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**SUBSTITUTE SENATE BILL 5155**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Commerce & Trade (originally sponsored by Senators Mulliken and T. Sheldon)

READ FIRST TIME 02/10/03.

1 AN ACT Relating to prohibiting strikes and lockouts under chapter  
2 41.59 RCW; amending RCW 41.59.020; adding a new section to chapter  
3 41.59 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.59 RCW  
6 to read as follows:

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

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

18 (3) If an injunction is granted based on a violation of this  
19 section, failure to comply with the injunction is contempt of court as

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

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

13 (5) Each of the remedies and penalties provided by this section is  
14 separate and several and is in addition to any other legal or equitable  
15 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 read  
20 as follows:

21 As used in this chapter:

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

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

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

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

17 (c) Confidential employees, which shall mean:

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

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

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

1 (e) Unless included within a bargaining unit pursuant to RCW  
2 41.59.080, principals and assistant principals in school districts.

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

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

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

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

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

16 (8) (~~The term~~) "Nonsupervisory employee" means all educational  
17 employees other than principals, assistant principals 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 continue  
26 the full performance of their normal duties and services as employees.

27 (11) "Strike" means an employee's refusal, in concerted action with  
28 others, to report to duty, or his or her willful absence from his or  
29 her position, or his or her stoppage or slowdown of work, or his or her  
30 abstinence in whole or in part from the full, faithful, and proper  
31 performance of the duties of employment, for the purpose of inducing,  
32 influencing, or coercing a change in conditions, compensation, rights,  
33 privileges, or obligations of his, her, or any other employee's  
34 employment.

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