IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.,
ARBITRATOR

SEIU, LOCAL 775, (collective bargaining representative of Independent Providers of Home Care Services), and STATE OF WASHINGTON, OFFICE OF FINANCIAL MANAGEMENT (on behalf of the Governor of the State of Washington).	INTEREST ARBITRATOR'S DECISION AND AWARD PERC NO. 20562-I-06-476

INDIVIDUAL PROVIDER HOME CARE INTEREST ARBITRATION
2007-09 COLLECTIVE BARGAINING AGREEMENT

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I. INTRODUCTION

By letter dated August 7, 2006, PERC Executive Director Marvin L. Schurke certified for interest arbitration ten unresolved contractual issues in the parties' negotiations for their 2007-09 collective bargaining agreement.[1] Tab 4, "Baseline Documents" Notebook. Following the PERC certification, the parties asked me to serve as their interest arbitrator and scheduled a hearing by mutual agreement, presenting extensive testimonial and documentary evidence[2] over six days of hearing conducted at locations in Olympia (August 15), SeaTac (August 17), Tumwater (September 5, 7, and 11), and Seattle (September 6). At the conclusion of the evidence, the parties chose oral closing arguments (Seattle, September 12) in lieu of written briefs.[3] The proceedings were transcribed by certified court reporters, and the reporters provided written transcripts on an expedited basis, both to the parties and to the Arbitrator. Having carefully considered the evidence and argument in light of the statutory criteria contained in RCW 74.39A.270 and 41.56.465, I am now prepared to issue the following Interest Arbitration Decision and Award.[4]

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[1] The issues include three paragraphs in Article 2 related to Union rights; Article 9 (Compensation), which includes non-wage elements of compensation as well as the formal wage scale contained in Appendix A; Articles 10 and 11 relating to health, vision, and dental benefits; Article 12 (Worker's Compensation); Article 13 (Vacation and Sick Leave); and Article 14 (Payroll, Electronic Deposit, and Tax Withholding).

[2] The record consists of more than 200 exhibits contained in three large three-ring binders plus a smaller notebook containing the "baseline documents," e.g. the existing CBA, the parties' proposals, the PERC certification, and copies of the relevant statutes.

[3] The parties' decision to argue the case orally was no doubt driven in part by the October 1, 2007 statutory deadline for issuance of the Interest Arbitrator's written decision. *See*, RCW 74.39A.300(2)(a). The case was submitted on the afternoon of September 12, slightly more than two weeks before that deadline. Under the circumstances, and given limitations of my schedule which I had disclosed to the parties at the time of appointment, submission of careful written briefs was simply impractical. From my perspective, however, while briefing would certainly have assisted me in analyzing the issues presented, oral argument afforded an opportunity for dialog with the parties that was perhaps even more useful in defining the issues before me and in clarifying the parties' views on those issues.

[4] Given the shorter than normal time frame in which to produce my written findings and conclusions, I have had to limit the written award in most cases to a summary of the most important factors influencing my

II. BACKGROUND AND STATUTORY CONTEXT

The workers at issue in this proceeding are individual providers ("IP's) of in-home long term care services to needy senior citizens and persons with disabilities, including developmental disabilities. IP's are hired directly by their clients, i.e. the needy consumers authorized to receive in-home care. The IP's are paid by the State, however, through the Medicaid system. The State budgets for these services out of the "General Fund-State" (sometimes abbreviated "GF-S") within the budget of the Department of Social and Health Services ("DSHS") and also obtains federal Medicaid matching funds, essentially dollar for dollar.[5]

Washington State is a leader in "rebalancing" the provision of these personal care services away from the historical "institutionalized" settings, e.g. nursing homes, in favor of more cost-efficient "home and community based" settings such as adult family homes and the consumers' own homes. Allowing consumers to choose to receive their services at home, either by contracting with a private "agency" which provides appropriate caregivers ("Agency Providers" or "AP's"), or by directly hiring an IP to provide such services, also improves the dignity of the process and enhances the physical, mental, and psychological well-being of those in need of care. *See*, RCW 74.39A009(5).

Case managers utilize a computerized Comprehensive Assessment Reporting Evaluation tool ("CARE") to assess clients' unmet needs for services and to assign an

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decision. Even though the resulting written findings are more condensed than they might have been under different circumstances, with fewer specific citations to the record than otherwise would have been the case, I want to assure the parties that I have carefully evaluated *all* of the evidence and the argument before me in light of the standards set forth in the relevant statutes.

[5] Although the documents in the record show slight variances between amounts budgeted and paid by the State and the "matching" amounts received from Medicaid, the differences are not substantial, and for the purposes of this proceeding, e.g. in the "costing" of bargaining proposals, I assume that the State's share of paying for increases in wages and benefits is one-half of the total cost.

appropriate number of monthly care "hours" to meet those needs. These CARE plans are reviewed and updated annually. The "hours of service" are assigned to the client, not to a caregiver, and the client may choose to use those approved hours of care in any appropriate setting, e.g. a nursing home, a residential care setting such as an adult family home, or in-home. Consumers may also use the hours in any combination of settings, e.g. a consumer may choose to "spend" some of the authorized monthly hours by contracting with a private Agency Provider and utilize the remainder to hire an IP to provide additional or different care services.

No license is required to work as an IP—the workers simply must take and pass a brief course entitled "Revised Fundamentals of Care" ("RFOC").[6] Although IP's perform the important work of providing personal care for some of society's most needy and vulnerable members, they have traditionally been relatively low-wage.[7] They are also predominantly female and somewhat older (average age 47, according to the Union). The State estimates that perhaps as high as 60% of all IP's provide care for a relative.

Because IP's are employed directly by the clients (unlike home care workers actually *employed* by private Agency Providers who utilize agency *employees* to provide services to clients), organizing in an attempt to improve IP wages and working conditions was virtually impossible until the voters approved Initiative 775 in November 2001. The

[6] There is, however, an annual "Continuing Education" ("CE") requirement of ten hours of additional education which may be met by physical attendance at seminars or by approved videotaped training sessions or other self-study. IP's also take a safety training course.

[7] The Union advocates passionately on behalf of a "living wage" and corresponding benefits for IP's, and argues that the demographics–including a projected rise in the segments of the population needing services (particularly the aging) combined with a projected decrease in the number of people willing and able to provide care (in the past, primarily females) makes it imperative to raise the compensation levels of IP's so as to attract and retain sufficient numbers of workers to meet projected needs. I will address these issues in some detail in the context of my consideration of the parties' compensation proposals.

Initiative created the Home Care Quality Authority ("HCQA" or "Authority") and designated the Authority as the "Employer of Record" for IP's for the purpose of collective bargaining.[8] This bargaining relationship reflects the functional reality that the State, not the individual client, is the primary source of funds used to compensate IP's.[9] SEIU, Local 775 organized the IP workforce in the state-wide bargaining unit created by RCW 74.39A.270(2)(a), and the Union has represented the IP's in bargaining for the two prior CBA's.

Although IP's are specifically prohibited from striking in support of their bargaining demands, *see* RCW 74.39A.270(2)(d), the interest arbitration provisions of RCW 41.56.430 through .470 (the provisions governing interest arbitration in the uniformed services such as police, correctional officers, and firefighters) apply to IP's with some modifications. For example, in addition to the factors listed in RCW 41.56.465 for resolving police and firefighter bargaining disputes,[10] a home care interest arbitrator is

[8] Subsequently, the Legislature modified the bargaining scheme to make the Governor the Employer of Record, and the Governor has delegated that bargaining authority to the Office of Financial Management.

[9] I agree with the State (and with Arbiter Timothy D. W. Williams, the interest arbitrator for the 2005-07 contract), however, that there is a unique tri-lateral relationship governing the employment of IP's. That is, the State may provide the funds with which IP's are paid, but in many significant respects, individual consumers retain control over the IP's working conditions.

[10] For police and correctional officers, the statute calls for a "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." *Id.* For firefighters, the statute provides for "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." *Id.* The statute also expressly requires consideration of the "cost of living" and contains a "catch-all" clause enabling an interest arbitrator to consider "such other factors . . . normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." RCW 41.56.465(1)(f). Choosing between the "police" or "firefighter" standards set forth above (or combining them)—and applying whatever standard is chosen to the workers involved in providing direct home care services, a very different "industry"—presents several challenges that will be more fully discussed in the course of this Decision and Award.

required to consider "the financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement." RCW 74.39A.270(2)(c)(ii). Reinforcing the importance of the "ability to pay" criterion, the statute provides that the wages and benefits contained in an interest arbitration award must be submitted to the Legislature for funding, and it expressly provides that an award is not binding on the State. Thus, the Legislature may reject an award by refusing to fund it. RCW 74.39A.270(2)(c)(iii).

In addition, HB 2333, adopted by the Legislature in 2006, adds another element to the "ability to pay" equation, requiring that any increases in IP wages and benefits that result from collective bargaining (including wages and benefits from an interest arbitration award accepted and funded by the Legislature) must be added to the "employee compensation" portion of the "vendor reimbursement rate" the State pays to the private Agency Providers. As a result of this "parity" requirement, any calculation of the cost to the State of benefit and wage increases awarded as a result of this proceeding—the factor most directly related to the "ability to pay" criterion–must also take into account the requirement that the State fund equivalent compensation for AP employees.

III. DETERMINATION OF COMPARABLES

An interest arbitrator's analysis traditionally begins with the selection of the "comparables" to which the wages and working conditions of the subject employees should be compared. In other words, the threshold question before the Arbitrator is, using the words of the statute, just who are the "like personnel" of "like employers" of "similar

size" on the "west coast of the United States"? RCW 41.56.465. The statute is silent on how an arbitrator should apply these criteria in selecting comparables,[12] and while the challenge that silence presents is difficult enough when applied to uniformed personnel, it is made even more difficult here because the statute has engrafted those standards onto the IP interest arbitration process despite the fact that IP's are wholly unlike police officers and firefighters.

For example, police officers and firefighters are full-fledged public employees, and there are a multitude of jurisdictions employing similar or identical workers throughout Washington State and on the West Coast. In my experience, there is rarely a problem of finding *potential* "comparables" for such workers. Rather, the issue is which jurisdictions among the many possibilities *most closely match* the involved employer and thus provide appropriate comparisons for determining wages and working conditions.

In applying RCW 41.56.465 to the IP's, however, an arbitrator has a much more limited range of potential comparables. First, the IP's are organized in a state-wide unit, unlike police and firefighters who are organized primarily on a city or county-wide basis, and although the State is the IP's "employer" for the purposes of collective bargaining, it is clear that IP's are not State employees for any other purpose. *See*, RCW 74.39A.270(3). These two facts differentiate IP's significantly not only from police and firefighters, but also from employees of the Agency Providers—home care workers who are both *employees* of the AP for whom they work, and are organized into much smaller bargaining units, at least in terms of the number of employees involved.[13] Thus, I agree

[12] Nor does the statute inform the arbitrator what relative weight to give the working conditions of "comparable" employees as compared to the "ability to pay," "cost of living," or "catch-all" criteria.
[13] According to estimates in the record, the IP unit contains between 22,500 and 25,000 workers. By contrast, the largest AP unit—Catholic Community Services—contains approximately 2000 workers, while

with Arbiter Williams, in his award with respect to the 2005-07 contract between the parties, that the AP home care workers are not "comparables within the statutory meaning of that term." Exh. S-1 at 32.[14]

I note that Oregon has a state-wide bargaining unit of approximately 13,000 IP's, and thus I agree with the parties that Oregon is an appropriate comparable. There are no other state-wide units of IP's on the West Coast, however, and that has led each party to present evidence with respect to state-wide IP units elsewhere, e.g. Illinois (20,000), Michigan (37,000), and Maine (number of IP's unclear from the record). The clear language of the statute, however, requires that comparables be located "on the west coast of the United States." I recognize that Oregon constitutes the only state-wide comparable available to the parties under this standard (whereas I generally prefer to have at least five comparison jurisdictions), but I do not believe that I am authorized to expand the statutory definition of a comparable employer.[15] Even if the language of RCW 41.56.465

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the next largest—Chesterfield—contains approximately 1800. The remaining Agency units all consist of fewer than 1000 home care workers. Many interest arbitrators define the "like size" criterion as falling within the range of 50% to 200% of the employer involved--i.e. employers half as large up to and including those twice as large. These limits are not absolute, of course, but the AP units urged by the Union as appropriate comparables fall well outside the size limitations most arbitrators utilize.

[14] While the AP home care workers may not fit the statutory definition of a "comparable," I do not read the statute as precluding consideration of appropriate elements of the AP bargaining agreements under the "catch-all" provisions of the statute. That is so because the evidence established that many IP's work both as IP's *and* for Agency Providers, either simultaneously or by going back and forth between one form of delivery of home care services and the other. As the Union points out, this is a "labor market" issue that may properly be considered in determining appropriate wages and working conditions for the IP's because Agency Providers are direct competitors for the workers involved. Stated another way, because home care workers have a choice whether to work as IP's or under virtually identical circumstances for an AP, a comparison of the terms of employment in the two settings may under some circumstances be the kind of consideration "normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." RCW 41.56.465(1)(f).

[15] Nor is it necessarily an essential element of "comparability" that a unit be state-wide. If that were so, Oregon would be the only *potential* comparable on the West Coast because a state-wide unit in California would dwarf the Washington unit in size. That fact alone would make it difficult to conclude that California is an appropriate comparable.

limiting an arbitrator's consideration to "like employers of similar size on the west coast of the United States" was originally an oversight as applied to the IP unit, the IP interest arbitration provisions have been amended by the Legislature on several occasions since the passage of Initiative 775 without expanding the range of comparable employers beyond the West Coast. Thus, I do not find the state-wide units in Illinois, Michigan, and Maine to be proper comparables.[16]

There are a number of county-wide IP bargaining units in California, however, of "similar size" (employing the 50%-200% standard) and consisting of "like employees," i.e. independent home care workers providing direct in-home services to consumers. These potential comparables, as set forth in Exh. S-6, are San Bernardino County (15,600), Sacramento County (15,000), San Francisco County (12,500), and San Diego County (12,000). In addition, Alameda County (10,500) and Fresno County (10,000) are close enough to the 50% size threshold to merit consideration, particularly in light of the relatively small number of other potential comparables on the West Coast. I note that Arbiter Williams considered unspecified California county home care programs as appropriate comparables in evaluating the parties' 2005-07 proposals, recognizing that "true comparability" must take into consideration factors such as labor market factors and relative cost of living.[17] Award at 29-32. I agree, and subject to those and similar considerations, I will consider Oregon's state-wide program and the California county

[16] Nor, unlike the Washington AP contracts, is there any evidence of significant interchange or other labor market relationship between IP's in Washington and IP's in Illinois, Michigan, and Maine.

[17] For example, Arbiter Williams explicitly discussed wages and benefits of the Los Angeles County program, noting that a large pool of less-skilled immigrant labor tended to depress wages which, in his view, made Los Angeles less than persuasive as a comparable. *Id.* at 30. I agree, and I also note that with 124,000 IP's in the unit, Los Angeles County is well outside the 200% traditional limit for judging whether an employer is of "similar size."

programs listed above as comparables for the purposes of evaluating the parties' contract proposals for the 2007-09 biennium.[18]

IV. BARGAINING PROPOSALS OF THE PARTIES

I turn now to consideration of the specific proposals of the parties. I have divided the ten issues into four groups: 1) wage and non-wage compensation, including proposals concerning vacation, sick leave, and Employer payment of the IP's portion of the worker's compensation premium; 2) health, dental, and vision benefits, including the State's proposals regarding "transparency" in the affairs of the Taft-Hartley Trust; 3) Union rights, including Union access to employees; and 4) proposals concerning "modernization" of the State's computer payroll system used to pay IP's. For each group of issues, I will set forth verbatim the "redlined" bargaining proposals of the parties (from which the language of the current CBA should be apparent),[19] and then summarize my award with respect to each issue contained in that section. Following the summary, I will discuss the reasoning that led to the award.[20]

[18] The Union also introduced evidence, in support of "internal comparability" arguments, concerning other State employees, particularly nurses. I do not find the arguments in support of comparability persuasive, especially given the well known critical shortage of nurses in Washington—and in fact throughout the country. Moreover, these nurses, as well as the other mental health workers cited by the Union, are full employees of the State, tend to work in institutionalized settings such as State mental hospitals, and are otherwise so dissimilar from IP's as to be of limited help in determining appropriate wages and working conditions for this bargaining unit.

[19] The parties provided me their final bargaining proposals on disk so that I have been able to simply paste them into this Decision and Award in the appropriate places.

[20] For ease of reference, I have also collected at the end of this Interest Arbitration Decision and Award the new contract language awarded in each section. *See* pages 56-58, *infra*.

A. WAGE AND NON-WAGE COMPENSATION

1. Wage Scale – Article 9 and Appendix A

a. Union's Proposals

ARTICLE 9

COMPENSATION

9.1 Wages

~~Effective July 1, 2005, home care workers shall be compensated at the minimum rate of $9.20 per hour.~~

Effective July 1~~, 2006~~ 2007 a new wage scale is established based on cumulative career experience and on the level of care required for each client. Effective July 1~~, 2006,~~ 2007, current employees will be placed on a step commensurate with their IP hours of work retrospectively calculated to July 1, 2005, and commensurate with the level of care required for each client. ~~Bargaining unit~~ Employees will be paid according to the wage scale found in Appendix 'A'. During the life of this Agreement ~~beginning on July 1, 2006,~~ wages shall be adjusted upward for each employee based upon accumulation of hours, and shall be adjusted upward or downward based on a change in each client's care level classification. All employees shall be paid strictly on an hourly basis. Except as modified in 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 one contained in Appendix A, are hereby void. ~~Except for circumstances that require otherwise and/or historically have been otherwise, beginning July 1, 2006 all employees shall be paid on an hourly basis, and according to the wage scale~~.

9.2 Client Care Level

As used in this Agreement, the "client care level" or "level of care required for each client" refers to the classification category defined in the DSHS "CARE" tool model. Should substantial changes occur to the classification categories or the methodology used to determine these categories during the life of this agreement, the parties will meet and confer to determine appropriate adjustments to the wage scale.

9.3 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 her or she works as a mentor, preceptor, or trainer.

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 the 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 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.**

9.5 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. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service.

APPENDIX A
WAGE SCALE

July 1, 2007 - June 30, 2008					
Client Care Level Cumulative Career Hours	**A**	**B**	**C**	**D**	**E**
0-2000	$9.60	$9.70	$9.80	$9.90	$10.00
2001-4000	$9.79	$9.89	$9.99	$10.09	$10.19
4001-6000	$9.99	$10.09	$10.19	$10.29	$10.39
6001-8000	$10.19	$10.29	$10.39	$10.49	$10.59
8001-10000	$10.39	$10.49	$10.59	$10.70	$10.81
10001-12000	$10.60	$10.71	$10.82	$10.93	$11.04
12001-14000	$10.81	$10.92	$11.03	$11.14	$11.25
14001-16000	$11.03	$11.14	$11.25	$11.36	$11.47
16001 or more	$11.25	$11.36	$11.47	$11.58	$11.70

b. State's Proposals

ARTICLE 9

COMPENSATION

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.

9.5 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.

APPENDIX A

WAGE SCALE

July 1, 2007 – June 30, 2008	
Cumulative Career Hours	
0-2000	$ ~~9.43~~ 9.73
2001-4000	$ ~~9.57~~ 9.87
4001-6000	$ ~~9.72~~ 10.02

6001-8000	$ ~~9.86~~ 10.16
8001-10000	$ ~~10.01~~ 10.31
10001-12000	$ ~~10.16~~ 10.46
12001 – 14,000	$ ~~10.31~~ 10.61

14001 plus hours 10.77

2. **Employer Payment of Worker Portion of L&I Premium**

a. Union Proposal

ARTICLE 12

WORKER'S COMPENSATION

The Employer shall provide worker's compensation (L & I) coverage for all home care workers in the bargaining unit. All home care workers shall complete any required health and safety training.

To the maximum extent permissible by law, the employee premium share for L&I shall be paid by the Employer. The Employer shall, if necessary, seek a statutory change or a change in rule to accomplish this objective. If applicable laws or rules prevent the employer from paying the premium share at any time during the life of this Agreement, the Employer shall adjust each step of the wage scale established under Article 9 of this Agreement upward by an amount equivalent to the employee premium share for L&I.

b. State Proposal

None

3. Vacation and Sick Leave

a. Union Proposal

ARTICLE 13
VACATION AND SICK LEAVE

13.1 Vacation

~~Commencing on July 1, 2006,~~ Eemployees shall be eligible for paid vacation benefits. Employees shall accrue one (1) hour for every ~~fifty~~ forty (40~~50~~) hours worked. Paid vacation leave hours shall cap at eighty (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.

13.2 Sick leave

Employees shall be eligible for paid sick leave for use when employees are sick or to attend personal medical appointments. Starting July 1, 2008, Employees shall accrue one (1) hour of sick leave for every sixty (60) hours worked. In order to be eligible to be paid for sick leave, an employee must inform both his/her client and a designated agent of the Employer no later than the day upon which the employee is sick. In order to guarantee that employees may use their sick leave without fear of negative health or personal impacts on their clients, the Employer shall establish policies and practices to provide alternative client care coverage on days when an employee is sick. The Employer may put into place reasonable policies to ensure that sick leave is used only when employees are sick or need to attend personal medical appointments.

b. State Proposal

The State proposes no language on sick leave and the following language on vacation leave:

ARTICLE 13
VACATION LEAVE

Commencing on July 1, 2006, employees shall be eligible for paid vacation benefits. Effective July 1, 2007 e~~E~~mployees shall accrue one (1) hour for every forty ~~fifty~~ (40~~50~~) hours worked. Paid vacation leave hours shall cap at eighty (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.

4. Interest Arbitrator's Award on Wage and Non-Wage Compensation

I hereby render the following Award on Wage and Non-Wage Compensation:

a. I award the State's proposal on Article 9.1 (Wages) and Appendix A (Wage Scale) and deny the Union's proposal for an "acuity based wage scale" (Union's proposed Article 9.2) as well as the proposal for overtime pay for hours worked in excess of 173 per month (Union Article 9.4). I award the Union's mileage reimbursement proposal effective July 1, 2008 with the following modifications: 1) the first sentence of the Union's proposal shall read "Effective July 1, 2008, employees shall be compensated for the use of their personal vehicles to provide services to clients (such as essential shopping and travel to medical services) authorized under the care or service plans." 2) the second sentence shall read "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."

b. Because the parties are in agreement on a pay differential for mentors, preceptors, and trainers (Union Proposal 9.3, State Proposal 9.2), that pay differential is hereby awarded with the agreed language as set forth in the respective proposals.

c. I award the Union's L&I proposal (that the State pay the employee share of the worker's compensation premium) in Article 12 with the following modifications: 1) the second sentence of the Union's proposal shall read "The Employer may, in its sole discretion, seek a statutory change or a change in rule to accomplish this objective"; 2) the third sentence of the Union's proposal shall read "If applicable laws or rules prevent the Employer from paying the premium share at any time during the life of this Agreement, or if the Employer believes in good faith that the applicable laws and rules prevent the Employer from paying the employees' premium share during the life of this Agreement and the Employer chooses not to exercise its discretion to seek a statutory or rule change, the Employer shall adjust each step of the wage scale established under Article 9 of this Agreement upward by an amount equivalent to the employee premium share for L & I."

d. I award the parties' agreed language on Article 13.1 (Vacation) and deny the Union's proposed Article 13.2 (Sick Leave).

5. Interest Arbitrator's Findings and Reasons for Decision on Wage Issues

a. Appendix A Wage Rates and Acuity Scale

The Union proposes a wage matrix that rewards accumulated career hours ("longevity") on a vertical axis (continuing the wage step approach first awarded by Arbiter Williams in the 2005-07 Agreement) and also rewards IP's based on a five-step "client care acuity scale" denominated "A" through "E" along the horizontal axis. *See,*

Union Proposal, "Appendix A" above. The Union believes that an acuity scale is essential for the State to attract and retain workers with the skills and desire to serve a client population projected to become increasingly "acute" in the coming years in terms of the severity and complexity of conditions IP's will need to deal with,. The issue is important enough to the Union that its wage proposal reflects smaller increases at the lower end of the step progression (vertical axis) in order to use those funds to reward IP's willing and able to take on more complex clients with higher levels of acuity (for which they would receive additional compensation along the horizontal "A through E" axis). *Id.* The Union notes that DSHS currently uses four groupings of the numerical results of CARE assessments of patients in nursing homes in order to determine the appropriate daily reimbursement rates for nursing homes to care for those patients (which is said to be a measure of relative "acuity"), and thus the Union suggests that the horizontal axis of Appendix A could utilize the same groupings (the "A" through "E" of the Union's proposal) to measure eligibility for higher IP wage rates based on the acuity of individual clients receiving in-home care.

The State counters that the CARE tool was not designed to measure "acuity" as such, but rather to determine the number of *hours of care* required to serve the clients' unmet needs. Thus, the nursing home reimbursement rates generally rise as the numerical CARE score increases not because the client is necessarily more "acute," but rather because it takes more hours to meet the clients' needs. Behavioral or cognitive issues of the client, for example, may mean that it takes longer for the care provider to serve the client, but that, according to the State, is different from "acuity." A nursing home receives a higher *daily* reimbursement rate for such clients in recognition of the fact that

more employee hours will be required to serve the consumer. The State argues that IP's achieve the equivalent result when the CARE plan authorizes more monthly hours to the client in recognition of the need for more hours of service.

I am not convinced that the CARE tool measures acuity *per se*. Thus, the predicate on which the Union's proposal rests seems insufficient to support an acuity scale based on CARE. While it may seem a matter of common sense to consider a pay differential for IP's serving clients with "unpleasant" care needs, e.g. clients with serious incontinence, limited cognitive abilities, or serious behavioral problems, the CARE tool in its present incarnation does not necessarily accurately measure such elements. I note, for example, that there is considerable overlap in the nursing home reimbursement rates from one care level grouping to the next. *See*, Exh. U-50. To focus on just one such overlap, it appears that the reimbursement rate for a client in the "Medium" category in "Care Classification A," the lowest classification, is the same as the daily reimbursement rate for a person in the "Low" category in "Care Classification C," two classifications above. *Id.* This seems to me to indicate that more than a straight-line measurement of client acuity is involved in the CARE assessment. In addition, I note that the parties have agreed to a "behavioral hours adjustment" by amending the CARE tool to authorize case managers to add hours of service to the CARE plans for clients with "complex behavioral and cognitive issues." Exh. S-2, Article 23 (Hours of Work), TA'd by the parties June 29, 2006. That approach is preferable for now as a start, at least until someone devises an accurate and efficient method of measuring client acuity.[21]

[21] I also note that there is no evidence that the more acute clients in the population served by IP's are having difficulty obtaining IP services because of the lack of an acuity based wage scale. In fact, the unrebutted testimony established that 96% of all authorized hours for in-home IP care are being utilized by clients and that there is no waiting list for clients who wish to be served at home but are unable to find an

Turning to Appendix A, the Employer proposes to raise each step of wage progression $0.30 effective July 1, 2007 and to add an additional step beyond where the current wage progression tops out at 14,000 hours. According to my calculations, the Employer is proposing a 2007 wage increase of approximately 3.2% at the lower end of the scale and approximately 2.9% at the upper end. The State proposes another increase of $0.30 per step on July 1, 2008, resulting in additional increases of approximately 3.1% to 2.8% in the second year of the contract.[22] In hard dollars, the Employer's proposal would result in a wage range of $9.73 to $10.77 in the first year and $10.03 to $11.07 in the second year.

During closing argument, counsel indicated that if I declined to accept the acuity scale proposal, the Union would propose a starting wage of $10.00 per hour with longevity step increases of $0.30 ($0.50 if the Arbitrator does not award the Union's L & I proposal). Tr. at 1495-97. If I understand the Union's alternative proposal correctly, it

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IP. It is thus difficult to conclude that an acuity scale is needed to serve the system's present clients. While it may be wise to consider whether compensation will be sufficient in the future to attract and retain IP's with the skills to serve an evolving population of clients, the evidence before me provides insufficient basis for judging just what will be required to do so. Thus, I focus on appropriate increases in compensation geared to the near term.

To the extent the Union's arguments are based on high turnover in the IP unit (estimated as high as 33% per year), I note again that 96% of all authorized home care hours are presently being worked and paid, and thus, while turnover is no doubt higher than the parties would like, it is not currently preventing clients from finding IP's to provide care. It is also unclear to me the extent to which turnover is a result of workers who leave to provide care in a different setting, e.g. an IP who becomes a Certified Nursing Assistant ("CNA") and takes a job in a hospital or an institutional facility, or to what extent the high percentage of IP's caring for a relative skews the turnover figures (e.g. because an IP is only in the profession to take care of that relative and leaves the system when the relative dies or transfers to an institutionalized setting). Thus, while the Union's arguments on turnover reflect common sense, there is a lack of hard data from which I could judge exactly what is necessary to deal with the problem.

[22] The weighting of increases toward the beginning longevity steps seems to me to be appropriate given that in Year One nearly half of the IP's are projected to be in the entry-level step (46%) and nearly all will be in the first three steps (just under 92%). Exh. S-10 at 9 ("seniority based wage matrix"). In Year Two, those percentages fall slightly, but 37% of IP's are still projected to be in the first step, with 80% in the first three steps. *Id.*

would result in a pay range of $10.00 to $12.10 in Year One (plus an additional $0.17 per hour in L & I contribution paid by the State on behalf of the workers), or a range of $10.00 to $13.50 in Year One if the IP's remain responsible for their share of the L & I premium. In Year Two, the entry rate would be $10.50 under the Union's alternative proposal, with a range of $10.50 to $12.60 plus $0.17 for L & I premium. Without L & I, the Union proposes a range of $10.50 to $14.00.

In evaluating these competing proposals, I begin with the comparables identified earlier. The State's wage proposal compares favorably with the wages paid in comparable jurisdictions. There are, of course, California counties that seem to be paying more, e.g. Alameda, San Diego, and San Francisco, but those areas also have substantially higher average living costs. Exh. S-9 (page 2 of Runzheimer data showing Sacramento County cost of living 5% above Washington State, Oakland 14%, and San Francisco 37%).[23] None of the comparables pay as high as the Union's proposed pay scale, however. Thus, I have decided to award the State's proposed Appendix A wage rates for both years of the Agreement.[24]

[23] I agree with Union President David Rolf that average cost of living percentages, such as the CPI, often do not reflect the impact of specific components of the average on low wage workers. For example, the skyrocketing cost of fuel over the last several years has no doubt affected the typical IP much more than a State worker earning $60,000 per year. Nevertheless, the statute specifically directs me to take account of the *average* cost of living, RCW 41.56.465(1)(d), and I am hesitant to find that the statute authorizes me to deconstruct what went into the average in considering the "cost of living" criterion in determining base wage rates. Nevertheless, a significant rise in costs in one component of the CPI, e.g. fuel, may (as I find in the next section) bolster the argument in favor of a specific item of non-wage compensation that is supported by other considerations, e.g. the Union's proposal for mileage reimbursement.

[24] The State estimates that its Appendix A rates will cost $15.73 Million over two years. Exh. S-10, line 1 ("Regular wage, FICA/FUTA") (one half of the $31,455,436 in the "Bien 0709" column, i.e. the share of the total cost that must come from GF-S).

b. Non-Wage Compensation – Mileage, L & I, Overtime, Vacation, and Sick Leave

Although I have awarded the State's Appendix A, I am persuaded by the Union's argument that these workers deserve a greater increase in effective compensation in this round of bargaining than they received from Arbiter Williams, particularly in a biennium in which the State is forecasting a $745 Million surplus as compared to a forecast of a *deficit* of nearly $1 Billion when the parties were arbitrating the 2005-07 Agreement.[25] Given the scarcity of State funds with which to work, Arbiter Williams chose to put virtually all available money into increases in the base wage and the longevity steps. Award at 33. As a consequence, he rejected all of the Union's non-wage compensation proposals such as mileage, overtime, and Employer payment of the employee portion of L & I. *Id.* Even with those financial constraints, however, Arbiter Williams granted wage increases of 3% in the first year and 2.5% in the second, only slightly below the wage increases I have awarded here. Consequently, I believe it is reasonable under the

[25] Although the State's Six Year Budget Outlook, Exh. S-8, does indeed forecast a budget surplus of $746 Million at the end of FY08 and $745 Million at the end of FY09, I agree with the State that the "transactional" nature of the State's tax base, i.e. tax dollars that are chiefly the result of fees imposed on business transactions (B & O Tax) and real estate sales (Real Estate Excise Tax) makes forecasting an inexact science. These transactional taxes tend to produce a lot of revenue in expanding economies and robust housing markets, and less revenue when the real estate market cools off and/or the economy slows or goes into recession. Therefore, I must also take into account, in determining the State's ability to pay, not only the fact that the budget surplus is currently expected to all but disappear in FY2011 ($10 Million), but that unforeseen events such as natural disasters or a significant terrorist event, not to mention an earlier than expected "recessionary" period caused by natural business cycles, could substantially reduce the funds that appear to be available to pay for increased wages and benefits for this unit. Also, HB 2333 essentially doubles the cost to the State of any wage or benefit increases I award here. In addition, any increases granted in this contract become part of the "base" budget for each successive budget cycle, thus exacerbating the budgetary effects of future economic downturns. It is also true, of course, that I am looking only at one very small portion of the State's entire budgetary needs, and therefore I should be cautious about committing State resources here that might be needed now or in the future for worthy programs elsewhere. Nevertheless, this unit deserves increases that go beyond the cost of living, both because they are at the lowest end of compensation of State employees, and because they had to forego increases in non-wage compensation in the last round of bargaining given the significant budget deficits forecast at that time.

circumstances to place additional money into improvements in non-wage areas under the Agreement covering the 2007-09 biennium and thus to increase effective compensation.

On that score, I am convinced that the Union's proposals on mileage and L & I premium payments are sound and should be awarded. Taking mileage first, I find it difficult to understand why a low-wage worker, using his or her own vehicle for transportation of a client—transportation that is specifically found necessary and authorized under an approved plan of care—should be required to absorb the cost of that transportation. I am mindful that in the recent past, gas prices have occasionally spiked to near $3.50 a gallon, and that the low points when prices do fall back to "normal" seem to be trending sharply upward. In other words, the level of transportation costs now being borne by the IP's is not a small matter. At the same time, I understand the State's concerns that it is difficult to control mileage given the independent nature of IP work and lack of day-to-day supervision and control by case managers. The State therefore argues that it needs a limit on monthly miles, and argues for a maximum of sixty miles per month consistent with the limited mileage reimbursement already available. That is a reasonable request.

In addition, the case managers will need to be more specific in the annual care plans so as to designate precisely when transportation is authorized and to require clients to exhaust the possibility of using other forms of transportation if available and appropriate, e.g. by using Medicaid transportation brokers. Also, the testimony established that several of the State programs under which IP's care for needy clients do not currently authorize payment for mileage. The State will need the federal government's approval of amendments to these "waiver" programs—although during

closing argument, the State conceded that there is no reason to believe that such amendments would not be approved. In order to give the State time to deal with these administrative details, I am delaying implementation of the mileage article until July 1, 2008. According to the State's calculations, the increased cost to the General Fund-State of granting mileage reimbursement in the second year of the Agreement is approximately $2.9 Million, but given the size of the anticipated budget surplus and the fact that these employees received limited increases in non-wage compensation in the prior contract, I believe that the State can afford the additional cost.

With respect to L & I premiums, it is true that none of the comparable employers currently pays the employee share of the worker's compensation premium. The same could have been said, however, of the longevity pay scale prior to the 2005-07 Agreement. Both the Union and the State consider the Washington IP contract to be a pacesetter for the industry, and to remain at the "vanguard," Washington will necessarily at times be ahead of comparable jurisdictions in terms of levels or forms of compensation. Moreover, given that these employees had to largely forego non-wage compensation in the last contract, it seems appropriate to consider increases now.[26]

In evaluating the propriety of the Union's Article 12 proposal, I have been influenced by the substantial trend in the Agency Provider segment of the market—at least those who have been organized by Local 775—toward paying the $0.17 per hour

[26] It also seems to me that the State's wage scale, which I have adopted, would be inadequate in the absence of increases to effective compensation such as the Union's L & I and mileage proposals. With the L & I proposal included, the effective wage increase would become something like 5.0% to 4.6% in the first year, and 4.8% to 4.4% in the second year. These percentages, of course, do not account for the mileage reimbursement effective in Year Two under my award, but they seem to me to be much more appropriate levels of increases, and they tend to make up—at least prospectively—for the lack of increases in non-wage compensation in the prior Agreement. I also note that the $0.30 increase in the State's Appendix A and the effective $0.17 raise in the Union's L & I proposal compare favorably with the annual $0.50 IP raises adopted by previous Legislatures. *See*, Exh. U-135 (chart of prior compensation increases for the IP unit).

employee share of L & I. It is true that the AP's do not meet the statutory definition of comparable employers, but as noted earlier, many IP's serve clients under the auspices of an AP in addition to serving clients directly as IP's. Others may work for a time for an AP and then work as an IP or vice versa. In either case, the work is exactly the same, performed in the same locations (i.e. the clients' homes). Yet if a caregiver chooses to work as an IP rather than as an employee of an AP, his or her effective hourly wage rate is essentially reduced by $0.17 per hour because of the employee share of L & I. It may be true that this issue has not yet manifested itself as a recruitment or retention problem for the IP program given that 96% of the authorized IP hours are actually being worked. But in reviewing the Union's chart of proposed comparables, Exh. U-6B, I note that many of the Local 775 contracts with the AP's call for L & I payment commencing January 1, 2007, at which point caregivers with the option to work for an AP may well begin to question why they should not take advantage of the opportunity to receive an immediate hourly raise. It seems to me that these labor market considerations fall squarely within the range of factors "normally and traditionally" taken into account in bargaining, and thus are appropriate factors for me to consider under RCW 41.56.465(1)(f).

There is an additional reason that it is appropriate for me to consider the fact that AP's pay (or soon will pay) the employee portion of the L & I premium. HB 2333 provides for parity in wages and benefits between IP's and caregivers who work in the AP setting. I agree with the State that the statute only requires that the cost of wages and benefits negotiated by the IP bargaining unit be added to the Agency Provider reimbursement rates. The statute does not directly speak to "parity" flowing the opposite

direction, i.e. it does not specifically say that wages and benefits enjoyed by the AP employees must be passed along to the IP's. It seems to me that it is implicit in the policy of the statute, however, that caregivers in the AP setting and IP caregivers should be compensated roughly the same in terms of their total compensation packages. That does not make the AP's statutory comparables, as I have previously noted, but it does support the granting of a benefit to the IP's that substantially all AP caregivers already enjoy, unless some other portion of the IP compensation package is significantly better.[27] Scanning the Union's AP spreadsheet, however, Exh. U-6B, that does not appear to me to be the case. Therefore, I award the Union's L & I proposal.[28]

I have denied the Union's overtime proposal for several reasons. First, it is not supported by the statutory comparables (none of the comparable employers pays overtime to IP's). In addition, the proposal is expensive and could nearly double the cost of the general wage increase I have already granted.[29] Finally, I am convinced by the

[27] During closing argument, the State expressed a concern that if AP wages and benefits are allowed to influence IP wages and benefits, the Agency Providers could agree to excessive increases in their bargaining with the Union, secure in the knowledge that HB 2333 would require the State to increase the reimbursement rate to cover the additional costs. In other words, the State fears that the Agencies would have little incentive to control labor costs. As the Union pointed out, however, currently the sequence of bargaining is just the opposite—i.e. the State bargains the IP contract first, then the Union and the AP's bargain their contracts after they know what the reimbursement rate will be. Even if the sequence were different, however, I believe any one of the many experienced interest arbitrators available to the parties would appropriately discount the weight to be given artificially inflated wages and benefits negotiated by the AP community. Moreover, it seems to me the State's exposure on this score is limited given that two interest arbitrators have now ruled that the AP's are not statutory comparables. It necessarily follows, it seems to me, that while AP wages and benefits under limited circumstances might be an appropriate consideration under the "catch-all" clause of RCW 41.56.465(f) in determining IP wages and benefits, they could not "drive" IP compensation to the extent they might if the AP's were considered statutory comparables.

[28] The State estimates the cost of this proposal as to GF-S as $6.15 Million over the biennium. Exh. S-11, line 3 ("Labor & Industries). Given projected budget surpluses and the relatively modest level of base pay increases awarded under the State's Appendix A, I find that the State can afford to pay the employee share of L & I, even when added to the $2.9 Million I have awarded for mileage in Year Two.

[29] The State "costed" the Union's overtime proposal at $15.85 Million to GF-S for the biennium, but that calculation used the wage rates of the Union proposal, not the somewhat lower effective rates I have

State's arguments that it would be impossible to effectively administer and control IP overtime. In a context in which consumers have a statutory right to choose their IP caregivers,[30] not to mention the fact that IP's may work for as many caregivers as they wish so long as they can adequately serve each client's needs,[31] the State faces significant obstacles to the creation of a system capable of controlling overtime. A client with 200 monthly hours, for example, could choose to give all those hours to a single IP, thus building in 27 hours a month of overtime and increasing the cost to the State of providing care. An Agency, on the other hand, could assign more than one caregiver to work those hours, thus ensuring that all 200 hours would be worked at the regular rate.

On the other side of the equation, an IP could choose to work for several different clients whose total authorized hours exceeded 200 per month, perhaps by a substantial margin. Once again, that approach would build in significant cost increases to the State by requiring hours over 173 per month to be compensated at time-and-one-half. It is true, of course, that AP's pay overtime to their caregiver employees, but as private employers they are *required* to do so by law. Most significantly, however, as true "employers" they are also empowered to *control* overtime in ways that are unavailable to the State—such as by assigning multiple caregivers to a client. As a result, AP's are able to spend what are, ultimately, public dollars in a way that distributes home care services with economic efficiency.

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awarded here. *See*, line 2 of Exh. S-11 ("Overtime, FICA, FUTA"). The State costed its own regular wage proposal at $15.73 Million. Exh. S-10, line 1 ("Regular Wage, FICA/FUTA").

[30] *See*, RCW 74.39A.270(6)(c) (collective bargaining for IP's does not modify "the consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care").

[31] *See*, e.g. RCW 74.39A.095(7) (a case manager may terminate an IP's contract in case of "inadequate performance or inability to deliver quality care" such that "the health, safety, or well-being of a consumer receiving service" is jeopardized).

Finally, I decline to award the Union's sick leave proposal for similar reasons. The unique nature of the tri-lateral IP employment relationship does not lend itself to easy administration of an IP sick leave benefit by the State. I note that the State agreed to increase the vacation benefit instead, an approach I find reasonable for this round of bargaining.

B. HEALTH, VISION AND DENTAL BENEFITS – EMPLOYER CONTRIBUTIONS AND FUND PARTICIPATION

1. Union Proposals

ARTICLE 10
SEIU 775 MULTI-EMPLOYER
COMPREHENSIVE HEALTH ~~CARE~~ BENEFITS FUND PARTICIPATION

~~**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.~~4~~1 **Coverage**

The Employer agrees to make periodic contributions on behalf of all employees covered by this Agreement to the SEIU 775 Multi-Employer Health Benefits Fund ("Fund") in the amounts specified in Section 3 below.

~~10.2 **Contributions**~~

~~Effective July 1, 2005, the Employer shall contribute up to four hundred fifty dollars ($450) per month of the Fund 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, 2006, the Employer shall contribute up to five hundred dollars ($500) per month of 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 Local 775 Multiemployer Health Benefits Trust shall determine the level of contributions 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~~.

10.2 **Contributions**

Effective July 1, 2007, the Employer shall contribute one dollar and fifty-four cents ($1.540) to the Fund per paid hour for all employees covered by the Agreement from the employee's initial date of employment or the effective date of the Collective Bargaining Agreement, whichever is later.

Commencing on July 1, 2008, the Employer shall contribute to the Fund in the amount of one dollar and sixty-nine XXXX cents ($1X.69XX) per paid hour for all employees covered by the Collective Bargaining Agreement.

Contributions required by this provision shall be paid to the Fund on or before the fifteenth (15th) 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 Fund or their designee.

The ~~SEIU Local 775 Multiemployer Health Benefits Trust~~ Fund shall determine the appropriate level of contribution, if any, by ~~eligible~~ home care workers to the ~~Trust~~ Fund ~~but in no case will it be less than $17.00 per month. This~~ Contributions ~~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.

1 ~~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 eight-six point six (86.6) 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~~.

10.3 **Purpose of 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 SEIU Local 775 Multiemployer Health Benefits Trust (also referred to herein as the "Trust") during the complete life of this agreement, and any extension thereof.

~~1~~ ~~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~~.

10.4 **Payroll Deductions**

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

10.5 **Fund 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.

10.6 **Cooperation**

The Employer and Union agree to cooperate with the Trustees of the Fund in distributing Plan booklets, literature, and other documents supplied by the Fund Administrator and in obtaining and providing such census and other data as may be required by the Fund's Administrator or Trustees to enable them to comply with the applicable provisions of the Employee Retire Income Security Act.

10.7 **Fund a Separate Entity**

The bargaining Parties hereby affirm that the Fund is a legally constituted joint labor and management trust fund separate and distinct from the bargaining Parties, and is a third-party beneficiary to this Agreement. The Fund is not, and shall not be, deemed, regarded or established as a public agency, fund, benefit plan or entity by reason of receipt of public funding pursuant to this Agreement. As such, the Fund is not subject to the state's public disclosure laws, RCW 42.17.250 through 42.17.348.

10.8 **Responsibilities of Fund**

The bargaining Parties agree that they will use their best efforts, jointly and separately, to assist the Fund and the Employer and/or its agents in the implementation and administration of health care benefits for the beneficiaries of the Fund. The bargaining Parties confirm that, in part, Fund benefits are funded through the provision of certain government funds and that accountability is therefore necessary. To that end, the bargaining Parties hereby authorize and direct the Fund and its Board of Trustees to provide the Employer a list each month of eligible employees, covered employees, and schedule of benefits, as well as, the aggregate cost for each employee.

10.9 **Approval by Fund Trustees**

The undersigned parties acknowledge that the provisions of this Article and the participation of the employees covered by it are subject to approval by the Trustees of

the Fund and that the Trustees reserve the right to terminate, at their sole and unreviewable discretion, the participation of the employees covered by this Agreement and to establish the level(s) of benefits to be provided. Termination may be directed by the Trustees for reasons including, but not limited to, failure of the Employer to timely pay contributions and expiration of a Collective Bargaining Agreement. The parties further acknowledge that the Trustees' acceptance for participation in the Fund of the employees covered by this Agreement is limited only to the categories of employment covered by the Collective Bargaining Agreement at the time application for acceptance occurs and the admission of other categories of employment to participate in the Fund will require specific acceptance by the Trustees.

10.10 **Indemnify and Hold Harmless**

The Fund shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Fund. As the policy holder, the 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.

10.11 **Miscellaneous**

In the event of any inconsistency between this Article and any other provision of this Agreement, or any other agreement between the parties, the terms of this Agreement shall prevail.

2. State Proposals

ARTICLE ~~10~~ HEALTH CARE BENEFITS

1 Coverage

The Employer agrees to pay monthly contributions on behalf of all eligible home care workers covered by this Agreement to the SEIU 775 Multi-Employer Health Benefits Fund (referred to as the "Trust") pursuant to the terms and conditions set forth in this Article.

2 Intent

The parties agree that the intent of this Article __ is to provide health care coverage only to those workers who do not have other health insurance coverage, to the extent permitted by law and pursuant to the terms and conditions set forth in this Article __.

3 Contributions

a.) Effective July 1, 2005~~5~~7, the Employer shall contribute up to ~~four hundred fifty dollars~~ 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.

b.) Effective July 1, 2006~~8~~, the Employer shall contribute up to five hundred fifty dollars ($550) ~~($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.

c.) The SEIU Local 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.

d.) The Employer shall make payment of the required contributions by and through its designated payor the Washington State Department of Social and Health Services (referred to as "DSHS"). DSHS shall calculate the total monthly Employer contributions based upon payroll information provided to it by individual providers or their agent. Contributions shall be paid only upon the covered home care workers for whom DSHS receives payroll information. DSHS shall remit a list of covered workers together with the monthly payment to the Trust.

e.) The bargaining Parties have been advised by the Trust of the amounts required to fund the current plan of benefits. The contribution amounts set forth herein represent the Employer contribution obligations during the term of this Agreement. The Employer shall not be obligated to pay additional or different amounts which might be established by the Trust and its Board of Trustees. Failure to pay or to agree to additional or different contribution amounts shall not be a basis for rejection of Employer contribution payments by the Trust or termination of the Employer as a contributing entity.

4 Eligibility

Effective January 1, 2007, 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 point six (86.6) 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.

5 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.

6 Trust Fund and Term of Agreement

~~For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit,~~ T~~t~~he Employer agrees to become and shall remain a ~~participating~~ contributing entity ~~employer~~ in the SEIU Local 775 Multiemployer Health Benefits Trust (also referred to herein as the "Trust") during the ~~complete life~~ term of this agreement, and any extension thereof.

7. **Indemnify and Hold Harmless**

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.

8. 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.

9. Unique Relationship Affirmed

(a) The bargaining Parties do hereby affirm the unique relationship they have with the third-party beneficiary Trust Fund and agree to cooperate in the implementation of the provisions of this Article. The bargaining Parties affirm that the Employer by and through its agents continues to be responsible for implementation and administration of certain provisions of this Agreement as specifically provided herein and as directed by the Employer. The bargaining Parties agree that they will use their best efforts, jointly and separately, to assist the Trust and the Employer and/or its agents in the implementation and administration of health care benefits for the beneficiaries of the Trust.

(b) The bargaining Parties confirm that, in part, Trust benefits are funded through the provision of certain government funds and that a high level of accountability is therefore necessary. To that end the bargaining Parties hereby authorize and direct the Trust and its Board of Trustees as follows:

(I) The Trust shall provide to the Employer, its responsible agencies and/or its representatives as specifically identified by the Employer such financial and eligibility information and documentation as may be reasonably requested by the Employer. The Employer agrees to provide information and documentation to the Trust as may be reasonably requested. The bargaining Parties agree that the exchange of such information and documentation is essential in implementation of this Article ___. The Employer, its responsible agencies and/or its representatives as specifically identified by the Employer may enter into direct relationship with the service providers of the Trust to implement information and documentation requests. Except for matters covered by HIPAA privacy rules, Trust policies and procedures pertaining to confidentiality shall not be applicable to the Employer, its responsible agencies and/or its representatives as specifically identified by the Employer.

(II) If the Trust advisory position of Public Liaison shall be appointed by the Employer as an agent of the Employer, such Public Liaison shall receive notice of all Trustee meetings, shall have the right to attend all meetings, including executive sessions (unless limited to protect necessary HIPAA confidentiality), to participate in Trustee discussions and to receive all material given to the Trustees. Failure of the Employer to fill the position of Public Liaison shall not preclude the Trust from responding to requests for such information and documentation as requested by the Employer, its responsible agencies and/or its representatives as specifically identified by the Employer.

(III) Trust policies and procedures pertaining to other contributing employers covering collection of delinquent contributions, payroll auditing, participation agreements and the like shall not be applicable to the Employer and/or its responsible agencies.

(IV) The Employer and the Union shall cooperate and assist the Trust in it's distribution of Plan booklets, literature, and other documents supplied by the Trust for publication purposes and also in obtaining and providing census and other information as may be necessary to the Trust in complying with the Employee Retirement Income Security Act of 1974. The Trust shall reimburse the Employer and the Union for all actual and reasonable expenses incurred.

10. **Trust a Separate Entity**

The bargaining Parties hereby affirm that the Trust is a legally constituted joint labor and management trust fund separate and distinct from the bargaining Parties, and is a third-party beneficiary to this Agreement. The Trust is not, and shall not be, deemed, regarded or established as a public agency, fund, benefit plan or entity by reason of receipt of public funding pursuant to this Agreement. The Employer and the Union agree to be bound by the provisions of the Trust's Agreement and Declaration of Trust and, except as may be excluded or limited under this Agreement, agree to the rules adopted by the Board of Trustees pursuant to the powers assigned to them by that agreement. The Employer accepts the Employer trustees of the Trust, and their duly elected successors as its representatives on the Board. The Union accepts the Union trustees of the Trust, and their duly elected successors as its representatives on the Board.

ARTICLE 11

DENTAL AND VISION BENEFITS

Effective July 1, 2007~~5~~, the Employer shall contribute up to $26.75 ~~25.00~~ per month for each eligible home care worker to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing dental benefits.

Effective July 1, 20086, the Employer shall contribute up to $29.43 ~~26.75~~ per month for each eligible home care worker to the SEIU Local 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~~5~~, the Employer shall contribute up to $5.25 ~~5.00~~ per month for each eligible home care worker to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing vision benefits.

Effective July 1, 2008~~6~~, the Employer shall contribute up to $5.78 ~~5.25~~ per month for each eligible home care worker to the SEIU Local 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.

3. Interest Arbitrator's Award on Health, Vision and Dental Benefits

I award no new language with the exception of 1) the Employer's language in Employer proposed Article 10.3 increasing Employer contributions by 10% in Year Two and 2) the language of Employer Proposed Article 11 increasing contributions for dental and vision benefits 10% in Year Two.

4. Interest Arbitrator's Findings and Reasons for Decision on Health,Vision, Dental Benefits, and Trust Issues

The parties have several fundamental disagreements over the health, dental, and vision insurance benefits for IP's. First, the Union has proposed that the State significantly increase its GF-S contributions to the Trust for the purpose of adding benefits, particularly for workers who do not currently work the 86 qualifying hours in a month.[32] The Union's proposal would add approximately $9.5 Million in increased health care costs during the 2007-09 biennium, s*ee*, Exh. S-11, line 4 ("Health Care Premium"), as opposed to the State's proposal to fully fund the anticipated 10% increase in the cost of

[32] Union President David Rolf envisions providing some form of "health benefits" (not necessarily health *care*) even for IP's who work very few hours in a month. For example, the Trust might provide a limited number of telephone consultations with a consulting nurse, or limited prescription discounts even for workers who do not qualify for more extensive health care benefits. IP's who work more monthly hours, but less than the 86 qualifying hours for full benefits, might receive some portion of the benefits of the full health care plan. I find the Union's proposals creative and intriguing, and even though I do not award them in this interest arbitration, I urge the parties to continue to discuss these and similar flexible approaches to the issues to lay the groundwork for possibly negotiating such graduated benefits in the future.

current benefits in the second year of the Agreement, which the State costs at $2.18 Million. *See,* Exh. S-10, line 2 ("Health Care Premium").

But the parties disagree over issues in addition to cost. The Union also proposes that the Employer make its contributions based on an hourly amount for each hour worked by each IP during the month, rather than continue to make lump sum monthly contributions only on behalf of those workers who reach the 86 hour monthly threshold. As the Union points out, hourly contributions would greatly simplify the process of calculating and transmitting the required contributions to the Trust, and it would also provide a basis for establishing entitlement to some graduated level of benefits the Trust might be able to offer in the future to employees who do not work enough qualifying hours under the present eligibility standards.[33]

My sense is that these issues could be resolved through bargaining, given the parties' constructive relationship, were it not for two other issues on which the parties seem hopelessly at impasse. One of these issues is the Union's proposal that the Employer allow the Trustees to decide how to spend the available funds on benefits. In other words, the Trust would possess full control of issues such as eligibility and plan design—control the Employer does not want to cede to others given the direct relationship of those issues to the cost of benefits.[34]

[33] The State does not necessarily oppose making contributions on an hourly basis. In fact, the current Agreement allows the Trust to convert the Employer's contributions to an hourly amount, so long as the total State contributions remain the same. Neither party has proposed removing this option from the Trust. The problem, of course, is that the Trust would unlikely be able to expand the number of workers receiving benefits, even nontraditional benefits, without an increase in total Employer contributions.

[34] This issue is complicated by the fact that the State does not have a Trustee representative on the Board of the Trust. *See,* the following discussion of the "transparency" and "public accountability" issues concerning Trust operations.

The second seemingly intractable issue involves the State's proposals regarding "transparency" in Trust operations. Without recounting the substantial intricacies of this issue in detail, it suffices to say that the State chose not have a formal Trustee on the Board of the SEIU Local 775 Multiemployer Health Benefits Trust, largely to avoid potential liabilities and to eliminate the possibility that the Trust could be considered a "public fund." Thus, even though the State is in reality the "primary funding entity" of the Trust, it lacks a formal voting presence on the Board. Instead, the State negotiated a nonvoting "Public Liaison" position designed to meet its "oversight" and "public information" interests. Exh. S-22 at 23. The Public Liaison is sort of a quasi-Trustee without the formal fiduciary responsibilities to the Trust beneficiaries that guide the voting Trustees.

The agreed purpose of the Public Liaison, according to the State, was to provide "transparency" and "accountability" with respect to an institution that is primarily funded with public monies.[35] The State envisioned a Public Liaison with access to virtually all the business of the Trust, including proprietary data such as the details of proposed contracts with vendors, etc.[36] Unfortunately, the relationship has not worked out the way the State intended. The Trustees—concerned on the advice of Trust counsel, for example,

[35] Robert Bohrer, the attorney who represented the HCQA in the process of drafting the Trust documents, testified about his understanding of what the parties had agreed. The attorney representing the other parties, however, did not testify. Subsequent to the creation of the Trust, the Trustees have engaged different attorneys, and they have apparently advised the Trust to limit its potential liabilities (and the confidentiality of its operations) by shielding the affairs of the Trust from outside view where possible, including limiting access of the Public Liaison to matters deemed "confidential.".

[36] I must say, however, that the language of Article VIII, Section 29 of the Trust Agreement, establishing the Public Liaison position, is somewhat general about the matters to which the Public Liaison will have access. In addition, even though Paragraph 29 provides that the Public Liaison shall have the right "to receive *all* material given to the Trustees," it goes on to provide a significant exception—namely, "unless limited to protect *necessary confidentiality*." Exh. S-22 at 23 (emphasis supplied). I suspect the State would argue that the quoted exception applies only to personal medical information made confidential by HIPAA, but on its face, the language certainly could be read more broadly.

that proprietary information in the hands of the Public Liaison could be subject to public disclosure under the Public Disclosure Act—enacted a confidentiality policy and took other steps that prevent the State's nonvoting representative from having the level of access to the affairs of the Trust that the State believes is necessary to protect the public interest. As a result, the State has proposed more detailed language for inclusion in the CBA that would "direct" the Trustees to "restore" the State's view of the original intent of the Public Liaison position.[37]

Essentially, it seems to me, the State asks that I interpret the Trust Agreement to "restore" the parties' original agreement as to the role of the Public Liaison, but that would turn this proceeding into a "rights" arbitration arising under the Trust Declaration as opposed to an "interest" arbitration arising under RCW Chs. 74.39A and 41.56. Totally apart from my misgivings about whether I have jurisdiction to, in effect, interpret the foundational documents of the Trust, I am also concerned by the fact—as I noted during closing argument—that interpretation of those documents is not an area in which I possess any expertise. Nor do I consider myself sufficiently knowledgeable to decide issues arising under the Public Disclosure Act—yet those issues, too, lie at the heart of the dispute.

In sum, while I am sympathetic to the State's public accountability concerns, I am also sympathetic to the Union's (and apparently the Trustees') concerns about whether public disclosure of proprietary Trust information might be required under the Public

[37] The State recognizes that these issues are within the technical legal control of the Trustees, not the bargaining parties, but argues that if the parties express their "mutual intent" to increase the matters to which the Public Liaison may have access, the Employer Trustees (drawn from the Agency Provider community) will have no reason to object. For the purposes of this discussion, I assume the accuracy of the State's assertions in that regard.

Disclosure Act if the Public Liaison has access to the detailed confidential workings of the Trust. These are important and difficult issues, and the parties should continue to discuss them,[38] but I do not believe they are appropriately decided in interest arbitration between the parties—at least not in their present posture.[39]

Returning to the Union's proposals to require hours-based contributions and to empower the Trustees to make decisions regarding plan design and benefits eligibility, given the direct effect of plan design and eligibility on cost, I cannot say that the State is unreasonable in its desire to retain those issues in the sphere of collective bargaining rather than turning them over to a Board of Trustees on which the State has no voting member (and on which the precise role of the State's nonvoting Public Liaison is up in the air). David Rolf's ideas about graduated and flexible benefits—perhaps extending partial benefits to those who do not meet the current 86 hour eligibility standard—are exciting and well worth exploring. But at present, at least, the State is within reason in insisting that those issues be examined within the context of collective bargaining. To the extent the Union foresees administrative efficiencies and other benefits in the hourly contribution concept, the Agreement already allows the Trust to convert the State's contributions to the Trust to an hourly basis so long as the total contribution remains the same. Therefore, no new language on that subject is needed at this time.

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[38] Apparently, the State's willingness to continue the Taft-Hartley Trust approach to funding health benefits for IP's will depend on finding a workable accommodation between the Trustees' confidentiality concerns and the State's need for high levels of public accountability in the expenditure of public funds. Thus, it seems to me that it is imperative the parties continue to explore creative alternatives—or, if that proves unsuccessful—to maneuver these issues into an appropriate forum for resolution.

[39] I had the impression, based on the testimony, that some of the perceived problems with the role of Public Liaison (at least from the Trustee side) may be ameliorated now that the State's Chief Negotiator for the Home Care CBA, Rick Hall, has been appointed to serve as the liaison. It is obvious to me that Mr. Hall not only has the confidence of the State on these matters, but also enjoys considerable respect from the Union side of the table. Perhaps with Mr. Hall in the position, the parties will be able to find a practical solution to these issues that will endure even after he no longer serves as the Public Liaison.

Finally, with respect to the proper contribution amounts, the evidence established that the Trustees do not foresee the need for an increase in the contribution rate in Year One in order to maintain present benefits. They do, however, forecast that a 10% rise in contributions will be necessary in Year Two. The State's proposal offered to pay the entire projected Year Two increase, and I have awarded that proposal. My reasoning is as follows. Until the parties resolve the Trust issues, including who will control plan design and eligibility, additional Employer contributions are premature. As to the current benefit model, the State estimates that approximately 9,800 IP's are eligible for coverage, but only slightly more than half (approximately 5, 256 or 54%) are currently enrolled. Exh. S-26 ("FY07" column). Even in fiscal year 2009, the State projects that only 6,832 of the eligible IP's will be enrolled, which I calculate at just under 70%. Under the circumstances, it seems to me that the priority should be to maintain current benefits—without an increase in cost to the workers—while the parties work on increasing "penetration" in the workforce and consider innovative approaches to expanding health coverage, even to those who work minimal monthly hours.[40] The Employer's proposal accomplishes that goal.

[40] As the State pointed out in closing argument, the current plan eligibility rules already extend health coverage to "part time" workers. The requirement that an employee work 86 hours in a month before becoming eligible for coverage means that IP's working roughly half time are eligible for the same coverage as employees working full time (approximately 173 hours per month using the parties' calculation). That is not to say that the parties can or should ignore those working less than half time, but this is not a bargaining unit in which an employee must work full time in order to meet the "hours worked" portion of the eligibility criteria.

C. UNION RIGHTS – ACCESS TO TRAINING, ACCESS TO PAY ENVELOPES, AND ANTI-UNION STATEMENTS

1. Union Proposals

ARTICLE 2

UNION RIGHTS

2.3 Access to Training

The intent of this section is to allow the Union access to all trainings required of individual provider home care workers for the purposes of conducting informational and orientation sessions regarding the Union, the Collective Bargaining Agreement, and other related matters.

The parties agree that a bargaining unit member IP will not receive pay for any more than a total of thirty (30) minutes in any calendar year.

The Union shall also be granted thirty (30) minutes for presentation at each "Revised Fundamentals of Caregiving (RFOC"), "Parent Provider Training (PPT)," continuing education class, and any other ~~(or similar such~~ mandatory training(s) conducted by the Employer ~~(Department, the Area Agencies on Aging, or their subcontractors~~ and/or ~~as~~ required to be completed by individual provider home care workers. 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, provided that each individual provider shall be paid for attending no more than one thirty (30)-minute Union training in any twelve (12)-month period of time. ~~The parties will enter into a side letter of agreement regarding the coordination and operational details necessary to implement this section.~~

2.5 Access to Pay Envelopes

The Employer agrees to include information provided by the Union in pay envelopes sent to individual providers, subject to the following conditions:

a. The Union shall provide such materials to the Department no later than two weeks prior to the first day upon which the Union requests that the materials be included in pay envelopes mailed to individual providers;

b. Except by consent of the Employer, the size and weight of such materials to be included in the pay envelopes for any pay period shall exceed two pieces of

printed materials, one of which may be no larger than 8.5" x 11" and no heavier than 20lb. weight, and the other of which may be a pre-printed #10 (or smaller) return envelope of standard weight;

c. The subject matters and contents of any materials provided shall be in conformance with RCW 42.52.160 and RCW 42.52.180;

d. The Union agrees to reimburse the Department any increase in postage costs arising from the inclusion of the Union materials.

2.6 Anti-Union Statements by Employer, Employer Agents Prohibited

The Employer (and its Executive Branch agencies including but not limited to the Department, Area Agencies on Aging, contracted case management agencies, and other contractors or subcontractors), shall not make anti-union statements or provide anti-union materials to individual providers or their clients. This includes but is not limited to statements by case managers encouraging non-membership in the union by bargaining unit members and statements by case managers that cuts in hours, services, or eligibility are made necessary by increases in wages or benefits.

2. State Proposals

No language proposed on access to pay envelopes or anti-union statements. The State proposes the following language on access to training:

2.5 Access to Training

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 Caregiving" (RFOC) training or the Parent Provider Training (PPT) for parents of people with developmental disabilities ~~or Safety training~~. ~~The Union shall be granted thirty (30) minutes on the agenda for presentation at a training conducted by or through the HCQA and required to be completed by all workers covered under this Agreement.~~ 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 that the thirty (30) minutes provided for the union presentation at the RFOC or the PPT will be for new bargaining unit member IPs. The parties agree that 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 training, they would not be paid for attending the union presentation at the RFOC training.

~~The Union shall also be granted thirty (30) minutes for presentation at each "Revised Fundamentals of Caregiving"(or similar such training(s) conducted by the (Department, the Area Agencies on Aging, or their subcontractors and as required to be completed by individual provider home care workers. 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 will enter into a side letter of agreement regarding the coordination and operational details necessary to implement this section.~~

The parties agree that the first thirty (30) minutes of the RFOC or PPT training will be for the Union presentation. For stand alone training, the Union presentation will be at the end of the training.

The Employer agrees to have the agencies, contractors or subcontractors providing or arranging for the training to give written notice to the Union, which will include the date, location and time of the RFOC or PPT within two weeks after the training is first scheduled. This written notice shall be by email. The Union agrees that if it or any of its representatives have questions about the schedule they will contact the person 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 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). Please 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 one-half (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 training, similar notification will be given to the bargaining unit member IPs.

3. Interest Arbitrator's Award on Union Rights

I decline to award the Union's proposal on anti-union statements, and I award neither party's proposals on access to training. I award the Union's proposal on access to pay envelopes with the following modification: Proposed Section 2.5(a) shall be amended to read "The Union shall provide such materials to the Department no later than ~~two weeks~~ thirty (30) calendar days prior to the first day upon which the Union requests that the materials be included in pay envelopes mailed to individual providers."

4. Interest Arbitrator's Findings and Reasons for Decision on Union Rights

The Union seeks effective means of communicating with the members of this geographically dispersed bargaining unit, not only during the orientation phase of employment (i.e. when new IP's attend required classes such as the RFOC), but also on a continuing basis. Originally, the parties agreed that the Union could make a thirty minute presentation at required safety training, but because employees now have the option of completing that training online or through self-study, safety training no longer meets the Union's needs for opportunities to meet face-to-face with members of the unit to discharge its representational duties.

Consequently, the Union now proposes that it be allowed time during every mandatory training session, including classes designed to meet the annually required ten hours of IP continuing education ("CE") so that it has physical access to each member of the unit on Employer-paid time at least once each year. The State does not object to paid time at mandatory training sessions such as RFOC and the course for Parent Provider

Training ("PPT"),[41] and I agree that the Union should have time set aside during those sessions for Union orientation matters. The State argues, however, that it would be an administrative nightmare to schedule Union access during every CE class given the wide variety of contexts in which IP's meet their CE requirements, including self-study and classes offered by community providers with no connection to DSHS. At a number of these classes, non-IP members of the community are also in attendance, making it inappropriate in the State's view to conduct Union business. The State suggests instead that the Union utilize direct mail, regional meetings, home visits, and similar techniques used by the Union in its organizing drives in order to meet its ongoing needs for access. The State also formally holds to the position that it should grant the Union access to each IP on paid time only "once in a career." At the same time, the State's principal negotiator signaled during his testimony that if DSHS or its contractors instituted additional mandatory classes, equivalent in logistics to the RFOC, that the State would likely not maintain its opposition to annual Union access to IP's on paid time.

It became clear to me, during the somewhat abbreviated testimony on this subject near the end of six days of hearing, that during bargaining the Union did not fully comprehend the State's objections, nor did the State understand access alternatives the Union might be willing to utilize—such as video Union presentations that could supplement an IP's video self-study. In these and other ways, I believe the issue is not ripe for decision in interest arbitration. The State is willing to go beyond the limitation of the current CBA, i.e. that Union access on paid time during training is limited to the safety class. The Union apparently has some ideas that could meet some of the State's

[41] PPT is apparently designed for parents of developmentally disabled children, and is less comprehensive than RFOC.

objections, and the State might not insist on "once a career" access if those objections could be met. Therefore, I award no language on this issue and ask the parties to continue discussing the issues.

In the meantime, I agree that the Union is entitled to some assistance in communicating with unit members in this unique tri-lateral relationship in which members of the unit rarely, if ever, gather in the same physical location. I therefore grant the Union's proposal on access to pay envelopes with the modifications set forth earlier. As modified, that proposal will allow the Union to utilize the monthly pay envelopes to send unit members limited printed communications with thirty days' advance notice to the State. Any increase in postage costs as a result of the Union materials will be borne by the Union. Although the State notes that it will cost approximately $8,000 each month to program its current computer system to handle a mailing targeted just to the IP's, I find it is reasonable for the State to bear that cost. The Union has been attempting since 2002 to require the State to "modernize" the computer system used to pay IP's (the "Social Services Payment System" or "SSPS"), and while I do not find any evidence that the State has intentionally delayed instituting a more flexible and adaptable system capable of handling the kinds of tasks most institutions today expect of their payroll systems (*see* the discussion in the next section of this interest arbitration award), assessing the programming cost of these mailings to the State will provide additional incentive to achieve prompt completion of the IP payroll modernization project.

Finally, I see no present need for the Union's proposed language on anti-Union statements. The language simply duplicates statutory unfair labor practice protections already available under the PERC system, and while it is true that contract language on

the subject would enable the Union to present these issues under the contractual grievance and arbitration process (instead of the somewhat more cumbersome PERC procedures), the evidence convinces me that the problems motivating the Union proposal were isolated. Moreover, Rick Hall, the State's lead negotiator, testified without contradiction that the incidents all occurred some time ago and each was promptly remedied (at least in the sense of strong oral reprimands to the offending case managers) by the State's labor relations representatives once brought to their attention. In the absence of evidence of a continuing problem, I agree with the State that the language is unnecessary.

D. PAYROLL, ELECTRONIC DEPOSIT, and TAX WITHHOLDING

1. Union Proposals

ARTICLE 14
PAYROLL, ELECTRONIC DEPOSIT AND TAX WITHHOLDING

14.1 Modern Payroll System

No later than July 1, 2008, the Employer shall adopt a modern payroll system for the purposes of calculating and making payments to individual provider home care workers. The system must, at a 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; providing web-based and telephonic reporting of hours; providing for direct deposit into multiple bank or other 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 a 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 July 1, 2008.

14.2 Twice Monthly Payments

Beginning July 1, 2008, home care workers shall be paid on a twice-monthly basis, on the 15th and final day of each month. In the event that the 15th or final

day of any month falls on a weekend or a banking holiday, payment shall be made on the businesses day most closely preceding the 15th or final day of that month.

14.~~1~~3 Timely and Accurate Payments

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.~~2~~3 Electronic Deposit[42]

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

14.~~3~~4 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. ~~Beginning on July 1, 2006 the Employer will also withhold Federal Income Tax~~.

14.5 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.

2. State Proposals

ARTICLE 14

PAYROLL, ELECTRONIC DEPOSIT AND ~~TAX~~ WITHHOLDING

14.3 Withholding

The Employer, at its expense, shall withhold from each employee's paycheck the appropriate amount of Social Security and L&I.., ~~Federal and State~~

[42] It appears that the Union has proposed two different Articles denominated "14.3."

~~Unewmployment Insurance and Medicare contributions. Beginning of July 1, 2006 t~~The Employer will also withhold Federal Income Tax upon request of the worker.

3. Interest Arbitrator's Award on Payroll, Electronic Deposit, and Tax Withholding

I award no new language except the Union's proposal that the first sentence of present Article 14.1 shall be amended to read "Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered."

4. Interest Arbitrator's Findings and Reasons for Decision

The State uses a decades-old COBOL computer program ("SSPS") to process monthly "invoices" from IP's and to pay them for authorized hours worked. The system is old and inflexible, at least by contemporary standards, and it has been a source of considerable frustration, not only to the Union, but also to the Employer as the parties have attempted to improve functionality of the IP payroll, e.g. provide for direct deposit, as well as the withholding of federal tax, unemployment insurance, Social Security, Medicare contributions, and similar items commonly deducted from checks as part of the payroll process. Because it is an "integrated" system, each one of these changes has been expensive and time-consuming to program because changing any particular process means that the programmers must re-write each place in the program in which that process or data might relate to other processes in the system.[43] Thus, the Union has been

[43] Because it is difficult to catch all such relationships before the new process becomes operational, a number of system issues have unexpectedly cropped up, including a recent problem that briefly prevented the State from calculating and transmitting to the Union the correct amount of dues withheld form IP paychecks, as well as preparing an accurate roster of the unit members on whose behalf dues had been withheld.

urging the State to eliminate SSPS in favor of a "modern payroll system" since the bargaining relationship began in 2002.

At the same time, the State has been working on revamping its Medicare Management Information System ("MMIS") into a more modern and functional system called "ProviderOne," and although SSPS is scheduled to be replaced (at least partially) in a later phase of that process, the target date has slipped somewhat given the complexities of the overall project and the required processes of State government, e.g. opportunity for all departments involved to have input, consideration of how ProviderOne will relate to other State computer systems, and Legislative budget processes. It now appears that the SSPS portion of the program may not be functional until 2010 or later.

The Union is understandably frustrated with the slow pace of progress, and blames the antiquated SSPS payroll process for recurring inaccuracies in members' paychecks.[44] Given the ProviderOne project, and the planned replacement of SSPS, the State is justifiably reluctant to "throw more money at SSPS," as the State's principal negotiator is quoted as having said during the negotiations. Under the circumstances, the Union urges me to set a date certain by which the State must commit that SSPS will no longer be used to pay IP's (the date proposed in the Union's written proposal is July 1, 2008).

It is now clear that the ProviderOne project will not be complete by that date, however, so the Union asks that I at least require the State to adopt a "modern payroll system" no later than the end of the 2007-09 Agreement. Although the SSPS replacement

[44] While I have no doubt that the Union's frustrations are justified, it also appeared to me from the testimony that many of the SSPS payroll problems the Union cites resulted from start-up "glitches" as the State modified SSPS to respond to the Union's needs for a system that would withhold various items such as Union dues, federal tax, and so on.

portion of ProviderOne seems unlikely to be accomplished even by the end of the new Agreement, I note that the State has issued a Request for Information ("RFI") seeking information on "Provider Payroll Services," i.e. soliciting feed back from the "vendor community regarding the range of available services for processing payroll-like payments" to DSHS providers. RFI at 2, Exh. S-31. The RFI explicitly incorporates functionality the Union would like to see, such as those set forth in Union's Proposed Article 14.1, and expressly notes that the State seeks a system capable of accommodating requirements that "will continue to evolve and will likely change with each new collective bargaining period." RFI at 3. The results of the RFI will be used to do a feasibility study, create an appropriate RFP, and seek budget authority to proceed with an "outsourced" vendor "payroll" system capable of handling the evolving needs of both DSHS and the IP's, hopefully sooner than those needs can be met through the ProviderOne project alone.[45]

There is no doubt in my mind that Rick Hall has diligently pursued the needed changes in the computer payroll system, persisting in his efforts up to the top executive levels of the departments involved. I can only assume that he will continue to press in good faith for the earliest possible replacement of the SSPS payroll system with a more

[45] The Union presented the testimony of Mark Baff, Marketing Director of SanData Services, a provider of outsourced payroll services in the Agency Provider context, to the effect that he is confident his company could produce a computer payroll system for the IP's that would meet everyone's needs in less than a year. The State's computer experts were less sanguine, given the need of the IP payroll system to interface with the "authorization for services" portion of the SSPS or its replacement. In other words, the system must be able to handle more than just payroll, it must also interface with the systems that "authorize" IP hours in the first place. Perhaps SanData's experience in the related Agency Provider world would, indeed, allow it to create a workable IP payroll system in a matter of months. Even if that is the case, however, given its responsibilities to the public, as well as to the IP's, the State is not being unreasonable in subjecting the entire concept to an RFI, feasibility study, RFP, and budget approval process, all of which takes time and would have to be completed before SanData or a similar outside provider could begin meaningful work on the project. Thus, it seems to me that Mr. Baff's testimony regarding when SanData could institute a new IP payroll system—even if his estimates regarding SanData's portion of the overall project are accurate—understates the time involved.

modern and flexible process. But given the complexity of the project, the risks to the State and the IP's if the project "fails" (i.e. does not work properly), and the requirement to satisfy the processes of State government before public money can be committed to an outsourced payroll solution, I do not believe it is constructive to set an artificial date certain for accomplishing the task within the term of the 2007-09 Agreement.[46] A date certain may well provide additional incentive to the State to successfully complete the process as soon as possible, as the Union argues, but a date certain not grounded in reality would very likely harm the relationship between the parties and undermine Mr. Hall's efforts. Clearly, the quest to modernize the computer system under which IP's are paid has gone on too long. I am certain that both parties agree with this observation, and both parties must also know that if a replacement system is not yet operational (or on the verge of being so) two years from now, it is very unlikely an interest arbitrator would be receptive to the idea that the State has had insufficient time to find an effective alternative to SSPS. That should be incentive enough for the State.

The Union's remaining payroll issues are not awarded at this time, except in one very limited respect, even though they have some merit. Twice-monthly payroll for IP's (Proposed Article 14.2) is simply unrealistic under the SSPS system which is geared to a *monthly* authorization of provided hours. I note, however, that the State's payroll system RFI specifically incorporates "multiple payroll frequencies, e.g. twice monthly payments," in its functionality specifications. Exh. S-31 at 6, line 14. Thus, the State appears to be setting the stage for consideration of semi-monthly paydays for IP's under the new computer system. Turning to the cost of replacing and operating the payroll

[46] During closing argument, I asked counsel for each party for their views as to whether I could set a date certain for adoption of a new payroll system beyond the term of the coming contract. Both parties expressed concern over whether I could do so. I will defer to the parties' views on that subject.

system, based on the testimony at the hearing, it is unclear to me that the State expects the Union to contribute to those costs. Therefore, Union's Proposed Article 14.5 appears to be unnecessary.

I agree, however, that the CBA should incorporate a right for IP's to receive "accurate" payment (Union's first Proposed Article 14.3) for their work. I therefore award that language as an amendment to Article 14.1.[47] It seems to me, however, that additional language concerning the remedies available in cases of inaccurate paychecks is unnecessary in light of the broad powers of an arbitrator to devise a remedy appropriate to the specific circumstances of any case in which the Employer's errors or omissions might rise to the level of a contractual violation.

Finally, the Employer's proposals on Article 14 appear to contain only two changes. The first, authorizing payroll deduction of the employee share of the L & I premium, is unnecessary given my award, set forth earlier, that the employee share of L & I shall be paid by the Employer. The second change proposes to clarify that federal tax will be withheld only upon request of the worker. From the evidence presented, I did not understand this issue to be in controversy, but I do not award the Employer's language in case there is some difference of opinion on the matter, either substantive or procedural.[48]

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[47] In substance, it seems to me this language adds little, if anything, to the current language recognizing a right of "timely" payment. If an IP's payment is "inaccurate" on the low side, it is just as difficult to call it "timely" as if it is not made at all. I do not suggest that every inaccuracy in a pay check will constitute a contractual violation, any more so than an "untimely" payment would necessarily constitute a violation under the current language. As a statement of aspiration, however, it seems to me that the parties should continue to commit themselves to "work together to identify causes and solutions to problems resulting in late, lost or *inaccurate* paychecks and similar issues." Exh. J-1, 2005-07 CBA, Article 14.1 (emphasis supplied). The Union's proposed addition to the language of Article 14.1 is consistent with that commitment.

[48] My understanding is that IP's may choose to have federal tax withholding, and that the Employer makes appropriate deductions for those who choose to do so. Given that the parties did not highlight this issue during the hearing, I suspect that this is a "housekeeping" issue on which the parties do not disagree. If that is the case, the parties are free, of course, to include the Employer's language if they wish.

V. SUMMARY OF INTEREST ARBITRATOR'S AWARD

Upon thorough evaluation of the parties' respective proposals on the issues certified for interest arbitration pursuant to RCW 74.39A.270 and RCW 41.56.465, and in consideration of all the evidence and argument in light of the statutory criteria, I have made the following AWARD:

Award on Wage and Non-Wage Compensation

a. I award the State's proposal on Article 9.1 (Wages) and Appendix A (Wage Scale) and deny the Union's proposal for an "acuity based wage scale" (proposed Article 9.2 of the Union's wage proposals) as well as the proposal for overtime pay for hours in excess of 173 per month (Union Article 9.4). I award the Union's mileage reimbursement proposal effective July 1, 2008 with the following modifications: 1) the first sentence of the Union's proposal shall read "Effective July 1, 2008, employees shall be compensated for the use of their personal vehicles to provide services to clients (such as essential shopping and travel to medical services) authorized under the care or service plans." 2) the second sentence shall read "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."

b. Because the parties are in agreement on a pay differential for mentors, preceptors, and trainers (Union Proposal 9.3, State Proposal 9.2), that pay differential is hereby awarded with the agreed language set forth in the respective proposals.

c. I award the Union's L&I proposal (that the State pay the employee share of the worker's compensation premium) in Article 12 with the following modifications: 1) the

second sentence of the Union's proposal shall read "The Employer may, in its sole discretion, seek a statutory change or a change in rule to accomplish this objective"; 2) the third sentence of the Union's proposal shall read "If applicable laws or rules prevent the Employer from paying the premium share at any time during the life of this Agreement, or if the Employer believes in good faith that the applicable laws and rules prevent the Employer from paying the employees' premium share during the life of this Agreement and the Employer chooses not to exercise its discretion to seek a statutory or rule change, the Employer shall adjust each step of the wage scale established under Article 9 of this Agreement upward by an amount equivalent to the employee premium share for L & I."

d. I award the parties' agreed language on Article 13.1 (Vacation) and deny the Union's proposed Article 13.2 (Sick Leave).

Award on Health, Vision and Dental Benefits

I award no new language with the exception of 1) the Employer's language in Employer proposed Article 10.3 increasing Employer contributions by 10% in Year Two and 2) the language of Employer Proposed Article 11 increasing contributions for dental and vision benefits 10% in Year Two.

Award on Union Rights

I decline to award the Union's proposal on anti-union statements, and I award neither party's proposals on access to training. I award the Union's proposal on access to pay envelopes with the following modification: Proposed Section 2.5(a) shall be amended to read "The Union shall provide such materials to the Department no later than ~~two~~

~~weeks~~ thirty calendar days prior to the first day upon which the Union requests that the materials be included in pay envelopes mailed to individual providers."

Award on Payroll, Electronic Deposit, and Tax Withholding

I award no new language except the Union's proposal that the first sentence of present Article 14.1 shall be amended to read "Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered."

Award on Costs of Interest Arbitration

Consistent with the statutory requirements governing interest arbitration, the parties shall bear the fees and expenses of the Interest Arbitrator in equal proportion.

Dated this 19th day of September, 2006

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Michael E. Cavanaugh, J.D.
Interest Arbitrator