
ENGROSSED SUBSTITUTE HOUSE BILL 2933

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Cody, Benson, Ormsby, O'Brien, Sullivan, Wood and Morrell)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to clarifying collective bargaining processes for
2 individual providers; amending RCW 74.39A.270 and 74.39A.300; adding a
3 new section to chapter 41.04 RCW; and adding a new section to chapter
4 43.01 RCW.

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

6 **Sec. 1.** RCW 74.39A.270 and 2002 c 3 s 6 are each amended to read
7 as follows:

8 (1) Solely for the purposes of collective bargaining and as
9 expressly limited under subsections (2) and (3) of this section, the
10 authority is the public employer, as defined in chapter 41.56 RCW, of
11 individual providers, who, solely for the purposes of collective
12 bargaining, are public employees, as defined in chapter 41.56 RCW, of
13 the authority. To accommodate the role of the state as payor for the
14 community-based services provided under this chapter and to ensure the
15 coordination necessary to implement RCW 74.39A.300 (1) and (2),
16 bargaining under this section shall be conducted by the governor's
17 designee appointed under chapter 41.80 RCW. The governor's designee
18 shall consult with the authority before any agreement is reached under
19 this section.

1 (2) Chapter 41.56 RCW governs the (~~employment~~) collective
2 bargaining relationship between the authority and individual providers,
3 except as otherwise expressly provided in chapter 3, Laws of 2002 and
4 except as follows:

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

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

11 (c) The mediation and interest arbitration provisions of RCW
12 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

13 (i) Negotiations shall be commenced by May 1 of any year prior to
14 the year in which an existing collective bargaining agreement expires;

15 (ii) With respect to factors to be taken into consideration by an
16 interest arbitration panel, the panel shall consider the financial
17 ability of the state to pay for the compensation and fringe benefit
18 provisions of a collective bargaining agreement; and

19 (iii) The decision of the arbitration panel is not binding on the
20 legislature and, if the legislature does not approve the request for
21 funds necessary to implement the compensation and fringe benefit
22 provisions of the arbitrated collective bargaining agreement, is not
23 binding on the authority or the state;

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

25 (e) Individual providers who are related to, or family members of,
26 consumers or prospective consumers are not, for that reason, exempt
27 from chapter 3, Laws of 2002 or chapter 41.56 RCW.

28 (3) Individual providers who are public employees (~~of the~~
29 ~~authority~~) solely for the purposes of collective bargaining under
30 subsection (1) of this section are not, for that reason, employees of
31 the state, its political subdivisions, or an area agency on aging for
32 any purpose. Chapter 41.56 RCW applies only to the governance of the
33 collective bargaining relationship between the authority and individual
34 providers as provided in subsections (1) and (2) of this section.

35 (4) Consumers and prospective consumers retain the right to select,
36 hire, supervise the work of, and terminate any individual provider
37 providing services to them. Consumers may elect to receive long-term

1 in-home care services from individual providers who are not referred to
2 them by the authority.

3 (5) In implementing and administering chapter 3, Laws of 2002,
4 neither the authority nor any of its contractors may reduce or increase
5 the hours of service for any consumer below or above the amount
6 determined to be necessary under any assessment prepared by the
7 department or an area agency on aging.

8 (6) Except as expressly limited in this section and RCW 74.39A.300,
9 the wages, hours, and working conditions of individual providers are
10 determined solely through collective bargaining as provided in this
11 section. No agency or department of the state, other than the
12 authority, may establish policies or rules governing the wages or hours
13 of individual providers. However, to recognize the obligation of the
14 department to comply with Title XIX of the federal social security act
15 and with the terms and conditions of any community-based waiver granted
16 by the federal department of health and human services, including those
17 related to client safety and quality of care, and to ensure federal
18 financial participation in the provision of these services, the
19 department retains authority to:

20 (a) Establish a plan of care for each consumer and to determine the
21 hours of care that each consumer is eligible to receive;

22 (b) Terminate its contracts with individual providers who are not
23 adequately meeting the needs of a particular consumer; and

24 (c) Deny a contract under RCW 74.39A.095(8).

25 (7)(a) The authority, the area agencies on aging, or their
26 contractors under chapter 3, Laws of 2002 may not be held vicariously
27 liable for the action or inaction of any individual provider or
28 prospective individual provider, whether or not that individual
29 provider or prospective individual provider was included on the
30 authority's referral registry or referred to a consumer or prospective
31 consumer.

32 (b) The members of the board are immune from any liability
33 resulting from implementation of chapter 3, Laws of 2002.

34 ((+7)) (8) Nothing in this section affects the state's
35 responsibility with respect to ((the state payroll system or))
36 unemployment insurance for individual providers. However, individual
37 providers are not to be considered, as a result of the state assuming
38 this responsibility, employees of the state.

1 **Sec. 2.** RCW 74.39A.300 and 2002 c 3 s 9 are each amended to read
2 as follows:

3 (1) Upon meeting the requirements of subsection (2) 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 administer chapter 3, Laws
7 of 2002 and to implement ((any)) the compensation and fringe benefits
8 provisions of a collective bargaining agreement entered into under RCW
9 74.39A.270 or for legislation necessary to implement ((any)) such
10 agreement ((within ten days of the date on which the agreement is
11 ratified or, if the legislature is not in session, within ten days
12 after the next legislative session convenes)).

13 (2) A request for funds necessary to implement the compensation and
14 fringe benefits provisions of a collective bargaining agreement entered
15 into under RCW 74.39A.270 shall not be submitted by the governor to the
16 legislature unless such request:

17 (a) Has been submitted to the director of the office of financial
18 management by October 1st prior to the legislative session at which the
19 request is to be considered; and

20 (b) Has been certified by the director of the office of financial
21 management as being feasible financially for the state or reflects the
22 binding decision of an arbitration panel reached under RCW
23 74.39A.270(2)(c).

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

29 ((+2)) (4) When any increase in individual provider wages or
30 benefits is negotiated or agreed to by the authority, no increase in
31 wages or benefits negotiated or agreed to under chapter 3, Laws of 2002
32 will take effect unless and until, before its implementation, the
33 department has determined that the increase is consistent with federal
34 law and federal financial participation in the provision of services
35 under Title XIX of the federal social security act.

36 ((+3)) (5) There is hereby created a joint committee on home care
37 worker relations, which consists of two members with leadership
38 positions in the house of representatives, representing each of the two

1 largest caucuses; the chair and ranking minority member of the house of
2 representatives appropriations committee, or its successor,
3 representing each of the two largest caucuses; two members with
4 leadership positions in the senate, representing each of the two
5 largest caucuses; and the chair and ranking minority member of the
6 senate ways and means committee, or its successor, representing each of
7 the two largest caucuses. The authority shall periodically consult
8 with the committee regarding appropriations necessary to implement the
9 compensation and fringe benefits provisions of any collective
10 bargaining agreement and, upon completion of negotiations, advise the
11 committee on the elements of the agreement and on any legislation
12 necessary to implement such agreement.

13 (6) After the expiration date of any collective bargaining
14 agreement entered into under RCW 74.39A.270, all of the terms and
15 conditions specified in any such agreement remain in effect until the
16 effective date of a subsequent agreement, not to exceed one year from
17 the expiration date stated in the agreement.

18 NEW SECTION. Sec. 3. A new section is added to chapter 41.04 RCW
19 to read as follows:

20 Individual providers, as defined in RCW 74.39A.240, are not
21 employees of the state or any of its political subdivisions and are
22 specifically and entirely excluded from all provisions of this title,
23 except as provided in RCW 74.39A.270.

24 NEW SECTION. Sec. 4. A new section is added to chapter 43.01 RCW
25 to read as follows:

26 The provisions of RCW 43.01.040 through 43.01.044 shall not be
27 applicable to individual providers under RCW 74.39A.220 through
28 74.39A.300.

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