

SB 6022 - S AMD 418

By Senators Conway, Hasegawa, Darneille, Keiser, Fraser

RULED BEYOND SCOPE 02/13/2014

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On page 3, after line 7, insert the following:

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

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to employees working for western state hospital and eastern state hospital.

(2) This chapter governs the collective bargaining relationship between the state and employees working for western state hospital and eastern state hospital, except as follows:

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

(b)(i) The following bargaining units of employees working for western state hospital and eastern state hospital shall be considered appropriate units under this chapter as of the effective date of this section, but there may be proceedings concerning certification and unit clarification under this chapter thereafter:

(A) All nonsupervisory classified employees of the state working for western state hospital in the psychiatric treatment and recovery center, the habilitative mental health unit, and at eastern state hospital in the adult psychiatric unit, forensic services unit, and geropsychiatric unit, excluding persons exempt from the coverage of chapter 41.06 RCW, employees in the Washington management service, confidential employees, supervisors, institutions employees in

1 historically excluded groups that have not been modified by subsequent
2 orders of the public employment relations commission, and all other
3 employees of the state;

4 (B) All supervisory classified employees of the state working for
5 western state hospital in the psychiatric treatment and recovery
6 center, the habilitative mental health unit, and at eastern state
7 hospital in the adult psychiatric unit, forensic services unit, and
8 geropsychiatric unit, excluding persons exempt from the coverage of
9 chapter 41.06 RCW, employees in the Washington management services,
10 confidential employees, nonsupervisory employees, institutions
11 employees in historically excluded groups that have not been modified
12 by subsequent orders, and all other employees of the state.

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

15 (c) The exclusive bargaining representatives recognized under
16 chapter 41.80 RCW as representing the bargaining units of employees
17 working for western state hospital and eastern state hospital shall be
18 the exclusive bargaining representatives recognized under this chapter
19 as representing the bargaining units of employees working for western
20 state hospital and eastern state hospital without the necessity of an
21 election as of the effective date of this section, but there may be
22 proceedings concerning representation under this chapter thereafter.

23 (d) If an exclusive bargaining representative represents more than
24 one bargaining unit, the exclusive bargaining representative shall
25 negotiate with the governor or the governor's designee one master
26 collective bargaining agreement on behalf of all the employees in
27 bargaining units that the exclusive bargaining representative
28 represents.

29 (e) Notwithstanding the definition of "collective bargaining" in
30 RCW 41.56.030(4), the scope of collective bargaining for employees
31 working for western state hospital and eastern state hospital: (i)
32 Includes terms and conditions of employment relevant to employee
33 safety, such as staffing levels with a direct relationship to employee
34 workload and safety; (ii) excludes matters pertaining to management

1 rights established in RCW 41.80.040, such as the employer's budget,
2 the size of the agency workforce, and the right to direct and
3 supervise employees; and (iii) is otherwise the same as the scope of
4 collective bargaining described in RCW 41.80.020.

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

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

18 (4) The governor shall submit a request for funds necessary to
19 implement the compensation and fringe benefit provisions in the
20 collective bargaining agreement or for legislation necessary to
21 implement the agreement. Requests for funds necessary to implement
22 the compensation and fringe benefit provisions of bargaining
23 agreements shall not be submitted to the legislature by the governor
24 unless such requests:

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

28 (b) Have been certified by the director of financial management as
29 being feasible financially for the state or reflects the decision of
30 an arbitration panel reached under section 2 of this act.

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32 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW
33 to read as follows:
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1 In addition to the classes of employees listed in RCW
2 41.56.030(13), the provisions of RCW 41.56.430 through 41.56.452 and
3 41.56.470, 41.56.480, and 41.56.490 also apply to the employees of the
4 state working for western state hospital and eastern state hospital as
5 provided in this section, subject to the following:

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

1 absent an agreement to the contrary. The parties shall execute a
2 written agreement before November 1st of each odd-numbered year
3 setting forth the names of the members of the arbitration panel and
4 the dates reserved for bargaining and arbitration. This subsection
5 imposes minimum obligations only and is not intended to define or
6 limit a party's full, good faith bargaining obligation under other
7 sections of this chapter.

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

14 (3) The decision of an arbitration panel is not binding on the
15 legislature and, if the legislature does not approve the funds
16 necessary to implement the compensation and fringe benefit provisions
17 in an arbitrated collective bargaining agreement, is not binding on
18 the state or western state hospital and eastern state hospital.

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

23 (a) The financial ability of the department to pay for the
24 provisions of a collective bargaining agreement;

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

26 (c) Stipulations of the parties;

27 (d) Comparison of the terms and conditions of employment relevant
28 to employee safety of personnel involved in the proceedings with the
29 terms and conditions of employment relevant to employee safety of like
30 personnel of like employers of similar size on the west coast of the
31 United States;

32 (e) Changes in any of the factors listed in this subsection during
33 the pendency of the proceedings; and

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1 (f) Such other factors, not confined to those listed in this
2 subsection, which are normally or traditionally taken into
3 consideration in the determination of matters that are subject to
4 bargaining under section 1(2)(e)(i) of this act and mediation or
5 arbitration under this section.

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7 **Sec. 4.** RCW 41.80.020 and 2013 2nd sp.s. c 4 s 972 are each
8 amended to read as follows:

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

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

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

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

18 (c) Rules of the human resources director, the director of
19 enterprise services, or the Washington personnel resources board
20 adopted under RCW 41.06.157.

21 (3) Matters subject to bargaining include the number of names to
22 be certified for vacancies, promotional preferences, and the dollar
23 amount expended on behalf of each employee for health care benefits.
24 However, except as provided otherwise in this subsection for
25 institutions of higher education, negotiations regarding the number of
26 names to be certified for vacancies, promotional preferences, and the
27 dollar amount expended on behalf of each employee for health care
28 benefits shall be conducted between the employer and one coalition of
29 all the exclusive bargaining representatives subject to this chapter
30 and all the exclusive bargaining representatives subject to section 1
31 of this act. The exclusive bargaining representatives for employees
32 that are subject to chapter 47.64 RCW shall bargain the dollar amount
33 expended on behalf of each employee for health care benefits with the
34 employer as part of the coalition under this subsection. Any such

1 provision agreed to by the employer and the coalition shall be
2 included in all master collective bargaining agreements negotiated by
3 the parties. For institutions of higher education, promotional
4 preferences and the number of names to be certified for vacancies
5 shall be bargained under the provisions of RCW 41.80.010(4). For
6 agreements covering the 2013-2015 fiscal biennium, any agreement
7 between the employer and the coalition regarding the dollar amount
8 expended on behalf of each employee for health care benefits is a
9 separate agreement and shall not be included in the master collective
10 bargaining agreements negotiated by the parties.

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

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

20 (6) Except as otherwise provided in this chapter, if a conflict
21 exists between an executive order, administrative rule, or agency
22 policy relating to wages, hours, and terms and conditions of
23 employment and a collective bargaining agreement negotiated under this
24 chapter, the collective bargaining agreement shall prevail. A
25 provision of a collective bargaining agreement that conflicts with the
26 terms of a statute is invalid and unenforceable.

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

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

32 (1) Collective bargaining negotiations between the state and
33 bargaining units of employees working for western state hospital and
34 eastern state hospital under this chapter shall commence no later than

1 July 1, 2014. A collective bargaining agreement between the state and
2 any bargaining unit of employees working for western state hospital
3 and eastern state hospital entered into under this chapter shall not
4 be effective prior to July 1, 2015.

5 (2) Any collective bargaining agreement between the state and any
6 bargaining unit of employees working for western state hospital and
7 eastern state hospital entered into under chapter 41.80 RCW before
8 July 1, 2014, that expires after July 1, 2014, shall, unless a
9 superseding agreement complying with this chapter is negotiated by the
10 parties, remain in full force during its duration, but the agreement
11 may not be renewed or extended beyond July 1, 2015, or until
12 superseded by a collective bargaining agreement entered into under
13 this chapter, whichever is later.

14 (3) The duration of any collective bargaining agreement between
15 the state and bargaining units of employees working for western state
16 hospital and eastern state hospital under this chapter shall not
17 exceed one fiscal biennium."

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19 Renumber the remaining sections consecutively and correct any
20 internal references accordingly.

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25 On page 1, line 2 of the title, after "RCW 9A.36.031" insert ",
26 and RCW 41.80.020; adding new sections to chapter 41.56 RCW"

EFFECT: The collective bargaining provisions of the Public Employees' Collective Bargaining Act (PECBA), instead of the Personnel System Reform Act (PSRA), are applied to the State of Washington with respect to employees working for Western and Eastern State Hospitals.

The mediation and binding interest arbitration provisions of the PECBA are also extended to state hospital employees, but only for terms and conditions of employment relevant to employee safety.

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The scope of bargaining includes terms and conditions of employment relevant to employee safety, such as staffing levels with a direct relationship to employee workload and safety. The scope excludes matters pertaining to management rights, such as the employer's budget, the size of the agency's workforce, and the right to direct and supervise employees. The scope is otherwise the same as described in the PSRA, and includes wages, hours, and other terms and conditions of employment

Certain bargaining units are "grandfathered" and considered appropriate units under the PECBA. These bargaining units include:

- nonsupervisory classified employees working at Western State Hospital in the psychiatric treatment and recovery center, the habilitative mental health unit; and employees working at Eastern State Hospital in the adult psychiatric unit, forensic services unit, and the geropsychiatric unit.
- supervisory classified employees working at Western State Hospital in the psychiatric treatment and recovery center, the habilitative mental health unit; and employees working at Eastern State Hospital in the adult psychiatric unit, forensic services unit, and the geropsychiatric unit.

Bargaining representatives recognized under the PSRA are also "grandfathered" and recognized as representing bargaining units under the PECBA.

Other collective bargaining provisions are comparable to the PSRA.

Employees are subject to mediation and binding interest arbitration if an impasse occurs in negotiations.

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