Chapter 41.76 RCW
PUBLIC FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION—FACULTY LABOR RELATIONS

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RCW 41.76.001 Findings—Declarations—Intent. The legislature finds and declares that:

(1) The people of the state of Washington have a fundamental interest in developing harmonious and cooperative labor relations within the public four-year institutions of higher education.

(2) Teachers in the public school system and instructors in the community colleges in the state have been granted the opportunity to bargain collectively. It is desirable to expand the jurisdiction of the public employment relations commission to cover faculty in the state's public four-year institutions of higher education.

(3) It is the purpose of this chapter to provide the means by which relations between the boards of regents and trustees of the public four-year institutions of higher education of the state of Washington and their faculty may assure that the responsibilities and authorities granted to these institutions are carried out in an atmosphere that permits the fullest participation by faculty in determining the conditions of employment which affect them. It is the intent of the legislature to accomplish this purpose by providing a

uniform structure for recognizing the right of faculty of the public four-year institutions of higher education to engage in collective bargaining as provided in this chapter, if they should so choose.

(4) It is the further purpose of this chapter to provide orderly and clearly defined procedures for collective bargaining and dispute resolution, and to define and prohibit certain practices that are contrary to the public interest. [2002 c 356 s 1.]

RCW 41.76.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Faculty governance system" means the internal organization that serves as the faculty advisory body and is charged with the responsibility for recommending policies, regulations, and rules for the college or university.

(2) "Grievance arbitration" means a method to resolve disputes arising out of interpretations or application of the terms of an agreement under which the parties to a controversy must accept the decision of an impartial person or persons.

(3) "Collective bargaining" and "bargaining" mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours, and other terms and conditions of employment. A written contract incorporating any agreements reached must be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining, subject to RCW 41.76.010.

(4) "Commission" means the public employment relations commission established pursuant to RCW 41.58.010.

(5) "Faculty" means employees who, at a public four-year institution of higher education, are designated with faculty status or who perform faculty duties as defined through policies established by the faculty governance system, excluding casual or temporary employees, administrators, confidential employees, graduate student employees, postdoctoral and clinical employees, and employees subject to chapter 41.06 or 41.56 RCW.

(6) "Employee organization" means any organization that includes as its members faculty of the employer and that has as one of its purposes representation of faculty under this chapter. A faculty governance system is not an employee organization as defined in this subsection.

(7) "Employer" means the board of regents or the board of trustees of a public four-year institution of higher education.

(8) "Exclusive bargaining representative" means any employee organization that has been determined by the commission to represent all of the faculty members of the bargaining unit as required in RCW 41.76.015.

(9) "Administrator" means deans, associate and assistant deans, vice provosts, vice presidents, the provost, chancellors, vice chancellors, the president, and faculty members who exercise managerial or supervisory authority over other faculty members.

(10) "Confidential employee" means (a) a person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of a collective bargaining agreement, if the role of the person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and (b) a person who assists and acts in a confidential capacity to a person in (a) of this subsection.

(11) "Bargaining unit" includes all faculty members of all campuses of each of the colleges and universities. Only one bargaining unit is allowable for faculty of each employer, and that unit must contain all faculty members from all schools, colleges, and campuses of the employer.

(12) "Public four-year institutions of higher education" means the University of Washington, Washington State University, Eastern Washington University, Western Washington University, Central Washington University, and The Evergreen State College. [2002 c 356 s 3.]

RCW 41.76.010 Scope of bargaining. (1) Prohibited subjects of bargaining include but are not limited to the following:

(a) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the employer, except for the terms and conditions of employment of faculty members who may be affected by such service, activity, or program.

(b) The amount of any fees that are not a term or condition of employment.

(c) Admission requirements for students, conditions for the award of certificates and degrees, and the content, methods, supervision, and evaluation of courses, curricula, and research programs.

(2) Permissive subjects of bargaining include, but are not limited to, criteria and standards to be used for the appointment, promotion, evaluation, and tenure of faculty.

(3) Nothing in this section shall be construed to limit the right of the employer to consult with any employee on any matter outside the scope of bargaining. [2002 c 356 s 4.]

RCW 41.76.013 Application of RCW 41.56.067—Bargaining representative access to new employees. RCW 41.56.067 applies to this chapter. [2018 c 250 s 4.]

RCW 41.76.015 Exclusive bargaining representatives—Duty of representation. The employee organization which has been determined by the commission to be the exclusive bargaining representative of a bargaining unit shall be required to represent all the faculty members within the bargaining unit without regard to membership in that employee organization: PROVIDED, That any faculty member may at any time present his or her complaints or concerns to the employer and have such complaints or concerns adjusted without intervention of the exclusive bargaining representative, as long as the exclusive bargaining representative has been given an opportunity to be present at the adjustment and to make its views known, and as long as the

adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. [2002 c 356 s 6.]

RCW 41.76.020 Exclusive bargaining representatives—Procedures for certification—Cross-check—Elections. The commission shall certify exclusive bargaining representatives in accordance with the procedures specified in this section.

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

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

(3) An employee organization seeking certification as exclusive bargaining representative of a bargaining unit, or faculty members seeking decertification of their exclusive bargaining representative, must make a confidential showing to the commission of credible evidence demonstrating that at least thirty percent of the faculty in the bargaining unit are in support of the petition. The petition must indicate the name, address, and telephone number of any employee organization known to claim an interest in the bargaining unit.

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

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

(6) The commission shall determine any question concerning representation by conducting a secret ballot election among the faculty members in the bargaining unit, except under the following circumstances:

(a) If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees; or

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

(c) The commission may adopt rules to implement this subsection (6).

(7) The representation election ballot must contain a choice for each employee organization qualifying under subsection (3) or (5) of this section, together with a choice for no representation. The representation election shall be determined by the majority of the valid ballots cast. If there are three or more choices on the ballot and none of the three or more choices receives a majority of the valid ballots cast, a runoff election shall be conducted between the two choices receiving the highest and second highest numbers of votes.

(8) The commission shall certify as the exclusive bargaining representative the employee organization that has been determined to represent a majority of faculty members in a bargaining unit. [2019 c 230 s 13; 2002 c 356 s 7.]

RCW 41.76.025 Bargaining unit determination—Hearings. In any dispute concerning membership in the bargaining unit or the allocation of employees or positions to a bargaining unit, the commission, after a hearing or hearings, shall determine the dispute. [2002 c 356 s 8.]

RCW 41.76.030 Settlement of unresolved matters—Role of commission—Mediation—Other procedures authorized. (1) The commission shall conduct mediation activities upon the request of either party as a means of assisting in the settlement of unresolved matters considered under this chapter.

(2) If any matter being jointly considered by the exclusive bargaining representative and the board of regents or trustees is not settled by the means provided in this chapter, either party may request the assistance and advice of the commission. Nothing in this section prohibits an employer and an employee organization from agreeing to substitute, at their own expense, some other impasse procedure or other means of resolving matters considered under this chapter. [2002 c 356 s 9.]

RCW 41.76.035 Provisions relating to compensation—Restrictions. (1) Except as provided in subsection (2) of this section, provisions of collective bargaining agreements relating to compensation shall not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(2) An employer may provide additional compensation to faculty that exceeds that provided by the legislature. [2002 c 356 s 10.]

RCW 41.76.040 Procedures for grievance arbitration—Subpoenas—Commission—Superior courts. A collective bargaining agreement negotiated under this chapter may include procedures for final and binding grievance arbitration of the disputes arising about the interpretation or application of the agreement.

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

(2) An arbitrator may require any person to attend as a witness, and to bring with him or her any book, record, document, or other evidence. Subpoenas shall issue and be signed by the arbitrator and shall be served in the same manner as subpoenas to testify before a court of record in this state. The fees for such attendance shall be paid by the party requesting issuance of the subpoena and shall be the same as the fees of witnesses in the superior court. If any person so summoned to testify refuses or neglects to obey such subpoena, upon petition authorized by the arbitrator, the superior court may compel the attendance of such person before the arbitrator, or punish the person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of this state.

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

(4) If a party to a collective bargaining agreement negotiated under this chapter refuses to submit a grievance for arbitration, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court for any county in which the labor dispute exists, and such court has jurisdiction to issue an order compelling arbitration. The commission, on its own motion, may invoke the jurisdiction of the superior court where a strike or lockout is in existence. Arbitration shall be ordered if the grievance states a claim which on its face is covered by the collective bargaining agreement, and doubts as to the coverage of the arbitration clause shall be resolved in favor of arbitration. Disputes concerning compliance with grievance procedures shall be reserved for determination by the arbitrator.

(5) If a party to a collective bargaining agreement negotiated under this chapter refuses to comply with the award of an arbitrator determining a grievance arising under such collective bargaining agreement, the other party to the collective bargaining agreement, or any affected employee, may invoke the jurisdiction of the superior court for any county in which the labor dispute exists, and such court has jurisdiction to issue an order enforcing the arbitration award. The commission, on its own motion, may invoke the jurisdiction of the superior court where a strike or lockout is in existence. The court shall not substitute its judgment for that of the arbitrator and shall

enforce any arbitration award which is based on the collective bargaining agreement, except that an arbitration award shall not be enforced and a new arbitration proceeding may be ordered:

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

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

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

(d) If the arbitrator or arbitrators have exceeded their powers, or so imperfectly executed them that a final and definite award on the subject matter was not made, in which event the court also has discretion to remand the matter to the arbitrator or arbitrators who issued the defective award. [2002 c 356 s 11.]

RCW 41.76.045 Employee authorization of membership dues and other payments—Revocation. (1)(a) Upon authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer shall as soon as practicable forward the request to the exclusive bargaining representative.

(c) Upon receiving notice of the employee's authorization from the exclusive bargaining representative, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(f) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction no later than the second payroll after receipt of the confirmation.

(g) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

(2) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that includes requirements for deductions of other payments, the employer must make such deductions upon authorization of the employee. [2019 c 230 s 14; 2018 c 247 s 4; 2002 c 356 s 12.]

RCW 41.76.050 Unfair labor practices. (1) It is an unfair labor practice for an employer to:

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

(b) Dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer is not prohibited from permitting faculty members to confer with it or its representatives or agents during working hours without loss of time or pay;

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

(d) Discharge or discriminate otherwise against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(e) Refuse to bargain collectively with the exclusive bargaining representative of its faculty.

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

(a) Restrain or coerce a faculty member in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection does not impair the rights of (i) an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or (ii) to the rights of an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) Cause or attempt to cause an employer to discriminate against a faculty member in violation of subsection (1)(c) of this section;

(c) Discriminate against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(d) Refuse to bargain collectively with an employer.

(3) The expressing of any view, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [2002 c 356 s 13.]

RCW 41.76.055 Commission to prevent unfair labor practices—Scope—Remedies. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.76.050: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission or in superior court. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

(2) If the commission determines that any person has engaged in or is engaging in any such unfair labor practice as defined in RCW 41.76.050, then the commission shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and/or the reinstatement of faculty members.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or wherein the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2018 c 252 s 3; 2002 c 356 s 14.]

RCW 41.76.060 Rule making. The commission is authorized from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter. [2002 c 356 s 15.]

RCW 41.76.065 Strikes and lockouts prohibited—Violations—Remedies. The right of faculty to engage in any strike is prohibited. The right of a board of regents or trustees to engage in any lockout is prohibited. Should either a strike or lockout occur, the representative of the faculty or board of regents or trustees may invoke the jurisdiction of the superior court in the county in which the labor dispute exists, and such court has jurisdiction to issue an appropriate order against either or both parties. In fashioning an order, the court shall take into consideration not only the elements necessary for injunctive relief but also the purpose and goals of this chapter and any mitigating factors such as the commission of an unfair labor practice by either party. [2002 c 356 s 16.]

RCW 41.76.070 Certain contracts or agreements—Chapter 34.05 RCW does not apply. Contracts or agreements, or any provision thereof, entered into between boards of regents or trustees and exclusive bargaining representatives pursuant to this chapter are not affected by or subject to chapter 34.05 RCW. [2002 c 356 s 17.]

RCW 41.76.075 Retroactive accrual of benefits and salaries. Whenever a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of the collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with the effective date as established by this section. [2002 c 356 s 19.]

RCW 41.76.080 Existing agreements not affected. Nothing in this chapter shall be construed to annul, modify, or preclude the renewal or continuation of any lawful agreement entered into before October 1, 2002, between an employer and an employee organization covering wages, hours, and terms and conditions of employment. [2002 c 356 s 20.]

RCW 41.76.085 Limitations on application of chapter. Except as otherwise expressly provided in this chapter, this chapter shall not

be construed to deny or otherwise abridge any rights, privileges, or benefits granted by law to employees. This chapter shall not be construed to interfere with the responsibilities and rights of the board of regents or board of trustees as specified by federal and state law. [2002 c 356 s 21.]

RCW 41.76.090 Certain communications—Privilege from examination and disclosure. The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter. [2023 c 202 s 6.]

Findings—2023 c 202: See note following RCW 5.60.060.

RCW 41.76.902 Effective date—2002 c 356. This act takes effect October 1, 2002. [2002 c 356 s 23.]