

# FINAL BILL REPORT

## 2SHB 2403

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### PARTIAL VETO

C 356 L 02

Synopsis as Enacted

**Brief Description:** Providing for collective bargaining at four-year institutions of higher education.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Kenney, Conway, Voloria, Linville, Campbell, O'Brien, Fromhold, Lovick, Hunt, Hurst, Miloscia, Jackley, Kagi, Schual-Berke, Kessler, Gombosky, Berkey, Cody, Chase, Morris, Dickerson, Tokuda, Cooper, Darneille, Kirby, Upthegrove, Edwards, Romero, Santos, Lysen, Quall, McIntire, Wood, Haigh, McDermott, Simpson and Sullivan).

**House Committee on Commerce & Labor**

**House Committee on Appropriations**

**Senate Committee on Labor, Commerce & Financial Institutions**

**Senate Committee on Ways & Means**

### **Background:**

Although academic personnel at public institutions of higher education are state employees, they are exempt from the state civil service law. As a result, they are not covered by the state civil service collective bargaining law. A separate collective bargaining law specifically governs collective bargaining for community college faculty.

In 1977 the Public Employment Relations Commission (PERC) held that it did not have jurisdiction under the public employees' collective bargaining law over faculty collective bargaining at Eastern Washington University (EWU). This decision was upheld in Spokane County Superior Court. The court also found that the university's Board of Trustees had implied power, but not an obligation, to negotiate with its employees or their representatives over terms of employment. For a number of years, Eastern Washington University and its faculty have entered into voluntary collective bargaining agreements.

### **Summary:**

The boards of regents or trustees of the four-year public institutions of higher education and the exclusive bargaining representatives of their respective faculties have a mutual obligation to bargain in good faith over wages, hours, and other terms and conditions of employment under a new collective bargaining law administered by the PERC.

However, faculty members may not engage in collective bargaining until any existing

faculty governance system is abolished. "Faculty" means employees who have faculty status or who perform faculty duties, but not certain employees, such as administrators, temporary employees, or graduate student employees.

### ***Legislative Findings***

The Legislature finds a public interest in developing cooperative labor relations within the public four-year institutions of higher education. The Legislature recognizes that shared governance between the administration and faculty is a long-accepted manner of governing public four-year institutions of higher education. However, collective bargaining can fill the same role and, therefore, faculty must choose between collective bargaining and faculty governance systems. The Legislature also recognizes the state's policy to encourage the pursuit of excellence in teaching, and requires all parties to endeavor to preserve academic freedom.

### ***Subjects of Bargaining***

Required subjects of collective bargaining include wages, hours, and other terms and conditions of employment, except that bargaining is prohibited over:

- the merits or organization of any activity or program established by law or employer resolution, except for the terms and conditions of employment for those employees affected by the activity or program;
- fees that are not a condition of employment; and
- student admission requirements, conditions for award of degrees, or the content or evaluation of courses and research programs.

The parties may, but are not required to, bargain criteria and standards for appointment, promotion, evaluation, and tenure of faculty.

Collective bargaining agreements may provide for arbitration of grievances. If an agreement between the same parties is concluded after the previous agreement expired, the new agreement may take effect the day after the old agreement expired.

If the parties are unable to settle unresolved matters, either party may request the assistance of the PERC.

### ***Legislative Review***

An agreement may not include compensation that exceeds the amount or percentage established by the Legislature in the appropriations act. The employer, however, may provide additional compensation. If a compensation provision is affected by subsequent modification of the appropriations act, both parties must enter into negotiations to arrive at a mutually agreed upon replacement for the affected provision.

### ***Determining Bargaining Units and Exclusive Bargaining Representatives***

Faculty members have the right to self-organization and to bargain collectively through exclusive bargaining representatives. However, they may not engage in bargaining until existing faculty governance systems are abolished. Shared governance practices may be exercised so long as faculty engages in collective bargaining.

The PERC resolves disputes over membership in a bargaining unit. Only one bargaining unit is allowed for faculty at each institution of higher education, including the institution's branch campuses.

To certify an exclusive bargaining representative, the PERC must conduct an election or, under some circumstances, conduct a cross-check of membership records. Questions concerning representation may not be raised until one year after a certification is issued. If a collective bargaining agreement is in effect, questions concerning representation may be raised only within the period 60 to 90 days before the agreement expires, with some exceptions.

An employee organization seeking a certification election to determine the exclusive bargaining representative, or faculty seeking decertification, must show support of at least 30 percent of the faculty in the bargaining unit. Another employee organization may be listed on an election ballot if it shows support of at least 10 percent of the faculty in the bargaining unit. If an employer files a petition, it must demonstrate the good faith basis for the employer's claim that a question exists concerning representation of the faculty.

The representation election is determined by the majority of valid ballots cast. The employee organization representing a majority of faculty in the bargaining unit will be certified. An exclusive bargaining representative must represent all faculty in the bargaining unit without regard to membership in the organization.

### ***Union Security Provisions***

The exclusive bargaining representative has the right to have dues deducted from the salary of faculty members who file a voluntary written authorization with the employer. The authorization may not be irrevocable for more than one year. The employer must transmit the funds to the exclusive bargaining representative.

A collective bargaining agreement may include union security provisions, but not a closed shop. If a union security provision is included in the agreement, the employer must enforce the provision by making monthly dues deductions from the pay of bargaining unit faculty members.

Special provisions apply to faculty members who assert a right of nonassociation based on bona fide religious beliefs. These faculty members may pay dues to a nonreligious

charity agreed upon by the faculty members and the exclusive bargaining representative.

### ***Unfair Labor Practices***

The employer may not:

- interfere with, restrain, or coerce faculty members exercising their rights;
- interfere with an employee organization;
- encourage or discourage union membership by discrimination in regard to hiring or other terms of employment;
- discriminate against a faculty member for filing charges or testifying on related matters; or
- refuse to bargain collectively with the faculty exclusive bargaining representative.

The employee organization may not:

- restrain or coerce faculty members exercising their rights;
- cause an employer to discriminate against a faculty member (to encourage or discourage union membership);
- discriminate against a faculty member for filing charges or testifying on related matters; or
- refuse to bargain collectively with the employer.

The PERC is authorized to prevent and determine unfair labor practices. Unfair labor practice complaints must be filed within six months after the event for which the complaint is brought.

### ***Strikes and Lockouts***

Both faculty strikes and employer lockouts are prohibited. Either party may request the superior court in the county in which the labor dispute exists to issue an appropriate order against either or both parties.

### ***Rule-Making***

The PERC may adopt rules to implement this new collective bargaining chapter.

### **Votes on Final Passage:**

- House 55 42
- House 52 45 (House reconsidered)
- House 53 44 (House reconsidered)
- Senate 27 22 (Senate amended)
- House 52 45 (House concurred)

**Effective:** October 1, 2002

**Partial Veto Summary:** The Governor vetoed two sections that would have prohibited the faculty from exercising shared governance practices while engaging in collective bargaining.