
HOUSE BILL 1790

State of Washington 55th Legislature 1997 Regular Session

By Representatives Sterk, Johnson, Talcott, Hickel, Mulliken and Smith

Read first time 02/10/97. Referred to Committee on Education.

1 AN ACT Relating to hearings for change of contract status of
2 educational employees; and amending RCW 28A.405.310.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 28A.405.310 and 1990 c 33 s 396 are each amended to
5 read as follows:

6 (1) Any employee receiving a notice of probable cause for discharge
7 or adverse effect in contract status pursuant to RCW 28A.405.300, or
8 any employee, with the exception of provisional employees as defined in
9 RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of
10 contract pursuant to RCW 28A.405.210, shall be granted the opportunity
11 for a hearing pursuant to this section.

12 (2) In any request for a hearing pursuant to RCW 28A.405.300 or
13 28A.405.210, the employee may request either an open or closed hearing.
14 The hearing shall be open or closed as requested by the employee, but
15 if the employee fails to make such a request, the hearing officer may
16 determine whether the hearing shall be open or closed. The hearing
17 shall be conducted in accordance with the procedure for the conduct of
18 an adjudicative hearing as provided for in RCW 34.05.449.

1 (3) The employee may engage counsel who shall be entitled to
2 represent the employee at the prehearing conference held pursuant to
3 subsection (5) of this section and at all subsequent proceedings
4 pursuant to this section. At the hearing provided for by this section,
5 the employee may produce such witnesses as he or she may desire.

6 (4) In the event that an employee requests a hearing pursuant to
7 RCW 28A.405.300 or 28A.405.210, a hearing officer shall be appointed in
8 the following manner: Within fifteen days following the receipt of any
9 such request the board of directors of the district or its designee and
10 the employee or employee's designee shall each appoint one nominee.
11 The two nominees shall jointly appoint a hearing officer who shall be
12 a member in good standing of the Washington state bar association or a
13 person adhering to the arbitration standards established by the public
14 employment relations commission and listed on its current roster of
15 arbitrators. Should said nominees fail to agree as to who should be
16 appointed as the hearing officer, either the board of directors or the
17 employee, upon appropriate notice to the other party, may apply to the
18 presiding judge of the superior court for the county in which the
19 district is located for the appointment of such hearing officer,
20 whereupon such presiding judge shall have the duty to appoint a hearing
21 officer who shall, in the judgment of such presiding judge, be
22 qualified to fairly and impartially discharge his or her duties.
23 Nothing herein shall preclude the board of directors and the employee
24 from stipulating as to the identity of the hearing officer in which
25 event the foregoing procedures for the selection of the hearing officer
26 shall be inapplicable. The district shall pay all fees and expenses of
27 any hearing officer selected pursuant to this subsection.

28 (5) Within five days following the selection of a hearing officer
29 pursuant to subsection (4) of this section, the hearing officer shall
30 schedule a prehearing conference to be held within such five day
31 period, unless the board of directors and employee agree on another
32 date convenient with the hearing officer. The employee shall be given
33 written notice of the date, time, and place of such prehearing
34 conference at least three days prior to the date established for such
35 conference.

36 (6) The hearing officer shall preside at any prehearing conference
37 scheduled pursuant to subsection (5) of this section and in connection
38 therewith shall:

1 (a) Issue such subpoenas or subpoenas duces tecum as either party
2 may request at that time or thereafter; and

3 (b) Authorize the taking of prehearing depositions at the request
4 of either party at that time or thereafter; and

5 (c) Provide for such additional methods of discovery as may be
6 authorized by the civil rules applicable in the superior courts of the
7 state of Washington; and

8 (d) Establish the date for the commencement of the hearing, to be
9 within ten days following the date of the prehearing conference, unless
10 ~~((the employee))~~ either party requests a continuance, in which event
11 the hearing officer shall give due consideration to such request.

12 (7) The hearing officer shall preside at any hearing and in
13 connection therewith shall:

14 (a) Make rulings as to the admissibility of evidence pursuant to
15 the rules of evidence ~~((applicable in the superior court of the state
16 of Washington))~~ for an adjudicative hearing under RCW 34.05.452.

17 (b) Make other appropriate rulings of law and procedure.

18 (c) Within ten days following the conclusion of the hearing
19 transmit in writing to the board and to the employee, findings of fact
20 and conclusions of law and final decision. If the final decision is in
21 favor of the employee, the employee shall be restored to his or her
22 employment position and shall be awarded reasonable attorneys' fees.

23 (8) Any final decision by the hearing officer to nonrenew the
24 employment contract of the employee, or to discharge the employee, or
25 to take other action adverse to the employee's contract status, as the
26 case may be, shall be based solely upon the cause or causes specified
27 in the notice of probable cause to the employee and shall be
28 established by a preponderance of the evidence at the hearing to be
29 sufficient cause or causes for such action.

30 (9) All subpoenas and prehearing discovery orders shall be
31 enforceable by and subject to the contempt and other equity powers of
32 the superior court of the county in which the school district is
33 located upon petition of any aggrieved party.

34 (10) A complete record shall be made of the hearing and all orders
35 and rulings of the hearing officer and school board.

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