
SUBSTITUTE HOUSE BILL 1276

State of Washington 61st Legislature 2009 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Green, Moeller, and Ormsby)

READ FIRST TIME 02/17/09.

1 AN ACT Relating to placing symphony orchestras, operas, performing
2 arts theaters, and other entertainment-based organizations under the
3 jurisdiction of the public employment relations commission for purposes
4 of collective bargaining; 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 a musician who is an employee of a symphony
3 orchestra that does not meet the jurisdictional standards of the
4 national labor relations board, or a musician who is an employee of an
5 opera or performing arts theater with a gross annual revenue of more
6 than one hundred fifty thousand dollars and does not meet the
7 jurisdictional standards of the national labor relations board.
8 "Employee" shall include any individual whose work has ceased as a
9 consequence of, or in connection with, any current labor dispute with
10 an employer or because of any unfair labor practice with an employer,
11 and who has not obtained any other regular and substantially equivalent
12 employment.

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

16 (5)(a) "Employer" means a symphony orchestra that does not meet the
17 jurisdictional standards of the national labor relations board, or an
18 opera or performing arts theater with a gross annual revenue of more
19 than one hundred fifty thousand dollars and does not meet the
20 jurisdictional standards of the national labor relations board.
21 "Employer" includes any person acting as an agent of an employer,
22 directly or indirectly.

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

27 (6) "Executive director" means the executive director of the
28 commission.

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

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

6 (9) "Person" includes one or more individuals, labor organizations,
7 partnerships, associations, corporations, legal representatives,
8 trustees in bankruptcy, or receivers.

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

15 (11) "Unfair labor practice" means any activity listed in sections
16 12 and 13 of this act.

17 NEW SECTION. **Sec. 2.** No employer, or other person, shall directly
18 or indirectly, interfere with, restrain, coerce, or discriminate
19 against any employee or group of employees in the free exercise of
20 their right to organize and designate bargaining representatives of
21 their own choosing for the purpose of collective bargaining, or in the
22 free exercise of any other right under this chapter.

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

27 NEW SECTION. **Sec. 4.** The commission, upon reasonable notice,
28 shall decide in each application for certification as an exclusive
29 bargaining representative, the unit appropriate for the purpose of
30 collective bargaining. In determining, modifying, or combining the
31 bargaining unit, the commission shall consider the duties, skills, and
32 working conditions of the employees; the history of collective
33 bargaining by the employees and their bargaining representatives; the
34 extent of organization among the employees; and the desire of the
35 employees. The commission shall determine the bargaining

1 representative by: (1) Comparison of signatures on organization
2 bargaining authorization cards; or (2) conducting an election
3 specifically therefor.

4 NEW SECTION. **Sec. 5.** (1) If the commission elects to conduct an
5 election to ascertain the exclusive bargaining representative, and upon
6 the request of a prospective bargaining representative showing written
7 proof of at least thirty percent representation of the employees within
8 the unit, the commission shall hold an election by secret ballot to
9 determine the issue. The ballot shall contain the name of the
10 bargaining representative and of any other bargaining representative
11 showing written proof of at least ten percent representation of the
12 employees within the unit, together with a choice for any employee to
13 designate that he or she does not desire to be represented by any
14 bargaining agent. Where more than one organization is on the ballot
15 and neither of the three or more choices receives a majority vote of
16 valid ballots cast, a run-off election shall be held. The run-off
17 ballot shall contain the two choices which received the largest and
18 second-largest number of votes. No question concerning representation
19 may be raised within one year of a certification or attempted
20 certification.

21 (2) Where there is a valid collective bargaining agreement in
22 effect, no question of representation may be raised except during the
23 period not more than ninety nor less than sixty days prior to the
24 expiration date of the agreement. A collective bargaining agreement
25 may provide for a term of any length. However, a valid collective
26 bargaining agreement, together with any renewals or extensions thereof,
27 will only bar a question concerning representation for three years. A
28 question concerning representation may be raised at any time
29 thereafter, and if the exclusive bargaining representative is removed
30 as the result of such procedure, the collective bargaining agreement
31 shall be deemed to be terminated as to the date of the certification.

32 NEW SECTION. **Sec. 6.** The bargaining representative which has been
33 determined to represent a majority of the employees in a bargaining
34 unit shall be certified by the commission as the exclusive bargaining
35 representative of, and shall be required to represent, all the
36 employees within the unit without regard to membership in the

1 bargaining representative. However, any employee at any time may
2 present his or her grievance to the employer and have such grievance
3 adjusted without the intervention of the exclusive bargaining
4 representative, if the adjustment is not inconsistent with the terms of
5 a collective bargaining agreement then in effect, and if the exclusive
6 bargaining representative has been given reasonable opportunity to be
7 present at any initial meeting called for the resolution of the
8 grievance.

9 NEW SECTION. **Sec. 7.** The commission may adopt rules necessary to
10 administer this chapter in conformity with the intent and purpose of
11 this chapter and consistent with the best standards of labor-management
12 relations.

13 NEW SECTION. **Sec. 8.** An employer may engage in collective
14 bargaining with the exclusive bargaining representative and no employer
15 may refuse to engage in collective bargaining with the exclusive
16 bargaining representative. Upon the failure of the employer and the
17 exclusive bargaining representative to conclude a collective bargaining
18 agreement, any matter in dispute may be submitted by either party to
19 the commission. If an employer implements its last and best offer
20 where there is no contract settlement, allegations that either party is
21 violating the terms of the implemented offer are subject to grievance
22 arbitration procedures if and as such procedures are set forth in the
23 implemented offer, or, if not in the implemented offer, if and as such
24 procedures are set forth in the parties' last contract.

25 NEW SECTION. **Sec. 9.** Upon the written authorization of any
26 employee within the bargaining unit and after the certification or
27 recognition of the bargaining representative, the employer must deduct
28 from the pay of the employee the monthly amount of dues as certified by
29 the secretary of the exclusive bargaining representative and must
30 transmit the dues to the treasurer of the exclusive bargaining
31 representative.

32 NEW SECTION. **Sec. 10.** A collective bargaining agreement
33 negotiated under this chapter may:

1 (1) Contain union security provisions. However, nothing in this
2 section authorizes a closed shop provision. Agreements involving union
3 security provisions must safeguard the right of nonassociation of
4 employees based on bona fide religious tenets or teachings of a church
5 or religious body of which the employee is a member. The employee must
6 pay an amount of money equivalent to regular union dues and initiation
7 fee to a nonreligious charity or to another charitable organization
8 mutually agreed upon by the employee affected and the bargaining
9 representative to which the employee would otherwise pay the dues and
10 initiation fee. The employee must furnish written proof that the
11 payment has been made. If the employee and the bargaining
12 representative do not reach agreement on this matter, the commission
13 must designate the charitable organization;

14 (2) Include procedures for final and binding arbitration of
15 grievances or labor disputes arising over the application or
16 interpretation of the matters contained in a collective bargaining
17 agreement.

18 NEW SECTION. **Sec. 11.** In addition to any other method for
19 selecting arbitrators, the parties may request the commission to
20 appoint a qualified person who may be an employee of the commission to
21 act as an arbitrator to assist in the resolution of a labor dispute
22 between the employer and the bargaining representative arising from the
23 application of the matters contained in a collective bargaining
24 agreement. The arbitrator must conduct the arbitration of the dispute
25 in a manner as provided for in the collective bargaining agreement.
26 The commission may not collect any fees or charges from the employer
27 or the bargaining representative for services performed by the
28 commission under this chapter. The provisions of chapter 49.08 RCW do
29 not apply to this chapter.

30 NEW SECTION. **Sec. 12.** It is an unfair labor practice for an
31 employer:

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

34 (2) To control, dominate, or interfere with a bargaining
35 representative;

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

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

4 NEW SECTION. **Sec. 13.** It is an unfair labor practice for a
5 bargaining representative:

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

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

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

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

12 NEW SECTION. **Sec. 14.** (1) The commission must prevent unfair
13 labor practices and issue appropriate remedial orders. However, a
14 complaint may not be processed for an unfair labor practice occurring
15 more than six months before the filing of the complaint with the
16 commission.

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

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

28 NEW SECTION. **Sec. 15.** Actions taken by or on behalf of the
29 commission shall be pursuant to chapter 34.05 RCW, or rules adopted in
30 accordance with chapter 34.05 RCW, and the right of judicial review
31 provided by chapter 34.05 RCW is applicable to all actions and rules.

32 NEW SECTION. **Sec. 16.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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

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