

# LABOR UPDATES: NOTABLE WASHINGTON PERC CASES

## LABOR LEGISLATION

### Unemployment Insurance for Striking Workers—SENATE BILL 5041

Workers for both public and private Washington employers on strike or who have been locked out will be able to receive up to six weeks of unemployment insurance benefits. The strike must generally last at least eight days (at least until the second Sunday after the first day of the strike) before the employees become eligible for benefits, followed by a one-week waiting period. Consequently, strikers can begin receiving unemployment benefits 15 to 21 days after the strike begins, depending on the start date. Additionally, employees are no longer disqualified from unemployment benefits if they are locked out by their employer as a part of a multi-employer bargaining unit.

If the worker subsequently receives retroactive wages for the period they received unemployment benefits, they will be required to repay the state for the benefits they receive. An individual will also be required to repay the benefits received if a strike is later prohibited through a final judgment.

Most of the actionable sections of SB 5041 will take effect on January 1, 2026. This bill includes a sunset clause, requiring state lawmakers to review the policy in 2036 and decide whether to extend the law or let it expire.

### KEY EMPLOYER TAKEAWAYS FOR SB 5041

- Employers involved in contract negotiations need to prepare for the possibility that a strike could last longer than it might otherwise, or might occur more frequently than otherwise, due to the employees receiving state unemployment benefits.
- An employer that anticipates a large spike in unemployment benefit claims due to labor strikes or employee lockouts can make voluntary contributions for these charges, but may want to contact a tax or legal advisor to discuss if the Voluntary Contribution Program will reduce or raise their tax liability. For more information on the Washington Voluntary Contribution Program and SB 5041 see [this article](#).



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## Union Rights for Cannabis Workers – HOUSE BILL 1141

As of July 27, 2025, agricultural cannabis workers across the state of Washington now have the right to unionize. While most private sector employers are governed by the National Labor Relations Act at the federal level, the NLRA statutorily excludes agricultural workers from its purview. This bill also gives the Washington Public Employment Relations Commission (PERC) authority to enforce collective bargaining agreements between employees who perform cannabis cultivating, growing, harvesting, or producing and certain cannabis employers. These unionization rights apply to employees of licensed cannabis producers or processors with cannabis farms.

The bargaining unit and representative must be determined between the employer and employees, with PERC as the intermediary if necessary. If the parties do not agree on a representative, then PERC will determine one through an election or a cross-check process depending on the percentage of representation of the employees within the unit.

Further, PERC may consolidate units of a single employee organization if it feels that they are larger than appropriate. Employers and bargaining representatives have a mutual obligation to negotiate a collective bargaining agreement in good faith with decisions on wages, hours, and working conditions.

Employers must give bargaining unit representatives the name, date of hire, contact information, and employment information of each employee in the bargaining unit. This information must be provided in an editable digital file format within 21 business days of hire for new hires and every 120 business days for all bargaining unit employees.

House Bill 1141 also enumerates what constitutes an unfair labor practice (ULP) for employers and bargaining representatives that PERC adjudicates by ordering monetary damages or employee reinstatement. Complaints must be filed to PERC within six months of the unfair labor practice.

| Employer ULPs                                                                  | Bargaining Rep ULPs                |
|--------------------------------------------------------------------------------|------------------------------------|
| Interfere with, restrain, or coerce employees in exercising their rights       |                                    |
| Discriminate against an employee that filed a charge for or testified to a ULP |                                    |
| Refuse to bargain                                                              |                                    |
| Control, dominate, or interfere with a rep                                     | Induce an employer to commit a ULP |
| Surveillance of protected activities                                           |                                    |

### KEY TAKEAWAYS

- Cannabis producers and processors should be prepared for their agricultural employees to take steps to unionize, but this only applies to employees that cultivate, grow, harvest, or produce cannabis.
- PERC is tasked with governing these disputes for private cannabis employers, since cannabis employers do not qualify for regulation under the National Labor Relations Act. Any complaint for unfair labor practices must be filed with PERC within six months of the unfair practice.
- Qualifying cannabis employers should update the labor relations section of their handbooks. For more information see [this article on HB 1141](#).

## WASHINGTON LABOR CASES – PERC

### Seattle School District, Decision 13982 (EDUC, 2024) and 13983 (PECB, 2024)

#### Issue:

Whether a school's principal impeded union activity and infringed upon member rights by reprimanding a member employee for including the Association president in a complaint email and/or for giving members negative annual reviews for participating in the union.

#### Facts:

During the 2022-2023 school year the Seattle Education Association ("Association") represented three separate bargaining units of employees of Rainier View Elementary School (RVE). Staff at RVE convened a building leadership team (BLT) as required under the Collective Bargaining Agreement (CBA). The BLT was made up of school administration and union-represented employees who met to make collective decisions for RVE. Three RVE member employees, Laura Jensen, Julia Diaz, and Elizabeth Ward-Robertson, were also members of the BLT. These employees also lodged the bulk of the Association's complaints. In November 2022, Jensen emailed RVE's principal, the Association president, and other impacted staff regarding substitute reimbursement pay. Following this email, the principal issued Jensen a letter of counseling for unprofessional communication and directed Jensen to contact the principal "directly" to address concerns. By spring 2023, BLT budget meetings became contentious. The principal refused to allow Association members to discuss their proposed budget votes without her. The same year the principal rated Ward-Robertson's performance as excellent, but also commented that she was negative, self-serving, and unprofessional in team meetings. The principal made similar comments in Diaz's and Jensen's annual evaluations, specifically regarding BLT meetings and the building budget for Diaz. Diaz was also moved from a focused evaluation to a comprehensive evaluation for the following school year. The Association filed three unfair labor practice (ULP) complaints against the District, which were consolidated for hearing before the Public Employment Relations Commission (PERC).

#### Held:

PERC determined that the District's actions toward Jensen, Diaz, and Ward-Robertson through their annual performance evaluations constituted unlawful discrimination in reprisal for protected union activity. The Examiner found the "pattern of discriminatory conduct by the employer" as "concerning" given the consistent negative comments towards the three Association members for their participation in the BLT and in other union activities. Jensen sent the November 2022 email as a part of her role in the BLT and this was protected union activity. The principal's responsive prohibition on Jensen sending emails to the Association president that included other people constituted a deprivation of Jensen's rights and an interference with union activity. The negative comments Jensen, Diaz, and Ward-Robertson's evaluations showed that the principal viewed union activity as a part of overall job performance and showed the principal's personal distaste for the employee's union participation. The fact that the negative comments were on the employee's annual reviews constituted reprisal for participation in protected union activity. The Principal then further discriminated against Diaz by placing her on a comprehensive evaluation cycle. As a result, the Examiner ordered the District to withdraw the letter of counseling issued to Jensen in November 2022, withdraw the 2022-23 written evaluations of the three employees, and conduct new evaluations for those employees.

## KEY TAKEAWAYS

- Employers should act with caution and contact a legal professional before including reference an employee's participation in protected union activities in a general performance review, even if that participation touches on conduct issues as well.
- Demonstrated personal animus by an employer for employee participation in union activity will be considered in a complaint even if the reprisal only consisted of negative comments on an evaluation and a letter of counseling.

### Arlington School District, Decision 13995 (PECB, 2024)

#### Issue:

The School District refused to bargain with an organization that it had previously bargained with because it no longer considered it to be a union or a labor organization. Whether the organization had bargaining representative status, and if so, whether the employer unlawfully skimmed previously bargained for work to people outside the organization.

#### Facts:

The Arlington Non-Rep Group (NRG) and the Arlington School District had a history of discussions and agreements dating back to 1985, with CBAs from 1985 to 2007. However, following the expiration of a CBA in 2010 there was no negotiation until 2019 when it requested to meet with the District. Before 2010, NRG was recognized as the sole bargaining representative for employees not included in the larger union, with the primary purpose of representing those otherwise-excluded employees in labor relations with the District. In doing so, the NRG solicited input from employees on topics to address with the District and advocates on behalf of those employees. The District chose to continue negotiations with NRG from 2020 to 2022, but the District then denounced their status as a Bargaining representative and gave Executive Assistant to Operations (EAO) work, a position covered by the prior NRG CBA, to a non-NRG member. NRG filed an unfair labor practice complaint against the employer, alleging that it had unlawfully skimmed bargaining unit work. The District asserted that the complainant was not a bargaining representative, so bargaining was not required.

#### Held:

A bargaining representative is any lawful organization that has as one of its primary purposes the representation of employees in their employment relations with the employer. An organization is a bargaining representative if it allows employee participation, is established to represent employees, and intends to carry out its representation functions, even if it has not created bylaws or collected dues.

Here, the employer had voluntarily recognized the complainant organization for several years. The complainant negotiated several collective bargaining agreements with the employer, solicited input from employees, made proposals to the employer, and advocated on behalf of the employees in the "bargaining unit." There had been a gap of years between bargaining activity and inactivity by the complainant, but the employer resumed bargaining with the complainant and negotiated an agreement. The complainant met the definition of bargaining representative. The nine-year gap between bargaining agreements, while unusual, was not dispositive. The employer resumed bargaining when requested and reached agreement.

## KEY TAKEAWAYS

PERC recognized that an organization can be a bargaining representative, even if it does not hold the classic structures of a union and it does not have formal bylaws or membership dues, if it:

- Allows employee participation,
- Is established to represent employees, and
- Intends to carry out representation functions.

### University of Washington, Decision 14174 (PECB, 2025)

#### Issue:

The University of Washington (UW) has historically paid “merit pay” increases for unrepresented employees, but it did not offer merit pay to employees that were in the process of joining, but had not yet joined, a bargaining unit. Whether the University of Washington interfered with employee rights when it withheld consideration for a merit pay increase to employees for the Continuum College (CC) after the union filed petitions to represent CC employees in new collective bargaining units.

#### Facts:

The Continuum College (CC) is a program provided by UW to offer non-traditional higher education services, and its staff includes professional employees that qualified for merit pay bonuses to cover cost of living increases. Unionized employees do not qualify for merit pay bonuses. Excluding 2020, UW has given merit pay for the last ten years and it gave merit pay in 2024 following standard procedures by first removing eligible employees and then divvying up the merit pay among the eligible pool. All eligible employees must get at least some merit pay. Merit pay for 2024 had already been announced and professional employees were determined to be eligible before the union filed for representation of the CC employees. After the union filed for representation, UW changed the merit pay process to exclude petitioned-for employees and excluded the CC employees from the pay pool.

#### Held:

Employers must maintain the status quo of the terms and conditions of employment for employees that are affected by a representation petition, while it is pending before PERC. This applies to all mandatory bargaining subjects which is limited to matters of direct concern to the employees not decisions that predominantly effect “managerial prerogatives.” Wages are unquestionably a mandatory subject, and the merit pay eligibility of the CC employees is directly related to wages making it a mandatory subject. The Examiner then turned to if the eligibility change for merit pay disrupted the status quo of past merit pay determination processes. The status quo can be dynamic, and the employer must follow through with changes that they have set in motion. For wage increases, disruption of the status quo depends on the amount of employer discretion left to implement the increase. Here, the wage increase was already budgeted, scheduled, employee eligibility had been determined, and the budget was announced before the union filed for representation. Although the departments still had some discretion on how much each employee’s merit pay would be and employees had not yet been notified of the amount of their merit pay bonus, the wage increase had already been set in motion. The employees had enough information to reasonably expect to receive a merit pay wage increase. As such UW committed an unfair labor practice.

## KEY TAKEAWAYS

- If wage increases have been publicly set in motion, it is an unfair labor practice to rescind employee eligibility for the increase because of a union's representation petition, even if the individuals have not been informed of the amount of their specific increase.
- Employers should consider changing eligibility criteria for certain wage increases to unionized employees and employees that are pending representation with PERC.

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*Disclaimer: This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change, with or without notice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.*