
SUBSTITUTE HOUSE BILL 1468

State of Washington

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By House Committee on Commerce & Labor (originally sponsored by Representatives King, Heavey, Dellwo, Brumsickle, Quall, Carlson, Jacobsen, Miller, Long, Locke, Bray, Leonard, Basich, Conway, Wood, Van Luven and Springer)

Read first time 02/24/93.

1 AN ACT Relating to labor relations in institutions of higher
2 education; amending RCW 41.58.020; adding a new chapter to Title 41
3 RCW; and providing an 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.** The boards of regents and boards of trustees
14 of the institutions of higher education as defined in section 3 of this
15 act may engage in collective bargaining with the exclusive bargaining
16 representatives of their employees, as provided in this chapter.

1 NEW SECTION. **Sec. 3.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Casual employee" means an individual working in assignments of
5 a limited scope or of a short term or transitory nature, so as to
6 indicate that the individual does not share a community of interest
7 with other employees of the institution and lacks an expectancy of
8 continued employment. "Casual employee" does not include a person who,
9 during the preceding twelve months: (a) Worked for the same
10 institution of higher education for more than one-sixth of the full-
11 time equivalent work year of a full-time equivalent employee performing
12 similar work; and (b) continues to be available for the same or other
13 assignments.

14 (2) "Collective bargaining" and "bargaining" mean the performance
15 of the mutual obligation of the representatives of the employer and the
16 exclusive bargaining representative to meet at reasonable times to
17 bargain in good faith in an effort to reach agreement with respect to
18 wages, hours, and other terms and conditions of employment. Service
19 and activity fees as defined in RCW 28B.15.041 shall not be a subject
20 for bargaining. A written contract incorporating any agreements
21 reached shall be executed if requested by either party. The obligation
22 to bargain does not compel either party to agree to a proposal or to
23 make a concession.

24 In the event of a dispute between an employer and an exclusive
25 bargaining representative over the matters that are terms and
26 conditions of employment, the commission shall decide which items are
27 mandatory subjects for bargaining.

28 (3) "Commission" means the public employment relations commission
29 established under RCW 41.58.010.

30 (4) "Confidential employee" means: (a) A person who participates
31 directly on behalf of an employer in the formulation of labor relations
32 policy, the preparation for or conduct of collective bargaining, or the
33 administration of collective bargaining agreements, if the role of the
34 person is not merely routine or clerical in nature but calls for the
35 consistent exercise of independent judgment; and (b) a person who
36 assists and acts in a confidential capacity to a person in (a) of this
37 subsection.

38 (5) "Employee" means any employee of an employer, except the chief
39 executive or administrative officers of the institution of higher

1 education, confidential employees, casual employees, supervisors, and
2 employees subject to chapter 28B.16 or 41.56 RCW. The term "employee"
3 does not include any person whose employment at the institution of
4 higher education is directly related to his or her status as a student
5 in a degree-granting program at the institution of higher education.

6 (6) "Employee organization" means any organization, union,
7 association, agency, committee, council, or group of any kind in which
8 employees participate and that exists for the purpose, in whole or in
9 part, of collective bargaining with employers.

10 (7) "Employer" means the board of regents or board of trustees of
11 each institution of higher education and includes any officer, board,
12 commission, council, or other person or body acting on behalf of an
13 employer.

14 (8) "Exclusive bargaining representative" means any employee
15 organization that has been certified or recognized pursuant to this
16 chapter as the representative of the employees in an appropriate
17 collective bargaining unit.

18 (9)(a) Until October 1, 1994, "institution of higher education"
19 means the University of Washington, Washington State University,
20 Western Washington University at Bellingham, Eastern Washington
21 University at Cheney, and The Evergreen State College.

22 (b) After October 1, 1994, "institution of higher education" means
23 the University of Washington, Washington State University, the regional
24 universities as defined in RCW 28B.10.016, The Evergreen State College,
25 and any other public four-year degree-granting institution.

26 (10) "Person" means one or more individuals, labor organizations,
27 partnerships, associations, corporations, employers, or legal
28 representatives. In determining whether a person is acting as an agent
29 of another person so as to make such other person responsible for his
30 or her acts, the question of whether the specific acts performed were
31 actually authorized or subsequently ratified shall not be controlling.

32 (11) "Supervisor" means any employee having authority, in the
33 interest of an employer, to hire, assign, promote, transfer, lay off,
34 recall, suspend, discipline, or discharge other employees, to adjust
35 employees' grievances, or to recommend effectively such action, if the
36 exercise of the authority is not merely routine or clerical in nature
37 but calls for the consistent exercise of independent judgment. An
38 employee is not includable as a supervisor solely by reason of his or
39 her membership on a faculty tenure or other governance committee or

1 body. The term "supervisor" includes only those persons who perform a
2 preponderance of the acts of authority specified in this subsection.

3 (12) "Unfair labor practice" means an unfair labor practice listed
4 in section 9 of this act.

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

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

22 NEW SECTION. **Sec. 5.** (1) Upon the voluntary written authorization
23 of a bargaining unit employee, the employer shall deduct from the pay
24 of the employee the periodic dues and initiation fees uniformly
25 required as a condition of acquiring or retaining membership in the
26 exclusive bargaining representative. The employee authorization may be
27 irrevocable for up to one year. Such dues and fees shall be
28 transmitted monthly by the employer to the exclusive bargaining
29 representative or to the depository designated by the exclusive
30 bargaining representative.

31 (2) A collective bargaining agreement may include union security
32 provisions, but not a closed shop. The employer shall enforce any
33 union security provision by monthly deductions from the pay of all
34 bargaining unit employees affected by the collective bargaining
35 agreement and shall transmit the funds to the exclusive bargaining
36 representative or to the depository designated by the exclusive
37 bargaining representative.

1 (3) An employee who is covered by a union security provision and
2 who asserts a right of nonassociation based on bona fide religious
3 tenets or teachings of a church or religious body of which the employee
4 is a member shall, as a condition of employment, make alternative
5 payments to a nonreligious charity designated by agreement of the
6 employee and the exclusive bargaining representative. The amount of
7 the alternative payment shall be equal to the periodic dues and
8 initiation fees uniformly required as a condition of acquiring or
9 retaining membership in the exclusive bargaining representative. The
10 employee shall furnish written proof that the payments have been made.
11 If the employee and the exclusive bargaining representative do not
12 reach agreement on the matter, the dispute shall be submitted to the
13 commission for determination.

14 NEW SECTION. **Sec. 6.** In any dispute concerning the unit
15 appropriate for collective bargaining or the allocation of employees or
16 positions to bargaining units, the commission, after a hearing or
17 hearings, shall determine the dispute, taking into consideration the
18 duties, skills, and working conditions of the employees, the extent of
19 organization among the employees, the community of interest among the
20 employees, the desire of the employees, and the overall management
21 structure of the employer including the interrelationships of divisions
22 within the institution. Unnecessary fragmentation shall be avoided.
23 All employees who are tenured or eligible to seek or be awarded tenure
24 shall be included in the same bargaining unit at each institution of
25 higher education.

26 NEW SECTION. **Sec. 7.** (1) The employee organization that has been
27 designated by the majority of the employees in an appropriate
28 bargaining unit as their representative for the purposes of collective
29 bargaining shall be the exclusive bargaining representative of, and
30 shall be required to represent, all the employees within the bargaining
31 unit without regard to membership in that employee organization:
32 PROVIDED, That any employee may at any time present his or her
33 complaints or concerns to the employer and have such complaints or
34 concerns adjusted without intervention of the exclusive bargaining
35 representative, as long as the exclusive bargaining representative has
36 been given an opportunity to be present at that adjustment and to make

1 its views known, and as long as the adjustment is not inconsistent with
2 the terms of a collective bargaining agreement then in effect.

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

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

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

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

24 (d) An employee organization seeking certification as exclusive
25 bargaining representative of a bargaining unit of employees, or
26 bargaining unit employees seeking decertification of an exclusive
27 bargaining representative, shall make a confidential showing to the
28 commission of credible evidence demonstrating that at least thirty
29 percent of the employees in the bargaining unit are in support of the
30 petition. The petition shall indicate the name, address, and telephone
31 number of any employee organization known to claim an interest in the
32 bargaining unit.

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

36 (f) Any employee organization that makes a confidential showing to
37 the commission of credible evidence demonstrating that it has the
38 support of at least ten percent of the employees in the bargaining unit
39 involved may intervene in proceedings under this section and have its

1 name listed as a choice on the ballot in an election conducted by the
2 commission.

3 (g) The commission shall determine any question concerning
4 representation by conducting a secret ballot election among the
5 employees in the bargaining unit. However, if the commission
6 determines that a serious unfair labor practice has been committed
7 that interfered with the election process and precludes the holding of
8 a fair election, the commission may determine the question concerning
9 representation by conducting a cross-check comparing the employee
10 organization's membership records or bargaining authorization cards
11 against the employment records of the employer.

12 (h) The representation election ballot shall contain a choice for
13 each employee organization qualifying under (d) or (f) of this
14 subsection, together with a choice for no representation. The
15 representation election shall be determined by the majority of the
16 valid ballots cast. If there are three or more choices on the ballot
17 and none of the choices receives a majority of the valid ballots cast,
18 a run-off election shall be conducted between the two choices receiving
19 the highest and second highest numbers of votes.

20 NEW SECTION. **Sec. 8.** (1) The commission shall adopt rules under
21 the administrative procedure act, chapter 34.05 RCW, as it deems
22 necessary and appropriate to administer this chapter, in conformity
23 with the intent and purpose of this chapter, and consistent with the
24 best standards of labor-management relations.

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

29 NEW SECTION. **Sec. 9.** (1) It is an unfair labor practice for an
30 employer:

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

33 (b) To dominate or interfere with the formation or administration
34 of any employee organization or contribute financial or other support
35 to it. An employer may permit employees to confer with it or its
36 representatives or agents during working hours without loss of time or
37 pay;

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

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

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

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

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

21 (b) To cause or attempt to cause an employer to discriminate
22 against an employee in violation of subsection (1)(c) of this section
23 or to discriminate against an employee with respect to whom membership
24 in such organization has been denied or terminated on some ground other
25 than the failure of the employee to tender the periodic dues and
26 initiation fees uniformly required as a condition of acquiring or
27 retaining membership;

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

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

32 (3) The expression of any views, argument, or opinion, or the
33 dissemination of those views, argument, or opinion to the public,
34 whether in written, printed, graphic, or visual form, shall not
35 constitute or be evidence of an unfair labor practice under this
36 chapter, if the expression contains no threat of reprisal or force or
37 promise of benefit.

1 NEW SECTION. **Sec. 10.** (1) The commission may prevent any person
2 from engaging in any unfair labor practice. This power shall not be
3 affected by any other means of adjustment or prevention that has been
4 or may be established by agreement, law, equity, or otherwise.

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

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

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

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

23 NEW SECTION. **Sec. 11.** Actions by or on behalf of the commission
24 shall be under chapter 34.05 RCW, or rules adopted under chapter 34.05
25 RCW.

26 NEW SECTION. **Sec. 12.** If any provision of any collective
27 bargaining agreement between the employer and the exclusive bargaining
28 representative requires legislative implementation or an appropriation,
29 the employer and the exclusive bargaining representative shall seek the
30 appropriate legislative action actively and in good faith.

31 NEW SECTION. **Sec. 13.** (1) Whenever a collective bargaining
32 agreement between an employer and an exclusive bargaining
33 representative is concluded after the termination date of the previous
34 collective bargaining agreement between the employer and an employee
35 organization representing the same employees, the effective date of the
36 collective bargaining agreement may be the day after the termination

1 date of the previous collective bargaining agreement, and all benefits
2 included in the new collective bargaining agreement, including wage or
3 salary increases, may accrue beginning with the effective date as
4 established by this subsection.

5 (2) Except as otherwise provided in subsection (3) of this section,
6 provisions of a collective bargaining agreement pertaining to salary
7 increases may not exceed the amount or percentage established by the
8 legislature in the appropriations act. Provisions of a collective
9 bargaining agreement pertaining to salary increases shall not be
10 binding upon future actions of the legislature. If any provision for
11 a salary increase is changed by subsequent modification of the
12 appropriations act by the legislature, the employer and the exclusive
13 bargaining representative shall immediately enter into collective
14 bargaining for the sole purpose of arriving at a mutually agreed upon
15 replacement for the modified provision.

16 (3) A collective bargaining agreement may provide for the increase
17 of any wages, salaries, and other benefits during the term of such an
18 agreement, if the employer receives, by increased appropriation or from
19 other sources, additional moneys for such purposes.

20 NEW SECTION. **Sec. 14.** (1) The commission, through the executive
21 director, may offer its mediation services in any labor dispute
22 involving an employer and an exclusive bargaining representative,
23 either upon its own motion or upon the request of one or more of the
24 parties to the dispute, if in its judgment the dispute threatens to
25 cause a substantial disruption to the public welfare.

26 (2) A person designated as a mediator in a labor dispute under this
27 section shall meet with the representatives of the parties, either
28 jointly or separately, and shall take other steps as he or she deems
29 appropriate to persuade the parties to resolve their differences. A
30 mediator does not have power of compulsion.

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

36 NEW SECTION. **Sec. 15.** An employer and an exclusive bargaining
37 representative who enter into a collective bargaining agreement shall

1 include in the agreement procedures for binding arbitration of the
2 disputes arising about the interpretation or application of the
3 agreement.

4 NEW SECTION. **Sec. 16.** Except as otherwise expressly provided in
5 this chapter, nothing in this chapter shall be construed to annul,
6 modify, or preclude the renewal or continuation of any lawful agreement
7 entered into before the effective date of this section between an
8 employer and an employee organization covering wages, hours, and terms
9 and conditions of employment. If there is a conflict between any
10 collective bargaining agreement and any resolution, rule, policy, or
11 regulation of the employer or its agents, the terms of the collective
12 bargaining agreement shall prevail.

13 NEW SECTION. **Sec. 17.** Except as otherwise expressly provided in
14 this chapter, nothing in this chapter may be construed to deny or
15 otherwise abridge any rights, privileges, or benefits granted by law to
16 employees.

17 NEW SECTION. **Sec. 18.** This chapter shall not be construed to
18 interfere with the responsibilities and rights of the employer as
19 specified by federal and state law, including the employer's
20 responsibilities to students, the public, and other constituent
21 elements of the institution.

22 **Sec. 19.** RCW 41.58.020 and 1975 1st ex.s. c 296 s 4 are each
23 amended to read as follows:

24 (1) It shall be the duty of the commission, in order to prevent or
25 minimize interruptions growing out of labor disputes, to assist
26 employers and employees to settle such disputes through mediation and
27 fact-finding.

28 (2) The commission, through the director, may proffer its services
29 in any labor dispute (~~((involving a political subdivision, municipal
30 corporation, or the community college system of the state,))~~) arising
31 under a collective bargaining law administered by the commission either
32 upon its own motion or upon the request of one or more of the parties
33 to the dispute, whenever in its judgment such dispute threatens to
34 cause a substantial disruption to the public welfare.

1 (3) If the director is not able to bring the parties to agreement
2 by mediation within a reasonable time, he shall seek to induce the
3 parties to voluntarily seek other means of settling the dispute without
4 resort to strike or other coercion, including submission to the
5 employees in the bargaining unit of the employer's last offer of
6 settlement for approval or rejection in a secret ballot. The failure
7 or refusal of either party to agree to any procedure suggested by the
8 director shall not be deemed a violation of any duty or obligation
9 imposed by this chapter.

10 (4) Final adjustment by a method agreed upon by the parties is
11 declared to be the desirable method for settlement of grievance
12 disputes arising over the application or interpretation of an existing
13 collective bargaining agreement. The commission is directed to make
14 its mediation and fact-finding services available in the settlement of
15 such grievance disputes only as a last resort.

16 NEW SECTION. **Sec. 20.** Sections 1 through 18 of this act shall
17 constitute a new chapter in Title 41 RCW.

18 NEW SECTION. **Sec. 21.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 22.** This act shall take effect October 1, 1993.
23 The public employment relations commission may immediately take such
24 steps as are necessary to insure that this act is implemented on its
25 effective date.

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