



## INTEGRATED HEALTHCARE STRATEGIES™

www.IHStrategies.com

*Exclusive to Healthcare. Dedicated to People.™*

# Healthcare Labor Update 2010: A Year of Critical Opportunity for Employers

Presented by Integrated Healthcare Strategies  
as Authored by Becky Brown and Kevin Haeberle

### **Is Labor still a formidable threat or have their recent efforts failed to secure their relevance for the future?**

When labor unions, particularly the Service Employee International Union (SEIU), spent hundreds of millions during the last presidential election cycle - resulting in a labor-friendly Democratic Administration and Congressional majority for the first time in a decade - it appeared the labor movement was poised to make a swift resurgence. The situation was almost perfect – an Administration philosophically pro-union, a Democratic controlled Congress, and some very serious political IOU's. Given the environment, unions like SEIU took advantage of the new political landscape, having its former president, Andrew Stern, earn the designation as the most frequent visitor to the White House during the new Administration's first year. Despite the millions of dollars spent and a politically favorable environment, Big Labor failed to achieve significant inroads in turning around a declining membership trend and has yet to achieve its primary legislative agenda item, The Employee Free Choice Act.

### **What continues to hold labor back?**

At the root of Big Labor's dilemma lies the reality of politics (even in a Democratic Administration and Democratic control of both the House and the Senate). And at the center of Big Labor's recent challenges over the past year we find the battle for health care reform, which aside from the nation's economic crisis and dual wars overseas, consumed almost the entire political maneuvering, favors and trade offs for the first eighteen months of President Obama's administration, leaving little political energy left over for labor law reform. Although the leaders of various unions voiced solidarity and pledged to work together towards common goals, the internal workings of the union movement continues to be inherently politically charged, power-based and, in many respects, petty.

Even Andrew Stern, the poster child for the new labor movement, recently 'resigned' after his internal power grab and politically-based focus was discredited to the point that his hand picked successor was not selected to take over.

While SEIU and other unions were dealing with internal changes, the Administration began to realize that even though the unions had been flush with cash and furnished volunteers essential for effective political campaigning, the deep pockets were not endless and the impatience was growing due to lack of legislative action. Further, polling revealed the majority of Americans are not supportive of granting unions "card check" recognition or giving them more power or influence outside of traditional NLRA channels. These realities leave the political environment with an interesting dilemma – how to retain the monetary campaign support and on-the-ground grass-roots organizing support without publically supporting and endorsing efforts to increase union power (i.e., increased union membership).

### **So how is the Administration dealing with this newly realized dilemma?**

The Administration has changed tactics to respond to the roadblocks created by this political dilemma; it has shown the initial signs of using the regulatory power of various federal agencies to fundamentally change the rules without the need for congressional approval and public scrutiny. The fundamental goal continues to be to make it easier for unions to win elections by limiting the amount of counter-union information an employee is exposed to before voting or signing a card. The unions, not necessarily picky about how this fundamental goal is achieved, recognize that if employees are exposed only to the union rhetoric, the 'sell' of the union will be much easier, thereby accomplishing their number one goal of increased revenue through increased membership and resulting dues.

With the appointment of vocal union advocate and attorney, Wilma Liebmann, as Chair of the National Labor Relations Board (NLRB), and the recent recess appointments of two additional strongly pro-union members, Craig Becker (Associate General Counsel for both SEIU and the AFL-CIO) and Mark Pearce (career union attorney and Board of Director for the AFL-CIO's Lawyers Coordinating Committee), to fill two of the NLRB's three open seats (and leaving the third slot, traditionally reserved for the minority party, vacant), the Administration has created the most labor-friendly NLRB majority in decades. This new reality creates the very real opportunity for a rash of potentially swift and far reaching changes while circumventing the legislative process and the distractions and potential political barriers that come with it. At the top of the list of likely changes to current NLRB guidelines is a significant reduction of the election campaign period from the generally followed 42-day guideline to as few as five days or a couple of weeks on the high end. This change would serve to substantially curtail an employer's ability to even provide information on the risks and consequences of unionization before employees would vote on whether to turn over their individual rights to a union.

Through its substantial rule-making authority, the NLRB is also poised to impose further restrictions on what is considered 'employer free speech' under the National Labor Relations Act (NLRA), expanding union access to employer premises for the purpose of organizing, imposing limitations on employers communications to employees during organizing campaigns, use of employer technology to promote union organizing, and supervisory issues relating to eligibility to unionize.

Further, evidence already exists in recent decisions as to the NLRB's proclivity to re-define what are considered employer unfair labor practices. All of these changes are aimed at allowing unions almost unfettered and unchallenged access to employees. These are just a few examples demonstrating the significance of the political makeup of NLRB given the substantial rule-making authority afforded to the Board and its ability to shape labor law precedent and set guidelines for future organizing campaigns. While employers have been focusing their fear on potential legislation like the Employee Free Choice Act, the NLRB's exercise of its rule-making authority could prove to be a powerful, expeditious approach in lieu of legislative action. Many fear that through its efforts, the new NLRB could easily wipe out business-supportive policy decisions of the Bush era and could move even further to the left, creating a polarizing labor bias not seen in decades.

It is not only the NLRB that is changing its perspective. In addition to significant changes to the NLRB, appointment of key labor leaders to influential Administration positions also signals a new climate of increased labor influence. A few of the numerous key administrative appointments include: SEIU Executive Vice President, Anna Burger's and AFL-CIO Secretary-Treasurer, Richard Trumka's appointments to the Economic Recovery Advisory Board, and Former SEIU Finance and Administration leader, Michael Kerr, appointed to Labor Department Assistant Secretary for Administration and Management. One prime example of this new direction can be seen in recent activities involving the Federal Railway Labor Act (FRLA). The FRLA, which also covers the airlines, has always had different rules than the NLRA ( including the inability to ever de-certify a union once it is voted in by the current employees), this leaves employees with only the option to change unions if they are dissatisfied with their union representation. Because of this particular rule, the FRLA requires that the union obtain a majority of everyone who is eligible to vote for the union, not a simple majority of those who actually vote, as required under the NLRA. This rule was changed in the spring of 2010, eliminating this higher requirement and almost immediately resulting in the unions going after one of the few remaining mostly union-free airlines – Delta Air Lines.

Further, Mary K. Henry's rise to the Presidency of SEIU, on the heels of the unexpected retirement of Andrew Stern, likely signals an increased focus on grass-roots organizing given Henry's claim that SEIU will increase its membership by 120,000 new union members by the end of the 2010 - a lofty goal.

It is too early to tell whether Henry will successfully balance this recommitment to organizing while also striving to build upon the political strength and focus built under Stern's leadership, or whether she will forge her own path, but what is certain is that SEIU will continue to be a force to be reckoned with in healthcare organizing for the foreseeable future. Also on the rise is the new super RN union, National Nurses United (NNU), created by the California Nurses Association/National Nurses Organizing Committee and several other state nursing associations. While still a relatively new kid on the block, NNU recently flexed its strength at the University of Chicago, successfully winning an election to represent approximately 1,200 Registered Nurses previously represented by the Illinois Nurses Association.

### **When will employers feel the impact of these changes?**

Many changes are already in process, but it is likely the most serious changes will not occur until after the November 2010 elections- keeping the Administration's plan of attack under the political radar is important. The unions are not as willing to be patient. Over ten million dollars of union members' money was spent in the Arkansas Senate Democratic primary alone for the purpose of 'punishing' a Senator who had not supported the union agenda. In some ways, labor's only avenue is to take a negative approach, since the entire union structure is supported by the concept of 'extortion' and 'attack'. The basis of striking is to harm the organization at a higher level than simply forcing the employer to give in to the union's demands. It was with this mindset that the unions attacked one of their own Democratic party leaders, without the support of the White House and even counter-action by former President Bill Clinton.

The political and economic events of the past several months should be taken as a small warning of what is to come, as the next six months are expected to be a relative period of calm before Big Labor's wrath is fully realized after the November 2010 mid-term elections. We believe the path healthcare employers choose to take over the next six months will likely separate those organizations who are able to successfully remain union-free in 2011 and beyond from those that find themselves unprepared and at the mercy of the new environment as it relates to union organizing. We have likely all heard about the "new normal" our nation faces from an economic standpoint; we suggest a "new normal" in the realm of labor relations is upon us as well. Organizations that use this critical period of opportunity to train their front-line leaders, establish strategic rapid response teams, and conduct surveys and/or baseline assessments of their environment with a commitment to respond to and address employee concerns, will be those that are best positioned to succeed in the "new normal" environment. Organizations that take a "wait and see" approach may find themselves not only an early target for a union that has done its homework to assess the most favorable opponents, but also may be unable to respond quickly enough or effectively enough under the anticipated new NLRB guidelines.

Regardless of what the future holds for the Employee Free Choice Act and/or for the partisan make-up in Congress post-November 2010, it is clear that enough chips are stacked in favor of Big Labor given recent political appointments, new labor coalitions, new union leadership and the continued volatile economic conditions across the country, to allow unions a much more favorable platform for organizing than anything experienced by unions since the late 1970s and early 1980s.

Given the rapidly changing landscape, healthcare leaders have a window of opportunity over the next six months to take proactive, protective steps to ensure they are positioned appropriately to continue with the normal course of business while effectively responding should a union come knocking, rather than operating on the defensive on a playing field that is certain to become more tilted in favor of the opponent.

Right now, labor leaders are simultaneously focused on the mid-term elections and protecting pro-labor seats in congress as well as positioning their ground crew of organizers by planning seeds. Increased reports of early-stage union surveillance and canvassing from healthcare organizations we partner with in many parts of the country are already starting to pop up. After the November 2010 elections, labor will likely turn its focus solely to increased grass roots in labor organizing attempts. In fact, much of the ground work is already being laid, albeit with great care so as not to upset the political dynamic before the elections any more than absolutely necessary.

The bottom line is that healthcare employers would be wise to take advantage of this period in time, while unions are operating cautiously, so as to not upset the political climate prior to the November 2010 elections. Employers who wisely utilize this opportunity to inoculate their organizations *now* through training, education and creating a foundation for a strategic labor relations plan that could be effectively implemented in the face of expedited elections and a labor-friendly NLRB, will find themselves able to operate with less distractions and less potential risk regardless of labor's next big move compared to those that risk a "wait and see" approach.

### **About the Authors**

#### ***Becky Brown JD, SPHR - Senior Vice President, MSA HR Capital***

*Becky Brown's nationwide consulting practice spans a broad array of Human Resource Capital areas, including management to employee relationships and communication improvement, employee and leadership surveys, positive employee and preventive labor strategies, and performance management redesign. Ms. Brown's healthcare HR Capital experience combined with her legal background and dynamic presentation and coaching abilities make her uniquely adept at approaching today's labor issues from an insightful, management perspective. Ms. Brown has been asked to speak at national and state healthcare and human resource organizations as well as on-site seminars and leadership training for healthcare executives, boards of directors and thousands of healthcare managers and supervisors nationwide.*

Prior to joining Integrated Healthcare Strategies, Ms. Brown's legal practice included representation of individuals and companies in a variety of labor and employment related matters. You may contact Ms. Brown at [Becky.Brown@IHStrategies.com](mailto:Becky.Brown@IHStrategies.com) or by calling 816.795.1947.

**Kevin Haeberle, JD – Executive Vice President and Practice Leader, MSA HR Capital**

Kevin Haeberle's experience includes over 20 years as consultant, attorney, and a healthcare administrator. Kevin brings a unique expertise to the consulting partnerships he has developed with healthcare organizations nationwide. Prior to joining IHStrategies, Kevin was a senior vice president of an award-winning healthcare system. As a nationally recognized expert in human resource issues and preventive labor relations strategies, he has developed long lasting senior level client relationships with some of the nation's most prestigious healthcare institutions. By combining his knowledge and expertise in human capital management with an administrative and financial approach, Kevin has been successful in developing plans and systems that support the chief executive and financial officers, as well as the chief human resources officer. A sought-after speaker, Kevin has presented at numerous national and state healthcare organizations. Bringing a high level of energy, enthusiasm, and professional humor to all projects is one of Kevin's trademarks, as well as introducing challenging and thought-provoking ideas to long-standing human capital issues. Kevin can be contacted at 816-795-1947 or [Kevin.Haeberle@IHStrategies.com](mailto:Kevin.Haeberle@IHStrategies.com)

**About Integrated Healthcare Strategies**

Integrated Healthcare Strategies provides not-for-profit healthcare organizations with direct access to a comprehensive array of healthcare-specific services, delivered by professionals from the industry who understand the rigors of running a healthcare organization – from the lunchroom to the Board Room. Its client list is a "who's who" of healthcare organizations including over 1,200 major healthcare providers, 1,800 hospitals and 700 independent and affiliated medical groups. Integrated Healthcare Strategies specializes in the areas of physician strategy and compensation, employee compensation, executive compensation, human capital solutions, labor relations, leadership transition planning, executive search, employee surveys, performance management and board governance solutions.

The MSA HR Capital labor team, comprised of attorneys and human capital experts, understand the high level strategic issues as well as day-to-day in the trenches work essential to a successful campaign outcome and how both pieces must be appropriately balanced with day-to-day operational needs. The MSA HR Capital team also provides comparative data on over 1,000 hospital organizations to tailor solutions to each client organization specific to work environment to ensure they reach their objectives by integrating management, compensation, labor relations and employee engagement goals into one seamless operating strategy. For more information, visit [www.IHStrategies.com](http://www.IHStrategies.com) or call 800.821.8481.