
SENATE BILL 5022

State of Washington

66th Legislature

2019 Regular Session

By Senators Keiser, Conway, Van De Wege, Hunt, Hobbs, Wellman, and Kuderer

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1 AN ACT Relating to granting binding interest arbitration rights
2 to certain higher education uniformed personnel; amending RCW
3 41.80.005 and 41.80.010; adding new sections to chapter 41.80 RCW;
4 and 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
15 in good faith in an effort to reach agreement with respect to the
16 subjects of bargaining specified under RCW 41.80.020. The obligation
17 to bargain does not compel either party to agree to a proposal or to
18 make a concession, except as otherwise provided in this chapter.

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

1 (4) "Confidential employee" means an employee who, in the regular
2 course of his or her duties, assists in a confidential capacity
3 persons who formulate, determine, and effectuate management policies
4 with regard to labor relations or who, in the regular course of his
5 or her 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
10 or labor relations matters, or who advise or represent the state in
11 tort 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
28 employers.

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

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

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

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

1 changing, or seeking to arrange terms or conditions of employment
2 with respect to the subjects of bargaining provided in this chapter,
3 regardless of whether the disputants stand in the proximate relation
4 of 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,
8 recall, promote, discharge, direct, reward, or discipline employees,
9 or to adjust employee grievances, or effectively to recommend such
10 action, if the exercise of the authority is not of a merely routine
11 nature but requires the consistent exercise of individual judgment.
12 However, no employee who is a member of the Washington management
13 service may be included in a collective bargaining unit established
14 under this section.

15 (14) "Unfair labor practice" means any unfair labor practice
16 listed 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 2017 3rd sp.s. c 23 s 3 are each
21 amended to read as follows:

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

1 bargaining agreement, subject to the parties' agreement regarding the
2 issues and procedures for supplemental bargaining. This section does
3 not prohibit cooperation and coordination of bargaining between two
4 or more 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
8 elected to exercise its option under subsection (4) of this section
9 to have its negotiations conducted by the governor or governor's
10 designee under the procedures provided for general government
11 agencies in subsections (1) 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
14 bargaining unit or bargaining units under RCW 41.80.070, the official
15 shall be consulted by the governor or the governor's designee before
16 any 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
21 master collective bargaining agreement or for legislation necessary
22 to implement the agreement. Requests for funds necessary to implement
23 the 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
26 financial management by October 1 prior to the legislative session at
27 which the requests are to be considered; and

28 (b) Have been certified by the director of the office of
29 financial management as being feasible financially for the state or
30 reflects the decision of an arbitration panel reached under section 5
31 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
35 unless the request is transmitted to the legislature as part of the
36 governor's budget document submitted under RCW 43.88.030 and
37 43.88.060. If the legislature rejects or fails to act on the
38 submission, either party may reopen all or part of the agreement or
39 the exclusive bargaining representative may seek to implement the
40 procedures provided for in RCW 41.80.090.

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

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

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

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

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

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

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

37 (ii) In the case of bargaining agreements reached between the
38 University of Washington and exclusive bargaining representatives
39 agreed to under the provisions of this chapter, if appropriations are
40 necessary to implement the compensation and fringe benefit provisions

1 of a bargaining agreement, the governor shall submit a request for
2 such funds to the legislature according to the provisions of
3 subsection (3) of this section, except as provided in this subsection
4 (4) (c) (ii) and as provided in (c) (iii) of this subsection.

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

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

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

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

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

31 (iii) In the case of a bargaining unit of employees of
32 institutions of higher education in which the exclusive bargaining
33 representative is certified during or after the conclusion of a
34 legislative session, the legislature may act upon the compensation
35 and fringe benefit provisions of the unit's initial collective
36 bargaining agreement if those provisions are agreed upon and
37 submitted to the office of financial management and legislative
38 budget committees before final legislative action on the biennial or
39 supplemental operating budget by the sitting legislature.

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

7 (6) After the expiration date of a collective bargaining
8 agreement negotiated under this chapter, all of the terms and
9 conditions specified in the collective bargaining agreement remain in
10 effect until the effective date of a subsequently negotiated
11 agreement, not to exceed one year from the expiration date stated in
12 the agreement. Thereafter, the employer may unilaterally implement
13 according to law.

14 (7) For the 2013-2015 fiscal biennium, a collective bargaining
15 agreement related to employee health care benefits negotiated between
16 the employer and coalition pursuant to RCW 41.80.020(3) regarding the
17 dollar amount expended on behalf of each employee shall be a separate
18 agreement for which the governor may request funds necessary to
19 implement the agreement. The legislature may act upon a 2013-2015
20 collective bargaining agreement related to employee health care
21 benefits if an agreement is reached and submitted to the office of
22 financial management and legislative budget committees before final
23 legislative action on the biennial or supplemental operating
24 appropriations act by the sitting legislature.

25 (8)(a) For the 2015-2017 fiscal biennium, the governor may
26 request funds to implement:

27 (i) Modifications to collective bargaining agreements as set
28 forth in a memorandum of understanding negotiated between the
29 employer and the service employees international union healthcare
30 1199nw, an exclusive bargaining representative, that was necessitated
31 by an emergency situation or an imminent jeopardy determination by
32 the center for medicare and medicaid services that relates to the
33 safety or health of the clients, employees, or both the clients and
34 employees.

35 (ii) Unilaterally implemented modifications to collective
36 bargaining agreements, resulting from the employer being prohibited
37 from negotiating with an exclusive bargaining representative due to a
38 pending representation petition, necessitated by an emergency
39 situation or an imminent jeopardy determination by the center for

1 medicare and medicaid services that relates to the safety or health
2 of the clients, employees, or both the clients and employees.

3 (iii) Modifications to collective bargaining agreements as set
4 forth in a memorandum of understanding negotiated between the
5 employer and the union of physicians of Washington, an exclusive
6 bargaining representative, that was necessitated by an emergency
7 situation or an imminent jeopardy determination by the center for
8 medicare and medicaid services that relates to the safety or health
9 of the clients, employees, or both the clients and employees. If the
10 memorandum of understanding submitted to the legislature as part of
11 the governor's budget document is rejected by the legislature, and
12 the parties reach a new memorandum of understanding by June 30, 2016,
13 within the funds, conditions, and limitations provided in section
14 204, chapter 36, Laws of 2016 sp. sess., the new memorandum of
15 understanding shall be considered approved by the legislature and may
16 be retroactive to December 1, 2015.

17 (iv) Modifications to collective bargaining agreements as set
18 forth in a memorandum of understanding negotiated between the
19 employer and the teamsters union local 117, an exclusive bargaining
20 representative, for salary adjustments for the state employee job
21 classifications of psychiatrist, psychiatric social worker, and
22 psychologist.

23 (b) For the 2015-2017 fiscal biennium, the legislature may act
24 upon the request for funds for modifications to a 2015-2017
25 collective bargaining agreement under (a)(i), (ii), (iii), and (iv)
26 of this subsection if funds are requested by the governor before
27 final legislative action on the supplemental omnibus appropriations
28 act by the sitting legislature.

29 (c) The request for funding made under this subsection and any
30 action by the legislature taken pursuant to this subsection is
31 limited to the modifications described in this subsection and may not
32 otherwise affect the original terms of the 2015-2017 collective
33 bargaining agreement.

34 (d) Subsection (3)(a) and (b) of this section (~~(d)~~) does not
35 apply to requests for funding made pursuant to this subsection.

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

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

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

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.80
8 RCW 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,
14 either party may declare that an impasse exists and may submit the
15 dispute to the commission for mediation, with or without the
16 concurrence of the other party. The commission shall appoint a
17 mediator, who shall promptly meet with the representatives of the
18 parties, either jointly or separately, and shall take such other
19 steps as he or she may deem appropriate in order to persuade the
20 parties to resolve their differences and effect an agreement. A
21 mediator, however, does not have a power of compulsion. The mediator
22 may consider only matters that are subject to bargaining under this
23 chapter.

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

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

1 appointment of the third member, who shall act as chair of the panel:
2 (a) By mutual consent, the two appointed members may jointly request
3 the commission to, and the commission shall, appoint a third member
4 within two days of such a request. Costs of each party's appointee
5 shall be borne by each party respectively; other costs of the
6 arbitration proceedings shall be borne by the commission; or (b)
7 either party may apply to the commission, the federal mediation and
8 conciliation service, or the American arbitration association to
9 provide a list of five qualified arbitrators from which the neutral
10 chair shall be chosen. Each party shall pay the fees and expenses of
11 its arbitrator, and the fees and expenses of the neutral chair shall
12 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
15 for potential arbitration between August 1st and September 15th of
16 the 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
20 setting forth the names of the members of the arbitration panel and
21 the dates reserved for bargaining and arbitration. This subsection
22 imposes minimum obligations only and is not intended to define or
23 limit a party's full, good faith bargaining obligation under other
24 sections of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) Stipulations of the parties;

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

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

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

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

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

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

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

34 (2) Except as provided in this subsection, a decision of the
35 arbitration panel shall be final and binding on the parties, and may
36 be enforced at the instance of either party, the arbitration panel or
37 the commission in the superior court for the county where the dispute
38 arose.

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

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

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

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

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

25 (1) By January 1, 2020, the public employment relations
26 commission shall review the appropriateness of the bargaining units
27 that consist of or include uniformed personnel and exist on the
28 effective date of this section. If the commission determines that an
29 existing bargaining unit is not appropriate pursuant to RCW
30 41.80.070, the commission may modify the unit.

31 (2) The exclusive bargaining representatives certified to
32 represent the bargaining units that consist of or include uniformed
33 personnel and exist on the effective date of this section shall
34 continue as the exclusive bargaining representative without the
35 necessity of an election as of the effective date of this section.

1 However, there may be proceedings concerning representation under
2 this chapter thereafter.

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