



CONSULTANTS

# LABOR ACTIVITY IN HEALTH CARE REPORT

57th Edition  
Spring 2023



# ABOUT THIS REPORT

As the leader in health care employee relations, IRI Consultants provides advice from industry subject matter experts and relevant and timely information about labor activity.

The 57th Semi-Annual IRI Labor Activity in Health Care Report contains the following:



An analysis of national, regional, and state petitions and elections, including those for Certification of Representation (RC petitions), Decertification (RD petitions), and Employer Petitions (RM petitions), as reported by the National Labor Relations Board (NLRB) during 2021 and 2022<sup>1,2</sup>

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The Labor Law/Activity Update, which includes articles written by labor experts about relevant and timely labor issues impacting employers and the workplace

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<sup>1</sup> See Appendix C for detailed definitions of the types of petitions and elections.

<sup>2</sup> NLRB election data describes dynamic case activity that is subject to revision and corrections during the year, and all data should be interpreted with that understanding.

# A LETTER FROM OUR CEO

Dear Industry Colleagues,

The past year presented significant staffing issues, legal challenges, compensation concerns, and increased activities, such as pickets, protests, and unionization efforts, mainly led by National Nurses United (NNU) and the California Nurses Association (CNA).

The year ahead looks to continue these challenges, including the beginnings of pay transparency, new leave requirements, and a shift toward a value-based care model, which emphasizes quality outcomes and cost-effective care. Such challenges may impact labor relations as we ask health care workers to meet performance metrics and quality indicators to maintain job security and advancement opportunities. As a result, labor unions will likely use these metrics to further their organizing efforts and to attack employers.

Additionally, we've seen a sharp increase in residents, interns, and fellows unionizing across the United States. Since the pandemic, the rate of union organizing among these employees has increased threefold, and we expect that to further accelerate in 2023.

Other critical developments we are watching that could have a significant impact on health care organizations include:

- A push to reinstate the Joy Silk doctrine to make it easier for unions to represent workers without an election. NLRB General Counsel Abruzzo released a memo ([GC 21-04](#)) stating she wants to revive the Joy Silk doctrine for bargaining orders. Abruzzo wants Joy Silk reinstated because it requires employers to demonstrate a good reason as to why the union shouldn't be recognized when a majority of union authorization cards are submitted.
- Possible adoption by the NLRB of stricter standards for independent contractors. The NLRB is considering a reversal of *SuperShuttle DFW*, using *The Atlanta Opera, Inc.* case to return to the prior standard. The effect of that would be to make it more likely for workers to be deemed employees rather than independent contractors. If this happens, thousands of independent contractors could be considered employees under the National Labor Relations Act (NLRA) and thus eligible to be unionized.

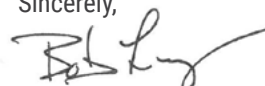
- Expansion of Board remedies to include consequential damages. Based on the *Thryv, Inc.* decision (12/13/2022), in addition to traditional make-whole remedies, employers may also be on the hook for all direct or foreseeable economic consequences that arise from a violation of labor laws.
- Return of micro units and fractured workplaces. In the wake of the return to 2011's *Specialty Healthcare* standard, expect the NLRB to allow unions to carve out smaller groups of employees within a distribution center, production line, plant, or facility, which could result in employers having multiple contracts with different bargaining units all under the same roof. Such micro units will not only be disruptive but very costly for employers.

I think John Ring, former member of the NLRB, recently said it best about what we can expect in 2023, "It's going to be tough sledding ahead." Expect a wave of pro-labor NLRB rulings, rulemaking, and overturning of long-established precedent from the Democratic Board majority. We also expect General Counsel Abruzzo to continue to push the Board to remove employer rights and make it easier for unions to organize.

For all these reasons, I believe we will see more organizing by both traditional and independent unions, as well as more union election wins, in 2023. To avoid becoming their next target, health care organizations and health systems need to act now by taking proactive measures, assessing vulnerabilities and labor readiness, and retaining expert labor relations consultants to develop and implement preventive strategies.

In the enclosed Labor Activity in Health Care Report, you'll find the latest data on union organizing and membership nationwide and timely labor and employee relations articles. We look forward to continuing to support health care organizations across the country and providing you with up-to-date and relevant labor information affecting your industry.

Sincerely,



Bob Long  
CEO, IRI Consultants

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# EXECUTIVE SUMMARY

## NLRB REPRESENTATION (RC) PETITIONS AND ELECTIONS

In 2022, there were 312 RC petitions filed in health care, compared to 232 RC petitions filed in 2021.

Unions were elected as a result of a recent low 78 percent of RC elections in 2022. However, 230 elections were held, which is the most elections held in a year since 2017.

The Service Employees International Union (SEIU) remains the most active union in health care, accounting for 39 percent of petitions filed and 39 percent of elections held in 2022. SEIU won 82 percent of these elections, a slight decrease from its 85 percent win rate in 2021.

Regional differences in activity levels and active unions are highlighted in the Regional Summaries section of the report. The Pacific region had the most RC elections in 2022. Eighty-five elections were held, and unions won 81 percent of them.

Strike activity continues to be concentrated in just a few states, primarily California. In 2022, there were 36 strikes in health care, idling 44,245 health care workers.



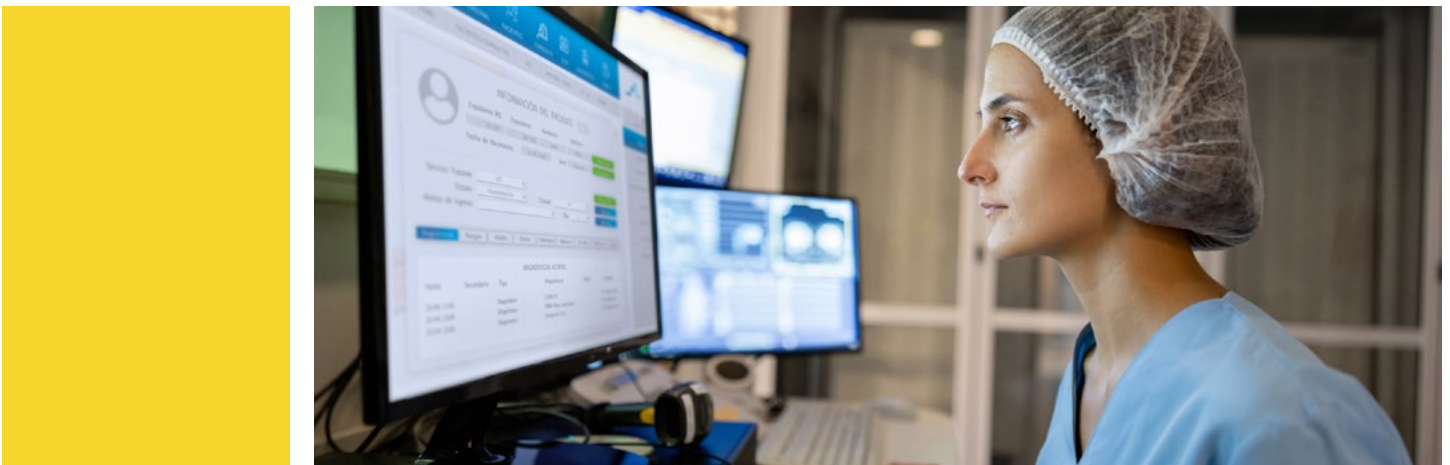
**In 2022, 230  
Certification for  
Representation  
(RC) elections  
were held, the  
highest number  
in over 6 years.**

# UNION MEMBERSHIP NATIONWIDE

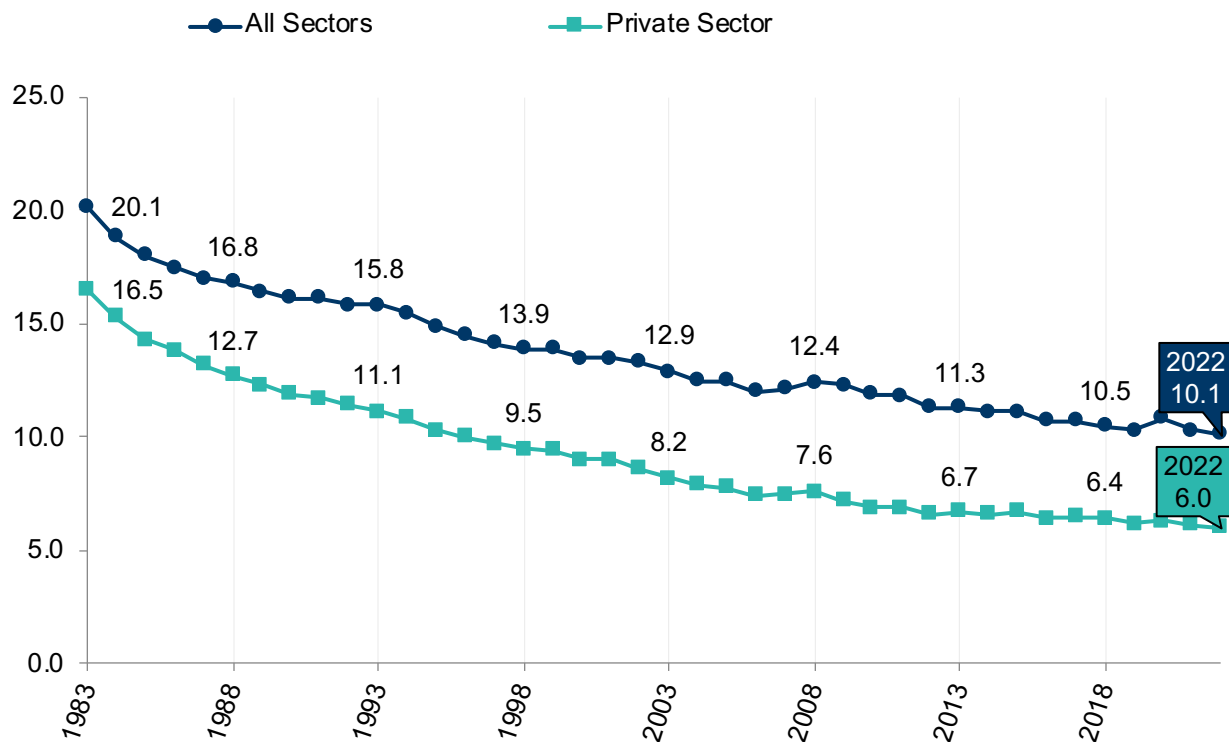
According to the Department of Labor (DOL) Bureau of Labor Statistics' Union Members – 2022 report, the percentage of unionized wage and salary employees decreased to 10.1 percent – the lowest on record. This number is down from 10.3 percent in 2021, although the number of wage and salary workers belonging to unions increased from 2021 to 2022.

Data from the DOL report include the following highlights:

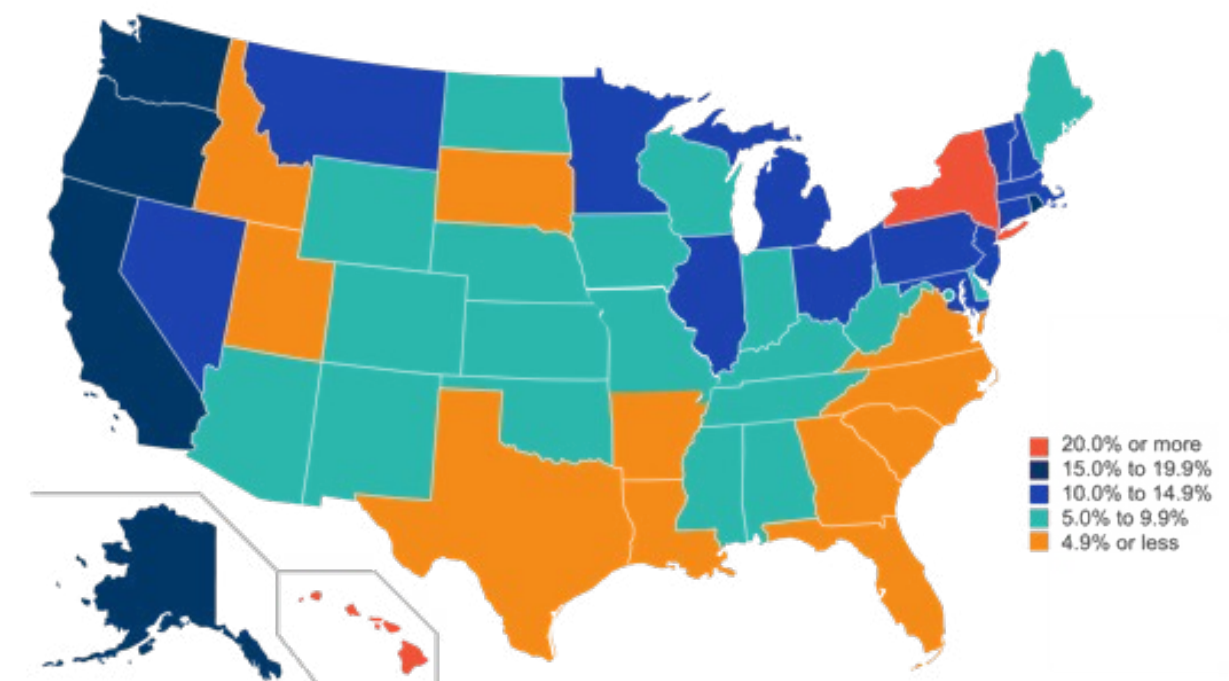
- The union membership rate was 10.1 percent in 2022 – down from 10.3 percent in 2021
- Public sector employees continue to be more than five times as likely to be members of unions as private sector employees (33.1 percent versus 6.0 percent, respectively)
- Black workers continued to have the highest union membership rate in 2022 (11.6 percent), followed by Whites (10.0 percent), Hispanics (8.8 percent), and Asians (8.3 percent)
- The highest union membership rate is among men aged 45 to 54 (12.7 percent), while the lowest is among women aged 16 to 24 (3.5 percent)
- Among states, Hawaii maintains the highest union membership rate (21.9 percent) and South Carolina has the lowest rate (1.7 percent)
- Union membership rates increased in 22 states and the District of Columbia, decreased in 24 states, and remained unchanged in 4 states



### UNION MEMBERSHIP RATE SUMMARY



### UNION MEMBERSHIP RATES BY STATE, 2022





# NLRB PETITION AND ELECTION RESULTS

This section includes the following:

## NATIONAL SUMMARIES

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- Comparison of health care versus all non-health care representation (RC) election results
- Comparison of health care versus all non-health care decertification (RD and RM) results
- Health care sector – Overview of elections
- Health care sector – Union successes in RC elections

## STATE SUMMARIES

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- All states – RC petitions filed
- All states – RC election results

## UNION SUMMARIES

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- Most active unions – RC petitions filed
- Most active unions – RC elections held
- Union success rates – RC election results

## REGIONAL SUMMARIES

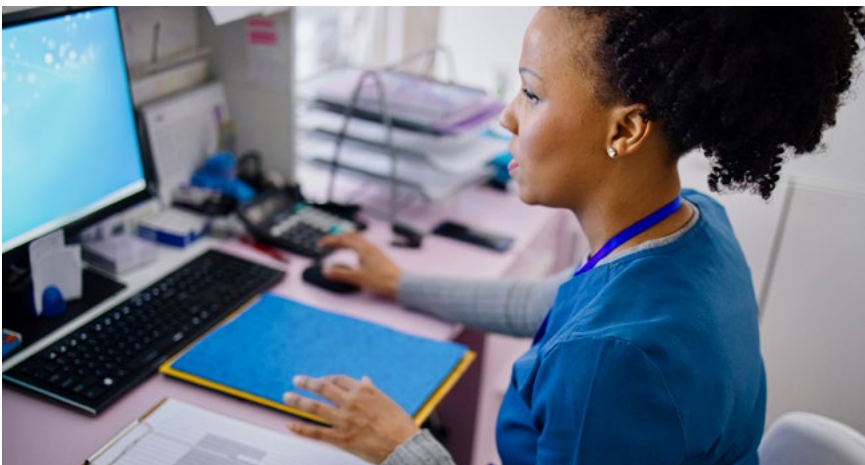
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- RC petitions, elections, and most active unions by geographic region

## STRIKES IN HEALTH CARE

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- Strikes held by year in health care



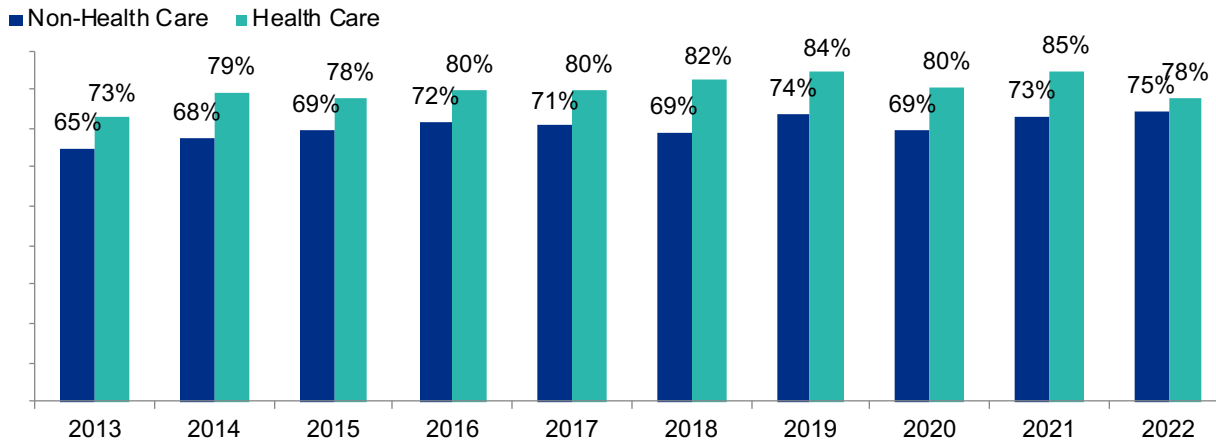
# NATIONAL SUMMARIES

The following information summarizes petition activity and elections held during the past decade as reported by the NLRB.

## UNION WINS IN REPRESENTATION (RC) ELECTIONS

Unions have consistently experienced greater success rates in RC elections in the health care sector than in non-health care sectors. In 2022, unions won 78 percent of RC elections held – this was the lowest success rate since 2015.

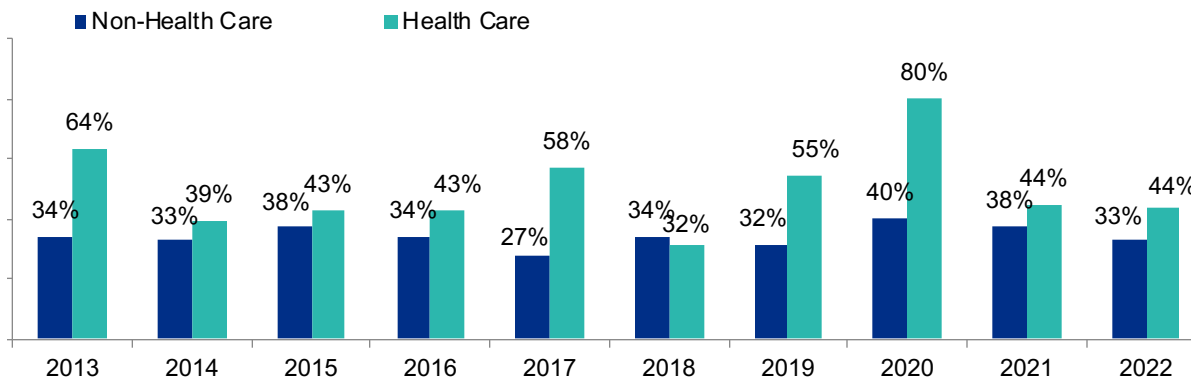
Health Care vs. Non-Health Care Sectors (2013 – 2022)



## UNION WINS IN DECERTIFICATION (RD/RM) ELECTIONS

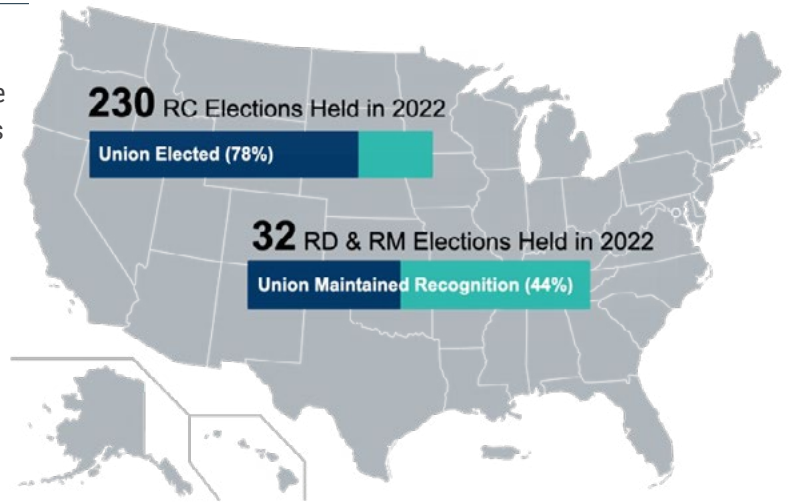
Unions maintained recognition in 44 percent of RD and RM elections held health care in 2022.

Health Care vs. Non-Health Care Sectors (2013 – 2022)



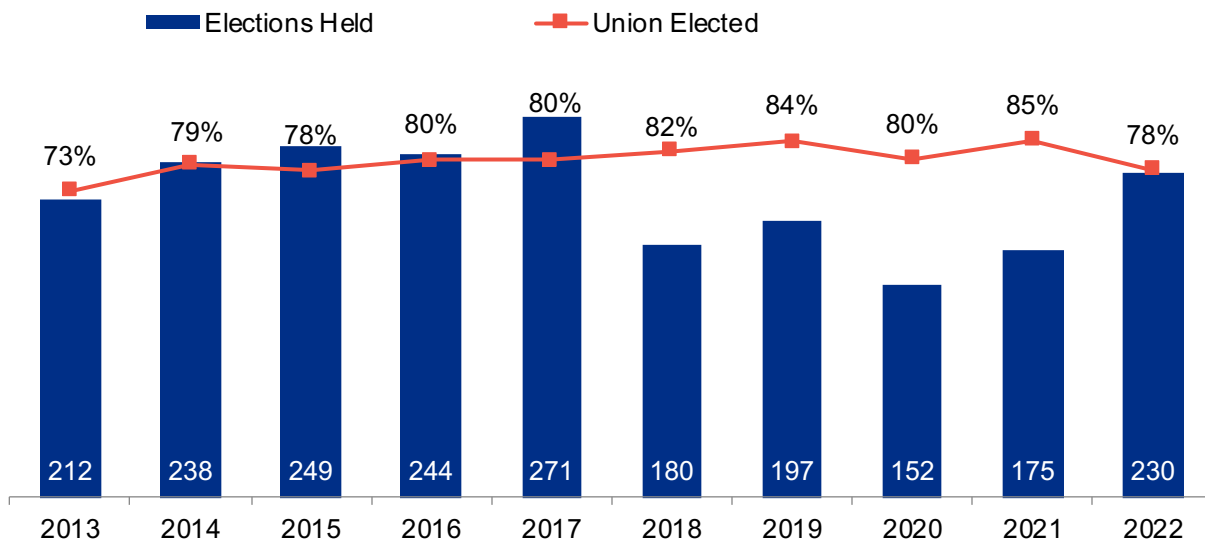
### HEALTH CARE SECTOR – ELECTIONS OVERVIEW

In 2022, there were 230 RC elections held in health care, and unions were elected as a result of 78 percent of them. During the same time period, 32 RD and RM elections were held, and unions maintained recognition in 44 percent.



### UNION SUCCESS IN REPRESENTATION (RC) ELECTIONS COMPARED TO NUMBER OF ELECTIONS

The chart below illustrates the number of RC elections held over the past decade, along with the percentage of elections won by unions. While the 78 percent rate in 2022 is the lowest recently, the 230 elections held is the most since 2017.



# STATE SUMMARIES

This section provides an overview of state-level organizing activity in the health care sector and is based on RC petitions filed and RC elections held. The data includes all reported petitions and elections for 2021 and 2022 at the time of publication.

## ALL STATES – REPRESENTATION (RC) PETITIONS IN HEALTH CARE

The table below details the number of RC petitions filed in each state in health care during 2021 and 2022.

State	2021	2022	State	2021	2022	State	2021	2022
Alabama	-	1	Iowa	-	2	New York	25	40
Arizona	1	2	Kansas	-	2	North Carolina	1	-
California	40	68	Kentucky	-	1	Ohio	3	13
Colorado	2	2	Maine	2	5	Oregon	13	19
Connecticut	12	10	Maryland	3	-	Pennsylvania	22	26
Delaware	2	-	Massachusetts	6	9	Puerto Rico	6	6
DC	3	1	Michigan	12	14	Rhode Island	4	-
Florida	1	3	Minnesota	19	15	South Dakota	1	-
Georgia	-	2	Missouri	2	2	Texas	-	4
Hawaii	3	1	Montana	2	4	Vermont	2	6
Idaho	-	1	Nevada	-	1	Washington	16	23
Illinois	18	7	New Jersey	8	19	West Virginia	1	-
Indiana	1	1	New Mexico	1	1	Wisconsin	-	1
<b>Total</b>							<b>232</b>	<b>312</b>

Note: States are not included in the table if no petitions were filed in 2021 or 2022.



## ALL STATES – REPRESENTATION (RC) ELECTION RESULTS IN HEALTH CARE

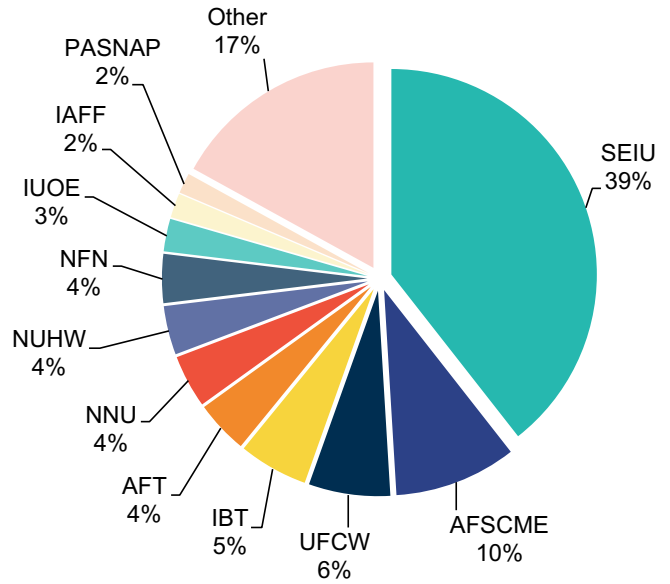
The table below details the number of RC elections held in each state in health care during 2021 and 2022. States are not included in the table if no elections were held in either year.

State	2021					2022				
	Total Elections	Union Elected		Union Not Elected		Total Elections	Union Elected		Union Not Elected	
		Count	Win Rate	Count	Win Rate		Count	Win Rate	Count	Win Rate
Alabama	-	-	-	-	-	1	1	100%	0	0%
Arizona	1	1	100%	0	0%	1	1	100%	0	0%
California	33	29	88%	4	12%	51	43	84%	7	14%
Colorado	-	-	-	-	-	3	2	67%	1	33%
Connecticut	10	8	80%	2	20%	6	5	83%	1	17%
District of Columbia	3	2	67%	1	33%	1	0	0%	1	100%
Delaware	2	2	100%	0	0%	-	-	-	-	-
Florida	1	1	100%	0	0%	3	3	100%	0	0%
Hawaii	2	2	100%	0	0%	1	1	100%	0	0%
Illinois	12	9	75%	2	17%	6	6	100%	0	0%
Indiana	-	-	-	-	-	2	1	50%	1	50%
Iowa	-	-	-	-	-	2	2	100%	0	0%
Kansas	-	-	-	-	-	2	2	100%	0	0%
Kentucky	-	-	-	-	-	1	0	0%	1	100%
Maine	1	1	100%	0	0%	2	1	50%	1	50%
Maryland	-	-	-	-	-	3	3	100%	0	0%
Massachusetts	7	6	86%	1	14%	9	9	100%	0	0%
Michigan	6	6	100%	0	0%	9	7	78%	2	22%
Minnesota	16	13	81%	3	19%	12	8	67%	4	33%
Missouri	2	1	50%	1	50%	1	1	100%	0	0%
Montana	1	1	100%	0	0%	3	2	67%	1	33%
Nevada	1	0	0%	1	100%	-	-	-	-	-
New Jersey	2	1	50%	1	50%	11	10	91%	1	9%
New Mexico	1	1	100%	0	0%	1	0	0%	1	100%
New York	21	15	71%	6	29%	29	23	79%	6	21%
North Carolina	-	-	-	-	-	1	1	100%	0	0%
Ohio	1	1	100%	0	0%	8	4	50%	4	50%
Oregon	10	9	90%	1	10%	14	11	79%	3	21%
Pennsylvania	18	16	89%	2	11%	17	11	65%	6	35%
Puerto Rico	3	3	100%	0	0%	4	1	25%	3	75%
Rhode Island	3	3	100%	0	0%	1	1	100%	0	0%
South Dakota	-	-	-	-	-	1	0	0%	1	100%
Texas	1	1	100%	0	0%	1	1	100%	0	0%
Vermont	2	2	100%	0	0%	4	4	100%	0	0%
Washington	14	12	86%	2	14%	19	14	74%	5	26%
West Virginia	1	1	100%	0	0%	-	-	-	-	-
<b>Total</b>	<b>175</b>	<b>147</b>	<b>84%</b>	<b>27</b>	<b>15%</b>	<b>230</b>	<b>179</b>	<b>78%</b>	<b>50</b>	<b>22%</b>

# UNION SUMMARIES

## MOST ACTIVE UNIONS – REPRESENTATION (RC) PETITIONS IN HEALTH CARE IN 2022

SEIU continues to be the most active union in health care. In 2022, SEIU accounted for 39 percent of RC petitions filed. The next most active union, the American Federation of State, County and Municipal Employees (AFSCME), only accounted for 10 percent.



## MOST ACTIVE UNIONS – REPRESENTATION (RC) PETITIONS FILED

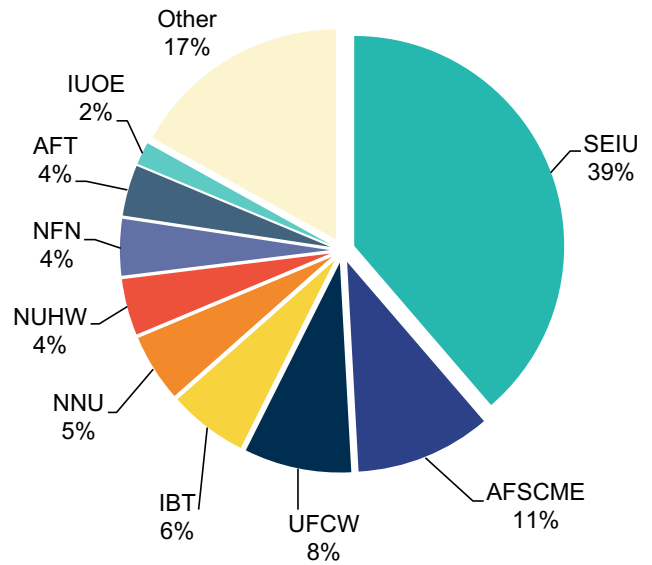
Abbreviation	Union Name	RC Petitions Filed	
		2021	2022
SEIU	Service Employees International Union	108	123
AFSCME	American Federation of State, County and Municipal Employees	20	30
UFCW	United Food and Commercial Workers	12	20
IBT	International Brotherhood of Teamsters	10	17
AFT	American Federation of Teachers	5	13
NNU	National Nurses United	7	13
NUHW	National Union of Healthcare Workers	11	12
NFN	National Federation of Nurses	7	12
IUOE	International Union of Operating Engineers	4	8
IAFF	International Association of Fire Fighters	3	6
PASNAP	Pennsylvania Association of Staff Nurses and Allied Professionals	5	5

The following table includes unions that are also active in health care and referenced on the following pages.

Abbreviation	Union Name
CRONA	Committee for Recognition of Nursing Achievement
CWA	Communications Workers of America
IAM	International Association of Machinists & Aerospace Workers
IBEW	International Brotherhood of Electrical Workers
IUPAT	International Union of Painters and Allied Trades
MNA	Massachusetts Nurses Association
NYSNA	New York State Nurses Association
OPEIU	Office and Professional Employees International Union
SPFPA	International Union, Security, Police and Fire Professionals of America
UAPD	Union of American Physicians and Dentists

### MOST ACTIVE UNIONS – REPRESENTATION (RC) ELECTIONS HELD IN HEALTH CARE IN 2022

As expected, SEIU also accounts for the most RC elections held in the health care sector. In 2022, SEIU was involved in 89 RC elections and was elected as a result of 82 percent of them.

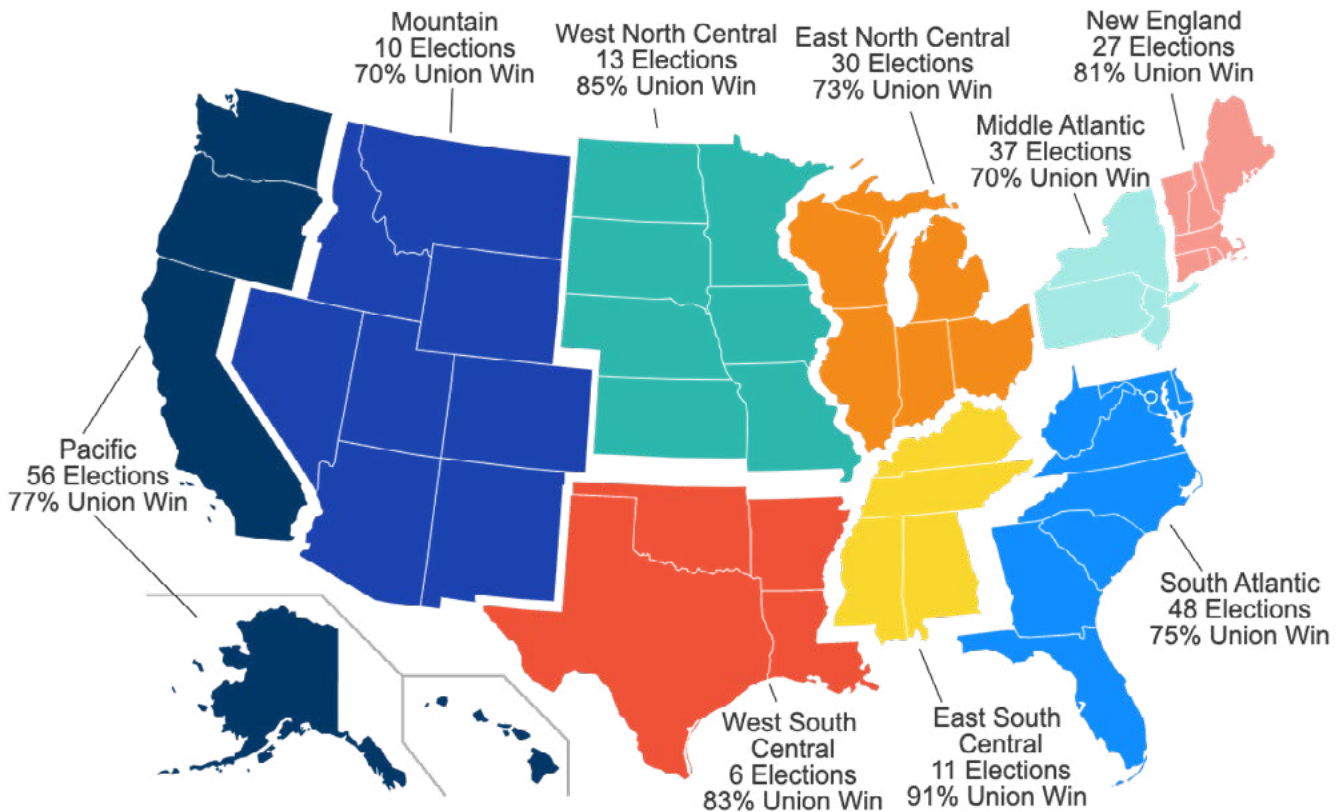


### MOST ACTIVE UNIONS – REPRESENTATION (RC) ELECTION RESULTS

	2021			2022		
	Total Elections	Union Elected %	Union Not Elected %	Total Elections	Union Elected %	Union Not Elected %
SEIU	86	85%	15%	89	82%	18%
AFSCME	17	82%	18%	24	63%	38%
UFCW	5	100%	0%	19	79%	21%
IBT	5	80%	20%	14	71%	29%
NNU	5	80%	20%	12	83%	17%
NUHW	4	75%	25%	10	100%	0%
NFN	4	100%	0%	10	70%	30%
AFT	3	100%	0%	9	89%	11%
IUOE	4	75%	25%	4	75%	25%

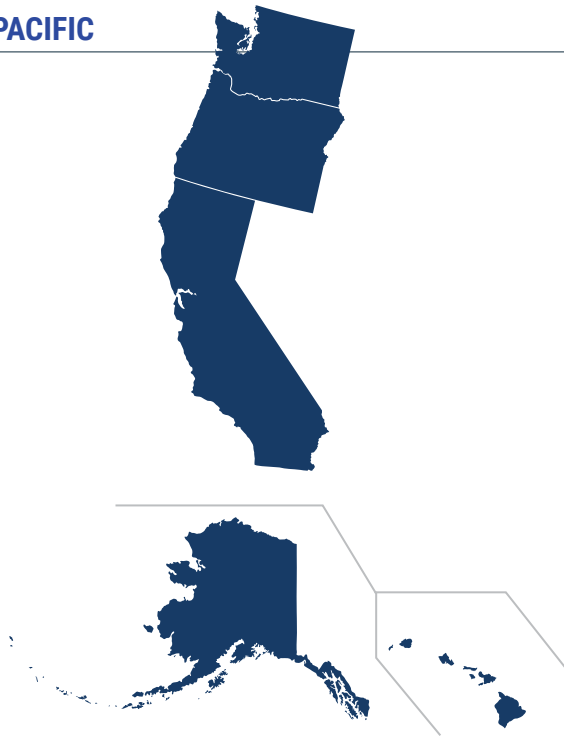
# REGIONAL SUMMARIES

For the purposes of this analysis, we have categorized the nation into nine regions, as illustrated in the map below. The following sections provide an overview of activity in each region in 2021 and 2022 and a breakdown of the most active unions in the region based on RC petitions filed in the same time period.





**PACIFIC**



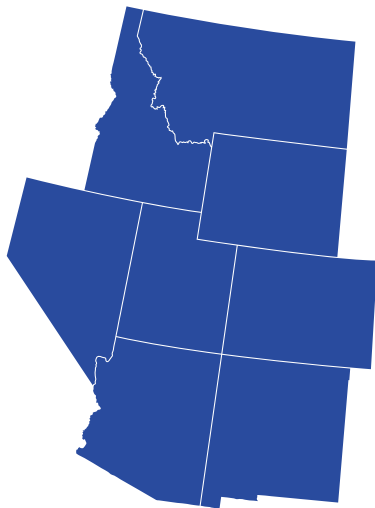
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Alaska	0	0	-
California	68	51	84%
Hawaii	1	1	100%
Oregon	19	14	79%
Washington	23	19	74%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Alaska	0	0	-
California	40	33	88%
Hawaii	3	2	100%
Oregon	13	10	90%
Washington	16	14	86%

**Most Active Unions**  
 SEIU, NUHW, UFCW, NFN, AFSCME, NNU, IBT, CRONA, IUOE, USW, IAFF, OPEIU, IAM, AFT, UAPD, Other

**MOUNTAIN**



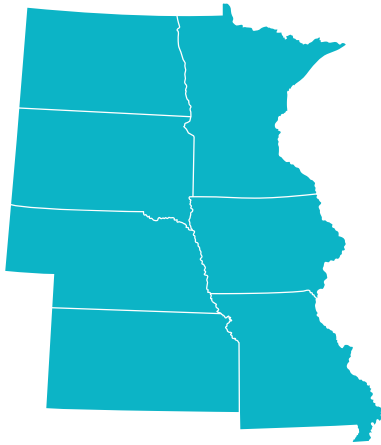
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Arizona	2	1	100%
Colorado	2	3	67%
Idaho	1	0	-
Montana	4	3	67%
Nevada	1	0	-
New Mexico	1	1	0%
Utah	0	-	-
Wyoming	0	-	-

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Arizona	1	1	100%
Colorado	2	0	-
Idaho	0	0	-
Montana	2	1	100%
Nevada	0	1	0%
New Mexico	1	1	100%
Utah	0	0	-
Wyoming	0	0	-

**Most Active Unions**  
 NFN, IAFF, IBT, IAM, UAPD, NNU, AFSCME, UFCW, IUOE, CWA

**WEST NORTH CENTRAL**



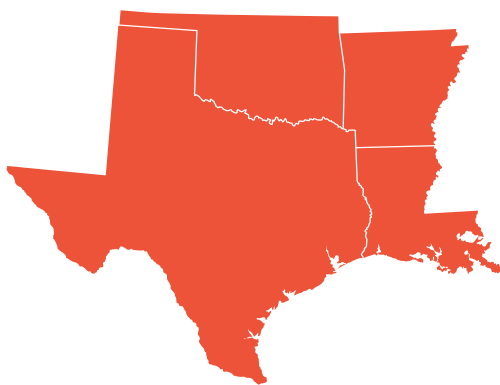
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Iowa	2	2	100%
Kansas	2	2	100%
Minnesota	15	12	67%
Missouri	2	1	100%
North Dakota	0	0	0%
South Dakota	0	1	0%
South Dakota	0	0	-

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Iowa	0	0	-
Kansas	0	0	-
Minnesota	19	16	81%
Missouri	2	2	100%
North Dakota	0	0	-
South Dakota	1	0	-
South Dakota	1	1	100%

**Most Active Unions**

SEIU, AFSCME, UFCW, IBT, CWA, OPEIU, IUOE, NNU, Other

**WEST SOUTH CENTRAL**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Arkansas	0	0	-
Louisiana	0	0	-
Oklahoma	0	0	-
Texas	4	1	100%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Arkansas	0	0	-
Louisiana	0	0	-
Oklahoma	0	0	-
Texas	0	1	100%

**Most Active Unions**

SEIU, IUOE, NNU

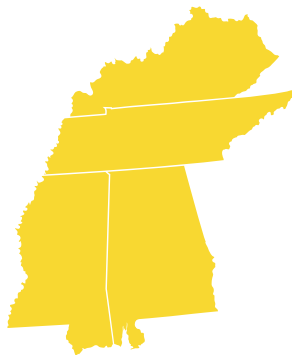
**EAST NORTH CENTRAL**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Illinois	7	6	100%
Indiana	1	2	50%
Michigan	14	9	78%
Ohio	13	8	50%
Wisconsin	1	0	-
State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Illinois	18	12	75%
Indiana	1	0	-
Michigan	12	6	100%
Ohio	3	1	100%
Wisconsin	0	0	-

**Most Active Unions**  
SEIU, AFSCME, IBT, NNU, IUOE, OPEIU, UAW, NFN, Other

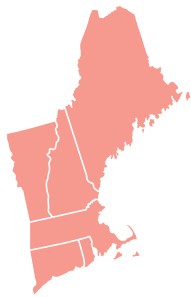
**EAST SOUTH CENTRAL**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Alabama	1	1	100%
Kentucky	1	1	0%
Mississippi	0	-	-
Tennessee	0	-	-
State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Alabama	0	0	-
Kentucky	0	0	-
Mississippi	0	0	-
Tennessee	0	0	-

**Most Active Unions**  
IBEW, AFSCME

**NEW ENGLAND**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Connecticut	10	6	83%
Maine	5	2	50%
Massachusetts	9	9	100%
New Hampshire	0	0	-
Rhode Island	0	1	100%
Vermont	6	4	100%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Connecticut	12	10	80%
Maine	2	1	100%
Massachusetts	6	7	86%
New Hampshire	0	0	-
Rhode Island	4	3	100%
Vermont	2	2	100%

**Most Active Unions**

SEIU, AFT, IBT, UNAP, AFSCME, MNA, UFCW, Other

**MIDDLE ATLANTIC**



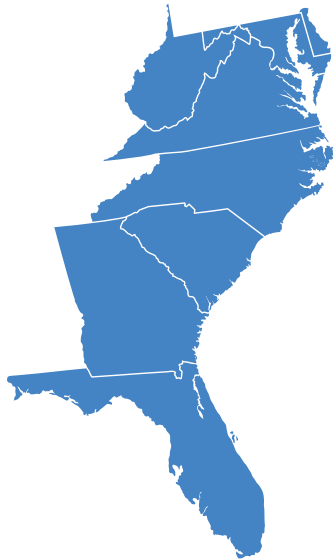
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
New Jersey	19	11	91%
New York	40	29	79%
Pennsylvania	26	17	65%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
New Jersey	8	2	50%
New York	25	21	71%
Pennsylvania	22	18	89%

**Most Active Unions**

SEIU, AFSCME, UFCW, PASNAP, AFT, CWA, NYSNA, IAFF, Other

**SOUTH ATLANTIC**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
DC	1	1	0%
Delaware	0	-	-
Florida	3	3	100%
Georgia	2	-	-
Maryland	0	3	100%
North Carolina	0	1	100%
South Carolina	0	-	-
Virginia	0	-	-
West Virginia	0	-	-

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
DC	3	3	67%
Delaware	2	2	100%
Florida	1	1	100%
Georgia	0	0	-
Maryland	3	0	-
North Carolina	1	0	-
South Carolina	0	0	-
Virginia	0	0	-
West Virginia	1	1	100%

**Most Active Unions**

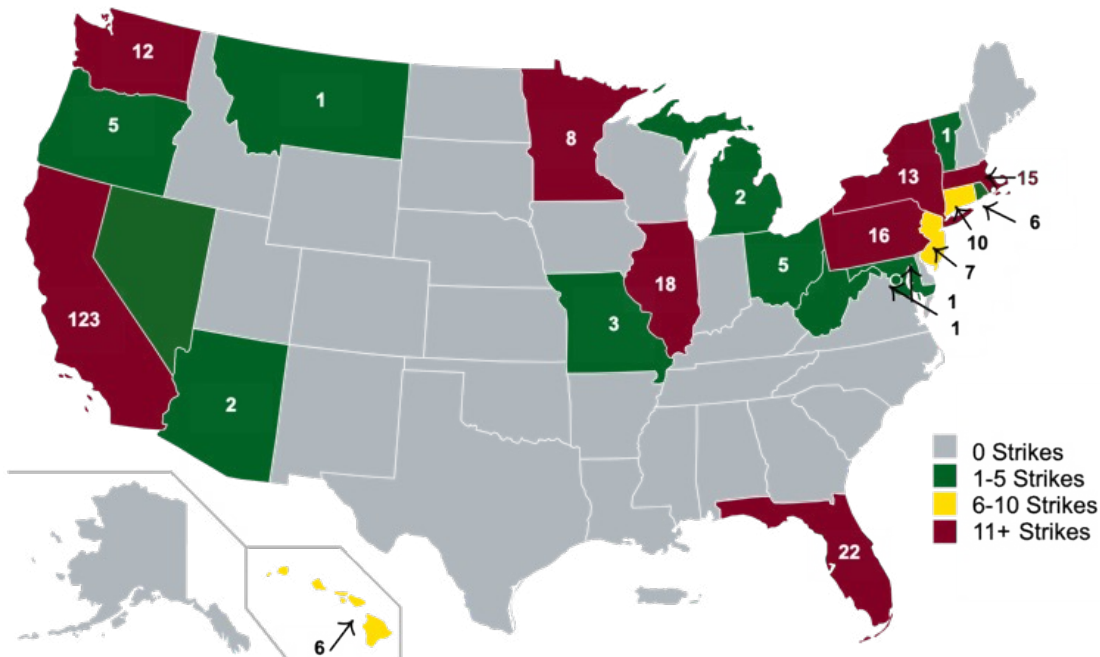
SEIU, NNU, SPFPA, IUPAT, AFSCME, Other



# STRIKES IN HEALTH CARE

## STRIKES IN HEALTH CARE BY STATE: 2013 – 2022

The map below illustrates the number of strikes held in health care since 2013<sup>3</sup>. Strike activity continues to be highly concentrated in a handful of states.



Year	Number of Strikes	Workers Idled	Average Number of Workers per Strike
2022	37	44,245	1,196
2021	35	75,572	2,159
2020	24	28,906	1,204
2019	36	122,161	3,393
2018	28	103,162	3,684
2017	19	4,131	217
2016	27	17,117	634
2015	18	8,378	465
2014	25	26,822	1,073
2013	22	13,328	606

<sup>3</sup> Strike data is compiled from a combination of Federal Mediation and Conciliation Services Work Stoppage Data, U.S. Bureau of Labor Statistics Major Work Stoppages Data, and media coverage of strikes in order to provide the most complete data possible. The data may not be comprehensive.

# LABOR LAW/ACTIVITY UPDATE

## **Union Organizing Campaigns by Interns and Residents**

Residents, interns, and fellows – also known as the house staff in a hospital – are unionizing across the United States. Once the pandemic started, the rate of organizing increased threefold and is expected to accelerate in 2023. In addition, the National Labor Relations Board continues to make it easier to start or join a union and is expected to accelerate its pro-union agenda during the current administration's term in office. Now is the time for all health care facilities to retain expert labor relations consultants to assess union vulnerability and develop and implement preventive strategies.

## **Checking the Health of Employee Relations in the Health Care Industry**

Four IRI Consultants share their insights into how health care companies can respond to these challenges and create a culture of employee engagement to minimize the risk of union organizing. Their responses offer a range of suggestions based on their considerable experience in union avoidance practices, labor relations, collective bargaining contract negotiations, strategic labor planning, employee communications, and leadership training.

## **Updated GC Memo Shows Whittled Down Goals of Busy NLRB General Counsel Abruzzo**

Under General Counsel Abruzzo's watch, the National Labor Relations Board has overturned a number of decisions rendered during President Trump's time in office. The Board's new decisions establish more employee-friendly standards. General Counsel Abruzzo's March 2023 "Status Update" memo outlines 15 remaining targets for Board modification.

# Union Organizing Campaigns by Interns and Residents

## Situational Overview

Residents, interns, and fellows – also known as the house staff in a hospital – are unionizing across the United States. Once the pandemic started, the [rate of organizing increased threefold](#) and is expected to accelerate in 2023.

House staff are primarily joining the Committee of Interns and Residents (CIR), which is a local of the Service Employees International Union (SEIU). The [CIR/SEIU](#) represents approximately 15 percent of house staff in the U.S. (over 24,000 residents, interns, and fellows) in more than 60 hospitals coast to coast. They are also joining physician-specific unions like the [Union of American Physicians & Dentists \(UAPD\)](#).

House staff organizing is occurring in multiple states, including California, Massachusetts, New York, Pennsylvania, Vermont, Washington, D.C., and elsewhere. While union contracts do not address academic issues, a broad range of topics is covered in the contracts, from family leave to on-call rooms to scheduling to compensation. In the timeline to the right are some of the health care facilities where, in the last few years, house staff have unionized or announced the intention to unionize.



This partial list demonstrates the trend of interns and residents choosing to seek union representation.



## What are the reasons prompting house staff to organize?

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- The pandemic led to issues like longer working hours without additional compensation, increased stress from treating COVID-19 patients, health and safety concerns due to the unavailability of personal protective equipment (PPE), lack of childcare assistance when parents had to work longer hours, and staffing shortages. There were also perceived inconsistencies in how COVID-19 policies and procedures were implemented.
- Some current workplace issues existed before the pandemic, like general burnout and lower-than-desired compensation. Per the [American Medical Association \(AMA\)](#), physicians at every stage of education frequently experience burnout and multiple other stressors. Additionally, medical students are three times more likely to die by suicide compared to the general population.
- Residents, interns, and fellows are “hybrid employees” because they are employees and medical students in the Graduate Medical Education (GME) program. Residency program supervisors, usually known as Program Directors, frequently are not employed by the hospital but rather by an educational institution. They are primarily concerned with the residents’ medical education, not leadership principles like employee engagement and positive employee relations. Human Resources (HR) frequently has little contact with house staff because they are not seen as regular employees, and most are only there for one to three years.
- Because of their hybrid employment status and Program Directors’ lack of influence over the health system’s administrative leadership, house staff feel powerless and like they have no voice in decision making. They believe there is a lack of communication between them and health administrators and inconsistent communication across medical units, groups, and facilities.
- Residents are an average of 24-28 years old, and unions are selling that they will be part of a “movement sweeping the country.” It is very much like a social justice cause. Younger generations support unionization and believe in activism and organizing as good strategies for pursuing social justice. In fact, CIR/SEIU’s issues include health

justice for all, racial justice, undocumented workers’ access to public health programs, and reproductive justice.

- House staff believe their working conditions lead to patient care deterioration, which violates professional values and altruistic goals. Younger millennials and older Gen Z generational perspectives differ from the perspectives of physicians who are older millennials, Gen X, and baby boomers who went through the residency programs and generally do not consider the long hours an issue.
- House staff believe they are responsible for improving working conditions for future residents, interns, and fellows.
- House staff believe their compensation is too low for the typical 80-100-hour work week with some 24-hour shifts. At an average of \$58,921 per year, according to an Association of American Medical Colleges (AAMC) survey, some could be earning minimum wage while some non-physician hospital employees working fewer hours with set schedules earn that much or more.
- House staff want more control over their work lives, including scheduling and inclusion in decision making concerning programs, initiatives, schedules, compensation calculations, and even perks, like parking.

## What actions have been successful with this audience?

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- Winning the Program Directors over to become active supporters of a strategy to build positive employee relations and prevent union organizing is essential to success.
- Educating Program Directors on the impact of unions on employee engagement, employee relations, organizational culture, and employer rights is a successful strategy. Though unions are not supposed to interfere with GME programs, keeping the employee and education sides separate is difficult, if not impossible.
- Educating house staff about the impacts of unionization on things like their connections with physicians and

management and the possibility of strikes is another successful strategy. Most residents do not understand what unions can and cannot do or how their concerns may not be resolved through the collective bargaining process.

- Developing a communications strategy that gives house staff a more powerful voice through digital tools, meetings, employee surveys, leader rounds, etc., is critical to avoiding unionization.

### What should employers do?

- Employers often have the perspective that residents, interns, and fellows are getting valuable and expensive training while earning compensation for the work they do. This perspective focuses on only one-half of the house staff's hybrid status. One of the first things to do is evaluate the administration's perspective to identify communication biases and barriers. Ensure house staff are treated like regular employees with a full orientation about their employment, not just their education.
- Consider a leadership structure that allows the Program Director to have a "dyad partner," where a site administrator is assigned to partner with the Program Director and act as the residents' connection to the health system and their employment. This should be in addition to an increased HR presence.
- Educate house staff on the risks associated with unionization, including potential strikes and walkouts, weakened employee relations between physicians and residents, less flexibility in the education program due to contract conditions, and the typical length of contract negotiations, which are also time-consuming and often contentious.
- Ensure house staff know about the benefits they are entitled to and allow them opportunities to utilize them. It hurts trust in management when the employer touts benefits, like family leave time, but staff are never able to use them due to scheduling.
- Ensure house staff know they and their GME program are valued and important, closing the communications gap between administration and Program Directors.

- Ensure HR has regular contact with house staff and checks up on their issues and concerns.
- Ensure a hospital manager, supervisor, or administrator does regular leadership rounding, talking to individuals and checking on their well-being.
- Do regular market reviews of wage, stipend, and paid time off (PTO) for benchmarking purposes, and maintain alignment with competitors and within the industry.
- Be thoughtful about changing perks, like parking, because they become triggering events for unionizing.
- Before there is a petition filed, hold listening and feedback sessions with action plans to address issues raised.
- Ensure regular interaction between GME leadership and health system leadership.

IRI believes the wave of unionizing will grow stronger in 2023 as more employees who are not traditional union members are swept up by the enthusiasm of frontline and white-collar workers across industries joining large labor unions or forming independent unions. In addition, the National Labor Relations Board continues to make it easier to start or join a union and is expected to accelerate its pro-union agenda during the current administration's term in office. Now is the time for all health care facilities to retain expert labor relations consultants to assess union vulnerability and develop and implement preventive strategies.

# Checking the Health of Employee Relations in the Health Care Industry

## ABSTRACT

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The [health care industry](#) is in a state of transformation, rocked by the pandemic, staffing issues, and a surge in labor union organizing among all employee groups. Four IRI Consultants share their insights into how health care companies can respond to these challenges and create a culture of employee engagement to minimize the risk of union organizing. Their responses offer a range of suggestions based on their considerable experience in union avoidance practices, labor relations, collective bargaining contract negotiations, strategic labor planning, employee communications, and [leadership training](#).

Increased labor [union organizing in the health care industry](#) reflects similar activity in other industries but creates unique issues concerning patient care. Health care facilities are dealing with staffing shortages, employees demanding more control over schedules and operational decisions, and general employee discontent and mistrust of management triggered during the pandemic. [Labor union organizing](#) is on the rise among traditional employee groups like nurses, technicians, and support staff in various health care facilities, including hospitals, clinics, and nursing homes, but it is also increasing among non-traditional employee professional groups like physicians, residents, advanced practice providers, and social workers. Union organizing is easier now due to social media and other technologies, and employees feel empowered to voice their needs in a unified manner. Preventing union organizing takes a strategic leadership approach founded on excellent leader communication skills, which enables the development and deployment of a successful employee engagement strategy and tactics that include everything from simple things like wellness carts to involving employees in organizational decision making. Above all, leadership training is the foundation of successful employee engagement.

Four IRI consultants with deep knowledge and expertise in strengthening [employee engagement](#) to prevent union organizing or improve employee engagement in a unionized workplace were asked to share their insights and real-world experiences. The consultants experience spans a combined 77 years. Collectively, they have advised clients in the health care industry ranging from community clinics to standalone hospitals to multi-site Fortune 500 companies. Their deep experience and expertise come from managing hundreds of organizing campaigns with the Service Employees International Union (SEIU), National Nurses United (NNU), California Nurses Association (CNA), Michigan Nurses Association (MNA), Minnesota Nurses Association (MNA) Pennsylvania Association of Staff Nurses and Allied Professionals (PASNAP), United Steel Workers, Teamsters, and many others. This diverse expertise from both sides of the bargaining table positions our clients to prevail against the [unions' traditional and corporate campaign tactics](#). Following are the questions they were asked and their responses.

## Interview With the Experts

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### How has union organizing in health care changed over the last 12-18 months?

Health care organizing has shifted from the traditional union-paid organizer in a parking lot to health care employees acting as internal organizers fueled by social media campaigns. The decrease in morale across the health care industry, exacerbated by short staffing, a hot jobs market, and pandemic burnout, makes the typical health care worker susceptible to the negativity in the [union's social media campaign](#) and activist posts. This makes it easier for unions to recruit employees willing to take the lead in organizing their peers. In the past, it took time for the union to identify and cultivate a relationship leading to this type of workplace activism. Now disgruntled employees are coming to them.

The power of these internal organizers should not be underestimated – especially if they are influential employees. Their access to other employees and the credibility they bring diminishes the argument that the union is a third party and enhances the idea that the employees *are* the union.

When unions are unable to identify an internal organizer, they resort to using “salts” to get union organizers hired into an organization so that they have the same rights as employees. Salting, a union tactic used for over a hundred years, has seen a rebirth in recent years. The Starbucks and Amazon campaigns have highlighted this tactic, but it's been used in health care for the better part of the last decade.

Union organizing petitions filed by nurses, technical and service employees was the standard, but unions are increasingly branching out to physicians, residents, advanced practice providers, and professional employees. These groups have not been on HR's radar, and these petitions are catching employers unprepared. Unions became very good at leveraging social media and texting/emailing during the pandemic when in-person organizing was restricted. Labor unions using [digital communications](#), coupled with the union tactic of encouraging employees not to discuss union activity with their leaders, has allowed unions to file petitions for election before senior leadership has any idea what is happening. Leadership loses the ability to fight back pre-petition.

Unions, particularly the nursing unions, have also become very active in [right-to-work states](#) where, in the past, they haven't been willing to expend organizing resources because of the uncertainty of their dues revenue stream should they win.

The surge in organizing is more about what the organization hasn't done to support employees during the pandemic-related staffing crisis than a desire for union representation. When there are organizational decisions that create disparity in the workforce, like offering a new hire a recruitment bonus but not a [retention](#) bonus for current employees or one that is significantly restricted by guidelines around receiving it and paying it back, such decisions open the door for organizing and result in managers and supervisors sympathizing with the need for employees to have a union. Employees are looking for an alternative to management whom they feel has failed them.

### How are employers in health care communicating with workers now? Is there more emphasis on digital solutions and short-form videos?

If employers want to effectively communicate with workers, particularly during the compressed timeline between petition and election, they must embrace digital formats – texting, email, purpose-built websites, [short-form videos](#), and social media. Employers must be intentional about promoting the messages and routinely monitor communications metrics, making adjustments when necessary to ensure that employees are engaging with the messages. Prerecorded town halls that were recorded in fancy offices and where the speaker is wearing a suit serve only to fuel the organizing fire. Employees want to see their leaders in person, answering tough questions, and wearing more casual clothes.

As always, the most effective communications come from direct supervisors. Therefore, [supervisors](#) must be trained on effective and legal communication regarding union organizing and they must build trusting relationships with their employees before organizing starts.

Many employers are also trying technology-based platforms, such as Slack and WorkChat, to increase communication with the workforce. While these forums make it easier for management to push content to employees, they do little to improve the relationship between employees and leaders.

Organizations need multiple communication avenues, but nothing replaces a strong relationship with the employee's direct manager. Shifting to this type of [two-way communication](#) reinforces the relationship between the employees and frontline leadership and, for the broader organization, improves business objectives while decreasing organizing risk.

### **What resources are health care companies using to combat burnout due to staffing shortages?**

One facet of [burnout](#) often overlooked is the lack of control employees feel they have in their work environment. Teaching leaders to involve employees in operational decisions helps employees feel that they are part of the solution instead of being victims of top-down management decisions. Pulling the team together to discuss all the factors contributing to the shortages helps employees see the broader picture and what they could do to help. This is a powerful tool to decrease callouts and [increase ownership](#) of the whole team's success, which leads to a culture that attracts talent.

One of the most creative resources we have seen is the "Employee Well-Being Cart." Rather than the traditional snack cart that leaders often round with, Employee Well-Being Carts offer selections like stress balls, stress relief tea, travel-sized bottles of lotions and hand sanitizers, healthy snacks, fidget spinners, mindfulness cards, adult coloring books, and sleep masks. This shows employees that the organization is committed to their [mental health](#) and provides an opportunity for purposeful rounding for leaders to engage in conversations with employees about their well-being at work.

### **How important are exceptional pay and benefits in the health care industry today?**

Ensuring benefits and pay are competitive goes without saying, but often the trigger for employees to seek a union has more to do with internal inequity or compression than the actual pay rate. Finding out that the new employee makes the same or more than an employee in the same position who has been with the organization for years triggers a lack of trust that the organization will treat them fairly or has their best interests at heart.

With the lingering financial hardships of COVID-19, especially in terms of increased labor costs associated with contract labor and employee incentive programs, organizations are struggling to keep up with employees' expectations on pay. As health care organizations strive to rein in costs, employees are incredibly frustrated with what they perceive as takeaways. Employees have gotten used to the high wages of traveling positions or picking up an extra shift for \$800 and, for those employees who stayed on during the pandemic, many are still waiting for their \$20,000+ retention bonus.

Benefits are less important than base pay. In many states, employees can get benefits through a spouse. Or, employees may be less in need of robust benefits because they are just starting their careers. What they need is a sufficient base wage to cover living expenses, e.g., rent, food, and gas. Clients who are transparent about the organization's pay philosophy and have leaders and frontline employees who understand the philosophy see reduced union activity.

[Pay](#) is a sensitive topic for many organizations, and leaders frequently struggle to explain the nuances of health care finance to their direct reports. As health care organizations work to keep up with employee expectations on pay, unions can promise significant wage increases to potential members and muddy the waters as it relates to the actual financial realities of the organization. Without a compelling and transparent compensation narrative accessible to leaders and employees, organizations are at a heightened risk of unionization.

Pay and benefits are always important, but it's vital to remember that union elections are always about the money, but they are [never only about the money](#). Culture, respect, feeling heard, and participating in decisions that affect them are as important to employees.

### **What are some best practices you're seeing today in health care around building stakeholder trust?**

The best way to increase trust is to require [transparency](#) in operational decisions and organizational changes. If employers want to take back the narrative from the unions, they need to take a hard look at their comfort level in providing additional business and financial details to employees. When employees understand the business and how the organization

makes decisions and are included in the change management process, they are more likely to trust and support the changes. Nothing breaks down trust faster than being surprised by a change, especially if it relates to an employee's schedule or pay. Organizations that put time into their change management process to help employees understand the reasons for the change and allow them to participate in how the [change](#) will be made may insulate themselves from many of the negative responses to change.

Purposeful [leadership rounding](#) with intentional follow up is another great way to build stakeholder [trust](#). Leaders should build rounding into their regular schedule and prioritize their rounding time. To amplify the goodwill developed by purposeful rounding, leaders should consider providing regular updates to highlight the good work that the organization is doing. Senior leaders should ensure that frontline managers understand how to use these communications tools to [build trust](#) with their teams and how that trust mitigates the risk of unionization.

Additionally, leaders should say what they mean and mean what they say, and never leave a question or suggestion unanswered. It's acceptable not to know the answer but always follow up with feedback. However, don't make promises you can't keep, and never fail to deliver on a promise. Ensure that leaders of all levels know how to deliver news – good or bad – and can own both. When reporting back or delivering news to employees, it should never be acceptable to blame all bad things on upper management or the "administration." Finally, don't let underperforming employees or leaders linger. Either train them up or move them out.

### **What should health care companies focus on right now relative to leadership and employee training?**

Health care companies must prioritize leadership training for both experienced and new leaders. Communication proficiency, business literacy, team development, and change management are crucial areas of focus. Teaching leaders and employees how to navigate change from a team perspective is an investment that diminishes union risk and improves business metrics. Such training needs to be coupled with skill-building components that ensure leaders are ready to take their learnings from the classroom to the frontline.

New health care workers require more support and precepting due to pandemic-related changes to education and orientation. While their leaders and peers struggle with heavy workloads and burnout, organizations must provide supplemental education and support to new health care workers to alleviate the strain and demands of the job.

### **Can you share some examples of how health care companies are creating a culture of engagement?**

The best way to improve engagement is to engage employees in the business. Making it the normal practice to involve employees in decision making regarding issues that impact them creates a [culture of ownership](#). Legal issues must be considered, but they are not complicated. Need to change your department's work schedule? Meet with employees to get their ideas. Need to change a work policy, attendance, uniforms, or training requirements? Meet with employees to get their ideas. [Employee advisory groups](#) are a great way to involve employees in the organizational decision-making process.

When leaders work on the business by being present with their teams, observing the actual work and involving employees in the decisions that impact them, engagement improves. Unfortunately, too many leaders spend time working on the business in meetings, on conference calls, or working from home. It's hard for employees to feel that their work is respected and their ideas valued when they have little contact with their leaders, especially when contact is limited to times when the leaders are pushing down [change](#) mandates.

### **What steps should health care industry employers take now to avoid employee pickets, protests and strikes?**

Take the same steps needed to remain union-free, including hiring the right people, providing good pay and benefits, ensuring leaders of all levels are excellent, and involving employees in the decision-making process. Spend the time rounding now to build trusted relationships and communicate face to face. If you are already going through collective bargaining, it is imperative that the employer communicate regular bargaining updates to mitigate the risk of [protected concerted activity](#).

In short, don't give employees a reason to picket, protest, or strike. These are extreme responses to extreme breakdowns in the relationship employees have with management and the organization. Focus on building trust and empowering leaders to lead the workforce with [transparency and accountability](#), and you won't need to plan for these extreme situations.

### **How can health care employers promote a good work-life balance for employees?**

Often, it is less about [work-life balance](#) and more about leadership visibility and transparent communication. Employees know health care will be long hours, nights, and weekends. They get frustrated when the manager and executives work from home or only on the day-shift, and swing- and night-shift employees never see or hear from them, or when leaders are not answering the tough questions.

Health care leaders should regularly check in with employees, even daily, using the "Thumb System." Employees use a thumb signal to indicate how they are doing – thumbs-up for good, thumbs-sideways for feeling drained and needing support, and thumbs-down for feeling burnt out and needing a break. Leaders should follow up with thumbs-sideways employees to plan for time off and send thumbs-down employees' home to recharge or provide additional support during their shift if staffing is limited.

Work-life balance can be tough to achieve with chronic staffing shortages, but non-union employers need to take advantage of the flexibility they have in scheduling to alter work schedules and do what they can to accommodate employees' personal lives. Unionized employers need to negotiate scheduling language into their contracts that allows them to do the same.

## **Developing a Full Employee Engagement Agenda**

One thing that is clear from the consultants' responses is that developing employee engagement in a health care organization requires a coordinated set of consistent leadership behaviors. It's not one thing, but many things, that [build positive employee relations](#) through leadership transparency and accountability. They include strengthening [employee voice](#) in decision making,

making leaders accessible to employees on all shifts, listening to [employee feedback](#) and always following up, adapting work schedules as much as possible to stave off employee burnout, providing competitive wages and benefits for new hires and ensuring fairness for existing employees, and more. Successfully putting all these steps together in a coordinated employee engagement strategy can help health care organizations prevent union organizing, strikes, protests, and walkouts and even help unionized employers achieve a culture of engagement that eases workplace tensions and eventually makes a labor union unnecessary.

IRI Consultants can help your organization develop an employee engagement strategy that best fits the health care workplace and minimizes the risk of unionization by increasing employee trust in leadership through transparency and accountability. You can easily [contact us online](#) or call 313-965-0350 to talk to a consultant with expertise in your industry.

# Updated GC Memo Shows Whittled Down Goals of Busy NLRB General Counsel Abruzzo

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## ABSTRACT

On March 20, 2023, National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo issued a "[Status Update on Advice Submissions Pursuant to GC Memo 21-04](#)." This memo served to direct Field Offices on which cases were to be submitted on advice. It also showed the boxes General Counsel Abruzzo had checked off her priority list already, as well as those that remained. This memo combined with the NLRB's recent attempts to issue proposed rulemaking aimed at broadening the definition of joint employer under the National Labor Relations Act (NLRA) and expansions of election challenges under the "Fair Choice and Employee Voice" rule illustrate the current NLRB's pro-employee agenda.

## What's happened so far

With any change in political administration comes an expectation that the incoming NLRB will work to move the pendulum on certain Board precedents of high priority. Keeping in line with this tradition, early in her tenure, General Counsel Abruzzo quickly identified a laundry list of precedents that she wanted submitted on advice with the notion to turn these precedents to more employee-friendly positions.

Thus far, under General Counsel Abruzzo's watch, the Board has overturned a number of decisions rendered during President Trump's time in office. These new decisions establish the following more employee-friendly standards:

- **Union Insignia** – In *Tesla, Inc.*, the Board overturned a 2019 ruling from *Wal-Mart Stores* by holding that employer attempts to impose any restrictions on the display of union insignia, including apparel, are presumptively unlawful absent special circumstances.
- **Dues-Checkoff** – In *Valley Hospital*, the Board returned to a 2015 ruling holding that employers may not unilaterally cease deducting employees' union dues pursuant to a valid dues-checkoff provision after the Collective Bargaining Agreement (CBA) has expired.
- **Full and Remedial Relief** – In *Thryv, Inc.*, the Board held that the need for full and remedial relief for employees aggrieved by unfair labor practices means that such employees must be compensated for all "direct or foreseeable pecuniary harm" caused by the unfair labor practice, including damages beyond backpay and reinstatement. However, the Board declined to adopt the General Counsel's position that such employees are also entitled to emotional distress damages, leaving that issue for a future case.
- **Right of Contracting Employees to Engage in Protected Concerted Activities** – In *Bexar County II*, the Board held that the employees of contractors have the right to engage in protected concerted activity at their worksites.



- **Non-Disparagement and Confidentiality Clauses Interfere with Section 7 Rights** – In February 2023, in *McLaren McComb*, the Board held that providing employees with severance agreements that would permanently furlough bargaining unit workers was unlawful where those severance agreements had non-disparagement and confidentiality clauses, as these clauses interfered with employees' exercise of Section 7 rights by causing a chilling effect on protected concerted activity.

- In March 2023, General Counsel Abruzzo issued [GC 23-05](#), which addressed many questions raised by the *McLaren McComb* decision. In her memo, Abruzzo clarified, among other things, that the decision will be applied retroactively, that the decision was not limited to severance agreements (but impacts all employment-related agreements inclusive of those clauses), and that savings clauses or disclaimers will not be enough to cure overly broad restrictions included in severance or other employment agreements. One question left unanswered by the General Counsel's memo was whether the NLRB would invalidate an entire agreement based on offending confidentiality or non-disparagement provisions or simply require rescission of those provisions. Although the General Counsel memo does not commit to a singular approach, it points out that the typical practice in the NLRB's regional offices has been to invalidate only the unlawful provisions regardless of whether there is a severability clause.

### The General Counsel's goals for future change

General Counsel Abruzzo's "Status Update" memo outlined the following 15 targets as remaining for Board modification:

1. The applicability of the inherently concerted doctrine
2. Cases that permit employers to offer significantly more backpay than what is owed in return for a waiver of reinstatement
3. Cases that require unions to provide non-member *Beck* objectors with confirmation that financial information disclosed to them has been independently audited and that lobbying costs are not chargeable to objectors
4. Cases requiring that a union faced with anticipatory withdrawal of recognition, based upon evidence of a loss of majority support within 90 days prior to contract expiration, may only reacquire majority status through filing a petition for a Board election within 45 days of the date of the employer's notice of anticipatory withdrawal and during which time the employer may lawfully refuse to bargain
5. Cases declining to determine whether the post-contract status quo requires increases to employer fund contributions
6. Cases declining to extend the NLRA's coverage to individuals with disabilities on grounds that these individuals, where working in a rehabilitative setting, are not employees within the meaning of Section 2(3) of the NLRA
7. Cases that support providing substantial deference to National Mediation Board advisory decisions
8. Cases involving a refusal to furnish information related to a relocation or other decision
9. Cases permitting mid-term withdrawals of recognition where they occur after the third year of a contract of longer duration
10. Cases that permit employers to unilaterally set the terms and conditions of replacement workers even to terms superior to those of striking employees
11. Cases declining a make-whole compensatory remedy for failures to bargain
12. Cases finding that employers do not necessarily violate the NLRA by promulgating a mandatory arbitration agreement in response to employees' collective action
13. Cases finding that a successor employer that discriminates in refusing to hire a certain number of the predecessor's workforce to avoid a *Burns* successorship bargaining obligation does not necessarily forfeit the right to set the employees' initial terms
14. Cases refusing to find a pre-disciplinary interview right to information, including the questions to be asked in the interview, as a purported extension of *Weingarten*

### 15. Cases broadly defining an intermittent strike

Beyond these topics, General Counsel Abruzzo further identified that cases involving electronic monitoring (surveillance) or algorithmic management that interfere with Section 7 rights are also required to be submitted on advice. This topic, in particular, will certainly be developing as many employers are just becoming familiar with the use of things like GPS tracking devices (to ensure company-owned vehicles are being used for designated purposes) and AI-driven data to manage employee productivity. Additionally, the technology developed to assist employers is growing at a much quicker rate than the applicable Board law.

### Rulemaking changes in the works

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In addition to modifications of Board precedent through litigation, the Biden Administration NLRB also began some rulemaking toward the end of 2022 that is currently in or recently passed the time period for public comment. These rules include:

- **Joint Employer** – The NLRB issued a Notice of Proposed Rulemaking (NPRM) in September 2022 that seeks to rescind the “direct and immediate” control standard to permit even indirect or hypothetical control as evidence of joint-employer status.
- **Election Protection Rule** – The NLRB issued an NPRM in September 2022 that seeks to revise certain April 1, 2020, amendments to representation election procedures. The rule, known as “Fair Choice and Employee Voice,” would rescind the April 1, 2020, final rule, which 1) permitted election representations to proceed despite pending unfair labor practice charges alleging interference; 2) permitted challenges to the representative status of a union that has been voluntarily recognized based on majority support among employees prior to a reasonable period of collective bargaining; and 3) permitted election challenges for construction industry unions, even if the employer agreed to detailed language recognizing the union in the parties’ CBA based on a showing of majority support. Instead, prior laws related to blocking charges, the voluntary recognition bar, and the contract bar, would be reinstated.

# APPENDIX A

## SUMMARY OF PETITIONS FILED AND ELECTIONS HELD

All Industries - Summary of Petitions Filed and Elections Held (2013 - 2022)										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Petitions	2,553	2,616	2,596	2,286	2,280	1,921	2,039	1,556	1,685	2,501
Total Representation (RC) Petitions	2,033	2,129	2,168	1,918	1,880	1,557	1,737	1,309	1,385	2,162
<b>Union Not Elected</b>	<b>461</b>	<b>436</b>	<b>453</b>	<b>354</b>	<b>372</b>	<b>322</b>	<b>299</b>	<b>241</b>	<b>243</b>	<b>402</b>
<b>Union Elected</b>	<b>889</b>	<b>995</b>	<b>1,096</b>	<b>964</b>	<b>981</b>	<b>796</b>	<b>917</b>	<b>596</b>	<b>738</b>	<b>1,209</b>
Total Decertification Petitions	520	487	428	368	400	364	302	247	300	339
Total RD Petitions	463	439	370	311	338	333	260	201	271	313
Total RM Petitions	57	48	58	57	62	31	42	46	29	26
<b>Union Not Elected</b>	<b>136</b>	<b>130</b>	<b>127</b>	<b>123</b>	<b>144</b>	<b>120</b>	<b>113</b>	<b>61</b>	<b>96</b>	<b>109</b>
<b>Union Elected</b>	<b>86</b>	<b>67</b>	<b>79</b>	<b>69</b>	<b>71</b>	<b>60</b>	<b>60</b>	<b>51</b>	<b>62</b>	<b>60</b>

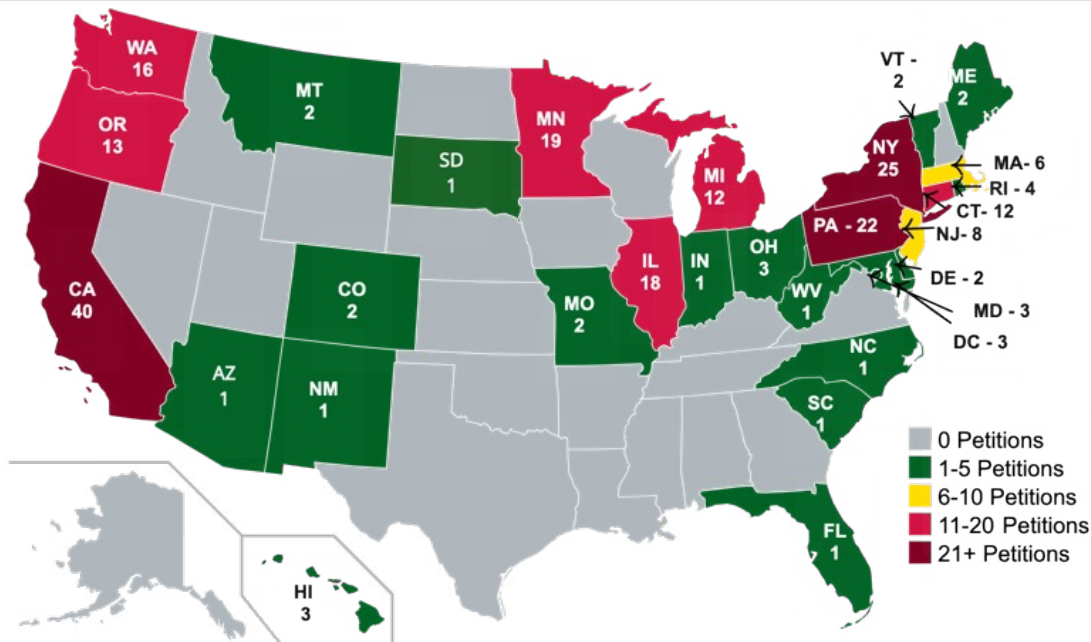
Health Care - Summary of Petitions Filed and Elections Held (2013 - 2022)										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Petitions	391	447	379	403	411	294	318	272	300	369
Total Representation (RC) Petitions	315	358	316	344	325	225	272	228	232	312
<b>Union Not Elected</b>	<b>58</b>	<b>50</b>	<b>56</b>	<b>49</b>	<b>54</b>	<b>32</b>	<b>31</b>	<b>30</b>	<b>27</b>	<b>50</b>
<b>Union Elected</b>	<b>154</b>	<b>188</b>	<b>193</b>	<b>195</b>	<b>217</b>	<b>148</b>	<b>166</b>	<b>122</b>	<b>148</b>	<b>179</b>
Total Decertification Petitions	76	89	63	59	86	69	46	44	68	57
Total RD Petitions	67	86	55	50	60	64	41	32	66	55
Total RM Petitions	9	3	8	9	26	5	5	12	2	2
<b>Union Not Elected</b>	<b>12</b>	<b>23</b>	<b>17</b>	<b>23</b>	<b>17</b>	<b>26</b>	<b>10</b>	<b>3</b>	<b>20</b>	<b>18</b>
<b>Union Elected</b>	<b>21</b>	<b>15</b>	<b>13</b>	<b>17</b>	<b>23</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>16</b>	<b>14</b>

All Non-Health Care Industries - Summary of Petitions Filed and Elections Held (2013 - 2022)										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Petitions	2,162	2,169	2,217	1,883	1,869	1,627	1,721	1,284	1,385	2,132
Total Representation (RC) Petitions	1,718	1,771	1,852	1,574	1,555	1,332	1,465	1,081	1,153	1,850
<b>Union Not Elected</b>	<b>403</b>	<b>386</b>	<b>397</b>	<b>305</b>	<b>318</b>	<b>290</b>	<b>268</b>	<b>210</b>	<b>216</b>	<b>352</b>
<b>Union Elected</b>	<b>735</b>	<b>807</b>	<b>903</b>	<b>769</b>	<b>764</b>	<b>648</b>	<b>751</b>	<b>474</b>	<b>590</b>	<b>1,030</b>
Total Decertification Petitions	444	398	365	309	314	295	256	203	232	282
Total RD Petitions	396	353	315	261	278	269	219	169	205	258
Total RM Petitions	48	45	50	48	36	26	37	34	27	24
<b>Union Not Elected</b>	<b>124</b>	<b>107</b>	<b>110</b>	<b>100</b>	<b>127</b>	<b>94</b>	<b>103</b>	<b>58</b>	<b>76</b>	<b>91</b>
<b>Union Elected</b>	<b>65</b>	<b>52</b>	<b>66</b>	<b>52</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>39</b>	<b>46</b>	<b>46</b>

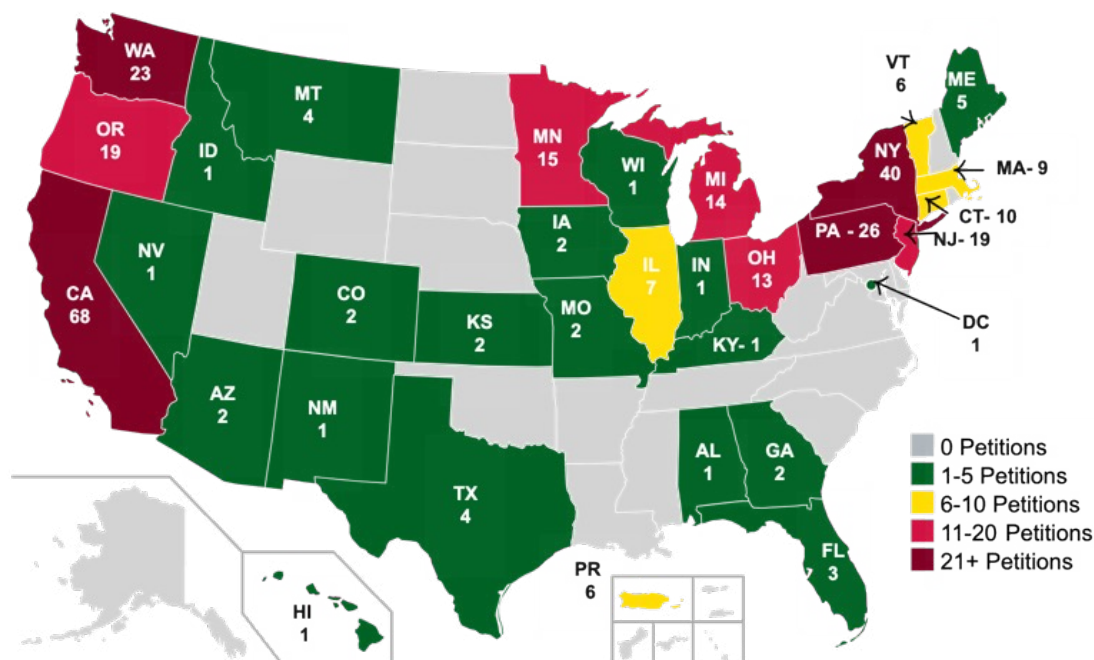
# APPENDIX B

## MAPS OF REPRESENTATION (RC) PETITIONS FILED IN HEALTH CARE

2021



2022



# APPENDIX C

## THE NATIONAL LABOR RELATIONS BOARD DEFINITIONS

### WHAT IS THE NATIONAL LABOR RELATIONS BOARD?

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The National Labor Relations Board (NLRB) is an independent federal agency established to enforce the National Labor Relations Act (NLRA). As an independent agency, the NLRB is not part of any other government agency, such as the Department of Labor.

Congress has empowered the NLRB to conduct secret ballot elections so employees may exercise a free choice whether a union should represent them for bargaining purposes. A secret ballot election will be conducted only when a petition requesting an election is filed. Such a petition should be filed with the Regional Office in the area where the unit of employees is located. All Regional Offices have petition forms that are available upon request.

### TYPES OF PETITIONS

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#### 1) CERTIFICATION OF REPRESENTATION (RC)

This petition, which is normally filed by a union, seeks an election to determine whether employees wish to be represented by a union. It must be supported by the signatures of 30 percent or more of the employees in the bargaining unit being sought. These signatures may be on paper. This designation or “showing of interest” contains a statement that the employees want to be represented for collective-bargaining purposes by a specific labor organization. The showing of interest must be signed by each employee, and each employee’s signature must be dated.

#### 2) DECERTIFICATION (RD)

This petition, which can be filed by an individual, seeks an election to determine whether the authority of a union to act as a bargaining representative of employees should continue. It must be supported by the signatures of 30 percent or more of the employees in the bargaining unit represented by the union. These signatures may be on separate cards or a single piece of paper. This showing of interest contains a statement that the employees do not wish to be represented for collective-bargaining purposes by the existing labor organization. The showing of interest must be signed by each employee, and each employee’s signature must be dated.

#### 3) WITHDRAWAL OF UNION-SECURITY AUTHORITY (UD)

This petition, which can also be filed by an individual, seeks an election to determine whether to continue the union’s contractual authority to require that employees make certain lawful payments to the union to retain their jobs. It must be supported by the signatures of 30 percent or more of the employees in the bargaining unit covered by the union-security agreement. These signatures may be on separate cards or a single piece of paper. This showing of interest states that the employees no longer want their collective-bargaining agreement to contain a union-security provision. The showing of interest must be signed by each employee, and each employee’s signature must be dated.

#### 4) EMPLOYER PETITION (RM)

This petition is filed by an employer for an election when one or more unions claim to represent the employer's employees or when the employer has reasonable grounds for believing that the union, which is the current collective-bargaining representative, no longer represents a majority of employees. In the latter case, the petition must be supported by the evidence or "objective considerations" relied on by the employer for believing that the union no longer represents a majority of its employees.

#### 5) UNIT CLARIFICATION (UC)

This petition seeks to clarify the scope of an existing bargaining unit by, for example, determining whether a new classification is properly a part of that unit. The petition may be filed by either the employer or the union.

#### 6) AMENDMENT OF CERTIFICATION (AC)

This petition seeks the amendment of an outstanding certification of a union to reflect changed circumstances, such as changes in the name or affiliation of the union. This petition may be filed by a union or an employer.

# APPENDIX D

## EMPLOYEE CATEGORIES AS DEFINED BY THE NATIONAL LABOR RELATIONS BOARD

**Registered Nurses (RNs):** Nurses who have graduated from a formal program of nursing education (diploma school, associate degree, or baccalaureate program) and are licensed by the appropriate state authority.

**Professional Employees:** Employees with four-year degrees or beyond (except RNs and physicians). These employees typically work in jobs that are intellectual and involve consistent exercise of discretion and judgment (e.g., pharmacists, physical therapists).

**Technical Employees:** Employees with some significant, distinct, specialized course of training beyond high school. Other factors considered will be length of training (generally more than six months), state or governmental licensing, or formal certification process (e.g., lab techs, respiratory therapists, radiology technicians).

**Security Guards:** Employees who provide security service to the hospital, its property, grounds, buildings, employees, and patients.

**Skilled Maintenance Employees:** Employees who provide skilled maintenance and/or engineering services (e.g., sanitary engineers, licensed electricians, plumbers).

**Business Office Clerical Employees:** Clerical employees who perform business office functions and/or who have a strong working relationship with the business office functions; general clerical should be classified as “service worker.”

**Physicians:** Licensed physicians who are “employees” of the hospital.

**Service and Non-Professional Employees:** This unit will generally include all service and unskilled maintenance employees. Employees in this category typically perform manual and routine job functions and are not highly skilled or trained.

**Other/Combined Job Classifications:** Any jobs not listed above or units covering more than one of the above categories.