

SHB 3127 - H AMD 744

By Representative Nixon

WITHDRAWN 2/14/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. Sec. 1. A new section is added to chapter 41.59
4 RCW to read as follows:

5 (1) It is unlawful for an employee or an employee organization,
6 directly or indirectly, to induce, instigate, encourage, authorize,
7 ratify, or participate in a strike.

8 (2) It is unlawful for an employer to authorize, consent to, or
9 condone a strike, to conduct a lockout, to pay or agree to pay an
10 employee for any day in which the employee participates in a
11 strike, or to pay or agree to pay any increase in compensation or
12 benefits to an employee in response to or as a result of a strike
13 or any act that violates subsection (1) of this section. It is
14 unlawful for any representative of the employer to authorize,
15 ratify, or participate in any violation of this subsection.

16 (3)(a) If a violation of subsection (1) or (2) of this section
17 occurs, or is imminently threatened, any citizen domiciled within
18 the jurisdictional boundaries of the state may petition the
19 superior court of the county in which the school district, or any
20 part thereof, is situated for an injunction restraining the
21 violation or imminently threatened violation. Rules of civil
22 procedure regarding injunctions apply to the action. However, the
23 court shall grant a temporary injunction if it appears to the court
24 that a violation has occurred or is imminently threatened; the
25 plaintiff need not show that the violation or threatened violation
26 would greatly or irreparably injure him or her. A bond may not be
27 required of the plaintiff unless the court determines that a bond
28 is necessary in the public interest.

29 (b) Failure to comply with any temporary or permanent
30 injunction granted under this subsection is contempt of court as

1 provided in chapter 7.21 RCW. The court may impose a penalty of up
2 to ten thousand dollars for an employee organization or the
3 employer, for each day during which the failure to comply
4 continues. The sanctions for an employee found to be in contempt
5 shall be as provided in chapter 7.21 RCW. An individual or an
6 employee organization that makes an active good faith effort to
7 comply fully with the injunction shall not be deemed to be in contempt.

8 (4) Nothing in this section prevents new or renewed bargaining
9 and agreement within the scope of bargaining, as defined by this
10 chapter, at any time. However, the parties may not agree to a
11 provision regarding suspension or modification of any court-ordered
12 penalty provided in this section and any such agreement is void.

13 (5) Each of the remedies and penalties provided by this section
14 is separate and several and is in addition to any other legal or
15 equitable remedy or penalty.

16 (6) In addition to the remedies and penalties provided by this
17 section, the successful litigant is entitled to recover costs and
18 reasonable attorneys' fees incurred in the litigation.

19 **Sec. 2.** RCW 41.59.020 and 1989 c 11 s 11 are each amended to
20 read as follows:

21 As used in this chapter:

22 (1) (~~The term~~) "Employee organization" means any
23 organization, union, association, agency, committee, council, or
24 group of any kind in which employees participate, and which exists
25 for the purpose, in whole or in part, of collective bargaining with
26 employers.

27 (2) (~~The term~~) "Collective bargaining" or "bargaining" means
28 the performance of the mutual obligation of the representatives of
29 the employer and the exclusive bargaining representative to meet at
30 reasonable times in light of the time limitations of the
31 budget-making process, and to bargain in good faith in an effort to
32 reach agreement with respect to the wages, hours, and terms and
33 conditions of employment: PROVIDED, That prior law, practice or
34 interpretation shall be neither restrictive, expansive, nor
35 determinative with respect to the scope of bargaining. A written
36 contract incorporating any agreements reached shall be executed if
37 requested by either party. The obligation to bargain does not
38 compel either party to agree to a proposal or to make a concession.

1 In the event of a dispute between an employer and an exclusive
2 bargaining representative over the matters that are terms and
3 conditions of employment, the commission shall decide which item(s)
4 are mandatory subjects for bargaining and which item(s) are nonmandatory.

5 (3) (~~The term~~) "Commission" means the public employment
6 relations commission established by RCW 41.58.010.

7 (4) (~~The terms~~) "Employee" and "educational employee" means
8 any certificated employee of a school district, except:

9 (a) The chief executive officer of the employer.

10 (b) The chief administrative officers of the employer, which
11 shall mean the superintendent of the district, deputy
12 superintendents, administrative assistants to the superintendent,
13 assistant superintendents, and business manager. Title variation
14 from all positions enumerated in this subsection (4)(b) may be
15 appealed to the commission for determination of inclusion in, or
16 exclusion from, the term "educational employee".

17 (c) Confidential employees, which shall mean:

18 (i) Any person who participates directly on behalf of an
19 employer in the formulation of labor relations policy, the
20 preparation for or conduct of collective bargaining, or the
21 administration of collective bargaining agreements, except that the
22 role of such person is not merely routine or clerical in nature but
23 calls for the consistent exercise of independent judgment; and

24 (ii) Any person who assists and acts in a confidential capacity
25 to such person.

26 (d) Unless included within a bargaining unit pursuant to RCW
27 41.59.080, any supervisor, which means any employee having
28 authority, in the interest of an employer, to hire, assign,
29 promote, transfer, layoff, recall, suspend, discipline, or
30 discharge other employees, or to adjust their grievances, or to
31 recommend effectively such action, if in connection with the
32 foregoing the exercise of such authority is not merely routine or
33 clerical in nature but calls for the consistent exercise of
34 independent judgment, and shall not include any persons solely by
35 reason of their membership on a faculty tenure or other governance
36 committee or body. The term "supervisor" shall include only those
37 employees who perform a preponderance of the above-specified acts
38 of authority.

39 (e) Unless included within a bargaining unit pursuant to RCW

1 41.59.080, principals and assistant principals in school districts.

2 (5) (~~The term~~) "Employer" means any school district.

3 (6) (~~The term~~) "Exclusive bargaining representative" means
4 any employee organization which has:

5 (a) Been selected or designated pursuant to the provisions of
6 this chapter as the representative of the employees in an
7 appropriate collective bargaining unit; or

8 (b) Prior to January 1, 1976, been recognized under a
9 predecessor statute as the representative of the employees in an
10 appropriate collective bargaining or negotiations unit.

11 (7) (~~The term~~) "Person" means one or more individuals,
12 organizations, unions, associations, partnerships, corporations,
13 boards, committees, commissions, agencies, or other entities, or
14 their representatives.

15 (8) (~~The term~~) "Nonsupervisory employee" means all
16 educational employees other than principals, assistant principals
17 and supervisors.

18 (9) "Labor dispute" means a controversy concerning terms or
19 conditions of employment, or concerning the association or
20 representation of persons in negotiating, fixing, maintaining,
21 changing, or seeking to arrange terms or conditions of their public
22 employment, regardless of whether the disputants in the controversy
23 stand in the proximate relation of employer and employee.

24 (10) "Lockout" means the refusal of the employer, in connection
25 with a labor dispute, to permit its employees to commence or
26 continue the full performance of their normal duties and services
27 as employees.

28 (11) "Strike" means any concerted action by employees or
29 employee organizations, in connection with a labor dispute, to
30 suspend, curtail, interrupt, withhold, or otherwise fail or refuse
31 to perform fully their normal duties or services as employees."

32 Correct the title.

EFFECT: Replaces all provisions of the substitute bill with a prohibition on strikes by educational employees or condoning or consenting to a strike or a lockout by an educational employer.