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**SUBSTITUTE SENATE BILL 5046**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Keiser, Kline, and Franklin)

READ FIRST TIME 01/27/10.

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 symphony musicians 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)(a) "Employer" means a symphony orchestra with a gross annual  
2 revenue of more than three hundred thousand dollars that does not meet  
3 the jurisdictional standards of the national labor relations board, and  
4 includes any person acting as an agent of an employer, directly or  
5 indirectly.

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

10 (5) "Executive director" means the executive director of the  
11 commission.

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

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

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

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

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



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

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

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

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

1        NEW SECTION.    **Sec. 9.**    Upon the written authorization of any  
2 symphony musician within the bargaining unit and after the  
3 certification or recognition of the bargaining representative, the  
4 employer must deduct from the pay of the symphony musician the monthly  
5 amount of dues as certified by the secretary of the exclusive  
6 bargaining representative and must transmit the dues to the treasurer  
7 of the exclusive bargaining 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 symphony musician is a member.    The  
14 symphony musician must pay an amount of money equivalent to regular  
15 union dues and initiation fee to a nonreligious charity or to another  
16 charitable organization mutually agreed upon by the symphony musician  
17 affected and the bargaining representative to which the symphony  
18 musician would otherwise pay the dues and initiation fee.    The symphony  
19 musician must furnish written proof that the payment has been made.    If  
20 the symphony musician and the bargaining representative do not reach  
21 agreement on this matter, the commission must designate the charitable  
22 organization;

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

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

32        (2) This section does not apply to provisions of a collective  
33 bargaining agreement which both parties agree to exclude from the  
34 provisions of subsection (1) of this section and to provisions within  
35 the collective bargaining agreement with separate and specific  
36 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 symphony musicians in  
19 the 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 a symphony musician who has filed an  
23 unfair labor practice charge or who has given testimony under this  
24 chapter;

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

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

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

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

31 (3) To discriminate against a symphony musician who has filed an  
32 unfair labor practice charge or who has given testimony under this  
33 chapter;

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

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

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

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

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

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

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

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