
SENATE BILL 6346

State of Washington

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By Senators Fairley, Kohl-Welles, Goings, Winsley, Jacobsen, Brown, Spanel, Fraser and Bauer

Read first time 01/13/2000. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to labor relations in institutions of higher
2 education; adding a new chapter to Title 41 RCW; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the purpose of this chapter to promote
6 cooperative efforts between employees and the boards of regents or
7 boards of trustees of the four-year institutions of higher education in
8 the state of Washington by prescribing certain rights and obligations
9 of the employees and by establishing orderly procedures governing the
10 relationship between the employees and their employers which procedures
11 are designed to meet the special requirements and needs of public
12 employment in higher education.

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

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

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

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

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

14 (4) "Employee" means any employee of an employer, except the chief
15 executive or administrative officers of the institution of higher
16 education, confidential employees, supervisors, and employees subject
17 to chapter 41.06 or 41.56 RCW. An individual is not excluded from the
18 coverage of this chapter solely because the person is both a student
19 within the institution of higher education and an employee.

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

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

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

32 (8) "Institution of higher education" means the University of
33 Washington, Washington State University, Western Washington University,
34 Central Washington University, Eastern Washington University, The
35 Evergreen State College, and any other public four-year degree-granting
36 institution.

37 (9) "Person" means one or more individuals, labor organizations,
38 partnerships, associations, corporations, employers, or legal
39 representatives.

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

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

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

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

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

34 NEW SECTION. **Sec. 5.** (1) Upon the voluntary written authorization
35 of a bargaining unit employee, the employer shall deduct from the pay
36 of the employee the periodic dues and initiation fees uniformly

1 required as a condition of acquiring or retaining membership in the
2 exclusive bargaining representative. The employee authorization may be
3 irrevocable for up to one year. Such dues and fees shall be
4 transmitted monthly by the employer to the exclusive bargaining
5 representative or to the depository designated by the exclusive
6 bargaining representative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) The person or persons named as respondent in a complaint
36 charging unfair labor practices may file an answer to the complaint and
37 appear in person or otherwise give testimony at the place and time set
38 by the commission for hearing.

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

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

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

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

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

33 (2) A person designated as a mediator in a labor dispute under this
34 section shall meet with the representatives of the parties, either
35 jointly or separately, and shall take other steps as he or she deems

1 appropriate to persuade the parties to resolve their differences. A
2 mediator does not have power of compulsion.

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

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

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

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

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

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

32 NEW SECTION. **Sec. 21.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 22.** This act takes effect October 1, 2000. The
4 public employment relations commission may immediately take such steps
5 as are necessary to insure that this act is implemented on its
6 effective date.

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