

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERPRETERS UNITED – WASHINGTON
FEDERATION OF STATE EMPLOYEES

Involving certain employees of:

STATE – LANGUAGE ACCESS
PROVIDERS

CASE 23334-E-10-3570

DECISION 10871-B - PECB

DECISION OF COMMISSION

Anita L. Hunter, Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Donna Stambaugh*, Senior Assistant Attorney General, for the employer.

In 2010, the Legislature passed Laws of 2010, Chapter 296 (ESSB 6726), which granted collective bargaining rights to independent contractors providing “spoken language interpreter services for department of social and health services (DSHS) appointments or medicaid enrollee appointments . . .” Laws of 2010, Chp. 296, Sec 3(14)(a). The statute designated the Governor as the public employer and language access providers (interpreters) as public employees for purposes of collective bargaining on limited topics. Laws of 2010, Chp. 296, Sec 2. ESSB 6726 provided that a statewide unit of all language access providers is the only unit appropriate for purposes of collective bargaining. Laws of 2010, Chp. 296, Sec. 2(2)(a).

Specifically, RCW 41.56.510 grants collective bargaining rights to interpreters as defined in RCW 41.56.030(11):

(a) “Language access provider” means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or Medicaid enrollee appointments, or provided these

services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) “Language access provider” does not mean an owner, manager, or employee of a broker or a language access agency.

On July 2, 2010, the Washington Federation of State Employees (union) filed a petition seeking to be certified as the exclusive bargaining representative of a bargaining unit of language access providers. During an August 5, 2010 investigation conference with Representation Coordinator Sally J. Iverson, the parties agreed to a bargaining unit description almost identical to the statutory language. During the investigation conference, the union presented a list of 217 interpreters the union believed should be included in the bargaining unit. The employer did not agree that all those interpreters should be included in the bargaining unit. Including the 217 challenged voters, 1556 interpreters were eligible to vote in the election. An election was conducted, and the union was certified as the exclusive bargaining representative. The challenges to the eligibility of 217 voters did not affect the outcome of the election.

Prior to a hearing on the eligibility of the challenged voters, the parties agreed to the eligibility of all but 34 of the challenged voters: 30 language access providers working in the Medicaid Administrative Match Program (MAM) and 4 language access providers working in legal settings. After a hearing, the Executive Director issued a decision including the 34 challenged voters in the bargaining unit.¹ The Executive Director concluded that the 34 challenged voters were language access providers as defined in RCW 41.56.030(11). Accordingly, the 34 challenged voters became part of the language access provider bargaining unit. The employer appealed the Executive Director’s decision.

ISSUES

1. Whether the independent contractors providing spoken language interpreter services through the MAM Program are language access providers within the definition of RCW 41.56.030(11)?

¹ *State – Language Access Providers*, Decision 10871-A (PECB, 2011).

2. Whether the independent contractors providing spoken language interpreter services in legal settings are language access providers within the definition of RCW 41.56.030(11)?

Independent contractors providing spoken language interpreter services through the MAM Program and in legal settings are language access providers within the definition of RCW 41.56.030(11). We affirm the Executive Director.

RELEVANT FACTS

Chapter 74.04 RCW governs the administration of public assistance. Medicaid is a form of public assistance. Under RCW 74.04.025(1), DSHS and the Office of Administrative Hearings have an obligation to provide bilingual services to non-English speaking applicants and recipients “to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.”

DSHS provides interpreter services to individuals with limited English proficiency in their interactions with DSHS. Interpreters are available to individuals seeking public assistance through DSHS and other services the agency provides, including determining eligibility for Medicaid.

Interpreter services are provided in a variety of ways. Bilingual DSHS employees may provide interpreter services.² DSHS may also use a brokerage system to obtain an interpreter. DSHS may use an interpreter from the Department of Enterprise Services statewide contract for either in-person or telephonic interpretation.³ Some DSHS offices arrange to have an interpreter present during certain time periods to provide services.

Under the brokerage model, the broker acts as the gatekeeper for interpreter services. When contacted to arrange interpreter services, the broker verifies that the services are for an individual

² Those employees are not at issue in this proceeding.

³ Testimony referred to a contract maintained by the state Department of General Administration. In 2011, the Department of General Administration was consolidated into the Department of Enterprise Services. Laws of 2011, Chapter 43.

who is a Medicaid enrollee and that the services are a covered service. The broker contacts a language access agency, who then arranges for an interpreter.

At the time the union filed its petition, DSHS was the designated state agency responsible for administering the Medicaid program.⁴ As the designated agency for Medicaid, DSHS received federal funding to administer the Medicaid program. Recipients of federal funds, including medical providers, are required to ensure equal access to their services. DSHS paid for interpreter services for Medicaid recipients.

Medicaid Administrative Match Program

The Medicaid Administrative Match Program (MAM) provides federal funding to local health jurisdictions, public hospitals, school districts, and tribes that provide qualifying activities. Through the MAM program, a local health jurisdiction or public hospital can receive matching funds for qualifying activities such as outreach, Medicaid application assistance, linking Medicaid enrollees to appropriate medical services, and, in some cases, interpreter services. Direct services are services such as medical appointments and vaccinations, which are billable directly to Medicaid through DSHS. Indirect activities are services that support the Medicaid program, such as outreach, assistance filling out applications, and linking Medicaid enrollees to health care. Indirect activities are not billable to Medicaid, but are eligible for MAM funding. The record below is not clear as to whether these interpreter services funded through MAM are for direct services or are for indirect activities.

The MAM Program funding is complex. Local public entities must provide 50% of the funding through local revenue and are eligible to receive a 50% match from the federal government. Local public entities request reimbursement from DSHS, which then passes through money from the federal government to the local public entity.

For interpreter services, the local public entity is able to bill the cost of the interpreter services and receive a 50% match from the federal government. The remaining 50% is paid from local

⁴ Legislation passed during the 2011 legislative session transferred this designation to the Health Care Authority effective July 1, 2011. Laws of 2011, 1st Special Session, Chapter 15 (2ESSHB 1738).

revenue. Local public entities are not allowed to use the DSHS brokerage service to pay for interpreters if the local public entity receives funding through MAM.

The MAM Program is only available to public hospital districts and local health jurisdictions. Private hospitals are not eligible to participate. Local health jurisdictions and public hospitals may use their employees to provide interpreter services or may contract with a language access agency or an independent contractor for interpreter services.

Legal Settings

The DSHS Division of Children and Family Services (DCFS) is responsible for protecting the safety and well-being of children. When DSHS removes a child from their parents' home, DSHS is required to participate in a hearing in Juvenile Court within 72 hours. DSHS is represented by the Attorney General's Office (AGO), who petitions the court for a hearing. If the parties to a court proceeding have limited English proficiency, an interpreter is required.

Interpreters for legal hearings are arranged in a number of ways. In Whatcom County, the court arranges for the interpreter. In some counties, the Assistant Attorney General representing DSHS will arrange for the interpreter. In King and Snohomish Counties, DSHS is responsible for arranging for the interpreter. The DSHS employee contacts a contractor or broker to arrange for an interpreter to be present at the hearing.

Interpreters in legal settings must be court certified. In circumstances when a court certified interpreter has not been available, the proceedings have been conducted with a non-certified interpreter.

APPLICABLE LEGAL PRINCIPLES

Statutory construction is a question of law and is reviewed de novo. *City of Pasco v. Public Employment Relations Commission*, 119 Wn.2d 504 (1992). When interpreting the statutes administered by this Commission, we must ascertain the meaning of the words within those statutes and give the words the full effect of the Legislature's intent. *State - Transportation*,

Decision 8317-B (PSRA, 2005). In ascertaining the meaning of a particular word or words in a statute, this Commission must consider both the statute's subject matter and the context in which the word is used. *Chamberlain v. Department of Transportation*, 79 Wn. App. 212, 217 (1995). Statutes must be interpreted and construed so that all language is given effect, and no portion is rendered meaningless or superfluous. *Whatcom County v. City of Bellingham*, 127 Wn.2d 537 (1996).

Absent a specific definition, contrary legislative intent, or ambiguity, words in statutes are accorded their plain and ordinary meaning. *Dennis v. Department of Labor and Industries*, 109 Wn.2d 476, 479 (1987). If a statute is "susceptible to two or more reasonable interpretations," it is ambiguous. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305 (2011), citing *Burton v. Lehman*, 153 Wn.2d 416, 423 (2005). The fact that two or more interpretations are conceivable does not render a statute ambiguous. *Five Corners Family Farmers v. State*, 173 Wn.2d at 305. If a statute is ambiguous, the Commission "may look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." *Five Corners Family Farmers v. State*, 173 Wn.2d at 306, citing *Rest. Dev., Inc. v. Canawill, Inc.*, 150 Wn.2d 674, 682 (2003). The Commission interprets the plain and ordinary meaning of words in the context of the statutory subject matter and the grammatical placement of the words. *State - Transportation*, Decision 8317-B.

ANALYSIS

When determining whether interpreters who provide spoken word interpretation for the MAM Program and in legal settings should be included in the bargaining unit, we must first examine the language of the statute to determine whether it is clear or ambiguous.

The Governor is the public employer of interpreters for purposes of collective bargaining. RCW 41.56.510(1). Interpreters, within the meaning of RCW 41.56.030(11), are public employees solely for purposes of collective bargaining. RCW 41.56.510(11). A statewide bargaining unit of all interpreters "is the only unit appropriate for purposes of collective bargaining." RCW

41.56.510(2)(a). The scope of collective bargaining for interpreters is limited. RCW 41.56.510(2)(c).

The statute is clear: the Governor is the employer. A statewide bargaining unit of all interpreters is the only appropriate unit. In order to qualify for inclusion in the bargaining unit, an interpreter must meet the definition of language access provider in RCW 41.56.030(11).

As codified in RCW 41.56.030(11),

(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

To be included in the bargaining unit, an interpreter must be an independent contractor. This clearly excludes employees of hospitals, local health jurisdictions, and other entities or political subdivisions who are providing spoken language interpreter services. The 34 challenged voters' independent contractor status is not in dispute.

The next requirement is that the interpreter provides spoken language interpreter services. There is no dispute that the 34 challenged voters provide spoken language interpreter services.

The third requirement is that the interpreter provide services for DSHS appointments or Medicaid enrollee appointments. The statute does not define appointment. Thus, we must accord the word its plain and ordinary meaning. An appointment is "an arrangement for a meeting." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED), 105 (1986). A DSHS appointment would include any meeting involving DSHS. A Medicaid enrollee appointment would include any meeting involving a Medicaid enrollee.

MAM Interpreters

The employer argues that the source of funds for paying for interpreter services is relevant to our determination about whether interpreters in the MAM Program meet the definition of RCW 41.56.030(11). We disagree. The source of funds is not relevant to our analysis. The legislation does not reference a funding source. The relevant inquiry is whether the interpreter is an independent contractor, is providing spoken language interpreter services, and is providing those services at either DSHS appointments or Medicaid enrollee appointments. The dispositive question is whether interpreting in the MAM Program is for DSHS appointments or Medicaid enrollee appointments.

Interpreters who provide services through the MAM Program are providing services at Medicaid enrollee appointments. The record indicates that interpreting occurs as part of outreach, application assistance, and linking Medicaid enrollees to appropriate services. All of these activities are performed in support of the Medicaid Program.

Under the statute, employees of local health jurisdictions or public hospitals who provide interpreter services would not be included in the bargaining unit because the statute applies only to “independent contractors.”

The statute provides for one statewide bargaining unit of interpreters. Interpreters in the MAM Program who are independent contractors are providing spoken language interpreter services at Medicaid enrollee appointments and are appropriately included in the bargaining unit.

Legal Settings

The relevant inquiry is whether the interpreter is an independent contractor, is providing spoken language interpreter services, and is providing those services at either DSHS appointments or Medicaid enrollee appointments. The legislation clearly states “‘Language access provider’ means any independent contractor” Employees of the courts, other agencies, or other political subdivisions providing interpreter services are not included in the bargaining unit.

The next step is to determine whether legal proceedings are a DSHS appointment or a Medicaid enrollee appointment. DSHS is required to provide interpreter services for limited English proficiency individuals when a matter goes to court. The record is clear, the need for interpreter services in a legal proceeding is because DSHS has initiated an action involving a party with limited English proficiency. For example, DSHS is required to petition for a hearing when a child is removed from the parents' home. DSHS is involved in the legal proceeding.

An appointment is an arrangement for a meeting. A legal proceeding is an appointment. Independent contractors interpreting in legal proceedings involving DSHS are included in the bargaining unit.

CONCLUSION

We are constrained by the language of the statute. The statute defined language access providers without identifying the funding source to pay for the service, without identifying the program the services are provided through or for, and without identifying the MAM Program or legal settings. The statute does not differentiate among types of DSHS appointments or Medicaid enrollee appointments, thus we cannot carve out exceptions to the statute. The employer raised the intent of the Legislature; however, because the language is clear and unambiguous, it is unnecessary, and inappropriate, for us to examine the Legislature's intent. If the Legislature intended to exclude language access providers who provide services as part of certain programs or in certain settings, it could have identified exclusions to the statewide bargaining unit and may clarify the statute in the future.

We affirm the Executive Director. The legislation provides for one statewide bargaining unit of interpreters who are independent contractors providing spoken language interpreter services for DSHS appointments or Medicaid enrollee appointments and are paid by brokers, language access agencies, or DSHS. The 34 challenged voters are language access providers as defined by RCW 41.56.030(11) and are appropriately included in the statewide bargaining unit.

NOW, THEREFORE, it is


ORDERED

The Findings of Fact, Conclusions of Law, and Order of Executive Director Cathleen Callahan are AFFIRMED and ADOPTED as the Findings of Fact, Conclusions of Law, and Order of the Commission.

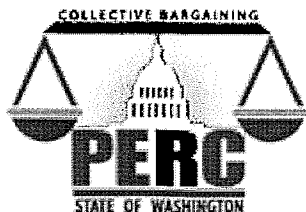
ISSUED at Olympia, Washington, this 19th day of June, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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PAMELA G. BRADBURN, Commissioner


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PUBLIC EMPLOYMENT RELATIONS
COMMISSION


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 23334-E-10-03570 FILED: 07/02/2010 FILED BY: PARTY 2
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BAR UNIT: MISCELLANEOUS
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