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**SUBSTITUTE SENATE BILL 5384**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Labor, Commerce & Financial Institutions  
(originally sponsored by Senators Prentice, Winsley, Fairley,  
Kohl-Welles and Brown)

READ FIRST TIME 02/26/01.

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 trustees of the  
7 four-year institutions of higher education in the state of Washington  
8 by prescribing certain rights and obligations of the employees and by  
9 establishing orderly procedures governing the relationship between the  
10 employees and their employers which procedures are designed to meet the  
11 special requirements and needs of public employment in higher  
12 education.

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

16 (1) "Collective bargaining" and "bargaining" means the performance  
17 of the mutual obligation of the representatives of the employer and the  
18 exclusive bargaining representative to meet at reasonable times to

1 bargain in good faith, subject to section 9 of this act, in an effort  
2 to reach agreement with respect to wages, hours, and other terms and  
3 conditions of employment.

4 (2) "Commission" means the public employment relations commission  
5 established under RCW 41.58.010.

6 (3) "Confidential employee" means: (a) A person who participates  
7 directly on behalf of an employer in the formulation of labor relations  
8 policy, the preparation for or conduct of collective bargaining, or the  
9 administration of collective bargaining agreements, if the role of the  
10 person is not merely routine or clerical in nature but calls for the  
11 consistent exercise of independent judgment; and (b) a person who  
12 assists and acts in a confidential capacity to a person in (a) of this  
13 subsection.

14 (4) "Employee" means any full or regular part-time faculty member,  
15 not including the chief executive or administrative officers of the  
16 institution of higher education, confidential employees, supervisors,  
17 and employees subject to chapter 41.06 or 41.56 RCW.

18 (5) "Employee organization" means any organization, union,  
19 association, agency, committee, council, or group of any kind in which  
20 employees participate and that exists for the purpose, in whole or in  
21 part, of collective bargaining with employers.

22 (6) "Employer" means the board of trustees of each institution of  
23 higher education and includes any officer, board, commission, council,  
24 or other person or body acting on behalf of an employer.

25 (7) "Exclusive bargaining representative" means any employee  
26 organization that has been certified or recognized under this chapter  
27 as the representative of the employees in an appropriate collective  
28 bargaining unit.

29 (8) "Institution of higher education" means the regional  
30 universities as defined under RCW 28B.15.005 and The Evergreen State  
31 College.

32 (9) "Person" means one or more individuals, labor organizations,  
33 partnerships, associations, corporations, employers, or legal  
34 representatives.

35 (10) "Shared governance" means the exercise of the functions of the  
36 faculty in any shared governance mechanisms or practices, including the  
37 faculty senate, faculty councils, and faculty codes.

38 (11) "Supervisor" means any employee having authority, in the  
39 interest of an employer, to hire, assign, promote, transfer, lay off,

1 recall, suspend, discipline, or discharge peers, or to recommend  
2 effectively such action, if the exercise of the authority is not merely  
3 routine or clerical in nature but calls for the consistent exercise of  
4 independent judgment. An employee is not includable as a supervisor  
5 solely by reason of his or her membership on a faculty tenure or other  
6 governance committee or body or because of being a department chair or  
7 head. The term "supervisor" includes only those persons who perform a  
8 preponderance of the acts of authority specified in this subsection.

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

11 (13) "Union security provision" means a provision in a collective  
12 bargaining agreement under which some or all employees in the  
13 bargaining unit may be required, as a condition of continued employment  
14 on or after the thirtieth day following the beginning of such  
15 employment or the effective date of the provision, whichever is later,  
16 to become a member of the exclusive bargaining representative or pay an  
17 agency fee established by the exclusive bargaining representative at an  
18 amount not greater than the periodic dues and initiation fees uniformly  
19 required as condition of acquiring or retaining membership in the  
20 exclusive bargaining representative.

21 NEW SECTION. **Sec. 3.** The boards of trustees of the institutions  
22 of higher education as defined in section 2 of this act may engage in  
23 collective bargaining with the exclusive bargaining representatives of  
24 their employees, as provided in this chapter.

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

32 NEW SECTION. **Sec. 5.** (1) Upon the voluntary written authorization  
33 of a bargaining unit employee, the employer shall deduct from the pay  
34 of the employee the periodic dues and initiation fees uniformly  
35 required as a condition of acquiring or retaining membership in the  
36 exclusive bargaining representative. The employee authorization may be

1 irrevocable for up to one year. Such dues and fees shall be  
2 transmitted monthly by the employer to the exclusive bargaining  
3 representative or to the depository designated by the exclusive  
4 bargaining representative.

5 (2) A collective bargaining agreement may include union security  
6 provisions, but not a closed shop. The employer shall enforce any  
7 union security provision by monthly deductions from the pay of all  
8 bargaining unit employees affected by the collective bargaining  
9 agreement and shall transmit the funds to the exclusive bargaining  
10 representative or to the depository designated by the exclusive  
11 bargaining representative.

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

25 NEW SECTION. **Sec. 6.** In any dispute concerning the unit  
26 appropriate for collective bargaining or the allocation of employees or  
27 positions to bargaining units, the commission, after a hearing or  
28 hearings, shall determine the dispute, taking into consideration the  
29 duties, skills, and working conditions of the employees, the extent of  
30 organization among the employees, the community of interest among the  
31 employees, the desire of the employees, and the overall management  
32 structure of the employer including the interrelationships of divisions  
33 within the institution. A faculty bargaining unit consists of all  
34 full-time and regular part-time faculty. Unnecessary fragmentation  
35 shall be avoided.

36 NEW SECTION. **Sec. 7.** (1) The employee organization that has been  
37 designated by the majority of the employees in an appropriate

1 bargaining unit as their representative for the purposes of collective  
2 bargaining shall be the exclusive bargaining representative of, and  
3 shall be required to represent, all the employees within the bargaining  
4 unit without regard to membership in that employee organization:  
5 PROVIDED, That any employee may at any time present his or her  
6 complaints or concerns to the employer and have such complaints or  
7 concerns adjusted without intervention of the exclusive bargaining  
8 representative, as long as the exclusive bargaining representative has  
9 been given an opportunity to be present at that adjustment and to make  
10 its views known, and as long as the adjustment is not inconsistent with  
11 the terms of a collective bargaining agreement then in effect.

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

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

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

20 (c) If there is a valid collective bargaining agreement in effect,  
21 no question concerning representation may be raised except during the  
22 period not more than ninety nor less than sixty days before the  
23 expiration date of the agreement. If a valid collective bargaining  
24 agreement, together with any renewals or extensions thereof, has been  
25 or will be in existence for more than three years, then a question  
26 concerning representation may be raised not more than ninety nor less  
27 than sixty days before the third anniversary date or any subsequent  
28 anniversary date of the agreement; if the exclusive bargaining  
29 representative is removed as the result of the procedure, the  
30 collective bargaining agreement shall be deemed to be terminated as of  
31 the date of the certification or the anniversary date following the  
32 filing of the petition, whichever is later.

33 (d) An employee organization seeking certification as exclusive  
34 bargaining representative of a bargaining unit of employees, or  
35 bargaining unit employees seeking decertification of an exclusive  
36 bargaining representative, shall make a confidential showing to the  
37 commission of credible evidence demonstrating that at least thirty  
38 percent of the employees in the bargaining unit are in support of the  
39 petition. The petition shall indicate the name, address, and telephone

1 number of any employee organization known to claim an interest in the  
2 bargaining unit.

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

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

12 (g) The commission shall determine any question concerning  
13 representation by conducting a secret ballot election among the  
14 employees in the bargaining unit. However, if the commission  
15 determines that a serious unfair labor practice has been committed  
16 that interfered with the election process and precludes the holding of  
17 a fair election, the commission may determine the question concerning  
18 representation by conducting a cross-check comparing the employee  
19 organization's membership records or bargaining authorization cards  
20 against the employment records of the employer.

21 (h) The representation election ballot shall contain a choice for  
22 each employee organization qualifying under (d) or (f) of this  
23 subsection, together with a choice for no representation. The  
24 representation election shall be determined by the majority of the  
25 valid ballots cast. If there are three or more choices on the ballot  
26 and none of the choices receives a majority of the valid ballots cast,  
27 a run-off election shall be conducted between the two choices receiving  
28 the highest and second highest numbers of votes.

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

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

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

1 (2) Tuition fees under RCW 28B.15.020 and services and activities  
2 fees under RCW 28B.15.041 are not subjects for bargaining.

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

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

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

11 NEW SECTION. **Sec. 10.** (1) The commission shall adopt rules as  
12 necessary and appropriate to administer this chapter, consistent with  
13 the best standards of labor-management relations.

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

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

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

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

27 (c) To encourage or discourage membership in any employee  
28 organization by discrimination in regard to hire, tenure of employment,  
29 or any term or condition of employment, but this subsection does not  
30 prevent an employer from requiring, as a condition of continued  
31 employment, payment of the periodic dues and initiation fees uniformly  
32 required to an exclusive bargaining representative under section 5 of  
33 this act;

34 (d) To discharge or discriminate otherwise against an employee  
35 because the employee has filed charges or given testimony under this  
36 chapter;

1 (e) To refuse to bargain collectively with the exclusive bargaining  
2 representative of its employees; or

3 (f) To unilaterally alter or abolish the shared governance system.

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

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

12 (b) To cause or attempt to cause an employer to discriminate  
13 against an employee in violation of subsection (1)(c) of this section  
14 or to discriminate against an employee with respect to whom membership  
15 in such organization has been denied or terminated on some ground other  
16 than the failure of the employee to tender the periodic dues and  
17 initiation fees uniformly required as a condition of acquiring or  
18 retaining membership;

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

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

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

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

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

36 (3) The person or persons named as respondent in a complaint  
37 charging unfair labor practices may file an answer to the complaint and

1 appear in person or otherwise give testimony at the place and time set  
2 by the commission for hearing.

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

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

14 NEW SECTION. **Sec. 13.** If any provision of any collective  
15 bargaining agreement between the employer and the exclusive bargaining  
16 representative requires legislative implementation or an appropriation,  
17 the employer and the exclusive bargaining representative shall seek the  
18 appropriate legislative action actively and in good faith.

19 NEW SECTION. **Sec. 14.** Whenever a collective bargaining agreement  
20 between an employer and an exclusive bargaining representative is  
21 concluded after the termination date of the previous collective  
22 bargaining agreement between the employer and an employee organization  
23 representing the same employees, the effective date of the collective  
24 bargaining agreement may be the day after the termination date of the  
25 previous collective bargaining agreement, and all benefits included in  
26 the new collective bargaining agreement, including wage or salary  
27 increases, may accrue beginning with the effective date as established  
28 by this subsection.

29 NEW SECTION. **Sec. 15.** (1) The commission, through the executive  
30 director, may offer its mediation services in any labor dispute  
31 involving an employer and an exclusive bargaining representative,  
32 either upon its own motion or upon the request of one or more of the  
33 parties to the dispute, if in its judgment the dispute threatens to  
34 cause a substantial disruption to the public welfare.

35 (2) A person designated as a mediator in a labor dispute under this  
36 section shall meet with the representatives of the parties, either

1 jointly or separately, and shall take other steps as he or she deems  
2 appropriate to persuade the parties to resolve their differences. A  
3 mediator does not have power of compulsion.

4 The services of the mediator, including any per diem expenses,  
5 shall be provided by the commission without cost to the parties. This  
6 section shall not be construed to prohibit an employer and an exclusive  
7 bargaining representative from agreeing to substitute at their own  
8 expense some other mediator or mediation procedure.

9 NEW SECTION. **Sec. 16.** An employer and an exclusive bargaining  
10 representative who enter into a collective bargaining agreement shall  
11 include in the agreement procedures for binding arbitration of the  
12 disputes arising about the interpretation or application of the  
13 agreement.

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

23 NEW SECTION. **Sec. 18.** Except as otherwise expressly provided in  
24 this chapter, this chapter does not deny or otherwise abridge any  
25 rights, privileges, or benefits granted by law to employees.

26 NEW SECTION. **Sec. 19.** This chapter does not interfere with the  
27 responsibilities and rights of the employer as specified by federal and  
28 state law, including the employer's responsibilities to students, the  
29 public, and other constituent elements of the institution of higher  
30 education.

31 NEW SECTION. **Sec. 20.** Sections 1 through 19, 21, and 22 of this  
32 act constitute a new chapter in Title 41 RCW.

1        NEW SECTION.    **Sec. 21.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 22.**    This act takes effect October 1, 2001. The  
6 public employment relations commission may immediately take such steps  
7 as are necessary to insure that this act is implemented on its  
8 effective date.

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