
Commerce & Labor Committee

HB 2343

Brief Description: Settling certificated educational employees' collective bargaining disputes.

Sponsors: Representatives Dunshee, Fromhold and Lantz.

Brief Summary of Bill

- Establishes procedures and timelines for negotiating teacher collective bargaining agreements, with requirements for settling negotiation impasses through binding interest arbitration and a prohibition against strikes and lockouts.

Hearing Date: 1/13/04

Staff: Chris Cordes (786-7103).

Background:

Collective Bargaining for Certificated Employees in Washington

Overview. Collective bargaining between school districts and certificated educational employees (including teachers and principals) is governed by state law. Under this law, the representatives of the employer and the exclusive bargaining representative of the employees must meet at reasonable times in light of the time limitations of the budget-making process and bargain in good faith regarding wages, hours, and terms and conditions of employment.

Limitations. The parties are not permitted to bargain salary or compensation increases in excess of those authorized under the statewide salary allocation determined by the Legislature or under the requirements related to the school district's authority over salaries and supplemental contracts.

Resolving Collective Bargaining Impasses.

- *Mediation.* If either party declares an impasse in bargaining, the party may request the Public Employment Relations Commission (Commission) to appoint a mediator. If the mediator is unable to effect a settlement within 10 days, either party may request that the dispute be submitted to fact-finding with recommendations, unless the parties agree to extend the mediation period.
- *Fact-Finding.* Within five days after a request for fact-finding is received, the parties must select a person to serve as fact-finder or the Commission will designate a fact-finder. The fact-finder, within five days, must meet with the parties, jointly or separately, and make inquiries or hold hearings. The fact-finder may issue subpoenas. Unless the dispute is settled

within 10 days of the fact-finder's appointment, the fact-finder must issue advisory findings and recommendations within 30 days. These findings and recommendations are submitted privately to the parties and the Commission. Any party, the fact-finder, or the Commission may make the report public if the dispute is not settled within five days of receiving the report. The costs of fact-finding are borne by the Commission.

- *Optional Procedures.* The parties are authorized to agree to substitute, at their own expense, their own procedure for resolving collective bargaining impasses, which could include binding interest arbitration.
- *Strikes or Lockouts.* The certificated employee collective bargaining statute does not address strikes or lockouts. Under Washington Supreme Court precedent, superior courts are authorized to issue orders enjoining public employee strikes.

Resolving Collective Bargaining Impasses in Other Laws

Interest Arbitration in Washington. Under the Washington Public Employees Collective Bargaining Act, uniformed personnel (law enforcement officers in larger jurisdictions, fire fighters, and certain jail employees in larger jurisdictions, among others), the Washington State Patrol officers, certain transit workers, and individual provider home care workers are subject to mediation and binding interest arbitration procedures if an impasse occurs in negotiations. In general, either party may declare an impasse and ask for mediation from the Commission. If the dispute is not resolved in a reasonable period of mediation, the issues in dispute are submitted to an arbitration panel for a binding determination. Ferry workers also have interest arbitration under the Marine Employees' Collective Bargaining Act. All employees subject to interest arbitration are also subject to an express statutory strike prohibition.

Other States. Nine states have compulsory binding interest arbitration under some or all circumstances. In Connecticut and Iowa, arbitration procedures are invoked if the parties have not reached agreement within a specific time period. Teachers are not permitted to strike in these two states. In Oregon, binding arbitration is required as part of a court order that enjoins a strike. However, teachers in Oregon are permitted to strike under certain circumstances. In Pennsylvania, arbitration is mandatory if a strike or lockout would prevent completion of the school year by June 15. In five other states, compulsory binding interest arbitration occurs if one party requests binding arbitration. Strikes are prohibited in these states, except in Wisconsin where strikes are permitted if both parties withdraw their final offers prior to the arbitration hearing.

In fifteen other states, voluntary binding interest arbitration is permitted when the parties agree (including Washington).

Summary of Bill:

The Legislature recognizes the importance of uninterrupted and dedicated service by certificated school employees and the need for a means of settling collective bargaining disputes. Timelines and procedures for negotiating collective bargaining agreements for certificated school employees are established, including a requirement for binding interest arbitration, and strikes and lockouts are prohibited.

Collective Bargaining Negotiation Timelines

The mediation and fact-finding procedures are replaced with a new process.

Beginning with contracts for the 2004-05 school year, bargaining must begin at least five months before adoption of the school district's budget. Renegotiations of an existing contract must begin as required by the contract or, if not specified, within 20 days of a request by either party. If an agreement is not reached within 60 days, then either party may declare an impasse and request mediation of the dispute from the Commission.

If the dispute is not resolved after a reasonable period of mediation, and the Commission's Executive Director finds that the parties remain at impasse, the dispute must be settled through binding interest arbitration.

Binding Interest Arbitration Procedures

Appointing the Arbitration Panel. Within seven days after the Executive Director determines that an impasse still exists, the parties must each name one person to serve on the arbitration panel. These two members choose a third person who will act as the neutral chair of the panel. If the parties are unable to choose a neutral chair, the chair is selected under one of two alternative methods. Under the first method, the Commission appoints the chair and the parties pay the costs of each party's appointee and other costs are borne by the Commission. Under the second method, the parties apply to various arbitration services for a list of five qualified arbitrators. The chair must be chosen from the lists, and the fees of expenses of the chair are shared equally between the parties, while each party pays the costs of its own arbitrator. Once created, the panel exercises a state function in performing its duties and is a state agency for its limited purposes.

Arbitration Procedure. The arbitration panel establishes a date and place for a hearing and gives notice to the parties. The panel is authorized to administer oaths and subpoena witness and documents. The hearing must be concluded within 25 days following the selection of the chair, unless the parties agree otherwise.

Within 30 days after the hearing, the chair must issue a decision in consultation with the other members of the panel. The determination is final and binding on both parties, subject to superior court review on whether the determination was arbitrary and capricious. The decision may be enforced in court by either party, the panel, or the Commission.

Factors that the Arbitration Panel Must Consider. In making an award, the arbitration panel must consider:

- the authority of the employer;
- the stipulations of the parties;
- comparison of wages and other conditions of employment with those of similarly situated public schools in Washington;
- the cost-of-living;
- the interest and welfare of the public;
- the ability of the employer to finance economic adjustments; and
- changes in circumstances in any of these factors during the proceedings.

Limitations. The arbitration panel is not authorized to make a determination regarding salary or compensation increases in excess of those authorized under the statewide salary allocation determined by the Legislature or under the requirements related to the school district's authority over salaries and supplemental contracts. The state has no liability for funding an arbitration

award that exceeds the state funding formulae or allocations in effect during the term of the contract. The award may not be inconsistent with any statutory limitation on the employer's revenues or allocation of revenues.

Enforcement. If any party refuses to submit to the arbitration procedures, the parties or the Commission may request an appropriate order from the superior court. Failure to obey the order is contempt of court.

Strikes and Lockouts

The right of certificated school employees to engage in a strike, work slow down, or work stoppage is prohibited. School districts are prohibited from engaging in a lock out. If a exclusive bargaining representative or an employer willfully disobeys a court order, the party is in contempt of court.

Rules Authority: The bill does not contain provisions addressing the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on January 12, 2004.

Effective Date: The bill contains an emergency clause and takes effect immediately.