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**SENATE BILL 5169**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Hasegawa, Saldaña, and Keiser

AN ACT Relating to ensuring the neutrality of public employers and state contractors with regard to employees exercising their rights to collectively bargain; amending RCW 28B.52.073, 39.04.350, 39.26.160, 41.56.140, 41.59.140, 41.76.050, 41.80.110, 47.64.130, 49.39.120, and 49.66.040; and creating a new section.

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

NEW SECTION. **Sec.**  It is declared the policy of the state of Washington to encourage labor peace and the practice and procedure of collective bargaining by all workers whose rights are not otherwise preempted by federal law, and to protect the exercise by these workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

**Sec.**  RCW 28B.52.073 and 1987 c 314 s 11 are each amended to read as follows:

(1) It shall be an unfair labor practice for an employer:

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

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

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

(e) To refuse to bargain collectively with the representatives of its employees;

(f) To not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (1)(f), examples of when an employer does not maintain neutrality are if it:

(i) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (1)(f)(i) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(ii) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (1)(f)(ii) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

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

(d) To refuse to bargain collectively with an employer.

(3) Except for an unfair labor practice under subsection (1)(f) of this section, the expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

**Sec.**  RCW 39.04.350 and 2018 c 243 s 1 are each amended to read as follows:

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; ((~~and~~))

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and

(h) Certify that the bidder will not influence its employees seeking to exercise rights guaranteed by the national labor relations act (29 U.S.C. Sec. 151 et seq.).

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.

**Sec.**  RCW 39.26.160 and 2017 c 258 s 3 are each amended to read as follows:

(1)(a) After bids that are submitted in response to a competitive solicitation process are reviewed by the awarding agency, the awarding agency may:

(i) Reject all bids and rebid or cancel the competitive solicitation;

(ii) Request best and final offers from responsive and responsible bidders; or

(iii) Award the purchase or contract to the lowest responsive and responsible bidder.

(b) The agency may award one or more contracts from a competitive solicitation.

(2) In determining whether the bidder is a responsible bidder, the agency must consider the following elements:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; ((~~and~~))

(g) Whether the bidder has certified that it will not influence its employees seeking to exercise rights guaranteed by the national labor relations act (29 U.S.C. Sec. 151 et seq.); and

(h) Such other information as may be secured having a bearing on the decision to award the contract.

(3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:

(a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;

(b) Whether the bid encourages diverse contractor participation;

(c) Whether the bid provides competitive pricing, economies, and efficiencies;

(d) Whether the bid considers human health and environmental impacts;

(e) Whether the bid appropriately weighs cost and noncost considerations; and

(f) Life-cycle cost.

(4) The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions. Before award of a contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (2)(f) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(5) The awarding agency may at its discretion reject the bid of any contractor who has failed to perform satisfactorily on a previous contract with the state.

(6) After reviewing all bid submissions, an agency may enter into negotiations with the lowest responsive and responsible bidder in order to determine if the bid may be improved. An agency may not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) The procuring agency must enter into the state's enterprise vendor registration and bid notification system the name of each bidder and an indication as to the successful bidder.

**Sec.**  RCW 41.56.140 and 2011 c 222 s 2 are each amended to read as follows:

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative;

(5) To not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (5), examples of when an employer does not maintain neutrality are if it:

(a) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (5)(a) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(b) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (5)(b) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

**Sec.**  RCW 41.59.140 and 2012 c 117 s 93 are each amended to read as follows:

(1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made by the commission pursuant to RCW 41.59.110, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 41.59.100;

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

(e) To refuse to bargain collectively with the representatives of its employees;

(f) To not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (1)(f), examples of when an employer does not maintain neutrality are if it:

(i) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (1)(f)(i) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(ii) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (1)(f)(ii) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: PROVIDED, That this ((~~paragraph~~)) subsection (2)(a) shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

(3) Except for an unfair labor practice under subsection (1)(f) of this section, the expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

**Sec.**  RCW 41.76.050 and 2002 c 356 s 13 are each amended to read as follows:

(1) It is an unfair labor practice for an employer to:

(a) Interfere with, restrain, or coerce faculty members in the exercise of the rights guaranteed by this chapter;

(b) Dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer is not prohibited from permitting faculty members to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) Encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) Discharge or discriminate otherwise against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(e) Refuse to bargain collectively with the exclusive bargaining representative of its faculty;

(f) Not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (1)(f), examples of when an employer does not maintain neutrality are if it:

(i) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (1)(f)(i) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(ii) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (1)(f)(ii) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

(2) It is an unfair labor practice for an employee organization to:

(a) Restrain or coerce a faculty member in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection does not impair the rights of (i) an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or (ii) to the rights of an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) Cause or attempt to cause an employer to discriminate against a faculty member in violation of subsection (1)(c) of this section;

(c) Discriminate against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(d) Refuse to bargain collectively with an employer.

(3) Except for an unfair labor practice under subsection (1)(f) of this section, the expressing of any view, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

**Sec.**  RCW 41.80.110 and 2002 c 354 s 312 are each amended to read as follows:

(1) It is an unfair labor practice for an employer:

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

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

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

(e) To refuse to bargain collectively with the representatives of its employees;

(f) To not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (1)(f), examples of when an employer does not maintain neutrality are if it:

(i) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (1)(f)(i) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(ii) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (1)(f)(ii) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

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

(d) To refuse to bargain collectively with an employer.

(3) Except for an unfair labor practice under subsection (1)(f) of this section, the expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

**Sec.**  RCW 47.64.130 and 2011 1st sp.s. c 16 s 19 are each amended to read as follows:

(1) It is an unfair labor practice for the employer or its representatives:

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

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the public employment relations commission pursuant to RCW 41.58.050, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

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

(e) To refuse to bargain collectively with the representatives of its employees;

(f) To not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (1)(f), examples of when an employer does not maintain neutrality are if it:

(i) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (1)(f)(i) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(ii) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (1)(f)(ii) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) Except for an unfair labor practice under subsection (1)(f) of this section, the expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

**Sec.**  RCW 49.39.120 and 2010 c 6 s 13 are each amended to read as follows:

It is an unfair labor practice for an employer:

(1) To interfere with, restrain, or coerce symphony musicians in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a symphony musician who has filed an unfair labor practice charge or who has given testimony under this chapter;

(4) To refuse to engage in collective bargaining;

(5) To not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (5), examples of when an employer does not maintain neutrality are if it:

(a) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (5)(a) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(b) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (5)(b) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

**Sec.**  RCW 49.66.040 and 1972 ex.s. c 156 s 4 are each amended to read as follows:

It shall be deemed an unfair labor practice, and unlawful, for any health care activity to:

(1) Interfere with, restrain or coerce employees in any manner in the exercise of their right of self-organization: PROVIDED, That, except for an unfair labor practice under subsection (5) of this section, the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization having bargaining as one of its functions;

(3) Discriminate in regard to hire, terms, or conditions of employment in order to discourage membership in any employee organization having collective bargaining as one of its functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of employees; and it shall be a requirement of good faith bargaining that the parties be willing to reduce to writing, and have their representatives sign, any agreement arrived at through negotiation and discussion;

(5) Not maintain neutrality in practices, policies, and activity with regard to employees seeking to exercise rights guaranteed by this chapter. For the purposes of this subsection (5), examples of when an employer does not maintain neutrality are if it:

(a) Unless otherwise required by this chapter, distributes literature, letters, emails, or postings to employees regarding the exercise of the rights guaranteed by this chapter. This subsection (5)(a) does not prohibit communications mutually agreed to by the employer and an exclusive bargaining representative already certified under this chapter; or

(b) Funds external organizations or external legal counsel to influence employees seeking to exercise the rights guaranteed by this chapter. This subsection (5)(b) does not prohibit an employer from hiring external legal counsel to negotiate a collective bargaining agreement with an exclusive bargaining representative, but the legal counsel must also maintain neutrality.

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