
HOUSE BILL 1468

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By Representatives King, Heavey, Dellwo, Brumsickle, Quall, Carlson, Jacobsen, Miller, Long, Locke, Bray, Leonard, Basich, Conway, Wood, Van Luven and Springer

Read first time 01/29/93. Referred to Committee on Commerce & Labor.

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 University of Washington, Washington State University, the
15 regional universities, and The Evergreen State College may engage in
16 collective bargaining with the exclusive bargaining representatives of
17 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) "Employee" means any employee of an employer, but does not
5 include the chief executive or administrative officers of the
6 institution of higher education, confidential employees, casual
7 employees, supervisors, or employees subject to chapter 28B.16 RCW.
8 However, department or division heads or chairs are not excludable
9 administrators or supervisors.

10 (2) "Confidential employee" includes a person who participates
11 directly on behalf of an employer in the formulation of labor relations
12 policy, the preparation for or conduct of collective bargaining, or the
13 administration of collective bargaining agreements, if the role of the
14 person is not merely routine or clerical in nature but calls for the
15 consistent exercise of independent judgment.

16 (3) "Casual employee" means an individual working in assignments of
17 a limited scope or of a short term or of a transitory nature so as to
18 indicate that the individual does not share a community of interest
19 with other employees of the institution or lacks an expectancy of
20 continued employment. However, an individual is not excluded from the
21 coverage of this chapter solely because the person is both a student
22 within the institution of higher education and an employee. However,
23 a person is not excluded from coverage of this chapter solely because
24 the person is employed part time.

25 (4) "Supervisor" includes any individual having authority in the
26 interest of an employer to hire, assign, promote, transfer, lay off,
27 recall, suspend, discipline, or discharge other employees, to adjust
28 employees' grievances, or to recommend effectively such action, if the
29 exercise of the authority is not merely routine or clerical in nature
30 but calls for the consistent exercise of independent judgment. A
31 person is not excluded solely by reason of his or her membership on a
32 faculty tenure or other governance committee or body. The term
33 "supervisor" includes only those persons who perform a preponderance of
34 the acts of authority specified in this subsection for a preponderance
35 of their duties.

36 (5) "Collective bargaining" and "bargaining" mean the performance
37 of the mutual obligation of the representatives of the employer and the
38 exclusive bargaining representative to meet at reasonable times to
39 bargain in good faith in an effort to reach agreement with respect to

1 wages, hours, and other terms and conditions of employment. Service
2 and activity fees as defined in RCW 28B.15.041 shall not be a subject
3 for bargaining. Prior law, practice, or interpretation shall be
4 neither restrictive, expansive, nor determinative with respect to the
5 scope of bargaining. A written contract incorporating any agreements
6 reached shall be executed if requested by either party. The obligation
7 to bargain does not compel either party to agree to a proposal or to
8 make a concession. It is the intent of the legislature to encourage
9 resolution of disputes between employees and their employers through
10 negotiations. Consequently, questions of negotiability must be
11 liberally construed.

12 In the event of a dispute between an employer and an exclusive
13 bargaining representative over the matters that are terms and
14 conditions of employment, the commission shall decide which items are
15 mandatory subjects for bargaining.

16 (6) "Commission" means the public employment relations commission
17 established under RCW 41.58.010.

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

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

26 (9) "Exclusive bargaining representative" means any employee
27 organization that has:

28 (a) Been certified or recognized pursuant to this chapter as the
29 representative of the employees in an appropriate collective bargaining
30 unit; or

31 (b) Before the effective date of this section, been certified or
32 recognized under a predecessor statute as the representative of the
33 employees in a bargaining unit that continues to be appropriate under
34 this chapter.

35 (10) "Institution of higher education" means the University of
36 Washington, Washington State University, the regional universities, The
37 Evergreen State College, and any other public four-year degree-granting
38 institution.

1 (11) "Person" means one or more individuals, labor organizations,
2 partnerships, associations, corporations, employers, or legal
3 representatives. In determining whether a person is acting as an agent
4 of another person so as to make such other person responsible for his
5 or her acts, the question of whether the specific acts performed were
6 actually authorized or subsequently ratified shall not be controlling.

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

9 (13) "Union security provision" means a provision in a collective
10 bargaining agreement under which some or all employees in the
11 bargaining unit may be required, as a condition of continued employment
12 on or after the thirtieth day following the beginning of such
13 employment or the effective date of the provision, whichever is later,
14 to become a member of the exclusive bargaining representative or pay an
15 agency fee equal to the periodic dues and initiation fees uniformly
16 required as condition of acquiring or retaining membership in the
17 exclusive bargaining representative.

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

25 NEW SECTION. **Sec. 5.** (1) Upon filing with the employer the
26 voluntary written authorization of a bargaining unit employee under
27 this chapter, the employee organization that is the exclusive
28 bargaining representative of the bargaining unit has the right to have
29 deducted from the salary of the bargaining unit employee the periodic
30 dues and initiation fees uniformly required as a condition of acquiring
31 or retaining membership in the exclusive bargaining representative.
32 The employee authorization shall not be irrevocable for a period of
33 more than one year. Such dues and fees shall be deducted monthly from
34 the pay of all employees who have given authorization for the
35 deduction, and shall be transmitted by the employer to the employee
36 organization or to the depository designated by the employee
37 organization.

1 (2) A collective bargaining agreement may include union security
2 provisions, but not a closed shop. The employer shall enforce any
3 union security provision by monthly deductions from the salary of
4 bargaining unit employees affected by the collective bargaining
5 agreement and shall transmit the funds to the employee organization or
6 to the depository designated by the employee organization.

7 (3) An employee who is covered by a union security provision and
8 who asserts a right of nonassociation based on bona fide religious
9 tenets or teachings of a church or religious body of which the employee
10 is a member shall pay to a nonreligious charity or other charitable
11 organization an amount of money equivalent to the periodic dues and
12 initiation fees uniformly required as a condition of acquiring or
13 retaining membership in the exclusive bargaining representative. The
14 charity shall be agreed upon by the employee and the employee
15 organization to which the employee would otherwise pay the dues and
16 fees. The employee shall furnish written proof that the payments have
17 been made. If the employee and the employee organization do not reach
18 agreement on the matter, the commission shall designate the charitable
19 organization.

20 NEW SECTION. **Sec. 6.** Four primary bargaining units may be
21 established as follows: (1) Full-time academic employees; (2) part-
22 time academic employees; (3) nonteaching professional employees; and
23 (4) graduate or student assistant employees. In any dispute concerning
24 the unit appropriate for collective bargaining or the allocation of
25 employees or positions to bargaining units, the commission, after a
26 hearing or hearings, shall determine the dispute, taking into
27 consideration the duties, skills, and working conditions of the
28 employees, the extent of organization among the employees, the
29 community of interest among the employees, the desire of the employees,
30 and the overall management structure of the employer including the
31 interrelationships of divisions within the institution. Unnecessary
32 fragmentation shall be avoided. All employees who are tenured or
33 eligible to seek or be awarded tenure shall be included in the same
34 bargaining unit at each institution of higher education. Full-time and
35 part-time academic employees may be included in the same unit if votes
36 by both units so determine.

1 NEW SECTION. **Sec. 7.** (1) The employee organization that has been
2 designated by the majority of the employees in an appropriate
3 bargaining unit as their representative for the purposes of collective
4 bargaining shall be the exclusive bargaining representative of, and
5 shall be required to represent, all the employees within the bargaining
6 unit without regard to membership in that employee organization:
7 PROVIDED, That any employee may at any time present his or her
8 complaints or concerns to the employer and have such complaints or
9 concerns adjusted without intervention of the exclusive bargaining
10 representative, as long as the exclusive bargaining representative has
11 been given an opportunity to be present at that adjustment and to make
12 its views known, and as long as the adjustment is not inconsistent with
13 the terms of a collective bargaining agreement then in effect.

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

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

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

32 (c) An employee organization seeking certification as exclusive
33 bargaining representative of a bargaining unit of employees, or
34 bargaining unit employees seeking decertification of an exclusive
35 bargaining representative, shall make a confidential showing to the
36 commission of credible evidence demonstrating that at least thirty
37 percent of the employees in the bargaining unit are in support of the
38 petition. The petition shall indicate the name, address, and telephone

1 number of any employee organization known to claim an interest in the
2 bargaining unit.

3 (d) A petition filed by an employer shall be supported by credible
4 evidence demonstrating the basis on which the employer claims the
5 existence of a question concerning the representation of its employees.

6 (e) Any employee organization that makes a confidential showing to
7 the commission of credible evidence demonstrating that it has the
8 support of at least ten percent of the employees in the bargaining unit
9 involved may intervene in proceedings under this section and have its
10 name listed as a choice on the ballot in an election conducted by the
11 commission.

12 (f) The commission shall determine any question concerning
13 representation by conducting a secret ballot election among the
14 employees in the bargaining unit. However, if the commission
15 determines that a serious unfair labor practice has been committed that
16 interfered with the election process and precludes the holding of a
17 fair election, the commission may determine the question concerning
18 representation by conducting a cross-check comparing the employee
19 organization's membership records or bargaining authorization cards
20 against the employment records of the employer.

21 (g) The representation election ballot shall contain a choice for
22 each employee organization qualifying under (c) or (e) of this
23 subsection, together with a choice for no representation. The
24 representation election shall be determined by the majority of the
25 valid ballots cast. If there are three or more choices on the ballot
26 and none of the choices receives a majority of the valid ballots cast,
27 a run-off election shall be conducted between the two choices receiving
28 the highest and second highest numbers of votes.

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

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

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

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

5 (b) To dominate or interfere with the formation or administration
6 of any employee organization or contribute financial or other support
7 to it. An employer may permit employees to confer with it or its
8 representatives or agents during working hours without loss of time or
9 pay;

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

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

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

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

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

30 (b) To cause or attempt to cause an employer to discriminate
31 against an employee in violation of subsection (1)(c) of this section
32 or to discriminate against an employee with respect to whom membership
33 in such organization has been denied or terminated on some ground other
34 than the failure of the employee to tender the periodic dues and
35 initiation fees uniformly required as a condition of acquiring or
36 retaining membership; or

37 (c) To refuse to bargain collectively with the employer of
38 employees for whom it is the exclusive bargaining representative.

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

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

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

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

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

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

29 NEW SECTION. **Sec. 11.** Actions by or on behalf of the commission
30 shall be under chapter 34.05 RCW, or rules adopted under chapter 34.05
31 RCW. The right of judicial review under chapter 34.05 RCW is
32 applicable to all these actions and rules.

33 NEW SECTION. **Sec. 12.** If any provision of any collective
34 bargaining agreement between the employer and the exclusive bargaining
35 representative requires legislative implementation or an appropriation,

1 the employer and the exclusive bargaining representative shall seek the
2 appropriate legislative action actively and in good faith.

3 NEW SECTION. **Sec. 13.** (1) Whenever a collective bargaining
4 agreement between an employer and an exclusive bargaining
5 representative is concluded after the termination date of the previous
6 collective bargaining agreement between the employer and an employee
7 organization representing the same or a substantially similar
8 bargaining unit, the effective date of the collective bargaining
9 agreement must be the day after the termination date of the previous
10 collective bargaining agreement unless otherwise agreed to, and all
11 benefits included in the new collective bargaining agreement, including
12 wage or salary increases, may accrue beginning with the effective date
13 as established by this subsection.

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

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

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

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

34 NEW SECTION. **Sec. 15.** An employer and an exclusive bargaining
35 representative who enter into a collective bargaining agreement shall
36 include in the agreement procedures for binding arbitration of the

1 disputes arising about the interpretation or application of the
2 agreement.

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

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

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

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

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

27 (2) The commission, through the director, may proffer its services
28 in any labor dispute involving a political subdivision, municipal
29 corporation, (~~or~~) the community and technical college system of the
30 state, or baccalaureate degree-granting state institutions of higher
31 education either upon its own motion or upon the request of one or more
32 of the parties to the dispute, whenever in its judgment such dispute
33 threatens to cause a substantial disruption to the public welfare.

34 (3) If the director is not able to bring the parties to agreement
35 by mediation within a reasonable time, he shall seek to induce the

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

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

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

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

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

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