

FACTFINDING REPORT AND RECOMMENDATION

In a Matter Between:)	
)	
CALIFORNIA UNITED HOMECARE)	PERB Impasse:
WORKERS, LOCAL 4034)	Case No. SF-IM-101-M
)	
UNION,)	
)	
And)	Hearing: August 28 & 29, 2012
)	
HUMBOLDT COUNTY IN-HOME)	Award: September 17, 2012
SUPPORTIVE SERVICES PUBLIC)	
AUTHORITY)	
)	
EMPLOYER)	Hirsch Case No. H12-079
)	
)	

FACTFINDING PANEL

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PROCEDURAL BACKGROUND

This matter involves the Medicaid funded, In-Home Supportive Services program (“IHSS”) of Humboldt County.

The California United Homecare Workers, Local Union 4034 (“CUHW” or “Union”) and Humboldt County (“Humboldt” or “County”) have spent the past year meeting and conferring in an attempt to negotiate a first-time labor agreement. The Union was previously certified as the exclusive bargaining representative for approximately 1400 home-care workers in Humboldt County.

On June 14, 2012, CUHW filed a request for factfinding with the Public Employment Relations Board (“PERB”) pursuant to Section 3505.4 of the Meyers-Millias-Brown Act (“MMBA”)¹ and PERB Regulation 32802. Prior to the factfinding request, the parties had negotiated and reached agreement on all but four issues. An impasse was declared on April 30, 2012, and the two parties participated in a mediated settlement session. The mediation ended without a settlement of the remaining issues.

By way of a letter dated July 9, 2012, PERB appointed this Impartial Chairperson as the Chair of the Factfinding Panel in this matter. The parties agreed to waive all statutory time limits found in the MMBA.² A factfinding hearing was convened in Eureka, California on August 28th & 29th 2012, at which time the parties presented oral and written testimony,

¹ Government Code Section 3505.4

² Government Code Sections 3505.4(c) and 3505.5(a).

documentary evidence, and arguments addressing the issues identified below. The hearing was conducted somewhat informally, so that the parties could both present evidence and information in support of their respective positions, and ask questions of the various presenters as the process unfolded. Additionally, written submissions were permitted by the Chair after the conclusion of the two-day hearing in Eureka.

After the hearing was completed, the Factfinding Panel members representing the Union and the County were not in agreement as to recommendations on the outstanding issues. Accordingly, the recommendations in this Report are those of the Impartial Chair unless noted otherwise.

IMPASSE ISSUES

The parties presented the following issues to the Factfinding Panel:

1) **WAGES:**

The Union proposes (Union Proposal # 1) that the County increase the wage from the current \$8.00 per hour to \$8.75, effective the first pay period following approval of the new rate by the State of California. The Union proposal calls for a second increase to \$9.50 at the one-year anniversary of the new contract.

The County proposes a wage freeze at the current \$8.00 per hour wage rate for the duration of the contract.

2) HEALTH, VISION & DENTAL:

The Union proposes (Union Proposal #7) that the County pay \$0.60 per paid hour of work to the United Homecare Workers' Trust for the life of the contract.

The County proposes no contribution or payment for health, vision or dental care.

3) LISTS & INFORMATION:

The Union proposes (Union Proposal # 9) that Humboldt provide CUHW with a list of providers (employees) which shall include the name, address, telephone number and unique identifier number recognized by the "State of California IHSS Payroll System." The list shall be provided on a monthly basis and shall be in an agreed upon, computer format.

The County agrees to the proposal *except*, it does not agree to provide the unique identifier number if that number is the individual's social security number.

4) UNION SECURITY:

The Union proposes (Union Proposal #3) a Union Security clause whereby employees covered by the negotiated labor agreement ("CBA") become and remain members in good standing or pay a "fair share agency fee."

The County does not object to the Union proposal, but proposes that the Union Security proposal, be voted on separately from the MOU by all covered employees.

At the factfinding session, the Union indicated that it would agree to holding the vote separately from the CBA vote, although they would be held on the same day. This was acceptable to Humboldt and accordingly, the Panel makes this a recommendation in accordance with the parties' agreement.

STATUTORY CRITERIA

MMBA, at Section 505.4(d), sets forth the criteria that factfinders must consider in matters such as this one:

- 1) State and federal laws that are applicable to the employer.
- 2) Local rules, regulations, or ordinances.
- 3) Stipulations of the parties.
- 4) The interests and welfare of the public and the financial ability of the public agency.
- 5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

- 6) The consumer price index in goods and services, commonly known as the cost of living.
- 7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- 8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

FACTUAL BACKGROUND

The County's In-Home Supportive Services, Public Authority ("IHSS") providers, care for the old, disabled, and the poor, by providing in-home services such as: housework, shopping, preparing meal, bathing, dressing, driving, and ambulation.

The Union commenced the factfinding session with an extensive review of the history of homecare in the United States. Professor Eileen Boris walked the party representatives and the Panel through a presentation of homecare as a "women's issue" and a "social welfare issue," encompassing both "care work" and "chore work." She traced the evolution of homecare legislation, at the federal and state levels, and emphasized, as part of her thesis, that "better wages lead to better care." Professor Boris touched upon some of the issues associated with homecare: work at home is not seen as "work," often the work is performed by minority and

immigrant women, welfare recipients were historically a source of homecare workers and, the work remains low paying across the country.

With that background, we track the statutory criteria above and look at the facts presented to the Panel by the parties.

1) State and Federal Laws:

There exists a complex array of federal and state laws regulating, or at least relating to, the homecare services provided by individuals in California. A newly enacted federal law, known as The Patient Protection and Affordable Care Act (“Affordable Care Act”)³ expands Medicaid-funded homecare programs offered by the states. The Community First Choice Option, (“First Choice Option”) which is part of the Affordable Care Act, expands those programs and provides additional funding for states electing to participate in that option. California has elected to participate in the First Choice Option. Under the current funding scheme for in-home services, federal dollars pay fifty percent (50%) of the cost of the IHSS program, while the State of California funds thirty-two & one-half percent (32.5%) of the cost. This leaves counties, such as Humboldt, with seventeen & one-half percent (17.5%) of the IHSS cost. While the parties were engaged in this factfinding, word was received that the federal matching payments would increase to fifty-six percent (56%), although it was not at all clear that the California counties would see any of that funding increase. It remains possible that the state will keep the additional funds without letting some, or all, flow to the counties.

³ Pub. L 111-148

Complicating the statutory and regulatory scheme even further are the anticipated changes to California's laws governing IHSS. California's Coordinated Care Initiative ("CCI") will take a fragmented IHSS system and integrate it as part of a larger managed care, health system for Medi-Cal beneficiaries. There was much discussion and speculation by the County and the Union about the impact that the CCI plan would have on IHSS, but the general consensus was that it would ultimately streamline and increase the efficiency of the homecare programs in California. It will also impact the way program costs, including labor costs, are established in the future. Under the CCI, each county will have a Maintenance of Effort ("MOE") cost base set. That base will be derived from the 2011-2012, state fiscal year. Beginning in July 2014, the MOE shall be increased by an inflation factor of three & one-half percent (3.5%). It will also be increased by any locally negotiated or imposed wage and health cost increases. We will address this further below when we look at its impact on Humboldt County and its IHSS program. Needless to say, the County expressed serious concerns about the potential impact that a wage and benefit increase, implemented during 2012, could have on its adjusted MOE in the future.

Humboldt County's Board of Supervisors has established a public authority for delivering in-home supportive services pursuant to the California Welfare and Institutions Code. Section 12301(c)(1) of that code designates the County as the employer of the care providers as that term is used in MMBA. Currently, the County is authorized, where a union is the

recognized bargaining representative, to bargain over terms and conditions of employment pursuant to MMBA.⁴

The County also provided the Panel with a summary of laws which it argued, protects the County from having to disclose social security numbers (“SSN’s”) of in-home care workers. Those laws include the Freedom of Information Act (“FOIA”)⁵ (which exempts SSN’s from disclosure pursuant to FOIA requests). Humboldt also points to The Privacy Act of 1974⁶, and the Social Security Act Amendments of 1990.⁷ These statutes expressly *do not apply* to state and local governments. Humboldt also submitted into the record, recommendations from the California Office of Privacy Protection (“COPP”) addressing the disclosure of SSN’s. Under “Control Access to SSNs,” the COPP cautions: “Limit access to records containing SSNs only to those who need to see the numbers for performance of their duties.” (Tab 28).

Finally, it is worth noting that under the California Welfare and Institutions Code, the state “shall participate...in a total of wages and individual health benefits up to eleven dollars and ten cents (\$11.10) per hour...”⁸

2) Local Rules, Regulations, or Ordinances:

Neither party has cited any such rules, regulations or ordinances materially affecting the negotiations at issue.

⁴ Government Code Section 3500, et seq.

⁵ 5 USC 552,

⁶ 5 USC 552a

⁷ 42 USC 405(c)(2)(C)(viii).

⁸ W&I Code Section 12306.1(d)(4).

3) Stipulations of the Parties:

The parties agreed to much of the factual evidence presented to the panel and, those agreed upon facts were noted. There were no formal stipulations offered and/or entered into by the Union and County.

4) The Interests and Welfare of the Public and the Financial Ability of the Public Agency:

Public Interest:

The County offered, through one of its key witnesses, Phillip Crandall, Health & Human Services Director, the observation that the in-home services offered by the County are adequate. Mr. Crandall testified that the County knew of no data suggesting that the care recipients were not being adequately served. Furthermore, Humboldt noted that there were many care-providers who were not working full-time and there were scores of names on the provider register who were available for in-home care work. He noted that more than ninety percent (90%) of the budgeted IHSS hours were actually worked for the prior fiscal year. Accordingly, the County felt the public interest was being met by IHSS.

Mr. Crandall also testified that the coordinated care effort should be beneficial to the County and its needy residents, as it will result in a more efficient care delivery system.

CUHW painted a different picture. The Union alleged that the service providers live at or near the poverty level, making eight dollars (\$8.00) per hour. This, says CUHW, contributes

to the poverty among the Humboldt residents, to the detriment of the public interest. The California minimum wage has been set at \$8.00 since January, 2008.

The Union called several care-providers and recipients to provide anecdotal accounts of the system's failings. According to these witnesses, there is a shortage of care-providers, frequent turnover in some cases, and difficulty recruiting individuals to work in the County's more remote regions. Union witness, Candace Howes, Professor of Economics at Connecticut College, testified that the wages of the County's 1450 in-home care providers have not kept up with inflation over the past several years. This, she said, keeps the providers in poverty and dependent upon the County for services themselves, rather than allowing them greater economic independence through higher wages. She estimated that the wage increase of \$0.75 would bring almost \$2 Million in increased consumer spending on local goods and services to the County.

The Union submitted a petition signed by 3000 individuals, supporting the Union's effort to increase the wages and benefits of the in-home care providers.

Financial Ability of the County:

Humboldt noted at the outset of its presentation, that it was not asserting an *inability* to pay for the wage and benefit increases sought by the Union. Rather, the County emphasized the enormous financial pressure it was under to fund and operate dozens of services and programs for its citizens. An overview of the County budget revealed that the General Fund, the IHSS funding source for Humboldt, had about \$94 Million for fiscal year 2011-2012. With an eye on

the General Fund as the funding source for IHSS, Humboldt budgeted \$3 Million for IHSS services, for fiscal year 2011-2012.

County's Exhibit 24 ("Tab 24") shows the County's share of IHSS provider wages for fiscal year 2011-2012 to be \$2,613,604 at the current \$8.00 per hour wage and \$2,858,629 with the \$8.75 wage increase proposed by CUHW.⁹ That results in a \$245,025 increase, according to Humboldt for 2011-2012. For the following year, when the Union wage proposal increases to \$9.50 per hour, the County calculates the cost at \$490,051.¹⁰ The County estimates the fiscal year 2012-2013, IHSS, MOE wage cost to be \$3 Million again. It revised downward, during the factfinding session, the all-in cost (including administrative and Public Authority costs) for 2012-2013, to \$3,101,075 from \$3,397,361 (Tab 25).

The County presented documentary evidence showing the significant number of staff positions, which were unfilled because of budgetary pressures. A total of twenty percent (20%) of the Department of Health & Human Services positions—from office assistants to substance abuse counselors, from psychiatric nurses to mental health clinicians—are vacant. Mr. Crandall stated that when the County was able to fill those vacancies, it would consider increasing the wages and benefits of the in-home care workers. He also maintained that Humboldt had a continuing cash flow problem, due in part to the fact that state and federal funding comes in late, sporadically and, at times, unpredictably.

⁹ The fiscal year runs through June of each calendar year, so we are mindful that the negotiations will affect fiscal year 2012-2013 and is not intended to be retroactive to prior fiscal years.

¹⁰ It is worth noting that these dollar projections by Humboldt are based upon "projected authorized hours" of 1,719,024, which exceed the *actual hours* paid in FY 2011-2012. Those hours totaled 1,595,861.

The County introduced an exhibit, K-3, into the record which revealed that Humboldt had been prepared, back in 2006, to contribute \$0.60 per hour paid each month to providers towards health coverage. The exhibit also reflects the County's willingness to raise the wage rates to \$7.75 per hour in 2006, \$8.00 per hour in 2007 and \$8.25 in 2008. At the time (June 2006), the minimum wage was \$6.75 per hour in California and the economic picture was brighter for Humboldt and other counties in the state. It was unclear why this proposal never became the basis of a labor agreement—each side blamed the other—but it did not.

The County also noted, in its presentation to the Panel, that all other County employees were now subject to wage freezes and, new hires were subject to reduced wages and a reduced retirement package.

CUHW maintained that Humboldt has the “financial ability” to pay the wage and healthcare rates proposed by the Union. It pointed to the significant financial contributions made by the federal and state governments, which leaves the County with only seventeen and one-half percent (17.5%) of the increased cost. In fact, the Union maintained that the County would only shoulder fifteen and four tenths of one percent (15.4%) of the costs because the federal share would increase from fifty (50%) to fifty-six percent (56%) under the Community First Choice option now in place. The Union also presented evidence showing that the Humboldt County, Board of Supervisors have raised their own salaries from about \$46,000 in 1999, to more than \$75,000 today. The Union provided evidence which showed that the Humboldt could afford to pay entry level, county workers such as secretaries, custodians,

homemakers, tire repair specialists, stock clerks, and animal shelter attendants anywhere from \$12.01 to \$16.86 per hour. (Union Exhibit (“Criteria”) 4).

5) Comparison of the Wages, Hours, and Conditions of Employment, of the Employees Involved in the Factfinding with Other Employees Performing Similar Services in Comparable Public Agencies:

The parties agreed that County Exhibit, Tab 22, slightly modified, reflected the wage and benefits earned by in-home care providers in all 58 California counties. That document, as amended, provided the following relevant data:

A) Of the 58 counties, eight had IHSS wages set at the minimum wage of \$8.00. All other counties had a higher wage.

B) The minimum wage counties are: Alpine, Colusa, Humboldt, Lassen, Modoc, Mono, Siskiyou, and Trinity.

C) Of the eight Counties, only Humboldt had a population of service providers totaling more than 460. Humboldt has 1,450.

D) None of the eight counties have a collective bargaining agreement in place with a union representing the providers.

E) The hourly rate of the other 50 counties range from \$8.15 to \$14.79.

The Union also provided the following data regarding counties with similar provider populations:

<u>County</u>	<u>Providers</u>	<u>Wage</u>	<u>Healthcare Contribution</u>
Humboldt	1450	\$8.00	0
Kings County	1360	\$9.00	60 Cents
Lake County	1560	\$8.75	60 Cents
Madera	1370	\$9.75	60 Cents
Mendocino	1370	\$9.90	60 Cents
Napa	1190	\$11.50	60 Cents
Placer	1840	\$10.00	60 Cents
San Luis Obispo	1633	\$10.00	60 Cents
Tehama	1010	\$8.40 (Current negotiations)	0
Yolo	1789	\$10.50	60 Cents

Average number of workers: 1468. Average hourly wage: \$9.75. Average health contribution: 53 Cents.

6) The Consumer Price Index:

The County submitted written evidence, (Tab 23), showing the CPI to be two percent (2%) for the Western United States from June 2011 to June 2012. The Union's witness, Professor Howes, provided a chart showing that the purchasing power of the Humboldt IHSS wage has dropped over \$0.30 per hour since the California minimum wage reached \$8.00 per hour in 2008. (Union Exhibit 3, p.7).

7) Overall Compensation Including Wages, Vacation, Pension, Medical Benefits, etc.:

The service providers at issue here receive minimum wages of \$8.00 per hour and no other benefits, insurance, pension, healthcare coverage or time off. Based upon testimony received by the Panel from one provider, the employees are not reimbursed for out of pocket expenses, like gasoline costs incurred when driving care recipients to pharmacies or doctor appointments.

8) Other Facts Normally or Traditionally Considered in Making Findings and Recommendations:

The Panel received evidence of the salaries of Humboldt County employees, other than the IHSS providers—who are not technically County employees, even though Humboldt sets their wages. The comparison is relevant since County funds are involved in all the salaries, and the rates are set by Humboldt. Some of the positions and hourly wages highlighted by CUHW are: Animal Shelter Care Attendant I: \$12.44; Custodian: \$11.49; Homemaker: \$11.15; Park Caretaker I: \$12.75; Tire Repair Specialist: \$16.86. CUHW also presented evidence that in the “North Coast” counties of California, the lowest tenth percentile (10th %) wage rate is currently \$9.03 per hour.

The Union presented evidence, by way of witness Professor Howes, about the poverty level in the United States. According to the data presented, even for the few in-home care providers who work a full 40 hours for 52 weeks each year, the annual wages totaling \$16,640 would place a family of three below the federal poverty level. Evidence presented to the Panel

suggests that the average number of hours worked by in-home care providers is approximately 1000 per year.

With regard to the disclosure of SSN's of providers, the Union submitted a listing of several California counties currently providing CUHW with that information so that the Union can collect its agency fee. The list includes the following counties: Butte, Del Norte, Imperial, Inyo, King, Lake, Madera, Mariposa, Shasta, Sutter, Tehama and, Tri-County (Nevada, Plumas and Sierra).

DISCUSSION AND RECOMMENDATIONS

Wages and Health, Vision & Dental:

Both parties presented an exhaustive amount of information to the Panel and made excellent presentations. Clearly, Humboldt is under economic pressure and must juggle the many competing demands upon its resources. Just the Health & Human Services Department alone, must satisfy the seemingly endless needs of the County's poorest residents. But when it comes to the issue of wages and healthcare for the care providers, the Union makes the more compelling case. The reasons for this conclusion are numerous: The County clearly has the ability to pay the modest increases sought (as it has acknowledged) and has even budgeted sufficient funds to cover most, if not all the costs.¹¹ The County, as far back as 2006 was prepared to pay a healthcare contribution for the providers, yet never did. The workers at issue

¹¹ \$3 Million budgeted; \$2,858,629 projected cost to County, *with the wage increase* to \$8.75, the first contract year. The second year will add approximately another \$250,000 in wages. These calculations, as noted above, are based on projected hours of care, which exceed the actual hours for FY 2011-2012 by more than 100,000 hours, thereby increasing the anticipated cost.

make the legal minimum wage and live at or near the poverty level. They have no healthcare coverage, unless they are able to work another job, which affords that benefit. Individuals in most every other California county, performing the same work, make more money and many have the \$0.60 per hour health benefit contribution. Other Humboldt County employees, even those at entry job-levels, make significantly more money than the IHSS providers. The purchasing power afforded by the \$8.00 per hour continues to decline each year and, the in-home care providers spend their own money to transport the care-recipients who need help with transportation.

Based upon this record and these facts, I recommend that the Union proposal be adopted. The wage increase to \$8.75 should be implemented and one year later, a wage increase to \$9.50 should be implemented. In addition, the County should contribute \$0.60 per hour to the United Homecare Workers' Trust for each hour worked by covered individuals. This is a fair and equitable proposal.

Lists and Information:

The only question here is whether the County should provide the Union with the SSN's of the providers. It remains unclear whether California will implement a different, unique identifier number for the affected employees so that disclosure of the SSN's will not be required. There was no definitive answer to this question at the time this factfinding was conducted.

The County has not offered any legal prohibition preventing the disclosure. In fact, the CCOP recommendation supports disclosure to the Union so it can perform its duties—here the collection of agency fees authorized by state law. Given the fact that so many other counties provide this information to CUHW and the failure of this record to substantiate any real risk of “identity theft” or improper use of the information, I recommend that the Union proposal be adopted. In the event that the state does not provide a different, unique identifier number for each homecare provider, the SSN’s shall be provided to the Union. This is a fair and equitable proposal.

Union Security:

As stated above, the parties have agreed upon terms for voting on the Union Security provision of the CBA. The agreement calls for a vote on the provision, separate and apart from the vote on the CBA, although it may occur at the same meeting. The Panel adopts that agreement as its recommendation. This is a fair and equitable resolution.

Respectfully submitted,

Date: September 17, 2012



Robert M. Hirsch, Impartial Chair