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SUPREME COURT  
STATE OF WASHINGTON

2009 JAN 13 P 4:34

NO. 82551-3

BY RONALD A. CARPENTER

SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

SEIU HEALTHCARE 775NW,

Petitioner,

v.

GOVERNOR CHRISTINE GREGOIRE,

Respondent.

ANSWER TO  
PETITION AGAINST  
STATE OFFICER

COMES NOW, the Honorable Christine Gregoire, Governor of the State of Washington, by and through the undersigned counsel, and in answer to the Petition Against State Officer filed in the above-captioned matter, admits, denies, and alleges as follows:

**I. ANSWER TO PETITION**

This Answer is submitted pursuant to the Order of this Court entered January 9, 2009. In this Section (I) of this Answer, each paragraph responds to the corresponding numbered paragraph of the Petition.

1. Respondent admits that RCW 74.39A.300(1), portions of which are quoted in Paragraph 1 of the Petition, was enacted into law via an initiative and amended in 2004. Respondent is without information sufficient to admit the truth of the remaining allegations set forth in Paragraph 1 of the Petition, and therefore denies the same.

2. Respondent admits that Arbitrator Timothy Williams issued an interest arbitration award on October 1, 2008, which decided a number of discrete issues that had been certified for arbitration by the Executive Director of the Public Employment Relations Commission (PERC), and that following the arbitration award the parties had a complete labor contract for the 2009-11 biennium, contingent upon funding by the Legislature.

3. Respondent denies the allegations set forth in Paragraph 3 of the Petition.

4. To the extent the allegations in Paragraph 4 of the Petition imply otherwise, Respondent denies that there was a need for legislation necessary to implement this labor contract. Respondent admits the remaining allegations set forth in Paragraph 4 of the Petition.

5. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions and allegations set forth in Paragraph 5 of the Petition.

6. Respondent admits that Petitioner is the exclusive bargaining representative for approximately 25,000 individual providers within the State of Washington. Respondent lacks sufficient knowledge to admit the truth of the allegations pertaining to the number of Montana workers represented by Petitioner, and therefore denies the same.

Respondent denies all remaining allegations set forth in Paragraph 6 of the Petition.

7. Respondent admits the allegations set forth in Paragraph 7 of the Petition.

8. Respondent admits the allegations set forth in Paragraph 8 of the Petition.

9. Respondent admits the allegations set forth in Paragraph 9 of the Petition.

10. Respondent admits the allegations set forth in Paragraph 10 of the Petition.

11. Respondent admits the allegations set forth in Paragraph 11 of the Petition.

12. Respondent admits that under RCW 74.39A.270, solely for the purposes of collective bargaining, the Governor is the public employer of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in RCW 41.56, and admits that the Governor is represented at the bargaining table by the Labor Relations Office, a division of the State's Office of Financial Management (OFM).

13. Respondent admits that RCW 74.39A.270(2)(c) provides for interest arbitration, in accordance with specified provisions within RCW 41.56.

14. Respondent admits that RCW 74.39A.300(1) is accurately quoted in Paragraph 14 of the Petition. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 14 of the Petition, and to the extent any allegations set forth in Paragraph 14 purport to interpret that statute, Respondent denies those allegations.

15. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 15 of the Petition, and to the extent any allegations set forth in Paragraph 15 purport to interpret the meaning of RCW 74.39A.300(2), Respondent denies those allegations.

16. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 16 of the Petition, and to the extent any allegations set forth in Paragraph 16 purport to interpret the meaning of RCW 74.39A.300(2), Respondent denies those allegations.

17. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth

in Paragraph 17 of the Petition, and to the extent any allegations set forth in Paragraph 17 purport to interpret the meaning of RCW 74.39A.300(2), Respondent denies those allegations.

18. Respondent admits that Petitioner is the exclusive bargaining representative for individual providers. Respondent lacks sufficient knowledge and information to admit the truth of the remaining allegations set forth in Paragraph 18 of the Petition, and therefore denies the same.

19. Respondent admits that the first collective bargaining agreement between the Home Care Quality Authority and Petitioner was successfully negotiated without any issues being certified for interest arbitration. Respondent denies that the Governor was designated as the employer during the first round of bargaining.

20. Respondent admits that Arbitrator Timothy Williams issued an arbitration award deciding a number of issues that had been certified for interest arbitration after the parties reached impasse on those issues during bargaining over the second labor contract, covering the 2005-07 biennium.

21. Respondent admits that Arbitrator Michael Cavanaugh issued an arbitration award, deciding a number of issues that were certified for interest arbitration after the parties reached impasse on those issues

during bargaining over the labor contract for the 2007-09 biennium. Respondent admits that funding to implement the provisions of the 2007-09 labor contract, including the provisions decided in the arbitrator's award, was approved by the Legislature.

22. Respondent admits that in 2008 the parties engaged in collective bargaining over the 2009-11 labor contract. Respondent further admits that selected issues were certified for interest arbitration by the Executive Director of PERC after the parties reached impasse on those issues during bargaining over the new labor contract for the 2009-11 biennium. Respondent denies all remaining allegations set forth in Paragraph 22 of the Petition.

23. Respondent admits that the interest arbitration hearing before Arbitrator Timothy Williams took place on the dates identified in Paragraph 23 of the Petition, and admits that on October 1, 2008, Arbitrator Williams issued an award on all issues certified for interest arbitration. Respondent denies all remaining allegations set forth in Paragraph 23 of the Petition.

24. Respondent admits that the State introduced evidence regarding the State's ability to pay, based on the most recent financial data available at the time of the arbitration hearing. Respondent admits that OFM's Deputy Director Wolfgang Opitz testified during the interest

arbitration hearing, and admits that the quoted portions of his testimony contained in Paragraph 24 of the Petition are accurate excerpts from his transcribed testimony. Respondent denies all additional allegations set forth in Paragraph 24 of the Petition.

25. Respondent admits that Arbitrator Williams addressed the State's ability to pay for the compensation and fringe benefit provisions of the labor contract in the "Preliminary Analysis" portion of his award, and admits that excerpts from Arbitrator Williams' written observations are accurately quoted in Paragraph 25 of the Petition. Respondent denies all additional allegations set forth in Paragraph 25 of the Petition.

26. Respondent denies that the arbitration award included the exact monetary benefits described in Paragraph 26 of the Petition, but admits that the award included monetary benefits approximating the percentage increases described in Paragraph 26. Respondent admits that the award includes an extra fifty cents (.50) an hour for specified workers who have obtained certain certifications. Respondent denies all remaining allegations set forth in Paragraph 26 of the Petition.

27. Respondent admits on October 1, 2008, the director of OFM was provided with a fiscal summary explaining the costs for this labor contract, including the arbitration award, and other arbitration awards and negotiated contracts. Respondent admits that the quoted

language from OFM's website is accurate. Respondent denies all remaining allegations set forth in Paragraph 27 of the Petition.

28. Respondent admits that a summary of the costs of the 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 to the director of OFM as part of the process required for requesting funding for the labor contract. Respondent denies all remaining allegations set forth in Paragraph 28 of the Petition.

29. Respondent admits the allegations set forth in Paragraph 29 of the Petition.

30. Respondent admits that 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. Respondent denies all remaining allegations set forth in Paragraph 30 of the Petition.

31. Respondent admits that Paragraph 31 of the Petition contains an accurate excerpt from the OFM website. Respondent denies

all remaining allegations and arguments contained in Paragraph 31 of the Petition.

32. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 32 of the Petition, and to the extent any allegations set forth in Paragraph 32 purport to interpret the meaning of RCW 74.39A.300(2), Respondent denies those allegations.

33. Although legal conclusions need not be the subject of factual pleading, Respondent denies the allegations, arguments, and legal conclusions set forth in Paragraph 33 of the Petition.

34. Respondent admits that the director of OFM's Labor Relations Office sent a letter to a number of labor organizations on December 18, 2008, and that a portion of that letter is quoted accurately in Paragraph 34 of the Petition. Although legal conclusions and arguments over the significance of evidence need not be the subject of factual pleading, Respondent denies that this letter constitutes an "implicit" admission, and denies all remaining allegations set forth in Paragraph 34 of the Petition.

35. Respondent admits that an excerpt of Wolfgang Optiz's transcribed testimony is accurately recited in Paragraph 35 of the Petition.

Respondent denies all additional allegations set forth in Paragraph 35 of the Petition.

36. Respondent denies the allegations set forth in Paragraph 36 of the Petition.

37. Respondent denies the allegations set forth in Paragraph 37 of the Petition.

38. Although legal conclusions and arguments need not be the subject of factual pleading, Respondent denies the arguments and opinions expressed in Paragraph 38 of the Petition, and further denies that the Legislature's ability to fund compensation increases decided in the arbitrator's award or agreed to by the parties in bargaining is legally impaired by the Governor's decision not to include funding for those increases in the Governor's budget document. Respondent denies all remaining allegations set forth in Paragraph 38 of the Petition.

39. Although legal conclusions, arguments and individual opinions about governmental processes need not be the subject of factual pleading, Respondent denies all allegations set forth in Paragraph 39 of the Petition.

40. Respondent admits that funding for compensation and fringe benefits under a labor contract negotiated between the Petitioner and the State was voted down by the Legislature in 2003, and upon

information and belief, following that vote the parties returned to the table and renegotiated compensation and benefits. Respondent is without sufficient information to admit the truth of the remaining allegations set forth in Paragraph 40 of the Petition, and therefore denies the same.

41. Respondent denies the allegations set forth in Paragraph 41 of the Petition.

42. Respondent denies the allegation set forth in Paragraph 42 of the Petition.

## **II. AFFIRMATIVE DEFENSES**

By way of further answer and affirmative defense, Respondent alleges as follows:

1. The Petition fails to state a claim upon which relief can be granted;
2. The Court lacks jurisdiction over the subject matter of this action;
3. This action is not justiciable;
4. Respondent's actions, herein alleged by Petitioner as unlawful, constitute the lawful exercise of the Governor's discretion and authority, and are therefore not actionable.
5. The relief requested in this action is barred by the separation of powers doctrine.

6. Because Petitioner cannot demonstrate that there is not a plain, speedy, and adequate remedy in the ordinary course of law, a writ of mandamus should not be issued in this action.

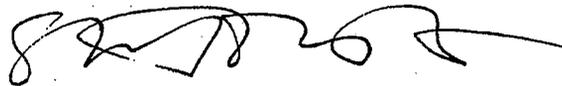
### III. REQUEST FOR RELIEF

Respondent denies that Petitioner is entitled to the relief requested in Paragraphs 43, 44 and 45 of the Petition, and respectfully requests relief as follows:

1. That this Petition be dismissed, and that no relief be granted to Petitioner;
2. That each party bear its own costs; and
3. For such other and further relief as this Court deems just and appropriate.

RESPECTFULLY SUBMITTED this 13th day of January, 2009.

ROBERT M. McKENNA  
Attorney General



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**PROOF OF SERVICE**

BY RONALD R. CAMPBELL I certify that I served a copy of this document on all parties or their

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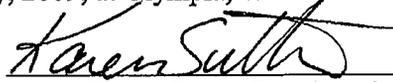
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I certify under penalty of perjury under the laws of the state of  
Washington that the foregoing is true and correct.

DATED this 13th day of January, 2009, at Olympia, WA.

  
Karen Sutter, Legal Assistant