
SUBSTITUTE SENATE BILL 5481

State of Washington

66th Legislature

2020 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Warnick, Sheldon, Short, Van De Wege, Honeyford, Wagoner, Fortunato, and Holy)

1 AN ACT Relating to providing department of fish and wildlife
2 officers interest arbitration under certain circumstances; amending
3 RCW 41.80.340; and reenacting and amending RCW 41.80.005 and
4 41.80.010.

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

6 **Sec. 1.** RCW 41.80.005 and 2019 c 234 s 1 and 2019 c 145 s 3 are
7 each reenacted and 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. "Agency" also includes the assistant
12 attorneys general of the attorney general's office, regardless of
13 whether those employees are exempt under chapter 41.06 RCW.

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

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

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

14 (5) "Director" means the director of the public employment
15 relations commission.

16 (6) "Employee" means any employee, including employees whose work
17 has ceased in connection with the pursuit of lawful activities
18 protected by this chapter, covered by chapter 41.06 RCW. "Employee"
19 includes assistant attorneys general of the office of the attorney
20 general, regardless of their exemption under chapter 41.06 RCW.
21 "Employee" does not include:

22 (a) Employees covered for collective bargaining by chapter 41.56
23 RCW;

24 (b) Confidential employees;

25 (c) Members of the Washington management service;

26 (d) Internal auditors in any agency; or

27 (e) Any employee of the commission, the office of financial
28 management, or the office of risk management within the department of
29 enterprise services.

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

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

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

38 (10) "Institutions of higher education" means the University of
39 Washington, Washington State University, Central Washington
40 University, Eastern Washington University, Western Washington

1 University, The Evergreen State College, and the various state
2 community colleges.

3 (11) "Labor dispute" means any controversy concerning terms,
4 tenure, or conditions of employment, or concerning the association or
5 representation of persons in negotiating, fixing, maintaining,
6 changing, or seeking to arrange terms or conditions of employment
7 with respect to the subjects of bargaining provided in this chapter,
8 regardless of whether the disputants stand in the proximate relation
9 of employer and employee.

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

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

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

22 (15) "Uniformed personnel" means (~~duly~~):

23 (a) Duly sworn police officers employed as members of a police
24 force established pursuant to RCW 28B.10.550; and

25 (b) Fish and wildlife officers as defined in RCW 77.08.010(21)
26 who rank below lieutenant.

27 **Sec. 2.** RCW 41.80.010 and 2019 c 415 s 961 and 2019 c 145 s 4
28 are each reenacted and amended to read as follows:

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

33 (2)(a) Except as otherwise provided, if an exclusive bargaining
34 representative represents more than one bargaining unit, the
35 exclusive bargaining representative shall negotiate with each
36 employer representative as designated in subsection (1) of this
37 section one master collective bargaining agreement on behalf of all
38 the employees in bargaining units that the exclusive bargaining
39 representative represents. For those exclusive bargaining

1 representatives who represent fewer than a total of five hundred
2 employees each, negotiation shall be by a coalition of all those
3 exclusive bargaining representatives. The coalition shall bargain for
4 a master collective bargaining agreement covering all of the
5 employees represented by the coalition. The governor's designee and
6 the exclusive bargaining representative or representatives are
7 authorized to enter into supplemental bargaining of agency-specific
8 issues for inclusion in or as an addendum to the master collective
9 bargaining agreement, subject to the parties' agreement regarding the
10 issues and procedures for supplemental bargaining. This section does
11 not prohibit cooperation and coordination of bargaining between two
12 or more exclusive bargaining representatives.

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

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

27 (d) For assistant attorneys general, the governor or the
28 governor's designee and an exclusive bargaining representative shall
29 negotiate one master collective bargaining agreement.

30 (e) Uniformed personnel who are fish and wildlife officers may
31 not be excluded from coalition bargaining for a master agreement of
32 all exclusive bargaining representatives of fewer than five hundred
33 employees. However, any exclusive bargaining representative of
34 uniformed personnel who are fish and wildlife officers may, should it
35 so choose, but not later than the first Monday in September of every
36 odd-numbered year, choose to, alone or in conjunction with any other
37 exclusive bargaining representative of uniformed personnel who are
38 fish and wildlife officers which also so chooses, enter into separate
39 bargaining with the employer regarding agency-specific issues and be
40 subject to the provisions set forth in RCW 41.80.310 through

1 41.80.370. If any exclusive bargaining representative does not choose
2 to enter into separate bargaining with the employer, RCW 41.80.310
3 through 41.80.370 do not apply. For purposes of this subsection
4 (2)(e), "agency-specific issues" are limited to those specified in
5 RCW 41.80.020 and include but are not limited to rates of pay and
6 other compensation.

7 (3) The governor shall submit a request for funds necessary to
8 implement the compensation and fringe benefit provisions in the
9 master collective bargaining agreement or for legislation necessary
10 to implement the agreement. Requests for funds necessary to implement
11 the provisions of bargaining agreements shall not be submitted to the
12 legislature by the governor unless such requests:

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

16 (b) Have been certified by the director of the office of
17 financial management as being feasible financially for the state.

18 The legislature shall approve or reject the submission of the
19 request for funds as a whole. The legislature shall not consider a
20 request for funds to implement a collective bargaining agreement
21 unless the request is transmitted to the legislature as part of the
22 governor's budget document submitted under RCW 43.88.030 and
23 43.88.060. If the legislature rejects or fails to act on the
24 submission, either party may reopen all or part of the agreement or
25 the exclusive bargaining representative may seek to implement the
26 procedures provided for in RCW 41.80.090.

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

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

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

1 (B) If the parties mutually agree, the governor or the governor's
2 designee and an exclusive bargaining representative shall negotiate
3 one master collective bargaining agreement for all of the bargaining
4 units of employees of more than one university or college that the
5 representative represents.

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

10 (b) Prior to entering into negotiations under this chapter, the
11 institutions of higher education or their designees shall consult
12 with the director of the office of financial management regarding
13 financial and budgetary issues that are likely to arise in the
14 impending negotiations.

15 (c)(i) In the case of bargaining agreements reached between
16 institutions of higher education other than the University of
17 Washington and exclusive bargaining representatives agreed to under
18 the provisions of this chapter, if appropriations are necessary to
19 implement the compensation and fringe benefit provisions of the
20 bargaining agreements, the governor shall submit a request for such
21 funds to the legislature according to the provisions of subsection
22 (3) of this section, except as provided in (c)(iii) of this
23 subsection.

24 (ii) In the case of bargaining agreements reached between the
25 University of Washington and exclusive bargaining representatives
26 agreed to under the provisions of this chapter, if appropriations are
27 necessary to implement the compensation and fringe benefit provisions
28 of a bargaining agreement, the governor shall submit a request for
29 such funds to the legislature according to the provisions of
30 subsection (3) of this section, except as provided in this subsection
31 (4)(c)(ii) and as provided in (c)(iii) of this subsection.

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

38 (B) If appropriations of ten thousand dollars or more are
39 necessary to implement the provisions of a bargaining agreement, a

1 request for such funds shall not be submitted to the legislature by
2 the governor unless the request:

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

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

8 (C) If the director of the office of financial management does
9 not certify a request under (c)(ii)(B) of this subsection as being
10 feasible financially for the state, the parties shall enter into
11 collective bargaining solely for the purpose of reaching a mutually
12 agreed upon modification of the agreement necessary to address the
13 absence of those requested funds. The legislature may act upon the
14 compensation and fringe benefit provisions of the modified collective
15 bargaining agreement if those provisions are agreed upon and
16 submitted to the office of financial management and legislative
17 budget committees before final legislative action on the biennial or
18 supplemental operating budget by the sitting legislature.

19 (iii) In the case of a bargaining unit of employees of
20 institutions of higher education in which the exclusive bargaining
21 representative is certified during or after the conclusion of a
22 legislative session, the legislature may act upon the compensation
23 and fringe benefit provisions of the unit's initial collective
24 bargaining agreement if those provisions are agreed upon and
25 submitted to the office of financial management and legislative
26 budget committees before final legislative action on the biennial or
27 supplemental operating budget by the sitting legislature.

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

34 (6) After the expiration date of a collective bargaining
35 agreement negotiated under this chapter, all of the terms and
36 conditions specified in the collective bargaining agreement remain in
37 effect until the effective date of a subsequently negotiated
38 agreement, not to exceed one year from the expiration date stated in
39 the agreement. Thereafter, the employer may unilaterally implement
40 according to law.

1 (7) (a) For the 2019-2021 fiscal biennium, the legislature may
2 approve funding for a collective bargaining agreement negotiated by a
3 higher education institution and the Washington federation of state
4 employees and ratified by the exclusive bargaining representative
5 before final legislative action on the omnibus appropriations act by
6 the sitting legislature.

7 (b) Subsection (3) (a) and (b) of this section do not apply to
8 requests for funding made pursuant to this subsection.

9 **Sec. 3.** RCW 41.80.340 and 2019 c 234 s 7 are each amended to
10 read as follows:

11 In making its determination, the panel shall be mindful of the
12 legislative purpose enumerated in RCW 41.80.300 and, as additional
13 standards or guidelines to aid it in reaching a decision, shall take
14 into consideration the following factors:

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

16 (2) Stipulations of the parties;

17 (3) Comparison of the hours and conditions of employment of
18 personnel involved in the proceedings with the hours and conditions
19 of employment of like personnel of like employers of similar size on
20 the west coast of the United States, except for uniformed personnel
21 who are fish and wildlife officers, for whom the comparison of hours
22 and conditions of employment is with like personnel of like
23 employers, agencies, or departments, of similar size in the state of
24 Washington;

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

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

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