

## The Rise of Minority Unions: How Social Movements and Tech Giants Could Be Showing Signs of Things To Come



By Charles S. Birenbaum & Anthony E. Guzman II | February 12, 2021 | *The Recorder*

For most companies, unions are old news—a vestige of tattered and worn history books painted with black and white photos of FDR and type-written passages stressing the importance of the New Deal at the dawn of the 20th Century. Or are they?

Recently, the tech industry has come head-to-head with a seeming renaissance of the practice—not through formal unionization, but through a lesser known concept known as the “minority union.” Although different in their iterations and impacts, minority unions still shroud themselves with certain notable powers and protections that should give pause to astute employers.

And with pro-union statements and appointments already coming out of the Biden camp, these minority unions could be in for a quickly approaching boost from a potential return to Obama-Era National Labor Relations Board (NLRB) decisions, like the endorsement of “micro-unit” organizing under Specialty Healthcare (2011) 356 NLRB No. 83. As a result, it may be important to understand what minority unions are, how they’ve been emerging as of late, and where they may be going moving forward.

## **Background on Minority Unionizing**

To understand minority unions, we start with unions themselves. Passed in 1935, the National Labor Relations Act (NLRA) formed the cornerstone of the U.S. labor movement by providing workers with a codified mechanism to organize into unions and collectively bargain with management over various aspects of the employment relationship, such as wages and benefits.

Under the framework, a union must demonstrate with objective evidence that a majority of employees in an appropriate bargaining unit desire union representation. The NLRB established a series of rules and a body of decisional law on union recognition. Employers may voluntarily recognize a union or may seek a secret ballot election of bargaining unit employees where a majority of those voting determine union recognition. If a majority of workers favor a union, the union becomes the exclusive representative of all workers for purposes of the collective bargaining with the employer.

The benefits of unionization are far from a foregone conclusion though. Often employees refuse unionization. Consequently, despite its initial boon, unionization declined, with the Bureau of Labor Statistics showing as few as 6.2% of private workplaces welcoming unions into their ranks by majority vote as of 2019.

Enter minority unions. Unlike traditional unions, minority unions only seek to represent subsets of the workforce who voluntarily join and pay dues, irrespective of whether that subset constitutes a majority of an appropriate bargaining unit and, as a result, irrespective of any vote. Absent the need for a vote, minority unions have a far less significant barrier to entry when seeking to organize portions of the workplace. Minority unions have no right to engage in collective bargaining, but they use other tactics to support employees and employee objectives in the workplace. Often these objectives do not focus exclusively on terms and conditions of employment but may extend towards advocacy by regulating the employer and its products in the marketplace.

Despite these differences, however, their acts in working toward “mutual aid and protection” of fellow workers still garners employee protections under the NLRA similar to protections against discrimination for engaging in union activity—limiting employers’ available responses. Once in, minority unions come with the resulting specter of blossoming into full unionization. Nevertheless, their status as true “unions” remains widely debated, with the National Labor Relations Board, at least currently, taking the position that employers have no duty to collectively bargain with such unions. As a result, since 1935, minority unions have remained somewhat of an outlier phenomenon.

## **Recent Emergence in Social Movements and Tech Giants**

Recently, non-unionized employee group activity has laid the foundation for the reemergence of minority unions, especially in the tech sector. Spurred on by social movements and the advent of social media, employees are leveraging new and union-like tactics, ranging from Twitter hashtags to full-scale walk-outs, and pressuring employers into policy changes.

The #MeToo Movement in 2018 generated some of the most prominent examples of this trend. There, social outcry, hashtags, and media coverage of employee protests forced employers to rethink employee arbitration agreements for sexual harassment claims. In November 2018, these efforts culminated in a mass 20,000 employee walk-out at Google, leading the company to change its practice soon thereafter. In the weeks and months following, other tech, social media,

and ecommerce giants quickly followed suit and Unions took note of this group employee activity in non-union settings.

On Jan. 4, 2021, that changed. Google workers unveiled that they have formally organized a minority union known as the Alphabet Workers Union—taken from the name of Google parent company, Alphabet, Inc. As of the announcement, the union remained small with only a few hundred employees. Unlike traditional unions, however, the minority union spans multiple types of workers and classifications, from direct employees, to managers, and even contract workers who all pledge to contribute 1% of their salaries and equity—a substantial figure considering Google’s median salary of \$200,000 annually. And while not entitled to collectively bargain on behalf of Google’s broader workforce, the Union, Communication Workers of America, may orchestrate concerted protected activity. Without question, the eyes of Silicon Valley now rest on minority unionization.

### **Political Shifts With ‘The Most Pro-Union President’**

Based on recent political shifts, minority unions may be here to stay. Following the recent elections, Democrats now control both the House and Senate, with their leader president-elect Joe Biden pledging himself to be “the most pro-union president” since FDR. Thus far, Biden has already showed signs of making this pledge a reality by nominating Marty Walsh for Secretary of Labor who, if confirmed, would stand as the first union member to fill the role in almost 50 years. With decentralized labor movements, and now formal minority unions, galvanizing and gaining steam amongst big tech employee circles, a Biden presidency could well till fertile ground for more hopeful minority unions that seek to blossom into more full bargaining units in the coming term.

Possible examples of this potential pro-union shift could include a return to the Obama-Era jurisprudence under Specialty Healthcare (2011) 356 NLRB No. 83, which made unionizing smaller subsets of an employee population all the easier. Under the former standard, unions were able to petition to represent “micro-units” or smaller employee subsets, even if those proposed bargaining units shared extensive similarities with other portions of the employer’s workforce—creating an extremely effective way for unions to pick and choose which parts of an employer to unionize even if substantial union opposition existed within the broader workforce. Although the Trump-Era decision, PCC Structurals, Inc. (2017) 365 NLRB No. 160 overturned this standard, a resurgence of these micro-units under the Biden-Era’s NLRB could give minority unions an even greater boost in the emerging pro-union political landscape.

Now, more than ever, employers should take care to refresh themselves on the basics of U.S. labor law, including the early warning signs of minority union organizing efforts and how to address the resulting “concerted activity” protections when they ultimately do arise.

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