

## Two NLRB Actions Will Sharply Tilt Playing Field in Unions' Favor in 2012

**The National Labor Relations Board (NLRB) issued two precedent-setting decisions in 2011 that will make it far easier for unions to organize workplaces:**

■ Elections will be held much sooner after a union files an RC petition. We estimate that the petition-to-election gap could shrink from the current median of 38 days to an average of 21 days and, in extreme cases, as few as 10 days.

This rule is due to take effect April 30, 2012. Considering that unions often spend months pitching their case to employees before they file an election petition, unprepared employers will have to struggle to play catch-up.

■ Unions will be allowed to organize very small (“micro”) bargaining units, rather than all eligible employees in a workplace. The impact? NLRB data show that the smaller the bargaining unit, the greater the union win rate (see chart on following page).

Many question why unions need more help organizing. Through the first six months of 2011 (the most recent data available), unions won 75 percent of the RC elections held in healthcare and 69 percent of the non-healthcare RC elections.

The revised election rules remove

much of the pre-election preparation time that has existed in the past. For example:

■ NLRB hearing officers will be allowed to limit pre-election hearings only to matters relevant to whether an election should be held. The hearing officer will have the authority to limit testimony, and to decide whether or not to accept post-hearing briefs. Before these changes, an employer’s legal counsel could use the pre-election period to thoroughly investigate and research that the petitioned-for group was appropriate, and to provide the employer with additional time to communicate their campaign messages.

■ Pre-election appeals will be prohibited and all appeals will be consolidated and reviewed after the election is held.

■ It no longer will be mandatory for the NLRB to review hearing officers’ decisions. Additionally, any reviews that are conducted will be allowed only after the election is held, leaving more final decisions in the hands of career civil servants.

The micro-unit judgment was issued against Specialty Healthcare and Rehabilitation Center of Mobile, AL (Specialty Healthcare). This de-

cision applies to all employers except acute healthcare organizations. It will have consequences even more serious than the shortened election rules. For example:

■ If a union realizes it doesn’t have the support needed to win an all-employee election, this ruling allows it to cherry pick small groups of employees it thinks it can organize. In the case of Specialty Healthcare, the bargaining unit targeted consisted of one job title, certified nursing assistants.

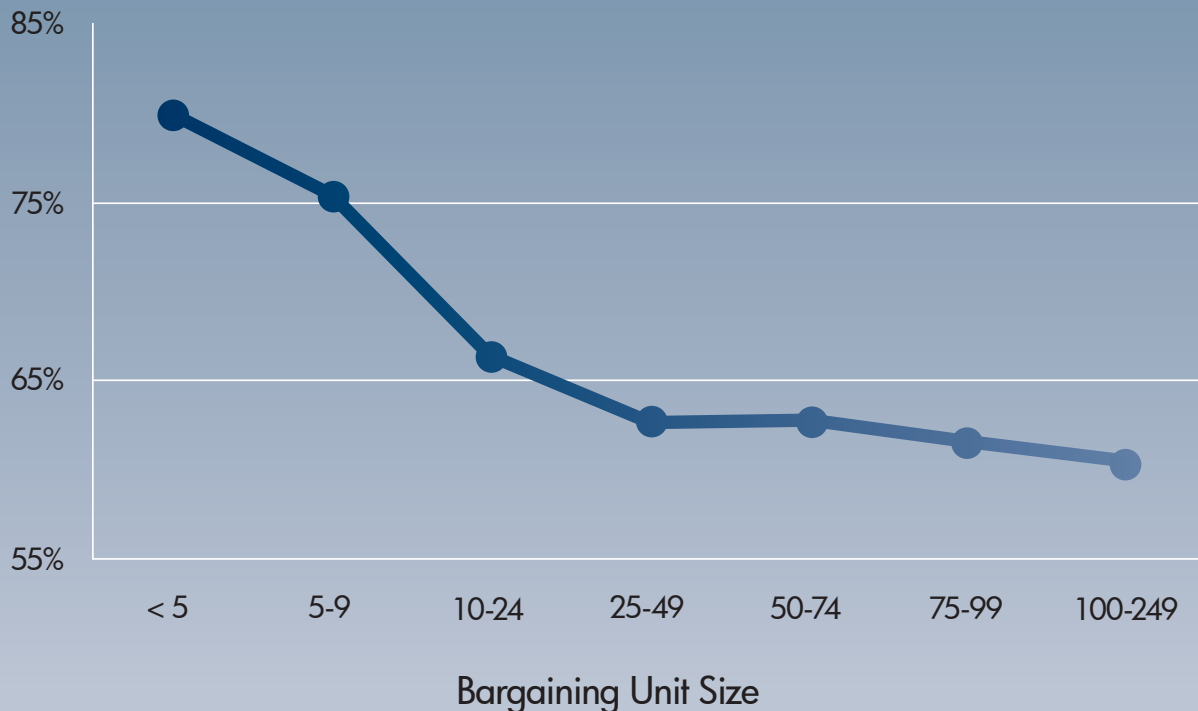
■ Because it permits an increased number of bargaining units, the ruling could allow several unions in the same workplace, each representing a handful of employees and with different collective bargaining agreements.

■ The Specialty Healthcare decision will make it far easier for unions to get their foot in an employer’s door. Instead of having to rely solely on external organizing, unions will use the micro-unit employees to organize their peers throughout the workplace.

As if the labor relations environment didn’t have enough change and uncertainty, three new board members have been appointed to the National Labor Relations Board. They replace three board members whose appointments expired in 2011. With one of the three

## Relationship Between Bargaining Unit Size and Union Win Rate

(RC Elections 2007 - 2011)



(Richard Griffin) the general counsel for International Union of Operating Engineers (IUOE), it's assumed he will continue the strong pro-labor push of his predecessor Craig Becker, who was an attorney for SEIU and AFL-CIO.

### How to Prepare

These NLRB actions will make it much harder, but not impossible, to maintain a union-free workplace. With so little time to work with during the run-up to the election, putting a firewall in place *before a petition is filed* will be essential.

It takes a tremendous amount of work to win a representation election. Essentially the same number of tasks needs to be completed whether the campaign lasts

for 38, 21 or 10 days. At a minimum, in advance of a petition, employers need to:

- Determine vulnerability to union organizing and proactively remedy the issues causing the employee dissatisfaction
- Educate leaders, managers and board about union tactics and election rules under the National Labor Relations Act
- Ensure compliance with all legal requirements
- Identify employee dissatisfaction and vulnerability to union organizing on an ongoing basis instead of just once every year or two by using employee surveys
- Train managers in effective leader-

ship and communications skills

- Train managers to recognize and effectively respond to employee dissatisfaction and early signs of a union campaign
- Improve internal and stakeholder communications
- Develop rapid-response strategies to union activity
- Strengthen employee engagement to minimize interest in union representation
- Provide advocacy training so that employees first go to their supervisors/managers, not elsewhere

An essential step is wall-to-wall education. Every employee needs to know what a union authorization card looks

like and what its significance is. Additionally, employees will need to understand the implications and consequences of unionization including what collective bargaining is and how it works, and how union representation can change their relationship with their employer and fellow employees.

In order to educate their employees, managers themselves must first understand these issues and be able to effectively, legally and articulately provide answers to questions from employees.

Human resources and other leaders should immediately determine which employees and job classifications would fall into particular bargaining units, and which employees would be classified as supervisors. In an abbreviated election, it will be nearly impossible to assess bargaining units or supervisory status after a petition is filed and still run a winning campaign.

Shorter union election campaigns require a trained and ready organizational response; there won't be time to assemble one once a petition is filed and an election is scheduled. One solution IRI recommends is a *Labor Relations Readiness Response Team* comprised of carefully selected leaders who receive in-depth training that prepares them to serve as internal labor relations and communications resources.

Readiness Response Teams:

- Share knowledge and coach their peers about union-avoidance techniques
- Conduct labor relations education and training for managers and supervisors
- Serve as educators to staff and employees, and provide needed training
- Are alert to early signs of organizing activity
- Deploy at the first sign of union organizing and monitor all union activity
- Provide feedback on campaign strategy, communications and educational materials provided to managers and employees
- Serve as an advisory board to Human Resources and senior leaders on employee relations issues
- Identify training needs and activities
- Help coordinate campaign information and strategy

Unions trying to organize a workplace have had months to hone their messages in face-to-face encounters with employees. Given the complexity of large businesses and the number of legal, senior leadership, financial, operational and human resources reviews needed to produce an important document, trying to play catch-up in three weeks or so won't work. Instead, we recommend producing pre-approved messages, letters, talk-

ing points and other communications far in advance of organizing that can be deployed at the first sign of union activity.

Called a *Readiness Manual*, this compendium contains the basic tools needed to successfully manage early stage union organizing activity with information and communications strategies for all affected stakeholders. At a minimum, it should include:

- Supervisor/manager educational materials including conversation starters, guidance on how to talk about unions with employees, frequently asked questions, talking points and messaging on key issues likely to arise in an organizing campaign
- Management and executive visibility strategies to promote trust between employees and management
- Draft employee and stakeholder communications materials

IRI has produced an overview document—*IRI Labor Relations Readiness System*—explaining these and other steps employers should take to remain union-free. To obtain a copy of the Readiness System booklet, simply [click here](#) and download a copy from our Web site. If you wish to speak to someone personally about our Readiness System, please contact us at [info@iriconsultants.com](mailto:info@iriconsultants.com) or call 313-965-0350.



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