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HOUSE BILL 1276

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Conway, Green, Moeller, and Ormsby

Read first time 01/16/09. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to placing symphony orchestras, operas, performing  
2 arts theaters, and other entertainment-based organizations under the  
3 jurisdiction of the public employment relations commission for purposes  
4 of collective bargaining; and adding a new chapter to Title 49 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

8            (1) "Bargaining representative" means any lawful organization which  
9 has as one of its primary purposes the representation of employees in  
10 their employment relations with employers.

11            (2) "Collective bargaining" means the performance of the mutual  
12 obligations of the employer and the exclusive bargaining representative  
13 to meet at reasonable times, to confer and negotiate in good faith, and  
14 to execute a written agreement with respect to grievance procedures and  
15 collective negotiations on personnel matters, including wages, hours,  
16 and working conditions, which may be peculiar to an appropriate  
17 bargaining unit of such employer, except that by such obligation  
18 neither party shall be compelled to agree to a proposal or be required  
19 to make a concession unless otherwise provided in this chapter.

1 (3) "Commission" means the public employment relations commission.

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

10 (b) "Employee" does not include any supervisor, unless the  
11 supervisor is included within a bargaining unit under section 4 of this  
12 act.

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

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

22 (6) "Executive director" means the executive director of the  
23 commission.

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

33 (8) "Labor organization" means an organization of any kind, or an  
34 agency or employee representation committee or plan, in which employees  
35 participate and which exists for the primary purpose of dealing with  
36 employers concerning grievances, labor disputes, wages, rates of pay,  
37 hours of employment, or conditions of employment.

1 (9) "Person" includes one or more individuals, labor organizations,  
2 partnerships, associations, corporations, legal representatives,  
3 trustees in bankruptcy, or receivers.

4 (10) "Supervisor" means an employee having authority, in the  
5 interest of an employer, to hire, assign, promote, transfer, lay off,  
6 recall, suspend, discipline, or discharge other employees, or to adjust  
7 their grievances, or to recommend effectively such action, if the  
8 exercise of this authority is not merely routine or clerical in nature  
9 and calls for the consistent exercise of independent judgment.

10 (11) "Unfair labor practice" means any activity listed in sections  
11 13 and 14 of this act.

12 NEW SECTION. **Sec. 2.** No employer, or other person, shall directly  
13 or indirectly, interfere with, restrain, coerce, or discriminate  
14 against any employee or group of employees in the free exercise of  
15 their right to organize and designate bargaining representatives of  
16 their own choosing for the purpose of collective bargaining, or in the  
17 free exercise of any other right under this chapter.

18 NEW SECTION. **Sec. 3.** If an employer and employees are in  
19 disagreement as to the selection of a bargaining representative the  
20 commission shall be invited to intervene as is provided in sections 4  
21 through 7 of this act.

22 NEW SECTION. **Sec. 4.** The commission, upon reasonable notice,  
23 shall decide in each application for certification as an exclusive  
24 bargaining representative, the unit appropriate for the purpose of  
25 collective bargaining. In determining, modifying, or combining the  
26 bargaining unit, the commission shall consider the duties, skills, and  
27 working conditions of the employees; the history of collective  
28 bargaining by the employees and their bargaining representatives; the  
29 extent of organization among the employees; and the desire of the  
30 employees. The commission shall determine the bargaining  
31 representative by: (1) Comparison of signatures on organization  
32 bargaining authorization cards; or (2) conducting an election  
33 specifically therefor.

1        NEW SECTION.    **Sec. 5.**    If the commission elects to conduct an  
2 election to ascertain the exclusive bargaining representative, and upon  
3 the request of a prospective bargaining representative showing written  
4 proof of at least thirty percent representation of the employees within  
5 the unit, the commission shall hold an election by secret ballot to  
6 determine the issue.    The ballot shall contain the name of the  
7 bargaining representative and of any other bargaining representative  
8 showing written proof of at least ten percent representation of the  
9 employees within the unit, together with a choice for any employee to  
10 designate that he or she does not desire to be represented by any  
11 bargaining agent.    Where more than one organization is on the ballot  
12 and neither of the three or more choices receives a majority vote of  
13 valid ballots cast, a run-off election shall be held.    The run-off  
14 ballot shall contain the two choices which received the largest and  
15 second-largest number of votes.    No question concerning representation  
16 may be raised within one year of a certification or attempted  
17 certification.    Where there is a valid collective bargaining agreement  
18 in effect, no question of representation may be raised except during  
19 the period not more than ninety nor less than sixty days prior to the  
20 expiration date of the agreement.    Any agreement which contains a  
21 provision for automatic renewal or extension of the agreement shall not  
22 be a valid agreement; nor shall any agreement be valid if it provides  
23 for a term of existence for more than three years.

24        NEW SECTION.    **Sec. 6.**    The bargaining representative which has been  
25 determined to represent a majority of the employees in a bargaining  
26 unit shall be certified by the commission as the exclusive bargaining  
27 representative of, and shall be required to represent, all the  
28 employees within the unit without regard to membership in the  
29 bargaining representative.    However, any employee at any time may  
30 present his or her grievance to the employer and have such grievance  
31 adjusted without the intervention of the exclusive bargaining  
32 representative, if the adjustment is not inconsistent with the terms of  
33 a collective bargaining agreement then in effect, and if the exclusive  
34 bargaining representative has been given reasonable opportunity to be  
35 present at any initial meeting called for the resolution of the  
36 grievance.



1 payment has been made. If the employee and the bargaining  
2 representative do not reach agreement on this matter, the commission  
3 must designate the charitable organization;

4 (2) Provide for binding arbitration of a labor dispute arising from  
5 the application or the interpretation of the matters contained in a  
6 collective bargaining agreement.

7 NEW SECTION. **Sec. 11.** (1) After the termination date of a  
8 collective bargaining agreement, all of the terms and conditions  
9 specified in the collective bargaining agreement remain in effect until  
10 the effective date of a subsequent agreement, not to exceed one year  
11 from the termination date stated in the agreement. Thereafter, the  
12 employer may unilaterally implement according to law.

13 (2) This section does not apply to provisions of a collective  
14 bargaining agreement which both parties agree to exclude from the  
15 provisions of subsection (1) of this section and to provisions within  
16 the collective bargaining agreement with separate and specific  
17 termination dates.

18 (3) This section shall not apply to collective bargaining  
19 agreements in effect or being bargained on the effective date of this  
20 section.

21 NEW SECTION. **Sec. 12.** In addition to any other method for  
22 selecting arbitrators, the parties may request the commission to  
23 appoint a qualified person who may be an employee of the commission to  
24 act as an arbitrator to assist in the resolution of a labor dispute  
25 between the employer and the bargaining representative arising from the  
26 application of the matters contained in a collective bargaining  
27 agreement. The arbitrator must conduct the arbitration of the dispute  
28 in a manner as provided for in the collective bargaining agreement.  
29 The commission may not collect any fees or charges from the employer  
30 or the bargaining representative for services performed by the  
31 commission under this chapter. The provisions of chapter 49.08 RCW do  
32 not apply to this chapter.

33 NEW SECTION. **Sec. 13.** It is an unfair labor practice for an  
34 employer:

1 (1) To interfere with, restrain, or coerce employees in the  
2 exercise of their rights guaranteed by this chapter;

3 (2) To control, dominate, or interfere with a bargaining  
4 representative;

5 (3) To discriminate against an employee who has filed an unfair  
6 labor practice charge or who has given testimony under this chapter;

7 (4) To refuse to engage in collective bargaining.

8 NEW SECTION. **Sec. 14.** It is an unfair labor practice for a  
9 bargaining representative:

10 (1) To interfere with, restrain, or coerce employees in the  
11 exercise of their rights guaranteed by this chapter;

12 (2) To induce the employer to commit an unfair labor practice;

13 (3) To discriminate against an employee who has filed an unfair  
14 labor practice charge or who has given testimony under this chapter;

15 (4) To refuse to engage in collective bargaining.

16 NEW SECTION. **Sec. 15.** (1) The commission must prevent unfair  
17 labor practices and issue appropriate remedial orders. However, a  
18 complaint may not be processed for an unfair labor practice occurring  
19 more than six months before the filing of the complaint with the  
20 commission.

21 (2) If the commission determines that a person has engaged in or is  
22 engaging in an unfair labor practice, the commission must issue and  
23 serve upon the person an order requiring the person to cease and desist  
24 from the unfair labor practice. The commission may take action to  
25 carry out the purposes and policy of this chapter, including requiring  
26 the person to pay damages and reinstate employees.

27 (3) The commission may petition the superior court for the county  
28 in which the main office of the employer is located or in which the  
29 person who has engaged or is engaging in the unfair labor practice  
30 resides or transacts business, for the enforcement of its order and for  
31 appropriate temporary relief.

32 NEW SECTION. **Sec. 16.** Actions taken by or on behalf of the  
33 commission shall be pursuant to chapter 34.05 RCW, or rules adopted in  
34 accordance with chapter 34.05 RCW, and the right of judicial review  
35 provided by chapter 34.05 RCW is applicable to all actions and rules.

1        NEW SECTION.    **Sec. 17.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 18.**    Sections 1 through 17 of this act  
6 constitute a new chapter in Title 49 RCW.

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