

As the economy continues to experience labor shortages and COVID-19 vaccine mandates, private sector unions that for decades saw membership declines had gains in 2020. The Bureau of Labor and Statistics reports that the percentage of American workers who belong to a union showed an uptick in 2020 to about 11%, which is still below the 2000 rate of 13% of all wage and salary union workers age 16 and older.

# Clubs



**T**he labor shortage is creating additional pressure on employers with unions, who are more vulnerable to union demands for pay increases and better benefits. Workers, with increased risk for exposure to the coronavirus combined with severe understaffing, have experienced a perfect storm for organizing and bargaining. The nation has seen an increase of large-scale work stoppages involving 1,000 or more workers in recent months. John Deere had 10,000 members of the United Auto Workers walk off at its plants and 1,400 cereal factory workers at Kellogg and 2,000 workers at Buffalo Hospital went on strike. In addition to increased strike activity, the pandemic has also heightened workers' awareness of job expectations, with new attempts to form unions at Amazon, Starbucks and various universities.

This article looks at the current landscape of unions in private clubs and how the pandemic has affected the club workforce.

## The Political Perspective on Unions

It is important to understand what the National Labor Relations Board (NLRB or Board) is and how it shapes labor laws and

regulations. Regardless of their political views, most employers—whether unionized or not—are bound by the NLRB and need to follow its guidance and the respective collective bargaining agreements (CBA), when applicable.

Thomas Lenz, partner at Atkinson, Andelson, Loya, Ruud & Romo, and National Club Association (NCA) board member and on faculty at University of Southern California Law School, notes that political tides affect how labor law is interpreted and enforced. In 2011–2012, the Obama Administration appointed a five-member Board with a majority of Democrats (3 to 2) and the General Counsel. Under the Biden Administration, we see a comparable situation with a 3 to 2 Democratic majority Board and can expect a different direction from the previous Trump Administration as they decide cases and direct regulations.

The new general counsel is Jennifer Abruzzo, who most recently served as special counsel for strategic initiatives for Communications Workers of America (CWA). Prior to her work at CWA, Abruzzo served as Acting General Counsel and Deputy General Counsel at the NLRB. She spent almost 23 years working in different capacities for

# Unions

## The 2022 Landscape

By Anne Catherine Nielsen, SPHR, SHRM-SCP

the NLRB. She plans to change the legal standards developed in the last four years and will target certain issues for attention.

The General Counsel sets the day-to-day direction that the agency will follow. What that means for clubs will be determined by the issues raised by employees, and charges filed with the NLRB. The General Counsel will use those issues to make any changes to the law. Under this Board, expect to see a more aggressive approach in terms of expanding employee rights, expanding union rights and limiting what employers can do.

The NLRB, unlike other agencies, generally does not pass a lot of regulations. The political ties of the NLRB and historical practice show that changes in the law occur through litigation and Board rulings. So, what the General Counsel chooses to prosecute—and the Board's ruling—will become law.

### **New Legislation: The PRO Act**

Protecting the Right to Organize Act of 2021 (PRO Act) is pending legislation that expands labor protections related to employees' rights to organize and collectively bargain in the workplace. In

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addition, it includes issues related to independent contractor status, the union-organizing process and rights of employers like clubs to speak to employees about these issues.

The legislation has passed the House of Representatives and is pending in the Senate and President Biden has vowed to sign it as written. Currently, there has been an effort to incorporate parts of this legislation into budget talks. It may not affect the PRO Act itself, but there are issues that could come from the budget process, such as fines for employers who violate the law (in the past there were none). This would be the first labor law reform of statutes if it were to happen.

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### Quick Election Process

The NLRB will likely maintain the quick election process, also referred to by some as “ambush election” regulations enacted in 2015, which significantly sped up the timeframe from when a union requests an election to when the vote is held.

When Lenz worked for the NLRB in late 1980s and early 1990s, union elections were typically held within 49–56 days; under the Clinton administration, the process sped up to approximately 35–42 days; and under the Obama administration, elections averaged about 23 days. Why does that matter?

It is critical for clubs to make sure that their management teams act lawfully and know the dos and don'ts of this process. Managers have the right to communicate with their workforce about the club's position on having a union and what they believe it would mean for the workers and their experiences. Noncoercive, nonthreatening and nonintimidating communications have been considered for decades by the courts to be lawful free speech by employers. So-called “ambush election” rules limit time and opportunity for employers to ensure management teams are in sync on dos and don'ts as well as in communicating lawfully with employees about these legally sensitive issues.

There is also discussion about electronic voting versus in-person paper balloting for elections. With the safe distancing requirements enacted during COVID-19, the NLRB ruled that balloting by mail would be prudent and employers did not object to that as they wanted to observe the safety protocol. Whether or not the NLRB will return to in-person balloting as the pandemic winds down, or will move to electronic voting, which is currently being considered for the transportation industry, or keep elections by mail is still up for discussion.

### Micro-Units

The topic of micro-units may also surface again. As an example, in a union election, small subsets of workers may choose to organize and leave out similar workers from another department to keep their numbers small. The Obama NLRB allowed each

union to choose which workers could join, and allowed different unions for various workers (e.g., groundskeepers, kitchen workers, servers). This creates more fragmentation, which makes it harder on employers having to deal with several unions and contracts, instead of setting the work rules and compensation practices for the business. The Trump NLRB wound that back to give employers more say. Moving forward, this topic of micro-units may gain more traction.

### Workplace Rules and Policies: Applicable to all Employers

Clubs maintain a pleasant, collegial environment without conflict. However, the Obama NLRB—and signals from General Counsel Abruzzo in the current Biden administration—have expressed a view that rules requiring civility, working in harmony and being collegial might be viewed as interfering with employees' rights under labor law.

The view that the Board took has been that conflict is expected under labor law and people will disagree so you cannot make rules to take away people's right to disagree, or to complain about working conditions—and it is critical to remember that law applies to the nonunion environment.

The Board may find other ways that nonunion clubs violate the law. One of the risk issues with the general counsel and the PRO Act legislation involves independent contractor misclassification.

If you operate a club with golf pros, tennis pros, fitness center instructors and others that you consider independent contractors, the Board may be suspicious. If an employee performs work of the same type that the hiring entity performs, and if that employee is working predominantly for that entity and not working elsewhere, classifying the employee as an independent person with an independent business can be challenged. That raises other issues like wage and hour, payroll tax, insurance and workers compensation; but the unions and NLRB will look from the standpoint that the club is depriving these individuals of the rights of employees.

This is an issue the NLRB wants to prosecute: Calling someone an independent contractor is a violation of the law because it deprives people of rights, including the rights of forming a union.

### Increased Remedies

If you have a unionized club, the Board expects the club to bargain over anything that affects the workplace. The Board is looking to enhance the remedies, so mistakes may well increase if a club gets it wrong or fails to notify the union on things such as a vaccination requirement or new work rules. Anything that may be considered a violation of the law would need to be presented to the union to bargain before being implemented.

During the pandemic, bargaining changed. Typically, people would meet in person but because of physical distancing and for efficiency, discussions happened by Zoom, phone or email exchanges. Whether that continues or parties resume meetings in person is still to be seen.

### Best Practices for Leading a Unionized Workforce

If clubs are concerned about organized labor, it is important to develop a game plan and be mindful that the rules keep changing not only in the labor law but also during the pandemic.

Clubs with good employee relations and HR practices, respectful and regular communication with their workforce, management team training, and regular employee surveys to identify issues of concern often remain union-free. (Note, if employers conduct employee surveys after union organizing discussions begin, it is a potential violation of the law.)

The pandemic has affected many of these issues, especially how people relate to each other and as some work remotely.

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Having civil communication with your workforce and checking in on them is critical. If employees feel they can come to their employer with their problems, they are less likely to need to reach out to a third party, such as a union.

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## **A certain level of service is expected, and clubs will face new duties and new liabilities with the current administration and an energized labor movement.**

It is a good practice for clubs to update their employee handbooks every one to two years to make sure the content is current and includes any changes that pertain to employee rights. Solicitation and distribution policies, dress code, conflict of interest, email and other means of communication, social media, confidentiality and workforce investigation should be reviewed and updated regularly.

It is also important for clubs to know that employees' rights—even to walk out on strikes at nonunion clubs—are still significant and if employees are punished for protected activity, that there could be liability.

There should be a safety protocol in place where employees feel comfortable in the workplace.

A certain level of service is expected, and clubs will face new duties and new liabilities with the current administration and an energized labor movement. Even for employers who are trying to be fully compliant, there is still potential for liability.

### **Best Practices in Working with Unions**

According to Lenz, unionized clubs have potential benefits because they can stay out of court by working with the union through the grievance-arbitration procedure. If the relationship is productive and not contentious, it can be beneficial and the club can set standards for how they treat employees, how they pay them and so forth. That not only provides stability but might also help the club be a leader in the market.

Chris Colley, General Manager at the National Democratic Club (NDC) in Washington, D.C., embodies that strategy and also stays in constant contact with the union representative, so they are never surprised by any stance or position the club takes. Colley offers that it is possible to have a mutually beneficial relationship with the union, for the benefit of your employees and your organization. Marlena Navarro, assistant general manager at NDC, is knowledgeable in the intricacies of the union and contract. Colley relies on her expertise and offers that it is critical clubs have an HR person or department head that is well-versed in the union contract.

Some clubs that have had contentious relationships with the union in the past have created an informal internal grievance

process and encourage employees to speak to management first before reaching out to the union. This type of relationship with the staff takes time to establish. Clubs will take the position not to settle and work through grievances by educating their managers on the union contract and decide when to push back. Most work rules are established during union negotiations, and it is important that the managers are educated on their collective bargaining agreement.

In union negotiations, Chief Operating Officer Tim Muessele, CCM, CCE, at The Olympic Club in San Francisco, shared that everybody at the table has different motivators and emphasized to be thoughtful and keep in mind the importance of the union's desires.

Negotiations and arbitration are time consuming and expensive propositions to any organization and having the support of the club board and ensuring management education and alignment is important.

### **Lessons Learned during the Pandemic**

Many clubs had no other option but to furlough their staff for a time during the pandemic when clubs were closed or only able to offer limited services. Many union employers furloughed employees in phases and started with union and line-level employees. Other clubs tried to keep their entire staff for a period of time with a stipend in addition to maintaining club benefits and unemployment compensation. Clubs typically furloughed their nonunion employees in following waves with similar benefits. The groups were addressed separately, and general managers and human resources orchestrated the strategic layoffs and the direct managers helped manage the process.

In retrospect, many club managers indicated that the key to a smooth process was proactive planning and direct and regular communication with the union.

At the Union League Club of Chicago, General Manager/COO Mark Tunney and his team worked with the union and the staff to maintain as many positions as they could. As an example, they tried to maintain the banquet staff by asking them to take a la carte shifts. The jobs they had were no longer available in the way they were before; the staff was given a choice and some accepted and some did not. Prior to the pandemic, there was a clear separation of duties for these positions.

The club also has a self-funded medical plan for union and nonunion employees, which has allowed some union employees to take nonunion positions, like a bellman position, for instance. Employees working at the club, even in a different capacity, will have a greater chance of getting their previous union position back when it reopens, based on their seniority. A key aspect to maintaining staff engagement during this challenging time was

# Survey Findings

## 2022 Outlook for Clubs and Unions

The National Club Association (NCA) recently surveyed clubs to learn more about unions at clubs. Of the responding 14 clubs with unions, 70% were golf or country clubs, 20% city or athletic clubs and 10% yacht or other specialty clubs.

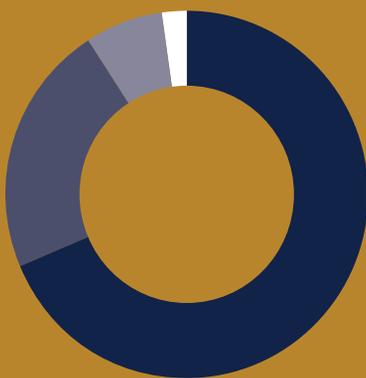
Top issues identified by unionized workers during negotiations or collective bargaining are ranked in the second chart to the right.

Going into 2022, the key concerns shared by those employers revolve around labor shortage, lack of a skilled workforce, pay compression associated with minimum increases, followed by an increase in benefit costs and lack of management due to labor shortage.

Given the recent pandemic, furloughs, layoff clauses and severance based on seniority may come to the forefront. Clubs will have to navigate local and state labor laws and see where there is flexibility.

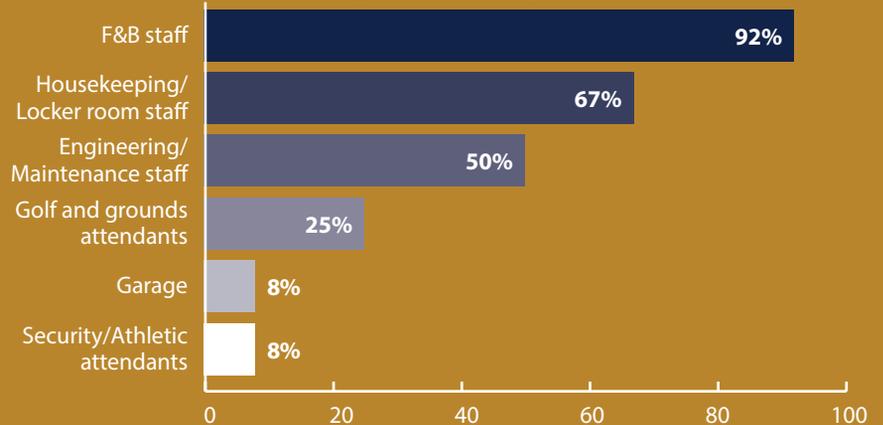
The other side of the equation is increasing club revenues. Clubs need to regain their pre-COVID member usage to staff up and cover vacation time for employees that have been working. For many clubs, the goal is to get back to normal operation levels, with employee celebrations and appreciations while operating in a fiscally responsible way. Employees will need to understand new efficiencies and managers will need to be focused on employees to ensure a safe and caring work environment.

### Responses by club type

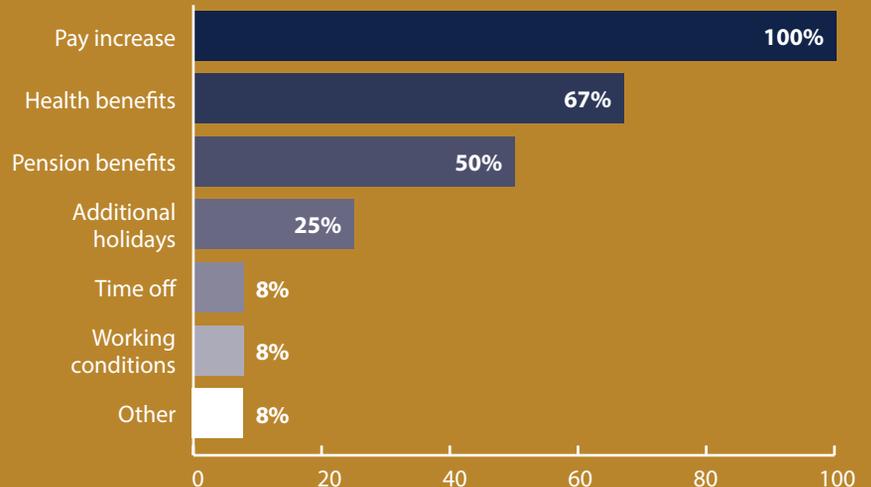


- Golf or country club (68%)
- City or athletic club (22%)
- Yacht club (7%)
- Specialty Club (2%)

### What types of unions are represented at your club?



### What are the top issues identified by your unionized workers during negotiations or collective bargaining?



### One a scale of 1 to 10 (1 being low, 10 being high), rate these labor concerns going into 2022



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through regular, weekly communication with the staff that was staying on, as well as with the members.

Many clubs have since hired back their staff: some are at 50% capacity, and many are back to 90% of their pre-COVID-19 operations. Most clubs have had to elevate pay for their staff and some are still struggling to bring back both union and nonunion employees, despite COVID-19 unemployment benefits ending in September 2021.

In some cases, having a unionized workforce has helped the club. Tim Muessle found that one of the benefits of having a union in this market is that most clubs right now are looking for staff. Staffing the club is easier with a union, because even after being furloughed, employees are more likely to come back because of seniority. General Manager John Dorman at The University Club of New York feels lucky to have a stable employee base with a well-trained union staff that stays for years and does their job well. It is harder to bring in new employees and train them to get to the same standards.

### Vaccination Mandates

The Olympic Club hosted the Women's USGA championship in June 2021, so everyone on property that week had to show proof of vaccination: employees, members and guests alike. In San Francisco, law dictates people must be vaccinated to come into a building and work. There is no testing—it is a hard mandate. For the past two months they have collected proof of vaccination through the club app for their members. They have implemented a strict check-in protocol for their members every time they come in. The vaccination proof for employees is collected separately and the clubs have not lost any employee due to the mandate.

Given Chicago's city-wide mandate, Tunney implemented a similar vaccination mandate for all its full- and part-time employees who were informed in the summer and started the implementation in September. Their members are required to wear a mask if not vaccinated. They also did not lose any staff because of the vaccination mandate.

In New York City, The University Club of New York employees were happy to be back at work after their furlough. COVID-19 testing for employees was implemented twice a week, then once a week for those that were not vaccinated, and once a month when vaccinated. By March 2021, 75–80% of the staff was vaccinated. A

strict vaccination mandate has now been in since November 2021 for staff and members due to New York City law, which mandates vaccinations for dining establishments. It has worked well with little attrition of staff and members.

The club stepped up their testing due to the variants. They work with an epidemiologist and test twice per month and whenever there is a COVID-19 scare. The cost is fully covered by the club and staff feels better getting tested ahead of big events to make everyone at ease. This has provided peace of mind to members and employees alike.

None of these mandates were challenged by the unions, who were either neutral or favorable to the extra safety precautions taken by employers.

### Initiatives to Become a Preferred Employer and What has Changed

In these tough times, to keep the staff engaged and performing at their best, clubs have recognized staff with regular celebrations, prizes and employee of the month programs. Many have offered weekly calls with staff during furloughs and extended mental health programs through their employee assistance program as well as supported employees grieving the loss of a relative or family member due to COVID-19.

The impetus for taking care of your employees so they will take care of your members has never been more relevant than now. Some clubs have even changed their policy regarding not hiring relatives to allow additional referrals.

“To be a preferred employer in this economy, it is critical to offer good wages and treat people in ways that makes them want to work for you and stay with you,” says Dorman. “NYC employers have been tremendously affected and many people have left the hospitality industry. It is important for leaders to ensure people feel rewarded for the work they do. Educating management is also of foremost importance to establish a culture of great service and fiscal responsibility.”

### Looking Ahead

Understanding the NLRB's upcoming agenda and planning accordingly through handbook updates and working with your HR team, management and legal counsel will prove essential in the years to come.

Now more than ever is an unprecedented opportunity for employers to assert themselves as a preferred employer whether they have a union or not, by leveraging their value proposition and promoting the uniqueness of their workplace, to current and prospective employees. 

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