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SENATE BILL 5772

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kohl-Welles, Franklin, Keiser and Kline

Read first time 01/31/2007.                      Referred to Committee on Labor,  
Commerce, Research & Development.

1            AN ACT Relating to certifying an employee organization for the  
2 purposes of state collective bargaining; and amending RCW 41.56.060,  
3 41.76.020, and 41.80.080.

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

5            **Sec. 1.** RCW 41.56.060 and 2005 c 232 s 1 are each amended to read  
6 as follows:

7            (1)(a) The commission, after hearing upon reasonable notice, shall  
8 decide in each application for certification as an exclusive bargaining  
9 representative, the unit appropriate for the purpose of collective  
10 bargaining. In determining, modifying, or combining the bargaining  
11 unit, the commission shall consider the duties, skills, and working  
12 conditions of the public employees; the history of collective  
13 bargaining by the public employees and their bargaining  
14 representatives; the extent of organization among the public employees;  
15 and the desire of the public employees. The commission shall determine  
16 the bargaining representative by: (a) Examination of organization  
17 membership rolls; (b) comparison of signatures on organization  
18 bargaining authorization cards; or (c) conducting an election  
19 specifically therefor.

1       (b) When only one organization is seeking certification as the  
2 representative of unrepresented employees, and the showing of interest  
3 submitted in support of the petition indicates that the organization  
4 has been authorized by a majority of the employees to act as their  
5 representative for the purposes of collective bargaining, the executive  
6 director of the public employment relations commission shall (i)  
7 conduct a cross-check comparing bargaining authorization cards against  
8 the department of personnel's employment records, and (ii) if majority  
9 support exists, certify the organization as the sole representative.

10       (2) For classified employees of school districts and educational  
11 service districts:

12       (a) Appropriate bargaining units existing on July 24, 2005, may not  
13 be divided into more than one unit without the agreement of the public  
14 employer and the certified bargaining representative of the unit; and

15       (b) In making bargaining unit determinations under this section,  
16 the commission must consider, in addition to the factors listed in  
17 subsection (1) of this section, the avoidance of excessive  
18 fragmentation.

19       **Sec. 2.** RCW 41.76.020 and 2002 c 356 s 7 are each amended to read  
20 as follows:

21       The commission shall certify exclusive bargaining representatives  
22 in accordance with the procedures specified in this section.

23       (1) No question concerning representation may be raised within one  
24 year following issuance of a certification under this section.

25       (2) If there is a valid collective bargaining agreement in effect,  
26 no question concerning representation may be raised except during the  
27 period not more than ninety nor less than sixty days prior to the  
28 expiration date of the agreement: PROVIDED, That in the event a valid  
29 collective bargaining agreement, together with any renewals or  
30 extensions thereof, has been or will be in existence for more than  
31 three years, then a question concerning representation may be raised  
32 not more than ninety nor less than sixty days prior to the third  
33 anniversary date or any subsequent anniversary date of the agreement;  
34 and if the exclusive bargaining representative is removed as the result  
35 of such procedure, the collective bargaining agreement shall be deemed  
36 to be terminated as of the date of the certification or the anniversary  
37 date following the filing of the petition, whichever is later.

1 (3) An employee organization seeking certification as exclusive  
2 bargaining representative of a bargaining unit, or faculty members  
3 seeking decertification of their exclusive bargaining representative,  
4 must make a confidential showing to the commission of credible evidence  
5 demonstrating that at least thirty percent of the faculty in the  
6 bargaining unit are in support of the petition. The petition must  
7 indicate the name, address, and telephone number of any employee  
8 organization known to claim an interest in the bargaining unit.

9 (4) A petition filed by an employer must be supported by credible  
10 evidence demonstrating the good faith basis on which the employer  
11 claims the existence of a question concerning the representation of its  
12 faculty.

13 (5) Any employee organization which makes a confidential showing to  
14 the commission of credible evidence demonstrating that it has the  
15 support of at least ten percent of the faculty in the bargaining unit  
16 involved is entitled to intervene in proceedings under this section and  
17 to have its name listed as a choice on the ballot in an election  
18 conducted by the commission.

19 (6) The commission shall determine any question concerning  
20 representation by conducting a secret ballot election among the faculty  
21 members in the bargaining unit, except under the following  
22 circumstances:

23 ~~(a) ((If only one employee organization is seeking certification as~~  
24 ~~exclusive bargaining representative of a bargaining unit for which~~  
25 ~~there is no incumbent exclusive bargaining representative, the~~  
26 ~~commission may, upon the concurrence of the employer and the employee~~  
27 ~~organization, determine the question concerning representation by~~  
28 ~~conducting a cross check comparing the employee organization's~~  
29 ~~membership records or bargaining authorization cards against the~~  
30 ~~employment records of the employer))~~ When only one organization is  
31 seeking certification as the representative of unrepresented employees,  
32 and the showing of interest submitted in support of the petition  
33 indicates that the organization has been authorized by a majority of  
34 the employees to act as their representative for the purposes of  
35 collective bargaining, the director of the public employment relations  
36 commission shall (i) conduct a cross-check comparing bargaining  
37 authorization cards against the department of personnel's employment

1 records, and (ii) if majority support exists, certify the organization  
2 as the sole representative; or

3 (b) If the commission determines that a serious unfair labor  
4 practice has been committed which interfered with the election process  
5 and precludes the holding of a fair election, the commission may  
6 determine the question concerning representation by conducting a cross-  
7 check comparing the employee organization's membership records or  
8 bargaining authorization cards against the employment records of the  
9 employer.

10 (7) The representation election ballot must contain a choice for  
11 each employee organization qualifying under subsection (3) or (5) of  
12 this section, together with a choice for no representation. The  
13 representation election shall be determined by the majority of the  
14 valid ballots cast. If there are three or more choices on the ballot  
15 and none of the three or more choices receives a majority of the valid  
16 ballots cast, a runoff election shall be conducted between the two  
17 choices receiving the highest and second highest numbers of votes.

18 (8) The commission shall certify as the exclusive bargaining  
19 representative the employee organization that has been determined to  
20 represent a majority of faculty members in a bargaining unit.

21 **Sec. 3.** RCW 41.80.080 and 2002 c 354 s 309 are each amended to  
22 read as follows:

23 (1)(a) The commission shall determine all questions pertaining to  
24 representation and shall administer all elections and be responsible  
25 for the processing and adjudication of all disputes that arise as a  
26 consequence of elections. The commission shall adopt rules that  
27 provide for at least the following:

- 28 ~~((a))~~ (i) Secret balloting;
- 29 ~~((b))~~ (ii) Consulting with employee organizations;
- 30 ~~((c))~~ (iii) Access to lists of employees, job classification,  
31 work locations, and home mailing addresses;
- 32 ~~((d))~~ (iv) Absentee voting;
- 33 ~~((e))~~ (v) Procedures for the greatest possible participation in  
34 voting;
- 35 ~~((f))~~ (vi) Campaigning on the employer's property during working  
36 hours; and
- 37 ~~((g))~~ (vii) Election observers.

1       (b) When only one organization is seeking certification as the  
2 representative of unrepresented employees, and the showing of interest  
3 submitted in support of the petition indicates that the organization  
4 has been authorized by a majority of the employees to act as their  
5 representative for the purposes of collective bargaining, the director  
6 of the public employment relations commission shall (i) conduct a  
7 cross-check comparing bargaining authorization cards against the  
8 department of personnel's employment records, and (ii) if majority  
9 support exists, certify the organization as the sole representative.

10       (2)(a) If an employee organization has been certified as the  
11 exclusive bargaining representative of the employees of a bargaining  
12 unit, the employee organization may act for and negotiate master  
13 collective bargaining agreements that will include within the coverage  
14 of the agreement all employees in the bargaining unit as provided in  
15 RCW 41.80.010(2)(a). However, if a master collective bargaining  
16 agreement is in effect for the exclusive bargaining representative, it  
17 shall apply to the bargaining unit for which the certification has been  
18 issued. Nothing in this section requires the parties to engage in new  
19 negotiations during the term of that agreement.

20       (b) This subsection (2) does not apply to exclusive bargaining  
21 representatives who represent employees of institutions of higher  
22 education.

23       (3) The certified exclusive bargaining representative shall be  
24 responsible for representing the interests of all the employees in the  
25 bargaining unit. This section shall not be construed to limit an  
26 exclusive representative's right to exercise its discretion to refuse  
27 to process grievances of employees that are unmeritorious.

28       (4) No question concerning representation may be raised if:

29       (a) Fewer than twelve months have elapsed since the last  
30 certification or election; or

31       (b) A valid collective bargaining agreement exists covering the  
32 unit, except for that period of no more than one hundred twenty  
33 calendar days nor less than ninety calendar days before the expiration  
34 of the contract.

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