
SENATE BILL 6835

State of Washington

60th Legislature

2008 Regular Session

By Senators Kohl-Welles and Keiser

Read first time 01/25/08. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to labor and management relations; and adding a new
2 chapter to Title 49 RCW.

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

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
5 Washington state labor management relations act.

6 NEW SECTION. **Sec. 2.** (1) Industrial strife can be avoided or
7 substantially minimized if employers, employees, and labor
8 organizations each recognize under law one another's legitimate rights
9 in their relations with each other, and further recognize under law
10 that neither party has any right in its relations with any other to
11 engage in acts or practices which jeopardize the public health, safety,
12 or interest.

13 (2) It is the purpose and policy of this chapter to prescribe the
14 legitimate rights of employees, employers, and labor organizations not
15 subject to the jurisdiction of the federal labor relations act, as
16 amended, and not exempted by the provisions of this chapter, to provide
17 orderly and peaceful procedures for preventing the interference by
18 employees, employers, and labor organizations with the legitimate

1 rights of the others, to protect the rights of individual employees in
2 their relations with labor organizations, to define and prescribe
3 practices on the part of labor and management that are inimical to the
4 general welfare, and to protect the rights of the public in connection
5 with labor disputes.

6 NEW SECTION. **Sec. 3.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Employee" includes any employee of an employer subject to this
9 chapter, and shall not be limited to the employees of a particular
10 employer, unless this chapter explicitly states otherwise, and shall
11 include any individual whose work has ceased as a consequence of, or in
12 connection with, any current labor dispute or because of any unfair
13 labor practice, and who has not obtained any other regular and
14 substantially equivalent employment, but shall not include any
15 individual employed as an agricultural worker, or in the domestic
16 service of any family or person at his or her home, any individual
17 employed by his or her parent or spouse, any individual having the
18 status of an independent contractor, any individual employed as a
19 supervisor, or any individual employed by an employer subject to any
20 federal labor relations act, as amended from time to time, or by any
21 other person who is not an employer as defined in this section.

22 (2)(a) "Employer" includes any person acting as an agent of an
23 employer, directly or indirectly, but shall not include the United
24 States, any wholly owned government corporation, any federal reserve
25 bank, any state or political subdivision or any municipal corporation
26 thereof, any health care activity subject to provisions of chapter
27 49.66 RCW, any wholly owned state or political subdivision corporation,
28 any person subject to the federal labor relations act, or any labor
29 organization (other than when acting as an employer), or any person
30 acting in the capacity of officer or agent of such labor organization.

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

35 (3) "Labor dispute" includes any controversy concerning terms,
36 tenure, or conditions of employment, or concerning the association of
37 representation of persons in negotiating, fixing, maintaining,

1 changing, or seeking to arrange terms or conditions of employment,
2 regardless of whether the disputants stand in the proximate relation of
3 employer and employee. In the event of a dispute between an employer
4 and an exclusive bargaining representative over the matters that are
5 terms and conditions of employment, the commission shall decide which
6 items are mandatory subjects for bargaining.

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

12 (5) "Person" includes one or more individuals, labor organizations,
13 partnerships, associations, corporations, legal representatives,
14 trustees in bankruptcy, or receivers.

15 (6) "Public employment relations commission" or "commission" means
16 the public employment relations commission created in chapter 41.58
17 RCW.

18 (7) "Representative" includes any individual or labor organization.

19 (8) "Supervisor" means any individual having authority, in the
20 interest of the employer, to hire, transfer, suspend, lay off, recall,
21 promote, discharge, assign, reward, or discipline other employees, or
22 responsibly to direct them, or to adjust their grievances, or
23 effectively to recommend such action, if in connection with the
24 foregoing the exercise of such authority is not of a merely routine or
25 clerical nature, but requires the use of independent judgment.

26 (9) "Unfair labor practice" means any activity listed in section 10
27 of this act.

28 NEW SECTION. **Sec. 4.** The employee organization that has been
29 determined by the commission to be the exclusive bargaining
30 representative of a bargaining unit shall be required to represent all
31 the members within the bargaining unit without regard to membership in
32 that employee organization. However, any bargaining unit member may at
33 any time present his or her complaints or concerns to the employer and
34 have such complaints or concerns adjusted without intervention of the
35 exclusive bargaining representative, as long as the exclusive
36 bargaining representative has been given an opportunity to be present

1 at the adjustment and to make its views known, and as long as the
2 adjustment is not inconsistent with the terms of a collective
3 bargaining agreement then in effect.

4 NEW SECTION. **Sec. 5.** The commission shall certify exclusive
5 bargaining representatives in accordance with the procedures specified
6 in this section.

7 (1) The commission, after hearing upon reasonable notice, shall
8 decide the unit appropriate for the purpose of collective bargaining.
9 In determining, modifying, or combining the bargaining unit, the
10 commission shall consider the duties, skills, and working conditions of
11 the employees; the history of collective bargaining by the employees
12 and their bargaining representatives; the extent of organization among
13 the employees; and the desire of the employees to be represented.
14 Supervisors shall not be included in the same bargaining unit as
15 nonsupervisory employees, but shall be included in a bargaining unit
16 containing only supervisors.

17 (2) No question concerning representation may be raised within one
18 year following issuance of a certification under this section.

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

32 (4) An employee organization seeking certification as the exclusive
33 bargaining representative of a bargaining unit, or employees seeking
34 decertification of their exclusive bargaining representative, must make
35 a confidential showing to the commission of credible evidence
36 demonstrating that at least thirty percent of the employees in the

1 bargaining unit are in support of the petition. The petition must
2 indicate the name, address, and telephone number of any employee
3 organization known to claim an interest in the bargaining unit.

4 (5) A petition filed by an employer must be supported by credible
5 evidence demonstrating the good faith basis on which the employer
6 claims the existence of a question concerning the representation.

7 (6) Any employee organization which makes a confidential showing to
8 the commission of credible evidence demonstrating that it has the
9 support of at least ten percent of the employees in the bargaining unit
10 involved is entitled to intervene in proceedings under this section and
11 to have its name listed as a choice on the ballot in an election
12 conducted by the commission.

13 (7) The commission shall determine any question concerning
14 representation by conducting a secret ballot election among the
15 employees in the bargaining unit, except under the following
16 circumstances:

17 (a) If only one employee organization is seeking certification as
18 exclusive bargaining representative of a bargaining unit for which
19 there is no incumbent exclusive bargaining representative, the
20 commission may, upon the concurrence of the employer and the employee
21 organization, determine the question concerning representation by
22 conducting a cross-check comparing the employee organization's
23 membership records or bargaining authorization cards against the
24 employment records of the employer; or

25 (b) If the commission determines that a serious unfair labor
26 practice has been committed that interfered with the election process
27 and precludes the holding of a fair election, the commission may
28 determine the question concerning representation by conducting a cross-
29 check comparing the employee organization's membership records or
30 bargaining authorization cards against the employment records of the
31 employer.

32 (8) The representation election ballot must contain a choice for
33 each employee organization qualifying under subsection (3) or (5) of
34 this section, together with a choice for no representation. The
35 representation election shall be determined by the majority of the
36 valid ballots cast. If there are three or more choices on the ballot
37 and none of the three or more choices receives a majority of the valid

1 ballots cast, a runoff election shall be conducted between the two
2 choices receiving the highest and second highest numbers of votes.

3 (9) The commission shall certify as the exclusive bargaining
4 representative the employee organization that has been determined to
5 represent a majority of employees in a bargaining unit.

6 NEW SECTION. **Sec. 6.** In any dispute concerning inclusion in the
7 bargaining unit or the allocation of employees or positions to a
8 bargaining unit, the commission, after a hearing or hearings, shall
9 determine the dispute.

10 NEW SECTION. **Sec. 7.** (1) The commission shall conduct mediation
11 activities upon the request of either party as a means of assisting in
12 the settlement of unresolved matters considered under this chapter.

13 (2) If any matter being jointly considered by the exclusive
14 bargaining representative and the employer is not settled by the means
15 provided in this chapter, either party may request the assistance of
16 the commission. Nothing in this section prohibits an employer and an
17 employee organization from agreeing to substitute, at their own
18 expense, some other impasse procedure or other means of resolving
19 matters considered under this chapter.

20 NEW SECTION. **Sec. 8.** A collective bargaining agreement negotiated
21 under this chapter may include procedures for final and binding
22 grievance arbitration of the disputes arising about the interpretation
23 or application of the agreement.

24 (1) The parties to a collective bargaining agreement may agree on
25 one or more permanent umpires to serve as arbitrator, may agree on any
26 impartial person to serve as arbitrator, or may agree to select
27 arbitrators from any source available to them, including federal and
28 private agencies, in addition to the staff and dispute resolution panel
29 maintained by the commission.

30 (2) An arbitrator may require any person to attend as a witness,
31 and to bring with him or her any book, record, document, or other
32 evidence. Subpoenas shall issue and be signed by the arbitrator and
33 shall be served in the same manner as subpoenas to testify before a
34 court of record in this state. The fees for such attendance shall be
35 paid by the party requesting issuance of the subpoena and shall be the

1 same as the fees of witnesses in the superior court. If any person so
2 summoned to testify refuses or neglects to obey such subpoena, upon
3 petition authorized by the arbitrator, the superior court may compel
4 the attendance of such person before the arbitrator, or punish the
5 person for contempt in the same manner provided for the attendance of
6 witnesses or the punishment of them in the courts of this state.

7 (3) The arbitrator shall appoint a time and place for the hearing
8 and notify the parties thereof, may adjourn the hearing from time to
9 time as may be necessary, and, on application of either party and for
10 good cause, may postpone the hearing to a time not extending beyond a
11 date fixed by the collective bargaining agreement for making the award.
12 The arbitrator has the power to administer oaths. The arbitration
13 award shall be in writing and signed by the arbitrator or a majority of
14 the members of the arbitration panel. The arbitrator shall, promptly
15 upon its rendition, serve a true copy of the award on each of the
16 parties or their attorneys.

17 (4) If a party to a collective bargaining agreement negotiated
18 under this chapter refuses to submit a grievance for arbitration, the
19 other party to the collective bargaining agreement may invoke the
20 jurisdiction of the superior court for any county in which the labor
21 dispute exists, and such court has jurisdiction to issue an order
22 compelling arbitration. Arbitration shall be ordered if the grievance
23 states a claim which on its face is covered by the collective
24 bargaining agreement, and doubts as to the coverage of the arbitration
25 clause shall be resolved in favor of arbitration. Disputes concerning
26 compliance with grievance procedures shall be reserved for
27 determination by the arbitrator.

28 (5) If a party to a collective bargaining agreement negotiated
29 under this chapter refuses to comply with the award of an arbitrator
30 determining a grievance arising under such collective bargaining
31 agreement, the other party to the collective bargaining agreement, or
32 any affected employee, may invoke the jurisdiction of the superior
33 court for any county in which the labor dispute exists, and such court
34 has jurisdiction to issue an order enforcing the arbitration award.
35 The court shall not substitute its judgment for that of the arbitrator
36 and shall enforce any arbitration award which is based on the
37 collective bargaining agreement, except that an arbitration award shall
38 not be enforced and a new arbitration proceeding may be ordered:

1 (a) If the arbitration award was procured by corruption, fraud, or
2 undue means;

3 (b) If there was evident partiality or corruption in the arbitrator
4 or arbitrators;

5 (c) If the arbitrator or arbitrators were guilty of misconduct, in
6 refusing to postpone a hearing upon sufficient cause shown, in refusing
7 to hear evidence pertinent and material to the controversy, or of any
8 other misbehavior by which the rights of any party have been
9 prejudiced; or

10 (d) If the arbitrator or arbitrators have exceeded their powers or
11 so imperfectly executed their powers that a final and definite award on
12 the subject matter was not made, in which event the court also has
13 discretion to remand the matter to the arbitrator or arbitrators who
14 issued the defective award.

15 NEW SECTION. **Sec. 9.** (1) Upon filing with the employer the
16 voluntary written authorization of a bargaining unit member under this
17 chapter, the employee organization that is the exclusive bargaining
18 representative of the bargaining unit shall have the right to have
19 deducted from the salary of the bargaining unit member the periodic
20 dues and initiation fees uniformly required as a condition of acquiring
21 or retaining membership in the employee organization. Such employee
22 authorization shall not be irrevocable for a period of more than one
23 year. Such dues and fees shall be deducted from the pay of all
24 bargaining unit members who have given authorization for such
25 deduction, and shall be transmitted by the employer to the employee
26 organization or to the depository designated by the employee
27 organization.

28 (2) A collective bargaining agreement may include union security
29 provisions, but not a closed shop. If an agency shop or other union
30 security provision is agreed to, the employer shall enforce any such
31 provision by deductions from the salary of bargaining unit members
32 affected thereby and shall transmit such funds to the employee
33 organization or to the depository designated by the employee
34 organization.

35 (3) A bargaining unit member who is covered by a union security
36 provision and who asserts a right of nonassociation based on bona fide
37 religious tenets or teachings of a church or religious body of which

1 such bargaining unit member is a member shall pay to a nonreligious
2 charity or other charitable organization an amount of money equivalent
3 to the periodic dues and initiation fees uniformly required as a
4 condition of acquiring or retaining membership in the employee
5 organization. The charity shall be agreed upon by the bargaining unit
6 member and the employee organization to which such bargaining unit
7 member would otherwise pay the dues and fees. The bargaining unit
8 member shall furnish written proof that such payments have been made.
9 If the bargaining unit member and the employee organization do not
10 reach agreement on such matter, the dispute shall be submitted to the
11 commission for determination.

12 NEW SECTION. **Sec. 10.** (1) It is an unfair labor practice for an
13 employer to:

14 (a) Interfere with, restrain, or coerce bargaining unit members in
15 the exercise of the rights guaranteed by this chapter;

16 (b) Dominate or interfere with the formation or administration of
17 any employee organization or contribute financial or other support to
18 it. However, subject to rules adopted by the commission, an employer
19 is not prohibited from permitting bargaining unit members to confer
20 with it or its representatives or agents during working hours without
21 loss of time or pay;

22 (c) Encourage or discourage membership in any employee organization
23 by discrimination in regard to hire, tenure of employment, or any term
24 or condition of employment;

25 (d) Discharge or discriminate otherwise against a bargaining unit
26 member because that member has filed charges or given testimony under
27 this chapter; or

28 (e) Refuse to bargain collectively with the exclusive bargaining
29 representative of its employees.

30 (2) It is an unfair labor practice for an employee organization to:

31 (a) Restrain or coerce a bargaining unit member in the exercise of
32 the rights guaranteed by this chapter. However, this subsection does
33 not impair the rights of (i) an employee organization to prescribe its
34 own rules with respect to the acquisition or retention of membership in
35 the employee organization or (ii) an employer in the selection of its
36 representatives for the purpose of bargaining or the adjustment of
37 grievances;

1 (b) Cause or attempt to cause an employer to discriminate against
2 a bargaining unit member in violation of subsection (1)(c) of this
3 section;

4 (c) Discriminate against a bargaining unit member because that
5 member has filed charges or given testimony under this chapter; or

6 (d) Refuse to bargain collectively with an employer.

7 (3) The expressing of any view, arguments, or opinion, or the
8 dissemination thereof to the public, whether in written, printed,
9 graphic, or visual form, shall not constitute or be evidence of an
10 unfair labor practice under this chapter, if such expression contains
11 no threat of reprisal or force or promise of benefit.

12 NEW SECTION. **Sec. 11.** (1) The commission is empowered to prevent
13 any person from engaging in any unfair labor practice as defined in
14 this chapter; however, a complaint shall not be processed for any
15 unfair labor practice occurring more than six months before the filing
16 of the complaint with the commission. This power shall not be affected
17 by any other means of adjustment or prevention that has been or may be
18 established by agreement, law, equity, or otherwise.

19 (2) If the commission determines that any person has engaged in or
20 is engaging in any unfair labor practice as defined in this chapter,
21 then the commission shall issue and cause to be served upon the person
22 an order requiring the person to cease and desist the unfair labor
23 practice, and to take such affirmative action as will effectuate the
24 purposes and policy of this chapter, including ordering the payment of
25 damages, the reinstatement of employees, or both.

26 (3) The commission may petition the superior court for the county
27 in which the main office of the employer is located or wherein the
28 person who has engaged or is engaging in such unfair labor practice
29 resides or transacts business, for the enforcement of its order and for
30 appropriate temporary relief.

31 NEW SECTION. **Sec. 12.** The commission may adopt rules necessary to
32 carry out the provisions of this chapter.

33 NEW SECTION. **Sec. 13.** Nothing in this chapter prohibits covered
34 employees from engaging in lawful strikes against their employers,
35 provided that the employee organization gives the employer and the

1 commission at least thirty days' notice prior to the commencement of
2 the strike. Nothing in this chapter prohibits covered employers from
3 lawfully locking out employees, provided the employer gives the
4 employee organization and the commission at least thirty days' notice
5 prior to the commencement of the lockout.

6 NEW SECTION. **Sec. 14.** Whenever a collective bargaining agreement
7 between an employer and an exclusive bargaining representative is
8 concluded after the termination date of the previous collective
9 bargaining agreement between the same parties, the effective date of
10 the collective bargaining agreement may be the day after the
11 termination date of the previous collective bargaining agreement, and
12 all benefits included in the new collective bargaining agreement,
13 including wage or salary increases, may accrue beginning with the
14 effective date as established by this section.

15 NEW SECTION. **Sec. 15.** Nothing in this chapter shall be construed
16 to annul, modify, or preclude the renewal or continuation of any lawful
17 agreement entered into before the effective date of this act, between
18 an employer and an employee organization covering wages, hours, and
19 terms and conditions of employment.

20 NEW SECTION. **Sec. 16.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
25 constitute a new chapter in Title 49 RCW.

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