



**2023**

**LABOR ACTIVITY  
IN TRANSPORTATION  
& LOGISTICS**

ANNUAL REPORT  
JANUARY - DECEMBER 2022

# ABOUT THIS REPORT

The 2023 Labor Activity in Transportation & Logistics Annual Report contains the following:



An analysis of national, regional, and state petitions and elections, including those for Certification of Representation (RC petitions), Decertification (RD petitions), and Employer Petitions (RM petitions), as reported by the National Labor Relations Board (NLRB) during 2021 and 2022<sup>1,2</sup>

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The Labor Law/Activity Update, which includes articles written by labor experts about relevant and timely labor issues impacting employers and the workplace

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<sup>1</sup> See Appendix C for detailed definitions of the types of petitions and elections.

<sup>2</sup> NLRB election data describes dynamic case activity that is subject to revision and corrections during the year, and all data should be interpreted with that understanding.

Dear Industry Colleagues,

Over the last 12 months, the Transportation industry has faced a variety of challenges related to employee relations. With a continued push for talent retention, adjustment to changing laws, and consideration of how new work styles are affecting workplace culture, 2022 was a year of reflection and reevaluation of our priorities and our approach.

The year ahead looks to continue these challenges and more – including the beginnings of pay transparency, new leave requirements, and even the exploration of a four-day workweek.

We're also seeing a dramatic increase in the number of union organizing attempts, particularly among younger workers. Traditional campaign messaging has shifted to include far broader demands than wages and working conditions. Add to that the rise of "Independent Unions" ... and preparing for an organizing attempt will now become a necessity in 2023.

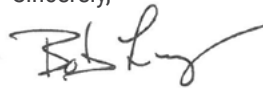
Other important developments you should be watching:

- A push to reinstate the Joy Silk doctrine to make it easier for unions to be elected without an election. NLRB's Abruzzo released a memo (GC 21-04) stating she wants to revive the Joy Silk doctrine for bargaining orders. Abruzzo wants Joy Silk reinstated because it requires employers to demonstrate a good reason as to why the union shouldn't be recognized when a majority of union authorization cards are submitted.
- Possible adoption by the NLRB of stricter standards for independent contractors. The NLRB is considering a reversal of SuperShuttle DFW, using The Atlanta Opera, Inc. case to return to the prior standard. The effect of that would be to make it more likely for workers to be found to be employees rather than independent contractors. If this happens, it could mean thousands of independent contractors could be considered employees under the National Labor Relations Act and thus eligible to be unionized.
- Expansion of Board remedies to include consequential damages. Based on the Thryv, Inc. decision (12/13/2022), in addition to traditional make-whole remedies, employers may also be on the hook for all direct or foreseeable economic consequences that arise from a violation of labor laws.
- Return of micro units and fractured workplaces. In the wake of the return to 2011's Specialty Healthcare standard, expect the NLRB to allow unions to carve out smaller groups of employees within a distribution center, production line, plant, or facility, which could result in employers having multiple contracts with different bargaining units all under the same roof. This will not only be disruptive but very costly for employers.

I think John Ring, former member of the NLRB, recently said it best about what we can expect in 2023, "It's going to be tough sledding ahead." Expect a wave of pro-labor NLRB rulings, rulemaking, and overturning of long-established precedent as the Democratic Board majority rolls into the New Year. Don't forget General Counsel Abruzzo who will continue to push the Board to remove employer rights and make it easier for unions to organize.

In the enclosed Labor Activity in Transportation & Logistics report, you'll find the latest data on union organizing and membership across the nation, as well as three timely labor and employee relations articles. In continued partnership with NATERA, IRI Consultants will be there with you as the Transportation industry continues to adapt over the coming year. We look forward to supporting your organization in building the strongest workforce in any industry.

Sincerely,



Bob Long  
CEO  
IRI Consultants

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# EXECUTIVE SUMMARY

## NLRB REPRESENTATION (RC) PETITIONS & ELECTIONS

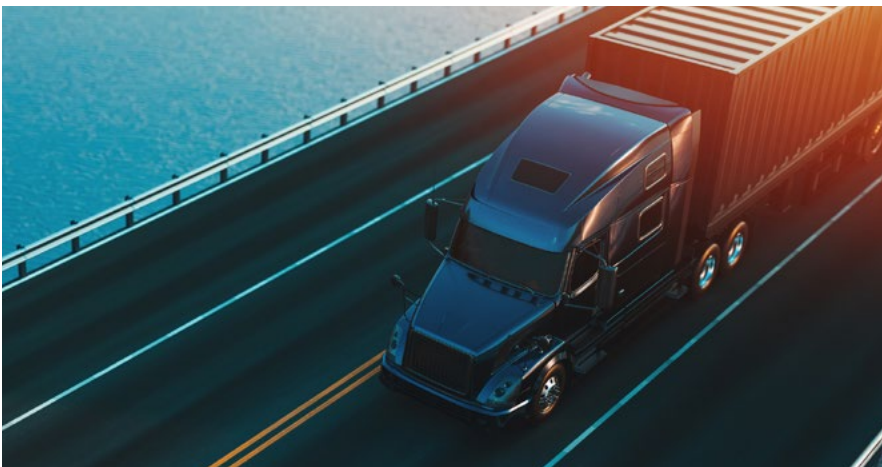
In 2022, there were 163 RC petitions filed in the transportation and warehousing industry compared to 130 RC petitions filed in 2021.

Unions were elected as a result of 75 percent of the 131 RC elections held in 2022. In 2021, unions were elected as a result of 83 percent of the 108 RC elections held.

The International Brotherhood of Teamsters (IBT) remains the most active union in the transportation industry, accounting for 40 percent of petitions filed and 39 percent of elections held in 2022. IBT won 84 percent of these elections – the same win rate as in 2021.

Regional differences in activity levels and active unions are highlighted in the Regional Summaries section of this report. The South Atlantic region had the most RC elections in 2022. Thirty-three elections were held, and unions won 73 percent of them.

The most strike activity in the past decade occurred in California – there were more than four times as many strikes there than in any other state. In 2022, 15 strikes were held in the transportation industry, idling 3,502 workers.



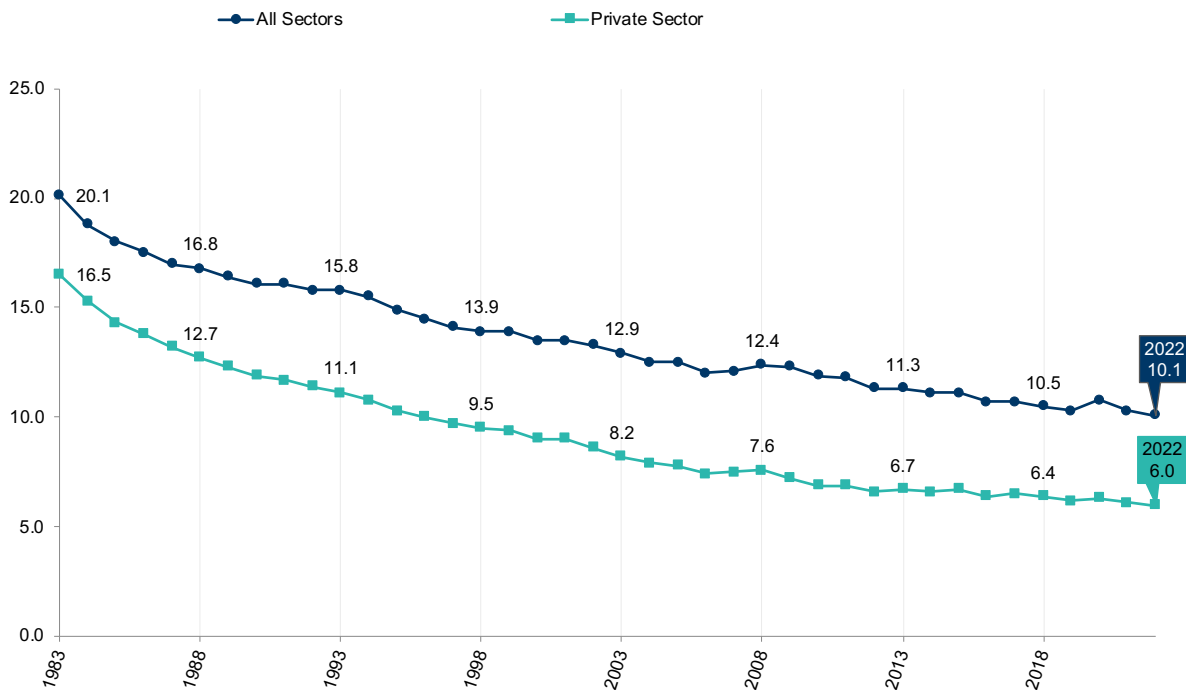
# UNION MEMBERSHIP NATIONWIDE

According to the Department of Labor (DOL) Bureau of Labor Statistics' Union Members – 2022 report, the percentage of unionized wage and salary employees decreased to 10.1 percent – the lowest on record. This number is down from 10.3 percent in 2021, although the number of wage and salary workers belonging to unions increased from 2021 to 2022.

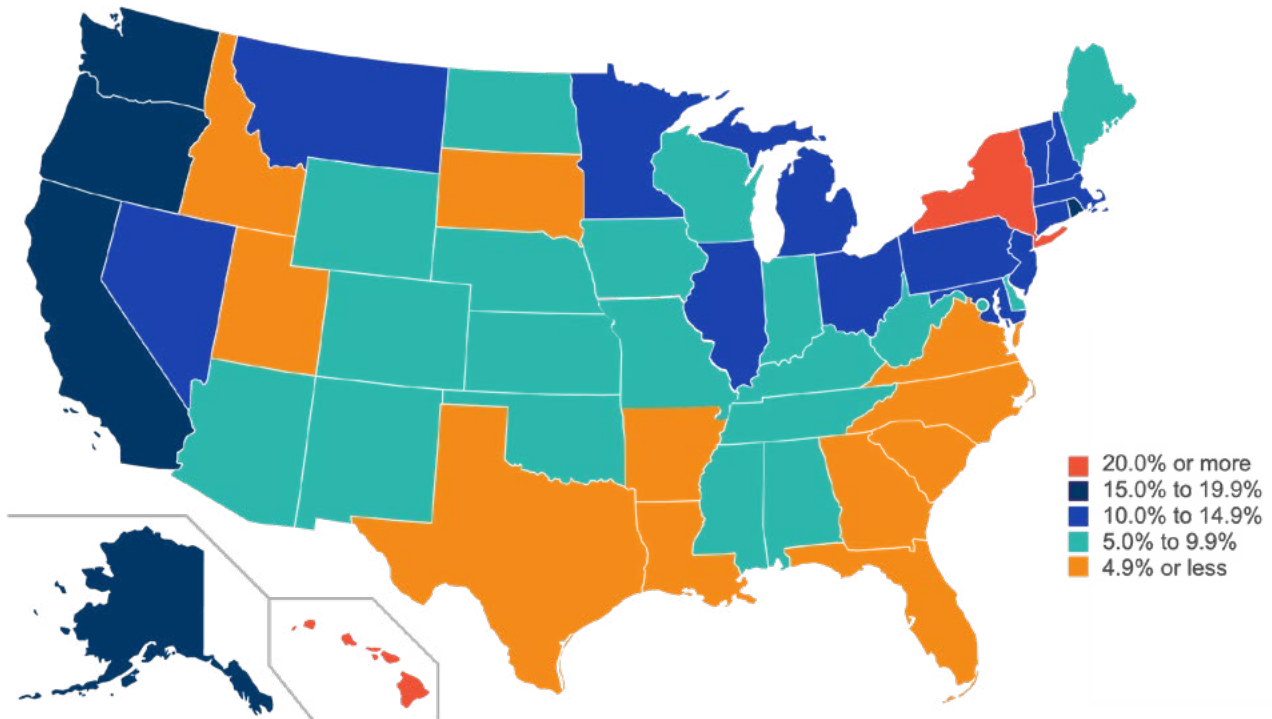
Data from the DOL report include the following highlights:

- The union membership rate was 10.1 percent in 2022 – down from 10.3 percent in 2021
- Public sector employees continue to be more than five times as likely to be members of unions as private sector employees (33.1 percent versus 6.0 percent, respectively)
- Black workers continued to have the highest union membership rate in 2022 (11.6 percent), followed by Whites (10.0 percent), Hispanics (8.8 percent), and Asians (8.3 percent)
- The highest union membership rate is among men aged 45 to 54 (12.7 percent), while the lowest is among women aged 16 to 24 (3.5 percent)
- Among states, Hawaii maintains the highest union membership rate (21.9 percent) and South Carolina has the lowest rate (1.7 percent)
- Union membership rates increased in 22 states and the District of Columbia, decreased in 24 states, and remained unchanged in 4 states

## UNION MEMBERSHIP RATE SUMMARY



## UNION MEMBERSHIP RATES BY STATE, 2022



# NLRB PETITION AND ELECTION RESULTS

This section includes the following:

## NATIONAL SUMMARIES

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- Comparison of transportation versus all non-transportation RC election results
- Comparison of transportation versus all non-transportation decertification (RD and RM) results
- Transportation industry – Overview of elections
- Transportation industry – Union successes in RC elections

## STATE SUMMARIES

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- Most active states – RC petitions filed and RC election results
- All states – RC petitions filed
- All states – RC election results

## UNION SUMMARIES

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- Most active unions – RC petitions filed
- Most active unions – RC elections held
- Union success rates – RC election results

## REGIONAL SUMMARIES

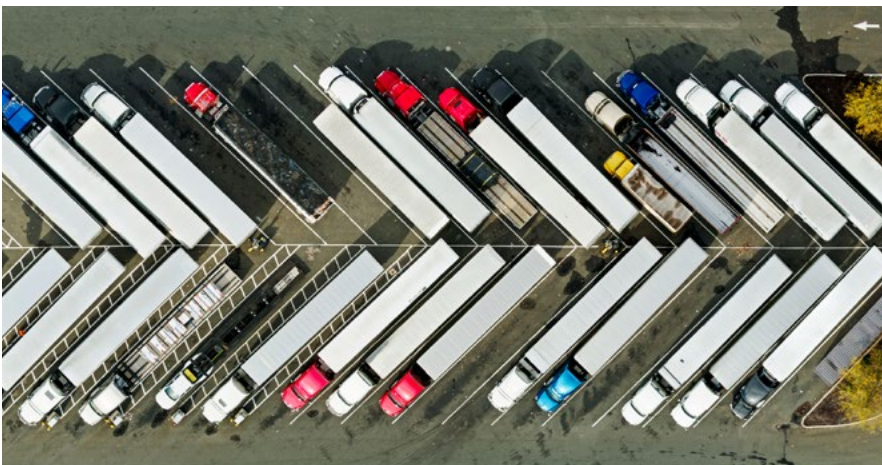
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- RC petitions, elections, and most active unions by geographic regions

## STRIKES IN TRANSPORTATION

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- Strikes held by year in transportation





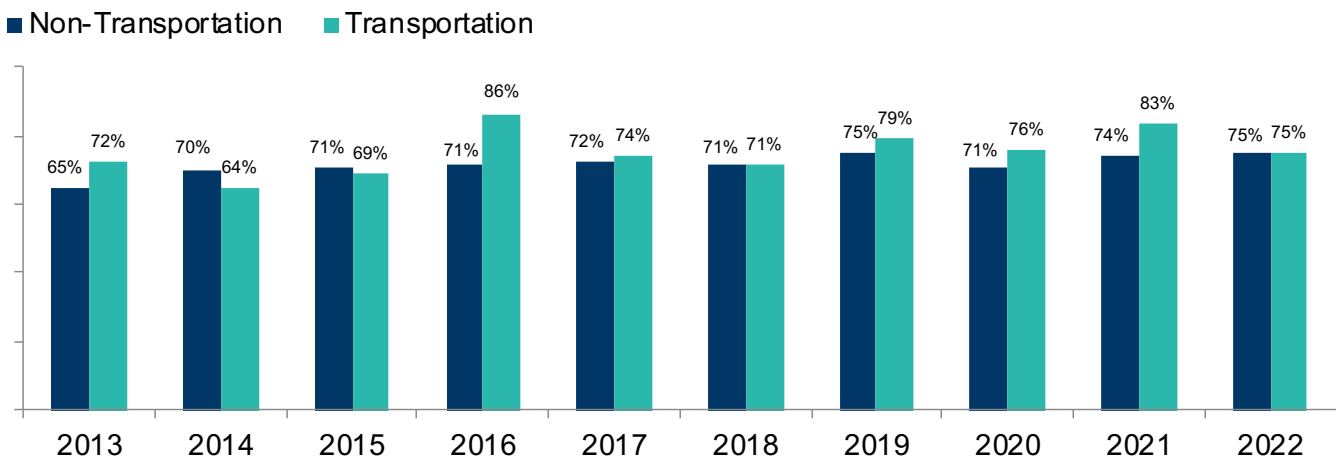
# NATIONAL SUMMARIES

The following information summarizes RC petition activity and elections in the transportation and warehousing industry held during the past decade as reported by the NLRB.

## UNION WINS IN REPRESENTATION (RC) ELECTIONS

In 2022, unions won 75 percent of all RC elections held in the transportation industry – the same as the win rate in all other industries. This was a slight drop from the 83 percent win rate in 2021.

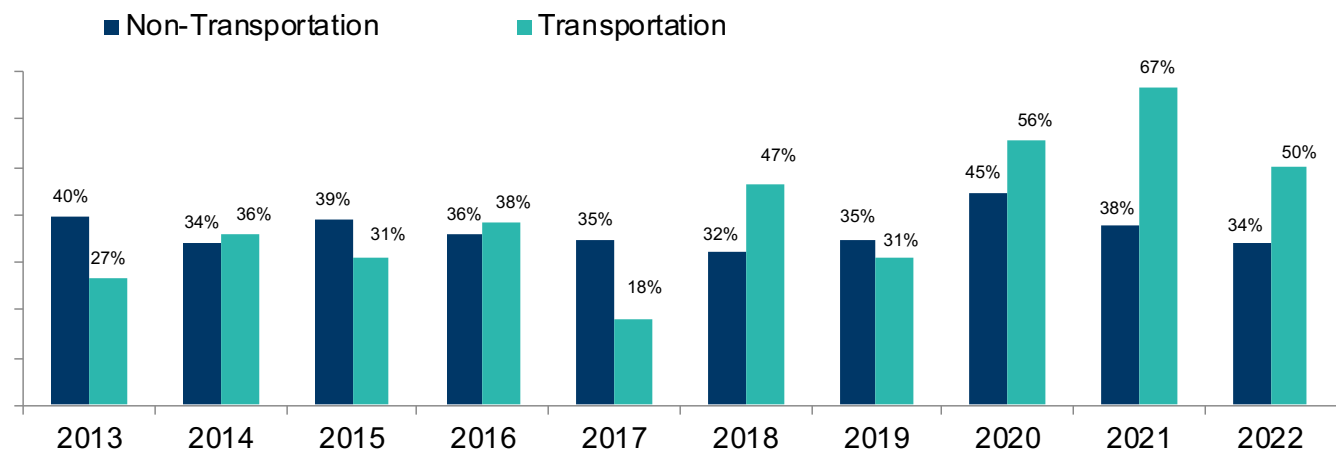
Transportation vs. Non-Transportation Industries (2013 – 2022)



## UNION WINS IN DECERTIFICATION (RD/RM) ELECTIONS

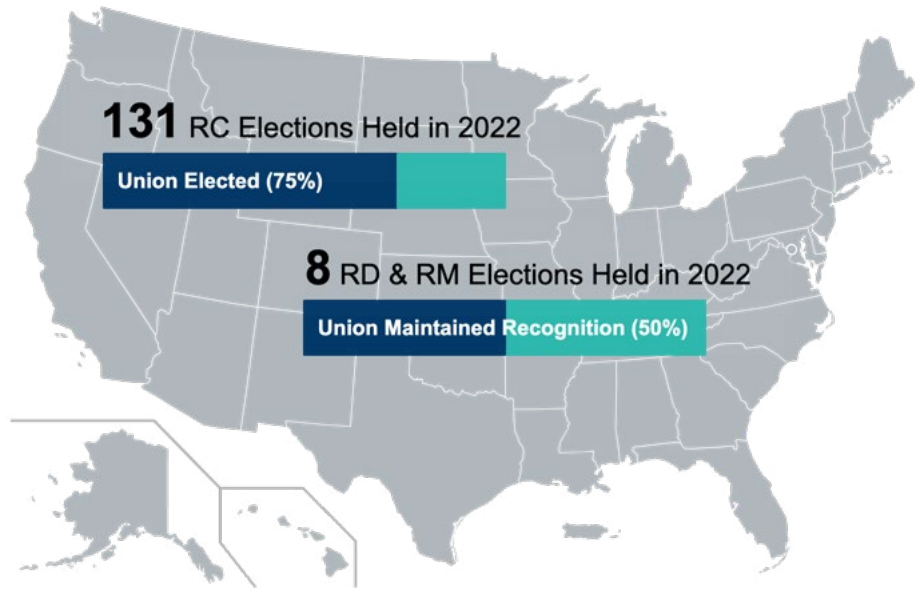
Unions maintained recognition in 50 percent of RD and RM elections held in the transportation industry in 2022.

Transportation vs. Non-Transportation Industries (2013 – 2022)



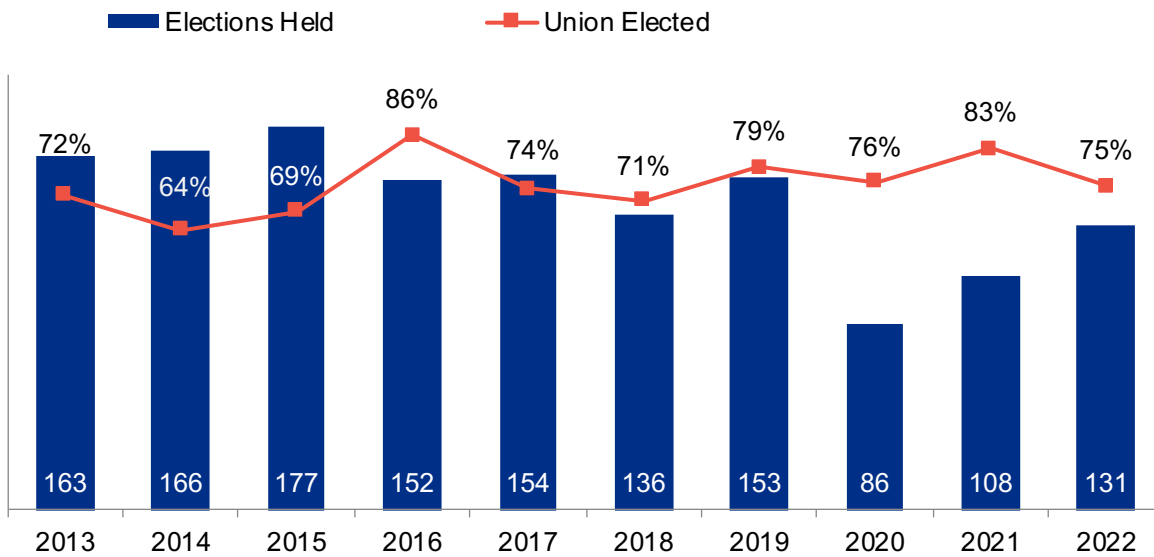
### TRANSPORTATION INDUSTRY – ELECTIONS OVERVIEW

In 2022, there were 131 RC elections held in the transportation industry and unions were elected as a result of 75 percent of them. During the same time period, 8 RD/RM elections were held and unions maintained recognition in just 50 percent.



### UNION SUCCESS IN REPRESENTATION (RC) ELECTIONS COMPARED TO NUMBER OF ELECTIONS

The chart below illustrates the number of RC elections held over the past decade, along with the percentage of elections won by unions. Unions were elected as a result of 75 percent of the 131 elections held in 2022.



# STATE SUMMARIES

This section provides an overview of state-level organizing activity in the transportation industry and is based on RC petitions filed and RC elections held. The data include all reported petitions and elections for 2021 and 2022 at the time of publication.

## ALL STATES – REPRESENTATION (RC) PETITIONS IN TRANSPORTATION

The table below details the number of RC petitions filed in each state in transportation during 2021 and 2022.

State	2021	2022	State	2021	2022	State	2021	2022
Alaska	-	1	Kentucky	-	3	Ohio	2	7
Arizona	1	2	Louisiana	-	1	Oregon	-	2
California	28	21	Maryland	5	24	Pennsylvania	10	9
Colorado	-	1	Massachusetts	4	6	Puerto Rico	1	3
Connecticut	9	11	Michigan	2	3	Rhode Island	1	-
Florida	6	3	Missouri	2	6	South Dakota	1	-
Georgia	1	6	Montana	-	1	Tennessee	1	2
Hawaii	2	1	Nebraska	-	1	Texas	7	7
Idaho	-	1	Nevada	4	-	Utah	1	-
Illinois	8	13	New Hampshire	-	1	Vermont	-	1
Indiana	2	2	New Jersey	8	3	Virginia	2	3
Iowa	3	-	New York	9	6	Washington	4	6
Kansas	2	1	North Carolina	2	4	Wisconsin	2	1
						<b>Total</b>	<b>130</b>	<b>163</b>

Note: States are not included in the table if no petitions were filed in 2021 or 2022.

## ALL STATES – REPRESENTATION (RC) ELECTION RESULTS IN TRANSPORTATION

The table below details the number of RC elections held in each state in transportation during 2021 and 2022.

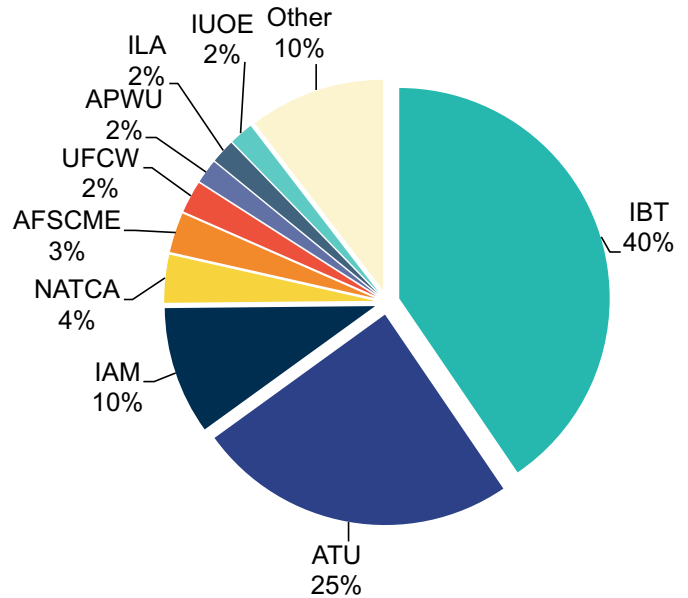
State	2021					2022				
	Total	Union Wins	% of Elections	Union Losses	% of Elections	Total	Union Wins	% of Elections	Union Losses	% of Elections
Alabama	1	0	0%	1	100%	-	-	-	-	-
Arizona	1	1	100%	-	-	2	1	50%	1	50%
California	24	20	83%	4	17%	18	13	72%	5	28%
Colorado	-	-	-	-	-	1	1	100%	0	0%
Connecticut	7	6	86%	1	14%	11	8	73%	3	27%
Florida	4	4	100%	0	0%	3	2	67%	1	33%
Georgia	1	0	0%	1	100%	5	3	60%	2	40%
Hawaii	5	4	80%	1	20%	1	1	100%	0	0%
Idaho	-	-	-	-	-	1	1	100%	0	0%
Illinois	6	5	83%	1	17%	10	6	60%	4	40%
Indiana	-	-	-	-	-	1	1	100%	0	0%
Iowa	2	1	50%	1	50%	1	1	100%	0	0%
Kansas	2	2	100%	0	0%	1	0	0%	1	100%
Kentucky	-	-	-	-	-	2	2	100%	0	0%
Maryland	5	4	80%	1	20%	20	14	70%	6	30%
Massachusetts	3	2	67%	1	33%	3	3	100%	0	0%
Michigan	1	1	100%	0	0%	3	2	67%	1	33%
Missouri	-	-	-	-	-	6	6	100%	0	0%
Montana	-	-	-	-	-	1	1	100%	0	0%
Nevada	3	2	67%	1	33%	-	-	-	-	-
New Hampshire	1	1	100%	0	0%	-	-	-	-	-
New Jersey	8	6	75%	2	25%	1	1	100%	0	0%
New York	8	7	88%	1	13%	1	1	100%	0	0%
North Carolina	2	2	100%	0	0%	3	3	100%	0	0%
Ohio	1	1	100%	0	0%	5	3	60%	2	40%
Oregon	-	-	-	-	-	2	1	50%	1	50%
Pennsylvania	8	8	100%	0	0%	11	8	73%	3	27%
Puerto Rico	-	-	-	-	-	2	2	100%	0	0%
Rhode Island	-	-	-	-	-	1	1	100%	0	0%
South Dakota	1	1	100%	0	0%	-	-	-	-	-
Tennessee	1	1	100%	0	0%	1	1	100%	0	0%
Texas	6	5	83%	1	17%	5	5	100%	0	0%
Utah	-	-	-	-	-	1	0	0%	1	100%
Vermont	-	-	-	-	-	1	1	100%	0	0%
Virginia	2	1	50%	1	50%	2	2	100%	0	0%
Washington	2	2	100%	0	0%	4	2	50%	2	50%
West Virginia	1	1	100%	0	0%	-	-	-	-	-
Wisconsin	2	2	100%	0	0%	1	1	100%	0	0%
<b>Total</b>	<b>108</b>	<b>90</b>	<b>83%</b>	<b>18</b>	<b>17%</b>	<b>131</b>	<b>98</b>	<b>75%</b>	<b>33</b>	<b>25%</b>

Note: States are not included in the table if no elections were held in 2021 or 2022.

# UNION SUMMARIES

## MOST ACTIVE UNIONS – REPRESENTATION (RC) PETITIONS IN TRANSPORTATION IN 2022

The International Brotherhood of Teamsters (IBT) is the most active union in the transportation industry. In 2022, IBT accounted for 40 percent of RC petitions filed. The next most active union, Amalgamated Transit Union (ATU), accounted for 25 percent of RC petitions filed.



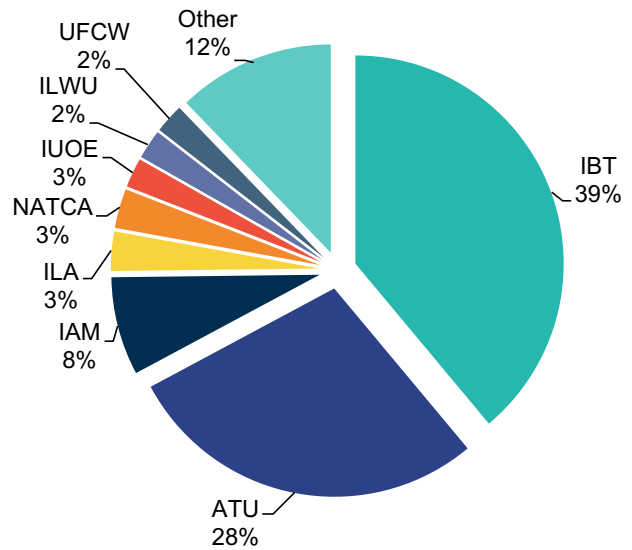
Abbreviation	Union Name	RC Petitions Filed	
		2021	2022
IBT	International Brotherhood of Teamsters	66	63
ATU	Amalgamated Transit Union	40	17
IAM	International Association of Machinists and Aerospace Workers	16	5
NATCA	National Air Traffic Controllers Association	6	7
AFSCME	American Federation of State, County and Municipal Employees	5	1
UFCW	United Food and Commerical Workers International Union	4	1
APWU	American Postal Workers Union	3	0
ILA	International Longshoremen's Association	3	3
IUOE	International Union of Operating Engineers	3	3

The following table includes unions that are also active in the transportation industry and referenced in the following pages.

Abbreviation	Union Name
ATDA	American Train Dispatchers Association
IBEW	International Brotherhood of Electric Workers
ILWU	International Longshore and Warehouse Union
IUJAT	International Union of Journeymen and Allied Trades
NPWU	National Production Workers Union
USW	United Steelworkers

### MOST ACTIVE UNIONS – REPRESENTATION (RC) ELECTIONS HELD IN TRANSPORTATION IN 2022

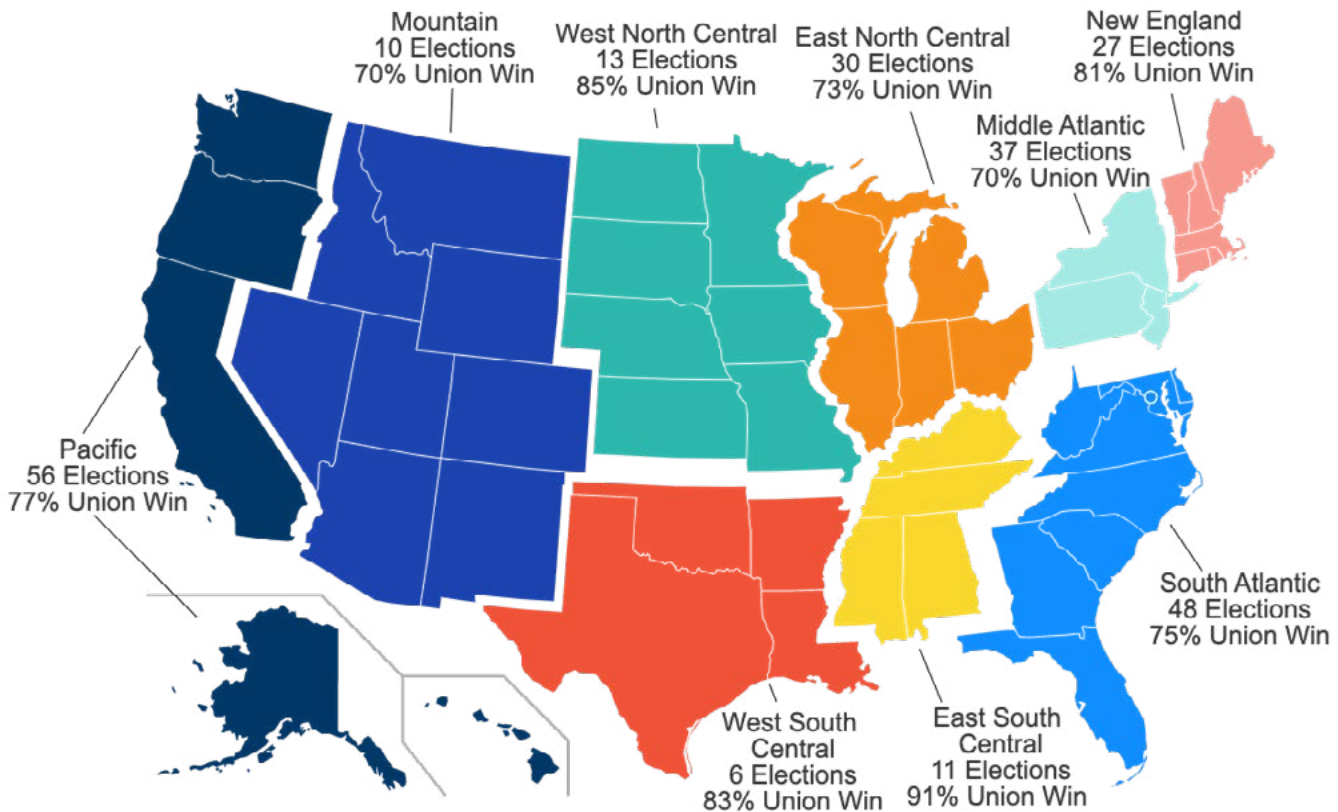
As expected, IBT also accounts for the most RC elections held in the transportation industry. In 2022, IBT was involved in 51 RC elections and was elected as a result of 84 percent of them – IBT also won 84 percent of the elections in which it was involved in 2021.



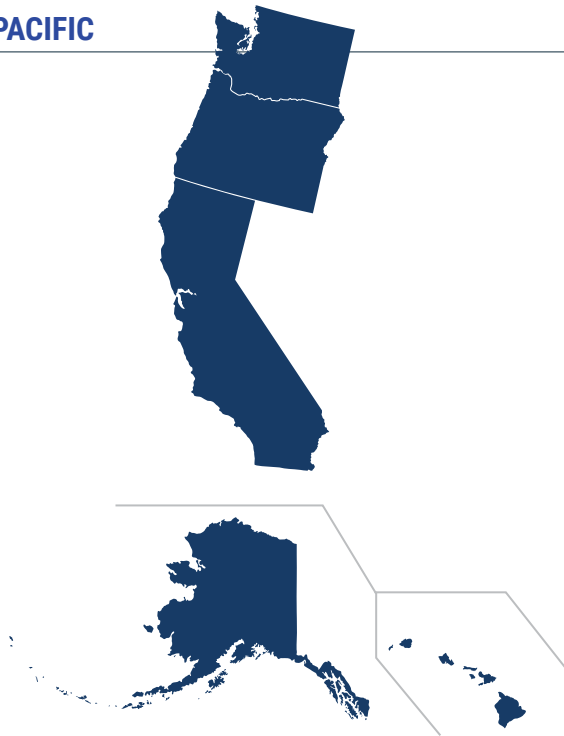
	2021			2022		
	Total Elections	Union Elected %	Union Not Elected %	Total Elections	Union Elected %	Union Not Elected %
IBT	49	84%	16%	51	84%	16%
ATU	16	88%	13%	37	88%	13%
IAM	6	83%	17%	10	83%	17%
NATCA	8	100%	0%	4	100%	0%
ILA	1	0%	100%	4	0%	100%
IUOE	3	67%	33%	3	67%	33%
ILWU	3	100%	0%	3	100%	0%
UFCW	2	50%	50%	3	50%	50%

# REGIONAL SUMMARIES

For the purposes of this analysis, we have categorized the nation into nine regions as illustrated in the map below. The following sections provide an overview of activity in each region in 2021 and 2022 and a breakdown of the most active unions in the region based on RC petitions filed in the same time period.



**PACIFIC**



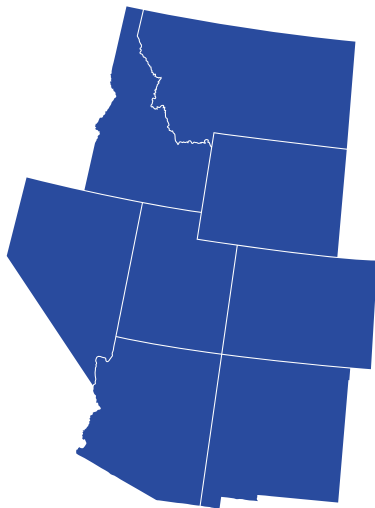
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Alaska	1	0	-
California	21	18	72%
Hawaii	1	1	100%
Oregon	2	2	50%
Washington	6	4	50%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Alaska	0	0	-
California	28	24	83%
Hawaii	2	5	80%
Oregon	0	0	-
Washington	4	2	100%

**Most Active Unions**  
IBT, IAM, ATU, ILWU, IBEW, USW

**MOUNTAIN**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Arizona	2	2	50%
Colorado	1	1	100%
Idaho	1	1	100%
Montana	1	1	100%
Nevada	0	0	-
New Mexico	0	0	-
Utah	0	1	0%
Wyoming	0	0	-

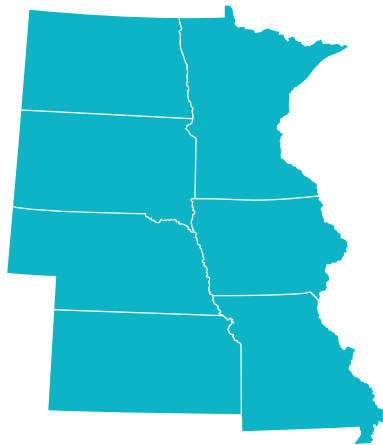
  

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Arizona	1	1	100%
Colorado	0	0	-
Idaho	0	0	-
Montana	0	0	-
Nevada	4	3	67%
New Mexico	0	0	-
Utah	1	0	-
Wyoming	0	0	-

**Most Active Unions**  
ATU, IBT



### WEST NORTH CENTRAL



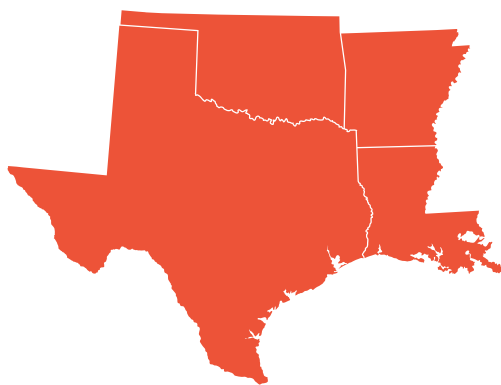
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Iowa	0	1	100%
Kansas	1	1	0%
Minnesota	0	0	-
Missouri	6	6	100%
Nebraska	1	0	-
North Dakota	0	0	-
South Dakota	0	0	-

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Iowa	3	2	50%
Kansas	2	2	100%
Minnesota	0	0	-
Missouri	2	0	-
Nebraska	0	0	-
North Dakota	0	0	-
South Dakota	1	1	100%

**Most Active Unions**  
IBT, NATCA

### WEST SOUTH CENTRAL



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Arkansas	0	0	-
Louisiana	1	0	-
Oklahoma	0	0	-
Texas	7	5	100%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Arkansas	0	0	-
Louisiana	0	0	-
Oklahoma	0	0	-
Texas	7	6	83%

**Most Active Unions**  
IBT, IAM, ATDA, ATU

**EAST NORTH CENTRAL**



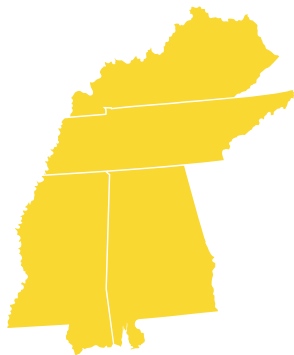
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Illinois	13	10	60%
Indiana	2	1	100%
Michigan	3	3	67%
Ohio	7	5	60%
Wisconsin	1	1	100%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Illinois	8	6	83%
Indiana	2	0	-
Michigan	2	1	100%
Ohio	2	1	100%
Wisconsin	2	2	100%

**Most Active Unions**  
 IBT, AFSCME, IAM, IUOE, APWU, ATU, NATCA

**EAST SOUTH CENTRAL**



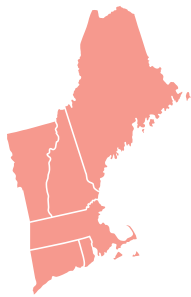
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Alabama	0	0	-
Kentucky	3	2	100%
Mississippi	0	0	-
Tennessee	2	1	100%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Alabama	0	1	0%
Kentucky	0	0	-
Mississippi	0	0	-
Tennessee	1	1	100%

**Most Active Unions**  
 IBT

**NEW ENGLAND**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
Connecticut	11	11	73%
Maine	0	0	-
Massachusetts	6	3	100%
New Hampshire	1	0	-
Rhode Island	0	1	100%
Vermont	1	1	100%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
Connecticut	9	7	86%
Maine	0	0	-
Massachusetts	4	3	67%
New Hampshire	0	1	100%
Rhode Island	1	0	-
Vermont	0	0	-

**Most Active Unions**

IBT, ATU, NATCA, UFCW

**MIDDLE ATLANTIC**



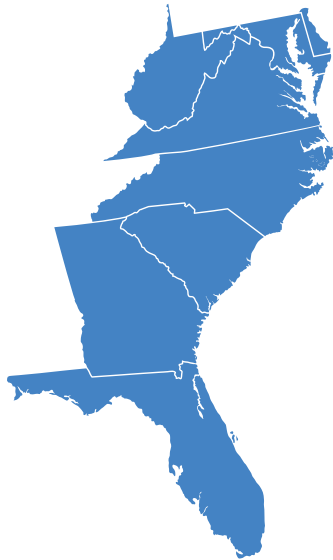
State	2022		
	Petitions Filed	Elections Held	Union Win Rate
New Jersey	3	1	100%
New York	6	1	100%
Pennsylvania	9	11	73%

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
New Jersey	8	8	75%
New York	9	8	88%
Pennsylvania	10	8	100%

**Most Active Unions**

IBT, ATU, IUJAT, IAM, ILA, NPWU, USW

**SOUTH ATLANTIC**



State	2022		
	Petitions Filed	Elections Held	Union Win Rate
DC	0	0	-
Delaware	0	0	-
Florida	6	5	80%
Georgia	1	0	-
Maryland	1	1	100%
North Carolina	1	1	100%
South Carolina	1	1	100%
Virginia	4	4	50%
West Virginia	0	0	-

State	2021		
	Petitions Filed	Elections Held	Union Win Rate
DC	0	0	-
Delaware	0	0	-
Florida	6	4	100%
Georgia	1	1	0%
Maryland	5	5	80%
North Carolina	2	2	100%
South Carolina	0	0	-
Virginia	2	2	50%
West Virginia	0	1	100%

**Most Active Unions**

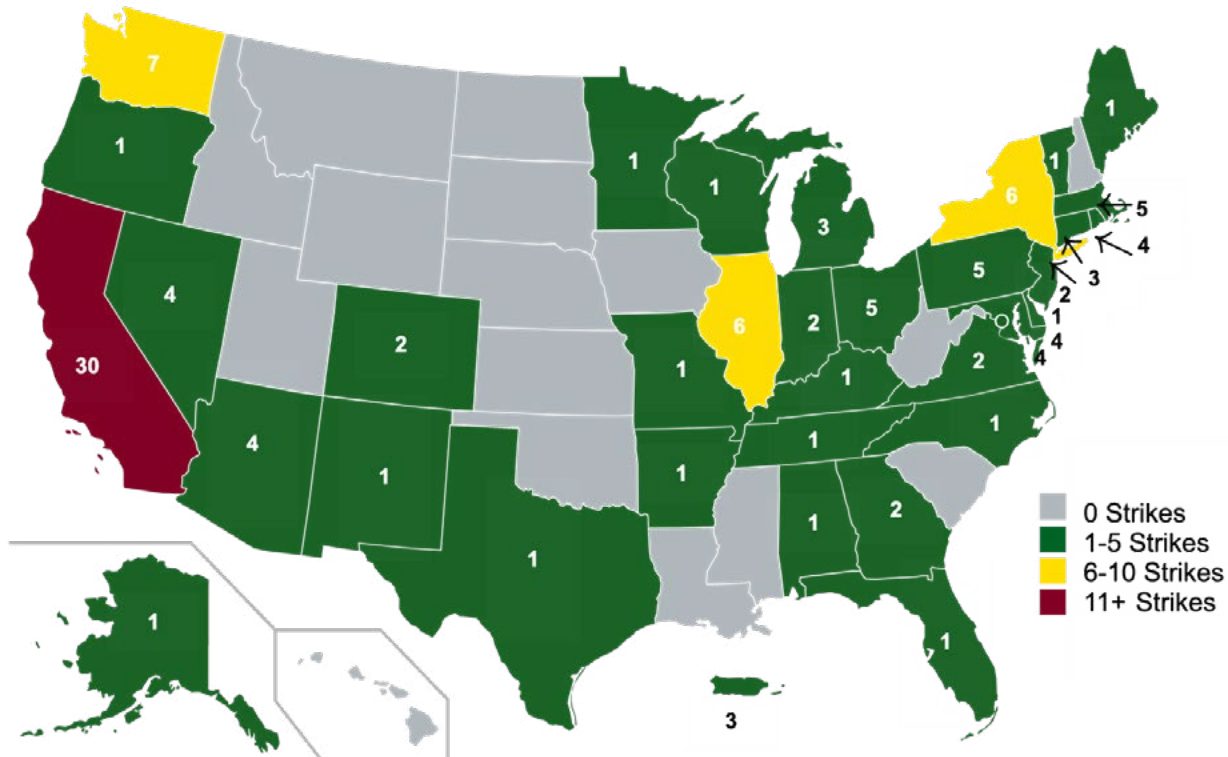
IBT, ATU, IAM, ILA



# STRIKES IN TRANSPORTATION

The map below illustrates the number of strikes held in transportation since 2013<sup>3</sup>. California has had more than four times the number of strikes as any other state, but otherwise, strike activity has been fairly well dispersed across the nation.

## STRIKES IN TRANSPORTATION BY STATE: 2013 – 2022



Year	Number of Strikes	Workers Idled	Average Number of Workers per Strike
2022	15	3,502	233
2021	17	1,707	100
2020	8	2,488	311
2019	13	8,225	633
2018	10	3,440	344
2017	12	2,331	194
2016	12	8,580	715
2015	4	3,533	883
2014	9	1,592	177
2013	22	10,248	466
2012	14	3,109	222

<sup>3</sup> Strike data is compiled from a combination of Federal Mediation and Conciliation Services Work Stoppage Data, U.S. Bureau of Labor Statistics Major Work Stoppages Data, and media coverage of strikes in order to provide the most complete data possible. The data may not be comprehensive.

# LABOR LAW/ACTIVITY UPDATE

This edition of IRI's Labor Activity in Transportation & Logistics Annual Report provides three important articles from industry experts that examine the issues most vital to the industry now. From the current administration and labor climate to the changing workforce and even preparing for activity, these experts will support your strategic planning with the insight you need.

[Transportation and Logistics Industry Labor Challenges for 2023](#) by A.Jack Finklea and Donald J. Vogel at Scopelitis, Garvin, Light, Hanson & Feary, PC looks at how the NLRB continues to shape the relationship between transportation industry employers and their employees. The burden of the current labor issues in transportation requires Human Resources professionals to get out ahead of challenges and educate the workforce.

In [Employee Engagement in Transportation and Logistics](#), Scott Purvis, COO at IRI Consultants, draws connections between transportation and other industries, detailing how this broader picture indicates an increase in union activity for all organizations in 2023. Engaging employees who are constantly on the move is a unique challenge, and digital technology can help supplement communication efforts. It's vital that every deskless worker in the transportation and logistics sector be engaged, trust leadership, feel a sense of belonging, and believe their work is appreciated and valued.

[Are You Ready? Looking Ahead in Transportation](#) from Daren Wingard, Mike Stutzman, and Tammy Bartter of NATERA explores three vital questions for the transportation industry: "Are you ready?" "Are you listening?" and "Are you telling your story?" With this simple framework, transportation industry leaders can explore the importance of listening to your workforce, sharing the company's vision, and taking action to ensure employees know that their contributions are about more than just the bottom line.

# Transportation and Logistics Industry Labor Challenges for 2023

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## ABSTRACT

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2023 stands to be a significant year in terms of how the National Labor Relations Board (the “Board”) continues shaping the relationships between transportation and logistics industry employers and employees. We expect developments in how the Board will handle employee monitoring and algorithm-based technology, pushes designed to increase unionization, joint employer findings in more cases making one entity jointly liable for another’s unfair labor practices, an increase in available damages assessed against employers, and more. These issues touch the heart of transportation companies, prompting the need, as we step into 2023, to remain nimble.

## The Board Is Watching You Watch Your Drivers

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Cameras, both forward-facing and even driver-facing, have grown increasingly popular with motor carriers in recent years. Along with algorithm-based behavioral predictive technology, cameras provide an endless array of data sets to help improve driving and to defend against specious claims by motorists coming in contact with a motor carrier’s trucks. Newly added features include audio capabilities to monitor more closely what is being said and heard in the cab. Without question, such monitoring devices have value to the carrier and, in many cases, help protect drivers. Drivers, of course, may chafe with increased monitoring, and in this driver market, driver opinions can carry significant weight. The Board’s General Counsel, Jennifer Abruzzo, recently added to the list of motor carrier concerns when she announced her office would be coming after carriers and other employers regarding excessive monitoring.

On October 31, 2022, Abruzzo issued a General Counsel Memorandum (GC 23-02) expressing her concerns about employee monitoring. Abruzzo cites, among other things, employer efforts to keep tabs on drivers using GPS tracking devices and cameras. In the Memorandum, she posits that intense monitoring techniques can unlawfully prevent union organizing and other protected activity from even starting. She therefore promises an aggressive push to force an adjustment between the interests of management and labor, requiring employers to justify actual intrusion on employees’ protected activity and even monitoring that merely may tend to discourage drivers from engaging in protected activity.

Ultimately, the Board will decide how far to push Abruzzo’s proposals. That being said, the General Counsel’s priorities are often the Board’s priorities. Employers can take proactive steps to avoid potential liability by limiting audio capabilities where practical, ensuring cameras are not operational when drivers are off-duty, and notifying drivers of the monitoring techniques being used.

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## Tilting the Scales Toward Unionization

Since the start of the pandemic, union activity has been on the rise. Union membership in the private sector has nevertheless continued to fall, recently reaching a low of six percent. Presumably in response to low membership, Abruzzo has called upon the Board to require employers to recognize a union if the union shows the employer that more than 50 percent of its workers signed a union authorization card. For nearly 75 years, employers have had the right to refuse to examine cards, thereby forcing a secret ballot election for employees to decide on unionization. Abruzzo seeks a change.

Abruzzo cites the need for card-check recognition due to the failure of the current remedial scheme to deter unfair labor practices committed during the election period. The card signing process has been criticized as potentially involving improper coercion to get employees to sign. The secret ballot process, on the other hand, has been a foundational principle of our governmental system. Favoring card check over a secret ballot election may bring about more problems than it solves. The Board has not signaled when its decision may be forthcoming.

Abruzzo has also called upon the Board to end the practice of employers conducting mandatory meetings on company time to sway employees to vote against unionization (GC Memo 22-04). Such “captive audience” meetings, according to Abruzzo, inherently involve an unlawful threat that employees will be disciplined for failing to attend. She further contends that such meetings deny an employee’s right to refrain from engaging in activities involving unionization (or, here, anti-unionization). She instead promises to advocate for a system in which employee attendance at employer speeches against unionization be voluntary. She will further advocate for a written notice from the employer promising no reprisals will occur if an employee declines to participate in an employer meeting.

As we await Board decisions in these two areas, employers would be well served to preemptively communicate the company’s position on unionization and, if appropriate, the dangers of unionization. Doing so prior to an organizing campaign may keep the union from gaining a foothold in the first place.

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## The Board’s Joint Employer Rulemaking

The transportation industry relies heavily on interaction between business entities to accomplish the freight movement process. In such business relationships, the industry must constantly balance the need to comply with controls required by U.S. Department of Transportation regulations against necessary independence of the relationships in order to avoid being treated as a joint employer and becoming subject to liability for each other’s labor law violations. In 2023, the Board may swing the pendulum toward a finding of joint employer relationships.

The Board has issued a notice of proposed rulemaking to rescind and replace the 2020 final rule on joint-employer status under the National Labor Relations Act. The proposed rule eliminates the requirement of “direct and immediate” and “actual” control and instead declares entities are joint employers if they “possess the authority to control (whether directly, indirectly, or both), or to exercise the power to control (whether directly, indirectly, or both), one or more of the employee’s essential terms and conditions of employment.” In other words, an entity could be found to be a joint employer if it has the authority to exercise control indirectly over an essential term of employment, regardless of whether it actually does. As such, the proposed rule as currently written could negatively affect the transportation industry to the extent that the right to communicate even basic service details and/or real-time monitoring of freight location may be characterized as indirect control.

The Board’s proposal nevertheless describes the new rule as an attempt to provide clarity and guidance to employers and to reconnect with established common-law agency principles. Two members of the Board have issued a dissent, which argues the new rule will actually decrease clarity, as the proposed rule is so vague that much will be left to case-by-case adjudication to determine joint-employer status. A final version of the proposed rule could come as early as March or April 2023.



## Bad News – The Board Will Be Pushing Harder for Damages

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The Board has always been vested with the authority to order remedial action when a party, usually the employer, commits an unfair labor practice. Such remedies include back pay for wrongfully discharged employees and interest on back pay amounts. The Board, however, has historically rejected the idea that it was vested with the authority to award “consequential damages,” including those indirect costs associated with being off work.

On December 13, 2022, the Board issued a decision expanding the scope of damages available to employees. The Board cited recovery not only for back pay, but possibly also for indirect amounts, such as out-of-pocket medical expenses, credit card debt, penalties for early withdrawal of retirement funds, and loss of a car or home due to the inability to make payments.

The Board’s decision unquestionably raises the stakes for employers charged with an unfair labor practice. Damages in some instances could be massive. As a result, employers should be hyper-diligent in evaluating employment decisions that may lead to the filing of unfair labor practice charges. In short, the best way to avoid a large damage award is to ensure sound decision making from the outset. Of course, decisions are not always amenable to a bright line determination – a perfect set of facts is hardly the norm. Careful consideration can nevertheless reduce the risk in many cases.

## The News May or May Not Be All Bad

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Employers are not alone in dealing with the prospect of significant damages associated with protected, concerted activity. Currently before the U.S. Supreme Court is a case involving damage allegedly caused by concrete truck drivers as they went out on strike. The damage occurred when drivers walked off the job while some concrete trucks were laden with wet concrete. Due to the strike, the company allegedly could not get the concrete delivered and it hardened in the trucks.

The concrete company sued in state court for damages, asserting the union intentionally timed the start of the strike to cause the damage, likening the matter to vandalism by the

union. The Washington Supreme Court eventually dismissed the case, holding that the Board had sole jurisdiction to determine federal labor disputes. The case is now at the U.S. Supreme Court to determine if, in fact, the state court should have decided the substance of the complaint or whether, instead, the Board had sole jurisdiction over the dispute.

In oral arguments, some justices seemed at times sympathetic to the prospect of assessing damages for the type of behavior alleged in this case. However, some justices also seemed concerned with a potential inability to draw an effective line between conduct that lies within the exclusive sphere of the Board and that which is actionable in state court. The decision will come this spring or summer, and a decision in favor of the company would be significant, as it could open the door to additional state court lawsuits, along with the deterrent effect such a consequence could have on strike timing or conduct altogether.

## UPS Contract Negotiations Could Affect Us All

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As far as major unionized transportation companies go, it took Congressional action to avoid a rail strike. Next up is the prospect of UPS and Teamster negotiations for a new contract. The current contract expires July 31, 2023, and negotiations are tentatively set to begin soon.

Last year, Teamsters President Sean O’Brien ran a campaign devoted to getting tough with companies in order to usher a return to the days of Teamster power and increased membership. According to O’Brien, the way to increase unionization and membership involves fighting hard for lucrative union contracts. By refusing to back down and fight for favorable contract provisions, non-union operations and employees would see the value in going union. The upcoming UPS negotiations provide O’Brien with the first major opportunity to further his agenda.

A hard-line approach from the Teamsters seemingly increases the odds of a strike. Such a strike would be the first since 1997, and it could conceivably be one of the largest strikes

ever, with consequences that reverberate expansively. To the extent the Teamsters are successful in gaining the contract they seek, it may very well encourage increased union activity in the transportation industry. We will therefore be keeping a close watch on the negotiations.

## On the Go

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Additional points that are compelling for 2023:

- The Board will continue to increase its use of preliminary injunctions, thereby providing relief to workers even as cases progress. Amazon and Starbucks are both feeling the heat.
- Illinois just passed a state constitutional amendment prohibiting right-to-work laws in the state. Is it enforceable? Will other states follow?
- The Board seems poised to return to a more rigid stance, finding more employee handbook provisions may tend to discourage protected activity by employees.

## Conclusion

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Labor issues in the transportation and logistics industry place a heavy burden on human resources professionals, who are already constantly training to meet the next challenge. Getting out ahead of issues is often the key to success. Doing so as we progress through this year is particularly important, and much can be accomplished by knowing your workforce (and, perhaps more important, them knowing you). In addition, educating your workforce in a way that prevents potential problems from ever becoming actual problems is crucial.

# Employee Engagement in Transportation and Logistics

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## ABSTRACT

The transportation and logistics sector has a relatively low [union membership](#) rate but is primed for an increase in union activity in 2023 for several reasons. Like the restaurant and [grocery](#) sectors, the pandemic increased public awareness of the importance of employees who keep the economy going during times of disruption, empowering employee activists. Most employees in transportation and logistics are deskless workers, so developing a communications system that strengthens employee engagement is crucial. Mobile communication technology blended with face-to-face leader and employee interactions supports the development of positive employee relations in transportation and logistics.

The [transportation and logistics](#) sector moves products and people, which is often taken for granted until there is significant disruption or the threat of disruption. If railroad workers had followed through with their strike threat in November 2022, shortages of gasoline, food, and consumer goods would have rapidly developed. When the [airlines](#) canceled thousands of flights in December 2022 and January 2022, people depended on airline workers to get them to their destinations on time. Truckers from California to New York have threatened to strike over the past year, which could have led to port closures and crippled food and goods supply chains. There has been a significant increase in labor union activity and employee activism among transportation and logistics association members. [Employee engagement](#) in the transportation and logistics sector is as critical as in other industry sectors. Still, there is one major challenge employers must address when developing a strategy for employee engagement in some areas of transportation like warehouses and trucking: approximately 70 percent of the logistics sector doesn't work at a desk, and in some companies, the number is as high as 90 percent.

## How Can We Engage Deskless Workers in Transportation and Logistics?

[Employee communication](#) is essential to employee engagement in every industry. But when a majority of workers are on the road and rails or in the air most of their work time, new approaches are needed. These employees have heavy workloads, are often away from home for long periods, and get few opportunities to engage coworkers. The process for strengthening employee engagement in transportation needs to embrace all employees because, while most workers are deskless or on the move, a cohort of onsite frontline workers must also be engaged, such as warehouse workers and operations workers.

Field workers, like truck drivers, and deskless frontline workers, like roaming warehouse workers, typically have issues like the following. They:

- Work different shifts and have flexible work schedules
- Have limited access to a computer, if any
- Are unable to access organizational information with the same regularity as onsite employees or are left out of the communication loop completely
- Are unable to communicate with peers in various locations

- Cannot easily access information like company newsletters, bulletin boards, and corporate email notices
- Are unable to get enmeshed in the organizational culture due to a lack of information about the brand and corporate values

[Regular quality communication](#) is the essence of employee engagement for workers on the go. Employees need:

- Company information
- Processes for completing and submitting hours, vacation requests, required forms, etc.
- Information on occupational safety, security, regulations in a particular state, port arrivals, warehouse deliveries for pickup, route changes, shipment delays, traffic jams, etc.
- Access to work-related general information resources
- To connect with coworkers to socialize
- To recognize peer achievements
- To share helpful information with coworkers
- The ability to communicate with organizational leaders
- To report problems by using a system that generates data for company analysis, like breakdowns and delivery delays

[Employee relations](#) in transportation relies on communication because communication is the primary link between deskless workers and the organization. Your leaders can't stop at a desk to compliment an employee on a project or employ the [leader rounding](#) strategy to build relationships with employees like supervisors can do in the healthcare industry. Instead, they need effective communication, made possible by using technology tools.

## What Tools Help Connect Companies With Workers in Transportation?

How you structure your [internal communications](#) system determines how well you can engage employees. It needs to reach all employees, connect the workforce, and connect employees and management. A [digital communications](#) system is the only type of internal communications system that

can fulfill all three requirements. One primary tool is proving to be the most efficient – the workforce management app. Workforce management apps support employee engagement and enable efficient leadership support.

Managing a mobile workforce is streamlined today through employee mobile apps. [Digital resources](#) like apps offer flexibility because they can be adapted to your organization's particular needs. Some of the ways the app platforms can streamline two-way communication with deskless workers and strengthen employee engagement include their ability to give access to:

- A virtual bulletin board on which employees can post information and events, like road blockages
- A notification system that delivers company or other relevant news, safety reminders, company policy reminders, efficiency tips, and positive recognition notes
- [Employee engagement pulse surveys](#) that measure employee engagement
- Links to the company's Human Resources department, internal policies and procedures documents, and training and education resources
- Scheduling
- A [recognition program](#)
- Checklists for completion to indicate review of truck maintenance and equipment before and after hauls

Mobile apps are one primary tool used today, but there are other tools. They include [podcasts](#), [videos](#), closed-circuit TVs, and handheld communication devices. Podcasts and videos can be integrated with apps.

There are three [frameworks of employee engagement](#): needs-satisfaction, job demands-resources, and social exchange. The mobile app can address all three frameworks, leading to positive employee relations and improved organizational performance. Technology tools are also crucial to navigating disruption, which is quite common now. In January 2023, an unanticipated technical issue at the Port of Los Angeles caused hundreds of [trucks to back up](#) when they were unable to enter or leave the port. During times like these, your leaders' ability to communicate with employees involves more than giving instructions. [Leadership soft skills](#) are also at play, like

showing concern for employee well-being and transparency in decision making, getting honest feedback concerning possible solutions, and encouraging discussion among the transportation workers. Taking these actions is how a sense of community is developed through the targeted use of technology.

Recognition platforms are essential employee engagement tools. [C.A. Short](#) developed a cloud-based Software as a Service tool called the People Are Employee Engagement Platform to engage truck drivers through [recognition](#). This recognition platform incorporates formal, informal, and day-to-day recognition. The company's research has found that organizations engaging all employees experience 17 percent higher productivity, 40 percent fewer quality accidents, a 70 percent reduction in safety incidents, and increased retention rates.

Another platform example is [WorkHound](#), which makes the point that drivers aren't always comfortable voicing their concerns out of fear their future with the company will be jeopardized. Their disconnection from the company through distance and communication conducted mainly with dispatchers can leave transportation workers feeling [disengaged](#). In some cases, the result is that only a few employees communicate with management, leaving leaders in the dark about the needs of the silent majority. Employee engagement in transportation needs to promote [employee voice](#) and engagement among the members of the entire workforce.

[Staffbase](#) is an employee communications platform that developed an employee app for communication with remote workers, including deskless workers. Employees can download the app from an app store, and the app is customizable to meet the client's needs. The app can offer corporate updates, news of interest, videos, shift plans, contact directories, chat, office calendars, IT service desk links, HR links, employee survey links, texts, and more. Staffbase developed [three examples of logistic companies](#) that shared their stories in employee engagement, and all three employed a mobile app with enormous success.

There are different ways to achieve employee engagement in transportation and logistics. Mobile apps act like an

information hub, but you can also blend technology with [face-to-face engagement](#).

An American regional, inter-regional, and national LTL (less than truckload) company stays in touch with its employees through face-to-face meetings and one-on-one interactions. Managers can communicate in person by walking around the facilities, which include warehouses and offices. There are CCTVs located throughout the buildings to keep everyone informed, and the company uses enabled devices to send messages regularly. The company recently changed its human resources information system (HRIS) to [Workday](#), which it uses to develop videos and podcasts and to disseminate announcements.

The shipping company constantly communicates via a variety of methods. There are daily meetings in some areas with those employees who don't have computers. However, management and supervisors can communicate throughout the day via handhelds for assignments and other company updates. Monthly in-person meetings regarding business topics are held, and all employees have the chance to hear from senior management bi-monthly through a podcast on various topics. The Workday HRIS enables leaders to instantly let people know there is a message for them to read or listen to. Managers can put announcements on home page screens where employees can also listen to podcasts. Employees who spend very little time in an office or building on a regular basis have given positive feedback and appreciate the conversations this approach sparks.

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## Connect Workers From Warehouse to the Road

The greatest number of workers in logistics are in warehousing and road transport, and both are labor-intensive. [Katy Fox-Hodess](#), a sociologist and co-founder of the International Labour and Logistics Research Network, shares historical reasons for the state of the logistics industry. Changes in technology and the rise of containerization led to increases in the size of container vessels. Most truckers can transport one container, so as more containers needed movement from the port, more truckers and warehouse workers were required.

She discusses the fact that so many things can go wrong in the logistics systems, but it works nonetheless because of information technology.

The rise of the Internet and instantaneous communication allows logistics firms to adjust quickly and frequently. They are able to minimize as much as possible the potential for things to go wrong. The potential for delays is reduced by rerouting and re-dispatching. And, of course, in road transport, warehousing, and parcel delivery, so many of the technological advances have consisted of new ways to surveil and discipline the workforce.

One of the pitfalls to avoid is letting employees believe the primary purpose of communication technology is to “[surveil](#) and discipline.” The way the communication technology is used should strengthen employee voice, making employees feel a greater sense of [belonging](#) to the organization. It shouldn’t make them feel like they are being spied on, a feeling that easily leads to union organizing. [Developing leaders](#) who are skilled in long-distance and deskless employee engagement is absolutely necessary. Otherwise, the transportation and logistics business increases its [vulnerability to unionization](#) if employees believe management is only interested in control and not well-being and satisfaction.

Chances are your employees in transportation and logistics expect digital communication, but deskless workers have different requirements than desk-based workers. Desk workers can access emails and other communication tools. The employee working the warehouse floor and the truck drivers don’t have easy access to programs residing on desktop computers. Mobile apps, texting, and voice messages are communication tools that warehouse workers and truck drivers can use to maintain a connection. The communication tools should work efficiently because poorly working technologies are a source of frustration and lead to workers avoiding communication.

Remember that effective communication is two way. [Employee relations](#) in transportation are positive when your leaders communicate with and listen and respond to drivers and warehouse workers. Conducting employee engagement surveys remains an excellent way to assess the level of engagement and discover worker perspectives and feelings. In addition, you will gain important insights about employee

concerns, problems not apparent to managers who are never on the road, developing issues, indications of potential union activity, and potentially better ways to manage various situations. The [feedback](#) has three components, though. You must ask for feedback, [listen](#) to it, and always respond. Don’t just request feedback because employees interpret a lack of response as disinterest or even a management “game.” [Culture Amp](#) conducted a survey of logistics and transport companies, and employees had much lower favorable scores compared to the average scores in action, equity, and feedback and recognition. Not getting feedback or not responding to feedback is a sure way to promote interest in labor unions.

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### Build Your Culture With Strong Employee Relations

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Employee engagement in transportation depends on the use of effective communication tools that encourages the expression of company voice. Developing positive employee relations may seem more challenging in the transportation and logistics sector because so many employees are deskless. Fortunately, technology enables communication no matter where employees work.

Having said that, you shouldn’t rely only on technology for interacting with employees. Managers should [meet with employees](#) face to face to add the human element when possible. This is easier to accomplish with warehouse workers, but making an effort to meet with truck drivers when they are at the workplace site is important, and so is giving the warehouse workers and truck drivers opportunities to get together. There is always the risk of drivers feeling isolated, and personal interactions help deskless workers feel connected to the workforce and the organization. [Warehouse workers](#) are also vulnerable to unionizing. There were two Teamster Union strikes at Sysco Corp facilities in New York and Massachusetts in October 2022.

The 2022 unionization rate for the transportation and warehouse sector was [14.5 percent](#) per the Bureau of Labor Statistics. It’s a small decrease from 14.7 percent in 2021. However, the relatively low unionization rate and decrease shouldn’t be taken as an indication there is not a risk of increased unionization in the sector and an increase in

protests. In 2022, truck drivers became employee activists and [halted cargo movement to protest](#) a California state law concerning gig workers and held several protests to object to COVID mandates. They have also gone on strike, as the 300 truck drivers of Teamsters Local 653 at a New England wholesale food distributor did in October 2022. Some truckers have refused to cross picket lines at warehouses. Post-pandemic, industry employees better understand their power to bring change through [labor union strikes and independent protests](#). In 2023, truck drivers will also get a lot of attention because the UPS contract will be renegotiated, and the [Teamsters Union](#) is already calling it a “contract fight.”

Building strong employee relations now can help your company [prevent unionization](#). High levels of employee engagement reduce the risk that employees would take an interest in what labor unions have to say. Ensuring your deskless workers have an employee voice as strong as that of onsite workers is a proactive approach to making unions unnecessary. Though this discussion used truck drivers and warehouse workers as examples, every deskless worker in the transportation and logistics sector and other industries should be engaged, trust leadership, feel a sense of belonging, and believe their work is appreciated and valued.

# Are You Ready? Looking Ahead in Transportation

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## ABSTRACT

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You've probably heard the saying "may you live in interesting times." This is often referred to as a curse, thought to mean that one will experience difficult or tumultuous events in life. The origin of this phrase is uncertain, but the saying is often used to express the idea that life can be unpredictable and full of challenges. And that brings us to the year 2023. Those of us who work in Human Resources, Employee Relations, and Labor Relations in the trucking industry have no shortage of challenges to identify, understand, plan for, and wrestle with as we enter 2023 – and the hits will just keep on coming as we go through this year.

The 2023 Labor Activity in Transportation & Logistics Annual Report is part of NATERA's effort to help our members prepare for what's ahead, and we are honored to co-brand it with IRI Consultants.

In this three-part article, we ask the following questions to help you gear up for what lies ahead in 2023: Are you ready? Are you listening? Are you telling your story? "Are You Ready?" lays out the current National Labor Relations Board environment, summarizes the challenges our industry faces, and provides tools and resources for additional information. "Are You Listening?" discusses the importance of really listening to your workforce and taking actionable steps to address employee feedback. Finally, "Are You Telling Your Story" explains the value of sharing your company's history with your employees and helping them to feel like they are contributing to something bigger than just the bottom line.

## Are You Ready?

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As the end of John Ring's term as a National Labor Relations Board member approached at the end of last year, we braced for a batch of decisions, concerned about how they might affect employers and the way in which they must approach employee relations. To prepare for the challenges before us in 2023, let's start with a summary of the five most consequential of these decisions handed down by the National Labor Relations Board (the "Board").

## Five Most Consequential Board Decisions in 2022

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### 1. Consequential Damages

In the Thyry, Inc. decision, the Board has expanded the General Counsel's (GC's) ability to seek consequential damages – or what they call "direct or foreseeable pecuniary harms suffered" – because of a violation of the National Labor Relations Act (NLRA) by an employer or a union. Interestingly, in this decision, the majority goes to great lengths to argue it is not expanding the GC's ability to pursue consequential damages – probably because it knows it doesn't have the constitutional authority to award such damages.



Consulting the dissent, we see members Ring and Kaplan write this: “On its face, this standard would permit recovery for any losses indirectly caused by an unfair labor practice, regardless of how long the chain of causation may stretch from unfair labor practice to loss, whenever the loss is found to be foreseeable. In our view, this standard opens the door to awards of speculative damages that go beyond the Board’s remedial authority.”

There’s a lot to dive into on this one. For more details and analysis, we encourage you to check out this [article](#) from Ogletree Deakins, a NATERA Corporate Member company.

## 2. Micro Units

On December 14, 2022, in another 3-2 decision on the American Steel Construction, Inc. case, the Board voted to return to its former Specialty Healthcare standard regarding bargaining unit determinations. The result is an environment that will make it easier for unions to move forward with elections for so-called “micro-units.”

Imagine an LTL (less than truckload) terminal with a hundred drivers, and four of them are yard hostlers who never go out on the street. Could a union try to organize just those four drivers to get their foot in the door at your terminal?

For more details and the potential impact to employers, we refer you to this [article](#) by Jonathan Spitz and Richard Vitarelli in the Labor Relations practice at Jackson Lewis, a law firm with a long history of supporting NATERA.

## 3. Property Owners’ Right to Limit Off-Duty Access for Section 7 Activity

In yet another 3-2 decision, the Board ruled that off-duty employees who work for third-party contractors can have access to private property not owned by their employer for purposes of Section 7 activity, such as picketing. The onus is now on the property owner to show that the activity “significantly interferes with the use of the property or where exclusion is justified by another legitimate business reason.”

This case is interesting because it involves musicians from the now-bankrupt San Antonio Symphony who, back in February of 2017, were engaged in informational picketing at the Tobin Center, the concert hall leased by the Symphony. How might this affect those of us in the trucking industry? Do you have mechanics who work for a truck or diesel engine manufacturer working elbow to elbow with your mechanics in your shops? Do you ever lease drivers from a labor provider? Do you ever have temp employees working side by side with your own employees? If you do, this case and the [analysis](#) by Ogletree Deakins is vital for you to understand.

## 4. Johnnie’s Poultry Disclaimers

In the Sunbelt Rentals case, the Board reached all the way back to 1964 to reestablish disclaimers that were outlined in the Johnnie’s Poultry case of that year. If you have union employees, this is a decision you’ll want to dive into and understand.

We’ve all heard of the Miranda warning that police officers are required to recite when arresting someone. So-called “Johnnie’s Poultry disclaimers” are somewhat similar, requiring a manager who is about to engage in an employee interview connected to its defense of an unfair labor practice charge to 1) communicate the purpose of the interview, 2) assure the employee there will be retaliation for refusing to answer questions or for any answer given, and 3) let the employee know that their participation is totally voluntary and get their consent to the interview.

This decision defies the five federal courts of appeal that have declined to follow the Johnnie’s Poultry requirements test. Those courts held that the decision exceeded the power of the Board, essentially saying that interviews in response to unfair labor practice charges are no more potentially coercive than other types of employee interviews, which are also protected under the NLRA.

For more guidance on this, we recommend the [analysis](#) by John R. Giovannone, a partner in the L.A. office of CDF Labor Law.

## 5. Cemex Construction Materials Pacific, LLC

Keep a very close eye on this case. This one case could have an enormous impact on how non-union employers engage with employees during election campaigns and whether employers will have a chance to actually get to an election if a union claims to represent a majority of employees in a workplace.

On April 11, 2022, NLRB General Counsel Jennifer Abruzzo filed a brief in this case, which is still pending before the Board. She asked the Board to overturn long-standing precedent that has become the bedrock of how non-union employers lawfully engage with employees during unionization campaigns.

In her memo, she advocates for the elimination of so-called “captive audience” meetings. She also seeks to eliminate the ability of employers to insist on secret ballot elections and would also like to restrict an employer’s right to inform employees about how the employer-employee relationship may change with union representation.

Similar to how cases make their way from lower courts up to the Supreme Court, the GC brief invites unions to file unfair labor practice charges that target common employee relations practices, creating cases that may come before the Board down the road. Cemex is one of those cases. Depending on how the Board decides the Cemex case, and the specific language used in the decision, this could result in a monumental change in best practices in employee relations for non-union employers. Again, keep a close eye on this case.

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### Are You Listening?

If you only do one thing to improve communications with your drivers, it’s this – simply listen to them.

That can mean taking a call from a driver who’s frustrated by a delay at a customer site, responding quickly to a request for time off, or even being a sounding board for a driver who’s having a rough day.

Keep in mind that the trucking industry can be incredibly stressful, and your drivers need a healthy way to manage their stress. Simply asking how they’re doing can make all the difference when it comes to improving driver performance,

increasing morale, and creating a productive, healthy workplace.

It’s critical that your drivers know you’ve heard them, even if immediate change is not possible. Listening boosts employee engagement and job satisfaction. Eighty-seven percent of today’s workers feel disengaged. Employee complaints about employers not listening to them certainly ranks high on the list as to why. In fact, a recent study revealed that more than one-third of the workforce believes that their employers do not listen to their voice, ever.

This is a staggering number for something so simple. Showing your workforce that you are really listening to them improves workplace morale, job satisfaction, and overall retention. In this tough market for drivers, this is essential. The good news is that listening to your employees is not as difficult as you might think. Here are some tips to get you started.

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### Let Employees Speak

The first step is simply creating a way for employees to speak. You simply cannot expect employees to spontaneously come to you with ideas or concerns. You not only have to create a safe place for them to speak up, you also need to provide tools for them to do so. A communication tool that is gaining popularity is [WorkHound](#), which allows real-time feedback from drivers along with mechanisms for managers to respond back, also in real time.

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### Make Listening a Priority

It is not enough to say that you’re going to start listening to your workers, you must make listening to them a priority. It’s important for driver managers to have good active listening skills so your drivers know that you are really listening to what they have to say.

## Prepare to Hear the Good and the Bad

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Don't make a commitment to listen to your employees if you're not ready to hear what they have to say. You must prepare yourself to hear both positive AND negative feedback. How you respond to your drivers, regardless of how you feel about the input, will have a direct impact on their willingness to give their opinions in the future. Remember that the goal is to show your drivers that you are really listening to them, whether you like what they have to say or not.

## Take Action

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Listening is only the first step. You must also then take action. This doesn't mean that you have to act on every suggestion or concern that your drivers have, but you should always closely evaluate what they have to say. Then, when you come across employee suggestions or concerns that call for more attention, don't stop at just listening – take action. When your drivers know that you are willing to make changes, they will know that you not only want to listen to them – but that you truly care about what they have to say.

Great communication can improve morale among your drivers, eliminate costly miscommunications, and help mitigate inefficiencies. Communicating better makes everyone happier and better at their job, but it also translates into financial benefits.

Drivers want to work for companies where they feel valued, respected, and part of the team. You don't want someone to feel slighted because you implicitly suggest that management is more important than the drivers. It sounds like a no-brainer, yet this is one of the biggest complaints that drivers have – management doesn't treat them with respect. Even if you're interacting with drivers who have been with your fleet for ages, you should always speak to them as if it's that very first time.

Building trust is a consequence of all of these strong communication strategies and methods. Trust requires time and consistency. A relationship with your drivers is just like a

relationship with anyone else – you build more trust if you keep interactions positive over a long period of time. Always being respectful, curious, and understanding will lead to both parties developing trust in and loyalty to each other. Loyal workers are less likely to be subject to turnover and more likely to refer other strong candidates to your company.

Don't lose your company's strongest marketing asset! Treat drivers with respect and build trust over the years through good communication, and the payoffs will be enormous.

## Are You Telling Your Story?

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The transportation industry continues to grow, and over time, it has started to see a change in what really matters to the work groups within it. For a long time, many believed that money was the most important thing an employee expected from their employer. Over time, that has shifted as society has changed and different generations have populated the industry. Employees no longer focus only on money but want to feel as if they are part of something bigger than just the bottom line. A paycheck is no longer enough, and it's more important than ever for companies within the transportation industry to share their stories. It's important that employees are interested in their employer and what it represents. When employees are interested and respect the part they play in the company's goal, they are bought in and, as a result, everyone wins including customers.

## Share the Company's History

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So how does a company tell its story, and how is it done while juggling the operational needs of the business? The best solution is to make the company's story part of everyday business processes. Employees want to know more about the history, successes, and future of a company. When they do, it establishes a feeling of partnership and pride.

Employees have a desire to learn the history of how a company started and what has gone into making it a success. It shows stability – the history tells the story of how the company made it through tougher times and managed to prosper in the end. A great way to introduce this history is in the interview process for a candidate. If they've done some research and know some of the company's history, it shows their interest and buy-in before they are even offered a job. If they don't know the history, it's an opportunity to share and educate candidates on the history that has formed the company's current mission and values. Many transportation companies started small with one or two individuals that had an idea and limited resources. It's inspiring to hear how a company grows and the impact that every employee made along the way to contribute to a successful business. Sharing this history in every new hire orientation is another way to introduce new employees to how it started, who the key players were, and what impact they've had on the business.

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### Share the Company's Success Stories

A company's success stories are inspiring and an important factor in educating employees on why certain processes are so important. Many times, employees complete daily tasks because they are told to and may not necessarily understand the impact they make. When they hear things like, "our damages have gone down by twenty percent this month and that helps our sales team negotiate price," it has an impact, and they get the "why" of how their everyday processes grow the business. No employee is "just a driver," "just a dockworker," or "just a clerk." They all play a role in the success of the business, and sharing that impact is invaluable. A great time to talk about these successes is in planned daily, weekly, or monthly meetings with the work groups. Add them into conversations discussing operational processes to show the impact they have and the way every employee can contribute to the growth and success of your company.

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### Share Where the Company Is Headed

The future of a company matters, and employees want to know they are secure. When future plans are shared with employees, they can look ahead and make plans of their own. Many jobs in the transportation industry are life changing. When a company does well, the employee does too and that can mean a new home or the opportunity to pay for their child's college education. Future expansions, projects, and improvements to a benefits plan have a positive impact, and it's important this information be part of meetings and everyday conversations when they could greatly impact a work group. When employees know this information, they feel like a part of the team and see the impact being made every day.

These same topics of sharing the history, successes, and future of a company have a similar impact on customers. They build trust, and customers can relate to the hard work and dedication that went into building a brand. Many customers are looking for companies that are easy to work with. Part of that is trusting the company will do what it says it is going to do and, if something goes wrong, it will own it and do everything it can to fix it. This is part of effective customer service and building a solid relationship. When problems arise, customers aren't only looking at a price but the value that the company can bring.

# APPENDIX A

## TAKEAWAYS FROM THE 2023 NATERA CONFERENCE

### Maintaining a Direct Relationship With Your Employees

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A major focus of this year's NATERA conference was how employers can maintain a direct relationship with their employees. Best practices in this area were presented in a four-part series called "Are You Ready for This":

#### **"Don't Get Salty with Me!"**

Presented by Scott Purvis, COO of [IRI Consultants](#), and Mark Stublely from [Ogletree Deakins](#), this presentation addressed the delicate subject of employees who are sent into a workplace by a union in an attempt to organize employees, get as many of them as possible to sign a union authorization card, and ultimately get a petition for an election in that workplace. In many cases, this is the first step a union may take when seeking to organize a group of employees. As you might imagine, employers can face some difficult issues and decisions if they become aware of an employee who is also a union salt. For more information on how to deal with such a situation, we recommend this [article](#) by Walter Orechwa, IRI's Director of Digital Solutions.

#### **"Picketing and Protest Preparation"**

Remember 2020? In addition to the onset of COVID, that year will also be remembered as the Year of Protest. From Black Lives Matter protests in the summer to election protests in the fall, this was a very challenging year for all Americans. Employers who were faced with protests in and around their workplaces were forced to figure out how to deal with protests and picketing and, in some cases, large-scale, highly organized events happening inside retail locations where their customers were simply trying to buy groceries. That was the experience of Dr. Mark Codd, who in 2020 was the Senior Director of Labor Relations for Publix Supermarkets. Now a Vice President and Managing Director of IRI Consultants, Mark presented best practices when dealing with picketing and protests at the

NATERA conference this year. More information can be found in his Project HR podcast [here](#).

#### **"You just found out about union activity at your company. What are you going to do?"**

Many of us in the Human Resources and Employee Relations spaces in the trucking industry have dealt with card signing. An employer can find out about this activity in a number of different ways. It can come from an employee who likes the company and is concerned about the impact a union might have if enough cards are signed to get to an election. It can come from a manager who accidentally overhears a conversation among employees. It can come from learning about a social media post that mentions the activity. Or, it might not come at all, and the employer could get blindsided by a union election petition that comes out of nowhere. However an employer becomes aware of card-signing activity, it's definitely cause for alarm and the employer must take action immediately. At the NATERA conference this year, we were joined by Amanda Tuckey, Regional HR and Development Manager at Old Dominion Freight Line, and Katie Lev, CEO of Lev Labor, as we guided our attendees through several scenarios that might happen with card-signing activity and then discussed best practices for how to handle each one. You can find more information on how to deal with card signing in this [article](#) by Walter Orechwa at IRI.

#### **"You just got a union election petition. What are you going to do?"**

This was the final presentation in our four-part "Are You Ready for This" series, and it's the thing that "keeps us up at night." When a union drops a proverbial bomb on your company by filing an election petition, what will you do? Do you know the steps in the legal process? Do you have a good labor attorney

picked out and ready to go? Is that person in-house or outside counsel? Is your campaign ready to go? Do you need to hire a consultant to help with the campaign? If so, which one, and will they be available when you need them? How will you run an effective campaign at this location? Do you have the facilities to meet with employees? If not, will you go virtual? There are so many questions that need to be answered in a situation like this. In our roles in Human Resources, Employee Relations, and Labor Relations in the trucking industry, we must ask (and answer) those questions well before an election petition gets dropped. At this year's NATERA conference, we had three of the best in the business present best practices on how to respond to an election petition. Russ Brown, CEO of RWP Labor, Fito Agraz, Labor Attorney with Ogletree Deakins, and Don Vogel, Labor Attorney with Scopelitis, took us through the "nightmare scenario," and guided us step by step in this absolutely crucial process that we all need to be ready to tackle. Are You Ready?

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## An Ever-Expanding Universe of Laws and Regulations

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The list of city, county, state, and federal laws and regulations that must be followed continues to grow. For Human Resources executives and Labor and Employment counsel, this is a major headache. Fortunately, there's a great tool that can help employers navigate this challenge. Take a look at Jackson Lewis' [workthruIT](#) application. If you'd like more information or a demo of this application, you can reach out to NATERA Executive Committee member Katharine Weber at [katharine.weber@jacksonlewis.com](mailto:katharine.weber@jacksonlewis.com).

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## Violence in the Workplace

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At this year's NATERA conference, we were pleased to have James Hamilton, SVP, Quality Protection at [Gavin de Becker and Associates](#), speak to our attendees about personal safety and awareness in the workplace. Unfortunately, this

is something that all managers, especially those of us who work in Human Resources, need to have on our radar. As we saw last November with the shooting in the breakroom of the Walmart store in Chesapeake, Virginia, we must have a process and method for identifying employees who could be potential threats.

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## The Economy: Storm Clouds on the Horizon?

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Near-record inflation plus the lowest unemployment since 1969 – what should we make of the contradictions in the current economy, and how will the trucking industry be affected?

We were fortunate to have Bob Costello, Chief Economist for the American Trucking Associations, speak at our 2023 conference and help us answer these questions. His insight into the trucking economy is unmatched. Taking into account macro and micro economic data and trends, Bob provides valuable insight on how to navigate the current economic challenges. For more on this, check out this [interview](#) with Bob in Transport Topics.

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## Driver Recruiting Challenges

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Hiring good drivers has been a challenge for quite some time and the industry is always looking for new ideas and solutions in this area.

Ellen Voie, President and CEO of the [Women In Trucking Association](#), is one of our NATERA board members, and at this year's conference, she made a very compelling case for why we should do whatever we can to attract more women to the profession of truck driving. With women making up only seven percent of the truck driver workforce in the U.S., we definitely have an opportunity – or, even, an obligation – to make sure that driving is an attractive and viable career option for women.

## Driver Health and Fitness

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Professional truck drivers, especially long-haul drivers who don't get home every day like their local driver colleagues, have the deck stacked against them when it comes to their health and fitness. When you have a job that rewards you for being in the driver's seat for 11 hours a day, and you spend at least 3 hours a day fueling, loading and unloading, inspecting your equipment, etc., it's very difficult to find time to exercise.

And then there are the food choices out on the road. Ever been to a truck stop for lunch or dinner? Try it and you'll see what we mean. Drivers are surrounded by food options that are the least healthful you can possibly imagine.

When you combine the factors of little-to-no exercise, unhealthy eating, and the stress of the job, it can lead to driver health issues, burnout, and good drivers leaving the industry because they're not healthy enough to maintain their Department of Transportation medical card. On top of all this, we see the increased medical costs hitting the budgets of trucking companies.

At the 2023 NATERA conference, we were pleased to welcome the team from Rolling Strong. Rolling Strong specializes in wellness and fitness programs specifically designed for truck drivers. We have wonderful people working as drivers in our industry. We need to take care of them and help them take care of themselves and their families. Visit [Rolling Strong's website](#) for great solutions to help us do just this.

# APPENDIX B

## SUMMARY OF PETITIONS FILED AND ELECTIONS HELD

All Industries – Summary of Petitions Filed and Elections Held (2013 - 2022)										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Petitions	2,553	2,616	2,596	2,286	2,280	1,921	2,039	1,556	1,685	2,501
Total Representation (RC) Petitions	2,033	2,129	2,168	1,918	1,880	1,557	1,737	1,309	1,385	2,162
<b>Union Not Elected</b>	<b>461</b>	<b>436</b>	<b>453</b>	<b>354</b>	<b>372</b>	<b>322</b>	<b>299</b>	<b>240</b>	<b>243</b>	<b>403</b>
<b>Union Elected</b>	<b>889</b>	<b>995</b>	<b>1,096</b>	<b>964</b>	<b>981</b>	<b>796</b>	<b>917</b>	<b>596</b>	<b>738</b>	<b>1,206</b>
Total Decertification Petitions (RD and RM)	520	487	428	368	400	364	302	247	300	339
Total RD Petitions	463	439	370	311	338	333	260	201	271	313
Total RM Petitions	57	48	58	57	62	31	42	46	29	26
<b>Union Not Elected</b>	<b>136</b>	<b>130</b>	<b>127</b>	<b>123</b>	<b>144</b>	<b>120</b>	<b>113</b>	<b>61</b>	<b>96</b>	<b>109</b>
<b>Union Elected</b>	<b>86</b>	<b>67</b>	<b>79</b>	<b>69</b>	<b>71</b>	<b>60</b>	<b>60</b>	<b>51</b>	<b>61</b>	<b>58</b>

Transportation and Warehousing Industry – Summary of Petitions Filed and Elections Held (2013 - 2022)										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Petitions	301	288	279	245	269	224	215	147	145	183
Total Representation (RC) Petitions	243	245	247	205	229	182	183	121	130	163
<b>Union Not Elected</b>	<b>45</b>	<b>59</b>	<b>55</b>	<b>21</b>	<b>40</b>	<b>39</b>	<b>32</b>	<b>21</b>	<b>18</b>	<b>33</b>
<b>Union Elected</b>	<b>118</b>	<b>107</b>	<b>122</b>	<b>131</b>	<b>114</b>	<b>97</b>	<b>121</b>	<b>65</b>	<b>90</b>	<b>98</b>
Total Decertification Petitions (RD and RM)	58	43	32	40	40	42	32	26	15	20
Total RD Petitions	56	40	29	39	40	40	29	23	12	20
Total RM Petitions	2	3	3	1	-	2	3	3	3	-
<b>Union Not Elected</b>	<b>11</b>	<b>9</b>	<b>11</b>	<b>13</b>	<b>18</b>	<b>8</b>	<b>9</b>	<b>4</b>	<b>2</b>	<b>4</b>
<b>Union Elected</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>8</b>	<b>4</b>	<b>7</b>	<b>4</b>	<b>5</b>	<b>4</b>	<b>4</b>

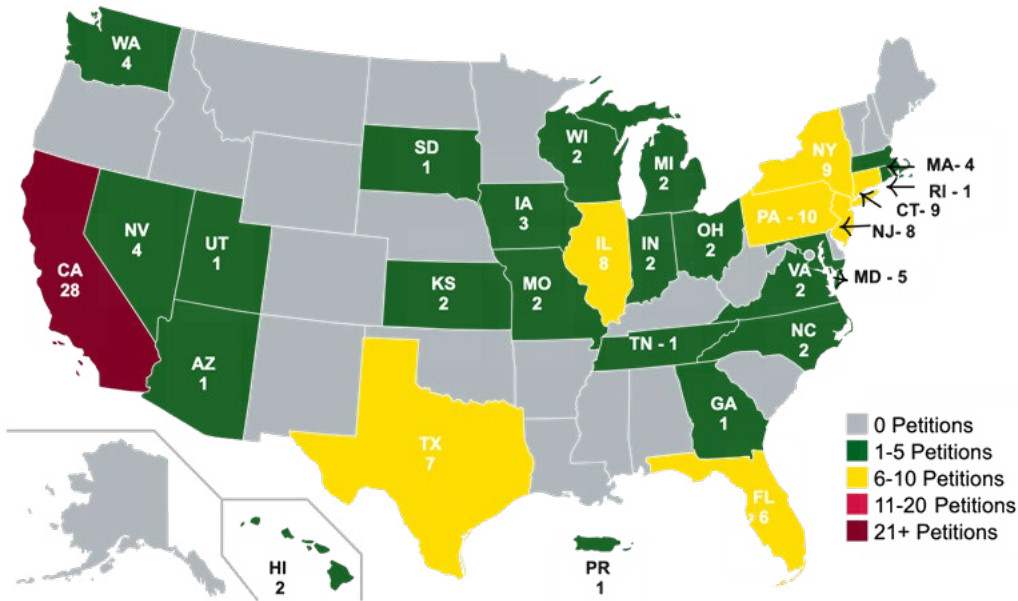
All Non-Transportation Industries – Summary of Petitions Filed and Elections Held (2013 - 2022)										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Petitions	2,252	2,328	2,317	2,041	2,011	1,697	1,824	1,409	1,540	2,318
Total Representation (RC) Petitions	1,790	1,884	1,921	1,713	1,651	1,375	1,554	1,188	1,255	1,999
<b>Union Not Elected</b>	<b>416</b>	<b>377</b>	<b>398</b>	<b>333</b>	<b>332</b>	<b>283</b>	<b>267</b>	<b>219</b>	<b>225</b>	<b>370</b>
<b>Union Elected</b>	<b>771</b>	<b>888</b>	<b>974</b>	<b>833</b>	<b>867</b>	<b>699</b>	<b>796</b>	<b>531</b>	<b>648</b>	<b>1,108</b>
Total Decertification Petitions (RD and RM)	462	444	396	328	360	322	270	221	285	319
Total RD Petitions	407	399	341	272	298	293	231	178	259	293
Total RM Petitions	55	45	55	56	62	29	39	43	26	26
<b>Union Not Elected</b>	<b>125</b>	<b>121</b>	<b>116</b>	<b>110</b>	<b>126</b>	<b>112</b>	<b>104</b>	<b>57</b>	<b>94</b>	<b>105</b>
<b>Union Elected</b>	<b>82</b>	<b>62</b>	<b>74</b>	<b>61</b>	<b>67</b>	<b>53</b>	<b>56</b>	<b>46</b>	<b>57</b>	<b>54</b>



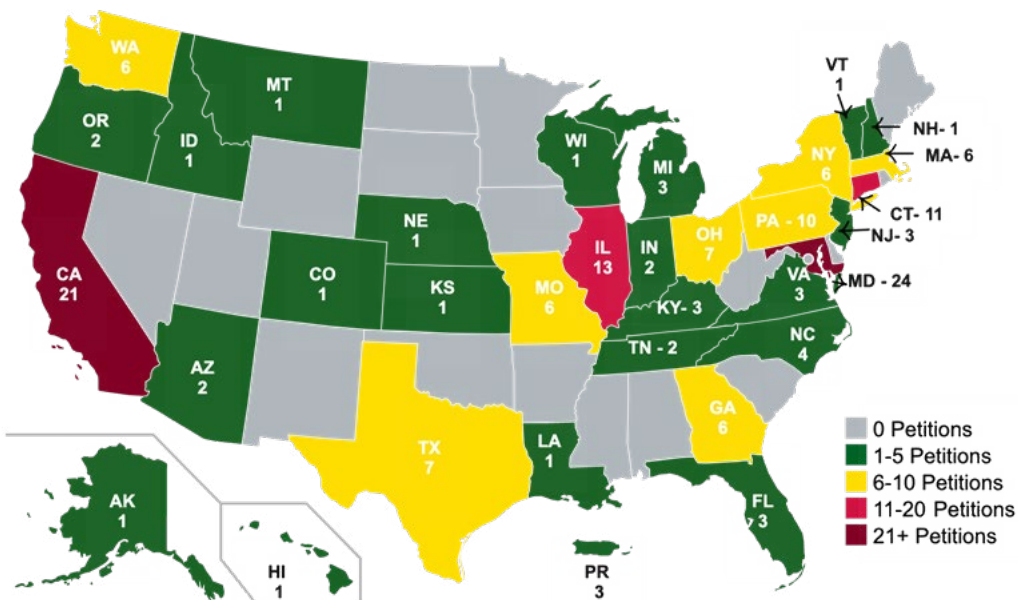
# APPENDIX C

## MAPS OF REPRESENTATION (RC) PETITIONS FILED IN TRANSPORTATION

2021



2022



# APPENDIX D

## THE NATIONAL LABOR RELATIONS BOARD DEFINITIONS

### WHAT IS THE NATIONAL LABOR RELATIONS BOARD?

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The National Labor Relations Board (NLRB) is an independent federal agency established to enforce the National Labor Relations Act (NLRA). As an independent agency, the NLRB is not part of any other government agency, such as the Department of Labor.

Congress has empowered the NLRB to conduct secret ballot elections so employees may exercise a free choice whether a union should represent them for bargaining purposes. A secret ballot election will be conducted only when a petition requesting an election is filed. Such a petition should be filed with the Regional Office in the area where the unit of employees is located. All Regional Offices have petition forms that are available upon request and without cost.

### TYPES OF PETITIONS

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#### 1) CERTIFICATION OF REPRESENTATION (RC)

This petition, which is normally filed by a union, seeks an election to determine whether employees wish to be represented by a union. It must be supported by the signatures of 30 percent or more of the employees in the bargaining unit being sought. These signatures may be on paper. This designation or “showing of interest” contains a statement that the employees want to be represented for collective-bargaining purposes by a specific labor organization. The showing of interest must be signed by each employee, and each employee’s signature must be dated.

#### 2) DECERTIFICATION (RD)

This petition, which can be filed by an individual, seeks an election to determine whether the authority of a union to act as a bargaining representative of employees should continue. It must be supported by the signatures of 30 percent or more of the employees in the bargaining unit represented by the union. These signatures may be on separate cards or a single piece of paper. This showing of interest contains a statement that the employees do not wish to be represented for collective-bargaining purposes by the existing labor organization. The showing of interest must be signed by each employee, and each employee’s signature must be dated.

#### 3) WITHDRAWAL OF UNION-SECURITY AUTHORITY (UD)

This petition, which can also be filed by an individual, seeks an election to determine whether to continue the union’s contractual authority to require that employees make certain lawful payments to the union to retain their jobs. It must be supported by the signatures of 30 percent or more of the employees in the bargaining unit covered by the union-security agreement. These signatures may be on separate cards or a single piece of paper. This showing of interest states that the employees no longer want their collective-bargaining agreement to contain a union-security provision. The showing of interest must be signed by each employee, and each employee’s signature must be dated.

#### 4) EMPLOYER PETITION (RM)

This petition is filed by an employer for an election when one or more unions claim to represent the employer's employees or when the employer has reasonable grounds for believing the union that is the current collective-bargaining representative no longer represents a majority of employees. In the latter case, the petition must be supported by the evidence or "objective considerations" relied on by the employer for believing that the union no longer represents a majority of its employees.

#### 5) UNIT CLARIFICATION (UC)

This petition seeks to clarify the scope of an existing bargaining unit by, for example, determining whether a new classification is properly a part of that unit. The petition may be filed by either the employer or the union.

#### 6) AMENDMENT OF CERTIFICATION (AC)

This petition seeks the amendment of an outstanding certification of a union to reflect changed circumstances, such as changes in the name or affiliation of the union. This petition may be filed by a union or an employer.



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