

PREPARED STATEMENT OF RICHARD W. HURD

The current environment presents dramatic challenges for the American labor movement. Structural change in the economy has meant job loss in traditionally unionized sectors such as heavy manufacturing, and job gains in the less unionized service industries. Deregulation and increased international trade have created competitive pressures on unionized industries, resulting in significant concessions and a reduction in bargaining power. Simultaneously, unions have contended for twelve years with unfriendly government regulators who have displayed little commitment to timely and vigorous enforcement of protective labor legislation. In particular, the National Labor Relations Board (NLRB) of the Reagan and Bush administrations has reinterpreted the National Labor Relations Act (NLRA), weakening protections for union activity and relaxing restrictions on management practices. The combination of competitive pressures and a more congenial legal setting has fostered more vigorous management opposition to unions at the bargaining table, during organizing campaigns, and in the courts.

Unions were slow to respond to the radically altered environment. Expert at promoting members' interests at the bargaining table and protecting their rights through the grievance and arbitration process, unions were unprepared for the triple threat of economic change, legal reinterpretation and management hostility. Recent years have brought signs of strategic adaptation as unions have sought to regain bargaining power by developing alternative approaches, ranging from joint decision making programs where management is congenial, to corporate campaigns and other weapons where management persists in anti-union behavior. In addition, most major unions have increased their commitment to organizing non-union workers.

Increased attention to organizing has come gradually over the past ten years. One by one, unions have reached the conclusion that the only effective way to stem membership decline is to recruit new members. Increased commitment has been reflected in a shift of financial and staff resources into organizing activities, in addition to less obvious changes such as reassignment of research personnel to support organizing, and

expanded educational programs on organizing techniques. This shift has resulted in some improvement in organizing effectiveness, with unions winning 48% to 49% of NLRB elections each year since 1987, compared to only 42% in 1985.

More notable than the improved win rate, however, is the fact that the number of new members added via NLRB elections has remained stable at a little above 90,000 per year since the mid 1980's. This compares to 196,000 new members in 1980 and 218,000 new members in 1975 as result of NLRB election victories. In other words, the increased commitment of unions to organizing has served only to halt the downward trend.

There are three reasons for this phenomenon:

1. Unions are devoting disproportionate attention to organizing public sector workers. Management resistance is less intense in the public sector, and state public sector bargaining laws have not been weakened coincident with the NLRA.

2. Some unions have opted to bypass the NLRB election process choosing instead to use pressure tactics including corporate campaigns to gain agreement from management to recognize a bargaining agent based on majority support verified by petition signatures or union authorization cards. The unions making most extensive use of this approach are the Service Employees International Union in its Justice for Janitors campaign, and the United Food and Commercial Workers Union in its efforts to organize retail clerks and food processing plant employees. Both unions assert that their approach is necessary because of the inherent roadblocks in the NLRB process, particularly delays which are easily obtained by management.

3. It is extremely difficult to win an NLRB election. Management resistance, a burdensome legal process, and worker fear combine to present unions with incredible obstacles which must be overcome in order to successfully organize workers via the traditional route. The following section will outline the pitfalls inherent in the NLRB election process.

I. Barriers to Union Organizing

A. Management Opposition - Management opposition to union organizing activities has increased substantially over the past twelve years. Even companies which have long established relationships with unions in a majority of their facilities now routinely and vigorously resist unions in their non-union operations. Union resistance is essentially viewed as an investment decision. Most companies in the United States have reached the conclusion that it is cost effective to resist unions aggressively (even if this involves substantial legal and consulting fees, and even fines).

1. Positive Labor Relations - Many companies pursue "preventative" measures, attempting to create a working environment which is not conducive to union organizing. Wages and benefits may be comparable to union rates in the same industry, or at least above what would be expected in the local labor market. Workers are given some type of voice, either through a participatory system such as teams or quality control circles, or through some type of in house grievance procedure.

2. "Union Free" Strategies - Faced with an organizing drive, most companies (even those which have been practicing "positive labor relations" up to this point) will wage an intense anti-union campaign within the limits of the law. This routinely involves the use of a management consultant who is expert at defeating union organizing efforts. Such consultants are estimated to be involved in over 70% of NLRB elections (Bronfenbrenner). The first step is to appeal the unit determination, or to file some other legal challenge in order to delay an election. The delay allows management to implement a multifaceted campaign, typically involving a combination of enticements and intimidation. Management promises improved conditions if the union is defeated, hints at pay raises, and points out that no improvements are guaranteed if the union wins. Top management writes letters about the dangers of unionizing, including the possibility of strikes during which management may legally hire permanent replacements; the likelihood of a plant closing may be suggested. Captive audience meetings are held during which management explains its opposition to unions. Supervisors are trained to monitor the situation and gather intelligence on union plans.

and actions. The supervisors also hold one-on-one meetings with workers to discuss unionization. These are sometimes supplemented by small group meetings, which exclude union sympathizers. If in spite of all this the union wins the election, management usually will appeal certification to delay bargaining. Even if the appeal fails and the union is certified as bargaining agent, management will sometimes engage in hard bargaining as part of a long run strategy to decertify the union. In approximately 25% of cases where the union wins a certification election, a first contract is never achieved.

8. Union Busting - Some companies are not satisfied with the advantages offered by the NLRB and openly violate the law. The most common approach is to discriminate against union activists in job assignments, discipline, and, in many cases, discharge. The apparent rationale behind this most extreme form of union avoidance is that the financial penalties for violating the law are modest in comparison to the potential cost of unionization.

B. Worker Reluctance to Organize - A survey conducted by the Gallop Organization in 1988 found that 69% of the general public agreed that "Labor unions are good for the national as a whole," and 90% agreed that "Employees should have an organization of co-workers to discuss and resolve legitimate concerns with their employer." In spite of this widespread support for unions and other forms of concerted action, non-union workers are reluctant to organize. There are two basic reasons for this.

1. Union Instrumentality - Even workers who favor unions believe that union power has declined substantially. In the 1988 Gallop survey, 56% of those expressing overall approval of unions agreed that "Labor unions have become too weak to protect their members." This perception undoubtedly reflects the public's knowledge of the difficult challenges facing unions which were discussed earlier. In particular, several highly publicized cases in which permanent replacements were hired while union strikers lost their jobs (including PATCO, Eastern Airlines, and Greyhound) certainly contributed to this impression. In

effect, many non-union workers have reached the conclusion that unions are less effective instruments for work place improvements than they once were.

2. Worker Fear - The biggest barrier to workers' willingness to exercise the right to organize all relate to fear - fear of job loss, fear of strikes, fear of management retaliation. In the 1988 Gallop survey, among workers expressing overall approval for unions, 71% agreed that "Corporations sometimes harass, intimidate or fire employees who openly speak out for a union." This concern is reflected in academic research on worker responses to union organizing efforts reported in the attached table. Most of the factors negatively associated with workers' decision to unionize are management actions, and most of these actions are standard tactics in management's anti-union arsenal. Although some of the factors are positive enticements, others are consistent with management efforts to intimidate workers including letters and captive audience meetings. Legal challenges also have a negative impact, undoubtedly contributing to the dashed hopes of potential union supporters. Management exploits workers' fear of strikes (reflected in the research), calling attention to strike activity and warning of the potential of hiring permanent replacements.

II. Policy Concerns

The NLRA declares that workers have "the right to self-organization, to form, join or assist labor organizations, ...and to engage in other concerted activities for the purpose of collective bargaining..." (NLRA, Section 7). It is clear that in the current economic and political/legal environment, many non-union workers are afraid to exercise that right. This is a particular concern because those non-union workers who are the most likely to support organization are the very workers who most need protection.

A. Characteristics of Workers Who Wish to Organize - As reflected in many of the factors which influence positively the worker decision to unionize (reported in the attached table), the workers most

interested in unionization do not fit the negative image of unionists who are overpaid middle aged white males. Women, blacks, Hispanics and Asians, relatively young and working in low wage jobs, are the workers who are courageous enough to seek unionization in spite of the obstacles. The highest levels of interest in organizing are displayed in the service sector among hotel and restaurant employees, janitors, retail clerks, health care workers and university clerical employees. The manufacturing employees who have demonstrated the highest levels of interest in unionization work in textile, clothing, food processing and electronics factories, especially those located in the South. In essence, the workers most attracted to union representation and, therefore, most harmed by barriers to organizing, are the very workers who need protection the most. These workers are organizing in an effort to gain dignity and respect, fair treatment and equality. The type of union movement they seek to join is democratic and member controlled. In short, their objectives and motivation for organizing deserve respect, rather than the intimidating process which now exists.

B. Steps to Protect the Right to Organize - A number of problem areas must be addressed if the right of workers to organize is to be effectively protected.

1. Union Busting Employers - For employers who knowingly violate labor laws in order to resist an organizing campaign, the costs of non-compliance must be increased. This could be in the form of penalties, fines, or forced recognition of a union when the law has been broken. In this regard, penalties should also be considered for consultants and law firms which assist in implementing these strategies, particularly those with a prior record of association with illegal campaigns..

2. Employers Who Pursue "Union Free" Strategies - Legal but intense union avoidance also interferes with workers' rights to organize. Steps should be taken to limit management's ability to intimidate workers with threats, surveillance, and continuous supervisory pressure.

3. Union Instrumentality - The effectiveness of unions has been artificially curtailed by the practice of permanently replacing strikers. This practice has interfered with the organizing objectives of non-union employees and should be stopped.

4. Legal Delays - Management has utilized legal maneuvering to undermine legitimate worker rights to organize. Steps should be taken to speed up the NLRB process.

The Non-Union Workers' Decision to Unionize

Factor's with Significant Positive Impact

Union Characteristics:

Organizing focused on issues such as dignity, discrimination, and quality

Democratic union with local control of bargaining

Bargaining committee and issues chosen by workers before NLRB election

One-on-one organizing

Organizing committee demographically representative of unit

Job Characteristics:

Wages less than 150% of Minimum Wage

Jobs secure

Worker Characteristics:

Women, Blacks, Hispanics, Asians, Youth

Factor's with Significant Negative Impact

Management actions:

Legal challenges filed

Captive audience meetings

Letters from management opposing unionization

Promises of improvement

Wage increases during organizing campaign

Pre-existing quality of work life program

Union characteristics:

Propensity for lengthy strikes

Recent strike activity in state

Sources: Kate Bronfenbrenner, Unpublished Ph.D. dissertation: Seeds of Resurgence: Successful Union Strategies for Winning Certification Elections and First Contracts in the 1980's and Beyond. Cornell University Graduate School, January, 1993.

Richard Hurd and Adrienne MacElwain: "Organizing Clerical Workers: Determinants of Success". Industrial and Labor Relations Review, April, 1988.

Cheryl Maranto and Jack Fiorito, "The Effect of Union Characteristics on the Outcome of NLRB Certification Elections," Industrial and Labor Relations Review, January, 1987.

References

Bronfenbrenner, Kate. Unpublished Ph.D. dissertation. Seeds of Resurgence: Successful Union Strategies for Winning

Fiorito, Jack and Martano, Cheryl. 1987. The Contemporary Decline of Union Strength. Contemporary Policy Issues, Vol. 5, No. 4, pp. 12-27.

The Gallop Organization, Inc. The Gallop Poll (various years).

The Gallop Organization, Inc. The 1988 Gallop Study of Public Knowledge and Opinion Concerning the Labor Movement.

Hurd, Richard W. "Bottom-Up Organizing: HERE in New Haven and Boston. Labor Research Review, Number 8, March 1986.

Hurd, Richard W. "Organizing and Representing Clerical Workers: The Harvard Model" Forthcoming in Women and the Labor Movement: Forging a New Partnership (Cornell University ILR Press: 1992). Edited by Dorothy Sue Cobble.

Hurd, Richard W. and McElwain, Adrienne. April, 1988. Organizing Clerical Workers: Determinants of Success. Industrial and Labor Relations Review, Vol. 41, No. 3, pp. 360-378.

Hurd, Richard W. and Rouse, William. 1989. Progressive Union Organizing: The SEIU Justice for Janitors Campaign. Review of Radical Political Economics, Vol. 21 (3): 70-75.

Lawler, John. Unionization and Deunionization (University of South Carolina Press, 1990.)

Martano, Cheryl L. and Fiorito, Jack. January, 1987. The Effect of Union Characteristics on the Outcome of NLRB Certification Elections. Industrial and Labor Relations Review Vol. 40, No. 2, pp. 225-240.

Sockell, Donna and Delany, John Thomas. Oct. 1987. Union Organizing and the Reagan NLRB. Contemporary Policy Issues, Vol. 5, No. 4, pp. 28-45.