HUSCH BLACKWELL

How to Build Employee Trust and Minimize Labor Unrest

By Thomas Godar, Rufino Gaytán III and Adam Doerr

Many in the press dubbed October 2021 as "Striketober." It was reported that roughly 25,000 workers had walked off their jobs and joined picket lines, and many journalists predicted that we had entered a new era of worker unrest, resulting in job actions.

This prediction is not yet borne out by the numbers. As much as anything, the Striketober headlines were driven by a handful of household names that were the subject of strikes or threatened strikes. Employees at Nabisco, John Deere, and Kellogg Co. were all on the picket line.

Striketober was further intensified by the threat of strikes.

A work stoppage of 32,000 healthcare workers in California was dodged with a last-minute settlement with Kaiser Permanente.

Additionally, 60,000 TV and film crew employees represented by the International Alliance of Theatrical Stage Employees also threatened to shut down Hollywood production. That strike, too, was averted.

Indeed, the use of strikes in 2021 as a bargaining tool was more in line with the significantly diminished use of strikes over the last several decades as compared with the strike activity in the 1950s, '60s, and even into the '70s.

Many mark the firing of striking Professional Air Traffic Controllers Organization workers by President Ronald Reagan in 1981 as the turning point for diminished strike activity.

For instance, in 1980 and 1981, there were between 21 million and 17 million idle days because of strikes, but in 2019, that number had fallen to only 3.2 million idle days.

In 2020, the Bureau of Labor Statistics recorded less than one million idle days. While that number jumped conspicuously in 2021 to 1.5 million idle days, last year's strike-related idle days were far below the historical pattern alluded to above.

While the concern that strikes will soon become the preferred weapon of unions in the bargaining or organizing context is likely overblown, worker actions could present as a real and substantial threat to business operations.

There are several reasons for this concern.

The COVID-19 pandemic has affected the entire American economy, but it has impacted some sectors, like healthcare, retail, and hospitality, more than others.

In the healthcare arena, for instance, the pandemic has introduced protocols and policies not welcomed by all staff, and hospitals straining with full occupancy have created unprecedented demands not only on the direct healthcare providers, but also on employees performing support tasks behind the scenes, such as maintenance, food service, and sanitation. For many hospitals, clinics, nursing homes and other healthcare providers, the pandemic highlighted the lack of personal protective equipment, and the inconsistent adoption or application of safety measures, overlong shifts and inadequate staffing—at least that is what unions are claiming. Unions claim these pressures jeopardize employee and patient/resident safety. As a result, the issues at the bargaining table healthcare professionals are not tied exclusively—and in many cases, even primarily—to wages, but to these broader issues of safety and staffing.

Also, unions have relied on research suggesting that healthcare facilities, including nursing homes and hospitals, that have had union representation had better patient outcomes and lower COVID-19 mortality rates.

The “Great Resignation,” a trend that saw the voluntary resignation of millions of employees beginning in 2021, has also put pressure on a variety of businesses, further fueling demands for increased productivity and hours for many employees. Staffing pressures and wages have fueled campaigns at Amazon—where a homegrown union won the first victory at a distribution center—and is fueling hundreds of union campaigns at Starbucks locations nationwide based on a string of victories in 2022.

Unlike manufacturing jobs, the hardest-hit sectors of the economy provide services and products that are immediate and local, and organizations cannot merely enter contracts with others around the country or the world to provide the necessary services to keep these operations up and running. These jobs cannot be offshored.

Further, as older workers move toward retirement, younger workers are taking the reins of leadership, and they may have a greater willingness to challenge institutional norms.

Polls gauging public opinion about unions are at a high-water mark, with approval at about 68% — the highest level since 1965, after declining to 48% in 2009.

Couple these issues with the Biden administration fulfilling its pledge to be the most union-friendly administration ever, and employees across multiple industries may be emboldened, even to the point of striking, if demands are not met. The Administration is seemingly fulfilling that promise with an avalanche of union-friendly opinions from the NLRB General Counsel and the union-leaning Board. These employee- and union-friendly decisions limit responsive weapons for management in strike situations.

It is important to note that the likelihood of organizations facing union organizing campaigns ups the ante on labor unrest, as strikes are often a result of failed first efforts at bargaining a new agreement.

On the horizon is a perfect storm for those businesses seeking to remain union-free or hoping to continue the status quo of positive relationships with existing unions. And what are the early results? We already see some evidence from the healthcare industry and other sectors that these pressures may lead to strike and picketing activity. The ILR School at Cornell University currently records 450 strikes and 614 labor protests in the past year.

According to an article published by NPR in January 2021, the organizing director for the Service Employees International Union-United Healthcare Workers West in California, Cass Gualvez, reported receiving urgent requests from workers to explore unionization at a level never experienced in her previous 20 years of work. In Chicago, the National Nurses United union takes a more aggressive approach in general to collective bargaining, and that approach will likely continue and even increase in 2022. This union has also aggressively pursued organizing of health care workers.

Likewise, the California Nurses Association, the union at the center of the threatened strike at Kaiser Permanente in October 2021, has historically advocated aggressively for nurses and others. The union's website highlights at least three informational picketing actions at three different healthcare providers in February.

In the historically union-averse state of North Carolina, nurses at Mission Hospital voted with 70% approval for union representation.

Becker's Hospital Review reported 14 healthcare industry strikes in 2021, including a 10-month nurses strike on the East Coast, resolved earlier this year. The manufacturing sector recorded 78 strikes in the past year, according to the ILR School tracker.

While Striketober may have been an overreaction to a few highly visible strikes and threats of strikes from others, there is a real battle for talent in an incredibly tight labor market, giving unions more leverage than they might have had historically. Organizing and strike activity in may be emblematic of the willingness of unions and their represented workers to use more aggressive tactics.

According to a McKinsey & Co. Inc. survey, published in May 2021, nearly a quarter of those nurses interviewed were looking to leave the profession. Other market data reports that 79% of people who quit their jobs feel undervalued. This creates great leverage for unions.

It can also encourage unions to promise relief to represented and unrepresented employees who are frustrated, fatigued, and drained by job demands. These demands may be tested by job actions such as strikes and slowdowns, picketing, and coordinated call-ins of absences.

Likewise, lower-paid paraprofessional employees (like those engaged in supporting hospital and nursing home services) may also have an abundance of opportunities to leave current employers to seek out jobs with more competitive wages and benefits as the entire marketplace adjusts to the reality of the Great Resignation and low unemployment, reported at just 3.8% in March.

An alternative for these employees may be to stay in the union job and demand greater wages or more control over working conditions, using the threat of strikes as leverage.

Of course, the lesson for employers seeking to maintain a good relationship with their workforces, whether unionized or not, remains the same. Well-trained supervisors must lead and mentor their employees.

While providing a competitive wage and benefit package is a given, employers must encourage a culture of respect, inclusion, stability, and transparency. The core of strikes, whether in the healthcare industry or elsewhere, is distrust.

Employees and unions that do not believe that the employer actually hears and understands their issues, or that the employer is offering wages and working conditions that meet deeply felt needs, are more likely to conclude they must force better working conditions and wages through a job action, rather than through dialogue and bargaining.

The antidote to most forms of labor strife is listening carefully and responding appropriately without the spin.

Employers can help to maintain or restore trust by supporting employee career development with competitive income and benefits; exhibiting a willingness to encourage and accept employee input; and offering clear messages of what is and is not available.

An employer that builds a relationship with its employees founded on trust will significantly reduce the risk of a strike or other job actions.

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