
HOUSE BILL 1429

State of Washington

68th Legislature

2023 Regular Session

By Representatives Stokesbary and Corry

Read first time 01/18/23. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to prohibiting strikes by employees covered by
2 the educational employment relations act and authorizing interest
3 arbitration; amending RCW 41.59.020 and 41.59.120; adding a new
4 section to chapter 41.59 RCW; creating a new section; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the state has a
8 constitutional paramount duty to provide its school children with an
9 education and thus has an obligation to ensure the fair, efficient,
10 and timely resolution of any contract impasse between public school
11 employees and school districts so that public schools always remain
12 open.

13 The legislature also finds that although public school employees
14 have no protected right to strike under Washington law, such strikes
15 continue to occur, creating enormous hardships for parents and
16 students. These unauthorized work stoppages hinder the academic
17 development of students and leave thousands of parents struggling
18 with upheaval to family lives and schedules, including the inability
19 to find child care. The resulting disruptions negatively impact
20 student learning, labor market participation, and earnings of working
21 parents.

1 The legislature also finds that there exists a public policy in
2 the state of Washington against strikes by providers of essential
3 public services like police officers, firefighters, and other
4 uniformed personnel as a means of settling labor disputes; that the
5 uninterrupted and dedicated service of these classes of employees is
6 vital to the public welfare in the state of Washington. To promote
7 such dedicated and uninterrupted public service the legislature has
8 provided for an effective and adequate alternative means of settling
9 labor disputes by prohibiting those employees from striking and has
10 instead granted interest arbitration rights as the exclusive means of
11 resolving any impasse during contract negotiations. Therefore, it is
12 the intent of the legislature to recognize that public school
13 employees provide a similarly essential public service as police
14 officers, firefighters, and other uniformed personnel, and to grant
15 interest arbitration rights to public school employees as the
16 exclusive means of settling labor disputes.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.59
18 RCW to read as follows:

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

22 (2) It is unlawful for an employer to authorize, consent to, or
23 condone a strike, to conduct a lockout, to pay or agree to pay an
24 employee for any day in which the employee participates in a strike,
25 or to pay or agree to pay any increase in compensation or benefits to
26 an employee in response to or as a result of a strike or any act that
27 violates subsection (1) of this section. It is unlawful for any
28 representative of the employer to authorize, ratify, or participate
29 in any violation of this subsection.

30 (3) If an injunction is granted based on a violation of this
31 section, failure to comply with the injunction is contempt of court
32 as provided in chapter 7.21 RCW. The court may impose a penalty of up
33 to \$10,000 for an employee organization or the employer, for each day
34 during which the failure to comply continues. The sanctions for an
35 employee found to be in contempt shall be as provided in chapter 7.21
36 RCW. An individual or an employee organization that makes an active
37 good faith effort to comply fully with the injunction shall not be
38 deemed to be in contempt.

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

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

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

12 **Sec. 3.** RCW 41.59.020 and 1989 c 11 s 11 are each amended to
13 read as follows:

14 As used in this chapter:

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

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

31 In the event of a dispute between an employer and an exclusive
32 bargaining representative over the matters that are terms and
33 conditions of employment, the commission shall decide which item(s)
34 are mandatory subjects for bargaining and which item(s) are
35 nonmandatory.

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

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

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

2 (b) The chief administrative officers of the employer, which
3 shall mean the superintendent of the district, deputy
4 superintendents, administrative assistants to the superintendent,
5 assistant superintendents, and business manager. Title variation from
6 all positions enumerated in this subsection (4)(b) may be appealed to
7 the commission for determination of inclusion in, or exclusion from,
8 the term "educational employee".

9 (c) Confidential employees, which shall mean:

10 (i) Any person who participates directly on behalf of an employer
11 in the formulation of labor relations policy, the preparation for or
12 conduct of collective bargaining, or the administration of collective
13 bargaining agreements, except that the role of such person is not
14 merely routine or clerical in nature but calls for the consistent
15 exercise of independent judgment; and

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

18 (d) Unless included within a bargaining unit pursuant to RCW
19 41.59.080, any supervisor, which means any employee having authority,
20 in the interest of an employer, to hire, assign, promote, transfer,
21 layoff, recall, suspend, discipline, or discharge other employees, or
22 to adjust their grievances, or to recommend effectively such action,
23 if in connection with the foregoing the exercise of such authority is
24 not merely routine or clerical in nature but calls for the consistent
25 exercise of independent judgment, and shall not include any persons
26 solely by reason of their membership on a faculty tenure or other
27 governance committee or body. The term "supervisor" shall include
28 only those employees who perform a preponderance of the above-
29 specified acts of authority.

30 (e) Unless included within a bargaining unit pursuant to RCW
31 41.59.080, principals and assistant principals in school districts.

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

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

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

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

1 (7) The term "person" means one or more individuals,
2 organizations, unions, associations, partnerships, corporations,
3 boards, committees, commissions, agencies, or other entities, or
4 their representatives.

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

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

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

18 (11) "Labor dispute" means a controversy concerning the terms or
19 conditions of employment.

20 **Sec. 4.** RCW 41.59.120 and 2012 c 117 s 92 are each amended to
21 read as follows:

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

1 the parties from mutually agreeing upon their own mediation
2 procedure, and in the event of such agreement, the commission shall
3 not appoint its own mediator unless failure to do so would be
4 inconsistent with the effectuation of the purposes and policy of this
5 chapter.

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

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

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

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

5 (5)(a) If the impasse in subsection (1) of this section was
6 declared at least 120 days before the start of a school year, and the
7 employer and exclusive bargaining representative have not reached an
8 agreement through negotiation or mediation within 60 days of that
9 declaration of impasse, then an interest arbitration panel shall be
10 created to resolve the dispute. The issues for determination by the
11 arbitration panel are limited to the issues certified by arbitration
12 by the executive director of the commission.

13 (b) Within seven days following the issuance of the determination
14 of the executive director of the commission, each party shall name
15 one person to serve as its arbitrator on the arbitration panel. The
16 two members so appointed shall meet within seven days following the
17 appointment of the later appointed member to attempt to choose a
18 third member to act as the neutral chair of the arbitration panel.
19 Upon the failure of the arbitrators to select a neutral chair within
20 seven days, the two appointed members shall use one of the two
21 following options in the appointment of the third member, who shall
22 act as chair of the panel:

23 (i) By mutual consent, the two appointed members may jointly
24 request the commission, and the commission shall appoint a third
25 member within two days of such request. Costs of each party's
26 appointee shall be borne by each party respectively; other costs of
27 the arbitration proceedings shall be borne by the commission; or

28 (ii) Either party may apply to the commission, the federal
29 mediation and conciliation service, or the American arbitration
30 association to provide a list of five qualified arbitrators from
31 which the neutral chair shall be chosen. Each party shall pay the
32 fees and expenses of its arbitrator, and the fees and expenses of the
33 neutral chair shall be shared equally between the parties.

34 (c)(i) The arbitration panel so constituted under this section
35 shall promptly establish a date, time, and place for a hearing and
36 shall provide reasonable notice thereof to the parties to the
37 dispute. A hearing, which shall be informal, shall be held, and each
38 party shall have the opportunity to present evidence and make
39 argument. No member of the arbitration panel may present the case for
40 a party to the proceedings.

1 (ii) The rules of evidence prevailing in judicial proceedings may
2 be considered, but are not binding, and any oral testimony or
3 documentary evidence or other data deemed relevant by the chair of
4 the arbitration panel may be received in evidence. A recording of the
5 proceedings shall be taken.

6 (iii) The arbitration panel has the power to administer oaths,
7 require the attendance of witnesses, and require the production of
8 such books, papers, contracts, agreements, and documents as may be
9 deemed by the panel to be material to a just determination of the
10 issues in dispute. If any person refuses to obey a subpoena issued by
11 the arbitration panel, or refuses to be sworn or to make an
12 affirmation to testify, or any witness, party, or attorney for a
13 party is guilty of any contempt while in attendance at any hearing
14 held hereunder, the arbitration panel may invoke the jurisdiction of
15 the superior court in the county in which the labor dispute exists,
16 and the court has jurisdiction to issue an appropriate order. Any
17 failure to obey the order may be punished by the court as a contempt
18 of court under chapter 7.21 RCW.

19 (iv) The hearing conducted by the arbitration panel shall be
20 concluded within 21 days following the selection or designation of
21 the neutral chair of the arbitration panel.

22 (d) The neutral chair shall consult with the other members of the
23 arbitration panel, and, within 21 days following the conclusion of
24 the hearing, the neutral chair shall make written findings of fact
25 and a written determination of the issues in dispute, based on the
26 evidence presented. A copy of the determination shall be served on
27 the commission, on each of the other members of the arbitration
28 panel, and on each of the parties to the dispute. The determination
29 shall be final and binding upon both parties, subject to review by
30 the superior court for the county in which the labor dispute exists
31 upon the application of either party solely upon the question of
32 whether the decision of the panel was arbitrary or capricious. The
33 determination may be enforced at the instance of either party, the
34 arbitration panel, the commission, or the parent or guardian of any
35 student in the school district, in the superior court for the county
36 in which the dispute exists.

37 (6) An interest arbitration panel created under this section, in
38 the performance of its duties under this chapter, exercises a state
39 function and is, for the purposes of this chapter, a state agency.

1 Chapter 34.05 RCW does not apply to proceedings before an interest
2 arbitration panel under this chapter.

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

10 ~~((+6))~~ (8) Any fact finder designated by an employer and an
11 exclusive representative or the commission for the purposes of this
12 section shall be deemed an agent of the state.

13 ~~((+7))~~ (9) This section does not apply to negotiations and
14 mediations conducted under RCW 28A.657.050.

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