

GETTING ORGANIZED

**UNIONIZING HOME-BASED
CHILD CARE PROVIDERS**

2013 UPDATE



ABOUT THE CENTER

The National Women's Law Center is a non-profit organization whose mission is to expand the possibilities for women and girls by working to remove barriers based on gender, open opportunities, and help women and their families lead economically secure, healthy, and fulfilled lives. Helen Blank is Director of Child Care and Early Learning, Nancy Duff Campbell is Co-President, and Joan Entmacher is Vice President for Family Economic Security at the National Women's Law Center.

ACKNOWLEDGMENTS

The authors wish to express their appreciation to the union personnel and organizers at the American Federation of State, County, and Municipal County and Municipal Employees (AFSCME), the Service Employees International Union (SEIU), the Communication Workers of America (CWA), the United Federation of Teachers (UFT), the United Auto Workers (UAW), and the child care advocates, child care resource and referral staff, and home-based child care providers who took time to provide information for this report.

The authors also thank other National Women's Law Center staff, including Fellows Emily Wales and Katie Wallat for their assistance with research and writing; interns Samantha Syverson, Amanda Mollo and Susanna Birdsong for research assistance; and Graphic and Web Designer Beth Stover for designing the report.

The report was made possible through the generous support for the National Women's Law Center's child care and early education work provided by the Ford Foundation, Heising-Simons Foundation, Moriah Fund, William Penn Foundation, Women's Law and Public Policy Fellowship Program, and an anonymous donor. The findings and conclusions of this report are solely the responsibility of the National Women's Law Center and do not necessarily reflect the opinions of these funders or of any of the individuals interviewed for this report.

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Introduction

In 2007, the National Women's Law Center (NWLC) published *Getting Organized: Unionizing Home-Based Child Care Providers*,¹ a report on the growing movement to enable home-based child care providers—a poorly paid and overwhelmingly female workforce—to join unions and negotiate with the state for better compensation and working conditions.

It found that the unionization of home-based child care providers,² while a relatively new development, was gaining ground—and that it was a promising strategy for improving the treatment of these providers and increasing support for child care more generally. As of February 2007, unions had secured the right to organize and negotiate on behalf of home-based child care providers in seven states: Illinois, Washington State, Oregon, Iowa, New Jersey, Michigan, and Wisconsin.

In 2010, NWLC released an update to *Getting Organized* that documented the continued growth and impact of the movement.³ As of early 2010, the number of states authorizing unions to represent home-based child care providers had doubled, with seven additional states authorizing them to organize and negotiate with the state—New York, Pennsylvania, Kansas, Maryland, Ohio, Maine, and New Mexico.

This 2013 Update reports on legal developments between early 2010 and October 2013 that expanded—or limited—authority for home-based child care providers to organize and negotiate with the state. It analyzes executive orders issued or reversed, legislation enacted or repealed, legislation passed but not enacted, and court rulings. This was a period of intense debate in several states over broader collective bargaining rights,⁴ and there were both advances and setbacks in the movement to organize home-based child care providers.

- **Three states—Connecticut, Massachusetts, and Rhode Island**—enacted legislation authorizing home-based child care providers to organize and negotiate with the state for the first time.
- **One state—Minnesota**—enacted legislation authorizing home-based child care providers to organize and negotiate with the state for the first time, but the U.S. Court of Appeals for the Eighth Circuit stayed the operation of the law pending a decision in a United States Supreme Court case involving a similar statute.
- **One state—New Jersey**—enacted legislation codifying the authority of home-based child care providers to organize and negotiate with the state that had earlier been granted by an executive order. Three states—Maine, Michigan, and Wisconsin—revoked the authority the state had previously granted to home-based child care providers to organize and negotiate with the state, in some instances, as part of broader efforts to limit workers' collective bargaining power at the state level.
- **One state—Ohio**—enacted legislation that would have stripped home-based child care providers and public sector employees of the authority to organize and negotiate with the state, but it was repealed by referendum.
- **One state—California**—passed, for the fifth time, legislation authorizing home-based child care providers to organize and negotiate with the state, but it was vetoed by the governor.

In sum, as of October 2013, the total number of states authorizing home-based child care providers to organize and negotiate with the state was 14, the same as in early 2010, with Minnesota's status yet to be resolved by the courts.

ORGANIZING HOME-BASED CHILD CARE PROVIDERS

Home-based child care providers are an integral part of the child care system. They include paid and unpaid caregivers who may be relatives or non-relatives of the children for whom they care. They may work either in the provider's home or the child's home. Many states regulate providers who care for more than a few unrelated children in the provider's home, but 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.

Because they work with individual families rather than a single entity that provides employment, home-based child care providers are not in a traditional employer-employee relationship that permits them to unionize and bargain over rates of compensation, benefits, and similar matters.

But many of them are regulated by the state and/or receive state subsidies because they are caring for children of low-income parents. The regulated status or receipt of subsidies can be a basis for providing special legal authority for these providers to organize into unions and for the state to serve in the role of employer for bargaining purposes. Such authority usually has been provided by an executive order from the governor, state legislation, or both. The source of legal authority generally defines the type of providers that may be organized, the ways in which providers are grouped together for representation and bargaining, and the process for electing a representative. Furthermore, it generally specifies the issues the union may bargain over, the strength of the bargaining mandate, and the enforceability of any negotiated agreement.⁵

States that gave providers new legal authority to organize and negotiate with the state

CONNECTICUT

Connecticut enacted legislation authorizing home-based child care providers to unionize and negotiate with the state in 2012, building on the executive order signed in 2011 by Governor Dannel P. Malloy that allowed those FCC and FFN providers who care for children receiving state subsidies to elect a majority representative with whom the state will meet and confer.⁶

The legislation gives subsidized FCC and subsidized FFN child care providers⁷ the right to negotiate with the state over reimbursement rates, benefits, payment procedures, contract grievance arbitration, training, professional development, and other requirements and opportunities.⁸ It specifies that these child care providers are not state employees⁹ and forbids bargaining as to "(A) The application of state employee benefits to family child care providers, including, but not limited to, health benefits and pensions; (B) a parent's right to (i) recruit, (ii) select, (iii) direct the activities of, and (iv) terminate the services of any family child care provider; and (C) a procedure for grievance arbitration against any parent."¹⁰ The law requires that any agreement must be submitted to the state's General Assembly for approval¹¹ and details an arbitration procedure for conflicts between the union and the state.¹²

Home-based child care providers voted to have CSEA Local 2001 of the Service Employees International Union (SEIU) represent them in 2012, just before they were granted collective bargaining rights.¹³ As of October 2013, CSEA Local 2001 was engaged in negotiations with the state and hoping to have a tentative agreement to present to members prior to the February 2014 legislative session.¹⁴

MASSACHUSETTS

After years of failed attempts to gain legal authority to unionize,¹⁵ home-based child care providers in Massachusetts finally achieved success in 2012, when the legislature passed and Governor Deval Patrick signed legislation granting subsidized FCC and subsidized FFN providers¹⁶ the right to organize and negotiate with the state.¹⁷

The law states that these home-based child care providers are considered public employees for the purposes of its provisions only.¹⁸ Although the providers are explicitly not state employees outside this context (and thus do not qualify for state employee benefits), the laws pertaining to the collective bargaining rights of state employees generally apply to these providers.¹⁹ As with all public employees in Massachusetts, strikes are forbidden.²⁰ Mandatory subjects of bargaining include “developing and encouraging greater education and training opportunities for family child care providers, improvement of recruitment and retention of qualified providers and reimbursement and payment procedures”²¹ and, effective January 1, 2013, “the rate structure for voucher and contracted payments for family child care providers.”²²

Within two months after Governor Patrick signed the bill into law, the Massachusetts Department of Labor Operations certified SEIU to represent subsidized FCC and subsidized FFN child care providers in the state.²³ In late November 2013, the union reached an agreement with the state after months of negotiations.²⁴ A worker vote is required for the agreement to take effect, and union representatives expect vote results in January 2014.²⁵ If approved, the agreement would provide for rate increases for providers, professional development, and new quality standards for workers.²⁶

RHODE ISLAND

After several years of ongoing efforts to authorize home-based child care providers in Rhode Island to unionize and negotiate with the state,²⁷ in July 2013, the Rhode Island legislature passed, and Governor Lincoln Chafee signed, a law authorizing subsidized FFN and subsidized FCC providers to do so.²⁸ The law states that these providers are expressly not state employees,²⁹ nor are they granted the right to strike.³⁰ The law requires a state designee to negotiate with the providers’ representative about “the terms and conditions of CCAP [Child Care Assistance Program] family child care providers’ participation in CCAP,” including, among other issues, training and professional development, recruitment and retention of providers, reimbursement rates, benefits, and payment procedures.³¹ It provides that any agreements reached that require appropriation of funds must receive legislative approval.³² It also provides that if negotiations reach an impasse, the parties must submit to mediation or arbitration.³³

In October 2013, Rhode Island’s Labor Relations Board scheduled a vote to allow subsidized FFN and FCC child care providers to determine whether the local New England SEIU chapter would be selected to represent them.³⁴ In late October, by a margin of 390-19, providers voted to be represented by SEIU.³⁵

State that enacted new legislation giving providers authority to organize that was stayed by court order

MINNESOTA

The effort to secure organizing and negotiating rights for home-based child care providers in Minnesota has been long and contentious—and was still unresolved as of October 2013. After years of organizing efforts at the county level by both AFSCME and SEIU,³⁶ Governor Mark Dayton issued an executive order in 2011 ordering an election to determine whether AFSCME Council 5 and SEIU would represent subsidized FCC providers in the state and, if

elected, authorizing the providers' representative to negotiate with the state on issues of mutual concern.³⁷ However, several providers, financed by a coalition of organizations, including the Minnesota Majority, Minnesota Family Council, and the Minnesota Free Market Institute, brought a lawsuit challenging the executive order on the grounds that the governor exceeded his authority in calling for a union election.³⁸ On April 6, 2012, Ramsey County District Court Judge Dale Lindman ruled that the establishment of a process for possible unionization of child care providers was a legislative function and permanently cancelled the election in which child care providers were to determine whether they wanted to form a union.³⁹ Governor Dayton announced that he would not appeal Judge Lindman's decision.⁴⁰

The Minnesota legislature then passed, and Governor Dayton signed, legislation in May of 2013 giving subsidized FCC and subsidized FFN providers⁴¹ the right to elect an exclusive representative to negotiate with the state.⁴² The law expressly gives these providers the "right to form and join labor or employee organizations"⁴³ and to "designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer."⁴⁴ Although the providers are granted the same rights to interest arbitration as public employees,⁴⁵ they are expressly not considered public employees for any purposes other than those specified,⁴⁶ nor does the legislation grant them the right to strike.⁴⁷ The legislation is designed to enable union representatives to bargain with the state over "issues of mutual concern," including quality standards and the quality rating system, the availability of training opportunities and funding for such opportunities, reimbursement rates, access to benefits, changes to the state system of providing early childhood education services, licensing and licensing actions, and the monitoring and evaluation of home-based child care providers.⁴⁸ All negotiated agreements and arbitration decisions must be submitted to the legislature for approval.⁴⁹

In February 2013, about the time the bill that formed the basis of the current law was introduced in the Senate,⁵⁰

the national presidents of AFSCME and SEIU agreed that if the legislation passed, AFSCME would seek certification to represent the home-based child care providers, and SEIU would seek certification to represent the other group granted the authority to organize and negotiate with the state under the new law, personal care workers—individuals who care for the elderly and people with disabilities in their own homes.⁵¹ In order to become the representative of home-based child care providers, AFSCME⁵² must establish by petition that thirty percent of the subsidized FCC and subsidized FFN providers in the state wish to be represented by AFSCME. If that happens, an election by mail ballot will be conducted. If the majority of subsidized family child care providers agrees to have AFSCME become the exclusive representative of these providers, the state will be required to meet and negotiate in good faith with AFSCME representatives, and the governor (or his designee) will be authorized to enter into agreements with them.⁵³ As of October 2013, AFSCME was in the process of gathering petition signatures⁵⁴—and contending with a new legal challenge.

A group of home-care providers represented by the National Right to Work Legal Defense Foundation challenged the statute on the ground that government certification of a bargaining representative to negotiate with the state on the providers' behalf would violate their constitutional right to free association because, even though the law does not require them to become members of the union if a majority of providers vote in favor of a union, the union would become the bargaining representative of all providers.⁵⁵ The complaint was dismissed by the U.S. District Court for the District of Minnesota.⁵⁶ However, on September 19, 2013, the U.S. Court of Appeals for the Eighth Circuit granted an injunction⁵⁷ blocking the holding of a unionization election pending a ruling by the U.S. Supreme Court in *Harris v. Quinn*, a challenge to a collective bargaining agreement under a similar Illinois statute allowing state-subsidized personal care providers to form a union to negotiate with the state.⁵⁸ (See sidebar for a discussion of the *Harris* case.) The Supreme Court's decision in *Harris* could have implications for the rights of home-based child care providers to organize and negotiate with the state in, and beyond, Minnesota.

HARRIS V. QUINN

Harris v. Quinn involves a challenge to a collective bargaining agreement negotiated pursuant to an Illinois statute authorizing workers providing personal care services in clients' homes who are subsidized and regulated under the state's Medicaid Home Services Program to organize and bargain with the state as public employees "[s]olely for the purposes of coverage under the Illinois Public Labor Relations Act [PLRA]."⁵⁹ Under the PLRA, a majority of employees may choose an organization to be their exclusive representative in collective bargaining over contract terms.⁶⁰ Employees "may be required, pursuant to the terms of a lawful fair share agreement, to pay a fee" to a union for their proportionate share of the costs of bargaining and contract administration.⁶¹ The PLRA also recognizes employees' right to refrain from participating in collective bargaining activities,⁶² and provides explicitly that such fair share fees may only be used to support collective bargaining activities, not electoral activities.⁶³

The plaintiffs in the *Harris* case are individual personal care providers who are paid with state funds to provide in-home care under the Medicaid rehabilitation and disabilities services programs.⁶⁴ They challenged the fair share fee provision of the collective bargaining agreement of the rehabilitation provider plaintiffs on the grounds that requiring them to pay a fee to a union representative violates their First Amendment rights.⁶⁵ The United States Court of Appeals for the Seventh Circuit held that it did not.⁶⁶

The court determined that "[b]ecause the personal [care providers] are employees of the State of Illinois at least in those respects relevant to collective bargaining, the union's collection and use of fair share fees is permitted by the Supreme Court's mandatory union fee jurisprudence," relying chiefly on *Railway Employees' Department v. Hanson* and *Abood v. Detroit Board of Education*.⁶⁷

In *Abood*, the Supreme Court held that requiring fair share fee payments by public employees who were not members of the union in order to support the collective bargaining activities of the union did not violate the non-union-member employees' First Amendment rights.⁶⁸ The *Abood* fair share agreement, the Seventh Circuit in *Harris* said, was similar to the agreement in *Harris* in that it required non-union-member public employees "to financially support the union's collective bargaining, contract administration, grievance-adjustment procedures, and other activities 'germane to its duties'" as an exclusive representative.⁶⁹ In addition, the court said that the "interests identified by the [Supreme] Court in *Abood* are identical to those advanced by the State" in *Harris*: peaceful employee relations and stable labor-management relations.⁷⁰ In reviewing the precedents, the court emphasized that the Supreme Court has "long approved"⁷¹ labor agreements with fair share fees where such funds are "not used to support political candidates or views, or other ideological causes."⁷²

The Seventh Circuit rejected the *Harris* plaintiffs' attempt to distinguish *Abood* by arguing that they are not state employees because the patients, not the state, employ them, and that the state's interest in "labor peace" does not apply because home care providers work "outside the workplace."⁷³ The court determined that the state was a joint employer of the personal assistants and that the state's interests in "stabilized labor-management relations" applied without regard to whether employees share the same workplace.⁷⁴

In the Supreme Court, the *Harris* plaintiffs renewed the arguments they made in the Seventh Circuit and urged the Supreme Court to reverse the *Abood* decision entirely, arguing that it does not provide adequate First Amendment protections.⁷⁵

State that codified prior authority to organize and negotiate with the state

NEW JERSEY

In 2010, New Jersey enacted legislation codifying bargaining rights first established by an executive order issued by then-Governor Jon Corzine in 2006.⁷⁶ Both the executive order and the legislation authorize FCC providers, both subsidized and unsubsidized, and subsidized FFN providers⁷⁷ to organize and bargain with the state.⁷⁸

The legislation authorizes the providers' representatives to meet with state officials on any topic normally considered negotiable for public employees, although providers are expressly not considered state employees.⁷⁹ Negotiable topics include reimbursement rates, collection and payment of fees, dispute resolution, reporting procedures, benefits, health and safety conditions, and "any other matters that would improve recruitment and retention of qualified family child care providers and the quality of the programs they provide."⁸⁰ These terms mirror the 2006 executive order.⁸¹

As described in the 2010 Update to *Getting Organized*, the 2006 executive order recognized the Child Care Workers Union (CCWU), a partnership between the Communications Workers of America (CWA) and the American Federation of State, County, and Municipal Employees (AFSCME) as the provider representative,⁸² and CCWU negotiated a contract that was in effect from October 2007 to June 30, 2010.⁸³ At the end of its term, the parties agreed to extend the contract while negotiating a new contract; as of October 2013, negotiations were continuing.⁸⁴

States that revoked providers' legal authority to organize and negotiate with the state

MAINE

In Maine, as reported in the 2010 Update to *Getting Organized*, subsidized and unsubsidized FCC providers and subsidized FFN providers gained the right to unionize and negotiate with the state under a statute enacted in 2008.⁸⁵ The Maine State Employees Association (MSEA), an affiliate of SEIU, was recognized as the bargaining agent for these providers in the legislation, and negotiated a contract that was in effect from July 1, 2009 through June 30, 2011.⁸⁶

Attempts to negotiate a new contract with Governor Paul LePage, who took office in January 2011, on behalf of home-based child care providers and other workers represented by MSEA, were unsuccessful.⁸⁷ In October 2011, MSEA filed a complaint with the Maine Labor Relations Board alleging that the state violated provisions of the law that require good faith bargaining and provide protections against discrimination and coercion of employees.⁸⁸ In March 2012, the Board ruled that the LePage administration must stand trial before the Board on the charges that it negotiated in bad faith and interfered with the rights of MSEA workers, although other charges were dismissed.⁸⁹ That same month, but before the trial took place, the LePage Administration proposed legislation to repeal the 2008 statute and end negotiating rights for home-based child care providers in the name of "fairness," explaining that they were the only group of service providers authorized to bargain collectively on their subsidy rates.⁹⁰ The bill passed the legislature and was signed into law on April 17, 2012, thereby ending this authority.⁹¹

MICHIGAN

As reported in *Getting Organized*, subsidized and unsubsidized FCC providers and subsidized FFN providers in Michigan obtained bargaining rights through an interlocal agreement between the state's Department of Human Services and the Michigan Home Based Child Care Council that was approved by then-Governor Jennifer Granholm in 2006.⁹² As reported in the 2010 Update to *Getting Organized*, Child Care Providers Together (CCPT), a partnership between AFSCME and the United Auto Workers (UAW), negotiated an agreement with the state on behalf of these providers that was effective from January 1, 2008, through December 31, 2011.⁹³ However, in March 2011 the Michigan Department of Human Services and Mott Community College—which had created the Michigan Home Based Child Care Council—dissolved the interlocal agreement and effectively ended future provider bargaining rights.⁹⁴

WISCONSIN

As described in the 2010 Update to *Getting Organized*, in 2009, the Wisconsin legislature codified then-Governor Jim Doyle's 2006 executive order that gave subsidized and unsubsidized FCC providers and subsidized FFN providers the authority to organize and negotiate with the state, and the AFSCME affiliate, CCPT, negotiated an agreement with the state that was in effect from June 2009 through June 2011.⁹⁵ However, in 2011, the Wisconsin legislature revoked the authority granted by Governor Doyle as part of a bill that eliminated collective bargaining rights for the majority of the state's public employees.⁹⁶ In a June 2011 ruling, the Wisconsin Supreme Court upheld the constitutionality of the legislative measures used to enact the bill and it went into effect, leaving providers with no legal authority to negotiate with the state going forward.⁹⁷

In a subsequent legal challenge to the law based on a challenge to its substantive provisions rather than its method of enactment, a Dane County circuit court ruled in September 2012 that parts of the law were unconstitutional.⁹⁸ In that case, brought by unions representing teachers and municipal employees, the court

held that the union members' rights of free speech and association and their right to equal protection were violated by the state's limitations on collective bargaining.⁹⁹ The state appealed; the circuit court refused to stay its decision,¹⁰⁰ and in March 2013, the state's Fourth District Court of Appeals also refused to stay the decision.¹⁰¹ In April 2013, that court certified the appeal to the state's Supreme Court.¹⁰² During the summer of 2013, the state Supreme Court agreed to review the case,¹⁰³ and a decision by that court—which could affect unions other than those that are parties to the lawsuit—was pending as of October 2013.

State in which providers' legal authority to organize and negotiate with the state survived a challenge

OHIO

As reported in the 2010 Update to *Getting Organized*, in 2010 then-Governor Ted Strickland signed an executive order giving subsidized and unsubsidized FCC providers and subsidized FFN providers the right to unionize and negotiate with the state, and the AFSCME affiliate CCPT negotiated an agreement with the state that was in effect from September 4, 2009, through June 30, 2010.¹⁰⁴ A second agreement, which is described in detail in the 2010 Update, was negotiated and in effect from August 1, 2010, through June 30, 2012.¹⁰⁵ That agreement was substantially similar to the previous one, but it also included a number of changes. Unlike the first agreement, it did not increase reimbursement ceiling rates, but it prohibited any lowering of rates for Fiscal Year 2011.¹⁰⁶ The first agreement called for a study of payment procedures, and the second agreement specified ways to make reimbursement payments faster and more accurate.¹⁰⁷ The second agreement also called for the state and the union to work together to expand access to professional training and development opportunities.¹⁰⁸

A Memorandum of Understanding (MOU) signed in 2011 extended the second agreement through June 30, 2015 with two changes required by changed circumstances.¹⁰⁹ First, because the union had negotiated a union-sponsored health insurance plan for providers after the second agreement was signed, the MOU included a process for deducting insurance premiums from reimbursement payments for providers who are members of the union and elect to participate.¹¹⁰ Second, because the state law that applied the fair share fee provision of Ohio's Public Sector Collective Bargaining Law to child care providers sunsetted on January 9, 2011, the MOU deleted the provision for the collection of fair share payments.¹¹¹

A law that would have curtailed collective bargaining rights in the state—including the rights granted to child care providers by Governor Strickland's 2010 executive order—was enacted in March 2011,¹¹² but a statewide coalition, We Are Ohio, successfully petitioned for a statewide referendum to repeal it.¹¹³ The referendum repealed it on November 8, 2011,¹¹⁴ before it took effect, by a vote of 62 to 38 percent.¹¹⁵ The repealed Ohio law was similar to the law that successfully eliminated collective bargaining rights for most public sector workers in Wisconsin in 2011.¹¹⁶

State with unsuccessful efforts to establish providers' legal authority to organize and negotiate with the state

CALIFORNIA

As reported in *Getting Organized* and the 2010 Update to *Getting Organized*, there has been a long-term effort in California to pass legislation authorizing home-based child care providers to unionize and negotiate with the state.¹¹⁷ Most recently, in 2011, the legislature passed a bill that would have provided authority for subsidized and unsubsidized FCC providers and subsidized FFN providers to form a union and negotiate with the state,¹¹⁸ but it was vetoed by Governor Jerry Brown.¹¹⁹ The bill was similar to bills passed and vetoed by Governor Arnold Schwarzenegger in 2007 and 2008.¹²⁰ In his veto message, Governor Brown cited the difficulty of balancing a desire for quality, affordable child care with a desire to provide good working conditions for providers, writing that he was "reluctant to embark on a program of this magnitude and potential cost" given the budget challenges California currently faced.¹²¹

The effort to gain bargaining rights for California home-based child care providers continued, however, with the introduction in 2013 of legislation authorizing subsidized and unsubsidized FCC providers and subsidized FFN providers to unionize.¹²² As of October 2013, the bill was pending in the Senate, after passing the Assembly on May 31, 2013.¹²³ Although the bill is similar to the one Governor Brown vetoed, the budget situation in California has improved since then,¹²⁴ which may also improve the bill's chances for enactment.

Conclusion

Since the publication of the 2010 Update to *Getting Organized*, the movement to unionize home-based child care providers has encountered more active opposition, in some cases related to broader anti-union activity. Home-based child care providers gained the right to organize in three new states, but lost rights they had previously secured in three other states. Most significantly, the Supreme Court's decision in *Harris v. Quinn*, expected sometime in the spring of 2014, could have serious implications for the ability of home-based child care providers to form unions and bargain with the state.

The unionization movement has helped the home-based child care workforce – and in some instances the child care workforce as a whole – secure better and more regular compensation and benefits, more efficient payment procedures, a process for resolving grievances, greater access to training, and a stronger voice in rulemaking, as *Getting Organized*, *Getting Organized: 2010 Update*, and this *Getting Organized: 2013 Update* have documented. These are the kinds of changes that child care providers and advocates have long argued are essential to improving the child care system, not only for providers but also for the children and families they serve.

Endnotes

- 1 Deborah Chalfie, Helen Blank & Joan Entmacher, Nat'l Women's Law Ctr., Getting Organized: Unionizing Home-Based Child Care Providers (2007) [hereinafter NWLC, Getting Organized], available at <http://www.nwlc.org/sites/default/files/pdfs/GettingOrganized2007.pdf>.
- 2 As used in this Update, "home-based child care providers" refers generally to registered family child care (FCC) providers who may or may not be receiving public funds to provide care to children from low-income families, and "family, friend, and neighbor" (FFN) child care providers who are exempt from regulation but receive public funds to provide care to children from low-income families, although in particular states the unionization of only some subset(s) of these providers may be at issue. These subsets are noted in the discussion of developments in each state.
- 3 Helen Blank, Nancy Duff Campbell & Joan Entmacher, NWLC, Getting Organized: Unionizing Home-Based Child Care Providers: 2010 Update (2010) [hereinafter NWLC, Getting Organized: 2010 Update], available at <http://www.nwlc.org/sites/default/files/pdfs/gettingorganizedupdate2010.pdf>.
- 4 Gordon Lafer, Economic Policy Institute, The Legislative Attack on American Wages and Labor Standards, 2011-2012 (2013), available at <http://s4.epi.org/files/2013/EPI-Legislative-Attack-on-American-Wages-Labor-Standards-10-31-2013.pdf>.
- 5 See generally NWLC, Getting Organized, *supra* note 1, at 5–12.
- 6 Compare Conn. Gen. Stat. Ann. § 17b-705a (West 2013), with Conn. Exec. Order No. 9 (Sept. 21, 2011), available at http://www.governor.ct.gov/malloylib/malloylib/EO_9_Family_child_care_providers.pdf.
- 7 By its terms, the law applies to "family child care providers," defined as those home-based child care providers "who provide child care service under the child care subsidy program." Conn. Gen. Stat. Ann. § 17b-705 (West 2013). This includes FFN providers who are exempt from regulation but receive subsidy payments.
- 8 Conn. Gen. Stat. Ann. § 17b-705a(d) (West 2013).
- 9 *Id.* § 17b-705a(a).
- 10 *Id.* § 17b-705a(b)(1).
- 11 *Id.* § 17b-705a(e)(7).
- 12 See *id.* § 17b-705a(e)(2).
- 13 See CSEA-SEIU Local 2001: The Child Care Union, *About Our Child Care Union*, <http://www.ctchildcare.org/2012/02/21/important-answers-about-our-child-care-union/> (last visited Sept. 26, 2013).
- 14 Telephone interview with Helene Figueroa, Director of Family Child Care Team, SEIU Local 2001 (Oct. 15, 2013).
- 15 See NWLC, Getting Organized, *supra* note 1, at 22; NWLC, Getting Organized: 2010 Update, *supra* note 3, at 34.
- 16 By its terms, the law applies to a "family child care provider," defined as "a person who provides family child care services on behalf of low-income and other at-risk children and receives payment from the commonwealth for such services under a rate structure for voucher and contracted payments." Mass. Gen. Laws Ann. ch. 15D, § 17(a) (West 2012).
- 17 *Id.* § 17.
- 18 *Id.* § 17(b).
- 19 *Id.* § 17(b)-(c).
- 20 *Id.* § 17(d).
- 21 *Id.* § 17(g).
- 22 *Id.* § 17(h).
- 23 See Service Emps. Int'l Union, Local 509, *Over 3,500 Family Child Care Providers Gain a Voice in Massachusetts* (Nov. 15, 2012), <http://www.seiu509.org/2012/11/15/over-3500-family-child-care-providers-gain-a-voice-in-massachusetts/>.
- 24 Kathy McCabe, *State, Union Agree to Contract for 4,000 Home-Based Child Care Providers*, Boston Globe, Dec. 1, 2013, http://www.bostonglobe.com/metro/2013/12/01/state-union-agree-contract-for-home-based-child-care-providers/nFUzY6jQ25osWzqCSMhh8J/story.html?s_campaign=8315.
- 25 *Id.*
- 26 *Id.*
- 27 See NWLC, Getting Organized, *supra* note 1, at 34; NWLC, Getting Organized: 2010 Update, *supra* note 3, at 20.
- 28 R.I. Gen. Laws § 40-6.6 (West 2013). By its terms, the law applies to "CCAP family child care providers," defined as licensed and license-exempt home-based child care providers who are approved to participate in the Child Care Assistance Program. *Id.* § 40-6.6-2 (West 2013).
- 29 *Id.* § 40-6.6-11.
- 30 *Id.* § 40-6.6-13.
- 31 *Id.* § 40-6.6-4.
- 32 *Id.* § 40-6.6-7.
- 33 *Id.* § 40-6.6-6.
- 34 Katherine Gregg, *R.I. Labor Board Schedules Childcare Union Vote*, Providence Journal, Oct. 11, 2013, <http://news.providencejournal.com/breaking-news/2013/10/embargoed-until-830am-friday-1011-ri-labor-board-schedules-child-care-union.html>.
- 35 Randal Edgar, *Rhode Island Childcare Providers Vote to Unionize*, Providence Journal, Oct. 31, 2013, <http://www.providencejournal.com/breaking-news/content/20131031-rhode-island-childcare-providers-vote-to-unionize.ece>.
- 36 See NWLC, Getting Organized, *supra* note 1, at 22–23; NWLC, Getting Organized: 2010 Update, *supra* note 3, at 33–34.
- 37 Minn. Exec. Order No. 11-31 (Nov. 15, 2011), available at <http://mn.gov/governor/images/EO-11-31.pdf>.

- 38 See John Rouleau, *On Appeal, Fees Awarded to Provider-Plaintiffs in Childcare Unionization Lawsuit*, Childcare Freedom (Apr. 23, 2013), <http://www.childcarefreedom.org/2013/04/23/on-appeal-fees-awarded-to-provider-plaintiffs-in-childcare-unionization-lawsuit/>.
- 39 See Swanson v. Dayton, No. 62-CV-11-9535, 2012 WL 1150257, at *1 (Minn. Dist. Ct. 2012).
- 40 See Rachel E. Stassen-Berger, *Dayton Won't Appeal Ruling on Child Care Vote*, Star Tribune, June 5, 2012, <http://www.startribune.com/politics/statelocal/157296085.html>.
- 41 By its terms, the law covers “family child care provider[s],” defined as licensed or unlicensed providers who receive “child care assistance to subsidize child care services for a child or children currently in their care.” Minn. Stat. Ann. § 179A.51 (West 2013).
- 42 *Id.* § 179A.52. See also Office of Governor Mark Dayton, Legislative Tracker, Legislation for 2013, Chapter 128, available at <http://mn.gov/governor/resources/legislation/?page=2> (last visited Sept. 26, 2013); Joe Imball, *Governor Dayton Signs Bill Authorizing Day Care Union Vote; Opponents to File Court Challenge*, MinnPost, May 28, 2013, <http://www.minnpost.com/political-agenda/2013/05/gov-dayton-signs-bill-authorizing-day-care-union-vote-opponents-file-court->.
- 43 See Minn. Stat. Ann. § 179A.06 (West 2006) (discussing the organizing rights of similarly-situated public employees). The 2013 law applied that provision of the state’s Public Employment Labor Relations Act to family child care providers. Minn. Stat. Ann. § 179A.52(1) (West 2013).
- 44 *Id.* The 2013 law applied this provision of the state’s Public Employment Labor Relations Act to family child care providers. Minn. Stat. Ann. § 179A.52(1) (West 2013).
- 45 Minn. Stat. Ann. § 179A.52 (West 2013). Under interest arbitration practices for public employees, if an impasse in a good faith negotiation has been reached, a representative may petition for binding arbitration on specific issues. Both parties are given a say in selecting the arbiter, and the arbiter’s decision is final and binding on both parties. Minn. Stat. Ann. §179A.16 (West 2006).
- 46 Minn. Stat. Ann. § 179A.52 (West 2013).
- 47 *Id.*
- 48 Office of Governor Mark Dayton, *Frequently Asked Questions about Child Care Collective Bargaining*, available at <http://mn.gov/governor/images/FAQ-about-Child-Care.pdf> (explaining the function of union organization under the governor’s executive order).
- 49 Minn. Stat. Ann. § 179A.52 (West 2013).
- 50 See SF 778, Status in the Senate for the 88th Legislature (2013–2014), available at <https://www.revisor.mn.gov/bills/bill.php?f=SF778&y=2013&ssn=0&b=senate> (last visited Sept. 26, 2013).
- 51 AFSCME, Minnesota Council 5, *Bills Let Child Care Providers Bargain* (Feb. 26, 2013), <http://afscmemn.prometheuslabor.com/printable/node/6081>.
- 52 See Minn. Stat. Ann. § 179A.52 (West 2013).
- 53 *Id.*
- 54 Clyde Weiss, AFSCME, *Union Election Moves Forward for Minnesota Child Care Providers* (July 30, 2013), <http://www.afscme.org/blog/union-election-moves-forward-for-minnesota-child-care-providers>.
- 55 Parrish v. Dayton, No. 13–1348, 2013 WL 4536260 (D. Minn. July 29, 2013), *appeal filed*, No. 13-2739 (8th Cir. Aug. 6, 2013).
- 56 *Id.*, No. 13–1348 (D. Minn. July 29, 2013).
- 57 *Id.*, No. 13–2739 (8th Cir. Sept. 19, 2013) (order granting injunction pending appeal).
- 58 Harris v. Quinn, 656 F.3d 692 (7th Cir.), *cert. granted*, 134 S. Ct. 48 (2013). The case is scheduled for argument on January 21, 2014. Supreme Court of the United States, *Monthly Argument Calendar: January 2014* (Nov. 4, 2013), http://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentViewer.aspx?Filename=MonthlyArgumentCalJanuary2014.html.
- 59 20 Ill. Comp. Stat. Ann. 2405/3 (West 2013).
- 60 5 Ill. Comp. Stat. Ann. 315/1, 315/6(a) (West 2013).
- 61 *Id.*
- 62 *Id.*
- 63 *Id.* 315/1(g).
- 64 Harris v. Quinn, 656 F.3d 692, 695 (7th Cir.), *cert. granted*, 134 S. Ct. 48 (2013). The Illinois Medicaid program subsidizes and regulates providers of in-home care to disabled individuals under two programs: the rehabilitation services program and the disability services program. See *id.* at 695. The rehabilitation providers voted in 2003 to designate SEIU as their bargaining representative, but the disability program providers voted not to unionize. *Id.* The plaintiffs in *Harris* are represented by the National Right to Work Legal Defense Foundation, which also represents the plaintiffs challenging Minnesota’s law authorizing home-based child care providers to organize and negotiate with the state. *Id.* at 692.
- 65 *Id.* at 693.
- 66 *Id.* at 694.
- 67 *Id.* (citing *Ry. Emps.’ Dep’t v. Hanson*, 351 U.S. 225 (1956), and *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977)). The *Harris* court dismissed the claims of the disability provider plaintiffs as not ripe, because a majority of those providers had voted not to unionize and thus were not subject to mandatory fair share fees. *Id.*
- 68 *Abood*, 431 U.S. at 226.
- 69 *Harris*, 656 F.3d at 697 (quoting *Abood*, 431 U.S. at 235).
- 70 *Id.* at 699.
- 71 *Id.* at 696.
- 72 *Id.*
- 73 *Id.* at 698–699.
- 74 *Id.*
- 75 Brief for Petitioners at 16–18, *Harris*, *cert. granted*, 134 S. Ct. 48 (Nov. 22, 2013) (No. 11-681).
- 76 Compare N.J. Stat. Ann. § 30:5B-22.2(a) (West 2010), with N.J. Exec. Order No. 23 (Aug. 2, 2006), available at <http://199.20.64.195/infobank/circular/eojsc23.htm>.

- 77 By its terms, the law applies to “family child care provider[s],” defined as “all in-home, voluntary, registered, approved family friend and neighbor caregivers and nationally accredited child care providers included in any agreement entered into under the provisions” of the governor’s executive order; therefore, all providers covered under the earlier order are covered by the new law. N.J. Stat. Ann. § 30:5B-22.2 (West 2010).
- 78 Compare N.J. Stat. Ann. § 30:5B-22.2(a), with N.J. Exec. Order No. 23 (2006), available at <http://199.20.64.195/infobank/circular/eojsc23.htm>.
- 79 N.J. Stat. Ann. § 30:5B-22.2(a) (West 2010).
- 80 *Id.*
- 81 Compare N.J. Stat. Ann. § 30:5B-22.2(a) (West 2010), with N.J. Exec. Order No. 23 (Aug. 2, 2006), available at <http://199.20.64.195/infobank/circular/eojsc23.htm>.
- 82 See NWLC, Getting Organized: 2010 Update, *supra* note 3, at 18.
- 83 *Id.*
- 84 Email from Sherryl Gordon, Exec. Dir., AFSCME N.J. Admin. Council 1, to Joan Entmacher, V.P. for Family Econ. Sec., NWLC (July 25, 2013) (on file with NWLC).
- 85 See NWLC, Getting Organized: 2010 Update, *supra* note 3, at 32–33.
- 86 *Id.*
- 87 Eric Russell, *LePage Bill Would End Collective Bargaining for Child Care Businesses*, Bangor Daily News, Mar. 27, 2012, <http://bangordailynews.com/2012/03/27/politics/lepage-seeks-repeal-of-union-rights-for-child-care-workers/>.
- 88 See Complaint, Maine State Emps. Ass’n v. Maine, No. 12-07 (Me. Labor Relations Bd. Oct. 24, 2011), available at https://docs.google.com/file/d/0Bz1xw7IZwFn_YWl4ZjU5ZDktNzlkNS00Y2ZjLTgyOWEzZWQ1ZWY0MmWl4YjJh/edit?hl=en_US. See also Susan Cover, *Union Files Complaint Against State Officials*, Portland Press Herald, Oct. 25, 2011, http://www.pressherald.com/news/union-files-complaint-against-state-officials_2011-10-25.html; Eric Russell, *Labor Negotiations Between LePage Administration, Union Going to Trial*, Bangor Daily News, Mar. 8, 2012, <http://bangordailynews.com/2012/03/08/politics/labor-negotiations-between-lepage-administration-union-going-to-trial/> (providing link to original complaint). MSEA filed a second amended complaint in March 2012. Second Amended Complaint, *Maine State Emps. Ass’n*, No. 12-07 (Me. Labor Relations Bd. Mar. 27, 2012).
- 89 Letter of Partial Dismissal, *Maine State Emps. Ass’n*, No. 12-07 (Me. Labor Relations Bd. Mar. 30, 2012).
- 90 S.P. 671, 2012 Leg., 2d Reg. Sess. (Me. 2012). See also Eric Russell, *LePage Bill Would End Collective Bargaining for Child Care Businesses*, Bangor Daily News, Mar. 27, 2012, <http://bangordailynews.com/2012/03/27/politics/lepage-seeks-repeal-of-union-rights-for-child-care-workers/>.
- 91 22 Me. Rev. Stat. Ann. § 8308, *repealed by* Act of Apr. 17, 2012, ch. 641 LD 1894 (repealing a requirement for the State to participate in collective bargaining with family child care providers who are not state employees).
- 92 See NWLC, Getting Organized, *supra* note 1, at 18–19.
- 93 See NWLC, Getting Organized: 2010 Update, *supra* note 3, at 19–20.
- 94 See Michigan Dep’t of Human Servs., *Michigan Department of Human Services, Mott Community College Dissolve Agreement That Created Michigan Home Based Child Care Council*, Mar. 1, 2011, <http://www.michigan.gov/dhs/0,1607,7-124-252244-,00.html>; United Auto Workers, *Battlegrounds: Michigan Child Care Providers Stripped of Collective Bargaining Rights*, Mar. 4, 2011, <http://www.uaw.org/articles/battlegrounds-michigan-child-care-providers-stripped-collective-bargaining-rights>.
- 95 See NWLC, Getting Organized: 2010 Update, *supra* note 3, at 20.
- 96 See A.B. 11, 2011 Leg., Jan. 2011 Spec. Sess. (Wis. 2011), available at <https://docs.legis.wisconsin.gov/2011/related/acts/10>.
- 97 See *Wisconsin ex rel. Ozanne v. Fitzgerald*, 798 N.W.2d 436 (Wis. 2011). In October 2011, AFSCME, the providers’ elected union, advised its members on its website: “We may not be able to negotiate a new contract at this time but we will still be able to advocate, represent, assist, provide technical assistance, provide trainings, lobby on behalf of fccp [family child care providers], provide health insurance and other benefits, keep providers informed through quarterly newsletters and mass e-mails, host Statewide meetings, and maintain our executive board made up of family child care providers around the state [after July 1, 2011, when our contract expires].” See Wisconsin Child Care Providers Together, AFSCME, *Important Updates* (May 29, 2011, 9:42 PM), http://www.wisconsinccpt.org/index.cfm?zone=/unionactive/view_article.cfm&HomeID=207139.
- 98 *Madison Teachers, Inc. v. Walker*, No. 11CV3774, 2012 WL 4041495 (Wis. Cir. Ct. Sept. 14, 2012), *appeal filed*, 2013 WL 1760805 (Wis. Ct. App. Sept. 18, 2012), *cert. granted*, 351 Wis.2d 237 (Wis. June 14, 2013).
- 99 *Id.*, 2012 WL 4041495 (Wis. Cir. Ct. Sept. 14, 2012).
- 100 *Id.*, 2012 WL 4041495 (Wis. Cir. Ct. Oct. 22, 2012), available at http://pdf.countyofdane.com/court/11cv3774_MTI_v_Walker_decision_denying_stay_pending_appeal.pdf.
- 101 *Id.*, 2013 WL 1760805 (Wis. Ct. App. Mar. 13, 2013).
- 102 *Id.*, 2013 WL 1760805 (Wis. Ct. App. Apr. 25, 2013).
- 103 *Id.*, 351 Wis.2d 237 (Wis. June 14, 2013) (order granting certification). Case history is available on the Wisconsin Court System website, <http://wscca.wicourts.gov/appealHistory.xsl?jsessionid=1F0F1F1723F169BD6821911B637ABF2E?caseNo=2012AP002067&cacheld=29FF17D3629B4FC3870DB55384AEFA13&recordCount=1&offset=0&linkOnlyToForm=false&sortDirection=DESC> (last visited Feb. 10, 2014).
- 104 See NWLC, Getting Organized: 2010 Update, *supra* note 3, at 30–31.
- 105 Collective Bargaining Agreement Between the State of Ohio and AFSCME, Ohio Council 8, Preamble, Art. 21 (effective 2010-2012), available at <http://www.afscmecouncil8.org/files/images/CBA.pdf>.
- 106 *Id.* art. 12 § 3. The agreement stated that there would “be no decrease in the reimbursement ceiling rates” and provided that the union and independent child care home providers (ICCHPs) could “work toward and/or lobby for additional increases in reimbursement rates,” subsidies, or incentive pay rates. *Id.*
- 107 *Id.* art. 11 §§ 1–2.
- 108 *Id.* art. 20 §§ 1–2.
- 109 Memorandum of Understanding Between the State of Ohio, Ohio Dep’t of Job & Families Servs., & AFSCME, Ohio Council 8, AFL-CIO/Child Care Providers Coming Together (effective 2011-2015) (on file with NWLC).

- 110 *Id.* § 1.
- 111 *Id.* § 2.
- 112 Act of Mar. 31, 2011, S.B. 5, 129th Sess. (Oh. 2011) (making changes to Ohio's collective bargaining law).
- 113 See Reginald Fields, Gov. *John Kasich Asks Union Leaders to Compromise on Senate Bill 5; Union Group Says Repeal It, Then We'll Talk*, *The Plain Dealer*, Aug. 17, 2011, http://www.cleveland.com/open/index.ssf/2011/08/ohio_governor_aks_union_leader.html.
- 114 Law of Mar. 31, 2011, S.B. 5, 129th Sess. (Oh. 2011) (repealed 2011).
- 115 See Sabrina Tavernise, *Ohio Turns Back a Law Limiting Unions' Rights*, *N.Y. Times*, Nov. 8, 2011, http://www.nytimes.com/2011/11/09/us/politics/ohio-turns-back-a-law-limiting-unions-rights.html?_r=1&ref=politic.
- 116 See Glenn Thrush, *Ohio Senate Bill 5's Repeal Buys Dems*, *Politico*, Nov. 8, 2011, <http://www.politico.com/news/stories/1111/67918.html>.
- 117 See NWLC, *Getting Organized*, *supra* note 1, at 21–22; NWLC, *Getting Organized: 2010 Update*, *supra* note 3, at 34.
- 118 A.B. 101, 2011-2012 Leg., Reg. Sess. (Cal. 2011) (vetoed Oct. 4, 2011 by Gov. Jerry Brown). By its terms, the bill covered “family child care providers,” defined to include both “family day care home provider[s]” licensed under the state’s Health and Safety code and license-exempt individuals who provided “child care in [the provider’s] home or the home of the child” and “participate[d] in a child care subsidy program.” *Id.* § 8431(c).
- 119 Veto Message from Jerry Brown, Governor of California, to Members of the California State Assembly [hereinafter Brown Veto Message] (Oct. 4, 2011), available at http://gov.ca.gov/docs/AB_101_Veto_Message.pdf.
- 120 Compare A.B. 101, 2011-2012 Leg., Reg. Sess. (Cal. 2011), with S.B. 867, 2007-2008 Leg., Reg. Sess. (Cal. 2008), and A.B. 1164, 2007-2008 Leg., Reg. Sess. (Cal. 2007), with A.B. 101, 2011-2012 Leg., Reg. Sess. (Cal. 2011) (similarities to the 2007 and 2008 bills include the size and scope of the bargaining unit, the scope of representation, and negotiation parameters).
- 121 See Brown Veto Message, *supra* note 119.
- 122 See A.B. 641, 2013-2014 Leg., Reg. Sess. (Cal. 2013), available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_641_bill_20130319_amended_asm_v98.pdf. The proposed legislation by its terms applies to a “family child care provider,” defined as a provider “that participates in a child care subsidy program,” whether licensed or license-exempt. *Id.* § 8430.5(c).
- 123 California Leg. Info., AB-641 Child Care: Family Child Care Providers: Bargaining Representative, available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_641_bill_20130911_history.html (last visited Dec. 13, 2013).
- 124 See Adam Nagourney, *California Faces A New Quandary, Too Much Money*, *New York Times*, May 25, 2013, <http://www.nytimes.com/2013/05/26/us/californias-new-problem-too-much-money.html>.



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