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Labor Watch

Battle Plan of the Shadowbosses

The strategy to unionize government employees who aren't government employees

By Mallory Factor with Elizabeth Factor

excerpted from their book *Shadowbosses*

Summary: *Unable to persuade most private sector workers to join unions, labor strategists are using political connections and dubious legal arrangements to unionize private citizens without their consent—including parents caring for their own children.*

Home child care provider Peggy Mashke was "shocked" to learn she was in the UAW.

In Michigan, AFSCME (the American Federation of State, County and Municipal Employees) and the UAW (United Auto Workers) launched a campaign to unionize home-based day care providers statewide. Providers in Michigan set their own hours, work at home, and negotiate their own rates with the families of the children for whom they care. The providers are paid partially or fully from government programs.

As usual, political allies gave the unions the creative legal structure needed to unionize these care providers. In July 2006, the state, under Gov. Jennifer Granholm (D), created a shell corporation that would be the "employer" of day care providers so they could be declared "state employees" for the limited purpose of unionizing them. A union election was held, with a mail-in ballot. Fewer than 15 percent of day care providers voted for the union, but it won the election and was certified forever as the representative of all 40,500 providers. After the state started deducting union dues from their reimbursement checks, many providers complained, saying they had never heard about any election or even about a unionization drive.

Michigan home child care provider Peggy Mashke explained: "I received a notice in the mail from the UAW congratulating me on my new membership. I was kind of shocked." Peggy, who's married to a retired Ford worker, was confused when she received the letter telling her she would now be paying dues to the UAW. "I don't have a problem with the union," she explained. "Just not in my home." Still, her home business was unionized without regard for her wishes.

Another Michigan child care provider, Carrie Schlaud, appeared on TV's "Fox & Friends" to explain her decision to fight being forced into a union. "You know, I'm just a mom who decided to care for children in my home. I provide a good service, and I'm able to contribute to the household income while caring for my own children. And never did I

dream I would have to fight the UAW out of my living room."

Peggy Mashke and Carrie Schlaud fought in court to be free of UAW control over their home-based businesses. Amazingly, given the unions' power, they won and reached a settlement with the State of Michigan that ensures the state cannot force home care workers to financially support a union as a condition of receiving state assistance. But the Mashke-Schlaud victory was a rare one in what seems to be an unrelenting wave of similar unionization drives.

How it works

How do states turn independent care workers into government workers so that unions can organize them? A history professor and a feminist studies professor wrote an article together praising the "unusual creativity" that was required to unionize home-based child care workers. "Workers and their unions," the professors claimed, "had to compel innovations in labor law and labor policy." The unions certainly did "compel innovations" in the law, but the workers did not. Many of them didn't find out they were represented by a union until after the unionization election was held.

A law professor rationalizes that labor unions "perfected a new model of organizing, one capable of representing the workers even as the law views many of them as independent contractors" who couldn't be organized under current law. A more honest person would say instead that the actual law was brushed aside and political favors were called in to pretend that a bunch of people who work for themselves are government employees so they could be ensnared into paying union dues.

Typically, here's how it works: A state forms a commission or other form of shell—an entity that has no independent existence except to serve as the "employer of record" for the independent care providers. It's a legal fiction designed to justify and camouflage a union power play that would otherwise be clearly illegal. (If this sort of government shell entity reminds you of the shell companies that were key to the Enron fraud, you're quite perceptive.) Some states such as California established this type of public authority on a county or district basis, while other states like Oregon established one entity for the entire state.

Once this commission or shell is in place, providers are then classified as employees of the entity. Workers can be unionized, and the unions can avail themselves of automatic deduction of union dues from payments to the "employees." Then the fictitious employer sits on the other side of the table from the union during negotiations, which are friendly indeed.

In Congressional testimony, Sally Coomer of Washington State explained how, as a Medicaid care provider for her daughter Becky, she was forced into a union. Pursuant to an initiative supported by the Service Employees International Union (SEIU), she is now considered her daughter's employee. But, she explained, "the Governor of the State of Washington is deemed the employer for bargaining purposes only"—in other words, she and other providers are treated as government employees so they can be forcibly unionized, but they aren't given any benefits of government employment. She noted that not only were care providers required to pay union dues, but the new system also meant that parent providers were tossed out of the Social Security system, because the parents were now government employees.

Coomer said she had no choice but to comply and join the union. "Some may argue that if you don't want to be a union member, then don't be a provider for your own daughter. . . . Thousands of parents and family members are forced to be union members, just for the privilege of taking care of a loved one."

Legal genius

How did unions figure out these clever maneuvers to make independent care workers into fake government employees? No surprise—they used lawyers. The mastermind was Craig Becker, a Yale College and Yale Law School graduate and former SEIU counsel who was SEIU boss Andy Stern's go-to guy on complex legal machinations.

Besides his strategy for care worker unionization, Becker has provided a number of creative ideas for advancing labor unions' interests. For example, he suggests taking away workers' rights to vote for "no union" in elections to unionize a workplace, so that they can choose *which* union, but not *whether* they're in a union. And he wants to use National Labor Relations Board (NLRB) regulations and other NLRB actions to implement "reforms" that have not passed Congress.

Following the 2008 election, Becker was a member of President Obama's transition team. In March 2010, he was appointed to the NLRB by the President using a "recess appointment" when Congress was out of session. He served a year and a half without ever being confirmed by the Senate and was the key pro-union member during the Boeing controversy, which involved an outra-

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geous NLRB effort to punish Boeing for opening a new plant in right-to-work South Carolina instead of its home state of Washington. In December 2011, the President was forced to withdraw his appointment in the face of Senate opposition.

Wade Rathke, the founder of the radical group ACORN, has praised Becker for "crafting and executing the legal strategies and protections which have allowed the effective organization of informal workers." It's estimated that Becker's ideas led to increases in union membership of perhaps half a million such workers—which translates into many millions of dollars a year for union bosses.

What unions do for the money

What does a union do to earn its dues income? It lobbies the legislature, supposedly on behalf of the providers, for increased payments and other changes that the union claims will benefit the providers. But in many cases the union strategy actually reduces the money available to the elderly, disabled, and poor families that receive government assistance.

Take the example of a mother who serves as a "personal assistant" to her adult disabled son and has been involuntarily unionized. Before unionization, her son received a subsidy from the government that he could use to pay for care or other expenses—say, $1,000 a month. Because the son required personal care, his mother forgoes other employment to act as his "personal assistant" and uses his subsidy to defray the cost of his care. His subsidy doesn't cover all the expenses of caring for her son or all of her hours taking care of him, but the $1,000 helps the family stay afloat.

Then one day the mom is told she is part of a labor union and her dues will be automatically deducted from the government subsidy. The family's subsidy for care of her disabled son is now reduced

Editor's note: This month's *Labor Watch* features an edited excerpt from the Factors' *New York Times* bestselling book, *Shadowbosses: Government Unions Control America and Rob Taxpayers Blind* (Center Street). Elsewhere in their book, the Factors explain that Andy Stern, head of the Service Employees International Union (SEIU) from 1996-2010, was the pioneer of labor schemes that unionize persons as "state employees" who didn't know they were being unionized, didn't want to be unionized, and had never previously believed they were state employees.

Stern, the Factors write, is part of the "Ivy League Amigos," a new group of union leaders who were slicker and better educated than labor bosses of old. They resemble slick political activists more than blue-collar workers and are using their business training to evolve unions from declining associations into growing enterprises. Stern's breakthrough came after he failed, despite aggressive tactics, to unionize nursing homes owned by Beverly Enterprises. His new tactic was to persuade the targeted company, many of whose customers received partial or full government subsidies for their care, that he and his union could lobby for larger government payments, if only the company would agree to have its workforce unionized.

Later, Stern led several unions in addition to SEIU out of the AFL-CIO federation into a new federation he created: Change to Win (see the December 2009 *Labor Watch*). Labor's business model, the Factors explain, shifted from collective bargaining to lobbying. Other unions, including the American Federation for State, County and Municipal Employees (AFSCME), began similar efforts, and overall this new strategy yielded some of the most lucrative union organizing seen in decades. For example, an SEIU local in Los Angeles scored the biggest increase in membership gained in any single union election since 1941, unionizing 74,000 workers who care for elderly and disabled residents in their homes—even though almost four out of five of these workers didn't vote in the union election.

The key to the scheme is first to identify a group of people, such as parents caring for their own children, who receive government assistance connected with that care. Then find a friendly politician—Gov. Rod Blagojevich (D-Illinois) was one such friend to unions—and get him to agree to some new-fangled legal arrangements that allow the union to be certified as the representative of the care providers, whether most of the providers want that or not. Once you represent them, you can deduct union dues and fees from those providers' government assistance and go looking for the next targets. Call it the "Government Employee Unions 2.0" strategy.

The Factors quote radio commentator Rush Limbaugh on the appeal to politicians: "It's not complicated. It just sounds unbelievable. You are a parent, Joe Schmo, and your wife, Molly Schmo, and you have a mentally disabled child, and so you accept Medicaid payment. Guess what? You are now a member of the SEIU. You have no choice, and a portion of what Medicaid gives you to care for your child now gets through back to SEIU in the form of union dues. That money then ends up in the traditional money laundering operation, the Democratic Party."

The union that inspired this comment, SEIU Local 880, now represents 20,000 such "members" who generate a revenue stream of at least $3.6 million a year in forced dues.

So far, the Factors count 14 states with such arrangements, and nearly all let unions collect forced dues. The states with mandatory union representation and mandatory dues or fees for child care and/or health care providers are California, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, New Mexico, New York, Oregon, and Washington. In addition, Iowa and Kansas have authorized mandatory representation, although as right to work states they do not require providers to pay union dues or fees. Lastly, Minnesota has several counties with unionized care providers.

by the amount of the union dues—say, $95 a month.

Many other supposed benefits for which unions lobby benefit unions more than the care providers they claim to represent. For example, unions often demand "training opportunities" for providers—with the training provided by the union. Whether or not the providers themselves want the training or benefit from it, the union receives additional income for conducting it, adding to the union's bottom line at taxpayers' expense and likely reducing the budget available to assist those in need.

Stealth unionization

Although the unionization of care workers usually begins with an executive order from a pro-union governor with a law passed by a pro-union state legislature, at some stage the process usually includes an election of some sort, to provide a false air of legitimacy. In many cases, a stealth election is held quickly and quietly to certify the union before the providers have time to organize resistance or start a media campaign.

Stealth unionization works because the union needs to win a majority of the votes cast, not a majority of all the persons eligible to vote. If most of the people who vote in the election are pro-union, the union wins, regardless of the desires of most members of the targeted group. By notifying as few care providers as possible about the election, the union can get enough yes votes from supporters without encountering resistance from opponents.

Often the unions have help from the politicians they patronize. Last year in Minnesota, Gov. Mark Dayton (D) issued an executive order that overtly denied voting rights to an entire class of providers, namely those who were regulated by the state but didn't receive subsidies. Only 4,300 of the more than 11,000 providers would be eligible to vote under Dayton's order. (After a raft of bad publicity, that election was put on hold, and its procedures are under challenge in federal court.)

In unionization elections, the union is technically required to notify all eligible voters—but whenever the union wins such a vote, many of the newly unionized workers say they never saw a notice and didn't know an election was being held. Once the union is certified, providers seeking to get rid of it must go through the difficult process of decertification. Each state has its own procedure for decertification, but each of them includes major obstacles—obstacles so high that no group of care providers has ever achieved decertification.

"Independent" certification in Kansas courtesy of Kathleen Sebelius

In 2007, more than 7,000 family child care providers were unionized through an executive order by Gov. Kathleen Sebelius (D-Kansas), who is now the U.S. Secretary of Health and Human Services. First, the Kansas Department of Health and the Environment (KDHE) and the Department of Social and Rehabilitation Services (SRS) selected a lawyer specializing in labor relations, who in turn picked a supposedly independent third party, who certified that a majority of the providers had chosen to join AFSCME's Child Care Providers Together union (CCPT) via petition and card check. Sebelius then issued an order declaring:

"WHEREAS, over 7,000 family child care providers deliver an invaluable service to families by providing a quality learning environment for their children, often during non-traditional and flexible hours in order to accommodate the needs of working families; and . . . SRS sets the terms and conditions through which family child care providers operate and through which they receive reimbursement for care provided to families who qualify for state child care assistance; and . . .

"WHEREAS, [AFSCME/CCPT] has been certified by an independent third party jointly appointed by authorized representatives of the KDHE, SRS and AFSCME/CCPT as the exclusive majority representative of all registered and licensed family child care providers. . . . "

Therefore, Sebelius ordered, "The Secretary of KDHE and the Secretary of SRS, on behalf of the State of Kansas, shall recognize AFSCME/CCPT as the exclusive majority representative of all registered, licensed, and group family day care homes (hereafter referred to as 'family child care providers') and work in good faith with AFSCME/CCPT in developing a mutual written agreement" regarding quality standards; training, licensure, and registration requirements; reimbursement rates for subsidized care; methods of payment for such reimbursement rates; benefits; health and safety conditions; the monitoring and evaluating of family child care providers; fees; and any other matters that would improve recruitment and retention of qualified family child care providers and the overall quality of child care programs in Kansas. In other words, the governor—who regularly received considerable union largesse—authorized the union to negotiate almost every aspect of the providers' work.

Following the Alice-in-Wonderland logic that providers are "state employees when we want them to be, but not when we don't," the order also stated, "Nothing in this Executive Order shall be construed to grant family child care providers status as state employees or agents of the state for any purpose." – SJA

Where will it end?

If the government can force care providers into unions by classifying them as state employees, is there any limit to what it can do to further the "Government Employee Unions 2.0" strategy?

The GEU 2.0 model opens up entirely new groups of people to unionization, people who are not actually government workers but who receive funds from the government in relation to their work. Obamacare opens up entire new vistas for the unions. Currently, only 14 percent of health care workers are unionized. Once (and if) Obamacare is fully implemented, most health care workers will receive government funds, will be strictly regulated by the federal government, and will be among unions' prime targets. After that could come groups that receive government funds, but whose receipt of that money is less directly connected to their employment—recipients of Social Security checks, Medicare, veterans' benefits, and other payments and transfers based on previous work.

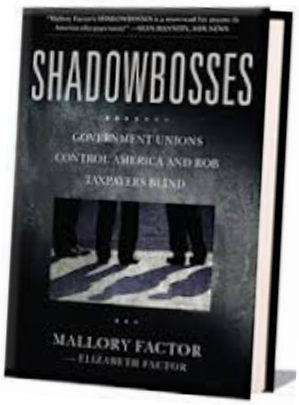
Labor lawyer William Messenger, who represents care providers in their fight with the union, has noted that "The representation imposed upon providers is no different than the government designating the American Association of Retired Persons as the mandatory representative of all persons on Medicare . . . or the American Banking Association as the mandatory trade association for all financial institutions receiving Troubled Asset Relief Program funds."

Already, most media types and politicians accept AARP as a legitimate representative of seniors, even though AARP isn't a democratic organization but a hybrid of (a) a business that provides insurance and discounts and (b) an activist group that promotes the agenda of its Washington staff while ignoring the opinions of its members and of the seniors it supposedly represents. (AARP supported both Hillarycare and Obamacare despite overwhelming opposition from America's older citizens, and it is a member in good standing of the left-wing coalitions that dominate Washington.) Under GEU 2.0 principles, could AARP become the officially designated organization for seniors, just as the National Education Association, once a professional group for teachers, morphed into a labor union with its own pet Cabinet department? (See "AARP: Advocacy Group or Crony Capitalists?" in *Foundation Watch*, May 2012.)

Then there are enormous and growing groups of public assistance recipients such as people on Medicaid, and people who receive federal aid for families with needy children, and people with electronic benefit transfer cards (aka "food stamps"). People in those programs who care for children, including their own, may be classified as government employees by the logic of GEU 2.0. The same is true for people who fulfill any sort of requirement that they work, or that they seek work, or that they get job training as a condition for receiving public assistance. All these people kind of, sort of work for the government, and they all need representation—right?

What comes next? How about people who have other relationships to the government, such as people who need licenses for their work? From real estate agents to insurance agents, from taxi drivers to barbers to "nail technicians," any type of licensed self-employed worker could be included. After all, the government gives them something of value—a license—which makes it possible for them to do their work. And what about employees of nonprofits that receive significant portions of their funding from government?

At a time when government intervention in the economy is expanding rapidly—in which politicians brag about putting together "public-private partnerships" between business and government—the classes of workers who could be unionized seems limitless. Union officials certainly grasp this. A union lawyer in that case challenging the unionization of care providers in Michigan admitted in court that unionizing these workers takes us down a "slippery slope." He reportedly admitted to a judge that "unionization of any group that accepted state subsidies would be within the state's authority if it had 'added value' to the state or the public's interest."



Given the current bent of the U.S. legal system, the union lawyer was probably correct on the legal point; namely, that the government can unionize any group that is compensated through a government program, as long as government officials claim to do so in the public interest.

And when have politicians or bureaucrats ever *not* claimed they're acting in the public interest?

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LaborNotes

As we go to press, **Michiganders** are set to vote on a state constitutional amendment that would vastly expand the power of labor unions and become a model for the rest of the country. **Proposition 2**, known as the "**Protect Our Jobs amendment**," would enshrine unions' collective-bargaining powers in the state constitution, invalidating any "existing or future" state laws that "abridge, impair, or limit" those powers. Union contracts would take priority over state law. Much of the reform legislation passed under **Gov. Rick Snyder** (R) could be invalidated, including reforms that require government workers to pay 20% of their healthcare premiums, make it easier to fire incompetent teachers, and protect the privatization of food, busing, and custodial services from collective bargaining agreements. Prop 2 would likely invalidate **Public Act 4**, which allows emergency managers to rewrite union contracts in order to save fiscally distressed local government entities. Michigan would be prohibited from becoming a right-to-work state, and opponents say that more than 170 existing state laws could be affected. Unions spent an estimated $8 million just getting the measure on the ballot.

Supporters admit that even they don't know how far Prop 2's effects would extend. A union lawyer said the amendment's "interaction with existing constitutional provisions, laws, and ordinances will be determined by the courts on a case-by-case basis." Much like **Obamacare**, it appears we'll have to pass it to find out what's in it.

California Gov. Jerry Brown (D) vetoed several measures that unions supported, including (as reported by **Ira Stoll** of **FutureOfCapitalism.com**) one that would have created state-mandated meal breaks, sleep periods, and rest breaks for domestic employees such as nannies and home health aides. In his veto message, Brown cited the possible "economic and human impact on the disabled or elderly person and their family of requiring overtime, rest, and meal periods for attendants who provide 24-hour care" and "fewer jobs for domestic workers," and he asked "How would the state actually enforce the new work rules in the privacy of people's homes?" Another veto killed legislation to make it a crime for farmers not to provide farm workers with "suitably cool" water and "continuous ready access to an area of shade sufficient to allow the body to cool." You know unions have overreached when they lose even Jerry Brown!

The new movie ***Won't Back Down*** takes on the issue of education reform and has been the target of union protests. In the film, a working-class mother, fed up with the treatment of her dyslexic daughter at a failing school, teams up with a teacher to trigger a parent-teacher takeover of the school. **American Federation of Teachers** boss **Randi Weingarten** denounced the movie ("the most blatant stereotypes and caricatures I've ever seen"), which, for anyone who cares about the nation's children, makes it the must-see film of the year!

The infamous "**Local 1199**," the largest union local in the country and an affiliate of the **SEIU**, is the target of a lawsuit under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Two companies that own and operate nursing homes in **Connecticut**, **New York**, **New Jersey**, and **Massachusetts** claim that 1199, which represents healthcare workers, engaged in a "shake-down" campaign of threats, intimidation, personal harassment, false accusations of Medicare billing fraud, and acts of sabotage—such as tampering with medication records—that endangered the lives of nursing home residents. 1199 has close ties to the **Obama administration**: **Patrick Gaspard**, who spent nine years as 1199's executive vice president for politics and legislation, served as director of the **White House Office of Political Affairs** and is now executive director of the **Democratic National Committee**. As noted by the **Capital Research Center**'s **Matthew Vadum** in his book ***Subversion Inc.***, Gaspard donated $40,000 to **ACORN** in 2007-08. Since his union salary was less than $112,000 in 2007, that makes Gaspard a *very* generous man.