

Hospice Insights: The Law and Beyond



Episode 19: Hospice Labor and Employment Trends: Labor Relations Revisited – The Union At Your Door

September 2, 2020

Speaker

Meg Pekarske

Statement

Hello! Welcome to “Hospice Insights: The Law and Beyond,” where we connect you to what matters in the ever-changing world of hospice and palliative care.

“Hospice Labor and Employment Trends: Labor Relations Revisited – The Union at Your Door.” No employer wants a union. While unions have had deep presence in hospice, hospice employers are not immune to unionization efforts.

In this session I’m joined by colleagues Jon Anderson and Tom O’Day who offer their insights into what makes unions attractive to employees and what you can do about it. The session addresses how well-trained management staff can identify union activity at the onset and can use proven human resources best practices to effectively prevent a union effort and, if one arises, to help your employees make good choices. The time to prepare for a union campaign comes well before the union knocks at the door. What you do now will improve your chances in this high-stakes game.

Welcome Tom and Jon, you are repeat guests and my favorite duo. Thank you for joining me for talking about this important topic. I need to warm you up because this is such a nerve-wracking experience – our podcasting.



Speaker	Statement
	How is your summer going, Jon?
Jon Anderson	Good. I'm getting projects done on the house. The lawn is meticulous. Life is great.
Meg Pekarske	What about you, Tom? What have you been up to this summer?
Tom O'Day	This are going well. A lot of home time, which has been nothing but great. Baseball season ends soon and I look forward to fall sports and sneak them in a little.
Meg Pekarske	Good. I appreciate you both making time to join the podcast. I feel like legal work hasn't slowed down. If anything the pandemic, especially in the labor and employment side, you guys have been busy folks. I wanted to talk about unions. When you and I were preparing for this, Jon, I started by saying, how concerned do healthcare providers need to be about unions? What was your answer to me, Jon?
Jon Anderson	I think very concerned even though the unions are kind of on the decline throughout our country. Back in the 50s people in unions were 30 percent. Thirty percent of the workforce was unionized. Now it's less than 10 percent but it's growing in one area. The one area where it's growing is in healthcare.
Meg Pekarske	Very odd.
Jon Anderson	Yeah and it's growing because people are getting older. People are and healthcare is kind of a growing industry because of that. It's an economic mainstay even in a recession in recessionary times. There's lots of job opportunities compared to the rest of the private sector. There is a strong need for workers but still we only have probably less than 10 percent of the U.S. healthcare workers are members of unions. But every healthcare employer is an opportunity for a union. All it takes is one disgruntled employee to try to get other employees to join.
Meg Pekarske	So, hospice in particular, Tom, I mean why do you think hospices should be concerned about that because I am sure some of our listeners will say, oh, I know the nurses are unionized at the hospital but there is no reason why I need to be concerned. Why are we spending this time today? Why should hospices care?
Tom O'Day	Well like Jon said, it's clear that unions are a presence in healthcare more than most other industries and to the extent that nurses or CNAs or any other medical profession is a unionized workforce at a hospital the same kinds of rules and opportunity for employees to unionize exist in hospice as well. Ultimately it comes down to employee choice. The employees in



Speaker	Statement
Meg Pekarske:	<p>hospice have the same choice of whether to join or not to join a union for employees at the hospital have. I think that the important component of the hospice workplace is asking yourself, Do my employees want a union? There is a lot of different reasons why a management organization should be concerned about having a union because more than anything the employees are looking for a union to get involved. An example of dissatisfaction within the organization.</p>
Jon Anderson	<p>Jon, what makes in particular a union attractive to employees and I guess as a non-labor and employment lawyer I would think that maybe seeing what other people are getting paid in your market and I want more money. Is it money or is it benefits or is it culture. Is it all of that? What is it?</p> <p>It's all of the above. Nobody really knows. I mean we get indications from time to time and we are certainly restricted as we'll talk about in terms of how we can find this information out but the union tends to prey upon employees who are dissatisfied. The union, nothing like a great pandemic to expose people to the uncertainties of the workplace and to create discomfort and having the union being able to come in and encourage people to join. Employees have perceived lack of voice in their workplaces. They are concerned about their job security. They have this feeling that they are not being respected or valued. They think their being treated inconsistent or there are favorites that managers are treating better. Better wages, improved working conditions, improved benefits and oftentimes, unfortunately, we see supervisors who are not really well versed in how to be supervisors and that tends to drive people to unions. The unions make a lot of promises. The promises that they make are to be the voice of the employees which is the collective nature of unions, to improve job security, to provide and make sure people get higher wages and better benefits, and increased professional respect and end the favoritism and abuse and more opportunities to improve work skills for professional development is a big pitch, especially to nurses within the healthcare arena. It's a series of things that people who may be susceptible, it's the uncertainties of the workplace and somebody has a bug up their butt because somebody is getting paid more at the shop down the street. All of those things that I just kind of addressed are mentioned that the union promises are things that we think, Tom and I think, that employers, including hospice employers, can address to minimize the possibility that they'll go to unionize.</p>
Meg Pekarske	<p>Yeah, I think probably every single workplace has disgruntled folks and people want to be paid higher or whatever. All of us have been around the block enough to know that people get disgruntled now and then but when do you know that a union might be picking around in my business?</p>



Speaker**Statement**

How do you get wind of this? Tom, maybe you can speak to that because I think everything, Jon, you said probably exists to some extent in every single workplace. How do you know that a union has now become interested and this one disgruntled person has made contact perhaps with a union or what? What are the organizing strategies?

Tom O'Day

That is a very good point. It leads to the best tool that management has to avoid unions which is just listening. A couple times when we continue down to size, when employees are dissatisfied then that leads to a union. They're like Meg pointed out, there are dissatisfied employees in every organization. The dissatisfied employee knows that they can go to management with their concerns, with their questions, with their issues and the employee knows that they'll be listened to when they go to management. That action may be taken to address or correct or at least try and better understand the issue. I think that helps avoid unions entering the workplace. It helps avoid employees getting interested and organized. It's the work environment where employees feel like they aren't being listened to, where unions organize. The best tool that management has in hearing about any organizing campaign then addressing any organizing campaign is really just to listen to your employees. Get out there on the floor, get to line staff, understand what they are doing, what they are hearing, what their concerns are and be there as a voice for them. It doesn't necessarily mean you have to give them what they are asking for but at least you are going to listen to them and they are going to feel that they've been heard.

Meg Pekarske

Tom, you read my mind because I was just going to go there. I feel like you are saying listening, listening, listening and Jon says, well people want better benefits and higher wages and I mean is listening really ever enough? How do you and maybe it's a rhetorical question but what sort of tips you over the line where, I mean I get it that listening is important but does it ever, if you are not changing wages and I don't want to jump ahead here but in terms of if you are just every year listening to what people have to say but wages are stagnate. I mean is that what pushes people over the edge? I guess what you experience, Jon, you seem to have something to say. What are your thoughts? Because you've been opposite the table for unions for decades.

Jon Anderson

Yeah, I know. It's certainly the broken record of listening and not doing anything is problematic but the key though is to listen and be transparent and if you can't do something about wages then tell people why you can't. To be very transparent about we provide you with good jobs that we haven't laid anybody off, if that's the case, or we have good job security and we are providing you with the best wages that we can given the circumstances that we've been dealt. Those go a long way so it's not



Speaker**Statement**

just listening. It's listening in combination with responding to employee complaints. Being very open about the financial condition of the employer and also convincing employees that even if we bring in a union, the union can't make the employer pay wages that the employer doesn't have the ability to pay. You know they can demand and demand but at the end of the day the collective bargaining agreement is entered into because management and the union have either agreed to it or they've reached an impasse and management has implemented it. Those are the types of things that part of an overall human resource program and a culture in the workplace that works beyond just listening.

Meg Pekarske

I think all the things we talked about when people can be disgruntled. This idea of what makes someone satisfied in their job. You all have been doing this for a long time and what is important for job satisfaction from a hospice perspective as a hospice lawyer for 20 years, I think that hospice employees I feel like you come to this work and that I think that death and dying are not things that we don't like talking about those things in this country. I think that people who are drawn to do this work, they feel a sense of meaning and purpose and so I think that that has probably been one reason why there hasn't been a lot of unionization in hospices because I think we do have a lot of job satisfaction from "I am helping relieving suffering" from folks and at the bedside and I think that this is always the push-pull with nursing homes and hospice relationships as hospice may come in towards the tail end of someone's life and sort of get all the praise for helping and the nursing home has been like you have been in my facility and I've cared for you for two years and hospice got all the donations and all that stuff. I do think historically there has been a lot of job satisfaction but my guess is you're going to tell me that you may think that you're employees are satisfied but perhaps they're not. Tom, can you speak to job satisfaction and you're perception that you think people are satisfied? I just said our employees have meaning and purpose, that may not be true or perhaps that is not what satisfies people any longer

Tom O'Day

I think ultimately job satisfaction is most important. I do agree though that wages and compensation are probably the ultimate breaking points in that relationship. I may be fully satisfied with the culture in an organization, with the work that I am doing but if I know that I can go down the street to another organization and make \$2 an hour more that ultimately is a breaking point that your organization may not be able to meet. I think like Jon said you talk to those employees about the other conditions or components of them being satisfied at a job. The culture is one of the most important things there but ultimately the breaking point could be compensation. I don't think employees necessarily organize a union solely because of wages and compensation. That is certainly one



Speaker**Statement**

factor among many. But I think if an employee is satisfied with all the other components of the culture, the workplace or the work that they're doing. They may forego some wages and compensation at some level in order to remain in that kind of welcome and culture from a human relation status. Job satisfaction includes all these different components but again wages and compensation that employee wants to earn more. Jon and I sat across the table from unions that have said you can make more money going to work at a Target or a Wal-Mart per hour. That just ultimately made me choke. We may represent a client that can't pay the CNAs or nurses any more money because of their own financial condition and employees ultimately have that ability of freedom of choice to move to a different employer outside the industry.

Meg Pekarske

Yeah and that brings us to this push-pull and paying for healthcare in this country and reimbursement rates and all that stuff. Given your point about the breaking point might be wages and benefits. You know I read more and more articles recently about how younger generations feel much more comfortable being very transparent about their compensation than perhaps older generations or generations in the past where you don't talk about how much money you make. I guess has that borne out in your work? How does that sort of play in? Is that more just talking to my friends who work at different places? Is it penetrating the workplace that we have more people talking internally about how much money they make and then using that as leverage? Jon?

Jon Anderson

It is actually. In the days when I started doing this a long time ago. Employers would routinely have rules that you could not talk to each other about your wages. Typically they would have a rule and they would enforce that rule. Now the National Labor Relations Board has come down and said that you can't stop people from talking about their wages and they do talk about their wages. I think Tom is right that wages might be a breaking point but I think equally important is the treatment issue of how people are treated in the workplace and you're absolutely right, Meg, that this is a calling. People come to a hospice to work because it's a calling. They are caring individuals and I think what they want from their employer and I think what their employer ought to give them is the same caring, respectful treatment that they give to the people that they're helping end-of-life issues with. What Tom and I tried to figure out for years and I think we are getting really good at it, is you try to do your best to figure out and create a work environment that really neutralizes what unions have to offer. The unions make all these promises and maybe the individual supervisor can't affect a wage adjustment for an employee but the supervisor can make the employee feel important and make the employee feel valued. Can provide the respect and fair treatment and treat people in similar situations, similarly. All of those



Speaker**Statement**

things that mean a lot to creating a workplace that people not only love but love to come to work in. It's all of these things are interrelated and the culture of the employer is so important in overall job satisfaction and the watch word that Tom and I use when we do a lot of training is that happy employees don't organize. You try to make sure that your employees are happy and that they feel comfortable in their space and in their jobs. There are some employees you will never reach. There are some employees who you give them a 20 percent raise, they are wondering why it's not 25 percent. They are just not going to be happy at all. But the bulk of the workforce, if you treat them with respect, you find out what the union is promising or what unions generally promise and you address those issues. I mean most employers are going to want to pay a competitive wage because this is a very competitive market. It's hard to get good people and to keep good people. You are going to pay the best wage that you can. There is no union in town that can make you do anything more than that. Why should employees pay dues when they are going to get the benefit of the competitive marketplace for wages. Now you got me going.

Meg Pekarske

I love it. My question is people will say, I really got a great culture and people are really happy here. It's like I believe this to be true but just because you believe that does not mean that it is truth. Right? So much of this is perception. I feel this way and I guess what can you as an employer other than, oh I come to work and the vibe seems good. What should you be doing to sort of measure these kinds of things. I hear you saying this is the key to preventing a union is to have your finger on the pulse so to speak. I see lots of people do job satisfaction surveys. How do you measure this? How do you know that what you think is actually true?

Jon Anderson

You don't use any one factor or measure. You use a multitude of them. Employee morale is important and so you want one-on-one meetings with employees. Surveys like you pointed out. Exit interviews are big for gaining information. Your attendance records. Look at your turnover rate. Make sure you have the infrastructure in place to motivate and retain employees. Performance evaluation processes. Fair disciplinary processes. Nobody likes to discipline an employee. Nobody likes to terminate employees. They are expensive to replace. But treating people fair in that process should be a given that should not be anything that we debate over at all. There is lots of ways to measure that and of course one of the most important ways is to get managers and supervisors out of their offices and away from their computers and have them manage people in face to face. Because you send somebody an email like I didn't like what you did today. You know that that message got sent but you don't know that that message got delivered. If you look somebody in the eye you can do that and if you are out there showing your employees that



Speaker	Statement
	<p>you are an advocate for them and that you really want them to succeed and here is what they need to do to succeed. They are going to have respect for you and even though they are getting a message that they don't necessarily like they see an opportunity to improve and they see that you really care and that is an important part of creating a culture that would support not having a union.</p>
Meg Pekarske	<p>There is this idea of employee choice that you and I talked about, Tom, because employees do have a choice and you have to vote on a union and so tell me a little bit about the role of employee choice and how that works.</p>
Tom O'Day	<p>Employee choice is absolutely paramount, I mean a union can't organize and get in as a bargaining representative for employees unless 50 percent plus one deem it preferable. At the end of the day it's their choice within the workforce. The employees have that ability to accept or reject the union. I think it's important for managers to recognize that they can educate employees about their choices. Some of the success that Jon and I have had with other organizations is that making sure there are steps in place to make sure employees know their rights with respect to choice about a union. An employee is free to choose whether or not to be part of an organization effort. Just because some employees want them or ask them to get out and march or circulate petitions or sign cards, it's not something the employee has to do. The employee can be confident that they will have the right to be free from coercion or intimidation or threats from the union. Employees of course have that right to vote or not vote for the union to represent them in a workplace. In some circumstances employees have the right to choose even if the union comes in whether they want to be a member of the union or whether they want to pay dues. We hear a lot about right-to-work states and I think it's up to roughly 23 or so states in the United States are what are called "right-to-work states" and those right-to-work laws in those states guarantee that no person can be compelled to join a union or pay union dues as a condition of employment. What will happen in the other states that are not right-to-work states is unions will come in and they will get voted into the workplace. They may be voted in by 51 percent of the employees.</p>
Meg Pekarske	<p>Can we stop there, Tom, so I have 100 employees. Do all of my employees have to vote or is it 50 percent of the people that vote? How does that work? What if only 50 of my 100 employees vote, does the union fail?</p>
Tom O'Day	<p>Correct. No – at the end of the day it's the greater percentage. It's the majority of the employees who do vote.</p>



Speaker	Statement
Meg Pekarske	Wow, so if only half your employees vote and the majority of the half that voted, voted for it, you could get a union.
Tom O'Day	You've got a union.
Jon Anderson	Right.
Meg Pekarske	Wow.
Tom O'Day	That's again making sure employees know that they have that choice and they have the right to exercise their votes to support or not to support a union is important.
Meg Pekarske	You don't even have to say no. You just cannot vote at all.
Jon Anderson	If you don't vote, you are essentially voting for the union because you're making it easier to reach the majority of those people who vote.
Tom O'Day	Correct.
Meg Pekarske	Wow.
Jon Anderson	We educate employees about that to make, we want to make sure that they understand that they are making a very important decision and that they ought to know how this process works and they ought to vote. Make their voice heard.
Meg Pekarske	How that plays out in your experience. Is it larger or smaller providers that I guess get a union. Is it, if I have 10 employees and only, I'm just trying to play the numbers here. That just seems crazy if and there is a lot of disengagement, right, political voting is way down so the fact I could see a lot of people saying, Oh this doesn't impact me so I'm not going to vote. Then you have two people who voted for the union and like no one else did but wow. I learned something here on this podcast that we're doing. Wow. It is important. You've been telling me, Tom and Jon, that we need to talk unions and I said, No and wow. That is significant. Okay. I interrupted your flow Tom so you were talking about people voting.
Tom O'Day	Sure in your example, Meg, a company with 100 employees. Let's say 30 employees actually vote in the election for a union or to reject a union and 16 of those employees out of the 30 who voted out of the 100 total employees say yes we want a union. In that circumstance the union then becomes the bargaining representative for the entire unit of all those



Speaker	Statement
	employees who are of the same classification or similar classification. All 100 of those employees are now part of a bargaining unit represented by a union, even though 16 of those 100 said we want a union.
	In right-to-work states that is really relevant and important because what a union normally will do in a non-right-to-work state is seek to include language in a bargaining agreement that says, All people who are part of this bargaining unit, all 100 of those employees, will be a member of the union must pay union dues in order to be employed with our organization. In those non-right-to-work states, that is why the vote for a union is even more important. That education for employees that it is important that they exercise their choice and exercise their involvedness.
Meg Pekarske	Do you happen to know because we have lots of listeners sort of in the southern part of the country and so in the right-to-work state, in our home state of Wisconsin, we are a right-to-work state. Right?
Tom O'Day	Correct. We are a right-to-work state in Wisconsin.
Meg Pekarske	In terms of the rest of the did you say there is 27 or something right-to-work states. Are they pocketed in certain areas or are they really spread out?
Tom O'Day	I would say it's in the southeast corner of the country. Most of those states are right-to-work states.
Meg Pekarske	Okay.
Tom O'Day	On the far west coast and upper northeast, they are non-right-to-work states.
Meg Pekarske	Okay.
Tom O'Day	In the middle of the country is a smattering of right-to-work and non-right-to-work states.
Meg Pekarske	Okay. Interesting. I've done these things and I've tried to keep my finger on the polls. I do surveys. I do exit interviews. I feel like I know what's going on. When am I going to know there is some union organizing activity, Jon?
Jon Anderson	You are going to know oftentimes because you kept your ear to the ground. Your supervisors are really your eyes and your ears and your voice out there on the floor. They will hear things. It may be that they see union organizing cards in a break room. It maybe that they walk around the corner and a group of employees stops talking. People become more



Speaker**Statement**

critical of the employer. Employees have expressions of terms that are typical labor union terms like “grievances,” “arbitration,” “seniority,” you see a union representative in the parking lot. SEIU has a van parked in the parking lot and they have people to workers and all of those things. It’s like there is a meeting at somebody’s house. I mean a lot of these factors come into play and we spend a lot of time talking about them but the fact of the matter is you should see some evidence in the workplace. But oftentimes you don’t and the first thing you see is a demand that is coming to you by somebody with a fistful of union authorization cards saying, the union represents a majority of people here. You should voluntarily recognize us and you never want to do that because you don’t know the circumstances under which those cards were obtained.

Meg Pekarske

What does that mean? Voluntarily recognize, with no vote?

Jon Anderson

Well the typical process is the union makes a demand to bargain, or a demand that you recognize them and they show these cards and you have the right to voluntarily recognize the union. You can do that as the employer if you want to but then you’ve got a union. A better approach would be to force the process through the statutory National Labor Relations Board process, which requires the union to file a petition and the showing of interest which is 30 percent not 50 percent, 30 percent of the workers and that’s an administrative determination and once you have that, then you engage in discussions about what the union should be and you go to an election. Without the election you really don’t have any idea as to whether the majority of your employees support the union. You have the potential to have the cards but the cards can be obtained under false pretenses, can be obtained in ways that are questionable so you’re not really sure that employees have exercised their free choice. The free choice that they would have in a National Labor Relations Board-supervised election which is like a national political election. You go into a booth in the privacy of the booth, you vote and nobody knows how you would vote.

Meg Pekarske

Oh, okay. I really wanted to get a flavor for that. So these union cards someone can say I got the stack and people want the union. Do they have to sign their name to that?

Jon Anderson

Oh yeah, they sign their name and it’s really. They are all worded differently. I like to think of myself as being pretty smart but I read those cards and they are very difficult to decipher. They are contracts, essentially contracts between the union and the employee, not the employer. But you don’t want to look at them because you don’t want to know who is organizing the union because that could be used against you if you were to take some actions as the employer in terms of retaliation or



Speaker	Statement
	discrimination.
Meg Pekarske	Oh.
Jon Anderson	So that is why, if you as the employer are given a stack of cards. Hand it back, don't look at them. Say we don't believe that a majority of our employees in the uncoerced exercise of their discretion really want to have a union and you know how to do it. If you are truly interested in this go to the National Labor Relations Board. Which is the safest place for the employer to be.
Meg Pekarske	In that process, I want to understand what that looks like. Once you say, okay you've got to use the formal process. It is voting, there are people from the National Labor Relations Board that are onsite that are administering the election?
Jon Anderson	Correct. Doesn't necessarily mean onsite, it may be a mail ballot election. Essentially what happens is you decide and describe the bargaining unit and then the election is set probably within 2 to 3 weeks. Then there is a campaign period where we do what Tom was referencing earlier where we educate employees about their ability to choose and what it means to vote and what it means not to vote. The employer has free speech rights to tell employees that we don't think we need a union here. Why would you vote for a union, we're giving you the best benefits in the market, no union can make us do more than what we want to do anyway. Why would you pay dues for something that you already get. All of those things play out in a campaign because the union will be campaigning too. Making promises that they can't deliver on without concurrences of the employer.
Meg Pekarske	In your experience, because obviously you guys do this a lot or I guess a dwindling amount to historically but perhaps maybe on the rise here. How many union efforts are defeated? Is it 50/50, or is they've gotten the card then it's so far down the field that you can't right the ship or what is your experience?
Jon Anderson	Let me take this, Tom. The best way to defeat the union is to never get to the point of the election. That's why it is so critical that you have your managers out there listening to employees. Giving you and your human resource professionals indications that there is union activity or that there is dissatisfaction someplace. Treating employees in the right way to create the environment and culture. The best way to win an election is to not have one. When you get to the election, I think the employer loses more often than they win because they are not going to file unless they got, even though they only need 30 percent to get the election.



Speaker**Statement**

Oftentimes they won't file unless they have 60 percent to 70 percent, knowing that there will be some form of a campaign. Very difficult to address the issues that have brought the union to the workplace after the election has been scheduled because you can't threaten employees, you can't interrogate employees about why they are bringing the union in, you can't make promises like vote the union down and we will do XYZ. You can't engage in surveillance. You can't sit there and study who is supporting the union and then take adverse action as a result of that. I think you lose, the employers generally lose more elections than they will win if they get to the point that election has been scheduled but you still run the campaign. You still try to educate employees that this is an important decision and that they ought to have all of the information that they can get before they vote.

Meg Pekarske

Obviously you have dealt with many a disgruntled employee and if you were talking to the disgruntled employee and this is for you, Tom, and you're saying and again obviously there is no union so you are not coercing them or anything but why would you say to a disgruntled employee a union isn't an answer?

Tom O'Day

Sure. It's important to recognize as I answer this question from the management side. Jon is a management side of terms. In my world I would say that unions are not something that is good for an organization if employees are already being taken care of. If we assume that employees are already being taken care of that the culture is the way it should be, the employees are respected then unions are not good or necessary to an organization.

Two main reasons for that is that unions usually drive inefficiencies within an organization and a union will increase costs within an organization. Not necessarily wage and compensation process. So let me start first with inefficiencies. Because there is a union involved, there is now a third-party organization that is part of most discussions in the workplace. An example of that that I use from the past is an incident where one of our employees had let another person, a non-employee or staff member, into a secured door of a facility. A manager sat down with the employee, had a non-disciplinary meeting with the employee and said, we can't let non-employees through secured doors. You can't do that, follow the visitor policies and lay those out for the employee. The employee understands and recognizes the policies, moves on. Five-minute conversation. Union representative hearing about that incident escalated it to a complaint with the National Labor Relations Board. For the union that was a problem and that third-party organization that was a problem. You just lose the inability for reasonable decisions and efficient ways to take care of those things within the workplace. You lose some



Speaker**Statement**

ability to work collaboratively with your employees. Your employees may look to the union in order to resolve what otherwise might have been taken care of in a conversation between employee and the manager. Policy changes for instance may need to involve the union. Want to address COVID-related safety issues, for instance, you may need to involve the union. Again those are all additional time and additional inefficiencies. If you want to provide hazard pay for the heroes who work in your facility that is something you would have to bring in the union, involve the union, in those discussions and ultimately you can make that decision but with union input as well. That just slows down the process. You also lose the ability to reward employees in a union setting. Inefficiencies with compensation related to successful management of a situation by an employee or if you want to award an employee you can't do that unless you involve the union and unions are all about the collective. They are not wanting to recognize individuals, they want to recognize the collective of the people. That's again one of the main reasons why unions aren't necessary where employees are already taken care of is because of the increase in efficiency.

The second main reason why unions aren't necessary is that employees are already taken care of. Is because unions do result in increased costs. The five-minute discussion becomes a federal case. The challenges with respect to managing employees get elevated to grievances. The grievance process potentially with an arbitration process or an unfair labor practice that's involved. All of those things – grievances, arbitrations, unfair labor practices – result in increased attorneys' fees. A result in increased time off for management and employees in order to deal with the issue. It increases stress in the workplace for sure. Then there is a cost to the employees as well as the employer. The employees in order to belong to a union are required to pay union dues. That's an automatic deduction most times that's made directly from their paycheck on a regular basis. Again that second reason why unions aren't necessary if employees are already taken care of is because of increased costs.

Meg Pekarske

As we are wrapping up here. It is nice not to have a podcast where we are talking about COVID but I feel like you know as you're saying all of this I wanted to get your thoughts, Tom, on how obviously lots of discussion about PPE and safety in the workplace with COVID. Do you think there could be a more union activity as employees are bringing up safety concerns and that do you think unions are going to be using that as, I will help protect you from these employers who aren't looking out for you?



Speaker	Statement
Tom O'Day	They already are.
Meg Pekarske	Okay.
Jon Anderson	<p>They are out there. I mean, again, they like to prey on the uncertainties and the difficulties that employees are having now coming to work because they have a great deal of fear. The union tends to prey on those people. They have a duty, work with the duty to supply information, so they are asking employers for information about safety and PPE. If they don't get the right response or get the response in a quick form that they want they will go to the National Labor Relations Board because of this duty that employers have to respond to these inquiries. They coach employees as to what appropriate levels of PPE should be. The way that employers ought to counter those types of things is to again communicate. Be transparent about how they're dealing with the pandemic and what types of equipment are available to employees; how it should be used; what the expectations are. What are the sanitation requirements? What are we doing to help people make sure that this is a safe place to work? All of that stuff is what needs to be out there rather than treating employees like mushrooms. Put your employees in the dark and they will come up with their own description of what you are doing as opposed to your going out there and being a reliable source of information as to how you are handling the pandemic in light of local public health directives and Centers for Disease Control recommendations on sanitation and how you handle things. People need these services. These operations need to be open whether it's in-house resident, hospice, or hospice going out to people. We need to make sure that we are doing it the right way and the safe way and to boast, it may not be the right word, but boast to your employees about how you are doing things that are not only required but above and beyond what is being required to make sure that they are safe and how you are taking care of them when they've had an exposure incident. Those are all very important things.</p>
Jon Anderson	<p>I give an example where at the beginning of the COVID situation an employer wants to do and wanted to do what is right for its employees. It was already making efforts to obtain PPE, it was already making efforts to explore potential increases in salary or hazard pay type arrangements for its employees and collaboratively work with the union. Discuss those issues and ultimately the employer put what they wanted to on the table and the union just accepted it and likely moved on to the next organization that it wanted to report of opposition. The employer ultimately like we said throughout has the ability to do the things it wants to do. It wants to take care of its employees so that its employees can take care of the patients. If there is a union involved, just continue to</p>



Speaker**Statement**

communicate with the employee about those issues, talk to the employees directly about PPE and complication related issues. After you've had those discussions with the employee then you can still have a workplace where it was content in that.

Meg Pekarske

Yeah. This has been really interesting. I think really a timely topic not just because of healthcare being a growing industry but I think you know these concluding thoughts on how the current pandemic and I guess being aware that union activity may be even increasing in light of this but good for folks to be having these things aligned as they try to manage through really unprecedented and very difficult times but I agree that most employers really do want to do right by their employees because as you said, Jon, right. We've all been there. If you have good employees, you want to keep them happy and retain them and you'll do whatever it takes to, I don't have an amount of money but you know it was encouraging to hear you guys say that, yeah wages matter and they're really important but culture is and all of these other sort of intangibles that because I do think as healthcare continues to get strapped and especially now with the increased costs with COVID. There is still a lot we can do to improve the lives of our employees and support them in the really important work that they do.

This has been a great conversation and as always I enjoy spending an hour with the two of you but we don't have any cocktails or you know we kept it all work related except for my how's your summer going. I really appreciate you taking time out of your busy schedules to share this important information with our listeners. I am going to require you to come back and talk to our listeners about something else. Not union related but labor employment related because you guys always have fun and interesting stories. I look forward to you joining us again.

Jon Anderson

Thanks for having us.

Meg Pekarske

Take care, bye bye. Well that is it for today's episode, "Hospice Insights: The Law and Beyond." Thank you for joining the conversation. To subscribe to our podcast, visit our website at huschblackwell.com, or sign up wherever you get your podcasts. Until next time, may the wind be at your back.

