
SUBSTITUTE SENATE BILL 5368

State of Washington

62nd Legislature

2011 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Zarelli, Chase, Nelson, Keiser, and Conway)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to the public employees' collective bargaining act
2 as applied to certain juvenile court services and department of
3 corrections employees; amending RCW 41.80.020; reenacting and amending
4 RCW 41.56.030; and adding new sections 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)(i) 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; or (ii) juvenile detention employees who are
2 uniformed and nonuniformed employees of a juvenile detention division
3 created pursuant to RCW 13.20.060 and are trained for and charged with
4 the responsibility of supervising, controlling, monitoring,
5 programming, classifying and/or maintaining custody of juveniles in
6 juvenile detention facilities or alternatives to secure detention
7 programs; (c) general authority Washington peace officers as defined in
8 RCW 10.93.020 employed by a port district in a county with a population
9 of one million or more; (d) security forces established under RCW
10 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030;
11 (f) employees of a port district in a county with a population of one
12 million or more whose duties include crash fire rescue or other
13 firefighting duties; (g) employees of fire departments of public
14 employers who dispatch exclusively either fire or emergency medical
15 services, or both; or (h) employees in the several classes of advanced
16 life support technicians, as defined in RCW 18.71.200, who are employed
17 by a public employer.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56 RCW
19 to read as follows:

20 (1) In addition to the entities listed in RCW 41.56.020, this
21 chapter applies to the state with respect to employees working for the
22 department of corrections.

23 (2) This chapter governs the collective bargaining relationship
24 between the state and employees working for the department of
25 corrections, except as follows:

26 (a) The state shall be represented by the governor or the
27 governor's designee who is appointed under chapter 41.80 RCW, and costs
28 of the negotiations under this section shall be reimbursed as provided
29 in RCW 41.80.140.

30 (b)(i) The following bargaining units of employees working for the
31 department of corrections shall be considered appropriate units under
32 this chapter as of the effective date of this section, but there may be
33 proceedings concerning certification and unit clarification under this
34 chapter thereafter:

35 (A) All nonsupervisory classified employees of the state working
36 for the department of corrections in correctional institutions, the
37 correctional industries program, the sex offender treatment program,

1 and regional business service center, excluding persons exempt from the
2 coverage of chapter 41.06 RCW, employees in the Washington management
3 service, confidential employees, supervisors, institutions employees in
4 historically excluded groups that have not been modified by subsequent
5 orders of the public employment relations commission, and all other
6 employees of the state;

7 (B) All supervisory classified employees of the state working for
8 the department of corrections in correctional institutions, the
9 correctional industries program, the sex offender treatment program,
10 and regional business service center, excluding persons exempt from the
11 coverage of chapter 41.06 RCW, employees in the Washington management
12 services, confidential employees, nonsupervisory employees,
13 institutions employees in historically excluded groups that have not
14 been modified by subsequent orders, and all other employees of the
15 state;

- 16 (C) Psychiatric social workers;
- 17 (D) Psychology associates;
- 18 (E) Chaplains;
- 19 (F) Psychiatrists;
- 20 (G) Psychologist 3 and 4 nonsupervisory;
- 21 (H) Psychologist 3 and 4 supervisory;
- 22 (I) Nonsupervisory community corrections;
- 23 (J) Supervisors community corrections;
- 24 (K) Nonsupervisors - warrants/records unit;
- 25 (L) Nonsupervisory marine department;
- 26 (M) Nonsupervisory officers at McNeil Island; and
- 27 (N) Ferry operators (deckhands) at McNeil Island.

28 (ii) This act does not preclude either party from seeking to
29 clarify the scope of any bargaining unit pursuant to RCW 41.56.060.

30 (c) The exclusive bargaining representatives recognized under
31 chapter 41.80 RCW as representing the bargaining units of employees
32 working for the department of corrections shall be the exclusive
33 bargaining representatives recognized under this chapter as
34 representing the bargaining units of employees working for the
35 department of corrections without the necessity of an election as of
36 the effective date of this section, but there may be proceedings
37 concerning representation under this chapter thereafter.

1 (d) If an exclusive bargaining representative represents more than
2 one bargaining unit, the exclusive bargaining representative shall
3 negotiate with the governor or the governor's designee one master
4 collective bargaining agreement on behalf of all the employees in
5 bargaining units that the exclusive bargaining representative
6 represents.

7 (e) Notwithstanding the definition of "collective bargaining" in
8 RCW 41.56.030(4), the scope of collective bargaining for employees
9 working for the department of corrections is the same as the scope of
10 collective bargaining described in RCW 41.80.020.

11 (f) The governor or the governor's designee and one coalition of
12 all the exclusive bargaining representatives subject to this section
13 and chapter 41.80 RCW shall conduct negotiations regarding the number
14 of names to be certified for vacancies, promotional preferences, and
15 the dollar amount expended on behalf of each employee for health care
16 benefits as described in RCW 41.80.020.

17 (3) The governor or the governor's designee shall periodically
18 consult with the joint committee on employment relations created in RCW
19 41.80.010(5) regarding appropriations necessary to implement the
20 compensation and fringe benefit provisions in a collective bargaining
21 agreement and, upon completion of negotiations, advise the committee on
22 the elements of the agreement and on any legislation necessary to
23 implement the agreement.

24 (4) The governor shall submit a request for funds necessary to
25 implement the compensation and fringe benefit provisions in the
26 collective bargaining agreement or for legislation necessary to
27 implement the agreement. Requests for funds necessary to implement the
28 compensation and fringe benefit provisions of bargaining agreements
29 shall not be submitted to the legislature by the governor unless such
30 requests:

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

34 (b) Have been certified by the director of financial management as
35 being feasible financially for the state or reflects the decision of an
36 arbitration panel reached under section 3 of this act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW
2 to read as follows:

3 In addition to the classes of employees listed in RCW
4 41.56.030(14), the provisions of RCW 41.56.430 through 41.56.452 and
5 41.56.470, 41.56.480, and 41.56.490 also apply to the employees of the
6 state working for the department of corrections as provided in this
7 section, subject to the following:

8 (1) Within ten working days after the first Monday in September of
9 every odd-numbered year, the governor or the governor's designee and
10 the bargaining representative for the appropriate bargaining unit shall
11 attempt to agree on an interest arbitration panel consisting of three
12 members to be used if the parties are not successful in negotiating a
13 comprehensive collective bargaining agreement. Each party shall name
14 one person to serve as its arbitrator on the arbitration panel. The
15 two members so appointed shall meet within seven days following the
16 appointment of the later appointed member to attempt to choose a third
17 member to act as the neutral chair of the arbitration panel. Upon the
18 failure of the arbitrators to select a neutral chair within seven days,
19 the two appointed members shall use one of the two following options in
20 the appointment of the third member, who shall act as chair of the
21 panel: (a) By mutual consent, the two appointed members may jointly
22 request the commission to, and the commission shall, appoint a third
23 member within two days of such a request. Costs of each party's
24 appointee shall be borne by each party respectively; other costs of the
25 arbitration proceedings shall be borne by the commission; or (b) either
26 party may apply to the commission, the federal mediation and
27 conciliation service, or the American arbitration association to
28 provide a list of five qualified arbitrators from which the neutral
29 chair shall be chosen. Each party shall pay the fees and expenses of
30 its arbitrator, and the fees and expenses of the neutral chair shall be
31 shared equally between the parties. Immediately upon selecting an
32 interest arbitration panel, the parties shall cooperate to reserve
33 dates with the arbitration panel for potential arbitration between
34 August 1st and September 15th of the following even-numbered year. The
35 parties shall also prepare a schedule of at least five negotiation
36 dates for the following year, absent an agreement to the contrary. The
37 parties shall execute a written agreement before November 1st of each
38 odd-numbered year setting forth the names of the members of the

1 arbitration panel and the dates reserved for bargaining and
2 arbitration. This subsection imposes minimum obligations only and is
3 not intended to define or limit a party's full, good faith bargaining
4 obligation under other sections of this chapter.

5 (2) The mediator or arbitration panel may consider only matters
6 that are subject to bargaining under section 1 of this act, and may not
7 consider the number of names to be certified for vacancies, promotional
8 preferences, and the dollar amount expended on behalf of each employee
9 for health care benefits.

10 (3) The decision of an arbitration panel is not binding on the
11 legislature and, if the legislature does not approve the funds
12 necessary to implement the compensation and fringe benefit provisions
13 in an arbitrated collective bargaining agreement, is not binding on the
14 state or the department of corrections.

15 (4) In making its determination, the arbitration panel shall be
16 mindful of the legislative purpose enumerated in RCW 41.56.430 and, as
17 additional standards or guidelines to aid it in reaching a decision,
18 shall take into consideration the following factors:

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

20 (b) Stipulations of the parties;

21 (c) Comparison of the hours and conditions of employment of
22 personnel involved in the proceedings with the hours and conditions of
23 employment of like personnel of like employers of similar size on the
24 west coast of the United States;

25 (d) Changes in any of the factors listed in this subsection during
26 the pendency of the proceedings; and

27 (e) Such other factors, not confined to those listed in this
28 subsection, which are normally or traditionally taken into
29 consideration in the determination of matters that are subject to
30 bargaining under section 1 of this act and mediation or arbitration
31 under this section.

32 **Sec. 4.** RCW 41.80.020 and 2010 c 283 s 16 are each amended to read
33 as follows:

34 (1) Except as otherwise provided in this chapter, the matters
35 subject to bargaining include wages, hours, and other terms and
36 conditions of employment, and the negotiation of any question arising
37 under a collective bargaining agreement.

1 (2) The employer is not required to bargain over matters pertaining
2 to:

3 (a) Health care benefits or other employee insurance benefits,
4 except as required in subsection (3) of this section;

5 (b) Any retirement system or retirement benefit; or

6 (c) Rules of the director of personnel or the Washington personnel
7 resources board adopted under section 203, chapter 354, Laws of 2002.

8 (3) Matters subject to bargaining include the number of names to be
9 certified for vacancies, promotional preferences, and the dollar amount
10 expended on behalf of each employee for health care benefits. However,
11 except as provided otherwise in this subsection for institutions of
12 higher education, negotiations regarding the number of names to be
13 certified for vacancies, promotional preferences, and the dollar amount
14 expended on behalf of each employee for health care benefits shall be
15 conducted between the employer and one coalition of all the exclusive
16 bargaining representatives subject to this chapter and all the
17 exclusive bargaining representatives subject to section 2 of this act.

18 The exclusive bargaining representatives for employees that are subject
19 to chapter 47.64 RCW shall bargain the dollar amount expended on behalf
20 of each employee for health care benefits with the employer as part of
21 the coalition under this subsection. Any such provision agreed to by
22 the employer and the coalition shall be included in all master
23 collective bargaining agreements negotiated by the parties. For
24 institutions of higher education, promotional preferences and the
25 number of names to be certified for vacancies shall be bargained under
26 the provisions of RCW 41.80.010(4).

27 (4) The employer and the exclusive bargaining representative shall
28 not agree to any proposal that would prevent the implementation of
29 approved affirmative action plans or that would be inconsistent with
30 the comparable worth agreement that provided the basis for the salary
31 changes implemented beginning with the 1983-1985 biennium to achieve
32 comparable worth.

33 (5) The employer and the exclusive bargaining representative shall
34 not bargain over matters pertaining to management rights established in
35 RCW 41.80.040.

36 (6) Except as otherwise provided in this chapter, if a conflict
37 exists between an executive order, administrative rule, or agency
38 policy relating to wages, hours, and terms and conditions of employment

1 and a collective bargaining agreement negotiated under this chapter,
2 the collective bargaining agreement shall prevail. A provision of a
3 collective bargaining agreement that conflicts with the terms of a
4 statute is invalid and unenforceable.

5 (7) This section does not prohibit bargaining that affects
6 contracts authorized by RCW 41.06.142.

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

9 (1) Collective bargaining negotiations between the state and
10 bargaining units of employees working for the department of corrections
11 under this chapter shall commence no later than July 1, 2012. A
12 collective bargaining agreement between the state and any bargaining
13 unit of employees working for the department of corrections entered
14 into under this chapter shall not be effective prior to July 1, 2013.

15 (2) Any collective bargaining agreement between the state and any
16 bargaining unit of employees working for the department of corrections
17 entered into under chapter 41.80 RCW before July 1, 2012, that expires
18 after July 1, 2012, shall, unless a superseding agreement complying
19 with this chapter is negotiated by the parties, remain in full force
20 during its duration, but the agreement may not be renewed or extended
21 beyond July 1, 2013, or until superseded by a collective bargaining
22 agreement entered into under this chapter, whichever is later.

23 (3) The duration of any collective bargaining agreement between the
24 state and bargaining units of employees working for the department of
25 corrections under this chapter shall not exceed one fiscal biennium.

--- END ---