

IN THE MATTER OF THE)
)
INTEREST ARBITRATION) ARBITRATOR'S
)
BETWEEN) OPINION
)
SERVICE EMPLOYEES) AND
INTERNATIONAL UNION) AWARD
HEALTHCARE 775NW)
(The Union))
)
AND) 2013-2015 Collective Bargaining Agreement
)
THE STATE OF WASHINGTON)
(The Employer)

HEARING DATES: August 27-31 and September 4-7 2012

HEARING CLOSED: September 7, 2012

ARBITRATOR:

Sylvia Skratek, Ph.D.
3028 Western Avenue
Suite 405
Seattle, Washington 98121

REPRESENTING THE EMPLOYER:

Robert McKenna, Attorney General
By Stewart A. Johnston, Senior Counsel,
Assistant Attorney General and
Andrew L. Logerwell, Assistant Attorney General

REPRESENTING THE UNION:

Judith Krebs, General Counsel
SEIU Healthcare 775NW

PROCEEDINGS RECORDED BY:

Amy P. Rostad, RPR, CCR and
Jan Floate, RPR, CCR
Likkell & Associates

WITNESSES FOR THE UNION:

David Rolf, President, SEIU Healthcare 775NW
Will Pittz, Executive Director, Washington Community Action Network
Sterling Harders, Vice President and Organizing Director, SEIU Healthcare 775NW
Marcus Morrell, Employee Benefits Consultant, DiMartino Associates
Kathleen (Kay) Sohl, Consultant and Trainer
Adam Glickman, Secretary-Treasurer, SEIU Healthcare 775NW
Karni Adamson, DiMartino Associates
Marissa Brooks, Director of Health Improvement Program for the Health Benefits Trust
Don Driscoll, Deputy Director of Member Programs and Participation
Charissa Raynor, Executive Director, SEIU Training Partnership and Health Benefits Trust
Denese Wallace, Individual Provider
Sahar Banijamali, Policy Analyst, SEIU Healthcare 775NW
Gayle Sevier, Individual Provider
Misha Werschkul, Legislative and Policy Director, SEIU Healthcare 775NW

WITNESSES FOR THE STATE:

Stan Marshburn, Deputy Director, Office of Financial Management (OFM)
Rick Hill, Acting Assistant Director of Labor Relations Division of OFM
James Kettel, Chief Forecast Development Manager, Aging and Disability Services Administration (ASDA)
Dan Murphy, Director of Legislative and Policy Analysis, ASDA
Rina Wikandari, Senior Forecast Analyst, DSHS, ASDA
Grace Kiboneka, Program Manager, Labor Relations ASDA
Diane Lutz, Senior Labor Negotiator, Labor Relations Division, OFM
Marc Baldwin, Assistant Director of Forecasting Division, OFM

BACKGROUND

The State of Washington (hereafter “the State”) and the Service Employees International Union Healthcare 775NW (hereafter “the SEIU” or “the Union”) are parties to a collective bargaining agreement that expires on June 30, 2013. (Ex. J6) This matter came before the Arbitrator pursuant to Washington State Statute RCW 74.39A.270 which provides at (2) (c) that *The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply...* and pursuant to Washington Administrative Code (WAC) 391-55-205 which provides at Section (1) *The use of partisan arbitrators shall be deemed waived if neither party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the parties' principal representatives shall then select the neutral chairperson.* The Arbitrator convened a hearing in this matter beginning on August 27, 2012 and continuing through September 7, 2012. The hearing was held in two separate locations for the convenience of the parties, at the office of the Attorney General in

Tumwater, Washington and at the office of the SEIU in Federal Way, Washington. The proceedings were recorded by Amy Rostad and Jan Floate of Likkel & Associates, Everett Washington. Ms. Rostad and Ms. Floate alternated the dates on which they recorded the proceedings.

At the hearing the parties had full opportunity to make opening statements, examine and cross examine witnesses, introduce documents, and make arguments in support of their positions. Closing arguments were presented on Friday, September 7, 2012 and the record was closed on that date.

STATUTORY CRITERIA

Pursuant to RCW 41.56.465 (5) and (6):

(5) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

- (i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and
- (ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

- (i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;
- (ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;
- (iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and
- (iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

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

CONTEXT OF THE DISPUTE

In November of 2001 the voters of the state of Washington passed Initiative 775 that had as its basis the regulation and improvement of long-term in-home care services. The Initiative acknowledged that thousands of Washington seniors and persons with disabilities live independently in their own homes and that long-term in-home care services were being provided by Individual Providers (IPs) hired directly by them under the Medicaid personal care, community options programs entry system, or chore services program. The Initiative further acknowledged that allowing a choice for seniors and persons with disabilities to remain in their own homes rather than being forced into institutional care would not only be beneficial for the seniors and persons with disabilities but also would yield significant savings for Washington taxpayers. The Home Care Quality Authority (HCQA) was established to regulate and improve the quality of long-term in-home care. Section 6 of the Initiative identified the HCQA as the public employer of individual providers for purposes of collective bargaining and further identified at (2)(a) *The only unit appropriate for the purpose of collective bargaining... is a statewide unit of all individual providers.* (Ex. U38) In the Spring of 2004, House Bill 2933 moved the collective bargaining responsibilities from the HCQA to the Governor's Office, OFM. (Ex. S9)

The Union today represents over 40,000 Individual Providers and has engaged in collective bargaining with the State since being certified as the official bargaining representative for the IPs in August 2002 with the first collective bargaining agreement accomplished in October 2002. The legislature rejected the financial terms of that agreement and unilaterally appropriated a raise for home care workers. The parties returned to the bargaining table and entered into a revised collective bargaining agreement. (Ex. J1, pp. 12-14) The parties' subsequent negotiations beginning in 2004 have resulted in submissions to the statutorily provided interest arbitration procedure resulting in five awards beginning in 2004. (Exs. J1-J5)

There is no disagreement between the parties that the Individual Providers represented by the Union provide a valuable service to seniors and persons with disabilities (hereafter "clients"). Their work is physically and emotionally tolling and a need for their services will only become greater as the proportion of the United States population aged 65 years and older will increase to

19.6 percent in the year 2030. In Washington State alone the population aged 65 and older has grown more than 22 percent since the 2000 census and the number of individuals aged 65 and older is projected to represent one-fifth of the state's population by the year 2030. (Ex. U11, pp.7-8) The needs of the clients range from minimal supports to live independently to 24-hour intensive supports. As stated by Arbitrator Williams in his 2010 award *A growing percentage of the population will benefit both financially and personally by being able to live out their lives in personal residences thanks to the work of the IPs.* (Ex. J5 at page 20)

The parties began their negotiations for the 2013-2015 collective bargaining agreement in the Spring of 2012. They successfully reached tentative agreements on several issues (Ex. J7) and continued their efforts throughout the Summer months. When it became apparent that they would not be able to reach agreements on several of the issues they entered into mediation with a mediator appointed by the Public Employment Relations Commission (PERC). The mediator confirmed that certain issues "be submitted to interest arbitration as provided in RCW 41.56.450..." specifically:

- Article 9-Compensation (including Appendix A-Wage Scale)
- Article 10-Comprehensive Healthcare Benefits
- Article 12-Paid Time Off
- Article 14-Non-discrimination
- Article 16-Training
- Article 21-Hours of Work
- Article 22-Retirement Benefits
- Article 26-Term of Agreement
- Article X-Holidays and Other Benefits
- Article Y-Health and Safety

The Executive Director of PERC certified the above listed issues for interest arbitration. On August 14, 2012 the State filed an unfair labor practice complaint against the Union contending that several of the issues represent non-mandatory subjects of bargaining. As a result of the complaint the Executive Director of PERC suspended interest arbitration on Articles 14, 21 and 26. Those three issues will be remanded to interest arbitration if the complaint is withdrawn or dismissed. (Ex. J8) At the hearing the parties reached resolution on Article Y and that matter is no longer before this Arbitrator leaving the following six articles for resolution through interest arbitration:

- Article 9-Compensation (including Appendix A-Wage Scale)
- Article 10-Comprehensive Healthcare Benefits
- Article 12-Paid Time Off
- Article 16-Training
- Article 22-Retirement Benefits
- Article X-Holidays and Other Benefits

The parties' oral closing arguments were by far the best that this Arbitrator has experienced in her three decades of presiding over arbitration proceedings. They were eloquent, comprehensive and well focused on their respective positions. The State emphasized that we are still experiencing the effects of the largest economic downturn since the Great Depression. The rate of recovery is slow and the State is looking at a \$492,000,000 projected deficit in the 2013-2015 biennium which does not even take into consideration the demands placed on the State by the recent Washington State Supreme Court decision in *McCleary v. State*. (Exs. S3, S16) Nonetheless the State has put forward proposals that are intended to help defray the increasing cost of healthcare for the IPs and to adequately fund the statutory training requirements. The State does not disagree that there are legitimate demands being made by the Union on behalf of the IPs however this is simply not the time to meet the demands given the fact that the recovery from the recession is fragile and volatile and the State's budget is limited. The Union emphasizes that one cannot ignore the fact that a well trained, stable IP work force earning reasonable wages and benefits increases the quality of long-term home care services. This is a unit of over 40,000 employees who work at poverty level wages providing services that are physically and emotionally demanding. Yet their wages and benefits have been significantly affected by the State's inability to pay over the last several years. From 2006-2009 the personal financial situation of Washington state home care workers worsened and 2011 survey results found that the level of poverty among these workers is 6.6% higher than the U.S. average and 9.1% higher than the statewide average. (Ex. U11, p. 14) The Union points to the State's exhibits 4 and 6 to illustrate that economic trends are improving and that the Washington economy continues to grow at a moderate pace. There are indicators that real disposable personal income has increased for seven consecutive months and personal income is projected to rise more than five percent in 2013 and 2014. The demands being put forward by the Union are not only justified but are also affordable.

In making a determination on each certified issue, the Arbitrator has taken into consideration the testimony and exhibits presented at the hearing as well as the parties' closing arguments. The statutory criteria have served as the basis for all of her decisions in this matter. She has paid particular attention to the fragile and volatile economic recovery represented in State exhibits 3-7 as well as the statements by the Director of OFM in his memo dated June 7, 2012 in which he emphasizes the funding of essential services and focusing on "...buying what you need..." (Ex. S2)

ANALYSES AND DECISIONS

ARTICLE 9 COMPENSATION

Union Proposal (Ex. J9)

Section 9.1 Wages

Effective July 1, 2014~~3~~, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid ...

Section 9.2: Add *Certification Differentials* to section title and add new language:

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

Employees who complete advanced training beyond the training required to receive a valid "Home Care Aide" certification (as set forth in Training Partnership curriculum) shall be paid an additional fifty cents (\$.50) per hour differential to his/her regular hourly wage rate. This advanced training differential stacks on top of the certification differential described above (e.g., an employee who has completed the home care certification and the advanced training requirements shall be paid one dollar (\$1.00) above his/her regular hourly wage rate).

Modify next paragraph as follows:

A home care worker who is working ~~assigned by the Employer~~ as a mentor, preceptor, or trainer of other home care workers or prospective home care workers shall be paid an additional one dollar (\$1.00) per hour differential in addition to the top ~~his or her regular~~ hourly wage rate in Appendix A...

Section 9.3 Mileage Reimbursement

Home care workers shall be compensated for the use of their personal vehicles to provide services to their consumers... Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service ~~up to a maximum of sixty miles a month per consumer.~~ ...

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

New Section 9.4 Overtime

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

New Section 9.5 Bargaining Team Release Time

The Employer will approve paid release time for the first ten (10) days of formal negotiations for up to thirty (30) Union bargaining team members who are scheduled to work on the days negotiations are being conducted. For days in excess of ten (10), the Employer will approve the use of paid time off benefits or unpaid leave, subject to consumer needs. No overtime will be incurred as a result of participation in negotiations and/or travel to and from bargaining sessions.

**APPENDIX A
WAGE SCALE**

July 1, 2013 – June 30, 2014	
Cumulative Career Hours	Wage
0-2000	\$10.03 <u>\$12.55</u>
2001-4000	\$10.17 <u>\$12.80</u>
4001-6000	\$10.33 <u>\$13.05</u>
6001-8000	\$10.46 <u>\$13.30</u>
8001-10000	\$10.61 <u>\$13.55</u>

10001-12000	\$10.76 <u>\$13.80</u>
12001-14000	\$10.91 <u>\$14.05</u>
14001plus hours-16000	\$11.07 <u>\$14.30</u>
<u>16001 plus hours</u>	<u>\$14.55</u>

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

<u>July 1, 2014 – June 30, 2015</u>	
<u>Cumulative Career Hours</u>	<u>Wage</u>
<u>0-2000</u>	<u>\$12.80</u>
<u>2001-4000</u>	<u>\$13.05</u>
<u>4001-6000</u>	<u>\$13.30</u>
<u>6001-8000</u>	<u>\$13.55</u>
<u>8001-10000</u>	<u>\$13.80</u>
<u>10001-12000</u>	<u>\$14.05</u>
<u>12001-14000</u>	<u>\$14.30</u>
<u>14001-16000</u>	<u>\$14.55</u>
<u>16001 plus hours</u>	<u>\$14.80</u>

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

State Proposal (Ex. J10)

Current Contract

DISCUSSION

The Union has put forward a compelling argument as to why the members of the Home Care profession should be compensated in a manner that reflects the importance and necessity of the profession. The Union reminds the Arbitrator that one-fifth of its membership is below the poverty level and three-fifths of its membership is below 200% of the poverty level. Wages have been frozen for four years, hours have been cut, and health care costs have increased. The Union's proposal represents an overall increase to wages of approximately twenty-five percent over the biennium. The State's fragile economic recovery does not allow it to provide the compensation at the level requested by the Union. That is not to say however that there cannot be modest improvements in several areas that will reflect the movement toward raising the profession to a fair and equitable level that takes into consideration the facts that in-home care not only provides financial savings for Washington taxpayers but also provides considerable societal benefits that cannot be underestimated. As the Arbitrator reviewed the Union's proposal she isolated the items that in her opinion would provide the Individual Providers the opportunity to modestly improve their financial situations which have been losing ground over the past several years (Exs. U72-74) while at the same time she carefully considered the financial circumstances of the State of Washington.

Focusing first on the wage scale, the Arbitrator has provided an increase of five percent to each of the levels within the scale with the exception of the top level, 14001 plus hours. The Union had proposed the modification of that level and the addition of a new level, 16001 plus hours. The Arbitrator finds no good reason to simply add a new step to the wage scale but recognizes that the Union is attempting to find a method by which IPs who have maxed out at the top level receive some form of a step increase in addition to whatever overall increase may be provided. That is an age old problem that has been faced by work groups ever since wage scales or step scales were introduced. Some work groups have chosen to add longevity language to the agreement rather than add another step. Other work groups have added additional steps to the point that their wage scales have an inordinate number of steps. Rather than burden this unit

with the addition of steps every time there is an IP who has maxed out on the scale, the Arbitrator has modified the top step of the scale, 14001 plus hours, to become a “senior” or “experienced” career level step that recognizes an IP’s long term commitment to the profession. An IP at the 14001 level in FY 2014 will receive an increase of twenty-five percent thereby reaching a pay rate that will no longer increase with additional hours but will be a pay rate that is considerably higher than the IPs without longevity and that will continue to receive the annual percentage increases that are negotiated on behalf of the members. The “senior” or “experienced” career level step is intended to encourage experienced Individual Providers to remain in the profession and thereby fulfill the State’s interest in “...promoting a stable long-term workforce to provide quality and reliable care to vulnerable elderly and disabled recipients” as stated in statutory criteria at 41.56.465(5)(b)(ii). It is further intended to fulfill the State’s fiscal interest at 41.56.465(5)(b)(iv) in “...reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.” Furthermore, the overall weighted average is comparable to the wages of other publicly reimbursed personnel (Exs. S23 and U47) as anticipated by the statutory criteria at 41.56.465(5)(a)(i) and makes progress toward the wages of publicly employed personnel (Exs. U48 and U49) as anticipated by the statutory criteria at 41.56.465(5)(b)(i). According to the data provided in Union exhibit 28 eight percent of the workforce is currently at Tier 8 of the wage scale. This small percentage of the workforce would enjoy the benefits that accrue with remaining in the profession while the remainder of the workforce would receive a modest increase with the incentive of the top career level step providing a reason to remain in the profession.

The Arbitrator has also considered the Union’s proposal for Certification Differentials and finds that education of the Individual Providers is not only important but is also critical to their success. It is not unusual to provide additional compensation to an employee who has furthered their education whether it be through employer provided education and training or through outside education and training. While the State is correct that the Training Partnership will be providing training that is required since the passage of Initiative 1163 that does not necessarily eliminate the possibility of additional compensation for completion of the training. There are some states that require a Masters’ degree in education in order to teach however those

states do not hesitate to provide additional compensation once an individual has obtained the additional education. The Union's proposal of fifty cents per hour however is too ambitious given the current financial situation and the Arbitrator has revised it to a rate that she believes is achievable. By cutting the Union's proposed rate in half the overall costs to the State as estimated in State Exhibit 24, pages 4 and 5, should also be cut in half.

The Arbitrator has also modified the Union's proposal for mileage reimbursement based on the State's concerns that unlimited mileage is not only costly but difficult, if not impossible, to manage. The State has also legitimately emphasized that there are other resources available to clients who require transportation and those resources should be explored by the clients and exhausted.

The Arbitrator has rejected all other proposed changes to Article 9, not because they are unreasonable but rather because this is not the right time for additional financial requirements given the fragile and volatile nature of the State's economic recovery.

DECISION

THE FOLLOWING PROPOSED CHANGES ARE GRANTED

Section 9.1 Wages

Effective July 1, 2014³, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid ...

Section 9.2: Add *Certification Differentials* to section title and add new language:

Employees who hold and submit a valid "Home Care Aide" certification or Certified Nursing Assistant license (or equivalent or greater medical license), shall be paid an additional **twenty-five cents (\$0.25)** per hour differential to his/her regular hourly wage rate.

Employees who complete advanced training beyond the training required to receive a valid "Home Care Aide" certification (as set forth in Training Partnership curriculum) shall be paid an additional **twenty-five cents (\$.25)** per hour differential to his/her regular hourly wage rate. This advanced training differential stacks on top of the certification differential described above (e.g., an employee who has completed the home care

certification and the advanced training requirements shall be paid **fifty cents (\$.50)** above his/her regular hourly wage rate).

Section 9.3 Mileage Reimbursement

Home care workers shall be compensated for the use of their personal vehicles to provide services to their consumers... Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of **one hundred (100) miles** a month per consumer. ...

Home care workers providing transportation to services funded by the Home and Community Based Services (HCBS) waivers, the DDD Individual and Family Services Program, or the Veteran’s Directed Home Services and identified in the consumer’s Individual Support Plan, in excess of **one hundred (100) miles** per month, will be reimbursed up to an additional maximum authorized by the case manager.

**APPENDIX A
WAGE SCALE**

July 1, 2013 – June 30, 2014	
Cumulative Career Hours	Wage
0-2000	\$10.03 <u>\$10.53</u>
2001-4000	\$10.17 <u>\$10.68</u>
4001-6000	\$10.33 <u>\$10.85</u>
6001-8000	\$10.46 <u>\$10.98</u>
8001-10000	\$10.61 <u>\$11.14</u>
10001-12000	\$10.76 <u>\$11.30</u>
12001-14000	\$10.91 <u>\$11.46</u>
14001 plus hours: Experienced IP	\$11.07 <u>\$13.84</u>

<u>July 1, 2014 – June 30, 2015</u>	
<u>Cumulative Career Hours</u>	<u>Wage</u>
<u>0-2000</u>	<u>\$11.06</u>
<u>2001-4000</u>	<u>\$11.21</u>
<u>4001-6000</u>	<u>\$11.39</u>
<u>6001-8000</u>	<u>\$11.53</u>
<u>8001-10000</u>	<u>\$11.70</u>
<u>10001-12000</u>	<u>\$11.86</u>
<u>12001-14000</u>	<u>\$12.03</u>
<u>14001 plus hours</u> <u>Experienced IP</u>	<u>\$14.53</u>

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

THE FOLLOWING PROPOSED CHANGES ARE REJECTED:

Section 9.2:

Modify next paragraph as follows:

A home care worker who is working assigned by the Employer as a mentor, preceptor, or trainer of other home care workers or prospective home care workers shall be paid an additional one dollar (\$1.00) per hour differential in addition to the top his or her regular hourly wage rate in Appendix A...

New Section 9.4 Overtime

Employees who work in excess of one hundred seventy three (173) hours in a month will be paid overtime for such additional hours at the rate of one and one half (1.5) times their regular hourly rate of pay. Paid leave time shall not be considered time worked for the purposes of this section. For the purpose of this section, a “month” begins at midnight on the first calendar day of each month and ends at 11:59 p.m. on the final calendar day of

each month. The Employer shall have the right to take such reasonable steps as it deems necessary to limit the obligation to pay overtime hours.

New Section 9.5 Bargaining Team Release Time

The Employer will approve paid release time for the first ten (10) days of formal negotiations for up to thirty (30) Union bargaining team members who are scheduled to work on the days negotiations are being conducted. For days in excess of ten (10), the Employer will approve the use of paid time off benefits or unpaid leave, subject to consumer needs. No overtime will be incurred as a result of participation in negotiations and/or travel to and from bargaining sessions.

ARTICLE 10 COMPREHENSIVE HEALTH BENEFITS

Union Proposal (Ex. J11)

10.2 Contributions

The Employer shall contribute two dollars and ~~sixty-three twenty-one cents (\$2.21)~~ (\$2.63) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, effective July 1, ~~2011-2013~~. Effective July 1, 2014 the Employer shall contribute two dollars and ninety-seven cents (\$2.97) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacations.

In the event that the number of Department-paid hours falls below the current forecasted amount of 54,344,882 Department-paid hours for FY2014 and 57,459,224 Department-paid hours for FY2015, the Employer shall increase its contribution by four cents (\$0.04) per every one percent (1%) reduction to the Department-paid hours.

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

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers. ~~provided; however, that if such contribution is required to be a deduction from home care workers' paychecks performed by the State, such deduction shall be the same for each eligible home care worker and in whole dollar amounts.~~ Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least ~~sixty~~ thirty (30) days notice of changes in deduction amounts must be given to allow Employer to implement requested changes.

10.3 Payroll Deductions

~~With adequate advance notice of no fewer than sixty (60) days, t~~ The Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any home

care worker. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer.

10.6 Indemnify and Hold Harmless

~~The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, health care providers, vendors, insurance carriers or home care workers covered under this Agreement.~~

10.6 Enrollment

The Employer shall offer home care workers the opportunity to pre-enroll in the Trust upon hire. Home care workers who elect to complete the pre-enrollment application will automatically become enrolled in the Trust plan upon meeting the eligibility requirements. Home care workers will not be charged a premium until they are eligible and enrolled in the Trust plan.

The Employer or its designees shall make every effort to enroll eligible home care workers in the Trust. All of the Washington Area Agencies on Aging will have enrollment forms and information about the Trust plan available to home care workers.

State Proposal (Ex. J12)

10.2 Contributions

Effective July 1, 2013 ~~the~~ Employer shall contribute to the Trust two dollars and twenty-one ~~six~~ cents ~~(\$2.24)~~ (\$2.26) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, effective July 1, 2011 ~~Effective July 1, 2014 the Employer shall contribute two dollars and thirty-one cents (\$2.31) per Department-paid hour worked by all home care workers covered by this Agreement.~~ Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacations.

[The Employer proposes the following changes to Article 10.2 and 10.3 provided a new payroll system is implemented in accordance with Article 13. If that payroll system is not implemented, the language of Article 10.2 and 10.3 in the 2011-2013 CBA (with the exception of the increase in the contribution amount above) will remain in effect.]

Contributions required by this provision shall be paid to the Trust on ~~or before the fifteenth (15th) day of~~ in the month following the month in which service hours are paid. Once the payroll vendor has been chosen by the State pursuant to Article 13, the parties will meet to determine the specific date by which the contribution will be paid to the Trust. Contributions shall be transmitted together with a remittance form as may reasonably be required by the Trust or their designee...

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers, ~~provided; however, that if such contribution is required to be a deduction from home care workers' paychecks performed by the State, such deduction shall be the same for each eligible home care worker and in whole dollar amounts.~~ Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least ~~sixty~~ thirty (30)

(30) days notice of changes in deduction amounts must be given to allow Employer to implement requested changes.

10.3 Payroll Deductions

With adequate advance notice of no fewer than ~~sixty-three (6030) days,~~†The Employer shall perform any such premium-share payroll deductions as directed by the Trust...

DISCUSSION

The rapidly escalating costs of health care have negative ramifications for those who are well paid. Co-pays increase, benefits are cut, and premium sharing amounts increase. In the best of times these ramifications have a noticeable difference on a household's income. In the worst of times, these ramifications for those who are at or near poverty level, lead to difficult choices. Should they remove themselves from the plan? Can they afford the doctor/hospital co-pay? As stated by the Union, if the cost becomes too high for an Individual Provider, they will simply not participate in the health care benefit. That is not only a loss for the Individual Provider, but it is also a loss for the taxpayers of the State of Washington who in some way will ultimately pay the cost of the uninsured. There have been significant changes to the Health Benefit Trust (HBT) since 2010 including an increase in the monthly cost share, an increase in office visit co-pays, an increase in deductibles for out of network providers and emergency rooms. These changes have led to a slowdown in the enrollment growth of the Health Benefit Trust. The Union's calculation of the contribution rate that is necessary to maintain the current level of benefits is based upon a monthly premium of \$706.17 for FY2013 that increases at a 9.7% inflation rate. The Union is not suggesting that the \$25 cost share be eliminated but rather is attempting to ensure that the status quo continues through the 2013-2015 biennium. Considerable efforts have been undertaken by the HBT to ensure that the costs of medical care for this high risk group are managed to the fullest extent possible. They have developed the Engaged Sponsor Program with specified targets and methods to determine whether or not the targets are being met. There has been year over year improvement in each identified metric. (Exs. U61 and U62) All of these efforts however cannot reverse the national cost trends for health care. As indicated in the three surveys presented by the Union as exhibits 51-53, health care costs will continue to grow at a rate between 7.5 through 10 percent per year. Ironically the trend projections for 2012 indicate that *All medical plan types are projected to experience lower cost trends for 2012...trends for*

2012 range from 9.6 percent to 10.4 percent. (Ex. U51, p. 1) To suggest that a health care benefit can be provided at a rate that does not take these *lower* trends into consideration is to suggest that there will be significant cuts in benefits and/or eligibility. Individual Providers are already faced with a monthly cost of \$25 to participate in the HBT as well as a \$15 co-pay for office visits. There is no more that can be reasonably asked of them. If they are asked to absorb the *lower* cost trends, then the end result will most likely be disenrollment. To keep the HBT moving forward and to ensure the continuation of the excellent work being done by programs such as the Engaged Sponsor Program, the monthly Employer contribution rate must keep up with the *lower* cost trends. The Arbitrator has reviewed all of the cost calculations provided by the parties (Exs. U54, U55, U123, S24, p.12 -13) and has concluded that a starting point for determining the monthly Employer contribution rate is through the incorporation of the lowest of the lower cost trends, 9.6%. She notes that the current contribution amount in the agreement effective July 1, 2011 is an amount of \$2.21. If she were to increase that amount by 9.6% in recognition of the lower cost trend for 2012, then the amount effective July 1, 2012 would have been \$2.42. Using that number as the base for FY 2014, she would then increase the amount by the projected cost trend for 2013 of 7.5% (Ex. U53, p.3) yielding an amount of \$2.60 for FY2014. In order to calculate the amount for FY2015, the Arbitrator relied upon the statement that there is "...the possibility that we have entered a new normal"...in lower health care trends (Ex. U53, p. 5) and therefore used the 2013 projected cost trend of 7.5% to calculate the amount for FY 2015 yielding an amount of \$2.80. The Arbitrator finds it worth noting that there was no increase within the current agreement that would have been effective July 1, 2012 and that the rate of \$2.21 has been in place for a two year period without any consideration of the increasing cost trends in health care. It is unreasonable to expect a contribution rate to remain flat or to increase minimally by one or two percent when clearly the cost trends are well beyond those numbers. If the health care benefit is to have any meaning it must be provided in a manner that will enable the enrollment of the highest number of eligible Individual Providers. It is not only a benefit for the members but is undeniably a benefit for all citizens of the state of Washington to have fewer individuals in the pool of the uninsured. Rather than rely solely on the calculations based on the health cost trends however the Arbitrator further considered the calculations presented by DiMartino Associates (Ex. U123) that showed shortfalls in the State's proposed contributions of 11.4% in FY2014 and 17.5% in FY2015. To eliminate the cut in enrollees that

are implied by the State's proposed contributions the Arbitrator has used the figures in Union Exhibit 123 and has confirmed that the rate of \$2.60 is required for FY 2014 and the rate of \$2.80 is required for FY2015. When the Arbitrator uses the State's charts at Exhibit S24, p.12 to determine a rough estimate of the costs to the State for the rates being granted she calculates that new money in the amount of approximately \$21,000,000 over the biennium will be required. While these rates may not be sufficient to allow the enrollment growth projected by the Union, they should be sufficient to allow for the maintenance of current enrollment with perhaps a modest enrollment growth.

DECISION

THE FOLLOWING LANGUAGE IS GRANTED

10.2 Contributions

The Employer shall contribute two dollars and sixty (\$2.60) per Department-paid hours worked by all home care workers covered by this Agreement to the Trust, effective July 1, ~~2011-2013~~. Effective July 1, 2014 the Employer shall contribute two dollars and eighty cents (\$2.80) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacations.

[The Employer proposes the following changes to Article 10.2 and 10.3 provided a new payroll system is implemented in accordance with Article 13. If that payroll system is not implemented, the language of Article 10.2 and 10.3 in the 2011-2013 CBA (with the exception of the increase in the contribution amount above) will remain in effect.]

Contributions required by this provision shall be paid to the Trust on ~~or before the fifteenth (15th) day of~~ in the month following the month in which service hours are paid. Once the payroll vendor has been chosen by the State pursuant to Article 13, the parties will meet to determine the specific date by which the contribution will be paid to the Trust. Contributions shall be transmitted together with a remittance form as may reasonably be required by the Trust or their designee...

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers, ~~provided; however, that if such contribution is required to be a deduction from home care workers' paychecks performed by the State, such deduction shall be the same for each eligible home care worker and in whole dollar amounts.~~ Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least ~~sixty thirty (60)~~ (30) days notice of changes in deduction amounts must be given to allow Employer to implement requested changes.

10.3 Payroll Deductions

With adequate advance notice of no fewer than ~~sixty-three (6030) days,~~†The Employer shall perform any such premium-share payroll deductions as directed by the Trust...

10.4 Purpose of Trust

Current Contract

10.5 Trust Agreement

Current contract

10.6 Indemnify and Hold Harmless

Current contract

THE FOLLOWING PROPOSED CHANGES IN THE UNION PROPOSAL ARE REJECTED:

10.2 Contributions

In the event that the number of Department-paid hours falls below the current forecasted amount of 54,344,882 Department-paid hours for FY2014 and 57,459,224 Department-paid hours for FY2015, the Employer shall increase its contribution by four cents (\$0.04) per every one percent (1%) reduction to the Department-paid hours.

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

10.6 Indemnify and Hold Harmless (delete entire section)

10.6 Enrollment

The Employer shall offer home care workers the opportunity to pre-enroll in the Trust upon hire. Home care workers who elect to complete the pre-enrollment application will automatically become enrolled in the Trust plan upon meeting the eligibility requirements. Home care workers will not be charged a premium until they are eligible and enrolled in the Trust plan.

The Employer or its designees shall make every effort to enroll eligible home care workers in the Trust. All of the Washington Area Agencies on Aging will have enrollment forms and information about the Trust plan available to home care workers.

ARTICLE 12 PAID TIME OFF

Union Proposal (Ex. J13)

Section 12.1 Accrual

Home care workers shall be eligible for paid time off (PTO). Home care workers shall accrue one (1) hour of PTO for every ~~forty (40)~~ thirty (30) hours worked. PTO hours shall cap at ~~eighty (80)~~ one-hundred and twenty (120) hours.

Section 12.2 Usage

In order to be eligible to be paid for PTO for vacation, a home care worker must have the consent of his or her consumer and inform a designated agent of the Employer no less than two (2) weeks before the paid vacation leave begins. Home care workers shall be eligible to use PTO as paid sick leave when they are sick, to attend personal medical appointments, to care for a sick child with a routine illness, to care for a spouse, registered domestic partner, parent, parent-in-law or grandparent with a serious or emergency health condition; or an adult child with a disability. In order to be eligible to use PTO as paid sick leave, a home care worker must inform both his/her consumer and a designated agent of the Employer no later than the day upon which the home care worker desires to use PTO as paid sick leave. In order to guarantee that home care workers may use their PTO as paid sick leave without fear of negative health or personal impacts on their consumers, the Employer shall establish policies and practices to provide alternative consumer care coverage on the day(s) that home care workers utilize their PTO as paid sick leave.

State Proposal (Ex. J14)

Current contract

DISCUSSION

The Arbitrator cannot find fault with the Union's interest in providing additional paid time off for home care workers and the Arbitrator recognizes that the Union's proposal is consistent with the additional paid time off that has recently been achieved in the City of Seattle. When the Arbitrator reviews the State's calculated cost of this proposal as being \$6M for the biennium (Ex. S24, p.15) she has concerns regarding the State's ability to pay for everything that should be provided within the Agreement. Priorities must be established and from the Arbitrator's perspective, there are other matters that have a higher priority than additional paid time off. That is not to say that the Union is unreasonable in its request, but rather this is not the right time to grant the request.

The Arbitrator has reviewed the additional language changes being sought by the Union within this Article and after considering the testimony and the evidence she finds no reason not to grant the changes requested at Section 12.2 up through and including: *In order to be eligible to use PTO as paid sick leave, a home care worker must inform both his/her consumer and a designated agent of the Employer no later than the day upon which the home care worker desires to use PTO as paid sick leave.*

DECISION

The Union's proposed change to Section 12.1 is rejected.

The Union's proposed change to Section 12.2 is granted as modified below:

Section 12.2 Usage

In order to be eligible to be paid for PTO for vacation, a home care worker must have the consent of his or her consumer and inform a designated agent of the Employer no less than two (2) weeks before the paid vacation leave begins. Home care workers shall be eligible to use PTO as paid sick leave when they are sick, to attend personal medical appointments, to care for a sick child with a routine illness, to care for a spouse, registered domestic partner, parent, parent-in-law or grandparent with a serious or emergency health condition; or an adult child with a disability. In order to be eligible to use PTO as paid sick leave, a home care worker must inform both his/her consumer and a designated agent of the Employer no later than the day upon which the home care worker desires to use PTO as paid sick leave.

ARTICLE 16 TRAINING

Union Proposal (Ex. J15)

Section 16.1 Training Partnership

Pursuant to RCW 74.39A.009 ~~(23)~~ and 74.39A.360, there shall be established a Training Partnership (or "Partnership"). The Training Partnership will possess the capacity to provide training, peer mentoring, workforce development, and other services to individual providers. The Employer shall become and remain a participating employer in such a Partnership during the complete life of this Agreement, and any extension thereof.

Section 16.4 Contributions

A. Contributions Required

Effective July 1, ~~2014~~ 2013, the Employer shall contribute to the Partnership ~~twenty-two thirty-six and five tenths of one cent cents (\$0.22)~~ (\$0.365) per Department-paid hour worked by all home care workers covered by this Agreement. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacation.

Effective July 1, 2014, the Employer shall contribute to the Partnership thirty-seven and four tenths of one cent (\$0.374) per Department-paid hour worked by all home care workers covered by this Agreement. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacation.

Effective July 1, 2013, contributions shall be transmitted twice monthly. Contributions required by this provision shall be paid to the Partnership on or before the ~~twenty-fifth (25th)~~ seventh (7th) day of the month following the month for which after service hours ~~are~~ were paid. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or its designee.

B. Contributions Increase When Actual Hours Fall Below Budgeted Hours

Effective July 1, 2013, if the actual number of department paid individual provider and agency hours in FY 14 falls below the number of hours budgeted for FY 14 - fifty-three million five hundred and fifty-two thousand eight hundred and seventy-five (53,552,875) - the contribution rate shall be increased by an additional one cent (\$0.01) for every one million three-hundred and fifty thousand (1,350,000) hours below the budgeted amount.

Effective July 1, 2014, if the actual number of department paid individual provider and agency hours in FY 15 falls below the number of hours budgeted for FY 14 - fifty-six million six hundred and forty-three thousand seven hundred and ten (56,643,710) - the contribution rate shall be increased by one cent (\$0.01) above the FY 14 rate for every one million three-hundred and fifty thousand (1,350,000) hours below the benchmark.

Contributions required by this provision shall be paid to the Partnership within thirty (30) days of the last day of the applicable fiscal year. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or its designee.

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

Section 16.5 Minimum Basic Training Requirements

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

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

Section 16.6 Minimum Continuing Education Training Requirements

Each individual provider shall complete all legally required continuing education training through the Partnership as required by RCW 74.39A.341. ~~The continuing education requirement must be satisfied every calendar year.~~ The purpose of continuing education is to improve and enhance the knowledge and skills of individual providers relative to the care needs of their consumer(s). Completion of all continuing education hours is a prerequisite for maintaining eligibility to work as an individual provider. ~~Upon completion of required continuing education training, or upon termination,~~ All individual providers shall be compensated at their regular rate of pay for all hours spent in legally-required continuing education training.

Section 16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall offer a peer mentoring program to all new individual providers ~~by the date specified in the statute.~~ The purpose of the mentoring program...

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

Section 16.10 Advanced Training

Pursuant to RCW 74.39A.350, the Partnership shall ~~prepare to~~ offer advanced training for individual providers ~~by the date specified in the statute.~~

Section 16.13 Access to Training

A. Union Presentation Compensation

The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. The Employer agrees to compensate up to fifteen (15) minutes of time annually for a presentation on Union issues to all individual providers receiving the Union portion of required continuing education. Any additional time for a presentation on Union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.

~~16.14 Indemnify and Hold Harmless~~

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

New Section 16.14 Computer Access for Training

The Employer shall provide two-hundred (200) computer kiosks for caregiver use, distributed through the state, in AAA's, Reporting Units and other state buildings and offices utilized by caregivers with special attention to distribution to rural and other areas underserved by internet access in order to provide easy access to caregivers for on-line training.

State Proposal (Ex. J16)

Section 16.4 Contributions

Effective July 1, ~~2014~~ 2013, the Employer shall contribute to the Partnership an amount according to the schedule below, ~~twenty-two cents (\$0.22)~~ per Department-paid hour worked by all home care workers covered by this Agreement to cover all legally required training necessary for IPs to remain qualified to work. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacation. The contribution amount for each fiscal quarter will be determined based on the number of training hours authorized by the Employer in the most recent prior fiscal quarter for which data is available. Training hours are the hours for which IPs are authorized to be paid while attending legally required training as described in sections 16.5, 16.6 and 16.8 of this Article. The contribution rate shall be determined based on the following thresholds:

Contribution Rate Schedule
(See page 2 of Joint Exhibit 16)

The contribution levels above are sufficient to fully pay for training that is legally required of IPs to maintain qualifications. Any fees or tuition charged to bargaining unit members by the Partnership for attendance at such legally required training shall be reported to the Employer on a monthly basis. The State's contribution amount under this subsection will be reduced by the total of any such fees or tuition charged to bargaining unit members.

B. (At the hearing the Employer withdrew its proposal at subsection B of Exhibit J16)

C. The Employer will contribute to the Partnership thirteen dollars and three cents (\$13.03) per provided hour of optional mentorship or advanced training, up to a maximum of twenty-five thousand nine hundred (25,900) provided hours in FY2014, and a maximum of fifty-four thousand nine hundred (54,900) hours in FY2015. Up to those maximums, the Employer will be provided with verifiable monthly reports, in a format acceptable to the Employer, on the number of optional training hours completed. The Partnership may provide additional optional mentorship or advanced training hours using a fee and tuition schedule of its choice. Tuition and fees for optional training will not reduce the Employer's contribution.

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

Contributions required by this provision shall be paid to the Partnership on the pay date(s) determined by the parties following the State's selection of a payroll vendor in accordance with Article 13, but in any case no later than ~~or before~~ the twenty-fifth (25th) day of the month following the month for which service hours are paid. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or its designee.

Section 16.5 Minimum Basic Training Requirements

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

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

Section 16.6 Minimum Continuing Education Training Requirements

Each individual provider shall complete all legally required continuing education training through the Partnership as required by RCW 74.39A.341. The purpose of continuing education is to improve and enhance...

Section 16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall offer a peer mentoring program to all new individual providers ~~by the date specified in the statute~~. The purpose of the mentoring program...

Section 16.10 Advanced Training

Pursuant to RCW 74.39A.350, the Partnership shall ~~prepare to~~ offer advanced training for individual providers ~~by the date specified in the statute~~. The State, the Union and the Partnership shall cooperate to develop advanced training curricula that support the objectives of the state's health home initiatives, which are targeted to high cost/high risk clients.

Section 16.13 Access to Training

B. Employer Access to Training

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

DISCUSSION

The State's proposal is designed to provide compensation for the hours of training that are actually authorized. As Mr. Murphy testified:

...we have a shared interest with the Union in sustaining the ability of this work force to work. If training requirements are not met, they lose members; by statute, we have to

terminate workers who are no longer qualified. We don't have care providers. There's a strong common interest in making sure that the training is provided. (Tr. V2, p. 282)

The State has placed an emphasis on the volume of training required as being the major driver of the cost of the training. When the amount of training capacity can be determined then the actual cost of that training can be more accurately determined. The State's proposal is designed to ensure that the State's payments for training "...match and track more closely with the actual capacity that's needed to provide required training." (Tr. V2, p. 391) The Arbitrator appreciates the State's efforts to be thorough, effective and efficient in the provision of training to the Individual Providers. She has carefully reviewed the testimony and evidence that accompanied the State's proposal and has determined that it has merit. (Exs. S13, S14) Unfortunately, the timing of the actual delivery of the proposal to the Union was late in the bargaining process and little, if any time, was available for a full and complete analysis and understanding of the proposal. The proposal itself is dated July 31, 2012 which is three weeks later than the July 10, 2012 date on several of the other State's proposals. With interest arbitration scheduled to begin on August 27th, the parties had insufficient time to give full and fair consideration to the State's proposal on this issue. While that is unfortunate, it is nonetheless the dilemma that the parties face when statutory procedures and requirements must be met.

When the Arbitrator considers the parties submissions on Article 16, she finds that they are both attempting to guarantee that training requirements are met. The point of departure is over the amount of the contribution that is required to deliver that guarantee. The Union's proposal is based in part on the Training Partnership Budget Projections for FYs 2013, 2014 and 2015. (Exs. U102, S26) There are perhaps some line items within those projections that would be viewed by some as being inflated and other line items that would be viewed as being unreasonable. The Arbitrator offers no opinion on the budget projections but rather accepts them at face value as being the Partnerships projections. The State's proposal has been developed on its determination of the actual delivery costs for training in prior years based on the experience of the agency and the Training Partnership. The Union has raised several legitimate questions regarding the State's proposal through both parties' witnesses. The Arbitrator will accept the State's representations at face value as being their best means of determining the actual costs of the training. The question before the Arbitrator becomes one of methodology. Is it best to

continue with the mechanism that served as the basis for the initial funding in 2009 and that may in fact result in overpayment to the Training Partnership? Or should a new funding mechanism be explored that is based upon actual experience? Interest arbitrators loathe entering into new, uncharted territory in their decisions however there are occasions when we are called upon to move the parties in a new direction. As has been emphasized throughout this process, the state of Washington is a leader in the Home Care profession. This is a new enterprise that requires careful review and consideration when opportunities are presented. One such opportunity has been presented in the State's funding mechanism for training. As the Union has emphasized, there are risks inherent in the State's proposal and for that reason the Arbitrator will build in a safety net in the event the State's proposal does not deliver as promised.

DECISION

THE FOLLOWING LANGUAGE IS GRANTED

Section 16.1 Training Partnership

Pursuant to RCW 74.39A.009 ~~(23)~~...

Section 16.4 Contributions

Effective July 1, ~~2011~~ 2013, the Employer shall contribute to the Partnership an amount according to the schedule below, twenty two cents (\$0.22) per Department-paid hour worked by all home care workers covered by this Agreement to cover all legally required training necessary for IPs to remain qualified to work. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacation. The contribution amount for each fiscal quarter will be determined based on the number of training hours authorized by the Employer in the most recent prior fiscal quarter for which data is available. Training hours are the hours for which IPs are authorized to be paid while attending legally required training as described in sections 16.5, 16.6 and 16.8 of this Article. The contribution rate shall be determined based on the following thresholds:

Contribution Rate Schedule

FISCAL YEAR 2014

<u>Prior Quarter Hours</u>	<u>Contribution Rate</u>
>187,500	\$0.21
>179,000	\$0.20
>170,500	\$0.19
>162,000	\$0.18
>153,500	\$0.17
>145,000	\$0.16
>136,500	\$0.15
>128,000	\$0.14

No later than the end of the third quarter following the implementation of the above Contribution Rate Schedule, an evaluation will be conducted by the parties to determine if the contribution levels above are sufficient to fully pay for training that is legally required of IPs to maintain qualifications. If so, then the Contribution Rate Schedule for Fiscal Year 2015 as set forth below shall go into effect on July 1, 2014. If not, then effective May 1, 2014 the Employer shall contribute to the Partnership thirty-six and five-tenths of one cent (\$0.365) per Department-paid hour worked by all home care workers covered by this Agreement. If there is any dispute regarding the third quarter determination as to whether the contribution levels above are sufficient to fully pay for training that is legally required of IPs to maintain qualifications, then that matter shall be submitted to this Arbitrator no later than April 15, 2014 for resolution. The Arbitrator may issue whatever remedy she deems appropriate if she finds that the contribution levels above are not sufficient to fully pay for training that is legally required of IPs to maintain qualifications. Nothing within this section prohibits the parties from negotiating modifications to the contribution levels at any time during this agreement if they deem it appropriate to do so. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacation.

FISCAL YEAR 2015

<u>Prior Quarter Hours</u>	<u>Contribution Rate</u>
>192,250	\$0.21
>183,600	\$0.20
>174,900	\$0.19
>166,200	\$0.18
>157,500	\$0.17
>148,800	\$0.16
>140,100	\$0.15
>131,400	\$0.14

The contribution levels above are sufficient to fully pay for training that is legally required of IPs to maintain qualifications. Any fees or tuition charged to bargaining unit members by the Partnership for attendance at such legally required training shall be reported to the Employer on a monthly basis. The State’s contribution amount under this subsection will be reduced by the total of any such fees or tuition charged to bargaining unit members.

C. The Employer will contribute to the Partnership thirteen dollars and three cents (\$13.03) per provided hour of optional mentorship or advanced training, up to a maximum of twenty-five thousand nine hundred (25,900) provided hours in FY2014, and a maximum of fifty-four thousand nine hundred (54,900) hours in FY2015. Up to those maximums, the Employer will be provided with verifiable monthly reports, in a format acceptable to the Employer, on the number of optional training hours completed. The Partnership may provide additional optional mentorship or advanced training hours using a fee and tuition schedule of its choice. Tuition and fees for optional training will not reduce the Employer’s contribution.

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

Contributions required by this provision shall be paid to the Partnership on the pay date(s) determined by the parties following the State's selection of a payroll vendor in accordance with Article 13, but in any case no later than ~~or before~~ the twenty-fifth (25th) day of the month following the month for which service hours are paid. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or its designee.

Section 16.5 Minimum Basic Training Requirements

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

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

Section 16.6 Minimum Continuing Education Training Requirements

Each individual provider shall complete all legally required continuing education training through the Partnership as required by RCW 74.39A.341. The purpose of continuing education is to improve and enhance...

Section 16.9 Mentoring

Pursuant to RCW 74.39A.330, the Training Partnership shall offer a peer mentoring program to all new individual providers ~~by the date specified in the statute~~. The purpose of the mentoring program...

Section 16.10 Advanced Training

Pursuant to RCW 74.39A.350, the Partnership shall ~~prepare to~~ offer advanced training for individual providers ~~by the date specified in the statute~~. The State, the Union and the Partnership shall cooperate to develop advanced training curricula that support the objectives of the state's health home initiatives, which are targeted to high cost/high risk clients.

Section 16.13 Access to Training

A. Union Presentation Compensation

The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. The Employer agrees to compensate up to fifteen (15) minutes of time annually for a presentation on Union issues to all individual providers receiving the Union portion of required continuing

education. Any additional time for a presentation on Union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.

B. Employer Access to Training

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

ALL OF THE OTHER PROPOSED CHANGES TO ARTICLE 16 ARE REJECTED

ARTICLE 22 RETIREMENT BENEFITS

Union Proposal (Ex. J17)

22.1 Intent

It is the intent of the parties to develop a new model of retirement benefits that provides retirement security for home care workers and that manages risk for the Employer and union members. Features of this model shall include secure retirement income for home care workers, mandatory employer and voluntary worker contributions, portability, lifetime retirement benefits, prudent asset investment management, cost-effectiveness, joint governance, and effective communication and education. The parties commit to work jointly to develop this model.

22.2 Development of a Retirement Benefit Trust

~~Prior to the expiration of this Agreement~~ By September 1, 2013 the parties shall join a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust. The Employer shall provide five hundred thousand dollars (\$500,000) in start up funds to establish said Trust in a lump sum payment on July 1, 2013. The Union shall, through its national benefits staff, arrange for research and staff support to the parties to support the joint effort of the parties to develop this new model of retirement benefits.

~~22.3 Development Funding~~

~~The Union shall, through its national benefits staff, arrange for research and staff support to the parties to support the joint effort of the parties to develop this new model of retirement benefits.~~

22.3 Contributions

Effective July 1, 2013, the Employer shall contribute fifty cents (\$.50) per hour for all hours worked by or paid as PTO to providers for whom the Employer is deducting FICA/FUTA payments. For hours worked by or paid as PTO to providers for whom the Employer is not deducting FICA/FUTA payments, the Employer shall contribute one

dollar and twenty-five cents (\$1.25) per hour to the Taft-Hartley multi-employer joint trust established by Article 22.2.

22.4 Providers Exempt from FICA/FUTA Benefits

The parties recognize that some individual providers are exempt from Social Security (FICA) and Federal Unemployment (FUTA) payroll taxes and benefits due to current Internal Revenue Service (IRS) rules. Such individual providers include parents providing home care services to their adult child(ren), adult children between eighteen (18) and twenty-one (21) years old providing home care services to their parent(s) and individual provider home care workers providing home care services to their spouses under CHORE. The parties agree to pursue all possible options for extending FICA and/or FUTA benefits to these individuals, including but not limited to, joint federal lobbying efforts and/or participation in the IRS rulemaking process.

State Proposal (Ex. J18)

Current Contract

DISCUSSION

The Arbitrator appreciates the importance of providing retirement benefits to the Individual Providers however until such time as the parties have developed a model it would be premature to allocate scarce resources to this provision. There is value in adding the descriptive language put forward by the Union in the hope that it will encourage the parties to move forward with the development of a new model.

DECISION

THE FOLLOWING LANGUAGE IS GRANTED

22.1 Intent

It is the intent of the parties to develop a new model of retirement benefits that provides retirement security for home care workers and that manages risk for the Employer and union members. Features of this model shall include secure retirement income for home care workers, mandatory employer and voluntary worker contributions, portability, lifetime retirement benefits, prudent asset investment management, cost-effectiveness, joint governance, and effective communication and education. The parties commit to work jointly to develop this model.

ALL OF THE OTHER PROPOSED CHANGES TO ARTICLE 22 ARE REJECTED

ARTICLE X
HOLIDAYS AND OTHER BENEFITS

Union Proposal (Ex. J19)

X.1 Paid Holidays

The Employer will recognize the following holidays and pay the caregiver an amount based on his/her hourly rate multiplied by his/her average daily hours in the previous month:

- a) New Year's Day (January 1st)
- b) Martin Luther King Jr.'s Birthday (3rd Monday in January)
- c) President's Day (3rd Monday in February)
- d) Memorial Day (last Monday in May)
- e) Independence Day (July 4th)
- f) Labor Day (1st Monday in September)
- g) Thanksgiving Day (4th Thursday in November)
- h) Christmas Day (December 25th)

X.2 Holiday Pay

Home care workers will be paid for all actual hours worked on the holidays above at their overtime rate of pay in accordance with Article 9, Section 4 Overtime.

State Proposal

No proposal

DISCUSSION

The Arbitrator has carefully considered the entire compensation being provided to the Individual Providers in making her determination in this interest arbitration. She has rejected many sound Union proposals that are beyond the State's financial capacity. Holidays however deserve consideration simply from an equity basis. The Arbitrator is not aware of any work group in the public or private sector that does not have some provision for Holidays. Some jurisdictions, notably Massachusetts which provides four paid holidays (Ex. S23, p.20), are beginning to realize that a compensation package should include some consideration of Holidays. If the Arbitrator were to grant the Union's proposal the costs to the State would be \$23.5M for the biennium. (Ex. S24B). Extrapolating from that amount, if the Arbitrator were to grant one Holiday at the overtime rate of one and one-half (1.5) times the rate of pay, the costs to

the State would be \$2.9M. Given the emotional and physical nature of the work of the Individual Providers, the Arbitrator views one Holiday as a small step toward filling an essential need of the IPs and will grant it at one times (1) the rate of pay.

DECISION

THE FOLLOWING LANGUAGE IS GRANTED

X.1 Paid Holidays

The Employer will recognize the following holiday and pay the caregiver an amount based on his/her hourly rate multiplied by his/her average daily hours in the previous month:

Independence Day (July 4th)

X.2 Holiday Pay

Home care workers will be paid for all actual hours worked on the holiday above at their rate of pay in accordance with Article 9-Compensation and Appendix A-Wage Scale.

AWARD

Consistent with the statutory criteria contained within RCW 41.56.465(5) and consistent with the understanding that the Arbitrator shall issue a decision that she deems just and appropriate with respect to each impasse item, and for all of the reasons set forth in the analyses above, the Arbitrator hereby awards that the 2011-2013 Collective Bargaining Agreement between the parties shall be modified according to the decisions accompanying the analyses of each of the impasse items above and according to the agreements reached by the parties through negotiations prior to and concurrent with this proceeding. That modified agreement shall be the 2013-2015 Collective Bargaining Agreement between the parties.

Respectfully submitted on this 27th day of September, 2012 by



Sylvia P. Skratek, Arbitrator