

SENATE BILL NO. 343—SENATORS ROBERSON;
HALSETH AND SETTELMEYER

MARCH 21, 2011

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions governing collective bargaining between local government employers and local government employees. (BDR 23-1084)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to local governments; eliminating binding fact-finding in negotiations between local governments and employee organizations; authorizing the governing body of a local government employer to impose employment conditions on certain employee organizations with which it has been negotiating under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, if the parties to a collective bargaining dispute between a
2 local government and an employee organization, other than an employee
3 organization that represents teachers and educational support personnel, cannot
4 resolve their dispute through mediation and arbitration, they may submit their
5 dispute to a neutral fact finder, and they may agree to make the findings and
6 recommendations of the fact finder final and binding on the parties. (NRS 288.200)
7 **Sections 1, 2 and 4** of this bill remove from the negotiation process the option of
8 final and binding fact-finding for disputes between local government employers
9 and employee organizations that represent local government employees other than
10 police officers and firefighters. Instead, if the parties do not reach an agreement
11 after receiving a report from a fact finder providing findings and recommendations,
12 the governing body of the local government employer may, at a public hearing,
13 impose the economic conditions of their most recent offer. Such an imposition is
14 final and binding on the parties and is effective only for the following fiscal year. In
15 the case of police officers and firefighters, **section 3** of this bill removes the option
16 of binding fact-finding. Instead, if a local government employer and an employee
17 organization representing police officers or firefighters do not reach an agreement
18 after fact-finding, the parties still submit the dispute to binding arbitration.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 288.045 is hereby amended to read as follows:
2 288.045 “Fact-finding” means the formal procedure by which
3 an investigation of a labor dispute is conducted by one person, a
4 panel or a board at which:
5 1. Evidence is presented; and
6 2. A written report is issued by the fact finder describing the
7 issues involved and setting forth recommendations for settlement .
8 ~~[which may or may not be binding as provided in NRS 288.200.]~~
9 **Sec. 2.** NRS 288.200 is hereby amended to read as follows:
10 288.200 Except in cases to which NRS 288.205 and 288.215,
11 or NRS 288.217 apply:
12 1. If:
13 (a) The parties have failed to reach an agreement after at least
14 six meetings of negotiations; and
15 (b) The parties have participated in mediation and by April 1,
16 have not reached agreement,
17 ➔ either party to the dispute, at any time after April 1, may submit
18 the dispute to an impartial fact finder for the findings and
19 recommendations of the fact finder. The findings and
20 recommendations of the fact finder are not binding on the parties .
21 ~~[except as provided in subsections 5, 6 and 11.]~~ The mediator of a
22 dispute may also be chosen by the parties to serve as the fact finder.
23 2. If the parties are unable to agree on an impartial fact finder
24 or a panel of neutral arbitrators within 5 days, either party may
25 request from the American Arbitration Association or the Federal
26 Mediation and Conciliation Service a list of seven potential fact
27 finders. If the parties are unable to agree upon which arbitration
28 service should be used, the Federal Mediation and Conciliation
29 Service must be used. Within 5 days after receiving a list from the
30 applicable arbitration service, the parties shall select their fact finder
31 from this list by alternately striking one name until the name of only
32 one fact finder remains, who will be the fact finder to hear the
33 dispute in question. The employee organization shall strike the first
34 name.
35 3. The local government employer and employee organization
36 each shall pay one-half of the cost of fact-finding. Each party shall
37 pay its own costs of preparation and presentation of its case in
38 fact-finding.
39 4. A schedule of dates and times for the hearing must be
40 established within 10 days after the selection of the fact finder
41 pursuant to subsection 2, and the fact finder shall report the findings



1 and recommendations of the fact finder to the parties to the dispute
2 within 30 days after the conclusion of the fact-finding hearing.

3 ~~5. [The parties to the dispute may agree, before the submission~~
4 ~~of the dispute to fact finding, to make the findings and~~
5 ~~recommendations on all or any specified issues final and binding on~~
6 ~~the parties.~~

7 ~~—6. If the parties do not agree on whether to make the findings~~
8 ~~and recommendations of the fact finder final and binding, either~~
9 ~~party may request the formation of a panel to determine whether the~~
10 ~~findings and recommendations of a fact finder on all or any~~
11 ~~specified issues in a particular dispute which are within the scope of~~
12 ~~subsection 11 are to be final and binding. The determination must be~~
13 ~~made upon the concurrence of at least two members of the panel and~~
14 ~~not later than the date which is 30 days after the date on which the~~
15 ~~matter is submitted to the panel, unless that date is extended by the~~
16 ~~Commissioner of the Board. Each panel shall, when making its~~
17 ~~determination, consider whether the parties have bargained in good~~
18 ~~faith and whether it believes the parties can resolve any remaining~~
19 ~~issues. Any panel may also consider the actions taken by the parties~~
20 ~~in response to any previous fact finding between these parties, the~~
21 ~~best interests of the State and all its citizens, the potential fiscal~~
22 ~~effect both within and outside the political subdivision, and any~~
23 ~~danger to the safety of the people of the State or a political~~
24 ~~subdivision.~~

25 ~~—7.]~~ Except as otherwise provided in subsection 10, any fact
26 finder ~~[, whether the fact finder's recommendations are to be~~
27 ~~binding or not.]~~ shall base such recommendations or award on the
28 following criteria:

29 (a) A preliminary determination must be made as to the financial
30 ability of the local government employer based on all existing
31 available revenues as established by the local government employer
32 and within the limitations set forth in NRS 354.6241, with due
33 regard for the obligation of the local government employer to
34 provide facilities and services guaranteeing the health, welfare and
35 safety of the people residing within the political subdivision.

36 (b) Once the fact finder has determined in accordance with
37 paragraph (a) that there is a current financial ability to grant
38 monetary benefits, and subject to the provisions of paragraph (c),
39 the fact finder shall consider, to the extent appropriate,
40 compensation of other government employees, both in and out of
41 the State and use normal criteria for interest disputes regarding the
42 terms and provisions to be included in an agreement in assessing the
43 reasonableness of the position of each party as to each issue in
44 dispute and the fact finder shall consider whether the Board found
45 that either party had bargained in bad faith.



1 (c) A consideration of funding for the current year being
2 negotiated. If the parties mutually agree to arbitrate a multiyear
3 contract, the fact finder must consider the ability to pay over the life
4 of the contract being negotiated or arbitrated.

5 ➔ The fact finder's report must contain the facts upon which the
6 fact finder based the fact finder's determination of financial ability
7 to grant monetary benefits and the fact finder's recommendations or
8 award.

9 ~~[8.]~~ 6. Within 45 days after the receipt of the report from the
10 fact finder, the governing body of the local government employer
11 shall hold a public meeting in accordance with the provisions of
12 chapter 241 of NRS. The meeting must include a discussion of:

13 (a) The issues of the parties submitted pursuant to subsection 3;

14 (b) The report of findings and recommendations of the fact
15 finder; and

16 (c) The overall fiscal impact of the findings and
17 recommendations, which must not include a discussion of the details
18 of the report.

19 ➔ The fact finder must not be asked to discuss the decision during
20 the meeting.

21 ~~[9.]~~ 7. The chief executive officer of the local government
22 shall report to the local government the fiscal impact of the findings
23 and recommendations. The report must include, without limitation,
24 an analysis of the impact of the findings and recommendations on
25 compensation and reimbursement, funding, benefits, hours, working
26 conditions or other terms and conditions of employment.

27 *8. If the parties have failed to reach an agreement by the date*
28 *of the meeting held pursuant to subsection 6, at that meeting, or at*
29 *a subsequent public meeting held in accordance with the*
30 *provisions of chapter 241 of NRS, the governing body of the local*
31 *government employer may impose the economic provisions of the*
32 *most recent offer of the local government employer.*

33 *9. The terms imposed pursuant to subsection 8 are:*

34 (a) *Final and binding on the parties; and*

35 (b) *Effective only for the succeeding fiscal year.*

36 10. Any sum of money which is maintained in a fund whose
37 balance is required by law to be:

38 (a) Used only for a specific purpose other than the payment of
39 compensation to the bargaining unit affected; or

40 (b) Carried forward to the succeeding fiscal year in any
41 designated amount, to the extent of that amount,

42 ➔ must not be counted in determining the financial ability of a local
43 government employer and must not be used to pay any monetary
44 benefits recommended ~~[or awarded]~~ by the fact finder.



1 ~~{11. The issues which may be included in a panel's order~~
2 ~~pursuant to subsection 6 are:~~

3 ~~—(a) Those enumerated in subsection 2 of NRS 288.150 as the~~
4 ~~subjects of mandatory bargaining, unless precluded for that year by~~
5 ~~an existing collective bargaining agreement between the parties; and~~

6 ~~—(b) Those which an existing collective bargaining agreement~~
7 ~~between the parties makes subject to negotiation in that year.~~

8 ~~→ This subsection does not preclude the voluntary submission of~~
9 ~~other issues by the parties pursuant to subsection 5.]~~

10 **Sec. 3.** NRS 288.215 is hereby amended to read as follows:

11 288.215 1. As used in this section:

12 (a) "Firefighters" means those persons who are salaried
13 employees of a fire prevention or suppression unit organized by a
14 political subdivision of the State and whose principal duties are
15 controlling and extinguishing fires.

16 (b) "Police officers" means those persons who are salaried
17 employees of a police department or other law enforcement agency
18 organized by a political subdivision of the State and whose principal
19 duties are to enforce the law.

20 2. The provisions of this section apply only to firefighters and
21 police officers and their local government employers.

22 3. If the parties ~~{have not agreed to make the findings and~~
23 ~~recommendations of the fact finder final and binding upon all issues,~~
24 ~~and}~~ do not otherwise resolve their dispute, they shall, within 10
25 days after the fact finder's report is submitted, submit the issues
26 remaining in dispute to an arbitrator who must be selected in the
27 manner provided in NRS 288.200 and have the same powers
28 provided for fact finders in NRS 288.210.

29 4. The arbitrator shall, within 10 days after the arbitrator is
30 selected, and after 7 days' written notice is given to the parties, hold
31 a hearing to receive information concerning the dispute. The
32 hearings must be held in the county in which the local government
33 employer is located and the arbitrator shall arrange for a full and
34 complete record of the hearings.

35 5. At the hearing, or at any subsequent time to which the
36 hearing may be adjourned, information may be presented by:

37 (a) The parties to the dispute; or

38 (b) Any interested person.

39 6. The parties to the dispute shall each pay one-half of the costs
40 incurred by the arbitrator.

41 7. A determination of the financial ability of a local
42 government employer must be based on:

43 (a) All existing available revenues as established by the local
44 government employer and within the limitations set forth in NRS
45 354.6241, with due regard for the obligation of the local government



1 employer to provide facilities and services guaranteeing the health,
2 welfare and safety of the people residing within the political
3 subdivision.

4 (b) Consideration of funding for the current year being
5 negotiated. If the parties mutually agree to arbitrate a multi-year
6 contract the arbitrator must consider the ability to pay over the life
7 of the contract being negotiated or arbitrated.

8 ➔ Once the arbitrator has determined in accordance with this
9 subsection that there is a current financial ability to grant monetary
10 benefits, the arbitrator shall consider, to the extent appropriate,
11 compensation of other governmental employees, both in and out of
12 this State.

13 8. At the recommendation of the arbitrator, the parties may,
14 before the submission of a final offer, enter into negotiations. If the
15 negotiations are begun, the arbitrator may adjourn the hearings for a
16 period of 3 weeks. An agreement by the parties is final and binding,
17 and upon notification to the arbitrator, the arbitration terminates.

18 9. If the parties do not enter into negotiations or do not agree
19 within 30 days, each of the parties shall submit a single written
20 statement containing its final offer for each of the unresolved issues.

21 10. The arbitrator shall, within 10 days after the final offers are
22 submitted, accept one of the written statements, on the basis of the
23 criteria provided in NRS 288.200, and shall report the decision to
24 the parties. The decision of the arbitrator is final and binding on the
25 parties. Any award of the arbitrator is retroactive to the expiration
26 date of the last contract.

27 11. The decision of the arbitrator must include a statement:

28 (a) Giving the arbitrator's reason for accepting the final offer
29 that is the basis of the arbitrator's award; and

30 (b) Specifying the arbitrator's estimate of the total cost of the
31 award.

32 12. Within 45 days after the receipt of the decision from the
33 arbitrator pursuant to subsection 10, the governing body of the local
34 government employer shall hold a public meeting in accordance
35 with the provisions of chapter 241 of NRS. The meeting must
36 include a discussion of:

37 (a) The issues submitted pursuant to subsection 3;

38 (b) The statement of the arbitrator pursuant to subsection 11;
39 and

40 (c) The overall fiscal impact of the decision, which must not
41 include a discussion of the details of the decision.

42 ➔ The arbitrator must not be asked to discuss the decision during
43 the meeting.

44 13. The chief executive officer of the local government shall
45 report to the local government the fiscal impact of the decision. The



1 report must include, without limitation, an analysis of the impact of
2 the decision on compensation and reimbursement, funding, benefits,
3 hours, working conditions or other terms and conditions of
4 employment.

5 **Sec. 4.** NRS 353.264 is hereby amended to read as follows:

6 353.264 1. The Reserve for Statutory Contingency Account
7 is hereby created in the State General Fund.

8 2. The State Board of Examiners shall administer the Reserve
9 for Statutory Contingency Account. The money in the Account must
10 be expended only for:

11 (a) The payment of claims which are obligations of the State
12 pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310,
13 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, ~~288.203,~~
14 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;

15 (b) The payment of claims which are obligations of the State
16 pursuant to:

17 (1) Chapter 472 of NRS arising from operations of the
18 Division of Forestry of the State Department of Conservation and
19 Natural Resources directly involving the protection of life and
20 property; and

21 (2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153,
22 ➔ except that claims may be approved for the respective purposes
23 listed in this paragraph only when the money otherwise appropriated
24 for those purposes has been exhausted;

25 (c) The payment of claims which are obligations of the State
26 pursuant to NRS 41.0349 and 41.037, but only to the extent that the
27 money in the Fund for Insurance Premiums is insufficient to pay the
28 claims; and

29 (d) The payment of claims which are obligations of the State
30 pursuant to NRS 535.030 arising from remedial actions taken by the
31 State Engineer when the condition of a dam becomes dangerous to
32 the safety of life or property.

33 3. The State Board of Examiners may authorize its Clerk,
34 under such circumstances as it deems appropriate, to approve, on
35 behalf of the Board, the payment of claims from the Reserve for
36 Statutory Contingency Account. For the purpose of exercising any
37 authority granted to the Clerk of the State Board of Examiners
38 pursuant to this subsection, any statutory reference to the State
39 Board of Examiners relating to such a claim shall be deemed to refer
40 to the Clerk of the Board.

41 **Sec. 5.** NRS 288.201, 288.202 and 288.203 are hereby
42 repealed.

43 **Sec. 6.** This act becomes effective on July 1, 2011.



TEXT OF REPEALED SECTIONS

288.201 Request for formation of panel to determine whether findings and recommendations of fact finder are final and binding. Any request for the formation of a panel to determine whether the findings and recommendations of a fact finder must be final and binding must be filed with the Commissioner. The request must include:

1. A list of the issues which remain unresolved and the position of each party regarding those issues;
2. The requester's assessment of the fiscal effect on the local government of the requester's positions;
3. An outline of any previous fact-finding between the parties, which includes any recommendations and awards of a fact finder and the actions of each party in response thereto;
4. A statement of whether the parties engaged in mediation regarding the current dispute;
5. A schedule of the dates and times set by the fact finder for the hearing; and
6. Any other information deemed necessary by the Commissioner.

↳ Any person filing such a request shall give written notice of the request to the Nevada State Board of Accountancy and the State Bar of Nevada.

288.202 Formation of panel to determine whether findings and recommendations of fact finder are final and binding.

1. Within 5 days after receiving notice of such a request, the Nevada State Board of Accountancy and the State Bar of Nevada shall each submit to the Commissioner and each party to the dispute a list of names of five of their members who would serve on a panel and are not closely allied with any employee association or local government employer.
2. Within 8 days after receiving the lists, the parties shall choose one name from each list by alternately striking one name until the names of only one attorney and one accountant remain, who will each be a member of the panel. The parties shall choose the member from the list of accountants separately from their choice from the list of attorneys. The parties shall notify the Commissioner of their selections and the Commissioner shall notify the attorney and accountant selected.



3. Within 5 days after receiving notice of their selection, the attorney and accountant shall:

(a) Choose the third member of the panel, who must:

(1) Be willing to serve on the panel;

(2) Be a resident of this State; and

(3) Not be closely allied with any employee organization or local government employer.

(b) Notify the Commissioner of their choice, and the three members shall, within 5 days after selecting the third member of the panel, notify the Commissioner of the dates when they will all be available to attend hearings.

4. The Commissioner shall serve as a nonvoting member and also as the chair of the panel.

5. If the accountant or attorney selected to serve on the panel is unable to do so, the Nevada State Board of Accountancy or State Bar of Nevada shall designate a person to replace its nominee. If the person selected by the accountant and attorney is unable to serve, the accountant and attorney shall designate another person as a replacement. If the Commissioner is unable to serve, the Governor shall designate a person to serve in the Commissioner's capacity.

288.203 Compensation of members of panel; claims.

1. Each person, except the Commissioner, who serves on a panel formed pursuant to NRS 288.201 is entitled to receive as compensation:

(a) One hundred fifty dollars for each day the person is engaged in the business of the panel; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

2. All claims which arise pursuant to this section must be paid from the reserve for Statutory Contingency Account upon approval by the Commissioner and the State Board of Examiners.

