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SEIU LOCAL 775

v.

STATE OF WASHINGTON,  
HOME CARE  
QUALITY AUTHORITY

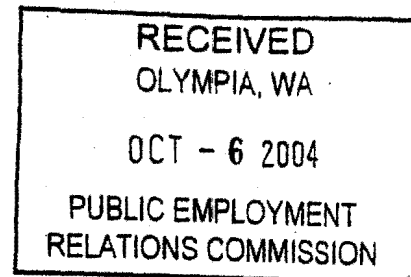
INTEREST ARBITRATION AWARD

BY

TIMOTHY D.W. WILLIAMS, ARBITRATOR  
2700 FOURTH AVENUE, SUITE 305  
SEATTLE, WASHINGTON 98121

IN THE MATTER OF THE INTEREST )  
ARBITRATION )  
BETWEEN )  
SEIU LOCAL 775 )  
"THE UNION" )  
AND )  
STATE OF WASHINGTON )  
"THE STATE" OR "THE EMPLOYER" )

ARBITRATOR'S  
OPINION  
AND  
INTEREST AWARD



HEARING: September 9, 10, 14, 15, 17, 20, 2004  
905 Plum Street SE  
Building 3  
Olympia, WA 98504

HEARING CLOSED: SEPTEMBER 20, 2004

ARBITRATOR: Timothy D.W. Williams  
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David Rolf, President, SEIU 775  
Suzanne Wall, Secretary Treasurer, SEIU 775

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APPEARING AS WITNESSES FOR THE STATE:  
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Kathy Leitch, Assistant Secretary  
Penny Black, Director  
Fran Wilson-Maudsley, Manager  
Bonnie Moonchild, Manager  
Wolfgang Opitz, Deputy Director  
Irv Lefberg, Chief of Forecasting

## EXHIBITS

### Union

1. HCS Management Bulletin, H04-074, August 24, 2004
2. SSPS, Meeting Unique Business Needs in Unique Ways
3. Engrossed Substitute House Bill 2662
4. Draft, WMIP Guide 9/2004 for DSHS Medicaid Consumers
5. HCS Management Bulletin.03-63, September 12, 2003
6. HCS Management Bulletin 03-86, December 30, 2003
7. Proposed Rule Making (RCS 34.05.320)
8. Chart, WA Homecare Contracts
9. Washington State Job Descriptions
10. Local List Job Opportunity, Dept. of Veterans Affairs
11. Chart, Contract Comparison
12. Home Care Contracts, Washington State
13. Home Care Contracts, Oregon and California
14. HCS Management Bulletin, H04-074, August 24, 2004
15. Washington State General Government Employee Benefits
16. SEIU National Industry Pension Fund
17. San Francisco: In-Home Supportive Services Public Authority
18. US Department of Labor, State Minimum Wages
19. Chart, Rate Comparison
20. Economic Forecast, September 16, 2004
21. Chart, Tax Exemption Bills Passed by Washington Legislature 2004, March 12, 2004
22. Article from The Olympian, "Critics: Tax breaks don't guarantee job growth", April 12, 2004
23. Article, "End the Costly R&D Tax Breaks", by Heather Carter, January 2004
24. Chart, Long-Term Care Has Shifted to Home & Community Care
25. Report, "The Self-Sufficiency Standard for Washington State"

## Employer

1. PERC letter, Submitted Issues, August 19, 2004
2. Union Articles/Positions, Effective August 13, 2004
3. Union Proposal, Wages
4. Union Proposal, DSHS Policies and Practices
5. Union Proposal, Referral Registry
6. Union Proposal, Training
7. Union Proposal, Pension
8. Union Proposal, Payroll, Electronic Deposit and Tax Withholding
9. Union Proposal, Sick & Vacation Leave
10. Union Proposal, Health and Safety
11. Union Proposal, Health, Dental, Vision, and Insurance Benefits
12. Union Proposal, Complete Agreement
13. Union Proposal, Side Letter on Dues Deduction 2003-2004
14. Union Proposal, Bargaining Unit
15. Employer Articles/Positions, Effective August 13, 2004
16. Employer's Economic Proposal, August 12, 2004
17. Employer Package Proposal, Medicaid Integration Projects, and 184/96 Hour Rule
18. Employer Package Proposal, Referral Registry
19. Employer Counter Proposal, Training
20. Employer Package Proposal, Payroll, Electronic Deposit
21. Employer Package Proposal, Health and Safety
22. Employer Initial Proposal, Complete Agreement
23. Employer Package Proposal, Bargaining Unit Information
24. Home Care Workers Contract, Tentative Agreement, August 21, 2004
25. Employer Package Proposal, Recognition
26. Employer Package Proposal, Employer Rights
27. Union Counter Proposal, Union Rights
28. Employer Counter Proposal, Union-Management Communications Committee
29. Union Proposal, Union Membership and Union Security
30. Employer Counter Proposal, Deduction of Dues, Contributions, and Fees
31. Employer Counter Proposal, Grievance and Dispute Resolution
32. Employer Package Proposal, No Discrimination
33. Employer Package Proposal, Duty to Bargain
34. Union Proposal, Worker's Compensation
35. Employer Counter Proposal, Production of Agreement
36. Union Proposal, Savings or Separability Clause
37. Employer Counter Proposal, Uninterrupted In-Home Care Services
38. Employer Counter Proposal, Consumer Rights
39. Employer Counter Proposal, Mediation of Disputes

40. Employer Counter Proposal, Term of the Agreement
41. Employer Counter Proposal, Cash and Counseling
42. Home Care Workers 2002-2005 Contract
43. Chart, DSHS Organization
44. Table, Personal Care Services Provided in Homes
45. Booklet, Medicaid and Long Term Care for Adults
46. DDD - Medicaid Personal Care, September 8, 2004
47. ADSA Fact Sheet, May 14, 2004
48. RCW 74.39
49. RCW 74.39A
50. WAC 388-71
51. DSHS Training
52. SSPS Overview
53. The SSPS Toll-Free Line
54. May 2004 Provider and Payment Statistics
55. Sample Invoices
56. Federal Tax Withholding Project
57. Mileage and Travel Project
58. Overtime Project
59. Dependent Healthcare Project
60. Sick and Vacation Project
61. Track Cumulative Hours Project
62. Seniority Pay Rate Changes Project
63. Communicable Disease Project
64. Bi-Monthly Payroll Project
65. Client Level of Care Project
66. Yearly Maintenance
67. Project Cost

\*There are no State Exhibits numbered 68-81

81. Individual Provider Wage and Benefits Comparison
82. 2003-2005 Collective Bargaining Agreement between Home Care Commission and SEIU, Local 503, OPEU, produced at pages State Exhibit 92 through State Exhibit 111
83. 2003-2004 State of Illinois, Department of Central Management Services and Human Services and SEIU Local 880, AFL-CIO, produced at pages State Exhibit 112 through State Exhibit 132
84. 2001-2003 Agreement between Sacramento County In-Home Supportive Services Public Authority and SEIU, Local 250, Health Care Workers Union, AFL-CIO, covering In-Home Supportive Services Unit, produced at pages State Exhibit 133 through State Exhibit 145
85. 2004-2005 Memorandum of Understanding In-Home Supportive Services (IHSS) Provider Unit for San Bernardino County, produced at pages State Exhibit 146 through State Exhibit 158

86. 1999 First-Ever Contract for Los Angeles IHSS Homecare Providers, Contractual Agreement between the Homecare Workers Union, SEIU Local 434B and Personal Assistance Services Council (PASC), produced at pages State Exhibit 159 through State Exhibit 173
87. August 6, 2002 through August 5, 2004, Memorandum of Understanding between Local 145, AFL-CIO/CLC and the In-Home Supportive Services Public Authority of the County of Santa Cruz, produced at pages State Exhibit 174 through State Exhibit 189
88. December 23, 2003, Summary of Proposed Union Contract between United Domestic Workers of America, NUHHCE, AFSCME, AFL-CIO and Riverside County IHSS Public Authority, produced at pages State Exhibit 190 through State Exhibit 192
89. Public Authority for In-Home Supportive Services in San Diego County, produced at pages State Exhibit 193 through State Exhibit 194
90. Archive of Fresno Home Care Workers Struggle, produced at pages State Exhibit 195 through State Exhibit 196
91. Public Authority for In-Home Supportive Services in Yolo County, produced at pages State Exhibit 197 through State Exhibit 198
92. July 1, 2004 to June 30, 2005, Memorandum of Understanding between Sonoma County In-Home Supportive Services Public Authority and SEIU, Local 250, produced at pages State Exhibit 199 through State Exhibit 232
93. Impact Summary, Data Entry for Calculations, Compensation, Pension, Dental and Vision, Health Care, Sick Leave and Vacation Leave, Training Fund Contribution
94. Home Care Quality Authority Model of Cost Estimates Proposal Summary, Data Entry for Calculations, Compensation (Proposed), Health Care (Proposed)
95. Home Care Quality Authority Model of Cost Summary, HCQU IP Contract 02-06-04 Summary
96. January 15, 2004, Actuarial Certification of Withdrawal Liability
97. Six-Year Outlook, Office of Financial Management, July 2004
98. Cost-Of Living Summary Report (Runzheimer data), 2004

## BACKGROUND

SEIU Local 775 represents a statewide bargaining unit made up of home healthcare workers identified as Individual Providers (IPs). RCW 74.39A.270 provides that for the "purposes of collective bargaining" the governor is the public employer. SEIU Local 775 (hereafter the "Union") and the State of Washington (hereafter the "Employer" or the "State") have an existing Collective Bargaining Agreement (CBA) that expires on June 30, 2005 (State Exhibit #42). The parties are in the process of negotiating a successor agreement.

RCW 74.39A (2,c&d) provides the home healthcare workers bargaining unit the right of interest arbitration and prohibits IPs from striking. RCW 74.39A.300 requires that any agreement, including the interest arbitration award, that requires funding be completed and submitted to "the director of financial management" by October 1<sup>st</sup> prior to the implementation date of a new agreement.

By letter dated August 19, 2004, the Executive Director of the Public Employment Relations Commission (PERC), in compliance with RCW 41.56.45A, certified a set of issues to be submitted to interest arbitration. Those issues, as certified, are as follows:

1. Article \_\_\_\_: Wages
  - Section 1. 2005-2006 Wages
  - Section 2. 2006-2007 Wage Scale
  - Section 3. Client case difficulty level
  - Section 4. Communicable disease differential
  - Section 5. Overtime
  - Section 8. Travel time pay
  - Section 9. Mileage reimbursement
  - Appendix A. Wage Scale

2. Article \_\_\_\_ : DSHS Policies and Practices
  - Section 1. Intent
  - Section 2. Changes to policy
  - Section 3. Cash and Counseling
  - Section 4. Medicaid Integration
  - Section 5. Employer communication
  - Section 6. Service contracts
  - Section 7. Hours cuts
  - Section 8. 184/96 hour rule
  - Section 9. Shared living rule
  
3. Article \_\_\_\_ : Referral Registry
  - Section 1. Eligible for referral registry
  - Section 2. Seniority preference
  - Section 3. Removal from referral registry
  
4. Article \_\_\_\_ : Training
  - Section 1. Minimum training requirements
  - Section 2. Multiemployer long-term care, industry training and education fund
  
5. Article \_\_\_\_ : Pension
  - Section 1. Coverage
  - Section 2. Term
  - Section 3. Contribution
  - Section 4. Trust Agreement
  - Section 5. Cooperation
  - Section 6. Approval by Trustees
  - Section 7. Miscellaneous
  
6. Article \_\_\_\_ : Payroll. Electronic deposit and Tax withholding
  - Section 1. Prompt, accurate, twice monthly payment
  - Section 2. Electronic deposit
  - Section 3. Tax withholding
  - Section 4. SSPS
  
7. Article \_\_\_\_ : Sick Leave and Vacation Leave
  - Section 1. Sick Leave
  - Section 2. Vacation Leave
  
8. Article \_\_\_\_ : Health and Safety
  - Section 1. Equipment
  - Section 2. Communicable disease exposure
  
9. Article \_\_\_\_ : Health, Dental, Vision and Insurance Benefits
  - Section 1. Trust fund



- Section 2. Payment for health benefits
- Section 3. Payment for dental and vision benefits
- Section 3. Benefit levels, eligibility, premium share, dependent coverage, payroll deductions
- Section 4. Trust agreement
- Section 5. Cooperation

10. Article \_\_\_: Complete Agreement

11. Side letter on dues deduction

On September 2, 2004 PERC issued a preliminary ruling with regard to an unfair labor practice case filed by the Employer on August 31, 2004. The Employer stated that the Union had breached its obligations to bargain in good faith by negotiating to impasse six issues which the State believed to be non-mandatory subjects of bargaining. The Executive Director of PERC, in a preliminary ruling, indicated that he was "exercising discretion to suspend the interest arbitration proceedings under WAC 391-55-265 for six issues currently before the interest arbitrator." The six issues suspended are as follows:

- DSHS Policies and Practices, Section 6: Service Contracts
- DSHS Policies and Practices, Section 9: Shared Living Rule
- Referral Registry, Section 1: Eligible for Referral Registry
- Referral Registry, Section 3: Removal from Referral Registry
- Training, Section 2: Multiemployer Long Term Care, Industry Training and Education Fund
- Side Letter on Dues Deduction

Additionally, prior to the start of the interest arbitration hearing, the parties stipulated that they had reached tentative agreement on the Policies and Practices

Article, Section 3, and thus it was no longer before the Arbitrator. A letter to this effect, dated September 7, 2004, was provided to PERC.

During the time of the hearing, the parties indicated that they had reached agreement on all matters concerning the Article on Referral Registry. This agreement related to one of the certified issues before the Arbitrator and two of the issues that had been suspended by PERC pending the outcome of the unfair labor practices procedure. As a result of this agreement, the entire article on Referral Registry was removed from the Arbitrator's consideration.

The hearing commenced on the 9<sup>th</sup> of September, continued on the 10<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> and concluded on the 20<sup>th</sup>. A transcript of the hearing was produced by a certified court reporter. The parties were offered the opportunity to provide written final arguments but they determined that for the purpose of expediting the matter they would make oral closing arguments. The Arbitrator closed the hearing at the end of the oral arguments on the 20<sup>th</sup> of September.

Finally, the Arbitrator has set aside the dates of October 28 and October 29, 2004 for additional hearing if the four issues that now constitute the unfair labor practices case pending before PERC are found to be mandatory and thus subject to the Arbitrator's jurisdiction.



## HISTORY OF BARGAINING RELATIONSHIP

SEIU Local 775 and the State of Washington enjoy a unique bargaining relationship that is a product of the employment status of IPs and the law that governs the bargaining relationship between the statewide IP bargaining unit and the State of Washington. It is the Arbitrator's belief that the award in this case is best understood in the context of that unique relationship. Thus, the following brief History, primarily based on the parties opening statements and a review of the various statutes, is provided to set forth the particulars of the relationship.

For a number of years the State of Washington and the federal government have supported a shared program to pay people to take care of the ill, disabled, and aged in their own homes. Home care makes a lot of sense. The clients prefer living in their own homes rather than being shipped off to nursing homes or other institutional settings. It benefits the government and ultimately the taxpayers because it's more humane and cheaper than institutional care.

In order to keep costs down and ensure client control over their caregivers, the individuals hired to provide home health care services were retained as "individual contractors" rather than state employees. In this arrangement, the state could maintained that the clients were hiring thousands of owner-

operated businesses to provide home care while the government was merely acting as the clients' "fiscal agent," passing along wages. The parties agree that there are more than 26,000 IPs doing home health care work in Washington and all of whom make up the bargaining unit. According to the State's best estimate, more than 60 percent of workers who are caring for the aged or infirm are looking after a relative. Typically, these IPs were hired near or at minimum wage.

In November 2001, voters overwhelmingly approved Initiative 775, which established a Home Care Quality Authority (HCQA) with responsibility to improve home care services for the elderly and disabled. Included in the responsibilities of the HCQA was the task of stabilizing the caregiver workforce through serving as the employer of the IPs solely for collective bargaining purposes. HCQA has a board of long-term care stakeholders and home care consumers appointed by the Governor. It is an agency of state government and consists of a nine-member board appointed by the Governor. Each board member serves a term of three years. The board members include:

- Five members who are currently using or have formerly used long-term in-home care services:
- a person with a developmental disability;
- a representative of the Developmental Disabilities Planning Council;
- a representative of the Governor's Committee on Disability Issues and Employment;
- a representative of the State Council on Aging; and

- a representative of the Washington Association of Area Agencies on Aging.

Staff members of the HCQA include:

- an Executive Director responsible for the day-to-day management and operations of the agency;
- an Executive Administrative Assistant responsible for various administrative projects;
- a Home Care Registry Manager responsible for planning and developing a statewide referral registry of home care workers;
- a Training and Communications Manager responsible for developing and delivering the HCQA's training and communications programs; and
- a Labor Relations Manager responsible for all aspects of labor relations including negotiation of statewide collective bargaining agreements.

SEIU Local 6, in 2002, filed a petition to represent the IPs with the Washington State Public Employment Relations Commission (PERC). PERC mailed ballots to more than 25,000 independent in-home care providers and gave them the choice of voting for SEIU Local 6 or for "No Representation." As a result of this election, in August 2002 PERC certified SEIU Local 6 as the official bargaining representative for the IPs.

Starting in August 2002, SEIU bargained an initial contract with the Home Care Quality Authority. The HCQA was considered the employer of IPs solely for the purpose of collective bargaining with the SEIU about terms and conditions of employment. Under this arrangement, the HCQA negotiates a collective bargaining agreement with the Union that sets general

terms of employment for IPs such as wages or other benefits. The consumer of in-home care services is the direct employer of the IP with the sole and exclusive right to hire, supervise, and terminate the worker.

The contract, which was submitted to the legislature by Governor Locke for funding in January of 2003, would have provided home care workers with a \$2.07/hr raise over two years (to 9.75/hr in July 2004), health care through the BHP for all home care workers who work at least half-time, and L&I coverage for all home care workers. The cost of the package was approximately \$98 Million.

The legislators rejected the financial terms of the contract and, instead of submitting the collective bargaining agreement back to the HCQA and SEIU for the purpose of renegotiating the funds necessary to implement the agreement, unilaterally appropriated a 75-cent raise for home care workers. In rejecting the contract, legislators primarily cited concerns about cost, state liability and the possibility that if provided these benefits directly by the state home care workers could be considered state employees.

In August of 2003, the in-home care providers voted to change the name of SEIU Local 6 to SEIU Local 775. PERC approved the request in October, 2003, and Local 775 is now

officially certified as the exclusive representative of home care workers.

With the contract rejected, SEIU 775 returned to the bargaining table with the Home Care Quality Authority. Responding to concerns about the bargaining process itself, representatives of both SEIU and HCQA met and stayed in close contact with legislative leaders in both parties in both chambers throughout the bargaining process, and made a concerted effort to address the concerns that had been raised by legislators during the previous session.

The revised contract is in evidence for this interest arbitration proceedings as State Exhibit #42 and it:

- Provides a 50-cent raise to individual provider home care workers, raising their wages to \$8.93 in October 2004
- Provides L&I coverage administered by a third-party administrator to all home care workers starting in October 2004
- Provides comprehensive individual health care coverage through a Taft-Hartley Trust fund to all home care workers who work at least half-time for at least three consecutive months and who have no other health insurance starting in January 2005.

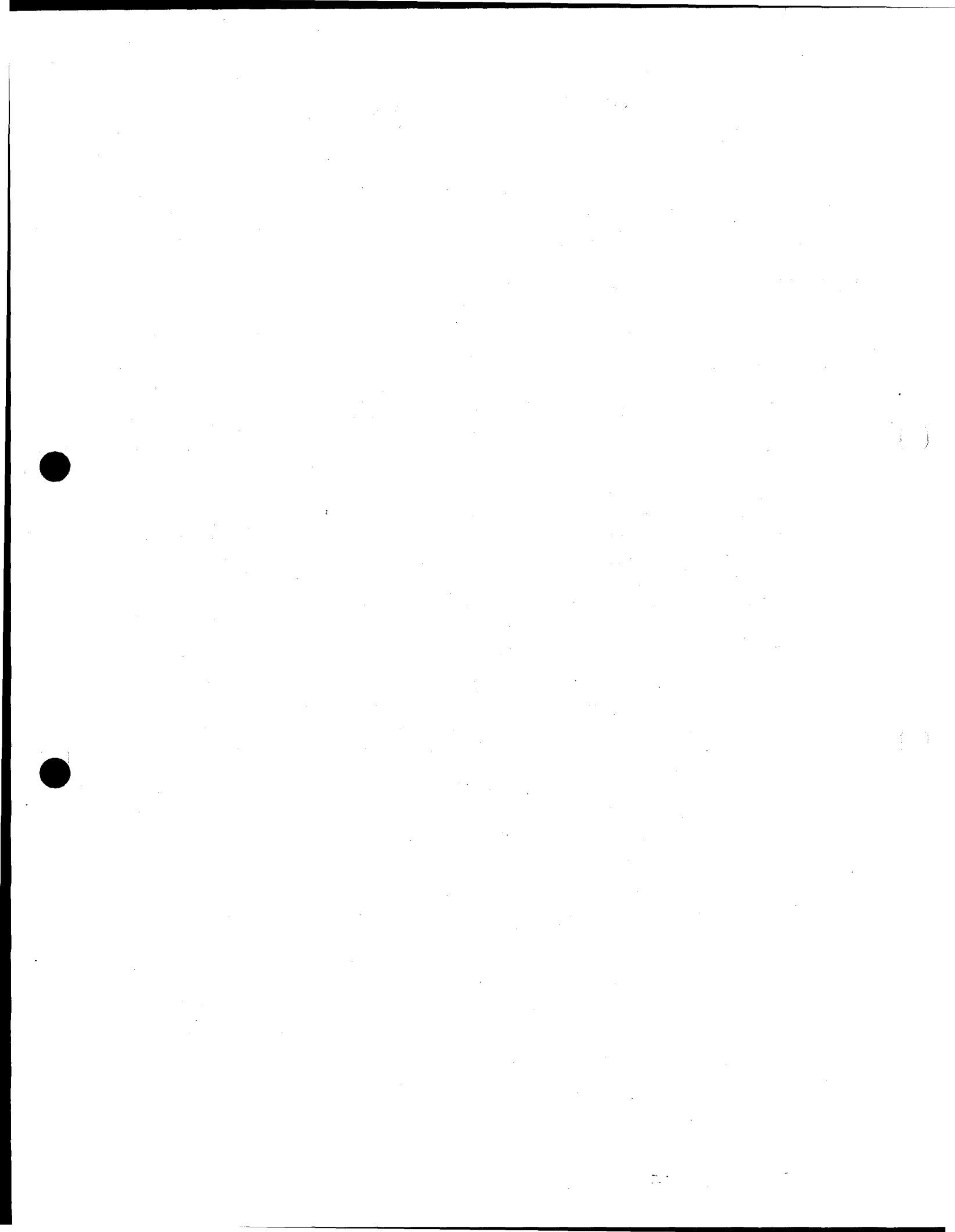
The total cost of this renegotiated contract is estimated at \$24.8 Million for the remainder of the biennium. Including the cost of the 75-cent raise provided last year, the total cost is just over \$50 Million, or about half the cost of the original economic provisions.



It is believed by the parties that in addition to substantially reducing the cost, the provision of the L&I and health coverage through a third-party administrator and a Taft-Hartley trust, respectively, will substantially shield the state from liability, reduce any administrative burden on state agencies, and maintain a "buffer" between the state and the individual provider home care workers so that they will not be considered state employees. This agreement is set to expire on June 30, 2005.

In 2004, there was a significant statutory amendment. RCW 74.39.270 was changed and, instead of the HCQA serving as the employer of record for collective bargaining purposes, the Governor or his designee now take on that function.

The parties began negotiations for a successor agreement on May 1, 2004 as required by RCW 74.39A.270. As a result of a failure to reach timely agreement and pushed by the October 1 deadline, the parties determined to submit the unresolved issues to interest arbitration.



## ARBITRATOR'S AUTHORITY

An arbitrator's authority to issue an interest award is generally derived from statute. In the instant case, RCW 41.56.450 to .465 establishes the arbitrator's authority and sets out the requirements for conducting the hearing and issuing an award. The work of the Arbitrator is further and guided and constrained by WAC 391-55-225.

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

1. In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
  - a. The constitutional and statutory authority of the employer;
  - b. Stipulations of the parties;
  - c.
    - i. For employees listed in RCW 41.56.030 (7) (a) through (d), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
    - ii. For employees listed in RCW 41.56.030 (7) (e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;
  - d. The average consumer prices for goods and services, commonly known as the cost of living;

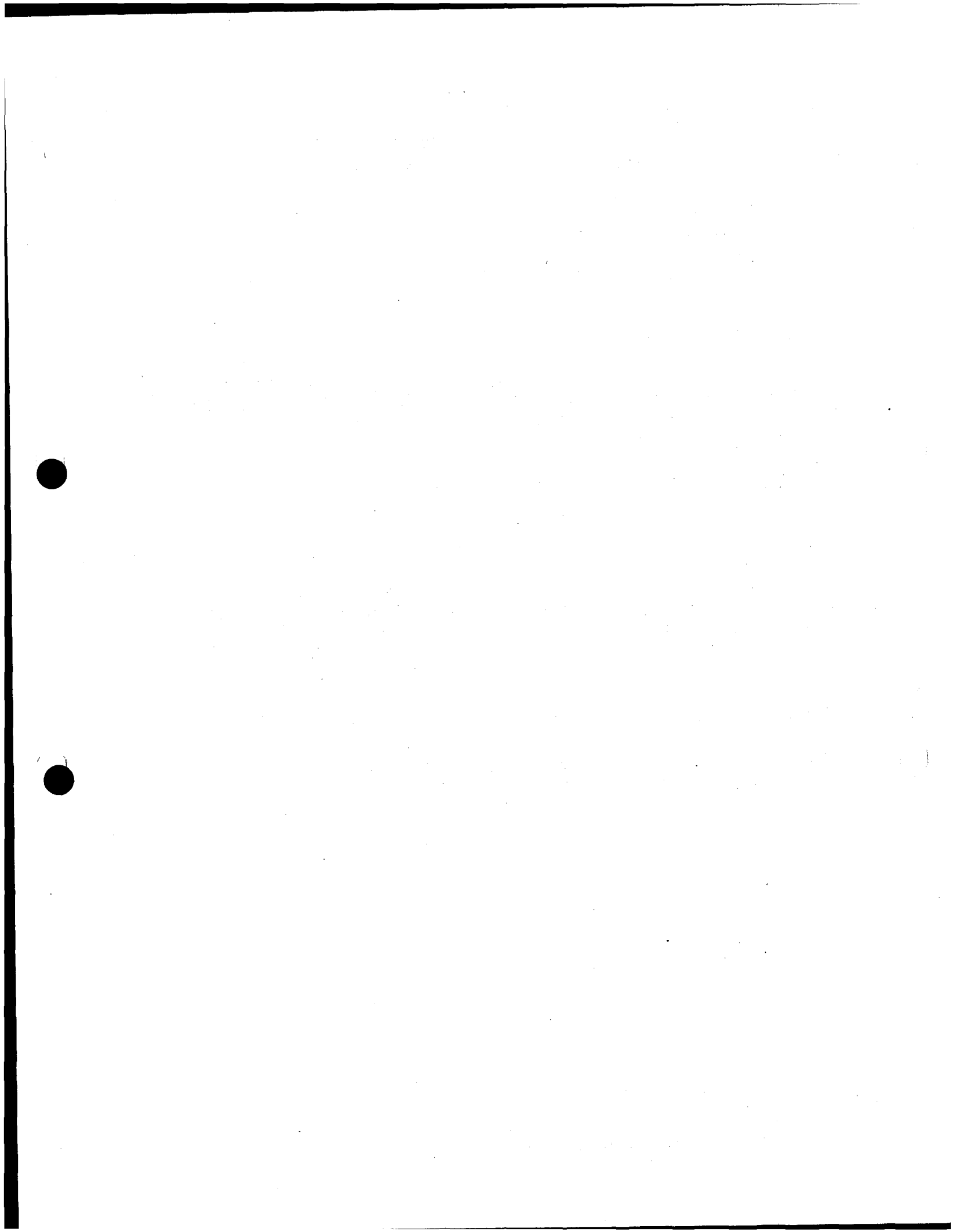
- e. Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
- f. Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination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

RCW 74.39A.270 provides, in pertinent part, that "the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply" except that the interest arbitrator is required to also consider "the financial ability of the state to pay for the compensation and fringe benefit provisions." Thus, where RCW 41.56.465 limits consideration to those "employees listed in RCW 41.56.030," RCW 74.39A.270 expands the list of applicable employees to include the IPs and extends the set of criteria to be used by the arbitrator in fashioning the decision.

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

RCW 41.56.450 grants the Arbitrator 30 days from the conclusion of the hearing to make "written findings of fact and a written determination of the issues in dispute." Moreover, it is this Arbitrator's experience that where the number of issues in dispute are extensive, as in the instant case, that the parties are often willing to grant the Arbitrator an extension of time to fully study the record and to provide the written report.

The instant case, however, is quite different in that the parties, at the time that they retained his services, fully informed the Arbitrator of the need for his written findings by October 1, 2004. The Arbitrator has worked to comply with that understanding and in doing so has pared back on providing an extensive analysis for each issue. Rather, this award focuses on those critical factors, which were most often the key points of the parties' arguments. The final decision is, however, based on a thorough review of the documentary and testimonial evidence that has been provided, a careful study of the closing arguments and the faithful application of the statutory criteria.



ISSUE 1 - 1

Article \_\_\_\_, Wages

Section 1 2005 - 2006 Wages

Current Contract Language

Wages increased to \$8.93 effective October 1, 2004.

Union's Proposed Language

Effective July 1, 2005 through June 30, 2006, the hourly wage rate for individual providers shall be \$9.65 per hour, and payment rates for all non-hourly individual providers shall be increased by 8.1%.

Employer's Proposed Language

Effective July 1, 2005, home care workers shall be compensated at the minimum rate of \$9.13\* per hour.

\*Nothing herein shall be construed as a limitation or restriction on the payer's ability to compensate individual providers at rates higher than the minimum rates set forth in this Agreement.

Award

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

ISSUE 1 - 2

Article \_\_\_\_, Wages

Section 2 2006 - 2007 Wage Scale

Union's Proposed Language

Effective July 1, 2006 a wage scale is established based on cumulative career experience and level of care required for each client. Effective July 1, 2006, each current employee will be placed on a step commensurate with their lifetime cumulative career hours and their client's care level or classification category. All bargaining unit employees will be paid according to the wage scale indicated 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. Except as modified in this Article, beginning July 1, 2006 all employees shall be paid strictly on an hourly basis, and 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 effective July 1, 2006.



July 1, 2006 - June 30,  
2007

Client Care Level Cumulative Career Hours	A	B	C	D	E
0-1000	\$ 9.75	\$ 9.99	\$ 10.24	\$ 10.50	\$ 10.76
1001-2000	\$ 9.90	\$10.14	\$ 10.40	\$ 10.66	\$ 10.92
2001-3000	\$ 10.04	\$10.30	\$ 10.55	\$ 10.82	\$ 11.09
3001-4000	\$ 10.20	\$10.45	\$ 10.71	\$ 10.98	\$ 11.25
4001-5000	\$ 10.35	\$10.61	\$ 10.87	\$ 11.14	\$ 11.42
5001-6000	\$ 10.50	\$10.77	\$ 11.04	\$ 11.31	\$ 11.59
6001-7000	\$ 10.66	\$10.93	\$ 11.20	\$ 11.48	\$ 11.77
7001-8000	\$ 10.82	\$11.09	\$ 11.37	\$ 11.65	\$ 11.94
8001-9000	\$ 10.98	\$11.26	\$ 11.54	\$ 11.83	\$ 12.12
9001-10000	\$ 11.15	\$11.43	\$ 11.71	\$ 12.01	\$ 12.31
10001-11000	\$ 11.32	\$11.60	\$ 11.89	\$ 12.19	\$ 12.49
11001-12000	\$ 11.49	\$11.77	\$ 12.07	\$ 12.37	\$ 12.68
12001-13000	\$ 11.66	\$11.95	\$ 12.25	\$ 12.55	\$ 12.87
13001-14000	\$ 11.83	\$12.13	\$ 12.43	\$ 12.74	\$ 13.06
14001 plus hours	\$ 12.01	\$12.31	\$ 12.62	\$ 12.93	\$ 13.26

Employer's Proposed Language

Effective July 1, 2006, home care workers shall be compensated at the minimum rate of \$9.43\* per hour.

\*Nothing herein shall be construed as a limitation or restriction on the payer's ability to compensate individual providers at rates higher than the minimum rates set forth in this Agreement.

Award

Effective July 1, 2006 a wage scale is established based on cumulative career experience. Effective July 1, 2006, current employee 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 beginning on July 1, 2006, wages shall be adjusted upward for each employee based upon accumulation of hours. 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.

**APPENDIX A**

<b>July 1, 2006 - June 30, 2007</b>	
<b>Cumulative Career Hours</b>	
0-2000	\$ 9.43
2001-4000	\$ 9.57
4001-6000	\$ 9.72
6001-8000	\$ 9.86
8001-10000	\$ 10.01
10001-12000	\$ 10.16
12001 plus hours	\$ 10.31

ISSUE 1 - 3

Article \_\_\_\_, Wages

Section 3 Client Case Difficulty Level

Current Contract Language

No current contract language.

Union's Proposed Language

As used in this Agreement, the "client care level" 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.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 1 - 4

Article \_\_\_\_, Wages

Section 4 Communicable Disease Differential

Current Contract Language

No current contract language.

Union's Proposed Language

An employee working for a client who has a communicable disease shall be paid an additional one dollar (\$1.00) per hour differential in addition to his/her regular hourly wage rate for every hour of service to that client.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 1 - 5

Article \_\_\_\_, Wages

Section 5 Overtime

Current Contract Language

No current contract language.

Union's Proposed Language

Employees who work in excess of hundred seventy-three hours in a month will 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 may establish reasonable pre-authorization procedures to ensure that all overtime worked is worked with the Employer's foreknowledge and approval.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 1 - 8

Article \_\_\_\_, Wages

Section 8 Travel Time Pay

Current Contract Language

No current contract language.

Union's Proposed Language

Employees with more than one client who must travel between clients during the same work day shall be paid their regular hourly rate of pay for travel time between clients, provided that no employee shall be entitled to be paid for time spent in meals, personal business, other employment, or for any activity not related to their travel directly to and from a client's residence. Where a dispute arises concerning appropriate travel time, the parties stipulate that a common, commercially-available travel and mapping software program such as Mapquest shall be used to determine travel time. Where an employee has more than one rate of pay for more than one client, the higher rate of pay shall be used in calculating travel pay.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 1 - 9

Article \_\_\_\_, Wages

Section 9 Mileage Reimbursement

Current Contract Language

No current contract language.

Union's Proposed Language

Employees with more than one client who must travel between clients during the same work day shall be paid \$0.345 cents per mile for each mile driven. Employees who use public transportation to travel between clients during the same work day shall be reimbursed the actual cost of their bus, train, or ferry fare.

Employer's Proposed Language

None

Award

No new language is awarded under this section

## ANALYSIS ON WAGES

The Arbitrator's award on wages limits itself to setting a wage rate of \$9.20 per hour for the 2005-06 year and setting a base wage of \$9.43 per hour as part of a wage scale built on cumulative career hours of work. This award reflects the application of the statutory requirement as previously discussed. The Arbitrator's award constitutes a 3% increase the first year and a 2.5% increase the second - for the base. The increase for the second year, however, also includes the establishment of a salary schedule and the opportunity for bargaining unit members to increase their wages by moving up on the schedule.

Specifically, the Arbitrator's first concern was with the requirement that he consider "the financial ability of the State to pay for the compensation and fringe benefit provisions." The uncontested evidence is that the State faces a billion dollar deficit and even with some of the recent encouraging news that that deficit may shrink, this Arbitrator is convinced that any increases must be limited. On the other hand, the Arbitrator notes that the State recognizes that even in the face of the budget shortfall there is a need for this bargaining unit to have some new money put on the table.



Ability to pay, however, is not the only criteria that the Arbitrator must use. A significant second criterion is the matter of comparability. RCW 41.56.465 restricts the Arbitrator's consideration to similarly sized jurisdictions "on the West Coast of the United States." SEIU Local 775 represents a statewide bargaining unit. The neighboring state of Oregon also has a statewide bargaining unit. California, further down the West Coast, does not have a statewide bargaining unit. Rather, for home healthcare workers, the State has entered into a unique relationship with the California Counties to have the Counties manage the home healthcare program. There are a number of large, countywide bargaining agreements that are reasonably similarly situated to Washington's statewide bargaining unit. The parties provided the Arbitrator with substantial evidence related to the jurisdictions outlined above.

Since the Statute specifically directs the Arbitrator to consider comparability when setting the wage rate, the Arbitrator carefully reviewed the comparability evidence to determine whether or not the State of Washington lagged behind. This review was important because if the data indicated that there was a serious lag, that would justify a more aggressive approach to setting wages even in the presence of the State's financial difficulties. The

Arbitrator's review of the data, however, does not lead him to the conclusion that there was a significant lag.

A word of caution needs to be entered with regard to evaluating comparability data. There are always factors that must be considered in order to get a true and accurate picture of comparability between different jurisdictions. For instance, the data clearly indicates that Los Angeles County and San Diego County substantially lag behind all of the other comparators (Union Exhibit #11). Why is this true? Persuasive testimonial evidence indicated that the large immigrant population in Southern California has had a chilling effect on wage rates.

On the other hand, if one looks at San Francisco and Monterey, these jurisdictions are pace setters. Why is this so? Again, very convincing documentary and testimonial evidence indicate that the cost of living in those jurisdictions is equally a pace setter. That is, a higher wage reflects a much higher cost of living in that jurisdiction. This Arbitrator can't ignore that fact because cost of living is one of the statutory criteria that must be considered in setting wages.

Also, this Arbitrator is particularly mindful of the Union's closing arguments related to the fact that the data does not set out what wages will be in those comparable

jurisdictions on July 1 of 2005 and July 1 of 2006; the years of concern for this interest arbitration proceeding. From the Union's perspective, some extrapolation needs to be made if the Arbitrator is to do full justice to the concept of comparability. The Arbitrator agrees with the Union's line of reasoning but finds it difficult to make that extrapolation.

The evidence with regard to the State of Oregon indicates that as of January 1, 2005 the average wage for the bargaining unit will be \$9.15. This seems very comparable to the Arbitrator to the \$9.20 per hour that the Washington bargaining unit will receive, as of July 1, 2005, per this arbitration award.

As for the California jurisdictions, there is significant difficulty with the extrapolation. The Arbitrator takes note of the front page fact that in the not too distant past the Governor of California was recalled and that budgetary problems were a significant issue in that recall. This Arbitrator is not convinced that the new and more conservative Governor is going to be generous in handing out money to the Counties. This is an important consideration when one studies the actual labor contracts for the comparable jurisdictions. For example,

the Sacramento County contract provides for wage increases but stipulates that those increases will occur only if:

- (a) There is availability of State funding for the wage increase;
- (b) The state sharing ratio for that increase equals or exceeds that identified in the Welfare and Institution's code as of the effective date of this agreement;
- (c) The County and State approve the public authority rate; and
- (d) The State completes the required State programming of the CMIPS to reflect such wage increase.

Union Exhibit #13

The Arbitrator's review of the other California contracts finds similarly funding language. The Arbitrator's sense of the matter is that there is far more likely to be a general freezing or limiting of wages than there is to be any increases. But, the reality is we simply don't know what ultimately will be agreed to by the parties who will negotiate the California contracts and, what may be more important, what is actually granted by the State through its actions. Overall, the Arbitrator does not find evidence that persuasively indicates that the California comparables will see a significant increase.

The Arbitrator also gave consideration to the Union's arguments related to private agencies within the State of Washington who do similar work and to State employees who

do similar work. The Arbitrator found neither of these groups to be comparables within the statutory meaning of that term.

From this Arbitrator's perspective, the wage rates he awarded are not generous, but they do reflect the State's serious financial situation, do not do harm to the question of comparability and reasonably addresses concerns related to cost of living.

Additionally, the Arbitrator has granted the Union's request to establish a wage scale. The awarded wage scale, however, includes only the experience dimension and not the client difficulty dimension. While the client difficulty dimension may have significant merit, the concept is not developed to the point, in this Arbitrator's view, that it can be readily adapted into a salary schedule.

One critical factor in the Arbitrator's award is that bargaining unit members are allowed to start counting hours of experience from July 1, 2005. This dimension of the award will make it much easier for the State to implement it and treats all employees similarly.

All of the other cost items that the Union included under the Wage Article, the Arbitrator has rejected. There were a number of reasons for these rejections. First, comparability data generally did not support including

these items. Second, given the State's financial position, it is this Arbitrator's conclusion that any increased money available for this bargaining unit ought to be focused on wages. Third, the Arbitrator found himself frequently convinced by State arguments that Union proposals ignored the unique tri-lateral nature of the IP's employment relationship. The IP is hired by the consumer but under contract by the State. While collective bargaining has definitely impacted the nature of the tri-lateral relationship, the statute that authorizes collective bargaining fully affirms the uniqueness of the relationship between the consumer and the IP.

All-in-all, the Union's non-wage money proposals would all be new to the collective bargaining agreement, have a serious financial impact on the State, and do not appear to be justified by the comparability data.



ISSUE 2 - 1

Article \_\_\_\_, Policies and Practices

Section 1 Intent

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer and the Union recognize that actions taken by the Employer's subsidiary departments and agencies and their contractors - including the implementation of policies, rules, management bulletins, and the actions of individual decision-makers - often directly or indirectly impact the wages, hours, and working conditions of members of the bargaining unit. This Article is intended to provide clear guidelines to the Employer in relation to policies and procedures impacting members of the bargaining unit and their wages, benefits, hours, and working conditions.

Employer's Proposed Language

None

Award

No new language is awarded under this section



ISSUE 2 - 2

Article \_\_\_\_, Policies and Practices

Section 2 Changes to Policy

Current Contract Language

No current contract language.

Union's Proposed Language

Except as provided in RCW 74.39A.270 (6) (f), any change of any Employer policy or practice that might directly or indirectly impact the wages, benefits, hours, or working conditions of any member of the bargaining unit shall be subject to collective bargaining negotiations.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 2 - 3

Article \_\_\_\_\_, Policies and Practices  
Section 3 Cash and Counseling

Resolved and withdrawn by the parties.

ISSUE 2 - 4

Article \_\_\_\_, Policies and Practices

Section 4 Medicaid Integration

Current Contract Language

No current contract language.

Union's Proposed Language

The Union and the Employer recognize that the implementation of Medicaid Integration or "managed care" may have impacts on worker wages, hours, benefits, and employment conditions. The implementation of any such program shall not result in the termination of any employee, the replacement of any employee by a non-member of the bargaining unit, the reduction of hours any employee is eligible to work for any client, a loss of wages or benefits for any worker, or an erosion of the bargaining unit. Any worker selected and supervised by a client participating in a managed care or Medicaid Integration project shall be a member of the bargaining unit. With respect to workers directly hired and supervised by a Medicaid Integration or managed care contractor or subcontractor, the Employer shall enact policies to provide that no Medicaid Integration or managed care contractor shall contract for personal assistance home care services at any rate lower than the established DSHS vendor rate for Medicaid-reimbursed home care services.

Employer's Proposed Language

Workers performing services as individual provider home care workers under Medicaid Integration Projects shall be covered under the collective bargaining agreement.

Award

Workers performing services as individual provider home care workers under Medicaid Integration Projects shall be covered under the collective bargaining agreement.

ISSUE 2 - 5

Article \_\_\_\_, Policies and Practices  
Section 5 Employer Communication

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer shall not communicate to the public or the members of the bargaining unit regarding union business such as union dues, union membership, and other internal union matters, without first obtaining explicit written approval from the Union in advance. In such cases, the Union shall have the sole and unilateral right to disapprove any such proposed communication for any reason or for no reason at all. Employer communications with members of the bargaining unit that refer factually to current wages, benefits, hours, and terms and conditions of employment shall reference this collective bargaining agreement and provide contact information for the Union.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 2 - 6

Article \_\_\_\_, Policies and Practices

Section 6 Service Contracts

Suspended by PERC

ISSUE 2 - 7

Article \_\_\_\_, Policies and Practices

Section 7 Hours Cuts

Current Contract Language

No current contract language.

Union's Proposed Language

Members of the bargaining unit shall have standing to appeal, on behalf of their individual clients, cuts in hours made by the Employer or its contractors. Rules and policies regarding fair hearings over hours appeals shall be amended to permit currently-employed individual providers to access the fair hearing process on behalf of any client who has suffered a reduction of hours or who seeks an increase in hours. Workers acting on behalf of their clients in this regard may be represented by a Shop Steward or Union Representative in the fair hearings process.

Employer's Proposed Language

None

Award

Whenever the client suffers a reduction in hours or seeks an increase in hours, the Employer will make a reasonable effort to consult with the client's individual provider prior to making a final determination.

ISSUE 2 - 8

Article \_\_\_\_, Policies and Practices

Section 8 184/96 Hour Rule

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer shall contact each consumer identified as being impacted by the implementation of WAC 388-71-0531 (repealed) and shall inform each such consumer that he or she is entitled to have his/her hours restored and that such restoration shall occur automatically upon his/her request. The Employer shall not be deemed out of compliance with this Article if it experiences short administrative delays of a reasonable length in administering this Section.

Employer's Proposed Language

The Employer shall contact each consumer identified as being impacted by the implementation of WAC 388-71-0531 (repealed) and shall inform each such consumer that the consumer may request a reassessment, if so desired. The Employer shall cause the appropriate agencies to provide reassessments as soon as practical.

Award

The Employer shall contact each consumer identified as being impacted by the implementation of WAC 388-71-0531 (repealed) and shall inform each such consumer that their individual provider is no longer under a 184 hour limitation and that the consumer may request a reassessment, if so desired. The Employer shall cause the appropriate agencies to provide notice of the revocation of the 184 rule and provide reassessments as soon as practical.

ISSUE 2 - 9

Article \_\_\_\_, Policies and Practices

Section 9 Shared Living Rule

Suspended by PERC



## ANALYSIS ON POLICIES AND PRACTICES

The Arbitrator begins his analysis with regard to the Article on the Policies and Practices of DSHS by emphasizing two general points of discussion. First, the relationship between SEIU Local 775 and the State of Washington is both new and unique. Confirmation of the statewide bargaining unit occurred in the summer of 2002, just two short years ago. The ink on the first labor agreement had hardly had time to dry before the parties, in response to statutory requirements, were back at the bargaining table for a second agreement.

In this short period of time, there have been a number of bumps and bruises. The testimonial evidence, particularly that by Union President David Rolf, clearly indicates that DSHS has made some mistakes in terms of how it approached the collective bargaining process. From the Arbitrator's perspective, this fact is not unusual given the circumstances under which this bargaining unit was formed and the fact that collective bargaining relationships oftentimes struggle in their infancy. What the evidence clearly establishes is that the collective bargaining relationship has simply not had time to mature.

Most of the proposals that have come before this Arbitrator under the Policies and Procedures Article

constitute a Union response to a specific incident that has occurred in the recent past. The bottom line is that the Arbitrator is not convinced that most of these proposals will be beneficial to the collective bargaining relationship. Actively working towards developing a constructive relationship between the State and Union will, in this Arbitrator's view, be far more helpful. Specifically, the Arbitrator points to the rapport that was obviously present between the Chief Negotiator for the State and Union leadership during the arbitration proceedings. It is this ability to work together that will effectively move the relationship forward in a positive manner.

Moreover, the evidence indicates that the State's Chief Negotiator was instrumental in working with the Union to help resolve some of the glitches that occurred over the past two years. It is this Arbitrator's perception that the parties are already demonstrating the ability to work together to resolve issues in their relationship. This effort is far more likely to provide positive results than putting some incident specific language in the collective bargaining agreement.

Second, it is the Arbitrator's conclusion that some of the language proposed by the Union will actually do damage

to the relationship and therefore harm the basic goal of evolving towards a mature, constructive collective bargaining relationship. For example, under Section 5 the Union proposes language which permits it to deny to the Employer the right to communicate with members of the bargaining unit "for no reason at all." While I can appreciate the Union's frustration with some of the incidents that occurred in the prior two years, I do not believe that such language will achieve any helpful purpose.

Additionally, some of the Union's proposals simply restate rights that are granted by statute. For example, the language of Section 2 asserts a collective bargaining right over certain actions that might be taken by the Employer. However, those rights are a matter of statute and properly administered by PERC.

The Arbitrator understands that part of the Union's goals in proposing this language is to use it for educational purposes. While there may be some validity in this point, the Arbitrator is convinced that the parties are better off to leave that language out of the agreement. And, if there is a question about the requirement to bargain an Employer action, this question should be directed to PERC.

All together there are nine sections in the Article on Policies and Practices that were certified for interest arbitration. Two of these sections (#6 and #9) were suspended by PERC and are not before the Arbitrator at this time. Of the other seven, the Arbitrator is not awarding language on four but is awarding new language on the other three.

For Section 4 - Medicaid Integration, the Arbitration is awarding the Employer's proposed language. Frankly, the Arbitrator would have liked to have granted language a little bit stronger than that offered by the Employer, but is convinced that the Union's proposal simply goes too far. Specifically, the Arbitrator's concern with the Union's language is that, after careful study, he is convinced that the language potentially does interfere with the consumer's right to free choice. Specifically, the Arbitrator is most concerned with the sentence that reads:

The implementation of any such program shall not result in the termination of any employee, the replacement of any employee by a non-member of the bargaining unit, the reduction of hours any employee is eligible to work for any client, a loss of wages or benefits for any worker, or an erosion of the bargaining unit.

While I agree with the Union that the employees and their negotiated wage scale deserve some protection from the Medicaid Integration process, I cannot see how the

consumer has any freedom of choice related to Medicaid Integration under the above sentence.

On the other hand, the Employer's language does provide a modicum of protection and perhaps a starting point for what will obviously be continuing discussions between the Union and the Employer.

The Arbitrator is also awarding some modified language for Section 7 that deals with Hours Cuts. It does seem reasonable from the Arbitrator's perspective that an IP who has had a long term relationship with a customer ought to be able to step forward and be helpful with regard to either a request for additional hours or protection for a potential loss of hours. The Union's language, however, substantially bothers the Arbitrator because on its surface it appears to grant the IP a greater role in any assessment process than should be given. It is this Arbitrator's belief that the proposed language raises a substantial specter that the IP is working on behalf of him or herself not on behalf of the client. The Arbitrator's award seeks to assure the IP the right of input but does not grant the full right of independent advocacy.

Finally, the Arbitrator notes that both parties have proposed language to deal with the problems created by the 184/96 hour rule that has now been repealed. The Union, in

its closing arguments, emphasizes that this is a significant issue because some 40% of the bargaining unit was impacted by that rule (TR. Page 887).

Frankly, while both parties write language that attempts to deal with the problems of the 184 hour rule, both the language proposed by the Union and that proposed by the Employer seemed deficient to the Arbitrator. The Union proposes language that would require the Employer to notify consumers that they have a right to have hours restored. The problem is, the consumer never had hours cut. It was the IPs that had hours cut.

On the other hand, the Employer proposes language that would notify consumers of the right for reassessment. While reassessment might be helpful, it doesn't deal with the core problem which is that the IPs had their hours cut.

The basic problem confronted by both the Employer and the Union is that consumers need to be returned to the status quo prior to the implementation of the poorly designed rule. The Arbitrator recognizes that this is not necessarily an easy task but is awarding language that he believes comes closer to addressing the real issue than either the language proposed by the Union or the Employer.



ISSUE 3 - 1

Article \_\_\_\_, Referral Registry  
Section 1 Eligible for Referral Registry

ISSUE 3 - 2

Section 2 Seniority Preference

ISSUE 3 - 3

Section 3 Removal from Referral Registry

Tentative agreement has been reached by the parties.  
Entire article has been withdrawn from Interest  
Arbitration.





ISSUE 4 - 1

Article \_\_, Training

Section 1 Minimum Training Requirements

Current Contract Language

No current contract language.

Union's Proposed Language

Effective July 1, 2006, the minimum training requirement for each new employee shall be a two (2) hour orientation, a 28.5-hour "fundamentals of caregiving" course, a four (4) hour health and safety course and ten-and-one-half (10.5) hours of related continuing education in each subsequent calendar year of employment. Employees who began work prior to July 1, 2006 shall not be subject to these minimum training requirements, but shall instead be required to complete the minimum training required by DSHS and the Home Care Quality Authority at the time of hire. Employees shall be paid their regular hourly rate for time spent in trainings.

Employer's Proposed Language

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

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

expenses of their respective representatives and/or resource persons attending meetings of the Joint Committee.

Section 2. The objective of this Committee shall be to establish comprehensive training qualifications and requirements for individual providers and subject to necessary input from consumers for recommendation to the HCQA Board under the HCQA's statutory duty to establish qualifications, including minimum training qualifications.

Section 3. Partnership Fund.

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

## Award

### Section 1. Minimum Training Requirements

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

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

### Section 2. Qualifications

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

### Section 3. Partnership Fund.

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

ISSUE 4 - 2

Article \_\_\_\_, Training

Section 2 Multiemployer Long Term Care,  
Industry Training and Education Fund

Suspended by PERC

## ANALYSIS ON TRAINING

The Union makes a strong and persuasive argument that increased training will help improve the professionalism of healthcare workers. On the other hand, the Employer makes an equally persuasive argument that revisions to the language found in the existing agreement are to be preferred to the Union's rewrite of that language. The Employer argues to maintain flexibility by appropriately using the joint committee on training and education. The Employer also, to this Arbitrator's satisfaction, raises concerns about the substantial new costs that are required by the Union's language. It is that point -- that the Union's language mandates new expenditures that ultimately moves the Arbitrator to award the Employer's language on this issue.



ISSUE 5 - 1  
Article \_\_\_\_, Pension  
Section 1 Coverage

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer agrees to make periodic contributions on behalf of all employees covered by the Collective Bargaining Agreement to the Service Employees International Union National Industry Pension Fund ("Fund") in the amounts specified in Section 3, below.

Employer's Proposed Language

None

Award

No new language is awarded under this section



ISSUE 5 - 2  
Article \_\_\_\_, Pension  
Section 2 Term

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer agrees to become and remain a participating employer in the Fund throughout the term of this Collective Bargaining Agreement, including any extensions thereof.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 5 - 3

Article \_\_\_\_, Pension  
Section 3 Contribution

Current Contract Language

No current contract language.

Union's Proposed Language

As of July 1, 2005, the Employer agrees to contribute to the Fund - \$0.15 (fifteen cents) per 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.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 5 - 4

Article \_\_\_\_, Pension  
Section 4 Trust Agreement

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer hereby agrees to be bound by the provisions of the Agreement and Declaration of Trust establishing the Fund, as it may from time to time be amended, and by all resolutions and rules adopted by the Trustees pursuant to the powers delegated to them by that agreement, including collection policies, receipt of which is here by acknowledged. The Employer hereby designates the Employer members of the Fund's Board of Trustees, or their duly selected successor(s), as its representatives on the Board.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 5 - 5

Article \_\_\_\_, Pension  
Section 5 Cooperation

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer and the 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 Retirement Income Security Act (ERISA).

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 5 - 6

Article \_\_\_\_, Pension

Section 6 Approval by Trustees

Current Contract Language

No current contract language.

Union's Proposed Language

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 the Collective Bargaining 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.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 5 - 7

Article \_\_\_\_, Pension  
Section 7 Miscellaneous

Current Contract Language

No current contract language.

Union's Proposed Language

In the event of any inconsistency between this Article and any other provision of the Collective Bargaining Agreement, this Article shall prevail.

Employer's Proposed Language

None

Award

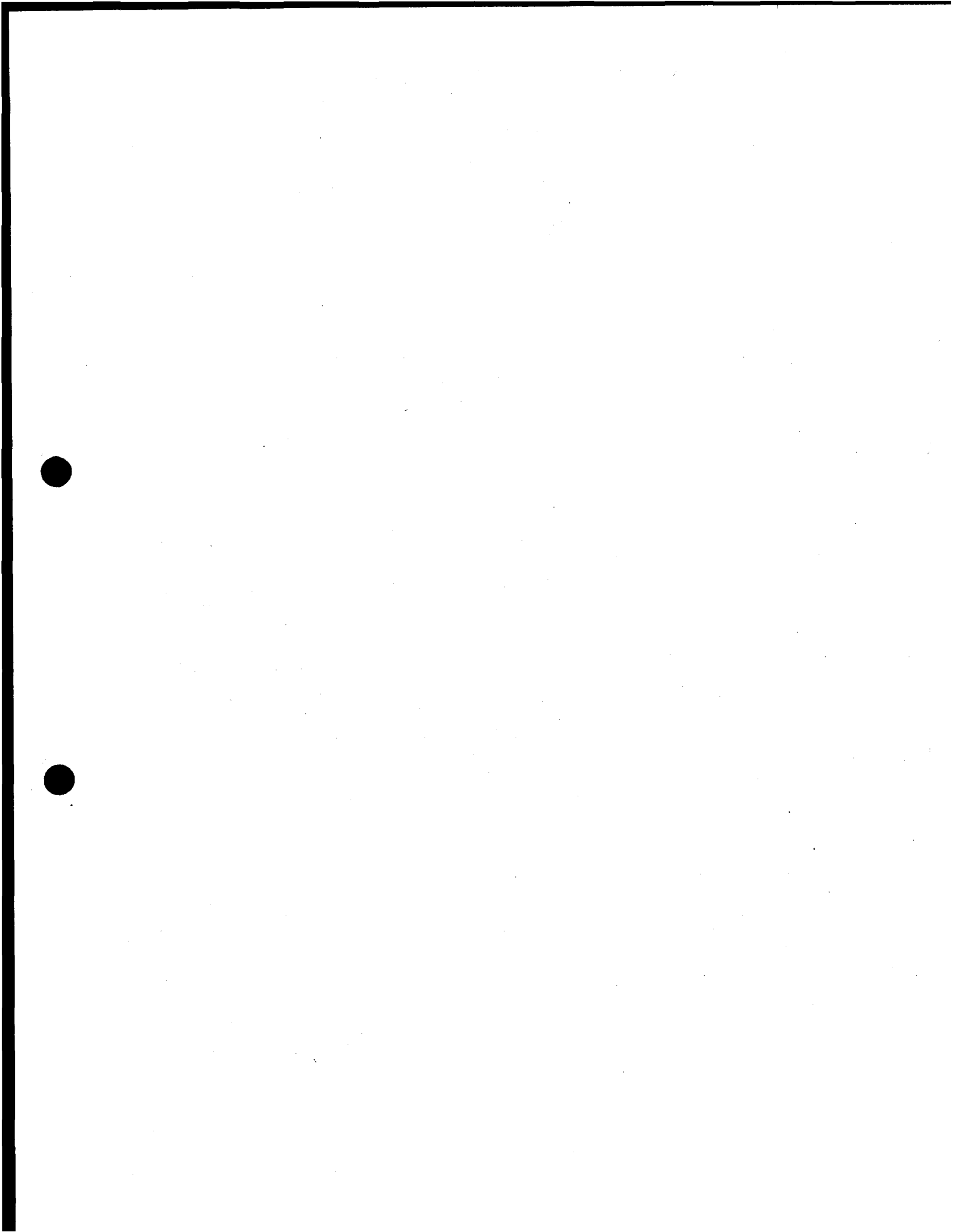
No new language is awarded under this section

## ANALYSIS ON PENSION

The Union, in its closing arguments, indicated that the Pension proposal was not its highest priority. The Employer stoutly resists any thoughts about implementing a pension, at this point, simply as a matter of budgetary constraints.

From the Arbitrator's perspective, this bargaining unit ought be in line ultimately to have a negotiated pension program. All other State employees have such a program. And, even though these employees have the unique tri-lateral relationship previously discussed, that does not make the bargaining unit any less deserving of a pension program.

But, as the Union recognizes, there are other priority items that must take precedence during a time when the State faces a billion dollar shortfall in its resources. Thus the Arbitrator is not awarding any language regarding the pension program.





ISSUE 6 - 1

Article \_\_\_\_, Payroll, Electronic Deposit and Tax Withholding  
Section 1 Prompt, Accurate, Twice Monthly Payment

Current Contract Language

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

Union's Proposed Language

The Employer shall establish payroll procedures that ensure timely payment of all home care workers on a twice monthly basis. Home care workers shall receive paychecks no later than the 15<sup>th</sup> and 30<sup>th</sup> of every month. The Employer shall establish a hotline enabling any worker who does not receive his or her check as an electronic deposit or via U.S. mail at their mailing address by the 15<sup>th</sup> or 30<sup>th</sup> to phone in and receive a replacement check no later than 3 business days after the date of their phone call. The same hotline shall be used to allow workers to report errors in their paychecks. Where an error has occurred, a replacement check will be issued no later than 3 business days after the date of the phone call reporting the error.

Employer's Proposed Language

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

Award

Home care workers shall be entitled to receive timely payment for services authorized and rendered. To promote a

timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

ISSUE 6 - 2

Article \_\_\_\_, Payroll, Electronic Deposit and Tax  
Withholding

Section 2 Electronic Deposit

Current Contract Language

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

Union's Proposed Language

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

Employer's Proposed Language

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

Award

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

ISSUE 6 - 3

Article \_\_\_\_, Payroll, Electronic Deposit and Tax  
Withholding

Section 3 Tax Withholding

Current Contract Language

The HCQA and the Union agree to work together in further research and discussion for practical and appropriate applications of tax withholding for homecare workers.

Union's Proposed Language

The Employer shall withhold from each employee's paycheck the appropriate amount of Federal Income Tax, Social Security, Federal and State Unemployment Insurance, Medicare contributions and any other standard deduction required by the Federal and state governments of an employer in the State of Washington. The cost of computer programming changes to enable these deductions to begin, and to maintain ongoing deductions, will be borne solely and exclusively by the State.

Employer's Proposed Language

Delete the language from the old agreement.

Award

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

ISSUE 6 - 4

Article \_\_\_\_, Payroll, Electronic Deposit and Tax  
Withholding

Section 4 SSPS

Current Contract Language

No current contract language.

Union's Proposed Language

SSPS shall not be used to calculate or issue payments to home care workers.

Employer's Proposed Language

None

Award

No new language is awarded under this section

## ANALYSIS ON PAYROLL ISSUE

The Arbitrator's analysis of the issue dealing with payroll is simple and straightforward. First, the Arbitrator agrees with the State that the current language with regard to dealing with problems associated with payroll should be retained. The Union simply did not make a strong enough case to justify changing the payment system from a once monthly to a twice monthly. The cost of this change is substantial and the Union did not convince the Arbitrator that the benefits of such a change justify the costs.

As to Section 2, the Arbitrator notes that in his Exhibits, the current contract language, the Union's proposed language and the Employer's proposed language are all the same. Thus there appears to be no dispute on this issue.

For the third section, the Arbitrator is awarding for 2005-06 continuation of the current program. For 2006-07 the Arbitrator is granting the Union's request to require the State to deduct federal income tax. The Arbitrator is convinced that the comparability data supports this move, it is a significant issue to the members of the bargaining unit, and by delaying it one additional year, the State has

adequate time to deal with both the cost and the inconvenience associated with implementing the program.

Finally, the Arbitrator will simply state, without comment, that the Union's proposal for Section 4 does not merit adoption.





ISSUE 7 - 1

Article \_\_\_\_, Sick Leave and Vacation Leave

Section 1 Sick Leave

Current Contract Language

No current contract language.

Union's Proposed Language

All employees shall accrue one (1) hour of paid sick leave for every forty (40) hours of work. Employees who have earned sick leave time shall be eligible to use paid sick leave for any period of absence from employment which includes but is not limited to the employee's illness; injury; temporary disability; medical or dental care; or to attend to members of the employee's or the employee's spouse's immediate family or domestic partner or domestic partner's immediate family, where the employee's presence is required because of illness. In order to be eligible to be paid for sick leave, an employee must inform a designated agent of the Employer prior to or on the day(s) upon which paid sick leave is claimed.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 7 - 2

Article \_\_\_\_, Sick Leave and Vacation Leave

Section 2 Vacation Leave

Current Contract Language

No current contract language.

Union's Proposed Language

Employees shall be eligible for paid vacation benefits. Employees shall accrue one (1) hour for every forty (40) hours worked. Paid vacation leave hours shall cap at eighty (160) hours. In order to be eligible to be paid for vacation leave, an employee must inform a designated agent of the Employer no less than two weeks before the paid vacation leave begins.

Employer's Proposed Language

None

Award

Commencing on July 1, 2006, employees shall be eligible for paid vacation benefits. Employees shall accrue one (1) hour for every fifty (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.

## ANALYSIS OF PAID TIME OFF ISSUE

The 7<sup>th</sup> issue related to Sick Leave and Vacation Leave is all about money, in this Arbitrator's view. It is a simple fact that the State is not in a position to absorb substantial new costs. On the other hand, this group of employees does not receive substantial income and as a result if there are times of illness or in the event that the employee needs some vacation time, the absence of paid time off is a serious concern. The Union's strong comparability arguments convince the Arbitrator to push the State to grant a minimal amount of vacation time as a starting point. In response to budgetary concerns, the Arbitrator delays the implementation of the vacation benefit until July 1, 2006.



ISSUE 8 - 1

Article \_\_\_\_, Health and Safety

Section 1 Equipment

Current Contract Language

No current contract language.

Union's Proposed Language

No employee shall be required to provide at his/her own expense cleaning equipment, supplies, or protective garments such as rubber gloves and face masks to perform any task for a client. If a situation arises where there are insufficient supplies or cleaning materials provided by his or her client, the employee will be provided such supplies by the Employer.

Employer's Proposed Language

None

Award

No new language is awarded under this section

ISSUE 8 - 2

Article \_\_\_, Health and Safety  
Section 2 Communicable Disease Exposure

Current Contract Language

No current contract language.

Union's Proposed Language

The Employer will develop policies to minimize the risk of exposure by bargaining unit members to communicable diseases and to minimize the health risks to those workers who are exposed to communicable diseases. By way of example only, this might include Hepatitis A and B vaccinations and flu shots.

Employer's Proposed Language

None

Award

No new language is awarded under this section

## ANALYSIS OF SAFETY ISSUES

Under an Article titled Health and Safety the Union raises two concerns. The first deals with a situation where the client is unable to give the IP the equipment and/or supplies that are needed for the IP to complete his or her work. The second concerns safety strategies related to communicable diseases.

Conceptually, the Union's proposed language has merit. The difficulty, as the State argues, is the implementation realities - both cost and workability.

The bottom line, to the Arbitrator, is that the merit behind the Union's proposals is insufficient to overcome the problems of implementing those proposals as outlined by the Employer.





ISSUE 9 - 1

Article \_\_\_\_, Health, Dental, Vision and Insurance Benefits

Section 1 Trust Fund

Current Contract Language

The purpose of participation by the parties in the joint health and welfare trust fund, hereinafter referred to as the "Trust Fund" or "Trust" until such time as it is mutually identified by the parties, shall be to provide health care insurance to eligible home care workers covered under this Agreement.

To maximize cost efficiencies, coordination of benefits shall be a feature of any plan provided by the Trust and to the greatest extent allowed by the law.

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 HCQA, all branches and departments of Washington State government, and the State of Washington, its agents and/or its representatives, from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

At its sole discretion, the Trust Fund may establish cents-per-hour contribution rates for the HCQA, 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.

Until such time as the HCQA has reviewed and signed a written Trust Agreement, the HCQA, all branches and departments of Washington State government, and the State of Washington, its agents and/or representatives shall not be bound by the terms, conditions and responsibilities provided for in the Trust Agreement.

Contributions to the Trust Fund, the amounts and effective date(s) for which are outlined in Section 2., shall not be paid until such time as the HCQA has reviewed and signed a written Trust Agreement.

#### Union's Proposed Language

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.

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.

#### Employer's Proposed Language

The purpose of participation by the parties in the "Trust" shall be to provide health care insurance to eligible home care workers covered under this Agreement.

To maximize cost efficiencies, coordination of benefits shall be a feature of any plan provided by the Trust and to the greatest extent allowed by the law.

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, all branches and departments of Washington State government, and the State of Washington, its agents and/or its representatives, its contractors and/or subcontractors, from any claims by beneficiaries, health care providers, vendors, insurance carriers or employees covered under this Agreement.

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

### **Award**

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.

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

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

The Employer hereby designates the Employer members of the Trust's Board of Trustees, or their duly selected

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

ISSUE 9 - 2

Article \_\_\_\_, Health, Dental, Vision and Insurance Benefits

Section 2 Payment for Health Benefits

Current Contract Language

The HCQA shall contribute up to four hundred dollars (\$400.00) per month for each eligible home care worker to a health and welfare trust fund mutually designated by the parties. The effective date of these contributions shall be January 1, 2005, assuming that a health and welfare trust fund can be put in place and operational by that date.

Eligible home care workers shall contribute seventeen dollars (\$17.00) per month to the joint health and welfare trust fund designated by the parties. This contribution shall be made via payroll deduction upon written authorization of each eligible home care worker.

Union's Proposed Language

Effective July 1, 2005, the Employer shall contribute up to four hundred fifty dollars (\$450) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

Effective July 1, 2006, the Employer shall contribute up to five hundred eighteen dollars (\$518) 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.

At its sole discretion, the Trust may establish cents-per-hour contribution rates for the Employer, based on the 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

vent, cost more than the monthly amounts provide for eligible employees above. 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.

#### Employer's Proposed Language

The Employer shall contribute up to \$444.00 per month for each eligible home care worker to the SEIU Local 775 Multiemployer Health Benefits Trust, (also referred to herein as the "Trust"). The effective date of these contributions shall be July 1, 2005.

Effective July 1, 2006, the Employer shall contribute up to \$497.00 per month for each eligible home care worker to the SEIU Local 775 Multiemployer Health Benefits Trust.

Eligible home care workers shall contribute \$17.00 per month to the SEIU Local 775 Multiemployer Health Benefits Trust. This contribution shall be made via payroll deduction upon written authorization of each eligible home care worker.

#### **Award**

Effective July 1, 2005, the Employer shall contribute up to four hundred fifty dollars (\$450) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

Effective July 1, 2006, the Employer shall contribute up to five hundred eighteen 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.

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.





ISSUE 9 - 3

Article \_\_\_\_, Health, Dental, Vision and Insurance Benefits  
Section 3 Payment for Dental and Vision Benefits

Current Contract Language

No current contract language.

Union's Proposed Language

For the purposes of providing dental and vision benefits, the Employer agrees to make periodic contributions on behalf of employees covered by the Collective Bargaining Agreement to the Trust. Beginning from each employee's initial date of employment or the effective date of this Agreement, which ever is later, the employer shall contribute the following sums to the designated trust per paid hour of work, including paid leave time.

<u>Benefit Plan</u>	<u>July 2005 - June 2006</u>	<u>July 2006-June 2007</u>
	<u>2006</u>	
Dental	\$0.15	\$0.17
Vision	\$0.03	\$0.4

Employer's Proposed Language

Effective July 1, 2005, the Employer shall contribute up to \$25.00 per month for each eligible home care worker workers to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing dental benefits.

Effective July 1, 2006, the Employer shall contribute up to \$26.75 per month for each eligible home care worker workers 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, 2005, the Employer shall contribute up to \$5.00 per month for each eligible home care worker workers to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing vision benefits.

Effective July 1, 2006, the Employer shall contribute up to \$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.

#### Award

Effective July 1, 2005, the Employer shall contribute up to \$25.00 per month for each eligible home care worker workers to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing dental benefits.

Effective July 1, 2006, the Employer shall contribute up to \$26.75 per month for each eligible home care worker workers 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, 2005, the Employer shall contribute up to \$5.00 per month for each eligible home care worker workers to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing vision benefits.

Effective July 1, 2006, the Employer shall contribute up to \$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.



ISSUE 9 - 4

Article \_\_\_\_, Health, Dental, Vision and Insurance Benefits  
Section 4 Benefit Levels, Eligibility, Premium Share,  
Dependent Coverage, Payroll Deductions

Provisions from this issue have been incorporated into the award for Sections 1-3 of this Article.



ISSUE 9 - 5

Article \_\_\_\_, Health, Dental, Vision and Insurance Benefits  
Section 5 Trust Agreement

Provisions from this issue have been incorporated into the award for Sections 1-3 of this Article.





ISSUE 9 - 6

Article \_\_\_, Health, Dental, Vision and Insurance Benefits  
Section 6 Cooperation

Provisions from this issue have been incorporated into the award for Sections 1-3 of this Article.



## ANALYSIS OF BENEFITS ISSUE

The State and Union clearly indicated that they were in substantial agreement on the substance of the Benefits Article. These statements by both Union and State witnesses are consistent with the Arbitrator's review of the proposed language. While each structures the language differently, they arrive at exactly the same place, in the Arbitrator's view. The only difference, a difference they both acknowledge, is that the Union wants the Employer to put a little more money in and the Union wants to delete the language that requires mandatory contribution by the employee. The Union hastens to add that the employee will undoubtedly continue to contribute, but that that contribution will not be set by the collective bargaining agreement but rather by the insurance trust.

The Arbitrator's award stays true to the two proposals and sets the State's contribution at \$450.00 per month for eligible employees for 2005-06 and \$500.00 per month for eligible employees for 2006-07. As to the reasoning behind the dollar amount of the increase, the Arbitrator notes that the parties were quite close on this issue and that neither party could articulate a strong case for why its position ought be preferred over that of the other. The Union obviously was concerned that the State



wasn't putting enough money on the table and the Employer was interested in controlling costs. The Arbitrator's award grants the Union its position for the first year and is much closer to the Employer's for the second year.

The Arbitrator is convinced by the State that it is important to specify in the agreement the minimum employee contribution. However, by writing it as a minimum contribution it allows the insurance trust to adjust that figure upward in the event that it is to the employee's advantage.



ISSUE 10

Article \_\_\_\_, Complete Agreement

Current Contract Language

Section 1. The parties hereto acknowledge that during the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are fully set forth in this Agreement. It is further understood that this Agreement fully and completely sets forth all understandings and obligations between the parties, constitutes the entire Agreement between the parties, and both parties in their own behalf and on behalf of their respective members waive any and all claims or demands they have made or could have made for any acts or omissions by either party or their respective members, agents, employees or assigns.

Section 2. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral or written statement shall add to or supersede any of its provisions unless mutually agreed to by the parties and as otherwise provided for in this Agreement.

Union's Proposed Language

None

Employer's Proposed Language

Section 1. The parties hereto acknowledge that during the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are fully set forth in this Agreement. It is further understood that this Agreement fully and completely sets forth all understandings and obligations between the parties, constitutes the entire Agreement between the parties, and both parties in their own behalf and on behalf



of their respective members waive any and all claims or demands they have made or could have made for any acts or omissions by either party or their respective members, agents, employees or assigns.

Section 2. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral or written statement shall add to or supersede any of its provisions unless mutually agreed to by the parties and as otherwise provided for in this Agreement.

#### Award

Section 1. The parties hereto acknowledge that during the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are fully set forth in this Agreement. It is further understood that this Agreement fully and completely sets forth all understandings and obligations between the parties, constitutes the entire Agreement between the parties, and both parties in their own behalf and on behalf of their respective members waive any and all claims or demands they have made or could have made for any acts or omissions by either party or their respective members, agents, employees or assigns.

Section 2. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral or written statement shall add to or supersede any of its provisions unless mutually agreed to by the parties and as otherwise provided for in this Agreement.

## ANALYSIS OF ZIPPER CLAUSE

The Employer proposes to retain the "zipper clause" as found in the prior agreement. The Union does not agree to its retention but did not raise strong arguments against it. The Arbitrator's general practice is to retain language from an old agreement where one party desires to retain it and the other cannot articulate a persuasive case for removing it. Thus the award retains the language.

**ISSUE 11**

**Side Letter on Dues Deduction**

Suspended by PERC

## AWARD SUMMARY

### Article \_\_\_\_, Wages

#### Section 1. 2005 - 2006 Wages

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

#### Section 2. 2006 - 2007 Wages

Effective July 1, 2006 a wage scale is established based on cumulative career experience. Effective July 1, 2006, current employee 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 beginning on July 1, 2006, wages shall be adjusted upward for each employee based upon accumulation of hours. 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.

### APPENDIX A

<b>July 1, 2006 - June 30, 2007</b>	
<b>Cumulative Career Hours</b>	
	\$
0-2000	9.43
	\$
2001-4000	9.57
	\$
4001-6000	9.72
	\$
6001-8000	9.86
	\$
8001-10000	10.01
	\$
10001-12000	10.16
	\$
12001 plus hours	10.31

## Article \_\_\_\_, Policies and Practices

### Section 4. Medicaid Integration

Workers performing services as individual provider home care workers under Medicaid Integration Projects shall be covered under the collective bargaining agreement.

### Section 7. Hours Cuts

Whenever the client suffers a reduction in hours or seeks an increase in hours, the Employer will make a reasonable effort to consult with the client's individual provider prior to making a final determination.

### Section 8. 184/96 Hour Rule

The Employer shall contact each consumer identified as being impacted by the implementation of WAC 388-71-0531 **(repealed)** and shall inform each such consumer that their individual provider is no longer under a 184 hour limitation and that the consumer may request a reassessment, if so desired. The Employer shall cause the appropriate agencies to provide notice of the revocation of the 184 rule and provide reassessments as soon as practical.

## Article \_\_\_\_, Training

### Section 1. Minimum Training Requirements

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

The Joint Committee shall consist of up to three (3) representatives of the Union and up to three (3) representatives of the HCQA. The parties are encouraged to

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

## Section 2. Qualifications

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

## Section 3. Partnership Fund.

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

## Article \_\_\_\_, Payroll, Electronic Deposit and Tax Withholding

### Section 1. Prompt and Accurate Payment

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

## Section 2. Electronic Deposit

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

## Section 3. Tax Withholding

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

## **Article \_\_\_\_, Sick Leave and Vacation Leave**

### Section 2. Vacation Leave

Commencing on July 1, 2006, employees shall be eligible for paid vacation benefits. Employees shall accrue one (1) hour for every fifty (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.

## **Article \_\_\_\_, Health, Dental, Vision and Insurance Benefits**

### Section 1. Trust Fund

For the purposes of offering individual health care insurance, dental insurance, and vision insurance, to members of the bargaining unit, the Employer shall become and remain a participating employer in 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.

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

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

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

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

## Section 2. Payment for Health Benefits

Effective July 1, 2005, the Employer shall contribute up to four hundred fifty dollars (\$450) per month to the Trust for each home care worker who has been employed for at least three (3) consecutive months and who works a minimum of 86 hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

Effective July 1, 2006, the Employer shall contribute up to five hundred eighteen 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.

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.

### Section 3. Payment for Dental and Vision Benefits

Effective July 1, 2005, the Employer shall contribute up to \$25.00 per month for each eligible home care worker workers to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing dental benefits.

Effective July 1, 2006, the Employer shall contribute up to \$26.75 per month for each eligible home care worker workers 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, 2005, the Employer shall contribute up to \$5.00 per month for each eligible home care worker workers to the SEIU Local 775 Multiemployer Health Benefits Trust for the purpose of providing vision benefits.

Effective July 1, 2006, the Employer shall contribute up to \$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.

Article \_\_\_\_, Complete Agreement

Section 1. The parties hereto acknowledge that during the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are fully set forth in this Agreement. It is further understood that this Agreement fully and completely sets forth all understandings and obligations between the parties, constitutes the entire Agreement between the parties, and both parties in their own behalf and on behalf of their respective members waive any and all claims or demands they have made or could have made for any acts or omissions by either party or their respective members, agents, employees or assigns.

Section 2. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral or written statement shall add to or supersede any of its provisions unless mutually agreed to by the parties and as otherwise provided for in this Agreement.

IN THE MATTER OF THE INTEREST )  
 )  
 ARBITRATION )  
 )  
 BETWEEN )  
 )  
 SEIU LOCAL 775 )  
 )  
 "THE UNION" )  
 )  
 AND )  
 )  
 STATE OF WASHINGTON )  
 )  
 "THE STATE" OR "THE EMPLOYER" )

ARBITRATOR'S  
 OPINION  
 AND  
 INTEREST AWARD

RECEIVED  
 OLYMPIA, WA  
 NOV 15 2004  
 PUBLIC EMPLOYMENT  
 RELATIONS COMMISSION

HEARING: October 28, 2004  
 Olympia, Washington  
 October 29, 2004  
 Seattle, Washington

HEARING CLOSED: October 29, 2004

ARBITRATOR: Timothy D.W. Williams  
 2700 Fourth Avenue, Suite 305  
 Seattle, WA 98121

REPRESENTING THE UNION:  
 Robert H. Lavitt, Attorney  
 David Rolf, President, SEIU 775

REPRESENTING THE STATE:  
 Stewart A. Johnston, Assistant Attorney General  
 Rick Hall, Labor Negotiator

APPEARING AS WITNESS FOR THE UNION:  
 David Rolf, President, SEIU 775  
 Adam Glickman, Director, SEIU 775

APPEARING AS WITNESSES FOR THE STATE:  
 Rick Hall, Labor Negotiator  
 Fran Wilson-Maudsley, Manager  
 Bonnie Moonchild, Manager  
 Charles Hunter, Director

## EXHIBITS

### Union

1. Side Letter on Dues Deduction 2003-2004
2. SEIU Local 775 Current Contract
3. Contract for Collection of Union Dues between the State of Washington, acting by and through the Department of Social and Health Services, and Service Employees International Union Local 775, Contract No. 0369-40784
4. RCW 41.56.113, Individual providers - Deductions from payments for dues - State is payor, not employer
5. Letter, September 13, 2002, to Secretary Dennis Braddock and Marty Brown from David Rolf
6. Engrossed Substitute House Bill 2459
7. Memorandum, March 6, 2003, Re: Follow up to meeting with DSHS
8. Letter, April 1, 2003, to David Rolf from Kenneth Harden
9. SEIU Local 775 Counterproposal to SSPS proposal to collect Union dues
10. Letter, May 1, 2003, to David Rolf from Kenneth Harden
11. E-mail, July 2, 2003, Re: In Home Personal Care Providers Union Dues
12. E-Mail, July 7, 2003, Re: In Home Personal Care Providers Union Dues
13. E-mail, July 8, 2003, Re: In Home Personal Care Providers Union Dues
14. Statement of Work
15. Letter, October 2, 2003, Re: Dues Collection
16. E-mail, October 27, 2004, to Robert Lavitt from Kathy Barnard
17. E-mail, October 8, 2003, to Charles Hunter from Adam Glickman, re: Negotiations
18. Table, Estimated Union Losses Caused by DSHS failure to implement HB 2662 on a timely basis

Employer

1. SEIU Local 775 Current Contract
2. Contract for Collection of Union Dues between the State of Washington, acting by and through the Department of Social and Health Services, and Services Employees International Union Local 775, Contract No. 0369-40784
3. RCW 41.56.113 Individual providers - Deductions from payments for dues - State is payor, not employer
4. Union Proposal, August 12, 2004, Side Letter on Dues Deduction 2003-2004
5. DSHS Organization Chart
6. 2003 Due Deduction Activity Log
7. E-mail, August 27, 2004, Re: Dues Deduction Activity and Union Dues Deduction Project Staff Costs
8. 2003-2004 DSHS/SSPS Timeline
9. E-mail, December 27, 2002, Re: Dues Options
10. E-mail, March 24, 2003, Re: Union Dues Project
11. Letter, April 1, 2003, Re: Collection of Union Dues
12. Letter, April 17, 2003, Re: Proposal to Collect Union Dues
13. Fax cover sheet, April 24, 2003, to Charles Hunter from Kenneth Harden
14. Letter, May 1, 2003, Re: Counterproposal for Union Dues Collection project with enclosure
15. E-mail, May 6, 2003, Re: Proposal to Collect Union Dues
16. E-mail, June 23, 2003, Re: In Home Personal Care Providers Union Dues
17. E-mail, July 18, 2003, Re: In Home Personal Care Providers Union Dues and a Draft Counterproposal
18. E-mail, July 16, 2003, Re: Draft contract, and E-mail, July 15, 2003, Re: Confusion over draft pre-agreement
19. E-Mail chain, August 6, 2003, Re: SEIU Contract
20. E-mail chain, August 20, 2003, Re: SEIU Local 775 proposed contract language with attachment
21. E-mail chain, September 2, 2003, Re: SEIU draft with attachment
22. E-mail chain, September 5, 2003, Re: SEIU draft with attachment
23. E-mail, September 19, 2003, Re: SEIU revised contract and response with attachments
24. E-mail chain, September 26, 2003, Re: Conference call on SEIU
25. E-mail chain, September 30, 2003, Re: Exhibit B Counterproposal
26. E-mail chain, October 7, 2003, Response to October 2 letter
27. E-mail chain, October 13, 2003, Re: Negotiations
28. Letter, May 1, 2003, Subject: Response to SEIU Suggestions for Collection of Union Dues from Provider Wages through SSPS

## BACKGROUND

SEIU Local 775 represents a Statewide bargaining unit made up of home healthcare workers identified as Individual Providers (IPs). RCW 74.39A (2,c&d) provides the home healthcare workers bargaining unit the right of interest arbitration and prohibits IPs from striking. By letter dated August 19, 2004, the Executive Director of the Public Employment Relations Commission (PERC), in compliance with RCW 41.56.45A, certified a set of issues to be submitted to interest arbitration. Timothy Williams was selected as the interest arbitrator and hearing dates were set beginning on September 9, 2004.

On September 2, 2004 PERC issued a preliminary ruling with regard to an unfair labor practice case which had been filed by the Employer on August 31, 2004. The Employer contended that the Union had breached its obligations to bargain in good faith by negotiating to impasse six issues which the State believed to be non-mandatory subjects of bargaining. The Executive Director of PERC, in the preliminary ruling, indicated that he was "exercising discretion to suspend the interest arbitration proceedings under WAC 391-55-265 for six issues currently before the interest arbitrator."

The hearing on the remaining issues commenced on the 9<sup>th</sup> of September and concluded on the 20<sup>th</sup>. The Arbitrator, at the request of the parties, set aside the dates of October 28 and

October 29, 2004 for additional hearing if the issues that constitute the unfair labor practices case pending before PERC are found to be mandatory and thus subject to the Arbitrator's jurisdiction.

PERC's decision on the unfair labor practice's case was issued on October 22, 2004. In that decision the Hearing Officer noted that the Union had withdrawn the services contracts issue thus eliminating one of the issues under consideration. Additionally, the Hearing Officer noted that the two issues related to the referral registration had been settled between the parties and thus the employer had withdrawn its claim of an unfair labor practice as it related to those two issues. This left three issues for consideration by the PERC Hearing Officer. The Hearing Officer set forth "conclusions of law" regarding these three issues as follows:

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 and 391-45 WAC, as well as 74.39A.270 (1) and (2).
2. The Union proposals on the "shared living rule" at WAC 388-71-0460 is a permissive and illegal topic for bargaining, and insistence to impasse and interest arbitration is an unfair labor practice under RCW 41.56.040 (1)-(4).
3. The Union's proposal on training is a permissive topic for bargaining, and insistence to impasse and interest arbitration is an unfair labor practice under RCW 41.56.040 (1) (4).
4. The Union's proposal on a side letter to collect union dues is a mandatory topic for bargaining under RCW 41.56

and said issue will be remanded to the interest arbitration panel as per chapter 74.39A RCW.

Case 18805-U-04-4777

Decision 8761 - PECB

As a result of PERC's decision that the issue related to the collection of union dues is a mandatory topic and properly before the interest arbitration, hearing was reconvened on October 28<sup>th</sup> for purposes of taking evidence and argument related to this issue. The hearing was closed following final oral arguments on Friday, October 29, 2004.

#### HISTORY

In April of 2002 the governor signed into law RCW 41.56.113. This statute called for the deductions of union dues so long as there is a valid collective bargaining agreement that provides for such a deduction and so long as :

(3)(a) The initial additional costs to the State in making deductions from the payments to individual providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the State by the exclusive bargaining representative.

Union Exhibit #4

By the end of August, 2002 SEIU Local 6 (now Local 775) had been certified by PERC as the exclusive bargaining representative for the individual providers (IPs). By letter dated September, 2002, David Roth, president of SEIU Local 6, informed Dennis Braddock (DSHS) and Marty Brown (OEM) of the Union's desire to



begin the work needed to deduct union dues from payments to the IPs.

Meanwhile, during the fall of 2002 negotiations began for the first collective bargaining agreement between SEIU and the HCQA. That agreement was completed and ratified by the end of December, 2002. Formal signing occurred on January 13, 2003 (Tr. Page 948). The collective bargaining agreement contained in Article 4 a union membership provision that provided in part:

The HCQA shall cause the State as payor, but not as Employer to enforce this Union security provision under the provisions of RCW 41.56.113 by causing deduction from the payments to bargaining unit members the dues required for membership and the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues.

Union Exhibit #2, Page 4

Testimonial evidence indicates that work on the part of DSHS necessary to begin deducting union dues from the warrant payments made to IPs began in September of 2002 (Tr., Page 1153). A contract for the collections of union dues between the State of Washington (DSHS) and SEIU Local 775 was signed and implemented as of December 3, 2003 (Union Exhibit #3), some fifteen months later. The computer programming work needed to begin deducting union dues began shortly after the contract was executed. The first dues deductions began in August of 2004 (Tr., Page 973).

During the negotiations for the 2005-06 collective bargaining agreement SEIU Local 775 proposed language, in the

form of a side letter, that provided compensation to the Union for the financial harm that had been caused by what it considered the inappropriate delays by DSHS in implementing the program changes that were needed to begin collecting union dues. The State sees the matter totally different than the Union and contends that no money whatsoever is owing the Union. This issue has been found by PERC to be properly before the Arbitrator and is the sole subject of this supplemental interest arbitration award.

ISSUE 11

Side Letter on Dues Deduction 2003-2004

Current Contract Language

No contract language

Union's Proposed Language

In consideration of DSHS' failure to implement the dues and fee deduction provisions of RCW 41.56.113 and the existing contract between SEIU and the HCQA in a timely manner, the Employer shall reimburse the Union the sum of \$6,954,750 on July 1, 2005, and the Union shall waive any claim, cause of action, or right to pursue other action against the State as a result of its failure to deduction Union dues between October 2003 and September 2004.

The Union agrees to forgive the Employer the amount of \$3,210,240 that the Union lost due to DSHS's failure to implement dues and fee deductions between February 2003 and September 2003.

Employer's Proposed Language

The Employer proposed no language and throughout negotiations maintained that no money should be paid the Union as a result of the delay in the start-up time for deduction union dues.

Award

In consideration of DSHS' failure to implement the dues and fee deduction provisions of RCW 41.56.113 and the existing contract between SEIU and the HCQA in a timely manner, the Employer shall reimburse the Union the sum of \$1,605,000 on July 1, 2005, and the Union shall waive any claim, cause of action, or right to pursue other action against the State as a result of its failure to deduct union dues prior to August, 2004.

## ANALYSIS ON DUES DEDUCTION

The Arbitrator begins his analysis by emphasizing his conclusion that this dues deduction issue is highly unusual for an interest arbitration proceeding. This conclusion is based on a number of different factors related to the substance of the issue. To begin, as noted by Union President David Rolf at page 925 of the transcript, union dues deductions are common place to the vast majority of public sector labor contracts. Later in the hearing, Mr. Rolf reemphasized this point when he stated:

You know, Union members pay dues, they do it through payroll deduction and probably 99% of all United State labor contracts, it's just what happens. It's part of what has to occur under the -- I mean, technically it's a negotiated, but it really in practice it's just true all the time. You know, I've worked in public sector labor settings for a dozen years and I've never known it not to be true in a true collective bargaining setting.

Tr. Page 932

In this Arbitrator's experience, commonplace issues rarely make it to interest arbitration.

Additionally, what is particularly unusual about this issue is that there was never a substantive dispute. Very early on DSHS indicated how much it would cost to implement dues deduction and the Union, consistent with the statute, indicated that it would pay that amount. While there was some dickering back and forth, the record is very clear that there were never any difficulties negotiating the cost which is the one item required by the statute. In other words, the statutory hurdle

was easily jumped leaving matters not covered by statute as the hang-ups.

Finally, what also makes this issue unusual is that interest arbitration awards are typically proactive; setting forth matters that should happen in the future. Clear evidence of this fact can be seen in the Arbitrator's initial award which sets forth terms and condition of employment for a contract that commences on July 1, 2005. This is the normal role for the interest arbitrator. In the instant issue over dues deduction, however, the interest arbitrator is being asked to remedy what the Union considers a failure of DSHS to implement, consistent with statute, the dues deduction provision that had been placed in the current contract and that could have been in place as early as the spring of 2003. The Union seeks, through the collective bargaining process and, thus, ultimately through interest arbitration to address the financial harm created by what it considers to be the delaying tactics of DSHS.

Ultimately, however, characterizing the issue as unique doesn't change the fact that PERC has found the subject to be mandatory and thus the interest arbitrator is required to consider the matter on its merits and issue an appropriate award. The Union requests \$6,954,750 in lieu of dues that it would have collected but for what it believes is DSHS's bad faith actions. This award grants the Union \$1,605,000 in lieu

of dues that would have been collected had DSHS proceeded in a timelier and good faith manner. The Arbitrator finds that the evidence, while not supporting the full amount requested by the Union, does clearly support the lesser amount that he has awarded. The Arbitrator's reasoning is as follows.

First, the evidence indicates that each month dues were not collected the Union lost \$535,000. The Arbitrator finds that the State's inappropriate actions fully justify compensation to the Union for three months, thus the award of \$1,605,000.

Second, individual providers are not paid through a payroll system but rather by warrant through a vendor system contained within DSHS's "antique", mainframe computer using COBOL as the language. There is no dispute that this system did not lend itself to doing "payroll deduction." The evidence clearly indicates that the programming work needed to implement the dues deduction program, while lengthy, was approached in a timely manner. The Arbitrator finds no reason to conclude that the programming work, when it finally occurred, was not good faith and fully justifiable, thus there is no basis to assess financial compensation in lieu of dues deductions for the period of time it took to complete the programming work.

Third, RCW 41.56.113 is very clear in establishing that Union dues for the individual provider bargaining unit will be deducted so long as there is a collective bargaining agreement

that calls for the deduction of union dues and so long as the Union and DSHS has agreed in advance on the initial cost that will be incurred by the State to implement the dues deduction program - cost that are to be reimbursed by the Union. The State and SEIU completed its negotiations over the collective bargaining agreement including the union dues portion two months after they began; the agreement was fully ratified in an additional two months and signed two weeks later. Thus the only issue that needed to be dealt with regarding union dues deduction as of January 13, 2003 was agreement on the cost to implement the program. These negotiations did drag on for a time that on its face does not reflect the simple agreement that needed to be reached in order to initiate the programming work.

Fourth, the Union's basic position is that DSHS inappropriately and in bad faith resisted, from the very beginning, the efforts to quickly and appropriately implement the dues deduction program. In the Union's view, this resistance brought on the protracted negotiations which ultimately produced the final agreement which is in evidence as Union Exhibit #3.

After a full and comprehensive review of the transcripts and the documentary evidence, the Arbitrator finds that the evidence supports only a part of the Union's position. Some of

the delay reflects negotiations where the Union contributed as much as the State towards the slow down.

Turning first to that part of the delay that the Arbitrator does not feel is attributable in bad faith to the State, the record clearly indicates that from January of 2003 through July 7, 2003 the parties were engaged in an ongoing exchange of proposals. While the Arbitrator is convinced that these negotiations should have been much shorter, I do not find evidence that the blame can be laid solely at the feet of the State. There are indications that the State made a genuine effort to get the matter moving. For example, on May 1<sup>st</sup>, 2003 DSHS sent to the Union a fully developed counterproposal which Mr. Hunter had sign-off on. Ultimately the provisions laid out in that document became the foundation for the final settlement with regard to scope of work and cost. The evidence indicates that the Union's response to this document was simply another counterproposal.

The big hang-up, it appears to the Arbitrator, during the spring of 2003 was the fact that all of the State proposals required an eight or nine month period of time during which reprogramming would be completed to the warrant/vendor computer program. The Union, for obvious good reasons, was constantly looking for a way to short cut this eight or nine month period of time (see for example Union Exhibit #7). Ultimately, it was



not able to find a method that was reasonably acceptable to the Employer and work proceeded as the State had proposed. The bottom line is that the Arbitrator cannot find evidence of bad faith in the State's determination that Union proposed short cuts were not an overall good idea. In hindsight it is clear that had the Union either signed off on the State's May 1 proposal or tweaked it a little for sign off, actual dues deductions could have started six or seven months earlier than what actually occurred. In the Arbitrator's view, the Union has to share some of the responsibility for this delay.

In summary, the Arbitrator finds that the evidence fully supports the conclusion that the parties must share joint responsibility for the length of the negotiations that occurred prior to July 7, 2003. On July 7, the Union provided an unfortunate counterproposal to the State. Unfortunate to the extent that it was poorly drafted, containing two paragraphs covering items never before seen by the State, and it was presented in such a way as to not make it clear that these are new proposals - the State saw it as deceptive.

This proposal was sent to Charles Hunter who was heading up DSHS's negotiations related to the dues deduction program. In his testimony, Mr. Hunter admits that he "perhaps" overreacted to this proposal (Tr. Page 1181). Mr. Hunter goes on to indicate that his reactions were based on his surprise over the

new proposals, and the fact that they were not properly identified as being additions. Moreover, he admitted that he was receiving legislative pressure because of the delay in implementing the dues deduction and was frustrated by this fact.

As a result of his reactions, Mr. Hunter turned the process from one of reaching a simple letter of agreement about scope and cost into formal contract negotiations and the matter was given over to a DSHS attorney. For two reasons, the Arbitrator concludes that the negotiations that went forth from this point until the Attorney General's office intervened were not in good faith.

First of all, RCW 41.56.113 requires that the initial additional cost of implementing a dues deduction program be agreed upon and reimbursed. In the Arbitrator's view you cannot agree on the cost if you have not agreed on the scope. Thus, all that was necessary to start on the programming changes was to specify scope and put an acceptable price to it. The Arbitrator's review of the proposed contract sent to the Union by DSHS clearly indicates that the items cover go far, far beyond scope and cost. While many of the items included in this proposed contract may have been important to DSHS, DSHS was holding hostage the dues deduction program to items not specified in the statute.

Specifically troubling to the Arbitrator is the termination language found in Article 18. What is most concerning about this provision is that there appears to be no recognition whatsoever that DSHS is under a statutory obligation to implement a dues deduction program. The Union called this a poison pill article meaning that it was language written in such a way that the Union could not possibly accept it. The Arbitrator agrees. For example, 18.2 allows DSHS to terminate the contract if SEIU violates any applicable law or regulation. Nowhere is there any mention of the States obligation under the law. Moreover, the law requires the dues deduction program. Thus, terminating the program would in effect violate the law.

Ultimately, the Arbitrator has concluded that there was approximately three months time where DSHS's actions were not in good faith and in compliance with the statute. This three month period of time caused specific and measurable financial harm to the Union (Union Exhibit #18). Ultimately the best way to remedy this financial harm is to assign financial compensation to the Union in the amount equal to three months of union dues.

Finally, as outlined in the full award, the Arbitrator is required by statute to consider comparability. The only evidence on comparability was provided by David Rolf who stated:

Now, we paid for dues deduction in two other states. This was not without precedent. In California we went to the State Controller in, I believe, it was 1993. We said, would you be - there are members out there who want to join

the Union, would you agree to change your payment systems so that they can pay dues? And the State Controller said, yes, I would be happy to. It will take me about a year to get done and it will cost you about \$150,000. And a year later, \$150,000 later, home care workers began paying dues in California years before many of them had a collective bargaining agreement. The State allowed the voluntary payment of dues years in advance of collective bargaining agreement.

Tr. Page 936

In Oregon, a similar thing happened. The Union went to the Governor and said, you know, we'd love to be able to have home care workers join, if they would like to join, even though there's no bargaining law. And the Governor spent, I think, nine months and \$62,000 changing the system there, billed the Union for the \$62,000 and Union members began to pay dues even before they had a bargaining agreement.

Tr. Page 937

Charles Hunter did testify that his research indicated that Oregon's computer was better setup to make the programming changes needed to collect dues (Tr. Page 1169). However that fact has no bearing on the Arbitrator's determination of bad faith because the length of time needed to do the actual programming was dismissed by the Arbitrator. It was not the programming work but the protracted negotiations that leads the Arbitrator to make an award for the Union.

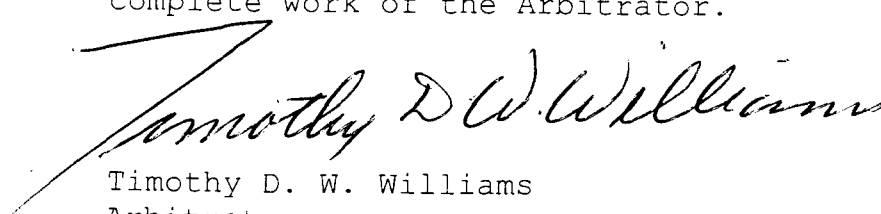
Most importantly, having reviewed the entire record, the Arbitrator is convinced that it was the positive approach taken in California and Oregon that lead to simple agreements by which financial costs associated with programming changes could be reimbursed to those states. Had the State of Washington proceeded similarly in good faith, the dues deduction program

would have been implemented far sooner. Moreover, the Arbitrator concludes that this was precisely what the legislature intended when it enacted RCW 41.56.113.

Thus, while the comparability data does not specifically address the main point in dispute under this issue, it does indirectly support the conclusion that an agreement on scope and cost could have been reached much more quickly with a simpler, good faith approach.

Thus, based on this conclusion and the other analysis previously provided, the Arbitrator makes an award for the Union.

This supplemental award is respectfully submitted on this the 10<sup>th</sup> day of October, 2004. It is intended as the final element in the interest arbitration proceedings involving the 2005-06 collective bargaining agreement between the parties. This supplemental award, when combined with the initial award given to the parties on October 1, 2004 constitutes the full and complete work of the Arbitrator.



Timothy D. W. Williams  
Arbitrator