

SENATE BILL REPORT

SHB 3003

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 25, 2010

Title: An act relating to placing symphony musicians under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Brief Description: Placing symphony musicians under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Hunter, Conway, Wood, Carlyle, Williams, Morrell, Moeller, Ormsby, Van De Wege, Kenney, Simpson and Santos).

Brief History: Passed House: 2/10/10, 59-38.

Committee Activity: Labor, Commerce & Consumer Protection: 2/22/10, 2/25/10 [DP, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Honeyford and King.

Staff: Kathleen Buchli (786-7488)

Background: The National Labor Relations Board (NLRB) is an independent federal agency that administers the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The NLRB has two principal functions: to determine, through secret-ballot elections, whether employees wish to be represented by a union in dealing with their employers, and if so, by which union; and to prevent and remedy unfair labor practices by either employers or unions. The NLRB's jurisdiction is limited to enterprises that involve a substantial effect on interstate commerce. This is based on the yearly amount of business done by the enterprise, stated in terms of total dollar volume of business, and is different for different kinds of enterprises. For example, symphony orchestras are covered if they receive at least \$1 million in gross annual revenues. Retail enterprises are covered if their annual volume of business is at least \$500,000.

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.

Employers who provide social services are covered if they receive at least \$250,000 in gross annual revenues.

The Public Employment Relations Commission (PERC) is an independent Washington State agency responsible for resolving disputes involving most public employers and employees, and the unions that represent those employees. When public employers and unions are unable to agree on a written contract establishing the wages, hours, and working conditions of bargaining unit employees, PERC provides mediation to help the parties reach an agreement. PERC's jurisdiction is determined by state law and includes the following groups: state civil service employees; state higher education classified (civil service) employees; community and technical college faculty; public utility district employees; home health care providers; adult family home providers; and certain higher education teaching and research assistants.

Summary of Bill: PERC's jurisdiction is extended to symphony musicians who work for a symphony orchestra with a gross annual revenue of more than \$300,000 and that does not meet the NLRB's jurisdictional requirements. If an employer and a group of employees are in disagreement as to the selection of a bargaining representative, PERC may intervene. PERC may decide the unit appropriate for collective bargaining, and must determine the bargaining representative by comparing the signature on bargaining authorization cards or by conducting an election. The exclusive bargaining representative must represent all employees of the unit, regardless of membership in the bargaining representative. If the employer and the exclusive bargaining representative fail to come to an agreement, matters in dispute may be submitted to PERC. A collective bargaining agreement may contain union security provisions, but closed shop provisions are not authorized. 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 must be safeguarded in the agreement. The collective bargaining agreement may also provide for binding arbitration.

PERC may appoint an arbitrator, upon request, to assist in the resolution of a labor dispute between the employer and the bargaining representative. The arbitrator must conduct the arbitration as provided in the collective bargaining agreement. PERC may not collect fees for services it provides. PERC must prevent unfair labor practices and issue appropriate remedial orders and may petition superior court for the enforcement of its orders and for temporary relief.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is the same bill as the one passed by the Senate with the exception of one inconsequential term. The last time this was considered in the House committee a number of Washington Arts Alliance representatives testified in favor of the bill. These are the people who represent the employers.

CON: We are in principled opposition to the bill because it crosses the rubicon of labor law in this state and invites ambiguity in how this law will be applied. We can forecast a fight during session after session to address expansion of this bill to other groups. This forecast is based on the inexhaustible march of bills under PECBA; once this begins, it will expand outward. This is concerning because this bill addresses the smallest of the small employers. If the power of the government can be focused on the small groups under the bill, what industry will be safe? The card check provision serves no public benefit. This is a solution looking for a problem and the bill does more harm than it does good.

Persons Testifying: PRO: Joan Sandler, American Federatino of Musicians, Local 76-493.

CON: Kris Tefft, Association of Washington Business; Patrick Connor, National Federation of Independent Business.