



Houston Nurses Vote for Unionization

NEW FOCUS ON HEALTHCARE EMPLOYERS AND ON LONE STAR STATE

Insights

4.07.08

It has been no secret that high-profile unions are devoting considerable resources to their attempts to organize employees in the healthcare industry. Bolstered by success in California, New York, Illinois and Florida, the California Nurses Association (CNA) and the Service Employees International Union (SEIU) have now set their sights on the vast, relatively untapped state of Texas.

Even though the two unions are using different tactics, there is no doubt that the Lone Star State, with its huge healthcare economy and relative scarcity of nurses, is a prize that both the CNA and SEIU dearly covet.

Company Stays Neutral, Yet Vote is Surprisingly Close

On March 28, the CNA chalked up an apparent "first" in the state when nurses at Houston's Cypress Fairbanks (CyFair) Hospital voted narrowly, 119-111, to make the union their collective bargaining representative. CyFair is owned by Tenet Healthcare, an industry giant.

After entering into a neutrality agreement it first executed in California, Tenet offered the union little or no resistance. Nevertheless, some nurses at the hospital mounted their own campaign and came surprisingly close to maintaining a union-free workplace. But now that its foot is solidly in Texas' door, however, the union is sure to try to expand its membership. Houston's Park Plaza Hospital or another Tenet facility, may be next on CNA's list of targets.

Texas Represents an Inviting Target

By some estimates, Texas' healthcare industry is the third largest in the country. Even though it is a right-to-work state, with overall union membership well below five percent, the CNA and SEIU apparently view Texas as fertile ground for organizing. Over 200,000 registered nurses work there. Additionally, the state's relatively low nurse per capita statistic means these RNs may be more receptive to the unions' goal of establishing mandatory staffing ratios.

Interestingly, CNA has successfully zeroed in on nurse staffing as a lynch-pin organizing issue. After winning 80 percent of certification elections last year, the CNA and SEIU are both now apparently hoping to orchestrate a "perfect storm" that will convert many Texas nurses into new dues-paying members. The impact of the close vote at CyFair Hospital is not yet clear. For healthcare executives, however, the unions' current momentum is not a good sign.

Unions continue to win a significantly higher percentage of certification elections in the healthcare industry than they do overall. In fact, by carefully selecting their targets and using non-traditional strategies, unions in New York and California have won 121 out of 145 healthcare certification elections during the past two years. Nationwide, the SEIU was involved in almost half of all certification elections in the industry, but the CNA's aggressive, high-profile style also continues to make a big splash.

Corporate Campaigns Figure Prominently in the Unions' Success

Industry-wide, SEIU has led the way in using so-called corporate campaigns to cajole and harass their organizing targets into capitulating. CNA memorably pressed Tenet into the neutrality agreement that now serves as a springboard into Texas and Florida. Besides CyFair, there are three more Tenet facilities in Houston and a total of nine in the state. Also, CNA has been distributing mailers, establishing committees and conducting meetings in other cities across Texas for many months. Moreover, the union supported a mandatory-staffing ratio bill that died during the 2007 session of the Texas Legislature. It vows to continue pressing for mandated nurse-patient ratios.

SEIU raised its profile in Houston through its "Justice for Janitors" campaign. It is now battling food service company Aramark and also attacking Service Master, which provides support services in many hospitals. This union has established offices in Houston and acknowledges interest in organizing healthcare employees. It also backed class action lawsuits in cities, including San Antonio, accusing hospitals of illegally conspiring to suppress nursing salaries. Although it is not (yet) openly organizing Texas hospital workers, the SEIU poses an increasing threat to hospitals who want to maintain their union-free status.

There is no love lost between these rivals, as neither is willing to concede the upper hand to the other. Interestingly, a recent dust-up between CNA and SEIU resulted in cancelation of a certification at nine Catholic Healthcare Partners hospitals in Ohio. In that case, CNA accused SEIU of confecting a "back-room deal" to represent the Ohio nurses, even though the situation was somewhat similar to the campaign CNA itself conducted at CyFair Hospital.

More Challenges are Looming on the Horizon

If all this did not give hospitals enough to be concerned about, the unions continue to push for state and federal legislation that will further regulate healthcare and make it easier for them to organize workers and/or obtain favorable contracts. The so-called "Employee Free Choice Act (EFCA)," which could do away with secret ballot certification elections, is almost certain to be re-introduced in Congress in 2009.

Meanwhile, CNA and SEIU continue to strengthen their toehold in Texas, hoping it will bring them more members across the state and the region. The unions have already demonstrated a penchant for effectively evaluating their targets before launching focused organizing activity.

Employers who want to maintain union-free status, regardless of their location or industry, should be firming up relationships with their legislators, assessing their vulnerability to organizing, shaping

be firming up relationships with their legislators, assessing their vulnerability to organizing, snoring up potential weak spots and refining their response plans now, before the unions come knocking at their doors.

For more information on this development, contact any Fisher Phillips attorney in our Texas offices at these numbers:

Dallas 214.220.9100

Houston 713.292.0150

This Legal Alert is provided to report on a particular event; it is not intended to be, nor should it be considered as, legal advice for any specific situation.