
SUBSTITUTE HOUSE BILL 1736

State of Washington

62nd Legislature

2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Ormsby, Hope, Van De Wege, Green, Reykdal, Fitzgibbon, Moscoso, Seaquist, and Kenney)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to granting binding interest arbitration rights to
2 certain uniformed personnel; amending RCW 41.80.005 and 41.80.010;
3 adding new sections to chapter 41.80 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 41.80.005 and 2002 c 354 s 321 are each amended to
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Agency" means any agency as defined in RCW 41.06.020 and
10 covered by chapter 41.06 RCW.

11 (2) "Collective bargaining" means the performance of the mutual
12 obligation of the representatives of the employer and the exclusive
13 bargaining representative to meet at reasonable times and to bargain in
14 good faith in an effort to reach agreement with respect to the subjects
15 of bargaining specified under RCW 41.80.020. The obligation to bargain
16 does not compel either party to agree to a proposal or to make a
17 concession, except as otherwise provided in this chapter.

18 (3) "Commission" means the public employment relations commission.

1 (4) "Confidential employee" means an employee who, in the regular
2 course of his or her duties, assists in a confidential capacity persons
3 who formulate, determine, and effectuate management policies with
4 regard to labor relations or who, in the regular course of his or her
5 duties, has authorized access to information relating to the
6 effectuation or review of the employer's collective bargaining
7 policies, or who assists or aids a manager. "Confidential employee"
8 also includes employees who assist assistant attorneys general who
9 advise and represent managers or confidential employees in personnel or
10 labor relations matters, or who advise or represent the state in tort
11 actions.

12 (5) "Director" means the director of the public employment
13 relations commission.

14 (6) "Employee" means any employee, including employees whose work
15 has ceased in connection with the pursuit of lawful activities
16 protected by this chapter, covered by chapter 41.06 RCW, except:

17 (a) Employees covered for collective bargaining by chapter 41.56
18 RCW;

19 (b) Confidential employees;

20 (c) Members of the Washington management service;

21 (d) Internal auditors in any agency; or

22 (e) Any employee of the commission, the office of financial
23 management, or the department of personnel.

24 (7) "Employee organization" means any organization, union, or
25 association in which employees participate and that exists for the
26 purpose, in whole or in part, of collective bargaining with employers.

27 (8) "Employer" means the state of Washington.

28 (9) "Exclusive bargaining representative" means any employee
29 organization that has been certified under this chapter as the
30 representative of the employees in an appropriate bargaining unit.

31 (10) "Institutions of higher education" means the University of
32 Washington, Washington State University, Central Washington University,
33 Eastern Washington University, Western Washington University, The
34 Evergreen State College, and the various state community colleges.

35 (11) "Labor dispute" means any controversy concerning terms,
36 tenure, or conditions of employment, or concerning the association or
37 representation of persons in negotiating, fixing, maintaining,
38 changing, or seeking to arrange terms or conditions of employment with

1 respect to the subjects of bargaining provided in this chapter,
2 regardless of whether the disputants stand in the proximate relation of
3 employer and employee.

4 (12) "Manager" means "manager" as defined in RCW 41.06.022.

5 (13) "Supervisor" means an employee who has authority, in the
6 interest of the employer, to hire, transfer, suspend, lay off, recall,
7 promote, discharge, direct, reward, or discipline employees, or to
8 adjust employee grievances, or effectively to recommend such action, if
9 the exercise of the authority is not of a merely routine nature but
10 requires the consistent exercise of individual judgment. However, no
11 employee who is a member of the Washington management service may be
12 included in a collective bargaining unit established under this
13 section.

14 (14) "Unfair labor practice" means any unfair labor practice listed
15 in RCW 41.80.110.

16 (15) "Uniformed personnel" means duly sworn police officers
17 employed as members of a police force established pursuant to RCW
18 28B.10.550.

19 **Sec. 2.** RCW 41.80.010 and 2010 c 104 s 1 are each amended to read
20 as follows:

21 (1) For the purpose of negotiating collective bargaining agreements
22 under this chapter, the employer shall be represented by the governor
23 or governor's designee, except as provided for institutions of higher
24 education in subsection (4) of this section.

25 (2)(a) If an exclusive bargaining representative represents more
26 than one bargaining unit, the exclusive bargaining representative shall
27 negotiate with each employer representative as designated in subsection
28 (1) of this section one master collective bargaining agreement on
29 behalf of all the employees in bargaining units that the exclusive
30 bargaining representative represents. For those exclusive bargaining
31 representatives who represent fewer than a total of five hundred
32 employees each, negotiation shall be by a coalition of all those
33 exclusive bargaining representatives. The coalition shall bargain for
34 a master collective bargaining agreement covering all of the employees
35 represented by the coalition. The governor's designee and the
36 exclusive bargaining representative or representatives are authorized
37 to enter into supplemental bargaining of agency-specific issues for

1 inclusion in or as an addendum to the master collective bargaining
2 agreement, subject to the parties' agreement regarding the issues and
3 procedures for supplemental bargaining. This section does not prohibit
4 cooperation and coordination of bargaining between two or more
5 exclusive bargaining representatives.

6 (b) This subsection (2) does not apply to exclusive bargaining
7 representatives who represent employees of institutions of higher
8 education, except when the institution of higher education has elected
9 to exercise its option under subsection (4) of this section to have its
10 negotiations conducted by the governor or governor's designee under the
11 procedures provided for general government agencies in subsections (1)
12 through (3) of this section.

13 (c) If five hundred or more employees of an independent state
14 elected official listed in RCW 43.01.010 are organized in a bargaining
15 unit or bargaining units under RCW 41.80.070, the official shall be
16 consulted by the governor or the governor's designee before any
17 agreement is reached under (a) of this subsection concerning
18 supplemental bargaining of agency specific issues affecting the
19 employees in such bargaining unit.

20 (3) The governor shall submit a request for funds necessary to
21 implement the compensation and fringe benefit provisions in the master
22 collective bargaining agreement or for legislation necessary to
23 implement the agreement. Requests for funds necessary to implement the
24 provisions of bargaining agreements shall not be submitted to the
25 legislature by the governor unless such requests:

26 (a) Have been submitted to the director of the office of financial
27 management by October 1 prior to the legislative session at which the
28 requests are to be considered; and

29 (b) Have been certified by the director of the office of financial
30 management as being feasible financially for the state or reflects the
31 decision of an arbitration panel reached under section 5 of this act.

32 The legislature shall approve or reject the submission of the
33 request for funds as a whole. The legislature shall not consider a
34 request for funds to implement a collective bargaining agreement unless
35 the request is transmitted to the legislature as part of the governor's
36 budget document submitted under RCW 43.88.030 and 43.88.060. If the
37 legislature rejects or fails to act on the submission, either party may

1 reopen all or part of the agreement or the exclusive bargaining
2 representative may seek to implement the procedures provided for in RCW
3 41.80.090.

4 (4)(a)(i) For the purpose of negotiating agreements for
5 institutions of higher education, the employer shall be the respective
6 governing board of each of the universities, colleges, or community
7 colleges or a designee chosen by the board to negotiate on its behalf.

8 (ii) A governing board of a university or college may elect to have
9 its negotiations conducted by the governor or governor's designee under
10 the procedures provided for general government agencies in subsections
11 (1) through (3) of this section, except that:

12 (A) The governor or the governor's designee and an exclusive
13 bargaining representative shall negotiate one master collective
14 bargaining agreement for all of the bargaining units of employees of a
15 university or college that the representative represents; or

16 (B) If the parties mutually agree, the governor or the governor's
17 designee and an exclusive bargaining representative shall negotiate one
18 master collective bargaining agreement for all of the bargaining units
19 of employees of more than one university or college that the
20 representative represents.

21 (iii) A governing board of a community college may elect to have
22 its negotiations conducted by the governor or governor's designee under
23 the procedures provided for general government agencies in subsections
24 (1) through (3) of this section.

25 (b) Prior to entering into negotiations under this chapter, the
26 institutions of higher education or their designees shall consult with
27 the director of the office of financial management regarding financial
28 and budgetary issues that are likely to arise in the impending
29 negotiations.

30 (c)(i) If appropriations are necessary to implement the
31 compensation and fringe benefit provisions of the bargaining agreements
32 reached between institutions of higher education and exclusive
33 bargaining representatives agreed to under the provisions of this
34 chapter, the governor shall submit a request for such funds to the
35 legislature according to the provisions of subsection (3) of this
36 section, except as provided in (c)(ii) of this subsection.

37 (ii) In the case of a bargaining unit of employees of institutions
38 of higher education in which the exclusive bargaining representative is

1 certified during or after the conclusion of a legislative session, the
2 legislature may act upon the compensation and fringe benefit provisions
3 of the unit's initial collective bargaining agreement if those
4 provisions are agreed upon and submitted to the office of financial
5 management and legislative budget committees before final legislative
6 action on the biennial or supplemental operating budget by the sitting
7 legislature.

8 (5) There is hereby created a joint committee on employment
9 relations, which consists of two members with leadership positions in
10 the house of representatives, representing each of the two largest
11 caucuses; the chair and ranking minority member of the house
12 appropriations committee, or its successor, representing each of the
13 two largest caucuses; two members with leadership positions in the
14 senate, representing each of the two largest caucuses; and the chair
15 and ranking minority member of the senate ways and means committee, or
16 its successor, representing each of the two largest caucuses. The
17 governor shall periodically consult with the committee regarding
18 appropriations necessary to implement the compensation and fringe
19 benefit provisions in the master collective bargaining agreements, and
20 upon completion of negotiations, advise the committee on the elements
21 of the agreements and on any legislation necessary to implement the
22 agreements.

23 (6) If, after the compensation and fringe benefit provisions of an
24 agreement are approved by the legislature, a significant revenue
25 shortfall occurs resulting in reduced appropriations, as declared by
26 proclamation of the governor or by resolution of the legislature, both
27 parties shall immediately enter into collective bargaining for a
28 mutually agreed upon modification of the agreement.

29 (7) After the expiration date of a collective bargaining agreement
30 negotiated under this chapter, all of the terms and conditions
31 specified in the collective bargaining agreement remain in effect until
32 the effective date of a subsequently negotiated agreement, not to
33 exceed one year from the expiration date stated in the agreement.
34 Thereafter, the employer may unilaterally implement according to law.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.80 RCW
36 to read as follows:

37 The intent and purpose of sections 4 through 10 of this act is to

1 recognize that there exists a public policy in the state of Washington
2 against strikes by uniformed personnel as a means of settling their
3 labor disputes; that the uninterrupted and dedicated service of these
4 classes of employees is vital to the welfare and public safety of the
5 state of Washington; and that to promote such dedicated and
6 uninterrupted public service there should exist an effective and
7 adequate alternative means of settling disputes.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.80 RCW
9 to read as follows:

10 Negotiations between the employer and the exclusive bargaining
11 representative of a unit of uniformed personnel shall be commenced at
12 least five months prior to the submission of the budget to the
13 legislature. If no agreement has been reached sixty days after the
14 commencement of such negotiations then, at any time thereafter, either
15 party may declare that an impasse exists and may submit the dispute to
16 the commission for mediation, with or without the concurrence of the
17 other party. The commission shall appoint a mediator, who shall
18 promptly meet with the representatives of the parties, either jointly
19 or separately, and shall take such other steps as he or she may deem
20 appropriate in order to persuade the parties to resolve their
21 differences and effect an agreement. A mediator, however, does not
22 have a power of compulsion. The mediator may consider only matters
23 that are subject to bargaining under this chapter.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.80 RCW
25 to read as follows:

26 (1) Within ten working days after the first Monday in September of
27 every odd-numbered year, the state's bargaining representative and the
28 exclusive bargaining representative for the appropriate bargaining unit
29 shall attempt to agree on an interest arbitration panel consisting of
30 three members to be used if the parties are not successful in
31 negotiating a comprehensive collective bargaining agreement. Each
32 party shall name one person to serve as its arbitrator on the
33 arbitration panel. The two members so appointed shall meet within
34 seven days following the appointment of the later appointed member to
35 attempt to choose a third member to act as the neutral chair of the
36 arbitration panel. Upon the failure of the arbitrators to select a

1 neutral chair within seven days, the two appointed members shall use
2 one of the two following options in the appointment of the third
3 member, who shall act as chair of the panel: (a) By mutual consent,
4 the two appointed members may jointly request the commission to, and
5 the commission shall, appoint a third member within two days of such a
6 request. Costs of each party's appointee shall be borne by each party
7 respectively; other costs of the arbitration proceedings shall be borne
8 by the commission; or (b) either party may apply to the commission, the
9 federal mediation and conciliation service, or the American arbitration
10 association to provide a list of five qualified arbitrators from which
11 the neutral chair shall be chosen. Each party shall pay the fees and
12 expenses of its arbitrator, and the fees and expenses of the neutral
13 chair shall be shared equally between the parties.

14 (2) Immediately upon selecting an interest arbitration panel, the
15 parties shall cooperate to reserve dates with the arbitration panel for
16 potential arbitration between August 1st and September 15th of the
17 following even-numbered year. The parties shall also prepare a
18 schedule of at least five negotiation dates for the following year,
19 absent an agreement to the contrary. The parties shall execute a
20 written agreement before November 1st of each odd-numbered year setting
21 forth the names of the members of the arbitration panel and the dates
22 reserved for bargaining and arbitration. This subsection imposes
23 minimum obligations only and is not intended to define or limit a
24 party's full, good faith bargaining obligation under other sections of
25 this chapter.

26 (3) If the parties are not successful in negotiating a
27 comprehensive collective bargaining agreement, a hearing shall be held.
28 The hearing shall be informal and each party shall have the opportunity
29 to present evidence and make argument. No member of the arbitration
30 panel may present the case for a party to the proceedings. The rules
31 of evidence prevailing in judicial proceedings may be considered, but
32 are not binding, and any oral testimony or documentary evidence or
33 other data deemed relevant by the chair of the arbitration panel may be
34 received in evidence. A recording of the proceedings shall be taken.
35 The arbitration panel has the power to administer oaths, require the
36 attendance of witnesses, and require the production of such books,
37 papers, contracts, agreements, and documents as may be deemed by the
38 panel to be material to a just determination of the issues in dispute.

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

13 (4) The neutral chair shall consult with the other members of the
14 arbitration panel, and, within thirty days following the conclusion of
15 the hearing, the neutral chair shall make written findings of fact and
16 a written determination of the issues in dispute, based on the evidence
17 presented. A copy thereof shall be served on the commission, on each
18 of the other members of the arbitration panel, and on each of the
19 parties to the dispute.

20 (5) Except as provided in this subsection, the written
21 determination shall be final and binding upon both parties.

22 (a) The written determination is subject to review by the superior
23 court upon the application of either party solely upon the question of
24 whether the decision of the panel was arbitrary or capricious.

25 (b) The written determination is not binding on the legislature
26 and, if the legislature does not approve the funds necessary to
27 implement provisions pertaining to compensation and fringe benefits of
28 an arbitrated collective bargaining agreement, is not binding on the
29 state.

30 (6) The arbitration panel may consider only matters that are
31 subject to bargaining under this chapter.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.80 RCW
33 to read as follows:

34 An interest arbitration panel created pursuant to section 5 of this
35 act, in the performance of its duties under this chapter, exercises a
36 state function and is, for the purposes of this chapter, a state

1 agency. Chapter 34.05 RCW does not apply to proceedings before an
2 interest arbitration panel under this chapter.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.80 RCW
4 to read as follows:

5 In making its determination, the panel shall be mindful of the
6 legislative purpose enumerated in section 3 of this act and, as
7 additional standards or guidelines to aid it in reaching a decision,
8 shall take into consideration the following factors:

9 (1) The constitutional and statutory authority of the employer;

10 (2) Stipulations of the parties;

11 (3) Comparison of the hours and conditions of employment of
12 personnel involved in the proceedings with the hours and conditions of
13 employment of like personnel of like employers of similar size on the
14 west coast of the United States;

15 (4) Changes in any of the circumstances under subsections (1)
16 through (3) of this section during the pendency of the proceedings; and

17 (5) Such other factors, not confined to the factors under
18 subsections (1) through (4) of this section, that are normally or
19 traditionally taken into consideration in the determination of matters
20 that are subject to bargaining under this chapter.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.80 RCW
22 to read as follows:

23 During the pendency of the proceedings before the arbitration
24 panel, existing wages, hours, and other conditions of employment shall
25 not be changed by action of either party without the consent of the
26 other but a party may so consent without prejudice to his rights or
27 position under sections 4 through 10 of this act.

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 41.80 RCW
29 to read as follows:

30 (1) If the representative of either or both the uniformed personnel
31 and the employer refuse to submit to the procedures set forth in
32 sections 4 and 5 of this act, the parties, or the commission on its own
33 motion, may invoke the jurisdiction of the superior court for the
34 county in which the labor dispute exists and such court shall have

1 jurisdiction to issue an appropriate order. A failure to obey such
2 order may be punished by the court as a contempt thereof.

3 (2) Except as provided in this subsection, a decision of the
4 arbitration panel shall be final and binding on the parties, and may be
5 enforced at the instance of either party, the arbitration panel or the
6 commission in the superior court for the county where the dispute
7 arose.

8 (a) The written determination is subject to review by the superior
9 court upon the application of either party solely upon the question of
10 whether the decision of the panel was arbitrary or capricious.

11 (b) The written determination is not binding on the legislature
12 and, if the legislature does not approve the funds necessary to
13 implement provisions pertaining to compensation and fringe benefits of
14 an arbitrated collective bargaining agreement, is not binding on the
15 state.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 41.80 RCW
17 to read as follows:

18 The right of uniformed personnel to engage in any strike, work
19 slowdown, or stoppage is not granted. An employee organization
20 recognized as the exclusive bargaining representative of uniformed
21 personnel subject to this chapter that willfully disobeys a lawful
22 order of enforcement by a superior court pursuant to this section and
23 section 9 of this act, or willfully offers resistance to such order,
24 whether by strike or otherwise, is in contempt of court as provided in
25 chapter 7.21 RCW. An employer that willfully disobeys a lawful order
26 of enforcement by a superior court pursuant to section 9 of this act or
27 willfully offers resistance to such order is in contempt of court as
28 provided in chapter 7.21 RCW.

29 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.80 RCW
30 to read as follows:

31 (1) By January 1, 2012, the public employment relations commission
32 shall review the appropriateness of the bargaining units that consist
33 of or include uniformed personnel and exist on the effective date of
34 this section. If the commission determines that an existing bargaining
35 unit is not appropriate pursuant to RCW 41.80.070, the commission may
36 modify the unit.

1 (2) The exclusive bargaining representatives certified to represent
2 the bargaining units that consist of or include uniformed personnel and
3 exist on the effective date of this section shall continue as the
4 exclusive bargaining representative without the necessity of an
5 election as of the effective date of this section. However, there may
6 be proceedings concerning representation under this chapter thereafter.

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