

---

HOUSE BILL 3093

---

State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Anderson, Talcott and Nixon

Read first time 01/27/2004. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to resolving certificated employee labor disputes;  
2 amending RCW 41.59.120; and adding a new section to chapter 41.59 RCW.

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

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

6            (1)(a) Either an employer or an exclusive bargaining representative  
7 may declare that an impasse has been reached between them in collective  
8 bargaining and may request the commission to appoint a mediator for the  
9 purpose of assisting them in reconciling their differences and  
10 resolving the controversy on terms which are mutually acceptable. If  
11 the commission determines that its assistance is needed, not later than  
12 five days after the receipt of a request therefor, it shall appoint a  
13 mediator in accordance with rules and regulations for such appointment  
14 prescribed by the commission. The mediator shall meet with the parties  
15 or their representatives, or both, forthwith, either jointly or  
16 separately, and shall take such other steps as he may deem appropriate  
17 in order to persuade the parties to resolve their differences and  
18 effect a mutually acceptable agreement. The mediator, without the  
19 consent of both parties, shall not make findings of fact or recommend

1 terms of settlement. The services of the mediator, including, if any,  
2 per diem expenses, shall be provided by the commission without cost to  
3 the parties.

4 (b) Nothing in this subsection (1) shall be construed to prevent  
5 the parties from mutually agreeing upon their own mediation procedure,  
6 and in the event of such agreement, the commission shall not appoint  
7 its own mediator unless failure to do so would be inconsistent with the  
8 effectuation of the purposes and policy of this chapter.

9 (2)(a) Except as provided in subsection (3) of this section, if the  
10 mediator is unable to effect settlement of the controversy within ten  
11 days after his or her appointment, either party, by written  
12 notification to the other, may request that their differences be  
13 submitted to fact-finding with recommendations, except that the time  
14 for mediation may be extended by mutual agreement between the parties.

15 (b) Within five days after receipt of the aforesaid written request  
16 for fact-finding, the parties shall select a person to serve as fact-  
17 finder and obtain a commitment from that person to serve. If they are  
18 unable to agree upon a fact-finder or to obtain such a commitment  
19 within that time, either party may request the commission to designate  
20 a fact-finder. The commission, within five days after receipt of such  
21 request, shall designate a fact-finder in accordance with rules and  
22 regulations for such designation prescribed by the commission. The  
23 fact-finder so designated shall not be the same person who was  
24 appointed mediator pursuant to subsection (1) of this section without  
25 the consent of both parties.

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

37 ~~((+3))~~ (d) Such recommendations, together with the findings of  
38 fact, shall be submitted in writing to the parties and the commission

1 privately before they are made public. Either the commission, the  
2 fact-finder, the employer, or the exclusive bargaining representative  
3 may make such findings and recommendations public if the dispute is not  
4 settled within five days after their receipt from the fact-finder.

5 ~~((+4))~~ (e) The costs for the services of the fact-finder,  
6 including, if any, per diem expenses and actual and necessary travel  
7 and subsistence expenses, and any other incurred costs, shall be borne  
8 by the commission without cost to the parties.

9 ~~((+5))~~ (3) If the parties have not reached agreement by the date  
10 on which the employer must adopt its annual budget in the year in which  
11 the collective bargaining agreement has expired or will expire, the  
12 procedures in this subsection shall apply:

13 (a) On the day following the required budget adoption date, the  
14 employer must request that the parties' differences be submitted to  
15 fact-finding. Within five days after receipt of the request, the  
16 commission shall designate a fact-finder in accordance with rules  
17 adopted under this section. The fact-finder may not be the same person  
18 who was appointed mediator under subsection (1) of this section or  
19 appointed fact-finder under subsection (2) of this section. Fact-  
20 finding shall proceed as provided in subsection (2)(c) and (d) of this  
21 section, except that the fact-finder must make findings of fact and  
22 recommend terms of settlement within fifteen days after his or her  
23 appointment unless the dispute is settled within ten days of the  
24 appointment, and if the dispute is not settled within five days after  
25 the parties' receipt of the fact-finder's report:

26 (i) The commission must make the parties' final offers and the  
27 fact-finder's recommendations and findings of fact public within five  
28 days after receiving the report; and

29 (ii) The commission must hold a public hearing to take public  
30 comment on the report within five days after making the report public.

31 (b) The costs of fact-finding under this subsection, including, if  
32 any, per diem expenses, actual and necessary travel and subsistence  
33 expenses, and any other incurred costs, and the costs of the hearing  
34 conducted by the commission under (a)(ii) of this subsection shall be  
35 borne by the employer and the exclusive bargaining representative in  
36 equal shares.

37 (4) Nothing in this section shall be construed to prohibit an  
38 employer and an exclusive bargaining representative from agreeing to

1 substitute, at their own expense, their own procedure for resolving  
2 impasses in collective bargaining for that provided in this section or  
3 from agreeing to utilize for the purposes of this section any other  
4 governmental or other agency or person in lieu of the commission,  
5 except that an agreement entered into under this subsection must:

6 (a) Be filed with the office of the superintendent of public  
7 instruction and the office must post the agreement on the office's web  
8 site; and

9 (b) Provide for settlement of the dispute by the date on which the  
10 employer must adopt its annual budget. If, for any reason, the dispute  
11 is not settled on that date as required, the procedures in subsection  
12 (3) of this section apply.

13 ~~((+6+))~~ (5) Any fact-finder designated by an employer and an  
14 exclusive representative or the commission for the purposes of this  
15 section shall be deemed an agent of the state.

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

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

22 (2) The attorney general must petition the superior court for the  
23 county in which the labor dispute exists to enjoin a strike that occurs  
24 or threatens to occur on any days of the school calendar. The court  
25 shall grant a temporary injunction under this section without requiring  
26 the plaintiff to show that the strike or threatened strike would  
27 irreparably harm the plaintiff, and the plaintiff shall not be required  
28 to post a bond. Failure of an employee or employee organization to  
29 comply with any court order issued under this section shall be punished  
30 as contempt of court.

--- END ---