

Teacher Strikes

The Issue

Teacher strikes can be devastating for all involved. This was made clear by the Marysville Education Association's 2003 strike which kept students and teachers out of school for a record-breaking forty-nine days. Even without strikes being called, the possibility of a strike affects education policy significantly and hampers local school board's ability to budget thoughtfully.

Current Law

Time and again, our state courts have ruled that based upon Washington common law, public employee strikes are illegal, including teacher strikes. Court rulings in two recent large teacher strikes, Marysville in 2003 and Issaquah in 2002, reiterated this point. In 2006, Attorney General McKenna issued AGO 2006 No. 3 also declaring "state and local public employees, including teachers, have no legally protected right to strike."

However, teacher strikes have regularly occurred since the early 1970's. So, if strikes are illegal, why do they still occur? There is a lack of consequences for going on strike because there is ambiguity in the law about how to deal with illegal strikes. Legislation has been proposed in past sessions to clarify and reiterate that strikes are illegal, but that legislation would not likely change anything about how the system currently works (or doesn't work). The employer needs to go to court to stop a strike, and in order for an injunction to be granted, the following tests need to be passed: (1) clear legal right; (2) fear of immediate invasion of that right; and (3) actual and substantial injury that cannot be remedied by money damages. Any legislation declaring striking is illegal would simply assure that the first of the three tests is passed. The third test may be difficult to substantiate until the strike has gone on for some amount of time. Procedural language would be needed in the legislation to change the current requirement for employers to go to court to get an injunction.

In current law, alternatives for resolving teacher labor disputes are (1) mediation and (2) fact finding. In the first case, a mediator is assigned by the director of PERC, the Public Employment Relations Commission (www.perc.wa.gov). That may move to fact finding, which is a formal process.

Also, controls are placed on teacher compensation by state law. In 1981, the Legislature put restrictions on negotiating salary and benefit increases in excess of those funded by the state (RCW 28A.400.200.) School districts are limited to providing salary increases only by separate contracts for additional time, additional responsibilities, or incentives. These are known as TRI contracts. It was not the intent of the Legislature for these contracts to be the vehicle for across-the-board salary increases.

Legislative Efforts

There have been multiple efforts to clarify that teacher strikes are illegal, but none have succeeded (in 2004, HB 3093 and SB 5155, and in 2006 HB 2808). Binding arbitration has been proposed by House Democrats as a way to resolve collective bargaining disputes that have deadlocked. However, binding arbitration can hinder the ability of school districts and the Legislature to develop budgets and adopt public policy and tip the balance in favor of employee groups.