WEST VIRGINIA CODE: §18-5-45A

§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

(a) *Legislative findings*. —

(1) The West Virginia Supreme Court of Appeals held, in Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W.Va. 15 (1990), that "[p]ublic employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration".

(2) Public employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a county board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by section one, article XII of the Constitution of West Virginia.

(3) Section 18-5-45 of this code is designed to define the school term both for employment of school personnel and for instruction of students. The employment term consists of at least 200 days and, within the employment term, an instructional term for students must consist of at least 180 separate instructional days. Section 18-5-45 of this code also defines the minimum length of an instructional day, requires county boards to develop a policy for additional minutes of instruction to recover time lost due to late arrivals and early dismissals, and allows schools with an instructional day in excess of certain minimums to apply this equivalent instructional time to cancel time lost due to necessary closures and other purposes designed to improve instruction. Furthermore, §18-5-45 of this code allows a county board, subject to approval of its plan by the state board, to deliver instruction through alternative methods for a maximum of five days, when schools are closed and provides that these days are considered to be instructional days, notwithstanding the closure of schools.

(4) The Legislature intended, by providing for equivalent instructional time and the use of alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-45 of this code, to: (1) Provide flexibility for collaborative time and other methods of improving instruction; and (2) lessen the disruption of the planned school calendar if rescheduling and adding instructional days became necessary to make up lost days due to closures pursuant to §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils. The Legislature did not intend with the enactment of these provisions to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees.

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(b) For the purposes of this section, an employee of a county board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the county board of education:

(1) The employee does not report to work as required by his or her contract of employment;

(2) The employee is not on leave, as specifically permitted by any provision of this code: *Provided*, That nothing in this section permits an employee to use personal leave in connection with a work stoppage or strike in violation of §18A-4-10 of this code; and

(3) The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

(c) The provisions of §18-5-45 of this code, permitting accrued and equivalent instructional time to cancel days lost, and the delivery of instruction through alternative methods, do not apply to and may not be used to cancel days lost due to a concerted work stoppage or strike. Notwithstanding any provision of this code to the contrary, the state board may not grant a waiver to a county board of education for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional term requirements if such noncompliance is the result of a concerted work stoppage or strike.

(d) Notwithstanding §18A-5-2 of this code or any other provision of this code to the contrary, if an employee remains employed by the county board of education, notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature hereby determines to be a ground for termination, the county board of education shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the county board of education.

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