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HOUSE BILL 2343

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Dunshee, Fromhold, Lantz, Ruderman, Linville, Rockefeller, Edwards and Kagi

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1            AN ACT Relating to binding interest arbitration for certificated  
2 school employees; amending RCW 41.59.020; adding new sections to  
3 chapter 41.59 RCW; repealing RCW 41.59.120; and declaring an emergency.

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

5            **Sec. 1.** RCW 41.59.020 and 1989 c 11 s 11 are each amended to read  
6 as follows:

7            (~~As used in this chapter:~~) The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9            (1) (~~The term~~) "Employee organization" means any organization,  
10 union, association, agency, committee, council, or group of any kind in  
11 which employees participate, and which exists for the purpose, in whole  
12 or in part, of collective bargaining with employers.

13            (2) (~~The term~~) "Collective bargaining" or "bargaining" means the  
14 performance of the mutual obligation of the representatives of the  
15 employer and the exclusive bargaining representative to meet at  
16 reasonable times in light of the time limitations of (~~the budget-~~  
17 ~~making process,~~) section 2 of this act and to bargain in good faith in  
18 an effort to reach agreement with respect to the wages, hours, and  
19 terms and conditions of employment: PROVIDED, That prior law, practice

1 or interpretation shall be neither restrictive, expansive, nor  
2 determinative with respect to the scope of bargaining. A written  
3 contract incorporating any agreements reached shall be executed if  
4 requested by either party. The obligation to bargain does not compel  
5 either party to agree to a proposal or to make a concession.

6 In the event of a dispute between an employer and an exclusive  
7 bargaining representative over the matters that are terms and  
8 conditions of employment, the commission shall decide which item(s) are  
9 mandatory subjects for bargaining and which item(s) are nonmandatory.

10 (3) (~~The term~~) "Commission" means the public employment relations  
11 commission established by RCW 41.58.010.

12 (4) (~~The terms~~) "Employee" and "educational employee" means any  
13 certificated employee of a school district, except:

14 (a) The chief executive officer of the employer.

15 (b) The chief administrative officers of the employer, which shall  
16 mean the superintendent of the district, deputy superintendents,  
17 administrative assistants to the superintendent, assistant  
18 superintendents, and business manager. Title variation from all  
19 positions enumerated in this subsection (4)(b) may be appealed to the  
20 commission for determination of inclusion in, or exclusion from, the  
21 term "educational employee".

22 (c) Confidential employees, which shall mean:

23 (i) Any person who participates directly on behalf of an employer  
24 in the formulation of labor relations policy, the preparation for or  
25 conduct of collective bargaining, or the administration of collective  
26 bargaining agreements, except that the role of such person is not  
27 merely routine or clerical in nature but calls for the consistent  
28 exercise of independent judgment; and

29 (ii) Any person who assists and acts in a confidential capacity to  
30 such person.

31 (d) Unless included within a bargaining unit pursuant to RCW  
32 41.59.080, any supervisor, which means any employee having authority,  
33 in the interest of an employer, to hire, assign, promote, transfer,  
34 layoff, recall, suspend, discipline, or discharge other employees, or  
35 to adjust their grievances, or to recommend effectively such action, if  
36 in connection with the foregoing the exercise of such authority is not  
37 merely routine or clerical in nature but calls for the consistent  
38 exercise of independent judgment, and shall not include any persons

1 solely by reason of their membership on a faculty tenure or other  
2 governance committee or body. The term "supervisor" shall include only  
3 those employees who perform a preponderance of the above-specified acts  
4 of authority.

5 (e) Unless included within a bargaining unit pursuant to RCW  
6 41.59.080, principals and assistant principals in school districts.

7 (5) (~~The term~~) "Employer" means any school district.

8 (6) (~~The term~~) "Exclusive bargaining representative" means any  
9 employee organization which has:

10 (a) Been selected or designated pursuant to the provisions of this  
11 chapter as the representative of the employees in an appropriate  
12 collective bargaining unit; or

13 (b) Prior to January 1, 1976, been recognized under a predecessor  
14 statute as the representative of the employees in an appropriate  
15 collective bargaining or negotiations unit.

16 (7) (~~The term~~) "Person" means one or more individuals,  
17 organizations, unions, associations, partnerships, corporations,  
18 boards, committees, commissions, agencies, or other entities, or their  
19 representatives.

20 (8) (~~The term~~) "Nonsupervisory employee" means all educational  
21 employees other than principals, assistant principals and supervisors.

22 NEW SECTION. Sec. 2. A new section is added to chapter 41.59 RCW  
23 to read as follows:

24 (1) The legislature recognizes that the uninterrupted and dedicated  
25 service of educational employees is vital to the welfare and public  
26 safety and health of this state, and that to promote such dedicated and  
27 uninterrupted public service there should exist an effective and  
28 adequate means of settling collective bargaining disputes.

29 (2) With respect to contracts for the 2004-05 school year or  
30 beyond, negotiations between an employer and the exclusive bargaining  
31 representative of a unit of employees under this chapter must commence  
32 at least five months prior to adoption of the employer's budget. After  
33 the effective date of this section, renegotiation of an existing  
34 contract must commence as required by the contract, or if not specified  
35 by the contract, within twenty days of receipt by one party of a  
36 written notice requesting negotiations, served as required under the  
37 contract.

1 (3) If the employer and exclusive bargaining representative have  
2 not reached an agreement within sixty days after commencing  
3 negotiations, then at any time thereafter either party may declare that  
4 an impasse exists and may submit the dispute to the commission for  
5 mediation, with or without the concurrence of the other party. The  
6 commission shall appoint a mediator, who shall forthwith meet with the  
7 representatives of the parties, either jointly or separately, and shall  
8 take such other steps as he or she may deem appropriate in order to  
9 persuade the parties to resolve their differences and effect an  
10 agreement. The mediator does not have a power of compulsion.

11 (4)(a) If an agreement has not been reached following a reasonable  
12 period of mediation, and the executive director of the commission, upon  
13 the recommendation of the assigned mediator, finds that the parties  
14 remain at impasse, then an interest arbitration panel shall be created  
15 to resolve the dispute. The issues for determination by the  
16 arbitration panel are limited to the issues certified by the executive  
17 director of the commission.

18 (b) Within seven days following the issuance of the determination  
19 of the executive director of the commission, each party shall name one  
20 person to serve as its arbitrator on the arbitration panel. The two  
21 members so appointed shall meet within seven days following the  
22 appointment of the later appointed member to attempt to choose a third  
23 member to act as the neutral chair of the arbitration panel. Upon the  
24 failure of the arbitrators to select a neutral chair within seven days,  
25 the two appointed members shall use one of the two following options in  
26 the appointment of the third member, who shall act as chair of the  
27 panel:

28 (i) By mutual consent, the two appointed members may jointly  
29 request the commission, and the commission shall appoint a third member  
30 within two days of such request. Costs of each party's appointee shall  
31 be borne by each party respectively; other costs of the arbitration  
32 proceedings shall be borne by the commission; or

33 (ii) Either party may apply to the commission, the federal  
34 mediation and conciliation service, or the American arbitration  
35 association to provide a list of five qualified arbitrators from which  
36 the neutral chair shall be chosen. Each party shall pay the fees and  
37 expenses of its arbitrator, and the fees and expenses of the neutral  
38 chair shall be shared equally between the parties.

1 (c)(i) The arbitration panel so constituted under this section  
2 shall promptly establish a date, time, and place for a hearing and  
3 shall provide reasonable notice thereof to the parties to the dispute.  
4 A hearing, which shall be informal, shall be held, and each party shall  
5 have the opportunity to present evidence and make argument. No member  
6 of the arbitration panel may present the case for a party to the  
7 proceedings.

8 (ii) The rules of evidence prevailing in judicial proceedings may  
9 be considered, but are not binding, and any oral testimony or  
10 documentary evidence or other data deemed relevant by the chair of the  
11 arbitration panel may be received in evidence. A recording of the  
12 proceedings shall be taken.

13 (iii) The arbitration panel has the power to administer oaths,  
14 require the attendance of witnesses, and require the production of such  
15 books, papers, contracts, agreements, and documents as may be deemed by  
16 the panel to be material to a just determination of the issues in  
17 dispute. If any person refuses to obey a subpoena issued by the  
18 arbitration panel, or refuses to be sworn or to make an affirmation to  
19 testify, or any witness, party, or attorney for a party is guilty of  
20 any contempt while in attendance at any hearing held hereunder, the  
21 arbitration panel may invoke the jurisdiction of the superior court in  
22 the county in which the labor dispute exists, and the court has  
23 jurisdiction to issue an appropriate order. Any failure to obey the  
24 order may be punished by the court as a contempt of court under chapter  
25 7.21 RCW.

26 (iv) The hearing conducted by the arbitration panel shall be  
27 concluded within twenty-five days following the selection or  
28 designation of the neutral chair of the arbitration panel, unless the  
29 parties agree to a longer period.

30 (d) The neutral chair shall consult with the other members of the  
31 arbitration panel, and, within thirty days following the conclusion of  
32 the hearing, the neutral chair shall make written findings of fact and  
33 a written determination of the issues in dispute, based on the evidence  
34 presented. A copy of the determination shall be served on the  
35 commission, on each of the other members of the arbitration panel, and  
36 on each of the parties to the dispute. The determination shall be  
37 final and binding upon both parties, subject to review by the superior  
38 court for the county in which the labor dispute exists upon the

1 application of either party solely upon the question of whether the  
2 decision of the panel was arbitrary or capricious. The determination  
3 may be enforced at the instance of either party, the arbitration panel,  
4 or the commission in the superior court for the county in which the  
5 dispute exists.

6 (5) An interest arbitration panel created under this section, in  
7 the performance of its duties under this chapter, exercises a state  
8 function and is, for the purposes of this chapter, a state agency.  
9 Chapter 34.05 RCW does not apply to proceedings before an interest  
10 arbitration panel under this chapter.

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

13 (1) In making the determination required under section 2 of this  
14 act, the arbitration panel shall be mindful of the legislative purpose  
15 enumerated in section 2(1) of this act and, as additional standards or  
16 guidelines to aid it in reaching a decision, it shall take into  
17 consideration the following factors:

- 18 (a) The constitutional and statutory authority of the employer;
- 19 (b) Stipulations of the parties;
- 20 (c) Comparison of the wages, hours, and conditions of employment of  
21 employees involved in the proceedings with the wages, hours, and  
22 conditions of employment of like employees of similarly situated public  
23 schools in this state;
- 24 (d) The average consumer prices for goods and services, commonly  
25 known as the cost of living;
- 26 (e) The interest and welfare of the public;
- 27 (f) The ability of the employer to finance economic adjustments;
- 28 (g) Changes in any of the circumstances under (a) through (f) of  
29 this subsection during the pendency of the proceedings; and
- 30 (h) Such other factors, not confined to the factors under (a)  
31 through (f) of this subsection, that are normally or traditionally  
32 taken into consideration in the determination of wages, hours, and  
33 conditions of employment.

34 (2) The arbitration panel is not authorized to make a determination  
35 regarding salary or compensation increases in excess of those  
36 authorized in accordance with RCW 28A.150.410 and 28A.400.200. The  
37 state has no liability for funding the arbitration panel's award in

1 excess of the funding resulting from state funding formulae or  
2 allocations in effect during the term of the contract. The arbitration  
3 panel's determination, or its implementation, may not be inconsistent  
4 with any statutory limitation on the employer's revenues or allocations  
5 of revenues.

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

8 During the pendency of the proceedings before the arbitration panel  
9 created under section 2 of this act, existing wages, hours, and other  
10 conditions of employment shall not be changed by action of either party  
11 without the consent of the other but a party may so consent without  
12 prejudice to its rights or position under section 2 of this act.

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

15 If the representative of either or both the exclusive bargaining  
16 representative and the employer refuse to submit to the procedures set  
17 forth in section 2 of this act, the parties, or the commission on its  
18 own motion, may invoke the jurisdiction of the superior court for the  
19 county in which the labor dispute exists and the court has jurisdiction  
20 to issue an appropriate order. A failure to obey such an order may be  
21 punished by the court as a contempt of court under chapter 7.21 RCW.

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

24 (1) The right of educational employees to engage in any strike,  
25 work slowdown, or work stoppage is prohibited. The right of a school  
26 district to engage in a lockout is prohibited.

27 (2) An organization recognized as the exclusive bargaining  
28 representative of employees subject to this chapter that willfully  
29 disobeys a lawful order of enforcement by a superior court pursuant to  
30 this section or section 2 or 5 of this act or that willfully offers  
31 resistance to such an order, whether by strike or otherwise, is in  
32 contempt of court as provided in chapter 7.21 RCW. An employer that  
33 willfully disobeys a lawful order of enforcement by a superior court  
34 under this section or section 2 or 5 of this act or willfully offers

1 resistance to such an order is in contempt of court as provided in  
2 chapter 7.21 RCW.

3 NEW SECTION. **Sec. 7.** RCW 41.59.120 (Resolving impasses in  
4 collective bargaining--Mediation--Fact-finding with recommendations--  
5 Other) and 1975 1st ex.s. c 288 s 13 are each repealed.

6 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and takes effect  
9 immediately.

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