
SUBSTITUTE SENATE BILL 5606

State of Washington

62nd Legislature

2011 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Conway, Hargrove, Kohl-Welles, Zarelli, Hobbs, Delvin, and Shin)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to granting binding interest arbitration rights to
2 certain uniformed personnel; amending RCW 41.56.473, 41.56.475, and
3 41.80.005; reenacting and amending RCW 41.56.030; and adding a new
4 section to chapter 41.56 RCW.

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

6 **Sec. 1.** RCW 41.56.030 and 2010 c 296 s 3 are each reenacted and
7 amended to read as follows:

8 As used in this chapter:

9 (1) "Adult family home provider" means a provider as defined in RCW
10 70.128.010 who receives payments from the medicaid and state-funded
11 long-term care programs.

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

15 (3) "Child care subsidy" means a payment from the state through a
16 child care subsidy program established pursuant to RCW 74.12.340 or
17 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
18 program.

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

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

12 (6) "Executive director" means the executive director of the
13 commission.

14 (7) "Family child care provider" means a person who: (a) Provides
15 regularly scheduled care for a child or children in the home of the
16 provider or in the home of the child or children for periods of less
17 than twenty-four hours or, if necessary due to the nature of the
18 parent's work, for periods equal to or greater than twenty-four hours;
19 (b) receives child care subsidies; and (c) is either licensed by the
20 state under RCW 74.15.030 or is exempt from licensing under chapter
21 74.15 RCW.

22 (8) "Home care quality authority" means the authority under chapter
23 74.39A RCW.

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

27 (10) "Institution of higher education" means the University of
28 Washington, Washington State University, Central Washington University,
29 Eastern Washington University, Western Washington University, The
30 Evergreen State College, and the various state community colleges.

31 (11)(a) "Language access provider" means any independent contractor
32 who provides spoken language interpreter services for department of
33 social and health services appointments or medicaid enrollee
34 appointments, or provided these services on or after January 1, 2009,
35 and before June 10, 2010, whether paid by a broker, language access
36 agency, or the department.

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

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

20 (13) "Public employer" means any officer, board, commission,
21 council, or other person or body acting on behalf of any public body
22 governed by this chapter, or any subdivision of such public body. For
23 the purposes of this section, the public employer of district court or
24 superior court employees for wage-related matters is the respective
25 county legislative authority, or person or body acting on behalf of the
26 legislative authority, and the public employer for nonwage-related
27 matters is the judge or judge's designee of the respective district
28 court or superior court.

29 (14) "Uniformed personnel" means: (a) Law enforcement officers as
30 defined in RCW 41.26.030 employed by the governing body of any city or
31 town with a population of two thousand five hundred or more and law
32 enforcement officers employed by the governing body of any county with
33 a population of ten thousand or more; (b) correctional employees who
34 are uniformed and nonuniformed, commissioned and noncommissioned
35 security personnel employed in a jail as defined in RCW 70.48.020(9),
36 by a county with a population of seventy thousand or more, and who are
37 trained for and charged with the responsibility of controlling and
38 maintaining custody of inmates in the jail and safeguarding inmates

1 from other inmates; (c) general authority Washington peace officers as
2 defined in RCW 10.93.020 employed by a port district in a county with
3 a population of one million or more; (d) security forces established
4 under RCW 43.52.520; (e) firefighters as that term is defined in RCW
5 41.26.030; (f) employees of a port district in a county with a
6 population of one million or more whose duties include crash fire
7 rescue or other firefighting duties; (g) employees of fire departments
8 of public employers who dispatch exclusively either fire or emergency
9 medical services, or both; (~~or~~) (h) employees in the several classes
10 of advanced life support technicians, as defined in RCW 18.71.200, who
11 are employed by a public employer; or (i) police forces for
12 universities and The Evergreen State College as authorized in RCW
13 28B.10.550.

14 **Sec. 2.** RCW 41.56.473 and 2005 c 438 s 1 are each amended to read
15 as follows:

16 (1) In addition to the entities listed in RCW 41.56.020, this
17 chapter applies to the state with respect to the officers of the
18 Washington state patrol appointed under RCW 43.43.020 and police forces
19 for universities and The Evergreen State College as authorized in RCW
20 28B.10.550, except that the state is prohibited from negotiating any
21 matters relating to retirement benefits or health care benefits or
22 other employee insurance benefits.

23 (2) For the purposes of negotiating wages, wage-related matters,
24 and nonwage matters, the state shall be represented by the governor or
25 the governor's designee who is appointed under chapter 41.80 RCW, and
26 costs of the negotiations under this section shall be reimbursed as
27 provided in RCW 41.80.140.

28 (3) The governor or the governor's designee shall consult with the
29 chief of the Washington state patrol regarding collective bargaining.

30 (4) The negotiation of provisions pertaining to wages and wage-
31 related matters in a collective bargaining agreement between the state
32 and the Washington state patrol officers is subject to the following:

33 (a) The state's bargaining representative must periodically consult
34 with a subcommittee of the joint committee on employment relations
35 created in RCW 41.80.010(5) which shall consist of the four members
36 appointed to the joint committee with leadership positions in the
37 senate and the house of representatives, and the chairs and ranking

1 minority members of the senate transportation committee and the house
2 transportation committee, or their successor committees. The
3 subcommittee must be consulted regarding the appropriations necessary
4 to implement these provisions in a collective bargaining agreement and,
5 on completion of negotiations, must be advised on the elements of these
6 provisions.

7 (b) Provisions that are entered into before the legislature
8 approves the funds necessary to implement the provisions must be
9 conditioned upon the legislature's subsequent approval of the funds.

10 (5) The governor shall submit a request for funds necessary to
11 implement the wage and wage-related matters in the collective
12 bargaining agreement or for legislation necessary to implement the
13 agreement. Requests for funds necessary to implement the provisions of
14 bargaining agreements may not be submitted to the legislature by the
15 governor unless such requests:

16 (a) Have been submitted to the director of financial management by
17 October 1st before the legislative session at which the requests are to
18 be considered; and

19 (b) Have been certified by the director of financial management as
20 being feasible financially for the state or reflects the decision of an
21 arbitration panel reached under RCW 41.56.475.

22 **Sec. 3.** RCW 41.56.475 and 2008 c 149 s 1 are each amended to read
23 as follows:

24 In addition to the classes of employees listed in RCW
25 41.56.030(~~(+7)~~) (14), the provisions of RCW 41.56.430 through
26 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to
27 Washington state patrol officers appointed under RCW 43.43.020 and
28 police forces for universities and The Evergreen State College as
29 authorized in RCW 28B.10.550 as provided in this section, subject to
30 the following:

31 (1) Within ten working days after the first Monday in September of
32 every odd-numbered year, the state's bargaining representative and the
33 bargaining representative for the appropriate bargaining unit shall
34 attempt to agree on an interest arbitration panel consisting of three
35 members to be used if the parties are not successful in negotiating a
36 comprehensive collective bargaining agreement. Each party shall name
37 one person to serve as its arbitrator on the arbitration panel. The

1 two members so appointed shall meet within seven days following the
2 appointment of the later appointed member to attempt to choose a third
3 member to act as the neutral chair of the arbitration panel. Upon the
4 failure of the arbitrators to select a neutral chair within seven days,
5 the two appointed members shall use one of the two following options in
6 the appointment of the third member, who shall act as chair of the
7 panel: (a) By mutual consent, the two appointed members may jointly
8 request the commission to, and the commission shall, appoint a third
9 member within two days of such a request. Costs of each party's
10 appointee shall be borne by each party respectively; other costs of the
11 arbitration proceedings shall be borne by the commission; or (b) either
12 party may apply to the commission, the federal mediation and
13 conciliation service, or the American arbitration association to
14 provide a list of five qualified arbitrators from which the neutral
15 chair shall be chosen. Each party shall pay the fees and expenses of
16 its arbitrator, and the fees and expenses of the neutral chair shall be
17 shared equally between the parties. Immediately upon selecting an
18 interest arbitration panel, the parties shall cooperate to reserve
19 dates with the arbitration panel for potential arbitration between
20 August 1st and September 15th of the following even-numbered year. The
21 parties shall also prepare a schedule of at least five negotiation
22 dates for the following year, absent an agreement to the contrary. The
23 parties shall execute a written agreement before November 1st of each
24 odd-numbered year setting forth the names of the members of the
25 arbitration panel and the dates reserved for bargaining and
26 arbitration. This subsection imposes minimum obligations only and is
27 not intended to define or limit a party's full, good faith bargaining
28 obligation under other sections of this chapter.

29 (2) The mediator or arbitration panel may consider only matters
30 that are subject to bargaining under RCW 41.56.473.

31 (3) The decision of an arbitration panel is not binding on the
32 legislature and, if the legislature does not approve the funds
33 necessary to implement provisions pertaining to wages and wage-related
34 matters of an arbitrated collective bargaining agreement, is not
35 binding on the state or the Washington state patrol.

36 (4) In making its determination, the arbitration panel shall be
37 mindful of the legislative purpose enumerated in RCW 41.56.430 and, as

1 additional standards or guidelines to aid it in reaching a decision,
2 shall take into consideration the following factors:

3 (a) The constitutional and statutory authority of the employer;

4 (b) Stipulations of the parties;

5 (c) Comparison of the hours and conditions of employment of
6 personnel involved in the proceedings with the hours and conditions of
7 employment of like personnel of like employers of similar size on the
8 west coast of the United States;

9 (d) Changes in any of the foregoing circumstances during the
10 pendency of the proceedings; and

11 (e) Such other factors, not confined to the foregoing, which are
12 normally or traditionally taken into consideration in the determination
13 of matters that are subject to bargaining under RCW 41.56.473.

14 **Sec. 4.** RCW 41.80.005 and 2002 c 354 s 321 are each amended to
15 read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Agency" means any agency as defined in RCW 41.06.020 and
19 covered by chapter 41.06 RCW.

20 (2) "Collective bargaining" means the performance of the mutual
21 obligation of the representatives of the employer and the exclusive
22 bargaining representative to meet at reasonable times and to bargain in
23 good faith in an effort to reach agreement with respect to the subjects
24 of bargaining specified under RCW 41.80.020. The obligation to bargain
25 does not compel either party to agree to a proposal or to make a
26 concession, except as otherwise provided in this chapter.

27 (3) "Commission" means the public employment relations commission.

28 (4) "Confidential employee" means an employee who, in the regular
29 course of his or her duties, assists in a confidential capacity persons
30 who formulate, determine, and effectuate management policies with
31 regard to labor relations or who, in the regular course of his or her
32 duties, has authorized access to information relating to the
33 effectuation or review of the employer's collective bargaining
34 policies, or who assists or aids a manager. "Confidential employee"
35 also includes employees who assist assistant attorneys general who
36 advise and represent managers or confidential employees in personnel or

1 labor relations matters, or who advise or represent the state in tort
2 actions.

3 (5) "Director" means the director of the public employment
4 relations commission.

5 (6) "Employee" means any employee, including employees whose work
6 has ceased in connection with the pursuit of lawful activities
7 protected by this chapter, covered by chapter 41.06 RCW, except:

8 (a) Employees covered for collective bargaining by chapter 41.56
9 RCW;

10 (b) Confidential employees;

11 (c) Members of the Washington management service;

12 (d) Internal auditors in any agency; or

13 (e) Any employee of the commission, the office of financial
14 management, or the department of personnel.

15 (7) "Employee organization" means any organization, union, or
16 association in which employees participate and that exists for the
17 purpose, in whole or in part, of collective bargaining with employers.

18 (8) "Employer" means the state of Washington.

19 (9) "Exclusive bargaining representative" means any employee
20 organization that has been certified under this chapter as the
21 representative of the employees in an appropriate bargaining unit.

22 (10) "Institutions of higher education" means the University of
23 Washington, Washington State University, Central Washington University,
24 Eastern Washington University, Western Washington University, The
25 Evergreen State College, and the various state community colleges,
26 except for police forces for universities and The Evergreen State
27 College as authorized in RCW 28B.10.550.

28 (11) "Labor dispute" means any controversy concerning terms,
29 tenure, or conditions of employment, or concerning the association or
30 representation of persons in negotiating, fixing, maintaining,
31 changing, or seeking to arrange terms or conditions of employment with
32 respect to the subjects of bargaining provided in this chapter,
33 regardless of whether the disputants stand in the proximate relation of
34 employer and employee.

35 (12) "Manager" means "manager" as defined in RCW 41.06.022.

36 (13) "Supervisor" means an employee who has authority, in the
37 interest of the employer, to hire, transfer, suspend, lay off, recall,
38 promote, discharge, direct, reward, or discipline employees, or to

1 adjust employee grievances, or effectively to recommend such action, if
2 the exercise of the authority is not of a merely routine nature but
3 requires the consistent exercise of individual judgment. However, no
4 employee who is a member of the Washington management service may be
5 included in a collective bargaining unit established under this
6 section.

7 (14) "Unfair labor practice" means any unfair labor practice listed
8 in RCW 41.80.110.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.56 RCW
10 to read as follows:

11 The exclusive bargaining representatives recognized under chapter
12 41.80 RCW as representing the bargaining units that consist of
13 employees described in RCW 41.56.030(14)(i) that exist on the effective
14 date of this section shall be recognized as the exclusive bargaining
15 representative of the employees described in RCW 41.56.030(14)(i) under
16 this chapter without the necessity of an election, and the commission
17 shall issue new bargaining unit certifications and modify any existing
18 bargaining unit certifications consistent with the purposes of this
19 act. However, there may be proceedings concerning representation under
20 this chapter thereafter.

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