

# Healthcare Labor Activity Update for 2023 and Beyond

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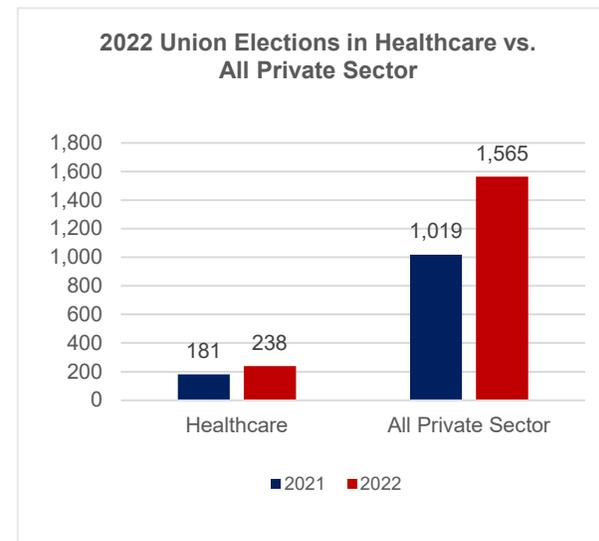


Chris Cimino is Chessboard Consulting's President and Chief Executive Officer, and he directs all of Chessboard's employee relations consulting services. Chris has over 30 years of experience helping clients increase employee engagement, achieve improved organizational performance, and respond to threats from organized labor.

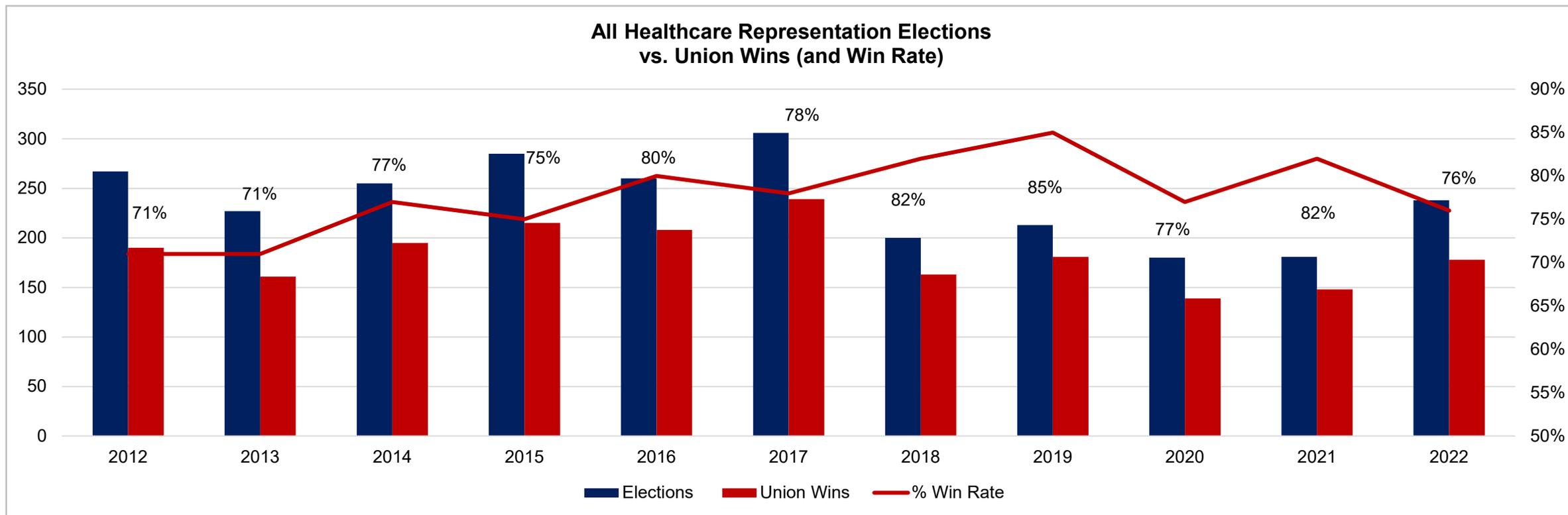
Professional associations frequently call on Chris as a content expert in the area of labor relations and employee engagement, including the Illinois Health and Hospital Association, the Hospital Council of Western Pennsylvania, the Iowa Hospital Association, and the Wisconsin Hospital Association, among others. In this capacity, Chris regularly consults with association leaders and C-level executives to offer his insight and expertise.

# Healthcare Labor Activity: Executive Summary

- ❑ **Union organizing surged in 2022:** Union organizing in all industries increased from 1,019 representation (RC) elections held in 2021 to 1,565 RC elections held in 2022 (a 53% increase).
- ❑ **Increased organizing targets retail, food and beverage:** In 2022, most increased organizing activity targeted some of the nation's largest employers (i.e., *Starbucks, Apple, the New York Times, Amazon, and Google*).
- ❑ **Starbucks was a primary organizing target in 2022:** Starbucks employees were targeted by the SEIU (*through the affiliated Starbucks Workers United*). Of the 1,565 RC elections held in the U.S. in 2022, 333 (21%) involved Starbucks locations.
- ❑ **The SEIU's Starbucks Workers United wins 81% of elections:** Of 333 RC elections involving Starbucks locations, Starbucks Workers United won 270 elections (81%).



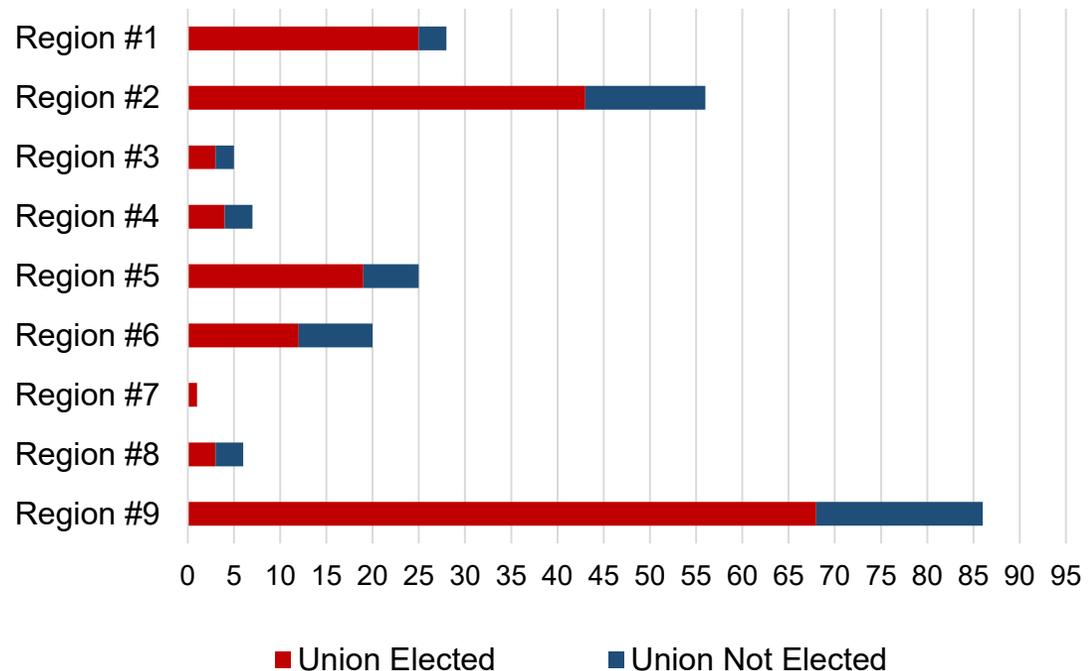
# Healthcare Labor Activity: Executive Summary



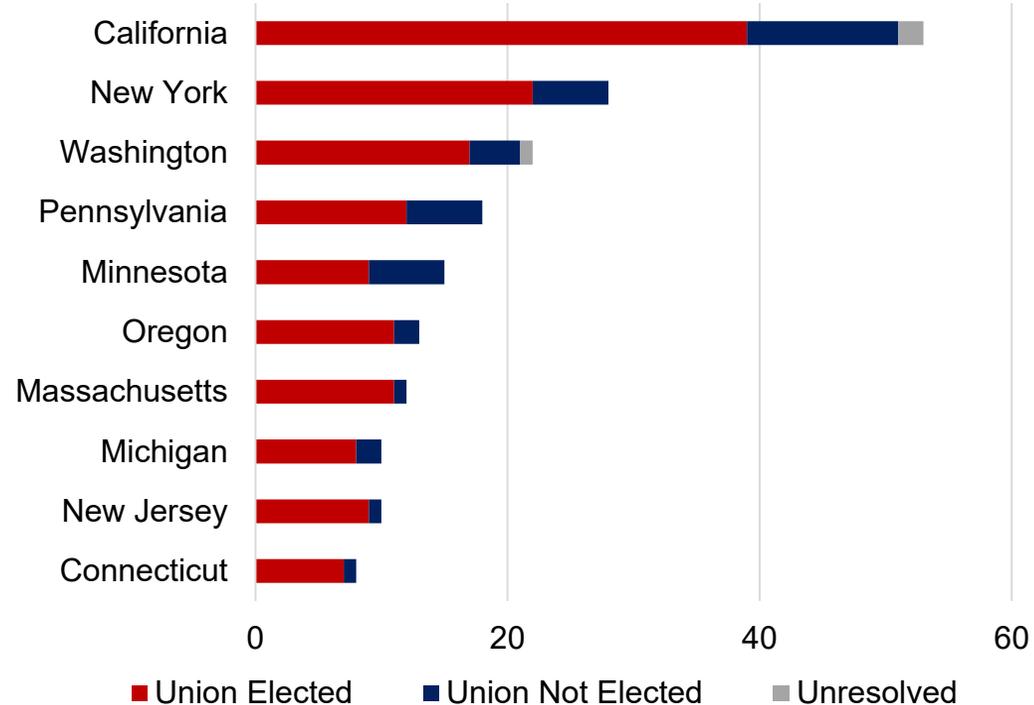
Source: Bloomberg Law, Labor Plus Database

# Healthcare Labor Activity: Executive Summary

2022 Healthcare Union Activity (RC Elections) by ASHHRA Region



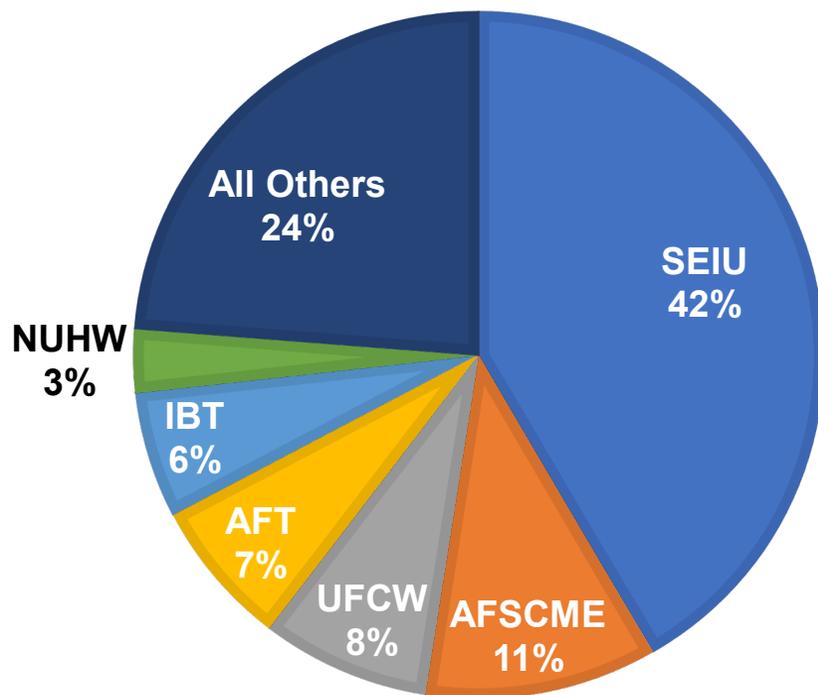
States with Highest Level of Healthcare Union Activity (RC Elections), 2022



Source: Bloomberg Law, Labor Plus Database

# Healthcare Labor Activity: Executive Summary

2022 Most Active Unions in Healthcare



Source: Bloomberg Law, Labor Plus Database

This past year, unions focused their available resources on organizing targets outside of healthcare.

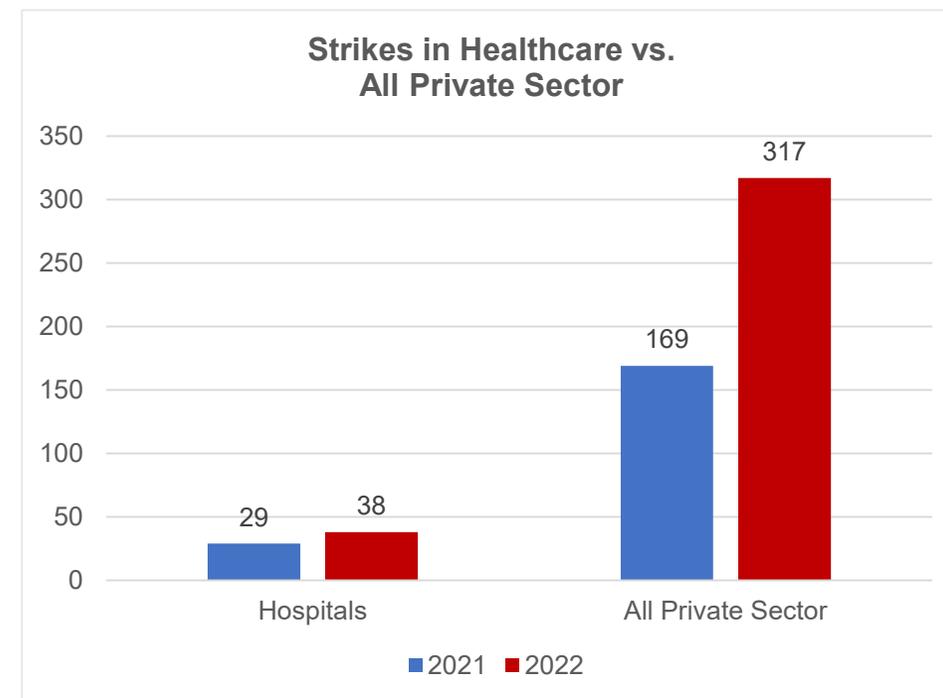
- For example, while the SEIU targeted Starbucks locations in 333 separate elections in 2022, during this same period the union targeted healthcare employees in only 99 elections.
- By comparison, five years ago, the SEIU targeted healthcare employees in 141 elections.

# Healthcare Labor Activity: Executive Summary



## In All Industries:

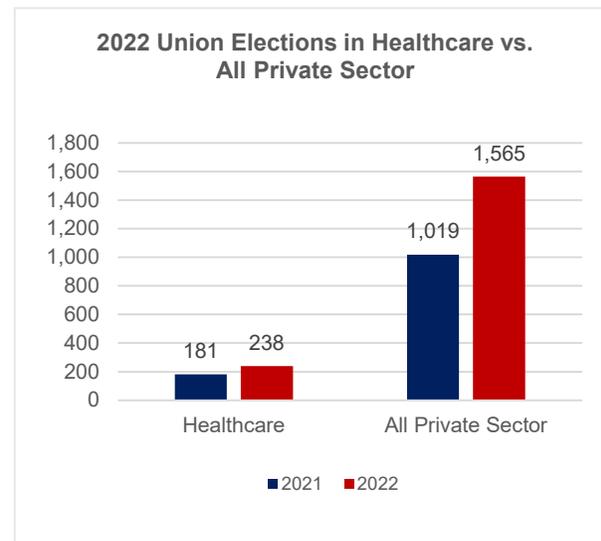
- ❑ 2021 union strike activity, dubbed “*striketober*,” continued and intensified in 2022.
- ❑ Strike activity among labor unions is reaching levels not seen for 15 years.
- ❑ In the first half of 2022, union-negotiated first-year pay increases averaged 5.3%. Combined with signing and other lump sum bonuses, 2022 first-year wage increases averaged 6.3%.
- ❑ Competing priorities (maintain staffing levels, while reducing costs) will produce continued bargaining challenges for union-represented hospitals and health systems.



Source: Bloomberg Law, Labor Plus Database

# Healthcare Labor Activity: Executive Summary

- ❑ **Healthcare Union Organizing in 2022:** While union organizing surged in some sectors, healthcare organizing was up more modestly year-over-year (238 healthcare RC elections in 2022, compared to 181 healthcare RC elections in 2021).
- ❑ Likely reasons healthcare organizing did not surge even higher in 2022:
  1. **Increased Compensation:** Compensation for healthcare employees increased dramatically in 2022 (base pay, differentials, incentives). Increases have likely improved employees' perceptions of pay.
  2. **Increased Opportunity:** Healthcare labor shortages provided employees more opportunity than ever before, making it easier for employees to leave or change jobs rather than organize.
  3. **Some Unions Focused on Other Organizing Targets:** Some unions focused their resources on organizing targets outside of healthcare – while SEIU had 333 elections at Starbucks, in 2022 they were involved in only 99 elections (compared to 141 elections in 2017).

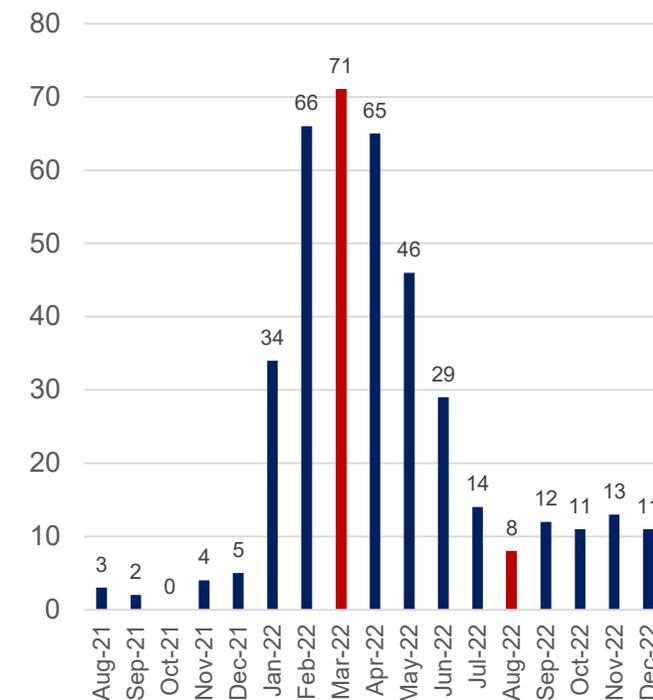


# Healthcare Labor Activity: Executive Summary

The following factors could lead to an increase in healthcare union organizing in 2023:

- 1. Pressure from Regulators:** The Biden Administration's effort to promote unions and collective bargaining (through actions by the NLRB and DOL) will likely intensify in 2023.
- 2. Financial Pressure on Hospitals:** Healthcare leaders are caught between the need to recruit and retain top talent and the need to reduce labor costs.
- 3. Decreased Organizing in Other Industries:** There is evidence union organizing targeting Starbucks is slowing. The SEIU now must deal with expectations from newly organized workers, growing employer resistance, and a coming recession.

Starbucks RC Petitions Filed,  
August 2021 – December 2022



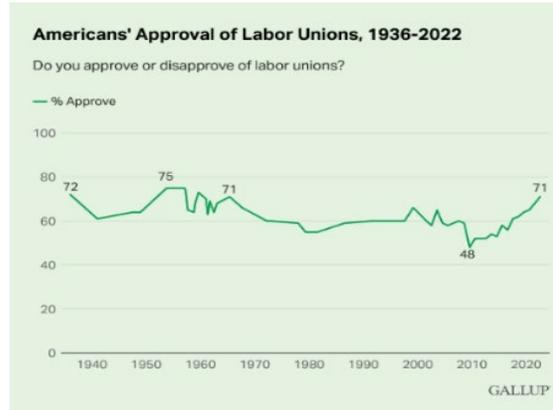
# Healthcare Labor Activity: Important Trends to Watch in 2023

## 1. Public Approval of Unions Remains Elevated

- At 71%, approval of labor unions has reached levels not seen since the 1960's.
- Most interesting in 2022, are the results this poll produced for key demographics of the healthcare workforce (i.e., women, 74% approval; ages 18-34, 72% approval; and, college educated, 71% approval).

## 2. Recruitment, Retention, and Staffing Challenges Will Persist

- According to NSI Nursing Solutions, turnover and vacancy rates have reached crisis levels: Total turnover = 25.9%; RN turnover = 27.1% and RN vacancy rates = 17.0%.
- Today, cash-strapped hospitals are saddled with skyrocketing contract labor costs, prompting healthcare leaders to seek new ways to reduce dependency on contract staffing.



# Healthcare Labor Activity: Important Trends to Watch in 2023

## 3. Hospital Safety and Workplace Violence in 2023 and Beyond

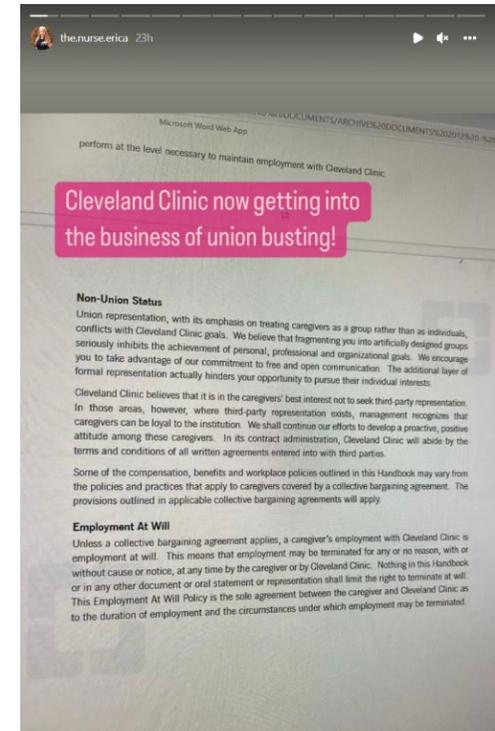
- In 2022, workplace violence in hospitals took center stage after several high-profile acts of violence against hospital workers gained national media attention.
- A Press Ganey report found that, on average, two nurses are assaulted every hour, *“That equates to roughly 57 assaults per day, 1,739 assaults per month, and 5,217 assaults per quarter.”*

## 4. Social Media and Union Organizing, The Rise of Influencers

- Today, unions and their supporters leverage social media platforms to communicate with workers they want to organize. Further complicating social-media-based organizing are *social media influencers* who promote unionization and union narratives.

## 5. Unions Demonstrate Renewed Interest in Organizing House Staff

- House staff have long had issues with workloads, compensation, and other aspects of their training experience. COVID-19 further complicated these factors. SEIU-CIR recently organized house staff at the University of Vermont Medical Center, Burlington, VT; the Keck School of Medicine, Los Angeles, CA; and at Stanford Health Care, Palo-Alto, CA.



# Healthcare Labor Activity: Important Trends to Watch in 2023

This video contains graphic language.

## Thoughts on the NYT Opinion Article/Video:

- ❑ The video pushes a false narrative: *'There are a lot of nurses in the U.S., but hospitals won't hire them.'*
- ❑ The video highlights the MNA's failed push for mandated ratios (blaming the legislation's failure on the hospital industry).
- ❑ Nowhere in the video does it disclose that all nurses featured in the video are union officials.

## Nurses interviewed are all union leaders from MNA and PASNAP:

- Marlena Pellegrino R.N., Co-Chair, MNA Bargaining Unit, St. Vincent Hospital
- Marci Keating R.N., Marci Keating, President, Mercy Fitzgerald's PASNAP Chapter
- Kerry Noonan R.N., MNA Bargaining Unit, Brigham and Women's Hospital
- Kim Wills-O'Connell R.N., Grievance Chair, PASPAP Temple University Jeanes Campus

# Healthcare Labor Activity: Important Trends to Watch in 2023

## 6. Regulatory Support for Unions will Continue

**NLRB Rulemaking:** The NLRB engages in rulemaking to implement new direction or alter existing Board policy. The Board is currently considering the following rules that would impact healthcare employers:

- **Standard for Determining Joint-Employer Status:** According to the NLRB, two or more employers would be considered joint employers if they share or codetermine those matters governing employees' essential terms and conditions of employment, (e.g., wages, benefits and other compensation, work and scheduling, hiring and discharge, discipline, workplace health and safety, supervision, assignment, and work rules).
- **Fair Choice – Employee Choice:** The NLRB issued a notice of proposed rulemaking in its proposed Fair Choice and Employee Voice rule. Significantly, *"this rule would restore a union's right to file blocking charges"* to block the holding of an election where the union feels alleged employer conduct has interfered with employees' right to a free choice in an election.



# Healthcare Labor Activity: Important Trends to Watch in 2023

## 6. Regulatory Support for Unions will Continue (continued)

**NLRB General Counsel (GC) Guidance Memos:** GC Memos provide policy guidance to NLRB field offices. The GC has issued a number of guidance memos that could impact healthcare employers:

- **Attempts to Advance Card-Check:** Abruzzo has advocated resurrecting the *Joy Silk doctrine* which would circumvent secret-ballot elections and allow the use of “card-check” to organize workers.
- **Seeking Full Remedies to Address Employer Conduct:** Abruzzo has advocated for greater use of injunctions and demands for new and alternative remedies to address employer conduct (e.g., front pay, interest fees on credit cards, compensation from loss of home or car, etc.).
- **Attempts to Prohibit Mandatory Employee Meetings:** Abruzzo wants to prohibit employers from holding mandatory meetings during which employers share their views on unionization with employees.
- **Attempts to Restrict Employers’ Use of Electronic Surveillance:** Abruzzo will urge the NLRB to adopt a “*new framework for protecting employees from an employer’s abuse of technology by holding that an employer has presumptively violated the act where an employer’s surveillance and management practices, viewed as a whole, would tend to interfere with protected activity.*”



# Healthcare Labor Activity: Important Trends to Watch in 2023

## 6. Regulatory Support for Unions will Continue (continued)

**Important NLRB Decisions:** NLRB decisions create precedent and, thus, determine how the law is administered. The following 2022 Board decisions have an impact on healthcare employers:

- In *Wismettac Asian Foods, Inc. v. NLRB*, Nos. 20-73768, 21-70142, 2022 U.S. App. LEXIS 2972 (9th Cir. February 2, 2022), the Ninth Circuit Court of Appeals reviewed whether WAF violated the NLRA by soliciting employees to revoke their signed union authorization cards during an organizing campaign. Applying NLRB precedent, an Administrative Law Judge (ALJ) found the employer's conduct violated the NLRA, and the court agreed.
- On August 29, 2022, in *Tesla Inc.*, 370 NLRB (2022), the NLRB ruled employers cannot prevent employees from displaying union insignia or wearing union apparel unless the employer can prove "special circumstances" justifying the restriction.
- On September 29, 2022, the NLRB modified its test for determining if COVID-19-related conditions warrant mail ballot union elections, potentially signaling a return to mostly in-person votes. The case is *Starbucks Corp.*, 371 NLRB No. 154.



# Healthcare Labor Activity: Important Trends to Watch in 2023

## 6. Regulatory Support for Unions will Continue (continued)

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- On October 3, 2022, the NLRB ruled employers must continue deducting union dues from employees' paychecks, pursuant to their labor contracts, even after the contracts expire. The case involved *Valley Hospital Medical Center, Inc.*, NLRB Case 28-CA-213783 (*Valley Hospital II*).
- December 14, 2022, the NLRB ruled in *Thryv, Inc.*, to expand the "make-whole" financial remedies available to victims of labor law violations. Employers may now be liable for "all direct or foreseeable" damages flowing from any violation of the NLRA, such as out-of-pocket medical expenses, restitution for lost credit rating, and missed mortgage and rental payments.



# Healthcare Labor Activity: Important Trends to Watch in 2023

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- In *American Steel* in a 3-2 decision issued on December 14, 2022, the Board resurrected the micro-unit framework first established by the Obama-era Board in *Specialty Healthcare, Inc.* (2011). Under this standard, unions are generally permitted to organize any “readily identifiable” group of employees who share a “community of interest” unless the opposing party (usually the employer) can prove an “overwhelming community of interest” between the petitioned-for unit and any employees excluded from the union's petition, such that there is no rational basis for the exclusion.
- On December 16, 2022, the NLRB reversed a Trump-era standard for deciding when property owners may eject a contractor’s employees from the owner’s property in *Bexar County Performing Arts Center Foundation (Bexar County II)*. The new standard makes it much more difficult for property owners to remove workers who are picketing, leafletting, or otherwise protesting working conditions on their property (i.e., engaging in “Section 7 activity”).



# Healthcare Labor Activity: Building Engagement

Healthcare leaders should continue to engage with staff by focusing actions *and* communication on the following important topics:

- 1. Staffing and Workloads:** Ensure staffing and workloads are appropriate and staff (on all shifts) have easy access to leaders to discuss and collaborate on staffing concerns and challenges.
- 2. Safety and Security:** Like staffing, safety and security should be standard topics of ongoing updates and discussion with employees, placing emphasis on specific actions taken by the organization and outcomes and/or progress of those actions to create a safer and more secure work and care environment.
- 3. Wellness and Work/Life Balance:** Also important is a *well-communicated* organizational focus on wellness, work/life balance, and flexible scheduling, providing staff with constant reminders that *they* are as important as their work and their contributions are both valued and essential to your organization's success.



# Healthcare Labor Activity: Building Engagement

- 4. Communication and Trust:** Employ best practices (e.g., purposeful leader rounding, virtual townhalls, video updates, etc.) to cascade communication, with an emphasis on transparency and consistency. Organizational communication should not only *inform* but also *build trust*.
- 5. A Real Voice in Decision-Making:** Employ department-based shared decision-making models to ensure employees have a *meaningful* voice in staffing and other issues impacting their work experience, including their professional practice (for RNs and other professionals), their workflow/work environment (for all employees), and employee and patient safety (for all employees).
- 6. Compensation and Benefits:** Regularly conduct compensation and benefits surveys to ensure your organization keeps up with the latest market moves.





# Questions and Discussion