



Hot Topics Impacting the Transportation & Logistics Industries

# Managing Labor Concerns in the Transportation & Logistics Industries

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**Seyfarth Shaw LLP**

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# Speakers

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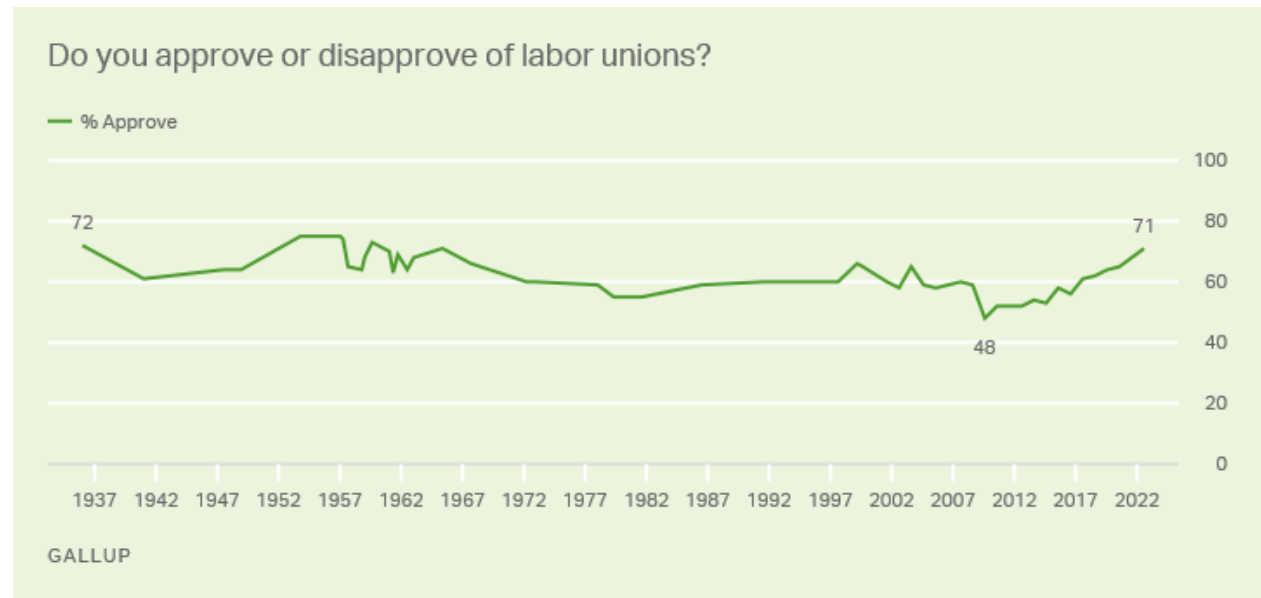
# Trends in Union Organizing



- Union Win Rates 2022
  - Increase in Union wins from 764 in 2021 to 1,196 in 2022
  - More Union wins than total elections in prior years
  - 76% Union win rate – up from historic norm around 50% in 1980's
  - Union membership dropped as a percentage, though overall numbers up
  - Number of elections way up, but really driven by SEIU/Starbucks

# Trends in Union Organizing

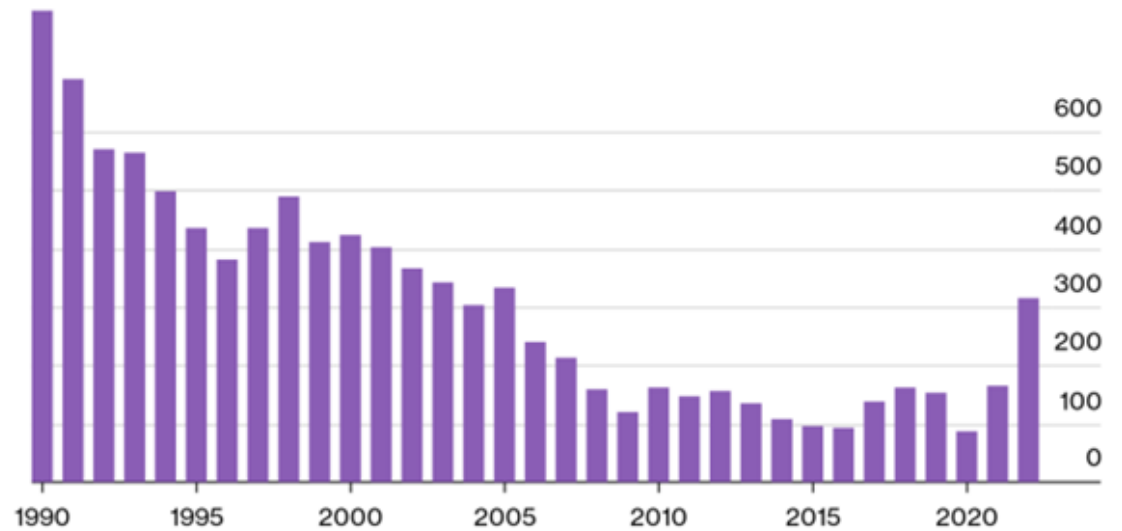
- Public approval of Unions at Highest Levels in recent years
  - 71% Americans approve
  - 48% as recently as 2010
  - Employee engagement higher among non-union workers



# Strikes are Back in Fashion

## Union Strike Activity Surged in 2022

Total number of union-initiated work stoppages by year, 1990–2022



Source: Bloomberg Law labor data.

Note: Totals do not include management-initiated lockouts, but do include union-initiated strikes that led to lockouts.

Bloomberg Law

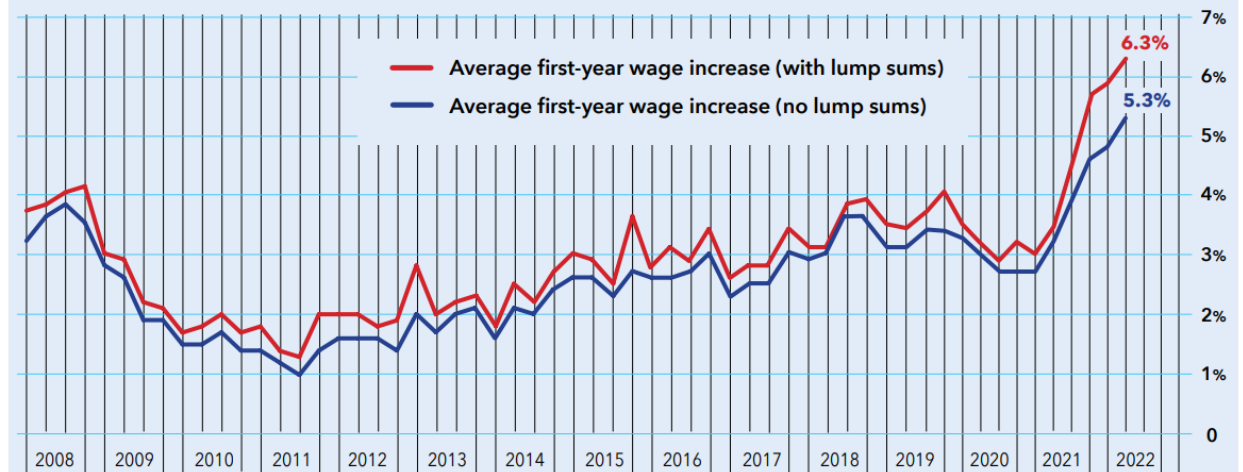
# Trends in Collective Bargaining

- Worker shortages in transportation/logistics industry resulted in higher-than-normal collective bargaining settlements
- Increased willingness by Unions to threaten or participate in strikes

## First-Year Wage Increases in Union Contracts, Quarter by Quarter

First-year pay raises negotiated in the 197 contracts ratified in second-quarter 2022 averaged 5.3%, up from 4.8% for contracts ratified in Q1. This is the highest average wage increase negotiated by unions since at least 2008, marking the first time in which raises have averaged greater than 5% in a single quarter.

With lump-sum payments included in the calculations, the second quarter's average first-year wage increase was 6.3%, following an average raise of 5.9% in Q1. This is the fourth straight quarter in which the average has reached a new high mark, going back at least as far as 2008.



Source: Bloomberg's Law's database of wage settlements

Bloomberg Law

# Trends in Collective Bargaining

- Upcoming UPS negotiations will set the tone for how Unions and employers deal with potential recession in the face of continuing inflationary environment
- A number of large Union contracts are set to expire in 2023

## Large Contract Expirations in 2023

At least 1.6 million workers will face contract expirations

■ Number of workers



Source: Bloomberg Law

Note: 1.6 million figure not fully reflected in chart data. Expiration dates recorded at the time the existing contract was signed.

Bloomberg Law



## The NLRB's Agenda



- The Board – 3 Democrats, 1 Republican, 1 Vacancy
- \$25M Budget increase for Agency at end of 2022
- Select Recent Decisions/Identified Agenda
  - Employer work rules (*Stericycle, Inc.*)
  - Group Meetings (GC 22-04)
  - Electronic Monitoring of Employees (GC 23-02)
  - Enhanced remedies for discharged employees (*Thryv, Inc.*, 372 NLRB No. 22 (Dec. 13, 2022))

## Joint Employer Test Redux



- NLRB Rulemaking to return to Obama-era Joint Employer Standard
- Seeks to broaden scope of joint employer relationships by relying on “indirect control”
- Confusion remains over impact of finding on bargaining obligations

## Return of the “Micro-Units”



- Last December, the NLRB officially returned to the *Specialty Healthcare* standard for determining whether a proposed bargaining unit is appropriate. (*American Steel Construction*, 372 NLRB No. 23 (Dec. 14, 2022))
  - Overruled Trump NLRB decisions and returned to Obama Board precedent
  - A proposed bargaining unit is appropriate if it is “readily identifiable as a group” and the workers share a “community of interest.”
  - Party challenging must show excluded employees share “overwhelming community of interest” with employees in proposed bargaining unit

## Employer Reporting Obligations Under LMRDA



- OLMS has announced and begun implementing heightened enforcement
- Coordination with NLRB to “educate” employers regarding their obligations
- New-found interest in provision of information beyond traditional “persuader activity”
- OLMS taking the position that any 8(a)(1) violation also triggers a reporting requirement



**Thank you!**



# CLE Code

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you

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