

SSB 6835 - S AMD 149

By Senator Kohl-Welles

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Employee" means an employee of a symphony orchestra, opera, or
6 performing arts theater that does not meet the jurisdictional standards
7 of the national labor relations board, and shall include any individual
8 whose work has ceased as a consequence of, or in connection with, any
9 current labor dispute with an employer or because of any unfair labor
10 practice with an employer, and who has not obtained any other regular
11 and substantially equivalent employment.

12 (2)(a) "Employer" means a symphony orchestra, opera, or performing
13 arts theater, that does not meet the jurisdictional standards of the
14 national labor relations board, and includes any person acting as an
15 agent of an employer, directly or indirectly.

16 (b) In determining whether any person is acting as an "agent" of
17 another person so as to make such other person responsible for his or
18 her acts, the question of whether the specific acts performed were
19 actually authorized or subsequently ratified shall not be controlling.

20 (3) "Labor dispute" includes any controversy concerning terms,
21 tenure, or conditions of employment, or concerning the association of
22 representation of persons in negotiating, fixing, maintaining,
23 changing, or seeking to arrange terms or conditions of employment,
24 regardless of whether the disputants stand in the proximate relation of
25 employer and employee. In the event of a dispute between an employer
26 and an exclusive bargaining representative over the matters that are
27 terms and conditions of employment, the commission shall decide which
28 items are mandatory subjects for bargaining.

29 (4) "Labor organization" means an organization of any kind, or an
30 agency or employee representation committee or plan, in which employees

1 participate and which exists for the primary purpose of dealing with
2 employers concerning grievances, labor disputes, wages, rates of pay,
3 hours of employment, or conditions of employment.

4 (5) "Person" includes one or more individuals, labor organizations,
5 partnerships, associations, corporations, legal representatives,
6 trustees in bankruptcy, or receivers.

7 (6) "Public employment relations commission" or "commission" means
8 the public employment relations commission created in chapter 41.58
9 RCW.

10 (7) "Representative" includes any individual or labor organization.

11 (8) "Supervisor" means any individual having authority, in the
12 interest of the employer, to hire, transfer, suspend, lay off, recall,
13 promote, discharge, assign, reward, or discipline other employees, or
14 responsibly to direct them, or to adjust their grievances, or
15 effectively to recommend such action, if in connection with the
16 foregoing the exercise of such authority is not of a merely routine or
17 clerical nature, but requires the use of independent judgment.

18 (9) "Unfair labor practice" means any activity listed in section 8
19 of this act.

20 NEW SECTION. **Sec. 2.** The labor organization that has been
21 determined by the commission to be the exclusive bargaining
22 representative of a bargaining unit shall be required to represent all
23 the members within the bargaining unit without regard to membership in
24 that labor organization. However, any bargaining unit member may at
25 any time present his or her complaints or concerns to the employer and
26 have such complaints or concerns adjusted without intervention of the
27 exclusive bargaining representative, as long as the exclusive
28 bargaining representative has been given an opportunity to be present
29 at the adjustment and to make its views known, and as long as the
30 adjustment is not inconsistent with the terms of a collective
31 bargaining agreement then in effect.

32 NEW SECTION. **Sec. 3.** The commission shall certify exclusive
33 bargaining representatives in accordance with the procedures specified
34 in this section.

35 (1) The commission, after hearing upon reasonable notice, shall
36 decide the unit appropriate for the purpose of collective bargaining.

1 In determining, modifying, or combining the bargaining unit, the
2 commission shall consider the duties, skills, and working conditions of
3 the employees; the history of collective bargaining by the employees
4 and their bargaining representatives; the extent of organization among
5 the employees; and the desire of the employees to be represented.
6 Supervisors shall not be included in the same bargaining unit as
7 nonsupervisory employees, but shall be included in a bargaining unit
8 containing only supervisors.

9 (2) No question concerning representation may be raised within one
10 year following issuance of a certification under this section.

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

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

32 (5) A petition filed by an employer must be supported by credible
33 evidence demonstrating the good faith basis on which the employer
34 claims the existence of a question concerning the representation.

35 (6) Any labor organization that makes a confidential showing to the
36 commission of credible evidence demonstrating that it has the support
37 of at least ten percent of the employees in the bargaining unit

1 involved is entitled to intervene in proceedings under this section and
2 to have its name listed as a choice on the ballot in an election
3 conducted by the commission.

4 (7) The commission shall determine any question concerning
5 representation by conducting a secret ballot election among the
6 employees in the bargaining unit, except under the following
7 circumstances:

8 (a) If only one labor organization is seeking certification as
9 exclusive bargaining representative of a bargaining unit for which
10 there is no incumbent exclusive bargaining representative, the
11 commission may, upon the concurrence of the employer and the labor
12 organization, determine the question concerning representation by
13 conducting a cross-check comparing the labor organization's membership
14 records or bargaining authorization cards against the employment
15 records of the employer; or

16 (b) If the commission determines that a serious unfair labor
17 practice has been committed that interfered with the election process
18 and precludes the holding of a fair election, the commission may
19 determine the question concerning representation by conducting a cross-
20 check comparing the labor organization's membership records or
21 bargaining authorization cards against the employment records of the
22 employer.

23 (8) The representation election ballot must contain a choice for
24 each labor organization qualifying under subsection (3) or (5) of this
25 section, together with a choice for no representation. The
26 representation election shall be determined by the majority of the
27 valid ballots cast. If there are three or more choices on the ballot
28 and none of the three or more choices receives a majority of the valid
29 ballots cast, a runoff election shall be conducted between the two
30 choices receiving the highest and second highest numbers of votes.

31 (9) The commission shall certify as the exclusive bargaining
32 representative the labor organization that has been determined to
33 represent a majority of employees in a bargaining unit.

34 NEW SECTION. **Sec. 4.** In any dispute concerning inclusion in the
35 bargaining unit or the allocation of employees or positions to a
36 bargaining unit, the commission, after a hearing or hearings, shall
37 determine the dispute.

1 NEW SECTION. **Sec. 5.** (1) The commission shall conduct mediation
2 activities upon the request of either party as a means of assisting in
3 the settlement of unresolved matters considered under this chapter.

4 (2) If any matter being jointly considered by the exclusive
5 bargaining representative and the employer is not settled by the means
6 provided in this chapter, either party may request the assistance of
7 the commission. Nothing in this section prohibits an employer and a
8 labor organization from agreeing to substitute, at their own expense,
9 some other impasse procedure or other means of resolving matters
10 considered under this chapter.

11 NEW SECTION. **Sec. 6.** A collective bargaining agreement negotiated
12 under this chapter may include procedures for final and binding
13 grievance arbitration of the disputes arising about the interpretation
14 or application of the agreement.

15 (1) The parties to a collective bargaining agreement may agree on
16 one or more permanent umpires to serve as arbitrator, may agree on any
17 impartial person to serve as arbitrator, or may agree to select
18 arbitrators from any source available to them, including federal and
19 private agencies, in addition to the staff and dispute resolution panel
20 maintained by the commission.

21 (2) An arbitrator may require any person to attend as a witness,
22 and to bring with him or her any book, record, document, or other
23 evidence. Subpoenas shall issue and be signed by the arbitrator and
24 shall be served in the same manner as subpoenas to testify before a
25 court of record in this state. The fees for such attendance shall be
26 paid by the party requesting issuance of the subpoena and shall be the
27 same as the fees of witnesses in the superior court. If any person so
28 summoned to testify refuses or neglects to obey such subpoena, upon
29 petition authorized by the arbitrator, the superior court may compel
30 the attendance of such person before the arbitrator, or punish the
31 person for contempt in the same manner provided for the attendance of
32 witnesses or the punishment of them in the courts of this state.

33 (3) The arbitrator shall appoint a time and place for the hearing
34 and notify the parties thereof, may adjourn the hearing from time to
35 time as may be necessary, and, on application of either party and for
36 good cause, may postpone the hearing to a time not extending beyond a
37 date fixed by the collective bargaining agreement for making the award.

1 The arbitrator has the power to administer oaths. The arbitration
2 award shall be in writing and signed by the arbitrator or a majority of
3 the members of the arbitration panel. The arbitrator shall, promptly
4 upon its rendition, serve a true copy of the award on each of the
5 parties or their attorneys.

6 (4) If a party to a collective bargaining agreement negotiated
7 under this chapter refuses to submit a grievance for arbitration, the
8 other party to the collective bargaining agreement may invoke the
9 jurisdiction of the superior court for any county in which the labor
10 dispute exists, and such court has jurisdiction to issue an order
11 compelling arbitration. Arbitration shall be ordered if the grievance
12 states a claim which on its face is covered by the collective
13 bargaining agreement, and doubts as to the coverage of the arbitration
14 clause shall be resolved in favor of arbitration. Disputes concerning
15 compliance with grievance procedures shall be reserved for
16 determination by the arbitrator.

17 (5) If a party to a collective bargaining agreement negotiated
18 under this chapter refuses to comply with the award of an arbitrator
19 determining a grievance arising under such collective bargaining
20 agreement, the other party to the collective bargaining agreement, or
21 any affected employee, may invoke the jurisdiction of the superior
22 court for any county in which the labor dispute exists, and such court
23 has jurisdiction to issue an order enforcing the arbitration award.
24 The court shall not substitute its judgment for that of the arbitrator
25 and shall enforce any arbitration award which is based on the
26 collective bargaining agreement, except that an arbitration award shall
27 not be enforced and a new arbitration proceeding may be ordered:

28 (a) If the arbitration award was procured by corruption, fraud, or
29 undue means;

30 (b) If there was evident partiality or corruption in the arbitrator
31 or arbitrators;

32 (c) If the arbitrator or arbitrators were guilty of misconduct, in
33 refusing to postpone a hearing upon sufficient cause shown, in refusing
34 to hear evidence pertinent and material to the controversy, or of any
35 other misbehavior by which the rights of any party have been
36 prejudiced; or

37 (d) If the arbitrator or arbitrators have exceeded their powers or
38 so imperfectly executed their powers that a final and definite award on

1 the subject matter was not made, in which event the court also has
2 discretion to remand the matter to the arbitrator or arbitrators who
3 issued the defective award.

4 NEW SECTION. **Sec. 7.** (1) Upon filing with the employer the
5 voluntary written authorization of a bargaining unit member under this
6 chapter, the labor organization that is the exclusive bargaining
7 representative of the bargaining unit shall have the right to have
8 deducted from the salary of the bargaining unit member the periodic
9 dues and initiation fees uniformly required as a condition of acquiring
10 or retaining membership in the labor organization. Such employee
11 authorization shall not be irrevocable for a period of more than one
12 year. Such dues and fees shall be deducted from the pay of all
13 bargaining unit members who have given authorization for such
14 deduction, and shall be transmitted by the employer to the labor
15 organization or to the depository designated by the labor organization.

16 (2) A collective bargaining agreement may include union security
17 provisions, but not a closed shop. If an agency shop or other union
18 security provision is agreed to, the employer shall enforce any such
19 provision by deductions from the salary of bargaining unit members
20 affected thereby and shall transmit such funds to the labor
21 organization or to the depository designated by the labor organization.

22 (3) A bargaining unit member who is covered by a union security
23 provision and who asserts a right of nonassociation based on bona fide
24 religious tenets or teachings of a church or religious body of which
25 such bargaining unit member is a member shall pay to a nonreligious
26 charity or other charitable organization an amount of money equivalent
27 to the periodic dues and initiation fees uniformly required as a
28 condition of acquiring or retaining membership in the labor
29 organization. The charity shall be agreed upon by the bargaining unit
30 member and the labor organization to which such bargaining unit member
31 would otherwise pay the dues and fees. The bargaining unit member
32 shall furnish written proof that such payments have been made. If the
33 bargaining unit member and the labor organization do not reach
34 agreement on such matter, the dispute shall be submitted to the
35 commission for determination.

1 NEW SECTION. **Sec. 8.** (1) It is an unfair labor practice for an
2 employer to:

3 (a) Interfere with, restrain, or coerce bargaining unit members in
4 the exercise of the rights guaranteed by this chapter;

5 (b) Dominate or interfere with the formation or administration of
6 any labor organization or contribute financial or other support to it.
7 However, subject to rules adopted by the commission, an employer is not
8 prohibited from permitting bargaining unit members to confer with it or
9 its representatives or agents during working hours without loss of time
10 or pay;

11 (c) Encourage or discourage membership in any labor organization by
12 discrimination in regard to hire, tenure of employment, or any term or
13 condition of employment;

14 (d) Discharge or discriminate otherwise against a bargaining unit
15 member because that member has filed charges or given testimony under
16 this chapter; or

17 (e) Refuse to bargain collectively with the exclusive bargaining
18 representative of its employees.

19 (2) It is an unfair labor practice for a labor organization to:

20 (a) Restrain or coerce a bargaining unit member in the exercise of
21 the rights guaranteed by this chapter. However, this subsection does
22 not impair the rights of (i) a labor organization to prescribe its own
23 rules with respect to the acquisition or retention of membership in the
24 labor organization or (ii) an employer in the selection of its
25 representatives for the purpose of bargaining or the adjustment of
26 grievances;

27 (b) Cause or attempt to cause an employer to discriminate against
28 a bargaining unit member in violation of subsection (1)(c) of this
29 section;

30 (c) Discriminate against a bargaining unit member because that
31 member has filed charges or given testimony under this chapter; or

32 (d) Refuse to bargain collectively with an employer.

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

1 NEW SECTION. **Sec. 9.** (1) The commission is empowered to prevent
2 any person from engaging in any unfair labor practice as defined in
3 this chapter; however, a complaint shall not be processed for any
4 unfair labor practice occurring more than six months before the filing
5 of the complaint with the commission. This power shall not be affected
6 by any other means of adjustment or prevention that has been or may be
7 established by agreement, law, equity, or otherwise.

8 (2) If the commission determines that any person has engaged in or
9 is engaging in any unfair labor practice as defined in this chapter,
10 then the commission shall issue and cause to be served upon the person
11 an order requiring the person to cease and desist the unfair labor
12 practice, and to take such affirmative action as will effectuate the
13 purposes and policy of this chapter, including ordering the payment of
14 damages, the reinstatement of employees, or both.

15 (3) The commission may petition the superior court for the county
16 in which the main office of the employer is located or wherein the
17 person who has engaged or is engaging in such unfair labor practice
18 resides or transacts business, for the enforcement of its order and for
19 appropriate temporary relief.

20 NEW SECTION. **Sec. 10.** The commission may adopt rules necessary to
21 carry out the provisions of this chapter.

22 NEW SECTION. **Sec. 11.** Nothing in this chapter prohibits covered
23 employees from engaging in lawful strikes against their employers,
24 provided that the labor organization gives the employer and the
25 commission at least thirty days' notice prior to the commencement of
26 the strike. Nothing in this chapter prohibits covered employers from
27 lawfully locking out employees, provided the employer gives the labor
28 organization and the commission at least thirty days' notice prior to
29 the commencement of the lockout.

30 NEW SECTION. **Sec. 12.** Whenever a collective bargaining agreement
31 between an employer and an exclusive bargaining representative is
32 concluded after the termination date of the previous collective
33 bargaining agreement between the same parties, the effective date of
34 the collective bargaining agreement may be the day after the
35 termination date of the previous collective bargaining agreement, and

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

4 NEW SECTION. **Sec. 13.** Nothing in this chapter shall be construed
5 to annul, modify, or preclude the renewal or continuation of any lawful
6 agreement entered into before the effective date of this act, between
7 an employer and a labor organization covering wages, hours, and terms
8 and conditions of employment.

9 NEW SECTION. **Sec. 14.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
14 constitute a new chapter in Title 49 RCW."

SSB 6835 - S AMD

By Senator

15 On page 1, line 1 of the title, after "relations;" strike the
16 remainder of the title and insert "and adding a new chapter to Title 49
17 RCW."

EFFECT: Conforms definition of employee to changes made to
definition of employer in the substitute. The intent of the substitute
was to limit the application of the bill to employers and employees of
small symphony orchestras, operas, or performing arts theaters.

--- END ---