Physician Unions (Collective Bargaining) as One Way to Combat Excessive wRVU Driven Expectations

• Employed physicians have the protections from labor law and enjoy an exemption from the antitrust laws when they engage in concerted action concerning their terms and conditions of their employment.
• Given that there are more employed physicians than in decades prior, physicians are increasingly using collective bargaining to protect their well being and to push back against risk-based-wRVU pay mechanisms.
• Anti-trust challenges that existed in the 1990s may not exist today.
How much money do Universities receive from patient care?
What is Collective Bargaining?

“Collective bargaining is the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more. Collective bargaining is a way to solve workplace problems. It is also the best means for raising wages in America. Indeed, through collective bargaining, working people in unions have higher wages, better benefits and safer workplaces.”

-AFL-CIO
Why should Physicians Engage in Collective Bargaining?

• Gives doctors a stronger voice and opportunity for communication in the healthcare workplace and beyond
• Shifts power back to the doctor, especially economic power
• Focuses on the needs of the doctor as an “employee”
• A possible antidote that can be used to counteract systems with high burnout/moral injury
• Allows a mechanism for building membership
ABOUT AAUP-BHSNJ

The American Association of University Professors – Biomedical and Health Sciences of New Jersey (AAUP-BHSNJ) is an independent, non-profit organization that represents 1400 faculty at Rutgers/Rowan Universities. These faculty teach the next generation of doctors, nurses, scientists, and health professionals. The Association furthers the interests of faculty by bargaining for improvements in clinical compensation, researcher incentives, work/life balance, and other benefits. We also defend members from discriminatory treatment and provide individual advice on an array of issues. Finally, we advocate for our students, patients, and colleagues in Trenton by advancing legislation which promotes their interests.
What has our Union (AAUP) Accomplished Through Collective Bargaining?

• Improved minimum pay standards based on AAMC benchmarks.
• Bargained Better use of wRVU data tables (MGMA etc.).
• Created mechanisms to reduce gender-based and arbitrary pay inequity.
• Enhanced access to childcare, parental leave and other policies that support better work-life balance.
• Moved faculty to longer appointment periods with greater job security.
• Reduced the use of overly-broad restrictive covenants in appointment letters.
• Stopped increases to health insurance premiums.
• Strengthened health and safety protections.
What is the Status of Physician Unions Today?

• In 1998, the AMA estimated that between 14,000 to 20,000 physicians were union members.
• In 2014, it appears that this number has grown to 46,689 (5.7% of 820,152 actively practicing physicians in the U.S.)
• In 2019, there were 67,673 physician union members (7.2% of the 938,156 physicians in the U.S)
• A 26% increase from 2014 to 2019.
Together, We Can Demand Improvements': Stanford Health Care's Residents Vote to Join Union
– Medscape Medical News May 6, 2022

- Stanford Health Care's resident physicians voted May 2 in favor of joining the Committee of Interns and Residents (CIR-SEIU), part of a growing trend in unionization within the medical profession.

- More than 81% of the health system's resident physicians voted to join the union; the decision garnered 835 yes votes and 214 no votes, according to a CIR-SEIU announcement.
What is the applicable law that enables Collective Bargaining?

- Private sector employees (National Labor Relations Act)
- State and Local Government employees (State statute)
- Federal employees (Federal Service Labor-Management Act)
- Railroad/Airline Workers (Railway Labor Act)
Physicians and the National Labor Relations Act

- Employed physicians who are not supervisors have the right under the NLRA, to self-organization, or form, join and assist labor organizations, to bargain collectively through representatives of the own choosing, or to engage in concerted activities
- No formal union required for certain NLRA protections
- Physicians-in-training
- Physicians Who Are Supervisors and Not Protected by the NLRA
- Self-Employed Physicians
How are Unions Formed and Contracts Negotiated?

- Card drive by which a majority of employees in a “unit” sign cards asking for a single entity to be their “exclusive representative” or voluntary recognition by the employer.
- A “unit” can be any group of employees who are “logically placed together” for the purposes of collective bargaining.
- Where there is no voluntary recognition, the National Labor Relations Board (or comparable labor board) schedules an election where all “unit” members vote either in favor of creating the exclusive representative or against it.
- Assuming a favorable outcome for exclusive representative, such entity then bargains a contract with the employer covering bargainable terms and conditions of employment. Such entity is usually made up of certain employees of the unit who form a bargaining committee for the purposes of such negotiations.
- Once contract negotiated, typically such contracts will contain a grievance procedure by which terms can be enforced.
Will Doctors Have to Go on Strike?

Rutgers unions picket as medical faculty remain frustrated at lack of contract progress (NorthJersey.com)
Will Doctors Have to Go on Strike?

• No.
• Strikes are very rare among doctors and employees in general.
• There are multiple ways of exercising collective power or gaining leverage in a negotiation. Striking is only one of them.
• Your local union leadership will likely take a strike vote of members before striking. If such votes don’t get at least 90% of members agreeing to strike, a strike is not likely.
• Patient safety is always taken into consideration. Actually, the law mandates notice to the employer before striking for this very reason.
• Sometimes a union contract or the law will prohibit striking.
• Some evidence that in the rare situations where healthcare workers do strike, patient health conditions and mortality actually improves.
Are there Challenges Physicians Face in Forming Unions?

- Yes.
- Employer may mount anti-union campaigns. (See Amazon, Starbucks)
- Sometimes labor relations law is old and weak.
- Occasionally forming a union or negotiating a contract may take time.
- Given poor union density, doctors lack familiarity with unions, how they work, and what they do
- Mythology around unions
- Dealing with special provisions physicians may already have within individual employment contracts

However, education and empowerment is the first step for any physician using collective bargaining as a tool. The above challenges should not prevent those interested in forming unions from doing so.
Is Collective Bargaining Appropriate for All Physicians?

• Not always.
• Some physicians will not have collective bargaining rights available to them as matter of law. As such, legal changes may be needed in that area, or other creative means maybe necessary.
• Physicians may be in high-level management type positions and may not be able to derive the benefits of collective bargaining.
• Other Physicians may also have unique circumstances where collective negotiations may not make sense.
How can the AMA Engage with Collective Bargaining and Support the Physician Employee?

• Nursing Associations as a model? Way to boost membership?
• Partnering with existing national unions which have expertise?
• Not all organizing drives need to be large.
• Short of organizing, the AMA can foster norms and culture that supports employment rights and physician unions.
• Provide resources, know-your-rights trainings, and mutual-aid type services for doctors as employees.
• Support local efforts to organize healthcare workers when they occur.
• Use its influence and unique role with accrediting medical schools to foster employment rights within the medical school.
• Support federal and state legislation that enables physician collective bargaining and stronger employment rights which benefit physicians and other healthcare employees.