

Chapter 49.66 RCW
HEALTH CARE ACTIVITIES

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RCW 49.66.010 Purpose—Policy—Declaration. It is the public policy of the state to expedite the settlement of labor disputes arising in connection with health care activities, in order that there may be no lessening, however temporary, in the quality of the care given to patients. It is the legislative purpose by this chapter to promote collective bargaining between health care activities and their employees, to protect the right of employees of health care activities to organize and select collective bargaining units of their own choosing.

It is further determined that any agreements involving union security including an all-union agreement or agency agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee must pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise pay dues. The employee shall furnish written proof that this has been done. If the employee and representative of the labor organization do not reach agreement on the matter, the department shall designate such organization. [1973 2nd ex.s. c 3 s 1; 1972 ex.s. c 156 s 1.]

RCW 49.66.020 Definitions. As used in this chapter:

(1) "Health care activity" includes any hospital, nursing home, institution, agency or establishment, exclusive of those operated by the state, its municipalities, or political subdivisions, having for one of its principal purposes the preservation of health or the care of sick, aged or infirm persons.

(2) "Bargaining unit" includes any group of employees of a health care activity having substantially common interests with respect to working conditions. The composition of a bargaining unit may be determined by common consent between an employer and its employees,

or, in the event either party shall apply to the director of labor and industries for a determination of the composition of a bargaining unit, it shall be determined by the director of labor and industries or his delegated representative. No bargaining unit shall be found appropriate if it includes guards together with other employees.

(3) "Employee" includes any registered nurse or licensed practical nurse or service personnel performing services for wages for a health care activity. The term shall not apply to a member of a religious order assigned to a health care activity by the order as a part of his obligations to it; nor shall it apply to persons performing services in connection with healing by prayer or spiritual means alone in accordance with the tenets and practices of recognized church or religious denominations by adherents thereof; nor shall it apply to supervisors.

(4) "Employer" includes any person, agency, corporation, company or other organization engaged in the operation of a health care activity, whether for profitable or charitable purposes.

(5) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisor includes registered nurses only if administrative supervision is his or her primary duty and activity.

(6) "Guard" means any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.

(7) "Director" means the director of the department of labor and industries.

(8) "Department" means the department of labor and industries.
[1973 2nd ex.s. c 3 s 2; 1972 ex.s. c 156 s 2.]

RCW 49.66.030 Bargaining unit. An employee association shall be deemed the properly designated representative of a bargaining unit when it can show evidence that bargaining rights have been assigned to it by a majority of the employees in the bargaining unit. Should questions arise concerning the representative status of any employee organization claiming to represent a bargaining unit of employees, upon petition by such an organization, it shall be the duty of the director, acting by himself or herself or through a designee to investigate and determine the composition of the organization. Any organization found authorized by not less than thirty percent of the employees of a bargaining unit shall be eligible to apply for an election to determine its rights to represent the unit. If more than one organization shall claim to represent any unit, the director, or his or her designee, may conduct an election by secret ballot to determine which organization shall be authorized to represent the unit. In order to be certified as a bargaining representative, an employee organization must receive, in a secret ballot election, votes from a majority of the employees who vote in the election, except that nothing in this section shall prohibit the voluntary recognition of a labor organization as a bargaining representative by an employer upon a showing of reasonable proof of majority. In any election held

pursuant to this section, there shall be a choice on the ballot for employees to designate that they do not wish to be represented by any bargaining representative. No representation election shall be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. Thirty percent of the employees of an employer may file a petition for a secret ballot election to ascertain whether the employee organization which has been certified or is currently recognized by their employer as their bargaining representative is no longer their bargaining representative.

No employee organization shall be certified as the representative of employees in a bargaining unit of guards, if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The determination shall be based upon a plurality of votes cast in such election, and shall remain in effect for a period of not less than one year. In determining appropriate bargaining units, the director shall limit such units to groups consisting of registered nurses, licensed practical nurses or service personnel: PROVIDED, HOWEVER, That if a majority of each such classification desires inclusion within a single bargaining unit, they may combine into a single unit. [2010 c 8 s 12062; 1973 2nd ex.s. c 3 s 3; 1972 ex.s. c 156 s 3.]

RCW 49.66.040 Unfair labor practice by health care activity. It shall be deemed an unfair labor practice, and unlawful, for any health care activity to:

(1) Interfere with, restrain or coerce employees in any manner in the exercise of their right of self-organization: PROVIDED, That the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization having bargaining as one of its functions;

(3) Discriminate in regard to hire, terms, or conditions of employment in order to discourage membership in any employee organization having collective bargaining as one of its functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of employees; and it shall be a requirement of good faith bargaining that the parties be willing to reduce to writing, and have their representatives sign, any agreement arrived at through negotiation and discussion. [1972 ex.s. c 156 s 4.]

RCW 49.66.050 Unfair labor practice by employee organization or agent. It shall be an unfair labor practice and unlawful, for any employee organization or its agent to:

(1) Restrain or coerce (a) employees in the exercise of their right to refrain from self-organization, or (b) an employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of RCW 49.66.040(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) Refuse to meet and bargain in good faith with an employer, provided it is the duly designated representative of the employer's employees for purposes of collective bargaining;

(4) Require of employees covered by a union security agreement the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the director finds excessive or discriminatory under all the circumstances. In making such a finding, the director shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(5) Cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(6) Enter into any contract or agreement, express or implied, whereby an employer or other person ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products or services of any other employer or person, or to cease doing business with any other employer or person, and any such contract or agreement shall be unenforceable and void; or

(7) Engage in, or induce or encourage any individual employed by any employer or to engage in, an activity prohibited by RCW 49.66.060. [2010 c 8 s 12063; 1973 2nd ex.s. c 3 s 4; 1972 ex.s. c 156 s 5.]

RCW 49.66.060 Strike and picketing. No employee organization, bargaining representative, person, or employee shall authorize, sanction, engage in, or participate in a strike (including but not limited to a concerted work stoppage of any kind, concerted slowdown or concerted refusal or failure to report for work or perform work) or picketing against an employer under any circumstances, whether arising out of a recognition dispute, bargaining impasse, or otherwise: PROVIDED, That nothing in this section shall prohibit picketing or other publicity for the sole purpose of truthfully advising the public of the existence of a dispute with the employer, unless an effect of such picketing or other publicity is (a) to induce any employee of the employer or any other individual, in the course of his or her employment, not to pick up, deliver, or transfer goods, not to enter the employer's premises, or not to perform services; or (b) to induce such an employee or individual to engage in a strike. [2010 c 8 s 12064; 1972 ex.s. c 156 s 6.]

RCW 49.66.070 Relief from unfair labor practice—Actions—Remedial orders. The director or any employee organization qualified to apply for an election under RCW 49.66.030 as now or hereafter amended or any employer may maintain in its name or in the name of its members legal action in any county in which jurisdiction of the

employer or employee organization may be obtained, to seek relief from the commission of an unfair labor practice: PROVIDED, That such employer or employee organization exhausts the administrative remedies under rules and regulations promulgated by the department prior to seeking such court action.

The department is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. Any party aggrieved by any remedial order is entitled to the judicial review thereof in accordance with the provisions of chapter 34.05 RCW. [1973 2nd ex.s. c 3 s 5; 1972 ex.s. c 156 s 7.]

RCW 49.66.080 Rules and regulations—Procedures. The director shall have the power to make such rules and regulations not inconsistent with this chapter, including the establishment of procedures for the hearing and determination of charges alleging unfair labor practices, and for a determination on application by either party when an impasse has arisen, and as he or she shall determine are necessary to effectuate its purpose and to enable him or her to carry out its provisions. [2010 c 8 s 12065; 1973 2nd ex.s. c 3 s 6; 1972 ex.s. c 156 s 8.]

RCW 49.66.090 Board of arbitration—Members—Selection—Chair. In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the matters in dispute shall be submitted to a board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as chair. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with RCW 7.04A.110, and that person shall act as chair of the arbitration board. [2010 c 8 s 12066; 2005 c 433 s 44; 1973 2nd ex.s. c 3 s 7; 1972 ex.s. c 156 s 9.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

RCW 49.66.100 Board of arbitration—Hearings—Findings. The arbitration board, acting through its chair, shall call a hearing to be held within ten days after the date of the appointment of the chair. The board shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings shall be taken. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. The board shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board material to a

just determination of the issues in dispute and to issue subpoenas. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the board may invoke the jurisdiction of any superior court and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrators shall be concluded within twenty days of the time of commencement and, within ten days after conclusion of the hearings, the arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the employees' negotiating agent or its attorney or other designated representative and to the employer or the employer's attorney or designated representative. The determination of the dispute made by the board shall be final and binding upon both parties. [2010 c 8 s 12067; 1972 ex.s. c 156 s 10.]

RCW 49.66.110 Board of arbitration—Standards or guidelines. In making its determination, the board of arbitrators shall be mindful of the legislative purpose enumerated in RCW 49.66.010 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(1) Wage rates or other conditions of employment of the health care activity in question as compared with prevailing wage rates or other conditions of employment in the local operating area involved.

(2) Wage rates or other working conditions as compared with wage rates or other working conditions maintained for the same or similar work of workers in the local area.

(3) The overall compensation of employees having regard not only to wages for time actually worked but also for time not actually worked, including vacations, holidays and other excused time and for all fringe benefits received.

(4) Interest and welfare of the public.

(5) Comparison of peculiarities of employment in regard to other comparable trades or professions, specifically:

(a) Physical qualifications.

(b) Educational qualifications.

(c) Job training and skills.

(6) Efficiency of operation of the health care activity. [1972 ex.s. c 156 s 11.]

RCW 49.66.120 Arbitrator—Compensation—Expenses. The arbitrator so selected by the parties shall be paid at the daily rate or rates not to exceed the usual or customary rates paid to arbitrators in addition to travel expenses at the rates provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such sums together with all expenses of the hearing shall be borne equally by the parties to the arbitration proceedings. [1975-'76 2nd ex.s. c 34 s 147; 1973 2nd ex.s. c 3 s 8; 1972 ex.s. c 156 s 12.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

RCW 49.66.900 Severability—1972 ex.s. c 156. If any portion of this chapter, or its application to any particular health care activity or class of health care activity, should be held invalid, the remainder of the chapter, or its application to other health care activities, or other classes thereof, shall not be affected. [1972 ex.s. c 156 s 13.]