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LABOR PULSE—How will organized labor respond as the coronavirus pandemic gains momentum?

By Dr. Jim Castagnera, Esq.

In this age of the Internet, of social media, of tweets and text messages, we’ve all become inured to a news cycle that is measured in minutes, in lieu of the leisurely 24-hour cycle driven by the daily newspaper not so very long ago. But not even the real-time immediacy of Twitter can quite keep up with the snowballing news story of the coronavirus—aka COVID-19—as the pandemic surges like a California wildfire.

This is not for lack of trying. As of mid-March, the COVID-19 bandwagon is overflowing with pundits and prognosticators of every conceivable expertise and political persuasion. I’m on the email list of all the major Philadelphia law firms and every one has issued at least one coronavirus-guidance missive. Some have already run webinars. My former firm just announced on Facebook, “In recognition of the far-reaching impact of Coronavirus (COVID-19) on our clients and their businesses, Saul Ewing Arnstein & Lehr has formed a multi-disciplinary COVID-19 Task Force.”

The news media too are in hot pursuit of the plague. CNN, for example, is giving more time to COVID-19 than to the Democratic primaries.

Disruption. Although the number of confirmed COVID-19 deaths still remains relatively small in a nation of 330 million, the socio-economic disruption already is profound. Colleges across the country have extended their spring breaks. Many, like Temple University here in my hometown, have gone a step farther, announcing that instruction for the remainder of the semester will be by online learning. An ever-increasing number of states have ordered some or all of their schools to temporarily close. Even the iconic NBA suspended its season after a player tested positive for the pandemic; other major sports have followed suit. Airliners are grounded, cruise ships are now ghost ships, and the stock markets are bouncing around (but mostly down) like bingo balls.
Meanwhile, in our nation’s capital, the federal government is grappling with a political-economic crisis that it can’t quite get its arms around. On March 11th, President Trump announced a 30-day ban of EU travel to the US, including some restrictions on cargo, only to Tweet himself back from those draconian pronouncements as evening turned to dawn. By mid-morning on the 12th, Vice President Pence was on CNN, trying to pour oil on troubled waters, only to have his claims about the extent of testing sharply challenged. On March 13, the President officially declared a national emergency. As of March 17, the number of cases globally exceeded 182,000 and the death toll had risen above 7100.

And what of organized labor?

Mary Kathryn Fletcher, a safety & health specialist with the AFL-CIO, was asked in a March 4th podcast how she felt about Mr. Pence’s coronavirus task force. Her response was telling.

“Accurate communication is important. I feel like I don’t have a lot of knowledge about what it is that they are currently doing or a lot of trust in what they say they are doing.” She added, “I feel like if we don’t protect [the] frontline workers and the focus is not on that, then we’re at greater risk.”

Organized labor’s concern for first responders and other frontline workers is well placed. According to the Bureau of Labor Statistics January 22nd “Union Members Summary,” 2019 public-employee union membership held firm at 7.1 million, or 33.6 percent. Significantly, “union membership was highest in local government (39.4 percent), which employees many workers in heavily unionized occupations, such as police officers, firefighters, and teachers.” Similarly, 20.4 percent of America’s nurses are unionized.

So, if the virus hits the fan, organized labor’s membership will be disproportionately impacted. What might this mean for all of us potential patients out here in the land of the free and home of the largely untested?

Some clues may be gleaned from what’s transpired in other, already harder-hit parts of the world.

A case in point: Hong Kong

On February 2nd, The Wall Street Journal reported, “Thousands of Hong Kong hospital workers voted to press ahead with a five-day strike starting Monday, kicking off a bid by organized labor to force the government to fully shut its borders to mainland China as cases of the deadly coronavirus tick up in the territory.”

The COVID-19-inspired work stoppage comes with its own unique backstory. Opponents of the PRC’s pressure to draw the former British colony more closely, both economically and politically, have been in the streets all year. Confrontations between police and protesters have seen the latter arming with everything from firebombs to bows and arrows.
As the *South China Morning Post* put it, “The fight against the government then moved insidiously to the medical front. On February 1, the Hospital Authority Employees Alliance, a newly established trade union, which boasted 13,000 members at the time, voted to go on strike from February 3, unless Hong Kong’s chief executive came to the negotiating table and accepted their demand for a ‘complete closure’ of all control points to ‘save Hong Kong’.

“As at 7pm on February 5,” the article continued, “5100 employees were recorded absent, including 300 doctors, 3,100 nurses, and 1,000 allied health professionals, accounting for roughly 5 per cent, 12 per cent and 12 per cent respectively of the Hospital Authority’s total strength.”

Two days later, after hundreds of doctors and nurses occupied several floors of the Hospital Authority’s headquarters, the union membership voted to end the strike. Emblematic of how conflicted unionized health workers feel about such stoppages, Chairwoman Winnie Yu Wai-ning led her membership in an apologetic bow to the patients who were inconvenienced by the strike, the media reported.

**Dissension in the Promised Land**

Earlier this month, Israel’s largest labor union, Histadrut, threatened a general strike, unless the government provides an economic aid package for workers stuck in quarantine and businesses crippled by the pandemic’s spread.

Also known as the General Organization of Workers, Histadrut was founded by no less a light than David Ben Gurion and remains today Israel’s trade-union core, representing most of the country’s unionized workers, totaling about 650,000. This places it in a strong position to press its reported demand, namely, “employees who are forced into home quarantine be given sick pay from the first day of their confinement, rather than the third. It was also seeking government compensation for businesses affected by the outbreak.”

On March 4th, Israel’s national airline, El Al, announced the layoff of some 1,000 workers due to COVID-19’s impact on international travel. “The figure represents almost one-sixth of the airline’s entire workforce and comes amid a severe decline in revenues as a result of the novel coronavirus outbreak. In addition, company executives and directors will be subject to a 20% wage cut, taking effect retroactively since March 1,” the Jerusalem Post reported.

This action led to negotiations between the troubled company and Histadrut. A 48-hour marathon bargaining session fell short of success, at least as of March 12th. A noontime news story reported, “Negotiations between the Histadrut (General Federation of Labor in Israel), the El Al Israel Airlines Ltd. (TASE: ELAL) workers' committee, and the company's management broke down a short time ago. Management rejected out of hand a proposal by the workers worth $1 billion in unpaid leave and other painful concessions, among them layoffs and wage cuts. The pilots also proposed a 20% cut in their salaries.”
Union leadership requested that members appear at a meeting “for an urgent vote on declaration of a labor dispute.”

**Meanwhile, in Merry Olde England**

Also in early March, *The Guardian* revealed, “Downing Street is under huge pressure from trade unions and Labour to promise statutory sick pay to all workers when it unveils its coronavirus plan, due to be published on Tuesday.” The March 3rd article adds, “The government has been accused of failing to grasp the threat of gig economy workers spreading coronavirus, after a minister advised those with no sick pay who have to self-isolate to claim benefits instead.”

The plan that emerged via the media a week later seems to say nothing about the union demand. However, Prime Minister Boris Johnson did indicate that cross-party conversations with Labour were on his agenda.

**And here at home?**

While the AFL-CIO’s Fletcher is probably representative of the unease shared by many knowledgeable, and perhaps even not-so-knowledgeable, Americans, no reports of planned work stoppages or other labor actions were to be found in the blogosphere or the news media as this piece went to press mid-March. However, this could change overnight, if circumstances—which, as I noted at the outset of this article, are uniquely fluid—change.

As of March 16, for example, the UAW, GM, Ford Motor Co., and Fiat Chrysler have announced they are forming a coronavirus taskforce to keep workers safe, a Fox affiliate reported, while CNBC revealed the very next day that the United Auto Workers union has asked the Big Three Detroit automakers to shut down production for two weeks.

*The New York Times* pointed out recently that not all of us have the luxury of avoiding contact with COVID-19. Not only frontline first responders and healthcare workers, but also employees in our service industries and the gig economy have no telecommuting options.

Thus far, COVID-19 appears to be drawing most fatalities from the ranks of the elderly. What if it follows the trajectory of the 1918-1920 Spanish Flu? That infamous pandemic’s first wave was no worse than seasonal influenza.

But in August 1918, according to a 2019 article in the Journal of Preventative Medicine and Hygiene, “a deadly second wave of the Spanish pandemic ensued. This was probably caused by a mutated strain of the virus, which was carried from the port city of Plymouth in south-western England by ships bound for Freetown in Sierra Leone and Boston in the United States. From Boston and Freetown, and from Brest in France, it followed the movements of the armies.”

That second, six-week onslaught was the beginning of a three-year ordeal that took an estimated 50 million lives and wreaked economic damage that makes the present market downturns sound like a hiccup.
If the coronavirus replicates the patterns of a century ago, organized labor may be a sleeping giant which, when roused by heavy casualties in its ranks and beyond, may react militantly. Old grievances may bubble to the surface. In her March 3rd “State of the Unions” podcast, Mary Kathryn Fletcher claimed that, at organized labor’s urging, OSHA had started down the path toward meaningful pandemic guidance and regulations, but that this work had been backburnered in the last three years.

Now, however, OSHA has released its “Guidance on Preparing Workplaces for COVID-19.” The agency also issued new temporary guidance, “Healthcare Respiratory Protection Annual Fit-Testing for N95 Filtering Facepieces During the COVID-19 Outbreak,” concerning enforcement of the health and safety agency’s Respiratory Protection standard. This may be too little, too late to satisfy organized labor, should—heaven forbid—the body count get high, as this pandemic drama plays out.

About the author. Dr. Jim Castagnera, Esq., practiced labor, employment and intellectual-property law with a major Philadelphia-headquartered law firm for a decade before joining New Jersey's Rider University as Associate Provost & Legal Counsel. Following 23 years in that role, he is now a partner and the chief consultant of Holland Media Services, a freelance writing, training, and consulting firm with offices in Los Angeles and Philadelphia. He also is an adjunct professor of law at Drexel University. His 21 published books include the Employment Law Answer Book (Wolters Kluwer, 9th edition 2018).