

1 1316-S2 AMH COLE H5054.1

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3 By Representative Cole

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5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.59 RCW
8 to read as follows:

9 The intent and purpose of sections 1 through 8 of this act are to
10 recognize that there exists a public policy in the state of Washington
11 against strikes by educational employees as a means of settling their
12 labor disputes; that the uninterrupted and dedicated service of these
13 employees is vital to the welfare and public safety of the state of
14 Washington; that to promote such dedicated and uninterrupted public
15 service there should exist an effective and adequate alternative means
16 of settling disputes.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.59 RCW
18 to read as follows:

19 Negotiations between an employer and the bargaining representative
20 in a unit of educational employees shall be commenced at least five
21 months before the date on which school districts are required to submit
22 copies of their budgets to their educational service districts. If no
23 agreement has been reached sixty days after the commencement of such
24 negotiations then, at any time thereafter, either party may declare
25 that an impasse exists and may submit the dispute to the commission for
26 mediation, with or without the concurrence of the other party. The
27 commission shall appoint a mediator, who shall forthwith meet with the
28 representatives of the parties, either jointly or separately, and shall
29 take such other steps as he or she may deem appropriate in order to
30 persuade the parties to resolve their differences and effect an
31 agreement: PROVIDED, That a mediator does not have a power of
32 compulsion.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.59 RCW
34 to read as follows:

1 If an agreement has not been reached following a reasonable period
2 of negotiations and mediation, and the executive director of the
3 commission, upon the recommendation of the assigned mediator, finds
4 that the parties remain at impasse, then an interest arbitration panel
5 shall be created to resolve the dispute. The issues for determination
6 by the arbitration panel shall be limited to the issues certified by
7 the executive director. Within seven days following the issuance of
8 the determination of the executive director, each party shall name one
9 person to serve as its arbitrator on the arbitration panel. The two
10 members so appointed shall meet within seven days following the
11 appointment of the later appointed member to attempt to choose a third
12 member to act as the neutral chairman of the arbitration panel. Upon
13 the failure of the arbitrators to select a neutral chairman within
14 seven days, the two appointed members shall use one of the two
15 following options in the appointment of the third member, who shall act
16 as chairman of the panel: (1) By mutual consent, the two appointed
17 members may jointly request the commission, and the commission shall
18 appoint a third member within two days of such request. Costs of each
19 party's appointee shall be borne by each party respectively; other
20 costs of the arbitration proceedings shall be borne by the commission;
21 or (2) either party may apply to the commission, the federal mediation
22 and conciliation service, or the American Arbitration Association to
23 provide a list of five qualified arbitrators from which the neutral
24 chairman shall be chosen. Each party shall pay the fees and expenses
25 of its arbitrator, and the fees and expenses of the neutral chairman
26 shall be shared equally between the parties.

27 The arbitration panel so constituted shall promptly establish a
28 date, time, and place for a hearing and shall provide reasonable notice
29 thereof to the parties to the dispute. A hearing, which shall be
30 informal, shall be held, and each party shall have the opportunity to
31 present evidence and make argument. No member of the arbitration panel
32 may present the case for a party to the proceedings. The rules of
33 evidence prevailing in judicial proceedings may be considered, but are
34 not binding, and any oral testimony or documentary evidence or other
35 data deemed relevant by the chairman of the arbitration panel may be
36 received in evidence. A recording of the proceedings shall be taken.
37 The arbitration panel has the power to administer oaths, require the
38 attendance of witnesses, and require the production of such books,
39 papers, contracts, agreements, and documents as may be deemed by the

1 panel to be material to a just determination of the issues in dispute.
2 If any person refuses to obey a subpoena issued by the arbitration
3 panel, or refuses to be sworn or to make an affirmation to testify, or
4 any witness, party, or attorney for a party is guilty of any contempt
5 while in attendance at any hearing held hereunder, the arbitration
6 panel may invoke the jurisdiction of the superior court in the county
7 where the labor dispute exists, and the court has jurisdiction to issue
8 an appropriate order. Any failure to obey the order may be punished by
9 the court as a contempt thereof. The hearing conducted by the
10 arbitration panel shall be concluded within twenty-five days following
11 the selection or designation of the neutral chairman of the arbitration
12 panel, unless the parties agree to a longer period.

13 The neutral chairman shall consult with the other members of the
14 arbitration panel, and, within thirty days following the conclusion of
15 the hearing, the neutral chairman shall make written findings of fact
16 and a written determination of the issues in dispute, based on the
17 evidence presented. A copy thereof shall be served on the commission,
18 on each of the other members of the arbitration panel, and on each of
19 the parties to the dispute. That determination shall be final and
20 binding upon both parties, subject to review by the superior court upon
21 the application of either party within thirty days of its receipt
22 solely upon the question of whether the decision of the panel was
23 arbitrary or capricious.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.59 RCW
25 to read as follows:

26 An interest arbitration panel created pursuant to section 3 of this
27 act, in the performance of its duties under this chapter, exercises a
28 state function and is, for the purposes of this chapter, a state
29 agency. Chapter 34.05 RCW does not apply to proceedings before an
30 interest arbitration panel under this chapter.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.59 RCW
32 to read as follows:

33 During the pendency of the proceedings before the arbitration
34 panel, existing wages, hours and other conditions of employment shall
35 not be changed by action of either party without the consent of the
36 other but a party may so consent without prejudice to his rights or
37 position under sections 1 through 8 of this act.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.59 RCW
2 to read as follows:

3 If the representative of either or both the educational employees
4 and the employer refuse to submit to the procedures set forth in
5 sections 2 and 3 of this act, the parties, or the commission on its own
6 motion, may invoke the jurisdiction of the superior court for the
7 county in which the labor dispute exists and such court shall have
8 jurisdiction to issue an appropriate order. A failure to obey such
9 order may be punished by the court as a contempt thereof. A decision
10 of the arbitration panel shall be final and binding on the parties, and
11 may be enforced at the instance of either party, the arbitration panel
12 or the commission in the superior court for the county where the
13 dispute arose.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.59 RCW
15 to read as follows:

16 The right of educational employees to engage in any strike, work
17 slowdown, or stoppage is not granted. Both parties to any dispute
18 shall submit to the procedures set forth in sections 2 and 3 of this
19 act without resort to a strike or lockout. An organization recognized
20 as the bargaining representative that willfully disobeys a lawful order
21 of enforcement by a superior court pursuant to section 6 of this act
22 and this section, or willfully offers resistance to such order, whether
23 by strike or otherwise, is in contempt of court as provided in chapter
24 7.21 RCW. An employer that willfully disobeys a lawful order of
25 enforcement by a superior court pursuant to section 6 of this act or
26 willfully offers resistance to such order is in contempt of court as
27 provided in chapter 7.21 RCW.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.59 RCW
29 to read as follows:

30 (1) In making its determination, the arbitration panel shall be
31 mindful of the legislative purpose enumerated in section 1 of this act
32 and as additional standards or guidelines to aid it in reaching a
33 decision, shall take into consideration the following factors:

- 34 (a) The constitutional and statutory authority of the employer;
- 35 (b) Stipulations of the parties;
- 36 (c) The average consumer prices for goods and services, commonly
37 known as the cost of living;

1 (d) At-risk student populations or students with special needs;
2 (e) The financial capability of the school district;
3 (f) Changes in any of the foregoing circumstances during the
4 pendency of the proceedings; and

5 (g) Such other factors, not confined to the foregoing, which are
6 normally or traditionally taken into consideration in the determination
7 of wages, hours, and conditions of employment.

8 (2) Nothing in this section shall be construed to prohibit an
9 employer and an exclusive bargaining representative from agreeing to
10 substitute, at their own expense, their own procedure for resolving
11 impasses in collective bargaining for that provided in this section or
12 from agreeing to utilize for the purposes of this section any other
13 governmental or other agency or person in lieu of the commission.

14 NEW SECTION. Sec. 9. RCW 41.59.120 and 1975 1st ex.s. c 288 s 13
15 are each repealed.

16 NEW SECTION. Sec. 10. This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect immediately."

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23 On page 1, line 2 of the title, after "obligations;" strike the
24 remainder of the title and insert "adding new sections to chapter 41.59
25 RCW; repealing RCW 41.59.120; and declaring an emergency."

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