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HOUSE BILL 1961

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By Representatives Wineberry, Heavey, Prentice, R. King, Wang, Jones, Franklin, Cole, Phillips, Anderson, Locke, Fraser, Leonard, Belcher, Brekke, Basich, Scott, Cantwell, Jacobsen, Ebersole, Riley, R. Fisher, Pruitt, G. Fisher and Nelson.

Read first time February 15, 1991. Referred to Committee on Commerce & Labor.

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

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

4 NEW SECTION. **Sec. 1.** This chapter shall be known and cited as  
5 the "Washington agricultural labor relations act."

6 NEW SECTION. **Sec. 2.** It is hereby stated to be the policy of  
7 the state of Washington to encourage and protect the right of  
8 agricultural employees to full freedom of association, self-  
9 organization, and designation of representatives of their own choosing.  
10 The legislature finds that industrial strife can be avoided or  
11 substantially minimized, and the public interest protected, if  
12 employers and employees recognize each other's legitimate rights under  
13 law in their relations with one another. It is the purpose and policy  
14 of this chapter to prescribe the collective bargaining rights of

1 employees and employers in the agricultural industry, to provide  
2 orderly and peaceful procedures for preventing the interference by one  
3 with the rights of another, to protect the rights of individual  
4 employees, to define and proscribe practices on the part of labor and  
5 management that are inimical to the general welfare, and to protect the  
6 rights of the public in connection with labor disputes.

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

10 (1) "Agriculture" includes farming in all its branches and among  
11 other things includes the cultivation and tillage of the soil,  
12 dairying, the production, cultivation, growing, and harvesting of any  
13 agricultural or horticultural commodities, the raising of livestock,  
14 bees, fur-bearing animals, or poultry, and any practice, including  
15 forestry or lumbering operations, performed by a farmer or on a farm  
16 incident to or in conjunction with such farming operations, including  
17 preparation for market and delivery to storage, market, or carriers for  
18 transportation to market. "Agriculture" also includes farming,  
19 harvesting, and primary processing of organic food products under  
20 chapter 15.86 RCW, cultured aquatic products as defined in RCW  
21 15.85.020, mushrooms under chapter 15.90 RCW, specialized forest  
22 products under chapter 76.48 RCW, and other similar activities.

23 (2) "Employee" includes any individual employed by an employer in  
24 agricultural work, and is not limited to the employees of a particular  
25 employer unless specifically stated in this chapter, but does not  
26 include an individual employed in the domestic service of a family or  
27 person at his or her home, or an individual employed by his or her  
28 parent or spouse, or an individual having the status of an independent

1 contractor, including those engaged in sharecrop operations, or an  
2 individual employed as a supervisor.

3 (3) "Employer" shall be liberally construed to include any person  
4 acting directly or indirectly in the interest of an employer in  
5 relation to an agricultural employee, any individual grower, corporate  
6 grower, cooperative grower, harvesting association, hiring association,  
7 land management group, any association of persons or cooperative  
8 engaged in agriculture, and any person who owns, leases, or manages  
9 land used for agricultural purposes. "Employer" does not include any  
10 person supplying agricultural employees to an employer, any farm labor  
11 contractor as defined in RCW 19.30.010(2), or any person functioning in  
12 the capacity of a farm labor contractor. If an employer uses the  
13 services of a farm labor contractor, or of a person functioning as a  
14 farm labor contractor, or of another person supplying agricultural  
15 labor, the employer shall be deemed to be the employer of the employees  
16 for the purposes of this chapter.

17 (4) "Certification year" means one year from the date on which the  
18 board certifies the results of an election conducted under section 10  
19 of this act.

20 (5) "Labor dispute" includes any controversy concerning terms,  
21 tenure, or conditions of employment, or concerning the association or  
22 representation of persons in negotiating, fixing, maintaining,  
23 changing, or seeking to arrange terms or conditions of employment,  
24 regardless of whether the disputants stand in the proximate relation of  
25 employer and employee.

26 (6) "Employee organization" means any organization, union,  
27 association, agency, committee, council, or group of any kind in which  
28 employees participate and which exists for the purpose, in whole or in  
29 part, of dealing with employers concerning grievances, labor disputes,  
30 wages, rates of pay, hours of employment, or conditions of employment.

1 (7) "Person" includes one or more individuals, employee  
2 organizations, partnerships, associations, corporations, legal  
3 representatives, trustees, trustees in bankruptcy, receivers, or other  
4 legal entities.

5 (8) "Representative" includes any individual or employee  
6 organization.

7 (9) "Secondary boycott" means to encourage or persuade any person,  
8 not a party to the labor dispute, to refrain from using, selling,  
9 handling, or transporting any agricultural commodity, or where the  
10 object of such action is to require any agricultural employer to  
11 bargain with or resolve any dispute with an employee organization.

12 (10) "State agricultural labor relations board" or "board" means  
13 the board established in section 4 of this act.

14 (11) "Supervisor" means any individual having authority, in the  
15 interest of the employer, to hire, transfer, suspend, layoff, recall,  
16 promote, discharge, assign, reward, or discipline other employees, or  
17 responsibility to direct them, or to adjust their grievances, or  
18 effectively to recommend such action, if the exercise of such authority  
19 is not of merely routine or clerical nature but requires the use of  
20 independent judgment.

21 (12) "Unfair labor practice" means any unfair labor practice listed  
22 in sections 7 and 8 of this act.

23 NEW SECTION. **Sec. 4.** (1) There is hereby created the state  
24 agricultural labor relations board to administer this chapter. The  
25 board shall consist of three members appointed by the governor. The  
26 first member shall be a representative of the public and shall be the  
27 chair of the board. The first member shall be appointed from a  
28 mutually agreed upon list of not less than three persons, submitted to  
29 the governor by the employee and employer organizations described

1 below. The second member shall represent agricultural employers and  
2 shall be selected from a list of not less than three names submitted to  
3 the governor by a recognized state-wide employer organization,  
4 representing a majority of employers. The third member shall represent  
5 agricultural employees and shall be selected from a list of not less  
6 than three names submitted to the governor by an employee organization,  
7 state-wide in scope, which through its affiliates embraces a cross-  
8 section and a majority of the organized labor of the state. The  
9 original third member shall be appointed for a term of six years, and  
10 the other two original members shall be appointed for terms of two  
11 years and four years, respectively. Their successors shall be  
12 appointed for terms of six years each, except that any person chosen to  
13 fill a vacancy shall be appointed only for the unexpired term of the  
14 member whom he or she succeeds. Board members shall be eligible for  
15 reappointment and shall hold office until the successor is appointed.  
16 A member of the board may be removed by the governor, upon notice and  
17 hearing, for neglect of duty or malfeasance in office, but for no other  
18 cause.

19 (2) A vacancy in the board shall not impair the right of the  
20 remaining members to exercise all of the powers of the board, and two  
21 members of the board shall, at all times, constitute a quorum of the  
22 board.

23 (3) The board shall, at the close of each fiscal year, make a  
24 report in writing to the legislature and to the governor stating the  
25 cases it has heard, the decisions it has rendered, the names, salaries,  
26 and duties of all employees and officers in the employ or under the  
27 supervision of the board, and an account of all moneys it has  
28 disbursed.



1        NEW SECTION.    **Sec. 6.**        Employees shall have the right to self-  
2 organization, to form, join, or assist employee organizations, to  
3 bargain collectively through representatives of their own choosing, and  
4 to engage in other concerted activities for the purpose of collective  
5 bargaining or other mutual aid or protection, and shall also have the  
6 right to refrain from any or all such activities, except that employees  
7 may be required to pay a fee to an exclusive bargaining representative  
8 under a union security provision authorized by this chapter.

9        NEW SECTION.    **Sec. 7.**        (1) It is an unfair labor practice for  
10 an employer:

11        (a) To interfere with, restrain, or coerce employees in the  
12 exercise of the rights guaranteed in this chapter. Violations of this  
13 subsection include a lock out of employees and the hiring of employees  
14 to replace striking employees;

15        (b) To control, dominate, or interfere with the formation or  
16 administration of any employee organization or to contribute financial  
17 or other support to it;

18        (c) To encourage or discourage support for or membership in any  
19 employee organization by discrimination in regard to hire, tenure of  
20 employment, or any term or condition of employment. Termination of an  
21 agricultural employee after the initiation of organizational activities  
22 shall be presumed to be an unfair labor practice absent clear and  
23 convincing proof to the contrary;

24        (d) To discharge or otherwise discriminate against an employee  
25 because the employee has filed charges or given testimony under this  
26 chapter, has participated in secret ballot elections authorized under  
27 this chapter, or has opposed unfair labor practices as defined in this  
28 chapter;

1 (e) To influence or attempt to influence the outcome of a secret  
2 ballot election by the threat of loss of jobs or benefits, or by the  
3 conferring of benefits or the promise of benefits;

4 (f) To recognize, bargain with, or sign a collective bargaining  
5 agreement with any employee organization not certified under this  
6 chapter as the exclusive bargaining representative of its employees;

7 (g) To interrogate, poll, or otherwise inquire into the views or  
8 preferences of any agricultural employee as to collective bargaining or  
9 collective bargaining representation;

10 (h) To engage in surveillance or cause the surveillance of any  
11 agricultural employee;

12 (i) To visit the residence or dwelling place of any agricultural  
13 employee during the pendency of a petition for an election under this  
14 chapter among the employees;

15 (j) To communicate to any agricultural employee, expressly or  
16 impliedly, a preference for recognizing, bargaining with, or otherwise  
17 dealing with any particular labor organization or organizations unless  
18 the communication contains no threat of reprisal or force or promise of  
19 benefit;

20 (k) To refuse to bargain collectively with the representatives of  
21 its employees; or

22 (l) To refuse to bargain with or to refuse to cooperate with or  
23 assist an employee organization regarding compliance with the  
24 conditions of an affirmative action program or a program or plan  
25 designed to assure compliance by the employer with the provisions of  
26 state or federal laws relating to equal employment opportunity for all  
27 persons regardless of race, creed, color, national origin, age, sex,  
28 marital status, or physical or mental handicap.

29 (2) The provisions of subsection (1)(c) of this section shall be  
30 subject to the following limitations:

1 (a) Nothing in this chapter precludes an employer from making an  
2 agreement with an employee organization to require, as a condition of  
3 employment, payment of a union shop fee on or after the seventh day  
4 following the beginning of employment or the effective date of the  
5 agreement, whichever is later, (i) if the employee organization is the  
6 exclusive representative of the employees as provided in section 10 of  
7 this act, in the appropriate collective bargaining unit covered by the  
8 agreement when made, and (ii) unless following an election held as  
9 provided in section 10 of this act within one year preceding the  
10 effective date of the agreement, the board has certified that at least  
11 a majority of the employees eligible to vote in the election have voted  
12 to rescind the authority of the employee organization to make such an  
13 agreement; and

14 (b) Agreements involving union security provisions must safeguard  
15 the right of nonassociation of employees based on bona fide religious  
16 tenets or teachings of a church or religious body of which the employee  
17 is a member. The employee shall pay an amount equivalent to the union  
18 shop fee to a nonreligious charity or to another charitable  
19 organization mutually agreed upon by the employee affected and the  
20 bargaining representative to which the employee would otherwise pay the  
21 union shop fee. The employee shall furnish written proof that the  
22 payment has been made. If the employee and the bargaining  
23 representative do not reach agreement on such matter, the board shall  
24 designate the charitable organization.

25 NEW SECTION. **Sec. 8.** It is an unfair labor practice for an  
26 employee organization:

27 (1) To interfere with, restrain, or coerce: (a) Employees in the  
28 exercise of the rights guaranteed in this chapter, but nothing in this  
29 subsection shall impair the right of an employee organization to

1 prescribe its own rules with respect to the acquisition or retention of  
2 its membership; or (b) an employer in the selection of representatives  
3 for the purposes of collective bargaining or the adjustment of  
4 grievances;

5 (2) To cause or attempt to cause an employer to discriminate  
6 against an employee in violation of section 7 of this act;

7 (3) To solicit or accept financial or other support from an  
8 employer. Any violation of this subsection shall be per se grounds for  
9 setting aside the election and disqualifying the employee organization  
10 from representing the employees of the employer for three years;

11 (4) To refuse to bargain collectively with an employer, provided  
12 the employee organization is the representative of the employer's  
13 employees under this chapter; or

14 (5) To refuse to bargain with or to refuse to cooperate with or  
15 assist an employer regarding compliance with the conditions of an  
16 affirmative action program or a program or plan designed to assure  
17 compliance by the employer with the provisions of state or federal laws  
18 relating to equal employment opportunity for all persons regardless of  
19 race, creed, color, national origin, age, sex, marital status, or  
20 physical or mental handicap.

21 Nothing in this section shall be construed to prohibit employees  
22 from engaging in a secondary boycott.

23 NEW SECTION. **Sec. 9.** (1) For the purpose of this section, to  
24 bargain collectively is the performance of the mutual obligation of the  
25 employer and the representative of the employees to meet at reasonable  
26 times and confer in good faith with respect to wages, hours, and other  
27 terms and conditions of employment, or the negotiation of an agreement,  
28 or any question arising thereunder, and the execution of a written  
29 contract incorporating any agreement reached if requested by either

1 party, but such obligation does not compel either party to agree to a  
2 proposal or require either party to make a concession. If there is in  
3 effect a collective bargaining contract covering employees, the duty to  
4 bargain collectively also means that no party to the contract may  
5 terminate or modify the contract, unless the party desiring termination  
6 or modification:

7 (a) Serves a written notice upon the other party to the contract of  
8 the proposed termination or modification not less than sixty days  
9 before the expiration date of the contract or, in the event the  
10 contract contains no expiration date, not less than sixty days before  
11 the time it is proposed to make the termination or modification;

12 (b) Offers to meet and confer with the other party for the purpose  
13 of negotiating a new contract or a contract containing the proposed  
14 modifications;

15 (c) Notifies the board within thirty days after notice of the  
16 existence of a dispute, provided no agreement has been reached by that  
17 time; and

18 (d) Continues in full force and effect, without resorting to  
19 strike, all the terms and conditions of the existing contract for a  
20 period of sixty days after notice is given or until the expiration date  
21 of the contract, whichever occurs later.

22 (2) The duties imposed upon employers, employees, and employee  
23 organizations by subsection (1) (b), (c), and (d) of this section shall  
24 become inapplicable upon an intervening certification of the board  
25 under which the employee organization or individual that is a party to  
26 the contract has been superseded as or ceased to be the representative  
27 of the employees under this chapter and the duties so imposed shall not  
28 be construed as requiring either party to discuss or agree to any  
29 modification of the terms and conditions contained in a contract for a  
30 fixed period, if such modification is to become effective before the

1 terms and conditions can be reopened under the provisions of the  
2 contract. An employee who engages in a strike within the sixty-day  
3 period specified in this subsection shall lose his or her status as an  
4 employee of the employer engaged in the particular labor dispute for  
5 the purposes of sections 7 through 11 of this act, but such loss of  
6 status for the employee shall terminate if and when he or she is  
7 reemployed by the employer.

8 (3) If the parties have not settled the dispute after the  
9 termination of the sixty-day period provided in this section, the  
10 employees may strike.

11 NEW SECTION. **Sec. 10.** (1) Representatives designated or  
12 selected for the purposes of collective bargaining by a majority of the  
13 employees by secret ballot in a unit appropriate for such purposes  
14 shall be the exclusive bargaining representatives of all the employees  
15 in the unit for the purpose of collective bargaining in respect to  
16 rates of pay, wages, hours of employment, or other conditions of  
17 employment. However, an individual employee or a group of employees  
18 shall have the right at any time to present grievances to their  
19 employer and to have such grievances adjusted without the intervention  
20 of the bargaining representative, as long as the adjustment is not  
21 inconsistent with the terms of a collective bargaining contract or  
22 agreement then in effect and as long as the bargaining representative  
23 has been given the opportunity to be present at such adjustment.

24 (2) The bargaining unit shall be all the agricultural employees of  
25 an employer. If the agricultural employees of the employer are  
26 employed in two or more noncontiguous geographical areas, the board  
27 shall determine the appropriate unit or units of agricultural employees  
28 in which a secret ballot election shall be conducted. In determining

1 whether a unit is appropriate under this subsection, the extent to  
2 which the employees have organized shall not be controlling.

3 (3)(a) Petitions for elections shall be filed during the season of  
4 peak agricultural employment and shall allege that:

5 (i) Not less than thirty percent of an employees' unit of a  
6 particular employer wish to be represented for collective bargaining;

7 (ii) The number of agricultural employees currently employed by the  
8 employer named in the petition, as determined from the payroll  
9 immediately preceding the filing of the petition, is not less than  
10 fifty percent of the employer's peak agricultural employment for the  
11 current calendar year;

12 (iii) No valid election under this section has been held among the  
13 agricultural employees of the employer named in the petition within the  
14 twelve months immediately preceding the filing of the petition;

15 (iv) No employee organization is currently certified under this  
16 chapter as the exclusive collective bargaining representative of the  
17 agricultural employees of the employer named in the petition;

18 (v) The petition is not barred by an existing collective bargaining  
19 agreement; and

20 (vi) The employee organization named in the petition has not,  
21 within the twelve months immediately preceding the filing of the  
22 petition, discriminated against any member or prospective member of the  
23 organization who is engaged in agricultural employment on the basis of  
24 race, color, national origin, religion, sex, or any other arbitrary or  
25 invidious classification. A finding by the United States equal  
26 employment opportunities commission under 29 U.S.C. Sec. 2000 that the  
27 employee organization has violated subchapter IV of chapter 21 of Title  
28 42 of the United States Code, or by the state human rights commission  
29 that the employee organization has engaged in unfair practices under  
30 RCW 49.60.190, shall be prima facie evidence of discrimination. Any

1 issue of discrimination under this subsection may be determined by the  
2 board at a hearing following an election under this section. If the  
3 board determines that discrimination has occurred, it shall either (A)  
4 refuse to certify the employee organization if the organization  
5 receives a majority of the votes cast and has not yet been certified by  
6 the board, or (B) decertify the organization if it had certified the  
7 organization under this section.

8 (4)(a) Whenever a petition has been filed in accordance with  
9 subsection (3) of this section and the rules prescribed by the board,  
10 the board shall investigate the petition and if it has reasonable cause  
11 to believe that a question of representation exists shall direct that  
12 a representation election by secret ballot be held, upon due notice to  
13 all interested parties and within a maximum of seven days of the filing  
14 of the petition. If at the time the election petition is filed, a  
15 majority of the employees in a bargaining unit are engaged in a strike,  
16 the board shall, with all due diligence, attempt to hold a secret  
17 ballot election within forty-eight hours of the filing of the petition.

18 (b) If any employee organization receives a majority of the votes  
19 cast in an election under this section, the organization shall be  
20 certified by the board for a period of twelve months as the exclusive  
21 bargaining representative of the employees among whom the election was  
22 conducted. An employer shall not initially recognize an employee  
23 organization as the collective bargaining representative of its  
24 employees unless the employee organization has received a majority of  
25 the votes cast in a representation election conducted pursuant to the  
26 provisions of this chapter.

27 (c) In determining whether or not a question of representation  
28 exists, the same rules of decision shall apply irrespective of the  
29 identity of the persons filing the petition or the kind of relief  
30 sought and in no case shall the board deny an employee organization a

1 place on the ballot by reason of an order with respect to the employee  
2 organization or its predecessor not issued in conformity with section  
3 11(3) of this act.

4 (d) No election shall be directed in any bargaining unit or any  
5 subdivision within which, in the preceding twelve-month period, a valid  
6 election has been held. Employees engaged in an economic strike shall  
7 be eligible to vote under such rules as the board finds are consistent  
8 with the purposes and provisions of this chapter in any election  
9 conducted within twelve months after the commencement of the strike.  
10 In any election where none of the choices on the ballot receives a  
11 majority, a run-off shall be conducted, the ballot providing for a  
12 selection between the two choices receiving the largest and second  
13 largest number of valid votes cast in the election.

14 (e) Nothing in this section shall be construed to prohibit the  
15 waiving of hearings by stipulation for the purpose of a consent  
16 election in conformity with the rules and decisions of the board.

17 (5) Once a petition for an election has been filed, any employee  
18 organization qualified to appear on the ballot shall have the right to  
19 communicate peacefully with the employees at their residences or  
20 dwelling places, or on the property of the employer during nonworking  
21 hours, including meal and rest periods or other breaks. However, an  
22 employee organization or its agents may not interfere with the  
23 performance of work in the exercise of the rights guaranteed by this  
24 section. The rights granted under this section shall be specifically  
25 enforceable in a court of competent jurisdiction.

26 (6) The employer shall make the payroll list available to the  
27 department and any labor organization qualified to appear on the ballot  
28 no less than forty-eight hours prior to any election. If the employer  
29 is unable to compile a full and accurate list within the time allowed,  
30 the board shall proceed to determine eligibility on the basis of such

1 other evidence as is available to the board at that time. If an  
2 employer willfully supplies the board with an inaccurate list or  
3 otherwise willfully fails to perform its obligations under this  
4 section, the petitioning employee organization shall be certified as  
5 the exclusive bargaining representative of the employer's employees.

6 (7) An employee organization qualified to participate in an  
7 election may file with the board any symbol or trademark it wishes to  
8 appear on the ballots used by the board. The ballots of the board  
9 shall then contain the symbols of the employee organizations qualified  
10 to appear on the ballot. The board shall make available at any  
11 election ballots printed in English and Spanish and, on request of a  
12 qualified employee organization, any other language used by the  
13 employees voting in the election.

14 (8) Recognizing that agricultural employment is a seasonal  
15 occupation for the majority of agricultural employees and because it is  
16 the intent of this chapter to provide the fullest scope for employees'  
17 enjoyment of the rights provided under this chapter, the board shall  
18 not consider a representation petition or petition to decertify as  
19 timely filed unless at least fifty percent of the peak agricultural  
20 employment for the current calendar year is on the payroll for the  
21 period immediately preceding the filing of the petition. Peak  
22 employment shall be determined from past employment records, current  
23 crop data, and other relevant evidence. The prior season alone shall  
24 not be a basis for the determination, but the board shall estimate the  
25 peak employment on the basis of acreage and crop statistics applied  
26 uniformly throughout the state of Washington, and on all other relevant  
27 evidence.

28 (9) Whenever a majority of the agricultural employees in a  
29 bargaining unit engage in a bona fide strike for the right to an  
30 election under this chapter, and an employee or group of employees, or

1 any individual or employee organization acting on their behalf, makes  
2 a demand on the employer for an election under this chapter, the  
3 employees shall be deemed to have selected the employee organization as  
4 their bargaining representative.

5 (10) Within five days after an election, any person may file with  
6 the board a signed petition asserting that allegations made in the  
7 petition filed pursuant to this section were incorrect, or that the  
8 board improperly determined the geographical scope of the bargaining  
9 unit, or raising objections to the conduct of the election or conduct  
10 affecting the results of the election. Upon receipt of a petition  
11 under this subsection, the board, after due notice, shall conduct a  
12 hearing to determine whether the election shall be decertified. The  
13 hearing may be conducted by an officer or employee of the board. If  
14 the board finds, on the record of the hearing, that any of the  
15 assertions made in the petition are correct, or the election was not  
16 conducted properly, or misconduct affecting the results of the election  
17 occurred, the board may refuse to certify the election. Unless the  
18 board determines that there are sufficient grounds to refuse to do so,  
19 it shall certify the election. If no petition under this subsection is  
20 filed within five days of the election, the board shall certify the  
21 election.

22 NEW SECTION. **Sec. 11.** (1) The board is empowered, as provided  
23 in this chapter, to prevent any person from engaging in any unfair  
24 labor practice listed in section 7 or 8 of this act. The procedures  
25 set forth in this section shall be the exclusive method of redressing  
26 unfair labor practices.

27 (2) Whenever it is charged that a person has engaged in or is  
28 engaging in an unfair labor practice, the board or its agent shall have  
29 power to issue and cause to be served upon such person a complaint

1 stating the charges in that respect, and containing a notice of hearing  
2 before the board or a member thereof, or before its designated agent or  
3 at a place therein fixed, not less than five days after the serving of  
4 the complaint. However, no complaint shall issue based upon any unfair  
5 labor practice occurring more than six months prior to the filing of  
6 the charge with the board and the service of a copy upon the person  
7 against whom the charge is made, unless the person aggrieved was  
8 prevented from filing the charge by reason of service in the armed  
9 forces in which event the six-month period shall be computed from the  
10 date of his or her discharge. A complaint may be amended by the member  
11 or the agent conducting the hearing or the board in its discretion at  
12 any time prior to the issuance of an order based thereon. The person  
13 so complained of shall have the right to file an answer to the original  
14 or amended complaint, and to appear in person or otherwise and give  
15 testimony at the place and time fixed in the complaint. In the  
16 discretion of the member or the agent conducting the hearing or the  
17 board, any other person may be allowed to intervene in the proceeding  
18 and to present testimony. A proceeding shall, insofar as is  
19 practicable, be conducted in accordance with the rules of evidence  
20 applicable in the superior courts of the state.

21 (3)(a) The testimony taken by the member or the agent or the board  
22 shall be reduced to writing and filed with the board. Thereafter, in  
23 its discretion, the board upon notice may take further testimony or  
24 hear argument.

25 (b) If, upon the preponderance of the testimony taken, the board is  
26 of the opinion that a person named in the complaint has engaged in or  
27 is engaging in an unfair labor practice, the board shall state its  
28 findings of fact and shall issue and cause to be served upon the person  
29 an order requiring the person to cease and desist from the unfair labor  
30 practice, and to take such affirmative action, including reinstatement

1 of employees with or without back pay and, when the board deems such  
2 relief appropriate, making employees whole for loss of pay resulting  
3 from the employer's refusal to bargain, and to provide such other  
4 relief as will effectuate the policies of this chapter. If an order  
5 directs the reinstatement of an employee, back pay may be required of  
6 the employer or employee organization, as the case may be, responsible  
7 for the discrimination. An order may further require reports showing  
8 the extent to which the order has been complied with.

9 (c) If, upon the preponderance of the testimony taken, the board is  
10 not of the opinion that the person named in the complaint has engaged  
11 in or is engaging in an unfair labor practice, the board shall state  
12 its findings of fact and shall issue an order dismissing the complaint.

13 (d) No order of the board shall require the reinstatement of an  
14 individual as an employee who has been suspended or discharged, or the  
15 payment of back pay to an individual, if the individual was suspended  
16 or discharged for cause.

17 (e) If the evidence is presented before a member of the board or  
18 before an examiner, the member or the examiner, as the case may be,  
19 shall issue and cause to be served on the parties to the proceeding a  
20 proposed report, together with a recommended order, which shall be  
21 filed with the board, and if no exceptions are filed within seven days  
22 after service upon the parties, or within such further period as the  
23 board may authorize, the recommended order shall become the order of  
24 the board and become effective as prescribed therein.

25 (f) In determining whether a complaint shall issue alleging a  
26 violation of section 7(1) (a) or (b) of this act, and in deciding such  
27 cases, the same rules and decisions of the board shall apply whether or  
28 not the employee organization affected is affiliated with an employee  
29 organization that is national or international in scope. However, no  
30 officer or member of an employee organization and no employee

1 organization participating or interested in a labor dispute shall be  
2 held responsible or liable for the unlawful acts of individual  
3 officers, members, or agents, except upon clear evidence of actual  
4 participation in, or actual authorization of, the acts, or of  
5 ratification of the acts after actual knowledge of the acts.

6 (4) Until the record in a case has been filed in a court as  
7 provided in this section, the board may at any time, upon reasonable  
8 notice and in such manner as it shall deem proper, modify or set aside,  
9 in whole or in part, any finding or order made or issued by it.

10 (5) Any person aggrieved by a final order of the board granting or  
11 denying in whole or in part the relief sought may obtain a review of  
12 such order in the superior court of the county wherein the employer is  
13 located or wherein such person resides or transacts business, by filing  
14 in the court a written petition requesting that the order of the board  
15 be modified or set aside. The petition shall be filed with the court  
16 within thirty days from the date of issuance of the board's order. A  
17 copy of the petition shall be forthwith transmitted by the clerk of the  
18 court to the board. The board shall file in the court the record of  
19 the proceedings, certified by the board, within ten days after the  
20 clerk's notice unless the time is extended by the court for good cause  
21 shown. The court shall have jurisdiction to grant to the board such  
22 temporary relief or restraining order as it deems just and proper, and  
23 in like manner to make and enter a decree enforcing, modifying and  
24 enforcing as modified, or setting aside in whole or in part the order  
25 of the board. The findings of the board with respect to questions of  
26 fact, if supported by substantial evidence on the record considered as  
27 a whole, shall in like manner be conclusive.

28 (6) The commencement of proceedings under subsection (5) of this  
29 section shall not, unless specifically ordered by the court, operate as

1 a stay of the board's order. An order directing an election shall not  
2 be stayed pending review.

3 (7) Petitions filed under this section shall be heard  
4 expeditiously.

5 (8) The board shall have power, upon issuance of a complaint as  
6 provided in subsection (2) of this section charging that any person has  
7 engaged in or is engaging in an unfair labor practice, to petition a  
8 superior court of the county wherein the employer is located or wherein  
9 such person resides or transacts business, for appropriate temporary  
10 relief or restraining order. Upon the filing of a petition the court  
11 shall cause notice thereof to be served upon such person, and thereupon  
12 shall have jurisdiction to grant to the board such temporary relief or  
13 restraining order as it deems just and proper.

14 (9) Whenever it is charged that any person has engaged in an unfair  
15 labor practice within the meaning of section 7 (1)(c) or (2) of this  
16 act, the charge shall be given priority over all other cases except  
17 cases of like character in the office where it is filed or to which it  
18 is referred.

19 NEW SECTION. **Sec. 12.** For the purpose of all hearings and  
20 investigations which, in the opinion of the board, are necessary and  
21 proper for the exercise of the powers vested in it by section 10 of  
22 this act:

23 (1) The board or its agents shall at all reasonable times have  
24 access to for the purpose of examination, and the right to copy, any  
25 evidence of a person being investigated or proceeded against that  
26 relates to a matter under investigation or in question. The board or  
27 any member thereof shall, upon application of a party to the  
28 proceedings, expeditiously issue to such party subpoenas requiring the  
29 attendance and testimony of witnesses or the production of evidence in

1 the proceeding or investigation requested in the application. Within  
2 seven days after service of a subpoena on any person requiring the  
3 production of evidence in his or her possession or under his or her  
4 control, the person may petition the board to revoke, and the board  
5 shall revoke, the subpoena if, in its opinion, the evidence whose  
6 production is required does not relate to any matter under  
7 investigation, or any matter in question in such proceedings, or if, in  
8 its opinion, the subpoena does not describe with sufficient  
9 particularity the evidence whose production is required. Any member of  
10 the board or its agent may administer oaths and affirmations, examine  
11 witnesses, and receive evidence. The attendance of witnesses and the  
12 production of evidence may be required from any designated place of  
13 hearing;

14 (2) In case of contumacy or refusal to obey a subpoena issued to  
15 any person, a superior court within the jurisdiction of which the  
16 inquiry is carried on or within the jurisdiction of which said person  
17 is found or resides or transacts business, upon application by the  
18 board, shall have jurisdiction to issue the person an order requiring  
19 the person to appear before the board, its member, agent, or agency,  
20 there to produce evidence if so ordered, or there to give testimony  
21 touching the matter under investigation or in question; and any failure  
22 to obey an order of the court may be punished by the court as a  
23 contempt of court;

24 (3) Complaints, orders, and other process and papers of the board,  
25 its member, or agent may be served either personally or by registered  
26 mail or by leaving a copy at the principal office or place of business  
27 of the person required to be served or with an employee or agent duly  
28 authorized to receive complaints, orders, and other process and papers.  
29 The verified return by the individual making the service, setting forth  
30 the manner of the service, shall be proof of the service, and the

1 return post office receipt, when registered and mailed as required in  
2 this subsection, shall be proof of service. Witnesses summoned before  
3 the board, its member, or agent shall be paid the same fees and mileage  
4 that are paid witnesses in the superior courts, and witnesses whose  
5 depositions are taken and the persons taking the same shall severally  
6 be entitled to the same fees as are paid for like services in the  
7 superior courts; and

8 (4) Process of a court to which application may be made under this  
9 chapter may be served in the county wherein the defendant or other  
10 person required to be served resides or may be found.

11 NEW SECTION. **Sec. 13.** Upon the petition of any person made not  
12 earlier than the ninetieth day nor later than the sixtieth day  
13 preceding the expiration of a certification year, the board shall  
14 determine whether the employer whose employees are represented as  
15 provided under this chapter has bargained in good faith. If the board  
16 finds that the employer has not bargained in good faith, the board  
17 shall order the parties to submit to interest arbitration.

18 NEW SECTION. **Sec. 14.** Any person who willfully resists,  
19 prevents, impedes, or interferes with members of the board or its  
20 agents in the performance of duties pursuant to this chapter shall be  
21 guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

22 NEW SECTION. **Sec. 15.** The provisions of this chapter shall not  
23 apply to employees of the federal government, employees of the state or  
24 a political subdivision of the state, employees covered by the railway  
25 labor act, or employees covered by the national labor relations act.

1        NEW SECTION.    **Sec. 16.**        Nothing in this chapter, except as  
2 specifically provided, shall be construed to interfere with or impede  
3 or diminish in any way the right to strike, or to affect the  
4 limitations or qualifications on that right.

5        NEW SECTION.    **Sec. 17.**        Nothing in this chapter shall prohibit  
6 any individual employed as a supervisor from becoming or remaining a  
7 member of an employee organization, but no employer subject to this  
8 chapter shall be compelled to recognize supervisors as employees for  
9 the purpose of this chapter.

10       NEW SECTION.    **Sec. 18.**        No provision of this chapter shall be  
11 deemed to make an unfair labor practice any act that was performed  
12 prior to the effective date of this act that did not constitute an  
13 unfair labor practice prior to the effective date of this act. The  
14 provisions of this chapter shall not make an unfair labor practice the  
15 performance of any obligation under a collective bargaining agreement  
16 entered into prior to the effective date of this act.

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

21       NEW SECTION.    **Sec. 20.**        Sections 1 through 19 of this act shall  
22 constitute a new chapter in Title 49 RCW.