

# GETTING ORGANIZED

**UNIONIZING HOME-BASED  
CHILD CARE PROVIDERS**

**2010 UPDATE**



The National Women's Law Center is a nonprofit organization working to expand opportunities and eliminate barriers for women and their families, with a major emphasis on family economic security, education and employment opportunities, and women's health and reproductive rights.

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## UNIONIZING HOME-BASED CHILD CARE PROVIDERS

by  
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## GETTING ORGANIZED: 2010 UPDATE

## INTRODUCTION

In February 2007, the National Women’s Law Center (NWLC) published *Getting Organized: Unionizing Home-Based Child Care Providers*. That report focused on the growing movement to authorize 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—to join unions and negotiate with the state for better compensation and working conditions.<sup>1</sup> It found that the unionization of the home-based child care workforce, while a relatively new development, was a promising strategy for improving the treatment of FCC and FFN providers—a poorly paid and overwhelmingly female workforce—and, more generally, increasing public support for the investments in high-quality affordable child care that are needed to develop America’s potential.

This *2010 Update* reports on developments across the country between February 2007 and March 2010 (unless otherwise noted) as the movement continues to gain momentum. As of February 2007, unions in seven states—Illinois, Washington, Oregon, Iowa, New Jersey, Michigan, and Wisconsin—had secured the right to organize and negotiate with the state on behalf of home-based child care providers. Contracts had been negotiated and signed in three states—Illinois, Washington, and Oregon—but only in one of these states, Illinois, had the legislature approved the funding called for by the agreement. This *2010 Update* describes the steps that have been taken to fund and implement the agreements, as well as other related union activities, in those three states. It also describes the agreements signed and actions taken in the four other states—Iowa, New Jersey, Michigan, and Wisconsin—that had not reached agreements as of February 2007.

Since February 2007, seven additional states—New York, Pennsylvania, Kansas, Maryland, Ohio, Maine, and New Mexico—have authorized home-based care providers to organize and negotiate with the state. For each of these states, this *2010 Update* describes the legal authority granting unions the right to represent FCC and FFN providers. It also summarizes the provisions of the contracts that have been negotiated in five of these states—New York, Kansas, Maryland, Ohio, and Maine—and summarizes the work unions are doing to implement the agreements and to engage in other related activities in all seven states. In addition, this *Update* reports on unsuccessful efforts to achieve such authority in three states—California, Massachusetts, and Rhode Island—in which bills authorizing unionization and negotiation had previously passed the legislature but were vetoed, and on work in Minnesota, where unions have secured authority to negotiate with several county governments.

Information for this *2010 Update* was gathered by reviewing authorizing executive orders and legislation and organizing- and bargaining-related documents and articles, and 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, child care advocates, and state child care administrators. Although not exhaustive, these sources provide a good picture of union activities and state developments through March 2010.<sup>2</sup>

Unions are having a growing impact on the home-based child care workforce and the child care field more generally. Since February 2007, the number of states authorizing unions to represent home-based child care providers and negotiate with the state on their behalf has doubled from seven to fourteen. The number of states in which contracts have been negotiated has grown from three to twelve. In most states in which agreements have been reached, legislatures have approved the funding called for by the agreements, raising reimbursement rates for home-based providers and, in some states, increasing reimbursement rates for child care centers and assistance for parents as well. In several states, unions have expanded access to training opportunities and incentives for FCC and FFN providers; increased access to



health insurance; and secured upgrades in administrative systems and practices to provide more accurate and timely payments and more professional treatment of providers. Unions also are providing assistance to providers in a number of areas outside of the agreements, from helping with local zoning issues to helping providers become eligible for the Child and Adult Care Food Program.

However, union efforts since February 2007 to win recognition, reach agreements with state officials, and secure the resources needed to implement them have occurred in the context of the worst recession in decades. The “Great Recession” that began in December 2007 and dramatically worsened at the end of 2008 and early 2009 has taken a heavy toll on state budgets, simultaneously shrinking revenues and increasing demands for state services. In February 2010, the National Governors Association and National Association of State Budget Officers wrote, “By just about any measure, the last two years have been the most difficult fiscal period for states since the depression.”<sup>3</sup>

States, unlike the federal government, cannot run deficits. Facing budget shortfalls, most states have cut services and raised taxes. Of the fourteen states in which unions are authorized to represent home-based child care providers, all reported making substantial budget cuts in FY 2009.<sup>4</sup> Eleven of these fourteen states already were reporting deeper budget cuts for FY 2010 by the fall of 2009—and the cuts are ongoing.<sup>5</sup>

The data collected for this report show that the recession has slowed the rate of progress. There were fewer dramatic increases in investments in child care won at the bargaining table and in the legislature in 2008 through 2010 than in previous years. However, “getting organized” has given home-based child care providers a stronger voice in tough times: winning some significant gains, averting some cuts, securing a role in making decisions that affect their lives, and highlighting the importance of child care.

## BACKGROUND

Home-based child care providers are an integral component of the child care system. They include paid and unpaid caregivers, relatives and non-relatives of the children they care for, in the provider’s or the child’s home. 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, while 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.<sup>6</sup>

As discussed in more detail in *Getting Organized*, home-based child care providers are not in a traditional employer–employee relationship that permits them to unionize.<sup>7</sup> Most are independent contractors and need special legal authority to organize into unions that can bargain with the state over rates, benefits, and similar matters.<sup>8</sup> The legal authority needed for FCC and FFN providers to unionize and negotiate with the state generally has been derived from an executive order from the governor, state legislation, or both. The executive order or legislation granting legal authority generally defines the bargaining unit (which type of providers may be organized and how they are grouped together for representation and bargaining); specifies the process for electing a representative, if not covered by existing state law; identifies the issues the union may bargain over; and defines the strength of the bargaining mandate and the enforceability of any negotiated agreement.<sup>9</sup> Agreements often create institutional arrangements to ensure that providers have some voice in policy and regulatory changes that affect their interests. Except in Illinois, either the legal authority that has thus far been conferred or the agreements negotiated specify that provisions in agreements that require additional funds to be implemented, such as child care subsidy rate increases, are contingent on legislative approval.<sup>10</sup>





## STATE STATUS REPORT: 2010 UPDATE

The *2010 Update* summarizes developments:

- In seven states in which FCC and FFN providers had secured the right to organize and negotiate with the state as of February 2007;
- In seven states in which FCC and FFN providers have gained the right to organize and negotiate with the state through executive order or legislation between February 2007 and March 2010;
- In three states in which legislation authorizing FCC and FFN providers to organize and negotiate with the state had been vetoed by the governor as of February 2007, and authority to organize and negotiate with the state had not been granted as of March 2010; and
- In one state in which unions have been organizing and negotiating on the county level.

A summary of developments in all states is provided in a chart in the Appendix.

### Recent Developments in States with Previous Legal Authority

This section of the report discusses developments since February 2007 in the seven states in which unions had secured authority to organize and negotiate with the state as of that date. As previously described, unions in three of these states had reached agreements with their states as of February 2007, and unions in four of these states had not. As of March 2010, unions in the four states that had not reached agreements had done so, and as of October 2009, unions in the three states that had reached agreements had negotiated a second agreement. The states are discussed in chronological order according to when they were granted negotiating rights.

#### Illinois

As reported in *Getting Organized*, SEIU represents 9,000 subsidized FCC and 40,000 subsidized FFN providers in Illinois, and successfully negotiated a collective bargaining agreement with the state in 2006<sup>11</sup> that was in effect through June 30, 2009.<sup>12</sup> In this three-year contract SEIU won four subsidy rate increases for FFN and FCC providers, plus training incentives and funding to create a health insurance plan.<sup>13</sup> The provisions of this contract have been implemented in the following ways:

- *Subsidy rates*—As reported in *Getting Organized*, the contract sets out specific subsidy rate increases for FCC and FFN providers and includes a schedule of when rate increases will take place.<sup>14</sup> Following the contract, FFN providers received these increases according to the schedule, for a cumulative rate increase that amounted to 35% for FY 2007–2009.<sup>15</sup> FCC providers also received the scheduled increases, for a cumulative rate increase over the same three years ranging from 26% to 30%.<sup>16</sup>

In addition, SEIU and child care advocates have successfully worked together since 2006 to secure subsidy rate increases for child care centers, although centers are not covered by the agreement or part of the bargaining



unit. Centers received cumulative rate increases over the same years as FCC and FFN providers ranging from 17% to 20%.<sup>17</sup>

- *Health insurance*—As reported in *Getting Organized*, the contract provides that the state will contribute a fixed \$27 million toward premiums for subsidized FCC and FFN providers to obtain health insurance and for union administration of the program, beginning in FY 2008.<sup>18</sup> The union is to offer the insurance. The legislature appropriated \$7 million for the health insurance program for FY 2008 and \$20 million for the health insurance program in FY 2009.<sup>19</sup>

Beginning in FY 2009, health insurance is available for providers through the SEIU Home Care & Child Care Fund.<sup>20</sup> A union official reports that there are two plans run by different networks: the Union Health Service (UHS) serves eligible providers living in Cook County, and HealthCare's Finest Network (HFN) serves eligible providers living outside Cook County.<sup>21</sup> UHS, which only operates in Cook County, offers providers an HMO plan. HFN, which operates statewide, offers providers a PPO plan.<sup>22</sup> UHS participants have no deductible for office visits, a co-payment of \$10 for visits to the main office, and no co-payment for visits to satellite offices.<sup>23</sup> They also have 100% hospitalization coverage with no deductible or co-payment.<sup>24</sup> HFN participants have a \$150 deductible, a primary care co-payment of \$15 for office visits, and 80% hospitalization coverage.<sup>25</sup> Participants in both plans have a prescription drug benefit, and participants in both drug plans pay no monthly premium. The plans, as initiated, do not cover the provider's spouse or dependents.<sup>26</sup>

- *Training incentives*—As reported in *Getting Organized*, the contract provides that subsidized FCC and FFN providers who meet certain training or quality standards receive an additional subsidy payment of 5% to 20% of the base rate under a new tiered reimbursement program.<sup>27</sup> Under the contract, the new program began in FY 2008, and funding for FCC and FFN providers in the program was capped at \$3 million for FY 2008 and \$7 million for FY 2009.<sup>28</sup>

Illinois implemented this tiered reimbursement program, Quality Counts: Quality Rating System (QRS), on July 1, 2007.<sup>29</sup> Under the QRS, there are three progressively higher training tiers for FFN providers. Once a provider completes a training tier, he or she receives a bonus of 10% for tier one, 15% for tier two, and 20% for tier three added to the base subsidy reimbursement rate.<sup>30</sup> There are four progressively higher training tiers for both FCC providers and centers, who receive a bonus of 5% for tier one, 10% for tier two, 15% for tier three, and 20% for tier four added to the base subsidy reimbursement rate.<sup>31</sup>

As of February 2009, the Department of Human Services reported that 175 child care centers, 63 FCC homes, and 15 FFN homes were participating in Quality Counts.<sup>32</sup> The union reports that it and the Department of Human Services are working to encourage greater participation in Quality Counts, particularly among FFN providers.<sup>33</sup>

In October 2009, providers in Illinois ratified a second contract with the state.<sup>34</sup> The agreement is in effect from January 1, 2010, through June 30, 2013.<sup>35</sup> Highlights of the second contract include:

- *Subsidy rates*—The contract includes subsidy rate increases that total 22% over three and a half years for both FCC and FFN providers, beginning with a 2.5% increase on January 1, 2010.<sup>36</sup>

The first rate increases for both FCC and FFN providers went into effect as scheduled.<sup>37</sup> Licensed child care centers also received a 2.5% rate increase in January 2010, but license-exempt centers did not.<sup>38</sup>

- *Health insurance*—The state will continue to supply funding for SEIU-run health insurance, making quarterly payments into SEIU's health care fund to expand participation to up to a total of 5,000 providers.<sup>39</sup> The state



contribution rate is set at \$365 per enrollee per month for the first half of 2010 and will increase each fiscal year of the contract as needed, based on actuarial reports submitted by the union, but “in no event” more than 9% annually.<sup>40</sup>

- *Training incentives*—The state will continue to provide up to \$7 million per fiscal year to fund QRS for the life of the contract.<sup>41</sup> The contract also states that all providers are “strongly encouraged” to attend an orientation session on the child care assistance program, which will now be offered at least four times per year in person and also as an online self-study course.<sup>42</sup> Previously, the in-person orientations were offered half as frequently.<sup>43</sup> The state will pay for the orientations but will not reimburse providers for their costs of attendance.<sup>44</sup>
- *Payment procedures*—The new contract gives providers the option of being paid by direct deposit or debit card rather than by check and allows them to receive itemized statements.<sup>45</sup>

### **Washington**

As reported in *Getting Organized*, Washington enacted legislation in 2006 authorizing two groups of home-based child care providers to organize: subsidized FCC and FFN providers and unsubsidized FCC providers.<sup>46</sup> The subsidized FCC and FFN providers are authorized to bargain collectively on a range of issues; the unsubsidized FCC providers are authorized only to engage in negotiated rulemaking.<sup>47</sup> SEIU represents both bargaining units.<sup>48</sup>

SEIU negotiated a two-year contract<sup>49</sup> for the unit of subsidized FCC and FFN providers in November 2006, which at the time *Getting Organized* was published had not yet been considered by the legislature.<sup>50</sup> The contract covers the period July 1, 2007, through June 30, 2009.<sup>51</sup> As reported in *Getting Organized*, under the Washington authorizing legislation, the agreement was contingent on the legislature’s approving the funds necessary to implement the agreement.<sup>52</sup>

In April 2007, the Washington legislature included in its 2007–2009 budget nearly \$86 million to fund the contract.<sup>53</sup> The funding covers both years of the contract. It also covers costs associated with the rulemaking process for the unsubsidized FCC providers. The provisions of the contract have been implemented in the following ways:

- *Subsidy rates*—As reported in *Getting Organized*, the contract provides that FCC and FFN providers receive increases in base subsidy rates over two years.<sup>54</sup> FCC providers receive an increase in the base rate of 7% in July 2007 and 3% in July 2008, and FFN providers receive an increase in the base rate of 4% in July 2007 and 3% in July 2008.<sup>55</sup> In addition, FCC providers receive financial incentives to provide care for infants (15% above the toddler/preschool rate)<sup>56</sup> and care during nonstandard hours.<sup>57</sup> FFN providers also receive an increase in the rate for siblings of the first child in care.<sup>58</sup> Previously, the reimbursement rate for siblings was equal to half the rate for the first child.<sup>59</sup> Under the contract, the rate for siblings is set at three cents per hour below that for the first child (as of July 1, 2007, \$2.11 per hour for siblings compared to \$2.14 per hour for the first child, and, as of July 1, 2008, \$2.17 per hour for siblings compared to \$2.20 per hour for the first child).<sup>60</sup>

Both groups of providers received the agreed-upon increases in the base subsidy rates.<sup>61</sup> In addition, FCC providers received the additional financial incentive to provide care for infants<sup>62</sup> and the additional financial incentive to provide care during nonstandard hours;<sup>63</sup> FFN providers received the increased rate for siblings.<sup>64</sup> Although not covered by the contract, child care centers received the same rate increases as FCC providers—7% in July 2007 and 3% in July 2008.<sup>65</sup>



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- *Health insurance*—As reported in *Getting Organized*, the contract provides that, beginning in FY 2008–2009, FCC providers (but not FFN providers) are eligible for health insurance if they care for at least four children receiving child care subsidies.<sup>66</sup> The contract establishes a premium payment of \$17 per month for providers.<sup>67</sup> The state’s contribution for the period July 1, 2008, through June 30, 2009, is up to \$555 per month, per provider, up to \$345,833 per month for all eligible providers.<sup>68</sup> In addition, the state is to contribute up to \$390,833 in the first month to recognize initial administrative costs.<sup>69</sup>

The union sent out registration information for the health insurance plan in April 2008, and providers enrolled on a first-come, first-served basis.<sup>70</sup> As of April 2009, however, only 675 providers had been able to participate in the plan due to the funding cap.<sup>71</sup> According to SEIU, there are hundreds of providers on the waiting list.<sup>72</sup>

- *Training*—As reported in *Getting Organized*, the contract increases training opportunities for both subsidized FCC and FFN providers.<sup>73</sup> All providers are required to take training on the subsidy system procedures. The state pays the cost of delivering this training, but it does not cover the costs for FCC providers to attend the training.<sup>74</sup> However, FFN providers may be reimbursed for up to four hours at their hourly rate per child to help compensate them for the time they miss providing care while attending the training.<sup>75</sup>

To provide reimbursement and assist FFN providers in becoming licensed and in taking state-approved training courses, the contract provides that the state will establish a fund of \$300,000.<sup>76</sup> This fund will reimburse FFN providers up to \$200 in tuition costs after they take the necessary training to become licensed and provide them with a bonus payment of \$250 within sixty days of becoming licensed.<sup>77</sup>

In addition to the \$300,000 training fund, the contract establishes a separate, second training fund of \$676,000 to provide further incentives for FFN providers to receive training.<sup>78</sup> The details of how the second training fund will be implemented are set out in a Memorandum of Understanding between the union and the state that is part of the contract.<sup>79</sup> Under this training fund, FFN providers who take ten hours of approved training are paid a \$600 bonus in the month following the completion of training.<sup>80</sup> Providers who take an additional ten hours of approved training are paid an additional \$600 incentive “after twelve months or more.”<sup>81</sup> In addition, separate from this second training fund, the contract provides SEIU with access to up to \$20,000 from the Department of Early Learning to pay for State Training and Registry System (STARS)<sup>82</sup> training to be offered at union events.<sup>83</sup> Union officials believe that securing this funding for free training was important because it is difficult for FFN providers to pay for tuition out of their limited incomes and be reimbursed later, as required under the contract’s other training and incentive provisions.<sup>84</sup> In some cases, this training is conducted by FCC providers who, according to a union official, have improved their caregiving as a result of being in a teaching/mentoring role.<sup>85</sup>

As of April 2009, 537 training incentive payments of \$600 had been earned.<sup>86</sup> In addition, approximately 116 FFN providers have become licensed and received a bonus payment for doing so.<sup>87</sup>

- *Other supports*—As reported in *Getting Organized*, the contract provides that children cared for by subsidized FFN providers will qualify for subsidized meals through the federal Child and Adult Care Food Program (CACFP).<sup>88</sup>

However, as of June 2009, no FFN provider had yet participated in CACFP.<sup>89</sup> The union believes that the program paperwork requirements may be a deterrent to participation. As of June 2009, the union was beginning to conduct door-to-door outreach that includes flyers on CACFP.<sup>90</sup>



Bargaining for a second contract for subsidized FCC and FFN providers began in January 2008. SEIU and the state reached agreement on a number of issues in 2008. However, they were unable to reach agreement on subsidy rate increases. Pursuant to the 2006 Washington legislation that granted subsidized FCC and FFN providers collective bargaining rights,<sup>91</sup> those issues were referred to an arbitrator to resolve.<sup>92</sup> The union proposed an across-the-board increase in the subsidy rate of 7.8% per year for two years.<sup>93</sup> It also proposed to increase the rate for infant care from 15% above the toddler rate to 19% above the toddler rate,<sup>94</sup> and as an additional financial incentive to provide care for children ages twelve to seventeen months, to raise the rate for this care to the rate for infant care.<sup>95</sup> The state argued against the union's proposed subsidy rate increases based on the state's financial condition.<sup>96</sup> The arbitration decision issued on August 25, 2008, awarded an across-board increase in the base subsidy rate for both FCC and FFN providers of 1.6%, effective July 1, 2009, and an increase of an additional 2%, effective July 1, 2010.<sup>97</sup> The decision also awarded an increase in the rate for children twelve to seventeen months to the infant rate,<sup>98</sup> but did not increase the rate for infant care from 15% to 19% above the toddler rate.<sup>99</sup> SEIU members voted to approve the arbitrated 2009–2011 agreement<sup>100</sup> on September 27, 2008.<sup>101</sup>

In addition to the base subsidy rate changes<sup>102</sup> and the increases in the rate for children ages twelve to seventeen months<sup>103</sup> awarded by the arbitration decision, key features of the 2009–2011 tentative agreement negotiated directly between SEIU and the state included: (1) providers were to be eligible for health insurance if they provided care to at least "60 subsidized units"<sup>104</sup> a month,<sup>105</sup> to allow for greater comparability across providers than the previous eligibility requirement (caring for four subsidized children a month); (2) the state contribution for health insurance increased to \$576 per month per licensed provider in the first year of the contract (up to a total monthly limit of \$380,416) and \$634 per month per licensed provider in the second year of the contract (up to a total monthly limit of \$418,458),<sup>106</sup> (3) the nonstandard-hours bonus of \$50 per month was to be paid when a child is in care for at least forty nonstandard hours in a month, rather than forty-five;<sup>107</sup> and (4) the original \$300,000 training fund was decreased to \$150,000<sup>108</sup> and the remaining \$150,000 from this fund was to be shifted to the second training incentive fund, which was increased from \$676,000 to \$826,000.<sup>109</sup>

The 2009–2011 tentative agreement, like the prior agreement, was subject to legislative approval and contingent upon the legislature's appropriating the funds to implement the agreement.<sup>110</sup> As described in *Getting Organized*, an initial step in securing legislation is for the agreement to be certified by the state Director of Financial Management as feasible financially for the state unless it reflects the binding decision of an arbitration panel.<sup>111</sup> The Director of Financial Management declined to certify the agreement as financially feasible,<sup>112</sup> but the union argued that the governor was required to request the funds because of the binding arbitration decision. However, Governor Christine Gregoire did not submit a request for funds necessary to implement the agreement in her proposed biennial operating budget to the legislature, because of a \$5.7 billion budget deficit in the state.<sup>113</sup> In response, SEIU filed suit against the governor in the Supreme Court of Washington on January 6, 2009, for a peremptory writ of mandamus to force her to submit a new budget request to the legislature that would include a request for funds necessary to implement the agreement.<sup>114</sup> SEIU dropped the lawsuit on March 5, 2009, however, before a decision was issued. The union issued a press release stating that FCC providers gave up \$8 million in subsidy rate increases awarded to them in arbitration and urged the legislature to use the funds to expand access to high-quality child care, keep parent co-payments constant, and reduce the paperwork for parents who qualify.<sup>115</sup>

Thereafter, the state and the union modified their tentative agreement to drop the increases in the base subsidy rates<sup>116</sup> and lower the amount of the state health insurance contributions to \$571.65 per month per licensed provider in the first year of the contract (up to a total monthly limit of \$356,208) and \$588.80 per month per licensed provider in the second year of the contract (up to a total monthly limit of \$366,894).<sup>117</sup> Funding for the contract with these modifications was approved by the legislature in May 2009.<sup>118</sup> The contract is in effect from July 1, 2009, to June 30, 2011.<sup>119</sup> The increase in subsidy rates for children ages twelve to seventeen months and the decrease in the nonstandard hours threshold went into effect July 1, 2009.<sup>120</sup> No change was made to subsidy rates for child care centers.<sup>121</sup>





As reported in *Getting Organized*, FCC providers who do not participate in the subsidy program in Washington have the right to union representation only for purposes of negotiated rulemaking; that is, they have meet-and-confer authority, and only for the purpose of shaping the regulatory requirements that apply to them.<sup>122</sup> Since 2007, SEIU has been working with the state to revise regulations that pertain to family child care.<sup>123</sup> In January 2007, the union and the state formed a Negotiated Rule Making Team (NRMT) to “develop a set of rules and recommendations about issues that affect the health, safety, learning and quality of environment for children that is supported by parents, early care providers, health/safety experts and interested stakeholders.”<sup>124</sup>

Advocates, state officials, and union representatives began meeting in NRMT working groups across the state in January 2007 and as of September 2009 had been meeting approximately every six weeks to discuss revisions to the regulations.<sup>125</sup> The goal of these working groups is to review each section of the code—such as sections relating to safe food handling, licensing, and infant care—and propose a new, wholly revised code as it relates to family child care.<sup>126</sup> The union has worked closely with a writing team that has been turning working group recommendations into regulatory language.<sup>127</sup> Once the proposed revision of the code is completed, the Department of Early Learning will give notice and hold a public hearing to begin the administrative process for instituting the new rules.<sup>128</sup>

In a separate development affecting child care centers, a bill was introduced in the Washington legislature in 2008 that would allow most centers that care for at least one subsidized child to unionize and bargain collectively with the state.<sup>129</sup> The bill provides that collective bargaining with the state would occur on behalf of center directors and staff as a community and would not disturb the relationship between center employers and center employees governed by the National Labor Relations Act.<sup>130</sup> The bill would allow bargaining on issues within the “community of interests,” such as subsidy reimbursement rates, health care and other benefit programs for center workers and directors, as well as training and professional development. The bill passed the House, but died in the Senate Ways and Means Committee without a vote.<sup>131</sup> The bill was reintroduced in the legislature in January 2009.<sup>132</sup> The House passed the bill on March 9, 2009, with a 65–31 vote, and the Senate passed a significantly amended version 46–2 on April 13, 2009.<sup>133</sup> The House rejected the Senate amendments, and the bill died in conference committee.<sup>134</sup>

### **Oregon**

As reported in *Getting Organized*, Governor Ted Kulongoski issued two executive orders in 2005 and 2006 authorizing the creation of two bargaining units: a unit of approximately 4,500 subsidized and unsubsidized FCC providers, represented by AFSCME, and a unit of approximately 6,000 subsidized FFN providers, represented by SEIU. Both of these units signed agreements with the state in 2006 and 2007, respectively, effective for the 2007–2009 biennium.<sup>135</sup> Thereafter, Governor Kulongoski proposed more than \$34 million in new funding for child care, both to implement the agreements and to increase subsidies for children in child care centers, thereby providing assistance to individuals outside the union membership.<sup>136</sup>

In its 2007–2009 budget, the Oregon legislature approved \$39.9 million to implement the AFSCME and SEIU agreements and the provisions affecting parents and children in child care centers.

The provisions of the agreements were implemented in the following ways:

- *Subsidy rates*—As reported in *Getting Organized*, the 2006 AFSCME/FCC contract required the Department of Human Services (DHS) to include in its budget a request for funds to increase the base reimbursement rate for FCC providers to 100% of the 75th percentile of market rates,<sup>137</sup> based on a 2006 market rate study.<sup>138</sup> The 2007 SEIU/FFN contract required DHS to include in its budget request funds to increase the base reimbursement rate for FFN providers to 88% of the 75th percentile of market rates, based on a 2006 market survey, and to increase “enhanced” reimbursement rates (payable for meeting certain training requirements) to 95% of the 75th percentile.<sup>139</sup>



FCC and FFN provider reimbursement rates were increased to the levels required by the contracts, effective July 1, 2007.<sup>140</sup> Although centers are not covered under the contracts, rates for licensed child care centers receiving subsidies were also increased to 100% of the 75th percentile of market rates, based on a 2006 market rate survey, effective October 1, 2007.<sup>141</sup>

However, not all providers actually received the higher rates. SEIU realized that providers were not filling out their claims for reimbursement to reflect the higher rates and initiated arbitration to help providers receive payment retroactively.<sup>142</sup> The arbitrator's decision allowed subsidized FFN providers represented by SEIU to submit amended reimbursement claims until April 30, 2008.<sup>143</sup> As of June 2009, 554 payment adjustments had been made as a result of the SEIU grievance.<sup>144</sup> AFSCME did not file a similar grievance, but the union reports it worked to help its members understand and obtain the rates to which they are entitled.<sup>145</sup>

- *Health insurance*—As reported in *Getting Organized*, AFSCME's agreement included a provision that the union and the agencies agree to “work together to explore” ways to help FCC providers “access affordable, comprehensive health insurance coverage.”<sup>146</sup> Although SEIU had sought \$3 million for health insurance coverage, the SEIU/FFN agreement did not mention health insurance.<sup>147</sup>

Although the unions were unsuccessful in securing state funds to cover health insurance costs through their first contracts,<sup>148</sup> in August 2009, AFSCME signed a contract with Augeo to provide insurance for union members without state funding.<sup>149</sup> Members have three insurance policy options ranging from \$55 to \$99 per person per month;<sup>150</sup> dental and vision options and family coverage are also available.<sup>151</sup>

- *Training*—As reported in *Getting Organized*, both the SEIU agreement and the AFSCME agreement provide that, within available funds, the agencies will work to make training for FFN providers more accessible and affordable and give FCC providers a larger voice in agency training.<sup>152</sup>

The SEIU agreement requires the Department of Human Services to hold orientations for FFN providers to explain the subsidy payment process and to inform providers about their roles and responsibilities.<sup>153</sup> The agreement requires that orientations include information on subsidy rates, billing paperwork, co-payments, and tax information resources.<sup>154</sup> The orientations also cover subjects such as early stages of child development.<sup>155</sup>

The agreement also provides that, within available funds, certain training costs for FFN providers will be covered by the state, including payment of class fees and required materials, transportation to and from the nearest training site, and payment of substitute care if needed.<sup>156</sup> Although the agreement does not specify that these costs will be covered for orientations, the parties agreed that in implementing the contract, orientation is considered a type of training and coverage of these costs would also apply to orientation.<sup>157</sup> As a result, providers receive a stipend for attending orientation of \$24 for a two-hour class, or \$36 for a three-hour class for providers who do not speak English.<sup>158</sup>

As previously discussed, providers who meet certain training requirements receive an enhanced subsidy rate.<sup>159</sup> Prior to the agreement, only a limited number of providers qualified for the enhanced rate because they found it difficult to afford the training.<sup>160</sup> Since the agreement, FFN providers receive a stipend of \$12 an hour to cover the costs of this training as well as orientation.<sup>161</sup>

With FFN providers now paid to attend orientation and training classes, there has been a significant increase in participation. From February 2008 to March 2009, 121 orientations took place and 787 FFN providers attended the orientations.<sup>162</sup> In addition, 416 FFN providers attended enhanced-rate training classes.<sup>163</sup>



Because of the lack of access to training in rural areas, FFN provider participation varies throughout the state.<sup>164</sup>

The AFSCME agreement requires that the union form a training committee to work on training issues.<sup>165</sup> By April 2009, the union had convened such a training committee and was working with the state to better disseminate information on the current training program.<sup>166</sup>

- *Increased eligibility and lower co-payments for parents*—As reported in *Getting Organized*, both agreements call on DHS to include in its budget request funds to increase the income threshold for eligibility for subsidized child care to 185% of the federal poverty level (from 150%) and to lower co-payments for participating parents by 20%.<sup>167</sup>

Legislation implementing the 2007–2009 biennium budget increased the income threshold for eligibility to 185% of the federal poverty level and reduced parent co-payments on average by 20%.<sup>168</sup>

- *Payment procedures*—As reported in *Getting Organized*, both agreements require that DHS improve payment procedures, including by making subsidy payments by direct deposit to providers' accounts.<sup>169</sup> SEIU's agreement with the state required that DHS implement a procedure for direct deposit by October 1, 2007.<sup>170</sup> AFSCME's agreement did not have a date certain for implementing direct deposit.<sup>171</sup>

Both unions worked with DHS to institute a direct deposit system. DHS failed to meet the deadline in the SEIU agreement. The union initiated arbitration.<sup>172</sup> The arbitration was resolved in favor of SEIU<sup>173</sup> and implemented for providers represented by both unions in February 2009.<sup>174</sup>

- *Providers' rights*—The AFSCME agreement included a seventeen-point “Family Child Care Provider Bill of Rights.”<sup>175</sup> Enumerated rights included the right to be treated as a professional, the right to be free from discrimination, the right to receive written information in the provider's primary language, the right to receive written notice of changes to state subsidy payments or programs, the right to review one's own provider file, the right to have a witness present during compliance visits, and the right to receive technical assistance from DHS if a provider has a compliance violation.<sup>176</sup>

In February 2007, Governor Kulongoski issued a third executive order strengthening the bargaining authority for both the AFSCME and SEIU bargaining units in the next negotiating period, raising it from meet-and-confer to collective bargaining authority.<sup>177</sup> Later in 2007, legislation codified the bargaining authority set out in the third executive order.<sup>178</sup>

In July 2009, members of Oregon Child Care Providers Together, the AFSCME affiliate representing FCC providers, ratified a new two-year contract with the Oregon Department of Administrative Services, consistent with the final budget.<sup>179</sup> The agreement is in effect from September 1, 2009, until June 30, 2011.<sup>180</sup> In October 2009, the SEIU-represented FFN providers ratified a new two-year contract with the state.<sup>181</sup> The contract is in effect from October 23, 2009, through June 30, 2011.<sup>182</sup>

Highlights of the second contracts and their implementation include:

- *Subsidy rates*—The AFSCME contract requires base subsidy rates to remain at 100% of the 75th percentile of market rates for FCC providers,<sup>183</sup> and the SEIU contract requires the base FFN provider subsidy rate to remain at 88% of the 75th percentile of market rates and the enhanced rate at 95% of the 75th percentile.<sup>184</sup> However, for both contracts the rates continue to be based on the 2006 market rate study for the duration of the two-year agreement rather than being increased to reflect updated market rates.<sup>185</sup>





Child care center subsidy rates, not covered by the contract, also remain the same, at 100% of the 75th percentile of market rates.<sup>186</sup>

- *Health insurance*—The AFSCME contract retains the first contract’s language regarding health insurance, affirming that the union and the state will work together to improve access to insurance for providers.<sup>187</sup>
- *Training*—The SEIU contract maintains the first contract’s provisions for state funding of provider orientations and training costs for FFN providers.<sup>188</sup> The AFSCME contract repeats the first contract’s language regarding the work of the union’s training committee,<sup>189</sup> and a new provision says that if additional state resources become available, the union and state will create a training fund to help providers pay for class fees and materials, transportation to trainings, and substitute care.<sup>190</sup>

Another SEIU contract provision builds upon a recent legislative accomplishment. SEIU successfully lobbied the Oregon legislature to pass a bill in the 2009 session making orientations mandatory for FFN providers paid through DHS.<sup>191</sup> According to the SEIU, making orientations mandatory will “increase new child care workers’ understanding of how the DHS child care subsidy program operates; increase awareness about roles and responsibilities; reduce payment miscalculations that lead to over/under payments, unpaid care, and general confusion about billing; and increase awareness about available training opportunities and wage incentives.”<sup>192</sup> The orientations became mandatory on July 10, 2009.<sup>193</sup> The SEIU contract provides that these mandatory orientations for new providers include thirty-minute presentations from union representatives “about the organization, representational status, [and u]nion benefits and to distribute and collect [u]nion membership applications.”<sup>194</sup>

- *Payment procedures*—Both contracts provide that DHS will maintain its direct deposit system for subsidy payments.<sup>195</sup> Under the AFSCME contract, DHS agreed to explore the possibility of implementing an automated billing system and provide AFSCME with a research status report by January 1, 2010.<sup>196</sup>

As of March 2010, AFSCME had received the automated billing report from DHS, and both AFSCME and SEIU are working with the state to obtain funding for the computer changes and equipment required to implement an automated billing system.<sup>197</sup>

- *Providers’ rights*—The AFSCME agreement repeats the enumerated provider bill of rights from the first agreement.<sup>198</sup>
- *Other provisions*—The AFSCME contract partially addresses issues the union had raised regarding the Oregon Child Care Division’s (CCD) processes for disclosing complaints about child care providers.<sup>199</sup> According to AFSCME, CCD’s practice with respect to telephone inquiries before the agreement was to keep valid complaints on the public record indefinitely.<sup>200</sup> The agreement establishes a policy outlining whether and for how long CCD will share complaints with callers after a CCD investigation determines the complaints to be either valid, “unable to substantiate,” or invalid.<sup>201</sup> Complaints that CCD deems valid will be shared with callers for ten years.<sup>202</sup> Complaints that CCD deems unable to substantiate will be shared with callers for two years.<sup>203</sup> Complaints that CCD deems invalid will not be disclosed to callers at all.<sup>204</sup> With respect to Internet searches, prior to the agreement each record in CCD’s online provider complaint history database included the notation, “There have been no valid complaints since January 1, 2004 for this facility.”<sup>205</sup> The union was concerned that families searching the database would assume, based on this language, that valid complaints had been made about a given provider prior to 2004.<sup>206</sup> The agreement requires CCD to clarify on its website that the online database only dates back to January 1, 2004.<sup>207</sup>



While both SEIU and AFSCME were in negotiations for their second contracts with the Department of Administrative Services, the state was facing a projected shortfall of \$1.2 billion.<sup>208</sup> Governor Kulongoski's 2009–2011 budget, which he submitted to the legislature on December 1, 2008,<sup>209</sup> proposed spending cuts to the state's child care programs as well as to many other services.<sup>210</sup> The governor's proposal, had it been approved, would have rolled back or undercut some of the gains achieved by SEIU and AFSCME in their 2007–2009 agreements. The governor's budget proposed to lower the basis of reimbursement rates for child care providers to the 65th percentile of the 2006 market rate survey and to increase co-payments for families not receiving Temporary Assistance for Needy Families (TANF) by an average of 6%.<sup>211</sup> These changes would have reduced the increase in provider reimbursement rates and reduction in parent co-payments secured by the unions in their 2007–2009 agreements.<sup>212</sup> In addition, the proposal would have restricted eligibility for new child care subsidies to those families currently receiving or leaving TANF, limiting the unions' earlier success in expanding eligibility for subsidies to TANF and non-TANF families earning up to 185% of the federal poverty level.<sup>213</sup> However, due to lobbying efforts by the unions and other advocates, the proposals on reimbursement rates and co-payments were rejected in the legislature's final two-year budget, passed in June 2009,<sup>214</sup> and the unions' gains in these areas were maintained.<sup>215</sup> Although the proposal to limit eligibility for child care assistance was not rejected, its effective date was delayed a fiscal year, until July 2010.<sup>216</sup> However, in February 2010, the Oregon legislature voted to reinstate the \$12.8 million in child care funding that was scheduled to be cut in July 2010,<sup>217</sup> preserving the eligibility gains for another year.<sup>218</sup>

Outside of the bargaining process, SEIU has negotiated with the state and private insurance companies to create a proposal for health insurance coverage for child care providers.<sup>219</sup> The union's proposal is to use any excess tax revenues collected for Oregon's new Healthy Kids program<sup>220</sup> to establish group coverage for SEIU-represented child care providers, under the state's Family Health Insurance Assistance Program (FHIAP).<sup>221</sup> FHIAP provides subsidies for eligible low-income Oregonians to help them buy health insurance, covering between 50% and 95% of the price of participants' premiums.<sup>222</sup> Currently, there is a one-and-a-half- to two-year waiting period to enroll in FHIAP,<sup>223</sup> but if the anticipated funding becomes available, under the proposal SEIU would be permitted to enroll its member providers who are eligible for the subsidy program without a wait.<sup>224</sup> Normally, an individual applying for FHIAP assistance would need to procure his or her own insurance plan, and purchasing individual insurance coverage can be cost-prohibitive, even for someone receiving FHIAP subsidies.<sup>225</sup> In order to further reduce costs for providers, SEIU has worked with two private insurance companies to design plans that, contingent upon the FHIAP subsidies, would be offered to providers at significantly lower out-of-pocket costs than they would pay if they were able to receive FHIAP subsidies to buy an individual insurance plan.<sup>226</sup> SEIU has secured a letter of endorsement from Governor Kulongoski for its proposal, and if there are sufficient funds, coverage for providers would begin in the fall of 2010.<sup>227</sup>

On other fronts, AFSCME, as the representative for FCC providers, has devoted time to licensing and zoning issues because FCC providers have concerns about the fairness of the licensing and zoning process.<sup>228</sup> The union is also monitoring licensing visits and providing legal representation to providers who are AFSCME members and who have their licenses revoked or suspended.<sup>229</sup> In addition, AFSCME has been engaged in an effort to dismantle local restrictive covenants for property use that would preclude homeowners from running a child care operation.<sup>230</sup>

SEIU is seeking to improve training opportunities, streamlining the process for documenting enhanced-rate training with DHS, and translating training materials into multiple languages.<sup>231</sup>

### **Iowa**

As reported in *Getting Organized*, then-Governor Tom Vilsack issued two executive orders in January 2006 recognizing two bargaining units: a unit of subsidized and unsubsidized FCC providers and a unit of subsidized FFN providers; at that writing, only the first unit had been organized by AFSCME, and it had not yet begun negotiating with the state.<sup>232</sup> In March 2008, Child Care Providers Together (CCPT), an affiliate of AFSCME, finalized a Memo of Understanding (MOU) with the Iowa Department of Human Services (DHS) on behalf of the first unit of 6,000 subsi-



dized and unsubsidized FCC providers, covering the period from April 2008 to April 2009.<sup>233</sup> As of April 2009, the second bargaining unit of the state's 7,000 subsidized FFN providers continued to be unrepresented and no union was seeking to represent this unit.

The provisions of the MOU and the extent to which they have been implemented include:

- *Subsidy rates*—Under the MOU, FCC providers offering both basic and special needs care receive an increase in reimbursement rates of 2%, effective October 1, 2008, subject to “legislative approval and funding.”<sup>234</sup> In addition, the MOU requires that DHS issue a subsidy payment within ten business days of receiving a claim for services provided, and that the agency notify the provider of any errors in a claim within five business days.<sup>235</sup>

The legislature approved the 2% subsidy rates increases, which took effect on October 1, 2008.<sup>236</sup> The legislature also approved a 2% increase for child care centers, which similarly took effect on October 1, 2008.<sup>237</sup>

- *Health insurance*—The MOU provides that a committee of five union representatives and five state representatives gather information on the accessibility and affordability of health insurance for providers, and report the committee's findings prior to a second meeting of the meet-and-confer committee agreed to in the MOU.<sup>238</sup> The MOU also specifies that the parties each contribute, matching dollar for dollar, up to \$50,000 for a study on how to improve health insurance coverage for providers.<sup>239</sup>

The union lobbied the legislature for these funds and the legislature appropriated its share of the \$50,000 for the fiscal year beginning July 1, 2008, and ending June 30, 2009.<sup>240</sup> As of January 2010, representatives of the union and the Department of Human Services had held a health committee meeting, but the union had not provided its share of the funds, and the study had not begun.<sup>241</sup>

- *Training*—The MOU provides that the state distribute a packet of orientation materials to newly registered FCC providers, including such items as the provider manual, the provider handbook, and lists of related resources that may be helpful to providers, as well as post and disseminate information regarding training opportunities on the DHS web site.<sup>242</sup> The state is also to “have a focused discussion regarding education and training opportunities and needs” during the second meet-and-confer committee meetings each year.<sup>243</sup> In addition, the state is to convene a summit with union participation “to discuss issues regarding the Quality Rating System (QRS)<sup>244</sup> which will include, but not be limited to, system categories and the delivery of technical support.”<sup>245</sup>

The state is distributing a packet of orientation materials to newly registered FCC providers, which contains standard information on the union and its role, and has posted a list of approved training opportunities on its website.<sup>246</sup> However, according to a union official, as of February 2009, the second meet-and-confer discussion focused on training had not yet taken place.<sup>247</sup> The QRS summit took place in 2009, and in January 2010, a QRS oversight committee was preparing to release recommendations for changes to the QRS based in part on suggestions made at the summit.<sup>248</sup>

- *Providers' rights*—The MOU contains several provisions on provider rights, including but not limited to the following: the right to have state policies applied uniformly<sup>249</sup> and consistently and to be treated as professionals in a non-discriminatory manner;<sup>250</sup> the right to have the confidentiality of files maintained by DHS protected and to have access to those files;<sup>251</sup> the right to know whether a proposed inspection is about a complaint or a spot-check;<sup>252</sup> the right to have a representative present during home visits;<sup>253</sup> the right to a specified grievance process;<sup>254</sup> the right to comment in advance on new DHS forms and support materi-



als prior to implementation<sup>255</sup> and have union representation on certain advisory boards;<sup>256</sup> and the right to specified improved subsidy payment procedures.<sup>257</sup>

As of August 2009, the union had not reported any particular issues with the implementation of these provisions.

### **New Jersey**

As reported in *Getting Organized*,<sup>258</sup> New Jersey Governor Jon Corzine issued an executive order in August 2006 granting collective bargaining rights to the more than 7,000 subsidized and unsubsidized FCC (“registered”) providers and subsidized FFN (“approved”) providers and granting formal recognition to the Child Care Workers Union (CCWU), a partnership between Communications Workers of America (CWA) and AFSCME, to represent them.<sup>259</sup>

Since *Getting Organized* was issued, members of CCWU ratified a collective bargaining agreement on November 17, 2007, which is in effect from October 1, 2007, to June 30, 2010.<sup>260</sup> The agreement is contingent on necessary regulatory or legislative revisions, including appropriations.<sup>261</sup> Highlights of the agreement and its implementation include:

- *Subsidy rates*—The agreement provides that reimbursement rates will increase for both FCC and FFN providers on October 1, 2007; July 1, 2008; and July 1, 2009,<sup>262</sup> and includes a schedule of rate increases.<sup>263</sup> The agreement provides that rates will also be increased by annual cost of living increases during the term of the contract, beginning with a 3% increase on January 1, 2008.<sup>264</sup>

Rate increases were approved by the legislature in October 2007<sup>265</sup> and received by FCC and FFN providers on schedule in January 2008 and in July 2008.<sup>266</sup> The third subsidy rate increase for FCC and FFN providers included in the agreement, scheduled for July 1, 2009, was approved by the legislature in 2008.<sup>267</sup> Although centers are not covered by the agreement, the 2007 legislation included a 3% cost of living increase for centers in January 2008, but not the October 2007 and July 2008 increases given to FCC and FFN providers.<sup>268</sup> The cost of living did not increase between 2008 and 2009, so providers did not receive a cost-of-living increase on January 1, 2009.<sup>269</sup>

- *Health insurance*—The agreement requires the state to survey providers to determine the health insurance coverage providers currently have; the number of providers and providers’ dependents without insurance; and providers’ current income and eligibility for Family Care, the state-funded children’s health insurance program.<sup>270</sup>

In 2008, this survey of 3,841 home-based child care providers was conducted by the New Jersey Department of Human Services, Division of Family Development (DFD), in collaboration with CCWU.<sup>271</sup> The survey found that approximately 51% of home-based providers have health insurance coverage; 55% of home-based providers with co-resident children under twenty-two years old have health insurance coverage; and spouses of providers who have no children (50%) are only slightly less likely to have health insurance coverage than spouses with children (55%).<sup>272</sup> As of July 2009, the union was aiming to have providers automatically receive information about state-sponsored health care services in their introductory packages when they register with the state or when they receive an initial home visit.<sup>273</sup>

- *Other provisions*—As an anti-poverty provision, the agreement requires that the state “arrange for the annual dissemination of information on the Earned Income Tax Credit (EITC) and Family Care to providers.”<sup>274</sup> In addition, the agreement provides that the state must inform the union in advance of promulgation of policies or regulations that may affect providers;<sup>275</sup> provide copies of state policies to all providers (in accessible



languages);<sup>276</sup> establish a new, specified grievance procedure;<sup>277</sup> and meet with union representatives semi-annually.<sup>278</sup>

The state has disseminated information on the EITC and Family Care to providers.<sup>279</sup> New Jersey counties with large percentages of Spanish-speaking providers also offer materials in Spanish.<sup>280</sup> In addition, the union has been invited to sit on an ad hoc committee to discuss proposed changes to the Manual of Requirements for Family Child Care Registration.<sup>281</sup> With respect to meetings in 2008, the state did not meet with the union semi-annually, and cancelled several meetings. However, as of July 2009, the union and the state had set a schedule for quarterly meetings to begin in the fall of 2009 and run through 2010.<sup>282</sup>

### **Michigan**

As reported in *Getting Organized*, legal authority for Michigan's home-based providers to organize derives from Governor Jennifer Granholm's approval of an "interlocal agreement" (ILA) in 2006,<sup>283</sup> rather than from legislation or an executive order.<sup>284</sup> The ILA is a mechanism by which Michigan agencies or political subdivisions (in this case, the state's Department of Human Services and a publicly funded community college) agree to cooperate to create a new public agency (in this case, the Michigan Home Based Child Care Council (MHBCCC)).<sup>285</sup> The ILA assigned to the MHBCCC the child care program functions previously performed by the Department of Human Services with respect to subsidized and unsubsidized FCC providers and subsidized FFN providers, including the authority to "bargain collectively and enter into agreements" with the providers' representative,<sup>286</sup> in this instance, Child Care Providers Together (CCPT), a partnership between AFSCME and United Automotive Workers (UAW). Pursuant to the ILA, the composition of MHBCCC is agreed upon jointly by the union and the state, and it includes a senior member from the Department of Human Services.<sup>287</sup>

On September 5, 2008, MHBCCC and CCPT signed a three-year agreement on behalf of subsidized and unsubsidized FCC providers and subsidized FFN providers, effective January 1, 2008.<sup>288</sup> Provisions of the agreement, and the extent to which they have been implemented, include:

- *Subsidy rates*—The agreement establishes a schedule of subsidy rate increases of 13% to 35%, depending on the provider's region and licensing status, beginning in January 2008.<sup>289</sup> These rate increases are dependent upon appropriations from the legislature<sup>290</sup> and if new funds are insufficient, MHBCCC and CCPT are to find "creative solutions" to fund rate increases.<sup>291</sup>

Because of the state's economic difficulties, the legislature did not appropriate funding for these increases in January 2008 or January 2009, and consequently as of April 2009, these rate increases had not been implemented.<sup>292</sup> Before the agreement was in effect, however, the union worked with advocates to help secure the first subsidy rate increases since 1996: \$5.6 million was appropriated in November 2007 to support a rate increase of 1.5% for FCC and FFN providers as well as for child care centers, effective January 5, 2008.<sup>293</sup> However, in December 2007, the Department of Human Services cut the maximum number of hours that all subsidized providers can claim for reimbursement from 100 to 90 hours biweekly.<sup>294</sup> This change in hours from 100 to 90 partially offset the January 2008 rate increases for a number of providers working 90 hours or more.<sup>295</sup>

In addition, a supplemental budget bill for FY 2008 increased reimbursement rates for FCC and FFN providers, as well as for centers, by 2.25%, effective May 25, 2008.<sup>296</sup>

- *Training*—The agreement provides for a new training program operated by MHBCCC, the Child Development Specialist Career Path Program.<sup>297</sup> The program has two phases. FFN providers (and child care aides) will start the training program at Phase One<sup>298</sup> (the training necessary for licensing), and FCC providers will start





the program at Phase Two<sup>299</sup> (having already completed training necessary for licensing). Successful completion of Phase One results in an increase of ten cents per child, per hour, above the base rate, regardless of when the provider becomes licensed. Successful completion of Phase Two results in an increase of twenty-five cents per child, per hour, above the base rate.<sup>300</sup> CCPT representatives are to serve on the Joint Training and Education Committee that oversees the training.<sup>301</sup>

Both MHBCCC and CCPT are tasked with obtaining funding for the program.<sup>302</sup> According to a union official, the program is limited to 300 participants during the first year of its operation.<sup>303</sup> CCPT states that resource and referral programs, through their statewide organization, the Michigan 4C Association, are to administer the training.<sup>304</sup> CCPT also estimates that the cost of the program will be approximately \$20 million over two years.<sup>305</sup> As of December 2009, no funding had been secured and the training program had not begun.<sup>306</sup>

- *Providers' rights*—The agreement states that FCC and FFN providers have the right to be treated as professionals by state officials, including with courtesy, dignity, consideration and respect; to request that a new state licensing specialist consultant be assigned when a conflict cannot be resolved by discussion with a supervisor of the licensing specialist consultant; to receive written notice of any changes to payments or programs that affect families receiving child care assistance; and to submit a written rebuttal to any information in the state's provider files with which they disagree.<sup>307</sup> It also reaffirms pre-existing state policies on payment for sick days and holidays, under which both FCC and FFN providers are paid for days on which a child is absent (up to two weeks) because of the child's own illness if the provider also charges parents who do not receive a subsidy for such days,<sup>308</sup> and are paid for state holidays if the provider similarly charges parents not receiving subsidies for such holidays.<sup>309</sup>

As of August 2009, the union had not reported any particular issues with the implementation of these provisions.

### **Wisconsin**

As reported in *Getting Organized*, Governor Jim Doyle signed an executive order in 2006 authorizing subsidized and unsubsidized FCC providers and subsidized FFN providers to organize and negotiate with the state,<sup>310</sup> and the AFSCME affiliate, Child Care Providers Together (CCPT), was certified to represent the bargaining unit of about 6,000 providers.

In June 2009, the legal authority of these providers to organize and negotiate with the state was codified in legislation.<sup>311</sup>

In April 2008, CCPT negotiated an agreement with the state,<sup>312</sup> and in June 2008, CCPT members ratified the agreement, which expires on June 30, 2011, and is contingent on necessary regulatory or statutory revisions, including appropriations.<sup>313</sup> Highlights of the agreement, and the extent to which it has been implemented, include:

- *Subsidy rates*—The agreement requires the state to continue to complete a market rate survey annually and set basic reimbursement rates for child care providers caring for children receiving child care assistance at the 75th percentile<sup>314</sup> of these market rates each year, subject to the availability of funds.<sup>315</sup> It also requires the state to continue to pay a higher rate, 10% more than the base rate, to child care programs that demonstrate they have met a higher quality-of-care standard (based on accreditation from a national organization).<sup>316</sup>

The state has conducted annual market surveys as called for in the agreement,<sup>317</sup> but has not updated its reimbursement rates to the 75th percentile of current market rates; reimbursement rates have been set at



the 75th percentile of 2005 market rates since 2006.<sup>318</sup> Indeed, by legislation enacted in June 2009, the state is prohibited from raising the maximum reimbursement rates for child care providers “in 2009, 2010, or before June 30 in 2011.”<sup>319</sup>

- *Health insurance*—The agreement provides that CCPT and the state will “work together on ways to make comprehensive health insurance coverage accessible and affordable” for providers.<sup>320</sup> The parties will convene a joint committee to review options for coverage if necessary or if the goals of the committee have not been met by July 1, 2009,<sup>321</sup> through a quarterly meet-and-confer process.<sup>322</sup> If the joint committee is convened, it may request information from the state to assess the cost of health coverage, ask for the assistance of experts in the health insurance field, and seek information from other states that have established health plans for FCC providers.<sup>323</sup> The committee’s report, which is due no later than six months after the committee has convened, may recommend legislative and appropriation changes and/or contractual changes to be sought in the successor to the current agreement.<sup>324</sup>

According to a union official, the quarterly meet-and-confer process has been productive in working through solutions to health care issues.<sup>325</sup> For example, the union worked with the state and other advocates to expand Badger Care Plus, the state’s health care program for low-income families, to childless adults.<sup>326</sup> The legislature passed enabling legislation for the program in October 2007, but this legislation did not provide funding and the state needed a federal Medicaid waiver to implement the program.<sup>327</sup> The federal government provided the necessary waiver in December 2008, and the legislature passed a budget with funding for the program in June 2009.<sup>328</sup> The state began accepting applications to participate in the program in June 2009, and began serving childless adults in July 2009.<sup>329</sup>

In addition, the 2010 state budget includes a provision directing the Department of Health and Human Services (DHS) to conduct a feasibility study on FCC provider health insurance.<sup>330</sup> The state and the union have agreed to a joint committee consisting of representatives of CCPT, DHS and the Department of Children and Families to work through the terms of a request for a federal Medicaid waiver related to this, and this committee is in lieu of the more broadly focused joint committee referenced in the contract.<sup>331</sup>

- *Training*—The agreement provides that the state will “encourage training providers with whom it contracts to offer required training on a variety of days (including weekends),” times and locations, and in Spanish and Hmong when appropriate.<sup>332</sup> In addition, a joint committee may be established to “study methods of bringing providers and licensors together for joint training on rules to increase consistency and understanding,” to explore the need for additional funds to pay for education and training, and to explore methods of increasing the number of trainers with experience as FCC providers.<sup>333</sup> The committee is only established if necessary or if the quarterly meet-and-confer process cannot accommodate a full discussion of these issues.<sup>334</sup>

According to a union official, because the quarterly meet-and-confer process has been successful in discussing these issues, the committee has not been necessary.<sup>335</sup> For example, as a result of the meet-and-confer process, as of June 2009, the state had agreed to participate in “meet-your-licensors” events that include providers, county licensing officials, and representatives of AFSCME.<sup>336</sup> These are informal meetings in various counties where participants can discuss issues that relate to licensing.<sup>337</sup> The union has also delivered presentations at state-run training sessions that have given it the chance to provide the union perspective on training issues.<sup>338</sup>

Outside of the agreement, CCPT has been working with child care resource and referral agencies to ensure that training on shaken-baby syndrome, required by legislation, is accessible to providers at a number of different locations.<sup>339</sup> It has also been training some union members to be peer advocates in order to help providers understand their rights under state laws and rules.<sup>340</sup>



## GETTING ORGANIZED: 2010 UPDATE

- *Receipt of federal funds*—The agreement provides that if the state receives additional federal child care funds beyond the existing allotment, or other federal undesignated social service funds or a reduction in any such funds, the union and the state will meet and confer to discuss how such funds may be used to increase or reduce child care funding.<sup>341</sup>

As of June 2009, the union and the state had not met to discuss the use of new federal child care funding under the American Recovery and Reinvestment Act.<sup>342</sup>

- *Providers' rights*—The agreement establishes a bill of rights for all providers,<sup>343</sup> including the right to be treated with dignity and respect and the right to be free from discrimination.<sup>344</sup> In addition, providers have the right to have a witness of the provider's choosing to observe any state licensing inspection; the right to have any violations communicated in writing before a final report is made and to receive a written report of the regulator's findings from the inspection listing each violation and the rule offended within ten business days of the visit;<sup>345</sup> and the right to respond to the licensing violations in writing within ten business days and to have a union representative present during any meetings or hearings.<sup>346</sup> Providers also have the right to receive written notification of a decrease in or termination of subsidy payments.<sup>347</sup> They have the right to receive written notification prior to any changes to state statutes or administrative rules relating to home-based child care and to be allowed to make comments on such changes.<sup>348</sup>

As of August 2009, the union had not reported any particular issues with the implementation of these provisions.

- *Other provisions*—The agreement acknowledges that the state and CCPT have convened a subcommittee to address payment issues, including accuracy, notification, and termination of eligibility of a provider to participate in the subsidy program, and will “incorporate those elements resolved into the [current a]greement.”<sup>349</sup> In addition, the state and CCPT will discuss the design and implementation of a quality rating system (QRS) in Wisconsin, but without a timeline for these discussions.<sup>350</sup>

In July 2008, CCPT and the state began meeting monthly to discuss a variety of topics, including payment issues.<sup>351</sup> As a result of the meetings on payment issues, CCPT has had success in changing the state's policy on recouping overpayments from providers.<sup>352</sup> Prior to January 2008, the state had been recouping overpayments of subsidies to providers at a rate of 50% of a provider's entire biweekly payment.<sup>353</sup> This was a serious financial burden for providers. As of January 26, 2009, the state changed the biweekly percentage a provider has to pay back for overpayments depending on the type of error.<sup>354</sup> For example, if the overpayment results from a caseworker error, the payback percentage is 10%.<sup>355</sup> If the overpayment results from an unintended provider error, the payback percentage is 25%.<sup>356</sup> However, if the error is deemed purposeful on the part of the provider, the percentage remains at 50%.<sup>357</sup> These amounts are taken out biweekly until the overpayment is recouped.<sup>358</sup>

CCPT has created an internal committee of providers represented by CCPT who are working to make sure that implementation of any QRS allows for the growth of high-quality FCC programs.<sup>359</sup> In addition, a CCPT leader has been named to the Governor's State Advisory Council on Early Childhood Education and Care, created in December 2008, whose purpose is to focus on a range of issues affecting child care and other early care and education programs.<sup>360</sup> The Council met in April and June 2009 and discussed various topics, including implementing a QRS.<sup>361</sup>

Before the agreement was reached, the union worked with advocates to ensure that funding for the child care assistance program was protected in the budget process for FY 2007–2008. From April 1, 2007, to October 27, 2007,<sup>362</sup> and again from March 30, 2008, to May 17, 2008,<sup>363</sup> the Department of Workforce Development had an emergency





rule in effect that required a provider to show that a child was in attendance for more than 50% of the time for which he or she was scheduled during a week in order to receive the full subsidy payment for that week.<sup>364</sup> This policy meant that providers, who normally could not fill the slot of a child sick or absent for half a week, would lose the entire week's subsidized pay for that child's care. CCPT and child care advocates urged the legislature to rescind the attendance-based reimbursement policy and to increase funding for the Wisconsin child care assistance program.<sup>365</sup> The legislature did rescind the policy and required that providers be reimbursed for all authorized hours of care in a week, not just for the actual hours attended by a child, as part of a budget adjustment bill for FY 2007–2008 that also appropriated an additional \$18.6 million for the child care program to address the program's growing caseload and a projected deficit.<sup>366</sup> Governor Doyle rejected the legislature's attempt to permanently codify the restriction on the attendance-based reimbursement policy by line-item vetoing the provision.<sup>367</sup> However, as part of the same veto message, the governor suspended the attendance-based reimbursement policy for the remainder of FY 2007–2008.<sup>368</sup> Although the Department retains the authority to reinstate the attendance rule, as of May 2009, it had not done so.<sup>369</sup>

### Developments in States with New Legal Authority

Home-based child care providers in seven states have won statewide legal recognition since February 2007, when *Getting Organized* was published. These seven states are discussed below in chronological order of when they were granted negotiating rights. In two of these states a contract had not been signed as of March 2010, and the parties are generally reluctant to disclose the issues being negotiated while negotiations are on-going. However, the unions are engaging in a range of activities outside of the bargaining process.

#### New York

As described in *Getting Organized*, in June 2006, then-Governor George Pataki vetoed legislation that would have authorized home-based child care providers to be represented by unions and bargain collectively with the state.<sup>370</sup> Shortly after taking office, on May 8, 2007, then-Governor Elliott Spitzer signed an executive order authorizing home-based child care providers to organize and negotiate with the state.<sup>371</sup> The 2007 executive order divides home-based child care providers into four representation units:

- All subsidized FCC and FFN providers within New York City
- All unsubsidized FCC providers within New York City
- All FCC providers, subsidized and unsubsidized, outside of New York City
- All subsidized FFN providers outside of New York City<sup>372</sup>

The United Federation of Teachers (UFT) won the right to represent New York City's subsidized and unsubsidized FCC providers and subsidized FFN providers, totaling around 28,000 providers.<sup>373</sup> The Civil Service Employees Association (CSEA), an affiliate of AFSCME, won the right to represent FCC and FFN providers outside of New York City: CSEA partnered with the Voice of Independent Child Care Educators (VOICE) to represent the 7,500 subsidized and unsubsidized FCC providers<sup>374</sup> and with Child Care Providers Together (CCPT) to represent the 17,000 subsidized FFN providers.<sup>375</sup>

Under the executive order, which differs in several respects from the vetoed legislation described in *Getting Organized*, the Office of Children and Family Services (OCFS) and other relevant state agencies are authorized to meet and confer with the providers' representatives in order to reach an agreement that "may address the stability,



funding and operation of child care programs; expansion of quality child care; and improvement of working conditions, including subsidies, benefits or payment, for child care providers.<sup>376</sup> If the implementation of an agreement requires legislation or the appropriation of funds, both parties must jointly seek such legislation or appropriations.<sup>377</sup> The State Employees Relations Board may direct parties to engage in non-binding mediation for disputes under the order.<sup>378</sup> The executive order explicitly states that it does not grant providers the status of state employees,<sup>379</sup> and providers do not have the right to strike.<sup>380</sup> According to a union official, Governor Spitzer's staff reviewed executive orders issued in other states before issuing the 2007 executive order and attempted to clarify provisions in the 2006 legislation vetoed by Governor Pataki.<sup>381</sup>

In July 2009, CSEA/CCPT, VOICE/CSEA, and UFT reached tentative agreements with OCFS.<sup>382</sup> UFT members ratified their agreement on January 15, 2010,<sup>383</sup> and both CSEA/CCPT members and VOICE/CSEA members ratified their agreements on February 8, 2010.<sup>384</sup> As of March 2010, the final CSEA/CCPT agreement<sup>385</sup> and VOICE/CSEA agreement<sup>386</sup> were available, but only the preliminary UFT memorandum of agreement was available;<sup>387</sup> the final agreement will include additional provisions.<sup>388</sup> All three agreements are in effect from October 1, 2009, through September 30, 2013, although some provisions cover a shorter time period.<sup>389</sup>

Provisions of the agreements include:

- *Subsidy rates*—All three agreements incorporate by reference the OCFS regulations on child care subsidy rates, updated in October 2009,<sup>390</sup> which set base FCC provider reimbursement rates at the 75th percentile of the spring 2009 market rate survey and base FFN provider rates at 65% of that rate through September 30, 2011.<sup>391</sup> The CSEA/CCPT and VOICE/CSEA agreements also state that the unions and OCFS “will jointly review the instrument and methodology for conducting the next biennial market rate survey” and that OCFS will consider any changes recommended by the unions,<sup>392</sup> but all three agreements are otherwise silent on rates for the last two years of the contracts.
- *Health insurance*—All three agreements allow child care providers who are not otherwise income-eligible to access health insurance through the state’s Family Health Plus (FHP) program,<sup>393</sup> New York’s public health insurance program for low-income adults whose incomes are too high to qualify for Medicaid.<sup>394</sup> First, providers who are already covered by FHP and those who are eligible but not enrolled will be grouped into union plans within FHP: the already existing Taft Hartley Plan for CSEA/CCPT and VOICE/CSEA members and the new Voluntary Employee Benefit Association for UFT members.<sup>395</sup> New York then will provide a total of \$14.8 million to CSEA/CCPT and VOICE/CSEA and \$23 million to UFT during fiscal years 2010–2011, 2011–2012, and 2012–2013, for the unions to expand the insurance coverage to providers who would not otherwise qualify for FHP.<sup>396</sup>
- *Training*—The state will contribute \$500,000 to CSEA/CCPT and VOICE/CSEA and \$500,000 to UFT for professional development funds to help both FCC and FFN providers “to meet existing training requirements and to enhance their development.”<sup>397</sup> The agreements provide that the state and unions will work together to determine how the funds will be expended and that appropriate uses of funds include offering training to providers during non-working hours; developing video, web-based, and classroom training; and managing a training voucher program.<sup>398</sup>
- *Quality improvement*—Under the VOICE/CSEA and UFT agreements, the unions will each establish funds to help subsidized and unsubsidized FCC providers “increase the quality of the environment in which they provide their services.”<sup>399</sup> Over the course of the agreements, the state will contribute \$11.2 million to VOICE/CSEA’s fund and \$3 million to UFT’s fund.<sup>400</sup> The money will be distributed equally among all FCC providers in the relevant geographic area—inside New York City for UFT and outside New York City for VOICE/CSEA—based on rules developed jointly by the unions and OCFS.<sup>401</sup> For VOICE/CSEA, any excess funds—beyond what is



required to give each applicable provider a \$500 quality improvement grant—will be used for health insurance coverage for providers.<sup>402</sup>

The CSEA/CCPT and VOICE/CSEA agreements also state that OCFS, the unions, and other relevant stakeholders will work together to create a quality rating improvement system (QRIS), “to the extent that the funding is made available specifically for such purposes.”<sup>403</sup>

- *Licensing and regulation*—The VOICE/CSEA agreement requires licensing inspectors to “leave a factual, written On-Site Inspection Report and conduct an exit interview” with FCC providers at the end of every inspection.<sup>404</sup>

Both the CSEA/CCPT and the VOICE/CSEA agreements state that a committee of state and union representatives will review current child care regulations, recommend changes to OCFS, and draft proposed regulations necessary for implementing the agreements.<sup>405</sup> Prior to the agreements, the committee had already reviewed regulations regarding licensing, registration, and enrollment of providers.<sup>406</sup>

In addition, under the VOICE/CSEA agreement, OCFS will make specified changes to its website “as resources permit.”<sup>407</sup> For example, OCFS will provide written descriptions of serious violations of regulations by providers listed on the website “in layperson’s terms.”<sup>408</sup> Even before the agreement, the union had worked with OCFS to end the use of a red “YES” without additional explanation to identify providers with recorded violations of regulations.<sup>409</sup> In addition, once the QRIS has been developed and implemented, OCFS will include a provider’s QRIS credentials on the provider’s OCFS profile page.<sup>410</sup>

- *Payment procedures*—To give providers an additional tool to ensure that individual social services districts comply with mandatory state policies,<sup>411</sup> the CSEA/CCPT and VOICE/CSEA agreements create a new payment dispute resolution process.<sup>412</sup> The resolution process permits OCFS, when presented by the union with documentation of a payment dispute between local administration and multiple child care providers, to “exercise its powers under sections 20 and 34 of the Social Services Law to attempt to compel the district to comply” with the relevant federal or state law or regulation.<sup>413</sup>

In addition, under the CSEA/CCPT and VOICE/CSEA agreements, OCFS agreed to provide \$4 million in American Recovery and Reinvestment Act<sup>414</sup> funding for computer system upgrades in fifty-seven counties and will “include the [unions] in discussions regarding the design of the system.”<sup>415</sup> The upgrades will make the payment systems uniform across the state, simplify providers’ record-keeping, and ensure that providers receive timely and accurate payments.<sup>416</sup>

- *Providers’ rights*—The CSEA/CCPT and VOICE/CSEA agreements set forth “guiding principles” for the treatment of providers, which OCFS agreed to encourage its employees, social services districts, and “entities with which it contracts for licensing and regulation activities” to implement.<sup>417</sup> Enumerated provider rights include the right to be treated as a professional, the right to be free from discrimination, the right to receive timely and accurate payments, the right to review one’s own provider file, and the right to receive technical assistance when correcting a compliance violation.<sup>418</sup>

The proposed FY 2010–2011 budget that Governor David Paterson released on January 19, 2010, included funding to implement all three child care provider bargaining agreements—specifically, \$1 million for professional development funds, approximately \$5 million for quality improvement grants, and approximately \$8 million for health insurance costs.<sup>419</sup> As of March 2010, the New York legislature had not enacted a budget.



Before they reached agreements with the state, all three unions worked at the city, county, and state levels for provider improvements.

For example, in 2006, VOICE/CSEA worked with Governor Pataki and state legislators to amend Social Services Law 390 to prohibit the commercial taxing of FCC providers.<sup>420</sup> As of June 2009, VOICE/CSEA was collaborating with the Suffolk County Commissioner to train FCC providers to use KinderAttend, a data system for tracking attendance, to expedite payments and ensure timely notification of changes in eligibility status.<sup>421</sup>

In addition to the health insurance coverage provided in the agreement, CSEA has designed its own package of benefits for union members with some benefits tailored to the needs of home-based child care providers who are VOICE or CCPT members.<sup>422</sup> They receive discounts on educational materials and on homeowners and business liability insurance as well as eye and dental care,<sup>423</sup> which is important because the Family Health Plus funding in the agreement is not sufficient to cover all union members.<sup>424</sup>

Before and during bargaining, UFT worked to improve the subsidy process for New York City's home-based child care providers. UFT reports that it helped to add six new staff positions for the city's hotline for providers to report payment problems, operated by the Administration for Children's Services (ACS), and to secure a two-week turn-around time for issuing subsidy payments.<sup>425</sup> In addition, UFT negotiated with ACS to improve the complaint and licensing renewal process for providers and to require the Department of Health to give providers a checklist before a home inspection to better prepare them for the process.<sup>426</sup> Inspectors now give language cards that explain their role in various languages to the provider during a visit; the cards indicate that the provider may request that the inspector call a language line that will assist in translating for the inspector.<sup>427</sup> UFT is also promoting provider training through UFT-sponsored teacher centers.<sup>428</sup>

UFT also successfully convinced New York City to make an overdue update to its reimbursement rates in May 2009.<sup>429</sup> New York is one of the several states in which the child care assistance system is locally administered.<sup>430</sup> This means that individual social services districts have some flexibility in setting policies such as eligibility limits, co-payment levels, and rates above the base rate for providers who have national accreditation or who work non-traditional hours, although they are otherwise required to follow OCFS regulations with respect to reimbursement rates.<sup>431</sup> At the beginning of 2009, New York City's reimbursement rates were still based on 2005 market rate surveys, even though OCFS had mandated that they be updated in October 2007 to reflect 2007 market rates.<sup>432</sup> After advocacy by the union, ACS agreed to provide an estimated \$45 million to fund the rate increases going forward and \$80 million for retroactive payment of the 2007 rates dating from October 2007.<sup>433</sup> The rate increases applied to FCC providers and FFN providers as well as centers using vouchers.<sup>434</sup> As described above, under all three agreements with the state, base reimbursement rates are based on 2009 market rates from October 1, 2009, through September 30, 2011.<sup>435</sup>

OCFS and the unions have launched several other joint initiatives. In 2008, VOICE was one of several organizations invited to partner with OCFS to produce a video training conference to educate providers about insurance.<sup>436</sup> Providers attending the training received training credit and completed a survey that the state used to issue a report detailing the insurance needs of home-based child care providers.<sup>437</sup> OCFS also established an insurance workgroup that includes CSEA, UFT, the State Insurance Department and OCFS to explore ways to make liability and homeowners insurance more accessible.<sup>438</sup> The first meeting was held in June 2009.<sup>439</sup>

### **Pennsylvania**

As reported in *Getting Organized*, Child Care Providers United (CCPUnited), a partnership between ASFCME and SEIU, had at that time recently begun to organize FCC and FFN providers in Philadelphia.<sup>440</sup> On June 14, 2007, Governor Edward Rendell issued two executive orders authorizing FCC and FFN providers to unionize and negotiate



with the state.<sup>441</sup> The first order establishes a bargaining unit of subsidized and unsubsidized FCC providers and requires the Department of Public Welfare to meet and confer with the providers' representative to address "issues of mutual concern on common goals such as a quality early childhood education and care program that includes availability to low-income families, professional preparation and development, health and safety regulations, reimbursement rates, payment procedures, the monitoring and evaluating of registered family child care as well as other issues that are of mutual interest for quality early education and care."<sup>442</sup> The second order establishes a bargaining unit of subsidized FFN providers and requires the Department of Public Welfare to meet and confer on "issues of mutual concern regarding quality early care and education that prepares children for schools [sic]."<sup>443</sup> Both orders provide that any agreement reached will be memorialized in writing and is contingent upon the completion of any regulatory, statutory or budgetary actions required by the agreement.<sup>444</sup> Providers in both units do not have the right to strike and are not considered state employees.<sup>445</sup> In October 2007, CCPUnited won the right to represent the more than 3,700 subsidized and unsubsidized FCC providers in Pennsylvania,<sup>446</sup> and in May 2008, CCPUnited won the right to represent the more than 20,000 subsidized FFN providers in the state.<sup>447</sup>

As of March 2010, an agreement had not been reached.<sup>448</sup> CCPUnited reports that during the ongoing bargaining process, it has been advocating for providers in the areas identified as issues of mutual concern. The union lobbied with children's advocates in the state for FCC providers who meet appropriate standards under the state's quality rating and improvement system, Keystone STARS,<sup>449</sup> to be eligible for prekindergarten funding through the state's Pre-K Counts Program,<sup>450</sup> and according to a union official, has generally supported increased funding from the legislature for early education programs, including child care and prekindergarten.<sup>451</sup> As the result of these efforts, in July 2008, the legislature approved increased funding for the Pre-K Counts program, the state's child care subsidy program, and Keystone STARS.<sup>452</sup> However, the Pre-K Counts increase did not benefit FCC providers because they were not given the right to participate in the Pre-K Counts program.

Because of concerns about unreasonable local restrictions that prevent FCC providers from operating a business, the union reports it also lobbied for revision of zoning laws as applied to home-based child care.<sup>453</sup> It supported legislation in 2007 to strip municipal government of the authority to regulate FCC homes through municipal zoning regulations and replace that authority with statewide zoning standards for FCC homes.<sup>454</sup> The bill passed the House but died in the Senate.<sup>455</sup> To complement these legislative efforts, CCPUnited employed a full-time staff person to represent providers (as needed, across the state) at zoning board meetings.<sup>456</sup>

CCPUnited reports it has created new training opportunities in recent years for FCC providers as well.<sup>457</sup> For example, beginning in 2006, the union identified grants available through the Department of Labor and Industry for workforce development and collaborated with advocates and Keystone STARS to secure funding for a program to help FCC providers qualify for Keystone STARS.<sup>458</sup> Between 2006 and 2009, under this program three grants from the Department of Labor and Industry were awarded to CCPUnited with the following groups as partners: Keystone Research Center, National Union for Hospital and Health Care Employees, United Child Care Union, AFSCME, Keystone Child Care Association, Brightside Academy, and Pennsylvania Home-Based Child Care Providers Association.<sup>459</sup> These grants assist both FCC providers and centers and range from \$200,000 to \$400,000.<sup>460</sup> The grants were each awarded for a one-year period, and funded the costs of mentors to work directly with providers to help them qualify for the enhanced rates that result from Keystone STARS participation, including by earning the credentials they need (such as an associate's degree).<sup>461</sup> The union has facilitated the mentorship program in other ways as well. For example, CCPUnited has been the meeting place for Philadelphia FCC providers participating in the mentoring program.<sup>462</sup>

In addition, CCPUnited reports it has been active in assisting individual providers with subsidy payment issues, such as timely payment.<sup>463</sup> Finally, the union is working to make FFN providers serving children who receive child care subsidies eligible for the Child and Adult Care Food Program.<sup>464</sup>





### **Kansas**

On July 19, 2007, then-Governor Kathleen Sebelius issued an executive order designating Child Care Providers Together (CCPT), an affiliate of AFSCME, to represent and negotiate with the state on behalf of all “registered and licensed”<sup>465</sup> FCC providers.<sup>466</sup> The order covers 7,000 subsidized and unsubsidized FCC providers.<sup>467</sup> It provides that CCPT and the Kansas Department of Health and Environment and the Department of Social and Rehabilitative Services will meet and confer and work in good faith to reach a written agreement. The topics on which the parties may negotiate are quality standards; training, licensure and registration requirements; reimbursement rates; methods of payment; benefits; health and safety conditions, monitoring and evaluating of providers; fees; and “any other matters” that would improve recruitment and retention of qualified FCC providers and the overall quality of child care programs.<sup>468</sup> The order obliges the union and the state, once agreements are reached, to “work jointly to see [sic] necessary legislative and/or regulatory action.”<sup>469</sup> Providers are not granted status as state employees and are not permitted to strike.<sup>470</sup>

In February 2009, CCPT negotiated a three-year agreement with the state, which is effective from May 2009 until February 2012.<sup>471</sup> Highlights of the agreement include:

- *Subsidy rates*—The agreement provides that the state and the union will work together to meet the goal of raising provider reimbursement rates to the 75th percentile of current market rates, including by requesting increased funding from the legislature to achieve this goal.<sup>472</sup> However, rates cannot be increased if doing so would require lowering the current income eligibility limit (185% of the current federal poverty guideline) or raising the current limit on parent co-payments (10% of household income).<sup>473</sup> In addition, the agreement provides that increasing the number of children served remains the state’s first priority for any funding requests.<sup>474</sup>
- *Health insurance*—The agreement provides that the state and union will “promote the health and wellness of all [p]roviders working with young children,” including by sharing information on access to public health services and connecting union representatives with representatives of the Kansas Health Policy Authority to enable the sharing of information on health insurance coverage that might be available to providers.<sup>475</sup>
- *Training*—The agreement provides that the state and the union will encourage opportunities for providers to engage in professional development activities.<sup>476</sup> As part of these efforts, the state will facilitate union representation in the development of the Kansas Professional Development Systems Plan, a “comprehensive system of professional development.”<sup>477</sup> In addition, the state and the union will research and, if possible, jointly prepare a provider mentoring system.<sup>478</sup>
- *Licensing improvements*—The agreement provides that the state will include union representatives on the Child Care Licensing Systems Improvement Best Team to advise the state on matters related to the licensing system.<sup>479</sup> The state and union will also research and, if possible, jointly propose funding options for grants to “assist [p]roviders in improving the health, development and safety of children in child care” and in complying with regulatory requirements.<sup>480</sup>
- *Payment procedures*—The agreement requires the state to complete and forward in a timely manner all paperwork necessary for providers to receive timely subsidy payment.<sup>481</sup> In addition, the state must notify the provider at the same time the family is notified when a family served by a provider is initially authorized to receive subsidies<sup>482</sup> or when a family served by a provider has its subsidies terminated prior to the original end date.<sup>483</sup>



The FY 2010 Kansas budget did not include a subsidy rate increase for providers,<sup>484</sup> nor did Governor Mark Parkinson's FY 2011 budget proposal, released January 11, 2010.<sup>485</sup> As of March 2010, the Kansas legislature had not passed a budget, and the extent to which the other provisions of the agreement are being implemented is unclear.

Another focus of union activity has been support for legislation that would revise licensing and inspection requirements for FCC providers.<sup>486</sup> CCPT supported a proposed bill in the 2008 legislative session that would have required home inspections to be conducted in a professional and courteous manner.<sup>487</sup> This bill would also have allowed licensed FCC providers to care for two additional school-age children under sixteen years of age in temporary situations involving school closures, vacations, or emergencies at other child care facilities.<sup>488</sup> Although this bill did not advance, the Kansas Department of Health and Environment issued a proviso to current regulations that allows FCC providers to care for two additional school-age children in the temporary circumstances set out in the bill.<sup>489</sup> This change will help families with school-age children to secure care during short periods when school is closed or there are other emergencies.

### **Maryland**

Governor Martin O'Malley issued an executive order on August 6, 2007, that authorizes subsidized FCC and subsidized FFN providers to unionize and negotiate with the state.<sup>490</sup> SEIU Kids First, an affiliate of SEIU, won the right to represent almost 6,000 subsidized FCC and FFN providers in September 2007.<sup>491</sup> The executive order gives the state and the providers' representative authority to meet and confer on issues "concerning the terms and conditions of the participation of family child care providers"<sup>492</sup> in the state's child care subsidy program, including "reimbursement rates..., payment procedures, and benefits."<sup>493</sup> If implementation of any provisions of the agreement requires legislation, the state and the union are obligated to "jointly seek" the enactment of that legislation.<sup>494</sup> Providers are not considered state employees and do not have the right to strike.<sup>495</sup>

The executive order met with opposition from the Maryland State Family Child Care Association (MSFCCA), a professional organization of FCC providers in the state,<sup>496</sup> and from certain state legislators who opposed earlier attempts to seek similar authorization through legislation. MSFCCA and these legislators initiated a legal challenge to the executive order<sup>497</sup> and succeeded in obtaining a temporary restraining order in state court on September 24, 2007.<sup>498</sup> However, the Maryland Court of Special Appeals stayed the temporary restraining order pending further briefing and argument on the issue,<sup>499</sup> and on March 5, 2009, the court issued a decision denying the permanent injunction sought by MSFCCA and ruling in favor of the state.<sup>500</sup> The Court held that the governor was within his constitutional and statutory authority to issue the executive order, thus validating the executive order granting subsidized FCC and subsidized FFN providers the right to unionize and negotiate with the state.<sup>501</sup>

In June 2009, SEIU negotiated an agreement with the state, effective from July 1, 2009, to June 30, 2011.<sup>502</sup>

Highlights of the agreement include:

- *Subsidy rate increases*—The agreement provides that the subsidy rates for FFN and FCC providers will receive average increases of 2.9%, effective October 1, 2009.<sup>503</sup> In addition, the state and the union will work together to educate FCC providers on the role the state's market rate survey plays in determining subsidy rates, and to encourage FCC providers to complete the annual survey.<sup>504</sup>

The state delayed the October 2009 subsidy rate increases for three months as a cost containment measure,<sup>505</sup> and the new rates took effect in January 2010.<sup>506</sup> Although not part of the agreement, centers also received subsidy rate increases that were comparable to the increases for FFN and FCC providers.<sup>507</sup>



- *Health insurance*—The agreement provides that the state and the union will form a joint committee for the purpose of evaluating ways to ensure that providers covered under the agreement have access to “affordable, quality health insurance.”<sup>508</sup> The committee is to forward its findings and recommendations to the governor and to the state superintendent of schools by September 30, 2010.<sup>509</sup>
- *Training*—The agreement affirms that the state and the union “have a shared commitment to ensuring that all providers have access to affordable quality, varied and ongoing training opportunities in accessible locations within their communities.”<sup>510</sup>

The state will include the union in “any committee” charged with developing policies affecting “easy access to affordable and quality training” for child care providers.<sup>511</sup> In addition, the Maryland State Department of Education (MSDE) will include representatives designated by the union on all review committees within the procurement process that evaluate grant proposals from outside vendors for providing training to child care providers.<sup>512</sup> The parties will also form a joint training subcommittee charged with seeking expanded opportunities for provider training within available resources; providing training, education, and other mechanisms to enable FCC providers to qualify to deliver prekindergarten services (should the legislature enact legislation permitting FCC providers to offer prekindergarten); exploring varied delivery models for training; seeking additional training resources that may be available; and providing input to the state in establishing accountability standards for training funded by the state through outside organizations.<sup>513</sup>

- *Payment procedures*—The agreement requires that if an overpayment is made to a provider due to an error on the part of the state, the overpayment will be collected or recouped at no more than 5% of the provider’s subsidy payment until paid in full.<sup>514</sup> The state will also hold a provider harmless from any obligation to reimburse the state for subsidy monies received resulting from a provider’s care for a child that has been authorized by the state, but the child’s parent is later found to have obtained eligibility in the subsidy program fraudulently.<sup>515</sup>
- *Other provisions*—The agreement requires the state to send information concerning the state’s subsidy program to providers in their orientation packets to ensure that providers understand their roles and responsibilities.<sup>516</sup> The orientation packet includes information on subsidy rates, billing policies and procedures, co-payments, tax information resources, and other policies and procedures required by the state.<sup>517</sup> The state and the union will also explore opportunities for informal providers to participate in the Child and Adult Care Food Program.<sup>518</sup>

### **Ohio**

As reported in *Getting Organized*, AFSCME organized county by county in Ohio until it could secure statewide recognition.<sup>519</sup> On February 1, 2008, Governor Ted Strickland signed an executive order giving subsidized and unsubsidized FCC providers and subsidized FFN providers the right to unionize and collectively bargain with the state.<sup>520</sup>

The order creates a single bargaining unit for both FCC<sup>521</sup> and FFN<sup>522</sup> providers.<sup>523</sup> It authorizes bargaining on “reimbursement rates, benefits, and other terms.”<sup>524</sup> Any agreement reached is binding in so far as it does not require legislative approval or rulemaking; if a term of the agreement requires legislative action, rulemaking, or the appropriation of funds, then the union and state must agree to work together to secure the approval needed to implement that provision of the agreement.<sup>525</sup> Any impasse in negotiations will be addressed by a neutral third-party with the authority to make only a non-binding recommendation.<sup>526</sup> Providers are not considered employees of the state<sup>527</sup> and are not permitted to strike.<sup>528</sup>





## GETTING ORGANIZED: 2010 UPDATE

In April 2008, Child Care Providers Together (CCPT), affiliated with AFSCME, won the right to represent the more than 8,000 FCC and FFN providers covered by the executive order.<sup>529</sup> CCPT and the state reached agreement on a one-year contract in July 2009.<sup>530</sup> The agreement is in effect from September 4, 2009, through June 30, 2010.<sup>531</sup> Provisions of the agreement, and the extent to which they have been implemented, include:

- *Subsidy rates*—The state, with the involvement of the union and providers, agreed to conduct a study “to evaluate the current method of reimbursing” providers.<sup>532</sup> In addition, the state agreed to propose changes to the Ohio Revised Code and the Ohio Administrative Code to eliminate a provision allowing individual county departments of job and family services to negotiate reimbursement rates with providers that are lower than providers’ customary rates or the rates set by the Ohio Department of Job and Family Services.<sup>533</sup>

As of March 2010, the Ohio Administrative Code section had been amended to eliminate the local option to negotiate,<sup>534</sup> but no change had been made in the Ohio Revised Code.<sup>535</sup>

- *Health insurance*—The union will “explore ways to make comprehensive health insurance coverage options accessible and affordable” for providers, and the state, “where possible,” will provide assistance to the union such as helping to secure grant funding to pay for an insurance plan and collecting data from providers to determine the cost of potential coverage.<sup>536</sup>

As of March 2010, no state action had been taken with regard to health insurance.<sup>537</sup>

- *Training*—The union will be permitted up to thirty minutes during specified FCC and FFN trainings to conduct a union orientation and disseminate information about union membership.<sup>538</sup>

As of March 2010, rule changes to allow union participation in provider trainings were “in progress.”<sup>539</sup>

- *Licensing and regulation*—Inspectors from county departments of job and family services will be required to tell providers whether a visit is a routine inspection or to investigate a complaint.<sup>540</sup> The Ohio Department of Job and Family Services, with feedback from the union, will develop a training curriculum for county inspectors and uniform checklists for routine inspections and complaint investigations.<sup>541</sup> The checklist forms will contain sections for provider comments, and inspectors will give providers copies of the completed forms at the end of each inspection or investigation.<sup>542</sup>

As of March 2010, rule changes regarding inspections and investigations were “in progress.”<sup>543</sup>

- *Payment procedures*—The Ohio Department of Job and Family Services will study the feasibility of a uniform statewide provider payment system.<sup>544</sup> If the Department develops a state-administered system, it will consider implementing a direct deposit option and will provide timely payment schedules and billing training for providers.<sup>545</sup>

As of March 2010, a statewide payment system was scheduled to begin in May 2010.<sup>546</sup>

- *Providers’ rights*—The agreement includes a provider bill of rights.<sup>547</sup> The list of rights includes the right to be free from discrimination, the right to review one’s own provider file, the right to have a union representative or private counsel at any appeal proceedings, and the right to receive timely notice of any changes to child care eligibility.<sup>548</sup>
- *Other provisions*—The parties agreed to form a state-union committee, which will meet quarterly to review current policies, rules, and regulations; identify best practices; and “work toward uniformity in the regulation of child



care.”<sup>549</sup> The state also agreed to give the union representation on external committees related to the subsidized child care program.<sup>550</sup>

As of March 2010, a four-member state-union committee had been established.<sup>551</sup>

Separate from the negotiations, CCPT and other advocates report that before the 2008 executive order was issued, they worked together in 2007 to increase subsidy rates.<sup>552</sup> First, in March 2007, Governor Strickland issued an executive order raising reimbursement rates for FFN providers and centers to the 65th percentile of the 2006 market survey.<sup>553</sup> Second, in the legislature’s budget for fiscal years 2008 and 2009, CCPT and advocates secured an expansion of eligibility for child care and early learning programs.<sup>554</sup> Unfortunately, for fiscal years 2010 and 2011, these gains were lost: due to budget shortfalls, the state reduced both reimbursement rates and the income eligibility limit for child care assistance to levels that are below what they were prior to the recent improvements.<sup>555</sup> As described above, the bargaining agreement does not change these reductions.

In addition, in 2008, CCPT supported a bill that would have transferred the administration of the certification process for FFN providers from county governments to the state.<sup>556</sup> (Certification is necessary for participation in the state’s subsidy program.) The bill would have made the Ohio Department of Job and Family Services responsible for reviewing certification applications, visiting the provider’s home, and renewing providers’ certification; it failed to move out of committee during the 2008 legislative session.<sup>557</sup>

### **Maine**

In April 2008, the Maine legislature approved a bill authorizing “all family child care providers in the state” to unionize and negotiate with the state<sup>558</sup> and defined the bargaining unit to include subsidized and unsubsidized FCC providers and subsidized FFN providers.<sup>559</sup> The SEIU affiliate, Maine State Employees Association (MSEA), which had been certified in an October 2007 election to represent approximately 2,200 home-based providers, was recognized as the bargaining agent for both groups of providers in the legislation,<sup>560</sup> which Governor John E. Baldacci signed into law on May 14, 2008.<sup>561</sup>

The legislation authorizes bargaining discussions between the state and the providers’ representative,<sup>562</sup> within ten days of written notice from the other party requesting a meeting for collective bargaining.<sup>563</sup> The legislation states that the parties are to negotiate issues of mutual concern, which include “training and other requirements and opportunities that are appropriate for providers; reimbursement rates; payment procedures; contract grievance arbitration; member dues deduction; representation or service fees for nonmembers;”<sup>564</sup> and “any changes to current practice other than those [listed] that would improve recruitment and retention of qualified providers, would improve the quality of the programs they provide, would encourage qualified providers to seek additional education and training and would promote the health and safety of providers and the children in their care.”<sup>565</sup> The legislation makes clear that retirement benefits for FCC and FFN providers and coverage by the state employee health insurance program are not issues about which the parties may bargain.<sup>566</sup> The legislation is silent on providers’ right to strike, but makes clear that providers are not granted the status of state employees.<sup>567</sup>

The legislation provides that “cost items”—bargained-for terms that require state spending—must be approved by the legislature.<sup>568</sup> If the legislature rejects any of the cost items submitted to it, those cost items will be returned to the parties for further bargaining. Any terms agreed upon by the parties that require modification of existing rules are contingent on the rule-making process under the Maine Administrative Procedure Act.<sup>569</sup>

Under the legislation, negotiations between MSEA and the state began on July 1, 2009,<sup>570</sup> and a final agreement was ratified on April 8, 2010.<sup>571</sup> The agreement is in effect from the date of ratification through June 30, 2011.<sup>572</sup> Provisions of the agreement include:



- *Subsidy rates*—The agreement states that the provider reimbursement rates that went into effect on October 1, 2009, will remain in effect through September 30, 2011.<sup>573</sup> These rates represented about a 10 percent reduction from the prior year because the state switched from basing reimbursement rates on the 2008 market rate survey to basing them on the 2006 market rate survey.<sup>574</sup> In addition, representatives from the union and the state agreed to form a rate structure committee “for the purpose of examining the current rate structure and exploring the alternatives to the current rate structure.”<sup>575</sup> The committee is required to meet within sixty days of ratification of the agreement.<sup>576</sup>
- *Other provisions*—Upon receiving a request from the union, a representative of the Maine Department of Health and Human Services (DHHS) will meet with a union representative in advance of each monthly Child Care Advisory Council meeting “to discuss upcoming agenda items or other issues relevant to the work of the [council].”<sup>577</sup> In addition, DHHS will work with the union to make sure that the union is represented on other standing DHHS committees relevant to child care.<sup>578</sup>

Outside the bargaining process, MSEA has been active in helping providers understand their obligations under new state rules that affect providers. For example, MSEA is working to disseminate information on regulations that change water safety precautions for children.<sup>579</sup> The union also has helped explain changes in the administration of Maine’s child care assistance program under a new voucher management system.<sup>580</sup> The union reports that the new system had some problems early in its operation, including software problems that led to delays in processing payments. As a result, some providers were not initially paid for several months and some providers were listed incorrectly, which prevented them from receiving voucher payments once the system became operational.<sup>581</sup> The union has worked closely with providers and DHHS to resolve these problems.<sup>582</sup>

### **New Mexico**

On March 10, 2009, the New Mexico legislature passed, and on April 7, 2009, Governor Bill Richardson signed, a bill authorizing subsidized FCC providers<sup>583</sup> to organize and bargain collectively with the state.<sup>584</sup>

The legislation provides that areas for negotiation include reimbursement rates, payment procedures, health and safety conditions, monitoring and evaluating of FCC homes, licensing and other fees, quality rating standards, training and certification requirements and “any other matters that would improve recruitment and retention of qualified family child care providers and the quality of the programs they provide.”<sup>585</sup> It also provides that the agency and union “shall work together to explore systems for family child care providers to have access to affordable, comprehensive health insurance coverage.”<sup>586</sup> Provisions of any agreement are contingent upon appropriation of funds by the legislature and the availability of funds.<sup>587</sup> The legislation further states that the written agreement “shall include a binding arbitration procedure, a grievance process, the creation of a labor management committee that will meet regularly to discuss concerns and issues as they arise and mechanisms for dues collection,”<sup>588</sup> but FCC providers are not considered public employees and are prohibited from striking.<sup>589</sup>

In October 2009, AFSCME affiliate Child Care Providers Together/New Mexico became certified as the representative of the covered FCC providers.<sup>590</sup> As of January 2010, the union was preparing to begin negotiations with the state.<sup>591</sup>

### **States with Unsuccessful Efforts to Establish Statewide Bargaining Authority for Unions**

As reported in *Getting Organized*, California, Massachusetts, and Rhode Island passed bills in 2005 or 2006 that would have given home-based child care providers the legal authority to unionize and negotiate with the state, but they were vetoed by the governors.<sup>592</sup> This section updates legal developments in those states. Although beyond the scope of this



report to detail, unions in all of these states, as in several other states, continue to advocate on behalf of home-based providers, even though they have not yet secured legal authority to organize.

### **California**

In 2007 and 2008, the California legislature, supported by the joint AFSCME–SEIU United Child Care Union, passed two bills that would have authorized statewide bargaining for home-based child care providers,<sup>593</sup> but as with the 2006 legislation described in *Getting Organized*,<sup>594</sup> Governor Arnold Schwarzenegger vetoed both bills, despite the fact that they included restrictions on the negotiating process that were not in the 2006 bill.<sup>595</sup> The 2007–2008 bills, like the 2006 bill, would have recognized a statewide bargaining unit of subsidized and unsubsidized FCC providers and subsidized FFN providers.<sup>596</sup> But under the 2007 and 2008 bills both groups of providers were authorized to organize immediately;<sup>597</sup> under the 2006 bill, these providers were authorized to organize sequentially.<sup>598</sup> In addition, under the 2007 and 2008 bills, the first agreement would not include negotiations over reimbursement rates in subsidy programs;<sup>599</sup> the 2006 bill had no such restrictions.<sup>600</sup> To the extent that negotiations over rates could occur following the first agreement, under the 2007 and 2008 bills only the state was able to negotiate rates with the union,<sup>601</sup> but the 2006 bill permitted any state agency or its contractor, whether public or private, that administers child care subsidies to negotiate rates with the union.<sup>602</sup>

### **Massachusetts**

As reported in *Getting Organized*, then-Governor Mitt Romney in 2006 vetoed legislation<sup>603</sup> supported by SEIU that would have authorized subsidized FCC providers in Massachusetts to organize and engage in collective bargaining with the state, and a ballot initiative<sup>604</sup> campaign organized and supported by the union to secure similar legislation failed later that year.<sup>605</sup> Nonetheless, efforts to win collective bargaining rights for home-based child care providers have continued. In 2007 and 2008, bills that would have authorized subsidized FCC and FFN providers to engage in collective bargaining and negotiate with the state<sup>606</sup> were never voted upon.<sup>607</sup> SEIU reports that the current governor, Deval Patrick, did not take a position on these bills. Massachusetts legislators introduced collective bargaining bills again in January 2009,<sup>608</sup> and as of March 2010, the legislation remained in committee.<sup>609</sup>

### **Rhode Island**

As reported in *Getting Organized*, Governor Donald Carcieri vetoed a bill in June 2005 that would have authorized subsidized FCC and FFN providers, represented by SEIU, to organize and collectively bargain with the state.<sup>610</sup> Later that year, a state court overturned a State Labor Relations Board decision holding that FCC providers are state employees.<sup>611</sup> As of March 2010, no further legislation has been introduced that would give home-based providers the legal authority to unionize, nor have other efforts been advanced to win collective bargaining rights for subsidized FCC and FFN providers.

## **States with Local Organizing Authority**

In one state, unions have obtained local authority to organize and negotiate with local governmental units.

### **Minnesota**

As reported in *Getting Organized*, both AFSCME and SEIU have organized home-based providers in Minnesota on a county-by-county basis, in part because the counties administer the subsidy program and are involved in regulatory issues.<sup>612</sup> AFSCME has organized providers in three counties—St. Louis, Hennepin, and Ramsey—securing resolutions in each county recognizing AFSCME as the representative of subsidized and unsubsidized FCC providers in the



county and authorizing the county to negotiate with the union on locally controlled issues and to work with the union for improvements at the state level.<sup>613</sup> The resolutions do not authorize collective bargaining agreements. Rather, they authorize the union to meet and confer with the county and negotiate on matters of mutual concern.<sup>614</sup> AFSCME describes its role as setting the stage for a future collective bargaining arrangement and building relationships with providers.<sup>615</sup>

In addition, a non-profit organization affiliated with AFSCME, Child Care Providers Together (CCPT), has received \$100,000 over four years from Ramsey County, and in-kind contributions from AFSCME, for an initiative that encourages child care providers to serve as “mentors” for the families they serve.<sup>616</sup> The initiative aims to take advantage of the relationships providers have with the families in their communities to increase families’ access to information about federal, state and other benefits and services available to them, including tax credits, nutrition, education, and family violence prevention programs.<sup>617</sup> Providers acting as mentors receive a stipend from CCPT to help develop an information network for families.<sup>618</sup> CCPT is working to improve the relationship and communications between providers and the licensing agency in Ramsey County as well.<sup>619</sup> In addition, since it started its organizing efforts, AFSCME has been providing translation services for providers in Ramsey and Hennepin Counties, including translating training materials for the large community of Hmong in the state.<sup>620</sup> Finally, AFSCME reports it is working to improve health care for providers, although progress on this front is slow.<sup>621</sup>

SEIU is pursuing meet-and-confer authority on behalf of FCC and FFN providers in three rural counties: Stearns, Mower, and Waseca.<sup>622</sup> As of August 2009, no authority had been secured.<sup>623</sup>

In a separate effort, SEIU collaborated with other organizations to win the enactment of a bill in 2007 that amended Minnesota’s human services licensing statute.<sup>624</sup> The legislation standardized licensing and background-check fees for FCC providers and capped fees at \$150 for a one-year license and background check.<sup>625</sup> Prior to this legislation, licensing fees in some counties were as much as \$250 per year.<sup>626</sup>

## CONCLUSION

The expanded movement to unionize home-based child care providers is having a growing impact on the compensation and opportunities of this traditionally poorly paid and isolated workforce, as well as the child care field more broadly. Since February 2007, unions in a number of states have negotiated increases in reimbursement rates, additional opportunities and incentives for training, access to health insurance, improved payment procedures, and a voice for providers in shaping policies that affect them. In some states, union bargaining and advocacy have helped win increased investments and improved policies for child care centers and parents as well. However, this *2010 Update* also finds that the impact of unionization has differed among states and over time, especially as economic conditions and state budgets have worsened. In most states, bargaining is a two-step process. First, union representatives negotiate an agreement with state agencies. Second, the legislature has to appropriate the necessary funds to implement the provisions of the agreement that require state spending, such as rate increases, expanded training programs, and contributions to health insurance. The current economic climate has made both stages more challenging for unions.

Raising reimbursement rates has been a key issue for unions representing subsidized FCC and FFN providers. Improving the adequacy of reimbursement rates for providers who care for children receiving child care subsidies not only affects providers’ income, but also their capacity to provide high-quality care, remain in the field, and serve low-income children. Unions have reached agreements in twelve states (Illinois, Washington, Oregon, Iowa, New Jersey,





Michigan, Wisconsin, New York, Kansas, Maryland, Ohio, and Maine), and all address the issue of reimbursement rates in some way.

Agreements in seven states (Illinois, Washington, Oregon—first agreements, Iowa, New Jersey, Michigan, and Maryland) include provisions for specific increases in reimbursement rates. In six of these seven states (Illinois, Washington, Oregon, Iowa, New Jersey, and Maryland), state legislatures approved the funding needed to implement the agreed-upon subsidy rate increases, although in Maryland, the legislature postponed the effective date of the increases by three months. In all six states, the legislature provided increases for child care centers as well when it implemented rate increases for FCC and FFN providers under the bargaining agreements. In Michigan, the legislature failed to provide the required funding for the increases, although smaller rate increases were secured before the agreement was signed.

In six states (Oregon—second agreements, Wisconsin, New York, Kansas, Ohio, and Maine), agreements address reimbursement rates in varying ways. In Oregon, the second agreements provide that the rate increases achieved under the first agreements will continue but do not provide for further increases. In Wisconsin, the agreement provides that the state will continue to set rates at the 75th percentile of an annual market survey, but the legislature must approve funding for rates to be updated, which it has failed to do—subsidy rates continue to be based upon the 2005 market survey. In New York, the agreements provide for continuing the rates established by 2009 regulations, which are based on the 75th percentile of a 2009 market survey, through the first two years of the contracts—but are silent on rates for the last two years. In Kansas, the agreement provides that the state and union will work toward the goal of increasing reimbursement rates to the 75th percentile of the market rates. So far, the Kansas governor has not requested and the Kansas legislature has not appropriated funding to increase subsidy rates. In Ohio, the agreement provides that the state will conduct a study of reimbursement rates with participation from the union and providers. In Maine, the agreement provides that the October 2009 reimbursement rates will remain constant and that the state and union will establish a rate structure committee to “explor[e] the alternatives to the current rate structure.”

Provisions designed to expand access to training are a part of the agreements in nine of the twelve states in which agreements have been reached: Illinois, Washington, Oregon, Iowa, Michigan, Wisconsin, New York, Kansas, and Maryland. Additional training can help FFN and FCC providers advance professionally and improve the quality of care they provide. The approaches of the agreements are varied and include expanded trainings; reimbursing providers for the direct and/or indirect costs of attending trainings; and incentives for participating in trainings, such as one-time bonuses or enhanced reimbursement rates. Agreements also provide for unions to work with the states to facilitate participation in training by FCC and FFN providers; for example, by giving them a voice in the development of training programs and offering programs at more convenient locations, during non-working hours, and in languages other than English. The extent to which training provisions have been implemented varies. For example, in Illinois, Washington, and Oregon, where agreements have been in place the longest, hundreds of providers have participated in trainings and some have qualified for enhanced reimbursement rates. In New York, the governor’s proposed FY 2010–2011 budget includes \$1 million for union professional development funds, as specified in the agreements. But in Michigan, the lack of funding has prevented the implementation of new training programs that could qualify FFN and FCC providers for enhanced reimbursement rates.

A majority of the agreements have addressed the issue of health insurance, recognizing access to coverage as a common problem for home-based child care providers, but few agreements provide state assistance in obtaining such coverage. While only a limited number of agreements provide for the state to contribute to the cost of health insurance, some unions are offering health benefits to their members, and some agreements provide for studies of the issue. In Illinois and Washington, unions negotiated for state contributions toward the cost of premiums, giving some providers new access to health insurance. However, a cap on the state contribution in Washington, although increased in the second contract, means that many providers seeking insurance are on a waiting list. In New York,



the agreements provide for the state to contribute toward health insurance coverage under the state's Family Health Plus program, and the governor has requested the necessary funding for the first year of the agreement in his FY 2010–2011 budget. In Oregon, the union for the FCC providers established a low-cost state group health plan for them, but the state is not contributing to the cost of coverage. The union representing FFN providers in Oregon has the governor's support—contingent upon funding—to set up government-subsidized health insurance for its members under Oregon's Family Health Insurance Assistance Program. In Iowa, New Jersey, Wisconsin, and Maryland, the agreements call for the unions and the state to study the issue of access to health care for child care providers. In Ohio, the agreement provides that the state will assist the union in exploring health insurance options for its providers, including, "where possible," by helping secure grant funding and collecting data.

Unions have helped to improve slow, burdensome, and error-prone state payment processes, benefiting both home-based providers and child care centers. Unions have helped to secure upgrades in computer systems to improve the timely processing and payment of claims (e.g., Illinois, Oregon, New York); established rights to timely notification and payment (e.g., Iowa, Wisconsin, New York, Kansas); assisted individual providers with payment issues, including in states where agreements have not been reached (e.g., Pennsylvania, Maine), and secured retroactive payments for groups of providers (e.g., Oregon, New York).

Unions also have established provider rights to fair and respectful treatment, grievance procedures, and opportunities to work with the state on a range of policy issues.

At this challenging time, unions are providing a strong voice for improved policies for home-based child care providers and increased investments in child care. By helping providers secure better and more regular compensation and benefits, expanded training, and respectful treatment, unions are contributing to the development of a more stable and better trained FFN and FCC workforce, which in turn could enable providers to better support children and their families.



**Endnotes**

- 1 Deborah Chalfie, Helen Blank & Joan Entmacher, NWLC, *Getting Organized: Unionizing Home-Based Child Care Providers* (2007), available at <http://www.nwlc.org/pdf/GettingOrganized2007.pdf> [hereinafter *Getting Organized*].
- 2 Information in the *2010 Update* is current as of March 2010 except where otherwise noted.
- 3 See Nat'l Governors Ass'n & Nat'l Ass'n of State Budget Officers, *State Fiscal Update—February 2010*, at 1 (based on an NGA/NASBO survey of states completed during the week of Feb. 15, 2010), available at <http://www.nasbo.org/LinkClick.aspx?fileticket=qifQdi7tlbU%3d&tabid=38>.
- 4 See Nat'l Governors Ass'n & Nat'l Ass'n of State Budget Officers, *The Fiscal Survey of States, Fall 2009*, at 2–4 (Dec. 2009), available at <http://www.nasbo.org/LinkClick.aspx?fileticket=5HIBWprlKhW%3d&tabid=106&mid=566&forcedownload=true>.
- 5 *Id.*
- 6 *Getting Organized*, *supra* note 1, at 5–6.
- 7 *Id.* at 6–7.
- 8 *Id.* at 6–9.
- 9 *Id.* at 8–11.
- 10 *Id.* at 11; see *infra* notes 52, 234, 261, 290, 313, 377, 444, 469, 494, 525, 568, 587 and accompanying text; Me. Rev. Stat. Ann. tit. 22, § 8308(2)(C); 2009 N.M. Laws ch. 238, § 1(H); Wash. Rev. Code Ann. § 41.56.028(5)–(7); Kan. Exec. Order No. 07–21 ¶ 2 (2007); Md. Exec. Order No. 01.01.2007.14 ¶ C (2007); N.J. Exec. Order No. 23 (2006) ¶ 2; N.Y. Exec. Order No. 12 ¶¶ 8–9 (2007); Ohio Exec. Order No. 44 ¶ 7 (2008); Or. Exec. Order No. 06–04 ¶ 2 (2006); Or. Exec. Order No. 05–10 ¶ 2 (2005); Pa. Exec. Order No. 7 ¶ 4 (2007); Pa. Exec. Order No. 6 ¶ 4 (2007); Wis. Exec. Order No. 172 ¶ 3 (2006); Memorandum of Understanding Between Iowa Department of Human Services and American Federation of State, County and Municipal Employees, Iowa Public Employees Council 61, AFL-CIO Art. X, § 2 (effective 2008–2009); Michigan Home Based Child Care Council and Child Care Providers Together Michigan: Collective Bargaining Agreement Art. 13, § 1 (effective 2008–2010).
- 11 *Getting Organized*, *supra* note 1, at 13–14.
- 12 Agreement By and Between the State of Illinois, Departments of Central Management Services and Human Services and the Service Employees International Union, Local 880, Art. XIII, § 3 (effective 2006–2009), available at [http://www.state.il.us/cms/download/pdfs/emp\\_seiuchild.pdf](http://www.state.il.us/cms/download/pdfs/emp_seiuchild.pdf) [hereinafter 2006 Illinois Contract].
- 13 *Id.* Arts. VII, VIII.
- 14 *Getting Organized*, *supra* note 1, at 14; 2006 Illinois Contract, *supra* note 12, Art. VII.
- 15 Chart on Home Reimbursement Rate Increases FY07–FY09 (undated) (created by Action for Children in conjunction with Dan Lesser, Senior Attorney, Sargent Shriver Nat'l Ctr. on Poverty Law), attached to Email from Katherine Ritter, Senior Policy Analyst, Action for Children, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Dec. 11, 2008) (on file with NWLC). FFN providers received four subsidy rate increases: 10.6% in 2006, 7.7% in 2007, 9.6% in January 2008, and 3.1% in July 2008. *Id.*
- 16 *Id.* FCC providers received four subsidy rate increases, which varied by age of the children in their care. For children less than two years old, FCC providers received increases of 10% in 2006, 4.3% in 2007, 6.4% in January 2008, and 3% in July 2008, for a cumulative increase of 25.7%. *Id.* For children two years old, FCC providers received increases of 15.1% in 2006, 2.6% in 2007, 5.3% in January 2008, and 3% in July 2008, for a cumulative rate increase of 28.1%. *Id.* For children three years old and over, FCC providers received increases of 6.2% in 2006, 6.2% in 2007, 12% in January 2008, and 3% in July 2008, for a cumulative rate increase of 30.1%. *Id.*
- 17 Chart on Center Reimbursement Rate Increases FY07–FY09 (undated) (created by Action for Children in conjunction with Dan Lesser, Senior Attorney, Sargent Shriver Nat'l Ctr. on Poverty Law), attached to Email from Katherine Ritter, Senior Policy Analyst, Action for Children, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Dec. 8, 2008) (on file with NWLC). Centers received four subsidy rate increases that varied by the age of the children in their care. For children less than two years old, centers received increases of 6.5% in 2006, 4.6% in 2007, 4.4% in January 2008, and 3% in July 2008, for a cumulative increase of 19.9%. *Id.* For children two years old, centers received increases of 7% in 2006, 3% in 2007, 3.6% in January 2008, and 3% in July 2008, for a cumulative increase of 17.9%. *Id.* For children three years old and over, centers received increases of 4.5% in 2006, 3% in 2007, 5.6% in January 2008, and 3% in July 2008, for a cumulative increase of 17.1%. *Id.*
- 18 *Getting Organized*, *supra* note 1, at 14; 2006 Illinois Contract, *supra* note 12, Art. IX.
- 19 Email from Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind., to Rachel Rebouché, Fellow, NWLC (July 18, 2008) (on file with NWLC).
- 20 Telephone Interview with Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind. (July 1, 2008). The Fund is managed by SEIU with the \$27 million provided by the state. SEIU created its own plan when private insurance companies did not respond to the union's RFPs. Telephone interview with Alex Han, Dir. Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind. (May 1, 2009).
- 21 Email from Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind., to Arlene Brens, Fellow, NWLC (Nov. 17, 2008) (on file with NWLC).
- 22 *Id.* SEIU reports that offering an HMO plan statewide was not a feasible option because available statewide HMO plans were considerably more expensive and, therefore, fewer members could have been covered with the available funding. *Id.*
- 23 Summary of UHS Medical Benefit Plan (undated), attached to Email from Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (July 1, 2008) (on file with NWLC).
- 24 Email from Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind., to Arlene Brens, Fellow, NWLC (Feb. 19, 2009) (on file with NWLC).



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- 25 Telephone Interview with Alex Han (July 1, 2008), *supra* note 20; Summary of HFN Medical Benefit Plan (undated), attached to Email from Alex Han, *supra* note 23.
- 26 Summary of UHS Medical Benefit Plan, *supra* note 23; Summary of HFN Medical Benefit Plan, *supra* note 25.
- 27 Getting Organized, *supra* note 1, at 14.
- 28 2006 Illinois Contract, *supra* note 12, Art. VII, § 2; see also Email from Maggie Laslo, Campaigns Director, SEIU Local 880, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Jan. 20, 2010) (on file with NWLC). QRS funds were budgeted separately for child care centers, but due to budget shortfalls, the funds allocated under the contract ultimately covered child care centers in addition to FCC and FFN providers. Email from Maggie Laslo, *supra* note 28.
- 29 PowerPoint Presentation on Quality Counts: Quality Rating System Orientation (undated), attached to Email from Sessy Nyman, Vice President of Pub. Policy and Gov't Affairs, Action for Children, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Dec. 4, 2008) (on file with NWLC); Ill. Early Learning Project, Early Childhood Initiatives in Illinois, <http://www.illinoisearlylearning.org/initiatives.htm> (last visited June 8, 2009). For a detailed description of the program, see Ill. Network of Child Care Resource and Referral Agencies, Quality Counts: Quality Rating System, <http://www.inccrra.org/overview.aspx?id=3801> (last visited June 8, 2009).
- 30 PowerPoint Presentation on Quality Counts, *supra* note 29.
- 31 *Id.*
- 32 Email from Katherine Ritter, Senior Policy Analyst, Action for Children, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (June 9, 2009) (on file with NWLC).
- 33 Telephone Interview with Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind. (July 30, 2009).
- 34 See Email from Alex Han, Dir., Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Oct. 29, 2009) (on file with NWLC).
- 35 SEIU HCII—IL DHS Child Care Contract Bullet Points (undated), attached to Email from Andrew Ginsberg, Child Care and Early Learning Div., SEIU Healthcare Ill. and Ind., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Oct. 30, 2009) (on file with NWLC).
- 36 Calculations by NWLC, comparing Agreement By and Between the State of Illinois, Departments of Central Management Services and Human Services, and the Service Employees International Union, Healthcare Illinois and Indiana, Art. VII, § 1 (effective 2010–2013) (on file with NWLC) [hereinafter 2009 Illinois Contract] with 2006 Illinois Contract, *supra* note 12, Art. VII, § 1.
- 37 Ill. Dep't of Human Servs., Payment Rates for HOME PROVIDERS (effective Jan. 1, 2010), <http://www.dhs.state.il.us/page.aspx?item=31069>; see also SEIU Healthcare Ill. and Ind., Home Child Care Providers Get Our First Rate Increase on January 1, 2010!, available at [http://www.seiuhealthcareillin.org/child\\_care/Home\\_child\\_care\\_providers\\_get\\_our\\_first\\_rate\\_increase\\_on\\_January\\_1st.aspx](http://www.seiuhealthcareillin.org/child_care/Home_child_care_providers_get_our_first_rate_increase_on_January_1st.aspx) (follow “click here” hyperlink in center of page) (last visited Mar. 12, 2010).
- 38 Calculations by NWLC, comparing Chart on Center Reimbursement Rate Increases FY07–FY09, *supra* note 17, with Ill. Dep't of Human Servs., Payment Rates for CENTERS (effective Jan. 1, 2010), <http://www.dhs.state.il.us/page.aspx?item=35766>; see also SEIU Healthcare Illinois and Indiana, Great news! Licensed child care centers won a 2.5% rate increase effective January 1, 2010, available at [http://www.seiuhealthcareillin.org/child\\_care/centers/Default.aspx](http://www.seiuhealthcareillin.org/child_care/centers/Default.aspx) (last visited Mar. 29, 2010).
- 39 2009 Illinois Contract, *supra* note 36, Art. IX, § 2(A).
- 40 *Id.*
- 41 *Id.* Art. VII, § 2.
- 42 *Id.* Art. XII, § 10.
- 43 See SEIU HCII—IL DHS Child Care Contract Bullet Points, *supra* note 35.
- 44 2009 Illinois Contract, *supra* note 36, Art. XII, § 10.
- 45 *Id.* Art. VIII, § 1.
- 46 Getting Organized, *supra* note 1, at 14; Quality Family Child Care Act, 2006 Wash. Laws ch. 54 (codified at Wash. Rev. Code §§ 41.04.810, 41.56, 41.56.030, 41.56.113, 43.01.047, 74.15, 74.15.020, 74.15.030 (West, Westlaw through 2009 legislation)).
- 47 Wash. Rev. Code Ann. §§ 41.56.028 (2)(c), 43.215.355(1) (West, Westlaw through 2009 legislation).
- 48 Getting Organized, *supra* note 1, at 15.
- 49 Collective Bargaining Agreement By and Between The State of Washington and Service Employees International Union 925 (effective 2007–2009) (on file with NWLC) [hereinafter Washington 2007–2009 Contract].
- 50 Getting Organized, *supra* note 1, at 15–16.
- 51 Washington 2007–2009 Contract, *supra* note 49, Art. 18.2.
- 52 Getting Organized, *supra* note 1, at 15; § 41.56.028(5)–(7).
- 53 See Children's Alliance, Summary of Early Learning Investments in the Final State Budget 2007–2009 (undated) (on file with NWLC).
- 54 Getting Organized, *supra* note 1, at 15; Washington 2007–2009 Contract, *supra* note 49, Art. 12.1.
- 55 Washington 2007–2009 Contract, *supra* note 49, Art. 12.1.
- 56 *Id.* Art. 11.2.

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- 57 *Id.* Art. 11.3. The contract provides for a \$50 bonus when the provider cares for a child during nonstandard hours for 45 hours or more per month. However, the total cost of the nonstandard hours bonus can not exceed \$2 million per biennium. *Id.* The contract states that the pre-existing incentive for nonstandard hours care also remains in place: providers receive an additional half day of pay for care for hours over 10 in a day and an additional full day of pay for hours of care over 15 hours in a 24-hour period. *Id.*
- 58 *Id.* Art. 12.3. Before the contract was finalized, the parties were unable to reach agreement on whether to equalize the subsidy rates paid to FFN providers for siblings. Pursuant to the Washington legislation that granted subsidized FCC and FFN providers collective bargaining rights, Wash. Rev. Code Ann. § 41.56.028 (West, Westlaw through 2009 legislation), the parties submitted this issue to arbitration. As part of a 2006 arbitration award, the arbitrator awarded 100% of the subsidy rate for the first child for siblings of that child. Wash. Office of Fin. Mgmt. v. Serv. Employees Int'l Union Local 925, Case No. 20690-I-06-483 (Pub. Employment Relations Comm'n Nov. 10, 2006) (Williams, Arb.), <http://www.perc.wa.gov/Databases/IntArb/20690-I.htm>. However, SEIU proposed to its members that the subsidy rate for siblings be set at 98.5% of the rate for the first child rather than 100%. Telephone Interview with Karen Hart, Early Learning Dir., SEIU 925 (Apr. 24, 2009). The decrease from 100% to 98.5% of the rate for the first child saved \$676,000, which SEIU proposed be placed into a separate training fund for FFN providers. *Id.* Separate from the vote on the contract, SEIU members voted in favor of this proposal and the Washington legislature approved the use of these funds for training. *Id.* Before the contract was signed, SEIU memorialized this agreement in a Memorandum of Understanding, as an attachment to the contract. Washington 2007–2009 Contract, *supra* note 49, App. B.
- 59 Telephone Interview with Karen Hart, *supra* note 58.
- 60 Washington 2007–2009 Contract, *supra* note 49, App. A.
- 61 An Act Relating to Fiscal Matters, 2007 Wash. Laws ch. 522, §§ 946, 1107(4).
- 62 § 946.
- 63 *Id.*
- 64 *Id.*
- 65 See § 1107(4); Email from Karen Hart, Early Learning Dir., SEIU 925, to Rachel Rebouché, Fellow, NWLC (July 2, 2008) (on file with NWLC).
- 66 Getting Organized, *supra* note 1, at 15; Washington 2007–2009 Contract, *supra* note 49, Arts. 13.1, 13.4.
- 67 *Id.* Art. 13.3(A).
- 68 *Id.* Art. 13.3.
- 69 *Id.*
- 70 Email from Karen Hart, Early Learning Dir., SEIU 925, to Arlene Brens, Fellow, NWLC (Feb. 18, 2009) (on file with NWLC).
- 71 *Id.*
- 72 *Id.*
- 73 Getting Organized, *supra* note 1, at 15.
- 74 Washington 2007–2009 Contract, *supra* note 49, Art. 14.3.
- 75 *Id.* Art. 14.2. FCC providers also must attend one mandatory training session on licensing rules. *Id.* Art. 14.4. However, as with the mandatory subsidy training, the state will pay only for delivering the training, not the cost of the provider to attend the training. *Id.*
- 76 *Id.* Art 14.2.
- 77 *Id.*
- 78 *Id.* App. B.
- 79 *Id.*
- 80 *Id.*
- 81 *Id.*
- 82 The Washington State Training and Registry System (STARS) was created in 1997 as a career development system for those who work in child care, early childhood education, and school-age care. Afterschool Investments Project, U.S. Dep't of Health and Human Servs., State Afterschool Profiles: Washington, available at <http://nccic.acf.hhs.gov/afterschool/PDFDocs/WA.pdf> (last visited June 18, 2009). Its purpose is to provide child care professionals with increased opportunities for both basic and continuing education to ensure quality care for all children in the state of Washington. *Id.*; see also Wash. Ass'n for the Educ. of Young Children, Washington STARS, <http://www.waec.org/STARS.htm> (last visited Dec. 14, 2009).
- 83 Washington 2007–2009 Contract, *supra* note 49, App. B.
- 84 Telephone Interview with Karen Hart, *supra* note 58.
- 85 Karen Hart, Early Learning Dir., SEIU 925, Transcript of NWLC Telephone Conference Call with Child Care Advocates at 5 (June 18, 2009), available at [http://www.nwlc.org/pdf/Transcript\\_6-9-09.pdf](http://www.nwlc.org/pdf/Transcript_6-9-09.pdf).
- 86 Email from Karen Hart, Early Learning Dir., SEIU 925, to Arlene Brens, Fellow, NWLC (Apr. 15, 2009) (on file with NWLC). There is a time lag of approximately 60 days between when the claim for the bonus is submitted to the state and when the bonus is actually paid, so some of these bonuses may not have been paid by April 2009. *Id.*
- 87 Telephone Interview with Karen Hart, *supra* note 58.
- 88 Getting Organized, *supra* note 1, at 15; Washington 2007–2009 Contract, *supra* note 49, Art. 15. FCC providers are already eligible for such subsidies. See 42 U.S.C. § 1766 (West, Westlaw through P.L. 111–62).
- 89 Karen Hart, Transcript of NWLC Telephone Conference Call, *supra* note 85, at 6–7.

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- 90 *Id.* at 7.
- 91 Wash. Rev. Code Ann. § 41.56.028(2)(d) (West, Westlaw through 2009 legislation).
- 92 See SEIU, Local 925 v. Wash. Office of Fin. Mgmt., Case No. 21885-I-08-0513 (Pub. Employment Relations Comm'n Aug. 25, 2008) (Cavanaugh, Arb.), <http://www.perc.wa.gov/Databases/IntArb/21885-I.pdf>.
- 93 *Id.* at 3 n.4.
- 94 *Id.* at 3.
- 95 *Id.*
- 96 *Id.* at 13–14.
- 97 *Id.* at 33.
- 98 *Id.* at 22.
- 99 *Id.* at 19.
- 100 Tentative Collective Bargaining Agreement By and Between The State of Washington and Service Employees International Union 925 (effective 2009–2011) (on file with NWLC).
- 101 Agreed Statement of Facts at 4, SEIU Local 925 v. Gregoire, No. 82577-7 (Wash. filed Jan. 27, 2009).
- 102 Tentative Collective Bargaining Agreement, *supra* note 100, Art. 12.1.
- 103 *Id.* Art. 11.2.
- 104 One unit equals one full day, or two half days, of care for one child in the month. *Id.* Art. 13.4(3).
- 105 *Id.*
- 106 *Id.* Art. 13.3.
- 107 *Id.* Art. 11.3.
- 108 *Id.* Art. 14.2(A).
- 109 *Id.* Art. 14.2(B).
- 110 *Id.* Art. 17.5; Wash. Rev. Code Ann. § 41.56.028(5)–(7) (West, Westlaw through 2009 legislation).
- 111 Getting Organized, *supra* note 1, at 15; see § 41.56.028 (6)(a), (b).
- 112 Memorandum from Victor A. Moore, Dir., Wash. Office of Fin. Mgmt., to Gov. Chris Gregoire (Dec. 17, 2008) (on file with NWLC).
- 113 The governor stated in her 2009–2011 budget request that the projected budget shortfall for 2009 was \$5.7 billion, a little more than the entire budgets of the state's higher education institutions and the Department of Corrections combined. Gov. Christine Gregoire, Proposed 2009–2011 Budget & Policy Highlights (Dec. 2008), *available at* <http://www.ofm.wa.gov/budget09/highlights/highlights.pdf>. The governor cited the state's \$5.7 billion budget deficit as a reason for not including the funds to implement the agreement in her budget request. *Id.* The governor also did not include the necessary funding in her budget request for three other union contracts as well. In response to the governor's action on one of these contracts, which was also the result of an arbitration agreement, SEIU Local 775, which represents 25,000 home-health care workers in the state, sued the governor for failure to include in her proposed budget a request for funds for the arbitrated agreement; this case was argued before the state supreme court on March 11, 2009. See Rachel La Corte, *Union Takes Pay-Raise Dispute to State Supreme Court*, Seattle Times, Mar. 11, 2009, *available at* [http://seattletimes.nwsource.com/html/politics/2008838537\\_scow11.html](http://seattletimes.nwsource.com/html/politics/2008838537_scow11.html). As of October 2009, no decision had been issued. In response to the governor's action on the other contracts, the Washington Federation of State Employees, which represents 40,000 workers in state agencies and colleges, and SEIU Local 1199, on behalf of 900 state registered nurses, sued the governor for failure to include negotiated pay raises in her proposed budget. See Rachel La Corte, *State Workers Sue Gregoire Over Canceled Raises*, Seattle Post-Intelligencer, Dec. 23, 2008, *available at* [http://seattlepi.com/local/393477\\_workers24.html](http://seattlepi.com/local/393477_workers24.html); Associated Press, *Fourth Union Sues Gregoire Over Contract Money*, Seattle Times, Jan. 15, 2009, *available at* [http://seattletimes.nwsource.com/html/localnews/2008632505\\_webunion15.html](http://seattletimes.nwsource.com/html/localnews/2008632505_webunion15.html). In the Washington Federation of State Employees case, the Thurston County Superior Court ruled that Gregoire “has the power to back out of negotiated contracts that are not feasible.” Rachel La Corte, *Nurses End Lawsuit Against Gregoire*, Seattle Times, Apr. 4, 2009, *available at* [http://seattletimes.nwsource.com/html/politics/2008983211\\_unionsuit04.html](http://seattletimes.nwsource.com/html/politics/2008983211_unionsuit04.html). The Federation returned to negotiations but appealed the decision. *Id.* SEIU Local 1199 dropped its lawsuit in April 2009 after the Public Employment Relations Commission determined that Gregoire had the right to back out of the contract but that her failure to immediately begin renegotiations constituted an unfair labor practice. *Id.*
- 114 SEIU Local 925 v. Gregoire, No. 82577-7 (Wash. filed Jan. 6, 2009).
- 115 Press Release, SEIU 925, Family Child Care Providers Urge Legislators, Governor to Focus Federal Recovery Funds on Parents and Children (Mar. 5, 2009), *available at* [http://www.seiu925.org/press/Family\\_child\\_care\\_providers\\_urge\\_legislators\\_governor\\_to\\_focus\\_federal\\_recovery\\_funds\\_on\\_parents\\_children\\_1.aspx](http://www.seiu925.org/press/Family_child_care_providers_urge_legislators_governor_to_focus_federal_recovery_funds_on_parents_children_1.aspx).
- 116 Collective Bargaining Agreement By and Between the State of Washington and Service Employees International Union 925 (effective 2009–2011), *available at* <http://www.ofm.wa.gov/labor/agreements/09-11/childcare/childcare.pdf> [hereinafter Washington 2009–2011 Contract].
- 117 *Id.* Art. 13.3.
- 118 An Act Relating to Fiscal Matters, 2009 Wash. Laws ch. 564.
- 119 Washington 2009–2011 Contract, *supra* note 116, Art. 18.2.
- 120 Wash. Dep't of Early Learning, Collective Bargaining Agreement and Enhanced Toddler Rate Increase Information for Providers (effective July 1, 2009), *available at* <http://www.del.wa.gov/publications/subsidy/docs/CBAandEnhancedToddler.pdf>.

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- 121 *Compare* Walter R. McDonald & Associates, Inc., Washington State 2008 Child Care Survey 28 (2008) (prepared for Wash. Dep't of Early Learning), available at [http://www.del.wa.gov/publications/research/docs/LicensedChildCareInWashingtonState\\_2008.pdf](http://www.del.wa.gov/publications/research/docs/LicensedChildCareInWashingtonState_2008.pdf), with Wash. Dep't of Early Learning, Child Care Subsidy Rates (July 1, 2009), available at <http://www.del.wa.gov/publications/subsidy/docs/ChildCareSubsidyRates.pdf>.
- 122 Getting Organized, *supra* note 1, at 15; Wash. Rev. Code Ann. § 43.215.355(1) (West, Westlaw through 2009 legislation).
- 123 Email from Karen Hart, Early Learning Dir., SEIU 925, to Rachel Rebouché, Fellow, NWLC (July 11, 2008) (on file with NWLC).
- 124 Wash. Dep't of Early Learning, Negotiated Rule Making Team Meeting Minutes (May 19, 2007), available at [http://www.del.wa.gov/publications/licensing/docs/Negotiated%20Rule%20Making\\_Meeting%20Notes\\_%2020070519.pdf](http://www.del.wa.gov/publications/licensing/docs/Negotiated%20Rule%20Making_Meeting%20Notes_%2020070519.pdf).
- 125 Wash. Dep't of Early Learning, Negotiated Rule Making, <http://www.del.wa.gov/laws/development/negotiated.aspx> (last visited Sept. 23, 2009).
- 126 Wash. Dep't of Early Learning, Review Plan for DEL Child Care Provider Rules, available at [http://www.del.wa.gov/publications/licensing/docs/DEL\\_Rules\\_Review\\_per\\_E2SSB\\_5828.pdf](http://www.del.wa.gov/publications/licensing/docs/DEL_Rules_Review_per_E2SSB_5828.pdf) (last visited June 15, 2009).
- 127 See Laura Giddings, *A Collaborative Process: Negotiated Rule-Making*, Early Learning Connections (Child Care Resource and Referral/Opportunity Council, Bellingham, Wash.), Summer 2009, at 2, available at <http://www.oppco.org/pdf/EarlyLearningConnectionsSummer2009.pdf>; Negotiated Rule Making Team Meeting Minutes, *supra* note 124.
- 128 See Giddings, *supra* note 127, at 2.
- 129 S. 6522, 60th Leg., Reg. Sess. §§ 1, 3(15)(a) (Wash. 2008). The bill explicitly states that the term “child care center” does not include a child care center “operated by an individual, partnership, profit or nonprofit corporation, or other entity that operates ten or more child care centers statewide.” *Id.* § 3(15)(b).
- 130 *Id.* § 1. Center owners and their employees have a traditional employer–employee relationship under the National Labor Relations Act and, as described in Getting Organized, unions have for several years been organizing center workers. Getting Organized, *supra* note 1, at 6. See also National Labor Relations Act (NLRA), 29 U.S.C. §152 (West, Westlaw through P.L. 111–64).
- 131 See Wash. State Legislature, Bill Information: HB 2449–2007–08, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=2449&year=2007> (last visited Sept. 24, 2009).
- 132 S. 5572 , 61st Leg., Reg. Sess. (Wash. 2009); H.R. 1329, 61st Leg., Reg. Sess. (Wash. 2009).
- 133 Wash. State Legislature, Bill Information: HB 1329–2009–10, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1329&year=2009> (last visited Sept. 24, 2009).
- 134 *Id.*; see also Jennifer Sullivan, *Child-Care Union Bill Is No Longer Being Considered*, Seattle Times Politics Northwest Blog, Apr. 22, 2009, [http://blog.seattletimes.nwsourc.com/politicsnorthwest/2009/04/22/child-care\\_union\\_bill\\_dead.html](http://blog.seattletimes.nwsourc.com/politicsnorthwest/2009/04/22/child-care_union_bill_dead.html).
- 135 Getting Organized, *supra* note 1, at 16; Or. Exec. Order No. 06–04 (2006); Or. Exec. Order No. 05–10 (2005).
- 136 As reported in Getting Organized, Governor Kulongoski’s proposal included nearly \$19 million to cover the rate increases for the two groups of providers represented by the unions. Getting Organized, *supra* note 1, at 17. The Governor’s proposal also included \$7 million to raise rates for licensed child care centers that receive subsidies and \$8 million to lower parent co-payments and increase income limits on eligibility for subsidies. *Id.*
- 137 The preamble to the federal regulations for the Child Care and Development Block Grant (CCDBG) recommends that states set their reimbursement rates at the 75th percentile of current market rates, which is the rate that allows families access to 75% of providers in their communities. Child Care and Development Fund (Preamble to Final Rule), 63 Fed. Reg. 39,936, 39,959 (July 24, 1998) (codified at 45 C.F.R. pts. 98, 99), available at <http://www.acf.hhs.gov/programs/ccb/law/finalrul/fr072498.pdf> (“In establishing payment rates we suggest a benchmark for States to consider. Payments established at least at the 75th percentile of the market would be regarded as providing equal access.”).
- 138 Getting Organized, *supra* note 1, at 16; 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, § VI(A) (effective 2006–2009), available at <http://www.oregonafscme.com/docs/contracts/ChildCareProvidersL132.pdf> [hereinafter 2006 Oregon AFSCME Agreement]. Before the agreement, base reimbursement rates for FCC providers ranged from 20% to 89% of the 75th percentile of market rates, based on a 2006 market rate survey, depending on the age of the child and the geographic region of the state. NWLC calculations based on data on monthly state reimbursement rates and the 75th percentile of market rates, based on a 2006 market rate survey in Deana Grobe et al., Or. Dep’t of Human Servs., 2006 Oregon Child Care Market Rate Study (2006), available at <http://www.oregon.gov/DHS/children/publications/cc/2006marketratestudy.pdf>.
- 139 Memorandum of Agreement Between the Oregon Employment Department, the Oregon Department of Human Services., and Service Employees International Union Local 503, Oregon Public Employees Union, § V (effective 2007–2009), available at <http://www.seiu503.org/care/Default.aspx> (follow “Child Care” hyperlink below “Contracts”) [hereinafter 2007 Oregon SEIU Agreement]. Before the agreement, base rates for FFN providers ranged from 66% to 83% of the 75th percentile of market rates, based on a 2006 market rate survey, depending on the age of the child and geographic region of the state. NWLC calculations based on Grobe, *supra* note 138. Enhanced rates were 7% over the base rate. Or. Employment Dep’t, Child Care Div., Child Care and Development Fund Plan for FFY 2006–2007, at 64 (Oct. 1, 2005) available at <http://www.Oregon.gov/EMPLOY/CCD/docs/2006-07CCDFStateplan.pdf>.
- 140 Staff of Joint Comm. on Ways and Means, 74th Or. Legis. Assemb., Budget Report and Measure Summary: H.B. 5031–A (2007), available at <http://www.leg.state.or.us/comm/sms/fis07/bhb5031ajwm06-23-2007.pdf>. For a breakdown of the budget pertaining to child care provider and center rates, see Or. Dep’t of Human Services, Child Care Policy Option Package 101–1 Breakdown (undated) (on file with NWLC).
- 141 H.R. 5031–A, 74th Legis. Assemb., Reg. Sess. (Or. 2007).
- 142 Or. Employment Dep’t and Dep’t of Human Servs. v. SEIU Local 503, OPEU (Feb. 12, 2008) (Skratek, Arb.) (on file with NWLC).
- 143 *Id.*
- 144 Telephone Interview with Rhonda Prodzinski, Child Care and Refugee Program Manager, Dep’t of Human Servs. (June 17, 2009).
- 145 Email from Faye Zepeda, AFSCME Representative, Local 132, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (July 11, 2008) (on file with NWLC).

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- 146 Getting Organized, *supra* note 1, at 17; 2006 Oregon AFSCME Agreement, *supra* note 138, § IV.
- 147 Getting Organized, *supra* note 1, at 17; 2007 Oregon SEIU Agreement, *supra* note 139.
- 148 Telephone Interview with Faye Zepeda, AFSCME Representative, Local 132 (Apr. 4, 2009); Telephone Interview with Abby Solomon, Field Coordinator, Care Providers, SEIU Local 503 (Apr. 23, 2009).
- 149 See Or. Child Care Providers Together, We Now Have Health Insurance! (Aug. 13, 2009), [http://www.oregonccpt.com/print\\_article.cfm?homeID=135202](http://www.oregonccpt.com/print_article.cfm?homeID=135202); Or. Child Care Providers Together, Augeo Health Insurance (Sept. 28, 2009), [http://www.oregonccpt.com/print\\_article.cfm?homeID=139491](http://www.oregonccpt.com/print_article.cfm?homeID=139491).
- 150 We Now Have Health Insurance!, *supra* note 149.
- 151 Augeo Health Insurance, *supra* note 149; Email from Faye Zepeda, AFSCME Representative, Local 132, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Jan. 4, 2010) (on file with NWLC).
- 152 Getting Organized, *supra* note 1, at 16–17; 2006 Oregon AFSCME Agreement, *supra* note 138, § V; 2007 Oregon SEIU Agreement, *supra* note 139, § IV.
- 153 2007 Oregon SEIU Agreement, *supra* note 139, § III.
- 154 *Id.*
- 155 For example, a toolkit developed in Michigan on early stages of development is distributed at orientations and is accompanied by a survey of providers before and after they use the toolkit to gauge its effectiveness. Telephone Interview with Rhonda Prodzinski, Child Care and Refugee Program Manager, Or. Dep't of Human Servs. (May 2, 2008).
- 156 2007 Oregon SEIU Agreement, *supra* note 139, § IV; see also Process for Orientations and Enhanced Rate Trainings Attended by License Exempt Child Care Providers (June 16, 2008) (on file with NWLC) [hereinafter Process for Orientations].
- 157 Process for Orientations, *supra* note 156, at 1.
- 158 *Id.* The stipend is not available to providers who choose to take classes on-line or through self-study. *Id.* at 2.
- 159 *Id.* at 3–4.
- 160 Telephone Interview with Abby Solomon, *supra* note 148.
- 161 *Id.*
- 162 Telephone Interview with Rhonda Prodzinski, *supra* note 155.
- 163 *Id.*
- 164 Email from Abby Solomon, Field Coordinator, Care Providers, SEIU Local 503, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (June 9, 2009).
- 165 2006 Oregon AFSCME Agreement, *supra* note 138, § V(A).
- 166 Telephone Interview with Faye Zepeda, *supra* note 148.
- 167 Getting Organized, *supra* note 1, at 17; 2006 Oregon AFSCME Agreement, *supra* note 138, § VI(B); 2007 Oregon SEIU Agreement, *supra* note 139, § XII.
- 168 H.R. 5031–A, 74th Legis. Assemb., 2007 Reg. Sess. (Or. 2007); see also Staff of Joint Comm. on Ways and Means, 74th Or. Legis. Assemb., Budget Report and Measure Summary: H.B. 5031-A (2007), at 7, available at <http://www.leg.state.or.us/comm/sms/fis07/bhb5031ajwm06-23-2007.pdf>.
- 169 Getting Organized, *supra* note 1, at 16; 2007 Oregon SEIU Agreement, *supra* note 139, § X; 2006 Oregon AFSCME Agreement, *supra* note 138, § III.
- 170 2007 Oregon SEIU Agreement, *supra* note 139, § X(B)(2).
- 171 2006 Oregon AFSCME Agreement, *supra* note 138, § III(A).
- 172 Or. Employment Dep't and Dep't of Human Servs. v. SEIU Local 503 (Feb. 12, 2008) (Skratek, Arb.) (on file with NWLC).
- 173 *Id.*
- 174 Telephone Interview with Rhonda Prodzinski, *supra* note 144.
- 175 2006 Oregon AFSCME Agreement, *supra* note 138, App. A.
- 176 *Id.*
- 177 Or. Exec. Order No. 07–03 (2007).
- 178 An Act Relating to Family Child Care Providers, 2007 Or. Laws ch. 563, § 3 (codified at Or. Rev. Stat. § 657A.430 (West, Westlaw through 2009 Reg. Sess. Enrolled Acts)).
- 179 Or. Child Care Providers Together, Child Care Members Ratify New Two-Year Contract (July 31, 2009), [http://www.oregonccpt.com/print\\_article.cfm?homeID=133895](http://www.oregonccpt.com/print_article.cfm?homeID=133895).
- 180 See 2009–2011 Collective Bargaining Agreement Between the Department of Administrative Services, on Behalf of the State of Oregon, and the American Federation of State, County & Municipal Employees Child Care Providers Together, § XXI, Signature Page (effective 2009-2011), available at <http://www.oregon.gov/DAS/HR/docs/lr/0911AFSCMEChildCareProvider.pdf> [hereinafter 2009 Oregon AFSCME Agreement].
- 181 See SEIU Local 503, Child Care Workers Ratify Contract, [http://www.seiu503.org/care/Child\\_Care\\_Workers\\_Ratify\\_Contract.aspx](http://www.seiu503.org/care/Child_Care_Workers_Ratify_Contract.aspx) (last visited Nov. 6, 2009); Kristen Kellar, *SEIU Child Care Providers Reach Two-Year Contract*, Statesman Journal, Oct. 19, 2009, available at <http://www.statesmanjournal.com/article/20091019/NEWS/910190323/SEIU-child-care-providers-reach-two-year-contract>.
- 182 See 2009-2011 Collective Bargaining Agreement Between the Department of Administrative Services, on behalf of the State of Oregon, and Service Employees International Union Local 503, Oregon Public Employees Union: License-Exempt Family Child Care Providers, Art. 3, § 1(A), Signature Page, available at <http://www.oregon.gov/DAS/HR/docs/lr/0911SEIUChildCareFin.pdf> [hereinafter 2009 Oregon SEIU Agreement].



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- 183 2009 Oregon AFSCME Agreement, *supra* note 180, § VI(1).
- 184 2009 Oregon SEIU Agreement, *supra* note 182, Art. 12.
- 185 2009 Oregon AFSCME Agreement, *supra* note 180, § VI(1); 2009 Oregon SEIU Agreement, *supra* note 182, Art. 12.
- 186 Compare Or. Employment Dep't, Child Care and Development Fund Plan for FFY 2010–2011, at 32–33, 93–100 (Oct. 1, 2009) available at [http://egov.oregon.gov/EMPLOY/CCD/2010-2011\\_CCDF\\_Plan\\_Final\\_09\\_23\\_09\\_Ver2.pdf](http://egov.oregon.gov/EMPLOY/CCD/2010-2011_CCDF_Plan_Final_09_23_09_Ver2.pdf), with Or. Dep't of Human Servs., DHS Child Care Subsidy Rates, <http://www.oregon.gov/DHS/children/childcare/ccrate1.shtml> (last visited Mar. 30, 2010).
- 187 2009 Oregon AFSCME Agreement, *supra* note 180, § IV.
- 188 2009 Oregon SEIU Agreement, *supra* note 182, Art. 5, § 1–3. For a list of covered training costs, see *supra* note 156 and accompanying text.
- 189 2009 Oregon AFSCME Agreement, *supra* note 180, § V(2).
- 190 *Id.* § V(7).
- 191 See An Act Relating to Child Care Facilities, 2009 Or. Laws ch. 319 (codified at Or. Rev. Stat. § 657A.340 (West, Westlaw through End of the 2009 Reg. Sess.)).
- 192 Summary of Tentative Agreement between SEIU Local 503 and the State of Oregon, attached to Email from Abby Solomon, Field Coordinator and Care Provider, SEIU, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Sept. 14, 2009) (on file with NWLC).
- 193 Telephone Interview with Rhonda Prodzinski, *supra* note 144.
- 194 2009 Oregon SEIU Agreement, *supra* note 182, Art. 5, § 2.
- 195 *Id.* Art. 7, § 2; 2009 Oregon AFSCME Agreement, *supra* note 180, § III.
- 196 2009 Oregon AFSCME Agreement, *supra* note 180, § VI(3)(d).
- 197 Telephone Interview with Faye Zepeda, AFSCME Representative, Local 132 (Mar. 9, 2010).
- 198 2009 Oregon AFSCME Agreement, *supra* note 180, App. A.
- 199 See Child Care Members Ratify New Two-Year Contract, *supra* note 179.
- 200 *Id.*
- 201 2009 Oregon AFSCME Agreement, *supra* note 180, § VIII(6).
- 202 *Id.*
- 203 *Id.*
- 204 *Id.*
- 205 See, e.g., Or. Employment Dep't—Child Care Div., Complaint History, A Place 4 Kids Daycare, <http://www.emp.state.or.us/ccd-complaints/results-detail.cfm?LIC=CF501219> (last visited Oct. 21, 2009).
- 206 See Child Care Members Ratify New Two-Year Contract, *supra* note 179.
- 207 See 2009 Oregon AFSCME Agreement, *supra* note 180, § VIII(7); *New Contract with the State*, AFSCME Local 132 Newsletter (Am. Fed'n of State, County, and Mun. Employees—Child Care Providers Together, Salem, Or.), Summer 2009, at 2, available at <http://www.oregonccpt.com/docs/summerEnglish.pdf>.
- 208 Gov. Ted Kulongoski, 2009–2011 Governor's Recommended Budget: Summary 14, available at [http://www.oregon.gov/DAS/BAM/docs/Publications/GRB0911/2009\\_11GRB\\_Summary.pdf](http://www.oregon.gov/DAS/BAM/docs/Publications/GRB0911/2009_11GRB_Summary.pdf) (last visited Oct. 5, 2009) [hereinafter Budget Summary].
- 209 Press Release, Gov. Ted Kulongoski, Governor Delivers 2009–2011 Recommended Budget to the Legislature (Dec. 1, 2008), available at [http://governor.oregon.gov/Gov/P2008/press\\_120108.shtml](http://governor.oregon.gov/Gov/P2008/press_120108.shtml).
- 210 See Budget Summary, *supra* note 208.
- 211 Or. Dep't of Human Servs., 2009–11 Governor's Recommended Budget Investments & Reductions (Dec. 12, 2008), available at <http://www.oregon.gov/DHS/aboutdhs/budget/09-11budget/index.shtml>.
- 212 See *supra* nn. 137–141.
- 213 See Budget Summary, *supra* note 208, at 22; Gov. Ted Kulongoski, 2009–2011 Governor's Recommended Budget: Human Services C-13, available at [http://www.oregon.gov/DAS/BAM/docs/Publications/GRB0911/C\\_HS.pdf](http://www.oregon.gov/DAS/BAM/docs/Publications/GRB0911/C_HS.pdf) (last visited Oct. 5, 2009).
- 214 Or. Legislative Fiscal Office, Budget Highlights: 2009–2011 Legislatively Adopted Budget, at 1 (Aug. 2009), available at [http://www.leg.state.or.us/comm/lfo/2009\\_11\\_budget/highlights.pdf](http://www.leg.state.or.us/comm/lfo/2009_11_budget/highlights.pdf).
- 215 Janice O'Malley, AFSCME Council 75, Child Care Budget Sidesteps Cutbacks, Ends up OK (July 7, 2009), [http://www.oregonccpt.com/print\\_article.cfm?homeID=131737](http://www.oregonccpt.com/print_article.cfm?homeID=131737).
- 216 See *id.*
- 217 Staff of Joint Comm. on Ways and Means, 75th Or. Legis. Assemb., Budget Report and Measure Summary: H.B. 5100–A (2010) at 18, available at [http://www.leg.state.or.us/budget/agency\\_reports\\_2010/HB5100.pdf](http://www.leg.state.or.us/budget/agency_reports_2010/HB5100.pdf).
- 218 The thwarting of the funding cut is due in part to the passage of State Ballot Measures 66 and 67, which affirmed tax increases on corporations and high-earning individuals that were passed by the Oregon legislature in 2009 and then subjected to statewide referenda. See Or. Sec'y of State, January 26, 2010 Statewide Special Election, Unofficial Election Results (Feb. 22, 2010), <http://egov.sos.state.or.us/division/elections/results/2010S/1372259056.html>; Edward Hershey & Arthur Towers, SEIU Local 503, Huge Legislative Victories for Oregon Care Providers (Feb. 27, 2010),



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- <http://www.seiu.org/2010/02/huge-legislative-victories-for-oregon-care-providers.php>; Or. Child Care Providers Together, 2010 Legislative Update (Mar. 16, 2010), [http://www.oregonccpt.com/print\\_article.cfm?homeID=156935](http://www.oregonccpt.com/print_article.cfm?homeID=156935).
- 219 Telephone Interview with Cheryl Willcoxon, SEIU Local 503 (Mar. 17, 2010).
- 220 Or. Dep't of Human Servs., Healthy Kids, <http://www.oregon.gov/DHS/healthykids/> (last visited Mar. 18, 2010). The legislation creating the Healthy Kids program created a new tax on hospitals and private insurance companies in order to fund nearly universal health care for Oregon children. H.R. 2116, 75th Legis. Assemb., Reg. Sess. (Or. 2009), available at <http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2116.en.pdf>.
- 221 Telephone Interview with Cheryl Willcoxon, *supra* note 219.
- 222 Or. Family Health Insurance Assistance Program, Applicant and Member Information, [http://www.oregon.gov/OPHP/FHIAP/member.shtml#What\\_is\\_FHIAP\\_](http://www.oregon.gov/OPHP/FHIAP/member.shtml#What_is_FHIAP_) (last visited Mar. 18, 2010).
- 223 Or. Family Health Insurance Assistance Program, <http://www.oregon.gov/OPHP/FHIAP/> (last visited Mar. 22, 2010).
- 224 Telephone Interview with Cheryl Willcoxon, *supra* note 219.
- 225 *Id.*
- 226 *Id.*
- 227 *Id.*
- 228 Telephone Interview with Faye Zepeda, *supra* note 148.
- 229 *Id.*
- 230 *Id.*
- 231 Abby Solomon, Field Coordinator, Care Providers, SEIU Local 503, Transcript of Telephone Conference Call with Oregon Child Care Advocates at 5–6 (Apr. 7, 2009), available at <http://www.nwlc.org/media/Audio-4709.pdf>.
- 232 Getting Organized, *supra* note 1, at 17–18; Iowa Exec. Order No. 45 (2006); Iowa Exec. Order No. 46 (2006).
- 233 Memorandum of Understanding between Iowa Department of Human Services and American Federation of State, County, and Municipal Employees, Iowa Public Employees Council 61, AFL-CIO (effective 2008–2009) (on file with NWLC) [hereinafter Iowa MOU].
- 234 *Id.* Art. X, § 2.
- 235 *Id.* Art. X, § 4.
- 236 Act of May 13, 2008, 2008 Iowa Acts ch. 1187, § 32(11).
- 237 See Iowa Dep't of Human Servs., Draft Child Care and Development Fund Plan, FFY 2010–2011, at 37–41 (effective Oct. 1, 2009), available at [http://www.dhs.state.ia.US/docs/2010-11\\_CCDFFPlan-DRAFT.pdf](http://www.dhs.state.ia.US/docs/2010-11_CCDFFPlan-DRAFT.pdf). However, FFN providers who, like centers, are not covered by the MOU, did not receive an increase. *Id.*
- 238 Iowa MOU, *supra* note 233, Art. XI, § 3.
- 239 *Id.* Art XI, § 2.
- 240 Act of May 9, 2008, 2008 Iowa Acts ch. 1179, § 1(7)(b).
- 241 Email from Sheila Hansen, Policy Dir., Child and Family Policy Center, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Jan. 6, 2010) (on file with NWLC).
- 242 Iowa MOU, *supra* note 233, Art. IX, § 2.
- 243 *Id.* Art. IX, § 3.
- 244 See Iowa Dep't of Human Servs., Iowa QRS: Iowa's Quality Rating System for Child Care Providers (undated), available at <http://www.dhs.state.ia.us/iqrs/docs/QRS%20brochure%20final.pdf> (last visited July 31, 2009). Iowa has had a QRS since 2006. Email from Sheila Hansen, Child and Family Policy Ctr., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (July 13, 2009) (on file with NWLC).
- 245 Iowa MOU, *supra* note 233, Art. XIII.
- 246 Telephone Interview with Steve Roth, AFSCME Representative (Feb. 22, 2009).
- 247 *Id.*
- 248 Email from Sheila Hansen, *supra* note 241.
- 249 Iowa MOU, *supra* note 233, Art. III, § A(4).
- 250 *Id.* Art. III, § A(3).
- 251 *Id.* Art. III, § B(1), (2).
- 252 *Id.* Art. III, § C(1).
- 253 *Id.* Art. III, § C(7).
- 254 *Id.* Art. VII.
- 255 *Id.* Art. IV, § 7.
- 256 *Id.* Art. XII, § 2.
- 257 *Id.* Art. X.

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- 258 Getting Organized, *supra* note 1, at 18.
- 259 N.J. Exec. Order No. 23 (2006), available at <http://www.nj.gov/infobank/circular/eojsc23.htm>.
- 260 Agreement Between the State of New Jersey and the Child Care Workers Union Covering Registered and Approved Family Child Care Providers (effective 2007–2010) (on file with NWLC) [hereinafter New Jersey Agreement].
- 261 *Id.* ¶ 4.
- 262 *Id.* ¶ 9.
- 263 *Id.* Attachment A. For this report, the authors were unable to calculate the changes in rates because the rate chart in the contract does not show the rates prior to the increases, and they do not seem to be readily available.
- 264 *Id.* ¶ 9(2).
- 265 Telephone Interview with Cecilia Zalkind, Executive Dir., Ass'n for Children of N.J. (Mar. 25, 2008).
- 266 Email from Beverly Wellons, Assistant Dir. of Child Care Operations, N.J. Dep't of Human Servs., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (April 28, 2009) (on file with NWLC).
- 267 Act of June 30, 2008, 2008 N.J. Laws ch. 35.
- 268 Email from Beverly Wellons, *supra* note 266.
- 269 Telephone Interview with Crystal Rogers, Member Serv. Representative, CWA Local 1037 (July 28, 2009).
- 270 New Jersey Agreement, *supra* note 260, ¶ 10.
- 271 N.J. Dep't of Human Servs., Health Care Coverage of Home-Based Child Care Providers (2008) (on file with NWLC).
- 272 *Id.* at 2–3.
- 273 Telephone Interview with Crystal Rogers, Member Serv. Representative, CWA Local 1037 (July 17, 2009).
- 274 New Jersey Agreement, *supra* note 260, ¶ 12.
- 275 *Id.* ¶ 6(B).
- 276 *Id.* ¶ 5.
- 277 *Id.* ¶ 7.
- 278 *Id.* ¶ 2(G).
- 279 Email from Beverly Wellons, Assistant Dir. of Child Care Operations, N.J. Dep't of Human Servs., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Dec. 8, 2008) (on file with NWLC).
- 280 Telephone Interview with Crystal Rogers, *supra* note 273.
- 281 *Id.*
- 282 *Id.*
- 283 Interlocal Agreement Between the Department of Human Services and Mott Community College Creating the Michigan Home Based Child Care Council (July 27, 2006) [hereinafter Michigan ILA] (on file with NWLC).
- 284 Getting Organized, *supra* note 1, at 18–19.
- 285 Michigan ILA, *supra* note 283, Art. I, § 1.04; Art II, § 2.01.
- 286 *Id.* Art. II, § 2.01; Art V, § 5.01; Art VI, § 6.10.
- 287 *Id.* Art. IV, § 4.01.
- 288 Michigan Home Based Child Care Council and the Child Care Providers Together Michigan: Collective Bargaining Agreement (effective 2008–2010), available at <http://www.miafscme.org/CCPTM/ccptmCONTRACT.pdf> [hereinafter Michigan Agreement].
- 289 *Id.* Art. 13, § 1; App. B.
- 290 *Id.* Art. 13, § 1.
- 291 *Id.*
- 292 John Rummel, *Home Child Care Providers Are Paid So Little, They're Losing Homes, Cars*, People's Weekly World, Apr. 24, 2009, available at <http://www.pww.org/article/articleview/15353/>.
- 293 Act of Oct. 31, 2007, 2007 Mich. Pub. Acts 131.
- 294 Michigan Dep't of Human Servs., Provider Handbook and Billing Instructions for Child Care Providers 3 (2009), available at [http://www.michigan.gov/documents/dhs/DHS-PUB-0230\\_222206\\_7.pdf](http://www.michigan.gov/documents/dhs/DHS-PUB-0230_222206_7.pdf). For a description of the effect of this change, see Mich. Poverty Law Program, Issue Alert—The Maximum Number of Authorized Care Hours is Decreased from 100 to 90 Hours Per Pay Period Per Child for All CDC Providers (Jan. 9, 2008), available at <http://www.mplp.org/Issues/mplpissue.2008-01-09.5659856773>.
- 295 Mich. Poverty Law Program, *supra* note 294.
- 296 Act of Apr. 29, 2008, 2008 Mich. Pub. Acts 113. The legislature allocated a total of \$3.3 million to raise subsidy rates. *Id.* § 451.

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- 297 Michigan Agreement, *supra* note 288, Art. 11, § 3.
- 298 *Id.* Phase One of the program begins with CPR and First Aid training. Phase One also includes 10 additional hours of training for providers on the following topics: blood borne pathogens and communicable disease, Sudden Infant Death Syndrome, safe sleep, seat belt safety, nutrition, identifying abuse and neglect, emergency evacuation plans, and medication policies. *Id.*
- 299 *Id.* Phase Two consists of 35 hours of additional approved training in Early Childhood Development and Administration within a two-year period. Training topics include but are not limited to: foundations of early child development, infant/toddler development, methods/materials for group care, curriculum development, and observations and assessment. *Id.*
- 300 *Id.* Art. 13, § 2.
- 301 *Id.* Art. 11, § 2.
- 302 *Id.* Art. 11, § 1. The Council and the union are obliged to “jointly identify funding sources and secure funding for training, where necessary, including administrative and operating costs.” *Id.*
- 303 Telephone Interview with Boyd McCarnish, AFSCME Representative (Apr. 22, 2008).
- 304 *Id.*
- 305 *Id.*
- 306 Email from Lisa Brewer Walraven, Dir., Mich. Office of Early Educ. and Care, to Helen Blank, Dir. of Leadership and Public Policy, NWLC (Dec. 8, 2009) (on file with NWLC).
- 307 Michigan Agreement, *supra* note 288, Art. 12.
- 308 *Id.* Art. 9, § 4.
- 309 *Id.* Art. 14. There are 13 paid holidays (14 in election years). *Id.* App. A.
- 310 Getting Organized, *supra* note 1, at 19; 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).
- 311 Executive Budget Act, 2009 Wis. Act 28, § 2216j, n, y (codified at Wis. Stat. § 111.02(6)(am), 111.02(7)(a)(4), 111.05(7) (West, Westlaw through 2009 Act 220)).
- 312 Agreement Between Wisconsin Department of Health and Family Services and Wisconsin Department of Workforce Development and Wisconsin Child Care Providers Together, AFSCME Councils 40 and 48 (effective 2008–2011) (on file with NWLC) [hereinafter Wisconsin Agreement].
- 313 *Id.* Art. 12, § 1.
- 314 For an explanation of the significance of the 75th percentile, see *supra* note 137.
- 315 Wisconsin Agreement, *supra* note 312, Art. 8. The agreement does not specify when these rate increases are to begin. *Id.*
- 316 *Id.* To receive the higher rate, an FCC provider, except in Dane County, must be accredited by the National Association of Family Child Care, or hold a Child Development Associate Credential for Family Child Care from the National Council for Early Childhood Professional Recognition. Wis. Admin. Code DCF § 203.02(1) (West, Westlaw through Reg. No. 644 (Aug. 2009)). Dane County providers must meet the accreditation standards of the city of Madison. City of Madison Child Care Program, City Accreditation, <http://www.cityofmadison.com/commserv/CommunityAccreditation.html> (last visited June 22, 2009).
- 317 Email from David Edie, Early Educ. Policy Analyst, Wis. Council on Children and Families, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (July 15, 2009) (on file with NWLC).
- 318 Email from Laura Saterfield, Bureau Dir., Dep’t of Children and Families, to Karen Schulman, Senior Policy Analyst, NWLC (Mar. 16, 2009) (on file with NWLC).
- 319 Executive Budget Act, 2009 Wis. Act 28, § 1214 (codified at Wis. Stat. § 49.155(6)(e) (West, Westlaw through 2009 Act 220)).
- 320 Wisconsin Agreement, *supra* note 312, Art. 10.
- 321 *Id.*
- 322 *Id.* Art. 12.
- 323 *Id.* Art. 10.
- 324 *Id.* Art. 10(D).
- 325 Telephone Interview with Ed Ramthun, Organizing Research Specialist, AFSCME Cent. Region (Aug. 6, 2009).
- 326 Telephone Interview with Larry Rodenstein, AFSCME Representative (June 18, 2009).
- 327 Executive Budget Act, 2007 Wis. Act 20, § 1546 (codified at Wis. Stat. § 49.45(23) (West, Westlaw through 2009 Act 27 and Acts 29 through 39)).
- 328 Telephone Interview with Larry Rodenstein, *supra* note 326.
- 329 *Id.*
- 330 Executive Budget Act, 2009 Wis. Act 28, § 9122(5f).
- 331 Email from Ed Ramthun, Organizing Research Specialist, AFSCME Cent. Region, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Aug. 6, 2009) (on file with NWLC).

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- 332 Wisconsin Agreement, *supra* note 312, Art. 13, § 2.
- 333 *Id.* Art. 13, § 3.
- 334 *Id.*
- 335 Telephone Interview with Larry Rodenstein, *supra* note 326.
- 336 *Id.*
- 337 *Id.*
- 338 *Id.*
- 339 Email from Ed Ramthun, Organizing Research Specialist, AFSCME Cent. Region, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Aug. 5, 2009) (on file with NWLC).
- 340 *Id.*
- 341 Wisconsin Agreement, *supra* note 312, Art. 18, § 2.
- 342 Telephone Interview with Larry Rodenstein, *supra* note 326. See American Recovery and Reinvestment Act, Pub. L. No. 111-8, 123 Stat. 524 (2009).
- 343 Wisconsin Agreement, *supra* note 312, Art. 3.
- 344 *Id.* Art. 3(A). Providers have the right to be free from discrimination based on race, color, religion, gender, sexual orientation, national origin, political affiliation, disability, marital status, age, or union affiliation. *Id.* Art. 3(A)(2).
- 345 *Id.* Art. 3(C).
- 346 *Id.* Art. 3(D).
- 347 *Id.* Art. 3(B)(5).
- 348 *Id.* Art. 3(B)(4).
- 349 *Id.* Art. 7, § 2.
- 350 *Id.* Art. 14.
- 351 Telephone Interview with Larry Rodenstein, *supra* note 326. Every third month the meeting is a “meet-and-confer” meeting. *Id.*
- 352 *Id.*
- 353 Email from Ed Ramthun, Organizing Research Specialist, AFSCME Cent. Region, to Arlene Brens, Fellow, NWLC (Jan. 29, 2009) (on file with NWLC).
- 354 *Id.*
- 355 *Id.*
- 356 *Id.*
- 357 *Id.*
- 358 *Id.*
- 359 *Id.*
- 360 Press Release, Wis. Office of the Governor, Governor Doyle Announces Creation of Advisory Council on Early Childhood Education and Care (Dec. 19, 2008), available at [http://www.wisgov.state.wi.us/journal\\_media\\_detail.asp?locid=19&prid=3864](http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=3864).
- 361 Email from David Edie, *supra* note 317.
- 362 Wis. Dep’t of Children and Families, Child Care Subsidy Payment Policy Changes 2008, <http://dcf.wisconsin.gov/childcare/wishares/policychanges2008.htm> (last visited July 16, 2009).
- 363 *Id.* See Wis. Dep’t of Children and Families, Child Care and Development Fund Plan for State of Wisconsin Department of Workforce Development FFY 2008-2009, at 48 (as amended Mar. 28, 2008) (on file with NWLC).
- 364 Letter from State of Wis. Dep’t of Workforce Dev. to Child Care Providers (Mar. 19, 2007) (on file with NWLC).
- 365 Email from David Edie, Early Educ. Policy Analyst, Wis. Council on Children and Families, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (May 26, 2009) (on file with NWLC).
- 366 Act of May 16, 2008, 2007 Wis. Act 226, §§ 43, 9254. See *More on Attendance Policy*, Sharing the News (Wis. Shares Child Care Subsidy Program, Madison, Wis.), Dec. 2007, at 1-2, available at <http://dwd.wisconsin.gov/childcare/wishares/pdf/newsletter1207.pdf>.
- 367 See Wis. Governor’s Veto Message for 2007 Wis. Act 226, at 3 (May 16, 2008), available at <http://www.wisgov.state.wi.us//docview.asp?docid=13749>.
- 368 *Id.*
- 369 Email from David Edie, *supra* note 365. However, legislation enacted in June 2009 provided that if a child’s attendance falls below 60% of the authorized hours of care over a six-week period, the department must reduce the authorized hours of care for that child to 90% of the maximum number of hours of care that the child attended during that six-week period. Executive Budget Act, 2009 Wis. Act 28, § 1214a (codified at Wis. Stat. § 49.155(6g) (West, Westlaw through 2009 Act 220)). See also Wis. Governor’s Veto Message for 2009 Wis. Act 28, at 13-14 (June 29, 2009), available at [http://www.wispolitics.com/1006/090629\\_2009\\_11\\_Veto\\_Message.pdf](http://www.wispolitics.com/1006/090629_2009_11_Veto_Message.pdf).
- 370 Getting Organized, *supra* note 1, at 20-21.
- 371 N.Y. Exec. Order No. 12 (2007), available at [http://www.ny.gov/governor/executive\\_orders/xeorders/12.html](http://www.ny.gov/governor/executive_orders/xeorders/12.html) [hereinafter New York Executive Order].

- 372 *Id.* ¶ 2.
- 373 See Press Release, United Fed'n of Teachers, UFT Opens Contract Talks for Home Child-Care Providers (Feb. 29, 2008), *available at* [http://www.uft.org/news/issues/press/contract\\_talks\\_child-care\\_providers/](http://www.uft.org/news/issues/press/contract_talks_child-care_providers/). UFT won the right to represent child care providers in New York City, and the New York State Employment Relations Board verified its representation on October 24, 2007. See Dorothy Callaci, *UNION YES!*, *New York Teacher* (United Fed'n of Teachers, New York, N.Y.), Nov. 1, 2007, *available at* [http://www.uft.org/news/teacher/top/union\\_yes/](http://www.uft.org/news/teacher/top/union_yes/).
- 374 VOICE/CSEA won the right to represent subsidized and unsubsidized FCC providers after the New York State Employment Relations Board verified their majority status on July 10, 2007, and sent official notification to VOICE/CSEA on July 23, 2007. See Press Release, Civil Servs. Employees Ass'n, New York State Declares VOICE/CSEA Certified (July 24, 2007), *available at* [http://www.csealocal1000.org/2007press.php#jul\\_24\\_07](http://www.csealocal1000.org/2007press.php#jul_24_07).
- 375 CSEA/CCPT won the right to represent subsidized FFN providers after FFN providers voted to form CSEA/CCPT on February 15, 2008 (96% voted in favor of union). See Press Release, Civil Servs. Employees Ass'n, 17,000 Child Care Providers Vote to Join CSEA Union (Feb. 15, 2008), *available at* [http://www.csealocal1000.org/2008\\_press.php#feb\\_15\\_08](http://www.csealocal1000.org/2008_press.php#feb_15_08).
- 376 New York Executive Order, *supra* note 371, ¶ 7.
- 377 *Id.* ¶¶ 8–9.
- 378 *Id.* ¶ 10.
- 379 *Id.* ¶ 11(b).
- 380 *Id.* ¶ 11(a), (f).
- 381 Telephone Interview with Ben Gordon, Dir. of Organizing, CSEA, AFSCME Local 1000 (Jan. 9, 2009). There are two major differences between the 2006 legislation and the 2007 executive order. First, the executive order grants meet-and-confer status to child care providers and allows non-binding arbitration, while the legislation granted collective bargaining authority for providers. *Compare* New York Executive Order, *supra* note 371, § 7, with S. 6758, 229th Leg., Reg. Sess., § 1 (N.Y. 2006). See also N.Y. Governor's Veto Message No. 215 (June 7, 2006). Second, the executive order expands the number of bargaining units from three to four and specifies particular issues subject to negotiation. *Compare* New York Executive Order, *supra* note 371, § 2, with S. 6758 §§ 1, 2.
- 382 Jennifer 8. Lee, *For Child Care Providers, Health Insurance and Set Rates*, N.Y. Times City Room, July 31, 2009, <http://cityroom.blogs.nytimes.com/2009/07/31/for-child-care-providers-health-insurance-and-set-rates/>.
- 383 UFT Providers, UFT Family Child Care Providers Approve First Contract (Jan. 15, 2010), <http://www.uftproviders.org/uft-family-child-care-providers-approve-first-contract>.
- 384 CCPT-NY: Child Care Providers Together!, <http://www.ccptny.org> (last visited Mar. 11, 2010); VOICE/CSEA, <http://www.voicecsea.org/main.php> (last visited Mar. 11, 2010).
- 385 Agreement Between CSEA/CCPT and the State of New York OCFS (effective 2009–2013) (on file with NWLC) [hereinafter New York CSEA/CCPT Agreement].
- 386 Agreement Between CSEA/VOICE and the State of New York OCFS (effective 2009–2013) (on file with NWLC) [hereinafter New York CSEA/VOICE Agreement].
- 387 Memorandum of Agreement Between the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, and New York State Office of Children and Family Services (effective 2009–2013) (on file with NWLC) [hereinafter New York UFT MOA].
- 388 New York UFT MOA, *supra* note 387, ¶ “Areas of Agreement on Other Issues.”
- 389 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 19; New York CSEA/VOICE Agreement, *supra* note 386, ¶ 21; New York UFT MOA, *supra* note 387, ¶ “Duration.”
- 390 N.Y. Comp. Codes R. & Regs. tit. 18, § 415.9 (2009).
- 391 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 10(b); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 10(b); New York UFT MOA, *supra* note 387, ¶ “Market Rates.”
- 392 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 10(c); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 10(c).
- 393 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 14; New York CSEA/VOICE Agreement, *supra* note 386, ¶ 16; New York UFT MOA, *supra* note 387, ¶ “Health Insurance.”
- 394 N.Y. Dep't of Health, Family Health Plus, What is Family Health Plus?, [http://www.health.state.ny.us/nysdoh/fhplus/what\\_is\\_fhp.htm](http://www.health.state.ny.us/nysdoh/fhplus/what_is_fhp.htm) (last visited Jan. 12, 2010).
- 395 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 14(a)–(c); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 16(a)–(c); New York UFT MOA, *supra* note 387, ¶ “Health Insurance.”
- 396 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 14(d)–(f); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 16(d)–(f); New York UFT MOA, *supra* note 387, ¶ “Health Insurance.”
- 397 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 12(d)–(e); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 13(d)–(e); New York UFT MOA, *supra* note 387, ¶ “Professional Development Funds.”
- 398 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 12(f); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 13(f); New York UFT MOA, *supra* note 387, ¶ “Professional Development Funds.”
- 399 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 12(a); New York UFT MOA, *supra* note 387, ¶ “Quality Grants.”
- 400 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 12(b)–(d); New York UFT MOA, *supra* note 387, ¶ “Quality Grants.”

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- 401 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 12(e), (f); New York UFT MOA, *supra* note 387, ¶ “Quality Grants.”
- 402 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 12(e).
- 403 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 13; New York CSEA/VOICE Agreement, *supra* note 386, ¶ 14.
- 404 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 8(d)(ii).
- 405 *Id.* ¶ 7(a); New York CSEA/CCPT Agreement, *supra* note 385, ¶ 7(a).
- 406 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 7(a); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 7(a).
- 407 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 8(e).
- 408 *Id.* ¶ 8(e)(iv).
- 409 See VOICE/CSEA, Tentative Agreement DRAFT Summary ¶ “Licensing/Regulation Upgrades” (undated) (on file with NWLC); VOICE/CSEA, Tell OCFS to Take off the Scarlet Letter, [http://www.unionvoice.org/voicesea/alert-description.tcl?alert\\_id=1317730](http://www.unionvoice.org/voicesea/alert-description.tcl?alert_id=1317730) (last visited Oct. 7, 2009).
- 410 New York CSEA/VOICE Agreement, *supra* note 386, ¶ 8(e)(iii).
- 411 Telephone Interview with Denise Dowell, Dir. of Strategic Campaigns, CSEA (Mar. 10, 2010).
- 412 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 9(a); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 9(c).
- 413 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 9(a)(ii); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 9(c)(ii). These sections of the New York Social Services Law establish the authority of OCFS and its commissioner to supervise local social services districts, including by overruling local rules, regulations, or procedures; withholding state reimbursement funds for failure to comply with OCFS rules or regulations; or presenting charges against the head of a social services district for failure to perform the necessary duties. N.Y. Soc. Serv. Law §§ 20, 34.
- 414 Pub. L. No. 111–8, 123 Stat. 524 (2009).
- 415 See New York CSEA/CCPT Agreement, *supra* note 385, ¶ 11; New York CSEA/VOICE Agreement, *supra* note 386, ¶ 11; VOICE/CSEA, Tentative Agreement DRAFT Summary, *supra* note 409, ¶ “Payment Upgrades” (undated) (on file with NWLC); Email from Denise Dowell, Dir. of Strategic Campaigns, CSEA, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC, (Nov. 2, 2009) (on file with NWLC).
- 416 See New York CSEA/CCPT Agreement *supra* note 385, ¶ 11; New York CSEA/VOICE Agreement, *supra* note 386, ¶ 10; VOICE/CSEA Tentative Agreement DRAFT Summary, *supra* note 409, ¶ “Payment Upgrades.”
- 417 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 6, Addendum A; New York CSEA/VOICE Agreement, *supra* note 386, ¶ 6, Addendum A.
- 418 New York CSEA/CCPT Agreement, *supra* note 385, Addendum A; New York CSEA/VOICE Agreement, *supra* note 386, Addendum A.
- 419 Gov. David A. Paterson, State of New York 2010–11 Executive Budget Briefing Book 89 (Jan. 2010), *available at* <http://publications.budget.state.ny.us/eBudget1011/fy1011littlebook/BriefingBook.pdf>; see also S. 6603/A. 9703, 233rd Leg. Sess., Reg. Sess. (N.Y. 2010) (governor’s proposed Education, Labor, and Family Assistance Budget); S. 6604/A. 9704, 233rd Leg. Sess., Reg. Sess. (N.Y. 2010) (governor’s proposed Health and Mental Hygiene Budget).
- 420 See Draft Summary of VOICE/CSEA Accomplishments (undated), attached to Email from Denise Dowell, Dir. of Strategic Campaigns, CSEA, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (June 23, 2009) (on file with NWLC); S. 6008, 229th Leg., Reg. Sess. (N.Y. 2006) (codified at N.Y. Soc. Serv. Law § 390(12)(c) (West, Westlaw through L. 2009)).
- 421 Draft Summary of VOICE/CSEA Accomplishments, *supra* note 420.
- 422 Telephone Interview with Denise Dowell, Dir. of Strategic Campaigns, CSEA (June 28, 2009).
- 423 Telephone Interview with Ben Gordon, Dir. of Organizing, CSEA, AFSCME Local 1000 (Jan. 1, 2009).
- 424 Telephone Interview with Denise Dowell, Dir. of Strategic Campaigns, CSEA (Jan. 4, 2010).
- 425 Telephone Interview with Tammie Miller, Chapter Chair, UFT Providers (June 18, 2009).
- 426 *Id.*
- 427 *Id.*
- 428 *Id.*
- 429 UFT Providers, City Agrees to Long-Overdue Raise for Child Care Providers (May 21, 2009), <http://www.uftproviders.org/long-overdue-raise>.
- 430 See Saima Akhtar & Susan Antos, Empire Justice Center, Mending the Patchwork: A Report Examining County-By-County Inequities in Child Care Subsidy Administration in New York State 2 (2010), *available at* <http://www.empirejustice.org/assets/pdf/publications/reports/mending-the-patchwork-1.pdf>.
- 431 *Id.* at 4, 10, 19.
- 432 *Id.*; Telephone Interview with Tammie Miller, *supra* note 425.
- 433 UFT Providers, *supra* note 429.
- 434 Telephone Interview with Tammie Miller, *supra* note 425. The rate increases did not apply to contracted centers, which are paid in accordance with negotiated rates that are not necessarily related to the 75th percentile. Email from Nancy Kolben, Executive Dir., Child Care Inc., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (June 19, 2009) (on file with NWLC). On May 18, 2009, OCFS issued a Local Commissioners Memorandum allowing local districts to reduce the enhanced rate for FFN providers from 75% of the FCC rate to 70% of the FCC rate in order “to assist the districts to serve more families during these difficult economic times” (the base rate for FFN providers remains at 65% of the FCC rate). N.Y. State Office of Children and Family Servs., Local Commissioners Memorandum 09-OFCS-LCM-07 (May 18, 2009), *available at* <http://www.ocfs.state.ny.us/main/policies/external/#LCM> (follow “09-OFCS-LCM-07” hyperlink). The enhanced rate was established in 2007 for providers who can demonstrate that they have completed ten or more hours of training on specified issues; prior to 2007, all FCC providers were reimbursed at 70% of the FCC rate. N.Y. State Office of Children and



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- Family Servs., Local Commissioners Memorandum 08-OFCS-LCM-10, at 10–11 (July 14, 2008), *available at* [http://www.ocfs.state.ny.us/main/policies/external/OCFS\\_2008/](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/) (follow “08-OCFS-LCM-10” hyperlink); Susan C. Antos & Stephanie Scalzo, Empire Justice Center, Emergency Rule Reduces Payment Rate to Legally Exempt Child Care Providers with Training (Nov. 2, 2009), *available at* <http://www.empirejustice.org/issue-areas/child-care/provider-compensation/emergency-rule-reduces.html>. Even with the May 2009 change, FFN providers in New York City eligible for the enhanced rate are receiving higher reimbursement rates than they were before the update from 2005 to 2007 rates, but the increase is less than it would have been without this change. Telephone Interview with Tammie Miller, *supra* note 425. (The change meant that FFN providers eligible for the enhanced rate in social services districts that were already using 2007 rates experienced a reduction in their reimbursement rates, however. Antos & Scalzo, *supra* note 434.)
- 435 New York CSEA/CCPT Agreement, *supra* note 385, ¶ 10(b); New York CSEA/VOICE Agreement, *supra* note 386, ¶ 10(b); New York UFT MOA, *supra* note 387, ¶ “Market Rates.”
- 436 Draft Summary of VOICE/CSEA Accomplishments, *supra* note 420.
- 437 *Id.*
- 438 *Id.*
- 439 *Id.*; Telephone Interview with Denise Dowell, *supra* note 424.
- 440 Getting Organized, *supra* note 1, at 23.
- 441 Pa. Exec. Order No. 6 (2007), *available at* [http://www.portal.state.pa.us/portal/server.pt/community/executive\\_orders/](http://www.portal.state.pa.us/portal/server.pt/community/executive_orders/) (follow “2007-06” hyperlink) [hereinafter FCC Pennsylvania Executive Order]; Pa. Exec. Order No. 7 (2007), *available at* [http://www.portal.state.pa.us/portal/server.pt/community/executive\\_orders/](http://www.portal.state.pa.us/portal/server.pt/community/executive_orders/) (follow “2007-07” hyperlink) [hereinafter FFN Pennsylvania Executive Order].
- 442 FCC Pennsylvania Executive Order, *supra* note 441, ¶ 3.
- 443 FFN Pennsylvania Executive Order, *supra* note 441, ¶ 3.
- 444 *Id.* ¶ 4; FCC Pennsylvania Executive Order, *supra* note 441, ¶ 4.
- 445 FCC Pennsylvania Executive Order, *supra* note 441, ¶ 7(a), (b); FFN Pennsylvania Executive Order, *supra* note 441, ¶ 7(a), (b).
- 446 See James Parks, *Pennsylvania Child Care Workers Unite for a Voice at Work*, AFL-CIO Now Blog, Nov. 1, 2007, <http://blog.aflcio.org/2007/11/01/pennsylvania-child-care-workers-unite-for-a-voice-at-work/>.
- 447 *20,000 More Pennsylvania Child Care Providers Now Have a Union*, AFSCME WORKS Online Xtras (Am. Fed’n of State, County and Mun. Employees, Wash., D.C.), May 16, 2008, <http://www.afscme.org/publications/18354.cfm>.
- 448 Email from Robert Frein, Dir., Bureau of Subsidized Child Care Servs., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Apr. 19, 2010) (on file with NWLC).
- 449 “Keystone STARS is an initiative of the Office of Child Development and Early Learning (OCDEL) to improve, support, and recognize the continuous quality improvement efforts of early learning programs in Pennsylvania” and is “managed through a partnership of the Office of Child Development and Early Learning (OCDEL) and the Pennsylvania and Regional Keys.” Pennsylvania Early Learning Keys to Quality, Keystone STARS, [http://www.pakeys.org/pages/get.aspx?page=programs\\_STARS](http://www.pakeys.org/pages/get.aspx?page=programs_STARS) (last visited Oct. 27, 2008).
- 450 Pre-K Counts is a state program that provides funding for half-day and full-day pre-kindergarten for three- and four-year-olds who are at risk of school failure. See Pa. Dep’t of Educ., Pennsylvania Pre-K Counts, [http://www.pde.state.pa.us/early\\_childhood/cwp/view.asp?A=316&Q=125765](http://www.pde.state.pa.us/early_childhood/cwp/view.asp?A=316&Q=125765) (last visited Oct. 22, 2009).
- 451 Email from Bonnie Caldwell, Executive Dir., CCPUnited, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Aug. 13, 2009) (on file with NWLC).
- 452 The Pre-K Counts program was increased by \$11.412 million and the child care subsidy and Keystone STARS programs by \$51.22 million. See S. 1389, 192d Gen. Assemb., Reg. Sess. (Pa. 2008); Governor’s Office of the Budget, 2008–09 Budget Highlights, *available at* [http://www.portal.state.pa.us/portal/server.pt/document/318790/08budgethighlights\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/318790/08budgethighlights_pdf) (last visited Jan. 7, 2010).
- 453 Telephone Interview with Catherine Ponerros, Secretary-Treasurer, CCPUnited Pennsylvania (June 17, 2009).
- 454 *Id.* See H.R. 1474, 192d Gen. Assemb., Reg. Sess. (Pa. 2008), *available at* <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2007&ind=0&body=H&type=B&BN=1474> (last visited Sept. 30, 2008). The bill applied to FCC providers that care for four to six non-relative children in their residential homes, and group child care homes that provide care for seven to twelve children. *Id.* The bill contained an exemption for certain municipalities, such as Philadelphia. *Id.*
- 455 *Id.* Telephone Interview with Denise Dowell, Dir. of Strategic Campaigns, CSEA (July 28, 2009).
- 456 Telephone Interview with Catherine Ponerros, *supra* note 453.
- 457 *Id.*
- 458 Telephone Interview with Denise Dowell, *supra* note 455. The grant also covers training for employees of the Brightside Academy centers, who are represented by CCPUnited. *Id.*
- 459 Email from Bonnie Campbell, Executive Dir., CCPUnited, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Oct. 22, 2009) (on file with NWLC).
- 460 Telephone Interview with Denise Dowell, Dir. of Strategic Campaigns, CSEA (June 16, 2009).
- 461 *Id.*
- 462 Telephone Interview with Catherine Ponerros, *supra* note 453.
- 463 *Id.*
- 464 *Id.*

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- 465 Licensed providers may care for a maximum of ten children under sixteen years of age, including children under eleven years of age related to the provider. Kan. Dep't of Health and Env't, Licensing and Regulation for Child Care Facilities—Definitions and Requirements, [http://www.kdheks.gov/bcclr/lic\\_and\\_req.html](http://www.kdheks.gov/bcclr/lic_and_req.html) (last visited June 9, 2009). Registered providers may care for a maximum of six children under sixteen years of age, with no more than three children under eighteen months of age. *Id.*
- 466 Kan. Exec. Order No. 07-21, Preamble, ¶ 1 (2007), available at [http://www.governor.ks.gov/executive/Orders/exec\\_order0721.htm](http://www.governor.ks.gov/executive/Orders/exec_order0721.htm) [hereinafter Kansas Executive Order].
- 467 *Child Care Providers Win with AFSCME in KS and PA!*, AFSCME WORKS Online Xtras (Am. Fed'n of State, County and Mun. Employees, Wash., D.C.), July 20, 2007, <http://www.afscme.org/16129.cfm>.
- 468 Kansas Executive Order, *supra* note 466, ¶ 1.
- 469 *Id.* ¶ 2.
- 470 *Id.* ¶¶ 3, 5.
- 471 Agreement Between American Federation of State County Municipal Employees/Child Care Providers Together and The State of Kansas Departments of Health and Environment and Social and Rehabilitation Services Art. 16 (effective 2009–2012), available at <http://afscmecouncil72.org/kansas-contract> [hereinafter Kansas Agreement].
- 472 *Id.* Art. 7, § 1.
- 473 *Id.* Art. 7, § 2(A).
- 474 *Id.* Art. 7, § 2(B).
- 475 *Id.* Art. 10.
- 476 *Id.* Art. 12.
- 477 *Id.* Art. 12, § 1.
- 478 *Id.* Art. 12, § 2.
- 479 *Id.* Art. 11, § 1(A).
- 480 *Id.* Art. 11, § 2.
- 481 *Id.* Art. 9, § 1(A).
- 482 *Id.* Art. 9, § 1(C).
- 483 *Id.* Art. 9, § 1(E).
- 484 Email from Jim Redmon, Executive Dir., Kan. Children's Cabinet and Trust Fund, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Jan. 4, 2010) (on file with NWLC).
- 485 Gov. Mark Parkinson, The Governor's Budget Report, State of Kansas, Volume 1, Fiscal Year 2011, at 91 (Jan. 2010), available at [http://budget.ks.gov/publications/FY2011/FY2011\\_GBR\\_Volume1—updated\\_2-10-2010.pdf](http://budget.ks.gov/publications/FY2011/FY2011_GBR_Volume1—updated_2-10-2010.pdf).
- 486 Telephone Interview with Jane Carter, Strategic Analyst, AFSCME Council 72 (Mar. 31, 2009).
- 487 *Id.* See H.R. 2851, 82d Leg., Reg. Sess. § 3 (Kan. 2008).
- 488 H.R. 2851 § 1.
- 489 Kan. Dep't of Health and Env't, Policy: Exception to Exceed the Licensed Capacity for School Age Children (Mar. 10, 2008), available at [http://www.kdheks.gov/bcclr/policy\\_exception/Policy\\_Exception-001\\_Exception\\_to\\_Exceed\\_the\\_Licensed\\_Capacity\\_for\\_School\\_Age\\_Children.pdf](http://www.kdheks.gov/bcclr/policy_exception/Policy_Exception-001_Exception_to_Exceed_the_Licensed_Capacity_for_School_Age_Children.pdf).
- 490 Md. Exec. Order No. 01.01.2007.14 (2007), available at <http://www.governor.maryland.gov/executiveorders/01.01.07.14ChildCareProviders.pdf> [hereinafter Maryland Executive Order].
- 491 Press Release, Serv. Employees Int'l Union, 6,000 Maryland Child Care Providers to Vote in First-Ever Union Election (Sept. 5, 2007), available at <http://www.seiu.org/2007/09/6000-maryland-child-care-providers-to-vote-in-first-ever-union-election.php>.
- 492 Maryland Executive Order, *supra* note 490, ¶¶ A, C.
- 493 *Id.* ¶ C.
- 494 *Id.*
- 495 *Id.* ¶ F.
- 496 Md. State Family Child Care Ass'n, Who are We?, <http://www.msfccca.org/pamphlet.htm> (last visited June 9, 2009).
- 497 Md. State Family Child Care Ass'n v. State, No. C-07-291 (Md. Cir. Ct. Sept. 20, 2007) (on file with NWLC).
- 498 Temporary Restraining Order, Md. State Family Child Care Ass'n v. State, No. C-07-291 (Md. Cir. Ct. Sept. 24, 2007) (on file with NWLC).
- 499 State v. Md. State Family Child Care Ass'n, No. 1572 (Md. Ct. Spec. App. Sept. 27, 2007).
- 500 State v. Md. State Family Child Care Ass'n, 966 A.2d 939 (Md. Ct. Spec. App. 2009).
- 501 *Id.* at 954.
- 502 Memorandum of Agreement between the Governor of Maryland and the Maryland State Department of Education and Services Employees International Union, Local 500, CTW (effective 2009–2011) (on file with NWLC) [hereinafter Maryland Agreement].

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- 503 Letter from SEIU Local 500 Kids First to Maryland Family Child Care Providers (June 12, 2009) (on file with NWLC); see also Maryland Agreement, *supra* note 502, § 5, App. A.
- 504 Maryland Agreement, *supra* note 502, § 8.
- 505 Md. Dep't of Educ., Early Childhood Dev., Analysis of the FY 2011 Maryland Executive Budget 12 (2010), available at [http://mlis.state.md.us/2010rs/budget\\_docs/all/operating/r00a99\\_-\\_msde\\_early\\_childhood\\_development.pdf](http://mlis.state.md.us/2010rs/budget_docs/all/operating/r00a99_-_msde_early_childhood_development.pdf).
- 506 Md. Dep't of Educ., Child Care Subsidy Branch, POC Subsidy Rates (effective Jan. 4, 2010), [http://www.marylandpublicschools.org/MSDE/divisions/child\\_care/purchase\\_of\\_care/pocsp\\_rates.htm](http://www.marylandpublicschools.org/MSDE/divisions/child_care/purchase_of_care/pocsp_rates.htm).
- 507 Calculations by NWLC based on comparing POC Subsidy Rates, *supra* note 506, with Md. Dep't of Educ., Child Care Subsidy Branch, Subsidy Rates—March 2008, [http://www.marylandpublicschools.org/MSDE/divisions/child\\_care/purchase\\_of\\_care/pocsp\\_rates\\_2008.htm](http://www.marylandpublicschools.org/MSDE/divisions/child_care/purchase_of_care/pocsp_rates_2008.htm); see also Email from Robyn Cavanagh, Dir. of Child Care and Community Affairs, SEIU Local 500-KidsFirst, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (June 22, 2009) (on file with NWLC).
- 508 Maryland Agreement, *supra* note 502, § 19(A).
- 509 *Id.* § 19(C). Presumably the committee is to report to the superintendent of schools because Maryland houses its child care agency in the Department of Education, not, as most other states do, in the Department of Human Resources or other human services agency. See Md. Dep't of Educ., Divisions, Early Childhood Dev., [http://www.msde.maryland.gov/MSDE/divisions/child\\_care](http://www.msde.maryland.gov/MSDE/divisions/child_care) (last visited Aug. 4, 2009).
- 510 Maryland Agreement, *supra* note 502, 4(A).
- 511 *Id.* § 4(B).
- 512 *Id.* § 4(E).
- 513 *Id.* § 18(E).
- 514 *Id.* § 7(E).
- 515 *Id.* § 7(F).
- 516 *Id.* § 3(A).
- 517 *Id.* § 3(B).
- 518 *Id.* § 14.
- 519 Getting Organized, *supra* note 1, at 23.
- 520 Ohio Exec. Order No. 2008–025 (2008) [hereinafter Ohio Executive Order].
- 521 The FCC providers covered by the order are those in “Type A” homes, who must be licensed and may care for seven to twelve children at once, or for four to twelve children at one time if four or more children at one time are under two years of age. Ohio Admin. Code 5101:2-13-02, available at <http://codes.ohio.gov/oac/5101%3A2-13>. In other states, these large family child care homes are sometimes labeled “group homes.”
- 522 The FFN providers covered by the order are those in “Type B” homes who receive subsidies and, as such, must be certified and may care for six children at any one time, of which no more than three may be under the age of two. Ohio Admin. Code 5101:2-14-01, available at <http://codes.ohio.gov/oac/5101%3A2-14>. The order also covers providers who are in-home aides and receive subsidies. Ohio Executive Order, *supra* note 520, ¶ 5(a).
- 523 Ohio Executive Order, *supra* note 520, ¶ 5.
- 524 *Id.* ¶ 6.
- 525 *Id.* ¶ 7. The order also states that bargaining about the appropriation of funds must conclude “prior to July 1st of any even-numbered year so that [the funds] may be included in the proposed Executive budget.” *Id.*
- 526 *Id.* ¶ 9.
- 527 *Id.* ¶ 6.
- 528 *Id.* ¶ 9.
- 529 *Ohio Child Care Providers Vote AFSCME ‘YES,’ AFSCME WORKS Online Xtras* (Am. Fed'n of State, County and Mun. Employees, Wash., D.C.), Apr. 15, 2008, <http://www.afscme.org/publications/17998.cfm>.
- 530 Email from Alicia Leatherman, Dir., Early Childhood Cabinet, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Aug. 4, 2009) (on file with NWLC).
- 531 Collective Bargaining Agreement Between the State of Ohio and AFSCME, Ohio Council 8, Preamble, Art. 21 (effective 2009–2010), available at [http://www.afscmecouncil8.org/files/images/Ohio\\_Child\\_Care\\_ProviderContract\\_2010.pdf](http://www.afscmecouncil8.org/files/images/Ohio_Child_Care_ProviderContract_2010.pdf) [hereinafter Ohio Agreement].
- 532 *Id.* Art. 12, § 12.1.
- 533 See *id.* § 12.2. Prior to the agreement, Ohio required counties to reimburse of child care providers at the lowest of: (1) the provider's “customary charge to the public,” (2) the reimbursement rate chart provided in the code, or (3) a rate negotiated with the provider, if the rate is “agreeable to the provider and the provider routinely serves at least seventy-five per cent of enrolled children who are eligible for publicly funded child care.” Ohio Admin. Code 5101:2-16-41(B) (2009); see also Ohio Rev. Code Ann. § 5104.32(B)(1), (C) (West, Westlaw through 2010 File 31 of the 128th GA (2009–2010)). The agreement affects the third option.
- 534 Ohio Admin. Code 5101:2-16-41(B) (2010); see also Ohio Dep't of Job and Family Servs., Child Care Manual Transmittal Letter No. 106 (Feb. 26, 2010), available at <http://www.odjfs.state.oh.us/lpc/calendar/fileLINKNAME.asp?ID=CCMTL106>.

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- 535 See Ohio Rev. Code Ann. § 5104.32(B)(1), (C) (West, Westlaw through 2010 File 31 of the 128th GA (2009–2010)). In fact, at the same time that the state agreed with the union to change this provision, the legislature passed a budget bill that amended § 5104.32, including § 5104.32(C), without incorporating the agreed-to change. Fiscal Year 2010–2011 State Budget, 2009 Ohio Laws File 9.
- 536 Ohio Agreement, *supra* note 531, Art. 13.
- 537 Email from Stephanie Shafer, Supervisor, Ohio Bureau of Child Care and Dev., to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Apr. 6, 2010) (on file with NWLC).
- 538 Ohio Agreement, *supra* note 531, Art. 4, § 4.2.
- 539 Email from Stephanie Shafer, *supra* note 537.
- 540 Ohio Agreement, *supra* note 531, Art. 5, § 5.4.
- 541 *Id.*
- 542 *Id.*
- 543 Email from Stephanie Shafer, *supra* note 537.
- 544 Ohio Agreement, *supra* note 531, Art. 11.
- 545 *Id.*
- 546 Email from Stephanie Shafer, *supra* note 537.
- 547 Ohio Agreement, *supra* note 531, App. B.
- 548 *Id.*
- 549 *Id.* Art. 5, § 5.2.
- 550 *Id.* Art. 9, § 9.1.
- 551 Email from Stephanie Shafer, *supra* note 537.
- 552 Telephone Interview with Tom Ritchie, Dir. of Field Servs. and Organizing, AFSCME Ohio Council 8 (Aug. 5, 2009).
- 553 Ohio Exec. Order No. 2007–04S (2007).
- 554 Telephone Interview with Tom Ritchie, *supra* note 552. See Fiscal Year 2008–2009 State Budget, 2007 Ohio Laws File 15 (codified at Ohio Rev. Code Ann. § 5104.30(c)(3)(d) (West, Westlaw through 2009 File 9 of the 128th GA (2009–2010))); Ohio Ass’n for the Educ. of Young Children, Ohio General Assembly Passes Milestone Budget for Early Care and Education in Ohio!, <http://www.oaeyc.org/i4a/pages/index.cfm?pageid=3356> (last visited Jan. 12, 2009). The budget included \$12.5 million designated for the state’s quality rating system and increased eligibility for child care subsidies as well as the state’s Early Learning Initiative (a cooperative program of the Ohio Department of Education and the Ohio Department of Job and Family Services that offers full-day early care and education to children ages three to five) to 200% of the federal poverty level beginning in FY 2009. *Id.*
- 555 The Ohio legislature reduced funding for early care and education by more than \$281 million over two fiscal years. See Katie Kelly & Susan Blasko, groundWork, *Early Care and Education Funding in Ohio*, State Budgeting Matters (Ctr. for Cmty. Solutions, Cleveland, Ohio), Oct. 16, 2009, at 1, *available* at <http://www.communitysolutions.com/assets/1/AssetManager/sbmv5n13.pdf>; Fiscal Year 2010–2011 State Budget, 2009 Ohio Laws File 9. As a result, Ohio lowered reimbursement rates from the 65th percentile of 2006 market rates—which is the approximate equivalent of the 51st percentile of 2008 market rates—to the 35th percentile of 2008 market rates. Ohio Dep’t of Job and Family Servs., Child Care and Development Fund Plan for FFY 2010–2011, at 23–25 (Oct. 1, 2009) *available* at [http://jfs.ohio.gov/cdc/docs/Ohio\\_2010\\_2011\\_CCDF%20Plan1.pdf](http://jfs.ohio.gov/cdc/docs/Ohio_2010_2011_CCDF%20Plan1.pdf). In addition, Ohio reduced eligibility for child care from 200% of the 2008 federal poverty level to 150% of the 2009 federal poverty level, while allowing a family already receiving a subsidy to remain eligible until its income reaches 200% of the federal poverty level. See Ohio Admin. Code 5101:2-16-30 (2010); Ohio Dep’t of Job and Family Servs., Child Care Manual Transmittal Letter No. 104 (Oct. 27, 2009), *available* at <http://www.odjfs.state.oh.us/lpc/calendar/fileLINKNAME.asp?ID=CCMTL104>. For a family of four, this is a decrease in annual income eligibility from \$42,400 to \$33,075. NWLC Calculations based on Annual Update of the HHS Poverty Guidelines, 73 Fed. Reg. 3971 (Jan. 23, 2008); Annual Update of the HHS Poverty Guidelines, 74 Fed. Reg. 4199 (Jan. 23, 2009). The Ohio legislature appropriated funding for the Early Learning Initiative, but the governor vetoed the funding and eliminated the program altogether. Gov. Ted Strickland, Budget Message for Am. Sub. HB 1, at 11 (July 17, 2009), *available* at <http://obm.ohio.gov/document.aspx?ID=e2a5560d-bb63-4fed-a47d-bffafdad221c>; Ohio Exec. Order No. 2009–10S, ¶ 3 (2009).
- 556 Telephone Interview with Terrie Hare, Chief, Ohio Bureau of Child Care and Dev. (Apr. 22, 2008). See S. 232, 127th Gen. Assemb., Reg. Sess. (Ohio 2008).
- 557 S. 232.
- 558 An Act to Ensure the Freedom of Family Child Care Providers to Jointly Negotiate with the State, 2008 Me. Laws ch. 672 (codified at Me. Rev. Stat. Ann. tit. 22, § 8308 (West, Westlaw through 2009 First Reg. Sess. of the 124th Leg.)).
- 559 Me. Rev. Stat. Ann. tit. 22, § 8308(1)(B).
- 560 § 8308(3)(B).
- 561 Local 771, Me. Direct Care Workers’ Union of MSEA-SEIU, Governor Baldacci Signs Bill Allowing Child Care Workers to Unionize, May 28, 2008, [http://www.unionmaine771news.blogspot.com/2008\\_05\\_01\\_archive.html](http://www.unionmaine771news.blogspot.com/2008_05_01_archive.html).
- 562 § 8308(2).
- 563 § 8308(2)(A)(2).
- 564 § 8308(1)(C)(1)–(6).
- 565 § 8308(1)(C)(7).

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- 566 § 8308(1)(C).
- 567 § 8308(4). If the parties do not reach an agreement, disputes over issues of mutual concern may be submitted for mediation and non-binding arbitration by a neutral third-party at the request of either the union or the state. § 8308(2)(A)(4). If a third party cannot be agreed upon, the union and state may each designate one person who will jointly decide on the third party. § 8308(2)(A)(6). In contrast, disputes over the collective bargaining process, which include failure to meet at reasonable times, to respond to the request of the other party to meet in order to bargain, or to execute the written agreement arrived at, are referred to an “acceptable neutral [third] party for mediation, binding arbitration and appropriate remedies.” § 8308(2)(A)(5).
- 568 § 8308(2)(C).
- 569 § 8308(2)(D).
- 570 § 8308(2).
- 571 Email from Mike Sylvester, Organizing Dir., MSEA-SEIU Local 1989, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Apr. 19, 2010).
- 572 *Id.*; Agreement Between the State of Maine and KidsFirst, Maine State Employees Association, Service Employees International Union, Local 1989, Art. 10 (effective 2010–2011) (on file with NWLC) [hereinafter Maine Agreement].
- 573 Maine Agreement, *supra* note 572, Art. 8.
- 574 Email from Bill Hager, Executive Dir., Child Care Svcs. of York County, to Karen Schulman, Senior Policy Analyst, NWLC (Aug. 24, 2009) (on file with NWLC).
- 575 Maine Agreement, *supra* note 572, Art. 6.
- 576 *Id.*
- 577 *Id.* Art. 1.
- 578 *Id.*
- 579 Telephone Interview with Aymie Walshe, Lead Care Div. Representative, MSEA-SEIU Local 1989 (May 15, 2009). See 10-148-33 Me. Code. R. §§ 11.5, 14.8, available at <http://www.maine.gov/dhhs/dlrs/rulemaking/adopted/Ch33Rules.pdf>.
- 580 Telephone Interview with Aymie Walshe, *supra* note 579. See 10-148-5 Me. Code R. § 4(I)(4), available at <http://www.maine.gov/sos/cec/rules/10/148/148c005.doc>. See also Me. Dep’t of Health and Human Servs., Child Care Voucher Program, available at [http://www.maine.gov/dhhs/ocfs/ec/occhs/voucher\\_flyer.doc](http://www.maine.gov/dhhs/ocfs/ec/occhs/voucher_flyer.doc) (informational flyer) (last visited Oct. 22, 2008). This new system, now housed in the Office of Integrated Access and Support, will have the capacity to cross-check data for voucher management with data in Department of Labor, Social Security, Maine Revenue, Child Support and other large databases in order to flag possible eligibility errors. Me. Dep’t of Health and Human Servs., Child Care Development Fund Plan for Maine FFY 2008–2009, at 20–21 (Oct. 1, 2007), available at <http://mainegov-images.informe.org/dhhs/ocfs/ec/occhs/stateplan0809.pdf>.
- 581 Telephone Interview with Aymie Walshe, *supra* note 579. Providers must be listed with the department as a vendor to be paid through a voucher, and many providers were listed incorrectly. *Id.*
- 582 *Id.*
- 583 In order to receive subsidies in New Mexico, non-licensed home-based child care providers must become registered and comply with registration requirements, which include participation in the Child and Adult Care Food Program, monitoring visits, and background checks. N.M. Children, Youth, and Families Dep’t, Child Care and Development Plan for New Mexico FFY 2008–2009, 41, 58, 61 (as amended July 24, 2008), available at [http://www.newmexikokids.org/pages/library/resources/08-09\\_State\\_Plan\\_NM\\_Final\\_July08\\_Amendments.pdf](http://www.newmexikokids.org/pages/library/resources/08-09_State_Plan_NM_Final_July08_Amendments.pdf). The requirements apply to all non-licensed home-based child care providers participating in the subsidy program, even if they are not otherwise subject to regulations. *Id.* As a result, New Mexico does not have a category of subsidized FFN (unregulated) providers equivalent to that which exists in other states.
- 584 An Act Relating to Child Care, 2009 N.M. Laws ch. 238 (codified at N.M. Stat. § 50-4-33 (West, Westlaw through the Second Session of the 49th Legislature (2010))). New Mexico’s legislature also considered bills in 2007 and 2008 that would have created a single bargaining unit of providers, covering subsidized and unsubsidized FCC providers. H.R. 512, 48th Leg., 2d Sess. (N.M. 2008); H.R. 632, 48th Leg., 1st Sess. (N.M. 2007). Both bills failed without a vote. In addition, a bill introduced in the House in January 2009 would have allowed child care centers to organize and bargain collectively with the state. H.R. 811, 49th Leg., 1st Sess. (N.M. 2009). However, this bill did not pass the Health & Government Affairs Committee.
- 585 2009 N.M. Laws ch. 238, § 1(G).
- 586 *Id.*
- 587 § 1(H).
- 588 § 1(F).
- 589 The legislation requires the parties to follow the procedures of the Public Employee Bargaining Act. § 1(J). The Public Employees Bargaining Act includes a prohibition on strikes. N.M. Stat. Ann. § 10-7E-21 (West, Westlaw through 1st Reg. Sess. of 49th Leg. (2009)).
- 590 *NM Child Care Providers Say ‘Yes’ to AFSCME*, AFSCME WORKS Online Xtras (Am. Fed’n of State, County and Mun. Employees, Wash., D.C.), Oct. 30, 2009, <http://www.afsme.org/workers/27226.cfm>.
- 591 Email from Erin Young, AFSCME Representative, to Helen Blank, Dir. of Leadership and Pub. Policy, NWLC (Jan. 5, 2010) (on file with NWLC).
- 592 Getting Organized, *supra* note 1, at 20–22.
- 593 See S. 867, 2007–08 Leg., Reg. Sess. (Cal. 2008); Assemb. 1164, 2007–08 Leg., Reg. Sess. (Cal. 2007).
- 594 Getting Organized, *supra* note 1, at 21–22; S. 697, 2005–06 Leg., Reg. Sess. (Cal. 2006).
- 595 Compare Ca. Governor’s Veto Message for S. 697 (Sept. 29, 2006), available at [http://gov.ca.gov/pdf/press/sb\\_697\\_veto.pdf](http://gov.ca.gov/pdf/press/sb_697_veto.pdf) (arguing that bill would inappropriately limit the state’s flexibility to determine reimbursement rates and would add to the state’s significant budget deficit as well as make child care too costly for low-income families not receiving child care subsidies) with Ca. Governor’s Veto Message for Assemb. 1164 (Oct. 14, 2007),



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available at <http://gov.ca.gov/pdf/press/AB%201164%20veto%20message.pdf> (stating “[w]hile I support efforts to improve the quality of child care services and have provided increased state funding to expand access to subsidized child care, I can [sic] not support this bill as it has the potential to add significant fiscal pressures to the State’s structural budget deficit”) and Ca. Governor’s Veto Message for S. 867 (Mar. 30, 2008), available at [http://gov.ca.gov/pdf/press/SB\\_867\\_Veto\\_Message.pdf](http://gov.ca.gov/pdf/press/SB_867_Veto_Message.pdf) (vetoing bill due to the state’s structural deficit).

- 596 Compare S. 867 § 8432(b) and Assemb. 1164 § 8432(b) with S. 697 § 8431.5(a), (b).
- 597 S. 867 § 8431.5; Assemb. 1164 § 8431.5.
- 598 S. 697 § 8431.5(a), (b).
- 599 S. 867 § 8434.7(b)(3); Assemb. 1164 § 8434.7(b)(3).
- 600 S. 697 § 8431.7(b)(1).
- 601 S. 867 § 8434.7(b)(2); Assemb. 1164 § 8434.7(b)(2).
- 602 S. 697 § 8434.7(b)(2).
- 603 H.R. 5257, 184th Gen. Ct., Reg. Sess. (Mass. 2006).
- 604 See 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).
- 605 Getting Organized, *supra* note 1, at 22. The ballot initiative failed by a margin of 5 percentage points (52.28% to 47.72%). See *id.*
- 606 S. 2218, 185th Gen. Ct., Reg. Sess. (Mass. 2007); S. 2286, 185th Gen. Ct., Reg. Sess. (Mass. 2007).
- 607 See Mass. Gen. Ct., Bill History: Senate, No. 2286, <http://www.mass.gov/legis/185history/s02286.htm> (last visited Dec. 9, 2009).
- 608 S. 55, 186th Gen. Ct., Reg. Sess. (Mass. 2009); H.R. 494, 186th Gen. Ct., Reg. Sess. (Mass. 2009).
- 609 See Mass. Gen. Ct., Bill History: Senate, No. 55, <http://www.mass.gov/legis/186history/s00055.htm> (last visited Apr. 12, 2010); Mass. Gen. Ct., Bill History: House, No. 494, <http://www.mass.gov/legis/186history/h00494.htm> (last visited Apr. 12, 2010).
- 610 Getting Organized, *supra* note 1, at 20.
- 611 State v. State Labor Relations Bd., 2005 WL 3059297 (R.I. Super. Ct. Nov. 14, 2005), *rev’g* New England Health Care Employees Union, Local 1199, No. EE-3671 (R.I. Labor Relations Bd. Apr. 6, 2004), available at <http://www.dlt.state.ri.us/lrb/pdfs/Decisions/DecisionEE3671.pdf>.
- 612 Getting Organized, *supra* note 1, at 22. See Hennepin County, Minn., Res. 06-7-405 (2006) (County Administrator authorized to “meet and negotiate”); Ramsey County, Minn., Res. 2006-328 (2006) (Community Human Services staff authorized 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); St. Louis County, Minn., Res. 613 (2005) (Public Health and Human Services Department authorized to “meet and confer” with union).
- 613 *More Than 2,000 Child Care Providers in Minnesota Now Have AFSCME Representation*, AFSCME WORKS Online Xtras (Am. Fed’n of State, County and Mun. Employees, Wash., D.C.), Oct. 19, 2006, <http://www.afscme.org/publications/12545.cfm>. See Res. 06-7-405; Res. 2006-328; Res. 613.
- 614 See Res. 06-7-405; Res. 2006-328; Res. 613.
- 615 Telephone Interview with Eric Lehto, Dir. of Organizing, AFSCME Minn. Council 5 (May 6, 2009).
- 616 Telephone Interview with Dan Fitzsimmons, AFSCME Representative (June 9, 2009).
- 617 *Id.*
- 618 *Id.*
- 619 *Id.*
- 620 *Id.*
- 621 *Id.*
- 622 Telephone Interview with Carol Nieters, Executive Dir., SEIU Local 284 (Aug. 10, 2009).
- 623 *Id.*
- 624 Omnibus Health and Human Services Finance Bill, 2007 Minn. Laws ch. 147 (codified at Minn. Stat. Ann. § 245A.10(2) (West, Westlaw through 2009 Reg. Sess.)).
- 625 § 245A.10(2)(a).
- 626 Letter from Minnesota Licensed Family Child Care Association to Minnesota State Representatives and Senators (Mar. 2, 2007), available at [http://www.mlfcca.org/pdf%20files/LtrSup\\_LicFee\\_3.07.pdf](http://www.mlfcca.org/pdf%20files/LtrSup_LicFee_3.07.pdf).



**APPENDIX A**  
**UNIONIZATION OF HOME-BASED CHILD CARE PROVIDERS:**  
**SUMMARY OF ACTIVITY IN STATES WITH LEGISLATION ENACTED/EXECUTIVE ORDERS ISSUED**

	Legal Authority to Bargain	Bargaining Units/Coverage/Union	Extent of Bargaining Mandate	Status/Highlights as of March 2010
<b>Illinois</b>	<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>● Subsidized FCC providers (9,000) and subsidized 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 necessary regulatory or legislative approval or appropriations</li> <li>● Right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● First contract (2006–2009) provides: <ul style="list-style-type: none"> <li>● Subsidy rate increases totaling 26% to 35%; increases took place according to schedule</li> <li>● \$27 million for administrative costs and benefits for union health insurance program; coverage began in FY 2009</li> <li>● \$3 million in FY 2008 and \$7 million in FY 2009 for enhanced rates of 5% to 20% for providers who meet certain training or quality requirements; quality rating system (QRS) incorporating these rates began in FY 2008</li> </ul> </li> <li>● Second contract (2010–2013) provides: <ul style="list-style-type: none"> <li>● Subsidy rate increases totaling 22% over three and a half years; first increase of 2.5% took place in Jan. 2010</li> <li>● Funding to expand health insurance program to cover up to a total of 5,000 providers</li> <li>● \$7 million per year to continue QRS</li> <li>● Increased availability of orientation sessions on child care assistance program</li> </ul> </li> <li>● Outside the contracts: <ul style="list-style-type: none"> <li>● All child care center subsidy rates increased by 17% to 20% during years of first contract</li> <li>● Licensed child care center subsidy rates increased by 2.5% in Jan. 2010</li> </ul> </li> </ul>
<b>Iowa</b>	<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, represented by Child Care Providers Together (CCPT)-AFSCME (6,000)</li> <li>● 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 the right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● MOU for FCC providers unit (2008–2009) provides: <ul style="list-style-type: none"> <li>● Subsidy rates increases of 2% effective Oct. 2008; increases took place according to schedule</li> <li>● State and union will contribute equal amounts for health insurance study; legislature appropriated funds in FY 2009, but union has not provided its share</li> <li>● State must distribute orientation packet that includes training opportunities to newly registered FCC providers; state has done so</li> <li>● State will convene summit regarding QRS; summit took place in 2009</li> </ul> </li> <li>● Outside the contract: <ul style="list-style-type: none"> <li>● Child care center subsidy rates increased by 2% in Oct. 2008</li> </ul> </li> </ul>
<b>Kansas</b>	<ul style="list-style-type: none"> <li>● Executive Order (July 2007)</li> </ul>	<ul style="list-style-type: none"> <li>● All FCC providers, both subsidized and unsubsidized (7,000)</li> <li>● Represented by Child Care Providers Together (CCPT)-AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>● Meet and confer</li> <li>● Contract contingent on necessary regulatory or statutory revisions</li> <li>● No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● Contract (2009–2012) provides: <ul style="list-style-type: none"> <li>● State and union will seek funding to increase subsidy rates to 75th percentile of market rates, without lowering income eligibility or raising co-payments; final FY 2010 budget and governor's proposed FY 2011 budget did not include rate increase</li> <li>● State and union will promote health and wellness of providers and share information on health care access</li> <li>● State and union will encourage training opportunities; union will be represented in development of training plan; state and union will research provider mentoring system</li> </ul> </li> </ul>

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	<b>Legal Authority to Bargain</b>	<b>Bargaining Units/ Coverage/Union</b>	<b>Extent of Bargaining Mandate</b>	<b>Status/Highlights as of March 2010</b>
<b>Maine</b>	<ul style="list-style-type: none"> <li>● Legislation (May 2008)</li> </ul>	<ul style="list-style-type: none"> <li>● All FCC providers, both subsidized and unsubsidized, and subsidized FFN providers (2,200)</li> <li>● Represented by Maine State Employees Association (MSEA)-SEIU</li> </ul>	<ul style="list-style-type: none"> <li>● Collective bargaining</li> <li>● Contract contingent on necessary regulatory or legislative revisions, including appropriations</li> <li>● Silent on the right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● Contract (2010–2011) provides: <ul style="list-style-type: none"> <li>● Subsidy rates continue to be set at Oct. 1, 2009, levels, which are based on 2006 market rates</li> <li>● State/union committee will form to examine rate current structure and explore alternatives</li> </ul> </li> </ul>
<b>Maryland</b>	<ul style="list-style-type: none"> <li>● Executive Order (Aug. 2007)</li> </ul>	<ul style="list-style-type: none"> <li>● Subsidized FCC providers and subsidized FFN providers (6,000)</li> <li>● Represented by SEIU Kids First</li> </ul>	<ul style="list-style-type: none"> <li>● Meet and confer</li> <li>● Contract contingent on necessary statutory revisions</li> <li>● No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● Contract (2009–2011) provides: <ul style="list-style-type: none"> <li>● Subsidy rate increases averaging 2.9% effective Oct. 2009; increases took effect in Jan. 2010</li> <li>● State/union committee will form to study health insurance and make recommendations by Sept. 2010</li> <li>● Union will be included in committees working to expand training and education opportunities and joint union/state training committee will be established</li> </ul> </li> <li>● Outside the contract: <ul style="list-style-type: none"> <li>● Child care centers received subsidy rate increases comparable to FCC and FFN provider increases in Jan. 2010</li> </ul> </li> </ul>
<b>Michigan</b>	<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>● All FCC providers, both subsidized and unsubsidized, and subsidized FFN providers (40,000)</li> <li>● Represented by Child Care Providers Together (CCPT), 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>● Contract (2008–2010) provides: <ul style="list-style-type: none"> <li>● Subsidy rate increases of 13% to 35%; increases not implemented because funds not appropriated by legislature</li> <li>● New training program with enhanced rates as completion incentives; not implemented because no funding secured</li> </ul> </li> <li>● Outside the contract: <ul style="list-style-type: none"> <li>● Legislature funded two subsidy rate increases for FCC and FFN providers and centers prior to agreement: 1.5% in Jan. 2008 and 2.25% in May 2008</li> </ul> </li> </ul>
<b>New Jersey</b>	<ul style="list-style-type: none"> <li>● Executive Order (Aug. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>● All FCC providers, both subsidized and unsubsidized, and 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>● Contract (2007–2010) provides: <ul style="list-style-type: none"> <li>● Subsidy rate increases effective Oct. 2007, July 2008, and July 2009; in addition, annual COLA increases beginning with 3% increase in Jan. 2008; increases went into effect as scheduled</li> <li>● State will survey provider health care needs; survey conducted in 2008</li> </ul> </li> <li>● Outside the contract: <ul style="list-style-type: none"> <li>● Child care centers received 3% COLA increase in Jan. 2008</li> </ul> </li> </ul>
<b>New Mexico</b>	<ul style="list-style-type: none"> <li>● Legislation (Apr. 2009)</li> </ul>	<ul style="list-style-type: none"> <li>● Subsidized FCC providers</li> <li>● Represented by Child Care Providers Together (CCPT)-AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>● Collective bargaining</li> <li>● Contract contingent upon appropriations</li> <li>● No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● Negotiations began in Jan. 2010</li> </ul>

**GETTING ORGANIZED: 2010 UPDATE**

	<b>Legal Authority to Bargain</b>	<b>Bargaining Units/Coverage/Union</b>	<b>Extent of Bargaining Mandate</b>	<b>Status/Highlights as of March 2010</b>
<b>New York</b>	<ul style="list-style-type: none"> <li>● Executive Order (May 2007)</li> </ul>	<ul style="list-style-type: none"> <li>● Four bargaining units (52,000 providers total)</li> <li>● Subsidized FCC providers and subsidized FFN providers in New York City, represented by UFT</li> <li>● Unsubsidized FCC providers in New York City, represented by UFT</li> <li>● All FCC providers, both subsidized and unsubsidized, outside of New York City, represented by VOICE/CSEA-AFSCME</li> <li>● Subsidized FFN providers outside of New York City, represented by CSEA/CCPT-AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>● Meet and confer for all units</li> <li>● Contract contingent on necessary regulatory or statutory action, including appropriations</li> <li>● No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● CSEA/CCPT, VOICE/CSEA, and UFT (for subsidized FCC and subsidized FFN unit) contracts (2009–2013) provide: <ul style="list-style-type: none"> <li>● Subsidy rates remain at 75th percentile of spring 2009 market rates for FCC providers and 65% of the FCC rates for FFN providers through Sept. 2011</li> <li>● \$14.8 million for CSEA/CCPT and VOICE/CSEA and \$23 million for UFT in state funding for health insurance to cover providers under New York’s Family Health Plus program</li> <li>● \$500,000 for CSEA/CCPT and VOICE/CSEA and \$500,000 for UFT to set up professional development funds for providers</li> <li>● \$11.2 million for VOICE/CSEA and \$3 million for UFT for quality improvement grants for FCC providers and the unions and the state will work together to create a QRS, to the extent funding is made available for that purpose</li> </ul> </li> <li>● Governor’s proposed FY 2010–2011 budget includes first-year funding to implement all three contracts</li> </ul>
<b>Ohio</b>	<ul style="list-style-type: none"> <li>● Executive Order (Feb. 2008)</li> </ul>	<ul style="list-style-type: none"> <li>● All FCC providers, both subsidized and unsubsidized, and subsidized FFN providers (8,000)</li> <li>● Represented by Child Care Providers Together (CCPT)-AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>● Collective bargaining</li> <li>● Contract contingent on necessary regulatory or statutory action, including appropriations</li> <li>● No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>● Contract (2009–2010) provides: <ul style="list-style-type: none"> <li>● State will conduct study to evaluate current reimbursement method, with participation from union and providers, and will eliminate the authority for individual county departments to negotiate rates that are lower than providers’ customary rates</li> <li>● Union will explore health insurance options and state will provide assistance “where possible”</li> <li>● Union will be permitted to conduct thirty-minute union orientations at specified FCC and FFN provider trainings</li> </ul> </li> <li>● Outside the contract: <ul style="list-style-type: none"> <li>● Executive order increased subsidy rates for FFN providers and centers to 65th percentile of 2006 market rates in Mar. 2007 and legislature expanded income eligibility limits for child care assistance in 2008 and 2009</li> <li>● State reduced subsidy rates to 35th percentile of 2008 market rates and reduced income eligibility limits to below the increased 2008–2009 levels in July 2009</li> </ul> </li> </ul>

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	<b>Legal Authority to Bargain</b>	<b>Bargaining Units/ Coverage/Union</b>	<b>Extent of Bargaining Mandate</b>	<b>Status/Highlights as of March 2010</b>
<b>Oregon</b>	<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> <li>• Legislation codified stronger bargaining authority in third Executive Order (June 2007)</li> </ul>	<ul style="list-style-type: none"> <li>• Two bargaining units</li> <li>• All FCC providers, both subsidized and unsubsidized, represented by AFSCME (4,500)</li> <li>• Subsidized FFN providers, represented by SEIU (6,000)</li> </ul>	<ul style="list-style-type: none"> <li>• Third Executive Order in Feb. 2007 strengthened bargaining authority from meet-and-confer to collective bargaining authority and legislation codified bargaining authority</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>• First AFSCME contract (2006–2009) provides:               <ul style="list-style-type: none"> <li>• FCC base subsidy rate increases to 100% of the 75th percentile of 2006 market rates; increases took place in July 2007</li> <li>• Union and state will “work together to explore” health insurance options; AFSCME began group insurance plan for FCC providers without state funding in Aug. 2009</li> <li>• Union will form a training committee, which will make recommendations to the state; as of Apr. 2009, the committee had been formed and was working to increase training opportunities</li> <li>• State will request funds to increase child care eligibility from 150% to 185% of the federal poverty level and lower co-payments by an average of 20%; changes implemented in 2007–2009 budget bill</li> </ul> </li> <li>• First SEIU contract (2007–2009) provides:               <ul style="list-style-type: none"> <li>• FFN base subsidy rate increases to 88% of the 75th percentile of 2006 market rates and enhanced rate increases to 95% of the 75th percentile of 2006 market rates for providers who meet certain training requirements; increases took place in July 2007</li> <li>• State funding for FFN providers to attend orientations and other trainings; funding has significantly increased participation in trainings and number of providers eligible for enhanced rate</li> <li>• State will request funds to increase child care eligibility from 150% to 185% of the federal poverty level and lower co-payments by an average of 20%; changes implemented in 2007–2009 budget bill</li> </ul> </li> <li>• Second AFSCME contract (2009–2011) provides:               <ul style="list-style-type: none"> <li>• FCC base subsidy rates remain at 100% of the 75th percentile of 2006 market rates</li> <li>• Union and state will “work together to explore” health insurance options</li> <li>• Union will form a training committee, which will make recommendations to the state, and if additional funds become available, state and union will create a training fund to help providers pay for costs of attendance</li> </ul> </li> <li>• Second SEIU contract (2009–2011) provides:               <ul style="list-style-type: none"> <li>• FFN base subsidy rates remain at 88% of the 75th percentile of 2006 market rates and enhanced rates remain at 95% of the 75th percentile of 2006 market rates</li> <li>• Continued state funding of orientation and training costs and newly mandatory orientation training will include union presentations on union membership benefits</li> </ul> </li> <li>• Outside the contracts:               <ul style="list-style-type: none"> <li>• Child care center subsidy rates increased to 100% of 75th percentile of 2006 market rates in Oct. 2007</li> </ul> </li> </ul>
<b>Pennsylvania</b>	<ul style="list-style-type: none"> <li>• Two Executive Orders issued together (June 2007)</li> </ul>	<ul style="list-style-type: none"> <li>• Two bargaining units</li> <li>• All FCC providers, both subsidized and unsubsidized (4,000)</li> <li>• Subsidized FFN providers (20,000)</li> <li>• Both units represented by Child Care Providers United (CCPUnited), a partnership between SEIU and AFSCME</li> </ul>	<ul style="list-style-type: none"> <li>• Meet and confer for both units</li> <li>• Contract contingent upon necessary regulatory or statutory revisions, including appropriations</li> <li>• No right to strike</li> </ul>	<ul style="list-style-type: none"> <li>• Negotiations are ongoing as of Mar. 2010</li> </ul>

	Legal Authority to Bargain	Bargaining Units/Coverage/Union	Extent of Bargaining Mandate	Status/Highlights as of March 2010
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>Two bargaining units</li> <li>Subsidized FCC providers and subsidized FFN providers (10,000)</li> <li>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>First contract for the subsidized unit only (2007–2009) provides:                             <ul style="list-style-type: none"> <li>Base subsidy rate increases of 7% in July 2007 and 3% in July 2008 for FCC providers and 4% in July 2007 and 3% in July 2008 for FFN providers; in addition, FCC providers receive an increase in rates for care for infants and during nonstandard hours and FFN providers receive an increase in rates for siblings of the first child in care; all increases took effect according to schedule</li> <li>State funding of up to \$555/month per provider for health insurance for eligible FCC providers beginning in July 2008, up to a total of approximately \$346,000 per month; implemented and 675 providers participating by Apr. 2009</li> <li>Almost \$1 million in state funding for reimbursement and bonus payments for FFN providers who attend trainings; implemented according to plan</li> </ul> </li> <li>After an initial arbitrated and litigated second contract did not receive funding, the state and the union agreed on a second contract for the subsidized unit only (2009–2011) that provides:                             <ul style="list-style-type: none"> <li>Base subsidy rates remain at the July 2008 level</li> <li>The subsidy rate for children ages 12 to 17 months increases to the rate for infant care, and the number of hours required to qualify for the rate for nonstandard hours care decreases; both changes went into effect in July 2009</li> <li>State funding for health insurance premiums increases by approximately \$17/month per provider in the first year of the contract and by an additional \$17/month per provider in the second year of the contract, and the total monthly cap increases by approximately \$10,500 in the first year and an additional \$10,500 in the second year; changes went into effect in July 2009</li> <li>Almost \$1 million in state funding for reimbursement and bonuses for FFN providers who attend trainings</li> </ul> </li> <li>Pursuant to the right to union representation of unsubsidized FCC providers in negotiated rulemaking:                             <ul style="list-style-type: none"> <li>Union is participating in negotiated rulemaking with the state to overhaul the regulations on family child care</li> </ul> </li> <li>Outside the contracts:                             <ul style="list-style-type: none"> <li>Child care center subsidy rates increased by 7% in July 2007 and 3% in July 2008</li> <li>Bill to grant right to subsidized child care centers and staff as a unit to bargain collectively with the state failed in 2008 and 2009</li> </ul> </li> </ul>



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<b>Wisconsin</b>	<ul style="list-style-type: none"> <li>● Executive Order (Oct. 2006)</li> <li>● Legislation (June 2009)</li> </ul>	<ul style="list-style-type: none"> <li>● All FCC providers, both subsidized and unsubsidized, and subsidized FFN providers (6,000)</li> <li>● Represented by Child Care Providers Together, an affiliate of 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>● Contract (2008–2011) provides:               <ul style="list-style-type: none"> <li>● State will continue to conduct annual market rate surveys and set base subsidy rates at the 75th percentile of those rates and continue to pay a 10% higher rate to programs that meet a higher-quality standard; state has conducted surveys but has not updated rates because necessary funding has not been approved and because June 2009 legislation prohibits the state from increasing rates before June 30, 2011; rates have been at the 75th percentile of the 2005 market rates since 2006</li> <li>● State and union will work together to make “comprehensive” health insurance “accessible and affordable” for providers and will convene a joint committee to review options; as part of this process, state and union achieved inclusion of childless adults in state health care program for low-income families beginning in July 2009, and joint committee is working on feasibility study on FCC provider health insurance</li> <li>● State will encourage provider training by expanding training schedule and providing trainings in additional languages; meet-and-confer process has resulted in joint union-state county meetings on licensing and training issues</li> </ul> </li> </ul>

**APPENDIX B**  
**UNIONIZATION OF HOME-BASED CHILD CARE PROVIDERS:**  
**SUMMARY OF ACTIVITY IN OTHER STATES**

	<b>Legal Authority to Bargain</b>	<b>Bargaining Units/ Coverage/Union</b>	<b>Extent of Bargaining Mandate</b>	<b>Status/Highlights as of March 2010</b>
<b>California</b>	<ul style="list-style-type: none"> <li>● Legislation passed but vetoed (Sept. 2006, Sept. 2007, and Mar. 2008)</li> </ul>	<ul style="list-style-type: none"> <li>● All FCC providers, both subsidized and unsubsidized, and subsidized FFN providers</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>
<b>Massachusetts</b>	<ul style="list-style-type: none"> <li>● Legislation passed but vetoed (Aug. 2006)</li> <li>● Ballot initiative defeated 52%-48% (Nov. 2006)</li> <li>● Legislation introduced but not passed (2007 and 2009)</li> </ul>	<ul style="list-style-type: none"> <li>● Most recent legislation would have created one bargaining unit</li> <li>● Subsidized FCC providers and subsidized 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>
<b>Rhode Island</b>	<ul style="list-style-type: none"> <li>● Legislation passed but vetoed (June 2005)</li> </ul>	<ul style="list-style-type: none"> <li>● Subsidized FCC providers and subsidized 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>







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