
HOUSE BILL 3003

State of Washington

61st Legislature

2010 Regular Session

By Representatives Hunter, Conway, Wood, Carlyle, Williams, Morrell, Moeller, Ormsby, Van De Wege, Kenney, Simpson, and Santos

Read first time 01/20/10. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to placing symphony musicians under the
2 jurisdiction of the public employment relations commission for purposes
3 of collective bargaining; and adding a new chapter to Title 49 RCW.

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

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

7 (1) "Bargaining representative" means any lawful organization which
8 represents employees in their employment relations with their
9 employers.

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

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

1 (4) "Employee" means a symphony musician who is an employee of an
2 employer.

3 (5)(a) "Employer" means a symphony orchestra that does not meet the
4 jurisdictional standards of the national labor relations board, and
5 includes any person acting as an agent of an employer, directly or
6 indirectly.

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

11 (6) "Executive director" means the executive director of the
12 commission.

13 (7) "Labor dispute" includes any controversy concerning terms,
14 tenure, or conditions of employment, or concerning the association of
15 representation of persons in negotiating, fixing, maintaining,
16 changing, or seeking to arrange terms or conditions of employment,
17 regardless of whether the disputants stand in the proximate relation of
18 employer and employee. In the event of a dispute between an employer
19 and an exclusive bargaining representative over the matters that are
20 terms and conditions of employment, the commission shall decide which
21 items are mandatory subjects for bargaining.

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

27 (9) "Person" includes one or more individuals, labor organizations,
28 partnerships, associations, corporations, legal representatives,
29 trustees in bankruptcy, or receivers.

30 (10) "Unfair labor practice" means any activity listed in sections
31 13 and 14 of this act.

32 NEW SECTION. **Sec. 2.** No employer, or other person, shall directly
33 or indirectly, interfere with, restrain, coerce, or discriminate
34 against any employee or group of employees in the free exercise of
35 their right to organize and designate bargaining representatives of
36 their own choosing for the purpose of collective bargaining, or in the
37 free exercise of any other right under this chapter.

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

5 NEW SECTION. **Sec. 4.** The commission, upon reasonable notice,
6 shall decide in each application for certification as an exclusive
7 bargaining representative, the unit appropriate for the purpose of
8 collective bargaining. In determining, modifying, or combining the
9 bargaining unit, the commission shall consider the duties, skills, and
10 working conditions of the employees; the history of collective
11 bargaining by the employees and their bargaining representatives; the
12 extent of organization among the employees; and the desire of the
13 employees. The commission shall determine the bargaining
14 representative by: (1) Comparison of signatures on organization
15 bargaining authorization cards; or (2) conducting an election
16 specifically therefor.

17 NEW SECTION. **Sec. 5.** If the commission elects to conduct an
18 election to ascertain the exclusive bargaining representative, and upon
19 the request of a prospective bargaining representative showing written
20 proof of at least thirty percent representation of the employees within
21 the unit, the commission shall hold an election by secret ballot to
22 determine the issue. The ballot shall contain the name of the
23 bargaining representative and of any other bargaining representative
24 showing written proof of at least ten percent representation of the
25 employees within the unit, together with a choice for any employee to
26 designate that he or she does not desire to be represented by any
27 bargaining agent. Where more than one organization is on the ballot
28 and neither of the three or more choices receives a majority vote of
29 valid ballots cast, a run-off election shall be held. The run-off
30 ballot shall contain the two choices which received the largest and
31 second-largest number of votes. No question concerning representation
32 may be raised within one year of a certification or attempted
33 certification. Where there is a valid collective bargaining agreement
34 in effect, no question of representation may be raised except during
35 the period not more than ninety nor less than sixty days prior to the
36 expiration date of the agreement. Any agreement which contains a

1 provision for automatic renewal or extension of the agreement shall not
2 be a valid agreement; nor shall any agreement be valid if it provides
3 for a term of existence for more than three years.

4 NEW SECTION. **Sec. 6.** The bargaining representative which has been
5 determined to represent a majority of the employees in a bargaining
6 unit shall be certified by the commission as the exclusive bargaining
7 representative of, and shall be required to represent, all the
8 employees within the unit without regard to membership in the
9 bargaining representative. However, any employee at any time may
10 present his or her grievance to the employer and have such grievance
11 adjusted without the intervention of the exclusive bargaining
12 representative, if the adjustment is not inconsistent with the terms of
13 a collective bargaining agreement then in effect, and if the exclusive
14 bargaining representative has been given reasonable opportunity to be
15 present at any initial meeting called for the resolution of the
16 grievance.

17 NEW SECTION. **Sec. 7.** The commission may adopt rules necessary to
18 administer this chapter in conformity with the intent and purpose of
19 this chapter and consistent with the best standards of labor-management
20 relations.

21 NEW SECTION. **Sec. 8.** An employer may engage in collective
22 bargaining with the exclusive bargaining representative and no employer
23 may refuse to engage in collective bargaining with the exclusive
24 bargaining representative. Upon the failure of the employer and the
25 exclusive bargaining representative to conclude a collective bargaining
26 agreement, any matter in dispute may be submitted by either party to
27 the commission. If an employer implements its last and best offer
28 where there is no contract settlement, allegations that either party is
29 violating the terms of the implemented offer are subject to grievance
30 arbitration procedures if and as such procedures are set forth in the
31 implemented offer, or, if not in the implemented offer, if and as such
32 procedures are set forth in the parties' last contract.

33 NEW SECTION. **Sec. 9.** Upon the written authorization of any
34 employee within the bargaining unit and after the certification or

1 recognition of the bargaining representative, the employer must deduct
2 from the pay of the employee the monthly amount of dues as certified by
3 the secretary of the exclusive bargaining representative and must
4 transmit the dues to the treasurer of the exclusive bargaining
5 representative.

6 NEW SECTION. **Sec. 10.** A collective bargaining agreement may:

7 (1) Contain union security provisions. However, nothing in this
8 section authorizes a closed shop provision. Agreements involving union
9 security provisions must safeguard the right of nonassociation of
10 employees based on bona fide religious tenets or teachings of a church
11 or religious body of which the employee is a member. The employee must
12 pay an amount of money equivalent to regular union dues and initiation
13 fee to a nonreligious charity or to another charitable organization
14 mutually agreed upon by the employee affected and the bargaining
15 representative to which the employee would otherwise pay the dues and
16 initiation fee. The employee must furnish written proof that the
17 payment has been made. If the employee and the bargaining
18 representative do not reach agreement on this matter, the commission
19 must designate the charitable organization;

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

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

29 (2) This section does not apply to provisions of a collective
30 bargaining agreement which both parties agree to exclude from the
31 provisions of subsection (1) of this section and to provisions within
32 the collective bargaining agreement with separate and specific
33 termination dates.

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

1 NEW SECTION. **Sec. 12.** In addition to any other method for
2 selecting arbitrators, the parties may request the commission to
3 appoint a qualified person who may be an employee of the commission to
4 act as an arbitrator to assist in the resolution of a labor dispute
5 between the employer and the bargaining representative arising from the
6 application of the matters contained in a collective bargaining
7 agreement. The arbitrator must conduct the arbitration of the dispute
8 in a manner as provided for in the collective bargaining agreement.
9 The commission may not collect any fees or charges from the employer
10 or the bargaining representative for services performed by the
11 commission under this chapter. The provisions of chapter 49.08 RCW do
12 not apply to this chapter.

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

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

17 (2) To control, dominate, or interfere with a bargaining
18 representative;

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

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

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

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

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

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

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

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

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

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

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

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

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

--- END ---