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**HOUSE BILL 1429**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Stokesbary and Corry

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

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

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

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

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

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

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

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

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

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

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

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

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

As used in this chapter:

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

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

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

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

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

(a) The chief executive officer of the employer.

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

(c) Confidential employees, which shall mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) An interest arbitration panel created under this section, in the performance of its duties under this chapter, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter.

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

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

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

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