

Memorandum of Understanding

between

San Mateo County IHSS Public Authority

and

Service Employees International Union
(SEIU)
Local 715, AFL-CIO

July 1, 2002– June 30, 2003

~~~

**IHSS  
MEMORANDUM OF UNDERSTANDING**

---

**TABLE OF CONTENTS**

|                                 | Page |
|---------------------------------|------|
| Advance Notice.....             | 8    |
| Consumer Rights.....            | 7    |
| Non-Discrimination.....         | 7    |
| No Strike-No Lockout.....       | 6    |
| Past Practices.....             | 8    |
| Preamble.....                   | 2    |
| Public Authority Rights.....    | 7    |
| Recognition.....                | 2    |
| Registry.....                   | 5    |
| Review Process.....             | 5    |
| Separability of Provisions..... | 8    |
| Term.....                       | 9    |
| Training.....                   | 7    |
| Union Rights.....               | 4    |
| Union Security.....             | 2    |
| Wages.....                      | 8    |

# MEMORANDUM OF UNDERSTANDING

## **ARTICLE 1 - PREAMBLE**

This collective bargaining agreement is entered into by San Mateo In-Home Supportive Service Public Authority (hereinafter referred to as the Public Authority) and Service Employees International Union, Local 715 (hereinafter referred to as the Union). This agreement shall be in compliance with the employer-employee relations of IHSS Independent Providers except as otherwise provided in Sections 12300 and 12301.6 of the State of California Welfare and Institutions Code, as amended. The Union and the Public Authority acknowledge that the relationship between the Public Authority and the IHSS Independent Providers is governed by state law, specifically Welfare and Institutions Code Section 12301.6, that this relationship is unique and that the Public Authority does not employ or manage the IHSS Independent Providers in the role of a traditional employer, and that the IHSS recipients (Consumers) remain the employer for the purposes of hiring, firing, and directing the work of any Independent Provider providing services to them. This collective bargaining agreement is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500-3510) and Sections 12300 and 12301.6 of the State of California Welfare and Institutions Code, as amended, and has been jointly prepared by the parties.

## **ARTICLE 2. RECOGNITION**

The Public Authority recognizes the Union as the exclusive collective bargaining representative for the In-Home Supportive Services Independent Provider representation unit, certified pursuant to Resolution No. 3-IHSS, adopted by the San Mateo County IHSS Public Authority on April 12, 1994. The Union agrees that it has the duty to provide fair and non-discriminatory representation to all Independent Providers covered by this MOU, regardless of whether they are members of the Union.

## **ARTICLE 3. UNION SECURITY**

### **Section 3.1 Agency Shop**

- A. The Union agrees that it has the duty to provide fair and non-discriminatory representation to all Independent Providers covered by this MOU, regardless of whether they are members of the Union.
- B. All Independent Providers covered by this MOU, except for those excluded as defined in the sideletter agreement shall either:
  1. Become a member of the Union in good standing; or,
  2. Pay to the Union an agency fee in an amount which does not exceed an amount which may be lawfully collected under applicable constitutional, statutory, and case law (e.g., Hudson v. Chicago Teachers Union, Local No. 1, AFL-CIO), which shall be less than the monthly dues made during the duration of this MOU, it being understood that it shall be the sole responsibility of the Union to determine an agency fee which meets the above criteria; or
  3. Do both of the following:
    - a. Present to the Union and Public Authority a written declaration that he/she is a member of a bona fide religion, body, or sect which has historically held a conscientious objection to joining or financially supporting any public employee organization as a condition of employment; and
    - b. Pay a sum equal to the agency fee to one of five negotiated non-religious, non-labor, charitable funds that are exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code.

### **Section 3.2 Payroll Deduction**

The Public Authority will cooperate with the State Controller to assist in the deduction of Union membership dues through payroll deduction. The specific procedure for implementing payroll dues deduction will be determined in conjunction with the State Controller.

If practicable for the State to implement, the dues or service fees shall be deducted from the provider's pay check on a monthly basis starting the first day of the month following completion of 45 days after the ratification date of this agreement.

### **Section 3.3 COPE Check Off**

Members may also request voluntary deductions to the Union's Political Activity Fund (COPE). Such deductions shall be sent in a separate check to the Union each payroll. Workers may withdraw from COPE deduction at any time by notifying the Union office. The provisions of this Section 3.3 are contingent on implementation by the State Controller's Office.

### **Section 3.4 Hold Harmless**

The Union shall indemnify, defend, and save the Public Authority harmless against any and all claims, demands, suits, orders, or judgements, or other forms of liability that arise out of or by reason of this Article 3, or action taken or not taken by the Public Authority under this Article 3. This includes, but is not limited to, the Public Authority's attorney's fees and costs.

### **Section 3.5 Forfeiture of Deduction**

If, after all other involuntary deductions are made in any pay period, the balance is not sufficient to pay the deduction of Union dues, agency fee, or charity fee required by this Section, no such deduction shall be made for the current pay period.

### **Section 3.6 Compliance**

If any currently employed Independent Provider fails to authorize union deductions within 30 days of employment, there shall be involuntary deductions for agency fee from the Independent Provider's pay check.

### **Section 3.7 Rescission**

This Agency Shop provision may be rescinded at any time that those Independent Providers covered by Agency Shop file a petition and present proof that at least 30% of the Providers in the representation unit want to rescind such provision. After petitioning, there shall be a majority vote for such rescission.

### **Section 3.8 Union Obligations**

- A. The Union shall provide the Public Authority and the State Controller with a copy of the Union's "Hudson procedure" for the determination and protest of its agency fees. Annually, the Union shall provide a copy of said "Hudson procedure" to every agency fee payor covered by this MOU and as a condition to any percentage change in the agency fee.
- B. Annually, the Union shall provide the Public Authority and the State Controller with copies of the financial report the Union files with the California Employee Relations Board, the Department of Labor (Form LM-2), or the union's balance and operating statement for the prior year. Failure to file such a report within 60 days after the end of its fiscal year shall result in termination of agency fee deductions without jeopardy to any worker, until such report is filed.

### **Section 3.9 Maintenance of Membership**

Independent Providers who become Union members shall remain as members for the duration of this and each subsequent Memorandum of Understanding thereafter. For a period of twenty (20) calendar days prior to the expiration of this and any subsequent Memorandum of Understanding, members shall have the right to withdraw from the Union by selecting one of the options in Section 3.1.B above. Withdrawal shall be communicated in writing by the Provider and postmarked during the twenty (20) day period, then delivered to the Union by certified mail.

## **ARTICLE 4. UNION RIGHTS**

### **Section 4.1 - List and Information**

The Public Authority shall provide the Union on a monthly basis a list of each Independent Provider in the unit represented by the Union. This list will include name, home address, date of hire, telephone number, date of termination and hours worked in a designated payroll period. The list shall be provided electronically or on floppy disks in an agreed upon format. For Independent Providers whose telephone number is also that of a Consumer, the Union agrees that calls will not be made to the Provider when the Consumer is receiving care and also agrees to terminate calls if the Consumer objects to calls to the home phone number.

The Public Authority will include official Union notices in mailings to the bargaining unit from the Public Authority if the Union provides such notices to the Public Authority five (5) working days prior to the mailing date, and if the Union reimburses the mailing costs to the Public Authority in the event that the Union documents increase mailing costs.

The Union shall be allowed use of reasonable space on available bulletin boards within the offices of the Public Authority for communications having to do with official organization business, such as times and places of meetings provided such use does not interfere with the needs of the Public Authority.

### **Section 4.2 Consumer Confidentiality-Right to Privacy**

The Union shall neither seek nor receive information regarding the name, address, phone number, or any other personal information regarding consumers. Union representatives and IHSS Independent Providers shall maintain strict standards of confidentiality regarding consumers and shall not disclose personal information obtained, from whatever source, pertaining to consumers, unless disclosure is compelled by legal process or otherwise authorized by law.

### **Section 4.3 Union Access/Home Visits**

Union representatives shall not conduct union business, including business related to enforcement of this agreement, nor make visits to IHSS Independent Providers at the homes of consumers unless the IHSS Independent Provider and the applicable consumer share the same residence in which case, the Union may only contact the IHSS Independent Provider. Solicitation for membership or other internal union business shall be conducted only during the non-duty hours of all IHSS Independent Providers and with oral approval by the applicable consumer.

Should a union representative inadvertently visit a consumer's home, having been given the consumer's address as that of the Independent Provider, the union representative shall discontinue the visit until the procedures above are followed.

Under no circumstances shall any picketing, demonstrations or other like activity be conducted at the

residence of a consumer.

#### **Section 4.4 Stewards**

The Union will give the Public Authority a list of all stewards and alternate stewards twice per year. In accordance with the employer-employee relations policy, Section XVI, stewards shall be provided reasonable release time for meetings falling within the scope of representation. Such paid release time shall not exceed a total of three hours in any month and shall not interfere with the provision of services to Consumers. The Union shall submit a written request to the Public Authority for paid release time for a particular steward(s) at least two working days prior to the meeting whenever possible.

#### **ARTICLE 5. REGISTRY**

Consumers have the right to seek IHSS Independent Providers from any source, including but not limited to referrals from the Registry. The Public Authority reserves the right to recruit IHSS Independent Providers for the Registry from any source. The Public Authority reserves the right to deny an application to be listed on the Registry if the applicant does not comply with the Registry application requirements and/or the Registry application process/procedure; or who has a past criminal record or work history which the Public Authority determines would make him/her inappropriate for the Registry. The Public Authority has the discretion to not include IHSS Independent Providers on the Registry. The Public Authority does not have the power to preclude IHSS Independent Providers from IHSS employment.

Registry referrals shall be handled in the following manner:

1. Should the consumer request a specific independent provider who is listed on the registry, only that individual's name will be referred.
2. Only names that meet the consumer's needs/criteria will be referred.
3. For registry referrals, seniority shall be defined as the most recent date of being registered at the Public Authority registry.
4. If the registry is utilized, and if the consumer does not name request an individual from the registry, the registry will first be screened to identify independent providers who meet the consumer's needs/criteria. Referral lists shall have a minimum of three and a maximum of ten names, except in cases where fewer than three individuals on the registry meet the consumer's needs/criteria. Only names that meet the consumer's needs/criteria will be referred. If there are more than ten Independent Providers on the registry list who meet the consumer's needs/criteria, only the ten most senior names, as defined above, will be referred.
5. The registry shall furnish the Union, through the Public Authority, a monthly list(s) of all Independent Providers referred during the preceding month. This list(s) will not identify the consumers to whom the Independent Providers were referred.

#### **ARTICLE 6. REVIEW PROCESS**

The Public Authority shall have the right to remove a Provider from the registry for cause. If the removal is due to any of the following reasons, the Provider may only appeal the removal to the Public Authority Advisory Committee. Any such appeal to the Advisory Committee will be heard by a sub-committee and the Independent Provider may be represented by the Union. The subcommittee shall issue its decision in writing no more than 30 work days after the hearing and shall send a copy to the Union if the Provider is represented by the Union at the hearing.

- Abuse (financial, emotional, physical, sexual, or neglect)
- Theft
- Misrepresentation (for example, providing false information on an application, timecard, or other document)
- Unauthorized disclosure of confidential information
- Being under the influence of or use or possession of alcohol or illegal substances while on duty
- Absence from or leaving the job without notice
- Possession of a firearm or other dangerous weapon while on duty
- Knowingly putting the Consumer in jeopardy
- Conviction of or arrest pending trial for a crime which indicates unfitness for the job or which raises a threat to the safety or well-being of the Consumer.

If the removal is due to other reasons, or if the Provider alleges a violation of this Memorandum of Understanding, the Provider may appeal through the three step review process described below and may be represented by the Union in this process.

**Step 1 - Executive Director** The Provider and the Steward will send a written complaint to the Executive Director. The complaint must be made within 10 working days of the event leading to the complaint or of when the Provider should have been reasonably aware of the event or circumstances giving rise to the complaint and must contain the following:

1. A complete statement of the complaint and the facts upon which it is based;
2. The article(s) or section(s) of the MOU that the Provider or Union alleges have been violated: and,
3. The remedy or correction sought.

Complaints failing to contain the above shall not be eligible to be referred beyond Step 1. Upon receipt of the written notification, the parties shall meet within 10 working days or at a time mutually agreed to by the parties. This meeting will be attended by a union representative and/or union steward, the Provider filing the complaint, and the IHSS Executive Director or his/her designee. The Executive Director will respond to the complaint in writing within 15 working days after the Step 1 meeting.

**Step 2** - If the complaint is not resolved at Step 1, either party may call for a Step 2 meeting. This meeting shall be held within 10 working days of the request or at a time mutually agreed to by the parties. This meeting will be attended by a union representative and/or union steward, the Provider filing the complaint, the IHSS Executive Director, and the Director of Aging and Adult Services or his/her designee. The Director will respond to the complaint in writing within 15 working days after the Step 2 meeting.

**Step 3** - If the matter is not settled at Step 2, either party may, within 15 working days, submit it to advisory mediation to attempt to resolve the issue. The parties agree to use the Peninsula Conflict Resolution Center for such advisory mediation. The parties will attempt to secure such mediation services at no charge. If there is a charge, the parties agree that any charge will be shared equally by the Union and the Public Authority. Each party, however, shall bear the costs of its own presentation, including preparation and post-mediation briefs, if any.

## **ARTICLE 7. NO STRIKE-NO LOCKOUT**

During the term of the agreement, the Union its members and representatives, agree not to engage in, authorize, sanction or support any strike, slowdown, stoppage of work, curtailment of production, or to perform customary duties, during the term of this agreement or when there is no agreement in place. The Union, its members and representatives further agree not to engage in job action for the purpose of

effecting changes in the directives or decisions of management of the Public Authority, nor to effect a change of personnel or operations of management or of workers not covered by this MOU either during the term of this agreement or when there is no agreement in place. The Public Authority agrees not to lock out members during the term of this agreement or when there is no agreement in place.

In the event that any dispute arises at the end of the agreement, the Public Authority and the Union shall follow the provisions of Section XIII of the Employer-Employee Relations Policy.

#### **ARTICLE 8. PUBLIC AUTHORITY RIGHTS**

Unless otherwise expressly specified in this agreement, the Public Authority retains the exclusive right to determine the methods, means and personnel by which its operations are to be conducted; to determine the mission of its governing body, constituent departments, committees, and other related work groups; to add or delete names of Independent Providers to and from the registry; and to take all necessary actions to carry out its mission in emergencies.

#### **ARTICLE 9. NON-DISCRIMINATION**

Neither the Public Authority nor the Union shall discriminate with respect to enrollment on the registry by reason of race, creed, color, national origin, sex, sexual orientation, age or legitimate union activities. To the extent prohibited by applicable state and federal law, there shall be no discrimination against any disabled person solely because of such disability unless that disability prevents the person from adequately performing the essential duties of the position. The provisions of this Article 9 are not applicable to consumers as defined in Article 10.

#### **ARTICLE 10. CONSUMER RIGHTS**

The parties reaffirm that under the statute and ordinance establishing the Public Authority, IHSS Recipients (Consumers) have the sole and undisputed right to:

- a) Hire Independent Providers of their choice, with full disclosure of relevant information on registry referrals;
- b) Remove providers from their service at will and without appeal;
- c) Determine in advance and under all circumstances who may or may not enter their homes;
- d) Manage, supervise, and direct the Independent Providers assisting them.

#### **ARTICLE 11. TRAINING**

The Public Authority shall seek and give full consideration to the Union's input for the purpose of developing and implementing training programs for Independent Providers. Training materials and the curriculum will be developed in conjunction with the Public Authority Advisory Committee, giving full consideration to the Union's input.

The Public Authority will mail written training materials to IHSS Independent Providers and will invite IHSS Independent Providers to training sessions. Training will be voluntary and without pay and will be at no cost to IHSS Independent Providers.

The Public Authority will provide a minimum of 4 training sessions annually. Training Programs for providers may include, but are not limited to the following:

- a) Universal precaution
- b) CPR
- c) Body mechanics
- d) How to use the registry



### **Section 11.2 – Job Development Fund**

A Job Development Fund shall be funded in the amount of \$10,000 annually. Independent Providers shall be reimbursed from this fund up to \$150.00 annually to attend programs of education and training, including the cost of course books (but not other materials) which directly relate to the Provider's job under the following conditions:

1. The program must be done in an off-duty status.
2. The Provider must both begin and successfully complete the course while employed by a Consumer or while actively on the Registry.
3. The Provider must submit an application on a form provided by the Public Authority to the Public Authority listing the name of the program and the dates of attendance prior to enrolling in the program. This application form must be submitted no less than 30 calendar days prior to the beginning date of the course or program. The Public Authority will review the application and notify the Provider, within 10 working days following receipt of the application, of approval or disapproval.
4. Upon completion of the program, the Provider must submit to the Public Authority a request for reimbursement accompanied by a copy of the school grade report or a certificate of successful completion.
5. Should the amount dedicated to the Job Development Fund be exhausted in any given year, further applications will not be accepted that year. For purposes of this Section 11.2, a year shall be considered the period of July 1 through June 30.

### **ARTICLE 12. WAGES**

The hourly wage shall be increased to \$9.50 effective October 1, 2002, contingent on the State's agreement to share in an increase to \$9.50 at the current sharing ratio effective October 1, 2002.

### **Section 13. Benefits**

#### **Section 13.1 Bus Passes**

As soon as practicable after ratification and adoption of this MOU, IHSS providers shall be reimbursed for the purchase of SamTrans bus passes or Caltrain monthly passes under the following conditions:

1. The fund shall be limited to a total of \$20,000 for each contract year.
2. Providers must purchase a monthly pass from SamTrans (currently costing \$38.00) or Caltrain. The Provider will submit evidence to the Public Authority of purchase in the form of an original or photocopy receipt. Within 10 working days after receiving such evidence of purchase, the Public Authority will issue a check to the Provider in the amount of \$30.00.
3. No Provider will be reimbursed for more than one pass in any given month.
4. The reimbursement described in paragraph 2 above will be on a first-come, first-served basis (based on submission of evidence of purchase) and shall be limited to the first \$1680.00 reimbursed in any given month. Except as provided in the following paragraphs, once \$1680.00 is reimbursed in any month, no further applications for reimbursement will be accepted.
5. Should less than \$1680.00 be reimbursed in any month, the excess funds shall be rolled over into the next month to supplement the monthly rate of \$1680.00 and into subsequent months within the same contract year. At the end of each contract year, any remaining funds shall be rolled forward to the next month.
6. Should the Public Authority be able to secure a different rate from SamTrans or Caltrain for monthly passes, or should the cost for such passes change, the Provider will be reimbursed for 80%

of the cost of the monthly pass with the same total limit of \$1680.00 per month as described above and under the same conditions as described in the preceding paragraphs of this Article 13.

### **Section 13.2 Health, Dental, Vision and Life Insurance Benefits**

The Public Authority will fund up to 718 health care slots at the contribution rate of \$185.00 per month until 2/1/03. This benefit is restricted to Providers who work at least 35 hours per month and is limited to employee only (no dependent coverage). Effective 2/1/03, the number of slots will be increased from 718 to 740 under the same conditions.

Effective 7/1/02, the Public Authority will fund up to 1900 slots for Independent Providers only (dependents will not be eligible for coverage) who work at least 35 hours per month for dental, vision and life insurance at the premium rates in effect as of 6/1/02. Dependents of Independent Providers who are enrolled for these benefits as of 6/1/02 will continue to be eligible for coverage only so long as the applicable Independent Provider is continuously enrolled for such benefits. Independent Providers who work less than 35 hours per month but who are enrolled for dental, vision or life insurance prior to 6/1/02 will continue to be eligible for such coverage as long as they are continuously enrolled.

SEIU Local 715 will administer Health, Dental, Vision and Life Insurance plans for IHSS Independent Providers. In order to be eligible to enroll for Health, Dental, Vision or Life Insurance benefits, Independent Providers must be either members of or pay an agency fee to SEIU Local 715. Effective July 1, 2002, the Public Authority will provide \$50,000 (including state and federal matching funds) each contract year to SEIU Local 715 for costs associated with administering the Health Plan of San Mateo. Independent Providers who are enrolled in the Health Plan of San Mateo shall pay \$10.00 per month toward the monthly premium.

### **ARTICLE 14. ADVANCE NOTICE**

Except in cases of emergency as provided below in this subsection the Union, if affected, shall be given reasonable advance written notice of any ordinance, resolution, rule or regulation directly relating to matters within the scope of representation proposed to be adopted by the Public Authority and shall be given the opportunity to meet with appropriate management representatives prior to adoption.

In cases of emergency when the foregoing procedure is not practical or in the best public interest, the Public Authority may adopt or put into practice immediately such measures as are required. At the earliest practicable date thereafter the Union shall be provided with the notice described in the preceding paragraph and be given an opportunity to meet with the appropriate management representatives.

### **ARTICLE 15. SEPARABILITY OF PROVISIONS**

In the event that any provision of this agreement is declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of the agreement shall be null and void but such nullification shall not affect any other provisions of this agreement, all of which other provisions shall remain in full force and effect.

### **ARTICLE 16. PAST PRACTICES**

Continuance of working conditions and practices not specifically authorized by resolution of the Public Authority is not guaranteed by this agreement.

### **ARTICLE 17. TERM**

This agreement and all of its provisions shall become effective upon ratification by the membership and

adoption by the Public Authority and shall remain in full force and effect until June 30, 2002, and annually thereafter, unless either party hereto serves notice on the other to amend or terminate the agreement as provided herein.

If either party hereto desires to modify or amend any of the provisions of this agreement, it shall give written notice to the other party by January 1, 2003, or any January 1 thereafter, that this agreement is in effect. The parties will begin bargaining by February 11, 2003, with an expected date of settlement of April 16, 2003. Any changes in the contract resulting from such negotiations shall take effect July 1, 2003.

**Made and entered into this 24th day of September, 2002.**

**Service Employees International Union, Local 715, AFL-CIO**

---

---

---

---

---

---

---

---

---

---

**IHSS Public Authority**

---

Charlene Silva  
Title

---

Tim Sullivan  
County of San Mateo, Employee Relations Manager

## Sideletter of Agreement

Service Employees International Union Local 715 and the County of San Mateo IHSS Public Authority hereby agree as follows:

All Independent Providers currently coded 01 or 02 (those providing care to minor children or spouses), or those working 25 hours or less per month, shall be exempt from the Agency Fee provision. Currently there are 77 Independent Providers coded as 01 or 02. In the event these codes get changed to a broader definition, the exemption from agency shop shall only apply to those meeting the current definition of Codes 01 and 02.

Codes 01 (spouse) and 02 (parent of a minor child) are defined as the relationship of the provider to the consumer by the San Mateo County IHSS Public Authority.

Nothing in this agreement shall preclude these Independent Providers from joining the union or paying a service fee if they so choose. In order to be enroll for Health, Dental, Vision or Life Insurance benefits, all Independent Providers, including those coded as 01 or 02, must be either members of SEIU Local 715 or must pay the Agency Fee.

This Sideletter of Agreement shall be available upon request to either the San Mateo County IHSS Public Authority, or the Service Employees International Union Local 715.

**Dated** – September 24, 2002

---

Myriam Escamilla  
SEIU Local 715

---

Tim Sullivan  
County of San Mateo