

Union Now!: Day Care Providers' Fight for Representation



The unifying theme that linked together all of the various topics that we covered throughout this course was unambiguous from the beginning; how the legal process can impact the political process, specifically through grass roots organizing and a coordinated public relations campaign, in order to produce a desired social change. While most of my classmates will invariably follow this rather simple frame work by identifying a specific court case that sparked a movement, I have chosen a different route.

After consulting with Professor Bernstein, as well as by paying special attention to a few of the lectures that stood out in my mind, I have come to realize that the framework is too simple. Social change, and how the legal and political processes intersect with it, is much more nuanced in practice. The theoretical framework ignores the many social activists such as Mirna Torres that work to achieve change before being sparked by a specific court case. To this end, I will study and analyze the largest successful union organizing drive New York has seen in 45 years. A movement that I was lucky enough to take a part in.

Similar to many states, New York's comprehensive public assistance program includes subsidies for childcare for families with children ages 2-12. The subsidy by and large takes the form of vouchers that eligible families use either towards a day care center, or an at home day care provider. The providers as they are commonly referred to take care of anywhere from 1-12 children, and receive payment from a local agency, with New York City's Administration for

Children's Services (ACS) covering 28,000 within the 5 boroughs alone. While the majority of the money is underwritten by the federal government, it travels through the hands of state agencies enroot to the municipal organization (ACS) before it finally reaches the provider. [Here on out I will specifically be referring to providers that live within New York City. There is a separate drive being undertaken by a different union to organize the non NYC, New York State providers.] In addition to the subsidy payment, the majority of providers [again in NYC] are enrolled in an additional state run food program administered by the New York State Department of Health. This analogous program reimburses providers for meals they feed their children, as a way of ensuring proper nutrition. Together these two programs make up the bulk of the funds that providers are paid for their services.

With a basic understanding of the system from a top-down approach, we can now look at the arrangement from the bottom up, in order to best understand how providers earn a living. Providers are considered state paid independent contractors, and are thus in a status of legal limbo, as they have no collective bargaining rights. Providers, typically women, are either licensed, or informal. If licensed, they have gone through a rigorous training process and have had their house or apartment inspected by the New York City Dep't of Health in order to ensure adequate fire safety. Licensed providers are paid a higher rate per child than informal.

In terms of process, providers register with ACS, if licensed take the appropriate classes and get tested. From here they have the option of joining 'networks' who serve as a middle man by linking providers with families. By law, the community based networks are supposed to perform oversight of their respective providers, yet in reality little is done. Finally, the Providers are paired up with children in their neighborhood, and continue serving the children until they either opt out of the program, find a new provider, reach the age of 13, or their parent stops working, which makes the child ineligible.

Understanding both perspectives of the organizational structure, it is pertinent to understand the financial implications of being a provider, as well as the challenges that they face. Of all NYC Providers, the average salary is \$19,933 (Whitt). For this work, they receive no benefits, no paid vacation, no professional development, and no sick days. On average providers work 5-6 days a week, and their work day varies per provider, yet a 7am-8pm day is not uncommon. In terms of pay, providers are paid on a per child per day basis, and thus the longer the hours per day the child is in care, the less money per hour the provider is paid. This often leads to sub-minimum wage salaries. Yet providers face myriad of other problems.

Informal providers look towards attaining their license as a way of moving up. Licensed providers are not only paid more per child, but are eligible to take care of more children, thus drastically increasing their salary potential. Yet acquiring the license is far from a walk in the park. Classes needed towards

licensing are prohibitively expensive. Costing hundreds if not thousands for the required courses, the poorly paid women often have serious difficulty raising the required funds. Further, the classes are offered sparingly and usually only during normal business hours, which directly conflicts with standard day care hours.

Moving on, ACS, which handles the providers from a city-stand point, is extremely under staffed. When providers call for assistance they will typically receive busy signals for hours on end. As part of a research project this summer I was supposed to keep a call log of average wait time on the ACS switch board. Over the course of a 10 hour work day, calling every 15 minutes, I did not get through once. Even when providers are able to finally speak to a representative, it usually takes weeks to solve pressing issues.

Further, providers face serious issues with their respective networks. While networks are supposed to provide oversight in the form of classes, on the spot inspections and administrative oversight, little if any of this is done. While some networks are better than others, most simply serve as referral services. For this they receive what is referred to as the network fee, which comes out to \$17 dollars per child per week. Originally this was covered by the City, underwritten by the federal government. This is to be expected, as the City was more or less contracting out oversight responsibilities to the private networks. Yet a few years ago as a cost saving measure, the City transferred the network fees to the provider. In a sense, the current system has the already underpaid providers

paying private organizations money to conduct federally mandated oversight. The system is just this perverse.

Beyond this, city health inspectors often give contradictory information on fire safety inspections, and the food program often fails to reimburse providers for expenses and doesn't have adequate safe-guards or appellate procedures. With all of these problems it isn't hard to understand why by 2005 providers were sick and tired of it all. Overworked, under paid and mistreated, providers began clamoring for change, and to their benefit they found partners that were all too willing to help.

With a firm grasp on the system that was in place and how the status quo was ill equipped for the providers, we can now move forward into the crux of the paper; how the providers created a social movement which forced political change and came full circle to lead to social change.

The Association of Communities Organizing for Reform Now! better known by the acronym ACORN is a nationwide full service social justice organization dedicated towards easing the plight for the working class. Some of their projects have included working through state referendums to increase the minimum wage, founding New York's progressive Working Families Party, advising new home owners on mortgage options, and pressing for better schools at all levels of education. By mid 2005 ACORN had identified the plight of the providers as a priority. Not only were the providers being ill treated, but as a

result the children that they watched were entering school at a distinct disadvantage. While ACORN was, and continues to be extremely effective at organizing at the grass roots level, when it comes time to press politicians to take action, they are somewhat less skillful. In terms of the initial organizing drive in 2005, ACORN's lack of political clout within New York was fully felt, and the campaign never truly got off the ground.

However things quickly changed. By 2006 ACORN teamed up with its historical ally, New York City's teachers' union, the United Federation of Teachers. ACORN and the UFT appeared to be adequately suited to compliment each others strengths and weaknesses. What political clout ACORN lacked, the UFT certainly had as one of, New York's most powerful unions. Further, ACORN was able to compliment the UFT's political strength with its grassroots organizing abilities. The pair was destined to succeed, and they immediately got to work.

Before analyzing the actual process of the movement, it is important to be realistic, and understand the underlying non altruistic reasons that each organization was willing to risk significant political and financial capital on such a movement. Early on the UFT recognized that if it could add 28,000 providers to their union rolls as a new chapter, than they could become that much more powerful. By increasing overall membership, UFT negotiators could leverage their electoral behavior during contract negotiations not only for the providers but for all teachers.

On the other hand, ACORN is a growing organization and always looking both for new members as well as accomplishments to put under its belt. A victory on such a big issue would clearly give it serious clout, and would enable the group to flex its muscle that much more later on. Beyond this, the ultimate goal was (and still is) to have the providers recognize the role that ACORN played, and eventually become full fledged dues paying members, allowing future growth.

As stated, the organizations involved decided early on that due to the legal status of the providers, the best way to support them was to have them join as a new chapter of the UFT. This would provide for collective bargaining rights, and would invariably lead to contract negotiations with improved salary and benefits. Yet from the onset, this appeared difficult. As independent workers contracted out by the state, it was illegal to unionize. To create a new chapter of the union, a number of steps needed to take place. First, the providers needed a change in their legal status. Following the lead of Illinois in 2005, providers needed to be considered state employees in order to attain collective bargaining rights. From here the actual work was needed to set up a union, and required various judicial oversight and recognition. This is the part where the courts come into play. While both aspects of the movement will be analyzed, it is important to understand that throughout the entire process, both the UFT and ACORN were dedicated agents of social activism working with the press and through the grass roots to create political change in order to affect social change.

This framework first played out in the political arena. After the UFT created an office led by senior organizer Fran Streich to lead the drive, they transferred funds to ACORN to accommodate hiring several organizers within the CLOC- Community Labor Organizing Committee. Together the two groups coordinated on a daily basis. Their immediate goal was to change the legal status of the providers. This could happen one of two ways. Either both houses of the NYS legislature could pass legislation then signed by the governor designating the change, or the governor would simply need to sign an executive order. The NYS Assembly is overwhelmingly Democratic, and thus posed no problem. Yet the Senate has historically been a Republican dominated chamber, as was the governor's mansion at the time. The UFT wrote off the governor as a lost cause, and began focusing its efforts on both legislative bodies. To do this, a coordinated organizing and public relations campaign was undertaken, which highlights one of the key aspects of the framework.

ACORN immediately hit the streets. Given a list of all providers with their



address and phone numbers by ACS, ACORN began a major canvassing drive (see picture) dedicated towards raising awareness among the providers as well as identifying potential leadership. While there were

some holdovers from the previous campaign, fresh blood was in need. Canvassers marched up and down all five boroughs in search of any provider that would listen, while the UFT got to work on the press side. After enough searching, CLOC and the UFT decided to begin holding organizing meetings within each borough. At this point the leaders decided that as they were going to be a union, it was important that not only were the providers the face of the struggle, but those actually calling the shots. This could be seen during the various meetings held throughout all of 2005 and all the way up to the summer of 2007 during the final push. While paid staffers would facilitate meetings and provide services, the idea that the providers had agency over the direction of the drive and *their* union was drilled to their core. The method of canvas → hold meetings → network out to other providers, quickly gained traction.

Even before the major social demonstrations got underway, the political clout of the organizations involved as well as the successful grass roots activism forced local politicians to support the campaign. In one instance, immediately after the announcement of the formation of the campaign, "[New York] City Councilman Bill de Blasio said he endorsed the day care providers' efforts to unionize" (Greenhouse 2005).

As stated, leadership development was always on the minds of the organizers early on. Any time a new provider was contacted, the organizer conducting the outreach would make note of it, and assign a number correlating to their perceived potential leadership abilities. Anytime a '1' was reached, indicating

that the provider was articulate, intelligent, well spoken, willing to dedicate time towards the campaign, and overall 'on board', they would be added to a special leadership list, contacted by the lead organizer and primed for future roles. Out all of the canvassing early on, four providers stuck out as exceptional leaders, with one, Tammie Miller being the clearly designated leader of the providers. The other three were encouraged to hire more assistants at their home, and basically move into the campaign in a full time capacity. The established political leadership of the movement was well aware that in order to be successful, the face of the campaign needed to be those directly affected.

To this effect, the ever growing yet still small core group of leaders met monthly with ACORN and UFT representatives and planned larger organizing meetings, held throughout New York. These meetings were open to the press, and were generally well covered. As the stories became more frequent, and were complimented by ever growing marches and small rallies, politicians at the state level took notice and acted accordingly. Only a few months into the campaign both the NYS Assembly, and even the conservative, Republican dominated Senate passed legislation allowing the providers to unionize by wide margins. All that was needed was a signature from the governor.

To this end the social activism that spurred the political component of the multi dimensional framework took the form of public rallies held outside of the offices where politicians worked. For example in May of 2006, in an effort to get Gov. Pataki to sign the legislation into law, "Hundreds of child care providers

rallied outside Gov. George Pataki's Midtown office ... to urge the governor to sign legislation allowing them to join a union and to negotiate with the state." (Whitt 2006). Yet the UFT had overplayed its hand. Pataki was a lame duck governor, far from indebted to progressive activists and teachers. He vetoed the bill. The coalition next turned its attention towards pushing the legislature to override the veto. Again the social change aspect of the campaign as expressed through the grassroots picks up again. Providers were told to call into legislators' offices and demand they override the veto. To some extent this worked, as the Assembly held to its word, yet as expected the Senate failed to override their fellow Republican. With defeat looming, the providers took sight on the incoming governor, Elliot Spitzer during his campaign. On the campaign trail heavy lobbying pushed Spitzer into promising that once in office he would simply offer an executive order changing the provider's status. From the moment he was sworn in on January 1st 2007, the providers through the UFT an ACORN coordinated a non-stop political, grass roots, and public relations blitz, forcing the governor to keep his word. Lobbying by allied politicians who simply saw the grass roots power as a way to move up the political chain, more rallies and marches as well as press releases all forced Spitzer to action.

All of the efforts paid off, and on May 12, 2007 Gov. Spitzer signed his 12th Executive Order, which stated that "... New York State shall recognize as the



representative of the child care providers... such representative as is designated by a majority of the providers..." (Sptizer 2007, Lovett 2007). In effect a legal path

was laid out which allowed the provider to start the actual process towards unionization. To this date, the social movement through its rallies, marches, and coordinated public relations campaign had achieved its first and most difficult objective, creating a social movement that would create political change. As the movement forged on, the scene of battle changed from the governor's mansion to the courtroom.

As laid out in the executive order, "Any prospective representative may demonstrate majority designation by submitting authorization cards approving its representation" (Sptizer 2007). To achieve representation status, the group needed to submit authorization cards from 50% plus one of registered providers. If they reached over 30%, yet failed to hit the 50% threshold, an automatic election would be required among all eligible providers as laid out by the bylaws of the State Employment Relations Board (SERB) in conjunction with the Office of Children and Family Services (OCFS).

As the next step in the campaign, the leadership immediately took stock of available options. In an effort to increase the potential union's political clout, as well as further ensure continued political support, it was decided that the providers would intentionally undercut the 50% rate, in order to trigger an election. The election was viewed as a means of showing policy makers their strength in numbers. A goal of 12,000 authorization cards was set, halfway in between the 30 and 50% thresholds. From May until early June the campaign focused all of its efforts on this goal.

In order to impress not only SERB (a quasi judicial body in its own right) but the presiding state judge in Albany whose duty it was to certify the authorization cards, a similar social movement was created. Leadership meetings were followed by borough meetings followed by city wide meetings followed by more meetings followed by rallies, etc. The campaign was in full swing and providers were issued their authorization cards. The campaign kept careful track of the numbers game and by early June had amassed over 12,000 cards to be sent to the judge upstate. What ensued next was some of the most trying weeks. As expected, serious negotiations as to the validity over the cards took place in the courtroom. As providers are paid so little, the program is more or less a



revolving door, and identifying who is a currently registered provider was rather difficult. Yet with political capital, legal maneuvering, and a publicity stunt

where the authorization cards were literally wheeled to the court (see picture), the state judge certified the cards in June. After negotiations between the UFT, SERB, OCFS, and the judge, an election was called between September and October of 2007. The mail in election required a simple majority of votes to be 'yes votes' in order to qualify for representation, yet the union wanted to make a splash.

Throughout the summer activist providers such as Jenny Rivera in Manhattan and Melvina Vandross in The Bronx (see below) aided by community organizers from ACORN (including myself) canvassed the 5 boroughs raising



awareness of the upcoming election. More public rallies were held all over the city, and providers were encouraged to reach out to each other, as well as hold local house meetings. The VOTE YES

campaign kicked off at a major rally in Harlem on Aug. 28th where a myriad of politicians addressed the boisterous crowd of providers clamoring for a union. The slogan throughout the summer was Union Now- Vote Yes/ Union Ahora Vote Si!

As the election rolled around the social movement was gaining strength, and providers from all five boroughs became more involved than ever. While

voting was an arduous task, by the time SERB and the state court certified all ballots, the final vote was 8,382 to 96, a resounding victory!



By the end of October the state court had validated the election and the UFT was officially named the representative of the providers in NYC. While the whole process

was arduous, and is still ongoing we can look at the genesis of events and understand how a social movement led by the providers and ACORN/UFT through a concerted grassroots and public relations campaign, forced politicians to action, and the courts to follow suit. While not working exactly within the framework, the providers' success was the biggest union organizing drive in NY in decades and will surely serve as a framework for future campaigns. Yet where does this leave the providers?

Unionization was merely a means towards and end, better working conditions and benefits. Throughout the summer as the election looked more and more like an assured victory, the UFT head organizer began preparing for contract negotiations. In my capacity, I worked some of the time in the field, and some of the time as a researcher identifying potential bargaining points and positions. Contract negotiations are currently underway, and will probably be

for a long time, as they are quite complex. The fiscal reality explained earlier in terms of how the program is underwritten by the federal government through various agencies leads to many regulations and conditions that are difficult for even policy makers to truly understand. There exist many ambiguities within the many levels of law corresponding to the providers that need to be understood before a contract will be reached. However the providers can expect a few things for sure.

First and foremost, a pay increase. [To the best of my knowledge] The federal government sets the market rate with which providers are allowed to charge private parents for day care. From here, the State sets a benchmark percentage of this as the rate that they will reimburse providers for taking care of subsidized children. This is the area ripe for negotiation. While some states offer providers close to 100% of the private rate, New York has settled on 75% to the best of my knowledge (this information is difficult to access and analyze without access to private documents located in NY). I predict that after negotiations the percentage reimbursed will increase possibly 5-10%. Additionally, it would be entirely in the realm of possibility for the \$17 network oversight fee to be transferred out of the provider's hands possible back to the City. However, state regulations make this uncertain. Additionally, benefits should become a reality, with an inclusion of sick days as well as better professional development and a better staffed ACS. This is all currently being sorted out. Yet a new contract is far from the only practical ramifications of unionization.

While the state government was eager to help the providers, local City policy makers were quite opposed. Mayor Michael Bloomberg was adamantly opposed to unionization. With some validity, he argued that by increasing the per-provider salary, yet without the State transferring more funds to the city for subsidies, there will exist a windfall possibly in the neighborhood of \$100 million. With NYC in a poor fiscal state, this could invariably lead to fewer providers being allowed to register. In economic terms, by raising the wage you create a surplus of labor, yet limited resources mandate fewer providers, so we will have a shortfall of open spots. In the end the children who are not allowed to attend daycare could truly suffer. Yet this is all hypothetical.

In terms of the organizations involved, the UFT has grown to epic proportions. They now represent 128,000 members, and have increased their budget significantly as well. This could lead to even greater political power in NY, as well as greater leverage in future non-provider teacher contract negotiations. Likewise, ACORN has new members, greater political capital, as well as heightened awareness of the organization. In reality this was a win-win-win-win-lose situation. With the UFT, ACORN, providers, the kids, and the governor winning, with only the networks, who had been paid to perform oversight they were not conducting probably losing out in the end.

The campaign was a scripted, coordinated movement that in reality had few surprises along the way. The intelligent and seasoned organizers gamed out most scenarios, and planned every detail extremely effectively. In my opinion

there were few unforeseen consequences in terms of the campaign. I would offer that there is the potential for the program to move NYC into the red. If forced to provide more money to the programs, it would in a sense be an unfunded mandate, and the City could try and either undercut the contract, transfer more costs to the providers, or simply refuse to register new providers as to stagnate their budget.

While the possibility of adverse affects is real, the overall movement was a wild success. The providers are a great example of how the grass roots, working with the press can utilize social change to force political and legal change which in the end creates changes within society for the better of tens of thousands of providers and hundreds of thousands of children, and I am proud to say that I was a part of the process.

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Throughout the course of the summer, and again while working on this project I talked with a number of providers as well as ACORN, UFT, and ACS staff. Most of these interviews are non documented, and form the factual basis of the paper.