THE MATTER OF THE INTEREST	)	ARBITRATOR'S
	)	
ARBITRATION BETWEEN	)	SUPPLEMENTAL INTEREST
	)	
THE STATE OF WASHINGTON	)	AWARD
	)	
"THE STATE" or "THE EMPLOYER"	)	
	)	
AND	)	
	)	
SEIU LOCAL 775 NW	)	
	)	
"LOCAL 775" OR "THE UNION"	)	

HEARING: September 10, 2009
Federal Way, Washington

September 11, 2009
Tumwater, Washington

BRIEFS: Employer's received: September 22, 2009
Union's received: September 22, 2009

HEARING CLOSED: September 22, 2009

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

REPRESENTING THE EMPLOYER:
Stewart Johnston, Sr. Assistant Attorney General
Alicia Young, Assistant Attorney General
Diane Lutz, Labor Negotiator
Dan Murphy, Director Strategic Planning DSHS
Grace Kiboneka, DSHS/ADSA Labor Relations
Rick Hall, E. D. Home Care Quality Authority
Paige Lemcke, Paralegal

REPRESENTING THE UNION:
Judith Krebs, General Counsel
David Rolf, President
Tim Palmer, C B and Employer Relations Manager
Nora Kelley, Director Member Programs

APPEARING AS WITNESSES FOR THE EMPLOYER:

Candace Espeseth, Assistant Director OFM
Judy Fitzgerald, Finance Director DSHS
Franida Bethire Wilson-Maudsley, Office Chief – Payment System
Rina Wikandari, Budget Analyst DSHS
Dan Murphy, Director Strategic Planning DSHS
Diane Lutz, Labor Negotiator OFM

APPEARING AS WITNESSES FOR THE UNION:

David Rolf, President
Charissa Raynor, Executive Director SEIU Healthcare NW Training Partnership
Tim Palmer, C B and Employer Relations Manager
Steven B. Abrecht, SEIU National Director of Benefits

EXHIBITS

Union

83. 50% Eligibility for Training Certificate
84. 60% IP Eligibility for Training Certificate
85. 80% IP Eligibility for Training Certificate
86. DOL Training Grant Application
87. Costs of Arbitration Award
88. Carry – Forward and Maintenance Levels
89 DSHS Long Term Care Recommendation Summary

Employer

B-1. Arbitrator Williams' 2008 Interest Arbitration Decision OFM, State of Washington v. SEIU 775
B-2. Tentative Agreements
B-3. RCW 74.39A.270
B-4. RCW 74.39A.300
B-5. State's Last Proposal for Article 9 – Compensation and Appendix A
B-6. Union's Last Proposal for Article 9 – Compensation and Appendix A

B-7. Union’s and State’s Last Proposals for Article 22 – Retirement Benefits
B-8. DSHS Organization Chart, ADSA Organization Chart
B-9. 20009-2011 DSHS Operating Budget Excerpt: Appropriations for DSHS Long Term Care Services
B-10. Long Term Care Workers Training Bill
B-11. June 2009 Washington State Economic and Revenue Forecast
B-12. June 18, 2009 Memo from Governor Gregoire – Additional Budget Savings
B-13. June 18, 2009 Memo from Arun Raha – Economic and Revenue Forecast Council
B-14. July 1, 2009 Memo from Victor Moore – Implementation Instructions for GFS Budget Savings
B-15. July 13, 2009 Economic & Revenue Update – Washington Economic Forecast Counsel
B-16. August 11, 2009 Economic & Revenue Update – Washington Economic Forecast Counsel
B-17. 2009-2011 Budget Overview – Operating, Transportation, and Capital Budgets
B-18. General Fund – State Cash Forecasts since February 2008
B-19. Homecare Model BN 0911 Union vs. Employer Comparison
B-20. Homecare Model BN 0911 Employer’s Proposal
B-21. Homecare Model BN 0911 Union’s Proposal
B-22. Certification Differential Cost Chart
B-23. Certification Pay Differential Methodology
B-24. Summary 2009-2011 Aging Budget
B-25. WSR 09-14-046

BACKGROUND

SEIU Local 775 Healthcare NW represents individual providers hired by Medicaid consumers to provide in-home personal care. The Department of Social and Health Services administers Medicaid in the State of Washington. The Parties were bound by a Collective Bargaining Agreement which expired on June 30, 2009.

On October 1, 2008 this Arbitrator issued an interest award for the two Parties as a final step towards implementing a

successor agreement to the 2007-2009 Collective Bargaining Agreement (S B-1). The Arbitrator's interest award was never implemented by the State. The Union provides the following explanation for the lack of implementation on pg. 1 of its closing brief.

> This 2009 interest arbitration between OFM – State of Washington and SEIU Healthcare 775NW stems from the Governor's failure to include this Arbitrator's October 1, 2008 interest arbitration Award for the 2009-2011 collective bargaining agreement in her balanced budget proposal to the legislature and the legislature's decision not to fund it on its own initiative. Consequently, nothing ordered in the 2008 Award received legislative funding.

The Union further provides insight into the steps required by State Statute in the event that an interest award is not implemented.

> When an interest arbitration award is not funded by the legislature, RCW 74.39A.300(3) directs the parties' next steps. The statutory provision says "If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement." Thus the statute compels us to begin with the Arbitrator's 2008 Award.

Following the failure to implement the Arbitrator's 2008 award, the Parties again undertook negotiations in an effort to reach agreement on a CBA to replace the 2007/09 agreement. Presently, while the Parties have reached a number of tentative agreements (S B-2), the Parties have come to an impasse in negotiations on several provisions that will become a substitute for Arbitrator's original decision. RCW 41.56.450 provides that interest arbitration is to be used to resolve an impasse; this

requirement applying as much to the substitute agreement as to the original. The issues to be submitted to the arbitrator for determination "shall be limited to the issues certified by the executive director." By letter dated August 31, 2009 Executive Director of the Public Employment Relations Commission (PERC), Cathleen Callahan, certified the following issues at impasse and thus subject to interest arbitration:

Article 9.2	Wages: Certification differential; Appendix A
Article 10.2	Health care contribution for 2011
Article 21	Hours of work
Article 22	Retirement Benefits

Prior to the arbitration hearing, the Parties were able to reach tentative agreement regarding Article 10.2. On September 9, 2009 Article 21.1 was removed from interest arbitration pending a resolution of a charge by the State that the Union is advancing a nonmandatory subject of bargaining. The only issues before the Arbitrator, therefore, are Article 9.2 (and Appendix A) and Article 22.

In accordance with WAC 391-55-205, each Party had the right to name one partisan Arbitrator to serve as a member of the arbitration panel. The statute provides that "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." Both Parties waived the use of partisan arbitrators and Arbitrator Timothy Williams

was selected as the neutral chairperson. For the purposes of this document, the terms “neutral chairperson” and “interest arbitrator” or “arbitrator” shall be interchangeable.

WAC 391-55-220 provides that parties to interest arbitration must provide the Arbitrator and each other with written proposals on all issues within fourteen (14) days of the hearing. The Parties and the Arbitrator mutually agreed to waive that requirement and set the date of submissions for end of business on September 9, 2009. Both Parties timely submitted their proposals on September 9, 2009.

The hearing took place in Federal Way, Washington on September 10, 2009 and in Tumwater, Washington on September 11, 2009. At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

RCW 41.56.450 provides that “a recording of the proceedings shall be taken.” In compliance with the statute, an official transcript of the proceedings was taken, and a copy was provided to the Arbitrator. At the close of the hearing, the Parties were given the opportunity to file written arguments. The Parties accepted and their briefs were timely received by the Arbitrator on September 22, 2009. In accordance with WAC 391-55-240, the Arbitrator declared the hearing closed on September 22, 2009.

The Arbitrator's opinion and awards are submitted on an issue-by-issue basis. For each issue I will begin by presenting the Parties' respective positions, outline the Parties' arguments in support of their positions, provide the analysis for the Arbitrator's opinion and conclude with the award.

The Arbitrator's supplemental interest award is based on a careful analysis of the evidence and argument presented during the immediate hearing, the entire record from the 2008 hearing, the arguments found in the written briefs, and with full consideration of the following factors, found in RCW 41.56.465:

> (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) The average consumer prices for 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 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living

(2) For employees listed in RCW 41.26.030(7)(a) through (d), the panel shall also consider a comparison of wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

POSITIONS, ARGUMENTS, OPINION AND AWARD

ISSUE I: ARTICLE 9.2

CERTIFICATION DIFFERENTIAL APPENDIX A

State's Proposal: 9.1 Wages

Effective July 1, 2007 a new wage scale is established based on cumulative career experience. Effective July 1, 2007, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any home care worker according to any other rate than the rates contained in Appendix A, are hereby void.

9.2 Mentor, Preceptor, and Trainer Pay

A home care worker who is 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 his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

APPENDIX A

WAGE SCALE

July 1, 2009 – June 30, 2011	
Cumulative Career Hours	Wage
0-2000	$10.03
2001-4000	$10.17
4001-6000	$10.33
6001-8000	$10.46
8001-10000	$10.61
10001-12000	$10.76
12001-14000	$10.91
14001 plus hours	$11.07

Note: Wage shall be adjusted upwards by $1.00/hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors.

Union's Proposal: 9.1 Wages

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

9.2 Certification Differential and Mentor, Preceptor, and Trainer Pay

Effective April 1, 2011 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 in addition to his/her regular hourly wage rate.

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

APPENDIX A

WAGE SCALE

July 1, 2009 – June 30, 2011	
Cumulative Career Hours	Wage
0-2000	$10.03
2001-4000	$10.17
4001-6000	$10.33
6001-8000	$10.46
8001-10000	$10.61
10001-12000	$10.76
12001-14000	$10.91
14001 plus hours	$11.07

Note: Wage shall be adjusted upwards by $1.00/hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors. Likewise, effective April 1, 2011, wages shall be adjusted upwards by fifty cents ($0.50) per hour for individual providers who hold and submit a valid “Home Care Aide” certification or Certified Nursing Assistant license (or equivalent or greater medical license).

State’s Position:

The State’s case largely consists of an inability to pay argument. The State’s position is that it is unable to grant the Union’s proposal for differential pay considering its present economic situation.

When this Arbitrator issued his opinion and award in the 2008 Interest Arbitration between the Parties on September 30, 2008, he recognized that the State was facing a financial shortfall and that economic forecasts did not bode well for state governments. Since that time, the State's economic outlook changed from being very bad to being the worst in history. The Governor's proposed budget accordingly excluded all compensation and benefit increases for individual providers.

The budged adopted by Legislature in April 25, 2009 included no additional funding for individual providers other than a 3% health care contribution. The budget also reduced funds for long-term care with the intended result of cutting by an average of 3.8% the number of hours of personal care received by Medicaid consumers. The budget does not include any funds for a certification differential.

Also, when this Arbitrator issued his opinion and award in the 2008 Interest Arbitration between the Parties on September 30, 2008, he found that the certification differential would serve as a financial incentive to individual providers to participate in a training program. Since that time, Initiative 1029 has made a training program mandatory for all individual providers beginning employment after January 1, 2011. One effect of this mandate is that it nullifies the function of the pay differential as incentive to individual providers. The other effect is that certification pay would translate into an across-

the-board wage increase, which the State is not in a position to afford. The direct costs are estimated to be $1 million for 2011, $11 million for 2012 and over $20 million for 2013. These sums are prohibitive.

The State argues against the Union's position that this Arbitrator's 2008 award had the effect of "transferring" money allocated to fund consumer hours of care to pay for a certification differential. According to the testimony of State witnesses, including Dan Murphy, "there is no money to transfer." The State emphasizes that ADSA clients are experiencing a drastic reduction in services due to the State's current economic situation. The most recent Economic Revenue Forecast shows that revenues continue to decline faster than projected. The Union's proposal for differential certification pay comes at a particularly bad time for the State and cannot responsibly be granted.

Union's Position:

The Union's position is that the State's inability to pay argument is irrelevant in this case because there is already a legislative appropriation available in excess of what the Union proposes.

The Union begins by citing RCW74.39A.300(3) which direct the Parties in the event that an interest arbitration award is not funded by the legislature. The statute provides that the agreement (the Arbitrator's 2008 award) is to be reopened for the

purpose of renegotiating the funds necessary to implement it. Presently, the Union presents its case that the Arbitrator should decide that allocated funds are already sufficient and no further legislative action is required. The Union's certification differential proposal is substantially less expensive than the Arbitrator's 2008 award.

When this Arbitrator issued his opinion and award in the 2008 Interest Arbitration between the Parties on September 30, 2008, he granted the Employer's proposal to eliminate Article 22.1 and added the savings thus realized to the hourly wage proposal. Because the 2008 Award was not adopted by the legislature, the State continues to spend funds under Article 22.1. However, once the new contract goes into effect the savings from Article 22.1 will disappear unless spent on the 2009 award. These savings were found by the Arbitrator to be $10 million and can be used to fund the Union's current proposal. The State failed to present any evidence that the 2009-2011 CBA funding is any less than the 2007-2009 CBA.

The Union believes that the savings from Article 22.1 are actually in excess of $10 million, and could easily be about $17.1 million. In addition to the $10 million found by the Arbitrator, there is a carryover of about $2 million in "Jenkins money." Other factors have a significant upward effect on the carryover amount. These include caseload growth, inflationary factors, and the federal government's enhanced Medicaid match.

Neither the money allocated by the legislature for health care for individual providers nor the money allocated for training can affect the Union's Article 22.1 savings because it is new money, not a product of collective bargaining. The Union asks the Arbitrator to find that the actual total amount of allocated funds available from the legislature's appropriation for the 2009-2011 CBA is $17.1 million.

The Arbitrator's 2008 award granted a $0.50 differential for training certification. The case for a certification differential is now even more compelling than it was in 2008 because of the enhanced federal Medicaid match currently available, but likely to be eliminated after 2011. Another compelling reason to grant the differential is that the SEIU Healthcare Northwest Training Partnership would likely receive funds from the American Recovery Reinvestment Act if it is able to show some wage progression resulting from increased training. The Union urges that these opportunities be taken advantage of.

Lastly, the Union argues that the State's projected administrative costs associated with the certification differential are artificially high. The Union believes these costs are exorbitant by any measure and not supported by sound reasoning.

For all of the reasons presented above, the Union requests that the Arbitrator grant its proposal.

Analysis:

In the 2008 award, this Arbitrator took the position that in the current tough economic times the State's ability to pay trumps all of the other statutory factors that the Arbitrator is required to use in making his award. The State's basic position with regard to this supplemental decision is that economic conditions have actually become more severe and thus no element of the Arbitrator's award should impose an additional financial cost on the Department.

In urging the Arbitrator to award its proposal, the Union draws a distinction between what it calls allocated funds and conditional funds. Allocated funds are those that have already been made available by the legislature. Conditional funds are those that the Department would have to seek approval from the legislature. The Union contends that there are sufficient allocated funds available to DSHS by which it could fully pay for the certification premium.

Ultimately the Arbitrator finds the presentation of the State more persuasive than that of the Union. In making this determination, the Arbitrator is mindful of the distinction between what he calls paper and pencil money and spendable money. Paper and pencil money is money that shows up on paper and that can be manipulated by striking it in one column and adding it to another column. On a personal level, paper and pencil money is that found in a stock portfolio where it can be worth a great

deal on one day and a great deal less on the next. Spendable money is money in the bank on which one can write a check.

While the Arbitrator is not an economist, he does believe it accurate to state that in a stable economy paper and pencil money can be roughly translated into spendable money. For example, a stock portfolio can show gradual changes, hopefully upward, from month to month but the overall value remains reasonably constant. Similarly when DSHS receives a budget approved by the state legislature, that budget (paper and Pencil money) carries with it the assurance that it is a good indicator of spendable money.

Clearly, a stable economy is not the current situation. The State's evidence persuasively establishes that since the original budget was set, calling for substantial cuts throughout DSHS's programs, additional cuts are being required because in this down economy spendable money has not equaled paper and pencil money.

Thus, when the Union takes a position in its brief that there are fund balances (p 3) and "money for differentials is available" (p 4), the Arbitrator finds that these statement are true in the sense of paper money. On the other hand the Arbitrator finds these statements completely untrue in the context of spendable money.

In its brief, the State notes what it calls the drastic reduction of services to ADSA clients (p 9) because of the loss of spendable money. The Arbitrator's review of the evidence

leads him to conclude that the State's Position is well supported.

The Arbitrator further notes that the requirements of a CBA are contractual and not subject to unilateral change. Thus once the State agrees to a CBA with this bargaining unit, it is obligated to pay the terms of that agreement. If the primary source of money diminishes, that does not allow the Employer to reduce the wages of the Union members. Rather, in order to find the money to comply with the terms of the CBA, the Employer will be required to further reduce services to ADSA clients. The Arbitrator is simply unwilling to make an award at this time that he believes will result in the additional reductions of services. Unfortunately that is his conclusion with regard to the certification pay premium that is requested by the Union.

One final note, the Arbitrator is also partially persuaded on this issue by State arguments related to the adoption by voters of a proposition that requires mandatory certification. In the Arbitrator's view, the original certification pay premium was to serve as the "carrot" to induce employees to take the training necessary to receive certification. The Arbitrator is convinced that a certified workforce deserves higher pay not as an inducement but based on the fact that greater skills and ability justify the higher level of compensation. This matter, however, needs to be addressed at the bargaining table.

Award:

9.1 Wages

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

9.2 Mentor, Preceptor, and Trainer Pay

A home care worker who is 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 his/her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer.

APPENDIX A

WAGE SCALE

July 1, 2009 – June 30, 2011	
Cumulative Career Hours	Wage
0-2000	$10.03
2001-4000	$10.17
4001-6000	$10.33
6001-8000	$10.46
8001-10000	$10.61
10001-12000	$10.76
12001-14000	$10.91
14001 plus hours	$11.07

Note: Wage shall be adjusted upwards by $1.00/hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Employer, its contractors or subcontractors.

ISSUE II: ARTICLE 22 – RETIREMENT BENEFITS

Union's Proposal: 22.1 Intent

It is the intent of the parties to develop a new model of retirement benefits which provides retirement security for home care workers and which 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 Benefits Trust

Prior to the expiration of this Agreement, 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.

22.3 Research and Staff Support

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.

State's Proposal: Delete Article 22 – Retirement Benefits.

Union's Position:

In the past, this Arbitrator has taken the position that this bargaining unit should have a retirement plan. The Union's position is that the Employer is attempting to relitigate a well-

settled decision by the Arbitrator by moving to eliminate Article 22. The Union asks that the Arbitrator reaffirm what he found in previous awards – that a retirement plan with mandatory Employer participation is a good idea.

The Union argues that its retirement benefits proposal carries no cost at all to the Employer because the new models it proposes to use do not require time consuming and costly actuarial calculations. In addition, the Union even offers its own staff and resources to help the process along. The Union recognizes that the benefit designs of a Taft-Harley Trust are beyond the scope of this arbitration, but it continues to propose that the first step be taken.

State's Position:

The State makes the same inability to pay argument regarding the Union's proposal for Article 22 as previously summarized for Article 9.2 and Appendix A.

Due to severe projected shortfalls in the State's revenues, the budged adopted by Legislature in April 25, 2009 included no additional funding for individual providers other than a 3% health care contribution and reduced funds for long-term care. The budget does not include any funds for the creation of an administrative system to support a retirement program.

When this Arbitrator issued his opinion and award in the 2008 Interest Arbitration between the Parties on September 30, 2008, he found that the Parties are required to explore and

develop the data necessary for establishing a program of sustainable retirement benefits for individual providers. Since that time the economy has worsened so drastically, that there is no longer any reasonable expectation that the State would be able to fund said retirement benefits in the foreseeable future.

In addition, there are too many unanswered questions with respect to the Union's proposal that are not currently resolved. Nor does the Union argue that retirement benefits for individual providers are supported by the comparability data. The State should not be required to join a trust under these circumstances.

Analysis:

This Arbitrator first discussed the issue of retirement benefits for bargaining unit members in his 2004 decision and again in the 2008 award. This supplemental award reaffirms the Arbitrator's basic belief that the Parties should continue to work towards developing a retirement benefits program that will work for this bargaining unit while not becoming an undue financial hardship to the State.

At page two of its brief, the State takes notice of the fact that "Union members are not state employees for any purpose other than collective bargaining." The Arbitrator considers this a legally true fiction created for the purpose of addressing the unique employment relationship that bargaining unit members face. Union members are technically the employees of ADSA clients but their employment is under the direction of the State. Payment for their services comes from the state augmented by the federal

government. Moreover, it is the state that writes payroll and it is the state that deducts social security contributions.

Most important, members of the bargaining unit perform services similar to those performed by traditional state employees. The difference is that traditional employees perform the services within a state institution while the bargaining unit members perform the services within ADSA clients' homes.

The factors that an Arbitrator is required to consider by RCW 41.56.465 includes:

> 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.

The simple fact is that state employees in Washington have a retirement benefit. The Arbitrator finds that this is a factor that should be "normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment."

Consistent with this analysis, the Arbitrator awards modified language on the retirement benefit. He believes that the language appropriately addresses some of the concerns brought forth by the State while maintaining at least some small momentum towards the ultimate goal of implementing a retirement benefit. The Union addresses the concept of carry-forward in collective bargaining (U 88). Ultimately the Arbitrator is aware that the value of his language is primarily found in the concept of carry-forward but the award does keep the retirement benefit alive in the CBA.

Award:

ARTICLE 22
RETIREMENT BENEFITS

22.1 Intent

It is the intent of the parties to develop a new model of retirement benefits which provides retirement security for home care workers and which manages risk for the employer and union members. The parties commit to work jointly to develop this model.

22.2 Development of a Retirement Benefits Trust

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

22.3 Research and Staff Support

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.

This interest arbitration award is respectfully submitted on this the 29th day of September, 2009 by,

Timothy D. W. Williams
Arbitrator