
SUBSTITUTE SENATE BILL 5347

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Prentice, Pelz, Moore, Talmadge, Fraser and Niemi)

Read first time 03/03/93.

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.** (1) This chapter shall be known and cited as
5 the agricultural employment relations act.

6 (2) It is hereby stated to be the policy of the state of Washington
7 to encourage and protect the right of agricultural employees to full
8 freedom of association, self-organization, and designation of
9 representatives of their own choosing for the purpose of collective
10 bargaining. Industrial strife can be avoided or substantially
11 minimized, and the public interest protected, if employers and
12 employees recognize each other's legitimate rights under law in their
13 relations with one another. It is the purpose and policy of this
14 chapter to prescribe the collective bargaining rights of employees and
15 employers in the agricultural industry, to provide orderly and peaceful
16 procedures for preventing the interference by one with the rights of
17 the other, to protect the rights of individual employees, to define and
18 proscribe practices on the part of labor and management that are

1 inimical to the general welfare, and to protect the rights of the
2 public in connection with labor disputes.

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

6 (1) "Agriculture" includes farming in all its branches, and among
7 other things, includes the cultivation and tillage of the soil,
8 dairying, the production, cultivation, growing, and harvesting of
9 agricultural or horticultural commodities, including commodities
10 defined as agricultural commodities in 12 U.S.C. Sec. 1141j(g), the
11 raising of livestock, bees, furbearing animals, or poultry, and
12 practices, including forestry or lumbering operations, performed by a
13 farmer or on a farm as an incident to or in conjunction with the
14 farming operations, including preparation for market and delivery to
15 storage, or to market, or to carriers for transportation to market.

16 (2) "Collective bargaining" means the performance of the mutual
17 obligation of the employer and the exclusive bargaining representative
18 to meet at reasonable times and to bargain in good faith in an effort
19 to reach agreement with respect to wages, hours, and other terms and
20 conditions of employment, or the negotiation of a question arising
21 under a collective bargaining agreement. A written contract
22 incorporating an agreement reached shall be executed if requested by
23 either party. The obligation to bargain does not compel either party
24 to agree to a proposal or to make a concession, except as otherwise
25 provided in this chapter.

26 (3) "Commission" means the commission established in chapter 41.58
27 RCW which for purposes of this chapter shall be known as the Washington
28 employment relations commission.

29 (4) "Employee" means anyone employed by an employer in agriculture,
30 and shall not be limited to the employees of a particular employer,
31 unless this chapter explicitly states otherwise, and shall include an
32 individual whose work has ceased as a consequence of, or in connection
33 with, a current labor dispute or because of an unfair labor practice,
34 and who has not obtained any other regular and substantially equivalent
35 employment, but shall not include an individual employed in the
36 domestic service of a family or person at his or her home, or an
37 individual employed by his or her parent or spouse, or an individual
38 having the status of an independent contractor, or an individual

1 employed as a supervisor, unless included within a separate bargaining
2 agreement pursuant to this chapter, or a person covered by the national
3 labor relations act or the railway labor act.

4 (5) "Employee organization" means an organization of any kind, or
5 an agency or employee representation committee or plan, in which
6 employees participate and that exists for the purpose, in whole or in
7 part, of dealing with employers concerning grievances, labor disputes,
8 wages, rates of pay, hours of employment, or conditions of work.

9 (6) "Employer" shall be liberally construed to include any of the
10 following who, at any time during the preceding calendar year, employed
11 fifteen or more employees at the same time: Any person acting directly
12 or indirectly in the interest of an employer in relation to an
13 employee, an individual grower, corporate grower, cooperative grower,
14 harvesting association, hiring association, land management group, an
15 association of persons or cooperatives engaged in agriculture, and a
16 person who owns or leases or manages land used for agricultural
17 purposes. A farm labor contractor, or a person supplying agricultural
18 workers to an employer, is an agent of the employer.

19 (7) "Exclusive bargaining representative" means an employee
20 organization which has been certified pursuant to section 8 of this act
21 as the representative of the employees in an appropriate bargaining
22 unit.

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

29 (9) "Person" includes one or more individuals, employee
30 organizations, partnerships, associations, corporations, legal
31 representatives, trustees, trustees in cases under Title II U.S.C., or
32 receivers. In determining whether a person is acting as an agent of
33 another person so as to make the other person responsible for his or
34 her acts, the question of whether the specific acts performed were
35 actually authorized or subsequently ratified shall not be controlling.

36 (10) "Professional employee" means:

37 (a) An employee engaged in work:

38 (i) Predominantly intellectual and varied in character as opposed
39 to routine mental, manual, mechanical, or physical work;

1 (ii) Involving the consistent exercise of discretion and judgment
2 in its performance;

3 (iii) Of such a character that the output produced or the result
4 accomplished cannot be standardized in relation to a given period of
5 time;

6 (iv) Requiring knowledge of an advanced type in a field of science
7 or learning customarily acquired by a prolonged course of specialized
8 intellectual instruction and study in an institution of higher learning
9 or a hospital, as distinguished from a general academic education or
10 from an apprenticeship or from training in the performance of routine
11 mental, manual, or physical processes; or

12 (b) An employee, who:

13 (i) Has completed the courses of specialized intellectual
14 instruction and study described in (a)(iv) of this subsection; and

15 (ii) Is performing related work under the supervision of a
16 professional person to qualify himself or herself to become a
17 professional employee as defined in (a) of this subsection.

18 (11) "Supervisor" means an individual having authority, in the
19 interest of the employer, to hire, transfer, suspend, lay off, recall,
20 promote, discharge, assign, reward, or discipline other employees, or
21 responsibility to direct them or to adjust their grievances, or
22 effectively to recommend such action, if in connection with the
23 foregoing the exercise of such authority is not merely a routine or
24 clerical nature, but requires the use of independent judgment.

25 (12) "Union security provision" means a provision in a collective
26 bargaining agreement under which some or all of the employees in the
27 bargaining unit may be required, as a condition of continued employment
28 on or after the seventh day following the beginning of the employment
29 or the effective date of the provision, whichever is later, to become
30 a member of the exclusive bargaining representative or pay a
31 representation fee not greater than the periodic dues and initiation
32 fees uniformly required as a condition of acquiring or retaining
33 membership in the exclusive bargaining representative.

34 (13) "Unfair labor practice" means an unfair labor practice listed
35 in section 9 of this act.

36 (14) "Work stoppage" means a suspension, curtailment, or other
37 interruption of normal work in connection with a labor dispute under
38 this chapter, including:

1 (a) A strike, which means an action by employees or employee
2 organizations, acting in concert, wherein any or all of the employees
3 withhold or otherwise fail or refuse to perform fully their normal
4 duties or services as employees; and

5 (b) A lockout, which means an action by an employer wherein it
6 refuses to permit its employees to commence or continue the full
7 performance of their normal duties and services as employees.

8 NEW SECTION. **Sec. 3.** It is the duty of the commission, in order
9 to prevent or minimize interruptions growing out of labor disputes in
10 agriculture, to assist employers, employees, and employee organizations
11 to settle disputes arising under this chapter, as follows:

12 (1) The commission has exclusive jurisdiction to determine a
13 dispute concerning the selection of an exclusive bargaining
14 representative, the unit appropriate for the purposes of collective
15 bargaining, or the allocation of employees or positions to bargaining
16 units. Work stoppages arising from representation disputes are
17 expressly prohibited.

18 (2) The commission has exclusive jurisdiction to prevent an unfair
19 labor practice and to issue appropriate remedial orders. Work
20 stoppages arising from unfair labor practice disputes are expressly
21 prohibited.

22 (3) Final adjustment by a method agreed upon by the parties is
23 declared to be the desirable method for settlement of grievance
24 disputes arising over the application or interpretation of an existing
25 collective bargaining agreement. Work stoppages arising from grievance
26 disputes are expressly prohibited.

27 (4) The commission shall maintain a list of persons qualified and
28 available to serve as an arbitrator in labor disputes under this
29 chapter, and shall provide the list to a party in a labor dispute upon
30 request.

31 (5) The commission shall employ staff with sufficient language
32 ability to implement this chapter efficiently and fairly.

33 (6) In consultation with agricultural employer and employee
34 organizations, the commission shall appoint a coordinator for
35 agricultural employment. The coordinator shall perform the duties and
36 have the powers as the commission shall prescribe, in consultation with
37 its executive director, to implement and enforce this chapter.

1 NEW SECTION. **Sec. 4.** The commission is an administrative agency
2 within the meaning of chapter 34.05 RCW.

3 (1) The commission shall have authority from time to time to adopt,
4 pursuant to chapter 34.05 RCW, rules as may be necessary to carry out
5 this chapter, consistent with the best standards of labor management
6 relations.

7 (2) The rules, practices, and precedents of the national labor
8 relations board, provided they are consistent with this chapter, shall
9 be considered by the commission in its interpretation of this chapter,
10 and prior to the adoption of commission rules.

11 NEW SECTION. **Sec. 5.** Employees have the right to self-
12 organization, to form, join, or assist employee organizations, to
13 bargain collectively through representatives of their own choosing, and
14 to engage in other lawful concerted activities for the purpose of
15 collective bargaining or other mutual aid or protection, and also have
16 the right to refrain from any or all of the activities except to the
17 extent that employees may be required to make payments to an exclusive
18 bargaining representative or charitable organization under a union
19 security provision authorized by this chapter. However, nothing
20 contained in this chapter shall permit or grant an employee the right
21 to strike or refuse to perform his or her duties.

22 NEW SECTION. **Sec. 6.** The employee organization that has been
23 designated or selected by the majority of the employees in an
24 appropriate bargaining unit as their representative for the purposes of
25 collective bargaining shall be the exclusive bargaining representative
26 of, and shall be required to represent, all the employees within the
27 bargaining unit without regard to membership in that employee
28 organization. However, an employee or group of employees may at any
29 time present complaints or concerns to the employer and have the
30 complaints or concerns adjusted without intervention of the exclusive
31 bargaining representative, as long as the exclusive bargaining
32 representative has been given an opportunity to be present at the
33 adjustment and to make its views known, and as long as the adjustment
34 is not inconsistent with the terms of a collective bargaining agreement
35 then in effect.

1 NEW SECTION. **Sec. 7.** The commission shall resolve a dispute
2 concerning the unit appropriate for collective bargaining or the
3 allocation of employees or positions to bargaining units, taking into
4 consideration the duties, skills, and working conditions of the
5 employees; the history of collective bargaining; the community of
6 interest among employees, same hours, duties, and compensation; and the
7 desires of the employees, except that:

8 (1) A unit shall not be considered appropriate if it includes both
9 supervisors and nonsupervisory employees;

10 (2) A unit that includes only supervisors may be considered
11 appropriate if a majority of the employees in the category indicate by
12 vote that they desire to be included in such a unit; and

13 (3) A unit that includes both professional employees and
14 nonprofessional employees shall not be considered appropriate unless a
15 majority of the professional employees indicate by vote that they
16 desire to be included in such a unit.

17 NEW SECTION. **Sec. 8.** The commission shall resolve a dispute
18 concerning selection of an exclusive bargaining representative in
19 accordance with the procedures specified in this section.

20 (1) No question concerning representation may be raised within one
21 year following certification of an exclusive bargaining representative
22 under this section.

23 (2) No question concerning representation may be raised within one
24 year following an election or cross-check in which the employees failed
25 to designate an exclusive bargaining representative.

26 (3) Where there is a valid collective bargaining agreement in
27 effect, no question concerning representation may be raised except
28 during the period not more than ninety nor less than sixty days prior
29 to the expiration date of the agreement. However, in the event a valid
30 collective bargaining agreement, together with a renewal or extension
31 thereof, has been or will be in existence for more than three years,
32 then a question concerning representation may be raised not more than
33 ninety nor less than sixty days prior to the third anniversary date or
34 a subsequent anniversary date of the agreement. If the exclusive
35 bargaining representative is removed as the result of the procedure,
36 the collective bargaining agreement shall be deemed to be terminated as
37 of the date of the decertification.

1 (4) An employee organization seeking certification as exclusive
2 bargaining representative of a bargaining unit of employees, or
3 bargaining unit employees seeking decertification of their exclusive
4 bargaining representative, shall make a confidential showing to the
5 commission of credible evidence demonstrating that at least thirty
6 percent of the employees in the bargaining unit are in support of the
7 petition.

8 (5) A petition filed by an employer shall be supported by credible
9 evidence demonstrating the good faith basis on which the employer
10 claims the existence of a question concerning the representation among
11 its employees.

12 (6) An employee organization that makes a confidential showing to
13 the commission of credible evidence demonstrating that it has the
14 support of at least ten percent of the employees in the bargaining unit
15 involved shall be entitled to intervene in proceedings under this
16 section, and to have its name listed as a choice on the ballot in an
17 election conducted by the commission.

18 (7) The commission shall determine a question concerning
19 representation by conducting a secret ballot election among the
20 employees in the bargaining unit, except where the commission
21 determines that a serious unfair labor practice has been committed
22 which interfered with the election process and precludes the holding of
23 a fair election, the commission may determine the question concerning
24 representation by conducting a cross-check comparing the employee
25 organization's membership records or bargaining authorization cards
26 against the employment records of the employer.

27 (8) An election shall be conducted within fourteen days of the
28 commission's determination that an election is to occur.

29 (9) The representation election ballot shall contain a choice for
30 each employee organization qualifying under subsection (4) or (6) of
31 this section, together with a choice for no representation. The
32 representation election shall be determined by the majority of the
33 valid ballots cast. Where there are three or more choices on the
34 ballot and none of the choices receives a majority of the valid ballots
35 cast, a runoff election shall be conducted between the two choices
36 receiving the highest and second highest numbers of votes.

37 (10) The ballots used by the commission shall include any symbol or
38 trademark requested by an employee organization qualified under
39 subsection (4) of this section in its petition, or requested by an

1 employee organization qualified under subsection (6) of this section in
2 its motion for intervention.

3 (11) Upon request of any party a reasonable time prior to the
4 election, as established by the commission, the ballots used by the
5 commission shall be printed in any language or languages used by
6 employees voting in the election, and in English.

7 (12) Employers shall maintain accurate and current payroll lists
8 containing the names and addresses of all their employees, and shall
9 make the list available to the commission upon request. Manipulation
10 of employee assignments or records of employee assignments, or other
11 action intended solely to circumvent the fifteen-employee threshold and
12 thereby avoid the application of this chapter, is strictly prohibited.
13 If the employer does not furnish a full and accurate list to the
14 commission within a reasonable time prior to an election, the
15 commission may proceed to determine eligibility on the basis of the
16 other evidence as is available to the commission at that time.

17 NEW SECTION. **Sec. 9.** (1) It is an unfair labor practice for an
18 employer or its agents to:

19 (a) Interfere with, restrain, or coerce employees in the exercise
20 of the rights guaranteed in this chapter;

21 (b) Dominate or interfere with the formation or administration of
22 an employee organization or contribute financial or other support to
23 it. However, an employer shall not be prohibited from permitting
24 employees to confer with it or its representatives or agents during
25 working hours without loss of time or pay;

26 (c) Encourage or discourage membership in an employee organization
27 by discrimination in regard to hiring, tenure of employment, or a term
28 or condition of employment, but nothing contained in this subsection
29 prevents an employer from enforcing a union security provision
30 authorized by this chapter;

31 (d) Discharge or otherwise discriminate against an employee because
32 he or she has filed charges or given testimony under this chapter; or

33 (e) Refuse to bargain collectively with the exclusive bargaining
34 representative of its employees.

35 (2) It is an unfair labor practice for an employee organization or
36 its agents to:

37 (a) Restrain or coerce:

1 (i) Employees in the exercise of the rights guaranteed in this
2 chapter. However, this subsection (2)(a)(i) shall not impair the right
3 of an employee organization to prescribe its own rules with respect to
4 the acquisition or retention of membership therein; or

5 (ii) An employer in the selection of its representatives for the
6 purposes of collective bargaining or the adjustment of grievances;

7 (b) Cause or attempt to cause an employer to discriminate against
8 an employee in violation of subsection (1)(c) of this section, or to
9 discriminate against an employee with respect to whom membership in the
10 organization has been denied or terminated on some ground other than
11 his or her failure to tender the amounts required under a union
12 security provision authorized by this chapter;

13 (c) Discriminate against an employee because he or she has filed
14 charges or given testimony under this chapter;

15 (d) Refuse to bargain collectively with the employer of employees
16 for whom it is the exclusive bargaining representative;

17 (e) Require of employees covered by a union security provision
18 authorized under this chapter the payment, as a condition precedent to
19 becoming a member of the organization, of a fee in an amount that the
20 commission finds excessive or discriminatory under all the
21 circumstances. In making such a finding, the commission shall
22 consider, among other relevant factors, the practices and customs of
23 employee organizations in the particular industry, and the wages
24 currently paid to the employees affected;

25 (f) Cause or attempt to cause an employer to pay or deliver or
26 agree to pay or deliver money or any other thing of value, in the
27 nature of an exaction for services that are not performed or not to be
28 performed;

29 (g) Breach its duty of fair representation with respect to an
30 employee or employees in a bargaining unit for which the employee
31 organization is the exclusive bargaining representative, by action or
32 inaction which is arbitrary, discriminatory, perfunctory, or lacking in
33 good faith. However, it is not a violation of this section for an
34 employee organization to refuse to pursue a dispute under this chapter
35 on behalf of one or more employees where, following investigation of
36 the facts and circumstances, the employee organization makes a good
37 faith determination that the employee claim is without merit.

38 (3) Nothing contained in this section shall be construed to make
39 unlawful a refusal by a person to enter upon the premises of an

1 employer, other than his or her own employer, if the employees of the
2 employer are engaged in a strike ratified or approved by a
3 representative of the employees whom the employer is required to
4 recognize under the national labor relations act.

5 (4)(a) It is not an unfair labor practice under this section for
6 an employer to make an agreement covering employees engaged, or who,
7 upon their employment, will be engaged, in the harvesting of
8 agricultural or horticultural commodities under this chapter because
9 (i) the majority status of the employee organization has not been
10 established under section 8 of this act prior to the making of the
11 agreement; (ii) the agreement requires as a condition of employment,
12 membership in the employee organization after the seventh day following
13 the beginning of the employment or the effective date of the agreement,
14 whichever is later; (iii) the agreement requires the employer to notify
15 the employee organization of opportunities for employment with the em-
16 ployer, or gives the employee organization an opportunity to refer
17 qualified applicants for employment; or (iv) the agreement specifies
18 minimum training or experience qualifications for employment or
19 provides for priority in opportunities for employment based upon length
20 of service with the employer, in agriculture or in the particular geo-
21 graphical area.

22 (b) Subsections (1)(c) and (2)(b) of this section apply to any
23 hiring hall operated under this subsection.

24 (c) An agreement made under this subsection does not bar a petition
25 under section 8(3) of this act.

26 (5) The expressing of views, argument, or opinion, or the
27 dissemination thereof, whether in written, printed, graphic, or visual
28 form, shall not constitute or be evidence of an unfair labor practice
29 under this chapter, if the expression contains no threat of reprisal or
30 force or promise of benefit.

31 NEW SECTION. **Sec. 10.** The commission shall adjudicate unfair
32 labor practice disputes in accordance with the procedures specified in
33 this section and in chapter 34.05 RCW.

34 (1) A complaint charging unfair labor practices must be filed
35 within six months following the act or event complained of.

36 (2) The person or persons named as respondent in a complaint
37 charging unfair labor practices shall have the right to file an answer

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

3 (3) If the commission determines that a person has engaged in or is
4 engaging in an 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 the policies of
8 this chapter, including the reinstatement of employees with back pay.

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

14 NEW SECTION. **Sec. 11.** (1) An employer shall:

15 (a) Maintain accurate and current payroll lists containing the
16 names and addresses of all their employees, and shall release the lists
17 to a requesting employee organization upon reasonable notice of intent
18 to organize the employers' employees; and

19 (b) Upon request, allow an employee organization authorized to
20 raise a question regarding representation under section 8 of this act
21 to meet with the employer's employees for at least three one-hour
22 periods per calendar year at the employees' worksite on work days
23 during meal breaks or other rest periods. An employee organization
24 that qualifies for the election ballot under section 8(4) or (6) of
25 this act shall be allowed, prior to the election, at least two
26 additional one-hour periods to meet with the employees at the
27 employees' worksite on work days during meal breaks or other rest
28 periods. Neither the employer, nor the employer's agents or represen-
29 tatives, may be in attendance at a meeting authorized under this
30 subsection. This subsection shall not be construed to limit any other
31 right, guaranteed by law, of employee organizations to communicate with
32 employees.

33 (2) An employee organization or its agents shall not:

34 (a) Engage in, or induce or encourage an individual to engage in,
35 a strike or a refusal in the course of his or her employment to use,
36 manufacture, process, transport, or otherwise handle or work on goods,
37 articles, materials, or commodities or to perform services, or

1 threaten, coerce, or restrain a person engaged, where in either case an
2 object thereof is:

3 (i) Forcing or requiring an employer or self-employed person to
4 join an employee or employer organization or to enter into an agreement
5 that is prohibited by (c) of this subsection;

6 (ii) Forcing or requiring a person to cease using, selling,
7 handling, transporting, or otherwise dealing in the products of any
8 other producer, processor, or manufacturer, or to cease doing business
9 with any other person, or forcing or requiring any other employer to
10 recognize or bargain with an employee organization as the
11 representative of his or her employees;

12 (iii) Forcing or requiring an employer to recognize or bargain with
13 a particular employee organization as the representative of his or her
14 employees;

15 (iv) Forcing or requiring an employer to assign particular work to
16 employees in a particular employee organization or in a particular
17 trade, craft, or class rather than to employees in another employee
18 organization or in another trade, craft, or class.

19 Nothing in this subsection (2)(a) shall be construed to prohibit
20 publicity, other than picketing, for the purpose of truthfully advising
21 the public, including consumers and members of an employee
22 organization, that a product or products are produced by an employer
23 with whom the employee organization has a primary dispute and are
24 distributed by another, as long as the publicity does not have an
25 effect of inducing any individual employed by any person other than the
26 primary employer in the course of his or her employment to refuse to
27 pick up, deliver, or transport any goods, or not to perform any
28 services, at the establishment of the employer engaged in such
29 distribution;

30 (b) Picket or cause to be picketed, or threaten to picket or cause
31 to be picketed, an employer where an object thereof is forcing or
32 requiring an employer to recognize or bargain with an employee
33 organization as the representative of his or her employees, or forcing
34 or requiring the employees of an employer to accept or select the
35 employee organization as their exclusive bargaining representative; and

36 (c) Enter into a contract or agreement with an employer, express or
37 implied, whereby the employer ceases or refrains or agrees to cease or
38 refrain from handling, using, selling, transporting, or otherwise
39 dealing in any of the products of any other employer, or to cease doing

1 business with any other person, and a contract or agreement entered
2 into heretofore or hereafter containing such an agreement shall be to
3 that extent unenforceable and void.

4 (3) Neither an employer or an exclusive bargaining representative,
5 or their agents, shall willfully resist, prevent, impede, or interfere
6 with members of the commission or its agents in performance of duties
7 under this chapter.

8 NEW SECTION. **Sec. 12.** (1) Notwithstanding RCW 49.36.015 or
9 chapter 49.32 RCW, if an employer is engaging in a lockout prohibited
10 by section 3 or 15 of this act, or fails to comply with section 11 of
11 this act, the jurisdiction of the superior court of Thurston county,
12 the county in which the main office of the employer is located, or
13 where the prohibited activity takes place may be invoked, and the court
14 shall have jurisdiction to issue a permanent injunction or compel such
15 action as may be appropriate, and award reasonable costs and attorneys'
16 fees to the prevailing party.

17 (2) Notwithstanding RCW 49.36.015 or chapter 49.32 RCW, if an
18 employee organization is engaging in a strike prohibited by section 3
19 or 15 of this act, or any activity prohibited by section 11 of this
20 act, the jurisdiction of the superior court of Thurston county or the
21 county in which the activity is taking place may be invoked, and the
22 court shall have jurisdiction to issue a permanent injunction against
23 the strike or other prohibited activity, and award reasonable costs and
24 attorneys' fees to the prevailing party.

25 NEW SECTION. **Sec. 13.** (1) Upon the voluntary written
26 authorization of a bargaining unit employee, the employer shall deduct
27 from the pay of the employee the periodic dues and initiation fees
28 uniformly required as a condition of acquiring or retaining membership
29 in the exclusive bargaining representative. The employee authorization
30 may be irrevocable for up to one year. The dues and fees shall be
31 transmitted by the employer monthly to the exclusive bargaining
32 representative, or to the depository designated by the exclusive
33 bargaining representative.

34 (2) A collective bargaining agreement may include union security
35 provisions. The employer shall enforce a union security provision by
36 monthly deductions from the pay of all bargaining unit employees
37 affected thereby, and shall transmit the funds to the exclusive

1 bargaining representative or to the depository designated by the
2 exclusive bargaining representative.

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

16 NEW SECTION. **Sec. 14.** Every collective bargaining agreement
17 negotiated under this chapter shall contain provision for the final and
18 binding arbitration of grievance disputes arising over the
19 interpretation or application of the agreement.

20 (1) The parties to a collective bargaining agreement may agree on
21 one or more permanent umpires to serve as arbitrator, or may agree on
22 an impartial person to serve as arbitrator, or may agree to select
23 arbitrators from any source available to them, including federal,
24 state, or private agencies.

25 (2) An arbitrator may require a person to attend as a witness, and
26 to bring with him or her any book, record, document, or other evidence.
27 Subpoenas shall issue and be signed by the arbitrator and shall be
28 served in the same manner as subpoenas to testify before a court of
29 record in this state. The fees for the attendance shall be paid by the
30 party requesting issuance of the subpoena and shall be the same as the
31 fees of witnesses in the superior court. If a person summoned to
32 testify refuses or neglects to obey the subpoena, upon petition
33 authorized by the arbitrator, the superior court may compel the
34 attendance of the person before the arbitrator, or punish the person
35 for contempt in the same manner provided for the attendance of
36 witnesses or the punishment of them in the courts of this state.

37 (3) The arbitrator shall establish a time and place for a hearing,
38 and shall provide reasonable notice thereof to the parties to the

1 dispute. The arbitrator may adjourn the hearing from time to time as
2 may be necessary and may, on application of either party and for good
3 cause, postpone the hearing to a time not extending beyond a date fixed
4 by the collective bargaining agreement for making the award. The
5 arbitrator has the power to administer oaths. Each party shall have
6 the opportunity to present evidence and make argument at the hearing.
7 The rules of evidence prevailing in judicial proceedings may be
8 considered, but are not binding, and any oral testimony or documentary
9 evidence or other data deemed relevant by the arbitrator may be
10 received in evidence.

11 (4) The arbitrator shall issue a written decision, which shall be
12 signed by the arbitrator. The arbitrator shall promptly serve a copy
13 of the decision on each of the parties or their attorneys.

14 (5) If a party to a collective bargaining agreement negotiated
15 under this chapter refuses to submit a grievance for arbitration, the
16 other party to the collective bargaining agreement may invoke the
17 jurisdiction of the superior court of Thurston county or any county in
18 which the labor dispute exists, and the court shall have jurisdiction
19 to issue an order compelling arbitration. The court shall order
20 arbitration if the grievance states a claim which on its face is
21 covered by the collective bargaining agreement. Doubts as to the
22 coverage of the arbitration clause shall be resolved in favor of
23 arbitration. Disputes concerning compliance with grievance procedures
24 shall be reserved for determination by the arbitrator.

25 (6) If a party to a collective bargaining agreement negotiated
26 under this chapter refuses to comply with the decision of an
27 arbitrator, the other party to the collective bargaining agreement, or
28 an affected employee, may invoke the jurisdiction of the superior court
29 of Thurston county or a county in which the labor dispute exists, and
30 the court shall have jurisdiction to issue an order enforcing the
31 arbitration award. The court shall not substitute its judgment for
32 that of the arbitrator, and shall enforce an arbitration award that is
33 based on the collective bargaining agreement, except that an
34 arbitration award shall not be enforced if the court is satisfied that
35 substantial rights of the parties have been prejudiced by:

36 (a) The arbitration award having been procured by corruption,
37 fraud, or undue means;

38 (b) Evident partiality or corruption in the arbitrator or
39 arbitrators;

1 (c) The arbitrator or arbitrators were guilty of misconduct, in
2 refusing to postpone a hearing upon sufficient cause shown, or in
3 refusing to hear evidence pertinent and material to the controversy, or
4 of other misbehavior by which the rights of a party have been
5 prejudiced; or

6 (d) The arbitrator or arbitrators have exceeded their powers, or so
7 imperfectly executed them that a final and definite award on the
8 subject matter was not made.

9 (7) Where an arbitration award is vacated, the court may, in its
10 discretion, direct a rehearing either before the same arbitrator or
11 before a new arbitrator to be chosen in the manner provided in the
12 collective bargaining agreement for the selection of the original
13 arbitrator, and a provision limiting the time in which the arbitrator
14 may make a decision shall be deemed applicable to the new arbitration
15 and to commence from the date of the court's order.

16 NEW SECTION. **Sec. 15.** Work stoppages arising from agreement
17 negotiations involving employees under this chapter are expressly
18 prohibited, and an alternative means of settling disputes is
19 substituted, as provided in this section.

20 (1)(a) Negotiations between an employer and an exclusive bargaining
21 representative shall be commenced immediately upon certification of the
22 exclusive bargaining representative, and thereafter, at least five
23 months in advance of the expiration of an existing collective
24 bargaining agreement. If no agreement has been reached sixty days
25 after the commencement of such negotiations then, at any time
26 thereafter, either party may submit the dispute to the commission for
27 mediation, with or without the concurrence of the other party.

28 (b) No person who has served as a mediator under this chapter shall
29 thereafter be compelled in a civil hearing or proceeding to give
30 testimony or produce evidence concerning information obtained in the
31 course of his or her activities as mediator.

32 (2) If an agreement has not been reached following a reasonable
33 period of negotiations and mediation, and the executive director of the
34 commission, upon recommendation of the assigned mediator, finds that
35 the parties remain at impasse, then an arbitrator may be designated to
36 resolve the dispute. The issues for determination by the arbitrator
37 are limited to the issues certified by the executive director.

1 (3) Within seven days following the issuance of the determination
2 of the executive director, the parties shall attempt to choose an
3 impartial arbitrator from a list of five or more qualified arbitrators
4 supplied by the commission.

5 (4) Upon the failure of the parties to select an impartial
6 arbitrator within two days, the commission shall designate an impartial
7 arbitrator.

8 (5) In the performance of his or her duties under this chapter, an
9 interest arbitrator exercises a state function and is, for the purposes
10 of this chapter, a state agency. Chapter 34.05 RCW does not apply to
11 proceedings before an arbitrator.

12 (6) Immediately upon the selection or designation of the
13 arbitrator, the assigned mediator shall supply the arbitrator with a
14 copy of the complete final offer of the exclusive bargaining
15 representative, as presented to the mediator and to the employer at the
16 close of mediation, and the complete final offer of the employer, as
17 presented to the mediator and to the exclusive bargaining
18 representative at the close of mediation. Copies of the final offer
19 shall be filed with the commission.

20 (7) The arbitrator shall promptly establish a date, time, and place
21 for a hearing and shall provide reasonable notice of the hearing to the
22 parties to the dispute. The hearing shall be informal and each party
23 shall have the opportunity to present evidence and make argument. The
24 arbitrator may not act as a witness or present the case for a party to
25 the proceedings. The rules of evidence prevailing in judicial
26 proceedings may be considered, but are not binding. Any oral testimony
27 or documentary evidence or other data deemed relevant by the arbitrator
28 may be received in evidence. A recording of the proceedings shall be
29 taken. The arbitrator has the power to administer oaths, require the
30 attendance of witnesses, and require the production of those books,
31 papers, contracts, agreements, and documents as may be deemed to be
32 material to a just determination of the issues in dispute. If a person
33 refuses to obey a subpoena issued by the arbitrator, or refuses to be
34 sworn or to make an affirmation to testify, or a witness, party, or
35 attorney for a party is guilty of contempt while in attendance at a
36 hearing held hereunder, the arbitrator or a party may invoke the
37 jurisdiction of the superior court of Thurston county or the county
38 where the labor dispute exists, and the court shall have jurisdiction
39 to issue an appropriate order. Failure to obey the order may be

1 punished by the court as a contempt thereof. The hearing shall be
2 concluded within twenty-five days following the designation of the
3 arbitrator, unless the parties agree to a longer period.

4 (8) The arbitrator shall, within five days following the conclusion
5 of the hearing, make written findings of fact and a written
6 determination of the issues in dispute, based on the evidence
7 presented. As to each issue certified for arbitration, the arbitrator
8 is limited to selecting:

9 (a) The final offer of the employer, as presented to the mediator
10 and to the exclusive bargaining representative at the close of the
11 mediation proceedings; or

12 (b) The final offer of the exclusive bargaining representative, as
13 presented to the mediator and to the employer at the close of the
14 mediation proceedings.

15 (9) In making the determination, the arbitrator shall be mindful of
16 the legislative purpose enumerated in this section and, as additional
17 standards or guidelines to aid it in reaching a decision, shall take
18 into consideration the following factors:

19 (a) The average consumer prices for goods and services, commonly
20 known as the cost of living;

21 (b) The stipulations of the parties;

22 (c) Comparison of the wages, hours, and conditions of employment of
23 the employees involved in the proceedings with the wages, hours, and
24 conditions of employment of employees in similar employment situations
25 on the west coast of the United States;

26 (d) Changes in any of the foregoing circumstances during the
27 pendency of the proceedings; and

28 (e) Other factors, not confined to (a) through (d) of this
29 subsection, that are normally or traditionally taken into consideration
30 in the determination of wages, hours, and conditions of employment.

31 (10) The arbitrator shall file a signed copy of the interest
32 arbitration decision with the commission, and shall serve a copy on
33 each of the parties to the dispute. The interest arbitration decision
34 shall be final and binding upon both parties.

35 (11) The fees and expenses of the arbitrator shall be shared
36 equally between the parties.

37 (12) Except as ordered through proceedings before an interest
38 arbitrator, existing wages, hours, and other terms and conditions of
39 employment shall not be changed by action of either party without the

1 consent of the other, but a party may so consent without prejudice to
2 its rights or position under this section.

3 (13) If a party to negotiations subject to this section refuses to
4 submit to the procedures set forth in this section, or refuses to
5 accept the interest arbitration award as final and binding, the other
6 party or the commission, on its own motion, may invoke the jurisdiction
7 of the superior court of Thurston county or the county in which the
8 labor dispute exists, and the court shall have jurisdiction to issue an
9 appropriate order. An interest arbitration award issued under this
10 section shall be enforced unless the court is satisfied that
11 substantial rights of the parties have been prejudiced by:

12 (a) The arbitration award having been procured by corruption,
13 fraud, or undue means;

14 (b) Evident partiality or corruption in the arbitrator;

15 (c) The arbitrator was guilty of misconduct, in refusing to
16 postpone a hearing upon sufficient cause shown, or in refusing to hear
17 evidence pertinent and material to the controversy, or of any other
18 misbehavior by which the rights of a party have been prejudiced;

19 (d) The arbitrator exceeded his or her powers, or so imperfectly
20 executed them that a final and definite award on the subject matter was
21 not made; or

22 (e) The award is arbitrary and capricious.

23 Where an interest arbitration award is vacated, the court shall
24 direct a rehearing either, in its discretion, before the same
25 arbitrator or before a new impartial arbitrator to be chosen in the
26 manner provided in this section, and the time limitations in this
27 section shall then be deemed applicable to the new arbitration and to
28 commence from the date of the court's order. A failure to obey the
29 order may be punished by the court as a contempt thereof.

30 NEW SECTION. **Sec. 16.** Members of the commission, the commission
31 staff, mediators, or arbitrators serving under this chapter are immune
32 from suit in any other civil action based upon commission proceedings
33 or official acts performed in good faith to effectuate the policies of
34 this chapter.

35 NEW SECTION. **Sec. 17.** This chapter is intended to be additional
36 to other rights and remedies and shall be liberally construed to

1 accomplish its purpose. If any provision of this chapter conflicts
2 with any other statute, ordinance, or rule, this chapter shall control.

3 NEW SECTION. **Sec. 18.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 19.** Except as otherwise expressly provided
8 herein, nothing in this chapter shall be construed to annul, modify, or
9 preclude the renewal or continuation of any lawful agreement entered
10 into between an employer and an employee organization prior to the
11 effective date of this act.

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

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