

MEMORANDUM OF UNDERSTANDING

**IN-HOME SUPPORTIVE SERVICES (IHSS)
PROVIDER UNIT**

2003-2004

IHSS PUBLIC AUTHORITY

AND

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 434-B

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MEMORANDUM OF UNDERSTANDING
BETWEEN THE IHSS PUBLIC AUTHORITY AND
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 434-B
CONCERNING THE IN-HOME SUPPORTIVE
SERVICES (IHSS) PROVIDER UNIT

PREAMBLE

This Memorandum of Understanding ("the MOU") is entered into between the San Bernardino County In-Home Supportive Services Public Authority ("the Public Authority") and the Homecare Workers Union, SEIU Local 434B ("the Union").

The Public Authority was established to enhance in-home supportive services ("IHSS") in San Bernardino County ("the County") under California Welfare and Institutions Code Section 12300 et seq. and San Bernardino County Ordinance #3842 (Chapter 42 of Division 2 of Title 1 of the San Bernardino County Code). The parties recognize that the Public Authority does not employ or manage the IHSS Providers in the County ("Providers") in the role of a traditional employer.

Both the Public Authority and the Union recognize the important role of the Providers in the community and the vital link they form to the recipients of IHSS ("Recipients"). The parties agree that it is in the best interest of the Recipients, the Providers and the health of the community to improve the working conditions of the Providers, without reducing services to the Recipients and while maintaining the independent provider mode of service delivery which includes the exclusive right of the Recipients to hire, fire and supervise the Providers.

RECOGNITION

Pursuant to the provisions of the Employee Relations Resolution of the Public Authority, the Union was certified on June 11, 2002, as the exclusive recognized representative for the IHSS Provider Unit. The Public Authority is the employer of record for the Providers for the sole purpose of collective bargaining. This MOU does not apply to others affiliated with or employed by the Public Authority, including without limitation, administrative and operational staff in the office.

GRIEVANCE PROCEDURE

A. Definitions

1. Grievance – In the context of this Agreement, a grievance shall mean a dispute regarding implementation of the provisions of this MOU brought by either party.
2. Authorized representative shall mean an individual officially designated by one party to accept a grievance presented by the other party. Each party shall have one representative for this purpose.

B. Grievance Procedure

1. If one party has cause to believe that any provision of the MOU has been violated by the other party, the aggrieved party shall provide to the other party's representative in writing a detailed statement of the grievance, including the Articles of the MOU alleged to have been violated; evidence supporting the allegation; and a good faith proposal to resolve the dispute. Grievances shall be filed within twenty-one (21) days of the incident or occurrence or knowledge of the incident or occurrence, whichever comes later.

2. Within fifteen (15) days of submission of the written grievance, the representative of the other party shall respond in writing either accepting the proposed resolution or to schedule a meeting.
3. If the parties are unable to reach a mutually satisfactory accord on any grievance after a good faith effort to reach resolution through discussion has been on going for twenty-one (21) days, the aggrieved party may request that the grievance be referred to an impartial arbitrator to resolve the grievance.
4. The Public Authority and the Union shall select the impartial arbitrator by mutual agreement within fifteen (15) days after the grievance was submitted to arbitration. If, however, the parties are unable to reach agreement, the parties shall request a list of seven (7) arbitrators from the State Mediation and Conciliation Service and, within five (5) days of receipt of the list, the parties shall select the arbitrator from the list by alternately striking names. The party that will strike first shall be determined by lot.
5. The decision of the arbitrator shall be rendered within thirty (30) days from the date of the hearing or the date any briefs are submitted, whichever is later. The decision of the arbitrator shall be final and binding, subject to the following:

In the event the arbitrator determines an economic remedy is an appropriate remedy, he/she shall limit any retroactive award to a date that is no earlier than thirty (30) days before the date the grievance was filed. When an economic remedy against the Public Authority is included in any Arbitrator's award under this Grievance Procedure, the Arbitrator shall initially render an "Intended Decision." In preparation of the "Intended Decision," the Arbitrator shall consult with an expert familiar with IHSS PA funding. Such expert shall be mutually agreed upon by both parties. In the event no mutual agreement is reached, the Arbitrator shall choose such an expert. The "Intended Decision" shall be submitted to the PA's Board of Directors for review and determination as to whether the PA has "legally available" funds to pay the award. "Legally available" funds shall be defined as those funds which are properly claimable by the County against the state and federal matches for the IHSS Program and which are made available to the PA by the County. It is understood that the San Bernardino County Code Section 12.4209 provides that the PA shall not have authority to incur any costs unless there is a state and/or federal funding match for such costs and that the County has funded the PA for such costs. The Board of Director's determination of whether funds are "legally available" shall be submitted to the Arbitrator. The arbitrator shall review and consider the Board's determination, along with the Union's position, and render the "Arbitrator's Award," including a finding of whether funds to the Public Authority are in fact "legally available." Either party may seek judicial review of any "Arbitrator's Award" which provides for an economic remedy against the Public Authority within ninety (90) calendar days of the filing of the "Arbitrator's Award."

6. The fees and expenses of the arbitrator and of the Court Reporter shall be shared equally by the Public Authority and the Union. Each party shall bear the costs of its own representation.
- C. Time Limits – The time limits specified above may be waived by mutual agreement of the parties.

HEALTH BENEFITS

- A. The parties agree that securing health benefits for uninsured providers is an important goal. Maintaining the health of providers is important to meet the needs of the Recipient, to facilitate the recruitment and retention of new providers to the program, and to minimize health costs to the public.
- B. The Public Authority shall provide a maximum of \$500,000 (local share) for the term of this Agreement to fund a health care program that makes coverage for current uninsured providers a priority. The parties

shall reopen this Agreement by July 1, 2003, to meet and confer regarding eligibility criteria for the health care program.

- C. Continuation of the health care program is subject to continuation of state and federal funding participation ratios at or above levels provided for under current law; and continuing appropriations by the County Board of Supervisors each fiscal year.
- D. It is recognized and agreed that it is in the discretion of the County Board of Supervisors to increase or to not increase appropriations and any action of the Board of Directors for the Public Authority is not binding on the County Board of Supervisors acting on behalf of the separate governmental entity County.
- E. It is recognized and agreed that the County is not a party to the MOU and is under no obligation to increase appropriations.
- F. SEIU agrees that it will not legally challenge any appropriation decision of the County Board of Supervisors and that any action of the Board of Supervisors is not a grievance, unfair labor practice or breach of this labor contract.

LABOR-MANAGEMENT COMMITTEE

In order to encourage open communication, promote harmonious relations and resolve matters of mutual concern, the parties shall create a labor-management committee. The committee shall be governed by the following:

- A. The committee shall meet every other month or as mutually agreed to by the parties.
- B. The topics for such meetings may include, but are not limited to, mutual respect, payroll problems, health and safety issues, training and education.
- C. The committee shall be composed of three (3) representatives appointed by the Public Authority and three (3) representatives appointed by the Union. Observers and guests may be invited by either party when their presence will be helpful in the resolution of specific issues.

The provisions of this Article and the subjects and recommendations of the committee shall not be subject to the Grievance Procedure.

The committee shall not have the authority to modify the terms and conditions of this MOU. Any changes recommended by the committee that would have the effect of modifying provisions of this MOU shall be addressed during the next negotiations period between the parties unless the parties mutually agree to reopen the agreement to address a specific issue.

LIABILITY OF PUBLIC AUTHORITY

The Public Authority is an independent legal entity, separate and apart from the County of San Bernardino. The Public Authority has no power to bind the County to any contractual or legal obligations, nor may the obligees of the Public Authority seek recourse against the County of San Bernardino for any financial or legal obligation of the Public Authority.

MANAGEMENT RIGHTS

Unless otherwise expressly specified in the MOU, the Public Authority shall have the right to determine the mission of its governing body, committees and other related work groups; maintain the efficiency of its operations; determine the methods, means and personnel by which its operations are to be conducted; and take all necessary actions to carry out its mission in emergencies.

NON DISCRIMINATION

There shall be no discrimination in the interpretation, application, or enforcement of the express terms of this MOU because of sex, race, creed, color, national origin, sexual orientation, age, disability or participation or non-participation in the union activities against any Provider by the IHSS Public Authority or by the Union.

Nothing in this Section shall limit the rights of IHSS recipients as provided in the Recipients' Rights Section.

NO STRIKE

During the term of the MOU, the Union, its members and representatives shall not to engage in, authorize, sanction or support any strike, slowdown or other stoppage of work.

ORIENTATIONS

Whenever the Public Authority conducts, or causes to be conducted, group orientation sessions for providers, it shall give the Union reasonable notice (not less than three business days shall be reasonable); and the Public Authority shall set aside a timeslot for the Union to make a ten (10) minute presentation to the providers at such orientations.

RECIPIENTS' RIGHTS

- A. Under the state law and the County Ordinance establishing the Public Authority, the Recipients have the sole and undisputed right to hire Providers of their choice; remove Providers at-will from their service; supervise the work of Providers; and determine in advance and under what circumstances anyone may enter their homes.
- B. The Union shall neither seek nor receive information regarding the name, address, phone number or any other personal information regarding recipients. Union representatives and Providers shall maintain strict standards of confidentiality regarding recipients obtained from whatever source, pertaining to recipients unless disclosure is compelled by legal process or otherwise required/permitted by law.

SAVINGS CLAUSE

If any term or provision of the MOU is found to be in conflict with any law or ordinance, the Public Authority and the Union shall meet promptly to expeditiously renegotiate the term or provision. All other terms and provisions of the MOU shall remain in full force and effect.

TERM AND RENEGOTIATION

- A. This Agreement becomes effective upon approval of the Public Authority Board of Directors, and shall remain in full force and effect through January 31, 2004. If a successor Agreement has not been reached by 12:00 a.m. (midnight) on January 31, 2004, the terms and conditions of this Agreement shall be extended for ninety (90) days or until a successor Agreement is adopted, whichever occurs sooner. All economic provisions are subject to funding availability as provided in specified Articles and paragraph (C) below.
- B. In the event either party hereto desires to negotiate a successor Agreement, such party shall serve upon the other ninety (90) days prior to expiration of the Agreement, any written request to commence negotiations, as well as its written proposals for such successor Agreement. Upon receipt of such written proposals, negotiations shall begin no later than thirty (30) calendar days after such receipt.

- C. Because of the uniqueness of the legislative scheme for IHSS Public Authorities, the continuing costs of wages, benefits and operations contained in this Agreement are subject to the on-going funding by the County, pursuant to County Code Section 12.4209. Should the County not provide adequate funding for the costs of the wages, benefits and operations contained herein, the parties shall forthwith meet and confer to provide for any necessary adjustments resulting from any reduction in funding. However, should funding be decreased to the Public Authority and the Public Authority not be able to meet the wage or other economic benefits in this Agreement, immediate reductions in wages and economic benefits shall be implemented pending further meeting and conferring.

TRAINING

- A. The Public Authority and the Union recognize that providing access to training for IHSS providers is an important goal and a significant component of the IHSS Program. The Public Authority acknowledges that the Union has extensive experience in developing and conducting training programs for IHSS Providers. The parties recognize that constraints on funding pose substantial challenges in achieving this goal. To meet these challenges, it is important for the parties to work cooperatively to improve training opportunities of Providers. Toward this end the labor-management committee shall develop a joint plan for implementing a Provider training program for IHSS Providers and to explore available resources for funding such a program. The parties understand that the Public Authority cannot implement any program which will result in committing any funds beyond those designated for training in the approved state rate application; however, this does not preclude funding such a program with grant monies or other funding approved by the Public Authority and designated by the Board of Directors for training purposes. It shall be the labor-management committee's goal to make recommendations to the Board of Directors no later than ninety (90) days after the effective date of this contract.
- B. The parties acknowledge that it is in the interest of the Union and the Public Authority to utilize the limited funding available to identify and address the areas of greatest need. Participation shall be voluntary and on a "first come, first served" basis. Participation shall not be made a condition for employment as an IHSS provider. In conformance with Welfare Institutions Code Section 12306 et seq., provider work hours may not be altered to accommodate attendance at trainings and time use in participation in training may not be compensated as provider hours. However, the Public Authority will strive to set training schedules that promote the greatest participation by providers.
- C. The Public Authority retains the exclusive right and authority to determine the scope of training and the method of training provision.
- D. The parties agree that failure of the state to meet its obligations to participate in funding for training of IHSS providers will excuse the Public Authority from implementing or completing some or all of the provisions of this section.
- E. Nothing in this Section shall in any way serve to limit the Union from continuing to provide any existing training programs or from designing and implementing its own training programs for Providers.

UNION RIGHTS

- A. List and Information
 - 1. The Public Authority shall provide the Union a list of the Providers. Such list shall include the names, addresses, telephone numbers, social security numbers, and hours authorized and hours paid in the previous month. The list shall be provided on a monthly basis and in an agreed upon computer format.

2. The Union recognizes that prior to distribution of social security numbers, the Public Authority must first amend its contract with the County to provide Providers' social security numbers, and that such contract amendment shall include a requirement that the Union fully indemnify the County as provided in subsection 3, below.
3. The Union shall defend, indemnify, save, protect and hold harmless the Public Authority and the County and their respective boards, directors, officers and employees from any and all claims, costs and liabilities for any damages and/or injury arising from disclosure to the Union of the Providers' names, social security numbers, hours authorized and hours paid, addresses and phone numbers.
4. The Union shall limit its use of Providers' social security numbers to the exclusive purpose of obtaining dues deductions as required by the Union's wage assignment agreement with the State Controller's Office.

B. Union Security

1. The Union agrees that it has a duty to provide fair and non-discriminatory representation to all Providers in the Unit regardless of whether they are members of the Union.
2. It shall be a condition of employment that all Providers covered by the MOU shall become and remain members of the Union in good standing or pay a fair share agency fee. Membership in good standing shall mean that the Provider pays the regular periodic dues as a condition of acquiring or retaining membership in the Union. An agency fee is the minimum regular periodic fee required of non-members as their fair share cost of representation, subject to the limitations and protections of applicable law. The dues or fees shall be deducted from the Providers' paycheck on a monthly basis following completion of thirty (30) calendar days of employment. For Providers employed as of the date of adoption of the MOU, the obligation to pay Union dues or agency fees shall commence with the first full payroll period following final adoption of the MOU.
3. Any Provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting unions, shall not be required to join or financially support the Union. Such Providers shall, as a condition of continued employment and in lieu of periodic dues or agency fees, pay sums equal to said amounts to one of the following organizations selected from the County's employee Combined Giving Campaign list: Inland Hospice Association; Desert AIDS Project; or First Steps Child Development Center, Inc. In order to make such an objection, a Provider must execute a written statement that the Provider is a member of a bona fide religion, body or sect that has historically held a conscientious objection to joining or financially supporting unions, and must also present verification to the Union and the Public Authority of active membership in that religion, body or sect. Charitable contributions will be by payroll deduction only, and are subject to state payroll deduction practices and limitations. Upon request, the Union shall provide proof of distribution of charitable contributions on a monthly basis to the Provider and the Public Authority.
4. The Union shall provide the Public Authority with a copy of the Union's agency fee procedure and each revision thereof, and shall provide notice of said procedure to bargaining unit members as required by all applicable laws.
5. Annually, the Union shall provide the Executive Director with copies of the financial report as required by law.
6. The Union shall defend, indemnify, save, protect and hold harmless the Public Authority and its Board, directors, officers and employees from any and all claims, judgments, costs and liabilities for any damages and/or injury arising from the enforcement of this union security provision.

7. When an individual provider's earnings for a calendar month, after required federal and state deductions are made, are insufficient to cover the amount of dues or agency shop fees, no dues payment or agency shop fee will be withheld for that calendar month.
8. When an individual provider is in a non-paid status for an entire calendar month, no dues payment or agency shop fee will be withheld for that calendar month. Further, no withholding will be made to cover that calendar month from future earnings.
9. All required federal and state deductions shall have priority over Union dues and agency shop fees.

C. Official Representatives

At the beginning of the term of the MOU, the Union shall notify the Public Authority of the names of the Union's field representatives and shop stewards. The Union shall notify the Public Authority of any changes to the list as they occur. The representatives and stewards shall not be recognized by the Public Authority until such list or changes are received by the Public Authority.

WAGES

- A. The wages of Providers shall be increased to \$8.50 per hour effective the first day of the month following adoption of this MOU, approval of this rate and appropriation of funds by the County Board of Supervisors, and approval of this rate by the state.
- B. Continuation of this wage rate is subject to continuation of state and federal funding participation ratios at or above levels provided for under current law; and continuing appropriations by the County Board of Supervisors each fiscal year thereafter.
- C. It is recognized and agreed that it is in the discretion of the County Board of Supervisors to increase or to not increase appropriations and any action of the Board of Directors for the Public Authority is not binding on the County Board of Supervisors acting on behalf of the separate governmental entity County.
- D. It is recognized and agreed that the County is not a party to the MOU and is under no obligation to increase appropriations.
- E. SEIU agrees that it will not legally challenge any appropriation decision of the County Board of Supervisors and that any action of the Board of Supervisors is not a grievance, unfair labor practice or breach of this labor contract.