

statute for resisting arrest, be guilty of a felony and punished by imprisonment for not less than ten years, which sentence shall not be suspended or deferred.

Passed the Senate March 18, 1981.

Passed the House April 22, 1981.

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CHAPTER 259

[Engrossed Substitute Senate Bill No. 3704]

DISCRIMINATION—COMPLAINTS, ADJUDICATION—CITIES, ADMINISTRATIVE REMEDIES

AN ACT Relating to state government; amending section 16, chapter 270, Laws of 1955 as amended by section 17, chapter 37, Laws of 1957 and RCW 49.60.240; amending section 17, chapter 270, Laws of 1955 as amended by section 18, chapter 37, Laws of 1957 and RCW 49.60.250; amending section 21, chapter 37, Laws of 1957 as amended by section 118, chapter 81, Laws of 1971 and RCW 49.60.260; amending section 22, chapter 37, Laws of 1957 and RCW 49.60.270; adding a new section to chapter 49.60 RCW; repealing section 19, chapter 37, Laws of 1957 and RCW 49.60.255; and repealing section 24, chapter 37, Laws of 1957 and RCW 49.60.290.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 16, chapter 270, Laws of 1955 as amended by section 17, chapter 37, Laws of 1957 and RCW 49.60.240 are each amended to read as follows:

After the filing of any complaint, the chairman of the board shall refer it to the appropriate section of the board's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be furnished to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the board's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the board setting forth the terms of said agreement. No order shall be entered by the board at this stage of the proceedings except upon such written agreement.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the complainant and the respondent.

Sec. 2. Section 17, chapter 270, Laws of 1955 as amended by section 18, chapter 37, Laws of 1957 and RCW 49.60.250 are each amended to read as follows:

In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairman of the board. The chairman of the board shall thereupon ~~((appoint a hearing tribunal of three persons, who shall be members of the board or a panel of hearing examiners, acting in the name of the board,))~~ request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the board a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before ((such tribunal)) the administrative law judge, at a time and place to be specified in such notice.

The place of any such hearing may be the office of the board or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the board: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the board who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall he participate in the deliberations of the ~~((tribunal))~~ administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

The respondent may file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

The ~~((tribunal))~~ administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

If, upon all the evidence, the ~~((tribunal))~~ administrative law judge finds that the respondent has engaged in any unfair practice ~~((it))~~, the administrative law judge shall state ~~((its))~~ findings of fact and shall issue and file with the board and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization,

or to take such other action as, in the judgment of the ~~((tribunal))~~ administrative law judge, will effectuate the purposes of this chapter, and including a requirement for report of the matter on compliance.

If, upon all the evidence, the ~~((tribunal))~~ administrative law judge finds that the respondent has not engaged in any alleged unfair practice, ~~((it))~~ the administrative law judge shall state ~~((its))~~ findings of fact and shall similarly issue and file an order dismissing the complaint.

An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

The board shall establish rules of practice to govern, expedite and effectuate the foregoing procedure.

Sec. 3. Section 21, chapter 37, Laws of 1957 as amended by section 118, chapter 81, Laws of 1971 and RCW 49.60.260 are each amended to read as follows:

(1) The board shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business, for the enforcement of any order which is not complied with and is issued by ~~((a tribunal))~~ an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court a transcript of the entire record of the proceedings, including the pleadings and testimony upon which such order was made and the finding and orders of the ~~((hearing tribunal))~~ administrative law judge. Within five days after filing such petition in court the board shall cause a notice of the petition to be sent by registered mail to all parties or their representatives.

The court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to issue such orders and grant such relief by injunction or otherwise, including temporary relief, as it deems just and suitable and to make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part any order of the board or ~~((hearing tribunal))~~ administrative law judge.

(2) The findings of the ~~((hearing tribunal))~~ administrative law judge as to the facts, if supported by substantial and competent evidence shall be conclusive. The court, upon its own motion or upon motion of either of the parties to the proceeding, may permit each party to introduce such additional evidence as the court may believe necessary to a proper decision of the cause.

(3) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to a review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is

provided in other cases of appeal to the supreme court or the court of appeals, and the record so certified shall contain all that was before the lower court.

Sec. 4. Section 22, chapter 37, Laws of 1957 and RCW 49.60.270 are each amended to read as follows:

Any respondent or complainant aggrieved by a final order of (~~a hearing tribunal~~) an administrative law judge may obtain a review of such order in the superior court for the county where the unfair practice is alleged to have occurred or in the county wherein such person resides or transacts business by filing with the clerk of the court, within two weeks from the date of receipt of such order, a written petition in duplicate praying that such order be modified or set aside. The clerk shall thereupon mail the duplicate copy to the board. The board shall then cause to be filed in the court a certified transcript of the entire record in the proceedings, including the pleadings, testimony and order. Upon such filing the court shall proceed in the same manner as in the case of a petition by the board and shall have the same exclusive jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable, and in like manner to make and enter a decree enforcing or modifying and enforcing as so modified or setting aside, in whole or in part, the order sought to be reviewed.

Unless otherwise directed by the court, commencement of review proceedings under this section shall operate as a stay of any order.

NEW SECTION. Sec. 5. There is added to chapter 49.60 RCW a new section to read as follows:

Any city classified as a first class city under RCW 35.01.010 with over one hundred twenty five thousand population may enact ordinances consistent with this chapter to provide administrative remedies for any form of discrimination prescribed by this chapter: **PROVIDED**, That the imposition of such administrative remedies shall be subject to judicial review.

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

- (1) Section 19, chapter 37, Laws of 1957 and RCW 49.60.255; and
- (2) Section 24, chapter 37, Laws of 1957 and RCW 49.60.290.

NEW SECTION. Sec. 7. Sections 2, 3, 4 and 5 of this 1981 act shall take effect upon the enactment of House Bill 101, 1981 Regular Session.

Passed the Senate April 24, 1981.

Passed the House April 20, 1981.

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