
SUBSTITUTE HOUSE BILL 1490

State of Washington

63rd Legislature

2013 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Tharinger, Pollet, Walsh, Green, Fitzgibbon, Goodman, Hope, Moscoso, Freeman, Lytton, Ormsby, Stanford, Ryu, Lias, Fey, and Bergquist)

READ FIRST TIME 02/18/13.

1 AN ACT Relating to the public employees' collective bargaining act
2 as applied to department of corrections employees; reenacting and
3 amending RCW 41.80.020; and adding new sections to chapter 41.56 RCW.

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

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

7 (1) In addition to the entities listed in RCW 41.56.020, this
8 chapter applies to the state with respect to employees covered by
9 chapter 41.06 RCW working for the department of corrections, except
10 confidential employees as defined in RCW 41.80.005, members of the
11 Washington management service, and internal auditors.

12 (2) This chapter governs the collective bargaining relationship
13 between the state and employees working for the department of
14 corrections, as described in subsection (1) of this section, except as
15 follows:

16 (a) The state shall be represented by the governor or the
17 governor's designee who is appointed under chapter 41.80 RCW.

18 (b) A bargaining unit of employees within the department of

1 corrections existing on the effective date of this section is an
2 appropriate unit unless the unit does not meet the requirements of RCW
3 41.56.060.

4 (c) The exclusive bargaining representative or representatives
5 certified to represent the bargaining units existing at the department
6 of corrections on the effective date of this section shall continue as
7 the exclusive bargaining representative without the necessity of an
8 election.

9 (d) If an exclusive bargaining representative represents more than
10 one bargaining unit within the department of corrections, the exclusive
11 bargaining representative shall negotiate with the governor or the
12 governor's designee one master collective bargaining agreement on
13 behalf of all the employees in bargaining units that the exclusive
14 bargaining representative represents within the department of
15 corrections.

16 (e) Notwithstanding the definition of collective bargaining in RCW
17 41.56.030, the scope of collective bargaining between the
18 representatives of the employer and the exclusive bargaining
19 representative is the same as the scope of collective bargaining
20 described in RCW 41.80.020. The employer and the exclusive bargaining
21 representative shall not bargain over matters pertaining to management
22 rights established in RCW 41.80.040.

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

29 (3) The governor or the governor's designee shall periodically
30 consult with the joint committee on employment relations created in RCW
31 41.80.010(5) regarding appropriations necessary to implement the
32 compensation and fringe benefit provisions in a collective bargaining
33 agreement and, upon completion of negotiations, advise the committee on
34 the elements of the agreement and on any legislation necessary to
35 implement the agreement.

36 (4) The governor shall submit a request for funds necessary to
37 implement the compensation and fringe benefit provisions in the
38 collective bargaining agreement or interest arbitration award, or for

1 legislation necessary to implement the agreement or award. Requests
2 for funds necessary to implement the compensation and fringe benefit
3 provisions of bargaining agreements or interest arbitration awards
4 shall not be submitted to the legislature by the governor unless such
5 requests:

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

9 (b) Have been certified by the director of financial management as
10 being feasible financially for the state.

11 (5) The legislature shall approve or reject the submission of the
12 request for funds as a whole. The legislature shall not consider a
13 request for funds to implement a collective bargaining agreement or
14 interest arbitration award unless the request is transmitted to the
15 legislature as part of the governor's budget document submitted under
16 RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to
17 act on the submission, the agreement or award may be reopened for the
18 sole purpose of renegotiating the funds necessary to implement the
19 agreement.

20 (6) If, after the compensation and fringe benefit provisions of an
21 agreement or award are approved by the legislature, a significant
22 revenue shortfall occurs resulting in reduced appropriations, as
23 declared by proclamation of the governor or by resolution of the
24 legislature, both parties shall immediately enter into collective
25 bargaining for a mutually agreed upon modification of the agreement.

26 (7) After the expiration date of a collective bargaining agreement
27 negotiated under this chapter, all of the terms and conditions
28 specified in the collective bargaining agreement remain in effect until
29 the effective date of a subsequently negotiated agreement, not to
30 exceed one year from the expiration date stated in the agreement.
31 Thereafter, the employer may unilaterally implement according to law.

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

34 In addition to the classes of employees listed in RCW
35 41.56.030(13), the provisions of RCW 41.56.430 through 41.56.452 and
36 41.56.470, 41.56.480, and 41.56.490 also apply to the employees of the

1 state working for the department of corrections as described in section
2 1(1) of this act, subject to the following:

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

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

6 (3) In making its determination, the arbitration panel shall be
7 mindful of the legislative purpose enumerated in RCW 41.56.430 and, as
8 additional standards or guidelines to aid it in reaching a decision,
9 shall take into consideration the following factors:

10 (a) The financial ability of the department of corrections to pay
11 for the compensation and benefit provisions of a collective bargaining
12 agreement;

13 (b) The constitutional and statutory authority of the employer;

14 (c) Stipulations of the parties;

15 (d) Comparison of the hours and conditions of employment of
16 personnel involved in the proceedings with the hours and conditions of
17 employment of like personnel of like state government employers of
18 similar size in the western United States;

19 (e) The ability of the state to retain employees working for the
20 department of corrections;

21 (f) The overall compensation presently received by employees of the
22 department of corrections, including direct wage compensation,
23 vacations, holidays and other paid excused time, pensions, insurance
24 benefits, and all other direct or indirect monetary benefits received;

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

27 (h) 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 (4) The decision of an arbitration panel is not binding on the
33 legislature and, if the legislature does not approve the funds
34 necessary to implement the compensation and fringe benefit provisions
35 of the arbitrated collective bargaining agreement, is not binding on
36 the state or the department of corrections.

1 **Sec. 3.** RCW 41.80.020 and 2011 1st sp.s. c 50 s 939 and 2011 1st
2 sp.s. c 43 s 445 are each reenacted and amended to read as follows:

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

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

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

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

12 (c) Rules of the human resources director, the director of
13 enterprise services, or the Washington personnel resources board
14 adopted under RCW 41.06.157.

15 (3) Matters subject to bargaining include the number of names to be
16 certified for vacancies, promotional preferences, and the dollar amount
17 expended on behalf of each employee for health care benefits. However,
18 except as provided otherwise in this subsection for institutions of
19 higher education, negotiations regarding the number of names to be
20 certified for vacancies, promotional preferences, and the dollar amount
21 expended on behalf of each employee for health care benefits shall be
22 conducted between the employer and one coalition of all the exclusive
23 bargaining representatives subject to this chapter and all the
24 exclusive bargaining representatives subject to section 1 of this act.

25 The exclusive bargaining representatives for employees that are subject
26 to chapter 47.64 RCW shall bargain the dollar amount expended on behalf
27 of each employee for health care benefits with the employer as part of
28 the coalition under this subsection. Any such provision agreed to by
29 the employer and the coalition shall be included in all master
30 collective bargaining agreements negotiated by the parties. For
31 institutions of higher education, promotional preferences and the
32 number of names to be certified for vacancies shall be bargained under
33 the provisions of RCW 41.80.010(4). For agreements covering the 2011-
34 2013 fiscal biennium, any agreement between the employer and the
35 coalition regarding the dollar amount expended on behalf of each
36 employee for health care benefits is a separate agreement and shall not
37 be included in the master collective bargaining agreements negotiated
38 by the parties.

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

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

10 (6) Except as otherwise provided in this chapter, if a conflict
11 exists between an executive order, administrative rule, or agency
12 policy relating to wages, hours, and terms and conditions of employment
13 and a collective bargaining agreement negotiated under this chapter,
14 the collective bargaining agreement shall prevail. A provision of a
15 collective bargaining agreement that conflicts with the terms of a
16 statute is invalid and unenforceable.

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

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.56 RCW
20 to read as follows:

21 (1) Collective bargaining negotiations between the state and
22 bargaining units of employees working for the department of corrections
23 under this chapter shall commence no later than July 1, 2014. A
24 collective bargaining agreement between the state and any bargaining
25 unit of employees working for the department of corrections entered
26 into under this chapter shall not be effective prior to July 1, 2015.

27 (2) Any collective bargaining agreement between the state and any
28 bargaining unit of employees working for the department of corrections
29 entered into under chapter 41.80 RCW before July 1, 2014, that expires
30 after July 1, 2014, shall, unless a superseding agreement complying
31 with this chapter is negotiated by the parties, remain in full force
32 during its duration, but the agreement may not be renewed or extended
33 beyond July 1, 2015. If an agreement under this chapter cannot be
34 reached by July 1, 2015, the terms and conditions of any collective
35 bargaining agreement negotiated under chapter 41.80 RCW shall remain in
36 effect until the effective date of an agreement under this chapter, not

1 to exceed one year from the expiration date stated in the agreement.
2 Thereafter, the employer may unilaterally implement according to law.
3 (3) The duration of any collective bargaining agreement between the
4 state and bargaining units of employees working for the department of
5 corrections under this chapter shall not exceed one fiscal biennium.

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