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Nonprofit-Sector Labor Relations: A Crossroads

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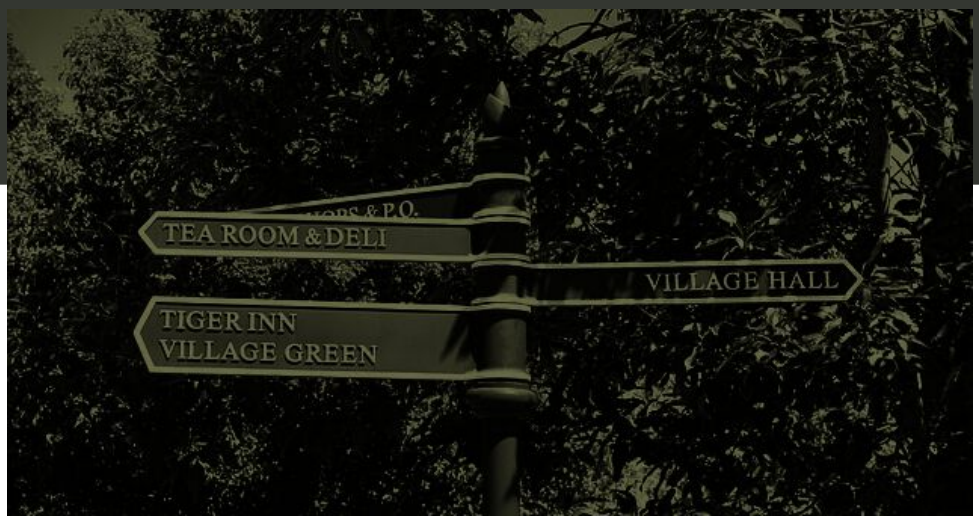

In *Cinemas Greatest Scenes: When Rocky runs up the steps of the Philadelphia Museum of Art* (September 14, 2022) *rear-view-mirror.com,* Robert Horwat discusses how he "still gets goosebumps" when "Rocky raises his arms in triumph and punches the air. Not bad," the Australian arts and culture blogger adds, "for a film approaching fifty years old."

When I was growing up in Philadelphia, our spectacular art museum was already a landmark and civic icon. But the 1976 film Rocky took it to a new level. Indeed, the "… 72 stone steps leading up to the entrance of the Philadelphia Museum of Art have become known around the world as the 'Rocky Steps.'" Tourists flock there and often "… mimic Rocky's famous climb, a metaphor for an underdog or an everyman rising to a challenge." A bronze Rocky statue at the bottom of the steps is "a popular photo opportunity for visitors."

You can't buy that kind of publicity and good will for a major cultural institution dating back to the 1876 Centennial. Or for a city regularly maligned by jokes like the one from a famous native: "Here lies W.C. Fields. I would rather be living in Philadelphia."

And you can't tarnish it more thoroughly than the ugly news stories and photos for the past two years about the labor struggles at the storied arts institution. See, for instance, *Workers at the Philadelphia Museum of Art have authorized a strike. What does that mean?* (Updated September 2, 2022) Stephan Salisbury, *The Philadelphia Inquirer* ["Staffers at the Philadelphia Museum of Art have gone 22 months without a contract. AFSCME members from around the country, in Philadelphia for their convention, came to help rally on behalf of the workers on the steps of the Philadelphia Museum of Art on July 13, 2022."]

The strike began on Monday, September 26, 2022. *Philadelphia Museum of Art workers will go on strike Monday, union says* (September 23, 2022) Robert Moran, *The Philadelphia Inquirer*. And it's still going on. *Art Museum workers continue strike into second week* (October 3, 2022) Peter Crimmins, *whyy.org*.

Important Choices

As we discussed recently in *Nonprofits & Unions: A Fall 2022 Update* (September 22, 2022), there has been a dramatic spurt in the past few years in union organizing in our sector.

This is all the more remarkable when viewed against the long history of the American labor movement that dates back to the earliest Colonial days. See our earlier post, *Nonprofits & The Pandemic* (November 19, 2020) ["In 1636, a group of fishermen working on an island off the coast of the Massachusetts Bay Colony went on strike. It was reportedly the first collective bargaining action in the New World."] And it was similarly important when considered against the general absence of interest or effort in union organizing in the philanthropy context over hundreds of years. (An exception has been the union activity in large healthcare and higher education institutions.)

This new spate of labor organizing in our community, though, has not proceeded smoothly in many cases. Among the many and varied organizations that have been tied up in prolonged and rancorous labor disputes are some of the nation's most prominent arts institutions. See *Strike at Philadelphia Museum of Art Is Window Into Broader Unrest* (September 29, 2022) John Hurdle, *The New York Times* [PMA strike is a "visible sign of the growing labor movement in museums across the nation."]

The story of the nascent labor movement in the U.S. nonprofit sector is yet to be written. It can be a tale of taking the high road, exemplifying the best principles of philanthropy and the "moral imperative" of honoring "workers' rights and dignity" as well as complying with both the letter and spirit of the law.

Or it can be a sorry and unnecessary duplication of the type of strife so frequently seen in the for-profit world.

We're at a crossroads.

Historical Context

By way of a brief recap of the historical context and development of applicable law, we start with that remarkable 1636 fishermens' strike. No one's sure how that turned out, but "… most instances of labor unrest during the colonial period were temporary and isolated, and rarely resulted in the formation of permanent groups of laborers for negotiation purposes. Notably, though, "… strikes were not typically considered illegal."

Later, when the Industrial Revolution got into full swing, there was a more contentious era as greater concentrations of laborers in major metropolitan areas created strife and competition. The "legality of labor combinations in America" became "uncertain"; there were indictments and criminal prosecutions. That changed in what has sometimes been called the Magna Carta of the labor movement, *Commonwealth v. Hunt* (1842). There, the Massachusetts Supreme Judicial Court decriminalized union organizing, ruling that "…labor combinations were legal provided that they were

organized for a legal purpose and used legal means to achieve their goals."

The formidable Sherman Antitrust Act of 1890 could have been an obstacle to labor activities, but in 1914, federal lawmakers made clear in the Clayton Act that there was a safe-harbor antitrust exception for union organizing.

It was President Franklin D. Roosevelt's New Deal that brought the legislation that ushered in the modern era of labor organizing. The landmark National Labor Relations Act of 1935 (NLRA) "is a foundational statute of United States labor law that guarantees the right of private sector employees to organize into trade unions, engage in collective bargaining, and take collective action such as strikes. Central to the act was a ban on company unions."

"The National Labor Relations Act seeks to correct the "inequality of bargaining power" between employers and employees by promoting collective bargaining between trade unions and employers. The law established the National Labor Relations Board to prosecute violations of labor law and to oversee the process by which employees decide whether to be represented by a labor organization. It also established various rules concerning collective bargaining and defined a series of banned unfair labor practices, including interference with the formation or organization of labor unions by employers."

But over a decade later, there was conservative push back with the Taft-Hartley Act of 1947, which amended the NLRA in significant ways.

Notably, the NLRA, Taft-Hartley, and their progeny apply across-the-board unless there are express exclusions. This body of law covers the for-profit sector as well as the nonprofit sector. On the other hand, government employees were expressly *omitted* from its scope. It wasn't until the enactment of specific new federal legislation in the 1960s and 1970s authorizing public-sector unions that those labor organizations flourished – albeit on a trajectory separate from the NLRA line of authority.

The heyday of the American labor movement was the 1950s. (Of course, this surge occurred in the business sector; the nonprofit sector slept through all of this activity.)

This high point was followed by turbulence and decline as anti-union forces steadily gained political influence and power. A key development was President Ronald Reagan's breaking of the airline-pilots union in 1981. See *The rise and fall of US labor unions, and why they still matter* (March 27, 2015) Jake Rosenfeld, University of Washington, Associate Professor, *The Conversation.*

While there have been periods of respite as the White House shifted back and forth from party to party, the bottom line is that the National Labor Relations Act of 1935, diluted by the Taft-Hartley Act of 1947, has simply not been strong enough to withstand relentless political headwinds against it. See, for instance, the excellent insights of Emily Bazelon in *Why Are Workers Struggling? Because Labor Law is Broken* (February 19, 2020) *The New York Times.*

The most recent across-the-board resurgence in union activity has been helped enormously by (1) the counter-headwinds of the current Washington administration which is decidedly pro-union and (2) a rising dissatisfaction by workers with the status quo of enormous economic inequality.

The Spark of Unrest

And that dissatisfaction is – not surprisingly – what may have been the critical spark a few years ago to the sudden burst of union sentiment among workers at the nation's major cultural institutions.

On May 31, 2019, a prominent arts publication reported on an explosive document making the rounds of the museum world. See *How Much Do Museum Employees Actually Make? A Tell-All Google Spreadsheet Is Now Making the Rounds* (May 31, 2019) Eileen Kinsella, *artnet.com*.

"Museum staffers from around the U.S. are publicly, but anonymously, posting their annual salaries on a Google spreadsheet that reportedly began circulating this morning. 'Art/Museum Salary Transparency 2019' is a shared document to which users can add details about their employment terms and pay."

By the time the story was online and going viral, that spreadsheet had "already drawn data reportedly from [...about 100...] current and former employees of some of the largest museums in the country, including the Metropolitan Museum of Art, the Museum of Modern Art, the Harvard Art Museums, the Whitney Museum of American Art, the Museum of Fine Arts, Boston, and the Philadelphia Museum of Art." The story included a link inviting additional entries.

A different publication later confirmed that this spreadsheet eventually included more than 3,000 entries and was a "galvanizing moment." Adam Rizzo, the key union organizer at the Philadelphia Museum of Art verified that the "... workers started having informal conversations, meeting up at each other's houses and falling into discussion about working conditions. 'We kind of realized at a certain point that we were actually talking about unionizing.'"

Long List of Issues

In *Nonprofit Workers Unionize – Good or Bad for Charity?* (April 1, 2021), *Inside Charity,* Dr. Kathleen Robinson describes the laundry list of "issues frequently raised" by nonprofit workers "seeking to join a union." The pay-equity issue is just the tip of the iceberg.

Among the grievances often included are:

- "Lack of a voice in determining the organization's directions and employees' work roles
- Lack of professional advancement opportunities
- Leaders' expectations that employees work 45-60 hours every week without just compensation
- Non-transparency of and involvement in governance and leadership decision-making
- Leaders' refusal to cut ties with racist and sexist donors
- Non-transparent, inconsistent, and inappropriate performance appraisals procedures"

(The title of the article is somewhat tongue-in-cheek; Dr. Robinson articulates a clear need for labor organizing in the nonprofit sector.)

By the way, the salary-transparency issue has been steadily gaining momentum. Just last week, for example, Governor Gavin Newsom of California signed Senate Bill 1162 that requires specification of pay ranges in job listings effective January 1, 2023. Other jurisdictions around the nation already have enacted (or are considering enacting) similar new laws.

Conclusion

In the next post, we'll conclude this Fall 2022 Update series on nonprofits and unions with a reference guide to resources explaining the rights and responsibilities of employers, workers, and labor organizations under federal law.

And we'll discuss the growing body of opinion urging taking the high road in philanthropy labor-management relations in the upcoming weeks, months, and years.

– Linda J. Rosenthal, J.D., FPLG Information & Research Director