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SENATE BILL 6361

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State of Washington

53rd Legislature

1994 Regular Session

By Senators Moore, Bauer and Wojahn

Read first time 01/20/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to labor relations in institutions of higher  
2 education; adding a new chapter to Title 41 RCW; and providing an  
3 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 promote  
6 cooperative efforts between employees and the boards of regents or  
7 boards of trustees of the four-year institutions of higher education in  
8 the state of Washington by prescribing certain rights and obligations  
9 of the employees and by establishing orderly procedures governing the  
10 relationship between the employees and their employers which procedures  
11 are designed to meet the special requirements and needs of public  
12 employment in higher education.

13 NEW SECTION. **Sec. 2.** The boards of regents and boards of trustees  
14 of the institutions of higher education as defined in section 3 of this  
15 act may engage in collective bargaining with the exclusive bargaining  
16 representatives of their employees, as provided in this chapter.

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

4        (1) "Casual employee" means an individual working in assignments of  
5 a limited scope or of a short term or transitory nature, so as to  
6 indicate that the individual does not share a community of interest  
7 with other employees of the institution and lacks an expectancy of  
8 continued employment. "Casual employee" does not include a person who,  
9 during the preceding twelve months:        (a) Worked for the same  
10 institution of higher education for more than one-sixth of the full-  
11 time equivalent work load of a full-time equivalent employee performing  
12 similar work; and (b) continues to be available for the same or other  
13 assignments.

14        (2) "Collective bargaining" and "bargaining" mean the performance  
15 of the mutual obligation of the representatives of the employer and the  
16 exclusive bargaining representative to meet at reasonable times to  
17 bargain in good faith in an effort to reach agreement with respect to  
18 wages, hours, and other terms and conditions of employment.

19        (3) "Commission" means the public employment relations commission  
20 established under RCW 41.58.010.

21        (4) "Confidential employee" means:        (a) A person who participates  
22 directly on behalf of an employer in the formulation of labor relations  
23 policy, the preparation for or conduct of collective bargaining, or the  
24 administration of collective bargaining agreements, if the role of the  
25 person is not merely routine or clerical in nature but calls for the  
26 consistent exercise of independent judgment; and (b) a person who  
27 assists and acts in a confidential capacity to a person in (a) of this  
28 subsection.

29        (5) "Employee" means any employee of an employer, except the chief  
30 executive or administrative officers of the institution of higher  
31 education, confidential employees, casual employees, supervisors, and  
32 employees subject to chapter 41.56 RCW. The term "employee" does not  
33 include any person whose employment at the institution of higher  
34 education is directly related to his or her status as a student in a  
35 degree-granting program at the institution of higher education.

36        (6) "Employee organization" means any organization, union,  
37 association, agency, committee, council, or group of any kind in which  
38 employees participate and that exists for the purpose, in whole or in  
39 part, of collective bargaining with employers.

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

5 (8) "Exclusive bargaining representative" means any employee  
6 organization that has been certified or recognized pursuant to this  
7 chapter as the representative of the employees in an appropriate  
8 collective bargaining unit.

9 (9) "Institution of higher education" means the University of  
10 Washington, Washington State University, the regional universities as  
11 defined in RCW 28B.10.016, The Evergreen State College, and any other  
12 public four-year degree-granting institution.

13 (10) "Person" means one or more individuals, labor organizations,  
14 partnerships, associations, corporations, employers, or legal  
15 representatives.

16 (11) "Supervisor" means any employee having authority, in the  
17 interest of an employer, to hire, assign, promote, transfer, lay off,  
18 recall, suspend, discipline, or discharge peers, to adjust employees'  
19 grievances, or to recommend effectively such action, if the exercise of  
20 the authority is not merely routine or clerical in nature but calls for  
21 the consistent exercise of independent judgment. An employee is not  
22 includable as a supervisor solely by reason of his or her membership on  
23 a faculty tenure or other governance committee or body or because of  
24 being a department chair or head. The term "supervisor" includes only  
25 those persons who perform a preponderance of the acts of authority  
26 specified in this subsection.

27 (12) "Unfair labor practice" means an unfair labor practice listed  
28 in section 11 of this act.

29 (13) "Union security provision" means a provision in a collective  
30 bargaining agreement under which some or all employees in the  
31 bargaining unit may be required, as a condition of continued employment  
32 on or after the thirtieth day following the beginning of such  
33 employment or the effective date of the provision, whichever is later,  
34 to become a member of the exclusive bargaining representative or pay an  
35 agency fee established by the exclusive bargaining representative at an  
36 amount not greater than the periodic dues and initiation fees uniformly  
37 required as condition of acquiring or retaining membership in the  
38 exclusive bargaining representative.

1        NEW SECTION.     **Sec. 4.**     Employees 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 also have the right to refrain from any or all of these activities  
5 except to the extent that employees may be required to make payments to  
6 an exclusive bargaining representative or charitable organization under  
7 a union security provision authorized in this chapter.

8        NEW SECTION.     **Sec. 5.**     (1) Upon the voluntary written authorization  
9 of a bargaining unit employee, the employer shall deduct from the pay  
10 of the employee the periodic dues and initiation fees uniformly  
11 required as a condition of acquiring or retaining membership in the  
12 exclusive bargaining representative. The employee authorization may be  
13 irrevocable for up to one year. Such dues and fees shall be  
14 transmitted monthly by the employer to the exclusive bargaining  
15 representative or to the depository designated by the exclusive  
16 bargaining representative.

17        (2) A collective bargaining agreement may include union security  
18 provisions, but not a closed shop. The employer shall enforce any  
19 union security provision by monthly deductions from the pay of all  
20 bargaining unit employees affected by the collective bargaining  
21 agreement and shall transmit the funds to the exclusive bargaining  
22 representative or to the depository designated by the exclusive  
23 bargaining representative.

24        (3) An employee who is covered by a union security provision and  
25 who asserts a right of nonassociation based on bona fide religious  
26 tenets or teachings of a church or religious body of which the employee  
27 is a member shall, as a condition of employment, make alternative  
28 payments to a nonreligious charity designated by agreement of the  
29 employee and the exclusive bargaining representative. The amount of  
30 the alternative payment shall be equal to the periodic dues and  
31 initiation fees uniformly required as a condition of acquiring or  
32 retaining membership in the exclusive bargaining representative. The  
33 employee shall furnish written proof that the payments have been made.  
34 If the employee and the exclusive bargaining representative do not  
35 reach agreement on the matter, the dispute shall be submitted to the  
36 commission for determination.

1        NEW SECTION.        **Sec. 6.**        In any dispute concerning the unit  
2 appropriate for collective bargaining or the allocation of employees or  
3 positions to bargaining units, the commission, after a hearing or  
4 hearings, shall determine the dispute, taking into consideration the  
5 duties, skills, and working conditions of the employees, the extent of  
6 organization among the employees, the community of interest among the  
7 employees, the desire of the employees, and the overall management  
8 structure of the employer including the interrelationships of divisions  
9 within the institution. Unnecessary fragmentation shall be avoided.  
10 All employees who are tenured or eligible to seek or be awarded tenure  
11 shall be included in the same bargaining unit at each institution of  
12 higher education.

13        NEW SECTION.        **Sec. 7.**        (1) The employee organization that has been  
14 designated by the majority of the employees in an appropriate  
15 bargaining unit as their representative for the purposes of collective  
16 bargaining shall be the exclusive bargaining representative of, and  
17 shall be required to represent, all the employees within the bargaining  
18 unit without regard to membership in that employee organization:  
19 PROVIDED, That any employee may at any time present his or her  
20 complaints or concerns to the employer and have such complaints or  
21 concerns adjusted without intervention of the exclusive bargaining  
22 representative, as long as the exclusive bargaining representative has  
23 been given an opportunity to be present at that adjustment and to make  
24 its views known, and as long as the adjustment is not inconsistent with  
25 the terms of a collective bargaining agreement then in effect.

26        (2) The commission shall resolve any dispute concerning selection  
27 of a bargaining representative in accordance with the procedures  
28 specified in this section.

29        (a) No question concerning representation may be raised within one  
30 year following a certification or attempted certification.

31        (b) No question concerning representation may be raised within one  
32 year following an election or cross-check in which the employees failed  
33 to designate an exclusive bargaining representative.

34        (c) If there is a valid collective bargaining agreement in effect,  
35 no question concerning representation may be raised except during the  
36 period not more than ninety nor less than sixty days before the  
37 expiration date of the agreement. If a valid collective bargaining  
38 agreement, together with any renewals or extensions thereof, has been

1 or will be in existence for more than three years, then a question  
2 concerning representation may be raised not more than ninety nor less  
3 than sixty days before the third anniversary date or any subsequent  
4 anniversary date of the agreement; if the exclusive bargaining  
5 representative is removed as the result of the procedure, the  
6 collective bargaining agreement shall be deemed to be terminated as of  
7 the date of the certification or the anniversary date following the  
8 filing of the petition, whichever is later.

9 (d) An employee organization seeking certification as exclusive  
10 bargaining representative of a bargaining unit of employees, or  
11 bargaining unit employees seeking decertification of an exclusive  
12 bargaining representative, shall make a confidential showing to the  
13 commission of credible evidence demonstrating that at least thirty  
14 percent of the employees in the bargaining unit are in support of the  
15 petition. The petition shall indicate the name, address, and telephone  
16 number of any employee organization known to claim an interest in the  
17 bargaining unit.

18 (e) A petition filed by an employer shall be supported by credible  
19 evidence demonstrating the basis on which the employer claims the  
20 existence of a question concerning the representation of its employees.

21 (f) Any employee organization that makes a confidential showing to  
22 the commission of credible evidence demonstrating that it has the  
23 support of at least ten percent of the employees in the bargaining unit  
24 involved may intervene in proceedings under this section and have its  
25 name listed as a choice on the ballot in an election conducted by the  
26 commission.

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

36 (h) The representation election ballot shall contain a choice for  
37 each employee organization qualifying under (d) or (f) of this  
38 subsection, together with a choice for no representation. The  
39 representation election shall be determined by the majority of the

1 valid ballots cast. If there are three or more choices on the ballot  
2 and none of the choices receives a majority of the valid ballots cast,  
3 a run-off election shall be conducted between the two choices receiving  
4 the highest and second highest numbers of votes.

5 (i) Representation that exists on the effective date of this  
6 section shall not be disturbed.

7 NEW SECTION. **Sec. 8.** In determining whether a person is acting as  
8 an agent of another person so as to make such other person responsible  
9 for his or her acts, the question of whether the specific acts  
10 performed were actually authorized or subsequently ratified shall not  
11 be controlling.

12 NEW SECTION. **Sec. 9.** (1) The commission shall broadly construe  
13 the scope of bargaining.

14 (2) Service and activity fees as defined in RCW 28B.15.041 shall  
15 not be a subject for bargaining.

16 (3) A written contract incorporating any agreements reached shall  
17 be executed if requested by either party.

18 (4) The obligation to bargain does not compel either party to agree  
19 to a proposal or to make a concession.

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

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

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

33 NEW SECTION. **Sec. 11.** (1) It is an unfair labor practice for an  
34 employer:

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

3 (b) To dominate or interfere with the formation or administration  
4 of any employee organization or contribute financial or other support  
5 to it. An employer may permit employees to confer with it or its  
6 representatives or agents during working hours without loss of time or  
7 pay;

8 (c) To encourage or discourage membership in any employee  
9 organization by discrimination in regard to hire, tenure of employment,  
10 or any term or condition of employment, but this subsection does not  
11 prevent an employer from requiring, as a condition of continued  
12 employment, payment of the periodic dues and initiation fees uniformly  
13 required to an exclusive bargaining representative under section 5 of  
14 this act;

15 (d) To discharge or discriminate otherwise against an employee  
16 because the employee has filed charges or given testimony under this  
17 chapter; or

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

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

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

28 (b) To cause or attempt to cause an employer to discriminate  
29 against an employee in violation of subsection (1)(c) of this section  
30 or to discriminate against an employee with respect to whom membership  
31 in such organization has been denied or terminated on some ground other  
32 than the failure of the employee to tender the periodic dues and  
33 initiation fees uniformly required as a condition of acquiring or  
34 retaining membership;

35 (c) To discriminate against an employee because that employee has  
36 filed charges or given testimony under this chapter; or

37 (d) To refuse to bargain collectively with the employer of  
38 employees for whom it is the exclusive bargaining representative.

1 (3) The expression of any views, argument, or opinion, or the  
2 dissemination of those views, argument, or opinion to the public,  
3 whether in written, printed, graphic, or visual form, shall not  
4 constitute or be evidence of an unfair labor practice under this  
5 chapter, if the expression contains no threat of reprisal or force or  
6 promise of benefit.

7 NEW SECTION. **Sec. 12.** (1) The commission may prevent any person  
8 from engaging in any unfair labor practice. This power shall not be  
9 affected by any other means of adjustment or prevention that has been  
10 or may be established by agreement, law, equity, or otherwise.

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

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

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

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

29 NEW SECTION. **Sec. 13.** Actions by or on behalf of the commission  
30 shall be under chapter 34.05 RCW, or rules adopted under chapter 34.05  
31 RCW.

32 NEW SECTION. **Sec. 14.** If any provision of any collective  
33 bargaining agreement between the employer and the exclusive bargaining  
34 representative requires legislative implementation or an appropriation,  
35 the employer and the exclusive bargaining representative shall seek the  
36 appropriate legislative action actively and in good faith.

1        NEW SECTION.    **Sec. 15.**    (1) Whenever a collective bargaining  
2 agreement between an employer and an exclusive bargaining  
3 representative is concluded after the termination date of the previous  
4 collective bargaining agreement between the employer and an employee  
5 organization representing the same employees, the effective date of the  
6 collective bargaining agreement may be the day after the termination  
7 date of the previous collective bargaining agreement, and all benefits  
8 included in the new collective bargaining agreement, including wage or  
9 salary increases, may accrue beginning with the effective date as  
10 established by this subsection.

11        (2) Except as otherwise provided in subsection (3) of this section,  
12 provisions of a collective bargaining agreement pertaining to salary  
13 increases may not exceed the amount or percentage established by the  
14 legislature in the appropriations act. Provisions of a collective  
15 bargaining agreement pertaining to salary increases shall not be  
16 binding upon future actions of the legislature. If any provision for  
17 a salary increase is changed by subsequent modification of the  
18 appropriations act by the legislature, the employer and the exclusive  
19 bargaining representative shall immediately enter into collective  
20 bargaining for the sole purpose of arriving at a mutually agreed upon  
21 replacement for the modified provision.

22        (3) A collective bargaining agreement may provide for the increase  
23 of any wages, salaries, and other benefits during the term of such an  
24 agreement, if the employer receives, by increased appropriation or from  
25 other sources, additional moneys for such purposes.

26        NEW SECTION.    **Sec. 16.**    (1) The commission, through the executive  
27 director, may offer its mediation services in any labor dispute  
28 involving an employer and an exclusive bargaining representative,  
29 either upon its own motion or upon the request of one or more of the  
30 parties to the dispute, if in its judgment the dispute threatens to  
31 cause a substantial disruption to the public welfare.

32        (2) A person designated as a mediator in a labor dispute under this  
33 section shall meet with the representatives of the parties, either  
34 jointly or separately, and shall take other steps as he or she deems  
35 appropriate to persuade the parties to resolve their differences. A  
36 mediator does not have power of compulsion.

37        The services of the mediator, including any per diem expenses,  
38 shall be provided by the commission without cost to the parties. This

1 section shall not be construed to prohibit an employer and an exclusive  
2 bargaining representative from agreeing to substitute at their own  
3 expense some other mediator or mediation procedure.

4 NEW SECTION. **Sec. 17.** An employer and an exclusive bargaining  
5 representative who enter into a collective bargaining agreement shall  
6 include in the agreement procedures for binding arbitration of the  
7 disputes arising about the interpretation or application of the  
8 agreement.

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

18 NEW SECTION. **Sec. 19.** Except as otherwise expressly provided in  
19 this chapter, nothing in this chapter may be construed to deny or  
20 otherwise abridge any rights, privileges, or benefits granted by law to  
21 employees.

22 NEW SECTION. **Sec. 20.** This chapter shall not be construed to  
23 interfere with the responsibilities and rights of the employer as  
24 specified by federal and state law, including the employer's  
25 responsibilities to students, the public, and other constituent  
26 elements of the institution.

27 NEW SECTION. **Sec. 21.** Sections 1 through 20 of this act shall  
28 constitute a new chapter in Title 41 RCW.

29 NEW SECTION. **Sec. 22.** If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

1        NEW SECTION.   **Sec. 23.**   This act shall take effect October 1, 1994.  
2   The public employment relations commission may immediately take such  
3   steps as are necessary to insure that this act is implemented on its  
4   effective date.

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