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SENATE BILL 5606

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Conway, Hargrove, Kohl-Welles, Zarelli, Hobbs, Delvin, and Shin

Read first time 02/01/11. Referred to Committee on Labor, Commerce & Consumer Protection.

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 campus police officers at  
17 institutions of higher education.

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

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

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

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

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

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

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

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

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

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

1 representative may seek to implement the procedures provided for in RCW  
2 41.80.090.

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

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

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

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

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

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

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

36 (ii) In the case of a bargaining unit of employees of institutions  
37 of higher education in which the exclusive bargaining representative is  
38 certified during or after the conclusion of a legislative session, the

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

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

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

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

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

36 The intent and purpose of sections 4 through 10 of this act is to  
37 recognize that there exists a public policy in the state of Washington

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

33 An interest arbitration panel created pursuant to section 5 of this  
34 act, in the performance of its duties under this chapter, exercises a  
35 state function and is, for the purposes of this chapter, a state  
36 agency. Chapter 34.05 RCW does not apply to proceedings before an  
37 interest arbitration panel under this chapter.

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

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

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

8            (2) Stipulations of the parties;

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

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

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

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

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

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

28           (1) If the representative of either or both the uniformed personnel  
29 and the employer refuse to submit to the procedures set forth in  
30 sections 4 and 5 of this act, the parties, or the commission on its own  
31 motion, may invoke the jurisdiction of the superior court for the  
32 county in which the labor dispute exists and such court shall have  
33 jurisdiction to issue an appropriate order. A failure to obey such  
34 order may be punished by the court as a contempt thereof.

35           (2) Except as provided in this subsection, a decision of the  
36 arbitration panel shall be final and binding on the parties, and may be

1 enforced at the instance of either party, the arbitration panel or the  
2 commission in the superior court for the county where the dispute  
3 arose.

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

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

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

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

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

27 The exclusive bargaining representatives certified to represent the  
28 bargaining units that consist of or include uniformed personnel and  
29 exist on the effective date of this section shall continue as the  
30 exclusive bargaining representative without the necessity of an  
31 election as of the effective date of this section. However, there may  
32 be proceedings concerning representation under this chapter thereafter.

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