Conventional and Accelerated Union Organizing in Hospitals

> Helping Hospital Leaders, Managers and Employees Be Prepared

# What You Can Do to be Prepared for Union Organizing

- Ensure that hospital leaders are informed about the unions' view of health care as an organizing opportunity
- Focus first on employees and what makes unions and organizing attractive to them
- Be sure all employees and managers know your hospital's story

# What You Can Do to be Prepared for Union Organizing

Help employees and managers understand unions and their organizing strategies

- Ensure that managers understand their responsibilities/obligations during union organizing
- Look to the AHA for additional information and resources www.aha.org

# Unions View Health Care as an Organizing Opportunity

- Why health care is an attractive organizing opportunity for unions
- Key unions targeting the health care sector
- Unions' primary messages to employees

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# Why Unions See an Organizing Opportunity in Health Care

- Health care sector is a growing segment of the U.S. economy
- Health care sector is an economic mainstay providing stability and growth, even during times of recession
- Hospitals rank second as a source of private-sector jobs, behind only full-service restaurants
- Health care jobs can't easily be transferred overseas
- Only about 8% of U.S. health care workers are currently union members

#### Presentation Notes:

#### A growing economic segment:

In 2006, health care represented about approximately \$2.1 trillion or 16 percent of the Gross Domestic Product (GDP). Hospital care is the largest component of the sector (\$648 billion).

#### Economic mainstay, even during recession:

In 2007, the health care sector overall added approximately 367,000 jobs, or about 45 percent of all private-sector jobs added. In 2007, hospitals had a 2.1 percent increase in employment, despite reported shortages in job classes such as nursing and pharmacy.

#### Rank second as a source of jobs:

Community hospitals employ more than 5 million people. In rural areas, hospitals are often either the largest or the second-largest employer, behind the school system.

#### Union membership among health care workers:

The U.S. Dept. of Labor, Bureau of Labor Statistics reports that in 2007 7.9% of those employed in the health care and social assistance sectors were members of a union. The percentage of workers who are union members is unchanged from 2006 and has remained relatively stable over time (e.g., in 2002, only 7.3% of workers were union members).

#### Labor Unions Targeting Hospitals

#### Most Active Unions in Health Care

 Service Employee International Union (SEIU) – Change to Win Coalition
 United American Nurses-National Nurses Organizing Committee (UAN – NNOC) – AFL-CIO affiliate



# Other Unions Active in Health Care American Federation of State County and Municipal Employees (AFSCME) Teamsters (IBT) United Auto Workers (UAW) Intermitional Union of Operating Engineers (II(OE)

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Labor Unions Targeting Hospitals

 International Union of Operating Engineers (IUOE)
 stationary engineers working in operations and maintenance in building and industrial complexes and in the service industries as well as nurses and other health care workers

**TEAMSTERS** 



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# SEIU's Message to Employees

"As long as nine of 10 healthcare workers have no union, we are constantly in danger of losing what we have accomplished for ourselves and our patients . . ."

From SEIU Healthcare's OUR VISION: An Opportunity to Change Healthcare in America



"Under the principle that RNs should be represented by an RN union, we resolve to ... [1] Organize all non-union direct care RNs ... [2] Provide a powerful national voice for RN rights ..."

From 2/18/09 joint statement of CNA/NNOC, UAN, and Massachusetts Nurses Association following their affiliation



# Make Employees Your First Focus

- Understand what makes unions and organizing attractive to employees
- Identify and address the issues that affect your employees and are likely to be used by unions to make organizing attractive to them

# Why Unions are Attractive to Employees

#### Unions promise:

- To be the voice of employees
- Job security
- Higher wages and better benefits
- Increased professional respect
- More opportunities to be involved in patient care and operational decisions
  - Eliminate or modify work duties
- An end to favoritism and abuse
- More opportunities to improve work skills

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Sound Advice from an Experienced Health Care Leader

"The most important things is to **do your best to provide the kind of work environment that neutralizes what unions have to offer. Start communicating more** with employees; be visible; walk the halls and ask them what you can do for them; make sure employees feel they can come to you and you will be responsive. **Be an advocate** for your employees; make sure they understand the law and what their rights are. Another key issue is to provide employees with the equipment and supplies they need to do their jobs – eliminate barriers that prevent their success. If you don't address their needs, the union will."

# Share Your Hospital's Story with Employees and Managers

- Share your hospital's employee and patient care philosophy, including how employees are essential to its mission and accomplishments
- Be prepared to explain your hospital's approach to union organizing
  - Be clear about why unions are not the answer for your hospital

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# Our Hospital's Employee and Patient Care Philosophy (sample)

Our Hospital strives to:

- Focus on the health and well being of our patients and our community
- Create and maintain a positive work environment where employees can thrive, work as a team, and keep patients safe
- Treat employees with dignity and respect, recognizing that they are our organization's most valuable resource
- Engage our employees in continuing efforts to improve our service to patients and our community

# Our Hospital's Accomplishments (sample)

#### Our Hospital:

Is ranked [ ] because of employees' dedication
 Delivered [x amount] of benefits to our community through services and programs supported by our employees

 Use example of a program in which employees participate

 Employed [x amount] members of our community with steady, good paying jobs that benefit patients every day
 Use examples of how salaries, benefits of employees are comparable

# Our Hospital's Approach to Union Organizing (sample)

- Employees have the legal right to organize
- Employees have the right to information necessary to make a fully informed choice about whether or not to join a union
- It is important that employees understand that union membership has serious and long lasting implications
  - Understanding the implications before signing a union authorization card or voting 'yes' to join a union is essential

# Why Unions Aren't the Answer for Our Hospital (sample)

- Unions can actually make it more difficult for the hospital and its employees to respond quickly, creatively, and compassionately to a rapidly changing health care system
- Changes made by the hospital to address patient care needs or respond to emergencies can be challenged by the union
  - The best interests of patients, employees and the community should be the test for important decisions, not a union contract

A relevant helpful resource available from the AHA is "How the *Employee Free Choice Act* Would Impede Delivery of High Quality Health Care in Hospitals" (January 2009) available on the AHA's Employee Relations Web site under Issues at www.aha.org. This is a members-only protected resource and reach log-in the the AHA Web site for access.

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#### Why Unions Aren't the Answer...

- Unions can significantly increase both direct and indirect costs for hospitals
  - Costs can increase as much as 10-15% as a result of restrictive work rule in organizing contracts
- Unions' conflict management tools strikes, boycotts or slow downs – can put patients, employees and the hospital at real risk

#### Why Unions Aren't the Answer...

- Employees and hospital leaders lose the ability to work together to address important concerns
- Hospital leaders/managers can lose the flexibility to promote, transfer, appropriately assign jobs, and grant employees' requests for overtime or time off
- Even in emergencies or to increase efficiency in the best interest of patients and employees
- Hospital leaders/managers lose the ability to reward superior performance with bonuses or other incentives

# **Understanding Unions' Organizing Strategies**

- Prepare for traditional and accelerated union organizing
  - Traditional organizing vs. 'card check' recognition
    Increasing pressure to recognize unions without an
  - election
- Ensure that management and staff understand basic labor law and employees' rights on union organizing activities
   Employees have the right to support or not support union
- Ensure that employees managers and staff have a clear understanding of the implications of the Employee Free Choice Act or 'card check' legislation

**Unions and Current Organizing Strategies** 

# A labor union is:

Any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.



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- Both cards and petitions are legally binding documents
- They give the union the right to:
   File for an election with the National Labor Relations
   Board (NLRB)
   OR
  - Demand recognition without a union election *if* management agrees

#### Corporate Campaigns as Adjunct to or Substitute for Traditional Organizing

#### **Corporate Campaigns:**

- Involve a broad attack against all potential vulnerabilities of the hospital
- Seek to exploit any and all of the hospital's relationships
- <u>Primary goal of a corporate campaign</u> Obtain an agreement from the employer that will make it easier for the union to organize employees
  - Neutrality Employer agrees not to oppose organizing
  - 'Card check' recognition Employer agrees to recognize union without secret ballot election

See "Corporate Campaigns: Five Questions Every Hospital Leaders Should Ask to Prepare For and Manage a Corporate Campaign" as well as other resources to help hospital leaders understand corporate campaigns and union organizing available on the AHA's Employee Relations Web site under Issues at www.aha.org. These are members-only protected resources and require log-in to the AHA Web site in order to access.

# Current Requirements for Election or Union Recognition

 30% or more of employees in a bargaining unit must sign a card/petition to request an election
 This is called "showing of interest"

OR

• If cards/petition are signed by more than 50% of employees in a bargaining unit, the union can demand recognition *without* the formality of an election

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# Reasons Unions Are Likely to Give Employees for Signing

#### Signature is needed to:

- Get more information about the union
- Show the employee spoke with a union representative
- To demand an election
- To be eligible to vote in an election
- To demonstrate the employees' solidarity with other employees
- To talk with hospital leaders on the employees' behalf

# "All You're Saying Is That You're Interested."



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# What Unions Don't Tell Employees

Excerpt from congressional testimony of a former union organizer:

"We rarely showed workers what an actual union contract looked like because we knew that it wouldn't necessarily reflect what a worker would want to see. We were trained to avoid topics such as dues increases, strike histories, etc. and to constantly move the worker back to what the organizer identified as his or her 'issues' ... "

# Potential Implications of Signing a Card or Petition

- Provides union with employee's address, phone numbers, and other information for solicitation
- Gives the union the exclusive right to act on behalf of employees for:

  - Wages and benefits
  - Working conditions
- Other terms of employment
  Eliminates employees' ability to deal directly with hospital management
- It could be a membership application allowing the union to collect dues from and impose its rules and disciplinary measures on employees • Be careful to read the fine print

#### What Are My Rights as an Employee?

#### Employees have a legal right to:

- Support the union and engage in union activitiesRefrain from engaging in any union activities
- Campaign against the union
- <u>Sign or not sign</u> a union authorization card

#### If you don't sign a card, you may still:

- Ask questions of hospital leaders/managers or any union organizer
- Get more information about the union
- Go to a union meeting

# **Employees' Legal Rights at Work**

#### Employees have the legal right to:

- Be free from being bothered by a union representative at work or while working
- Clear and unobstructed access at work
- Be free from union solicitation by other employees except during breaks at work and lunch
  - Include explanation of your hospital's access/solicitation/distribution policy
  - Include discussion of your hospital's email use policy

For helpful guidance with your hospital's access/solicitation/distribution policy, see "Securing Your Premises in an Active Union Environment" from AHA's *Health Care Labor Report*, September 2008.

For helpful guidance with your hospital's email use policy, see "Navigating Labor Organizing in the Virtual Workplace" from AHA's *Health Care Labor Report*, January 2009.

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# Employees' Legal Rights to Prevent Union Interference

#### Employees have the legal right to:

- Be free from restraint, coercion, intimidation by a union they don't support
- File an unfair labor practices charge against a union for violating their right not to support the union
- · File a civil lawsuit if the union harasses them at home

# Employees' Limited Legal Rights After They've Signed a Card

#### What employees should know before signing a card:

- A card is a binding legal document
- Once signed, the card becomes the union's property
   An employee can ask the union to return the card by sending a certified letter revoking the authorization implied by the card
- But they can't make the union return the card if it does not wish to do so



#### What Labor Would Like to Do with Cards in the Future

#### **The Washington Post** Thursday, November 6, 2008

#### Labor Seeks Election Rewards

Union Organizing Rights Could Be Early Obama Test Labor's top priority is passage of legislation that would make it easier to organize unions, which advocates say would help labor groups expand their shrinking numbers and win better wages and benefits for average workers, whose pay has stagnated in the last eight years.

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## Employee Free Choice Act (EFCA) Would **Replace Elections with Cards**

- Eliminates private ballot elections in favor of signed cards (card check)
- Mandates binding arbitration for first-contract, if no contract agreement is reached within 120 days of union certification
- · Increases penalties and punitive sanctions for employer National Labor Relations Act (NLRA) violations







See the resources about the *Employee Free Choice Act* ("Card Check") on the AHA's Employee Relations Web site under Issues at www.aha.org. Recent resources, including the December 2008 updated AHA/ASHHRA Issue Paper: Protecting Hospital Employees' Confidential Decision to Unionize: *Employee Free Choice Act* and the January 2009 How the *Employee Free Choice Act* Would Impede Delivery of High Quality Health Care in Hospitals include information about the potential implications for initial union contracts. These resources are members-only and require the use of a log-in to access.



For a complete report of the voter polling results, see the Web site of the Coalition for a Democratic Workplace at www.myprivateballot.com.







#### Employee Free Choice Act Would Impose Mandatory **Binding Arbitration for First Contracts**

- Eliminates private ballot elections in favor of signed cards (card check)
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#### **Mandatory Arbitration**

#### Following card check certification:

- If NO agreement within 90 days, either party may refer the negotiation to the Federal Mediation and Conciliation Service (FMCS)
- If <u>NO</u> agreement after an additional 30 days, open issues submitted to mandatory interest arbitration
- Arbitration board established by FMCS The arbitration board's "decision" would
- establish the initial terms of contract
- Contract binding for up to 2 years

# What You Should Know about Mandatory Arbitration

#### **Currently:**

- Employees and management negotiate appropriate terms
  Contract terms subject to ratification vote by employees
- If they don't like the contract, employees can send the union back to the negotiating table

# Under EFCA or Card Check:

- Under EFCA or Card Check:
  Third party arbitrator is free to impose terms he or she determines are appropriate
  Terms are immediately binding on employer and employees for up to two years or until the parties agree on a new contract, whichever occurs first
  Employees cannot change their mind about union representation for two years

#### Arbitration under EFCA

- Mandatory interest arbitration would cover a broad range of collective bargaining topics, including:
  - Initial wage rates and any built-in pay increase
  - Terms of employee benefit plans (e.g., deductibles, contribution)
  - · Whether employees can honor other unions' picket lines
  - Employer's ability to use outside contractors in addition or in place of bargaining unit employees
- There is no remedy if the arbitration results in the loss of jobs or an unexpected decline in hospital's operating income

#### **Employee Free Choice Act Would Increase** Penalties Only for Employers

- · Eliminates private ballot elections in favor of signed card (card check)
- Mandates binding arbitration for first-contract, if no contract agreement is reached within 120 days of union certification
- Increases penalties and punitive sanctions for employer National Labor Relations Act (NLRA) violations

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#### **EFCA's Increased Employer Sanctions**

- \$20,000 per violation when employer willfully or repeatedly engages in unfair labor practices during union organizing or first contract negotiation
- · Reinstatement with triple back-pay when employer discharges or suspends an employee for engaging in protected activity
- Mandatory injunctions imposed for unfair labor practices



# How EFCA Modifies Sanctions for Unfair Labor Practices

#### Currently:

- Employees are protected from unfair practices of both employers and unions
   NLRB is authorized "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies" of the NLRA
   NLRB can order employer to bargain collectively with a certain union
   NLRB already empowered to petition for injunction relief in federal court to temporarily prevent unfair labor practices and to restore status quo

## Under EFCA or Card Check:

- Enhanced penalties apply only to employer, not union, violations
- · Penalties would include triple back pay damages
- Mandatory for the NLRB to go to federal court to obtain an injunction against an employer



For the Latest Updates on the Fight against EFCA, Consult AHA

# AdvocacyUpdate Action Alert!

Monday, December 8, 200 URCE OPLICESLATORS TO OPPOSE CARD CHECK LEGISLATION May unloss the control of the control of the Monday of the control of the contro

Please contact your registators immediately and educate unern on the dangerous precedent the misleadingly named "Employee Free Choice Act" would set. Urge your senators and your representative to vote against the bill when it comes to the floor. Keep union elections free and fair! Go to <u>www.AHA.org</u> for updated information

#### Understanding Managers' Responsibilities/ Obligations During Organizing Efforts

- · Share the expectations of leadership with all managers
- Encourage managers to be proactive in recognizing warning signs of union activity
- Educate managers about the law and what they can and cannot say
- Support good employee relations, advance preparation, and improved communications skills among managers

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### Leadership Expectations for the Management Team

## Each member of the management team is:

- An agent of the hospital
   Expected to understand and support the hospital's position on union organizing when communicating or dealing with employees
- To be proactive and look for early warning signs of union organizing activity

# Management's Role under the Labor Laws

# Under the National Labor Relations Act, members of management legally:

- Are NOT permitted to belong to a union
- May NOT support union organizing

# Managers Need To Be Proactive

# Be aware of and look for early warning signs of union organizing activity

Changes in employee behavior are early warning signs

- Employees stop talking in front of managers
- Employees appear cool toward or avoid managers
- Employees huddle frequently
- Employees who never socialized with each other are seen together
- Employees take long breaks or linger after their shiftEmployees deliberately defy their supervisors

# **Early Warning Signs**

#### Changes in employee behavior...

- Employees loiter in other work areas
- Employees are frequently absent or complain of injuries
- Employee turnover increases
- Employee complaints become more frequent
- Employee phone calls increase
- Employees begin using labor terms:
  - Grievance arbitration seniority

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# Early Warning Signs

#### **Other Important Signs:**

- Employees ask to copy names of employees from lists, schedules or time cards
- Employee complaints are presented by a delegation of employees
- Former employees appear before or after shifts
- Employees seen wearing union logos
- Union leaflets, literature or other communications
- appear at workWork-related confidential information goes missing

# What Managers Can and Can't Say To Employees About Unions

#### The National Labor Relations Act (NLRA) guarantees employers free speech about unions and union organizing

But there are limits on free speech for:

- Threats
- Interrogation
- PromisesSurveillance
- Discrimination



What is NOT Allowed:	What IS Allowed:
INTERROGATION	Listening to what employees say
'Did you sign a union card?''	Expressing your opinion to employees, especially if asked
"Who went to last night's meeting?"	Telling employees to get the facts from
'Why are you mad at the nospital?"	both sides before signing a card







# What Managers Can DO

#### **Good Employee Relations:**

- Know your employees and the issues that are important to them
- Communicate with and involve employees in workplace decisions
- Listen to your employees and encourage their ideas and suggestions
- Work with your employees to resolve problems they bring forward, no matter how small they might seem to you
- Keep your employees informed about the hospital's activities and challenges
- Ensure your employees know that the hospital's policies are fair to all

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# What Managers Can DO

#### **Good Preparation:**

- Contact [fill in] at the first signs of union influence
  - Don't destroy union literature you find; take it to [fill in]
- Be alert for issues that could make a union pitch more attractive to employees and try and resolve those issues quickly
- Make sure everyone in management is aware of employee issues and knows what's being done to address them

# What Managers Can Do

#### **Good Communication:**

- Use facts to make your points
- Express your personal views
- Use personal experiences
- Know and cite the law
  - Particularly on employee rights
- Practice your communication skills and how to make the most effective arguments about your position on unions



# Remember that AHA Can Help

AHA members can access numerous resources about fighting card check legislation and the latest information on other important labor developments at

www.AHA.org

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