
SENATE BILL 5347

State of Washington 53rd Legislature 1993 Regular Session

By Senators Prentice, Pelz, Moore, Talmadge, Fraser and Niemi

Read first time 01/25/93. Referred to Committee on Labor & Commerce.

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

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

4 NEW SECTION. **Sec. 1.** This chapter shall be known and cited as the
5 "Washington agricultural labor relations act."

6 NEW SECTION. **Sec. 2.** It is hereby stated to be the policy of the
7 state of Washington to encourage and protect the right of agricultural
8 employees to full freedom of association, self-organization, and
9 designation of representatives of their own choosing for the purpose of
10 collective bargaining. The people of the state of Washington find that
11 industrial strife can be avoided or substantially minimized, and the
12 public interest protected, if employers and employees recognize each
13 other's legitimate rights under law in their relations with one
14 another. It is the purpose and policy of this chapter to prescribe the
15 collective bargaining rights of employees and employers in the
16 agricultural industry, to provide orderly and peaceful procedures for
17 preventing the interference by one with the rights of the other, to
18 protect the rights of individual employees, to define and proscribe

1 practices on the part of labor and management that are inimical to the
2 general welfare, and to protect the rights of the public in connection
3 with labor disputes.

4 NEW SECTION. **Sec. 3.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Agriculture" includes farming in all its branches and among
8 other things includes the cultivation and tillage of the soil,
9 dairying, the production, cultivation, growing, and harvesting of any
10 agricultural or horticultural commodities, the raising of livestock,
11 bees, fur-bearing animals, or poultry, and the forestation and
12 reforestation of lands, and any practice performed by a farmer or on a
13 farm incident to or in conjunction with such farming operations.

14 (2) "Employee" includes any individual employed by an employer in
15 agricultural work, and is not limited to the employees of a particular
16 employer unless specifically stated in this chapter, and shall include
17 any individual whose work has ceased as a consequence of, or in
18 connection with, any current labor dispute or because of any unfair
19 labor practice, but shall not include an individual employed by his or
20 her parent or spouse, or an individual employed by an agricultural
21 employer who hired less than eight employees at any time during the
22 preceding calendar year.

23 (3) "Employer" shall be liberally construed to include any
24 individual, partnership, association, corporation, business trust, or
25 any person or group of persons acting directly or indirectly in the
26 interest of an employer in relation to an agricultural employee. In
27 deciding whether a party is an "employer" economic reality controls,
28 rather than common-law concepts of agency. Factors which shall be
29 considered include: The degree of control exercised by the alleged
30 employer; the extent of the relative investments of the employee and
31 the employer; the degree to which the opportunity for loss or profit is
32 determined by the employer; the skill and initiative required by the
33 job; and the permanency of the relationship. "Employer" includes any
34 person who employed eight or more employees at any time during the
35 preceding calendar year. If an employer uses the services of a farm
36 labor contractor, as defined in RCW 19.30.010(2), whether or not
37 licensed, or of another person supplying agricultural labor, the farm
38 labor contractor or any other person who supplies agricultural labor

1 shall be considered the agent of the employer and the employer shall be
2 deemed to be the employer of the employees for the purposes of this
3 chapter. An employer shall be strictly liable for any violations of
4 this chapter committed by its farm labor contractor and other agents.

5 (4) "Certification year" means one year from the date on which the
6 state agricultural labor relations board certifies the results of an
7 election conducted under section 10 of this act.

8 (5) "Labor dispute" includes any controversy concerning terms,
9 tenure, or conditions of employment, or concerning the association or
10 representation of persons in negotiating, fixing, maintaining,
11 changing, or seeking to arrange terms or conditions of employment,
12 regardless of whether the disputants stand in the proximate relation of
13 employer and employee.

14 (6) "Employee organization" means any organization, union,
15 association, agency, committee, council, or group of any kind in which
16 employees participate and which exists for the purpose, in whole or in
17 part, of dealing with employers concerning grievances, labor disputes,
18 wages, rates of pay, hours of employment, or conditions of employment.

19 (7) "Person" includes one or more individuals, employee
20 organizations, partnerships, associations, corporations, legal
21 representatives, trustees, trustees in bankruptcy, receivers, or other
22 legal entities.

23 (8) "Representative" includes any individual or employee
24 organization.

25 (9) "State agricultural labor relations board" or "board" means the
26 board established in section 4 of this act.

27 (10) "Supervisor" means any individual having authority, in the
28 interest of the employer, to hire, transfer, suspend, layoff, recall,
29 promote, discharge, assign, reward, or discipline other employees, or
30 responsibility to direct them, or to adjust their grievances, or
31 effectively to recommend such action, if the exercise of such authority
32 is not of merely routine or clerical nature but requires the use of
33 independent judgment.

34 (11) "Unfair labor practice" means any unfair labor practice listed
35 in sections 7 and 8 of this act.

36 (12) "Professional strike breaker" means a person who is not
37 involved in a labor dispute whose primary object is to prevent,
38 interfere with, or break up a lawful strike.

1 NEW SECTION. **Sec. 4.** (1) There is hereby created the state
2 agricultural labor relations board to administer this chapter. The
3 board shall consist of three members appointed by the governor, with
4 the advice and consent of the house of representatives. The first
5 member shall be a representative of the public and shall be the chair
6 of the board. The first member shall be appointed from a list of not
7 less than three persons mutually agreed upon submitted by the employee
8 and employer organizations described below. The second member shall
9 represent agricultural employers and shall be selected from a list of
10 not less than three names submitted by a recognized state-wide employer
11 organization, representing a majority of employers. The third member
12 shall represent agricultural employees and shall be selected from a
13 list of not less than three names submitted by an employee organization
14 registered as a labor organization with the United States department of
15 labor, state-wide in scope, whose membership represents a majority of
16 the organized agricultural workers of the state. The original third
17 member shall be appointed for a term of six years, the original second
18 member for a term of two years, and the original first member for a
19 term of four years, respectively. Their successors shall be appointed
20 for terms of six years each, except that any person chosen to fill a
21 vacancy shall be appointed only for the unexpired term of the member
22 whom he or she succeeds. Board members shall be eligible for
23 reappointment and shall hold office until the successor is appointed.
24 A member of the board may be removed by the governor with the advice
25 and consent of the house of representatives, upon notice and hearing,
26 for neglect of duty or malfeasance in office, but for no other cause.

27 (2) A vacancy in the board shall not impair the right of the
28 remaining members to exercise all of the powers of the board, and two
29 members of the board shall, at all times, constitute a quorum of the
30 board.

31 (3) The board shall, at the close of each fiscal year, make a
32 report in writing to the legislature and to the governor stating the
33 cases it has heard, the decisions it has rendered, the names, salaries,
34 and duties of all employees and officers in the employ or under the
35 supervision of the board, and an account of all moneys it has
36 disbursed.

37 NEW SECTION. **Sec. 5.** (1) Members of the board shall serve full
38 time fulfilling the duties of the board and shall receive for services

1 a salary as fixed by the governor in accordance with RCW 43.03.040,
2 which shall be in addition to reimbursement for travel expenses
3 incurred in the discharge of their official duties as provided in RCW
4 43.03.050 and 43.03.060.

5 (2) The board may appoint an executive director whose annual salary
6 shall be determined under RCW 43.03.028. The executive director shall
7 perform the duties and have the powers the board prescribes to carry
8 out the provisions of this chapter. The executive director, with
9 additional legal assistance consistent with chapter 43.10 RCW, shall
10 have authority on behalf of the board in matters concerning the
11 administration of this chapter, and shall perform the duties prescribed
12 by the board.

13 (3) When necessary to carry out or enforce any action or decision
14 of the board, the executive director shall have authority to petition
15 a court of competent jurisdiction for an order requiring compliance
16 with the board action or decision.

17 (4) The board may employ employees, including attorneys, as it
18 finds necessary for the proper performance of its duties, consistent
19 with the provisions of this chapter.

20 (5) The payment of all of the expenses of the board, including
21 travel expenses incurred by the members or employees of the board under
22 its orders, shall be subject to the provisions of RCW 43.03.050 and
23 43.03.060.

24 (6) The board shall have the authority to adopt, make, amend, and
25 rescind, in the manner prescribed by the administrative procedure act,
26 chapter 34.05 RCW, rules necessary to carry out this chapter.

27 NEW SECTION. **Sec. 6.** Employees shall have the right to self-
28 organization, to form, join, or assist employee organizations, to
29 bargain collectively through representatives of their own choosing, and
30 to engage in other concerted activities for the purpose of collective
31 bargaining or other mutual aid or protection, and shall also have the
32 right to refrain from any or all such activities, except that employees
33 may be required to pay a fee to an exclusive bargaining representative
34 under a union security provision authorized by this chapter.

35 NEW SECTION. **Sec. 7.** (1) It is an unfair labor practice for an
36 employer:

- 1 (a) To interfere with, restrain, or coerce employees in the
2 exercise of the rights guaranteed in this chapter;
- 3 (b) To control, dominate, or interfere with the formation or
4 administration of any employee organization or to contribute financial
5 or other support to it: PROVIDED, That subject to rules and
6 regulations made and published by the board pursuant to section 5 of
7 this act, an employer shall not be prohibited from permitting employees
8 to confer with him or her during working hours without loss of time or
9 pay;
- 10 (c) To encourage or discourage support for or membership in any
11 employee organization by discrimination in regard to hire, rehire,
12 tenure of employment, or any term or condition of employment.
13 Termination of an agricultural employee after the initiation of
14 organizational activities shall be presumed to be an unfair labor
15 practice absent clear and convincing proof that an employee was
16 terminated solely for just cause;
- 17 (d) To discharge, fail to rehire, or otherwise discriminate against
18 an employee because the employee has filed charges or given testimony
19 under this chapter, or has opposed unfair labor practices as defined in
20 this chapter;
- 21 (e) To refuse to bargain collectively with the representatives of
22 its employees;
- 23 (f) To recognize, bargain with, or sign a collective bargaining
24 agreement with any employee organization not certified under this
25 chapter as the exclusive bargaining representative of its employees;
- 26 (g) To hire permanent employees to replace striking or locked out
27 employees. Replacement persons engaged by an employer to fill the
28 positions of employees of the employer who are on strike or are locked
29 out, in circumstances permitted by this chapter, shall be considered
30 temporary employees for the duration of the strike or lock out, and
31 upon termination of the strike or lock out, the employment of the
32 persons engaged to replace the employees shall, without notice, be
33 deemed to be terminated. An employer shall not be subject to liability
34 in contract, tort, or other common law causes of action by replacement
35 employees terminated in compliance with this section;
- 36 (h) To use or authorize or permit the use of, a professional strike
37 breaker or an organization of professional strike breakers;
- 38 (i) To hire temporary replacement employees without first
39 disclosing to such employees the existence of the strike or labor

1 dispute, the name of the employee organization involved, the temporary
2 nature of the position being offered, and the terms and conditions of
3 employment in dispute in writing and in their native language; or

4 (j) To willfully arrange for persons to become employees for the
5 primary purpose of voting in elections.

6 (2) The provisions of subsection (1)(c) of this section shall be
7 subject to the following limitations:

8 (a) Nothing in this chapter precludes an employer from making an
9 agreement with an employee organization to require, as a condition of
10 employment, payment by payroll deduction transmitted to the collective
11 bargaining agent by the employer of union membership dues, or the
12 equivalent of dues by employees who choose not to become union members,
13 on or after the seventh day following the beginning of employment or
14 the effective date of the agreement, whichever is later, if the
15 employee organization is the exclusive representative of the employees
16 as provided in section 10 of this act, in the appropriate collective
17 bargaining unit covered by the agreement when made.

18 (b) Agreements involving union security provisions must safeguard
19 the right of nonassociation of employees based on bona fide religious
20 tenets or teachings of a church or religious body of which the employee
21 is a member. The employee shall pay an amount equivalent to the union
22 shop fee to a nonreligious charity or to another charitable
23 organization mutually agreed upon by the employee affected and the
24 bargaining representative to which the employee would otherwise pay the
25 union shop fee. The employee shall furnish written proof that the
26 payment has been made. If the employee and the bargaining
27 representative do not reach agreement on such matter, the board shall
28 designate the charitable organization.

29 NEW SECTION. **Sec. 8.** It is an unfair labor practice for an
30 employee organization:

31 (1) To interfere with, restrain, or coerce:

32 (a) Employees in the exercise of the rights guaranteed in this
33 chapter, but nothing in this subsection shall impair the right of an
34 employee organization to prescribe its own rules with respect to the
35 acquisition or retention of its membership; or

36 (b) An employer in the selection of its representatives for the
37 purposes of collective bargaining or the adjustment of grievances;

1 (2) To cause or attempt to cause an employer to discriminate
2 against an employee in violation of section 7 of this act;

3 (3) To solicit or accept financial or other support from an
4 employer;

5 (4) To force or require an employer to bargain with a particular
6 labor organization as the representative of his or her employees if
7 another employee organization has been certified as the representative
8 of such employees under the provisions of section 10 of this act; or

9 (5) To refuse to bargain collectively with an employer, provided
10 the employee organization is the representative of the employer's
11 employees under this chapter.

12 NEW SECTION. **Sec. 9.** (1) For the purpose of this section, to
13 bargain collectively is the performance of the mutual obligation of the
14 employer and the representative of the employees to meet at reasonable
15 times and confer in good faith with respect to wages, hours, and other
16 terms and conditions of employment, or the negotiation of an agreement,
17 or any question arising thereunder, and the execution of a written
18 contract incorporating any agreement reached if requested by either
19 party. Such obligation does not compel either party to agree to any
20 specific proposal or require either party to make any specific
21 concession. Each party has the duty to make a good faith attempt to
22 arrive at a mutually satisfactory agreement.

23 (2) Upon the filing by any person of a petition not earlier than
24 the ninetieth day nor later than the sixtieth day preceding the
25 expiration of the twelve-month period following initial certification,
26 the board shall determine whether an employer has bargained in good
27 faith with the currently certified labor organization. If the board
28 finds that the employer has not bargained in good faith, it shall
29 extend the certification for up to one additional year, effective
30 immediately upon the expiration of the previous twelve-month period
31 following initial certification.

32 (3) If there is in effect a collective bargaining contract covering
33 employees, the duty to bargain collectively also means that no party to
34 the contract may terminate or modify the contract, unless the party
35 desiring termination or modification:

36 (a) Serves a written notice upon the other party to the contract of
37 the proposed termination or modification not less than sixty days
38 before the expiration date of the contract or, in the event the

1 contract contains no expiration date, not less than sixty days before
2 the time it is proposed to make the termination or modification;

3 (b) Offers to meet and confer with the other party for the purpose
4 of negotiating a new contract or a contract containing the proposed
5 modifications;

6 (c) Notifies the board within thirty days after notice of the
7 existence of a dispute, provided no agreement has been reached by that
8 time; and

9 (d) Continues in full force and effect, without resorting to strike
10 or lock out, all the terms and conditions of the existing contract for
11 a period of sixty days after notice is given or until the expiration
12 date of the contract, whichever occurs later.

13 (4) The duties imposed upon employers, employees, and employee
14 organizations by subsection (3) (b), (c), and (d) of this section shall
15 become inapplicable upon an intervening certification of the board,
16 under which the employee organization or individual, that is a party to
17 the contract, has been superseded as or ceased to be the representative
18 of the employees under this chapter, and the duties so imposed shall
19 not be construed as requiring either party to discuss or agree to any
20 modification of the terms and conditions contained in a contract for a
21 fixed period, if such modification is to become effective before the
22 terms and conditions can be reopened under the provisions of the
23 contract.

24 (5) If the parties have not settled the dispute after the
25 termination of the sixty-day period provided in this section, the
26 employees may strike or the employer may lock out employees.

27 NEW SECTION. **Sec. 10.** (1) Representatives designated or selected
28 for the purposes of collective bargaining by a majority of the
29 employees by secret ballot or other suitable method in a unit
30 appropriate for such purposes shall be the exclusive bargaining
31 representatives of all the employees in the unit for the purpose of
32 collective bargaining in respect to rates of pay, wages, hours of
33 employment, or other conditions of employment. However, an individual
34 employee or a group of employees shall have the right at any time to
35 present grievances to their employer and to have such grievances
36 adjusted without the intervention of the bargaining representative, as
37 long as the adjustment is not inconsistent with the terms of a
38 collective bargaining contract or agreement then in effect and as long

1 as the bargaining representative has been given the opportunity to be
2 present at such adjustment.

3 (2) The bargaining unit shall be all the agricultural employees of
4 an employer. If the agricultural employees of the employer are
5 employed in two or more noncontiguous geographical areas, the board
6 shall determine the appropriate unit or units of agricultural employees
7 in which a secret ballot election shall be conducted. In determining
8 whether a unit is appropriate under this subsection, the extent to
9 which the employees have organized shall be an important consideration.

10 (3) Petitions for elections shall be filed by an employee
11 organization during any normal harvest or nonharvest period of
12 agricultural employment and shall allege that:

13 (a) Not less than fifty percent of an employees' unit of a
14 particular employer wish to be represented for collective bargaining;

15 (b) The number of agricultural employees currently employed by the
16 employer named in the petition, as determined from the payroll
17 immediately preceding the filing of the petition, is not less than
18 thirty percent of the employer's peak agricultural employment for the
19 current calendar year;

20 (c) No valid election under this section has been held at the
21 request of the same employee organization among the agricultural
22 employees of the employer named in the petition within the twelve
23 months immediately preceding the filing of the petition;

24 (d) No employee organization is currently certified under this
25 chapter as the exclusive collective bargaining representative of the
26 agricultural employees of the employer named in the petition; and

27 (e) The petition is not barred by an existing collective bargaining
28 agreement.

29 (4) Any other employee organization shall be qualified to appear on
30 the ballot if it presents authorization cards signed by at least fifty
31 percent of the employees in a bargaining unit at least seventy-two
32 hours prior to the election.

33 (5) When an employee organization claims that more than fifty-five
34 percent of employees in a bargaining unit have authorized it to be
35 their agent for collective bargaining it may apply to the board for
36 certification. Upon application the board shall ascertain the number
37 of employees in the bargaining unit at the time the application was
38 made and the number of employees in the unit who have signed union
39 authorization cards. If the board is satisfied that more than fifty-

1 five percent of the employees in the bargaining unit have authorized
2 the union to be their agent for collective bargaining, the board shall
3 certify the employee organization as the bargaining agent of the
4 employees in the bargaining unit. Certification under this subsection
5 is subject to the conditions required to sustain a petition for an
6 election as set forth in subsection (3) (b), (c), (d), and (e) of this
7 section.

8 (6)(a) Whenever a petition has been filed in accordance with
9 subsection (3) of this section and the rules prescribed by the board,
10 the board shall investigate the petition and if it has reasonable cause
11 to believe that a question of representation exists shall direct that
12 a representation election by secret ballot be held, upon due notice to
13 all interested parties and within a maximum of five days of the filing
14 of the petition. If, at the time the election petition is filed, a
15 majority of the employees in a bargaining unit are engaged in a strike,
16 the board shall, with all due diligence, attempt to hold a secret
17 ballot election within forty-eight hours of the filing of the petition.

18 (b) If any employee organization receives a majority of the votes
19 cast in an election under this section, the organization shall be
20 certified by the board for a period of twelve months as the exclusive
21 bargaining representative of the employees among whom the election was
22 conducted. An employee organization certified by the board pursuant to
23 a card check conducted under subsection (5) of this section shall
24 likewise be certified for a period of twelve months as the exclusive
25 bargaining representative of the employees in the bargaining unit. An
26 employer shall not initially recognize an employee organization as the
27 collective bargaining representative of its employees unless the
28 employee organization has either received a majority of the votes cast
29 in a representation election conducted pursuant to the provisions of
30 this chapter or has been certified by the board as the representative
31 of the employees pursuant to subsection (5) of this section.

32 (c) No election shall be directed in any bargaining unit or any
33 subdivision within which, in the preceding twelve-month period, a valid
34 election has been held at the request of the same employee
35 organization, or where an employee organization has been certified as
36 a representation of its employees within the immediately preceding
37 twelve-month period. All agricultural employees of the employer whose
38 names appear on the payroll applicable to the payroll period
39 immediately preceding the filing of the petition for an election,

1 except employees who are replacing striking or locked out employees,
2 shall be eligible to vote. Employees engaged in an economic strike
3 shall be eligible to vote under such rules as the board finds are
4 consistent with the purposes and provisions of this chapter in any
5 election conducted within twelve months after the commencement of the
6 strike. Employees terminated due to employer unfair labor practices
7 shall remain eligible to vote. In any election where none of the
8 choices on the ballot receives a majority, a run-off shall be
9 conducted, the ballot providing for a selection between the two choices
10 receiving the largest and second largest number of valid votes cast in
11 the election.

12 (d) Nothing in this section shall be construed to prohibit the
13 waiving of hearings by stipulation for the purpose of a consent
14 election in conformity with the rules and decisions of the board.

15 (7) Once an employer is served with notice by an employee
16 organization of its intent to organize the employer's employees, the
17 employee organization shall have the right to communicate peacefully
18 with the employees on the employer's property during nonworking times
19 and at their residences or dwelling places, including labor camps
20 located on the property of the employer, during nonworking hours,
21 including meal and rest periods or other breaks. However, an employee
22 organization or its agents may not interfere with the performance of
23 work in the exercise of the rights guaranteed by this section.

24 (8) Agricultural employers shall maintain accurate and current
25 payroll lists containing the names and addresses of all their
26 agricultural employees and shall release such lists to any requesting
27 employee organization within twenty-four hours after being served with
28 notice by the employee organization of its intent to organize the
29 employer's employees. The employer shall make the payroll list
30 available to the board upon request but in no situation less than
31 forty-eight hours prior to an election. If the employer is unable to
32 compile a full and accurate list within the time allowed, the board
33 shall proceed to determine eligibility on the basis of such other
34 evidence as is available to the board at that time.

35 (9) An employee organization qualified to participate in an
36 election may file with the board any symbol or trademark it wishes to
37 appear on the ballots used by the board. The ballots of the board
38 shall then contain the symbols of the employee organizations qualified
39 to appear on the ballot. The board shall make available at any

1 election ballots printed in English and Spanish and, on request of a
2 qualified employee organization, any other language used by the
3 employees voting in the election.

4 (10) Recognizing that agricultural employment is a seasonal
5 occupation for the majority of agricultural employees and because it is
6 the intent of this chapter to provide broad scope for employees'
7 enjoyment of the rights provided under this chapter, the board shall
8 not consider a representation petition as timely filed unless at least
9 thirty percent of the peak agricultural employment for the current
10 calendar year is on the payroll for the period immediately preceding
11 the filing of the petition. Peak employment shall be determined from
12 past employment records, current crop data, and other relevant
13 evidence. The prior season alone shall not be a basis for the
14 determination, but the board shall estimate the peak employment on the
15 basis of acreage and crop statistics applied uniformly throughout the
16 state of Washington, and on all other relevant evidence.

17 (11) A collective bargaining agreement executed by an employer and
18 an employee organization certified as the exclusive bargaining
19 representative of its employees pursuant to this chapter shall be a bar
20 to a petition for an election among such employees for the term of the
21 agreement, but in any event such bar shall not exceed three years
22 provided that both the following conditions are met:

23 (a) The agreement is in writing and executed by all the parties;
24 and

25 (b) It incorporates the substantive terms and conditions of
26 employment of such employees.

27 (12) Within five days after an election or card certification, any
28 person may file with the board a signed petition asserting that
29 allegations made in the petition filed pursuant to this section were
30 incorrect, or that the board improperly determined the geographical
31 scope of the bargaining unit, or raising objections to the conduct of
32 the election or card certification or conduct affecting the results of
33 the election or card certification. Upon receipt of a petition under
34 this subsection, the board, after due notice, shall conduct a hearing
35 to determine whether the election shall be decertified or the card
36 certification revoked. The hearing may be conducted by an officer or
37 employee of the board. If the board finds, on the record of the
38 hearing, that any of the assertions made in the petition are correct,
39 or the election or card certification were not conducted properly, or

1 misconduct affecting the results of the election or card certification
2 occurred, the board may refuse to certify the election or may revoke
3 the card certification. Unless the board determines that there are
4 sufficient grounds to refuse to do so, it shall certify the election or
5 maintain the card certification. If no petition under this subsection
6 is filed within seven days of the election or card certification, the
7 board shall certify the election, and maintain any certification based
8 on authorization cards.

9 NEW SECTION. **Sec. 11.** (1) The board is empowered, as provided in
10 this chapter, to prevent any person from engaging in any unfair labor
11 practice listed in section 7 or 8 of this act.

12 (2) Whenever it is charged that a person has engaged in or is
13 engaging in an unfair labor practice, the board or its agent shall have
14 power to issue and cause to be served upon such person a complaint
15 stating the charges in that respect, and containing a notice of hearing
16 before the board, or before its designated agent at a place therein
17 fixed, not less than five days after the serving of such complaint.
18 However, no complaint shall issue based upon any unfair labor practice
19 occurring more than six months prior to the filing of the charge with
20 the board and the service of a copy upon the person against whom the
21 charge is made, unless the person aggrieved was prevented from filing
22 the charge by reason of service in the armed forces in which event the
23 six-month period shall be computed from the date of his or her
24 discharge. A complaint may be amended by the agent conducting the
25 hearing or the board in its discretion at any time prior to the
26 issuance of an order based thereon. The person so complained of shall
27 have the right to file an answer to the original or amended complaint,
28 and to appear in person or otherwise and give testimony at the place
29 and time fixed in the complaint. In the discretion of the agent
30 conducting the hearing or the board, any other person may be allowed to
31 intervene in the proceeding and to present testimony. A proceeding
32 shall, insofar as is practicable, be conducted in accordance with the
33 rules of evidence applicable in the superior courts of the state.

34 (3)(a) The testimony taken by the agent shall be reduced to writing
35 and filed with the board. Thereafter, in its discretion, the board
36 upon notice may take further testimony or hear argument.

37 (b) If, upon the preponderance of the testimony taken, the board is
38 of the opinion that a person named in the complaint has engaged in or

1 is engaging in an unfair labor practice, the board shall state its
2 findings of fact and shall issue and cause to be served upon the person
3 an order requiring the person to cease and desist from the unfair labor
4 practice, and to take such affirmative action, including reinstatement
5 of employees with back pay, and when the board deems such relief
6 appropriate, making employees whole for loss of pay resulting from the
7 employer's refusal to bargain, and to provide such other relief as will
8 effectuate the policies of this chapter. If an order directs the
9 reinstatement of an employee, back pay plus an equal amount as
10 liquidated damages may be required of the employer or employee
11 organization, as the case may be, responsible for the discrimination.
12 An order may further require reports showing the extent to which the
13 order has been complied with.

14 (c) If, upon the preponderance of the testimony taken, the board is
15 not of the opinion that the person named in the complaint has engaged
16 in or is engaging in an unfair labor practice, the board shall state
17 its findings of fact and shall issue an order dismissing the complaint.

18 (d) No order of the board shall require the reinstatement of an
19 individual as an employee who has been suspended or discharged, or the
20 payment of back pay to an individual, if the individual was suspended
21 or discharged solely for just cause.

22 (e) If the evidence is presented before an examiner, the examiner
23 shall issue and cause to be served on the parties to the proceeding a
24 proposed report, together with a recommended order, which shall be
25 filed with the board, and if no exceptions are filed within seven days
26 after service upon the parties, or within such further period as the
27 board may authorize, the recommended order shall become the order of
28 the board and become effective as prescribed therein.

29 (4) Until the record in a case has been filed in a court as
30 provided in this section, the board may at any time, upon reasonable
31 notice and in such manner as it shall deem proper, modify or set aside,
32 in whole or in part, any finding or order made or issued by it.

33 (5) The board shall have power, upon issuance of a complaint as
34 provided in subsection (2) of this section charging that any person has
35 engaged in or is engaging in an unfair labor practice, to petition the
36 superior court in any county wherein the unfair labor practice in
37 question is alleged to have occurred, or wherein such person resides or
38 transacts business, for appropriate temporary relief or restraining
39 order. Upon the filing of any such petition, the board shall cause

1 notice thereof to be served upon such person, and thereupon the court
2 shall have jurisdiction to grant to the board such temporary relief or
3 restraining order as the court deems just and proper.

4 (6) Any person aggrieved by a final order of the board granting or
5 denying in whole or in part the relief sought may obtain a review of
6 such order in the court of appeal having jurisdiction over the county
7 wherein the unfair labor practice in question was alleged to have been
8 engaged in, or wherein the employer resides or transacts business, by
9 filing in such court a written petition requesting that the order of
10 the board be modified or set aside. The petition shall be filed with
11 the court within thirty days from the date of issuance of the board's
12 order. A copy of the petition shall be forthwith transmitted by the
13 clerk of the court to the board. The board shall file in court the
14 record of the proceedings, certified by the board, within ten days
15 after the clerk's notice unless the time is extended by the court for
16 good cause shown. The court shall have jurisdiction to grant to the
17 board such temporary relief or restraining order as it deems just and
18 proper, and in like manner to make and enter a decree enforcing,
19 modifying and enforcing as modified, or setting aside in whole or in
20 part the order of the board. The findings of the board with respect to
21 questions of fact, if supported by substantial evidence on the record
22 considered as a whole, shall in like manner be conclusive.

23 (7) The commencement of proceedings under subsection (6) of this
24 section shall not, unless specifically ordered by the court, operate as
25 a stay of the board's order. An order directing an election shall not
26 be stayed pending review.

27 (8) Petitions filed under this section shall be heard
28 expeditiously.

29 (9) If the time for review of the board order has lapsed, and the
30 person has not voluntarily complied with the board's order, the board
31 may apply to the superior court in any county in which the unfair labor
32 practice occurred or wherein such person resides or transacts business
33 for enforcement of its order. If after hearing, the court determines
34 that the order was issued pursuant to procedures established by the
35 board and that the person refuses to comply with the order, the court
36 shall enforce such order by writ of injunction or other proper process.
37 The court shall not review the merits of the order.

1 (10) The procedures set forth in this chapter shall be the
2 exclusive method of redressing unfair labor practices for parties
3 covered under this chapter.

4 NEW SECTION. **Sec. 12.** For the purpose of all hearings and
5 investigations which, in the opinion of the board, are necessary and
6 proper for the exercise of the powers vested in it by section 10 of
7 this act:

8 (1) The board or its agents shall at all reasonable times have
9 access to for the purpose of examination, and the right to copy, any
10 evidence of a person being investigated or proceeded against that
11 relates to a matter under investigation or in question. The members of
12 the board or their designees or their duly authorized agents shall have
13 the right of free access to all places of labor. The board or any
14 member thereof shall, upon application of a party to the proceedings,
15 expeditiously issue to such party subpoenas requiring the attendance
16 and testimony of witnesses or the production of evidence in the
17 proceeding or investigation requested in the application. Within five
18 days after service of a subpoena on any person requiring the production
19 of evidence in his or her possession or under his or her control, the
20 person may petition the board to revoke, and the board shall revoke,
21 the subpoena if, in its opinion, the evidence whose production is
22 required does not relate to any matter under investigation, or any
23 matter in question in such proceedings, or if, in its opinion, the
24 subpoena does not describe with sufficient particularity the evidence
25 whose production is required. The board or its agent may administer
26 oaths and affirmations, examine witnesses, and receive evidence. The
27 attendance of witnesses and the production of evidence may be required
28 from any designated place of hearing;

29 (2) In case of contumacy or refusal to obey a subpoena issued to
30 any person, the superior court within the jurisdiction of which the
31 inquiry is carried on or within the jurisdiction of which said person
32 is found or resides or transacts business, upon application by the
33 board, shall have jurisdiction to issue the person an order requiring
34 the person to appear before the board, its member, agent, or agency,
35 there to produce evidence if so ordered, or there to give testimony
36 touching the matter under investigation or in question; and any failure
37 to obey an order of the court may be punished by the court as a
38 contempt of court;

1 (3) Complaints, orders, and other process and papers of the board,
2 its members, or agents may be served either personally or by registered
3 mail or by leaving a copy at the principal office or place of business
4 of the person required to be served or with an employee or agent duly
5 authorized to receive complaints, orders, and other process and papers.
6 The verified return by the individual making the service, setting forth
7 the manner of the service, shall be proof of the service, and the
8 return post office receipt, when registered and mailed as required in
9 this subsection, shall be proof of service. Witnesses summoned before
10 the board, its members, or its agents shall be paid the same fees and
11 mileage that are paid witnesses in the superior courts, and witnesses
12 whose depositions are taken and the persons taking the same shall
13 severally be entitled to the same fees as are paid for like services in
14 the superior courts; and

15 (4) Process of a court to which application may be made under this
16 chapter may be served in the county wherein the defendant or other
17 person required to be served resides or may be found.

18 NEW SECTION. **Sec. 13.** (1) Where an employee organization
19 certified as bargaining agent and an employer have been engaged in
20 collective bargaining to conclude their first bargaining agreement and
21 have failed to do so, the board shall, at the request of either party,
22 inquire into the terms of the dispute and settle the terms and
23 conditions for the first collective bargaining agreement between the
24 employee organization and the employer. A petition under this section
25 must be filed within the last six months before the expiration of the
26 twelve-month period following initial certification.

27 (2) In settling terms and conditions under this section, the board
28 shall give the parties an opportunity to present evidence and make
29 representations, and shall take into account, among other things:

30 (a) The extent to which the parties have, or have not, bargained in
31 good faith in an effort to conclude a first collective agreement; and

32 (b) Terms and conditions of employment negotiated through
33 collective bargaining for comparable employees performing the same or
34 similar functions in the same or related circumstances.

35 (3) Any collective bargaining agreement settled under this section
36 shall as a minimum contain: (a) A union shop provision; (b) a
37 grievance and arbitration clause; and (c) a no-strike provision for the
38 duration of the agreement.

1 (4) In no event shall the collective agreement settled by the board
2 under this section be for a period exceeding two years from the date
3 the board settles the terms and conditions of the agreement.

4 NEW SECTION. **Sec. 14.** Any person who willfully resists, prevents,
5 impedes, or interferes with members of the board or its agents in the
6 performance of duties pursuant to this chapter shall be guilty of a
7 gross misdemeanor punishable under chapter 9A.20 RCW.

8 NEW SECTION. **Sec. 15.** The provisions of this chapter shall not
9 apply to employees of the federal government, employees of the state or
10 a political subdivision of the state, employees covered by the railway
11 labor act, or employees covered by the national labor relations act.

12 NEW SECTION. **Sec. 16.** Nothing in this chapter, except as
13 specifically provided, shall be construed to interfere with or impede
14 or diminish in any way the right to strike.

15 NEW SECTION. **Sec. 17.** Nothing in this chapter shall prohibit any
16 individual employed as a supervisor from becoming or remaining a member
17 of an employee organization, but no employer subject to this chapter
18 shall be compelled to recognize supervisors as employees for the
19 purpose of collective bargaining.

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

24 NEW SECTION. **Sec. 19.** A board shall employ agents and other
25 employees with sufficient language ability to conduct business
26 efficiently and fairly. The board may employ, or contract for services
27 from, disinterested, competent interpreters and translators to conduct
28 its business and to develop written records.

29 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act shall
30 constitute a new chapter in Title 49 RCW.

--- END ---