

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

HEARING: August 10, 11, 12, 13, 14
August 17, 18, 19, 20

HEARING CLOSED: August 20, 2020

ARBITRATOR: Timothy D.W. Williams

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Sterling Harders, President SEIU 775

Day 8

Adam Glickman, Secretary/Treasurer SEIU 775 -
rebuttal witness

Day 9

Closing Arguments by Judy Krebs

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BACKGROUND

The Service Employees International Union, Healthcare 775NW represent a bargaining unit composed of individual health care providers (IPs) under RCW 74.39A.270. The State of Washington (hereafter "the Employer" or "the State") and the Service Employees International Union Healthcare 775NW (hereafter "the Union") are in the process of negotiating a successor collective bargaining

agreement (CBA) for the 2022-2023 biennium (July 1, 2021 through June 30, 2023). Unable to reach agreement on a number of issues, the parties decided to submit the matter to interest arbitration as is provided by statute.

RCW 41.56.450 provides that if "an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director." By letter dated August 7, 2020 PERC Executive Director Michael Sellers certified the following issues to arbitration:

The Employer has submitted the following issues for certification:

- *Appendix A - Wage Scales*
- *Article 9 - Comprehensive Health Care Benefits*

The Union has submitted the following issues for certification:

- *Appendix A - Wage Scales*
- *Article 2 - Union Rights*
- *Article 4 - Membership Dues and Other Deductions*
- *Article 5 - Bargaining Unit Information*
- *Article 7 - Grievance and Dispute Resolution*
- *Article 8 - Compensation*
- *Article 9 - Comprehensive Health Care Benefits*
- *Article 1 - Paid Time Off*
- *Article 12 - Payroll*
- *Article 13 - No Discrimination*
- *Article 14 - Referral Registry*

- *Article 15 - Training*
- *Article 19 - Policies, Programs and Practices*
- *Article 20 - Hours of Work*
- *Article 21 - Retirement Benefits*
- *Article 25 - Term of Agreement*
- *Article 26 - Contracts and Overpayments*
- *Article 27 - Health and Safety*
- *Article 28 - Successorship*
- *Article W - Holidays*
- *Article X - HAD It*
- *Article Y - Electronic Visit Verification*
- *Article Z - Arbitration*

Washington Administrative Code (WAC) 391-55-205 permits the Parties to waive the requirement for partisan arbitrators and to select a neutral Arbitrator. The Parties selected Timothy D.W. Williams as neutral Arbitrator. A virtual hearing was held before Arbitrator Williams over a period of nine days on the Zoom platform.

At the outset of the hearing the Union informed the Arbitrator that most of the issues certified for arbitration were no longer in dispute and would, therefore, not be presented to the Arbitrator. As to what was presented, both the State and the Union provided evidence and arguments on *Wage Scales* and *Comprehensive Healthcare Benefits*. Additionally, the Union proposed changes to Article 8, *Compensation*; Article 14, *Referral Registry*; and a new Article on *Holidays*.

At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses,

present documentary evidence, and make arguments in support of their positions. RCW 41.56.450 provides that "a recording of the proceedings shall be taken." In compliance with the statute, an official transcript of the proceedings was taken, and a copy was provided to the Arbitrator. At the close of the evidentiary hearing, the Parties were given the opportunity to do closing oral arguments which were presented during the morning of August 20, 2020. In accordance with WAC 391-55-240, the Arbitrator declared the hearing closed on August 20, 2020. This document contains his final analysis, conclusions and the interest award.

ARBITRATOR'S AUTHORITY

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

(a) The panel shall consider:

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

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

(b) The panel may consider:

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

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

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

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing and emergency medical services.

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

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

RCW 41.56.450 grants the Arbitrator 30 days from the conclusion of the hearing to make "written findings of fact and a written determination of the issues in dispute." The instant case, however, is different in that the parties, at the time that they retained his services, requested the award by September 25 and that the award would fail to meet the legal timeline if it was not delivered by October 1, 2020. The Arbitrator has worked to comply

with that understanding and has focused his efforts on writing an award that sets forth the key points in his determinations.

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

OVERVIEW

Clearly, the best place to begin this overview is to recognize the accomplishments of the Parties with regard to their mutual efforts to improve the quality of home healthcare. Bill Moss, testifying on behalf of the State, emphasized this fact when he stated:

We have, in the Aging and Long-Term Support Administration been a national leader in the delivery of long-term services and support home and community-based services for more than a couple of decades. The most recent AARP poll, as you heard Julie say earlier, we were ranked No. 1. The prior three years before that we were ranked No. 2 behind Minnesota, but we have always been, I would say, within the top five in terms of how we do services and those kinds of things. (Tr 53)

There are two things clear to this Arbitrator about the No. 1 ranking. The first, amply supported by testimony from both State and Union witnesses, is that the parties have worked cooperatively on building many aspects of the nation leading home and community-based services. There is a shared vision on what they are

attempting to accomplish. Mr. Moss' testimony strongly emphasizes this fact when he states:

I think SEIU 775 has contributed a great deal to the success of Washington and being able to serve seniors and individuals with disabilities...

So I just want to -- even though we're here at arbitration talking about money, I just wanted to highlight that we have a lot -- we have many common goals and a lot of alignment in terms of where we want to see the long-term care system in Washington go. (Tr 53, 54)

The second point is that the high ranking is a reflection of a substantial investment of public dollars into the programs. In its opening statement, the State emphasizes the fact that in the last three bargaining cycles¹ the State has increased its investment "by over \$150 million per contract. As the Union acknowledged, over the last three contracts, IPs wages have gone up, and IPs enjoy benefits such as paid time off, health care and retirement benefits and training opportunities" (Tr 44). More specifically, the evidence indicates that total new dollars invested are \$262 million in 2015-17, \$168 million in 2017-19 and \$164 million in 2019-21² (Tr 63).

Not surprising, this interest arbitration is all about money. Every issue in dispute has a \$ attached to it. The State is

¹ Each bargaining cycle is for a two-year biennium beginning July 1 of an odd year and ending June 30 two years later. The instant negotiations are for the biennium commencing July 1, 2021 and ending June 30, 2023.

² A review of the transcript clearly indicates that two different figure's surface. One set of figures provide the complete cost of wage and benefit increases. As a Medicaid driven program, these complete costs were paid for by both State and Federal dollars. There is a second set of cost figures that are just the State's portion of the increased costs.

proposing increases in two areas, wages and insurance. Costing figures provided through testimony and exhibits indicate that total new State dollars is \$25 million; a very thin offer compared to the last three bargaining cycles for reasons that will be discussed later.

The Union also puts forward a request for increases to the salary schedule and the insurance payment; a request substantially greater than that offered by the State. Additionally, it proposes to change a number of provisions in the contract, including adding a new Article granting holiday pay, all of which require additional money. Total new State money associated with the Union's proposals are in the \$130 million range (Tr 520, 883, 1178). The Union's proposal, therefore, is roughly equivalent to the amount of State dollars that were added in each of the last three bargaining cycles.

The Arbitrator notes that the discussion during the interest arbitration hearing around wages and benefits clearly reflected the unique nature of this bargaining unit. Washington, like many states, provides interest arbitration in lieu of the right to strike for employees in essential services like police and fire. Typically, the discussion for those bargaining units over wages and benefits focuses on increases to the cost of living and comparable wages. While both of those factors were a matter of discussion in the instant arbitration hearing, the dominant focus

was on the relationship between improved wages and benefits as the determining factor in making home healthcare a profession that people can aspire to. The Union strongly built its case around what it called the historical pattern of discrimination related to wages and benefits paid to women and minorities. Since home healthcare employees are typically women and minorities this clearly denoted pattern of discrimination has worked to keep wages quite low. The Union emphasized that even with the significant improvement in the wage structure found in the last three bargaining cycles, most of the employees in the bargaining unit still fail to make a living wage.

Significantly integrated into the discussion around creating a profession that a person can aspire to was the recognition that home healthcare is a rapidly expanding area of employment (Tr 742). More than just an area of job growth, it is potentially a significant employment vacuum for the State. The term used during the hearing was "silver tsunami" (Tr 955, 1019). The Arbitrator notes that the significance of the term *silver tsunami* is well documented in the testimony of Union president Sterling Harders:

And so you can see in this chart [Un. Ex 86] that by 2040, the State is forecasting that we'll have an elderly population of just about 2 million. And you can also see that the population of folks over 85 will nearly triple to almost 400,000 by 2040. So this just demonstrates the rate at which the population of Washington State is aging. (Tr 741)

Needless to say, the employment demands created by a significant increase in the older population will result in the need to recruit a larger workforce. This need is detailed throughout the testimony of both State and Union witnesses (Tr 316, 611, 1019). Testifying on behalf of the State, Bea Rector provided the following exchange on cross examination:

Q. So if the State is generally concerned about an overall shortage of home care workers and - and competition between Medicaid clients and private-pay clients, isn't the real solution to that to figure out how to recruit more home care workers?

A. Yes, and we are doing that. We have workforce initiatives that we -- we are working on around recruitment and retention, and we have contracts in place with our home care referral registries that they recruit a certain number of new individual providers on a monthly basis, and that same expectation is going into the Consumer Directed Employer contract.

The Arbitrator emphasizes that State witnesses clearly showed an understanding of how the new labor agreement would impact the ability to recruit a significant number of new individual providers (IPs) (Tr 955). Ann Green was the chief negotiator for the State during the negotiations that led ultimately to this interest arbitration process. She testified as follows:

And so taking into consideration the limited dollars that we had, and I think what we've already heard in testimony, the age wave or the, I think what someone referred to as a silver tsunami, that we needed to continue to recruit and attract IPs into the workforce. We put the limited dollars that we had and we focused the increase in the first step to make that attractive or to continue to make it attractive to new IPs and to be mindful of minimum wage.
(Tr 1019, 1020)

The Arbitrator further notes that the focus during the hearing on matters of home healthcare as a profession along with recruitment and retention were two of several significant issues discussed. There were the additional issues created by the change of employer that will occur during the term of the new labor agreement. By statute, the State of Washington will no longer be the employer for this bargaining unit. Dennis Elonka Jr, testified (Tr 844-45) that he was the State's project manager to oversee the process by which a transition was made from State employment to private employment (Consumer-Directed Employer) for the SEIU 775 bargaining unit. He further stated:

So Consumer-Directed Employer is what's called out by state statute. Consumer Direct of Washington is the vender who will be operating as the Consumer-Directed Employer. We refer to them as CDWA. (Tr 847)

From the testimonial evidence, it is clear that both Parties recognize that this change is significant with regard to the new contract. There is no question that the new Employer is required to assume the 2021-23 agreement. There is a difference, however, between a labor contract administered by the State and one administered by a private employer. Ms. Green, the State's chief negotiator, succinctly testified about the impact of the change:

Q. Besides the budget, were there any other major issues kind of different about this particular bargaining session?

A. Yes. The consumer-directed Employer and the timeline of that transition. We -- in the previous session, in

2018, we knew that the CDE was likely to come. There had been a delay. And so probably a year ago at this time we all -- everyone in this room, aside from maybe the arbitrator and the court reporter, were not -- we were assuming we weren't going to bargain this summer. And then that changed, and we needed to bargain another contract, given the timeline of that transition.

So that transition is going to happen, as we've heard in testimony, July 1st, likely conclude on November -- July 1st of 2021. It will conclude on November 1st of 2021. And that transition played a huge role in how we looked at the contract and the things that we could do, the major changes or the payroll changes of the various interfaces that are as a result of things that we collectively bargained.

From a State perspective, we were looking for a very smooth transition to the -- we are looking for a very smooth transition to the CDE. In my tenure, I've never seen a situation where we've essentially privatized 40-plus thousand individuals in our workforce. And so a transition of that nature, I think, is historic and undoubtedly will be very complicated. And so our desire was to ensure that whatever we did from the collective bargaining resulted in a smooth, calm, and orderly transition. And that really equated to then perhaps we don't do any new things, any new things such as holidays or differentials or things that we had never done before that cause payroll changes or things that we have to do to program the system which will then be going away four months after it is implemented. So it was a deliberate effort to minimize changes and to really focus on what we felt, in the pandemic, what's most important to appease and I think to everybody is wages and benefits. And that was the sort of focusing of our bargaining and where we really wanted to make changes and make a difference. (Tr 1016, 17)

As the Arbitrator understands the testimony, the actual transition is set to commence with a small group beginning July 1 of 2021 and ultimately to be completed in the next few months. One of the factors that makes this a significant issue is that the

computer software currently used by the State to manage more than 40,000 employees will be changed to an entirely new software program. The State is understandably resistant to implement changes in the current system that will cost significant dollars and have a lifespan of less than half year. While the Union is somewhat sympathetic to this issue, it does not believe that much needed changes should be held hostage to the transition.

Beyond the above points of discussion, there is another extremely significant issue impacting these negotiations, the elephant in the room. The Arbitrator must consider "the financial ability of the State to pay for the compensation and fringe benefits provisions..." COVID has had a significant and negative impact on the State's projected ability to pay the cost of wages and benefits provided to this bargaining unit.

Moreover, a central fact about what makes the current situation so difficult as related to a successor collective bargaining agreement is the uncertainty. Will there be a second round of COVID? Will a second round, if it comes, have an additional, negative impact on projected revenues? How quickly will the Washington state economy recover? Every state has suffered revenue losses because of COVID. Will the Federal Government provide some relief back to the states to help them deal with these revenue losses? There are no clear answers to these questions.

State Exhibits #1 and #30 focus on a projected \$8.4 billion hole in the current budget and the one for the next biennium (3.3 B FY 21 and 5.1 B 21-23). While the late breaking exhibit presented by the Union (U 118³) indicates that new projections are much better than those of a few months ago, there is nothing in that document that suggests to this Arbitrator that "all is well." There is simply no reason to believe that the State will start the 2021-23 biennium in a healthy financial situation.

So, where is the money to come from not only to pay the wages and benefits found in the current contract but also to cover any increases in the new contract? The answer to that question was, of course, a major point of discussion between the Parties during the hearing. A key point of contention between the parties is that the State has offered \$25 million of new money even though projected revenue is heavily in the red. In closing arguments, the State noted that:

The economic crisis that we're going through is like nothing we've seen before. There's been a loss of nearly \$9 billion -- \$8.8 billion to be exact -- in projected revenue in just the space of three months. (Tr 1236)

Yet later the State in its closing arguments noted:

And finally, even in these unprecedented economic times, the State is not proposing to cut IPs but offering an increase. Perhaps not as great an increase as during the good times,

³ The Arbitrator, over the objection of the State, reopened the record for the limited purpose of admitting this document. The document in question is created by the State for budgeting purposes. Much of this award is based on projections and having the very latest available to the Arbitrator before he rendered his decision seemed sufficient reason to admit the document.

but an increase still within the State's current means. (Tr 1237)

At a number of different places on the record, the Union asks State witness why it is that the State can afford \$25 million of new money but can't afford \$30 or \$40 or \$60 (for example, Tr 1157 to 1160). No direct answer to this question was ever given. During rebuttal arguments the Union addressed this point:

So we'll start first with the most obvious observation. Given the opportunity to again address why \$25 million is within its means but not 50 or \$60 million the State didn't rise to the question; didn't answer it. Why is the line where the line is? It's not clear. It's simply the line that the State drew.

The Arbitrator notes that the Union's frustration and disagreement with the \$25 million number is best found in the rebuttal testimony of Union witness Glickman:

We have a \$50 billion-a-year state budget. Do I think we have a budget deficit? Of course. But do I think that if this arbitrator awards, you know, more than the \$25 million that the State proposed, if this arbitrator awards, you know, whatever - \$50 million or \$60 million -- if this arbitrator spends \$25 or \$30 or \$40 million over two years more than the State's proposal, do I think that's going to mean, you know, that the State's going to make hundreds of millions of dollars in cuts to seniors or people with disabilities? No. I just don't think that's how the legislature approaches the budget and how the legislature is going to approach writing a budget. (Tr 1105)

The Arbitrator's response to the concerns over the State's ability to pay as a determining factor in setting wages and benefits starts by recognizing that both parties bring valid concerns and positions into this arbitration proceeding. While the Union is somewhat frustrated by the State's slim financial

offerings and inability to give a specific response as to why \$25 million is the number, the simple fact is the State could have reasonably offered less. Likewise, there is nothing in the Union's proposals that are exorbitant or unrealistic. Moreover, the Arbitrator also found that both the Union and the State did an exceptional job of providing evidence and arguments in support of their proposals.

COVID happened. It was unexpected and it, in a very short time, significantly altered the collective bargaining landscape. From this Arbitrator's perspective, the draconian loss of projected revenue at the time the instant negotiations were in full swing would have fully justified the State coming to the table with a zero-increase proposal. Unlike the Union, the Arbitrator does not consider the governor's request for Departments to determine how they could reduce their budgets by 15% as merely an empty exercise. And, it is not just the loss of projected revenue that is the problem, it is the uncertainty of what the future holds. So far the news has been good (U 118), but there are plenty of clouds on the horizon and ambiguity in the forecast.

The Arbitrator is very aware of the arguments and evidence put forward by the Union that the State of Washington has numerous and reasonable ways to offset revenue losses related to COVID. Most of these actions consist of raising taxes in one form or another. The Union did acknowledge on cross examination that the

Arbitrator has no authority to direct the State to raise taxes. Rather, the Union's position is basically that the legislature is currently composed of those that might reasonably be seen as having a progressive vision with regard to low income earners and they will be more focused on looking for ways to raise wages by increasing revenue than to cut services.

Additionally, the Union provided very persuasive arguments related to cost of living increases, minimum wage and a living wage. While the wages for the employees in this bargaining unit have gone up substantially during the last three bienniums, they still struggled to make a living wage and the wage scale as proposed by the State could run afoul of the City of Seattle's minimum wage.

Moreover, wages for the bargaining unit are paid with a unique product of a Federal/State match with the State's match being the lesser of the two. By expanding this workforce and increasing their wages, more Federal money flows into the State's economy. This is a very good reason, from the Union's perspective, why the legislature will look favorably on an Arbitrator's decision providing significant compensation improvements.

To the above, the Arbitrator emphasizes that the criteria he is statutorily bound to consider include under the "may" category all of the above considerations. Clearly, under the Washington interest arbitration statute, the Arbitrator's task is to find a

reasonable balance among all of the criteria. From this perspective, revenue losses associated with COVID must be considered by the Arbitrator, but the other factors cannot be ignored. It is this Arbitrator's conclusion that his award finds the right balance between projected losses, the financial realities associated with this bargaining unit and the other statutory criteria.

Consistent with the above, the State put \$25 million of new money on the table. The evidence to this Arbitrator is that the new money offered is the State's perception of the appropriate balance between the realities of revenue forecast losses against the importance of the services provided by this bargaining unit and the financial realities of the IPs that provide the services. Included in this equation is the obvious importance of the State claiming as much Federal matching dollars as it can to infuse the dollars into the local economy.

While the Arbitrator is in no way bound to the State's conclusions, his approach will probably be very similar. Based on his review of the financial information, the default position is no new money. Thus, any new money must be strongly supported by evidence and argument. The award does give a significant amount of new money reflecting the Arbitrator's considerations of the criteria he is legally bound to and compelling evidence and arguments. As this discussion proceeds, the Arbitrator will

provide an overview of the reasons why he moved off the default position on those issues where the award provides new money.

Finally, the issue by issue analysis that follows provides each party's position on the issue, the Arbitrator's discussion of the Parties' arguments, the Arbitrator's conclusions, and the award. In presenting the positions of the parties, proposed changes to the language from the existing agreement are shown by a strikeout with the new language inserted; changes are also denoted in red. The Arbitrator will keep his discussion succinct and focused on the primary factors that led to his decisions.

ANALYSIS and AWARD

Appendix A Wage Scale

Union's Proposal:

**APPENDIX A
WAGE SCALES**

CCH	1 st Half FY 2022	2 nd Half FY 2022	1 st Half FY 2123	2 nd Half FY 2123
0-2,000	\$16.97 \$15.50	\$17.22 \$16.00	\$17.48 \$16.40	\$17.74 \$16.72
2,001-4,000	\$17.12 \$15.75	\$17.38 \$16.25	\$17.64 \$16.60	\$17.90 \$16.87
4,001-6,000	\$17.28 \$16.00	\$17.53 \$16.50	\$17.79 \$16.80	\$18.06 \$17.02
6,001-8,000	\$17.46 \$16.20	\$17.72 \$16.75	\$17.98 \$17.00	\$18.25 \$17.20
8,001-10,000	\$17.66 \$16.40	\$17.92 \$17.00	\$18.19 \$17.20	\$18.46 \$17.40
10,001-12,000	\$17.91 \$16.60	\$18.18 \$17.20	\$18.45 \$17.40	\$18.72 \$17.65
12,001-14,000	\$18.17 \$16.80	\$18.44 \$17.45	\$18.71 \$17.70	\$18.99 \$17.90
14,001-16,000	\$18.83 \$17.40	\$19.11 \$17.75	\$19.39 \$18.00	\$19.68 \$18.55
16,001-20,000	\$19.08 \$17.65	\$19.36 \$18.00	\$19.65 \$18.25	\$19.94 \$18.80
20,001-24,000	\$19.36 \$17.90	\$19.64 \$18.25	\$19.94 \$18.50	\$20.23 \$19.07

State's Proposal:

STATE'S APPENDIX A
WAGE SCALES

CCH	July 1, 2021-June 30, 2022	July 1, 2022-June 30, 2023
0-2,000	\$16.72 \$16.92	\$17.07
2,001-4,000	\$16.87 \$16.97	\$17.12
4,001-6,000	\$17.02 \$17.07	\$17.17
6,001-8,000	\$17.20 \$17.25	\$17.30
8,001-10,000	\$17.40 \$17.45	\$17.50
10,001-12,000	\$17.65 \$17.70	\$17.75
12,001-14,000	\$17.90 \$17.95	\$18.00
14,001-16,000	\$18.55 \$18.60	\$18.65
16,001-20,000	\$18.80 \$18.85	\$18.90
20,001 and above	\$19.07 \$19.12	\$19.17

Analysis:

Having carefully reviewed all the exhibits and testimony related to the wage scales in light of the statutory criteria, the Arbitrator has crafted his award for Appendix A which is provided below. The award is basically a 3% increase spread out over the two years of the biennium using the structure found in the existing collective bargaining agreement. By spreading the increases out through four steps, the amount of new money is significantly less than 3% and reflects the Arbitrator's prior discussion regarding budgetary issues. The reasoning behind this award is provided in the following multipoint analysis.

First, this is all about money and projected budget deficits. At the same time, there is the list of all of those issues discussed in the earlier overview to include such matters as recruitment, retention, minimum wage, living wage and the Federal/State match as it impacts the flow of money into the economy. The Arbitrator's conclusion is that the wage increase awarded pushes the concept of ability to pay as far as it should be pushed while still taking into consideration all the above factors including projected increases in the cost of living. Also, the fact that each step of the wage scale is increased by a percentage avoids the problem of compression that was one focus of the Union during the hearing.

Second, the award does not add a new top step. Simply put, the Arbitrator did not find a compelling case to add a new top step. While there was some testimony that retention was impacted by a lack of movement at the top of the wage schedule, the Arbitrator notes the lack of specific evidence with regard to comparability and any actual data that the existing structure was insufficient. The Arbitrator specifically notes the reliance of the Union on comparability data from the State of Illinois where commencing January 1, 2023 the base wage will be \$17.25 (U 48). Interestingly, the base wage is also the top step. The Arbitrator's award has a base wage of \$17.24 but a top step of \$19.65. The Arbitrator has every reason to conclude that a top step of \$19.65 is very competitive in this industry.

Arbitrator's Award on Appendix A:

**APPENDIX A
WAGE SCALES**

CCH	July 1, 2021	Jan. 1, 2022	July 1, 2022	Jan. 1, 2023
0-2,000	\$16.85	\$16.98	\$17.11	\$17.24
2,001-4,000	\$17.00	\$17.13	\$17.26	\$17.40
4,001-6,000	\$17.15	\$17.28	\$17.41	\$17.54
6,001-8,000	\$17.33	\$17.46	\$17.60	\$17.73
8,001-10,000	\$17.53	\$17.66	\$17.79	\$17.92
10,001-12,000	\$17.78	\$17.91	\$18.04	\$18.18
12,001-14,000	\$18.03	\$18.17	\$18.31	\$18.45
14,001-16,000	\$18.69	\$18.83	\$18.97	\$19.11
16,001-20,000	\$18.94	\$19.08	\$19.22	\$19.36
20,001-and above	\$19.21	\$19.35	\$19.50	\$19.65

Article 8 Compensation

Union's Proposal:

8.1 Wages

Effective July 1, ~~2019~~2021, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. In addition, effective July 1, 2022, all home care workers will be placed on a step that also includes their verifiable hours of work as a Medicaid-contracted home care agency direct care worker retroactively calculated to July 1, 2017. Ips who wish to receive credit for their home care agency direct care work must produce, within sixty (60) days of signing their individual contract with the employer, a

letter from their other employer(s) or employer-provided payroll records verifying direct in-home care hours worked since July 1, 2017. Providers who are already working as Ips but were never given credit for their home care agency experience may submit, by May 1, 2022, a letter from their previous employer(s) or employer-provided payroll records verifying direct in-home care hours worked since July 1, 2017. Bargaining unit home care workers will be paid according to the wage scales found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours not including time spent as mentors pursuant to Section 8.2. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scales. 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.

8.2 Certification Differentials and Mentor, Preceptor, and Trainer Pay

Employees who hold a valid Home Care Aide certification or who are exempt from certification under RCW 18.88B.041(1)(a)(i)(A) shall be paid an additional twenty-five cents (\$0.25) per hour differential to their regularly hourly wage rate.

Employees with a valid Home Care Aide certification or who are exempt from certification under RCW 18.88B.041(1)(a)(i)(A) who complete advanced training (as set forth in Training Partnership curriculum) shall be paid an additional ~~twenty-five~~ ~~seventy-five~~ cents (~~\$0.25~~~~0.75~~) per hour differential to their 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~~ ~~one dollar~~ (~~\$0.50~~~~\$1.00~~) above their regular hourly wage rate). ~~Only workers who completed this advanced training by June 30, 2021 are eligible for this advanced training differential in Article 8.2.~~

8.3 Mileage Reimbursement

Home care workers shall be compensated when the IP drives their personal vehicles to provided services to their consumers (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of one hundred ~~and twenty~~(120) miles per month per consumer.

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

8.4 Advanced Home Care Aide Specialist (AHCAS) And Advanced Behavioral Home Care Aide Specialist (ABHCAS) Differential

Individual providers with a valid Home Care Aide certification or who are exempt from certification under RCW 18.88B.041(1)(a)(i)(A) or (B) or RCW 18.88B.041 (1)(c) and have completed seventy (70) hours of basic training, or advanced training provided by the Training Partnership and complete the advanced training described in the Article 15.11 or Article 15.12 shall be paid an additional seventy five cents (\$0.75) per hour differential added to their regular hourly wage rate. This AHCAS or ABHCAS differential stacks on top of the certification differential described in Section 8.2, if applicable, and the advanced training differential in Section 8.2.

8.5 Administrative Time

Individual providers ~~who are not required to log-in daily and report hours~~ shall be compensated an additional fifteen (15) minutes per pay period for the purposes of recording and submitting timesheets. ~~Individual providers who are required to log-in daily and report hours shall be compensated an additional forty-five (45) minutes per pay period for the purpose of recording and submitting timesheets.~~

8.6 Nurse Delegation Differential

The Employer shall pay caregivers who are nurse delegated a differential of twenty-five-cents (\$.25) per hour for all hours worked with clients for which the caregiver is nurse delegated.

State's Proposal:

The State opposes making any changes to the language found in Article 9 of the current CBA.

Discussion

Article 8 deals with matters of compensation. The Union proposes modifications to the provisions found in Article 8.1, 8.2, 8.3, 8.5 and a new 8.6. Each modification requires new money. The Arbitrator agreed with the Union on the modification to Article 8.1 but otherwise the award retains the existing language and the existing level of benefits. The following is a paragraph by paragraph discussion of the Arbitrator's award on this Article.

Article 8.1 is all about recruitment and the integrity of the wage scale; the Union's arguments were very strong on this point. In part, wage scales are set up to recognize that experience is valuable to the Employer. Being able to recognize experience when recruiting a new employee ought be valuable to the State in the sense that that experience can be recognized on the wage scale. Telling a perspective new employee that their multi years of bona fide work experience is of no value to the State would certainly

be a recruiting downer. Where that experience occurs in a private agency, for example, and not with the State would appear to this Arbitrator to make little difference. Additionally, the fact that the award makes changes the second year of the biennium leaves plenty of time for the new employer to do the necessary computer work and reduces the cost of the benefit improvement.

Article 8.2 is the one place in the Union's proposed changes with which the Arbitrator simply disagrees. The employees that would benefit from this change took an earlier training/certification program, no longer offered. There is a new training program, the graduates of which receive a higher pay differential. Interestingly, the graduates of the old training program can take the new training program and receive both differentials (Tr 546). The value of training recedes over time, taking new training has the advantage of being a refresher and imparting new information. It seems to this Arbitrator that the existing differentials system is set up precisely as it should be.

The Arbitrator's decision not to grant the Union its request regarding Articles 8.3 and 8.5 is all about controlling costs, directing any increased costs to more important benefits and the transition to a new Employer with a new software system.

The Union's proposal regarding a new Article 8.6 covering a nurse delegation differential clearly has some merit in this Arbitrator's view. Once again, cost containment and the transition

to a new Employer convinced him not to make the award for the next biennium. The State's concerns regarding the ability to track this work and the new software system was one important factor in this conclusion.

Arbitrator's Award on Article 8

8.1 Wages

Effective July 1, 2021, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. In addition, effective July 1, 2022, all home care workers will be placed on a step that also includes their verifiable hours of work as a Medicaid-contracted home care agency direct care worker retroactively calculated to July 1, 2017. IPs who wish to receive credit for their home care agency direct care work must produce, within sixty (60) days of signing their individual contract with the employer, a letter from their other employer(s) or employer-provided payroll records verifying direct in-home care hours worked since July 1, 2017. Providers who are already working as IPs but were never given credit for their home care agency experience may submit, by May 1, 2022, a letter from their previous employer(s) or employer-provided payroll records verifying direct in-home care hours worked since July 1, 2017. Bargaining unit home care workers will be paid according to the wage scales found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours not including time spent as mentors pursuant to Section 8.2. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scales. 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.

8.2 Certification Differentials and Mentor, Preceptor, and Trainer Pay

Employees who hold a valid Home Care Aide certification or who are exempt from certification under RCW

18.88B.041(1)(a)(i)(A) shall be paid an additional twenty-five cents (\$0.25) per hour differential to their regularly hourly wage rate.

Employees with a valid Home Care Aide certification or who are exempt from certification under RCW 18.88B.041(1)(a)(i)(A) who complete advanced training (as set forth in Training Partnership curriculum) shall be paid an additional twenty five cents (\$0.250) per hour differential to their 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 (\$0.50) above their regular hourly wage rate

8.3 Mileage Reimbursement

Home care workers shall be compensated when the IP drives their personal vehicles to provided services to their consumers (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of one hundred (100) miles per month per consumer.

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

8.4 Advanced Home Care Aide Specialist (AHCAS) And Advanced Behavioral Home Care Aide Specialist (ABHCAS) Differential

Individual providers with a valid Home Care Aide certification or who are exempt from certification under RCW 18.88B.041(1)(a)(i)(A) or (B) or RCW 18.88B.041 (1)(c) and have completed seventy (70) hours of basic training, or advanced training provided by the Training Partnership and complete the advanced training described in the Article 15.11 or Article 15.12 shall be paid an additional seventy five cents (\$0.75) per hour differential added to their regular hourly wage rate. This AHCAS or ABHCAS differential stacks on top of the certification differential described

in Section 8.2, if applicable, and the advanced training differential in Section 8.2.

8.5 Administrative Time

Individual providers shall be compensated an additional fifteen (15) minutes per pay period for the purposes of recording and submitting timesheets.

ARTICLE 9

At the COMPREHENSIVE HEALTH CARE BENEFITS

Union's Proposal:

9.2 Contributions (Union Proposed)

Effective July 1, ~~2019~~2021, the Employer shall contribute ~~Three dollars and ninety-six cents (\$3.96)~~ ~~three dollars and fifty four cents (\$3.54)~~ per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, two and one-half cents (\$0.25) of which may be used ~~for a Health and Safety Benefit, in accordance with Article 27.~~ Effective July 1, ~~2020~~2022, the Employer shall contribute ~~four dollars and sixty-seven cents (\$4.67)~~ ~~three dollars and sixty one cents (\$3.61)~~ per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, two and one-half cents (\$.025) of which shall be used ~~for a Health and Safety Benefit. in accordance with Article 27.~~ Department-paid hours shall not include administrative time in Section 8.5 consumer participation hours, training hours, paid time off or vacations.

Contributions required by this provision shall be paid to the Trust on or before the twenty-fifth day of the month following the month in 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 Trust or its designee.

Eligibility for health care benefits shall be determined solely by the Board of Trustees. ~~Contributions for the Health and Safety Benefit will be paid to the Trust, which will administer any program established with these funds. The use of the negotiated funds for health and safety will~~

be determined by the Board of Trustees of the Health Benefits Trust.

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least thirty (30) days' notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

9.6 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 that relates to the benefits provided by the Trust of the Trust's actions.

State's Proposal:

9.2 Contributions

Effective July 1, 2021~~19~~, the Employer shall contribute ~~three dollars and seventy-five cents (\$3.75) three dollars and fifty four cents (\$3.54)~~ per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, two and one-half cents (\$.025) of which may be used in accordance with Article 27. Effective July 1, 2022~~20~~ the Employer shall contribute three dollars and ~~ninety-sixty one cents~~ (\$3.~~9061~~) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, two and one-half cents (\$.025) of which shall be used in accordance with Article 27. Department-paid hours shall not include administrative time in Section 8.5, consumer participation hours, training hours, paid off or vacations.

Contributions required by this provision shall be paid to the Trust on or before the twenty-fifth day of the month following the month in 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 Trust or its designee.

Eligibility for health care benefits shall be determined solely by the Board of Trustees.

The Trust shall determine the appropriate level of contribution if any, by eligible home care workers. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least thirty (30) days' notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

Discussion

The Arbitrator begins his discussion of Article 9 by noting that there are two areas of apparent disagreement. Apparent because, while there is disagreement over the level of contribution to the health benefit trust (HBT), there are some contract language changes proposed by the Union which it only appears the State opposes. A careful review of the testimony of State witnesses indicates that there is no specific disagreement to these changes and that the changes are, as described by the Union, non-substantive editings to correct problems with the language. For this reason, the award incorporates the Union's proposed changes.

As to the level of contribution to the HBT, the Arbitrator's award provides a 5% increase for each year of the biennium. This is more than the State offered and less than the Union proposed. The State's offer was 4% in the first year of the biennium and 4% in the second year. The State's chief negotiator testified at hearing:

- Q. Okay. So moving on to the State's healthcare proposal, was it the State's intention to cover healthcare inflation?
- A. I think that was the idea. That was our aim or our goal to do as much as we could. We understand and we heard the Union on that concern, and our proposal reflects as much as we could.
- Q. So you're not taking the position that So you're not taking the position that a 4 percent increase actually meets some kind of medical trend?
- A. I would say the 4 percent puts a big -- from our perspective, puts a big dent in it, and it goes a long way to address it. I don't know that it's perfect, from the HBT's perspective, or the Union's perspective, clearly not, but we did our best to put the funds to try to meet that interest.

The Arbitrator emphasizes two points from the above testimony. First, the State is clear about its objective - cover the cost of inflation related to medical care. Second, 4% takes a bite out of inflation but is insufficient to accomplish the objective. The Arbitrator agrees with the State's objective and finds 5% to be much closer to the projected increased costs of the existing medical benefits program (U 8).

Finally, concerns over the ability of the State to pay the increased costs associated with the collective bargaining agreement is the only reason that the Arbitrator determined not to support the Union's position on the contribution to the HBT. The Union put forward solid evidence and argument towards the goal of providing dependent medical coverage and dental care. Ultimately

the Arbitrator concluded that the limited new monies need to be placed elsewhere in the labor contract.

Arbitrator's Award on Article 9

9.2 Contributions

Effective July 1, 2021, the Employer shall contribute Three dollars and seventy-nine cents (\$3.79) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, two and one-half cents (\$0.25) of which may be used for a Health and Safety Benefit. Effective July 1, 2022, the Employer shall contribute three dollars and ninety-eight cents (\$3.98) per Department-paid hour worked by all home care workers covered by this Agreement to the Trust, two and one-half cents (\$.025) of which shall be used for a Health and Safety Benefit. Department-paid hours shall not include administrative time in Section 8.5 consumer participation hours, training hours, paid time off or vacations.

Contributions required by this provision shall be paid to the Trust on or before the twenty-fifth day of the month following the month in 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 Trust or its designee.

Eligibility for health care benefits shall be determined solely by the Board of Trustees. Contributions for the Health and Safety Benefit will be paid to the Trust, which will administer any program established with these funds. The use of the negotiated funds for health and safety will be determined by the Board of Trustees of the Health Benefits Trust.

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least thirty (30) days' notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

9.6 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 that relates to the benefits provided by the Trust of the Trust's actions.

ARTICLE 14

Union's Proposal:

- B. Referral Registry Benefit Contribution
Effective July 1, ~~2019~~2021, the Employer shall contribute to the Referral Registry Benefit Vendor ~~three cents (\$0.03)~~ **four cents (\$0.04)** per Department-paid hour worked by all home care workers covered by this Agreement.

Department-paid hours worked by all home care workers covered by this Agreement shall not include administrative time in Section 8.5, consumer participation hours, training hours or paid off time.

State's Proposal:

The State opposes making any changes to the language found in Article 14 of the current CBA.

Discussion

A key concern to the Union is the fact that IPs work an average of 107 hours a month, not nearly full time work. A standard work month is 173 hours (52 weeks X 40 hours / 12 months). A central problem is connecting clients that need help with IPs who need hours of work. The Referral Registry Benefit Vendor has developed an app for a smart phone or computer that facilitates

this process. Currently the app provides a service that connects a client that is Medicaid eligible with an IP in the bargaining unit that provides services under Medicaid. The Union's proposal opens the door to allowing the app to also connect a member of the bargaining unit with a private-pay client.

After reflecting on the various discussions concerning this modification, the Arbitrator concludes that conceptually it is a worthy idea. But, not only is it an additional cost in a time when every dollar matters, the concept has not been well developed. Payment for the IP is not to come from the CDE when working for a private-pay client but rather from a private agency (Tr 501, 536). There is no evidence that the Arbitrator can see that this somewhat tenuous connection has ever been fully explored. How would this work?

The testimony indicates that the Referral Registry Benefit Vendor has a grant with King County to provide this service but that the program has not been implemented at this time. It is unclear to the Arbitrator as to whether King County would be the Employer of record for the IP under the King County grant. The bottom line is that the Arbitrator believes that at minimum this proposal is premature. Questions should be answered and perhaps the issue raised again during the negotiations over the 2023-25 agreement.

Arbitrator's Award on Article 14

- B. Referral Registry Benefit Contribution
Effective July 1, 2021, the Employer shall contribute to the Referral Registry Benefit Vendor three cents (\$0.03) per Department-paid hour worked by all home care workers covered by this Agreement.

Department-paid hours worked by all home care workers covered by this Agreement shall not include administrative time in Section 8.5, consumer participation hours, training hours or paid off time.

**NEW ARTICLE
HOLIDAYS**

Union's Proposal:

1. HOLIDAY PAY FOR WORKED HOLIDAYS

Effective July 1, 2021, all home care workers who are assigned by their client to work on one of the recognized holidays listed below will be paid for all hours worked on those days, up to eight hours per day, at one and half times their regular rate of pay which includes any applicable differential.

- A. Independence Day (July 4)
- B. Thanksgiving Day
- C. New Year's Day
- D. Labor Day

State's Proposal:

The State opposes adding a new financial benefit in the form of an Article granting holiday pay.

Discussion:

The Arbitrator begins his discussion of this issue by noting that there are generally two different levels of a holiday benefit.

In most cases, the employee gets a paid day off for the holiday. The second type of benefit involves the employee working on the holiday and receiving extra compensation. Oftentimes both types of holiday benefits are present - a paid day off and, if you have to work the holiday, extra compensation. In the instant case, the Union is asking for a very limited holiday benefit - if asked by the client to work on the holiday the employee receives time and a half compensation for up to 8 hours.

The Arbitrator notes that there are two costs regarding implementing this new Article. The first is the cost of programming the computers for holiday pay. The second is the yearly costs of the benefit itself. By implementing the holiday benefit the second year of the biennium, the programming work can be done as part of the work of building the new software program for the CDE; no programming costs to the State in 2021. Logic dictates to this Arbitrator that the cost of doing the computer work should be less when it is done as part of the start-up programming instead of as an add on sometime later. Also, by implementing the benefit the second year of the agreement, it substantially reduces the biennium cost of the benefit. The Arbitrator concludes that the second year of the biennium (July 1, 2022) is the time to implement this benefit. The Arbitrator's award, however, is limited to two holidays - not four -- as another cost saving measure.

There are two additional factors that influenced this conclusion. First, the comparability data presented by the Union strongly supports adding the holiday benefit (U 60), a fact also emphasized by Arbitrator Skratek in her 2012 decision (J 6). Second, the holiday benefit should provide modest help towards the recruitment needs of the State particularly since the State competes to hire IPs with private agencies which provide a holiday benefit (U 61).

Arbitrator's Award on Holidays Article:

**NEW ARTICLE
HOLIDAYS**

1. HOLIDAY PAY FOR WORKED HOLIDAYS

Effective July 1, 2022, all home care workers who are assigned by their client to work on one of the recognized holidays listed below will be paid for all hours worked on those days, up to eight hours per day, at one and half times their regular rate of pay which includes any applicable differential.

- E. Independence Day (July 4)
- F. New Year's Day

This interest arbitration award is respectfully submitted on this the 28th day of September, 2020 by,

Timothy D. W. Williams
Arbitrator