

## Four More Years: How Far Will the Pendulum Swing to the Left?

**E**very week seems to add more uncertainty for management-labor relations. As 2012 came to a close, the National Labor Relations Board (NLRB) released a flurry of post-election decisions covering an array of topics that give unions increased leverage – even in non-union environments. Momentum continues to gain in a handful of states for right to work legislation. And most recently the U.S. Court of Appeals for the District of Columbia Circuit threw into legal limbo the status of the Board’s composition and nearly 1,000 Board decisions. Below is a summary of recent union-related issues to watch from Washington and across the country in coming months.

### Board Composition

An appellate court ruled in January that President Obama’s “recess” appointments were illegal, but that suit (*Noel Canning v. NLRB*) was one of several cases winding through the country’s federal appellate courts. It’s unclear whether the U.S. Solicitor General will fast-track the issue of presidential powers related to recess appointments to the Supreme Court. But assuming the Supreme Court doesn’t immediately take up this issue and President Obama is unable to get Senate confirmation for any as-of-yet unnamed nominees, the Board would have no legal members to create a three-member quorum when Chairman Pearce’s term expires in August 2013. The NLRB effectively would become powerless except through the General Counsel’s office and at the Regional Director level. According to Chairman Pearce, until there’s greater clarity, “the board has important work to do... We will continue to perform our statutory duties and issue decisions.”

Also unresolved are proposed changes to NLRB election procedures to “reduce unnecessary barriers to the fair and expeditious resolution of questions concerning representation.” These proposed rules, strongly favored by unions, including expedited elections and postings about employees’ rights to organize, would lead to the most dramatic changes to federal labor law since the Taft-Hartley Act of 1947.

### Right to Work Momentum

Michigan – the modern-day labor movement’s birthplace – became the second state in 2012 to join the ranks for right to work states. (Indiana was the other.) Politicos, editorialists and union leaders believe the speedy passage of Michigan’s right to work legislation (within weeks) was retribution for Proposal 2, a failed labor-supported ballot initiative that would have prohibited a right to work law and enshrined collective bargaining in Michigan’s state constitution. UAW President Bob King admits making mistakes: “We did it because of broader concerns for the labor movement... I’d rather try and fail than not try at all.” The UAW and other unions now are exploring legal challenges, legislative processes and citizens’ initiatives as a way to right to work in Michigan.

At the same time, there now is talk about other states, including Maine, Missouri, Ohio, Pennsylvania and Wisconsin, joining the existing 24. Since the beginning of the 2011 legislative session, 19 states have introduced right to work legislation.

Right to work laws make it illegal to require financial support of a union as a condition of employment, and are believed by some economists to create jobs and boost market economics by attracting businesses. Unions, of course, are concerned a domino effect among states will erode their membership, finances and political power, and fighting efforts with rhetoric of lower wages and destruction of the middle class. In reality, providing employees with the option to pay union dues, as right to work legislation does, is not a significant drain on union coffers. Numerous studies have found little or nominal effect on union membership in right to work states.

### CNA/SEIU/NUHW War Intensifies

In January 2013, the 85,000-member California Nurses Association (CNA) and 10,000-member National Union of Healthcare Workers (NUHW) announced a partnership to 1) Focus on organizing California’s healthcare industry and, 2) Challenge the strength of the 2.1 million-member Service Employees International Union (SEIU), the nation’s largest healthcare union.

In a joint statement, the unions said they would be focused on “preventing hospital chains from scaling back benefits for employees and fighting for workplace standards needed to improve patient care.”

Deborah Burger, CNA co-president, said the nurses union chose to work with the NUHW because the SEIU has been driving down benefits at hospital chains by agreeing to concessions, and doing “everything but climb into bed with the employers” to create “a faux union.” Steve Trossman, an SEIU spokesman, denied those charges and said unions shouldn’t be fighting with each other over workers at a time when all of organized labor is under siege nationally. “We’re going to spend millions, and they’re going to spend millions. In the meantime, we’re losing members all across the country,” Mr. Trossman said.

A major reason for the CNA/NUHW alliance is to aggressively campaign against the SEIU in one of the largest organizing drives ever, which will take place this spring at healthcare giant Kaiser Permanente. With 43,000 workers at stake, it is being called the largest private sector representation election of the last 70 years.

The workers, now represented by the SEIU, will vote on whether to remain with that union or join the strengthened NUHW. According to SEIU spokesman Steve Trossman, those 43,000 members contribute \$40 million to SEIU coffers.

According to the *Wall Street Journal*, the affiliation might spur an increase in organizing because CNA and NUHW are two of the country’s more militant unions. The partnership between CNA and NUHW marks the end of a nearly four-year-long truce between CNA and SEIU that expired on December 31. Since 2009, their peace pact helped reduce inter-union strife nationwide, while facilitating non-union hospital organizing in Texas, Florida and other states. The agreement permitted CNA exclusive organizing rights with nurses with the SEIU attempting to organize the rest of the organization.

It’s unclear what if any affect the partnership will have outside of California. CNA, the nation’s largest nurses union, helped found National Nurses United (NNU), which represents 185,000 registered nurses across the country. Sal Rosselli, NUHW President and SEIU dissident, said the group’s first goal is to deal with California issues and focus later on working with the NNU in other parts of the country.

### What to Do?

Employers would be wise to take advantage of the relative quiet period at the Board to invest in workplace training and

organization development before the proposed rules, if adopted, go into affect. One approach is through developing a Labor Relations Readiness System, as well as proactive assessments that help identify an organization’s vulnerability to union organizing, prepare for a potential union campaign and address weaknesses that could encourage employees to consider union representation.

As part of this system, we recommend getting ahead of the inevitable and suggest that employers:

- Develop human resource teams and appropriate leaders as subject matter resources or internal persuaders to identify early warning signs of union activity, deliver key messages, and educate employees about their rights, and effectively respond to employee questions and concerns. The Labor Relations Readiness System includes:
- Creating internal capability by incorporating train-the-trainer programs that include video and web-based training.
- Development of a Readiness Response Team to serve as an internal group of first responders.
- A customized Readiness Manual with fully vetted materials ready to distribute at a moment’s notice.
- Management training that goes beyond the legal Do’s and Don’ts. Focus on detecting early warning signals and skill-building training that increases managers’ comfort with openly discussing the subject of unions and the organization’s position toward labor unions.
- Seek legal counsel about new issues under the National Labor Relations Act and recent NLRB rulings that impact policies and practices as well as carefully examining supervisory status and bargaining unit composition.
- Provide regular internal briefings and updates for human resources and departmental leaders on labor law and union organizing strategies.
- Assess the various communications sources and methods used in your organization and determine where employees are most apt to get information.
- Assess the need for a coordinated team of external legal counsel, communications support and human resources consulting.
- Commit to maintaining a positive employee relations environment.
- Establish and/or reinforce a culture that promotes employee engagement and gives employees little reason to demand third-party representation.



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