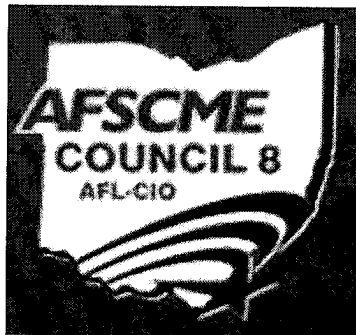


**COLLECTIVE BARGAINING AGREEMENT  
BETWEEN**



**THE STATE OF OHIO  
AND**



**AFSCME, OHIO COUNCIL 8**

**EFFECTIVE  
AUGUST 1, 2010 – JUNE 30, 2012**

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## **PREAMBLE**

This Agreement embodies the terms agreed upon by the State of Ohio (State), Ohio Department of Job and Family Services (ODJFS), and the American Federation of State, County, and Municipal Employees, Ohio Council 8, AFL-CIO/Child Care Providers Together (Union), and reflects the parties' mutual understanding concerning the issues discussed pursuant to the provisions of Executive Order 2008-02S issued February 1, 2008, attached hereto as Appendix A and made part of this Agreement. It is the purpose of this Agreement to promote access to quality child care, to enable licensed and certified family child care providers to reach higher quality standards, to improve recruitment and retention of qualified family child care providers, to allow family child care providers to participate in the decisions affecting their businesses and to provide for the prompt and equitable resolution of disputes.

The Union understands that a key to quality family child care is an infrastructure that addresses the safety, quality, accessibility, and affordability of this regulated child care option. The Union and the providers it represents are committed to professionalism in their interactions with the State.

The provisions of this Agreement that require statutory or regulatory change or legislative funding shall not take effect until such change or funding has been secured. The State, ODJFS, and the Union agree to propose, lobby, and work jointly to effectuate the statutory change, regulatory change, or legislative funding necessary to fully implement each of the provisions of this Agreement.

## **ARTICLE 1 – RECOGNITION**

The State recognizes the Union as the exclusive majority representative of Independent Child Care Home Providers (ICCHPs) in the State of Ohio. ICCHPs included in the bargaining unit are those child care providers categorized, pursuant to Ohio law and by the Ohio Department of Job and Family Services as either "Type A" licensed providers, who do not meet the definition of employee under the National Labor Relations Act, or "Type B" certified providers and in-home aides, who enter into a provider agreement with the State, but are not county or State employees. The Union was selected pursuant to Executive Order 2008-02S issued February 1, 2008 and its exclusive majority status was verified by the American Arbitration Association on April 4, 2008. The State will not, during the life of this Agreement, negotiate with or reach agreement with any other organization of family child care providers with respect to any matters subject to collective bargaining as defined in Executive Order 2008-02S. The Union understands that the State may confer with other committees and organizations on matters of concern to child care providers and child care services. The State agrees that its communication with other committees and organizations shall not diminish, interfere with, or adversely affect the exclusive right of the Union to represent providers.

## **ARTICLE 2 – NON-DISCRIMINATION**

### **Section 2.1**

Neither the State nor the Union shall unlawfully discriminate against any ICCHP on the basis of race, sex, creed, color, religion, age, national origin, ancestry, political affiliation, disability, sexual orientation, height, weight, parental or marital status, pregnancy or childbirth in

compliance with the existing laws of the United States or the State of Ohio, or Executive Orders of the State of Ohio. This Section does not prohibit the State from placing reasonable and lawful qualifications and restrictions on child care providers.

**Section 2.2**

Nothing in this Section shall limit the rights of parents and children to choose the child care provider of their choice as provided for in Article 3.

**Section 2.3**

No child care provider shall be discriminated against, intimidated, restrained, investigated, retaliated against, or coerced in the exercise of any rights granted by this Agreement or on account of membership in or participating in or refusal to participate in the Union.

**ARTICLE 3 – PARENTAL RIGHTS**

**Section 3.1 Parent Rights**

The parties reaffirm that parents have the sole and exclusive rights to: (1) select providers of their choice and (2) discontinue services from any provider for any reason.

**Section 3.2 Confidentiality**

Union representatives shall maintain strict standards of confidentiality regarding parents and children and shall not disclose personal information pertaining to parents and children obtained from any source unless the disclosure is compelled by a legal process, is necessary for the representation of bargaining unit providers, or is otherwise required by law. Union representatives shall be authorized to obtain relevant and necessary information regarding bargaining unit providers to properly represent providers.

**Section 3.3 Information Available to Parents**

ODJFS agrees to create a brochure, in consultation with the State-Union Committee, for parents who are considering using or are new to using subsidized child care. The brochure will focus on eligibility requirements and the rights and responsibilities of the parent, including any co-payment obligation. ODJFS will provide the brochure to the counties. ODJFS will also continue to have such information available through its website.

**Section 3.4 Parent Handbook**

ODJFS agrees to develop, in consultation with the Union, a list of items to be included in a parent handbook for Type B Certified ICCHPs to distribute.

**Section 3.5 Parent Conduct Not Subject to Grievance Procedure**

No action taken by an individual in his or her role as a parent of a child receiving care shall be subject to the grievance procedure of this Agreement.

**Section 3.6**

The Union and ICCHPs commit to treating parents fairly and with respect.

**ARTICLE 4 - UNION RIGHTS**

**Section 4.1 Information from the State**

Once each month, the State shall provide the Union with a list of all ICCHPs which will accompany the deduction and transmittal of union dues/fair share fees. The list shall be provided at no cost to the Union and include fields showing each provider's name, address, city, zip code,

county, provider type, provider ID number and provider e-mail address. The State is not responsible for the accuracy of provider e-mail addresses.

**Section 4.2 Participation in Training Sessions**

The Union will have up to thirty minutes before, during, or after the Health and Safety training for certified “Type B” providers to conduct union orientation, hand out information about the Union and/or Union benefits and to distribute membership cards. This meeting shall not be counted as part of the required hours for Health and Safety Training and participation shall be voluntary. The Union is responsible for facilitating the logistics of the meeting with the CDJFS if necessary. Union materials will include information that membership in the Union is voluntary and will not affect the providers’ ability to receive subsidies.

If the Union reaches agreement with the CDJFS or any other provider of training to ICCHPs to allow the Union time for the presentation at a meeting or training other than the Health and Safety training, it shall meet the intent of this Section.

The Union will have up to thirty minutes during the application interview with a potential Type A provider to conduct union orientation.

**Section 4.3 Neutrality**

The State shall remain neutral on the question of union membership and union representation for providers. All questions addressed to the State regarding membership in or representation by the Union shall be referred to the Union.

**Section 4.4 Notices**

The State shall provide the Union with a copy of any notice the State intends to distribute to all child care providers.

**Section 4.5 Union Health Care Plan Deduction**

The State shall continue to work with the Union on establishing a mechanism for deducting health care premiums for providers who choose to participate in a union sponsored health care plan, provided there are sufficient funds to make such deduction.

**Section 4.6 Union Dues/ P.E.O.P.L.E. Deduction/Fair Share Fee**

**a. Union Dues**

Upon the implementation of a State-administered payment system for ICCHPs and upon receipt of a dues authorization card signed by a provider who is eligible to be in the bargaining unit, the State shall deduct from the reimbursement due to such child care provider those dues required by the provider’s membership in the Union, provided there are sufficient funds to make such deduction. Amounts deducted will be remitted to the controller, Ohio Council 8, AFSCME, AFL-CIO. The Union will give the State written notice of the amounts to be deducted and the bank account information to which an EFT of the deduction amounts are to be sent.

A list will accompany each remittance of check-off monies including an alphabetical list of the name, provider ID number and current address of the provider for whom a deduction was made and the amount of the deduction. The State and the Union shall work cooperatively to exchange information and data to allow for such deduction.

**b. PEOPLE Deductions.**

The State shall continue to work with the Union on establishing a mechanism for PEOPLE Deductions for providers who choose to make voluntary monthly contributions to the American Federal of State, County and Municipal Employees International Union’s Public Employees Organized to Promote Legislative Equality (PEOPLE) Committee provided there are sufficient funds to make such deduction.

**c. Fair Share Fee Deduction.**

Upon the implementation of a State-administered payment system for ICCHPs, the State will deduct from the reimbursement due to such child care provider a fair share fee, provided there are sufficient funds to make such deduction. The fair share fee amount shall be certified to the State by the Union. The deduction of the fair share fee shall be automatic and shall not require an authorization card. The deduction shall not begin until the ODJFS and CDJFS receive written notice to begin deduction from the Controller of Ohio Council 8, AFSCME, AFL-CIO. Payment to the Union of fair share fee deductions will be made according to the same provisions of the agreement that govern the payment to the union of regular union dues. The payment will be accompanied by an alphabetical list of the name, provider ID number and current address of the providers from whom a fair share fee deduction was made and the amount of the deduction. The State and the Union shall work cooperatively to exchange information and data to allow for such deduction.

**Section 4.7 Indemnification**

The Union agrees to indemnify and hold the State harmless against any and all claims, suits, orders or judgments brought or issued against the State as a result of any action taken or not taken under the provisions of this Article.

The parties agree that hence forth AFSCME shall indemnify the State for any liability incurred to any third parties or loss arising out of the State's deduction of dues or fair share fees.

**ARTICLE 5 – PROVIDER RIGHTS**

**Section 5.1 Policy and Rule Changes Affecting Child Care Providers**

With the exception of emergency rule filings, when ODJFS advances proposed changes to rules, the Union shall be included in its stated Clearance Process if the proposed change will affect the terms and conditions for bargaining unit members as provided in this Agreement. The Union will be given as much notice as possible prior to an emergency rule change being filed.

Additionally, rule changes will be a standing item on the State-Union committee meeting agendas. Where possible, ODJFS will provide advance notice to the Union of proposed changes in this forum and give the Union the opportunity to comment.

If the Union desires to bargain over the proposed rule change, and it is a subject appropriate for bargaining, notice shall be given to the Office of Collective Bargaining within twenty (20) days of receipt of the proposed change.

The Union shall receive copies of all approved (non-emergency) rule changes that affect the terms and conditions of ICCHPs at least thirty (30) days prior to their implementation. The Union shall also receive copies of adopted emergency rules no later than fifteen (15) days after their approval.

ODJFS shall provide the Union notice of approved new or modified rules/policies submitted by a CDJFS pursuant to ORC 5401 and/or OAC 5101:2-14-03(f) at the same time the CDJFS is notified of the approval. Rules and policies adopted by a CDJFS are an appropriate topic for State-Union committee meetings.

**Section 5.2 State-Union Committee**

For the purposes of maintaining communications between the parties and in order to cooperatively discuss matters of mutual concern, the ODJFS and the Union shall form a State-Union Committee. The committee shall meet on a quarterly basis. A request can be made by either party to meet more frequently on an as needed basis. The parties shall exchange agendas

one (1) week prior to the scheduled meeting. The committee will be made up of five (5) representatives from ODJFS, one (1) representative from the Office of Collective Bargaining, and ten (10) representatives of Union/bargaining unit providers. Up to four (4) individuals who represent the interests of the counties and/or stakeholder groups may be included in the meeting at the State's discretion. The purpose of the Committee shall be to maintain an open forum to discuss issues pertaining to ICCHPs. Counties shall be notified that participation on the State-Union committee is an acceptable use of a substitute care provider.

### **Section 5.3 Provider Files**

A provider shall have the right to access, review and make copies of any information in the files concerning the provider maintained by the State or CDJFS, except instances specifically prohibited by state or federal law. A provider may be accompanied by a union representative during this process and/or may authorize the Union to have access to such files. Any complaint that exists in a provider's file shall be accompanied by the investigation findings and any appeal initiated by the provider.

### **Section 5.4 Inspections and Investigations**

ICCHPs have a right to be treated with respect during visits, inspections and investigations and to receive impartial evaluations. ICCHPs shall have the right to request that CDJFS employees present identification during home site visits. CDJFS inspectors shall be required to inform the ICCHPs whether the home visit is about a complaint or a routine inspection.

The ODJFS shall develop a curriculum for use by the counties in training county inspectors. The curriculum shall include the principles referenced in the paragraph above. The curriculum will include a uniform inspection checklist to be used by CDJFS employees/contractors across the State in routine inspections. The form will include a section for the ICCHP to make comments at the end of the inspection. The form will be printed on three-part carbonless paper, or a similar type of paper, and the ICCHP will be given a copy before the inspector leaves the site. A similar form will be used for complaint inspections. In instances where a complaint investigation continues beyond the initial inspection, any additional information added to the complaint form will be added to the same form in a designated section and given to the ICCHP as soon as possible. The forms will be adapted for use by inspectors who utilize handheld computers to conduct inspections.

The curriculum will also educate the county inspectors on issues related to running a child care business and identifying developmentally appropriate activities and equipment. Additionally, county inspectors will be required to attend the Health and Safety Training that is required of all ICCHPs. As the curriculum and inspection checklist is being developed, the Union shall be invited to give feedback.

### **Section 5.5 Time and Attendance**

ICCHPs with fifty (50) or fewer children authorized for publicly funded child care shall be provided one (1) time and attendance key card swipe system unit at no cost. Any additional units may be purchased by the provider at the provider's own cost. Normal maintenance of the swipe system unit, including repair or replacement of defective equipment, shall be at no cost to the provider. Abuse or misuse of the system is outside the scope of normal maintenance. Any determination of abuse or misuse of the system is appealable through the grievance and arbitration procedure in Article 7.

The State shall provide training or contract with the vendor to provide training to ICCHPs on use of the swipe system.

At least three (3) Union representatives will serve on the Provider Leadership Workgroup, which will allow for input regarding the time and attendance key card swipe system. The Union representatives will be designated by AFSCME and include at least one Type A and one Type B child care provider. The State will also convene educational/informational user discussions in order to explain the new system, answer questions, and allow the providers to give input. The Union can identify the participants of the Type A and Type B group.

**Section 5.6 Emergency/Substitute Caregivers**

Type B providers shall be allowed to use and compensate an Emergency/Substitute Caregiver as an assistant at the Provider's own expense. There is no limit on the number of hours or days that a Provider may use an assistant. A one-time notice to the county shall be required prior to the provider using an Emergency/Substitute Caregiver as an assistant. The provider shall also notify parents of his/her intent to use an assistant. Use of an assistant will not change the provider's capacity.

The provider shall be present in the home at all times that the Emergency/Substitute is being used as an assistant. Nothing in this provision changes the notice requirements for use of an Emergency/Substitute caregiver as such.

**ARTICLE 6 – STATE'S RIGHTS**

The Union agrees that all of the function, rights, powers, responsibilities, and authority of the State, in regard to the operation and management of its Child Care programs which the State has not specifically abridged, deleted, granted or modified by the express and specific written provision of this Agreement are and shall remain, exclusively those of the State.

Accordingly, except as modified by this Agreement, the State retains the rights to: 1) establish the missions, programs, and objectives of its Child Care programs; 2) plan, direct, and control the use of resources, including all aspects of the budget in order to achieve the mission, programs, and objectives of its Child Care programs; 3) manage, direct, and control all activities necessary to deliver programs and services; 4) develop, modify, and administer policies, procedures, rules and regulations, and determine the methods and means by which operations are to be carried out; 5) establish qualifications of child care providers and standards of accountability; 6) take appropriate action when an ICCHP fails to behave in a manner consistent with his or her licensure, certification, or applicable regulations and policies; 7) make and execute contracts and all other instruments necessary or convenient for the performance of the State's duties or exercise of the State's powers; and 8) modify any and all operations and requirements in order to more efficiently and effectively provide services as a result of any existing and/or new laws, rules and other regulatory provisions.

**ARTICLE 7 – GRIEVANCE PROCEDURE**

**Section 7.1**

The State and the Union commit to address and resolve issues in a fair and responsible manner at the lowest possible level, and to use mediation and conflict resolution techniques when possible. Prior to filing a grievance, the Union and State will attempt whenever possible to resolve problems informally.

**Section 7.2 Definition of a Grievance**

- A. Grievance, as used in this Agreement, refers to an alleged violation, misinterpretation, or misapplication of a specific article(s) or section(s) of the Agreement or allegations that a county rule or regulation is in conflict with the terms of this Agreement. An allegation that a CDJFS is violating state statute, rule, or policy may be raised as a grievance by an ICCHP or the Union, but may not be carried past Step 2 of the grievance procedure. Nothing in this Article shall limit or impede the right of parents to select the provider of their choice and discontinue services from any provider for any reason. Actions taken by parents shall not be grievable.
- B. The parties shall expedite the processing of grievances involving payment reimbursement from the State.

**Section 7.3 Definition of Day**

Day as used in this Article means a calendar day, and times shall be computed by excluding the first and including the last day, except when the last day falls on a Saturday, a Sunday, or a legal holiday, the act may be done on the next succeeding day which is not a Saturday, Sunday, or holiday.

**Section 7.4 Specific Provision**

The grievant shall cite on the grievance form the specific article, section, statute, rule, regulation, policy, or combination thereof that he/she alleges to have been violated and the specific resolution requested. If the grievant fails to cite provision(s) and requested resolution, the State or its designee shall return the grievance form to the grievant.

**Section 7.5 Grievant**

A grievance under this procedure may be brought by any bargaining unit member who believes that he/she has been aggrieved by a specific violation of this Agreement. Participation in the grievance procedure shall be done in such a way as to not disrupt the ICCHPs care of the children. Efforts will be made on the part of all parties to schedule meetings and/or teleconferences when the ICCHP is not serving children or can use a substitute care provider. When a group of bargaining unit ICCHPs desires to file a grievance involving an alleged violation that affects more than one (1) ICCHP in the same way, the grievance may be filed by the Union. A grievance so initiated shall be called a Class Grievance. Class Grievances shall be filed by the Union within thirty (30) days of the date on which the Union knew or reasonably could have known of the event giving rise to the Class Grievance. Class Grievances shall be initiated directly at Step Two (2) of the grievance procedure. The Union shall identify the class involved, including the names if necessary, if requested by the State or designee.

Union representatives, officers or bargaining unit members shall not attempt to process as grievances matters which do not constitute a grievance.

**Section 7.6 Termination of the Issue**

When a decision has been accepted by the State or its designee and the Union at any step of this grievance procedure, or the State or its designee has granted the grievance, it shall be final and no further use of this grievance procedure in regard to that issue shall take place. It is understood that settlements below Step Three (3) are not precedent setting.

**Section 7.7 Grievance/Dispute Resolution Procedure**

**Step 1. Informal Step**

An ICCHP may consult the Office for Children and Families Help Desk for assistance before filing a formal grievance. The parties shall make a good faith effort to resolve the issue informally. If a meeting occurs between the ICCHP and a representative of ODJFS, there may

be a union representative present. If the ICCHP is not satisfied with the result of the informal meeting, if any, the ICCHP may pursue the formal steps which follow within fifteen (15) days of the conclusion of the informal process.

### **Step 2. Written Grievance**

In the event the complaint is not resolved at Step 1 of this procedure, or if it is the ICCHP's decision not to discuss the complaint at the Step 1, the grievance shall be reduced to writing and presented to the appropriate designated representative of the Office of Collective Bargaining within fifteen (15) days of the date on which the grievant or union knew or reasonably should have had knowledge of the event. The written grievance may be submitted by the Union or ICCHP in person, by US Mail, by fax, or by email. If sent by US Mail the post mark date shall be construed as the date of filing

Grievances submitted beyond the fifteen (15) day limit will not be honored. The grievance at this step shall be submitted to the Office of Collective Bargaining on the grievance form. The Office of Collective Bargaining shall indicate the date and time of receipt of the form. Within seven (7) days of the receipt of the form the Office of Collective Bargaining shall hold a meeting in the county the grievant resides or by telephone conference with the grievant to discuss the grievance. At such meeting, the grievant may bring with him/her a Union representative. The representative of the Office of Collective Bargaining may bring with him/her a representative of the Ohio Department of Job and Family Services. The Office of Collective Bargaining shall respond to this grievance by writing the answer on the form or attaching it thereto, and by returning a copy to the grievant and Union representative within fifteen (15) days of the meeting. The answer shall be reviewed by the Agency Director or his/her designee prior to issuance. The answer shall be consistent with the terms of this Agreement. Once the grievance has been submitted at Step (2) of the grievance procedure, the grievance form may not be altered except by mutual written agreement of the parties.

The Step 2 answer to a grievance which concerns an allegation that a CDJFS is violating state statute, rule, or policy is final. Such matters are not arbitrable.

If the matter is not resolved in Step 2 and as an alternative prior to final and binding arbitration in Step 4, the parties may choose by mutual agreement to submit the matter to mediation in order to resolve the issue. The party requesting mediation of the dispute must notify the other party in writing no later than fifteen (15) days of receipt by the Union of the written response from the State in Step 2. The party receiving the request for mediation must notify the other party of its agreement to mediate the dispute with fifteen (15) days of receipt of the request. If the party receiving the request does not agree to mediate the dispute, the Union may immediately proceed to Step 4, Arbitration.

### **Step 3. (Optional) Mediation**

If the parties agree to mediation, the parties shall use an Arbitrator from the permanent panel to act as a mediator. The State and the Union shall each pay one half the costs or fees, if any, of the neutral mediator. Each party shall be responsible for its own costs including the costs of representation, advocacy, and the costs of each party's appointed representatives.

If the issue is successfully resolved by mediation, the decision shall be binding on all parties. The comments and opinions of the mediator, and any settlement offers put forth by either party shall not be admissible in subsequent arbitration of the grievance nor be introduced in any future arbitration proceedings. If the issue is not successfully resolved through mediation, the Union may, within fifteen (15) days of mediation, proceed to Step 4, Arbitration.

#### **Step 4. Arbitration**

##### **A. Arbitration Panel**

Within thirty (30) days after this Agreement becomes effective, the State and the Union shall select a panel of four (4) arbitrators. The panel shall be assigned cases in rotating order. Each arbitrator/mediator shall serve for the duration of this Agreement unless the arbitrator/mediator's services are terminated earlier by mutual agreement. The arbitrator/mediator shall be notified of such termination by a joint letter from the parties. The arbitrator/mediator shall conclude his/her services by deciding any grievance(s) previously heard. A successor arbitrator/mediator shall be selected by the parties. The method of selection and all other questions regarding this section shall be jointly agreed to by the parties.

Within sixty (60) days of the effective date of this Agreement, the parties will mutually agree on a set of rules of arbitration. Insofar as is practical the rules will be based on the Voluntary Rules of the American Arbitration Association (AAA).

##### **B. Expenses**

All other fees and expenses of the arbitrator shall be shared equally by the State and the Union, except as expressly provided in this Article. If one (1) party desires a transcript of the proceedings, the total cost for such transcription shall be paid by the party desiring the transcript. If the other party desires a copy, then the cost for the copy shall be borne by the requesting party. The parties agree that normally transcripts will not be requested.

##### **C. Arbitration Decisions**

The arbitrator shall render the decision as quickly as possible, but in any event, no later than thirty (30) days after the conclusion of the hearing unless the State and the Union agree otherwise. The arbitrator shall submit an accounting for the fees and expenses of arbitration to both the State and the Union. The arbitrator's decision shall be submitted in writing and shall set forth the findings and conclusions with respect to the issues submitted to arbitration.

##### **D. Arbitrator Limitations**

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement by State or Federal statute, regulation, rule, or ODJFS policy or procedure. The arbitrator shall have no power to require the State to take or refrain from any action that is contrary to Federal or State regulations. The Arbitrator shall have no power to bind entities, persons, or organizations that are not party to this Agreement, or not under the legal control of either party to this Agreement. Questions of arbitrability shall be decided by the arbitrator. Once a determination is made that a matter is arbitrable, or if such preliminary determination cannot be made on the day of the hearing, the arbitrator shall then proceed to determine the merits of the dispute. Matters of arbitrability shall not be bifurcated from the merits of the dispute without mutual agreement of the parties.

##### **E. Binding Decisions**

Arbitrators' decisions under this Agreement shall be final and binding.

## **F. Issues**

Prior to the start of an arbitration hearing under this Agreement, the State and the Union shall attempt to reduce to writing the issue or issues to be placed before the arbitrator. The arbitrator's decision shall address itself solely to the issue or issues presented and shall not impose upon either party any restriction or obligation pertaining to any matter raised in the dispute which is not specifically related to the submitted issue or issues.

### **Section 7.8 Time Limitations**

The State and the Union agree that the time limitations provided in this Article are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations. To this end, grievances must be processed within the periods of time specified above. Any grievance not properly presented in writing and within the time limits specified, or any grievances not moved to the next step within the specified time limits shall be considered to have been withdrawn. If the State fails to meet the time limitations specified, the State will be deemed to have denied the grievance and the Union may move the grievance to the next step. Time limitations may be extended by mutual agreement in writing executed by both parties.

## **ARTICLE 8 – NON-TRADITIONAL WORK HOURS**

Pursuant to O.A.C. Rule 5101:2-16-41(G), non-traditional work hours include any hours of care provided on New Year's Day, Thanksgiving Day, Christmas Day, Memorial Day, and Labor Day.

The State shall propose to add the following holidays to the definition of "non-traditional hours" for providing child care services: Martin Luther King Jr. Day and Independence Day.

## **ARTICLE 9 – COMMITTEE PARTICIPATION AND REGULATIONS**

### **Section 9.1 Committee Participation**

The State will allow the Union to have representation, where the Union has an interest, on external committees that are established for the purpose of addressing issues affecting the subsidized child care program. The State will designate at the outset of the committee how many Union representatives may attend each committee and will ensure that the Union has meaningful representation on each committee. There will be at least one representative from AFSCME, one Type A child care provider representative, and one Type B child care provider representative, all to be designated by the Union, invited to the Child Care Advisory Council and the Early Childhood Advisory Council. Additionally, as membership procedures are drafted for the Early Childhood Advisory Council, 25% of the invitees to the Early Care and Education standing committee shall be ICCHPs and representatives from AFSCME, all to be designated by the Union. The individuals occupying seats on external committees and/or workgroups and those occupying seats on the CCAC and ECAC shall have all the duties and privileges due any other member of that committee, group, and/or council.

### **Section 9.2 Regulations**

ODJFS shall continue to provide technical advice to CDJFS to increase their understanding and agreement that providers are not required to provide services to at least one private pay client in order to receive reimbursement for subsidized care.

## **ARTICLE 10 - APPEAL PROCEDURE**

Legal representatives for all involved parties, including union staff or a union steward from the American Federation of State, County and Municipal Employees, Ohio Council 8, AFL-CIO/Child Care Providers Together, may be present for Type B Provider certification appeal and/or review.

## **ARTICLE 11 – TIMELY PAYMENTS**

### **Section 11.1**

A form will be created for the counties to send to the ICCHP and the parent as soon as a change in eligibility occurs. The eligibility brochure created by ODJFS will include a statement that parents have an obligation to report any changes in eligibility status to the ICCHP within ten (10) days of a final determination.

Providers who take into their care children from parents who are awaiting eligibility determinations and who are in need of child care due to any subsidy eligible activity or condition, shall receive payment from the date the parent applied for subsidized care if the parent is deemed eligible or the first date of eligibility

The State agrees that any external committee formed by the State or ODJFS to review, propose, or amend policies, regulations, rules, requirements, or rates regarding subsidy payments, parental co-payments, payment procedures, reporting procedures or county subsidy rates shall include union representation as provided in Article 9, Committee Participation and Regulations.

The State shall pay the ICCHPs on a weekly basis when the Time and Attendance system is fully implemented.

### **Section 11.2 Accurate Payments**

The State, working with the Union, shall take all reasonable steps to ensure the accuracy of payments to Providers. Remittance advices will be available to providers via the Provider Portal on the same day as payment is made to the Provider.

### **Section 11.3 Overpayments**

Before the Time and Attendance system is fully implemented, ICCHPs may work with the CDJFS to determine a repayment plan for any overpayment.

Once the Time and Attendance system is fully implemented, any overpayment must be repaid by the Provider within a six (6) month period. The amount will be collected through an equal distribution of payments during the time period, unless a more expedient procedure is agreed to between the ICCHP and the CDJFS.

If the ICCHP ceases doing business as an ICCHP, is decertified, or has his/her license revoked, any overpayments must be repaid within thirty (30) days from the date the overpayment was identified or the date the ICCHP ceases providing services, whichever is sooner.

### **Section 11.4 Reporting of Child Care Information**

The State shall collect information from the counties regarding the invoice processing schedules and share that information with the Union.

The State shall assign a point person to assist AFSCME with gathering information and resolving payment issues.

## **ARTICLE 12 – REIMBURSEMENT RATES**

### **Section 12.1 Reimbursement Study**

The State agrees to conduct a study over the term of this Agreement to evaluate the current method of reimbursing ICCHPs. The objective of the study is to review the current rate setting methodology and reimbursement structure to work toward a more efficient system that adequately serves the interests of the children and families receiving subsidized care, the ICCHP's, and the State. The State will seek participation in the study from the Union and Type A and B providers and will share the results of the study with the Union. The State shall not implement any study findings or recommendations during the term of this Agreement or before the parties have reached impasse over a successor Agreement.

### **Section 12.2**

The ODJFS agrees to pursue a legislative change that would omit as an option from the Ohio Revised Code 5104.32(B)(1) and (C) a rate the county department negotiates with the provider. Upon successful legislative change, a revision to O.A.C. 5101:2-16-41(B)(2) will be proposed to reflect such change.

### **Section 12.3**

There will be no decrease in the reimbursement ceiling rates for providers of publicly funded child care as set forth in OAC 5101:2-16-41 for providers during State fiscal year 2011.

Nothing in this Article prohibits the continuing efforts of the Union and/or the ICCHPs to work toward and/or lobby for additional increases in reimbursement rates or county subsidy rates or incentive pay rates for ICCHPs.

## **ARTICLE 13 – HEALTH INSURANCE**

The Union will explore ways to make comprehensive health insurance coverage options accessible and affordable for ICCHPs. The State will assist the Union where possible in efforts such as (1) attaining grant funding to cover insurance costs and (2) gathering and sharing data from the State or counties in order to analyze and determine the cost of various forms of health coverage.

## **ARTICLE 14 – STEP UP TO QUALITY**

The State and Union agree to review the Step Up To Quality Program, Ohio's quality rating and improvement system, in the State-Union committee during the term of this Agreement with a goal of adapting and applying the program to ICCHPs in the future when it is economically feasible to do so.

## **ARTICLE 15 – OHIO PROFESSIONAL DEVELOPMENT NETWORK'S REGISTRY**

### **Section 15.1**

The Ohio Professional Development Network's Registry (hereinafter referred to as the "The Registry") is an online tool managed by the Ohio Child Care Resource and Referral Association (hereinafter referred to as "OCCRRA"). All ICCHP's are encouraged to register on The Registry and the Union shall encourage all ICCHP's to fully utilize The Registry.

**Section 15.2**

Utilization of The Registry shall not replace any current methods for child care providers to receive notices of training opportunities available in their area.

**ARTICLE 16 – SUCCESSORSHIP**

The terms and provisions of this Agreement shall bind all successor agencies to the operations of the ODJFS to such terms and provisions to which bargaining unit providers are entitled under this Agreement.

**ARTICLE 17 – DUTY TO BARGAIN**

Nothing in this Agreement shall be construed to limit, prohibit or diminish the obligation of the State and the Union to bargain over subjects appropriate under Executive Order 2008-02S, issued February 1, 2008.

The State and the Union shall have the authority to bargain mid-term and to enter into amendments to this Agreement during its term that may clarify, modify, delete, or add to the terms of the Agreement. Any amendment to the Agreement must be in writing and executed by the President of the Union and the State designee. Upon its execution, such amendment shall supersede any existing provision of this Agreement in accordance with its terms and continue in full force and effect for the duration of the Agreement or such other date as specified in the amendment.

**ARTICLE 18 – AGREEMENT**

**Section 18.1 Savings**

This Agreement shall be subject to all present and future applicable federal, state, and local laws, rules, and regulations. Should any provision of this Agreement, or the application of such provision, be invalidated or ruled contrary to law by Federal or State court the remainder of this Agreement shall not be affected.

The invalidated provision shall be subject to re-negotiation by the parties within a reasonable period of time from either party's request.

**Section 18.2 Operation of Law**

To the extent that this Agreement conflicts with Federal or State statutes or administrative rules in effect at the time of the signing of this Agreement or which become effective during the term of this Agreement, the statutes and rules shall take precedence and supersede all conflicting provisions of this Agreement. The State shall not propose legislative action or rule-making that conflicts with the provisions of this Agreement, unless such legislative action or rule-making is necessary to comply with federal or state regulations or guidance.

To the extent that Federal or State statutes or rules control the terms and conditions of service as an ICCHP in areas where this Agreement is silent, those terms and conditions shall be determined by those statutes and rules.

**Section 18.3 Total Agreement**

This Agreement represents the entire agreement between the State and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, and practices previously and presently in effect, may be modified or

discontinued at the sole discretion of the State, unless the subject matter of the proposed change is subject to bargaining as defined in Article 1, Recognition.

## **ARTICLE 19 – NO STRIKE**

### **Section 19.1**

Neither the Union nor the ICCHPs shall directly or indirectly authorize, assist, encourage and/or participate in any way in any strike, slowdown, walkout, work stoppage, to children provided by ICCHPs. A determination by an individual ICCHP to forego providing subsidized care shall not be considered a strike, slowdown, walkout or work stoppage.

### **Section 19.2**

The State retains the right to take any and all appropriate action against an ICCHP who violates Section 19.1 above, including but not limited to action on the provider's licensure, certification, or other credentialing of the provider.

### **Section 19.3**

In addition, the Union shall cooperate at all times with the State in assuring the continuation of services to children and shall actively discourage any violation of this Article. If any violation of this Article occurs, the Union shall immediately notify all ICCHPs that the strike, slowdown, walkout, work stoppage, or other similar interference with services to children is prohibited and not sanctioned by the Union. The Union will inform ICCHPs of their obligation to resume services immediately.

### **Section 19.4**

Nothing in this provision shall prevent ICCHP's from engaging in picketing or other forms of protected speech.

## **ARTICLE 20 - PROFESSIONAL TRAINING, DEVELOPMENT AND LICENSING**

### **Section 20.1 Professional Development Partnership**

The State and Union recognize that the provision of high quality child care and early learning activities is contingent upon Providers' professional development. The parties are committed to working in partnership to expand access to training, education, and other professional development opportunities designed for providers.

### **Section 20.2 Partnership Goals**

The State and Union agree that the goals of their professional development partnership include, but are not limited to reviewing existing educational and training programs to enhance professional development opportunities, exploring how such training and opportunities can be made available through the internet, and discussing the establishment of a peer mentoring program to assist child care providers with meeting training requirements.

### **Section 20.3 Licensing**

In the event that legislation is introduced to implement licensing instead of certification for Type B Providers, the State and the Union will jointly advocate 1) to grandfather all Type B providers who were grandfathered pursuant to OAC 5101:2-14-02(B)(8) and 2) for a provision to be included for a transition period of at least one (1) year from the effective date of the bill for Type B Providers to meet the licensing requirements.

## **ARTICLE 21 – MISCELLANEOUS**

### **Section 21.1 Printing of the Agreement**

The State and the Union will each pay its own share of printing the Agreement. The Union will be responsible for distribution of the Agreement to current and new ICCHPs.

### **Section 21.2 Errata**

It is the understanding of the parties that any error in printing or typography will not alter the intent of the parties with respect to any such item.

## **ARTICLE 22 – TERM OF AGREEMENT**

### **Section 22.1**

This Agreement shall expire on June 30, 2012.

### **Section 22.2**

Either party may provide notice not less than 120 days prior to the expiration of the current Agreement to open negotiations for a successor agreement.

The parties here caused this Agreement to be executed this 1<sup>st</sup> day of July, 2010.

On Behalf of

The State of Ohio

AFSCME, Ohio Council 8, AFL-CIO

  
Ted Strickland, Governor

  
Kijim A. Messing-Bernardie  
Associate General Counsel

  
Douglas E. Lumpkin, Director  
Ohio Department of Job and Family Services

  
Stephen Roberts  
Staff Representative

  
Hugh Quill, Director  
Department of Administrative Services

  
Jalalab Aslam  
Staff Representative


  
Michael P. Duco, Deputy Director  
Office of Collective Bargaining

  
Asyia Haile  
Local 4025 President


  
Alicia L. Catheman  
Early Childhood Cabinet

  
Theresa Warner  
Local 4024 President

  
Terrie Hare  
Ohio Department of Job and Family Services

  
Betty Davis  
Local 4022 President


  
Matthew Murray  
Ohio Department of Job and Family Services

  
Devlyn A. Jones  
Local 4028 President


  
Cara Lee  
Ohio Department of Job and Family Services


  
Mary Johnson  
Local 4027 President


  
Sandy Miller  
Ohio Department of Education

  
Ella Hopkins  
Local 4023 President

  
Kristen N. Rankin  
Office of Collective Bargaining

  
Gail Montana  
Local 4021 President

  
Marissa Hartley  
Office of Collective Bargaining

  
Jamie Simpson  
Local 4026 President



**TED STRICKLAND**  
GOVERNOR  
STATE OF OHIO

**Executive Order 2008 - 02S**

**Establishing Collective Bargaining for  
Child Care Home Providers**

1. **The Role of Independent Child Care Home Providers.** Independent Child Care Home Providers (ICCHPs) offer an invaluable service to Ohio's children and their parents by providing them with child care in a home environment that allows parents to fulfill their daily responsibilities while knowing their children are in a safe, nurturing and educational environment.
2. **The State Must Ensure the Availability of Child Care Services.** In order to ensure that child care services for Ohio's children are accessible and of the highest quality possible, ICCHPs should have access to proper training and to effective representation in order to negotiate for work-related benefits.
3. **ICCHPs Have No Adequate Method for Addressing Work-Related Concerns.** Currently, ICCHPs, and the recipients of their care, have no standardized means of communicating their concerns about home child care programs, their respective roles within those programs, or the reimbursement rates or benefits for ICCHPs.
4. **Role of the State in Addressing the Needs of ICCHPs.** The State has control over certain aspects of the work life of ICCHPs, including the rate of reimbursement received for publicly subsidized child care services, licensing and certification requirements, and the ability to offer benefits and training to ICCHPs who participate in the child care subsidy program.

5. **Selection of Independent Child Care Home Providers for Collective Bargaining Purposes.** In order to ensure that the State addresses the concerns and interests of ICCHPs, the State shall recognize one representative as the exclusive collective bargaining representative for all ICCHPs, designated in a manner as follows:
- a. **ICCHPs Defined.** For the purposes of this Order, ICCHPs are child care providers categorized, pursuant to Ohio law, by the Ohio Department of Job and Family Services as either "Type A" licensed providers, who do not meet the definition of employee under the National Labor Relations Act, or "Type B" certified providers and in-home aides, who contract with the county Departments of Job and Family Services, but are not county employees.
  - b. **Eligible Voter List.** Upon the request of a labor organization, the State shall create a list of eligible voters. The eligible voter list shall be composed of all ICCHPs at the time the petitioner requests the list. The list shall include the names, addresses, and phone numbers of all eligible voters and shall be provided to the election monitor and any petitioning or intervening labor organization. The eligible voter list shall be valid for ninety (90) days from the issuance of the list for use in determining whether a showing of interest justifying an election has been established and shall constitute the list of eligible voters in any such election.
  - c. **Showing of Interest Justifying Election.** Should a labor organization be able to demonstrate to the satisfaction of an impartial election monitor, by either authorization card or petition, that thirty (30) percent of ICCHPs on the eligible voter list request an election to select an exclusive bargaining representative, the organization seeking representation shall provide a request to the Governor, or his designee, for a secret ballot election. An impartial election monitor shall conduct a representation election if such monitor determines that that the petitioner has established a thirty (30) percent showing of interest. The election monitor shall be from the American Arbitration Association (AAA) or other entity mutually agreed upon by the petitioner for the election and the Governor or his designee. The cost of the election process shall be borne by the organization seeking representation. The election may be conducted by mail and shall commence thirty (30) days from the date the election monitor determines a showing of interest.
  - d. **Election Interveners.** Subsequent to a valid election request, but not later than ten (10) days prior to an election, any non-petitioning labor

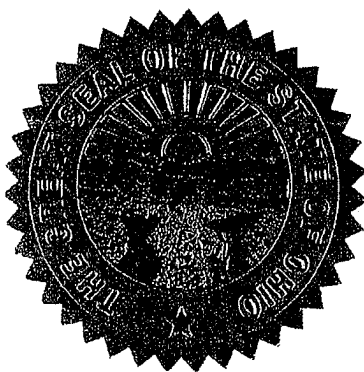
organization can submit to the election monitor a request to participate in the representation election, provided that it can demonstrate to the satisfaction of the election monitor that at least ten (10) percent of eligible voters wish to be represented by such labor organization. If the intervening labor organization is found to be eligible to participate in the election, it shall bear the cost of the election process equally with the petitioning labor organization.

- e. **Majority Vote Required.** In order for any labor organization to be recognized as the exclusive bargaining representative of the ICCHPs, the election monitor must certify that a majority of ICCHPs voting in the election voted affirmatively for the representation of a specific labor organization. After such results are certified, the State must recognize the labor organization as the exclusive representative of all ICCHPs working in the State.
- f. **Decertification of ICCHP Representative.** Except as stated below, the ICCHPs may not seek a decertification election during the term of any collective bargaining agreement or sooner than 12 months after a representation election has been conducted. Such petition may be filed no sooner than one hundred twenty days, or no later than ninety days, before the expiration of a collective bargaining agreement or after the expiration date until the parties enter into a new collective bargaining agreement. Upon the request of any ICCHP, the State shall create a list of eligible decertification voters. The eligible decertification voter list shall be composed of all ICCHPs at the time the petitioner requests the decertification election. The list shall include the names and addresses of all eligible decertification voters and shall be provided to the election monitor. The eligible decertification voter list shall be valid for ninety (90) days from the issuance of the list for use in determining whether a showing of interest justifying a decertification election has been established and shall constitute the list of eligible voters in any such election.
- g. **Showing of Interest Justifying a Decertification Election.** Should any ICCHP show by petition that fifty (50) percent of ICCHPs on the eligible decertification voter list request a decertification, the petitioning individual shall provide such petition to the Governor, or his designee, for a secret ballot decertification election. The petition must contain a statement that the incumbent bargaining representative is no longer the representative of a majority of the eligible decertification voters. An impartial election monitor shall conduct a decertification election if the monitor determines that that petitioner has established a fifty (50) percent showing of interest. The

election monitor shall be from the AAA or other entity mutually agreed upon by the petitioner for the election and the Governor or his designee. The cost of the election process shall be borne by the State. The election may be conducted by mail and shall commence thirty (30) days from the date the election monitor determines a required showing of interest.

- h. **Majority Decertification Vote Required.** In order for any labor organization to be decertified as the exclusive bargaining representative of the ICCHPs, the election monitor must certify that a majority of ICCHPs voting in the election voted affirmatively to decertify the incumbent exclusive bargaining representative for the ICCHPs. After such results are certified, the State will no longer recognize the incumbent exclusive bargaining representative.
6. **Bargaining with ICCHPs.** Although ICCHPs are not State employees, the State, acting through the Office of the Governor or his designee, shall engage in collective bargaining with the elected representative of the ICCHPs regarding reimbursement rates, benefits, and other terms. Bargaining shall begin within ninety (90) calendar days after the certification of an exclusive representative of the ICCHPs.
7. **The Parties Will Work Jointly to Obtain Necessary Legislative Changes.** Any agreement reached shall be embodied in writing and shall be binding on the State of Ohio, except the terms contingent upon the successful completion of such state and federal regulatory or legislative action as may be required to implement the terms of the agreement. If any provisions of the agreement require legislative action, rule-making, or the appropriation of funds, the parties will jointly seek the enactment of such legislative action. Bargaining about items that require the appropriation of funds must reach some resolution prior to July 1<sup>st</sup> of any even-numbered year so that they may be included in the proposed Executive budget.
8. **The Relationship Between Provider and Consumer Will Not Change.** This Order in no way alters the unique relationship between ICCHPs and the consumers who opt to use their services. The consumers retain the absolute right to choose and discontinue use of ICCHPs. However, the State retains its responsibilities under Ohio law and administrative regulations to take appropriate action when an ICCHP fails to behave in a manner consistent with such laws and administrative regulations.

9. **Procedure if the Parties Reach Impasse during Negotiations.** Nothing in this Order shall permit ICCHPs to engage in any strike or collective cessation of the delivery of child care services. If the parties reach impasse during negotiations, they shall employ the services of a third-party neutral who will make a non-binding recommendation as to contract provisions. If the services of a third-party neutral are necessary, any costs shall be borne equally by the parties.
10. **The State Action Exemption Applies for the Purpose of Antitrust Laws.** In according the ICCHPs the right to act through an exclusive representative and seek an agreement with the State according to the terms of this Order, the State intends that the "State action exemption" to application of the federal and state antitrust laws be fully available to the State, ICCHPs, and their elected representative to the extent that their activities are authorized pursuant to this Executive Order.
11. **The Order is Non-Severable.** Should any part of this Order be declared to be invalid or unenforceable, or should the enforcement of or compliance with any part of this Order be suspended, restrained or barred, by the final judgment of a court of competent jurisdiction, the remainder of this Order shall be void.
12. I signed this Executive Order on February 1, 2008 in Columbus, Ohio and it will not expire unless it is rescinded.



*Ted Strickland*  
Ted Strickland, Governor

ATTEST:

*Jennifer Brunner*  
\_\_\_\_\_  
Jennifer Brunner, Secretary of State

## **APPENDIX B - OHIO FAMILY CHILD CARE PROVIDER BILL OF RIGHTS**

All family child care providers have:

- The right to be treated with respect and objectivity during visits, inspections and investigations.
- The right to request that all agency employees present identification during home visits.
- The right to know whether a home visit is about a complaint or a routine inspection.
- The right to objective, uniform statewide standards (checklist) to be used during both routine and complaint inspections.
- The right to receive a copy of any inspection report and the right to add comments to that report.
- The right to access review and make copies of any information in their files maintained at the State or local level.
- The right to ensure that any complaints maintained in their files are accompanied by the investigative findings and the outcome of any appeal procedure.
- The right to a union representative or private counsel at appeal procedures.
- Timely notice of all changes in eligibility for children in their care.
- The right to operate without discrimination on the basis of race, sex, creed, color, religion, age, national origin, ancestry, political affiliation, disability, sexual orientation, height, weight, parental or marital status, pregnancy or childbirth or union membership or participation in accordance with State and federal law.
- The right to be represented on an ongoing labor-management committee and committees created to review proposed new rules or changes in payment procedures or reimbursement rates.
- The right to file a grievance over any breach of the collective bargaining agreement between the State of Ohio and AFSCME or allegations that a county rule or regulation is in conflict with the terms of the Agreement and submit meritorious grievances to binding arbitration.