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Testimony of John J. Lawler Before the Commission on the Future of Worker-Management Relations

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Hot Topic
Future Worker Mgmt

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In 1990, I published a book dealing with union organizing efforts and employer responses.[1] Part of that book involved an extensive review and evaluation of prior empirical research dealing with the impact of employer and union strategies and tactics before, during, and after organizing efforts. My testimony today will focus on what the evidence contained in this research indicates regarding the consequences of various forms of employer opposition for union success, both in organizing new bargaining units and in securing initial contracts. I have updated my earlier work, taking into account research published since 1990.[2]

My analysis here reflects the work of more than fifty scholarly studies published since the mid-1970s, when research on this topic began in earnest. The group of studies upon which I base my analysis is fairly comprehensive. Most of these studies have been published in peer-reviewed academic journals. I think the peer review process is especially noteworthy here, as it underscores the credibility of the research upon which my observations are based. Another important point is that, unlike anecdotal evidence, most of the studies in this set utilized sophisticated statistical methods to isolate the impact of campaign strategies and tactics from other influences, such as changing economic conditions and work force demographics.

My testimony will focus on what are among the most significant, and controversial, issues concerning employer opposition to unionization:

- the use of NLRB procedures to gain strategic advantage in representation elections;
- representation election delays;
- the commission of unfair labor practices by employers during and after representation elections;
- employer use of labor relations consultants.

I will deal with each of these topics in turn.

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[1]Lawler, John J. (1990). *Unionization and Deunionization: Strategy, Tactics, and Outcomes.* Columbia, SC: University of South Carolina Press.

[2]Interested parties may contact the author to receive a copy of this paper (Institute of Labor and Industrial Relations, University of Illinois, 504 East Armory, Champaign, IL 61820).

Procedural Maneuvering

Both employers and unions may raise any number of issues at various points before and after a representation election. While challenges, say, to the composition of an election unit or a party's conduct during an campaign may reflect legitimate concerns, there is every reason to believe that parties utilize challenges and objections in strategic ways to influence the outcomes of representation cases. Any reading of the many articles and books authored by union avoidance specialists quickly reveals the extent to which employers are advised to engage in procedural maneuvering. One indicator of this activity has been the substantial shift away from *consent elections* under NLRB election procedures to so-called *stipulated* and *directed elections*. The parties have much greater latitude to raise objections and pursue appeals in the latter election formats. The shift away from consent elections is largely the consequence of employer action; indeed, union avoidance specialists almost always recommend that employers move for stipulated or directed elections.

Numerous studies have examined the impact of the type of election case on the likelihood of union victory in elections. Although there some exceptions, almost all of these studies have shown that election type has a pronounced impact on election outcomes. Unions have a much better chance of winning in consent elections than in either stipulated or directed elections. Other things equal, unions garner around an 8%-10% higher share of the vote in consent elections and have perhaps a 10% higher victory rate. Thus, the clear preponderance of evidence here indicates that an important employer union avoidance tactic, one that very much seems to circumvent public policy, undercuts union organizing effectiveness.

Election Delays

The period between the filing of a petition for an election and the holding of the election has climbed substantially over the past thirty years. This is partly the result in the shift away from consent election procedures. However, under non-consent procedures, employers may engage in efforts to draw the certification process out even longer. As with election format, delaying the election is often promoted by union avoidance specialists as an important tactic for defeating unions.

Various studies have shown a significant reduction in the likelihood of union success the greater election delays, even after controlling for other factors. One study suggests, for example, that every month an election is delayed, the union's chance of victory declines by about 1%. There is, however, some conflicting evidence on this, so that the findings in this area are not quite as strong as in the case of procedural maneuvering.

Unfair Labor Practices

It has been well documented that the number of unfair labor practice charges brought against employers, especially alleged violations of Section 8(a)(3) of the National Labor Relations Act, have risen dramatically of the past twenty to thirty years. Moreover, the proportion of such charges found to be meritorious has, if anything, also risen somewhat. There has been a lively debate as to whether this increase in the incidence of unfair labor practices has resulted in a reduced likelihood of unions securing representation rights. Here, the evidence is less conclusive in certain respects than in the case of either procedural maneuvering or election delays.

Research has concerned both the likelihood of unions winning certification elections and the ability of unions, once certified, to secure initial contracts. In the case of initial contracts, I think research studies, while limited in number, provide considerable evidence that employer unfair labor practices, committed both during and after election campaigns, reduce the likelihood of initial contracts being successfully negotiated. This includes both violations of Section 8(a)(5) (refusal to bargain) and Section 8(a)(3) (employment discrimination). In the case of election outcomes, the evidence is somewhat more mixed. Some studies have shown a strong, deleterious impact on union victory rates, while others find little relationship. I would note that studies that have looked at the outcomes of specific elections, rather than use highly aggregated data, have generally shown stronger unfair labor practice effects. I believe these findings are somewhat more persuasive.

Labor Relations Consultants

Labor relations consultants provide a variety of services to clients, ranging from legal advice and related attorney services to security guards and private investigators. While not questioning the legitimate role of management attorneys and other types of consultants during organizing efforts, serious concerns have been raised regarding the unethical and illegal activities seemingly promoted by a significant number of the union avoidance specialists who have been dubbed "union busters." Most of the studies that have examined the effects of consultants have found some significant negative impact on the probability of union victory where labor relations consultants were utilized by employers. As these studies only examine the presence or absence of consultant involvement in campaigns, it is not possible to discern the mechanisms by which consultants impact outcomes, only that they do seem to provide management with a real advantage in election campaigns.