

HOUSE BILL REPORT

HB 1276

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to placing symphony orchestras, operas, performing arts theaters, and other entertainment-based organizations under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Brief Description: Placing symphony orchestras, operas, and performing arts theaters under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Sponsors: Representatives Conway, Green, Moeller and Ormsby.

Brief History:

Committee Activity:

Commerce & Labor: 1/27/09, 2/13/09 [DPS].

Brief Summary of Substitute Bill

- Establishes procedures for collective bargaining between certain private symphony orchestras, operas, and performing arts theaters and their employees.
- Authorizes the Public Employment Relations Commission to administer and enforce these procedures.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler.

Staff: Jill Reinmuth (786-7134)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The federal National Labor Relations Act (NLRA) governs collective bargaining rights in the private sector in the United States. The NLRA states that workers under its jurisdiction have, among other rights, the right to self-organization, to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing, and also have the right to refrain from such activities subject to certain limits. The NLRA is administered and enforced by the National Labor Relations Board (NLRB).

The NLRA excludes certain groups of workers in the private sector from its coverage. In addition, the NLRB limits its jurisdiction to cases which have a substantial effect on interstate commerce. For example, the NLRB's jurisdiction does not extend to retail establishments with annual gross volumes of business of less than \$500,000 or non-retail enterprises with annual outflow or inflow of less than \$50,000. It also does not extend to symphony orchestras with gross annual revenues of less than \$1 million.

No Washington laws provide specific procedures for implementing or enforcing collective bargaining between private sector employees and employers. The state Public Employees' Collective Bargaining Act (PECBA) and other laws govern collective bargaining rights in the public sector. The PECBA and most other public sector collective bargaining laws are administered and enforced by the Public Employment Relations Commission.

Summary of Substitute Bill:

Procedures are established for implementing and enforcing collective bargaining between certain private symphony orchestras, operas, and performing arts theaters and musicians employed by such enterprises. These procedures are administered and enforced by the Public Employment Relations Commission (PERC).

Definitions.

"Employer" is defined as a symphony orchestra that does not meet the National Labor Relations Board's jurisdictional standards, or an opera or performing arts theater with gross annual revenue of more than \$150,000 that does not meet the jurisdictional standards.

"Employer" includes persons acting as the employer's agent.

"Employee" is defined as an employee of such a symphony orchestra, opera, or performing arts theater. "Employee" includes individuals whose work has ceased because of a current labor dispute or an unfair labor practice, and who has not obtained other regular and substantially equivalent employment. "Employee" does not include most supervisors.

Numerous other terms are defined, including "bargaining representative," "commission," "executive director," "labor dispute," "labor organization," "person," and "supervisor."

Organizing Rights.

Employers are prohibited from interfering with, restraining, coercing, or discriminating against employees in the free exercise of their right to organize and designate representatives for the purpose of collective bargaining.

Bargaining Units and Representatives.

The bargaining unit and representative may be determined by agreement between employees and employers. However, if the parties disagree, the PERC must be invited to intervene.

In determining the bargaining unit, the PERC must consider: the duties, skills, and working conditions of the employees; the history of collective bargaining by the employees and their representatives; the extent of organization among the employees; and the desire of the employees.

In determining the bargaining representative, the PERC must compare signatures on bargaining authorization cards or conduct a secret ballot election.

Collective Bargaining.

Both employers and exclusive bargaining representatives have a mutual obligation to negotiate in good faith and to execute a written agreement with respect to mandatory subjects of bargaining (grievance procedures and personnel matters, including wages, hours, and working conditions).

Agreements may contain union security provisions, but closed shop provisions are not authorized. Agreements containing union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which the employee is a member.

Agreements also may provide for final and binding arbitration of grievances or labor disputes arising over the application or interpretation of the collective bargaining agreement.

Agreements may provide for terms of any length. Valid agreements only bar questions concerning representation for three years. Thereafter, such questions may be raised at any time.

Impasse Procedures.

If a collective bargaining agreement cannot be concluded, the parties may submit the dispute to the PERC. If an employer unilaterally implements its last and best contract offer where there is no settlement, allegations that either party is violating the terms of the implemented offer are subject to arbitration under any procedures that are in the implemented offer or, if no procedures are in the offer, in the parties' last contract.

Grievance Arbitration.

The parties may request the PERC to appoint an arbitrator to assist in the resolution of labor disputes arising from the application of the matters contained in a collective bargaining

agreement. The arbitrator must conduct the arbitration in the manner provided for in the agreement. The PERC may not collect fees or charges for its services.

Unfair Labor Practices.

Unfair labor practices are enumerated for both employers and employee organizations.

Employers may not: interfere with, restrain, or coerce employees in the exercise of their rights; control, dominate, or interfere with a bargaining representative; discriminate against an employee who has filed an unfair labor practice charge or who has given testimony; or refuse to engage in collective bargaining.

Bargaining representatives may not: interfere with, restrain, or coerce employees in the exercise of their rights; induce an employer to commit an unfair labor practice; discriminate against an employee who has filed an unfair labor practice charge or who has given testimony; or refuse to engage in collective bargaining.

The PERC must prevent unfair labor practices and issue remedial orders. An unfair labor practice complaint must be filed with the PERC within six months of the unfair practice. The PERC must issue a cease and desist order if a person has engaged in or is engaging in an unfair labor practice. The PERC also may require the person to pay damages or reinstate employees. The PERC may petition the Superior Court for enforcement of its order and appropriate temporary relief. The PERC's actions must follow the requirements of the Administrative Procedures Act (APA) and the APA's right of judicial review applies to the PERC's actions and rules.

Strikes/Lockouts.

No provisions address strikes by employees or lockouts by employers.

Substitute Bill Compared to Original Bill:

The collective bargaining procedures apply only to symphony orchestras that do not meet the National Labor Relations Board's jurisdictional standards, and operas and performing arts theaters with gross annual revenues of more than \$150,000 that do not meet the jurisdictional standards, and to musicians employed by such enterprises. The procedures do not apply to all employees of such enterprises, or to any employees of entertainment-based organizations. A collective bargaining agreement may provide for a term of any length (rather than a term of up to three years). Questions concerning representation may be raised at any time after three years. The unilateral implementation provision is stricken.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The problem that exists is one of jurisdiction. Many musicians are employed by small nonprofits and theaters. If they are unhappy with their working condition, their attempts to discuss solutions are often unsuccessful. Musicians have attempted to organize and engage in collective bargaining, but symphonies with less than \$1 million in revenue and theaters with less than \$500,000 can ignore them.

The members of our orchestra have faced labor problems, but have not had the tools needed to bring people together. Collective bargaining will save time and energy. Other states, like Colorado, New York, and Wisconsin, have taken this step, and have had no bad consequences.

This bill ensures that workplace rights can be protected in a collective bargaining agreement. Musicians want to know what the rules are about hiring and firing, and what can be expected from day to day. If the Public Employment Relations Commission has jurisdiction, musicians have a resource to enforce that an agreement.

This bill will enable both sides to engage in a formal dialogue about the rules of the game. It will give dignity and respect to musicians. The union has worked hard with the sponsors and stakeholders, and the result is the proposed substitute. It is very narrow compared to last year's bill. It mirrors the Public Employees' Collective Bargaining Act.

(Neutral with concerns) Section 4 of the bill includes card check procedures. Only secret ballot elections should be authorized. Sections 9 and 10 of the bill are inconsistent, because section 9 says deductions for union dues are mandatory and section 10 says union security clauses may be negotiated. This bill could help kill local arts.

(With concerns) The law should not be changed to address isolated incidents. This bill represents a major structural change in private sector labor law. It puts in place a state labor relations act. Although this bill applies narrowly, the Legislature will be asked to extend its application to other industries and the state's smallest businesses in the future.

(Opposed) None.

Persons Testifying: (In support) Joan Sandler, American Federation of Musicians, Local 76-493; Martha Garrett; and Jeff Johnson, Washington State Labor Council.

(Neutral with concerns) Scott Dilley, Evergreen Freedom Foundation.

(With concerns) Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.