
SUBSTITUTE HOUSE BILL 3003

State of Washington

61st Legislature

2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Hunter, Conway, Wood, Carlyle, Williams, Morrell, Moeller, Ormsby, Van De Wege, Kenney, Simpson, and Santos)

READ FIRST TIME 01/29/10.

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 with a gross annual
4 revenue of more than three hundred thousand dollars that does not meet
5 the jurisdictional standards of the national labor relations board, and
6 includes any person acting as an agent of an employer, directly or
7 indirectly.

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

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

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

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

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

31 (10) "Unfair labor practice" means any activity listed in sections
32 13 and 14 of this act.

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

1 their own choosing for the purpose of collective bargaining, or in the
2 free exercise of any other right under this chapter.

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

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

19 NEW SECTION. **Sec. 5.** If the commission elects to conduct an
20 election to ascertain the exclusive bargaining representative, and upon
21 the request of a prospective bargaining representative showing written
22 proof of at least thirty percent representation of the employees within
23 the unit, the commission shall hold an election by secret ballot to
24 determine the issue. The ballot shall contain the name of the
25 bargaining representative and of any other bargaining representative
26 showing written proof of at least ten percent representation of the
27 employees within the unit, together with a choice for any employee to
28 designate that he or she does not desire to be represented by any
29 bargaining agent. Where more than one organization is on the ballot
30 and neither of the three or more choices receives a majority vote of
31 valid ballots cast, a run-off election shall be held. The run-off
32 ballot shall contain the two choices which received the largest and
33 second-largest number of votes. No question concerning representation
34 may be raised within one year of a certification or attempted
35 certification. Where there is a valid collective bargaining agreement

1 in effect, no question of representation may be raised except during
2 the period not more than ninety nor less than sixty days prior to the
3 expiration date of the agreement. Any agreement which contains a
4 provision for automatic renewal or extension of the agreement shall not
5 be a valid agreement; nor shall any agreement be valid if it provides
6 for a term of existence for more than three years.

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

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

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

1 NEW SECTION. **Sec. 9.** Upon the written authorization of any
2 employee within the bargaining unit and after the certification or
3 recognition of the bargaining representative, the employer must deduct
4 from the pay of the employee the monthly amount of dues as certified by
5 the secretary of the exclusive bargaining representative and must
6 transmit the dues to the treasurer of the exclusive bargaining
7 representative.

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

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

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

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

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

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

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

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

- 18 (1) To interfere with, restrain, or coerce employees in the
19 exercise of their rights guaranteed by this chapter;
- 20 (2) To control, dominate, or interfere with a bargaining
21 representative;
- 22 (3) To discriminate against an employee who has filed an unfair
23 labor practice charge or who has given testimony under this chapter;
- 24 (4) To refuse to engage in collective bargaining.

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

- 27 (1) To interfere with, restrain, or coerce employees in the
28 exercise of their rights guaranteed by this chapter;
- 29 (2) To induce the employer to commit an unfair labor practice;
- 30 (3) To discriminate against an employee who has filed an unfair
31 labor practice charge or who has given testimony under this chapter;
- 32 (4) To refuse to engage in collective bargaining.

33 NEW SECTION. **Sec. 15.** (1) The commission must prevent unfair
34 labor practices and issue appropriate remedial orders. However, a

1 complaint may not be processed for an unfair labor practice occurring
2 more than six months before the filing of the complaint with the
3 commission.

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

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

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

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

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

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