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

ARBITRATOR'S)
INTEREST)
AWARD)

PUBLIC EMPLOYEE
RELATIONS COMMISSION

HEARING: August 2, 3, and 4, 2010
Tumwater, Washington

September 2, 3 and 10, 2010
Federal Way, Washington

September 8, 2010
Tumwater, Washington

HEARING CLOSED: September 10, 2010

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Seattle, WA 98121

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Diane Lutz, Labor Negotiator
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Grace Kiboneka, DSHS/ADSA Labor Relations

REPRESENTING THE UNION:
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Leslie Liddle, SEIU Staff
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APPEARING AS WITNESSES FOR THE EMPLOYER:

DAY 1

Stan Marshburn, Deputy Director of Financial
Management
John Anderson, Project Manager ProviderOne Project

Day 2

Diane Lutz, Labor Negotiator
Dan Murphy, Director Strategic Planning DSHS

Day 3

Dan Murphy, Director Strategic Planning DSHS
Grace Kiboneka, DSHS/ADSA Labor Relations
Rita Wikiandri, Budget Analyst DSHS

Day 6

Bea-Alise Rector, Office Chief of the State Unit
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Dan Murphy, Director Strategic Planning DSHS
Rita Wikiandri, Budget Analyst DSHS

Day 7

Diane Lutz, Labor Negotiator
Dan Murphy, Director Strategic Planning DSHS

APPEARING AS WITNESSES FOR THE UNION:

Day 4

David Rolf, President
Will Pittz, Director of Washington Community
Action Network
Denise Garcia-Wallace, Care Provider
Tim Palmer, C B and Employer Relations Manager

Day 5

Seth Hemond, Director Member Programs SEIU
Gregory DeMartino, Employee Benefits Consultant
Misha Werschkul, SEIU Healthcare Lobbyist
Nancy Dapper, Executive Director Western and
Central Washington chapter of Alzheimer's
Assoc.
Charissa Raynor, Executive Director SEIU
Healthcare NW Training Partnership

Day 6

Seth Hemond, Director Member Programs SEIU
Leslie Liddle, Manager of Collective Bargaining
and Employer Relations Department

Day 7

Charissa Raynor, Executive Director SEIU
Healthcare NW Training Partnership

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1. 2004 Interest Arbitration Award
2. 2006 Interest Arbitration Award
3. 2008 Interest Arbitration Award
4. 2009 Interest Arbitration Award
5. Current Collective Bargaining Agreement (2009-2011)
6. 2011 - 2013 Tentative Agreements
7. Certification of Issues by PERC
8. Article 5 - Bargaining Unit Information - Union Proposal
9. Article 5 - Bargaining Unit Information - State Proposal
10. Article 9 - Compensation - Union Proposal
11. Article 9 - Compensation - State Proposal
12. Article 10 - Comprehensive Healthcare Benefits - Union Proposal
13. Article 10 - Comprehensive Healthcare Benefits - State Proposal
14. Article 13 - Payroll, Electronic Deposit and Tax Withholding - Union Proposal
15. Article 16 - Training - Union Proposal
16. Article 16 - Training - State Proposal
17. Article 22 - Retirement Benefits - Union Proposal
18. New Article - Holidays and Other Benefits - Union Proposal
19. RCW 74.39A 270-360
20. Rcw 41.56.026.465

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1. Overview of Washington Stated Budget
2. Transforming Washington Budget
3. Transforming Washington's Budget: The State's 2009 - 2011 Budget Expressed as Six Values
4. Press Release (June 2010): Washington quarterly revenue projection flat
5. Washington State Economic and Revenue Forecast - June 2010
6. Six-Year Outlook
7. Economics and Review Update - July 2010
8. Monthly Revenue Collection Variance Table
9. Organizational Chart
10. Provider One Timeline
11. Diane Lutz Notes Re: Union Proposal on Appendix A Wage Scale
12. Home Care Wage and Benefit Comparison Chart
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14. Cost Estimate - Union Proposals - backup Data
15. Cost Estimate - Union Proposals - SSPS
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21. Chart - Homecare Direct Costs
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24. Chart - Comparables of Direct Cause
25. Chart - Incremental Cost Comparison
26. Massachusetts Collective Bargaining Agreement
27. Massachusetts Regulations

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1. Seattle Times, 1/31/10, "How the aged and frail are exploited in Washington's adult family homes."
2. Seattle Times, 1/31/10, "Neglect and death but adult family home stays open."

3. Seattle Times, 2/7/10, "fragile, push out and paying a price. State saves millions by relocating poorest patients."
4. Seattle Times, 2/2/10, "Gregoire4 calls for review of adult family homes."
5. Seattle Times, 2/2/10, "DSHS strives for continued improvement in WASHINGTON LONG-TERM CARE SYSTEM."
6. 2011-13 Biennium Operating Budget Instructions, OOFMk Budget Division
7. RCW 75.20 Agency Codes and Authorized Abbreviations.
8. Draft Rules Amending Chapter 388-71 WAC
9. Summary of 2010 Tax Legislation Dept of Revenue, May 2010
10. Legislative Tax Update, Dept of Revenue, May 2010
11. Forecast Overview
12. Implementing Initiative 1029, www.adsa.dshs.gov/1029
13. Update of Agency Compensation Data for 2011-13, Calculations for Collective Bargaining and Budget Development, Memo to Agency Budget Officers from Karen Durant, Sr. Compensation and Policy Analyst, Labor Relations Office and Pam Davidson, Sr. Budget Asst to the Governor, OFM, May 3, 2010.
14. OFM, Priorities of Government, Improve the security of Washington's vulnerable children and adults.
15. OOFM, Budget Division, Strategic Plan Guidelines, February 2010.
16. 2009 Full Tax Preference Performance Review, Report 09-11, Joint Legislative Audit and Review Committee, January 5, 2010.
17. 2008 Tax Exemption Study Summary Listing of All Tax Preferences, Dept of Revenue, January 2008.
18. Miles Claimed and Reimbursed from May 2009-2010.
19. The Wall Street Journal, "NBER Makes It Official: Recession Started in December 2007," December, 2008.
20. Washington Stated: Economic & Revenue Forecast Council, Revenue Review Meeting, June 17, 2010.
21. In-Home Care Provider Hour Projections.
22. Consumer Spending Decreases Revenue
23. Consumer Spending Increases Revenue
24. Revenue Review PowerPoint Presentation, June 17, 2010
25. Alternative forecasts compared to the baseline forecast 2011-13 biennium
26. AP/IP Comparison - "Identical Twins"
27. PCPS Timeline As-Of August 2008

28. Union Cost Model Training 2011-2013
29. D. Garcia Household Budget 2008, 2010 Single, 2010 Married
30. IP Living Wage by County
31. IP Living Wage Trend Chart
32. Living Wage Market Basket
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47. Average wage for Washington Home Care Workers, July 2010
48. Washington Home Care Worker 2010 HealthCare Cost Changes
49. SSEIU 775 Member Distribution by Gender, Etc.
50. SEIU 775 Long-Term Care Training - Blue Print for the Future
51. Letter to DOH - Comments Regarding Draft HCA Certification
52. Letter to Governor Regarding Certified Home Care Aide Exam/Certification
53. Letter to Governor Regarding DSHS Rulemaking Related to I-1029
54. DSHS Letter to DOH Regarding Concerns with Certification and Testing for HCA
55. Letter to DSHS Rules Coordinator Regarding Draft Rules Amending Chapter 388 WAC
56. 2009-11 Agreement between Washington State and SEIU 1199NW
57. SEIU Healthcare NE Training Partnership Slide Show
58. 2010 Legislative Summary - Department of Revenue
59. Legislative Tax Update - Department of Revenue

60. WSA Budget - Proposed v Realized Revenue
61. Initiative 1098 Expenditure Chart
62. State Sen. Berkey falls below level for mandatory recount
63. Diane Lutz Email - Unions that May be Receiving Soc. Sec. Numbers
64. Spreadsheet - Unions that May be Receiving Soc. Sec Numbers
65. Agency Providers and State Employee Comparables
66. "Beauty Brains - Best of the Northwest", Fortune Magazine, September 6, 2010
67. Supplemental Budget Overview, 2010

BACKGROUND

The Service Employees International Union, Local 775 NW represent a bargaining unit composed of individual health care providers (IPS) under RCW 74.39A.270. The Office of Financial Management of the State of Washington (hereafter "the Employer" or "the State") and the Service Employees International Union Local 775 (hereafter "the Union") are in the process of negotiating a collective bargaining agreement (CBA) for the 2011-2013 biennium. Unable to reach agreement on a number of issues, the parties decided to submit the matter to interest arbitration. The interest arbitration case was conducted under the authority of RCW 41.56.465.

A copy of the letter dated July 28, 2010 was provided the Arbitrator. It contained a list of issues certified for interest arbitration by the Executive Director of PERC, Cathleen Callahan,

in accordance with WAC 391-55-200(3)(a). Those issues, as certified, are:

Article 5	Bargaining Unit Information
Article 9	Compensation
	Article 9.1 Wages
	Article 9.2 Certification Differentials
	Article 9.3 Mileage Reimbursement
	Article 9.4 Overtime
	Article 9.6 Home Care Aide Certification and Testing Costs
Article 10	Comprehensive Health Care Benefits
Article 13	Payroll, Electronic Deposit and Tax Withholding
Article 16	Training
Article 22	Retirement Benefits
	Section 2 Development of a Retirement Benefit Fund
New Article	Holidays and Other Benefits

A hearing was held before Arbitrator Timothy D.W. Williams over a period of seven days and in two different locations. The hearing took place in Tumwater, Washington on August 2, 3 and 4, 2010, in Federal Way, Washington on September 2, 3 and 10, 2009 and in Tumwater, Washington on September 8, 2010. At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

RCW 41.56.450 provides that "a recording of the proceedings shall be taken." In compliance with the statute, an official transcript of the proceedings was taken, and a copy was provided

to the Arbitrator. At the close of the evidentiary hearing, the Parties were given the opportunity to do closing oral arguments which were received on the afternoon of September 10, 2010. In accordance with WAC 391-55-240, the Arbitrator declared the hearing closed on September 10, 2010.

ARBITRATOR'S AUTHORITY

An arbitrator's authority to issue an interest award is generally derived from statute. RCW 74.39A.270 provides, in pertinent part, that "the mediation and interest arbitration provisions of RCA 41.56.430 through 41.56.470 and 41.56.480 apply." RCW 41.56.465(5) requires that the arbitrator, in making his or her decision, consider the following criteria:

(a) The panel shall consider:

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

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

(b) The panel may consider:

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

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

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

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical

coupons, food stamps, subsidized housing and emergency medical services.

(6) Subsection (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517 Laws of 1993 as required under chapter 41.26 RCW.

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

RCW 41.56.450 grants the Arbitrator 30 days from the conclusion of the hearing to make "written findings of fact and a written determination of the issues in dispute." The instant case, however, is quite different in that the parties, at the time that they retained his services, informed the Arbitrator of the need for his written findings by October 1, 2010. The Arbitrator has worked to comply with that understanding and has focused his efforts on writing a succinct award that sets forth the key points in his determinations.

In summary, the final decision is provided issue by issue and is based on a thorough review of the documentary and testimonial evidence that has been provided, a careful study of the closing arguments and the faithful application of the statutory criteria. The decision continues with an overview of the Parties positions followed by the award, issue by issue.

OVERVIEW

In September of 2004 this Arbitrator issued the first interest arbitration award for this bargaining unit (J 1). In September of 2008 and September of 2009 he issued additional interest decisions for IPs (Home Healthcare employees) (J 3, 4). Throughout all these proceedings there are some common threads that have been the reemphasized in the instant case. The Arbitrator begins this award by summarizing those "threads" that are important to the resolution of the issues in dispute.

Union

The Arbitrator begins his overview by noting that one of the Union's primary concerns in working to organize this bargaining unit and throughout the course of its bargaining relationship with the State has been to gain recognition for home healthcare workers as a professional group. The Union repeatedly emphasizes that this is a demanding vocation, requiring a variety of skills and abilities, which historically has not been recognized as a profession. Given the current status of home healthcare work as low-paying and lacking in security, there is a dire need for progress in terms of developing this as a respected and valued profession.

There is no dispute that caring for people in their homes who would otherwise be institutionalized creates better outcomes, both for the clients in terms of their quality of life, and from a financial standpoint. Currently, home healthcare work is not

viewed as a desirable career for many people. There is little to attract individuals who would be capable of providing the necessary services because the work is underpaid and provides exceedingly few opportunities for advancement. At the same time, the need for these services is great and the national trend is that demand is increasing. As baby boomers age, the segment of the population in need of home healthcare services will expand, foreseeably creating a crisis in the mismatch between the increasing demand of caring for the elderly and the decreasing availability of adequately skilled service providers.

The Union emphasizes the possibility and desirability of creating a workforce which is capable of addressing the needs of that segment of the population which requires in-home care. To that end, the Union wants to see the work force expand and the professionalization of the work force progress. This is only possible by attracting capable individuals via better pay, the creation of benefits and the establishment of retirement security. At the same time, those individuals must be given the opportunity to advance in their profession through increased training and certification programs. Should the status of home healthcare work remain as undervalued as it currently stands, the foreseeable future is bleak in terms of the ability of DSHS to ensure that its vulnerable citizens receive quality care in a cost effective manner.

While there is a great need from the standpoint of home healthcare service providers for increased professionalization of their work, the same is true for the clients who require those essential services. Currently, there are too many ways in which those clients are not being well served because the service providers available to them lack the minimum skill set necessary to ensure adequate in-home care. Lacking core competencies, some home healthcare workers are simply not capable of doing even the minimum of what's needed to provide the necessary services. Some, through ill-will of their own, fail to take appropriate measures to care for their clients. The fact is, there is a skills need which is simply not being met.

The people of Washington recognized this unfortunate fact. By a record breaking 73% they passed initiative 1029 which mandates new training standards, including the requirement that beginning January 1, 2011 new care providers, except for those who provide care exclusively to a parent or child, pass a test in order to receive a certificate. Thus, the responsibilities of the training partnership will necessarily increase, as will the costs of meeting those responsibilities. In addition, the new statute provides for a mentorship program and an apprenticeship program, both of which likewise require funding.

The State's position that no new funds are available puts the training partnership in a situation where it would be required by law to do more, to administer these programs, without

any funding for the responsibilities assigned. The Union recognizes that the State is operating with a massive deficit and faces difficult decision regarding how best to spend the money that it does have available. That speaks to the necessity of prioritizing the funding, rather than the necessity to fund nothing that was not previously provided for. The people of Washington, through the statute about to take effect, recognize that training and certifying home healthcare workers and providing them with the support and experience they need to do their jobs well must be a priority.

The Union emphasizes that the proposal it advances is not by any means an aspirational one. Rather, it was crafted with a keen understanding of the economic difficulties faced by the State. The Union does not propose to increase the spending power of its bargaining unit members; it seeks only to restore what little spending power this group has had in the past to keep it from falling back towards the minimum wage. The Union does not propose to undo the existing healthcare benefit cuts; it seeks only to maintain the status quo as it currently stands, not the status quo ante, and not be forced to make further sacrifices in this regard. To the extent that the Union seeks additional funding, it is funding that is necessary to cover the costs of implementing the new statutory mandates. The Union recognizes that the progress it seeks in terms of professionalizing its membership must in many ways be deferred due to the economic

climate, but it wants some commitment from the State that it is also willing to move towards what is ultimately a shared goal, that of creating a system under which adequate care is provided to the disabled.

The Union also emphasizes that, as difficult as the financial situation is for the State, its membership has suffered disproportionately as a consequence of the recent economic downturn. Home healthcare workers are a group of people who are struggling daily to keep from falling into poverty. The Union presented two monthly budgets which show that the nearly 100% of take-away pay is spent every month. Typically, they do not have savings to draw from when their hours are cut or when their earning power is otherwise decreased. These employees are people for whom a late paycheck or an unexpected expense means having to resort to measures such as payday loans, a situation from which it is exceedingly difficult to extract oneself. The lack of cost of living increases over the last two years and the cuts they've suffered in their medical coverage are harsh realities for these individuals. In that respect, they are not comparable to other bargaining units with which the State has negotiated recently, because those employees have substantially more security. Those of us who make more are more capable of absorbing the kinds of losses that these employees simply do not have the ability to live with. Home healthcare workers have suffered significant setbacks over the last biennium and the impact has been

especially painful. Any further setbacks would be catastrophic in terms of people's ability to get by with what they are paid.

The Union strongly opposes the Employer's characterization of its proposal as "maintenance." Under the Employer's proposal, the financial situation of home healthcare workers deteriorates as the cost of necessary goods and services increases, as hours are cut, and as employees are required to pay more for their healthcare due to what is likely to be double digit inflation for healthcare. 2005 saw the peak of this group's earning power. Since then, they have fallen further and further behind. The State's proposal would only continue this regression. Bargaining unit members would never have ratified a contract which would put them into the fourth year of a wage freeze, force further dramatic cuts in health benefits, fails to fund statutory training requirements and makes no progress in any other area to compensate for those losses. For all of the reasons presented above, the Union urges the Arbitrator to adopt its proposal.

State

The State recognizes the importance of home healthcare work and the need to maintain funding this workforce. The State's position on its proposal is that it accurately reflects the dire economic circumstances which it is currently facing while concurrently showing a commitment to continue this important program. The State's ability to pay is a factor that the Arbitrator must consider in arriving at his award. The simple

fact is that the deficit which the State must address in negotiating all of its contracts is tremendous. While some predict that the current recession may be ending, the reality is that the recovery is likely to be a slow and uneven process. The State continues to see expenditures increasing at a faster rate than revenues and each new forecast projects a greater deficit than previously anticipated. In short, the State's financial outlook is exceedingly bleak and there is no reason to be optimistic about the future. Given this difficult situation, the State believes that the only responsible thing to do is to maintain the current level of spending. The argument that this is not the time to negotiate spending increases is even more true now than it was during the last round of negotiations.

In evaluating the Parties' proposals, the Arbitrator is also required to consider comparability as a factor. From the State's analysis, the proposal it has put forth is quite comparable to that adopted in other states, including Oregon, Massachusetts and Illinois. The unfortunate reality is that other states are experiencing an equally bleak economic situation. The same issues are being faced by all those involved in or employed by state governments. Accordingly, prioritization of funds has become increasingly important not only at the state level but also for the administration of the Trust, for the caregivers, and for the recipients of in-home healthcare services. While other unions across the state are facing take-aways, the State is

offering maintenance to this bargaining unit. In so doing, it recognizes the importance of continuing to support the services provided by home healthcare workers.

Also, it is important to remember that, while the State is not capable of funding a wage increase, individual providers will continue to advance through the steps of the pay scale, resulting in higher wages for individuals over time. Those at the top of the pay scale will have the opportunity to increase their wages through peer mentorship. The State's proposal, while clearly not attractive to the Union, holds its ground as regards comparability. If this proposal is adopted, home healthcare workers in Washington will continue to be at parity with similar workers in other parts of the country.

The State also argues that its proposal provides sufficient funding to address the statutory responsibilities that have recently been assigned by initiative 1029. The Arbitrator must be mindful that the Trust which is responsible for administering the training, certification, and mentoring programs also covers a lot of other entities which are not a party to this agreement. The unfortunate consequence of the dire economic situation is that all agencies and all budgets across the state are suffering cuts. The Employer recognizes that this is not easy for anybody. It is the Trust's responsibility to prioritize those changes that have been mandated by the new statute. The State believes that the Trust has the funding (State's proposal) necessary to

adequately address those mandates. The State's position is that it is being responsible to its statutory obligations given the exceedingly difficult economic context which is the present reality.

The State is offering this bargaining group maintenance, enough to keep it at parity with similar groups in other parts of the country, and enough to cover the statutory responsibilities assigned by the recent initiative. The State is simply not in a position at this time to offer anything more. Much less is it able to afford the Union's proposal. For all of the reasons presented above, the State urges the Arbitrator to adopt its proposal.

Arbitrator

The Arbitrator begins his general response on a personal note. During the period of time of these proceedings his next door neighbor passed away. She was 96 and because of the Home Healthcare program was allowed to live out the end years of her life and die at home. This was very important to her. Thomas Lynch in the book *The Undertaken* chronicles the fact that at one time we all died at home. Then, for a variety of reasons, institutional death became the norm. Recently the tide has again turned, there has been an awakening to the fact that institutional care is often dehumanizing and expensive and that there is something fundamentally good about living out your life in your personal residence.

The Arbitrator emphasizes these points to underscore the importance of the Home Healthcare program. A growing percentage of the population will benefit both financially and personally by being able to live out their lives in personal residences thanks to the work of the IPs. Nothing in this award should be viewed by either Party as reflecting indifference or a lack of appreciation on the part of the Arbitrator to the significance of the work performed by this bargaining unit.

Additionally, the Arbitrator notes that both Parties indicated in opening or closing statements a frustration with the contentiousness of the current round of negotiations. The Arbitrator attributes this fractiousness to our current bleak financial times and emphasizes his belief that both Parties share his perception about the importance of the work performed by this bargaining unit and are committed to improving the lot and the work of the IPs.

Turning more specifically to the challenges of addressing each of the issues in dispute, the Arbitrator notes that he is required by statute to consider, when rendering his award, a set of criteria previously set forth in this decision. This task is not always easy and, in this Arbitrator's view, made more difficult in a recessionary economy. Employment data is often murky as usually evidenced when the Parties indicate their difficulties in making "apple to apple" comparisons. Employee furloughs, the reopening of old contracts and other such factors found only during a recessionary economy complicates the process

of determining the actual facts. For example, a key comparator mentioned by both the State and the Union is Illinois. Yet, the Arbitrator takes note of the fact that front page media information indicates an Illinois "doomsday budget" that will devastate social services. How then can the Arbitrator and the Parties to this dispute rely on data from the state of Illinois? Who knows what will actually transpire? Will contracts be revisited, will changes be made?

The Arbitrator also notes the fact that the Union fully recognizes that there is a budget crisis. This fact was emphasized in the opening statement and closing arguments. At the same time the Union sets forth the testimony of lobbyist Adam Glickman-Flora who states:

I mean, at some level it's all about priorities. I mean, there's always -- there's always money, and I think the question is how the State -- how the Legislature and the Governor choose to spend it, right? Tr 1108

Obviously he is correct, it is all about priorities. But, in the Arbitrator's view, the State obviously has numerous significant priorities of all which must be dealt with.

Union President David Rolf testified as to the struggles that IPs have dealing with low wages and the fact that the dollar value of those wages keep receding as the years roll by without any increases (TR 568, 569, 570, 571). The Arbitrator is very aware of this fact and aware that this bargaining unit is less capable of dealing with wage freezes and other diminishment of benefits than are State employees that make five to ten times the money.

Still, counterbalancing the Union's arguments is the simple fact of a significant budget deficit that must be contended with. Ultimately the Arbitrator concludes that the most pertinent fact tempering his desire to be more aggressive in awarding wage and benefit increases is the current data that indicates the optimism of spring 2010 turned into the pessimism of summer 2010. As the Arbitrator understands the evidence (for example Tr 42, 46), revenue collection during the summer was less than what was expected leading to the conclusion that budget deficits for the 2011 - 13 biennium are likely be higher than projected and they were already projected as a substantial shortage.

Then we get to June, a new forecast for 24 months, and the June number in the month that the forecast came out was off by \$85 million. That's a pretty big whack, and it made us all kind of very nervous. But then we thought, Oh, it's a one-time aberration, things will get better. So far in July, and we won't know the July numbers officially finally until August 10th, but so far it looks as though July might be off by \$50 million. TR 47

Finally, particularly in light of the above, the Arbitrator returns to the matter of prioritizing. Just as the State will prioritize in setting the biennium budget, the Arbitrator concludes that this award must of necessity be miserly and reflect the Arbitrator's efforts to prioritize. After careful reflection over the data and testimony, the Arbitrator determines that highest priorities goes first to maintaining adequate health care and next to fulfilling the mandates of Initiative 1029.

With these brief introductory comments, the Arbitrator now turns to an issue by issue analysis and the formulation of the award on each issue.

ANALYSIS and AWARD

Article 5 Bargaining Unit Information

Current Language:

5.1 Information to be Provided

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

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

Union's Proposal:

5.1 Information to be Provided

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format specified by the Union, and shall include the home care worker's full name, individual provider number cumulative lifetime hours worked as an individual provide, hours or units (day, work or month) worked in a month for which payment has been made, home address, mailing address, home phone number, personal wireless telephone numbers, electronic mail addresses, hire date, Social Security number, termination date, date of birth, gender, primary

preferred language, relationship to consumer employer, marital status, PTO hours paid, PTO hours forfeited, wage rate program or service code, amount paid during the current month of payment, union member type and deduction type. The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information.

State's Proposal:

5.1 Information to be Provided

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

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

Analysis:

For two reasons the Arbitrator found the proposal of the State the more acceptable. First, the Arbitrator shares the State's concern over publishing even in a secure fashion the Social Security numbers of the bargaining unit the size of SEIU Local 775 NW. In his view, any benefit to providing this number to the Union is substantially outweighed by the potential risks

and liabilities. Second, again this Arbitrator received substantial testimony around replacing the antiquated computer system by which payroll is administered to this bargaining unit. There is good evidence that by the end of the 2011 - 13 biennium, the mission of replacement will be accomplished with current technology. Until that happens, the Arbitrator is reluctant to provide language in the agreement that requires an action of the Employer that may not be reasonably possible.

Award:

5.1 Information to be Provided

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

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

Article 9.1 Wages

Current Language:

9.1 Wages

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

Appendix A - Wage Scale
July 1, 2011 - June 30, 2013

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

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

Union's Proposal:

9.1 Wages

Effective July 1, 2011, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid accordingly to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours. All home care workers shall be paid strictly on an hourly basis. Except as

modified by this Agreement, all home care workers shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any home care worker according to any other rate than the rates contained in Appendix A, are hereby void.

Appendix A - Wage Scale
July 1, 2011 - June 30, 2012

Cumulative Career Hours	Wage
0 - 2000	\$10.80
2001 - 4000	\$11.05
4001 - 6000	\$11.30
6001 - 8000	\$11.55
8001 - 10000	\$11.80
10001 - 12000	\$12.05
12001 - 14000	\$12.30
14001 - 16000	\$12.55
16001 plus hours	\$12.80

Effective July 1, 2012 all of the steps on the above wage scale shall be adjusted upward by the rate of inflation of the annual percentage change of the Consumer Price Index for Urban wage Earners and Clerical Workers (CPI-W) in the Seattle-Tacoma-Bellevue Metropolitan Statistical Area (MSA) between 2010 and 2011. If such wage adjustment would not result in a wage increase for individual provider home care workers, then the above wage scale shall remain in effect through the life of this Agreement.

State's Proposal:

9.1 Wages

Effective July 1, 2009, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid accordingly to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours not including time spent as mentors pursuant to Section 9.2. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any home care worker according to any other rate than the rates contained in Appendix A, are hereby void.

Appendix A - Wage Scale
July 1, 2011 - June 30, 2013

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

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors or trainers as assigned by the Training Partnership. Time worked as a mentor will not count toward cumulative career hours.

Analysis:

The Union's proposed changes to the salary schedule, in this Arbitrator's view, are eminently fair and appropriate even in this recessionary economy. A starting wage of \$10.80 and a top wage of \$12.80 are more than justified. But, where is the money? The Arbitrator again reemphasizes what he has earlier written, the belief that the economy is getting better has not shown up in recent data. The Arbitrator turns to the testimony of Stan Marshburn of the OFM who is concerned about a recessionary 'W' pattern which would mean that instead of the economy improving in the state of Washington it will again recede. He states:

Well, a W is what is, you know, also called a double-dip recession where we fall, things stabilize, we start to grow back, and something happens and we fall again, so it's got a double dip or two. So - and I think at the national level that's what people are very much concerned about, is we will see a double dip, will we - the - as the federal stimulus, most economists will in - you know, have indicated that the

federal spending has been the major cause for increased economic activity in the country, and as that comes to an end and as Congress has kind of tightened up and said, Oh, we're not going to spend any more money, we're going to - you know, the deficit is really important, it - a lot of stimulus stuff is beginning to go away. Tr 46

The Arbitrator also points to his prior discussion about prioritizing and his conclusion that a wage increase is not as high a priority as maintaining the health benefit and responding appropriately to the requirements of Initiative 1029.

Reluctantly the Arbitrator is awarding no increase to the wage schedule. While this award does not help maintain the buying power of wages, the Arbitrator concludes that it does keep pace with the wages of other State employees and ought to keep pace with the wages of similarly situated employees across the country where every State is facing budgetary problems.

Award:

9.1 Wages

Effective July 1, 2011, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours not including time spent as mentors pursuant to Section 9.2. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any home care worker according to any other rate than the rates contained in Appendix A, are hereby void.

Appendix A - Wage Scale
July 1, 2011 - June 30, 2013

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

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors or trainers as assigned by the Training Partnership. Time worked as a mentor will not count toward cumulative career hours.

Article 9.2 Certification Differentials

Current Language:

9.2 Mentor, Preceptor, and Trainer Pay

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

Union's Proposal:

9.2 Certification Differentials and Mentor, Preceptor, and Trainer Pay

Employees who hold and submit a valid "Home Care Aide" certification or Certified Nursing license (or equivalent or greater medical license), shall be paid an additional fifty cents (\$0.50) per hour differential to his/her regular hourly rate

Employees who complete advanced training to meet apprenticeship standards beyond the training required to receive a valid "Home Care Aide" certification (as set forth in Training Partnership curriculum) shall be paid an

additional twenty-five cents (\$0.25) per hour differential to his/her regular hourly wage rate. This advanced training differential stacks on top of the certification differential described above (e.g., an employee who has completed the home care certification and the advanced requirements shall be paid seventy-five cents (\$0.75) above his/her regular wage rate)

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

State's Proposal:

9.2 Mentor, Preceptor, and Trainer Pay

Pursuant to Article 16.9, a home care worker who is assigned by the Training Partnership as a mentor preceptor, or a trainer of other home care workers or prospective home care workers shall be paid an additional one dollar (\$1.00) per hour differential in addition to his or her regular hourly wage rate, and in addition to any other differential or adjustments for each hour that he or she works as a mentor, preceptor, or trainer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

Analysis:

There are two reasons why the Arbitrator is not granting the Union any of its requests for certification pay. First, this is a lower priority than the salary schedule and the Arbitrator has already determined that there is no financial basis upon which to grant a general wage increase. Any priority lower than that of the wage schedule will obviously not receive any financial improvement in this arbitration decision.

The Arbitrator is also not persuaded that the timing is inappropriate. The training programs are not fully implemented and, therefore, there is no way to predict the overall impact of the Union's proposal. Moreover, assuming that training efforts can proceed along a reasonable course, the Union's proposal can be fine-tuned to the specific results of the now fully implemented training regime for the 2013-15 CBA.

Award:

9.2 Mentor, Preceptor, and Trainer Pay

Pursuant to Article 16.9, a home care worker who is assigned by the Training Partnership as a mentor preceptor, or a trainer of other home care workers or prospective home care workers shall be paid an additional one dollar (\$1.00) per hour differential in addition to his or her regular hourly wage rate, and in addition to any other differential or adjustments for each hour that he or she works as a mentor, preceptor, or trainer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

Article 9.3 Mileage Reimbursement

Current Language:

9.3 Mileage Reimbursement

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

Home care workers providing transportation to services funded by the Division Developmental Disabilities (DDD) Home

and Community Based Services (HCBS) waivers or the DDD Individual and Family Services Program and identified in the consumer's Individual Support Plan, in excess of sixty (60) miles per month, will be reimbursed up to an additional maximum authorized by the case manager.

Union's Proposal:

9.3 Mileage Reimbursement

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

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

State's Proposal:

9.3 Mileage Reimbursement

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

Home care workers providing transportation to services funded by the Home and Community Based Services (HCBS) waivers, the DDD Individual and Family Services Program, or the Veteran's Directed Home Services and identified in the consumer's Individual Support Plan, in excess of sixty (60)

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

Analysis:

State caseworkers work with the client not with the IP. The IP works for the client and the State has no specific form of supervision over the IP. This is the primary a reason that again the Arbitrator cannot award an open-ended mileage allowance. Union arguments, however, have persuaded the Arbitrator that there are unusual circumstances that warrant an extension of the mileage allowance. The Arbitrator has crafted language to address this need and has placed it in the awarded provision.

Award:

9.3 Mileage Reimbursement

Home care workers shall be compensated for the use of their personal vehicles to provide services to their consumers (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month per consumer. The State will not unreasonably deny a request to expand the mileage allowance where unusual circumstances and the care or service plan warrant an allowance greater than sixty (60) miles per month. The Employer will make all necessary changes to work forms, the payroll system and the CARE tool to assure that accurate mileage can be tracked and compensated.

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

Article 9.4 Overtime

Current Language: (No current language)

Union's Proposal:

9.4 Overtime

Employees who work in excess of one hundred seventy three (173) hours in a month will be paid overtime for such additional hours at the rate of one and one half (1.5) times their regular hourly rate. Paid leave time shall not be considered time worked for the purposes of this section. For the purpose of this section a "month" begins at midnight on the first calendar day of each month and ends at 11:59 p.m. on the final calendar day of each month. The Employer shall have the right to take such reasonable steps as it deems necessary to limit the obligation to pay overtime hours.

State's Proposal: (No change)

Analysis:

A standard work month is 171 hours. Almost all hourly employees receive overtime when they work in excess of that time. The Union's proposal is reasonable when viewed in that context. The problem again is one of supervisory control. Employers usually have strict control over all hours of overtime and actively working to minimize the assignment of overtime work. In this case the IP can determine or at least influence how much overtime he or she works as opposed to the State. The Arbitrator has awarded language that provides overtime compensation only when the IP has received written authorization from the State to work hours at the overtime rate. The IP can still work more than 173 hours but would receive time and one-half wages for the

excess hours only if they had been pre-authorized. The Arbitrator notes and it may very well be to the State's benefit, in some cases, to authorize the overtime.

Award:

9.4 Overtime

Employees who work in excess of one hundred seventy three (173) hours in a month will be paid overtime for such additional hours at the rate of one and one half (1.5) times their regular hourly rate if he or she has written authorization from the State to work the overtime. Paid leave time shall not be considered time worked for the purposes of this section. For the purpose of this section a "month" begins at midnight on the first calendar day of each month and ends at 11:59 p.m. on the final calendar day of each month. The Employer shall have the right to take such reasonable steps as it deems necessary to limit the obligation to pay overtime hours.

Article 9.5 Home Care Aide Certification and Testing Costs

Current Language: (No Current language)

Union's Proposal:

9.5 Home Care Aide Certification and Testing Costs

The Employer shall pay the full costs of any required "Home Care Aide" certification examination fees or any other required costs incurred by home care workers while undergoing the process of meeting mandatory training requirements.

State's Proposal: (No change)

Analysis:

There is a substantial need for trained and qualified IPs. Union evidence convinces the Arbitrator that the population from which to draw these employees often times lacks financial

resources. Reimbursement by the State for at least part of the examination fee is justified so long as the potential employee passes the examination.

Award:

9.5 Home Care Aide Certification and Testing Costs

Upon the successful completion of the "Home Care Aide" certification examination, the State shall reimburse home care workers up to \$100 of the cost of the examination.

Article 10.2 Comprehensive Health Care Benefits

Current Language:

10.2 Contributions

Effective July 1, 2009, the Employer shall contribute up to six hundred two dollars and seventy-seven cents (\$602.77) 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 eighty-six (86) hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage. However, those home care workers who are receiving health insurance through the Trust on July 1, 2009 and those transitioning from an agency provider position (covered by the Letter of Agreement dated May 18, 2009), and who work at least seventy seven (77) hours in the months of July through December 2009, will continue to be eligible to receive health care benefits. Effective January 1, 2010 the eligibility requirement for all home care workers will return to eighty-six (86) hours per month.

Effective July 1, 2010, the Employer shall contribute up to six hundred twenty dollars and eighty-five cents (\$620.85) 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 eighty-six (86) hours per month and is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

Provided the State received approval from the Center for Medicaid services (CMS), the Trust may, at its sole discretion, establish cents-per-hour contribution rates for

the Employer, based on the total number of Department-paid hours worked by members of the bargaining unit and the total number of Department paid service hours provided by Washington agency home care providers that contribute to the Trust. Department-paid hours shall not include consumer participation hours. Hourly contribution rates shall not, in any event, cost more to the State than the amounts provided using the monthly contribution method.

Implementation of hourly rate contributions shall occur only at such time as a practical application of the process may be put into effect. Upon the effective date of such a transition to cents-per-hour contribution rate, the terms of eligibility above shall be voided and eligibility for health care benefits shall be determined solely by the Trust.

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

The Trust shall determine the appropriate level of contributions, if any, by eligible home care workers provided, however, that if such contribution is required to be a deduction from home care worker' paychecks performed by the State, such deduction shall be the same for each eligible home care worker in whole dollar amounts. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer.

10.3 Payroll Deductions

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

Union's Proposal:

10.2 Contributions

Effective July 1, 2011, the Employer shall contribute up to six hundred eighty six dollars and four cents (\$686.04) 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 eighty-six (86) hours per month, and who is not otherwise eligible to receive health care benefits through other family coverage. However, those home care

workers who are receiving health insurance through the Trust on July 1, 2009 and those transitioning from an agency provider position (covered by the Letter of Agreement dated May 18, 2009), and who work at least seventy seven (77) hours in the months of July through December 2009, will continue to be eligible to receive health care benefits. Effective January 1, 2010 the eligibility requirement for all home care workers will return to eighty-six (86) hours per month.

Effective July 1, 2012, the Employer shall contribute up to seven hundred fifty-eight dollars and seven cents (\$758.07) 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 eighty-six (86) hours per month and is not otherwise eligible to receive health care benefits through other family coverage, other employment based coverage or military or veterans coverage.

The Trust may, at its sole discretion, establish cents-per-hour contribution rates for the Employer, based on the total number of Department-paid hours worked by members of the bargaining unit and the total number of Department paid service hours provided by Washington agency home care providers that contribute to the Trust. Department-paid hours shall not include consumer participation hours. Hourly contribution rates shall not, in any event, cost more to the State than the amounts provided using the monthly contribution method. Upon the effective date of such a transition to cents-per-hour contribution rate, the terms of eligibility above shall be voided and eligibility for health care benefits shall be determined solely by the Trust.

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

The Trust shall determine the appropriate level of contributions, if any, by eligible home care workers provided, however, that if such contribution is required to be a deduction from home care workers' paychecks performed by the State, such deduction shall be the same for each eligible home care worker an in whole dollar amounts. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer.

10.3 Payroll Deductions {No change}

State's Proposal:

Effective July 1, 2011, the Employer shall contribute \$2.06 per Department-paid hour worked to the Trust. Department-paid hours shall not include consumer participation hours, training hours paid time off or vacations.

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

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15th) day of the month following the month in which service hours are paid. Contributions shall be transmitted together with a remittance form as may reasonably be required by the Trust or their designee.

Eligibility for health care benefits shall be determined solely by the Trust.

The Trust shall determine the appropriate level of contributions, if any, by eligible home care workers provided, however, that if such contribution is required to be a deduction from home care worker's paychecks performed by the State, such deduction shall be the same for each eligible home care worker and in whole dollar amounts. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least ninety (90) days notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

10.3 Payroll Deductions

With adequate advance notice of no fewer than ninety (90) days, the Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any home care worker. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer

Analysis:

The Arbitrator is convinced that the Parties are advantaged by transitioning to a per hour reimbursement rate. Testimonial evidence indicates that the Trust will have greater flexibility and it provides a substantially easier method by which the State can budget. Moreover, it is the Arbitrator's understanding that the entire Medicaid industry functions off a per hour reimbursement concept. As to the Union's concerns that it is the Trust that should determine to move to a per hour rate, that right was established in prior negotiations and the State clearly has the right to negotiate a change during the current collective bargaining process.

The Arbitrator's award does recognize two fundamental issues. The first is the amount of the contribution which he set at \$2.16. Gregory DiMartino creditably testified that this was the break-even point (Tr 814) and the Arbitrator found no evidence that convincingly indicated otherwise. As the Arbitrator previously indicated, he believes that break-even on the medical benefit is a top priority and reflects the fact that the State has made this a priority with other employees.

Additionally, there was the issue with regard to potential growth of the number of participants in the medical benefits program. Mr. DiMartino also testified that the number of participants was currently approaching 11,000 (Tr 834). To a certain extent the Arbitrator believes that growth is an issue

for the Trust to deal with under in its new flexibility. On the other hand the award does provide some additional financial assistance in the event of substantial growth.

Award:

Effective July 1, 2011, the Employer shall contribute \$2.16 per Department-paid hour worked to the Trust. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacations.

In the event that the number of bargaining unit members participating in the health care benefit grows to 11,500 then the State will increase its contribution to \$2.26 per Department-paid hour worked and to \$2.36 if the number reaches 12,000.

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

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15th) day of the month following the month in which service hours are paid. Contributions shall be transmitted together with a remittance form as may reasonably be required by the Trust or their designee.

Eligibility for health care benefits shall be determined solely by the Trust.

The Trust shall determine the appropriate level of contributions, if any, by eligible home care workers provided, however, that if such contribution is required to be a deduction from home care worker' paychecks performed by the State, such deduction shall be the same for each eligible home care worker an in whole dollar amounts. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least sixty (60) days notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

10.3 Payroll Deductions

With adequate advance notice of no fewer than sixty (60) days, the Employer shall perform any such premium-share

payroll deductions as directed by the Trust and as authorized by any home care worker. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer

Article 13 Payroll, Electronic Deposit and Tax Withholding

Current Language:

13.1 Modern Payroll System

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

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

13.2 Twice Monthly Payments

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

Union's Proposal:

13.1 Modern Payroll System

No later than July , 2011, the Employer shall adopt a modern payroll system for the purposes of calculating and making payments to individual providers.

The system will, at a minimum, be capable of collecting and reporting demographic data, including but not limited to information outlined in Article 5: Bargaining Unit Information; calculating and applying variable wage rates; combining several consumers' service hours in a single

payment; adding and editing deductions at variable levels for health care premiums, retirement contributions, taxes, union deductions, wage garnishments, and other purposes; changing pay dates providing web-based and telephonic reporting of hours; providing for direct deposit into multiple bank or other accounts; provide for payment by electronic debit card; and providing a reasonable level of ease and cost-control in making changes to fields and/or records or system-wide payments and deductions on a thirty day (30) day notice with no significant addition cost to the Employer.

13.2 Twice Monthly Payments

Beginning July 1, 2011, individual provider home care workers shall be paid on a twice-monthly basis.

State's Proposal: [No change]

Analysis:

Everyone wants a modern payroll system based in current technology. The State has initiated the process by which to complete this task during the life of the 2011 - 13 CBA. The Arbitrator's award directs the State to continue this effort in good faith. Once that system has been installed, the award then directs the State to initiate the process for moving from a once a month to a twice a month payment to the IPs.

Award:

13.1 Modern Payroll System

The State will in good faith continue the program it has initiated for implementing a modern payroll system for the purposes of calculating and making payments to individual providers.

The system will, at a minimum, be capable of collecting and reporting demographic data, including but not limited to information outlined in Article 5: Bargaining Unit Information; calculating and applying variable wage rates; combining several consumers' service hours in a single

payment; adding and editing deductions at variable levels for health care premiums, taxes, union deductions, wage garnishments, and other purposes; providing web-based and telephonic reporting of hours; providing for direct deposit; and providing a reasonable level of ease and cost-control in making changes to fields and/or records or system-wide payments and deductions with no significant addition cost to the Employer.

13.2 Twice Monthly Payments

When the State has finished installing the modern payroll system, it will initiate the process by which to convert payroll so that individual provider home care workers will be paid on a twice-monthly basis.

Article 16 Training

Current Language

16.4 Contributions

Subject to the provisions of ESHB 1244, Section 206(7)(c), the Employer shall make the following contributions to the Partnership: Effective July 1, 2009 the Employer shall contribute up to ten cents (\$0.10) to the Partnership per paid hour for all home care workers covered by this Agreement. Effective July 1, 2010 the Employer shall contribute up to twenty-two cents (\$0.22) to the Partnership per paid hour for all home care workers covered by this Agreement.

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

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

16.5 Minimum Basic Training Requirements

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

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

16.6 Minimum Continuing education Training Requirements

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

16.7 Exemptions from Minimum Training Requirements

Effective July 1, 2009, all existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers. The Partnership shall recognize all exemptions from required basic training for individual providers required by law.

16.8 Minimum Training Requirements for Exempted Individual Providers

All individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

The Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

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

16.9 Mentoring

Pursuant to RCW 74.39A.330, beginning on January 1, 2010 the Training Partnership shall prepare to offer a peer mentoring program to all new individual providers by July 1, 2011. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire or fire or instruct the mentee in the performance of the individual provider's duties or with the case manager's exercise of his or her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

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

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

16.10 Advanced Training

Pursuant to RCW 74.39A.350, The Partnership shall prepare to offer advanced training for individual providers by January 1, 2012

16.12 Training Provisions, Tracking and Reporting

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

1. Providing all types of training required by law and that meets training standards set in administrative rule.
2. Providing all types of curricula and methods of delivery authorized in rule by the Employer.
3. Registering all individual providers eligible for training.

4. Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines.
5. Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable.
6. Providing fully supplied clinical settings and ADA compliant facilities for training.
7. Evaluating knowledge and skills competency prior to the administration of the certification examination.
8. Issuing state-provided Certifications of Completion to those individual providers that successfully complete their course work.
9. Providing the Employer with reports on student course evaluations at least quarterly.
10. Maintaining training records for a reasonable amount of time and making such records available to individual providers upon request.
11. Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

16.13 Transition to the Partnership

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

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

16.14 Access to Training

- A. Prior to January 1, 2010
The Employer agrees to provide the Union with a total of thirty (30) minutes of presentation time on Union issues at either the Revised Fundamentals of Care (RFOC) training or the Parent Provider Training (PPT) for parents of people with developmental disabilities.

This thirty (30) minute period shall be paid as time worked for all individual provider home care works in the bargaining until receiving the Union portion of training.

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

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

The Employer agrees to have the agencies providing or arranging for the training give written notice to the Union, which will include the date, location and the time of the RFOC or PPT, within two (2) weeks after the training is first scheduled. This written notice shall be sent by email. The Union agrees that if it or any of its representatives have questions about the schedule they will contact the person at the agency who provided them notice of the training. The Union will not contact the trainer with any questions about the training or the trainer's presentation.

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

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

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

wages, benefits and the Union. You will be paid for this one half (1.2) hour of time.

In addition, if the trainer is asked by individuals who are not IPs if they should attend the Union presentation the response will be that the time is paid time only for IPs and that if any other person decides to attend they will not be paid for the time.

- B. After January 1, 2010
The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. Any additional time for a presentation on Union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.
- C. Employer Access to Training
Effective January 1, 2010, Employer responsibilities included in this section 16.14 for reporting and notification shall become the responsibility of the Partnership. Effective January 1, 2010, the Partnership shall provide all statewide training, schedules for all basic training, advanced training and continuing education courses, including dates, locations and times, to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

16.15 Indemnify and Hold Harmless

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or home care workers under this Agreement

Union's Proposal:

16.4 Contributions

The Employer shall make the following contributions to the Partnership: Effective July 1, 2011 the Employer shall contribute up to thirty-one cents (\$0.31) to the Partnership per paid hour for all home care workers covered by this Agreement. Effective July 1, 2012 the Employer shall contribute up to thirty-one and six tenths of one cent

(\$0.316) to the Partnership per paid hour for all home care workers covered by this Agreement.

In the event any other significant change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

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

16.5 Minimum Basic Training

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

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

16.6 Minimum Continuing education Training Requirements

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

16.7 Exemptions from Minimum Training Requirements

All existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers. The Partnership shall recognize all exemptions from required basic training for individual providers required by law.

16.8 Minimum Training Requirements for Exempted Individual Providers

All individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

The Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

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

16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall prepare to offer a peer mentoring program to all new individual providers by July 1, 2011. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire or fire or instruct the mentee in the performance of the individual provider's duties or with the case manager's exercise of his or her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

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

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

16.10 Advanced Training

Pursuant to RCW 74.39A.350, The Partnership shall prepare to offer advanced training for individual providers by January 1, 2012. The parties anticipate that the Partnership will offer advanced and other educational and professional development opportunities

to Partnership beneficiaries, including but not limited to higher education tuition reimbursement, English as a Second Language (ESL) coursework and certification and other educational enhancement that allow home care workers to improve their skills and knowledge and advance their careers in home care, health care, social services, special education and other related fields.

16.12 Training Provisions, Tracking and Reporting

The parties agree that it is their intention that the Partnership will be capable of the following:

1. Providing all types of training required by law and that meets training standards set in administrative rule.
2. Providing all types of curricula and methods of delivery authorized in rule by the Employer.
3. Registering all individual providers eligible for training.
4. Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines.
5. Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable.
6. Providing fully supplied clinical settings and ADA compliant facilities for training.
7. Evaluating knowledge and skills competency prior to the administration of the certification examination.
8. Issuing state-provided Certifications of Completion to those individual providers that successfully complete their course work.
9. Providing the Employer with reports on student course evaluations at least quarterly.
10. Maintaining training records for a reasonable amount of time and making such records available to individual providers upon request.
11. Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

16.13 Access to Training

A. Union Presentation Compensation

The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. Any additional time for a presentation on Union issues agreed upon between the

Union and the Partnership shall not be paid by the Employer.

B. **Employer Access to Training**

The Partnership shall provide all statewide training, schedules for all basic training, advanced training and continuing education courses, including dates, locations and times, to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

16.14 Indemnify and Hold Harmless

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or home care workers under this Agreement

State's Proposal:

16.4 Contributions

The Employer shall make the following contributions to the Partnership: Effective July 1, 2011 the Employer shall contribute up to twenty-three cents (\$0.23) to the Partnership per Department-paid hour worked by all home care workers covered by this Agreement. Department-paid hours shall not include consumer participating hours, training hours, paid time off or vacation hours

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

Contributions required by this provision shall be paid to the Partnership on or before the twenty-fifth (25th) day of the month following the month for which service hours are paid. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or its designee.

16.5 Minimum Basic Training

All legally required basic training for individual providers shall be provided through the Partnership. Upon completion of the required basic training requirement, individual providers shall be compensated at their regular rate of pay for all hours spent in legally-required basic training.

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

16.6 Minimum Continuing education Training Requirements

Each individual provider shall complete all legally required continuing education training through the Partnership. The continuing education requirements must be satisfied every calendar year. The purpose of continuing education is to improve and enhance the knowledge and skills of individual providers relative to the care needs of their consumer(s). Completion of all continuing education hours is a prerequisite for maintaining eligibility to work as an individual provider. Upon completion of required continuing education training, providers shall be compensated at their regular rate of pay for all hours spent in legally-required continuing education.

16.7 Exemptions from Minimum Training Requirements

All existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers. The Partnership shall recognize all exemptions from required basic training for individual providers required by law.

16.8 Minimum Training Requirements for Exempted Individual Providers

All individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

The Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

Any individual provider who is exempted from basic training requirements, or any portion thereof, may voluntarily enroll at his or her own expense in any training offered by the Partnership for which that individual provider is otherwise eligible.

16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall offer a peer mentoring program to all new individual providers by July 1, 2011. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire or fire or instruct the mentee in the performance of the individual provider's duties or with the case manager's exercise of his or her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

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

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

16.10 Advanced Training

Pursuant to RCW 74.39A.350, The Partnership shall offer advanced training for individual providers by January 1, 2012

16.12 Training Provisions, Tracking and Reporting

The parties agree that it is their intention that the Partnership will be capable of the following:

1. Providing all types of training required by law and that meets training standards set in administrative rule.
2. Providing all types of curricula and methods of delivery authorized in rule by the Employer.
3. Registering all individual providers eligible for training.
4. Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines.

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

16.13 Access to Training

- A. The parties agree that the Union shall have a total of thirty (30) minutes of presentation time on Union issues at either the Revised Fundamentals of Care (RFOC) training or the Parent Provider Training (PPT) for parents of people with developmental disabilities. This thirty (30) minute period shall be paid as time worked for all individual provider home care works in the bargaining until receiving the Union portion of training.

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

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

- B. Union Presentation Compensation

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

- C. **Employer Access to Training**
The Partnership shall provide all statewide training, schedules for all basic training, advanced training and continuing education courses, including dates, locations and times, to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

16.14 Indemnify and Hold Harmless

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or home care workers under this Agreement

Analysis:

As the Arbitrator has previously indicated, he believes that this issue is a priority and ultimately concludes that the State needs to do more in order to be in full compliance with Initiative 1029. At the same time, he is also convinced that a compromise between the two positions with regard to the rate of contribution provides the Trust with sufficient financial resources to move forward on the entire program at least in a barebones manner. Otherwise, his award is the language of the Union which he believes more closely mirrors the tone and tenor of Initiative 1029.

Award:

16.4 Contributions

During the life of this agreement the Employer shall contribute up to twenty-seven cents (\$0.27) to the Partnership per paid hour for all home care workers covered by this Agreement.

In the event any other significant change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

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

16.5 Minimum Basic Training

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

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

16.6 Minimum Continuing education Training Requirements

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

16.7 Exemptions from Minimum Training Requirements

All existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers. The Partnership shall recognize all exemptions

from required basic training for individual providers required by law.

16.8 Minimum Training Requirements for Exempted Individual Providers

All individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

The Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

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

16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall prepare to offer a peer mentoring program to all new individual providers by July 1, 2011. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire or fire or instruct the mentee in the performance of the individual provider's duties or with the case manager's exercise of his or her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

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

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

16.10 Advanced Training

Pursuant to RCW 74.39A.350, The Partnership shall prepare to offer advanced training for individual providers by January 1, 2012. The parties anticipate that the Partnership will offer advanced and other educational and professional development opportunities to Partnership beneficiaries, including but not limited to higher education tuition reimbursement, English as a Second Language (ESL) coursework and certification and other educational enhancement that allow home care workers to improve their skills and knowledge and advance their careers in home care, health care, social services, special education and other related fields.

16.12 Training Provisions, Tracking and Reporting

The parties agree that it is their intention that the Partnership will be capable of the following:

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

16.13 Access to Training

- A. Union Presentation Compensation

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

- B. **Employer Access to Training**
The Partnership shall provide all statewide training, schedules for all basic training, advanced training and continuing education courses, including dates, locations and times, to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

16.14 Indemnify and Hold Harmless

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or home care workers under this Agreement

Article 22 Retirement Benefits

Current Language:

22.2 Development of a Retirement Benefit Trust

At such time that the parties have negotiated an Employer contribution towards a retirement benefit, the parties shall join a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

Union's Proposal:

22.2 Development of a Retirement Benefit Trust

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

State's Proposal: [No proposal]

Analysis:

The Arbitrator maintains the position that he has taken in prior decisions. Ultimately these employees need and deserve some type of retirement fund even if they are the sole contributor to such a fund. The Arbitrator awards the retention of language found in the existing agreement in recognition that nothing will happen about retirement in the next couple of years because of the current economic problems but at the same time the language keeps the hope alive.

Award:

22.2 Development of a Retirement Benefit Trust

At such time that the parties have negotiated an Employer contribution towards a retirement benefit, the parties shall join a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

New Article Holidays and Other Benefits

Current Language: [No current language]

Union's Proposal:

Holidays and Other Benefits

1. Paid Holidays

The Employer will recognize the following holidays:

- a) New Year's Day (January 1st)
- b) Labor Day (first Monday in September)
- c) Thanksgiving Day (4th Thursday in November)
- d) Christmas Day (December 25th)

- e) One floating religious holiday to be determined by worker
- 2. Holiday Pay
Home care workers will be paid for all actual hours required to be worked on the holidays above at their overtime rate of one and one-half times their regular hourly rate of pay
- 3. Jury Duty Leave
Employees shall be paid at their regular rate of pay for time spent serving on jury duty.
- 4. Bereavement Leave
Employees shall be paid at their regular rate of pay for up to three (3) days per calendar year upon the death of an immediate family member. Immediate family shall be defined as a grandparent parent or parent-in-law, spouse or domestic partner, sibling, child grandchild or stepchildren of the immediate family.

State's Proposal: [No Proposal]

Analysis:

The Arbitrator has previously indicated that any available financial resources would be directed, as a matter of priority, to the wage schedule. Since the Union's proposal is a cost item to the State, the Arbitrator cannot include it in his award for the 2011 - 13 CBA.

Award:

[The award does not provide a holiday or any other paid time off benefit]

AWARD SUMMARY

Article 5 Bargaining Unit Information

5.1 Information to be Provided

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

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

Article 9.1 Wages

9.1 Wages

Effective July 1, 2011, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours not including time spent as mentors pursuant to Section 9.2. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any home care worker according to any other rate than the rates contained in Appendix A, are hereby void.

Appendix A - Wage Scale
July 1, 2011 - June 30, 2013

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

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors or trainers as assigned by the Training Partnership. Time worked as a mentor will not count toward cumulative career hours.

Article 9.2 Certification Differentials

9.2 Mentor, Preceptor, and Trainer Pay

Pursuant to Article 16.9, a home care worker who is assigned by the Training Partnership as a mentor preceptor, or a trainer of other home care workers or prospective home care workers shall be paid an additional one dollar (\$1.00) per hour differential in addition to his or her regular hourly wage rate, and in addition to any other differential or adjustments for each hour that he or she works as a mentor, preceptor, or trainer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

Article 9.3 Mileage Reimbursement

9.3 Mileage Reimbursement

Home care workers shall be compensated for the use of their personal vehicles to provide services to their consumers (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month per consumer. The State will not unreasonably deny a request to expand the mileage allowance where unusual circumstances and the care or service plan warrant an allowance greater than sixty (60)

miles per month The Employer will make all necessary changes to work forms, the payroll system and the CARE tool to assure that accurate mileage can be tracked and compensated.

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

Article 9.4 Overtime

9.4 Overtime

Employees who work in excess of one hundred seventy three (173) hours in a month will be paid overtime for such additional hours at the rate of one and one half (1.5) times their regular hourly rate if he or she has written authorization from the State to work the overtime. Paid leave time shall not be considered time worked for the purposes of this section. For the purpose of this section a "month" begins at midnight on the first calendar day of each month and ends at 11:59 p.m. on the final calendar day of each month. The Employer shall have the right to take such reasonable steps as it deems necessary to limit the obligation to pay overtime hours.

Article 9.6 Home Care Aide Certification and Testing Costs

9.5 Home Care Aide Certification and Testing Costs

Upon the successful completion of the "Home Care Aide" certification examination, the State shall reimburse home care workers up to \$100 of the cost of the examination.

Article 10 Comprehensive Health Care Benefits

Effective July 1, 2011, the Employer shall contribute \$2.16 per Department-paid hour worked to the Trust. Department-paid hours shall not include consumer participation hours, training hours paid time off or vacations.

In the event that the number of bargaining unit members participating in the health care benefit grows to 11,500 then the State will increase its contribution to \$2.26 per Department-paid hour worked and to \$2.36 if the number reaches 12,000.

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

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15th) day of the month following the month in which service hours are paid. Contributions shall be transmitted together with a remittance form as may reasonably be required by the Trust or their designee.

Eligibility for health care benefits shall be determined solely by the Trust.

The Trust shall determine the appropriate level of contributions, if any, by eligible home care workers provided, however, that if such contribution is required to be a deduction from home care worker' paychecks performed by the State, such deduction shall be the same for each eligible home care worker an in whole dollar amounts. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least sixty (60) days notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

10.3 Payroll Deductions

With adequate advance notice of no fewer than sixty (60) days, the Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any home care worker. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer

Article 13 Payroll, Electronic Deposit and Tax Withholding

13.1 Modern Payroll System

The State will in good faith continue the program it has initiated for implementing a modern payroll system for the purposes of calculating and making payments to individual providers.

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

13.2 Twice Monthly Payments

When the State has finished installing the modern payroll system, it will initiate the process by which to convert payroll so that individual provider home care workers will be paid on a twice-monthly basis.

Article 16 Training

16.4 Contributions

During the life of this agreement the Employer shall contribute up to twenty-seven cents (\$0.27) to the Partnership per paid hour for all home care workers covered by this Agreement.

In the event any other significant change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

Contributions required by this provision shall be paid to the Partnership on or before the twenty-fifth (25th) day of the month following the period for which contributions are due or before such other date as the Trustees of the Partnership may hereafter determine. Contributions shall be transmitted together with a remittance report containing

such information, in such manner, and on such form as may be required by the Partnership or its designee.

16.5 Minimum Basic Training

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

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

16.6 Minimum Continuing education Training Requirements

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

16.7 Exemptions from Minimum Training Requirements

All existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers. The Partnership shall recognize all exemptions from required basic training for individual providers required by law.

16.8 Minimum Training Requirements for Exempted Individual Providers

All individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

The Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

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

16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall prepare to offer a peer mentoring program to all new individual providers by July 1, 2011. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire or fire or instruct the mentee in the performance of the individual provider's duties or with the case manager's exercise of his or her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

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

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

16.10 Advanced Training

Pursuant to RCW 74.39A.350, The Partnership shall prepare to offer advanced training for individual providers by January 1, 2012. The parties anticipate that the Partnership will offer advanced and other educational and professional development opportunities to Partnership beneficiaries, including but not limited to higher education tuition reimbursement, English as a Second Language (ESL) coursework and certification and other educational enhancement that allow home care workers to improve their skills and knowledge and advance their careers in home care, health care, social services, special education and other related fields.

16.12 Training Provisions, Tracking and Reporting

The parties agree that it is their intention that the Partnership will be capable of the following:

23. Providing all types of training required by law and that meets training standards set in administrative rule.

24. Providing all types of curricula and methods of delivery authorized in rule by the Employer.
25. Registering all individual providers eligible for training.
26. Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines.
27. Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable.
28. Providing fully supplied clinical settings and ADA compliant facilities for training.
29. Evaluating knowledge and skills competency prior to the administration of the certification examination.
30. Issuing state-provided Certifications of Completion to those individual providers that successfully complete their course work.
31. Providing the Employer with reports on student course evaluations at least quarterly.
32. Maintaining training records for a reasonable amount of time and making such records available to individual providers upon request.
33. Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

16.13 Access to Training

- A. Union Presentation Compensation
The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. Any additional time for a presentation on Union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.
- B. Employer Access to Training
The Partnership shall provide all statewide training, schedules for all basic training, advanced training and continuing education courses, including dates, locations and times, to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

16.14 Indemnify and Hold Harmless

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or home care workers under this Agreement

Article 22 **Retirement Benefits**

At such time that the parties have negotiated an Employer contribution towards a retirement benefit, the parties shall join a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

New Article Holidays and Other Benefits

This interest arbitration award is respectfully submitted on this the 30th day of September, 2010 by,

Timothy D. W. Williams
Arbitrator

