

Nonprofit-Sector Labor Relations: The Path Forward

10.11.22 | Linda J. Rosenthal, JD



As we continue our Fall Update 2022 on [nonprofits and unions](#), the latest headlines from [the Rocky Steps](#) at the beleaguered Philadelphia Museum of Art are getting worse by the day. See, for example: [Strike by Philadelphia Museum of Art workers shows woes of 'prestige' jobs](#) (October 9, 2022) Laura Benshoff, *NPR/witf.org*.

[Update, 10.20.22: Over last weekend, the strike settled.]

See also [Beleaguered Philadelphia Museum of Art Disables Social Media Comments](#) (October 10, 2022) Elaine Velie, *hyperallergenic.com*. The renowned cultural icon “... has feigned normalcy on social media. Its feeds remind visitors that the museum is still open, highlight notable works in the collection, and advertise its upcoming Matisse show” scheduled to open on October 20th. But supporters in this traditionally strong union town are outraged, not least by the suggestion that they cross picket lines to attend the Matisse show. “[U]sers have not allowed the museum to ignore the workers picketing outside its doors, and hundreds of critical opinions overran PMA’s comment sections before the museum shut them down.”]

In last week’s [Nonprofit-Sector Labor Relations: A Crossroads](#) (October 6, 2022), we mentioned that 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
- An overview of the “growing body of opinion urging taking the high road in philanthropy labor-management relations in the upcoming weeks, months, and years.”

Each is timely and urgently needed.

Labor Law: The Rules

The website of the National Labor Relations Board includes a useful summary of federal labor law, as currently interpreted and applied. See [Employer/Union Rights and Obligations](#).

“The National Labor Relations Act forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or from working together to improve terms and conditions of employment, or refraining from any such activity. Similarly, labor organizations may not restrain or coerce employees in the exercise of these rights.”

This overview provides an excellently succinct description of examples of the types of both “employer conduct that violates the law” and “labor organization conduct that violates the law.”

Prohibited employer conduct includes:

- “Threatening employees with loss of jobs or benefits if they join or vote for a union or engage in protected concerted activity.
- Threatening to close the plant if employees select a union to represent them.
- Questioning employees about their union sympathies or activities in circumstances that tend to interfere with, restrain or coerce employees in the exercise of their rights under the Act.
- Promising benefits to employees to discourage their union support.
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they engaged in union or protected concerted activity.
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they filed unfair labor practice charges or participated in an investigation conducted by NLRB.”

Prohibited labor organization conduct includes:

- “Threats to employees that they will lose their jobs unless they support the union.
- Seeking the suspension, discharge or other punishment of an employee for not being a union member even if the employee has paid or offered to pay a lawful initiation fee and periodic fees thereafter.
- Refusing to process a grievance because an employee has criticized union officials or because an employee is not a member of the union in states where union security clauses are not permitted.
- Fining employees who have validly resigned from the union for engaging in protected concerted activities following their resignation or for crossing an unlawful picket line.
- Engaging in picket line misconduct, such as threatening, assaulting, or barring non-strikers from the employer’s premises.
- Striking over issues unrelated to employment terms and conditions or coercively enmeshing neutrals into a labor dispute.”

That website section also discusses the rules that govern collective bargaining for a contract. Once workers vote to have a union, “the employer and union are required to meet at reasonable times to bargain in good faith about wages, hours, vacation time, insurance, safety practices and other

mandatory subjects.” Note that it’s “... an unfair labor practice for either party to refuse to bargain collectively with the other, but parties are not compelled to reach agreement or make concessions.”

Of course, the body of law that has developed about what constitutes good-faith bargaining is huge and well beyond the scope of this post. This happens to be the current stage of the labor-relations conflict at the Philadelphia Museum of Art as with a number of other arts organizations nationwide. 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 United States Department of Labor also has a new and comprehensive informational resource: see [Know Your Rights Toolkit](#). The agency created the Toolkit “to inform workers about their right to organize, their right to collective action, and their right to form a union....” which is the declared legislative purpose of the landmark National Labor Relations Act of 1935. The 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.”

Going Forward

In [Nonprofits: Unions & The Pandemic](#) (November 19, 2020), we noted that “experts and observers from the nonprofit sector have wondered for more than a little while about the historical absence of the labor movement in rank-and-file organizations,” citing, for instance: [Nonprofit Groups Turn to Unions to Organize Workers and Collaborate on Common Causes](#) (November 21, 2002) Jennifer C. Berkshire, *The Chronicle of Philanthropy* (paywall); and [Unions and the Nonprofit Workforce: A Few Considerations](#) (August 8, 2013) Rick Cohen, *The Nonprofit Quarterly* [“There are few topics in the nonprofit sector likely to create as much discomfort as the idea that nonprofits should be unionized.”].

Now that nonprofit-sector workers have substantially increased their union-organizing activity, more than a few commentators are wondering why this process has not proceeded smoothly. After all, the nonprofit sector would seem to be a fertile ground for calm and thoughtful discussion about how, ethically, to approach labor unions in the nonprofit workplace.

For instance, in an article cited in last week’s post – see [Nonprofit Workers Unionize – Good or Bad for Charity?](#) (April 1, 2021), *Inside Charity*, Dr. Kathleen Battle not only supplied a long list of workplace issues ripe for consideration in labor-management discussions, but she also advocated for an approach that avoids viewing “unionizing nonprofits” as a “win-lose proposition.”

A constructive approach, she writes, “may well help the sector change” much more than “acceptable compensation levels: ... It may positively affect and change leaders’ and governors’ attitudes and practices, and decentralize governance decision making. It may change the strategic directions of some nonprofits. It may affect which donations are accepted and which are not and why.”

In short, the “push to unionize may help leaders deal with issues they have put off for decades because of the fear of reprisal from their donors, community leaders and other influentials. It may help managers begin to bargain with employees in ways where workers’ voices can no longer be

dismissed. It may curb excessive discrimination, lack of diversity, lack of promotion from within, lack of benefits, lack of respect for workers' time and efforts, and restore more work-life balance for many nonprofit employees.”

For equally intriguing and important observations, see also a trio of more recent articles:

- [*The Future Is Organized: How Workers Are Reshaping the Nonprofit Sector*](#) (May 15, 2022)
Jessica Del Fiocco, *YNPN Twin Cities Blog*
- [*It's Time for Philanthropy to Support Nonprofit Union Drives*](#) (May 30, 2022) Allison
Celosia, communitycentricfundraising.org
- [*Nonprofits Need Unions, Too*](#) (July 25, 2022) Hayley Brown and Katie Barrows,
progressive.org

Conclusion

Peaceful and constructive cooperation between management and labor in nonprofit union-organizing drives opens up a necessary dialogue about on-the-job issues that “... can make ... organizations better by creating an environment where talented, passionate employees want to stay and work.”

In an era of unprecedented labor-shortage challenges, this is perhaps one of the best reason for taking the high road.

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