

2012 -- H 7617

=====
LC01376
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————
A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- SCHOOL EMPLOYEE
ARBITRATION

Introduced By: Representatives McCauley, Medina, Bennett, Savage, and Fellela

Date Introduced: February 16, 2012

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-9.3-9, 28-9.3-10, 28-9.3-11 and 28-9.3-12 of the General Laws
2 in Chapter 28-9.3 entitled "Certified School Teachers' Arbitration" are hereby amended to read as
3 follows:

4 **28-9.3-9. Unresolved issues submitted to mediation or arbitration.** -- (a) In the event
5 that the negotiating or bargaining agent and the school committee are unable, within thirty (30)
6 days from and including the date of their first meeting, to reach an agreement on a contract, either
7 of them may request mediation and conciliation upon any and all unresolved issues, including,
8 but not limited to, the expenditure of money by the director of labor and training or from any
9 other source. ~~If mediation and conciliation fail or are not requested, at any time after the thirty~~
10 ~~(30) days, either party may request that any and all unresolved issues shall be submitted to~~
11 ~~arbitration by sending the request by certified mail postage prepaid to the other party, setting forth~~
12 ~~the issues to be arbitrated.~~

13 (b) In the event that the negotiating or bargaining agent and the school committee are
14 unable to reach an agreement on a contract thirty (30) days before the last day on which money
15 can be appropriated by the city and town to cover the first year of the contract period, any and all
16 unresolved issues, including, but not limited to, the expenditure of money shall be submitted to
17 the director of labor and training for compulsory mediation until the date upon which the money
18 is scheduled to be appropriated. The director of labor and training or his or her designee may

1 waive this requirement upon the mutual agreement of the parties.

2 (c) In the event that the negotiating or bargaining agent and the school committee are
3 unable within ten (10) days of the scheduled close of school in June of the last year of the
4 contract in effect to reach an agreement on a contract, any and all unresolved issues shall be
5 submitted to the director of labor and training for compulsory mediation.

6 (d) If the parties cannot mutually agree upon a mediator within twenty-four (24) hours,
7 the director of labor and training shall select a mediator from a panel previously established by
8 the director comprised of persons knowledgeable in the field of labor management relations to
9 mediate the dispute. The department of labor and training is empowered to compel the attendance
10 of all the parties to any and all meetings it deems necessary until the dispute is resolved.

11 (e) For any mediation pertaining to unresolved issues that are submitted to compulsory
12 mediation between the negotiating or bargaining agent and the school committee, pursuant to the
13 provisions of this section, the state shall pay up to five thousand dollars (\$5,000) of the cost of the
14 mediation expenses. Any costs above five thousand dollars (\$5,000) shall be shared equally
15 between the bargaining unit and the school committee.

16 (f) If no agreement is reached by midnight of the expiration of the existing contract, or by
17 mutual agreement of the parties at an earlier point in the mediation process, the parties shall
18 submit a list of their respective unresolved issues to the mediator. If an agreement is not reached
19 prior to the opening of school, teachers shall continue to work under the terms of the existing
20 contract.

21 (g) The parties shall then proceed to arbitration with the composition of the arbitration
22 board made in accordance with section 28-9.3-10.

23 (h) Between ten (10) and fifteen (15) days prior to the first scheduled arbitration hearing,
24 the parties shall meet with the mediator and submit to the mediator their respective positions on
25 each individual issue in dispute between them in the form of a last best offer.

26 (i) In the event an agreement is still not reached by the date of the first scheduled
27 arbitration hearing, the parties shall proceed with arbitration. The arbitration panel shall resolve
28 separately each individual disputed issue by accepting the last best offer thereon of either of the
29 parties, and shall incorporate in a decision each such accepted individual last best offer. The
30 decision shall be rendered within thirty (30) days of the conclusion of the arbitration hearings,
31 and shall be retroactive to the expiration date of the prior contract.

32 **28-9.3-10. Arbitration board -- Composition.** -- (a) Within seven (7) days after
33 arbitration has been requested as provided in section 28-9.3-9, the negotiating or bargaining agent
34 and the school committee shall each select and name one arbitrator and shall immediately notify

1 each other in writing of the name and address of the person so selected. The two (2) arbitrators
2 selected and named shall, within ten (10) days from and after their selection, agree upon and
3 select and name a third arbitrator, [who shall be selected from a list of retired trial court judges](#)
4 [and/or justices who have previously served as judges and/or justices in a Rhode Island trial court.](#)

5 If within the ten (10) days the arbitrators are unable to agree upon the selection of a third
6 arbitrator, the third arbitrator shall be selected in accordance with the rules and procedure of the
7 American Arbitration Association.

8 (b) If the negotiating or bargaining agent agrees with the school committee to a different
9 method of selecting arbitrators, or to a lesser or greater number of arbitrators, or to any particular
10 arbitrator, or if they agree to have the board of regents for elementary and secondary education
11 designate the arbitrator or arbitrators to conduct the arbitration, the agreement shall govern the
12 selection of arbitrators. However, if the board of regents for elementary and secondary education
13 is unwilling or fails to designate the arbitrator or arbitrators, an alternative method of selection
14 shall be used.

15 (c) The third arbitrator, whether selected as a result of agreement between the two (2)
16 previously selected arbitrators, or selected under the rules of the American Arbitration
17 Association, or by the board of regents for elementary and secondary education, or by any other
18 method, shall act as chairperson.

19 **28-9.3-11. Hearings.** -- (a) The arbitrators shall call a hearing to be held within ~~ten (10)~~
20 [sixty \(60\)](#) days after their appointment and shall give at least seven (7) days notice in writing to
21 the negotiating or bargaining agent and the school committee of the time and place of the hearing.
22 The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall
23 not be binding. Any documentary evidence and other data deemed relevant by the arbitrators may
24 be received in evidence.

25 (b) The arbitrators shall have the power to administer oaths and to require by subpoena
26 the attendance and testimony of witnesses, and the production of books, records, and other
27 evidence relative or pertinent to the issues presented to them for determination. [The provisions of](#)
28 [this subsection shall not prohibit the respective parties from engaging in continued negotiations](#)
29 [and/or from reaching a compromise agreement of their own accord, separate and apart from the](#)
30 [arbitration, prior to conclusion of the arbitration.](#)

31 (c) Both the negotiating or bargaining agent and the school committee shall have the
32 right to be represented at any hearing before the arbitrators by counsel of their own choosing.

33 (d) The hearing conducted by the arbitrators shall be concluded within twenty (20) days
34 of the time of commencement, and within ten (10) days after the conclusion of the hearings, the

1 arbitrators shall make written findings and a written opinion upon the issues presented, a copy of
2 which shall be mailed or otherwise delivered to the negotiating or bargaining agent or its attorney
3 or other designated representative and the school committee.

4 **28-9.3-12. Appeal from decision.** -- The decision of the arbitrators shall be made public
5 and shall be binding on the certified public school teachers and their representative and the school
6 committee on all matters ~~not involving the expenditure of money; provided, that nothing~~
7 ~~contained in this section shall prevent the representative of the certified public school teachers~~
8 ~~and the school committee from mutually agreeing to submit all unresolved issues to binding~~
9 ~~arbitration pursuant to the procedures set forth in sections 28-9.3-10 -- 28-9.3-12. In that case the~~
10 ~~decision of the arbitrators shall be final and binding on all matters so submitted, including those~~
11 ~~involving the expenditure of money;~~ and cannot be appealed except on the ground that the
12 decision was procured by fraud or that it violates the law, in which case appeals shall be to the
13 superior court. The school committee shall within three (3) days after it receives the decision send
14 a true copy of the decision by certified or registered mail postage prepaid to the department or
15 agency which appropriates money for the operation of the schools in the city, town, or regional
16 school district involved, if the decision involves the expenditure of money.

17 SECTION 2. Chapter 28-9.3 of the General Laws entitled "Certified School Teachers'
18 Arbitration" is hereby amended by adding thereto the following section:

19 **28-9.3-9.1. Unresolved issues in non-teacher employee disputes submitted to**
20 **mediation or arbitration.** -- (a) In the event that the negotiating or bargaining agent for non-
21 teacher, non-certified employees and the school committee are unable, to reach an agreement on a
22 contract, within thirty (30) days from and including the date of their first meeting, either party
23 may request mediation and conciliation upon any and all unresolved issues by the director of
24 labor or from any other source.

25 (b) In the event that the negotiating or bargaining agent and the school committee are
26 unable to reach an agreement on a contract thirty (30) days before the last day on which money
27 can be appropriated by the city or town to cover the first year of the contract period, then any and
28 all unresolved issues shall be submitted to the director of labor for compulsory mediation until the
29 date upon which the money is scheduled to be appropriated. The director of labor or his/her
30 designee may waive this requirement upon the mutual agreement of the parties.

31 (c) In the event that the negotiating or bargaining agent and the school committee are
32 unable to reach an agreement on a contract, within ten (10) days of the scheduled close of school
33 in June of the last year of the contract in effect any and all unresolved issues shall be submitted
34 to the director of labor for compulsory mediation.

1 (d) If the parties cannot mutually agree upon a mediator within twenty-four (24) hours,
2 the director of labor shall select a mediator from a panel previously established by the director
3 comprised of persons knowledgeable in the field of labor management relations to mediate the
4 dispute. The department of labor is hereby empowered to compel the attendance of all the parties
5 to any and all meetings it deems necessary until the dispute is resolved.

6 (e) If no agreement is reached by midnight of the expiration of the existing contract, or by
7 mutual agreement of the parties at an earlier point in the mediation process, the parties shall
8 submit a list of their respective unresolved issues to the mediator. If an agreement is not reached
9 prior to the opening of school, employees shall continue to work under the terms of the existing
10 contract.

11 (f) The parties shall then proceed to arbitration with the composition of the arbitration
12 board made in accordance with section 28-9.3-10.

13 (g) Between ten (10) and fifteen (15) days prior to the first scheduled arbitration hearing,
14 the parties shall meet with the mediator and submit to the mediator their respective positions on
15 each individual issue in dispute between them in the form of a last best offer.

16 (h) In the event an agreement is still not reached by the date of the first scheduled
17 arbitration hearing, the parties shall proceed with arbitration. The arbitration panel shall resolve
18 separately each individual disputed issue by accepting the last best offer thereon of either of the
19 parties, and shall incorporate in its decision each such accepted individual last best offer. The
20 decision shall be rendered within thirty (30) days of the conclusion of the arbitration hearings,
21 and shall be retroactive to the expiration date of the prior contract.

22 **28-9.3-9.2 Conduct of teachers during arbitration -- Proceedings.** – No certified
23 public school teacher shall participate in a strike.

24 **28-9.3-9.2.1 Factors to be considered by the arbitration board.** – The arbitrators shall
25 conduct the hearing and render their decision upon the basis of a prompt, peaceful and just
26 settlement of wage or hour disputes or working conditions and terms and conditions of
27 professional employment between the teachers and the school committee by which they are
28 employed. The factors to be considered by the arbitration board shall include, but are not limited
29 to, the following:

30 (1) The interest and welfare of the students, teachers, and taxpayers;

31 (2) The city or town's ability to pay;

32 (3) Comparison of compensation, benefits and conditions of employment of the school
33 district in question with compensation, benefits and conditions of employment maintained for
34 other Rhode Island public school teachers;

1 (4) Comparison of compensation, benefits and conditions of employment of the school
2 district in question with compensation, benefits and conditions of employment maintained for the
3 same or similar skills under the same or similar working conditions in the local operating area
4 involved; and

5 (5) Comparison of education qualification and professional development requirements in
6 regard to other professions.

7 SECTION 3. Section 28-9.4-10 of the General Laws in Chapter 28-9.4 entitled
8 "Municipal Employees' Arbitration" is hereby amended to read as follows:

9 **28-9.4-10. Unresolved issues submitted to mediation or arbitration. --** (a) In the event
10 that the negotiating or bargaining agent and the municipal employer are unable after thirty (30)
11 days from and including the date of their first meeting to reach an agreement on a contract, either
12 of them may request mediation and conciliation upon any and all unresolved issues by the
13 director of labor and training or from any other source. After a request for mediation and
14 conciliation has been made by either party, it shall be the duty and obligation of each party to
15 participate in the mediation and conciliation. If mediation and conciliation fail or are not
16 requested at any time after the thirty (30) days, either party may request that any and all
17 unresolved issues shall be submitted to arbitration by sending the request by certified mail
18 postage prepaid to the other party, setting forth the issues to be arbitrated; provided, however, that
19 mediation and arbitration for certified school teachers shall be conducted pursuant to the
20 provisions of chapter 28-9.3, entitled "Certified School Teachers' Arbitration," and certified
21 school teachers shall not be subject to mediation and/or arbitration pursuant to the provisions of
22 this chapter.

23 (b) In the event that the negotiating or bargaining agent and the municipal employer are
24 unable to reach an agreement on a contract thirty (30) days before the last day on which money
25 can be appropriated by the city or town to cover the first year of the contract period, then any and
26 all unresolved issues shall be submitted to the director of labor and training for compulsory
27 mediation until the date upon which the money is scheduled to be appropriated. The director of
28 labor and training, or his or her designee, may waive this requirement upon the mutual agreement
29 of the parties.

30 (c) In the event that the negotiating or bargaining agent and the municipal employer are
31 unable within ten (10) days of the expiration of the contract to reach an agreement on a contract,
32 any and all unresolved issues shall be submitted to the director of labor and training for
33 compulsory mediation, except where the municipal employer is a school board. In the event that
34 the negotiating or bargaining agent and the municipal employer school board are unable within

1 thirty (30) days of the scheduled opening of school to reach an agreement on a contract, any and
2 all unresolved issues shall be submitted to the director of labor and training for compulsory
3 mediation.

4 (d) If the parties cannot mutually agree upon a mediator within twenty-four (24) hours,
5 the director of labor and training shall select a mediator from a panel previously established by
6 the director comprised of persons knowledgeable in the field of labor management relations to
7 mediate the dispute. The department of labor and training is empowered to compel the attendance
8 of all parties to any and all meetings it deems necessary until the dispute is resolved.

9 SECTION 3. This act shall take effect upon passage.

=====
LC01376
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- SCHOOL EMPLOYEE
ARBITRATION

1 This act would expand the scope of the binding arbitration process to include monetary
2 issues for teachers and non-teacher educational employees. It would also streamline the actual
3 binding arbitration process itself.

4 This act would take effect upon passage.

=====
LC01376
=====