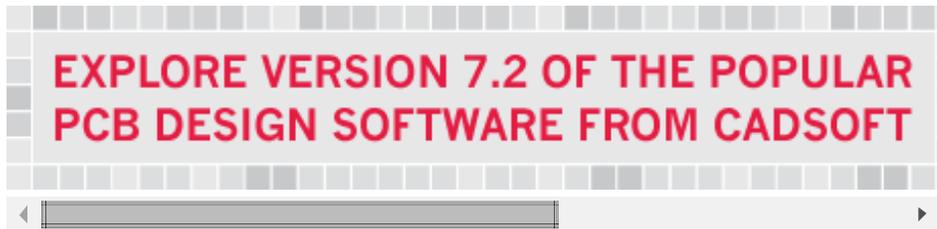


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High Tech and New Media: Organized Labor's New Frontier

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When one thinks of industries where union activity remains strong and additional organizing is likely, one may think of health care, education, retail, heavy manufacturing, and other “old school” fields, but not high tech and “new media.” Recent developments, however, including targeted campaigns focusing on employers in the *Silicon Valley*, its East Coast cohort Silicon Alley, and online, demonstrate that these assumptions may not be correct. High tech and new media are in the sights of not only some of America’s most actively organizing unions but also a coalition of interest and advocacy groups that are partnering with a coalition of unions with the common goal of increasing union representation at high-tech companies and the various contractors, subcontractors, and vendors that clean their facilities, feed their employees, and drive them to and from their facilities.

Taken together with the recent rule changes adopted by the *National Labor Relations Board* (“NLRB” or “Board”) to allow for much faster union representation elections in smaller units defined by unions, and the Board’s continuing emphasis on the application of the National Labor Relations Act to employees who are not represented by unions and who work in non-union workplaces, employers in the high-tech and new media fields should be aware of how these forces can impact their businesses and the ability to maintain dynamic workplaces.

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Silicon Valley Rising: An Industry-Targeted Movement

When 1930s legendary bank robber Willie Sutton was asked why he robbed banks, he replied that was where the money was. Today's labor unions, with their emphasis on income inequality and the gap between the 1 percent and the 99 percent have realized that Silicon Valley and technology companies are where the money is today and that there are many more employees in these industries who are not receiving the high salaries, stock options, and perks that many think of when they think of Silicon Valley.

A well-financed effort by a coalition of unions—including the Teamsters, the Service Employees International Union (SEIU), the Communication Workers of America (CWA), UNITE-HERE, the South Bay Labor Council, the NAACP, and other community organizations—have banded together to establish “Silicon Valley Rising” to organize employees of high-tech employers and the various vendors and service providers that they rely upon.

Silicon Valley Rising' describes its goal as addressing what it sees as a two-tiered economic system in which, in its view, direct employees of the companies in the technology and media industry are paid well and receive good benefits, while those who support the industry as employees of contractors and suppliers are not. Silicon Valley Rising's focus includes the vendors and contractors that Silicon Valley employers rely upon for transportation, maintenance, food service, and the like.

One of Silicon Valley Rising's first successes came earlier this year, when it was certified as the bargaining representative of the company that Facebook relies upon to provide shuttle bus services between its various facilities at its headquarters. Soon after it won a representation election, Teamsters Local 853 negotiated a first contract with Loop Transportation that significantly increased wages and benefits and changed work rules and the like. In its campaign, Local 853 made clear that it saw the party that ultimately controlled the purse strings as being Facebook and media reports demonstrated the fact that Facebook was dragged into the matter and was ultimately responsible.

SiliconBeat (the “tech blog” of the *San Jose Mercury News*), the *Los Angeles Times*, *USA Today*, and other publications are all reporting that while apparently not a direct party to the negotiations between Loop and the union, Facebook has now “approved” the collective bargaining agreement, which it had to do before the contract could go into effect. In fact, Loop and Local 853 announced in their joint press release, “The contract, which workers overwhelmingly voted to ratify, went to Facebook for its agreement as Loop's paying client before implementation.” Such economic realities are the type of consideration that the NLRB's General Counsel has been urging the Board to look at in deciding whether a joint-employer relationship exists.

High-tech and new media companies often rely upon third-party vendors to provide a range of non-core support services so that their own employees can focus on their primary activities. But if, as expected, the NLRB rewrites its definition and standards for determining who is a joint employer, the risks are increasing that high-tech and new media companies, like other employers, will face the prospect of having to stand alongside their vendors as employers of the vendors' personnel, including bargaining with their unions when they are represented.

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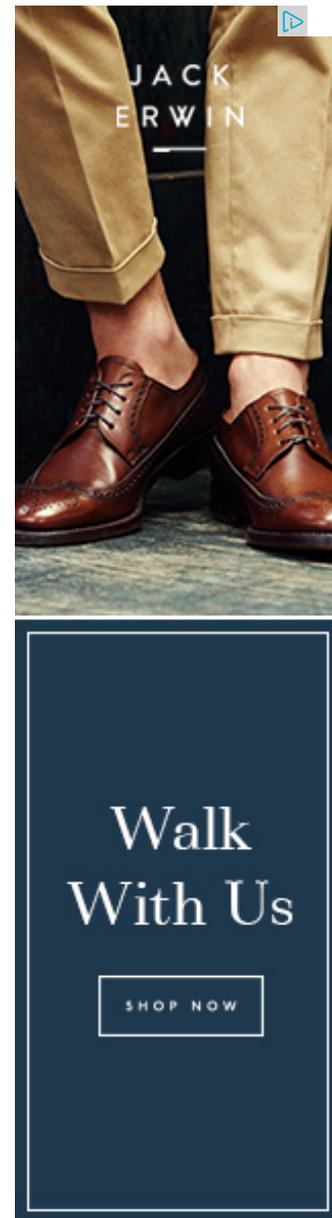
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