

SENATE BILL REPORT

SB 5046

As of January 22, 2009

Title: An act relating to placing symphony orchestras, operas, and performing arts theaters 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: Senators Kohl-Welles, Keiser, Kline and Franklin.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/22/09.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

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. 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.

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.

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 (Proposed Substitute): PERC's jurisdiction is extended to symphony orchestras, operas, and performing arts theaters that do 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 will resolve a problem that has existed for some time. Musicians who become unhappy through their working conditions can form a collective bargaining unit and ask the employer to recognize it. If they do not meet the jurisdictional requirements of the NLRB, the employer does not have to talk to them and often does not. This bill is trying to prevent the business from ignoring their employees. The only action available to these musicians is to strike and that often does not work. This will ensure that employees will enjoy work place rights guaranteed through collective bargaining. Other states have implemented similar laws. We support some modifications to the current bill, including limiting the definition of employee to musician, eliminating the maximum of a three year existence to the contract, and eliminating the one year extension of the contract. With the changes noted, this bill has wide support.

OTHER: Our concerns are not about symphony orchestras, but are about creating a new state labor relations act. We support a simple bill that does not contain issues such as the employee free choice act. With a small change, this bill becomes a state labor relations act and we want to make sure that this is done in the right way. The structure of the bill is too elaborate for its intended purpose and it could be expanded to all small businesses. There should be secret ballot provisions and not card check provisions. This would create a labor relations headache for the small arts community and could help to kill local arts. We welcome the suggested revisions, but this bill expands the potential of mandated collective bargaining. This is not a good time to bring this forward to a nonprofit community who may not be equipped to adjust to the requirements of the bill.

Persons Testifying: PRO: Joan Sandler, Martha Garrett, Seattle Musicians Association.

OTHER: Dan Fazio, Washington Farm Bureau; Troy Nichols, National Federation of Independent Business/Washington; Kris Tefft, Association of Washington Business; Gary Smith, Independent Business Association; Scott Dilley, Evergreen Freedom Foundation; D. David Brown, Washington State Arts Alliance.