



NUHW

California Kaiser Workers: A “Militant Minority” Union? By Steve Early

AT THE AFL-CIO convention in Los Angeles in September 2013, the pros and cons of labor-management cooperation schemes were not much debated by the hundreds of union delegates, most of them fulltime union officials. But, on the opening day of their meeting, a small group of rank-and-file workers managed to alter the convention agenda — by threatening to protest the presence of Kaiser Permanente (KP), which happens to be their employer.

The AFL-CIO had scheduled two convention presentations featuring the California hospital chain and health maintenance organization (HMO) whose continuing drive for contract concessions triggered statewide strikes by 20,000 of its own workers in 2011 and 2012. The strikers included members of the National Union of Healthcare Workers (NUHW) and the AFL-affiliated California Nurses Association (CNA), before the two decided to affiliate in January, 2013.

Just before the convention, five NUHW-CNA supporters

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at Kaiser wrote to AFL-CIO president Rich Trumka, questioning why he was showcasing Kaiser as a “model employer.” They noted that several AFL-CIO unions “are currently in the middle of an epic struggle at Kaiser to defend standards that workers have fought decades to establish.” They asked Trumka “and the rest of the AFL-CIO to stand with us and not with this multi-billion dollar HMO.”

These NUHW supporters also prepared a leaflet detailing their employer’s recent mistreatment of workers and patients in California. And they prepared to distribute the flyer to the 1,600 delegates and guests attending the convention’s opening session.

Shortly before that deadline, the AFL-CIO informed NUHW-CNA that Kaiser was dis-invited. Time slots sides aside for the marketing of Kaiser’s Labor-Management Partnership (LMP) and its LMP-backed corporate wellness program suddenly disappeared from convention schedule.

Representatives of the partnership did not get to mount the “Solidarity Stage” outside the convention hall to promote “Instant Recess,” a component of workplace “wellness” at Kaiser. “Instant Recess” promotes “short bursts of physical activity throughout the workday” — as long as it doesn’t involve union picketing!!

Picketing or Partnering?

The Kaiser workers who won this small skirmish are among the 4,000 still seeking non-concessionary first contracts with Kaiser, after switching from the Service Employees International Union (SEIU) to the NUHW in 2010, a move actively discouraged and, at one point, illegally punished by their employer.² In 2010 and again in May 2013, the NUHW tried but failed to oust the SEIU as the bargaining representative of 45,000 service and technical employees at hospitals throughout California.

These two decertification elections were the largest private sector union votes in the last seven decades — and took place in the biggest Kaiser bargaining anywhere in the country. In the second contest, NUHW support increased by 15% over that union's previous showing. But SEIU won again by a margin of 18,844 to 13,101 after criticizing the two NUHW-CWA strikes, encouraging its members to cross strike picket lines, and emphasizing the advantages of cooperating with Kaiser management.

NUHW-CNA supporters campaigned against the \$2.1 billion worth of future benefit cuts accepted by SEIU negotiators during a period when Kaiser posted profits of nearly \$9 billion.³ The SEIU-dominated Coalition of Kaiser Permanente Unions (CKPU) includes 28 local unions, from national affiliates of both the AFL-CIO and the rival group Change to Win. They represent nearly 100,000 employees, in nine states, serving nine million Kaiser health plan members. Unfortunately, participation in the CKPU's coordinated bargaining is limited to unions willing to embrace the ideology of the LMP.

Dave Regan, the SEIU executive vice-president from Ohio who moved to California in 2009 to assume control over SEIU's largest Kaiser worker local, United Healthcare Workers-West (UHW), now pays himself as much as some KP executives, about \$300,000 a year. Regan has bonded not only with his counterparts at Kaiser but also its lobbying arm in Sacramento, the California Hospital Association (CHA).

CHA president Duane Dauner praises Regan's business-friendly approach, while condemning the more adversarial stance of NUHW and CNA. "They look at management and employers as the enemy," Dauner says. "They draw a line in the sand. Anything management does, they are against. It's just 'give us more and more.'" In contrast, he noted, SEIU leaders "are working with us and we are trying to work with them on health care policy and high-road labor relations."⁴

Break Away or Work Within?

The four years of workplace conflict between NUHW-CNA and SEIU-UHW highlight broader differences between U.S. unions happy to be on the "high road" and those questioning where it leads. The struggle by thousands of workers to oust SEIU puts strategy questions facing many other union members in sharp relief: If reforming a union that's overly wedded to "partnership" becomes impossible, how can a "militant minority" of workers, who remain committed to a different vision of unionism, function most effectively to achieve their organizational goals, longer term and day-to-day?

The NUHW-CNA attempts to decertify SEIU at Kaiser in California have been frowned upon by labor-oriented academics, left-liberal journalists, and some union organizers. These observers bemoan the resulting "drain on union treasuries at

a time when precious little organizing of unorganized workers is going on anywhere in the country."⁵

Without offering any concrete assistance to Kaiser workers if they chose a different path, such critics simply assume that working for change within SEIU is a more preferable option, whether viable or not.

Internal union reform has been the prevalent strategy pursued by disgruntled members in the private sector since the mid-1950s. Rules against "raiding," adopted as part of the AFL-CIO merger, made it more difficult thereafter to switch unions unless the incumbent one (or the "raider") was unaffiliated.

With varying degrees of success since then, workers of all kinds organized to elect shop stewards, union convention delegates, bargaining committee members, and national or local leaders more responsive to the rank-and-file. Dissidents who once would have ditched the AFL for the CIO — to become part of what had been, at its inception in the 1930s, a more militant, democratic labor federation — now had to replace their existing union leaders and structures while remaining institutionally loyal.

After four years of open rebellion against SEIU-UHW, few NUHW supporters at Kaiser believe that SEIU-UHW is reformable. Dissenters on its elected executive board face removal from office for their NUHW sympathies; a Kaiser negotiator who ran against Dave Regan for local president in 2011 was later brought up on internal union charges and suspended from membership for seven years for "aiding a rival labor organization." Any member seeking to become a shop steward must sign a "loyalty oath" as a prerequisite for the job.

Efforts to remove incompetent and unresponsive stewards are routinely thwarted by SEIU-UHW staffers. Ousting incumbent officials elected on a statewide basis, in a staff-dominated local of more than 140,000, will be an uphill fight in 2014 — even if many of the 13,000 dues-payers at Kaiser who voted to leave SEIU in 2013 try to "Dump Dave" by participating in that election.

In 2008, thousands of the most active and committed trade unionists in SEIU-UHW rallied behind efforts to reform SEIU at the national level. That effort was crushed when UHW was placed under a retaliatory trusteeship, by then SEIU President Andy Stern, who personally installed Regan as the new leader of UHW. The ouster of 100 elected statewide UHW officers and board members was followed by the resignation or removal of many hundreds of shop stewards. At Kaiser, these included some of the union's most experienced "contract specialists."

Many of the key union activists sidelined by SEIU's takeover helped to create NUHW as a rival union, and to sustain its shop floor support in hospitals and nursing homes around the state. In some Kaiser facilities, NUHW has majority support and could easily decertify SEIU if that were legally possible at individual hospitals, as it has been for service and technical workers at fifteen other healthcare employers with smaller stand-alone bargaining units. (NUHW has won bargaining rights for about 10,000 former SEIU-UHW members and previously unorganized workers.)

If the United States had labor laws like those in Italy or France, Kaiser workers dissatisfied with SEIU could simply

quit that organization and make their voluntary dues payments to NUHW instead. In many countries where labor law does not grant any union exclusive bargaining rights, multiple unions or labor federations can compete for members and play a representational role in the same enterprise or workplace. But Kaiser is not an open shop and this is not how the post-Wagner Act system of labor relations system works in the United States, for better or worse.

Everyone represented by a Kaiser union in California is required to pay dues or, if they become non-members, pay an equivalent amount in agency fees. Thus thousands of workers at Kaiser and other hospitals who want to leave SEIU are forced to remain captive members. Their own dues money continues to be used against them, an egregious insult that began when UHW was seized by SEIU in 2009, after more than a year of disruption and subversion by the national union.

Post-Election Brainstorming

At a strategy meeting in mid-May 2013, after their second failed de-cert attempt, more than 150 NUHW committee members gathered at CNA headquarters in Oakland to figure out what to do about this. They came at their own expense, on a Saturday morning of Mother's Day weekend, from Kaiser hospitals in Fresno, Modesto, Roseville, Sacramento, Stockton, San Jose, Santa Clara, Antioch, Hayward, Vallejo, Redwood City and South San Francisco.

The purpose of the gathering was to begin charting a course that might combine elements of past rank-and-file struggles with the "dual union" approach Kaiser workers have already sustained, most impressively, through two decertification campaigns of unusual scale and difficulty. The participants were predominantly female, with African Americans and Latinas heavily represented, along with working-class whites.

"Those who voted for NUHW are still there and are still committed," reported one speaker from Santa Clara, who sought guidance about next steps for her hospital-level committee. Now that there was no immediate prospect of escape from SEIU, a Fremont worker wanted to know "how do we keep everyone together? How do we continue to give our co-workers hope?"

A 17-year respiratory therapist at Kaiser said of her NUHW campaign role that she had "never been so inspired" by her involvement in anything but needed advice now on "how do you force them [SEIU] to follow the contract?" Another NUHW activist argued that, even after the election defeat, "we can still have a movement about pensions, working conditions, and the dignity and integrity of our work."

The consensus of the group was: "We can be a 'shadow union,' if we stay united," in the words of one worker. "There are lots of different things we can do as 'the union in exile,'" agreed NUHW organizer Ralph Cornejo, citing the NUHW Solidarity Facebook page as one valuable tool for keeping real union spirit alive, sharing ideas and information, and encouraging ongoing rank-and-file activity at Kaiser.

One dilemma facing the group was how to handle co-workers who had, for a second time, disappointed NUHW stalwarts by voting for SEIU. "When someone comes to you and says 'I made a big mistake,' don't smash on them," one former UHW steward suggested helpfully.

A backer of NUHW at Kaiser San Jose, now known in her hospital as the "Red Lady" because of her 24/7 union color



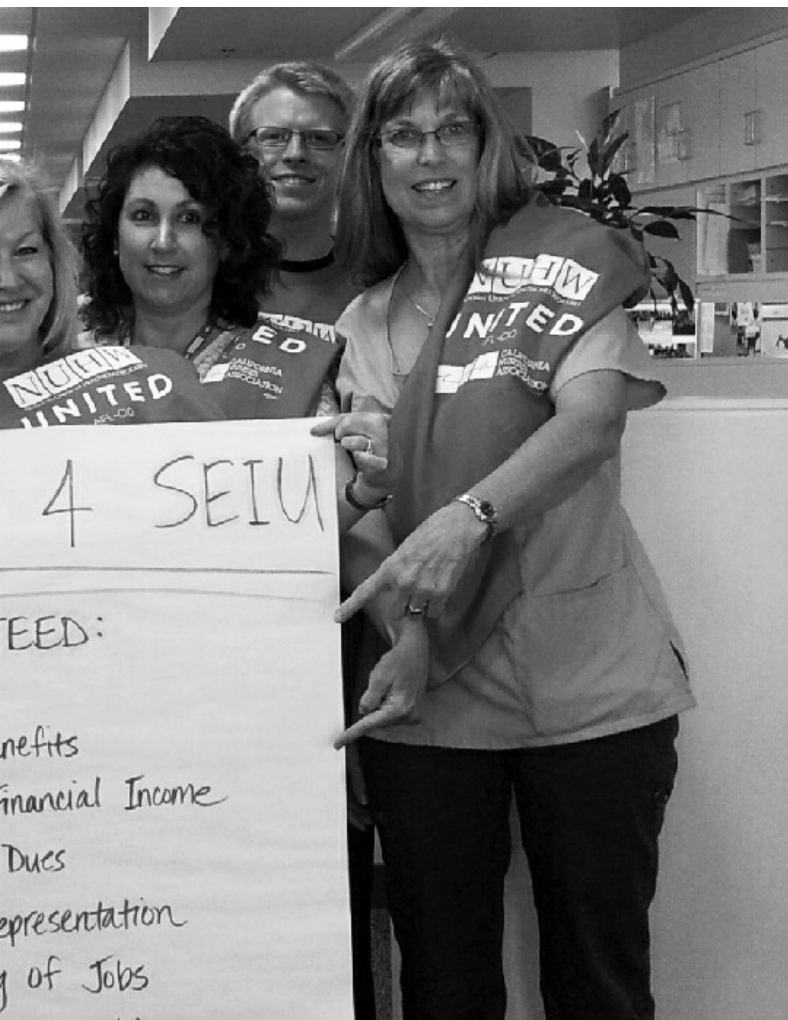
Roseville, California: Hospital workers list their reasons for ousting SEIU as the largest Ka

wearing, reported that she "gets constant calls from co-workers." She planned to continue her practice of answering all contract related questions, even from "folks still lost in their purple haze." But now, she said, as part of the process of educating her co-workers about their rights and developing the leadership ability of others, she was going to "encourage them to do more things for themselves."⁶

As one participant summed up her unofficial shop-floor leadership role, amid widespread union dysfunction at Kaiser Hayward, "We don't get representation. And we need it. The workers need stewards and they need to know who they are, they need to recognize them, they need to trust them. Now we can't find a steward. It's heartbreaking. But I do my best. It's why I arrive early to walk the floors. I make connections at lunch time, at five o'clock I walk the floors again."

Another NUHW volunteer was even more succinct about the post-election terrain in her hospital: "It's just us and Kaiser — we work in a non-union shop." But with NUHW backers still active and organizing, Kaiser is no *de facto* "union-free environment" of the ordinary sort.

In Fresno, members of an informal workplace grouping known as the "Five O'Clock Gang" — because of its regular meeting time in the hospital cafeteria — announced plans to keep planting the red flag of NUHW at the same time and location. "Create your own 'Five O'Clock Gang,'" one Fresno worker counseled. "Be brave and lead by example."



major union.

NUHW

After driving all the way to Oakland from Manteca in the San Joaquin Valley, a rank-and-file leader there insightfully contrasted NUHW's union culture with SEIU's. "They don't have brothers and sisters," she observed. "They have 'me, myself, and I,' everybody out for themselves. We have familyhood and that's the one thing we will always have that they do not."

She expressed optimism that "we can convince our co-workers, SEIU members, that they can have power this way too" but predicted, accurately, "there's going to have to be a grassroots movement process we go through."

New Model of Workplace Representation?

This informative exchange of views among rank-and-file Kaiser workers occurred not long after the AFL-CIO itself professed high-level interest in assisting "any worker or group of workers who wants to organize and build power in the workplace." At a University of Illinois conference on "New Models of Worker Representation," held in March 2013, AFL-CIO president Trumka declared that our "system of workplace representation is failing to meet the needs of America's workers."

When workers don't have an effective voice on the job, wage levels drop, there's less retirement security, and other past labor gains are jeopardized. To remedy this situation, Trumka touted "new models for organizing workers" that don't necessarily involve traditional collective bargaining rela-

tionships.⁸

In preparation for the federation's convention in Los Angeles seven months later, Trumka created a committee of labor historians, including Nelson Lichtenstein, to advise the federation about "new and forgotten methods of organizing." Meanwhile, local central labor councils were encouraged to hold "listening sessions" as part of a "6-month effort to come up with more viable union models."

The "minority union" experiments, now being embraced by the AFL-CIO, are based on the idea that losing a representation vote or lacking enough support to petition for one should not stop any group of workers from thinking and acting like a union. As some on the left have long argued, union membership and functioning should never have been defined so narrowly, by statute or confined to formal collective bargaining units.

In recent years, immigrant-oriented workers' centers have demonstrated that they can "organize and/or represent workers in a way that improves wages, benefits, and/or working conditions," without formal bargaining rights. Functioning in much the same way, "minority unions" have also established a workplace presence, but without being "officially recognized by employers or certified as collective bargaining representatives."⁹

At least one labor law professor, Charles Morris, has argued that the National Labor Relations Board should support union demands that employers engage in "members-only bargaining," even where the majority support necessary for legal certification under the NLRA has not been demonstrated.¹⁰

This would appear to be a pretty good theoretical blueprint for the continued practical functioning of NUHW in the Kaiser service and technical unit where SEIU's exclusive bargaining rights have been contested twice, most recently with 40% of the voters choosing an alternative union.

Of course, for top AFL-CIO officials and probably most of their academic helpers, the concept of "minority unionism" is only properly applied in non-union workplaces. The proponents of "new ideas" for organized labor are unlikely to endorse it as an organizing model for workers opposed to a labor-management cooperation scheme blessed by the AFL-CIO! And that's true even if "minority union" activity might actually help defend defined benefit pensions, job security protections, affordable health insurance, and other past contract gains now threatened by Kaiser.

According to NUHW organizer Marilyn Albert, too many academics, observing the Kaiser conflict from afar, have mistakenly characterized it "as just two unions fighting over already organized workers." Their assumption is that "thousands of those workers had no agency in this struggle," she says, "but were just being batted around by leaders of SEIU-UHW and NUHW-CNA. In reality, rank-and-file members would not have fought so hard and for so long if they did not think they were defending their very jobs, working conditions, salaries, and hard won benefits."

Fall and Rise of Labor

The notion that a "militant minority" of workers can still shape events, while swimming against the prevailing tide of their era, is not a new one. Nor is the concept historically limited to the circumstances contemplated by the AFL-CIO today. It was an idea that greatly animated David Montgomery's *The*

Fall of the House of Labor and also the early writings of William Z. Foster, when he was still a left syndicalist strike organizer and new union builder, before becoming a Communist Party USA commissar.¹¹

Like workplace “colonizers” before and after him, Montgomery was a college-educated radical who became a blue-collar worker in the 1950s. As an active member of the much-attacked United Electrical Workers (UE), he was fired and blacklisted, an experience that eventually altered his career plans.

Left-wing labor’s loss became academia’s gain when Montgomery transitioned, in the early 1960s, from being a machinist to one of the nation’s leading labor historians. As one colleague noted after he died in 2011, “Montgomery took his readers into the workplace....which he saw as central to shaping workers’ consciousness and political struggles. The key to working-class organization and advance lay in the militant minority, in the shop stewards, radicals, ethnic leaders, and itinerant organizers.... Clear-eyed about labor’s defeats as well as its victories, Montgomery had a firm faith in the power and ingenuity of working people in fighting for better lives and a better society.”¹²

In the early 1930s, right after the post-World War I era of defeat and retreat chronicled in *Fall of the House of Labor*, U.S. labor was able to revive in rather dramatic fashion. As fellow radical historian Staughton Lynd and others have documented, rank-and-file struggles — relying heavily on direct action — “were organized from below, by committees of ordinary workers who teamed up with others in their shops...and in the community where they all lived.”

Now, as then, the labor officialdom too often discourages worker initiatives that threaten to disrupt the stability of old or new collective bargaining relationships. So, Lynd has argued, “small, informal groups of active and retired workers, and their supporters” should seek to create and sustain forms of “parallel unionism” rooted in the workplace struggles that union contract holders are reluctant to wage, particularly in settings, like Kaiser, where the ideology of “partnership” is so highly developed and unabashedly articulated.¹³

The “parallel union” path at Kaiser is largely uncharted, beyond the already familiar routines of workplace committee building and representation election campaigning. Hopefully, those with the institutional resources necessary to sustain the next phase of California healthcare worker struggle will help rank-and-file activists find their way. (Although the CNA spent a reported \$5 million on its new affiliate NUHW prior to the second de-cert vote in the Kaiser service and technical unit in May, 2013, large subsidies from CNA dried up immediately thereafter.)

Those who are bravely resisting and trying to replace SEIU at Kaiser may have to “make the road by walking,” just like the workers’ center members in New York City who organize under that name.¹⁴ But, unlike Make The Way supporters in Brooklyn, the durable pro-NUHW network at Kaiser isn’t going to be financed by “social change” foundations.

These funders are far more enamored with “Alt-labor” initiatives like the “Fight for Fifteen” campaign among fast food workers. That effort is, ironically, funded by SEIU, a union with perhaps a million members making less than \$15 an hour and, at Kaiser, a record of opposing strike activity by its own

dues payers.

The union rebels at Kaiser in California are unlikely to gain wider solidarity or support of any kind until more advocates of “organizing the unorganized” realize that the fate of their own troubled project is inextricably tied to the precarious state of workplace organization, contract protection, and rank-and-file morale among the already organized.

The goal of union revitalization today is best pursued in ecumenical fashion, from the bottom up, with no false dichotomy between “internal” and “external” organizing. Activists trying to expand the labor movement by building “alternative institutions” should not neglect or, worse yet, reject the struggles of union members forced to create alternatives to their existing unions.

Wherever the traditional route of union reform is blocked and workers remain trapped in labor-management relationships that deprive them of any meaningful, independent voice, the militant minority will soldier on. Their friends and allies will continue to lend a hand, knowing that the magic kingdom of labor-management partnering is no laboratory for creating a more democratic, inclusive and social justice-oriented labor movement. It’s far more likely that elements of such a movement will emerge from worker resistance to company unionism, where the first glimmers of something better have already been visible and inspiring at Kaiser. §

Notes

1. For more on this workplace trend, see “The Corporate Wellness Scam,” in Steve Early, *Save Our Unions: Dispatches From a Movement in Distress*, (New York: Monthly Review Press, 2013)

2. For a history of 2009-10 unfair labor practice activity by the “labor-friendly” Kaiser, see Steve Early, *The Civil Wars in U.S. Labor: Birth of a New Workers’ Movement or Death Throes of the Old?* (Chicago: Haymarket Books, 2011), pp. 64-65, 319-326.

3. Between 2009 and early 2013, Kaiser Permanente reported a record \$8.7 billion in profits.

4. Kathy Robertson, “CHA Leader: Unions, organizations need to work together,” *Sacramento Business Journal*, November 25, 2012.

5. Harold Meyerson, “Just What Workers Need: More Labor Civil War,” *The American Prospect*, January 7, 2013.

6. The role of other unofficial shop floor leaders, like Angela Gasper at Kaiser Antioch, is well described in Samantha Winslow, “Round Two in High-Stakes California Health Care Vote,” *Labor Notes*, April 2012, 1-4.

7. Mel Garcia, a medical assistant at Kaiser Hayward, as quoted in Cal Winslow, “Nail Biting Time at Kaiser,” *ZNet*, April 24, 2013.

8. For more on this Trumka speech, see Jackie Tortora, “Future of Unions: New Models of Worker Representation,” *AFL-CIO.org/blog*, March 7, 2013.

9. See “Bargaining for the Future: Rethinking Labor’s Recent Past and Planning Strategically for Its Future,” a discussion paper by Katie Corrigan, Jennifer Luff, and Joseph A. McCartin, “Kalmanovitz Initiative for Labor and the Working Poor,” Georgetown University, 32-33.

10. As Corrigan, Luff, and McCartin note in their paper, the USWA attempted in 2006 to use a union-backed “employee council” as “a test case for the legal theory that the NLR allows collective bargaining for minority unions; the NLRB declined the Steelworkers’ complaint and has yet to take action on two different union petitions for minority bargaining rights.” For more on these thwarted NLRB rule-making initiatives, backed by multiple unions and labor law experts, that were inspired by Charles Morris, see his book, *The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace*, (Ithaca: Cornell ILR Press, 2004).

11. David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865-1925* (New York: Cambridge University Press, 1987). For a good account of Foster’s pre-Communist Party labor organizing and theorizing, see James R. Barrett, *William Z. Foster and the Tragedy of American Radicalism* (Champaign, Illinois: University of Illinois Press, 2002).

12. Josh Freeman, “Labor Historian David Montgomery (1927-2011),” *Sidney Hillman Foundation Blog*, December 5, 2011.

13. For an example of successful, if small scale, workplace organizing in a situation where Teamster members, like NUHW supporters represented by SEIU at Kaiser, had “formal but little substantive power over union affairs,” see Brian Walsh’s account of a Vermont bus drivers’ “parallel union” activity in “Battling Business-as-Usual Unionism: Worker Insurgencies and Labor Revitalization,” *Dollars & Sense*, May/June, 2013. All Staughton Lynd quotes are from that article.

14. Jane McAlevey, “Make the Road New York: Success Through ‘Love and Agitation,’” *The Nation*, May 21, 2013.