

HOUSE BILL REPORT

HB 2403

As Reported by House Committee On:
Commerce & Labor
Appropriations

Title: An act relating to labor relations at the public four-year institutions of higher education.

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

Sponsors: 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.

Brief History:

Committee Activity:

Commerce & Labor: 1/21/02, 1/30/02 [DPS];

Appropriations: 2/7/02, 2/9/02 [DP2S(w/o sub CL)].

Brief Summary of Second Substitute Bill

- Establishes procedures for exclusive bargaining representatives of faculty at the public four-year institutions of higher education to collectively bargain with the board of regents or trustees over wages, hours, and terms and conditions of employment.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Kenney and Lysen.

Minority Report: Do not pass. Signed by 3 members: Representatives Clements, Ranking Minority Member; Chandler and McMorris.

Staff: Chris Cordes (786-7103).

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 of Substitute Bill:

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 terms and conditions of employment under a new collective bargaining law administered by the PERC. "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 that it intends to preserve and encourage. 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 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; or
- 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 changed by subsequent modification of the appropriations act, both parties must enter into negotiations to arrive at a mutually agreed upon replacement for the modified provision.

Determining Bargaining Units and Exclusive Bargaining Representatives

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 union security is included in the agreement, the employer must enforce 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.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill: (1) provisions addressing bargaining units are clarified to allow only one bargaining unit of faculty at each institution of higher education with no discretion to consider other units; (2) provisions addressing the selection of exclusive bargaining representatives are clarified to require the PERC to certify them under specified procedures and to require a determination that the organization represents a majority of employees in a bargaining unit; (3) the requirement is deleted for the Governor to submit requests for funds necessary to implement a collective bargaining agreement. Instead, a requirement is added that 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 changed by subsequent modification of the appropriations act, both parties must enter into negotiations to arrive at a mutually agreed upon replacement for the modified provision; (4) the provision allowing an agreement to have a retroactive effective date is clarified to permit retroactivity only when the new agreement is between the same parties that were parties to the previous agreement; (5) provisions are added giving the PERC authority to prevent and determine unfair labor practices and requiring complaints to be filed within six months after the event for which the complaint is brought; (6) provisions are added giving the PERC authority to adopt rules to implement the new collective bargaining chapter; (7) various technical changes are made to make language consistent throughout the new chapter or with other public sector collective bargaining laws; and (8) an effective date of October 1, 2002, is added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2002.

Testimony For: Faculty at the institutions of higher education should have the same basic rights as other employees. Collective bargaining rights are civil rights that all employees should enjoy. This bill gives faculty the right to choose to be represented for collective bargaining while preserving the traditional role of faculty shared governance. Eastern Washington University (EWU) has shown that collective bargaining can be beneficial to an institution of higher education. The result of bargaining at EWU has been to create a collaborative, interest-based relationship between the administration and faculty. The EWU collective bargaining agreement includes provisions addressing what

happens if the state enters a severe financial crisis. A coalition of representatives from the faculty at various schools and University of Washington administration have reached an agreement on this bill that is flexible enough to meet everyone's needs, including the parties at EWU. Many states with peer research universities have statutes authorizing collective bargaining for faculty. Polls show that faculty supports enabling legislation like this bill. Faculty without collective bargaining rights have no means to express concerns about working conditions except by leaving the school.

(Concerns) Some faculty have a concern about permissive bargaining over standards for appointment, evaluation, and tenure of faculty, an issue that is commonly dealt with through a shared governance process.

Testimony Against: None.

Testified: (In support) Gail Stygall; James N. Gregory; Norm Wolf; Mike Honey; Galya Diment; Dolphine Oda; Wendy Rader-Konofalski, Washington Federation of Teachers; Marvin Smith, United Faculty and Faculty Senate of Eastern Washington University; Terry Fitzpatrick, Washington Education Association, Eastern Washington; Richard Allumbaugh; Dick Ludwig; Jan Sjavik; Nicholas Lovrick, Council of Faculty Representatives; George Durrie, Eastern Washington University; and Sarah Ryan.

(Concerns) Jeff Newcomber.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 14 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Ruderman, Schual-Berke and Tokuda.

Minority Report: Do not pass. Signed by 11 members: Representatives Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cox, Lisk, Mastin, Pearson, Pflug and Talcott.

Staff: Laurie Schaffler (786-7143).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

The parties must bargain over the replacement of a compensation clause when the clause has been "affected" instead of "modified" by subsequent modifications of an appropriations act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect on October 1, 2002.

Testimony For: Faculty should have the same basic rights as other employees and be able to choose whether to collectively bargain or not. Eastern has had collective bargaining in place for the past six years. This bill would provide the ground rules for EWU. This will finally grant faculty the same rights as other employees. Cost should not be prohibitive and should be able to be absorbed.

Testimony Against: None.

Testified: (In support) Dick Ludwig, University of Washington Faculty Representative; George Durrie, Eastern Washington University; and Wendy Rader-Konofalski, Washington Federation of Teachers and Washington Education Association.