
SENATE BILL 6657

State of Washington

58th Legislature

2004 Regular Session

By Senators Esser, Benton, Schmidt, Sheahan, Roach, Rasmussen, Keiser, Doumit, Prentice, Haugen and Shin

Read first time 01/28/2004. Referred to Committee on Health & Long-Term Care.

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.

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

18 (a) The only unit appropriate for the purpose of collective

1 bargaining under RCW 41.56.060 is a statewide unit of all individual
2 providers;

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

6 (c) The mediation and interest arbitration provisions of RCW
7 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

8 (i) With respect to commencement of negotiations between the
9 authority and the bargaining representative of individual providers,
10 negotiations shall be commenced by May 1 of any year prior to the year
11 in which an existing collective bargaining agreement expires; and

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

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

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

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

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

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

37 (6)(a) The authority, the area agencies on aging, or their
38 contractors under chapter 3, Laws of 2002 may not be held vicariously

1 liable for the action or inaction of any individual provider or
2 prospective individual provider, whether or not that individual
3 provider or prospective individual provider was included on the
4 authority's referral registry or referred to a consumer or prospective
5 consumer.

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

8 (7) Nothing in this section affects the state's responsibility with
9 respect to ~~((the state payroll system or))~~ unemployment insurance for
10 individual providers. However, individual providers are not to be
11 considered, as a result of the state assuming this responsibility,
12 employees of the state.

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

15 (1) Upon meeting the requirements of subsection (2) of this
16 section, the governor must submit, as a part of the proposed biennial
17 or supplemental operating budget submitted to the legislature under RCW
18 43.88.030, a request for funds necessary to administer chapter 3, Laws
19 of 2002 and to implement ((any)) the compensation and fringe benefits
20 provisions of a collective bargaining agreement entered into under RCW
21 74.39A.270 or for legislation necessary to implement ((any)) such
22 agreement ((within ten days of the date on which the agreement is
23 ratified or, if the legislature is not in session, within ten days
24 after the next legislative session convenes)).

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

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

32 (b) Has been certified by the director of the office of financial
33 management as being feasible financially for the state or reflects the
34 binding decision of an arbitration panel reached under RCW
35 74.39A.270(2)(c).

36 (3) The legislature must approve or reject the submission of the
37 request for funds as a whole. If the legislature rejects or fails to

1 act on the submission, any such agreement will be reopened solely for
2 the purpose of renegotiating the funds necessary to implement the
3 agreement.

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

11 ~~((+3))~~ (5) There is hereby created a joint committee on home care
12 worker relations, which consists of two members with leadership
13 positions in the house of representatives, representing each of the two
14 largest caucuses; the chair and ranking minority member of the house of
15 representatives appropriations committee, or its successor,
16 representing each of the two largest caucuses; two members with
17 leadership positions in the senate, representing each of the two
18 largest caucuses; and the chair and ranking minority member of the
19 senate ways and means committee, or its successor, representing each of
20 the two largest caucuses. The authority shall periodically consult
21 with the committee regarding appropriations necessary to implement the
22 compensation and fringe benefits provisions of any collective
23 bargaining agreement and, upon completion of negotiations, advise the
24 committee on the elements of the agreement and on any legislation
25 necessary to implement such agreement.

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

31 (7) Except as expressly limited in this section, the wages, hours,
32 and working conditions of individual providers are determined solely
33 through collective bargaining as provided in this section. No agency
34 or department of this state, other than the authority, may establish
35 policies or rules governing the wages or hours of individual providers.
36 However, this subsection does not modify:

37 (a) The department's authority to establish a plan of care for each

1 consumer and to determine the hours of care that each consumer is
2 eligible to receive;

3 (b) The department's authority to terminate its contracts with
4 individual providers who are not adequately meeting the needs of a
5 particular consumer;

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

9 (d) The consumer's right to determine conditions of employment for
10 each individual provider in the consumer's employ.

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

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

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

19 The provisions of RCW 43.01.040 through 43.01.044 shall not be
20 applicable to individual providers under RCW 74.39A.220 through
21 74.39A.300.

--- END ---