



Union free - or your money back

Author(s): JOHN LOGAN

Source: *International Union Rights*, 2006, Vol. 13, No. 2, Focus on union avoidance (2006), pp. 6-7

Published by: International Centre for Trade Union Rights

Stable URL: <http://www.jstor.com/stable/41936360>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



International Centre for Trade Union Rights is collaborating with JSTOR to digitize, preserve and extend access to *International Union Rights*

JSTOR

Union free - or your money back

John Logan looks at the role of union avoidance consultants and law firms in the United States

Over the past three decades, US employers have waged what Business Week has labelled 'one of the most successful anti-union wars ever'. But they have not conducted this campaign alone. Since the 1970s, they have been assisted by an extensive and sophisticated 'union avoidance' industry, which is now worth several hundred million dollars per year. This industry has not only enabled management to resist unionisation, undermine union strength, or unload existing unions, it has also contributed to the aggressive and adversarial nature of labour-management relations in the US. This article analyses the development of the union avoidance industry and its impact on organising campaigns and labour-management relations. In particular, it examines how union avoidance consultants and lawyers - now recruited by over 70 percent of employers facing union organising campaigns - have created a demand for their services by encouraging management to fear the allegedly catastrophic consequences of unionisation and fight it with all the resources at their disposal.

According to a recent article in Fortune Magazine, US employers 'greet the prospect of unionisation with the enthusiasm that medieval Europeans reserved for an outbreak of the Black Death'. Employer anti-unionism in the US is grounded in rational economic and job-control considerations. In both wages and benefits, most unionised employees get more than their non-union counterparts. Thus, for employers, unionisation means higher labour costs and, at least in the short-run, reduced profits. US-style 'job-conscious unionism', moreover, entails a significant loss of managerial control over the workplace. In the US, unlike most liberal democracies, absent a union, employers enjoy virtual unilateral control of the workplace. But these economic and work rule considerations are buttressed by a powerful ideological attachment to a union-free environment. In addition to the so-called wage and control gaps, this anti-union ideology explains why US employers have fought so vigorously against collective bargaining. While there are complex historic and cultural reasons why US employers are more hostile to unions than are employers in other developed nations, union avoidance experts have contributed to the spread of anti-union attitudes among management.

The union avoidance industry

When the union avoidance industry was in its infancy in the 1950s and 1960s, consultants claimed that they were simply providing services sought by a growing number of employers. By the mid-1970s, however, the union avoidance industry had developed into a multi-million dollar concern, and consultants were no longer simply

responding to employer demand for their services. Rather, they were actively and aggressively creating that demand by stressing the allegedly catastrophic consequences of unionisation and by encouraging employers to fight organising drives to the death. In response to broader economic changes that heightened the incentives for employers to operate union free, the union avoidance industry expanded significantly in the 1970s; by the 1980s consultants and lawyers were advising employers to rid themselves of the union threat once-and-for-all. One leading consultant wrote in the Wall Street Journal that the 'current business climate presents a unique opportunity for companies... to develop and implement long-term plans for conducting business in a union-free environment'. The 'critical test', he insisted, was whether management had the 'intellectual discipline and foresight to capitalise on this rare moment in our history'. In recent years, aided by the union avoidance industry, private-sector employers in the US have come close to realising that goal of a union-free environment.

The union avoidance industry has a clear self-interest in promoting aggressive and adversarial labour relations. Mostly hired on a campaign-by-campaign basis - which means they do not have to worry about any long-term negative consequences of their activities - consultants have a vested interest in billing employers as much as possible for lengthy campaigns and little or no incentive to accept defeat, even in situations in which an overwhelming majority of employees support unionisation. The prosperity of the industry - indeed, its entire existence - depends on its ability to stop employees from being able to unionise. Consultants' reputations, moreover, and thus their business success, depend on their claims of success in virtually all organising campaigns, especially those in which a clear majority of employees desire union representation prior to their engagement.

Starting in the 1950s, most prominent consultants have claimed campaign victory rates in excess of 90 percent. The leading consultant firm of the 1970s, Modern Management Methods, adopted the slogan 'we never lose'. The largest firm of recent years, the Malibu-based Burke Group, which claims a victory rate of 96 percent, boasts of winning campaigns in which an overwhelming majority of employees have signed union authorisation cards prior to its engagement, informing clients that its consultants specialise in 'the tough ones' and in 'come from behind situations'. Another Californian firm, Cruz & Associates, assures clients that it possesses the 'resources, skills and experience' required to secure victory 'in the face of virtually any union challenge'. Labor Relations Institute, Inc. goes a

JOHN LOGAN
London School of Economics
and Political Science

step further, offering its clients a 'money-back guarantee' in the event of a union victory:

'Here is bottom-line proof of our confidence in the persuasiveness of the NLRB Election Campaign Program. If your organisation purchases an LRI Guaranteed Winner Package and the union becomes certified, the Labor Relations Institute will refund the full cost of the package... Experience has proven that clients who conduct coordinated, diligent campaigns using LRI videos, support tools, and management-training aids consistently win their campaigns - now that investment is fully protected'.

The union-free morality

Some consultant firms have actively promoted 'the morality of a union free environment', complaining that employers 'mistakenly believe there is something 'wrong' - or even worse, something 'immoral' - about fighting to maintain union-free status'. Cruz & Associates warns that, 'few experiences in business are as counter-productive as a union organising campaign'. But Cruz explains that its 'unmatched track record' in defeating union campaigns provides evidence of its 'effectiveness in preserving' employers' 'right' to a union-free workplace. Labor Relations Services offers to protect the 'right to manage and operate your company's business independently'. And another prominent firm, The Mission Group, tells employers 'every business has the right to operate without the interference of a labour organisation... Union free is the way to be'.

In addition to offering to protect employers' 'right' to operate union-free, consultants frequently use extreme anti-union rhetoric while marketing their services. Projections, Inc. produces a campaign video, titled *The Nightmare*, for which it provides the following description:

'The Nightmare begins when an employee dreams that the union has won the election. The action reaches its peak when the employee wakes up in a sweat realising that he's been having a nightmare, and it's not too late. He still has time to do what's right - vote no'.

One of the nation's leading union avoidance law firms, Jackson Lewis, encourages its clients to treat organisers like they would treat a 'contagious disease' and to inoculate their employees against the 'union virus'. Several consultants use military metaphors when describing their union avoidance services. Projections, Inc. warns employers that an organising drive is a 'declaration of war' against their company and asks: 'are you using the most powerful weapon in your arsenal?' (see illustration 1). The weapon in question is one of Projections' custom-made videos that 'launch all-out attacks on unions... to destroy the union's attractiveness in the eyes of employees'. Executive Enterprise, Inc. (EED) runs seminars titled 'union avoidance war games'. Alongside a picture of a bomb dropping, the seminar brochure warns that employers should not be 'lulled into a false sense of security - this is war' (see illustration 2). EEI guarantees that its seminars will prepare employers for all contingencies when they are confronted with an 'organising attack' Seminar participants will experience 'first-hand the battlefield conditions of union organising' and learn that, when dealing

with the 'threat' of unionisation, 'war is helpful'. Adopting similar language, Labor Relations Consultants states that employers should 'expect to win' any organising campaign because its consultants possess the 'knowledge, experience, and desire' required to defeat this 'attack on your company and send the union packing'.

Aggressive anti-unionism

Employers do not, of course, uncritically and unthinkingly adopt consultants' attitudes and advice, and consultants are not the sole source of anti-union attitudes in US employment relations. But this rhetoric starkly illuminates the mindset that union avoidance consultants bring to organising campaigns. Consultants encourage employers to view organising campaigns as 'attacks' on their companies and offer to protect their right to operate free from 'third party interference'. The impact of union avoidance consultants and law firms on labour-management relations has not been limited to the development and implementation of specific union avoidance tactics. Through their seminars, publications, web pages, videos, and face-to-face contacts, consultants and law firms have served as an important conduit for the dissemination of a militant anti-union mindset among American employers, encouraging them to fear unionisation and resist it to the bitter end. Consultants advise employers to consider the organising process as a decision that is taken by them, rather than by their employees, thereby turning the intention of the US labour law on his head. The extent of employee support for unionisation is something that consultants must tackle during the union avoidance campaign, but it is not something that employers need or should consider when deciding whether they intend to continue operating union free. By promoting such attitudes, consultants have played a critical role, since the 1970s, in transforming organising campaigns into acrimonious struggles that can last months or years.

Union avoidance consultants and law firms have not been the major cause of union decline in the United States in the past half-century. Nor have they been the sole source of the intensification of employer opposition to unionisation since the 1970s. They have, however, contributed to both the spread of aggressive anti-union attitudes among US employers and the transformation of union organising campaigns into all-out struggles to the death. In recent years, US-based consultant firms have sought new markets in the UK, Canada, Ireland, Australia and New Zealand. It remains to be seen whether they will have a similar impact on labour-management relations in those countries.

One of the nation's leading union avoidance law firms encourages its clients to treat organisers like a 'contagious disease' and to inoculate employees against the 'union virus'



Illustration 1

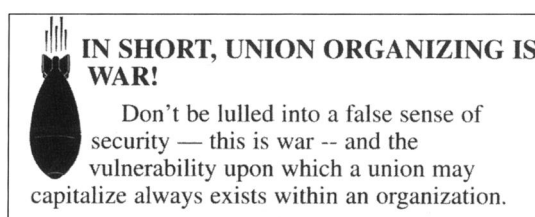


Illustration 2