

SEIU-UHW

January 2007

The California Alliance Agreement: Lessons Learned In Moving Forward in Organizing California's Nursing Home Industry

The California Alliance agreement between SEIU and Alliance nursing home operators is currently being renegotiated. The purpose of this paper is to provide a critique of the current agreement in order to learn how we move forward in organizing the nursing home industry in California. Attached to this paper is an addendum that provides a more detailed analysis.

It is important to begin this discussion with an understanding of the nursing home industry in California. There are approximately 1143 (OSHPD data) skilled nursing facilities (SNFs) in the state (not including assisted living facilities). The Alliance represents only 284 homes or 25% of California nursing homes. Only 83 of those homes are organized (55 UHW and 28 Local 434B). Of those 83 homes, 35 are template labor agreements and the rest traditional collective bargaining agreements. In total SEIU represents only 17% (195) of all nursing homes in California. UHW represents the largest share of the SNFs with 148 homes and Local 434B represents 47.

The California Alliance agreement was historic in many ways for operators, workers and residents. While the positive achievements of the Alliance should not be overlooked, there were, however, limitations that we need to evaluate in order to organize the entire nursing home industry in California. Out of this experience we learned that we can organize a section of the nursing home industry employers, identify a point of unity with them (rate reform - AB 1629) and forge a relationship that allowed SEIU organizing rights to 42 homes.

In exchange the nursing home employers received significant funding never before seen in California's nursing home industry. Equally important was the fact that we were able to negotiate substantial wage and benefit increases for our members whether they were from Alliance or non-Alliance homes. It is important to note that with the exception of workers covered under Alliance template contracts, there was fundamentally little difference between Alliance and non-Alliance contracts. However, the nature of this relationship was transactional - a quid pro quo arrangement. It was not based on trust or forged through a collective bargaining relationship. It was simply a business arrangement. The industry was in dire need for Medi-Cal funding reform and it was in our members' interest to lead in that effort. We leveraged our political influence in state politics to win rate reform on Medi-Cal funding, and in exchange the nursing home employers gave us rights to organize 42 homes that they selected.

The conversation that began this relationship started at the top between nursing home operators and SEIU. However it is important to note that winning rate reform involved mobilizing thousands of our members in the political process. This process included leveraging the 500,000 SEIU members in California, making nursing home reform the highest political objective at that moment. This latter point was our

bargaining chip with these employers. SEIU's political capacity is based on its membership and our ability to move politics in California. Important as that was, this mobilization was primarily the extent of our members' involvement. Members had little say in reaping the benefits of that activity. The collective bargaining agreement for newly organized Alliance workers (the template) had little, if any, member involvement, nor did having a say on the amount of money that ultimately became the 'economic deal' in negotiations for wages and benefits. In short, the template and the economic deal were cut at the top. It became part of the business transaction with the nursing home employers.

In negotiating a new agreement with the Alliance employers, it is imperative that we acknowledge the gains we made in the current agreement, but it is equally important that we address the shortcomings resulting from a transactional relationship that we've established with a limited number of employers in the industry. Again, it is important to note that in its entirety, the Alliance currently represents both union and non-union facilities, about 25% of California's nearly 1143 nursing homes¹.

If our objective is to organize the entire nursing home industry in California, then moving forward, we must ask the following questions:

1. **Did the current agreement allow us to achieve all that we could have?** In other words, given our accomplishments, did we sell ourselves short in terms of organized homes and contracts for our members? UHW projects that by the end of the current (06-07) rate year, Alliance union homes will receive approximately \$119 million cumulatively in new Medi-Cal revenues while employers will spend about \$21 million on improvements to SEIU's members' contracts. Further, these same homes are slated to receive more than \$180 million cumulatively through June 2008, but employers only committed to spend about \$46 million on members' contracts over that same time period. Meanwhile, a total of only 42 new homes came into the union as a result of our neutrality organizing agreement. In fact, one Alliance operator represented at both the national discussions and the California table shared with us their surprise at SEIU's willingness to leave money on the table, as well as not ask for more homes to organize.

If we move forward with a similar approach in re-negotiating the Alliance agreement based on quid pro quo, what type of value do we put on the number of homes we want organized for achieving 'political benchmarks?' For example, is the renewal of AB 1629 (rate reform) worth only 75 homes over another five years, or should it have a greater value while in exchange the operators receive hundreds of millions in continued rate reimbursement? A similar assessment must be made on other political objectives, i.e., reducing turnaround time for reimbursement. (Note: A more detailed critique of the Alliance agreement/experience follows in the addendum page 8 of this paper.)

2. **Does continuing such a relationship under a similar nature with only Alliance operators achieve SEIU's objective of 100% density and winning hospital industry standards for our members and improve the quality of care for residents?** The answer is a simple no. At best, and we do not want to understate the

¹ Source: OSHPD

significance of this achievement, if we are successful in reaching another agreement with Alliance operators that achieves 100% density in their universe, it still leaves close to 75% of the industry in California non-union. In pursuing this strategy of growth with Alliance operators, how do we address the rest of the non-Alliance industry? What should be our parallel strategy for growth?

Alliance operators have not substantively addressed how they will expand their universe. Is there a strategy to grow the Alliance? At this point there is not. In fact, there is one view within their camp to 'exclude' any non-Alliance operators from any other future legislative gains we may make. Can we allow this view to prevail when in fact we represent many homes and workers that are not in the Alliance? Equally troubling is a recent point of view among some Alliance operators that says they should have the arbitrary right to exclude other nursing home operators from the Alliance.

Likewise, SEIU has not made a compelling argument to Alliance members about the 'union' difference in this process. In fact, one Alliance operator said their homes with union contracts cost them more than their non-union homes, and they question what it will mean for them if they allow us to achieve 100% density within their company. Will they be market competitive? Equally revealing, a non-Alliance operator with whom UHW has a collective bargaining relationship told us that if we want to achieve high standards in the industry, then we need to level the playing field in the market by getting rid of 'template' contracts.

Does the current Alliance arrangement deal effectively with internal contradictions among operators, e.g., market expansion, Medi-Cal funding vs. Medicare and private insurance? One non-Alliance operator with whom UHW has a relationship has stated that their future is not with Medi-Cal funding but with Medicare and private insurance, and that the Alliance agreement does not address that. Since for the moment they reap the same benefits from AB 1629 as Alliance operators, but their future is to move away from depending on Medi-Cal funding, they see no need to join the Alliance. In fact part of their future lies with the rehabilitative and acute care side of the SNF industry which relies on hospital referrals. What is our strategy dealing with operators with that world view, particularly where we have a direct relationship with that hospital industry? How do we leverage that relationship for growth?

Non-Alliance operators benefited from rate reform. That means close to 70% of California nursing homes that receive Medi-Cal funding gained from this legislation. Where we have relationships with these employers the only way we can reap the benefit of AB 1629 and win standards for our members is through traditional collective bargaining and developing an alternative organizing strategy for non-Alliance operators. We contend that any renewed agreement with the Alliance operators needs to address how we can take advantage of AB 1629 for the rest of the industry - union and non-union.

In addition to being part of the Alliance agreement, UHW has developed and is implementing a strategy that is based on organizing regional markets in the non-Alliance nursing home industry in Northern California. This strategy is not transactional in nature but relies on our strengths: market density, relations with the hospital industry, political influence, collective bargaining relationships and member involvement, as well as AB 1629 funding. It is based on organizing an entire market at one time and getting employers to agree to union standards because a majority of the employers in that regional market will have done so. With this approach we have identified five regional markets of non-Alliance operators in Northern California. Developing an alternative strategy to organize non-alliance homes is critical to not only leveraging our relationship with Alliance operators but developing the capacity to organize the entire industry. Since many of the Alliance operators are statewide we would argue that this strategy should be adopted statewide. When negotiating a new agreement with Alliance operators we should not just bring to the table our political capacity to move state politics to affect the nursing home industry and bargain over the value of that. We should also demonstrate our ability to organize the industry with or without an Alliance agreement and bargain that value as well.

What should be the relationship of this strategy with our Alliance work given that the Alliance work does not have a regional market approach at all? It can not be simply 'one or the other.' In addition, UHW will more than likely hold these non-Alliance employers to higher standards in collective bargaining; develop a workplace structure that empowers members through collective bargaining; and develop relationships with employers for future organizing that starts with a collective bargaining relationship, not a transactional one.

3. What kind of worker organizations are Alliance based template agreements creating, and, equally important, what are they laying the groundwork for?

Alliance based template agreements do not allow workers to empower themselves, nor are they conceived out of a process in which workers are truly part of 'winning' the union.

Essentially the Alliance agreement gave SEIU the opportunity to organize facilities (that the Alliance employers chose) in exchange for SEIU's political power to raise reimbursement rates. The quid pro quo nature of this transaction can not be understated. Traditionally, for workers to organize they engage in struggle to win that right. Under the Alliance agreement this is absent. The contract that newly organized Alliance workers will have is worked out in advance with the ultimate terms of that agreement discouraging - and in some cases, preventing - workers from independently engaging in struggle to improve their working conditions. Prior to getting to the negotiating table not only are the rules of engagement worked out but the nature of the 'deal' itself. Is it any wonder that we have often heard from these workers that "the boss brought us the union?"

Many workers who came into our union through the Alliance neutrality agreement found themselves with 'template' contracts that allowed for very little power on the

shop floor with no right to strike and no clear path toward full collective bargaining rights. From UHW members' experience it is safe to state that the template arrangement created a worker organization that restricts member empowerment. Those members covered by template agreements went to the table with the expectation that bargaining would be an opportunity to not only secure economic benefits, but to change labor relations within facilities where templates restricted their rights to do so. Our members have made it very clear to us: re-negotiation of a new Alliance agreement must involve members - it must begin from the bottom up.

If the nature of the labor agreement defined in the current Alliance templates - which restrict members' rights and ability to be empowered - is allowed to continue, what effect will this have on the fundamental nature of a union organization? What ultimately happens if we give up the right to strike as the means for workers to level the playing field with employers when needed? We would argue that it would adversely affect our mission and goal to advance and defend the interests of our members, and in fact, may come close to becoming what have historically been called 'company' unions. If this is the case, what started out as leverage and a strength, i.e. our ability to organize our members into political action, can in fact become an empty promise because the alienation our members will have from this experience will reduce our capacity to deliver the political capital.

4. Was the quality of care for residents improved as a result of the increased funding and a new relationship with the industry?

Winning the political fight for Medi-Cal rate reform was based on the argument that rate reform would improve the quality of care for nursing home residents. This argument was critical: we could never have succeeded if our argument simply had been that rate reform would put more money into the pockets of nursing home operators and increase wages for caregivers. Because of delays in implementing AB 1629, however, it will be at least another year before an evaluation can be made about the impact of rate reform on quality of care.

Our political capital was based on our commitment to improve the quality of care residents receive in nursing homes. Our allies in this effort - advocates for residents and organizations of seniors, as well as elected officials - will certainly be expecting quality improvements. The long term viability of the new Medi-Cal rate system will depend on ensuring that quality of care is improved.

One strategy to improve quality of care would be to mandate staffing ratios that would increase the number of hours of direct care received by residents every day, similar to improvements in nurse to patient staffing ratios that have already been accomplished in the hospital industry. Any new agreement with Alliance operators must address this in a substantive way. Failure to address in any meaningful way improved quality care for nursing home residents will not only alienate SEIU from its natural allies in the health care community but seriously compromise our political influence at the state level as legislators may become less willing to expend political capital for little or no measurable improvements.

Fighting to hold the industry to higher staffing ratios for residents' care is the road to improved resident care. Recently, UHW surveyed over 1600 members under

Alliance contracts, and this was the number one complaint that our members raised with us: short staffing and how it compromises their ability to provide quality care for residents. With SEIU's mission and objective to become a national health care union and voice for health care in this country, this issue should be number one on our list in any new Alliance agreement.

In Summary

We contend that we did not achieve what we could have both in terms of our density and in terms of economics, particularly in relation to the increases in funding that operators received. This relationship yielded substantial rate increases for employers, but only a fraction of that windfall made its way to our members and the verdict is still out as to whether the quality of residents' care has improved.

At the same time, employers benefited from the union's agreement to having limits placed on our demands at the bargaining table as well as limits placed on our ability to organize nursing home workers. In fact, many workers at Alliance nursing homes throughout California were precluded from organizing the union or improving standards resulting from the new rates due to the prohibition on organizing included in the current agreement.

Furthermore, despite efforts to take a non-traditional approach to bargaining, employers forced the union into a traditional relationship. Generally speaking, negotiations took nearly one full year to complete, employers dragged out the process in order to try to limit their financial obligation to members, and several settlements came only as a result of strike threats. Alliance employers at a November 9, 2006 meeting - collectively and without exception - stated that the relationship was indeed traditional. (It is interesting to note that the operators' disappointment regarding the reasons why the collective bargaining experience became traditional was based on their expectations that the negotiating process would entail very limited bargaining at all.)

Equally important to point out is despite the significance of rate reform and its political impact and economic windfall for the nursing home industry in California, the Alliance as an organization of employers has in fact shrunk in size. Collectively the Alliance only represents 2 out of 10 nursing homes in California. Failure to acknowledge this fact, and more important to take advantage of AB 1629 and what it has meant for workers in increased wages and benefits as well as its potential to improve the care for residents, will result in SEIU missing an historic opportunity for new growth in the nursing home industry in California.

In Conclusion:

To simply conclude that we must be 'better negotiators' with the Alliance operators for a renewed arrangement is at best simplistic thinking and at worst a strategic mistake. We must think out of the box and more globally. Using the California experience to help leverage a national discussion and relationship with the nursing home industry is one direction we must go in. However, the California experience is far from complete and if viewed more globally provides great opportunity for growth.

Moving forward in organizing 100% density in nursing homes in the state of California means we must critically look at the shortcoming of the first Alliance agreement and renegotiate a new agreement that not only gives us 100% density of

homes among Alliance operators, but positions us to organize the rest of the nursing home industry. Critical to that is developing an alternative growth strategy for non-Alliance homes as UHW is doing. However, key to both Alliance and non-Alliance operators is the involvement of our members. Our ability to win rate reform was based on our political capacity to mobilize our members in the industry to achieve it. Our ability to organize regional markets of non-Alliance homes will involve our members. In short, UHW contends that moving forward means involving our members throughout the entire process, including strategic planning. Member involvement is our strength and will to continue to be our strength.

In conclusion, in renegotiating a new Alliance agreement we must have the following:

- Any new agreement should not be simply based on a quid pro quo transaction that gives SEIU organizing rights to homes in exchange for achieving political benchmarks.
- Any new agreement must lead to 100% density of all Alliance homes during the term of the agreement.
- Any new agreement must improve the quality of care for nursing home residents in measurable ways.
- Any new agreement must be compatible to and contingent upon a parallel strategy to organize the rest of the nursing home industry in California by a combination of growing the Alliance and engaging in a regional market strategy to organize non-Alliance homes.
- Any new agreement must have as a principal objective establishing standards in the industry on wages and benefits for providers and quality care for residents that are comparable to the health systems industry in California.

January 4, 2007

ADDENDUM

The following is UHW's critique of the Alliance experience and its current agreement.

Did the current agreement allow us to achieve all that we could have?

AB 1629: *Did SEIU get its "Fair Share"?*

As a result of AB 1629, SEIU estimates that upwards of \$900 million in new federal matching funds will make its way into California's Medi-Cal reimbursement system between 2004 and 2008². Already, Alliance employers have seen substantial amounts of new money in increased reimbursements at their unionized homes, totaling approximately \$119 million cumulatively by the end of the state's 2006-07 rate year (with an additional \$217 million to non-union facilities). The successful passing of this legislation and the influx of new revenue paved the way for SEIU and Alliance employers to work together to raise standards for nursing home workers while investing in increasing quality of care for residents. Despite this huge cash infusion, unionized Alliance workers will see only \$21 million in increased wages and benefits through the 2006-07 rate year³.

Basic elements of the deal with the Alliance employers include the following:

- **Wages:** \$2.25 across the board, added to wage scales or starting rates whichever existed prior to this round of bargaining. Additional monies were secured for parity or "catch up" raises for select classifications already behind market standards in Bay Area facilities (up to \$.75).
- **"Envelope":** Discretionary money to be used for further economic improvements allowing for additional labor cost increases of \$.50 per hour in the Bay Area and \$.25 per hour in all other regions.
- **Training Fund:** Established to provide educational and career opportunities for nursing home workers. Employers will contribute \$.06 per bargaining unit hour to the fund in 2007 and \$.07 per hour beginning January 2008 through the remainder of the agreement.
- **Health Insurance Improvements:** Employers will cover a minimum of 80% of the cost of individual coverage for facilities in the Bay Area (a standard already established at UHW homes) and a minimum of 70% of the cost of coverage for workers in all other peer groups or improve health insurance contribution for individuals a maximum of 10%- whichever was greater.
- **Single Bargaining Unit By Company:** All union homes by company are a single bargaining unit and negotiate together.
- **Common Expiration:** June 15, 2008.

If it is assumed that Medi-Cal rates increase by another 3% next year, it is possible to draw a comparison of approximate new revenue that Alliance employers will

² According to an internal SEIU document titled "*Nursing Home Quality Care Act AB 1629: The Basics*" dated August 31, 2004, "Facilities will pay a 'quality assurance fee' to bring in new federal money to pay for the increased funding. The fee will generate more than \$900 million for nursing home care over four years that can be matched by federal Medicaid funds."

³ Source: UHW analysis of the cost of basic economic package compared to increased revenues received (less quality assurance fees) from August 1, 2004 through July 31, 2007. For all UHW costing contained herein see Appendix A: "Methodology and Assumptions."

be receiving at their unionized facilities to the amount of that revenue committed to spending on raising standards for members roughly over the same time period. The following chart shows UHW's estimate of revenues received versus spending on members through the life of our current contracts:

| Company | Assumed Cumulative New M-Cal Revenue 2004-08 | Total Cost of Economic Package | Percent of Revenue Passed Through to Members |
|--------------------|--|--------------------------------|--|
| Avalon | \$6,937,098 | \$1,306,139 | 18.8% |
| Beverly | \$12,070,974 | \$1,959,955 | 16.2% |
| Chase | \$2,213,752 | \$224,992 | 10.2% |
| Country Villa | \$12,800,181 | \$2,976,139 | 23.3% |
| Covenant Care | \$16,619,017 | \$4,359,849 | 26.2% |
| Evergreen | \$9,423,248 | \$2,538,337 | 26.9% |
| Family Senior Care | \$31,561,733 | \$7,240,865 | 22.9% |
| Golden State | \$1,816,210 | \$399,854 | 22.0% |
| Horizon West | \$14,426,361 | \$3,704,102 | 25.7% |
| IQC/Foresight | \$8,554,806 | \$2,466,372 | 28.8% |
| Kindred | \$32,113,227 | \$8,977,017 | 28.0% |
| Longwood | \$3,091,792 | \$1,957,559 | 63.3% |
| Sava | \$14,002,687 | \$2,474,767 | 17.7% |
| Skilled | \$5,366,629 | \$2,197,795 | 41.0% |
| SunBridge | \$8,699,693 | \$2,550,830 | 29.3% |
| Sun Mar | \$2,039,412 | \$579,261 | 28.4% |
| Totals | \$181,736,822 | \$45,913,833 | 25.3% |

As indicated above, Alliance employers at union facilities will receive approximately \$182 million cumulatively in increased Medi-Cal revenues through the expiration of these agreements (June 15, 2008). These employers have committed to spend about \$46 million, or just over 25% of that new money on SEIU members currently covered under collective bargaining agreements⁴.

Another way of comparing increases in Medi-Cal revenue with operators' commitments to raising standards for workers is by examining the impact of the agreed-upon economic package on hourly bargaining unit labor costs across each individual company. During the life of the current agreement, the Alliance employers listed in the following table have committed to raise bargaining unit labor costs by just over 12% overall. At the same time, this group of employers' weighted average Medi-Cal reimbursement rate will increase by more than 27%⁵.

⁴ Source: UHW analysis of the cost of basic economic package compared to increased revenues slated to be received between August 1, 2004 and June 15, 2008.

⁵ Source: UHW analysis of increased labor costs resulting from basic economic package. Base labor cost figures were provided by employers during contract negotiations.

| Company | Percent Increase in Labor Costs | Percent Increase in Medi-Cal Rate |
|--------------------------|---------------------------------|-----------------------------------|
| Avalon | 12.24% | 31.24% |
| Beverly | 16.32% | 29.72% |
| Chase | 23.66% | 27.30% |
| Country Villa | 17.39% | 28.80% |
| Covenant Care | 11.60% | 27.43% |
| Evergreen | 10.54% | 27.20% |
| Family Senior Care | 7.93% | 28.83% |
| Golden State | 19.54% | 26.83% |
| Horizon West | 17.86% | 21.82% |
| IQC/Foresight | 18.70% | 27.25% |
| Kindred | 7.05% | 32.05% |
| Sava | 7.83% | 30.73% |
| Skilled | 22.71% | 19.88% |
| Sun Mar | 20.43% | 18.29% |
| SunBridge | 14.02% | 21.58% |
| Alliance Overall: | 12.40% | 27.46% |

The Template and the Collective Bargaining Experience

It is important to consider that despite our never creating a hard deadline or bottom line for employers, we were still able to keep the majority of companies in the room and move them to a collective settlement. Collectively we made a decision that keeping these employers together would force those providing the lowest economic benefits to our members to raise standards to meet the rest of the industry. However, a side effect was that the cost of the economic package actually lowered for those companies who fared best under the new reimbursement system. Since reimbursement is driven by previous spending on labor costs, there were companies at the table that would not have been able to meet the terms of the agreement if those terms were based on a percentage increase in labor costs as defined by the top revenue getters. In other words, negotiating the economic package at the Alliance table was a delicate balancing act.

While we were conscious that we were in fact leaving money on the table, a primary problem with bargaining was that while it started as a standards-based approach that was based on workers' demands it transformed to a standardized economic settlement in terms of increased bargaining unit costs for the employers regardless of what standards were to start at each facility. For example, wage standards were only created in the Bay Area Urban C peer group, and health insurance improvements were focused only on a minimal standard – moves that aided in keeping the collective intact, but had the net effect of our achieving less for members than we might have been able to secure in a different bargaining setting. However, where we took an approach to establish a market standard as in Bay Area Urban C, our experience was that employers

fundamentally understood that need from a competitive perspective. In fact, non-Alliance operators in the same market responded in the same way. Hence, a standards-based approach not only should be our bargaining methodology objective, but we have learned that employers will respond to it.

A major problem with the collective bargaining process was a fundamental lack of member involvement, running contrary to our constitution and by-laws as well as our standard practice. While bargaining began as very participatory, democratic and member-driven, it eventually evolved into a substitute staff-driven process. In fact, recall that we started by surveying over 5,000 nursing home workers which led to a list of demands called our "Platform for Progress" adopted by rank and file leaders from both locals. We then held membership meetings with ratification votes that overwhelmingly ratified our platform with thousands of workers participating. In December 2005, UHW and Local 434B brought over 100 bargaining committee members to the bargaining table to kick off these negotiations. Subsequently, only two more bargaining sessions actually included workers' participation at the table. Thereafter, union staff and Alliance employers met repeatedly to work toward identifying a framework for an economic settlement in a half dozen face to face and phone meetings. Understandably, this lack of involvement created major frustration among members and fed third-party unionism, despite our best efforts to keep workers engaged.

For some workers, specifically those employed at Family Senior Care and Sava Senior Care, a final settlement was not reached until December 2006 - a full year after the first bargaining session was held with the Alliance employers. Ultimately, it was the threat of a strike (at non-template facilities) that moved Family Senior Care to settle with the union and give up demands that had presented significant hurdles to coming to an agreement with caregivers. This is only one example of how what was supposed to be a new approach to bargaining turned very traditional. In fact, after reaching a tentative agreement with Alliance employers and turning our attention to company-specific bargaining, it took several months to reach final agreement with a host of employers who sought to take advantage of an economic settlement largely predetermined, and the union's relative weakness based on a demobilized workforce, in order to further ratchet down settlements at their respective facilities.

The following are examples where the union was forced to deal with employers in a traditional sense:

- **Family Senior Care:** Initially, the company proposed that all "envelope" money be used to pay for the employer's increased costs related to health insurance inflation. This contradicted the terms outlined in the Alliance tentative agreement. The company was also opposed to using discretionary funds to internally standardize wages and benefits at one newly organized (non-template) facility. Only a strike threat moved the employer off this position.
- **Sava Senior Care:** The employer sought to establish their ability to unilaterally offer workers new health insurance plans without union agreement. In the interest of getting to a deal, the company moved away from this position, but not until the union moved to conduct strike petitions at non-template facilities.

- **Kindred:** This employer made it very clear that they would rather weather a strike than begin a pension plan in their San Francisco facilities, where virtually every other union nursing home has the pension. Kindred also put language on the table seeking the ability to conduct drug testing and mandatory competency testing on our members. Workers mobilized for a strike to push the employer off of this position.
- **Beverly:** The employer refused to ensure that our settlement included Fresno Care & Guidance, an IMD facility. In order to achieve an agreement that included this facility, workers were forced to move a strike petition at the building as well as build political support. Because this facility is the only non-template union Beverly home in the Alliance, workers at other facilities were not able to conduct strike petitions in their buildings to drive the best settlements.

Bargaining for Future Power

Partly due to the California Alliance agreement and the limits it placed on our bargaining (continuation of the template, no right to strike, etc.) from a position of strength, as well as the complicated bargaining process that ensued, SEIU was not successful in maximizing the payoff for workers relative to the amount of revenue received by employers. At the same time, it should be noted that several key items were negotiated that represent meaningful movement toward our expressed goals.

As described above, one very positive step in that direction was our ability to move forward - both conceptually and practically - the notion of establishing a minimum standard of starting wage rates by peer group. While we did not succeed in that initial demand in all peer groups, we did establish minimum start rates in Bay Area Urban C nursing homes. In addition, SEIU was successful in securing more dedicated funding for union homes located geographically where density and reimbursements were higher, and workers in these homes have seen this benefit in the form of additional parity increases and higher amounts of discretionary or “envelope” money. In short, employers bought into our concept of standardization of wages and benefits, thereby raising the floor for workers in Bay Area homes, many of whom were far behind other union facilities at nearby Urban C facilities.

Other important elements related to future power that came as a result of our bargaining include the following:

- **Common Expiration:** The common expiration of June 15, 2008 allows us the ability to create a crisis in the industry with employers, government, or both. The importance of this must be acknowledged, as AB 1629 is scheduled to sunset on July 31, 2008. However, it is important to note that this common expiration will mean little if there is a continuation of no right to strike in template agreements in approximately 25 homes and any new Alliance agreement prohibits our right to strike.
- **Single Bargaining Unit by Employer:** This represents progress in our bargaining relationship where we are now able to sit down at one table to discuss terms and conditions for workers at individual facilities within a company.

- **Training Fund:** This is very important, because it draws Alliance employers into working with the union in order to meet future needs.

The nature of our neutrality agreement must change to ensure 100% density

Changing our relationship with the industry and moving away from transactional dealings with these employers should include a revision of the current neutrality agreement to allow for all non-union Alliance homes to be organized into the union without employer interference and without requirements of reaching pre-defined benchmarks. This should be a principled position of any new agreement. The elimination of benchmarks and the 30% cap on organizing would signify the maturation of our relationship to a point where the parties will act together in recognition and consideration of each others' growth and success.

The current transactional relationship has generated 42 new union homes and approximately 3,000 new members between UHW and Local 434B. This does not represent an adequate payoff in relation to the union resources expended to achieve rate reform and the revenue increases described above. There still remain about 185 non-union Alliance operated facilities enjoying a prohibition on organizing and the ability to reap the full benefits of AB 1629. Belonging to the Alliance should mean that workers at all of an operator's facilities are able to join the union, not just a handful based on the discretion of the employer and whether or not benchmarks were reached.

Tort reform is a case in point. Due to a political miscalculation, more neutrality homes were pegged to achieving tort reform than were assigned to passing rate reform. Had tort reform become a reality, our two locals would have stood to receive an additional 30 homes through the current neutrality agreement. Instead, SEIU's support of a controversial tort reform package placed UHW in a precarious position with both the International Union and many of our union's allies in the advocacy community. This is a prime example of how the union dedicated resources to a project and in this case suffered – both publicly and in relation to building union strength – as a result of not being able to deliver on reaching an ethically questionable benchmark that would have satisfied the industry while leaving residents and key allies behind. This example points to the inherent problem with a transactional relationship based in delivering on benchmarks – if we aren't working in the common interest, then we are forced to work against ourselves for the sake of building union strength.

Neutrality Home Selection

The current system for selecting neutrality homes leaves too much of the decision making power in the hands of the employers. During the past few years of neutrality organizing, the selection of which homes joined the union was often a tedious and contentious process. In some cases, the decision making was mutual and the homes selected fit in with both the union's strategic organizing plan as well as the needs of the employers. In other cases, the union's preferred facilities were denied, leaving our locals

with homes that were not necessarily desirable as organizing targets. In at least two cases neutrality homes were either sold or closed their doors soon after coming into the union.

For UHW, desirability of a home was measured by a set of criteria used internally that included the following elements:

- **Geography:** Will the home in question help build union density and strength in a peer group, thereby shifting labor costs sufficiently to increase reimbursement? Was the home clustered near other neutrality homes where workers could build unity through a shared experience of organizing the union? Does the union infrastructure facilitate representation?
- **Potential Political Strength:** Would organizing the home in question make sense as part of a plan to build political clout in state assembly and senate districts where upping density could help strengthen our ability to gain influence with elected officials who will go to bat for the nursing home Alliance and its programs?
- **Financial Health:** Was the facility in question profitable, or is there reason to believe that the facility could be closed down or sold due to financial strain? How much new revenue is the facility slated to receive as a result of AB 1629?
- **Worker Desire:** Did the workers want to become union? Were workers willing to help organize other non-union workers into our union?

After two plus years of neutrality home selection that was often time consuming and sometime contentious, UHW proposed to the Alliance Board that a set of criteria similar to that outlined above be put in place and a process be agreed upon for selecting neutrality homes. Employers resisted, opting instead to exercise their exclusive rights under the Alliance agreement. Despite this fact, we continued working to organize neutrality homes that fit into our strategic vision with mixed results.

In renegotiating the Alliance agreement, it is in our union's best interest to work with employers in building a bridge to 100% density within these companies by agreeing to a process that allows for a more strategic selection of neutrality homes. A means to achieving this density that is free from benchmarks and employer obstruction is a basic necessity in developing a more effective and mutually beneficial partnership with the industry.

Templates must give way to full collective bargaining agreements

Finally, workers who have come into the union through Alliance neutrality organizing have for the most part been subject to template agreements. Currently, UHW represents members covered under template agreements at 12 of 19 neutrality organized homes, while Local 434B represents workers under the template agreement in 23 facilities. These agreements hold little economic value and rights for workers, contain no right to strike for economic or other improvements, and are devoid of many of the basic features of standard full collective bargaining agreements.

For example:

- Templates contain no provisions for arbitrating disputes with the exception of termination and economics.

- Employers have the right under the templates to unilaterally change the economic terms of the agreement and are only required to maintain a base level of expenditure and provide notice to the union if changes occur.
- Other terms and conditions of employment – such as vacation, holiday and sick leave – are not spelled out in the templates. Instead, workers must refer to individual facility employee handbooks, and employers may unilaterally make changes to these items as well as the majority of all other work rules.
- Template agreements contain no seniority rights for workers.
- Template agreements also restrict the number of allowable stewards and associated activities – hence restricting worksite member empowerment and activism in the union.

It has been and continues to be our position that the template agreement should serve as a springboard for realizing full collective bargaining rights and standard contracts for Alliance workers. As a matter of both principle and functionality, a renewed pact must spell out a clear path toward the phase out of the template agreement, and employers must be held accountable to the will of members who are covered under templates. In fact, UHW members have expressed incredible frustration and dissatisfaction with these agreements and have adopted a position that any renewed agreement should start with transitioning current templates into full contracts, and in some cases rollover into existing full contracts already in place with the same Alliance operators.

At the outset of the Alliance agreement the templates served a purpose in providing prospective employers a basic framework and idea for what could be expected in terms of minimum introductory obligations toward workers at newly organized facilities. We organized workers into the union under the templates knowing full well that these agreements would entice nursing home employers to forge ahead with us in building the kind of relationship we assumed would be required to move a legislative package around rate reform. We also organized these workers with an operating assumption that templates would eventually give way to full contracts, and that we reserved the right to have a discussion with the industry about how best we work together to phase out template agreements. Currently one school of thought suggests that the road to ‘mature’ labor relations is the utilization of labor management committees (LMC). LMCs while potentially viable in addressing some aspects of labor relations do not replace worker rights vis à vis full collectively bargaining rights and the fundamental right to strike as the means for workers to level the playing field with employers.

Unfortunately, despite holding up our end of the bargain by dedicating massive amounts of members’ resources to fend off cuts to Medi-Cal and to pass rate reform, workers who long for more continue to be held hostage by the template agreements while employers continue in their efforts to resist any movement away from these inadequate contracts. We have enabled employers to use the template agreement as a basis for attempting to define their maximum ongoing obligation to all Alliance workers – neutrality organized or otherwise. In the interest of raising standards in cooperation with the nursing home industry, it is absolutely necessary that all Alliance workers see a path toward full master agreements by company and an elimination of templates.

APPENDIX A:

METHODOLOGY AND ASSUMPTIONS

1. Alliance Costing (Two sets of figures – 2004 to 6/15/08 AND 2004 to 7/31/07):

| <u>Element</u> | <u>Assumption</u> |
|----------------|--|
| WAGES | \$2.25 total: \$.75/hr @ 1/1/06, \$.75/hr @ 1/1/07, and \$.75/hr @ 1/1/08 (ending 6/15/08). No crediting factored in, no roll-up costs for payroll taxes, etc. factored in. |
| PARITY | 1/3 of facility-specific parity cost at each date listed above. Source: Alliance Costing Model (SEIU). |
| ENVELOPE | \$.50/hr for all Urban C facilities, \$.25/hr for All Others: 1/3 of envelope cost at each date listed above. Exceptions: per agreement, Envelope for Evergreen, Sava, and FSC is full amount on 1/1/07; Envelope is reduced by \$.10/hr for Sun-Mar facilities. |
| TRAINING FUND | \$.06/hr effective 1/1/07, \$.07/hr effective 1/1/08. |
| HEALTH | Assumes ½ the “snapshot cost” per facility at 1/1/07, remaining ½ at 1/1/08 – where data is available. Source: Alliance Costing Model (SEIU). |
| B.U. HOURS | Employer-provided annual hours used for all facilities where available. Average of Alliance annual hours used for facilities where no hours information was provided (123,804). Source: Alliance Costing Model (SEIU). |
| COMPANIES | Includes all union facilities for the following companies: Avalon, Beverly, Chase, Country Villa, Covenant Care, Evergreen, Golden State, Horizon West, Foresight/IQC, Kindred, Longwood, Sava, Family Senior Care, Skilled, SunBridge, Sun-Mar. |
| REVENUES | Medi-Cal pd rates are compared from 2003-04 to 2006-07. For 2007-08 a 3% increase in all rates is assumed. All actual Medi-Cal rates used exclude monies paid for Quality Assurance Fees and dollar approximations are arrived at by multiplying annual increase amounts by total Medi-Cal resident days as reported to OSHPD. Totals are cumulative. Source: OSHPD, SEIU Rate Analysis. |

2. **Percent labor cost increase comparison to percent Medi-Cal reimbursement increase:**

Labor Cost Calculations

Base labor costs calculated using employer-provided data from “big table” discussions. This dataset is incomplete and excludes all facilities operated by Longwood, so the analysis is done only for facilities where data was available.

Base average hourly labor costs include all regular wages paid plus paid time off wages paid, annual health insurance contribution costs, and annual retirement/pension employer costs. This number is divided by the total annual b.u. regular hours as provided by the employer.

Next, individual facility “snapshot” hourly increase costs (as calculated by SEIU and provided to employers as the total cost of the economic package) are added to the base facility average hourly labor costs in order to determine the percent increase in labor costs negotiated. This includes the following elements: new wage increase, 2005 credited wage increase amount, health benefits improvement cost, training fund, parity, and envelope.

Percent Increase in Medi-Cal Rates

This number is arrived at by comparing an assumed 07-08 weighted average Medi-Cal rate (06-07 rate minus QAF plus 3%, weighed by annual Medi-Cal resident days) to each company’s weighted average 03-04 Medi-Cal rate. All rates used in this analysis exclude QAFs.

APPENDIX B:

FAMILY SENIOR CARE/SAVA SENIOR CARE: A CASE STUDY

An illustration of the problems resulting from a transactional relationship with the industry can be seen in the case of Family Senior Care (FSC) and Sava Senior Care (Sava). With SEIU members working in 14 facilities statewide, these employers (who entered into negotiations bound to a multi-employer master agreement) are a primary example of how those who gained the most financially through AB 1629 while exploiting the union's perceived weaknesses have enjoyed the privileges of membership in the Alliance.

FSC and Sava were among the last employers to settle contracts with the union, closing deals in early December 2006. In the case of both companies settlements were achieved only after members began to mobilize workplace actions and even threaten a strike at FSC. What's more, FSC's intransigence at the bargaining table was not based in financial concerns. At the employer's own admission, prior to ultimately bowing to the union's demands, FSC was unwilling to settle with the union for purely ideological reasons related to our proposal to spend pre-negotiated "envelope" monies on modest pension improvements. It is extremely important to consider that collectively FSC and Sava allowed SEIU to organize only three additional facilities through the neutrality agreement, representing little increase in market leverage for the union.

The following shows how FSC and Sava sought gains through their dealings with the union in the context of the current Alliance agreement and the critique presented herein.

The companies maximized their gains from AB 1629 by working to minimize those of our members:

As outlined above, both companies fared well under AB 1629, seeing substantial increases in their Medi-Cal reimbursement rates and large sums of increased revenues – a testament to the 'union difference' for nursing home employers in terms of maximizing reimbursement for higher past spending on labor costs as a result of a collective bargaining history influenced by our ability to drive standards in higher density areas, particularly in the Bay Area.

Between 2004 and the June 15, 2008 contract expiration date, the companies are projected to receive the following approximate cumulative increases:

- **FSC:** \$31.6 million, or about a 30% overall increase in Medi-Cal rates at union facilities.
- **Sava:** \$14 million, or nearly 31% overall increase in Medi-Cal rates at union facilities.

At the same time, improvements in standards for SEIU's members will cost the companies less than 30% of increased revenues at FSC and less than 20% of increased revenues at Sava. Both companies have committed to increase bargaining unit labor costs by less than 10% over the life of the current contract.

The companies forced the union to fight for improvements while demanding takeaways at the table.

During the course of determining the framework for an economic settlement with the Alliance, it became very clear that companies like FSC and Sava were getting a break financially. In the higher density Bay Area, these companies were the leaders in terms of wage and other benefit standards as a result of a history of struggle and building the union in those facilities. For example, standardized wage rates in the Urban C peer group were actually defined by those standards already achieved at UHW-represented facilities operated by FSC and Sava. The net effect for these companies was that workers would receive the same minimum package as others in the Urban C peer group less additional parity increases and less increases in health insurance improvements per the overall tentative agreement. Financially, these companies got a break.

When it came time to bargain alone with these companies over the use of discretionary “envelope” monies and other non-economic aspects of the contract, workers were faced with two employers who were insisting on holding the line economically and jamming the union with takeaways. This is exemplified by the following:

- **FSC:** The company originally proposed that all “envelope” monies be used to cover increased employer costs for health insurance premium inflation, then sought changes in employee health benefits that would have resulted in higher co-pays for members. Focused on health savings for the company, the employer also came to the table refusing to use discretionary funds to bring one non-template facility to benefit parity with other FSC buildings.
- **Sava:** This employer put language across the table seeking the ability to unilaterally change the terms of workers’ health benefits without a discussion with the union – the same right employers have under the template agreement. They were also unwilling to make further improvements to health, pension and other benefits at their Southern California template facility that would have put those members in line with Sava’s other union homes.

Ultimately, bargaining with these employers forced the union to break up the multi-employer master agreement and settle one company at a time. Settlements did not come without a struggle, and it became clear that limits placed on Sava’s template facility would not allow workers there to mobilize to effectively wage a fight for the improvements they were seeking. In addition, the template workers’ perspective was that the boss and the union had been responsible for the situation at the table, and third-party unionism threatened our ability to help engage and mobilize these members to act in their interests. Sava workers settled after non-template facilities moved a strike petition and the employer backed off of their health insurance flexibility in exchange for our backing off demands for health and pension improvements at the template facility.

In the case of FSC – the very last of the major Alliance employers to come to a settlement – workers voted to strike and moved forward with building a fight to ensure the SEIU pension continue to exist and improve in FSC’s union homes. “Corporate is just not interested in having the pension,” the employer representative said to our members at the bargaining table – a statement that captures the overall problem with a relationship of this kind. Our members, who represented decades of dedicated service to

both residents and the company responded in kind and won. In unity and in principle, the demands of the union were met because workers were prepared to strike – Alliance partnership or not.