

INTEREST ARBITRATION BEFORE
ARBITRATOR MICHAEL ANTHONY MARR

TACOMA AND SEATTLE, WASHINGTON

In the Matter of the Interest Arbitration) ARBITRATOR'S OPINION
) AND AWARD
)
) PERC Case 130759-1-18
)
 between the) COLLECTIVE BARGAINING
) AGREEMENT FOR THE
 STATE OF WASHINGTON, OFFICE) 2019-2021 BIENNIUM
 OF FINANCIAL MANAGEMENT, AND)
 THE DEPARTMENT OF CHILDREN,)
 YOUTH, AND FAMILY SERVICES,)
)
 Employer,)
)
 and)
)
 FAMILY CHILD CARE PROVIDERS,)
 SEIU 925 (Child Care Providers Bargaining)
 Unit),)
)
)
 UNION.)
)
 _____)

Appearances for the Employer:
Gina L. Comeau, Assistant Attorney General
John C. Jaquish, Assistant Attorney General
Office of the Attorney General
State of Washington
1250 Pacific Avenue, Suite 105
Tacoma, Washington 98402

Appearances for Union:
Robert H. Lavitt, Esq.
Schwerin Campbell Barnard Iglitzen & Lavitt
18 West Mercer Street
Suite #400
Seattle, WA 98119

Witnesses for the Employer:
Heather Moss, Deputy Director for the Department
of Children, Youth, and Family Services

Nicole Rose, Director of Eligibility and Provider Support,
Department of Children, Youth, and Family Services
Matt Judge, Administrator, Department of Children,
Youth, and Family Services
Robin Vazquez, Labor Negotiator, Office of Financial Management
Rebecca Doane, DHS, Office of Accounting Services
Jim Crawford, Assistant Director of Budgeting, Office of Financial Management
Marc Baldwin, Office of Forecasting and Research, Office of Financial Management

Witnesses for the Union:

Mary Louis Curry, family child care provider
Carol Gibbs, family child care provider
Pauline Owen, family child care provider
Nathalia Medina, family child care provider
Tyler Bass, Field Director for SEIU, Early Learning Division
Devin Rydel Kelly, Strategic Researcher for SEIU, Local 925
Karen Hart, President, SEIU, Local 925

ARBITRATOR’S OPINION AND AWARD

The above-referenced interest arbitration was heard before your Arbitrator on July 30 and 31, 2018 in Tacoma, Washington, at the Offices of the Attorney General, State of Washington, and on August 1, 2, and 3, 2018 in Seattle, Washington, at the Law Offices of Sherwin, Campbell, Barnard, Iglitzin & Lavitt.¹ The proceedings were transcribed by Cindy Koch, a court reporter with Buell and Associates.

Your Arbitrator was mutually selected by the parties as the interest arbitrator for the above-referenced interest arbitration. Both parties were represented by professional and competent counsel at the arbitration hearing. As noted above, The State of Washington, Office of Financial Management and the Department of Children, Youth, and Family Services, hereinafter sometimes collectively referred to as the “State” or “Employer,” were represented by Assistant Attorney General Gina L. Comeau and Assistant Attorney General John C. Joquish. As noted above, the Family Child Care

¹ This decision and award shall refer to many arbitrators. Therefore, the words “your Arbitrator” shall always be in reference to arbitrator “Michael Anthony Marr.”

Providers, SIEU, (Child Care Provider’s Bargaining Unit), Local 925, hereinafter sometimes referred to as the “Union” or “SIEU” was represented by Robert H. Lavitt, Esq. During the interest arbitration hearing thirty-eight (38) Employer exhibits, forty-one (41) Union exhibits, and four (4) Joint Exhibits were received into evidence. They are set forth in Section VIII of this opinion and award. State Exhibit 1 and Union Exhibit 1 are both the current Collective Bargaining Agreement between the parties and shall sometimes hereinafter be referred to as the “CBA.” As noted above, the State called seven (7) witnesses and the Union called seven (7) witnesses.

The parties were given full opportunity to present evidence, call witnesses, and cross-examine witnesses. The parties agreed to make closing oral arguments in lieu of written closing briefs. This was done on the final day of the arbitration hearing, August 3, 2018. The Union’s closing argument is set forth in Sections III and V and the State’s in Section IV of the opinion and award.

After the first day of the arbitration hearing, July 30, 2018, your Arbitrator was requested to expedite his award. Prior to this request it was your Arbitrator’s understanding that he had until September 21, 2018 to file his award. Your Arbitrator agreed to expedite this opinion and award and have it to the parties by the agreed upon deadline of September 7, 2018. The proceeding was officially closed on August 8, 2018 after your Arbitrator received clean versions of the Union’s proposals. Like arbitrators before him who were requested to expedite their awards in interest arbitrations between the parties, this will mean that your Arbitrator will be unable to discuss the matters before him as completely as he would otherwise have done.²

² RCW 41.80.101(3)(a) and (b) provides “The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the

Your Arbitrator has reviewed the written transcripts consisting of five days of testimony and arguments as well as the numerous exhibits submitted by the parties. Your Arbitrator does not feel compelled to address all of the numerous arguments and issues raised by the professional advocates representing the parties. Please note that this is not to be interpreted that your Arbitrator has not read and reread the transcripts and numerous pages of exhibits and carefully considered all arguments of counsel. Rather, your Arbitrator has elected to address only the factors that your Arbitrator is mandated to consider pursuant to RCW 41.55.465 which have had a significant impact on his decision-making process. Your Arbitrator, as a general rule, will not comment on matters he believes are irrelevant, superfluous, redundant, or rendered moot by this opinion and award.³

I. BACKGROUND

The State of Washington and the Family Child Care Providers, SEIU 925, were unable to successfully negotiate various articles of their CBA for the July 1, 2019 through June 30, 2021 biennium. The Employer submitted the following issues for certification: Articles 10: 10.2 (Non-Standard Hour Funding Cap), 11: 11.1 (Subsidy

agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests: (a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and (b) Have been certified by the director of the office of financial management as being feasible financially for the state.

If your Arbitrator was given advanced notice of this request, there would not have been any concern whatsoever as he would have cleared his August schedule. Your Arbitrator had intended to use September to complete this opinion and award. Your Arbitrator was inundated with a one-day panel arbitration which was rescheduled, two one-day mediations which were rescheduled, a request that he accept an appointment as a discovery master which he declined, a commissionership which required substantial work, and closing written briefs due on August 3, 2018 from a four (4) day federal arbitration which were rescheduled to August 31st. At that time your Arbitrator was also scheduled for six court appearances, with two additional court appearances added after August 3, 2018. These could not be rescheduled. Despite rescheduling your Arbitrator still found it necessary to “burn the midnight oil” to review the numerous exhibits and five days of transcripts necessary to expedite this opinion and award.

³ In the twenty (20) plus years that your Arbitrator has arbitrated labor disputes and contracts, other than panel arbitrations that involve your arbitrator in Hawaii, the arbitration between the State of Washington and the Child Family Care Providers, SEIU 925, was one of the most well-organized, professional, and civil hearings that your Arbitrator has presided over. In addition, the friendly humor between the counsels and sometimes with witnesses is commendable. It was most certainly my honor and privilege to serve and to meet the counsels and the numerous witnesses.

Rates and Partial Time Rate); 11.3 (Legislative Pass-through), and Article 12: 12.3 (Health Insurance Cap). The Union submitted the following issues for certification: Articles 10: 10.2 Non-Standard Hour Funding Cap; 10.3 Field Trip Funding Cap, Article 11: 11.1 Subsidy Rates and Partial Time Rate; 11.3 Legislative Pass-through, 12: 12.3 Health Insurance Funding Cap, 16: 16.2 Absent Days. The issues were certified for arbitration on July 17, 2018 by Michael P. Sellars, Executive Director of the State of Washington Public Employment Relations Commission.

After the issues were certified, the parties continued to meet at the negotiating table. On July 26, 2018 your Arbitrator was advised that all issues regarding Article 10 were resolved. On July 27, 2018 your Arbitrator was advised that issues regarding Article 11.3 were resolved. Hence, all issues certified except Article 10 and Article 11.3 shall be resolved by your Arbitrator. The certified issues that remain unresolved are Articles 11.1, 12.3, and 16.2.

II. UNION AND STATE PROPOSALS

Article 11 concerns subsidy rates. The current language set forth in Article 11.1 reads as follows:

- 11.1 Effective July 1, 2017, subsidy rates for licensed providers shall increase by two percent (2%). (See Appendix A-1).

Effective July 1, 2017, subsidy rates for FFN providers shall be two dollars and fifty cents (\$2.50) per child per hour.

All providers shall ensure that the base rate they charge the State is no greater than their usual private pay rates. If a provider charges the State a higher amount than their usual private pay consumer rate, the provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but is subject to the administrative

hearing process.

The State proposed to change the current language in Article 11.1 as it relates to dates and subsidy rates for licensed providers and FFN while leaving the remaining portion of 11.1 unchanged. The State's proposed language is as follows:

Effective July 1, 2019, subsidy rates for licensed providers shall be in accordance with Appendix A-1. Effective July 1, 2020, subsidy rates shall increase by three percent (3%).

Effective July 1, 2019, subsidy rates for FFN providers shall be two dollars and fifty-five (\$2.55) per child per hour.

All providers shall ensure that the base rate they charge the State is no greater than their usual private pay rates. If a provider charges the State a higher amount than their usual private pay consumer rate, the provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but is subject to the administrative hearing process.

The Union also proposed to change the current language in Article 11.1 as it relates to dates and subsidy rates for licensed providers and FFN, and to add a new provision for a partial-day rate by increasing the half-day rate to seventy-five percent (75%) of the full-day rate. The Union's proposed language is as follows:

Effective July 1, 2019, subsidy rates for licensed providers shall increase across the board by five percent (5%).

Effective July 1, 2020, subsidy rates shall increase by five percent (5%).

Effective July 1, 2019, subsidy rates for FFN providers shall increase ten percent (10%) across the board.

Effective July 1, 2020, subsidy rates shall increase ten percent (10%) across the board.

Partial Day: "The half-day rate will be raised in all regions

to 75% of the full-day rate, in all regions for all ages.”

All providers shall ensure that the base rate they charge the State is no greater than their usual private pay rates. If a provider charges the State a higher amount than their usual private pay consumer rate, the provider agrees that an overpayment has occurred and a reimbursement is owed to the State. This overpayment will not be subject to the grievance procedure, but is subject to the administrative hearing process.

Article 12 concerns health care. The current language set forth in Article

12.3 reads as follows:

Contributions

For the first time period from July 1, 2017 through June 30, 2019, the State shall contribute to the Trust an amount per month per entitled licensed provider; this amount will be determined by the Trust. The Trust will notify the State of the monthly amount to be contributed for all entitled licensed providers effective July 1, 2017; this amount must be the same for all entitled licensed providers and may be changed during the life of the Agreement with thirty (30) calendar days’ notice. However, notwithstanding any changes to the monthly amount contributed per entitled licensed provider, the total contributions by the State will be no more than five hundred seventy-six thousand eight hundred sixty-two dollars (\$576,862.00) per month for fiscal year 2018 and six hundred twenty-seven thousand six hundred and fifteen dollars (\$627,615.00) per month for the fiscal year 2019, for all entitled licensed providers excluding the payroll deduction described below:

The State proposed to change the current language in Article 12.3

primarily as it relates to contribution dates and dollar amounts set forth in the cap while leaving the remaining portion of 12.3 unchanged. The State’s proposed language is as follows:

Contributions

For the first time period from July 1, 2019 through June 30, 2021, the State shall contribute to the Trust an amount per month per entitled licensed provider; this amount will

be determined by the Trust. The Trust will notify the State thirty (30) days in advance of what the monthly amount to be contributed for each entitled licensed provider shall be effective July 1, 2019; this amount must be the same for all entitled licensed providers and may be changed during the life of the Agreement with thirty (30) calendar days' notice. However, notwithstanding any changes to the monthly amount contributed per entitled licensed provider, the total contributions by the State will be no more than six hundred twenty-seven thousand six hundred fifteen dollars (\$627,615.00) per month for fiscal year 2020 and six hundred forty-six thousand four-hundred forty-four dollars (\$646,444.00) per month for the fiscal year 2021, for all entitled licensed providers excluding the payroll deduction described below:

The Union proposed to change the language in Article 12.3 by eliminating the health care cap. The Union's proposed language is as follows:

Contributions

For the first time period from July 1, 2019 through June 30, 2021, the State shall contribute to the Trust an amount per month per entitled licensed provider; this amount will be determined by the Trust. The Trust will notify the State thirty (30) days in advance of what the monthly amount to be contributed for each entitled licensed provider shall be effective July 1, 2019; this amount must be the same for all entitled licensed providers and may be changed during the life of the Agreement with thirty (30) calendar days' notice.

Article 16 concerns holidays, absent days, and closure days. The current language set forth in Article 16.2 concerns absent days and reads as follows:

16.2 Absent Days

- A. From July 1, 2017 through June 30, 2019: The State shall pay the licensed provider for all days the subsidized child is absent, unless an automated system for billing absent days is in place, in which case the next paragraph B applies. The State shall collect data on the actual absent day use by licensed providers while creating an automated system for billing absent days.

B. Upon implementation of an automated system for billing absent days, the State shall pay licensed providers for up to sixty (60) days per twelve (12) month authorization period when the subsidized child is absent. These days shall not roll over into subsequent authorization periods. Absent days may be billed only if the subsidized child attended care in the month of service billed for by the licensed provider, or the month prior, on a day that falls within the provider's authorized period. Absent days may be billed regardless of the number or half days or full days authorized, however the total number of days billed must not exceed the number of days authorized in the month. For the purpose of this Section, days shall be defined as consecutive twenty-four (24) hour periods. Licensed providers may bill an absent day for more than one (1) authorization within a twenty-four (24) hour period. For children served under the Children's Administration Child Care Program, refer to the provisions of Section 9.4, Planned and Urgent and Unanticipated Terminations Children's Administration.

The State proposed no changes to the current language of Article 16.2 with the exception of minor changes regarding dates. However, the Union proposed to delete portions of Article 16.2 which relate to the automated system limiting the number of paid absent days per child to sixty (60) per year. Without the automated system, there is no limitation. The Union's proposed Article 16.2 provides as follows:

16.2 Absent Days

A. From July 1, 2019 through June 30, 2021: The State shall pay the licensed provider all days the child receiving subsidy is scheduled and authorized for care but is absent. Absent days may be billed only if the subsidized child attended care in the month of service billed for by the licensed provider, or the month prior, on a day that falls within the provider's authorized period, or if the days fall within the 10 day notice period. Absent days may be billed regardless of the

number of days or full days authorized, however, the total number of days billed must not exceed the number of days authorized in the month. For the purpose of this Section, days shall be defined as consecutive twenty-four (24) hour periods. Licensed providers may bill an absent day for more than one (1) authorization within a twenty-four (24) hour period. For children served under the Children's Administration Child Care Program, refer to the provisions of Section 9.4, planned and Urgent and Unanticipated Terminations – Children's Administration.

The proposals of the parties were eventually set for interest arbitration before your Arbitrator pursuant to RCW 41.56.028.

III. POSITIONS EMPHASIZED BY THE UNION DURING CLOSING ARGUMENT

1. In-home licensed child care is facing an existential crisis. The trend lines show a dramatic decline in the total number of licensed providers. *Ex. U-20.*
2. The number of licensed homes has dropped dramatically in every region with King County being slightly less severe. From 2004 through 2018 the trend lines show a decrease in all regions upwards to a 50% decrease and in some regions in excess of 50%. *Id.*
3. The decreases are particularly pronounced in rural and low-income areas. Since April 2010 nearly 2,000 licensed family homes have disappeared. *Ex. U-29.*
4. The number of licensed family homes who are taking subsidized children has dropped below the 2,000 mark for the first time. *Id.* When the Family Child Care Providers, SEIU 925 was first organized it was north of 5,000 to 6,000 licensed homes so the drop is precipitous. *Id.*
5. *Ex. U-24* was created by the Governor to look at the problem of the loss of providers and compensation amounts. This exhibit reflects an existential crisis and if the trend continues the bargaining unit will be reduced by 50% and eventually there will be no providers to care for families of low-income children.

6. The Union's proposals are designed to make caring for subsidized children more attractive... more economically feasible and sustainable.
7. The statutory factors include the average consumer prices for goods and services, referred to as the cost of living. This is a "shall" factor and then there are several "may" factors. The shall factors are a comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities along the West Coast of the United States and the financial ability of the State to pay.
8. The Arbitrator may also consider the public's interest in reducing turnover and increasing retention of child care providers. It is not surprising there is a red flag over child care providers and that the issue of retention and reducing turnover is a factor of paramount public importance.
9. Another factor is the State's interest in promoting, through education and training, a stable child care workforce and to provide quality and reliable child care from all providers throughout the State. There is substantial discussion about the "Quality Rating Improvement System" (QRIS). The Union recognizes and appreciates the drive for quality.
10. A brand-new, state-of-the-art classroom with modern technology, great curriculum, lovely environment, scholarships, quality ratings, incentive awards that are one-time awards and professional development opportunities are good things but insufficient on their own. What is needed to make the program work is the Union's proposal of a five percent (5%) across-the-board subsidy increase for year one and a five percent across-the-board increase for year two for the child care providers who have a licensed family home. These providers use their residence as their child care business and it is open to the public. *Ex. U-5*.
11. The other portion of the bargaining unit that relates to the Union's 11.1 proposal is for family, friends, and neighbors (FFN). This group is exempt from the licensing requirements and are referred to as license-exempt providers. This group is large and consists of approximately 6,000 members. The Union's proposal is ten percent (10%) across the board for each of the two years of the contract. Since they are making \$2.50 per hour per child they care for, the amount is a 25-cent

increase. For the first year of the contract the amount would increase to \$2.75 per child and for the second year of the contract amount would increase to \$3.00 per hour per child.

12. Most providers are compensated per month for full-time families that need full-time care. These are the base rates. There are twenty-two (22) units or twenty-two (22) days of care in a given month. While not every month has twenty-two (22) units, that is what is reflected on the table. *Ex. U-5*. The base rates do not include any tier or level of quality improvements on top of the base rates. This is relevant to comparables.
13. *Ex. U-6* is the Union's Article 12 to eliminate the healthcare cap and *Ex. U-8* is the Union's proposal concerning Article 16.2, absent days.
14. The Union's partial day proposal rate is located in *Ex. U-9*, at the bottom of the page to Article 11, where it says "Partial Article 11 on half days."
15. Both sides conceptually believe in trying to make resources available to incentivize licensed providers to improve their facilities and develop and improve their skills.
16. If licensed family homes cease to do business or if they decide to no longer take subsidized children, children and families in the Working Connections program will lose out on being able to access affordable care that's available to them in a licensed family home.
17. There has been discussion on *Ex. U-30* which addresses the 75th percentile. The 75th percentile is the rate at which a family is able to access three-quarters of the providers in the family's region based upon the rate. This provides a supplier with an effective instrument for measuring whether the rate is going to provide access to care in that region. This is particularly appealing and attractive to an arbitrator who must evaluate competing proposals with a table that contains around 35 different rates throughout the state for different categories because it eliminates the need to resolve competing and complicated programs that are organized differently.⁴

⁴ The 75th percentile market rate is the price at or below which seventy-five percent (75%) of child care providers reported charging for services. The 75th percentile is a ranking of the market prices versus an average of the reported charges. The Office of Child Care has acknowledged that the 75th percentile is a benchmark for payment rates. *Ex. U-30*. The Child Care and Development Fund (CCDF) is a federal and state partnership program (over \$5 billion in federal funding) authorized under the Child Care and Development Block Grant Act (CCDBG) and administered by states, territories, and tribes with funding and support from the Administration for Children

18. The Arbitrator is statutorily charged with reviewing the child care programs in Oregon and California and to determine how they relate to Washington. Oregon uses three rates. The rates are at Levels A, B, and C, and the various zip codes throughout the state are given an assigned level, either urban, suburban, or rural. California's system is different because each of the approximately fifty (50) counties has its own system. *Ex. U-20* provides an analysis as to how to make a comparison. The comparisons are an imperfect science at best. The Union selected counties in California and Oregon based upon population and median income to compare a region in Washington. While not perfect, the Union believes it withstands scrutiny.
19. Reviewing the State's comparables reveals there is nothing in the record to determine how the counties were selected when the State selected California locations. They were inherited by State's witnesses for use in the current arbitration from previous arbitrations to be used as comparisons and there was no analysis as to why particular counties were more appropriate or applicable for purposes of comparison.
20. If the 75th percentile is used it is unnecessary to review COLA, cost-of-living adjustments across state lines or across multiple jurisdictions within the state. This was what State witnesses from the Revenue Forecast Council explained about the Runzheimer data, which "market basket" to use, and using statewide averages to compare with Washington. The Union believes that this does not work because Washington doesn't have a single statewide figure. What was proposed was looking at a high, low, and average figures, which were not used when the State's witnesses testified. What the State witnesses did was calculate the three rates and took their average. It is not a natural statewide figure in Washington. For better or for worse, Washington has a regional approach with very different rates within different regions.
21. The 75th percentile is a more-supple instrument because it takes the provider rates in the community as they are found, charges needed to stay in business, to attract families, and to operate their business. It is not necessary to sort out econometric

and Families' Office of Child Care. States use the CCDF to provide financial assistance to low-income families to access child care so they can work or attend a job training or educational program. There are restrictions on how the CCDF monies are used. For example, eight percent (8%) of funds must be spent on activities to improve the quality of services and increase access to them and three percent (3%) on activities related to quality infant and toddler care. *Ex. E-14, p. 51.*

machinations to try to line up COLAs across jurisdictional lines that don't work.

22. The key question is going to be how to make sense of the comparables. The Union submits that the natural place to start is with base rates to compare apples to apples. The State talks about using a tiered reimbursement system at Level 3 and why it is a more appropriate measure, although there has been some discussion as to other levels.
23. There is precedent to use the 75th percentile *in Ex. J-2/Ex. E-22*. This is the decision of Arbitrator Tim Williams who dealt with the 2015-2017 labor agreement for the parties. Arbitrator Williams also considered the subsidy rate. Page 21 of Arbitrator Williams' decision provides, "Most important, and what is new in this arbitration award versus prior arbitration awards involving this bargaining unit, it is difficult to make comparisons when the tiered reimbursement quality incentive program is added to discussion. Is comparability to be considered only on the base rates, or should one take into account compensation available to licensed providers through tiered incentive payments? Ultimately the arbitrator determined that for this award, where the only issue at dispute is whether to increase the base rate during the life of the agreement, the 75 percent factor should be related to the base rate, not the tiered quality incentives... In other words, base rates need to be kept high enough as to not permit the available options to parents to substantially shrink. While California comparables are not particularly helpful on this point, Oregon comparables are, since in that state the 75th percentile rate is specifically pegged to the collective bargaining agreement."
24. However, now it appears that California is pegging its rates to the 75th percentile. Also, while Oregon acknowledges this was once the case, the Oregon legislature has not maintained sufficient funding to maintain the 75th percentile.
25. A review of *Ex. U-32* contains the California preprint, and page 95 and 96 talk about the payment rates, age groups, and the 75th percentile. Arbitrator Williams used Oregon because it used the 75th percentile. Now, Oregon no longer uses the 75th percentile, but California now uses the 75th percentile.
26. The Union believes that the 75th percentile is the most useful instrument for making comparisons and the base rate should be used to make an evaluation.

27. The State has argued that it is concerned that if the base rates are used, when the tiered program is applied, it makes the rates too high. The Union believes it is a specious argument because it is referring to a rule that is found in *Ex. U-39*. This rule provides that a provider cannot bill the State more than what they're billing private pay families. Under this concept, if the subsidy rates go too high, the provider is charging the State a rate greater than what it is charging its own private pay families. However, the State's rule applies only to the base rate, not the tiered rate. The tiered rate should be ignored when considering the base rate.
28. When reviewing the most recent 2018 market survey, it reviews data that was gathered during the course of 2017 and maybe the beginning of 2018 since it was circulated in June of 2018. There's always a delay.
29. There is no evidence that over time a subsidy rate in the 70th percentile will grow and expand to afford a family access to 95 percent (95%) of providers in that region. What invariably happens is that over time the subsidy rate that the State pays decreases its access and declines.
30. Evidence was presented that the parties talked in July of 2016 and intended to be at the 75th Percentile but when they reviewed the issue a year and a half later rates were at the 30th and 40th percent market access percentile.
31. Historically, license-exempt providers have received increases similar to FFN. The Union is asking for a larger percentile increase. The comparables listed for California and Oregon, as per *Ex. U-11A*, show they are significant behind their comparables in Oregon and California. There will be additional steps that FFN's will be required in order to participate in the FFN program, various trainings, CPR, blood borne pathogens, food safety and other similar types of training. So it makes sense to increase their hourly rate given that more is being asked of them.
32. By the time the contract gets to 2019 and 2020 the California and Oregon rates for FFN will be going up and Washington will be playing catchup.
33. The Union has heard several ability to pay arguments, some of which have resulted in settlement and some which have not

resulted in settlement. However, in this arbitration the State has said so little about the ability to pay because State revenues are robust.

34. The Washington State Revenue Forecast Summary that is put out by the Revenue Forecast Council for the 2015-2017 biennium came out before arbitrator Tim Williams' arbitration decision. *Ex. U-40*. There was an objection lodged to this exhibit since there was no evidence that Arbitrator Williams considered *Ex. U-40*. Your Arbitrator concluded that he would give the exhibit appropriate weight.⁵
35. However, Arbitrator Williams did consider a 2014 Economic and Revenue Forecast Report for 2014. *Ex. U-41*. In addition, Arbitrator Williams, in regard to *Ex. E-22*, at page 23, stated "Bluntly stated, the arbitrator tempered his award with his information because he found it fully credible. He is convinced that had the 75% figure been rigorously applied the base rate increase would have to have been substantially higher." If there had not been limitations and concerns about the fiscal climate of the State, he would have applied the 75th percentile standard more rigorously and awarded a higher across-the-board increase. However, he still awarded a 2% increase.
36. The OFM reviews interest arbitration awards, contracts, and other labor agreements and the governor has the ability to invoke a provision in the law that would allow review and intervention to prevent the bottom of the economy from deteriorating.
37. *Ex. U-20, slide 23*, shows that the 2021 biennium is healthier than the previous biennium. The forecast is being adjusted upwards based upon current economic data available to the Economic and Revenue Forecast Council. For 2017-19 revenues are at 48.5 billion. For the 2021-2013 biennium the trend line continues to move strongly upward in terms of revenue forecast collection.
38. The GDP in Washington State is the highest in the country. It is predicted to rise again between 2.4 and 2.6 percent in 2019.
39. *Ex. U-17* shows that the Consumer Price Index for the Seattle area is up 3.3 percent from a year ago. This might be reflecting a little warming on the inflation side.

⁵ Your Arbitrator believes that *Ex. U-40* should not be used to support the decision of Arbitrator Williams. However, it is relevant to determine the State's revenue forecast.

40. *Ex. U-18* reflects that for the Seattle, Tacoma, and Bellevue area the consumer price index rose 3.4 percent.
41. The Union relies on the increasing revenue and the increasing cost of living index to justify its proposals.
42. The Union's proposal to strike the cap on healthcare is not based upon it being a cost item from the Union's perspective. It is not a limitless benefit as the State describes. There is a decreasing group of individuals who are potentially eligible.
43. The trend line on licensed family home providers is declining. The Union wants to incentivize providers with the offer of healthcare. Both sides recognize that this is a valuable item that will attract home providers.
44. In all the years in which monies were not exhausted for the health care benefit, the monies were returned to the general fund. Since it continues to be underspent, it is not a cost item.
45. The State and the Union are attempting to work with the Zenith, the third-party administrator for the health fund, to determine the cause of why the program is not working the way it was intended to work.
46. There is no other State labor group that has a cap on it like the one on the Child Service Provider's Bargaining Unit. This is the only group.
47. The bargaining unit overwhelmingly consists of women and a majority of the women are people of color. *Ex. U-7* is an email confirming that there is no other labor agreement with a health care cap.
48. The Union believes it is time to remove the health care cap. The Union does not believe that a cap is fair. If there are eligibility issues that need to be addressed they can be addressed by the parties in the future, but at the present time it is not a cost item and it is an award that the Union believes should be awarded.
49. Absent days concern the importance of continuity of care because some children come from distressed homes, homes with health problems, or lower-income homes with complications such loss of a job, residence, or broken car. If

there is a family problem the provider wants to hold the spot for the child from a subsidized family.

50. At the current time there is no cap on the number of absent days. If a child is absent the provider can continue to hold the spot as long as the child is eligible.
51. If the automated billing system comes online, then the State's current proposal would limit the number of absent days to five (5) days. The State has had two years to implement an automated billing system, and it has not done so. Providers are a bit anxious and skeptical about the automated billing system.
52. In the CCDF printout, which is *Ex. U-31, p. 79*, the State represents that it pays for absent days. It makes no reference to a cap. California, which is a comparable, compensates all absent days.
53. There must be adequacy of support for the providers by providing them compensation for absent days. Payment for absent days enables providers to hold a slot for their subsidized kids, which increases and stabilizes the quality of the kid's care.
54. This is not a problem for the child care providers when they deal with private pay clients. Private pay families pay to keep a slot open for the month. The State should not get a better deal with subsidized families and child care providers should not have added economic pressures.
55. The partial-day rate was meant to address a particular scenario, when school-age children might come to a provider twice in one day. Children sometimes come to the provider, leave for school, and return after school. The child care provider holds a school-age slot from 8:30 a.m. to 3:00 p.m. It is being held to take care of the child in the afternoon. Private pay clients would pay a full days' payment for that scenario. That's the private market. If the Arbitrator wishes to use the proverbial pencil to limit the application of the partial-day rate to the specific scenario described, it would be acceptable to the Union. The Union was never trying to get 1.5 days' compensation for doing a days' work or less.
56. Under the current system, if a child stays at a home for less than five hours, even if the child visits the providers home twice, the child care provider is not paid a full day, because if

the number of hours is less than 5, the child care provider is paid a half-day.

57. The State has stated that the partial day rate would create a new classification or it would be different from the current half-day structure. It is significant to note that one of the features of the CBA is the enhanced toddler rate. The enhanced toddler category was created by Arbitrator Cavanaugh's decision, dated August 28, 2008. *Ex. J-4*. He extended the infant rate and called it an enhanced toddler rate. Arbitrators have issued awards that have impacted how rates are administered.
58. Lastly, *Ex. U-11(B)*, the comparables for California and Oregon are different. Oregon has a partial day rate of 75% of a full day and California, depending upon the county, has different approaches which are not uniform.
59. The proposals put forth by the Union have the broadest impact on the shrinking number of quality homes and the crisis needs to be turned around. The proposals incentivize child care providers to keep their homes in business, accept children in the subsidized program, and attract new providers into the system so the number of child care providers will increase to care for subsidized children.

IV. POSITONS EMPHASIZED BY THE STATE DURING CLOSING ARGUMENT

1. The State's Early Achiever's Program comes with benefits that cannot be ignored while reviewing a child care provider's total compensation and the State's ability to pay.
2. The Early Achiever's program was designed by the State to incentivize child care providers with subsidies, scholarships, training, coaching, professional development, and quality improvement awards, all with which have a cost to the State. In addition, they are paid nonstandard hours for the child care they provide and receive holiday pay.
3. The legislature has determined that quality, cultural, and linguistic values provided in early child care benefits increase the success of children in later life.
4. All dollars, whether they are federal or state funds are focused toward incentivizing quality as opposed to across the board

rate increases, which further the disparity gap in payment rates and the market.

5. The healthcare benefit that the State provides child care providers promotes fiscal responsibility and is necessary for a balanced budget.
6. The proposals by the State serve two important functions. The first is about creating fairness and access to the market in places that have been left behind. The second is about continuing and creating incentives for high quality care for those families and children able to receive a subsidy. Those are fairly onerous between the CCDF funds and the State legislative mandates and Working Child Connections subsidy.
7. There was considerable testimony from the State's witnesses that DCYF, formerly DEL, is working hard and passionately to fill requirements of the federal government and the legislature.
8. The CCDF funds and the Working Child Connections subsidy were created for the purpose of providing high quality care for children.
9. The State's job is to provide high quality in all regions and not that all Small business owners get a raise.
10. Similarly, the State and the Union have both used equity, about giving parents and providers equal access to the market, not about an across-the-board raise for everyone.
11. The State proposals relate to three articles, 11.1, 12.3, and 16.2. *Ex. E-2*. The State believes that its proposals are fair, equitable, financially appropriate, and will continue to allow the State to continue to put money into it's programs where it believes is most important, which is into quality.
12. The State proposes that Article 12.3 remain unchanged, but add a three percent (3%) increase to the cap in year two. There are four reasons why it believes the cap is necessary. First, caps are financially responsible. Second, the State does not control the size of the bargaining unit. In most situations an employer can hire a set number of employees and know what this cost will be. The Union is trying to increase the number of child care providers. If this were to occur, there

would obviously be additional health care costs. Third, the cap has never been hit. Fourth, despite the wait list, there is still substantial capacity to add significantly more members into the health care system.

13. The Child Care Providers Bargaining Unit is a unique group because they are not employees of the State. They are only treated as employees for bargaining purposes. Since they are not employees of the State, the State has no control over the number of people who come into the unit and the number of people who leave the unit.
14. The number of licensed homes at one time was 3,400. The influx of new members could significantly increase healthcare costs.
15. The State also has no control over the premium rate. Normally a contract would limit the premium. Next year premiums are not expected to rise. However, the State has no idea what premium rates shall be for the following year. If there is a dramatic increase, it could lead to exorbitant fees. The State is providing a cap with a significant benefit of certainty. The cap has not damaged or prejudiced the Union.
16. *Ex. E-18* shows that the cap has not been hit in the last two years. *Ex. E-15* reflects the State's proposal that for the fiscal year 2020, the State can insure an additional 137 providers above the average. For the fiscal year 2021, despite an anticipated increase in the cost of health care, an additional 121 providers could be added.
17. In regard to *Ex. E-30*, it is interesting to note that Zenith found that half the 37 people on the wait list did not qualify for healthcare because they were not authorized to provide services. Given the State's analysis, the ability to forecast and budget appropriately outweighs the need to remove the cap. The State is willing to discuss the situation if the cap at some time in the future is hit.
18. Zenith appears to be part of the problem for the wait list and for bargaining unit members not being on the list. For example, Zenith evidently gave one bargaining unit member who testified the wrong forms.
19. The State is currently paying approximately 15 million dollars in health care for the bargaining unit. If the State

insured every member in the bargaining unit, it would cost the State an additional \$26 million dollars.

20. The State proposes to leave Article 16.2 unchanged. The State intends to implement an automated billing system for absent days. The specific language for the automated billing system was the result of bargaining. The State is willing to bargain the impact of the automated system once it has been implemented. Even when the automated system is implanted, home providers will be able to bill up to sixty (60) absent days per year.
21. *Ex. E-7* reflects different benefits the State provides to child care providers. Oregon caps the number of absent days to five per month. Washington has a sixty (60) day bank that allows child care providers flexibility. If a child is in the home for one-day of the month, a child care provider to bill for twenty (20) absent days.
22. The average number of days a child is absent per month is three (3) days or thirty-six (36) days per year. The average as currently written would allow for an additional twenty-four (24) days per child above the average which is more than adequate.
23. *Ex. U-31*, the CCDF preprint, page 17, 4.5.1 (b), indicates that the State has checked an “x” on the bottom to show that it is “providing full payment if a child is absent for five or fewer days in a month. If implemented, describe the policy or procedure.” The five-day absent days per month is built into the questions for the CCDF fund. Unlike Oregon, Washington has a hybrid approach between the five-day per month limitation (Oregon) and unlimited days per month (California).
24. Nothing regarding Article 16.2 has changed from the last CBA to the current CBA which would justify changing the contract language. There has been no change in circumstances.
25. Article 11 involves three issues, the subsidy rate for a full-day, what the rate should be for a half-day, and what the FFN rate should be increased to.
26. The Early Start Act requires all providers to reach the Level 3 QRIS requirement by December 31, 2018. Everyone must

meet this level of quality to be eligible to provide subsidized care in Washington. Everyone believes it is a very positive program to have.

27. *Ex. E-14* indicates how the State gets funding for various programs and how the 38 million dollars it has received must be spent. While there is considerable money that is provided it must be spent in a particular manner. The State does not have the discretion to spend it the way it wants to spend it, i.e, towards subsidy rates. It must spend it consistently as directed by the legislature. In addition, the State should have the autonomy to decide how to spend the money as it determines, on quality or on rates. Since Level three is going to be a requirement, when rates are reviewed, a review should also consider the Level three with 12%. This should be included in determining what constitutes the base rate.
28. The Early Achiever's program is mandated by the legislature. When Arbitrator Williams wrote his decision it was a voluntary program. However, now it is mandatory and everyone must participate in the tiered reimbursement program if they wish to participate in subsidized programs. It is illogical not to consider this program when considering rates.
29. The State also believes that the total compensation paid to licensed family homes should be reviewed from a historical perspective.
30. *Ex. E-7* is useful for determining comparables to Washington State. Everything was adjusted for the cost of living. This indicates that the State offers tiered reimbursement, field trip fees, registration fees, holidays, absent day, nonstandard hours, bonuses, training, health insurance, the latter of which is not provided by California or Oregon. These benefits totaled \$324.69 per subsidized child. Add health care for an additional \$815.40. These expenditures are for incentivizing high quality care in Washington.
31. The State's position is that base rates are not the only item that should be viewed. Washington made a policy decision to allocate money for programs in addition to base rates.
32. The Arbitrator should also consider these programs when considering the 75th percentile as suggested by the Union. The 75th percentile does not show the whole picture.

33. While Oregon may have higher base rates in some areas or higher averages, the overall compensation in Washington is higher than in Oregon. Admittedly trying to compare the two states is very difficult because Oregon uses zip codes as opposed to Washington's use of regions. Washington's highest rate is paid in Region 4, at \$54.00. When adjusted for cost of living, it is higher than any rates paid by Oregon. What is confusing about Oregon is that it uses a maximum and an average and they are always the same because of the way they are calculated. Group A is at \$44.00. Since there is no volatility in the market, the average is going to be the same. Since Washington is reviewed as an entire State, there are differences between highest, lowest, and average. Each region would have an average.
34. The averages in the State of Washington are the result of the average of all seven regions against one another and total population is not a consideration which would make it a true weighted average.
35. The Union in its opening and through testimony referenced child care deserts which are primarily in rural areas. While such areas exist, the causes are not known. The Union plan does little to raise disparity in these deserts, does not target the deserts, and they will continue to grow. Under the Union plan, the areas that will get the highest rate increases are already receiving the highest rates and it will move them further away from the lower rate areas, region 1, region 2, and Spokane.
36. The State's plan is the fairest because it raises everyone up to the 55th percentile. Some regions will see a drastic increase, especially for preschool and school-age children, because children in these regions are at the 20th to 30th percentile. It doesn't take away any rates. If a child care provider is above the 55th percentile, there is no increase. Providers in region 3 and region 4, the highest populated areas, which are close to the 75th percentile, will not receive an increase for the first year with the exception of a small increase for some age categories. These areas already have fairly good access to the market. It might not be at the benchmark, but it is important to remember that this is just a benchmark. The goal is to pull region 1, region 2, and Spokane upwards during the first year. This will make the playing field more level and the markets will move closer to one another. The State's plan is reflected

in *Ex. E-19*, Appendix A-1. The proposal is the 55th percentile with a Level 3 base rate. An across-the-board increase where everyone gets a raise would occur in year two of the contract.

37. *Ex. E-37*, shows that the State's proposal would pay those in regions 2 and 5 more while the union's proposal would pay those in regions 3 and 4 more. Region 2 and region 5 are significantly behind the 75th percentile while regions 3 and 4 are closer to the 75th percentile. The State wants to help regions 1, 2, 5, and Spokane because they are significantly behind the market and it wants to give the parents in these areas more choices.
38. The State is attempting to do what makes the most sense financially and is the fairest across the board. It believes that an increase to the 55th percentile for the first year and then an across the board increase to second year is the most appropriate.
39. While *Ex. E-12* indicates that licensed child care homes are diminishing and there is a crisis, it doesn't indicate what is happening to the children. Some could be going to FFN or other types of care. If the vacancy rates were extraordinarily low or nonexistent, there would be a concern that the children have nowhere to go. However, there is no wait list for the program so child care from providers is available. Also, going from 3,400 to 2,000 licensed child care homes is not a crisis. The reduction in homes could also be a market correction. Child care providers that have been unable to operate a profitable child care home will close but children still have homes to go to.
40. Under the Union's proposal, Union 11(D), reflects that during the second year, region 5 for enhanced toddler is moved up to the 95th percentile. Region 3 also moves to the 95th percentile. Region 5, school aged children, after two yearly 5% increases, is only at the 45th percentile. Whatever decision is made the first year must be about pulling lagging areas upwards to decrease the disparity between regions. Everyone should be given additional help and funding.
41. In regard to the Union's suggestion that the half-day rate be increased to 75% of the full-day rate, *Ex. E-11*, this will cost the State \$7 million dollars for the first year and \$8 million dollars for the second year for a total of \$15,940,606. What seems like a small task has a huge fiscal and financial impact

on the overall proposals of the two parties. For certain types of care, the State will pay one and a half days. Changing the way authorizations are processed could create difficulties for parents too. Parents would have to switch authorization to full-days when their children are on breaks and then to half-days when their children start school.

42. Limiting the Union's proposal to school aged children does not significantly change the cost of the Union's proposal.
43. *Ex. E-11*, shows that all the Articles TA'ed total \$15,417.00 for the 2019-21 biennium. The State's pending proposals amount to \$13,565,702. The total that the State is putting into its proposals is \$28,982,703 which the State believes is significant. The total cost of the Union's proposals, including what has been TA'ed, totals \$63,754,000. This number does not include health care which would go up an additional \$26 million dollars if the cap was removed and all providers received health care.
44. Testimony has indicated that expenditures and costs in 2018 will exceed revenues. Also see *Ex. E-38*, which provides: "2019-2021 Operating and Capital Budget Instructions." It provides "For the 2019-2021 biennium forecasted revenue growth is not likely to meet current demands on the State's resources, including mandatory caseloads and cost growth, maintenance of the K-12 and healthcare systems, and spending increases for critical mental health programs, employee compensation and other services. Washington continues to face a structural budget gap because the State's tax and revenue system does not keep pace with the increasing demands for services of a growing population." Despite revenue increases the State does not have unlimited funds and expenditures are likely to exceed its revenue growth. *Ex. E-38*, also provides, "Resources will once again be limited and agencies should be prepared to manage with minimal or no funding increases." It is dated June 11, 2018.
45. *Ex. E-11*, indicates that the Union's 10% across the board increase would cost the State 5 million dollars in the first year and \$11 million in the second year for a total of \$16,488,000. The amount is not high in terms of a dollar amount but there are approximately 4,500 FFNs. The total bargaining unit consists of about 6,000 members. Under the State's proposal at a 2% increase for FFN, the total cost for the first year would be approximately 1 million dollars and in first year and

approximately 1 million in the second year for a total cost of approximately \$2,127,600. A two percent (2%) increase is consistent with the historical increases for the FFN group. Most children go to the FFN group for less than 11 months. The subsidy is not meant to constitute a living wage. In addition, the State has agreed to pay for more training pursuant to federal law for FFN. The Union's proposal of 10% is drastically higher than traditional increases.

46. *Ex. U-11*, the Union's comparables do not reflect an adjustment for the cost of living allowance.
47. While there was no conversation about the State's comparables, the testimony established that the State has used the same comparables in previous arbitrations.
48. The Union has consistently referred to the 75th percentile across the board. The 75th percentile is a benchmark. States are free to choose where they put their money, into quality or rates. There is nothing in the regulations that prohibits this practice. The 75th percentile could be referred to as a best practice but states are free not to put their money to the 75th percentile for the base rate and instead put their money into other programs and incentives for high quality care.
49. Part of the problem with this interest arbitration is there has been no evidence from either side as to what the market will be like in the future, up or down. There's also been no regional analysis or data that the market will increase 5 or 10 percent.
50. Everything is speculative and there needs to be market rate surveys every three years and rate increases should be supported by market rate surveys and there are no market rate surveys, which include inflation, that can be used to calculate rates and percentiles.
51. The Union has stated that it sees no reason why private pay dollars should be treated differently from subsidized dollars. There is a difference because the latter is taxpayer money and the State should be able to determine how the money is spent, including limiting payment of subsidized money to when a child is in a provider's home and to prohibit payment when a child is not in the provider's home. While the State is sympathetic to a provider holding a spot for a child, the child care provider is free to try to fill the spot with other children.

The State has a responsibility to spend its money responsibly and conservatively.

52. Arbitrator Williams has previously denied Union proposals based upon half-day and partial day rates.
53. Arbitrator Williams granted only a 2% pay increase. While the financial situation of the State may be better than in previous years, it cannot take on a significant increase in fees.

**V. POSITONS EMPHASIZED BY
THE UNION DURING REBUTTAL**

1. While the State may have preferences as to where it wishes to put its money, there is a duty to bargain over compensation. That is why the parties are in interest arbitration.
2. Arbitrator Williams used the 75th percentile which is supported by the Early Start Act, despite the tiered reimbursement rate adopted by the State.
3. Only about 25% of the child service providers are at Level 3 or higher.
4. New providers who come into the system start at the base rate. Once they enroll in the Early Achiever's program they move to Level 2. They have 30 months to move to Level 3.
5. The State's proposal for the first year provides for no subsidy increase for region 3 for preschool and school age children. Similarly, there is no subsidy increase for infants and enhanced infants for region 4. region 5 is treated similarly.
6. *Ex. U-28*, indicates that for regions 3, 4, and 5, in April of 2018, 1,081 licensed home providers took a subsidized child into their care for that month. *Ex. E-9*, indicates that in 2019, there will be no subsidy increase for various regions. This means that certain regions will have no subsidy increase for two consecutive years and will receive an increase only after the second year of the 2019-21 contract as proposed by the State. This is problematic for the Union. The last agreement was not established by arbitration, but by agreement.
7. *Ex. E-14*, slide 14, provides that there are 305,932 children under the age of 6 that potentially need childcare. Slide 17 indicates that the licensed home capacity is at 142,128

children. The licensed home capacity is less than 50% of identifiable children possibly needing child care. There is no abundance of child care homes, but a shortage. While this is only an inference, there is a potentially larger number of children that need child care than there is space available.

8. There is no reference to comparables regarding FFN but Washington is behind California and Oregon. The State is proposing a nickel an hour which the Union does not believe is a meaningful increase for FFNs. While this group may not intend to do it for the duration of their careers, they do it full-time. The rate is important for those that are doing it the majority of their time.
9. The State made a distinction between private pay and taxpayer dollars in conjunction with absent days. If taxpayer dollars are treated too conservatively childcare providers may elect to take only private pay clients and not subsidized children.
10. The Union's proposal for Article 16.2 should not differentiate between private pay and children who are subsidized. There should be no distinction between the two.
11. Arbitrator Williams used a market rate percentile to help him make comparisons.

VI. THE WASHINGTON STATE EARLY LEARNING PROGRAM

The Temporary Assistance for Needy Families (TANF), a federal program, is a major source of funding for child care subsidies for the State of Washington's early learning program. The federal government matches the State's budget, dollar for dollar, that the State spends on its early learning program.

At one time, states, to receive federal funds, were required to show that their early learning programs provided access to 75% of child care facilities, often referred to as the "75% of child care services requirement." This requirement was determined by a biennial market survey. However, in 1996 this 75% percentile was removed as a requirement for federal funding and was replaced as a "benchmark." The

federal government's commitment to state early learning programs, including low income families is set forth in 45 CFR 98.1, 45 CFR 98.2, and 45 CFR 98.45, all of which refer to the Child Care Development Fund (CCDF). *Ex. E-25.*⁶

Three components of the State of Washington Department of Youth, Children and Families (DYCF), formerly known as the Department of Early Learning, were frequently mentioned in this interest arbitration. They were the State's Early Learning program (ELP), Working Connections Child Care program (WCCC), and the Early Achiever's Program (EAP). *Ex. E-14.*

The ELP reflects Washington State's commitment to developing high quality level early learning opportunities to children, particularly children from low-income families. Washington's commitment to its ELP resulted in it being the first in the state in the nation to have a cabinet-level Department of Early Learning in 2005, winning a \$60 million dollar federal "Race to the Top-Early Learning Challenge Grant" in 2011, and the recent enactment of the Early Start Act in 2015. *Ex. E-15, p. 5.* Parents who wish to participate in the program can pay a provider the provider's private rate. Parents and caretakers who cannot afford the provider rate are eligible to apply for State subsidies so that their children can enroll in the program. A child care provider has the option to accept State subsidized clients or to accept only private pay clients.

The WCCC program is the State's program that subsidizes low income families for child care payments while they prepare for work or while they work. It is the State's goal to have children of families who qualify for the WCCC program enrolled so they are ready for school when they enroll in Kindergarten.

⁶ Washington's child care subsidy costs for the 2015-2017 biennium totaled \$622,199,041. Of this amount, TANF contributed \$309,228,564 or 49.709% of the subsidy costs for the biennium. Clearly, the State relies heavily upon the TANF program. *Ex. E-14, p 45.*

Child care subsidies for the State's ELP are based upon total family income. If a family does not qualify for a 100% subsidy, parents are expected to pay the unsubsidized portion of the child care. Subsidization of child care is discontinued once the parents reach a predetermined income. Next year the Department of Human Services will assist the DYCF in helping families apply, determine eligibility, and make appropriate payments.

The evidence indicates that some child care providers prefer to enroll private pay clients. State subsidized clients are less desirable to them because it is sometimes difficult to collect the subsidized client's nonsubsidized share of the child care provider's monthly fee. Still, many, but not all child care providers accept state subsidized clients. In order to be a member of the Union, child care providers, must accept subsidized children.

The State created the EAP to incentivize the quality of child care. This program creates a tiered reimbursement level which applies to licensed family child care providers, but not to FFN. Each of the five tiers (1, 2, 3, 4, and 5) reflects a higher level of child care quality and a higher percentage premium on the base rate of pay to child care providers. This program was negotiated and approved by the Union. Participation is voluntary but the incentive to participate is substantial. The licensed child care provider receives a higher percentage pay above the base rate of pay as the provider advances to tier Level 5. For the current CBA, the tiered reimbursement rate for Level three (3) is ten percent (10%), for Level four (4) it is fifteen percent (15%), and for Level five (5) it is twenty (20%). The parties TA'ed the rate for the 2019-21 biennium. The tiered reimbursement rate for Level three (3) is twelve percent (12%), for Level four (4) it is

seventeen percent (17%), and for Level five (5) it is twenty percent (20%). *Ex. E-14, p. 33.*

The State's quality improvement rating system (QRIS) determines when child care providers advance through the EAP's tiered system. The QRIS factors are the learning environment and interactions of the class and environment rating scales, child outcomes, curriculum and staff support, family engagement and partnership, and professional development and training. Level 1 is considered "Licensed Child Care-the Foundation of Quality," Level 2, "Professional Growth and Facility Management," Level 3, "Demonstrating High Quality," Level 4, "Thriving in High Quality," and Level 5, "Excelling in High Quality." *Ex. E-14, p. 27.* A Level 2 FCC Quality Improvement Award is paid at \$1,000, Level 3 at \$2,750, Level 4 at \$3,000 and Level 5 at \$3,250. *Ex. E-14, p. 33.*

The legislature has directed the DYCF to require child care providers who receive a subsidy to be at Level 3 tiered reimbursement by December 31, 2019 to be eligible to participate in the EAP. This program provides subsidies, scholarships, coaching, professional development, and quality improvement awards. A child care provider who accepts only private pay families is not affected by the EAP requirements.

VII. THE CHILD CARE PROVIDERS, SEIU 925

The State regulates three classifications of child care providers, home child care service providers, FFN, and child care centers. The former two classifications are bargaining unit members. Although child care centers are licensed and regulated by the State of Washington they are not bargaining unit members. Some centers enroll children from families who qualify for subsidized child care support from the State of

Washington. Like home child care service providers who are bargaining unit members, these centers receive a subsidy payment from the State and they are responsible for obtaining the copayment from the parents of the child. Home child care service providers are allowed to provide care for a maximum of twelve (12) children. The maximum number of children that may be provided care at centers depends on the center's square footage and available resources. The largest center in Washington State provides child care services for approximately 160 children.

Child care centers usually have set hours, 9:00 a.m. to 5:00 p.m. or 8:00 a.m. to 5:00 p.m. However, home child care providers are more flexible and are capable of providing service after normal working hours, i.e., hours that are consistent with parents who work at night until 11:00 p.m.

Bargaining unit members consist of licensed providers who are inspected by the State of Washington to insure quality curriculum, safety, and training. The bargaining unit also consists of licensed exempt providers known as family, friends, and neighbors (FFN) who may be eligible to receive child care vouchers for providing early learning opportunities to children of low income parents. The FFN also receive training in early childhood education. A provider, licensed and licensed exempt, is entitled to Union membership if the provider cares for at least one subsidized child during the course of a year. RCW 41.56.030(12).

The bargaining unit of child care providers consisted of approximately 6,870 given the State's calculations. Of this number, approximately 4,500 were FFN. The total number of licensed home child care providers was approximately 2,370. *Ex. E-11*. The Union's numbers were similar for lists provided by the State in May, 2018. There

were 6,859 bargaining unit child care providers. Of this number, 4,849 were FFN. The total number of home child care providers was 2,010. *E-Ex. U-29*. The Union numbers as of May, 2018 were similar. There were 6,595 bargaining unit members. The licensed home care provider group totaled 1,985 and the FFN group totaled 4,610.

Home child care providers are employees of the State of Washington for the sole purpose of collective bargaining. They are not employees of the State of Washington for any other purpose.

If a provider accepts a state subsidized client, the provider cannot charge the State subsidized client a fee greater than what the provider charges the private pay client. Currently, a licensed child care provider is authorized to bill for any absent days in a month as long as the child attends one day in that month. *Ex. E-14*. If a child care provider accepts State subsidized clients the provider is eligible for enrollment in the State of Washington's medical insurance program. This benefit is discussed more below in Section XI.

Unlike California, there is no wait list in Washington for children to enter the State's ELP. Washington has provided its subsidy to every eligible child whose family has applied.

VIII. EXHIBITS

It is significant to note that the majority of exhibits, except arbitration awards by arbitrators, statutory law, and reports prepared by government entities, cited in this opinion and award have been prepared by either the Employer or the Union. All exhibits have been read, in some cases numerous times, prior to the completion of your Arbitrator's opinion and award.

Joint Exhibits in Evidence by Number as Marked.

1. RCW 41.56.025
2. Arbitration Opinion and Award, dated September 19, 2014, by Arbitrator D. Williams.
3. Arbitration Decision and Award, dated September 5, 2010, by Arbitrator Michael Cavanaugh, J.D.
4. Arbitration Decision and Award, dated August 28, 2008, by Arbitrator Michael Cavanaugh, J.D.

Union's Exhibits in Evidence by Number as Marked.

1. (A) PERC Certification for Interest Arbitration, 7.17.2018; (B) Family Child Care Providers' CBA, 2017-2019
2. RCW 41.56.465
3. Washington State Administrative Regions and Licensed Care Rates for FCCP
4. Article 10 – Tentative Agreement
5. (A) Union's Article 11 Proposal and Spreadsheet for Subsidy Base Rates for Licensed and Family Friends & Neighbors (FFN) Providers, (B) Article 11.3-confirmation of agreement (7.27.2018 email to arbitrator)
6. Union's Article 12 Proposal – Healthcare (Art.21.3)
7. Email Response to Union Request for Information (7.25.2018 email) re: lack of monthly caps on healthcare
8. Union's Article 16 Proposal – Absent Days (Art.16.2)
9. Union's Counter Proposal Package (7.13.2018) re: partial day at 75% of full day rate.
10. County Data for Comparing Washington Administrative Regions
11. Spreadsheets
 - A. Western States Comparison of Family Child Care Base Rates;
 - B. Comparison of Part-Day Rate as percent of Full-Day Rate in Washington;
 - C. Definitions of Age Groups and Time Periods for Licensed and FFN;
 - D. Analysis of Market Access Percentile
 - E. Comparative Examples – Region 1
 - F. Comparative Examples - Spokane
 - G. Comparative Examples – Region 4
12. TABLE: County Data in California, Washington and Oregon
13. Oregon 2018 Child Care Rates – Licensed and Exempt for Areas A, B, and C
14. CBA, 2017-2021 – Oregon Child Care Providers
15. California Reimbursement Ceilings for Subsidized Child Care
16. California Child Care Reimbursement Rates – by County (eff. 1.1.2018)
17. US DOL – Seattle Consumer Price Index (June 2018)
18. US DOL – Seattle-Tacoma-Bellevue, Consumer Price Index (7.12.2018)
19. Union's Analysis of State's Year 1 Proposal for 2019-21 CBA.
20. PowerPoint – Decreasing Use and Availability of Licensed Child Care (SEIU 925)
21. DEL's 2018 Child Care Market Rate Survey (7.26.2018)

22. Fact Sheet, Center for Law and Social Policy, budget Deal Includes Unprecedented Investment in Child Care (Feb. 2018)
23. Rasheed Malike & Katie Ham, Mapping America's Child Care Deserts, Center for American Progress (8.39.2017)
24. Compensation Technical Workgroup, Draft Report (Recommendations to Legislature to address shortage of early childcare education teachers, final report due Dec. 2018)
25. Targeting Underserved Populations – February 2018 Working Meeting, Washington State Department of Early Learning
26. Child Care Supply, Demand and Cost in Whatcom County, The Opportunity Council (March 19, 2018)
27. Katherine B. Stevens, Workforce of Today, Workforce of Tomorrow: The Business Case for High-Quality Childcare, US Chamber of Commerce Foundation (June 2017)
28. Vickie Ybarra, Data on Supply of Subsidy Providers, Department of Early Learning (February 14, 2018)
29. Child Care Crisis – Licensed and FFN Family Child Care by County and Region (Comparison of April 2010 and April 2018 data based on State lists provided to SEIU 925)
30. CCDF Payment Rates – Understanding the 75th Percentile, U.S. Department of Health & Human Services (HHS), Office of Child Care's National Center on Child Care Subsidy Innovation and Accountability
31. Child Care Development Fund (CCDF) Plan for Washington, FFY 2019-2021, Draft#4 (May 10, 2018) (Excerpt) prepared by DEL and DCYF)
32. Child Care Development Fund (CCDF) Plan for California, FFY 2019-2021, Draft (April 10 2018) (Excerpt).
33. Child Care Development Fund (CCDF) Plan for California, FFY Oregon, FFY 2019-2021. Draft (2018) (Excerpt)
34. Washington State Register, 18-14-079, Permanent Rule, Department of Early Learning, effective August 1, 2019 (affecting Chapter 170-300-001 et seq Washington Administrative Code)
35. Resume – Pauline Owen, Licensed Family Care Provider
36. Pathways Enrichment Academy (homepage) – Mary Curry, Licensed Family Child Care Provider
37. Resume – Carol Gibbs.
38. Small Business Economic Impact Statement, Chapter 170-300 WAC, Foundational Quality Standards for Early Learning Programs, May 9, 2018
39. WAC 170-290-0205, Daily child care rates – Licensed or certified family home child care providers
40. Chapter 3: Washington State Revenue Forecast Summary
41. Economic and Revenue Forecast for the 2015-17 biennium

State's Exhibits in Evidence by Number as Marked.

1. Collective Bargaining Agreement between the State of Washington and Service Employees International Union 925, effective July 1, 2017 through June 30, 2019

2. State's Final Proposals:
 - Article 11-Subsidy Rates (State's Proposed Appendix A1-Ex. 19)
 - Article 12-Health Care
 - Article 16- Holidays, Absent Days, Substitute Pool Coverage and Closure Days.
3. Tentative Agreement Article 1 Union Recognition, Tentative Agreement Article 2 Non-Discrimination; Tentative Agreement Article 3 Consumer Rights; Tentative Agreement Article 4 Union Rights; Tentative Agreement Article 6 Grievance Procedure; Tentative Agreement Article 7 Labor/Management Committee Meetings; Tentative Agreement Article 8 General Provisions; Tentative Agreement Article 9 Payment; Tentative Agreement Article 10 Fees and Differentials; Tentative Agreement Article 14 Early Achievers; Tentative Agreement Article 15 Food Program,
4. Certification to Interest Arbitration, dated July 17, 2018
5. Cost of Living Summary Report, 2018
6. 2017 Child Care Subsidy Report Map and Rate Chart and Licensed Family Child Care Providers Rate Tables from the 2017-2019 CBA
7. Comparison of Subsidy Rates for Family Home Providers-Adjusted for COL 2017
8. Financial supports in QRIS in WA, OR, and CA
9. History of Family Child Care Subsidy Rate increases 2005-2019
10. Union's Proposed Subsidy Rates with TR – Level 3
11. Estimated Costs of 2019-2021 CBA for Family Child Care Providers
12. 2018 State of Washington Child Care Market Rate Survey
13. Percentile Rate Charts from 2018 State of Washington Market Rate Survey
14. Overview of Early Learning in Washington, July 2018
15. Projections for 2019-21 Biennium for 925 Healthcare
16. Family Childcare Provider Benefit Eligibility and Payment Process Map
17. SSPS/925-Zenith American Solutions Monthly Eligibility & Payment Process Flows: As-Is per HBT Understanding
18. 925 Healthcare Trends spreadsheet, July 2023 to June 2018
19. 55th Percentile by Regions spreadsheet – State's Proposed Appendix A-1
20. Arbitrator's Opinion and Award, dated November 10, 2006
21. Arbitrator's Opinion and Award, dated September 5, 2010
22. Arbitrator's Opinion and Award, dated September 19, 2014
23. RCW 43.216.135
24. RCW 43.216.005, 43.216:085, 43.216.110
25. Code of Federal Regulations
 - A. 45 CFR 98.1
 - B. 45 CFR 98.2
 - C. 45 CFR 98.45
26. Resume of Rebecca Doane, DSHS
27. Resume of Marc Baldwin, PH. D
28. 07/26/16 Information Request Response Memo
29. Administrative Services Agreement – Healthcare Benefits Trust and Zenith
30. SEIU 925 Waitlist
31. Fact Sheet Listing Month of Service, Age in Years, Tr Service Date, Base Rate, Authorized Units, Authorized Amount, Sum Amount of TR, TR percentage, and

- TR, and Double Check Authorized amount of TR.
32. Letter from Monica Evans, Grants Officer, Administration for Children and Families to Washington Department of Early Learning, dated May 1, 2018
 33. Letter from Monica Evans, Grants Officer, Administration for Children and Families to Washington Department to Washington Department of Early Learning, dated May 30, 2018
 34. Chart regarding Places Where the Employer Proposal Pays More: Year One at EA Level 3 (includes 12%) Rates
 35. Health Care Trends: Cost of State Premiums and Monthly Budgeted Amounts
 36. Spreadsheet comparison of Subsidy Rates for 2018
 37. Spreadsheet comparison of current rates paid to Mary Curry, Carol Gibbs, Pauline Owen, and Nathalia Medina
 38. Letter from Director David Schumacher to Agency Directors, Presidents, and Boards and Commissions, dated June 11, 2018

IX. APPLICABLE LAW

Your Arbitrator’s authority to issue this opinion and award and for conducting the interest arbitration hearing are set forth in RCW 41.58.028 and 41.56.465.⁷ The primary concern of both parties is clearly focused on the quality of care provided to children in the State’s ELP. The principal difference is how they believe statutory factors, some mandatory (“shall”) and some discretionary (“may”) should be applied. Your Arbitrator must apply the statutory factors set forth in RCW 41.56.465 in deciding any proposals made by the State and the Union. The factors which are the foundation of your Arbitrator’s opinion and award are provided as follows:

- (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid in reaching a decision, the panel shall consider:
 - (a) The constitutional authority and statutory authority of the employer;
 - (b) Stipulations of the parties;

⁷ RCW 41.54.028 gives your Arbitrator the authority to act as a “panel” to issue this Opinion and Award. It makes the Governor the Employer and it gives the Union collective bargaining rights over “(i) economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursement; (ii) health and welfare benefit; (iii) professional development; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters...” takes away their right to strike, and gives them access to interest arbitration. It also provides that the of interest arbitration provisions set forth in RCW 41.56.430 through RCW 41.56.480 apply to child family care providers. RCW 41.56.450 sets forth additional matters regarding Arbitrator’s authority. The factors which your Arbitrator “shall” consider and “may” consider an interest arbitration concerning family child care providers are set forth in RCW 41.56.465.

- (c) The average consumer price of goods and services, commonly known as the cost of living;
 - (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
 - (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.03(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.
- (2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of wages, hours, and condition of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.
 - (3) For employees listed in RCW 41.56.030(7)(e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of the public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.
 - (4) For employees listed in RCW 41.56.028:
 - (a) The panel shall consider:
 - (i) The comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and
 - (ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and
 - (b) The panel may consider:
 - (i) The public's interest in reducing turnover and increasing retention of child care providers;
 - (ii) The state's interest in promoting through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and
 - (iii) In addition, for employees exempt from licensing under Chapter 74.15, RCW, 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....

Your Arbitrator has carefully considered the factors set forth in RCW

41.56.465 prior to completing this opinion and award. This statutory law has been

applied to all certified issues not resolved by the parties that are determined herein by your Arbitrator.

IX.A OVERVIEW OF THE STATE'S ABILITY TO PAY

The State's ability to pay is always fact sensitive and subject to a totality of circumstances test. It is a "shall" factor which must be considered in determining whether an arbitrator should award or deny a proposal.

Your Arbitrator has considered testimony that the State and the Union tentatively agreed to the settlement of several certified issues prior to the arbitration before your Arbitrator. The cost to the State was \$15,417,001. *Ex. E-11*. For certified issues pending before your Arbitrator, the Union's proposals would cost the State \$63,754,119 while the State's proposals would cost the State \$28,982,703. *Ex. E-11*. These dollar amounts assume that all of each side's proposals are awarded and that your Arbitrator makes no adjustments to the proposals.

Your Arbitrator has also considered testimony from the State that while revenues increase they are outpaced by expenditures. The State is still dealing with the McCleary decision. There is also a bow wave on collective bargaining agreements for the current biennium. The State is currently bargaining with 28 separate labor organizations and the total costs of the agreements and/or arbitrations is unknown. In addition, the State legislature passed a new bill that requires the State to bargain health care benefits for school employees in 295 school districts. The State is experiencing a structural budget deficit. It has existed since the 2007-2009 biennium.

Ex. U-41, titled "Economic and Revenue Forecast Council," was

available to Arbitrator Timothy D. W. Williams when he awarded rate increase of two percent (2%) for licensed providers and FFN in 2014. *Ex. J-2, Ex. E-22*. It provides in relevant part:

Slightly better than expected collections lead to small forecast increase

OLYMPIA, June 17, 2014 – The General Fund-State (GFS) revenue forecast has been increased by \$157 million (0.5%) for the 2013-15 biennium and by \$238 million (0.7%) for the 2015-2017 biennium.

General Fund-State revenues are expected to grow 8.2% between the 2011-13 and 2013-15 biennia and 8.3% between the 2013-15 and 2015 biennia. We expect the slow pace of economic recovery to continue in both the U.S. and Washington economies.

The financial climate appears healthier today than it was during the 2015-2017 biennium. *Ex. U-40, p. 2* provides for the “General fund State forecast in millions.” Revenue collection was 36 billion for that biennium. Table 3.1 indicates an upward revision of \$143 million. If this is contrasted with the present situation and the next biennium, the revenue picture is brighter. *Ex. U-20, slide 23*. Rather than revenues at 36.1 billion for the 2015-2017 biennium, it is at 48.5 billion for the 2019-21 biennium and 52.2 billion for the 2021-2023 biennium. *Id.* In addition, there is an upward revenue increase of 266 million for the 2019-21 biennium and a revenue increase for the 2021-2023 biennium in the amount 349 million. *Id.* There is currently a much healthier economic climate now when compared to 2014.

However, the “State’s 2019-21 OPERATING AND CAPITAL BUDGET INSTRUCTIONS” provides in relevant part:

For the 2019-2021 biennium forecasted revenue growth is not likely to meet current demands on the State’s resources, including mandatory caseloads and cost growth, maintenance of the K-12 and healthcare systems, and spending increases for critical mental health programs, employee compensation and other services. Washington continues to face

a structural budget gap because the State's tax and revenue system does not keep pace with the increasing demands for services of a growing population...

State revenue collections rebounded from the Great Recession at a slow but steady pace over the past eight years. If the economy performs as forecasted, the recovery will be the longest period of sustained growth since at least the 1940s. This steady economic performance, combined with revenue increase, allowed the state to maintain important services to Washingtonians while also providing billions more dollars to state K-12 funding as required by the *McLeary v. State of Washington* decision. Despite the strong economy, agencies are reminded that balancing the 2017-19 biennium required both major tax increases and use of one-time reserves...

As the State phased in McLeary funding over the past six years, demand grew and expanded in other areas. With so many pent-up needs, competition will be fierce and for 2019-21 and 2021-23 resources in virtually every part of the budget. Meanwhile, with the next round of collective bargaining underway, the extent to which state employee compensation increase will compete for limited resources is unknown.

Resources will once again be limited and agencies should be prepared to manage with minimal or no funding increases.

Ex. E-38.

IX.B OVERVIEW OF THE COMPARISON OF CHILD CARE SUBSIDY RATES AND REIMBURSEMENT PROGRAMS ALONG THE WEST COAST

The comparison of child care subsidy rates and reimbursement programs along the West Coast is another "shall" factor. Washington uses a system based upon seven regions. King county is region 4 and Spokane is a region.

The State's comparisons of subsidy rates set forth in *Ex. E-7* were adjusted for the cost of living. Oregon uses a three area system, urban, suburban, and rural and zip codes throughout the State are assigned to each area. Oregon's collective bargaining agreement at one time was pegged to the 75th percentile, but it's legislature has allowed the erosion of this benchmark.

California uses a county system and each of the approximately 50 counties has considerable autonomy as to what benefits to provide child care service providers. However, it's collective bargaining agreement is pegged to the 75th percentile.

The State prepared a subsidy comparison table. It compared Washington State as a singular entity (not by region) to six counties in California, Alameda, Fresno, Los Angeles, Sacramento, San Bernardino, and San Diego to compare to Washington. It also compared the three groups in Oregon (groups A, B, and C) to Washington. The comparisons were made on pay per day basis. Washington had three payment rates per day, "highest," "lowest," and "average." Each of the three Oregon groups had two payment rates per day, "Max" and "Average." Each of the six California counties also had two payment rates, "Max" and "Average." *Ex. E-7*. Not much testimony was given to help your Arbitrator understand how the comparables of Oregon and California were supposed to be applied to Washington. However, after considerable review and analysis, your Arbitrator has a good understanding of how the comparables are used when compared to Washington State. They were evidently inherited from previous arbitrations.

The Union presented a very interesting comparison of Washington to Oregon and California. *Exs. U-10, 11, 12, 13, & 14*. The methodology was primarily based upon two factors, Washington's regional averages of median income and population. Thereafter, counties in California and Oregon with the closest data in terms of median income and population were matched as variables to Washington's regions. *Ex. U-10*. Data used was taken from "County Regions and Road Maps. *Ex. U-12*.

For example, using Washington's region 2, consisting of Columbia, the counties of Walla Walla, Franklin, Benton, Yakima, and Kittitas were used to

determine the median household income and population. Data in California and Oregon was reviewed to find a match. Oregon data was determined by using Oregon's zip codes and matching them to Oregon's groups, A, B, or C. *Ex. U-13.*

California and Oregon counties comparable in terms of average median income and population to Washington's seven were displayed on *Ex. U-10*. Base rates of California and Oregon were compared to Washington base rates for the various child categories were reflected on *Ex. U-11*.

Several comparative examples were given. For example, Mendocino county in California and Oregon's group C were compared to Washington Region 1. The results showed that for the infant and toddler rates, Region 1 was paid 56% less than California and 2% less than Oregon base rates. *Ex. U-11(E)*.

The Union presentation was interesting. Unfortunately, while it was a good presentation, it did not consider an adjustment for the cost of living allowance.

The 75th percentile is applied to the base rate and not to any tiered quality incentives. Given the fact that California has pegged its collective bargaining agreement to the 75th percentile, Washington State recognizes that the 75th percentile as a benchmark, but not a requirement, Arbitrator Williams expressly stated that he used the 75th percentile to justify giving child care providers a subsidy rate increase of 2% increase, *Arbitration Opinion and Award, dated September 19, 2014, by Arbitrator D. W. Williams. Ex. J-2/E-22*, Arbitrator Cavanaugh addressed the 75th percentile but did not expressly state that he was using the 75th percentile or disregarding the 75th percentile as the basis for awarding subsidy increases, *Arbitration Decision and Award, dated August 28, 2008, by Arbitrator Michael Cavanaugh, J.D., Ex. J-4*, and both parties acknowledge

that there are no good comparables, your Arbitrator concludes that the 75th percentile is one of several factors that an Arbitrator may or may not apply to proposals made by the State and the Union.

The 75th percentile, being a benchmark, is a goal that the federal government has set. Benchmarks set by the federal government, or for that matter, by the State of Washington, should seriously be considered in determining budget priorities. They should have priority over matters that have no benchmarks. The 75th percentile is unique to the child care service provider industry. While it is not a comparable, it is similar to a comparable. Both are not requirements, but are factors that should be considered, among several factors, in the application of the criteria set forth in RCW 41.56.465.⁸

Both Arbitrator Williams and Arbitrator Cavanaugh stated that they found the comparables of California and Oregon less useful than they had hoped. Counsels for the State and the Union confirmed that comparables were difficult to compare to Washington.

It was the Union's position that your arbitrator should compare only the base rates of California and Oregon to Washington, apples to apples. The Union acknowledged based upon its calculations, some Washington areas are higher than areas in Oregon. The State argued that your Arbitrator should consider the "total compensation package." This concept will be discussed more thoroughly later in this opinion and award.

⁸ Testimony from the Union indicated that the parties were discussing an approach to a mutually agreeable methodology to establish comparables in the event of future interest arbitrations. The current Union methodology apparently was not acceptable to the State. Suffice to say, stipulations of the parties are a "shall" factor pursuant to RCW 41.56.465 (1) (b) and would save the parties substantial time and resources if agreed upon. Arguendo, the methodology resulted in several comparables, which is not uncommon in interest arbitration, an arbitrator would be able to select, in his/her view the most appropriate comparable to apply to Washington State.

IX.C THE AVERAGE CONSUMER PRICE OF GOODS, COMMONLY KNOWN AS THE COST OF LIVING

The cost of living is also a “shall” factor. The cost of living has increased. A dollar buys less than it did last year. This factor has been considered by your Arbitrator in this opinion and award. The State’s cost of living comparisons were adjusted for inflation to 2017 dollars. *Ex. E-5*. The median household income for child care workers working from their homes in Washington was \$73,589.00 for 2016 and for 2017 was \$74,829.00. *Id.* This is a mere increase of 1.69%.

The State put on evidence that a dollar in Oregon buys more in Washington than a Washington dollar. The cost of living is also higher in California when compared to Washington, with the least expensive being Oregon. *Ex. E-7*.

The United States Department of Labor, in a report dated July 12, 2018, stated that for the past 12 months, the CPI-U advanced three and three-tenths of one percent (3.3%). *Ex. U-17*. For the Seattle-Tacoma-Bellevue area, the CPI rose three and four-tenths of one percent (3.4%). *Ex. U-18*. For the Seattle area, it grew two and two-tenths of one percent (2.2%) in 2016, three and one-tenth of one percent (3.1%) in 2017, and for the first half of 2018, two and four-tenths of one percent (2.4%). *Ex. U-20, slide 21*. These percentages are consistent with Washington having the highest GDP growth in the country, rising in 2018 from two and seven-tenths of one percent (2.7%) to two and nine-tenths of one percent (2.9%). *Ex. U-20, slide 23*. Again, there are no traditional comparables. Suffice to say, considering what is in evidence, irrespective of which comparable is reviewed or what combination of factors are used to create a comparable, the cost of living increased significantly.

IX.D. THE PUBLIC’S INTEREST IN REDUCING TURNOVER AND INCREASING RETENTION OF CHILD CARE PROVIDERS

RCW 41.56.430 4 (b) (i) provides that the public’s interest in reducing turnover and increasing retention of child care providers is a factor that your Arbitrator “may” consider. The record of testimony in this interest arbitration clearly shows that the public’s interest is being negatively affected by the increased turnover and decreasing retention of child care providers. Without increases in base rates of pay, subsidies, and other benefits your Arbitrator believes that keeping committed child care providers in their current businesses and careers will be difficult. This factor has been considered by your Arbitrator and will be discussed in more detail later in this opinion and award.

IX.E. SUCH OTHER FACTORS NORMALLY AND TRADITIONALLY TAKEN INTO CONSIDERATION IN DETERMINING THE WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT

As noted above, the total value of compensation packages to bargaining unit employees have normally and traditionally been considered a factor in determining wages and benefits in the bargaining process and in interest arbitrations. See *Snohomish County, Decision 8733-A-PERC*, (2005) where the Board at page 3:

Deferred compensation is a form of wages, and because wages have derived in many forms (e.g., money in the form of a paycheck, paid vacation, paid holiday, health and welfare benefit) it is just a part of the total compensation package delivered to a bargaining unit.

Also see *Washington State Ferries*, 2664-I-14 (2014); *Snohomish County*, 25996-I-13 (2014); *City of Seattle*, 1163-I-77 (1997); *City of Pullman*, 2116-I-07 (2008) and your Arbitrator’s award, *In the Matter of the Interest Arbitration between the Washougal Police Officers’ Association and the City of Washougal*, 026301-I-14-0644, (2014).

The State provides a substantial health care benefit to bargaining unit members of the Family and Child Care Providers, SEIU 925. This benefit costs the State

\$850.40 per month per bargaining unit member. This is a “shall” factor that has been considered in awarding or denying the State and Union proposals. While this is a substantial benefit, your Arbitrator must consider that not all licensed child care providers have opted to take advantage of this benefit.

Your Arbitrator has also considered, as part of the total compensation received by licensed child care service providers, the State’s Early Achiever’s tiered reimbursement rate program and its quality improvement rating system (QRIS). Still, your Arbitrator has considered that these programs are incentive programs. The total compensation packages of Washington, California, and Oregon are described in *Ex. E-7*.

X. THE ARTICLE 11.1 ISSUES, DISCUSSION AND AWARD

The State argued that its subsidy proposal is the fairest proposal because it allows regions to catchup to regions that are hovering at the 75% percentile and it is consistent with the State’s ability to pay. The State’s plan also comes with a Level 3 tiered reimbursement rate of 12%.⁹

Your Arbitrator has also considered the State’s testimony that eighty-five percent (85%) of child care providers, centers, and private pay providers who have gone through the QRIS are already at Level 3, two percent (2%) are at Level 4, and only thirteen percent (13%) at Level 2. *Ex. E-15, p. 32*.

Nonetheless, your Arbitrator is persuaded that the State’s proposal is superior to the Union’s proposal for the first year of the biennium in large part because it raises all regions to the 55th percentile. Since it is the State’s proposal there is a strong

⁹ The State appeared to be arguing that the Early Achiever’s Program with its substantial tiered incentive rates and the State’s QRIS awards should be calculated in determining the appropriate subsidy rate (base rate). Your Arbitrator respectfully disagrees. Subsidy rates must be considered and compared to other subsidy rates. This comparison of course includes the history of the bargaining unit’s subsidy rates and subsidy rates of comparable jurisdictions. Subsidy rates are applied to all employees irrespective of merit. While this may not be the best view of how to determine a subsidy rate, this is established labor law. This is an “apples to apples” comparison. However, it is permissible to consider the State’s incentive programs as part of the “total compensation package” that child care providers receive. Please see Section IX.E for a discussion on total compensation packages. Also, please see footnote 14.

inference that the State has the ability to pay. Some regions will see a drastic payment increase, especially for preschool and school-age children. Children in these regions have been consistently left behind in the lower percentiles. For example, region 2 is paid at the 30th percentile while region 1 is paid at the 40th percentile. *Ex. E-13, p. 24*. These two regions consist of rural communities and low-income communities, These are the areas where child care deserts are the most common.¹⁰ Child care vacancy rates are the lowest in these regions and the States interest in decreasing turnover and increasing retention of child care service providers also appears to be the greatest in these rural and low-income areas. The problems with vacancy rates, turnover, and retention are discussed more fully below.

However, your Arbitrator is concerned, as the Union has asserted, that if a child care provider lives in a region that is above the 55th percentile, the provider will not receive a raise for some age categories. Other than King county which is at the 70th percentile), these include regions 3 and 6, both at the 60th percentile. Other regions below the 55th percentile include region 5 and Spokane which are at the 50th percentile. *Ex. E-12, p. 24*.

Your Arbitrator is troubled, as the Union has maintained, that certain regions or child categories within a region will receive no subsidy increase for two consecutive years for some age categories and will receive an increase only after the second year of the 2019-21 contract under the State's proposal. For example, a close review of Appendix A, *Ex. E-19* indicates that for the first year of the contract the State's proposal would result in no subsidy increase for region 3 as it relates to preschool

¹⁰ Rasheed Malik & Katie Ham, *Mapping America's Child Care Deserts*, Center for American Progress Organization, (2017), "Hispanic/Latino and American Indian and Alaska Native (AIAN) communities are disproportionately represented in child care deserts, with roughly sixty percent (60%) of their combined populations living in areas with a low supply of child care. More than seventy-five percent (75%) of the rural AIAN population lives in a child care desert." *Ex. U-23, p. 4*.

children and school age children, region 4 concerning infants, enhanced toddlers, and school age children, and region 5 for infants and enhanced toddlers. *Ex. E-19*.

Your Arbitrator is also troubled by the fact that the failure of some regions to receive a subsidy rate increase for over two years may have an adverse impact on their ability to maintain their current percentile rating. The increased cost of living, discussed above in Section IX.C, adds to the possibility of a decrease if there is no subsidy increase until after two years. Market factors which may negatively impact those regions hovering around the 75th percentile include, but are not limited to, the fact that the numbers in the market rate survey have changed considerably during the last three years, Initiative 1433 which raised the minimum wage in Washington, increases in private pay rates, and wage increases to assistants, above the minimum wage, by several child care providers.¹¹

Your Arbitrator is distressed, as the Union has averred, that the State's proposal could have a demoralizing and de incentivizing impact on regions that have excelled above the 55th percentile which could result in a lower quality of child care. Your Arbitrator is also apprehensive in awarding the State's proposal because it could also result in divisions among the bargaining unit members within different regions.

Your Arbitrator is alarmed, as the Union has emphasized, that the number of licensed family homes who are taking subsidized children has dropped below 2,000 for the first time since the inception of the bargaining unit. *Ex. U-29*. When the Family Child Care Providers, SEIU 925, was first organized in 2005 it was north of 6,000 licensed homes. While your Arbitrator agrees with the State that the decline is probably

¹¹ In 2016 the parties, using data that was one- to-two years and a 2015 market study thought they were close to the 75th percentile. They were mistaken. The Union asserted that the State is taking a similar approach which has put the parties at a 55th percentile market rate.

due, at least in some part, to a market correction, your Arbitrator is also troubled that the decline appears related to the loss of licensed child care providers is particularly pronounced in these rural and low-income areas when compared to region 4 (King County) which is at the 70th percentile. *Ex. U-29*. This loss in rural areas is consistent with the vacancy rate. The vacancy rate for region four (4) is thirty-one percent (31%), but seventeen percent (17%) in region one (1), eighteen percent (18%) in regions two (2) and four (4), six percent (6%) in region five (5), eight percent (8%) in region three (3), and a mere one percent (1%) in Spokane. *Ex. E-12, p. 15*. It appears that reducing turnover and increasing retention of child care providers shouldn't be the only concern for the State of Washington, but also recruitment of new child care providers. See RCW 41.56.465 (4) (b) (i).¹²

Your Arbitrator has also considered that licensed child care providers have never had two (2) consecutive years of no subsidy increases except for the period following the Great Recession, from 2010 through 2013. Despite a structural deficit, subsidy rates have gradually increased as the economic recovery has gotten stronger. The exception was for 2019 when the Union agreed to no subsidy rate increase. Your Arbitrator must consider that under the State's proposal, some child care providers will not, since the period following the Great Recession, receive a subsidy increase for two (2) consecutive years. Please see footnote 14.

¹² "Pay in the childcare field is lower than 97% of all U.S. occupations. The average wage of full-time, professional childcare workers in the United States was \$10.72 per hour in 2015, a little less than wages for parking lot attendants and manicurists, and a fraction of those for teachers of older children... Such low pay impedes the recruitment and retention of a high-quality workforce, causing high turnover among current workers and discouraging talented young people from pursuing a career working with young children." Katherine B. Stevens, *Workforce of Today, Workforce of Tomorrow: The Business Case for High-Quality Childcare*, US Chamber of Commerce Foundation, (2017), page 18. (Footnote omitted, emphasis added). *Ex. U-19*. Washington's child care teachers rank in the 3rd percentile of occupational wages and suffer from a 43% turnover rate which has impact on the continuity of care and child outcomes. *Ex. U-24, p. 18*.

While child care providers are among the lowest paid in the nation, your Arbitrator is charged with applying the factors set forth in RCW 41.56.465. Their low wages are relevant to the extent RCW 41.56.465(4)(b)(i) should be considered in relation to other RCW 41.54.465 factors.

The FFN classification of child care providers is excluded from participation in the incentives offered by the State's Early Achiever's Program. Their exclusion from receiving these valuable incentives is a factor that should be weighed in determining whether to increase their subsidy rates. Another factor is California and Oregon have greater subsidy rates than Washington. In addition, to qualify for subsidies, FFN will soon have to take classes and training. This training for FFN was the primary reason why Arbitrator Williams awarded a subsidy increase to both licensed providers and FFN, although the FFN group was awarded slightly less. *Ex. E-20.*

The State argued that its proposal of a two percent (2%) increase (\$2.50 to \$2.55) beginning July 1, 2019 is consistent with the historical averages for the FFN group. However, there was a four percent (4%) increase in 2008, three percent (3%) increase in 2009, no increase between 2010 and 2013, a two percent (2%) increase in 2014 an eight percent (8%) increase in 2015 (four percent (4%) effective 7/1/14 and four percent (4%) effective 7/1/15), two percent (2%) increases in 2017 and 2018, and no increase in 2019. If the FFN classification received an increase, it was for a minimum of two percent (2%). The maximum increase of four percent (4%) was in 2008, 2014, and 2015.

Historical data regarding FFN indicates that whenever the economy is in a worrisome situation, there have been no increases for FFN. When the economy has been stable and recovering, increases have been at a minimum of two percent (2%) and a maximum of four percent (4%). Unfortunately, there are no comparables for FFN.

Your Arbitrator is persuaded that the State's proposal and the Union's

proposal concerning Article 11.1 should be awarded in part and denied in part. The specifics are set forth below.

The Union also proposed adding a partial-day rate provision to the CBA which would provide that the half-day rate be increased to seventy-five percent (75%) of the full-day rate. A full day in Washington is considered 5 or more hours. Anything less is paid at the half-day rate, or fifty percent (50%) of the full-day rate.

While Oregon pays seventy-five percent (75%) for a partial day, the evidence indicated that it was unknown how a partial-day was defined. California also pays a partial-day rate, but the rate differed from county to county and for each of the four child categories.¹³ For example, in Mendicino county, the partial-day rate was ninety-one percent (91%) for infants, seventy-one percent (71%) for preschool children, and seventy-eight (78%) for school age children. California, unlike Washington and Oregon, has no toddler category. *Ex. U-11*. A partial-day rate would not be without precedent.

The Union argued that child care providers, being small businesses, must be fiscally responsible, similar to the State. These child care providers accept subsidized children and budget their money, time, and other resources with the expectation that the child will be present the entire day. The Union further argued that the policy of paying child care providers fifty percent (50%) of a full-day when a child attends two half days,

¹³ Washington has divided children into four (4) age categories depending on the age of the child. Infants/enhanced toddler are up to 18 months old, toddlers are between 18 months and 29 months old, preschool children at between 30 months and 5 years old, and school age children are between 5 and 12 years old. While California has no toddler category, Oregon does. The charts and spreadsheets in evidence as exhibits indicate that child care providers are paid the least for school age children and most for infants. *Ex. U-11*. California and Oregon both do not have an enhanced toddler category. The Union persuaded Arbitrator Michael E. Cavanaugh to create this category to reflect a pay differential. *Ex. J-4*.

generally part of a morning session and an afternoon session, is inconsistent with this expectation.

For example, if a child spends two hours at a provider's home from 9:00 a.m. through 11:00 a.m. and the child must leave the morning session for an afternoon event such as a doctor's appointment or some activity, returning at 2:00 p.m. and leaving again at for the day at 4:55 p.m., the child care provider is paid a partial day rate of fifty-percent (50%) of the full-day rate. The child care provider is not entitled pay beyond fifty percent (50%) of the full-day for two reasons. First, the three (3) hours spent providing services to the child in terms of holding the spot for the child is not considered service to the child because the child was not physically present in the home of the child care provider. Second, the total time the child was physically present in the home was only 4 hours and 55 minutes, less than the 5 hours required to constitute a full-day.

The Union argued that similar scenarios would be consistent with 75% of the full-day pay rate of pay and with the concern of both the State and the Union that continuity of care is essential to maintain the quality of care provided by a child care provider.

The State argued that partial-day payments at 75% of a full-day rate would result in difficulties with processing payment authorizations to subsidized families. The State has also argued that the Union's proposed language will result in the child care providers being paid for two-half days, totaling one hundred fifty percent (150%) pay for a full-day. The Union has confirmed that this was never the intent of the Union proposal and that it seeks only seventy-five percent (75%) of the full-day pay rate.

Arbitrator Williams shared the "Union's concern on this issue" for a

partial-day rate but he denied the proposal as not being ripe because he believed that the proposal needed more discussion in terms of operational protocols and administration. *Ex. J-2, Ex. E-22, p.32*. The Union argued that the partial-day proposal was ripe since many members are experiencing situations similar to the above scenario.

It is also significant to note that the Union proposal before Arbitrator Williams was completely different from the Union proposal before your Arbitrator. The proposal that Arbitrator Williams considered was “For all children that attend child care twice in a one day, for less than five (5) hours total per day, the provider will receive a full day subsidy.” *Ex. J-2, Ex. E-22, p. 30*. If awarded, this would mean that a child visited twice during a morning session or twice during an afternoon session for any period of time, the child care provider would be entitled to a full-day subsidy. Actual time spent providing service could theoretically be less than thirty (30) minutes during either a morning or afternoon session. In addition, the Union was asking for a full-day subsidy, not seventy-five percent (75%) of a full-day subsidy. Your Arbitrator’s inclusion of a partial- day rate would not be inconsistent with Arbitrator Williams’ opinion and award.

RCW 41.54.465 provides that the State’s Ability to pay is a “shall” factor while issues relating to turnover and retention is a “may” factor. RCW 41.54.465 does not provide guidance as to how much weight to provide to these two factors. Suffice to say, a “shall” factor generally should carry more weight than a “may” factor unless the “may” factor is combined another “shall” factor.

It is significant to note that the ability to pay factor is not as severe as it

was during the Great Recession. A dire economic outlook indicates a strong likelihood for no wage increases. A robust economy indicates a good wage increase. The economic outlook for Washington is not robust. Rather, it is bright and revenues are increasing although they are outpaced by expenditures. The State is in an economic recovery. The cost of living is another “shall” factor. This shall factor indicates that the cost of living continues to increase. The only other “shall” factor applicable to this interest arbitration is the comparables of California and Oregon, which the parties acknowledge are not very useful. Your Arbitrator is also convinced that low wages for licensed child care providers is a factor that is related to their increased turnover and decreased retention, a “may” factor.

In regard to subsidy rates, your Arbitrator, faithfully applying the factors set forth in RCW 41.56.465 awards the State’s proposal for subsidy rates beginning July 1, 2019 and shall award the Union’s proposal, with a slight modification, effective July 1, 2020.¹⁴

Your Arbitrator also awards the Union a partial-day provision, but modifies the Union proposal as set forth below. The State’s proposal for the status quo on the partial-day provision is respectfully denied. The awarded language shall protect the

¹⁴ The history of subsidy rate increases indicates that in 2008 there was a seven percent (7%) increase for licensed providers and four (4%) increase for FFN. For 2009 subsidy rates increased by three percent (3%) for licensed providers and FFN. For 2010 through 2013 there were no increases for licensed providers and FFN. In 2014 there was a two percent (2%) increase for licensed providers and FFN. In 2015 there was an increase of eight percent (8%) for licensed providers and FFN (four percent (4%) effective 7/1/14 and four percent (4%) effective 1/1/15). In 2016 there were no increases for child care providers. In 2017 licensed providers received a minimum increase of two (2%) with a maximum increase of eleven (11%) as modifications were made based upon the 2014 Market Rate Survey. In 2018 licensed providers and FFN subsidy rates were increased by two percent (2%). No increase was scheduled in 2019 for licensed child care providers and FFN. *Ex. E-9, p.1.*

Also, see the discussion in Section VI for the State’s Early Achiever’s program which offers a tiered reimbursement rate of pay above the base rate up to 20% for Level 5 and the State’s Quality Rating Improvement System awards, up to \$3,250.00 for Level 5. Both of these programs were created to incentivize child care providers to provide quality child care services. These programs are consistent with the State’s goal to provide the same quality of care, received by the children of private pay clients, to the children of parents who receive child care subsidies. This is the vision of Governor Christine Gregoire and her successor, Governor Jay Inslee, subject to budget constraints.

State from unfair scenarios and shall be limited to a scenario described in testimony given by witnesses for the State and the Union.

The Article 11.1 subsidy increases and the inclusion of a carefully modified partial-day rate provision have been tempered by the State's structural deficit, the total compensation package offered to bargaining unit employees (discussed in Section IXE), particularly health care insurance (discussed in Section XI), and the fact that the State must deal with several unions, all of which want a part of the State's increased revenues.

Article 11.1, Subsidy Rate Increases, shall read as follows:

Effective July 1, 2019, subsidy rates for licensed providers shall be in accordance with Appendix A-1. Effective July 1, 2020, subsidy rates for licensed providers shall increase by six percent (6%).

Effective July 1, 2019, subsidy rates for FFN providers shall be two dollars and fifty-five cents (\$2.55) per child per hour.

Effective July 1, 2020, subsidy rates for FFN providers shall increase by four percent (4%).

Partial-Day Rate.

The half-day rate is increased for licensed child care providers in all regions and for all ages to seventy-five percent (75%) of the full-day rate, if the licensed child care provider provides child care services to the child during a morning session and an afternoon session and the child care provider is not entitled to payment at the full-day rate. Unless otherwise agreed by the parties, a morning session shall begin at any time of the day and end at 12:00 noon. An afternoon session shall begin one (1) second past 12:00 noon. In no event shall a child care provider be entitled to two half-day rates totaling one hundred fifty percent (150%) of the daily rate.

All providers shall ensure that the base rate they charge the State is no greater than their usual private pay rates. If a provider charges the State a higher amount than their usual private pay consumer rate, the provider agrees that an overpayment has occurred and a reimbursement is owed

to the State. This overpayment will not be subject to the grievance procedure, but is subject to the administrative hearing process.

XI. THE ARTICLE 12.3 ISSUES, DISCUSSION, AND AWARD

Throughout the arbitration hearing the State consistently referred to the medical plan that it provides to bargaining unit members to establish that its benefit package is superior to other comparable employee plans. Undoubtedly, the medical plan is a tremendous benefit in terms of the State paying a premium of \$815.40 per bargaining unit member per month and in terms of lower out-of-pocket medical expenses paid by the bargaining unit member to medical providers.

However, the State, while considering the medical benefit as part of a “total compensation package,” does not reference the fact that this medical benefit has a cap. While this Cap has never been met, the very nature of a cap recognizes that this benefit may not be available to all bargaining unit members if the cap is exceeded. The testimony indicates that if that event should occur the State will negotiate again with the Union.

The State asserted cap is necessary to maintain fiscal responsibility and without a cap the State’s exposure would be unlimited. The bargaining history indicates that the State removed contingencies for bargaining unit members’ health care eligibility in return for placing a cap on this significant benefit. For the 2019-21 contract it has increased the cap for the 2019 period and again for the 2020 period. Premiums are not expected to increase in 2019. There are no contingencies for acceptance into the plan other than being a member of the bargaining unit.¹⁵

¹⁵ The Union has argued that the wait list of 37 people to get health care benefits is a reason to justify the removal of the health care cap. *Ex. E-30*. However, the unrebutted testimony is that approximately 50% of the people on the list do not have authorization to

The Union argued that is the only labor group that has a labor contract with the State of Washington that has a cap. *Ex. U-7*. The Union was clearly asserting that the State's failure to follow the theory of internal parity was unfair.

However, your Arbitrator is persuaded that this issue is not ripe for interest arbitration under the record of this grievance since the State has increased the cap by making additional contributions, there are open slots for licensed child care providers to apply for the health care benefit, there isn't any evidence to indicate that licensed child care providers on the wait list will become ineligible for health care benefits due to the cap, and there is no evidence that the cap is in eminent danger of being exceeded by an excessive number of applicants.

The Union's proposal is respectfully denied. The State's proposal to maintain the status quo and increase the cap amounts is awarded. The language in Article 12.1 for the July 1, 2019 through June 30, 2021 biennium contract shall not be changed (with the exception of dates). The language in dispute shall read as follows:

Contributions

For the first time period from July 1, 2019 through June 30, 2021, the State shall contribute to the Trust an amount per month per entitled licensed provider; this amount will be determined by the Trust. The Trust will notify the State thirty (30) days in advance of what the monthly amount to be contributed for each entitled licensed provider shall be effective July 1, 2019; this amount must be the same for all entitled licensed providers and may be changed during the life of the Agreement with thirty (30) calendar days' notice. However, notwithstanding any changes to the monthly amount contributed per entitled licensed provider, the total contributions by the State will be no more than six hundred twenty-seven thousand six hundred fifteen dollars (\$627,615.00) per month for fiscal year 2020 and six

work. Zenith, the Health Care Administrator unfortunately gave one witness the wrong forms. Your Arbitrator is persuaded that the wait list is in danger to the health cap, but that a problem exists with either the Fund Administrator and/or the Health Care Trust, not the State. The testimony establishes that the State is currently working with the Fund Administrator to identify any problems so that members will obtain health care benefits in a timely manner.

hundred forty-six thousand four-hundred forty-four dollars (\$646,444.00) per month for the fiscal year 2021, for all entitled licensed providers excluding the payroll deduction described below:

XII. THE ARTICLE 16.2 ISSUES, DISCUSSION AND AWARD

The Union asserted arguments similar to those used to support the creation of the seventy-five percent (75%) partial-day rate in Article 11.1 to support the Union's proposal concerning Article 16.2. However, the State declared that there were factors which relate to Article 16.2, that did not concern Article 11.1, including the fact that the Union's proposal seeks to delete language that was bargained for between the parties during the last bargaining session for the contract covering the period from July 1, 2017 through June 30, 2019. Absent substantially changed circumstances or other good cause, allowing parties to submit an issue resolved in the previous bargaining session would minimize the importance of bargaining and honoring labor agreements. In addition, the State has stated that it intends to implement the bargained for automated system.

Lastly, while California pays for all absent days, Oregon pays for only five (5) absent days. Washington's absent day provision is superior to Oregon but inferior to California. Again, a comparable is difficult to find. Your Arbitrator is convinced that he should award the State's proposal to maintain the status quo and leave Article 16.2 unchanged.

The Union's proposal is respectfully denied. The State's proposal to maintain the status quo for Article 16.2 is awarded. Article 16.2 for the July 1, 2019 through June 30, 2021 biennium shall remain unchanged (except for dates as proposed by the State). The language in dispute shall read as follows:

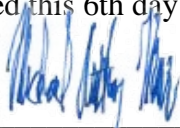
16.2 Absent Days

- A. From July 1, 2019 through June 30, 2021: The State shall pay the licensed provider for all days the subsidized child is absent, unless an automated system for billing absent days is in place, in which case the next paragraph B applies. The State shall collect data on the actual absent day use by licensed providers while creating an automated system for billing absent days.
- B. Upon implementation of an automated system for billing absent days, the State shall pay licensed providers for up to sixty (60) days per twelve (12) month authorization period when the subsidized child is absent. These days shall not roll over into subsequent authorization periods. Absent days may be billed only if the subsidized child attended care in the month of service billed for by the licensed provider, or the month prior, on a day that falls within the provider's authorized period. Absent days may be billed regardless of the number or half days or full days authorized, however the total number of days billed must not exceed the number of days authorized in the month. For the purpose of this Section, days shall be defined as consecutive twenty-four (24) hour periods. Licensed providers may bill an absent day for more than one (1) authorization within a twenty-four (24) hour period. For children served under the Children's Administration Child Care Program, refer to the provisions of Section 9.4, Planned and Urgent and Unanticipated Terminations - Children's Administration.

XIII. CONCLUSION

Your Arbitrator renders an award on each issue set forth above which has been certified for interest arbitration by the Washington State Public Employees Relations Commission. The proposals awarded in this Opinion and Award shall be incorporated into the July 1, 2019 through June 30, 2021 collective bargaining agreement of the parties.

Respectfully submitted this 6th day of September, 2018.



MICHAEL ANTHONY MARR
Interest Arbitrator