
SUBSTITUTE SENATE BILL 6835

State of Washington

60th Legislature

2008 Regular Session

By Senate Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles and Keiser)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to labor and management relations; and adding a new
2 chapter to Title 49 RCW.

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

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

6 (1) "Employee" includes any employee of an employer and is not
7 limited to the employees of a particular employer, unless this chapter
8 explicitly states otherwise, and shall include any individual whose
9 work has ceased as a consequence of, or in connection with, any current
10 labor dispute or because of any unfair labor practice, and who has not
11 obtained any other regular and substantially equivalent employment.

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

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

1 (3) "Labor dispute" includes any controversy concerning terms,
2 tenure, or conditions of employment, or concerning the association of
3 representation of persons in negotiating, fixing, maintaining,
4 changing, or seeking to arrange terms or conditions of employment,
5 regardless of whether the disputants stand in the proximate relation of
6 employer and employee. In the event of a dispute between an employer
7 and an exclusive bargaining representative over the matters that are
8 terms and conditions of employment, the commission shall decide which
9 items are mandatory subjects for bargaining.

10 (4) "Labor organization" means an organization of any kind, or an
11 agency or employee representation committee or plan, in which employees
12 participate and which exists for the primary purpose of dealing with
13 employers concerning grievances, labor disputes, wages, rates of pay,
14 hours of employment, or conditions of employment.

15 (5) "Person" includes one or more individuals, labor organizations,
16 partnerships, associations, corporations, legal representatives,
17 trustees in bankruptcy, or receivers.

18 (6) "Public employment relations commission" or "commission" means
19 the public employment relations commission created in chapter 41.58
20 RCW.

21 (7) "Representative" includes any individual or labor organization.

22 (8) "Supervisor" means any individual having authority, in the
23 interest of the employer, to hire, transfer, suspend, lay off, recall,
24 promote, discharge, assign, reward, or discipline other employees, or
25 responsibly to direct them, or to adjust their grievances, or
26 effectively to recommend such action, if in connection with the
27 foregoing the exercise of such authority is not of a merely routine or
28 clerical nature, but requires the use of independent judgment.

29 (9) "Unfair labor practice" means any activity listed in section 8
30 of this act.

31 NEW SECTION. **Sec. 2.** The employee organization that has been
32 determined by the commission to be the exclusive bargaining
33 representative of a bargaining unit shall be required to represent all
34 the members within the bargaining unit without regard to membership in
35 that employee organization. However, any bargaining unit member may at
36 any time present his or her complaints or concerns to the employer and
37 have such complaints or concerns adjusted without intervention of the

1 exclusive bargaining representative, as long as the exclusive
2 bargaining representative has been given an opportunity to be present
3 at the adjustment and to make its views known, and as long as the
4 adjustment is not inconsistent with the terms of a collective
5 bargaining agreement then in effect.

6 NEW SECTION. **Sec. 3.** The commission shall certify exclusive
7 bargaining representatives in accordance with the procedures specified
8 in this section.

9 (1) The commission, after hearing upon reasonable notice, shall
10 decide the unit appropriate for the purpose of collective bargaining.
11 In determining, modifying, or combining the bargaining unit, the
12 commission shall consider the duties, skills, and working conditions of
13 the employees; the history of collective bargaining by the employees
14 and their bargaining representatives; the extent of organization among
15 the employees; and the desire of the employees to be represented.
16 Supervisors shall not be included in the same bargaining unit as
17 nonsupervisory employees, but shall be included in a bargaining unit
18 containing only supervisors.

19 (2) No question concerning representation may be raised within one
20 year following issuance of a certification under this section.

21 (3) If there is a valid collective bargaining agreement in effect,
22 no question concerning representation may be raised except during the
23 period not more than ninety nor less than sixty days prior to the
24 expiration date of the agreement. However, in the event a valid
25 collective bargaining agreement, together with any renewals or
26 extensions thereof, has been or will be in existence for more than
27 three years, then a question concerning representation may be raised
28 not more than ninety nor less than sixty days prior to the third
29 anniversary date or any subsequent anniversary date of the agreement;
30 and if the exclusive bargaining representative is removed as the result
31 of such procedure, the collective bargaining agreement shall be deemed
32 to be terminated as of the date of the certification or the anniversary
33 date following the filing of the petition, whichever is later.

34 (4) An employee organization seeking certification as the exclusive
35 bargaining representative of a bargaining unit, or employees seeking
36 decertification of their exclusive bargaining representative, must make
37 a confidential showing to the commission of credible evidence

1 demonstrating that at least thirty percent of the employees in the
2 bargaining unit are in support of the petition. The petition must
3 indicate the name, address, and telephone number of any employee
4 organization known to claim an interest in the bargaining unit.

5 (5) A petition filed by an employer must be supported by credible
6 evidence demonstrating the good faith basis on which the employer
7 claims the existence of a question concerning the representation.

8 (6) Any employee organization which makes a confidential showing to
9 the commission of credible evidence demonstrating that it has the
10 support of at least ten percent of the employees in the bargaining unit
11 involved is entitled to intervene in proceedings under this section and
12 to have its name listed as a choice on the ballot in an election
13 conducted by the commission.

14 (7) The commission shall determine any question concerning
15 representation by conducting a secret ballot election among the
16 employees in the bargaining unit, except under the following
17 circumstances:

18 (a) If only one employee organization is seeking certification as
19 exclusive bargaining representative of a bargaining unit for which
20 there is no incumbent exclusive bargaining representative, the
21 commission may, upon the concurrence of the employer and the employee
22 organization, determine the question concerning representation by
23 conducting a cross-check comparing the employee organization's
24 membership records or bargaining authorization cards against the
25 employment records of the employer; or

26 (b) If the commission determines that a serious unfair labor
27 practice has been committed that interfered with the election process
28 and precludes the holding of a fair election, the commission may
29 determine the question concerning representation by conducting a cross-
30 check comparing the employee organization's membership records or
31 bargaining authorization cards against the employment records of the
32 employer.

33 (8) The representation election ballot must contain a choice for
34 each employee organization qualifying under subsection (3) or (5) of
35 this section, together with a choice for no representation. The
36 representation election shall be determined by the majority of the
37 valid ballots cast. If there are three or more choices on the ballot

1 and none of the three or more choices receives a majority of the valid
2 ballots cast, a runoff election shall be conducted between the two
3 choices receiving the highest and second highest numbers of votes.

4 (9) The commission shall certify as the exclusive bargaining
5 representative the employee organization that has been determined to
6 represent a majority of employees in a bargaining unit.

7 NEW SECTION. **Sec. 4.** In any dispute concerning inclusion in the
8 bargaining unit or the allocation of employees or positions to a
9 bargaining unit, the commission, after a hearing or hearings, shall
10 determine the dispute.

11 NEW SECTION. **Sec. 5.** (1) The commission shall conduct mediation
12 activities upon the request of either party as a means of assisting in
13 the settlement of unresolved matters considered under this chapter.

14 (2) If any matter being jointly considered by the exclusive
15 bargaining representative and the employer is not settled by the means
16 provided in this chapter, either party may request the assistance of
17 the commission. Nothing in this section prohibits an employer and an
18 employee organization from agreeing to substitute, at their own
19 expense, some other impasse procedure or other means of resolving
20 matters considered under this chapter.

21 NEW SECTION. **Sec. 6.** A collective bargaining agreement negotiated
22 under this chapter may include procedures for final and binding
23 grievance arbitration of the disputes arising about the interpretation
24 or application of the agreement.

25 (1) The parties to a collective bargaining agreement may agree on
26 one or more permanent umpires to serve as arbitrator, may agree on any
27 impartial person to serve as arbitrator, or may agree to select
28 arbitrators from any source available to them, including federal and
29 private agencies, in addition to the staff and dispute resolution panel
30 maintained by the commission.

31 (2) An arbitrator may require any person to attend as a witness,
32 and to bring with him or her any book, record, document, or other
33 evidence. Subpoenas shall issue and be signed by the arbitrator and
34 shall be served in the same manner as subpoenas to testify before a
35 court of record in this state. The fees for such attendance shall be

1 paid by the party requesting issuance of the subpoena and shall be the
2 same as the fees of witnesses in the superior court. If any person so
3 summoned to testify refuses or neglects to obey such subpoena, upon
4 petition authorized by the arbitrator, the superior court may compel
5 the attendance of such person before the arbitrator, or punish the
6 person for contempt in the same manner provided for the attendance of
7 witnesses or the punishment of them in the courts of this state.

8 (3) The arbitrator shall appoint a time and place for the hearing
9 and notify the parties thereof, may adjourn the hearing from time to
10 time as may be necessary, and, on application of either party and for
11 good cause, may postpone the hearing to a time not extending beyond a
12 date fixed by the collective bargaining agreement for making the award.
13 The arbitrator has the power to administer oaths. The arbitration
14 award shall be in writing and signed by the arbitrator or a majority of
15 the members of the arbitration panel. The arbitrator shall, promptly
16 upon its rendition, serve a true copy of the award on each of the
17 parties or their attorneys.

18 (4) If a party to a collective bargaining agreement negotiated
19 under this chapter refuses to submit a grievance for arbitration, the
20 other party to the collective bargaining agreement may invoke the
21 jurisdiction of the superior court for any county in which the labor
22 dispute exists, and such court has jurisdiction to issue an order
23 compelling arbitration. Arbitration shall be ordered if the grievance
24 states a claim which on its face is covered by the collective
25 bargaining agreement, and doubts as to the coverage of the arbitration
26 clause shall be resolved in favor of arbitration. Disputes concerning
27 compliance with grievance procedures shall be reserved for
28 determination by the arbitrator.

29 (5) If a party to a collective bargaining agreement negotiated
30 under this chapter refuses to comply with the award of an arbitrator
31 determining a grievance arising under such collective bargaining
32 agreement, the other party to the collective bargaining agreement, or
33 any affected employee, may invoke the jurisdiction of the superior
34 court for any county in which the labor dispute exists, and such court
35 has jurisdiction to issue an order enforcing the arbitration award.
36 The court shall not substitute its judgment for that of the arbitrator
37 and shall enforce any arbitration award which is based on the

1 collective bargaining agreement, except that an arbitration award shall
2 not be enforced and a new arbitration proceeding may be ordered:

3 (a) If the arbitration award was procured by corruption, fraud, or
4 undue means;

5 (b) If there was evident partiality or corruption in the arbitrator
6 or arbitrators;

7 (c) If the arbitrator or arbitrators were guilty of misconduct, in
8 refusing to postpone a hearing upon sufficient cause shown, in refusing
9 to hear evidence pertinent and material to the controversy, or of any
10 other misbehavior by which the rights of any party have been
11 prejudiced; or

12 (d) If the arbitrator or arbitrators have exceeded their powers or
13 so imperfectly executed their powers that a final and definite award on
14 the subject matter was not made, in which event the court also has
15 discretion to remand the matter to the arbitrator or arbitrators who
16 issued the defective award.

17 NEW SECTION. **Sec. 7.** (1) Upon filing with the employer the
18 voluntary written authorization of a bargaining unit member under this
19 chapter, the employee organization that is the exclusive bargaining
20 representative of the bargaining unit shall have the right to have
21 deducted from the salary of the bargaining unit member the periodic
22 dues and initiation fees uniformly required as a condition of acquiring
23 or retaining membership in the employee organization. Such employee
24 authorization shall not be irrevocable for a period of more than one
25 year. Such dues and fees shall be deducted from the pay of all
26 bargaining unit members who have given authorization for such
27 deduction, and shall be transmitted by the employer to the employee
28 organization or to the depository designated by the employee
29 organization.

30 (2) A collective bargaining agreement may include union security
31 provisions, but not a closed shop. If an agency shop or other union
32 security provision is agreed to, the employer shall enforce any such
33 provision by deductions from the salary of bargaining unit members
34 affected thereby and shall transmit such funds to the employee
35 organization or to the depository designated by the employee
36 organization.

1 (3) A bargaining unit member who is covered by a union security
2 provision and who asserts a right of nonassociation based on bona fide
3 religious tenets or teachings of a church or religious body of which
4 such bargaining unit member is a member shall pay to a nonreligious
5 charity or other charitable organization an amount of money equivalent
6 to the periodic dues and initiation fees uniformly required as a
7 condition of acquiring or retaining membership in the employee
8 organization. The charity shall be agreed upon by the bargaining unit
9 member and the employee organization to which such bargaining unit
10 member would otherwise pay the dues and fees. The bargaining unit
11 member shall furnish written proof that such payments have been made.
12 If the bargaining unit member and the employee organization do not
13 reach agreement on such matter, the dispute shall be submitted to the
14 commission for determination.

15 NEW SECTION. **Sec. 8.** (1) It is an unfair labor practice for an
16 employer to:

17 (a) Interfere with, restrain, or coerce bargaining unit members in
18 the exercise of the rights guaranteed by this chapter;

19 (b) Dominate or interfere with the formation or administration of
20 any employee organization or contribute financial or other support to
21 it. However, subject to rules adopted by the commission, an employer
22 is not prohibited from permitting bargaining unit members to confer
23 with it or its representatives or agents during working hours without
24 loss of time or pay;

25 (c) Encourage or discourage membership in any employee organization
26 by discrimination in regard to hire, tenure of employment, or any term
27 or condition of employment;

28 (d) Discharge or discriminate otherwise against a bargaining unit
29 member because that member has filed charges or given testimony under
30 this chapter; or

31 (e) Refuse to bargain collectively with the exclusive bargaining
32 representative of its employees.

33 (2) It is an unfair labor practice for an employee organization to:

34 (a) Restrain or coerce a bargaining unit member in the exercise of
35 the rights guaranteed by this chapter. However, this subsection does
36 not impair the rights of (i) an employee organization to prescribe its
37 own rules with respect to the acquisition or retention of membership in

1 the employee organization or (ii) an employer in the selection of its
2 representatives for the purpose of bargaining or the adjustment of
3 grievances;

4 (b) Cause or attempt to cause an employer to discriminate against
5 a bargaining unit member in violation of subsection (1)(c) of this
6 section;

7 (c) Discriminate against a bargaining unit member because that
8 member has filed charges or given testimony under this chapter; or

9 (d) Refuse to bargain collectively with an employer.

10 (3) The expressing of any view, arguments, or opinion, or the
11 dissemination thereof to the public, whether in written, printed,
12 graphic, or visual form, shall not constitute or be evidence of an
13 unfair labor practice under this chapter, if such expression contains
14 no threat of reprisal or force or promise of benefit.

15 NEW SECTION. **Sec. 9.** (1) The commission is empowered to prevent
16 any person from engaging in any unfair labor practice as defined in
17 this chapter; however, a complaint shall not be processed for any
18 unfair labor practice occurring more than six months before the filing
19 of the complaint with the commission. This power shall not be affected
20 by any other means of adjustment or prevention that has been or may be
21 established by agreement, law, equity, or otherwise.

22 (2) If the commission determines that any person has engaged in or
23 is engaging in any unfair labor practice as defined in this chapter,
24 then the commission shall issue and cause to be served upon the person
25 an order requiring the person to cease and desist the unfair labor
26 practice, and to take such affirmative action as will effectuate the
27 purposes and policy of this chapter, including ordering the payment of
28 damages, the reinstatement of employees, or both.

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

34 NEW SECTION. **Sec. 10.** The commission may adopt rules necessary to
35 carry out the provisions of this chapter.

1 NEW SECTION. **Sec. 11.** Nothing in this chapter prohibits covered
2 employees from engaging in lawful strikes against their employers,
3 provided that the employee organization gives the employer and the
4 commission at least thirty days' notice prior to the commencement of
5 the strike. Nothing in this chapter prohibits covered employers from
6 lawfully locking out employees, provided the employer gives the
7 employee organization and the commission at least thirty days' notice
8 prior to the commencement of the lockout.

9 NEW SECTION. **Sec. 12.** Whenever a collective bargaining agreement
10 between an employer and an exclusive bargaining representative is
11 concluded after the termination date of the previous collective
12 bargaining agreement between the same parties, the effective date of
13 the collective bargaining agreement may be the day after the
14 termination date of the previous collective bargaining agreement, and
15 all benefits included in the new collective bargaining agreement,
16 including wage or salary increases, may accrue beginning with the
17 effective date as established by this section.

18 NEW SECTION. **Sec. 13.** Nothing in this chapter shall be construed
19 to annul, modify, or preclude the renewal or continuation of any lawful
20 agreement entered into before the effective date of this act, between
21 an employer and an employee organization covering wages, hours, and
22 terms and conditions of employment.

23 NEW SECTION. **Sec. 14.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
28 constitute a new chapter in Title 49 RCW.

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