GETTING ORGANIZED AT HOME:

Why Allowing States to Siphon Medicaid Funds to Unions
Harms Caregivers and Compromises Program Integrity

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Introduction and Executive Summary

Sage Wilson, spokesman for the union-backed nonprofit Working Washington, recently told the *Seattle Times* that, "Collective bargaining doesn't make sense for single employees working for single employers."[1]

While a perfectly defensible statement in the context of domestic workers, to which Wilson was referring, it was nonetheless an awkward choice of words given that the union that almost singlehandedly funds his organization[2] exists primarily because it figured out a way to organize single employees working for single employers.

Medicaid — a federal program administered by states and jointly funded with state and federal dollars — pays for elderly or disabled individuals meeting eligibility requirements to receive support at home from a caregiver to assist them with activities of daily living, "defined as a broad range of support with everyday activities, such as eating, bathing, dressing, grooming, and mobility."[3]

For legal purposes, home caregivers are either employed by their clients and paid by the state directly for their services on behalf of the client, or they are employed by a privately owned and operated home care agency that contracts with the state to serve Medicaid clients.

While exact numbers vary by state, many or even most home caregivers serving Medicaid-eligible clients are related to the persons they serve.

Allowing clients to remain at home and select the caregiver(s) of their choosing affords them independence, community ties and control over their care. It also generally costs less than having taxpayers pay for client care in an institutional setting.

Beginning in California in the early 1990s, however, labor unions like the Service Employees International Union (SEIU) and the American Federation of State, County and Municipal Employees (AFSCME) sought to revitalize their declining memberships by organizing the growing ranks of home care workers.

While agency caregivers could be unionized under the framework of the National Labor Relations Act (NLRA), which governs private-sector collective bargaining, state-paid caregivers working directly for their clients are considered independent contractors. As such, they fall outside the scope of the NLRA. Besides, in Wilson's words, "Collective bargaining doesn't make sense for single employees working for single employers."

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[1] Daniel Beekman. "Domestic workers launch campaign as Seattle looks at new rights for nannies and house cleaners." *Seattle Times*. December 6, 2017. https://www.seattletimes.com/seattle-news/politics/domestic-workers-launch-campaign-as-seattle-looks-at-new-rights-for-nannies-and-house-cleaners/

[2] Maxford Nelsen. "Working Washington Still An SEIU-Front Group." Freedom Foundation, February 22, 2017. https://www.freedomfoundation.com/labor/working-washington-still-an-seiu-front-group/

[3] Galina Khatutsky, Joshua Wiener, Wayne Anderson, Valentina Akhmerova, E. Andrew Jessup and Marie R. Squillace. "Understanding Direct Care Workers: A Snapshot of Two of America's Most Important Jobs." U.S. Department of Health and Human Services, March 2011. https://aspe.hhs.gov/system/files/pdf/76186/CNAchart.pdf

Thus, before unions could turn one of the largest federal programs to their financial advantage, they first had to develop and implement a legal framework that would allow tens of thousands of home-based caregivers spread across a state and working for tens of thousands of separate clients to be represented by a single union that would bargain with a single public entity.

The easiest path, it was determined, would be to get state governments to place home caregivers under the jurisdiction of public-sector collective bargaining laws for government employees. However, rather than turning caregivers into full-fledged public employees — an expensive proposition given public employee wages, benefits and pensions — unions opted to designate caregivers as public employees solely for the purposes of state collective bargaining (unionization) laws. The strategy was initially opposed by AFSCME, which felt it would devalue state employment. But political realities eventually gave way to the union's acquiescence.[4]

The strategy was pioneered in California, where the state legislature was persuaded to allow home care workers to unionize and bargain with county officials. SEIU and AFSCME affiliates eventually organized nearly all Medicaid-paid caregivers in the state, boosting their membership by hundreds of thousands.

After achieving success in California, the unions quickly took their model nationwide, using every tool at their disposal to organize caregivers. In many states, sympathetic governors issued executive orders setting up the framework for caregivers' unionization. In other states, unions prevailed upon state legislatures to do their bidding. In still other cases, unions funded and passed deceptive ballot measures generically marketed to voters as being about improving home care quality.

With legal authority in place, unions still had to check certain boxes before representing caregivers. In most cases, some kind of election was held for caregivers to determine whether to be union represented. However, these have tended to be little-publicized, low-turnout affairs in which a motivated pro-union minority carries the day. Suspect practices and anomalies are another common feature of many such union elections. In other cases, no election was ever held. Instead, unions simply collected authorization cards from caregivers one at a time in person and presented them to the state as proof of the union's majority support. This method of certifying a union, generally referred to as "card check," is known for its tendency to be highly coercive.

Home Care Aide Union Election Participation

Election	Participation	Union	Not Union	Year
Alameda County, CA	21%	89%	11%	1992-99
San Francisco County, CA	27%	91%	9%	1992-99
Los Angeles County, CA	25%	89%	11%	1999
Oregon	42%	92%	8%	2001
Washington	31%	84%	16%	2002
Illinois	No election			2003
Michigan	21%	81%	19%	2005
Iowa	No election			2005

[4] David Moberg. "Union blues lift in Chicago." *The Nation*, April 9, 2005. https://www.thenation.com/article/union-blues-lift-chicago/

Ohio	N/A	N/A	N/A	2007
Massachusetts	N/A	94%	6%	2007
Maryland	N/A	N/A	N/A	2008
Wisconsin	35%	64%	36%	2010
Missouri	30%	53%	47%	2010
Connecticut	24%	77%	33%	2012
Vermont	26%	71%	29%	2013
Minnesota	22%	60%	40%	2014
Pennsylvania	15%	89%	11%	2015
Average	**27%**	**80%**	**21%**	

Once unions were established, public payroll entities withheld union dues from caregivers' paychecks. Most states in which home care workers were organized had laws on the books allowing unions to require caregivers to pay dues as a condition of employment.

Because of caregivers' unique employment status, the services unions can offer are relatively limited compared to traditional unions. Without a workplace, in the traditional sense, there are no workplace representation services for the union to provide; no grievances, no shop stewards, etc. There is simply no mechanism for a mother caring for her disabled child in her own home file a grievance about her working conditions. In many cases, the union's role is limited to negotiating a single collective bargaining agreement with a single public entity ever few years setting the reimbursement rate caregivers will receive.

With few obligations to their membership, but significant dues money skimmed from caregivers' Medicaid payments, these unions tend to be exceptionally political. Catherine Sullivan, SEIU's Coordinator for Long-Term Care, told researchers in 2008 that, since "public sources of revenue... are used to fund contracts, a political organizing program is essential to win improvements."[5]

But even after becoming political heavyweights in certain states and using the dues skimmed from Medicaid to fund a host of controversial political goals and candidates nationwide, many unions still collect more in dues than they can spend.

With so much power and money in play, it is little surprise that both union leaders like Tyrone Freeman in California and prominent politicians like Gov. Rod Blagojevich in Illinois were brought down on corruption charges for dealings related to home care unions.

Many caregivers resent the amount of dues skimmed from their Medicaid payments, as well as the use of that money for political agendas they oppose, and do not see the limited service provided by the unions as of much value.[6]

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[5] Eileen Boris and Jennifer Klein. "Labor on the Home Front: Unionizing Home-Based Care Workers." *New Labor Forum*, (2008) 17:2, 32-41. http://laborcenter.berkeley.edu/homecare/pdf/boris_03.pdf

[6] Unions sometimes try to deflect member criticism by pretending to be bipartisan. The best union attitudes towards bipartisanship were summarized nicely by Elsie Otero, vice president of SEIU 1199's home care division in 2005 when she said: "[W]hen I think of Republicans I tend to cringe, but if you look at them as folks they're not all demons..." Patrice Mareschal. "Innovation and Adaptation: Contrasting Efforts to Organize Home Care

One family caregiver, Pam Harris from Illinois, challenged her state's requirement that she have union dues deducted from her pay for SEIU as a condition of taking care of her son, Josh. Her case made it all the way to the U.S. Supreme Court in 2014. In *Harris v. Quinn*¸ the Supreme Court repeatedly denounced the compelled dues payment requirement as a "scheme," especially given unions' "sharply circumscribed" role in this context, and struck down as unconstitutional state laws requiring caregivers like Pam to fund unions against their will.[7]

While a significant step forward, *Harris* failed to put a stop to unions and state governments colluding to exploit home caregivers through a series of work-arounds and countermeasures.

In many states, unions changed the terms of their membership forms to make it difficult for caregivers to cancel the state's deduction of dues from their pay. To boost union recruitment, other states required caregivers to participate in captive-audience meetings with union organizers, often under the guise of a training or orientation program, who coerce or deceive caregivers into signing nearly irrevocable dues deduction authorizations. In Washington, the state will collect full union dues from a caregiver's pay even if the caregiver never authorizes it, though it will permit the caregiver to cancel the deduction after the fact if they learn they can and how to do so.

The key factor enabling many of these coercive practices is states' role as dues collector. If unions had to persuade caregivers to pay the union directly by check, electronic funds transfer or credit card, much of the power would be back in the hands of caregivers themselves.

Though states have skimmed union dues from caregivers' Medicaid payments since at least 1992, there is a strong case to be made the practice has been illegal under federal Medicaid laws the entire time.

Specifically, 42 U.S. Code § 1396a(a)(32) requires that payments for services be made directly and in full to Medicaid providers. Diversions of funds to third-parties that provide no services to Medicaid recipients are not permitted.

However, the Obama administration in 2014 adopted a regulation, 42 CFR 447.10(g)(4), that authorizes the deduction of funds from caregivers' pay for "benefits customary to employees." Because it exceeds that which is authorized by the statute and provides some small measure of legal cover for states to engage in the coercive practice of union dues skimming from Medicaid, the regulation should be repealed and the Centers for Medicare and Medicaid Services should clarify that federal law prohibits the diversion of Medicaid funds to unions.

Some states have taken the initiative to end these arrangements on their own. Iowa, Maryland, Michigan, Missouri, Ohio and Wisconsin and have all rescinded or fought back efforts to impose Medicaid dues skimming.

However, the practice remains alive and well in at least eight states, including California, Connecticut, Illinois, Massachusetts, Minnesota, Oregon, Vermont and Washington. An attempt to unionize home caregivers in Pennsylvania is on hold pending a state Supreme Court ruling.

Workers in Four States." *Labor Studies Journal*, Vol. 31, No. 1, (Spring 2006): 25-49. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.823.3624&rep=rep1&type=pdf

[7] *Harris v. Quinn*, 573 U.S. ___ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf

In 2017 alone, these states skimmed nearly $150 million in union dues from home care aides' Medicaid payments. From 2000-17, states diverted an estimated $1.4 billion in caregivers' Medicaid funds to unions.

Union Dues Skimming from Medicaid by State			
State	**Providers**	**2017 Dues Skim**	**Total Dues Skim 2000-17**
California	260,779	$99,287,523	$924,174,007
Washington	32,982	$21,673,776	$190,314,317
Illinois	16,434	$7,258,849	$99,990,630
Oregon	17,072	$6,660,624	$81,157,846
Massachusetts	15,035	$5,142,820	$39,454,875
Minnesota	6,500	$3,179,934	$8,539,941
Vermont	5,083	$2,044,192	$8,452,958
Connecticut	4,152	$1,352,376	$7,872,268
Michigan	0	$0	$36,102,285
Ohio	0	$0	$36,466,934
Maryland	0	$0	$1,606,500
Iowa	0	$0	?
Pennsylvania	0	$0	$0
Wisconsin	0	$0	$0
Missouri	0	$0	?
Total	**358,037**	**$146,600,094**	**$1,434,132,561**

What's not covered by these estimates

POLITICAL CONTRIBUTIONS: In addition to collecting union dues and fees, states commonly collect additional contributions from caregivers' pay for union political action committees (PACs), if authorized by the caregiver. Often, these are federal PACs operated by the national union affiliate.

For instance, in Washington state, SEIU 775 solicits contributions to the national SEIU Committee on Political Education (COPE) from the state's Medicaid-paid individual providers, even though the union also regularly spends millions of dollars of caregivers' dues on political contributions.[8]

Quantifying the amount of PAC contributions diverted from caregivers' Medicaid payments is difficult due to the lack of quality data. However, anecdotally, unions make it a point to pressure caregivers into contributing, and the amount withheld can be quite significant. In Illinois, for example, the state cumulatively withheld nearly $1.5 million in political contributions from caregivers' wages in fiscal years 2009-13.[9]

[8] A copy of an SEIU COPE solicitation sent to providers by SEIU 775 in 2015 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-COPE-letter-6-29-15.pdf
[9] Agostino Lorenzini of the State of Illinois. Email to Justin Hegy of the Illinois Policy Center. October 9, 2013. https://www.illinoispolicy.org/wp-content/uploads/2013/11/LorenziniEmail2.pdf

PRIVATE HOME CARE AGENCIES: In addition to independent home caregivers, states frequently contract with privately owned and operated home care agencies to serve Medicaid clients. Rather than working for the individual clients, agency caregivers are employed by the agency they work for, which can serve a mix of Medicaid and private-pay clients. In some states, all Medicaid-funded home care is provided by private agencies. Unlike independent providers paid directly by the state, the NLRA has always provided unions with a mechanism to organize home agencies.

Unions have used various tactics to organize agency caregivers, with some success in at least Illinois, Indiana, Montana, Nevada, New York and Washington.[10]

In New York City, for instance, 1199SEIU succeeded in organizing many "subcontractor" home care agencies serving Medicaid clients:

> "In 2004, a strike by over thirty thousand home care workers resulted in signed union contracts for the great majority of the city's subcontractors… If they oppose the union, the subcontractors face the risk of harshly negative publicity. Alternatively, by cooperating with the union the subcontractors are offered the potential of increased state funding. This arrangement has led some agencies 'to conclude that they would rather have 1199 SEIU as a friend than an enemy.' …
>
> In New York, Local 1199 has used mergers to extend its reach statewide, but about nine hundred agencies employ home care workers throughout the state."[11]

The job of an independent provider serving their Medicaid-eligible daughter in one state is, for all intents and purposes, exactly the same as the job of a similarly situated caregiver serving a Medicaid-eligible relative under the umbrella of a private home care agency in another state. The only real difference is the first caregiver receives their Medicaid payment directly from the state, while the second caregiver receives their payment from the home care agency which receives it from the state.

The legal difference, however, is key. Absent state authorization, unions have no way to organize independent providers, while the NLRA provides a vehicle for organizing agencies.

Nevertheless, this report does not attempt to quantify the amount of union dues collected from home care agency caregivers serving Medicaid clients. Despite practical similarities, obtaining reliable data is simply more complicated and the legal framework involved too dissimilar.

ADULT FAMILY HOMES: Unions in some states — including at least Washington, Oregon and New Jersey — have organized adult family home owners serving Medicaid clients in much the same fashion independent caregivers were unionized.

In Washington, the legislature established in 2007 that "the governor is the public employer of adult family home providers who, solely for the purposes of collective bargaining, are public

[10] David Rolf. *The Fight for $15*. New York: The New Press, 2016. Pg. 60.
[11] Patrice Mareschal. "Innovation and Adaptation: Contrasting Efforts to Organize Home Care Workers in Four States." *Labor Studies Journal*, Vol. 31, No. 1, (Spring 2006): 25-49. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.823.3624&rep=rep1&type=pdf

employees."[12] Under the terms of state law[13] and the union collective bargaining agreement,[14] union dues are withheld from providers' Medicaid reimbursements by the state.

In New Jersey, community care residential providers were unionized by the Communication Workers of America Local 1037 pursuant to then-Gov. Jon Corzine's (D) issuance of Executive Order No. 97 in 2008.[15] The executive order allowed the union to deduct dues and fees from providers' state payments. The New Jersey legislature enshrined the unionization of community care residential providers into law in 2010[16] and subsequently negotiated various memorandums of understanding obligating the state to deduct dues from providers' pay automatically, unless the provider opts out.[17]

Similarly, adult foster home providers in Oregon were unionized by SEIU Local 503 following an executive order by then-Gov. Ted Kulongoski (D) in 2007.[18] The Oregon legislature subsequently wrote the unionization of adult foster home providers into state law in 2009.[19] Despite having a collective bargaining agreement in effect, however, the state has yet to implement dues deductions from providers' Medicaid payments.[20]

Legally, the diversion of union dues from adult family home operators is presumably governed by the same federal Medicaid laws cover independent home caregivers. However, because the number of unionized adult family home operators is relatively small, because their situation as business operators differentiates them from home caregivers in practical and legal ways, and because data about dues collection for this population is more difficult to obtain, they are not included in the dues skimming estimates in this report.

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[12] RCW 41.56.029.

[13] RCW 41.56.113.

[14] The collective bargaining agreement between the State of Washington and the Adult Family Home Council is available online from the Washington Office of Financial Management at: https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_afh.pdf

[15] New Jersey Gov. Jon Corzine. Executive Order No. 97. March 5, 2008. https://nj.gov/infobank/circular/eojsc97.htm

[16] N.J. Rev. Stat. § 30:6D-32.2.

[17] The 2014-15 memorandum of understanding between the New Jersey Department of Human Services and the Communications Workers of America on behalf of community care residential providers is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/MOA-CWA-CCRP-2014.pdf

[18] Oregon Gov. Ted Kulongoski. Executive Order No. 07-07. June 1, 2007. https://www.oregon.gov/gov/Documents/executive_orders/es07-07.pdf

[19] House Bill 3279 (2009): https://olis.leg.state.or.us/liz/2009R1/Downloads/MeasureDocument/HB3279/Enrolled

[20] The collective bargaining agreement between the Oregon Department of Administrative Services and SEIU 503 on behalf of adult foster home providers is available online at: https://www.oregon.gov/das/HR/CBA/SEIU%20Non%20State%20Adult%20Foster%20Care%20Home%20Providers%2015-19.pdf

California

“This isn’t right. I shouldn’t have to pay the union in order to care for my loved one.”
- *Taeko Moses, CA*
http://bit.ly/2NVHXtc

California was ground zero for the movement to unionize Medicaid-paid home care aides. As a result, the pathway used by unions in California was less direct than in many subsequent states that could learn from unions’ experience in the Golden State.

Caregivers’ unique employment status — paid by the state through the In-Home Supportive Services (IHSS) program but hired and overseen by their clients — presented serious obstacles to union organizing. Caregivers did not work for a traditional private-sector employer and were not covered by the NLRA. Neither were they public employees subject to the state’s collective bargaining laws. As long as clients were considered caregivers’ legal employer, there was no legal pathway to unionization. The fact that the IHSS program was administered by the state’s 58 counties further complicated the organizing process.

Beginning in the 1980s, changing legal opinions began to view state and county governments increasingly as caregivers’ employer for various purposes.[21] For instance, the Ninth Circuit Court of Appeals in 1983 determined state and county governments needed to abide by the federal Fair Labor Standards Act in their dealings with caregivers.[22] Two years later, the state attorney general determined individual providers (IPs) were not state employees, but were covered by the state’s workers’ compensation law and could be considered county employees.[23]

When the SEIU began an extensive campaign to unionize IPs in Los Angeles County in October 1987, it did so without a clear employer to bargain with. The union attempted to argue in court that IPs were county employees under the state’s collective bargaining law for municipal employees, but the state Court of Appeals ruled against the union in 1990, finding that IPs were merely independent contractors.[24]

At some point during the initial organizing process, however, the state granted unions the authority to collect union dues from IPs via payroll deduction on a voluntary basis, “thus providing a stable financial base for future campaigns” and allowing the skimming of union dues from Medicaid

[21] Eileen Boris and Jennifer Klein. “Organizing Home Care: Low-Waged Workers in the Welfare State.” *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf
[22] *Bonnette v. California Health and Welfare Agency* (1983) 704 F.2d 1465 at 13–14, 19–21.
[23] Eileen Boris and Jennifer Klein. “Organizing Home Care: Low-Waged Workers in the Welfare State.” *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf
[24] *SEIU Local 434 v. County of Los Angeles*, 225 Cal. App. 3d. 761 (1990). https://caselaw.findlaw.com/ca-court-of-appeal/1775214.html

payments for the first time anywhere.[25]

In the early 1990s, SEIU focused on developing and passing state legislation allowing counties to develop "public authorities" that would serve as the employer of IPs:

> "The public authority was based upon the model of public commissions, drawn largely from SEIU's experience with commissions as employers of city workers in San Francisco. It was an effort to create an employer of record that would include multiple employers and would maintain existing sources of funding. The public authority could take the form of an independent organization or could be the county's Board of Supervisors; in either case there would be a community-based advisory board with the majority of its members representing the senior and disabled communities. Responsibilities of the public authority would include bargaining with the union, providing job training skills for homecare workers, and providing a registry to match workers with prospective consumers. The authority structure would also maintain state and federal funding streams, administered through the Department of Social Services."[26]

In 1992, the legislature passed Senate Bill 485, allowing counties to set up public authorities to act as the employer of record of IHSS providers for the purpose of collective bargaining.[27]

In creating the public authority framework,

> "SEIU sought to place IHSS workers within the meaning of public employee without defining them as civil servants both to maximize flexibility for bargaining and ease enactment… This legal change, gained from political lobbying by the union… created an employer to bargain with—as well as a central registry to locate the home care workforce."[28]

Additional legislation enacted in 1993 provided further regulations and funding for counties to set up public authorities.[29]

By 1999, public authorities had been established in Alameda, Contra Costsa, Monterey, San Francisco, San Mateo, Santa Clara and Los Angeles counties and unions had won representation

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[25] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[26] Linda Delp and Katie Quan. "Homecare Worker Organizing in California: An Analysis of a Successful Strategy." *Labor Studies Journal*, Vol. 27, No. 1, (2002): 1-23. http://laborcenter.berkeley.edu/homecare-worker-organizing-in-california-an-analysis-of-a-successful-strategy/

[27] Senate Bill 485 (1992): http://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1992/92Vol2.PDF

[28] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[29] Senate Bill 35 (1993): http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0001-0050/sb_35_bill_930630_chaptered
Senate Bill 1078 (1993): http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1051-1100/sb_1078_bill_931011_chaptered

elections in all seven.[30]

But while some counties moved quickly to form public authorities, others resisted the unionization of IPs. The union faced particular opposition from the Board of Supervisors in Los Angeles County. To overcome the opposition,

> "...the union waged a massive campaign to pressure the policymakers. Workers picketed the offices of the Board of Supervisors and the DPSS and filed mass applications for zookeeper jobs, asserting that workers who cared for animals were better paid than homecare workers who cared for human beings. Union and community groups flooded the Board of Supervisors with letters and met with Board members, urging them to establish a public authority. Ultimately these activities led to a 1997 ordinance to establish a public authority in Los Angeles County."[31]

After overcoming political opposition to establish public authorities, SEIU had to surmount multiple logistical difficulties to unionize caregivers, namely,

> "...the workforce was extremely fragmented. Workers were dispersed in different homes with no occasion to come together as a group. They spoke many languages—more than 100 in Los Angeles County alone... Worker organizing began in Los Angeles and was particularly intense because of the sheer numbers—74,000 workers. The initial challenge confronting the union was to find the workers. Los Angeles homecare worker Verdia Daniels, President of SEIU Local 434B and one of the original activists, described the outreach process, 'We went to senior citizens' centers, doctor's offices, markets, churches; we even dug in trash cans to find lists of workers.'"[32]

That's not all the union did to reach caregivers. An academic paper explains some of the less-than-scrupulous methods utilized by union organizers:

> "...SEIU's Los Angeles Homecare Organizing Committee faced a number of hurdles... Primarily it had to identify the workers. Elsewhere it had obtained lists of names 'through co-opting an inside source of the targeted company' or it had circulated a petition on 'a popular issue (e.g., minimum-wage increase)' at the site where workers picked up paychecks. In Los Angeles, it planned to use its members in other government employee locals: caseworkers could get names from microfiche, and data and payroll processors could compile a list, while other county contacts could pilfer the program's 'referral list.' So, even when counties formally refused to hand over the names of workers, the sectoral strength of SEIU provided alternative routes. That social workers and home care workers belonged to

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[30] Candace Howes. "Upgrading California's Home Care Workforce: The Impact of Political Action and Unionization." *State of California Labor*, No. 1, (2004): PP 71-105. https://digitalcommons.conncoll.edu/cgi/viewcontent.cgi?article=1002&context=econfacpub
[31] Linda Delp and Katie Quan. "Homecare Worker Organizing in California: An Analysis of a Successful Strategy." *Labor Studies Journal*, Vol. 27, No. 1, (2002): 1-23. http://laborcenter.berkeley.edu/homecare-worker-organizing-in-california-an-analysis-of-a-successful-strategy/
[32] Ibid.

the same union, although usually in separate locals, proved a benefit for organizing."[33]

The use of such tactics exposes as transparently self-serving unions' later efforts to prevent other groups from lawfully obtaining lists of caregivers from public entities to inform them of their constitutional right to stop union dues deductions.

Nevertheless, the union's efforts eventually paid off. When it won an election to represent the 74,000 IPs in Los Angeles County in 1999, SEIU Local 434B scored "the biggest organizing victory for the U.S. labor movement since workers at Ford's River Rouge plant joined the United Auto Workers in 1941."[34]

With high union support but very low turnout, the first home care union elections in Alameda, San Francisco and Los Angeles set the pattern that most succeeding home care unionization elections around the country would follow. In Alameda County, only 21 percent of caregivers participated in the election, but 89 percent of those participating voted for union representation. In San Francisco, participation was 27 percent and the union garnered 91 percent of the votes while, in Los Angeles, 25 percent of caregivers voted, with the union receiving support from 89 percent of voters.[35]

The unions scored another big win in 1999 when the legislature passed Assembly Bill 1682 requiring "each county to act as, or establish, an employer for in-home supportive service personnel for purposes of provisions of statutory law regarding employer-employee relations," thus setting the stage for the unionization of all IHSS providers statewide.[36]

The county-based public authority model created a recipe for competition among SEIU and the United Domestic Workers (UDW), affiliated with AFSCME, to represent IHSS caregivers newly eligible for unionization. On-again-off-again clashes and disputes characterized the relationship between the two unions for years.[37]

In 1999 the two unions divvied up the state's counties between them, with each claiming the right to organize about half.[38] The following year, the unions created the California Homecare Council "as

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[33] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[34] Linda Delp and Katie Quan. "Homecare Worker Organizing in California: An Analysis of a Successful Strategy." *Labor Studies Journal*, Vol. 27, No. 1, (2002): 1-23. http://laborcenter.berkeley.edu/homecare-worker-organizing-in-california-an-analysis-of-a-successful-strategy/

[35] Ibid.

[36] Assembly Bill 1682 (1999): http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1651-1700/ab_1682_bill_19990712_chaptered.pdf

[37] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[38] Patrice Mareschal. "Innovation and Adaptation: Contrasting Efforts to Organize Home Care Workers in Four States." *Labor Studies Journal*, Vol. 31, No. 1, (Spring 2006): 25-49. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.823.3624&rep=rep1&type=pdf

a joint lobbying and organizing effort."[39] But that did not end conflict between the two unions:

> "[W]ith SEIU leaving the AFL-CIO and AFSCME putting UDW into receivership for diverting dues to SEIU, among other charges, raiding each other began again during the summer of 2005. In late September, however, AFSCME and SEIU entered into a two-year pact, agreeing to form the California United Homecare Workers Union, to be affiliated with both, while maintaining their existing jurisdictions. The new entity would organize the twenty-six mostly rural counties that lacked bargaining agreements."[40]

Even this arrangement did not last. After the rural counties had been organized, CUHW was split up in March 2015, with UDW (AFSCME Local 3930) picking up some counties and United Long Term Care Workers (ULTCW/SEIU Local 6434) picking up the rest.[41] Later that same year, SEIU announced the dissolution of ULTCW and the creation of a new local, SEIU 2015.[42]

Once the initial hurdles were overcome, the unionization of IHSS created a cash machine for SEIU and UDW. By 2010, 375,000 caregivers worked through the IHSS program.[43] Nearly all of them were represented by SEIU or UDW and, under California's labor laws, had mandatory union dues and fees withheld from their pay. That same year, ULTCW alone collected nearly $50 million in dues and fees from IHSS providers.[44]

Access to such significant resources and influence led some union officials to abuse their positions of trust. In 2008, the *Los Angeles Times* began running a series of stories exposing how ULTCW president Tyrone Freeman directed "tens of thousands of dollars from the union and a related nonprofit to relatives and friends, in addition to his lavish spending on a Four Seasons Resort golf tournament, restaurants and a Beverly Hills cigar club."[45] Freeman and other union officials soon lost their jobs and, in 2013, Freeman was sentenced to three years in prison and ordered to pay $150,000 in restitution.[46] At the time the scandal broke, Freeman was paid $200,000 a year and "wielded significant clout in Los Angeles, Sacramento and Washington, D.C., because he commanded deep sources of campaign money and foot soldiers."[47]

The financial resources of SEIU and UDW have only continued to grow since Freeman's ouster. Since caregivers work in homes, there are no union shop stewards, grievances or traditional workplace

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[39] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf
[40] Ibid.
[41] United Domestic Workers, AFSCME Local 3930. "Stronger together: UDW welcomes CUHW homecare providers to our union." March 6, 2015. http://www.udwa.org/2015/03/stronger-together-udw-welcomes-cuhw-homecare-providers-to-our-union/
[42] SEIU Local 521. "A New SEIU Local to Lift Home Care Workers Out of Poverty." June 12, 2015. http://www.seiu521.org/2015/06/home-care-union/
[43] Candace Howes. Testimony before the Connecticut General Assembly Human Services Committee. March 8, 2011. https://www.cga.ct.gov/2011/HSdata/Tmy/2011HB-06486-R000308-Candace%20Howes-TMY.PDF
[44] See the calculations at the end of this section.
[45] Paul Pringle. "Former SEIU local leader gets 33 months in prison." *Los Angeles Times*, October 7, 2013. http://articles.latimes.com/2013/oct/07/local/la-me-freeman-20131008
[46] Ibid.
[47] Ibid.

issues for the union to handle. The fact that nearly three-quarters of IHSS providers are related to their clients — and often live with them — underscores just how little room there is for a union to intervene in the "workplace."[48] The unions' primary obligation is simply to negotiate a new collective bargaining agreement every few years in each county it represents IHSS providers.

Even those limited obligations are on track to diminish. Passage of Senate Bill 1036 in 2012[49] established the California In-Home Supportive Services Authority to,

> "...serve as the employer of record of IHSS providers in the seven Coordinated Care Initiative (CCI) demonstration counties for collective bargaining purposes only. The seven CCI demonstration counties are Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo and Santa Clara."[50]

Though initially confined to a pilot project, one prominent law firm has "no doubt that the intent is to eventually expand [the statewide authority] to every county."[51] In so doing, SEIU and UDW would narrow their representational obligations still further by negotiating a single, statewide collective bargaining agreement for all IHSS providers instead of one for each county.

As it is, despite no increase in workload or representational obligations in recent years, SEIU dues collection from 2013-17 skyrocketed by more than 50 percent from $48.8 to $73.6 million. UDW dues collection increased by more than 30 percent over the same period.[52] As of 2017, dues for SEIU 2015 were 3 percent of wages up to $540 per year.[53] UDW has five dues rates depending on the number of hours worked per month, with the highest rate totaling $488.40 per year.[54]

With so much money to burn, the unions spend lavishly on political activity both in California and around the country. SEIU 2015 maintains three political committees which made a combined $8.1 million in contributions and expenditures in 2016 alone.[55]

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[48] Candace Howes. "Upgrading California's Home Care Workforce: The Impact of Political Action and Unionization." *State of California Labor*, No. 1, (2004): 71-105. https://digitalcommons.conncoll.edu/cgi/viewcontent.cgi?article=1002&context=econfacpub

[49] Senate Bill 1036 (2012): http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1036

[50] See the home page for the In-Home Supportive Services Statewide Authority: http://www.ihssstatewideauthority.ca.gov/

[51] Tim Yeung. "In-Home Supportive Services Employer-Employee Relations Act Enacted." California PERB Blog, July 12, 2012. http://www.caperb.com/2012/07/12/in-home-supportive-services-employer-employee-relations-act-enacted/

[52] See the calculations at the end of this section.

[53] See item 69 of SEIU 2015's form LM-2 for 2017 on file with the U.S. Department of Labor. File No. 545-348. https://olms.dol-esa.gov/query/getOrgQry.do

[54] United Domestic Workers, AFSMCE Local 3930. "Membership Dues." http://www.udwa.org/dues/

[55] California Secretary of State. Cal-Access. SEIU Local 2015 State PAC. Filer ID 1374983. http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1374983&session=2015&view=general
California Secretary of State. Cal-Access. SEIU Local 2015 Issues PAC. Filer ID 1378400. http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1378400&session=2015&view=general
California Secretary of State. Cal-Access. Dignity CA SEIU Local 2015. Filer ID 1357256. http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1357256&session=2015&view=general

SEIU 2015 PACs		
PAC Name	**CA Sec. of State Filer ID**	**2016 Contributions and Expenditures**
SEIU Local 2015 State PAC	1374983	$1,640,261
Dignity CA SEIU Local 2015	1357256	$2,779,704
SEIU Local 2015 Issues PAC	1378400	$3,691,276
	Total	**$8,111,241**

Similarly, UDW operates three California PACs which, combined, made $2.6 million in contributions and expenditures in 2016.[56]

UDW PACs		
PAC Name	**CA Sec. of State Filer ID**	**2016 Contributions and Expenditures**
United Domestic Workers of America Action Fund	1302384	$1,120,695
United Domestic Workers of America Independent Expenditure PAC	1367550	$816,302
United Domestic Workers of America Issues PAC	1367548	$650,676
	Total	**$2,587,673**

The unions spend millions more each year on lobbying and political activities not involving campaign contributions.[57] Tens of millions of dollars in per capita taxes — $33 million in 2017 alone[58] — are forwarded by SEIU 2015 to the national SEIU in Washington, D.C., and used to fund its political agenda.[59] UDW forwards almost $10 million per year to AFSCME's D.C. headquarters.[60]

[56] California Secretary of State. Cal-Access. United Domestic Workers of America Action Fund. Filer ID 1302384. http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1302384&session=2015
California Secretary of State. Cal-Access. United Domestic Workers of America Independent Expenditure PAC. Filer ID 1367550.
http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1367550&session=2015
California Secretary of State. Cal-Access. United Domestic Workers of America Issues PAC. Filer ID 1367548. http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1367548&session=2015

[57] See statement B, item 51 of SEIU Local 2015's forms LM-2 filed with the U.S. Department of Labor. File No. 545-348. https://olms.dol-esa.gov/query/getOrgQry.do

[58] See Statement B, item 56 of SEIU Local 2015's forms LM-2 filed with the U.S. Department of Labor. File No. 545-348. https://olms.dol-esa.gov/query/getOrgQry.do.

[59] For example, Article XIII, Section 1(B) of the SEIU 2016 Constitution and Bylaws provides: "An amount of money which shall be determined annually by the International Executive Board shall be set aside from the per capita tax and shall be expended by the International Union directly or indirectly for political education and political action purposes, but solely in accordance with the provisions of applicable law." A copy of the constitution and bylaws is available online at: https://d3jpbvtfqku4tu.cloudfront.net/img/constitution-2016.pdf
The SEIU Political Education and Action Fund is registered with the Internal Revenue Service as a section 527 political organization, EIN 52-2263644.

[60] See statement B, item 56 of UDW's form LM-2 for 2017 filed with the U.S. Department of Labor. File No. 512-519. https://olms.dol-esa.gov/query/getOrgQry.do.

All told, SEIU 2015 estimated in 2017 that over 52 percent of its expenses were unrelated to representing caregivers.[61]

Even with such profligacy, SEIU 2015 collects more money than it can spend. At the end of 2017, the union had $45.4 million in cash on hand.[62]

The U.S. Supreme Court dealt the two unions a temporary setback in 2014, when it ruled in *Harris v. Quinn* that forcing "partial-public employees" like Medicaid-paid home caregivers to financially support a union violated the caregivers' First Amendment free speech rights.[63] As a result, SEIU and UDW had to cease collecting agency fees from caregivers who had not signed up for membership. The number of caregivers paying dues to SEIU dropped 30 percent after the decision, while UDW experienced a more modest 13 percent decline.[64] Both unions scrambled to sign up nonmembers and membership levels in both unions reached pre-*Harris* levels within two years. UDW president Doug Moore explained the union went "door to door, member to member" and used "all the technology at our disposal"[65] to sign up "nearly 30,000 additional members."[66]

The unions' efforts received a boost from the politically friendly state legislature which, following the 2014 ruling, passed Senate Bill 878 and required counties to grant union organizers at least 30 minutes to recruit members at mandatory, in-person orientations for new caregivers.[67]

After the Freedom Foundation made known its intention to help California IHSS providers understand and exercise their right under *Harris* to cease financially supporting SEIU and/or UDW, the legislature sprang into action again to protect the unions with the passage of Senate Bill 88 in 2017.[68] While granting unions a legal right to access to caregivers' names, addresses, home telephone numbers, cell phone numbers and email addresses, it barred the release of any such information to any other person or entity.

Unable to communicate with California caregivers directly, the Freedom Foundation was forced to use other, more creative methods. While caregivers' contact information was unobtainable, the schedule of counties' mandatory orientations for IHSS caregivers was publicly available.

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[61] In *Communication Workers v. Beck,* 487 U.S. 735 (1988), the U.S. Supreme Court ruled that private-sector employees who resign their union membership and object to paying union dues can only be required to pay an agency fee to cover their portion of the union's costs of "collective bargaining, contract administration, or grievance adjustment." On item 69 of its 2017 form LM-2 filed with the U.S. Department of Labor, SEIU 2015 notes that the agency fee it could charge its private-sector nonmembers for the year was only 47.86 percent of regular dues, meaning 52.14 percent of the dues paid by members went towards activity other than collective bargaining and representation. File No. 545-348. https://olms.dol-esa.gov/query/getOrgQry.do.
[62] See statement A, item 22 of SEIU 2015's form LM-2 for 2017 filed with the U.S. Department of Labor. File No. 545-348. https://olms.dol-esa.gov/query/getOrgQry.do.
[63] *Harris v. Quinn,* 573 U.S. ___ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
[64] See calculations at the end of this section.
[65] IBEW Local 1245. "Defending Our House: Local 1245 Public Sector Members Gear Up to Fight Back Against Anti-Union Attacks." August 25, 2017. http://ibew1245.com/2017/08/25/defending-our-house-local-1245-gears-up-to-fight-back-against-public-sector-union-attacks/
[66] Robert Holly. "How Home Care Paved the Way for SCOTUS' Janus Ruling." *Home Health Care News*, June 28, 2018. https://homehealthcarenews.com/2018/06/how-home-care-paved-the-way-for-scotus-janus-ruling/
[67] Senate Bill 878 (2014): http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB878
[68] Senate Bill 88 (2017): http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB88

Accordingly, the Freedom Foundation began dispatching canvassers to speak with caregivers in person and distribute informational flyers as caregivers entered their required orientations.

After the Freedom Foundation informed the Orange County Board of Supervisors of the coercive nature of the union's orientations, the county changed its orientation script to include a factual statement about caregivers' rights to join or, importantly, refrain from joining the union. The notice read to providers simply stated,

> "Under the law, IHSS providers are not required to join a union, pay any fees to the union, or attend the union's presentation… If you do decide to join the UDW and sign a UDW membership form, the State Controller's Office, on behalf of the UDW, will deduct union dues from your pay. You may dis-enroll from the union and cancel the deduction of dues from your pay in accordance with the terms and conditions set forth on the UDW membership form. You may also re-enroll for UDW membership at any time."[69]

Upset that caregivers might receive some basic factual information about their constitutional rights, UDW in May 2018 filed an unfair labor practice complaint against the county with the state Public Employment Relations Board.[70] The complaint alleges the county violated union-backed legislation adopted in late 2017 prohibiting public employers from "deter[ing] or discourag[ing] public employees from becoming or remaining members of an employee organization."[71]

Some caregivers who learned of their rights because of the Freedom Foundation's outreach and subsequently attempted to cancel the union dues deductions of their pay were told by the union that irrevocability provisions in the membership forms they signed prevented them from resigning except during narrow annual escape periods. The terms of the UDW membership forms provide:

> "I hereby authorize the Office of the State Controller of California to deduct from my earnings and to pay over to the Union those dues and fees that may now or hereafter be established by the Union. This authorization is irrevocable, irrespective of my membership status, for a period of one year from the date of execution. This authorization shall be automatically renewed for successive periods of one year, unless I give the Union written notice of revocation signed by me not less than ten (10) days and not more than twenty (20) days before the end of any yearly period."[72]

The union has claimed the 10-day escape period is for "administrative" reasons.[73] This argument is hard to take seriously since the window is not standardized, but instead calculated based on the day a caregiver first signs up. Far more likely is that the window is simply a gimmick to pad the

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[69] A copy of the ULP containing the revised script is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/UDW-Orange-County-orientation-ULP.pdf

[70] Samuel Han. "Union complains the government is telling the truth." Freedom Foundation. May 23, 2018/ https://www.freedomfoundation.com/labor/union-complains-the-government-is-telling-the-truth/

[71] Senate Bill 866 (2018): http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB866

[72] See the terms of UDW's online membership form available online at: http://www.udwa.org/signup/

[73] Margo Roosevelt. "The fight to deduct union fees from paychecks will be fought in Santa Ana's federal court." *The Orange County Register*, July 10, 2017. https://www.ocregister.com/2017/07/07/lawsuit-challenges-a-california-home-care-union/

union's treasury by limiting caregivers' ability to exercise their constitutional rights to 10 days a year.

SEIU 2015 maintains a similar 15-day escape period for card signers. An IHSS caregiver who attempted to cancel the SEIU 2015 dues deductions from her paycheck in September 2017 received a letter from the union stating,

> "…you chose to sign a union membership card that includes a commitment to continue paying dues until either the fifteen-day period prior to the anniversary date of the time the card was signed or until the fifteen-day period prior to the expiration date of your collective bargaining agreement (whichever is sooner). If you do not request cancellation of dues deduction during any such fifteen-day period, the deductions will continue until the next such period, when you will again have the opportunity to cancel dues deductions… If you would like to cancel your dues deductions, please send a signed letter to the Union during the identified window period above…"[74]

The IHSS CA Facebook page, operated by a group of providers, mocked the unions' restrictive resignation process by posting a sign for caregivers to place on their door that reads:

> "This household charges $50 per minute to listen to SEIU/UDW union BS, intimidation tactics, and threats… THIS CHARGE IS PAYABLE IN ADVANCE! By knocking on this door or ringing the door bell, you signal *your agreement* as in the terms outlined above. To resign from this agreement, write a certified letter of resignation, and your $50 per minute charges will STOP, 2 years after your resignation letter is received by our processing department. Thank you."[75]

Amid reports from caregivers of forged signatures on union membership forms[76] and unauthorized union dues deductions,[77] the Freedom Foundation has begun filing litigation on behalf of individual caregivers to force UDW and SEIU 2015 to acknowledge their requests to resign.[78]

Based on the Freedom Foundation's interactions so far with California IHSS providers, there is little doubt a great many caregivers are simply unaware of their constitutional rights and believe they have no choice but to continue to permit the seizure of union dues from their pay.

In addition to collecting union dues and fees from individual providers, SEIU and UDW have generated other sources of revenue by creating and managing training programs and health care trusts.

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[74] A copy of the letter is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-2015-window-period-letter-Melissa-Johnson_Redacted.pdf
[75] A copy of the notice is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/DoorknockingProtest.jpg
[76] Samuel Han. "California union caught forging signatures." Freedom Foundation, December 11, 2017. https://www.freedomfoundation.com/labor/california-union-caught-forging-signatures/
[77] Samuel Han. "Union fraud? Shocking…" Freedom Foundation, January 25, 2018. https://www.freedomfoundation.com/labor/union-fraud-shocking/
[78] Samuel Han. "The law shall set you free." Freedom Foundation. https://www.freedomfoundation.com/litigation/the-law-shall-set-you-free/

In 2012, the California Long-Term Care Education Center (CLTCEC), an SEIU-affiliated nonprofit, received an $11.8 million grant from the federal Center for Medicaid Services to conduct a voluntary, 61-hour training program for IHSS caregivers.[79] It applied for additional federal funds in 2015 to expand the program.[80]

The union also operates the SEIU Local 2015 Long Term Care Workers Health Trust Fund, which administers over $7 million per year in public funds to provide health insurance benefits to eligible IHSS caregivers in counties within the union's jurisdiction.[81]

UDW does not have a training program, but maintains a separate, publicly funded health benefits trust for each county in which the union represents caregivers.[82]

Estimated California Dues Skim for SEIU 434/6434/2015

Year	Total Dues and Fees	Total Dues Payers	Average Dues	Homecare Members	Homecare-Public Members	Nursing Home Members	Agency Fee Payers	Total Public Homecare Payers	Estimated IP Dues
2002	$15,704,571	90,486	$174	88,012	N/A	2,474	N/A	88,012	$15,275,188
2003	$18,945,965	109,038	$174	106,564	N/A	2,474	N/A	106,564	$18,516,094
2004	$23,366,911	118,410	$197	115,936	N/A	2,474	N/A	115,936	$22,878,694
2005	$28,348,242	122,790	$231	44,703	N/A	2,474	75,613	116,351	$26,861,637
2006	$32,599,008	130,115	$251	77,416	N/A	3,584	49,115	124,358	$31,156,603
2007	$40,283,402	154,828	$260	88,685	N/A	3,326	62,817	149,231	$38,827,244
2008	$47,516,778	174,080	$273	170,116	N/A	3,264	700	170,803	$46,622,241
2009	$49,071,020	180,781	$271	73,432	N/A	2,231	105,118	175,450	$47,624,111
2010	$49,959,504	170,985	$292	70,957	N/A	3,296	96,732	163,395	$47,741,863
2011	$47,082,971	171,293	$275	70,118	N/A	2,279	98,896	165,901	$45,600,837
2012	$47,938,353	172,736	$278	74,953	N/A	3,190	94,593	165,684	$45,981,385
2013	$50,114,262	170,819	$293	86,988	N/A	2,329	81,502	166,365	$48,807,499
2014	$50,802,663	119,216	$426	115,949	N/A	3,267	N/A	115,949	$49,410,465
2015	$51,799,524	185,626	$279	N/A	179,713	5,803	N/A	179,713	$50,149,483
2016	$72,891,048	194,848	$374	N/A	184,101	9,813	N/A	184,101	$68,870,683
2017	$78,814,307	192,376	$410	N/A	179,729	11,655	N/A	179,729	$73,632,972
								Total	**$677,956,998**

Source: SEIU 434/6434/2015 forms LM-2. File Nos. 542-218, 543-788 and 545-348. https://olms.dol-esa.gov/query/getOrgQry.do

[79] Scott Mann. "Federal Government Awards California Long-Term Care Education Center With $11.8 Million Grant." *PR Newswire*, June 8, 2012. https://www.prnewswire.com/news-releases/federal-government-awards-california-long-term-care-education-center-with-118-million-grant-159461205.html
[80] CLTCEC's application letter for additional funds is available online at: http://www.dhcs.ca.gov/provgovpart/Documents/Waiver%20Renewal/CLTCEC_Letter.pdf
[81] See part 1, line 12 of the fund's 2016 form 990 filed with the Internal Revenue Service. Available online at: https://www.guidestar.org/FinDocuments/2017/204/570/2017-204570305-0f09263f-90.pdf
[82] See item 69, question 10 of UDW's form LM-2 for 2017 filed with the U.S. Department of Labor. File No. 512-519. https://olms.dol-esa.gov/query/getOrgQry.do

METHODOLOGICAL NOTES: For 2002-04, total dues and fees are taken from Statement B, Item 39 of SEIU Local 434B's annual forms LM-2. Total dues payers are reported on Item 18 of the union's forms LM-2. Only the union's total membership is reported on its 2002-04 forms LM-2. These calculations assume the union's membership included the same number of nursing home members as reported in 2005. The union's estimated homecare members and total public homecare workers are calculated by subtracting the estimated nursing home members from the union's total membership.

For 2005-09, total dues and fees comes from Statement B, Item 36 of SEIU Local 434B's forms LM-2. The union's total members/fee payers, homecare workers, nursing home workers and agency fee payers are recorded on Schedule 13 of its forms LM-2.

For 2010, SEIU Local 6434 filed two forms LM-2, the first covering the period from January 1 through March 25 and the second covering the period from March 26 through December 31. Total dues and fees for 2010 comes from adding the amounts included on Statement B, Item 36 of the two forms LM-2. The union's total members/fee payers, homecare workers, nursing home workers and agency fee payers are taken from Schedule 13 of the second form LM-2.

For 2011-13, total dues and fees comes from Statement B, Item 36 of SEIU Local 6434's form LM-2. The union's total members/fee payers, homecare workers, nursing home workers and agency fee payers are recorded on Schedule 13 of its form LM-2.

For 2014, total dues and fees comes from Statement B, Item 36 of SEIU Local 6434's form LM-2. The union's total members/fee payers, homecare workers and nursing home workers are recorded on Schedule 13 of its form LM-2.

Total public homecare workers for 2005-13 assumes the percentage of nonmember agency fee payers who are homecare workers equals the percentage of SEIU Local 6434's members who are homecare workers. Total public homecare workers are calculated by adding the number of public homecare worker members reported by the union to the estimated number of agency fee payers who are homecare workers. No agency fee payers were reported for 2014.

For 2015, total dues and fees are calculated by adding Statement B, Item 36 from SEIU Local 6434's LM-2 report with Statement B, Item 36 from SEIU Local 2015's form LM-2 for the year. Total dues payers, homecare public members and nursing home members come from Schedule 13 of SEIU Local 2015's form LM-2.

For 2016-17, total dues and fees come from Statement B, Item 36 of SEIU Local 2015's form LM-2. Total dues payers, homecare public members and nursing home members come from Schedule 13 of the union's forms LM-2.

For all years, average dues are calculated by dividing the amount of dues paid by the total number of dues/fee payers. Estimated IP dues for each year are calculated by multiplying average dues by the estimated number of public homecare workers. In situations in which the union filed amended forms LM-2, the data in the most recently submitted LM-2 is used.

Estimated California Dues Skim for UDW					
Year	Dues and Fees	Dues Payers	Average Dues	Union IPs	Estimated IP Dues
2000	$1,171,393	10,000	$117	10,000	$1,171,393
2001	$1,358,871	10,000	$136	10,000	$1,358,871
2002	$3,225,977	20,000	$161	20,000	$3,225,977
2003	$4,993,736	58,953	$85	58,953	$4,993,736
2004	$8,448,679	42,225	$200	42,225	$8,448,679
2005	$10,758,013	50,053	$215	50,053	$10,758,013
2006	$11,716,113	52,197	$224	52,183	$11,712,971
2007	$12,962,521	52,259	$248	52,247	$12,959,544
2008	$9,877,840	65,000	$152	64,985	$9,875,560
2009	$19,743,457	61,510	$321	61,510	$19,743,457
2010	$18,025,405	59,250	$304	59,250	$18,025,405
2011	$17,842,619	60,515	$295	60,515	$17,842,619
2012	$17,885,121	72,943	$245	72,943	$17,885,121
2013	$19,593,702	65,000	$301	65,000	$19,593,702
2014	$19,445,430	56,466	$344	56,466	$19,445,430
2015	$19,777,256	60,061	$329	60,061	$19,777,256
2016	$23,757,261	77,688	$306	77,647	$23,744,723
2017	$25,780,529	81,448	$317	81,050	$25,654,551
				Total	**$246,217,009**
Source: UDW forms LM-2. File No. 512-519. https://olms.dol-esa.gov/query/getOrgQry.do					

METHODOLOGICAL NOTES: For years 2000-04, total dues and fees come from Statement B, Item 39 of the union's annual forms LM-2. Total dues payers come from Item 18 of the LM-2 reports.

For years 2005-17, total dues and fees come from Statement B, Item 36 of the union's forms LM-2. The union's total dues payers come from Schedule 13 of its forms LM-2.

For 2000-15, the only workers paying dues or fees to UDW were IPs. In 2016-17, however, the union reported small numbers of retired members. For these years, the number of union IPs is calculated by subtracting the number of retired members from the union's total dues payers.

For all years, average dues are calculated by dividing the amount of dues paid by the total number of dues/fee payers. Estimated IP dues for each year are calculated by multiplying average dues by the estimated number of IPs. In situations in which the union filed amended forms LM-2, the data in the most recently submitted LM-2 is used.

Oregon

In Oregon, SEIU Local 503 hoped to build on the success of its California counterparts and, in 1997, began an effort to unionize Medicaid-paid caregivers.[83] The union began organizing caregivers before a legal employer had been established. Its efforts were aided by Gov. John Kitzhaber (D), whose administration provided SEIU organizers the list and home addresses of state paid home care workers (HCWs). Subsequently, "[o]rganizers and home care workers made 22,000 house visits over the next four years, attempting to reach the approximately 13,000 workers paid by the state of Oregon."[84]

"I have asked the union over 20 times to let me opt out, but the union leaders will not let me."

- Bonita Entwistle, OR

http://bit.ly/2up5BpQ

After an attempt to create a state home care commission legislatively in 1999 failed, the union decided to take a different approach to creating a public employer for collective bargaining purposes.[85]

In a first, the union decided to pursue a ballot measure to enshrine the unionization of HCWs into the state constitution. Measure 99 was placed on the ballot in the fall of 2000 and approved by voters. As would happen in other states, the measure was presented to the public as a means to improve home care for seniors and the disabled through the creation of a Home Care Commission. The ballot description generated by then-Secretary of State Bill Bradbury noted:

> "RESULT OF 'YES' VOTE: 'Yes' vote creates commission ensuring quality home services for elderly, disabled receiving publicly-funded care.
> RESULT OF 'NO' VOTE: 'No' vote rejects commission ensuring quality home services for elderly, disabled receiving publicly-funded care."[86]

Given such a deceptively innocuous description, it's a wonder the measure passed with only 63 percent support.[87]

Commenting after the fact, SEIU 503 organizer Lisa Siegle explained how it used other groups interested in the home care system as cover to achieve its aims, noting,

> "...the real motivation for trying to put together a coalition was really so that the whole

[83] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[84] Ibid.

[85] Patrice Mareschal. "Innovation and Adaptation: Contrasting Efforts to Organize Home Care Workers in Four States." *Labor Studies Journal*, Vol. 31, No. 1, (Spring 2006): 25-49. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.823.3624&rep=rep1&type=pdf

[86] A copy of the ballot description is available online at: http://oregonvotes.org/irr/2000/104dbt.pdf

[87] Oregon Secretary of State. Election results available online at: https://sos.oregon.gov/blue-book/Documents/elections/initiative.pdf

> process of organizing and trying to improve workers' wages and benefits was not seen as greedy workers, but to give some legitimacy to the idea that this was really about improving service to clients..."[88]

The last substantive provision of Measure 99 paved the way for unionization by designating the newly created Commission as,

> "...the employer of record of home care workers hired directly by the client and paid by the State... Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the Commission on matters concerning employment relations."[89]

According to SEIU 503's organizing director, the success of Measure 99 represented the first time unionization was advanced through a ballot measure.[90] It would not be the last.

The following year, the legislature passed House Bill 3816, which provided the statutory framework needed to implement Measure 99[91] and approved funding for the Home Care Commission.[92]

In December 2001, SEIU 503 won an election administered by the Oregon Employment Relations Board (ERB) to be the representative of all HCWs in the state. Of approximately 12,000 eligible voters, the union received the support of 4,668 (39 percent). 418 HCWs (3 percent) voted against the union while the majority (58 percent) did not return ballots.[93] Nevertheless, the result meant the union would represent all HCWs in the state.

Negotiating the first collective bargaining agreement (CBA) took some time; it did not take effect until August 2003. However, the finalized agreement contained numerous provisions favorable to the union.

Importantly, Article 9, Sections 6 and 7 obligated the state to collect union dues from HCWs' pay and required caregivers who choose not to join the union as members to nonetheless pay a so-called "fair-share" fee to the union as a condition of employment. Article 9, Section 2 required the state to give union organizers access to any orientations it conducted for caregivers so they could "distribute and collect membership applications." Lastly, Article 9, Section 3 required the state to monthly provide the union with caregivers' detailed personal contact information, including name, address, phone number and even Social Security number. Under Article 15, Section 7, the state agreed to pay

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[88] Patrice Mareschal. "Innovation and Adaptation: Contrasting Efforts to Organize Home Care Workers in Four States." *Labor Studies Journal*, Vol. 31, No. 1, (Spring 2006): 25-49. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.823.3624&rep=rep1&type=pdf

[89] A copy of Measure 99 is available online at: http://oregonvotes.org/irr/2000/104text.pdf

[90] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[91] House Bill 3816 (2001): https://www.oregonlegislature.gov/bills_laws/archivebills/2001_BEHB3816.pdf

[92] Eileen Boris and Jennifer Klein. "Organizing Home Care: Low-Waged Workers in the Welfare State." *Politics and Society*, Vol. 34, No. 1, (March 2006): 81-107. https://www.ssa.uchicago.edu/sites/default/files/uploads/Politics_and_Society_published.pdf

[93] *Northwest Labor Press*. "12,000 homecare workers in Oregon say 'Union Yes.'" December 21, 2001. https://nwlaborpress.org/2001/12-21-01SEIU.html

the union to act as the administrator of the health benefits plan for eligible caregivers.[94]

The second CBA, in effect from September 2005 through June 2007, made no substantive changes to these provisions.[95] The third agreement, in effect from November 2007 through June 2009, guaranteed the union at least 20 minutes to present at caregiver orientations. It also created the Home Care Commission's Training Committee and tasked it with starting a training program for caregivers. As with orientations, union organizers were ensured at least 20 minutes to present at any such training opportunities.[96] Though not explicitly mentioned in the prior agreements, the 2009-11 CBA acknowledged that the state had been making, upon written authorization, deductions from caregivers' pay for contribution to the union's political committee, Citizen Action for Public Education (CAPE).[97]

In 2010, the legislature passed House Bill 3618 designating the Home Care Commission as the employer for collective bargaining purposes of the state's personal support workers (PSWs) serving clients with developmentally disabilities.[98] In June 2011, the ERB certified SEIU 503 as the representative of PSWs, who were added to the existing HCW bargaining unit.[99]

Consequently, the 2011-13 CBA was the first to cover both HCWs and PSWs. The agreement also added email addresses to the list of HC/PSW contact information the state had to provide to the union and obligated the parties to "pursue establishing a jointly-governed Taft-Hartley-like [sic] Trust (Trust) to oversee the selection and administration of the Homecare Workers' benefit plan…"[100]

The U.S. Supreme Court's June 2014 *Harris v. Quinn* decision, which made union dues payment optional for "partial-public employees" like HC/PSWs, came during the middle of SEIU 503's 2013-15 CBA.[101] *The Oregonian* reported in July 2014 that SEIU 503 had ceased deducting agency fees from nonmember caregivers. The paper claimed state payroll data showed that 10,603 of the 25,842

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[94] The 2003-05 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2003-2005 OHCC-SEIU CBA.pdf
[95] The 2005-07 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2005-2007%20OHCC-SEIU%20CBA.pdf
[96] The 2007-09 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2007-2009%20OHCC-SEIU%20CBA.pdf
[97] The 2009-11 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2009-11contract.pdf
[98] House Bill 3618 (2010): https://olis.leg.state.or.us/liz/2010S1/Downloads/MeasureDocument/HB3618/Enrolled
[99] A copy of the certification is available online at: https://www.oregon.gov/ERB/certifications/uc-007-11.pdf
[100] The 2011-13 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2011-2013-CBA-HCC-SEIU-Local-503-OPEU.pdf
[101] The 2013-15 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2013-2015-OHCC-SEIU-CBA.pdf

caregivers represented by the union paid “fair share” fees, though the union disputed the state data.[102]

Executed in September 2017, years after the prior contract expired, the union’s 2015-19 CBA was the first post-*Harris* contract and remains in effect. In addition to the information previously provided, the state agreed to provide SEIU 503 with caregivers’ gender, date of birth and language preference. Instead of being provided monthly, the state was required to send an updated list to the union each business day.

In accordance with *Harris*, the “fair-share”/agency fee requirement was removed from the contract, though it also expanded the ways in which the union could sign up members to include “written, electronic or recorded telephonic message authorization.” Article 7, Section 10(b) of the contract also specified that an HC/PSW’s dues deduction authorization could only be revoked according to the following terms:

> “This authorization is irrevocable for a period of one (1) year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period of the termination of the contract between my Employer and the Union, whichever occurs first, I notify the Union and my Employer in writing, with my valid signature of my desire to revoke this authorization.”[103]

To aid the union in collecting signed membership agreements, Article 23 of the CBA required all new providers to attend orientations featuring a 20-minute union sales pitch.

In December 2014, the Freedom Foundation requested the list of HC/PSWs from the Oregon Department of Human Services (DHS) for the purpose of contacting them with information about their constitutional rights under *Harris*.[104] DHS delayed producing the requested records, which it later admitted were disclosable under the state’s public records law.[105] On April 9, 2015, Gov. Kate Brown (D) signed House Bill 3037, which contained an emergency clause, into law.[106] The measure added a section to the state’s public records law exempting home care workers’ contact information from public disclosure.[107]

The following day, DHS notified the Freedom Foundation that, due to the law’s passage, “…we have

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[102] Jeff Mapes. “Two Oregon unions stop collecting dues for some 'fair share' workers following high court's decision.” *The Oregonian*, July 23, 2014. https://www.oregonlive.com/mapes/index.ssf/2014/07/two_oregon_unions_stop_collect.html

[103] The 2015-19 collective bargaining agreement between the Oregon Home Care Commission and SEIU 503 on behalf of HC/PSWs is available online at: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/ohcc-seiu-2015-19-bargaining-agreement.pdf

[104] A copy of the Freedom Foundation’s request is available online at: http://media.oregonlive.com/opinion_impact/other/2015/12/02/request.pdf

[105] Editorial board. “How state officials, with guidance from the Department of Justice, knee-capped a public records request.” *The Oregonian*, December 24, 2015. https://www.oregonlive.com/opinion/index.ssf/2015/12/government_transparency_oregon.html#incart_river_home

[106] Information about the procedural history of House Bill 3037 is available from the Oregon State Legislature at: https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB3037

[107] House Bill 3037 (2015): https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3037

no responsive records to provide you."[108]

In July, the governor signed a "compromise" proposal, House Bill 3557,[109] that allowed caregivers' contact information to be released if "the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance..."[110]

Accordingly, the Freedom Foundation submitted a second request for the information to DHS. Unsurprisingly, the agency did not believe that informing HC/PSWs of their constitutional rights served the public interest and denied the request.[111]

Nevertheless, the legislation did not exempt caregivers' names from disclosure. Accordingly, the Freedom Foundation was able to conduct educational outreach to caregivers for whom it was able to find mailing addresses. It also began conducting outreach to HC/PSWs in other ways, including by leafleting outside of state orientations and trainings.

For a time, there was one other opening for obtaining a list of HC/PSWs. Oregon's nonprofit corporation laws require nonprofit membership organizations, like SEIU 503, to provide membership lists to any member requesting one.[112]

In 2013, former SEIU 503 president Joe DiNicola prevailed against the union in a lawsuit in which he contended the union consistently violated various requirements placed on nonprofit corporations by state law, contending it operated "more like a secret society than a member-run organization."[113] The Oregon circuit court judge found the union's violations of the Oregon Nonprofit Corporation Act were "regular, sustained, and ongoing."[114]

Consequently, when a series of SEIU 503 members requested to inspect the membership list amidst Freedom Foundation efforts to communicate with caregivers, the union decided to take the drastic action of holding an election to shed its status as a nonprofit corporation in favor of becoming an unincorporated association. In a letter to members encouraging them to vote in favor of un-incorporation, SEIU 503's board of directors played on caregivers' privacy concerns.[115]

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[108] A copy of DHS' denial of the Freedom Foundation's request is available online at: http://media.oregonlive.com/opinion_impact/other/2015/12/02/rejectedbydhs.pdf

[109] Information about the procedural history of House Bill 3557 is available online from the Oregon State Legislature at: https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB3557

[110] House Bill 3557 (2015): https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3557/Enrolled

[111] Anne Marie Gurney. "Oregon's continuing public-records runaround benefits unions." *The Oregonian.* https://www.oregonlive.com/opinion/index.ssf/2016/01/oregons_continuing_public-reco.html

[112] ORS 65.774(2)(c).

[113] Jeff Mapes. "Oregon's largest union grapples with messy lawsuit from former president." *The Oregonian,* August 4, 2013. http://media.oregonlive.com/mapes/other/Judge%20Graves%20Order%20Dated%20June%2026.pdf

[114] A copy of Judge Dennis Graves' order granting injunctive relief in *DiNicola v. SEU 503,* Case No. 12C18681, 2013 is available online at: http://media.oregonlive.com/mapes/other/Judge%20Graves%20Order%20Dated%20June%2026.pdf

[115] A copy of SEIU 503's April 7, 2017 letter to members regarding the election is available online at: https://freedomfoundation.com/wp-content/uploads/2017/06/documents_seiu-mail-in-vote-notice.PDF

In April 2017, the union conducted an internal vote in which it reported 91 percent of votes cast supported un-incorporation.[116] Exactly what percentage of SEIU 503's membership participated in the election was not disclosed. Following the election, one state lawmaker, Rep. Mike Nearman (R-Independence), wrote SEIU 503's executive director a letter in which he noted how the union's members have "lost important protections under state law designed to safeguard their rights to organizational transparency, accountability and democracy."[117] The letter also suggested less than 15 percent of the union's members participated in the election and requested the union document that the election "was conducted in a fair and ethical manner." The union failed to reply.[118]

As caregivers learned of their rights and attempted to cancel the SEIU 503 deductions from their pay — which amount to 1.7 percent of wages plus $2.75 per month[119] — they discovered the union would only permit them to resign during a 15-day annual period.[120]

One caregiver, Bonita Entwistle, sent more than 20 separate resignation requests to SEIU 503. It ignored every single one.[121]

To help caregivers get their requests processed, the Freedom Foundation began collecting the opt out requests and submitting copies to SEIU 503 once every two weeks on the theory that every caregiver would eventually have their resignation submitted during their individualized window. Still, the union refused to process the resignations because they were merely copies.[122] At one point, the Foundation was submitting more than 900 resignation requests to SEIU 503 every two weeks.[123]

Beginning in 2016, the Freedom Foundation started filing litigation on behalf of specific caregivers who had their requests denied and negotiated settlements with SEIU 503 that ceased the dues deductions from the named plaintiffs.[124] The most recent lawsuit was also the largest, including 14

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[116] SEIU 503. "A Huge Win for Member Privacy and Democracy!" http://www2.seiu503.org/MemberPrivacy

[117] A copy of Rep. Nearman's June 9, 2017 letter to SEIU 503 executive director Brian Rudiger is available online at: https://freedomfoundation.com/wp-content/uploads/2017/06/documents_nearman-open-letter-to-seiu.pdf

[118] Ben Straka. "Open Letter From GOP Lawmaker Challenges Validity Of SEIU 503 Election." Freedom Foundation, June 23, 2017. https://www.freedomfoundation.com/labor/open-letter-from-gop-lawmaker-challenges-validity-of-seiu-503-election/

[119] See item 21 of SEIU 503's form LM-2 for 2017 on file with the U.S. Department of Labor. File No. 519-355. https://olms.dol-esa.gov/query/getOrgQry.do

[120] Editorial board. "Home care worker quit her union, but her dues payments continued." *The Oregonian*, February 16, 2016. https://www.oregonlive.com/opinion/index.ssf/2016/02/post_159.html

[121] Aaron Withe. "SEIU 503 refuses to honor opt-out requests." Freedom Foundation, January 11, 2018. https://www.freedomfoundation.com/labor/seiu-503-refuses-honor-opt-requests/

[122] Freedom Foundation. "Federal Lawsuit Accuses Oregon, SEIU 503 of Violating Caregivers' Rights to Opt Out." November 3, 2016. https://www.freedomfoundation.com/press-release/federal-lawsuit-accuses-oregon-seiu-503-of-violating-caregivers-rights-to-opt-out/

[123] Aaron Withe. "SEIU 503 refuses to honor opt-out requests." Freedom Foundation, January 11, 2018. https://www.freedomfoundation.com/labor/seiu-503-refuses-honor-opt-requests/

[124] Editorial board. "Home care worker quit her union, but her dues payments continued." *The Oregonian*, February 16, 2016. https://www.oregonlive.com/opinion/index.ssf/2016/02/post_159.html
Freedom Foundation. "Federal Lawsuit Accuses Oregon, SEIU 503 of Violating Caregivers' Rights to Opt Out." November 3, 2016. https://www.freedomfoundation.com/press-release/federal-lawsuit-accuses-oregon-seiu-503-of-violating-caregivers-rights-to-opt-out/

named plaintiffs.[125]

Despite SEIU 503's gimmicks, significant numbers of HC/PSWs have indicated their lack of support for the union by resigning or refraining from signing up for membership. Monthly snapshots of state payroll obtained from DHS showed that, as of August 2017, more than 40 percent of HC/PSWs were not having union dues withheld from their pay.[126]

As with other similar unions, SEIU 503 spends significant sums of the dues it collects on electoral political activity. In one particularly egregious example, the union poured $3.6 million into supporting Measure 97 in 2016, a proposal to dramatically increase the state corporate tax.[127] It was rejected by 60 percent of Oregon voters.[128]

Estimated Dues Skim for SEIU Local 503

Year	Total Dues and Fees	Total Dues Payers	Average Dues	Union HC/PSWs	Estimated HC/PSW Dues
FY2004	$15,563,792	34,734	$448	14,237	$4,253,066
FY2005	$17,103,900	37,229	$459	15,356	$4,703,339
FY2006	$17,564,475	44,015	$399	16,475	$4,382,954
FY2007	$18,097,942	42,530	$426	17,594	$4,991,130
FY2008	$19,315,259	55,572	$348	18,712	$4,335,935
FY2009	$20,996,962	51,527	$407	19,831	$5,387,383
FY2010	$20,995,367	52,639	$399	20,950	$5,570,650
FY2011	$21,372,369	43,781	$488	22,069	$7,182,085
FY2012	$21,339,966	47,236	$452	23,187	$6,983,613
FY2013	$23,888,187	57,129	$418	24,306	$6,775,635
FY2014	$27,208,960	52,327	$520	25,425	$6,610,186
FY2015	$28,030,519	56,454	$390	17,072	$6,660,624
FY2016	$28,420,819	56,926	$390	17,072	$6,660,624
CY2017	$30,368,883	58,384	$390	17,072	$6,660,624
				Total	**$81,157,846**

Sources: SEIU Local 503 forms LM-2. File No. 519-355. https://olms.dol-esa.gov/query/getOrgQry.do
Data obtained upon request from the Oregon Department of Human Services.

Freedom Foundation. "Freedom Foundation Lawsuit Challenges Illegal Union Dues Deductions." January 27, 2017. https://www.freedomfoundation.com/press-release/freedom-foundation-lawsuit-challenges-illegal-union-dues-deductions/

125 Aaron Withe. "SEIU 503 refuses to honor opt-out requests." Freedom Foundation, January 11, 2018. https://www.freedomfoundation.com/labor/seiu-503-refuses-honor-opt-requests/

126 Ben Straka. "Less than 60 percent of caregivers are paying dues to SEIU 503." Freedom Foundation, December 1, 2017. https://www.freedomfoundation.com/labor/less-60-percent-caregivers-paying-dues-seiu-503/

127 Ben Straka. "How SEIU 503 Spent Members' Dues in 2016." Freedom Foundation, June 8, 2017. https://www.freedomfoundation.com/labor/how-seiu-503-spent-members-dues-in-2016/

128 Hillary Borrud. "Oregon corporate tax Measure 97 defeated: Election 2016 results." *The Oregonian*, November 8, 2016. https://www.oregonlive.com/politics/index.ssf/2016/11/oregon_corporate_tax_measure_9.html

METHODOLOGICAL NOTES: SEIU 503 files its forms LM-2 with the U.S. Department of Labor on a fiscal year running from October through September.

Even though SEIU 503's first CBA for HC/PSWs took effect in August 2003, it likely took the state at least some time to initiate the union dues deductions from caregivers' pay. Accordingly, this estimate assumes the union collected no dues or fees from HC/PSWs for the purposes of its 2003 LM-2 report.

For FY 2004, total dues payers comes from item 18 of the union's form LM-2 and total dues and fees comes from statement B, item 29.

For FY 2005-14, total dues and fees are reported on statement B, item 36 of SEIU 503's forms LM-2. Members, agency fee payers and total dues payers are found on schedule 13 of the union's forms LM-2.

For FY 2003-14, average dues are calculated by dividing total dues and fees by total dues payers. The estimated number of HCWs at the time of the union certification election at the end of 2001 was 12,000. Payroll data obtained from DHS upon request for May, July and August 2017 indicates the number of HC/PSWs from whom the state withheld union dues. The estimated number of HC/PSWs for 2017 is calculated by averaging the number paid in these three months (28,781). The estimated number of union HC/PSWs for 2004-14 assumes that the number of caregivers increased at a constant rate from 12,000 in 2002 to 28,781 in 2017.

Estimated HC/PSW dues for 2004-13 are calculated by multiplying two-thirds of average dues by the estimated number of union member providers, since the 2017 state payroll data suggests caregivers pay less in dues on average than other SEIU 503 members. Estimated HC/PSW dues for 2014 is calculated by multiplying half of average dues by the estimated number of union member providers, since dues collection for nonmember caregivers ceased after *Harris* for 1-2 months of the union's 2014 fiscal year.

Estimated HC/PSW dues for 2017 is calculated by averaging the dues collected by SEIU 503 in May, July and August, as recorded by the state data, and multiplying the average dues collection ($555,052.04) by 12.

For lack of better data post-*Harris,* the estimated number of union member HC/PSWs and dues collection for 2015-16 is assumed to be the same as 2017.

Washington

In Washington state, about 37,000 individual provider home care aides (IPs) contract directly with the state Department of Social and Health Services (DSHS) to serve Medicaid-eligible clients. About 70 percent of IPs are related to the client(s) they care for.[129]

After trying unsuccessfully to get the state legislature to pass a legal framework for the unionization of IPs, the SEIU turned to the ballot box.[130] In 2001, the union funded a statewide ballot measure, Initiative 775, ostensibly to promote quality home care.[131] The political committee formed to support the initiative was entitled, "Washingtonians for Quality Homecare."[132] In an op-ed published shortly after the initiative's passage, David Rolf of SEIU cited I-775's success as proof Washingtonians wanted to "invest in quality home care for seniors and people with disabilities."[133]

"Having the union take our money was a real hardship on us."

- *Ben and Tammy Olson, WA*

http://bit.ly/2KXGSmw

Rolf's statement that Washingtonians *thought* they were voting for quality home care was undoubtedly correct. In reality, I-775 set up the legal framework necessary to allow SEIU to unionize IPs. The measure set up a sham employer-of-record for IPs called the Home Care Quality Authority (HCQA).[134] From the beginning, the HCQA's primary goal was never to improve home care, but to collectively bargain with the union representing IPs, who were designated by I-775 as public employees "solely for the purposes of collective bargaining."[135]Academics later ascribed the union's success in part to the fact that it "portrayed the needs of home care workers and their clients as congruent, helping the union manage perceptions of legitimacy."[136]

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[129] Washington State Department of Social and Health Services. Request for Proposal 1334-437. https://www.freedomfoundation.com/wp-content/uploads/2017/11/WA-DSHS-RFP-1334-437.pdf

[130] Patrice Mareschal and Patricia Ciorici. "Promoting Economic Justice for Home Care Workers in Washington: From Warfare to Kumbaya." Prepared for delivery at the 2014 Annual Meeting of the Labor Employment Relations/Allied Social Sciences Association/American Economics Association, January 3-5, 2014. https://www.aeaweb.org/conference/2014/retrieve.php?pdfid=877

[131] Initiative 775 (2001): https://www.sos.wa.gov/elections/initiatives/text/i775.pdf

[132] Carol Ostrom. "I-775: A solution or problem?" *Seattle Times*, October 29, 2001. http://community.seattletimes.nwsource.com/archive/?date=20011029&slug=healthinitiative29m

[133] David Rolf and Kathy Coster. "Public wants home care strengthened." *Seattle Post-Intelligencer*, December 13, 2001. http://www.seattlepi.com/local/opinion/article/Public-wants-home-care-strengthened-1074510.php

[134] The HCQA was eventually abolished and the governor designated IPs' employer for collective bargaining purposes. See RCW 74.39A.270.

[135] See RCW 74.39A.270.

[136] Patrice Mareschal and Patricia Ciorici. "Promoting Economic Justice for Home Care Workers in Washington: From Warfare to Kumbaya." Prepared for delivery at the 2014 Annual Meeting of the Labor Employment Relations/Allied Social Sciences Association/American Economics Association, January 3-5, 2014. https://www.aeaweb.org/conference/2014/retrieve.php?pdfid=877

One of the existing locals, SEIU 6, quickly sought to represent IPs after I-775 became law. In August 2002, the state Public Employment Relations Commission (PERC) conducted an election in which 6,575 (25.8 percent) out of 25,501 employees voted to be represented by SEIU 6 while 1,234 (4.8 percent) voted against union representation and 17,692 (69.4 percent) didn't vote.[137]

The election process, however, was questionable at best. For instance, PERC agreed to SEIU's demand to conduct an election before the HCQA had even been established. SEIU also persuaded PERC to abandon many of its standard procedures, such as mailing out a notice of election before the ballots, verifying mailing addresses and providing IPs an opportunity to request ballots in their own language, all of which help explain the election's dismal participation rate.[138]

The legally questionable behavior continued after the initial certification vote. When SEIU 6's president stepped down, Rolf was appointed by the international SEIU to complete his term. However, a rank-and-file rebellion against Rolf in 2002 elected Sergio Salinas head of the local, leaving Rolf out of power.[139] In response, the international SEIU chartered a new local in Washington — Local 775 — and placed Rolf in charge. His first order of business was to get PERC to transfer certification to represent IPs from SEIU 6 to SEIU 775 without another election. After some resistance, PERC acquiesced.[140]

The union's next order of business was to negotiate an initial collective bargaining agreement (CBA) and get it approved by the legislature. SEIU 775 and the HCQA negotiated a first CBA in 2003,[141] but the legislature refused to approve it, opting to implement a wage increase for IPs different from that specified in the agreement.[142] In response, the union ratcheted up the pressure on legislators, resorting to tactics like,

> "...holding rallies at the Capitol Campus, holding a vigil at the Senate Majority leader's home, enlisting a Republican senator's own priest to lead a rally urging him to support the union, hiring a woman dressed as Marie Antoinette to hand out slices of cake in front of the legislative cafeteria, sending a satirical e-mail message to legislators threatening to move home care workers to another state (mocking corporate threats to relocate), and offering to give Democratic lawmakers a remedial lesson in bargaining."[143]

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[137] Washington Public Employment Relations Commission. *Home Care Quality Authority*, Decision 8064 (PECB, 2003). https://decisions.perc.wa.gov/waperc/decisions/en/item/171611/index.do?r=AAAAAQAEODA2NAE

[138] Kirsten Nelsen. "Brewing Up a Union." *Freedom Matters*, Vol. 1, No. 1, (Fall/Winter 2016): 22-23. https://issuu.com/jeffrhodes2/docs/freedom-matters_issue01

[139] Brian King. "Service Employees union local has its first contested election in anyone's memory." *Washington Free Press*, No 62, (March/April 2003). http://wafreepress.org/62/membersFirst.htm

[140] Washington Public Employment Relations Commission. *State - Home Care Quality Authority*, Decision 8241 (PECB, 2003). https://decisions.perc.wa.gov/waperc/decisions/en/item/171616/index.do?r=AAAAAQAEODA2NAE

[141] The 2003-05 collective bargaining agreement between SEIU 775 and the Home Care Quality Authority is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-IP-CBA-03-05.pdf

[142] Washington State Labor Council. 2003 Convention, Resolution No. 27. http://www.wslc.org/2003-wslc-resolutions/#27

[143] Patrice Mareschal and Patricia Ciorici. "Promoting Economic Justice for Home Care Workers in Washington: From Warfare to Kumbaya." Prepared for delivery at the 2014 Annual Meeting of the Labor Employment Relations/Allied Social Sciences Association/American Economics Association, January 3-5, 2014. https://www.aeaweb.org/conference/2014/retrieve.php?pdfid=877

The first collective bargaining agreement was ratified by the legislature in 2004 and, ever since, political action has been central to the union's work.

Then-secretary-treasurer Suzanne Wall told researchers in an interview, "As we're organizing workers in the long-term care industry, in every conversation with workers we include talking about political power."[144]

Then-communications director for SEIU 775 Adam Glickman, the current secretary-treasurer, put a finer point on it in an interview with the same researchers:

> "I think we sent a pretty clear message both to Democrats that we weren't always going to support Democrats regardless of what they did and regardless of who the Republican was, and to Republicans that we could take you out if we chose to or we could help keep you in office if we chose to, depending upon how you behaved. And so there were Republicans who behaved very well and we supported them and helped them get re-elected, and then there were Republicans who behaved very badly, and we helped take them out."[145]

"After about three months, I realized that full union membership dues were being taken out of my check without my permission."

- Miranda Thorpe, WA

http://bit.ly/2Jsqyon

In the ensuing years, SEIU 775 amassed power largely unopposed.[146] Until 2014, all IPs were required by the union's CBAs to pay union dues or fees as a condition of employment.[147] However, the U.S. Supreme Court's June 2014 decision in *Harris v. Quinn* established that "partial-public employees" like IPs could not be required to financially support a union against their will.

Since the *Harris* decision, however, SEIU 775 has coordinated with executive branch officials to keep IPs paying union dues whether they want to or not.[148] For example, the union:

- **Spent as much as $3.7 million on efforts to prevent IPs from learning of their First Amendment right to resign from the union.**[149] The union sued the Freedom Foundation multiple times for attempting to educate IPs about their constitutional rights. At the same time, SEIU 775 lobbied the state legislature in 2015 and 2016 to change state public records laws to prevent anyone but a labor union from obtaining the list of providers, a necessary element in any effort to educate IPs about their rights.[150] Having failed on these fronts, SEIU

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[144] Ibid.
[145] Ibid.
[146] For more information, see the case study on union benefits trusts on page 107.
[147] See, for example, Article 4 of SEIU 775'2 2013-15 collective bargaining agreement with the State of Washington on behalf of IPs, available online from the Washington Office of Financial Management at: https://www.ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/13-15/nse_hc.pdf
[148] Maxford Nelsen. "Six Ways SEIU 775 Is Getting Around Harris v. Quinn." Freedom Foundation, May 18, 2016. https://www.freedomfoundation.com/labor/six-ways-seiu-775-is-getting-around-harris-v-quinn/
[149] Ibid.
[150] Ibid.

775 funded another statewide ballot measure in 2016, Initiative 1501, that re-wrote the state Public Records Act to prevent the release of the list of IPs to any group but a union under the guise of protecting seniors and the vulnerable from identity theft.[151] It was universally derided by newspapers and media,[152] with some observers going so far as to label it the "most dishonest initiative in history."[153] Nonetheless, without a well-funded opposition campaign, the measure coasted to victory at the polls.[154] The constitutionality of the measure is currently being challenged in federal court.[155]

- **Continues to collect union dues from thousands of IPs without their permission.** Article 4.1 of the union's current 2017-19 CBA requires the state to withhold full union dues from all IPs automatically, unless an IP demands in writing that the deductions cease.[156] A group of IPs who had dues withheld from their pay without authorization challenged the practice in state court,[157] but the Washington Supreme Court ultimately ruled that state law permits the seizure of union dues from providers' pay without their consent.[158] SEIU 775 has admitted in court records that, at the union's direction, the state deducts dues from thousands of IPs without their permission.[159]
- **Requires IPs to attend coercive union meetings.** Article 2.3 of the union's 2017-19 CBA gives union organizers 15-minutes at the start of state-operated "contracting appointments" for new IPs to pressure the caregivers into signing union membership cards.[160] Article 15.13 grants SEIU 775 organizers a 30-minute captive audience session with IPs at the beginning of their state-mandated training and another 15-minute session when IPs complete their annual continuing education requirements. IPs are deliberately given the false impression that union membership is mandatory. In one case, an SEIU trainer was caught on tape

[151] Maxford Nelsen. "Initiative 1501: Protecting Seniors or Special Interests?" Freedom Foundation, September 27, 2016. https://www.freedomfoundation.com/labor/initiative-1501-protecting-seniors-or-special-interests/
[152] Jeff Rhodes. "Forbes The Latest National Publication to Lambaste I-1501." Freedom Foundation, November 7, 2016. https://www.freedomfoundation.com/labor/forbes-the-latest-national-publication-to-lambaste-i-1501/
[153] Todd Herman. "The most dishonest initiative in history is on the Wash. Ballot." MyNorthwest.com, October 26, 2016. http://mynorthwest.com/436971/dishonest-washington-initiative-1501/
[154] Washington State Secretary of State. November 8, 2016 General Election Results. http://results.vote.wa.gov/results/20161108/State-Measures-Initiative-Measure-No-1501-concerns-seniors-and-vulnerable-individuals.html
[155] Freedom Foundation. "Lawsuit Filed to Overturn I-1501." April 6, 2017. https://www.freedomfoundation.com/press-release/lawsuit-filed-to-overturn-i-1501/
[156] The 2017-19 collective bargaining agreement between the State of Washington and SEIU 775 on behalf of IPs is available online from the Washington Office of Financial Management at: https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf
[157] David Dewhirst. "Freedom Foundation Represents Caregiver Who Seeks to Strike Down Washington's 'Opt-Out' Scheme." Freedom Foundation, February 23, 2017. https://www.freedomfoundation.com/litigation/freedom-foundation-represents-caregiver-who-seeks-to-strike-down-washingtons-opt-out-scheme/
[158] *Thorpe v. Inslee, et al.*, 188 Wn.2d 282, 393 P.3d 1231 (2017). https://www.courts.wa.gov/opinions/pdf/929122.pdf
[159] Declaration of Adam Glickman in support of SEIU Healthcare 775NW's Opposition to Plaintiffs' Motion for Class Certification. *Centeno v. Quigley*, No. 2:14-cv-00200-MJP (W.D. Wash. Feb. 2, 2015). https://www.freedomfoundation.com/wp-content/uploads/2016/05/Glickman-Decl.-in-Centeno.pdf
[160] The 2017-19 collective bargaining agreement between the State of Washington and SEIU 775 on behalf of IPs is available online from the Washington Office of Financial Management at: https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf

falsely telling a class of IPs they had to be part of the union.[161] In documents obtained by the Freedom Foundation under the state Public Records Act and through additional litigation in 2017, DSHS staff describe SEIU 775 organizers' behavior at the contracting appointments as, "aggressive," "forceful," "rude," "unprofessional," "coercive," "demanding," and "bullying." These same staff report caregivers feeling, "pressured," "misled," "tricked," "coerced," "intimidated" and "forced" into signing SEIU membership forms.[162] In one case, DSHS staff report a caregiver being reduced to tears by the high-pressure tactics of two SEIU organizers.[163] IPs sued the state and union and succeeded in making attendance at the union captive audience sessions voluntary instead of mandatory, but IPs are still not informed by the state they do not have to attend.[164]

- **Restricts IPs' ability to resign from the union to a 15-day annual window.** In early 2016, SEIU 775 changed the fine print on its membership forms — which authorize the state to withhold union dues from IPs' pay — to provide that card-signers can only cancel their dues deduction between 45 and 30 days prior to the annual anniversary of the day they signed the card.[165] The sole purpose of the escape window is to limit IPs' ability to exercise their constitutional right to cease paying dues to SEIU 775 against their will and give the union more time to coerce them back into formal membership. Again, many IPs sign in the first place under the impression they have no choice in the matter.[166]
- **Gets to co-opt state resources to promote union membership.** In addition to having access to IPs' mandatory training and certification classes and orientations, Article 2 of the CBA permits SEIU 775 to use a host of state tools and resources to promote union membership, disseminate union information, boost the union's lobbying efforts and solicit contributions to the national SEIU PAC.
- **Signs IPs up for union membership telephonically.** With the consent of state officials, SEIU 775 works to sign IPs up for membership any time they call the union with questions. Employees in the union's call center have reported being expected to "solicit and lie" to get IPs to authorize membership over the phone.[167]
- **Receives IPs' detailed personal information from the state.** Article 5 of the current CBA requires the state to, on a daily basis, provide SEIU 775 with IPs' name, home address, phone numbers, email address, date of birth, gender, marital status, language preference and even Social Security number.[168]

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[161] Maxford Nelsen. "Video Footage Shows SEIU Lying to Individual Providers in State Mandated Training." Freedom Foundation, July 7, 2015. https://www.freedomfoundation.com/labor/video-footage-shows-seiu-lying-to-individual-providers-in-state-mandated-training/
[162] Maxford Nelsen. "DSHS allowing SEIU to continue exploiting caregivers." Freedom Foundation, January 29, 2018. https://www.freedomfoundation.com/labor/dshs-allowing-seiu-continue-exploiting-caregivers/
[163] Ibid.
[164] Maxford Nelsen. "Six Ways SEIU 775 Is Getting Around Harris v. Quinn." Freedom Foundation, May 18, 2016. https://www.freedomfoundation.com/labor/six-ways-seiu-775-is-getting-around-harris-v-quinn/
[165] A copy of SEIU 775's membership form with the irrevocability provision is available online at: https://www.freedomfoundation.com/wp-content/uploads/2016/05/SEIU-775-Membership-Form-March-2016.pdf
[166] Maxford Nelsen. "Six Ways SEIU 775 Is Getting Around Harris v. Quinn." Freedom Foundation, May 18, 2016. https://www.freedomfoundation.com/labor/six-ways-seiu-775-is-getting-around-harris-v-quinn/
[167] Ibid.
[168] The 2017-19 collective bargaining agreement between the State of Washington and SEIU 775 on behalf of IPs is available online from the Washington Office of Financial Management at: https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf

It is difficult to understate the degree to which SEIU 775 and officials in Gov. Jay Inslee's (D) administration have joined forces to prevent caregivers from learning about and exercising their right to leave the union. For example, after SEIU 775 passed I-1501 and prevented the Freedom Foundation from obtaining a list of IPs from the state, the Freedom Foundation requested the state turn over the schedule of contracting appointments and training sessions for IPs so that it could distribute informational pamphlets to IPs as they entered.

"I just want the dues to stop because the money doesn't belong in their hands."

- *Calvin Ravencraft, WA*

http://bit.ly/2uCBmuQ

Article 15.13 of the collective bargaining agreement between the state and SEIU 775 requires the union to make the schedule of trainings available to the state through an "intranet portal."[169] However, after the Freedom Foundation requested the schedule, SEIU shut off the state's access to the portal. Despite the fact that the union's action both expressly violated the terms of the collective bargaining agreement and tangibly impaired DSHS operations, the state took no action against the union to enforce the agreement.[170]

Additionally, rather than promptly disclose the contracting appointment schedules to the Freedom Foundation as required by the state Public Records Act, DSHS intentionally delayed release of the schedules to give the union time to file litigation against the state and the Freedom Foundation to block their release. SEIU 775's lawsuit failed at the trial court, appellate court and Washington Supreme Court, but successfully delayed release of the records by seven months.[171]

Despite such obstructionism, thousands of IPs have, with Freedom Foundation assistance, successfully resigned from the union and ceased paying union dues.

The decline in SEIU 775's membership led the union to back state legislation in 2018 to work around the *Harris v. Quinn* decision on a technicality and pave the way for the union to again force IPs to pay union dues or fees as a condition of employment.

Senate Bill 6199[172] directs DSHS to hire a private company to act as a "consumer-directed employer" (CDE) and take over management and administration of the state's home care program for Medicaid clients. The bill specifies that the CDE will be the "legal employer of individual providers," who will now contract with the CDE instead of DSHS. As a result, IPs will no longer be subject to state collective bargaining laws for public employees and no longer be designated public employees

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[169] See Article 15.13 of the 2017-19 collective bargaining agreement between the State of Washington and SEIU 775 on behalf of IPs available online from the Office of Financial Management at: https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf

[170] Maxford Nelsen. "Inslee Shrugs Off SEIU Violations of Collective Bargaining Agreement." Freedom Foundation, June 15, 2017. https://www.freedomfoundation.com/labor/inslee-shrugs-off-seiu-violations-of-collective-bargaining-agreement/

[171] Jami Lund. "Another Harassing SEIU Lawsuit Ends in Defeat." Freedom Foundation, October 9, 2017. https://www.freedomfoundation.com/labor/another-harassing-seiu-lawsuit-ends-in-defeat/

[172] Senate Bill 6199 (2018): http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6199-S.SL.pdf

"solely for the purposes of collective bargaining."[173]

Instead, IPs will be considered private-sector employees and subject to the National Labor Relations Act. Because the *Harris v. Quinn* decision only protects "partial-public employees" from being forced to support a union, and because Washington state has not exercised its authority under Section 14(b) of the Taft-Hartley Act[174] to pass a right-to-work law and prevent private-sector workers from having to financially support a union as a condition of employment, SEIU 775 believes it will be free to impose such a requirement on IPs after the transition to the CDE.

After being questioned by Sen. Ann Rivers (R) in a hearing of the Senate Health and Long-Term Care Committee, DSHS assistant secretary Bill Moss wrote a follow up letter to the committee in which he conceded SB 6199 would permit SEIU 775 to again require IPs to pay union dues under a "closed-shop" arrangement.[175]

When asked by a reporter for the *Seattle Times* whether SB 6199 was an attempt to "require [IPs] to be members of the union," SEIU 775's president, David Rolf, responded, "Anything that allows for stronger unions… is obviously good in and of itself… We're for it."[176]

Legislative debate over the proposal was intense. A hearing on the bill before the House Health Care and Wellness Committee — chaired by Rep. Eileen Cody (D), an SEIU activist — was ended before opponents were allowed to testify.[177] A Saturday hearing on the bill before the House Appropriations Committee was held with only a few hours' notice.[178]

Ultimately, SB 6199 was passed by the Senate 26-21, with one Republican joining with majority Democrats to pass the bill while two other Republicans were absent.[179] Debate stretched into the early morning hours.[180]

In the House, minority Republicans took the unprecedented action of walking off the floor in protest

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173 RCW 74.39A.270.

174 Codified as 29 U.S. Code § 164.

175 Maxford Nelsen. "Bills in state legislature would force caregivers to pay union dues again." Freedom Foundation, February 1, 2018. https://www.freedomfoundation.com/labor/bills-state-legislature-force-caregivers-pay-union-dues/

176 Maxford Nelsen. "Caregiver takes on SEIU on King 5." Freedom Foundation, February 22, 2018. https://www.freedomfoundation.com/labor/caregiver-takes-on-seiu-on-king-5/

177 Maxford Nelsen. "House committee shuts off debate on controversial SEIU proposal." Freedom Foundation, February 20, 2018. https://www.freedomfoundation.com/press-release/house-committee-shuts-off-debate-controversial-seiu-proposal/

178 Maxford Nelsen. "Debate over SEIU bill characterized by hypocrisy, deception." Freedom Foundation, February 28, 2018. https://www.freedomfoundation.com/labor/debate-seiu-bill-characterized-hypocrisy-deception/

179 Information about the procedural history of Senate Bill 6199 is available from the Washington State Legislature at: http://apps2.leg.wa.gov/billsummary?BillNumber=6199&Year=2017&BillNumber=6199&Year=2017

180 Jeff Rhodes. "Democrats and Governor Inslee push bill that would force newly freed caregivers back into union." Freedom Foundation, February 8, 2018. https://www.freedomfoundation.com/labor/democrats-governor-inslee-push-bill-force-newly-freed-caregivers-back-union/

during the vote after being repeatedly prevented from discussing the bill's political motivations.[181] It passed with 50 "yea" votes from Democrats and the chamber's 48 Republicans marked as absent.[182]

More than 1,000 IPs petitioned Gov. Inslee to veto SB 6199.[183] Frustrated by their union's support of a bill they opposed, some caregivers took their concerns straight to local media.[184] Multiple newspaper editorial boards opposed the legislation.[185] None supported it.

Gov. Inslee sided with SEIU 775, however, and signed the bill into law anyway.[186]

His decision came as little surprise. As early as June 2014, SEIU 775 had petitioned Gov. Inslee for legislation to "contract with an outside entity to run the home care system, making IPs private-sector employees."[187] No such legislation was introduced, however, until Democrats took control of the state Senate in a special election in the fall of 2017, giving them unified control of state government for the first time since *Harris v. Quinn*.[188]

Following SB 6199's passage, SEIU 775's secretary-treasurer, Adam Glickman, told the *Tacoma News Tribune* that making it so that "workers can't opt out" of financially supporting the union "would

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181 Maxford Nelsen. "Forcing union membership is no way to run government-funded home health care." *The Seattle Times*, March 23, 2018. https://www.seattletimes.com/opinion/forcing-union-membership-is-no-way-to-run-government-funded-home-health-care/

182 Information about the procedural history of Senate Bill 6199 is available from the Washington State Legislature at: http://apps2.leg.wa.gov/billsummary?BillNumber=6199&Year=2017&BillNumber=6199&Year=2017

183 Maxford Nelsen. "Bills in state legislature would force caregivers to pay union dues again." Freedom Foundation, February 1, 2018. https://www.freedomfoundation.com/labor/nearly-900-caregivers-petition-inslee-veto-seiu-bill/

184 Natalie Brand. "Home caregiver mom fighting union backed bill." *King 5 News*, February 21, 2018. https://www.king5.com/article/news/politics/home-caregiver-mom-fighting-union-backed-bill/281-521882870
Natalie Brand. "Home caregivers divided over union-backed bill signed into law." *King 5 News*, March 29, 2018. https://www.king5.com/article/news/local/home-caregivers-divided-over-union-backed-bill-signed-into-law/281-533379155

185 Editorial board. "Inslee and Company Choose Unions Over the Rest of Us." *The Daily Chronicle*, February 16, 2018. http://www.chronline.com/opinion/our-views-inslee-and-company-choose-unions-over-the-rest/article_593eecbc-13a3-11e8-ae0e-e376f488094a.html
Editorial board. "Blow Against Transparency." *The Columbian*, April 2, 2018. http://www.columbian.com/news/2018/apr/02/in-our-view-blow-against-transparency/
Editorial board. "Legislators, don't cave to in-home care union — reject bill that would increase DSHS costs." *Seattle Times*, February 7, 2018. https://www.seattletimes.com/opinion/editorials/legislators-dont-cave-to-in-home-care-union-reject-bill-that-would-increase-dshs-costs/

186 Maxford Nelsen. "Gov. Inslee signs SEIU bill, rewards campaign donors." Freedom Foundation, March 28, 2018. https://www.freedomfoundation.com/labor/gov-inslee-signs-seiu-bill-rewards-campaign-donors/

187 Maxford Nelsen. "Inslee Administration Working to Help Unions Avoid Complying with Supreme Court Ruling." Freedom Foundation, September 12, 2014. https://www.freedomfoundation.com/labor/inslee-administration-working-to-help-unions-avoid-complying-with-supreme-court-ruling/

188 Jim Camden. "Democrats take control of Washington State Senate." *Spokesman-Review*, November 8, 2017. http://www.spokesman.com/stories/2017/nov/07/democrats-take-control-of-state-senate/

be 'a good thing' that would make SEIU a 'stronger union.'"[189] Glickman further stated he didn't see anything wrong with "states legislating their values even if those values conflict with Supreme Court decisions."[190]

DSHS plans to begin the transition to the CDE by July 2020.[191]

"They lied to me. The union told me I had to join them if I wanted to provide care for my mother."

- *Rosetta Horne, WA*

http://bit.ly/2LpeC80

Shortly after SB 6199's passage, SEIU 775 changed the terms of its membership forms yet again. As with the previous version, the newest membership forms authorize the state to withhold union dues from the IPs' pay, retain the irrevocability provision and solicit an extra contribution to the national SEIU Committee on Political Education also to be withheld from the IPs' pay.[192] However, the forms feature a new section providing,

> "In the event my employer(s) ceases payroll deductions, and upon the Union entering an agreement with an entity to act as the agent for Individual Providers for voluntary deductions, I authorize that entity to serve as my agent for purposes of deducting and remitting membership dues, SEIU COPE and other voluntary deductions to SEIU 775 pursuant to the authorizations contained herein."[193]

An additional section authorizes the state to provide the union with the IPs' personal financial account information for the purposes of dues collection:

> "In the event my employer, its agent, an agent designated by me, or an agent designated by the Union, ceases payroll deductions, I authorize SEIU 775 to make withdrawals from my checking or savings account… To pay the dues or other amounts indicated above by automatic deduction from my bank account, I authorize my employer, its agent, or any third-party payroll agent, to provide to SEIU 775's secure payment processor, the information for the bank account (bank account number and routing number) on file with my employer or its agent that I have designated to receive the proceeds of my paycheck via direct deposit."[194]

The changes suggest SEIU 775 knows its past method of dues deduction from IPs' pay is legally questionable and has an uncertain future. However, coercing caregivers to sign away access to their personal financial accounts is hardly more defensible.

Despite all the efforts of Gov. Inslee's administration and the union, as of December 2017, 4,125 IPs

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[189] Walker Orenstein. "Inslee signs controversial union bill despite calls for a veto." *Tacoma News Tribune*, March 27, 2018. http://www.thenewstribune.com/news/politics-government/article206839864.html
[190] Ibid.
[191] Washington State Department of Social and Health Services. "Consumer Directed Employer Time Line." https://www.dshs.wa.gov/sites/default/files/ALTSA/stakeholders/documents/CDE/CDE%20Timeline.pdf
[192] A copy of the newest version of SEIU 775's membership form is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-membership-form-version-6-clean.pdf
[193] Ibid.
[194] Ibid.

(10.6 percent) were no longer paying dues to SEIU 775, according to payroll data obtained by the Freedom Foundation from DSHS upon request. However, the state still diverts more than $20 million per year in IPs' Medicaid payments to SEIU 775. Even though SEIU 775 does not provide traditional workplace representation services, it collects 3.2 percent of IPs' pay in dues,[195] more than double the 1.5 percent state workers' pay in dues to the Washington Federation of State Employees, which provides a fuller range of workplace representation services to its members.[196]

Because it collects so much in dues and has comparatively few formal duties to perform, SEIU 775 is free to spend an exceptionally high percentage of its funds on political activity. The union admits that 43 percent of the dues it collects from IPs go towards political, ideological and other activity unrelated to representing IPs.[197] In 2016, the union's prolific campaign spending led the local National Public Radio affiliate to dub SEIU the "heavyweight champion of election influencing — or at least election spending — in Washington state..."[198]

In addition to spending heavily in state elections, the union regularly contributes to local and out-of-state political campaigns for positions that have no authority over the IP system. For instance, in 2015 SEIU 775 contributed $10,000 to socialist Chuy Garcia's unsuccessful campaign to unseat Rahm Emanuel as mayor of Chicago.[199] It contributed another $10,000 in 2017 to SEIU official Cathy Glasson's failed campaign for governor of Iowa.[200]

Nearly every penny of SEIU 775's electoral spending comes from union dues coercively collected by the state from Medicaid payment to IPs.

All told, from 2003-17, the state of Washington diverted more than $190 million to SEIU 775 from IPs' Medicaid payments.

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[195] See line 21 of SEIU 775's form LM-2 for 2017 filed with the U.S. Department of Labor. File No. 542-433. https://olms.dol-esa.gov/query/getOrgQry.do

[196] See line 21 of WFSE's form LM-2 for 2017 filed with the U.S. Department of Labor. File No. 544-112. https://olms.dol-esa.gov/query/getOrgQry.do

[197] In *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), the U.S. Supreme Court ruled that public-sector employees who resign their union membership and object to paying union dues can only be required to pay an agency fee to cover their portion of the union's costs of "collective bargaining, contract administration, and grievance adjustment." In *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the U.S. Supreme Court established, among other things, that unions had to provide nonmembers with a calculation of the union's expenses showing how the agency fee was documented. SEIU 775's most recent audited statement shows that 43 percent of the union's expenditures were unrelated to representational activity. A copy of the statement is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-membership-solicitation-packetmembership-formHudson-notice-May-2018.pdf

[198] John Ryan. "Here are the real winners (and one loser) of this year's ballot initiatives." *94.9 KUOW*, November 29, 2016. http://kuow.org/post/here-are-real-winners-and-one-loser-years-ballot-initiatives

[199] See the form C4 filed by the SEIU 775 Quality Care Committee on January 28, 2016 with the Washington Public Disclosure Commission, available online at:
http://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100676312

[200] See the form C4 filed by the SEIU 775 Quality Care Committee on July 10, 2017 with the Washington Public Disclosure Commission, available online at:
http://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100773483

Estimated Washington Dues Skim for SEIU 775					
Year	Total Dues and Fees	Total Dues Payers	Average Dues	Union IPs	Total IP Dues
2003	$375,528	2,914	$129	25,500	$375,528
2004	$2,745,056	26,094	$105	26,235	$2,759,889
2005	$7,612,390	28,193	$270	26,970	$7,282,168
2006	$9,428,307	28,850	$327	27,705	$9,054,116
2007	$11,847,368	30,880	$384	28,440	$10,911,242
2008	$14,302,673	35,195	$406	29,176	$11,856,650
2009	$16,175,155	39,173	$413	29,912	$12,351,141
2010	$17,946,348	42,361	$424	30,648	$12,984,105
2011	$18,405,820	42,254	$436	31,384	$13,670,854
2012	$18,906,295	41,091	$460	32,120	$14,778,667
2013	$19,599,254	41,517	$472	32,856	$15,510,588
2014	$22,115,830	42,545	$529	33,581	$17,755,621
2015	$23,747,795	43,114	$570	33,621	$19,164,212
2016	$26,924,640	41,433	$625	32,325	$20,185,761
2017	$27,694,547	40,682	$657	32,982	$21,673,776
				Total	**$190,314,317**

Sources: SEIU 775 forms LM-2. File No. 542-433. https://olms.dol-esa.gov/query/getOrgQryResult.do reports
Payroll data obtained by request from the Department of Social and Health Services.

METHODOLOGICAL NOTES: Average dues, the number of IPs and total dues withheld from IPs for 2014-17 come from payroll data obtained monthly by request from DSHS. Monthly data for each year is averaged over 12 months. SEIU Local 775's total annual dues and fees are reported on Statement B, Line 36 of its annual LM-2 forms filed with the U.S. Department of Labor. The union's total members/fee payers are recorded on Schedule 13 of its annual forms LM-2. Average IP dues for 2003-13 are calculated by multiplying the number of union IPs by the average dues amount. Though the union represents home care aides employed by private home care agencies, state-paid IPs constitute the bulk of the union's membership. Both groups are paid comparably since, (1) the nature of the work is the same, (2) SEIU 775 has unionized not only IPs, but most private home care agency caregivers as well,[201] and (3) because state law requires that the rate the state pays to home care agencies to serve Medicaid clients be linked to the wages and benefits negotiated for IPs by SEIU 775 and the state.[202] Consequently, average dues paid by members of SEIU 775 should be the same or very close to the average dues paid by SEIU 775-represented IPs. The number of union IPs for 2003 is derived from the number that participated in the initial certification election. The number of IPs listed for 2004-13 assumes the number of IPs increased at an equal rate from 25,500 in 2003 (the number eligible to participate in the certification election) to 33,581 in 2014 (the number reported by DSHS data).

[201] A list of home care agencies SEIU 775 has organized is available online at: http://seiu775.org/findyourcontract/
[202] RCW 74.39A.310.

Illinois

On March 4, 2003, newly elected Illinois Gov. Rod Blagojevich (D) issued executive order 2003-8 directing the state to,

> "...recognize a representative designated by a majority of the personal assistants as the exclusive representative of all personal assistants... and engage in collective bargaining with said representative concerning all terms and conditions of employment of personal assistants working under the Homes Services Program that are within the State's control."[203]

"I have real fears about unionism in my home... It intrudes in my family."

- Pam Harris, IL

http://bit.ly/2us3p0j

Credit: Illinois Policy Institute

The move provided SEIU with the legal framework needed to unionize the state's personal assistants (PAs) serving Medicaid-eligible clients through the Home Services Program, something it had sought for decades.

SEIU's effort began as far back as 1985, when it petitioned the Illinois State Labor Relations Board to allow it to unionize PAs under the framework of the Illinois Public Labor Relations Act. In need of a single employer to bargain against, the union contended the state Department of Rehabilitation Services (DORS, now the Department of Human Services) employed PAs, rather than individual clients.[204]

The hearing officer assigned to the case determined that, "DORS and the individual clients are joint employers of the employees..." She further determined that, while DORS was indisputably a public employer, "the numerous DORS' clients, however, do not satisfy the statutory definition of a public employer... Therefore the Board does not have jurisdiction over clients served by the HSP program."[205]

Since "[p]ower to govern only one of two necessary employers is insufficient for the Board to perform its regulatory function," the hearing officer dismissed the SEIU petition. On appeal, the Board affirmed the hearing officer's decision, observing the "very unique situation" was "virtually impossible" to regulate as "[t]here is no typical employment arrangement here, public or otherwise..."[206]

Though neither the facts nor the law had changed by 2003, Blagojevich's executive order simply directed PAs' unionization by fiat.

In signing the executive order, Blagojevich fulfilled a campaign promise to SEIU, which backed his

[203] Illinois Gov. Rod Blagojevich. Executive Order 2003-8. March 4, 2003. https://www2.illinois.gov/Documents/ExecOrders/2003/execorder2003-8.pdf
[204] Illinois State Labor Relations Board. *State of Illinois v. SEIU, et al.* Case No. S-RC-115, https://www.freedomfoundation.com/wp-content/uploads/2018/05/S-RC-85-115-bd.pdf
[205] Ibid.
[206] Ibid.

2002 candidacy for governor in a big way, supporting him with about $800,000 in campaign contributions.[207]

Writing for the *American Prospect,* Harold Meyerson explained the extent of SEIU's support for Blagojevich:

> "Unions were all over the map during the primary, but the SEIU joined AFSCME in supporting Blagojevich, not only with money but, for the first time in an Illinois election, with large numbers of ground troops. The union provided roughly 1,000 precinct walkers in the primary campaign's final weeks, with an estimated 400 coming in from Wisconsin and Ohio, and Blagojevich eked out a 1-percent victory over his rivals. (The Democratic primary was decisive; state Republicans were too damaged by scandal to mount a serious candidacy of their own.)
>
> In exchange for its support, the SEIU won a specific commitment from Blagojevich: an executive order that created collective bargaining rights for the state's 25,000 home-care workers."[208]

SEIU Local 880 — a Chicago-based union originally founded by ACORN in the late 1970s — boasted jubilantly about its role in electing Blagojevich.[209] After union officials attended his inauguration, the union's website trumpeted, "This was the first time in the history of the Local that leaders were invited to participate in the Inauguration of the Governor. And well we should! We helped put him there!"[210]

In a 2017 article for the *Huffington Post*, Keith Kelleher — the founder and past president of SEIU Local 880 and its eventual successor — explained that Blagojevich, "had been the only Democratic candidate to sign onto our candidates' questionnaire pledging to allow homecare and home childcare workers the right to organize."[211]

SEIU Illinois Council president Tom Balanoff told the *Chicago Tribune* in the wake of Blagojevich's election that, "We can't have a better ally supporting us… We elected a person who is going to be with us through thick and thin."[212] Similarly, Balanoff explained to *The Nation,* "We learned here in Illinois it's important to develop political power. Unions need to increase their political strength and

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[207] Kris Maher and David Kesmodel. "Illinois Scandal Spotlights SEIU's Use of Political Tactics." *Wall Street Journal*, December 20, 2008. https://www.wsj.com/articles/SB122973200003022963
[208] Harold Meyerson. "Labor War in Illinois." *The American Prospect,* March 29, 2009. http://prospect.org/article/labor-war-illinois
[209] SEIU Local 880. "About Us." March 6, 2001. https://web.archive.org/web/20010306002013/http://www.seiu880.org:80/about.htm
[210] SEIU Local 880. Website home page. March 28, 2003. https://web.archive.org/web/20030328013209/http://seiu880.org:80/
[211] Keith Kelleher. "The JANUS Case: "Kill Shot" for Unions, Or Shot in the Arm?" *The Huffington Post*, November 28, 2017. https://www.huffingtonpost.com/entry/the-janus-case-kill-shot-for-unions-or-shot-in_us_5a1da40de4b0e6631c44bbcc?ncid=engmodushpmg00000003
[212] Brett McNeil. "Home health care workers to get union rights." *The Chicago Tribune*, February 17, 2003. http://articles.chicagotribune.com/2003-02-17/news/0302170167_1_blagojevich-janitors-seiu

hold politicians accountable on questions of collective bargaining rights."[213]

Almost six years later, however, Balanoff's close political ties to the governor earned him an early morning visit from the FBI and a prominent role in the criminal corruption case filed against Blagojevich regarding, in part, his attempt to trade a U.S. Senate appointment for a $300,000 job with SEIU.[214]

Despite Blagojevich's eventual removal from office, the scheme he concocted with SEIU continues to live on thanks to the Illinois General Assembly.

The new Democratic majority that swept to power alongside Blagojevich in 2002 quickly followed up his executive order with legislation codifying the unionization of PAs. In May 2003, HB 2221 passed the Illinois House 75-43.[215] It passed the Senate 51-2, with five Senators voting "present."[216]

HB 2221 specified that,

> "Solely for the purposes of coverage under the Illinois Public Labor Relations Act (5 ILCS 315/), personal care attendants and personal assistants providing services under the Department's Home Services Program shall be considered to be public employees and the State of Illinois shall be considered to be their employer..."[217]

SEIU Local 880 hadn't waited for the General Assembly to act, though. Just a week after Blagojevich issued his executive order, the union petitioned the state to be recognized as the bargaining agent for all PAs. Paul Kersey of the Illinois Policy Institute (IPI), a limited government, free market think tank, reported that,

> "In a [March 11, 2003] letter to Nancy Pittman, counsel for labor relations at the Illinois Department of Central Management Services, SEIU Local 880's head organizer, Keith Kelleher, claimed that 9,496 personal care assistants already were paying dues as union members. He also presented copies of 1,131 membership cards, supposedly signed by other personal care assistants in total. According to Kelleher, there were 20,475 personal care assistants. With 10,627 either paying dues or having signed cards indicating union support, SEIU supposedly had the support of a narrow majority of 51.9 percent."[218]

Kersey went on to note that the state apparently accepted the union's proclamation of majority

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[213] David Moberg. "Union Blues Lift in Chicago." *The Nation*, April 9, 2005. https://www.thenation.com/article/union-blues-lift-chicago/

[214] Carl Horowitz. "Blagojevich Trial Puts Obama Closer to Senate Seat Deal." National Legal and Policy Center, July 15, 2010. http://nlpc.org/2010/07/15/blagojevich-trial-reveals-shady-obama-chicago-connections/

[215] The roll call vote in the House on House Bill 2221 (2003) is available online from the Illinois General Assembly at: http://www.ilga.gov/legislation/votehistory/93/house/09300HB2221_04042003_008000T.pdf

[216] The roll call vote in the Senate on House Bill 2221 (2003) is available online from the Illinois General Assembly at: http://www.ilga.gov/legislation/votehistory/93/senate/09300HB2221_05292003_047000T.pdf

[217] House Bill 2221 (2003): http://www.ilga.gov/legislation/93/HB/PDF/09300HB2221lv.pdf

[218] Paul Kersey. "Process for unionizing non-state workers raises red flags." Illinois Policy Institute, June 19, 2014. https://www.illinoispolicy.org/policy-points/process-for-unionizing-non-state-workers-raises-red-flags/

status “at face value.”[219]

In response to subsequent requests by IPI for records pertaining to the certification process, the state denied having any responsive records. In a letter, the Department of Central Management Services explained it determined a majority of PAs “wanted to be represented by SEIU” by “adding the number of personal assistants who, payroll records indicated, had already been dues-paying members of SEIU to the number of signed membership cards submitted by SEIU for additional new members who were personal assistants.”[220] This questionable process was concerning for several reasons.

First, for the state to be already collecting union dues from PAs’ paychecks before the union was even formally recognized is highly irregular. As Kersey explained,

> “Ordinarily, deduction of union dues does not happen until two things take place: 1) a union has demonstrated majority support of its membership and is recognized by the state, and 2) a collective bargaining agreement is signed. For Illinois state government to begin collecting dues on behalf of a union that was not authorized to bargain was extremely unusual, highly premature and raises serious red flags.”[221]

Second, the state should have made an effort to independently verify the union’s claims. Were the signatures accurate? Were the signed cards submitted by different PAs than those paying union dues already? Was the union’s estimate of the total number of PAs accurate? Apparently, the state thought it best not to probe too deeply into these obvious questions.

Third, the lack of any secret ballot election in which PAs could cast their votes in confidence taints the union’s claim to majority status. The coercion inherent in the “card check” process — in which union organizers confront workers one-on-one and pressure them to sign cards authorizing the union to represent them — is well-documented.[222]

Lastly, it’s unclear how the union obtained the list of PAs in order to contact them about joining the union and/or sign union authorization cards. In its *amicus* brief filed in support of the plaintiff in *Harris v. Quinn*, IPI observed that, “The record does not indicate how SEIU received Rehabilitation Providers’ information in 2003, but the State is the only apparent possible source.”[223]

Yet when IPI requested it be provided the list of caregivers, the state Department of Human Services (DHS) responded that it was “unable to provide you with this information” because it “is both

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[219] Ibid.
[220] Benno Weisberg of the Illinois Department of Central Management Services. Letter to Justin Hegy of the Illinois Policy Institute. November 21, 2013. https://www.illinoispolicy.org/wp-content/uploads/2013/11/WeisbergLetter.pdf
[221] Paul Kersey. “Process for unionizing non-state workers raises red flags.” Illinois Policy Institute, June 19, 2014. https://www.illinoispolicy.org/policy-points/process-for-unionizing-non-state-workers-raises-red-flags/
[222] James Sherk. “How Union Card Checks Block Workers' Free Choice.” The Heritage Foundation, February 21, 2007. https://www.heritage.org/jobs-and-labor/report/how-union-card-checks-block-workers-free-choice
[223] *Harris v. Quinn*, 573 US _ (2014). Brief of the Illinois Policy Institute as Amicus Curiae in Support of Petitioners. https://www.illinoispolicy.org/wp-content/uploads/2013/11/Harris-v.-Quinn-amicus-brief.pdf

private and personal."[224]

Subjecting PAs to the Public Labor Relations Act meant permitting SEIU to require them to financially support the union as a condition of employment, just like any other public employee.

After SEIU Local 880 negotiated its first collective bargaining agreement with the state in 2004, then-president Kelleher claimed the contract, "helped move our membership from only 15,000 in January, 2004 to over 29,000 by November 2004 – almost doubling our membership in ten months!"[225] Undoubtedly, the increase did not come from a wave of PAs signing up for membership, but from the imposition of an agency fee requirement forcing all caregivers to financially support the union regardless of their membership status.

Several years later, as part of a national SEIU restructuring initiative, SEIU Local 880 merged with Locals 20 and 4 to form SEIU Healthcare Illinois and Indiana (Missouri and Kansas were added later), the union that continues to represent PAs today.[226]

In April 2008, SEIU Local 880 claimed, "Members voted overwhelmingly to create the new union, which will be the largest in Illinois, with more than half of its membership in Cook County."[227]

In 2009, SEIU attempted to reuse past tactics to expand its membership further. After Blagojevich's removal from office in January 2009, then-Lieutenant Governor Pat Quinn was sworn in as his successor. At the end of June, Quinn issued Executive Order 2009-15, paving the way for SEIU Healthcare IL & IN to organize another group of about 3,500 similarly situated home caregivers for Medicaid clients: Individual providers (IPs) serving clients in the Home-Based Support Services Program.[228]

Unlike the order issued by Blagojevich, order 2009-15 specifically directed DHS to, "provide to an organization interested in representing individual providers access to the names and addresses of current individual providers."[229]

However, unlike the organization of PAs in 2003, AFSCME intervened in SEIU's effort to represent IPs. As a result, caregivers were able to participate in a secret-ballot election administered by the

[224] Agostino Lorenzini of the State of Illinois. Email to Justin Hegy of the Illinois Policy Institute. October 30, 2013. http://illinoispolicy.org/wp-content/uploads/2013/11/LorenziniEmail.pdf
[225] Keith Kelleher. "The JANUS Case: "Kill Shot" for Unions, Or Shot in the Arm?" *The Huffington Post*, November 28, 2017. https://www.huffingtonpost.com/entry/the-janus-case-kill-shot-for-unions-or-shot-in_us_5a1da40de4b0e6631c44bbcc?ncid=engmodushpmg00000003
[226] Ibid.
[227] Brynn Seibert. "Healthcare, child care workers vote to create Illinois' largest union." SEIU Local 880, April 15, 2008.
https://web.archive.org/web/20080511064831/http://www.seiu880.org:80/media_center/pressreleases/Healthcare__child_care_workers_vote_to_create_Illinois__largest_union_.aspx
[228] Illinois Gov. Pat Quinn. Executive Order 2009-15. June 29, 2009.
https://www2.illinois.gov/Documents/ExecOrders/2009/execorder2009-15.pdf
[229] Ibid.

American Arbitration Association.[230] After a campaign of about a month, IPs had the opportunity to vote for SEIU, AFSCME or no union representation.

The delay in proceedings gave caregivers opposed to unionization time to organize. Led by Pam Harris, who cares for her disabled adult son Josh, caregivers sent out a flyer opposing the unionization campaign[231] and spoke out against the unions in local media.[232] To tamp down the opposition, state officials sent out several notices to caregivers directing them to, "refrain from making statements supporting or opposing one or both of the contending unions, and strictly limit their statements about the election to the Governor's executive order 2009-15…"[233]

Nevertheless, IPs resoundingly rejected both unions in the October 2009 election. According to Kersey, SEIU Local 73 received 293 votes (19 percent), AFSCME Council 31 garnered 220 (14 percent) and 1,018 (66 percent) voted against any union representation.[234]

Caregivers like Harris, however, feared the unions' defeat would be temporary. Nothing prevented SEIU and/or AFSCME from attempting to unionize IPs again in the future, either through another secret ballot election or — more likely — through card check.

Consequently, with legal assistance provided by the National Right to Work Legal Defense Foundation, Harris and a coalition of other IPs and PAs filed a class-action lawsuit against Gov. Quinn and the State of Illinois in April 2010 arguing that being compelled to financially support SEIU violated their First Amendment free speech rights.[235]

A little over four years later, the caregivers prevailed before the U.S. Supreme Court in *Harris v. Quinn*.[236] In a 5-4 ruling, the Court held that,

> "…perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support. The First Amendment prohibits the collection of an agency fee from personal assistants in the Rehabilitation Program who do not want to join or support the union."[237]

Having lost the ability to compel union dues payment, SEIU Healthcare IL & IN responded to *Harris*

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[230] Michelle Malkin. "Special report: A parental revolt against the SEIU's home invasion robbery." October 5, 2009. http://michellemalkin.com/2009/10/05/special-report-a-parental-revolt-against-the-seius-home-invasion-robbery/
[231] Ibid.
[232] Lisa Black. "Organized labor recruits in-home caregivers." *Chicago Tribune*, September 3, 2009. http://articles.chicagotribune.com/2009-09-03/news/0909021191_1_caregivers-organized-labor-union-dues
[233] Michelle Malkin. "Special report: A parental revolt against the SEIU's home invasion robbery." October 5, 2009. http://michellemalkin.com/2009/10/05/special-report-a-parental-revolt-against-the-seius-home-invasion-robbery/
[234] Paul Kersey. "Process for unionizing non-state workers raises red flags." Illinois Policy Institute, June 19, 2014. https://www.illinoispolicy.org/policy-points/process-for-unionizing-non-state-workers-raises-red-flags/
[235] National Right to Work Legal Defense Foundation. "Gov. Quinn Faces Class-Action Suit for Executive Order Designed to Unionize Home-Care Providers." April 22, 2010. http://www.nrtw.org/news/gov-quinn-faces-class-action-suit-for-executive-order-designed-to-unionize-home-care-providers-0
[236] *Harris v. Quinn*, 573 US _ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
[237] Ibid.

by scrambling to sign caregivers up for union membership.

According to Kelleher, the union,

> "…kicked off one of the largest membership drives in our local's history in coordination with the other locals in the national SEIU Homecare Council. Because of this campaign, hundreds of staff and member organizers in HCIIMK, went out and 'hit the doors,' and through house visits and various training and membership events, along with new signup technologies, we signed up over 16,000 fee payers into new members over a twelve-month period and ended with over 65% of our public homecare members signed up!"[238]

Despite Kelleher's positive spin, the fact that the union had to sign up 16,000 caregivers just to reach 65 percent membership meant the union was simply riding on its mandatory dues collection ability pre-*Harris*. That fact that 35 percent of caregivers rebuffed the union's advances is also a pretty stinging indictment.

SEIU's work to sign up caregivers for membership was aided by Gov. Quinn's administration, which agreed to add a "side letter of agreement" to the union contract in December 2013 requiring both current and newly hired caregivers to attend a union-sponsored "training" by the end of 2014.[239] The agreement gave SEIU organizers "access for 30 minutes to orientations for the purpose of meeting and talking with bargaining unit employees and distributing and collecting membership cards…"[240] It also required the state to pay SEIU Healthcare IL & IN up to $2 million to administer the trainings.[241]

Tellingly, the mandatory orientations did not begin until just after the Supreme Court's ruling in *Harris* made union dues payment optional.

A September 2014 letter sent by DHS informed caregivers of their need "to participate in mandatory PAID training about Fraud, Abuse, Neglect, Exploitation, and the Basic Roles of being an Individual Provider… Full compliance of this mandatory training is required…"[242] A subsequent letter provided the schedule of trainings for the fall and directed caregivers to sign up through SEIU[243] while yet another letter sent to home care clients noted, "All newly hired IPs are now required to attend a mandatory New Hire Orientation within 90 days of starting employment in the Home Services

[238] Keith Kelleher. "The JANUS Case: "Kill Shot" for Unions, Or Shot in the Arm?" *The Huffington Post*, November 28, 2017. https://www.huffingtonpost.com/entry/the-janus-case-kill-shot-for-unions-or-shot-in_us_5a1da40de4b0e6631c44bbcc?ncid=engmodushpmg00000003
[239] The 2012-15 collective bargaining agreement between the State of Illinois and SEIU Healthcare IL&IN on behalf of PAs is available online at: https://www2.illinois.gov/cms/personnel/employeeresources/Documents/emp_seiupast.pdf
[240] Ibid.
[241] Ibid.
[242] Chuck Ross. "Illinois Workers Forced Into Mandatory Union-Led Training Sessions." *The Daily Caller*, November 3, 2014. http://dailycaller.com/2014/11/03/illinois-workers-forced-into-mandatory-union-led-training-sessions/
[243] Ibid.

Program.[244]

In November, Kersey pointed out,

> "Many of the training sessions are being held at SEIU offices. And, as part of the training, caregivers are forced to sit through a membership pitch by SEIU officials. After this pitch, caregivers are asked to sign union membership cards."[245]

In some cases, caregivers reported being told, incorrectly, that they had to sign up for union membership to receive state-paid health care benefits.[246] When IPI sent staff to speak with caregivers entering the trainings and inform them about their rights, SEIU staff responded with hostility, attempting to shout down IPI employees and even calling the police to prevent them from speaking to caregivers.[247]

In addition to being coercive, the SEIU trainings constituted "a serious hardship for many families," according to Kersey. Because "[m]any of the disabled Illinoisans receiving care under this Medicaid program require around-the-clock care… family members who tend to them cannot always leave them alone for the three hours (plus travel time) needed for the 'training.'"[248] The need for the additional training was also unclear, since "[m]any of these families have been giving wonderful care to their loved ones for years."[249]

Later in November, IPI exposed an ultimately unsuccessful effort by the Illinois General Assembly to write the mandatory training requirements into state law.[250]

The union's collective bargaining agreement expired in June 2015, after the election of Gov. Bruce Rauner (R) in November 2014. To-date, SEIU has been unable to negotiate a successor contract with the Rauner administration and, as a result, the mandatory trainings ceased.[251] SEIU mounted another attempt to enshrine the "training" program in state law in 2016 with Senate Bill 2931.[252]

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[244] Sean Higgins. "Despite Supreme Court ruling, Illinois caregivers still obligated to meet with union." *Washington Examiner*, July 3, 2017. https://www.washingtonexaminer.com/despite-supreme-court-ruling-illinois-caregivers-still-obligated-to-meet-with-union/article/2550459

[245] Paul Kersey. "Caregivers forced to attend union-led training sessions deserve to know their rights." Illinois Policy Institute. https://www.illinoispolicy.org/caregivers-forced-to-attend-union-led-training-sessions-deserve-to-know-their-rights-2/

[246] Paul Kersey. "Proposed law would force parents to attend union-led 'training.'" Illinois Policy Institute, November 18, 2014. https://www.illinoispolicy.org/proposed-law-force-parents-attend-union-led-training/

[247] Jim Long. "SEIU lies to home-based caregivers to stymie flow of opt-outs." Illinois Policy Institute, December 22, 2014. https://www.illinoispolicy.org/seiu-lies-to-home-based-caregivers-to-stymie-flow-of-opt-outs/

[248] Paul Kersey. "Proposed law would force parents to attend union-led 'training.'" Illinois Policy Institute, November 18, 2014. https://www.illinoispolicy.org/proposed-law-force-parents-attend-union-led-training/

[249] Ibid.

[250] Ibid.

[251] Austin Berg. "The SEIU is hurting Illinois caregivers." *The Chicago Tribune*, April 28, 2016. http://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-berg-seiu-st-0429-20160428-story.html

[252] Ibid.

Though passed by both houses, SB 2931 was vetoed by Gov. Rauner.[253] While the Senate voted to override Rauner's veto,[254] SEIU couldn't muster the necessary support in the House and the legislation died.

Though no longer in effect, the CBA SEIU Healthcare IL & IN negotiated with Quinn's administration contained a host of other provisions designed to aid SEIU's dues collection. For instance, Article IV, Section 4 required the state to monthly provide the union with personal assistants' names, addresses, birthdates, Social Security numbers and telephone numbers (including cell numbers), while Section 9 required the state to distribute "materials prepared by the Union" in new caregivers' information packets.[255]

Also of note, Article VII, Section 2 directed the state to contribute $27 million in Medicaid funds between June 2013 and June 2014 into a health benefits fund operated by SEIU.[256]

Though the so-called "fair share" requirement in Article X, Section 6 was struck down as unconstitutional in *Harris,* the state continues to collect union dues from caregivers' wages on behalf of SEIU Healthcare IL & IN in accordance with Article X, Section 5 of the CBA. Thankfully, however, caregivers are currently free to cancel the dues deductions from their pay at any time by notifying the state.[257]

Estimated Illinois Dues Skim for SEIU Healthcare IL IN

Year	Total Dues and Fees	Total Dues Payers	Average Dues	Union PAs	Estimated PA Dues
CY2003	$3,691,239	15,906	$232	20,475	$4,751,548
CY2004	$6,164,394	30,100	$205	20,475	$4,193,222
CY2005	$7,349,361	31,207	$236	20,475	$4,821,936
CY2006	$12,325,510	67,161	$184	20,475	$3,757,610
CY2007	$18,526,947	85,847	$216	20,475	$4,418,783
CY2008	$22,702,185	83,291	$273	20,475	$2,790,381
FY2009	N/A	N/A	N/A	N/A	$8,973,770
FY2010	N/A	N/A	N/A	N/A	$9,394,800
FY2011	N/A	N/A	N/A	N/A	$11,187,509

253 Information about the procedural history of Senate Bill 2931 (2016) is available from the Illinois General Assembly at:
http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2931&GAID=13&DocTypeID=SB&LegId=96255&SessionID=88&GA=99
254 The roll call vote in the Senate on Senate Bill 2931 (2016) is available from the Illinois General Assembly online at: http://www.ilga.gov/legislation/votehistory/99/senate/09900SB2931_11162016_007000M.pdf
255 The 2012-15 collective bargaining agreement between the State of Illinois and SEIU Healthcare Illinois and Indiana on behalf of PAs is available online at:
https://www2.illinois.gov/cms/personnel/employeeresources/Documents/emp_seiupast.pdf
256 Ibid.
257 A copy of SEIU Healthcare Illinois and Indiana's electronic membership form is available online at:
http://hcilin.seiu.org/page/s/join-us The terms of the dues deduction authorization state, "This authorization and direction will remain in effect until revoked by me in writing."

FY2012	N/A	N/A	N/A	N/A	$11,529,006
FY2013	N/A	N/A	$405	13,663	$5,531,714
FY2014	N/A	N/A	$354	15,988	$5,658,594
FY2015	N/A	N/A	$422	19,046	$8,030,519
FY2016	N/A	N/A	$445	17,288	$7,692,391
FY2017	N/A	N/A	$442	16,434	$7,258,849
				Total	**$99,990,630**
Sources: SEIU Healthcare IL&IN forms LM-2. File No. 543-894. https://olms.dol-esa.gov/query/getOrgQryResult.do Data obtained upon request from the Department of Human Services					

METHODOLOGICAL NOTES: Reliable and consistent data for Illinois was not possible to obtain. The above data is compiled from several sources that, in some cases, contradict each other.

For calendar years 2003-04, SEIU Healthcare IL & IN's total members are listed on Item 18 of its annual LM-2 forms filed with the U.S. Department of Labor. Its total dues and fees are recorded in Statement B, Item 39. For calendar years 2005-08, the union's total annual dues and fees are reported on Statement B, Line 36 of its LM-2 forms, while the union's total members/fee payers are recorded on Schedule 13. For calendar years 2003-08, average dues are calculated by dividing the amount of dues paid by the total number of dues/fee payers. The number of personal attendants in 2003 is derived from the number permitted to participate in the certification of SEIU Local 880.[258] For lack of better information, it is assumed this number remained the same in calendar years 2004-08. Estimated PA dues for calendar years 2003-08 are calculated by multiplying average dues by the estimated number of PAs.

Estimated PA dues for fiscal years 2009-12 were obtained from the DHS upon request by IPI.[259]

For fiscal years 2013-17, the number of PAs paying dues and the aggregate amount of dues paid was obtained from DHS upon request. Average dues for these years are calculated by dividing aggregate dues collection by the number of PAs paying dues.

Whereas the data provided to IPI by DHS indicated PAs paid $11,441,033 in dues in fiscal year 2013, the data provided to the Freedom Foundation by DHS indicated PAs paid only $5,531,714 that year. The lower number is used for the purposes of this calculation.

Lastly, the union's LM-2 reports are filed on a calendar year basis, while the data provided by DHS reflects fiscal years running from the beginning of July to the end of June. Consequently, because fiscal year 2009 includes the second half of calendar year 2008, the estimated PCA dues for calendar year 2008 are halved.

[258] Paul Kersey. "Process for unionizing non-state workers raises red flags." Illinois Policy Institute, June 19, 2014. https://www.illinoispolicy.org/policy-points/process-for-unionizing-non-state-workers-raises-red-flags/
[259] Agostino Lorenzini of the State of Illinois. Email to Justin Hegy of the Illinois Policy Center. October 9, 2013. https://www.illinoispolicy.org/wp-content/uploads/2013/11/LorenziniEmail2.pdf

Michigan

The SEIU in Michigan began its efforts to organize the state's home care providers serving Medicaid clients in the Home Help Program in 2003, apparently gathering showing of interest cards from caregivers before there was even a legal framework in place for a union to form.[260] Then-Gov. Jennifer Granholm's (D) administration paved the way, however, with the creation of the Michigan Quality Community Care Council (MQC3) in 2004. The result of an interlocal agreement between the state Department of Community Health (DCH) and the Tri-County Aging Consortium,[261] the MQC3 was described as "an independent governmental agency formed to enhance and expand the provision of personal care services rendered by individual providers…"[262]

"There is nothing in Medicaid that says our funds are to pay union dues."

- Judi Hendrickson, MI

http://bit.ly/2utJoGS

Credit: Mackinac Center for Public

In addition, however, Section 6.11 of the interlocal agreement authorized the MQC3 to, "bargain collectively and enter into agreements with labor organizations. The Council shall fulfill its responsibilities as a public employer subject to 1947 PA 336, MCL 423.201 to 423.217 with respect to all its employees."[263] As in other states, however, IPs continued to be technically employed by their clients, who controlled their hiring, termination and duties.

SEIU submitted about 20,000 showing of interest cards to the Michigan Employment Relations Commission (MERC) with a petition for a union certification election in January 2005.[264] In the election that followed, 6,949 providers (about 17 percent) voted in favor of SEIU representation, 1,007 (about two percent) voted against the union, and 601 ballots (about 1 percent) were disputed or rejected. About 33,000 IPs (about 79 percent) did not participate in the election, and MERC certified SEIU Healthcare Michigan (SEIU HCMI) as IPs' bargaining representative in April.[265]

The unionization process raised serious legal questions under state law about the validity of the interlocal agreement and MERC's jurisdiction over IPs.[266] Nonetheless, shortly after the certification vote, SEIU Local 79 and MQC3 entered into a collective bargaining agreement (CBA) requiring all

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[260] *SEIU Healthcare Michigan v. Snyder*, 875 F.Supp.2d 710 (2012). https://www.leagle.com/decision/infdco20120621e66

[261] A copy of the interlocal agreement is available online at: http://www.mackinac.org/archives/2012/InterlocalAgrmt.DCH.TriCounty..pdf

[262] Paul Reinhart. Health Care Eligibility Policy 04-07. Michigan Department of Community Health. November 23, 2004. https://www.michigan.gov/documents/HCEP_04-07_110034_7.pdf

[263] A copy of the interlocal agreement is available online at: http://www.mackinac.org/archives/2012/InterlocalAgrmt.DCH.TriCounty..pdf

[264] *SEIU Healthcare Michigan v. Snyder*, 875 F.Supp.2d 710 (2012). https://www.leagle.com/decision/infdco20120621e66

[265] *Michigan Quality Community Care Council and SEIU*. Petition for representation proceedings. Michigan Bureau of Employment Relations. 2005. http://www.mackinac.org/archives/2012/Michigan.ERC.PetitionforRepresentation..pdf

[266] Derk Wilcox. "An Analysis of Proposal 4 of 2012: The Unionization of In-Home Caregivers." Mackinac Center for Public Policy, October 8, 2012. https://www.mackinac.org/archives/2012/s2012-09.pdf

home care providers to pay union dues or fees as a condition of employment.[267] Accordingly, beginning around November 2006,[268] the state began withholding 2.75 percent of providers' pay for SEIU dues.[269]

In 2010, after groups like the Mackinac Center for Public Policy began to raise public awareness of the dues skim, state lawmakers approved a budget defunding the MQC3.[270] To keep the dues skim alive, SEIU HCMI took the extraordinary step of providing funds to keep the MQC3 operating, effectively funding the same "employer" with which it allegedly "bargained."[271] As the Mackinac Center's Derk Wilcox put it dryly, "Under such circumstances, with money changing hands, the ability of the MQC3 to bargain effectively on behalf of taxpayers and the SEIU's ability to bargain effectively on behalf of in-home caregivers is in doubt."[272]

In the spring of 2012, the legislature passed and Gov. Rick Snyder (R) signed Public Act 76, clarifying that IPs are not public employees for any purpose, including collective bargaining, providing:

> "A person employed by a private organization or entity who provides services under a time-limited contract with this state or a political subdivision of this state or who receives a direct or indirect government subsidy in his or her private employment is not an employee of this state or that political subdivision, and is not a public employee. This provision shall not be superseded by any interlocal agreement, memorandum of understanding, memorandum of commitment, or other document similar to these."[273]

After the bill's passage, the DCH gave notice it would terminate the interlocal agreement in one year (April 2013), in accordance with its terms.[274] However, the day before PA 76 took effect, in an attempt to allow the dues skim to continue, SEIU HCMI and MHQC3 agreed to extend the collective bargaining agreement until February 2013.[275] The state briefly stopped diverting dues to SEIU HCMI after the state attorney general issued an opinion in May 2012 finding that the state could cease

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[267] The 2006-09 collective bargaining agreement between the Michigan Quality Community Care Council and SEIU Local 79 on behalf of IPs is available online: http://www.mackinac.org/archives/2012/CollectiveBargainingAgrmt.MQCCC.SEIU..pdf

[268] *Michigan Capitol Confidential*. "skimTRACKER 'Forced Unionization' Dues: More Than $34 Million Taken by The SEIU." January 11, 2012. https://www.michigancapitolconfidential.com/16302

[269] Michigan House Fiscal Agency. "Ballot Proposal 4 of 2012." October 10, 2012. http://house.michigan.gov/hfa/Archives/PDF/ballotproposa2012_4.pdf

[270] Margaret Alston, Susan Frey, Steve Stauff and Tumai Burris. "FY 2011-12 Appropriation Report Department of Community Health, Public Act No. 63 of 2011, Article IV and FY 2010-11 Supplemental Actions." Michigan House Fiscal Agency. February 2012. http://house.michigan.gov/hfa/PDF/HealthandHumanServices/DCH2012_IntentDocument.pdf

[271] Jack Spencer. "Union Money Helps 'Dues Skim' Stay Alive." *Michigan Capitol Confidential*, May 16, 2012. http://www.michigancapitolconfidential.com/16921

[272] Derk Wilcox. "An Analysis of Proposal 4 of 2012: The Unionization of In-Home Caregivers." Mackinac Center for Public Policy, October 8, 2012. https://www.mackinac.org/archives/2012/s2012-09.pdf

[273] Senate Bill 1018 (2012): http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0076.pdf

[274] *SEIU Healthcare Michigan v. Snyder*, 875 F.Supp.2d 710 (2012). https://www.leagle.com/decision/infdco20120621e66

[275] Ibid.

deducting dues from Medicaid payments before the expiration of the extension.[276] SEIU HCMI quickly filed federal litigation against the state and obtained a preliminary injunction in June 2012 allowing the dues skim to continue until the lawsuit was resolved or the CBA expired.[277]

With its days numbered, SEIU HCMI made a bold attempt to create a successor entity to the MQC3 — the similarly named Michigan Quality Home Care Council — and enshrine its ability to skim dues from Medicaid payments in the state constitution via Proposal 4 on the 2012 general election ballot.[278] As it has done consistently in ballot measures related to the dues skim, SEIU pretended that Proposal 4 was needed to protect the Home Help Program and relied heavily on a message of protecting seniors by making sure caregivers had background checks.[279]

Of course, as a Michigan Citizens Research Council analysis of Proposal 4 concluded,

> "The Medicaid-funded Home Help Services Program will remain in effect regardless of the outcome of the proposal that has been placed on the November 2012 ballot: this proposal focuses on the unionization of home health care workers and the establishment of the Michigan Quality Community Care Council, not on the services available to the disabled and elderly."[280]

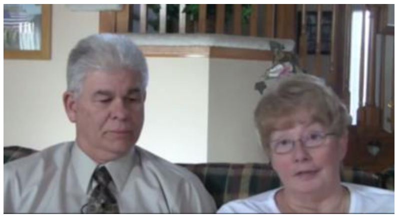
Outside Michigan, union leaders were more transparent about the purpose of Proposal 4 and, ultimately, the unionization of home caregivers generally. At the Democratic National Convention in 2012, the president of SEIU Healthcare Michigan, Marge Faville, stated that passing Proposal 4 to keep the dues skim alive was needed because, "…unions are effective, we make sure Democrats get [into office] and we're going to make sure Obama gets in."[281]

Thankfully, voters saw through the union's deception and handily defeated the measure at the polls by a margin of 56 to 44 percent.[282]

Shortly before the election, Gov. Snyder replaced the entire, union-aligned MQC3 board, since the governor's ability to do so would end if Proposal 4 had passed.[283] After the measure's rejection

[276] Richard Bandstra of the Michigan Department of Attorney General. Letter to Rep. Paul Opsommer. May 24, 2012. http://www.mackinac.org/archives/2012/AGlettertoOpsommer.pdf
[277] *SEIU Healthcare Michigan v. Snyder*, 875 F.Supp.2d 710 (2012). https://www.leagle.com/decision/infdco20120621e66
[278] Michigan House Fiscal Agency. "Ballot Proposal 4 of 2012." October 10, 2012. http://house.michigan.gov/hfa/Archives/PDF/ballotproposa2012_4.pdf
[279] Manny Lopez. "Commentary: Prop 4 Supporters Promise Programs That Already Exist." *Michigan Capitol Confidential*, September 18, 2012. https://www.michigancapitolconfidential.com/17549
[280] Citizens Research Council of Michigan. "Statewide Ballot Issue: Proposal 1012-04." No. 1119, September 2012. http://www.crcmich.org/PUBLICAT/2010s/2012/proposal_12-4_quality_home_care_collective_bargaining_rights-2012.pdf
[281] David Eggert. "Michigan's union-backed ballot measures are hot topic at Democratic National Convention." *MLive*, September 6, 2012. http://www.mlive.com/politics/index.ssf/2012/09/michigan_ballot_measures_come.html#incart_river_default
[282] Election results for Proposal 4 are available online from the Michigan Secretary of State at: http://miboecfr.nictusa.com/election/results/12GEN/#90000004
[283] Office of Gov. Rick Snyder. "Appointments made to Michigan Quality Community Care Council board." November 1, 2012. http://www.michigan.gov/snyder/0,4668,7-277-57577-289403--,00.html

by voters, however, the new board made sure the council's operations finally ceased.[284]



"They're just taking money away from us we could be using for our kids."

- *Robert and Patricia Haynes, MI*

http://bit.ly/2NIQlAW

Credit: Mackinac Center for Public Policy

SEIU didn't lose for lack of trying. While it was obvious at the time that SEIU was pouring significant resources into the ballot measure, the extent of its support didn't become clear until much later. In September 2013, after receiving a complaint from Michigan Freedom Fund, the Michigan Secretary of State launched an investigation into the political group that backed Proposal 4, Citizens for Affordable Quality Home Care. While the entity had initially reported receiving its funding from a group called "Home Care First," it turned out that SEIU had funneled nearly all of the $9.3 million spent to support Proposal 4 through Home Care First and, subsequently, Citizens for Affordable Quality Home Care.[285] In March 2014, the Secretary of State announced that SEIU would pay $199,000 in penalties for violating state campaign finance disclosure laws, the second-largest such fine in the state's history.[286]

After the extended CBA between the MQC3 and SEIU expired on March 1, 2013, the unionization of the state's roughly 59,000 caregivers and the skimming of dues from their paychecks ceased.[287]

From at least 2008 through February 2012, IPs paid 2.75 percent of wages in dues to SEIU, according to the union's LM-2 filings (SEIU Healthcare Michigan did not file any forms LM-2 in 2006 or 2007).[288] Beginning in March 2012, caregivers' dues were reduced to 2.5 percent.[289]

After losing its access to government-run dues collection, SEIU Healthcare MI considered lowering dues and creating an "alternative dues structure" to allow 'home care providers to continue as dues-paying members."[290] Nevertheless, its membership fell by 80 percent in 2013.[291]

[284] Jack Spencer. "SEIU 'Dues Skim' Days Are Numbered." *Michigan Capitol Confidential*, December 18, 2012. https://www.michigancapitolconfidential.com/18078

[285] Sean Higgins. "Michigan elections bureau probes SEIU's role in ballot initiative on unionizing." *Washington Examiner*, September 25, 2013. http://www.washingtonexaminer.com/michigan-elections-bureau-probes-seius-role-in-ballot-initiative-on-unionizing/article/2536379

[286] Michigan Secretary of State. "SEIU to pay almost $200,000 fine - the second-largest in Michigan - as part of campaign finance complaint settlement." March 10, 2014. http://www.michigan.gov/sos/0,4670,7-127--323432--,00.html

[287] Jack Spencer. "Confirmed: The SEIU 'Dues Skim' Finally Ends." *Michigan Capitol Confidential*, April 8, 2013. https://www.michigancapitolconfidential.com/18499

[288] See item 21 of SEIU Healthcare Michigan's forms LM-2 for 2008-12 on file with the U.S. Department of Labor. File No. 543-857. https://olms.dol-esa.gov/query/getOrgQryResult.do

[289] See item 69 of SEIU Healthcare Michigan's form LM-2 for 2012 on file with the U.S. Department of Labor. File No. 543-857. https://olms.dol-esa.gov/query/getOrgQryResult.do

[290] SEIU Healthcare Michigan. "Background Paper: The Story of Home Care Providers in SEIU Healthcare MI." http://www.seiuhealthcaremi.org/files/2013/05/Memo-re-home-care-workers-4-2.pdf

[291] Jack Spencer. "SEIU Affiliate's Revenue Cut in Half After 'Dues Skim' Ended." *Michigan Capitol Confidential*, June 17, 2015. https://www.michigancapitolconfidential.com/21420

From start to finish, the dues skim had diverted about $36 million from Medicaid recipients and their caregivers to SEIU.[292]

Estimated Michigan Dues Skim for SEIU Healthcare Michigan						
Year	**Total Dues and Fees**	**Total Dues Payers**	**Average Dues**	**Union IPs**	**Estimated Average IP Dues**	**Estimated IP Dues and Fees**
2006	N/A	N/A	N/A	42,127	$20	$849,922
2007	N/A	N/A	N/A	42,127	$121	$5,099,534
2008	$10,497,917	53,533	$196	42,127	$121	$5,099,534
2009	$10,871,481	58,118	$187	43,451	$126	$5,473,098
2010	$11,508,410	57,789	$199	44,337	$138	$6,110,027
2011	$11,974,800	56,160	$213	44,844	$147	$6,576,417
2012	$11,307,314	56,007	$202	44,844	$132	$5,908,931
2013	$7,119,322	10,949	$650	44,844	$22	$984,822
2014	$5,398,383	10,730	$503	0	$0	$0
2015	$5,446,451	10,715	$508	0	$0	$0
2016	$5,527,195	9,719	$569	0	$0	$0
					Total	**$36,102,285**
Source: SEIU Healthcare Michigan forms LM-2. File No. 543-857. https://olms.dol-esa.gov/query/orgReport.do						

METHODOLOGICAL NOTES: SEIU Healthcare Michigan's total annual dues and fees are reported on Statement B, Line 36 of its annual LM-2 forms filed with the U.S. Department of Labor. The union's total members/fee payers are recorded on Schedule 13 of its annual forms LM-2. Average dues are calculated by dividing the union's total dues and fees by its total dues payers. The union did not file an LM-2 in 2006 or 2007. Schedule 13 of the union's 2008-11 forms LM-2 specifically list the number of "home healthcare workers," as opposed to other types of employees, the union represented each year. Subsequent forms LM-2 simply provide the total number of workers the union represented. Consequently, the estimated "union IPs" for 2006-07 are assumed to be the same as 2008, while the number of IPs in 2012-13 is assumed to be the same as 2011. Since the deduction of dues from IPs' pay ended in March 2013, 2014 was the first complete year no dues were withheld from IPs. The estimated IP dues and fees for 2008-12 are calculated by subtracting the union's 2014 total dues and fees, collected from non-IPs, from each respective year. The 2008 estimate is used for 2007 since no LM-2 was filed for 2007. The 2006 estimate is one-sixth of the 2008 estimate, since the dues deductions only occurred during the last two months of the year. Similarly, the dues estimate for 2013 is one-sixth of the 2012 estimate, since the dues deductions only occurred during the first two months of the year.

[292] Jack Spencer. "SEIU 'Skim Tracker' Stops Ticking." *Michigan Capitol Confidential,* March 1, 2013. https://www.michigancapitolconfidential.com/18344

Iowa

The unionization of individual providers (IPs) in Iowa's Consumer Directed Attendant Care (CDAC) program came about as a result of Executive Order No. 43 issued by Gov. Tom Vilsack (D) in 2005.[293]

Vilsack was first elected governor in 1998 with significant backing from government unions. AFSCME claimed in 1999 that, "without Labor support… Tom Vilsack of Iowa probably would not have won…"[294]

Campaign finance watchdogs reported that, over the course of his 1998 election and 2002 re-election,

> "AFSCME Council 61, the Iowa council of the government employees union, gave [Vilsack] $326,825. Of that, $276,700 (85 percent) was given during 2002. Vilsack also received $78,100 from the national AFSCME headquarters in Washington, DC."[295]

AFSCME Council 61 was Vilsack's third-largest donor, after the Democratic Governors Association and the Iowa Democratic Party.[296] Altogether, unions contributed $1.9 million to Vilsack's campaign war chest.[297]

Consequently, when then-president of AFSCME Gerry McEntee approached Vilsack in 2005 to ask a favor, his request was well-received. Robert Kuttner of the *American Prospect* explained,

> "McEntee wanted Vilsack to emulate an idea successfully pioneered in California: Change the rules so that the home-care and child-care workers would be treated as state employees for bargaining purposes. Then let the union organize them, and push for higher wages… Vilsack liked the idea, but he didn't have the votes in the divided Iowa Legislature to change the workers' status. AFSCME pointed out, correctly, that the governor could make the change by executive order. To McEntee's delight, Vilsack did…[298]

Vilsack's executive order directed the state Department of Human Services (DHS) to "meet and confer" with a union "designated by the majority of the individual providers."[299] The order directed that the union would not be selected in a secret ballot election, but through the coercive "card check" process whereby union organizers would seek to get collect "signed authorization cards"

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[293] Iowa Gov. Thomas Vilsack. Executive Order No. 43. July 4, 2005. http://publications.iowa.gov/3763/1/EO_43.pdf

[294] Catherine Barnett Alexander. "We Talked. We Walked. We Won!!" *AFSCME Works*, January/February 1999. https://www.afscme.org/news/publications/newsletters/works/januaryfebruary-1999/we-talked-we-walked-we-won

[295] Tyler Evilsizer. "Names in the News: Tom Vilsack." FollowTheMoney.org, December 19, 2008. https://www.followthemoney.org/research/institute-reports/names-in-the-news-tom-vilsack

[296] Ibid.

[297] Ibid.

[298] Robert Kuttner. "Solidarity Man." *The American Prospect*, June 18, 2006. http://prospect.org/article/solidarity-man

[299] Iowa Gov. Thomas Vilsack. Executive Order No. 43. July 4, 2005. http://publications.iowa.gov/3763/1/EO_43.pdf

from a majority of IPs.[300]

In the spring of 2006, AFSCME reported that, "In July, after Vilsack signed an executive order granting the right to organize and bargain, 2,500 home care providers joined Council 61."[301] As McEntee told the *American Prospect* the same year, "Tom Vilsack has been very good to us."[302]

AFSCME's attempt to organize IPs in the CDAC program had actually begun more than a year before Vilsack's executive order. In April 2004, AFSCME had begun sending mail to caregivers while union organizers went door-to-door to generate interest in unionization.[303] As a result, AFSCME presented union authorization cards to the Iowa Mediation service immediately after Vilsack's order and was certified to represent IPs on July 15, 2005.[304]

Bargaining between the state and union commenced shortly thereafter.[305] While some sources indicate a memorandum of understanding was negotiated between DHS and AFSCME Council 61, Local 1100 in December 2006, a copy could not be obtained.[306]

Because of Iowa's status as a right-to-work state in which state law prohibits unions from requiring employees to financially support a union as a condition of employment,[307] it is likely that union membership for IPs was optional from the beginning, even before the U.S. Supreme Court's 2014 ruling in *Harris v. Quinn*.[308]

Nevertheless, the state and union adopted a novel union dues collection scheme. In an April 2008 letter to CDAC providers, DHS explained:

> "AFSCME [Council 61, Local 1100] has informed us that if you have signed a green dues deduction card, you have agreed to have dues deducted from your Medicaid payments. In addition you may have authorized AFSCME to make other deductions. *Due to Federal Medicaid rules, the Iowa Medicaid Enterprise is not able to deduct the dues*. However, we can assist in the process by sending your Medicaid payments to an intermediary selected by AFSCME to perform the dues and other deductions. AFSCME has selected BMGI [Benefits Management Group Inc.] to perform the dues deduction." (Emphasis added)[309]

The letter continued,

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[300] Ibid.
[301] Jon Melegrito. "Fighting & Winning." *AFSCME Works*, March/April 2006. https://www.afscme.org/news/publications/newsletters/works/marchapril-2006/fighting-winning
[302] Robert Kuttner. "Solidarity Man." *The American Prospect*, June 18, 2006. http://prospect.org/article/solidarity-man
[303] Clyde Weiss. "Home Care Bargaining Certified." *AFSCME Works*, November/December 2005. https://www.afscme.org/news/publications/newsletters/works/novemberdecember-2005/home-care-bargaining-certified
[304] Ibid.
[305] Ibid.
[306] PCA Union Information. http://www.pcaunioninfo.com/iowa.html
[307] Iowa Code Ann. §§ 20.8, 20.10 and 731.1 through 731.8.
[308] *Harris v. Quinn*, 573 U.S. ___ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
[309] Iowa Department of Human Services. Informational Letter 696. April 1, 2008. http://dhs.iowa.gov/sites/default/files/696_DuesDeductionforAFSCME.pdf

"In order for IME [Iowa Medicaid Enterprise] to accommodate the AFSCME dues and other deductions, this is how the process will work:
1. You will send your Medicaid claim to IME the same way and to the same address as you have always done before.
2. IME will process your claim in the same way as in the past and under the same time frames.
3. You will receive a remittance advice (an explanation of your claim processing) from IME just as you always have in the past. The amount on the remittance advice will reflect your total Medicaid payment – which will be larger than the amount you receive from AFSCME/BMGI, after the dues are deducted. The difference between the amount on the statement from IME and the check you receive, will be the amount of the dues or any other deductions you have authorized.
4. If you agree and authorize it (by returning the attached IME form), your Medicaid payment will be transferred by electronic funds transfer to a Wells Fargo bank account, managed by BMGI.
5. BMGI/AFSCME will deduct the AFSCME dues and then forward your payment to you."[310]

The fact the state recognized it could not collect union dues from providers pay under federal Medicaid law is noteworthy, though diverting the entire amount of a provider's payment to AFSCME for dues withholding likely also ran afoul of federal law.[311]

DHS distributed a form to providers to authorize the diversion of their wages to AFSCME/BMGI for the purposes of dues collection. The terms of the authorization provided it would "remain in effect until such time as I revoke it by giving 60 days written notice to Iowa Medicaid Enterprise,"[312] though the union ultimately had to approve all such cancellations.[313]

It is unknown how much money was collected by AFSCME Council 61 from providers wages in this manner.[314]

In August 2012, Vilsack's successor, Gov. Terry Branstad (R), rescinded Vilsack's executive order.[315] This may not have ended the deduction of dues from IPs pay right away, however. A subsequent DHS notice stated, "Effective July 13, 2016, form 470-4510, *Concsumer [sic] Directed Attendant Care*

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310 Ibid.
311 For a more extended discussion of the direct payment requirement of federal Medicaid law, refer to the section entitled, "Legality of Dues Skimming" on pg. 104.
312 Iowa Department of Human Services. Consumer Directed Attendant Care Providers – AFSCME Members Authorization Form for Payment to Business Agent.
http://dhs.iowa.gov/sites/default/files/CDAC%20Providers%20-%20AFSCME%20Member%20Authorization%20Form%20for%20Payment%20to%20Business%20Agent.pdf
313 Iowa Department of Human Services. "PRV - Enrollment Process of Provider Electronic Fund Transfer (EFT)."
https://dhs.iowa.gov/sites/default/files/PRV%20-%20Enrollment%20Process%20of%20Provider%20Electronic%20Funds%20Tranfer%20(EFT)_0.pdf
314 AFSCME Local 1100 never filed forms LM-2 with the U.S. Department of Labor reporting its annual financial condition. AFSCME Council 61 does file such forms, but only reports receiving an aggregate amount of dues from its several dozen locals, of which Local 1100 is but one.
315 Iowa Gov. Terry Branstad. Executive Order No. 79. August 20, 2012.
http://publications.iowa.gov/13571/1/executive-Order-791.pdf

Providers - AFSCME Members Authorization Form for Payment to Business Agent, is obsolete."[316] (Emphasis in original)

More recently, the state moved to privatize administration of the CDAC program. In 2014, the legislature passed SF 2320, which authorized the Department of Human Services to "require services through the consumer-directed attendant care option to be provided through an agency."[317]

Gov. Branstad's administration moved ahead with the privatization of the program. As a result, DHS now contracts with Amerigroup to administer the CDAC program.[318]

It is not entirely clear what effect, if any, this change had on AFSCME's unionization of IPs. On its website, AFSCME Council 61 continues to list Local 1100 "Home Care" and indicates it represents private-sector workers.[319]

AFSCME Council 61 president Danny Homan told the *Des Moines Register* in 2016 that his union used to represent CDAC providers until Branstad "cancelled the arrangement" and that the union was "looking into possible legal action against the governor for the order."[320] No legal action appears to have ever been taken by the union.

[316] Iowa Department of Human Services. https://dhs.iowa.gov/sites/default/files/470-4510.pdf
[317] Senate File 2320 (2014): https://www.legis.iowa.gov/legislation/BillBook?ga=85&ba=SF2320
[318] Amerigroup. "New Provider Orientation." https://providers.amerigroup.com/ProviderDocuments/IAIA_CDACOrientation.pdf
[319] See AFSCME Council 61's website listing its affiliated locals: https://www.afscmecouncil61.org/iowa-locals
[320] Tony Leys. "Union: In-home care workers go weeks with no pay." *Des Moines Register*, July 8, 2016. https://www.desmoinesregister.com/story/news/health/2016/07/08/union--home-care-workers-go-weeks-no-pay/86859246/

Ohio

In July 2007, then-Gov. of Ohio Ted Strickland (D) issued executive order 2007-23S, which arranged for the unionization of the state's independent home care providers (IHCPs). Under the pretense of promoting the "quality of services" provided by IHCPs, Strickland's order required the state to recognize and bargain with a union designated to represent IHCPs. Of course, the order stacked the deck in the unions' favor. It directed the state to turn over the contact list of IHCPs to any union seeking to represent them. It tried to exempt unionized IHCPs from antitrust laws. And while a union certification election could be triggered with the support of 30 percent of the IHCPs, the order specified that an election to decertify a union would not take place unless at least 50 percent of IHCPs called for one.[321]

Just two months later, SEIU District 1199 was certified to represent the state's approximately 7,000 IHCPs.[322] If nothing else, the speed at which the union (allegedly) collected a sufficient showing of interest to trigger and win a certification election raises concerns about the integrity of the process.

In response, anti-trust attorney and then-state Sen. Bill Seitz (R) requested an opinion from the Federal Trade Commission (FTC) regarding whether the unionization of IHCPs, who are essentially independent contractors, violated federal anti-trust laws. In a February 2008 memo, the FTC concluded that Strickland's executive order was "likely to foster certain anticompetitive conduct that is inconsistent with federal antitrust law and policy, and that such conduct could work to the detriment of Ohio home health care consumers."[323] Nevertheless, it does not appear that the order was ever challenged in court.

SEIU District 1199 and the state entered into their first collective bargaining agreement (CBA) in January 2009.[324] The CBA implemented an unusually complex dues deduction scheme similar to that used in Iowa.

Article 4 of the CBA provided that, if authorized by an IHCP, the state would pay the IHCPs' wages to a union-affiliated intermediary, Independent Home Care Providers United,[325] that would deduct union dues for SEIU District 1199 and forward the remaining funds to the provider. While IHCPs were not required to join the union as a condition of employment, Article 4.4 contained a "maintenance of membership" provision stating, "IHCPs who voluntarily choose to become members of the Union shall maintain such membership in good standing for the duration of the

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[321] Ohio Gov. Ted Strickland. Executive Order 2007-23S. July 17, 2007. http://governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202007-23S.pdf

[322] Gregg Blesch. "Ohio governor, FTC butt heads on home care." *Modern Healthcare*, February 25, 2008. http://www.modernhealthcare.com/article/20080225/MAGAZINE/531376927

[323] Maureen Ohlhausen, Michael Baye and Jeffrey Schmidt. Letter to Sen. Bill Seitz. Federal Trade Commission, February 14, 2008. https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-hon.william-j.seitz-concerning-ohio-executive-order-2007-23s-establish-collective-bargaining-home-health-care/v080001homecare.pdf

[324] The 2009-10 collective bargaining agreement between the State of Ohio and SEIU District 1199 on behalf of IHCPs is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/05/SEIU-District-1199-CBAs.pdf

[325] Independent Home Care Providers United. "IHCPU Contact Information Guide." https://www.freedomfoundation.com/wp-content/uploads/2018/04/IHCPU-Contact-Information-Guide.pdf

Agreement," except for an annual, thirty-day escape period.[326]

To aid the union in signing up members, Article 3.1 of the CBA required the state to give SEIU District 1199 organizers "no less than thirty (30) minutes" access to IHCPs at any state-operated orientation programs. It also required the parties to "meet and evaluate the Union's ability to meet with all new IHCPs and participate in orientation programs."[327]

A second CBA took effect in June 2010 and required the state to begin collecting SEIU District 1199 dues from IHCPs' pay. The maintenance of membership requirement was retained, and a new subsection was added to Article 4 of the CBA requiring all IHCPs who did not join the union to nevertheless,

> "...pay to the Union a fair share fee of an amount equal to the dues uniformly required of its members. The deduction of the fair share fee from the reimbursements of IHCPs in the bargaining unit shall be automatic and does not require authorization by the non-member IHCP."[328]

In a May 2010 notice provided to new IHCPs in accordance with federal requirements, SEIU District 1199 stated, "As independent providers working under a Union security or agency fee agreement, you may be required to pay dues or fees to the Union as a condition of employment."[329] The union estimated that 78 percent of its expenditures were for "chargeable," non-political expenses.[330] According to the notice, union dues for IHCP's represented by SEIU District 1199 amounted to 1.75 percent of gross wages.[331]

Curiously, the website for Independent Home Care Providers United posted a notice in late 2010 stating,

> "Effective January 13, 2011, Service Employees International Union (SEIU) 1199 will no longer deduct union dues from Ohio Medicaid provider reimbursements. Instead, the Ohio Department of Job and Family Services (ODJFS) will make the necessary deduction before issuing payment... Effective January 13, 2011, 'fair share' fees will no longer be required of Ohio Medicaid providers who are not members of Service Employees International Union (SEIU) 1199. As a result, the Ohio Department of Job and Family Services (ODJFS) will no longer deduct these fees from non-union provider reimbursements."[332]

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[326] The 2009-10 collective bargaining agreement between the State of Ohio and SEIU District 1199 on behalf of IHCPs is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/05/SEIU-District-1199-CBAs.pdf
[327] Ibid.
[328] The 2010-12 collective bargaining agreement between the State of Ohio and SEIU District 1199 on behalf of IHCPs is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/05/SEIU-District-1199-CBAs.pdf
[329] Kathy McCormick of SEIU District 1199. Letter to independent providers. May 1, 2010. https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-District-1199-Hudson-notice-2010.pdf
[330] Ibid.
[331] Ibid.
[332] Independent Home Care Providers United. Website home page. July 19, 2011. https://web.archive.org/web/20110719060657/http://ihcpu.org/

It is unclear what caused the change, since the CBA requiring agency fee payments from nonmember IHCPs did not expire until June 2012. It is also unclear whether agency fee requirements were ever reinstated prior to *Harris v. Quinn*.

At any rate, in May 2015, Gov. John Kasich (R) rescinded Strickland's executive order establishing collective bargaining for IHCPs, effectively ending state dues deduction for SEIU District 1199 and the unionization of IHCPs.[333]

The exact number of IHCPs represented by SEIU District 1199 is unclear. While news reports indicated there were about 7,000 providers at the time of Strickland's executive order,[334] SEIU 1199 claimed there were around 13,000 IHCPs in early 2015, just prior to Kasich's executive order.[335]

Estimated Ohio Dues Skim for SEIU District 1199

Year	Total Dues and Fees	Total Dues Payers	Average Dues	Total IHCPs	Maximum IHCP Dues
2009	$14,985,757	27,167	$552	8,500	$4,688,738
2010	$15,576,485	30,290	$514	9,250	$4,756,767
2011	$13,912,058	27,610	$504	10,000	$5,038,775
2012	$13,453,298	25,378	$530	10,750	$5,698,753
2013	$13,972,147	24,509	$570	11,500	$6,555,946
2014	$13,748,858	24,148	$569	12,250	$6,974,636
2015	$13,725,248	27,002	$508	13,000	$2,753,318
				Total	**$36,466,934**

Source: SEIU District 1199 forms LM-2. File No. 509-111. https://olms.dol-esa.gov/query/orgReport.do

METHODOLOGICAL NOTES: During the relevant time period, SEIU District 1199 represented many employees who were not IHCPs. SEIU District 1199's total annual dues and fees are reported on Statement B, Line 36 of its annual LM-2 forms filed with the U.S. Department of Labor. The union's total members/fee payers are recorded on Schedule 13 of its annual forms LM-2. The estimates for the annual number IHCPs assume the number of IHCPs increased from 7,000 in 2007 to 13,000 in 2015 at a constant rate. Estimated IHCP dues are calculated by multiplying the average annual dues paid by a member of SEIU District 1199 by the number of IHCPs. If IHCPs paid less in dues than the average SEIU District 1199 member, the estimate will be high. Also, the complication and frequent changes in the union's dues deduction arrangements make it impossible to reasonably estimate the number that paid dues in any given year. Consequently, the estimates assume all IHCPs paid union dues and represent the maximum dues SEIU District 1199 could have collected from IHCPs. Since dues collection ended part way through 2015, IHCP dues for that year are prorated.

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[333] Ohio Gov. John Kasich. Executive Order 2015-05K. May 22, 2015. http://www.governor.ohio.gov/Portals/0/Executive%20Order%202015-05K.pdf

[334] Jim Provance. "Bargaining rights stripped for in-home health workers." *The Blade*, May 23, 2015. http://www.toledoblade.com/Politics/2015/05/23/Bargaining-rights-stripped-for-in-home-health-workers.html

[335] Anthony Caldwell. "Healthcare Union: You Can't Have Choice Without Options." SEIU District 1199, February 4, 2015. http://www.seiu1199.org/healthcare-union-you-cant-have-choice-without-options/

Maryland

The unionization of independent providers (IPs) in Maryland by AFSCME followed a common path for such efforts: A governor's executive order followed up by legislative action.

Then-Gov. Martin O'Malley (D) signed executive order 01.01.2007.15 on August 6, 2007, directing the state to, "recognize a provider organization designated by a majority of independent home providers who participate in the [state's Medicaid-funded home care programs] … voting in a mail ballot election, as the representative of the independent home care providers in the State."[336]

O'Malley's order directed the Department of Health and Mental Hygiene (DHMH), Department of Aging, the Department of Human Resources and the Department of Disabilities to furnish a list of IPs for the purpose of unionizing the workers.

Within six months, AFSCME Council 67 succeeded in unionizing the state's approximately 4,000 IPs in a February 2008 election. It's not clear what entity conducted the election or what the vote tally was — the Maryland Labor Relations Board denied having any record of the election — though the union claimed its victory was "overwhelming."[337] If the election followed the pattern in other states, the union likely won by a convincing margin in a very low-turnout and procedurally suspect election.

Despite the quick unionization process, negotiating a contract with the state took well over two years, with AFSCME announcing a final, three-year memorandum of understanding (MOU) in July 2010.[338]

In the spring of 2011, Maryland's General Assembly passed and Gov. O'Malley signed HB 171, solidifying collective bargaining rights for IPs.[339] While the legislation permitted the state and union to negotiate memoranda of understanding requiring nonmember IPs to pay a "service fee" to the union, it contained several important limitations. Most notably, the legislation exempted IPs providing care "only to an immediate family member." Since most caregivers tend to serve family members, the exemption likely prevented many IPs in Maryland from being forced to pay union dues as a condition of employment, even before the *Harris v. Quinn* decision extended this protection to all state-paid caregivers in 2014.[340] The bill also reiterated that IPs were not to be considered state employees, despite subjecting them to public employee collective bargaining laws.

Article 4 of the successor MOU between the state and AFSCME Council 67 in effect from July 2012

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[336] Maryland Gov. Martin O'Malley. Executive Order 01.01.2007.15. August 6, 2007. http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/005000/005092/unrestricted/20071943e-015.pdf

[337] AFSCME. "Maryland – Home Care Providers Vote for AFSCME." *AFSCME Works*, March/April 2008. https://www.afscme.org/news/publications/newsletters/works/marchapril-2008/maryland-home-care-providers-vote-for-afscme

[338] AFSCME. "Maryland - Home Care Providers Win Historic 1st Contract." *AFSCME Works*, September/October 2010. https://www.afscme.org/news/publications/newsletters/works/septemberoctober-2010/maryland-home-care-providers-win-historic-1st-contract

[339] House Bill 171 (2011): http://mlis.state.md.us/2011rs/chapters_noln/Ch_171_hb0171E.pdf

[340] *Harris v. Quinn*, 573 US _ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf

through July 2015 directed the state to "deduct union dues from payments received by providers who have elected to join the Union" and to "deduct a service fee... from registered providers who participate in the Home Care Provider ('HCP') program and who are covered under the terms of this Agreement, who have not joined the union."[341]

As provided in HB 171, the MOU did not permit collection of a service fee from family member providers.

Thus, at least from July 2012 until the *Harris* decision in June 2014, at least some Maryland providers were required to pay service fees to AFSCME 67 as a condition of employment.

The U.S. Department of Labor's promulgation of additional regulations governing home care workers ultimately led Maryland to shut down its self-directed home care programs, instead routing all IPs and all home-based care through privately-owned and operated home care agencies.

In 2013, the Department of Labor issued a regulation eliminating exemptions in the Fair Labor Standards Act — which, among other things, requires that covered workers be paid minimum wage and overtime — for "companionship services" and "domestic service occupations," including home care.[342] The rule applied to "third party employers" like the state of Maryland. Litigation kept the rule from taking effect for several years.[343]

A notice sent by DHMH to independent providers in June 2015, just prior to expiration of AFSCME 67's MOU, informed them that, "due to changes in federal rules," the state's Medicaid home care programs "will no longer pay independent providers for services" and that, "you must work for an agency provider on or before October 1, 2015 in order to be paid for services."[344]

A follow-up notice sent by DHMH the following month noted that, "All providers must work for an agency in order to get paid," including relatives and live-in caregivers.[345]

The left-leaning Maryland Center on Economic Policy (MCEP) explained that the state "[cancelled] its independent provider program" due to the increased cost of complying with the FLSA, estimated by the DHMH to be about $33 million per year.[346]

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[341] A copy of the 2012-15 memorandum of understanding between the State of Maryland and AFSCME Council 67 on behalf of IPs is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/AFSCME-Council-67-MOU-2012-15.pdf

[342] U.S. Department of Labor, Wage and Hour Division. "Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule." September 2013. https://www.dol.gov/whd/regs/compliance/whdfsFinalRule.pdf

[343] Allen Smith. "Supreme Court Leaves Home Care Rule in Place." Society for Human Resource Management, July 5, 2016. https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/home-care-rule-left-in-place.aspx

[344] Mark Leeds of the Maryland Department of Health and Mental Hygiene. Letter to Independent Personal Assistance Providers. June 11, 2015. https://www.freedomfoundation.com/wp-content/uploads/2018/07/Independent-to-Agency-Only-Independent-Providers-6.11.15.pdf

[345] Mark Leeds of the Maryland Department of Health and Mental Hygiene. Letter to Independent Personal Assistance Providers. July 10, 2015. https://www.freedomfoundation.com/wp-content/uploads/2018/07/Agency-Only-FAQ-for-Providers.pdf

[346] Maryland Center on Economic Policy. "Expanding Home Care Options in Maryland." May 2017. http://www.mdeconomy.org/wp-content/uploads/2017/03/MDCEP_homecare.pdf

According to MCEP, the state,

> "...[terminated] the independent provider program through which it had previously paid some home care aides and [required] those serving Medicaid participants to seek employment with private home care agencies. Since this sudden change in 2015, the state no longer pays the home care aides directly for their work. Rather, it now reimburses the home care agencies, as the new employers of the home care aides, for the work their employees provide... Before the Department of Labor issued its new rules, Maryland's Medicaid program provided both agency-based and self-directed home care services. Aides in Maryland's self-directed program, known as independent providers, had union representation..."[347]

While some of Maryland's private home care agencies may have been unionized under traditional private-sector labor laws, it appears the end of the independent provider model also ended the unionization of these providers and the subsequent diversion of union dues from their pay by the state.

The laws authorizing the unionization of independent providers remain on the books and would presumably apply should the state reinstate such a program in the future.[348]

Estimated Maryland Dues Skim for AFSCME Council 67			
Year	Union IPs	Dues	Estimated IP Dues
2010	1,500	$25/month	$225,000
2011	1,500	$25/month	$450,000
2012	1,434	$25/month	$430,200
2013	909	$25/month	$272,700
2014	508	$25/month	$152,400
2015	508	$25/month	$76,200
		Total	**$1,606,500**
Source: DHMH annual reports.			

METHODOLOGICAL NOTES: At the time of HB 171's adoption in 2011, legislative staff reported that the bargaining unit consisted of about 4,600 IPs, only about 1,500 of whom were paying dues to AFSCME.[349] Because no data source specifically indicates union membership for 2010, the 2011 number is used as an estimate for 2010. A series of annual reports provided by DHMH to the General Assembly in accordance with HB 171 provides snapshots of IPs' membership in AFSCME Council 67

[347] Maryland Center on Economic Policy. "Expanding Home Care Options in Maryland." May 2017. http://www.mdeconomy.org/wp-content/uploads/2017/03/MDCEP_homecare.pdf
[348] Md. Code Ann., Health §15–901-907.
[349] Maryland General Assembly, Department of Legislative Services. "Fiscal and Policy Note, House Bill 171." 2011 Session. http://mlis.state.md.us/2011rs/fnotes/bil_0001/hb0171.pdf

over time. DHMH's 2012 report noted that the state paid 3,882 IPs to provide home care through one of the state's several Medicaid programs, of which only 1,434 paid union dues in December 2012.[350] The agency reported paying 4,043 IPs and withholding union dues from 909 caregivers in December 2013.[351] Lastly, DHMH's 2014 report, issued after the *Harris* decision, reported that 3,990 IPs served Medicaid clients that year, while 508 had dues withheld from their pay by the state in December.[352] Each report recorded the union dues rate as being $25 per month. Because no data source specifically indicates union membership for 2015, the 2014 number is used as an estimate for 2015. Since the state began dues deductions when the first MOU was signed in July 2010, and since the IP program was phased out between June and October 2015, the estimated dues amount for each year is pro-rated.

[350] Joshua Sharfstein of the Maryland Department of Health and Mental Hygiene. Letter to Sen. Thomas Middleton and Rep. Norman Conway. January 2, 2013. http://dlslibrary.state.md.us/publications/Exec/DHMH/HB171Ch171(4)(2011)_2013.pdf

[351] Joshua Sharfstein of the Maryland Department of Health and Mental Hygiene. Letter to Sen. Thomas Middleton and Rep. Norman Conway. January 24, 2014. https://mmcp.health.maryland.gov/Documents/hb171collectivebargainingJCRfinal12-13.pdf

[352] Laura Herrera Scott of the Maryland Department of Health and Mental Hygiene. Letter to Sen. Thomas Middleton and Rep. Maggie McIntosh. January 20, 2015. https://mmcp.health.maryland.gov/Documents/JCRs/hb171collectivebargainingJCRfinal12-14.pdf

Massachusetts

In 2006, the Massachusetts General Court passed H.4758 to establish the Personal Care Attendant Quality Home Care Workforce Council (PCA Council).[353] The legislation also decreed that personal care attendants (PCAs) serving "persons with disabilities or seniors under the MassHealth personal care attendant program" were "public employees as defined by and solely for the purposes of" M.G.L. ch.150E §1, the statute governing collective bargaining by state and municipal employees.

Although passage of the bill ran into a speedbump when it was vetoed by then-Gov. Mitt Romney (R), the General Court overrode the governor's veto unanimously in July 2006 and passed the bill into law.[354] It is now codified as M.G.L. ch.118E §70-75.[355]

In less than a year and a half, 1199SEIU United Healthcare Workers East — a large, multi-state union headquartered in New York City — was certified to act as the exclusive bargaining representative of PCAs.

The organizing process was facilitated by several provisions of H.4758. First, while the Massachusetts Department of Labor Relations will generally only conduct a certification election if 30 percent of the proposed bargaining unit petitioned to be represented by a particular union,[356] the "showing of interest" necessary to trigger such a proceeding for PCAs was set at 10 percent by H.4758.

Second, the bill also required that the state compile and provide to the PCA Council a list of all PCAs. Undoubtedly, 1199SEIU obtained the list from the Council for the purposes of gathering its showing of interest.

For some reason, the certification election was conducted by the American Arbitration Association (AAA) instead of the Department of Labor Relations. According to meeting minutes of the PCA Council, "Ballots were counted on November 7, 2007 at the AAA office in Boston" and 1199SEIU selected to act as the exclusive bargaining representative of PCAs.[357] As an AAA election, the results and participation rate are not publicly available, though an article in the *Jamaica Plain Gazette* reported that "the vote passed by a landslide of 94 percent."[358]

Article 4 of the initial collective bargaining agreement (CBA) — in effect from December 16, 2008 through June 30, 2011 — contained an odd union security provision stating that, "The payment of

[353] House Bill 5218 (2006): https://malegislature.gov/Laws/SessionLaws/Acts/2006/Chapter268
[354] Ibid.
[355] M.G.L. ch.118E §70-75.
[356] Massachusetts Department of Labor Relations. "Showing of interest." https://www.mass.gov/service-details/showing-of-interest
[357] Personal Care Attendant Quality Home Care Workforce Council. Minutes of the November 13, 2007 general council meeting. https://www.mass.gov/files/documents/2016/08/mr/minutes-20071113.pdf
[358] Andy Zagastizábal. "Massachusetts PCAs give union the nod." *Jamaica Plain Gazette*, December 14, 2007. http://jamaicaplaingazette.com/2007/12/14/massachusetts_pcas_give_union_the_nod/

dues or agency service fees is required for all PCAs covered by this contract."[359] However, the provision also stated that, "Each PCA who chooses not to become a Union member *and signs the form authorizing agency fee deductions* shall have an agency service fee deducted from his or her wages…" (Emphasis added) Additionally, the provision required the fiscal intermediary to successively mail three dues deduction authorization forms to PCAs. In effect, under the terms of the original CBA, a PCA would only have dues withheld from their pay upon written authorization.

However, the agreement allowed the union to "reopen negotiations solely on the content of Article 4" if, after 18 months, "the percentage of signors is 90% or lower…"

The union must have been disappointed in its ability to persuade PCA's to sign up for the union deductions from their pay, because just 10 months later — in October 2009 — the PCA Council and 1199SEIU amended the union security provision to state:

> "The payment of dues or agency service fees is required as a condition of employment for all PCAs covered by this contract… Effective January 1, 2010, all persons currently employed as PCAs and future hires who have not signed a membership form will have the agency service fee deducted by the Fiscal Intermediary without a signature required for the deduction to be implemented."[360]

Article 4 provided further that the union be provided with PCAs' personal contact information, including home and mailing address, home phone and cell phone numbers, and email address.

The successor CBA ran from June 2011-12 and contained few noteworthy changes. It did, however, require the state to pay $1 million to the 1199SEIU Training and Upgrading Fund (TUF) "for the purpose of PCA training."[361]

Duration of the third CBA was three years, from 2012 to 2015, and required a further $1 million in state funds be allocated to the TUF. A "side letter of agreement" signed in July of 2013 obligated the parties to "jointly develop a PCA orientation program" lasting "no more than three hours." All PCAs would be required to attend an orientation within six months of their date of hire.

According to the PCA Council's 2014 report to the General Court, 1199SEIU had pressed for a paid orientation program for "several years." The Council opposed the program on the grounds that "funds would be better directed toward wage increases and benefits" for PCAs. However, with 1199SEIU threatening to "impose" an orientation program through the legislature, the PCA Council finally agreed to implement it through bargaining.[362]

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[359] The 2008-11 collective bargaining agreement between the Personal Care Attendant Quality Home Care Workforce Council and 1199SEIU Healthcare Workers East on behalf of PCAs is available online at: https://www.mass.gov/files/documents/2016/08/mv/pca-contract.pdf
[360] A copy of the amendment adding a union security provision to the 2008-13 collective bargaining agreement is available online at: http://www.mass.gov/pca/docs/amend-union-security.pdf
[361] The 2011-12 collective bargaining agreement between the Personal Care Attendant Quality Home Care Workforce Council and 1199SEIU Healthcare Workers East on behalf of PCAs is available online at: http://www.mass.gov/pca/docs/pca-contract-2011.doc
[362] Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "2014 Performance Review Report to the Governor and the General Court." http://www.mass.gov/pca/docs/annual-review-report-2014.pdf

The PCA Council noted in its newsletter that the mandatory orientation program "began as a pilot in January 2014 and will be fully implemented in July 2014."[363] It seems an unlikely coincidence that the orientation program — which covers "workers' rights and responsibilities presented by a Union representative," and "the role of 1199SEIU" — was "fully implemented" the month after the U.S. Supreme Court made union membership optional for PCAs in *Harris v. Quinn*.[364]

A sample orientation curriculum guide prepared by the PCA Council stated that a "goal" of the last 15 minutes of the orientations was to allow a union organizer to explain "how to become more involved in the Union" and that an "objective" of the presentation was to ensure the PCA could "describe how to join the Union as a member."[365] Sample talking points in the guide not only encouraged PCAs to join the union, but to contribute to its political action committee as well. The guide even implied that PAC contributions were necessary for membership: "To become a member: fill out the member application and check off your PAC contribution…"[366]

The new orientation program was not the only way 1199SEIU sought to respond to *Harris*. The PCA Council's 2014 report to the General Court noted that, during the year, consumers began complaining to the PCA Council about home visits from union organizers:

> "Because some PCAs live at the same address as their consumer/employers, union organizers engaged in door knocking outreach sometimes visit the homes of consumers. The consumers complaining to the Council said that some organizers were very persistent; returning several times after the consumer told them that they should just leave their materials and the consumer would give them to their PCA. Council members, although supportive of Union organizing efforts, took the concerns of consumers very seriously."[367]

While not stated explicitly in the report, the purpose of these visits was almost certainly to get PCAs to sign union membership forms.

The current CBA took effect in July 2016, fully two years after the *Harris* decision, and expires in June 2019. Article 4 now provides, "Initiation fees, regular dues, and voluntary core contributor fees, as established from time to time by the Union, shall be deducted from the wages due each PCA."[368]

The winter 2012 edition of the PCA Council's newsletter noted that, because of the recently negotiated union contract, "all PCAs will have to pay 2% dues or a similar agency fee. PCAs can

[363] Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "PCA New Hire Orientation Program to Start in 2014." *The Bridge*, Vol. 8, Winter 2014. https://www.mass.gov/files/documents/2016/08/qx/news-winter-2014.pdf
[364] The 2012-15 collective bargaining agreement between the Personal Care Attendant Quality Home Care Workforce Council and 1199SEIU Healthcare Workers East on behalf of PCAs is available online at: http://www.mass.gov/pca/docs/pca-fully-executed-cba-2012.pdf
[365] Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "Personal Care Attendant New Hire Orientation." http://www.mass.gov/pca/docs/new-hire/curriculumguide.pdf
[366] Ibid.
[367] Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "2014 Performance Review Report to the Governor and the General Court." http://www.mass.gov/pca/docs/annual-review-report-2014.pdf
[368] The 2016-19 collective bargaining agreement between the Personal Care Attendant Quality Home Care Workforce Council and 1199SEIU Healthcare Workers East on behalf of PCAs is available online at: http://www.mass.gov/pca/docs/pca-fully-executed-cba-2016.pdf

write to the union and apply for *financial core contributor* status, which will lower their payment to 1.2%" of wages (emphasis added).[369] In the pre-*Harris* world governed by the U.S. Supreme Court's 1977 ruling in *Abood v. Detroit Board of Education*, "partial public employees" like PCAs who objected to joining a union and paying dues could nevertheless be forced to pay a reduced "agency fee" to cover the costs of the union's representational work.[370] 1199SEIU appeared to refer to individuals paying this reduced amount as "financial core contributors."

If the union only collected funds from the paychecks of PCAs who had signed up for membership, the deductions would presumably be referred to as "dues." The reference, however, to "voluntary core contributor fees" in the current CBA suggests the union continues to collect funds from nonmember PCAs who have not objected to paying an automatically collected agency fee.

However, when queried, the PCA Quality Home Care Workforce Council stated, "Union membership deductions for individuals employed through the Massachusetts PCA program are voluntary and a PCA worker must provide prior written authorization before membership dues and fees can be deducted."[371]

If this is correct, the reference to "core contributor fees" in the current CBA appears to be superfluous.

Regardless of the initial dues deduction practice, it appears Massachusetts PCAs may cancel dues deductions a little more easily than their counterparts in other states. 1199SEIU membership forms do not contain fine print limiting the ability of signers to resign from the union,[372] and the PCA Quality Home Care Workforce Council stated that a PCA's authorization for dues deductions may "be withdrawn at any time by a worker with a sixty day written notice,"[373] in accordance with M.G.L. c. 180 § 17A.

Unrelated to the dues deduction process, several requirements were added to the current CBA for the purpose of increasing the union's access to PCAs:

- Language was added to Article 4 requiring that the union be provided with PCAs' Social Security numbers.
- The ironically-titled Article 5, Section 7, "Privacy," prohibits the state from releasing the contact information of PCAs to any entity other than 1199SEIU.
- Article 5, Section 8 gives the union the right to send material out in PCA's payroll envelopes.

[369] Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "Council and Union Agree to New Contract." *The Bridge*, Vol. 5, Winter 2012. https://www.mass.gov/files/documents/2016/08/pi/news-winter-2012.pdf
[370] *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977)
[371] Lisa Sirois of the PCA Quality Home Care Workforce Council. Email to Maxford Nelsen of the Freedom Foundation. May 18, 2018. https://www.freedomfoundation.com/wp-content/uploads/2018/07/Lisa-Sirois-email-May-2018.pdf
[372] The terms of 1199SEIU's membership form for PCAs are available online at: http://pcasignup.org/
[373] Lisa Sirois of the PCA Quality Home Care Workforce Council. Email to Maxford Nelsen of the Freedom Foundation. May 18, 2018. https://www.freedomfoundation.com/wp-content/uploads/2018/07/Lisa-Sirois-email-May-2018.pdf

- Article 5, Sections 3 and 5 require the fiscal intermediaries to post links to 1199SEIU's website on their own webpages and give the union access to their offices.
- Article 11 guarantees the union "at least twenty (20) minutes of paid time to present information on the Union and to recruit for membership and the Political Action Fund" at PCAs' mandatory orientations.[374]

The CBA also requires a one-time state contribution to TUF of $700,000 and annual state contributions to TUF of $950,000.

It further requires that, as of 2017, all PCAs be paid via electronic funds transfer, the effect of which is that the fiscal intermediaries handling PCA payroll will accumulate PCA's personal financial information. This sets the stage for 1199SEIU to demand access to PCA's financial accounts as a means of collecting dues, should it lose the ability to collect dues through payroll deduction.

Accordingly, the current PCA membership forms 1199SEIU is pressing PCAs to sign, revised early in 2018, contain the following provisions:

> "In the event my employer ceases payroll deductions and 1199SEIU provides me with a transition notice notifying me of the change, I authorize 1199SEIU to bill my credit card account or make withdrawals from my bank account... I authorize my employer, or its fiscal agent, to provide only to 1199SEIU's designated secure payment processor, TD Bank, the information for the bank account (bank account number, account holder's name and routing number) on file with my employer ("Account") that I have designated to receive the proceeds of my paycheck via direct deposit, and for my dues, contributions to the 1199SEIU Massachusetts Political Action Fund, and/or other payments I have authorized to be deducted from this Account..."[375]

It is not clear if the state would provide 1199SEIU with PCAs' personal financial accounts absent the authorization of a PCA.

As in many states, family members comprise a sizeable portion of Massachusetts PCAs. Though family members were barred from serving as PCAs until 2006, a large and growing number of Massachusetts PCAs are related to the client(s) they serve.[376]

A survey of 515 PCAs in 2010 commissioned by the PCA Council found that 33 percent of PCAs were related to their clients.[377] A survey of 975 PCAs conducted by the TUF in 2012 found that 42 percent were family members of their clients.[378]

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[374] The 2016-19 collective bargaining agreement between the Personal Care Attendant Quality Home Care Workforce Council and 1199SEIU Healthcare Workers East on behalf of PCAs is available online at: http://www.mass.gov/pca/docs/pca-fully-executed-cba-2016.pdf

[375] The terms of 1199SEIU's membership form for PCAs are available online at: http://pcasignup.org/

[376] JSI Research and Training Institute, Inc., prepared on behalf of the Massachusetts PCA Quality Home Care Workforce Council. "The Experience of Personal Care Attendants (PCA) in the Massachusetts PCA Program." March 2010. http://www.mass.gov/pca/docs/worker-survey.doc

[377] Ibid.

[378] The 1199SEIU Training and Upgrading Fund. "PCA Training Needs Assessment: November 2011 – March 2012." https://www.mass.gov/pca/docs/training-assessment.ppt

Since their unionization by 1199SEIU, PCAs have had tens of millions of dollars in union dues withheld from their pay. The union's bylaws specify that, in addition to a $75 initiation fee, dues for PCAs amount to "2 percent of hourly pay for all hours worked per month..."[379]

Estimated Massachusetts Dues Skim for 1199SEIU

Year	Total PCAs	Union PCAs	Average Dues	PCA Dues
2009	26,000	N/A	$149	$3,877,104
2010	27,000	N/A	$149	$4,026,224
2011	29,500	N/A	$149	$4,399,022
2012	32,000	N/A	$149	$4,771,820
2013	33,000	N/A	$149	$4,920,940
2014	31,236	19,187	$149	$2,887,173
2015	34,956	18,947	$239	$4,538,748
2016	37,773	20,209	$242	$4,891,024
2017	46,135	15,035	$342	$5,142,820
			Total	**$39,454,875**

Source: PCA Council semi-annual performance reports and data obtained upon request from the Massachusetts Executive Office of Health and Human Services.

METHODOLOGICAL NOTES: In accordance with M.G.L. ch.118E §75, the PCA Council has published performance reviews every two years, beginning in 2008. Total PCAs for 2009-13 are derived from these reports. The initial 2008 report indicated that there were "more than 25,000 PCAs."[380] The 2010 review reported "more than 27,000 PCAs,"[381] the 2012 review reported "more than 32,000 PCAs,"[382] the 2014 review reported "approximately 34,000 PCAs,"[383] and the most recent 2016 review reported a workforce of "over forty-four thousand personal care attendants."[384] The number of PCAs listed for odd-numbered years without a review was calculated by splitting the difference between the preceding and succeeding years. Data obtained upon request from the Massachusetts Executive Office of Health and Human Services indicated the total PCAs paid, the number of PCAs

379 See Article V, Section 8 of 1199SEIU's Constitution as amended through September 1, 2006, available online at: https://www.1199seiu.org/constitution#ArticleV

380 Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "Performance Review Report to the Governor and the General Court." December 2008. http://www.mass.gov/pca/docs/annual-review-report.pdf

381 Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "2010 Performance Review Report to the Governor and the General Court." http://www.mass.gov/pca/docs/annual-review-report-2010.pdf

382 Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "2012 Performance Review Report to the Governor and the General Court." http://www.mass.gov/pca/docs/council-performance-review-report-2012.pdf

383 Massachusetts Personal Care Attendant Quality Home Care Workforce Council. "2014 Performance Review Report to the Governor and the General Court." http://www.mass.gov/pca/docs/annual-review-report-2014.pdf

384 Massachusetts Personal Care Attendant Workforce Council. "2015-2016 Annual Report." July 2017. https://www.mass.gov/files/documents/2018/02/06/council-performance-review-report-2016.docx

having union dues withheld from their pay and the total amount of union dues deducted from PCAs' pay monthly for 2014-17. The number of PCAs paid and the number with dues deductions are 12-month averages for each year. Dues deducted is cumulative. Average dues for 2009-13 are unknown, so the average dues paid by PCAs in 2014 is used as an estimate. Similarly, PCA dues for 2009-13 are calculated by multiplying the estimated number of PCAs by the estimated average dues. Estimates for 2009-13 constitute the upper limit of the dues that 1199SEIU could have collected during these years.

Wisconsin

The Democratic-controlled Wisconsin State Legislature created the Wisconsin Quality Home Care Authority as part of 2009 Wisconsin Act 28. At the same time, it designated the state's individual providers (IPs) as public employees "for purposes of collective bargaining only," placing them under the jurisdiction of the State Employment Labor Relations Act and allowing them to collectively bargain with the Department of Health Services.[385]

In May 2010, the new IP bargaining unit voted to be represented by SEIU Healthcare Wisconsin in an election administered by the Wisconsin Employment Relations Commission. Out of an estimated 5,500 eligible voters, 1,249 (22.7 percent) voted for the union while 705 (12.8 percent) voted against and 3,546 (64.5 percent) did not vote.[386]

Later that year, however, voters elected Gov. Scott Walker (R) and gave control of both the state senate and assembly to Republicans. In June 2011, the legislature passed and Gov. Walker signed 2011 Wisconsin Act 10.[387] While most news coverage focused on the bill's collective bargaining reforms for public employees, the legislation also did away with the Wisconsin Quality Home Care Authority and repealed the provisions authorizing the unionization of IPs.

The *Wisconsin State Journal* reported that SEIU Healthcare Wisconsin was not able to negotiate a collective bargaining agreement with the state before its authority to do so was repealed.[388] If true, this suggests that Wisconsin IPs were able to narrowly avoid having any union dues skimmed from their Medicaid payments, though it is possible dues were deducted from caregivers' payments for a short time.

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[385] Wisconsin Department of Health Services. "Wisconsin Quality Home Care Authority." July 17, 2009. https://web.archive.org/web/20091014030439/http://dhs.wisconsin.gov/LTCare/QHCA/SummaryAct28.pdf
[386] Guy Boulton. "Home care workers vote in favor of union." *Wisconsin Journal-Sentinel*, May 6, 2010. http://archive.jsonline.com/business/93000694.html
[387] Assembly Bill 11 (2011): https://docs.legis.wisconsin.gov/2011/related/acts/10.pdf
[388] David Wahlberg. "Walker budget proposal would impact how health care works in state." *Wisconsin State Journal*, February 14, 2011. http://host.madison.com/wsj/news/local/govt-and-politics/walker-budget-proposal-would-impact-how-health-care-works-in/article_a28507fa-38a7-11e0-a87e-001cc4c002e0.html

Connecticut

Introduced in 2011, House Bill 6486 was the first attempt by SEIU to unionize personal care attendants (PCAs) in Connecticut.[389] The legislation sought to create a "Personal Care Attendant Quality Home Care Workforce Council" (QHCWC), tasked with studying and making recommendations regarding the "the recruitment, retention and adequacy of personal care attendants," developing a registry to connect PCAs and clients and creating a "list of the names and addresses of all personal care attendants who have been paid through a state-funded program that provides personal care services."[390]

"[SEIU's] new theme song, called 'Take 'Em Down,' shows contempt and encourages violence… The direction of home care should not be decided by who can create the biggest disturbance but by who has the best ideas."
- Catherine Ludlum, CT
http://bit.ly/2Nm9cMb

While the legislation gave the Council the "obligation to bargain and enter into agreements with a representative of personal care attendants," it clarified that, "Personal care attendants shall not be considered employees of the council or the state for any purpose except for the purpose of collective bargaining…"[391]

It also paved the way for unionization by establishing that a union could trigger a certification election with signatures from just 10 percent of PCAs, instead of the usual 30 percent.[392]

To say testimony on the bill in committee was contentious is an understatement.[393] SEIU brought a contingent of PCAs and representatives from states like California and Massachusetts that had already unionized caregivers to support the bill.[394] A number of PCAs, Medicaid recipients and disability rights advocates turned out in opposition.

While it did not formally oppose the bill, the Connecticut Commission on Aging noted that, "[M]any consumers and advocates remain concerned that this proposal would remove independence, dignity and choice from consumers."[395] Similarly, the head of the state's Office of Protection and Advocacy for Persons with Disabilities sounded a cautionary note, stating,

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389 Information about the procedural history of House Bill 6486 (2011) is available from the Connecticut General Assembly online at: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06486&which_year=2011

390 House Bill 6486 (2011): https://www.cga.ct.gov/2011/TOB/H/2011HB-06486-R04-HB.htm

391 Ibid.

392 Ibid.

393 A list of the written statements of individuals who testified on House Bill 6486 is available online at: https://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-06486&doc_year=2011

394 Deborah Chernoff of SEIU District 1199. Testimony before the Connecticut Human Services Committee. March 8, 2011. https://www.cga.ct.gov/2011/HSdata/Tmy/2011HB-06486-R000308-Deborah%20Chernoff-TMY.PDF

395 Julie Evans Star of the Connecticut Commission on Aging. Testimony before the Connecticut General Assembly, Human Services Committee. March 8, 2011. https://www.cga.ct.gov/2011/HSdata/Tmy/2011HB-06486-R000308-Connecticut%20Commission%20on%20Aging,%20Part%201%20of%203-TMY.PDF

> "History is filled with examples of centralized policy-making authorities that were established with the best of intentions, but which ultimately became the very type of power structure that the first independent living pioneers worked so hard to escape. I urge you to proceed with caution in this area, and not establish an entity that could undermine the inherently individualized nature of PCA services."[396]

The Connecticut Disability Advocacy Collaborative formally opposed the bill, pointing out that it was "being pursued aggressively by the Service Employees International Union (SEIU), not by the ultimate beneficiaries, individuals with disabilities" and contending it "has the potential to do great harm to the special relationship between the employer with a disability and his or her personal care attendant."[397]

Though advanced out of various committees, HB 6486 failed to pass before the end of the legislative session.[398] SEIU's defeat was short-lived, however.

In September 2011, as a way to boost his standing with organized labor,[399] Gov. Dannel Malloy signed Executive Order No. 10, unilaterally creating the QHCWC and providing a process for the unionization of PCAs, though it fell short of providing for formal collective bargaining.[400] Of note, the order permitted the unionization of PCAs via either a secret ballot election or by "card check," a coercive process whereby a union seeks to gather authorization cards from a majority of workers one-on-one, with no election ever conducted. Also, the order required "the council or any other vendor or contractor that provides fiscal intermediary services to the state" to "make payroll deductions of voluntary dues," though it did not specifically require nonmember PCAs to pay union fees. Lastly, the order directed a working group to examine and report back on extending collective bargaining to PCAs.

In March, 2012, at the request of SEIU Healthcare 1199NE, the American Arbitration Association (AAA) conducted a vote-by-mail election in which, out of an estimated 6,700 PCAs deemed eligible

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396 James McGaughey of the Connecticut Office of Protection and Advocacy for Persons with Disabilities. Testimony before the Connecticut General Assembly, Human Services Committee. March 8, 2011. https://www.cga.ct.gov/2011/HSdata/Tmy/2011HB-06486-R000308-Office%20of%20Protection%20and%20Advocacy%20for%20Persons%20with%20Disabilities-TMY.PDF c

397 Stan Kosloski of the Connecticut Disability Advocacy Collaborative. Testimony before the Connecticut General Assembly, Human Services Committee. March 8, 2011. https://www.cga.ct.gov/2011/HSdata/Tmy/2011HB-06486-R000308-Connecticut%20Disability%20Advocacy%20Collaborative-TMY.PDF

398 Information about the procedural history of House Bill 6486 (2011) is available from the Connecticut General Assembly online at: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06486&which_year=2011

399 Christine Stuart. "Malloy Keeps Promise to Unions By Signing Two Executive Orders." CT News Junkie, September 21, 2011. http://www.ctnewsjunkie.com/archives/entry/malloy_keeps_promise_to_unions_in_signing_two_executive_orders/

400 Connecticut Gov. Dannel Malloy. Executive Order No. 10. September 21, 2011. http://www.governor.ct.gov/malloy/lib/malloy/EO_10_Personal_Care_Attendant_Quality_Home_Care_Workforce_Council.pdf

to participate, 1,228 (18 percent) voted for SEIU and 365 (5 percent) voted against.[401] While SEIU Healthcare 1199NE participated in the election as "Home Care Workers United," the union appeared to cease functioning under that banner after the election, preferring instead to simply operate as SEIU Healthcare 1199NE.[402] While jubilant at the result of the election, the union called on the legislature to follow up by allowing it to engage in full collective bargaining with the state.[403]

On March 8, We the People of Connecticut filed litigation on behalf of a group of PCAs alleging Malloy's executive order exceeded the governor's authority, since the general assembly had considered and rejected a substantively similar bill in the prior session.[404] A second lawsuit challenging the order was filed on March 22 by a coalition of PCAs, clients, the Connecticut Association of Personal Assistance, the Yankee Institute for Public Policy and two state legislators.[405]

However, legislation to codify Malloy's executive order was already working its way through the General Assembly in the form of HB 5312, [406] based on the results of the working group's report which had been completed in February.[407] While the legislation faced a temporary setback when it failed to pass out of an important committee, it was eventually resurrected, passed and signed into law in May 2012 (currently codified as Conn. Gen. Stat. Sec. 17b-706 through 706e).[408]

As passed, the legislation created the Personal Care Attendant Workforce Council to take the place of the QHCWC and formalized collective bargaining for PCAs. As before, the legislation required the list of PCAs to be turned over to a union upon request. Importantly, HB 5312 also allowed collective bargaining agreements (CBAs) between the union and state to "include provisions calling for the state or its fiscal intermediary to deduct from reimbursement payments the regular dues, fees and assessments that a member is charged and nonmember service fees…"[409]

On July 13, several days after HB 5312 took effect, the Connecticut State Board of Labor Relations

[401] Allied Health Workforce Policy Board. "Annual Legislative Report 2013." https://www.ctdol.state.ct.us/OWC/CETC/Committees/IndustrySectors/AlliedHealth/Final%20AHWPB2013.pdf
[402] The Facebook page and website for Home Care Workers United, www.homecareunited.org, have not been updated since May 2012.
[403] Janice Podsada. "Home Care Workers Form First CT Union Under SEIU." *Hartford Courant*, March 29, 2012. http://articles.courant.com/2012-03-29/business/hc-home-care-union-formed-20120329_1_home-health-care-aides-care-providers-deborah-chernoff
[404] Hugh McQuaid. "Lawsuit: Executive Orders 'Akin to Slavery,' Administration Questions Legal Theory." CT News Junkie, March 9, 2012.
[405] Mary O'Leary. "Yankee Institute of Public Policy files lawsuits to block daycare and personal care assistant unionization." New Haven Register, March 22, 2012. http://www.nhregister.com/news/article/Yankee-Institute-of-Public-Policy-files-lawsuits-11456918.php
[406] Information about the procedural history of House Bill 5312 (2012) is available from the Connecticut General Assembly online at: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05312&which_year=2012
[407] Personal Care Attendant Working Group. "Final Report." February 15, 2012. https://portal.ct.gov/-/media/Office-of-the-Governor/Personal-Care-Attendant-Working-Group/PCA_Final_Report.pdf
[408] Arielle Levin Becker. "Controversial unionization bills fail to clear committee." *Connecticut Mirror*, March 20, 2012. https://ctmirror.org/2012/03/20/controversial-unionization-bills-fail-clear-committee/
[409] House Bill 5312 (2012): https://www.cga.ct.gov/2012/ACT/Pa/pdf/2012PA-00033-R00HB-05312-PA.pdf

formally recognized SEIU Healthcare 1199NE as the bargaining representative of PCAs pursuant to the new law. As required by the legislation, the Board of Labor Relations recognized the previously conducted AAA election as valid and did not conduct another.[410]

With the legislation in place, the legal challenges to Malloy's executive order were rendered moot. A trial court dismissed the litigation in October 2012, a decision which was upheld by the court of appeals in May 2014.[411]

It took about a year for the union and the PCA Workforce Council to negotiate and approve the first CBA covering PCAs, effective from July 1, 2013, through June 30, 2016.[412]

The CBA went to great lengths to enable the union to communicate with and collect dues from PCAs. Notably, the contract:

- Required fiscal intermediaries to withhold union dues from the pay of "PCAs who elect to join the Union" and agency fees from the pay of "PCAs who elect not to join the Union or who terminate their membership in the Union." Interestingly, Connecticut's collective bargaining law for state employees permits collective bargaining agreements to supersede "any general statute or special act, or regulations adopted by any state agency" when in conflict.[413] In order to force all PCAs to pay union dues or fees, SEIU's collective bargaining agreement specifically overrode another state law requiring employers to get written permission from employees before withholding funds from their pay.[414]
- Required fiscal intermediaries (the various entities paid by the state to handle PCAs' payroll and perform other administrative functions) to distribute up to four pages of union material in PCAs' new hire packets;
- Required the PCA Workforce Council to promote the union's website on its own;
- Allowed the union to send up to eight mailings per year to PCAs in pay envelopes sent out by fiscal intermediaries;
- Directed fiscal intermediaries to provide the union with detailed personal and contact information about PCAs on a monthly basis;
- Required PCAs to complete a three-hour orientation, including a 30-minute presentation by union representatives; and,
- Created a "PCA Training Fund" to which the state was required to contribute $950,000 over the duration of the CBA.

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[410] Connecticut State Board of Labor Relations. *State of Connecticut Personal Care Attendant Quality Home Care Workforce Council and SEIU District 1199*, Decision No. 4609 (2012). http://www.ctdol.state.ct.us/csblr/decisions-pdf/2012/DEC4609.pdf

[411] *We the People of Connecticut, Inc. v. Malloy*, 150 Conn. App. 576, 92 A.3d 961 (2014). https://www.jud.ct.gov/external/supapp/Cases/AROap/AP150/150AP347.pdf

[412] The 2013-16 collective bargaining agreement between the PCA Workforce Council and SEIU Healthcare 1199NE is available online at: https://portal.ct.gov/-/media/Office-of-the-Governor/Personal-Care-Attendant-Workforce-Council/PCAWC_Collective_Bargaining_Agreement.pdf?la=en

[413] Lee Hansen. "State Employee Union Contract Supersedence Laws." Connecticut Office of Legislative Research, December 21, 2017. https://www.cga.ct.gov/2017/rpt/pdf/2017-R-0356.pdf See also CGS § 5-278: https://www.cga.ct.gov/current/pub/chap_068.htm#sec_5-278

[414] CGS § 31-71e.

The state subsequently entered into an additional contract with 1199 Training and Upgrading Fund, operated by SEIU, to run the orientation program and provide additional training opportunities for PCAs.[415] Amendments to the initial contract ensured that the state continued to pay hundreds of thousands of Medicaid dollars to the fund after the expiration of the initial CBA.

"[SEIU has] a reputation of using intimidation, bullying, and violence to get people to do what they want. Are these the type of people that we will trust the lives of our disability community with?"
- Michelle Tyler, CT
http://bit.ly/2mlEwPK

The day of the Supreme Court's *Harris v. Quinn* decision in 2014, Gov. Malloy denounced the ruling while state Attorney General George Jepsen said his office was still evaluating its implications.[416] Interestingly, even though its collective bargaining agreement had been in effect for a full year, SEIU Healthcare 1199NE spokesperson Jennifer Schneider told the *Connecticut Mirror* the union had not begun collecting agency fees at the time of the decision, "since its contract was only recently finalized."[417]

An extension of the original CBA was agreed to on June 30, 2016, allowing it to "continue in force until such time as a successor agreement is approved by the legislature..."[418]

In October 2016, the nonprofit Yankee Institute for Public Policy published two concerning reports about the treatment of PCAs by SEIU. The first report noted that the state Department of Social Services was "'looking into' claims that personal care assistants... are having union dues deducted from their paychecks without authorization."[419] The second report documented how the union was using the mandatory orientations to harass PCAs into signing up for union membership.[420]

A PCA named Pauline recounted how she began receiving repeated, harassing phone calls from union organizers after she refused to sign a union membership form at her orientation and authorize the deduction of union dues from her pay. "Let people make up their mind," Pauline told Yankee. "You don't push things on people like that. Everyone has a right to make the right decision, you don't push people to do things."[421]

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[415] The agreement between the Personal Care Attendant Workforce Council and SEIU Healthcare 1199NE regarding the Training and Upgrading Fund is available online at: https://portal.ct.gov/-/media/Office-of-the-Governor/Personal-Care-Attendant-Workforce-Council/PCAWC-Contract-as-Amended.pdf?la=en
[416] *Harris v. Quinn*, 573 U.S. ___ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
[417] Arielle Levin Becker. "Connecticut closely scrutinizing Supreme Court's home care union ruling." *Connecticut Mirror*, June 30, 2014. https://ctmirror.org/2014/06/30/connecticut-closely-scrutinizing-supreme-courts-home-care-union-ruling/
[418] The 2016 extension of the collective bargaining agreement between the Personal Care Attendant Workforce Council and SEIU Healthcare 1199NE is available online at: https://portal.ct.gov/-/media/Office-of-the-Governor/Personal-Care-Attendant-Workforce-Council/PCAWC-Collective-Bargaining-Agreement-Extension-Agreement.pdf?la=en
[419] Marc Fitch. "Personal care assistants claim union dues are deducted without authorization." Yankee Institute for Public Policy, October 14, 2016. http://www.yankeeinstitute.org/2016/10/personal-care-assistants-claim-union-dues-are-deducted-without-authorization/
[420] Marc Fitch. "Unions exert pressure at state-mandated PCA orientation." Yankee Institute for Public Policy, October 22, 2016. http://www.yankeeinstitute.org/2016/10/unions-exert-pressure-at-state-mandated-pca-orientation/
[421] Ibid.

SEIU Healthcare 1199NE announced in February 2018 it had negotiated a new agreement with the state.[422] The union didn't make a full copy of the changes immediately available to its members, but a summary document claimed that, among other things, the new agreement would provide,

> "**Protection Against Attacks Against our Union:** If ultra right-wing, anti-worker groups with out-of-state funding try to attack our organization and our ability to pay dues through paycheck deductions, members will still be able to pay dues so we can win future campaigns."[423] (Bold in original)

The state Office of Labor Relations within the Office of Policy and Management transmitted the new memorandum of agreement to the Connecticut General Assembly on February 20, 2018.[424]

While the new agreement acknowledged the *Harris* decision by removing the requirement that PCAs who are not members of SEIU Healthcare 1199NE nonetheless pay union fees, it also contained several troubling provisions.

Under the agreement, all PCAs will be paid via electronic funds transfer to their bank account beginning July 2018. The contract provides that, "If a PCA is unable to receive his/her wages through EFT [electronic funds transfer], the PCA shall receive a paycheck; then the PCA must apply to the FI [fiscal intermediary] for an application for a payment card no later than August 1, 2018."[425]

While there's nothing inherently wrong in paying PCAs electronically, it means the fiscal intermediaries must collect PCAs' bank account/debit card information in order to process payroll, and additional language in the memorandum of agreement allows the union to access PCA's personal financial information to facilitate continued dues collection:

> "If payroll deductions for dues and or PAC are no longer permitted by law, the FI shall electronically transmit all union members' bank account, debit account or pay card information on file with the Fiscal Intermediary to the secure third party processor identified by the Union to process Union dues and/or COPE contributions via electronic funds transfer. The FI's electronic transmission shall also provide the secure third party processor with the employee's name, birth date, address, home number, cell number, employee ID number and home address in the FI's possession."[426]

Legislative debate over approval of the memorandum of agreement was almost nonexistent and the fact that it provides for SEIU Healthcare 1199NE to capture PCA's private financial information completely ignored. The wage increases included in the memorandum were the sole item of

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[422] Deborah Chernoff. "Home Care Workers Ratify New Contract." SEIU Healthcare 1199NE, February 5, 2018. http://www.seiu1199ne.org/2018/02/05/home-care-workers-ratify-new-contract/
[423] SEIU Healthcare 1199NE. "Tentative Agreement Highlights." http://www.seiu1199ne.org/files/2018/02/Tenative-Agreement-Summary-2-18.pdf
[424] The memorandum of agreement between the PCA Workforce Council and SEIU Healthcare 1199NE extending the 2016 agreement to 2021 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/04/FOI17-41-Responsive-Docs_-1.pdf
[425] Ibid.
[426] Ibid.

discussion.[427]

Senate Resolution No. 7,[428] approving the memorandum, was passed unanimously,[429] while the accompanying House Resolution No. 8[430] passed 127-16.[431]

As before, implementing the provisions of the new agreement involved superseding various Connecticut statutes governing financial practices and state government operations.[432]

In the wake of the General Assembly's approval of the memorandum, SEIU Healthcare 1199NE updated the terms of its membership forms. The previous version contained fine print containing an "irrevocable" authorization for the PCA Workforce Council and fiscal intermediaries to deduct union dues from the signers' pay, unless the PCA demands in writing the deductions cease "during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this authorization…"[433]

While the irrevocability language remains in the current membership form, the union added a provision designed to aid its collection of dues from PCAs' personal financial institutions:

> "In the event the PCA Workforce Council ceases payroll deductions, I authorize the Union to make withdrawals from my checking or savings account… I authorize the Union to make withdrawals from the financial account where I receive direct deposit of my paycheck, and I authorize the PCA Workforce Council or its designee to provide the Union's designated secure payment processor the information for the Account (account number, account holder's name and routing number) on file that I have designated to receive the proceeds of my paycheck via direct deposit. If direct deposit of my paycheck goes to both a checking and a savings account, I hereby authorize the PCA Workforce Council or its designee to provide the Union's designated secure payment processor the information for the checking account and for my dues and/or other contributions to be deducted from this account…"[434]

According to the membership form language, dues for PCAs are currently 2.25 percent of gross earnings.

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[427] See the March 20, 2018 press conference held by SEIU Healthcare 1199NE urging legislative approval of the memorandum of agreement, available online from the Connecticut Network: http://ct-n.com/ctnplayer.asp?odID=15129

[428] Senate Resolution 7 (2018): https://www.cga.ct.gov/2018/TOB/s/pdf/2018SR-00007-R00-SB.pdf

[429] The roll call vote on Senate Resolution 7 is available online from the Connecticut General Assembly at: https://www.cga.ct.gov/2018/VOTE/s/2018SV-00007-R00SR00007-SV.htm

[430] House Resolution 8 (2018): https://www.cga.ct.gov/2018/TOB/h/pdf/2018HR-00008-R00-HB.pdf

[431] The roll call vote on House Resolution 8 is available online from the Connecticut General Assembly at: https://www.cga.ct.gov/2018/VOTE/h/2018HV-00012-R00HR00008-HV.htm

[432] The memorandum of agreement between the PCA Workforce Council and SEIU Healthcare 1199NE extending the 2016 agreement to 2021 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/04/FOI17-41-Responsive-Docs_-1.pdf

[433] A copy of SEIU Healthcare 1199NE's old membership authorization is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/04/SEIU-1199NE-PCA-membership-form.png

[434] A copy of SEIU Healthcare 1199NE's newer membership authorization is available online at: http://1199ne.seiu.org/page/s/home-care-become-a-member

Estimated Connecticut Dues Skim for SEIU Healthcare 1199NE				
Year	**Total PCAs**	**Union PCAs**	**Average PCA Dues**	**Total Estimated PCA Dues**
2013	7,000	7,000	$311	$2,180,080
2014	7,000	7,000	$311	$1,635,060
2015	8,415	4,152	$326	$1,352,376
2016	8,415	4,152	$326	$1,352,376
2017	8,415	4,152	$326	$1,352,376
			Total	**$7,872,268**
Sources: Connecticut Allied Health Workforce Policy Board and data from the Departments of Social and Developmental Services.				

METHODOLOGICAL NOTES: In January 2015, the Connecticut Allied Health Workforce Policy Board estimated that approximately 7,000 PCAs were covered by the union's initial 2013-16 collective bargaining agreement.[435] Data obtained by request from the Connecticut Department of Social Services and the Department of Developmental Services indicated that the average number of PCAs paid in a given month of 2017 was 8,415. The data also indicate that, on average, 4,152 PCAs had union dues withheld from their pay each month in 2017. Cumulatively, the state withheld $1,352,376 in union dues from PCAs' pay in 2017. According to SEIU Healthcare 1199NE's forms LM-2 filed with the U.S. Department of Labor, average dues for the union, which represents many workers other than PCAs, remained basically flat from 2013-17. Consequently, the above chart assumes average dues for PCAs were the same in 2016 and 2015 as they were in 2017. Since all PCAs had to financially support the union in 2013, the estimated dues for that year assumed all 7,000 PCAs supported the union. The 2017 data from the state indicates that, on average over the course of the year, just under 50 percent of PCAs had dues withheld from their pay. The above chart assumes the PCA membership rate in SEIU Healthcare 1199NE for 2015-16 was the same as it was in 2017. Because the U.S. Supreme Court's *Harris v. Quinn* decision made dues payment optional as of June 30, 2014, estimated PCA dues for that year assume that 50 percent of PCAs had no dues withheld from their pay for the second half of the year.

[435] Allied Health Workforce Policy Board. "Connecticut's Allied Health Workforce: Challenges and Opportunities." January 2015. https://www.ctdol.state.ct.us/OWC/CETC/Final%20AHWPB%20Report%202015.pdf

Vermont

After lobbying efforts by both SEIU and AFSCME, the Vermont General Assembly passed and then-Gov. Peter Shumlin (D) signed Act 48 in May 2013, which provided a process for the unionization of the state's Medicaid-subsidized independent direct support providers (IDSPs).[436]

Despite treating providers as public employees for collective bargaining purposes, the legislation stated, "Independent direct support providers shall not be considered state employees for purposes other than collective bargaining."[437]

Additionally, to ease the process of unionization, the legislation, now codified as 21 V.S.A. § 1631-1644, required the state to maintain a list of IDSPs and provide it to labor unions "upon request."[438]

Prior to the legislation's passage, both unions were eyeing the new bargaining unit of IDSPs as a potential prize and actively working to gather union authorization signatures from providers to later submit in a certification proceeding.[439]

On May 29, 2013, just five days after Act 48 was signed into law, AFSCME filed a petition with the Vermont Labor Relations Board seeking to represent the new bargaining unit.[440] Before an election could be conducted, however, SEIU petitioned to intervene in the proceedings and also appear on the ballot, though it later withdrew its request and encouraged providers to vote for AFSCME.[441]

In September 2013, the Labor Relations Board mailed ballots to the 7,573 IDSPs it deemed eligible to participate in the certification, defined as those who had been paid during the 180-day period between January 22, 2013 and July 20, 2013.

Of the eligible providers, 1,412 (18.6 percent) voted in favor of AFSCME representation while 566 (7.5 percent) voted against union representation. Almost three-quarters of IDSPs declined to participate in or did not know about the election. The Board certified AFSCME Council 93, Local 4802/Vermont Homecare United in October.[442]

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[436] Act 48 (2013):
http://legislature.vermont.gov/assets/Documents/2014/Docs/ACTS/ACT048/ACT048%20As%20Enacted.pdf
[437] Ibid.
[438] Ibid.
[439] Clyde Weiss. "Building a Union, Face to Face." *AFSCME Works*, Spring 2013.
https://www.afscme.org/news/publications/newsletters/works/works-spring-2013/building-a-union-face-to-face
1199SEIU. "Vermont Homecare Providers Work with Legislature to Gain a Voice." February 13, 2013.
https://www.1199seiu.org/vermont_homecare_providers_work_with_legislature_to_gain_a_voice
[440] Vermont Labor Relations Board. *AFSCME and State of Vermont*. Docket No. 13-15. October 21, 2013.
http://vlrb.vermont.gov/sites/vlrb/files/documents/Certifications/SE_13-15.pdf
[441] Paul Heintz. "SEIU Drops Bid to Represent 7000 Home-Care Workers, Clearing Way for AFSCME." *Seven Days*, July 31, 2013. https://www.sevendaysvt.com/OffMessage/archives/2013/07/31/seiu-drops-bid-to-represent-7000-home-care-workers-clearing-way-for-afscme
[442] Vermont Labor Relations Board. *AFSCME and State of Vermont*. Docket No. 13-15. October 21, 2013.
http://vlrb.vermont.gov/sites/vlrb/files/documents/Certifications/SE_13-15.pdf

Collective bargaining negotiations commenced in December[443] and the first collective bargaining agreement (CBA) between the state and the union took effect on July 1, 2014, and expired on June 30, 2016.[444]

Article X of the CBA directed the state to "arrange for the deduction of union dues (expressed as a percentage of gross pay) from payments received by Providers who have elected to join the Union" and to collect "a collective bargaining service fee from Providers who are covered under the terms of this CBA, who have elected to not join the Union."[445]

However, on June 30, 2014 — the day before the CBA took effect — the U.S. Supreme Court struck down such service fee requirements for caregivers as unconstitutional in *Harris v. Quinn*.[446] A FAQ sheet prepared by the Vermont Agency of Human Services dated July 3, 2014, noted that union dues were set at "2% of gross wages."[447] The document also noted that, "The parties to the CBA and their attorneys are reviewing the United States Supreme Court decision in *Harris v. Quinn*..."

State attorneys must have ultimately reached the unavoidable conclusion that *Harris* prevents the state from forcing Vermont independent direct support providers to financially support AFSCME. Article 10.1 of the second CBA — which took effect July 1, 2016 and expires June 30, 2018 — states,

> "All Providers shall have the option of becoming a member of the Union. The State agrees to arrange for the deduction of union dues (expressed as a percentage of gross pay) from payments received by Providers who have elected to join the Union in a manner that promotes ease of administration and that is mutually acceptable to the State and the Union."[448]

Article 10.3 permits IDSPs to cancel their dues deductions by "providing thirty (30) calendar days advance written notice to the [fiscal employer/agent] and the Union," though Article 10.9 directs the state to distribute "union membership applications and union orientation materials" at "any

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443 Vermont Agency of Human Services. "Collective Bargaining Agreement (CBA) for Independent Direct Support Providers: Facts and Frequently Asked Questions (FAQs)." July 3, 2014. http://humanservices.vermont.gov/news-info/collective-bargaining-agreement-for-independent-direct-support-providers-facts-and-frequently-asked-questions/view

444 The 2014-16 collective bargaining agreement between the State of Vermont and Vermont Homecare United on behalf of IDSPs is available online at: http://humanservices.vermont.gov/news-info/collective-bargaining-agreement-between-the-state-of-vermont-and-afscme-relating-to-independent-direct-support-providers/collective-bargaining-agreement-between-the-state-of-vermont-and-afscme-relating-to-independent-direct-support-providers-effective-7-1-14/view

445 Ibid.

446 *Harris v. Quinn*, 573 US _ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf

447 Vermont Agency of Human Services. "Collective Bargaining Agreement (CBA) for Independent Direct Support Providers: Facts and Frequently Asked Questions (FAQs)." July 3, 2014. http://humanservices.vermont.gov/news-info/collective-bargaining-agreement-for-independent-direct-support-providers-facts-and-frequently-asked-questions/view

448 The 2016-18 collective bargaining agreement between the State of Vermont and Vermont Homecare United on behalf of IDSPs is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/Signed-Agreement.6.30.16.pdf

orientation and training activities."[449] The third and current CBA retains these provisions.[450]

Beyond continuing to negotiate semiannual collective bargaining agreements, it does not appear the union is putting much effort into representing the bargaining unit.

The website for Vermont Homecare United does not appear to have been updated since 2016, and both the union's Facebook page and Twitter account are no longer active.[451] AFSCME Council 93's website has made little mention of home care workers since its initial organizing victories.

ARIS Solutions, the fiscal agent contracted by the state of Vermont to process IDSPs' payroll,[452] posted a membership form for Vermont Homecare United on its website in September 2014.[453] Unlike many similar membership forms, it does not attempt to limit signers' ability to cancel the deduction of dues from their pay.

Though Vermont home care workers were probably never forced to pay union dues as a condition of employment, the diversion of union dues from Medicaid funds continues to occur.

Estimated Vermont Dues Skim for AFSCME Council 93					
Year	**Total Dues and Fees**	**Dues Payers**	**Average Dues**	**Total IDSPs**	**Maximum IDSP Dues**
2014	$13,805,054	36,468	$379	7,500	$1,419,572
2015	$14,142,065	35,960	$393	6,694	$2,632,695
2016	$14,528,770	36,306	$400	5,889	$2,356,500
2017	$14,662,037	36,458	$402	5,083	$2,044,192
				Total	**$8,452,958**
Source: AFSCME Council 93 forms LM-2. File No. 511-964. https://olms.dol-esa.gov/query/getOrgQryResult.do					

METHODOLOGICAL NOTES: AFSCME Council 93's total annual dues and fees are reported on Statement B, Line 36 of its annual LM-2 forms filed with the U.S. Department of Labor. The union's total members/fee payers are recorded on Schedule 13 of its annual forms LM-2. The number of IDSPs for 2014 is approximated from the number that participated in the union certification vote in 2013. Data provided upon request by the Vermont Department of Disabilities, Aging & Independent Living indicates that, on average, 5,083 IDSPs were paid monthly in 2017. The number of IDSPs listed for 2015 and 2016 were calculated by assuming a steady rate of decline from 7,500 in 2014 to 5,083 in 2017. The number of IDSPs paying dues could not be ascertained. If

[449] Ibid.
[450] The 2018-20 collective bargaining agreement between the State of Vermont and Vermont Homecare Workers United on behalf of IDSPs is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/CBA-FINAL-4-16-18.pdf
[451] See http://vthomecareunited.org/
[452] ARIS Solutions. "Union-Related Announcements." http://www.arissolutions.org/union-related-announcements/
[453] A copy of Vermont Homecare United's membership form is available online at: http://www.arissolutions.org/wordpress/wp-content/uploads/2014/09/Membership-PEOPLE-application.pdf

IDSPs pay average AFSCME Council 93 dues and all remained members of the union after *Harris v. Quinn*, then a maximum of $8.5 million in Medicaid funds was diverted from providers' pay in union dues between 2014 and 2017. Because the first CBA for IDSPs took effect on July 1, 2014, the dues estimate for that year is pro-rated.

Missouri

The stage was set for SEIU and AFSCME to unionize personal care attendants (PCAs) in Missouri following passage of Proposition B in 2008, which created the Missouri Quality Homecare Council (MQHC).[454] The official ballot title generated by the Secretary of State's office under Robin Carnahan (D) made no mention of unions or collective bargaining, instead reading:

> "Shall Missouri law be amended to enable the elderly and Missourians with disabilities to continue living independently in their homes by creating the Missouri Quality Homecare Council to ensure the availability of quality home care services under the Medicaid program by recruiting, training, and stabilizing the home care workforce?"[455]

Buried in a mountain of nonbinding intent language and procedural provisions about the governance of the MQHC was a provision designating PCAs as "employees of the Council solely for purposes of RSMo 105.500," the state's collective bargaining law for public employees. The measure further required the State Board of Mediation to conduct a union certification election upon the petitioning of 10 percent of the PCAs, instead of the typical "showing of interest" requirement for such elections of 30 percent.

All told, the Missourians for Quality Home Care campaign raised $1.7 million to pass Proposition B.[456] SEIU was the measure's only financial backer.[457] Proposition B was ultimately approved with 75 percent of the vote[458] and is currently codified as RSMo §§ 208.850-871.

During the following legislative session, Gov. Jay Nixon (D), who received $150,000 from SEIU in the prior election, began making appointments to the MQHC, but the Republican-controlled legislature refused to appropriate funding needed for the MQHC to operate.[459] Nevertheless, SEIU and AFSCME created a joint union, the Missouri Home Care Union (MHCU), to try and unionize PCAs. Interestingly, while union spokespeople told media before the 2008 election that about 8,000s PCAs would be affected by Proposition B,[460] they claimed double that amount were eligible

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[454] The text of Proposition B (2008) is available online at: https://www.sos.mo.gov/elections/2008petitions/2008-025
[455] The ballot title for Proposition B (2008) is available online at: https://www.sos.mo.gov/elections/2008ballot
[456] The committee termination statement provided by Missourians for Quality Home Care to the Missouri Ethics Commission lists the total funds raised during the election and is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/Missourians-for-Quality-Home-Care-MEC-termination-report.pdf
[457] Khadijah Rentas and Emily Coleman. "Proposition B creates argument over home health care standards, union." *The Columbia Missourian,* October 29, 2008. https://www.columbiamissourian.com/news/state_news/proposition-b-creates-argument-over-home-health-care-standards-union/article_8a3f141c-b4c2-5b17-a328-53e89d478dce.html
[458] The results of the 2008 Missouri general election are available online from the Missouri Secretary of State at: https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/AllRacesGeneralNovember2008.pdf
[459] David Lieb. "ANALYSIS: Missouri unions seek to organize in-home care." *The Columbia Missourian,* April 12, 2009. https://www.columbiamissourian.com/news/analysis-missouri-unions-seek-to-organize-in-home-care/article_becc724d-9097-5004-a620-3f8c4672bf23.html
[460] Khadijah Rentas and Emily Coleman. "Proposition B creates argument over home health care standards, union." *The Columbia Missourian,* October 29, 2008.

for unionization just a few months later.[461]

Despite passage of Proposition B, organizing PCAs took MHCU some time. Within months of the measure's passage, MHCU petitioned the State Board of Mediation for a union certification election. In May 2009, the Board of Mediation certified the union had gathered signatures from 10 percent of the PCAs, thus meeting the showing of interest requirement needed to trigger an election.[462]

In Missouri, multiple privately owned "vendors" contract with the state Department of Health and Social Services (DHSS) to manage payroll for PCAs and handle other administrative aspects of the Consumer-Directed Personal Care Assistance Services Program. Several vendors refused to turn over their PCA lists to the Board of Mediation for the purpose of conducting the union certification election. A further 2,500 PCAs were inadvertently left off the board's election list.[463]

Consequently, just before ballots were counted in July 2009, a vendor and group of PCAs filed litigation to block the election on the grounds that many eligible PCAs had not been permitted to vote. After the trial court ruled in the PCAs favor, MHCU decided to pursue a second election.[464]

However, when the Board of Mediation requested in January 2010 that vendors provide updated PCA lists, four refused to do so. After issuing subpoenas and taking other legal actions against the recalcitrant vendors, the Board succeeded in obtaining the complete list of 13,151 PCAs eligible to participate in the election by the end of March 2010. Ballots were counted in May 2010, with 2,085 votes (15.8 percent) in favor of the union, 1,405 votes (10.7 percent) against, 432 (3.3 percent) disputed or void, and 9,229 (70.2 percent) not returning a ballot.[465]

In determining voter eligibility, however, the Board of Mediation did not permit PCAs who had started working after January 1, 2010, to participate in the May 2010 election. Consequently, another group of PCAs filed suit after the second certification arguing that the approximately 2,600 PCAs who had started working for the first time after the board's cutoff date were improperly excluded from participating in the election.[466]

While the trial court ruled in the PCA's favor and voided the results of the second certification election, the Missouri Court of Appeals overturned the trial court's decision in May 2012, finding the election to be lawful.[467] In November 2012, the Missouri Supreme Court denied review of the court of appeals decision, effectively ending the litigation and recognizing the unionization of PCAs.[468]

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https://www.columbiamissourian.com/news/state_news/proposition-b-creates-argument-over-home-health-care-standards-union/article_8a3f141c-b4c2-5b17-a328-53e89d478dce.html

[461] David Lieb. "ANALYSIS: Missouri unions seek to organize in-home care." *The Columbia Missourian,* April 12, 2009. https://www.columbiamissourian.com/news/analysis-missouri-unions-seek-to-organize-in-home-care/article_becc724d-9097-5004-a620-3f8c4672bf23.html

[462] *DeGraffenreid v. State Bd. of Mediation,* 379 S.W.3d 171 (2012). https://www.courts.mo.gov/file.jsp?id=54022

[463] Ibid.

[464] Ibid.

[465] Ibid.

[466] Ibid.

[467] Ibid.

[468] *The Labor Tribune.* "Missouri home care workers prepare for collective bargaining." November 13, 2012. https://labortribune.com/missouri-home-care-workers-prepare-for-collective-bargaining/

MHCU and the MQHC agreed to their first and only collective bargaining agreement (CBA) in October 2014,[469] which contained a provision allowing Medicaid recipients to set the wage of their PCA within a certain range.[470]

In response, Gov. Nixon's administration proposed an administrative rule[471] to implement the new pay structure agreed to in the CBA.[472] In May 2015, however, the General Assembly's Joint Committee on Administrative Rules voted down the proposed rule, finding that DHSS did not have authority to implement it.[473] The following year, the General Assembly passed Senate Concurrent Resolution No. 46,[474] officially suspending implementation of the rule. Though Gov. Nixon vetoed the resolution in February 2016, the General Assembly voted to override his veto in May.[475]

Anticipating defeat in the legislature, MHCU in 2015 started an ultimately unsuccessful or abandoned petition drive for another ballot measure to raise PCA wages.[476]

Since its collective bargaining agreement took effect after the U.S. Supreme Court's 2014 *Harris v. Quinn* decision, Missouri PCAs were never required to pay union dues as a condition of employment.[477] The agreement did require vendors to withhold union dues from the paychecks of PCAs who authorized such deductions though, given the fact that the changes to PCAs' wage structure negotiated in the CBA were never implemented, it is unclear to what extent this and other provisions in the CBA were implemented.

Regardless, the CBA expired in July 2017 and there appears to be no effort underway to negotiate a successor contract. The Missouri Boards and Commissions website appears to be the only government website referencing the MQHC and indicates that all positions on the Council are

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469 The Labor Tribune. "Missouri Home Care attendants overwhelmingly ratify historic first contract." December 16, 2014. https://labortribune.com/missouri-home-care-attendants-overwhelmingly-ratify-historic-first-contract/

470 The 2015-17 labor agreement between the Missouri Quality Home Care Council and the Missouri Home Care Union on behalf of PCAs is available online at: https://oa.mo.gov/sites/default/files/Missouri%20Home%20Care%20Union%20Agreement.pdf

471 Missouri Department of Health and Senior Services. Proposed Rule: 19 CSR 15-8.410 Personal Care Attendant Wage Range. December 2014. https://www.mhanet.com/mhaimages/19%20CSR%2015-8%20410%20Proposed%20Personal%20Care%20Attendant%20Wage%20Rule%20filed%20with%20JCAR.pdf

472 Jordan Shapiro. "Confusion surrounds wage increase for Missouri home health attendants." *St. Louis Post-Dispatch*, December 18, 2014. http://www.stltoday.com/business/local/confusion-surrounds-wage-increase-for-missouri-home-health-attendants/article_e3c7f1cc-3fc6-5a69-b32b-3547947f08a5.html

473 Robert Espinoza. "Missouri Legislature Rejects Wage Raise for Home Care Attendants." Paraprofessional Healthcare Institute, May 28, 2015. https://phinational.org/missouri-legislature-rejects-wage-raise-for-home-care-attendants/

474 Senate Concurrent Resolution No. 46 (2015): http://www.senate.mo.gov/16info/pdf-bill/intro/SCR46.pdf

475 Information about the procedural history of Senate Concurrent Resolution No. 46 (2015) is available online from the Missouri State Senate at: http://www.senate.mo.gov/16info/BTS_Web/Actions.aspx?SessionType=R&BillID=23926099

476 Chloe Leshner. "Missouri Home Care Union launches petition to improve wages." *KOAM 7*, October 7, 2015. https://web.archive.org/web/20151011122006/http://www.koamtv.com/story/30212088/missouri-home-care-union-launches-petition-to-improve-wages

477 *Harris v. Quinn*, 573 US _ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf

currently vacant.[478] State officials confirmed over the phone that the MQHC has not met in several years.

The MHCU appears to be similarly dormant. Given the union's expense in unionizing PCAs, its inability to wage PCA wages and the loss of its ability to compel all PCAs to pay union dues after *Harris*, it could be that SEIU and AFSCME simply determined keeping MHCU afloat wasn't worth the expense. MHCU's website appears to have shut down sometime after January 2016[479] and the union does not appear to have filed any annual financial reports with the U.S. Department of Labor as typically required by active labor unions, though MHCU's Facebook page is periodically updated.[480] Interestingly, AFSCME national headquarters made an $11,000 contribution to the MHCU in March 2016.[481] The address listed for the MHCU is 3230 Emerald Lane, Jefferson City, the same address as an AFSCME international union area office.[482]

Thus, while no PCA union is currently active in Missouri, AFSCME may be keeping MHCU on life support in the hopes an eventual change in the union's political fortunes will allow it to begin skimming union dues from PCAs' pay at some future time. After all, the legal infrastructure for the unionization of PCAs remains on the books.

[478] Missouri Boards and Commissions. "Missouri Quality Home Care Council."
https://boards.mo.gov/UserPages/Board.aspx?158
[479] See http://www.missourihomecareunion.org/
[480] See https://www.facebook.com/MissouriHomeCareUnion/
[481] See schedule 17 of AFSCME's form LM-2 for 2016 filed with the U.S. Department of Labor. File No. 000-289.
https://olms.dol-esa.gov/query/getOrgQry.do
[482] See Google Maps: http://bit.ly/2B9fv0t

Minnesota

The unionization of home care workers in Minnesota by SEIU was the culmination of a multi-year political effort that first produced the election of Gov. Mark Dayton (DFL) and, subsequently, DFL majorities in the state legislature.

"I got involved in the effort to decertify the union because I am very concerned about maintaining the integrity of the program."

- Catherine Hunter, MN

http://bit.ly/2NmVF77

Credit: MNPCA

In his 2010 campaign for governor, Dayton vied for the Democratic-Farm-Labor party's nomination in a crowded field of 10 candidates. His prospects received a significant boost when AFSCME Council 5 gave him an early endorsement — his first of consequence.[483] Dayton went on to secure his party's nomination and racked up additional union endorsements heading into the general election.[484] On election night, Dayton narrowly led his Republican opponent, Tom Emmer, by about 9,000 votes, within the 0.5 percent margin needed to trigger an automatic recount.[485]

Both SEIU and AFSCME had supported Dayton's campaign with contributions and both weighed in again heavily to support his recount effort. AFSCME's national headquarters contributed $125,000 to Dayton's recount fund,[486] while SEIU Joint Council 7 chipped in $25,000.[487] By December, the recount confirmed Dayton's slim victory and he was sworn into office in January 2011.[488]

Speaking at AFSCME's state convention several years later, Dayton thanked attendees for the union's political support, adding, "Without you, I wouldn't be here today."[489]

Less than a year after his swearing in, Dayton set about repaying SEIU and AFSCME for their electoral support by attempting to unionize home-based family child care providers serving state-subsidized children from low-income families.

In a letter to Dayton dated November 8, 2011, AFSCME Council 5 and SEIU Local 284 claimed,

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[483] Rachel Stassen-Berger. "AFSCME backs Dayton's gubernatorial bid." *The Star Tribune*, October 25, 2009. http://www.startribune.com/afscme-backs-dayton-s-gubernatorial-bid/65956917/

[484] *89.3 The Current/Minnesota Public Radio*. "Minn. unions get behind Dayton for governor." August 13, 2010. https://www.thecurrent.org/feature/2010/08/13/education-minnesota-backs-dayton

[485] Elizabeth Dunbar and Tom Schek. "Mark Dayton declared winner, finally." *Minnesota Public Radio*, December 8, 2010. https://www.mprnews.org/story/2010/12/08/emmer-recount-concession

[486] See schedule 16 of AFSCME's form LM-2 for 2010 filed with the U.S. Department of Labor. File No. 000-289. https://olms.dol-esa.gov/query/getOrgQry.do

[487] See schedule 17 of SEIU Joint Council 7's form LM-2 for 2010 filed with the U.S. Department of Labor. File No. 047-059. https://olms.dol-esa.gov/query/getOrgQry.do

[488] Elizabeth Dunbar and Tom Schek. "Mark Dayton declared winner, finally." *Minnesota Public Radio*, December 8, 2010. https://www.mprnews.org/story/2010/12/08/emmer-recount-concession

[489] Tom Schek. "Dayton blasts Johnson at union event." *Minnesota Public Radio*, September 13, 2014. https://blogs.mprnews.org/capitol-view/2014/09/dayton-blasts-johnson-at-union-event/

> "While a majority of providers have signed authorizations in the areas listed above, some people have disputed that fact. To resolve the controversy, we feel the best way to determine majority support is to have the providers vote in each of the respective areas on whether they wish to be represented by their unions. We request a union election for only the licensed in-home family child care providers who participate in the Child Care Assistance Program."[490]

Exactly one week later, Dayton responded by issuing Executive Order 11-31, directing the Minnesota Bureau of Mediation Services (BMS) to,

> "…conduct two mail-ballot elections to determine whether AFSCME Council 5 and SEIU shall represent licensed registered subsidized family child care providers in the appropriate units, requested by AFSCME Council 5 and SEIU… If the Commissioner of the Bureau of Mediation Services certifies a majority exclusive representative in an appropriate unit, the Commissioners of Human Services and Education or their designees, shall meet and confer in good faith with the exclusive representatives of the licensed registered family child care provider units…"[491]

Opposition to unionization from family child care providers had already taken hold, however, and a group of 11 providers filed litigation challenging Dayton's executive order in state court. In December 2011, just two days before the union elections were to begin, Ramsey County District Judge Dale Lindman issued a temporary restraining order, putting the proceedings on hold.[492]

One of the points of contention centered on the fact that the executive order, as interpreted by BMS, would have permitted only about 4,300 of the state's 11,000 licensed family child care providers to participate in the election.[493]

The judge's final decision, issued in April 2012, declared Dayton's executive order to be "null and void" because,

> "By Executive Order 11-31, the Governor is attempting to circumvent the legislative process and unionize child care providers by executive order, rather than by adhering to a valid legislative process. In doing so, the Governor has improperly superseded the Legislature's authority and violated the separation of powers clause as set forth in the Minnesota Constitution."[494]

Shortly after the ruling, the Minnesota Legislature passed HF 1766 which sought to affirmatively

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[490] Eliot Seide of AFSCME Council 5 and Carol Nieters of SEIU Local 284. Letter to Minnesota Gov. Mark Dayton. November 8, 2011. https://mn.gov/gov-stat/images/Letter-11-15-11.pdf

[491] Minnesota Gov. Mark Datyon. Executive Order 11-31. November 15, 2011. http://state.mn.us/gov-stat/images/EO-11-31.pdf

[492] Mike Kaszuba. "Dayton fights judge's child-care union ruling." *The Star Tribune*, December 8, 2011. http://www.startribune.com/dayton-fights-judge-s-child-care-union-ruling/135291738/

[493] Mike Kaszuba. "Judge blocks child-care union vote: Why the rush?" *The Star Tribune*, December 5, 2011. http://www.startribune.com/judge-blocks-child-care-union-vote-why-the-rush/135072323/

[494] *Swanson, et al. v. Dayton, et al.*, 62-cv-11-9535 (Minn. Dist. Ct., April 6, 2012). https://www.scribd.com/doc/88299623/04-06-12-Findings-of-Fact-Conclusions-of-Law-and-Order

prevent union dues from being withheld from family child care providers' payments.[495] Although the bill was passed by the House 74-55[496] and by the Senate 37-25,[497] it was vetoed by Dayton, who claimed the bill was "completely unnecessary because no union representation of child care providers exists in the State of Minnesota."[498]

In a statement issued in June, Dayton announced he would not appeal Judge Lindman's ruling but would instead, "work toward electing a new legislature, which will support the right of working people to decide for themselves whether or not they want to join a union."[499]

Dayton got his wish in November 2012, when DFL candidates swept to control of both the state House and Senate with commanding margins.[500] Some observers attributed DFL's success to the work of the union-backed Alliance for a Better Minnesota.[501]

The new majority wasted little time in resurrecting the unionization scheme via SF 778.[502] The legislation not only enshrined the unionization of family child care providers into state law, but also provided for the unionization of the state's Medicaid-paid home care aides, known as individual providers (IPs) of direct support services, providing:

> "For the purposes of the Public Employment Labor Relations Act, under chapter 179A, individual providers shall be considered, by virtue of this section, executive branch state employees employed by the commissioner of management and budget or the commissioner's representative. This section does not require the treatment of individual providers as public employees for any other purpose."[503]

In addition, the bill required BMS to provide the list of IPs to "any employee organization wishing

[495] House File 1766 (2011):
(https://www.revisor.mn.gov/bills/text.php?number=HF1766&version=0&session=ls87&session_year=2012&session_number=0&format=pdf
[496] The House roll call vote on HB 1766 (2011) is available from the Minnesota House or Representatives online at: http://www.house.leg.state.mn.us/cco/journals/2011-12/J0209071.htm#5493
[497] The Senate roll call vote on HB 1766 (2011) is available from the Minnesota Senate online at: http://www.senate.mn/journals/2011-2012/20120416102.pdf#page=14
[498] Minnesota Gov. Mark Dayton. Veto letter to Speaker of the House Kurt Zellers. April 20, 2012. https://www.leg.state.mn.us/archive/vetoes/2012veto_ch190.pdf
[499] Rachel Stassen-Berger. "Dayton will not appeal decision negating child care unionization vote." *The Star Tribune*, June 5, 2012. http://www.startribune.com/dayton-will-not-appeal-decision-negating-child-care-unionization-vote/157295815/
[500] Faegre Baker Daniels LLP. "Minnesota legislative update: 2012 election update." Lexology, November 7, 2012. https://www.lexology.com/library/detail.aspx?g=bb665376-d751-45da-80c2-3256219b7ed0
[501] Catharine Richert. "How the DFL and its allies engineered a takeover of the Legislature." *89.3 The Current/Minnesota Public Radio*, November 20, 2012.
https://www.thecurrent.org/feature/2012/11/20/politics/alliance-for-a-better-minnesota-dfl-legislature-takeover
[502] Senate File 778 (2013):
https://www.revisor.mn.gov/bills/text.php?number=SF778&version=latest&session=ls88&session_year=2013&session_number=0&format=pdf
[503] Now codified as Minnesota Statutes 2017, section 179A.54.

to represent the appropriate unit of individual providers" that had the support of at least 500 IPs.[504] To trigger an election, a union would have to collect a showing of interest from at least 30 percent of the IPs eligible to vote.[505] SF 778 also directed the Department of Human Services (DHS) to begin requiring IPs to attend "orientation programs within three months of hire."

Lastly, the bill directed DHS to require the fiscal intermediaries handling IPs' payroll to, beginning January 1, 2014, "make all needed deductions on behalf of the state of dues check off amounts or fair-share fees for the exclusive representative..."[506]

Given the issue's history, SF 778 was highly controversial. After a marathon 17-hour debate, it passed the Senate 35-32, with four DFL Senators voting with minority Republicans in opposition.[507] Days later, after a 10-hour debate, the House DFL majority passed the legislation 68-66.[508] Dayton signed the bill into law on May 24, 2013.[509]

Before SEIU could organize IPs, however, the U.S. Supreme Court ruled in *Harris v. Quinn* in June 2014 that "partial-public employees" like IPs could not be forced to financially support a union against their will.[510] SEIU Healthcare Minnesota denounced the ruling and, just a week later, petitioned BMS for a certification election.[511]

On August 26, 2014, BMS certified SEIU Healthcare Minnesota (Local 113) as the exclusive representative of all IPs, based on the results of a vote-by-mail election in which 3,543 providers (13 percent) voted for the union, 2,306 (8.5 percent) voted against unionization, 23 cast void or blank ballots and 21,105 (78 percent) did not participate.[512]

A collective bargaining agreement (CBA) was negotiated relatively quickly that fall, ratified in

[504] Senate File 778 (2013): https://www.revisor.mn.gov/bills/text.php?number=SF778&version=latest&session=ls88&session_year=2013&session_number=0&format=pdf
[505] Ibid.
[506] Ibid.
[507] Tim Pugmire. "State Senate passes union bill after all-night debate." *Minnesota Public Radio*, May 15, 2013. https://blogs.mprnews.org/capitol-view/2013/05/state_senate_pa_2/?refid=0
[508] Mike Schoemer. "Minnesota House, Senate Approve Day Care, Provider Unionization Bill." Patch, May 14, 2013. https://patch.com/minnesota/stmichael/day-care-providers-rally-as-minnesota-senate-debates-50be318d9d
[509] Information about the procedural history of Senate File 778 (2013) is available online from the Minnesota Revisor of Statutes at: https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF0778&ssn=0&y=2013&keyword_type=all&keyword=FAMILY+CHILD+CARE+PROVIDERS+REPRESENTATION+ACT
[510] *Harris v. Quinn*, 573 US _ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
[511] *The Union Advocate*. "Home care workers 'invisible no more' after filing for historic union election." July 8, 2014. https://advocate.stpaulunions.org/2014/07/08/home-care-workers-invisible-no-more-after-filing-for-historic-union-election/
[512] Minnesota Bureau of Mediation Services. *State of Minnesota and SEIU Healthcare Minnesota*, Certification of Exclusive Representative, Case No. 15PCE0010. https://mn.gov/bms/assets/15PCE0010-MMB_tcm1075-237522.pdf

February 2015[513] and subsequently approved by the legislature.[514] It took effect on July 1, 2015.[515]

Article 4, Section 1 of the CBA required the state's fiscal intermediaries handling payroll and administrative tasks for IPs to,

> "…implement all the terms of dues checkoff authorizations submitted by the Union and agreed to by the Individual Provider, including terms regarding the duration, renewal, procedure for revocation, amount of dues deducted, deducted, and all other provisions… In all cases, authorizations for deductions shall be continuously effective unless properly cancelled with the Union by the Individual Provider."[516]

Additionally, Article 4, Section 2 of the CBA required the fiscal intermediaries to provide the union with lists of caregivers' names and addresses each pay period.[517]

To aid SEIU's recruitment efforts, Article 4, Section 4 of the CBA required fiscal intermediaries to "distribute to Individual Providers Union membership applications and Union orientation Materials" at any orientation they conduct.[518]

Also of note, Article 10 of the CBA required all newly hired IPs to complete an orientation program and obligated the state to provide $250,000 to a "Training and Orientation Committee" for the purpose of "[making] available voluntary training programs and required orientation programs for all Individual Providers."[519]

Even though DHS notified fiscal intermediaries in May of 2015 of their upcoming obligation to collect union dues,[520] implementing the new union dues collection procedure proved to be a challenge for many of Minnesota's approximately 400 fiscal intermediaries, according to a grievance filed by SEIU against the state in October 2015.[521]

After receiving complaints from SEIU, DHS sent another notice to fiscal intermediaries in September warning that the state would begin cutting off payments to fiscal intermediaries that were not "in

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513 The 2015-17 agreement between SEIU Healthcare Minnesota and the State of Minnesota on behalf of IPs is available online at: https://www.ser.leg.mn/Meetings/2015/2015-2017SEIUBargainingAgreement.pdf
514 Greg Hubinger. Memo to the Minnesota legislature's Subcommittee on Employment Relations: SEIU Labor Contract summary. May 11, 2017. https://www.ser.leg.mn/Meetings/2017/SEIU_sum_5_11_17.pdf
515 The 2015-17 agreement between SEIU Healthcare Minnesota and the State of Minnesota on behalf of IPs is available online at: https://www.ser.leg.mn/Meetings/2015/2015-2017SEIUBargainingAgreement.pdf
516 Ibid.
517 Ibid.
518 A copy of the union orientation packet currently distributed by fiscal intermediaries is available online at: http://www.seiuhealthcaremn.org/files/2017/09/HC_Fiscal-Intermediaries_Orientation-Materials_170906.pdf
519 The 2015-17 agreement between SEIU Healthcare Minnesota and the State of Minnesota on behalf of IPs is available online at: https://www.ser.leg.mn/Meetings/2015/2015-2017SEIUBargainingAgreement.pdf
520 Minnesota Department of Human Services. Memo to Personal Care Assistance (PCA) Choice Agencies and Fiscal Support Entities. May 29, 2015. https://c.ymcdn.com/sites/mnhomecare.site-ym.com/resource/resmgr/PCA/Provider_letter-PCA_Choice_a.pdf
521 *State of Minnesota and SEIU Healthcare Minnesota*. Minnesota Bureau of Mediation Services, Case No. 16 PA 0431. https://mn.gov/bms/documents/BMS/128188-20161031-State.pdf

compliance" with the dues collection requirements by October 12, 2015.[522]

DHS subsequently followed up with about 200 fiscal intermediaries and decided to cease payments to about 40 of them based on their lack of compliance with the CBA.[523]

Northwest Home Healthcare, LLC, the fiscal intermediary at the center of the union's grievance, described some of the difficulties facing fiscal intermediaries caught between SEIU and PCAs. The owner testified that the PCAs the union directed him to withhold dues from,

"They're taking millions of dollars from us, millions of dollars from our vulnerable children and millions of dollars from the generous taxpayers who wanted to help us. That's not only wrong, it's downright rude."
- Kris Greene, MN
http://strib.mn/2L22wWT

> "...told him they could not recall signing a dues authorization card. He said he told them he was responsible to the deduct [sic] the Union dues, and they told him not to deduct dues from them... He also testified that he called the Union and asked the Union to provide him with a copy of the authorization cards and the Union refused. He said he then went to the Union's offices, they were locked, and he couldn't get anyone to open the door and talk with him."[524]

In 2017, SEIU Healthcare Minnesota and the state agreed to a second CBA which took effect July 1.[525] The second CBA made no substantive changes to the union's dues collection or membership promotion practices, but did dramatically increase funding for the Training and Orientation Committee. Over the term of the CBA, the committee will receive $3,056,000 in Medicaid funds from the state.[526]

Around Labor Day in 2017, SEIU Healthcare Minnesota sent a mail piece to IPs urging them to sign a union membership form. The form authorizes the state to withhold union dues from IPs' pay and "is irrevocable for a period of one year from the date of execution and from year to year thereafter" unless the IP "[notifies] the Union in writing" of their "desire to revoke [the] authorization not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of [the] authorization..."[527] An online membership form maintained by the union contains substantially similar resignation restrictions.[528]

According to the union's website, the membership forms were updated to make it harder to cancel

[522] Ibid.
[523] Ibid.
[524] Ibid.
[525] The 2017-19 agreement between SEIU Healthcare Minnesota and the State of Minnesota on behalf of IPs is available online at: http://www.seiuhealthcaremn.org/files/2017/06/HCMN-2017-2019-Home-Care-Contract.pdf
[526] Ibid.
[527] A copy of the SEIU Healthcare mailing to IPs with a union membership form is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/05/SEIU-Healthcare-Minnesota-membership-card-with-window-period.pdf
[528] SEIU Healthcare Minnesota's online membership form is available at: http://hcmn.seiu.org/page/s/newmemberform

dues deductions at a union membership meeting in June 2015.[529] It was determined at the same meeting to set IP dues at 3 percent of gross wages.[530]

SEIU Healthcare Minnesota's tactics have done little to endear it to caregivers who, with assistance from the Center for the American Experiment, a Minnesota public policy organization, launched an effort to decertify the union in July 2016.[531] The effort has proceeded under the banner "MNPCA" (Minnesota personal care attendants).[532]

Minnesota's Public Employment Labor Relations Act requires that, to initiate a decertification election, employees must demonstrate to BMS that "the certified representative no longer represents the majority of the employees in an established unit and that at least 30 percent of the employees wish to be unrepresented."[533] Additionally, state law provides that BMS,

> "…shall not consider a petition for a decertification election during the term of a contract covering employees of the executive or judicial branches of the state of Minnesota except for a period from not more than 270 to not less than 210 days before its date of termination."[534]

That meant MNPCA had to submit signatures from 30 percent of IPs to BMS by December 2016.

Gathering petitions for an election from thousands of home-based IPs scattered around the state with no common means of communication is a daunting task. To make it easier, MNPCA requested a list of IPs in the bargaining unit from the state. After trying to reach IPs on the seven old lists initially provided by the state, however, MNPCA quickly discovered the information was replete with "fake addresses, fake names, and people who have never been PCAs,"[535] raising questions about the legitimacy of the original union certification election.[536]

In October 2016, MNPCA filed a lawsuit in Ramsey County District Court seeking to compel the state to turn over an accurate list and to grant the group more time to gather signatures.[537] During the hearing, the state admitted it did not keep an accurate list of IPs as required by law.[538] At the end of

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[529] SEIU Healthcare Minnesota. "Frequently Asked Questions about membership status." July 24, 2015. http://www.seiuhealthcaremn.org/2015/07/24/frequently-asked-questions-about-membership-status/
[530] Ibid.
[531] Doug Seaton. "Personal Care Attendants (Home Care Providers) file Notice of Intent to Remove SEIU-Healthcare Union." MNPCA, July 19, 2016. http://www.mnpca.org/personal-care-attendants-home-care-providers-file-notice-of-intent-to-remove-seiu-healthcare-union/
[532] MNPCA's website is: http://www.mnpca.org/
[533] Minnesota Statutes 2017, section 179A.12, subdivision 3.
[534] Minnesota Statutes 2017, section 179A.12, subdivision 4.
[535] MNPCA. "Did SEIU Use Fake Names to Unionize PCAs?" October 18, 2016. http://www.mnpca.org/did-seiu-use-fake-names-to-unionize-pcas/
[536] Kevin Mooney. "Home Caregivers Identify Evidence of Voter Fraud in Bid to Oust Union." *Daily Signal*, May 2, 2017. https://www.dailysignal.com/2017/05/02/home-caregivers-identify-evidence-of-voter-fraud-in-bid-to-oust-union/
[537] MNPCA. "Personal Care Attendants Secure Court Hearing in Decertification Effort." October 26, 2016. http://www.mnpca.org/personal-care-attendants-secure-court-hearing-in-decertification-effort/
[538] Kim Crockett. "State Admits to Judge that it does not have list of PCA "Bargaining Unit" Union Members." MNPCA, October 31, 2016. http://www.mnpca.org/state-admits-to-judge-that-it-does-not-have-list-of-pca-bargaining-unit-union-members/

the month, the judge ordered the state to produce an accurate list to MNPCA.[539] However, the state failed to turn over an updated list until one week before the December 2, 2016, deadline for MNPCA to file for decertification.[540] Nevertheless, on December 2, MNPCA submitted the 2,600 signatures it had gathered to BMS and requested a decertification election.[541]

In the process of using the new list to gather additional signatures, MNPCA gathered signed affidavits from 11 caregivers stating union dues were being withheld from their pay without their permission.[542] One caregiver, Patricia Johnson, submitted an affidavit stating the signature on the membership form SEIU claimed she signed was a forgery.[543] Others alleged SEIU had forged their signatures on ballots during the original certification effort.[544] The organization also continued to find a host of invalid or inaccurate entries on the list provided by the state.[545]

Questions about SEIU's conduct and the validity of the original election prompted some in the state legislature — under Republican control after the 2016 general election — to press BMS for answers.[546] The *Daily Signal* reported in April 2017 that State Rep. Marion O'Neill (R), chair of the House and Senate's Joint Subcommittee on Employee Relations, planned to hold a hearing in early May to press BMS for details about how the certification election was conducted.[547] While a hearing took place on May 8,[548] it proceeded without BMS Commissioner Josh Tilsen who had passed away suddenly

[539] Doug Seaton. "Press Release from MNPCA's Labor Attorney Doug Seaton: Court Rules for MNPCA and Against DHS, BMS and MMB." MNPCA, November 1, 2016. http://www.mnpca.org/press-release-from-mnpcas-labor-attorney-doug-seaton-court-rules-for-mnpca-and-against-dhs-bms-and-mmb/

[540] Kim Crockett. "PCAs ask Governor Dayton for a new election today." Center for the American Experiment, December 2, 2016. https://www.americanexperiment.org/2016/12/pcas-ask-governor-dayton-new-election-today/

[541] Ibid.

[542] Kevin Mooney. "She Never Joined a Union. But Union Fees Got Deducted from Her Paycheck." *Daily Signal*, March 30, 2017. https://www.dailysignal.com/2017/03/30/she-never-joined-a-union-but-union-fees-got-deducted-from-her-paycheck/

[543] Minnesota Bureau of Mediation Services. Case No. 17PDE0404. Affidavit of Patricia Johnson. January 6, 2017. https://www.freedomfoundation.com/wp-content/uploads/2018/05/Minnesota-PCA-forged-signature-affadavit.pdf

[544] Kevin Mooney. "Home Caregivers Identify Evidence of Voter Fraud in Bid to Oust Union." *Daily Signal*, May 2, 2017. https://www.dailysignal.com/2017/05/02/home-caregivers-identify-evidence-of-voter-fraud-in-bid-to-oust-union/

[545] Ibid.

[546] Briana Bierschbach and Greta Kaul. "Historic election puts Republicans in control of Minnesota House and Senate." *Minnesota Post*, November 9, 2016. https://www.minnpost.com/politics-policy/2016/11/historic-election-puts-republicans-control-minnesota-house-and-senate

[547] Kevin Mooney. "Election Results Gave This Union Millions. Now State Lawmakers Are Looking Into Voter Fraud." *Daily Signal*, April 17, 2017. https://www.dailysignal.com/2017/04/17/panel-asks-governor-to-explain-support-for-labor-union-despite-reports-of-fraud

[548] Tom Steward. "Lawmakers Spar Over Controversial Home Care Worker Contract." Center for the American Experiment, May 9, 2017. https://www.americanexperiment.org/2017/05/lawmakers-spar-controversial-home-care-worker-contract/
The 2017-18 meeting schedule for the Minnesota legislature's Subcommittee on Employment Relations is available online at: https://www.ser.leg.mn/meetings.html

on April 19.[549]

After BMS dismissed its decertification petition in February 2017, MNPCA pressed the legislature to refuse to ratify the proposed SEIU Healthcare Minnesota CBA.[550] Without a successor contract in place, MNPCA would be free to file for decertification after the existing CBA expired on June 30, 2017.

As the end of the legislative session approached, MNPCA appeared poised for success. Republican majorities in both the House and Senate had intentionally decided not to ratify the CBA. However, without the knowledge or approval of Republican budget writers, provisions were slipped into the DHS appropriations bill during the conference committee process "to implement" the CBA.[551] The addition escaped notice until after the bill was passed and signed by Gov. Dayton and the union trumpeted its success in June.[552]

Rep. Matt Dean (R), who participated in the legislative negotiations involving the DHS appropriations bill, told MNPCA:

> "Legislators never intended to ratify the SEIU contract and specifically agreed with one another, and with Governor Dayton's representative, that ratification could not and would not be part of the agreed bill. What happened is a shocking, illegitimate betrayal of the Legislative process. Someone inserted language which no Legislative Committee ever approved, in violation of our agreement, claiming to ratify a contract which no legislative body had actually ratified, despite the specific agreement of all parties that this would not occur."[553]

Though the CBA's ratification effectively shut the door on the decertification campaign, MNPCA proceeded to collect signature cards, boosted by a July decision from the Minnesota Court of Appeals confirming MNPCA's right to the list of caregivers.[554] In what may be the largest union decertification attempt in history, MNPCA on September 28, 2017 submitted decertification petition cards signed by more than 10,000 caregivers, over three times the amount that voted to originally certify SEIU Healthcare Minnesota in 2014.[555]

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549 Ricardo Lopez. "Bureau of Mediation Services Commissioner Josh Tilsen dies from sudden illness." *The Star Tribune*, April 19, 2017. http://www.startribune.com/bureau-of-mediation-services-commissioner-died-tuesday/419736523/

550 Minnesota Bureau of Mediation Services. Case No. 18PDE0254. Notice of Dismissal Order. December 12, 2017. https://mn.gov/bms/documents/BMS/131740-18PDE0254-Notice%20of%20Dismissal%20Order.pdf

551 See Minnesota Laws 2017, chapter 6, article 18, section 2, subdivisions 7(f) and 15(b)(1).

552 SEIU Healthcare Minnesota. "After Tumultuous End to Legislative Session, Home Care Workers Celebrate Ratification of New Agreement – And Resolve to Fight for Full Funding to be Restored." June 20, 2017. http://seiumn.org/2017/06/20/after-tumultuous-end-to-legislative-session-home-care-workers-celebrate-ratification-of-new-agreement-and-resolve-to-fight-for-full-funding-to-be-restored/

553 MNPCA. "SEIU Commits Even More Fraud on PCAs, Fakes SEIU 'Contract' Ratification." June 8, 2017. http://www.mnpca.org/seiu-commits-even-more-fraud-on-pcas-fakes-seiu-contract-ratification/

554 Kim Crockett. "Victory: PCA Access to Union List Upheld by Court." Center for the American Experiment, July 26, 2017. https://www.americanexperiment.org/2017/07/victory-pca-access-union-list-upheld-court/

555 Kim Crockett. "10,000 Cards Delivered to Gov. Dayton Demanding New PCA Election." Center for the American Experiment, September 28, 2017. https://www.americanexperiment.org/2017/09/10000-cards-delivered-gov-

Nevertheless, since the implementation of a new CBA in July 2017 closed the window for decertification, BMS dismissed MNPCA's petition in December.[556] In another setback, the Minnesota Court of Appeals in January 2018 upheld BMS' dismissal of MNPCA's original decertification petition.[557]

An attempt was made to revive the decertification effort in the 2018 legislature through SF 3983, an MNPCA-supported bill[558] which directed BMS to,

> "…conduct a decertification election for self-directed workers if, at any time prior to July 1, 2019, the Bureau of Mediation Services is provided decertification election authorization cards or petitions containing the names and signatures of 6,000 or more self-directed workers."[559]

While the bill made some progress in committee, it failed to pass before the conclusion of the legislative session.[560]

Estimated Dues Skim for SEIU Healthcare Minnesota

Year	Total Dues and Fees	Total Dues Payers	Average Dues	Union IPs	Estimated IP Dues
2014	$9,215,492	15,908	$579	0	0
2015	$10,184,577	20,859	$488	6,500	$1,586,839
2016	$11,124,460	19,164	$580	6,500	$3,773,168
2017	$11,033,882	22,554	$489	6,500	$3,179,934
				Total	**$8,539,941**

Source: SEIU Healthcare Minnesota forms LM-2. File No. 057-419. https://olms.dol-esa.gov/query/orgReport.do

METHODOLOGICAL NOTES: SEIU Healthcare Minnesota's total annual dues and fees are reported on Statement B, Line 36 of its annual LM-2 forms filed with the U.S. Department of Labor. The union's total members/fee payers are recorded on Schedule 13 of its annual forms LM-2. Average dues are

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dayton-demanding-new-pca-election/ Video of the press conference is available online at: https://vimeo.com/237918468

[556] Minnesota Bureau of Mediation Services. Case No. 18PDE0254. Notice of Dismissal Order. December 12, 2017. https://mn.gov/bms/documents/BMS/131740-18PDE0254-Notice%20of%20Dismissal%20Order.pdf

[557] *In re Petition for Decertification of an Exclusive Representative for Certain Employees*, A17-0798 (Minn. Ct. of App., Jan. 16, 2018). https://cases.justia.com/minnesota/court-of-appeals/2018-a17-0798.pdf?ts=1516127795

[558] Kim Crockett. "Decertification Election Bill for PCAs Advances in the Legislature." Center for the American Experiment, April 25, 2018. https://www.americanexperiment.org/2018/04/decertification-election-bill-pcas-advances-legislature/

[559] Senate File 3983 (2018): https://www.revisor.mn.gov/bills/text.php?number=SF3983&version=0&session=ls90&session_year=2018&session_number=0&format=pdf

[560] Information about the procedural history of Senate File 3983 (2018) is available online from the Minnesota legislature at: https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF3983&ssn=0&y=2018

calculated by dividing the amount of dues paid by the total number of dues/fee payers. SEIU Healthcare Minnesota claims to represent a total of 35,000 employees.[561] The Center for the American Experiment reported in July 2017 that SEIU Healthcare Minnesota estimated the size of the IP bargaining unit to be 19,000.[562] If these numbers are correct, it means that SEIU Healthcare Minnesota represents about 16,000 employees who are not IPs, approximately the same number the union represented in 2014 before organizing IPs. Since Minnesota is not a right-to-work state and non-IPs can be forced to financially support the union as a condition of employment, it can be safely assumed that all or nearly all of the 16,000 non-IPs represented by the union pay dues or fees and are included in Schedule 13 of SEIU Healthcare Minnesota's forms LM-2. If 16,000 of the 22,554 employees paying dues or fees to the union in 2017 were not IPs, then the remainder (about 6,500) must be IPs. Estimated IP dues are calculated by multiplying average dues by the estimated number of IPs. Because the initial collective bargaining agreement took effect on July 1, 2015, the estimated IP dues amount for that year is prorated for six months.

[561] SEIU Healthcare Minnesota. "About Us." http://www.seiuhealthcaremn.org/about/

[562] Kim Crockett. "Victory: PCA Access to Union List Upheld by Court." Center for the American Experiment, July 26, 2017. https://www.americanexperiment.org/2017/07/victory-pca-access-union-list-upheld-court/

Pennsylvania

Unions have waged an eight-year campaign to unionize home care aides in Pennsylvania. Though unsuccessful so far, the effort's fate will soon be decided by the Pennsylvania Supreme Court.

"It doesn't make sense that an outside group would involve themselves in a relationship that has taken place for 25 years just for the sake of collecting $400 dollars of hard earned money from someone who already does his job without their interference."

- David Smith, PA

http://bit.ly/2Jp0B7r

Credit: The Fairness Center

In 2010, Gov. Edward Rendell (D) issued Executive Order 2010-04 seeking to set in place a process for the unionization of home care aides serving Medicaid clients in Pennsylvania. However, the order was challenged by the Pennsylvania Homecare Association and the Commonwealth Court of Pennsylvania, one of the state's two appellate courts, issued an injunction against the order's implementation.[563]

The issue remained dormant until after current Pennsylvania Gov. Tom Wolf (D) was elected in 2014 with the backing of organized labor. Public employees' unions alone contributed nearly $3.5 million towards Wolf's election.[564]

Just over a month after taking office, Gov. Wolf issued Executive Order 2015-05 on February 27, 2015, directing the Department of Human Services (DHS) to "recognize a representative for the Direct Care Workers for the purpose of discussing issues of mutual concern through a meet and confer process."[565] Selection of such representative was to be accomplished through an election administered by the American Arbitration Association upon the request of 10 percent of the direct care workers (DCWs). DHS was directed to provide the lists of DCWs to entities seeking to serve as their representative. One of the subjects the order directed DHS to discuss in the meet and confer process with the representative was "voluntary payroll deductions for Direct Care Workers," presumably for union dues. The meet and confer process was intended to produce written memoranda of understanding though, for legal reasons, the order attempted to deny this amounted to a collective bargaining relationship.

On April 7, 2015, the Fairness Center, a nonprofit public interest law firm, filed suit on behalf of a DCW and his client to block the executive order's implementation.[566] Another lawsuit was filed by

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[563] *Pa. Homecare Assoc., et al. v. Rendell, et al.* (Pa. Cmwlth., No. 776 M.D. 2010, filed October 28, 2010) (single j. op.) (unreported).

[564] Bob Dick. "Political Spending by Government Unions During the 2014 Election." The Commonwealth Foundation, February 11, 2015. https://www.commonwealthfoundation.org/research/detail/political-spending-by-government-unions-during-the-2014-election

[565] Pennsylvania Gov. Tom Wolf. Executive Order 2015-05. February 27, 2015. http://www.oa.pa.gov/Policies/eo/Documents/2015_05.pdf

[566] The Fairness Center. "Homecare Worker Fights $21 Million Union Money Grab Ordered by Wolf." September 2, 2015. https://www.fairnesscenter.org/contents/detail/dave-smith-press-release-1

the Pennsylvania Homecare Association.[567] The crux of the lawsuit was that the executive order sought to create new law without proper authority and actually contradicted existing state laws.[568] A Commonwealth Court judge quickly issued a preliminary injunction on April 23, 2015, barring the state from entering into a memorandum of understanding pursuant to the executive order pending the court's consideration of the merits of the lawsuit.[569]

The injunction came amid efforts by United Home Care Workers of Pennsylvania (UHCW), a joint effort of SEIU Healthcare Pennsylvania and AFSCME Council 33, to unionize DCWs.[570] In gathering support from DCWs to trigger an election, UHCW sought to get caregivers to sign membership forms authorizing the deduction of two percent of their wages in union dues.[571] Just a day after the injunction was issued, UHCW announced it had won an election to be designated DCWs' representative. Out of approximately 20,000 DCWs, only 2,970 (15 percent) participated in the election, and only about 2,640 (13 percent) voted for the union.[572]

The victory was largely symbolic, however. In a 4-1 ruling issued September 22, 2015, the Commonwealth Court ruled the key provisions of Wolf's executive order to be "invalid and void" because,

> "...the Executive Order is *de facto* legislation, with provisions contrary to the existing statutory scheme. At its core, the Executive Order invades the relationship between a DCW and the employer participant who receives personal services in his or her home."[573]

On the heels of its loss in the Commonwealth Court, SEIU and AFSCME poured significant resources into the 2015 elections for the Pennsylvania Supreme Court, successfully electing three of their preferred candidates.[574]

The Commonwealth Court reiterated its earlier conclusion in a decision issued in another similar

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[567] Bill Toland. "Unionizing battle for Pennsylvania home-care workers heating up." *Pittsburgh Post-Gazette*, April 7, 2015. http://www.post-gazette.com/news/state/2015/04/08/Unionizing-battle-for-Pennsylvania-home-care-workers-heating-up/stories/201504080032

[568] The Fairness Center. "Backgrounder: David Smith & Donald Lambrecht v. Governor Tom Wolf & Pennsylvania Department of Human Services, Office of Long Term Living." September 9, 2015. https://www.fairnesscenter.org/contents/detail/dave-smith-backgrounder

[569] *Smith and Lambrecht v. Wolf, et al.*, 177 M.D. 2015 (Pa. Commw. Ct., April 23, 2015) https://www.dropbox.com/s/e9i724htepr2z6f/Order%20Filed.pdf?dl=0

[570] Matt Miller. "Gov. Wolf, opponents claim wins as judge issues injunction on home care worker executive order." *PennLive*, April 23, 2015. https://www.pennlive.com/midstate/index.ssf/2015/04/gov_wolf_opponents_claim_wins.html

[571] A copy of a mail piece United Pennsylvania Home Care Workers sent to DCWs including a membership form is available online at: https://www.commonwealthfoundation.org/docLib/20150419_DuesCheckoffMailing.pdf

[572] David Wenner. "Pa. home care workers hold historic vote, but 'unionization' remains murky." *PennLive*, April 24, 2015. https://www.pennlive.com/midstate/index.ssf/2015/04/home_care_union_seiu.html

[573] *Markham, et al. v. Wolf, et al.*, 176 M.D. 2015 (Pa. Commw. Ct., Sept. 22, 2016). http://www.pacourts.us/assets/opinions/Commonwealth/out/176MD15_9-22-16.pdf?cb=1

[574] Elizabeth Stelle. "Unions Targeting Vulnerable Pennsylvanians." The Commonwealth Foundation, May 16, 2016. https://www.commonwealthfoundation.org/policyblog/detail/unions-targeting-vulnerable-pennsylvanians

case on October 6, 2016.[575] Gov. Wolf appealed to the Pennsylvania Supreme Court later in the month.[576] The case was argued in November 2017, but the state Supreme Court has yet to issue its decision.[577] In the meantime, Gov. Wolf is enjoined by the Commonwealth Court from implementing the executive order.[578]

While Gov. Wolf's appeal was pending before the state Supreme Court, his administration agreed to provide $1.25 million to an SEIU-affiliated nonprofit, the "Training and Education Fund," for the purpose of operating an "orientation" program for DCWs, the purpose of which was to get caregivers in captive-audience settings with union organizers.[579] The Fairness Center challenged the orientation program in a motion filed with the Commonwealth Court in July 2017.[580] In October 2017, facing depositions and discovery related motions, Wolf's administration agreed to suspend the program pending the state Supreme Court's ruling on the legality of his executive order.[581]

Should Wolf's executive order be upheld, the Commonwealth Foundation estimates the resulting diversion of union dues from DCWs' paychecks to UHCW could total as much as $8.4 million per year.[582]

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[575] *Smith and Lambrecht v. Wolf, et al.*, 177 M.D. 2015 (Pa. Commw. Ct., Oct. 14, 2016). https://www.fairnesscenter.org/doclib/20161014_SummaryReliefGranted.pdf
[576] John Bouder. "Press Release: Gov. Wolf Appeals to PA Supreme Court." The Fairness Center, October 25, 2016. https://www.fairnesscenter.org/contents/detail/smith-press-release-8
[577] Liz Navratil. "State Supreme Court hears health care worker case." *Pittsburgh Post-Gazette*, November 28, 2017. http://www.post-gazette.com/news/politics-state/2017/11/28/pennsylvania-Supreme-Court-health-care-gov-tom-wolf-executive-order/stories/201711280143
[578] *Smith and Lambrecht v. Wolf, et al.*, 177 M.D. 2015 (Pa. Commw. Ct., Nov. 10, 2016). https://www.freedomfoundation.com/wp-content/uploads/2018/07/Smith-Doc.-No.-73-ORDER-Vacating-Automatic-Supersedeas-11.10.16.pdf
[579] John Bouder. "Press Release: Wolf Flouts Court, Fairness Center Clients File Motion to Enforce." The Fairness Center, July 14, 2017. https://www.fairnesscenter.org/contents/detail/smith-press-release-07-14-17
[580] Ibid.
[581] John Bouder. "Press Release: Wolf Forced to Halt Latest Union-Friendly Home Care Scheme." The Fairness Center, October 10, 2017. https://www.fairnesscenter.org/contents/detail/smith-press-release-101017
[582] Nathan Benefield and Bob Dick. "Gov. Wolf's Stealth Unionization of Home Health Care Workers." The Commonwealth Foundation, April 20, 2015. https://www.commonwealthfoundation.org/issues/detail/gov-wolfs-stealth-unionization-of-home-health-care-workers

Legality of Dues Skimming

Legally, the employment status of Medicaid-subsidized caregivers is a matter of some dispute. On one hand, state home care programs are designed, appropriately, to maximize consumer independence and choice. This means allowing Medicaid recipients to not only direct caregivers and assign their duties, but to control the hiring and termination of their caregivers as well. At a minimum, the state pays caregivers on clients' behalf and, in some cases, provides other employment benefits like health insurance or worker's compensation.

Unions, on the other hand, want caregivers to have a single employer, since this is the only practical way to organize them. Consequently, they emphasize the state's role as payor and generally attempt to make caregivers look as much like employees of a single employer as possible. Most often, this has meant designating caregivers as public employees, but only for the purposes of state collective bargaining laws.

Undoubtedly, unions would prefer to simply turn caregivers into state employees, but having to provide caregivers the generous wages and benefits of public employees would be prohibitively expensive for cash-strapped state budgets and potentially erase the cost benefits of providing home-based, as opposed to institutional, care. State employment would also presumably involve greater state oversight of caregivers' day-to-day employment and lead to a loss of client control over their care.

While the U.S. Supreme Court determined in *Harris v. Quinn* that "partial-public employees" such as Medicaid-subsidized caregivers cannot be forced to financially support a union, the question of whether states can divert Medicaid funds meant for clients to labor unions has never been addressed in court.[583] David Rolf, president of SEIU 775, which represents Medicaid caregivers in Washington State, admits the unionization of "Medicaid-paid home care workers" has taken place in a "legal gray area."[584]

In fact, there are strong reasons to believe state skimming of Medicaid funds for unions violates federal Medicaid laws.

Medicaid funds are intended to be used to provide services to eligible persons, and payment for such services must be made directly to the providers of such services. Medicaid funds are not intended to go to third parties, such as labor unions, that provide no services to clients.

42 U.S. Code § 1396a(a)(32) requires that state plans for medical assistance must,

> "...provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise..."

The corresponding regulation, 42 CFR 447.10, similarly requires that,

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[583] *Harris v. Quinn,* 573 U.S. ___ (2014). https://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
[584] David Rolf. *The Fight for $15.* New York: The New Press, 2016. Pg. 61.

> "A State plan must provide that the requirements of paragraphs (d) through (h) of this section are met... Payment may be made only to the provider."

While the statute includes several exceptions to the direct payment requirement, mirrored in the accompanying regulation, none would permit the deduction of union dues or political contributions from providers' wages.

Thus, when a state deducts union dues from a Medicaid providers' payment, it inappropriately diverts a portion of that providers' pay to a third-party non-provider in violation of federal law.

However, in 2014 the Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services (DHHS) adopted a new regulation, 42 CFR 447.10(g)(4), which added an exception to the direct payment requirement not permitted by 42 U.S. Code § 1396a(a)(32). The regulation provided that,

> "In the case of a class of practitioners for which the Medicaid program is the primary source of service revenue, payment may be made to a third party on behalf of the individual practitioner for benefits such as health insurance, skills training and other benefits customary for employees."

While the new language does not specifically reference union dues or political deductions, it created significant vagueness about the types of legally permissible deductions.

When the proposed regulation was published in the Federal Register in 2012, CMS explained,

> "Several States have requested that we consider adopting additional exceptions to the direct payment principle to permit withholding from the payment due to the individual practitioner for amounts paid by the State directly to third parties for health and welfare benefits, training costs, and other benefits customary for employees. These amounts would not be retained by the state, but would be paid to third parties on behalf of the practitioner for the stated purpose.
>
> *While section 1902(a)(32) of the [Social Security] Act does not expressly provide for additional exceptions to the direct payment principle*, we believe the circumstances at issue were not contemplated under section 1902(a)(32) of the Act and, therefore, that the direct payment principle should not apply."[585] (Emphasis added)

In other words, CMS effectively admitted it did not have statutory authority to adopt the additional regulatory exception to the direct payment requirement, but did so anyway.

Because CMS lacked authority to adopt the regulation in the first place, and because it has given states some justification, however limited, for allowing unions to take advantage of home caregivers, CMS should rescind 42 CFR 447.10(g)(4) and begin enforcing the direct payment requirement in 42 U.S. Code § 1396a(a)(32) to end the deduction of union dues and political contributions from providers' Medicaid payments.

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[585] Federal Register. Vol. 77, No. 86, Part II, May 3, 2012. https://www.gpo.gov/fdsys/pkg/FR-2012-05-03/pdf/2012-10385.pdf

In addition, CMS should add new regulatory language to 42 CFR 447.10 to eliminate any uncertainty about whether federal law prohibits diversions of Medicaid funds to private entities not involved in providing services to Medicaid recipients. For example, CMS could clarify that,

> "In the case of a class of individual practitioners for which the Medicaid program is the primary source of service revenue, no person or entity authorized to disburse funds to an individual provider or practitioner as payment for any service furnished to a beneficiary may deduct, withhold, or collect any funds from the provider or practitioner's payment on behalf of a membership organization, labor union, non-profit entity, or political fund."

If CMS took enforcement action to prevent states from collecting union dues from Medicaid, the full payment for services would have to be made directly to Medicaid caregivers. Once such payment has been made, individual home care aides can choose to use the funds however they wish. Caregivers who wish to join the union would be free to make their own arrangements for paying union dues.

Getting states out of the business of collecting union dues from Medicaid funds would not only uphold the law, but would reaffirm the principle that Medicaid dollars are meant to serve those in need, not to enrich politically connected special interests. Additionally, caregivers would be better protected against having dues withheld from their pay against their will. The automatic deduction of dues without consent would end. If unions had to request caregivers' personal financial account information in order to collect dues, instead of merely doing whatever it takes to obtain a signature on a membership card or an oral authorization, many of unions' coercive tactics would be rendered ineffectual.

In short, caregivers would finally have a meaningful choice about whether to join a union.

Case Study: Union Benefit Trusts

In addition to getting states to withhold union dues from Medicaid-subsidized home caregivers' paychecks, unions in some states operate their own employee benefits trusts and have persuaded or forced the state to divert substantial Medicaid funds into the trusts to provide caregivers with health benefits, training or other employment benefits. While there's certainly nothing inherently wrong with caregivers receiving such benefits, the way in which union benefits trusts are currently funded and operated raises both legal and policy concerns.

In most cases, state-funded training opportunities amount to little more than an excuse to get caregivers in front of union organizers eager to sign them up for membership. At best, union-operated benefits trusts are expensive, unaccountable and provide uncertain benefits.

Nowhere have unions been more successful in setting up state-funded, union-operated trusts than in Washington. The state's experience provides a good example of what can happen when unions are given nearly unfettered ability to co-opt Medicaid funds for their own purposes.

The first trust set up by SEIU 775, the union representing individual providers (IPs) in Washington, was the SEIU Healthcare NW Health Benefits Trust (HBT). It was created in 2004 pursuant to a provision in the union's first collective bargaining agreement (CBA) requiring the state to pay into the HBT for the purpose of providing health insurance benefits to certain IPs.[586] As a Taft-Hartley multiemployer trust[587] regulated only by the federal Employment Retirement Income Security Act (ERISA), the HBT has complete discretion to determine benefit levels and eligibility.[588] A majority of the HBT's board of directors are also employees or officers of SEIU 775.[589] Effectively, then, SEIU gets to tell the state how much to pay into the HBT, determines which IPs are eligible for benefits and what benefits eligible IPs receive, and has total discretion to spend the funds how it likes, all without legislative oversight or financial transparency.

Such lack of accountability has produced predictable results.[590]

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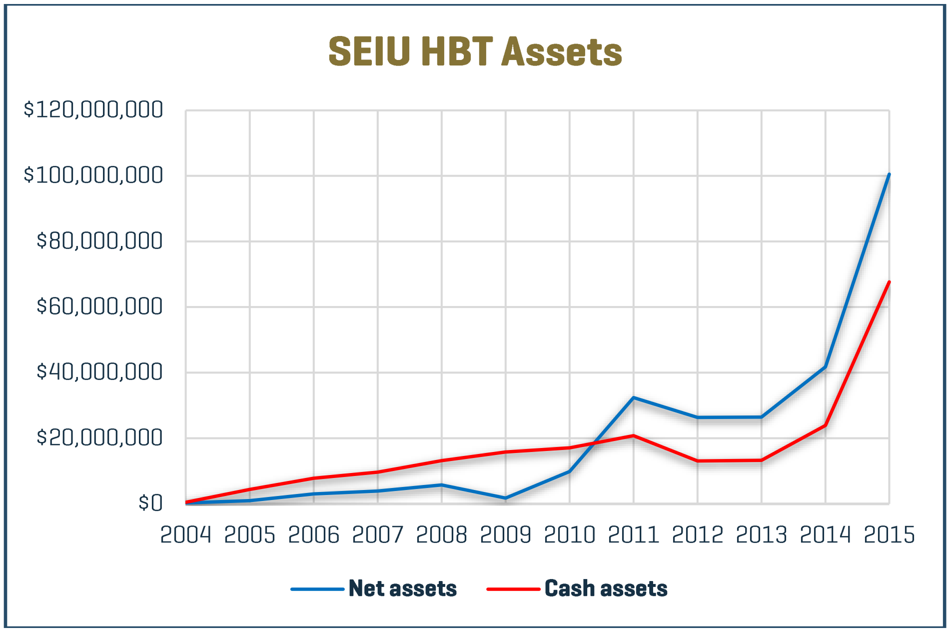
586 The 2003-05 collective bargaining agreement between SEIU 775 and the Home Care Quality Authority is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-IP-CBA-03-05.pdf

587 SEIU 775 Benefits Group. "About Our Health Benefits." https://www.myseiubenefits.org/about/health-benefits-trust/

588 Article 9.2 of the 2017-19 collective bargaining agreement between the State of Washington and SEIU 775 on behalf of IPs provides, "Eligibility for health care benefits shall be determined solely by the [SEIU Healthcare NW Health Benefits] Trust." A copy of the CBA is available online from the Washington Office of Financial Management at: https://www.ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf

589 The HBT's form 990 for 2015 filed with the Internal Revenue Service indicates that six of its 11 trustees — including Sterling Harders, Misha Werschkul, Seth Hemond, Adam Glickman-Flora, Shaine Truscott, and Monique Taylor Swan — are also employees or officers of SEIU 775. A copy of the HBT's 2015 form 990 is available online at: https://www.guidestar.org/FinDocuments/2016/201/842/2016-201842198-0dde409c-90.pdf SEIU 775's form LM-2 for 2015 on file with the U.S. Department of Labor lists these individuals as staff and/or officers of the union. File No. 542-433. https://olms.dol-esa.gov/query/getOrgQry.do

590 The information related to the HBT in the following paragraphs comes from the forms 990 filed by the HBT annually with the Internal Revenue Service.



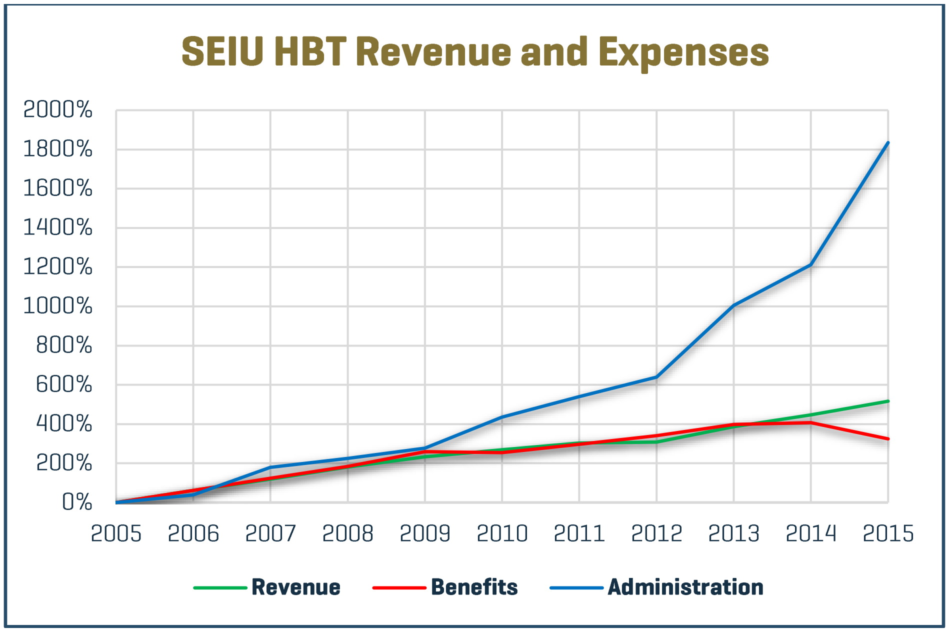
First, the annual amount paid into the HBT has increased dramatically. The HBTs total annual revenue has increased by 516 percent from 2005 to 2015 — nearly 26 times the rate of inflation — ballooning from $30.8 million to $190.1 million.

Second, while the amount of benefits paid out by the HBT increased significantly, it increased less than revenue, growing 324 percent from 2005 to 2015.

Third, the excess funds went toward skyrocketing administrative costs and a growing cash balance.

The HBT's 2004 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2004-IRS-990.pdf
The HBT's 2006 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2006-IRS-990.pdf
The HBT's 2008 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2008-IRS-990.pdf
The HBT's 2009 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2009-IRS-990.pdf
The HBT's 2010 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2010-IRS-990.pdf
The HBT's 2011 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2011-IRS-990.pdf
The HBT's 2012 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2012-IRS-990.pdf
The HBT's 2013 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2013-IRS-990.pdf
The HBT's 2014 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2014-IRS-990.pdf
The HBT's 2015 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Healthcare-NW-Health-Benefits-Trust-2015-IRS-990.pdf

Between 2005 and 2015, the HBT's administrative costs shot up 1,835 percent, from $368,395 to $7,128,097, while its net assets increased an astronomical 9,977 percent, growing from $997,709 to $100,540,754.



From 2005-10, the state's contribution to the HBT as determined by the CBAs between the state and SEIU 775 was set at a monthly amount for every IP, though not every IP met eligibility requirements. In 2005, the state contributed $400 per month to the HBT for every IP.[591] Eligible IPs had a monthly premium of $17 withheld from their pay by the state for the HBT. In 2010, the state's monthly contribution per IP reached $680.25.[592]

Since 2011, however, the state's contribution rate to the HBT has been based on an hourly calculation, beginning at $2.21 for every hour worked by an IP (irrespective of an IPs' eligibility for benefits)[593] and reaching $3.55 today.[594] Eligible IPs currently pay an additional $25 per month

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591 See Article 9, Section 2 of the 2003-05 collective bargaining agreement between SEIU 775 and the Home Care Quality Authority on behalf of IPs, available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-IP-CBA-03-05.pdf
592 See Article 10.2 of the 2009-11 collective bargaining agreement between SEIU 775 and the State of Washington on behalf of IPs, available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-IP-CBA-09-11.pdf
593 See Article 10.2 of the 2011-13 collective bargaining agreement between SEIU 775 and the State of Washington on behalf of IPs, available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-775-IP-CBA-11-13.pdf
594 See Article 9.2 of the 2017-19 collective bargaining agreement between SEIU 775 and the State of Washington on behalf of IPs, available online at: https://www.ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf

premium to the HBT,[595] deducted from their pay by the state as required by the CBA.[596]

Conveniently, the HBT pays SEIU 775 and another SEIU-affiliated ERISA trust, the SEIU Healthcare NW Training Partnership (TP), to provide much of its administrative support and services. For instance, the HBT and TP both lease office space from SEIU 775 in its building in downtown Seattle, and all three entities operate out of the union's call center located in the same facility. From 2009-15, the HBT purchased at least $1,474,774 in services from SEIU 775 and at least $8,680,602 from the TP.

The HBT it just one of several ERISA trusts currently operated by SEIU 775 and funded by the state with Medicaid dollars.

In 2008, SEIU backed I-1029, a statewide ballot measure to dramatically increase the training requirements for individual providers (IPs) in Washington.[597] SEIU 775 almost single-handedly provided the almost $1 million spent to pass the measure.[598] Opponents of the initiative raised merely $177,000[599] and were crushed at the polls.[600] In addition to boosting the training requirements for IPs from 34 to 75 hours, the initiative required that all such training be provided by a single entity, a so-called "training partnership" designated by SEIU 775 and funded at the level specified by the union in its CBAs with the state.

Facing budget difficulties amid the financial crisis, however, supermajorities in the Washington legislature in 2009 voted to delay implementation of the initiative until 2011. In 2011, the legislature voted again to delay implementation of the new requirements until 2014.[601]

After the legislature's second vote to delay I-1029, SEIU 775 funded and backed a second ballot measure — Initiative 1163 — to implement the new training requirements immediately.[602] SEIU 775 outspent its opponents even more handily the second time around, spending $1.6 million[603] to the

[595] See the SEIU 775 Benefits Group website: https://www.myseiubenefits.org/health-benefits-trust/
[596] See Article 9.3 of the 2017-19 collective bargaining agreement between SEIU 775 and the State of Washington on behalf of IPs, available online at: https://www.ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/nse_homecare.pdf
[597] Initiative 1029 (2008): https://www.sos.wa.gov/elections/initiatives/text/i1029.pdf
[598] See the contributions to People for Safe Quality Care, available from the Washington Public Disclosure Commission. https://www.pdc.wa.gov/browse/campaign-explorer/committee?filer_id=PEOPSQ%20109&election_year=2008
[599] See the contributions to the Community Care Coalition of Washington, available from the Washington Public Disclosure Commission: https://www.pdc.wa.gov/browse/campaign-explorer/committee?filer_id=COMMCC%20020&election_year=2008
[600] Washington Secretary of State. November 4, 2008 General Election Results: Initiative Measure 1029. http://results.vote.wa.gov/results/20081104/Initiative-Measure-1029-concerns-long-term-care-services-for-the-elderly-and-persons-with-disabilities.html
[601] Kathy Buchli. "Summary of Initiative 1163 to the people." Washington State Senate Committee Services. http://leg.wa.gov/Senate/Committees/documents/Initiatives/2011/1163Summary.pdf
[602] Initiative 1163 (2011): https://www.sos.wa.gov/elections/initiatives/text/i1163.pdf
[603] See the contributions to People for Quality, Efficient and Accountable Home Care, available from the Washington Public Disclosure Commission. https://www.pdc.wa.gov/browse/campaign-explorer/committee?filer_id=PEOPQE%20109&election_year=2011

opposition's $135,000.[604] To make the expensive proposition more palatable to the voters, SEIU 775 provided no funding mechanism (tax increase) to pay for the new training program.[605]

I-1163 drew strident opposition from the state's editorial boards, with the *Seattle Times* denouncing it as "is bad policy and cynical politics combined."[606]

Nevertheless, the union again succeeded at the polls, though by a smaller margin than before.[607] In part because of its ability to single-handedly finance and pass two statewide ballot initiatives to implement its desired training monopoly, one reporter described SEIU 775 as "one of the largest, wealthiest and most aggressive political forces in the state."[608]

With the union breathing down their necks, legislators failed to muster the votes to postpone implementing I-1163 as they had its predecessor.

Unsurprisingly, SEIU 775 designated its own trust, the SEIU Healthcare NW Training Partnership (TP), to be the exclusive provider of IPs mandatory training.[609]

Like the HBT, the TP is largely governed by union employees and officers.[610] Like the HBT, the TP's revenue has increased dramatically. Like the HBT, the TP's assets have increased faster than its revenue, increasing 275 percent from 2011-15, suggesting either excess funds or diversion of funds.

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[604] See the contributions to People Protecting Our Seniors No 1163, available from the Washington Public Disclosure Commission. https://www.pdc.wa.gov/browse/campaign-explorer/committee?filer_id=PEOPPO%20507&election_year=2011

[605] Editorial board. "In crisis, Washington Legislature should suspend Initiative 1163." *Seattle Times*, November 9, 2011. https://www.seattletimes.com/opinion/in-crisis-washington-legislature-should-suspend-initiative-1163/

[606] Editorial board. "Initiative 1163: Why no funding source, SEIU?" *Seattle Times*, July 18, 2011. https://www.seattletimes.com/opinion/initiative-1163-why-no-funding-source-seiu/

[607] Washington Secretary of State. November 8, 2011 General Election Results: Initiative Measure 1163. https://www.pdc.wa.gov/browse/campaign-explorer/committee?filer_id=PEOPQE%20109&election_year=2011

[608] Andrew Garber. "Initiative 1163 latest dispute between Services Employees union, legislators." *Seattle Times*, October 22, 2011. https://www.seattletimes.com/seattle-news/initiative-1163-latest-dispute-between-services-employees-union-legislators/

[609] The information related to the TP in the following paragraphs comes from the forms 990 filed by the TP annually with the Internal Revenue Service.
The TP's 2012 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Training-Partnership-IRS-990-2012.pdf
The TP's 2013 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Training-Partnership-IRS-990-2013.pdf
The TP's 2014 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Training-Partnership-IRS-990-2014.pdf
The TP's 2015 form 990 is available online at: https://www.freedomfoundation.com/wp-content/uploads/2018/07/SEIU-Training-Partnership-IRS-990-2015.pdf

[610] The TP's form 990 for 2015 filed with the Internal Revenue Service indicates SEIU 775 president David Rolf is chair of the board and that SEIU 775 employees Sterling Harders, Seth Hemond and Adam Glickman-Flora, as well as SEIU 775 officer Linda Lee, are members of the board. A copy of the TPs 2015 form 990 is available online at: https://www.guidestar.org/FinDocuments/2016/510/673/2016-510673005-0dd45a5e-9.pdf SEIU 775's form LM-2 for 2015 on file with the U.S. Department of Labor lists these individuals as staff and/or officers of the union. File No. 542-433. https://olms.dol-esa.gov/query/getOrgQry.do

And like the HBT, the TP pays SEIU 775 significant sums to provide administrative services and call center support, totaling $7.1 million from 2012-15 alone.

SEIU Training Partnership				
Year	**Total Revenue**	**State Contributions**	**Total Assets**	**Paid to SEIU 775**
2011	$11,105,663	N/A	$3,592,197	N/A
2012	$13,022,417	$9,019,065	$4,222,910	$1,286,194
2013	$21,137,787	$16,027,409	$6,379,230	$1,852,089
2014	$18,632,059	$13,457,550	$5,944,522	$1,921,508
2015	$25,102,293	?	$9,884,635	$2,024,206

Source: Forms 990 filed by the SEIU Training Partnership with the Internal Revenue Service.

Even though dozens of other entities are certified by the Washington Department of Social and Health Services to provide home care aide training to employees of privately owned and operated home care agencies, the TP has what amounts to a statutory monopoly on providing similar training for the state's nearly 40,000 Medicaid-paid IPs.[611] To date, no research has shown that the enhanced training requirements for IPs have resulted in improved care or outcomes for Medicaid clients. Many IPs caring for family members, for instance, report receiving little benefit from the classes, since they already know better than anyone how to care for their loved one.

In fact, a series of reports issued by the Washington State Auditor suggest the enhanced training requirements dictated by I-1163 produced significant barriers to entry that discourage people from seeking work as caregivers.

In a 2012 sample, the Auditor found that "209 of 275 individual providers (76 percent) who applied had not been certified" as home care aides.[612] A second Auditor's report found that, although the home care aide completion rate had risen significantly by 2013, 42 percent of applicants failed to attain the home care aide certification. The report noted,

> "Program managers are working to improve timeliness and completion rates. They believe that failure to complete the certification process has resulted in higher turnover in the workforce, which can affect continuity of care for clients. Managers point out there are factors outside the state's control that can affect the rate. For example, some people caring for a family member might decide not to pursue the 75 hours of required training needed to gain the certificate."[613]

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[611] A searchable database of instructors approved by the Washington Department of Social and Health Services to provide the 75-hour home care aide certification training is available online at: https://fortress.wa.gov/dshs/adsaapps/Professional/training/training.aspx

[612] Washington State Auditor's Office. "Initiative 1163: Long-Term Care Worker Certification Requirements." Report No. 1008965, January 8, 2013. https://www.freedomfoundation.com/wp-content/uploads/2018/07/ar1008965.pdf

[613] Washington State Auditor's Office. "Performance Audit: Initiative 1163: Long-Term Care Worker Certification Requirements." December 18, 2014. https://www.sao.wa.gov/state/Documents/I-1163_HCA_Workers_Certification_ar1012952.pdf

In 2016, a third Auditor's report found that, despite lowering the score needed to pass the home care aide certification exam, extending the time period for taking the test and spending tens of millions of dollars monitoring and tinkering with the process, "...certification completion rates have remained flat... In 2013, the completion rate was 58 percent. During our audit period, 56 percent of applicants completed the certification process."[614]

The most recent Auditor's report, issued in November 2016, surveyed home care aide applicants to better understand the barriers preventing people from completing the home care aide training and certification. The report explained:

> "Many survey respondents (68 percent) who dropped out because of a barrier said a training issue contributed to their decision. Almost half said the most difficult problem in the training phase of certification was finding course times that fit their schedules. Some told us training requires too much time away from their clients or other jobs. As one applicant explained, 'I was working at a hotel with variable shifts and could not get a week off of work for the training.' Another applicant was concerned about taking time away from her client, saying, 'I was trying to work and take care of this lady and go to training at the same time.' Another 14 percent of respondents who dropped out because of a training issue said a difficult aspect was trying to find a convenient location. One woman said she could not find any classes within a two hour drive of her home in Omak. 'I was given options for other training sites in Republic and Wenatchee, but the time and cost [to travel] was too high. I was told by DOH that I could not provide care for my client and had to quit.' Finally, 16 percent of these respondents thought the training included information that was not relevant to their work and did not prepare them for the exam."[615]

The Auditor could not help but observe that, "Despite many years of efforts to improve the certification completion rate, it remains relatively unchanged," and that, "Although DSHS and DOH have been addressing barriers since the program's inception, they agree more long-term care workers are needed to help fill the growing demand."[616]

All of this strongly suggests the TPs' monopoly on IP training produces the same results as one might expect from any unaccountable monopoly: Poor service and high cost. After all, the state pays the TP the same whether IPs complete the training or not.

Most recently, SEIU 775 has set up and required the state to begin paying into the so-called "Secure Retirement Trust" (SRT) to provide 401(k)-style retirement benefits to eligible IPs. Though still in its infancy, the SRT appears to be structured much like the others: An ERISA trust free from state regulation or oversight, SEIU control over the state's payments *into* the trust and benefit eligibility, administration provided by the union and its affiliates, and chaired by SEIU 775 president David Rolf.

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[614] Washington State Auditor's Office. "Performance Audit: I-1163: Long-term Care Worker Certification Requirements." August 4, 2016. https://www.sao.wa.gov/state/Documents/PA_I-1163_HCA_Workers_Certification_2016_ar1017262.pdf
[615] Washington State Auditor's Office. "Performance Audit: Barriers to Home Care Aide Certification." November 28, 2016. https://www.sao.wa.gov/state/Documents/PA_Barriers_to_HCA_Certification_ar1018059.pdf
[616] Ibid.

Again, states may consider it good policy to provide generous compensation and benefits for Medicaid caregivers. But allowing special interest groups like SEIU to exert so much control over the provision and administration of such benefits allows for significant waste and abuse.

SEIU 775 president Rolf himself encouraged Washington state in 2009 to,

> "…require healthcare providers to move to a 'pay for performance' system that values evidence-based medicine and improved health outcomes, not paperwork and profit. Every provider and carrier should meet specified state standards around the practice of evidence-based medicine and paperwork reduction or face financial penalties."[617]

While Rolf probably never intended his words to apply to SEIU's growing fiefdom, the state could benefit significantly by adopting for home care the kind of performance-based approach he advocates.

Regardless, as previously discussed, the method by which Washington state funds the array of SEIU-operated benefits trust may run afoul of federal Medicaid laws. If the federal Department of Health and Human Services begins to take enforcement action against the state for its diversion of Medicaid funds to SEIU trusts, it would provide Washington with an opportunity to restructure the provision of these benefits to caregivers in a more competitive way that makes sense for taxpayers and caregivers, rather than benefiting a single, politically influential labor union.

[617] David Rolf. "Dear Governor: About the State of Reform." Edited by DJ Wilson. 2009. http://davidmrolf.com/wp-content/uploads/2016/03/Dear-governor-about-the-state-of-reform-1.pdf

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