
ENGROSSED 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, or any person who does not
13 employ more than twenty-four employees at any time during the current
14 calendar year. If an employer uses the services of a farm labor
15 contractor, or of a person functioning as a farm labor contractor, or
16 of another person supplying agricultural labor, the employer shall be
17 deemed to be the employer of the employees for the purposes of this
18 chapter.

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

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

28 (6) "Employee organization" means any organization, union,
29 association, agency, committee, council, or group of any kind in which
30 employees participate and which exists for the purpose, in whole or in

1 part, of dealing with employers concerning grievances, labor disputes,
2 wages, rates of pay, hours of employment, or conditions of employment.

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

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

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

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

18 (11) "Unfair labor practice" means any unfair labor practice listed
19 in sections 7 and 8 of this act.

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

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

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

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

26 NEW SECTION. **Sec. 5.** (1) Members of the board shall devote
27 their entire time to the duties of the board and shall receive for
28 services a salary as fixed by the governor in accordance with RCW
29 43.03.040, which shall be in addition to reimbursement for travel

1 expenses incurred in the discharge of their official duties as provided
2 in RCW 43.03.050 and 43.03.060.

3 (2) The board may appoint an executive director whose annual salary
4 shall be determined under RCW 43.03.028. The executive director shall
5 perform the duties and have the powers the board prescribes to carry
6 out the provisions of this chapter. The executive director, with
7 additional legal assistance consistent with chapter 43.10 RCW, shall
8 have authority on behalf of the board in matters concerning the
9 administration of this chapter, and shall perform the duties prescribed
10 by the board.

11 (3) When necessary to carry out or enforce any action or decision
12 of the board, the executive director shall have authority to petition
13 a court of competent jurisdiction for an order requiring compliance
14 with the board action or decision.

15 (4) The board may employ employees, including attorneys, as it
16 finds necessary for the proper performance of its duties, consistent
17 with the provisions of this chapter.

18 (5) The payment of all of the expenses of the board, including
19 travel expenses incurred by the members or employees of the board under
20 its orders, shall be subject to the provisions of RCW 43.03.050 and
21 43.03.060.

22 (6) The board shall have the authority to make, amend, and rescind,
23 in the manner prescribed by the administrative procedure act, chapter
24 34.05 RCW, rules necessary to carry out this chapter.

25 NEW SECTION. **Sec. 6.** Employees shall 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 to engage in other concerted activities for the purpose of collective
29 bargaining or other mutual aid or protection, and shall also have the

1 right to refrain from any or all such activities, except that employees
2 may be required to pay a fee to an exclusive bargaining representative
3 under a union security provision authorized by this chapter.

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

6 (a) To interfere with, restrain, or coerce employees in the
7 exercise of the rights guaranteed in this chapter. Violations of this
8 subsection include the hiring of permanent employees to replace
9 striking or locked out employees;

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

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

19 (d) To discharge or otherwise discriminate against an employee
20 because the employee has filed charges or given testimony under this
21 chapter, has participated in secret ballot elections authorized under
22 this chapter, or has opposed unfair labor practices as defined in this
23 chapter;

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

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

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

4 (h) To engage in surveillance or cause the surveillance of any
5 agricultural employee;

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

9 (j) To communicate to any agricultural employee, expressly or
10 impliedly, a preference for recognizing, bargaining with, or otherwise
11 dealing with any particular labor organization or organizations unless
12 the communication contains no threat of reprisal or force or promise of
13 benefit;

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

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

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

25 (a) Nothing in this chapter precludes an employer from making an
26 agreement with an employee organization to require, as a condition of
27 employment, payment of a union shop fee on or after the seventh day
28 following the beginning of employment or the effective date of the
29 agreement, whichever is later, (i) if the employee organization is the
30 exclusive representative of the employees as provided in section 10 of

1 this act, in the appropriate collective bargaining unit covered by the
2 agreement when made, and (ii) unless following an election held as
3 provided in section 10 of this act within one year preceding the
4 effective date of the agreement, the board has certified that at least
5 a majority of the employees eligible to vote in the election have voted
6 to rescind the authority of the employee organization to make such an
7 agreement; and

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

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

21 (1) To interfere with, restrain, or coerce: (a) Employees in the
22 exercise of the rights guaranteed in this chapter, but nothing in this
23 subsection shall impair the right of an employee organization to
24 prescribe its own rules with respect to the acquisition or retention of
25 its membership; or (b) an employer in the selection of representatives
26 for the purposes of collective bargaining or the adjustment of
27 grievances;

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

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

5 (4)(a) To engage in, or to induce or encourage an individual
6 employed by any person to engage in a strike, or a refusal in the
7 course of his or her employment to use, manufacture, process,
8 transport, or otherwise handle or work on any goods, articles,
9 materials, or commodities, or to perform any services in a normal and
10 expeditious manner; or

11 (b) To threaten, coerce, or restrain any person with the object of:

12 (i) Forcing or requiring an employer or self-employed person to
13 join an employee or employer organization;

14 (ii) Forcing or requiring a person to cease using, selling,
15 handling, transporting, or otherwise dealing in the products of any
16 other producer, processor, or manufacturer, or to cease doing business
17 with any other person, or forcing or requiring any other employer to
18 recognize or bargain with an employee organization as the
19 representative of his or her employees unless such employee
20 organization has been certified as the representative of the employees
21 under the provisions of section 10 of this act. However, nothing
22 contained in this subsection (4)(b)(ii) shall be construed to make
23 unlawful, where not otherwise unlawful, a primary strike or primary
24 picketing;

25 (iii) Forcing or requiring an employer to bargain with a particular
26 employee organization as the representative of employees if another
27 employee organization has been certified as the representative of such
28 employees under the provisions of section 10 of this act; or

29 (iv) Forcing or requiring an employer to assign particular work to
30 employees in a particular employee organization or in a particular

1 trade, craft, or class rather than to employees in another employee
2 organization or in another trade, craft, or class, unless such employer
3 is failing to conform to an order or certification of the board
4 determining the bargaining representative for employees performing such
5 work.

6 For the purposes of this subsection (4), nothing contained in this
7 subsection shall be construed to prohibit publicity, other than
8 picketing, for the purpose of truthfully advising the public, including
9 consumers and members of an employee organization, that a product is
10 produced by an employer with whom the employee organization has a
11 primary dispute and is distributed by another employer, as long as the
12 publicity does not have the effect of inducing an individual employed
13 by any person other than the primary employer, in the course of his or
14 her employment, to refuse to pick up, deliver, or transport any goods,
15 or not to perform any services at the establishment of the employer
16 engaged in such distribution, and as long as such publicity does not
17 have the effect of requesting the public to cease patronizing such
18 other employer. However, publicity which includes picketing and has
19 the effect of requesting the public to cease patronizing such other
20 employer shall be permitted only if the employee organization is
21 currently certified as the representative of the primary employer's
22 employees. Publicity other than picketing, but including peaceful
23 distribution of literature, which has the effect of requesting the
24 public to cease patronizing such other employer, shall be permitted
25 only if the employee organization has not lost an election for the
26 primary employer's employees within the preceding twelve-month period,
27 and no other employee organization is currently certified as the
28 representative of the primary employer's employees. Nothing contained
29 in this subsection shall be construed to prohibit publicity, including

1 picketing, which may not be prohibited under the United States
2 Constitution or the Washington Constitution;

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

6 (6) To refuse to bargain with or to refuse to cooperate with or
7 assist an employer regarding compliance with the conditions of an
8 affirmative action program or a program or plan designed to assure
9 compliance by the employer with the provisions of state or federal laws
10 relating to equal employment opportunity for all persons regardless of
11 race, creed, color, national origin, age, sex, marital status, or
12 physical or mental handicap.

13 NEW SECTION. **Sec. 9.** (1) For the purpose of this section, to
14 bargain collectively is the performance of the mutual obligation of the
15 employer and the representative of the employees to meet at reasonable
16 times and confer in good faith with respect to wages, hours, and other
17 terms and conditions of employment, or the negotiation of an agreement,
18 or any question arising thereunder, and the execution of a written
19 contract incorporating any agreement reached if requested by either
20 party, but such obligation does not compel either party to agree to a
21 proposal or require either party to make a concession. If there is in
22 effect a collective bargaining contract covering employees, the duty to
23 bargain collectively also means that no party to the contract may
24 terminate or modify the contract, unless the party desiring termination
25 or modification:

26 (a) Serves a written notice upon the other party to the contract of
27 the proposed termination or modification not less than sixty days
28 before the expiration date of the contract or, in the event the

1 contract contains no expiration date, not less than sixty days before
2 the time it is proposed to make the termination or modification;

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

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

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

13 (2) The duties imposed upon employers, employees, and employee
14 organizations by subsection (1) (b), (c), and (d) of this section shall
15 become inapplicable upon an intervening certification of the board
16 under which the employee organization or individual that is a party to
17 the contract has been superseded as or ceased to be the representative
18 of the employees under this chapter and the duties so imposed shall not
19 be construed as requiring either party to discuss or agree to any
20 modification of the terms and conditions contained in a contract for a
21 fixed period, if such modification is to become effective before the
22 terms and conditions can be reopened under the provisions of the
23 contract. An employee who engages in a strike within the sixty-day
24 period specified in this subsection shall lose his or her status as an
25 employee of the employer engaged in the particular labor dispute for
26 the purposes of sections 7 through 11 of this act, but such loss of
27 status for the employee shall terminate if and when he or she is
28 reemployed by the employer.

1 (3) If the parties have not settled the dispute after the
2 termination of the sixty-day period provided in this section, the
3 employees may strike or the employer may lock out employees.

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

17 (2) The bargaining unit shall be all the agricultural employees of
18 an employer. If the agricultural employees of the employer are
19 employed in two or more noncontiguous geographical areas, the board
20 shall determine the appropriate unit or units of agricultural employees
21 in which a secret ballot election shall be conducted. In determining
22 whether a unit is appropriate under this subsection, the extent to
23 which the employees have organized shall not be controlling.

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

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

28 (ii) The number of agricultural employees currently employed by the
29 employer named in the petition, as determined from the payroll

1 immediately preceding the filing of the petition, is not less than
2 fifty percent of the employer's peak agricultural employment for the
3 current calendar year;

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

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

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

12 (vi) The employee organization named in the petition has not,
13 within the twelve months immediately preceding the filing of the
14 petition, discriminated against any member or prospective member of the
15 organization who is engaged in agricultural employment on the basis of
16 race, color, national origin, religion, sex, or any other arbitrary or
17 invidious classification. A finding by the United States equal
18 employment opportunities commission under 29 U.S.C. Sec. 2000 that the
19 employee organization has violated subchapter IV of chapter 21 of Title
20 42 of the United States Code, or by the state human rights commission
21 that the employee organization has engaged in unfair practices under
22 RCW 49.60.190, shall be prima facie evidence of discrimination. Any
23 issue of discrimination under this subsection may be determined by the
24 board at a hearing following an election under this section. If the
25 board determines that discrimination has occurred, it shall either (A)
26 refuse to certify the employee organization if the organization
27 receives a majority of the votes cast and has not yet been certified by
28 the board, or (B) decertify the organization if it had certified the
29 organization under this section.

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

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

20 (c) In determining whether or not a question of representation
21 exists, the same rules of decision shall apply irrespective of the
22 identity of the persons filing the petition or the kind of relief
23 sought and in no case shall the board deny an employee organization a
24 place on the ballot by reason of an order with respect to the employee
25 organization or its predecessor not issued in conformity with section
26 11(3) of this act.

27 (d) No election shall be directed in any bargaining unit or any
28 subdivision within which, in the preceding twelve-month period, a valid
29 election has been held. All agricultural employees of the employer
30 whose names appear on the payroll applicable to the payroll period

1 immediately preceding the filing of the petition for an election,
2 except employees who are replacing striking or locked out employees,
3 shall be eligible to vote. Employees engaged in an economic strike
4 shall be eligible to vote under such rules as the board finds are
5 consistent with the purposes and provisions of this chapter in any
6 election conducted within twelve months after the commencement of the
7 strike. In any election where none of the choices on the ballot
8 receives a majority, a run-off shall be conducted, the ballot providing
9 for a selection between the two choices receiving the largest and
10 second largest number of valid votes cast in the election.

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

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

23 (6) The employer shall make the payroll list available to the
24 department and any labor organization qualified to appear on the ballot
25 no less than forty-eight hours prior to any election. If the employer
26 is unable to compile a full and accurate list within the time allowed,
27 the board shall proceed to determine eligibility on the basis of such
28 other evidence as is available to the board at that time. If an
29 employer willfully supplies the board with an inaccurate list or
30 otherwise willfully fails to perform its obligations under this

1 section, the petitioning employee organization shall be certified as
2 the exclusive bargaining representative of the employer's employees.

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

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

25 (9) Whenever a majority of the agricultural employees in a
26 bargaining unit engage in a bona fide strike for the right to an
27 election under this chapter, and an employee or group of employees, or
28 any individual or employee organization acting on their behalf, makes
29 a demand on the employer for an election under this chapter, the

1 employees shall be deemed to have selected the employee organization as
2 their bargaining representative.

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

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

25 (2) Whenever it is charged that a person has engaged in or is
26 engaging in an unfair labor practice, the board or its agent shall have
27 power to issue and cause to be served upon such person a complaint
28 stating the charges in that respect, and containing a notice of hearing
29 before the board or a member thereof, or before its designated agent or

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

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

23 (b) If, upon the preponderance of the testimony taken, the board is
24 of the opinion that a person named in the complaint has engaged in or
25 is engaging in an unfair labor practice, the board shall state its
26 findings of fact and shall issue and cause to be served upon the person
27 an order requiring the person to cease and desist from the unfair labor
28 practice, and to take such affirmative action, including reinstatement
29 of employees with or without back pay and, when the board deems such
30 relief appropriate, making employees whole for loss of pay resulting

1 from the employer's refusal to bargain, and to provide such other
2 relief as will effectuate the policies of this chapter. If an order
3 directs the reinstatement of an employee, back pay may be required of
4 the employer or employee organization, as the case may be, responsible
5 for the discrimination. An order may further require reports showing
6 the extent to which the order has been complied with.

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

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

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

23 (f) In determining whether a complaint shall issue alleging a
24 violation of section 7(1) (a) or (b) of this act, and in deciding such
25 cases, the same rules and decisions of the board shall apply whether or
26 not the employee organization affected is affiliated with an employee
27 organization that is national or international in scope. However, no
28 officer or member of an employee organization and no employee
29 organization participating or interested in a labor dispute shall be
30 held responsible or liable for the unlawful acts of individual

1 officers, members, or agents, except upon clear evidence of actual
2 participation in, or actual authorization of, the acts, or of
3 ratification of the acts after actual knowledge of the acts.

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

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

26 (6) The commencement of proceedings under subsection (5) of this
27 section shall not, unless specifically ordered by the court, operate as
28 a stay of the board's order. An order directing an election shall not
29 be stayed pending review.

1 (7) Petitions filed under this section shall be heard
2 expeditiously.

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

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

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

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

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

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

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

1 the board, its member, or agent shall be paid the same fees and mileage
2 that are paid witnesses in the superior courts, and witnesses whose
3 depositions are taken and the persons taking the same shall severally
4 be entitled to the same fees as are paid for like services in the
5 superior courts; and

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

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

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

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

24 NEW SECTION. **Sec. 16.** Nothing in this chapter, except as
25 specifically provided, shall be construed to interfere with or impede

1 or diminish in any way the right to strike, or to affect the
2 limitations or qualifications on that right.

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

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

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

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