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BINDING ARBITRATION FOR NON-TEACHING SCHOOL STAFF

House Bill 4654
Sponsor: Rep. Gerald Law
**Committee: Employment Relations,
Training and Safety**

Complete to 9-18-00

A SUMMARY OF HOUSE BILL 4654 AS INTRODUCED 5-11-99

The Public Employment Relations Act, among other things, sets the rules for collective bargaining between public schools and their employees. In particular, the act contains provisions allowing for public school employers and public school employee bargaining units to agree to mediation of their differences, though if mediation fails a 1994 amendment to the act (Public Act 112 of 1994) allows public school employers to unilaterally implement their last offer of settlement made before the impasse occurred.

The bill would amend the act and add a new section to provide for compulsory arbitration of nonteaching school employee labor disputes in the public schools.

Disputes in mediation. More specifically, if, in the course of mediation of a dispute between a public school employer and a bargaining representative of its nonteaching employees, the dispute (other than a dispute concerning the interpretation or application of an existing collective bargaining agreement) were not resolved to the agreement of both parties within 30 days of submitting the dispute to mediators (or within additional periods to which the parties had agreed), either the bargaining representative or the employer could initiate binding arbitration proceedings. Such a request for binding arbitration would have to be made in writing to the other party, and a copy of the request would have to be filed with the Employment Relations Commission.

Selection of the arbitration panel. Within ten days after a request for binding arbitration for a dispute between a public school employer and a bargaining representative of nonteaching public school employees were filed with the Employment Relations Commission, the public school employer and the bargaining representative would each have to choose a delegate to an arbitration panel, and promptly notify each other and the commission of their selection. Within seven days after receiving such a request, the Employment Relations Commission also would be required to select from its panel of arbitrators (established under Public Act 312 of 1969) three nominees for impartial arbitrator or chairperson of the arbitration panel.

Five days after the commission's selection of its nominees, either party to the dispute would be allowed to preemptively strike the name of one of the commission's nominees, and within seven days after this five-day period, the commission would have to designate one of the remaining nominees as the impartial arbitrator.

Hearings. When the impartial arbitrator were appointed, he or she would act as the chairperson of the arbitration panel, call a hearing to begin within 15 days, and give reasonable

notice to the parties of the time and place of the hearing. The chairperson would preside over the hearing and take testimony. Any oral or documentary evidence and other data the arbitration panel considered relevant could be received into evidence. The proceedings would be informal and technical rules of evidence would not apply, nor would the competency of the evidence be considered impaired because of technical violations of rules of evidence. A verbatim record of the proceedings would have to be made, with the chairperson arranging for the necessary recording service, and transcripts could be ordered at the expense of the party doing the ordering. However, transcripts would not be necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee to the chairperson, would be established in advance by the Employment Relations Commission, and would be borne equally by each of the parties to the dispute and by the state. A delegate who was a public officer or employee would continue on the public employer's payroll at the employee's usual rate of pay. The hearing could be adjourned from time to time, but unless otherwise agreed to by the parties to the dispute the hearing would have to be concluded within 30 days after it began. Actions and ruling of the majority of the arbitration panel would constitute the actions and rulings of the panel.

Wages, hours, and conditions of employment during arbitration. During the pendency of proceedings before the arbitration panel under the bill, existing wages, hours, and other conditions of employment could not be changed by action of either party without the other party's consent. A party could consent to such a change without prejudicing its rights or position under the bill.

Leave to intervene. A person, labor organization, or governmental unit having a substantial interest in the hearing could be granted leave to intervene in the arbitration panel upon application and for good cause shown, and upon terms and conditions the arbitration panel considered just.

Panel powers. The arbitration panel could administer oaths, issue subpoenas, and require the attendance of witnesses and the production of documents that the panel considered material to a just determination of the issue in dispute.

Court orders. The arbitration panel could – or the attorney general, if requested by the panel, would be required to – request the circuit court to issue an appropriate order if a person refused to obey a subpoena or refused to be sworn or to testify, or if a witness, party, or attorney were guilty of contempt while attending a hearing. Upon proper request, the circuit court would be required to issue an appropriate order, and failure to obey the order could be punished by the court as contempt.

Remand for further collective bargaining. At any time before an arbitration panel rendered an award, the panel chairperson could remand the dispute to the parties for further collective bargaining for a period of up to three weeks, if the chairperson were of the opinion that it would be useful or beneficial to do so. If the dispute were remanded for further collective bargaining, the arbitration panel chairperson would be required to notify the Employment Relations Commission of the remand, and the time provisions in the bill would be extended for a time period equal to that of the remand.

Identification of economic issues in dispute. By the time the hearing concluded, the arbitration panel would be required to identify the economic issues in dispute and direct each of the parties to submit, within a time limit prescribed by the panel and to both the panel and to each other,

the party's last offer of settlement on each economic issue. The arbitration panel's determination of the economic issues in dispute, and as to which of these issues were economic, would be conclusive.

Arbitration panel decisions. Within 30 days after the end of a hearing – or within additional periods agreed to by the parties to the dispute in question – the arbitration panel would have to (1) make written findings of fact and (2) issue a written opinion and order regarding the issues presented to, and upon the record made before, the panel. The panel also would have to mail or otherwise deliver (“true”) copies of the findings, opinion, and order to the parties involved, their representatives, and the Employment Relations Commission.

Awards. Increases in rates of compensation or other benefits could be awarded retroactively to the beginning of any period or periods in dispute, and by stipulation the parties could amend or modify an arbitration award at any time.

Applicable factors. The arbitration panel would have to base its findings, opinion, and order on the applicable factors prescribed in the bill. With regard to economic issues, the panel would have to adopt the last offer of settlement made that, in the panel's opinion, more nearly complied with these applicable factors, while the panel's findings, opinion, and order regarding other (i.e. noneconomic) issues would have to be based completely on these factors.

If there were no agreement between the parties, or if there were an agreement but the parties had begun negotiations or discussion toward a new agreement (or an amendment to the existing agreement), and if wage rates or other conditions of employment were under dispute, the arbitration panel would have to use the following factors, as applicable, as the basis of its findings, opinion, and order:

- (1) The lawful authority of the public school employer;
- (2) Stipulation of the parties to the dispute;
- (3) The public's interests and welfare and the public school employer's financial ability to meet those costs;
- (4) Comparison of the employees' wages, hours, and conditions of employment with those of other employees performing similar services for public school employers in comparable communities;
- (5) The average consumer prices for goods and services, commonly known as the cost of living;
- (6) The overall compensation that the employees received currently, including not only direct wage compensation, but also vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(7) Changes in any of the circumstances described above during the pendency of the arbitration proceedings; and

(8) Other additional factors that were normally or traditionally taken into consideration in determining wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between nonteaching public school employers and similar employees.

Arbitration panel decisions, enforcement. A majority decision of the arbitration panel would be final and binding on the parties in question, if supported by competent, material, and substantial evidence. Such decisions could be enforced (“at the instance of either party or of the arbitration panel”) in the circuit court in which the majority of the affected employees resided or in the county in which the dispute arose.

Penalties. If an employee bargaining representative or a public school employer willfully disobeyed a lawful court order of enforcement or willfully encouraged or offered resistance to the order, he or she would be in contempt and subject to a fine of up to \$250 a day for each day that the contempt persisted.

Circuit court review of arbitration orders. Arbitration panel orders would be reviewable by the circuit court for the county in which the dispute arose or in which the majority of the affected employees lived, but only for one or more of three reasons:

- (1) That the arbitration panel was without or exceeded its jurisdiction;
- (2) That the order was not supported by competent, material, and substantial evidence on the whole record; or
- (3) That the order was procured by fraud, collusion, or other similar unlawful means.

The pendency of a proceeding for a circuit court review would not automatically stay an arbitration panel’s order.

Interpretation. The new section added by the bill would be liberally construed to promote the dispute resolution procedure provided in the bill.

Other provisions. The bill also would strike an existing provision in the act that excludes from collective bargaining between public school employers and a bargaining representative of their employees the decision of whether or not to contract with a third party for nonteaching support services, the procedures of obtaining the contract, the identity of the third party, or the impact of the contract on individual employees or the bargaining unit.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.