

Legal Challenge to Michigan Union Power Grab

Posted By [Ivan Osorio](#) On November 20, 2009 @ 2:30 pm In [Economy](#), [Labor](#), [Politics as Usual](#), [Regulation](#) | [No Comments](#)

With the Detroit auto industry floundering, the United Auto Workers is turning its attention to...day care provider. And to do so, the UAW partnering with the American Federation of State, County & Municipal Employees, a union that organizes workers in the one sector where unionization is growing: government. That's because some 40,000 Michigan home day care providers have now found themselves classified as working for the state.

Home care providers are government employees? Defining them as such is a novel strategy some unions are pursuing — with help from union-friendly politicians — in order to organize independent businesses who cater to clients who receive any sort of state subsidy. This is what happened to Michigan home day care providers Sherry Loar, Paulette Silverson, and Michelle Berry. The Mackinac Center's [Patrick Wright, who is representing them in a lawsuit, explains](#) ^[1]:

[I]n December 2008 these women were notified by mail that they were dues-paying members of the newly formed Child Care Providers Together Michigan union, a joint enterprise of the United Auto Workers and American Federation of State, County and Municipal Employees. Loar, Silverson, Berry and 40,000 other home-based day care providers in Michigan are now seeing a total of \$3.7 million annually taken from their paychecks by the Michigan Department of Human Services and given to the union.

Here's how the union did it.

The Child Care Providers Together Michigan was formed in or around 2006 with the intent of organizing "[a]ll home-based child care providers." In July 2006, the DHS entered into an interlocal agreement with Mott Community College to create the Michigan Home Based Child Care Council. This, from all appearances, is a government "shell corporation" designed to get around possible political and constitutional obstructions to the arrangement. In September 2006, CCPTM filed a petition with the Michigan Employment Relations Commission seeking to organize against the MHBCCC.

MERC conducted a vote by mail in October and November 2006. Of the 40,500 home day care providers who would be effected by this decision, 6,396 voted. The outcome was 5,921 in favor of the union and 475 opposed. Neither Loar, Silverson nor Berry believes they were aware of or voted in that election.

In 2008, the CCPTM and the MHBCCC entered into what they called "a collective bargaining agreement." The mechanism for collecting "union dues" was through child care subsidy payments made to needy families with children in home day care. When those payments were passed on to Loar, Silverson and Berry, dues were withheld. The Michigan Department of Human Services began collecting the dues in January 2009.

The Mackinac Center is seeking a writ of mandamus to keep the state's Department of Human Services from deducting dues, which, at 1.15 percent of each subsidy check, would provide the UAW/AFSCME affiliate with \$3.7 million annually.

The main arguments presented in the case are that the plaintiffs, as home-based business owners, are really independent contractors and not government employees of the MHBCCC, and that an interlocal agreement cannot expand the definition of public employee beyond what the Legislature has set.

This tactic is not new. As Wright notes, the Michigan effort follows the same pattern as the model established in California, Oregon, and Washington state for unionizing home care workers who look after disabled and elderly residents. In our Cato Institute paper on public sector unions, my co-authors and I noted this trend.

Now some unions are trying to expand the definition of "public" by trying to organize government contractors. Washington state provides a good example of this. There, the

trend began in 2001, when voters approved a ballot measure, Initiative 775, to allow independent long-term health care providers to unionize and bargain collectively over hours, compensation, and working conditions. Then in 2007, Washington state authorized collective bargaining for adult-home-care providers who receive Medicaid and other state aid. Stretching the definition of "public employee" to any home-care provider who may contract with the state can give a public employee union a foothold in the private sector.

The full Cato study is available [here](#) [2].

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[1] Patrick Wright, who is representing them in a lawsuit, explains: <http://www.mackinac.org/article.aspx?ID=10992>

[2] here: http://www.cato.org/pub_display.php?pub_id=10569

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