



Unionization of the Home Child Care Industry:

Beware Taxpayers, Providers, and other
Independent Business Owners

September 16, 2013

Summary

Hundreds of home-based child care professionals, who started their own businesses to build better futures for themselves, may soon lose their independence and the freedom to provide services in the manner they see fit. Most never considered that unionization would be part of their work; nor do they see themselves as incapable of operating their businesses without union representation.

Today, they are independent small business owners; in the coming weeks, if a majority of those who vote at a small special election opt to unionize, every one of them will see herself transformed into a quasi-government worker, forced to pay compulsory union dues or fees and subject to the agenda of a national and international political entity: the Service Employees International Union (SEIU).

The successful unionization of this group of providers, however, will not end the matter, with consequences reaching into industries throughout the state. Other independent service providers who receive subsidized payments from the state may also be forced to unionize against their will, including small business owners or independent contractors in other areas of child or home care, health services, real estate, or even in the retail industry.

Regarding home child care providers, this report reviews results from other states and discusses a number of important considerations and projections of which these providers and the general public should be aware, especially those who are eligible to vote in the upcoming election. If patterns observed with similar efforts in other states hold true in the Ocean State, there are a number of reasons for the child care industry, other professionals, and taxpayers to be concerned:

Diversion of Funds

A portion of taxpayer money, originally intended to aid low-income families, will end up, instead, in the bank accounts of the SEIU and other unions.

- **Broken promises:** Unions are usually not able to fulfill the promises they make to providers.
- **Individual rights:** Child care providers may be severely restricted.
- **Reduced services:** In other states, when home child care providers are unionized, the number of providers and children served usually shrinks.
- **Legality:** Involuntary representation by a state-selected monopoly union may be unconstitutional.
- **Increased union clout:** The financial and political power of the statewide union stands to be substantially increased, with up to \$500,000 or more to further advance its political agenda.
- **Trojan horse:** The stated mission of the AFL-CIO labor union is to expand its membership in Rhode Island, targeting other independent contractors and small businesses in the state.
- **Burden on taxpayers:** As unions seek to provide benefits to a newly unionized professionals, it will come at taxpayer expense.
- **Missed opportunities:** Other alternatives do exist for child care and other service providers that might be better for everybody involved.

The Election Process

On August 6, 2013, only three weeks after Governor Lincoln Chafee signed legislation allowing for child care unionization, the SEIU filed a petition with the State Labor Relations Board (SLRB) for an election among providers caring for children who receive assistance.

The board is preparing for the election and will designate locations across Rhode Island at which providers will be able to vote. This will not be a mail ballot election. Based on patterns in other states, voter turnout is expected to be low, with as few as 15% of the providers potentially deciding the fate of the entire group. Only votes cast in person will be counted, so if only 100 providers actually vote and 51 vote for the union, all 580 or so providers will be exclusively represented by the SEIU — even those who choose not to join the union.

Broken Promises: A Poor Track Record

Based on data from 15 other states that have unionized their

child care providers, it is evident that many of the promised results promoted as benefits of unionization *are usually unfulfilled*.¹ With compulsory dues automatically deducted from their subsidized payments, providers are at a high risk of receiving little or no benefit in exchange. Among the items commonly promised to prospective union members are health care benefits, increased state subsidies for services, and enhanced working conditions.

However, all financial items to be negotiated by a union with the state are subject to legislative funding. Given the Ocean State's dire fiscal status and current budgetary pressures, it is highly questionable whether this area would ever see new spending. Even the local AFL-CIO head in Rhode Island confirmed this process.²

Even if a raise in subsidy rates or health insurance is negotiated with the state, the benefits will not be available to providers unless the legislature agrees to pass additional funding for that specific purpose.

Ballot Language Revision

The Rhode Island Center for Freedom and Prosperity has petitioned the SLRB to revise the language on the proposed ballot. It is the opinion of our Center that the proposed language does not make an important provision clear to those child care providers who will be voting: that by opting to unionize and accept representation, such representation would be *exclusive* to the SEIU. Any child care providers who find alternative means of negotiating with the state will be unable to pursue them.

The Center therefore recommends that the ballot language should be revised to include the word “exclusively,” to read more clearly:

*‘Do you desire to be represented for the purpose of collective bargaining **exclusively** by Service Employees International Union, District 1199, NE, or by no provider representative.’*

- Of the 15 states that have unionized child care providers, only 6 have active contracts.
- Only a fraction of child care providers who pay dues or fees have obtained any form of health insurance. In the three states for which evidence of this benefit can be found, eligibility is restricted by some combination of household income, number of children, and even a limit on the number of providers who can claim the benefit at one time.
- Only about half of the states where data is available saw an increase in total state and federal funding through the Child Care and Development Fund (CCDF) for subsidized child care services after unionization.

Industry Risk: Reduced Services for Children

Not only is there risk to individual child care providers, but the entire child care industry in Rhode Island is likely to suffer adverse consequences of unionization:

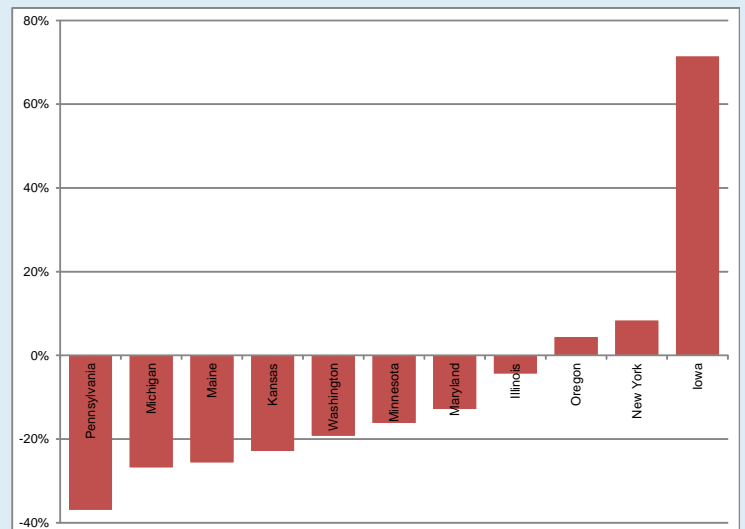
- Of the 10 states that successfully negotiated and implemented union contracts at some point, and for which the data is available, eight experienced a decrease in the number of children served through the CCDF after unionization.³
- Of the 11 states for which the data is available, eight experienced a decrease in the number of licensed providers, by an average of 21%.

Union Dues & Fees; Rhode Island Projections

If unionization is successful at the ballot box, all providers who subsequently opt to become full union members will be required to pay dues. Those who do not wish to become members will still be forced to pay compulsory “fair share fees” that the law allows to be as high as full member dues.⁴

Change in Number of Licensed Child Care Providers After Unionization

According to data from ChildCareUnionInfo.com, eight of the eleven states for which data is available saw a decrease in the percentage of licensed child care providers after unionization.



- Of 15 other states with unionization experience, dues of six are unknown, dues of five are monthly (four at \$25 and one at \$35), and dues of four are based on a percentage of the provider's subsidy check (1.5% to 2.1%). In Illinois, some providers pay \$900 per year.

The process by which dues are funneled to the union is worth noting. Currently, subsidized child care assistance for low income families is sent directly from the state to the provider, as directed by the family. Once unionized, the state, before paying the provider, will siphon off a percentage of these payments, money that was intended to be used for the care of children, and instead send it directly to the SEIU.⁵

- At \$25 per month and 580 providers, \$174,000 per year of taxpayer money would be directed to the union and away from providers; at the Illinois maximum (\$900 per year), \$522,000 would be redirected.
- Per U.S. Dept. of Health & Human Services (HHS) data, 2011 expenditures for “direct services” in Rhode Island’s child care program were \$33,673,651; ⁶ approximately 30% of children are served by in-home providers, who will be subject to these dues. ⁷ At 2%, dues would equal \$202,042 per year, or an average of around \$348 per provider.
- Using rough estimates for a “typical” subsidy rate, the high end of the potential range for dues would be equivalent to the full government benefit for up to 70 children.

One accomplishment the unions have been able to make in some states in which they reached a contract was to increase subsidy rates. However, when subsidy rates are locked in by these contracts, if future legislatures look to make cuts to

the overall CCDF program, they cannot be made by reducing rates. Therefore, cutbacks must come from some-where else, likely via eligibility guidelines for families

A New Taxpayer Burden

If unions are successful in negotiating benefits and rate increases for these and other newly unionized industries, and if the legislature approves the spending, the cost of providing new perks will fall squarely on the shoulders of Ocean State taxpayers, as if employees in these industries are government workers. With budget deficits already projected to be in the hundreds of millions of dollars in the coming years, and with Rhode Island already ranking at or near 50th in an alarming number of economic tax indices, this is hardly a new burden taxpayers, or Rhode Island, can afford to bear.

RI Projections: If, for example, subsidy rates were to increase by 10%, about \$3.4 million per year would need to be added to the state’s already bloated budget. If healthcare benefits were to be provided to all 580 providers, another \$2.5 million to \$4.0 million could be needed from taxpayers. ⁸

And these projections are just for one industry. Below, this report discusses the additional industries that may be targeted for unionization in the coming years.

A Trojan Horse?

This is not the first time the SEIU has attempted to unionize providers in Rhode Island. In 2005, then-Governor Donald Carcieri vetoed a previous attempt. In his veto letter, the governor called it an

“unmitigated legal and financial disaster” for both taxpayers and the state’s child care system. He also said, “This bill is the Trojan Horse of the effort by organized labor to swell its ranks in the public sector as its ranks in the private sector diminish.”⁹

Eight years later, the Rhode Island AFL-CIO head confirmed the former governor’s suspicion.¹⁰ On WPRI-TV12, on Ted Nesi’s *Executive Suite* program, George Nee boldly admitted that the effort to unionize home child care workers was just the beginning, stating that we’re “going to see more and more of this type of situation.”

Commenting that unless unions grow, they will fade away, Nee further stated that “from membership comes political and legislative strength” and asked rhetorically: “Do we seek more power?” His answer: “Yes.”

By these standards, any other independent contractor or small business owner who provides services to clients who receive state-subsidized assistance may soon become subject to forced unionization. Industries and providers who may be on the union’s target list could include:

- **Home health care providers:** family members who care for loved ones with disabilities
- **Health professionals:** doctors, dentists, and others who provide services to Medicaid patients
- **Landlords:** building owners with tenants receiving housing assistance
- **Food retail:** employees of stores that accept (SNAP) food stamps
- **Child care expansion:** employees of larger centers

Legal Considerations

Rhode Island may be violating child care providers’ First Amendment rights by forcing them into an unwanted relationship with the SEIU. The First Amendment protects the right of freedom of speech and to petition government. The government does not have the authority to force citizens or small businesses to accept handpicked lobbyists.

In some cases, providers are not strangers, but friends and relatives of the families for whose children they care. As with small businesses, it isn’t clear that the government can require grandmothers to pay for negotiating services in order to receive some compensation while watching their own grandchildren.

Similar unionization schemes in Michigan, Illinois, and Minnesota have been challenged as unconstitutional. Michigan eventually ended its scheme after a lawsuit was filed, while the Illinois case is pending review at the United States Supreme Court.

Rights of Child Care Providers & Other Options

Child care providers are independent business owners. They set their own working conditions and hours and hire their own employees. Caring for children who are on state assistance does not transform them into public employees, nor does it create an employment relationship with the state government.

Forcing providers into a union is no different than if Rhode Island tried to force all small businesses to accept the Chamber of Commerce as their

mandatory lobbyist. Providers have the right to lobby the state government through voluntary associations, rather than through the state's handpicked monopoly union.

Also, child care providers, as small business owners, are not full state employees, and therefore are not covered under the National Labor Relations Act. In Rhode Island, it appears that providers were placed under the jurisdiction of the SLRB, which would indicate an ability to file a decertification petition.

However, this would be nearly impossible for providers to accomplish, because unlike a more-standard labor union, they do not have a common workplace or union hall in which to collect the signatures needed for petitions. It would require them to go door to door to 580 homes across the state and collect enough signatures.

Unionization is not the only option if greater representation is desired. Trade Associations accomplish the same things unions can, with a cost of dues that is far less and with more control over workplace provisions. Moreover, in such arrangements membership is completely voluntary. Association dues can be as low as \$30–50 per year, while union dues are likely to be a minimum of \$300 per year.

Forced Representation

Forcing providers into SEIU representation is no different than if RI tried to force all businesses to accept the Chamber of Commerce as their exclusive, state-mandated lobbyist!

End Notes

¹ States that have experimented with unionization are in very diverse stages of the process, with many having unwound the change. The availability of data on the results is also inconsistent, so it is a matter of some debate which states ought to be considered in the group. Based on data collected for ChildCareUnionInfo.com, the states counted here are Connecticut, Illinois, Maryland, New Mexico, New York, Oregon, and Washington, which all have active unions, as well as Iowa, Kansas, Maine, Michigan, New Jersey, Ohio, Pennsylvania, and Wisconsin, which all have unions that are inactive or defunct for a variety of reasons.

² See: www.wpri.com/sp-home-2/sp-home-21/9-1-george-nee-rhode-island-afl-cio-unions-labor-day

³ The data for child care provider unionization must be gathered on a state-by-state basis and is presented in a variety of ways (e.g., whether the number of providers shown is the total, only in-home providers, or only in-home *and licensed* providers and whether or not the total includes those receiving pass-through funding from their respective states). The Center therefore partnered with the Coalition of Union Free Providers — www.childcareunioninfo.com — for the collection of accurately comparable data.

⁴ 40-6.6-8(b): “Each CCAP family child care provider may choose whether to be a member of the provider organization; provided, however, that after a first contract is ratified, the provider representative shall be authorized to collect from non-member CCAP family child care providers a service charge as a contribution toward the negotiation and administration of the written contract. The service charge shall not exceed the regular dues paid by CCAP family child care providers who are members of the provider representative.” See: webserver.rilin.state.ri.us/BillText13/HouseText13/H5946A.pdf

⁵ 40-6.6-8(b): “The state shall deduct the service charge, membership dues, and any voluntary deductions authorized by individual CCAP family child care providers, from the payments to CCAP family child care providers.” Ibid.

⁶ See: www.acf.hhs.gov/sites/default/files/occ/fy_2011_expenditures_all_years_508_compliant.pdf

⁷ See chart on page 3, here: childcare.gov/sites/default/files/StateProfiles/RI.pdf

⁸ This range is defined by the rates described in available contracts from Illinois and Washington, where child care providers are members of the SEIU. See: www.state.il.us/cms/download/pdfs/emp_seiuchild.pdf and www.ofm.wa.gov/labor/agreements/09-11/childcare/childcare.pdf.

⁹ See: news.providencejournal.com/breaking-news/Carcieri%20veto%20message.pdf

¹⁰ See: www.wpri.com/sp-home-2/sp-home-21/9-1-george-nee-rhode-island-afl-cio-unions-labor-day