



EXECUTIVE ORDER NO. 07-03

COLLECTIVE BARGAINING WITH FAMILY CHILD CARE PROVIDERS

The availability of quality child care enables Oregon parents to work and contribute directly to Oregon's economy. Further, quality child care is a vital contributor to the healthy development of Oregon's young children. More than one-third of Oregon children are in paid child care during the most critical stage of their development, from birth to age five. Numerous long-term studies have shown that high quality care during these formative years increases the likelihood of a child's success in school and later in life.

The quality of child care depends upon several factors, including the caregiver's training and the continuity in the relationship between the child and the caregiver. The State now requires all licensed family child care providers and staff, as well as license-exempt family child care providers receiving state subsidies, to have criminal background checks and to maintain health and safety standards. However, there remains a shortage of quality child care in many communities in Oregon, particularly for young children, infants and children with special needs.

In order to ensure the best outcomes for children and to build a strong system of childhood care and education in Oregon, the State must maintain a child care delivery system that encourages recruitment and retention of quality child care providers. Increased stability in the child care workforce will ensure parents' ability to select appropriate child care services for their children from a wide range of child care options. Improved recruitment, retention and stability will also benefit children by allowing them continuity with their caregiver.

The Oregon Employment Department, Child Care Division ("CCD"), is the executive agency authorized to administer and direct regulated child care services in Oregon, and the Department of Human Services ("DHS") administers state-subsidized care for eligible Oregon families through the Employment Related Day Care ("ERDC") and Temporary Assistance to Needy Families ("TANF") program. CCD, DHS, parents, children and family child care providers all will benefit from a process that allows for collective input from family child care providers on how the State can improve stability in the workforce and quality of care provided to children and families in Oregon.

In 2005, AFSCME Council 75 presented cards to the Employment Relations Board ("ERB") representing a request for representation by more than fifty percent of the eligible certified and registered family child care work force. After the cards were certified by ERB, Executive Order 05-10 directed CCD and DHS to meet and



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confer with AFSCME Council 75 on behalf of certified and registered family child care providers regarding issues of mutual concern.

In 2006, SEIU Local 503 presented cards to the Employment Relations Board ("ERB") representing a request for representation by more than fifty percent of the subsidized, license-exempt family child care work force. After the cards were certified by ERB, Executive Order 06-04 directed CCD and DHS to meet and confer with SEIU Local 503 on behalf of subsidized, license-exempt family child care providers regarding issues of mutual concern.

After issuance of Executive Orders 05-10 and 06-04, CCD, DHS, AFSCME Council 75 and SEIU Local 503 reached agreement on several important issues of mutual concern. The agreement with AFSCME Council 75 will expire on September 30, 2008; the agreement with SEIU Local 503 will expire on June 30 2009. In order to further build this positive relationship, the State, AFSCME Council 75 and SEIU Local 503 would like negotiations that occur after the expiration of the current agreements to occur in a collective bargaining framework. As stated in ORS 662.405, it is "the public policy of the State of Oregon that the best interests of the people of this state are served by fostering collective bargaining."

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. For the negotiation of future agreements and in connection with funding to be sought during the 2009-11 biennium, CCD and DHS shall engage in collective negotiations and attempt to reach an agreement with AFSCME Council 75 and SEIU Local 503, on behalf of their respective segments of the family child care provider population, concerning all terms and conditions of the relationship between the State and family child care providers that are within the State's control. Such terms and conditions shall include those that would be deemed to be mandatory subjects of bargaining under the Public Employee Collective Bargaining Act, ORS 243.650 *et seq.*, as if that law applied, including but not limited to subsidy rates and the provision of health care coverage.
2. If collective negotiations fail to result in an agreement with either AFSCME Council 75 or SEIU Local 503 after a 150-calendar-day period of good faith negotiations, then CCD and DHS shall agree that either party to the negotiations may demand appointment of an



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arbitrator for binding arbitration, subject to the conditions set forth below. Either party to the negotiations may request from ERB a list of seven qualified, disinterested, unbiased persons to serve as a potential arbitrator so that that each party can alternatively strike three names from the list. The order of striking should be determined by lot. CCD and DHS shall agree that the arbitration process shall follow generally the procedures and timelines of ORS 243.746(3), (5) and (6) (except that the arbitrator's opinion and order shall not be filed with ERB) and require that the arbitrator's findings and opinion be based on the criteria of ORS 243.746(4). It is the State's intent that judicial review of the arbitrator's findings and opinion be available under the Uniform Arbitration Act, ORS 36.600 *et seq.*, and that an arbitration award may be vacated by a court for the reasons contained in ORS 36.705.

3. To the extent that either DHS or CCD, or both, may not implement an agreement or an arbitrator's findings and opinion under this Executive Order without first undertaking rule-making under the Administrative Procedures Act, ORS chapter 183, then the state will not be obligated to implement such agreement or arbitrator's findings and opinion until the necessary rule-making is completed.
4. Any arbitrator's findings or opinion that has a budgetary impact upon CCD or DHS shall be subject to the affected agency obtaining an appropriation to fund those impacts unless and until the Legislative Assembly enacts legislation to apply ORS 243.742, ORS 243.752, or similar provisions, to family child care collective bargaining.
5. This Executive Order is not intended to create any contractual rights or obligations, although it is expected that negotiations will result in a written agreement between the parties. It is intended solely as executive direction to the State agencies identified herein. Nothing in this Executive Order is intended to give to family child care providers, or imply that family child care providers have, any right to engage in a strike or a collective cessation of the delivery of child care services. Nothing in this Executive Order is intended to authorize the execution of any fair-share agreements, unless and until the Legislative Assembly enacts legislation to allow for fair-share agreements, or to infringe upon the non-association rights of family child care providers. Nothing in this Executive Order is intended to provide AFSCME



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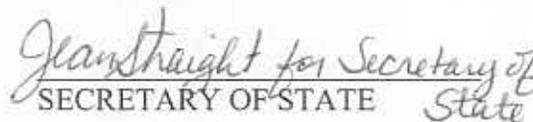
Council 75, SEIU Local 503 or any other individual or entity with third-party beneficiary rights.

6. The purpose of the ERDC program is to give low-income working parents financial access to quality child care of their choosing. Nothing in this Executive Order is intended to directly or indirectly limit parental choice, or cause financial loss to low-income working parents, including those not eligible for the subsidy.
7. Family child care providers are not employees or agents of the State. Nothing in this Executive Order is intended to alter the existing relationship between family child care providers and the State or in any way imply an employer-employee or principal-agent relationship.
8. This Executive Order is effective immediately.

Done at Salem, Oregon this 1st day of February, 2007.


GOVERNOR

ATTEST:


SECRETARY OF STATE *State*

