

WASHINGTON FEDERATION OF
STATE EMPLOYEES, AFSCME
COUNCIL 28 FOR LANGUAGE ACCESS
PROVIDERS,
Union,

Vs.

STATE OF WASHINGTON, OFFICE OF
FINANCIAL MANAGEMENT,
Employer

ARBITRATOR'S OPINION AND AWARD

**PERC 135731-I-22 and 134871-M-22
INTEREST ARBITRATION**

Arbitrator: Donna E. Lurie

SENT ELECTRONICALLY TO PERC AND THE PARTIES:

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Clyde Takeuchi
Huan Nguyen
Nona Snell
Michael Grund
Jacob Dowell
Bill Jordan

The Arbitrator and the parties were assisted by Scott Kappes, Legal Assistant with the Office of the Attorney General, on exchanging documents and screen sharing the exhibits.

Joint Exhibits:

J-1: 2021-23 Language Access Providers CBA
J-2: 2019-2021 Language Access Providers CBA
J-3: 2017-2019 Language Access Providers CBA
J-4: 2015-2017 Language Access Providers CBA
J-5: RCW 41.56.030 (11)
J-6: RCW 41.56.430
J-7: RCW 41.56.440
J-8: RCW 41.56.450
J-9: RCW 41.56.452
J-10: RCW 41.56.465
J-11: RCW 41.56.470
J-12: RCW 41.56.510
J-13: RCW 39.26.300
J-14: RCW 74.04.025
J-15: Budget Overview – August 22, 2022
J-16: Budget Overview – July 2022
J-17: WFSE Article 6 Economic Compensation Proposal
J-18: WFSE Article X Healthcare Proposal
J-19: State of WA Article 6 Economic Compensation Proposal
J-20: PERC Certification to Interest Arbitration

Union Exhibits:

Union 1: LAP Rate History
Union 2: CPI Rates
Union 3: L&I Language Access Services Policy
Union 4: DES Contract Rates
Union 5: 2021 Industry Survey by Nimdzi
Union 6: LAP Hourly Rate Comparisons
Union 7: Oregon Health Authority Survey
Union 8: Moody's Analytics
Union 9: DSHS LAP Population Loss
Union 10: Union Initial Proposal on 6/8/2022 regarding Health Care Benefits

Employer/State Exhibits:

State 1: Mileage Pilot Report

State 2: HBE Rates Costing

State 3: LAP Pay Rate History

State 4: HCA Costing Model – Union’s Article 6 Proposal

State 5: DCYF Costing Model – Union’s Article 6 Proposal

State 6: DSHS Costing Model – Union’s Article 6 Proposal

State 7: HCA Costing Model – State’s Article 6 Proposal

State 8: DCYF Costing Model – State’s Article 6 Proposal

State 9: DSHS Costing Model – State’s Article 6 Proposal

State 10: Costing Summary Chart

Interest Arbitration Awards Cited by the Parties:

WA State Residential Care Council and WA Department of Social and Health Services, PERC Case 2688-I-14-0662 (2014)

Washington County and Federation of Oregon Parole and Probation Officers, Oregon ERB Case (2012)

INTRODUCTION

This matter came before Arbitrator Donna Lurie upon the issuing of PERC certification to interest arbitration (J-20). The parties to the dispute are the State of Washington, Office of Financial Management (hereafter “Employer” or “State”) and the Washington Federation of State Employees, AFSCME Council 28 for Language Access Providers (hereafter “Union”). This arbitration is governed by RCW 41.56, 39.26, 74.04, and the regulations promulgated under these statutes. The parties engaged in good faith negotiations and were unable to reach agreement on a successor collective bargaining agreement (CBA) for July 1, 2023 to June 30, 2025. PERC declared impasse on August 23, 2022 and certified the following issues for interest arbitration:

Article 6 – Economic Compensation (in its entirety from the State’s last proposal)

6.2 Rate of Pay, Sections A, B, and C (Union issue)

6.3 Appointment Times, Section A (Union issue)

6.5 No-Shows and Cancellations, Sections A, B, and C (Union issue)

6.8 Travel Reimbursements, new Sections B and C (Union issue)

6.9 HCA Family Member Appointments, Sections J and K (Union issue)

New Article X regarding Health Care Benefits (Union issue)

The parties had earlier selected the Arbitrator during the negotiations process. After receiving certification to interest arbitration, the parties requested a videoconference hearing option. A videoconference hearing was held on August 24 and 25, 2022. An official transcript was

provided by Anita Self of Buell Reporting. The parties stipulated to the admission of all Joint Exhibits, Union Exhibits, and State Exhibits. In addition, the parties stipulated to having Arbitrator Lurie serve as the sole arbitrator in lieu of a panel. The Union and the Employer were each given a full opportunity to provide opening statements, introduce documents, examine and cross examine sworn witnesses, and make closing arguments in support of their positions. Both parties submitted an interest arbitration decision regarding another public sector bargaining unit to support their closing arguments. The hearing record was closed upon receipt of the transcript on September 9, 2022. The Arbitrator committed to satisfying the parties' deadline of September 23, 2022 for a reasoned Opinion and Award.

BACKGROUND

Washington Federation of State Employees, AFSCME Council 28 (hereafter "Union") has represented the Language Access Providers (LAPs) who provide spoken language interpreter services for the Health Care Authority (HCA), the Department of Health and Social Services (DSHS), and the Department of Children, Youth & Families (DCYF). Bargaining unit LAPs are independent contractors. Appointments for their language interpreter services are arranged through a web portal administered by a scheduling entity known as Universal Language Services (ULS). A second scheduling entity named "Four Corners" is expected to go live on September 22, 2022 (Waldron testimony). The work of LAPs is defined in RCW 74.04.025(8)(a). LAP staff perform an essential role in assuring that non-English speaking persons are not denied, or are unable to obtain/maintain, services or benefits because of their difficulty in speaking and understanding English (RCW 74.04.025). All interpretive services must be performed by LAPs who are certified or authorized by Washington State or national certification boards, unless a certified or authorized LAP is not available (RCW 39.26.300).

During the Pandemic, spoken language interpreter services have been delivered in-person, by telephone, and by video. Different compensation rates and scheduled time periods have been provided for each modality in the CBA. The Union and the State disagree on the appropriate rates to be paid in the upcoming 2023-2025 CBA. Medical providers and agency staff post appointments on the web portal, indicating which modality is needed. LAPs log into the web portal and select the appointments that they can fill. Witnesses generally agreed that

90 percent of the appointments involve Medicaid clients for the HCA, 8 percent involve DSHS clients, and 2 percent involve DCYF clients. Some appointments involve onsite sessions for blocks of time (block appointments), and some appointments involve multiple family members requiring services (family member appointments). Definitions for the types of appointments can be found in Section 6.1 of the existing CBA. Approximately 18 percent of HCA appointments (Nguyen testimony), 5.4 percent of DSHS appointments (Jordan testimony), and 9.66 percent of DCYF appointments (Dowell testimony) involve cancellations or no-shows. The existing CBA has specific provisions to address cancellations, no-shows, and appointments that end earlier than originally scheduled (Section 6.5 of J-1). A fund of \$100,00 has been established to reimburse LAPs for appointments that cancel or end earlier than scheduled; however, this fund is usually exhausted after four months of the fiscal year and no further funding has been provided (Section 6.5(G) in J-1) (Holland, Inforzato testimony). The Union and the State disagree on how to handle cancellations, no-shows, and changes to appointment times in the future.

The bargaining unit has approximately 1,000 registered LAPs with approximately 765 LAPs actively providing language interpreter services. The Union raised a concern regarding agencies contracting with third party language access delivery organizations instead of contracting exclusively with members of the Union bargaining unit. The Arbitrator understands the Union's concern over the loss of employment opportunities. At the same time, the Arbitrator and the parties cannot override statutory authority. RCW 39.26.300 provides DSHS, DCYF, and HCA, as well as Labor & Industries, with the option to purchase spoken language interpreter services directly from LAPs in the bargaining unit AND/OR through limited contracts with third party providers (RCW 39.26.300(3)). In addition, the named State agencies have the statutory authority to procure interpreters through the named departments if demand for spoken language interpreters cannot be met by the existing LAP contracts (RCW 39.36.300(5) and (6)).

As of 2010, LAPs have been treated as State employees for collective bargaining purposes only (RCW 41.56.060 and 41.56.510). The scope of bargaining for LAPs is limited primarily to economic compensation, health and welfare benefits, and other economic matters (RCW 41.56.510 (2)(c)). Negotiations over health and welfare benefits were added to the statute in

2021 (Holland testimony). The Governor is named as the public employer for LAPs, rather than a specific agency, for bargaining purposes (RCW 41.56.510(1)).

The parties submitted collective bargaining agreements (CBAs) from 2015 to the current CBA that expires on June 30, 2023 (J-1 through J-4). This case involves the first set of contract negotiations between the parties that has resulted in an impasse.

Specific factors are listed in RCW 41.56.465 to be considered by an arbitrator in providing an interest arbitration award:

- (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 cost of living;
- (d) Changes in any circumstances under (a) or (c) during the proceedings; and
- (e) Other factors that are normally taken into consideration to determine wages, hours, and conditions of employment (e.g., comparisons with like positions).

In addition to the factors listed in RCW 41.56.465, an arbitrator must consider the financial ability of the State to pay for the compensation and benefit provisions of a collective bargaining agreement for LAPs (RCW 41.56.510 (2)(d)(i)).

ARTICLE 6 – ECONOMIC COMPENSATION ISSUES

The Union and the State have developed a complex compensation system for LAPs. Many of the CBA sections are interconnected and overlap. This Arbitrator believes that interest arbitration is an extension of the negotiations process and will do her best not to upset or disrupt the framework that the parties have carefully established over the years. Each CBA section will be reviewed and discussed separately and as part of the overall framework.

Section 6.1 Definitions:

The State's last proposal on the entirety of Article 6 is reflected in J-19. State witnesses testified that revisions to the definitions in Section 6.1 were needed to clarify the differences between in-person, block, over-the-phone, video remote, and family member appointments.

Union witnesses testified that the State's proposed revisions changed the meaning of the existing contract language in Section 6.1. A review of Section 6.1-B in several contracts show that block appointments have been treated as separate from in-person, telephonic, and video appointments for multiple iterations of the CBA (J-1, J-2, J-3, and J-4). The parties have historically provided distinct definitions for spoken language interpreter services in specific modalities. The Arbitrator finds the State's proposed language for Section 6.1 to be reasonable and helpful in clarifying the meaning of the different types of appointments serviced by LAPs in this bargaining unit. As indicated later in this Opinion and Award, the numbering sequence for Section 6.1 through Section 6.9 is preserved, and there is no need for a Section 6.10. The parties are directed to retain the current numbering sequence.

Section 6.2 Rates of Pay:

Both the State and the Union have made proposals for changes to the various rates of pay; therefore, both are moving parties and must show compelling need for their respective positions. The Union proposes one rate of pay for in-person, block, and family member appointments at \$50.76 per hour as of July 1, 2023 (J-17). While in-person and block appointments involve onsite language interpreting, family member appointments can involve any modality (in-person, on-the-phone, or video remote). Lumping these types of appointments together will change the parties' framework and cause confusion. The Union's proposal reflects a 16.7 percent wage increase over the existing wage rate of \$43.48 per hour for the two years of the biennium. The Union proposes 74 cents per minute for telephonic interpreting (J-17). The Union proposes \$3.60 per minute for the first ten minutes and 72 cents thereafter for video remote interpreting services (J-17). Lastly, the Union proposes to change the social service appointment premium to correspond to 5 percent of the normal hourly rate or base rate (J-17).

The Union argues that the Consumer Price Index (CPI) increased 9 percent in July of 2022, with significant increases to food, housing, fuel, and medical care costs (Union 2). The Union provided industry reports that reflect national statistics and Oregon statistics on LAP compensation to bolster its contention that LAPs for HCA, DSHS, and DCYF are paid less than current job market rates (Union 5 and Union 7). The Arbitrator finds the national statistics to be of limited value, due to the lack of clarity regarding employment status,

specific services provided, compensation package, and job market conditions. A table of Washington LAP wage rates is more instructive. This table compares wage rates for the same LAP services with the Washington Department of Labor and Industries (L&I) and the Washington Department of Enterprise Services (DES) (Union 6). LAPs performing the same spoken language interpreter services for L&I receive \$61.60 per hour or \$18.32 more per hour (paid in minutes). LAPs performing the same spoken language interpreter services for DES receive \$133.77 per hour or \$90.29 more per hour (Union 6). Under cross examination, the Union negotiator was unsure whether the DES wage rate included a mark-up for an administrative fee (Holland testimony). Several Union witnesses testified that they have performed the same spoken language interpreting services for L&I and DES at higher rates of pay (Eby, Waldron, Muhammed testimony). The Union cited an interest arbitration decision, *Washington State Residential Care Council and DSHS*, PERC 2688-I-14-0662 (2014) to support its comparison with the wage rates paid to other employees performing similar work for the State of Washington. Using the analysis stated by Arbitrator Herman Torosian, the WFSE Union has established that LAP contractors for HCA, DSHS, and DCYF are treated differently and paid less for the same spoken language interpreting work.

The State has raised concerns regarding comparisons with LAP wage rates with other Washington State agencies on the grounds that other LAPs are not paid mileage or cancellation fees. The Union pointed out that the parties' mileage pilot project for social service appointments is capped at \$50,000 and will end on June 30, 2023 (J-1, pp. 36-37). Specific mileage reimbursement rates will not be paid in the upcoming 2023-2025 CBA. Both State and Union witnesses generally agreed that the fund for cancellations, no-shows, and earlier ending times is capped at \$100,000 and is unavailable for LAPs at least eight months of the fiscal year (J-1, Section 6.5) (testimony of Holland, Waldron, Inforzato, Templett).

In contrast to the Union compensation proposal, the State proposes a rate of \$44.56 as of July 1, 2023 and \$45.44 as of July 1, 2024 for in-person and family member appointments (see J-19). The State's negotiator testified that the proposed \$1.08 hourly increase for July 1, 2023 and the proposed 88 cents hourly increase for July 1, 2024 somehow includes a compensation increase, mileage, and a contribution towards LAP personal health and welfare expenses. The State's proposed increases in the base rate equate to a 2.5 percent increase

for 2023-2024 and a 2 percent increase for 2024-2025. The State proposed a 2-cent increase per minute in 2023 and a one-cent increase per minute in 2024 for telephonic interpreting (J-19). The State proposed an increase of 8 cents per minute in 2023 and another 6 cents per minute in 2024 for the first ten minutes of video remote interpreting, as well as a 2-cent increase in 2023 and a one-cent increase in 2024 for every minute thereafter (J-19). The State negotiator testified that these increases reflect a compensation increase and a contribution towards health and welfare expenses. This bargaining unit does not have a health and welfare plan and LAPs must fund their own health insurance and medical costs. The State proposed that the social service appointment premium in Section 6.2-D remain at \$2 per hour (J-19). Under cross examination, the State's negotiator was unable or unwilling to specify how much of the State's proposed increases can be attributed to compensation, mileage, and/or health and welfare costs.

Witnesses and exhibits established that this bargaining unit received a 2.7 percent wage increase on July 1, 2022 (Union-1). In comparison to the 2.7 percent increase for LAPs, non-represented State employees received a 3.25 percent wage increase and an increase in health insurance funding on July 1, 2022 (see <https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2022-supplemental-budgets/agency-recommendation-summaries/037>). The State of Washington added \$236 million for a 5.5% inflation adjustment for statewide K-12 salary increases for contract negotiations taking place for the upcoming school year and \$629 million for the 2023-2025 biennium - See page 12 of the OSPI Legislative Report <https://www.k12.wa.us/sites/default/files/public/legisgov/pubdocs/2022%20End%20of%20Session%20Overview.pdf>). Current school district settlements are running 6-7 percent in the Puget Sound region for the 2022-2023 school year. Masuood Muhammed testified that he provides spoken language interpreter services for the Kent School District, in addition to the LAP services that he provides to HCA, DSHS, and DCYF (Muhammed testimony). If the State's wage proposals were to be adopted, Muhammed would receive an increase that is less than half of the wage increase he will receive doing the same work for a public school district.

The State argues that the State proposals in J-19 are consistent with previous wage increases for this bargaining unit (State-2 and State-3). The Union request for a 16.7 percent increase is larger than the 9 percent inflation rate and increases to the cost of living (J-15 and J-16). State witnesses argued that other departments do not pay mileage or cancellation fees that are currently paid in limited amounts to HCA LAPs. More specifically, State witnesses cited the importance of funding direct services rather than paying for services that are not delivered to clients of HCA, DSHS, and DCYF because of no-shows, cancellations, or schedule changes (Templet testimony). The State's position is that a 16.7 percent increase paid upfront in the first year of the biennium, along with the other financial increases requested by the Union, are beyond the State's ability to pay and maintain over time (see cost estimates for Union proposal in State Exhibits 4 through 10). State fiscal staff estimated that the Union's compensation proposals in Article 6 would cost at least an additional \$5.3 million over the 2023-2025 Biennium (State 10).

The Arbitrator carefully reviewed the parties' exhibits, bargaining history, testimony, wage data, and economic data regarding the cost of living. The U.S. Bureau of Labor Statistics issued a report on September 13, 2022 indicating that the national average cost for all items in the CPI index increased **8.3 percent** over the last 12 months. Core items continue to increase in price. This report can be found at <https://www.bls.gov/news.release/cpi.nr0.htm>. Locally, the inflation rate for the Seattle Metro area is currently **9 percent** over the past year (seattletimes.com/business, 9/17/22). Rents have increased 22 to 30 percent. We are experiencing the highest inflation rate in 40 years. Despite inflation reduction efforts, inflation rates stubbornly continue to remain well above the target rates sought by the Federal Reserve. So far, consumption rates have not decreased in any noticeable fashion. Washington State will continue to receive sales tax revenue as consumers continue to purchase goods and services. Nona Snell, Assistant Director of Budget for OFM, confirmed the CPI figures in July and August for the cost of living faced by LAPs. In answer to questions about the State's ability to pay, Snell testified that the revenue projection for the current 2021-23 biennium is \$1.5 billion higher than the February forecast and the revenue forecast for the 2023-25 biennium has been increased by \$632 million (J-15 and J-16). In addition, the State has received \$6.8 billion in Federal Covid funds that are due to expire in December of 2024

(Snell testimony). The specific amounts to be received from Federal infrastructure legislation and other federal legislation (e.g., Inflation Reduction Act) are unknown at this time.

The current rate of inflation is unprecedented and reflects a dramatic difference from the economic conditions surrounding previous years of negotiations between the State and LAPs. Housing shortages, medical costs, supply chain difficulties, climate change affecting food and tangible goods, global conflict, fuel cartels, rising grocery prices, a tight labor market, and other macroeconomic factors continue to feed inflation. There is no assurance that inflation rates will significantly decrease in the next year or two.

According to the U.S. Bureau of Labor Statistics, wages in the private sector have risen by at least 5.5 percent over the past year and far eclipsed wage gains by public sector employees (<https://www.washingtonpost.com/business/2022/08/01/public-sector-wages-inflation/>). LAPs can earn higher pay in the private sector (Waldron testimony). Given the high cost of living in the Puget Sound region, it is imperative for the State to retain its LAP workforce and ensure an adequate number of certified and authorized interpreters who will accept work orders for HCA, DSHS, and DCYF. The Arbitrator finds it necessary to provide a substantial increase in the base wage rate if the State truly wishes to fulfill its stated commitments to include a compensation increase, mileage, and a contribution towards LAP health and welfare expenses (testimony of Inforzato and J-19). State representatives and the chief negotiator stated that wage increases were preferable to the establishment of a new health and welfare plan (State Opening Statement, Inforzato testimony). Wage increases would allow LAPs to finance their own health care. The Arbitrator takes judicial notice that independent contractors are usually paid a higher rate of pay to account for the fact that they are expected to self-fund their health insurance and retirement.

The Arbitrator finds that base wage increases of **6.0 percent** on July 1, 2023 and an additional base wage increase of **3.0 percent** on July 1, 2024 allow the State to gradually increase wages to address the impact of unprecedented inflation on this bargaining unit. In addition, these increases will help narrow the gap in wages paid for LAP services, whether the LAPs are providing spoken language interpreting for HCA, DSHS, DCYF, Labor & Industries, or Enterprise Services. With additional projected revenue of \$1.5 billion for 2021-

2023 and \$632 million for 2023-2025, the State has the financial ability to fund increases in LAP wage rates that keep pace with inflation and begin to address discrepancies in LAP compensation between relevant Washington State agencies.

The Arbitrator finds that Section 6.2(A) on IPI and FMA appointments must be revised to reflect a minimum of **\$46.09** per hour effective July 1, 2023 and a minimum of **\$47.47** per hour effective July 1, 2024. These increases implement the 6.0 percent and 3.0 percent base wage rate increases. The additional verbiage proposed by the State for IPI and FMA appointments to attribute wage increases to compensation, mileage, and health and welfare costs will now have some meaning. During the hearing, the State's negotiator was unable or unwilling to specify what portion of the State's proposed wage increase could be attributed to compensation, mileage, and/or health and welfare expenses. Without significant wage increases, the State's proposed attribution language is superficial and self-serving.

State witnesses testified that block appointments are desirable and are easily filled with an LAP. The State proposes no increase to the block appointment rate of pay in new Section 6.2(B). In contrast, the Union proposes that block appointment wage rates be combined with the pay rates for in-person and family member appointments (J-17). Adopting the Union proposal would change the parties' compensation framework. A review of previous CBAs between the parties (J-1 through J-4) reveals that the hourly rate for block appointments will have remained at \$31.00 per hour for at least eight years in 2023. The Arbitrator recognizes the convenience of block appointments AND recognizes the need to pay a competitive wage. In recognition of the gap in pay rates with L&I and DES pay rates for LAP work, the Arbitrator concludes that the block appointment hourly rate should be increased by 6.0 percent as of July 1, 2023 and an additional 3.0 percent as of July 1, 2024. The Arbitrator finds that the block appointment rate must be raised to **\$32.86** per hour as of July 1, 2023 and **\$33.85** per hour as of July 1, 2024.

The State requests some modifying language that restricts new Section 6.2(B) to in-person appointments. Testimony established that block appointments are serviced in-person (Inforzato, Nguyen). The State's request to clarify block appointments in Section 6.2(B) is consistent with the definition offered in Section 6.1(B) and is adopted by the Arbitrator.

Union witnesses established a compelling need to increase wage rates for over-the-phone (OPI) and video remote (VRI) services. Telephonic and video interpreting can be much more difficult without the LAP's ability to read facial expressions, body language, and other situational clues (Eby, Waldron, Verduzco testimony). LAPs have experienced cognitive challenges, privacy issues, and higher equipment costs to effectively interpret over the phone and on video (Eby, Waldron, Verduzco testimony). The Arbitrator finds that Section 6.2 (C) on telephonic (OPI) and video remote (VRI) interpreting services must be revised to reflect the 6.0 percent and 3.0 percent wage increases in a consistent manner for interpreting work that is equally or more difficult than in-person interpreting. There is a compelling need to pay **\$0.66** per minute effective July 1, 2023 and **\$0.68** per minute effective July 1, 2024 for OPI services. There is a compelling need to pay **\$3.18** per minute for the first ten minutes and **\$0.64** per minute thereafter effective July 1, 2023 and **\$3.28** per minute for the first ten minutes and **\$0.66** per minute thereafter effective July 1, 2024 for VRI services.

Section 6.2 (D) will remain at **\$2.00** per hour for the social service appointment premium. Section 6.2 (D) provides a premium, rather than a wage rate. No evidence was provided by the Union to demonstrate a compelling need to change the pay structure for social service appointments. State witnesses testified that social service appointments have a high fill rate with the current premium (Nguyen testimony). Considering the awarded increases to wage rates, the Arbitrator concurs with the State to retain the status quo for this subsection.

Section 6.3 – Appointment Times

The parties submitted similar proposals to edit language in Section 6.3 of the CBA, except for the last paragraph in Section 6.3(A)(6) regarding the inability of requestors to schedule or fill an appointment within 24 hours of the start time. The Arbitrator agrees with the State's position on the language in Section 6.3 of the contract. RCW 39.26.300 provides DSHS, DCYF, and HCA, as well as Labor & Industries, with the option to purchase spoken language interpreter services directly from LAPs in the bargaining unit AND/OR through limited contracts with third party providers (RCW 39.26.300(3)). In addition, the named State agencies have the statutory authority to procure interpreters through the named departments if demand for spoken language interpreters cannot be met by the existing LAP contracts

(RCW 39.36.300(5) and (6)). The focus of this statutory language is to ensure that spoken language services are provided as needed and agencies comply with federal requirements (Templet testimony). In accordance with RCW 41.56.465, the Arbitrator cannot override the statutory authority of the State. The Arbitrator adopts the State's language for Section 6.3.

Section 6.4 – Refusal of Services

The State proposed to restrict coverage of Section 6.4 to only in-person appointments for refusal of services and change the scope of the contract section (J-19). The current contract language makes no distinction (J-1). The State's proposed language was first received by the Union on August 22 without any opportunity to discuss the rationale and the ramifications for such a change to the parties' compensation framework. Insufficient justification was provided by the State to support a compelling need to eliminate coverage in Section 6.4 for telephonic and video remote appointments. The Arbitrator finds that the eligibility language in Section 6.4 on refusal of services should remain the same as current contract language.

Section 6.5 – No-shows and Cancellations

Over the years, the parties have developed a complex system for handling no-shows and cancellation of appointments (J-1). The State proposes to restrict coverage of this contract section to in-person appointments (IPI) for individuals and family members (J-19). In addition, the State proposes to restrict coverage of appointments ending earlier than scheduled to only HCA in-person appointments (J-19).

In contrast, the Union seeks to expand coverage in Section 6.5 by increasing the cancellation window from 6 hours to 9 hours in Sections 6.5(A) and Section 6.5(B). More significantly, the Union proposes to remove the cap of \$100,000 per fiscal year for current Section 6.5(G).

The Arbitrator finds that the parties achieved a balancing of interests in the current contract language in Section 6.5. Coverage was intended to apply towards all no-shows and cancellations, regardless of the modality used. The State was protected by a cap of \$100,000 per fiscal year for payment to LAPs under this contract language. The Union's proposal would result in more time, energy, and resources devoted to administration rather than delivery of services (Templet testimony). Witnesses generally agreed that removing the \$100,000 cap

would cost an additional \$300,000 per year or \$600,000 over the biennium (Holland, Inforzato, Templet). An additional expense of \$600,000 is counterproductive and removes State resources from addressing the needs of those with limited English proficiency. The Arbitrator finds that funding increases in the base wage rates are more essential to providing professional interpreting services than funding reimbursements when services are not rendered by the LAPs. Based on a review of the bargaining history, exhibits, testimony, and arguments of the parties, the Arbitrator concludes that the language in Section 6.5 should remain unchanged from the current contract language.

New Section 6.6, as proposed by the State, unduly restricts the coverage of the contract language and changes the balance of interests achieved by the parties. The State's proposed language for new Section 6.6 is rejected. The current numbering framework will be preserved in Article 6 for Sections 6.5, 6.6, 6.7, 6.8, and 6.9.

Section 6.6 – Extended Services

The State proposes to limit the scope of this contract section to in-person appointments. No compelling need was demonstrated to justify the limitation in scope. It is just as likely that an LAP may be requested to stay beyond the scheduled end time for an over-the-phone (OPI) or video remote (VRI) appointment. The Arbitrator finds that a restriction to IPI appointments is unreasonable and without merit. The last sentence proposed by the State for Section 6.6 on Extended Services is a reasonable clarification and should be adopted by the parties.

Section 6.7 – Double Booking

The State provided a last-minute series of contract language restrictions to the Union on August 22 (J-19). The State did not establish a compelling need to alter the scope of Section 6.7 on Double Booking. The Arbitrator concludes that the existing contract language should remain and be continued into the 2023-2025 CBA.

Section 6.8 – Travel Reimbursements

Both parties proposed language changes for Section 6.8 on Travel Reimbursements. The existing CBA restricts reimbursements for parking, ferry and travel costs to in-person and family member appointments (J-1, pp. 11-12). Mileage is NOT included in Section 6.8, and

the parties' mileage pilot will expire on June 30, 2023. The Union proposes a new Section 6.8 (B) that establishes a new scheme for mileage reimbursement that will involve extensive administrative resources in tracking and recording payments to LAPs. State witnesses testified that the mileage pilot is being discontinued because of the administrative burden and the lack of any demonstrable value added to the LAP services delivered to HCA, DSHS, and DCYF clients (Inforzato, Nguyen testimony). The Arbitrator agrees with the State's concerns regarding a proposed burdensome system that will divert State resources from service delivery to administrative oversight. The Arbitrator adopts the State's proposed language for Section 6.8 on travel reimbursements.

Section 6.9 – HCA Family Member Appointments

HCA family member appointments (FMA) involve appointments with Medicaid enrollees to ensure that HCA is reimbursed by Medicaid for services provided (Templet testimony). The Union proposes to increase reimbursement to LAPs for cancellations by expanding the window from six hours to nine hours for advance notice (J-17). The Arbitrator is sensitive to the parties' need to focus on delivery of professional services rather than reimbursement for not providing services. The Arbitrator rejects the Union's proposed language changes for Section 6.9.

The State has proposed several language changes to Section 6.9. Some changes clarify the contract, and some of them alter the scope of coverage. The State's proposed language for Section 6.9 (A) recognizes that "FMA appointments may be scheduled under any of the three modalities (IPI, OPI, or VRI)" (J-19, p. 8). The State's proposed subsection A and elimination of the previous language in subsection B provide clarifying language and is adopted by the Arbitrator. Similarly, new subsections B, C, D, E and F are all consistent with the parties' existing framework. The Arbitrator rejects the State's proposals to restrict coverage to only IPI appointments in new subsections G, H, I, J, and K, because subsection A specifically recognizes that FMA appointments may be scheduled for IPI, OPI, or VRI delivery. The State has not shown a compelling need to restrict coverage to only IPI appointments in Section 6.9. Lastly, the Arbitrator adopts the State's proposed clarifying language for Section 6.9 (L).

ARTICLE X - COMPREHENSIVE HEALTH CARE BENEFITS

The Union proposes a new Article X and the establishment of a “Premium Assistance Sponsorship Fund” for health care coverage (J-18). This proposal stems from a Memorandum of Understanding that created a work group to “study, explore, and discuss potential frameworks for health and welfare benefits” (J-1, p. 38). Although the Union proposed a health care coverage plan on June 8, 2022 (Union-10), the parties were unable to discuss the proposal in any detail. The Union did not receive any formal response from the State on this proposal (Holland testimony).

The Union’s proposal offers benefit entitlement criteria, employer contributions, and indemnification language that is more expansive than health care plans currently provided to State employees (Iseminger testimony). The Union’s proposal would change the nature of the employment relationship for LAPs from an independent contractor to a quasi-employee of the State (Iseminger testimony). This proposal is a dramatic change from the status quo.

Many important details are missing from this proposal. Eligibility issues would result in challenges and appeals due to a lack of a timeline for enrollment, lack of clarity on what qualifies as “billable hours”, unclear coverage for dependents, lack of detail on waiting periods, unclear start and end times for coverage, etc. (Iseminger testimony). The Union’s proposal undercuts the authority of the Exchange and the PEB to be the ultimate arbiter of eligibility, and it awards coverage based on retroactive work history (Iseminger). Is the household or the individual being covered by this plan? It is unclear. Benefits Director David Iseminger testified that the Union’s proposal would allow coverage for LAPs who did not work any hours in a given month. The Union proposal refers to Washington, Oregon, and Idaho residents (J-18). The State cannot pay invoices for Oregon and Idaho – Oregon does not have a State exchange and Idaho has its own rules and procedures (Iseminger testimony).

The Washington Health Benefit Exchange or “Exchange” cannot split premiums and a split of 85/15 is simply not possible (Iseminger). The Union’s proposed language on overpayments would result in a gift of public funds and would raise legal issues for the proposed plan (Iseminger).

A new health coverage plan would necessitate IT upgrades for new data systems and payment systems, hiring of additional administrative staff, and would require an appropriation request by the HCA to the Legislature (Iseminger).

Not knowing the ages, health needs, income levels, or other pertinent information to determine exact costs, State fiscal staff estimated that the Union proposal for a health care plan would cost between \$2.38 million and \$10.3 million above and beyond the Union's wage proposal (State-2). The State points out that RCW 41.56.510(2)(c) does not compel a party to agree to a proposal or be required to make a concession. The State argues that the Union's proposal is a significant departure from the status quo and offers better health care benefits than enjoyed by existing State employees. Citing *Washington County and Federation of Oregon Parole and Probation Officers* (Oregon ERB Arbitration Award on March 29, 2012), the State argues that the Union has not met its burden of proof to show a compelling need and sufficient detail to support the creation of a break-through health care plan.

The Arbitrator agrees with the State that the health care proposal is a significant departure from the status quo and is not supported by the evidence submitted to interest arbitration. Considering the wage increases previously awarded in this Opinion and Award, the Arbitrator finds that State funds are better spent in compensating LAPs for their interpreter services and letting them purchase their own health care coverage to meet their specific needs. Independent contractors are usually paid higher wages to compensate for the expectation that they will self-fund their health care and retirement costs.

SUMMARY OF AWARD

Section 6.1 - Definitions

The Arbitrator concurs with the State's proposal in Exhibit J-19, except for the proposed change in numbering for Sections 6.1 through 6.9.

Section 6.2 – Rates of Pay

Effective July 1, 2023, the base wage rate will be increased by **6.0 percent** to \$46.09 per hour. Effective July 1, 2024, the base wage rate will be increased by **3.0 percent** to \$47.47 per hour.

Effective July 1, 2023, block appointments will be paid at \$32.86 per hour. Effective July 1, 2024, block appointments will be paid \$33.85 per hour.

The Arbitrator concurs with the State’s proposed clarifying language for Section 6.2(B). Effective July 1, 2023, OPI services will be paid at \$0.66 per minute. Effective July 1, 2024, OPI services will be paid at \$0.68 per minute.

Effective July 1, 2023, VRI services will be paid at \$3.18 per minute for the first 10 minutes and \$0.64 per minute thereafter. Effective July 1, 2024, VRI services will be paid at \$3.28 minute for the first ten minutes and \$0.66 per minute thereafter.

Section 6.2 (D) will remain at \$2.00 per hour for the social service appointment premium.

Section 6.3 - Appointment Times

The Arbitrator concurs with the State’s language for Section 6.3.

Section 6.4 – Refusal of Services

The Arbitrator rejects any proposed changes. The current contract language remains.

Section 6.5 – No-Shows and Cancellations

The Arbitrator rejects any proposed changes. The current contract language remains.

The Arbitrator rejects new Section 6.6 that was proposed by the State.

Section 6.6 – Extended Services

The Arbitrator rejects the proposed changes, except for the last sentence proposed by the State for original Section 6.6.

Section 6.7 – Double Booking

The Arbitrator rejects proposed changes. The current contract language remains.

Section 6.8 – Travel Reimbursements

The Arbitrator concurs with the State’s proposed language for original Section 6.8.

Section 6.9 – HCA Family Member Appointments

The Arbitrator concurs with the State’s language for Section 6.9(A) and subsections B, C, D, E and F. The Arbitrator rejects the proposed restriction to IPI appointments in subsections G, H, I, J and K. The Arbitrator concurs with the State language for subsection L.

Article X on Health Care Benefits:

The Arbitrator concurs with the State’s concerns and does not award the Union’s proposal for a health benefits plan.

At the request of the parties, the Arbitrator retains jurisdiction between the date of this Opinion and Award and October 1, 2022 for the sole purpose of assisting the parties in the implementation of this Award.

Dated this 20th day of September, 2022.

Respectfully submitted,

Donna E. Lurie /s/

Arbitrator Donna E. Lurie
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Woodinville, WA 98072

WASHINGTON FEDERATION OF
STATE EMPLOYEES, AFSCME
COUNCIL 28 FOR LANGUAGE ACCESS
PROVIDERS,
Union,

Vs.

STATE OF WASHINGTON, OFFICE OF
FINANCIAL MANAGEMENT,
Employer

**CLARIFICATION OF
ARBITRATOR'S OPINION AND AWARD**

**PERC 135731-I-22 and 134871-M-22
INTEREST ARBITRATION**

Arbitrator: Donna E. Lurie

SENT ELECTRONICALLY TO PERC AND THE PARTIES:

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The parties contacted the Arbitrator on September 28, 2022 to request a clarification of the Interest Arbitration Award regarding the final language for Section 6.5(G) in the parties' Collective Bargaining Agreement (CBA) for 2023-2025. The Arbitrator issues the following clarification on Section 6.5 and 6.5(G). The remainder of the Opinion and Award that was issued on September 20, 2022 remains the same.

Section 6.5 – No-shows and Cancellations

Over the years, the parties have developed a complex system for handling no-shows, cancellation of appointments, and appointments that end earlier than the originally scheduled time (J-1). The State proposes to restrict coverage of all of Section 6.5 to in-person appointments (IPI) for individuals and family members (J-19). In addition, the State proposes to restrict coverage of appointments ending earlier than scheduled to only HCA in-person appointments for Section 6.5(G) (J-19).

In contrast, the Union seeks to expand coverage in Section 6.5 by increasing the cancellation window from 6 hours to 9 hours in Sections 6.5(A) and Section 6.5(B). More significantly, the Union proposes to remove the cap of \$100,000 per fiscal year for current Section 6.5(G).

The Arbitrator finds that the parties achieved a balancing of interests in the current contract language in Section 6.5. Coverage in Section 6.5 was intended to apply towards all no-shows, cancellations, and appointments ending earlier than the originally scheduled time, regardless of the modality used. The State was protected by a cap of \$100,000 per fiscal year for payment to LAPs for appointments ending earlier than the originally scheduled time (Section 6.5(G) in Joint Exhibit 1). The Union's proposal would result in more time, energy, and resources devoted to administration rather than delivery of services (Templet testimony). Witnesses generally agreed that removing the \$100,000 cap in Section 6.5(G) would cost an additional \$300,000 per year or \$600,000 over the biennium (Holland, Inforzato, Templet). An additional expense of \$600,000 is counterproductive and removes State resources from addressing the needs of those with limited English proficiency. The Arbitrator finds that funding increases in the base wage rates are more essential to providing professional interpreting services than funding reimbursements when services are not rendered by the LAPs. Based on a review of the bargaining history, exhibits, testimony, and arguments of the parties, the Arbitrator concludes that the language in Section 6.5 should remain unchanged from the current contract language.

More specifically, the language in Section 6.5(G) will remain as follows:

“If an appointment ends earlier than the originally scheduled time, an LAP will be paid for seventy-five percent (75%) of the originally scheduled appointment length, or the completed appointment time, whichever is greater. Payment related to this section shall be capped at one-hundred thousand dollars (\$100,000) per fiscal year for each year of this Agreement. The payment minimums described in Section 6.3 continue to apply.” (see Joint Exhibit 1, p. 11)

Dated this 28th day of September, 2022.

Respectfully submitted,

Donna E. Lurie /s/

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WASHINGTON FEDERATION OF
STATE EMPLOYEES, AFSCME
COUNCIL 28 FOR LANGUAGE ACCESS
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**CLARIFICATION OF
ARBITRATOR'S OPINION AND AWARD**

**PERC 135731-I-22 and 134871-M-22
INTEREST ARBITRATION**

Arbitrator: Donna E. Lurie

SENT ELECTRONICALLY TO PERC AND THE PARTIES:

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The parties contacted the Arbitrator on September 28, 2022 to request a clarification of the Interest Arbitration Award regarding the final language for Section 6.5(G) in the parties' Collective Bargaining Agreement (CBA) for 2023-2025. Section 6.5 of the parties' CBA is titled "No-shows and Cancellations"; however, Section 6.5(G) only applies to appointments that end earlier than the originally scheduled time. The

Arbitrator issues the following clarification on Section 6.5 and 6.5(G). The remainder of the Opinion and Award that was issued on September 20, 2022 remains the same.

Section 6.5 – No-shows and Cancellations

No change to current contract language.

Section 6.5(G) – No change to current contract language.

Dated this 29th day of September 2022.

Respectfully submitted,

Donna E. Lurie /s/

Arbitrator Donna E. Lurie

Lurie Workplace Solutions

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Woodinville, WA 98072