

Labor Activity in Health Care

50

SEMI-ANNUAL REPORT

JANUARY – DECEMBER 2018

Presented by



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ABOUT THIS REPORT

As the authoritative resource for health care human resource professionals, ASHHRA provides its members with relevant and timely information about labor activity.

The 50th Semi-Annual ASHHRA/IRI Labor Activity in Health Care Report includes:

- An analysis of national, regional and state representation petitions and elections (RC, RD and RM) as reported by the National Labor Relations Board (NLRB) during 2017 and 2018.
- The Labor Law/Activity Update: Articles written by labor experts about relevant and timely labor issues impacting employers and the workplace.

LETTER FROM BOB LONG

The labor movement continues to see major shifts under the Trump Administration's National Labor Relations Board (NLRB or Board), which now includes three Republicans, two Democrats, and an equally important and sometimes overlooked general counsel, a position currently held by Republican Peter B. Robb.

The NLRB recently made major decisions on joint-employer status, the composition of bargaining units and the definition of facially neutral rules, among many other cases.

Joint-employer status has long been a moving target for employers and the new NLRB was quick to set a better course. The NLRB had expanded joint-employer status in the Browning-Ferris Industries case in 2015. The ruling made companies joint employers even if they never exercised joint control in cases where joint control is merely "reserved" in contracts. It also extended the status when joint control was only indirect and put the status in place in cases where it never affected fundamental employment issues but did affect limited and routine matters such as scheduling. The decision had significant impacts, opening companies up to party status in litigation and picketing, among other areas.

In 2017, a ruling in the Hy-Brand case overturned the Browning-Ferris decision. Then, a year later, the Hy-Brand decision was vacated, and Browning-Ferris was back as the law of the land.

New NLRB Chair John Ring, in a letter in May of 2018, rightly pointed to the extreme uncertainty created by the back and forth:

"Whether one business is the joint employer of another business's employees is one of the most critical issues in labor law today," he wrote. "The current uncertainty over the standard to be applied in determining joint-employer status under the Act undermines employers' willingness to create jobs and expand business opportunities."

To correct the situation, the NLRB proposed a new rule that would extend joint-employer status to companies that only exercise direct control over employees.

The United States Court of Appeals for the District of Columbia Circuit then weighed in and upheld part of Browning-Ferris and overturned part of it.

In response, the NLRB extended its comment deadline on the new rule. Ring, in a letter to House Democrats, said the United States Court of Appeals for the District of Columbia Circuit decision doesn't stop the NLRB's rule-making process. It is possible that the Board may simply choose to ignore the court's decision and adopt a final rule without any modifications.

Beyond joint-employer status, the NLRB is also reconsidering rules for determining the size of a bargaining unit in the PCC Structural, Inc., case. It provided more leeway in evaluating facially neutral rules, which are practices that do not discriminate on their face, with a decision in the Boeing Company case. The decision means the NLRB will now consider the nature and extent of the potential impact on NLRA rights and legitimate justifications associated with the requirements. Previously, under the Lutheran Heritage Village case, the board decided a facially neutral rule violated the NLRA if an employee "would reasonably construe" the rule to prohibit some type of NLRA-protected activity.

Labor unions are fighting hard to maintain the advantages they held under a Democratically controlled NLRB and they are moving to organize in new ways with a heavy focus on persuading the new Millennial workforce, which is explored in one of the articles (by IRI Consultants' own Megan Mitchell and Philippa Levenberg) later in this report.

Lastly, I want to say that I'm privileged to be IRI's new managing partner. Jim Trivisonno and Jo Zamora ably led our firm for decades, and they will remain trusted, knowledgeable and reliable advisors to me and my colleagues. We look forward to our continued partnership with ASHHRA and to continuing to help the nation's health care systems and hospitals with labor and employee relations challenges.

Sincerely,



Bob Long
Managing Partner
IRI Consultants

INTRODUCTION

The percentage of unionized wage and salary employees in 2018 decreased by 0.2 percentage points to 10.5 percent, while the number of unionized workers decreased slightly to 14.7 million.

The number of private sector employees belonging to a union (7.6 million) remains greater than the number of public sector employees belonging to a union (7.2 million).

Unions were successful in 83 percent of the 167 representation elections in the health care sector last year. In the same time period, unions maintained recognition in 31 percent of the 36 decertification elections. While the unions' success rate is higher than in previous years, the number of representation case (RC) petitions (224) filed in health care and elections held (167) is the lowest in at least one decade.

The majority of elections took place within 21 to 30 days from the date of the petition, and the average number of days was 28.2 days.

Service Employees International Union (SEIU) remained the most active union in the health care sector in 2018, accounting for 44 percent of representation petitions filed or 99 in total, which is down from 151 in 2017. SEIU's election success rate grew slightly from 80 percent in 2017 to 83 percent in 2018.

The next most active union was the American Federation of State, County and Municipal Employees (AFSCME) with nine percent or 20 petitions filed, which is up from 16 in 2017. And AFSCME's success rate jumped from 60 percent in 2017 to 75 percent in 2018. National Nurses United (NNU) historically has not filed a petition unless it is near certain it will win the election. This union's success rate grew again in 2018 to 100 percent – where it had been a few years ago – up from a success rate of 88 percent of its elections in 2017.

Politically, 2018 was an important year. The Trump Administration's National Labor Relations Board made major decisions on joint-employer status, the composition of bargaining units and the definition of facially neutral rules, among many other cases.

Labor unions are working hard to maintain the advantages they held under a Democratically controlled NLRB and they are moving to organize in new ways with a heavy focus on persuading the new Millennial workforce. Unions also are more regularly meeting with future workers while they're still in school – particularly nurses and physicians. Nursing unions are positioning themselves as progressive trade

associations with an emphasis on advocacy for patients as a way to couch “safe staffing ratios” legislatively and in labor contracts. These unions also have been meeting with future physicians while they’re in medical school to ask that once they’re working in a hospital setting or elsewhere that they support their nurses’ focus on social justice causes for patients. Health care systems and hospitals must be prepared to navigate this changing environment, and that begins with a firm message about the organization’s position regarding unions during new hire orientation.

EXECUTIVE SUMMARY

NLRB REPRESENTATION PETITIONS & ELECTIONS^{1,2}

During 2018, only 224 representation (RC) petitions were filed in the health care sector. That's a remarkable 100 fewer petitions compared with 324 in 2017. This is the lowest number of petitions filed in more than 15 years.

Meanwhile, 167 representation elections were held in 2018. Unions were elected in 83 percent of these cases. This is the highest success rate unions have experienced in the past decade, but also the fewest number of elections.

The majority of organizing activity occurred in five states: California, New York, Michigan, Massachusetts and Pennsylvania. Despite remaining the highest activity state, California saw a large decline in union organizing activity.

The Service Employees International Union (SEIU) remains the most dominant union in the health care sector, accounting for 44 percent of both petitions filed and elections held in 2018. Of the 78 representation elections SEIU was involved in, they were elected as a result of 83 percent of them.

Despite a decrease in activity over the past year, ASHHRA Region 9 continues to be the most active region in the nation.

Over the past decade, strike activity has continued to be concentrated in California, with the state experiencing more than five times as many strikes as Florida – the next most active state. The majority of states have not seen a strike in health care in the past decade, but unions' use of strikes in all industries were on the rise again in 2018.

¹ See Appendix D for detailed definitions of the types of representation petitions and elections.

² 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.

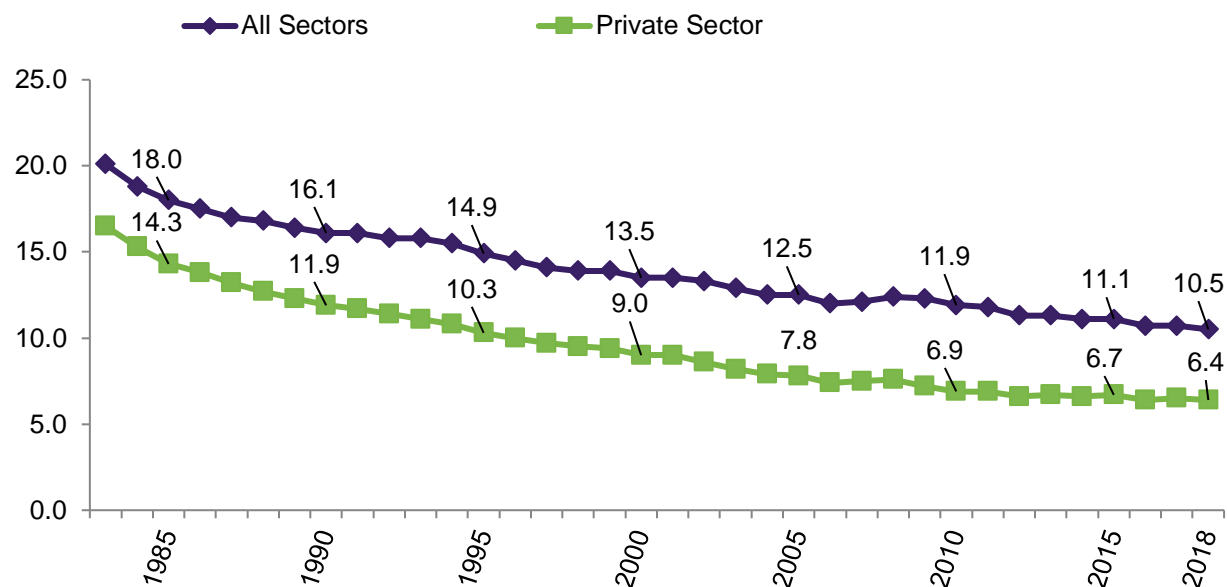
UNION MEMBERSHIP NATIONWIDE

According to the Department of Labor (DOL) Bureau of Labor Statistics' *Union Members — 2018* report, the percentage of unionized wage and salary employees decreased by 0.2 percentage points to 10.5 percent, while the number of unionized workers decreased slightly to 14.7 million in 2018.

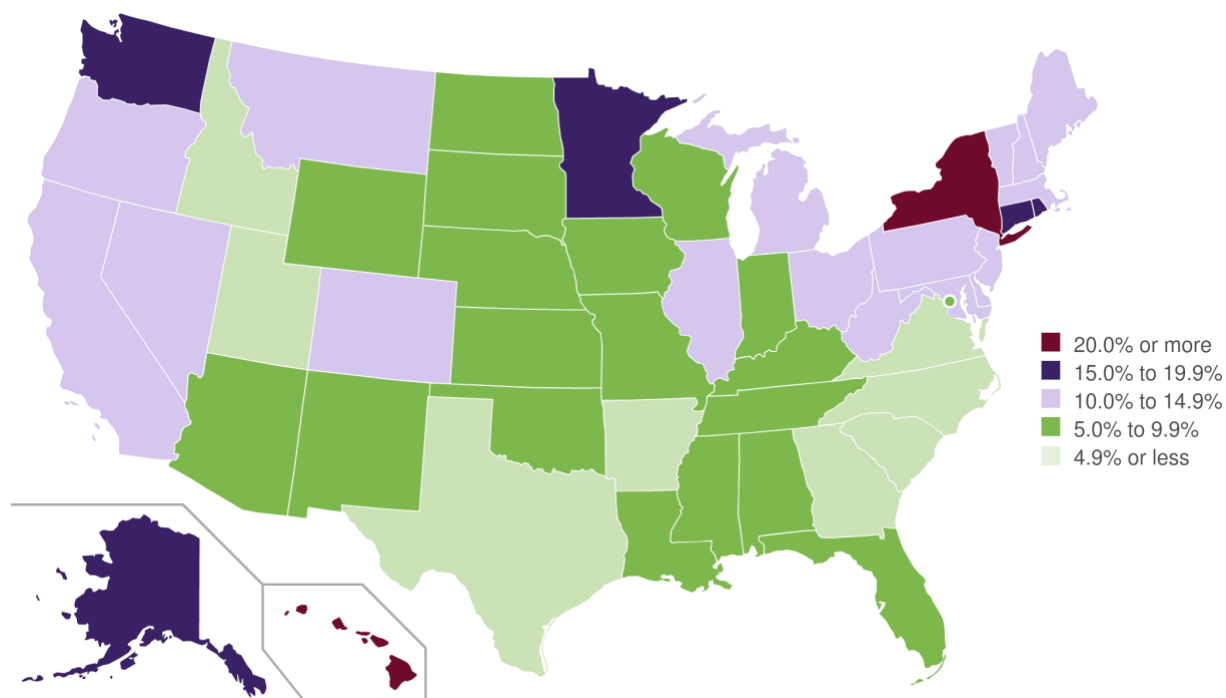
Data from the DOL report include the following highlights:

- The number of *private sector* employees belonging to a union (7.6 million) remains greater than the number of *public sector* employees belonging to a union (7.2 million)
- *Public sector* employees were more than five times as likely than *private sector* workers to be members of a union (33.6 percent vs. 6.4 percent, respectively)
- Black workers continued to have the highest union membership rate in 2018 (12.5 percent), followed by Whites (10.4 percent), Hispanics (9.1 percent) and Asians (8.4 percent)
- The highest union membership rate is among men aged 55 to 64 (13.9 percent), while the lowest is among women aged 16 to 24 (3.3 percent)
- Hawaii has surpassed New York to have the highest union membership rate (23.1 percent vs. 22.3 percent, respectively); North Carolina and South Carolina have the lowest rates (2.7 percent each)
- Union membership rates increased in 24 states and the District of Columbia, decreased in 25 states and remained unchanged in one state
- Over half of all union members live in seven states: California, New York, Illinois, Pennsylvania, Michigan, Ohio and Washington

UNION MEMBERSHIP RATE SUMMARY



UNION MEMBERSHIP RATES BY STATE - 2018



NATIONAL LABOR RELATIONS BOARD PETITION AND ELECTION RESULTS

This section includes the following:

National Summaries

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

State Summaries

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

Union Summaries

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

Regional Summaries

- RC petitions and elections in ASHHRA regions

Strikes in Health Care

- Strikes held by year in health care

NATIONAL SUMMARIES

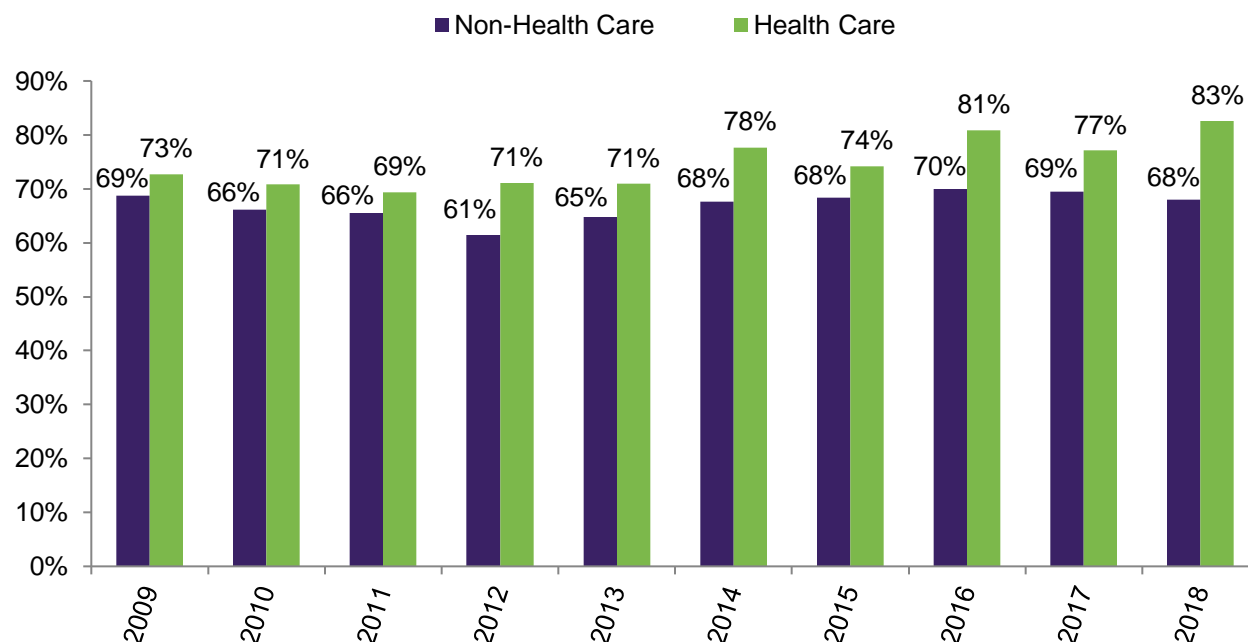
The following information summarizes representation petition activity and elections held during the past decade as reported by the National Labor Relations Board (NLRB).

HEALTH CARE VS. ALL NON-HEALTH CARE SECTORS COMPARISON

Over the past decade, unions have experienced higher success rates in the health care sector than in non-health care sectors. During 2018, unions were elected as a result of 83 percent of elections held in the health care sector, compared to just 68 percent in non-health care sectors.

UNION SUCCESSES IN RC ELECTIONS

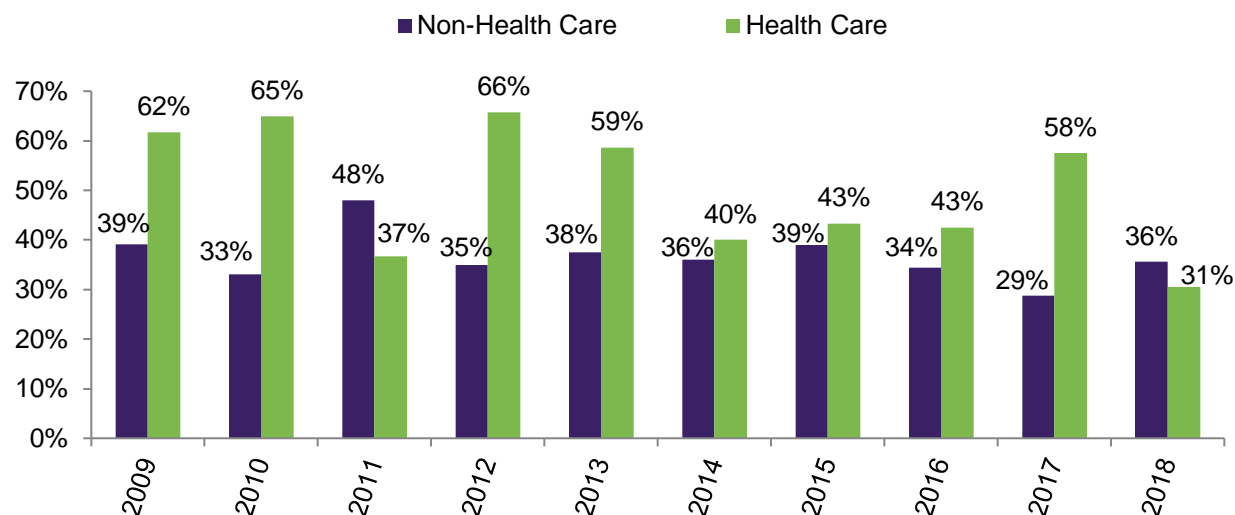
Health Care vs. Non-Health Care Sectors (2009-2018)



Unions have typically been more successful defending against decertification elections in the health care sector than in non-health care, however, during 2018, unions only maintained recognition in 31 percent of decertification elections held in health care compared to 36 percent in non-health care.

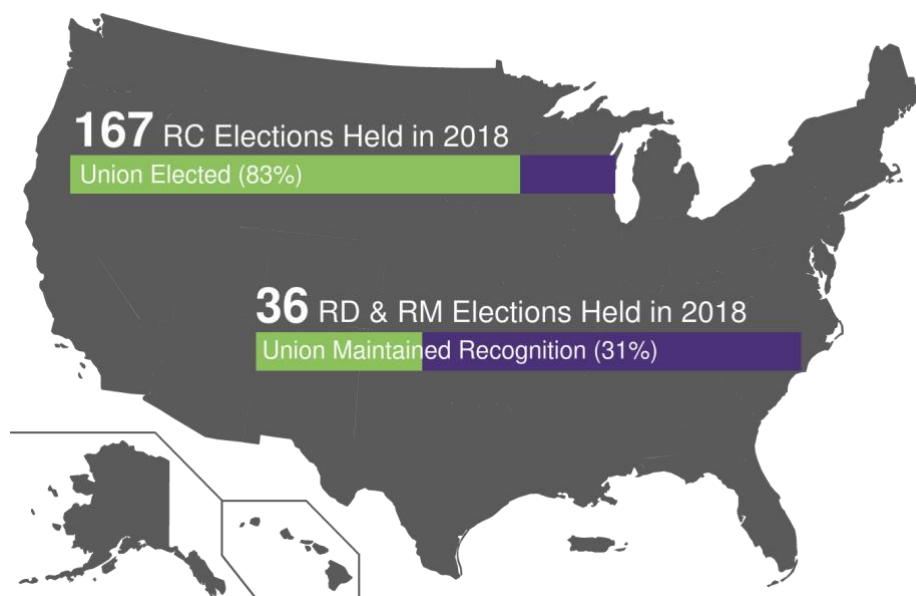
UNION SUCCESSES IN RD/RM ELECTIONS

Health Care vs. Non-Health Care Sectors (2009-2018)



HEALTH CARE SECTOR – ELECTIONS OVERVIEW

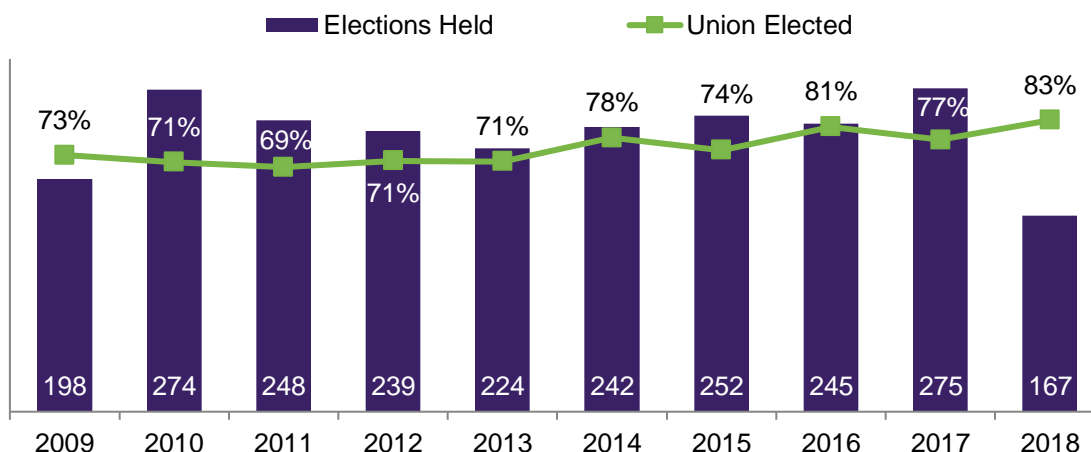
During 2018, 167 representation elections were held in the health care sector and unions were elected as a result of 83 percent. In the same time period, 36 decertification elections were held, and unions maintained recognition in 31 percent.



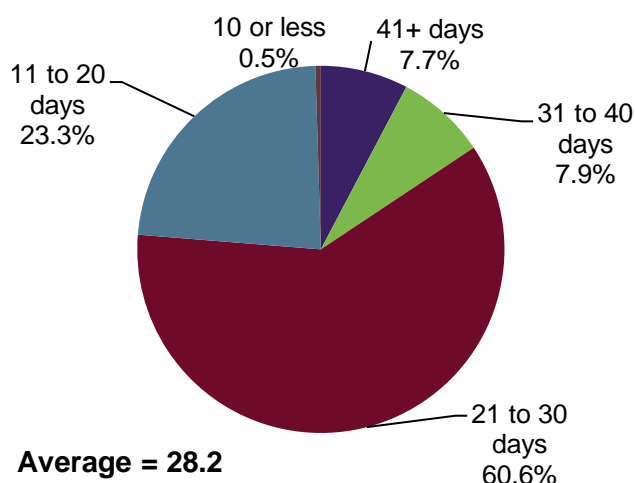
HEALTH CARE SECTOR – UNION SUCCESSES IN REPRESENTATION (RC) ELECTIONS

The chart below illustrates the number of representation elections held over the past decade along with the percentage of successful union elections. Unions were elected as a result of a decade-high 83 percent of elections, however, the total number of elections held was far lower than any other year in the past decade as well.

UNION SUCCESSES IN RC ELECTIONS COMPARED TO NUMBER OF ELECTIONS HELD



DAYS FROM NLRB PETITION TO ELECTION



4/14/2015 to 12/31/2018
(n=843 RC elections) –
Health Care Sector

This chart details the number of days from NLRB petition to election since the expedited election ruling went into effect on April 15, 2015. The majority of representation elections take place within 21 to 30 days from the date of the petition and the average number of days is 28.2.

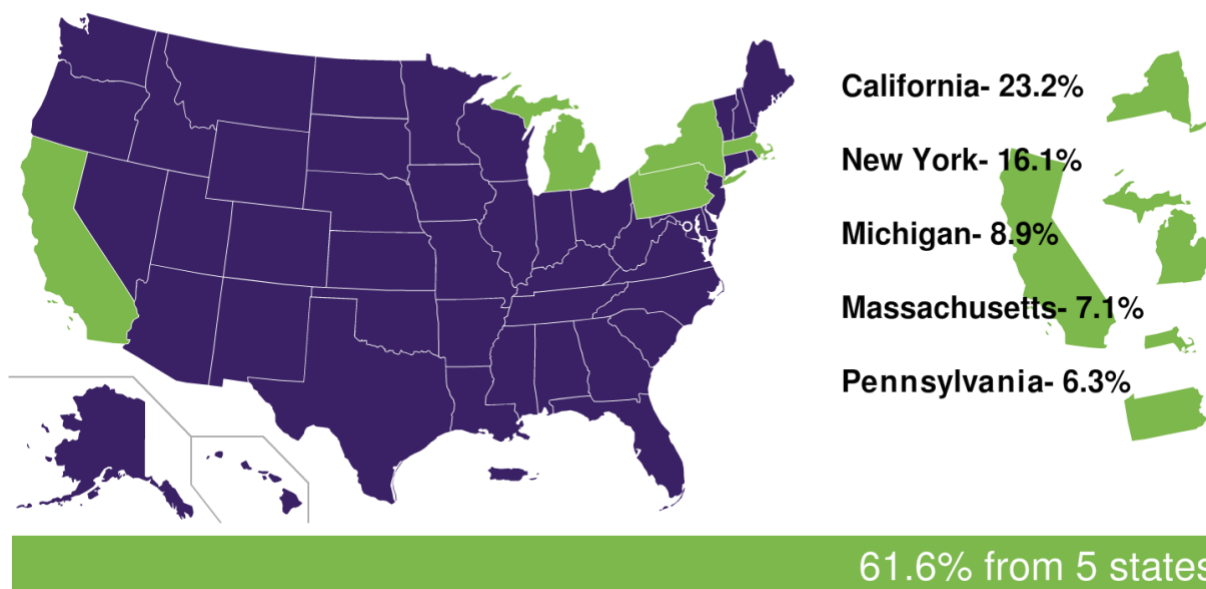
STATE SUMMARIES

This section provides an analysis 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 2017 and 2018 at the time of publication.

MOST ACTIVE STATES – REPRESENTATION PETITIONS FILED IN HEALTH CARE

Of the 224 representation petitions filed in health care in 2018, 62 percent were filed in five states and nearly a quarter were filed in just one state – California. New York, Michigan, Massachusetts and Pennsylvania round out the top five states and each account for more than six percent of petitions filed.

224 RC Petitions Filed in 2018



ALL STATES – REPRESENTATION PETITIONS FILED IN HEALTH CARE

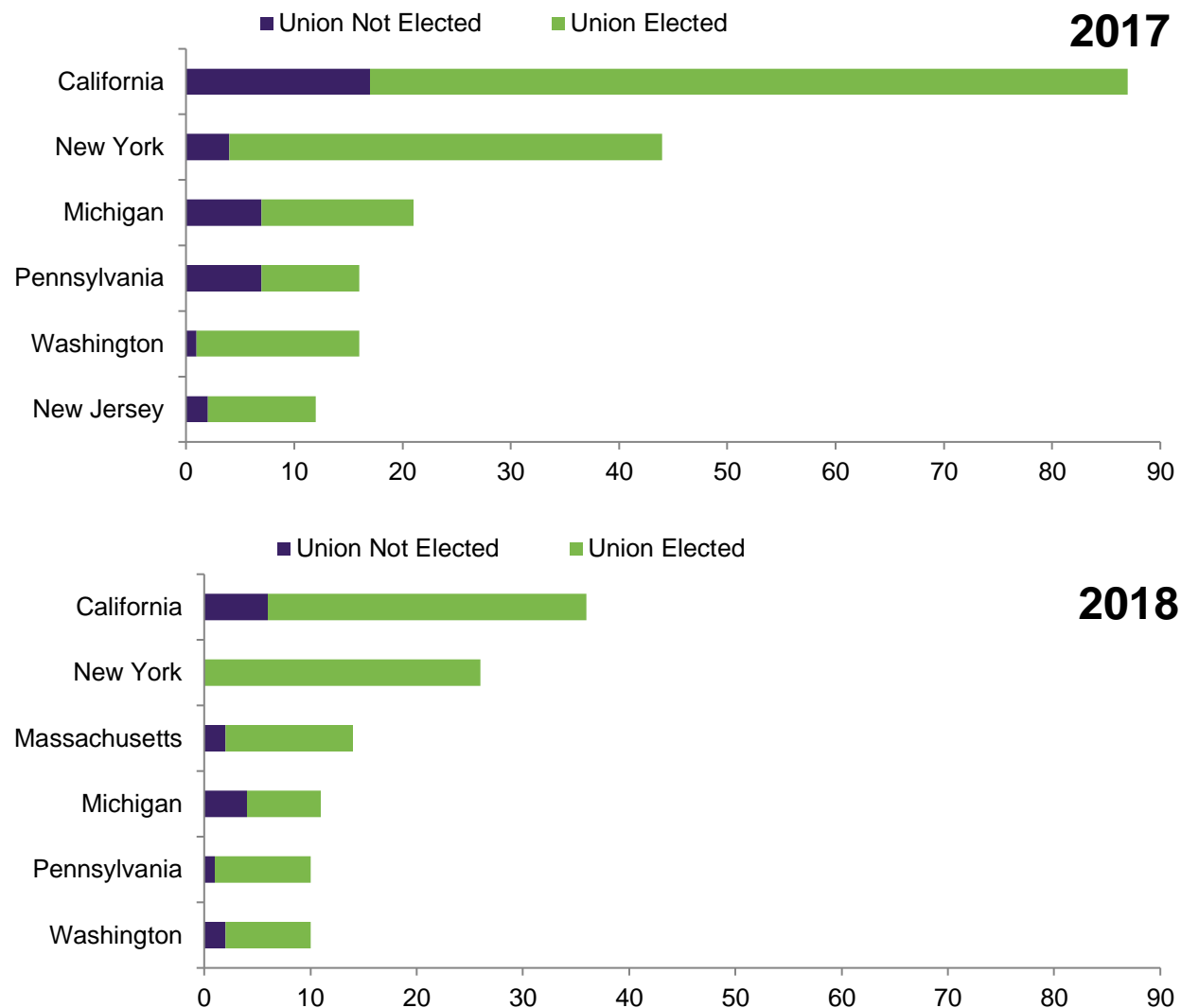
The table below details the number of representation petitions filed in each state in health care during 2017 and 2018.

State	2017	2018	State	2017	2018	State	2017	2018
Alabama	9	-	Iowa	1	2	North Dakota	1	-
Arizona	2	2	Kentucky	1	-	Ohio	10	4
California	90	52	Maine	2	-	Oregon	9	6
Colorado	2	-	Maryland	3	2	Pennsylvania	18	14
Connecticut	7	9	Massachusetts	15	16	Puerto Rico	1	8
DC	3	1	Michigan	29	20	Rhode Island	4	-
Delaware	2	2	Minnesota	6	10	South Carolina	1	-
Florida	-	4	Missouri	2	2	Texas	-	1
Georgia	1	-	Montana	4	2	Washington	-	1
Hawaii	4	2	New Jersey	15	8	West Virginia	15	10
Illinois	6	6	New Mexico	1	-	Wisconsin	2	2
Indiana	1	-	New York	57	36	Total	324	224

Note: A state is not listed in the table if no petitions were filed in 2017 or 2018

In both 2017 and 2018, California and New York were the two most active states in terms of the number of representation elections held.

MOST ACTIVE STATES – REPRESENTATION ELECTION RESULTS IN HEALTH CARE



ALL STATES – REPRESENTATION ELECTION RESULTS IN HEALTH CARE

The following table depicts the number of representation elections held in each state in the health care sector in 2017 and 2018.

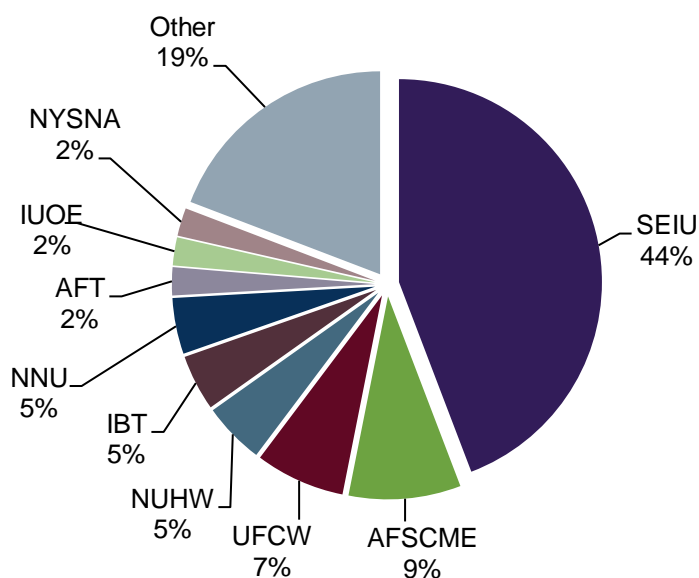
State	2017					2018				
	Total Elections	Union Elected		Union Not Elected		Total Elections	Union Elected		Union Not Elected	
		Total Successes	% of Elections	Total Successes	% of Elections		Total Successes	% of Elections	Total Successes	% of Elections
Alabama	6	3	50%	3	50%	-	-	-	-	-
Arizona	2	2	100%	0	0%	2	2	100%	0	0%
California	87	70	80%	17	20%	36	30	83%	6	17%
Colorado	1	1	100%	0	0%	1	0	0%	1	100%
Connecticut	7	5	71%	2	29%	8	6	75%	2	25%
District of Columbia	2	1	50%	1	50%	-	-	-	-	-
Delaware	2	2	100%	0	0%	-	-	-	-	-
Florida	1	1	100%	0	0%	2	2	100%	0	0%
Georgia	1	0	0%	1	100%	-	-	-	-	-
Hawaii	2	1	50%	1	50%	1	1	100%	0	0%
Illinois	4	2	50%	2	50%	4	4	100%	0	0%
Indiana	1	1	100%	0	0%	-	-	-	-	-
Iowa	1	0	0%	1	100%	-	-	-	-	-
Kentucky	1	1	100%	0	0%	-	-	-	-	-
Maine	2	2	100%	0	0%	-	-	-	-	-
Maryland	4	3	75%	1	25%	1	1	100%	0	0%
Massachusetts	11	9	82%	2	18%	14	12	86%	2	14%
Michigan	21	14	67%	7	33%	11	7	64%	4	36%
Minnesota	5	4	80%	1	20%	6	3	50%	3	50%
Missouri	2	1	50%	1	50%	1	0	0%	1	100%
Montana	3	2	67%	1	33%	3	3	100%	0	0%
New Mexico	-	-	-	-	-	9	6	67%	3	33%
New Jersey	12	10	83%	2	17%	1	1	100%	0	0%
New York	44	40	91%	4	9%	26	26	100%	0	0%
North Dakota	1	0	0%	1	100%	-	-	-	-	-
Ohio	5	2	40%	3	60%	2	2	100%	0	0%
Oregon	9	7	78%	2	22%	5	5	100%	0	0%
Pennsylvania	16	9	56%	7	44%	10	9	90%	1	10%
Puerto Rico	-	-	-	-	-	7	6	86%	1	14%
Rhode Island	3	2	67%	1	33%	-	-	-	-	-
South Carolina	1	1	100%	0	0%	-	-	-	-	-

Texas	-	-	-	-	-	1	1	100%	0	0%
Vermont	-	-	-	-	-	1	0	0%	1	100%
Virginia	1	0	0%	1	100%	-	-	-	-	-
Washington	16	15	94%	1	6%	10	8	80%	2	20%
West Virginia	1	1	100%	0	0%	3	2	67%	1	33%
Wisconsin	-	-	-	-	-	2	1	50%	1	50%
Total	275	212	77%	63	23%	167	138	83%	29	17%

Note: A state is not listed in the table if there were no elections held in 2017 or 2018.

UNION SUMMARIES

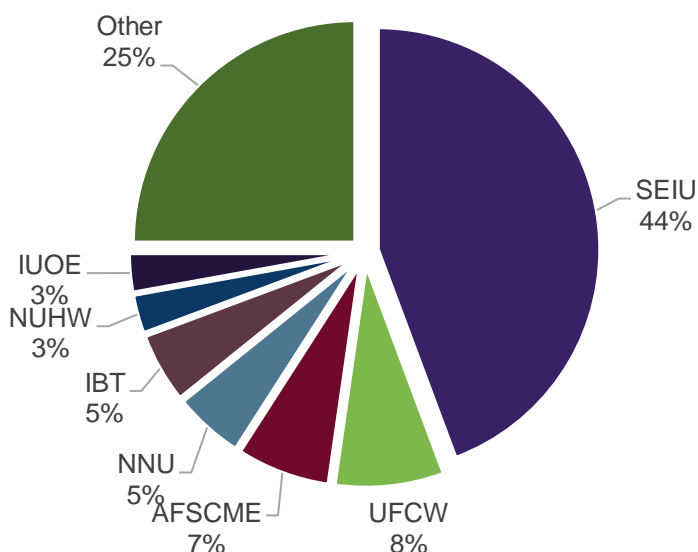
MOST ACTIVE UNIONS – REPRESENTATION PETITIONS FILED IN HEALTH CARE IN 2018



As has been the case for many years, SEIU remained the most active union in the health care sector in 2018, accounting for 44 percent of representation petitions filed. The next most active union was AFSCME.

Abbreviation	Union Name	RC Petitions Filed	
		2017	2018
SEIU	Service Employees International Union	151	99
AFSCME	American Federation of State, County and Municipal Employees	16	20
UFCW	United Food and Commercial Workers	27	16
NUHW	National Union of Healthcare Workers	26	11
IBT	International Brotherhood of Teamsters	19	10
NNU	National Nurses United	14	10
AFT	American Federation of Teachers	5	5
IUOE	International Union of Operating Engineers	7	5
NYSNA	New York State Nurses Association	3	5

MOST ACTIVE UNIONS – REPRESENTATION ELECTIONS HELD IN HEALTH CARE IN 2018



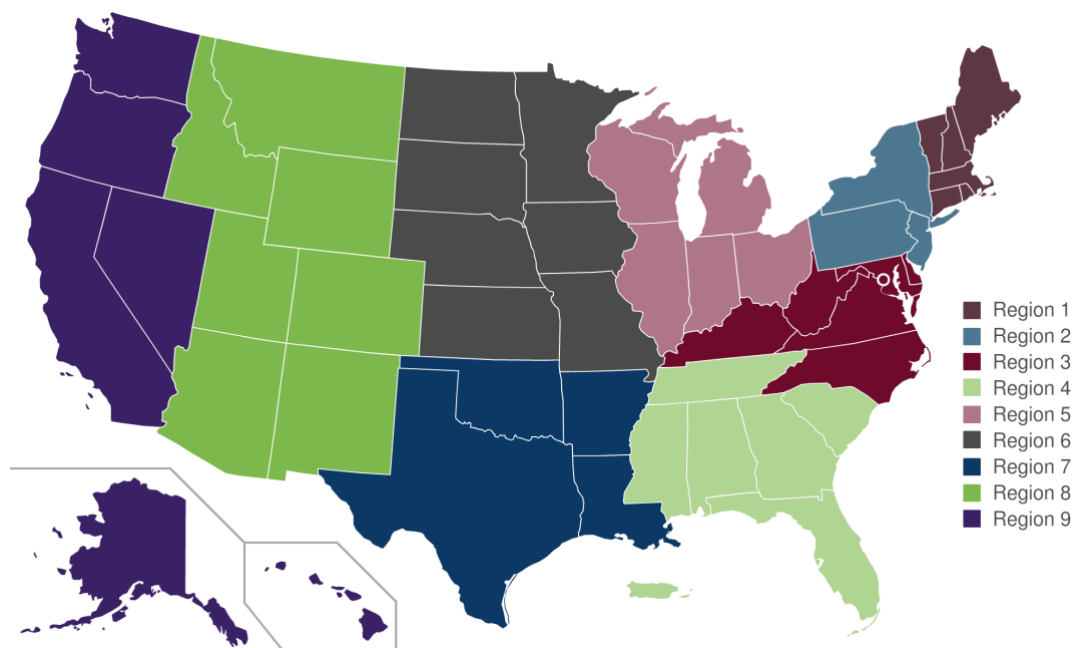
SEIU also accounted for the most representation elections in 2018. SEIU was involved in 78 elections and was elected as a result of 83 percent. The next most active union was UFCW with 14 representation elections.

MOST ACTIVE UNIONS – REPRESENTATION ELECTION RESULTS

	2017			2018		
	Total Elections	Union Elected %	Union Not Elected %	Total Elections	Union Elected %	Union Not Elected %
SEIU	126	80%	20%	78	83%	17%
UFCW	22	73%	27%	14	57%	43%
AFSCME	15	60%	40%	12	75%	25%
NNU	16	88%	13%	9	100%	0%
IBT	14	57%	43%	9	78%	22%
NUHW	23	87%	13%	5	60%	40%
IUOE	8	63%	38%	5	100%	0%

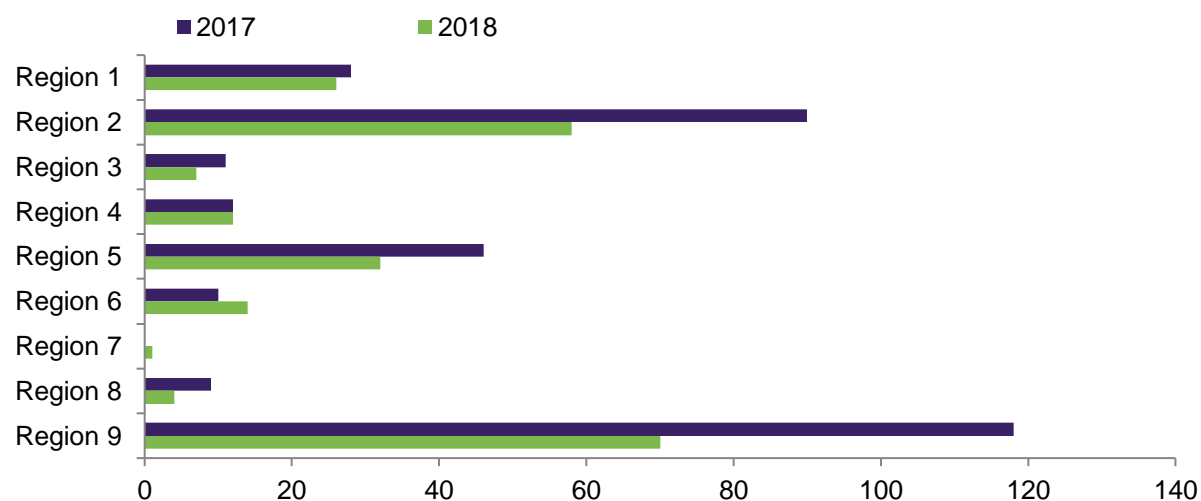
REGIONAL SUMMARIES

ASHHRA has categorized the nation into nine regions as illustrated in the map below:



The number of RC petitions filed in each ASHHRA region is detailed in the chart below. There are wide variations in the level of activity in each region.

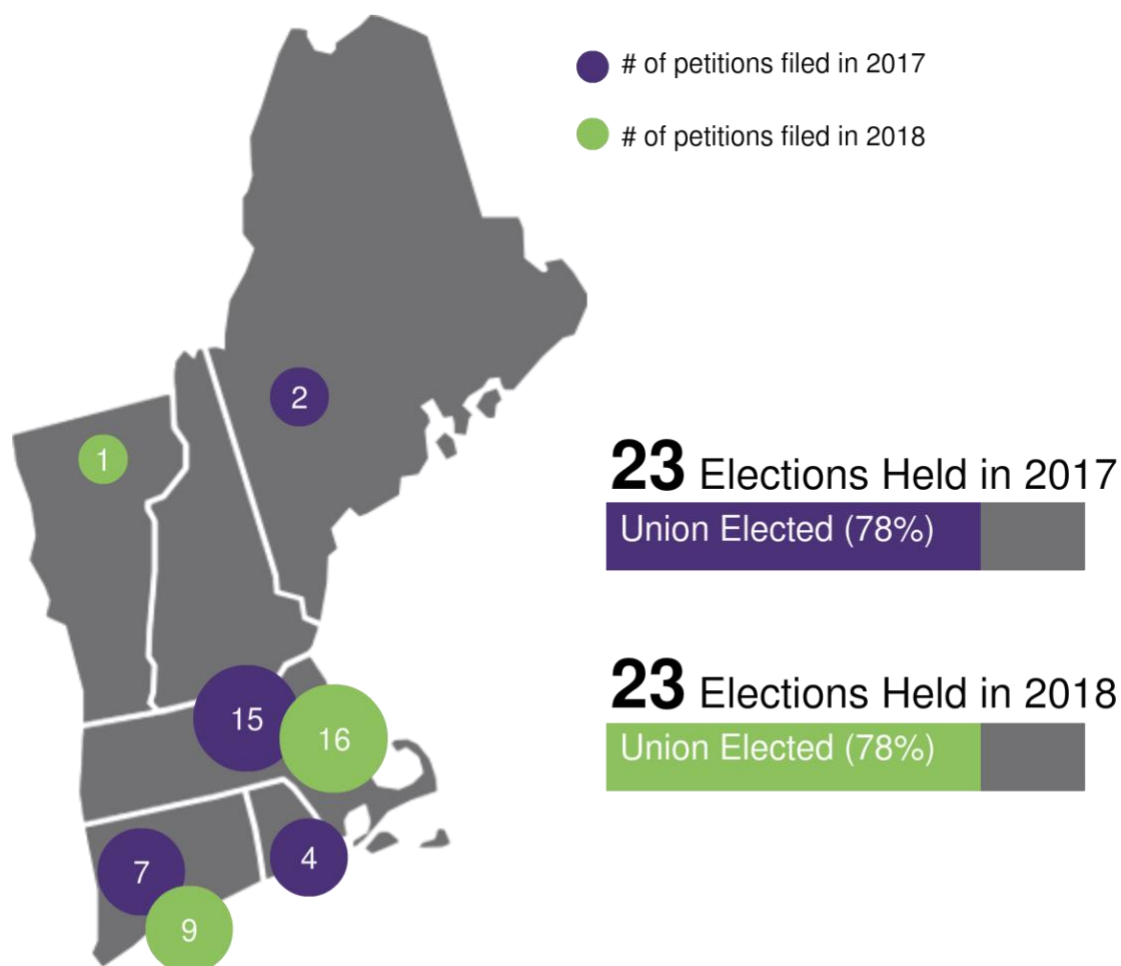
RC PETITIONS FILED IN HEALTH CARE BY ASHHRA REGION



REGION 1

The majority of the activity in Region 1 continues to occur in Massachusetts and Connecticut. There were 23 representation elections held in both 2017 and 2018 and unions were equally successful both years.

Petitions & Elections



REGION 2

There were significantly fewer representation petitions filed in Region 2 in 2018 than in 2017. Additionally, only 45 representation elections were held in 2018 compared to 72 in 2017, although unions were more successful in 2018.

Petitions & Elections

72 Elections Held in 2017

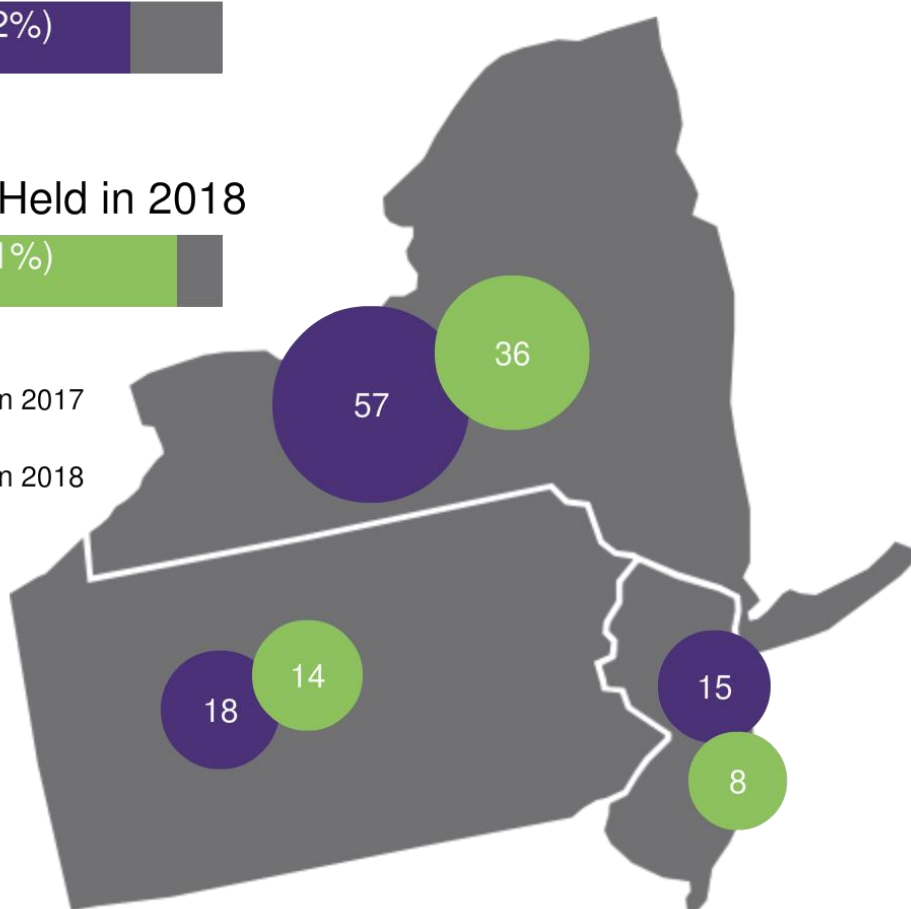
Union Elected (82%)

45 Elections Held in 2018

Union Elected (91%)

● # of petitions filed in 2017

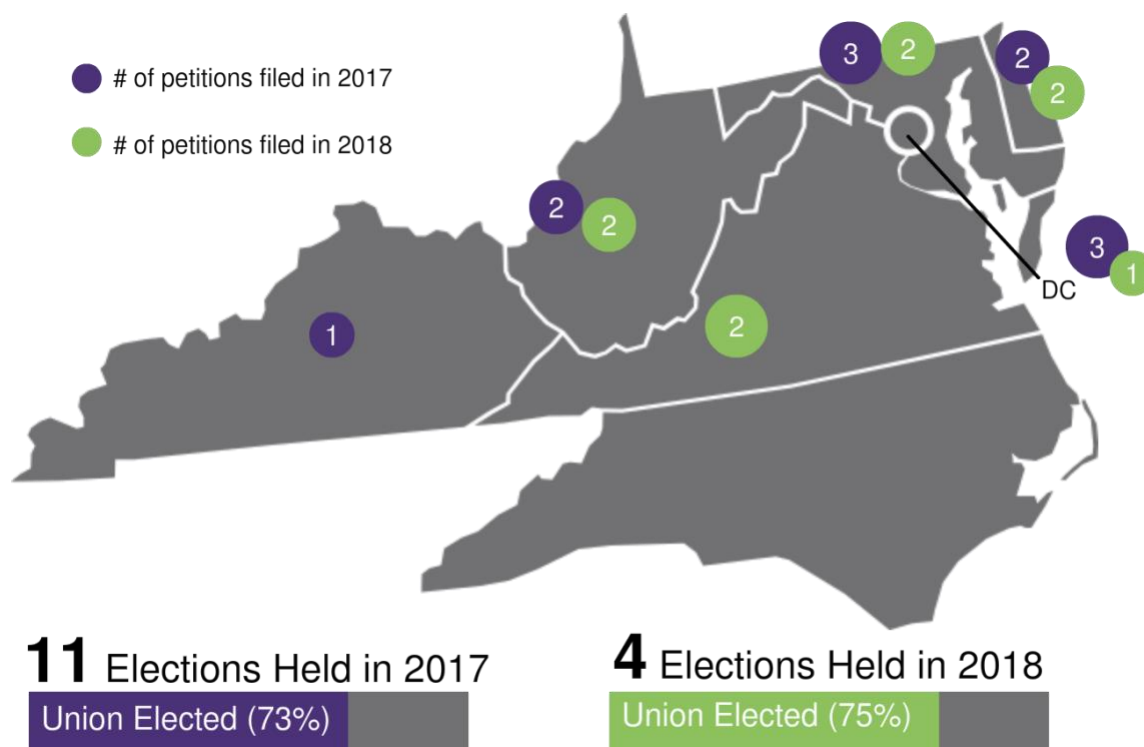
● # of petitions filed in 2018



REGION 3

There is limited organizing activity in Region 3. However, nearly every state has experienced some activity in either 2017 or 2018. There have been four representation elections held in 2018, and unions were elected as a result of three of them.

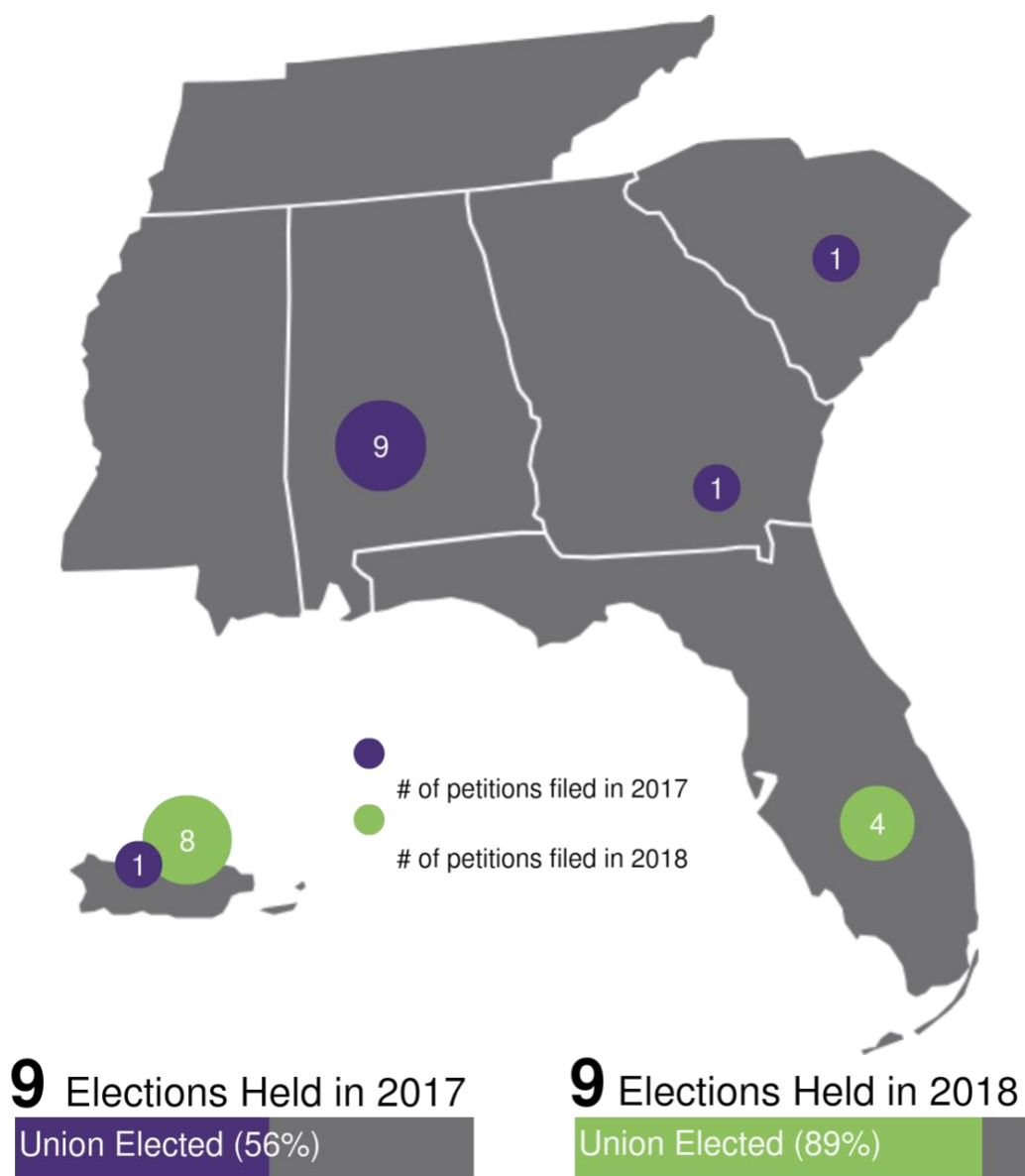
Petitions & Elections



REGION 4

Organizing activity in Region 4 has been concentrated in Puerto Rico and Florida in 2018, as opposed to Alabama in 2017. While there were nine elections held in both 2017 and 2018, unions were more successful in 2018, winning 89 percent of elections compared to 56 percent in 2017.

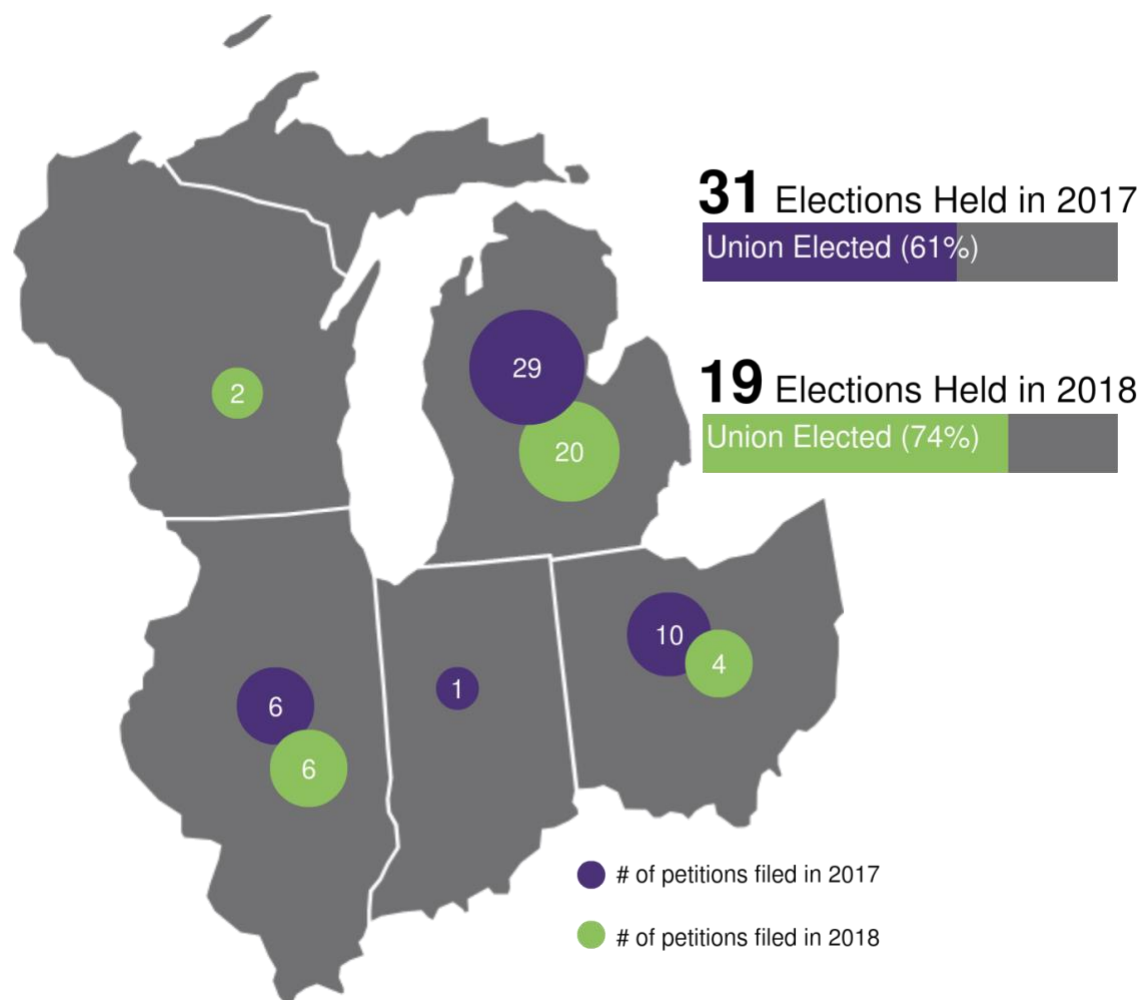
Petitions & Elections



REGION 5

Michigan is the most active state in terms of organizing activity in Region 5 with 20 petitions filed in 2018. There were fewer elections held in 2018, but unions had a greater success rate.

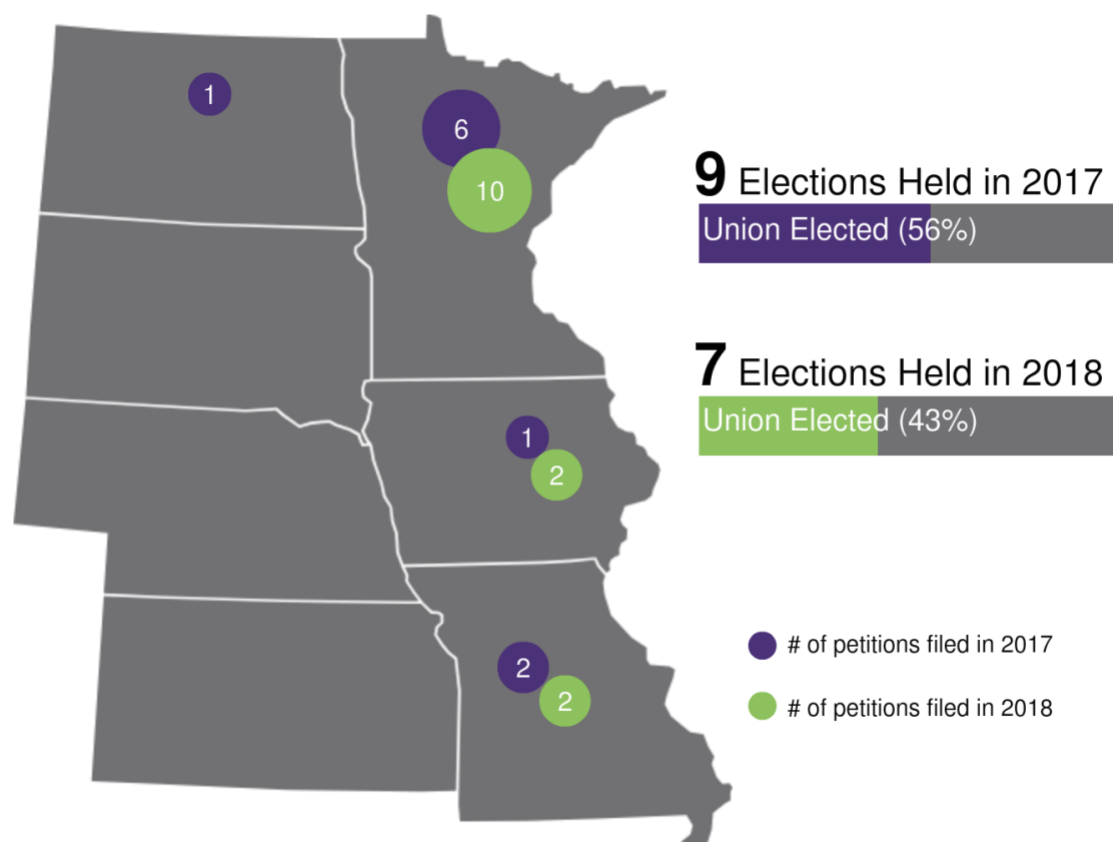
Petitions & Elections



REGION 6

While the activity level in Region 6 is moderate to low, the union election rate has been well below average at 56 percent in 2017 and only 43 percent in the 2018.

Petitions & Elections



REGION 7

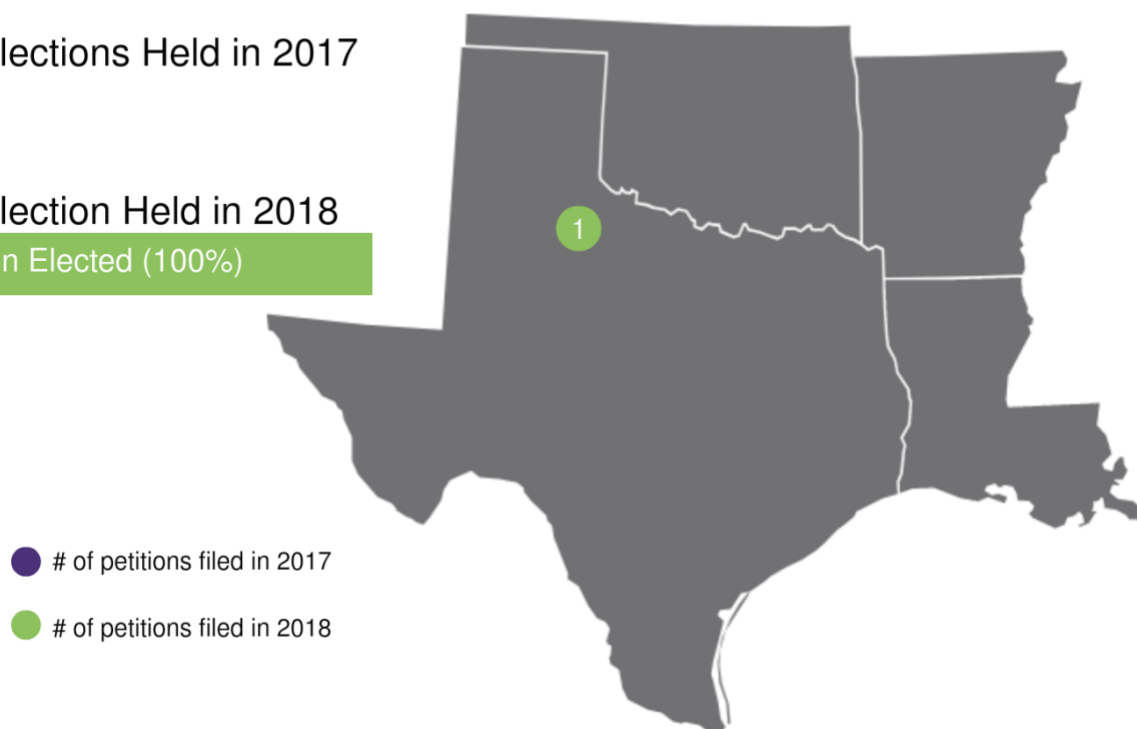
There has been almost no activity in Region 7 in the past year and a half. Just one representation petition has been filed in Texas in 2018, and that resulted in the union being elected.

Petitions & Elections

0 Elections Held in 2017

1 Election Held in 2018

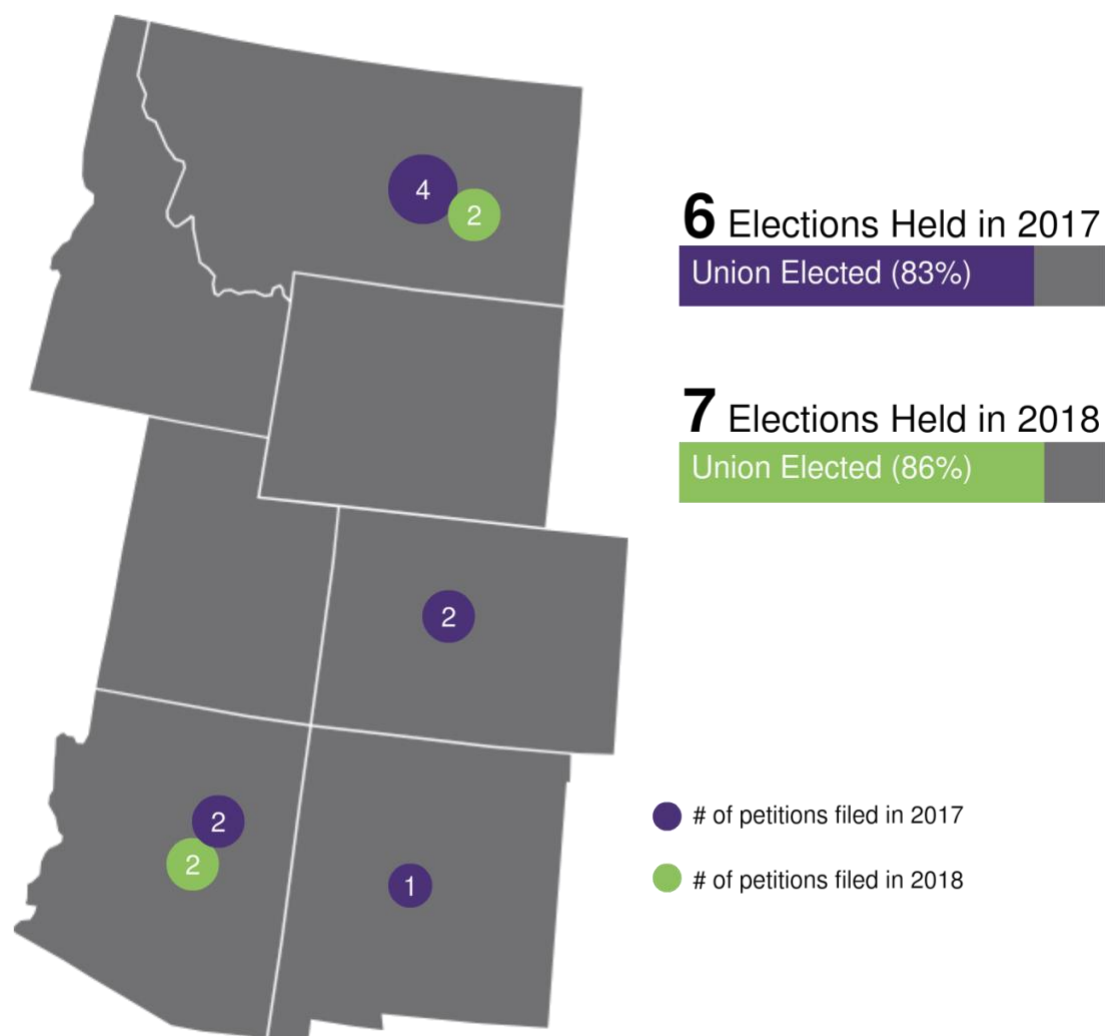
Union Elected (100%)



REGION 8

The number of petitions filed in Region 8 decreased in 2018. Unions were elected as a result of 86 percent of the seven elections held in 2018.

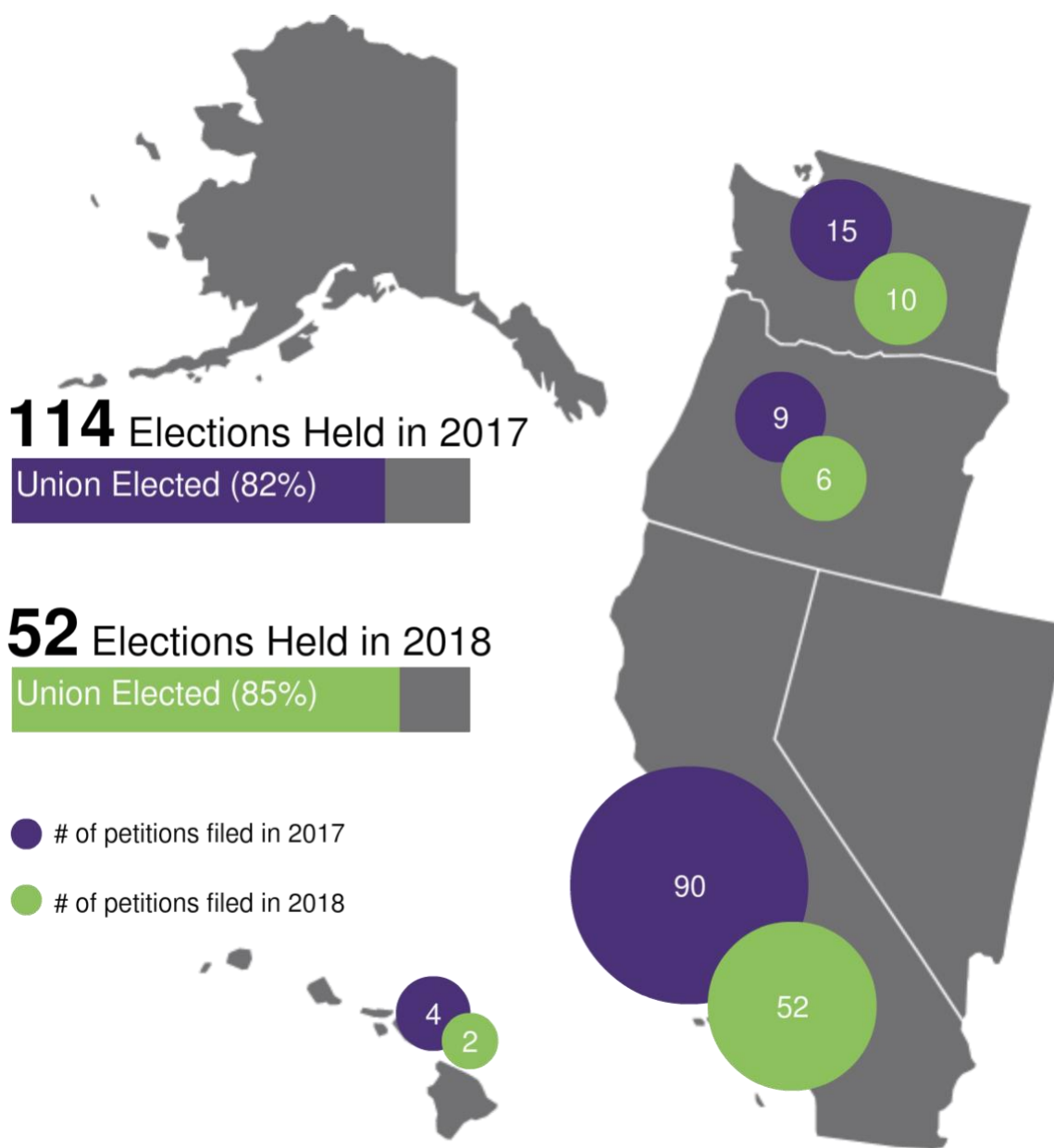
Petitions & Elections



REGION 9

Region 9 continues to be the most active region in the nation, however, there was a large decrease in activity between 2017 and 2018. In the region as a whole, there were half the number of elections held in 2018, and the majority of the decrease was seen in California.

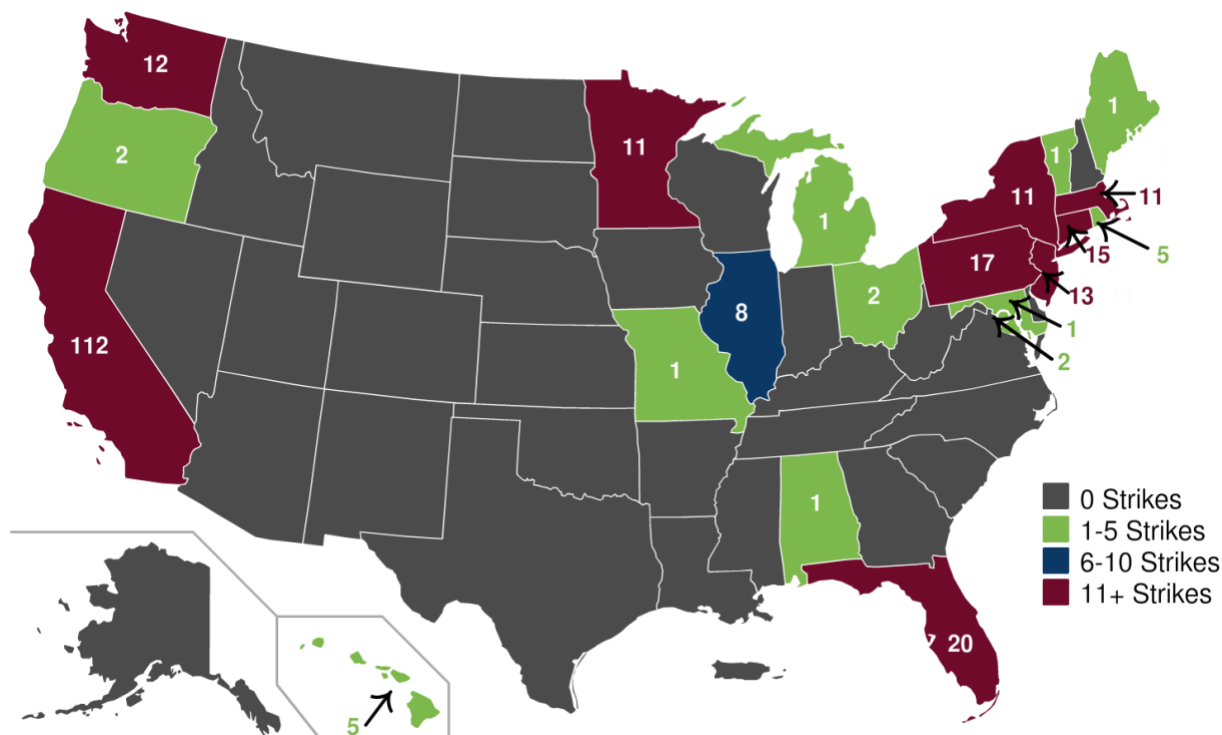
Petitions & Elections



STRIKES IN HEALTH CARE

The map below illustrates the number of strikes in the health care sector in each state since 2009. The majority of states have not seen a strike in health care in the past decade, while there was a large concentration of strikes in California.

STRIKES IN HEALTH CARE BY STATE, 2009 – 2018



Year	Number of Strikes	Workers Idled	Average Number of Workers per Strike
2018	23	11,587	504
2017	18	2,931	163
2016	27	17,117	634
2015	18	8,378	465
2014	24	26,182	1,091
2013	23	13,328	579
2012	45	24,104	536
2011	40	24,939	623
2010	23	38,397	1,669
2009	12	2,724	227

LABOR LAW/ACTIVITY UPDATE

This edition of the Labor Law/Activity update contains four articles.

Does “We” = Protected Concerted Activity? by Harry I. Johnson, III, examines why individual griping does not qualify as concerted activity solely because it is carried out in the presence of other employees and a supervisor and includes the use of the first-person plural pronoun.

Where Should the NLRB Go in Its Joint Employer Rulemaking? by G. Roger King looks at the joint employer doctrine as one of the most potent in our nation’s labor and employment jurisprudence. It exposes non-actor entities to potential liability in situations where another unrelated entity or entities engaged in conduct or omissions that the other entity(s) may not have any knowledge let alone condoned such course of conduct. Indeed, even the potential application of the joint employer doctrine can provide a potential litigant with considerable leverage to extract monetary payments from non-acting parties due to non-acting parties’ desire to avoid potential joint employer litigation.

#MeTooMedicine’s Influence on Culture: In Search of an Improved Institutional Climate in Hospital and Provider Settings by Kristin G. McGurn examines the movement among clinicians who have argued that the #MeToo movement’s influence on the entertainment, political and academic communities has outpaced its influence on health care. The National Academies of Sciences, Engineering and Medicine has issued guidelines that emphasize support for victims and advocate for data-driven measurements of progress. They also demand that entire academic and medical communities be held responsible for prevention.

Millennials Are From Mars, Their Managers Are From Venus: How to understand and communicate with the generation that is taking over your workplace by Megan Mitchell and Philippa Levenberg looks at a recent Iowa State University Extension Study that examined what motivated millennials at work compared to what their managers *thought* motivated them. Managers assume millennials are motivated by historically valued goals: good pay, job security and an opportunity for upward mobility within the organization. Millennials, however, are craving recognition in totally different ways. They want to be personally recognized for their contributions, feel like they are a part of the decision-making process and feel supported in their personal lives. Mitchell and Levenberg, two millennials, go beyond the cliched persona that proceeds their generation to offer insight into what really drives them and how to build a more productive relationship with millennials.

DOES “WE” = PROTECTED CONCERTED ACTIVITY?

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The mere use of the word “we” by a single employee will no longer be automatically construed as a concerted complaint.

Abstract

On January 11, 2019, the National Labor Relations Board (“the Board” or “NLRB”) narrowed its definition of “concerted activity” in finding that a provider of ground services at JFK International Airport lawfully terminated a skycap for complaining to his supervisor about customers’ tipping habits in Alstate Maintenance, LLC.¹ The Board, overruling its 2011 decision in WorldMark by Wyndham,² held that although an individual skycap’s complaint was made in the presence of coworkers and included the use of the word “we,” “individual griping does not qualify as concerted activity solely because it is carried out in the presence of other employees and a supervisor and includes the use of the first-person plural pronoun.” Rather, for a complaint voiced by an individual employee to qualify as concerted activity, the employee must be “bring[ing] a

¹ 367 NLRB No. 68 (January 11, 2019).

² 356 NLRB 765 (2011).

truly group complaint regarding a workplace issue to management's attention" or "seeking to initiate, induce or prepare for group action."

Background

The employer provided ground services at JFK International Airport's terminal one under a contract with Terminal One Management, Inc. (Terminal One). The primary duty of the employer's skycaps was to assist arriving airline passengers with their luggage outside the entrance to the terminal. The bulk of skycaps' compensation comes from passengers' tips. On July 17, 2013, Greenidge, the skycap at issue in the case, was working with three other skycaps outside the entrance to terminal one. He was approached by his supervisor, who informed him that Lufthansa, an airline that operates out of Terminal One, had requested skycaps to assist with a soccer team's equipment. Greenidge remarked, "We did a similar job a year prior and we didn't receive a tip for it." When a van containing the team's equipment arrived, the skycaps were waved over by managers from Lufthansa Airlines and Terminal One. The skycaps turned and walked away from the managers. The two managers questioned Greenidge's manager, who told them the skycaps did not want to do the job because they were anticipating a small tip.

As the Lufthansa and Terminal One managers still required help loading the luggage, they sought assistance from baggage handlers inside the terminal, who completed a significant share of the work before Greenidge and the other three employer skycaps helped them finish the loading job. After the job was completed, the soccer team gave the skycaps an \$83 tip. That evening, the Lufthansa manager emailed Terminal One managers to alert them that the skycaps had provided subpar service to a group Lufthansa considered a VIP client. The Lufthansa manager questioned why the skycaps "would refuse to provide skycap services to a partner carrier" and stated that "in [her] entire professional career [she had] never been this embarrassed in front of the customer." After a series of emails, it was determined that the skycaps should be terminated. Greeridge's termination letter noted:

You were indifferent to the customer and verbally make [sic] comments about the job stating you get no tip, or it is very small tip [sic]. Trevor, you made this comments [sic] in front of other skycaps, Terminal One Mod [manager on duty] and the Station Manager of Lufthansa.

The Board's Decision

In this decision, the Board made clear that the governing standard for determining whether an individual employee has engaged in concerted activity is still the test from *Meyers II*. In *Meyers II*, the Board held that the definition of concerted activity “encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action” or where individual employees bring “truly group complaints to the attention of management.”³ As to the latter, the *Meyers II* Board required “record evidence [that] demonstrates group activities”⁴ in order to find that an individually-urged complaint is a truly group complaint. The Board in *Meyers II* also held that “the question of whether an employee has engaged in concerted activity is a factual one based on the totality of the record evidence.” Finally, the Board in *Meyers II* also held that “the question of whether an employee has engaged in concerted activity is a factual one based on the totality of the record evidence.”⁵

The Board, applying the *Meyers* decisions,⁶ found that Greenidge did not engage in protected concerted activity by making the statement, “We did a similar job a year prior and we didn’t receive a tip for it.” The Board majority was careful to point out, as did the administrative law judge in the underlying case, that only the statement was at issue and not the skycap’s action of walking away from the arriving work, noting that, “The judge is correct that the General Counsel’s theory of the case was strictly limited to the allegation that Greenidge’s statement constituted protected concerted activity” as evidenced by the termination letter referring only to his comments about the job. The General Counsel’s case was further undermined by the fact that Greenidge himself testified that his statement was just a statement and was not made with any forward-looking intent toward generating action by the other skycaps.

³ *Meyers Industries*, 281 NLRB 882, 887 (1986) (“*Meyers II*”), *affd.* sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

⁴ *Id.* at 886.

⁵ *Id.*

⁶ *Meyers Industries*, 268 NLRB 493 (1984) (“*Meyers I*”), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985); *Meyers Industries*, 281 NLRB 882 (1986) (“*Meyers II*”), *affd.* sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

Member McFerran, the dissenting member, argued that the statement was both concerted and for mutual aid and protection and noted that, even with the delay in handling the luggage, the team still received its luggage within 12 minutes. The majority assailed this argument, noting:

The length of the delay and its ultimate effect are irrelevant; what matters here was that Greenidge was “indifferent to the customer,” as his discharge letter states. Failure to respond to a customer’s request can mean loss of business and of jobs. Greenidge’s selfish stunt caused the customer to complain and failure to remedy the source of that complaint could have resulted in the Respondent losing its contract with Terminal One Management, jeopardizing all the skycaps’ jobs.⁷

The majority also pointed out another argument, which, although not made by the General Counsel, would have been particularly fatal to the case:

We recognize, of course, that under the Act, employees have a protected right to strike and the fact that a strike could also result in a loss of contract and jobs does not deprive strikers of the Act’s protection. But what happened here was mere insubordination, not a protected strike. Indeed, a case could be made that the skycaps’ act of walking away was an unprotected partial strike.⁸

In sum, the Board found that Greenidge’s statement was neither concerted nor for mutual aid and protection and therefore the Company lawfully terminated him.

Takeaways

- Statements made by individuals must be supported by more than the word “we” to be found concerted.
- Individual griping does not qualify as concerted activity solely because it is carried out in the presence of other employees and includes the use of the word “we.”

⁷ See footnote 1, slip op. at 2.

⁸ Id.

- The fact that a statement is made at a meeting, in a group setting, or with other employees present will not automatically make the statement concerted activity.
- To constitute concerted activity, an individual employee's statement to a supervisor or manager must either bring a truly group complaint regarding a workplace issue to management's attention, or the totality of the circumstances must support a reasonable inference that in making the statement, the employee was seeking to initiate, induce or prepare for group action. Contact labor counsel immediately for an assessment based on the above-mentioned cases.
- Employers should carefully consider the nature of employee complaints and the circumstances surrounding such complaints. Contact labor counsel for an assessment of such complaints if in doubt.

The majority noted in a footnote that it would be interested in reconsidering the line of cases finding statements about certain subjects "inherently" concerted, showing the current Board may be interested in overruling that entire line of cases: "Although we do not reach them here, other cases that arguably conflict with Meyers include those in which the Board has deemed statements about certain subjects "inherently" concerted. See *Trayco of S.C., Inc.*, 297 NLRB 630, 634–635 (1990) (discussions about wages inherently concerted), enf. denied mem. 927 F.2d 597 (4th Cir. 1991); *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995) (discussions about work schedules inherently concerted), enf. denied in relevant part 81 F.3d 209 (D.C. Cir. 1996); *Hoodview Vending Co.*, 362 NLRB 690 (2015), incorporating by reference 359 NLRB 355 (2012) (discussions about job security inherently concerted). We would be interested in reconsidering this line of precedent in a future appropriate case."⁹

⁹ See footnote 2, slip op. at 1.

WHERE SHOULD THE NLRB GO IN ITS JOINT EMPLOYER RULEMAKING?

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Abstract

The joint employer doctrine is one of the most potent in our nation's labor and employment jurisprudence. It exposes non-actor entities to potential liability in situations where another unrelated entity or entities engaged in conduct or omissions that the other entity(s) may not have any knowledge let alone condoned such course of conduct. Indeed, even the potential application of the joint employer doctrine can provide a potential litigant with considerable leverage to extract monetary payments from non-acting parties due to non-acting parties' desire to avoid potential joint employer litigation.

The NLRB 2015 Browning-Ferris Industries Decision

In its 2015 decision in Browning-Ferris Industries (BFI), the National Labor Relations Board ("the Board" or "NLRB") created a new joint employer standard that turned decades of established precedent on its head and resulted in a dangerous expansion of joint employer liability for employers. The BFI majority either failed to note the potency and potentially toxic impact of an ambiguous and expanded joint employer doctrine on the important user/supplier aspect of our economy, or the majority was fully aware of the potential reach of the expanded joint employer doctrine and deliberately proceeded in such a policy direction in an attempt to enhance union organizing objectives and to establish a way for individuals to pursue through litigation "the deeper pockets" of user employers. Regardless, the result has been nearly four years of debilitating confusion for employers unsure of whether they will incur potentially significant liability for continuing to operate their business pursuant to past practice with third-party suppliers, contingent workers and other supply-chain entities. The 2015 Board created a new standard that has proven to be both overly expansive and inconsistent in its application,

forcing many employers to abandon heretofore standard relationships with third-party entities out of fear of becoming mired in protracted litigation.

The D.C. Circuit Court of Appeals Browning-Ferris Industries Decision

In an appeal of the 2015 BFI decision, decided in December 2018, the D.C. Circuit Court of Appeals itself recognized just how unworkable such a standard has proven to be. While the court recognized, in accordance with the Board's majority opinion in the 2015 case, that indirect control can be a factor as part of the joint employer analysis, it nonetheless rebuked the Board for crafting a standard with inconsistent application:

The problem with the Board's decision is not its recognition that indirect control (and certainly control exercised through an intermediary) can be a relevant consideration in the joint-employer analysis. It is the Board's failure when applying that factor to hew to the relevant common-law boundaries that prevent the Board from trenching on the common and routine decisions that employers make when hiring third-party contractors and defining the terms of those contracts... The Board's analysis of the factual record in this case failed to differentiate between those aspects of indirect control relevant to status as an employer and those quotidian aspects of common-law third-party contract relationships.¹

The Court's opinion itself provided no meaningful guidance about what analytical standards should be utilized in determining joint employer status under the National Labor Relations Act ("the Act" or NLRA) and instead remanded to the Board for further clarity. Specifically, the Court stated:

In applying the indirect-control factor in this case, however, the Board failed to confine it to indirect control over the essential terms and conditions of the workers' employment. We accordingly remand that aspect of the decision to the Board for it to explain and apply its test in a manner that hews to the common law of agency.²

¹ BFI Indus. v. NLRB, 911 F.3d 1195, 1219-20 (D.C. Cir. 2018).

² Id. at 1209.

The NLRB Joint Employer Rulemaking Initiative

It is against this backdrop that the current Board decided to proceed with rulemaking on the joint employer issue, proposing a rule in which:

[A]n employer may be found to be a joint-employer of another employer's employees only if it possesses and exercises substantial, direct and immediate control over the essential terms and conditions of employment and has done so in a manner that is not limited and routine.³

Rulemaking on the joint employer issue has been long overdue and the Board's proposed rule is certainly an encouraging first step toward accomplishing the goal of "fostering predictability, consistency and stability in the determination of joint-employer status," qualities that are conspicuously absent from the standard promulgated by the 2015 BFI decision. Nonetheless, the proposed rule still leaves significant questions unanswered and any final rule would enormously benefit from addressing a number of key issues.

Types of Control

First and foremost, while discussions of indirect and reserved control are potentially interesting from an academic perspective, they are largely irrelevant to any meaningful, real-world application of the joint employer analysis and only serve to confuse and hinder the discussion pertaining to the establishment of a workable joint employer standard. A joint employer standard that unduly focuses on indirect control to determine joint employer status provides no meaningful guidance to stakeholders under the NLRA. Any final rule should be centered on the existence of actual control.

■ Actual Control

Actual control, for abundantly clear reasons, is the most obvious type of control in any joint employer analysis. It can be observed, measured and objectively established. In other words, it is "hard evidence," and either exists or does not exist pursuant to factual review of the record in question.

³ Office of Public Affairs, Board Proposes Rule to Change its Joint-Employer Standard, National Labor Relations Board (Sept. 13, 2018), <https://www.nlrb.gov/news-outreach/news-story/board-proposes-rule-change-its-joint-employer-standard>.

■ Indirect Control

Indirect control is a key part of the Board's 2015 BFI standard. The phrase "indirect control," however, has been subject to many definitions and has led to considerable ambiguity in the common law. By any definition, however, this phrase requires some type of "control" by one entity over the terms and conditions of employment of employees of other entities. For such type of "control" to be a helpful analytical tool, however, in any type of joint employer analysis, it also must be objectively measurable.

■ Reserved Control

Reserved control is an even more ambiguous standard and is of the least assistance in any meaningful joint employer analysis. It is difficult if not impossible to measure objectively, to the extent it exists at all. If it does exist, it should have a substantial and potentially direct impact on terms and conditions of employment of the employees in question before having any bearing on the joint employer analysis. Moreover, some type of reserved control is contained in virtually any type of contractual arrangement between parties. For example, many contractual agreements between user and supplier entities contain safety requirements, quality requirements, timeliness of completion requirements and federal state and local statutory compliance obligations. These types of "control" represent common forms of routine and reserved control that exist in countless arrangements between entities. Such hypothetical or potential reserved "control" should not – on its own – be the basis for a joint employer finding.

To put it succinctly, actual control and indirect control that results in some type of "actual control" should be given the vast majority of weight in any joint employer final rule. Reserved control, if it exists at all, should be subject to no more than a 10 percent weight factor and should not be the basis, alone, to find joint employer status.

Additional Considerations

Additionally, it is critical that any final joint employer rule include carve-out exceptions for "corporate social responsibility" ("CSR") initiatives. CSR initiatives, in general, are ethical standards adopted by companies that exceed their legal obligations and come in all shapes and sizes. These include arrangements with suppliers that outline certain paid leave requirements for their employees and also include guidelines to strictly

adhere to fair labor practices. Such CSR initiatives are most effective when companies elect to extend such policies throughout supply chains and other third-party entities and allow employers to drive social change that is often elusive for federal lawmakers mired in prolonged decision-making processes. Often, CSR initiatives address issues that are already in the public eye and will give the corporation, its investors and consumers a chance to make real change on vital issues, such as human rights and sustainability. Alternatively, many CSR initiatives additionally target and address social problems that might otherwise be largely invisible to the public.

An expansive joint employer rule, such as the standard created by the 2015 BFI decision, will deter companies from adopting CSR initiatives that make great strides in improving working conditions for employees of supplier employers. For example, the Board suggested in BFI that a company may be a joint employer if it merely “retains the contractual right to set a term or condition of employment.”⁴ Under such an approach, plaintiff unions or employees can be expected to argue that CSR initiatives relating to workers’ treatment establish a joint employment relations because they set the broad parameters of the job and include measures to verify compliance. Thus, companies with existing CSR initiatives would have a strong incentive to terminate them under any overly expansive joint employer rule along the lines of the BFI standard.

Additionally, the Board’s rulemaking initiative in the joint employer area should include as much specificity as possible. The Board should include in its final rule a definition of the essential terms and conditions of employment that an entity necessarily must control before being found to be a joint employer. Such “essential terms and conditions of employment” should include at a minimum: (1) the authority to determine and set wages and benefits, including management of payroll and leave policies, (2) the hiring and firing of employees, (3) the authority to directly discipline, supervise and direct employees, including determination of work schedules and assignment of positions and tasks and (4) the authority to maintain employee records required by law. Anything below this minimum threshold would create a standard that is both ambiguous and overly broad and one that is too reliant on indirect and reserved forms of control.

⁴ *Browning-Ferris Indus*, 362 NLRB No. 186 at *19 n.80 (2015).

Concluding Thoughts

A broad and overreaching definition of joint employer status harms both employers and workers alike. Clearly, any employer seeking to affirmatively avoid liability by constructing sham arrangements with workers should be prosecuted. Any final rule, however, should not be overly broad so as to punish employers seeking to provide certain benefits to contingent workers, or for engaging in limited and routine general oversight over such workers. Such reserved and indirect control is a necessary feature of almost any contractual agreement and making such control a basis of joint employer status will only deter companies from entering into vital third-party arrangements at great cost to the economy, cost that undoubtedly will be ultimately transferred to the average consumer. It is imperative then that the Board, in its rulemaking, carefully consider the implications of placing too much weight on indirect and reserved control. Further, the Board should establish a rule that is centered around direct control that is objectively measurable and contains definitions that are easily understood by all stakeholders.

#METOOMEDICINE'S INFLUENCE ON CULTURE: IN SEARCH OF AN IMPROVED INSTITUTIONAL CLIMATE IN HOSPITAL AND PROVIDER SETTINGS

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Abstract

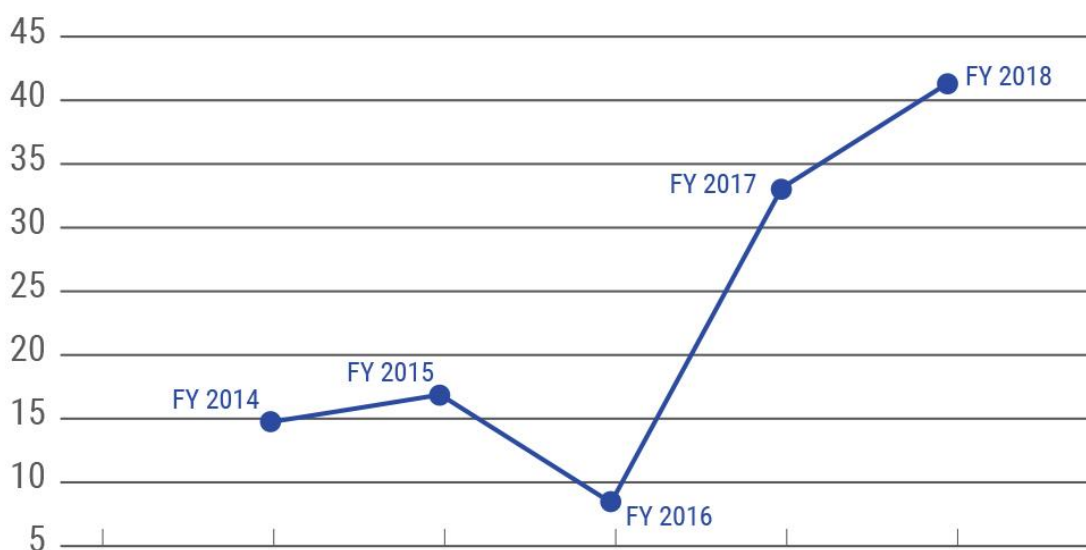
Clinicians have argued in reputable medical journals that the #MeToo movement's influence on the entertainment, political and academic communities has outpaced its influence on health care. Equal Employment Opportunity Commission statistics show complaints about workplace bullying and discrimination in health care and social assistance fields rank third only behind hospitality and manufacturing. The National Academies of Sciences, Engineering and Medicine has issued guidelines that emphasize support for victims and advocate for data-driven measurements of progress. They also demand that entire academic and medical communities be held responsible for prevention.

Some may argue that the #MeToo era has waned. But there is countervailing evidence, especially in the health care industry. The Times Up initiative, for example, funds litigation and advocacy on behalf of registered nurses. Health care and social assistance workers, ranking third behind only hospitality and manufacturing workers, produced the highest number of complaints of workplace bullying and discrimination, according to statistics from the Equal Employment Opportunity Commission (EEOC) for FY18. Similarly, researchers, trainees and clinicians across the globe continue to tweet at #MeTooMedicine. As evidenced by these posted stories, years-long, hyper-competitive university and hands-on clinical training requirements and the grueling pace of careers in the medical field – hard enough in their own right – can become unbearable when coupled with harassment and discrimination.

As the demand for qualified clinicians capable of attending to the health care needs of an aging population continues to rise, health care employers are increasingly focused on attracting, nurturing and retaining a diverse pool of employees. Many health care employers have begun to place significant focus on fundamentally shifting the way they recognize, talk about and respond to workplace harassment and discrimination. Many consider the change welcome and overdue.

Across all sectors, nearly two thirds of the EEOC's Title VII filings in FY18 targeted sex-based discrimination. Despite this demonstrated uptick in post-#MeToo filings, accomplished clinicians have argued in reputable medical journals that the movement's influence on the entertainment, political and academic communities has outpaced its influence on health care. Certain scientific associations, sharing this view, have responded decisively.

#MeToo Filings By Year



For example, the National Academies of Sciences, Engineering and Medicine (“NASEM”) recently published a detailed report,⁵ summarized in the Journal of the

⁵ National Academies of Sciences, Engineering and Medicine 2018, Sexual Harassment of Women: Climate, Culture and Consequences in Academic Sciences, Engineering and Medicine, The National Academies Press (2018).

American Medical Association,⁶ about the problem of sexual harassment and gender discrimination in health care and other STEM fields. The high-risk, triage environments in health care workplaces, along with the prominent power gradient between clinicians and the staff who support them, combine to create an education and employment dynamic that is uniquely susceptible to opportunities for harassment. NASEM determined that a significant predictor of risk is the perception that an organization is tolerant of harassing and bullying behavior, or soft on punishment. These perceptions are often fueled by a history of reporting reluctance, ineffective attempts at rehabilitation, or systemic or episodic leniency. NASEM found that in such environments, direct harassment is more likely to be experienced and observed.

Advocating for a fundamental, institutional change, NASEM noted that overt and implicit harassment and discrimination have the capacity to reduce productivity, funding and earnings and to increase stress, thereby diminishing an organization's ability to protect and retain a diverse workforce. NASEM's analysis focused not only on familiar *quid pro quo* sexual harassment and other conduct explicitly based on sex, but also on "verbal and nonverbal behaviors that convey hostility, objectification, exclusion or second-class status about members of one gender." NASEM called to action university administrators, faculty, students, officials, funders and legislators to insist that such behaviors are treated as akin to research misconduct.

The American Association for the Advancement of Science ("AAAS") is now doing just that. Starting in Q4 of 2018, AAAS implemented a unanimously supported policy pursuant to which AAAS fellows will be stripped of the prestigious honor (expected to be held for a lifetime) if they are proven to have violated professional ethics, including through sexual harassment. Breaches of professional ethics that might cause AAAS to conclude that a reported individual no longer merits fellow status include sexual misconduct, racial discrimination or retaliation occurring wherever professional activities transpire (such as academic, lab, field and research locations, as well as at professional meetings).

Both AAAS and NASEM understand that to achieve fundamental change, organizations and universities that train health care professionals must focus on the building blocks of a healthy culture. NASEM responded to the research findings by offering evidence-

⁶ National Academies of Sciences, Engineering and Medicine Report on Sexual Harassment: Making the Case for Fundamental Institutional Change, JAMA, Sept. 4, 2018, Vo. 320, No. 9.

based guidelines for addressing harassment and gender discrimination in health care. These include prioritizing awareness, transparency, investment, diversity and accountability. The NASEM guidelines encourage a shift from a goal of merely achieving compliance (such as through rote annual distribution of policies) to investing in tools that actually nurture a bully-free climate and culture. The guidelines highlight the need to defuse the dependent relationship between trainees and faculty, through which a culture of “going along to get along” for the sake of professional advancement is a predictable and fraught byproduct. The guidelines emphasize support for victims and advocate for data-driven measurements of progress. Above all, they demand that entire academic and medical communities be held responsible for prevention.

A successful program designed to accomplish this fundamental cultural shift should contain several components:

- **Start at the top.** Board of directors and executives seem eager these days to understand whether their teams are equipped to recognize and respond effectively to inappropriate workplace behaviors. They want to know whether they have set up systems that empower potential targets of discrimination, harassment and bullying, rather than enabling those who engage in undesired behavior. Subordinate employees want to see that leadership is supportive of the culture shift by “walking the walk.” Open communication about historical challenges, clear and measurable goals and effective self-reflection are critical.
- **Conduct memorable training.** Engaging, interactive training at all levels of health care organizations must clearly convey the boundaries of expected behaviors to promote civility and respect. Participants should walk away with a common language for speaking out and stepping up. Meaningful education happens most effectively when workplace or academic colleagues exchange experiences through interactive didactic training. Only through dialogue about specific behaviors, viewed by some as acceptable but considered by other colleagues, cultures or age groups to be offensive, can attendees develop an appreciation for why intentions matter less than perceptions under the law.
- **Empower.** Would-be targets of bullying and harassment, bystanders at all levels and organizational leadership all must be encouraged to call out behavior that falls short of expected behaviors, wherever it is observed, known to be, reported, or rumored. Ignoring known warning signs, discounting rumored misconduct, or waiting for a “formal” complaint before undertaking

investigation are common mistakes. These must be overcome in order to usher in fundamental cultural change.

- **Everyone is accountable.** Organizations that succeed at fundamental cultural change hold every member to account for the mission. Performance feedback must incorporate behavioral components, for which all must be held accountable. Progress must be honestly measured, and programs continuously modified to ensure ongoing improvement. Activities designed to protect one group within the organization may be less effective for the protection of other groups. Continuous evaluation, learning and renewed investment are critical.

While respecting the uniquely multi-cultural and multi-generational teams that comprise the American health care workforce, employers can make measurable progress toward fundamentally shifting expected workplace behaviors and align themselves with prominent science associations' call to change. Such progress in a workplace results, most reliably, from carefully crafted, cascading communications that start authentically with leadership, purposeful and robust institution-wide dialogue and training and consistently firm accountability.

MILLENNIALS ARE FROM MARS, THEIR MANAGERS ARE FROM VENUS: HOW TO UNDERSTAND AND COMMUNICATE WITH THE GENERATION THAT IS TAKING OVER YOUR WORKPLACE

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Abstract

A recent Iowa State University Extension Study took a look at what motivated millennials at work, compared to what their managers *thought* motivated them. Managers assume millennials are motivated by historically valued goals: good pay, job security and an opportunity for upward mobility within the organization. Millennials, however, are craving recognition in totally different ways. They want to be personally recognized for their contributions, feel like they are a part of the decision-making process and feel supported in their personal lives. Mitchell and Levenberg, two millennials, go beyond the clichéd persona that precedes their generation to offer insight into what really drives them and how to build a more productive relationship with millennials.

Millennials are defined as the generation born between [1981 and 1996](#). They are also often described as “lazy,” “entitled” and “selfish” by generations above them. The typical takeaway is usually something like this: They’ve grown up with the world at their fingertips and expect the same in their lives and at work.

So, why should you care?

By next year, millennials will make up the majority of the American workforce. What's more is that many of these "entitled" and "selfish" workers are being drawn to a career in patient care. [Research has shown](#) that by the time the first members of the millennial generation reached age 33, there were 760,000 millennial full-time equivalent registered nurses, compared to 400,000 in generation X at the equivalent point in time. In fact, some reports show that nurses who are 35 years or younger account for one-third of all U.S. nurses today.

But there's another, more concerning trend in health care – specifically among millennial nurses. While they are flocking to the nursing profession, they are also the leading source of turnover in many organizations. The worst part? Their reasons for leaving are completely baffling to their managers. A recent study published in the [Journal of Nursing Administration \(JOMA\)](#) provides evidence that "millennial new graduate nurses' levels of commitment and satisfaction do not moderate turnover intentions in the first two years of practice as they did in the previous group of new graduate nurses."

Don't worry – it's not all bad news. According to JOMA, "newly licensed millennial nurses expressed greater organizational commitment and reported higher means on the cohesion among their team and supervisor support in a study comparing generational needs. The unique dynamic millennials bring to the work environment requires generational strategies to mobilize their full potential within health systems."

Working with millennials can be incredibly rewarding (if we two millennial authors do say so ourselves).

First things first... What's the deal with millennials?

If you are managing a millennial workforce, there are two important things to keep in mind:

1. Millennials look for meaning and purpose in their work and they will change jobs – sometimes sacrificing pay and benefits – to find it.
2. If they feel fulfilled in their jobs but are unhappy with how they are being managed, millennials will not shy away from seeking third-party representation or leading an internal organizing effort.

Millennials are less inclined to cater to hierarchy. They came of age during the tech boom and have been taught to idolize disruptors of the status quo and distrust institutions. Many millennials entered the workforce during the Great Recession. They had job offers rescinded and settled for unpaid internships and childhood bedrooms over jobs with benefits and apartments in the city. While they're mocked by older generations for living out a never-ending adolescence, they look at those generations and the institutions they mismanaged as the source of so many lost opportunities.

Additionally, millennials live their lives online and are increasingly blurring the lines between work life and personal life. What they do is a reflection of who they are – an important badge they want to be able to wear proudly along with where they live, who they socialize with and what political/social issues they support.

This is different from how older generations traditionally think of work. For baby boomers and members of the Gen X generation, the relationship that you have with your employer is more an economic contract than a social one.

A recent Iowa State University Extension Study took a look at what motivated millennials at work compared to what their managers *thought* motivated them. When we look at the differences, it's no wonder there's some friction in the workplace: managers assume millennials are motivated by the same things they are: good pay, job security and an opportunity for upward mobility within the organization. Meanwhile, millennials are craving recognition in totally different ways. They want to be personally recognized for their contributions, feel like they are a part of the decision-making process and feel supported in their personal lives.

MANAGER VS MILLENNIAL

1 High Wages	Full Appreciation of Work Done
2 Job Security	Feeling of Being in on Things
3 Promotion	Help on Personal Problems
4 Good Working Conditions	Job Security
5 Interesting Work	High Wages
6 Personal Loyalty of Manager	Interesting Work
7 Tactful Discipline	Promotion
8 Full Appreciation of Work Done	Personal Loyalty of Manager
9 Help on Personal Problems	Good Working Conditions
10 Feeling of Being in on Things	Tactful Discipline

They don't think like me, they don't work like me... Can't I just ignore them?

When managers can't (or won't) engage, millennials will look to others to fill the void. This is not unique to millennials. However, this generation has a strong activist streak and the digital know-how to lead organizing efforts from an iPhone. If they are unhappy with leadership, millennials will not shy away from seeking collective action – either among themselves or with the help of a union.

Union favorability has seen a resurgence among young people in recent years. In fact, [employees under the age of 35 made up 76 percent of new union members in 2017](#). Labor unions have made inroads with this demographic both by taking advantage of the distrust and misunderstanding between millennials and their managers, as well as leveraging millennials' growing favorability toward collective action as it relates to social and political issues they care about.

Wait, wait... What's politics got to do with it?

The 2018 midterm elections saw a [historic 10-point jump](#) in voter turnout among young people. Many were driven to the polls through social media. [Some studies showed](#) that 28 percent of this voting block heard about the midterm elections exclusively through social. This was largely thanks to initiatives like [Snapchat's in-app voter registration tool](#) or [Taylor Swift's get-out-the-vote push](#) to her 112 million Instagram followers, which drove more than 100,000 registrations within a matter of days. Not only did millennials turn out to vote, but many voted on issues of social justice like [immigration and gender inequality](#).

It is this idealism, combined with a movement among millennials toward collective action and overall activism at a national level that is most noteworthy for employers – particularly those who are concerned about potential unionization.

Growing up in an age of hyper-connectivity has, ironically, led to millennials feeling hyper-isolated and longing to be a part of something greater. Labor unions have done a very good job of aligning themselves to the political and social issues millennials and younger generations have aligned with, sending one clear signal: We stand for what you stand for. We are members of the same tribe.

Unions have also proven to be flexible in their ability and willingness to adopt the communication style and preferences of those audiences they're trying to reach. Over

the past few years, we've seen a huge increase in their use of techniques tailored to reach young people, largely on digital, social and mobile.

- Facebook events presented as social activities “without obligations.”
- Private Facebook groups used to organize employees without employers' knowledge.
- Targeted social media advertising, usually on Facebook and Instagram.
- Funny memes designed to discredit the employer.
- Campaign websites, often with a petition attached to them to apply pressure to the employer.
- Hashtag campaigns, sometimes with a specific policy objective.
- Bootcamps aimed at training millennials on digital organizing tactics.
- Articles in media outlets focused on younger generations (Teen Vogue, Vox) highlighting the benefits of supporting the labor movement.
- Video series promoted via social and text.

Fine, fine, I'll work with them... How do I start?

It can be difficult to know what millennials want in the workplace, partly because they [like to communicate differently](#) than many of their baby boomer or Gen X counterparts – preferring more visual and informal communication (☺) delivered in quick hits to a mobile device.

But there are a number of approaches employers can take to stay in touch and engage younger generations in their workplace.

Involve them in decision making. Remember, above all else, millennials want to feel like what they're doing means something – not just the organization, but the individual role they play as an employee. The Wall Street Journal recently illustrated how Tesla has been able to leverage this to become a “hot spot” for young, talented job seekers, in a story about a summer intern who saw her suggestion made a reality in a matter of weeks: Ms. Atluri spotted a way to tweak a step in the manufacturing line that she thought might speed up production. She put together a PowerPoint presentation for the rest of the team and, encouraged by the response, she suggested following up the next week with management to discuss implementing the change. *“They were like, why not*

just try it tomorrow?” she said. The process changed the next day and within a week the line was running more efficiently.

Simplify the message. Millennials have been the targets of online advertisers their whole lives. They can see a sales pitch coming from a mile away and they don’t like it. The same goes for anything that comes across as “workplace propaganda” or “corporate speak.” Take a look at how millennial-focused publications write headlines versus other more traditional publications write headlines as a model.

Vox New York Times

***G.D.P.R., a New Privacy Law, Makes
Europe World’s Leading Tech Watchdog***

**Why you’re getting so many emails
about privacy policies**

Use visuals over text (or at the very least, less text). Older generations express frustration over their younger counterparts’ inability to focus on anything for more than a few minutes and often feel they shouldn’t have to compromise their message to accommodate a shrinking attention span. Looked at a different way, though, younger generations consume an overwhelming amount of content each day. Some studies have shown [millennials consume up to 18 hours of content each day](#). It’s not that they’re too lazy to read your 500-word email, it’s that we’re reading, watching or listening to several things at once and assume if it’s something important, it will be made clear within the first two lines of text. And the shift toward more visual, informal communication isn’t going away anytime soon. An [op-ed from the CEO of Vidyard](#) described his experience with Gen Z employees (the generation born after millennials): “My youngest employees treat email the way that I looked at the fax machine when I got my first real job: a relic from a bygone era and an absolute last resort if efficient communication is the goal. The array of non-text options at their fingertips—from emojis and GIFs to photos, Boomerangs and self-made videos—has fundamentally altered the way they communicate and expect to be communicated with.”

Consider alternatives to print and email communication. Engage younger employees by using the content they use such as infographics, text messages, social media and podcasts.

Conduct “millennial training” for your leaders. Like most communication issues, much of the friction stems from a lack of understanding what motivates these younger

generations. Help position your managers for success by educating them on the millennial perspective and establish new rules of engagement.

Engage intergenerational focus groups and mentor programs. Chip Conley, a hotelier and author who has studied intergenerational relationships in the workplace (and calls himself a “modern elder”), recommends employers build an environment in which different generations can learn from one another to help break down barriers and facilitate trust. *“The more I’ve seen and learned about our respective generations, the more I realize that we often don’t trust each other enough to actually share our respective wisdom. The modern elder is as much an intern as they are a mentor, because they realize, in a world that is changing so quickly, their beginners’ mind and their catalytic curiosity is a life-affirming elixir, not just for themselves but for everyone around them. Intergenerational improv has been known in music and the arts: Think Tony Bennett and Lady Gaga or Wynton Marsalis and the Young Stars of Jazz. This kind of riffing in the business world is often called “mutual mentorship.”*

Watch and listen. Conduct regular social media monitoring to gauge employee sentiment, as well as ongoing or potential organizing activity on public platforms. This discussion often occurs on Facebook, LinkedIn and employee review sites like Glassdoor, Indeed and Nurse.org instead of the hallway.

TL;DR

- Stop fighting it – the millennial workforce is here to stay.
- Understand (and accept) that what motivates you might not be what motivates your millennial counterparts.
- Millennials are drawn to activism and the labor movement – if you don’t engage them, unions will.
- Involve them in the decision-making process for best results.
- Use less text, more visuals and straightforward language when communicating important messages.
- Practice empathy – the generations above you found you annoying, too 😊.

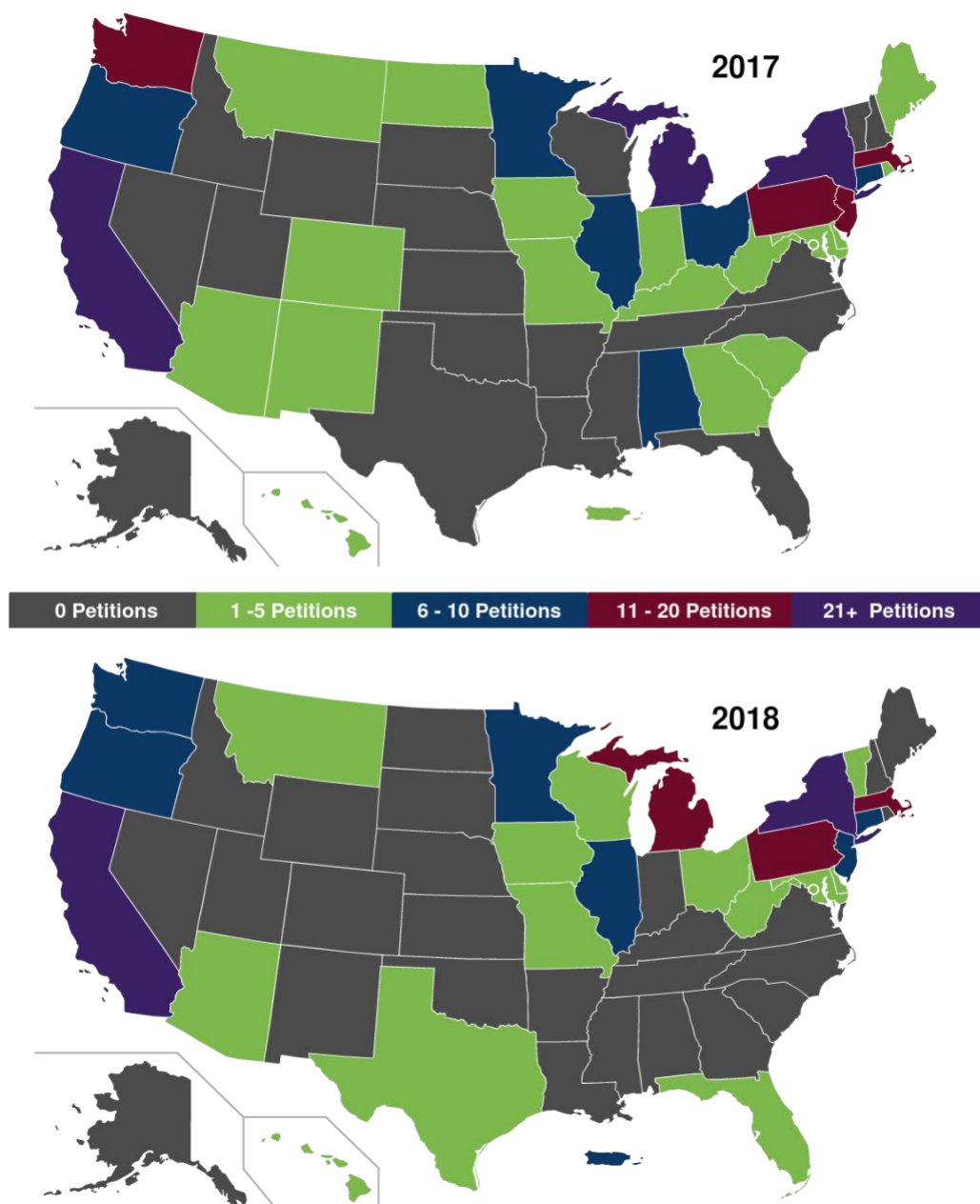
APPENDIX A: SUMMARY OF PETITIONS FILED AND ELECTIONS HELD

All Industries - Summary of Petitions Filed & Elections Held (2009 – 2018)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total Petitions	2,789	2,894	2,552	2,474	2,554	2,621	2,809	2,289	2,280	1,917
Total Representation Petitions	2,109	2,351	1,966	1,983	2,033	2,136	2,347	1,920	1,880	1,556
Union Not Elected	409	576	443	501	470	437	491	383	399	320
Union Elected	923	1,162	871	860	902	989	1,105	982	976	755
Total Decertification Petitions	680	543	586	491	521	485	462	369	400	361
Total RD Petitions	592	490	494	462	464	438	397	312	338	330
Total RM Petitions	88	53	92	29	57	47	65	57	62	31
Union Not Elected	159	164	174	149	130	122	130	122	141	110
Union Elected	115	100	141	98	88	71	85	69	73	58

Health Care - Summary of Petitions Filed & Elections Held (2009 - 2018)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total Petitions	467	432	410	364	388	446	394	402	409	292
Total Representation Petitions	357	349	290	298	314	358	327	342	324	224
Union Not Elected	54	80	76	69	65	54	65	47	63	29
Union Elected	144	194	172	170	159	188	187	198	212	138
Total Decertification Petitions	110	83	120	66	74	88	67	60	85	68
Total RD Petitions	103	72	69	59	65	85	57	51	59	63
Total RM Petitions	7	11	51	7	9	3	10	9	26	5
Union Not Elected	13	14	57	13	12	21	17	23	17	25
Union Elected	21	26	33	25	17	14	13	17	23	11

All Non-Health Care Industries - Summary of Petitions Filed & Elections Held (2009 - 2018)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total Petitions	2,322	2,462	2,142	2,110	2,166	2,175	2,415	1,887	1,871	1,625
Total Representation Petitions	1,752	2,002	1,676	1,685	1,719	1,778	2,020	1,578	1,556	1,332
Union Not Elected	355	496	367	432	405	383	426	336	336	291
Union Elected	779	968	699	690	743	801	918	784	764	617
Total Decertification Petitions	570	460	466	425	447	397	395	309	315	293
Total RD Petitions	489	418	425	403	399	353	340	261	279	267
Total RM Petitions	81	42	41	22	48	44	55	48	36	26
Union Not Elected	146	150	117	136	118	101	113	99	124	85
Union Elected	94	74	108	73	71	57	72	52	50	47

APPENDIX B: MAPS OF REPRESENTATION PETITIONS FILED IN HEALTH CARE



APPENDIX C: 2018 ASHHRA ADVOCACY COMMITTEE

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Senior Vice President and Chief Human Resources Officer
Halifax Health Medical Center of
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Atlantic Health System
Summit, N.J.

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Senior Vice President, Human
Resources
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REGION 3

APPENDIX D: THE NATIONAL LABOR RELATIONS BOARD DEFINITIONS

The following summary from the National Labor Relations Board (NLRB) is reproduced with permission. More information can be found at the NLRB's website, <https://www.nlr.gov> and at a "Basic Guide to the NLRB" accessible at <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf>.

WHAT IS THE NATIONAL LABOR RELATIONS BOARD?

We are an independent Federal agency established to enforce the National Labor Relations Act (NLRA). As an independent agency, we are 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 on request and without cost.

TYPES OF PETITIONS

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

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 E: EMPLOYEE CATEGORIES AS DEFINED BY THE NATIONAL LABOR RELATIONS BOARD

Registered Nurses (RNs): A nurse who has graduated from a formal program of nursing education (diploma school, associate degree or baccalaureate program) and is 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.