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Abstract
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We'll Close! *Plant Closings, Plant-Closing Threats, Union Organizing and NAFTA*

by Kate Bronfenbrenner

PLANT-CLOSING THREATS and actual plant closings are extremely pervasive and effective components of U.S. employer anti-union strategies. From 1993 to 1995, employers threatened to close the plant in 50 percent of all union certification elections and in 52 percent of all instances where the union withdrew from its organizing drive ("withdrawals"). In another 18 percent of the campaigns, the employer threatened to close the plant during the first-contract campaign after the election was won.

Nearly 12 percent of employers followed through on threats made during the organizing campaign and shut down all or part of the plant before the first contract was negotiated. Almost 4 percent of employers closed down the plant before a second contract was reached.

This 15 percent shutdown rate within two years of the certification election victory is triple the rate found by researchers who examined post-election plant-closing rates in the late 1980s, before the North American Free Trade Agreement (NAFTA) went into effect.

These overall percentages actually underestimate the extent employers use plant-closing threats, since they include industries and sectors of the economy where threats to shut down and move facilities are much less likely and carry less weight because the industry or product is less mobile. In mobile industries such as manufacturing, transportation and warehouse/distribution, the percentage of campaigns with plant-closing threats is 62 percent, compared to only 36 percent in relatively immobile industries such as construction, health care, education, retail and other services. Where employers can credibly threaten to shut down or move their operations in response to union activity, they do so in large numbers.

Moving to Mexico and other threats

THE STORY BEHIND THE STORY

Plant-closing threats come in a variety of guises. Veiled and verbal threats are the most common, which is not surprising given that direct

unambiguous threats to close the plant in response to union organizing activity are clearly in violation of the law. From 1993 to 1995, approximately 40 percent of employers made veiled verbal threats in both elections and withdrawals. Fifteen percent of the employers in the withdrawals and 22 percent of the employers in the election campaigns made specific unambiguous verbal threats. At least 13 percent of the employers made veiled written threats in both elections and withdrawals. Six percent of the employers in the withdrawals and 10 percent of the employers in the elections made specific unambiguous written threats.

In some of these cases, the plant manager or company official stated clearly in captive-audience meetings (meetings which management requires employees to attend, at which management makes the case against the union, and at which no union representatives are present) that, if the employees voted in favor of union representation, they would lose their jobs. This kind of threat was made often in building trades and contracting jobs where the employer claimed it could easily hire non-union replacement workers.

In more than one in 10 cases, according to organizers, employers directly threatened to move to Mexico if the workers voted to unionize. According to the organizers, specific unambiguous threats ranged from attaching shipping labels to equipment throughout the plant with a Mexican address, to posting maps of North America with an arrow pointing from the current plant site to Mexico, to a letter directly stating the company will have to shut down if the union wins the election.

In March 1995, ITT Automotive in Michigan parked 13 flat-bed tractor-trailers loaded with shrink-wrapped production equipment in front of the plant for the duration of a *VA* W organizing campaign. The company posted large hot-pink signs posted on the side which read "Mexico Transfer Job." The equipment came from a production line the company had closed without warning. ITT Automotive also flew employees from its Mexican facility to videotape Michigan workers on a production line which the supervisor

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The report was commissioned as an outgrowth of a complaint filed by the Mexican Telephone Workers Union under the NAFTA labor side agreement. The Mexican union charged that Sprint violated the rights of its employees to organize under U.S. labor law in July 1994, when it shut down La Conexion Familiar, its San Francisco-based Hispanic marketing division, just one week before workers there were scheduled to vote for representation by the Communications Workers of America. In December 1996, nearly two-and-a-half years after the shutdown, the National Labor Relations Board found Sprint guilty of more than 50 different egregious labor law violations, including fabricating evidence, interrogation, bribes, threats, surveillance and closing its facility, transferring operations and firing its workers in direct response to the union campaign. Rather than forcing Sprint to re-open the facility and recognize the union, however, the Board ordered Sprint to offer all the fired workers comparable jobs at other Sprint facilities, to
reimburse them for all lost pay and benefits plus interest and to post a detailed order to cease and desist from illegal anti-union activity at all Sprint facilities across the country.

The study was begun May 15, 1996, with the final report submitted to the Secretariat on September 30, 1996. The Secretariat then incorporated the findings from the Cornell study into its larger report, "Plant Closings and Worker Rights," which also includes research analyzing court and labor relations agency cases relating to plant closings and the threat of plant closings during organizing drives in the United States, Canada and Mexico. As specified in the agreement that came out of the ministerial consultations between the secretaries of labor of the United States and Mexico, the Secretariat's report was submitted to the labor department of the three countries in
early October for prompt comment and review. Within the 45 days allotted for review, Canada and Mexico approved the report pending a few

claimed the company was "considering moving to Mexico. "

Another company provided statistics in a captive audience meeting on the average wage of a Mexican auto worker, the average wage of their U.S. counterparts and how much the company stood to gain from moving to Mexico. Company managers also provided an overhead visual with a large red arrow pointing from Michigan to the company's plant near Mexico City. Other companies simply posted maps with arrows pointing south.

minor revisions. Based on their recommendations, a revised report was submitted to the three labor departments on December 17, 1996. As of early February 1997, more than four months after submitting its original report, the Secretariat still awaits a response from the U.S. Labor Department before it can release the report.

Companies also made direct threats to move their facilities to other locations within the United States. One company official told employees in a captive-audience meeting that, if they voted in favor of the union, it would give him the long-awaited reason to close the facility and move it closer to his home to avoid a tedious one-hour commute.

In a captive-audience meeting speech during a Teamsters organizing campaign, Robert Epstein, president of AJM Packaging and Roblaw Industries in Folkston, Georgia, made a more subtle but no less direct and unambiguous threat. "We've been here in Folkston going on 10 years, we've enjoyed the stay in Folkston. Our company is growing ... by leaps and bounds," he said. "It looks like now that we can't count on Folkston to be part of those future plans and part of that future growth. But nothing is said and done and the fat lady hasn't sung yet and quite frankly we won't know what's gonna happen around here, I guess until May 12 [the date of the certification election vote]."

Ambiguous verbal and written threats tended to focus on examples of union facilities that had closed down, or to imply that the company would lose business if the union were organized. Examples included showing videos from closed union factories, providing data and statistics on the number of union plants that have closed in the past to prove that unionization causes job loss, reminding workers that only the company could provide job security and arguing that a union would make it impossible to stay competitive in a "changing economy." For example, during the Amalgamated Clothing and Textile Workers Union (ACTWU, now part of UNITE) campaign at the Tultex plant in Martinsville, Virginia, the company showed a videotape in captive audience meetings which provided graphic footage of former ACTWU plants in New Jersey with boarded windows and padlocked gates, implying that the plants all had shut down in the aftermath of violent strikes which are inevitable if a union comes in. The company then had the same video shown on the local cable access station.

In other cases, the threats were much less complicated. In one campaign in the Texas Rio Grande Valley, Fruit of the Loom posted yard signs in the community that said, "Keep Jobs in the Valley. Vote No." The company also hung a banner across the plant that warned, "Wear the Union Label. Unemployed."

Threats to contract out work or transfer bargaining unit jobs to non-union facilities were most often made by companies that solely rely on contracts. In most cases, the company would warn that if the
union demanded increases in wages and benefits, the company would easily be underbid by non-union companies and be forced to close or layoff workers. Other companies claimed that unions' rigid wage rates and inflexible work rules would put them at a competitive disadvantage.
Companies communicated the plant-closing threats in many different ways. One of the most common tactics was to make threats in one-an-one sessions with supervisors. A common approach used by supervisors was to call two or three workers together for a meeting to give them the "straight facts"

about unionization. The supervisor would explain how she was concerned about the union campaign because she "had as much to lose," meaning her job, if the union was certified. Other supervisors would claim that they had "inside information" from the company about plans to move the plant. Plant-closing threats were also commonly made when plant managers, human resource personnel or company executives would lead several mandatory mass captive-audience meetings throughout the campaign to inform workers "what was at stake" in the election. Other companies distributed leaflets in the plant or mailed letters to all employees' homes making veiled plant-closing threats. A final tactic used by companies was to spread plant-closing rumors either through the anti-union committee or supervisors. In one case involving the glass and chemical maker PPG Industries, a plant manager's son, who was also part of the bargaining unit, claimed that he had overheard a phone conversation in which his father discussed plans to close the plant and move it to Mexico if the union was certified.

Plant-closing threats matter. From 1993 to 1995, the union election win rate was 33 percent in units where plant-closing threats occurred, compared to the overall win rate of 40 percent. The rate of union success dropped significantly in cases where employers put direct threats into writing; the union won only 25 percent of those elections. Additionally, 30 percent of the organizers in the withdrawal cases, and more than half of the organizers in cases where threats occurred, reported that threats of plant closings contributed to the union withdrawing the petition before the campaign went to an election.

The threats continue

Employer opposition to unions does not stop after a union wins a recognition election. In the 174 instances from 1993 to 1995 where the union either won the election or won voluntary recognition, only 57 percent had won a first contract by September 1996.

Plant-closing threats continued after the election, although not to the same degree. Employers threatened to close the plant in 18 percent of the first-contract campaigns.

Several lead negotiators for the first contract report that the employer simply stated, "We told you we couldn't operate union and we won't." Some employers filed objections to the election and absolutely refused to bargain with the union, making clear that they would shut down rather than be forced to sign a union agreement. Others focused on how, now that the union had won the election, the company was re-evaluating operations and considering transferring work to non-union facilities or contracting out bargaining unit work.

More common was the threat that the employer

RESEARCH METHODS

THE STUDY UPON WHICH THIS ARTICLE IS BASED relied on surveys of lead union negotiators from random samples of 400 withdrawals and 600 certification elections from 1993 to 1995. The samples were based on a comprehensive AFL-CIO-maintained database which includes the entire population of NLRB-certification election campaigns in units with more than 50 employees.

Lead organizers in these campaigns were mailed surveys asking them a series of questions about bargaining unit demographics, employer characteristics and employer tactics during the organizing campaigns, including questions about plant closings and the threat of plant closings. For all of the elections in the sample where the union won the election, a follow-up questionnaire was sent to the union representative responsible for the first contract campaign to collect additional data on employer behavior during the first contract process.

The study's research team conducted follow-up phone interviews for all cases where organizers and/or union representatives reported plant closings or threats of plant closings to have

might go out of business if the union succeeded in bargaining the kind of agreement that they were attempting to reach. One New Jersey bus company directly stated across the bargaining table that the union proposals would put it out of business, or require it to contract out some bus lines or terminate some bus service. Union representatives report that these threats have a chilling effect on union contract demands and on the willingness of union leaders and bargaining unit members to aggressively pressure the employer to give in to their demands. According to these union negotiators, the primary adverse effect of these post-election plant-closing threats was to seriously undermine the quality and scope of the first agreement. In the most extreme cases, the threats led to the union withdrawing from the unit or losing a decertification election, as bargaining unit members began to question the ability of the union to reach a first agreement without severely risking their job security.

played a role in the withdrawal, election or first-contract process. In these interviews, organizers were asked detailed questions about the nature of the plant closing threats, how the threats were carried out, the frequency of the threats and the availability of any documentary evidence.

The study's research team collected surveys on 376 election campaigns, 149 withdrawals and 112 first-contract campaigns.

A comparison of the elections and first-contract campaigns where survey responses were received with the total sample indicates no bias in terms of industry, unit, union or geographical distribution when compared to the total population of single union certification elections in units over 50 for petitions filed in 1993 to 1995.

Again, the evidence strongly suggests that these threats matter. First-contract rates in units where the employer made plant-closing threats after the election was won were 40 percent, 19 percentage points lower than the overall first-contract rate. First-contract rates were lowest in units with clear unambiguous threats made in writing or in verbal communication with bargaining unit members. Unions were not able to win first contracts in any of the units where the employer made specific unambiguous written threats and in only 33 percent of the cases where they made specific unambiguous verbal threats.

We're closing!

Actual plant closings are the most severe form of anti-union employer activity. From 1993 to 1995, employers imposed this "death penalty" sanction in a surprisingly high number of cases. In 12 percent of the units where the union won the election, there was a full or partial plant closing after the election.

In 85 percent of these units, the employer had directly threatened during the organizing campaign to shut the plant down if the union won the election, and then proceeded to actually follow through on the threat after the election was won. In one case, the United Steelworkers of America campaign at St. Louis Refrigerator Car Company, the company had repeatedly told workers during the organizing campaign that if workers gave the company trouble it would have no more incentive to keep the site open and would transfer operations to a newer non-union facility in Akron, Ohio. Ten days before the election, the company agreed to voluntarily recognize the union, only to shut the facility down one week later.

Other employers who had threatened to shut down the plant during the organizing campaign refused to recognize the union or start bargaining after the election was won, often filing numerous election objections at the NLRB. In these cases, the employer shut down the plant many months after the election, after it became clear that the union was not going to wither away on its own accord.

In 7 percent of the first-contract campaigns, employers shut the entire plant; in 5 percent of the cases,

they closed a part. In only one of those cases, a partial closing, was the union able to bargain a first agreement and continue representation. In the other partial closings, the union is still attempting to bargain a first agreement, but, according to the union negotiators, there is little likelihood of success. In the remaining cases, all of the bargaining unit jobs were lost due to plant closure or contracting out and the union is no longer the certified bargaining representative. In another 4 percent of the campaigns surveyed, the union lost certification because the employer closed the plant or contracted out the entire workforce after the first contract was reached.

Out of the 112 campaigns from 1993 to 1995 where the union won a certification election, employers at 17 units (15 percent) shut the plant fully or partially.

This 15 percent figure represents an upsurge from the 5 percent post-election plant-closing rate in the 1980s and early 1990s. The tripling of the post-election plant-closing rate in the years since NAFfA was ratified suggests that NAFfA has both increased the credibility and effectiveness of the plant-closing threat for employers and emboldened increasing numbers of employers to act upon that threat. In fact, in several campaigns, the employer used the media coverage of the NAFf A debate to threaten the workers that it was fully within the company's power to move the plant to Mexico if workers were to organize.

Toward a threat-free workplace

Plant-closing threats and plant closings have become an integral part of employer anti-union campaigns. The majority of employers threaten to close the plant during organizing campaigns and 15 percent of employers follow through on the threat to close the plant once the union has won the election.

In the current context of downsizing and persistent fear of job loss, many workers appear to take even the most veiled employer plant-closing threats very seriously.

When combined with other anti-union tactics of employers, plant-closing threats appear to be extremely effective in undermining union organizing efforts, even in a context where the majority of workers in the unit seem predisposed to support the union at the onset of the organizing campaign. Thus, although most of the unions filed petitions with more than 60 percent of the unit signed upon authorization cards, a very high number of petitions are withdrawn without going to an election, and unions win elections in only 41 percent of units with more than 50 eligible voters. Only 59 percent of those units successfully negotiate a first collective bargaining agreement. Only 50 to 55 percent are also able to bargain for a

DISCHARGES, SURVEILLANCE AND OTHER ANTI-UNION TACTICS

THREATENING PLANT CLOSINGS is not the only means -- and not the only illegal means -- by which employers combat union organizing drives. From 1993 to 1995, the overwhelming majority of employers whose workers sought to unionize aggressively opposed the union's organizing efforts through a combination of threats, discharges, promises of improvements, unschetluled unilateral changes in wages and benefits, bribes and surveillance. More than a third of the employers discharged workers for union activity, while 21 percent gave unscheduled wage increases and 25 percent made unilateral changes in benefits and working conditions. Fifteen percent promoted union activists out of the unit, 38 percent gave bribes or special favors to those who opposed the union, 43 percent assisted an anti-union committee and 14 percent used electronic surveillance of union activists during the organizing campaign.

Sixty-four percent of the employers in election campaigns and 48 percent of the employers in the withdrawals ran aggressive anti-union campaigns using more than 5 anti-union tactics (hiring management consultants, holding captive audience meetings, mailing anti-union letters, holding supervisor one-on-one meetings,

second contract. Thus, approximately one in five of the workforces that express a strong majority interest in unionizing ultimately end up being covered under a collective bargaining agreement.

Even these figures underestimate the power of plant-closing threats. They do not account for the many organizing campaigns where the bargaining unit members do not petition for a certification election because of the chilling effect of aggressive employer opposition, including the effective use plant-closing threats.

What is clear from interviews with organizers in campaigns where plant-closing threats occurred is that one of the most effective components of employer threats are the photos, newspaper clippings and video footage of plants which shut down in the aftermath of a union campaign. Thus, the impact of plant closings and threats of plant closings during organizing campaigns goes well beyond the individual workers in the unit being organized.

Under U.S. labor laws, the penalties for illegal plant-closing threats and other labor-law violations are extremely limited. If employers fire a quarter of the workforce, including most, if not all, of the union activists, as Orion Industries in Oriskany, New York recently did during a UA W organizing campaign, the worst penalty they face is reinstatement and back pay for the fired workers, with no possibility of punitive damages. If employers absolutely refuse to bargain, directly ignoring bargaining order after bargaining order, the worst penalty they receive is another bargaining order telling them to cease and desist from failing to bargain in good faith. In the case of Sprint's La Conexi on Familiar, where the company admitted to engaging in unlawful interrogation and surveillance of employees, harassing and threatening to terminate union supporters, and threatening to shut down if the union won, and where the National Labor Relations Board found that the company had committed more than 50 labor law violations, the only penalty was that Sprint was required to pay the fired workers back pay and find them comparable jobs at other Sprint locations -- the

establishing employee involvement programs, making positive personnel changes, making promises of improvements, granting unscheduled raises, making unilateral changes, discharging union activists, promoting pro-union activists, using bribes and special favors, using electronic surveillance, holding company social events, assisting anti-union committees, using the media, using layoffs, threatening to report workers to the Immigration and Naturalization Service, showing anti-union videos) and 15 percent of the employers in the election campaigns and 6 percent of the employers in the withdrawals ran extremely aggressive campaigns using more than 10 tactics.

Threats of plant closing tend to occur in the context of other aggressive anti-union behavior by employers. Employers who make threats of plant closings are more likely to hire outside consultants, hold supervisor one-on-ones, establish employee involvement committees during the organizing campaign, make unilateral changes in wages, benefits and/or working conditions, discharge union activists, use bribes and special favors, use electronic surveillance and show anti-union videos.

Win rates are also lower in units where plant-closing threats were combined with other anti-union tactics, in some cases as much as 10 percentage points lower. Individually and in combination, these tactics were extremely effective in reducing union election win rates. The union election win rate drops from 40 percent to. 34 percent for units where employers used more than 5 anti-union tactics and to 28 percent where they used more than 10 tactics.

Employers continue to use a wide range of anti-union tactics after unions win certification. During the first-contract campaign, 50 percent of employers hired an outside union consultant, 25 percent refused requests to start bargaining, 35 percent continued supervisor one-on-ones, 35 percent made unilateral changes in wages, benefits and working conditions, 25 percent discharged union activists, 15 percent used bribes or special favors and 20 percent organized a decertification effort. The threat rate was 60 percent in units where the employer ran an aggressive anti-union campaign after the election was won, resulting in a first-contract rate of only 33 percent in those units.

workers still did not gain the union for which they fought so hard (see "Sprint Hangs Up on Workers," *Multinational Monitor*, March 1996).

Things could be different. Where workers choose unions in an environment largely free from plant-closing threats and other forms of coercion, intimidation and manipulation, the union success rate in certification elections is dramatically higher. In the public sector, nearly one quarter of employers do not mount any campaign at all against the union -- no threats, no meetings, no letters. Even in those cases where public sector employers do oppose the union effort, most employer campaigns are limited to a few legal actions of extremely low intensity. In this significantly less coercive environment, public sector workers vote enthusiastically for unions in large numbers. In contrast to the private sector win rate, which has averaged less than 50 percent for more than a decade, unions in the public sector enjoy win rates averaging more than 85 percent, across a wide range of units, regions and public entities.

Plant-closing threats were also linked with more aggressive employer opposition at the bargaining table, including absolute refusal to bargain (15 percent), engaging in surface bargaining (35 percent), bargaining hard over union security issues (30 percent), declaring impasse and implementing final offer (20 percent) and forcing the union to strike by holding to concessions (10 percent).

-- K.B

Given the absence of any effective constraints on employer behavior in the private sector, reproducing the more "level playing field" that predominates in the public sector will require significant expansion of both worker and union rights and employer penalties in the organizing process. This will require not only more vigorous and rapid enforcement of current laws but also serious financial penalties and injunctive relief to restrain the most egregious employer violations, particularly plant shutdowns and the threat of plant shutdowns. It will also require the expansion of union access rights to the workplace in order to counteract the captive and coercive nature of employer communication with workers during the organizing campaign.

These changes should be accomplished both by significant reform to U.S. labor laws and by amendments to the North American Agreement on Labor Cooperation, which provides an enforceable code of conduct for countries covered under NAFf A. This code must include both restrictions on the ability of companies to shift their operations to other countries to avoid unionization and guarantees for the right to organize free of management interference and intimidation. Most important of all, the new codes must include meaningful penalties for violations of those rights. Then, and only then, will workers be able to exercise their democratic rights to have an independent voice of their own choosing represent their interests in the workplace. And then, and only then, will employers no longer be able to flagrantly violate labor laws at the expense of their workers' dignity and well-being.

END