
SENATE BILL 5046

State of Washington 61st Legislature 2009 Regular Session

By Senators Kohl-Welles, Keiser, Kline, and Franklin

Read first time 01/12/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to placing symphony orchestras, operas, and
2 performing arts theaters under the jurisdiction of the public
3 employment relations commission for purposes of collective bargaining;
4 and adding a new chapter to Title 49 RCW.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Bargaining representative" means any lawful organization which
9 has as one of its primary purposes the representation of employees in
10 their employment relations with employers.

11 (2) "Collective bargaining" means the performance of the mutual
12 obligations of the employer and the exclusive bargaining representative
13 to meet at reasonable times, to confer and negotiate in good faith, and
14 to execute a written agreement with respect to grievance procedures and
15 collective negotiations on personnel matters, including wages, hours,
16 and working conditions, which may be peculiar to an appropriate
17 bargaining unit of such employer, except that by such obligation
18 neither party shall be compelled to agree to a proposal or be required
19 to make a concession unless otherwise provided in this chapter.

1 (3) "Commission" means the public employment relations commission.

2 (4)(a) "Employee" means an employee of a symphony orchestra, opera,
3 or performing arts theater that does not meet the jurisdictional
4 standards of the national labor relations board, and shall include any
5 individual whose work has ceased as a consequence of, or in connection
6 with, any current labor dispute with an employer or because of any
7 unfair labor practice with an employer, and who has not obtained any
8 other regular and substantially equivalent employment.

9 (b) "Employee" does not include any supervisor, unless the
10 supervisor is included within a bargaining unit under section 4 of this
11 act.

12 (5)(a) "Employer" means a symphony orchestra, opera, or performing
13 arts theater, that does not meet the jurisdictional standards of the
14 national labor relations board, and includes any person acting as an
15 agent of an employer, directly or indirectly.

16 (b) In determining whether any person is acting as an "agent" of
17 another person so as to make such other person responsible for his or
18 her acts, the question of whether the specific acts performed were
19 actually authorized or subsequently ratified shall not be controlling.

20 (6) "Executive director" means the executive director of the
21 commission.

22 (7) "Labor dispute" includes any controversy concerning terms,
23 tenure, or conditions of employment, or concerning the association of
24 representation of persons in negotiating, fixing, maintaining,
25 changing, or seeking to arrange terms or conditions of employment,
26 regardless of whether the disputants stand in the proximate relation of
27 employer and employee. In the event of a dispute between an employer
28 and an exclusive bargaining representative over the matters that are
29 terms and conditions of employment, the commission shall decide which
30 items are mandatory subjects for bargaining.

31 (8) "Labor organization" means an organization of any kind, or an
32 agency or employee representation committee or plan, in which employees
33 participate and which exists for the primary purpose of dealing with
34 employers concerning grievances, labor disputes, wages, rates of pay,
35 hours of employment, or conditions of employment.

36 (9) "Person" includes one or more individuals, labor organizations,
37 partnerships, associations, corporations, legal representatives,
38 trustees in bankruptcy, or receivers.

1 (10) "Supervisor" means an employee having authority, in the
2 interest of an employer, to hire, assign, promote, transfer, lay off,
3 recall, suspend, discipline, or discharge other employees, or to adjust
4 their grievances, or to recommend effectively such action, if the
5 exercise of this authority is not merely routine or clerical in nature
6 and calls for the consistent exercise of independent judgment.

7 (11) "Unfair labor practice" means any activity listed in sections
8 13 and 14 of this act.

9 NEW SECTION. **Sec. 2.** No employer, or other person, shall directly
10 or indirectly, interfere with, restrain, coerce, or discriminate
11 against any employee or group of employees in the free exercise of
12 their right to organize and designate bargaining representatives of
13 their own choosing for the purpose of collective bargaining, or in the
14 free exercise of any other right under this chapter.

15 NEW SECTION. **Sec. 3.** If an employer and employees are in
16 disagreement as to the selection of a bargaining representative the
17 commission shall be invited to intervene as is provided in sections 4
18 through 7 of this act.

19 NEW SECTION. **Sec. 4.** The commission, upon reasonable notice,
20 shall decide in each application for certification as an exclusive
21 bargaining representative, the unit appropriate for the purpose of
22 collective bargaining. In determining, modifying, or combining the
23 bargaining unit, the commission shall consider the duties, skills, and
24 working conditions of the employees; the history of collective
25 bargaining by the employees and their bargaining representatives; the
26 extent of organization among the employees; and the desire of the
27 employees. The commission shall determine the bargaining
28 representative by: (1) Comparison of signatures on organization
29 bargaining authorization cards; or (2) conducting an election
30 specifically therefor.

31 NEW SECTION. **Sec. 5.** If the commission elects to conduct an
32 election to ascertain the exclusive bargaining representative, and upon
33 the request of a prospective bargaining representative showing written
34 proof of at least thirty percent representation of the employees within

1 the unit, the commission shall hold an election by secret ballot to
2 determine the issue. The ballot shall contain the name of the
3 bargaining representative and of any other bargaining representative
4 showing written proof of at least ten percent representation of the
5 employees within the unit, together with a choice for any employee to
6 designate that he or she does not desire to be represented by any
7 bargaining agent. Where more than one organization is on the ballot
8 and neither of the three or more choices receives a majority vote of
9 valid ballots cast, a run-off election shall be held. The run-off
10 ballot shall contain the two choices which received the largest and
11 second-largest number of votes. No question concerning representation
12 may be raised within one year of a certification or attempted
13 certification. Where there is a valid collective bargaining agreement
14 in effect, no question of representation may be raised except during
15 the period not more than ninety nor less than sixty days prior to the
16 expiration date of the agreement. Any agreement which contains a
17 provision for automatic renewal or extension of the agreement shall not
18 be a valid agreement; nor shall any agreement be valid if it provides
19 for a term of existence for more than three years.

20 NEW SECTION. **Sec. 6.** The bargaining representative which has been
21 determined to represent a majority of the employees in a bargaining
22 unit shall be certified by the commission as the exclusive bargaining
23 representative of, and shall be required to represent, all the
24 employees within the unit without regard to membership in the
25 bargaining representative. However, any employee at any time may
26 present his or her grievance to the employer and have such grievance
27 adjusted without the intervention of the exclusive bargaining
28 representative, if the adjustment is not inconsistent with the terms of
29 a collective bargaining agreement then in effect, and if the exclusive
30 bargaining representative has been given reasonable opportunity to be
31 present at any initial meeting called for the resolution of the
32 grievance.

33 NEW SECTION. **Sec. 7.** The commission may adopt rules necessary to
34 administer this chapter in conformity with the intent and purpose of
35 this chapter and consistent with the best standards of labor-management
36 relations.

1 NEW SECTION. **Sec. 8.** An employer may engage in collective
2 bargaining with the exclusive bargaining representative and no employer
3 may refuse to engage in collective bargaining with the exclusive
4 bargaining representative. Upon the failure of the employer and the
5 exclusive bargaining representative to conclude a collective bargaining
6 agreement, any matter in dispute may be submitted by either party to
7 the commission. If an employer implements its last and best offer
8 where there is no contract settlement, allegations that either party is
9 violating the terms of the implemented offer are subject to grievance
10 arbitration procedures if and as such procedures are set forth in the
11 implemented offer, or, if not in the implemented offer, if and as such
12 procedures are set forth in the parties' last contract.

13 NEW SECTION. **Sec. 9.** Upon the written authorization of any
14 employee within the bargaining unit and after the certification or
15 recognition of the bargaining representative, the employer must deduct
16 from the pay of the employee the monthly amount of dues as certified by
17 the secretary of the exclusive bargaining representative and must
18 transmit the dues to the treasurer of the exclusive bargaining
19 representative.

20 NEW SECTION. **Sec. 10.** A collective bargaining agreement may:

21 (1) Contain union security provisions. However, nothing in this
22 section authorizes a closed shop provision. Agreements involving union
23 security provisions must safeguard the right of nonassociation of
24 employees based on bona fide religious tenets or teachings of a church
25 or religious body of which the employee is a member. The employee must
26 pay an amount of money equivalent to regular union dues and initiation
27 fee to a nonreligious charity or to another charitable organization
28 mutually agreed upon by the employee affected and the bargaining
29 representative to which the employee would otherwise pay the dues and
30 initiation fee. The employee must furnish written proof that the
31 payment has been made. If the employee and the bargaining
32 representative do not reach agreement on this matter, the commission
33 must designate the charitable organization;

34 (2) Provide for binding arbitration of a labor dispute arising from
35 the application or the interpretation of the matters contained in a
36 collective bargaining agreement.

1 NEW SECTION. **Sec. 11.** (1) After the termination date of a
2 collective bargaining agreement, all of the terms and conditions
3 specified in the collective bargaining agreement remain in effect until
4 the effective date of a subsequent agreement, not to exceed one year
5 from the termination date stated in the agreement. Thereafter, the
6 employer may unilaterally implement according to law.

7 (2) This section does not apply to provisions of a collective
8 bargaining agreement which both parties agree to exclude from the
9 provisions of subsection (1) of this section and to provisions within
10 the collective bargaining agreement with separate and specific
11 termination dates.

12 (3) This section shall not apply to collective bargaining
13 agreements in effect or being bargained on the effective date of this
14 section.

15 NEW SECTION. **Sec. 12.** In addition to any other method for
16 selecting arbitrators, the parties may request the commission to
17 appoint a qualified person who may be an employee of the commission to
18 act as an arbitrator to assist in the resolution of a labor dispute
19 between the employer and the bargaining representative arising from the
20 application of the matters contained in a collective bargaining
21 agreement. The arbitrator must conduct the arbitration of the dispute
22 in a manner as provided for in the collective bargaining agreement.
23 The commission may not collect any fees or charges from the employer
24 or the bargaining representative for services performed by the
25 commission under this chapter. The provisions of chapter 49.08 RCW do
26 not apply to this chapter.

27 NEW SECTION. **Sec. 13.** It is an unfair labor practice for an
28 employer:

29 (1) To interfere with, restrain, or coerce employees in the
30 exercise of their rights guaranteed by this chapter;

31 (2) To control, dominate, or interfere with a bargaining
32 representative;

33 (3) To discriminate against an employee who has filed an unfair
34 labor practice charge or who has given testimony under this chapter;

35 (4) To refuse to engage in collective bargaining.

1 NEW SECTION. **Sec. 14.** It is an unfair labor practice for a
2 bargaining representative:

3 (1) To interfere with, restrain, or coerce employees in the
4 exercise of their rights guaranteed by this chapter;

5 (2) To induce the employer to commit an unfair labor practice;

6 (3) To discriminate against an employee who has filed an unfair
7 labor practice charge or who has given testimony under this chapter;

8 (4) To refuse to engage in collective bargaining.

9 NEW SECTION. **Sec. 15.** (1) The commission must prevent unfair
10 labor practices and issue appropriate remedial orders. However, a
11 complaint may not be processed for an unfair labor practice occurring
12 more than six months before the filing of the complaint with the
13 commission.

14 (2) If the commission determines that a person has engaged in or is
15 engaging in an unfair labor practice, the commission must issue and
16 serve upon the person an order requiring the person to cease and desist
17 from the unfair labor practice. The commission may take action to
18 carry out the purposes and policy of this chapter, including requiring
19 the person to pay damages and reinstate employees.

20 (3) The commission may petition the superior court for the county
21 in which the main office of the employer is located or in which the
22 person who has engaged or is engaging in the unfair labor practice
23 resides or transacts business, for the enforcement of its order and for
24 appropriate temporary relief.

25 NEW SECTION. **Sec. 16.** Actions taken by or on behalf of the
26 commission shall be pursuant to chapter 34.05 RCW, or rules adopted in
27 accordance with chapter 34.05 RCW, and the right of judicial review
28 provided by chapter 34.05 RCW is applicable to all actions and rules.

29 NEW SECTION. **Sec. 17.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act
2 constitute a new chapter in Title 49 RCW.

--- END ---