



Credit: Flamingo Images/Adobe Stock

ANALYSIS

Code Red for Hospitals: Unions Find Receptive Audience in Weary Health Care Workers

"There could be a campaign going on and you don't even know it," said Trecia Moore, a Husch Blackwell partner.

January 05, 2024 at 08:26 AM

7 minute read

[Health Care](#)



Chris O'Malley [→](#)

At a time when unions are courting everyone from Amazon workers to Starbucks baristas, one industry may be ripe for organizing like no other: health care.

Unionizing efforts at hospitals and other health care providers are popping up all over the country, often with successful results. More than 1,200 resident physicians at Montefiore Medical Center in Bronx, New York, prevailed in an election last spring, for instance, joining the Committee of Interns and Residents of the Service Employees International Union. And just this week, more than 1,000 health care workers at the Ohio State University's Wexner Medical Center scored a victory, joining the International Association of Machinists and Aerospace Workers.

Powering the movement, union advocates say, is the health care industry's continuing efforts to consolidate and cut costs, even as workers run ragged during COVID-19 continue to plead for more resources, better working conditions and more say on patient care.

Rather than addressing those concerns, many health care employers are investing in labor-reducing technologies or simply forcing workers to do more with less, union advocates say. The level of desperation drove nonunion pharmacy workers at CVS and Walgreens this fall to walk off the job, complaining of chronic understaffing and worried they'll make mistakes potentially fatal to their patients.

“I don’t know of many industries where people were hit harder for a two-year period,” Kevin Carr, a partner and co-chair of the labor and employment practice at Spilman Thomas & Battle, said of the pandemic’s burden on health care workers.

Adding to that are a more favorable public perception of unions, ambitious campaigns by groups such as the SEIU, and changes to labor rules under the Biden administration that drastically lower the hurdles to unionizing.

“All of those create a situation where health care is a particularly vulnerable industry,” Carr said.

Tensions Simmer

The trend is so new and the health care industry is so gigantic, with nearly 15 million workers, that it has yet to show up in employment data.

In fact, the percentage of health care practitioners and technical staff represented by a union fell in 2022 to 13%, from 13.5% in 2021, according to the Bureau of Labor Statistics.

A study of 14,298 U.S. health care workers published in the Journal of the American Medical Association in late 2022 found “no significant change” in union representation from 2009 through 2021.

But the study noted that health care worker burnout was a growing problem even before COVID and that the pandemic “amplified calls for labor unionization” to improve working conditions.

“Health care employees are organizing because they want a greater voice in their work lives,” said Paul Clark, a professor in the School of Labor and Employment Relations at Penn State University.

“In particular, they want a voice in patient care because RNs, doctors and other health care professionals believe they can help make the quality of care better if administrators give them a greater voice in care decisions,” Clark said. “Smart administrators should welcome the ideas and contributions health care professionals have to offer.”

‘It’s All About Engagement’

CEOs of health care providers better be listening, said Jon Anderson, a partner and office manager at Husch Blackwell in Madison, Wisconsin, who recently conducted a webinar for health care leaders on the topic of labor union organizing efforts.

“This is an issue that needs to be on your agenda for almost every leader and management meeting that you have,” Anderson told participants.

“You need to make this a priority to figure out what are the issues that your employees have. You’ve got to get to know those employees and find out what’s important to them. It’s all about engagement.”

While unions long have represented health care workers such as nurses, they’ve broadened their focus in recent years to resident and fellow physicians. The SEIU’s Committee of Interns and Residents now represents more than 30,000 workers.

Doctors historically were off limits to unions because most worked for themselves. But that has changed rapidly in recent years. In 2019, more doctors were employees rather than independent practitioners for the first time. Just in the last year, the percentage of doctors working for hospitals, health systems or corporate entities has risen to 75% from 69%.

Last month, the CIR/SEIU ratified its first contract with resident and fellow physicians at Stanford Health Care in Palo Alto, California, resulting in a 21% pay hike over three years.

The union won over this often-sleep-deprived population by focusing on such themes as the root causes of burnout, work-life balance, and higher wages and better benefits.

“It will help ensure [we] can focus on what matters most—caring for our patients—without the constant worry over how we’ll pay for our rent or afford groceries,” Simran Kaur, a doctor at Stanford, said in an [announcement](#) of the deal, struck after 13 months of talks.

Caught Off Guard

Many health care administrators never saw a unionizing campaign coming.

Unlike the days of handing out leaflets and huddling around the water cooler, unions are interacting with a younger generation of workers via text messaging and social media. “They’re connected. The campaign is underground,” Anderson said.

“There could be a campaign going on and you don’t even know it,” said Trecia Moore, a Husch Blackwell partner and former National Labor Relations Board attorney.

That’s all the more reason to be more engaged with workers, attorneys say, noting the potential to pick up on discontent and the drumbeat of organizing talk.

A better dialog with health care workers can also reveal concerns that may not have been on management’s radar, such as scheduling and time-

off issues. In a number of cases, workers deemed after-hours access to food and refreshments as an important issue to them, Anderson said.

He also advises administrators to communicate with workers on a regular basis. “Be visible. Walk the halls. Ask them what you can do for them. Make sure that employees feel they can come to you and that you’ll be responsive,” Anderson said.

“If you don’t address their needs, the union will. And that’s the door that the union wants to walk through—that you have been derelict in addressing the needs of people who are pretty important to your operation,” he said.

The Husch Blackwell lawyers also recommended that management publicize what it’s done to make things better for the workforce.

And employers may want to take a page from the union playbook and communicate with workers via their cellphone. But it’s important to gain their consent and give them the option to opt out.

Health care employers also might be wise to put in place additional shared decision-making models to ensure employees, particularly residents and doctors, have a more meaningful voice.

Carr said administrators also should make sure they have capable supervisors in place across every level of the organization. Because of labor shortages during the pandemic, many employers delegated supervision to workers who may not have been equipped for the task, he noted.

“What’s the old saying, ‘The best union organizer is a bad supervisor’?” Carr said.

Employers either do that now, “or they do it with their hair on fire during a union campaign,” he said.

While it’s not necessarily verboten to talk with employees about a union, it’s important to have guardrails in place, since threats or inappropriate promises could lead the NLRB to find the employer committed an unfair labor practice.

Under an NLRB ruling issued last August, such a finding had dire consequences, causing an employer to forfeit its right to require workers to prevail in a secret ballot election process in order to unionize.

Ultimately, Anderson said: “The most important thing to do is provide a work environment that neutralizes what unions have to offer.”

Penn State’s Clark said health care administrators almost always see unionizing “as the end of the world” and fight it, partly because labor law attorneys convince them that they can beat back the organizing drive if they hire them.

One way some health care providers attempt to head off a unionizing effort and placate workers is by hiring consultants to recraft policies to give employees a greater voice, Clark said.

“But in my experience if administrators go this route, it is often done without a sincere commitment to improving employees’ work lives. Rather, it is done just to keep them from organizing,” he said.

--

Chris O'Malley

Reporter

Law.com

p: +1 317 654-2074

e: comalley@law.com