
SUBSTITUTE SENATE BILL 5783

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, Zarelli, Hatfield, Franklin, Roach, Kline, Hobbs, Keiser, Kauffman, Kilmer, Kastama, Oemig, Delvin, Benton and Rasmussen)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to interest arbitration regarding certain care
2 providers; and amending RCW 41.56.028 and 74.39A.270.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 41.56.028 and 2006 c 54 s 1 are each amended to read
5 as follows:

6 (1) In addition to the entities listed in RCW 41.56.020, this
7 chapter applies to the governor with respect to family child care
8 providers. Solely for the purposes of collective bargaining and as
9 expressly limited under subsections (2) and (3) of this section, the
10 governor is the public employer of family child care providers who,
11 solely for the purposes of collective bargaining, are public employees.
12 The public employer shall be represented for bargaining purposes by the
13 governor or the governor's designee appointed under chapter 41.80 RCW.

14 (2) This chapter governs the collective bargaining relationship
15 between the governor and family child care providers, except as
16 follows:

17 (a) A statewide unit of all family child care providers is the only
18 unit appropriate for purposes of collective bargaining under RCW
19 41.56.060.

1 (b) The exclusive bargaining representative of family child care
2 providers in the unit specified in (a) of this subsection shall be the
3 representative chosen in an election conducted pursuant to RCW
4 41.56.070, except that in the initial election conducted under chapter
5 54, Laws of 2006, if more than one labor organization is on the ballot
6 and none of the choices receives a majority of the votes cast, a
7 run-off election shall be held.

8 (c) Notwithstanding the definition of "collective bargaining" in
9 RCW 41.56.030(4), the scope of collective bargaining for child care
10 providers under this section shall be limited solely to: (i) Economic
11 compensation, such as manner and rate of subsidy and reimbursement,
12 including tiered reimbursements; (ii) health and welfare benefits;
13 (iii) professional development and training; (iv) labor-management
14 committees; (v) grievance procedures; and (vi) other economic matters.
15 Retirement benefits shall not be subject to collective bargaining. By
16 such obligation neither party shall be compelled to agree to a proposal
17 or be required to make a concession unless otherwise provided in this
18 chapter.

19 (d) The mediation and interest arbitration provisions of RCW
20 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

21 (i) With respect to commencement of negotiations between the
22 governor and the exclusive bargaining representative of family child
23 care providers, negotiations shall be commenced initially upon
24 certification of an exclusive bargaining representative under (a) of
25 this subsection and, thereafter, by February 1st of any even-numbered
26 year;

27 (ii) In addition to the factors to be taken into consideration by
28 an interest arbitration panel under RCW 41.56.465, the panel shall
29 consider:

30 (A) A comparison of child care provider subsidy rates and
31 reimbursement programs by public entities, including counties and
32 municipalities, along the west coast of the United States; and

33 (B) The financial ability of the state to pay for the compensation
34 and benefit provisions of a collective bargaining agreement; ((and))

35 (iii) In addition to the factors to be taken into consideration by
36 an interest arbitration panel under RCW 41.56.465, the panel may
37 consider:

1 (A) The public's interest in reducing turnover and increasing
2 retention of child care providers;

3 (B) The state's interest in promoting a stable child care workforce
4 to provide quality and reliable care throughout the state; and

5 (C) For employees exempt from licensing under chapter 74.15 RCW,
6 the state's fiscal interest in reducing reliance upon public benefit
7 programs including but not limited to medical coupons, food stamps,
8 subsidized housing, and emergency medical services; and

9 (iv) The decision of the arbitration panel is not binding on the
10 legislature and, if the legislature does not approve the request for
11 funds necessary to implement the compensation and benefit provisions of
12 the arbitrated collective bargaining agreement, is not binding on the
13 state.

14 (e) Family child care providers do not have the right to strike.

15 (3) Family child care providers who are public employees solely for
16 the purposes of collective bargaining under subsection (1) of this
17 section are not, for that reason, employees of the state for any
18 purpose. This section applies only to the governance of the collective
19 bargaining relationship between the employer and family child care
20 providers as provided in subsections (1) and (2) of this section.

21 (4) This section does not create or modify:

22 (a) The parents' or legal guardians' right to choose and terminate
23 the services of any family child care provider that provides care for
24 their child or children;

25 (b) The secretary of the department of social and health services'
26 right to adopt requirements under RCW 74.15.030, except for
27 requirements related to grievance procedures and collective
28 negotiations on personnel matters as specified in subsection (2)(c) of
29 this section;

30 (c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130;
31 and

32 (d) The legislature's right to make programmatic modifications to
33 the delivery of state services through child care subsidy programs,
34 including standards of eligibility of parents, legal guardians, and
35 family child care providers participating in child care subsidy
36 programs, and the nature of services provided. The governor shall not
37 enter into, extend, or renew any agreement under this section that does

1 not expressly reserve the legislative rights described in this
2 subsection (4)(d).

3 (5) Upon meeting the requirements of subsection (6) of this
4 section, the governor must submit, as a part of the proposed biennial
5 or supplemental operating budget submitted to the legislature under RCW
6 43.88.030, a request for funds necessary to implement the compensation
7 and benefit provisions of a collective bargaining agreement entered
8 into under this section or for legislation necessary to implement such
9 agreement.

10 (6) A request for funds necessary to implement the compensation and
11 benefit provisions of a collective bargaining agreement entered into
12 under this section shall not be submitted by the governor to the
13 legislature unless such request has been:

14 (a) Submitted to the director of financial management by October
15 1st before the legislative session at which the request is to be
16 considered, except that, for initial negotiations under this section,
17 the request must be submitted by November 15, 2006; and

18 (b) Certified by the director of financial management as being
19 feasible financially for the state or reflects the binding decision of
20 an arbitration panel reached under this section.

21 (7) The legislature must approve or reject the submission of the
22 request for funds as a whole. If the legislature rejects or fails to
23 act on the submission, any such agreement will be reopened solely for
24 the purpose of renegotiating the funds necessary to implement the
25 agreement.

26 (8) The governor shall periodically consult with the joint
27 committee on employment relations established by RCW 41.80.010
28 regarding appropriations necessary to implement the compensation and
29 benefit provisions of any collective bargaining agreement and, upon
30 completion of negotiations, advise the committee on the elements of the
31 agreement and on any legislation necessary to implement such agreement.

32 (9) After the expiration date of any collective bargaining
33 agreement entered into under this section, all of the terms and
34 conditions specified in any such agreement remain in effect until the
35 effective date of a subsequent agreement, not to exceed one year from
36 the expiration date stated in the agreement, except as provided in
37 subsection (4)(d) of this section.

1 (10) If, after the compensation and benefit provisions of an
2 agreement are approved by the legislature, a significant revenue
3 shortfall occurs resulting in reduced appropriations, as declared by
4 proclamation of the governor or by resolution of the legislature, both
5 parties shall immediately enter into collective bargaining for a
6 mutually agreed upon modification of the agreement.

7 (11) In enacting this section, the legislature intends to provide
8 state action immunity under federal and state antitrust laws for the
9 joint activities of family child care providers and their exclusive
10 bargaining representative to the extent such activities are authorized
11 by this chapter.

12 **Sec. 2.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to read
13 as follows:

14 (1) Solely for the purposes of collective bargaining and as
15 expressly limited under subsections (2) and (3) of this section, the
16 governor is the public employer, as defined in chapter 41.56 RCW, of
17 individual providers, who, solely for the purposes of collective
18 bargaining, are public employees as defined in chapter 41.56 RCW. To
19 accommodate the role of the state as payor for the community-based
20 services provided under this chapter and to ensure coordination with
21 state employee collective bargaining under chapter 41.80 RCW and the
22 coordination necessary to implement RCW 74.39A.300, the public employer
23 shall be represented for bargaining purposes by the governor or the
24 governor's designee appointed under chapter 41.80 RCW. The governor or
25 governor's designee shall periodically consult with the authority
26 during the collective bargaining process to allow the authority to
27 communicate issues relating to the long-term in-home care services
28 received by consumers. The governor or the governor's designee shall
29 consult the authority on all issues for which the exclusive bargaining
30 representative requests to engage in collective bargaining under
31 subsection (6) of this section. The authority shall work with the
32 developmental disabilities council, the governor's committee on
33 disability issues and employment, the state council on aging, and other
34 consumer advocacy organizations to obtain informed input from consumers
35 on their interests, including impacts on consumer choice, for all
36 issues proposed for collective bargaining under subsection (6) of this
37 section.

1 (2) Chapter 41.56 RCW governs the collective bargaining
2 relationship between the governor and individual providers, except as
3 otherwise expressly provided in this chapter and except as follows:

4 (a) The only unit appropriate for the purpose of collective
5 bargaining under RCW 41.56.060 is a statewide unit of all individual
6 providers;

7 (b) The showing of interest required to request an election under
8 RCW 41.56.060 is ten percent of the unit, and any intervener seeking to
9 appear on the ballot must make the same showing of interest;

10 (c) The mediation and interest arbitration provisions of RCW
11 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

12 (i) With respect to commencement of negotiations between the
13 governor and the bargaining representative of individual providers,
14 negotiations shall be commenced by May 1st of any year prior to the
15 year in which an existing collective bargaining agreement expires;

16 (ii) With respect to factors to be taken into consideration by an
17 interest arbitration panel, the panel shall consider:

18 (A) A comparison of wages, hours, and conditions of employment of
19 publicly reimbursed and employed personnel providing similar services
20 to similar clients, including clients who are elderly, frail, or have
21 developmental disabilities, both in the state and across the United
22 States; and

23 (B) The financial ability of the state to pay for the compensation
24 and fringe benefit provisions of a collective bargaining agreement;
25 ((and))

26 (iii) With respect to factors to be taken into consideration by an
27 interest arbitration panel, the panel may consider:

28 (A) The state's interest in promoting a stable long-term care
29 workforce to provide quality and reliable care to vulnerable elderly
30 and disabled recipients;

31 (B) The state's interest in ensuring access to affordable, quality
32 health care for all state citizens; and

33 (C) The state's fiscal interest in reducing reliance upon public
34 benefit programs including but not limited to medical coupons, food
35 stamps, subsidized housing, and emergency medical services; and

36 (iv) The decision of the arbitration panel is not binding on the
37 legislature and, if the legislature does not approve the request for

1 funds necessary to implement the compensation and fringe benefit
2 provisions of the arbitrated collective bargaining agreement, is not
3 binding on the authority or the state;

4 (d) Individual providers do not have the right to strike; and

5 (e) Individual providers who are related to, or family members of,
6 consumers or prospective consumers are not, for that reason, exempt
7 from this chapter or chapter 41.56 RCW.

8 (3) Individual providers who are public employees solely for the
9 purposes of collective bargaining under subsection (1) of this section
10 are not, for that reason, employees of the state, its political
11 subdivisions, or an area agency on aging for any purpose. Chapter
12 41.56 RCW applies only to the governance of the collective bargaining
13 relationship between the employer and individual providers as provided
14 in subsections (1) and (2) of this section.

15 (4) Consumers and prospective consumers retain the right to select,
16 hire, supervise the work of, and terminate any individual provider
17 providing services to them. Consumers may elect to receive long-term
18 in-home care services from individual providers who are not referred to
19 them by the authority.

20 (5) In implementing and administering this chapter, neither the
21 authority nor any of its contractors may reduce or increase the hours
22 of service for any consumer below or above the amount determined to be
23 necessary under any assessment prepared by the department or an area
24 agency on aging.

25 (6) Except as expressly limited in this section and RCW 74.39A.300,
26 the wages, hours, and working conditions of individual providers are
27 determined solely through collective bargaining as provided in this
28 chapter. No agency or department of the state may establish policies
29 or rules governing the wages or hours of individual providers.
30 However, this subsection does not modify:

31 (a) The department's authority to establish a plan of care for each
32 consumer or its core responsibility to manage long-term in-home care
33 services under this chapter, including determination of the level of
34 care that each consumer is eligible to receive. However, at the
35 request of the exclusive bargaining representative, the governor or the
36 governor's designee appointed under chapter 41.80 RCW shall engage in
37 collective bargaining, as defined in RCW 41.56.030(4), with the
38 exclusive bargaining representative over how the department's core

1 responsibility affects hours of work for individual providers. This
2 subsection shall not be interpreted to require collective bargaining
3 over an individual consumer's plan of care;

4 (b) The department's authority to terminate its contracts with
5 individual providers who are not adequately meeting the needs of a
6 particular consumer, or to deny a contract under RCW 74.39A.095(8);

7 (c) The consumer's right to assign hours to one or more individual
8 providers selected by the consumer within the maximum hours determined
9 by his or her plan of care;

10 (d) The consumer's right to select, hire, terminate, supervise the
11 work of, and determine the conditions of employment for each individual
12 provider providing services to the consumer under this chapter;

13 (e) The department's obligation to comply with the federal medicaid
14 statute and regulations and the terms of any community-based waiver
15 granted by the federal department of health and human services and to
16 ensure federal financial participation in the provision of the
17 services; and

18 (f) The legislature's right to make programmatic modifications to
19 the delivery of state services under this title, including standards of
20 eligibility of consumers and individual providers participating in the
21 programs under this title, and the nature of services provided. The
22 governor shall not enter into, extend, or renew any agreement under
23 this chapter that does not expressly reserve the legislative rights
24 described in this subsection (6)(f).

25 (7)(a) The state, the department, the authority, the area agencies
26 on aging, or their contractors under this chapter may not be held
27 vicariously or jointly liable for the action or inaction of any
28 individual provider or prospective individual provider, whether or not
29 that individual provider or prospective individual provider was
30 included on the authority's referral registry or referred to a consumer
31 or prospective consumer. The existence of a collective bargaining
32 agreement, the placement of an individual provider on the referral
33 registry, or the development or approval of a plan of care for a
34 consumer who chooses to use the services of an individual provider and
35 the provision of case management services to that consumer, by the
36 department or an area agency on aging, does not constitute a special
37 relationship with the consumer.

1 (b) The members of the board are immune from any liability
2 resulting from implementation of this chapter.

3 (8) Nothing in this section affects the state's responsibility with
4 respect to unemployment insurance for individual providers. However,
5 individual providers are not to be considered, as a result of the state
6 assuming this responsibility, employees of the state.

--- END ---