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SENATE BILL 6576

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State of Washington

58th Legislature

2004 Regular Session

By Senator Mulliken

Read first time 01/26/2004. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to educational employee collective bargaining;  
2 amending RCW 41.59.020 and 41.59.120; adding new sections to chapter  
3 41.59 RCW; creating a new section; prescribing penalties; and providing  
4 an expiration date.

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

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

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

18 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       **Sec. 4.** RCW 41.59.120 and 1975 1st ex.s. c 288 s 13 are each  
14 amended to read as follows:

15       (1) Either an employer or an exclusive bargaining representative  
16 may declare that an impasse has been reached between them in collective  
17 bargaining and may request the commission to appoint a mediator for the  
18 purpose of assisting them in reconciling their differences and  
19 resolving the controversy on terms which are mutually acceptable. If  
20 the commission determines that its assistance is needed, not later than  
21 five days after the receipt of a request therefor, it shall appoint a  
22 mediator in accordance with rules and regulations for such appointment  
23 prescribed by the commission. The mediator shall meet with the parties  
24 or their representatives, or both, forthwith, either jointly or  
25 separately, and shall take such other steps as he may deem appropriate  
26 in order to persuade the parties to resolve their differences and  
27 effect a mutually acceptable agreement. The mediator, without the  
28 consent of both parties, shall not make findings of fact or recommend  
29 terms of settlement. The services of the mediator, including, if any,  
30 per diem expenses, shall be provided by the commission without cost to  
31 the parties. Nothing in this subsection (1) shall be construed to  
32 prevent the parties from mutually agreeing upon their own mediation  
33 procedure, and in the event of such agreement, the commission shall not  
34 appoint its own mediator unless failure to do so would be inconsistent  
35 with the effectuation of the purposes and policy of this chapter.

1 (2) If the mediator is unable to effect settlement of the  
2 controversy within ten days after his or her appointment, either party,  
3 by written notification to the other, may request that their  
4 differences be submitted to fact-finding with recommendations, except  
5 that the time for mediation may be extended by mutual agreement between  
6 the parties. Within five days after receipt of the aforesaid written  
7 request for fact-finding, the parties shall select a person to serve as  
8 fact-finder and obtain a commitment from that person to serve. If they  
9 are unable to agree upon a fact-finder or to obtain such a commitment  
10 within that time, either party may request the commission to designate  
11 a fact-finder. The commission, within five days after receipt of such  
12 request, shall designate a fact-finder in accordance with rules and  
13 regulations for such designation prescribed by the commission. The  
14 fact-finder so designated shall not be the same person who was  
15 appointed mediator pursuant to subsection (1) of this section without  
16 the consent of both parties.

17 The fact-finder, within five days after his appointment, shall meet  
18 with the parties or their representatives, or both, either jointly or  
19 separately, and make inquiries and investigations, hold hearings, and  
20 take such other steps as he may deem appropriate. For the purpose of  
21 such hearings, investigations and inquiries, the fact-finder shall have  
22 the power to issue subpoenas requiring the attendance and testimony of  
23 witnesses and the production of evidence. If the dispute is not  
24 settled within ten days after his appointment, the fact-finder shall  
25 make findings of fact and recommend terms of settlement within thirty  
26 days after his appointment, which recommendations shall be advisory  
27 only.

28 (3) Such recommendations, together with the findings of fact, shall  
29 be submitted in writing to the parties and the commission privately  
30 before they are made public. Either the commission, the fact-finder,  
31 the employer, or the exclusive bargaining representative may make such  
32 findings and recommendations public if the dispute is not settled  
33 within five days after their receipt from the fact-finder.

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

1 (5) Nothing in this section shall be construed to prohibit an  
2 employer and an exclusive bargaining representative from agreeing to  
3 substitute, at their own expense, their own procedure for resolving  
4 impasses in collective bargaining for that provided in this section or  
5 from agreeing to utilize for the purposes of this section any other  
6 governmental or other agency or person in lieu of the commission.

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

10 (7) This section expires June 30, 2004, and any collective  
11 bargaining activity being carried out under this section on June 30,  
12 2004, shall proceed under section 5 of this act.

13 NEW SECTION. Sec. 5. A new section is added to chapter 41.59 RCW  
14 to read as follows:

15 (1) With respect to contracts for the 2004-05 school year and  
16 beyond, negotiations between an employer and the exclusive bargaining  
17 representative of a unit of employees under this chapter must commence  
18 by May 1st.

19 (2) If by June 30th an agreement has not yet been ratified, the  
20 commission shall designate a fact-finder in accordance with rules for  
21 such designation adopted by the commission. The fact-finder, within  
22 five days after his or her appointment, shall meet with the parties or  
23 their representatives, or both, either jointly or separately, and make  
24 inquiries and investigations, hold hearings, and take such other steps  
25 as he or she may deem appropriate. For the purpose of such hearings,  
26 investigations and inquiries, the fact-finder may issue subpoenas  
27 requiring the attendance and testimony of witnesses and the production  
28 of evidence. On or before July 16th, the fact-finder must issue  
29 written findings of fact to the parties and to the commission. The  
30 commission shall hold a public fact-finding hearing and make the  
31 findings available to the public if the parties have not reached a  
32 settlement within three days of their receipt of the findings.

33 (3) Beginning the first day following the public fact-finding  
34 hearing, the parties must conduct contract negotiations daily until a  
35 contract is adopted. The negotiations must be open to the public.

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