



LABOR ACTIVITY IN RETAIL

ANNUAL REPORT

Spring 2024

ABOUT THIS REPORT

In partnership with the Retail Industry Leaders Association (RILA), the 2024 IRI Consultants Labor Activity in Retail Annual Report includes the following:



An analysis of national, regional, and state representation petitions and elections (RC, RM, and RD) as reported by the National Labor Relations Board (NLRB) during 2022 and 2023^{1,2}



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



¹ See Appendix C for detailed definitions of the types of petitions and elections.

² 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.

A LETTER FROM MARK CODD

Dear Industry Colleagues,

Throughout 2023, retail leaders faced a string of challenges – both old and new – as they continued to navigate the rise of union organizing in a post-pandemic world with a pro-labor Administration. The national organizing push at Starbucks brought issues like wages and working conditions to the forefront. But other organizing efforts at big-name retailers like Amazon and REI also captured media attention, particularly because of the large number of young workers driving these campaigns.

In 2024, we expect a similar outlook, not only because the national retail unionization movement is gaining momentum, but also because the current National Labor Relations Board (NLRB) is overturning decades of precedent with decisions that are changing the parameters of union organizing – and leaving organizations confused and scrambling.

In retail specifically, we're seeing a dramatic increase in concerns about issues regarding employee safety and workplace well-being. This is likely correlated to the rise of organized retail crime and the violence that often comes with it, as you'll see outlined later in this report.

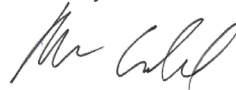
Other notable developments to keep in mind:

- The NLRB overturned decades of federal labor law precedent with its decision in *Cemex Construction Materials Pacific, Inc.*, which announced a dramatic new framework for the union representation process, effective immediately, and in some cases retroactively. The process now in effect puts the onus on the employer to challenge the union's claim of majority status by filing its own request for an election to decide whether its employees want to unionize.
- In the case of *Stericycle Inc.*, the NLRB adopted a new standard for how the NLRB will evaluate workplace rules and policies that are challenged on the grounds that they interfere with or restrict employees' rights to engage in protected concerted activity.
- The NLRB changed its election process and reinstated expedited or "quickie" elections, which significantly shortens the timeline for union elections and adds new requirements and restrictions for employers. The cumulative effects of this new rule are to speed up elections while reducing employers' abilities to educate their employees on the effects of potential union representation. This ruling took effect on December 26, 2023.

As you can see, today's regulatory environment has extended a significant advantage to labor unions who seek to represent a retailer's workforce. With time and momentum on the side of the unions, retailers must act now and take proactive measures, including assessing vulnerabilities and labor readiness, to protect their organizations and avoid becoming part of the labor unionization trend.

To assist with these efforts, we have included the latest data on union organizing and membership across the nation, as well as four timely labor and employee relations articles, in the enclosed Labor Activity in Retail report. In continued partnership with the Retail Industry Leaders Association (RILA), IRI Consultants will be there with you as the retail industry continues to adapt over the coming year. We look forward to supporting your organization in building a strong and engaged workforce.

Sincerely,



Mark Codd, Ph.D.

Vice President, Managing Director
IRI Consultants

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EXECUTIVE SUMMARY

NLRB REPRESENTATION (RC AND RM) PETITIONS AND ELECTIONS

There were 143 representation petitions³ filed in the retail industry in 2023, down from 225 in 2022.

In 2023, 127 representation elections were held in the retail industry and unions were elected as a result of 65 percent of these. This was a large drop from the number of elections held in 2022, when unions won 73 percent of the 164 elections held.

Nearly two-thirds of all petitions were filed in just 7 states in 2023 – California, New York, Illinois, Oregon, Missouri, Idaho, and New Jersey. These same 7 states accounted for 56 percent of petitions filed in 2022.

The United Food and Commercial Workers International Union (UFCW) remains the most active union in the retail industry, accounting for 49 percent of all petitions filed and 48 percent of all elections held. UFCW was elected as a result of 66 percent of the 61 elections it was involved in.

Over the past decade, the most strikes in the retail industry were held in Illinois, New York, California, and Massachusetts. In 2023, 29 strikes were held, idling a total of 2,086 workers.



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³ Throughout this report, a combination of RC and RM cases are used anytime we discuss representation petitions and elections.

UNION MEMBERSHIP NATIONWIDE

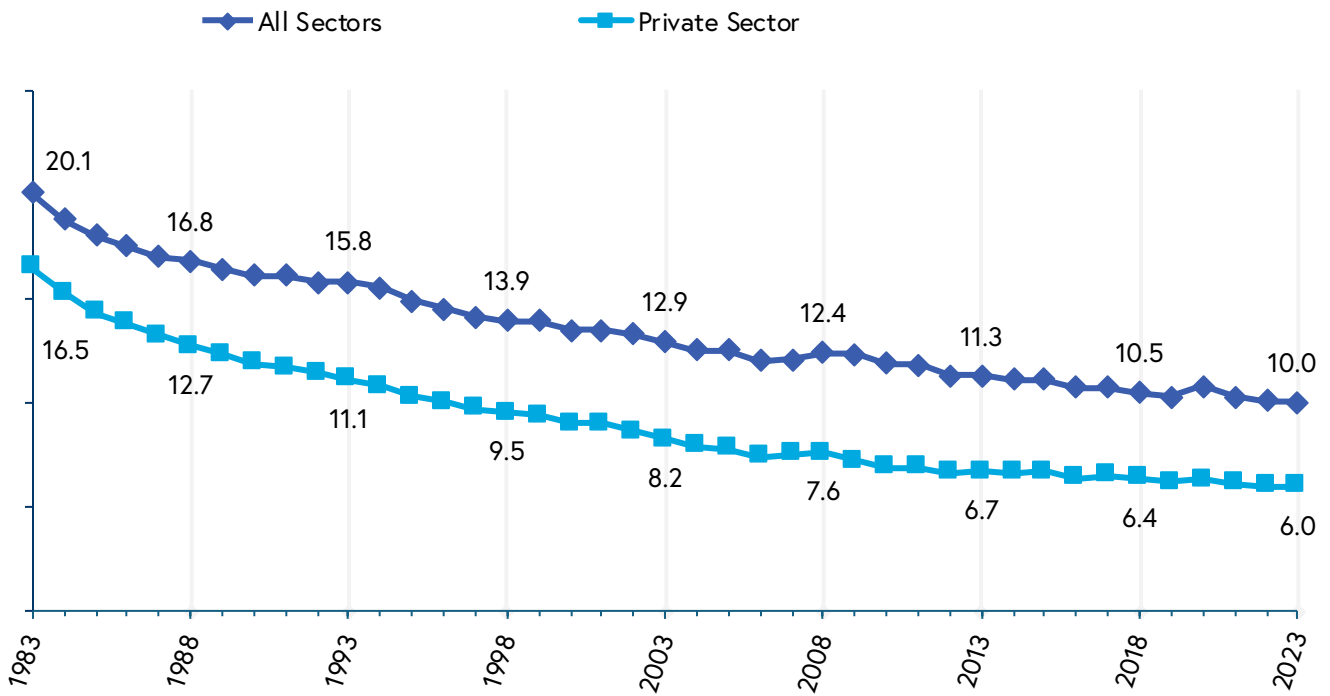
According to the Department of Labor (DOL) Bureau of Labor Statistics' Union Members – 2023 report, the percentage of unionized wage and salary employees decreased to 10.0 percent – the lowest on record. This number is down slightly from 10.1 percent in 2022, although the number of wage and salary workers belonging to unions increased from 2022 to 2023.

Data from the DOL report include the following highlights:

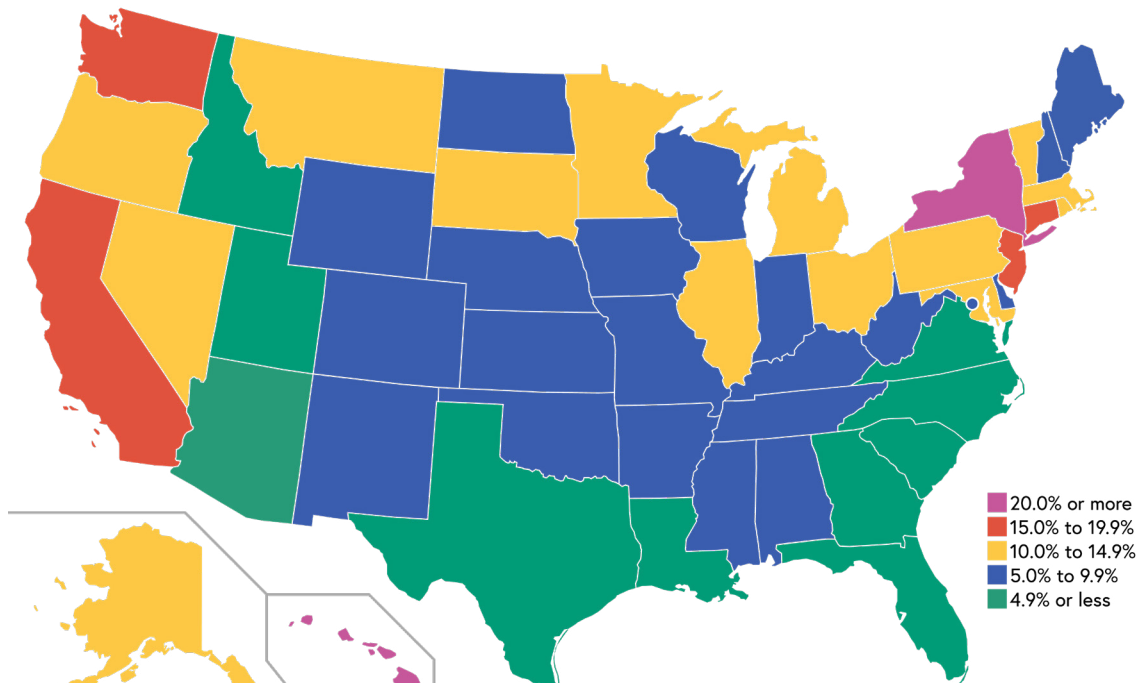
- The union membership rate was 10.0 percent in 2023 – down from 10.1 percent in 2022
- Public sector employees continue to be more than 5 times as likely to be members of unions as private sector employees (32.5 percent versus 6.0 percent, respectively)
- Black workers continued to have the highest union membership rate in 2023 (11.8 percent), followed by Whites (9.8 percent), Hispanics (9.0 percent), and Asians (7.8 percent)
- The highest union membership rate is among men aged 45 to 54 (12.9 percent), while the lowest is among women aged 16 to 24 (3.4 percent)
- Among states, Hawaii maintains the highest union membership rate (24.1 percent), and South Carolina has the lowest rate (2.3 percent)
- Union membership rates increased in 27 states, decreased in 21 states, and remained unchanged in 2 states and the District of Columbia



UNION MEMBERSHIP RATE SUMMARY



UNION MEMBERSHIP RATES BY STATE, 2023



NLRB PETITION AND ELECTION RESULTS

This section includes the following:

NATIONAL SUMMARIES

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

UNION SUMMARIES

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

STRIKES IN RETAIL

- Strikes held by year in retail

STATE SUMMARIES

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

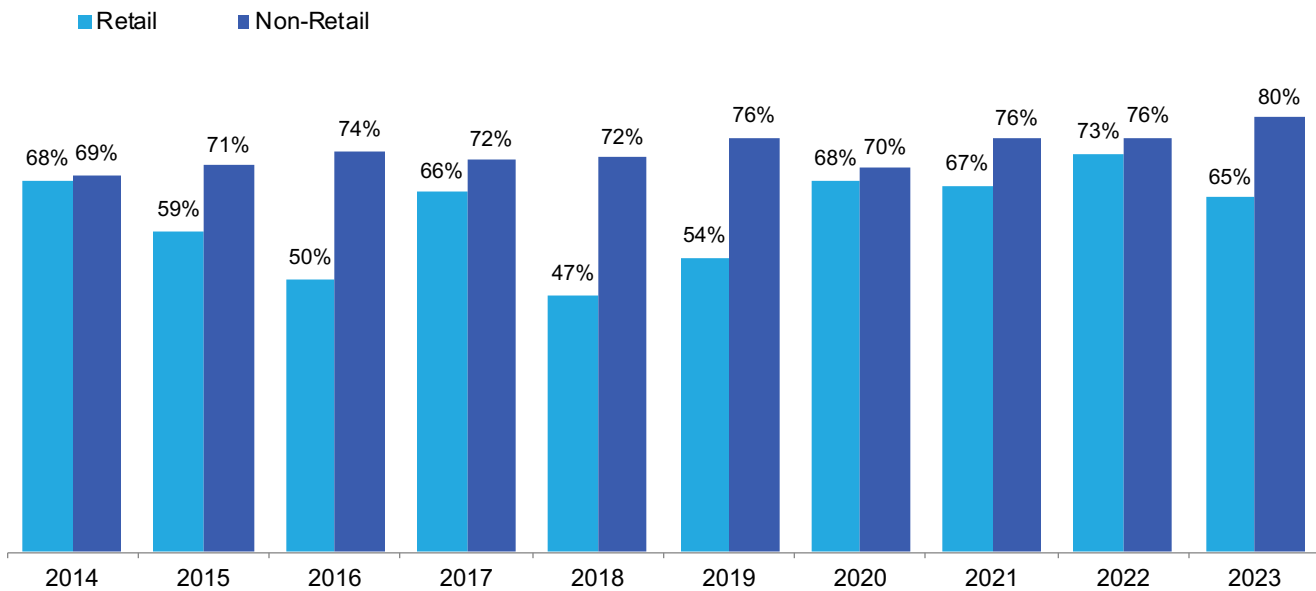


NATIONAL SUMMARIES

The following information summarizes representation petition activity and elections held during the past decade as reported by the NLRB.

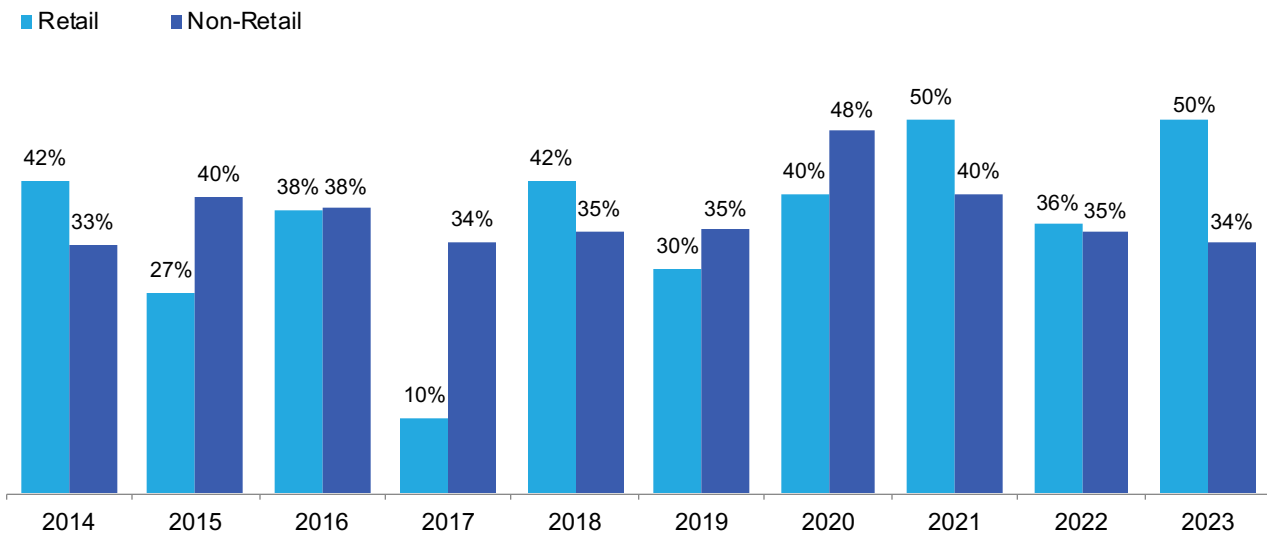
UNION WINS IN REPRESENTATION (RC AND RM) ELECTIONS

Unions were elected as a result of 65 percent of representation elections held in 2023, much lower than the 80 percent win rate in non-retail industries.



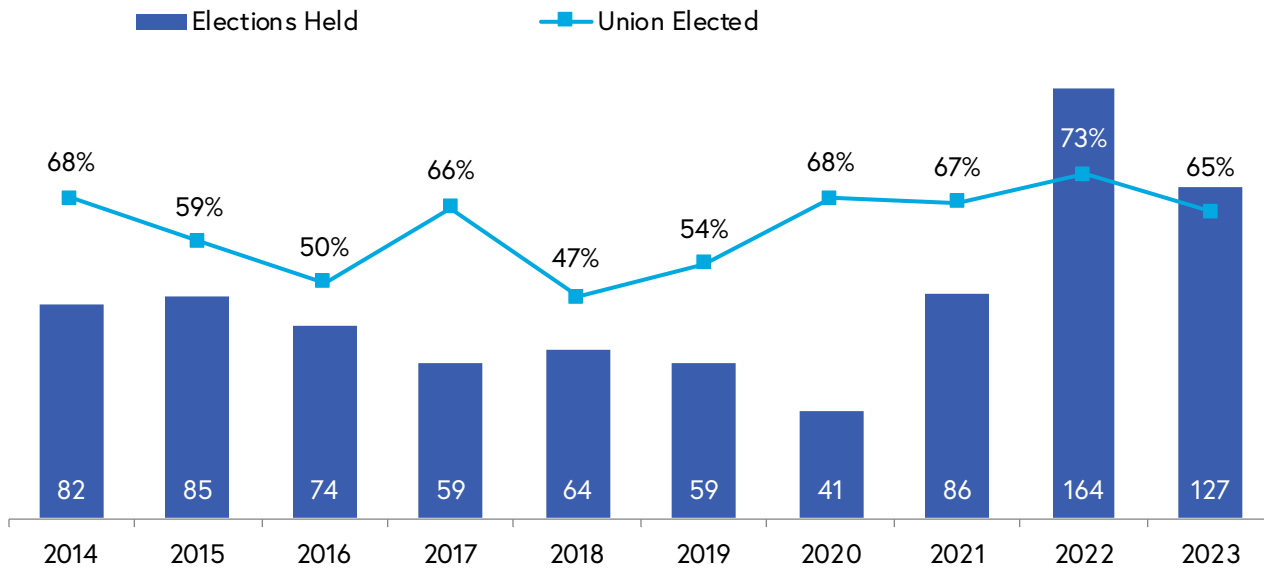
UNION WINS IN DECERTIFICATION (RD) ELECTIONS

Unions maintained recognition in half of the decertification elections held in 2023.



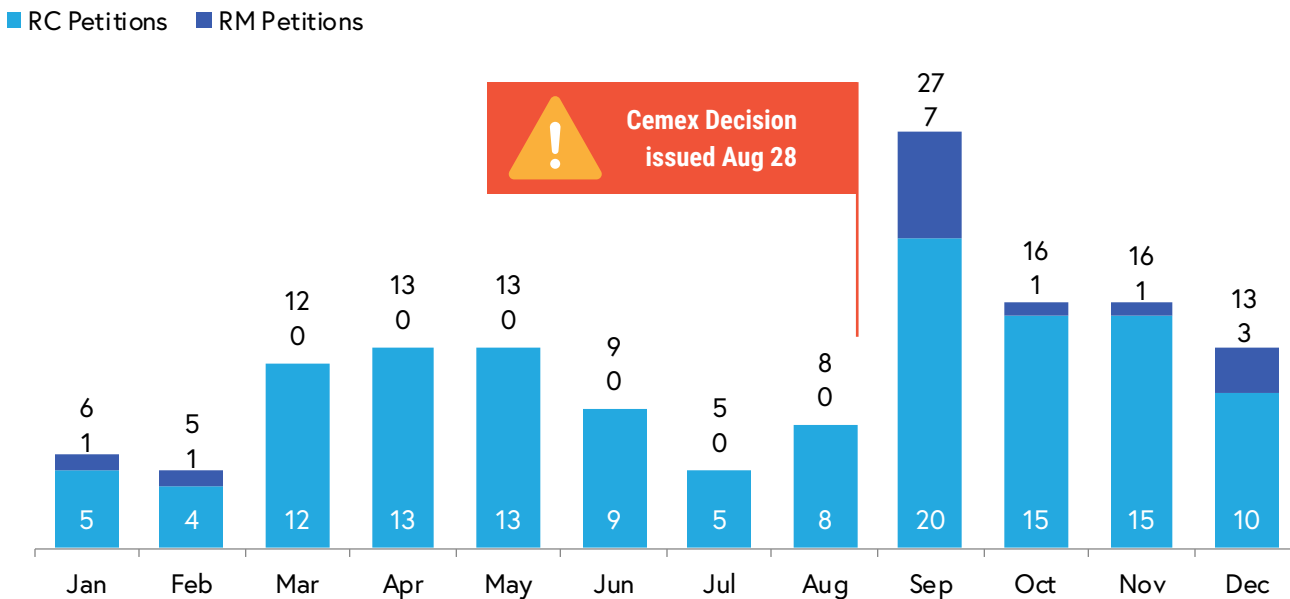
RETAIL INDUSTRY – ELECTIONS OVERVIEW

In 2023, 127 representation elections were held in the retail industry. This was down from a record-high 164 elections in 2022 but was still well above average. Unions were elected as a result of 65 percent of elections held in 2023 compared to 73 percent the previous year.



CEMEX ALERT – RC VS. RM PETITIONS FILED

Since the *Cemex* decision was issued on August 28, 2023, the composition of representation petitions filed has seen a slight shift, with more RM petitions being filed. Throughout this report, a combination of RC and RM cases are used anytime we discuss representation petitions and elections.

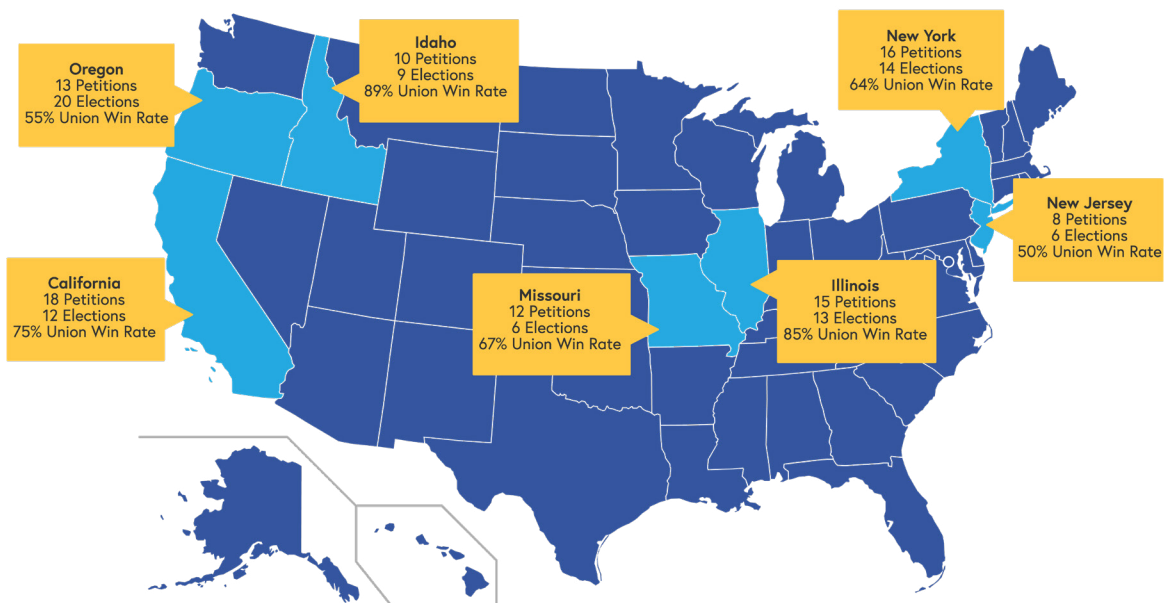


STATE SUMMARIES

This section provides an analysis of state-level organizing activity in the retail industry and is based on RC and RM petitions filed and RC and RM elections held. The data includes all reported petitions and elections for 2022 and 2023 at the time of publication.

MOST ACTIVE STATES – REPRESENTATION (RC AND RM) PETITIONS FILED IN RETAIL

In 2023, 64 percent of all representation petitions filed were in just 7 states – California, New York, Illinois, Oregon, Missouri, Idaho, and New Jersey. These same 7 states accounted for 56 percent of representation petitions filed in 2022.



ALL STATES – REPRESENTATION (RC AND RM) PETITIONS FILED IN RETAIL

The table below details the number of representation petitions filed in each state during 2022 and 2023. States are not included in the table if no petitions were filed in either year. There were significantly more petitions filed in 2022 than in 2023.

State	2022	2023	State	2022	2023	State	2022	2023
Alaska	2	-	Kentucky	4	4	Oklahoma	-	2
Arizona	9	-	Maryland	6	1	Oregon	37	13
California	34	18	Massachusetts	10	4	Pennsylvania	7	5
Colorado	5	1	Michigan	8	1	Rhode Island	1	-
District of Columbia	4	1	Minnesota	4	3	Tennessee	2	-
Florida	1	-	Missouri	9	12	Texas	2	1
Georgia	-	1	Montana	1	-	Utah	-	1
Hawaii	2	-	Nevada	2	3	Vermont	1	2
Idaho	3	10	New Jersey	4	8	Virginia	4	1
Illinois	28	15	New Mexico	1	-	Washington	10	5
Indiana	3	3	New York	12	16	West Virginia	1	-
Iowa	1	-	North Carolina	-	1	Wisconsin	2	1
Kansas	1	3	Ohio	4	7	Total	225	143



ALL STATES – REPRESENTATION (RC AND RM) ELECTION RESULTS IN RETAIL

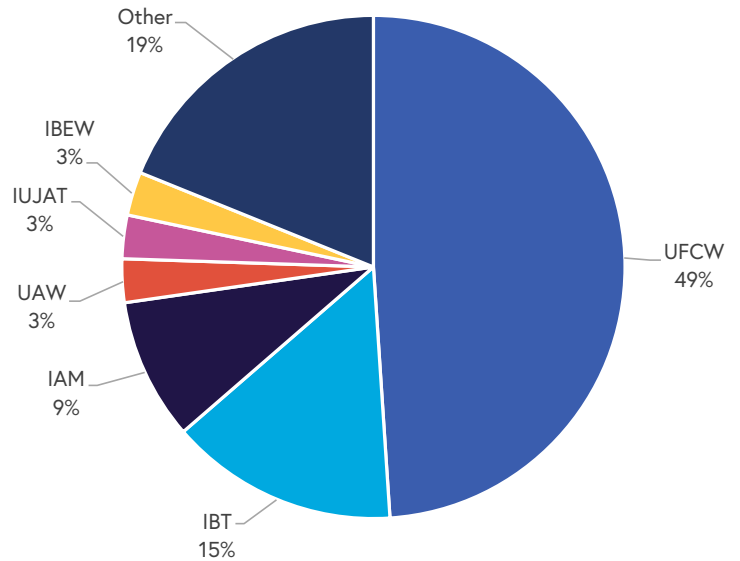
The following table depicts the number of representation elections held in each state in the retail industry in 2022 and 2023. States are not included in the table if no elections were held in either year.

State	2022					2023				
	Total Elections	Union Elected		Union Not Elected		Total Elections	Union Elected		Union Not Elected	
		Count	Win Rate	Count	Win Rate		Count	Win Rate	Count	Win Rate
Alabama	1	0	0%	1	100%	-	-	-	-	-
Alaska	1	1	100%	0	0%	-	-	-	-	-
Arizona	8	5	63%	3	38%	1	0	0%	1	100%
California	25	16	64%	9	36%	12	9	75%	3	25%
Colorado	3	1	33%	2	67%	1	0	0%	1	100%
District of Columbia	1	1	100%	0	0%	1	1	100%	0	0%
Florida	1	1	100%	0	0%	-	-	-	-	-
Hawaii	-	-	-	-	-	1	1	100%	0	0%
Idaho	3	3	100%	0	0%	9	8	89%	1	11%
Illinois	27	21	78%	6	22%	13	11	85%	2	15%
Indiana	3	3	100%	0	0%	3	1	33%	2	67%
Kansas	1	1	100%	0	0%	2	2	100%	0	0%
Kentucky	2	2	100%	0	0%	4	3	75%	1	25%
Maryland	5	4	80%	1	20%	2	1	50%	1	50%
Massachusetts	6	5	83%	1	17%	3	1	33%	2	67%
Michigan	3	1	33%	2	67%	2	1	50%	1	50%
Minnesota	4	3	75%	1	25%	2	2	100%	0	0%
Missouri	8	6	75%	2	25%	6	4	67%	2	33%
Montana	1	0	0%	1	100%	-	-	-	-	-
Nevada	2	2	100%	0	0%	3	3	100%	0	0%
New Jersey	4	4	100%	0	0%	6	3	50%	3	50%
New Mexico	1	1	100%	0	0%	-	-	-	-	-
New York	9	5	56%	4	44%	14	9	64%	5	36%
Ohio	4	4	100%	0	0%	6	3	50%	3	50%
Oregon	21	16	76%	5	24%	20	11	55%	9	45%
Pennsylvania	4	3	75%	1	25%	6	3	50%	3	50%
Tennessee	2	1	50%	1	50%	-	-	-	-	-
Texas	2	0	0%	2	100%	1	1	100%	0	0%
Utah	-	-	-	-	-	1	1	100%	0	0%
Vermont	1	1	100%	0	0%	1	-	0%	1	100%
Virginia	-	-	-	-	-	2	1	50%	1	50%
Washington	8	7	88%	1	13%	4	1	25%	3	75%
West Virginia	1	1	100%	0	0%	-	-	-	-	-
Wisconsin	1	1	100%	0	0%	1	1	100%	0	0%
Wyoming	1	0	0%	1	100%	-	-	-	-	-
Total	164	120	73%	44	27%	127	82	65%	45	35%

UNION SUMMARIES

MOST ACTIVE UNIONS – REPRESENTATION (RC AND RM) PETITIONS FILED IN RETAIL IN 2023

The United Food and Commercial Workers International Union (UFCW) remained the most active union in the retail industry in 2023, accounting for nearly 50 percent of the petitions filed. UFCW, however, filed only half as many petitions in 2023 as it did in 2022 (70 petitions in 2023 vs. 134 in 2022).



MOST ACTIVE UNIONS – REPRESENTATION (RC AND RM) PETITIONS FILED IN RETAIL

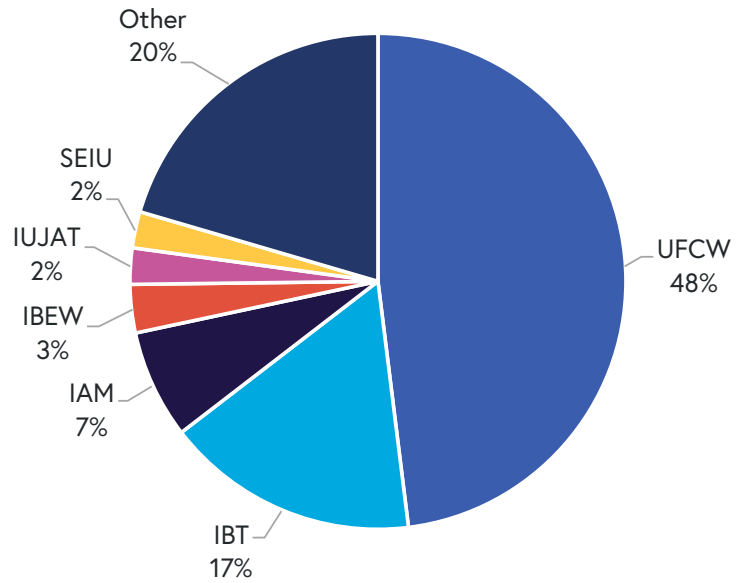
Abbreviation	Union Name	Petitions Filed	
		2022	2023
UFCW	United Food and Commercial Workers International Union	134	70
IBT	International Brotherhood of Teamsters	37	21
IAM	International Association of Machinists	10	13
UAW	United Automobile, Aerospace and Agricultural Implement Workers of America	3	4
IUJAT	International Union of Journeymen and Allied Trades	2	4
IBEW	International Brotherhood of Electrical Workers	1	4

Also active in the retail industry and referenced on the next page is the following union.

Abbreviation	Union Name
SEIU	Service Employees International Union

MOST ACTIVE UNIONS – REPRESENTATION (RC AND RM) ELECTIONS HELD IN RETAIL IN 2023

As expected, UFCW was involved in nearly half of the elections held in 2023. UFCW was elected as a result of 66 percent of the 61 elections held.



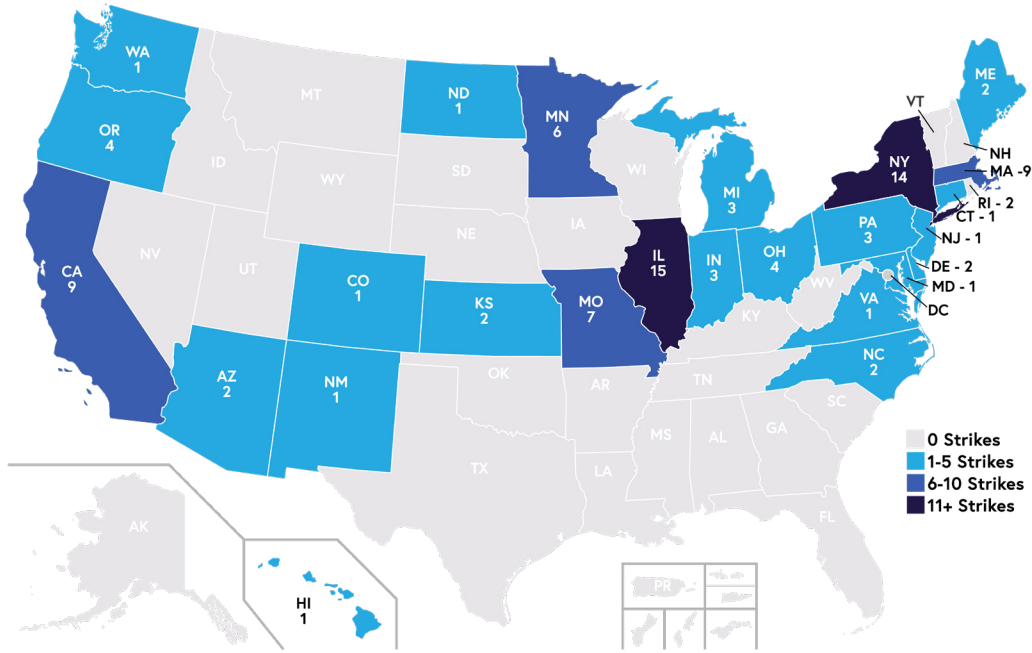
MOST ACTIVE UNIONS – REPRESENTATION (RC AND RM) ELECTION RESULTS IN RETAIL

	2022			2023		
	Total Elections	Union Elected %	Union Not Elected %	Total Elections	Union Elected %	Union Not Elected %
UFCW	100	71%	29%	61	66%	34%
IBT	27	85%	15%	21	71%	29%
IAM	7	43%	57%	9	56%	44%
IBEW	0	-	-	4	25%	75%
IUJAT	0	-	-	3	33%	67%
SEIU	1	100%	0%	3	67%	33%

STRIKES IN RETAIL

STRIKES IN RETAIL BY STATE, 2014 – 2023

The map below illustrates the number of strikes in the retail industry in each state since 2014.⁴ Strike activity is heavily concentrated in a handful of states.



STRIKES IN RETAIL BY STATE, 2014 – 2023

Year	Number of Strikes	Workers Idled	Average Number of Workers per Strike
2023	29	2,086	72
2022	13	10,447	804
2021	12	9,766	814
2020	9	1,144	127
2019	10	33,157	3,316
2018	3	297	99
2017	11	2,531	230
2016	3	100	33
2015	5	668	134
2014	3	350	117

⁴ 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 to provide the most complete data possible. The data may not be comprehensive.

LABOR LAW/ACTIVITY UPDATE

[The Rise of Organized Retail Crime and Its Effect on Employee Safety](#)

Organized retail crime, which involves profiting from the sale of stolen products, is a complex societal problem impacting communities across the country. Although theft is not a new problem for retail leaders, what's become increasingly concerning is the violence that is often associated with these incidents – and the negative impact it has on employee safety. Here, we discuss the challenges, solutions, and ways in which the Retail Industry Leaders Association (RILA) is fighting back to combat this issue and create the synergies necessary to start making retail theft a less attractive crime for criminals.

[Starbucks: A Proving Ground for the Modern Labor Movement](#)

The Service Employees International Union (SEIU) campaign to unionize Starbucks has emerged as a major test of the viability of contract trade unionism in this country. It will likely serve as a defining moment – for better or worse – for the labor movement and be viewed as a measuring stick of the efficacy of trade unionism as a worker representation model within the counter service restaurant sector, as well as the American entry-level employment space more broadly. Employers would be wise to understand and appreciate how the organizing effort took hold, which elements of it may be replicated (or may not), and what it could mean for future organizing campaigns.

[Retail Industry Union Organizing Onslaught – Evolving Labor Law Landscape for Retail Employers Requires Action Now](#)

National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo has added a significant amount of stress to the growing number of retailers that are facing union organizing post-pandemic. Notably, she has injected the NLRB into election campaigns and collective bargaining negotiations in ways never seen before, leaving companies that have a bargaining relationship with a union questioning what the “status quo” is regardless of past practices or business conditions. In response, four seasoned labor attorneys have outlined the hurdles faced by retail employers in today's labor environment and provided practical takeaways to address the hottest labor disputes pending before the NLRB.

[Back to the Future and Beyond: Retailers' Preparation for the New Labor Environment](#)

The fall of 2023 saw significant changes in labor relations requirements for retailers. In August 2023, a court case known as the “*Cemex* decision” changed over 50 years of past practice when it comes to the method in which labor unions come to represent a retail workforce. Later in November, NLRB General Counsel Jennifer Abruzzo confirmed that labor unions are no longer required to file petitions for election in order to represent a retailer's workforce. This article showcases the challenges and the opportunities retailers will likely face in 2024, seeing as they now have little or no time to respond once union organizing activity occurs.

The Rise of Organized Retail Crime and Its Effect on Employee Safety

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ABSTRACT

Organized retail crime (ORC) is a complex societal problem that affects every state in the nation. In recent years, retailers, police, prosecutors, consumers, and employees have seen a drastic rise in retail crime affecting the workplace and the communities they serve. Although theft itself is not a new problem, retailers specifically are concerned by the violence often associated with these incidents, especially in regard to the negative impact it has on employee safety. This is because employee safety and well-being is becoming one of the most significant touch points for labor relations and human resources professionals. As a result, there is a growing sense of urgency and hope surrounding the ongoing efforts to decrease retail theft, as shown by the Retail Industry Leaders Association (RILA) and its work to combat this issue and create the synergies necessary to start making retail theft a less attractive crime for criminals.

INTRODUCTION

Organized retail crime (ORC) is a significant problem impacting communities across the country. The increase in organized rings profiting from the sale of stolen products and a growing number of habitual offenders has led to increasingly brazen theft and acts of violence against retail employees.

Theft itself is not a new problem. Retailers have been dealing with the repercussions of retail theft for decades. What’s become increasingly concerning for retail leaders is the violence that is often associated with these incidents and the negative impact it has on employee safety.

As we stated in the 2022 Labor Activity in Retail Annual Report, employee safety and well-being is becoming one of the most significant touchpoints for labor relations and human resources professionals. The threat of violence for employees within some retail environments causes both mental and physical harm. A 2023 survey from Axonify found 33% of associates said their store has experienced violent situations involving customers in the past six months.

33%
of associates

said their store has experienced violent situations involving customers in the past six months.

Increased customer behaviors noted by associates

More likely to ask to speak with manager	63%
More irritable than before	60%
More disputes with staff/other customers	58%
More haggling with staff over prices	55%

Amid Attacks and Thefts, Some Retail Workers Want to Fight Back

Assaults at stores have been increasing at a faster pace than the national average. Some workers are tired of waiting for their safety.

The Retail Violence Epidemic Reaches New Heights

An Violence Against Retail Associates Committee to RILA, LP Publication March 2023 New Ways to Keep Employees Safe

Violence Against Retail Workers Is on the Rise. How to Keep Your Team Safe

Fostering a safe workplace starts with strong internal policies and good communication—a framework employees need to stay alert and decisive in the face of potential violence.

The increase in violence has led retailers to implement major operational changes that would have been unthinkable just a few years ago: locking up products, deploying more security guards, and closing stores in high-crime areas. No retailer wants to take these steps, but the current environment has left retailers with few options.

Most retailers have policies in place instructing frontline employees not to intervene when a retail theft incident occurs in a store. This is necessary to protect employees. There are no products more important than the life of an associate. While retailers do employ thousands of trained asset protection employees who are permitted to disrupt criminal activity in stores, tragically, there have been employees killed during the apprehension of criminals in the store. The escalated violence and disrespect for the safety of retail employees continue to motivate retailers to innovate on how to keep their associates and stores safe.

According to a RILA survey on ORC:

- 86.2% of retailers surveyed said an ORC subject has verbally threatened an associate
- 75.9% said an ORC subject has physically assaulted an associate
- 41% said an ORC subject had used a weapon to harm an associate

Retailers have been making the case for many years that the costs associated with habitual theft and ORC have been escalating, most recently due to the rise of online marketplaces. As Amazon, Facebook, and other marketplaces opened their platforms to third-party sellers, criminals saw an opportunity to exploit the anonymity provided by the Internet to quickly and easily fence stolen products. Coupled with a boom in buying online, criminals looking to profit from selling stolen products suddenly had millions of unsuspecting customers at their fingertips.

WHAT IS ORGANIZED RETAIL CRIME?

Organized Retail Crime (ORC) refers to professional-organized shoplifting occurring in retail stores. These criminal

enterprises are sophisticated and well coordinated. They typically target multiple retailers with the intent of stealing mass quantities of products to then turn around and sell for criminal financial gain. ORC gangs operate on a local, national, and, in some cases, international level.

According to a joint report from Homeland Security Investigations (HSI) and the Association of Certified Anti-Money Laundering Specialists, “organized retail crime is leading to more brazen, more violent attacks in retail stores throughout the country, and many of the criminal rings orchestrating these thefts are also involved in other serious criminal activity,” said HSI’s acting executive associate director Steve Francis.

According to the report, organized theft groups are often involved in other illicit activity cited in the U.S. Treasury Department’s National AML/CFT Priorities list, including cybercrime, fraud, drug trafficking, terrorism financing, weapons trafficking, and transnational organized crime.

RETAILERS FIGHT BACK TO COMBAT RETAIL THEFT

Mitigating the ongoing negative effects of retail crime is an industry-wide priority. RILA is working diligently with all stakeholders to address the problem from multiple angles. This includes passing laws at the state and federal level, creating partnerships, and standing up an initiative to tackle the root causes of retail crime at the local level.

ENACTING LAW – FEDERAL TRADE COMMISSION AND STATE ATTORNEYS GENERAL ENFORCEMENT

INFORM Consumers Act

RILA established the Buy Safe America Coalition to bring trade associations, retailers, and leading brands into the fight against criminal rings using third-party marketplaces to sell dangerous, defective, and stolen goods to unsuspecting consumers. The Coalition was successful in passing the INFORM Consumers Act at the end of 2022.

INFORM became effective in June 2023, and it empowers the Federal Trade Commission (FTC) and state attorneys general (AGs) to investigate and penalize marketplaces for failing to follow the strict verification and collection mandates in the law. It allows AGs and the FTC to fine a marketplace for non-compliance up to \$50,120.00 per infraction.

The basic transparency requirements included in INFORM will make it harder for bad actors to easily deceive consumers. It will also provide law enforcement with an important tool to track and prevent these illicit sales.

State Actions

ORC is not a red-state or blue-state problem. It impacts every state in the nation. Retailers, police, prosecutors, consumers, and employees have seen a drastic rise in retail crime affecting the workplace and the communities they serve.

Over the last three years, RILA and its member companies embarked on a state-by-state strategy by partnering with state retail associations to increase the visibility, knowledge, and impact of ORC. The strategy had two prongs: pass INFORM legislation in as many states as possible and help states create dedicated, ORC task forces. Thirteen states, both Republican and Democratic, enacted the INFORM Consumers Act before the same policy was passed federally. Also, 16 states have created a dedicated, ORC task force.

The state task forces provide increased funding to support coordination among law enforcement, prosecutors, and businesses to stop multi-jurisdictional retail crime operations. Attorneys general in [California](#), [Illinois](#), and [New Mexico](#) have already carried out coordinated sting operations based on the important work that their state ORC task forces have conducted.

States are also looking at creating or increasing laws related to ORC (for example, how a state defines “retail theft” or “organized retail theft” within their criminal code, or if a state allows multiple thefts to be aggregated into a single crime, resulting in stricter sentences). The goal here is to restore lawfulness in and around retail establishments. Retail theft, especially violent theft, needs to be prosecuted appropriately so that criminals no longer view retail theft as a low-risk crime.

PARTNERSHIP WITH THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION

Cooperation, collaboration, and information sharing are key to combatting ORC, prolific theft, and other disorders in and around retail environments. As the retail industry fights back against retail theft, RILA identified the need to open lines of communication with local district attorneys to facilitate learning, address persistent challenges, and unite in a shared goal of reducing retail crime and restoring vibrancy to communities across the country.

Out of that need, RILA and the National District Attorneys Association (NDAA) formed a first-of-its-kind partnership between retailers and prosecutors: *Combating Crime for Safer Communities*. The partnership serves as a conduit for educating prosecutors on the scope and impact of ORC and other retail crime, identifying best practices for retailers to support prosecutions, examining emerging criminal schemes, and more.

The success of the RILA/NDAA partnership spawned National Store Walk Month in the fall of 2023. This groundbreaking initiative invited retailers to host local district attorneys in stores to experience first-hand retailers’ efforts to prevent, deter, and dismantle ORC and other criminal activity. The conversations helped foster understanding between frontline prosecutors and retail asset protection professionals, allowed for the exchange of insights and ideas, and, importantly, have already led to collaboration on cases. More than 80 store walks were conducted in 2023. The relationships established between retailers and local prosecutors will promote regular information sharing and collaboration around persistent challenges, best practices, and solving big cases.

VIBRANT COMMUNITIES INITIATIVE

RILA’s [Vibrant Communities Initiative \(VCI\)](#) arises out of an urgent need to address rising ORC, habitual theft, violence, vagrancy, and blight in and around retail stores. Communities across America are plagued with underlying social challenges – substance abuse disorder, mental health issues, homelessness – that are exacerbating a retail crime problem

that has persisted for years. Addressing these complex criminal and social problems requires commitment from a diverse group of stakeholders.

The goal for VCI is to promote actions to reduce unlawful activity in and around retail environments that threatens the safety of employees and the vibrancy of these areas and surrounding communities. The effort will seek to reduce recidivism among high-impact habitual offenders.

WHAT IS A HIGH-IMPACT OFFENDER?

A high-impact offender could be a booster working for an ORC ring, a prolific theft offender, an individual who is self-administering narcotics inside store bathrooms, or anyone who poses a safety risk to associates and customers in or around a retail establishment.

Our aim is to identify an approach for dealing with high-impact offenders that successfully deters individuals from stealing from a retail store again. Our goal is to determine which diversion programs and social services are most successful and can break the cycle of habitual theft. This is particularly important for teens and young adults.

To be clear, anyone who commits an act of violence in a retail store and poses a safety risk to employees and customers deserves to be in the criminal justice system. But for those who are likely to rehabilitate if given targeted support services, we want to work with local stakeholders to identify an approach that will reduce the likelihood that the individual will re-offend.

With the goal of protecting retail employees and returning vibrancy to shopping districts that have been plagued by unprecedented increases in crime, RILA and NDAA partnered to launch VCI in the summer of 2023. Last September, VCI kicked off in two pilot communities – Yolo County (CA) and King County (WA) that bring together district attorneys, law enforcement, social service organizations, civic and business groups, and other stakeholders to identify, test, and promote effective approaches to combat retail crime and disorder. We hope to expand this program as workable solutions are identified.

LEVERAGING TECH TO ENHANCE WORKPLACE SECURITY

Retailers are increasingly leveraging technology to tackle the rising tide of retail theft. In 2024, we're seeing a significant shift towards advanced surveillance systems that employ artificial intelligence (AI) and machine learning. These systems are not just passive recording devices but are capable of real-time analysis to detect suspicious activities and behaviors. Additionally, the use of RFID (Radio-Frequency Identification) technology has been refined to track products more accurately, significantly reducing the incidence of shoplifting and inventory loss. Retailers are also integrating their systems with broader networks, sharing information with law enforcement and other retail organizations to identify and apprehend ORC rings more effectively while working much closer with local prosecutors.

There's also a renewed focus on employee training and well-being. Retailers understand that their employees are on the front lines and are essential in preventing and responding to theft and other criminal activities. Comprehensive training programs are being rolled out, which include conflict de-escalation techniques, emergency response protocols, and awareness of ORC tactics. These programs are often augmented with workshops and support systems to address the psychological impact of dealing with retail crime. Employees are also being equipped with panic buttons and other personal safety devices, ensuring they have immediate access to help if needed. This also includes the activation of remote monitoring centers, deployment of body-worn cameras, and role-playing/table talk exercises.

Make sure your new hire training on workplace violence is:

- ✓ Practical
- ✓ Specific
- ✓ Prescriptive

Axonify

Lastly, the physical store layouts and security measures are being re-evaluated and redesigned. Retailers are adopting store designs that minimize blind spots and make it more difficult for criminals to operate undetected. Entry and exit points are being controlled more rigorously, with some stores implementing

advanced entry systems that require identification or proof of purchase upon exit. Additionally, there's a greater presence of security personnel, both in uniform and plain clothes, to deter criminal activity and provide a sense of security to both employees and customers. This multi-faceted approach, combining technological innovation, employee empowerment, and physical security enhancements, represents the retail industry's comprehensive strategy to combat ORC today and in the future.

CONCLUSION

There is a sense of urgency and hope surrounding the ongoing efforts to decrease retail theft.

Decreasing retail theft and the violence associated with ORC is a complex societal problem. There isn't a single solution that will stop theft from occurring in stores, but that doesn't mean that the status quo is unchangeable, far from it.

Retail leaders are working holistically with all stakeholders to identify practical solutions that can make an impact. Collaboration is imperative to deterring theft and protecting workplaces. To keep retail workplaces safe and restore vibrancy to local communities, stakeholders are sharing information and innovating to identify incremental changes that will make it harder for thieves to target retail stores.

Bringing retailers, law enforcement, prosecutors, social service providers, policymakers, and solution providers together creates the synergies necessary to start making retail theft a less attractive crime for criminals. The harder it is to profit from retail crime, the less appealing it will become to opportunistic offenders.

Driving down habitual theft, prosecuting violent offenders, reducing recidivism, and working with law enforcement to break up criminal ORC gangs – these are ambitious goals. But they are important to affect real change in retail stores across the country. RILA and our partners are committed to making progress on these initiatives so that retail employees and customers can feel safe and empowered when in a retail store.

Starbucks: A Proving Ground for the Modern Labor Movement

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ABSTRACT

The Service Employees International Union (SEIU) campaign to unionize Starbucks has emerged as a major test of the viability of contract trade unionism in this country. That may seem obvious today – after nearly 400 elections, thousands of press hits, a nationally televised sparring match between progressive icon U.S. Senator Bernie Sanders and Howard Schulz, and a pending case before the U.S. Supreme Court. But neither the union nor the company seemed to appreciate the stakes when organizing efforts first kicked off in upstate New York. At that time, Workers United was engaged in a regional organizing effort that captured local Starbucks locations. Those efforts grabbed national attention, caught fire, and swept across progressive social media networks in a way that no campaign had before. Now, it will likely serve as a defining moment – for better or worse – for the labor movement. It will likely be viewed as a measuring stick of the efficacy of trade unionism as a worker representation model within the counter-service restaurant sector and the American entry-level employment space more broadly. Employers would be wise to understand and appreciate how the organizing effort took hold, which elements of it may be replicated (or may not), and what it could mean for future organizing campaigns.

STARBUCKS' BLIND SPOT

In Howard Schultz's own telling, the company did not believe that it was susceptible to a union organizing campaign. Company executives firmly believed that Starbucks stood apart and that its wage rates, benefits, and corporate culture inoculated it from any organizing effort. That steadfast belief, obviously, would end up being a serious miscalculation.

Coming out of the pandemic, there were warning signs everywhere for employers. Serious labor relations practitioners (then and now) appreciate how worker expectations dramatically evolved during the pandemic. Nowhere was trust between employees and managers more strained than in frontline workplaces, such as retail. As critical worker satisfaction benchmarks (health and safety concerns, job satisfaction, paid leave access, return-to-work policies, etc.) showed widening fissures between workers and management, an unprecedented labor shortage provided workers with new opportunities and confidence. In short, the general atmosphere

provided union organizers with perhaps the most favorable organizing environment in a generation. Many of these macro trends were not unique to Starbucks. And the Starbucks C-suite would soon discover that it was not immune to these external forces.

In addition to the overall environment, the company had made operational (in addition to human resources) missteps in the months and years leading up to the unionization effort. The company would later overhaul workplace processes in an effort to demonstrate responsiveness to worker complaints and boost employee satisfaction. In the Buffalo locations, some combination of concerns around pandemic-related policies meshed with other latent workplace issues allowed union organizers to gain traction.

Finally, it's worth noting that Starbucks' workforce (both workers and managers alike) were/are almost certainly

more sympathetic to union appeals compared to the average industry workers. That is to say, the company's workforce almost certainly skews more progressive in its personal views. In hindsight, this was also likely a contributing factor to the union's initial and ongoing organizing success.

The company's miscalculation and lack of a serious focus on union avoidance allowed the union to notch early victories and control the narrative. Union organizers were driving the story in the most crucial early months of the campaign, laying the groundwork for one of the most effective organizing campaigns in modern history.

AN ACCIDENTAL NATIONAL ORGANIZING CAMPAIGN

Months before the first signs of a Starbucks organizing effort, the post-pandemic atmosphere was translating into union-organizing victories in the independent coffee sector, not only in upstate New York but in metros across the country (Milwaukee, Boston, Chicago, to name a few). It was only a matter of time before organizing efforts captured a corporate brand. However, organizers in this segment were largely focused on building power in specific metro areas, not focused on trying to organize a national chain.

In fact, Workers United's original intent was to organize coffee shops in upstate New York. In a fairly common approach to organizing, the union was focused on organizing as many coffee shops as possible within the region to increase its bargaining power. (The SEIU, for instance, has employed this approach effectively in organizing janitors.) All of the first elections were in the Buffalo market. The organizing effort looked very much like a traditional campaign. Union "salts" had been building support within locations, laying the groundwork for months. To highlight this point, Workers United had fewer than five staff members at that time, and the organization's website in 2020 was basically a blog. This was not an entity that was gearing up to spearhead a national organizing effort largely conducted online through social channels, targeting a major, sophisticated international brand.

As the campaign spread from upstate New York, one of the next major metros to organize was the greater Boston area.

In that market, UNITE HERE was successfully organizing independent coffee shops (just as Workers United was enjoying success in upstate New York and other unions were in other metros). UNITE HERE stepped aside to allow Workers United to take the lead, fueling the growing national momentum. Within weeks, dozens more locations would begin organizing.

STARBUCKS' RESPONSE

Every campaign is different, but generally speaking, there are a number of proven ways that employers can effectively communicate with employees (as well as customers, the public, and other stakeholders) during an organizing effort, as labor practitioners know. Many of those things simply didn't happen quickly enough and with the right cadence. The company was caught flatfooted. It's easy with the benefit of hindsight to be critical of any company response, but Starbucks, by its own admission, made major missteps before the first election was held.

Most importantly, the company did not establish – right out of the gate – that the SEIU-affiliate Workers United had salted their locations and was behind the unionization effort. The company did not provide background information to their employees, the media, and the public as to the union's goals and interests in organizing. The company allowed the narrative to grab hold that the organizing effort was an organic, worker-driven campaign. That narrative went unchallenged for months after the first election as dozens of new organizing efforts materialized all over the country.

The company was also not prepared with a crisis plan for this exact scenario. A microsite addressing union complaints and articulating the company's position wouldn't go live until months after the first election. Starbucks would eventually deploy response teams, but everything felt like it was too little and too late, and the company struggled to reset the narrative established early on by organizers. In fact, many of the company's actions seemed to reinforce organizers' side of the story: that "corporate" was out-of-touch and didn't understand or appreciate the concerns of frontline workers. The situation became so dire that some managers were crossing the picket lines to join workers.

THE NATIONAL CAMPAIGN EXPLODES, STARBUCKS FINALLY FINDS ITS FEET

Within six months, the company had begun to find its feet, but at that point, the campaign had taken on a life of its own. Unlike the initial Buffalo locations that were salted, workers were indeed organically organizing unions in Starbucks' locations (albeit with assistance from Workers United and other unions). Workers at hundreds of units were doing exactly what union organizers dream of: they were taking the initiative to organize their own workplaces. They wanted to be part of this new movement that was sweeping the nation and being endorsed by progressive luminaries across every social channel. Workers suddenly found themselves featured as local celebrities. TV and print reporters clamored for interviews, and their posts on organizing efforts received floods of likes and reposts.

The company spent the better part of the next year playing a losing game of whack-a-mole as new units unionized. The first store unionized in December 2021, and by December 2022, over 250 stores had joined Workers United. By almost any measure, it was the most successful union organizing campaign in modern history. The union carried that momentum into 2023, pushing the number above 350 unionized units.

Howard Schultz's testimony in the U.S. Senate in late March 2023 marked a turning point in the campaign. The national platform allowed the company an opportunity to reset some of the narrative, particularly around the genesis of the campaign as well as the company's conduct. And, much to Senator Bernie Sander's dismay, Schultz deftly outmaneuvered inquisitors and drove home his main talking points. At this juncture, too, most of the units that were apt to unionize already had. Workers United had harvested all the low-hanging fruit, so to speak. In short, the number of election petitions had slowed to a trickle by mid-2023. Meanwhile, the company was preparing to go on the offensive as units began to consider decertification and contract negotiations stalled. Today, the company and the union seem to be approaching a stalemate. The union will almost certainly escalate its pressure tactics over the course of 2024, hoping to gain additional leverage and earn concessions from the company.

THE FUTURE OF THE LABOR MOVEMENT

Will the Starbucks campaign provide a template for how contract trade unionism can function as a viable form of worker representation in the restaurant sector? Will NLRB rule changes – like the *Cemex* decision – tilt the playing field so sharply in the unions' favor that they enjoy a renaissance? Will the U.S. Supreme Court rule broadly for Starbucks and, as a result, dramatically curtail the NLRB's power? Is some form of sectoral bargaining, rather than single-employer representation, the future of the American labor movement? All good questions, and there's a thousand more. It does feel like we're at an inflection point for the labor movement, but the path forward is uncertain. The Starbucks campaign itself will likely grind along for years, if not decades, as both sides have dug in.

What does seem certain is if the SEIU cannot convert the energy around the Starbucks campaign into tangible success(es), then it's difficult to imagine how unions will organize the restaurant industry in any meaningful way. Success could be defined in many different ways: a strong collective bargaining agreement or it could just be collecting initiation fees on a location with 150 percent turnover, for instance. However, there needs to be some "payoff" or return on investment for both workers and the union if this is going to be sustainable.

Workers United has organized nearly 400 Starbucks locations. That's an amazing feat, but the company is quick to point out that it's less than 1 percent of the brand's footprint. Both the union and the company now seem to appreciate what neither did two years ago: That the union, the company, and the viability of union organizing in the service industry is at stake and tied to the outcome of this struggle. Time will tell if the post-pandemic Starbucks organizing effort will be revered decades from now like the Memphis sanitation workers campaign or Cesar Chavez's campaign to organize farmworkers, or whether it will serve as a cautionary tale like the PATCO or Hormel strikes. Workers United's accidental national organizing effort has become a key proving ground for the U.S. labor movement.

Retail Industry Union Organizing Onslaught – Evolving Labor Law Landscape for Retail Employers Requires Action Now

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ABSTRACT

Retailers facing the challenges of union organizing post-pandemic have met their match with the General Counsel of the National Labor Relations Board (NLRB), Jennifer Abruzzo. During her tenure, General Counsel Abruzzo has gone out of her way to inject the NLRB into election campaigns and collective bargaining negotiations in ways never seen before. Companies that have a bargaining relationship with a union are questioning what the “status quo” is regardless of past practices or business conditions. This article discusses the hurdles faced by retail employers in today’s labor environment and provides practical takeaways to address the hottest labor disputes pending before the NLRB.

INTRODUCTION

While unionization overall in the private sector has steadily declined for many years, that trend has changed since the pandemic with the explosion in union organizing and elections – emanating in large part from the retail industry.⁵ A Bloomberg analysis of 2022 NLRB election data revealed that more new union members were added in 2022 (75,290) than were organized in 2020 (35,243) and 2021 (36,934) together.⁶ The Service Employees International Union (SEIU) alone added nearly 20,000 workers to its membership in 2022 – nearly a four-fold increase from the 5,827 workers it added in 2021. The United Food and Commercial Workers (UFCW), by contrast, added just 2,552 workers to its membership.⁷ Interestingly, the

data also showed that smaller units (less than 50 employees) won 955 elections in 2022, up from 575 wins in 2021.⁸

Companies subject to high-profile union campaigns included Starbucks, Trader Joe’s, REI, and Apple. Since the elections ended, retailers have faced onerous collective bargaining and status quo obligations. These companies learned quickly that they were not just bargaining across the table from the union. The NLRB’s General Counsel, Jennifer Abruzzo, inserted herself into these situations by adopting legal positions without precedent and leaving the companies confused about what they could and could not do during campaigns and bargaining. As discussed below, retailers are often in a no-win situation,

⁵ <https://news.bloomberglaw.com/daily-labor-report/us-union-membership-dips-to-record-low-despite-high-profile-wins>; for a detailed breakdown of union membership in specific industries please visit: <https://www.bls.gov/news.release/pdf/union2.pdf>

⁶ <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-labors-triumphant-organizing-year-may-not-be-its-last>

⁷ <https://news.bloomberglaw.com/daily-labor-report/retail-service-sectors-notch-labor-wins-as-union-density-falls>

⁸ <https://news.bloomberglaw.com/daily-labor-report/retail-service-sectors-notch-labor-wins-as-union-density-falls>

absent, of course, agreeing with the position or interest of the union involved.

- **First**, under the General Counsel's approach, retail employers that face union organizing at *any* United States location must act as if union organizing is occurring at *all* locations in the United States as long as the union signals an intent to expand the campaign, with the corresponding restrictions on any changes to wages, benefits, or offerings that might reduce interest in union organizing at the non-union locations.
- **Second**, retail employers with some unionized locations (even two locations out of 1,000) face an impossible feat in defining the "status quo" with respect to operational and employment conditions while a first contract is being bargained. In general, "good changes" must immediately be applied to unionizing or unionized stores in exchange for little or nothing, while "bad changes" can be blocked by the union for months or years. This creates unworkable legal and operational challenges and protracted litigation during bargaining.
- **Third**, this article will discuss situations where retail employers with several or more unionized locations may face demands for a common contract and/or merged negotiations across bargaining units, and General Counsel Abruzzo will likely support those efforts, including through union demands to engage in virtual or remote bargaining with a common union negotiation committee across stores.

ORGANIZING AT ONE LOCATION EQUALS RESTRICTIONS ON ALL LOCATIONS

Where a union announces interest in broad organizing of an employer, even if the employer is unaware of where such organizing is occurring, General Counsel Abruzzo is taking the position that an employer thereafter is limited in granting any new compensation or benefits at any other location, unless it can prove there was *no* motivation to reduce interest in unionization and instead the change occurred *entirely* for business or market reasons. In other words, guilty until proven innocent.

Under current law, where the employer has no knowledge of active union organizing in a potential bargaining unit (for example, a single store), the employer may lawfully grant improvements to the terms and conditions of employment for employees at those locations, even if partially or fully motivated to reduce interest in potential future union organizing. The law allows the employer to stay "one step ahead" of the union campaign spreading (*Field Family Associates, LLC*, 348 NLRB 16, 18 (2006)).

General Counsel Abruzzo is effectively ignoring the *Field Family* decision. In cases where a union simply announces an interest in broader or national organizing of a company, regardless of evidence that employees in a specific store have sought to unionize or employer knowledge thereof, the General Counsel is arguing that companies *may not grant any improvements* to terms and conditions of employment *at any other location* because it could reduce interest in unionization.

In a pending Starbucks case, an NLRB administrative law judge agreed with the General Counsel's theory, framing out a *per se* rule that has a particular and negative impact on retail employers with dozens, hundreds, or thousands of U.S. stores that a single union can target.⁹ The decision is now pending NLRB review.

STATUS QUO IMPLICATIONS

Aside from extending the presumption of organizing to all retail locations across an entire company, companies that face successful unionizing campaigns and must bargain have the almost impossible burden of defining the status quo for the newly organized store. It is well settled that an employer violates Section 8(a)(5) of the National Labor Relations Act (NLRA) if it unilaterally grants *new* wages and benefits to employees who are represented by a union without bargaining or union permission (*NLRB v. Katz*, 369 U.S. 736 (1962)). An employer that unilaterally implements *new* wages and benefits acts with considerable legal peril because the NLRB may find that the employer's unilateral change bars the employer from claiming negotiations reached a good faith impasse, bars a decertification petition following expiration of the certification

⁹ Starbucks ALJD SF 29-23

year, converts an economic strike into an unfair labor practice (precluding the hiring of permanent replacements or the imposition of a lockout), and may entitle a union and affected employees to other future “make whole” remedies including bargaining expenses. See, e.g., *Troy Grove & International Union Operating Engineers, Local 150, AFL-CIO*, 372 NLRB No. 94 (2023) (bargaining expenses); *In Re Jhp & Associates, LLC*, 338 NLRB 1059, 1065 (2003) (extension of certification year); *J.G. Kern Enterprises, Incorporated*, 371 NLRB No. 91 (2022) (extension of certification year).

But at the same time, the NLRB General Counsel advocates that an employer must automatically extend certain wages, benefits, or other *positive changes* at non-union locations to unionized employees under a broad view of the “status quo,” or simply where the union demands the changes be applied based on a volunteered “waiver” of bargaining rights. She is advocating that any *negative changes* at non-union locations, like reducing or canceling temporary benefits programs or lower store hours, must not be implemented at union locations absent union consent and regardless of alignment with past practices or business rationale.

The General Counsel, for example, has issued a complaint alleging that routine changes to store hours (See Complaint in *Starbucks Corporation*, 01-CA-307838, et al.¹⁰) and other routine operational changes (See Complaint in *Recreational Equipment, Inc.*, 32-CA-311227, et al.¹¹) are unlawful because the union did not expressly consent to them and the first contract bargaining has not reached an *overall* impasse on *all* issues. The General Counsel also is taking advantage of the recent NLRB decision in *Wendt Corporation*, 372 NLRB No. 135 (2023), where the NLRB seemingly approved this “good change” versus “bad change” distinction in defining the status quo, noting “when the General Counsel argues that an employer has violated the statutory duty to bargain by failing to maintain a [good] past practice that predates the union, the theory is that the practice itself was a term and condition of employment, part of the status quo that the employer may not change unilaterally,

such as established annual or anniversary wage increases that employees reasonably have come to expect.” *Id.* at fn. 73. While the current NLRB majority rejected Member Kaplan’s dissenting statement in *Wendt* that “an employer is damned if it does and damned if it does not,” Member Kaplan’s point is well taken and the reality for many retail employers. The practical impact is that unions will gain leverage in first contract negotiations – in that positive changes may continue to flow to their represented employees even if the bargaining process takes years, while the same union can effectively block any employment or operational change it doesn’t like until the contract bargaining is finished.

Working with labor counsel is essential to defining and applying the status quo to avoid litigation or, alternatively, best position the company to prevail in a setting where the default is “heads the union wins, tails the employer loses.”

DEMAND FOR COMMON CONTRACT TERMS AND MERGED NEGOTIATIONS

Finally, General Counsel Abruzzo is advocating that companies must permit unions to bargain via hybrid or remote technologies so that a common bargaining committee can negotiate across unionized retail stores and establish common contractual terms, even where the units were organized separately.¹² Historically, in-person bargaining for the unit at issue has been the default framework for negotiations, absent mutual agreement to alter the bargaining format or scope. Abruzzo’s support of hybrid/remote bargaining will encourage unions to have national bargaining committees and demand common terms – or even common contracts – across all U.S. locations.

In essence, Abruzzo’s approach is designed to make up for the limited leverage unions obtain after organizing a micro or single-location unit in a larger enterprise. For example, Starbucks initially argued in 2021 that district-wide units with

¹⁰ [Starbucks Complaint](#)

¹¹ [REI Complaint](#)

¹² <https://www.nlr.gov/case/01-CA-305952>

dozens of Starbucks stores were the smallest appropriate units to make bargaining effective, and the NLRB categorically and summarily rejected that position, citing the single location presumption for bargaining units.¹³ However, when the bargaining process thereafter imposes extra costs on the union to represent the units it organized, the union can effectively abandon those units and pivot to negotiating a *de facto* national contract via identical proposals and the use of virtual bargaining for the national union committee to show up at each “table.”

PRACTICAL CONSIDERATIONS

- Bargaining Unit Analysis and Proactive Adjustments. Conducting a bargaining unit analysis and identifying potential changes before union organizing can pay off to undermine micro-unit organizing on the front end through material levels of temporary employee transfer, cross-supervision, and/or flexible job classifications and location assignments in markets with more than one store.
- Written Documentation for the Existing Status Quo. It is prudent for retail companies to establish robust and written wage, benefit, and operational (store hours, customer promotions, staffing levels, etc.) review cycles and relevant factors/formulas independent of any union organizing drive or considerations tied to external market conditions, and of course, improving employee engagement. Such written documentation greatly aids in defining the existing “status quo” during organizing or bargaining.
- Detailing the Business Reasons for New Changes. For any *new* wage, benefit, or other positive changes, ensure that company documentation cites employee feedback, business conditions, or market-driven motivation for the change, and without any explicit or implicit reference to the changes being motivated to reduce unionization interest at non-union locations. Also, make clear that because the change is new, it is not part of the status quo for unionized locations and its application will be governed by the bargaining process outcome.

- Aligning Bargaining Format and Scope with Negotiation Objectives. Finally, for those retail employers with existing unionized locations, it is imperative to develop clear bargaining strategies on format, scope, and substance while simultaneously keeping in mind the long-term goals of the company at the bargaining table and maintaining non-union locations.

CONCLUSION

The best way to avoid these legal challenges is to never be placed in a situation where you have to deal with them. There is no substitute for proactively pursuing positive employee engagement strategies, including ensuring that managers are properly trained on the importance of engagement and understanding the potential liabilities that come along with a unionized workforce. However, if you find yourself in a position where your employees have chosen to pursue unionization or bargaining, ensure your operational and bargaining strategy is reviewed by labor counsel, given the many pitfalls and traps the NLRB and current NLRB General Counsel have set for retail industry employers.

¹³ <https://www.nlr.gov/case/03-RC-282115>

Back to the Future and Beyond: Retailers' Preparation for the New Labor Environment

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ABSTRACT

This article showcases the challenges and opportunities retailers face now in 2024, with little or no time to respond once union organizing activity occurs. IRI suggests retailers must prepare in advance with an abundance of caution. With only 4.5 percent of the retail industry represented by labor unions, the industry poses a tremendous opportunity for labor unions to recoup its increasing dwindling market share. Most retail employers have settled into the belief that while opportunities may exist within their organization, it would not likely result in complex labor union organizing or even an NLRB election. As some of the most forward-thinking retailers have learned, the costs associated with misjudging the labor union organizing vulnerability can be costly in dollars, employee loyalty, and operational efficiencies.

INTRODUCTION

The fall of 2023 saw significant changes in labor relations requirements for retailers. Many suggest that an August 2023 court case known as the “*Cemex decision*” changed over 50 years of past practice when it comes to the method in which labor unions come to represent a retail workforce. On November 2, 2023, NLRB General Counsel Jennifer Abruzzo confirmed in the General Counsel memo GC 24-01 that labor unions are no longer required to file petitions for election in order to represent a retailer’s workforce. Now, labor unions can simply obtain the signatures of a majority of employees, authorizing a labor union’s representation. Once the retailer is notified of that status, it triggers the retailer’s requirement to recognize and negotiate with the labor union. Fortunately, employers may contest a labor union’s claim of majority status as the employees’ authorized representative by filing their own petition for election with the NLRB or addressing the matter in litigation with the NLRB. For most retailers, that process is new, unfamiliar, and not entirely defined as of the time this report was published.

The net effect of this major change in labor relations is that a retailer will surprisingly learn that it has been subjected to a covert, secretive organizing project by its employees, most often in coordination with a labor union. Most consultants to labor unions emphasize the critical importance of ensuring that an employer has no knowledge that organizing activity, also known as card signing, is underway. Fortunately, there are a number of proactive steps that employers can take with an abundance of caution.

A REGULATORY ENVIRONMENT THAT DISADVANTAGES EMPLOYERS

Today’s regulatory environment has extended a significant advantage to labor unions that seek to represent a retailer’s workforce. Notably, time is on the labor union’s side. Historically, retailers had sufficient time during a month-long

or even longer election campaign to provide details and facts that otherwise would not be addressed by labor unions. On December 26, 2023, the NLRB revised its election procedures, enabling an election to occur in as little as ten days after a retailer is notified that a majority of its employees have authorized a labor union to be their workplace representative. In 2024, retailers will continue to learn of the refinements of the expedited representation election procedures through the experience of other companies. It has never been more important to solicit help from consultants, attorneys, and, most importantly, the Retail Industry Leaders Association (RILA).

The NLRB has tilted the scale in favor of labor unions' ability to capitalize on employers' lack of preparation to respond to their initiation of the organizing process. Some refer to the current environment as a "Quickie Election" or "Ambush Election" process strategy.

This process notably disadvantages retail employers with little time to respond. Labor organizations consistently advise internal organizers working at the employer's workplace to ensure that management is unaware that employees are signing union authorization cards to force the employer to recognize and bargain with their selected union. The goal is to ambush the employer and take advantage and control of a regulatory process that leaves little time for an employer to campaign and respond to an election to determine if a majority of its employees select unionization.

An employer may have fewer than seven full days to initially respond to the NLRB and as many as 14 days to respond to either a petition for election or a demand for recognition. While 1-2 weeks may seem sufficient to some, when one considers the number and magnitude of decisions to be made within that period, retailers are forced to make sub-optimal decisions due to the lack of preparation for such an event. This is especially true of retailers lacking any experience in prior NLRB elections.

2024 STEPS RECOMMENDED TO PREPARE

While the *Cemex* decision is challenged in Federal Court, labor unions have already begun leveraging the decision and forcing retailers and others to decide whether to recognize and negotiate with the designated labor union or challenge

the claim for majority status by filing their own petition for election. As shown elsewhere in this report, the number of employer petitions to challenge a labor union's claim of majority status has increased significantly. Again, it is now the process that unions use to achieve recognition as the authorized representative of a retailer's workforce at one or more locations.

While many retailers employ staff specifically for the purpose of advancing and maintaining positive employee relations, all retailers should undergo a Labor Relations Readiness Assessment. It is a gap analysis of sorts to validate the existing efforts or even identify the needed preparations to avoid the costly mistakes associated with a lack of preparation for a potential quickie election.

Employers can take immediate action to get ahead of the covert labor union activity.

- 1. Labor Training for Leaders** – Managers and supervisors must be fully trained on labor organizing fundamentals, know the law, and be prepared to act quickly. Whether new or refresher training, leaders must know the new rules and focus on compliance. Every manager and supervisor should have an awareness of what to say if confronted by a retail worker or labor organization claiming that a majority of employees have authorized the labor union to represent their workplace issues. Managers who decide what to say in the heat of the moment will surely provide a less-than-ideal response.
- 2. Union Vulnerability Assessment (UVA)** – It is imperative that retailers know their vulnerabilities and have identified the retail locations with opportunities to emphasize positive employee relations. Both corporate and store leadership should be prepared for the new organizing tactics by labor unions, particularly with the labor unions' emphasis on secretive and covert card signing activity. UVAs give leaders a better insight into the issues of importance within their workforce as well as opportunities for strategic emphasis.
- 3. Labor Relations Readiness Assessment** – Organizations must understand their current state of labor readiness. This assessment categorizes the retailer's existing preparation and provides recommendations to develop a

road map for prioritizing and taking expedited, appropriate action to minimize the costly risks associated with the lack of preparation to respond to or even avoid organizing activity in the workplace.

4. Digital Media Intelligence – Along with preparing the internal team, it is equally important to leverage Digital Media Intelligence to understand the external public conversation online regarding labor issues in the retailer's market region.

5. Petition Proximity Alerts – Retailers must maintain an awareness of NLRB election activity filed by both employers and labor unions near their retail locations. Many retailers combine petition proximity alerts with internal data that measures their positive employee relations to help them prioritize their actions – particularly in cases where the retailer has a large number of stores. These “Heat Maps” or “Positive Employee Relations Dashboards” can be an effective mechanism for resource allocation in this new labor environment.

CHECKLIST OF OTHER SHORT- AND LONG-TERM STEPS TO PREPARE FOR THE NEW LABOR ENVIRONMENT

For the foreseeable future, employers should focus on short- and long-term measures to protect their organizations – these include efforts to educate employees, train managers, and address issues. The most effective approach to minimize a union's success in organizing an employer's workforce is ensuring employees have the facts, promoting an engagement mindset to address employee concerns and questions, and preparing your workforce to ask union organizers the details about claims they make in the organizing process. Below are steps employers should take in the short-term (the next 90 days) as well as over the next 6 to 12 months to prepare for the new labor environment.

Short-Term Steps

- Develop a written philosophy statement regarding your organization's position on unions and distribute it in new hire orientation, employee handbooks, newsletters, websites, etc. This is important because of the low union

density in retail, which means the workforce generally has a lack of familiarity with the culture associated with a unionized workplace. In the past, many retailers have not publicized or promoted their position on unionization, and many retailers are surprised to learn that new entrants to the workforce believe that employers support unionization. The retailer's philosophy statement informs employees of the retailer's position.

- Prepare a playbook in case a labor union or retail employee files a demand for recognition claiming a union achieved majority status by collecting signatures on union authorization cards. The playbook should contain actions to be taken by all of the retailer stakeholders, along with preapproved communications for all stakeholders and retail employees involved.
- Prepare an expedited campaign plan and sample themes and messages for a multi-phase information campaign that can be shortened or lengthened for the allotted election period.
- Conduct a supervisory status analysis to determine which individuals are supervisors under the NLRB's definition so that your organization does not inadvertently violate the NLRA when conducting training or asking managers/supervisors to help educate employees about your position on unions and employees' legal rights.
- Train managers and supervisors and, importantly, role-play how to recognize early warning signs of union organizing activity and to whom to report the activity, as well as how to engage in legal, effective conversations with employees about unions.
- Educate employees about union organizing tactics, the promises unions may make to try to convince employees to sign union authorization cards or petitions for representation, physically or electronically, and the importance of protecting their signature and other personal information.
- Require every manager and supervisor to develop and practice their personal statement regarding unionization. The time to prepare a response to an employee's question about unionization is not in the moment the manager is asked.
- Utilize a Petition Proximity Alert to be alerted of NLRB election petitions filed near the retailers' stores.

- Develop a robust digital media intelligence plan to be informed of union organizing tactics and employee unrest in the retailer's operations. Increasingly, retailers are finding that social media provides insight into organizing activity, which is typically uncovered by managers in the workplace.
- Train store management, security staff, and other retail stakeholders on how to legally enforce employer property rights, particularly against protests, pickets, strikes involving employees, and other property-related disputes.
- Review policies and procedures to ensure they could not be construed as violating employees' NLRA Section 7 rights and, thus, trigger unfair labor practice charges. The NLRB will target a number of typical retail policies for scrutiny in 2024 (for example, uniforms, cell phone usage, confidentiality, so-called ethics or professionalism standards, and many others).
- Develop a Statement of Position regarding supervisor status and preferred bargaining unit so that the retailer is prepared for an expedited election. In this new labor environment, a retailer may have to reply to the NLRB with its stated position in response to a labor union's election petition within seven days.
- Develop and test the retailer's ability to generate accurate voter eligibility lists per NLRB requirements. Because the NLRB would require the retailer to provide a completely accurate list within two days after the NLRB determines who is eligible to vote, the retailer should test and assess its processes in advance.
- Conduct regular market analyses on compensation and benefits to support job evaluation and pay structures that align with the retailer's compensation philosophy.
- Continue to maintain familiarity with early warning signs of organizing activity, as well as emerging developments with the NLRB and this dynamic new labor environment.

Long-Term Steps

- Conduct multiple employee opinion surveys throughout the year to collect input on a variety of decisions impacting retail employees and to solicit employees' opinions regarding their work environment. More and more, retail employees are expressing a desire to have a voice in workplace decisions. Pulse surveys are an ideal mechanism for collecting employee input and assessing their satisfaction.
- Measure employee satisfaction. For retail locations with opportunities for improvement, require written action plans for improvement, along with the monitoring of progress and follow-up assessments.
- Train corporate communications staff on how to effectively and legally communicate within the nuances of labor relations laws. The contentious environment associated with a labor organizing campaign most often entails a tone that is inconsistent with typical corporate communications.
- Develop a readiness response team that can support local management in implementing the retailer's strategies for positive employee relations when it becomes necessary to respond to the early warning signs of organizing or even in response to an election campaign overseen by the NLRB.

CONCLUSION

The immediate, short-term, and long-term steps identified above will surely enhance a retailer's ability to respond to potential organizing activity at retail locations. When combined with the lessons to be learned from the organizing activity at Starbucks, along with the expectations from the NLRB, retailers may not only advance their preparations for potential organizing activity but also may find that such preparations enhance workplace morale and have a positive impact on the retailers' employee relations.

APPENDIX A

SUMMARY OF PETITIONS FILED AND ELECTIONS HELD

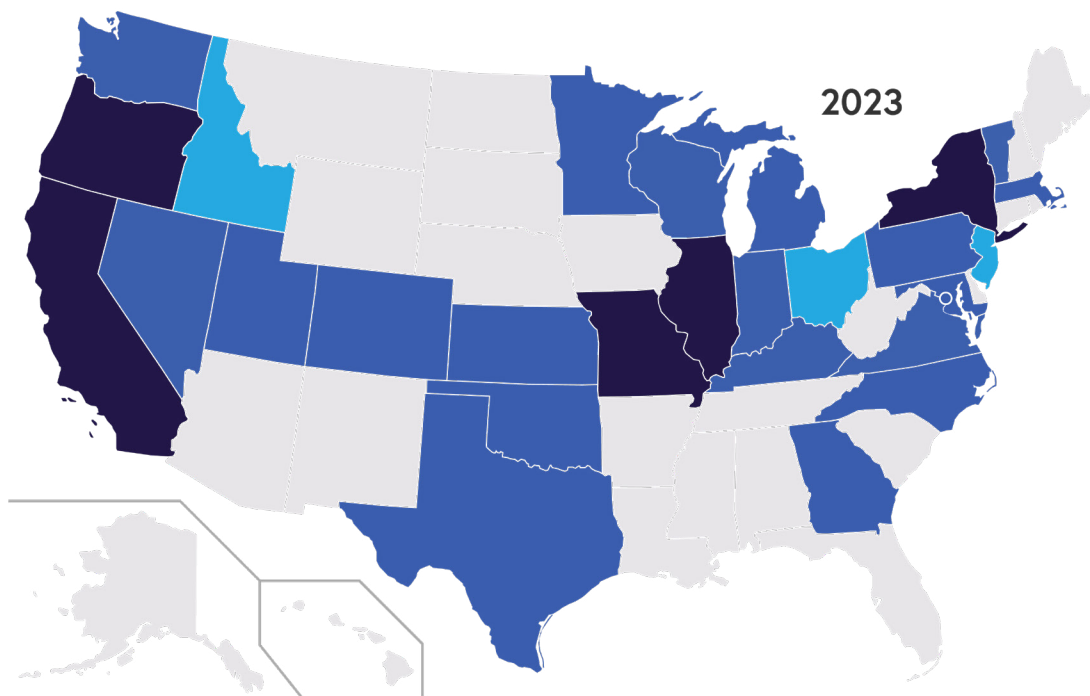
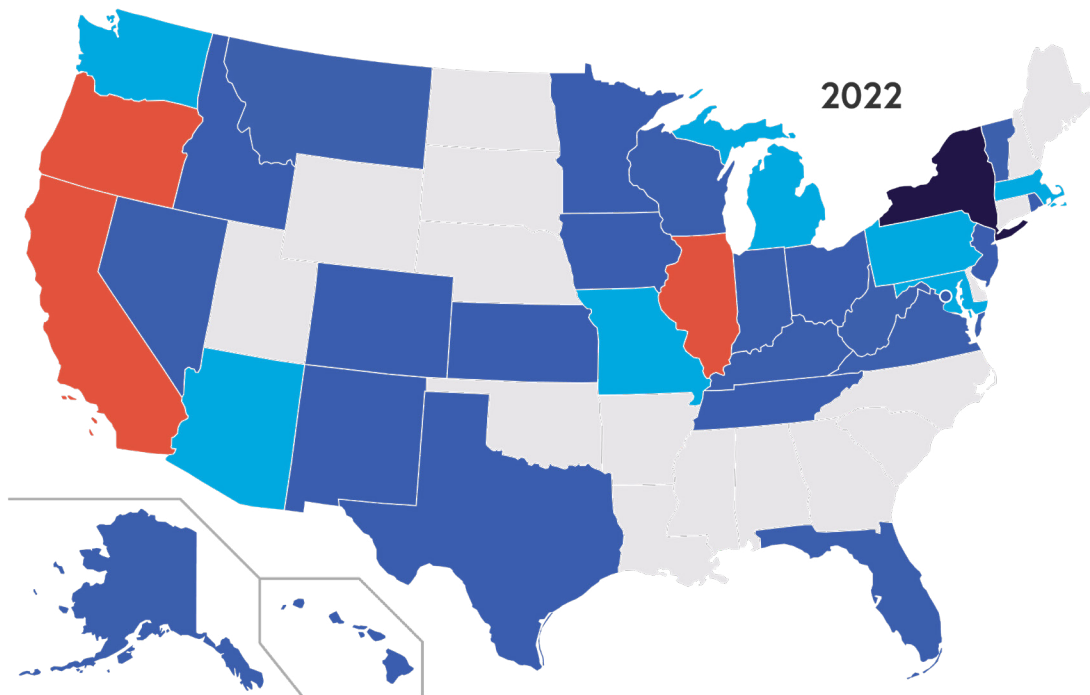
All Industries – Summary of Petitions Filed and Elections Held (2014 - 2023)										
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total Petitions	2,614	2,596	2,285	2,280	1,921	2,039	1,555	1,684	2,503	2,676
Total Representation Petitions	2,176	2,226	1,974	1,942	1,588	1,779	1,355	1,413	2,187	2,362
Total RC Petitions	2,128	2,168	1,917	1,880	1,557	1,737	1,309	1,384	2,161	2,159
Total RM Petitions	48	58	57	62	31	42	46	29	26	203
Union Not Elected	449	470	372	395	341	307	255	247	396	376
Union Elected	1,008	1,107	974	991	830	924	602	738	1,222	1,345
Total Decertification (RD) Petitions	438	370	311	338	333	260	200	271	313	314
Union Not Elected	119	107	104	123	110	104	53	83	102	110
Union Elected	61	68	64	59	61	56	49	57	55	58

Retail – Summary of Petitions Filed and Elections Held (2014 - 2023)										
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total Petitions	151	158	139	124	108	115	92	160	242	166
Total Representation Petitions	117	123	110	96	85	98	80	142	225	143
Total RC Petitions	107	114	105	89	81	92	76	135	223	129
Total RM Petitions	10	9	5	7	4	6	4	7	2	14
Union Not Elected	26	35	37	20	34	27	13	28	44	45
Union Elected	56	50	37	39	30	32	28	58	120	82
Total Decertification (RD) Petitions	34	35	29	28	23	17	12	18	17	23
Union Not Elected	7	8	5	9	7	7	3	4	7	5
Union Elected	5	3	3	1	5	3	2	4	4	5

All Non-Retail Industries – Summary of Petitions Filed and Elections Held (2014 - 2023)										
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total Petitions	2,463	2,438	2,146	2,156	1,813	1,924	1,463	1,524	2,261	2,510
Total Representation Petitions	2,059	2,103	1,864	1,846	1,503	1,681	1,275	1,271	1,962	2,219
Total RC Petitions	2,021	2,054	1,812	1,791	1,476	1,645	1,233	1,249	1,938	2,030
Total RM Petitions	38	49	52	55	27	36	42	22	24	189
Union Not Elected	423	435	335	375	307	280	242	219	352	331
Union Elected	952	1,057	937	952	800	892	574	680	1,102	1,263
Total Decertification (RD) Petitions	2,059	2,103	1,864	1,846	1,503	1,681	1,275	1,271	1,962	2,219
Union Not Elected	112	99	99	114	103	97	50	79	95	105
Union Elected	56	65	61	58	56	53	47	53	51	53

APPENDIX B

MAPS OF REPRESENTATION PETITIONS FILED IN RETAIL



APPENDIX C

NATIONAL LABOR RELATIONS BOARD DEFINITIONS

WHAT IS THE NATIONAL LABOR RELATIONS BOARD?

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 of 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.

TYPES OF PETITIONS

1) PETITION FOR A REPRESENTATION ELECTION (RC PETITION)

An “RC 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) EMPLOYER-FILED PETITION FOR A REPRESENTATION ELECTION (RM PETITION)

An “RM petition” or “employer 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 that the union, which 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.

3) PETITION FOR DECERTIFICATION (RD PETITION)

An “RD 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.

4) DEAUTHORIZATION OF UNION SHOP AUTHORITY PETITION (UD PETITION)

A “UD petition,” which also can 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.

5) UNIT CLARIFICATION PETITION (UC PETITION)

A “UC 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 PETITION (AC PETITION)

An “AC 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.