

Background Paper

The Story of Home Care Providers in SEIU Healthcare MI

Introduction

The purpose of this paper is to tell the story of how home care workers in Michigan won the legal rights and benefits of representation by the SEIU and how right wing forces stripped these dedicated caregivers of their ability to have collective bargaining with the Union of their choice as their exclusive representative. This story underscores why the Executive Board of SEIU HCMI believes it is right and just and necessary to waive minimum dues and establish a fair fixed dues structure which empowers home care workers to maintain continuing membership in our Union.

Over the last ten years, SEIU HCMI has been instrumental in improving the quality of life and working conditions for thousands of home care workers in Michigan. These workers are providing important care to help keep seniors and persons with disabilities in their homes and independent. Many are providing complex medical care that we see in our hospitals and nursing homes, such as physical therapy, wound treatment, tracheotomies, feeding tube maintenance, etc. Before they were organized by SEIU, home care workers were among the lowest paid in Michigan. Since SEIU began representing these caregivers, they have been able to collectively improve their wages and working conditions; gain recognition and respect for the very difficult work that they do; and improve the quality of care they provide to the elderly and disabled. Most importantly, they have become vital and enthusiastic members and activists in SEIU HCMI. Now, however, because of a relentless and sustained attack by extreme right wing forces, including the Koch brothers-funded Mackinac Center and the Republican controlled Michigan legislature, they have lost -- for the time being -- the right to collectively bargain. As explained herein, the SEIU HCMI Executive Board has hereby decided not to abandon these members in the face of these attacks on their collective bargaining rights. We seek to create a method by which every home care member of SEIU HCMI who wishes to do so can remain a member of SEIU HCMI; so that our Union can continue to protect, secure and enhance their rights as home health care workers in Michigan.

History of SEIU's Organizing of Michigan Home Care Workers

Michigan's Home Help Program is one of the Medicaid long-term care programs provided by the State of Michigan for low-income individuals and families. The State pays home care providers to assist elderly and disabled individuals with activities of daily living so the consumers can remain in their own homes with dignity and independence rather than face institutionalization, which would be more expensive for Michigan's Medicaid program. The State pays the home care providers an hourly wage to provide services approved by the State to eligible consumers, who are able to select their own home care providers subject to State eligibility requirements.

In 2003, workers who provide care through Michigan's Home Help Program began a multi-year campaign to organize a union. During the course of this campaign, more than 20,000 providers signed authorization cards to select SEIU HCMI as their collective bargaining representative.

In 2004, the Michigan Department of Community Health, a State agency, and the Tri-County Aging Consortium, a local government entity, established the Michigan Quality Community Care Council ("MQC3") as a public entity, through an interlocal agreement pursuant to Michigan's Urban Cooperation Act. Among the purposes of MQC3 were to promote effective and efficient community care in Michigan by acting as the employer of record and providing training and other employer-related services to care providers; and by creating and sustaining a qualified long-term care workforce in order to address the severe provider shortage caused by Michigan's difficulty in recruiting and retaining qualified long-term providers.

In 2005, SEIU HCMI presented the MQC3 with the providers' signed authorization cards demonstrating majority support for the union as their collective bargaining representative. Shortly thereafter, the Michigan Employment Relations Commission ("MERC") ruled that a representation election should be held under the Michigan Public Employment Relations Act ("PERA"). MERC conducted a mail ballot election to determine whether SEIU HCMI should be recognized as the providers' exclusive bargaining representative with MQC3. Nearly 87% of the valid ballots were cast in favor of SEIU HCMI, and on April 19, 2005 MERC officially certified SEIU HCMI as the collective bargaining representative of the providers.

Over the past 8 years, as a result of SEIU representation, the provider members of SEIU HCMI have enjoyed great improvements in wages, working conditions and the quality of care. For

example:

- SEIU HCMI negotiated its first CBA with MQC3 for the period 2006-2009, a successor CBA for the period 2009-2012, and extensions of the 2009-2012 CBA through Feb. 28, 2013.
- As a result of these CBAs, SEIU HCMI won multiple, first ever wage increases for the providers, raising the lowest hourly wages from \$5.15 an hour to over \$8 an hour – a 55% increase
- SEIU HCMI helped create a first-ever registry to match screened, trained home care workers with individuals in need of care – with access for thousands of families.
- SEIU HCMI worked as part of a broad coalition including AARP, Area Agencies on Aging, Multiple Sclerosis Society, United Cerebral Palsy, Michigan Disability Rights Coalition, and the Disability Networks of Michigan to stop cuts to the Home Help Program and improve the quality of Home Help in Michigan;
- SEIU HCMI launched the first-ever training programs for home care workers to obtain skills training in areas such as adult first aid/CPR, safe lifting techniques, handling difficult behaviors like Alzheimers and dementia, interaction between medication and diet, and others.
- SEIU HCMI helped organize home care chapters throughout the State to allow members the chance to meet other caregivers through local meetings and participate in their union.

The Backlash

Soon after SEIU HCMI successfully organized the home care workers in Michigan, right wing forces mobilized in opposition. Leading the charge was the Mackinac Center for Public Policy, an extreme right-wing “think tank” funded in part by the infamous Koch brothers. The Mackinac Center began a relentless campaign of negative publicity and lobbying against SEIU’s successes in organizing the home care workers. The truth is that the lot of home care providers – and the home care system itself – was vastly improved as a result of the providers’ collective bargaining through SEIU. But Mackinac falsely portrayed the home care workers as independent contractors and victims of union trickery and collaboration with friendly politicians, both Democratic and Republican. Among other lies, Mackinac accused SEIU of “skimming” Medicare funds to make it appear as though the Union was taking money from the clients, when in reality dues were paid out of the wages of the providers through a collectively bargained dues checkoff authorization. Even

though SEIU won the election in 2005 by an 87% margin, and even though less than 2% of the providers were *Beck* objectors while the remaining 98+ % were full dues paying voluntary members, Mackinac's publicity implied that provider dues were somehow being involuntarily confiscated by SEIU. The Mackinac Center's website even displayed a "skim-o-meter" with a constantly increasing tally of the dues Mackinac Center claimed SEIU was wrongfully "skimming" from the system.

Following the Republican takeover of Michigan's government after the 2010 election, the efforts of the Mackinac Center and other extreme right wing forces against SEIU began to bear fruit. First, the State cut all funding to MQC3, even though this threatened to dismantle the improvements in the home care system gained through the cooperation of SEIU HCMI and MQC3, including the provider registries and training programs. SEIU responded by joining a coalition of non-profit advocacy groups for the elderly and disabled in order to provide an alternate funding source for MQC3. This enabled MQC3 to survive despite the elimination of State funding.

Next, the Michigan legislature enacted 2012 PA 76 which Governor Snyder signed on April 10, 2012. The express purpose of this legislation was to take away the home care providers' collective bargaining rights by declaring that it was unlawful for a public employer to collectively bargain or enter into a CBA with a union as exclusive representative of such providers. In short, the law was a direct attack intended to outlaw the SEIU HCMI collective bargaining unit. Shortly after the enactment of PA 76, Michigan's Republican Attorney General issued an opinion that the law could be applied to void the existing CBA (which did not expire until Feb. 28, 2013). In turn, the State advised SEIU that it would no longer withhold dues from provider paychecks nor transmit dues to the Union, all in derogation of the existing CBA.

The State also began the process of formally dismantling MQC3. The Interlocal Agreement allowed any party to terminate it unilaterally by giving 11 months notice of intent to terminate. The Michigan Department of Community Health invoked this provision to terminate the Interlocal Agreement effective April 2013, meaning that MQC3 will effectively cease to exist after April 2013 except for purposes of winding down.

The Litigation

SEIU HCMI fought back by suing Governor Snyder and other state officials in federal court.

The lawsuit, filed May 29, 2012, sought a preliminary injunction requiring the State to honor the CBA and to continue deducting and transmitting dues, because application of PA 76 to the existing CBA resulted in the impairment of SEIU's contract in direct violation of the contract clause of United States Constitution. Two hearings were held in Detroit before U.S. District Judge Nancy Edmonds in May and June 2012, resulting in a victory for SEIU. Judge Edmonds issued a preliminary injunction requiring the State to continue to honor the CBA, and to continue deducting and transmitting union dues under the CBA which expired on Feb. 28, 2013. The preliminary injunction is still in effect. Although the CBA expired on Feb. 28, 2013, the State has obeyed the injunction; and SEIU HCMI expects to receive the remaining dues payments for wages earned through February 28, 2013 when they are due in April 2013.

The Ballot Proposal

Although the litigation was successful, the victory meant only that the State was required to honor the CBA which would soon expire. By the time the injunction was issued, the State had already taken steps to dismantle MQC3, meaning that there would be no employer with whom to bargain after April 2013. Further, the effect of the litigation was to prohibit enforcement of PA 76 against the Union's existing CBA. The litigation did not and could not invalidate PA 76 as a whole. After PA 76 became law, without further action the home care providers in the SEIU HCMI bargaining unit would lose their collective bargaining rights once the CBA expired. SEIU and its allies had already started a campaign to secure collective bargaining rights through a ballot proposal, Proposal 4. Over 444,000 petition signatures were obtained, and Proposal 4 was successfully placed on the November 2012 Michigan general election ballot. Proposal 4 would have amended the Michigan Constitution to clarify that home help providers were entitled to collective bargaining rights, and enshrine a successor agency to MQC3 as a public entity and public employer under the State Constitution. Although SEIU and its allies conducted a strong campaign, in the end Proposal 4 did not succeed, by a margin of 44 % in favor to 56 % opposed. The end result is that the home care providers in the SEIU HCMI bargaining unit have lost -- for the time being -- the right to collectively bargain. But they can and should continue to remain members of our Union, with the mutual benefits to our Union and the providers that their continuing membership will provide.

The Path To The Future

As shown above, the rationale for continued membership in SEIU HCMI of the home care providers is clear. Home care is a vital and major component of health care for Michigan citizens. And SEIU HCMI is dedicated to protecting and improving health care for all the residents of Michigan. Our Union has fought long and hard to secure and improve the rights and working conditions for home care provider members. The result has been many gains for the members, our Union and the home care system itself. Our Union needs to protect these gains by establishing a path to the future whereby every provider member who wishes to remain a member of SEIU HCMI can do so.

1. The home care providers are clearly eligible for full membership in SEIU HCMI. Article 3 Section 1 of the Local Union Constitution and Bylaws provides that “[h]ealth care workers in the state of Michigan and persons employed in any employment over which this Local Union claims or exercises jurisdiction . . . shall be eligible for membership in SEIU HCMI, with all the rights and obligations of SEIU members in accordance with the SEIU Constitution and Bylaws. . . .” These members will continue to be employed as “health care workers in the state of Michigan” performing the same work that they now perform, which is obviously work over which the local union claims or exercises jurisdiction. Accordingly, they are members and will continue to remain eligible as members. The only question is the dues structure.

2. Receipt of the final dues payment for these members is anticipated in early April, 2013. Thereafter, dues will no longer be withheld by the State for these members. Our goal is to create a dues system which will allow as many of these providers who wish to remain members to do so.

3. These members are currently entitled to self pay dues to SEIU HCMI. Many home care providers have in the past maintained continuous membership by self-payment of dues during periods when there were no dues withheld by the State because they were not working. However, the landscape has now changed dramatically, as the Union will no longer be the exclusive bargaining representative for these members, they will not be covered by a CBA, and under current law it is essentially impossible to assert a legally enforceable duty to bargain by the State with respect to these employees. However, even though SEIU HCMI will not be able to act as their exclusive bargaining representative, it can and should continue to provide Union rights and Union representation to

providers who continue their membership. Our Union has in the past provided services to these members that do not depend on exclusive representative status, such as assisting with wage & hour issues, helping to resolve issues or disputes with case workers, and assisting providers in administrative appeals with the State over various issues. SEIU HCMI would like to continue providing these types of services but will not be financially able to do so without a source of dues.

As explained below, there are alternative workforce and non-exclusive representation models to guide SEIU HCMI in maintaining membership standing for to the home care provider members. However, it would be unfair to require that these members continue paying dues at the rate they were paying when the Union was able to represent them in contract negotiations and administration as their exclusive representative. The fair solution is to reduce dues to reflect this structural change. Moreover, a dues reduction is the only feasible method for achieving the goal of allowing as many current members as possible to remain members of our Union. Even with a dues reduction many current members will likely drop out of the union as a result of the cessation of dues withholding. It must be remembered that these workers are still among the lowest paid workers in Michigan. By requiring self-payment without a dues reduction, many more will likely drop out. Therefore, the Executive Board recommends that a waiver of the regular dues structure be granted to the providers in the MQC3 bargaining unit, and that reduced dues in the amount of \$10 per month be required unless and until SEIU HCMI secures exclusive collective bargaining rights for these members.

4. Further, because of the uncertainty and confusion created by the cessation of dues withholding, expiration of the CBA, and cessation of MQC3 as an employing entity, there should be at least a 3 month hiatus or dues "holiday" following approval which would allow our Union to publicize the new dues structure and solicit self payments from as many current members as possible. Again, our Union's goal is to keep as many of the current members as continuing members. It is therefore critical that the new dues structure be fashioned so as to avoid delinquencies to the extent reasonably practical. A 3 month hiatus will achieve that goal.

5. Here are some models to guide SEIU HCMI in providing a path for continuous membership:

- There is at least one example in Michigan of a public employee union comprised entirely of non-exclusively represented employees: The Michigan Association of Government Employees (MAGE). Even though MAGE is not the exclusive representative and can not impose a legally enforceable duty to bargain, and its

members are not covered by a CBA, MAGE successfully represents public employees in Michigan and has established productive relationships with government employer representatives which have resulted in real gains for its members. MAGE also engages in lobbying and litigation on its members' behalf with respect to their government employers. MAGE has successfully implemented a dues checkoff procedure under which its members voluntarily authorize their employer to withhold dues and transmit them to the union, in much the same way as employees under a dues checkoff system in a traditional collective bargaining arrangement.

- In some states public employees have not yet secured exclusive bargaining rights, and in other states it is actually unlawful to recognize or bargain with an exclusive representative of government employees. Nevertheless, public employee unions, including SEIU, have successfully negotiated "meet and confer" arrangements with state authorities which have allowed them to secure tangible benefits and improvements in working conditions for their members.
- Other scenarios might involve SEIU establishing an alternative registry or referral system which would provide additional employment opportunities for its home care provider members.

6. Obviously, the ultimate goal is to overturn PA 76 either legislatively or through another ballot proposal, and/or to secure exclusive bargaining rights for the providers by executive order with a more sympathetic governor and legislature in the future. The best advocates and the best volunteers for these efforts will be the home care provider members themselves. For that reason, again, it is critical that SEIU HCMI retain the maximum number possible of these members as continuing members.

RESOLUTION

WHEREAS, recent legislation promoted and passed by right wing, anti-union forces and the Governor of Michigan has taken away the rights of the home care provider members of our Union to have SEIU HCMI act as their exclusive bargaining representative;

WHEREAS, SEIU HCMI desires to provide a path for continued membership in our Union for these members;

WHEREAS, without an alternative dues structure most or all of these members will not be able to continue as members, thereby depriving SEIU HCMI of a major source of financial support;

WHEREAS, the alternative dues structure prosed herein will allow these home care providers to continue as dues-paying members and will provide an additional source of financial support to our Union which would otherwise not exist;

SEIU HCMI THEREFORE HEREBY RESOLVES:

- A. To submit this proposed waiver of minimum dues and alternative dues structure to a membership vote as soon as practicable under Article VI, Section 4 of the SEIU HCMI Constitution and Bylaws, and to submit a request to the International President, subject to ratification by the International Executive Board, for approval under Article 15, Section 6(d) of the SEIU International Constitution and Bylaws;
- B. That current home care provider members be granted a dues hiatus of 3 months after approval of the alternative dues structure following receipt of their withheld dues for work performed prior to the expiration of the CBA on Feb. 28, 2013. Accordingly, this hiatus would mean there would be no lapse in membership and that no dues would be required until 3 months following approval of the new dues structure;
- C. That following the hiatus, dues will be reduced for the home care providers in the current MQC3 bargaining unit to the rate of \$10 per month per member. This reduced dues rate would remain in effect unless and until SEIU is again able to secure the right to act as exclusive bargaining representative for these members, or until the dues structure is otherwise changed in accordance with the International and Local Union Constitution and Bylaws.