

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 925)
)
"THE UNION")

HEARING: October 11, 2006
18 West Mercer Street, Suite 400
Seattle, Washington

October 16, 2006
7141 Cleanwater Dr. SW, Conference Room N454
Tumwater, Washington

October 18, 2006
1019 Pacific Avenue
Tacoma, Washington

October 24, 2006
18 West Mercer Street, Suite 400
Seattle, Washington

CLOSING ORAL ARGUMENTS:
October 24, 2006

HEARING CLOSED: October 24, 2006

ARBITRATOR: Timothy D.W. Williams
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OFM
Irv Lefberg, Assistant Director of OFM
Rachael Langen, Assistant Director of the
Department of Early Learning

EXHIBITS

Union

1. Letter from PERC certifying issues for interest arbitration
2. Union 's proposal - Subsidy Rates for Licensed and Licensed Exempt Family Child Care Providers for 2007-2009 Biennium
3. State's proposal
4. Chapter 41.56, RCW - Public Employees' Collective Bargaining
5. Governor Gregoire's Executive Directive to DSHS (September 16, 2005)
6. Family Child Care Collective Bargaining Bill, ESSHB 2353, (2006)
7. Description of Working Connections Child Care (WCCC) and a document showing the size of the program (60,000 kids per month)
8. Chart showing that 95% of the providers in the bargaining unit are in WCCC
9. WAC 388-165-108 - Describing Children's Administration subsidy programs
10. Chapter 43.215, RCW - Department of Early Learning (DEL) statute establishes authority over subsidy policy and administration
11. Child Care and Development Fund; Final Rule, U.S. Department of Health & Human Services, 45 CFR Parts 98, 99, (1998)
12. Table - 80% of funding is federal and 20% state; DSHS data.
13. WAC 388-290-0125; 388-290-0130 - DSHS description of Licensed and Licensed- Exempt providers under WCCC.
14. WAC 170-296 - Table of Contents- Child care business regulations for family child care (DSHS).
15. Profile of Children Served by WCCC, including breakout by type of care. Shows SEIU 925 members care for children from TANF (42%) and Non-TANF (51%) eligible families.
16. Non-Standard Hours - Licensed Child Care in Washington State, DSHS (2004) p. 45.
17. Rural Care & Infant Care - Licensed Child Care in Washington State, DSHS (2004) p. 25.
18. Infant Care - Child Care in Washington State, Washington State Child Care Resource & Referral Network (2006) p.2.

19. Special Needs - Licensed Child Care in Washington State, DSHS (2004) p. 31.
20. *Enhancing Family Friend and Neighbor Caregiving Quality: The Research Case for Public Engagement*, Richard N. Brandon, Ph.D., Human Services Policy Center, University of Washington, Revision August 8, 2005: (page 24-25).
21. *2006 Kids Count Data Book, Family, Friend, and Neighbor Care: Strengthening a Critical Resource to Help Young Children Succeed*, (pages 6-23), The Annie E. Casey Foundation, 2006: (page 9), (page 10-15), (page 21).
22. *Current Research Directions in Family, Friend, and Neighbor Care: An Interim Report*, Amy Susman-Stillman, Ph.D., Center for Early Education and Development, University of Minnesota, November 2, 2005: (page 19).
23. WAC 388-290-0240 - DSHS Licensed Exempt providers earn \$2.06/hr, and \$1.03/hr for each additional sibling.
24. Washington map illustrating DSHS Administrative Regions
25. 388-290-0205 - DSHS Licensed providers. Chart with subsidy rates by region and age.
26. Percentiles According to Market Survey - Licensed Child Care in Washington State, DSHS (2004) p. 48
27. Chart - regional rates with market access percentile, DSHS data (November 2005)
28. Market Access Percentile - Licensed child Care in Washington State, DSHS (2004) p. 50. Illustrates that parents, on a statewide basis, can access only 31% of the child care market.
29. No Place Like Home (October 2005) - SEIU 925 report examining actual costs and net income for licensed providers.
30. Chart - Statewide access percentile 1995-2005). Illustrates declining access to child care market for those who rely on DSHS subsidy, with source documents illustration breakdown of subsidy rates by age and region.
31. Charts of each of the six regions showing that many are quite flat.
32. Charts, by region, showing that the DSHS rate has not kept up with the market rates in many areas of the state.
33. Licensed comparables: State comparison - Washington, California & Oregon

34. State of Oregon's Tentative Agreement with Union for Licensed Providers (2006).
35. Licensed comparables: Washington to Seattle and to select counties in California
36. Licensed comparables: Washington DSHS regions to selected counties in California
37. License exempt: State comparison - Washington, California & Oregon.
38. Sylvia Skratek's Neutral Third Party Recommendations for Oregon's License Exempt Providers (2006).
39. License exempt: Washington to select California counties
40. Supporting data for comparison tables - Rates in California by county; rates in Oregon by rate area, rate for City of Seattle.
41. Licensed Child Care in Washington State, DSHS (2004) p. 40. Shows average gross revenue received by Family Child Care providers.
42. *Child Care Cost & Quality*, Future of Children, Financing Child Care Vol 6, No. 2 (1996).
43. *Family Child Care Finances and Their Effect on Quality and Incentives*, Helburn and Morris, University of Colorado at Denver (2003) (excerpt).
44. Northwest Job Gap Study: Living Wage Jobs in the Economy (2005).
45. WA Self Sufficiency Standard for Washington State (2001).
46. Federal poverty guidelines.
47. NCEDL Spotlights, No. 18 January 2000 "Teacher education, wages key to incomes:
48. *From Neurons to Neighborhoods: The Science of Early Childhood Development*, National Academy of Sciences (2000).
49. Washington Learns Draft Report: Creating a World Class Learner Focused Education System for Washington (*final report scheduled for November 15, 2006*) (Excerpt).
50. Washington State Child Care Resource and Referral Network, Public Policy Agenda January 2006, p. 2.
51. Child Care Is Not Child's Play: The Economic Impact of the Child Care and After-School Industry in Washington. Human Services Dept., City of Seattle (2005)
52. Licensed Child Care in Washington State: 2000, DSHS (2002): Excerpt, p. 35 (Table 18).
53. Summary Cost Comparison of Parties' Proposals

54. Cost of SEIU 925's Subsidy Rate proposal (8% for year one; 7% for year two) - Licensed
55. Cost of SEIU 925's Subsidy Rate proposal (8% for year one; 7% for year two) - Licensed Exempt
56. Cost of State's Subsidy Rate proposal (4.5% and 2.5%) - Licensed
57. Cost of State's Subsidy Rate proposal (3.5% and 2.5%) - License Exempt
58. Cost of SEIU 925's Equal Funding for Siblings proposal - License Exempt
59. Cost of SEIU 925's Training Incentive proposal - License Exempt
60. State's Cost Analysis of setting rates for Licensed Providers at 75th Percentile
61. Financial Snapshot of Licensed Family Child Care Providers - Illustrates cost of cutting non-standard hours bonus, the infant bonus, and reducing subsidies by increasing parent co-pays.
62. OFM Press Release, "Washington's Quarterly Revenue Projection Up by \$412 Million" (September 20, 2006)
63. OFM, Six Year Outlook (June 2006)
64. CPI-U & CPI-W for West Urban, Bureau of Labor Statistics (2000-2006). Sum of CPI-U increases from 2000 through August 2006 totals 20.6%
65. Professional Activities of Nancy Gerber

Employer

1. SEIU 925 07-09 Contract TA'd Articles
2. Cost Model - Employer Proposal
3. Cost Model - SEIU Proposal
4. Cost Comparison Summary
5. Subsidy Rate Comparison Chart - Licensed Family Homes
6. Subsidy Rate Comparison Chart - Exempt Providers
7. Illinois Rate Chart and Child Care Provider Contract
8. Oregon Executive Orders and Rate Charts
9. California Regulations regarding Child Care Subsidy Rates
10. State of Washington 6 Year Outlook
11. September 2006 State of Washington Revenue Forecast Executive Summary
12. Runzheimer Data - Cost of Living Report
13. Comparison of Rates with Cost of Living Adjustments (Licensed and Exempt)

14. Child Care Licensing - A Brief History
15. Child Care Subsidies - A Brief History
16. WCCC Program Description
17. Exempt Providers Description
18. Licensed Family Home Providers Description
19. Child Care Centers Description
20. WCCC Sample Documents
21. 2004 Licensed Child Care Market Rate Survey
(Excerpts)
22. Graph - Number of Children by Provider Type
(Represented only)
Graph - Number of Children by Provider Type (All)
23. Graph- Yearly Income Estimates for Providers
24. 55th Percentile Costs
25. Child Care Resource and Referral Network Survey
26. Copay Chart and History
27. Excerpt from State Plan for CCDF Services
28. Workfirst Reexamination Workgroup Report
29. Child Care Development Fund History
30. 2004 Income of Family Home Providers
31. RCW 74.15.010
32. WAC 170-295 Excerpts from Minimum Licensing
Requirements for Child Care Centers
33. WAC 170-296 Excerpts from Child Care Business
Regulations for Family Home Child Care
34. Child Care Subsidies - A Booklet for Licensed and
Certified Child Care Providers
35. Child Care Cost and Quality
36. Costing on Licensed and License Exempt
37. Historical Subsidy Rates: Licensed and License
Exempt

BACKGROUND

The Service Employees International Union, Local 925 represents a statewide bargaining unit made up of licensed and license exempt child care workers. The Office of Financial Management of the State of Washington (hereafter "the Employer or the State") and the Service Employees International Union Local 925 (hereafter "the Union") are in the process of negotiating an initial contract. Unable to reach agreement on the issue of State subsidy rates, the parties agreed to submit the matter to interest arbitration.

As an interest arbitration, the case was conducted under the authority of RCW 41.56.0228, as well as under the requirements of the various statutes that are referenced within that statute.

A copy of the letter dated October 9, 2006 was provided the Arbitrator. It contained a list of issues certified for interest arbitration by the Executive Director of PERC, Marvin L. Schurke, in accordance with RCW 74.39A.300. Those issues, as certified, are as follows:

Article 12 - SUBSIDY RATES (limited to Section 12.1 "Subsidy Rate Increases" and Section 12.3 "License exempt hourly rates")

A hearing was held before Arbitrator Timothy D.W. Williams over a period of four days and in three different

locations. The first day of hearing, October 11, 2006 was held in Seattle, Washington. The second day of hearing, October 16, 2006 was held in Tumwater, Washington. The third day of hearing, October 18, 2006 was held in Tacoma, Washington. The final day of hearing, October 24, 2006 was held in Seattle, 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 had a full copy by Friday, October 26.

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 the afternoon of October 24, 2006. Thus the award, in this case, is based on the evidence and argument presented during the hearing.

HISTORY OF SEIU/STATE BARGAINING

SEIU Local 925 and the State of Washington are in the process of negotiating an initial labor contract for a statewide bargaining unit composed of licensed and license-exempt providers of child-care services. Both the national and local history that has lead to the formulation of this

statewide bargaining unit and the ongoing efforts to negotiate the labor contract are of importance to this arbitration decision and thus will be reviewed by the Arbitrator. The following information is drawn from the opening and closing statements of both Parties, the testimony of various witnesses and a review of the pertinent statutes.

Welfare Reform

Federal legislation enacted in the mid 1990s initiated a process for moving welfare recipients into the workforce. As many of these new workers were the primary caregivers of young children, the emphasis on requiring parents on welfare to work of necessity addressed the issue of providing affordable childcare. Government assistance paying for child-care was provided based on total family income. Where family income was low enough, child-care was subsidized at a rate of 100%. As total family income grew, the percentage of subsidization diminished. Where child-care was subsidized at less than 100%, the parent(s) are expected to pay the unsubsidized portion of the costs of child-care. When family income reaches a predetermined figure, child-care subsidization is discontinued.

While the particulars were left up to the states, federal participation in providing childcare was accomplished through

the establishment of Temporary Assistance for Needy Families (TANF) funds, granted as a block to each state. The amounts of these annual TANF grants have essentially remained unchanged since their inception, and they constitute (among other things) the entirety of federal aid for state childcare subsidy, the balance of which is provided in most cases from the general fund of each state. In fiscal year '05 the state of Washington spent \$246.9 million on subsidized child care through its program titled *Working Connections Child Care*.

It was a statutory requirement that, as a recipient of TANF funds, the states must show that the subsidized rate is sufficient to provide access to 75% of childcare facilities as determined by a biennial market survey (the 75th percentile requirement). In 1996, the federal mandate of the 75% percentile was removed, though the benchmark remained as the ideal point at which coverage would be sufficient. Indeed, some states have set goals exceeding this mark, most notably California's statewide goal of 85th percentile coverage, based upon their own market survey.

Child Care Facilities

In the state of Washington, as in most of the country, child care services are primarily provided in three different models. Childcare centers are typically commercial operations

(for profit and not for profit) that hire staff and are usually located in a building other than a private residence. In-home child care constitutes the other two ways of providing services in that it can be on either a licensed or license exempt basis.

In the state of Washington, home child care providers are either licensed under RCW 74.15.030 (approximate number = 4,049) or license exempt under RCW 74.15 (approximate number = 6,593). Child-care centers provide services to roughly 51% of eligible children; in-home licensed providers service 30% and exempt 19%.

This interest arbitration award focuses exclusively on in-home child care, both licensed and license exempt.

Collective Bargaining

House Bill 2353 enjoyed bipartisan support and easily passed both houses of the legislature. It was signed into law by Governor Christine Gregoire on March 15, 2006. At that time she stated:

Investing in childcare workers and programs will lead to great results in the future. The first five years are the most important years for emotional, experiential, and intellectual development. They set the stage for the rest of life. This bill reflects the value we place on early learning and the child-care experience.

(Office of Governor Chris Gregoire, Press Release 3/15/06)

As a side note, Governor Gregoire's above statement extolled the virtues of early education. State witnesses testified that the Governor has made the education of pre-kindergarten aged children a central issue of import in her administration. Thus the rich and consistent quality of a properly licensed facility's educational program is viewed as more desirable to the goals of the current government than the unregulated and more questionable learning potentially provided in unlicensed facilities. The evidence and arguments of the State in the arbitration proceedings focused in part on this fact.

House Bill 2353 identified itself as, "AN ACT Relating to improving access to and the stability of quality child care through providing collective bargaining and other representation rights for family child care providers and licensees . . ." In simple terms, House Bill 2353 granted home child care workers the right to form a union and bargaining over their economic compensation, healthcare, training and grievance procedure - to name a few. The right of parents to choose a child care facility and legislative prerogatives are among those items that are not negotiable.

Child-care centers are not covered under House Bill 2353. Home child care providers are typically one person operations and each provider receives the State's subsidy directly from

the State. The employer of record for the staff of child care centers is the center itself. In most cases, the staff of the center could form a into a bargaining unit and negotiate with their employer - not the state.

In November of 2005, more than one third of Washington's roughly 10,000 in-home childcare workers providing service to at least some children whose care was subsidized by the state voted to organize under the Service Employees International Union, Local 925. Local 925 was elected by a large majority to represent the interest of the child care workers in bargaining with the State of Washington. Following this, Local 925 and the State of Washington began to construct a bargaining relationship. Negotiations have resulted in a substantial number of TA'd items which are in evidence as State exhibit #1.

One of the unique features of House Bill 2353 is that it extended RCW 41.56, the chapter governing bargaining for uniformed public employees, to encompass child care workers. As a result, the interest arbitration provision available to uniformed public employees is also available to the home child care bargaining unit.

Negotiations over the issues of compensation posed an insurmountable block to a bargained agreement. Due to the requirement that Governor include the costs of the contract in

her budget proposal before the state legislature, the closing date for bargaining was hard and fast. Spurred by the statutory deadline of November 14, 2006, the two unresolved compensation issues were submitted to interest arbitration.

Other States

While the criterion of comparability is specifically discussed at a later point in this decision, there are some general comments about subsidized child care programs in other states that should be helpful in understanding the overall environment within which the negotiations in the instance case have proceeded.

Illinois is the only state with a full-fledged bargaining unit similar to that in the state of Washington. SEIU and the state of Illinois have successfully negotiated a collective bargaining agreement. Therefore, when the state of Washington and SEIU Local 925 complete their current negotiations it will result in the second statewide bargaining agreement between home child care providers and a state.

Oregon has split the child care workers into two bargaining units, with the American Federation of State, County and Municipal Employees representing licensed facilities, and the Service Employees International Union (SEIU) covering license-exempt providers. Both units are

engaged with the State not through full scale collective bargaining, but through what is known as a "meet and confer" statute. Under the provisions of this statute, the representatives of the childcare workers have the right to meet and discuss matters of employment with the state but the ultimate authority over the terms and conditions of employment rests with the employer.

California has no overarching system of compensation rates for their childcare workers statewide. Rather than imposing one standard across the enormity of the state, they have chosen to allow each county to set up their own system. With counties reaching in excess of ten million residents (nearly double the population of the entire state of Washington), this is no mean feat. While the subsidy rates in many California counties are much higher than those in Washington, cost of living is also at times much higher. Also, nearly 300,000 more children statewide qualify for subsidized care than California can afford to subsidize and these children are considered to be on a waiting list. There are no children on a waiting list in the state of Washington.

ARBITRATOR'S AUTHORITY

An Arbitrator's authority to issue an interest award is generally derived from statute. House Bill 2353 gives the home child care bargaining unit access to the interest arbitration and mediation provisions of RCW 41.56. RCW 41.56.450 to .465 establishes the Arbitrator's authority and sets out the requirements for conducting the hearing and issuing an award.

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

- (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW [41.56.430](#) and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
 - a. The constitutional and statutory authority of the employer;
 - b. Stipulations of the parties;
 - c.
 - i. For employees listed in RCW [41.56.030](#) (7) (a) through (d), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
 - d. For employees listed in RCW [41.56.030](#) (7) (e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of

Washington, other west coast employers may not be considered;

- e. The average consumer prices for goods and services, commonly known as the cost of living;
- f. Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
- g. Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW [41.56.030](#)(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

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" except that the interest Arbitrator is required to also consider "the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement." Thus, where RCW 41.56.465 limits consideration to those "employees listed in RCW [41.56.030](#)," RCW 41.56.028 expands the list of applicable employees to include family child care providers and extends the set of criteria to be used by the Arbitrator in fashioning the decision

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 two 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 findings by November 10, 2004. 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.

ISSUE 1

Article 12.1, Subsidy Rate Increases

Current Provisions:

Licensed Providers:

Daily Full-Time Rates for Family Home Child Care

	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6
Infants	21.29	21.29	30.88	31.94	23.42	23.42
Toddlers	19.16	20.23	26.62	31.59	21.29	21.29
Pre-school	19.16	18.10	23.42	26.62	20.23	21.29
School-age	17.04	18.10	21.29	25.55	18.10	20.23

License Exempt Providers:

Hourly rate per child: \$2.06/hr

Each additional child in the same family: \$1.03/hr

Union 's Proposed Language:

Subsidy rates for providers shall be increased across the board by 8% effective July 1, 2007 and 7% effective July 1, 2008.

All Providers shall ensure that the rate they charge the State is no greater than their usual private pay rates. If a Provider charges the State a higher amount than their private pay Consumers, the Provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but it is subject to the Fair Hearing Process.

Employer's Proposed Language:

Subsidy rates for Licensed Providers shall be increased across the board by 4.5% effective July 1, 2007 and 2.5% effective July 1, 2008.

Subsidy rates for Exempt Providers shall be increased by 3.5% effective July 1, 2007 and 2.5% effective July 1, 2008.

All Providers shall ensure that the rate they charge the State is no greater than their usual private pay rates. If a Provider charges the State a higher amount than their private pay Consumers, the Provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but it is subject to the Fair Hearing Process.

Award

Subsidy rates for Licensed Providers shall be increased across the board by 7% effective July 1, 2007 and 3% effective July 1, 2008.

Subsidy rates for Exempt Providers shall be increased by 4% effective July 1, 2007 and 3% effective July 1, 2008.

All Providers shall ensure that the rate they charge the State is no greater than their usual private pay Consumers, the Provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but it is subject to the Fair Hearing Process.

ARGUMENT

Union's Case

The Union begins their argument by emphasizing the importance of childcare in the pre-school education of children. Effective and well-run childcare provides a crucial learning environment, fostering academic and social development that substantially advantages the children that take part in it. It stands to reason that by increasing the quality of this childcare, children it services will be better served and even further advantaged.

It is the Union's contention that there is a direct correlation between the compensation of childcare workers and the quality of care they provide. In the case of the bargaining unit employees, applicable questions of compensation are tied to the Working Connections childcare subsidy. The low rate of compensation, argues the Union, keeps potential childcare workers from entering the industry in favor of more lucrative arenas, and it keeps current providers from being able to better their programs through equipment or training. On the other hand, with an increase to compensation, more individuals will seek out the positions, and there will be more training available to raise the quality of care all around.

While training is a key to raising the level of service in the industry, the Union is quick to point out that it is useless if, at the end of the program, there are not profitable enough jobs to keep the trainee working. Thus, while it makes sense to increase compensation for higher-trained workers, there must be increases across the board to stimulate the industry and make it attractive enough to ensure the high quality the children of the state deserve. Compensation as it stands now is far too low, and it must be raised substantially.

The compensation of licensed providers has been untouched since 2005, and before that the increases were inadequate. Taking into account the CPI market data, it is clear that by and large the increase in childcare subsidy did not grow at an equal rate. For all the percentage increases in the subsidy, there were enough cuts in service to nearly mitigate them. The 6% increase licensed providers got in 2005 was mostly counterbalanced by a reduction in the subsidy for nonstandard-hours care and a drop in the infant incentive. When the deficits are added into the equation, the net increase in compensation becomes paltry indeed.

Added to the balance of deficits, the provider now collects a larger portion of their copay directly from the child's parent, with all the problems of timeliness that

entails. Where once the bulk of their subsidy came as a regular government payment, providers now must directly appeal to parents who may not always be able to pay on time. In order to receive the full subsidy, they must expend a greater effort for a lesser guarantee of schedule. Again, whatever small gains that have been granted in the direct compensation have been negated this time by extended duties and obligations.

There is precedent for substantial rate increases, both for licensed and exempt providers. Two other west-coast states have similar enough childcare subsidy programs that they can be considered comparables. In Oregon, rate increases are seen up into the 30-40% range, while California's counties, on average, far exceed Washington's rates. It is uncontroversial that these raises must occur, and, as shown by the example of comparable state policies, there are established models of increase to point at in discussing such a raise.

To the Employer's anticipated claims that the requested increases in compensation constitute absurd percentages, the Union presents a simple claim: while they might be high when applied to the salary of a well-paid employee somewhere, they are only fair as applied to the incredibly low rates currently provided licensed and license-exempt providers via government

subsidy. Where a percentage raise in the single digits might mean thousands more per year for a manager, they come out to mere cents a day for a self-employed childcare provider. Even the initial proposal of a 30% hike over the biennium is a reasonable one under these conditions; yet again the Union has retreated and placed a combined 15% increase on the table which is both eminently affordable and far more fair to the workers providing such an essential service. In light of a projected surplus of over 1.8 billion dollars for the 2007-2009 biennium, these proposals are particularly affordable and sound. True, we may not be able to forecast the vagaries of the economic climate decades into the future, but from current estimates and our best information, these proposals are well within Washington's power to grant

Employer's Case

The Employer's argument counters with a total 7% increase of subsidy for licensed providers over the biennium and a 6% increase for license exempt providers over the same period, with no change in the sibling differential and no percentage incitement for optional training. It argues that this moderate increase is both fair and fiscally responsible, particularly in as much as these increases will have to be paid across the entire industry to ensure the effectiveness of

the subsidy program and the feasibility of the goal of 75th percentile affordability. Were the State to not extend the same subsidy to non-bargaining unit members, there would be no incentive for them to enroll subsidized children, thus limiting further the childcare options of subsidy-eligible parents. Given this moderate and appropriate increase, the State can afford to raise the value of subsidized children to all providers in all regions, whether or not they are participants in the bargaining relationship.

Nor is Washington alone or particularly unfair with its rates: both Illinois and Arizona offer lower rates calculated *per diem*. Regardless of slated increases or geographical location, the data introduced into evidence by the State shows that Washington's current rates are quite comparable, even favorable to those of states across the board. When things like population and cost of living are factored in, even California's rates relate. Even more telling, Washington manages to provide its subsidy to every eligible child, where California has a waiting list of over 280,000 children statewide. While the rates may not be the highest in the region, there are at least the funds to adequately provide them to all that merit the subsidy.

Arbitrator's Analysis

Under the best of circumstances, writing an interest arbitration decision can be challenging for no other reason than the sheer volume of information that is usually placed on the record. This case is certainly no exception to that general principle and is further hampered by restricted timeline within which the Arbitrator agreed to provide his decision. The Arbitrator spent his time first studying the transcript of the proceedings while reviewing the evidence that was submitted. Particular attention was paid to the closing arguments of each Party and the way in which those arguments incorporated the evidence.

The Arbitrator begins his analysis by complimenting both Parties on the clarity of their presentations, the civility with which the hearing preceded and the overall quality of their work. The Arbitrator's only regret is that he is not able to provide a comprehensive discussion of all the points that were raised. Rather, he has limited his analysis to bulleting the key factors that led to the specific terms of the decision.

- The Arbitrator's award is to grant the licensed providers a 7% increase the first year and the license exempt providers a 4% increase. In part the Arbitrator is persuaded by the State of the need to focus dollars into licensed provider care. This is obviously made easier the first year of the contract by the fact that the Arbitrator's decision is also

to equalize the rate for siblings that receive care from license exempt providers.

- The second element of the Arbitrator's award is to grant both the licensed and the license exempt providers with a 3% increase the second year of the collective bargaining agreement. The Arbitrator believes that the substantial increases given the first year of the agreement involves catch up and the second year is a matter of maintaining ground that has been captured.
- The most significant reason, in the Arbitrator's view, for granting a substantial increase the first year lies in his understanding of the governor's concerns over improving early childhood learning as well as the legislative intent as expressed in the bill itself. Since the expressed intent of the legislation was to improve the level of professionalism, the state simply has to make a stretch to do exactly that. While additional money is not always the answer to a problem, the current compensation levels for early childhood education obviously are a deterrent to recruiting and retaining qualified staff.
- As a matter of statute, the ability of the State to pay is a matter that must be considered by the Arbitrator. With a \$1.7 billion surplus, the State clearly has the ability, if it chooses to do so, to pay for the awarded increases. While the State's concerns over its economic future are reasonable, the Arbitrator's award is for the 2007, 2008 collective bargaining agreement. If the State's financial condition takes a turn for the worse, that problem can be addressed in future negotiations. Finally, while the Arbitrator has awarded significantly more dollars than offered by the State, the award is still substantially less than that requested by the Union and the second year of the award is clearly a hold the line amount, just barely above what the State offered.
- Comparability was difficult to use in this case. While the statute clearly limits the Arbitrator to looking at Oregon and California, California is not a good fit simply because services are provided on a county by county basis. Moreover, Oregon is not very helpful because it is looking at the potential of a 30% increase. Potential does not always turn into reality so there is a wide swing that is ultimately possible in the data. However, the fact that considerations are being given to such a large increase

indicates that Oregon also has a concern over raising the bar for early childhood education.

- For a number of reasons the Arbitrator does agree with the State that there is a need to protect and encourage the use of licensed providers. Thus the 4%/7% split that is awarded. The license exempt providers, however, are helped by the decision to eliminate the sibling differential.

ISSUE 2

Article 12.3, License Exempt Hourly rates

Current Provisions:

Hourly rate per child: \$2.06/hr

Each additional child in the same family: \$1.03/hr

Union's Proposed Language:

License exempt providers who voluntarily take at least 10 hours of STARS training during the life of this agreement will have their hourly rate of pay increased by 10% at the completion of the training

OR

The hourly rate of pay of license exempt providers for each child shall match the rate paid for the first child on top of the across the board increases provided in section 1.

Employer's Proposed Language:

None - No change in current practice

Award:

Effective July 1, 2007 the hourly rate of pay for license exempt providers will match that given for the first child for all children to whom services are provided.

ARGUMENT

Union's Case

License exempt care in Washington serves some 12,000 children. These facilities are generally not the ones preferred by the state, as seen in its policy of compensation and in the Governor's own platform, but they are chosen for many reasons, including the desire to impart and preserve cultural and religious values, issues with regard to communication and language, and simple trust and personal relationships between parents and providers. From the standpoint of the consumer, license exempt providers are often much more able to accommodate non-standard and late hours, and are generally far more able to tailor childcare to their clients' needs and schedules.

These providers are an integral part of the childcare industry and cannot be ignored or pushed aside for the more favored licensed facilities. Allowing this choice to parents and ensuring the quality of service is not only a Union request; federal regulation mandates it.

The major disincentive to unlicensed care, currently, is the familial subsidy discount, wherein a child will rate half the subsidy (figured as an hourly wage) of their sibling, assuming that first child is compensated for at the full rate. This discount has no basis or precedent in statute or comparable example. Even at the full rate of \$2.06 per child per hour, Washington lags substantially behind those it can be compared to. In order for the compensation plan for Washington State's childcare providers to be fairly and equitably raised to a more fitting level, this discount must be dealt with.

The Union believes that all children should be subsidized at the same rate based on their age group, not their familial affiliation. The employment of a license-exempt childcare provider does not bear along with it such perks as insurance, sick days or vacation leave. The one benefit it merits is the government subsidy currently at issue in the establishment of this contract. For this reason, the Union believes it to be imperative to address this as fully as possible; here they seek to remove the discount fully so that each child merits the full subsidy rate. Even so, the Union recognizes that, should a full 100% of the subsidy being made available for all children be considered too expensive, a middle ground can be established. Though not optimal, a rate between 50% and 100%

may be considered with the understanding that it is a step towards applying the full subsidy to all eligible children.

Should the sibling discount be upheld, the Union puts forth a second option wherein exempt providers that take a minimum 10 hours of supplemental training are paid an additional 10% upon completion of that training. While the inherent inequity of the rate of subsidy for siblings will not be addressed, the stated reasoning for the State's preference of licensed facilities over exempt will: the higher level of educational programs within these facilities. With this training, the exempt providers will be better equipped to offer the same level of care available from the licensed facilities.

Employer's Case

The Employer brings forth an argument supporting the sibling differential for exempt providers different from the Union's expectation: rather than citing historical precedent, they argue that the differential is an easy way to ensure that the subsidy is paid out commensurate with experience and training. Thus, the differential is not a penalty for the exempt worker, but a device whereby it can be ensured that the more regulated licensed providers are compensated at a higher rate per State policy. Not only do licensed providers need to

adhere to regulations governing the quality of care and education, they must also pay for all materials, food and supplementary assistance out of their subsidy. To pay them at the same rate as the exempt providers (who can offer care with far fewer out-of-pocket expenses) would effectively be putting them at significant financial disadvantage.

Currently, the differential saves the State an approximate \$22 million in additional subsidy money drawn from the general fund, this on top of the estimated \$10 million per percentage point raise in subsidy. Even given the estimated \$1.8 billion surplus of this year, such rampant spending is unsustainable. The Employer introduced into evidence projections on State finances going forward six years. Without figuring in the increases in subsidy at issue here, the projected surplus for 2011 is only \$10 million, a precipitous drop from the seemingly fat purse of the State at this time. Add into that the projected increases bargained on other State labor contracts and the financial prospects become tight indeed.

Should the rate differential be removed, argues the State, the added drain on the general fund should then be considered when addressing the across-the-board increases proposed by the Union. To assign both a substantial increase as well as the de-facto augment to the exempt subsidy that the

removal of the sibling differential would mean would be a severe blow to the State's coffers. The federal TANF grant which mainly supports the subsidy (among others) is a block grant fundamentally unchanged since its inception in the mid 1990s. At the current time, only 50% of this required subsidy is paid for with federal dollars by way of TANF; the rest of the money is drawn directly from the State's general fund.

Arbitrator's Analysis

As in the first issue, the Arbitrator's analysis is bulleted.

- First, the Arbitrator is not convinced that the training option has merit at this time. For one thing, it does not address the merits of the sibling differential. For a second, based on the testimony and discussion at hearing, the Arbitrator does not believe that the Parties thinking with regard to providing the training option is sufficiently mature for implementation. It seems much more reasonable to think about it in the context of a project to be worked on for a subsequent collective bargaining agreement.
- Ultimately the Arbitrator believes the sibling differential should be illuminated. Other than the fact that it is a cost savings to the state, there seems to be no programmatic basis by which to justify it. For example, based on the logic of efficiency in numbers, it could be argued that a decreasing rate for multiple children is justified. This logic, however, would have nothing to do with whether not the children are siblings. Currently, however, an exempt provider receives the full rate of \$6.18 per hour for the care of three children so long as they're not siblings but the rate of \$4.12 per hour if the three are siblings. As the Union argues, there is no programmatic logic in this.
- Previously the Arbitrator has noted that comparability data was not very helpful. The sibling differential arena, however, was the exception to this fact. Whether one

restricts comparability to the west coast as provided by statute or whether data from Arizona and Illinois are included, the sibling differential is absolutely unique to the state of Washington and therefore cannot be justified on the basis of comparability.

- The Arbitrator recognizes that the State does have a legitimate concern over encouraging the use of licensed providers. However, the discrepancy between caring for siblings versus non siblings does not seem to the Arbitrator as a reasonable arena within which to attempt to encourage the use of licensed providers.

AWARD SUMMARY

12.1 Subsidy Rate Increases

Subsidy rates for Licensed Providers shall be increased across the board by 7% effective July 1, 2007 and 3% effective July 1, 2008.

Subsidy rates for Exempt Providers shall be increased by 4% effective July 1, 2007 and 3% effective July 1, 2008.

All Providers shall ensure that the rate they charge the State is no greater than their usual private pay rates. If a Provider charges the State a higher amount than their private pay Consumers, the Provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but it is subject to the Fair Hearing Process.

12.3 License Exempt Hourly Rates

Effective July 1, 2007 the hourly rate of pay for license exempt providers will match that given for the first child for all children to whom services are provided.

This interest award is respectfully given on this the 10th day of November, 2006 by,

Timothy D. W. Williams
Arbitrator