

THE CHALLENGES OF ORGANIZING

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I

INTRODUCTION

In 1978, the U.S. Senate, after six votes, failed to invoke cloture to limit debate on the labor law reform measure that the House passed in the previous year by almost 100 votes.¹ The majority of the Senate was prevented, by use of the filibuster, from working its will, and the needed revision of our national labor law failed. The failure of the reform bill had a profound effect on all labor relations, and especially on the conduct of the Steelworkers Union campaign to organize DuPont.

The elements that were contained in the Labor Law Reform Act are still important and necessary: (1) prompt elections, (2) increased accessibility and (3) expedited appeals procedures. Given the complexion of the present Congress and Administration, however, it would be extremely dangerous to have any labor law legislation come to the floor.

In late 1979, I became Director of Organization for the Steelworkers. Our particular target at that time was the longstanding campaign among the workers of DuPont scattered throughout the country. I would like to draw some observations and conclusions from that campaign, posing as it did the challenge of union organizing in hard political and economic times.

II

TARGETING

The principal consideration in initiating union organizing campaigns is, of course, targeting. Successful organizing can be secured by prudent employment of staff and resources. Such targeting should be directed to unorganized facilities of an employer with whom the union has a collective bargaining relationship and to those industrial classifications where there are industry-wide agreements. Little benefit can be secured for the workers of an employer with limited resources; therefore, organization of such marginal operations should be avoided. In those situations, the collective bargaining process is frustrated and often results in work disruptions. Given this targeting philosophy, why did the United Steelworkers endeavor to organize DuPont?

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1. Labor Law Reform Act of 1978, H.R. 8410, 95th Cong., 2d Sess. (1978).

In 1972, District 50, Allied and Technical Workers, merged into the Steelworkers, which thus became the largest chemical workers' union in North America. DuPont, as the largest chemical producer and employer, became a target. We had all the other chemical giants under contract, but as long as DuPont remained unorganized, it was a threat to wages and conditions in the chemical industry.

In 1973, the Steelworkers Union organized a DuPont explosives plant in West Virginia and an initial contract was secured containing terms largely dictated by DuPont. Decertification ensued after one year.

Interest was generated, nevertheless, at other DuPont locations and an educational campaign was organized to identify workers' attitudes towards unionization. As interest grew, it was determined by the leadership of the union that a company-wide coordinated organizing campaign should be initiated to obtain meaningful leverage against DuPont.

Over a period of time, organizing committees were built in a number of the plants. In fact, the leadership of twenty of the independent, "company" unions endorsed the Steelworkers Union drive and the majority of the workers in nineteen plants signed Steelworker membership cards.

Although there was some union activity in fifty plants, the degree of interest varied from plant to plant. Workers in a few of the plants wanted immediate elections, but the broad goals set forth for company wide bargaining tempered such local intensity. A cooling off process, with all its dangers, had to be initiated.

In the meantime, DuPont did not sit idly by and wait for election petitioning by the Steelworkers. The company not only reinforced its individual plant antiunion programs, but built a company wide structure based in its corporate headquarters in Wilmington, Delaware, with a "task force" and "support teams" at each location. DuPont also built an anti-Steelworker apparatus at the plant level where the "task force" members worked with the support teams and the plant's supervisory force. They implemented so-called "Know Your Employee (KYE)" programs to counter the organizing efforts.

The center of this antiunion activity at the plant level was a communication center equipped to conduct a full anti-Steelworker campaign. Each supervisor was obliged to spend several hours each week familiarizing himself with the developments regarding the Steelworkers and the company's counter measures.

The extent of DuPont's effort is apparent from a close look at the KYE program, the Employee Venture Plan, and its components, such as the employee profile and contingency plans. DuPont utilized almost a dozen boilerplate films and video tapes as well as materials produced in-house to counter the Steelworkers' activities. The company played those materials at captive audience meetings, virtually from the moment Steelworkers' activity began in the area. At the same time, DuPont granted wage increases of unprecedented levels and paid particular attention to any concerns raised by

employees.² They improved fringe benefits substantially or, at least, contrived an appearance of improvement.

DuPont had a weekly itinerary outlining each Steelworker activity at each location. DuPont officials admitted that they knew what each Steelworker organizer had for lunch each day. It is clear that the company planted "moles" in the plant organizing structure.

There are heavy moral and ethical considerations raised by these pervasive employer activities. DuPont vehemently denied any such activity. They denied it on record when the press, such as *The Wall Street Journal*³ and local newspapers, confronted the various plant managers with the written KYE programs. DuPont management characterized the programs as inconsequential. Despite these encroachments on the personal liberties of the workers, DuPont increased and strengthened their antiunion campaign.

In view of the extensive employer interferences in organizing activities, how is it possible for workers to exercise those rights guaranteed to them under the National Labor Relations Act (NLRA)?⁴ DuPont and similar employers have seemingly unlimited resources, staff and finances, and utilize them to the fullest extent. No limitations were set and no costs spared to resist union organizing.

III

CAMPAIGN EXPENDITURE LIMITATIONS

If the law is to be effective and the rights and protections accorded workers under the NLRA are to be secured, should employers such as DuPont be allowed to spend unlimited resources in such a legally dubious pursuit? We have one government policy which says workers not only have the right to organize and engage in other concerted activities, but that it is in the country's best interest that such activities be pursued. The same government, on the other hand, allows employers to deduct money spent to counter these efforts as a business expense. In the DuPont case, we are talking about considerable sums of money. The national policy needs some revision.

President Reagan and the Administration decry the imposition of martial law in Poland and the suppression of the Solidarity trade movement.

2. From the spring of 1980 wage increases by DuPont at the respective locations ranged from \$.65 up to \$1.28 per hour per year. Thus in less than two years, workers at DuPont plants in Newark, Pompton Lakes and Linden, New Jersey, received wage increases totalling over \$3.00 per hour during the campaign. Wage rates rose to \$12.54 per hour and in Cleveland, Ohio, up to \$13.25.

One week before the election, all pensioned DuPont workers received increases of 12% plus 1/2% per year in pension. Thus a pensioner since 1965 received a 20% pension increase.

Each plant had called in pensioners for lunches and dinners and recruited them for use in the anti-Steelworker campaign, via children, relatives, through phone calls and house calls.

3. *Wall Street Journal*, July 29, 1981, at A1, col. 1.

4. 29 U.S.C. §§ 151-69 (1935).

Yet, the administration's draconian treatment of the air traffic controllers, ignoring the merits of their dispute with the government, brings into question their own willingness to administer the law fairly. Our national government encourages employers such as DuPont to abridge workers' rights here by allowing antiunion expenses as business deductions. Taxing these expenses would be a source of revenue to offset the huge deficits in the national budget while helping to guarantee workers' rights.

While the Steelworkers' organizing campaign was extensive, there were never more than twenty staff members working on it. It is reliably reported that DuPont had well over a thousand staff members employed almost full time from May 1981 until the mid-December elections, in addition to support forces and hundreds of supervisors. If the law is supposed to provide freedom of choice to the workers in determining their collective bargaining relationship, how much freedom of choice is left after they have been repeatedly subjected to company propaganda, presentations, promises and threats?

IV

ACCESSIBILITY

As important as spending money and allocating manpower were to DuPont, accessibility was also an important element. The company's plants, especially in the mid-South, cover many thousands of acres on campus-like settings and may be up to half a mile from a public highway. This limits access to leafletting, "meetings on the green," and other activities of the professional staff organizer. The plant populations draw on workers from distances of up to 100 miles, making communication with the workers a logistic challenge of great proportion.

DuPont had virtually total accessibility to workers during their daily eight hours on the job. A supervisor distributed literature, sometimes as often as three times a day. The constant distribution of material was to the advantage of the company and certainly swayed employees on several issues. The same tactics operated in many communities where local presses ran front page headlines of an antiunion nature.

V

MEDIA USE

DuPont spends large sums on media time. At the national level DuPont sponsors network news and television specials, and at the local level it runs segments called "DuPont—Someplace Special." DuPont ads often feature safety quiz segments: "Where is a DuPont worker most likely to be injured—at work, at home, or at play? The answer: At home" (connoting DuPont's safety compliance). These ads apparently meet the fairness doctrine because they are considered noncontroversial. They are misleading,

however, because DuPont fails to point out that an injury, by definition, is deemed to have occurred only if it results in loss of time from the job to the injured worker.

DuPont has a program that mandates that if a worker breaks his leg he must return to his job the next day, even if this entails being transported by the company. DuPont threatens that the worker will lose disability payments if he does not comply and report to work. The so-called "wheelchair brigade" is well known within the company. DuPont is thus able to shield its safety record and its public image.

A recent study by the Council on Economic Priorities cited DuPont as the worst of all chemical companies in receiving citations from OSHA for "willful" violations of the law.⁵ Further, DuPont opposed safety legislation such as the Toxic Substances Control Act,⁶ especially the premarket testing provision. Now, DuPont wants a relaxation of the lead standard promulgated by EPA. Yet, DuPont sells safety programs to industry throughout the world.

On the other hand, the media restricted the Steelworkers' use of some video spots that were drafted for use in the election. DuPont, P & G, Kodak, Litton and other prominent nonunion employers with comparable resources couch their messages in noncontroversial terms and obtain access to the media.

VI

DID DUPONT VIOLATE THE LAW?

Since the organizing campaign was spread over a period of time, many charges were filed by the Steelworkers Union and individual DuPont workers with the National Labor Relations Board and against company actions. Complaints were issued and often settlements were secured, but the NLRA is not punitive and DuPont was willing to take the chance of committing unfair labor practices for the short term advantage.

Had the Steelworkers filed charges of objectionable conduct by DuPont, they would still be in the midst of litigation. Certainly, there was substantial basis for filing such charges, but by the time they had been processed, a year would have passed, and it would be time for the next election. DuPont's conduct can best be summarized from a decision made by Administrative Law Judge Fitzpatrick. He said, "[DuPont] is shown to have proclivity for violating the Act and has engaged in widespread misconduct demonstrating a general disregard of employee statutory rights."⁷

5. 123 CONG. REC. 32,613 (Oct. 6, 1977) (passage of Labor Law Reform Act, H.R. 8410).

6. Toxic Substance Control Act, Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C.A. §§ 2601-2629 (West 1982).

7. E.I. DuPont de Nemours and Teamsters Local 515, Cases 10-CA-14698 and 10-CA-14776, 263 NLRB No. 15, Aug. 6, 1982 (order of Admin. Law Judge appended to order of the Board).

VII

THE ELECTION PETITION

The Steelworkers filed a representation petition on July 31, 1981 with the General Counsel of the National Labor Relations Board in Washington, D.C. It was a single petition which contained two options—the first one called for a single multiplant unit covering those sixteen plants petitioned for, and the second had provisions for sixteen separate petitions for sixteen units with the request that they be considered on a consolidated hearing basis.

Since the union was unsure of how many plants would eventually be included in the multiplant petition, it was able to meet its commitment to a single unit multiplant bargaining attempt. DuPont could have approved the appropriateness of such a unit and the union wanted DuPont's position on the multiplant issue put on record. It was not unexpected that DuPont fought the concept and the proposal with unparalleled fury. It produced a film and tape and had separate captive audience meetings for employees outlining its opposition to the single unit multiplant concept.

DuPont hired outside counsel to formulate its position. Former NLRB member Peter Walther, was instructed to craft the arguments against the petition after the General Counsel assigned the administration of the petition to the Regional Board in Baltimore, Maryland. A consolidated hearing was set up at the U.S. Court House in Washington, D.C.

DuPont moved to have the multiplant single unit petition dismissed as inappropriate and was startled that the Steelworkers conceded and therefore moved to have the hearing continue on a consolidated basis for the sixteen plants. Walther and DuPont were caught off guard, claiming that they were tricked and DuPont moved to have the sixteen separate hearings in the respective NLRB regions. This motion was denied by the Hearing Officer and the company asked for a continuance of the hearings. After a one day postponement, the Regional Director dismissed DuPont's motion and requested that the consolidated hearing be continued. Walther and the entire DuPont delegation walked out of the hearing room claiming that they had been tricked by the Steelworkers and, particularly, by the speaker. They appealed to the full Board for relief, but their appeals were denied at every level.

The case affirmed the General Counsel's authority to direct a hearing on a consolidated basis. The union's position prevailed and was sustained by the NLRB. The elections were to be conducted simultaneously or as closely as practical with a simultaneous tally. The union thus won all of the legal battles. The decisive battle was yet to come.

VIII

MECHANICS OF THE ELECTION—"THE HOME COURT ADVANTAGE"

Based on our observations and experience, the mechanics of the election have been co-opted by employers. It might even be said that they have raised the staging of an election to an art. The Regional Offices of the National Labor Relations Board have gone along with the employers in setting up election arrangements. These include the site of the elections, as well as the date and the time when elections will be held. These elements, along with certain other considerations, such as schedules for release on company time, are critical, even determinative in most elections. How much advantage is there to the so-called "home court" or "home field"? While there is no scientific, precise determination, certainly it could be five percent or more, and therefore affect the election results. Certainly, DuPont places a high premium on the importance of these elements.

The election manual entitled "The Way to Win" which we were able to secure from several of DuPont's communication centers, details the company election strategy. Needless to say, it has worked for them over the years. DuPont follows the manual and attempts to treat the election as a company election—not a union election.

In over a half-dozen day-long meetings and numerous telephone conversations, the parties argued with the Regional Director in setting up the election details. Since DuPont campaigned so resolutely and fiercely, the union contended that the election sites should be off company property—that is, on "neutral sites." The Regional Directors have authority to conduct elections off-site. The Steelworkers maintained that DuPont property was a battle zone and that a "neutral site" was necessary to carry out the purposes of the Act under laboratory conditions. "The Way to Win" manual advises: "If the company proves too rigid, the Regional Director may schedule an election off company premises . . . which would put the company at an extreme disadvantage."⁸

DuPont sought to have each election in a company conference room, where they also conduct their captive meetings and show antiunion films. The Regional Director, in most cases, went along with DuPont's requests, despite union protest. Similarly, the union requested that all elections be held on Monday and Tuesday because, as the DuPont manual indicates, "the union has the entire weekend to do the final campaigning."⁹

Again, the Regional Director complied largely with the company scheduling. The company constructed release schedules enabling them to create a "bandwagon" effect as the employees moved into the voting area on their release time. The company was able to exploit the element of fear by

8. "The Way to Win," Labor Analysis and Forecast in association with Patrick B. Commer Assoc. 94 (on file at N.Y.U. Review of Law & Social Change).

9. *Id.* at 93.

keeping a tally of the employees voting, thus creating an atmosphere of surveillance.

Upon assuming the directorship of the United Steelworkers Union two years ago, I directed an in-house study of NLRB conducted elections focusing on the day of the week in which the elections were held. Of the elections held on Monday, the union was victorious in eighty percent; on Tuesday, the union won seventy percent; on Wednesday, fifty percent; Thursday, forty-three percent, and Friday, forty-seven percent. One hundred ten elections were surveyed. The results indicate that DuPont and other employers know what they are doing by scheduling campaigns to culminate on Thursday and Friday and the Board generally goes along with their requests. The unions should press the Regional Boards for more evenhanded treatment in the election process. Members of the National Labor Relations Board are aware of these employer tactics and I personally have provided the members of the Board with copies of company literature.

DuPont blatantly campaigned for and supported the so-called "independent unions" wherever they appeared on the ballot. Thus, the Steelworkers entered the election with a 2 to 1 disadvantage—the NO block and the INDEPENDENT UNION block against the STEELWORKERS block. I wanted the independent unions' leadership to file disclaimers at the proper time, but the company already had alternate independent unions set up with by-laws and committees.

Post-election samplings were conducted in a nonscientific manner. Nevertheless, the vote may be attributed to: (1) hard times; (2) fear of job loss; (3) the length of time from the inception of the campaign to its conclusion; (4) high dues; and (5) fear of strikes (especially, given the Reagan treatment of the PATCO strikers). The union and the Steelworkers, particularly, recognize the cycles determined by the national economy and are positioned for a productive organizing effort when the economy picks up.

Labor doesn't really lose an election where no previous bargaining relationship exists. In second elections, the unions are victorious sixty-five percent of the time, as opposed to a forty-five percent rate in first elections.¹⁰ The Steelworkers did not lose one member at DuPont. Admittedly, there was no gain either.

DuPont workers were the beneficiaries of increased wages, benefits and deferential treatment during the course of the union campaign. Workers said that the work atmosphere changed to that of a resort during the drive, and, in that atmosphere, the workers succumbed to the respective plant managers begging for one more chance. At least one plant manager "went to his knees" at the pre-election captive audience meetings to ask for that chance.

10. Statistical and Tactical Information Report, No. 4, AFL-CIO Organizing Department, August 1981 (on file at N.Y.U. Review of Law & Social Change).

DuPont workers at Pompton Lakes, Newark and Linden, New Jersey had their rates boosted before the election, up to \$12.84 per hour. Pensioners on December 1 received twelve percent plus one-half percent per year kicker¹¹ increases, and were instructed at company sponsored dinners to campaign against the union among their children, relatives and friends at the respective plants. Layoffs were delayed.

IX

CONCLUSION

The experience with DuPont, although undertaken when the nation's economic climate turned ice cold, when employment and job opportunities dropped precipitously, and Reductions in Force (RIF) and Reductions of Force (ROF) became the most common acronyms in our language, was nevertheless necessary. The campaign itself was a clinic in terms of its scope, virtually every facet of organizing strategy and law were touched. It is regrettable that every member of our union staff did not have the opportunity to directly participate, so as to absorb all aspects of the election and organizing process; and to study the "state of the art" of resisting unions.

Prior to the DuPont drive, the Steelworkers completed a successful campaign among 16,000 workers at Tenneco's Newport, Virginia shipyard in a landmark battle. We had another warmup with a few elections among employees of Proctor and Gamble plants in Kansas City, Kansas and Dallas, Texas. The union was successful in Kansas City where eighty percent of the workers cast their votes for Steelworkers representation. After almost two years and a hundred bargaining sessions, we have failed to reach an agreement with Proctor and Gamble and we are now engaged in broadening our nationwide boycott against that company's soap products to include Western Europe.

It is more and more evident that securing initial contracts has become an integral part of the organizing process. The experiences mentioned should make it clear that union critics' charges that organized labor has lost its fighting spirit are false and without foundation. There is much missionary zeal in the movement.

Certainly the Steelworkers Union has proved that it is on the offensive in organizing, in legislative and political endeavors, and, of course, in collective bargaining, where its successes are unparalleled in the industrial world. The steelworker employed in basic steel production has a wage scale that generates over \$14 per hour straight time wage, with substantial fringe benefits bringing the total employer cost to over \$22 per hour.

11. A "kicker" is a 1/2% increment for each year on pension. Thus a pensioner retiring in 1965 would have received 12% and 16 x 1.2%, or a 20% total pension increase.

Additionally, the Steelworkers Union is leading the coalition to preserve the gains made in the Clean Air Act, which is up for renewal in Congress, and which industry and others are trying to erode. We are leading the fight for extension of the Voting Rights Act, and to preserve the integrity and funding of worker safety legislation such as OSHA and MSHA. There is no paucity of fight in the Steelworkers.

Certainly, challenging Proctor and Gamble, DuPont, Tenneco, or similar corporate giants that have the histories and the resources to resist unionization is some kind of targeting. At this time, there is no apparent spontaneous organizing spirit in the country. Unions must go out and initiate it. That is not to say the workers don't want unionization. Our own polls and a recent Harris Poll indicate that workers in the general population, and sectionally, regard unions as desirable and effective instruments for workers—whether in Tupelo, Mississippi or in Chicago, in Los Angeles or on the East Coast—worker sentiment is positive for unionization. Numerically, about fifty-nine percent of the general population agree that unions are desirable. So the opportunity for organization persists, but the task is difficult.

RESPONSES

MAX ZIMNY*

Organizing is the essential ingredient in any mass movement. Without it a labor movement could not have been established, and without it the movement could not have been maintained. The organizing problems unions are currently experiencing are a composite of perennial difficulties and those peculiar to today's economic and political scene.

Whether an organizing campaign takes place in the southeast, southwest, or northeast United States; whether it is centered in a metropolitan or rural setting, there is a syndrome of tactics that unions customarily encounter and should be prepared to overcome. One can almost always expect the employer to label the union an outside, alien force that will destroy the day-to-day intimacy between worker and employer. This is not a difficult message to counter. Inherent in the union's activity is relief from the day-to-day oppression arising out of the employee-employer relationship.

Unions are also repeatedly labeled as dues-hungry institutions whose activities are primarily directed at satisfying a commercial need. "The union is here," says the employer, "for only one reason: it wants your dues and initiation fee, and," adds the employer, "if you look at the union's constitution you will notice that it can assess you, fine you, suspend you, and expel you for non-payment." This is also a message that can be effectively answered. Unions exist, after all, in the real world where money is required to carry on trade union activities. The payment of dues is an essential part of union financing. Workers are sophisticated enough to understand and accept this proposition. Unions should turn the employer's message against the employer and to their own favor. They should ask workers to join and support an organization that devotes its money and its resources to helping workers solve economic and other job problems and to effectively counter the wealth and influence that the employer brings to bear.

In rural communities, unions often encounter a "small town hostility" manifested by community leaders, businessmen, newspapers, police, and sometimes religious leaders. Unions must be prepared for it. The staff has to be schooled to overcome it and lawyers must be prepared to go into court promptly for immediate relief, if necessary.

Unfortunately, the shortcomings of the National Labor Relations Act and its administrators, at both the national and regional levels, cause equally persistent problems. Chronic delays in pre- and post-election procedures are an inherent feature of the Act. Furthermore, the Act contains a whole host of ineffective remedies and self-defeating election rules, customs

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and precedents. Board decisions operate more as a post-mortem than a cure and reviewing courts are reversing more and more frequently those NLRB decisions which offer some measure of relief.

Unions need better staff, training, and public relations. Unions need the ability to conduct more effective strikes. Above all, and perhaps this sums up everything else, unions need the ability to attract and retain employee support notwithstanding the recurring difficulties they confront.

I think the current economic and political climate affords unions an opportunity they have not had since the thirties and forties. The country is experiencing a recession and high levels of unemployment; both are likely to get worse before they get better. Workers are experiencing shock and insecurity and should increasingly be drawn towards unions. Employers are relying more and more on management consultants who, I believe, will be self-defeating in the long run. Politicians on both sides of the aisle are ineffective. Workers are under great stress, and therefore unions are presented with significant opportunities for new organization.

Unions, together with other progressive forces must seize the opportunity afforded by the failures of Reaganomics to reeducate workers and rededicate themselves to solving worker problems.

CLYDE SUMMERS*

I would like to make a comment about Max Zimny's last statement concerning the great opportunities for the trade union movement at the present time. I think there's considerable truth in what he said, but it made me uneasy because it brought to mind the story of the man who, as he was standing on the gallows, was asked if he had any last words. He replied, "Yes, this is certainly going to be a lesson to me." I'm afraid that may describe the opportunity we have at the present time.

The one fact I find the most troubling which we must confront is that today, nearly fifty years after the passage of the Wagner Act, we have less than twenty percent of the work force organized. We have less than thirty percent of the people in the private sector covered by collective bargaining. When we talk about the problem of organizing, we're not talking about the problem of organizing DuPont. The problem is immensely larger. What do we do about the seventy percent of the people not covered by collective bargaining agreements? How do they get organized, and how do we bring collective bargaining to them? How do we correct the massive failure to organize?

I would like to suggest that there are at least two questions we ought to study if we're going to confront this problem. The first question is, Why don't American workers join unions? Why is it that in this country, which probably has more positive legislation to encourage and protect the process of unionization than any other country in the world, workers do not join unions? It is easy to say that it is because we have no working-class consciousness; but I'm not sure how much that explains. In other countries of the world, there is extensive organization among employees who were never considered, nor considered themselves, to be a part of the working class. And there is indeed much about our labor relations situation that has more working-class conflict than most labor relations systems of the world.

I don't know why American workers don't join unions. But it seems to me that with all our capacity for researching attitudes, conducting public opinion polls, and analyzing social behavior, there could be some kind of a systematic study or inquiry made to find out why this is the case. Of course, I don't assume that the answer is the same in every sector of the economy, or for every occupation or industry. It undoubtedly takes different shapes in different places. But it does seem to me that unions and academics and others should make a very careful study to try to understand this problem.

There is a second question we ought to research. Why is it that American employers so bitterly resist unions? This is a peculiarly American phenomenon. European employers do not have this kind of antiunion attitude. Why is it that American employers have this attitude when employers in

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other countries do not? Again, I don't know the answer, but I suggest that if we knew and understood more about this we might know more about what the potential for organization is.

Part of our problem is that we take for granted many things which we do not really know. For example, we should be aware that in this country, unions through collective bargaining do more to encroach on management prerogatives than unions do in any other country in the world, or at least in any of the Western European countries. One of the factors that has eased the process of unionization in other countries is that unions have not encroached on management's prerogatives.

I have engaged here in an old academic game. That is, I have proceeded from my ignorance, my lack of experience, and have resorted to asking questions. But I think these questions are important; I think they are fundamental. Although I realize that I am vulnerable to the frequently made charge that any fool can ask more questions than the wisest man can answer, I still think we need to ask these questions so that we can begin to search for the answers.

AMY GLADSTEIN*

It's an interesting experience to be up here as opposed to being down there. I wanted to try to speak from the experience I've had, first working at the NLRB, and now fighting its procedures. I don't say that only in a negative sense—but it's different when you're a staff attorney at the NLRB than when you're trying to effectively represent unions and workers engaged in concerted activities.

To me, it's not so much a question of why employers resist unions; I think it makes perfect sense from an employer's point of view to resist the union. Economically, an employer has to resist a union; I've never seen an employer who doesn't understand that. I've seen an employer try to figure out how to work with the union after they have a union, but I've almost never seen an employer not fight a union at the start.

The other question Professor Summers raises, which is more serious, is what can be done to improve the rate of success in union organizing during this period of time. Most people know that the rate of success, at this point, is less than fifty percent. I do think some of those figures are a bit deceptive, as are the figures on the rate of unionization in this country. When people say the rate of unionization is about twenty percent, it's often forgotten that this percentage is derived from the number of workers unionized out of the entire working population, many of whom cannot be organized into unions by law, and many of whom work in very small plants in small work places.

This is a difficult time for unions to be organizing. Some of these points have already been addressed. We are in a recession. Workers are worried and employers are playing upon their fears by predicting dire economic consequences flowing from unionization. People are constantly threatened with plant closings; they are threatened with the claim that union wages will drive their particular employer out of business in a competitive industry. I think that the PATCO strike and Reagan's firm handling of it, which is a polite way of speaking about what happened with PATCO, had an effect on workers' confidence in unions. Workers think that even with a union they are not protected, that the job security that unions have traditionally been able to provide for people may not be what people always thought it was.

On the other hand, and I want to speak from personal experience, I think there are certain things that employers inevitably have to do in their own interests, that are, in fact, going to aid unionization. For example, white collar and governmental sector unionization are still expanding fields of organization. Some of the things that employers are doing for their own benefit in these areas are going to foster unionization. I want to give two examples. There's a great increase at this point in the use of technology in

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service industries and in the clerical industry. By using this technology employers are socializing workers. We have handled cases where, for example, all the secretaries in a large accounting firm are suddenly split into "administrative" secretaries and "correspondence" secretaries and become production workers who, for the first time, have a word count. They operate machines which can measure a production quota for typewriting. They operate on machines where the employer knows their error rate. Whereas originally each secretary worked for his or her own individual boss, now they work together as a large pool. This has an effect on how people view their employer; it leads to workers having more contact with other workers and collectively sharing their complaints.

To give another example, we had a case involving a large law firm that implemented night shifts and segregated the secretaries from the other employees. The secretaries then engaged in concerted activity to improve their working conditions. It has been proposed that law firms—at least in New York, where space is so expensive—put secretaries in another building in a cheaper part of town, and feed them work electronically, which can be done now.

When you take secretaries, or other kinds of service workers, who have had a one-to-one relationship with an employer, and put them in a room with twenty other secretaries, you increase the potential for unionization. So, I don't think the future is so gloomy, because some of the things that employers are going to do for their own good are also going to increase the potential for major organization.

I'd like to add a few things concerning what, from my personal experience, are some of the problems with the NLRB and with the National Labor Relations Act. The Act's failure to impose stiff penalties on employers found to have committed unfair labor practices creates an economic incentive to violate the law. During an organizing drive, an employer can save money by violating the law. He can resist unionization by delaying an election, by contesting the bargaining unit petitioned for by the union, thereby requiring the union to engage in a lengthy hearing. Even after the NLRB has issued a ruling concerning the appropriateness of the unit, an employer can refuse to bargain with the union, forcing the union and the NLRB to process a bad-faith bargaining case through the entire unfair labor practice machinery—a process that can take over two years. Throughout this period, the employer pays lawyer's fees, but is not bound by any collective bargaining contract setting wage rates or requiring the provision of welfare or pension benefits. Resisting unionization is thus cost effective, and will remain so until both punitive damages and attorneys' fees can be assessed for violations such as these.

This is not the time to talk about labor law reform, which is unattainable under the present administration. I would suggest instead that unions today have to think about what kind of economic power they can bring to

bear during the initial organizing situation, and how they can mount stronger organizing efforts.

I want to make two other brief points. One is that there has been a lot of discussion about management consultants. I've heard a lot of people say, and I agree, that their tactics are not too different from the traditional tactics used to defeat unions. The first thing to note about management consultants is that they are able to come into a shop before a union drive begins and set an employer up to be in a better position to fight a union when it tries to organize. For example, consultants will integrate the groups within the work force, creating more interchange among workers; this effectively forces a union to file for a much larger bargaining unit in an election, and makes the election that much harder to win. Consultants will tell an employer to pay wages at the end of the week because the NLRB will often hold an election on payday, and, as Mr. Oshinski mentioned, unions lose elections held at the end of the week more frequently than elections that are held at the beginning of a week. They will tell an employer to designate a vast number of people as supervisors. Consultants usually advise employers to hold small group meetings consistently; then when the union comes in, the employer can continue to hold these small group meetings and use them to interrogate and intimidate his or her employees. Finally, and perhaps most importantly, consultants will tell employers to screen prospective employees to weed "troublemakers" out of their work force. That's something that I think unions are going to have to deal with during the next several years.

Management consultants will also use the documents filed with the U.S. Department of Labor, showing officers' salaries, dues increases, etc., to try to defeat unionization. For example, one handbook for employers discusses how a "negative message" can be conveyed by telling employees about prior disciplinary incidents, or about court cases concerning breach of the duty of fair representation. Unions are going to have to be more conscious of the extent to which their conduct may provide some of these management consultants with ammunition that can be used to attack unions.

JULIUS GETMAN*

Clyde Summers' comments suggest that there really are two different, significant issues here. One is why unions lose representation elections as frequently as they do, or at least why the success rate isn't better. The second is why there isn't more spontaneous movement towards unions in segments of the economy where unionization is limited at the moment. I think this second question is probably the more significant question; it is also the one about which most of us know the least, and it is worthy of further study. I want to comment on that very briefly at the end.

What most of us know more about is the representation election and the responses of employers and the law. Let me begin then with the question of why unions aren't doing better in elections. Presently, there is a school of thought that believes employees who become involved in a representation election are ambivalent about the union. Unions come in at moments of discontent. There is interest in the union, but there is also a great deal of uncertainty.

Underneath all this, there's a message from the employer that says, "Give us a chance, we'll do better." Employees, in fact, respond to that message, in part because they have underlying doubts about the desirability of unionization. It's that message that tends to hit home in the successful employer campaign, more than the notion that "We're going to retaliate against you," or "We're going to fire you," or even "We're going to move the plant." The truth of it is that American workers, like other workers, particularly when they reach the point of getting involved with a union, are very hard to frighten. And, when you think about it, the history of the American labor movement does not suggest that the American worker is easily frightened.

What we do have a problem with is the attitude of American workers towards unions. My sense from watching union organizing, was that the quality of organization varies enormously from the excellent to the dreadful, and that unfortunately in a great many of the elections which I studied and informally analyzed, the dreadful tends to predominate.

The union campaigns that I have studied have tended to be as formalistic as the employer's campaign. There is a heavy reliance on literature that people do not read. I studied one election where the union simply crossed out the name of another group of employees to whom they were sending their message, and then wrote, "Dear Employee of" It seems to me that this is not atypical. It was a crude demonstration of one union's lack of personal involvement with the employee; good union organizers do receive better responses.

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There is one thing that can be done about the lack of organizing success. This may not be successful either, but I feel that the claim for equal access by the unions, which we tried to document, is greater than the law has recognized. Equal access can be achieved without legislative reform. The whole area of union ability to respond to management speeches and of greater union access to company premises, is still open to the unions. In this regard I would like to see a concerted, legal drive, because I do think that would make a significant difference. The unions could get a head start. Unions currently lose a certain amount of support simply by the passage of time. If an employer can delay an election, he will probably win.

Finally, I would like to say a word about Clyde's question, why so much of the work force does not think of itself as having a potential for unionization. The answer is that, contrary to what people always say, there is no class consciousness. The reality is that the union movement has been seen largely as a working class, blue-collar movement, and others do not see themselves as really having a role in it. One striking aspect of Solidarity in Poland was the ability of that movement to bring the entire society together and give people from disparate backgrounds a sense of a common interest and a common movement. American workers and American intellectuals, whose relationship I could discuss at great length, are both to blame for the fact that we view each other as very distinct from one another. There is real distrust, which has a legitimate basis on both sides. There is a sense among working class people that intellectuals do not understand them, do not recognize their problems, tend to look down on them and patronize them. Among intellectuals there is a similar feeling of distance. I think that efforts to bridge the gaps and make what the labor movement has to offer more attractive and more accessible to all members of this society would benefit both the labor movement and society in general.

DISCUSSION

THOMAS CHRISTENSEN, MODERATOR: We make the assumption that the organizing success of American Unions has been uniformly going downhill. I recently saw some statistics which would indicate that in white-collar work, and particularly in government areas, organizational success has been rather substantial.

JOHN OSHINSKI: In the public sector, there's been a dramatic growth in membership at all levels of government. There is no question that both as a percentage of the labor force and in absolute numbers the American labor movement has grown. In whatever universe we have conducted polls, they pretty well establish that fifty-nine percent of the American people perceive unions as desirable and effective, as I mentioned in my paper.

Unions do their sampling by signing of cards. In the DuPont situation, we did at one point have fifty-nine percent of the people sign. I'm not going to say at which point, but it was not at petitioning time. People were polled by the IUD in Tupelo, Mississippi and within a hundred mile radius. We were flabbergasted that we came up with the fifty-nine percent figure. We did that in Orange County, in Reagan country, and we came up with that same percentage. We did it in the Southeast, in Atlanta where we have campaigns now.

The American labor movement is coordinating all the American unions in a huge campaign in Houston, Texas at the behest of the Harris County AFL-CIO, and again our polling there indicates that fifty-nine percent of the people are receptive. Thus it can be said that the American worker does want unionization, and that he perceives it as an effective force.

As Ms. Gladstein had indicated, the large number of people that are not organized in the United States, for the most part, are supervisors, clerical, proprietary employees, and single employees that are beyond the scope of the NLRA. There is certainly a universe out there to be organized. But in the Northeast more than ninety percent of all manufacturing people are organized. The hard core that are not organized are the DuPonters and the Kodaks, and people like that. That is where we have difficulty. But we still have to throw high fast balls at those people to keep them honest. This is why, perhaps, we are not having a high degree of success in that area. While we are only winning forty-five percent of our elections, in second elections we have sixty-five percent success rate. That is because the antiunion campaign, which is predicated on fear, is obviated as you get into the second campaign.

JULIUS GETMAN: I think success in the second campaign can be explained in a slightly different way. The employees by the time of the campaign have very often been convinced by management to give them a second chance. That is to say, management admits it has made some mistakes, and that it is going to do better in the future. If the union can seize the right moment to inform employees that management made promises before and look where

that has gotten them, there will be no way that management can win them back. Employees frequently go into an election very confused. They are worried about the effects of unionization, but they think it would be nice. They feel there is a certain sophistication that goes into this approach. They often feel that they have successfully used the threat of unionization as a bargaining tactic with management and that employees are going to get all they want without having to have a union because the employer then begins to pay union wages, to set up internal grievance systems, and the like. There is a great amount of free riding in the unorganized sector. If the employer gets the message and moves towards a union level of benefits, it will work. If the employees feel that this message was merely a tactic in stalling for time, they are going to vote for the union, and threats by management will not change their minds. I think this is what it is really all about. It is interesting that the one universal feeling on this panel, and I think on the earlier ones, is that this is a time when there really is a great opportunity for organizing.

MAX ZIMNY: I think we ought to stop dwelling on and overemphasizing these statistical studies. More than anything else, they're a distraction, they simply do not promote success in organizing. Each organizing situation stands on its own; it has its own set of anxieties and it has its own problems to overcome. The specific problems have to be addressed, and I say to Professor Summers, we have had studies up to our necks, and they have not helped a bit.

I also want to add that many unions have at times employed psychologists rather than organizers to help them solve their problem, and the results have been dreadful. The answer to organizing problems comes not from studies, but from a concentration on the specific situation involved: a worker's needs, an employer's tactics, preparation in advance, preparation for the long fight while it's going on, preparation for the second campaign. Furthermore, you have to distinguish between second elections which come shortly after the first, and which are regularly lost at about a rate of seventy to seventy-five percent, and second elections which come sometime after the first. By the time the lessons of the employer's rejection of the union have sunk in, the employer has failed to heed the message, and has made the same mistakes again. A concentration on specific problems and a combination of specific remediation with general, true and tested organizing techniques, is how you obtain success.

CLYDE SUMMERS: I think it's unquestionably true that there are a lot of methods of making organizing drives more successful, or less successful, and that is certainly one level of attacking the problem. I must say, though, that I am a little uneasy about a kind of complacency, a kind of whistling in the dark, concerning the 70% of employees not covered by collective bargaining as if they were only a few foremen and small groups or categories of workers.

It is my impression that we have broad masses of people who are simply not touched by unionization and collective bargaining and, to a large extent,

many of them need some of the benefits that come with unionization and collective bargaining a great deal more than the employees of DuPont. They have much greater needs in terms of wages, benefits, and protection against arbitrary treatment.

I must say that I am more than a little troubled by the spectacle of the trade union movement spending millions of dollars to organize people whose wages, benefits and other conditions are on the whole above the average of the working people. There seems to be so little money and resources available for the people who are down at the bottom. Then to suggest that the people at the bottom have no problem is troubling.

AMY GLADSTEIN: I do not think that you can pose this as a contradiction: the gains that have been made in some of the more concentrated industries help the kind of unionization you are talking about because you have to show people that unions can be an effective force.

The history in this country indicates that some of the initial organizing drives and the drives in the big plants, can be used as an example for other types of organizing. I would agree that there should be more emphasis on organizing. I don't know anyone who would say no, or anyone who is part of the trade union movement, who doesn't think that there should be more work done. There is no one thing you can blame for the lack of organizing success.

People are going to have to determine on an industry by industry, and case by case basis, what a union can do to counter the economic threats of the employer. Constructing a large, theoretical construct at this point is not what needs to be done. It's more a question of figuring out how to grapple practically with some of the new problems being posed, both by economics and delays in the law, as well as the management consultants.

Nobody suggests ignoring those groups of people who aren't unionized. However, I feel the work done by the Steelworkers, for example, in DuPont, has an effect. Similarly, the work done by the United Auto Workers (UAW) in the larger plants has a very direct effect on the ability to organize other sectors.

AUDIENCE COMMENT: Yesterday and today, we've heard that the Reagan administration, at this point, presents an unparalleled opportunity for union organizing and that certain sectors are very ripe for organizing. I haven't heard any particularly new or innovative organizing strategies, other than formalistic and perhaps alienating strategies that we've seen for a long time. Could one of the panelists please respond to the recent corporate strategy that was used in the J.P. Stevens drive appealing to the media and the community? The idea is to affect public opinion, bring in support for the organizing drive itself and not rely strictly upon legal remedies.

MAX ZIMNY: J.P. Stevens had a board of directors composed of officials of banks, insurance companies and the like, whose institutions were peculiarly

susceptible to challenge. That presented an unusual opportunity. Certainly that technique, which incidentally is not a new technique, should be utilized.

J.P. Stevens engaged in such massive and persistent violations of the labor laws, that even the management community had too much of it. The J.P. Stevens violations in large part gave impetus to the labor reform bill, which almost passed. I might add that had it passed, it would not have been a panacea for the problems we're now discussing. It would have helped, but it would not have been the solution by far.

What is necessary is improved public relations and more intelligent behavior by the trade union movement when strikes, labor disputes, and organizing opportunities are present. This panel cannot be expected to formulate new techniques which will revolutionize the practice. That occurs when unions adopt improved techniques to solve particular problems.

JOHN OSHINSKI: There are techniques, Max, being utilized in the Tupelo IUD Campaign, in the Tupelo, Mississippi area. For nine months we sponsored public service messages that had no direct connection or allusion to unions. The same thing is going to happen to a great extent in the Houston drive where some 125 organizers are going to be allocated by the various unions.

There are techniques being developed. We're using the latest resources. I don't want to dwell on it, but we have great strictures because of the fairness doctrine when we do get into a campaign. I had some fellow unionists from the National Football Players Association tape messages in the DuPont campaign; however, we were denied access to the public media. The general managers of the respective stations claimed that the messages were controversial. Therefore, we were restrained from purchasing time. There are all kinds of legal ramifications in this area.

The labor movement is not moribund, is not static, there are all kinds of dynamics that work. This period of time will be like the crucible, where we will be able to, hopefully, produce a product that will be more timely. After all, the management consulting companies are only turning around our very weapons for their own use. There's nothing original in what they're doing. They have adopted our procedures, refined them, put them in the hands of psychologists and sold them at a high price.

MAX ZIMNY: Most of you know the song, "Look for the Union Label." That's an indication of a successful public relations campaign. I would be pleased if that public relations campaign has made organizing of garment workers easier; it has not.

AUDIENCE COMMENT: There's a great shortcoming here. Organizing has always been difficult. The external problems, such as the hostility of employers, the use of labor consultants, the role of the media, the political situation, and the role of the NLRB which may on balance be hostile toward

carrying out legislation which is supposed to encourage the organization of workers; these are things we are all aware of.

But let me make an analogy which I don't want to be mistaken about. When there are movements of resistance in communist countries, the CIA is blamed for instigating them in an attempt to overlook the grievances that provoked the movement. Within the labor movement there is a feeling of lack of participation on the part of the members of the labor movement and a division between the officers and the rank and file. Thus the fundamental goal of the labor movement, organizing workers, is obscured. Organizing over the years has become a professional, staff job, and not the membership participation in the organizing process. When you don't have the members participating in organizing, you have members who are turned off, leading to antiunion sentiments. The labor movement must address this issue.

AUDIENCE COMMENT: My name is Carol Schlitt. I'm on the International Staff of the Amalgamated Clothing and Textile Workers Union. I have not been inside the labor movement as long as the gentleman who just spoke, but I am also speaking from inside the movement, rather than as an academic.

I worked for two years for the union that won the J.P. Stevens boycott. It was a very long struggle of seventeen years, and it cost the union about seventeen million dollars. For that we got about 3,500 members in the South who will pay dues for a very, very long time, before they pay the union back for the resources and money that it spent on that campaign.

I was also involved somewhat in the Tupelo campaign. They mapped out an area and said that in that section of Northern Mississippi, and part of Alabama, they were going to try to get all the industrial unions to give staff and resources to organize people where all industry is running now. The Tupelo campaign was disbanded as a failure because it did not organize the numbers of people it was supposed to, like the DuPont and J.P. Stevens campaigns. Some people think J.P. Stevens was a great victory, but we have some questions about it.

I want to address this question of real organizing in a practical perspective. As you know, you get a list of names and you send out direct mail pieces and it doesn't touch people. People are afraid and people are not organizing. I recently spoke to a person who organizes in Tennessee for the Amalgamated. I was told they were starting in Memphis and moving across the state in order to get people to sign up, but that there is not a whole lot of interest right now in joining unions.

How do we attack that? How do we deal with that? I think the whole idea of the hot-shot campaign—when there's a spark of interest, the union runs in and responds to that interest—is not adequate. We must generate the interest ourselves, but how do we do that?

JULIUS GETMAN: Your questions are unanswerable. The only thought that I have is that you misstate the dimensions of the J.P. Stevens victory. You

can't measure the results from the number of people who are brought in. The struggle symbolized to many people the power and commitment to the unions. Solidarity demonstrated that this very small, futile-appearing organizing can often ultimately explode if you keep at it long enough. Several hundred people just stuck with it. So I don't think you can write off these campaigns as failures because of the immediate results.

JOHN OSHINSKI: Labor doesn't lose in those elections where there were no existing collective bargaining relationships. We don't win by a tally of the votes; we don't gain at that particular point. Seldom, as the old saying goes, do you reap in the same season that you sow. Specifically, in regard to the Tupelo campaign, I did reassign two staff organizers back into the Tupelo area. So these things are cyclical and you may have a defeat in the short term, but victory in the long run. We plant the seeds. I wouldn't feel any discouragement. We are going to be on the threshold of some tremendous organizing experiences.

