

## “We Have to Take it to the Top!”<sup>1</sup>: Workers, State Policy, and the Making of Home Care\*

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On Halloween 1988, seventy-five Chicago home care workers shouted in front of the Evanston residence of Janet Otwell, director of the Illinois Department of Aging (IDO): “No More Tricks, Treat Us with Dignity and Respect!”<sup>2</sup> For weeks, Otwell had rebuffed their requests for a meeting, so these black women, members of Service Employees International Union (SEIU) Local 880, finally took dramatic action.<sup>3</sup> Seeking to draw attention to “poverty wages and the union-busting activity of vendors in the state’s home health care program,” they marched on her lawn, posted notices on her door and those of her neighbors, and caused a commotion reminiscent of the heyday of the welfare rights movement.<sup>4</sup> Local 880 President Irma Sherman declared: “The vendors are making a tidy profit and we are left living from paycheck to paycheck, with no health coverage and no benefits to speak of—we’re tired of their bag of tricks.”<sup>5</sup> Since IDOA set the framework for elder home care, the union demanded a voice in policymaking along with

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\* Unless otherwise indicated, portions of the following discussion have been drawn from and expand upon scholarship reported in EILEEN BORIS & JENNIFER KLEIN, *CARING FOR AMERICA: HOME HEALTH WORKERS IN THE SHADOW OF THE WELFARE STATE* (2012).

1. *Union Members Going to Springfield*, THE *HOMEMAKERS’ VOICE*, Mar. 1985 (quoting Local 880 union member Mary Jones).

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2. *For Immediate Release: Homecare Workers Give Halloween Message to Director of Aging*, Oct. 29, 1988, in LOCAL 880 RECORDS, Box 3, Folder 2, available at Wisconsin Historical Society.

3. *Id.*

4. *Id.*

5. *Id.*; Letter from Gale S. Thetford to Keith Kelleher, Lead Organizer, Local 880 (Oct. 31, 1988), in LOCAL 880 RECORDS, Box 3, Folder 2, available at Wisconsin Historical Society.

advocates for the aged. Local 880 got the attention of the state and soon became a player in home care politics.<sup>6</sup>

Community organizing and political unionism, Local 880 found, could together improve the lives of home health care workers.<sup>7</sup> On the one hand, the SEIU had discovered an alternative route to unionization through grassroots action.<sup>8</sup> Rather than an offshoot of a pre-existing local, Local 880 began as part of the United Labor Unions (ULU), a project of the Association for Community Organizations for Reform Now or ACORN. ULU represented a workforce counterpart to the neighborhood organizing of ACORN.<sup>9</sup> On the other hand, given the structure of home care, it was never enough just to win collective bargaining rights with individual agencies—as unions in New York already had learned. To make economic gains, the union had to go to government.<sup>10</sup> But with Reagan Era assaults on public benefits and government employees, turning to the state for economic rights was no easy matter.<sup>11</sup> Political unionism would require innovative tactics and new allies.<sup>12</sup>

Home aides and attendants perform intimate tasks of daily life—such as bathing, brushing teeth, dressing, cooking, and cleaning—that enable aged, disabled, or chronically ill people to live decent lives at home.<sup>13</sup> These essential workers are America's front-line caregivers, but they earn average hourly wages lower than that of all other jobs in health care and historically have labored without security of employment, social benefits, or even workers'

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6. EILEEN BORIS & JENNIFER KLEIN, *CARING FOR AMERICA: HOME HEALTH WORKERS IN THE SHADOW OF THE WELFARE STATE* 149 (2012).

7. *Id.* at 149.

8. *See id.* at 149-81 (demonstrating the use of grass roots action and organizing by Local 880).

9. *Id.* at 138-43, 176-81; VANESSA TAIT, *POOR WORKERS' UNIONS: REBUILDING LABOR FROM BELOW* 101-28 (2005).

10. BORIS & KLEIN, *supra* note 6, at 149.

11. *Id.*

12. *Id.*

13. *See Home Health Aides and Personal and Home Care Aides: Duties, Occupational Outlook Handbook*, U.S. BUREAU OF LABOR STATISTICS (Apr. 5, 2012), <http://www.bls.gov/ooh/Healthcare/Home-health-and-personal-care-aides.htm#tab-2>.

compensation.<sup>14</sup> They labor in private spaces meeting individual and family needs.<sup>15</sup> But how they do so is a story of political economy, one that reflects the major shifts in the welfare state and economic life that define contemporary America. Home care aides make up a vast workforce of over 1.8 million workers<sup>16</sup>—much larger than those of the iconic industries of auto and steel—that links our most challenging social issues: an aging society; the enormous medical sector and its ability to prolong life; the neo-liberal restructuring of public services; immigration; disability rights; the prospects of health care for all and the potential of a new American labor movement.

Home care is currently the fastest growing occupation in the nation, adding hundreds of thousands of positions at a steady clip. Numbering almost two million at the start of the Great Recession, the United States Bureau of Labor Statistics projects the fastest employment growth in home health aide jobs through 2020.<sup>17</sup>

These low-waged workers stand at the center of a new care work economy, defined by a continuum of jobs: hospital workers, nursing home aides, child care workers, teachers' aides, preschool teachers, school lunch room aides, mental health and substance abuse social workers and counselors, social and human services assistants and specialists, and occupational therapists.<sup>18</sup> These jobs are also increasingly

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14. See *Home Health Aides and Personal and Home Care Aides: Pay*, *Occupational Outlook Handbook*, U.S. BUREAU OF LABOR STATISTICS (Apr. 5, 2012), <http://www.bls.gov/ooh/Healthcare/Home-health-and-personal-care-aides.htm#tab-5>.

15. See *Home Health Aides and Personal and Home Care Aides: Duties*, *supra* note 13.

16. See *Home Health and Personal Care Aides*, *Occupational Outlook Handbook*, U.S. BUREAU OF LABOR STATISTICS (Apr. 5, 2012), <http://www.bls.gov/ooh/Healthcare/Home-health-and-personal-care-aides.htm#tab-1>.

17. See *id.*; *Home Health and Personal Care Aides: Job Outlook*, *Occupational Outlook Handbook*, U.S. BUREAU OF LABOR STATISTICS (Apr. 5, 2012), <http://www.bls.gov/ooh/Healthcare/Home-health-and-personal-care-aides.htm#tab-6>.

18. Eileen Boris & Jennifer Klein, *Organizing the Carework Economy: When the Private Becomes Public*, in *RETHINKING U.S. LABOR HISTORY: ESSAYS ON THE WORKING-CLASS EXPERIENCE, 1756–2009*, at 192-216 (Donna Haverty-Stacke & Daniel J. Walkowitz eds., 2010) [hereinafter Boris & Klein, *Organizing the Carework Economy*].

important because they cannot be offshored. Wherever capital may migrate globally to produce goods or provide technical services, care work stays home. As had been the case with manufacturing a century earlier, waves of new immigrants continually replenish these jobs. Consequently, women's labors—once considered outside of the market or at the periphery of economic life—have now become the strategic sites for worker struggle and the direction and character of the American labor movement.

Just about the only growth in the United States labor movement has been in health care, public employment, food service and hotels, education, and domestic labors.<sup>19</sup> These workers transformed organizing strategy, union demands, and the very nature of collective bargaining. Home care became a pivotal sector in which unions experimented with new tactics. Since the job stood outside New Deal labor laws, unionization had to take shape apart from that framework. Workers also had to take account of the complex interpersonal relations essential to carework. They had to enter into alliances with the receivers of care (who have labeled themselves “consumers”). Even though they labored in private homes and had no standing as employees, they turned the public welfare state itself into a terrain of social struggle. By 2010, over 400,000 home care workers had joined unions, although over the last year their union and bargaining rights have been jeopardized by the conservative governors that took over state houses in 2010 Republican sweep.<sup>20</sup>

We have sought to rethink the history of the American welfare state from the perspective of care work. Social policies are not just income transfer programs. They also depend on a particular configuration of labor that facilitates support on a daily basis. Government has had a central role in creating labor markets in human and social services. Broad trends in United States social policy over the latter

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19. See Dorothy Sue Cobble & Michael Merrill, *The Promise of Service Unionism*, in *SERVICE WORK: CRITICAL PERSPECTIVES* (Cameron McDonald & Marek Korczynski eds., 2009); John Schmitt & Kris Warner, *The Changing Face of Labor, 1983–2008*, *CTR. FOR ECON. & POL'Y RES.* 1, 18 (2009); *Economic News Release*, U.S. BUREAU OF LABOR STATISTICS (Apr. 5, 2012), <http://bls.gov/news.release/union2.nr0.htm>.

20. Interview with Keith Kelleher, President, SEIU Healthcare Illinois and Indiana (Oct. 2011).

half of twentieth century fostered the creation of new occupations, funded by the state, and actively channeled particular workers into these jobs, especially poor and minority women, deploying and perpetuating gender and racial inequality. The beneficiaries of the services, the structure of the industry, and the terms and conditions of the labor were all products of state intervention.

Home care has existed in a clouded nether world between public and private, family care and employment. It was possible because of the devaluation of women's work and the stigmatization attached to the labor of poor women of color. The labor, however, is devalued not just because of its ascribed racial or gendered meanings but because of the way the state chooses to structure it. This outcome, we show, is historical rather than epiphenomenal; devaluation is not only structural and ideological but a product of conflict and accommodation between experts, state authorities, workers, care receivers, and institutions since the New Deal.

For decades, while the American population, like that of Western Europe, has aged and baby boomers have moved toward retirement, the United States Congress failed to enact a genuine long-term care policy. In the absence of guaranteed social insurance, the default has been to use public assistance and Medicaid. In our research, we primarily discuss services funded through various public programs. They are not unconnected, however, to the allegedly "private market" wherein middle-class families purchase care for their loved ones. The United States reliance primarily on means-tested social services available only to the poorest people fundamentally shaped the entire labor market for care. The claim of the Supreme Court in 2007 in *Long Island Care at Home, Ltd. v. Coke*,<sup>21</sup> in sustaining the exclusion of home care workers from the nation's wage and hour law, exemplifies the fear that only through cheap labor can we provide long term care. The assumption that the provision of care is a zero-sum trade-off further implies that denial and self-sacrifice are essential to a genuine "ethic of care." *Caring for America* argues that we all have a stake in rethinking that assumption.

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21. 551 U.S. 158 (2007).

## I. ORIGINS

Home care as a distinct occupation emerged in the crisis of the Great Depression to meet both welfare and health imperatives.<sup>22</sup> One strand took shape as work relief for unemployed black women who previously labored in domestic service.<sup>23</sup> During the New Deal, state funding began to play a significant role in formulating a new occupation that helped poor families and individuals with medical emergencies, chronic illness, and old age, while curtailing the costs of institutionalization.<sup>24</sup> Through Homemaker Service, state and local governments would provide support to one group of needy Americans, women with children, through employing another needy group, poor, unemployed women, as “substitute mothers.”<sup>25</sup> The government employed homemakers directly through the Works Progress Administration (WPA).<sup>26</sup>

Relieving public hospitals of long-term elderly and chronically ill patients became the other origin of state-supported home-based care.<sup>27</sup> The WPA initiated programs to move such people out of the hospital and give them the necessary assistance to become “independent” at home.<sup>28</sup> These programs often called the workers “housekeepers,” reflecting the non-medical designation of service workers in

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22. BORIS & KLEIN, *supra* note 6, at 11.

23. *Id.*

24. *Id.*

25. *Id.*

26. See *id.*; MAUD MORLOCK, *HOMEMAKER SERVICES: HISTORY AND BIBLIOGRAPHY* 1-3 (1964); *Report on the First Year's Work of the WPA Project, February 15, 1937*, in Mary C. Jarrett Papers, Sophia Smith Collection, Smith College, Box 4, Folder 50.

27. BORIS & KLEIN, *supra* note 6, at 11.

28. *Id.* at 11, 28-30 (citing FINAL REPORT OF THE WORKS PROGRESS ADMINISTRATION FOR THE CITY OF NEW YORK 212 (1945); Marta Fraenkel, *Housekeeping Service for Chronic Patients*, WELFARE COUNCIL OF NEW YORK CITY (1942); S.S. Goldwater, *The Aims of the Department of Hospitals*, in THE SIGNIFICANCE OF RESEARCH IN PREVENTION AND CARE OF CHRONIC ILLNESS: SUMMARY OF PROCEEDINGS OF THE MEETING HELD BY THE COMMITTEE ON CHRONIC ILLNESS, in Mary C. Jarrett Papers, Sophia Smith Archives, Smith College, Box 3, Folder 48; *The Hospitalization of the Chronically Ill* (NBC broadcast Apr. 18, 1935), in Mary C. Jarrett Papers, Sophia Smith Archives, Smith College, Box 3, Folder 48).

hospital settings.<sup>29</sup> In either case, central to this origin was the location of the program in assistance to the poor.<sup>30</sup> Not only the workers but also the clients, who obtained eligibility for the service from the Department of Welfare, had to be destitute.<sup>31</sup>

Yet while these 1930s public works programs created paid caregiving positions, New Deal labor law ignored the resulting workforce. The labor rights of the New Deal—old age insurance, unemployment benefits, collective bargaining, minimum wages, and maximum hours—excluded nurse companions, homemakers, and other in-home care workers from coverage. In 1940, the Fair Labor Standards Act (FLSA) categorized nurse-companions and other in-home care workers hired directly by clients as domestic workers.<sup>32</sup> As the New Deal made work the entrée to a host of new social benefits, domestic work suffered further marginalization.

The New Deal left a three-fold legacy, which persisted through the rest of the century.<sup>33</sup> Although tied to the medical sector, the state would pay for home-based care through welfare agencies but often with federal funds. Second, policy experts and welfare administrators saw female public assistance recipients as a ready supply of labor for home care.<sup>34</sup> And, third, the exclusion of home attendants from national wages and hours laws would remain in place for the next seven decades.<sup>35</sup> Though first focused on families with children, with the growth of Social Security after World War II, homemaker services came to

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29. *Id.* at 11; *The Story of the Housekeeping Aides Project, March 7, 1938*, in HEALTH, PRODUCTION, AND SERVICE PROJECTS OF THE PROFESSIONAL AND SERVICE DIVISION OF THE WPA, NEW YORK CITY (1939), available at Part I, PSP, folder, “Narrative Reports NYC,” RG 69, Nat’l Archives and Records Admin., College Park, Md.

30. BORIS & KLEIN, *supra* note 6, at 11.

31. Fraenkel, *supra* note 28, at 81-82.

32. See PHYLLIS PALMER, DOMESTICITY AND DIRT: HOUSEWIVES AND DOMESTIC SERVANTS IN THE UNITED STATES, 1920–1945, at 111-35 (1989); MARY POOLE, SEGREGATED ORIGINS OF SOCIAL SECURITY: AFRICAN AMERICANS AND THE WELFARE STATE (2006).

33. *Id.* at 39.

34. *Id.*

35. *Id.*

prioritize the support for the elderly, a group of voters privileged by the American welfare state over other recipients of social assistance.<sup>36</sup>

Following World War II, private family agencies led by women social workers and aided by the U.S. Children's Bureau attempted to create a good job for "mature women" and define a new occupation—a job that took place in the home but performed the public work of the welfare state.<sup>37</sup> Over the next decade, a mixture of public welfare departments and private agencies established visiting homemaker programs and boarding programs to maintain aged and disabled people in the community rather than in more expensive hospitals and nursing facilities.<sup>38</sup> The service grew through demonstration projects and charities receiving child welfare grants and assistance to the indigent aged.<sup>39</sup> They aimed at convincing the community to fund centralized public services.<sup>40</sup>

The promotion of home care in the two decades after WWII demonstrates how competing definitions of care—particularly the labor of care—fundamentally shaped old age, disability, and welfare policy; job training; and an emerging labor market.<sup>41</sup> Welfare, health, and medical professionals held contrasting views on the location of care; they also had distinct ideas about who should perform the valorized or menial aspects of such labor.<sup>42</sup> Gendered and racialized understandings of carework, home life, and institutional authority initially led home care down two

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36. *Id.*

37. *See id.* at 44 nn.18, 20 (citing U.S. CHILDREN'S BUREAU, SUPERVISED HOMEMAKER SERVICE: A METHOD OF CHILD CARE, PUB. 296 (1943); NAT'L COMM. FOR HOMEMAKER SERV., *Minutes of Meeting, Nov. 13-14, 1947, New York 4, available at* Central Files 1949-1952, Box 119, Folder "4-6-11," RG-102, U.S. Children's Bureau Records, Nat'l Archives & Records Admin., College Park, Md.; *Homemaker (dom. Ser.) housekeeper, visiting, 677, Domestic Service Occupations (2.00.00-2.09.99)*, in DIV. OF OCCUPATIONAL ANALYSIS, USES, FSA, SSA, BUREAU OF EMP'T SECURITY, *DICTIONARY OF OCCUPATIONAL TITLES, VOL. II* (1949), at 59).

38. BORIS & KLEIN, *supra* note 6, at 40.

39. *Id.*

40. *Id.*

41. *Id.* at 41-42.

42. *Id.* at 42.



developmental tracks: a social work model and a medical care model.<sup>43</sup> Throughout this process, social workers sought to maintain some control over a new occupation in the face of its increased medicalization.<sup>44</sup>

The rapidly expanding postwar medical system sought its own strategies for aiding the chronically ill and disabled persons. Home care offered a possible remedy for problems of overcrowding and patient priority driven by budget concerns.<sup>45</sup> Voluntary hospitals could move chronically ill, often impoverished patients out—without abandoning them.<sup>46</sup> In this medical model, home care would become one element in a far-reaching medical institutional complex extending outward from the hospital.<sup>47</sup>

Welfare and medical initiatives shared an emphasis on dependency, defined in social, psychological, physical, and gendered terms.<sup>48</sup> Professionals in each realm agreed that large numbers of relief recipients suffered from chronic illness or impairments.<sup>49</sup> With the right intervention—or *care*—a significant percentage of such individuals should and could be moved off public assistance, the categorical programs for the elderly, disabled, and children.<sup>50</sup> Each group deployed notions of rehabilitation toward the goal of ending dependency, believing that it could help patients or clients achieve some final state of independence.<sup>51</sup> Yet while social workers envisioned home care as a public job—with the features of dependable employment—the predominance of the medical model, among other things, resulted in increased casualization of the labor.

From the 1940s up to the early 1960s, social workers and welfare advocates transformed (through patchwork means and backdoor channels) a program originally

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43. *Id.*

44. *Id.*

45. *Id.* at 56.

46. *Id.*

47. *See id.*

48. *Id.* at 41.

49. *Id.*

50. *Id.*

51. *See id.* at 66.

intended for children into a long-term care system.<sup>52</sup> That it took shape as a welfare service would have ramifications well into the future—for policy makers, consumers, workers, and the American labor movement. For in the years after World War II, the major expansions of the United States welfare state occurred through the Hill-Burton Act, which funneled money into hospital development and medical institutions, and the growth of Social Security pensions.<sup>53</sup> Advocates for home care never had access to those more generous components of the American welfare state.<sup>54</sup> They only had access to the lesser titles of the Social Security Act—those set up for child welfare, adult categorical aid (old age indigence, blindness, and disability) and social services.<sup>55</sup> Although home-based care would eventually become crucial to the medical system, these programs stayed within the realm of welfare policy.

Proponents of the service created a dual ideology of rehabilitation. The “deserving” clients of social assistance—the elderly, chronically ill, and disabled—depended on the “undeserving” recipients of Aid to Families with Dependent Children (AFDC).<sup>56</sup> From the 1930s on, each generation of government officials clung to the premise that poor single mothers could end their own dependency on welfare by maintaining the independence of those incapacitated through no fault of their own—that is, by performing care work.<sup>57</sup> They could become rehabilitated in the process of rehabilitating others.<sup>58</sup>

What developed before the War on Poverty was a combined public/private system of care with poor women on public assistance as both the receivers and workers. The War on Poverty in the 1960s provided new vehicles for the state to expand the home care labor market. The new Office of Economic Opportunity in 1964 created programs for AFDC recipients to meet the labor shortage in service

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52. *Id.*

53. *Id.*

54. *See id.*

55. *Id.* at 12, 51-52.

56. *Id.* at 12.

57. *Id.* at 12-13.

58. *Id.* at 13.

occupations, especially health and child aides, home attendants, and homemaker aides, positions still classified by the United States Department of Labor as similar to domestic service.<sup>59</sup> Anti-poverty warriors argued these could be made over into “New Careers.”<sup>60</sup> But essentially, the new career turned out to be much like the old one: a low-waged job in domestic labor. The legacy of the Johnson years lay with new rights and services for the elderly through the Older Americans Act and Medicare. Because home care, while necessary to keep people in their communities was deemed not medical, few Medicare dollars would go to it. Instead, Medicaid became over time the de facto funding mechanism for home care: needs-based and dependent on state-level largess.<sup>61</sup> It remained part of the contentious politics of welfare.

Although home care workers began organizing through the variety of social movements of the 1960s and 1970s—especially welfare rights and domestic workers rights—they found themselves once again pushed into the economic shadows when the FLSA came up for amendment in 1974. With every anti-poverty program that channeled particular poor women into home care jobs, Congress continually deferred the inclusion of care workers in the labor law. During the 1960s, amendments to the FLSA placed agricultural, nursing home, and many retail workers under

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59. See *Toward Full Employment: Proposals for a Comprehensive Employment and Manpower Policy in the United States: Hearing Before the Subcomm. on Emp't and Manpower of the Comm. on Labor and Public Welfare*, 88th Cong. v-vii, at 25 (1964); *Services to the Elderly on Public Assistance: Hearing Before the Subcomm. on Federal, State, and Community Servs. of the Special Comm. on Aging*, 89th Cong. 10 (1965) (statement of Dr. Ellen Winston).

60. ARTHUR PEARL & FRANK RIESSMAN, *NEW CAREERS FOR THE POOR: THE NONPROFESSIONAL IN HUMAN SERVICES* 13 (1965); FRED POWLEDGE, *NEW CAREERS: REAL JOBS AND OPPORTUNITIES FOR THE DISADVANTAGED* 1-3 (Public Aff. Comm., Public Aff. Pamphlet No. 427 1968).

61. See PENNY HOLLANDER FELDMAN ET AL., *WHO CARES FOR THEM? WORKERS IN THE HOME CARE INDUSTRY* (1990); ADMIN. ON AGING, *HUMAN RESOURCES IN FIELD OF AGING: HOMEMAKER-HOME HEALTH AIDE SERVICES*, ADMINISTRATION ON AGING OCCASIONAL PAPERS IN GERONTOLOGY, NO. 2 (1977); Katherine Ricker-Smith, *A Historical and Critical Overview of the Development and Operation of California's In-Home Supportive Services Program*, S.F. HOME HEALTH SERV., GRANT HEW-100-78-0027, 31-36 (1978), available at Calif. State Library; Brahma Trager, *Homemaker-Home Health Aide Services in the U.S.*, U.S. GOVERNMENT PRINTING OFFICE 10-12 (1973).

the federal wage and hour law.<sup>62</sup> Still, most in Congress could not accept home care as work, on par with other paid employment; a mixture of housekeeping and bodily care, the job consisted of tasks expected from unpaid wives, daughters, and mothers. In 1974, Congress finally included private household workers in the wage and hour law in one of the largest legislative expansions of FLSA.<sup>63</sup> Nursing home workers were also included for overtime pay.<sup>64</sup> But at this moment of triumph—a critical civil rights gain for women of color—those doing the same care work in individual homes were left out.<sup>65</sup>

A definitional ruse reduced the home aide to an elder companion.<sup>66</sup> The Senate Committee on Labor and Public Welfare explicitly refused “to include within the terms ‘domestic service’ such activities as babysitting and acting as a companion.”<sup>67</sup> Companion or sitter implied friendly visitors, not women who labored to support themselves or their families.<sup>68</sup> The passive term “watch” implied no real work was going on.<sup>69</sup> When the Department of Labor promulgated rules for the implementation of the 1974 FLSA amendments, it codified this previously nonexistent “companionship exemption.”<sup>70</sup> Congress remedied one

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62. See Phyllis Palmer, *Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act*, 7 J. POL'Y HIST. 419, 419-40 (1995).

63. See Eileen Boris & Jennifer Klein, *Making Home Care: Law and Social Policy in the U.S. Welfare State*, in INTIMATE LABORS: CULTURES, TECHNOLOGIES, AND THE POLITICS OF CARE 187-203 (Eileen Boris & Rachel Salazar Parrenas eds., 2010) [hereinafter Boris & Klein, *Making Home Care*].

64. See *id.*

65. “Highlights of the Fair Labor Standards Act Amendments of 1974,” S1, B11, “Minimum Law,” 417-18.

66. BORIS & KLEIN, *supra* note 6, at 131.

67. See *id.*; U.S. Congress, S. Comm. on Labor and Public Welfare, *Fair Labor Standards Act Amendments of 1971*, at 30 (1971); SUBCOMM. ON LABOR AND PUBLIC WELFARE, UNITED STATES SENATE, LEGISLATIVE HISTORY OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1974 (PUBLIC LAW 93-259), at 964 (1976) (statement of Sen. Javits) [hereinafter “LEGISLATIVE HISTORY OF THE FLSA OF 1974”].

68. See BORIS & KLEIN, *supra* note 6, at 131.

69. *Id.*

70. Boris & Klein, *Making Home Care*, *supra* note 63, at 196-97.

injustice but generated a new inequality by explicitly omitting those *newly* termed as elder companions.

The final legislative language opened the way for administrative rule-making that would keep homemakers outside the law. Whether from outdated notions of the companion or downright ignorance about the maintenance of impaired individuals, Congress classified household chores such as “making lunch or throwing a diaper into the washing machine” as “incidental” rather than integral to the labor.<sup>71</sup> It was then up to the Department of Labor’s Wage and Hour Division to draft the new regulations that would implement the FLSA amendments.<sup>72</sup> After an open comment period, the Wage and Hour Division issued its final ruling in February 1975 exempting elder companions from the newly extended FLSA coverage.<sup>73</sup> What distinguished the companion from the domestic now was the amount of time spent in housework not directly related to care. If housework was incidental to the job, less than 20% of the workday, then the worker was a companion rather than a domestic and therefore outside the law.<sup>74</sup> This formulation ignored the actual work of home care, which involved a range of household tasks that allowed the family or individual to function in a domestic environment.<sup>75</sup> The final rule excluded not only aides hired directly by a household but also those employed by hospitals and private health and social welfare agencies (referred to as “third parties”) previously covered under the law.<sup>76</sup> The Wage and Hour Division offered no explanation for changing the

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71. BORIS & KLEIN, *supra* note 6, at 132; LEGISLATIVE HISTORY OF THE FLSA OF 1974, *supra* note 67, at 964 (statement of Sen. Burdick).

72. BORIS & KLEIN, *supra* note 6, at 132.

73. *Id.*

74. *Id.*

75. *Id.*; compare Employment of Domestic Service Employees, 39 Fed. Reg. 35,382, 35,383-84 (proposed Oct. 1, 1974) (to be codified at 29 C.F.R. pt. 552), with Employment of Domestic Service Employees, 29 C.F.R. §§ 552.5, 552.103, 552.106 (1975).

76. BORIS & KLEIN, *supra* note 6, at 132; see Opinion Letter of Wage-Hour Administrator, No. 1226 (WH-174), [1969–1973 Transfer Binder] 2 CCH LAB. L. REP. ¶ 30,809, at 42,262 (1972).

status of home care workers.<sup>77</sup> The rule freed staffing agencies from paying minimum wages and overtime.

The reclassification of home care workers in the mid-1970s occurred just as the demand for long-term care began to explode, with senior citizens and a disability rights movement calling for community and home-based alternatives to institutionalization in the face of horrifying nursing home scandals.<sup>78</sup> After 1976, the home health care sector entered a phase of significant growth—that is yet unabated—as counties and states turned aides into more casualized workers. Conveniently, it came just as home care service was rapidly becoming a growth industry; changes to Medicare, Medicaid, and other government programs, especially after 1980, fueled a new for-profit sector.<sup>79</sup> This determination that home care would be low-paid, low-cost, labor somehow reassured governments that herein lay the answer to several welfare problems: overcrowding of public hospitals, rising cost of nursing homes, an aging population, and public refusal to spend tax dollars on “welfare.”

Two soon-to-be dominant forms of delivery emerged in the 1970s: the independent contractor and the private vendor.<sup>80</sup> Local and state governments turned to contracting home care through private agencies or designating care workers as “independent contractors” without benefits or job security. By distancing such workers from public employment, states denied responsibility for the working conditions of an occupation whose contours government policies had done so much to set during the previous quarter century.

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77. BORIS & KLEIN, *supra* note 6, at 133.

78. *See id.* at 115-16 nn.106-07 (citing Frank J. Prial, *Abram Names 4 to Panel on Nursing Home Inquiry*, N.Y. TIMES, Jan. 31, 1975, at 69; *Excerpts from Cuomo's Report to Carey About Nursing Homes*, N.Y. TIMES, Jan. 17, 1975, at 30; John L. Hess, *Care of Aged Poor a Growing Scandal*, N.Y. TIMES, Oct. 4, 1974, at 1, 40; Memorandum from Alice M. Brophy, to Marvin Schick and Leon Panetta (Mar. 18, 1971); *Subject Files*, in JOHN LINDSAY PAPERS 1966-1973).

79. Andrew Sasz, *The Labor Impacts of Policy Change in Health Care: How Federal Policy Transformed Home Health Organizations and Their Labor Practices*, 15 J. HEALTH POL. POL'Y & L. 191, 195-96 (1990); *The Black Box Report*, AM. BAR ASS'N 1, 2 (1986).

80. *See* BORIS & KLEIN, *supra* note 6, at 133.

## II. ORGANIZING

Even as the welfare state location of the labor devalued the workforce, it opened up a new site of social and political struggle. How could these women gain a measure of political and economic power, in spite of enormous structural, ideological, and political obstacles? The story is a complicated one, especially since they faced the challenge of figuring out the structures of an ever shifting, evolving welfare state. Structurally, unions seeking to organize home care workers had to deal with the reality that the jobs were dispersed—while there were tens of thousands of workers, there was no common work site. Most workers never saw each other, and many had little sense that there were so many others out there doing the same kind of work.

Further, the work is different. The actual labor process is relational, creating interdependence.<sup>81</sup> Such work consists of more than tasks completed. It doesn't produce something that can be quantitatively measured, or easily represented, in the GNAT<sup>82</sup> Essential to the job are emotional labor, affection, and building trust.<sup>83</sup> Workers cannot go on strike and simply leave clients who are unable to get out of bed.<sup>84</sup> After spending many hours, weeks, even years with a client, the job may end suddenly with the death of the person cared for. Part of these workers' struggle involves establishing legitimacy of care itself in a way that defies our most taken-for-granted definitions of work as production.

Politically, unions faced an additional challenge: how to build a labor movement of poor people in a service so heavily dependent on state funding. The emergence of this movement coincided with President Reagan's cuts to social service, welfare, urban policy, tax policies, and Medicaid.<sup>85</sup> Women got squeezed as both clients and workers of the welfare state.

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81. *Id.* at 9.

82. *Id.*

83. See generally ARLIE HOCHSCHILD, *THE MANAGED HEART: THE COMMERCIALIZATION OF HUMAN FEELING* (1983); EVA FEDER KITTAY, *LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY* (1999); CLARE L. STACEY, *THE CARING SELF: THE WORK EXPERIENCE OF HOME CARE AIDES* (2011).

84. BORIS & KLEIN, *supra* note 6, at 9.

85. *Id.* at 149-81.

We have identified a series of organizing strategies that responded to the structure of home care since the 1960s. First, organizing took place among homemakers as employees of social welfare departments, that is, as welfare workers in New York swept up by the mid-1960s rise of public employee unionism.<sup>86</sup> Second, organizing occurred among welfare recipients, led by the independent living movement, which lobbied for the payments that made home care as a consumer service possible. But by winning a method of service delivery based on the employment of the care worker as an “independent contractor” (or provider), it established a framework that made it difficult for workers to find any clear employer to bargain collectively with.<sup>87</sup> A third organizing strategy was unionization as part of the service sector—through unions such as the SEIU.<sup>88</sup> This involved coalition building, community organizing, and political unionism. A fourth organizing strategy coincided with the union effort: legal challenges to exclusion of workers from definitions of “employee” or labor standards.<sup>89</sup> The legal challenge produced a two-track result: restructuring the state through public policy (for example, by creating new public authorities in California or state Home Care Commissions elsewhere to stand in for the multitude of dispersed employers);<sup>90</sup> and a series of court cases that eventually culminated in an unsuccessful 2007 Supreme Court case, *Long Island Care at Home, Ltd. v. Coke*.<sup>91</sup> A fifth and final organizing strategy has emerged not from unions but from a revitalized domestic worker movement led by immigrant women from the Americas and Asia to revalue care under the banner of “Caring Across the Generations.”<sup>92</sup> This movement aims to improve jobs

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86. *See id.* at 78-82, 89-91.

87. *See id.* at 94-108.

88. *See id.* at 123-82.

89. Boris & Klein, *Making Home Care*, *supra* note 63, at 187-203.

90. BORIS & KLEIN, *supra* note 6, at 194-99, 213-14; Boris & Klein, *Making Home Care*, *supra* note 63, at 187-203.

91. 551 U.S. 158 (2007).

92. *See* Barbara Ehrenreich, *The Nannies' Norma Rae*, N.Y. TIMES MAG. (Apr. 26, 2011); Ai-Jen Poo, *A Twenty-First Century Organizing Model: Lessons from the New York Domestic Workers Bill of Rights Campaign*, 21 NEW LAB. FORUM 50, 50-55 (2011).



through training, higher wages, a new path to citizenship, and connecting those who need care with those who do care.<sup>93</sup>

The story of home care organizing in Chicago and Illinois in the final decades of the twentieth century powerfully illustrates the tangle of public and private forces against which home care organizing occurred and how workers came out of the shadows to fight back.

In the mid-1970s, Illinois took advantage of federal monies to develop community care for the elderly.<sup>94</sup> Illinois initially ran its home care program out of public welfare.<sup>95</sup> In 1979 Illinois established two programs to pay for home care through its general revenues.<sup>96</sup> The Illinois Department of Aging started the Community Care Program, which contracted with a wide-range of nonprofit and proprietary agencies to offer homemaker and housekeeping services to those over age sixty.<sup>97</sup> Workers became employees of vendors rather than the state.<sup>98</sup> In a separate program disabled people under sixty would receive similar assistance from the Department of Rehabilitative Services (DORS), funded in good part after 1984 by Medicaid.<sup>99</sup> In keeping with the ethos of independence, DORS relied on a different mode: clients hired their own provider, who could be family or friends, with the state claiming to be a co-employer—and it set wages, for most of the decade at minimum wage.<sup>100</sup> Workers had no hospital or medical insurance, paid vacation, compensated sick days, life insurance, or compensation for time spent traveling to and from clients' homes, often on long bus and subway rides.<sup>101</sup>

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93. Laura Flanders, *Can 'Caring Across the Generations' Change the World?*, THE NATION (Apr. 11, 2012); see also CARING ACROSS GENERATIONS, [www.caringacrossgenerations.org](http://www.caringacrossgenerations.org) (last visited Mar. 13, 2013).

94. BORIS & KLEIN, *supra* note 6, at 162.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 163.

99. *Id.*

100. *Id.*

101. *Id.*

ACORN came to town to change all of this in 1983, planting a branch of its United Labor Unions (ULU).<sup>102</sup> Key ACORN leaders and rank and filers had come out of the welfare rights movement.<sup>103</sup> Like other radicals of the period, they had developed a sectoral analysis that linked low wage workers with those on public assistance, including poor single mothers.<sup>104</sup> The ACORN model tied together workplace issues, such as wages and working conditions, with community ones, such as struggles over housing, banking, and living wage campaigns. Union organizing was one part of a broader mobilization against poverty. ULU, which in Chicago would become SEIU Local 880, used direct action and political lobbying with agency-by-agency bargaining.<sup>105</sup> It built power by recruiting members through door to door canvassing, house meetings, and developing leaders for specific actions. From the get go, it mobilized members for electoral campaigns to gain access to political power. It would “build an organization first” that could maintain itself during workplace campaigns that could take years.<sup>106</sup> Members paid dues from the moment they signed up, well before the union had a contract or certification; for people who made little, paying over that few dollars a month cemented organizational loyalty.<sup>107</sup>

With a cadre of just fifteen to twenty paid members, out of a total workforce of 225, the union dramatically made its presence known in October 1983 at National Home Care Systems (NHS), a domestic temp agency formerly named *McMaid*.<sup>108</sup> An organizing committee, led by employees Irma Sherman, Doris Gould, and Juanita Hill, showed up at the *McMaid/NHS* office on pay day, and gathered workers willing to listen to their testimonials of mistreatment and disrespect. Sherman, Gould, Hill, and others marched into the offices chanting, “We’re Fired UP,” singing, and

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102. *Id.*; Keith Kelleher, *ACORN Organizing and Chicago Homecare Workers*, 80 LAB. RES. REV. 33, 33 (1986).

103. BORIS & KLEIN, *supra* note 6, at 163.

104. *Id.*; see Kelleher, *supra* note 102, at 36.

105. See TAIT, *supra* note 9, at 101-28; Kelleher, *supra* note 102, at 33, 36-37.

106. Kelleher, *supra* note 102, at 37.

107. *Discount Foundation Application Summary*, c. 880 Records, Box 2, Folder 31 (1986); see Kelleher, *supra* note 102, at 40.

108. BORIS & KLEIN, *supra* note 6, at 167.

demanding a meeting with the boss.<sup>109</sup> When the executive director came out, Sherman announced their union was ULU 880, and asked him to sign a “Recognition Agreement.”<sup>110</sup> He declined, called the police, and retreated to his office amid louder chants.<sup>111</sup> Their union had become public; the workers had made their point.<sup>112</sup> This event was the first of many “recognition actions.”<sup>113</sup>

By the 1980s, the National Labor Relations Board (NLRB) had become essentially dysfunctional, as management perfected ways to contest every aspect of the organizing process, undermine union elections, and stall bargaining.<sup>114</sup> Local 880’s collective self-assertion of the union served as an adaptive strategy to deal with the limitations of the NLRB regime. As lead organizer Keith Kelleher explained, “we didn’t wait for the employer to formally recognize us, but forced the employer to deal with us without official recognition.”<sup>115</sup> The members made it a union, not the state.<sup>116</sup> Since they were treated as not real workers within the framework of the nation’s laws, these women honed a different set of tactics for unionism in the care work sector that linked public and private: recognition actions, member bargaining, direction action, political lobbying and pressure, and strategic use of “consumer choice.”<sup>117</sup>

At NHS, the union won its election fairly quickly, but contract bargaining turned into trench warfare that led it to combine the militant direct action of welfare rights—showing up en masse at the owner’s plush suburban estate

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109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*; see *Union Wins YMCA Election, Company Stalls*, LOCAL 880 VOICE (1985).

114. BORIS & KLEIN, *supra* note 6, at 167; DAVID BRODY, LABOR EMBATTLED: HISTORY, POWER, AND RIGHTS 99-109 (2005).

115. *Id.*; Keller, “A History of SEIU Local 880” (2005) (unpublished manuscript) (on file with author); *Union Wins YMCA Election, Company Stalls* LOCAL 880 VOICE, Nov.-Dec. 1985, at 1.

116. BORIS & KLEIN, *supra* note 6, at 167.

117. *Id.* at 166.

and pinning a notice on his door—with political unionism, as Local 880 creatively deployed tactics that blurred the public and private domains.<sup>118</sup> Workers turned their relationship with consumers and the state to their advantage.<sup>119</sup> They raised the specter that they would ask their clients to transfer to another agency.<sup>120</sup> In the care work sector, moving consumers to another agency had a similar impact to a strike, without leaving those cared for stranded.<sup>121</sup> The union then gambled on calling an actual strike, which required notice to the State Department of Aging as well as the company. NHS now faced the prospect that the state would drop it as a problematic contractor and decided to settle. Local 880 won a “union shop,” paid holidays and vacations, a grievance procedure, health and safety protective clause, and a “Dignity and Respect” clause.<sup>122</sup> Subsequently, when facing other recalcitrant agencies, the union helped to move former employees to union shops.<sup>123</sup>

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118. *Id.*

119. See Letter from Keith Kelleher, Lead Organizer, Local 880, to John Sweeney (Dec. 5, 1986), in LOCAL 880 RECORDS, Box 4, Folder 36, available at Wisconsin Historical Society; Letter from Mark Heaney, Exec. Dir., Nat'l Home Care Sys., to All Field Staff (Oct. 27, 1986), in LOCAL 880 RECORDS, Box 11, Folder 41, available at Wisconsin Historical Society; *Year End/Year Begin Report* (July 1, 1993), at 4, in LOCAL 880 RECORDS, Box 8, Folder 41, available at Wisconsin Historical Society; *Year End/Year Begin Report* (Dec. 30, 1989), at 2, in LOCAL 880 RECORDS, Box 8, Folder 41, available at Wisconsin Historical Society; *Year End/Year Begin Report-1986* (Jan. 2, 1987), at 3, in LOCAL 880 RECORDS, Box 8, Folder 41, available at Wisconsin Historical Society; *Meeting Agenda* (Apr. 25, 1987), in LOCAL 880 RECORDS, Box 5, Folder 2, available at Wisconsin Historical Society; *Meeting Agenda* (Mar. 28, 1987), in LOCAL 880 RECORDS, Box 5, Folder 2, available at Wisconsin Historical Society.

120. See *supra* note 119 and accompanying text.

121. See *id.*; *N.H.S. Contract Victory, Strike is Off*, THE HOMEMAKER'S VOICE: SPECIAL CONTRACT ISSUE (n.d.); Interview with Keith Kelleher, Lead Organizer, Local 880.

122. BORIS & KLEIN, *supra* note 6, at 167; *N.H.S. Contract Victory*, *supra* note 119; Letter from Keith Kelleher, Lead Organizer, Local 880, to Olson and Mark Heaney, Exec. Dir., Nat'l Home Care Sys. (June 17, 1985); Letter from Mark Heaney, Exec. Dir., Nat'l Home Care Sys., to Keith Kelleher, Lead Organizer, Local 880 (June 10, 1985).

123. *Homecare: Where the Heart Is*, HEALTHCARE WORKER UPDATE, Winter/Spring 1991, at 9; Letter from Keith Kelleher, Lead Organizer, Local 880, to John Sweeney, *supra* note 119; Letter from John J. Eganto to Dr. Jean

The union consistently cultivated rank and file leaders from among home attendant members, like local presidents Irma Sherman and Helen Miller.<sup>124</sup> The women created a social world around the union, with regular meetings, parties, barbeques, recognition ceremonies, letter writing campaigns, marches, and neighborhood alliances.<sup>125</sup> They held “speakouts” and “honk-ins,” stopping traffic.<sup>126</sup> These most invisible workers made themselves visible and audible.<sup>127</sup>

Winning a contract was certainly a big victory, but it was only the first step. Any ability to raise pay depended on the public budget. ULU mobilized its own members, taking busloads of workers to the capitol at Springfield, Illinois to meet with legislators, the Illinois Department of Aging, and the Republican governor. For these battles, though, the ULU local needed greater political clout and a larger support network. After a member vote, Chicago’s unit voted in 1985 to merge into the SEIU, a fast growing union representing over one million service workers in public and private workplaces.<sup>128</sup>

But Local 880 cut its own political path. It drew on direct action tactics more familiar to welfare rights than to the late twentieth century labor movement. Toward the end of 1985, seventy members picketed the Governor’s office and won a new state Home Care Task Force, which would enable all players to develop policy guidelines and

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Otwell, (Jan. 2, 1985); *Year End/Year Begin Report* (July 1, 1993), *supra* note 119, at 4; *Year End/Year Begin Report* (Dec. 30, 1989), *supra* note 119, at 2; *Year End/Year Begin Report-1986* (Jan. 2, 1987), *supra* note 119, at 3.

124. BORIS & KLEIN, *supra* note 6, at 165.

125. See Eileen Boris & Jennifer Klein, *We Were the Invisible Workforce: Organizing Home Care*, in *THE SEX OF CLASS* 177, 189 (Dorothy Sue Cobble ed., 2007); Keith Kelleher, *Local 880 Industry Profile/Organizing Model for Homecare Sector* (Feb. 12, 1993), in LOCAL 880 RECORDS, Box 8, Folder 49, available at Wisconsin Historical Society.

126. *Id.* at 166.

127. See BORIS & KLEIN, *supra* note 6, at 165-66.

128. See *id.* at 169 n.95 (citing Letter from Gene Moats, in LOCAL 880 RECORDS, Box 1, Folder 33, available at Wisconsin Historical Society); Confidential Memorandum from Wade Rathke to Keith Kelleher, Lead Organizer, Local 880 (Mar. 2, 1993), in LOCAL 880 RECORDS, Box 4, Folder 41, available at Wisconsin Historical Society.

coordinate demands for increased reimbursement rates.<sup>129</sup> Such political remedies institutionalized the potential of provider agencies and the union to work together in the arena of the welfare state. From then on, 880 workers organized busloads of union members to go to Springfield and meet with legislators, Department of Aging staff, and governors.

One other key factor helped the union win its first contract. A new NHS executive director, Mark Heaney, came on board in May 1985, and he too understood the political economy of home care.<sup>130</sup> Where the previous executive took an ideological hard line against the union, Heaney approached the situation as a pragmatist.<sup>131</sup> He grasped both the potential threat from the union's appeal to the state and the strategic advantages of "partnership"<sup>132</sup> Heaney realized the union's political organizing and disruption could cost NHS its state contract.<sup>133</sup> After the June 1985 settlement, Heaney kept communication with the union open, worked with the union to implement a health insurance plan, and sought out the points where NHS could use the union to increase its client base.<sup>134</sup> Heaney was not an unequivocal friend of the union, but he recognized they had a common interest in protecting the state's social welfare budget, fighting tax cuts, and disciplining the market.<sup>135</sup>

Where those interests overlapped, the partnership worked. Heaney served on the Governor's Task Force too, where he joined the union in pushing to increase the state reimbursement rate.<sup>136</sup> Described by the union as the first substantial raise in four years, this 1986 boost helped

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129. *Union Members Going to Springfield*, *supra* note 1; *Year End/Year Begin Report-1986*, *supra* note 119.

130. BORIS & KLEIN, *supra* note 6, at 169.

131. *Id.*

132. *Id.*

133. *Id.*

134. See Letters between Mark Heaney, Exec. Dir., Nat'l Home Care Sys., and Keith Kelleher, Lead Organizer, Local 880 (1985-1993) in LOCAL 880 RECORDS, Box 11, Folders 41-46, available at Wisconsin Historical Society.

135. BORIS & KLEIN, *supra* note 6, at 169.

136. *Id.*

secure an even better second contract from NHS and affected thousands of other home care workers around Illinois.<sup>137</sup> Amid Reagan's open warfare on the welfare state, for-profit, corporate NHS distributed postcards to all staff employees to write to the legislature and the governor to support proposed tax *increases*.<sup>138</sup> By the early 1990s, NHS top management even appropriated the language of justice and comparable worth.<sup>139</sup> Pointing out that Illinois paid more to "a janitor to clean floors and toilets" than to homemakers and aides, NHS owner Andrew Wright asserted "that a gross injustice exists in the reimbursement rates paid for home care services and that a rate *adjustment* is due."<sup>140</sup> To coordinate collective bargaining with the state budget process, NHS shared information with the union on hours billed to the state for chore housekeepers and homemakers, and both union and company cooperated to force shady agencies out of the market.<sup>141</sup> In that sense, the union helped to stabilize its industry by setting best practices, rewarding firms that met its labor standards, and policing non-union employers much as unions like the United Mine Workers and Amalgamated Clothing Workers did earlier in the century.<sup>142</sup>

Cooperation, though, remained circumscribed, especially concerning balance of power. NHS and Local 880 did not exactly lobby together.<sup>143</sup> The union sent its people to Springfield, while the company or Association of Home Care Providers worked their own channels of influence.<sup>144</sup> When it

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137. *Id.* at 170; *Year End/Year Begin Report-1986* (Jan. 2, 1987), *supra* note 119.

138. BORIS & KLEIN, *supra* note 6, at 170; Letter from Mark Heaney, Exec. Dir., Nat'l Home Care Sys., to Serv. Emp'rs. Int'l Union Local 880 Bargaining Comm. (June 3, 1991), in LOCAL 880 RECORDS, Box 11, Folder 42, *available at* Wisconsin Historical Society; Letter from Mark Heaney, Exec. Dir., Nat'l Home Care Sys., to Nat'l Home Care Sys. Staff—Office & Field (June 5, 1987), in LOCAL 880 RECORDS, Box 4, Folder 44, *available at* Wisconsin Historical Society.

139. BORIS & KLEIN, *supra* note 6, at 170.

140. *Id.*; Letter from Andrew Wright, Owner, Nat'l Home Care Sys., to Mark Heaney, Exec. Dir., Nat'l Home Care Sys. (Dec. 1, 1993), in LOCAL 880 RECORDS, Box 11, Folder 46, *available at* Wisconsin Historical Society.

141. BORIS & KLEIN, *supra* note 6, at 170.

142. *Id.*

143. *Id.*

144. *Id.*

came down to the dividing up the rate increase between wages and profits, they became adversaries again.<sup>145</sup> Meanwhile, the union continually filed grievances against the company on minimum wage violations.<sup>146</sup>

Perpetually, though, Local 880 and ACORN ran up against the public-private conundrum that shaped home care employment.<sup>147</sup> Vendors claimed that the state was the employer or coemployer, and the state argued that the vendors were the responsible party. On one hand, the state placed them under the Domestic Workers Law (which after 1974 meant they should earn at least minimum wage). On the other, when the union tried to gain redress for wage and hour violations, the state waved the 1975 FLSA companionship exemption in their faces. The legal structure

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145. *Id.*; Interview with Keith Kelleher, Lead Organizer, Local 880.

146. See *Union Members Win Backpay!*, LOCAL 880 VOICE, Nov.-Dec. 1985, at 1; *Affidavit of Thelma Brown* (Apr. 2, 1986), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Daniel New to Keith Kelleher (May 3, 1988), in SEIU RECORDS, Box 4, Folder 45, available at Wayne State Univ.; Letter from Terrance Barnich to Janet Otwell (June 12, 1986), in LOCAL 880 RECORDS, Box 4, Folder 42, available at Wisconsin Historical Society; Letter from Terrance Barnich to Janet Otwell (June 6, 1986), in LOCAL 880 RECORDS, Box 4, Folder 42, available at Wisconsin Historical Society; Letter from Keith Kelleher to Nelson Keilt and Herbert Cohen (Apr. 25, 1986), in LOCAL 880 RECORDS, Box 4, Folder 42, available at Wisconsin Historical Society; Letter from William Ghesquiere to Herbert Cohen (Apr. 4, 1986), in LOCAL 880 RECORDS, Box 4, Folder 42, available at Wisconsin Historical Society; Letter from Keith Kelleher to Gene Moats (Feb. 4, 1986), in LOCAL 880 RECORDS, Box 4, Folder 36, available at Wisconsin Historical Society; Letter from Daniel New to Keith Kelleher (Nov. 27, 1985), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Keith Kelleher to Daniel New (Oct. 19, 1984), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Daniel New to Keith Kelleher (Oct. 2, 1984), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Keith Kelleher to Daniel New (Sept. 25, 1984), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Daniel New to Keith Kelleher (Sept. 19, 1984), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Keith Kelleher to Daniel New (July 9, 1984), in LOCAL 880 RECORDS, available at Wisconsin Historical Society; Letter from Keith Kelleher to Daniel New (June 15, 1984), in LOCAL 880 RECORDS, available at Wisconsin Historical Society.

147. *State of Illinois, Before the State Labor Relations Board, DORS v. SEIU, Case No. S-RC-115*, in LOCAL 880 RECORDS, Box 11, Folder 3, available at Wisconsin Historical Society; *Petitioner's Post-Hearing Brief, S-RC-115, 13*, in LOCAL 880 RECORDS, Box 11, Folder 3, available at Wisconsin Historical Society.



made it impossible for them to organize collectively or win any economic gains through private agencies.

The way the state structured care in response to other stakeholders also mattered. Thousands of Chicago-area home care workers did not work for vendor agencies. Through DORS, which serviced the disabled, workers were classified as “independent providers.”<sup>148</sup> Without them in the union, the state had an enormous reserve pool of labor. Yet, the union encountered the same obfuscation of identifying the employer. Was it the state, which allotted the service hours, paid the salaries, and withheld workers comp? Or was it the client who had “the sole responsibility to hire, dismiss, train, supervise and discipline workers”?<sup>149</sup>

The union proceeded with its organizing project anyway. The state comptroller’s office maintained records of checks issued to the attendants, available for public viewing. Local 880 organizers combed through these and painstakingly built a list.<sup>150</sup> They reached middle-aged women like future President Miller, a transplanted rural Mississippian who had labored in laundries and factories.<sup>151</sup> Her husband was a union man, and she was one of those women whose efforts sustained the black church.<sup>152</sup> Soon she was going along on house visits and, like other DORS workers, participating in the life of the local through membership meetings, fundraising events, canvassing, and lobbying days.<sup>153</sup> DORS workers joined the fabric of the union, participating in membership meetings, fundraising events, canvassing, legal actions, and lobbying days.<sup>154</sup> These members led a legislative campaign for a Home care Workers’ Bill of Rights, collecting pledges from legislators.<sup>155</sup>

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148. BORIS & KLEIN, *supra* note 6, at 149-81.

149. *State of Illinois*, *supra* note 147; *Petitioner’s Post-Hearing Brief*, *supra* note 147.

150. BORIS & KLEIN, *supra* note 6, at 173.

151. *Id.*

152. *Id.*

153. *Id.*

154. *See id.*

155. Kelleher, *supra* note 102, at 39-43, 49-51.

An involved workforce remained essential to Local 880's vision of unionism.<sup>156</sup>

The state refused to formally recognize the union but through persistent mobilization, political allies, and militant pressure, the union compelled the state to accede to wage raises and other demands. Between 1985 and 1990, through member lobbying and political clout, the union managed to win wage hikes to \$4.50 an hour and eliminate underpayments.<sup>157</sup> Through incremental steps like a "Meet and Confer" agreement in 1990, workers won an institutional foothold within the political process that determined their security and that of their clients, while the union kept its sights on the horizon and built for some day in the future when a majority of workers would become members.<sup>158</sup>

Based on their caring relationships, workers also acted politically with consumers, as disability rights activists refer to themselves. Their fates were linked by the question of enough hours for the service. In the economic downturn of the early 1990s, Illinois cut services to elderly and DORS by refusing new applicants. ADAPT, a militant independent living group, launched confrontational protests in Chicago.<sup>159</sup> Disability rights activists brought suit, with the result that a federal court prohibited the state from denying eligible Medicaid recipients in-home services.<sup>160</sup> Local 880 workers became allies with independent living activists and advocates to "stop the cuts."<sup>161</sup> Women and men in wheelchairs rolled through Springfield, Illinois to the capitol, along with workers who carried oversized pennies.<sup>162</sup>

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156. See BORIS & KLEIN, *supra* note 6, at 173.

157. Boris & Klein, *Organizing the Carework Economy*, *supra* note 18, at 205 n.67 (citing Memorandum from Keith Kelleher, Lead Organizer, Local 880, to Harry Kurshenbaum (Feb. 1, 1993), in LOCAL 880 RECORDS, Box 11, Folder 15, available at Wisconsin Historical Society).

158. See Memorandum from Keith Kelleher, Lead Organizer, Local 880, to Gene Moats (Mar. 24, 1992), in LOCAL 880 RECORDS, Box 1, Folder 32, available at Wisconsin Historical Society.

159. BORIS & KLEIN, *supra* note 6, at 175.

160. *Id.*

161. See *id.*

162. *Id.* at 173-74 (focusing specifically on the SEIU photos from the SEIU Collection).

Home care workers would defend these entitlements by creating an arena of struggle in which workers refused to play their role—providing care on the cheap

For another decade, the workers paid their dues, attended meetings, and built the union—still without recognition. Finally, through financial and ground support for the Democratic gubernatorial candidate, Rod Blagojevich, in 2004, a labor-supportive governor came into office and through executive order formally recognized SEIU Local 880 as the collective bargaining agent for these workers.<sup>163</sup> Within months, the state legislature codified his executive order into law, representing one of largest formal extensions of labor rights in decades.<sup>164</sup> They had, in fact, changed the landscape of political power.

#### CONCLUSION

Longer life expectancy means that more of us live with chronic illness. A majority of Americans, across the spectrum of class and ethnicity, will at some point depend on a caretaker, often one who has long labored in poverty and struggled to balance her own and others' social needs. The macroeconomic structuring of the occupation, as well as its interpersonal challenges, heightens the stresses of an already emotionally and psychologically intense and economically precarious job. Workers, family members, state administrators, and policy makers all wring their hands in frustration over the undependability of home care services; for the former there are not enough trustworthy or reliable workers.

In December of 2011, President Obama made good on a campaign promise and finally announced that the United States Department of Labor would move to overturn the companionship exemption and include these workers in the minimum wage and overtime provisions of the FLSA.<sup>165</sup> Obama's proposal not only rectifies a thirty-year injustice, but also faces the realities of both our aging society and

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163. See Kelleher, *supra* note 102, at 39-43, 49-51.

164. See Eileen Boris & Jennifer Klein, *Labor on the Home Front: Unionizing Home-Based Care Workers*, 17 NEW LAB. FORUM 32, 39 (2008).

165. 158 CONG. REC. H4067 (daily ed. June 27, 2012) (statement of Rep. Tim Walberg).

service labor in the twenty-first century American economy. The new Department of Labor proposal explicitly recognizes that housekeeping is integrally bound up with caregiving in the home, valuing the multi-dimensions of care as work. It mandates agency payment for travel time of aides who move between clients over the course of a day, acknowledging that the very nature of the job means they do not labor in one place for a standard number of hours.<sup>166</sup> It closes loopholes that the old category “employee” has allowed so many to slip through.

While the job title has changed repeatedly since the 1930s, these workers always have performed a combination of basic bodily care (bathing, dressing, feeding, and ambulation) and housekeeping. In the current fiscal crisis, states have used the slipperiness of the companionship terminology to squeeze the workers and extract more unpaid labor. State agencies are recalculating what family members would supposedly provide anyway, reducing the amount of home care support based on expanding the range of unpaid labor. States are reducing the hours a worker can spend with a client and targeting housekeeping for elimination.

This decades-long fight, therefore, is not simply about the ability to earn the minimum wage or just above it for working even longer hours; that would not be much to bring home, nor greatly bolster one’s ability to sustain a home. If the rule change were solely the ability to earn \$7.25 an hour and over-time, home-care workers would still be poor. Its deeper possibility is the potential to reestablish some notion of labor standards, rights, and security—the very elements that conservatives and employers have been so successful at subverting over the last two decades, especially in the service sectors. Clearly, the exemption of workers from labor standards is not making better care more widely accessible. Instead, the stigmatization of care—and those who need it—is creating greater insecurity and hardship It

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166. See *Notice of Proposed Rulemaking to Amend the Companionship and Live-In Worker Regulations*, U.S. DEPT OF LABOR, <http://www.dol.gov/whd/flsa/companionNPRM.htm> (last visited Feb. 28, 2013) (discussing *Application of the Fair Labor Standards Act to Domestic Service*, 76 Fed. Reg. 81190, 81201-02 (proposed Dec. 27, 2011) (to be codified at 29 C.F.R. pt. 552)).

compromises the independence and dignity of those on both sides of the relation. Separating better care from better jobs and working conditions has moved us no further toward a viable and decent long-term care program. It turns out the devaluation of one has only perpetuated the devaluation of the other.