

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5046

Chapter 6, Laws of 2010

61st Legislature
2010 Regular Session

SYMPHONY MUSICIANS--COLLECTIVE BARGAINING

EFFECTIVE DATE: 06/10/10

Passed by the Senate February 15, 2010
YEAS 30 NAYS 17

BRAD OWEN

President of the Senate

Passed by the House February 28, 2010
YEAS 60 NAYS 36

FRANK CHOPP

Speaker of the House of Representatives

Approved March 10, 2010, 2:14 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5046** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 10, 2010

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5046

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Keiser, Kline, and Franklin)

READ FIRST TIME 01/27/10.

1 AN ACT Relating to placing symphony musicians under the
2 jurisdiction of the public employment relations commission for purposes
3 of collective bargaining; and adding a new chapter to Title 49 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Bargaining representative" means any lawful organization which
8 represents symphony musicians in their employment relations with their
9 employers.

10 (2) "Collective bargaining" means the performance of the mutual
11 obligations of the employer and the exclusive bargaining representative
12 to meet at reasonable times, to confer and negotiate in good faith, and
13 to execute a written agreement with respect to grievance procedures and
14 collective negotiations on personnel matters, including wages, hours,
15 and working conditions, which may be peculiar to an appropriate
16 bargaining unit of such employer, except that by such obligation
17 neither party shall be compelled to agree to a proposal or be required
18 to make a concession unless otherwise provided in this chapter.

19 (3) "Commission" means the public employment relations commission.

1 (4)(a) "Employer" means a symphony orchestra with a gross annual
2 revenue of more than three hundred thousand dollars that does not meet
3 the jurisdictional standards of the national labor relations board, and
4 includes any person acting as an agent of an employer, directly or
5 indirectly.

6 (b) In determining whether any person is acting as an "agent" of
7 another person so as to make such other person responsible for his or
8 her acts, the question of whether the specific acts performed were
9 actually authorized or subsequently ratified shall not be controlling.

10 (5) "Executive director" means the executive director of the
11 commission.

12 (6) "Labor dispute" includes any controversy concerning terms,
13 tenure, or conditions of employment, or concerning the association of
14 representation of persons in negotiating, fixing, maintaining,
15 changing, or seeking to arrange terms or conditions of employment,
16 regardless of whether the disputants stand in the proximate relation of
17 employer and symphony musician employee. In the event of a dispute
18 between an employer and an exclusive bargaining representative over the
19 matters that are terms and conditions of employment, the commission
20 shall decide which items are mandatory subjects for bargaining.

21 (7) "Labor organization" means an organization of any kind, or an
22 agency or employee representation committee or plan, in which symphony
23 musicians participate and which exists for the primary purpose of
24 dealing with employers concerning grievances, labor disputes, wages,
25 rates of pay, hours of employment, or conditions of employment.

26 (8) "Person" includes one or more individuals, labor organizations,
27 partnerships, associations, corporations, legal representatives,
28 trustees in bankruptcy, or receivers.

29 (9) "Unfair labor practice" means any activity listed in sections
30 13 and 14 of this act.

31 NEW SECTION. **Sec. 2.** No employer, or other person, shall directly
32 or indirectly, interfere with, restrain, coerce, or discriminate
33 against any symphony musician or group of symphony musicians in the
34 free exercise of their right to organize and designate bargaining
35 representatives of their own choosing for the purpose of collective
36 bargaining, or in the free exercise of any other right under this
37 chapter.

1 NEW SECTION. **Sec. 3.** If an employer and its symphony musician
2 employees are in disagreement as to the selection of a bargaining
3 representative the commission shall be invited to intervene as is
4 provided in sections 4 through 7 of this act.

5 NEW SECTION. **Sec. 4.** The commission, upon reasonable notice,
6 shall decide in each application for certification as an exclusive
7 bargaining representative, the unit appropriate for the purpose of
8 collective bargaining. In determining, modifying, or combining the
9 bargaining unit, the commission shall consider the duties, skills, and
10 working conditions of the symphony musicians; the history of collective
11 bargaining by the symphony musicians and their bargaining
12 representatives; the extent of organization among the symphony
13 musicians; and the desire of the symphony musicians. The commission
14 shall determine the bargaining representative by: (1) Comparison of
15 signatures on organization bargaining authorization cards; or (2)
16 conducting an election specifically therefor.

17 NEW SECTION. **Sec. 5.** If the commission elects to conduct an
18 election to ascertain the exclusive bargaining representative, and upon
19 the request of a prospective bargaining representative showing written
20 proof of at least thirty percent representation of the symphony
21 musicians within the unit, the commission shall hold an election by
22 secret ballot to determine the issue. The ballot shall contain the
23 name of the bargaining representative and of any other bargaining
24 representative showing written proof of at least ten percent
25 representation of the symphony musicians within the unit, together with
26 a choice for any symphony musician to designate that he or she does not
27 desire to be represented by any bargaining agent. Where more than one
28 organization is on the ballot and neither of the three or more choices
29 receives a majority vote of valid ballots cast, a run-off election
30 shall be held. The run-off ballot shall contain the two choices which
31 received the largest and second-largest number of votes. No question
32 concerning representation may be raised within one year of a
33 certification or attempted certification. Where there is a valid
34 collective bargaining agreement in effect, no question of
35 representation may be raised except during the period not more than
36 ninety nor less than sixty days prior to the expiration date of the

1 agreement. Any agreement which contains a provision for automatic
2 renewal or extension of the agreement shall not be a valid agreement;
3 nor shall any agreement be valid if it provides for a term of existence
4 for more than three years.

5 NEW SECTION. **Sec. 6.** The bargaining representative which has been
6 determined to represent a majority of the symphony musicians in a
7 bargaining unit shall be certified by the commission as the exclusive
8 bargaining representative of, and shall be required to represent, all
9 the symphony musicians within the unit without regard to membership in
10 the bargaining representative. However, any symphony musician at any
11 time may present his or her grievance to the employer and have such
12 grievance adjusted without the intervention of the exclusive bargaining
13 representative, if the adjustment is not inconsistent with the terms of
14 a collective bargaining agreement then in effect, and if the exclusive
15 bargaining representative has been given reasonable opportunity to be
16 present at any initial meeting called for the resolution of the
17 grievance.

18 NEW SECTION. **Sec. 7.** The commission may adopt rules necessary to
19 administer this chapter in conformity with the intent and purpose of
20 this chapter and consistent with the best standards of labor-management
21 relations.

22 NEW SECTION. **Sec. 8.** An employer may engage in collective
23 bargaining with the exclusive bargaining representative and no employer
24 may refuse to engage in collective bargaining with the exclusive
25 bargaining representative. Upon the failure of the employer and the
26 exclusive bargaining representative to conclude a collective bargaining
27 agreement, any matter in dispute may be submitted by either party to
28 the commission. If an employer implements its last and best offer
29 where there is no contract settlement, allegations that either party is
30 violating the terms of the implemented offer are subject to grievance
31 arbitration procedures if and as such procedures are set forth in the
32 implemented offer, or, if not in the implemented offer, if and as such
33 procedures are set forth in the parties' last contract.

1 NEW SECTION. **Sec. 9.** Upon the written authorization of any
2 symphony musician within the bargaining unit and after the
3 certification or recognition of the bargaining representative, the
4 employer must deduct from the pay of the symphony musician the monthly
5 amount of dues as certified by the secretary of the exclusive
6 bargaining representative and must transmit the dues to the treasurer
7 of the exclusive bargaining representative.

8 NEW SECTION. **Sec. 10.** A collective bargaining agreement may:

9 (1) Contain union security provisions. However, nothing in this
10 section authorizes a closed shop provision. Agreements involving union
11 security provisions must safeguard the right of nonassociation of
12 employees based on bona fide religious tenets or teachings of a church
13 or religious body of which the symphony musician is a member. The
14 symphony musician must pay an amount of money equivalent to regular
15 union dues and initiation fee to a nonreligious charity or to another
16 charitable organization mutually agreed upon by the symphony musician
17 affected and the bargaining representative to which the symphony
18 musician would otherwise pay the dues and initiation fee. The symphony
19 musician must furnish written proof that the payment has been made. If
20 the symphony musician and the bargaining representative do not reach
21 agreement on this matter, the commission must designate the charitable
22 organization;

23 (2) Provide for binding arbitration of a labor dispute arising from
24 the application or the interpretation of the matters contained in a
25 collective bargaining agreement.

26 NEW SECTION. **Sec. 11.** (1) After the termination date of a
27 collective bargaining agreement, all of the terms and conditions
28 specified in the collective bargaining agreement remain in effect until
29 the effective date of a subsequent agreement, not to exceed one year
30 from the termination date stated in the agreement. Thereafter, the
31 employer may unilaterally implement according to law.

32 (2) This section does not apply to provisions of a collective
33 bargaining agreement which both parties agree to exclude from the
34 provisions of subsection (1) of this section and to provisions within
35 the collective bargaining agreement with separate and specific
36 termination dates.

1 (3) This section shall not apply to collective bargaining
2 agreements in effect or being bargained on the effective date of this
3 section.

4 NEW_SECTION. **Sec. 12.** In addition to any other method for
5 selecting arbitrators, the parties may request the commission to
6 appoint a qualified person who may be an employee of the commission to
7 act as an arbitrator to assist in the resolution of a labor dispute
8 between the employer and the bargaining representative arising from the
9 application of the matters contained in a collective bargaining
10 agreement. The arbitrator must conduct the arbitration of the dispute
11 in a manner as provided for in the collective bargaining agreement.
12 The commission may not collect any fees or charges from the employer
13 or the bargaining representative for services performed by the
14 commission under this chapter. The provisions of chapter 49.08 RCW do
15 not apply to this chapter.

16 NEW_SECTION. **Sec. 13.** It is an unfair labor practice for an
17 employer:

- 18 (1) To interfere with, restrain, or coerce symphony musicians in
19 the exercise of their rights guaranteed by this chapter;
- 20 (2) To control, dominate, or interfere with a bargaining
21 representative;
- 22 (3) To discriminate against a symphony musician who has filed an
23 unfair labor practice charge or who has given testimony under this
24 chapter;
- 25 (4) To refuse to engage in collective bargaining.

26 NEW_SECTION. **Sec. 14.** It is an unfair labor practice for a
27 bargaining representative:

- 28 (1) To interfere with, restrain, or coerce employees in the
29 exercise of their rights guaranteed by this chapter;
- 30 (2) To induce the employer to commit an unfair labor practice;
- 31 (3) To discriminate against a symphony musician who has filed an
32 unfair labor practice charge or who has given testimony under this
33 chapter;
- 34 (4) To refuse to engage in collective bargaining.

1 NEW_SECTION. **Sec. 15.** (1) The commission must prevent unfair
2 labor practices and issue appropriate remedial orders. However, a
3 complaint may not be processed for an unfair labor practice occurring
4 more than six months before the filing of the complaint with the
5 commission.

6 (2) If the commission determines that a person has engaged in or is
7 engaging in an unfair labor practice, the commission must issue and
8 serve upon the person an order requiring the person to cease and desist
9 from the unfair labor practice. The commission may take action to
10 carry out the purposes and policy of this chapter, including requiring
11 the person to pay damages and reinstate employees.

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

17 NEW_SECTION. **Sec. 16.** Actions taken by or on behalf of the
18 commission shall be pursuant to chapter 34.05 RCW, or rules adopted in
19 accordance with chapter 34.05 RCW, and the right of judicial review
20 provided by chapter 34.05 RCW is applicable to all actions and rules.

21 NEW_SECTION. **Sec. 17.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW_SECTION. **Sec. 18.** Sections 1 through 17 of this act
26 constitute a new chapter in Title 49 RCW.

 Passed by the Senate February 15, 2010.
 Passed by the House February 28, 2010.
 Approved by the Governor March 10, 2010.
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