

HOUSE BILL REPORT

HB 1961

*As Reported By House Committee on:
Commerce & Labor
Appropriations*

Title: An act relating to agricultural labor relations.

Brief Description: Adopting the Washington agricultural labor relations act.

Sponsor(s): 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.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 26, 1991, DP;
Appropriations, March 8, 1991, DP.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass.* Signed by 7 members:
Representatives Heavey, Chair; Cole, Vice Chair; Franklin;
Jones; R. King; O'Brien; and Prentice.

Minority Report: *Do not pass.* Signed by 4 members:
Representatives Fuhrman, Ranking Minority Member; Lisk,
Assistant Ranking Minority Member; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: Under Washington law, employees are permitted to organize and form labor unions for the purpose of improving their working conditions. However, no specific procedures are provided for implementing or enforcing collective bargaining between agricultural employees and employers.

Agricultural employees are not covered by the National Labor Relations Act. Several states, including California, Arizona, Idaho, and Kansas, have statutes governing agricultural collective bargaining. Two states, Hawaii and Wisconsin, include agricultural employees under general collective bargaining laws.

Summary of Bill: Collective bargaining procedures for agricultural employment are established in the Washington Agricultural Labor Relations Act.

Covered employment. The act covers all employers and employees in farming, including dairying and raising livestock, and forestry or lumbering operations, and activities incident to farming operations, including preparation for market or delivery to storage. It also covers aquatic farming and activities related to collecting specialized forest products. The act does not apply to governmental employees or employees covered by the National Labor Relations Act or the Railway Labor Act.

Scope of bargaining. Collective bargaining is authorized over wages, hours, and other terms and conditions of employment. During the term of a contract, no party may terminate or modify the contract unless written notice has been served on the other party not less than 60 days before the contract terminates, an offer has been made to negotiate the modification, and the parties continue the terms of the contract for 60 days after notice is given or until expiration of the contract, whichever is later.

Rights of employees. Employees have the right to self-organization, to join employee organizations, to bargain collectively and to engage in other lawful concerted activities for mutual aid and protection, or to refrain from such activities, except for a fee requirement under a union security provision.

Right to strike. Nothing in the act, unless specifically provided, may be construed to interfere with or diminish the right to strike.

Representation. The state Agricultural Labor Relations Board certifies the exclusive bargaining representatives and conducts representation elections. The board must investigate and hold hearings on petitions for representation or decertification. Petitions may be filed only during the season of peak agricultural employment; at least 50 percent of the peak employment for the calendar year is on the payroll. Elections must be held within seven days of the hearing if a question of representation exists. If the majority of employees are engaged in a strike, the board must attempt to hold the election within 48 hours. Elections may not be held in any bargaining unit in which a valid election has been held in the previous 12 months.

Once a petition has been filed, an employee organization has the right to communicate peacefully with the employees, but may not interfere with the performance of work. A payroll

list must be made available to the employee organization and the board.

Within five days after an election, any person may file a challenge to the election. If no challenge is filed, the board must certify the election.

Bargaining units. The bargaining unit consists of all of the employees of an employer. The board must determine the appropriate unit if the employer has employees in two noncontiguous geographical areas.

Union security. Collective bargaining agreements may require union shop fees as a condition of employment in the bargaining unit. Persons asserting a right of nonassociation may designate their fee for a charitable organization.

Unfair labor practices. Unfair labor practices for employers and employee organizations are enumerated. Employers may not interfere with or coerce employees in the exercise of their collective bargaining rights, or lock out workers or hire replacements during a strike; control or interfere with the exclusive bargaining representative; discriminate against an employee who has filed an unfair labor practice charge; influence the outcome of a secret ballot election; interrogate or engage in surveillance of employees; communicate a preference for bargaining with any employee organization unless the communication contains no threat or promise of benefits; refuse to engage in collective bargaining; bargain with a noncertified employee organization; or refuse to cooperate with an affirmative action program. Employee organizations may not interfere with or coerce employees in the exercise of their collective bargaining rights or employers in the selection of representatives for bargaining; induce the employer to commit an unfair labor practice; solicit or accept financial support from an employer; refuse to engage in collective bargaining; or refuse to cooperate with an affirmative action program. The unfair labor practices do not prohibit employees from engaging in a secondary boycott.

The state Agricultural Labor Relations Board is authorized to determine unfair labor practice cases. Complaints must be filed within six months of the unfair labor practice. The board may order the party engaging in an unfair labor practice to cease the practice, and may order reinstatement of an employee, with or without back pay, and make employees "whole" for loss of pay resulting from refusal to bargain. The board may petition for enforcement of an order in the superior court. Appeals may be filed from board orders, but the appeal does not stay the board's order.

If the board finds that an employer has not bargained in good faith, the board must order the parties to submit to interest arbitration.

Administration and enforcement. The state Agricultural Labor Relations Board is created to provide administration and adjudication of the collective bargaining provisions. The three member board is appointed by the governor. Board members are compensated on a per diem basis.

The board must appoint a director to whom the board may delegate authority with respect to administrative of the act.

Any person who willfully resists or interferes with members of the board in the performance of their duties is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor under Title 9A RCW.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: All workers should have the same opportunity to collective bargain under procedures that protect these rights. Collective bargaining is one method of addressing the poor working conditions that agricultural employees continue to face. Without bargaining procedures, labor disputes are frequent and disruptive to the industry. Employers are free to refuse to bargain and to discriminate against workers who try to improve their working conditions. Workers cannot achieve a position of parity with the employer without procedures that make the process clear to both sides.

Testimony Against: This legislation is not needed, because employees are free to join unions now. The legislation would only increase labor tensions, make labor relations more cumbersome, and insert a third party into the relationship between the employer and the worker. It is not apparent that the majority of workers are supporting this legislation. Strikes are extremely costly to the industry when the grower's entire annual income depends on getting the crop harvested. Agricultural labor relations requires very careful tailoring to take into account the special needs of the industry. Some provisions of this bill go beyond what is permitted in bargaining under the federal labor laws, such as permitting secondary boycotts and restricting the employers' ability to lock out employees.

Witnesses: (in favor): Representative Jesse Wineberry, prime sponsor; Tomas Villanueva, United Farm Workers; Jeff Johnson, Washington State Labor Council; Lupe Gamboa, Evergreen Legal Services; Andrew Rodriguez, Washington State Commission on Hispanic Affairs; Tony Lee, Washington Association of Churches; Matt Herreshoff, Socialist Worker's Party; and Manuel Arambul.

(opposed): Ron Gamache, Yakima County Farm Bureau; Frank DeLong, Washington State Horticultural Association; Ray Schindler, Mike Harker, and Tom Clayton, Washington Asparagus Growers; Clif Finch, Association of Washington Business; and Mike Gempler, Washington Grower's League.

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *Do pass.* Signed by 17 members: Representatives Locke, Chair; Inslee, Vice Chair; Spanel, Vice Chair; Appelwick; Belcher; Braddock; Brekke; Dorn; Ebersole; Hine; Pruitt; Rust; H. Sommers; Sprenkle; Valle; Wang; and Wineberry.

Minority Report: *Do not pass.* Signed by 11 members: Representatives Silver, Ranking Minority Member; Morton, Assistant Ranking Minority Member; Bowman; Ferguson; Fuhrman; Lisk; May; McLean; Mielke; Nealey; and Vance.

Staff: Susan Nakagawa (786-7145).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Commerce & Labor: No changes were recommended.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of the session in which the bill is passed.

Testimony For: Farm workers need the protection of collective bargaining. Agricultural employees lack the protections afforded to other employees which include collective bargaining rights.

Testimony Against: None.

Witnesses: Representative Jesse Wineberry; Jeff Johnson, Washington State Labor Council AFL-CIO; Roberto Maestos, El Centro de la Raza; and Phil Kaplan, United Farm Workers of Washington.