

Labor Union Plants a Big Flag in Western North Carolina

Written By **Grant B. Osborne** (gbo@wardandsmith.com)

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“Change is the only constant in life.” - Heraclitus (535 to 475 B.C.E.)

Registered nurses at HCA Healthcare's Mission Health system in Asheville have recently voted to be represented by the National Nurses Organizing Committee, a labor union that is affiliated with National Nurses United ("NNU"). According to various media reports, 965 nurses voted in favor of union representation, while 411 opposed it. The union has apparently called the election the most significant union victory at a hospital in the southern United States since 1975.

Such gloating is understandable. According to Becker's Hospital Review, Mission Health, which was acquired by Nashville-based HCA Healthcare ("HCA") in 2019, is a seven-hospital health system with more than 12,000 employees. It's among the 50 largest private employers in North Carolina and one of the largest employers in the state west of Charlotte. Its service area covers 18 counties in western North Carolina. The National Labor Relations Board ("NLRB") will almost certainly certify the results of the election, after which HCA and the NNU will engage in "collective bargaining" to seek a contract covering a "bargaining unit" of about 1,600 registered nurses at Mission Health's campuses in Asheville.

Why is this a big deal? Because representation by a labor union in the private workforce in North Carolina, and in the south generally, is relatively rare. According to the U.S. Bureau of Labor Statistics (an agency of the U.S. Department of Labor) ("BLS"), labor unions' representation of employees throughout the U.S. has been declining for a long time: in 1983 it was about 20%. By last year it was only about half that, at 10.3%. In North and South Carolina union membership rates have been even less impressive, at 2.3% and 2.2% respectively as recently as this year. And more than half of all union members in the U.S. live in just seven states: California, New York, Illinois, Pennsylvania, New Jersey, Ohio, and Washington. One could therefore be forgiven for thinking that unions have abandoned hope of getting traction in North Carolina and decided to focus all of their efforts in more promising territory.

The recent news out of Asheville, however, demonstrates that reports of the demise of labor unions in our state may be premature.

Should private employers in North Carolina care? And, if so, then why?

They should care. For one thing, information provided by the BLS suggests that representation by labor unions pays. And pays well. According to the BLS, in 2019 *non-union* workers had median weekly earnings that were only about **81%** of such earnings by workers who were members of unions. Put another way, union-

membership may provide employees with the prospect of a **19%** bump in weekly earnings. The BLS acknowledges that such "comparisons of earnings ... are on a broad level and do not control for many factors that can be important in explaining earnings differences". That's surely true, but such esoterica may be less moving to potential members of unions than that 19%. You can bet that most of the nurses at Mission hope that their earnings will improve as a result of representation by the union, and that they will share their experience on that subject with family and friends – and possibly with some of the many thousands of patients and their families whom they'll encounter on the job in coming years.

For another, unions' struggles in the south surely stem partly from the fact that, for so long, they have, well, struggled in the south. People tend to avoid what they don't know, even if that means perpetuation of undesirable circumstances; hence the adage "Better the devil you know than the devil you don't." But, with NNU's representation of more than 1,500 well-paid professional employees at a conspicuous employer in the center of a respectable media market, some of the regional stigmas of labor unions is bound to wear off, if for no other reason than that news and gossip about the union will begin to permeate the area. Employees whose wages and benefits may have stagnated for years but who have associated unions with northern states, or thought them antithetical to "southern values", may begin to warm to the idea of union representation, especially if the NNU can claim to have achieved attractive results for its constituents.

Having said all that, what should private employers do?

The answer: Try to avoid what happened to HCA. There are ways to try to do so, and many of them are perfectly legal (which, by the way, are the only ones that we recommend). *Employers of all sizes can be targets of union-organizing campaigns* – they need not be behemoths like HCA – and small employers can be much more attractive targets than big ones because smaller ones can be much easier to pick off because the union need not persuade as many people to vote "Yes". Employers should take measures to ensure, as well as they can, that a union's overtures to their employees would get a chilly reception, and that they know what to do – and what NOT to do – if a union appears on the scene. A law firm with experience in such matters can provide quick and very helpful training to company management and its supervisors. Such training can help them to avoid violations of federal labor law – known as "unfair labor practices" or "ULPs" – that can land a company in hot and expensive water, and in severe cases lead to an NLRB-order requiring the company to recognize a union as its employees' bargaining representative without the casting of a single vote. Prudent employers will do what they can to avoid even inadvertent ULPs, which, if one is ignorant of the relevant law, can easily occur.

Precautions are critical because, once a union gets in the door, the law makes it very hard for an employer, or its employees, to show it the way out.

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