
SUBSTITUTE SENATE BILL 6156

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Commerce & Trade (originally sponsored by Senators Pflug and Mulliken)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to mediating teacher strikes; amending RCW
2 41.59.020 and 41.59.120; adding new sections to chapter 41.59 RCW;
3 creating a new section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes the state's
6 paramount duty to provide a basic education to all students residing in
7 Washington. The legislature further recognizes that uninterrupted
8 service of educational employees is vital to the welfare of the state,
9 and that such uninterrupted service must be ensured. The legislature
10 acknowledges that the state's courts have long considered strikes by
11 public employees, including teachers, to be unlawful, and in order to
12 ensure that no student is denied his or her constitutional right to a
13 basic education, the legislature affirms that strikes by public
14 employees are unlawful.

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

17 As used in this chapter:

1 (1) The term "employee organization" means any organization, union,
2 association, agency, committee, council, or group of any kind in which
3 employees participate, and which exists for the purpose, in whole or in
4 part, of collective bargaining with employers.

5 (2) The term "collective bargaining" or "bargaining" means the
6 performance of the mutual obligation of the representatives of the
7 employer and the exclusive bargaining representative to meet at
8 reasonable times in light of the time limitations of the budget-making
9 process, and to bargain in good faith in an effort to reach agreement
10 with respect to the wages, hours, and terms and conditions of
11 employment: PROVIDED, That prior law, practice or interpretation shall
12 be neither restrictive, expansive, nor determinative with respect to
13 the scope of bargaining. A written contract incorporating any
14 agreements reached shall be executed if requested by either party. The
15 obligation to bargain does not compel either party to agree to a
16 proposal or to make a concession.

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

21 (3) The term "commission" means the public employment relations
22 commission established by RCW 41.58.010.

23 (4) The terms "employee" and "educational employee" means any
24 certificated employee of a school district, except:

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

26 (b) The chief administrative officers of the employer, which shall
27 mean the superintendent of the district, deputy superintendents,
28 administrative assistants to the superintendent, assistant
29 superintendents, and business manager. Title variation from all
30 positions enumerated in this subsection (b) may be appealed to the
31 commission for determination of inclusion in, or exclusion from, the
32 term "educational employee".

33 (c) Confidential employees, which shall mean:

34 (i) Any person who participates directly on behalf of an employer
35 in the formulation of labor relations policy, the preparation for or
36 conduct of collective bargaining, or the administration of collective
37 bargaining agreements, except that the role of such person is not

1 merely routine or clerical in nature but calls for the consistent
2 exercise of independent judgment; and

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

5 (d) Unless included within a bargaining unit pursuant to RCW
6 41.59.080, any supervisor, which means any employee having authority,
7 in the interest of an employer, to hire, assign, promote, transfer,
8 layoff, recall, suspend, discipline, or discharge other employees, or
9 to adjust their grievances, or to recommend effectively such action, if
10 in connection with the foregoing the exercise of such authority is not
11 merely routine or clerical in nature but calls for the consistent
12 exercise of independent judgment, and shall not include any persons
13 solely by reason of their membership on a faculty tenure or other
14 governance committee or body. The term "supervisor" shall include only
15 those employees who perform a preponderance of the above-specified acts
16 of authority.

17 (e) Unless included within a bargaining unit pursuant to RCW
18 41.59.080, principals and assistant principals in school districts.

19 (5) The term "employer" means any school district.

20 (6) The term "exclusive bargaining representative" means any
21 employee organization which has:

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

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

28 (7) The term "person" means one or more individuals, organizations,
29 unions, associations, partnerships, corporations, boards, committees,
30 commissions, agencies, or other entities, or their representatives.

31 (8) The term "nonsupervisory employee" means all educational
32 employees other than principals, assistant principals and supervisors.

33 (9) "Strike" means a concerted work stoppage or slowdown by one or
34 more educational employees in a school district for all or part of a
35 regularly scheduled school day for the purpose of inducing,
36 influencing, or coercing a change in conditions, compensation, rights,
37 privileges, or obligations of employment of educational employees.

1 (10) "Lockout" means the refusal of the employer school district,
2 in connection with a labor dispute, to permit its educational employees
3 to commence or continue the full performance of their normal duties and
4 services as educational employees.

5 (11) "Labor dispute" means a controversy concerning terms or
6 conditions of employment.

7 **NEW SECTION. Sec. 3.** A new section is added to chapter 41.59 RCW
8 to read as follows:

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

12 (2) It is unlawful for an employer to conduct a lockout.

13 **NEW SECTION. Sec. 4.** A new section is added to chapter 41.59 RCW
14 to read as follows:

15 The attorney general must petition the superior court for the
16 county in which the labor dispute exists to enjoin a strike or lockout
17 that occurs or is threatened to occur on any days of the school
18 calendar. The injunction shall be filed on behalf of the students who
19 are being harmed because they are being denied an education as a result
20 of the labor dispute. The court shall grant a temporary injunction
21 under this section if the attorney general demonstrates any potential
22 harm to students.

23 **Sec. 5.** RCW 41.59.120 and 1975 1st ex.s. c 288 s 13 are each
24 amended to read as follows:

25 (1) (~~Either an employer or an exclusive bargaining representative~~
26 ~~may declare that an impasse has been reached between them in collective~~
27 ~~bargaining and may request the commission to~~) Beginning with contracts
28 for the 2004-05 school year, negotiations between an employer and the
29 exclusive bargaining representative of a unit of employees under this
30 chapter must commence by May 1st in the year in which the collective
31 bargaining agreement has expired or will expire. If by June 30th, an
32 agreement has not yet been reached, the commission must appoint a
33 mediator for the purpose of assisting ((them)) the employer and the
34 exclusive bargaining representative in reconciling their differences
35 and resolving the controversy on terms which are mutually acceptable.

1 (~~((If the commission determines that its assistance is needed, not later~~
2 ~~than five days after the receipt of a request therefor, it))~~) The
3 commission shall appoint a mediator in accordance with rules and
4 regulations for such appointment prescribed by the commission. The
5 mediator shall meet with the parties or their representatives, or both,
6 forthwith, either jointly or separately, and shall take such other
7 steps as he may deem appropriate in order to persuade the parties to
8 resolve their differences and effect a mutually acceptable agreement.
9 The mediator, without the consent of both parties, shall not make
10 findings of fact or recommend terms of settlement. The services of the
11 mediator, including, if any, per diem expenses, shall be provided by
12 the commission without cost to the parties. (~~((Nothing in this~~
13 ~~subsection (1) shall be construed to prevent the parties from mutually~~
14 ~~agreeing upon their own mediation procedure, and in the event of such~~
15 ~~agreement, the commission shall not appoint its own mediator unless~~
16 ~~failure to do so would be inconsistent with the effectuation of the~~
17 ~~purposes and policy of this chapter.))~~)

18 (2) If the mediator is unable to effect settlement of the
19 controversy within ten days after his or her appointment, (~~((either~~
20 ~~party, by written notification to the other, may request that their~~
21 ~~differences be submitted to fact finding with recommendations, except~~
22 ~~that the time for mediation may be extended by mutual agreement between~~
23 ~~the parties. Within five days after receipt of the aforesaid written~~
24 ~~request for fact finding,))~~) the parties shall select a person to serve
25 as fact-finder and obtain a commitment from that person to serve. If
26 they are unable to agree upon a fact-finder or to obtain such a
27 commitment within (~~(that time, either party may request))~~) five days,
28 the commission (~~((to))~~) shall designate a fact-finder. The commission,
29 within five days after receipt of such request, shall designate a fact-
30 finder in accordance with rules and regulations for such designation
31 prescribed by the commission. The fact-finder so designated shall not
32 be the same person who was appointed mediator pursuant to subsection
33 (1) of this section without the consent of both parties.

34 The fact-finder, within five days after his appointment, shall meet
35 with the parties or their representatives, or both, either jointly or
36 separately, and make inquiries and investigations, hold hearings, and
37 take such other steps as he may deem appropriate. For the purpose of
38 such hearings, investigations and inquiries, the fact-finder shall have

1 the power to issue subpoenas requiring the attendance and testimony of
2 witnesses and the production of evidence. If the dispute is not
3 settled (~~((within ten days after his appointment,))~~) by July 30th, the
4 fact-finder shall make findings of fact and recommend terms of
5 settlement (~~((within thirty days after his appointment))~~), which
6 recommendations shall be advisory only.

7 (3) Such recommendations, together with the findings of fact, shall
8 be submitted in writing to the parties and the commission privately
9 before they are made public. (~~(Either)~~) If the dispute is not settled,
10 the commission(~~(, the fact finder, the employer, or the exclusive~~
11 ~~bargaining representative may))~~ shall make such findings and
12 recommendations public (~~((if the dispute is not settled within five days~~
13 ~~after their receipt from the fact finder))~~) at a public hearing to be
14 held on or before August 10th.

15 (4) The costs for the services of the fact-finder, including, if
16 any, per diem expenses and actual and necessary travel and subsistence
17 expenses, and any other incurred costs, shall be borne by the
18 commission without cost to the parties.

19 (~~(Nothing in this section shall be construed to prohibit an~~
20 ~~employer and an exclusive bargaining representative from agreeing to~~
21 ~~substitute, at their own expense, their own procedure for resolving~~
22 ~~impasses in collective bargaining for that provided in this section or~~
23 ~~from agreeing to utilize for the purposes of this section any other~~
24 ~~governmental or other agency or person in lieu of the commission.~~

25 ~~(6))~~ Any fact-finder designated by an employer and an exclusive
26 representative or the commission for the purposes of this section shall
27 be deemed an agent of the state.

28 (6) If the parties have not reached agreement by June 30th for the
29 coming school year, until the dispute is resolved, the parties must
30 participate in mediation, fact-finding, negotiation, or related
31 activities at least daily.

32 NEW SECTION. Sec. 6. This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and takes effect
35 immediately.

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