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Rich Meneghello (00:00)

Welcome to The FP 5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking topics down into five parts. I'm Rich Meneghello, Chief Content Officer here at Fisher Phillips.

71% of Americans approve of labor unions, which is the highest Gallup has measured since 1959, but yet only 5.9% of private sector workers actually belong to one, which is the lowest on record. So which number should employers pay attention to? Well, today to help us break that down, I've got Todd Lyon. Todd is a partner in the Portland office and several other offices of Fisher Phillips, and he's the co-chair of our Labor Relations Group.

Todd travels around the country and he represents employers in organizing campaigns and collective bargainings and strikes and arbitrations and other labor disputes. Todd, you're a busy guy. How are you today?

Todd Lyon (00:59)

I'm doing great. Thanks again for having me.

Rich Meneghello (01:01)

You live on the road, essentially, Todd, and I know this because we've been based out of the same office in Portland since I've known you for quite a while now. Where are you today?

Todd Lyon (01:10)

Today you find me in Honolulu.

Rich Meneghello (01:12)

That is a tough assignment, huh?

Todd Lyon (01:14)

Yeah, you know, someone's gotta do it, but I'm happy to oblige.

Rich Meneghello (01:18)

Honolulu aside, what is your favorite part of the country to visit for work when you're having to do labor stuff?

Todd Lyon (01:26)

New York, of course. If I have a reason to get to New York and do some work on the side, that's the best.

Rich Meneghello (01:32)

What part of the city do you stay in when you visit New York City?

Todd Lyon (01:37)

Midtown, Central Park West.

Rich Meneghello (01:40)

All right. We're gonna get lots of travel recommendations from Todd interspersed throughout this podcast. So those travel folks will appreciate this. Todd, last quick question before we dive into the five things. Tell us your origin story: How did you become a labor attorney?

Todd Lyon (01:54)

Well, I always wanted to be a labor lawyer. So I remember I came home after a Halloween costume contest in middle school and told my parents that I was gonna be a labor lawyer. I don't recall why that was the case. You'd think that maybe my family had a rich history in labor unions or something like that. And quite the opposite. My dad was a supervisor at a cardboard box manufacturing plant. So I don't have that kind of cool backstory, but I always wanted to help people and figured doing labor relations was the way to do it.

Rich Meneghello (02:30)

Let me ask a clarifying question here, Todd. Were you dressed as a labor lawyer for this Halloween costume contest?

Todd Lyon (02:37)

No, I was not. And I don't remember what I was dressed as, but I don't know what the costume would have been for a labor lawyer in those days. But I'm sure it's different than what it is today, I'll tell you, 'cause I'm dressed in an aloha shirt and some some shorts.

Rich Meneghello (02:52)

Yeah, of course you are. I was just trying to figure out the connection between this revelation and reveal to your parents and the Halloween costume contest.

Todd Lyon (03:01)

Yeah, I don't know why there was a connection there, but I remember that very distinctly in my mind.

Rich Meneghello (03:07)

Most little boys our age wanted to be like astronauts, and little Todd Lyon wanted to be a labor attorney. I love it.

Todd Lyon (03:15)

This is true.

Rich Meneghello (03:21)

Okay, well let's dive in. Our first thing of our five things we're gonna talk about is that Americans love unions more than they have in 65 years. So let's start with this Gallup poll number that I talked about in the intro, Todd. 71% of Americans currently approve of unions, which is the highest since 1959. When you saw that stat, did that surprise you?

Todd Lyon (03:45)

No, it did not.

Rich Meneghello (03:47)

Why not?

Todd Lyon (03:47)

It didn't surprise me because since maybe 2019, shortly before COVID, what I would see on the front lines, dealing with employees in collective bargaining, dealing with employees in grievance arbitrations, is that there was a level of activism, interest in engaging with the employer in a collective way that I had never seen before.

And it really was in 2019. And we've seen that activism just absolutely continue throughout this current climate where I think most Americans feel that energy. They feel that activism and that interest and engagement. And we can speculate about why that is the case, why people are interested in collective matters. But that's what I'm seeing on the front lines, is that employees to this day are still very much interested in doing things collaboratively and collectively. So it doesn't surprise me that permeates into kind of the American psyche in a Gallup poll.

Rich Meneghello (04:50)

Huh. We're gonna dive into a couple other stats. And for those who want to dive deeper, in our show notes, we have a detailed article that Todd co-authored that lays out all these Gallup numbers and some other things too. But another surprising stat which shows that it's not just, you know, your typical Portland area, Seattle area progressive hippies here who are union members: For the first time in twenty-five years, the stats showed that a majority of folks who identify as Republicans support unions. Did that surprise you?

Todd Lyon (05:25)

That one did surprise me. And we're seeing some level of attention by the Republican Party to the labor movement, which prior to, I want to say Sean O'Brien's speech at the Republican National Convention, unions didn't really pay that much attention to the Republican Party. And so I think there's a mutual interest there. And maybe it's because, again, this kind of psyche or interests across the country to be part of a collective, you know, engagement.

Rich Meneghello (06:01)

Yeah. When you have clients talk to you or you chat with them about sort of this newer era we're living in now, what are things you're hearing from clients about their view of how this is shaping up for them?

Todd Lyon (06:14)

Well, I think those that are paying close attention are paying attention mostly to the Faster Labor Contracts Act, which I believe Steve Bernstein talked with you about on a prior podcast. So I would say those clients that are really dialed in are talking to me about that and what would be the consequences of a set time period to bargain collectively, and what is interest arbitration.

The other clients that I'm talking to about this, they're concerned about how they can reach employees. How can they communicate with their employees and maintain that direct relationship in light of this curiosity toward unions, so that the employer can effectively make those changes in the workplace without necessarily having to go through a third party, namely a union.

Rich Meneghello (07:12)

Yeah, yeah, interesting.

Okay, let's talk about the second thing, Todd, which is that corresponding weirdly enough to this never-before seen levels of union support in the minds of Americans, we're seeing record low membership in the private sector. It's

just at 5.9% of private sector employees that are represented by unions. Why is that gap so wide? What's going on here?

Todd Lyon (07:44)

Well, I think the employees that are unionized are leaving membership. So while the number of petitions that we've seen over the last several years have, they were really at a high, what, a couple of years ago? Now today we're seeing that drop off dramatically. And I think that the reason why people are dropping off is that the promise of the unions have not been fulfilled. And employees are now realizing that what they were told would be the kind of unicorn and rainbows of union organizing, turns out not necessarily to have been fulfilled on the shop floor. And so employees are now very much engaged in efforts to get rid of the unions once they get them.

Rich Meneghello (08:33)

Interesting. So membership is down, you're talking about some people feeling disaffected, that sort of thing. Is that like a good news thing for employers, or is there sort of a deeper component too here that we need to unpack further?

Todd Lyon (08:45)

Well, I think you have to put it in context, and that is unions still are winning over 70% of all union organizing petitions. So once the union files the petition to start the secret ballot election process at the NLRB, they are winning those to a level of around 70-some percent. Now the last statistic I looked at was 78%, but I think it's gone down since.

So how do you square the fact that the unions are winning 70-some percent and then this union membership in the private sector, which is holding around 5.9%, how do you square that? Wouldn't that 5.9% number increase? The only explanation that exists is that employees are leaving it to the same level that they're getting members.

Rich Meneghello (09:35)

Okay, interesting. So it sounds like they're sort of just not necessarily carpet bombing every employer in the country, but if they're winning at that high level, it sounds like they're being pickier and choosier about who they're targeting for organizing and then doing quite well when they figure out who to target.

Todd Lyon (09:55)

Exactly, yeah.

Rich Meneghello (10:03)

Which leads us, really a perfect segue, to our third thing. You've identified in this article that you co-wrote with Steve Bernstein that unions have gotten a lot more strategic about who they target, and you've identified some real shifts in how they're picking their targets. So what has changed? What's sort of the current landscape when we're looking at which businesses are being targeted by unions?

Todd Lyon (10:27)

Well, I would say first and foremost, smaller companies are the biggest, most obvious target. And oftentimes when that client calls me, they say, "We can't, we're small potatoes. We can't understand why the union is coming after us. We have 15 employees. Don't they have bigger fish to fry?" And I say, "Well, this is the current norm. You just have to get over the fact that the union is interested in representing your employees." So there's nothing to be

gained for a company to wonder “Why are they coming after small employers?” The reality is that's what they're doing.

Now, I will also add that the current legal landscape allows unions to target small departments, small sectors, small groups within a larger employer. And as a consequence, the unions are targeting maybe a small 10-person unit out of a 2,000-person operation. I have that going on right now, and it's a small shipping department for a company when they've got hundreds more employees in the production unit. And there you can imagine the employer says, “Well, wait a minute, this doesn't make sense. Why are they just going after to organize these small 10-person shipping, you know, employees when they work shoulder to shoulder with the rest of our production and other shipping employees?” So that's what we're seeing is this kind of compartmentalization, this micro unit concept where, you know, the unions are targeting a small group of people within a larger one, I suppose, with the hope that if they are successful at getting a collective bargaining agreement, perhaps the rest of the company will follow.

Rich Meneghello (12:32)

Yeah, that makes sense. The other interesting part about your article, Todd, that I found fascinating was sort of these newer, I don't know, non-traditional industry examples of increased union organization. I guess in my head I hear “union member” and I'm thinking, you know, “blue collar worker in a manufacturing facility” or something like that. But your article tells a much different story about sort of the modern target for organizing.

Todd Lyon (12:59)

Yeah, that's right. I mean, we're seeing all different kinds of industries. I think the most interesting one is the video game industry right now, where that's seeing a massive surge in union organizing. But what's not being told, even in my article, is what I'm seeing is, maybe the “do-gooder” union organizing. I have seen an absolute wave of union organizing take place in organizations that have a mission for good in the world. You know, providing homeless services, for example, or providing mental health services for particular county residents. And these kind of do-gooder organizations are now really being targeted by a number of unions in their union organizing activity. And it's difficult for these employers to segregate out kind of the goodness of their mission and their progressive views with wanting to maintain their direct relationship with their employees.

Rich Meneghello (14:11)

You're listening to the FP 5. I'm Rich Meneghello here with Todd Lyon, partner in Fisher Phillips Labor Relations Practice Group, and actually the co-chair of the group. Just a reminder: you can find a link to the article that goes into much more depth about the topic we're talking about in our show notes, along with a link to the FP Union Organizing Activity Map that we've talked about in the podcast so far.

Let's jump to thing number four, Todd, which is the workplace conditions that drive almost every campaign. This is probably a question you're asked the most about, which is, you know, what leads unions to land on my doorstep? What are the things that we did that led people to get here? And then more proactively, what are the things that we should be avoiding if we don't want to have a union land at our front door? So what are the kinds of things that you see employers do that lead unions to be able to get in there and make an impact.

Todd Lyon (15:12)

I love this question because when asked this question of my clients, I cite the survey that was done amongst supervisors about why employees unionize. And supervisors universally say number one, pay, number two,

schedules of work, number three, job opportunities and career advancement. And number four, I don't know, benefits.

But when you interview employees, the survey is upside down, insofar as wages is typically the last subject why unions or employees organize. The number one reason that employees give is something I call engagement. Are they engaged in the workplace? Do they feel seen? Do they feel heard? Do they feel like they've got someone that is their advocate that can ask the question about, "Hey, I need next Thursday off because I want to take my pet to the vet." And they want empathy for, you know, taking their pet to the vet. So it's that level of engagement that I think is driving employees to unionize. And pay typically is the last thing that they cite as the reason.

So how does an employer deal with the prospect of union organizing in their workplace? Engage their workers. It's not complicated. This is not magic. You know? Walk around, talk to the employees and say, "Hey, Rich, man, how was your weekend? Did you have a good weekend? How are the kids? What are they up to these days?" Establish a relationship with the employees and let them know that you've got a bona-fide open-door policy, not something that was written in a seventy-page handbook that says "We have an open-door policy."

Rich Meneghello (17:13)

Yeah, yeah. I will say for the record, listening in on this conversation obviously is our great producer of our podcast, Evan Banks. And I would say in the content department of Fisher Phillips that I have the pleasure of leading, we have a high level of employee engagement and we talk all the time about what we do over the weekends. And he's giving me a thumbs up right there too, knowing that that's valid.

That's, I mean we joke about it, but I get it really does make sense, right? You hear all the time people don't necessarily leave jobs. I mean, you do leave jobs for money, but it's very often just like you don't want to leave a job if you like the people you work with and work for, right? I mean, so you can't just be a nice person all the time, and just be like, "Hey, this is like fun zone every day at work." But that engagement element I think is so often missing when people are just, especially supervisors, are so focused on the bottom line and in their day to day, they don't think about that.

Todd Lyon (18:07)

Well, the best is when I get the, you know, client and I did have this call. The client called and said, "We don't understand why they're organizing. We provide for twenty-one paid holidays." And I nearly fell out on that chair. And I'm like, "What? You have twenty-one paid holidays?" They said, "Oh yeah, no, we provide top level, you know, wages and benefits, and we're the top echelon." I said, "Well, clearly the employees hate you." It's got nothing to do with pay and benefits, it's about how you treat them.

Rich Meneghello (18:36)

Did you find out how they treated them then that led to this?

Todd Lyon (18:39)

Yeah, of course. And they treated them poorly.

Rich Meneghello (18:45)

Twenty-one holidays, wow. Was this a European company, Todd?

Todd Lyon (18:49)

No, no. In fact it was a do-gooder organization too. So it just made no more sense at all.

Rich Meneghello (18:56)

Amazing, wow. Well maybe we'll add to the show note a link to that company if people want to apply to work there and if they want twenty-one holidays. No, my producer's saying no, we're not gonna do that. Sorry, folks.

All right, so our fifth and final thing, Todd, which is given all of these numbers, given all these trends, given all of what you shared with us, if an employer right now listening to this wants to make some changes, we release these podcasts on a Thursday morning. People probably listen to them on Thursdays and Fridays, or maybe over the weekend if they're gluttons, I don't know. First thing they should do Monday morning. What are some Monday morning things employers can start doing if they want to do a better job of providing the kind of workplace that would lead folks to think, "We're just fine. We don't necessarily need to have a union come in here."

Todd Lyon (19:52)

Yeah. Easy, easy answer. Number one, do some internal and external auditing. The internal auditing is "What does your handbook say? Has it been updated recently? Is it consistent with the with the law?" External auditing includes checking with the comparable employers. What are they paying? What level of benefits are they paying? So many states today require employers to put the wages in the job posting itself, so it's not as difficult learning who your comparable employers are and what they're paying because it's in the Indeed postings.

But probably the most important thing is, get the employees together and talk to them about their terms and conditions of employment. Ask them, how are we doing? How can we make your lives better? And engage with them about those ideas. You'd be surprised, given the opportunity to talk about those things, some really great ideas come up. And as people are popcorning those ideas about their own workplace, they end up talking about how they can make the customer or the patient or the vendor experience even better for the company too. So it's a surprising exercise to engage with the employees and just frankly ask them. You'd be surprised, for example, that maybe a 4/10 schedule is on people's minds. Well, I don't know about you, Rich, but you know, if there was an opportunity to do a 4/10 work schedule, I'd sign up immediately, let's do it.

Rich Meneghello (21:27)

Yeah, I mean 4/10s and twenty-one holidays is what I'm aiming for at my next job. Exactly.

Todd Lyon (21:31)

Exactly.

Rich Meneghello (21:33)

What I would assume is, some employers are a little nervous to do this because I hate to say it, but they're sort of scared of what they're gonna hear.

Todd Lyon (21:40)

Yeah. Well, then, you know, they deserve a union if that's where they're at. If they're scared to ask their employees how they're doing, then they're not engaged. And the union is going to force a level of engagement that's not going to be comfortable because they're going to be dealing with the third party and not the employees directly, which is what they could do today.

Rich Meneghello (22:06)

All right, Todd, so that concludes the boring legal stuff, but can you stick around for another minute so we can do another FP 5 and ask you five things about you so the audience gets to know you a little bit better?

Todd Lyon (22:18)

Absolutely.

Rich Meneghello (22:19)

All right. What was your first ever job?

Todd Lyon (22:22)

I was a bartender at a supper club in Wisconsin at the age of eighteen. At the time Wisconsin had a law that allowed eighteen-year-olds to serve alcohol, even though we had a twenty-one drinking age limit.

Rich Meneghello (22:38)

Sure. I'm picturing like a velvet tuxedo, like burgundy.

Todd Lyon (22:44)

Well, let me just say I made a lot of Grasshoppers and Brandy Alexanders.

Rich Meneghello (22:49)

Ooh, yeah, okay, that kind of crowd. Love it.

Number two, what is one thing that's on your desk or in your office that most people ask about?

Todd Lyon (22:58)

I have three, or is it four? I think it's four nails that are soldered or fused together. And people ask about what that is, and it's a spike strip or some spikes that were used in a strike, on the very first strike that I managed on the employer side, where the union or the employees threw these giant nails on the ground so as to blow out the tires of the trucks.

Rich Meneghello (23:28)

That's a pretty intense story. And you keep those as a reminder?

Todd Lyon (23:37)

Yeah.

Rich Meneghello (23:38)

Good okay.

Number three, what's one thing about you that you get genuinely nerdy about that has nothing to do with work?

Todd Lyon (23:46)

Well, I love science fiction and in particular cosmic horror. So I read a lot of that stuff. And every year in Portland there is a movie film festival that I go to. So in the coming days I will be in Portland for that movie film festival.

Rich Meneghello (24:05)

You know, I saw that too late. It was already sold out by the time I stumbled across that. I didn't realize you were gonna be there.

Todd Lyon (24:12)

Yeah, every year. Been there for like twenty years.

Rich Meneghello (24:16)

Speaking of Portland, question number four. Portland is one of your many home bases that you land in quite often. And as a local Portlander as well, I know it's one of the best restaurant cities in the country. What's your favorite Portland restaurant right now?

Todd Lyon (24:29)

Easy, Janken. It's in the Pearl. They've got amazing sushi and the vibe in there is real, it's amazing.

Rich Meneghello (24:39)

Yes, all right. Okay, that's a good one. Those visiting Portland, we are not sponsored by Janken, but go ahead and look it up and get a reservation.

Five, if you weren't a labor lawyer, Todd, what would you be doing?

Todd Lyon (24:53)

I'd be teaching philosophy. I love philosophy. You know, the arc of, kind of the evolution of how people think about themselves and how we interact in society has always fascinated me. And so if I weren't doing this, that's what I would be doing.

Rich Meneghello (25:09)

So I would tell the audience next time you're in Portland, go to Janken in the Pearl District, belly up to the bar. You'll find Todd there, wearing his velvet tuxedo from his supper club days, drinking a Grasshopper, talking cosmic horror and philosophy.

Todd Lyon (25:26)

That's right, that's right.

Rich Meneghello (25:27)

Well, Todd, thank you so much for joining us again. It was a pleasure to catch up with you on this podcast and hear what you had to say. And we appreciate it. Thanks so much.

Todd Lyon (25:36)

Yeah, thank you for having me.

Rich Meneghello (25:39)



Thanks again for listening to the FP 5. You can find the Insight that goes into more depth about the topic we've been talking about, along with a link to our FP Union Organizing Activity Map in our show notes. We'll see you next week.

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