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By Representatives Wineberry, Leonard, Locke, Thibaudeau, Pruitt, J. Kohl, Brown, R. Fisher, Conway and Anderson

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1 AN ACT Relating to agricultural labor relations; adding a new
2 chapter to Title 49 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** This chapter shall be known and cited as the
5 "Washington agricultural labor relations act."

6 NEW SECTION. **Sec. 2.** It is hereby stated to be the policy of the
7 state of Washington to encourage and protect the right of agricultural
8 employees to full freedom of association, self-organization, and
9 designation of representatives of their own choosing. The legislature
10 finds that industrial strife can be avoided or substantially minimized,
11 and the public interest protected, if employers and employees recognize
12 each other's legitimate rights under law in their relations with one
13 another. It is the purpose and policy of this chapter to prescribe the
14 collective bargaining rights of employees and employers in the
15 agricultural industry, to provide orderly and peaceful procedures for
16 preventing the interference by one with the rights of another, to
17 protect the rights of individual employees, to define and proscribe
18 practices on the part of labor and management that are inimical to the

1 general welfare, and to protect the rights of the public in connection
2 with labor disputes.

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

6 (1) "Agriculture" includes farming in all its branches and among
7 other things includes the cultivation and tillage of the soil,
8 dairying, the production, cultivation, growing, and harvesting of any
9 agricultural or horticultural commodities, the raising of livestock,
10 bees, fur-bearing animals, or poultry, and any practice, including
11 forestry or lumbering operations, performed by a farmer or on a farm
12 incident to or in conjunction with such farming operations, including
13 preparation for market and delivery to storage, market, or carriers for
14 transportation to market. "Agriculture" also includes farming,
15 harvesting, and primary processing of organic food products under
16 chapter 15.86 RCW, cultured aquatic products as defined in RCW
17 15.85.020, mushrooms under chapter 15.90 RCW, specialized forest
18 products under chapter 76.48 RCW, and other similar activities.

19 (2) "Employee" includes any individual employed by an employer in
20 agricultural work, and is not limited to the employees of a particular
21 employer unless specifically stated in this chapter, but does not
22 include an individual employed in the domestic service of a family or
23 person at his or her home, or an individual employed by his or her
24 parent or spouse, or an individual having the status of an independent
25 contractor, including those engaged in sharecrop operations, or an
26 individual employed as a supervisor.

27 (3) "Employer" shall be liberally construed to include any person
28 acting directly or indirectly in the interest of an employer in
29 relation to an agricultural employee, any individual grower, corporate
30 grower, cooperative grower, harvesting association, hiring association,
31 land management group, any association of persons or cooperative
32 engaged in agriculture, and any person who owns, leases, or manages
33 land used for agricultural purposes. "Employer" does not include any
34 person supplying agricultural employees to an employer, any farm labor
35 contractor as defined in RCW 19.30.010(2), or any person functioning in
36 the capacity of a farm labor contractor, or any person who does not
37 employ more than twenty-four employees at any time during the current
38 calendar year. If an employer uses the services of a farm labor

1 contractor, or of a person functioning as a farm labor contractor, or
2 of another person supplying agricultural labor, the employer shall be
3 deemed to be the employer of the employees for the purposes of this
4 chapter.

5 (4) "Certification year" means one year from the date on which the
6 board certifies the results of an election conducted under section 10
7 of this act.

8 (5) "Labor dispute" includes any controversy concerning terms,
9 tenure, or conditions of employment, or concerning the association or
10 representation of persons in negotiating, fixing, maintaining,
11 changing, or seeking to arrange terms or conditions of employment,
12 regardless of whether the disputants stand in the proximate relation of
13 employer and employee.

14 (6) "Employee organization" means any organization, union,
15 association, agency, committee, council, or group of any kind in which
16 employees participate and which exists for the purpose, in whole or in
17 part, of dealing with employers concerning grievances, labor disputes,
18 wages, rates of pay, hours of employment, or conditions of employment.

19 (7) "Person" includes one or more individuals, employee
20 organizations, partnerships, associations, corporations, legal
21 representatives, trustees, trustees in bankruptcy, receivers, or other
22 legal entities.

23 (8) "Representative" includes any individual or employee
24 organization.

25 (9) "State agricultural labor relations board" or "board" means the
26 board established in section 4 of this act.

27 (10) "Supervisor" means any individual having authority, in the
28 interest of the employer, to hire, transfer, suspend, layoff, recall,
29 promote, discharge, assign, reward, or discipline other employees, or
30 responsibility to direct them, or to adjust their grievances, or
31 effectively to recommend such action, if the exercise of such authority
32 is not of merely routine or clerical nature but requires the use of
33 independent judgment.

34 (11) "Unfair labor practice" means any unfair labor practice listed
35 in sections 7 and 8 of this act.

36 NEW SECTION. **Sec. 4.** (1) There is hereby created the state
37 agricultural labor relations board to administer this chapter. The
38 board shall consist of three members appointed by the governor. The

1 first member shall be a representative of the public and shall be the
2 chair of the board. The first member shall be appointed from a
3 mutually agreed upon list of not less than three persons, submitted to
4 the governor by the employee and employer organizations described
5 below. The second member shall represent agricultural employers and
6 shall be selected from a list of not less than three names submitted to
7 the governor by a recognized state-wide employer organization,
8 representing a majority of employers. The third member shall represent
9 agricultural employees and shall be selected from a list of not less
10 than three names submitted to the governor by an employee organization,
11 state-wide in scope, which through its affiliates embraces a cross-
12 section and a majority of the organized labor of the state. The
13 original third member shall be appointed for a term of six years, and
14 the other two original members shall be appointed for terms of two
15 years and four years, respectively. Their successors shall be
16 appointed for terms of six years each, except that any person chosen to
17 fill a vacancy shall be appointed only for the unexpired term of the
18 member whom he or she succeeds. Board members shall be eligible for
19 reappointment and shall hold office until the successor is appointed.
20 A member of the board may be removed by the governor, upon notice and
21 hearing, for neglect of duty or malfeasance in office, but for no other
22 cause.

23 (2) A vacancy in the board shall not impair the right of the
24 remaining members to exercise all of the powers of the board, and two
25 members of the board shall, at all times, constitute a quorum of the
26 board.

27 (3) The board shall, at the close of each fiscal year, make a
28 report in writing to the legislature and to the governor stating the
29 cases it has heard, the decisions it has rendered, the names, salaries,
30 and duties of all employees and officers in the employ or under the
31 supervision of the board, and an account of all moneys it has
32 disbursed.

33 NEW SECTION. **Sec. 5.** (1) Members of the board shall devote their
34 entire time to the duties of the board and shall receive for services
35 a salary as fixed by the governor in accordance with RCW 43.03.040,
36 which shall be in addition to reimbursement for travel expenses
37 incurred in the discharge of their official duties as provided in RCW
38 43.03.050 and 43.03.060.

1 (2) The board may appoint an executive director whose annual salary
2 shall be determined under RCW 43.03.028. The executive director shall
3 perform the duties and have the powers the board prescribes to carry
4 out the provisions of this chapter. The executive director, with
5 additional legal assistance consistent with chapter 43.10 RCW, shall
6 have authority on behalf of the board in matters concerning the
7 administration of this chapter, and shall perform the duties prescribed
8 by the board.

9 (3) When necessary to carry out or enforce any action or decision
10 of the board, the executive director shall have authority to petition
11 a court of competent jurisdiction for an order requiring compliance
12 with the board action or decision.

13 (4) The board may employ employees, including attorneys, as it
14 finds necessary for the proper performance of its duties, consistent
15 with the provisions of this chapter.

16 (5) The payment of all of the expenses of the board, including
17 travel expenses incurred by the members or employees of the board under
18 its orders, shall be subject to the provisions of RCW 43.03.050 and
19 43.03.060.

20 (6) The board shall have the authority to make, amend, and rescind,
21 in the manner prescribed by the administrative procedure act, chapter
22 34.05 RCW, rules necessary to carry out this chapter.

23 NEW SECTION. **Sec. 6.** Employees shall have the right to self-
24 organization, to form, join, or assist employee organizations, to
25 bargain collectively through representatives of their own choosing, and
26 to engage in other concerted activities for the purpose of collective
27 bargaining or other mutual aid or protection, and shall also have the
28 right to refrain from any or all such activities, except that employees
29 may be required to pay a fee to an exclusive bargaining representative
30 under a union security provision authorized by this chapter.

31 NEW SECTION. **Sec. 7.** (1) It is an unfair labor practice for an
32 employer:

33 (a) To interfere with, restrain, or coerce employees in the
34 exercise of the rights guaranteed in this chapter. Violations of this
35 subsection include the hiring of permanent employees to replace
36 striking or locked out employees;

1 (b) To control, dominate, or interfere with the formation or
2 administration of any employee organization or to contribute financial
3 or other support to it;

4 (c) To encourage or discourage support for or membership in any
5 employee organization by discrimination in regard to hire, tenure of
6 employment, or any term or condition of employment. Termination of an
7 agricultural employee after the initiation of organizational activities
8 shall be presumed to be an unfair labor practice absent clear and
9 convincing proof to the contrary;

10 (d) To discharge or otherwise discriminate against an employee
11 because the employee has filed charges or given testimony under this
12 chapter, has participated in secret ballot elections authorized under
13 this chapter, or has opposed unfair labor practices as defined in this
14 chapter;

15 (e) To influence or attempt to influence the outcome of a secret
16 ballot election by the threat of loss of jobs or benefits, or by the
17 conferring of benefits or the promise of benefits;

18 (f) To recognize, bargain with, or sign a collective bargaining
19 agreement with any employee organization not certified under this
20 chapter as the exclusive bargaining representative of its employees;

21 (g) To interrogate, poll, or otherwise inquire into the views or
22 preferences of any agricultural employee as to collective bargaining or
23 collective bargaining representation;

24 (h) To engage in surveillance or cause the surveillance of any
25 agricultural employee;

26 (i) To visit the residence or dwelling place of any agricultural
27 employee during the pendency of a petition for an election under this
28 chapter among the employees;

29 (j) To communicate to any agricultural employee, expressly or
30 impliedly, a preference for recognizing, bargaining with, or otherwise
31 dealing with any particular labor organization or organizations unless
32 the communication contains no threat of reprisal or force or promise of
33 benefit;

34 (k) To refuse to bargain collectively with the representatives of
35 its employees; or

36 (l) To refuse to bargain with or to refuse to cooperate with or
37 assist an employee organization regarding compliance with the
38 conditions of an affirmative action program or a program or plan
39 designed to assure compliance by the employer with the provisions of

1 state or federal laws relating to equal employment opportunity for all
2 persons regardless of race, creed, color, national origin, age, sex,
3 marital status, or physical or mental handicap.

4 (2) Subsection (1)(c) of this section is subject to the following
5 limitations:

6 (a) Nothing in this chapter precludes an employer from making an
7 agreement with an employee organization to require, as a condition of
8 employment, payment of a union shop fee on or after the seventh day
9 following the beginning of employment or the effective date of the
10 agreement, whichever is later: (i) If the employee organization is the
11 exclusive representative of the employees as provided in section 10 of
12 this act, in the appropriate collective bargaining unit covered by the
13 agreement when made; and (ii) unless following an election held as
14 provided in section 10 of this act within one year preceding the
15 effective date of the agreement, the board has certified that at least
16 a majority of the employees eligible to vote in the election have voted
17 to rescind the authority of the employee organization to make such an
18 agreement; and

19 (b) Agreements involving union security provisions must safeguard
20 the right of nonassociation of employees based on bona fide religious
21 tenets or teachings of a church or religious body of which the employee
22 is a member. The employee shall pay an amount equivalent to the union
23 shop fee to a nonreligious charity or to another charitable
24 organization mutually agreed upon by the employee affected and the
25 bargaining representative to which the employee would otherwise pay the
26 union shop fee. The employee shall furnish written proof that the
27 payment has been made. If the employee and the bargaining
28 representative do not reach agreement on such matter, the board shall
29 designate the charitable organization.

30 NEW SECTION. **Sec. 8.** It is an unfair labor practice for an
31 employee organization:

32 (1) To interfere with, restrain, or coerce: (a) Employees in the
33 exercise of the rights guaranteed in this chapter, but nothing in this
34 subsection shall impair the right of an employee organization to
35 prescribe its own rules with respect to the acquisition or retention of
36 its membership; or (b) an employer in the selection of representatives
37 for the purposes of collective bargaining or the adjustment of
38 grievances;

1 (2) To cause or attempt to cause an employer to discriminate
2 against an employee in violation of section 7 of this act;

3 (3) To solicit or accept financial or other support from an
4 employer. Any violation of this subsection shall be per se grounds for
5 setting aside the election and disqualifying the employee organization
6 from representing the employees of the employer for three years;

7 (4)(a) To engage in, or to induce or encourage an individual
8 employed by any person to engage in a strike, or a refusal in the
9 course of his or her employment to use, manufacture, process,
10 transport, or otherwise handle or work on any goods, articles,
11 materials, or commodities, or to perform any services in a normal and
12 expeditious manner; or

13 (b) To threaten, coerce, or restrain any person with the object of:

14 (i) Forcing or requiring an employer or self-employed person to
15 join an employee or employer organization;

16 (ii) Forcing or requiring a person to cease using, selling,
17 handling, transporting, or otherwise dealing in the products of any
18 other producer, processor, or manufacturer, or to cease doing business
19 with any other person, or forcing or requiring any other employer to
20 recognize or bargain with an employee organization as the
21 representative of his or her employees unless such employee
22 organization has been certified as the representative of the employees
23 under the provisions of section 10 of this act. However, nothing
24 contained in this subsection (4)(b)(ii) shall be construed to make
25 unlawful, where not otherwise unlawful, a primary strike or primary
26 picketing;

27 (iii) Forcing or requiring an employer to bargain with a particular
28 employee organization as the representative of employees if another
29 employee organization has been certified as the representative of such
30 employees under the provisions of section 10 of this act; or

31 (iv) Forcing or requiring an employer to assign particular work to
32 employees in a particular employee organization or in a particular
33 trade, craft, or class rather than to employees in another employee
34 organization or in another trade, craft, or class, unless such employer
35 is failing to conform to an order or certification of the board
36 determining the bargaining representative for employees performing such
37 work.

38 For the purposes of this subsection (4), nothing contained in this
39 subsection shall be construed to prohibit publicity, other than

1 picketing, for the purpose of truthfully advising the public, including
2 consumers and members of an employee organization, that a product is
3 produced by an employer with whom the employee organization has a
4 primary dispute and is distributed by another employer, as long as the
5 publicity does not have the effect of inducing an individual employed
6 by any person other than the primary employer, in the course of his or
7 her employment, to refuse to pick up, deliver, or transport any goods,
8 or not to perform any services at the establishment of the employer
9 engaged in such distribution, and as long as such publicity does not
10 have the effect of requesting the public to cease patronizing such
11 other employer. However, publicity which includes picketing and has
12 the effect of requesting the public to cease patronizing such other
13 employer shall be permitted only if the employee organization is
14 currently certified as the representative of the primary employer's
15 employees. Publicity other than picketing, but including peaceful
16 distribution of literature, which has the effect of requesting the
17 public to cease patronizing such other employer, shall be permitted
18 only if the employee organization has not lost an election for the
19 primary employer's employees within the preceding twelve-month period,
20 and no other employee organization is currently certified as the
21 representative of the primary employer's employees. Nothing contained
22 in this subsection shall be construed to prohibit publicity, including
23 picketing, which may not be prohibited under the United States
24 Constitution or the Washington Constitution;

25 (5) To refuse to bargain collectively with an employer, provided
26 the employee organization is the representative of the employer's
27 employees under this chapter; or

28 (6) To refuse to bargain with or to refuse to cooperate with or
29 assist an employer regarding compliance with the conditions of an
30 affirmative action program or a program or plan designed to assure
31 compliance by the employer with the provisions of state or federal laws
32 relating to equal employment opportunity for all persons regardless of
33 race, creed, color, national origin, age, sex, marital status, or
34 physical or mental handicap.

35 NEW SECTION. **Sec. 9.** (1) For the purpose of this section, to
36 bargain collectively is the performance of the mutual obligation of the
37 employer and the representative of the employees to meet at reasonable
38 times and confer in good faith with respect to wages, hours, and other

1 terms and conditions of employment, or the negotiation of an agreement,
2 or any question arising thereunder, and the execution of a written
3 contract incorporating any agreement reached if requested by either
4 party, but such obligation does not compel either party to agree to a
5 proposal or require either party to make a concession. If there is in
6 effect a collective bargaining contract covering employees, the duty to
7 bargain collectively also means that no party to the contract may
8 terminate or modify the contract, unless the party desiring termination
9 or modification:

10 (a) Serves a written notice upon the other party to the contract of
11 the proposed termination or modification not less than sixty days
12 before the expiration date of the contract or, in the event the
13 contract contains no expiration date, not less than sixty days before
14 the time it is proposed to make the termination or modification;

15 (b) Offers to meet and confer with the other party for the purpose
16 of negotiating a new contract or a contract containing the proposed
17 modifications;

18 (c) Notifies the board within thirty days after notice of the
19 existence of a dispute, provided no agreement has been reached by that
20 time; and

21 (d) Continues in full force and effect, without resorting to strike
22 or lockout, all the terms and conditions of the existing contract for
23 a period of sixty days after notice is given or until the expiration
24 date of the contract, whichever occurs later.

25 (2) The duties imposed upon employers, employees, and employee
26 organizations by subsection (1) (b), (c), and (d) of this section shall
27 become inapplicable upon an intervening certification of the board
28 under which the employee organization or individual that is a party to
29 the contract has been superseded as or ceased to be the representative
30 of the employees under this chapter and the duties so imposed shall not
31 be construed as requiring either party to discuss or agree to any
32 modification of the terms and conditions contained in a contract for a
33 fixed period, if such modification is to become effective before the
34 terms and conditions can be reopened under the provisions of the
35 contract. An employee who engages in a strike within the sixty-day
36 period specified in this subsection shall lose his or her status as an
37 employee of the employer engaged in the particular labor dispute for
38 the purposes of sections 7 through 11 of this act, but such loss of

1 status for the employee shall terminate if and when he or she is
2 reemployed by the employer.

3 (3) If the parties have not settled the dispute after the
4 termination of the sixty-day period provided in this section, the
5 employees may strike or the employer may lock out employees.

6 NEW SECTION. **Sec. 10.** (1) Representatives designated or selected
7 for the purposes of collective bargaining by a majority of the
8 employees by secret ballot in a unit appropriate for such purposes
9 shall be the exclusive bargaining representatives of all the employees
10 in the unit for the purpose of collective bargaining in respect to
11 rates of pay, wages, hours of employment, or other conditions of
12 employment. However, an individual employee or a group of employees
13 shall have the right at any time to present grievances to their
14 employer and to have such grievances adjusted without the intervention
15 of the bargaining representative, as long as the adjustment is not
16 inconsistent with the terms of a collective bargaining contract or
17 agreement then in effect and as long as the bargaining representative
18 has been given the opportunity to be present at such adjustment.

19 (2) The bargaining unit shall be all the agricultural employees of
20 an employer. If the agricultural employees of the employer are
21 employed in two or more noncontiguous geographical areas, the board
22 shall determine the appropriate unit or units of agricultural employees
23 in which a secret ballot election shall be conducted. In determining
24 whether a unit is appropriate under this subsection, the extent to
25 which the employees have organized shall not be controlling.

26 (3)(a) Petitions for elections shall be filed during the season of
27 peak agricultural employment and shall allege that:

28 (i) Not less than thirty percent of an employees' unit of a
29 particular employer wish to be represented for collective bargaining;

30 (ii) The number of agricultural employees currently employed by the
31 employer named in the petition, as determined from the payroll
32 immediately preceding the filing of the petition, is not less than
33 fifty percent of the employer's peak agricultural employment for the
34 current calendar year;

35 (iii) No valid election under this section has been held among the
36 agricultural employees of the employer named in the petition within the
37 twelve months immediately preceding the filing of the petition;

1 (iv) No employee organization is currently certified under this
2 chapter as the exclusive collective bargaining representative of the
3 agricultural employees of the employer named in the petition;

4 (v) The petition is not barred by an existing collective bargaining
5 agreement; and

6 (vi) The employee organization named in the petition has not,
7 within the twelve months immediately preceding the filing of the
8 petition, discriminated against any member or prospective member of the
9 organization who is engaged in agricultural employment on the basis of
10 race, color, national origin, religion, sex, or any other arbitrary or
11 invidious classification. A finding by the United States equal
12 employment opportunities commission under 29 U.S.C. Sec. 2000 that the
13 employee organization has violated subchapter IV of chapter 21 of Title
14 42 of the United States Code, or by the state human rights commission
15 that the employee organization has engaged in unfair practices under
16 RCW 49.60.190, shall be prima facie evidence of discrimination. Any
17 issue of discrimination under this subsection may be determined by the
18 board at a hearing following an election under this section. If the
19 board determines that discrimination has occurred, it shall either:
20 (A) Refuse to certify the employee organization if the organization
21 receives a majority of the votes cast and has not yet been certified by
22 the board; or (B) decertify the organization if it had certified the
23 organization under this section.

24 (4)(a) Whenever a petition has been filed in accordance with
25 subsection (3) of this section and the rules prescribed by the board,
26 the board shall investigate the petition and if it has reasonable cause
27 to believe that a question of representation exists shall direct that
28 a representation election by secret ballot be held, upon due notice to
29 all interested parties and within a maximum of seven days of the filing
30 of the petition. If at the time the election petition is filed, a
31 majority of the employees in a bargaining unit are engaged in a strike,
32 the board shall, with all due diligence, attempt to hold a secret
33 ballot election within forty-eight hours of the filing of the petition.

34 (b) If any employee organization receives a majority of the votes
35 cast in an election under this section, the organization shall be
36 certified by the board for a period of twelve months as the exclusive
37 bargaining representative of the employees among whom the election was
38 conducted. An employer shall not initially recognize an employee
39 organization as the collective bargaining representative of its

1 employees unless the employee organization has received a majority of
2 the votes cast in a representation election conducted pursuant to the
3 provisions of this chapter.

4 (c) In determining whether or not a question of representation
5 exists, the same rules of decision shall apply irrespective of the
6 identity of the persons filing the petition or the kind of relief
7 sought and in no case shall the board deny an employee organization a
8 place on the ballot by reason of an order with respect to the employee
9 organization or its predecessor not issued in conformity with section
10 11(3) of this act.

11 (d) No election shall be directed in any bargaining unit or any
12 subdivision within which, in the preceding twelve-month period, a valid
13 election has been held. All agricultural employees of the employer
14 whose names appear on the payroll applicable to the payroll period
15 immediately preceding the filing of the petition for an election,
16 except employees who are replacing striking or locked out employees,
17 shall be eligible to vote. Employees engaged in an economic strike
18 shall be eligible to vote under such rules as the board finds are
19 consistent with the purposes and provisions of this chapter in any
20 election conducted within twelve months after the commencement of the
21 strike. In any election where none of the choices on the ballot
22 receives a majority, a run-off shall be conducted, the ballot providing
23 for a selection between the two choices receiving the largest and
24 second largest number of valid votes cast in the election.

25 (e) Nothing in this section shall be construed to prohibit the
26 waiving of hearings by stipulation for the purpose of a consent
27 election in conformity with the rules and decisions of the board.

28 (5) Once a petition for an election has been filed, any employee
29 organization qualified to appear on the ballot shall have the right to
30 communicate peacefully with the employees at their residences or
31 dwelling places, or on the property of the employer during nonworking
32 hours, including meal and rest periods or other breaks. However, an
33 employee organization or its agents may not interfere with the
34 performance of work in the exercise of the rights guaranteed by this
35 section. The rights granted under this section shall be specifically
36 enforceable in a court of competent jurisdiction.

37 (6) The employer shall make the payroll list available to the
38 department and any labor organization qualified to appear on the ballot
39 no less than forty-eight hours prior to any election. If the employer

1 is unable to compile a full and accurate list within the time allowed,
2 the board shall proceed to determine eligibility on the basis of such
3 other evidence as is available to the board at that time. If an
4 employer willfully supplies the board with an inaccurate list or
5 otherwise willfully fails to perform its obligations under this
6 section, the petitioning employee organization shall be certified as
7 the exclusive bargaining representative of the employer's employees.

8 (7) An employee organization qualified to participate in an
9 election may file with the board any symbol or trademark it wishes to
10 appear on the ballots used by the board. The ballots of the board
11 shall then contain the symbols of the employee organizations qualified
12 to appear on the ballot. The board shall make available at any
13 election ballots printed in English and Spanish and, on request of a
14 qualified employee organization, any other language used by the
15 employees voting in the election.

16 (8) Recognizing that agricultural employment is a seasonal
17 occupation for the majority of agricultural employees and because it is
18 the intent of this chapter to provide the fullest scope for employees'
19 enjoyment of the rights provided under this chapter, the board shall
20 not consider a representation petition or petition to decertify as
21 timely filed unless at least fifty percent of the peak agricultural
22 employment for the current calendar year is on the payroll for the
23 period immediately preceding the filing of the petition. Peak
24 employment shall be determined from past employment records, current
25 crop data, and other relevant evidence. The prior season alone shall
26 not be a basis for the determination, but the board shall estimate the
27 peak employment on the basis of acreage and crop statistics applied
28 uniformly throughout the state of Washington, and on all other relevant
29 evidence.

30 (9) Whenever a majority of the agricultural employees in a
31 bargaining unit engage in a bona fide strike for the right to an
32 election under this chapter, and an employee or group of employees, or
33 any individual or employee organization acting on their behalf, makes
34 a demand on the employer for an election under this chapter, the
35 employees shall be deemed to have selected the employee organization as
36 their bargaining representative.

37 (10) Within five days after an election, any person may file with
38 the board a signed petition asserting that allegations made in the
39 petition filed pursuant to this section were incorrect, or that the

1 board improperly determined the geographical scope of the bargaining
2 unit, or raising objections to the conduct of the election or conduct
3 affecting the results of the election. Upon receipt of a petition
4 under this subsection, the board, after due notice, shall conduct a
5 hearing to determine whether the election shall be decertified. The
6 hearing may be conducted by an officer or employee of the board. If
7 the board finds, on the record of the hearing, that any of the
8 assertions made in the petition are correct, or the election was not
9 conducted properly, or misconduct affecting the results of the election
10 occurred, the board may refuse to certify the election. Unless the
11 board determines that there are sufficient grounds to refuse to do so,
12 it shall certify the election. If no petition under this subsection is
13 filed within five days of the election, the board shall certify the
14 election.

15 NEW SECTION. **Sec. 11.** (1) The board is empowered, as provided in
16 this chapter, to prevent any person from engaging in any unfair labor
17 practice listed in section 7 or 8 of this act. The procedures set
18 forth in this section shall be the exclusive method of redressing
19 unfair labor practices.

20 (2) Whenever it is charged that a person has engaged in or is
21 engaging in an unfair labor practice, the board or its agent shall have
22 power to issue and cause to be served upon such person a complaint
23 stating the charges in that respect, and containing a notice of hearing
24 before the board or a member thereof, or before its designated agent or
25 at a place therein fixed, not less than five days after the serving of
26 the complaint. However, no complaint shall issue based upon any unfair
27 labor practice occurring more than six months prior to the filing of
28 the charge with the board and the service of a copy upon the person
29 against whom the charge is made, unless the person aggrieved was
30 prevented from filing the charge by reason of service in the armed
31 forces in which event the six-month period shall be computed from the
32 date of his or her discharge. A complaint may be amended by the member
33 or the agent conducting the hearing or the board in its discretion at
34 any time prior to the issuance of an order based thereon. The person
35 so complained of shall have the right to file an answer to the original
36 or amended complaint, and to appear in person or otherwise and give
37 testimony at the place and time fixed in the complaint. In the
38 discretion of the member or the agent conducting the hearing or the

1 board, any other person may be allowed to intervene in the proceeding
2 and to present testimony. A proceeding shall, insofar as is
3 practicable, be conducted in accordance with the rules of evidence
4 applicable in the superior courts of the state.

5 (3)(a) The testimony taken by the member or the agent or the board
6 shall be reduced to writing and filed with the board. Thereafter, in
7 its discretion, the board upon notice may take further testimony or
8 hear argument.

9 (b) If, upon the preponderance of the testimony taken, the board is
10 of the opinion that a person named in the complaint has engaged in or
11 is engaging in an unfair labor practice, the board shall state its
12 findings of fact and shall issue and cause to be served upon the person
13 an order requiring the person to cease and desist from the unfair labor
14 practice, and to take such affirmative action, including reinstatement
15 of employees with or without back pay and, when the board deems such
16 relief appropriate, making employees whole for loss of pay resulting
17 from the employer's refusal to bargain, and to provide such other
18 relief as will effectuate the policies of this chapter. If an order
19 directs the reinstatement of an employee, back pay may be required of
20 the employer or employee organization, as the case may be, responsible
21 for the discrimination. An order may further require reports showing
22 the extent to which the order has been complied with.

23 (c) If, upon the preponderance of the testimony taken, the board is
24 not of the opinion that the person named in the complaint has engaged
25 in or is engaging in an unfair labor practice, the board shall state
26 its findings of fact and shall issue an order dismissing the complaint.

27 (d) No order of the board shall require the reinstatement of an
28 individual as an employee who has been suspended or discharged, or the
29 payment of back pay to an individual, if the individual was suspended
30 or discharged for cause.

31 (e) If the evidence is presented before a member of the board or
32 before an examiner, the member or the examiner, as the case may be,
33 shall issue and cause to be served on the parties to the proceeding a
34 proposed report, together with a recommended order, which shall be
35 filed with the board, and if no exceptions are filed within seven days
36 after service upon the parties, or within such further period as the
37 board may authorize, the recommended order shall become the order of
38 the board and become effective as prescribed therein.

1 (f) In determining whether a complaint shall issue alleging a
2 violation of section 7(1) (a) or (b) of this act, and in deciding such
3 cases, the same rules and decisions of the board shall apply whether or
4 not the employee organization affected is affiliated with an employee
5 organization that is national or international in scope. However, no
6 officer or member of an employee organization and no employee
7 organization participating or interested in a labor dispute shall be
8 held responsible or liable for the unlawful acts of individual
9 officers, members, or agents, except upon clear evidence of actual
10 participation in, or actual authorization of, the acts, or of
11 ratification of the acts after actual knowledge of the acts.

12 (4) Until the record in a case has been filed in a court as
13 provided in this section, the board may at any time, upon reasonable
14 notice and in such manner as it shall deem proper, modify or set aside,
15 in whole or in part, any finding or order made or issued by it.

16 (5) Any person aggrieved by a final order of the board granting or
17 denying in whole or in part the relief sought may obtain a review of
18 such order in the superior court of the county wherein the employer is
19 located or wherein such person resides or transacts business, by filing
20 in the court a written petition requesting that the order of the board
21 be modified or set aside. The petition shall be filed with the court
22 within thirty days from the date of issuance of the board's order. A
23 copy of the petition shall be forthwith transmitted by the clerk of the
24 court to the board. The board shall file in the court the record of
25 the proceedings, certified by the board, within ten days after the
26 clerk's notice unless the time is extended by the court for good cause
27 shown. The court shall have jurisdiction to grant to the board such
28 temporary relief or restraining order as it deems just and proper, and
29 in like manner to make and enter a decree enforcing, modifying and
30 enforcing as modified, or setting aside in whole or in part the order
31 of the board. The findings of the board with respect to questions of
32 fact, if supported by substantial evidence on the record considered as
33 a whole, shall in like manner be conclusive.

34 (6) The commencement of proceedings under subsection (5) of this
35 section shall not, unless specifically ordered by the court, operate as
36 a stay of the board's order. An order directing an election shall not
37 be stayed pending review.

38 (7) Petitions filed under this section shall be heard
39 expeditiously.

1 (8) The board shall have power, upon issuance of a complaint as
2 provided in subsection (2) of this section charging that any person has
3 engaged in or is engaging in an unfair labor practice, to petition a
4 superior court of the county wherein the employer is located or wherein
5 such person resides or transacts business, for appropriate temporary
6 relief or restraining order. Upon the filing of a petition the court
7 shall cause notice thereof to be served upon such person, and thereupon
8 shall have jurisdiction to grant to the board such temporary relief or
9 restraining order as it deems just and proper.

10 (9) Whenever it is charged that any person has engaged in an unfair
11 labor practice within the meaning of section 7 (1)(c) or (2) of this
12 act, the charge shall be given priority over all other cases except
13 cases of like character in the office where it is filed or to which it
14 is referred.

15 NEW SECTION. **Sec. 12.** For the purpose of all hearings and
16 investigations which, in the opinion of the board, are necessary and
17 proper for the exercise of the powers vested in it by section 10 of
18 this act:

19 (1) The board or its agents shall at all reasonable times have
20 access to for the purpose of examination, and the right to copy, any
21 evidence of a person being investigated or proceeded against that
22 relates to a matter under investigation or in question. The board or
23 any member thereof shall, upon application of a party to the
24 proceedings, expeditiously issue to such party subpoenas requiring the
25 attendance and testimony of witnesses or the production of evidence in
26 the proceeding or investigation requested in the application. Within
27 seven days after service of a subpoena on any person requiring the
28 production of evidence in his or her possession or under his or her
29 control, the person may petition the board to revoke, and the board
30 shall revoke, the subpoena if, in its opinion, the evidence whose
31 production is required does not relate to any matter under
32 investigation, or any matter in question in such proceedings, or if, in
33 its opinion, the subpoena does not describe with sufficient
34 particularity the evidence whose production is required. Any member of
35 the board or its agent may administer oaths and affirmations, examine
36 witnesses, and receive evidence. The attendance of witnesses and the
37 production of evidence may be required from any designated place of
38 hearing;

1 (2) In case of contumacy or refusal to obey a subpoena issued to
2 any person, a superior court within the jurisdiction of which the
3 inquiry is carried on or within the jurisdiction of which said person
4 is found or resides or transacts business, upon application by the
5 board, shall have jurisdiction to issue the person an order requiring
6 the person to appear before the board, its member, agent, or agency,
7 there to produce evidence if so ordered, or there to give testimony
8 touching the matter under investigation or in question; and any failure
9 to obey an order of the court may be punished by the court as a
10 contempt of court;

11 (3) Complaints, orders, and other process and papers of the board,
12 its member, or agent may be served either personally or by registered
13 mail or by leaving a copy at the principal office or place of business
14 of the person required to be served or with an employee or agent duly
15 authorized to receive complaints, orders, and other process and papers.
16 The verified return by the individual making the service, setting forth
17 the manner of the service, shall be proof of the service, and the
18 return post office receipt, when registered and mailed as required in
19 this subsection, shall be proof of service. Witnesses summoned before
20 the board, its member, or agent shall be paid the same fees and mileage
21 that are paid witnesses in the superior courts, and witnesses whose
22 depositions are taken and the persons taking the same shall severally
23 be entitled to the same fees as are paid for like services in the
24 superior courts; and

25 (4) Process of a court to which application may be made under this
26 chapter may be served in the county wherein the defendant or other
27 person required to be served resides or may be found.

28 NEW SECTION. **Sec. 13.** Upon the petition of any person made not
29 earlier than the ninetieth day nor later than the sixtieth day
30 preceding the expiration of a certification year, the board shall
31 determine whether the employer whose employees are represented as
32 provided under this chapter has bargained in good faith. If the board
33 finds that the employer has not bargained in good faith, the board
34 shall order the parties to submit to interest arbitration.

35 NEW SECTION. **Sec. 14.** Any person who willfully resists, prevents,
36 impedes, or interferes with members of the board or its agents in the

1 performance of duties pursuant to this chapter shall be guilty of a
2 gross misdemeanor punishable under chapter 9A.20 RCW.

3 NEW SECTION. **Sec. 15.** The provisions of this chapter shall not
4 apply to employees of the federal government, employees of the state or
5 a political subdivision of the state, employees covered by the railway
6 labor act, or employees covered by the national labor relations act.

7 NEW SECTION. **Sec. 16.** Nothing in this chapter, except as
8 specifically provided, shall be construed to interfere with or impede
9 or diminish in any way the right to strike, or to affect the
10 limitations or qualifications on that right.

11 NEW SECTION. **Sec. 17.** Nothing in this chapter shall prohibit any
12 individual employed as a supervisor from becoming or remaining a member
13 of an employee organization, but no employer subject to this chapter
14 shall be compelled to recognize supervisors as employees for the
15 purpose of this chapter.

16 NEW SECTION. **Sec. 18.** No provision of this chapter shall be
17 deemed to make an unfair labor practice any act that was performed
18 prior to the effective date of this act that did not constitute an
19 unfair labor practice prior to the effective date of this act. The
20 provisions of this chapter shall not make an unfair labor practice the
21 performance of any obligation under a collective bargaining agreement
22 entered into prior to the effective date of this act.

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

27 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act shall
28 constitute a new chapter in Title 49 RCW.

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