

Feb. 13, 2015

To: Chair Holvey and members of the House Business and Labor Committee
From: Nancy Hungerford
Re: H.B. 2544 (Changes in Expedited Bargaining Law)

In abbreviated fashion, I offer these reasons why HB 2544 should be rejected:

1. Expedited bargaining is a process for dealing with issues that were not addressed – by labor or management – in a prior round of “successor” contract bargaining. Labor unions have an option to attempt to negotiate these issues during regular rounds of bargaining over a new contract.
2. Expedited bargaining addresses the need for a much faster resolution process – as when financial resources don’t materialize or state or federal laws or regulations change. HB 2544 will extend the process from the current 90 days to a minimum of 180 days. Such delay was the reason why the 1995 Legislature added an expedited process.
3. The Employment Relations Board has interpreted the law to require a public employer to negotiate over the impact of a change – even if the change is permissive for bargaining. Thus, any change in a student schedule (permissive), evaluation criteria (permissive), minimum hours of student instruction (prohibited for bargaining), and other education-related topics end up intertwined with bargaining over impacts. An interest arbitration award is very likely to constrain school districts from making necessary decisions about educational services to students.
4. School districts have used expedited bargaining sparingly – most often in times of acute financial exigency such as experienced in 2008-13. There is no pattern or proof of misuse, such as charged by proponents.
5. Even if the employer imposes a change by unilateral action, the union can raise the issue in the next round of successor bargaining.
6. Allowing an outsider arbitrator to decide these issues is bad public policy: It replaces accountability by local school boards and local union leaders and allows decisions with significant impact on the public to be made by persons who answer to no one.
7. HB 2544 is a barely disguised attempt to kill expedited bargaining indirectly, when prior legislatures would not kill it directly.

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EXAMPLES OF USE OF EXPEDITED BARGAINING

1. The State Board of Education revises the OARs to increase annual student instruction time from 810 to 900 hours per year for 1st-3rd-graders, who ride the same buses as grades 4-6 (always required to receive 900 hours per year). After studying options, the district decides it will add the instructional time for grades 1-3 by reducing from 2 to 1 recess per day (same as grades 4-6 have had). The association demands to bargain over the impact of additional 15 minutes of instruction per day on teachers in grades 1-3. No change can be made in the student schedule until bargaining is complete.

2. A middle school is experiencing an increase of incidence of vandalism and bullying in the halls, gym, and commons areas of the school. The school announces it will install video cameras in those areas to deter improper student behavior and to be able to validate student complaints. The employee association demands to bargain over the impact of having cameras in the gym, where instruction takes place during some times of the day. The association demands that the cameras not be used until agreement is reached on use of footage that happens to show employee misconduct.

3. A high school needs to cut staff because of inadequate state support in 2008-13 recession. The current block schedule (teachers teach 3 periods of 88 minutes each per day; have one 88-period prep time) means 25% of staff is unavailable for teaching at all times. Staff cuts will mean class sizes will rise from 30 to 40 in many classes. The school determines that changing to a seven-period schedule with teachers teaching 6 periods of 45 minutes each will make 86% of staff available for each period, thus maintaining class sizes with fewer staff. The Association demands to bargain the impact on staff working conditions. The change in schedule cannot proceed until expedited bargaining over the impact is completed.

4. The district employs 5 school nurses, who are RNs and in the bargaining unit, but also employs a number of contract nurses (also RNs) to spend all day with medically fragile students who may die without immediate medical intervention. One day the contract nurse is sick and the backup contract nurse is in a traffic accident on the way to the school. The district directs one of the 5 bargaining unit nurses to go to the school for the day to provide needed medical services to one student. The association contends that this is a change in the assignment of staff that has an impact on working conditions of its bargaining unit nurses. The district engages in expedited bargaining for more than 90 days, but when no agreement is reached and a new school year is starting, implements its final offer, which includes additional training for the five nurses who will provide only back-up services for medically-fragile students.