

## Union Representation Petitions Are Up 57 Percent, but That's Not All!

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Americans view labor unions more favorably than they have in decades, and the recent shift in support seems to be yielding results. The private sector unionization rate was just 6.1 percent in 2021, and Union membership in the private sector has been declining for decades. However, the National Labor Relations Board (NLRB) reported that for the first six months of Fiscal Year 2022 (October 1, 2021 – March 31, 2022), labor unions filed 57 percent more representation petitions than they did during the same period a year earlier. It also seems that just about every day we are seeing a headline about a labor union organizing employees at a national company with a well-recognized brand, including Apple, Starbucks, and Amazon. This increase comes on the heels of a [Gallup poll of Americans' approval of Labor Unions](#), which establishes that the percentage of Americans who view labor unions favorably has gone from just 48 percent in 2009 to 68 percent in 2021. The last time this many Americans viewed unions positively was 1965 and union membership rate in the United States was near its all-time high then.

### *Help from the White House & Legislators*

President Biden has promised to be the most pro-union President, and, within the first two months of his presidency, advocated for the U.S. House of Representatives to pass the Protecting the Right to Organize (PRO) Act of 2021, which would make a number of union-friendly changes to the National Labor Relations Act (NLRA).<sup>[1]</sup> Two of President Biden's appointees – NLRB General Counsel, Jennifer Abruzzo, and NLRB Chairman, Luran McFerran – have been unwavering in their support for labor organizing rights, and without waiting for the PRO Act, have begun to interpret existing law in a dramatically different and pro-union manner.

For example, General Counsel Abruzzo is currently arguing to the NLRB that, under current law, employers should be unable to require employees to attend meetings during which a company expresses its opinion concerning unionization or other statutorily-protected activity, meetings which have been labeled "captive-audience meetings." Notably, NLRB's Brooklyn regional director recently stated that if Amazon doesn't settle unfair labor practice allegations around such meetings, it will issue a complaint to challenge the meetings Amazon appears to have held for the purpose of informing employees about unions and elections. Such a complaint would provide Abruzzo an

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opportunity to get the issue before the NLRB, where Democratic appointees hold a majority.

Local legislators have also joined the parade. For example, the Connecticut General Assembly recently passed a bill that proscribes employers from disciplining an employee, or threatening to discipline an employee, should the employee refuse to attend an employer-sponsored meeting, listen to a speech, or view communications primarily intended to convey the employer's opinion about religious or political matters, including meetings during which employers share their opinion about labor unions and the facts about what it means to have a union. Oregon has similar legislation, but that statute is the subject of litigation on a claim that it conflicts with the NLRA, a federal law.

Secret-ballot elections about union representation are also at risk. While the NLRB has, for 50 years, allowed employers to insist on secret-ballot elections, in which employees must cast their vote privately and anonymously, to gain representational status, Abruzzo has expressed interest in overturning that precedent as well. If successful, employers, including manufacturers, would be required to recognize a union if presented with signed authorization cards from a majority of employees. Many argue that such a process is inherently more susceptible to intimidation and coercion as it is largely unregulated.

### *More to Come*

With union favorability at heights not seen in decades and a union-friendly political climate, manufacturing employers should understand the causes and consequences of their workforce becoming organized. If employees select a labor organization as their bargaining representative, the NLRA requires that the employer deal exclusively with that union with respect to any and all mandatory subjects of bargaining (wages, hours, and conditions of employment). Also, employers would be required to give the labor organization notice and an opportunity to bargain before modifying any policies or processes that impact a mandatory subject of bargaining. Another consideration is that the NLRA provides employees with the right to strike, and such strike actions have recently seemed more prevalent. October 2021 was coined "Striketober" due to the numerous, prolonged strikes at multiple facilities, including John Deere, Kellogg's, and Nabisco.

Organizing is a very real possibility for all manufacturers and having employees represented by a union carries with it very real implications. Manufacturers should understand the root causes of union organizing, such as understanding that unions, in a very basic sense, are a means of communication. Thus, workers may turn to a union as a means for "having a voice" on a range of issues related to wages, hours, and working conditions, such as pandemic response and social justice. Irrespective of the rise in organizing, manufacturers may wish to create and develop avenues for open, effective and legal communication with their workers. The rise in organizing could be signaling that, for many, such measures are either absent or ineffective.

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## **FOOTNOTES**

<sup>[1]</sup> The PRO Act was passed in the U.S. House on March 9, 2021. President Biden said that he would sign the PRO Act into law if it passed in the U.S. Senate.

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