

Beltway Buzz, January 20, 2023

Article By:

James J. Plunkett

Union Membership Decreases. The percentage of workers who are union members dropped to 10.1 percent in 2022 from 10.3 percent in 2021, according to data released this week by the [U.S. Bureau of Labor Statistics](#) (BLS). In the private sector, the unionization rate fell to 6 percent last year from 6.1 percent in 2021. According to BLS:

The 2022 unionization rate (10.1 percent) is the lowest on record. In 1983, the first year where comparable union data are available, the union membership rate was 20.1 percent and there were 17.7 million union workers.

Thus, despite some splashy headlines and a few high-profile examples, the great majority of employees continue to reject unionization. Expect labor unions and their allies in Washington, D.C., to spin these numbers as a reason to double down on efforts to tilt the labor policy field in favor of labor unions.

D.C. Circuit Issues Ruling on NLRB 2019 Election Regs. This week, the U.S. Court of Appeals for the District of Columbia Circuit [issued a decision](#) relating to five specific provisions of the National Labor Relations Board's (NLRB) 2019 changes to its regulations governing union elections. In a [May 2020 decision](#), the U.S. District Court for the District of Columbia (in an opinion by then-judge Ketanji Brown Jackson) invalidated the five provisions as contrary to the Administrative Procedure Act because the NLRB did not seek public comment on the changes. (The Board argued that the changes were procedural, not substantive, in nature and that public comment was not necessary.) In this week's decision, the D.C. Circuit agreed that the district court was correct in invalidating three provisions: "the rules regarding the eligible employee-voters list, the timeline for certification of election results, and election-observer eligibility." However, the D.C. Circuit ruled that the two remaining provisions—regarding pre-election litigation of voter eligibility and the timing of the date of an election—are "'internal house-keeping' rules" that are exempt from notice and comment requirements.

House Republicans Seek Information From Federal Agencies. Representative Virginia Foxx (R-NC) is wasting no time exercising her authority as chair of the House Committee on Education and the Workforce. Late last week, Foxx resent to federal labor agencies a [series of previous information requests](#) that were answered while Republicans were in the House minority in 2021 and 2022. The requests include the following:

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- Letters to Secretary of Labor Martin Walsh regarding, among other issues, his involvement in various high-profile labor disputes; documents and communications relating to the development and implementation of the Occupational Safety and Health Administration's (OSHA) 2021 vaccine-or-test emergency temporary standard; and information surrounding the [February 2022 report](#) offered by the Task Force on Worker Organizing and Empowerment, such as attendance lists, meeting minutes, rejected policy proposals, involvement of outside organizations.
 - A letter to National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo regarding her [April 2022 memorandum](#) relating to employer speech. Specifically, the letter asks for information about the possible involvement of outside organizations, other agencies, and the White House, in the drafting of the memo.
 - A letter to NLRB Chair Lauren McFerran inquiring about potential conflicts of interest that Member Gwynne Wilcox and Member David Prouty may have regarding the Board's joint employer policy.

The *Buzz* suspects that these letters are just the first examples of what will be at least two years of aggressive agency oversight by the committee.

DHS Announces Deferred Action for Workers Involved in Labor Investigations. Late last week, the U.S. Department of Homeland Security (DHS) [announced](#) a new streamlined and expedited process for undocumented workers seeking deferred action as a result of their cooperation in investigations into potential violations of labor laws. The new policy further implements provisions of DHS's [October 2021 memorandum](#), "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual." According to the announcement, DHS will "provid[e] new guidance to labor agencies regarding processes to seek deferred action for certain workers" and will create a "single intake point for deferred action requests from noncitizen workers." As such, "[t]he centralized intake process will allow DHS to efficiently review these time-sensitive requests, provide additional security to eligible workers on a case-by-case basis, and more robustly support the mission of labor agencies."

OFCCP Proposes Changes to Complaint Intake Process. This week, the Office of Federal Contract Compliance Programs (OFCCP) [proposed changes](#) to its complaint intake process. OFCCP is proposing to add a preliminary step to evaluate the timeliness of allegations, whether it has jurisdiction over a matter, and how the matter should proceed. If OFCCP determines that an investigation is warranted, it will direct the complainant to fill out a more detailed form. According to the proposal, this two-step procedure "will improve the efficiency of [OFCCP's] complaint intake process." Comments are due by March 20, 2023.

Days of Hayes. President Rutherford Birchard Hayes passed away this week (January 17) in 1893. Hayes, the nineteenth president, was a former congressman and three-time governor of Ohio before he ran for president in 1876. His election against Democrat Samuel Tilden, the governor of New York, was mired in controversy and allegations of voter intimidation, resulting in disputed Electoral College votes. This led to the creation of an electoral commission, which eventually swung the Electoral College votes to Hayes by a margin of 185–184. The process earned Hayes the nickname "Rutherfraud" from Democrats. While Hayes hasn't been the subject of popular movies or Broadway shows, he was a very interesting president:

- Although twelve presidents who served before him were lawyers, Hayes was the first president to graduate from law school.
- At almost forty years old, with no previous military experience, Hayes volunteered to fight for the Union during the Civil War. He was wounded several times, and served in the same infantry unit as fellow future president, William McKinley.
- In 1879, Hayes signed the “[Lockwood Bill](#),” which permitted women to practice law in federal court.
- Hayes was the first president to make a trip to the West Coast and the first president to have both a telephone and a typewriter in the White House.

Hayes is responsible for the first Easter Egg Roll on the White House lawn, a tradition that will celebrate its [145th anniversary](#) in just a few weeks.

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