UC Berkeley
Recent Work

Title

Analysis of Labor Organizing, Unionization, and Collective Bargaining Strategies for the ECE Workforce

Permalink

https://escholarship.org/uc/item/6mr4v8kh

Authors

Valerio, Dalton A

Goity, Sam B

Publication Date

2026-11-13

eScholarship.org Powered by the California Digital Library
University of California

Student Publication | April 2023

Analysis of Labor Organizing, Unionization, and Collective Bargaining Strategies for the Early Care and Education Workforce

By Dalton A. Valerio and Sam B. Goity

This publication is part of CSCCE's Student Paper Series and was produced in conjunction with the UC Berkeley Labor Center by students in the course PUBPOL 229, Challenges and Innovations in Labor Policy, offered through the Goldman School of Public Policy at the University of California, Berkeley.



*Pictured: **OLÉ** early educator leaders with Governor Michelle Lujan Grisham in New Mexico. Credit: Organizers in the Land of Enchantment - New Mexico.*

Table of Contents

Executive Summary 4

Methods 6

I. Literature Review 6

II. Case Studies 6

Findings 7

I. Benefits of Unionizing 7

II. What Does the ECE Field Look Like? 8

A. Center-Based Providers 8

B. Home-Based Providers 8

C. Friend, Family, and Neighbor (FFN) Providers 9

D. Subsidy Rates and Bargaining 9

III. What Legal Concepts Pertain to Organizing the ECE Workforce? 11

A. National Labor Relations Act Coverage 11

B. Antitrust Law 12

C. Sectoral Bargaining 13

IV. Applying and Overcoming Legal Restrictions 14

A. The Case of Sole Proprietors in California: The Union Pathway 14

B. The Case of Legislative Wins in New Mexico: The Policy Pathway 18

V. Barriers and Limitations to Organizing in the ECE Sector 21

In Closing 22

References 24

Acknowledgments 26

About the Authors

Dalton A. Valerio is a second-year law student at the University of California, Berkeley, School of Law. He is a professional dancer working to create sustainable, equitable, and thriving conditions for fissured workforces.

Sam B. Goity is a second-year law student at the University of California, Berkeley, School of Law. He is a department steward for UAW 2865, a Senior Executive Editor of the *Berkeley Journal of Employment and Labor Law*, and the son of two elementary school educators.

Executive Summary

Workers in the early care and education (ECE) sector have historically been underpaid and underrepresented. Shaped by United States history, the structure of the sector has racial and gender exploitation baked into its foundations. Enslaved Black women were forced to take care of White children without pay. After emancipation, they received nominal pay for performing domestic work, which established a norm of low wages for caregiving (Center for the Study of Child Care Employment, 2022). Today, annual pay for child care workers is among the lowest across all occupations, ranking in the second percentile (McLean et al., 2021). The sector is composed almost entirely of women, 40 percent of whom are people of color, who tend to be paid lower wages than their White peers (Center for the Study of Child Care Employment, 2022). Specifically, Black early educators are paid, on average, $0.78 less per hour than White early educators (McLean et al., 2021).[1]

This history has also created the fissured workforce we see today, where ECE workers often work in isolation from each other in their homes, other people's homes, or small centers. These fissures, as well as chronic underfunding, have kept wages low and stagnant, preventing many workers from entering or remaining in the profession. These compounding factors, exacerbated by the pandemic, inhibit access to child care, disproportionately so for families in marginalized communities (Malik et al., 2020). The early childhood workforce[2] deserves economic dignity in their own right, and the challenges facing the early childhood workforce demand creative solutions. Worker organizing offers such solutions. Given the fissured nature of the workforce and its roots in the laws of the United States, this report analyzes the ways in which legal and policy conditions shape the possibilities for organizing, collective action, unionization, and collective bargaining in the ECE sector.

1 While other terms describing race and ethnicity may have been used in the study questionnaire, CSCCE is committed to eliminating oppressive language and using bias-free terms. Under this philosophy, for example, all terms used to describe race are capitalized, and gender neutral terms are used when appropriate.

2 We use the terms "early childhood workforce" or "early educators" to encompass all those who are paid to work directly with young children prior to kindergarten in group early care and education settings, particularly those in roles focused on teaching and caregiving (McLean et al., 2021).

The primary questions guiding this research were:

- What legal regimes govern the right of certain categories of ECE workers to organize and/or unionize?
- What conditions have supported unionization of ECE workers in the past, and what conditions have presented challenges?
- What alternatives to traditional union representation exist to secure employment protections for ECE workers?

We found a few common threads in our research. First, where an early educator works, how they are paid, and who pays them determines their possibilities for organizing. We applied the traditional shop-by-shop[3] unionizing model to the early childhood workforce at large and found that this model does not apply to a large swath of the sector because so many child care providers are sole proprietors (i.e., small business owners and independent contractors). Second, we found that, among those who participate in subsidy programs, increases in reimbursement rates—and thus in program revenue that may be applied to wages—are most likely to occur by way of collective organizing in direct conversation with government at the state level. Furthermore, because state agencies set reimbursement rates, make licensing decisions, and otherwise regulate providers, the state effectively exercises control over the terms and conditions of employment for these workers. As one expert in the field told us:

> *Even if* [*the providers*] *don't think of it as an employment relationship, and even if the government doesn't think of it as an employment relationship, it is obvious that* [*workers*] *need some kind of collective power to bargain over the conditions of pay that they receive from this entity* (*Anonymous Key Informant Interviewee*).

In light of barriers posed by government processes, representative organizations have had to argue that these workers deserve a seat at the table. Once this is granted, organizing can improve conditions for ECE workers—even without a direct bargaining representative in the picture—because organizations can rely on the support of organized workers and parents to lobby for favorable policy at the state and local level.

3 A shop in this case refers to when a local unit of the larger union represents the workers at one specific location.

This report serves, foremost, as a launching point for future research encompassing more states and their laws. Second, it presents possibilities for states interested in entering into bargaining relationships with representative entities and expanding the possibilities for policy to help an underserved and very important sector. Finally, it offers guidance for worker advocacy groups and individuals seeking to improve conditions in the ECE sector.

Methods

Our methodology included legal research, literature reviews, and informational interviews with community stakeholders in the field. More specifically, the goals of this research were to:

- Conduct a legal landscape review on the possibilities of sectoral bargaining, unionization, and general collective organizing in the ECE sector;
- Draw on interviews with stakeholders to conduct case studies of specific U.S. labor organizations or unions that represent ECE professionals to develop a deeper understanding of factors that lead to unionization and equitable inclusion of ECE professionals across roles, settings, and communities; and
- Create a report amalgamating and analyzing the above information that sheds light on potential pathways towards a more organized and better supported and protected early childhood workforce.

I. Literature Review

We reviewed key resources, including quantitative data, academic scholarship, organizational white papers, state and federal statutes, and news articles, to create an overview of the structure of the ECE industry and a legal framework highlighting concepts that affect the viability of worker organizing in the sector.

II. Case Studies

We conducted informational interviews with various representatives from groups involved with organizing in the ECE sector. These individuals work for organizations that study and serve the early childhood workforce but are not workers in the sector themselves. We used the information that these interviews yielded to produce two case studies, one on the organizing efforts of Child Care Providers United (CCPU) in California and the other on the policy advocacy work of Organizers in the Land of Enchantment (OLÉ) in New Mexico.

Findings

I. Benefits of Unionizing

Union representation has historically raised standards for workers. Nationally, union households earn 10- to 20-percent higher income than nonunion households, which has been shown to also reduce income inequality (Farber et al., 2021). According to estimates by the Labor Center at the University of California, Berkeley, union members in California earn, on average, $5,800 more annually compared to nonunion workers with similar demographic characteristics and working in similar industries (Jacobs & Thomason, 2021).[4] Traditionally, unions have organized and fought for better pay, working conditions, and benefits; however, more recently, their efforts have expanded far beyond. For example, when the Chicago Teachers Union went on strike in 2012, they demanded the city provide wraparound services to address students experiencing homelessness. And they won (Gupta et al., 2022).

Conversely, expanding corporate models tend to be explicitly at odds with unionization efforts. In the ECE context, for example, KinderCare, one of the largest corporate ECE providers, expressly notes the threat of unionization for its financial model in its 2021 SEC filing (KC Holdco, LLC, 2021). Corporations across the gamut of industries have made unionizing and organizing difficult by fissuring workplaces, shedding direct employment to other parties, and turning wage-setting issues into contracting decisions. Such fissuring "creates downward pressure on wages and benefits, murkiness about who bears responsibility for work conditions, and increased likelihood that basic labor standards will be violated" (Weil, 2014). One way this fissuring can manifest is by turning employees into independent contractors and isolating one worker from the next.

The ECE sector is one such fissured workforce. ECE professionals have historically been physically isolated from one another because educators generally provide their services in a home or an independent center setting with relatively few employees. In response, labor must be more creative in determining who holds the power over providers' terms and conditions of employment, and who to ultimately bargain with.

4 See methodology in **Appendix 2** of the Jacobs & Thomason (2021) report.

II. What Does the ECE Field Look Like?

For the purpose of this report, we place ECE providers into three categories based on where they work and, in some cases, on the source of their funding: center-based providers; home-based providers; and friend, family, and neighbor (FFN) providers, each of which is discussed in more detail below. Under each category, we highlight their potential relationship to organizing. We also discuss how state subsidies apply to the field.

A. Center-Based Providers

Center-based providers exist in various funding and regulatory structures, including for-profit, nonprofit, faith-based, and public programs. For-profit centers may be a small, independent business or owned by a larger multi-site entity, franchise, or investor-backed corporation. Public centers encompass state and local preschool programs, as well as two programs regulated by the federal government, Head Start and Early Head Start, which are available to low-income families for children up to age five; Early Head Start serves infants and toddlers (Committee for Economic Development, 2019). An important feature of the center-based workforce is that educators are typically classified as employees. This essentially means that educators are under the control of directors or managers who have the power to hire and fire. Organizing for collective bargaining thus takes the traditional form of union representation under the National Labor Relations Act (discussed in **Part III.A** below), where a local unit of the larger union represents the workers at one specific location, often called a shop.

B. Home-Based Providers

Home-based providers, sometimes referred to as family child care (FCC) providers, tend to be much smaller enterprises. As the name suggests, the work of home-based providers takes place in their own home. Educators in this part of the sector are generally sole proprietors for tax purposes. Depending on the size of the enterprise, they may hire assistant educators, as well. They may be eligible to receive state subsidies if they are licensed or if they are license exempt and meet specific state eligibility criteria. Because workers in this part of the sector are generally not considered employees under federal and state law, in order for these workers to collectively bargain, the bargaining must take place across the sector, rather than on a shop-by-shop basis.

C. Friend, Family, and Neighbor (FFN) Providers

Finally, providers can be in the category of friend, family, and neighbor (FFN) care. FFN refers to informal care, unlicensed care, and kin care; it is the most common nonparental form of care in the United States.[5] FFN providers come in many forms, including nannies, grandparents, siblings, and other community members who are engaged to provide care. Because pay is often under the table and relationships are often private between the worker and the hiring entity, data and information on this workforce is difficult to find. The extent to which we address this category of providers is limited, only insofar as to opine on the repercussions of organizing the ECE field at large. We believe that when enough pressure is put on a sector to change through more official channels like state-level bargaining and organizing shops, FFN providers will benefit through market forces (in addition to more inclusive ECE policies).

D. Subsidy Rates and Bargaining

State subsidies' reimbursement rates are relevant to our research because they are one of the primary levers ECE workers have for bargaining purposes. States, U.S. territories, and Native American Tribes are eligible to receive funding from the Child Care and Development Fund (CCDF), a federal program enacted by the Child Care and Development Block Grant (CCDBG) of 2014 (Lynch, 2014). States can use this funding to bolster subsidy systems to support center- and home-based providers. These subsidies allow children from low-income households to receive services from providers (as regulated by CCDBG and further defined by the state). Providers often serve a mix of both subsidy and nonsubsidy children (Thomason et al., 2018).

Child care represents a significant expense, particularly for low-income families. Using the most recent data available from 2018 and adjusted for inflation to 2022 dollars, child care prices range from $5,357 for school-age home-based care in small counties to $17,171 for infant center-based care in very large counties. These prices represent between 8 percent and 19.3 percent of median family income per child (Landivar, 2023).

5 FFN can also include license-exempt providers; however, for the purposes of this report, we include license-exempt providers in the home-based category because they are eligible to receive state subsidies. FFN providers who do not engage with the state do not receive these subsidies.

The federal income threshold for families to qualify for child care subsidies is set at or below 85 percent of state median income, but states can set lower thresholds (U.S. Department of Health and Human Services, 2016). However, the total amount of funding for these subsidy programs is limited, and these funding limits mean that not every eligible family is able to actually receive a subsidy. In 2016, only an estimated 8 percent of children potentially eligible based on federal income eligibility limits received a subsidy. Since most states set the reimbursement rate below the federally recommended amount, 12 percent of children potentially eligible under state eligibility requirements received subsidies (Ullrich et al., 2019).

Because they allow families to pay for child care services, these subsidies functionally serve as reimbursements to the providers. The reimbursement amount is traditionally based on a standard market analysis survey that bases rates on what parents are currently paying or are able to pay. However, an alternative method exists that bases subsidy rates, and thus reimbursement rates, on the actual costs of providing ECE services for a child, including inputs linked to quality programs (e.g., staff compensation, paid planning time, professional development). Currently, New Mexico is the only state, along with the District of Columbia, that bases the subsidy amount on an alternative method to better reflect the cost of care; other states have conducted or plan to conduct studies but have yet to implement reimbursement rates accordingly. The Administration for Children and Families (ACF) recommends that reimbursement rates be set at the 75th percentile of the market rate for child care to ensure that they are "sufficient to ensure equal access for eligible children." However, only 18 states currently reimburse center-based child care providers at the rate recommended by the ACF (Coffey, 2023).

Workers traditionally engage in collective bargaining with the entity that controls the conditions in which they work. In the ECE sector, the state often holds that role as the state exercises control of factors like subsidy rates and licensing. As a result, it is key for representative organizations to be able to bargain with or lobby the state with regard to these factors. Direct bargaining between a representative organization and the state is an example of "sectoral bargaining," a concept upon which we expand in **Part III.C**.

III. What Legal Concepts Pertain to Organizing the ECE Workforce?

To address our primary research question around the legal and policy conditions supporting organizing and unionizing in the ECE sector, we have analyzed federal law and several state legal regimes. Different laws apply to workers depending on their sector and role in the sector. For example, an educator who works as an employee under an employer is covered under federal labor and employment law both in minimum wage and workplace protections under the Fair Labor Standards Act and in the right to organize under the National Labor Relations Act. On the other hand, individual home-based and FFN providers are exempt from these laws. Therefore, it is up to each state (and the U.S. Congress, if it so enacts) to take further steps to issue protections like financial security and workplace safety and to extend bargaining rights to these workers. Three legal concepts are of particular significance in the context of worker organizing in the ECE sector: the National Labor Relations Act, antitrust law, and sectoral bargaining.

A. National Labor Relations Act Coverage

The National Labor Relations Act (NLRA) guarantees private-sector employees the right to form and join unions, bargain collectively, and engage in concerted activity for mutual aid or protection, subject to certain limitations (29 U.S.C. § 157). The NLRA expressly excludes independent contractors from its coverage (29 U.S.C. § 152[3]). Whether a worker is an independent contractor or an employee under the NLRA is determined according to "pertinent common law agency principles" (*NLRB v. United Insurance Co.*, 390 U.S. 254, 258 [1968]). The common law test that courts apply essentially revolves around the extent to which the hiring party has the authority to control the manner in which the work is performed. For example, a plumber hired by a private individual would typically be considered an independent contractor, rather than an employee of the private individual, in part because the hiring party does not dictate what tools the plumber will use or what steps the plumber will follow to complete the work.

The NLRA definition of "employee" also excludes "any individual... in the domestic service of any family or person at his home" (29 U.S.C. § 152[3]). The domestic worker exclusion is part of a political compromise that congressional supporters of the NLRA made in order to win the support of Southern Democrats intent on preserving White supremacy. In the 1930s, when the NLRA was passed, Black employment in the South was disproportionately concentrated in domestic labor. During the New Deal Era, Southern Democrats dominated Congress, controlling more than half the committee chairmanships and leadership positions. Although some scholars argue that this exclusion represents unconstitutional race discrimination, such a challenge has never been litigated, and the exclusion remains good law (Perea, 2011).

Workers at center-based providers remain entitled to the NLRA's protections, so long as they are not the business owner or director. Home-based ECE workers are excluded from NLRA coverage as either independent contractors or domestic workers. While this exclusion is a barrier in itself, the NLRA does not prevent states from taking the extra step of granting independent contractors and domestic workers collective bargaining rights, a concept we discuss in more detail in **Part IV.A** below.

B. Antitrust Law

The Sherman Antitrust Act of 1890 provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal" (15 U.S.C. § 1). In the years following the passage of the Sherman Act, courts held that the law prohibited the existence and operation of labor unions because when workers agree to withhold labor to receive higher pay, they are violating the law by agreeing not to compete on wages (*Loewe v. Lawlor*, 208 U.S. 274, 302 [1908]). It was not until 1914 that the Clayton Act established that labor unions were exempt from federal antitrust law (15 U.S.C. § 17) and not until 1935 that the NLRA granted private-sector employees the right to form and join labor unions.

However, as discussed above, the NLRA does not cover certain categories of workers, including independent contractors, and if a worker cannot legally join a union, they cannot gain the protection of the antitrust labor exemption (*Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143 [1942]; *L.A. Meat & Provision Drivers Union, Local 626 v. United States*, 371 U.S. 94 [1962]). Therefore, independent contractors who attempt to unionize are potentially subject to severe sanctions under federal law; they are seen as independent businesses conspiring to fix prices.

One solution to this problem is state action immunity, whereby a state has the ability to exempt private conduct from antitrust scrutiny if the state (1) adopts the restraint as state policy and (2) actively supervises the activity (*Parker v. Brown*, 317 U.S. 341 [1943]). A state can thus shield independent contractor organizing from antitrust scrutiny if it expresses a specific policy in favor of such organizing and regulates it.

C. Sectoral Bargaining

Broadly, sectoral bargaining means that an entity, often a union, bargains on behalf of most or all of the workers in a specific sector. This practice is in direct contrast to the traditional shop-based bargaining model[6] under the NLRA where a union represents all the workers under one employer, and often more narrowly, under one location of that employer. When a union bargains at the level of the shop, it limits change across the entire sector. The only way shop-based bargaining can have a large impact on income inequality, for example, is "if there is enough union presence in the industry or geographic area to pose a threat to non-unionized firms" (Andrias, 2016). When this is the case, employers raise wages to stave off unionization or to compete for labor. This rarely occurs, however, because sectoral bargaining is not required (Andrias, 2016).

Nonetheless, sectoral bargaining responds to the lack of influence that shop-based bargaining has on an entire sector. In the United States, sectoral bargaining is generally permissible, but not mandatory as shop-based bargaining is under the NLRA. Because the ECE workforce is so fissured, policies requiring sectoral bargaining could have a positive impact on the workforce at large. By making sectoral bargaining mandatory, negotiations can directly impact the wages and benefits of all members of the sector, regardless of whether they are actually members of the union and regardless of who their employer is. These agreements would apply to all employers in the industry or region and create a pathway for empowered unions to be more effective in shaping public policy (Andrias, 2016). We argue that this approach creates streamlined efficiency and continuity across the sector. Not only will more of the workforce be covered by union wins, but employers will have one clear rule to follow for their entire workforce, rather than many different contracts depending on the location.

6 This is often referred to as "firm-based" bargaining. For consistency, this report sticks with the use of "shop" as previously defined to streamline understanding.

IV. Applying and Overcoming Legal Restrictions

A. The Case of Sole Proprietors in California: The Union Pathway

Sole proprietors in the ECE workforce are often home-based providers (alternatively referred to as family child care providers). They own their own businesses and are paid by families, unless the family is eligible for subsidies in which case the state reimburses the provider based on reimbursement rates it sets. Sole proprietors and small business owners do not have an employer; they are their own employer, and depending on the number of children in their care, they may hire an assistant. Traditionally these providers can set their own prices, wages, time off, and have full control over every aspect of their business, to the extent the law and the market allow. However, one subset of the ECE workforce is even more restricted: subsidy-based providers. As soon as a provider agrees to care for a child whose care is subsidized by the state, that provider is then limited to how much that subsidy actually pays in a reimbursement. Here is where sectoral bargaining can benefit them.

Two issues limit sole proprietors from sector-wide collective bargaining. First, they do not meet the mold of a traditional collective bargaining unit protected by the NLRA. Second, the coming together of sole proprietors to set prices and standards across a sector can violate antitrust laws.

Child Care Providers United (CCPU) and AB 378 answer both of these issues, paving the way for California home-based and subsidy-receiving child care providers to negotiate directly with the state.

In California, two unions—Service Employees International Union (SEIU) and American Federation of State, County, and Municipal Employees (AFSCME)—have partnered to form California's first statewide union for child care providers: Child Care Providers United (CCPU), representing all home-based providers who receive state subsidies in California. Roughly 40,000 sole proprietors are based in California (Thompson, 2021). Since most are sole proprietors owning small businesses, shop-based organizing did not make sense.

Therefore, to really have an impact on the lives of union members, CCPU had to gain sectoral bargaining privileges—bargaining with the State of California on behalf of all home-based providers in the state. The benefits gleaned affect the entire sector, regardless of whether they are members of CCPU or not.

After roughly 20 years of organizing, CCPU convinced the California Legislature to pass AB 378 (Building a Better Early Care and Education System Act) in 2019.[7] The law established how the state will recognize a representative union and lays out the scope of that representation. It exempts the activities of home-based providers and their authorized representatives from federal and state antitrust laws. It defines a provider as an individual who (1) either operates a licensed family day care home or provides early care and education in their own home or the home of the child and is exempt from licensing requirements; and (2) participates in a state-funded early care and education program, including programs that provide child care subsidies, but not including the public education system.

AB 378 also established the procedures by which an organization can become the bargaining representative for home-based providers. In order for California to recognize a union, which the law calls a "provider organization," the union must provide an initial showing that at least 10 percent of the providers who participate in state-funded ECE programs are interested in being represented by the union. The union can show support through proof of dues payments, dues deduction authorization forms, membership applications, authorization cards signed by providers, and petitions signed by providers. The date of acquiring that proof can date back two years so long as at least 10 percent of supporting members have received a state subsidy reimbursement within the past three months leading up to authorization. If the Public Employment Relations Board finds that the petition is valid, it shall order a mail ballot election, and ballots shall be sent to all providers. If the union wins a majority of the votes cast, the board shall certify it as the exclusive bargaining representative of all providers in the state.

7 You can find the bill text at https://leginfo.legislature.ca.gov/ and the published law in the California Education Code sections 8430 - 8440.

AB 378 sets the scope of union representation to the following:

1. Improvement of recruitment and retention of providers.
2. Joint labor-management committees, including the training partnership described in Section 8439.8.
3. Grievance arbitration.[8]
4. Professional development and training for providers, including pre-service and ongoing in-service training and training on supporting dual language learners in their biliteracy and overall development.
5. Contributions to a certified provider organization-administered benefit trust fund.
6. Payment and payment reporting procedures for state-funded ECE programs.
7. Reimbursement rates including, but not limited to, rate add-ons for providers who complete additional training, and other economic matters.
8. The deduction of membership dues and other voluntary deductions authorized by individual providers and allocation of the costs of implementing that deduction system.
9. Strike and lockout provisions.[9]
10. Confidentiality of information exchanged between parties consistent with state and federal law.
11. Management and certified provider organization rights clauses.
12. Any standard contract clauses necessary to effectuate a memorandum of understanding, including an entire agreement or integration clause, savings clause, or duration clause.

8 A grievance arbitration is held when a party alleges a violation of the collective bargaining agreement. This is a private way to resolve disputes rather than going to court and is presided over by an arbitrator.

9 Generally, a union will agree to not strike during the term of a collective bargaining agreement in exchange for concessions by the employer. Similarly, employers often agree not to lock out employees.

13. Impacts on providers' delivery of services as a result of changes in regulations, rules, or resolutions, including, but not limited to, those that impact providers in regard to licensing and child care quality measures. However, the decision to promulgate, the content of a regulation, rule, or resolution, and the enforcement of a regulation, rule, or resolution are not within the scope of representation and shall not be a subject of meeting and negotiating.

In 2021, CCPU and California ratified a contract certifying CCPU as the bargaining representative for all providers in the state. As a result of the passage of AB 378 and this contract, California now offers funding for 200,000 subsidized child care slots and has increased provider rates with a 4.05-percent cost-of-living adjustment. The contract also provides funding for training and professional development, as well as new and renovated child care facilities in underserved areas (Thompson, 2021). CCPU has grown significantly, ratifying a healthcare benefits package of $100.2 million with the State of California and a dues structure to better sustain the union financially (Miller et al., 2022; Child Care Providers United, 2022).

In addition to California, 11 other states have granted collective bargaining rights to state-funded home-based care providers. Eight of these states—Connecticut, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, and Rhode Island—did so by means of legislation. In New Jersey, the governor granted the right via executive order. Two states, Washington and Illinois, granted the right via executive order and later fortified it with legislation. The executive order route appears more precarious: Indiana, Missouri, and Kentucky all granted home-based providers some form of collective bargaining rights via executive order only to later repeal them under a successor administration (Hunter, 2005).

Successes like that of CCPU in California take fierce advocates, strong willpower, know-how, and strategy.

At the heart of the past 20 years of work is Dion Aroner, a former California Assemblymember who was instrumental in the formation of CCPU and continues to support SEIU and AFSCME in a consulting capacity. She provided us with insight into how a bill like AB 378 can get passed. Essentially, it requires a governor in favor and a legislature ready for change, in addition to creative and committed organizers who are willing to spend years advocating in order to win the support of these politicians.

Aroner also discussed some potential barriers to ongoing efforts. Organizing a base as large as 40,000 workers requires survey after survey of the rank-and-file union members so that leadership may continue to genuinely represent them. This can come at a cost in the form of survey fatigue in an already overburdened workforce. Aroner also warned of the implications of universal transitional kindergarten (TK) programs for four- to five-year-olds. TK poses potential challenges to CCPU organizing in the ECE sector because it may put home-based providers out of business as preschool and TK programs offered through school districts pull three- and four-year-olds out of home-based programs. Aroner suggests offering a mixed-delivery system where home-based providers are brought into the fold of TK and relevant state funding. This approach could mean that parents are given options to take their children to either center- or home-based programs that offer services equivalent to what is offered in TK.

The remarkable success of CCPU and similar provider representatives in other states illustrates one pathway for empowering ECE workers via organizing and collective action. However, this model is not the only route.

B. The Case of Legislative Wins in New Mexico: The Policy Pathway

Granting a representative entity the right to bargain is one legislative tactic; changing a policy itself to protect workers is an alternative. New Mexico is one state where the ECE sector has seen great success in directly changing policy. At the heart of this change is the 501(c)4 nonprofit Organizing in the Land of Enchantment (OLÉ). OLÉ's primary focus is to build a broad base of power through community members and to use that collective power to run issue-based campaigns and electoral engagement to fight on behalf of early educators and workers across New Mexico (OLÉ, n.d.). The organization's child care advocacy started in 2010 when it initially partnered with the American Federation of Teachers (AFT) to organize early child care teachers. OLÉ has since shifted away from the shop-by-shop model of organizing and, instead, lobbies at the state capital in Santa Fe for better conditions surrounding the ECE workforce.

Through an interview with Matthew Henderson, Executive Director of the OLÉ Education Fund, we were able to learn about what has made the organization successful. The OLÉ Education Fund primarily focuses on policy advocacy that directly impacts center-based providers; however, their successes affect the greater ECE sector. For example, they have supported efforts to change the reimbursement rate to account for the cost of care, rather than the more traditional market survey. They have seen success in the establishment of a specific department to address the needs of early child care in New Mexico. They have won increased public subsidies for higher early educator wages. And, they have ushered in a Constitutional Amendment that creates a permanent $150 million annual funding stream for early learning programs (Parks, 2022). New Mexico now subsidizes 100 percent of a child's early education for parents who earn less than 400 percent of the federal poverty level. The state also waives all copays for any family that qualifies for the subsidy program, regardless of where they fall within the program's income continuum (New Mexico Early Childhood Education & Care Department, 2022).

One large win for ECE workers in New Mexico was the successful shift from a market survey to a cost-of-care model in setting subsidy rates and issuing reimbursements to child care providers. New Mexico engaged a third-party consultant, Prenatal to Five Fiscal Strategies (P to 5), to research the existing market-survey model to see where it fell short. P to 5 sums up the market-survey approach well:

> *In this... approach, the market is driven by the families who use child care. The market survey gathers data on what they pay for child care. After analysis of that data, the state administrator establishes child care subsidy rates; states are encouraged to set their subsidy payment rates at the 75th percentile of the market rates found in the survey process. Under a market survey approach, child care rates paid by public funding are based on what parents can afford to pay for child care. This amount is not necessarily related to the actual cost of delivering child care... (Capito, et al., 2021).*

P to 5 found that the traditional market survey approach set subsidy rates that were insufficient to cover the true cost of care. In response, P to 5 analyzed the cost-of-care model and found that it fills gaps left by the market-survey model. For center-based care, this cost-of-care model makes up a difference of between $94 and $334 per child per month, depending on the age of the child and the quality of the care. For licensed family child care homes, this model makes up a difference of between $290 and $483 per child per month. Setting subsidy rates based on the cost-of-care model puts more money per child per month into the pockets of providers, depending on where they work and what age the child is. Unfortunately, due to the complex nature of calculating the cost of care in license-exempt homes, P to 5 could not apply the cost-of-care model to these homes. Thus, it recommended setting subsidy rates so a provider working at full capacity throughout the year would earn a minimum wage of $12.10 (Capito et al., 2021).

Thanks to P to 5's findings and advocacy work by the OLÉ Education Fund, New Mexico now sets subsidy rates paid to providers driven by an established wage floor (Office of the Governor of New Mexico, 2021). This win creates a new way of looking at reimbursement rates that moves away from a model that put low-income communities at a disadvantage and towards a more realistic picture of the workforce's needs today (Capito et al., 2021).

The OLÉ Education Fund has been able to accomplish these gains by organizing a base of parents and educators despite pushback from center owners and misinformation about unions. Through digital ad campaigns, OLÉ has been able to target parents who take their children to centers. Henderson noted that parents tend to be sympathetic to educators' needs, and naturally, the roles are not exclusive when an educator is a parent who may also require child care. By taking action to change policies that would benefit the workers, parents also inspire confidence in early educators to organize and take action themselves.



*Pictured: **OLÉ** early educator leaders at the House Appropriations and Finance Committee Hearing, New Mexico. Credit: Organizers in the Land of Enchantment - New Mexico.*

There is more work to be done, particularly for family child care providers, most of whom are license exempt in New Mexico. Increasing rates for these providers will require more targeted organizing and bargaining, which, based on our research, may be better accomplished through organization models like CCPU. Luckily, as referenced above, New Mexico has exempted family child care providers and their representatives from federal and state antitrust laws since June 2009. All that is needed is an organizing effort to get 30 percent of providers to indicate interest and a representative entity to steward this effort and initiate talks with the state.

V. Barriers and Limitations to Organizing in the ECE Sector

Unfortunately, many barriers to organizing still exist. For example, states are often reluctant to view the subsidy relationship between providers and the state as an employment relationship and therefore unwilling to bargain to the same extent as is required in more traditional employment relationships. There can also be pushback from center owners who want more autonomy in their shop's operations. Misinformation about unions sometimes discourages people from organizing to form one. And state politics constantly shift, as we see in the granting and rescinding of collective bargaining rights via executive orders.

Furthermore, several challenges surfaced during our work that could use further investigation in future reports. What are the implications of universal transitional kindergarten or expanding state preschool programs on the ECE workforce? If the population wants TK, are there ways to fold in existing providers so current home-based providers don't go out of business? In order to prevent such negative impacts, home-based providers need a seat at the bargaining table, be it with the state or a representative entity like a union.

As the tech industry is expected to seep into every sector, Aroner and another key informant both cautioned that venture capitalists and startups pose challenges to worker organizing by peddling false solutions. While we were not able to investigate specific instances of this issue in the ECE sector for the purpose of this report, we have already seen examples in other industries, as companies like Uber and Doordash consistently fissure their workforces through independent contracting while still controlling wages.[10]

A final challenge relates to family, friend, and neighbor providers. How do we get data on these providers? How do we make sure FFNs are equitably represented? Certain types of FFN providers may not be interested in organizing/unionizing, but it is difficult to say how providers self-conceptualize without representative qualitative data.

All of these barriers, limitations, and questions can be explored in future reports. Additionally, it would be helpful to scan the 50 states and territories to create a database of policies that organizers can easily comprehend, access, and build on through their own efforts.

In Closing

Worker organizing and collective action have tremendous potential for improving the working conditions of the many workers in the ECE sector, as well as learning conditions for children and living conditions for families. But a fissured sector like that of early care and education must be creative in its organizing and advocacy efforts. As seen in California and New Mexico, overcoming legal hurdles is possible, but is certainly not handed over.

10 In 2020, Uber, Lyft, and Doordash spent millions of dollars to pass Proposition 22, which provides that app-based drivers are automatically considered independent contractors under California law, rather than being subject to California's standard employee designation test. Multiple legal challenges to Prop 22 are currently underway (Chen & Padin, 2021).

Even if every provider essentially performs the same task of educating and taking care of children, organizing those workers to collectively bargain and/or pass legislation looks different based on where they work and how they get paid. Center-based educators who are employees can unionize under the NLRA on a shop-by-shop basis. Home-based sole proprietors, licensed or license exempt, who receive reimbursements from the state, must be exempted from antitrust laws by the state in order to grant a representative entity the right to bargain on their behalf. Furthermore, general organizing to directly change policies around ECE funding, licensing, work environments, and workforce supports can be done through advocacy organizations or unions and have sector-wide impact. Past successes on these fronts have been driven by persistence and collaboration between different coalitions and centering the voices of early educators themselves, particularly the leadership of women of color. Future efforts can learn from and build on these achievements to improve conditions for workers, children, and families.

References

Andrias, K. (2016). The new labor law. *Yale Law Journal, 126*(1), 2-101, pp. 78–79.

Capito, J., Rodriguez-Duggan, J., & Workman, S. (2021). *Understanding the cost of quality child care in New Mexico: A cost estimation model to inform subsidy rate setting.* Prenatal to Five Fiscal Strategies.

Center for the Study of Child Care Employment. (2022). *Early childhood history, organizing, ethos and strategy, a project of the Center for the Study of Child Care Employment, University of California, Berkeley.* https://cscce.berkeley.edu/projects/echoes/

Chen, B. & Padin, L. (2021). *Prop 22 was a failure for California's app-based workers. Now, it's also unconstitutional.* National Employment Law Project (NELP). https://www.nelp.org/blog/prop-22-unconstitutional/

Child Care Providers United. (2022). *CCPU members vote overwhelmingly in favor of ratifying our health care benefit and dues structure*. https://childcareprovidersunited.org/news/ccpu-members-vote-overwhelmingly-in-favor-of-ratifying-our-health-care-benefit-and-dues-structure/

Coffey, M. (2023). *States can improve child care assistance programs through cost modeling.* Center for American Progress (CAP). https://www.americanprogress.org/article/states-can-improve-child-care-assistance-programs-through-cost-modeling/

Columbia River Packers Ass'n v. Hinton, 315 U.S. 143 (1942).

Committee for Economic Development. (2019). *Child care in state economies — 2019 update*. https://www.ced.org/childcareimpact

Farber, H. S., Herbst, D., Kuziemko, I., & Naidu, S. (2021). Unions and inequality over the twentieth century: New evidence from survey data. *The Quarterly Journal of Economics, 136*(3), 1325–1385. https://doi.org/10.1093/qje/qjab012

Gupta, S., Jacobs, L., Lerner, S. & McCartin, J. A. (2022). The lever and the fulcrum: Organizing and bargaining for democracy and the common good, Cornell, A., & Barenberg, M. (Eds.). *The Cambridge Handbook of Labor and Democracy*, Cambridge University Press, 111-12. https://doi.org/10.1017/9781108885362.009

Hunter, K. (2005). GOP governors trim state employees' bargaining clout. Stateline.org. http://archive.stateline.org/old/2005.html

Jacobs, K. & Thomason, S. (2018). *The union effect in California #1: Wages, benefits, and use of public safety net programs*. UC Berkeley Labor Center. https://laborcenter.berkeley.edu/union-effect-in-california-1/

KC Holdco, LLC. (2021). *Form S-1 Registration Statement Under the Securities Act of 1933*. https://www.sec.gov/Archives/edgar/data/1873529/000119312521301187/d163371ds1.htm#rom163371_6

Landivar, C. (2023). New childcare data shows prices are untenable for families. *U.S. Department of Labor Blog*. https://blog.dol.gov/2023/01/24/new-childcare-data-shows-prices-are-untenable-for-families

L.A. Meat & Provision Drivers Union, Local 626 v. United States, 371 U.S. 94 (1962).

Loewe v. Lawlor, 208 U.S. 274, 302 (1908).

Lynch, K. (2014). *The child care and development block grant: Background and funding*. Congressional Research Service (CRS) RL30785. https://www.iaem.org/portals/25/documents/Childcare-and-Development-Lynch-2014.pdf

Malik, R., Hamm, K., & Lee, W. (2020). *The coronavirus will make child care deserts worse and exacerbate inequality*. Center for American Progress (CAP). https://www.americanprogress.org/article/coronavirus-will-make-child-care-deserts-worse-exacerbate-inequality/

McLean, C., Austin, L.J.E., Whitebook, M., & Olson, K.L. (2021). *Early Childhood Workforce Index – 2020*. Center for the Study of Child Care Employment, University of California, Berkeley. https://cscce.berkeley.edu/workforce-index-2020/report-pdf/

Miller, K., Dara, S., & Schulman, K. (2022). *State child care and early education updates 2022: Progress on a long path*. National Women's Law Center. https://nwlc.org/wp-content/uploads/2022/12/Progress-on-a-Long-Path-State-Child-Care-and-Early-Education-Updates-2022.pdf

National Labor Relations Act, 29 U.S.C. §§ 152(3), 157.

New Mexico Early Childhood Education & Care Department. (2022). New Mexico leads the nation as Governor Lujan Grisham makes childcare free for most families [press release]. https://www.nmececd.org/2022/04/28/new-mexico-leads-the-nation-as-governor-lujan-grisham-makes-childcare-free-for-most-families/

NLRB v. United Insurance Co., 390 U.S. 254, 258 (1968).

Office of the Governor of New Mexico. (2021). N.M. dramatically expands Child Care Assistance [press release]. https://www.governor.state.nm.us/2021/07/01/n-m-dramatically-expands-child-care-assistance/

OLÉ (Organizers in the Land of Enchantment). (n.d.). *About OLÉ*. http://olenm.org/

Parker v. Brown, 317 U.S. 341 (1943).

Parks, C. (2022). In N.M. child-care funding win, providers nationwide see road map. *The Washington Post*. https://www.washingtonpost.com/dc-md-va/2022/11/10/new-mexico-child-care-fund/

Perea, J. (2011). The echoes of slavery: Recognizing the racist origins of the agricultural and domestic worker exclusion from the National Labor Relations Act. *Ohio State Law Journal, 72*, 195.

Sherman Antitrust Act, 15 U.S.C. §§ 1, 17.

Thomason, S., Austin, L., Bernhardt, A., Dresser, L., Jacobs, K., & Whitebook, M. (2018). *At the wage floor.* Center for the Study of Child Care Employment, University of California, Berkeley. https://cscce.berkeley.edu/publications/report/at-the-wage-floor/

Thompson, D. (2021). California inks contract with new 40,000-member child care union. *Los Angeles Times.* https://www.latimes.com/california/story/2021-07-23/california-inks-contract-with-new-40-000-member-child-care-union

Ullrich, R., Schmit, S., & Cosse, R. (2019). *Inequitable access to child care subsidies.* Center for Law and Social Policy (CLASP). https://www.clasp.org/publications/report/brief/inequitable-access-child-care-subsidies/

U.S. Department of Health and Human Services. (2016). *Child Care and Development Fund Frequently Asked Questions Final Rule*. Office of Child Care (OCC): An Office of the Administration for Children & Families. https://www.acf.hhs.gov/occ/faq/child-care-and-development-fund-final-rule-frequently-asked-questions

Weil, D. (2014). Vignettes from the modern workplace & the fissured workplace and its consequences. In *The Fissured Workplace: Why work became so bad for so many and what can be done to improve it* (pp. 1-38). Harvard University Press.

Suggested Citation

Valerio, D. & Goity, S. (2023). *Analysis of labor organizing, unionization, and collective bargaining strategies for the early care and education workforce*. Center for the Study of Child Care Employment, University of California, Berkeley. https://cscce.berkeley.edu/publications/student-paper/analysis-of-labor-organizing-for-the-ece-workforce/

Acknowledgments

We would like to thank Annie Dade for initiating this project, for her valuable feedback and insight, and for pushing us to expand and deepen this report. We would also like to thank Dr. Anibel Ferus-Comelo for her strong advocacy in coordinating the entire course of Challenges and Innovations in Labor Policy and for her support of our research. Furthermore, we would like to thank Dion Aroner and Matthew Henderson, as well as the informants who have chosen to remain anonymous. Their key insights uplift this report and provide nuances that would otherwise go unseen. And finally, thank you to the many workers, advocates, organizers, and unions out there fighting for a more equitable and just early care and education sector. You are shaping the future for the better.

The views expressed in this commentary are those of the authors and do not necessarily represent collaborating organizations or funders.

Editor: Deborah Meacham