

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

EVA MADER, TERESA KNUDSEN, and)
a class of similarly-situated)
individuals,)
Petitioners,)

NO. 98-2-30850-8 SEA

v.)

HEALTH CARE AUTHORITY, STATE)
BOARD FOR COMMUNITY AND)
TECHNICAL COLLEGES)
Respondents.)

EVA MADER, TERESA KNUDSEN, and)
a class of similarly situated individuals,)
Plaintiffs,)

v.)

STATE OF WASHINGTON AND THE)
HEALTH CARE AUTHORITY,)
Defendants.)

CLASS ACTION SETTLEMENT AGREEMENT

STEPHEN K. STRONG, WSBA #6299
DAVID F. STOBAUGH, WSBA #6299
STEPHEN K. FESTOR, WSBA #23147
BENDICH, STOBAUGH & STRONG, P.C.
Attorneys for Petitioners/Plaintiffs and the Class

W. HOWARD FISCHER, WSBA #6142
DEREK EDWARDS, WSBA #18889
MELISSA BURKE-CAIN, WSBA #12895
Assistant Attorneys General
Attorneys for Respondents/Defendants

SETTLEMENT AGREEMENT

TABLE OF CONTENTS

	<i>Page</i>
I. INTRODUCTION AND SUMMARY OF PROCEEDINGS	1
II. DEFINITIONS.....	3
III. GENERAL MATTERS	5
IV. SPECIFIC RELIEF	8
V. COMPENSATION FOR HEALTH BENEFITS	10
VI. SETTLEMENT ADMINISTRATION	15
VII. ATTORNEY FEES.....	17
VIII. COURT’S AUTHORITY AND ENFORCEMENT	19
IX. PROCEDURE.....	21

1 **I. INTRODUCTION AND SUMMARY OF PROCEEDINGS**

2 1. This Settlement Agreement is made under Civil Rule 23(e) to settle the class ac-
3 tion petition for review, *Mader v. Health Care Authority*, and related claim for damages, *Mader*
4 *v. State of Washington*, King Co. No. 98-2-30850 SEA.

5 2. Plaintiffs Eva Mader and Teresa Knudsen are part-time community college in-
6 structors. Plaintiffs continually worked half-time or more in their colleges' instructional years,
7 *i.e.*, the Fall, Winter, and Spring Quarters, but they were denied State-paid health benefits in the
8 summer months. In December 1998, Plaintiffs filed an administrative claim for State-paid
9 health benefits in the summer months. Defendant Health Care Authority (HCA) denied the
10 claim in January 1999. Defendant State Board for Community and Technical Colleges (State
11 Board) intervened in the proceedings to represent the State's community and technical colleges.
12 The HCA affirmed the denial of health benefits in September 1999.

13 3. Plaintiffs filed a petition for review of the HCA's decision in October 1999.
14 Plaintiffs also filed a separate claim for damages in October 1999. The parties agreed to stay
15 Plaintiffs' claim for damages pending final resolution of the petition for review (the stay on the
16 claim for damages expired on January 1, 2004).

17 4. Plaintiffs filed their petition for review and claim for damages on behalf of them-
18 selves and a class of similarly situated individuals. Plaintiffs claimed that they are and were eli-
19 gible for certain State-paid health benefits, but the State never provided the health benefits for
20 which they were eligible. The Plaintiffs sought declaratory relief, injunctive relief, benefits,
21 damages, and attorney fees.

22 5. In January 2000, the King County Superior Court (the "Superior Court") certified
23 the petition for review as a class action under Civil Rule 23(b)(1)(A) and (b)(2) and RCW
24 34.05.510(2).

25 6. In July 2002, the Superior Court issued a decision denying relief to the majority

1 of the class, granting relief to the minority of class members who work in the summer, and re-
2 serving decision on another small number of class members. The Parties both sought review by
3 the Court of Appeals.

4 7. The Court of Appeals issued its decision in January 2002. 109 Wn.App. 904
5 (2002). It affirmed the Superior Court’s decision denying relief to the majority of the class. *Id.*
6 at 926. The Court of Appeals also vacated the Superior Court’s decision granting relief to the
7 minority of class members who work in the summer and it vacated the portion of the order re-
8 serving decision on some other class members. *Id.*

9 8. The Supreme Court accepted review of the case. 146 Wn.2d 1021 (2002). The
10 Supreme Court issued its decision in June 2003, later correcting it twice. 149 Wn.2d 458, 70
11 P.3d 931 (2003) (as corrected on August 12 and September 3, 2003).

12 9. The Supreme Court reversed the Court of Appeals, the Superior Court, and the
13 HCA. The Supreme Court said that the “HCA must examine the *actual work circumstances* of a
14 state employee, rather than the contracts or titles under which he or she is employed, to deter-
15 mine whether an employee” is eligible for state-paid health benefits. 70 P.3d at 940 (emphasis
16 in original). And “this is not what the HCA did with Mader’s and Knudsen’s claims.” *Id.* The
17 Supreme Court “therefore remand[ed] to the HCA for a determination, consistent with [its]
18 opinion, of Mader’s and Knudsen’s eligibility for health care coverage.” *Id.*

19 10. The Supreme Court also said that the “class definition is insufficient” and “un-
20 clear.” *Id.* at 936. The Supreme Court “remand[ed] this matter to the superior court to clarify
21 its definition of the class.” *Id.*

22 11. After the Supreme Court’s decision in June 2003, the Parties stipulated that the
23 State would provide State-paid health benefits to class members who worked half-time or more
24 in each quarter of the 2002-03 instructional year at a single college district. The affected class
25 members were determined from the colleges’ payroll records. The employer contributions for

1 health benefits received by the affected class members in the summer of 2003 as a result of the
2 Parties' stipulation were approximately \$1.5 million.

3 12. The Parties then agreed to stay the litigation and enter into settlement discus-
4 sions. The State had previously given Plaintiffs a copy of a database containing, among other
5 things, the percentage of full-time work of every part-time community college instructor in the
6 State back to 1987. The Parties then conducted independent, but consistent, analyses of the data
7 to estimate the risks and potential liabilities of further proceedings. Under the Supreme Court
8 decision, 70 P.3d at 940, eligibility for state-paid benefits is based on instructors' "actual work
9 circumstances," which are determined here from the payroll records in the State Board's data-
10 base.

11 13. The Parties recognize that to further continue the *Mader* litigation would delay
12 its resolution for a considerable time (likely some additional years, including possible further
13 appeals), would create additional burdens and costs for the Parties, and would present uncertain-
14 ties and risks for all Parties as to the ultimate outcome. To avoid the uncertainty, risks, delays,
15 and burdens of further litigation, the Parties agreed to this Settlement Agreement.

16 14. As part of the Settlement Agreement, the Parties also agree, for settlement pur-
17 poses only, to certify a class in the claim for damages and merge the claim for damages with the
18 petition for review.

19 15. All provisions in the Settlement Agreement apply to the Class Members defined
20 below, unless an exception is specifically stated. Just as class membership alone would not nec-
21 essarily result in relief for any Class Member if the litigation had proceeded to judgment, class
22 membership alone does not necessarily make relief available. Class Members are entitled to
23 relief in this settlement only as specifically stated in this Agreement.

24 II. DEFINITIONS

25 The following general definitions apply in this Settlement Agreement.

1 16. “Class” means all individuals who are Class Members.

2 17. “Class Counsel” means the law firm of Bendich, Stobaugh & Strong, P.C., and
3 the firm’s attorneys.

4 18. “Class Members” means:

5 All present and former part-time “academic employees,” as that term is defined in
6 RCW 28B.50.489(3), who, while working at one or more college districts, at any
7 time: (1) worked half-time or more in the Fall, Winter, and Spring Quarters or
8 who worked half-time or more in just the Winter and Spring Quarters and who did
9 not receive employer-paid health coverage in the following summer; or (2)
worked on average half-time or more in the Fall, Winter, and Spring Quarters (but
less than half-time in one or more of those quarters) and who did not receive em-
ployer-paid health coverage during the following summer or the instructional year.

10 19. “Dismissal Order” has the meaning ascribed to it in paragraph 39 of this Settle-
11 ment Agreement.

12 20. “Effective Date” has the meaning ascribed to it in paragraph 39 of this Settlement
13 Agreement.

14 21. “Employer Premium” means the monthly composite cost to the State to purchase
15 health benefits for state employees. The “composite” Employer Premium assumes an average
16 number of dependents and average health expenses.

17 22. “Full-Time Equivalency” or “FTE Percentage” is the percentage of full-time a
18 part-time instructor is deemed to work. “Half-time” means 0.50 FTE. A Class Member’s FTE
19 Percentage for the purpose of this Settlement Agreement is the percentage contained in the State
20 Board’s Database.

21 23. “HCA” means the Washington Health Care Authority.

22 24. “Instructional Year” means the Fall through Spring Quarters in a community or
23 technical college. For example, the 1990-91 Instructional Year begins with the 1990 Fall Quar-
24 ter and ends with the 1991 Spring Quarter.

25 25. “Quarters” include the Fall, Winter, and Spring Quarters in an Instructional Year.

1 cessful had the litigation proceeded. The compromise embodied in this Settlement Agreement
2 is intended to fully and finally resolve the claims of the Class Members in this case.

3 **Claims Subject to this Settlement Agreement.**

4 34. This Settlement Agreement resolves and settles the Plaintiffs' claims for dam-
5 ages of any kind relating to or arising out of their exclusion from specific health benefits which
6 may have arisen at any time to the present, as defined herein. The Plaintiffs claimed that the
7 State failed to provide health benefits in the past summers to part-time instructors who worked
8 at least 50% FTE in the Fall, Winter, and Spring Quarters of an instructional year or at least
9 50% FTE in the Winter and Spring Quarters of an instructional year. Plaintiffs also asserted that
10 the State failed to provide health benefits to part-time instructors who worked *on average* more
11 than half-time in the Fall, Winter, and Spring Quarters on an instructional-year basis, *e.g.*, an
12 instructor who worked 66% FTE in the Fall Quarter, 66% FTE in the Spring Quarter, and 33%
13 in the Spring Quarter. The State denies these allegations. All such claims described above con-
14 cerning the State's alleged failure to provide health benefits, whether based on a theory of re-
15 covery in tort, contract, constitution, or statute (including chapters 41.05 RCW, 49.48 RCW,
16 49.52 RCW, RCW 28B.50.489 and .4891, and RCW 49.44.170) that either was asserted or
17 could have been asserted in this litigation regarding the State's past conduct or failure to act up
18 to the date of settlement approval are covered herein. Claims by Class Members against the
19 State that are separate and independent from the specific claims described in this paragraph, in-
20 cluding claims that may arise after the effective date of this Settlement Agreement, are not set-
21 tled or resolved in this Settlement Agreement.

22 **Release of Claims Subject to the Settlement Agreement.**

23 35. Contingent upon final approval of this settlement by the Superior Court and
24 payment of the amounts described herein, Plaintiffs hereby completely release and forever dis-
25 charge the State of Washington, the State Board, the HCA, including the State's officers, agents,

1 attorneys, employees, agencies and departments, from any and all demands, obligations, actions,
2 causes of action, rights, damages, losses, costs (including payment of attorneys' fees), expenses
3 and compensation, that Plaintiffs asserted or could have asserted in the Litigation relating to the
4 claims described in the preceding paragraph.

5 36. Plaintiffs acknowledge and agree that the release and discharge set forth above is
6 a general release of those claims described above. The Parties have entered into this Agreement
7 as a compromise of disputed claims, and as a means of finally resolving all questions, issues,
8 duties, obligations, and responsibilities between them regarding those disputed claims. Plain-
9 tiffs further agree that they have accepted payment of the sums and the other terms specified
10 herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiffs
11 assume the risk that the facts or law may be other than they believe. It is understood and agreed
12 by the Parties that this settlement is a compromise and nothing contained herein, including the
13 payments are to be construed or interpreted as an admission of liability on the part of the State
14 of Washington, by whom liability is expressly denied, or as an admission by either party as to
15 any issue in dispute or which could have been in dispute between the Parties.

16 **Timeliness.**

17 37. The Settlement Agreement includes certain commitments by the parties and
18 counsel to take actions. Any procedural failure or error, such as a failure to act in a timely man-
19 ner, does not preclude final approval and enforcement of the Settlement Agreement if the error
20 can be corrected or made harmless (*e.g.*, a failure to give adequate notice to class members may
21 be corrected).

22 **Taxability of Settlement.**

23 38. The defendants take no position as to the taxability of any payments hereunder or
24 as to any taxes which may be owed by the Plaintiffs as a result of this settlement. Plaintiffs are
25 responsible for any tax payments that plaintiffs may owe as a result of this Settlement Agree-

1 ment.

2 **Effective Date of Settlement Agreement.**

3 39. Following signature of the Parties' representatives, this Settlement Agreement is
4 effective on the date of an order by the Superior Court approving the Settlement Agreement pur-
5 suant to Civil Rule 23(e) and dismissing the litigation with prejudice ("Dismissal Order") in the
6 form agreed to by Class Counsel and Defendants and approved by the Court ("Effective Date"),
7 or twenty (20) days after the effective date of an appropriation by the Washington Legislature
8 for the purposes of funding the settlement herein, whichever date is later.

9 **Warranty of Capacity to Execute Agreement.**

10 40. The undersigned attorneys represent and warrant that they have the authority to
11 execute this Settlement Agreement on behalf of their respective parties, subject to approval as
12 stated in paragraph 32 above.

13 **IV. SPECIFIC RELIEF**

14 **Settlement Amount.**

15 41. The State shall pay \$11 million cash which, together with the other relief pro-
16 vided in this Agreement, is in full and final settlement of this lawsuit. In addition, the State al-
17 ready paid approximately \$1.5 million in health benefit premiums in the summer of 2003 as a
18 result of the Supreme Court's decision and the Parties' June 2003 stipulation (see ¶11). Under
19 paragraph 2 of the Parties' June 2003 stipulation, these 2003 health benefit premiums are cred-
20 ited toward the Class's claims to avoid duplicative recovery.

21 **Payments to Named Plaintiffs.**

22 42. The Named Plaintiffs shall each receive \$17,000 incentive payments for their
23 participation as class representatives. This participation included, but was not limited to, com-
24 mencement of this lawsuit, preparation of declarations, attendance at meetings, assisting Class
25 Counsel, and supporting the settlement. The Court may in its discretion reasonably modify

1 those Named Plaintiffs' incentive payments without rejecting the entire settlement

2 43. The payments to the Named Plaintiffs described in the preceding paragraph shall
3 be disbursed to them within thirty-five (35) days of the Effective Date.

4 44. In addition to the incentive payment described above, the Named Plaintiffs shall
5 receive, under the formula applicable to other Qualifying Class Members, their payments for all
6 qualifying service back to 1993, as provided in Part V, to be paid when the class is paid.

7 **Payments to Qualifying Class Members.**

8 45. The State shall make payments to Qualifying Class Members in lieu of the omit-
9 ted employer contributions for health benefits as described below. The Distribution Fund for
10 these omitted contribution payments consists of \$7.4 million, less any Plaintiff incentive awards
11 provided in ¶ 42.

12 **Health Benefits.**

13 46. In light of the Supreme Court's decision in this action, the State will continue en-
14 rollment and fund the employer contribution required for continued enrollment in future sum-
15 mers of part-time community and technical college instructors who work half-time or more in
16 each quarter of an academic year or equivalent nine-month seasonal basis and who have a rea-
17 sonable expectation of continued employment at a single college district or in multiple college
18 districts. This provision shall continue until such time as a pertinent statute or regulation pro-
19 vides otherwise.

20 47. As part of this Settlement Agreement, the State has further agreed to undertake a
21 good faith review of eligibility for health benefits under the instructional-year employee regula-
22 tion [WAC 182-12-115(4)] of those who work on average half-time or more in an entire instruc-
23 tional year (the Fall, Winter, and Spring Quarters) for two or more consecutive years, but who
24 do not work more than half-time in each of those three quarters. As part of its review, the
25 Health Care Authority will look at the following factors:

- 1 (a) the employees' length of service;
- 2 (b) the employees' past service;
- 3 (c) the colleges' past practices concerning continuation of benefits to instruc-
- 4 tors who are generally half-time but have occasional dips; and
- 5 (d) the minimum FTE Percentage contained in paragraph 48(b) *infra*.

6 **V. COMPENSATION FOR HEALTH BENEFITS**

7 **Criteria for Determining Qualifying Class Members.**

8 48. A Qualifying Class Member, for the purpose of receiving a share of the omitted
9 employer premium costs for summer health benefits, is an individual who meets the following
10 criteria:

- 11 (a) the Class Member worked during the period of the 1992/1993 to
12 2002/2003 instructional years:
 - 13 (i) 50% FTE for one or more college districts in each of the Fall,
14 Winter, and Spring Quarters in at least one instructional year, and the
 - 15 (ii) Class member did not receive State-paid health benefits in the
16 summer following such an instructional year, or
- 17 (b) the Class Member worked during the period of the 1999/2000 to
18 2002/2003 instructional years:¹
 - 19 (i) on average at least half-time for two consecutive instructional
20

21 ¹ There are several reasons why the Class Members who meet the Qualifying Class Member criteria in
22 paragraph 48(b) are treated for relief differently from the Class Members who meet the Qualifying Class Member
23 criteria in paragraph 48(a), *i.e.*, the paragraph 48(b) Qualifying Class Members can only obtain relief back to the
24 summer of 2001 summer rather than the summer of 1993. First, the claims of the Qualifying Class Members in
25 paragraph 48(b) were added for settlement purposes only. The claims thus involve additional arguments and risks
that are not associated with the claims of the Qualifying Class Members in paragraph 48(a). Second, if this case
were not settled, plaintiffs could have moved to amend the complaint to add the claims. But whether the ¶48(b)
claims relate back to the date of the plaintiffs' original administrative claim for statute of limitations purposes is
unknown and the applicable statute of limitations is not resolved. A reasonable compromise of these claims is to
thus provide relief for three years.

1 years within the 1999/2000, 2000/2001, 2001/20002 and 2002/2003 instructional years;

2 (ii) the Class Member worked in each of the Fall, Winter, and Spring
3 Quarters of the consecutive instructional years;

4 (iii) in each instructional year the Class Member worked in two Quar-
5 ters at least 50% FTE and in the remaining Quarter at least 33% FTE (The Class Member, how-
6 ever, must still average at least half time in each instructional year as specified in paragraph
7 48(b)(i). For example, the following work schedule meets the criteria: Fall Quarter 67% FTE,
8 Winter Quarter 33% FTE, and Spring Quarter 50% FTE. But if there are two Quarters in the
9 instructional year at less than 50% FTE then the work schedule would not meet the criteria, *e.g.*,
10 Fall Quarter 90% FTE, Winter Quarter 20% FTE, and Spring Quarter 40% FTE);

11 (iv) the Class Member did not receive State-paid health benefits in a
12 summer quarter following the second (and/or later) consecutive instructional year meeting these
13 criteria.

14 **Payments for Omitted Contributions for Summer Health Benefits to Qualifying Class**
15 **Members.**

16 49. Plaintiffs filed their administrative claim for summer health benefits in Decem-
17 ber, 1998. For purposes of this Settlement Agreement only, the Parties agree that plaintiffs’
18 claims may relate back as far as the summer of 1993 for payment purposes. The payment for-
19 mula is based on the assumption that the State’s contribution for health benefits, *i.e.*, the com-
20 posite employer premium cost, is a reasonable measure of the value of benefits lost by the in-
21 structors. The premium cost is a reasonable method to ascertain the value of the lost health
22 benefits because it represents the State’s *actual* cost to secure the benefit. The Qualifying Class
23 Members shall be paid based on a formula utilizing the composite employer cost for health
24 benefits multiplied by the average number of months they would have received health insurance
25 as defined in this Settlement Agreement.

50. The composite employer premium cost per month used in the formula is as fol-

1 lows:

2	Calendar Yr.	Composite Employer Premium Cost
3	2003	\$482.38
4	2002	\$457.25
5	2001	\$436.16
6	2000	\$391.15
7	1999	\$341.75
8	1998	\$317.34
9	1997	\$314.51
10	1996	\$313.95
11	1995	\$305.32
12	1994	\$323.70
13	1993	\$324.20

14 The composite employer premium cost is the State’s actual aggregate cost in each calendar year
15 for health care benefits for covered employees plus the cost of administration, divided by the
16 number of insured employees with an average number of dependents.

17 51. For purposes of this settlement, the parties agree that the average summer months
18 without health insurance is 2.68. The 2.68 factor is based on HCA records, which show that on
19 average approximately 32% of Qualifying Class Members who did not receive health insurance
20 in the summer “self-paid” for coverage and therefore lost two months of State-paid health bene-
21 fits each summer (July and August). The approximate 68% of Qualifying Class Members who
22 did not self-pay lost three months of employer-paid health benefits each summer (July, August
23 and September). The 2.68 factor is therefore a reasonable estimate of the average number of
24 months that Qualifying Class Members did not receive employer-paid summer health benefits.

25 52. Qualifying Class Members’ losses are all calculated by multiplying the 2.68 fac-
tor by the monthly composite employer premium cost in that year ([Average Summer Months
Without Health Insurance (paragraph 51)] x [Employer Monthly Premium Cost (paragraph 50)]
= Qualifying Class Member’s Loss). These are the assumed losses for each Qualifying Class
Member in each calendar year, based on this formula:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Calendar Yr.	Qualifying Class Member Loss
2003	\$1,292.77
2002	\$1,225.43
2001	\$1,168.90
2000	\$1,048.28
1999	\$915.89
1998	\$850.47
1997	\$842.88
1996	\$841.38
1995	\$818.25
1994	\$867.51
1993	\$868.85

Distribution Formula.

53. The named plaintiffs’ incentive awards (¶42) shall be deducted from the \$7.4 million fund. The balance remaining (the “Distribution Fund”) shall be distributed to Qualifying Class Members as follows:

(a) Class members working half-time or more as part-time or full-time instructors in the colleges in Fall Quarter 2003 and Winter Quarter 2004 shall receive the monetary awards as specified in ¶52 for each year that they meet the requirements of Qualifying Class Members (see ¶48). These are, for purposes of this settlement, “Currently Employed Qualifying Class Members.” The monetary awards for all Currently Employed Qualifying Class Members shall be totaled and then deducted from the Distribution Fund balance.

(b) All Qualifying Class Members who last worked half-time or more in two or more Quarters as part-time or full-time instructors in the community and technical colleges in the 2002/2003 instructional year, *i.e.*, the 2002 Fall Quarter, the 2003 Winter Quarter, and the 2003 Spring Quarter shall then receive the monetary awards contained in ¶52 for each year that they meet the requirements of Qualifying Class Members (see ¶48). This group is called the “2003 Qualifying Class Members.” The monetary awards for all “2003 Qualifying Class Members” shall be totaled and then deducted from the Distribution Fund balance.

(c) This same process will then be applied to all prior instructional years until

1 the Distribution Fund balance is depleted. For example, after the “2003 Qualifying Class Mem-
2 bers” losses are deducted from the fund, the Qualifying Class Members who last worked half-
3 time or more in two or more Quarters as part-time or full-time instructors in the community and
4 technical colleges in the 2001/2002 instructional year, (*i.e.*, the “2002 Qualifying Class Mem-
5 bers”) shall then receive the monetary awards contained in ¶52 for each year that they meet the
6 requirements of Qualifying Class Members (see ¶48). The balance in the Distribution Fund
7 shall then be distributed to the “2001 Qualifying Class Members” using the same formula and so
8 forth for each year until the Distribution Fund is depleted.

9 (d) When the Distribution Fund balance becomes insufficient in a particular
10 year to fully compensate the Qualifying Class Members who last worked half-time or more in
11 two or more Quarters as part-time or full-time instructors in that particular year (*e.g.*, 1998
12 Qualifying Class Members), the balance of the Distribution Fund shall be distributed *pro rata* to
13 the Qualifying Class Members in that particular group by the following formula.² After each
14 Qualifying Class Member’s loss is calculated, the aggregate losses for all the Qualifying Class
15 Members in that particular group shall be calculated by adding together all of the individual
16 Qualifying Class Member’s losses. The aggregate losses for all Qualifying Class Members in
17 that particular group shall then be divided into the Distribution Fund balance to determine the
18 *pro rata* share of losses for each Qualifying Class Member in that particular group. For exam-
19 ple, if hypothetically the aggregate losses for all 1998 Qualifying Class Members is equal to \$1
20 million, and the remaining Distribution Fund balance is \$750,000, the *pro rata* share of each
21 Qualifying Class Member will equal 0.75:

22
23
24 ² The parties recognize that Qualifying Class Members who last worked half-time or more as part-time or
25 full-time instructors in community or technical colleges in earlier years will receive a *pro rata* award or no award at
all from the Distribution Fund because the fund will become depleted. This is reasonable because, among other
reasons, this agreement is a compromise and the applicable statute of limitations is unresolved and may bar claims.

$$\begin{array}{r}
 1 \qquad \qquad \qquad \$750,000 \text{ (Hypothetical Fund Distribution Balance)} \\
 \qquad \qquad \qquad \qquad \qquad \qquad \div \\
 2 \qquad \qquad \qquad \$1 \text{ million (hypothetical aggregate health benefit losses)} \\
 \qquad \qquad \qquad \qquad \qquad \qquad = \\
 3 \qquad \qquad \qquad 0.75 \text{ (hypothetical } \textit{pro rata} \text{ share)}
 \end{array}$$

4 After the *pro rata* share is calculated on an aggregate basis, the losses in each calendar year for
 5 the Qualifying Class Members in the particular year-group will be multiplied by the *pro rata*
 6 share to determine the monetary amount of lost health benefits that will be provided to a Quali-
 7 fying Class Member. For example, if a 1998 Qualifying Class Member had \$2,000 in lost
 8 health benefits and the *pro rata* share is 0.75, the Qualifying Class Member would receive
 9 \$1,500.

10 (e) After the formula is applied and the *pro rated* Qualifying Class Members'
 11 losses are calculated both in the aggregate and individually, the remaining Distribution Fund
 12 balance will be paid on a *pro rata* basis to the Qualifying Class Members in that particular
 13 group.

14 (f) In the event that the Distribution Fund becomes depleted before the 1999
 15 Qualifying Class Members receive full payments for their assumed losses, rather than payments
 16 to Qualifying Class Members being based on groups organized by the particular year the Quali-
 17 fying Class Members stopped working for the community and technical colleges as set forth in
 18 paragraphs 53(a)-(d), **all** Qualifying Class Members in each instructional year from 1998-99 to
 19 the present shall receive a *pro rata* payment for the following summers. The *pro rata* payments
 20 to these Qualifying Class Members will be calculated in the manner set forth in paragraphs
 21 53(d)-(e). In the event that there is excess in the Distribution Fund after calculating the mone-
 22 tary awards for all Qualifying Class Members in accordance with paragraphs 53(a)-(c), the ex-
 23 cess money will be distributed *pro rata* to **all** Qualifying Class Members. The *pro rata* amount
 24 each Qualifying Class Member will receive will be calculated in the manner set forth in para-
 25

1 graph 53(d).

2 VI. SETTLEMENT ADMINISTRATION

3 **Disbursements to Qualifying Class Members and Verification of Qualifying Class Member** 4 **Status.**

5 54. Qualifying Class Members may be required to file by a reasonable deadline, set
6 by the State Board with Class Counsel's approval, claim forms verifying their addresses or iden-
7 tities or provide other information to receive payments. Any person who is required to verify
8 their address or identity or provide other information, but who does not comply in a timely
9 manner, will not receive a monetary award. The claim form will not be used to calculate eligi-
10 bility or amount of payments. (See ¶157, below.)

11 **Locating Qualifying Class Members.**

12 55. If the State mails a claim form to a Qualifying Class Member, and the mailing is
13 not returned by the postal service, the State has the right to rely on the assumption that the
14 Qualifying Class Member received the mailing and no further action is required. If a claim form
15 sent by the State to a Qualifying Class Member is returned as undeliverable or with a new ad-
16 dress, the State will make reasonable efforts to mail the form to the new address and/or find an-
17 other address and re-mail the form to such a Qualifying Class Member before the claim-filing
18 deadline.

19 **Information to be Utilized for Determining Payment Eligibility and Payments.**

20 56. The State Board's Database is based on the Class Members' payroll records used
21 in tax reporting and withholding. The data in the State Board's Database are normal business
22 records and the Database was created for routine business purposes other than this litigation.
23 The State Board's Database and the data contained therein thus have a presumption of accuracy.
24 Plaintiffs have had the opportunity to test the State Board's Database and believe that the pre-
25 sumption of accuracy is well-founded. The State shall have discretion to correct errors and fill
in gaps in the State Board's Database prior to payments to Qualifying Class Members.

1 57. The State will rely on and has the right to rely on the information in the State
2 Board's Database in administering the Settlement Agreement in determining payment eligibility
3 and amounts. Whether a Class Member is a Qualifying Class Member entitled to a payment and
4 the amount of such payment shall be based exclusively on the information in the State Board's
5 Database and any corrections the State makes to the database. The State has discretion to use
6 averages or other defaults when gaps in the data remain after its efforts to fill such gaps.

7 **Consistency Check.**

8 58. In determining who are Qualifying Class Members and the amount of their
9 awards, the State shall conduct one or more consistency checks to ensure the accuracy of its cal-
10 culations. The consistency checks shall include, at a minimum, two database programmers in-
11 dependently applying the criteria in this Settlement Agreement to the State Board's Database to
12 ensure the criteria are accurately applied and the result is substantially the same.

13 **Unclaimed Distributions and Funds Remaining.**

14 59. Class Members shall have no more than six (6) months from the date the dis-
15 bursement is mailed to cash the disbursement check, except that in the event a Class Member's
16 check is returned to the State as undeliverable, additional efforts shall be made by the State to
17 locate the Class Member (such as re-mailing). The State shall not be obligated to re-mail a
18 check more than once.

19 60. If the Class Member still cannot be located or if, after re-mailing to a new ad-
20 dress or emergency contact, the disbursement check is not cashed within ninety days from the
21 date of the second mailing (or a total of 180 days from the first mailing, whichever is later),
22 these unclaimed settlement funds shall be paid as set forth in paragraph 61.

23 61. All unclaimed funds remaining in the Distribution Fund after the close of the
24 check-cashing period, shall be disbursed to an Internal Revenue Code § 501(c)(3) charitable in-
25

1 stitution or public educational institution to be agreed upon by the State and Class Counsel.

2 **Objections to Settlement.**

3 62. Unless the Superior Court directs otherwise, all objections to the Settlement shall
4 be: (a) submitted in writing, (b) to the Superior Court, Class Counsel, and counsel for Defen-
5 dants, (c) in a manner and time prescribed by the Superior Court, (d) no less than six court days
6 in advance of the hearing on the settlement. Any objections that do not comply with (a) through
7 (d) above shall be waived. Anyone wishing to appear at the settlement hearing to object to the
8 Settlement shall so specify in a timely written objection or the person's participation at the hear-
9 ing shall be waived.

10 **Notice of Settlement Agreement and Right to Object.**

11 63. Class Members who can be identified through reasonable effort from State Board
12 records shall be given notice of the settlement in the form proposed by the parties, subject to any
13 modifications ordered by the Court. The notice shall contain the major terms of the Settlement
14 Agreement, state the time, date and place of the settlement hearing, and explain the procedures
15 and deadlines for submitting written comments or objections. The State shall mail the notice, at
16 the State's expense, to the last known address of each Class Member whose identity and address
17 is reasonably ascertainable, or cause the notice to be delivered by campus or college mail sys-
18 tems.

19 64. Prior to the settlement hearing the State shall submit a certification to the Court
20 that it has complied with notice requirements.

21 **Responsibility for Notice and Settlement Administration.**

22 65. The State, at its expense, shall be responsible for administering the settlement
23 and notice to Class Members. The State shall keep Class Counsel timely informed about the
24 notice process and the settlement administration process. At Class Counsel's request, the State
25 shall, upon reasonable notice, provide Class Counsel with information about notice and settle-

1 ment administration.

2 **VII. ATTORNEY FEES**

3 66. The Washington Supreme Court determined the method of computing attorney
4 fees in common fund class actions in a public employee benefit case, *Bowles v. Department of*
5 *Retirement Systems*, 121 Wn.2d 52 (1993). The Court said that when class counsel’s efforts
6 have created a “common fund,” counsel’s fees are a percentage of the fund because “the size of
7 the recovery constitutes a suitable measure of the attorneys’ performance.” *Id.* at 72. The re-
8 covery obtained in a common fund includes the value of both monetary and prospective relief
9 obtained for the class. *Id.* at 70-71; *Lyzanchuk v. Yakima Ranches*, 73 Wn.App. 1, 8 (1994).
10 *Bowles* therefore adopted the percentage approach to calculate common fund fees and the Su-
11 preme Court specifically rejected the lodestar method of calculating fees in a common fund
12 case. 121 Wn.2d at 73. The Supreme Court said a percentage-of-recovery approach to review
13 common fund attorney fees “furthers important policy interests[.]” *Id.* at 72. The approach set
14 forth in *Bowles* is applied here.

15 67. In accordance with the *Bowles* criteria, a reasonable attorney fee is \$3.6 million
16 based on the value conferred on Class Members as described in this Settlement Agreement. The
17 value includes \$12.5 million obtained in this case to compensate for employer health benefit
18 contributions including the approximate amount of \$1.5 million in employer-paid health care
19 benefit premiums provided in the summer of 2003 by stipulation. In addition, there are health
20 care benefits that part-time community and technical college instructors will obtain in the future
21 due to the Supreme Court’s interpretation of WAC 182-12-115(4). The benefits part-time
22 community and technical college instructors will receive in future summers are estimated pres-
23 ently at approximately \$1.8 million per summer. The \$3.6 million fee for Class Counsel thus
24 equals 28.8% of \$12.5 million and is a significantly smaller percentage of the total value of re-
25 lief when the value of future health benefits is considered. The fee is thus within the range of

1 Court retains authority to compel performance of all requirements of the Agreement that are in-
2 tended to be carried out after dismissal of claims.

3 **IX. PROCEDURE**

4 **Procedures to Implement Settlement Agreement.**

5 72. The Parties agree, as soon as practicable after execution of this Settlement Agree-
6 ment, to jointly move the Superior Court to:

7 (a) find preliminarily that this Settlement is a fair and reasonable compro-
8 mise of the Claims;

9 (b) order that notice of the Litigation and Settlement be provided to Class
10 Members;

11 (c) declare that the content of the proposed notice and the mechanisms of
12 communicating such notice meet the requirements of Civil Rule 23(e);

13 (d) schedule a date, at least six Court days prior to the settlement hearing, by
14 which any Class Member who objects to the terms of this Settlement Agreement may file writ-
15 ten objections to this Settlement Agreement with the Clerk of the Court, and serve such objec-
16 tions on Class Counsel and attorneys for Defendants; and

17 (e) schedule a settlement hearing date pursuant to Civil Rule 23(e) at which
18 any Class Member, who meets other requirements established by the Superior Court, may ap-
19 pear in order to object to the fairness, adequacy, or reasonableness of this Settlement Agreement
20 or to any order or findings of the Superior Court.

21 **Additional Notice After Settlement Agreement is Approved.**

22 73. Other Notice to Ensure Filing of Claim Verification Forms. The parties agree to
23 provide additional notice to class members to encourage Qualifying Class Members to file claim
24 verification forms so that they receive payments. This notice is not provided for settlement
25 hearing purposes, but rather, it is provided to encourage Qualifying Class Members to file claim

1 verification forms. The notice of the Qualifying Class Members' obligation to file claim verifi-
2 cation forms shall be in a form agreed to by the parties.

3 74. If the Settlement is approved, each State community and technical college shall
4 post the notice of the Qualifying Class Members' obligation to file claim verification forms in
5 common areas frequented by faculty or it shall distribute notices to all faculty members by cam-
6 pus mail or email, or both, as each college determines is reasonable. The notice of the Qualify-
7 ing Class Members obligation to file a verification form shall also be posted on internet sites of
8 Class Counsel and the State Board for Community and Technical Colleges two weeks after the
9 Agreement is finally approved by the Court.

10 75. The State shall also provide a copy of the notice of the Qualifying Class Mem-
11 bers' obligation to file claim verification forms to the Washington Federation of Teachers and
12 the Washington Education Association, which collectively bargain on behalf of the Class Mem-
13 bers, approximately two weeks after the Settlement Agreement is finally approved by the Court.

14 DATED: February 13, 2004.

15 BENDICH, STOBACH & STRONG, P.C.

CHRISTINE GREGOIRE,
Attorney General of Washington

16
17
18 _____
STEPHEN K. STRONG, WSBA #6299

DEREK EDWARDS, WSBA #18889
Assistant Attorney General
Attorneys for Respondents/Defendants

19
20
21 _____
STEPHEN K. FESTOR, WSBA #23147
Attorneys for Petitioners/Plaintiffs and the
22 Class

MELISSA BURKE-CAIN, WSBA #12895
Assistant Attorney General
Attorneys for Respondents/Defendants