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POLICY BRIEF

Unionizing Daycare

Analysis of the proposal requiring union membership and collective bargaining in the provision of state subsidized daycare services

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For unionized daycare workers, membership in the union Local would be a mandatory condition of employment, and failure to pay union dues in full and on time would be cause for dismissal.

Child care center directors and workers would be forced to join a union as a result of taking into care one child whose family receives a state subsidy for care.

Introduction

The legislature is currently considering a proposal to require union membership of directors and workers at daycare centers across the state.[1] The new requirement would apply to small daycare centers that accept even one child from a family receiving subsidized child care.

Description of the Unionization Proposal

If adopted, this proposal would impose union membership on all child care directors and workers, a process that started in February 2006, when collective bargaining was imposed on Family Child Care providers caring for any child whose family receives public assistance.[2]

The main components of the new proposal are as follows:

- Child care center directors and workers would be forced to join a union as a result of taking into care one child whose family receives a state subsidy for care. Certain centers would be exempt from mandatory collective bargaining: those operated by a unit of government or an Indian tribe, or by an entity which operates 10 or more child care centers statewide, or is a large social service organization with a national presence.[3]

- Child care center directors and workers would become "public employees" of the state for purposes of collective bargaining under the Public Employees' Collective Bargaining Act.

[1] Introduced as bills HB 1329 in the House and SB 5572 in the Senate.
[2] Revised Code of Washington 41.56.028.
[3] HB1329 (15)(b).

Extending collective bargaining to daycare centers would strengthen the power of union leaders and weaken the authority of state lawmakers.

- The designated union organization would have authority to enter into collective bargaining to negotiate "economic compensation, such as the rate and manner of subsidy payments, including quality incentives" (such as wages), mechanisms and funding for access to health care insurance and other benefit programs, funding for professional development training, grievance procedures and a vague category called "other economic matters."

- The statutory definition of collective bargaining includes negotiation over wages, hours and working conditions "which may be peculiar to an appropriate bargaining unit of such public employer."[4] As public employees of the state, child care centers may be forced by their bargaining unit to pay wages according to a pre-set "career and wage ladder" defined by statute,[5] rather than by individual work performance.

- Wage levels in the "career and wage ladder" could be subject to mandatory negotiation with designated union representatives, and could set wages based on level of education, experience, level of responsibility, early childhood credits and other training requirements. No provision for individual merit pay or an individual year-end bonus for workers would be allowed.

- Extending collective bargaining to daycare centers would strengthen the power of union leaders and weaken the authority of state lawmakers.

- Lawmakers would be barred from reviewing the provisions of any collective bargaining agreement. No amendments, additions or changes would be allowed. Lawmakers would only be permitted to vote up or down on total funding, by considering union agreements "solely for the purpose of renegotiating the funds necessary to implement the agreement."[6]

- Under the new proposal, several million dollars would be transferred from the treasury to union bank accounts, deducted by the state from subsidy payments to child care centers. Under a November 2006 collective bargaining contract with Family Child Home providers, unions will receive $6.13 million in public funds.[7]

- The state would retain management control over the delivery of state services and child care subsidy programs, including eligibility for subsidies.

- The Director of the Office of Financial Management would certify that the compensation and benefit provisions of a collective bargaining agreement are "feasible financially for the state," or reflect the binding decision of an arbitration panel.

- Retirement benefits would not be subject to negotiation.

- In theory, daycare workers would not be allowed to strike, although no enforcement policy is included and there would be no penalty if a strike occurs.

- Daycare center directors would control hiring, firing and the work hours of

[4] RCW 41.56.030(4)Definition of collective bargaining.
[5] RCW 43.215.505
[6] "Contract for Washington Family Child Care Providers - Summary," SEIU Local #925, July 2007 – July 2009, at http:www.seiu925.org/Early_Learning/FCCP_Summary/default.aspx.
[7] Ibid, and see Appendix. The contract requires the state to pay a minimum of 2% of the 10% increase in subsidy payments to union bank accounts. Between August and December 2007 the union received $1.6 million in payments from the state.

their employees.

- Parents would still be allowed to choose their own child care provider
- Provisions of the bill may violate the National Labor Relations Act.
- The bill would grant union officials state immunity from violating federal antitrust law, which if challenged in court, could result in substantial legal costs to the state.
- The bill has a fiscal note of $960,798, which would permanently increase state spending, further adding to the legislature's problems.
- The bill would require all child care centers to provide the Department of Early Learning with a list of the names and addresses of all current child care directors and workers each year, and provide this list to a labor organization seeking to organize these directors and workers. Providing state assistance to the private organizing activities of a union violates the privacy rights of child care center directors and workers.

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Recent Increases in Daycare Subsidy Payments

In the 2005-07 budget cycle the state paid $138 million in subsidies to daycare providers to care for children from low-income families. In 2007-09, the legislature increased that amount to $214 million, a rise of 55%.[8]

In addition to state spending, several federal programs add to the amount spent on daycare subsidies in Washington. In 2005-07, the federal government spent $551 million on daycare subsidies in Washington. In 2007-09 the in-state federal daycare subsidy will be $549 million.[9]

In the 2007-09 budget cycle, Child Care Centers are receiving a $32.4 million increase in subsidy payments from the state to care for low-income children.[10] These Centers employ 15,488 people.[11] This funding increase was obtained by these providers, even though they do not belong to a union.

The 2007 budget also raised subsidy payments in the amount of $45 million pursuant to a November 2006 contract agreement between the Department of Early Learning and the SEIU Union Local 925 representing licensed Family Care Homes (FCH) and license-exempt Family Friend and neighbor Care (FFN). The agreement covers 29,108 workers.[12]

Number of children in child care

There are just over one million (1,094,866) children under age 13 in

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[8] "Economic Services Administration Briefing Book," Department of Social and Health Services, 2007 pages 4 and 10, at www1.dshs.wa.gov/pdf/esa/briefbook/2007expenditures.pdf.
[9] Ibid., page 4.
[10] "Washington State Legislative Budget Notes for 2007-09 Biennium," Part V-Omnibus Appropriations Act-Agency Detail, Department of Health and Human Services, page 154, Economic Services Administration entry.
[11] "Quarterly Workforce Indicators," LEHD Washington Industry Reports, United States Census Bureau, Fourth Quarter 2006, Code 6244, "Child Day Care Services."
[12] "Quarterly Workforce Indicators," LEHD Washington Industry Reports, United States Census Bureau, Fourth Quarter 2006, Code 6241, "Individual and Family Services."

Washington.[13] The vast majority of these children, more than 85%, are cared for in a home setting by their parents, other family member or a trusted neighbor.

About 15%, or 166,782, of children under age 13, receive care in one of two types of institutionalized, state-licensed child care. Child Care Centers, of which there are 2,092, [14] provide care for 118,482 children.[15] Family Care Homes (FCH), of which there are 5,387,[16] provide care for 48,300 children.[17]

The families of approximately 38% of children in daycare receive a tax-funded subsidy.[18] Families of the remaining 62% of the children in daycare pay the full cost of care, without relying on the state for help.

A more informal type of care is called Family, Friend and Neighbor (FFN) and does not require a licensing from the state. Union sources estimate there are at least 6,000 people providing daycare that is classed as Family, Friend and Neighbor.[19]

One policy concern is that many of these informal care providers may stop accepting children from subsidized families in order to avoid the added cost and loss of operating freedom that comes from having to join a union.

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The Cost of Child Care Centers

Child Care Centers provide institutional care to children at the highest cost to families. These centers are legally permitted to provide one adult for the care of eight children, with up to four of those children being infants.[20] In 2006, the median annual cost of Child Care Center care was $9,308 for an infant, $7,800 for a toddler, $7,124 for a preschooler, and $4,065 for a school age child.[21]

The Cost of Family Care Homes

Family care homes (FCH) most closely approximate traditional home-based parent care. An FCH license allows a provider to care for up to 12 children, with one adult for every six children, and a maximum of two infants.[22] In 2006, the median annual cost of FCH care was $7,020 a year for an infant, $6,500 for a toddler, $5,980 for a preschooler and $3,120 for a school age child.[23]

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[13] "Key Child Care Trends in 2006," Washington State Child Care Resource and Referral Network, September 2007.
[14] Number of child care centers as of January 2008, author interview with Steve Rowswell, Information Technology Specialist 5, Department of Early Learning, January 18, 2008.
[15] "Key Child Care Trends in 2006," Washington State Child Care Resource and Referral Network, September 2007, page 2.
[16] Author interview with Steve Rowswell, Information Technology Specialist 5, Department of Early Learning, January 18, 2008.
[17] "Key Child Care Trends in 2006," Washington State Child Care Resource and Referral Network, September 2007, page 2.
[18] The average number of children on child care subsidy is 63,411 per month. See "Key Child Care Trends in 2006," Washington State Child Care Resource and Referral Network, September 2007.
[19] "Contract for Washington Family Child Care Providers - Summary," SEIU Local #925 at http:www.seiu925.org/Early_Learning/FCCP_Summary/default.aspx.
[20] See www.childcare.org/families/licensed-choices/centers-homes.htm.
[21] "Key Child Care Trends in 2006," Washington State Child Care Resource and Referral Network, September 2007, page 4.
[22] See www.childcare.org/families/licensed-choices/centers-homes.htm.
[23] "Key Child Care Trends in 2006," Washington State Child Care Resource and Referral Network, September 2007, page 4.

No Evidence That Unionization Leads to Better Quality Care

Proponents of requiring child care workers to join a union argue that mandatory collective bargaining, with the higher state costs involved, is justified because it would raise the quality of child care. They claim that a similar requirement imposed on FCH providers in 2006 resulted in better quality care for children.

There is no analytical evidence to support this claim. To the contrary, out of a total of 5,387 FCH providers, only thirty FCH providers in Washington have achieved National Association for Family Child Care as of January, 2009.[24]

Requiring unionization of FCH workers has not led to any appreciable increase in accredited providers, or to measurably better quality care for children, and current research shows it is not likely to do so in the future. In fact, requiring unionization of FCH workers is likely to discourage providers from expanding the number of child care slots available, and is certain to reduce access to care for children under state subsidy.

Turnover Rates for Daycare Centers Have been Exaggerated

Proponents of the daycare unionization proposal also argue that the quality of child care in Washington is poor because workers are paid a low hourly wage and that this leads to a high staff turnover rate at daycare centers.

There is no analytical evidence to support the claim that unionizing child care workers raises the quality of child care.

A closer analysis reveals that the staff turnover rate at child care centers has been exaggerated. Turnover of child care workers is not 30% to 40% or more in Washington, as unionization advocates claim.

Census figures for 2006 show that annual staff turnover at FCHs is only 14%.[25] At Child Care Centers it is just 17%.[26] Trends show that paying a child care worker one dollar an hour more would have a minimal effect on staff turnover rates and would not increase the overall quality of care.

Raising Daycare Hiring Costs Reduces Job Creation

In fact, it could have the opposite effect. Increasing the cost of hiring a child care worker means fewer such jobs will be created. This effect would likely reduce the number of available positions for one segment of the working population. Reducing the number of available jobs would not improve quality or worker morale at child care centers. It would simply make it harder for operators of child care centers to provide quality child care services to families who need their help.

Instead, maintaining flexibility and efficiency in the labor market would contribute more to better quality childcare, because more workers could be hired and families would be able to access care at more affordable rates. Lowering the cost of operating a child care center means more job opportunities for workers,

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[24] Total number of family child care homes in Washington State obtained from National Association of Child Care Resource and Referral Agencies website. Total number of NAFCC accredited FCH providers in Washington State obtained through author interview with Dawn Cramer, Accreditation Specialist, National Association Family Child Care, January 28, 2009.

[25] "Quarterly Workforce Indicators," LEHD Washington Industry Reports, United States Census Bureau, Fourth Quarter 2006, Code 6241, "Individual and Family Services."

[26] "Quarterly Workforce Indicators," LEHD Washington Industry Reports, United States Census Bureau, Fourth Quarter 2006, Code 6244, "Child Day Care Services."

lower caregiver-to-child ratios, and increased opportunities for families seeking care.

$6.13 Million Funding Increase for the Union

The current Family Child Care contract with the Service Employee International Union (SEIU) Local 925 gives a good indication of how extending a similar unionization requirement to Child Care Center employees would work. Local 925 represents more than 46,000 public sector employees, including service employees at public schools and University of Washington.

For most of these workers, membership in Local 925 is a mandatory condition of their employment, and failure to pay union dues in full and on time is cause for dismissal.[27]

That contract granted 4,000 FCH providers and 6,000 FFN license-exempt providers a subsidy rate increase of 7% for the first year, and another 3% increase the second year, for a total of $45 million, starting July 2007.[28] The union leadership collects 2% of the tax-funded subsidy increase, with a cap of $50 per provider per month.

The Family Child Care union is projected to receive $6.13 million over the two-year contract term, funding that is not available to support the policy goals of the program.

Appendix A shows an accounting, based on public records, of subsidy payments made to FCHs and to the union in 2007. The union is projected to receive $6.13 million over the two-year contract term, funding that is not available to support the policy goals of the program.

Daycare Providers May Decline to Take Children from Subsidized Families

Many daycare providers take children on subsidy into their care, even though the compensation rate for these children (the subsidy rate plus parent copay) is less than what unsubsidized families pay for child care.

Daycare providers are likely to view collective bargaining and mandatory career and wage salary grids as resulting in increases in the cost of providing care, without providing any guarantee of increased funding from the state. Since accepting even a single child from a family receiving a state subsidy makes the entire center subject to unionization and mandatory pay scales, a rational response of a daycare provider would be to decline to accept children from subsidized families.

The same trend is already occurring in the Medicaid program. When reimbursements rates are too low, and come with complicated and expensive enforcement strings attached, doctors decline to accept more Medicaid patients. The result is a reduction in the quality of medical services available to people in the program.

A similar result would occur in child care. As union requirements and wage and benefit rules begin to bite, the cost of providing care to children from subsidized families would increase. Fewer opportunities for daycare would be

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[27] SEIU Local 925 membership includes 23,000 education and public service workers, 12,000 family child care workers, 6,500 UW employees, 3,500 public school employees, and 1,000 public service workers at public and non-profit organizations in Washington State, www.seiu925.org/Press/about_925/Default.aspx.

[28] "Contract for Washington Family Child Care Providers - Summary," SEIU Local #925 at http:www.seiu925.org/Early_Learning/FCCP_Summary/default.aspx.

offered to these families, and access to quality child care services for the very families that need it most would decline.

Extending Collective Bargaining Will Strengthen the Union and Weaken the Legislature

Collective bargaining agreements allow unions to negotiate the details of public spending, thus eroding the powers and constitutional responsibility of the legislature. Public sector unions lack the natural discipline of the marketplace and place huge political and budgetary pressure on lawmakers, which results in a skewing of spending priorities in the unions' favor.

The Bill May Violate the National Labor Relations Act

Collective bargaining agreements allow unions to negotiate the details of public spending, thus eroding the powers and constitutional responsibility of the legislature.

This proposal contains contradictory clauses in an apparent effort to avoid violating the National Labor Relations Act. Section 1 of HB 1329 states as follows:

> "… The legislature intends to create a new type of collective bargaining for these directors and workers whereby they can come together and bargain with the state over matters within the state's purview to improve the quality of child care for the state's families. Unlike traditional collective bargaining, this new approach will afford these directors and workers the opportunity to bargain with the state only over the state's support for child care centers, a matter of common concern to both directors and workers. Specific terms and conditions of employment at individual centers, which are the subjects of traditional collective bargaining between employers and their employees, fall outside the limited scope of bargaining defined by this act. Accordingly, traditional policy concerns over supervisors and employees being organized into a common bargaining unit are inapplicable…"

And that:

> "Under the national labor relations act, an organization that represents child care center directors and workers in bargaining with the state under this act is precluded from representing workers seeking to engage in traditional collective bargaining with their employer over specific terms and conditions of employment at individual child care centers."

Later in the bill, though, these statements are contradicted by the bill's definition of collective bargaining. Section 3 (subsection 4) says:

> "'Collective bargaining' means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions…."

Thus Section 1 says the bill does not authorize traditional collective bargaining, while Section 3 says just the opposite.

The bill text then attempts to reconcile this contradiction with a "notwithstanding clause," Section 2 (2)(c) (ii), which says:

> "Notwithstanding the definition of 'collective bargaining' in RCW

41.56.030 (4),

> The matters subject to bargaining under this section shall be within the purview of the state and within the community of interest of child care center directors and workers. The public employer is: (A) Required to bargain over the manner and rate of subsidy and reimbursement, including quality incentives; (B) Permitted, but not required to bargain over: (I) Funding for professional development and training; (II) mechanisms and funding to improve the access of child care centers to health care insurance and other benefit programs; (III) other economic support for child care centers; and (IV) grievance procedures to resolve disputes arising out of the interpretation or application of the collective bargaining agreement…"

It appears the bill, despite its confusing "notwithstanding clause," violates the National Labor Relations Act, because it gives the union monopoly authority to engage in traditional collective bargaining.

This "notwithstanding clause" fails to solve the bill's internal contradictions because it reintroduces negotiation of personnel matters. HB 1329 would require collective bargaining of "quality incentives," health care insurance benefits, other benefit programs, other economic support, requirements for professional development and training, and grievance procedures, in violation of the National Labor Relations Act. Bonuses, wages, merit pay, and even retirement benefits would be subject to collective bargaining, as all of these subjects are "quality incentives" or "other economic support."

It appears the bill, despite its confusing "notwithstanding clause," violates the National Labor Relations Act, because it gives the union monopoly authority to engage in traditional collective bargaining.

The Bill Grants Union Officials Immunity from Violating Federal Antitrust Law

Section 11 of the bill would grant state action immunity under federal and state antitrust laws for the joint activities of family child care providers and their exclusive bargaining representative and of child care center directors and workers and their exclusive bargaining representatives. When two unions collaborate to use their monopoly power to extract concessions from a state legislature, or to fix subsidy rates that the state must pay, such actions suggest a violation of the federal Sherman Antitrust Act. Violation of anti-trust law can result in stiff penalties and treble damages. Attempting to protect union representatives from the consequences of violating federal law puts the public purse in jeopardy due to union monopoly or other price fixing activities.

Instead of mandatory unionization, a public policy of arming parents with unbiased consumer information through an effective Quality Rating and Improvement System (QRIS) would be a more effective way to improve child care in Washington.

The Best Way to Improve the Quality of Daycare

Instead of mandatory unionization, a public policy of arming parents with unbiased consumer information through an effective Quality Rating and Improvement System (QRIS) would be a more effective way to improve child care in Washington.

Parents know what is best for their children, so they are in the best position to decide which Family Care Home, Child Care Center or informal daycare arrangement meets the needs of their family. Parents are day-to-day monitors of what a daycare provider is doing, or is failing to do for their children. The state can have a positive influence over the quality of child care by helping parents assess the qualifications of formal Family Care Homes and Child Care Centers, and of informal daycare providers.

As parents become better informed about the characteristics and qualities of daycare options, providers will respond to the demands of the marketplace and improve their services. If they do not, these providers will find they are losing families to their better-qualified competitors.

Increasing state regulation of the private child care market would not improve access, affordability or the quality of care. It would only reduce competition and parental choice by driving providers out of business, which is the real problem in the Family Child Home market.

A QRIS system would help parents gather the information they need when they make one of the most important decisions in their lives: "Who will care for our children."

Requiring providers to acquire more and more educational credentials would certainly increase the cost of providing care, but would do little to improve the quality of care. Often the best daycare is provided by people with experience, skill and a love of children, not by those with the most training degrees. The challenge for parents is to identify daycare providers who are best at what they do, rather than simply scanning a list of credentials.

A QRIS system would help parents gather the information they need when they make one of the most important decisions in their lives: "Who will care for our children." Parents are in the best position to decide whether their child and family is best served by providers with a higher-education degrees, or whether they prefer the woman with 25 years of experience (and little education) who is gentle and kind and has demonstrated through years of service that she understands the needs of children.

Conclusion

The state has a vital interest in improving the private market for accessible, affordable, high-quality child care available to working families. Increased regulation and mandatory unionization, however, is unlikely to achieve this goal.

Even a modest increase in cost would put daycare out of reach of many family budgets. Rather than improve access to daycare, this proposal is likely to:

1. Reduce the number of child care slots available to families on subsidy, as some daycare providers seek to avoid the increased costs imposed by mandatory collective bargaining;

2. Reduce the ability of lawmakers to set policy and provide incentives to improve the quality of daycare available through the subsidy program;

3. Create a cost shift to middle-income families, as daycare providers seek to offset the higher costs created by unionization by increasing prices for their non-subsidized customers.

State-mandated collective bargaining tends to create workforce rigidity, inflexible work rules and fewer performance incentives, without measurably improving standards for performance.

The market for child care is highly price-sensitive. This point is a statement from the Washington Child Care Resource and Referral Network: "Parents and policymakers alike have a stake in ensuring that care is affordable, accessible and high quality. Cost impacts providers… who must operate on the thinnest of margins in order for parents to afford their fees."[29]

State-mandated collective bargaining tends to create workforce rigidity, inflexible work rules and fewer performance incentives, without measurably improving standards for performance. Daycare workers who are not required to join a union are just as likely to meet or exceed the level of child care provided by their unionized counterparts.

[29] Washington Child Care Resource and Referral Network, January 28, 2008, at http://www.child-carenet.org/partners/data.

The state has a public interest in providing accessible and affordable daycare opportunities for all families in Washington, which may conflict with a desire to promote union membership by requiring daycare workers to join a union as a condition of employment. Parents, not policymakers or labor organizers, know what best serves the needs of their children. The most effective approach is for the state to use a Quality Rating and Improvement System to provide parents with the information they need to choose the best daycare services for their children.

Liv Finne is director of the Center for Education at Washington Policy Center, a non-partisan independent policy research organization in Seattle and Olympia. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Appendix A* Accounting of Payments to Family Child Care Homes:
Total Subsidy to Family Homes: $63,930,494
Total to Union: $1,278,609

Report Generated in:	**Sep.07**	**Oct.07**	**Nov.07**	**Dec.07**	**Jan.08**
Month of Payments	August	September	October	November	December
Exempt Providers Unduplicated	6,129	6,149	5,565	5,492	5,056
Exempt Provider Payment Lines	13,224	15,638	13,964	13,988	12,447
Family Home Providers Unduplicated	3,545	3,520	3,501	3,522	3,429
Family Home Provider Payment Lines	25,338	27,882	28,054	28,778	22,094
Family Homes Without Payments	2,054	2,052	2,092	2,066	2,562
Total Payments - Exempt	$3,855,275.27	$4,740,310.65	$3,456,854.07	$3,705,864.58	$3,192,698.48
Total Union Dues Deducted - Exempt	$77,103.77	$94,802.02	$69,139.40	$74,114.14	$63,856.42
Total Payments - Homes	$8,628,362.37	$9,759,739.24	$8,967,424.45	$9,694,192.27	$7,929,776.39
Total Union Dues Deducted - Homes	$172,573.36	$195,195.24	$179,349.30	$193,884.07	$158,594.77
Removed Payment Lines	629	1344	1931	2166	4307
			* has suppl report (+..)	* includes suppl data	

*Source: Public Records Office, Department of Early Learning, pursuant to Public Records Request dated 1/23/08.