

SENATE BILL REPORT

SB 5046

As of January 18, 2010

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. [**Revised for 1st Substitute:** Placing symphony musicians 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, 1/18/10.

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

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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: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): PERC's jurisdiction is extended to symphony musicians who work for a symphony orchestra with a gross annual revenue of more than three hundred fifty thousand dollars 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: There are about a dozen orchestras that are not covered by collective bargaining agreements at this time. Employees can become unhappy with the hours, conditions, and status of their work situations. Pay is usually last on their list. Those employees may decide to form a collective bargaining unit, but the employer is not required to recognize them unless they fit the jurisdictional requirements of the NLRB. A contract defining the conditions of employment is what the employees often seek. The remedy left to the employees is to strike or agitate and embarrass the employer into discussion. Using PERC would provide some recourse for the employees who wish to

organize. Other states have implemented a similar law with no bad consequences. We have refined the bill and narrowed the scope and it is a fair compromise for all the stakeholders involved. This will benefit musicians as well as employers.

CON: The bill contemplates putting a National Labor Relations Act (NLRA) into state law. The application of the bill has been narrowed, but the scope remains large. We are not sure what the need of this bill is now that the musicians have come to an agreement with their employer. Although the application is narrow now, we see this expanding to other groups in the future. The policy decision in the federal law exempts the small businesses out of it, it may be running against that policy to put this system into place at the state level. This will undermine federal labor law. It puts a burden on small businesses and small employers. The card check provision denies the protections afforded to the small businesses under the NLRA.

Persons Testifying: PRO: Joan Sandler, Vice President, American Federation of Musicians, Local 76-493; Motter Snell, President, American Federation of Musicians, Local 76-493.

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