
HOUSE BILL 1540

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2013 Regular Session

By Representatives Seaquist, Sells, Hope, Reykdal, Stanford, Hayes, Appleton, Green, Moscoso, Bergquist, Fey, Pollet, and Santos

Read first time 01/30/13. Referred to Committee on Labor & Workforce Development.

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

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

6 **Sec. 1.** RCW 41.80.005 and 2011 1st sp.s. c 43 s 444 are each
7 amended to read as follows:

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

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

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

19 (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 office of risk management within the department of
24 enterprise services.

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

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

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

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

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

1 changing, or seeking to arrange terms or conditions of employment with
2 respect to the subjects of bargaining provided in this chapter,
3 regardless of whether the disputants stand in the proximate relation of
4 employer and employee.

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

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

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

17 (15) "Uniformed personnel" means duly sworn police officers
18 employed as members of a police force established pursuant to RCW
19 28B.10.550.

20 **Sec. 2.** RCW 41.80.010 and 2011 1st sp.s. c 50 s 938 and 2011 c 344
21 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

33 The legislature shall approve or reject the submission of the
34 request for funds as a whole. The legislature shall not consider a
35 request for funds to implement a collective bargaining agreement unless
36 the request is transmitted to the legislature as part of the governor's
37 budget document submitted under RCW 43.88.030 and 43.88.060. If the
38 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) In the case of bargaining agreements reached between
31 institutions of higher education other than the University of
32 Washington and exclusive bargaining representatives agreed to under the
33 provisions of this chapter, if appropriations are necessary to
34 implement the compensation and fringe benefit provisions of the
35 bargaining agreements, the governor shall submit a request for such
36 funds to the legislature according to the provisions of subsection (3)
37 of this section, except as provided in (c)(iii) of this subsection.

1 (ii) In the case of bargaining agreements reached between the
2 University of Washington and exclusive bargaining representatives
3 agreed to under the provisions of this chapter, if appropriations are
4 necessary to implement the compensation and fringe benefit provisions
5 of a bargaining agreement, the governor shall submit a request for such
6 funds to the legislature according to the provisions of subsection (3)
7 of this section, except as provided in this subsection (4)(c)(ii) and
8 as provided in (c)(iii) of this subsection.

9 (A) If appropriations of less than ten thousand dollars are
10 necessary to implement the provisions of a bargaining agreement, a
11 request for such funds shall not be submitted to the legislature by the
12 governor unless the request has been submitted to the director of the
13 office of financial management by October 1 prior to the legislative
14 session at which the request is to be considered.

15 (B) If appropriations of ten thousand dollars or more are necessary
16 to implement the provisions of a bargaining agreement, a request for
17 such funds shall not be submitted to the legislature by the governor
18 unless the request:

19 (I) Has been submitted to the director of the office of financial
20 management by October 1 prior to the legislative session at which the
21 request is to be considered; and

22 (II) Has been certified by the director of the office of financial
23 management as being feasible financially for the state.

24 (C) If the director of the office of financial management does not
25 certify a request under (c)(ii)(B) of this subsection as being feasible
26 financially for the state, the parties shall enter into collective
27 bargaining solely for the purpose of reaching a mutually agreed upon
28 modification of the agreement necessary to address the absence of those
29 requested funds. The legislature may act upon the compensation and
30 fringe benefit provisions of the modified collective bargaining
31 agreement if those provisions are agreed upon and submitted to the
32 office of financial management and legislative budget committees before
33 final legislative action on the biennial or supplemental operating
34 budget by the sitting legislature.

35 (iii) In the case of a bargaining unit of employees of institutions
36 of higher education in which the exclusive bargaining representative is
37 certified during or after the conclusion of a legislative session, the
38 legislature may act upon the compensation and fringe benefit provisions

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

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

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

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

33 (8) For the 2011-2013 fiscal biennium, a collective bargaining
34 agreement related to employee health care benefits negotiated between
35 the employer and coalition pursuant to RCW 41.80.020(3) regarding the
36 dollar amount expended on behalf of each employee shall be a separate
37 agreement for which the governor may request funds necessary to
38 implement the agreement. If such an agreement is negotiated and funded

1 by the legislature, this agreement will supersede any terms and
2 conditions of an expired 2009-2011 biennial master collective
3 bargaining agreement under this chapter regarding health care benefits.

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

6 The intent and purpose of sections 4 through 10 of this act is to
7 recognize that there exists a public policy in the state of Washington
8 against strikes by uniformed personnel as a means of settling their
9 labor disputes; that the uninterrupted and dedicated service of these
10 classes of employees is vital to the welfare and public safety of the
11 state of Washington; and that to promote such dedicated and
12 uninterrupted public service there should exist an effective and
13 adequate alternative means of settling disputes.

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

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

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

32 (1) Within ten working days after the first Monday in September of
33 every odd-numbered year, the state's bargaining representative and the
34 exclusive bargaining representative for the appropriate bargaining unit
35 shall attempt to agree on an interest arbitration panel consisting of

1 three members to be used if the parties are not successful in
2 negotiating a comprehensive collective bargaining agreement. Each
3 party shall name one person to serve as its arbitrator on the
4 arbitration panel. The two members so appointed shall meet within
5 seven days following the appointment of the later appointed member to
6 attempt to choose a third member to act as the neutral chair of the
7 arbitration panel. Upon the failure of the arbitrators to select a
8 neutral chair within seven days, the two appointed members shall use
9 one of the two following options in the appointment of the third
10 member, who shall act as chair of the panel: (a) By mutual consent,
11 the two appointed members may jointly request the commission to, and
12 the commission shall, appoint a third member within two days of such a
13 request. Costs of each party's appointee shall be borne by each party
14 respectively; other costs of the arbitration proceedings shall be borne
15 by the commission; or (b) either party may apply to the commission, the
16 federal mediation and conciliation service, or the American arbitration
17 association to provide a list of five qualified arbitrators from which
18 the neutral chair shall be chosen. Each party shall pay the fees and
19 expenses of its arbitrator, and the fees and expenses of the neutral
20 chair shall be shared equally between the parties.

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

33 (3) If the parties are not successful in negotiating a
34 comprehensive collective bargaining agreement, a hearing shall be held.
35 The hearing shall be informal and each party shall have the opportunity
36 to present evidence and make argument. No member of the arbitration
37 panel may present the case for a party to the proceedings. The rules
38 of evidence prevailing in judicial proceedings may be considered, but

1 are not binding, and any oral testimony or documentary evidence or
2 other data deemed relevant by the chair of the arbitration panel may be
3 received in evidence. A recording of the proceedings shall be taken.
4 The arbitration panel has the power to administer oaths, require the
5 attendance of witnesses, and require the production of such books,
6 papers, contracts, agreements, and documents as may be deemed by the
7 panel to be material to a just determination of the issues in dispute.
8 If any person refuses to obey a subpoena issued by the arbitration
9 panel, or refuses to be sworn or to make an affirmation to testify, or
10 any witness, party, or attorney for a party is guilty of any contempt
11 while in attendance at any hearing held under this section, the
12 arbitration panel may invoke the jurisdiction of the superior court in
13 the county where the labor dispute exists, and the court has
14 jurisdiction to issue an appropriate order. Any failure to obey the
15 order may be punished by the court as a contempt thereof. The hearing
16 conducted by the arbitration panel shall be concluded within
17 twenty-five days following the selection or designation of the neutral
18 chair of the arbitration panel, unless the parties agree to a longer
19 period.

20 (4) The neutral chair shall consult with the other members of the
21 arbitration panel, and, within thirty days following the conclusion of
22 the hearing, the neutral chair shall make written findings of fact and
23 a written determination of the issues in dispute, based on the evidence
24 presented. A copy thereof shall be served on the commission, on each
25 of the other members of the arbitration panel, and on each of the
26 parties to the dispute.

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

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

32 (b) The written determination is not binding on the legislature
33 and, if the legislature does not approve the funds necessary to
34 implement provisions pertaining to compensation and fringe benefits of
35 an arbitrated collective bargaining agreement, is not binding on the
36 state.

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

1 and the employer refuse to submit to the procedures set forth in
2 sections 4 and 5 of this act, the parties, or the commission on its own
3 motion, may invoke the jurisdiction of the superior court for the
4 county in which the labor dispute exists and such court shall have
5 jurisdiction to issue an appropriate order. A failure to obey such
6 order may be punished by the court as a contempt thereof.

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

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

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

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

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

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

35 (1) By January 1, 2014, the public employment relations commission
36 shall review the appropriateness of the bargaining units that consist

1 of or include uniformed personnel and exist on the effective date of
2 this section. If the commission determines that an existing bargaining
3 unit is not appropriate pursuant to RCW 41.80.070, the commission may
4 modify the unit.

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

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