

IN THE MATTER OF THE INTEREST ) ARBITRATOR'S  
 )  
ARBITRATION BETWEEN ) OPINION  
 )  
OFFICE OF FINANCIAL MANAGEMENT ) AND  
STATE OF WASHINGTON )  
 ) AWARD  
"THE EMPLOYER" OR "THE STATE" )  
 )  
AND )  
 )  
SERVICE EMPLOYEES INTERNATIONAL )  
UNION LOCAL 775 )  
 )  
"THE UNION" )

HEARING:

August 18, 2008  
August 22, 2008  
August 29, 2008  
September 5, 2008  
33615 1<sup>st</sup> Way S.  
Federal Way, WA 98003

August 25, 2008  
August 26, 2008  
August 28, 2008  
7141 Cleanwater Drive SW  
Olympia, WA 98504

CLOSING ORAL ARGUMENTS:

September 5, 2008

HEARING CLOSED:

September 5, 2008

ARBITRATOR:

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REPRESENTING THE EMPLOYER:

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Stewart Johnston, Attorney  
Paige Lemcke, AG Paralegal  
Rick Hall, Executive Director of Home Care  
Quality Authority  
Diane Lutz, Lead Labor Negotiator OFM  
Dan Murphy, Director of Strategic Planning,  
Aging & Disability Services  
Grace Kiboneka, Homecare Workers' Labor  
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Sam Senn, Collective Bargaining Liaison

APPEARING AS WITNESSES FOR THE UNION:

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Linda Lee, IP & Exec. Bd. for Local 775  
Denese Garcia, IP  
Will Pittz, Exec. Director of Washington  
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Mark M. McDermott, Private Citizen  
Charissa Raynor, Director of Training  
Partnerships  
Tim Palmer, SEIU Researcher  
Marcelle Johnston, RN Infection Control Nurse  
Fir Crest  
Peter Nazzal, Director of Home Care Catholic  
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Marie Rux, IP Tacoma  
Marianne Brown, IP Chehalis  
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Nora Kelley, Director of Member Health  
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Quality Authority  
Jerry Britcher, Enterprise Architects DSHS  
Fran Wilson-Maudsley, Office Chief for SSPS  
Diane Lutz, Labor Negotiator OFM

**EXHIBITS**

**Union**

1. Strategic Plan 2009-2013, Aging and Disability  
Services Administration
2. Initiative 775
3. 2001 General Elections Voters Pamphlet
4. November 2001 General Elections Result
5. RCW 74.39A.310 AP Parity Formula
6. RCW 41.56.465 Uniformed Personnel - Interest  
Arbitration Panel - Determinations - Factors to  
be Considered
7. Denese Garcia's Monthly Budget
8. New York Times, August 14, 2008, "Living costs  
rising fast, and wages are trailing."
9. IP Wages vs. Basic Inflation, 2005-2008
10. IP Compensation vs. Fuel Costs, 2005-2008
11. IP CPI Comparison
12. IP Wage Growth vs. CPI Growth
13. Current IP Wages
14. WA Catch Up Needed to Match July 08 Rates
15. WA IP Wages vs. IL & MA Wages
16. Future WA Raises Needed to Catch Up to IL & MA
17. IP Wages Growth vs. Minimum Wage Growth
18. WA Comparison of C.N.A. Wages in WA
19. SEIU Healthcare 775NW Nursing Home C.N.A. Wages  
in WA

20. "Future Supply of LTC Workers in Relation to the Aging Baby Boom Generation", Report to Congress, May 14, 2003
21. "The Long-Term Care Workforce: Can the Crisis be Fixed?" by the Institute for the Future of Aging Services, January 2007
22. "Who Will Care for Us?" by Robyn I. Stone with Joshua M. Wiener
23. "The Cost of Frontline Turnover in Long Term Care," A Better Jobs Better Care Practices and Policy Report
24. "The Impact of a Large Wage Increase on the Work Force Stability of IHSS Home Care Workers in San Francisco County," by Candace Howe
25. "Recruitment and Retention of Para-Professionals" by Stephen L. Dawson, PHI
26. WA State RN and Corrections Wage Increases, 2006-2009
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28. Living in the Red: Northwest Family Budgets Falling Behind, 2007, the NFCO Study
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31. Living Wage and IP Population - Top 5 Counties
32. Living Wage Trend Chart
33. "California Public Benefits Analysis" by Candace Howes
34. Public Benefits Analysis Background Data
35. Washington State Basic Food Analysis
36. Summary of Potential Public Benefits Impact
37. Temporary Assistance to Needy Families Analysis
38. Earned Income Tax Credit
39. Section 8 King County Analysis
40. Past WA State Deficits and IP Wage Increases
41. State Deficits in IL and MA
42. "Medicaid: Good Medicine for State Economies" by Families USA
43. Office of Financial Management, Quarterly Revenue Projection up to \$282 million
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45. Department of Revenue, Tax Exemption Study 2008
46. Department of Revenue, Tax Payer Savings for 2007 - 2009 Biennium
47. Olympian article on state deficit, March 20, 2003
48. WA Medicaid Caregiver Compensation Comparison Chart

49. Email from Bea Rector, August 23, 2007
50. Initiative 688 - Washington Minimum Wage
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52. SEIU Healthcare 775NW Washington Home Care and Nursing Home Differential Comparison Chart
53. Washington State Differentials - CBA Comparison Chart
54. 2006 SEIU Healthcare 775NW - State of Washington IP Bargaining Notes, June 29, 2006
55. Governor Gregoire Address to 2006 SEIU Healthcare 775NW Convention (transcript and DVD)
56. SEIU Healthcare 775NW Washington Home Care and Washington State CBA Mileage Comparison Chart
57. SEIU Healthcare 775NW Washington Home Care and Washington State CBA PTO, Overtime, Holidays, Bereavement and Jury Duty Leave Comparison Chart
58. 184 Hour Rule - Proposed, Washington State Register
59. Washington State IP Labor and Payroll Standards Chart
60. HB 2284 - Long Term Care Training Statute
61. I-1029 - Long Term Care Training & Background Checks Initiative
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63. IP Health Care Trust Enrollment Data
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66. Retirement Benefits Consultant Report - Data Gap Analysis
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69. July 2, 2008 OFM Press Release on AA Bond Ratings
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72. Washington State Plan - Medicaid, 2007
73. Past Payroll-Related Implementation Issues and Results
74. IP Grievance Settlement - Improper Step Increases, 2008
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81. Health Benefits Trust Agreement
82. Union's Issue Priorities

**Employer**

1. Arbitrator's Award on 2007-09 Collective Bargaining Agreement Michael E. Cavanaugh, Arbitrator
2. Arbitrator's Award on 2005-07 Collective Bargaining Agreement Timothy D.W. Williams, Arbitrator
3. 2007-2009 Collective Bargaining Agreement, Between The State of Washington and SEIU Healthcare 775 NW
4. Articles under the 2009-2011 CBA for which there has been Tentative Agreement
5. PERC Mediation Statement of Issues
6. Article 5 - Employer's Last Proposal
7. Article 5 - Union's Last Proposal
8. Article 9 -Employer's Last Proposal
9. Article 9 -Union's Last Proposal
10. Article 10 - Employer's Last Proposal
11. Article 11 - Union's Last Proposal
12. Article 11 - Union Proposal
13. Article 13 - Employer's Last Proposal
14. Article 13 - Union's Last Proposal
15. Article 14 - Employer's Last Proposal
16. Article 14 - Union's Last Proposal
17. Article 17 - Employer's Last Proposal
18. Article 17 - Unions' Last Proposal
19. Article 22 - Employer's Proposed Changes
20. Article 23 - Employer's Last Proposal
21. Article 23 - Union's Last Proposal
22. Summary of Positions on Open Issues
23. RCW 74.39A.270 - Collective Bargaining - Circumstances in which individual providers are considered public employees - Exceptions (effective March 1, 2008)

24. RCW 41.56.465 - Uniformed personnel - Interest arbitration panel - Determinations - Factors to be considered
25. Washington State Budget Process
26. Article - Washington Quarterly Revenue Projection
27. Chart - Revenue Act Collections
28. Comparing Consumer Price Index and the Implicit Price Deflator
29. Washington Economic and Revenue Forecast
30. Estimated Six Year GF-S Outlook (June 26, 2008 Update)
31. Runzheimer Report
32. Homecare Provider 2008 Wage and Benefit Comparison Chart
33. Historical Wage Comparison Chart
34. Health Care Benefit Cost - Trust
35. Agency Provider Parity Impact
36. Homecare Collective Bargaining Agreement Comparables of Direct Cost
37. Homecare Worker Cost Estimate - Summary
38. Homecare Worker Cost Estimate - Employer Proposal
39. Homecare Worker Cost Estimate - Union Proposal
40. ADSA - Strategic Plan 2009-2013
41. Welcome to ADSA
42. CARE - LTC Assessor's Manual
43. ADSA Employment Reference Guide for Individual Providers
44. SSPS SEIU 775 Cost Estimates
45. Provider Payroll with SEIU 775 Agenda
46. Provider Compensation Processing System Project Meeting Agenda and Minutes - July 9, 2008
47. Provider Compensation Processing System Timeline
48. Medicaid Match for Personal Care Provider Training
49. Department of Health & Human Services correspondence
50. Social Security Laws - Evidence, Procedure, and Certification for Payment
51. Executive Order 00-03 RE: Protecting Social Security Numbers
52. Jenkins v. Washington State Dept. of Social and Health Services 106 Wash.2d 287
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54. WAC 388-106-0130 - How does the department determine the number of hours I may receive for in-home care?
55. WAC 388-546-5100 - Nonemergency transportation program scope of coverage
56. RCW 74.39A.360 Training Partnership
57. RCW 74.39A.310 - Contract for individual home care services providers - Cost of increase in wages and benefits funded - Formula (effective March 1, 2008)
58. Initiative Measure 1015
59. Health Care Enrollment Trend
60. Compilation of Collective Bargaining Agreements

### BACKGROUND

The State, as an alternative to institutional care, has developed a program by which qualifying individuals can receive assistance in a residential setting. This program is highly dependent upon services provided by a cadre of home healthcare workers otherwise known as individual providers (IPs). The State uses the services of more than 25,000 IPs to help provide residential care for the elderly and the disabled.

Under the provisions of RCW 74.39A.270, for collective bargaining purposes only, the IPs are combined into a single statewide bargaining unit. The Service Employees International Union, Local 775 (SEIU Healthcare 775 NW) represents the bargaining unit of some 25,000 plus IPs. Under RCW 74.39A.270, the Governor is designated as the Employer and she is represented at the bargaining table by



the State of Washington Office of Financial Management (hereafter "the Employer" or "the State").

RCW 74.39A.270 provides for interest arbitration in the event the parties are unable to successfully negotiate the labor contract. The first labor agreement between the two Parties was completed without the use of the arbitration process. The instant Arbitrator issued an award for the second labor agreement covering the 2005-07 biennium (Em 2). The third contract was fully implemented for the 2007-09 biennium after a decision by Arbitrator Michael Cavanaugh (Em 1).

During the late spring of 2008, as required by RCW 74.39A.270, SEIU Healthcare 775 NW and the State began the process of negotiating a successor collective bargaining agreement (CBA) for the 09-11 bienieum. Unable to reach full agreement on all the terms for a new CBA, the parties agreed to submit the unresolved issues to interest arbitration. The instant Arbitrator was selected to hear the case and he accepted his selection.

By letter dated August 4, 2008, Cathleen Callahan, the Executive Director of the Public Employment Relations Commission (PERC), in compliance with RCW 41.56.45A, certified a set of issues to be submitted to interest

arbitration (Em 5). Those issues, as certified, are as follows:

- Article 5 - Bargaining Unit Information
- Article 9.1 - Compensation & Appendix A Wage Scales
- Article 9.2 - Certification and Differential Pay
- Article 9.3 - Mileage Reimbursement
- Article 9.4 - Overtime (new section)
- Article 10 - Comprehensive Health Care Benefits  
(formerly Article 10 & 11 covering health care,  
dental and vision benefits)
- Article 11 - Holidays and Other Benefits (new section)
- Article 13 - Paid Time Off (formerly Vacation Leave)
- Article 14 - Payroll, Electronic Deposition & Tax  
Withholding
- Article 17 - Training
- Article 22 - Hours of Work
- Article 23 - Retirement Benefits

A hearing was held before Arbitrator Timothy D.W. Williams over a period of seven days and in two different locations. The first two days of hearing, August 18 and August 22, were held in Federal Way, Washington. The next three days, August 25, 26, and 28, were held in Olympia, Washington. The final two days of hearing, August 29 and September 5, were held in Federal Way, Washington.

At the hearing, the Parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make arguments in support of their positions. A transcript was made of the

full proceeding and, due to the exemplary effort of the court reporter, each Party and the Arbitrator received a complete copy shortly after the close of hearing.

At the close of the evidentiary portion of the hearing, the Parties agreed to provide closing oral arguments. Arguments were heard by the Arbitrator on September 5, 2008. These arguments are found in the transcript for the seventh hearing day.

On September 12, 2008 the Union submitted a request to supplement the record with a memo from the Aging and Disability Services Administration of DSHS, received by the Union on September 9, 2008. At the Arbitrator's request, the Employer responded with an objection to the Union's request to admit said document. The Arbitrator ruled that the record would not be reopened to admit the additional document.

During the hearing, the Parties informed the Arbitrator that there was a sub-issue (Article 17.11) where the State was the proposing party and to which the Union, before PERC, had raised the question of whether the matter was permissive and therefore not properly present in an interest arbitration proceeding. The Parties and the Arbitrator agreed to set the matter aside until a decision was reached by PERC and, if necessary, the Arbitrator would

issue a supplemental decision on State's Article 17.11. On September 25, 2008, the Arbitrator was provided a copy of the PERC decision ruling that the matter was in fact permissive and that the State was directed to withdraw Article 17.11 from interest arbitration.

Thus, this award is the final determination of the Arbitrator for all of the issues that were certified by PERC and on which he received evidence and argument during the hearing.

#### **ARBITRATOR'S AUTHORITY**

An Arbitrator's authority to issue an interest award is generally derived from statute. RCW 74.39A.270 provides, in pertinent part, that "the mediation and interest arbitration provisions of RCA 41.56.430 through 41.56.470 and 41.56.480 apply" with a few exceptions and/or alterations. The Arbitrator notes that the exceptions and alterations are not at issue in these proceedings and therefore do not need to be detailed.

RCW 41.56.465 requires that the Arbitrator, in making his or her decision, consider the following criteria:

- (5) For employees listed in RCW 74.39A.270:
  - (a) The panel [arbitration] shall consider:
    - (i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing

similar services to similar clients, including clients who are elderly, frail, or have developed developmental disabilities, both in the State and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developed developmental disabilities, both in the State and across the United States; and

(ii) The state's interest in promoting a stable long-term care work force to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's fiscal interest in ensuring access to affordable, quality health care for all State citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

The Arbitrator is charged with the responsibility of carefully weighing the factors outlined above when rendering his decision. As he worked his way through the issues in dispute, this Arbitrator has faithfully applied the above criteria. Additionally, he has been careful to give special consideration to those criteria that were the focal points of the discussion between the two parties.

RCW 41.56.450 grants the Arbitrator 30 days from the conclusion of the hearing to make "written findings of fact and a written determination of the issues in dispute." The

instant case, however, is quite different in that the parties, at the time that they retained his services, fully informed the Arbitrator of the need for his written award by October 1, 2008. The Arbitrator has worked to comply with that understanding.

In summary, the final decision is based on a thorough review of the documentary and testimonial evidence that has been provided, a careful study of the closing arguments and the faithful application of the statutory criteria.

#### **PRELIMINARY ANALYSIS**

The parties have placed before the Arbitrator twelve provisions from the collective bargaining agreement over which they have made proposals that are in conflict. The Arbitrator's work consists of applying the above stated criteria to each of the points of conflict and arriving at a conclusion as to the best resolution of the matter. The Arbitrator will go forward with an article by an article analysis but finds that there are a number of points of analysis that reflect on all of the issues in dispute and these are better presented as a preliminary analysis.

First, the Arbitrator has been mindful throughout all of his work on this interest arbitration case of the unique elements related to this bargaining unit. On the opening

day of hearing, SEIU President David Rolf provided extensive testimony both about the emergence of the home healthcare industry and the use of the collective bargaining process to promote professionalism amongst home healthcare workers.

The Arbitrator notes that the record as a whole clearly establishes a number of significant points: the need for home healthcare workers is rapidly growing particularly as baby-boomers age, there is a substantial need to improve the quality of care available in a residential setting, the past history of home health care leaves much to be desired and the states of Oregon and Washington, prompted by a good relationship between the union and the governors' offices, have taken a national leadership role for implementing positive changes. In the instant case, the record indicates that Governor Gregoire has given solid support to the efforts to bring needed change to the industry (U 27 and 55 as examples).

The above translates into a position, oftentimes expressed by the State during the arbitration hearing, that while it agrees conceptually with what the Union is proposing, it lacks the resources to make the changes within the proposed timeline. In other words, on many of the issues the essential question is not whether

conceptually what is being proposed is a good idea but rather whether the proposal can be implemented given the resources that are available. The Arbitrator's issue by issue analysis was very mindful of this point (how fast can you go with the resources that are present?) and in the context of supporting the efforts to ensure a growing professionalism in the thousands of IPs across the state.

Second, the Arbitrator recognizes the rather unique collective bargaining relationship between the home healthcare workers and the Employer. IPs are not State employees in the traditional sense but rather have been placed into a single bargaining unit for the purpose of negotiating wages, hours and working conditions. The State provides the compensation but does not hire IPs, the individual consumer is the employer. Because IPs are not State employees they are not eligible for traditional benefits such as the State retirement program and the State medical benefits program. Also, IPs are not supervised in the same way that a State employee would be supervised; IPs work in a highly independent manner with little if any contact with State personnel.

The significance of the above point is found, for example, in the fact that the parties have had to use the concept of a *Taft-Hartley Trust* to provide medical benefits



and training activities. The bottom line to the Arbitrator is that he was reluctant to award language on an issue that appeared to be reflective of a traditional employment relationship as opposed to the unique relationship that exists between IPs and the State of Washington.

Third, the home healthcare industry in the state of Washington, as in other states, is a product of what is called a *community based waiver* and it is a subset of Medicaid. Traditionally, as the Arbitrator understands the system, Medicaid provides support exclusively for institutionalized care. Community based care is usually less expensive and often times far more desirable. For Medicaid to financially participate in a community based program, a State must apply through a waiver. The State waiver spells out program details and if Medicaid approves the waiver it will contribute 50% of the cost. Program details not approved by Medicaid will not receive the 50% match. In that case, if the State still chooses to proceed, it will pick up 100% of the cost.

In making his award, the Arbitrator was mindful of the importance of the 50% match and attempting to provide language protective of it. Obviously, the ability of the State to pay increased costs of the new labor agreement is

directly related to the financial support it can expect to receive from Medicaid.

Fourth, clearly the most significant problem faced by both the State and the Union with regard to completing the 09-11 collective bargaining agreement is the concern with the State's ability to pay for any increased costs. The State provided evidence that it is looking at a 2.6 billion dollar shortfall for the 09-11 biennium (Tr 31). Worse, the Arbitrator takes note of the fact that this award is being written at a time when the front page of every newspaper carries the message that we are in the midst of one of the darkest times in the history of American financial markets. This cannot bode well for the financial well being of the State of Washington or any other State.

To put it bluntly, the award is not a rich one; it would not be professionally responsible for the Arbitrator to be anything other than extremely conservative with regard to the expenditure of funds. The Arbitrator would have liked it to be otherwise because he found merit in many of the Union's proposals but ultimately he determined not to award the provision solely on the basis of cost. Throughout the award, the Arbitrator's thinking was around limiting the total amount of increased dollars and prioritizing how those dollars were to be spent.

Fifth, the Arbitrator wants to emphasize his understanding that there are two basic presumptions that are present in every interest arbitration proceeding. The first is the presumption that the Employer is able to financially support whatever it proposes. Thus, it is not the Arbitrator's job to question whether the Employer can pick up the financial tab on the offers it has made to the Union and the positions that the State has taken in these arbitration proceedings.

The second presumption involves modifications to the language from the existing agreement. This presumption works towards retaining the existing language in a successor agreement unless a party can come forward with a persuasive reason for making a change. Some changes are simply clean up, such as correcting dates on an existing provision, and the presumption does not apply. However, where a proposed change modifies the provision or benefit, the party requesting the change carries, in this Arbitrator's view, a significant burden of proof.

Sixth, in their opening statements, both parties recognized that the relationship between the Union and the State is primarily one of cooperation. This cooperation existed both at the bargaining table and in everyday discussions when problems needed to be addressed. The

Arbitrator adds his acknowledgement of the collaborative spirit that existed during the arbitration hearing. While the parties clearly disagreed on some of the issues, the tone at all times was cordial and constructive.

The Arbitrator commends the Parties for this approach. More importantly, the Arbitrator's award relies, in certain parts, on the continuation of this collaborative behavior. The unique nature of this bargaining relationship makes it, in the Arbitrator's view, imperative that the parties maintain positive dialogue. The training trust, for example, will only work if the parties continue to interact from the standpoint of good faith and the willingness to constructively work out any problems.

Moreover, the fact that the parties are attempting to deal with problems never confronted through the collective bargaining process requires patience and openness to creativity. This Arbitrator is old enough to have actually heard President John Kennedy make the statement, "we choose to go to the moon." And we did, but it took ten years and the country had to develop new enterprises and new technologies.

While not as dramatic, the parties to this interest arbitration have recognized that they are exploring new territories in the area of providing home healthcare to the

elderly and the disabled. This will likewise require patience and openness to creativity. Professionalism cannot be grown overnight nor can one instantaneously develop and implement effective institutional support.

The relevance of this point of analysis to the award is focused on several different Union proposals that would mandate the State to complete some process within a specified period of time. In general, the Arbitrator did not concur with these proposals. Creating something new on limited resources is made much more difficult when it has to be done within a specified period of time. The Arbitrator would have been much more open to imposing a mandated time frame if there had been a history of anti-union animus and/or deliberate foot dragging. The evidence, to the Arbitrator, clearly establishes the opposite; the willingness on the part of the State to work with the Union to build, often times from scratch, the necessary systems and protocols.

Finally, the record in this case is extensive and the time frame within which the award had to be completed is of a very short duration. Obviously, had time permitted, the Arbitrator could have written a 200 to 300 page decision and still not have fully explored all of the evidence and arguments. To complete the task by October 1, 2008, the Arbitrator of necessity had to shorten his analysis. Therefore, he has focused the issue by issue analysis on first setting forth the actual award and then providing a simple outline of the key determinants in the decision.

## ISSUE 1

### Article 5 - Bargaining Unit Information

#### Current Provisions:

##### 5.1 - Information to be Provided

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format specified by the Union, and shall include the home care worker's full name, individual provider number, home address, mailing address, phone number, wage rate, program or service code, amount paid during the current month of payment, union member type and deduction type.

The Employer shall make a good faith effort to provide other information to the Union, if not otherwise prohibited by force of law, including hire date, cumulative lifetime hours worked as an individual provider, hours of units (day, week, or moth) worked in a month for which payment has been made, electronic mail addresses, personal wireless telephone numbers, information about current training status and the most recent dates that training has been received. The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information and records.

##### 5.2 - Collection of Additional Information

Effective January 1, 2008, the Employer shall amend all of the employment-related documents and forms required to be completed by individual provider home care workers so as to allow individual provider home care workers to provide the Employer with electronic mail addresses and personal wireless telephone numbers.

##### 5.3 - Privacy

Unless otherwise provided for under Title 42 RCW, the following are exempt from public inspection and copying and shall not be released by the Employer except as necessary to comply with the provisions of this Agreement:

The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency

contact information of individual provider home care workers as defined in RCW 74.39A.240 and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of individual provider home care workers as defined in RCW 74.39A.240, which may be held by the Employer in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of individual provider home care workers as defined in RCW 74.39A.240.

### **Union's Proposed Language:**

#### 5.1 -Information to be Provided

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format specified by the Union, and shall include the home care worker's full name, individual provider number, home address, mailing address, home phone number, personal wireless telephone numbers, electronic mail addresses, hire date, date of termination, date of birth, gender, primary preferred language, marital status, cumulative lifetime hours worked as an individual provider, hours or units (day, week or month) worked in a month for which payment has been made, wage rate, program or service code, amount paid during the current month of payment, vacation hours used, vacation hours cashed out, vacation hours forfeited, union member type and deduction type.

The Employer also shall provide a Social Security number, or in the event a Social Security number is not available, a common unique identifier number that applies to both individual providers and agency home care providers. In the event Social Security numbers are provided, the Employer shall transmit such numbers to a mutually agreed upon third party administrator. Such a third party administrator shall be contractually bound to provide a secure data storage and transmission system for the handling of Social Security numbers.

The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information and records.

## 5.2 - Collection of Additional Information

The Employer shall amend all of the employment-related documents and forms required to be completed by individual provider home care workers so as to allow individual provider home care workers to provide the Employer with electronic mail addresses and personal wireless telephone numbers.

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The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of individual provider home care workers as defined in RCW 74.39A.240 and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of individual provider home care workers as defined in RCW 74.39A.240, which may be held by the Employer in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of individual provider home care workers as defined in RCW 74.39A.240.

## **Employer's Proposed Language:**

### 5.1 - Information to be Provided

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format specified by the Union, and shall include the home care worker's full name, individual provider number, cumulative lifetime hours worked as an individual provider, hours or units (day, week, or month) worked in a month for which payment has been made, home address, mailing address, home phone number, personal wireless telephone numbers, electronic mail addresses, wage rate, program or service code, amount paid during the current month of payment, union member type and deduction type.



The Employer shall make a good faith effort to provide other information to the Union, if not otherwise prohibited by force of law, including hire date, a unique employee identifier number, termination date, date of birth, gender, primary preferred language, relationship to consumer employer, marital status, vacation hours paid, and vacation hours forfeited. The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information and records.

## 5.2 - Collection of Additional Information

The Employer shall amend all of the employment-related documents and forms required to be completed by individual provider home care workers so as to allow individual provider home care workers to provide the Employer with electronic mail addresses and personal wireless telephone numbers.

## 5.3 - Privacy

Unless otherwise provided for under Title 42 RCW, the following are exempt from public inspection and copying and shall not be released by the Employer except as necessary to comply with the provisions of this Agreement:

The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of individual provider home care workers as defined in RCW 74.39A.240 and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of individual provider home care workers as defined in RCW 74.39A.240, which may be held by the Employer in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of individual provider home care workers as defined in RCW 74.39A.240.

## **Award:**

### 5.1 - Information to be Provided

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format

specified by the Union, and shall include the home care worker's full name, individual provider number, cumulative lifetime hours worked as an individual provider, hours or units (day, week, or month) worked in a month for which payment has been made, home address, mailing address, home phone number, personal wireless telephone numbers, electronic mail addresses, wage rate, program or service code, amount paid during the current month of payment, union member type and deduction type.

The Employer shall make a good faith effort to provide other information to the Union, if not otherwise prohibited by force of law, including hire date, a unique employee identifier number, termination date, date of birth, gender, primary preferred language, relationship to consumer employer, marital status, vacation hours paid, and vacation hours forfeited. The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information and records.

#### 5.2 - Collection of Additional Information

The Employer shall amend all of the employment-related documents and forms required to be completed by individual provider home care workers so as to allow individual provider home care workers to provide the Employer with electronic mail addresses and personal wireless telephone numbers.

#### 5.3 - Privacy

Unless otherwise provided for under Title 42 RCW, the following are exempt from public inspection and copying and shall not be released by the Employer except as necessary to comply with the provisions of this Agreement:

The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of individual provider home care workers as defined in RCW 74.39A.240 and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of individual provider home care workers as defined in RCW 74.39A.240, which may be held by the Employer in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of individual provider home care workers as defined in RCW 74.39A.240.

## **Arbitrator's Analysis**

The Arbitrator is awarding the Employer's proposed language changes and is doing so for two primary reasons. First, as discussed in the preliminary analysis, the basic presumption of interest arbitration is that the Employer is capable of doing what it offers to do and that existing language is preferred absent a strong, persuasive case for change. The Arbitrator's reading of the Employer's proposed modifications is that they clarify, cleanup and maintain the old language. The Employer does not propose a reduction of benefit. This seems more than adequate to the Arbitrator.

Second, in the Arbitrator's view, much of the proposed change put forward by the Union is premature. The increased data collection set forth in the Union's proposal makes very good sense to the Arbitrator particularly in the context of the unique bargaining unit to which this language would be applied. Both the State and the Union would benefit from this information. The problem is that the mechanism by which to acquire the information is, at the present time, woefully inadequate. This is a problem more fully discussed under Issue 9 of this award.

The bottom line is that, absent a better system for collecting information, the Arbitrator is not able to impose on the State an obligation to collect the new information mandated in the Union's proposal.

## ISSUE 2

### Article 9.1 - Compensation & Appendix A Wage Scales

#### Current Provisions:

##### 9.1 Wages

Effective July 1, 2007 a new wage scale is established based on cumulative career experience. Effective July 1, 2007, current employees will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit employees will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each employee based upon accumulation of hours. All employees shall be paid strictly on an hourly basis. Except as modified by this Agreement, all employees shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any employee according to any other rate than the rates contained in Appendix A, are hereby void.

#### Appendix A - Wage Scales

July 1, 2008 - June 30, 2009	
Cumulative Career Hours	Wage
0-2000	\$10.03
2001-4000	\$10.17
4001-6000	\$10.33
6001-8000	\$10.46
8001-10000	\$10.61
10001-12000	\$10.76
12001-14000	\$10.91
14001 plus hours	\$11.07

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors.

**Union's Proposed Language:**

**9.1 Wages**

Effective July 1, 2009 a new wage scale is established based on cumulative career experience. Effective July 1, 2009, current employees will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit employees will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each employee based upon accumulation of hours. All employees shall be paid strictly on an hourly basis. Except as modified by this Agreement, all employees shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any employee according to any other rate than the rates contained in Appendix A, are hereby void.

**Appendix A - Wage Scales**

July 1, 2009 - June 30, 2010	
Cumulative Career Hours	Wage
0-2000	\$10.80
2001-4000	\$11.00
4001-6000	\$11.20
6001-8000	\$11.40
8001-10000	\$11.60
10001-12000	\$11.80
12001-14000	\$12.00
14001-16000	\$12.20
16001 plus hours	\$12.40

July 1, 2010 - June 30, 2011	
Cumulative Career Hours	Wage
0-2000	\$11.30
2001-4000	\$11.50
4001-6000	\$11.70
6001-8000	\$11.90
8001-10000	\$12.10
10001-12000	\$12.30
12001-14000	\$12.50
14001-16000	\$12.70
16001 plus hours	\$12.90

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors.

**Employer's Proposed Language:**

**9.1 Wages**

Effective July 1, 2009 a new wage scale is established based on cumulative career experience. Effective July 1, 2009, current employees will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit employees will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each employee based upon accumulation of hours. All employees shall be paid strictly on an hourly basis. Except as modified by this Agreement, all employees shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any employee according to any other rate than the rates contained in Appendix A, are hereby void.

**Appendix A - Wage Scale**

July 1, 2009 - June 30, 2010	
Cumulative Career Hours	Wage
0-2000	\$10.19
2001-4000	\$10.33
4001-6000	\$10.49
6001-8000	\$10.63
8001-10000	\$10.78
10001-12000	\$10.93
12001-14000	\$11.08
14000 plus hours	\$11.25

July 1, 2010 - June 30, 2011	
Cumulative Career Hours	Wage
0-2000	\$10.36
2001-4000	\$10.51
4001-6000	\$10.67
6001-8000	\$10.81
8001-10000	\$10.96
10001-12000	\$11.12
12001-14000	\$11.27
14000 plus hours	\$11.44

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors.

**Award:**

**9.1 Wages**

Effective July 1, 2009 a new wage scale is established based on cumulative career experience. Effective July 1, 2009, current employees will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit employees will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each employee based upon accumulation of hours. All employees shall be paid strictly on an hourly basis. Except as modified by this Agreement, all employees shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any employee according to any other rate than the rates contained in Appendix A, are hereby void.

**Appendix A - Wage Scale**

July 1, 2009 - June 30, 2010	
Cumulative Career Hours	Wage
0-2000	\$10.28
2001-4000	\$10.42
4001-6000	\$10.58
6001-8000	\$10.72
8001-10000	\$10.87
10001-12000	\$11.02
12001-14000	\$11.17
14000 plus hours	\$11.34



July 1, 2010 - June 30, 2011	
Cumulative Career Hours	Wage
0-2000	\$10.49
2001-4000	\$10.63
4001-6000	\$10.79
6001-8000	\$10.93
8001-10000	\$11.09
10001-12000	\$11.24
12001-14000	\$11.39
14000 plus hours	\$11.57

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors. Likewise, wages shall be adjusted upwards by fifty cents (\$.50) an hour for individual providers who hold and submit a valid "Home Care Aide" certification or Certified Nursing Assistant license (or equivalent or greater medical license).

### **Arbitrator's Analysis**

As previously indicated, the award is not a rich one; it is bare bones. The Arbitrator began with the presumption that the State would find the means to fund the proposal it had placed on the table. For the 09-10 wage, the Arbitrator added nine cents (9¢) to each step in the wage table. The Arbitrator used the money saved when he determined to delete the language in Article 22 that the Union claimed carried a ten million dollar cost savings. The Employer has emphasized that each penny added to the

wage table carries a cost of 1.2 million over the biennium (Tr 1296). Using a somewhat generous arithmetic, the Arbitrator divided the \$10 million of savings<sup>1</sup> by 1.2 million and came up with nine cents.

For the second year of the biennium (10-11), the Arbitrator increased each step in the wage table by 2%. This is slightly more generous than what the State offered and substantially less than the Arbitrator believes comparability and costs of living data justify. Clearly, ability to pay is the primary issue and the 2% back loads the biennium where hopefully the State's economic condition will have improved.

The projected budget shortfall for the coming biennium is the dominant factor in the Arbitrator's award related to wages. The Union made a considerable effort during the hearing to provide a basis by which the Arbitrator could ignore, at least in part, the negative monetary projections. The Arbitrator gave careful considerations to these factors but, in the current economic climate, was not persuaded. Reasonable and responsible wage increases can

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<sup>1</sup> The Arbitrator realizes that some of this cost savings will undoubtedly be lost as the CARE tool is applied on a case by case basis. Nevertheless, for reasons explained at issue eleven of this decision, there is value to the State in removing the pertinent language which the Arbitrator believes more than justifies the discrepancy between perceived dollars saved and the actual dollars saved.

occur even in negative economic times. Priorities can be reset, the Employer can choose not to fill vacant positions and use the savings to improve wages, new revenue sources can be found, cost savings can be achieved in other parts of the budget and other similar techniques can be applied all of which can make it possible to implement a wage increase even when there appears to be a budget shortfall.

In the instant case, however, the Arbitrator is convinced by the evidence that the State's economic problems will not be easily overcome; some real belt tightening is going to occur. It is not just the \$2.6 billion projected deficit, repeatedly discussed during the hearing, that is the problem; it is the budget deficit considered in the context of the overall economic climate of the State and nation that convinces the Arbitrator to impose a very lean decision.

The Arbitrator is bound by statute to consider the State's ability to pay any increased costs placed in a new labor agreement. The Arbitrator is also to consider comparability data and cost of living. But for the bleak economic news, The Arbitrator was convinced by the comparability evidence and the cost of living data that increases beyond those he is awarding would be justified; the Union was not unreasonable in its wage requests.

The Arbitrator would typically, in an interest case, spend considerable effort to do a specific analysis of the data. Since he has already determined that ability to pay trumps any increases justified by comparability and cost of living, the detailed analysis does not seem to be in order. However, the Arbitrator would note two general conclusions he drew as he reviewed all of the evidence.

First, the Arbitrator finds comparability dated to be very "squiggly" in that there is always differences between the various jurisdictions making direct comparisons very difficult. With regard to the IPs, this fact is intensified because they work under a State waiver and the waivers differ state to state. The Arbitrator does not believe it unreasonable to conclude that a firefighter in one fire district of the State compared to a firefighter in another fire district of the same State or a different State basically do the same thing. The Arbitrator is not convinced that the same conclusion can be drawn for the work of the IPs in the different states. Since wages reflect the specific duties of the position, there needs to be more complete information with regard to the work performed by the IPs in the various states as a factor of the wages they receive in order to do an accurate comparison.

Second, while the Union's comparability data justifies larger increases than that awarded in this decision, the Arbitrator was convinced by State argument and evidence that there is not as large a gap as the Union projects. The fact that the State of Washington provides a wage scale as opposed to a single wage and the fact that it has an extremely generous medical benefit helps to offset a lower starting wage. Moreover, since the wage scale is predicated on hours of experience commencing with July 1, 2005, many of the IPs in the bargaining unit will begin to receive the upper tier wages during the 09-11 biennium.

Finally, the Arbitrator notes that the State indicates that it has put 78.8 million dollars of new money into its proposals (Tr 1294). Over the biennium, this award should be only a little beyond that number<sup>2</sup> which will undoubtedly still force the State to stretch its efforts. The Arbitrator's primary concern has been to put the money where it can best facilitate the professional development of the members of this bargaining unit.

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<sup>2</sup> Some of the costs like premium pay for certification are almost impossible to calculate. The Arbitrator's award, however, does not go much beyond what the State has offered and therefore the final total should be reasonably close to that projected by the State.

## Issue 3

### Article 9.2 - Certification and Differential Pay

#### Current Provisions:

##### **9.2 Mentor, Preceptor, and Trainer Pay**

An employee who is assigned by the Employer as a mentor, preceptor, or trainer of other employees or prospective employees shall be paid an additional one dollar (\$1.00) per hour differential in addition to his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

#### Union's Proposed Language:

##### **9.2 Certification Differential and Mentor, Preceptor, and Trainer Pay**

Employees who hold and submit a valid "Home Care Aide" certification or Certified Nursing Assistant license (or equivalent or greater medical license), shall be paid an additional one dollar (\$1) per hour differential in addition to his/her regular hourly wage rate.

An employee who is assigned by the Employer as a mentor, preceptor, or trainer of other employees or prospective employees shall be paid an additional one dollar (\$1.00) per hour differential in addition to his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

#### Employer's Proposed Language:

##### **9.2 Mentor, Preceptor, and Trainer Pay**

An employee who is assigned by the Employer as a mentor, preceptor, or trainer of other employees or prospective employees shall be paid an additional one dollar (\$1.00) per hour differential in addition to his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

## **Award:**

### **9.2 Certification Differential and Mentor, Preceptor, and Trainer Pay**

Employees who hold and submit a valid "Home Care Aide" certification or Certified Nursing Assistant license (or equivalent or greater medical license), shall be paid an additional fifty cents (\$.50) per hour differential in addition to his/her regular hourly wage rate.

An employee who is assigned by the Employer as a mentor, preceptor, or trainer of other employees or prospective employees shall be paid an additional one dollar (\$1.00) per hour differential in addition to his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

## **Arbitrator's Analysis**

Issue 10 of this award addresses the topic of training. While there are some small differences between the Parties related to funding, there is broad agreement as to an aggressive new training and certification program. The Arbitrator is convinced that the revisions in the training program should be supported, at least in some small measure, by a financial incentive. Because of the budgetary constraints previously discussed, he reduced the Union's proposal by 50% but left the concept intact. Also, as a cost item, the State should feel little impact until late into the biennium and the full impact being felt after the biennium is over.

## ISSUE 4

### Article 9.3 - Mileage Reimbursement

#### Current Provisions:

##### **9.3 Mileage Reimbursement**

Effective July 1, 2008, employees shall be compensated for the use of their personal vehicles to provide services to their clients (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month.

#### Union's Proposed Language:

##### **9.3 Mileage Reimbursement**

Employees shall be compensated for the use of their personal vehicles to provide services to their clients (such as essential shopping and travel to medical services) authorized under the care or service plans and for all travel between clients. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service. The Employer will make all necessary changes to work forms, the payroll system and the CARE tool to assure that accurate mileage can be tracked and compensated.

#### Employer's Proposed Language:

##### **9.3 Mileage Reimbursement**

Effective July 1, 2008, employees shall be compensated for the use of their personal vehicles to provide services to their clients (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month per client.

Employees providing transportation to services funded by the Division of Developmental Disabilities (DDD) Home and Community Based Services (HCBS) waivers or the DDD Individual and Family Services Program and identified in the client's Individual Support Plan, in excess of sixty



(60) miles per month, will be reimbursed up to an additional maximum authorized by the case manager.

**Award:**

**9.3 Mileage Reimbursement**

Effective July 1, 2008, employees shall be compensated for the use of their personal vehicles to provide services to their clients (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month per client. The Employer will make all necessary changes to work forms, the payroll system and the CARE tool to assure that accurate mileage can be tracked and compensated.

Employees providing transportation to services funded by the Division of Developmental Disabilities (DDD) Home and Community Based Services (HCBS) waivers or the DDD Individual and Family Services Program and identified in the client's Individual Support Plan, in excess of sixty (60) miles per month, will be reimbursed up to an additional maximum authorized by the case manager.

**Arbitrator's Analysis**

There are two separate points to the Arbitrator's considerations on the mileage question. First, he is in agreement with the Union that IPs should not have to financially support clients with their personal vehicles. Second, the decision as to reimbursement cannot be left exclusively in the hands of the IPs - there must be reasonable controls on choices made by IPs to use personal vehicles and seek reimbursement. In the arbitrators view the State's proposal best balances the above two considerations while the Union's proposal does not provide

adequate safeguards. Also, since the distance between clans is a choice made by the IP, the Arbitrator did not award mileage for inter-client travel.

## **Issue 5**

### **Article 9.4 Overtime**

**Current Provisions:** none

**Union's Proposed Language:**

**9.4 Overtime**

Employees who work in excess of one hundred seventy-three hours in a month will be paid overtime for such additional hours at the rate of one and one-half (1.5) times their regular hourly rate of pay. Paid leave time shall not be considered time worked for purposes of this section. For the purposes of this section, a "month" begins at midnight on the first calendar day of each month and ends at 11:59 p.m. on the final calendar day of each month. The Employer shall have the right to take such reasonable steps as it deems necessary to limit the obligation to pay overtime hours.

**Employer's Proposed Language:**

**9.4 Overtime**

[No new provision]

**Award:**

**9.4 Overtime**

[No new provision]

**Arbitrator's Analysis**

This is a cost item that the Arbitrator simply could not justify in the context of the State's projected budget

deficit. More importantly, the Arbitrator is not convinced that the concept of overtime applies when considering the unique three party relationship between the State, the client and the IP. In a traditional employer-employee relationship, the Employer determines when over time will be worked. While the Union, in the instant case, argues that the State can set up safeguards against overtime abuse, this fact does not change the reality that IPs would be able to seek overtime work on their own initiative. The IPs have a much greater say in how many hours will be worked than in a standard employment situation.

## **ISSUE 6**

### **Article 10 - Comprehensive Health Care Benefits (formerly Article 10 and 11 covering health care, dental and vision benefits)**

#### **Current Provisions:**

**10.1 Intent** The parties agree that the intent of this Article 10 is to provide health care coverage only to those workers who do not have other health insurance coverage, to the extent permitted by law.

**10.2** Effective July 1, 2007, the Employer shall contribute up to five hundred dollars (\$500) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

Effective July 1, 2008, the Employer shall contribute up to five hundred fifty dollars (\$550) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

The SEIU 775 Multiemployer Health Benefits Trust shall determine the level of contribution by eligible home care workers to the Trust but in no case will it be less than \$17.00 per month. This contribution shall be made via payroll deduction upon written authorization of each eligible home care worker. Eligible home care workers who do not provide written authorization for the required payroll deduction shall not receive coverage until such time as they have provided written authorization pursuant to the policies established by the Trust and in order to minimize adverse selection against any health plan(s) of the Trust. Ongoing costs for deduction of employee premiums for health care shall be paid by the Employer.

**10.3 Eligibility** Effective January 1, 2005, or as otherwise provided for in Section 1, those home care workers employed for at least three (3) consecutive months and who work a minimum of eighty-six (86) hours per month, and who are not otherwise eligible to receive health care benefits through other family coverage, other employment-based coverage or military or veterans coverage, shall be considered eligible.

**10.4 Coverage** Coverage for eligible home care workers shall begin subsequent to legislative funding approval and as provided for in Section 1. Eligible home care workers who do not provide written authorization for the required payroll deduction in Section 1 shall not receive coverage until such time as they have provided written authorization. Costs for implementation of deduction of employee premiums for health care shall be paid by the Employer.

**10.5 Trust Fund** For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit, the Employer shall become and remain a participating employer in the SEIU 775 Multiemployer Health Benefits Trust (also referred

to herein as the "Trust") during the complete life of this Agreement, and any extension thereof.

The Trust Fund shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust Fund shall indemnify and hold harmless from liability the Employer, the HCQA, all branches and departments of Washington state government, and the State of Washington, its agents and/or its representatives, from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

At its sole discretion, the Trust Fund may establish cents-per-hour contribution rates for the Employer, based on the total number of hours worked by members of the bargaining unit. The hourly rates shall be calculated as identical to the total dollar monthly contributions required under this Agreement. Hourly contribution rates shall not, in any event, cost more than the monthly amounts provided for eligible employees in Section 2. Implementation of hourly rate contributions shall occur only if sufficient funds are available and only at such time as a practical application of the process may be put into effect.

The Employer hereby designates the Employer members of the Trust's Board of Trustees, or their duly selected successors, as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the designated Trust in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Trust.

#### **Article 11 - Dental and Vision Benefits**

Effective July 1, 2007, the Employer shall contribute up to \$26.75 per month for each eligible home care worker to the SEIU 775 Multiemployer Health Benefits Trust for the purpose of providing dental benefits.

Effective July 1, 2008, the Employer shall contribute up to \$29.43 per month for each eligible home care worker to the SEIU 775 Multiemployer Health Benefits Trust for the purpose of providing dental benefits.

Eligibility for dental benefits and coverage shall be provided pursuant to the Health Benefits Trust Fund Section of the Agreement.

Effective July 1, 2007, the Employer shall contribute up to \$5.25 per month for each eligible home care worker to the SEIU 775 Multiemployer Health Benefits Trust for the purpose of providing vision benefits.

Effective July 1, 2008, the Employer shall contribute up to \$5.78 per month for each eligible home care worker to the SEIU 775 Multiemployer Health Benefits Trust for the purpose of providing vision benefits.

Eligibility for vision benefits and coverage shall be provided pursuant to the Health Benefits Trust Fund Section of the Agreement.

### **Union's Proposed Language:**

#### **10.1 Coverage**

The Employer agrees to make periodic contributions on behalf of all employees covered by this Agreement to the SEIU 775 Multiemployer Health Benefits Trust Fund ("Trust") in the amount specified in Section 10.3 below.

#### **10.2 Contributions**

Effective July 1, 2009, the Employer shall contribute two dollars and twenty-five cents (\$2.25) to the Trust per paid hour for all employees covered by this Agreement. Effective July 1, 2010, the Employer shall contribute two dollars and fifty-three cents (\$2.53) to the Trust per paid hour for all employees covered by this Agreement.

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15<sup>th</sup>) day of the month following the period for which contributions are due or before such other date as the Trustees may hereafter determine. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Trust or their designee.

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers. Ongoing costs for deduction of employee premiums for health care shall be paid by the Employer.

### **10.3 Payroll Deductions**

The Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any employee. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer.

### **10.4 Purpose of Trust**

For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit, the Employer shall become and remain a participating employer in the Trust during the complete life of this Agreement, and any extension thereof.

### **10.5 Trust Agreement**

The Employer and the Union hereby agree to be bound by the provisions of the Fund's Agreement and Declaration of Trust, and by all resolutions and rules adopted by the Trustees pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the designated Trust in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Trust.

The Employer shall ask the Board of Trustees to modify the Trust Agreement, so that the Employer appoints an Employer Trustee. If such modification is made, the Employer shall appoint the appropriate Trustee.

### **10.6 Indemnify and Hold Harmless**

The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

## **Employer's Proposed Language:**

### **10.1 Intent**

The parties agree that the intent of this Article 10 is to provide health care, dental and vision benefits and coverage only to those workers who do not have other health insurance coverage, to the extent permitted by law.

### **10.2 Contributions**

Provided the State receives approval from the Center for Medicaid Services (CMS) for the change in payment method, effective July 1, 2009, the Employer shall contribute to the SEIU Local 775 Multiemployer Health Benefits Trust (also referred to herein as the "Trust") one dollar and ninety-seven cents (\$1.97) per Department-paid hour for all employees covered by this Agreement. Provided the State received CMS approval, effective July 1, 2010, the Employer shall contribute two dollars and forty-five cents (\$2.45) to the Trust per Department-paid hour for all employees covered by this Agreement. Department-paid hours shall not include participation hours.

If the State is unsuccessful in receiving approval from CMS for the above payment method, effective July 1, 2009, the Employer shall contribute up to six hundred forty-nine dollars and fifty-eight cents (\$649.58) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

If CMS has not approved the change in payment method, effective July 1, 2010, the Employer shall contribute up to seven hundred twenty-seven dollars and fifty-three cents (\$727.53) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

The SEIU 775 Multiemployer Health Benefits Trust shall determine the level of contribution by eligible home care



workers to the Trust but in no case will it be less than \$17.00 per month. This contribution shall be made via payroll deduction upon written authorization of each eligible home care worker. Eligible home care workers who do not provide written authorization for the required payroll deduction shall not receive coverage until such time as they have provided written authorization pursuant to the policies established by the Trust and in order to minimize adverse selection against any health plan(s) of the Trust. Ongoing costs for deduction of employee premiums for health care shall be paid by the Employer.

### **10.3 Eligibility**

Effective January 1, 2005, or as otherwise provided for in Section 1, those home care workers employed for at least three (3) consecutive months and who work a minimum of eighty-six (86) hours per month, and who are not otherwise eligible to receive health care benefits through other family coverage, other employment-based coverage or military or veterans coverage, shall be considered eligible.

### **10.4 Coverage**

Coverage for eligible home care workers shall begin subsequent to legislative funding approval and as provided for in Section 1. Eligible home care workers who do not provide written authorization for the required payroll deduction in Section 1 shall not receive coverage until such time as they have provided written authorization. Costs for implementation of deduction of employee premiums for health care shall be paid by the Employer.

### **10.5 Purpose of Trust**

For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit, the Employer shall become and remain a participating employer in the Trust during the complete life of this Agreement, and any extension thereof.

### **10.6 Trust Agreement**

The Employer and the Union hereby agree to be bound by the provisions of the Fund's Agreement and Declaration of Trust, and by all resolutions and rules adopted by the Trustees pursuant to the powers delegated, unless otherwise

provided for in this Agreement. The Employer accepts the Employer Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the designated Trust in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Trust. The Employer shall ask the Board of Trustees to modify the Trust Agreement, so that the Employer appoints one or more Employer Trustees. If such modification is made, the Employer shall appoint the appropriate Trustees.

### **10.7 Indemnify and Hold Harmless**

The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust shall indemnify and hold harmless from liability the Employer, the HCQA, all branches and departments of Washington state government, and the State of Washington, its agents and/or its representatives, from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

### **Award:**

## **Article 10 - Comprehensive Health Care Benefits**

### **10.1 Coverage**

The Employer agrees to make periodic contributions on behalf of all employees covered by this Agreement to the SEIU 775 Multiemployer Health Benefits Trust Fund ("Trust") in the amount specified in Section 10.3 below.

### **10.2 Contributions**

Provided the State receives approval from the Center for Medicaid Services (CMS) for the change in payment method, effective July 1, 2009, the Employer shall contribute to the SEIU Local 775 Multiemployer Health Benefits Trust (also referred to herein as the "Trust") one dollar and ninety-seven cents (\$1.97) per Department-paid hour for all employees covered by this Agreement. Provided the State received CMS approval, effective July 1, 2010, the Employer

shall contribute two dollars and forty-five cents (\$2.45) to the Trust per Department-paid hour for all employees covered by this Agreement. Department-paid hours shall not include participation hours.

If the State is unsuccessful in receiving approval from CMS for the above payment method, effective July 1, 2009, the Employer shall contribute up to six hundred forty-nine dollars and fifty-eight cents (\$649.58) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

If CMS has not approved the change in payment method, effective July 1, 2010, the Employer shall contribute up to seven hundred twenty-seven dollars and fifty-three cents (\$727.53) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15<sup>th</sup>) day of the month following the period for which contributions are due or before such other date as the Trustees may hereafter determine. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may reasonably be required by the Trust or their designee.

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers. Ongoing costs for deduction of employee premiums for health care shall be paid by the Employer.

### **10.3 Payroll Deductions**

The Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any employee. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer.

#### **10.4 Purpose of Trust**

For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit, the Employer shall become and remain a participating employer in the Trust during the complete life of this Agreement, and any extension thereof.

#### **10.5 Trust Agreement**

The Employer and the Union hereby agree to be bound by the provisions of the Fund's Agreement and Declaration of Trust, and by all resolutions and rules adopted by the Trustees pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the designated Trust in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Trust.

The Employer shall ask the Board of Trustees to modify the Trust Agreement, so that the Employer appoints an Employer Trustee. If such modification is made, the Employer shall appoint the appropriate Trustee.

#### **10.6 Indemnify and Hold Harmless**

The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

#### **Arbitrator's Analysis**

There are only three significant points to the Arbitrator's analysis on this issue. First, the Arbitrator is persuaded by State arguments that having a safeguard in the language in the event that Medicaid does not approve

the health trust arrangement is simply prudent and that there is no reason not to include the language to ensure a reasonable fall back position.

Second, the State appears to the Arbitrator to have accepted an involvement in the Taft-Hartley Trust but then it has also decided that it only wants to be halfway in. The Arbitrator is convinced by Union arguments that the trust has certain benefits but that those benefits only work if the Parties fully embrace it. The Employer is adequately protected, in the Arbitrator's view, because it negotiates the financial contribution and it has a place on the trust's board of directors. Moreover, if the experience is not a good one, then the matter can be taken up during negotiations for a future CBA.

Finally, for budgetary reasons the Arbitrator awarded the State's offer with regard to the 09-10 and 10-11 contributions to the trust.

## ISSUE 7

### Article 11 - Holidays and Other Benefits (new provision)

#### Current Provision

The Parties have chosen to incorporate Article 11 - Dental and Vision Benefits - of the current contract into Article 10 - Comprehensive Health Care Benefits - of the proposed contract language. The Union proposes an entirely new Article 11 titled *Holidays and Other Benefits*.

#### Union's Proposed Language

##### 11.1 Paid Holidays

The Employer will recognize the following holidays:

- a) New Year's Day (January 1<sup>st</sup>)
- b) Martin Luther King Jr.'s Birthday (3<sup>rd</sup> Monday in January)
- c) President's Day (3<sup>rd</sup> Monday in February)
- d) Memorial Day (last Monday in May)
- e) Independence Day (July 4)
- f) Labor Day (1<sup>st</sup> Monday in September)
- g) Veteran's Day (November 11<sup>th</sup>)
- h) Thanksgiving Day (4<sup>th</sup> Thursday in November)
- i) The Friday Immediately Following Thanksgiving Day
- j) Christmas Day (December 25<sup>th</sup>)

##### 11.2 Holiday Rules

The following rules apply to all holidays, except personal holiday:

- a) On each holiday, employees that work 160 or more hours per month will be paid eight (8) hours at their regular rate of pay. Employees that work less than 160 hours per month shall be paid an appropriate pro-rated portion of the eight hours of regular pay provided above. For example, an employee that works 80 hours per month (50% of 160) shall be paid for four (4) hours at their regular rate of pay on each holiday.

- b) In addition to subsection a) above, employees will be paid for all actual hours worked on the holiday at their overtime rate of pay in accordance with Article 9.4.

### **11.3 Personal Holiday**

The Employer will recognize one personal holiday each calendar year, as selected by the employee. For employees that work 160 or more hours per month, this self selected holiday will be compensated with eight (8) hours of regular pay. Employees that work less than 160 hours per month shall be paid an appropriate pro-rated portion of the eight hours of regular pay provided above. For example, an employee that works 80 hours per month (50% of 160) shall be paid for four (4) hours at their regular rate of pay on each holiday.

### **11.4 Increased Wages in Lieu of Holidays**

In the event that the technological and administrative function of maintaining a holiday benefits system is too burdensome, the Employer may choose to instead create a formula to convert the economic value of the holidays in sections 11.1 and 11.3 above into an additional increase to each step of the wage scale in Appendix A

### **11.5 Jury Duty Leave**

Employees shall be paid at their regular rate of pay for time spent serving on jury duty.

### **11.6 Bereavement Leave**

Employees shall be paid at their regular rate of pay for up to three (3) days per calendar year upon the death of an immediate family member. Immediate family shall be define as a grandparent, parent or parent-in-law, spouse or domestic partner, sibling, child, grandchild or stepchildren of the immediate family.

### **Employer's Proposed Language**

[No holiday or other benefits provision]

## **Award**

[No holiday or other benefits provision]

## **Arbitrator's Analysis**

The award reflects two primary considerations. First, the proposed benefits are those typically found in a traditional employment relationship. IPs have an independent, personal relationship with individual clients - their employer. These traditional benefits are not easily administered in the context of the IPs unique employment situation.

The second and the most significant consideration, in prioritizing how to spend the available new money during the term of the CBA, the Arbitrator did not place any of the proposed benefits in a must do category.

## **ISSUE 8**

### **Article 13 - Paid Time Off (formerly Vacation Leave)**

#### **Current Provisions**

##### **Article 13 - Vacation Leave**

Employees shall be eligible for paid vacation benefits. Employees shall accrue one (1) hour for every forty (40) hours worked. Paid vacation leave hours shall cap at eight (80) hours. In order to be eligible to be paid for vacation leave, an employee must have the consent of his/her client and inform a designated agent of the Employer no less than two weeks before the paid vacation leave begins.



## **Union's Proposed Language**

### **Article 13.1 - Paid Time Off Accrual Rate**

Employees shall be eligible for paid time off. Employees shall accrue one (1) hour for every thirty (30) hours worked. Paid time off hours shall cap at eight (80) hours. In order to be eligible to be paid for paid time off, an employee must have the consent of his/her client and inform a designated agent of the Employer no less than two weeks before the paid time off begins.

### **Article 13.2 - Forfeited Vacation and Sick Benefits**

The Employer shall submit all paid time off benefits forfeited by employees to an hours bank. The use of these hours shall be designated by the Union. For example, such hours, at the Union's discretion, may be used to compensate bargaining team members.

## **Employer's Proposed Language**

### **Article 13 - Paid Time Off**

Employees shall be eligible for paid time off. Employees shall accrue one (1) hour for every forty (40) hours worked. Paid time off hours shall cap at eight (80) hours. In order to be eligible to be paid for time off, an employee must have the consent of his/her client and inform a designated agent of the Employer no less than two weeks before the paid time off begins.

### **Award:**

### **Article 13 - Paid Time Off**

Employees shall be eligible for paid time off. Employees shall accrue one (1) hour for every forty (40) hours worked. Paid time off hours shall cap at eight (80) hours. In order to be eligible to be paid for time off, an employee must have the consent of his/her client and inform a designated agent of the Employer no less than two weeks before the paid time off begins.

## **Arbitrator's Analysis**

Once again this is primarily a money issue. The Employer's position leaves intact language from the old agreement and requires no new money. The Union's position alters the existing provision and requires new money both by increasing the rate of compensation and by creating an hours bank. Thus it was not accepted by the Arbitrator.

### **Issue 9**

## **Article 14 - Payroll, Electronic Deposits & Tax Withholding**

### **Current Provisions**

#### **14.1 Timely Payment**

Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered. To promote a timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

#### **14.2 Electronic Deposit**

Home care workers shall have the right to authorize electronic deposit of any payment issued to them for services or other reimbursement.

#### **14.3 Tax Withholding**

The Employer, at its expense, shall withhold from each employee's paycheck the appropriate amount of Social Security, Federal and State Unemployment Insurance and Medicare contributions. Beginning on July 1, 2006 the Employer will also withhold Federal Income Tax.

## **Union's Proposed Language**

### **14.1 Modern Payroll System**

Prior to the expiration date of this Agreement, the Employer shall implement a payroll system for the purposes of calculating and making payments to individual providers.

The system must, at minimum, be capable of calculating and applying variable wage rates, combining several clients' service hours in a single payment; adding and editing deductions at variable levels for health care premiums, retirement contributions, taxes, union deductions, wage garnishments, and other purposes; changing pay dates; collecting and reporting required and supplemental demographic data, including, but not limited to, information outlined in Article 5; providing web-based and telephonic reporting of hours; providing for direct deposit into multiple bank accounts per individual; provide for payment by electronic debit card; and provide for a level of ease and cost-control in making changes to records, fields, and systems that easily allows for changes to be made in individual or system-wide payments and deductions on a 30 day notice with no significant additional cost to the Employer. In no case shall the current SSPS system be used to pay individual provider home care workers after June 30, 2011.

### **14.2 Twice Monthly Payment**

Prior to the expiration of this Agreement, home care workers shall be paid on a twice-monthly bases on the fifteenth and final day of each month. In the event that the fifteenth or final day of any month falls on a weekend or a banking holiday, payment shall be made on the business day most closely preceding the fifteenth or final day of that month.

### **14.3 Timely and Accurate Payment**

Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered. Home care workers who receive late payments as a result of an error or omission by the Employer shall be entitled to be made whole for personal costs (including but not limited

to costs such as bank account fees and credit account interest charges incurred as a result of late payments resulting from an error or omission by the Employer). To promote a timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

#### **14.4 Electronic Deposit**

Home care workers shall have the right to authorize electronic deposit of any payment issued to them for services or other reimbursement.

#### **14.5 Tax Withholding**

The Employer, at its expense, shall withhold from each employee's paycheck the appropriate amount of Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare contributions.

#### **14.6 Changes to Payroll and Payment Systems**

Unless specifically otherwise noted in this Agreement, the Employer shall bear all costs for any changes to payroll or payment systems required to implement this Agreement, including both the costs of any initial programming changes and the ongoing costs of operating payroll and payment systems.

### **Employer's Proposed Language**

#### **14.1 Modern Payroll System**

Prior to the expiration date of this Agreement, the Employer shall make every effort to implement a payroll system for the purposes of calculating and making payments to individual providers.

The system will, at minimum, be capable of collecting and reporting demographic data, including but not limited to, information outlined in Article 5; calculating and applying variable wage rates, combining several clients' service hours in a single payment; adding and editing deductions at variable levels of health care premiums, taxes, union

deductions, wage garnishments, and other purposes; providing web-based and telephonic reporting of ours; providing for direct deposit; and providing a reasonable level of ease and cost-control in making changes to fields and/or records for individual or system-wide payments and deductions with no significant cost to the Employer.

#### **14.2 Twice Monthly Payment**

Prior to the expiration of this Agreement, the Employer will explore the options that would allow individual provider home care workers to be paid on a twice-monthly basis.

#### **14.3 Timely and Accurate Payment**

Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered. To promote a timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

#### **14.4 Electronic Deposit**

Home care workers shall have the right to authorize electronic deposit of any payment issued to them for services or other reimbursement.

#### **14.5 Tax Withholding**

The Employer, at its expense, shall withhold from each employee's paycheck the appropriate amount of Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare contributions.

#### **14.6 Changes to Payroll and Payment Systems**

Unless specifically otherwise noted in this agreement, the Employer shall bear all costs for any changes to payroll for payment systems required to implement this agreement, including both the cost of any initial programming changes and the I'm going costs of operating payroll and payment systems.

**Award:**

**Article 14 - Payroll, Electronic Deposits & Tax Withholding**

**14.1 Modern Payroll System**

Prior to the expiration date of this Agreement, the Employer shall make every effort to implement a payroll system for the purposes of calculating and making payments to individual providers.

The system will, at minimum, be capable of collecting and reporting demographic data, including but not limited to, information outlined in Article 5; calculating and applying variable wage rates, combining several clients' service hours in a single payment; adding and editing deductions at variable levels of health care premiums, taxes, union deductions, wage garnishments, and other purposes; providing web-based and telephonic reporting of ours; providing for direct deposit; and providing a reasonable level of ease and cost-control in making changes to fields and/or records for individual or system-wide payments and deductions with no significant cost to the Employer.

**14.2 Twice Monthly Payment**

Prior to the expiration of this Agreement, the Employer will explore the options that would allow individual provider home care workers to be paid on a twice-monthly basis.

**14.3 Timely and Accurate Payment**

Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered. To promote a timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

**14.4 Electronic Deposit**

Home care workers shall have the right to authorize electronic deposit of any payment issued to them for services or other reimbursement.

#### **14.5 Tax Withholding**

The Employer, at its expense, shall withhold from each employee's paycheck the appropriate amount of Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare contributions.

#### **14.6 Changes to Payroll and Payment Systems**

Unless specifically otherwise noted in this agreement, the Employer shall bear all costs for any changes to payroll for payment systems required to implement this agreement, including both the cost of any initial programming changes and the I'm going costs of operating payroll and payment systems.

#### **Arbitrator's Analysis**

In the Arbitrator's view, the State has shown that it is moving forward in a reasonable fashion to address this mutual area of concern. As previously noted, the Arbitrator is convinced that when mandatory timelines are placed for the development of new technologies or protocols, the mandatoriness has a tendency to drive up the cost. If the State was not making progress, The Arbitrator would find differently.

Additionally, The Arbitrator is convinced that the State's simpler version of the payroll system is better supported by the evidence. Asking too much of the new system is most likely to slow the implementation and to increase the frustration of the parties over the adequacy of the end result.

## ISSUE 10

### Article 17 - Training

#### Current Provisions

##### **17.1 Minimum Training Requirements**

Within six (6) months of the signing of this Agreement, the parties shall establish a Joint Committee on Training and Education to consist of equal numbers of home care worker representatives (designated by the Union) and employer representatives (designated by HCQA). The Joint Committee shall meet at mutually convenient times and at ADA accessible locations.

The Joint Committee shall consist of up to three (3) representatives of the Union and up to three (3) representatives of HCQA. The parties are encouraged to select members who are representatives of home care workers' and consumers' interests respectively. Home care workers serving as representatives of the Union as described above, shall be compensated by the HCQA for their time spent in Joint Committee meetings. The parties shall be solely responsible for determining reimbursement, if any, of other expenses of their respective representatives and/or resource persons attending meetings of the Joint Committee.

##### **17.2 Qualifications**

The objective of this Committee shall be to establish comprehensive training qualifications and requirements for individual providers and subject to necessary input from consumers for recommendation to the HCQA Board under the HCQA's statutory duty to establish qualifications, including minimum training qualifications.

##### **17.3 Partnership Fund**

The Joint Committee on Training and Education shall endeavor to develop a proposal for a joint training and education partnership fund for the purpose of conducting training through or by the HCQA for independent providers covered under this Agreement. The Committee shall also consider the feasibility of the creation of a multi-employer home care industry training and education partnership fund.



## **Union's Proposed Language**

### **17.1 SEIU Healthcare Northwest Training Partnership**

Pursuant to RCW 74.39A.360, there shall be established a ("Training Partnership" or "Partnership"), which will be called the SEIU Healthcare Northwest Training Partnership. The Training Partnership will possess the capacity to provide training, peer mentoring, workforce development, and other services to individual providers. The Employer shall become and remain a participating employer in such a Partnership during the complete life of this Agreement, and any extension thereof.

### **17.2 Partnership Agreement**

By being a participating employer during the complete life of this Agreement, any extension thereof, the Employer and the Union hereby agree to be bound by the provisions of the Partnership's Operating Agreement, and by all resolutions and rules adopted by the Trustees of the Partnership pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Partnership, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Partnership, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the Partnership in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Partnership.

### **17.3 Coverage**

The Employer agrees to make periodic contributions to the Training Partnership identified in Section 17.1, on behalf of all employees covered by this Agreement, in the amount specified in Section 17.4 below.

### **17.4 Contributions**

Effective July 1, 2009, the Employer shall contribute up to twenty-one and one-half cents (\$0.215) to the Partnership per paid hour for all employees covered by this Agreement.

In the event of a statutory change to individual provider training requirements, effective July 1, 2009, the State shall contribute up to twenty-seven and one-half cents (\$0.275) to the Partnership per paid hour for all employees covered by this Agreement in lieu of the above rate.

If the State is unsuccessful in receiving approval from CMS for the above payment method, the parties shall meet to bargain over an alternative method of payment. Additionally, in the event any other significant change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

Contributions required by this provision shall be paid to the Partnership on or before the twenty-fifth (25<sup>th</sup>) day of the month following the period for which contributions are due or before such other date as the Trustees of the Partnership may hereafter determine. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or their designee.

### **17.5 Minimum Basic Training Requirements**

Effective January 1, 2010, all legally required basic training for individual providers shall be provided through the Partnership. All individual providers shall be compensated at their regular rate of pay for all hours spent in basic training.

In the event of a statutory change to individual provider training requirements, the Partnership shall provide all additional required basic training for individual providers required by law. All individual providers shall continue to be compensated at their regular rate of pay for all hours spent in basic training.

The parties intend that all orientation and safety training occur as close to the date of hire as possible, so as to prevent the creation of any barriers to the timely provision of Medicaid benefits to consumers.

### **17.6 Minimum Continuing Education Training Requirements**

Beginning January 1, 2010, and each calendar year after completing basic training, each individual provider shall complete all legally required continuing education training through the Partnership. The continuing education requirement must be satisfied every year. The purpose of continuing education is to improve and enhance the knowledge and skills of individual providers relative to the care needs of their consumer(s). Completion of all continuing education hours is a prerequisite for maintaining eligibility to work as an individual provider. All individual providers shall be compensated

at their regular rate of pay for all hours spent in continuing education training.

### **17.7 Exemptions from Minimum Training Requirements**

Effective July 1, 2009, all existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers.

In the event of a statutory change to individual provider training requirements, the Partnership shall recognize all exemptions from required basic training for individual providers required by law.

### **17.8 Minimum Training Requirements for Exempted Individual Providers**

Effective July 1, 2009, all individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

In the event of a statutory change to individual provider training requirements, the Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

Any individual provider who exempted from basic training requirements may voluntarily enroll in any training offered by the Partnership for which that individual provider is otherwise eligible.

### **17.9 Peer Mentoring**

Pursuant to RCW 74.39A.330, beginning on January 1, 2010, the Training Partnership shall offer a peer mentoring program to all new individual providers. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire, fire or instruct the mentee in the performance of the individual provider's duties, or with the case manager's exercise of his/her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking and verifying hours of mentor work.

To be mentors, individual providers must have completed all applicable required training appropriate to their date of hire, plus peer mentorship training. Prior to appointment, mentors must meet the same qualifications as an individual provider and must meet all other qualifications set forth by the Partnership.

Once selected, peer mentors will complete training before being assigned to mentor up to ten (10) new workers. Peer mentors will be eligible to receive continuing education credit for mentor training, while mentees mentoring hours count towards satisfaction of basic training requirements.

#### **17.10 Advanced Training**

Effective January 1, 2010, all legally required advanced training for individual providers shall be provided through the Partnership.

In the event of a statutory change to individual provider training requirements, the Partnership shall provide all additional required advanced training for individual providers required by law.

#### **17.11 Training Curriculum and Instructors**

The Employer shall be responsible for setting standards for training instructors and approving curriculum to the extent required by law.

#### **17.12 Training Provisions, Tracking and Reporting**

The parties agree that it is their intention that effective January 1, 2010, the Partnership will be capable of the following:

- 1) Providing all types of training required by law and that meets training standards set in administrative rule;
- 2) Providing all types of curricula and methods of delivery authorized in rule by the Employer;
- 3) Registering all individual providers eligible for training;
- 4) Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines;
- 5) Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable;

- 6) Providing fully supplied clinical settings and ADA compliant facilities for training;
- 7) Evaluating knowledge and skills competency prior to the administration of the certification examination;
- 8) Issuing state-provided Certifications of Completion to those individual providers that successfully complete their court work;
- 9) Providing the Employer with reports on student course evaluations at least quarterly;
- 10) Maintain training records for a reasonable amount of time and making such records available to individual providers upon request;
- 11) Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

#### **17.13 Transition to the Partnership**

To ensure services to consumers that are continuous, efficient and appropriate, the Employer may meet with the Partnership when necessary during the transition from the current training system to the Partnership. The Employer also shall be available on an ongoing basis to answer training questions and concerns during the complete life of this Agreement and any extension thereof.

In the event that either party determines that the development and integration of all necessary training-related data systems cannot be accomplished in time to allow the Employer to acquit its obligations under the law, the parties may meet and confer to address alternate ways to deliver training, including the possibility of using the current system, until such time that the development and integration of data systems is complete.

#### **17.14 Access to Training**

##### **a) Prior to January 1, 2010**

The Employer agrees to provide the Union with a total of thirty (30) minutes of presentation time on union issues at either the "Revised Fundamentals of Care" (RFOC) training, the Parent Provider Training (PPT) for parents of people with developmental disabilities, or Safety Training or any other required training. This thirty (30) minute period shall be paid as time worked for all individual provider

home care workers in the bargaining unit receiving the Union portion of the training.

The parties agree the thirty (30) minutes provided for the union presentation at the RFOC, PPT, or Safety Training or any other required training will be for new bargaining unit member IPs. The parties agree the thirty (30) minutes provided for the union presentation at the PPT will be for new bargaining unit member IPs who are not required to take RFOC.

The parties agree that a bargaining unit member IP will not receive pay for any more than a total of thirty (30) minutes for any and all Union presentations; for example, in the event that an IP attending an RFOC training has already heard the union presentation at a stand-alone Safety training, they would not be paid for attending the union presentation at the RFOC training. The parties agree that the first thirty (30) minutes of the RFOC or PPT training will be for the Union presentation. For stand alone Safety Training, the Union presentation will be at the end of the training.

The Employer agrees to have the Agencies providing or arranging for the training give written notice to the Union, which will include the date, location and time of the RFOC, PPT, or Safety Training or any other required training within two weeks after the training is first scheduled. This written notice shall be sent by email. The Union agrees that if it or any of its representatives have questions about the schedule they will contact the person at the Agency who provided them notice of the training. The Union will not contact the trainer with any questions about the training or the trainer's presentation.

The Union agrees that this thirty (30) minute presentation time outlined above is its only opportunity during training to address the IPs. If the Union representative does not appear at the scheduled time, the access of the Union to that training class is forgone.

The Employer agrees to provide notice to IPs about the Union presentation in the RFOC, or PPT or any other required training notification letter that the bargaining unit member IP receives from the training entity. This notice will read:

"On (date) you are scheduled to attend training on (RFOC or PPT, whichever is appropriate). Arrive for this training at (time). The first thirty (30) minutes of

the training will be a presentation from members of the union for Individual Providers on information about your wages, benefits and the union. You will be paid for this ½ hour of time.

In addition, if the trainer is asked by individuals who are not IPs if they should attend the union presentation, the response will be that the time is paid time only for IPs and that if any other person decides to attend they will not be paid for the time. For stand alone Safety Training, similar notification will be given to the bargaining unit member IP.

**b) After January 1, 2010**

The Employer agrees to compensate up to thirty (30) minutes of time for presentation time on union issues to all individual providers receiving the Union portion of required basic training. Any additional time for presentation on union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.

**c) Employer Access to Training**

Effective January 1, 2010, Employer responsibilities included in this section 17.15 for reporting and notification shall become the responsibility of the Partnership. Effective January 1, 2010, the Partnership shall provide all statewide training schedules for all basic training, advanced training and continuing education courses, including dates, locations and times to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

**17.15 Indemnify and Hold Harmless**

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or employees covered under this Agreement.

**Employer's Proposed Language**

**17.1 Training Partnership**

Pursuant to RCW 74.39A.009(14) and 74.39A.360 there shall be established a ("Training Partnership" or "Partnership"). The Training Partnership will possess the capacity to provide training, peer mentoring, workforce development, and other services to individual providers. The Employer shall become and remain a participating employer in such a Partnership during the complete life of this Agreement, and any extension thereof.

### **17.2 Partnership Agreement**

By being a participating employer during the complete life of this Agreement, any extension thereof, the Employer and the Union hereby agree to be bound by the provisions of the Partnership's Operating Agreement, and by all resolutions and rules adopted by the Trustees of the Partnership pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Partnership, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Partnership, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the Partnership in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Partnership.

### **17.3 Coverage**

The Employer agrees to make periodic contributions to the Training Partnership identified in Section 17.1, on behalf of all employees covered by this Agreement, in the amount specified in Section 17.4 below.

### **17.4 Contributions**

Effective July 1, 2009, the Employer shall contribute up to twenty-one and one-half cents (\$.215) to the Partnership per paid hour for all employees covered by this Agreement.

In the event of a statutory change to individual provider training requirements, effective July 1, 2009, the State shall contribute up to twenty-seven and one-half cents (\$.275) to the Partnership per paid hour for all employees covered by this Agreement in lieu of the above rate.

If the State is unsuccessful in receiving approval from CMS for the above payment method, the parties shall meet to bargain over the amount and an alternative method of payment. Additionally, in the event any other significant



change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

Contributions required by this provision shall be paid to the Partnership on or before the twenty-fifth (25<sup>th</sup>) day of the month following the period for which contributions are due or before such other date as the Trustees of the Partnership may hereafter determine. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or their designee.

### **17.5 Minimum Basic Training Requirements**

Effective January 1, 2010, all legally required basic training for individual providers shall be provided through the Partnership. All individual providers shall be compensated at their regular rate of pay for all hours spent in basic training.

In the event of a statutory change to individual provider training requirements, the Partnership shall provide all additional required basic training for individual providers required by law. All individual providers shall continue to be compensated at their regular rate of pay for all hours spent in basic training.

The parties intend that all orientation and safety training occur as close to the date of hire as possible, so as to prevent the creation of any barriers to the timely provision of Medicaid benefits to consumers.

### **17.11 Minimum Continuing Education Training Requirements**

Beginning January 1, 2010, and each calendar year after completing basic training, each individual provider shall complete all legally required continuing education training through the Partnership. The continuing education requirement must be satisfied every year. The purpose of continuing education is to improve and enhance the knowledge and skills of individual providers relative to the care needs of their consumer(s). Completion of all continuing education hours is a prerequisite for maintaining eligibility to work as an individual provider. All individual providers shall be compensated at their regular rate of pay for all hours spent in continuing education training.

### **17.12 Exemptions from Minimum Training Requirements**

Effective July 1, 2009, all existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers.

In the event of a statutory change to individual provider training requirements, the Partnership shall recognize all exemptions from required basic training for individual providers required by law.

#### **17.13 Minimum Training Requirements for Exempted Individual Providers**

Effective July 1, 2009, all individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

In the event of a statutory change to individual provider training requirements, the Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

Any individual provider who exempted from basic training requirements may voluntarily enroll in any training offered by the Partnership for which that individual provider is otherwise eligible.

#### **17.14 Peer Mentoring**

Pursuant to RCW 74.39A.330, beginning on January 1, 2010, the Training Partnership shall offer a peer mentoring program to all new individual providers. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire, fire or instruct the mentee in the performance of the individual provider's duties, or with the case manager's exercise of his/her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking and verifying hours of mentor work.

To be mentors, individual providers must have completed all applicable required training appropriate to their date of hire, plus peer mentorship training. Prior to appointment, mentors must meet the same qualifications as an individual provider and must meet all other qualifications set forth by the Partnership.

Once selected, peer mentors will complete training before being assigned to mentor up to ten (10) new workers. Peer mentors will be eligible to receive continuing education credit for mentor training, while mentees mentoring hours count towards satisfaction of basic training requirements.

#### **17.15 Advanced Training**

Effective January 1, 2010, all legally required advanced training for individual providers shall be provided through the Partnership.

In the event of a statutory change to individual provider training requirements, the Partnership shall provide all additional required advanced training for individual providers required by law.

#### **17.11 Training Curriculum and Instructors**

The Employer shall be responsible for setting standards for training instructors and approving curriculum to the extent required by law.

#### **17.12 Training Provisions, Tracking and Reporting**

The parties agree that it is their intention that effective January 1, 2010, the Partnership will be capable of the following:

- 1) Providing all types of training required by law and that meets training standards set in administrative rule;
- 2) Providing all types of curricula and methods of delivery authorized in rule by the Employer;
- 3) Registering all individual providers eligible for training;
- 4) Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines;
- 5) Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable;
- 6) Providing fully supplied clinical settings and ADA compliant facilities for training;
- 7) Evaluating knowledge and skills competency prior to the administration of the certification examination;

- 8) Issuing state-provided Certifications of Completion to those individual providers that successfully complete their court work;
- 9) Providing the Employer with reports on student course evaluations at least quarterly;
- 10) Maintain training records for a reasonable amount of time and making such records available to individual providers upon request;
- 11) Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

### **17.13 Transition to the Partnership**

To ensure services to consumers that are continuous, efficient and appropriate, the Employer may meet with the Partnership when necessary during the transition from the current training system to the Partnership. The Employer also shall be available on an ongoing basis to answer training questions and concerns during the complete life of this Agreement and any extension thereof.

In the event that either party determines that the development and integration of all necessary training-related data systems cannot be accomplished in time to allow the Employer to acquit its obligations under the law, the parties may meet and confer to address alternate ways to deliver training, including the possibility of using the current system, until such time that the development and integration of data systems is complete.

### **17.14 Access to Training**

#### **a) Prior to January 1, 2010**

The Employer agrees to provide the Union with a total of thirty (30) minutes of presentation time on union issues at either the "Revised Fundamentals of Care" (RFOC) training, or the Parent Provider Training (PPT) for parents of people with developmental disabilities. This thirty (30) minute period shall be paid as time worked for all individual provider home care workers in the bargaining unit receiving the Union portion of the training.

The parties agree the thirty (30) minutes provided for the union presentation at the RFOC or PPT will be for new bargaining unit member IPs. The parties agree the thirty (30) minutes provided for the union presentation at the PPT

will be for new bargaining unit member IPs who are not required to take RFOC.

The parties agree that a bargaining unit member IP will not receive pay for any more than a total of thirty (30) minutes for any and all Union presentations. The parties agree that the first thirty (30) minutes of the RFOC or PPT training will be for the Union presentation.

The Employer agrees to have the Agencies providing or arranging for the training give written notice to the Union, which will include the date, location and time of the RFOC or PPT. This written notice shall be sent by email. The Union agrees that if it or any of its representatives have questions about the schedule they will contact the person at the Agency who provided them notice of the training. The Union will not contact the trainer with any questions about the training or the trainer's presentation.

The Union agrees that this thirty (30) minute presentation time outlined above is its only opportunity during training to address the IPs. If the Union representative does not appear at the scheduled time, the access of the Union to that training class is forgone.

The Employer agrees to provide notice to IPs about the Union presentation in the RFOC, or PPT or any other required training notification letter that the bargaining unit member IP receives from the training entity. This notice will read:

"On (date) you are scheduled to attend training on (RFOC or PPT, whichever is appropriate). Arrive for this training at (time). The first thirty (30) minutes of the training will be a presentation from members of the union for Individual Providers on information about your wages, benefits and the union. You will be paid for this ½ hour of time.

In addition, if the trainer is asked by individuals who are not IPs if they should attend the union presentation, the response will be that the time is paid time only for IPs and that if any other person decides to attend they will not be paid for the time. For stand alone Safety Training, similar notification will be given to the bargaining unit member IP.

**b) After January 1, 2010**

The Employer agrees to compensate up to thirty (30) minutes of time for presentation time on union issues to all individual providers receiving the Union portion of required basic training. Any additional time for presentation on union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.

**c) Employer Access to Training**

Effective January 1, 2010, Employer responsibilities included in this section 17.15 for reporting and notification shall become the responsibility of the Partnership. Effective January 1, 2010, the Partnership shall provide all statewide training schedules for all basic training, advanced training and continuing education courses, including dates, locations and times to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

**17.15 Indemnify and Hold Harmless**

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or employees covered under this Agreement.

**Award:**

[The Arbitrator awards the entirety of the Employer's Language]

**Arbitrator's Analysis**

The Arbitrator is at a loss with regard to this issue because the differences seem so minute in the context of the whole provision. The parties have reached an extraordinary, broad based agreement on what is a unique and positive move in the direction of increased professionalism for IPs. Because of his concerns over

avoiding any potential increased costs, the Arbitrator is awarding the Employer's language with regard to the potential increase in contribution and with regard to potential issues with Medicaid.

## **Issue 11**

### **Article 22 - Hours of Work**

#### **Current Provisions**

##### **22.1 Hours of Work in Shared Residence Situations**

Effective September 1, 2007, workers performing work for clients with incontinence or special meal preparation needs shall not experience any reduction in hours based upon their shared residence with their clients. Specifically:

a) Incontinence: When total, frequent or occasional incontinence is present, the Employer will treat all housekeeping/laundry needs as unmet, which eliminates the current 5% housekeeping/laundry deduction in hours taken by the CARE tool to a 0% deduction in hours.

b) Meal Preparation: The elements in the CARE tool that can be related to the need for more than usual meal preparation are tube feeding, nutritional/oral issues (such as low sodium, calorie restriction, mechanically altered diet, etc.) and other special meal preparations (such as a soft or renal diet). If any of these elements are present, the Employer will treat meal preparation needs as unmet, which eliminates the current 5% meal preparation deduction in hours taken by the CARE tool to a 0% deduction in hours.

##### **22.2 Hours of Work when Clients have Complex Behavioral and Cognitive Issues**

Effective September 1, 2007, the Employer shall increase the hours of work for individual providers working for clients with complex behavioral and cognitive issues by:

a) Introducing a "behavior score" to CARE that will add authorized hours based upon the frequency and severity of problem behaviors. Each of the behaviors measured in CARE will be weighed based on severity and frequency of occurrence and the result will be a "behavior score" between one and four that will be added to the considerations that determine the authorization of hours by the CARE tool.

b) Establishing two new classification categories in CARE for extremely high Activities of Daily Living CARE tool scores. These new classifications would involve clinically complex caregiving and/or caregiving involving moderate to severe cognitive impairments.

### **Union's Proposed Language**

[No change in the provision]

### **Employer's Proposed Language**

#### **22.1 Hours of Work when Clients have Complex Behavioral and Cognitive Issues**

Effective September 1, 2007, the Employer shall increase the hours of work for individual providers working for clients with complex behavioral and cognitive issues by:

c) Introducing a "behavior score" to CARE that will add authorized hours based upon the frequency and severity of problem behaviors. Each of the behaviors measured in CARE will be weighed based on severity and frequency of occurrence and the result will be a "behavior score" between one (1) and four (4) that will be added to the considerations that determine the authorization of hours by the CARE tool.

d) Establishing two new classification categories in CARE for extremely high Activities of Daily Living CARE tool scores. These new classifications would involve clinically complex caregiving and/or caregiving involving moderate to severe cognitive impairments. When clients qualify for more than one classification category they will be placed in the category with the highest base hours.



## **Award**

### **22.1 Hours of Work when Clients have Complex Behavioral and Cognitive Issues**

Effective September 1, 2007, the Employer shall increase the hours of work for individual providers working for clients with complex behavioral and cognitive issues by:

e) Introducing a "behavior score" to CARE that will add authorized hours based upon the frequency and severity of problem behaviors. Each of the behaviors measured in CARE will be weighed based on severity and frequency of occurrence and the result will be a "behavior score" between one (1) and four (4) that will be added to the considerations that determine the authorization of hours by the CARE tool.

f) Establishing two new classification categories in CARE for extremely high Activities of Daily Living CARE tool scores. These new classifications would involve clinically complex caregiving and/or caregiving involving moderate to severe cognitive impairments. When clients qualify for more than one classification category they will be placed in the category with the highest base hours.

## **Arbitrator's Analysis**

The Arbitrator carefully studied this issue and considered it in the larger context of not only the applicable court decision but also changes in the home healthcare industry. The Arbitrator is convinced by State arguments that the industry is moving away from blanket assessments, either positive or negative, related to a shared living situation. A shared living situation is to be assessed purely on its merits without consideration for whether the client is living with the IP. Clients are not

to be given a mandatory, blanket deduction because of the living arrangement.

Similarly, in the Arbitrator's view, IPs should not receive a blanket enhancement based on the living arrangement. An individual assessment may grant the same benefit to the IP but it would be predicated exclusively on the results of the application of the CARE tool to each individual situation. As a result of this analysis, the Arbitrator agrees with the State and has removed the old language from Article 22. Since the removal of this language is a cost benefit to the State, as noted under issue 2 of this award, the Arbitrator applied the cost savings to the wage schedule.

## **Issue 12**

### **Article 23 - Retirement Benefits**

#### **Current Provisions**

##### **Article 23 - Retirement Benefit Consultant**

**23.1** The Union and the Employer agree that the Union Management Communications Committee shall explore the possible options for establishing a sustainable retirement benefit for workers covered under this Agreement.

**23.2** The Committee shall retain a consultant to prepare recommendations to be reported to the parties no later than January 31, 2008. Recommendations to the Committee should include plan designs that minimize individual risk to employee contributions, maximize individual retirement income and maximize portability. Recommendations to the Committee shall not be binding on either party.

**23.3** The cost of the consultant shall be shared equally by the parties and shall not exceed thirty thousand dollars (\$30,000.00) for either party.

### **Union Proposed Language**

#### **23.1 Creation of Administration System**

The Union and the Employer agreed that prior to the expiration of this agreement, the Employer shall develop an administrative and data collection system needed for establishing a sustainable retirement benefits for workers covered under this agreement. At a minimum, such a system shall have access to all the information provided to the Union per the requirements of Article 5 Bargaining Unit Information and all the data elements recommended by the retirement benefits consultant hired by the parties during the term of the 2007-2009 Collective Bargaining Agreement.

#### **23.2 Development of a Retirement Benefit Trust**

Prior to the expiration of this Agreement, the parties shall help develop a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

### **23.3 Development Funding**

The Employer shall bear the cost of developing such an administrative and data collection system but shall not exceed two hundred fifty thousand dollars (\$250,000.00).

### **Employer Proposed Language**

Employer Proposed to eliminate Article 23 - Retirement Benefits Consultant.

### **Award**

## **Article 23 - Retirement Benefits**

### **23.1 Creation of Administration System**

The Union and the Employer agreed that prior to the expiration of this agreement, the Employer shall develop an administrative and data collection system needed for establishing a sustainable retirement benefits for workers covered under this agreement. At a minimum, such a system shall have access to all the information provided to the Union per the requirements of Article 5 Bargaining Unit Information and all the data elements recommended by the retirement benefits consultant hired by the parties during the term of the 2007-2009 Collective Bargaining Agreement.

### **23.2 Development of a Retirement Benefit Trust**

Prior to the expiration of this Agreement, the parties shall help develop a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

### **23.3 Development Funding**

The Employer shall bear the cost of developing such an administrative and data collection system but shall not exceed two hundred fifty thousand dollars (\$250,000.00).

### **Arbitrator's Analysis**

In a prior interest arbitration decision involving this same bargaining unit the Arbitrator has indicated his

belief that ultimately the IPs should have a retirement program in place. The above provision simply keeps the process moving in this direction while minimizing any costs during the 09-11 biennium. While the State is correct in its argument that comparability data does not support moving forward, the Arbitrator notes that other State employees have a retirement system and that agency employees typically have a retirement system. He is convinced that these two facts more than justify what is a very modest step forward.

## **SUMMARY OF AWARD**

The following is an issue by issue reproduction of the Arbitrator's actual award on the twelve articles in dispute. It is provided solely for the purpose of making it easier for the party's to review the Arbitrator's decision as a whole.

### **ISSUE 1**

#### **Article 5 - Bargaining Unit Information**

##### **5.1 - Information to be Provided**

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format specified by the Union, and shall include the home care worker's full name, individual provider number, cumulative lifetime hours worked as an individual provider, hours or units (day, week, or month) worked in a month for which payment has been made, home address, mailing address, home phone number, personal wireless telephone numbers, electronic mail addresses, wage rate, program or service code, amount paid during the current month of payment, union member type and deduction type.

The Employer shall make a good faith effort to provide other information to the Union, if not otherwise prohibited by force of law, including hire date, a unique employee identifier number, termination date, date of birth, gender, primary preferred language, relationship to consumer employer, marital status, vacation hours paid, and vacation hours forfeited. The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information and records.

##### **5.2 - Collection of Additional Information**

The Employer shall amend all of the employment-related documents and forms required to be completed by individual provider home care workers so as to allow individual

provider home care workers to provide the Employer with electronic mail addresses and personal wireless telephone numbers.

### **5.3 - Privacy**

Unless otherwise provided for under Title 42 RCW, the following are exempt from public inspection and copying and shall not be released by the Employer except as necessary to comply with the provisions of this Agreement:

The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of individual provider home care workers as defined in RCW 74.39A.240 and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of individual provider home care workers as defined in RCW 74.39A.240, which may be held by the Employer in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of individual provider home care workers as defined in RCW 74.39A.240.

## **ISSUE 2**

### **9.1 Wages**

Effective July 1, 2009 a new wage scale is established based on cumulative career experience. Effective July 1, 2009, current employees will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit employees will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each employee based upon accumulation of hours. All employees shall be paid strictly on an hourly basis. Except as modified by this Agreement, all employees shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any employee according to any other rate than the rates contained in Appendix A, are hereby void.

**Appendix A - Wage Scale**

July 1, 2009 - June 30, 2010	
Cumulative Career Hours	Wage
0-2000	\$10.28
2001-4000	\$10.42
4001-6000	\$10.58
6001-8000	\$10.72
8001-10000	\$10.87
10001-12000	\$11.02
12001-14000	\$11.17
14000 plus hours	\$11.34

July 1, 2010 - June 30, 2011	
Cumulative Career Hours	Wage
0-2000	\$10.49
2001-4000	\$10.63
4001-6000	\$10.79
6001-8000	\$10.93
8001-10000	\$11.09
10001-12000	\$11.24
12001-14000	\$11.39
14000 plus hours	\$11.57

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors. Likewise, wages shall be adjusted upwards by fifty cents (\$.50) an hour for individual providers who hold and submit a valid "Home Care Aide" certification or Certified Nursing Assistant license (or equivalent or greater medical license).



## **ISSUE 3**

### **9.2 Certification Differential and Mentor, Preceptor, and Trainer Pay**

Employees who hold and submit a valid "Home Care Aide" certification or Certified Nursing Assistant license (or equivalent or greater medical license), shall be paid an additional fifty cents (\$.50) per hour differential in addition to his/her regular hourly wage rate.

An employee who is assigned by the Employer as a mentor, preceptor, or trainer of other employees or prospective employees shall be paid an additional one dollar (\$1.00) per hour differential in addition to his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

## **ISSUE 4**

### **9.3 Mileage Reimbursement**

Effective July 1, 2008, employees shall be compensated for the use of their personal vehicles to provide services to their clients (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month per client. The Employer will make all necessary changes to work forms, the payroll system and the CARE tool to assure that accurate mileage can be tracked and compensated.

Employees providing transportation to services funded by the Division of Developmental Disabilities (DDD) Home and Community Based Services (HCBS) waivers or the DDD Individual and Family Services Program and identified in the client's Individual Support Plan, in excess of sixty (60) miles per month, will be reimbursed up to an additional maximum authorized by the case manager.

## **ISSUE 5**

### **9.5 Overtime**

[No new provision]

## **ISSUE 6**

### **Article 10 - Comprehensive Health Care Benefits**

#### **10.1 Coverage**

The Employer agrees to make periodic contributions on behalf of all employees covered by this Agreement to the SEIU 775 Multiemployer Health Benefits Trust Fund ("Trust") in the amount specified in Section 10.3 below.

#### **10.2 Contributions**

Provided the State receives approval from the Center for Medicaid Services (CMS) for the change in payment method, effective July 1, 2009, the Employer shall contribute to the SEIU Local 775 Multiemployer Health Benefits Trust (also referred to herein as the "Trust") one dollar and ninety-seven cents (\$1.97) per Department-paid hour for all employees covered by this Agreement. Provided the State received CMS approval, effective July 1, 2010, the Employer shall contribute two dollars and forty-five cents (\$2.45) to the Trust per Department-paid hour for all employees covered by this Agreement. Department-paid hours shall not include participation hours.

If the State is unsuccessful in receiving approval from CMS for the above payment method, effective July 1, 2009, the Employer shall contribute up to six hundred forty-nine dollars and fifty-eight cents (\$649.58) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

If CMS has not approved the change in payment method, effective July 1, 2010, the Employer shall contribute up to seven hundred twenty-seven dollars and fifty-three cents (\$727.53) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care

benefits through other family coverage, other employment based coverage or military or veterans coverage.

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15<sup>th</sup>) day of the month following the period for which contributions are due or before such other date as the Trustees may hereafter determine. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may reasonably be required by the Trust or their designee.

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers. Ongoing costs for deduction of employee premiums for health care shall be paid by the Employer.

### **10.3 Payroll Deductions**

The Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any employee. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer.

### **10.4 Purpose of Trust**

For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit, the Employer shall become and remain a participating employer in the Trust during the complete life of this Agreement, and any extension thereof.

### **10.5 Trust Agreement**

The Employer and the Union hereby agree to be bound by the provisions of the Fund's Agreement and Declaration of Trust, and by all resolutions and rules adopted by the Trustees pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Fund, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the designated Trust in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Trust.

The Employer shall ask the Board of Trustees to modify the Trust Agreement, so that the Employer appoints an Employer Trustee. If such modification is made, the Employer shall appoint the appropriate Trustee.

#### **10.6 Indemnify and Hold Harmless**

The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

#### **ISSUE 7**

### **Article 11 - Holidays and Other Benefits (new provision)**

#### **11.1 Paid Holidays**

[No new provision on holidays and other benefits]

#### **ISSUE 8**

### **Article 13 - Paid Time Off**

Employees shall be eligible for paid time off. Employees shall accrue one (1) hour for every forty (40) hours worked. Paid time off hours shall cap at eight (80) hours. In order to be eligible to be paid for time off, an employee must have the consent of his/her client and inform a designated agent of the Employer no less than two weeks before the paid time off begins.

#### **ISSUE 9**

### **Article 14 - Payroll, Electronic Deposits & Tax Withholding**

#### **14.1 Modern Payroll System**

Prior to the expiration date of this Agreement, the Employer shall make every effort to implement a payroll system for the purposes of calculating and making payments to individual providers.

The system will, at minimum, be capable of collecting and reporting demographic data, including but not limited to, information outlined in Article 5; calculating and applying variable wage rates, combining several clients' service hours in a single payment; adding and editing deductions at variable levels of health care premiums, taxes, union deductions, wage garnishments, and other purposes; providing web-based and telephonic reporting of ours; providing for direct deposit; and providing a reasonable level of ease and cost-control in making changes to fields and/or records for individual or system-wide payments and deductions with no significant cost to the Employer.

#### **14.2 Twice Monthly Payment**

Prior to the expiration of this Agreement, the Employer will explore the options that would allow individual provider home care workers to be paid on a twice-monthly basis.

#### **14.3 Timely and Accurate Payment**

Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered. To promote a timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

#### **14.4 Electronic Deposit**

Home care workers shall have the right to authorize electronic deposit of any payment issued to them for services or other reimbursement.

#### **14.5 Tax Withholding**

The Employer, at its expense, shall withhold from each employee's paycheck the appropriate amount of Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare contributions.

#### **14.6 Changes to Payroll and Payment Systems**

Unless specifically otherwise noted in this agreement, the Employer shall bear all costs for any changes to payroll for payment systems required to implement this agreement, including both the cost of any initial programming changes and the going costs of operating payroll and payment systems.

## **ISSUE 10**

### **Article 17 - Training**

#### **17.2 Training Partnership**

Pursuant to RCW 74.39A.009(14) and 74.39A.360 there shall be established a ("Training Partnership" or "Partnership"). The Training Partnership will possess the capacity to provide training, peer mentoring, workforce development, and other services to individual providers. The Employer shall become and remain a participating employer in such a Partnership during the complete life of this Agreement, and any extension thereof.

#### **17.2 Partnership Agreement**

By being a participating employer during the complete life of this Agreement, any extension thereof, the Employer and the Union hereby agree to be bound by the provisions of the Partnership's Operating Agreement, and by all resolutions and rules adopted by the Trustees of the Partnership pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Partnership, and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Partnership, and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the Partnership in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Partnership.

#### **17.3 Coverage**

The Employer agrees to make periodic contributions to the Training Partnership identified in Section 17.1, on behalf of all employees covered by this Agreement, in the amount specified in Section 17.4 below.

#### **17.4 Contributions**

Effective July 1, 2009, the Employer shall contribute up to twenty-one and one-half cents (\$0.215) to the Partnership per paid hour for all employees covered by this Agreement.

In the event of a statutory change to individual provider training requirements, effective July 1, 2009, the State shall contribute up to twenty-seven and one-half cents (\$0.275) to the Partnership per paid hour for all employees covered by this Agreement in lieu of the above rate.

If the State is unsuccessful in receiving approval from CMS for the above payment method, the parties shall meet to bargain over the amount and an alternative method of payment. Additionally, in the event any other significant change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

Contributions required by this provision shall be paid to the Partnership on or before the twenty-fifth (25<sup>th</sup>) day of the month following the period for which contributions are due or before such other date as the Trustees of the Partnership may hereafter determine. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or their designee.

#### **17.5 Minimum Basic Training Requirements**

Effective January 1, 2010, all legally required basic training for individual providers shall be provided through the Partnership. All individual providers shall be compensated at their regular rate of pay for all hours spent in basic training.

In the event of a statutory change to individual provider training requirements, the Partnership shall provide all additional required basic training for individual providers required by law. All individual providers shall continue to be compensated at their regular rate of pay for all hours spent in basic training.

The parties intend that all orientation and safety training occur as close to the date of hire as possible, so as to prevent the creation of any barriers to the timely provision of Medicaid benefits to consumers.

#### **17.16 Minimum Continuing Education Training Requirements**

Beginning January 1, 2010, and each calendar year after completing basic training, each individual provider shall complete all legally required continuing education training through the Partnership. The continuing education requirement must be satisfied every year. The purpose of continuing education is to improve and enhance the knowledge and skills of individual providers relative to the care needs of their consumer(s). Completion of all continuing education hours is a prerequisite for maintaining eligibility to work as an individual provider. All individual providers shall be compensated at their regular rate of pay for all hours spent in continuing education training.

**17.17 Exemptions from Minimum Training Requirements**

Effective July 1, 2009, all existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers.

In the event of a statutory change to individual provider training requirements, the Partnership shall recognize all exemptions from required basic training for individual providers required by law.

**17.18 Minimum Training Requirements for Exempted Individual Providers**

Effective July 1, 2009, all individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

In the event of a statutory change to individual provider training requirements, the Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

Any individual provider who exempted from basic training requirements may voluntarily enroll in any training offered by the Partnership for which that individual provider is otherwise eligible.

**17.19 Peer Mentoring**

Pursuant to RCW 74.39A.330, beginning on January 1, 2010, the Training Partnership shall offer a peer mentoring program to all new individual providers. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by



individual providers. Mentors will not infringe on the rights of the consumer to select, hire, fire or instruct the mentee in the performance of the individual provider's duties, or with the case manager's exercise of his/her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking and verifying hours of mentor work.

To be mentors, individual providers must have completed all applicable required training appropriate to their date of hire, plus peer mentorship training. Prior to appointment, mentors must meet the same qualifications as an individual provider and must meet all other qualifications set forth by the Partnership.

Once selected, peer mentors will complete training before being assigned to mentor up to ten (10) new workers. Peer mentors will be eligible to receive continuing education credit for mentor training, while mentees mentoring hours count towards satisfaction of basic training requirements.

#### **17.20 Advanced Training**

Effective January 1, 2010, all legally required advanced training for individual providers shall be provided through the Partnership.

In the event of a statutory change to individual provider training requirements, the Partnership shall provide all additional required advanced training for individual providers required by law.

#### **17.11 Training Curriculum and Instructors**

The Employer shall be responsible for setting standards for training instructors and approving curriculum to the extent required by law.

#### **17.12 Training Provisions, Tracking and Reporting**

The parties agree that it is their intention that effective January 1, 2010, the Partnership will be capable of the following:

- 12) Providing all types of training required by law and that meets training standards set in administrative rule;
- 13) Providing all types of curricula and methods of delivery authorized in rule by the Employer;

- 14) Registering all individual providers eligible for training;
- 15) Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines;
- 16) Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable;
- 17) Providing fully supplied clinical settings and ADA compliant facilities for training;
- 18) Evaluating knowledge and skills competency prior to the administration of the certification examination;
- 19) Issuing state-provided Certifications of Completion to those individual providers that successfully complete their court work;
- 20) Providing the Employer with reports on student course evaluations at least quarterly;
- 21) Maintain training records for a reasonable amount of time and making such records available to individual providers upon request;
- 22) Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

### **17.13 Transition to the Partnership**

To ensure services to consumers that are continuous, efficient and appropriate, the Employer may meet with the Partnership when necessary during the transition from the current training system to the Partnership. The Employer also shall be available on an ongoing basis to answer training questions and concerns during the complete life of this Agreement and any extension thereof.

In the event that either party determines that the development and integration of all necessary training-related data systems cannot be accomplished in time to allow the Employer to acquit its obligations under the law, the parties may meet and confer to address alternate ways to deliver training, including the possibility of using the current system, until such time that the development and integration of data systems is complete.

## **17.14 Access to Training**

### **a) Prior to January 1, 2010**

The Employer agrees to provide the Union with a total of thirty (30) minutes of presentation time on union issues at either the "Revised Fundamentals of Care" (RFOC) training, or the Parent Provider Training (PPT) for parents of people with developmental disabilities. This thirty (30) minute period shall be paid as time worked for all individual provider home care workers in the bargaining unit receiving the Union portion of the training.

The parties agree the thirty (30) minutes provided for the union presentation at the RFOC or PPT will be for new bargaining unit member IPs. The parties agree the thirty (30) minutes provided for the union presentation at the PPT will be for new bargaining unit member IPs who are not required to take RFOC.

The parties agree that a bargaining unit member IP will not receive pay for any more than a total of thirty (30) minutes for any and all Union presentations. The parties agree that the first thirty (30) minutes of the RFOC or PPT training will be for the Union presentation.

The Employer agrees to have the Agencies providing or arranging for the training give written notice to the Union, which will include the date, location and time of the RFOC or PPT. This written notice shall be sent by email. The Union agrees that if it or any of its representatives have questions about the schedule they will contact the person at the Agency who provided them notice of the training. The Union will not contact the trainer with any questions about the training or the trainer's presentation.

The Union agrees that this thirty (30) minute presentation time outlined above is its only opportunity during training to address the IPs. If the Union representative does not appear at the scheduled time, the access of the Union to that training class is forgone.

The Employer agrees to provide notice to IPs about the Union presentation in the RFOC, or PPT or any other required training notification letter that the bargaining unit member IP receives from the training entity. This notice will read:

"On (date) you are scheduled to attend training on (RFOC or PPT, whichever is appropriate). Arrive for this training at

(time). The first thirty (30) minutes of the training will be a presentation from members of the union for Individual Providers on information about your wages, benefits and the union. You will be paid for this ½ hour of time.

In addition, if the trainer is asked by individuals who are not IPs if they should attend the union presentation, the response will be that the time is paid time only for IPs and that if any other person decides to attend they will not be paid for the time. For stand alone Safety Training, similar notification will be given to the bargaining unit member IP.

**b) After January 1, 2010**

The Employer agrees to compensate up to thirty (30) minutes of time for presentation time on union issues to all individual providers receiving the Union portion of required basic training. Any additional time for presentation on union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.

**c) Employer Access to Training**

Effective January 1, 2010, Employer responsibilities included in this section 17.15 for reporting and notification shall become the responsibility of the Partnership. Effective January 1, 2010, the Partnership shall provide all statewide training schedules for all basic training, advanced training and continuing education courses, including dates, locations and times to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

**17.15 Indemnify and Hold Harmless**

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or employees covered under this Agreement.

**ISSUE 11**

**Article 22 - Hours of Work**

## **22.1 Hours of Work when Clients have Complex Behavioral and Cognitive Issues**

Effective September 1, 2007, the Employer shall increase the hours of work for individual providers working for clients with complex behavioral and cognitive issues by:

g) Introducing a "behavior score" to CARE that will add authorized hours based upon the frequency and severity of problem behaviors. Each of the behaviors measured in CARE will be weighed based on severity and frequency of occurrence and the result will be a "behavior score" between one (1) and four (4) that will be added to the considerations that determine the authorization of hours by the CARE tool.

h) Establishing two new classification categories in CARE for extremely high Activities of Daily Living CARE tool scores. These new classifications would involve clinically complex caregiving and/or caregiving involving moderate to severe cognitive impairments. When clients qualify for more than one classification category they will be placed in the category with the highest base hours.

## **ISSUE 12**

### **Article 23 - Retirement Benefits**

#### **23.1 Creation of Administration System**

The Union and the Employer agreed that prior to the expiration of this agreement, the Employer shall develop an administrative and data collection system needed for establishing a sustainable retirement benefits for workers covered under this agreement. At a minimum, such a system shall have access to all the information provided to the Union per the requirements of Article 5 Bargaining Unit Information and all the data elements recommended by the retirement benefits consultant hired by the parties during the term of the 2007-2009 Collective Bargaining Agreement.

#### **23.2 Development of a Retirement Benefit Trust**

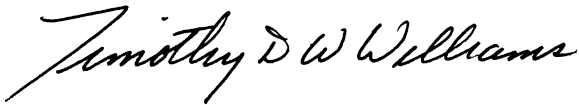
Prior to the expiration of this Agreement, the parties shall help develop a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized

home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

### **23.3 Development Funding**

The Employer shall bear the cost of developing such an administrative and data collection system but shall not exceed two hundred fifty thousand dollars (\$250,000.00).

This interest arbitration award is respectfully submitted on this the 30<sup>th</sup> day of September, 2008 by,



Timothy D. W. Williams  
Arbitrator