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STATE OF WASHINGTON

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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SEIU HEALTHCARE 775NW,

Petitioner,

v.

GOVERNOR CHRISTINE GREGOIRE,

Respondent.

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**AGREED STATEMENT OF FACTS**

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Attorneys for Respondent

**ORIGINAL - FILED BY E-MAIL ATTACHMENT**

1. Petitioner. SEIU Healthcare 775NW is the exclusive bargaining representative for approximately 25,000 individual providers who independently contract with the State Department of Social and Health Services to provide in-home personal care services to Medicaid-eligible clients. Pursuant to RCW 74.39A, which was passed into law via Initiative 775, after its approval on November 6, 2001, these workers are considered public employees solely for the purposes of collective bargaining under RCW 41.56. Petitioner has been the exclusive bargaining representative for the individual providers since 2002.

2. Respondent. Respondent is the Governor of the State of Washington.

3. Past Contracts and Interest Arbitration. The first labor agreement between the State and Petitioner was completed through collective bargaining without the use of the arbitration process set forth in RCW 74.39A.270. Arbitrator Timothy Williams issued an interest arbitration award in 2004 for the second labor agreement, covering the 2005-07 biennium. The third contract was fully implemented by the Washington State Legislature for the 2007-09 biennium after a decision by Arbitrator Michael Cavanaugh.

4. Bargaining in 2008. The Washington State Labor Relations Office (LRO), a division of the State Office of Financial

Management (OFM) and SEIU Healthcare 775NW commenced bargaining for the 2009-2011 labor contract on April 4, 2008, and during the course of several days of bargaining in April and May, reached tentative agreement on a number of issues. The parties reached impasse on several remaining issues, which were then certified for interest arbitration by the Public Employment Relations Commission (PERC). PERC Aug, 4, 2008 Letter Re: Interest Arbitration, attached as Exhibit 1. A Timeline for SEIU Healthcare 775NW Bargaining is attached as Exhibit 2.

5. Tentatively Agreed Articles. Articles tentatively agreed to by the parties are attached hereto as Exhibit 3.

6. Interest Arbitration. RCW 74.39A.270 provides for interest arbitration in the event the parties are unable to successfully negotiate a labor agreement. The interest arbitration hearing occurred on August 18, 22, 25, 26, 28, and 29, and September 5, 2008.

7. Evidence Regarding State's Financial Condition. During the hearing, the State introduced testimony and exhibits relating to the financial condition of the State and to the potential impact on the State's budget of any interest arbitration award. Attached as Exhibit 4 is the transcribed testimony of OFM Deputy Director Wolfgang Optiz. Transcript of Proceedings, PERC No. 21907-01-08-0516, Aug. 26, 2008,

pp. 598-678. The exhibits listed below were introduced into evidence through Mr. Opitz's testimony:

- a. *Washington State Budget Process*, OFM publication dated June 2008, attached as Exhibit 5.
- b. *Washington Economic and Revenue Forecast*, Vol. XXXI, No. 2, Economic and Revenue Forecast Council, June 2008, attached as Exhibit 6.
- c. *Revenue Act Collections* (chart), Economic & Revenue Forecast Council, Aug. 10, 2008, attached as Exhibit 7.
- d. *Estimated Six Year GF-S Outlook*, Senate Ways and Means Committee, June 26, 2008, attached as Exhibit 8.
- e. *Wash. Quarterly Revenue Projection Down \$167 Million*, OFM News Release, June 19, 2008, attached as Exhibit 9. Also available electronically at:  
<http://www.ofm.wa.gov/news/release/2008/080619.asp>.

8. Arbitrator's Decision. Arbitrator Timothy Williams issued his arbitration award on Oct. 1, 2008, deciding all issues certified for interest arbitration. A copy of Arbitrator's Opinion and Award, Timothy D.W. Williams, Oct. 1, 2008, is attached as Exhibit 10.

9. Contract Funding Information. On or before Oct. 1, 2008, a copy of Arbitrator Williams' decision, along with a summary of the costs of that arbitration award rendered pursuant to RCW 74.39A.270(2), plus all costs associated with monetary issues successfully negotiated by the parties without requiring interest arbitration, was submitted by LRO to

the director of OFM as part of the process for requesting funding for the labor contract. A copy of the cost summary is attached as Exhibit 11.

10. November Economic Report. In November 2008, the Economic and Revenue Forecast Council issued a quarterly report titled *Washington Economic and Revenue Forecast, Vol. XXXI, No. 4*, attached as Exhibit 12.

11. Membership Vote. SEIU Healthcare 775NW members voted to approve the 2009-2011 labor contract on November 14, 2008.

12. Budget Outlook. On December 4, 2008, the Senate Ways and Means Committee published a report titled *2009-2011 Budget Outlook*, a copy of which is attached as Exhibit 13. This document is also accessible electronically at the following link:

<http://www.leg.wa.gov/Senate/Committees/WM/Presentations/>.

13. Report on Financial Feasibility. On December 17, 2008, the Director of the Office of Financial Management (OFM) submitted a memorandum to the Governor titled *Financial Feasibility of Collective Bargaining Agreements & Arbitration Awards for 2009-11 Biennium*, a copy of which is attached as Exhibit 14.

14. Letter From Labor Relations Office. On December 18, 2008, the Director of LRO issued a letter addressed to several labor organizations, including Petitioner, regarding *Financial Feasibility of*

*2009–2011 Collective Bargaining Agreement*, a copy of which is attached as Exhibit 15.

15. Budget Document. On December 18, 2008, the Governor submitted her proposed biennial budget document to the legislature, pursuant to RCW 43.88. The budget document includes the following: *Proposed 2009-2011 Budget & Policy Highlights, Agency Recommendation Summaries, Agency Detail Budgets, and Summary Tables*. A copy of the publication titled *Proposed 2009-2011 Budget & Policy Highlights* is attached as Exhibit 16. The additional budget document components listed above are accessible on-line at <http://www.ofm.wa.gov/budget09/default.asp>.

16. No Request for Funding. The Governor's budget document does not include a request for funding to implement the compensation and fringe benefit increases decided by Arbitrator Williams, and does not include a request for funding to implement any compensation or money contributions that were agreed to by the parties and not subject to interest arbitration.

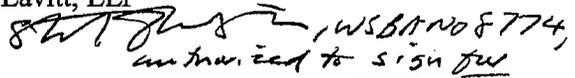
17. Budget Bill. A copy of the *Proposed 2009-11 Operating Appropriations Bill*, Governor Gregoire, Dec. 18, 2008, is attached as Exhibit 17. The Budget Bill is accessible on-line at: <http://www.ofm.wa.gov/budget09/bills/default.asp>.

18. Legislative Calendar. The 2009 legislative session commenced on January 12, 2009. The last day allowed for the 2009 regular legislative session under the state constitution is April 26, 2009.

19. Additional Facts Not Precluded: This Agreed Statement of Facts comprises all the facts to which the parties agree. It is not intended to preclude the parties from citing additional matters of which the Court may take judicial notice in briefing to the Court, including, but not limited to, pending legislation.

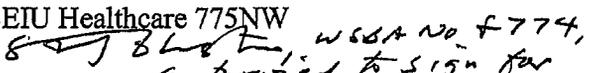
RESPECTFULLY SUBMITTED this 27th day of January, 2009.

Schwerin Campbell Barnard Iglitzin  
& Lavitt, LLP

  
*WSBA No. 8774,  
authorized to sign for*

Dmitri Iglitzin, WSBA No. 17673

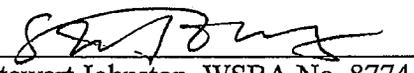
SEIU Healthcare 775NW

  
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