

SENATE BILL REPORT

ESHB 2475

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 23, 2006
Ways & Means, February 27, 2006

Title: An act relating to collective bargaining regarding hours of work for individual providers.

Brief Description: Requiring collective bargaining regarding hours of work for individual providers.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Williams, Fromhold, Wood, B. Sullivan, Simpson, Sells, Ormsby and Green).

Brief History: Passed House: 2/13/06, 97-1.

Committee Activity: Labor, Commerce, Research & Development: 2/21/06, 2/23/06 [DP-WM, DNP, w/oRec].

Ways & Means: 2/27/06 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senator Parlette, Ranking Minority Member.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Kohl-Welles, Parlette, Pflug, Pridemore, Rasmussen, Roach, Rockefeller, Schoesler and Thibaudeau.

Staff: Tim Yowell (786-7435)

Background: The Department of Social and Health Services (DSHS) contracts with agency and individual home care workers (individual providers) to provide in-home long-term care services for elderly and disabled clients (consumers) who are eligible for publicly funded services through the DSHS's Aging and Adult Services and Developmental Disabilities

programs. Home care workers provide consumers with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. The individual providers are hired and fired by the consumer, but are paid by DSHS.

The Home Care Quality Authority (HCQA) is responsible for establishing qualifications for individual providers, recruiting and training individual providers, and providing assistance to consumers in finding care by establishing a referral registry.

In implementing the long-term care services program, DSHS adopted a rule, generally known as the "shared living" rule, under which DSHS will not pay for services such as shopping, housework, laundry, or meal preparation if the individual provider lives in the same household with the consumer. According to hearing examiner findings made in an unfair labor practice case filed with the Public Employment Relations Commission (PERC), this rule has resulted in a 15 percent deduction in the hours allotted to individual providers as compensation for their services in homes where they also reside.

Individual providers have collective bargaining rights under the Public Employees' Collective Bargaining Act administered by PERC. The law explicitly states that wages, hours, and working conditions are determined solely through collective bargaining and, except for the HCQA, no state agency may establish policies or rules governing wages or hours of individual providers. However, this provision also states that it does not modify various responsibilities of DSHS, including the authority to establish a consumer's plan of care and determine the hours of care for which a consumer is eligible.

The first contract to be implemented under the individual provider collective bargaining law was effective until June 30, 2005. By law, negotiations for a new agreement must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires. In April 2004, the union representing the individual providers and the Governor's Labor Relations Office began negotiating for a successor contract. By August, a PERC mediator determined that the parties were at an impasse on several issues, which were certified to an arbitrator. One of these issues involved the "shared living" rule.

On August 31, 2004, the Office of Financial Management filed an unfair labor practice with the PERC, alleging that the union failed to bargain in good faith by insisting on submitting some issues, including the "shared living" rule issue, to arbitration. The PERC hearing examiner agreed that the union had committed an unfair labor practice, finding that the Legislature intended the DSHS to retain its core responsibility to administer the home care program and to set the hours of care and the plan of care for consumers receiving services. This decision was affirmed by the PERC on October 12, 2005.

Summary of Amended Bill: At the request of the bargaining representative for individual providers, the Governor or designee must collectively bargain over how DSHS's core responsibility to manage long-term in-home care affects hours of work for individual providers. This requirement is not to be interpreted as requiring bargaining over an individual consumer's plan of care.

The language recognizing DSHS's authority to establish plans of care and determine hours of care for consumers is modified to reference the agency's core responsibility to manage long-

term in-home care, including determining the level of care that consumers are eligible to receive.

The reference to the Home Care Quality Authority adopting rules governing wages or hours of individual providers is deleted.

The governor is to include representatives of the Home Care Quality Authority on the bargaining team for all negotiations involving the hours worked by individual providers. The Authority is to obtain informed input from consumers on such issues.

Amended Bill Compared to Substitute Bill: The amended bill provides for the Home Care Quality Authority participation, and consumer input, into negotiations regarding hours worked.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Labor, Commerce, Research & Development): Many home care workers have had their hours cut by DSHS as a result of the shared work rule. This rule impacts workers' ability to care for the consumers. DSHS should pay for the hours that home care workers work. This legislation has been worked on for two years and all the stakeholders have been involved and are in agreement. This bill represents an agreement as to when the hours of home care workers can be cut; this issue should be collectively bargained. The bill does not interfere with DSHS's ability to do rulemaking.

Testimony Against (Labor, Commerce, Research & Development): Consumers should be at the bargaining table. This bill would enact unfair labor practices by including employees at the bargaining table but not include consumers (technically the employer) at the bargaining table. Consumers' lives are scheduled around the workers' needs, and that is not fair. The interests of consumers and employees are not always the same, especially when money is involved. This is a business relationship and the consumers should have a seat at the table.

Testimony Other: The Health Care Quality Authority has been at the bargaining table with the state although the state is not required to have them there. I-775 did recognize the importance of having consumers at the bargaining table but the Legislature later modified this requirement. DSHS and the union do not represent consumers so it makes sense to have them at the bargaining table. This bill does not represent an unfair labor practice in a legal sense.

Who Testified (Labor, Commerce, Research & Development): PRO: Representative Conway, Prime Sponsor; Denise Swett, SEIU 775; David Rolf, SEIU 775.

CON: Mark Stroh, Washington Protection & Advocacy; Emily Rogers, The Arc of Washington; Joelle Brouner, citizen.

OTHER: Donna Patrick, DD Council; Tobey Olson, Governor's Council on Disability Issues in Employment; Marv Schurke, PERC.

Testimony For (Ways & Means): None.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): No one.