
SENATE BILL 5515

State of Washington

64th Legislature

2015 Regular Session

By Senators Braun and Baumgartner

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to excluding retirement as a subject of
2 collective bargaining for individual providers under chapter 74.39A
3 RCW; and amending RCW 74.39A.270 and 41.56.030.

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

5 **Sec. 1.** RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each
6 amended to read as follows:

7 (1) Solely for the purposes of collective bargaining and as
8 expressly limited under subsections (2) and (3) of this section, the
9 governor is the public employer, as defined in chapter 41.56 RCW, of
10 individual providers, who, solely for the purposes of collective
11 bargaining, are public employees as defined in chapter 41.56 RCW. To
12 accommodate the role of the state as payor for the community-based
13 services provided under this chapter and to ensure coordination with
14 state employee collective bargaining under chapter 41.80 RCW and the
15 coordination necessary to implement RCW 74.39A.300, the public
16 employer shall be represented for bargaining purposes by the governor
17 or the governor's designee appointed under chapter 41.80 RCW. The
18 governor or governor's designee shall periodically consult with the
19 authority during the collective bargaining process to allow the
20 authority to communicate issues relating to the long-term in-home
21 care services received by consumers. The department shall solicit

1 input from the developmental disabilities council, the governor's
2 committee on disability issues and employment, the state council on
3 aging, and other consumer advocacy organizations to obtain informed
4 input from consumers on their interests, including impacts on
5 consumer choice, for all issues proposed for collective bargaining
6 under subsections (5) and (6) of this section.

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

10 (a) The only unit appropriate for the purpose of collective
11 bargaining under RCW 41.56.060 is a statewide unit of all individual
12 providers;

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

16 (c) The mediation and interest arbitration provisions of RCW
17 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

23 (ii) The decision of the arbitration panel is not binding on the
24 legislature and, if the legislature does not approve the request for
25 funds necessary to implement the compensation and fringe benefit
26 provisions of the arbitrated collective bargaining agreement, is not
27 binding on the authority or the state;

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

29 (e) Individual providers who are related to, or family members
30 of, consumers or prospective consumers are not, for that reason,
31 exempt from this chapter or chapter 41.56 RCW; and

32 (f) The scope of collective bargaining for individual providers
33 under chapter 41.56 RCW does not include any matters relating to
34 retirement benefits.

35 (3) Individual providers who are public employees solely for the
36 purposes of collective bargaining under subsection (1) of this
37 section are not, for that reason, employees of the state, its
38 political subdivisions, or an area agency on aging for any purpose.
39 Chapter 41.56 RCW applies only to the governance of the collective

1 bargaining relationship between the employer and individual providers
2 as provided in subsections (1) and (2) of this section.

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

8 (5) Except as expressly limited in this section and RCW
9 74.39A.300, the wages, hours, and working conditions of individual
10 providers are determined solely through collective bargaining as
11 provided in this chapter. No agency or department of the state may
12 establish policies or rules governing the wages or hours of
13 individual providers. However, this subsection does not modify:

14 (a) The department's authority to establish a plan of care for
15 each consumer or its core responsibility to manage long-term in-home
16 care services under this chapter, including determination of the
17 level of care that each consumer is eligible to receive. However, at
18 the request of the exclusive bargaining representative, the governor
19 or the governor's designee appointed under chapter 41.80 RCW shall
20 engage in collective bargaining, as defined in RCW 41.56.030(4), with
21 the exclusive bargaining representative over how the department's
22 core responsibility affects hours of work for individual providers.
23 This subsection shall not be interpreted to require collective
24 bargaining over an individual consumer's plan of care;

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

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

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

35 (e) The department's obligation to comply with the federal
36 medicaid statute and regulations and the terms of any community-based
37 waiver granted by the federal department of health and human services
38 and to ensure federal financial participation in the provision of the
39 services; and

1 (f) The legislature's right to make programmatic modifications to
2 the delivery of state services under this title, including standards
3 of eligibility of consumers and individual providers participating in
4 the programs under this title, and the nature of services provided.
5 The governor shall not enter into, extend, or renew any agreement
6 under this chapter that does not expressly reserve the legislative
7 rights described in this subsection (5)(f).

8 (6) At the request of the exclusive bargaining representative,
9 the governor or the governor's designee appointed under chapter 41.80
10 RCW shall engage in collective bargaining, as defined in RCW
11 41.56.030(4), with the exclusive bargaining representative over
12 employer contributions to the training partnership for the costs of:
13 (a) Meeting all training and peer mentoring required under this
14 chapter; and (b) other training intended to promote the career
15 development of individual providers.

16 (7) The state, the department, the area agencies on aging, or
17 their contractors under this chapter may not be held vicariously or
18 jointly liable for the action or inaction of any individual provider
19 or prospective individual provider, whether or not that individual
20 provider or prospective individual provider was included on the
21 referral registry or referred to a consumer or prospective consumer.
22 The existence of a collective bargaining agreement, the placement of
23 an individual provider on the referral registry, or the development
24 or approval of a plan of care for a consumer who chooses to use the
25 services of an individual provider and the provision of case
26 management services to that consumer, by the department or an area
27 agency on aging, does not constitute a special relationship with the
28 consumer.

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

33 **Sec. 2.** RCW 41.56.030 and 2011 1st sp.s. c 21 s 11 are each
34 amended to read as follows:

35 As used in this chapter:

36 (1) "Adult family home provider" means a provider as defined in
37 RCW 70.128.010 who receives payments from the medicaid and state-
38 funded long-term care programs.

1 (2) "Bargaining representative" means any lawful organization
2 which has as one of its primary purposes the representation of
3 employees in their employment relations with employers.

4 (3) "Child care subsidy" means a payment from the state through a
5 child care subsidy program established pursuant to RCW 74.12.340 (~~or~~
6 ~~74.08A.340~~), 45 C.F.R. Sec. 98.1 through 98.17, or any successor
7 program.

8 (4)(a) "Collective bargaining" means the performance of the
9 mutual obligations of the public employer and the exclusive
10 bargaining representative to meet at reasonable times, to confer and
11 negotiate in good faith, and to execute a written agreement with
12 respect to grievance procedures and collective negotiations on
13 personnel matters, including wages, hours and working conditions,
14 which may be peculiar to an appropriate bargaining unit of such
15 public employer, except that by such obligation neither party shall
16 be compelled to agree to a proposal or be required to make a
17 concession unless otherwise provided in this chapter.

18 (b) "Collective bargaining" does not include retirement benefits
19 for individual providers under chapter 74.39A RCW.

20 (5) "Commission" means the public employment relations
21 commission.

22 (6) "Executive director" means the executive director of the
23 commission.

24 (7) "Family child care provider" means a person who: (a) Provides
25 regularly scheduled care for a child or children in the home of the
26 provider or in the home of the child or children for periods of less
27 than twenty-four hours or, if necessary due to the nature of the
28 parent's work, for periods equal to or greater than twenty-four
29 hours; (b) receives child care subsidies; and (c) is either licensed
30 by the state under RCW 74.15.030 or is exempt from licensing under
31 chapter 74.15 RCW.

32 (8) "Individual provider" means an individual provider as defined
33 in RCW 74.39A.240(4) who, solely for the purposes of collective
34 bargaining, is a public employee as provided in RCW 74.39A.270.

35 (9) "Institution of higher education" means the University of
36 Washington, Washington State University, Central Washington
37 University, Eastern Washington University, Western Washington
38 University, The Evergreen State College, and the various state
39 community colleges.

1 (10)(a) "Language access provider" means any independent
2 contractor who provides spoken language interpreter services for
3 department of social and health services appointments or medicaid
4 enrollee appointments, or provided these services on or after January
5 1, 2009, and before June 10, 2010, whether paid by a broker, language
6 access agency, or the department.

7 (b) "Language access provider" does not mean an owner, manager,
8 or employee of a broker or a language access agency.

9 (11) "Public employee" means any employee of a public employer
10 except any person (a) elected by popular vote, or (b) appointed to
11 office pursuant to statute, ordinance or resolution for a specified
12 term of office as a member of a multimember board, commission, or
13 committee, whether appointed by the executive head or body of the
14 public employer, or (c) whose duties as deputy, administrative
15 assistant or secretary necessarily imply a confidential relationship
16 to (i) the executive head or body of the applicable bargaining unit,
17 or (ii) any person elected by popular vote, or (iii) any person
18 appointed to office pursuant to statute, ordinance or resolution for
19 a specified term of office as a member of a multimember board,
20 commission, or committee, whether appointed by the executive head or
21 body of the public employer, or (d) who is a court commissioner or a
22 court magistrate of superior court, district court, or a department
23 of a district court organized under chapter 3.46 RCW, or (e) who is a
24 personal assistant to a district court judge, superior court judge,
25 or court commissioner. For the purpose of (e) of this subsection, no
26 more than one assistant for each judge or commissioner may be
27 excluded from a bargaining unit.

28 (12) "Public employer" means any officer, board, commission,
29 council, or other person or body acting on behalf of any public body
30 governed by this chapter, or any subdivision of such public body. For
31 the purposes of this section, the public employer of district court
32 or superior court employees for wage-related matters is the
33 respective county legislative authority, or person or body acting on
34 behalf of the legislative authority, and the public employer for
35 nonwage-related matters is the judge or judge's designee of the
36 respective district court or superior court.

37 (13) "Uniformed personnel" means: (a) Law enforcement officers as
38 defined in RCW 41.26.030 employed by the governing body of any city
39 or town with a population of two thousand five hundred or more and
40 law enforcement officers employed by the governing body of any county

1 with a population of ten thousand or more; (b) correctional employees
2 who are uniformed and nonuniformed, commissioned and noncommissioned
3 security personnel employed in a jail as defined in RCW 70.48.020(9),
4 by a county with a population of seventy thousand or more, and who
5 are trained for and charged with the responsibility of controlling
6 and maintaining custody of inmates in the jail and safeguarding
7 inmates from other inmates; (c) general authority Washington peace
8 officers as defined in RCW 10.93.020 employed by a port district in a
9 county with a population of one million or more; (d) security forces
10 established under RCW 43.52.520; (e) firefighters as that term is
11 defined in RCW 41.26.030; (f) employees of a port district in a
12 county with a population of one million or more whose duties include
13 crash fire rescue or other firefighting duties; (g) employees of fire
14 departments of public employers who dispatch exclusively either fire
15 or emergency medical services, or both; or (h) employees in the
16 several classes of advanced life support technicians, as defined in
17 RCW 18.71.200, who are employed by a public employer.

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