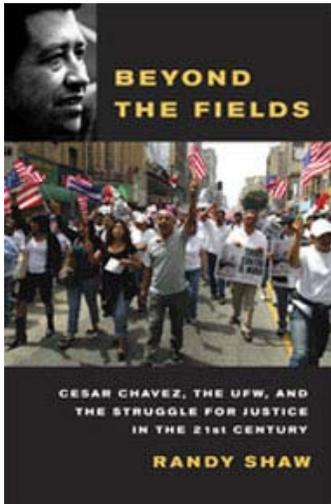




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NLRB Judge Throws Out Kaiser Elections

by Cal Winslow, Jul. 20, 2011

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New Vote for 43,000 California Workers

The National Labor Relations Board (NLRB) has just thrown out the results of the September/October 2010

representation election at Kaiser Permanente, the huge California based Health Maintenance Organization. The ruling, by an administrative law judge, has handed California healthcare workers a stunning victory. In that election, the Service Employees International Union (SEIU) defeated the National Union of Healthcare Workers (NUHW), the new union challenging SEIU in the healthcare industry. The 2010 election – involving 43,000 Kaiser service and tech workers - was marred by a SEIU campaign of lies, fear and intimidation. The election itself was estimated to have cost SEIU between \$20 and \$40 million dollars – more than \$500 per vote.

NUHW appealed, charging SEIU and Kaiser with a host of unfair labor practices, above all with collusion in denying service and technical workers a free and fair choice election, relying, crucially, on Kaiser's illegal decision in 2010 to withhold scheduled wage increases for new southern California NUHW members.

In her July 18, 2011 decision, Washington DC Judge Lana H. Parke ruled that SEIU had indeed “interfered with unit employee’s free and uncoerced choice in the election.” Underscoring the significance of her ruling, Judge Parke explained, “The Board does not lightly set aside representational elections... There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.” She then ordered a new election so that workers will have “the right to cast their ballots as they see fit... in the exercise of this right free from interference...”

The vote, taken in September/October 2010 was the largest union election in the US in the last seven decades.

NUHW spokesman Leighton Akio Woodhouse hailed the decision as a “total

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victory for our members – SEIU’s whole campaign was dependent on Kaiser’s violation of the law.”

In early 2010, NUHW Southern California nurses and professionals successfully challenged SEIU in NLRB administered elections. Kaiser responded by unilaterally denying these workers scheduled contractual wage increases, increases guaranteed, according to labor law, even when a union is replaced by another

Judge Parke’s ruling drew attention to the conduct of Kaiser Permanente Regional President Ben Chu who reinforced SEIU’s illegal threats during a large employee town hall forum prior to the election. SEIU “was joined in its warnings by Kaiser’s President [Ben] Chu, who informed employees that only members of coalition unions were guaranteed PSP incentive bonuses. “

The ruling focuses on SEIU. The withholding of wages, subsequently found by the NLRB to be illegal (back wages increase were ordered to be paid) gave SEIU a key opening for a barrage of misinformation.

Here’s just one example from a SEIU campaign leaflet: “After Southern California RNs and pros voted to join NUHW, here’s what happened: They lost their 2% raise in April. That means a loss of more than \$1600 a year for some pros and RNs... They are no longer eligible for up to \$2000 a year in tuition reimbursement...” Parke noted “30 disseminations of this statement in as many facilities.” It was just one of many. It was a lie.

“We won,” says Jonathan Siegel, the Oakland lawyer who led NUHW’s appeal. “I don’t want to quibble, she didn’t go far enough.”

Siegel believes Parke erred in not finding Kaiser also at fault. “It is clear that Kaiser and SEIU worked together to have raises come due precisely at election time, while arguing a NUHW victory would negate them.”

“But we won, they lost! SEIU will no doubt appeal, that will take 6 to 12 months, we may cross-appeal, but I’m certain the ruling will stand, so we’re looking for a new election in 2012.”

This California conflict remains, I’ll argue, the most important issue in US labor today, not as spectacular as the February days in Madison, to be sure, but ongoing and stark in its implications –can workers stand up to corporate power? With unions? What kind?

The California healthcare union dispute stems from the 2009 trusteeship of SEIU’s California local, the 150,000 strong United Healthcare Workers- West (UHW), then a militant, progressive union, now a shambles.

The California healthcare workers took issue with SEIU’s corporate structures and strategies, above all its back-door wheeling and dealing with healthcare corporations and corrupt politicians – policies aimed at increasing members

(read dues payers) at any cost, most often at the expense of the rights and standards of its own members, healthcare workers.

They objected as SEIU spent lavishly on politicians (Blagojevich in Illinois) signed ten year contracts (in Washington State) gave up the right to strike (in California nursing homes), abandoned organizing drives (in Santa Rosa), sabotaged healthcare reform (with Arnold Schwarzenegger), ignored staggering intern corruption (LA local 6434) – all with the justification that cultivating friendly employers and politicians was the road to grow and influence. They are still doing it.

Today the healthcare corporations - profit and not-for profit alike - are as voracious as any. There is no recession for them. Kaiser reported a net income of \$921 million for the first quarter of 2011, with reserves of more than \$12 billion. Still, last month it announced it would raise premiums for more than 300,000 Californians. Kaiser officials claimed this would amount a 10.7 increase, but consumer groups predicted increases of up to 17% for some subscribers.

At the same time, George Halvorson, the CEO for Kaiser Foundation Health Plan and Kaiser Foundation Hospitals received compensation of \$6.7 million.

“What is their justification for causing economic hardship on 300,000 people?” asks Woodhouse. “They’re doing incredibly well financially (and) sitting on huge reserves.”

Still Kaiser wants concessions and SEIU is handing them out. Worse, while the nation’s second-largest union announces one sham national political campaign after another, it has virtually abandoned its UHW members. Roy Chaffee, a call center clerk at Kaiser’s Vallejo call center, reports that “SEIU has withdrawn staff, they’re not visible, we have to fend for ourselves, with Kaiser taking full advantage – the changes have been unprecedented and all detrimental.”

Angela Glasper, Kaiser Antioch, fired executive board member of pre-trusteeship UHW, says, “We have not seen them /SEIU/... we get no representation at all. And we have people getting fired, some with 20 years on the job. It’s a big thing.”

And NUHW? According to NUHW’s John Borsos, “We are already working for the new election – but we’re mostly doing what unions are supposed to do, fighting back against employers demanding concessions, fighting for better standards for our members. And organizing. I have to say -in contrast with far too many unions today – we’re not rolling over in the face of employer demands for concessions. We’re in the middle of contract negotiations for several thousand healthcare workers.”

And it’s not just about talk. On May 18, 2011, 2500 NUHW members struck Kaiser in Southern California: 1100 nurses and 100 professional (social workers, therapists, dieticians, medical technicians) and picketed Kaiser’s Los Angeles

medical Center in Hollywood, rejecting concessions and demanding a decent contract in a powerful display of solidarity.

On June 21 In Salinas, 850 NUHW members struck the Salinas Valley Memorial Hospital. The day- long strike, the first ever in the hospital's 58-year history was in response to stalled negotiations with hospital management workers. NUHW is fighting plans to cut more than 100 direct-care positions and trim pension and healthcare benefits for new hires.

It is important to note that in each strike, SEIU sent multiple mailers to the workers involved, urging them to cross picket lines.

At the same time, NUHW is joining with other workers, community and consumer groups to expose corporate greed. At Salinas Valley NUHW members revealed the fact that Samuel Downing, outgoing chief executive, was granted a retirement package that included \$5 million in supplemental payments plus a \$150,000 annual benefit.

These struggles are critical. NUHW is rebuilding at a time when the situation of workers is increasingly desperate; they come at a time when it ought to be self-evident that concessions don't work; they come at a time when the political class, here in California, across the nation, internationally, is singing just one song: austerity!

There is, however, an alternative. The NLRB ruling on the Kaiser election will strengthen it. "It was a shot of hope," reports Glasper. " People are smiling today, we're rejuvenated. We still are the union. They tell us we our voices don't count. We remember, they do."

"This ruling is a tremendous vindication for us," says Chafee. "It is a vindication for thousands of honest healthcare workers, the victims of the SEIU – we are excited and hopeful, we can still regain our union, we can restore our economic security, we can regain our voice and do the job we want to do – take care of and defend the rights of our patients."

Cal Winslow has written extensively on the subject of the SEIU and NUHW. He is the author of Labor's Civil War in California, PM Press and an editor of Rebel Rank and File: Labor Militancy and Revolt From Below during the Long Seventies (Verso, 2010). He is a Fellow at UC Berkeley, Director of the Mendocino Institute and associated with the Bay Area collective, Retort. He can be reached at cwinslow@berkeley.edu

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