
HOUSE BILL 1863

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By Representatives Conway, Jacobsen, Brown, Carlson, Cole, Quall, Thibaudeau, Morris, Cody, Brumsickle, Delvin, Chopp, Basich and Scott

Read first time 02/13/95. Referred to Committee on Commerce & Labor.

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.

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

37 (7) "Employer" means the board of regents or board of trustees of
38 each institution of higher education and includes any officer, board,

1 commission, council, or other person or body acting on behalf of an
2 employer.

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

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

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

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

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

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

37 NEW SECTION. **Sec. 4.** Employees have the right to self-
38 organization, to form, join, or assist employee organizations, to

1 bargain collectively through representatives of their own choosing, and
2 also have the right to refrain from any or all of these activities
3 except to the extent that employees may be required to make payments to
4 an exclusive bargaining representative or charitable organization under
5 a union security provision authorized in this chapter.

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

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

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

35 NEW SECTION. **Sec. 6.** In any dispute concerning the unit
36 appropriate for collective bargaining or the allocation of employees or
37 positions to bargaining units, the commission, after a hearing or

1 hearings, shall determine the dispute, taking into consideration the
2 duties, skills, and working conditions of the employees, the extent of
3 organization among the employees, the community of interest among the
4 employees, the desire of the employees, and the overall management
5 structure of the employer including the interrelationships of divisions
6 within the institution. Unnecessary fragmentation shall be avoided.
7 All employees who are tenured or eligible to seek or be awarded tenure
8 shall be included in the same bargaining unit at each institution of
9 higher education.

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

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

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

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

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

1 anniversary date of the agreement; if the exclusive bargaining
2 representative is removed as the result of the procedure, the
3 collective bargaining agreement shall be deemed to be terminated as of
4 the date of the certification or the anniversary date following the
5 filing of the petition, whichever is later.

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

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

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

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

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

1 a run-off election shall be conducted between the two choices receiving
2 the highest and second highest numbers of votes.

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

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

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

12 (2) Services and activities fees as defined in RCW 28B.15.041 shall
13 not be a subject for bargaining.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (3) The expression of any views, argument, or opinion, or the
38 dissemination of those views, argument, or opinion to the public,
39 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. 12.** (1) The commission may prevent any person
5 from engaging in any unfair labor practice. This power shall not be
6 affected by any other means of adjustment or prevention that has been
7 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 appear in person or otherwise give testimony at the place and time set
14 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. 13.** Actions by or on behalf of the commission
27 shall be under chapter 34.05 RCW, or rules adopted under chapter 34.05
28 RCW.

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

34 NEW SECTION. **Sec. 15.** (1) Whenever a collective bargaining
35 agreement between an employer and an exclusive bargaining

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

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

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

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

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

35 The services of the mediator, including any per diem expenses,
36 shall be provided by the commission without cost to the parties. This
37 section shall not be construed to prohibit an employer and an exclusive

1 bargaining representative from agreeing to substitute at their own
2 expense some other mediator or mediation procedure.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 23.** This act shall take effect October 1, 1995.
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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