

SENATE BILL REPORT

SB 5347

AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 5, 1993

Brief Description: Regulating agricultural labor relations.

SPONSORS: Senators Prentice, Pelz, Moore, Talmadge, Fraser and Niemi

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5347 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: Do not pass.

Signed by Senators Amondson, Barr, Cantu, Newhouse, and Prince.

Staff: Jonathan Seib (786-7427)

Hearing Dates: February 4, 1993; March 3, 1993

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5347 as recommended by Committee on Labor & Commerce be substituted therefor and the substitute bill do pass.

Signed by Senators Rinehart, Chairman; Spanel, Vice Chairman; Gaspard, Hargrove, Jesernig, Owen, Pelz, Quigley, Snyder, Sutherland, Talmadge, Williams, and Wojahn.

Minority Report: Do not pass.

Signed by Senators Bluechel, Cantu, McDonald, and West.

Staff: Martin Chaw (786-7715)

Hearing Dates: March 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. Some states, including California, Arizona, Idaho and Kansas have statutes specifically covering agricultural collective bargaining. Two states, Hawaii and

Wisconsin, include agricultural employees under general collective bargaining laws.

SUMMARY:

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

Covered Employment: The act covers all employers of eight or more employees in agriculture, including farming, dairying, the raising of animals, and the forestation and reforestation of land, and any practice performed by a farmer or on a farm incident to or in conjunction with such farming operations. The act does not apply to government employees, or employees covered by the Railway Labor Act or the National Labor Relations Act.

Scope of Bargaining: Collective bargaining is authorized over wages, hours and other terms and conditions of employment. During the term of a contract, no party may terminate or modify the contract unless written notice has been served on the other party not less than 60 days before the contract terminates, an offer has been made to negotiate the modification, and the parties continue the terms of the contract for 60 days after notice is given, or until the expiration of the contract, whichever is later.

First Contract Arbitration: If the employer and employee representatives are unable to conclude their first bargaining agreement within six month of initial certification of the representative, the board, at the request of either party, shall settle the terms and conditions of the first agreement. Any such agreement must at a minimum contain a union shop provision, a grievance and arbitration clause, and a no-strike provision for the duration of the agreement.

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: Nothing in the act, unless specifically provided, may be construed to interfere with or diminish the right to strike.

Representation: The state Agricultural Labor Relations Board certifies the exclusive bargaining representatives and conducts representation elections. The board must investigate and hold hearings on petitions for representation or decertification. Petitions may be filed during any normal harvest or nonharvest period when at least 30 percent of the employer's peak agricultural employment for the current calendar year is on the payroll and must allege that at least 50 percent of employees in a bargaining unit wish to be represented for collective bargaining. Elections must be held

within five days of the hearing if a question of representation exists. If the majority of employees are engaged in a strike, the board must attempt to hold an election within 48 hours. Elections may not be held in any bargaining unit in which a valid election has been held in the previous 12 months, or where it is barred by an existing collective bargaining agreement.

The board shall also certify any employee organization where more than 55 percent of the employees in a bargaining unit have signed cards authorizing that organization to be their agent for collective bargaining.

Once an employer is served with notice by an employee organization of its intent to organize the employer's employees, an employee organization has the right to communicate peacefully with the employees, but may not interfere with the performance of work. A payroll list must also be made available to the employee organization. The list must be available to the board upon request.

Within five days after an election or card certification, any person may file a challenge. If no challenge is filed, the board must certify the election, or maintain the card certification.

Bargaining Units: The bargaining unit consists of all of the employees of an employer. The board must determine the appropriate unit if the employer has employees in two noncontiguous geographical areas.

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.

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, hire permanent replacements during a strike or lockout, hire temporary replacement employees without first disclosing to them the existence of a labor dispute, control or interfere with an exclusive bargaining representative, discriminate against an employee who has filed an unfair labor practice charge, refuse to engage in collective bargaining, bargain with a noncertified employee organization, use professional strike breakers, or arrange for persons to become employees for the primary purpose of voting in elections.

Employee Organization Unfair Labor Practices: It is an unfair labor practice for an employee organization to: interfere with 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, solicit or accept financial support from an employer, force an employer

to bargain with a noncertified employee organization, or refuse to engage in collective bargaining.

Unfair Labor Practice Procedure: The state Agricultural Labor Relations Board is authorized to determine unfair labor practice cases. Complaints must be filed within six months of the unfair labor practice. The board may order the party engaging in an unfair labor practice to cease the practice and order reinstatement of an employee with back pay and an equal amount of liquidated damages, and may order the employees be made "whole" for loss of pay resulting from an employer's refusal to bargain. The board may petition for enforcement of an order in superior court. Appeals may be filed from board orders, but the appeal does not stay the board's order.

Administration and Enforcement: The state Agricultural Labor Relations Board is created to administer and adjudicate claims under the act. The full-time three member board is appointed by the Governor, with consent of the House of Representatives. One member shall be chair of the board and represent the public, one member shall represent agricultural employers, and one member shall represent agricultural employees.

The board may appoint an executive director, and employ employees, as necessary to administer the act.

Any person who willfully resists or interferes with members of the board in the performance of their duties is guilty of a gross misdemeanor.

EFFECT OF PROPOSED SUBSTITUTE:

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 exclusive jurisdiction to determine disputes concerning recognition of an exclusive bargaining representative and disputes concerning unfair labor practices. Strikes and lockouts arising from such disputes are expressly prohibited.

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: Strikes are prohibited in all circumstances.

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. The election must take place within 14 days of the commission determination that one is to occur. The 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 for at least three one-hour periods per year. At least two additional one-hour periods must be allowed to any employee organization qualified for a representation election.

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

Neither an employer or an exclusive bargaining representative may willfully interfere with members of the commission or its agents in the performance of their duties under the act.

If an employer or an exclusive bargaining representative fails to comply with these requirements or prohibitions or engages in a strike or lockout, 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.

Grievance Arbitration: Work stoppages due to grievances are expressly prohibited. Every collective bargaining agreement must contain provisions for final and binding arbitration of grievance disputes arising over the interpretation or application of the agreement.

Binding Interest Arbitration: Work stoppages due to contract negotiations are expressly prohibited. Contract negotiations must begin immediately upon certification of the exclusive bargaining representative, and thereafter, at least five months prior to the expiration of an existing agreement. If the parties do not reach an agreement within 60 days, either one may submit the dispute to the commission for mediation. After a reasonable time in mediation, and upon direction of the commission, an arbitrator may be designated to resolve the dispute. The costs of the arbitrator are to be split between the parties. The arbitrator is to choose, for each issue certified to him or her by the commission, between the final offer of the employer and the final offer of the exclusive bargaining representative.

Appropriation: none

Revenue: none

Fiscal Note: requested February 1, 1992

TESTIMONY FOR (Labor & Commerce):

Agricultural workers were left out of the National Labor Relations Act, and as a result, are denied the rights enjoyed by most other workers. The workers, unable to collectively bargain, are subject to dangerous work for which they are poorly paid, and to inadequate living conditions. They have little recourse should they be unfairly treated by their employer. Collective bargaining rights are needed to equalize the power between workers and employers. Collective bargaining will promote stability in the agricultural industry.

TESTIMONY AGAINST (Labor & Commerce):

The agricultural industry is unique and should not be subject to collective bargaining. Allowing strikes at harvest would devastate the industry. The bill would force workers into unions even if they did not want to be union members. It would replace the good relationship that already exists between most farmers and their workers with an adversarial relationship dictated by unions. Unions make promises, but then they do not deliver.

TESTIFIED (Labor & Commerce): PRO: Tomas Villanueva, United Farmworkers of Washington; Lupe Gamboa, Evergreen Legal Services; Jeff Johnson, Washington State Labor Council; Martin Rios, Maria Rosa Cuevas; Pepe Lopez; Luis Ceron; Ned Delessay; CON: Refugio Cavazos; Jorge Valencia; George Robeles; Randy Smith; Frank Ochoa; Grant Daniel; Mike Garcia; Terry Bergevin, John Boonstra; Doug Stockwell, Bill Denhood

TESTIMONY FOR (Ways & Means): None

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): No one