

# GETTING ORGANIZED



**UNIONIZING HOME-BASED CHILD CARE PROVIDERS**

The National Women's Law Center is a nonprofit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families, including employment, education, health and reproductive rights, and family economic security. At the time this report was written, Deborah Chalfie was Senior Counsel, Helen Blank was Director of Leadership and Public Policy, and Joan Entmacher was Vice President for Family Economic Security at the National Women's Law Center.

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by Deborah Chalfie, Helen Blank, and Joan Entmacher

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## TABLE OF CONTENTS

<b>INTRODUCTION . . . . .</b>	<b>5</b>
<b>BACKGROUND . . . . .</b>	<b>5</b>
Home-Based Child Care Providers . . . . .	5
Unions and the Child Care Workforce—The Legal Backdrop . . . . .	6
The Development of a New Organizing Model. . . . .	7
<b>THE WHY, WHAT, WHO, AND HOW OF UNIONIZING HOME-BASED CHILD CARE PROVIDERS . . . . .</b>	<b>8</b>
Creation of Legal Authority for Unionization . . . . .	8
Definition of the Bargaining Unit . . . . .	8
Election of a Representative . . . . .	9
Identification of Bargainable Issues . . . . .	10
Strength of the Bargaining Mandate . . . . .	10
Implementation of the Agreement . . . . .	11
Union Competition and Cooperation. . . . .	11
<b>GETTING ORGANIZED: A STATE STATUS REPORT . . . . .</b>	<b>12</b>
States Where Unions Have Achieved Formal Recognition . . . . .	12
<i>Illinois</i> . . . . .	13
<i>Washington</i> . . . . .	14
<i>Oregon</i> . . . . .	16
<i>Iowa</i> . . . . .	17
<i>New Jersey</i> . . . . .	18
<i>Michigan</i> . . . . .	18
<i>Wisconsin</i> . . . . .	19
States Where Authorizing Legislation Has Been Passed but Vetoed . . . . .	20
<i>Rhode Island</i> . . . . .	20
<i>New York</i> . . . . .	20
<i>California</i> . . . . .	21
<i>Massachusetts</i> . . . . .	22
States with Local Organizing Activity . . . . .	22
<b>CONCLUSION . . . . .</b>	<b>23</b>
<b>ENDNOTES. . . . .</b>	<b>24</b>
<b>APPENDIX: SUMMARY OF STATE ACTIVITY . . . . .</b>	<b>34</b>



## INTRODUCTION

For decades, child care advocates, provider associations, and others in the field have worked together for increased public investment in child care, in order to improve the quality of child care and make it more affordable. This work has included efforts to improve the pay and working conditions of child care providers, including by securing more funding for child care assistance to help families pay for care, developing and encouraging greater education and training opportunities for providers, fighting for “a worthy wage” and benefits for the child care workforce, and giving child care providers an additional voice on policy and regulatory issues.

Unions have been an important voice in the effort to increase public investment in child care and they share with the broader child care advocacy community a concern for improving the lot of child care providers. But unions have also begun to play a role in state campaigns for increased public investment in child care that is more akin to their traditional role: worker representative.

Unionization of the child care workforce is not a new phenomenon. A small percentage of child care centers and Head Start programs have been unionized for decades. What is new is that unions have begun organizing home-based child care providers—both regulated family child care (FCC) providers and “family, friend, and neighbor” (FFN) care providers who are exempt from regulation but receive public funds—with the objective of winning improvements in rates and procedures for providers receiving child care subsidies, benefits, training opportunities, and regulations governing the provision of home-based child care.

The movement to organize FCC and FFN providers is growing rapidly and, while it is too early to fully evaluate the impact of the strategy, developments so far are promising. Over just the past two years, seven states—Illinois, Iowa, Michigan, New Jersey, Oregon, Washington, and Wisconsin—have authorized union representation and negotiation with the state on behalf of one or more of these types of providers. Three of these states—Illinois, Oregon, and Washington—have negotiated and signed statewide contracts; all provide for improvements in compensation, training, and treatment for home-based providers. Moreover, in all three states, the governors requested in their state budgets not only additional funding for the home-based providers covered by the contract, but also for the child care centers receiving state subsidies. Although the governors of four states—California, Massachusetts, New York, and Rhode Island—have vetoed legislation to authorize unionization and negotiation, the election of new governors in two of these states may lead to renewed union efforts. Finally, localities in a few states have granted some degree of union recognition, though not on a statewide basis.

This report focuses on the statewide campaigns to date to permit home-based providers—both regulated FCC providers and FFN providers who receive public funds and are exempt from regulation—to join unions and bargain for better working conditions. Information about these organizing drives was gathered by reviewing authorizing executive orders and legislation, organizing- and bargaining-related documents, and articles, as well as by conducting numerous telephone interviews with national union leaders and on-the-ground organizers, policy researchers, child care resource and referral staff, representatives of family child care providers and family child care associations, and child care advocates. While not exhaustive, these sources provide a snapshot of the state of play on unions’ efforts to organize home-based child care providers.

*Unions have been an important voice in the effort to increase public investment in child care.*

## BACKGROUND

### Home-Based Child Care Providers

Home-based child care providers are an integral component of the child care system in the U.S.: about two-thirds of children under age six regularly spent some time in nonparental care in 2003, and nearly





42% of these children were in home-based care for all or part of that time.<sup>1</sup> Although many home-based providers do not request remuneration, nearly 1.8 million home-based caregivers are paid for their child care services, including an estimated 804,000 providers who are relatives of the children in their care, another 650,000 providers who care for unrelated children in the provider's own home, and about 298,000 nonrelatives who provide care in the child's home.<sup>2</sup> States vary in the extent to which they regulate these providers. However, in most states, providers who care for more than a few unrelated children in the provider's home are subject to some level of state regulation in order to operate, whereas providers who care for related children in the provider's home, or provide care in the child's own home, are generally exempt from state regulation. In this paper, regulated home-based providers are referred to as FCC providers, and home-based providers who are exempt from regulation are referred to as FFN providers.

Paid child care providers may be "private-pay"—receive full payment from parents—and/or may receive subsidies from the state for serving children from low-income families. The major source of federal funding for child care subsidies<sup>3</sup> is the Child Care and Development Block Grant (CCDBG).<sup>4</sup> Under CCDBG, states set policies, within federal parameters, that determine the families eligible for subsidies and the amount of assistance they can receive. To receive these subsidies, providers must agree to the reimbursement rate established by the state and (except for specified relatives) must meet certain state-set health and safety requirements.

Although providers of home-based child care may differ from one another based on whether they are paid, by whom, and whether they are subject to or exempt from regulation, there are at least two things that most FCC and FFN providers have in common: most are women, and most have low earnings. The Center for the Child Care Workforce estimates that 99% of FCC and FFN providers are women.<sup>5</sup> And the average annual earnings of "self-employed"<sup>6</sup> child care providers in 2002, including for part-time work, ranged from a low of \$6,209 in New Mexico to a high of \$16,367 in Washington.<sup>7</sup> Moreover, some state studies have found that few family child care providers are able to obtain health insurance through their business (as opposed to coverage through a spouse).<sup>8</sup> With these low earnings and few benefits, FCC and FFN providers are good candidates for union organizing campaigns.

## Unions and the Child Care Workforce—The Legal Backdrop

Unions have been longtime advocates in support of increased funding and better child care policies at the federal level and in many states. Moreover, in some states, unions have worked to organize child care workers in child care centers. Beginning in the 1960s, the American Federation of State, County, and Municipal Employees (AFSCME) organized several thousand workers in child care centers in New York City.<sup>9</sup> In the 1970s, the United Auto Workers (UAW) began organizing center workers in Massachusetts, Michigan, and Wisconsin,<sup>10</sup> and over the last two decades other unions, including the Service Employees International Union (SEIU), American Federation of Teachers (AFT), National Education Association (NEA), International Brotherhood of Teamsters (IBT) and Painters Union have been involved in organizing workers in Head Start programs and child care centers in scattered cities across the country.<sup>11</sup> Still, as of 2004, only about three percent of the child care workforce was in a union or covered by a union contract.<sup>12</sup>

Child care centers may be difficult to organize, but at least there is a traditional employer-employee relationship between center owners and staff. In contrast, home-based providers do not easily fit into a legal status that permits them to unionize. The federal labor laws that cover the private sector expressly exclude both independent contractors and persons providing domestic services in another person's home from the legal definition of "employee."<sup>13</sup> FCC and FFN providers are either independent contractors—self-employed business owners—or, in the case of a small number of FFN providers who are

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providing care in a child’s home, otherwise not in an employer-employee relationship under the federal labor relations laws.

In fact, since these individuals are self-employed persons or businesses—and thus competitors—they are subject to state and/or federal antitrust laws and are actually *prohibited* from agreeing on matters such as rates,<sup>14</sup> unless their activities are exempt under the “state action” doctrine. Under this doctrine, anticompetitive activities that are authorized by and “supervised” by the state are exempt from antitrust scrutiny.<sup>15</sup> Accordingly, unions may mount organizing campaigns, providers can show support by joining a union, and the union and providers can lobby together for policy changes without any special legal authority, but in order to negotiate agreements over rates, benefits, and similar matters, an exemption by the state from the antitrust laws is needed.

Even if FCC and FFN providers were considered employees under federal labor laws, however, the entities with which they would negotiate over key elements of their work—state and local governments—are not considered employers. They are expressly excluded from the definition of “employer” under the federal labor laws, and thus state and local public-sector employees also require specific legal authority in order to obtain collective bargaining rights with their government employer. Yet, only about half of the states authorize public employees to be represented by a union and bargain collectively with the state.<sup>16</sup>

In other words, without additional, specific legal authority, home-based child care providers have no right to organize for the purpose of collective bargaining, and the state has no obligation to recognize or negotiate with the providers’ representative.

## The Development of a New Organizing Model

Faced with a similar lack of legal authority with respect to a similar group of independent contractors, in the 1980s the Service Employees International Union (SEIU) began developing a new model of labor organizing and used it to organize another group of low-paid, mostly female, decentralized individuals who provide home-based caregiving services: home care workers. Also called personal care attendants, home care workers provide services such as bathing, dressing, cooking, cleaning, and limited medical services that enable persons with disabilities and the frail elderly to stay in their own homes.

Notwithstanding the absence of a traditional employer-employee relationship, this model used the provider’s relationship with the state—receipt of payment from the state under a program administered by the state—as the nexus to find or fashion an “employer of record” with whom to bargain. The first state in which SEIU tested this new model was Illinois. In Illinois, home care workers are independent contractors hired and supervised by consumers, but the state sets the reimbursement rates and pays the providers using funds from Medicaid and other support services programs. Initially, SEIU convinced Illinois home care workers to join the union, and together they lobbied the state legislature to win several rate increases, a grievance procedure, and improvements in payment procedures. In this way, the union was able to win several victories over two decades by mobilizing providers informally, until it won formal recognition and bargaining authority through an executive order<sup>17</sup> and codifying legislation in 2003.<sup>18</sup>

SEIU used a similar model in California in the 1980s. California has a home care system in which the counties screen residents for eligibility, home care workers are hired and supervised by the elderly or disabled consumers for whom they care, and workers are paid by the state’s In-Home Supportive Services program using state and federal funds. After organizing local chapters and unsuccessfully suing in one county to have home care workers declared county employees, SEIU advocated for and won state legislation in 1992, first permitting and later requiring counties<sup>19</sup> to pass ordinances to create local “public authorities” that could serve as employers of record with the authority to bargain with the union.<sup>20</sup> This new model spread, with slight variations, to some other states.<sup>21</sup>



This model developed to organize home care workers is now being adapted and extended by SEIU, AFSCME, AFT, Communications Workers of America (CWA) and United Auto Workers (UAW) to organize other home-based caregivers who have a relationship with the state: FFN providers who receive subsidy payments and FCC providers.

## THE WHY, WHAT, WHO, AND HOW OF UNIONIZING HOME-BASED CHILD CARE PROVIDERS

The changing role of unions in representing FCC and FFN providers has sparked interest in what a union of independent, home-based child care providers looks like, how it comes about, and what it can accomplish. This subsection describes the legal process for authorizing home-based child care unions, who is being unionized, the election, recognition and bargaining process, and what it means to reach an agreement. Although home-based providers do not become legally full-fledged employees of the state, the mechanisms by which these providers become authorized to unionize, the negotiation rights acquired, and the means by which any negotiated agreement may be implemented and enforced in several respects resemble those applicable to public employees.

### Creation of Legal Authority for Unionization

As they have done with home care providers, the unions working to organize home-based child care providers have sought special legal authority from the state requiring it to serve as providers' employer of record and to bargain collectively with their union representative. No state has taken the approach of making providers public employees without qualification, not only because the providers do, indeed, function as independent contractors, but also because categorization as a public employee under state law may trigger certain rights (e.g., civil service rights) and benefits (e.g., health insurance, pensions, unemployment insurance, etc.) that can involve significant costs. Indeed, six of the eleven states that have recognized or attempted to recognize home-based child care unions so far have expressly disclaimed the public-employee status of the providers—the law states that providers are *not* employees, but their right to organize and negotiate is being recognized anyway.<sup>22</sup> In two states, the law granting providers organizing and negotiating rights explicitly states that providers are employees, but only for the very limited purposes specified.<sup>23</sup> One state with several bargaining units makes some providers qualified public employees and disclaims that status for other providers.<sup>24</sup> In the remaining two states, the law is less clear regarding the employee status of the providers, but authorizes negotiations between the state and the providers' representative.<sup>25</sup>

The legal authority needed for FCC and FFN providers to unionize and negotiate with the state, thus far, generally has been derived from an executive order from the governor,<sup>26</sup> state legislation,<sup>27</sup> or both.<sup>28</sup> Executive orders have the disadvantage of being revocable by succeeding governors with the stroke of a pen,<sup>29</sup> whereas legislation is more difficult to repeal. In all seven of the states that have authorized FCC and FFN providers to unionize and negotiate, the governor issued an executive order of some sort,<sup>30</sup> and in two of those seven states the orders were quickly followed by codifying legislation.<sup>31</sup> Although an executive order is not a necessary legal predicate to legislation, it may be a helpful political predicate. There are four states in which bills have passed the legislature without any preceding executive order,<sup>32</sup> but in all four the governor vetoed the legislation.

### Definition of the Bargaining Unit

A major issue in unionizing FCC and FFN providers is defining *who* is being organized. The primary focus of unions' organizing efforts has been providers who receive subsidy payments from the state (regardless of regulatory status), since they have a financial, employment-like relationship with the state and since the receipt of subsidy payments provides a convenient mechanism for identifying them. FCC provid-

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ers who are regulated by the state but who do not receive subsidies are sometimes also included, either in the same bargaining unit as the providers who receive subsidies, or in a separate, second bargaining unit. FFN providers who do not receive subsidies do not have a requisite relationship to the state since they are neither regulated by nor receive payment from the state, and are thus not the target of union organizing efforts.

The executive orders and legislation permitting home-based providers to organize specify which providers may be grouped together for representation and bargaining purposes. Providers may be delineated into one or more units based on their regulatory status, subsidy participation, and/or geography. In general, in order to be grouped into the same bargaining unit, workers must share a sufficient “community of interest” in their compensation, benefits, job functions, and working conditions such that the union can represent all unit members fairly (without conflicts of interests between members) and efficiently.<sup>33</sup> In practice, though, how these bargaining units are defined may be a function of union preference, provider preference, or political factors. For instance, in New York, the unions decided among themselves to focus their organizing efforts on different groups of providers in different geographic areas,<sup>34</sup> whereas in Iowa, FCC providers wanted to be represented separately from FFN providers, and expressed a preference for one union over another.<sup>35</sup> In Oregon, the governor endeavored to satisfy two competing unions by creating two separate bargaining units, each represented by one of the competing unions.<sup>36</sup>

The eleven states that have authorized home-based providers to unionize and negotiate, or passed authorizing bills that were vetoed, have differed both as to the types of providers they authorized to unionize and the composition of the bargaining unit (or units). Three states permitted only subsidized FCC and FFN providers to be part of a bargaining unit,<sup>37</sup> whereas eight states permitted subsidized and unsubsidized FCC providers and subsidized FFN providers to do so.<sup>38</sup> Moreover, three states created only one statewide bargaining unit of all subsidized FCC and FFN providers,<sup>39</sup> and four more created one statewide bargaining unit of subsidized and unsubsidized FCC providers and subsidized FFN providers.<sup>40</sup> The four remaining states created two or more bargaining units (see state descriptions for details).<sup>41</sup>

## Election of a Representative

The process by which home-based providers elect to unionize may be prescribed in the authorizing law itself or by reference to existing state laws governing public-sector unions. The election process for FCC and FFN providers has been somewhat less formal than the process used by public-sector or private-sector employees, but it generally contains the same basic elements. Once the bargaining unit (or units) is defined, the providers who want a union, or want to join a particular union among competing unions, sign a card indicating their support. If and when a certain percentage of providers indicate their support for a union, the card-signing itself may be verified and taken as the election, or the cards are taken as demonstrating sufficient interest in having an election. Elections are held by mail-in ballot, with recognition subject to official certification of the results, for example by a state mediation or arbitration board.

Everyone represented by a union is encouraged to join the union, but an individual’s decision whether to join a union is always a voluntary one. FCC and FFN providers who join the union are required to pay union dues, and if the provider receives child care subsidies, the dues payments may be deducted from the provider’s reimbursement check. In addition, in several states, the legislation recognizing providers’ right to unionize also authorizes the union to negotiate and deduct a “fair-share” fee (amount is typically set by collective bargaining but can be no higher than the dues amount) from the reimbursement payments of a provider who does not join the union.<sup>42</sup> Fair-share fees are typical in collective bargaining agreements: nonmembers who are in the bargaining unit and thus benefit from any increase in rates or other improvements obtained in the bargaining agreement may be required to pay a fair-share fee to compensate the union for the costs of negotiating and servicing the contract.



## Identification of Bargainable Issues

The executive order or legislation that authorizes FCC and/or FFN providers to organize and negotiate an agreement with the state also usually addresses the “bargainable” issues that may be discussed and negotiated. In all of the states that have authorized unionization and negotiation, or passed authorizing bills that were vetoed, the authorizing provision frames the scope of the issues broadly, for instance, as “issues of mutual concern,” “economic matters,” or “all terms and conditions” of the provision of child care services, and sometimes lists by way of example specific bargainable issues.<sup>43</sup> These issues include:

- subsidy rates and payment procedures;
- health benefits;
- professional development and training opportunities;
- grievance procedures; and
- health and safety regulations.

Six<sup>44</sup> of the eight states<sup>45</sup> that permit FCC providers who do not receive subsidies to be part of a bargaining unit, or that included such authority in a bill that was vetoed, expressly identify regulatory requirements among the bargainable issues.<sup>46</sup> Every executive order or legislative enactment authorizing home-based providers to negotiate regulatory requirements with the state makes clear that any change in regulations or statute must follow normal government decision-making processes by rulemaking or legislative enactment. But the union can represent these providers in their communications with regulatory agencies regarding the interpretation of the regulations and any desired changes,<sup>47</sup> and a negotiated agreement could obligate the state to initiate a rulemaking or “regulatory negotiation” proceeding on an issue, hold public hearings in the evening when providers could attend, or impose similar conditions.

The authorizing legislation lays out the scope of bargainable issues, but the union and its members identify priority issues and develop a contract proposal that reflects the membership’s priorities. Once the contract is negotiated, the membership must ratify it for it to become final.

## Strength of the Bargaining Mandate

What a union can accomplish for FCC and FFN providers may rest on the strength of the bargaining obligation created and the enforceability of any negotiated agreement. In nine states, FCC and FFN providers have been granted or are seeking “collective bargaining” rights,<sup>48</sup> while in two states, these providers have been granted only the opportunity to “meet and confer.”<sup>49</sup>

Generally with collective bargaining (also often called “collective negotiations” in the public sector), the parties approach the bargaining process on a more equal footing than may exist otherwise. Each is obligated to meet and bargain in good faith with the intent to reach an agreement and, if an impasse is reached, the dispute is often required to be decided by a neutral, third-party arbitrator. The parties need not agree on any particular issue, but there is an expectation and intent to reach agreement, and a process for resolving impasses. Any agreement reached, once ratified by the membership, is an enforceable contract that, subject to any needed ratification or implementation by the legislative or executive branch (see Implementation subsection below), is binding on the state.

Meet-and-confer authority, on the other hand, is a weaker mandate.<sup>50</sup> The state is obligated only to meet and discuss issues. It is required to negotiate in good faith and attempt to reach an agreement,<sup>51</sup> but failure to reach agreement is not generally subject to resolution by a third party, thus permitting the negotiations to terminate without reaching agreement. Nevertheless, even a requirement on a state (or locality) to meet and confer with a union representative of FCC and/or FFN providers about subsidy rates

and other issues can be, as some advocates who have had previous difficulties being heard by state agencies have noted, a considerable advance over no negotiation mandate at all. Moreover, should an agreement be reached and memorialized, the parties will proceed as if they had a collective bargaining agreement. That is, in the public-employment context, the key distinctions between the two types of mandates relate, for the most part, to the duties and rights of the parties *before* an agreement is reached. Once an agreement is reached, it can become an enforceable contract that is as binding as an agreement that is the result of collective bargaining.<sup>52</sup>

## Implementation of the Agreement

In the context of public-sector collective bargaining generally, “binding” is a relative term. In most of the states that recognize public employee unions and confer collective bargaining rights, disputes are subject to compulsory binding arbitration,<sup>53</sup> but public employees seeking to enforce an agreement are not permitted to strike.<sup>54</sup> Moreover, the ratification of a contract does not usually mean that the contract is self-executing. As one union staff member observed, one way in which collective bargaining in the public sector differs from the private sector is that the executive branch—with which the union bargains—usually does not have the authority to “give you what it has agreed to.” Thus, in most states, any agreement between the state and public employees that requires either changes in statutory law (e.g., a change in retirement plan rules) or appropriations is tentative until approved by the state legislature or until funds to implement the contract are appropriated.<sup>55</sup>

Thus far, the same type of implementation process that applies to public-sector bargaining also typically applies to agreements between FCC and FFN providers and the state. In most of the eleven states that authorize or proposed authorizing providers to organize, these providers are expressly prohibited from engaging in strikes.<sup>56</sup> Instead, the process contemplated for resolving impasses and/or enforcing previous agreements is usually some type of arbitration by a neutral third party. Moreover, in accordance with the established process in the public sector, once an agreement is reached with the union representing providers, the governor includes any financing needed to fulfill the terms of the contract in her or his proposed budget, and then it is up to the state legislature to appropriate the funds. In five<sup>57</sup> of the nine states that have granted or proposed granting collective bargaining rights, and one of the two states that have granted meet-and-confer authority,<sup>58</sup> to FCC and FFN providers, the authorizing executive order or legislation expressly provides that negotiated agreements that require additional funds to implement their terms are contingent upon legislative appropriations and are subject to modification if those appropriations are not forthcoming.

Even when the union and its allies must lobby the executive branch and the legislature for the additional funding or regulatory improvements needed to implement a contract, this is qualitatively different from the traditional lobbying done by advocates for increased public investment or quality improvements. The consensus among those interviewed for this report was that a labor agreement provides the union and its allies with a significant leg up in the lobbying process. Rather than approaching the governor and legislature with a “request,” a collective bargaining agreement constitutes a “mandate” on the executive branch to do all it can to fulfill the agreement. Any increased investment is included in the governor’s budget proposal, and that proposal has the power of the executive branch behind it. Moreover, that proposal has the resources and political clout of a union behind it, which in many states, goes a long way with legislators of both parties.

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## Union Competition and Cooperation

Among the various unions that have been involved in organizing FCC and FFN providers, AFSCME and SEIU have been the most active and expansive in their organizing campaigns.<sup>59</sup> But the two unions have targeted their organizing efforts at different populations of providers in different states. Although





patterns are not uniform, AFSCME has generally sought to represent all FCC providers, whether subsidized or not, as a starting point, and eventually expand to subsidized FFN providers, whereas SEIU has generally sought to represent all subsidized FCC and FFN providers.

In three states,<sup>60</sup> unions have sought recognition without competition from another union. Usually, however, there is more than one union interested in representing providers. In two states,<sup>61</sup> unions aggressively competed to organize and win the right to represent all providers. In all of the others, the interests of competing unions have been reconciled either by creating two or more bargaining units that are represented by different unions (three states<sup>62</sup>) or by forming one joint “unity” union with each other or with other unions (three states<sup>63</sup>).

In the summer of 2006, SEIU and AFSCME announced<sup>64</sup> they had reached agreement on a plan under which one union or the other will take the lead in organizing FCC and FFN providers in sixteen states, and in one state, each union would take the lead in a different part of the state. As a result:

AFSCME will have jurisdiction for: Hawaii, Michigan, Oklahoma, New Jersey, New Mexico, New York, Ohio, and Wisconsin. SEIU will have jurisdiction in Arizona, Colorado, Connecticut, Louisiana, Massachusetts, Maryland, North Carolina and Rhode Island. The unions will share jurisdiction in Minnesota. An earlier agreement established SEIU/UCCU-AFSCME [United Child Care Union-AFSCME] joint family child care unions in California and Pennsylvania. AFSCME also has partnership agreements with the United Auto Workers in Michigan and with the Communication Workers of America in New Jersey.<sup>65</sup>

To the extent that unions avoid the expenditures associated with competition, they can focus their resources in their assigned states and the number of states in which providers are becoming unionized may be expected to grow more quickly.

## GETTING ORGANIZED: A STATE STATUS REPORT

The movement by unions to organize and win bargaining rights for FCC and FFN providers has grown rapidly over the past two years. In 2005 and 2006, as previously described:

- Eleven states have seen either an executive order issued, bills passed by the legislature, or both, concerning the unionization of home-based child care providers. Of these eleven:
  - Seven states have authorizing executive orders or laws in effect that grant union negotiating rights: Illinois, Iowa, Michigan, New Jersey, Oregon, Washington, and Wisconsin.
  - Four states have passed authorizing legislation granting such rights, but it was vetoed by the governor: California, Massachusetts, New York, and Rhode Island.<sup>66</sup>
- In at least three states—Minnesota, Ohio, and Pennsylvania—unions have organized FCC and FFN providers on the local level, negotiating with local policymakers and agencies over matters within their jurisdiction, with the intention of eventually working for state-level authorization.

This section provides a description of the developments in each state; the appendix provides a chart summarizing these developments.

### States Where Unions Have Achieved Formal Recognition

The seven states in which home-based child care providers have won statewide legal recognition and the opportunity to negotiate with the state over issues related to the provision of child care services are discussed below in chronological order of when they were granted negotiating rights.

*The movement to organize home-based child care providers has grown rapidly over the past two years.*

## Illinois

Illinois was the first state to complete negotiations and sign a statewide contract for home-based child care providers. In February 2005, Illinois Governor Rod Blagojevich issued an executive order permitting subsidized FCC and FFN providers to organize and requiring the state to engage in “collective negotiations” with their representative.<sup>67</sup> SEIU campaigned for and won the right to represent all 49,000 subsidized FCC and FFN providers—9,000 FCC providers and 40,000 FFN providers.<sup>68</sup> Six months after the executive order, legislation made subsidized FCC and FFN providers “public employees” and the state a “public employer,” but only for the limited purpose of granting collective bargaining rights.<sup>69</sup> The legislation is clear that providers are not eligible for the statutory health and retirement benefits that public employees receive.<sup>70</sup> However, the legislation also specifies that the parties may bargain over any term or condition of employment under the state’s control, which can include the provision of health insurance.<sup>71</sup>

The rights accorded to the Illinois home-based child care providers are uniquely strong in two important respects: Illinois is the only state of the eleven in which the statute provides that any contract negotiated by the providers is both self-executing and enforceable by the right to strike. The authorizing legislation does not make the implementation of any contract contingent upon further legislative action, and the executive order that preceded the authorizing legislation states that the Department of Human Services has “plenary authority” to set rates. According to those interviewed, this means that the agency is bound to make any contract-related expenditures, and if additional appropriations are not forthcoming, the contract must be financed out of existing agency funds for other components of its programs. Unlike most of the other ten states, the Illinois authorizing legislation contains no express bar on providers’

### Obtaining Health Insurance Benefits for Home-Based Child Care Providers<sup>72</sup> through Unionization

With roughly one-fourth of the U.S. child care workforce uninsured,<sup>73</sup> there is interest in unionization as a way to increase access to affordable health insurance. In addition to being able to bargain for FCC and FFN providers to have access to new or existing state-sponsored programs,<sup>74</sup> unions are permitted to establish collectively bargained health insurance plans, called Taft-Hartley plans, which must be jointly managed by the union and the employer.<sup>75</sup> These plans may be able to make health insurance more affordable by 1) including large groups to pool the risk of loss, 2) self-insuring,<sup>76</sup> and 3) getting the employer of record to pay a share of health insurance premiums, as was done in Illinois.

SEIU has recently created a new national health plan with the aim of creating scaled-back but more affordable health care options for home-based child care providers and other low-wage union members such as janitors and home care providers. SEIU members will eventually be offered three types of plans:

- Lilac - This first tier of benefits is already available and costs about \$25/month for an employee and family; it provides some eye and dental exams, access to a nurse hotline, and a discount on some medical services, but no insurance for health care.<sup>77</sup>
- Violet - This second tier contains several insurance options (Violet plans A-E) with varying levels of service. The lowest level plan (Violet A, already available) includes the Lilac benefits plus some coverage for doctor visits with a \$10-15 co-payment, outpatient diagnostic tests, and emergency room visits (for accident injuries only), subject to annual limits of a few hundred dollars for each service. The low-tier Violet plans do not cover hospitalization or associated physician services; monthly premiums start at \$80/month for employee-only coverage.<sup>78</sup> Higher-benefit plans (not yet available) will provide some benefits toward prescriptions (Violet C-E), outpatient surgery (Violet B & C) and hospitalization expenses (Violet D & E).<sup>79</sup>
- Purple - This third tier will eventually be offered, and it too will contain several options. It will include the Lilac and Violet benefits plus more comprehensive insurance, but with higher co-pays than the Violet plans and premiums that are expected to be around \$300 to \$425/month for employee-only coverage.<sup>80</sup>

With a plan in place, SEIU can negotiate agreements with employers of record to make contributions toward the cost of premiums for their members.





*In Illinois, advocates used subsidy rate increases in the contract for home-based providers to leverage rate increases for child care centers as well.*

right to strike, a right generally accorded as part of the “duty to bargain collectively” under the Illinois Public Labor Relations Act. However, the contract that providers negotiated in 2005 prohibits them from striking.

After several months of bargaining, SEIU and the State of Illinois agreed to a three-year, estimated \$250 million<sup>81</sup> contract<sup>82</sup> that provides:

- *Subsidy rate increases*—FCC and FFN providers will receive four subsidy rate increases in base rates totaling 35% over three years, which began in April 2006.<sup>83</sup> Rates increase once in the first year of the contract, once in the second year, and twice in the third year.<sup>84</sup> FCC providers who meet certain training or quality standards receive an additional 5-20% increase on top of the base rate under a new tiered reimbursement program;<sup>85</sup> these training incentives are expected to encourage more FFN providers to become regulated.
- *Health insurance*—Over the course of the second and third years of the contract, the state will contribute a fixed \$27 million toward premiums for subsidized FCC and FFN providers to obtain health insurance beginning in the third year.<sup>86</sup> The state will transfer funds to the union to cover the “employer” portion of the cost of premiums; in the third year, the union can use those funds to self-fund insurance benefits or to purchase insurance benefits from a third-party vendor.<sup>87</sup>
- *Grievance procedures*—Payments to subsidized FCC and FFN providers must be processed in a timely fashion and grievances may be settled by binding arbitration.<sup>88</sup> Providers have no right to strike.<sup>89</sup>

SEIU and the child care community pressed for new money to fund the improvements required by the contract. Indeed, they persuaded Governor Blagojevich to include in his budget,<sup>90</sup> and the legislature to approve,<sup>91</sup> nearly \$33 million to cover the first-year rate increases required by the contract.

Perhaps even more impressive, child care advocates used the rate increases in the contract for subsidized FCC and FFN providers as leverage to lobby the governor and legislature for increases for child care centers that also provide subsidized child care, although centers are not part of the union or the bargaining unit. The legislature responded by allocating an additional \$18 million to increase center subsidy rates for FY 2007.<sup>92</sup> Admittedly, such increases may not always be possible or sustainable. However, to the extent that unionizing some segments of the child care workforce may raise concerns about other segments being left behind, the ingenuity and commitment of Illinois advocates, with the support of the union, to bring centers along is a model for how advocates can use unionization of FCC and FFN providers to help lift all boats. As described below, this model is gaining traction in other states as well.<sup>93</sup>

## Washington

Washington has enacted legislation authorizing two groups of home-based child care providers to organize—subsidized FCC and FFN providers, and unsubsidized FCC providers—and, as of this writing, the bargaining unit that represents one of these groups, the subsidized FCC and FFN providers, has reached an agreement with the state.

Unionization of FCC and FFN providers in Washington took a path similar to the one taken in Illinois, but it was by no means identical. As in Illinois, SEIU first obtained an executive order<sup>94</sup> from the governor. In September 2005, Governor Christine Gregoire issued a generally worded “executive directive” permitting all home-based providers to organize and directing the Department of Social and Health Services to “strive to arrive at a mutually agreeable resolution,”<sup>95</sup> that is, requiring the state to “meet and confer” with union representatives. Then in March 2006, SEIU won legislation that grants stronger, collective bargaining rights but only to subsidized FCC and FFN providers.<sup>96</sup> As in Illinois, the authorizing legislation makes the subsidized providers state employees, but only for the purpose of conferring collective bargaining rights.<sup>97</sup> The legislation includes as bargainable issues the rate and manner of subsidy

payments, health and welfare benefits, training, grievance procedures and “other economic matters,” but expressly excludes retirement benefits.<sup>98</sup>

The Washington experience is different from Illinois, however, in that two bargaining units are created by the Washington statute: one that resembles the Illinois unit, for all 10,000<sup>99</sup> subsidized FCC and FFN providers (both are called “family child care providers” in the law), and a second unit for the roughly 1,500<sup>100</sup> FCC providers who do not receive subsidies (called “family child care licensees” in the law). The FCC providers who do not participate in the subsidy program have the right to union representation only for purposes of “negotiated rule making,”<sup>101</sup> that is, they have meet-and-confer authority, and only for the purpose of shaping the regulatory requirements that apply to them.

Providers in both bargaining units voted overwhelmingly in favor of unionizing and having SEIU represent them.<sup>102</sup> After the election, SEIU formed a negotiating team and began bargaining on behalf of the first bargaining unit—subsidized FCC and FFN providers—in mid-July 2006. In November 2006, the union and the state reached an estimated \$50 million,<sup>103</sup> two-year agreement<sup>104</sup> that, if approved by the state legislature, will make several improvements for providers who participate in the subsidy program:

- *Subsidy rate increases*—FCC providers will receive a 10% increase over two years,<sup>105</sup> plus additional financial incentives to care for infants (15% above the toddler rate) and provide care during nonstandard hours.<sup>106</sup> FFN providers will receive uniform rates for each child in their care (instead of the lower rate now in effect for siblings of the first child),<sup>107</sup> plus a 7% increase in that uniform rate over two years.<sup>108</sup>
- *Health insurance*—Beginning in 2008, subsidized FCC (“licensed providers”) but not FFN providers will have access to health insurance coverage if they care for at least four children receiving child care subsidies.<sup>109</sup> The state’s contribution will be up to \$555 per month per provider, with the total amount capped.<sup>110</sup>
- *Other supports*—Both subsidized FCC and FFN providers will have increased training opportunities,<sup>111</sup> and children cared for by subsidized FFN providers will qualify for subsidized meals through the federal Child and Adult Care Food Program.<sup>112</sup>

The second bargaining unit, which consists of FCC providers who do not participate in the subsidy program, delayed starting its negotiations over regulatory issues until the state hired a director for its new Department of Early Learning, which occurred in September 2006.<sup>113</sup> Organizers report that, at this writing, negotiation meeting dates are being discussed.

In implementing their collective bargaining agreement, the Washington providers’ union must clear some hurdles that the Illinois providers’ union did not have. In the authorizing legislation, the Washington legislature retains substantial control over the process, just as it does for other collective bargaining contracts with public employees. Any agreement reached must first be certified by the state Director of Financial Management as financially feasible<sup>114</sup> before the governor can include a budgetary request for funds to implement the agreement.<sup>115</sup> Moreover, although the legislature retains the right to approve or reject the governor’s funding request, its approval or rejection must take the form of an up-or-down vote on the funding request “as a whole;”<sup>116</sup> it cannot change line items or appropriate less than the contract amount. If the legislature rejects the contract funding request, the statute provides for reopening contract negotiations, but just for the purpose of adjusting the contract’s budgetary impact.<sup>117</sup> And even if the legislature approves the funding, the statute requires the parties to renegotiate in the event the governor or the legislature declares that the state has suffered a “significant revenue shortfall,”<sup>118</sup> a term not defined in the state code. Finally, there is no right to strike.<sup>119</sup>

As of this writing, Governor Gregoire has included funds in her 2007-2009 budget to cover the costs of the SEIU contract, including nearly \$26 million for rate increases and health insurance for subsidized FCC providers,<sup>120</sup> more than \$25 million for rate increases for subsidized FFN providers,<sup>121</sup> and about



\$2 million for anticipated negotiated rulemaking costs for the second bargaining unit and training programs and implementation-related costs for both bargaining units.<sup>122</sup> Moreover, following the Illinois example, the governor's budget includes an additional \$32 million to increase reimbursement rates for subsidized, licensed child care centers.<sup>123</sup> In all, Governor Gregoire has included in her proposed budget nearly \$86 million in new state funds—almost \$84 million<sup>124</sup> in rate increases and benefits plus \$2 million for training and rulemaking—for provider-related improvements in the child care assistance program.

## **Oregon**

In Oregon, AFSCME and SEIU, representing two different groups of home-based child care providers, have each signed agreements with state agencies. The funds to implement their contracts have been included in the governor's proposed budget and, at this writing, the unions are preparing to lobby the state legislature to obtain the funds.

The contracts are the result of two executive orders issued by Governor Ted Kulongoski, which in turn were the result of efforts by AFSCME and SEIU to recruit a majority of providers to sign cards in support of their respective unions while at the same time pressing the governor's office for recognition. The first executive order,<sup>125</sup> issued in October 2005, applies to about 4,500<sup>126</sup> FCC providers, both subsidized and unsubsidized. The second order,<sup>127</sup> issued in February 2006, applies to the nearly 6,000<sup>128</sup> FFN providers who receive subsidies. Thus, the bargaining units are defined primarily by their regulatory status rather than by their participation in the state's child care subsidy program. There was no separate election; pursuant to the executive orders, Governor Kulongoski assigned each union to a bargaining unit based on its presentation of a majority of signed cards to the state Employee Relations Board.

In both cases, there is a mandate on the two state agencies that regulate child care to meet and confer with the union representatives, and each executive order clearly states that no contractual rights are being created, the providers are not employees or agents of the state, and there is no right to strike.<sup>129</sup> Moreover, each executive order states that any agreement requiring regulatory or statutory changes will be contingent upon those changes being made; if they are not, the agreement may require "reconsideration" and "modification."<sup>130</sup> The range of issues subject to negotiation is almost identical for each unit: reimbursement rates, payment procedures, health and safety conditions, training and other requirements, and "any other changes" that would enhance quality or improve recruitment and retention.<sup>131</sup>

The two unions did not coordinate their negotiating efforts, although some of their demands overlapped. The contract for the FCC unit represented by AFSCME was signed at the end of September 2006,<sup>132</sup> and the contract for the FFN unit represented by SEIU was signed in February 2007.<sup>133</sup> Both agreements cover the 2007-2009 biennium. According to the agreements, highlights include:

- *Subsidy rate increases*—Both contracts include substantial increases in subsidy rates. The AFSCME/FCC contract requires the Department of Human Services (DHS) to include in its budget request funds to increase "standard" reimbursement rates for FCC providers up to 100% of the 75<sup>th</sup> percentile based on a 2006 market rate study.<sup>134</sup> (CCDBG regulations recommend that states set their rates at the 75<sup>th</sup> percentile of current market rates, which is the rate that allows families access to 75% of providers in their communities.) The SEIU/FFN contract requires DHS to include in its budget request funds to increase standard rates for FFN providers to 88% of the 75<sup>th</sup> percentile based on a 2006 market rate study, and to increase "enhanced" reimbursement rates (payable for meeting certain training requirements) to 95% of the 75<sup>th</sup> percentile.<sup>135</sup> Both contracts also require DHS to make improvements in payment procedures, for instance to make subsidy payments via direct deposit into providers' accounts.<sup>136</sup>

- *Increased eligibility and lower co-payments for parents*—Although parents are not in either bargaining unit, both contracts call on DHS to propose and include in its 2007-2009 budget request funds to restore the income threshold for eligibility for subsidized child care to 185% of the federal poverty level (from 150%<sup>137</sup>) and to lower copayments for participating parents by 20%.<sup>138</sup>
- *Health insurance*—Neither contract provides health insurance coverage. However, in the AFSCME agreement the union and the agencies agreed to “work together to explore” ways to help FCC providers “access affordable, comprehensive health insurance coverage.”<sup>139</sup> Although SEIU had sought \$3 million for health insurance coverage,<sup>140</sup> the SEIU/FFN agreement does not mention health insurance, but organizers report that Governor Kulongoski has committed to a “path to health care” in the 2009-2011 biennium.<sup>141</sup>
- *A Provider Bill of Rights*—The AFSCME/FCC contract contains a 17-point “Provider Bill of Rights” appendix that establishes many procedural protections for FCC providers in their dealings with state regulatory agencies. For instance, providers are given the right to have a union representative present during interactions with regulators and the right to have complaints be found “valid” before the provider’s registration/certification may be revoked.<sup>142</sup> The SEIU/FFN contract does not contain a bill of rights, as FFN providers are exempt from regulation, but it does include provisions on procedures for dealing with disputes and overpayments.<sup>143</sup>
- *Training*—FCC providers will have a larger voice in agency training<sup>144</sup> and, within the available funds, the agencies will work to make training for FFN providers more accessible and affordable.<sup>145</sup>

*In Oregon, agreements call for increases in subsidy rates for providers and increased eligibility for subsidies and lower co-payments for parents.*

Before the negotiations began, some advocates were not optimistic about whether the state would find the funds to fulfill any agreements, as state shortfalls had prompted budget cuts in human services programs during recent years.<sup>146</sup> However, as of this writing, the state has issued new forecasts projecting significant increases in state revenues.<sup>147</sup> And the union contracts have already set in motion dramatic changes. For 2007-2009, Governor Kulongoski has proposed more than \$34 million<sup>148</sup> in new funds for child care assistance. This includes nearly \$19 million<sup>149</sup> to cover the rate increases for the two groups of providers represented by the unions. As in Illinois and Washington, the governor’s budget includes an extra \$7 million<sup>150</sup> to raise rates for licensed child care centers that receive subsidies. In a feature not found in the other states, however, and based on recommendations in the Oregon contracts, Governor Kulongoski’s budget includes \$8 million<sup>151</sup> to lower parent co-payments and increase income limits on eligibility for subsidies. This means that almost half of the new funds will go for child care investments flowing to parents and center workers—individuals outside of the union membership.

After the contracts were signed and incorporated into agency budgets, Governor Kulongoski issued a new executive order in February 2007, granting both unions collective bargaining rights for future contract negotiations, an upgrade of the meet-and-confer rights granted in the earlier executive orders.<sup>152</sup> The new executive order repeats the provisions of the previous orders that no contractual rights are being created (“although it is expected that the negotiations will result in a written agreement between the parties”<sup>153</sup>), the providers are not employees or agents of the state, and there is no right to strike.<sup>154</sup> It softens the language of the previous orders with respect to regulatory or legislative changes, however, eliminating the language on required “reconsideration” or “modification.”<sup>155</sup> It also states the range of bargainable issues somewhat more broadly, providing for negotiations on “all terms and conditions of the relationship between the State and family child care providers that are within the state’s control ... including but not limited to subsidy rates and the provision of health care coverage.”<sup>156</sup>

## Iowa

Iowa Governor Tom Vilsack issued two separate executive orders in January 2006 recognizing two bargaining units of home-based child care providers; however, only one unit has materialized and, at this writing, it has not yet negotiated an agreement.



Prior to the issuance of the executive orders, AFSCME campaigned to represent all FCC providers, regardless of subsidy participation, whereas SEIU campaigned to represent all subsidized FCC and FFN providers, regardless of regulatory status. Governor Vilsack responded to the competition by dividing the provider pool into two bargaining units and issuing two executive orders.

The first executive order<sup>157</sup> directs Iowa's Department of Human Services (DHS) to meet and confer with the authorized representative of 6,000<sup>158</sup> FCC providers, both those who receive subsidies and those who do not. The second executive order<sup>159</sup> directs DHS to meet and confer with the roughly 7,000<sup>160</sup> FFN providers who receive subsidies. Both executive orders are silent on the providers' employee status but require the state to discuss "issues of mutual concern," including reimbursement rates, payment procedures, training, and health and safety requirements,<sup>161</sup> subject to the caveat that nothing in the orders should be construed to contravene any applicable state or federal law.<sup>162</sup> Both orders are silent on the right to strike.

Both executive orders also authorize the Iowa Mediation Service to verify majority status for union representation.<sup>163</sup> AFSCME demonstrated majority support to represent the first bargaining unit—all FCC providers<sup>164</sup>—but according to a local advocate it took several months until Governor Vilsack ratified the results. As of this writing, the providers in the AFSCME unit have developed their contract proposal and hope to begin meeting on it in early 2007. However, since SEIU did not attempt to represent a bargaining unit of just subsidized FFN providers, that group is, at this writing, unrepresented.

### **New Jersey**

New Jersey Governor Jon Corzine issued an executive order<sup>165</sup> granting collective bargaining rights to home-based child care providers in August 2006 and, as of this writing, negotiations have begun.

The New Jersey unionization effort began in earnest in March 2006, when the New Jersey State Board of Mediation certified<sup>166</sup> that a majority of the state's more than 7,000<sup>167</sup> "registered and approved" home-based providers had signed cards in support of representation by the Child Care Workers Union (CCWU), a partnership between CWA and AFSCME. Thereafter, Governor Corzine issued an executive order granting formal recognition to CCWU.<sup>168</sup> The order defines the bargaining unit to include FCC providers, whether or not they participate in the subsidy program, and FFN providers who participate in the subsidy program.<sup>169</sup>

The executive order provides that the state must meet in good faith for the purpose of entering into a written agreement and that any agreement reached is binding on the state, contingent upon the passage of any needed regulatory or statutory change, including appropriations.<sup>170</sup> However, the executive order makes clear that providers are not considered state employees<sup>171</sup> and may not strike.<sup>172</sup> The order specifies that the parties may bargain over "reimbursement rates, payment procedures, benefits, health and safety conditions and any other matters that could improve recruitment and retention [of providers] ... and the quality of programs they provide ...."<sup>173</sup> As of this writing, organizers report the parties have begun the negotiating process.

### **Michigan**

Michigan has taken a different approach than other states to authorizing home-based child care providers to engage in collective bargaining with the state, and Child Care Providers Together, a partnership between the UAW and AFSCME, has been certified to represent all of the state's 40,000<sup>174</sup> FCC providers, regardless of participation in the subsidy program, and subsidized FFN providers.

The governor did not issue a traditional executive order, nor did the legislature pass legislation. Instead, the authority for these providers to unionize was created by Governor Jennifer Granholm's approval<sup>175</sup> of



an “interlocal agreement” (ILA)—a mechanism by which Michigan agencies or political subdivisions agree to cooperate—between the State’s Department of Human Services and a publicly funded community college to create a new public agency, the Michigan Home Based Child Care Council.<sup>176</sup> The ILA assigns the Council child care program functions previously performed by the Department of Human Services with respect to these providers.<sup>177</sup> These functions include administering the subsidy program, improving the quality of home-based child care, and recommending changes to statutes and regulations governing providers and the child care system.<sup>178</sup>

The Michigan ILA authorizes the new Council to “bargain collectively and enter into agreements” with the providers’ representative.<sup>179</sup> Although the ILA specifies no bargainable issues, and is silent with respect to the right to strike, it requires the Council to “fulfill its responsibilities as a public employer,”<sup>180</sup> cross-referencing the sections of the code that govern public-sector bargaining.<sup>181</sup> Those sections require bargaining on “wages, hours, and other terms and conditions of employment ....”<sup>182</sup> They also prohibit strikes.<sup>183</sup> Following the precedent of an earlier ILA-created Council that bargains with independent contractors who provide home care for seniors and persons with disabilities,<sup>184</sup> the unions and others in Michigan interviewed expect that, consistent with these provisions, the Child Care Council will recognize and bargain collectively with any duly elected union representative of providers. As of this writing, Child Care Providers Together was elected to represent all FCC providers and all FFN providers receiving subsidies, the election results were certified in November 2006,<sup>185</sup> and a bargaining committee has been formed, although negotiations have not yet begun.<sup>186</sup>

## Wisconsin

Following campaigns in key cities to sign up home-based providers, Wisconsin Governor James Doyle issued an executive order in the fall of 2006 permitting all subsidized and unsubsidized FCC providers and subsidized FFN providers to unionize and negotiate with the state, and AFSCME has been certified to represent them.

After some success in organizing workers in child care centers in Madison, beginning in 2006, AFSCME began organizing home-based providers in Madison and Milwaukee with the objective of seeking statewide recognition. In early October 2006, Governor Doyle issued an executive order directing state agencies to meet and confer with the more than 7,000<sup>187</sup> FCC providers (called “licensed” providers in the order), regardless of participation in the subsidy program, and FFN providers who participate in the subsidy program (called “certified” or “provisionally certified” providers in the order).<sup>188</sup> By the end of the same month in which Governor Doyle issued his executive order, AFSCME’s Child Care Providers Together had been certified to represent one bargaining unit containing both groups of providers.<sup>189</sup>

The executive order spells out a long list of bargainable “issues of mutual concern,” including quality standards, training and certification requirements, reimbursement and payment procedures, health and safety conditions, and “any other matters and regulations that would improve recruitment and retention...., encourage certified providers to become licensed and improve the quality of the programs they offer....”<sup>190</sup> Any agreement reached that requires rule-making, statutory changes, or appropriations to become effective is expressly made contingent on further regulatory or legislative action.<sup>191</sup> The order also states that it is not intended to create any contractual rights or obligations or intended to imply any employer-employee relationship and that providers do not have a right to strike.<sup>192</sup> At this writing, the union and providers are engaged in efforts to identify their priorities.

*In Wisconsin, authorization for statewide organizing followed campaigns in key cities.*



## States Where Authorizing Legislation Has Been Passed but Vetoed

The four states in which unions succeeded in persuading their state legislatures to adopt legislation authorizing negotiations on behalf of FCC and FFN providers, but saw that legislation vetoed by the governor, are discussed below in chronological order of their most recent official action on the issue.

### Rhode Island

The campaign to win authorization for home-based child care providers in Rhode Island to unionize and negotiate with the state has been multifaceted and ongoing for several years, but at this writing it has come to a standstill.

The campaign began in 2003 when SEIU petitioned the State Labor Relations Board seeking to represent all FCC providers, regardless of subsidy program participation, and in 2004 SEIU won a ruling that these FCC providers are state employees.<sup>193</sup> The state appealed the Board's decision in court. While that appeal was pending, in 2005 SEIU pushed for and won passage of a bill<sup>194</sup> that would have granted all subsidized FCC and FFN providers the right to elect a representative and engage in collective bargaining over "all the terms and conditions of the provision of child care provider services under the state's child care assistance program and/or under state regulations,"<sup>195</sup> although it also expressly stated that these providers would retain their independent contractor status (but be exempt from the antitrust laws) and would not be considered employees of the state "for any purpose."<sup>196</sup> The legislation did not expressly address the extent to which any agreement might need regulatory or legislative approval or appropriations to be effective, though it did require the parties to agree to be bound by the terms and conditions arrived at through their negotiations.<sup>197</sup> It also expressly prohibited providers from striking.<sup>198</sup>

Governor Donald Carcieri vetoed the bill<sup>199</sup> in June 2005, objecting that making FCC and FFN providers even "virtual" employees would set "a remarkably bad precedent."<sup>200</sup> He also cited the potential impact on Rhode Island's free health insurance program for income-eligible, subsidized, home-based providers and its child care entitlement for all families earning up to 225% of the federal poverty level. "By forcing the state to negotiate [higher] reimbursement rates with a providers' union," the bill would increase costs and thus "could force the state to consider reducing eligibility for families and children."<sup>201</sup> The legislature did not attempt to override the veto, and later that year, in November 2005, a state court overturned the labor board's decision.<sup>202</sup> Thus, at least for the near future, SEIU's options for obtaining legal authorization to unionize home-based child care providers in Rhode Island have been limited, requiring it to return to the drawing board.

### New York

As in Rhode Island, the New York campaign to win authorization for home-based providers to unionize and engage in negotiations with the state has been ongoing for several years, but suffered a significant setback in late 2006.

AFSCME's New York affiliate, the Civil Service Employees Association (CSEA), has been organizing FCCs in various counties around the state for the last few years, working toward building the union statewide, and more recently, the United Federation of Teachers (UFT), an affiliate of AFT, has been working with the Association of Community Organizations for Reform Now (ACORN) to organize all subsidized FCC and FFN providers in New York City.

In May 2006, the New York legislature passed a bill that apparently would have authorized the state's roughly 52,000<sup>203</sup> home-based child care providers to be represented by a union and bargain collectively with the state.<sup>204</sup> The bill did not specify any particular issues subject to negotiation, but the general civil service law that it amended authorizes bargaining over the terms and conditions of employment and the

*In four states, unions persuaded their state legislatures to adopt legislation authorizing negotiations, only to see that legislation vetoed by the governor.*



administration of related grievances.<sup>205</sup> That law also prohibits strikes.<sup>206</sup> The child care bill created three different bargaining units of home-based providers:<sup>207</sup>

- all subsidized FCC and FFN providers in New York City;
- all subsidized FFN providers outside of New York City; and
- all FCC providers, subsidized or not, outside of New York City.

Although New York's child care assistance program is largely shaped and implemented at the county level, the legislation expressly stated that any FCC or FFN provider who receives a subsidy "shall be deemed an employee solely of the State of New York."<sup>208</sup> But it further provided that these subsidized providers shall not be considered public employees of the state for any purpose other than organizing and collective bargaining.<sup>209</sup> The unions agreed among themselves that UFT would represent the New York City bargaining unit and CSEA would represent the two bargaining units in the rest of the state.

Governor George Pataki vetoed the bill in June 2006, arguing that its framework would "inappropriately" permit providers to be deemed state employees, albeit for limited purposes.<sup>210</sup> The state Senate voted to override the veto,<sup>211</sup> but although Governor Pataki called the legislature back to meet in special session in mid-December 2006, the Assembly did not hold an override vote. With a new governor taking office in 2007, efforts may be revived to secure recognition.

## California

In September 2006, Governor Arnold Schwarzenegger vetoed legislation passed on the last day of the 2005-2006 regular session that would have permitted all subsidized and unsubsidized FCC providers and subsidized FFN providers to elect a union representative and negotiate as one bargaining unit with the state.<sup>212</sup> The legislation expressly disclaimed that these providers are public employees for any purpose—they remain self-employed<sup>213</sup>—and afforded them the state action exemption from antitrust liability.<sup>214</sup> The legislation required the state to bargain collectively over the reimbursement system and "the terms of the provision of child care services" under the state subsidy program.<sup>215</sup> It made agreements regarding reimbursement rates subject to legislative appropriations and any other necessary changes in regulations or law.<sup>216</sup> In addition, the legislation required the state to "consult"—rather than negotiate with—the union at least once per year on regulatory issues affecting FCC providers.<sup>217</sup> There was no right to strike.<sup>218</sup>

The California legislation was different from the legislation introduced or enacted in other states in several respects. First, while all FCC providers and subsidized FFN providers were required to be in the same bargaining unit, authority for these providers to organize was sequenced, with FCC providers permitted to organize immediately, and subsidized FFN providers required to wait until 2009.<sup>219</sup> Second, and perhaps not surprising given how the state's child care system is structured, it required any state agency or its contractor, whether public or private, that administers publicly funded child care subsidies,<sup>220</sup> to negotiate with the union representative of the providers. This means that the local contracting agencies that manage the state's child care voucher program, some of whom are private nonprofit agencies, were brought into the process and, either separately or collectively, would have been required to negotiate with the union over matters<sup>221</sup> within their realm of responsibility, such as voucher payment procedures, nutrition program enrollment, and training for child care providers. Third, the legislation expressly authorized the union representing providers to engage in several activities traditionally performed by child care resource and referral and other agencies.<sup>222</sup> For instance, the legislation allowed unions to "market family child care programs" and "offer business development programs" for providers.<sup>223</sup> It also permitted the union to operate referral pools of substitute child care providers in areas not already served.<sup>224</sup>



According to a committee bill analysis, the legislation was chiefly supported by AFSCME and SEIU,<sup>225</sup> who represented the providers through a joint United Child Care Union. Several associations that represent voucher-management agencies publicly opposed the bill because it would have required them to process union dues payments and negotiate over their management practices.<sup>226</sup> In his veto message, Governor Schwarzenegger's objections to the bill centered on the adverse impact that raising reimbursement rates could have on the funds available for other child care programs and services, the market rates of private-pay providers, and the state budget.<sup>227</sup>

### **Massachusetts**

In Massachusetts, the union has sought, through both legislation and a ballot initiative, but thus far failed to win the authority to negotiate with the state on behalf of home-based providers.

In 2006, on the last day of the regular session, the Massachusetts state legislature enacted a bill to permit subsidized FCC providers to organize and engage in collective bargaining with the appropriate state agencies over the "terms and conditions of their provision of child care services."<sup>228</sup> Governor Mitt Romney vetoed the bill, asserting without further explanation that the bill "inappropriately shifts the focus of child care away from the interests of children and families."<sup>229</sup>

While promoting the legislation, however, SEIU simultaneously organized a ballot initiative campaign and succeeded in placing a similar proposal on the November 2006 ballot.<sup>230</sup> That proposal would have required collective bargaining over the terms and conditions of the provision of child care services under the state subsidy program and its regulations.<sup>231</sup> It expressly stated that any funds needed to implement the contract would be subject to appropriation by the legislature.<sup>232</sup> As under the prior legislation, providers were not considered public employees<sup>233</sup> and there was no right to strike.<sup>234</sup> Unlike the legislation, however, the ballot measure would have included subsidized FCC and FFN providers.<sup>235</sup> The ballot measure was opposed by the State Department of Early Education and Care, and was defeated on a vote of 52% to 48%.<sup>236</sup> However, as in New York, Massachusetts has since elected a new governor, which may lead to a renewed effort to secure recognition.

### **States with Local Organizing Activity**

There are at least three states in which unions have been organizing home-based child care providers at the local level with the eventual goal of seeking statewide recognition, but no statewide authorization has yet been sought. At the local level, union representation can consist of voluntary arrangements under which sympathetic localities work to improve their child care programs and partner with unions and other advocates to press for state improvements, or they can be more formal arrangements under which the localities, through some authorizing legal process such as passage of a resolution, commit to negotiate with unions over those aspects of child care regulation and assistance over which they have jurisdiction. Without state-level authorization, however, unions are not able to collectively bargain with a locality over state-regulated aspects of the provision of home-based child care.

- **Minnesota:** AFSCME made a decision to organize Minnesota FCC providers (both subsidized and unsubsidized) county by county because, although the state sets the subsidy rates and regulatory requirements, counties are involved in regulatory issues and administer the subsidy program. In at least three counties, AFSCME obtained a majority of signed cards from providers and used those cards to convince Boards of County Commissioners to pass resolutions authorizing the county to negotiate with the union on locally controlled issues and to lobby together for state improvements.<sup>237</sup> These three counties have essentially volunteered to bargain by adopting a resolution,<sup>238</sup> and any agreement reached on local issues will be binding on the county, according to a local organizer. SEIU has also been actively organizing in some counties, and in late 2006, a

labor arbitrator accepted a plan by the two unions to divide the state roughly in half, with AFSCME organizing the northern half and SEIU organizing the southern half.<sup>239</sup>

- **Ohio:** As in Minnesota, AFSCME has elected to organize county by county until it can secure statewide recognition. In Ohio, at least two counties<sup>240</sup> have passed resolutions formally recognizing AFSCME's Child Care Providers Together affiliate and requiring county agencies to meet and confer with the union.<sup>241</sup> In those counties, local organizers report that negotiations are nearing completion regarding payment procedures and other local matters, and that Mahoning County and several others are getting close to passing similar resolutions.
- **Pennsylvania:** Some child care centers and Head Start programs in Philadelphia have been unionized since the late 1990s, represented by the United Child Care Union (UCCU), a partnership between AFSCME and SEIU.<sup>242</sup> More recently, according to interviewees, that partnership, recently renamed Child Care Providers United, has begun to organize Philadelphia FCC and FFN providers.

## CONCLUSION

Organizing home-based child care providers to join labor unions is still a relatively new development—thus far, only a few contracts have been signed and only one has begun to be implemented—making it premature for a full evaluation of what this strategy can accomplish. However, it is already clear that this strategy is no flash in the pan. National unions have demonstrated their serious commitment to organizing the home-based child care workforce. That commitment is evident from the rapid pace of organizing and from the formal agreement reached by the major unions over how best to coordinate their organizing efforts.

Moreover, the early signs of what unions can deliver for FCC and FFN providers look promising. In all three states in which unions, at this writing, have reached agreements with the state, those contracts have included substantial increases in reimbursement rates, more efficient payment procedures, a process for resolving grievances, greater access to training, and a stronger voice in rulemaking. And in the cases of Illinois and Washington, the unions won state financing for health insurance for some FCC and FFN providers.

Equally important, the bargaining process appears to be achieving results not only for the home-based child care workforce, but the child care system as a whole. In all three states thus far in which contracts have been inked, the governors have included in their budgets (and Illinois has approved) rate increases not only for FCC and/or FFN providers but also for child care centers that receive state subsidies. Just as union contracts in other industries have had the effect of increasing prevailing wages for nonunion workers, rate increases for home-based providers who are unionized in these states are having the effect of raising rates for nonunion members, too. Moreover, from a systemic perspective, increases for centers means that union activity is increasing public investment in the entire subsidized workforce, not just the home-based segment. Furthermore, at least in the case of Oregon, the union negotiations led the executive branch to recommend increases in subsidy income-eligibility thresholds and reductions in co-payments, making child care more affordable and more available to parents. And all of the funds thus far allocated or proposed have represented increased investments in the child care system, not a reallocation of existing resources.

These are precisely the types of increased public investments that child care providers and advocates have long urged to reduce provider turnover, improve the quality of care, and make child care more accessible and—in some instances—more affordable. Unionizing the home-based child care workforce could turn out to be a significant advance for the entire child care system.

*The bargaining process appears to be achieving results not only for the home-based child care workforce, but the child care system as a whole.*

## ENDNOTES

- <sup>1</sup> The Annie E. Casey Foundation, *2006 KIDS COUNT Data Book 8* (2006) (citing Annie E. Casey Foundation analysis of the 2003 National Survey of Children's Health), available at [http://www.aecf.org/kidscount/sld/db06\\_pdfs/entire\\_db.pdf](http://www.aecf.org/kidscount/sld/db06_pdfs/entire_db.pdf) (last visited Jan. 3, 2007).
- <sup>2</sup> Ctr. for the Child Care Workforce & Human Servs. Policy Ctr., Estimating the Size and Components of the U.S. Child Care Workforce and Caregiving Population: Key Findings from the Child Care Workforce Estimate (Preliminary Report) 17 (2002), available at <http://ccw.cleverspin.com/pubs/workforceestimatereport.pdf> (last visited Nov. 29, 2006) [hereinafter Child Care Workforce Estimates]. Another nearly 2.4 million child care providers are unpaid relatives and nonrelatives. *Id.*
- <sup>3</sup> Melinda Gish & Gail McCallion, Cong. Research Serv., Early Childhood Care and Education Programs in the 110<sup>th</sup> Congress: Background and Funding (2007).
- <sup>4</sup> Child Care and Development Block Grant Act of 1990, 42 U.S.C. §§ 9858–9858q (2004). This statute is also the source for the other information on CCDBG in this paragraph.
- <sup>5</sup> Child Care Workforce Estimates, *supra* note 2, at 26.
- <sup>6</sup> “Self-employed” child care providers are defined as mostly “family child care providers;” the term does not include relatives or “nannies” who provide care in the child’s home and are thus classified primarily as “private household” workers. See Bureau of Labor Statistics, U.S. Dep’t of Labor, Career Guide to Industries 221, 222 (2006-07 ed.), available at <http://www.bls.gov/oco/cg/pdf/cgs032.pdf> (last visited Oct. 25, 2006) [hereinafter DOL Career Guide].
- <sup>7</sup> See Nat’l Child Care Info. Ctr., U.S. Dep’t of Health & Human Servs., NCCIC Child Care Database, Early Childhood Workforce: Self-Employed Child Care Providers and Average Annual Earnings (Latest Data: 2002), available at <http://nccic.org/IMS/Search.asp> (last visited Aug. 16, 2006).
- <sup>8</sup> See, e.g., N.H. Bus. Partners for Early Learning Health Ins. Working Group, Keeping New Hampshire’s Child Care Providers Healthy 4, 6, available at [http://www.endowmentforhealth.org/\\_docs/35.pdf](http://www.endowmentforhealth.org/_docs/35.pdf) (last visited Aug. 16, 2006) (only 8% of family child care providers have health insurance through their business, and more than one-fifth have no health coverage at all); New England Workforce Partners for Early Care and Educ., Health Insurance for Child Care Workers: Snapshots from New Hampshire and Rhode Island (2003) (78% of FCCs have health coverage, but three out of four receive coverage through a spouse).
- <sup>9</sup> District Council 1707, American Federation of State, County and Municipal Employees Union, About Us, available at <http://www.dc1707.net/about.htm> (last visited Feb. 14, 2007).
- <sup>10</sup> Keystone Research Ctr., Brief Summary—Unions in Child Care 1 (Aug. 17, 2006), available at [http://www.wecanaeyc.org/uploads/media/Keystone\\_Research\\_Center-Brief\\_Summary\\_of\\_Unions\\_in\\_ChildCare.pdf](http://www.wecanaeyc.org/uploads/media/Keystone_Research_Center-Brief_Summary_of_Unions_in_ChildCare.pdf) (last visited Jan. 3, 2007) [hereinafter Keystone Summary].
- <sup>11</sup> *Id.* at 1.
- <sup>12</sup> DOL Career Guide, *supra* note 6, at 223.
- <sup>13</sup> National Labor Relations Act (NLRA), 29 U.S.C. §§ 152(2), 152(3). Although the NLRA does not define “employee,” the Supreme Court has held that the established meaning under common law may be inferred, *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85, 93-94 (1995), and under common law, an employer-employee relationship exists if an individual performs work in exchange for financial compensation and the employer has the “right to control and direct the results of the work and the way in which it is done.” See Internal Revenue Service, Retirement Plans for Small Business, Definitions You Need to Know, Publication 560 (2005), available at <http://www.irs.gov/publications/p560/ch01.html>.
- <sup>14</sup> See Sherman Act, 15 U.S.C. § 1 (2005). Concerted activities by employees under the auspices of a union are also exempt from the antitrust laws, Clayton Act, 15 U.S.C. § 17 (2005); however, individuals who are not employees are ineligible to form unions to represent them in private-sector labor negotiations.
- <sup>15</sup> See *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980) (exemption requires clear articulation of state policy and active state supervision). In some places where FCC and FFN providers have obtained the authority to negotiate with the state, the authorizing order or legislation specifically states that providers are exempt from federal (and state) antitrust laws under the state action doctrine; in other cases, immunity and state supervision are apparently implicit in the act of authorizing collective bargaining with a union. State regulation does not, by itself, satisfy the state action exemption, See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 790-91 (1975); the state regulates almost all occupations and industries to some extent. However, the fact and extent of regulation is relevant to the issue of “state supervision,” which is needed to qualify for the state action exemption under the federal antitrust laws. *California Retail Liquor Dealers*, 445 U.S. at 105-06.
- <sup>16</sup> U.S. Gen. Accounting Office (now Gov’t Accountability Office), Collective Bargaining Rights: Information on the Number of Workers with and without Bargaining Rights 8-9 (2002), available at <http://www.gov/new.items/d02835.pdf> (last visited Jan. 3, 2007) [hereinafter GAO Report]. All of the states discussed in this report in which FCC and FFN providers are considering unionization are ones that authorize collective bargaining by public employees. *Id.* at 8, n.12.
- <sup>17</sup> Ill., Exec. Order No. 2003-8, Collective Negotiation by Personal Care Assistants (2003), available at <http://www.illinois.gov/Gov/pdfdocs/execorder2003-8.pdf> (last visited Jan. 8, 2007). As part of the rationale for formal recognition of a home care workers union, the executive order noted that “the State has productively dealt with a representative of the personal assistants on an informal basis....” *Id.* at 2.
- <sup>18</sup> Ill. Pub. Act 093-0204 (2003) (codified at 5 Ill. Comp. Stat. 315 (2006)).



- <sup>19</sup> Cal. Welf. & Inst. Code § 12301.6 (West 2006). In some counties, the contracts obtained by the unions have not been as generous as in others. Patrice M. Mareschal, *Innovations and Adaptation: Contrasting Efforts to Organize Home Care Workers in Four States*, 31 Lab. Stud. J. 25, 31 (2006) [hereinafter *Home Care Workers in Four States*]. County-to-county variation is one result of the California approach—one that Oregon and Washington overcame by creating state-level home care commissions using ballot initiatives. See *id.* at 32-35.
- <sup>20</sup> Cal. Welf. & Inst. Code, *supra* note 19. See Linda Delp & Katie Quan, *Homecare Worker Organizing in California: An Analysis of a Successful Strategy*, 27 Lab. Stud. J. 1, 8-9 (2002). Public authorities also provided training programs for home care workers and a registry-matching service for consumers. *Id.* at 9.
- <sup>21</sup> In addition to California and Illinois, home care workers have gained the authority to unionize in at least five other states—Massachusetts, Michigan, New York, Oregon, and Washington. In Oregon, Or. Measure 99, in Or. Sec’y of State, Official 2000 General Election Online Voters’ Guide (Nov. 7, 2000), available at <http://www.sos.state.or.us/elections/nov72000/2000genmea.htm> (last visited Jan. 8, 2007) [hereinafter *Oregon Initiative*], and Washington, Initiative Measure 775, in Wash. Sec’y of State, Voters Pamphlet, General Election, November 6, 2001, at 16-20, available at [http://www.secstate.wa.gov/elections/pdf/pamphlets/2001\\_general\\_election\\_voters\\_pamphlet.pdf](http://www.secstate.wa.gov/elections/pdf/pamphlets/2001_general_election_voters_pamphlet.pdf) (last visited Jan. 8, 2007) [hereinafter *Washington Initiative*], the authority for home care workers to unionize came from ballot initiatives rather than executive orders or legislation. Oregon created a statewide home care commission, Oregon Initiative, §1, and Washington created a statewide home care public authority, Washington Initiative, at 16-17. In Michigan, home care workers gained the right to bargain as the result of an interlocal agreement creating the Michigan Quality Community Care Council. Interlocal Agreement between the Department of Community Health (a principal department of the Executive Branch of the State of Michigan) and the Tri-County Aging Consortium (a Michigan public body corporate and politic) Creating the Michigan Quality Community Care Council (April 19, 2004) (on file with the National Women’s Law Center). More recently, the Massachusetts legislature overrode a gubernatorial veto, made personal care attendants limited employees of the state, and created a “personal care attendant quality home care workforce council.” 2006 Mass. Acts Chap. 268 (Aug. 21, 2006), available at <http://www.mass.gov/legis/laws/seslaw06/si060268.htm> (last visited Jan. 8, 2007). Finally, in New York, the unions bargain with the local contracting agencies, even without state-level authorization. See *Home Care Workers in Four States*, *supra* note 19, at 38. The state contracts with private or nonprofit agencies that “employ” (recruit, train, and supervise) home care workers and issue the workers’ paychecks, but those paychecks are funded by the state. *Id.*
- <sup>22</sup> The six states are California, Massachusetts, New Jersey, Oregon, Rhode Island, and Wisconsin. See *infra* pp. 16-22.
- <sup>23</sup> The two states are Illinois and Washington. See *infra* pp. 13-15.
- <sup>24</sup> This state is New York. See *infra* p. 21.
- <sup>25</sup> These two states are Iowa and Michigan. See *infra* pp. 17-19.
- <sup>26</sup> See Iowa, Exec. Order No. 45 (2006), available at <http://www.statelibraryofiowa.org/services/law-library/govexecorders/execordvilsack> (last visited Jan. 14, 2007) [hereinafter *Iowa Executive Order 45*] & Iowa, Exec. Order No. 46 (2006), available at <http://www.statelibraryofiowa.org/services/law-library/govexecorders/execordvilsack> (last visited Jan. 14, 2007) [hereinafter *Iowa Executive Order 46*]; Letter from Jennifer M. Granholm, Governor, Mich., to Marianne Udow, Dir., Dep’t of Human Services, & M. Richard Shaink, Pres., Mott Cmty. Coll. (Sept. 1, 2006) (on file with National Women’s Law Center) [hereinafter *Michigan Approval Letter*]; N.J., Exec. Order No. 23 (2006), available at <http://199.20.64.195/infobank/circular/eojsc23.htm> (last visited Aug. 17, 2006) [hereinafter *New Jersey Executive Order*]; Or., Exec. Order No. 05-10, Representation of Certified and Registered Family Child Care Providers (2005), available at <http://governor.oregon.gov/Gov/pdf/E00510.pdf> (last visited Jan. 13, 2007) [hereinafter *2005 Oregon Executive Order*]; Or., Exec. Order No. 06-04, Representation of Subsidized, License Exempt Family Child Care Providers (2006), available at <http://governor.oregon.gov/Gov/pdf/eo0604.pdf> (last visited Jan. 13, 2007) [hereinafter *2006 Oregon Executive Order*]; & Or., Exec. Order No. 07-03 (Feb. 1, 2007) [hereinafter *2007 Oregon Executive Order*]; Wis., Exec. Order No. 172 (2006), available at [http://www.wisgov.state.wi.us/journal\\_media\\_detail.asp?locid=19&prid=2359](http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=2359) (last visited Jan. 14, 2007) [hereinafter *Wisconsin Executive Order*]. Although the Michigan letter is not technically an executive order, it provides similar executive authority and is treated as an executive order for purposes of this report.
- <sup>27</sup> See S.B. 697, 2005-06 Reg. Sess. (Cal. 2006) [hereinafter *Vetoed California Legislation*]; H.B. 5257, 184<sup>th</sup> Gen. Ct., 2005-06 Sess. (Mass. 2006) [hereinafter *Vetoed Massachusetts Legislation*]; S. 6758, 229<sup>th</sup> Leg. Sess., Reg. Sess. (N.Y. 2005) [hereinafter *Vetoed New York Legislation*]; H6099 Substitute A as amended, Gen. Assemb., Jan. Sess. (2005), available at <http://www.rilin.state.ri.us/BillText05/HouseText05/H6099Aaa.pdf> (last visited Jan. 4, 2007). [hereinafter *Vetoed Rhode Island Legislation*]. State legislation can also be adopted through the approval of statutory ballot initiatives. Although such initiatives have been successful in the home care context in Oregon and Washington, See *supra* note 21, the one ballot initiative thus far to permit home-based child care providers to unionize, Mass., Question 3, Family Child Care Providers, in Mass. Sec’y of the Commonwealth, The Official Massachusetts Information for Voters: 2006 Ballot Questions 12-13, available at [http://www.sec.state.ma.us/ele/elepdf/IFV\\_2006.pdf](http://www.sec.state.ma.us/ele/elepdf/IFV_2006.pdf) (last visited Jan. 14, 2007) [hereinafter *Massachusetts Ballot Initiative*], was voted down 52-48% in Massachusetts in the November 2006 election. See Mass. Sec’y of the Commonwealth, Return of Votes for Massachusetts State Election, November 7, 2006 (Dec. 6, 2006), at 58, available at <http://www.sec.state.ma.us/ele/elepdf/rov06.pdf> (last visited Jan. 8, 2007) [hereinafter *Massachusetts Ballot Results*].
- <sup>28</sup> There are two states, Illinois and Washington, in which an executive order was followed by legislation. In Illinois, the legislation contained more details than the executive order regarding the union recognition process and bargainable issues. Compare Ill., Exec. Order No. 2005-1, Collective Negotiation by Day Care Home Providers (2005) [hereinafter *Illinois Executive Order*] with Ill. Pub. Act. 094-0320, sec. 5, 10 (2005) (codified as amended at 5 Ill. Comp. Stat. 315/3, 315/7 (2005) & 305 Ill. Comp. Stat. 5/9A-11 (2005)). In Washington, the legislation was preceded by an “executive directive,” a letter from the governor to an executive agency, directing it to meet with providers and strive to reach agreement, but which

contained few of the parameters on bargaining units, procedures, and implementation that were defined in the legislation. *Compare* Wash., Exec. Dir., Early Learning (2005), available at [http://www.governor.wa.gov/execorders/dir\\_05\\_09\\_16-2.pdf](http://www.governor.wa.gov/execorders/dir_05_09_16-2.pdf) (last visited Jan. 12, 2007) [hereinafter Washington Executive Order] with H.B. 2353, 59<sup>th</sup> Leg. Reg. Sess., 2006 Wash. Law Ch. 54, available at <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Session%20Law%202006/2353-S2.SL.pdf> (last visited Jan. 12, 2007) [hereinafter Washington Legislation].

- 29 In fact, in at least three states where general collective bargaining rights (Indiana and Missouri) or “meet and confer” authority (Kentucky) for public employees were grounded in executive orders, subsequent governors have recently rescinded those orders and, accordingly, the rights of state employees to negotiate a contract with the state. Kathleen Hunter, GOP Governors Trim State Employees’ Bargaining Clout, in Stateline.org (Feb. 25, 2005), available at <http://archive.stateline.org/old/2005.html> (last visited Aug. 20, 2006).
- 30 See *supra* note 26 & 28.
- 31 See *supra* note 28.
- 32 These states are California, Massachusetts, New York, and Rhode Island. See *supra* note 27.
- 33 See National Labor Relations Board, Guide for Hearing Officers in NLRB Representation and Section 10(k) Proceedings 71-74, available at <http://www.nlr.gov/nlr/legal/manuals/hog5.pdf> (last visited Jan. 12, 2007).
- 34 See *infra* p. 20.
- 35 See *infra* p. 18.
- 36 See *infra* p. 16.
- 37 The three states are Illinois, Massachusetts, and Rhode Island. See *infra* pp. 13, 20, 22.
- 38 The eight states are California, Iowa, Michigan, New Jersey, New York, Oregon, Washington, and Wisconsin. See *infra* pp. 14-21.
- 39 The three states are Illinois, Massachusetts, and Rhode Island. See *infra* pp. 13, 20, 22.
- 40 The four states are California, Michigan, New Jersey, and Wisconsin. See *infra* pp. 18-21.
- 41 The four states are Iowa, New York, Oregon, and Washington. See *infra* pp. 14-21.
- 42 See, e.g., Vetoed California Legislation, *supra* note 27, sec. 2, § 8433.5 (c)(1); Massachusetts Ballot Initiative, *supra* note 27, sec. 4(b); New Jersey Executive Order, *supra* note 26, ¶ 5; Vetoed Rhode Island Legislation, *supra* note 27, sec. 1, § 40-6.6-6(c); Washington Legislation, *supra* note 28, sec. 3, § 41.56.113(2).
- 43 See *infra* pp. 13-21.
- 44 The six states are California, Iowa, New Jersey, Oregon, Washington, and Wisconsin. See *infra* pp. 14-21.
- 45 The eight states are California, Iowa, Michigan, New Jersey, New York, Oregon, Washington, and Wisconsin. See *id.*
- 46 Regulatory requirements applicable to child care providers vary by state, and cover issues such as prerequisites for licensing, limits on the number of children in care, facility and space requirements, sanitation requirements, and inspections. They can also involve zoning, food program procedures, subsidy payment procedures, and other administrative matters.
- 47 Of course, a union is not needed in order for child care providers to advocate policy positions before lawmakers or regulatory agencies. Moreover, even without a union, the “Noerr-Pennington doctrine” shields coordinated lobbying activity by business competitors from antitrust liability, even if the purpose or effect of a policy change is to limit competition. See *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). The main reasons to seek union representation in regulatory matters are to benefit from the political clout conferred by union membership and to use any negotiated agreement to spur changes in regulations.
- 48 The nine states are California, Illinois, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island, and Washington, although in Washington only one group of providers is given collective bargaining rights, in California only meet-and-confer authority is given for regulatory issues, and in New York the authority for one group of providers is unclear. See *infra* pp. 14-22.
- 49 The two states are Iowa and Wisconsin, although in Washington one group of providers is given meet-and-confer authority and in California meet-and-confer authority is given for regulatory issues. See *infra* pp. 15, 18, 19.
- 50 See Richard C. Kearney & David G. Carnevale, *Labor Relations in the Public Sector* 67 (2001) (“Meet and confer is an activity peculiar to the public sector. ... Although a meet and confer approach is sometimes favored by management, unions argue that the arrangement more closely approximates ‘collective begging’ than collective bargaining. In reality, employers have adopted a modified approach ...[and] [i]n practice, it often is not an easy matter to distinguish between the two anyway.” *Id.*).
- 51 In the collective bargaining context, the duty to meet and bargain in good faith is also often referred to as a duty to “meet and confer,” the violation of which is an unfair labor practice. Under meet-and-confer authority, however, the employer’s obligation may end with meeting and discussing issues with the union.
- 52 For example, in Oregon, in which providers were initially given only meet-and-confer authority, SEIU and the state agencies reached an impasse over the issue of a dispute resolution process, and, as is permitted under the executive orders, a third-party fact-finder was asked by the parties to rule on the areas of disagreement. In her report and recommendations, the fact-finder stated, “While the State is correct in its assertion that the

Executive Order does not create any contractual rights, the Union is correct in its assertion that any agreement reached by the parties may create obligations that are contractual in nature.” *In re State of Oregon and SEIU Local 503, OPEU 7* (Sept. 18, 2006) (on file with the National Women’s Law Center) [hereinafter Oregon Neutral Recommendations].

53 GAO Report, *supra* note 16, at 10, n. 18.

54 *Id.* at 10.

55 Stephen F. Befort, *Public Sector Bargaining: Fiscal Crisis and Unilateral Change*, 69 Minn. L. Rev. 1221, 1243 (1985) (as of 1982, two-thirds of state employee bargaining laws subjected at least parts of collective bargaining agreements to the legislative appropriations process).

56 These states are California, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island, Washington, and Wisconsin. Illinois permits strikes and Iowa is silent on the issue. See *infra* pp. 13-22.

57 The five states are California, Massachusetts (ballot initiative), New Jersey, New York, and Washington. See *infra* pp. 14-22.

58 This state is Wisconsin. See *infra* p. 19.

59 As previously discussed, other unions include the AFT, CWA, and UAW. Another key player in the effort to unionize FCC and FFN providers is ACORN (the Association of Community Organizations for Reform Now), an organization dedicated to assisting low-income families to organize for social justice. Over the years, ACORN has worked with several unions, but it has had a longstanding partnership with SEIU; in many cases SEIU has used ACORN’s organizing strategies to recruit members and organize for policy changes, even before obtaining formal recognition. See Fred P. Brooks, New Turf for Organizing Family Child Care Providers, 29 Labor Studies J. 45, 51 (2005). Traditionally, ACORN has organized low-income parents who need better access to affordable, quality child care, and low-income child care providers to demand better treatment from subsidy programs. In 2005, however, the organization’s child care provider associations voted to formally affiliate with SEIU, to participate in its organizing efforts and to organize parents to support the unionization campaigns. ACORN Working Parents Association, Campaign Description (2006) (on file with the National Women’s Law Center). According to interviews with ACORN organizers, it has participated in FCC/FFN organizing campaigns in California, Illinois, Maryland, Massachusetts, New Jersey, and New York (in the latter ACORN partnered with the United Federation of Teachers, an affiliate of AFT).

60 The three states are Massachusetts, Rhode Island, and Wisconsin. See *infra* pp. 19, 20, 23.

61 The two states are Illinois and Washington. See *infra* pp. 13-16.

62 The three states are Iowa, New York, and Oregon. See *infra* pp. 16, 18, 21.

63 The three states are California, Michigan, and New Jersey. See *infra* pp. 18, 22.

64 See Letter to Helen Blank, Dir. of Leadership & Pub. Policy, Nat’l Women’s Law Ctr., from Denise Dowell, Coordinator, Child Care Providers Together, AFSCME (Aug. 1, 2006) (on file with the National Women’s Law Center).

65 *Id.*

66 In one other state—Maryland—legislation was introduced and considered during the 2006 session but not voted upon. This proposal would have authorized FCC and FFN providers to join a union and created two bargaining units: one for subsidized FCC and FFN providers and another for unsubsidized FCC providers. H.B. 1478, 2006 Leg., 422d Leg. Sess. (Md.). Only the first unit would have obtained collective bargaining rights, with the state required to negotiate on reimbursement rates, subsidy rules, and working conditions. *Id.* at 8-10. The second, nonsubsidized unit, would have gained an exclusive “rulemaking representative” with whom the state was required to “meet and confer” on proposed rules governing FCC providers. *Id.* at 10-11. The bill was voted down in committee and sent to “interim study,” Md. Gen. Assemb., 2006 Regular Session Bill Information, available at <http://mlis.state.md.us/2006rs/billfile/HB1478.htm> (last visited Feb. 1, 2007), meaning the bill was dead for the session and that concerns would need to be explored and addressed over the interim period prior to the next legislative session.

67 Illinois Executive Order, *supra* note 28.

68 See Illinois Action for Children, Talking Points When Asked about SEIU Unionizing Efforts among Family Child Care Providers in Illinois 1 (Feb. 2006 undated) (on file with the National Women’s Law Center).

69 Illinois Legislation, *supra* note 28, sec. 5, §§ 3(n), (o).

70 *Id.* § 3(o).

71 *Id.* Sec. 7.

72 To help child care centers provide affordable health care coverage for their employees, child care policy consultants are exploring the concept of using unionized Professional Employer Organizations (PEOs). See Louise Stoney, A Consultative Session on Establishing an Early Care and Education Private Employer Organization (PEO) (2005), available at <http://www.earlychildhoodfinance.org/Publications/PEOReport.doc> (last visited Jan. 11, 2007); Keystone Summary, *supra* note 10, at 4; TRIADA, Supporting the Early Childhood Profession for Quality Care & Education (a project of the Wisconsin Regional Training Partnership, 2006) (on file with the National Women’s Law Center). In general, a PEO is an arrangement whereby small businesses outsource many of their administrative and human resources responsibilities (e.g., processing payroll, administering employee benefits, and withholding and paying taxes) to an outside entity, the PEO. See Nat’l Ass’n of Prof’l Employees Orgs., What is a Professional Employer Organization? (undated), available at <http://www.napeo.org/peoindustry/definition.cfm> (last visited Jan. 24, 2007). In exchange, the PEO charges member businesses a membership fee and becomes a “co-employer” of the business’ employees. Nat’l Ass’n of Prof’l



Employees Orgs., Frequently Asked Questions, PEO Industry Information (undated), *available at* <http://www.napeo.org/peoindustry/faq.cfm> (last visited Jan. 23, 2007). Usually, PEOs only have access to the same types of commercially available insurance benefits that centers can already access; they may receive a volume discount, but that discount does not reflect the added savings from an expanded risk pool. Telephone interview with Eric Parker, Exec. Dir., Wisconsin's Reg'l Training P'ship, May 12, 2006.

However, a PEO, as the employer-of-record, could engage in collective bargaining with a union on behalf of all the employees of PEO members, without individual centers having to unionize directly. *Id.* PEO-member centers, by virtue of their PEO membership, would agree to abide by the terms of the negotiated contract, which might require the contribution of a certain amount toward employee premiums. *Id.*

Unionized PEOs are currently under development in Wisconsin and Pennsylvania, and could become a new model for unionizing child care centers. In both states, however, outside funds are being used to help finance the health insurance premiums—Wisconsin is receiving foundation funds and Pennsylvania has committed state funds to a pilot—highlighting the challenge of providing adequate health care coverage for low-wage workers at an affordable cost on a self-sustaining basis.

<sup>73</sup> David H. Bradley & Stephen A. Herzenberg, Pennsylvania Child Care Workers Face Health Insurance Crisis 5, Table 2: Health Insurance Coverage in Child Care and Comparison Industries, Pennsylvania and the U.S., 1997-99 (percent) (Keystone Research Center, Apr. 2001), *available at* [http://www.keystoneresearch.org/publications/summaries/2001/childcare\\_health\\_ins.php](http://www.keystoneresearch.org/publications/summaries/2001/childcare_health_ins.php) (last visited Jan. 12, 2007).

<sup>74</sup> Unions have pursued this strategy in their negotiations on behalf of home care workers. For instance, in San Francisco, home care workers pay \$3/month for access to the county's "Healthy Workers" plan, which provides routine care and check-ups, diagnostic tests, maternity care, prescription drugs, emergency room care, and many other services using county public health facilities. See San Francisco Health Plan, Healthy Workers, *available at* [http://www.sfhp.org/visitors/programs/healthy\\_workers/benefits\\_and\\_services.aspx](http://www.sfhp.org/visitors/programs/healthy_workers/benefits_and_services.aspx) (last visited Oct. 11, 2006). The "Healthy Families" plan costs the worker \$4-12/month per child (\$36/month maximum) and offers comprehensive coverage such as hospital and emergency room care at six hospitals, prescriptions drugs, doctor visits, OB/GYN care, and other key services. See San Francisco Health Plan, Healthy Families, *available at* [http://www.sfhp.org/visitors/programs/healthy\\_families/cost.aspx](http://www.sfhp.org/visitors/programs/healthy_families/cost.aspx) (last visited Oct. 11, 2006).

In Oregon, the union's contract with the state Homecare Commission provided access for home care workers to a state program that pays 95% of the cost of premiums for private health insurance for low-income Oregonians (Family Health Insurance Assistance Program or FHIAP). The union formed the Homecare Union Benefits Board (HUBB) to administer the program: HUBB handles enrollment paperwork, bills the state for premium subsidies, then sends the premiums to an insurance company, which provides coverage for managed care. See Homecare Union Benefits Board, Homecare Workers Benefit Summary (Apr. 1, 2006-Mar. 31, 2007), *available at* [http://www.opecseiu.org/Emily/hubb\\_summary06\\_r4.pdf](http://www.opecseiu.org/Emily/hubb_summary06_r4.pdf) (last visited Oct. 11, 2006). Union organizers representing home-based child care providers in Oregon have suggested that FCC and FFN providers may be able to negotiate a similar arrangement using the HUBB/FHIAP partnership.

<sup>75</sup> See 29 U.S.C. § 186(c) (2005). Taft-Hartley plans are a fixture in the private sector, whereas public employees are usually insured by a state-run plan. In the case of home-based child care providers, a Taft-Hartley plan would be providing coverage for quasi-public employees.

<sup>76</sup> Self-insured plans, including nearly all Taft-Hartley plans, are those in which insureds' claims are paid directly by the plan out of premiums collected from employees and the employer. In contrast, a fully insured plan is one in which premiums are paid to and claims are paid by a third-party insurance company. In general, insurance companies are exempt from federal regulation; states regulate companies engaged in the business of insurance, requiring their plans to meet minimal standards of adequacy by providing certain benefits deemed critical to the health and well-being of policyholders (e.g., coverage for periodic mammograms or minimum maternity stays in the hospital). However, these state requirements do not apply to self-insured plans—they are exempt from state insurance regulation—allowing such plans to offer limited-benefit packages for lower premiums. Except for being subject to limited federal law requirements on disclosure and fiduciary duties, Taft-Hartley insurance plans are largely self-regulated.

<sup>77</sup> SEIU, Two New Affordable Health Plans Designed Specifically for SEIU Members, *available at* <http://www.seiuforyou.org/uhc.aspx> (last visited Jan. 12, 2007).

<sup>78</sup> *Id.*

<sup>79</sup> SEIU, SEIU Health Care Access Trust: Opening Doors to Quality, Affordable Health Care for Working Families, The Violet Plans (2006) (on file with the National Women's Law Center).

<sup>80</sup> *Id.* at The Purple Plans.

<sup>81</sup> Shriver Center, Local 880 and Illinois Reach Tentative Agreement on Contract for Home Child Care Providers, Poverty Action Report (Dec. 2005), *available at* <http://www.povertylaw.org/news-and-events/poverty-action-report/december-2005/local-880> (last visited Jan. 12, 2007) [hereinafter Local 880 and Illinois Reach Tentative Agreement]; Jonathan Walters, *Solidarity Forgotten*, *Governing*, June 2006, *available at* <http://www.governing.com/articles/6labor.htm> (last visited Jan. 12, 2007).

<sup>82</sup> SEIU-Child Care Providers 2006-2009 Labor Contract (ratified Jan. 2006), *available at* [http://www.state.il.us/cms/2\\_servicese\\_per/laborrel.htm](http://www.state.il.us/cms/2_servicese_per/laborrel.htm) (last visited Jan. 12, 2007) [hereinafter Illinois Contract].

<sup>83</sup> Shriver Center, Illinois Takes Leap Forward on Early Childhood Education and Care, Poverty Action Report (May 2006), *available at* <http://www.povertylaw.org/news-and-events/poverty-action-report/may-2006/early-childhood> (last visited Jan. 12, 2007) [hereinafter Illinois Takes Leap].

<sup>84</sup> Illinois Contract, *supra* note 82, Art. VII.

- <sup>85</sup> Local 880 and Illinois Reach Tentative Agreement, *supra* note 82.
- <sup>86</sup> Illinois Contract, *supra* note 82, Art. IX.
- <sup>87</sup> If the union were to use the state's premium contributions to purchase insurance from an insurance company rather than provide the insurance from its own self-insured plan, the benefits *would* be subject to state insurance regulations. If, however, the insurance company performs only claims-processing functions for the union, it is serving in an "administrative services only" (ASO) capacity and thus its involvement does not trigger state regulation. SEIU has arranged with United Healthcare to offer Lilac and the first level of Violet benefits to SEIU's FCC and FFN members in Illinois on a buy-in basis immediately. But, because under the collective bargaining agreement health insurance is not provided until the third year, any buy-in would be to an insurance company, and thus the benefits will be slightly modified to comply with state regulations.
- <sup>88</sup> Illinois Contract, *supra* note 82, Art. VIII, Art. X.
- <sup>89</sup> *Id.* Art. XII, § 2.
- <sup>90</sup> See Ill. Dep't of Human Servs., Fiscal Year 2007 Budget, Table: FY07 Budget—Change by Line Item—General Revenue Fund, Human Capital Development Grants (2006) *available at* <http://www.dhs.state.il.us/Budget/2007/Human%20Capital%20Development%20Grants-GRF%20.PDF> (last visited Jan. 12, 2007); Illinois Takes Leap, *supra* note 83.
- <sup>91</sup> See Ill. Pub. Act 094-0798, Art. 83, § 5, at 580 (2006).
- <sup>92</sup> Illinois Takes Leap, *supra* note 83.
- <sup>93</sup> See *infra* pp. 15-17.
- <sup>94</sup> Washington Executive Order, *supra* note 28.
- <sup>95</sup> *Id.* at 1.
- <sup>96</sup> Washington Legislation, *supra* note 28.
- <sup>97</sup> *Id.* sec. 1, § 41.56 (1).
- <sup>98</sup> *Id.* § 41.56(a)-(b).
- <sup>99</sup> Letter from SEIU 925 Bargaining Team to Family Child Care Providers (undated), *available at* [http://www.seiu925.org/onthejob/early\\_learning/a\\_great\\_contract.cfm](http://www.seiu925.org/onthejob/early_learning/a_great_contract.cfm) (last visited Jan. 13, 2007) (urging ratification of the contract).
- <sup>100</sup> E-mail from Kursten Holabird, Researcher, SEIU Local 925, to Deborah Chalfie, Senior Counsel, National Women's Law Center (Aug. 2, 2006) (on file with the National Women's Law Center).
- <sup>101</sup> Washington Legislation, *supra* note 28, sec. 6, § 74.15(1).
- <sup>102</sup> The authorizing legislation provides that the second bargaining unit will be represented by the same union as the first unit unless and until that second unit requests a separate election. *Id.*
- <sup>103</sup> Associated Press, *Child Care Workers, State Agree on Contract*, Seattle Post-Intelligencer, Nov. 16, 2006, *available at* [http://seattlepi.nwsourc.com/local/292549\\_contract16.html?source=rss](http://seattlepi.nwsourc.com/local/292549_contract16.html?source=rss) (last visited Jan. 12, 2007).
- <sup>104</sup> Agreement between State of Washington and SEIU, *available at* [http://www.seiu925.org/onthejob/early\\_learning/fcc\\_contract.cfm](http://www.seiu925.org/onthejob/early_learning/fcc_contract.cfm) (last visited Jan. 13, 2007) [hereinafter Washington Contract].
- <sup>105</sup> *Id.* § 11.1.
- <sup>106</sup> *Id.* §§ 12.2-12.3.
- <sup>107</sup> *Id.* § 11.3.
- <sup>108</sup> *Id.* § 11.1.
- <sup>109</sup> *Id.* §§ 13.1, 13.4
- <sup>110</sup> *Id.* § 13.3.
- <sup>111</sup> *Id.* Art. 14.
- <sup>112</sup> *Id.* Art. 15. FCC providers are already eligible for such subsidies. See 42 U.S.C. § 1766 (2003).
- <sup>113</sup> Press Release, Governor Gregoire Announces Director of New Washington Department of Early Learning (Aug. 22, 2006), *available at* <http://www.governor.wa.gov/news/news-view.asp?pressRelease=341&newsType=1> (last visited Jan. 12, 2007).
- <sup>114</sup> Washington Legislation, *supra* note 28, sec. 1, § 41.56 (6)(b).
- <sup>115</sup> *Id.* § 41.56(5).
- <sup>116</sup> *Id.* § 41.56(7). The legislature also expressly retained the power to make programmatic modifications to the subsidy program. *Id.* § 41.56(4)(d).
- <sup>117</sup> *Id.* § 41.56(7).
- <sup>118</sup> *Id.* § 41.56(10).

- <sup>119</sup> *Id.* § 41.56(2)(e).
- <sup>120</sup> Telephone Interview with Tammy Hay, Budget Assistant to the Governor, Office of Fin. Mgmt. (Jan. 18, 2007) [hereinafter Tammy Hay Interview].
- <sup>121</sup> *Id.*
- <sup>122</sup> See Office of the Governor, Proposed 2007-2009 Budget, Recommendation Summaries, Agency 357, Department of Early Learning 1-2 (2006), available at <http://www.ofm.wa.gov/budget07/recsum/357.pdf> (last visited Jan. 18, 2007).
- <sup>123</sup> Tammy Hay Interview, *supra* note 120.
- <sup>124</sup> See Office of the Governor, Proposed 2007-2009 Budget, Recommendation Summaries, Agency 300, Department of Social and Health Services 1 (Dec. 2006) <http://www.ofm.wa.gov/budget07/recsum/300.pdf> (last visited Jan. 13, 2007).
- <sup>125</sup> 2005 Oregon Executive Order, *supra* note 26.
- <sup>126</sup> See Or. AFSCME Council 75, AFSCME, State Sign Landmark Child Care Providers Contract (Oct. 4, 2006), available at [http://oregonafscme.com/index.cfm?zone=/unionactive/view\\_article.cfm&homeID=44358](http://oregonafscme.com/index.cfm?zone=/unionactive/view_article.cfm&homeID=44358) (last visited Jan. 13, 2007).
- <sup>127</sup> 2006 Oregon Executive Order, *supra* note 26.
- <sup>128</sup> Steve Law, *Oregon's Day-Care Workers to Unionize: Governor Authorizes Collective Bargaining for 6,000 Providers*, Statesman Journal, Feb. 27, 2006.
- <sup>129</sup> 2005 Oregon Executive Order, *supra* note 26, ¶¶ 1, 3, 4; 2006 Oregon Executive Order, *supra* note 26, ¶¶ 1, 3, 4.
- <sup>130</sup> 2005 Oregon Executive Order, *supra* note 26, ¶ 2; 2006 Oregon Executive Order, *supra* note 26, ¶ 2.
- <sup>131</sup> 2005 Oregon Executive Order, *supra* note 26, ¶ 1; 2006 Oregon Executive Order, *supra* note 26, ¶ 1.
- <sup>132</sup> Memorandum of Agreement between the Oregon Employment Department, the Oregon Department of Human Services, and American Federation of State, County and Municipal Employees Child Care Providers Together (Sept. 30, 2006), available at <http://www.oregonafscme.com/docs/contracts/ChildCareProvidersL132.pdf> (last visited Jan. 13, 2007) [hereinafter Oregon AFSCME Contract].
- <sup>133</sup> Memorandum of Agreement between the Oregon Employment Department, the Oregon Department of Human Services, and Services Employees International Union Local 503, Oregon Public Employees Union (Feb. 1, 2007) (on file with the National Women's Law Center) [hereinafter Oregon SEIU Contract].
- <sup>134</sup> Oregon AFSCME Contract, *supra* note 132, § VI (A).
- <sup>135</sup> Oregon SEIU Contract, *supra* note 133, § V (A).
- <sup>136</sup> Oregon AFSCME Contract, *supra* note 132, § III; Oregon SEIU Contract, *supra* note 133, § X.
- <sup>137</sup> See Or. Comm'n for Child Care Affordability Workgroup, Recommended Priorities for Commission Consideration 1 (rev'd Apr. 2006), available at <http://www.oregon.gov/EMPLOY/CCC/docs/OCCCAffordabilityRecommendations.doc> (last visited Jan. 18, 2007).
- <sup>138</sup> See Oregon AFSCME Contract, *supra* note 132, § VI(B); Oregon SEIU Contract, *supra* note 133, § XII.
- <sup>139</sup> Oregon AFSCME Contract, *supra* note 132, § IV.
- <sup>140</sup> Oregon Neutral Recommendations, *supra* note 52, at 18-20.
- <sup>141</sup> E-mail from Abby Solomon, Organizer, SEIU Local 503, OPEU, to Deborah Chalfie, Senior Counsel, Nat'l Women's Law Ctr. (Dec. 7, 2006) (on file with the National Women's Law Center).
- <sup>142</sup> Oregon AFSCME Contract, *supra* note 132, App. A, ¶¶ 16, 17.
- <sup>143</sup> Oregon SEIU Contract, *supra* note 133, §§ IX, X (D).
- <sup>144</sup> Oregon AFSCME Contract, *supra* note 132, § V.
- <sup>145</sup> Oregon SEIU Contract, *supra* note 133, § IV.
- <sup>146</sup> See Or. Dep't of Human Servs., DHS 2007-09 Budget, available at <http://www.oregon.gov/DHS/aboutdhs/budget/07-09budget/index.shtml>. (last visited Jan. 13, 2007).
- <sup>147</sup> Or. Office of Econ. Analysis, Oregon Economic and Revenue Forecast 49-50 (Dec. 2006) available at [http://www.oea.das.state.or.us/DAS/OEA/economic.shtml#Most\\_Recent\\_Forecast](http://www.oea.das.state.or.us/DAS/OEA/economic.shtml#Most_Recent_Forecast) (last visited Nov. 29, 2006).
- <sup>148</sup> See Governor Ted Kulongoski, Governor's 2007-2009 Recommended Budget, 2007-09 Budget Summary 21, available at <http://www.governor.state.or.us/> (last visited Jan. 13, 2007).
- <sup>149</sup> Or. Dep't of Human Services, Child Care Policy Option Package (POP) Breakdown (unpublished) (undated) (on file with the National Women's Law Center).
- <sup>150</sup> *Id.*
- <sup>151</sup> *Id.* See also Oregon AFSCME Contract, *supra* note 132, § VI (B); Oregon SEIU Contract, *supra* note 133, § XII.

- <sup>152</sup> 2007 Oregon Executive Order, *supra* note 26.
- <sup>153</sup> *Id.* ¶ 5.
- <sup>154</sup> *Id.* ¶¶ 5, 7.
- <sup>155</sup> *Id.* ¶¶ 3, 4.
- <sup>156</sup> *Id.* ¶ 1.
- <sup>157</sup> Iowa Executive Order 45, *supra* note 26.
- <sup>158</sup> John Pollak, Legislative Guide to Family Investment Program (FIP), Food Assistance (Food Stamp) Program, and State Child Care Assistance 19 (Iowa Legislative Services Agency, Dec. 2005), *available at* <http://www.legis.state.ia.us/Central/Guides/fip.pdf> (last visited Jan. 14, 2007) [hereinafter Iowa Legislative Guide].
- <sup>159</sup> Iowa Executive Order 46, *supra* note 26.
- <sup>160</sup> Iowa Legislative Guide, *supra* note 158, at 19.
- <sup>161</sup> Iowa Executive Order 45, *supra* note 26, ¶ II; Iowa Executive Order 46, *supra* note 26, ¶ II.
- <sup>162</sup> Iowa Executive Order 45, *supra* note 26, ¶ IV; Iowa Executive Order 46, *supra* note 26, ¶ IV.
- <sup>163</sup> Iowa Executive Order 45, *supra* note 26, ¶ I; Iowa Executive Order 46, *supra* note 26, ¶ I.
- <sup>164</sup> See *Iowa Child Care Providers Win with AFSCME*, AFSCME Public Employee Xtra (AFSCME) (undated), *available at* <http://www.afscme.org/publications/7320.cfm> (last visited Jan. 14, 2007).
- <sup>165</sup> New Jersey Executive Order, *supra* note 26.
- <sup>166</sup> CWA, Big Victory for Childcare Providers, March 9, 2006, *available at* [www.cwa1037.org](http://www.cwa1037.org) (last visited Dec. 28, 2006).
- <sup>167</sup> E-mail from Michael Vella, Child Care Policy Analyst, N.J. Div. of Family Dev., to Karen Schulman, Senior Policy Analyst, Nat'l Women's Law Ctr. (Oct. 24, 2006).
- <sup>168</sup> New Jersey Executive Order, *supra* note 27.
- <sup>169</sup> *Id.* ¶ 1.
- <sup>170</sup> *Id.* ¶ 2.
- <sup>171</sup> *Id.* ¶ 6. The order does state, however, that the state labor laws that apply to state employees and specify the issues to be negotiated are applicable to home-based child care providers. *Id.*
- <sup>172</sup> *Id.* ¶ 4.
- <sup>173</sup> *Id.* ¶ 1.
- <sup>174</sup> Press Release, UAW, 40,000 Child Care Providers Join AFSCME and UAW to Strengthen Child Care for Michigan's Families (Dec. 13, 2006), *available at* <http://www.uaw.org/news/newsarticle.cfm?ArtId=421> (last visited Jan. 14, 2007).
- <sup>175</sup> Michigan Approval Letter, *supra* note 26.
- <sup>176</sup> Interlocal Agreement between the Department of Human Services (a principal department of the Executive Branch of the State of Michigan) and Mott Community College (a community college district of the State of Michigan) Creating the Michigan Home Based Child Care Council (a Michigan public body corporate) (July 27, 2006).
- <sup>177</sup> *Id.* §§ 1.15, 2.01.
- <sup>178</sup> *Id.* § 2.01.
- <sup>179</sup> *Id.*
- <sup>180</sup> *Id.*
- <sup>181</sup> *Id.*
- <sup>182</sup> M.C.L.A. § 423.215 (2006).
- <sup>183</sup> M.C.L.A. § 423.202 (2006).
- <sup>184</sup> Interlocal Agreement between the Department of Community Health (a principal department of the Executive Branch of the State Of Michigan) and the Tri-County Aging Consortium (a Michigan public body corporate and politic) Creating the Michigan Quality Community Care Council (a Michigan public body corporate and politic) (2004).
- <sup>185</sup> Telephone Interview with Bob Strassberg, Elections Officer, Mich. Employment Relations Comm'n (Nov. 28, 2006).
- <sup>186</sup> Joe Guy Collier, *UAW Branches Out in Michigan: 40,000 Launch Child-Care Union*, Detroit Free Press, Dec. 13, 2006, *available at* <http://www.freep.com/apps/pbcs.dll/article?AID=/20061213/BUSINESS01/612130418> (last visited Jan. 14, 2007).

- <sup>187</sup> AFSCME, *Wisconsin Child Care Providers Gain Bargaining Rights*, Public Employee Xtra, Nov. 16, 2006, available at <http://www.afscme.org/publications/12831.cfm> (last visited Jan. 14, 2007).
- <sup>188</sup> Wisconsin Executive Order, *supra* note 26.
- <sup>189</sup> Press Release, AFSCME/CCPT, 7,000 Child Care Providers Win Voice and First-ever Union with AFSCME/CCPT (Nov. 9, 2006), available at [http://www.wispolitics.com/1006/110906\\_AFSCME\\_CCPT.pdf](http://www.wispolitics.com/1006/110906_AFSCME_CCPT.pdf) (last visited Jan. 14, 2007).
- <sup>190</sup> Wisconsin Executive Order, *supra* note 26, ¶ 2.
- <sup>191</sup> *Id.* ¶ 3.
- <sup>192</sup> *Id.* ¶ 4.
- <sup>193</sup> *In re* State of Rhode Island, Dep'ts of DCYF & DHS and New England Health Care Employees Union, Local 1199, SEIU, AFL-CIO, Case No.: EE- 3671, Home Daycare Providers (Apr. 6, 2004), available at <http://www.dlt.state.ri.us/lrb/pdfs/DecisionEE3671.pdf> (last visited Jan. 14, 2007).
- <sup>194</sup> Vetoed Rhode Island Legislation, *supra* note 27.
- <sup>195</sup> *Id.* sec. 1, § 40-6.6-4.
- <sup>196</sup> *Id.* § 40-6.6-9.
- <sup>197</sup> *Id.* § 40-6.6-5 (c).
- <sup>198</sup> *Id.* § 40-6.6-10.
- <sup>199</sup> Child Care Veto Message of Governor Donald Carcieri (R.I. June 22, 2005), available at [http://www.governor.ri.gov/documents/Child\\_Care\\_Veto\\_Message.pdf](http://www.governor.ri.gov/documents/Child_Care_Veto_Message.pdf) (last visited Jan. 14, 2007).
- <sup>200</sup> Remarks by Governor Donald L. Carcieri, Child Care Unionization Bill Veto Press Conference, Wednesday, July 22, 2005, at 2 (June 22, 2005), available at [http://www.governor.ri.gov/documents/child\\_care\\_veto\\_remarks.pdf](http://www.governor.ri.gov/documents/child_care_veto_remarks.pdf) (last visited Jan. 14, 2007).
- <sup>201</sup> *Id.*
- <sup>202</sup> *State of Rhode Island v. State Labor Relations Bd.*, C.A. No: 04-1899 (Providence Super. Ct., Nov. 14, 2005) (providers are not considered state employees or independent contractors under state law, they are considered businesses, and thus the state labor relations board did not have jurisdiction to reclassify them as employees).
- <sup>203</sup> See UFT, UFT Helps Day-Care Providers Get Money They're Owed (Mar. 2, 2006), available at <http://www.uft.org/chapter/childcare/news/day-care/> (last visited Jan. 14, 2007).
- <sup>204</sup> Vetoed New York Legislation, *supra* note 27. The Vetoed New York Legislation was not a model of clarity, in that it expressly authorized subsidized providers to organize and bargain collectively, *id.*, sec. 1, § 201 (h), but contained no such authorization for unsubsidized providers, except by implication, by making them part of a bargaining unit with subsidized providers, *id.*, sec. 2, § 701 (3)(c).
- <sup>205</sup> N.Y. Civil Service Law § 203 (McKinney 2006).
- <sup>206</sup> N.Y. Civil Service Law § 210 (McKinney 2006).
- <sup>207</sup> Vetoed New York Legislation, *supra* note 27, sec. 1, § 201(h) & sec. 2, § 701 (3)(c).
- <sup>208</sup> *Id.* sec. 1, § 201 (h). As previously noted, *supra* note 194, there is no similar provision covering FCC providers who do not receive a subsidy, except by implication.
- <sup>209</sup> *Id.*
- <sup>210</sup> Veto Message No. 215 of Governor George E. Pataki (N.Y. June 7, 2006). The Governor also stated the legislation would jeopardize the state's federal child care funding because payments determined by collective bargaining would be "inconsistent" with federal regulations. *Id.*
- <sup>211</sup> New York Bill Tracking, 2005 New York S.B. 6758, 229<sup>th</sup> Ann. Leg. Sess., available at 2005 N.Y. S.B. 6758 (SN) (Westlaw).
- <sup>212</sup> Vetoed California Legislation, *supra* note 27.
- <sup>213</sup> *Id.* sec. 2, § 8436.
- <sup>214</sup> *Id.* § 8430.5.
- <sup>215</sup> *Id.* § 8434.7(a)-(b).
- <sup>216</sup> *Id.* § 8434.7(b)(1).
- <sup>217</sup> *Id.* § 8434.6.
- <sup>218</sup> *Id.* § 8434.
- <sup>219</sup> *Id.* § 8431.5(a)-(b).
- <sup>220</sup> *Id.* § 8434.7(b).

- <sup>221</sup> *Id.* § 8434.7(b)(2) .
- <sup>222</sup> *Id.* § 8434.5.
- <sup>223</sup> *Id.*
- <sup>224</sup> *Id.*
- <sup>225</sup> Assemb. Comm. on Labor & Employment, SB697 Bill Analysis, at M (Aug. 22, 2006), *available at* [http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb\\_0651-0700/sb\\_697\\_cfa\\_20060822\\_115617\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0651-0700/sb_697_cfa_20060822_115617_asm_comm.html) (last visited Jan. 14, 2007).
- <sup>226</sup> *Id.* at N-O, R.
- <sup>227</sup> Veto Message of Governor Arnold Schwarzenegger on SB 697 (Cal. Sept. 29, 2006), *available at* <http://www.assembly.ca.gov/acs/acsframeset2text.htm> (last visited Jan. 14, 2007).
- <sup>228</sup> Vetoed Massachusetts Legislation, *supra* note 27.
- <sup>229</sup> Veto Message of Governor Mitt Romney re H5269/H5257 (Aug. 10, 2006) (on file with the National Women's Law Center).
- <sup>230</sup> Massachusetts Ballot Initiative, *supra* note 27.
- <sup>231</sup> *Id.* § 3(c).
- <sup>232</sup> *Id.* §§ 3(d), 9.
- <sup>233</sup> *Id.* § 2(b).
- <sup>234</sup> *Id.* § 7.
- <sup>235</sup> *Id.* § 2(a).
- <sup>236</sup> See Massachusetts Ballot Results, *supra* note 27.
- <sup>237</sup> AFSCME, *More than 2,000 Child Care Providers in Minnesota Now Have AFSCME Representation*, Public Employee Xtra Oct. 19, 2006, *available at* <http://www.afscme.org/publications/12545.cfm> (last visited Dec. 29, 2006).
- <sup>238</sup> See St. Louis County, Mn., Resolution 613 (Dec. 13, 2005) (Public Health and Human Services Department authorized to “meet and confer” with union); Hennepin County, Mn., Resolution 06-7-405 (2006) (County Administrator authorized to “meet and negotiate”); and Ramsey County, Mn., Resolution 2006-328 (2006) (directs Community Human Services staff to meet with Child Care Providers Together (CCPT)/AFSCME to discuss issues of mutual concern such as streamlining bureaucracy and work together to lobby government for improvements).
- <sup>239</sup> See Michael Moore, *Unions Strike Agreement on Organizing Child-Care Providers*, St. Paul Union Advocate (St. Paul Area Trades & Labor Assembly, St. Paul, Mn.), Oct. 22, 2006, *available at* [http://www.workdayminnesota.org/index.php?news\\_6\\_2754](http://www.workdayminnesota.org/index.php?news_6_2754) (last visited Oct 23, 2006).
- <sup>240</sup> AFSCME, *Child Care + AFSCME: Success in Ohio*, AFSCME in Motion, Apr. 20, 2006, *available at* <http://www.afscme.org/publications/4069.cfm> (last visited Dec. 29, 2006).
- <sup>241</sup> See Lucas County, Ohio, Resolution 05-718 (May 24, 2005) (providing for recognition of provider representative, requiring deduction of union dues from reimbursements, and requiring county administrator to meet and confer on payment procedures and other issues of mutual concern); Franklin County, Ohio, Resolution 230-06 (Mar. 21, 2006) (requiring county administrator to recognize, and meet and confer with, providers’ representative on payment procedures and other issues of mutual concern).
- <sup>242</sup> See Keystone Summary, *supra* note 10, at 2.



## APPENDIX

## Unionization of Home-Based Child Care Providers: Summary of State Activity

(States in Which Legislation Passed/Executive Orders Issued)

State	Legal Authority	Bargaining Units/ Coverage/Union	Extent of Bargaining Mandate	Status/Highlights as of January 2007
California	<ul style="list-style-type: none"> <li>Legislation passed but vetoed (Sept. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>One bargaining unit</li> <li>All FCC providers, both subsidized and unsubsidized, and all subsidized FFN providers, but FFN providers not permitted to organize until 2009</li> <li>Represented by United Child Care Union (UCCU), a partnership between AFSCME &amp; SEIU</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining, except meet and confer on regulations</li> <li>Contract contingent on necessary regulatory or legislative revisions, including appropriations</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Renewed efforts to obtain legal authority needed to secure recognition and right to negotiate</li> </ul>
Illinois	<ul style="list-style-type: none"> <li>Executive Order (Feb. 2005)</li> <li>Legislation (July 2005)</li> </ul>	<ul style="list-style-type: none"> <li>One bargaining unit</li> <li>All subsidized FCC providers (9,000) and FFN providers (40,000)</li> <li>Represented by SEIU</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining</li> <li>Contract not contingent on regulatory or legislative approval or appropriations</li> <li>Right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Contract ratified (Jan. 2006); legislature funded first year</li> <li>Contract contains \$250 million in improvements over 3 years               <ul style="list-style-type: none"> <li>Rates increased by ~35%, and an additional 5-20% for FCC providers who meet certain standards</li> <li>Health insurance in 3<sup>rd</sup> year, financed by \$27 million from state</li> </ul> </li> <li>Contract used to win \$18 million in increases for subsidized child care centers</li> </ul>
Iowa	<ul style="list-style-type: none"> <li>Two Executive Orders issued together (Jan. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>Two bargaining units</li> <li>All FCC providers, both subsidized and unsubsidized (6,000), represented by AFSCME</li> <li>All subsidized FFN providers, not yet represented (7,000)</li> </ul>	<ul style="list-style-type: none"> <li>Meet and confer for both units</li> <li>Contract cannot contravene applicable state or federal law</li> <li>Silent on right to strike</li> </ul>	<ul style="list-style-type: none"> <li>FCC unit has developed proposal and hopes to begin negotiations in early 2007</li> </ul>
Massachusetts	<ul style="list-style-type: none"> <li>Legislation passed but vetoed (Aug. 2006)</li> <li>Ballot initiative defeated (Nov. 2006) 52-48</li> </ul>	<ul style="list-style-type: none"> <li>Ballot initiative would have created one bargaining unit</li> <li>All subsidized FCC and FFN providers</li> <li>Represented by SEIU</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining</li> <li>Contract contingent on necessary regulatory revisions and/or appropriations</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Renewed efforts to obtain legal authority needed to secure recognition and right to negotiate</li> </ul>
Michigan	<ul style="list-style-type: none"> <li>Governor approved "Interlocal Agreement" (ILA) creating Michigan Home Based Child Care Council (Sept. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>No mention of number of bargaining units in ILA</li> <li>All FCC providers, both subsidized and unsubsidized, and all subsidized FFN providers (40,000)</li> <li>Represented by Child Care Providers Together, a partnership between UAW and AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining</li> <li>Council must comply with applicable laws, regulations, and orders</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Bargaining committee has been formed but negotiations have not yet begun</li> </ul>
New Jersey	<ul style="list-style-type: none"> <li>Executive Order (Aug. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>One bargaining unit</li> <li>All FCC providers, both subsidized and unsubsidized, and all subsidized FFN providers (7,000)</li> <li>Represented by Child Care Workers Union (CCWU), a partnership between CWA and AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining</li> <li>Contract contingent on necessary regulatory or legislative approval, including appropriations</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Negotiations have begun</li> </ul>
New York	<ul style="list-style-type: none"> <li>Legislation passed but vetoed (June 2006); Senate voted to override, Assembly took no vote</li> </ul>	<ul style="list-style-type: none"> <li>Three bargaining units (52,000 providers total)</li> <li>All subsidized FCC and FFN providers in New York City, represented by UFT</li> <li>All subsidized FFN providers outside of New York City, represented by CSEA-AFSCME</li> <li>All FCC providers, subsidized or not, outside of New York City, represented by CSEA-AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining</li> <li>Contract for NYC units contingent on necessary legislation, including appropriations</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Renewed efforts to obtain legal authority needed to secure recognition and right to negotiate</li> </ul>



State	Legal Authority	Bargaining Units/ Coverage/Union	Extent of Bargaining Mandate	Status/Highlights as of January 2007
Oregon	<ul style="list-style-type: none"> <li>Three Executive Orders, one for FCC providers (Oct. 2005), one for FFN providers (Feb. 2006), and one for both FCC and FFN providers (Feb. 2007)</li> </ul>	<ul style="list-style-type: none"> <li>Two bargaining units</li> <li>All FCC providers, both subsidized and unsubsidized (4,500), represented by AFSCME</li> <li>All subsidized FFN providers (6,000), represented by SEIU</li> </ul>	<ul style="list-style-type: none"> <li>Meet and confer for both bargaining units in 2005 and 2006 orders; collective bargaining in 2007 order (for next round of contract negotiations)</li> <li>Contract contingent on necessary regulatory or legislative approval</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Both AFSCME (Sept. 2006) &amp; SEIU (Feb. 2007) units have signed contracts</li> <li>Governor included \$26 million in new state funding in budget for 2007-2009               <ul style="list-style-type: none"> <li>FCC rates increased to 100% of 75<sup>th</sup> percentile of 2006 market rate</li> <li>FFN rates increased to 88% of 75<sup>th</sup> percentile of 2006 market rate, increasing to 95% for meeting training requirements</li> <li>Provider procedural protections for FCCs and FFNs</li> </ul> </li> <li>Both contracts called for, and Governor's budget included, additional \$8 million to lower co-payments by parents by 20% and raise income eligibility from 150% to 185% of the federal poverty line</li> <li>Governor also included \$7 million over 2 years in budget for increases for subsidized child care centers</li> </ul>
Rhode Island	<ul style="list-style-type: none"> <li>Legislation passed but vetoed (June 2005)</li> </ul>	<ul style="list-style-type: none"> <li>One bargaining unit</li> <li>All subsidized FCC and FFN providers</li> <li>Represented by SEIU</li> </ul>	<ul style="list-style-type: none"> <li>Collective bargaining</li> <li>No mention of need for regulatory or legislative approval</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Renewed efforts to obtain legal authority needed to secure recognition and right to negotiate</li> </ul>
Washington	<ul style="list-style-type: none"> <li>Executive Order (Sept. 2005)</li> <li>Legislation (Mar. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>Legislation created two bargaining units</li> <li>All subsidized FCC and FFN providers (10,000)</li> <li>All unsubsidized FCC providers (1,500)</li> <li>Both units represented by SEIU</li> </ul>	<ul style="list-style-type: none"> <li>Subsidized unit—collective bargaining</li> <li>Unsubsidized unit—meet and confer for purposes of “negotiated rulemaking”</li> <li>Contract for subsidized providers must be certified financially feasible funding must be approved as a whole by legislature</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Contract signed for subsidized unit only (Nov. 2006)</li> <li>Governor included \$53 million in new state funding budget for 2007-2009               <ul style="list-style-type: none"> <li>FCC base rates increased by 10%, plus additional incentives for providing care for infants and during odd-hours</li> <li>FFN base rates made more uniform and increased by 7%</li> <li>Health insurance for subsidized FCC providers, financed in part by state</li> </ul> </li> <li>Governor also included \$32 million over 2 years in budget for increases for subsidized child care centers</li> <li>Unsubsidized unit preparing for negotiations</li> </ul>
Wisconsin	<ul style="list-style-type: none"> <li>Executive Order (Oct. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>One bargaining unit</li> <li>All FCC providers, both subsidized and unsubsidized, and all subsidized FFN providers (7,000)</li> <li>Represented by Child Care Providers Together - AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>Meet and confer</li> <li>Contract contingent on necessary regulatory or legislative approval, including appropriations</li> <li>No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>Union and providers engaged in effort to identify priorities</li> </ul>







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