
HOUSE BILL 2615

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By Representatives Dellwo, R. King, Heavey, Winsley, Anderson, Jacobsen, Dorn, R. Meyers, Appelwick, Wang, Ludwig, Miller, Fraser, Basich, Wineberry, Nelson, Belcher, Spanel, J. Kohl and Brekke

Read first time 01/22/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to labor relations in institutions of higher
2 education; amending RCW 41.58.020; adding a new chapter to Title 41
3 RCW; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** It is the purpose of this chapter to
6 promote cooperative efforts between employees and the boards of regents
7 or boards of trustees of the four-year institutions of higher education
8 in the state of Washington by prescribing certain rights and
9 obligations of the employees and by establishing orderly procedures
10 governing the relationship between the employees and their employers
11 which procedures are designed to meet the special requirements and
12 needs of public employment in higher education.

1 NEW SECTION. **Sec. 2.** The boards of regents and boards of
2 trustees of the state institutions of higher education may engage in
3 collective bargaining with the exclusive bargaining representatives of
4 their employees, as provided in this chapter.

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

8 (1) "Employee" means any employee of an employer, but does not
9 include the chief executive or administrative officers of the
10 institution of higher education, confidential employees, casual
11 employees, supervisors, or employees subject to chapter 28B.16 RCW.

12 (2) "Confidential employee" includes:

13 (a) A person who participates directly on behalf of an employer in
14 the formulation of labor relations policy, the preparation for or
15 conduct of collective bargaining, or the administration of collective
16 bargaining agreements, if the role of the person is not merely routine
17 or clerical in nature but calls for the consistent exercise of
18 independent judgment; and

19 (b) A person who assists and acts in a confidential capacity to
20 that person.

21 (3) "Casual employee" means an individual working in assignments of
22 a limited scope or of a short term or of a transitory nature so as to
23 indicate that the individual does not share a community of interest
24 with other employees of the institution or lacks an expectancy of
25 continued employment. However, an individual is not excluded from the
26 coverage of this chapter solely because the person is both a student
27 within the institution of higher education and an employee.

28 (4) "Supervisor" includes any individual having authority in the
29 interest of an employer to hire, assign, promote, transfer, lay off,

1 recall, suspend, discipline, or discharge other employees, to adjust
2 employees' grievances, or to recommend effectively such action, if the
3 exercise of the authority is not merely routine or clerical in nature
4 but calls for the consistent exercise of independent judgment. A
5 person is not included solely by reason of his or her membership on a
6 faculty tenure or other governance committee or body. The term
7 "supervisor" includes only those persons who perform a preponderance of
8 the acts of authority specified in this subsection.

9 (5) "Collective bargaining" and "bargaining" mean the performance
10 of the mutual obligation of the representatives of the employer and the
11 exclusive bargaining representative to meet at reasonable times early
12 in the college budget-making process to bargain in good faith in an
13 effort to reach agreement with respect to wages, hours, and other terms
14 and conditions of employment. Service and activity fees as defined in
15 RCW 28B.15.041 shall not be a subject for bargaining. Prior law,
16 practice, or interpretation shall be neither restrictive, expansive,
17 nor determinative with respect to the scope of bargaining. A written
18 contract incorporating any agreements reached shall be executed if
19 requested by either party. The obligation to bargain does not compel
20 either party to agree to a proposal or to make a concession.

21 In the event of a dispute between an employer and an exclusive
22 bargaining representative over the matters that are terms and
23 conditions of employment, the commission shall decide which items are
24 mandatory subjects for bargaining.

25 (6) "Commission" means the public employment relations commission
26 established under RCW 41.58.010.

27 (7) "Employer" means the board of regents or board of trustees of
28 each institution of higher education and includes any officer, board,
29 commission, council, or other person or body acting on behalf of an
30 employer.

1 (8) "Employee organization" means any organization, union,
2 association, agency, committee, council, or group of any kind in which
3 employees participate and that exists for the purpose, in whole or in
4 part, of collective bargaining with employers.

5 (9) "Exclusive bargaining representative" means any employee
6 organization that has:

7 (a) Been certified or recognized pursuant to this chapter as the
8 representative of the employees in an appropriate collective bargaining
9 unit; or

10 (b) Before the effective date of this section, been certified or
11 recognized under a predecessor statute as the representative of the
12 employees in a bargaining unit that continues to be appropriate under
13 this chapter.

14 (10) "Institution of higher education" means the University of
15 Washington, Washington State University, the regional universities, and
16 The Evergreen State College.

17 (11) "Person" means one or more individuals, labor organizations,
18 partnerships, associations, corporations, employers, or legal
19 representatives. In determining whether a person is acting as an agent
20 of another person so as to make such other person responsible for his
21 or her acts, the question of whether the specific acts performed were
22 actually authorized or subsequently ratified shall not be controlling.

23 (12) "Unfair labor practice" means an unfair labor practice listed
24 in section 9 of this act.

25 (13) "Union security provision" means a provision in a collective
26 bargaining agreement under which some or all employees in the
27 bargaining unit may be required, as a condition of continued employment
28 on or after the thirtieth day following the beginning of such
29 employment or the effective date of the provision, whichever is later,
30 to become a member of the exclusive bargaining representative or pay an

1 agency fee equal to the periodic dues and initiation fees uniformly
2 required as condition of acquiring or retaining membership in the
3 exclusive bargaining representative.

4 NEW SECTION. **Sec. 4.** Employees have the right to self-
5 organization, to form, join, or assist employee organizations, to
6 bargain collectively through representatives of their own choosing, and
7 also have the right to refrain from any or all of these activities
8 except to the extent that employees may be required to make payments to
9 an exclusive bargaining representative or charitable organization under
10 a union security provision authorized in this chapter.

11 NEW SECTION. **Sec. 5.** (1) Upon filing with the employer the
12 voluntary written authorization of a bargaining unit employee under
13 this chapter, the employee organization that is the exclusive
14 bargaining representative of the bargaining unit has the right to have
15 deducted from the salary of the bargaining unit employee the periodic
16 dues and initiation fees uniformly required as a condition of acquiring
17 or retaining membership in the exclusive bargaining representative.
18 The employee authorization shall not be irrevocable for a period of
19 more than one year. Such dues and fees shall be deducted monthly from
20 the pay of all employees who have given authorization for the
21 deduction, and shall be transmitted by the employer to the employee
22 organization or to the depository designated by the employee
23 organization.

24 (2) A collective bargaining agreement may include union security
25 provisions, but not a closed shop. The employer shall enforce any
26 union security provision by monthly deductions from the salary of
27 bargaining unit employees affected by the collective bargaining

1 agreement and shall transmit the funds to the employee organization or
2 to the depository designated by the employee organization.

3 (3) An employee who is covered by a union security provision and
4 who asserts a right of nonassociation based on bona fide religious
5 tenets or teachings of a church or religious body of which the employee
6 is a member shall pay to a nonreligious charity or other charitable
7 organization an amount of money equivalent to the periodic dues and
8 initiation fees uniformly required as a condition of acquiring or
9 retaining membership in the exclusive bargaining representative. The
10 charity shall be agreed upon by the employee and the employee
11 organization to which the employee would otherwise pay the dues and
12 fees. The employee shall furnish written proof that the payments have
13 been made. If the employee and the employee organization do not reach
14 agreement on the matter, the commission shall designate the charitable
15 organization.

16 NEW SECTION. **Sec. 6.** In any dispute concerning the unit
17 appropriate for collective bargaining or the allocation of employees or
18 positions to bargaining units, the commission, after a hearing or
19 hearings, shall determine the dispute, taking into consideration the
20 duties, skills, and working conditions of the employees, the extent of
21 organization among the employees, the community of interest among the
22 employees, the desire of the employees, and the overall management
23 structure of the employer including the interrelationships of divisions
24 within the institution. Unnecessary fragmentation shall be avoided.
25 All employees who are tenured or eligible to seek or be awarded tenure
26 shall be included in the same bargaining unit at each institution of
27 higher education.

1 the date of the certification or the anniversary date following the
2 filing of the petition, whichever is later.

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

12 (d) A petition filed by an employer shall be supported by credible
13 evidence demonstrating the basis on which the employer claims the
14 existence of a question concerning the representation of its employees.

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

21 (f) The commission shall determine any question concerning
22 representation by conducting a secret ballot election among the
23 employees in the bargaining unit. However, if the commission
24 determines that a serious unfair labor practice has been committed that
25 interfered with the election process and precludes the holding of a
26 fair election, the commission may determine the question concerning
27 representation by conducting a cross-check comparing the employee
28 organization's membership records or bargaining authorization cards
29 against the employment records of the employer.

1 (g) The representation election ballot shall contain a choice for
2 each employee organization qualifying under (c) or (e) of this
3 subsection, together with a choice for no representation. The
4 representation election shall be determined by the majority of the
5 valid ballots cast. If there are three or more choices on the ballot
6 and none of the choices receives a majority of the valid ballots cast,
7 a run-off election shall be conducted between the two choices receiving
8 the highest and second highest numbers of votes.

9 NEW SECTION. **Sec. 8.** (1) The commission shall adopt rules
10 under the administrative procedure act, chapter 34.05 RCW, as it deems
11 necessary and appropriate to administer this chapter, in conformity
12 with the intent and purpose of this chapter, and consistent with the
13 best standards of labor-management relations.

14 (2) The rules, precedents, and practices of the national labor
15 relations board, if consistent with this chapter, shall be considered
16 by the commission in its interpretation of this chapter, and before the
17 adoption of any commission rules.

18 NEW SECTION. **Sec. 9.** (1) It is an unfair labor practice for
19 an employer:

20 (a) To interfere with, restrain, or coerce employees in the
21 exercise of the rights guaranteed by this chapter;

22 (b) To dominate or interfere with the formation or administration
23 of any employee organization or contribute financial or other support
24 to it. An employer may permit employees to confer with it or its
25 representatives or agents during working hours without loss of time or
26 pay;

27 (c) To encourage or discourage membership in any employee
28 organization by discrimination in regard to hire, tenure of employment,

1 or any term or condition of employment, but this subsection does not
2 prevent an employer from requiring, as a condition of continued
3 employment, payment of the periodic dues and initiation fees uniformly
4 required to an exclusive bargaining representative under section 5 of
5 this act;

6 (d) To discharge or discriminate otherwise against an employee
7 because the employee has filed charges or given testimony under this
8 chapter; or

9 (e) To refuse to bargain collectively with the exclusive bargaining
10 representative of its employees.

11 (2) It is an unfair labor practice for an employee organization or
12 its agents:

13 (a) To restrain or coerce: (i) Employees in the exercise of the
14 rights guaranteed in section 4 of this act, but this does not impair
15 the right of an employee organization to prescribe its own rules for
16 the acquisition or retention of membership in the organization; or (ii)
17 an employer in the selection of its representatives for the purposes of
18 collective bargaining or the adjustment of grievances;

19 (b) To cause or attempt to cause an employer to discriminate
20 against an employee in violation of subsection (1)(c) of this section
21 or to discriminate against an employee with respect to whom membership
22 in such organization has been denied or terminated on some ground other
23 than the failure of the employee to tender the periodic dues and
24 initiation fees uniformly required as a condition of acquiring or
25 retaining membership; or

26 (c) To refuse to bargain collectively with the employer of
27 employees for whom it is the exclusive bargaining representative.

28 (3) The expression of any views, argument, or opinion, or the
29 dissemination of those views, argument, or opinion to the public,
30 whether in written, printed, graphic, or visual form, shall not

1 constitute or be evidence of an unfair labor practice under this
2 chapter, if the expression contains no threat of reprisal or force or
3 promise of benefit.

4 NEW SECTION. **Sec. 10.** (1) The commission may prevent any
5 person from engaging in any unfair labor practice. This power shall
6 not be affected by any other means of adjustment or prevention that has
7 been or may be established by agreement, law, equity, or otherwise.

8 (2) A complaint charging unfair labor practices shall be filed
9 within six months following the act or event complained of or discovery
10 of such act or event complained of, whichever is later.

11 (3) The person or persons named as respondent in a complaint
12 charging unfair labor practices may file an answer to the complaint and
13 to appear in person or otherwise give testimony at the place and time
14 set by the commission for hearing.

15 (4) If the commission determines that a person has engaged in or is
16 engaging in any unfair labor practice, then the commission shall issue
17 and cause to be served upon the person an order requiring the person to
18 cease and desist from the unfair labor practice and to take such
19 affirmative action as will effectuate the purposes and policy of this
20 chapter, including the reinstatement of employees with back pay.

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

26 NEW SECTION. **Sec. 11.** Actions by or on behalf of the
27 commission shall be under chapter 34.05 RCW, or rules adopted under

1 chapter 34.05 RCW. The right of judicial review under chapter 34.05
2 RCW is applicable to all these actions and rules.

3 NEW SECTION. **Sec. 12.** If any provision of any collective
4 bargaining agreement between the employer and the exclusive bargaining
5 representative requires legislative implementation or an appropriation,
6 the employer and the exclusive bargaining representative shall seek the
7 appropriate legislative action actively and in good faith.

8 NEW SECTION. **Sec. 13.** (1) Whenever a collective bargaining
9 agreement between an employer and an exclusive bargaining
10 representative is concluded after the termination date of the previous
11 collective bargaining agreement between the employer and an employee
12 organization representing the same or a substantially similar
13 bargaining unit, the effective date of the collective bargaining
14 agreement may be the day after the termination date of the previous
15 collective bargaining agreement, and all benefits included in the new
16 collective bargaining agreement, including wage or salary increases,
17 may accrue beginning with the effective date as established by this
18 subsection.

19 (2) A collective bargaining agreement may provide for all benefits,
20 including wage and salary increases, to accrue beginning with the
21 effective dates of any individual employee contracts covering employees
22 in the bargaining unit for the same or related period.

23 (3) A collective bargaining agreement may provide for the increase
24 of any wages, salaries, and other benefits during the term of such
25 agreement or the term of any individual employee contracts covering
26 employees in the bargaining unit, if the employer receives, by
27 increased appropriation or from other sources, additional moneys for
28 such purposes.

1 commission shall, upon the request of either party, appoint a fact-
2 finder. The commission shall not appoint as fact-finder the same
3 person who acted as mediator in the dispute.

4 (b) The fact-finder shall promptly establish a date, time, and
5 place to meet with the representatives of the parties and shall provide
6 reasonable notice of the meeting to the parties to the dispute. The
7 requirements of chapter 34.05 RCW do not apply to fact-finding
8 proceedings. The fact-finder shall make inquiries and investigations,
9 hold hearings, and take such other steps as he or she deems
10 appropriate. The fact-finder may issue subpoenas requiring the
11 attendance and testimony of witnesses and the production of evidence.

12 (c) The fact-finder shall, within thirty days following the
13 conclusion of the hearing, make written findings of fact and written
14 recommendations to the parties as to how their dispute should be
15 resolved. A copy shall be delivered or mailed to each of the parties
16 to the dispute. A copy shall be filed with the commission. The
17 findings and recommendations of the fact-finder are advisory only.

18 (d) The findings and recommendations of the fact-finder shall be
19 held in confidence among the fact-finder, the employer, the exclusive
20 bargaining representative, and the commission for seven calendar days
21 following their issuance, to permit the employer and the exclusive
22 bargaining representative to study the recommendations. No later than
23 seven calendar days following the issuance of the recommendations of
24 the fact-finder, each party shall notify the commission and the other
25 party whether it accepts or rejects, in whole or in part, the
26 recommendations of the fact-finder. If the parties remain in
27 disagreement following the expiration of the seven-day period, the
28 findings and recommendations of the fact-finder may be made public.

29 (e) The fees and expenses of the fact-finder shall be paid by the
30 commission. All other costs of the proceeding shall be paid by the

1 party incurring those costs. This section does not prohibit an
2 employer and an exclusive bargaining representative from agreeing to
3 substitute, at their own expense, some other impasse procedure or from
4 agreeing to some other allocation of the costs of fact-finding between
5 them.

6 NEW SECTION. **Sec. 15.** An employer and an exclusive bargaining
7 representative who enter into a collective bargaining agreement may
8 include in the agreement procedures for binding arbitration of the
9 disputes arising about the interpretation or application of the
10 agreement.

11 NEW SECTION. **Sec. 16.** Except as otherwise expressly provided
12 in this chapter, nothing in this chapter shall be construed to annul,
13 modify, or preclude the renewal or continuation of any lawful agreement
14 entered into before the effective date of this section between an
15 employer and an employee organization covering wages, hours, and terms
16 and conditions of employment. If there is a conflict between any
17 collective bargaining agreement and any resolution, rule, policy, or
18 regulation of the employer or its agents, the terms of the collective
19 bargaining agreement shall prevail

20 NEW SECTION. **Sec. 17.** Except as otherwise expressly provided
21 in this chapter, nothing in this chapter may be construed to deny or
22 otherwise abridge any rights, privileges, or benefits granted by law to
23 employees.

24 NEW SECTION. **Sec. 18.** This chapter shall not be construed to
25 interfere with the responsibilities and rights of the employer as
26 specified by federal and state law, including the employer's

1 responsibilities to students, the public, and other constituent
2 elements of the institution.

3 NEW SECTION. **Sec. 19.** Nothing in this chapter permits or
4 grants: (1) An employee the right to strike or to refuse to perform
5 his or her official duties; or (2) an employer the right to lock out
6 its employees in connection with a labor dispute.

7 NEW SECTION. **Sec. 20.** All agreements reached pursuant to this
8 chapter shall contain the following clause: Implementation of any
9 salary adjustment provided for in this agreement that is funded by
10 general funds of the state of Washington shall be consistent with
11 legislative appropriations and with any subsequent modification
12 thereto.

13 **Sec. 21.** RCW 41.58.020 and 1975 1st ex.s. c 296 s 4 are each
14 amended to read as follows:

15 (1) It shall be the duty of the commission, in order to prevent or
16 minimize interruptions growing out of labor disputes, to assist
17 employers and employees to settle such disputes through mediation and
18 fact-finding.

19 (2) The commission, through the director, may proffer its services
20 in any labor dispute involving a political subdivision, municipal
21 corporation, ~~((or))~~ the community and technical college system of the
22 state, or baccalaureate degree-granting state institutions of higher
23 education either upon its own motion or upon the request of one or more
24 of the parties to the dispute, whenever in its judgment such dispute
25 threatens to cause a substantial disruption to the public welfare.

26 (3) If the director is not able to bring the parties to agreement
27 by mediation within a reasonable time, he shall seek to induce the

1 parties to voluntarily seek other means of settling the dispute without
2 resort to strike or other coercion, including submission to the
3 employees in the bargaining unit of the employer's last offer of
4 settlement for approval or rejection in a secret ballot. The failure
5 or refusal of either party to agree to any procedure suggested by the
6 director shall not be deemed a violation of any duty or obligation
7 imposed by this chapter.

8 (4) Final adjustment by a method agreed upon by the parties is
9 declared to be the desirable method for settlement of grievance
10 disputes arising over the application or interpretation of an existing
11 collective bargaining agreement. The commission is directed to make
12 its mediation and fact-finding services available in the settlement of
13 such grievance disputes only as a last resort.

14 NEW SECTION. **Sec. 22.** Sections 1 through 20 of this act shall
15 constitute a new chapter in Title 41 RCW.

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

20 NEW SECTION. **Sec. 24.** This act shall take effect October 1,
21 1992. The public employment relations commission may immediately take
22 such steps as are necessary to insure that this act is implemented on
23 its effective date.