

SENATE BILL REPORT

SHB 1287

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, APRIL 2, 1993

Brief Description: Providing for collective bargaining of agricultural employees.

SPONSORS: House Committee on Commerce & Labor (originally sponsored by Representatives Heavey, Thibaudeau, Franklin, Flemming, G. Cole, Riley and H. Myers)

HOUSE COMMITTEE ON COMMERCE & LABOR

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, McAuliffe, Sutherland, Vognild, and Wojahn.

Minority Report: Do not pass.

Signed by Senators Amondson and Cantu.

Staff: Jonathan Seib (786-7427)

Hearing Dates: March 30, 1993; April 2, 1993

SENATE COMMITTEE ON WAYS & MEANS

Staff: Martin Chaw (786-7715)

Hearing Dates: April 5, 1993

BACKGROUND:

Under Washington law, employees are permitted to organize and form labor unions for the purpose of improving their working conditions. However, no specific procedures are provided for implementing or enforcing collective bargaining between agricultural employees and employers.

Agricultural employees are not covered by the National Labor Relations Act (NLRA). Several states, including California, Arizona, Idaho, and Kansas, have statutes governing agricultural collective bargaining. Two states, Hawaii and Wisconsin, include agricultural employees under general collective bargaining laws.

SUMMARY:

All agricultural employees are granted the right to collectively bargain over wages, hours and working conditions. Agricultural employers engaged in farming, dairying, and harvesting of agricultural or horticultural products are covered.

Agricultural employees are granted the right to form, join or assist employee organizations. Elections are by secret ballot only. The board created by the bill makes the determination of the appropriate unit for bargaining purposes. Appeals of the board's determination are allowed after five days past the election. An election may occur only if no election has been held within the previous 12 months. The employee organization may meet with the employees on the employer's premises for a period of one-half hour for organizing purposes, with 24-hour advance notice. Replacement workers are not allowed to vote. Elections for either a "raid" by another union or a decertification of the existing union may occur only after the first year of certification and then only in a window period of one month, two months prior to the conclusion of the current contract.

An agricultural labor relations board is created to administer the law. The board is composed of three "neutral" members to be picked by the Governor from a list agreed to by both employees and employers. The members will serve part-time and be compensated pursuant to RCW 43.03 250. The board shall appoint an executive director operating in the same manner as the Public Employee Relations Commission. The board is to follow applicable National Labor Relations Board precedents. The board is directed to establish an expedited process for Unfair Labor Practice (ULP) determinations to occur within 30 days, and to report recommendations to the Legislature for implementation of this process.

The board is directed to appoint mediators to assist in preventing or minimizing disruptions from labor disputes. The parties reserve the right to agree to their own mediator or arbitrator at their own cost at any time.

The following actions on the part of an employee organization are Unfair Labor Practices: (1) restraining, coercing or interfering with employees in the exercise of their rights; (2) requiring an excessive union shop fee; (3) engaging in a strike or refusing to handle certain products with the object of forcing a self-employed person to join a union, or with the object of forcing an employer to assign certain work to a particular employee organization; (4) bargaining not in good faith; (5) refusing to bargain or cooperate with an employer in the implementation of an affirmative action plan; and (6) striking during the harvest period unless notice is given five days prior to the intended strike and mediation during those five days fails.

The following actions on the part of an employer are Unfair Labor Practices: (1) interfering with employees in the exercise of their rights under the bill; (2) interfering with the formation of an employee organization; (3) discriminating in regard to hiring on the basis of union membership; (4) discharging an employee for filing charges under the bill; (5) refusing to bargain collectively; and (6) hiring permanent replacement workers before the expiration of one year after the beginning of a strike.

Any contracts currently in effect remain unaffected by the bill.

Supervisors are permitted to belong to a union, but not to be in the same union as nonsupervisors.

SUMMARY OF PROPOSED SENATE AMENDMENT:

Collective bargaining rights and procedures for agricultural employment are established in the Washington Agricultural Employment Relations Act.

Covered Employment: The act covers all employers who employed 15 or more employees at any one time during the preceding calendar year in agriculture, including farming, dairying, the raising of animals, and practices performed by a farmer or on a farm incident to or in conjunction with such farming operations. The act does not apply to employees covered by the Railway Labor Act or the National Labor Relations Act.

Administration and Enforcement: The Public Employment Relations Commission, renamed the Washington Employment Relations Commission for purposes of the act, is to administer and adjudicate claims under the act, taking into consideration the rules, practices and precedents of the National Labor Relations Board.

The commission has jurisdiction to determine disputes concerning recognition of an exclusive bargaining representative and disputes concerning unfair labor practices.

The commission is to appoint a coordinator for agricultural employment.

Scope of Bargaining: Collective bargaining is authorized over wages, hours and other terms and conditions of employment.

Rights of Employees: Employees have the right to self-organization, to join employee organizations, to bargain collectively, and to engage in other lawful concerted activities for mutual aid and protection, or to refrain from such activities, except for a fee requirement under a union security provision.

Right to Strike: The act explicitly does not interfere with, impede, or diminish the right to strike or lock out. However, seventy-two hour written notice must be given of any vote to authorize a union to call a strike.

Bargaining Units: The bargaining unit appropriate for collective bargaining is to be determined by the commission based on "community of interest" criteria set out in the bill.

Representation: The commission conducts representation elections and certifies the exclusive bargaining representatives. A question concerning representation may not be raised within one year of an election or certification, nor may one be raised where there is a collective bargaining

agreement in effect, with certain limited exceptions. An election is initiated by a confidential showing to the commission that at least 30 percent of employees in a bargaining unit support the petition.

Where a petition seeking representation is filed, and the employer named in the petition currently employs not less than 50 percent of the previous year's peak employment, the unit determination and decision to hold an election must be made within two working days. The election must then take place within seven days. Where the employer currently employs less than 50 percent of the previous years peak employment, the unit determination and decision to hold an election must be made within seven days. The election must then take place within 14 days. Any election outcome is determined by majority vote.

Employer Unfair Labor Practices: It is an unfair labor practice for an employer to: interfere with or coerce employees in the exercise of their collective bargaining rights; dominate or interfere with an employee organization, encourage or discourage membership in an employee organization by discrimination in employment; discriminate against an employee who has filed an unfair labor practice charge; or refuse to engage in collective bargaining.

Employee Organization Unfair Labor Practices: It is an unfair labor practice for an employee organization to: restrain or coerce employees in the exercise of their collective bargaining rights or employers in the selection of representatives for bargaining; cause or attempt to cause an employer to discriminate against an employee; discriminate against an employee who has filed an unfair labor practice charge; refuse to engage in collective bargaining; charge excessive dues; cause an employer to pay for services not performed; or breach its duty of fair representation.

Unfair Labor Practice Procedure: The Washington Employment Relations Commission is authorized to determine unfair labor practice cases pursuant to the act and the state Administrative Procedure Act. Complaints must be filed within six months of the unfair labor practice. The commission may order the party engaging in an unfair labor practice to cease the practice, and where appropriate may order reinstatement of an employee with back pay. The commission may petition for enforcement of an order in superior court.

Required and Prohibited Actions: An employer must maintain an accurate payroll list and release the list to a requesting employee organization upon reasonable notice of intent to organize.

Upon request, an employer must also allow an employee organization to meet with the employer's employees at the employees' worksite one hour prior to or after the workday, or during meal breaks or other rest periods. The employer may not attend these meetings.

Employee organizations are prohibited from engaging in, or inducing others to engage in, secondary boycotts, or from entering into "hot cargo" agreements.

If an employer or an exclusive bargaining representative fails to comply with these requirements or prohibitions, the jurisdiction of the superior court may be invoked to issue a permanent injunction or compel action as appropriate, and award reasonable costs and attorneys' fees.

Union Security: Collective bargaining agreements may require the payment of union dues on or after the seventh day of employment as a condition of employment in the bargaining unit. Persons asserting a right of nonassociation may designate their fee for a charitable organization.

Appropriation: none

Revenue: none

Fiscal Note: requested March 3, 1993

TESTIMONY FOR: None

TESTIMONY AGAINST: None

TESTIFIED: No one