

# Raw Power

## *Plant-Closing Threats and the Threat to Union Organizing*

By Kate Bronfenbrenner

FOR THE LAST DECADE, the United States has experienced the longest and most dramatic peace time economic expansion in its history. With unemployment extremely low, labor markets are as tight as or tighter than they have been since the 1960s. According to the most basic precepts of labor economics, these tight labor markets should have resulted in rising wages and increased job security for U.S. workers, and increased density and bargaining power for U.S. unions. Yet real wage gains have come only recently and are extremely modest, and recent polls show U.S. workers are more, not less, anxious about job security.

The relationship between worker insecurity and restraint of wage demands is both individual and collective. Not only are individual workers afraid to ask for significant wage increases, the specter of capital mobility haunts the union organizing process for unorganized workers and collective bargaining over wages and benefits for workers already in unions.

Absent union representation, individual workers have neither the courage nor the power to overcome employer resistance to transferring their profits to workers' wages. Yet, without protection from employer threats of plant closing, workers in mobile industries remain constrained and intimidated from exercising their legal right to organize into a union to bargain collectively for wage increases. And without

*Kate Bronfenbrenner is director of labor education research at the New York State School of Industrial and Labor Relations at Cornell University. She is the author of "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing," a report submitted to the U.S. Trade Deficit Review Commission on which this article is based.*

the ability to organize significant numbers of workers in their industries, unions lack the market power to overcome employer threats to close all or part of the firm in response to union bargaining demands for increased wages.

In a 1996 study commissioned by the Labor Secretariat of the Commission for Labor Cooperation (NAALC), I found that under the cover of trade agreements and the need to stay competitive in the global economy, a majority of employers use the threat of plant closure and capital flight in organizing drives and at the bargaining table [see "We'll Close!," *Multinational Monitor*, March 1997].

Today, in the post-NAFTA climate of expanding trade agreements and skyrocketing levels of corporate migration, a majority of employers continue to make plant-closing threats during organizing campaigns, according to surveys collected from the lead organizers in 407 National Labor Relations Board (NLRB) certification elections in 1998 and 1999. This study, sponsored by the U.S. Trade Deficit Review Commission, found that plant-closing threats continue to be among the most powerful anti-union strategies, the survey data show. By several important measures, threats are even more pervasive than they were in 1993-1995, and the threat of capital mobility has discernibly affected union organizing strategies.

The survey data, which represent more than 5 percent of the 6,207 NLRB union certification elections in 1998 and 1999, is the largest comprehensive database on private sector union certification election campaigns to date.

### AN EPIDEMIC OF PLANT-CLOSING THREATS

By the end of the 1990s, plant-closing threats had become an even more pervasive and effective component of employer anti-union strategies than in the immediate post-

NAFTA period.

Consistent with the 1993-1995 period, 51 percent of all employers in 1998-1999 made threats to close all or part of the facility if the union was to win the certification election campaigns.

The overall threat rate, however, underestimates the extent that employers use plant-closing threats during organizing drives because it includes industries and sectors of the economy where threats to shut down or move facilities to another town or state and/or out of the country are much less prevalent and carry less weight simply because the industry or product is less mobile. While workers in an auto parts plant, textile mill or telecommunications call center can easily believe an employer's threat to move their jobs to Mexico or even Southeast Asia, an employer's threat to shut down and/or move has much less credibility for workers in a nursing home, retail store, social service agency or hotel.

Just under a third of the union certification campaigns in 1998 and 1999 were in manufacturing units, 42 percent were in services, 3 percent in retail, 11 percent in transportation and 9 percent in warehouse and wholesale distribution, with the remaining 5 percent in mining, construction, communications and utilities.

These numbers represent a significant change in organizing focus from the 1993-1995 period, when 43 percent of the campaigns were in manufacturing units and 28 percent were in services. These data reveal that unions are shifting their focus from organizing targets in industries with high plant-closing threat rates, such as garment and textiles, electronics, communications and auto parts, toward less mobile industries such as health care, passenger transportation, social services, education and laundries.

UNITE, for example, which in past years has concentrated most of its efforts in organizing in textile and apparel manufacturing, where the threat rate is 100 percent and the percent of plant closings and jobs moved overseas from already organized units increases each year, has shifted its focus to laundries and distribution warehouses, where the threat rate is 50 percent and 43 percent and the ability of employers to move work out of the country is much more restricted. Similarly, the percentage of campaigns in the health care industry has doubled since the 1993-1995 study from 13 percent to 26 percent.

Forty-five percent of the campaigns with threats were concentrated in manufacturing units while only 27 percent were in service sector units. The plant-closing threat rate was lowest in industries such as social services (8 percent), entertainment (25 percent), health care (31 percent), passenger transportation (37 percent) and hospitality (33 percent), while it was 75 percent or higher in industries such as aerospace, auto and auto parts, electronics, food processing, garment and textiles, metal fabrication and production, household and recreational products, printing, communications and gas and electric utilities.

For the least mobile industries, such as health care and passenger transportation, the win rate for campaigns with threats averaged close to 60 percent. This rate contrasts sharply with the average win rate in campaigns with threats

## THREATS AND THE LAW

THE NATIONAL LABOR RELATIONS BOARD (NLRB) and the courts have held that employer threats to close the plant if the union succeeds in organizing can be unlawful under certain circumstances. For example, *Guardian Industries Corp. v. NLRB* held that it was unlawful for a supervisor to say to an employee, "If we got a union in there, we'd be in the unemployment line." However, under the "employer free speech" provisions of the Taft-Hartley Act, the courts have permitted the employer to predict a plant closing in situations where it is based on an objective assessment of the economic consequences of unionization.

While the Board and courts have made plant-closing threats illegal under certain circumstances, they have upheld the right of employers to completely shut down operations and go out of business for the purpose of avoiding unionization, if the shutdown is complete. Under this standard, partial shutdowns or the transfer or subcontracting of work to avoid unionization are not legal, but full shutdowns are.

When an employer is found guilty of making an unlawful threat of plant closure, the typical remedy is a cease and desist order coupled with the posting of a notice promising not to make such statements in the future. If the employer chooses to litigate the charge, it can take months and even years before such a remedy takes place. However, such notices do not state that the employer will not close the plant if the employees unionize, or even that it would be illegal for the employer to relocate its operations because employees unionized. They only indicate that the employer promises not to make further threats in the future. And, if the employer violates the cease and desist order and continues to make threats, further legal sanctions, such as contempt citations, are extremely rare, and take years to process through the courts.

In effect, the posting of the notice or even a cease and desist order can serve as a reminder and reinforcement of the earlier threat, advertising to all employees, in writing, that this employer has threatened to close the plant if the union wins.

Unlawful threats of a plant closing can also be the basis for setting aside the results of an election and calling for a new one. However, this occurred in only 11 percent of the campaigns with threats where objections were filed (only 14 percent of the cases where threats occurred), and normally only in the most egregious cases, where the plant-closing threats were clear and unambiguous and were coupled with numerous other egregious violations including repeated discharges, surveillance, threats and harassment of union activists and supporters. Unions were not able to win any of the rerun elections in our sample for campaigns where the employer had made plant-closing threats.

The strongest Board remedy in the aftermath of a union loss after plant-closing threats is to reverse the election and issue a certification and bargaining order, without requiring the union to go through a rerun. These are extremely rare, occurring in only one campaign in the 1998-1999 survey sample. — K.B.

in much more mobile industries such as manufacturing (28 percent), communications (0 percent) and wholesale distribution (30 percent), reflecting how much less credible and

effective plant-closing threats are in companies where workers feel it is unlikely, or much less likely, that employers will be able to follow through on the threat.

In mobile industries, employers made plant-closing threats in 68 percent of the campaigns in 1998-1999, a jump from the 62 percent threat rate for mobile industries in the 1993-1995 study. The plant-closing threat rate particularly increased in manufacturing industries (71 percent in 1998-1999 versus 64 percent in the 1993-1995 study), food processing (78 percent in 1998-1999 versus 21 percent in 1993-1995) and communications (100 percent in 1998-1999 versus 11 percent in 1993-1995).

**THE DELIVERY**

Employers deliver threats to close plants in a variety of guises and through varied channels. Forty percent of employers facing union certification elections in 1998-1999 made veiled verbal threats, while 26 percent made specific unambiguous verbal threats. Thirteen percent of the employers made veiled written threats and 5 percent of the employers made specific unambiguous written threats.

Specific unambiguous written threats ranged from newspaper articles, videos and photographs of union plants that had closed to letters and leaflets which specifically mentioned plant closings. During a Sheet Metal Worker campaign at Gerald Industries in Gerald, Missouri, management posted a list of union companies that had closed and then sent a letter from the plant manager to all employees stating, "If our company cannot agree to union demands, which in our judgment will make us non-competitive, ... Gerald Indus-

NLRB, in 1999 the company's owner, managers, and first line supervisors made direct threats "that the plant would close and move to Mexico if employees voted for the UAW" (United Auto Workers) in a series of captive audience meetings and supervisor one-on-ones at three of their facilities involved in the organizing campaign.

Companies also made direct threats to transfer work to unorganized plants of the same company, both in the U.S. and abroad, if the union was successful. For example, during the Steelworkers' campaign at Valeo Sylvania, a vehicular lighting manufacturer that is part of a joint venture between Valeo Sylvania and the German multinational Siemens AG, managers continuously spoke to workers about their new facility in Mexico. An entire product line had been sent to Mexico prior to the organizing drive and during the campaign the company sent equipment from the plant to Mexico, with the full knowledge of the employees.

Similarly, early in the UAW campaign at Mitsubishi Heavy Industries Climate Control in Franklin, Tennessee, a company management consultant discussed a plant that Mitsubishi was building in Mexico and the possibility of some work being transferred to that facility. During the last two weeks of the campaign, the company put up a poster under glass on a plant bulletin board showing an Indiana plant closed, with a lock on the gate and the caption, "This is what happened to hundreds of strikers in Indiana." In the last two weeks of the campaign, supervisors escalated the threats in individual conversations with workers, asking one worker, "Is your family ready to move to Mexico?"

For some campaigns, the mere existence of other sites and operations in other countries made specific mention of moving work to that country unnecessary. For example, according to the Steelworkers organizer of the 1998 campaign at Continental General Tire in Mt. Vernon, Illinois, management made threats in captive audience meetings and supervisor one-on-ones stating, "We are not competitive as a company and we can't afford to pay the wages and benefits the union will impose on us. We will have to close, and we already have facilities overseas." The threats were effective because workers knew through rumors that several other General Tire plants were moving to Mexico at the time of the organizing campaign.

Ambiguous verbal and written threats tended to focus on examples of union facilities that had closed down, or implications that the company would lose business or be unable to remain competitive in the global economy if the union was to win the election. During the Teamsters campaign at Premix in North Kingsville, Ohio, the company posted a list of "Ashtabula County Industrial and Employment Losses" with a caption: "Unionized plants do not secure jobs." During the Steelworkers' campaign at Excel Mining Systems in Marion, Illinois, the company circulated more than 30 newspaper clippings of the many Steelworker plants that had closed around the country over the past decade. The articles included sensational headlines such as "Final Bell tolls for Flagg," "Kun-



Organizing immigrant workers at Mediacity in Northern California.

tries may simply have to shut down and go out of business."

In 9 percent of the elections and 18 percent of the campaigns with threats, employers made specific threats to move to another country, most often Mexico. Other threatened locations include Canada, Puerto Rico, China or an unspecified foreign country.

Mexican Industries, a leading auto parts supplier based in Detroit, Michigan, made the threat of moving to Mexico a central theme of its anti-union campaign. According to the

kle workers 'devastated,'" "Bethlehem closes last hometown plant," and "Ala. Town loses coke plant; a mainstay since 1912, processing facility lays off 300."

Employers also made threats that unionization would threaten existing contracts with customers or suppliers. In some cases, such as the UAW campaign at auto parts manufacturer ZF Industries, representatives from the customer or supplier company passed on the threat to employees.

**THE THREAT AFTERMATH**

Union election win rates were significantly lower in units where plant-closing threats occurred (38 percent) than in units without plant-closing threats (51 percent). Win rates were especially low (24 percent) in those campaigns where employers made specific threats to move to another country. Win rates were also significantly lower in mobile industries where the threat of closure was more credible. Overall, win rates in mobile industries averaged 34 percent compared to a 54 percent win rate for immobile industries, while in campaigns in mobile industries with threats the win rate averaged 32 percent, compared to a 46 percent win rate in immobile industries with threats.

Even in campaigns in mobile industries without threats the win rate averaged only 37 percent, in contrast to immobile industries without threats, where the win rate averaged as high as 58 percent. These numbers suggest that in mobile industries such as manufacturing, communications, wholesale distribution and some business services, the threat of capital mobility need be neither spoken nor written to have an impact. Workers in industries such as textiles, electronics,

telecommunications, food processing or computer technical support do not need any reminder from their employers that they work in an insecure industry where companies shut down and move in search of lower labor costs, higher profits and a non-union workforce. Similarly, at the largest multinational companies, such as Mitsubishi, Pepsico, Royal Dutch Shell,

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**THE EFFORT TO UNIONIZE KITCHENS OF THE OCEANS DROVE THE COMPANY OUT OF TOWN AND HAITIAN EMPLOYEES INTO UNEMPLOYMENT LINES**  
**BY PAUL BELDEN**

In 1996, 1115/UNITE won an NLRB election at a shrimp processing plant in Deerfield Beach. The plant was called Kitchens of the Oceans and it employed about 200 Haitian workers. Some time after the Union won the election the Company announced that it was shutting down and moving its operations to Jacksonville. Operating costs were lower there according to the Company's President.

The following are excerpts from this sad chapter in the Union's history as they appeared in the *New Times*, the local paper covering Broward and Palm Beach Counties.

As you read this sad story, remember

**The Union never got a contract - as it had promised!**  
**The Union never got any wage increases - as it had promised!**  
**The Union never got shorter hours - as it had promised!**

Here's what did happen:

**The plant was shutdown! 200 jobs were lost! Many families lost their only source of income - their only source of hope.**

**And what did the Union do?? Nothing . . . Nothing at all!!!**

Facing a Service Employees organizing drive, Avante of Lake Worth, a Florida nursing home, distributed an article regarding the closure of a shrimp processing plant following a successful union certification by UNITE. The company added its own editorial comments to the news account. (The Service Employees won the 1999 union election.)

Owens Corning, Georgia Pacific, Pratt and Whitney or Siemens AG, workers did not need a direct plant-closing threat to worry that these companies might move all or part of their work to sites in Asia, Latin America, Africa, Europe or Canada. An increase in shipments to other countries or a visit from company officials from other countries could serve as a very credible threat of plant closure during an organizing campaign.

Where workers ignore plant-closing threats and vote in a

union, employers now appear to rarely deliver on their threats. Of the original 407 campaigns in the 1998-1999 survey sample, in five campaigns the employer shut down all or part of the plant after the election was won.

In another five campaigns, the employer shut down all or part of the plant after the election was lost. This brings the total number of full or partial plant closings since the elections took place in 1998-1999 to 10 (less than 3 percent). This is substantially lower than the 15 percent of units in the 1993-1995 sample which had closed within three years of the election being held, most likely because not enough time has passed since the 1998-1999 elections to assess the actual post-election plant closing rate.

Yet, given the dramatic increase in plant-closing threats in more mobile industries, it is very telling that so few firms have yet to follow through on their threat to close down all or part of their operations in response to the union campaign.

#### CULTIVATING INSECURITY

Capital mobility and the threat of capital mobility have had a profound impact on the ability of U.S. workers to exercise their rights to freedom of association and collective bargaining. Despite strategic initiatives by many unions to target their organizing activity in industries and firms less vulnerable to global markets, the majority of all employers continue to threaten to shut down all or part of their operations if workers try to organize. In industries such as manufacturing, communications and wholesale distribution, where the rate of capital mobility in and out of the country skyrocketed in the second half of the 1990s, the proportion of employers making plant-closing threats during organizing campaigns has risen to more than 70 percent.

The data suggests that most workers take even the most veiled employer plant-closing threats very seriously. When combined with other anti-union tactics of employers, as they are in the overwhelming majority of employer campaigns,

### THE WIDE WORLD OF ANTI-UNION TACTICS

**T**HE OVERWHELMING MAJORITY of the employers in the 1998-1999 survey sample aggressively opposed the union's organizing efforts through a combination of threats, discharges, promises of improvements, unscheduled unilateral changes in wages and benefits, bribes, and surveillance.

Individually and in combination, these tactics were extremely effective in reducing union election win rates.

In addition to plant-closing threats, one in every four employers discharged workers for union activity, while 48 percent made promises of improvement, 20 percent gave unscheduled wage increases, and 17 percent made unilateral changes in benefits and working conditions. Sixty-seven percent of the employers held supervisor one-on-ones with employees at least weekly, 11 percent promoted union activists out of the unit, 34 percent gave bribes or special favors to those who opposed the union, 31 percent assisted an anti-union committee and 10 percent used electronic surveillance of union activists during the organizing campaign. Employers threatened to refer undocumented workers to the Immigration and Naturalization Service (INS) in 7 percent of all campaigns and in 52 percent of cases where undocumented workers were present in the unit.

Sixty-two percent of the employers in election campaigns ran anti-union campaigns using more than five of the tactics

listed, and 20 percent of the employers ran extremely aggressive campaigns using more than 10 tactics. Employers ran no campaign whatsoever against the union in only 3 percent of the campaigns, all of which were won by the union.

The election win rate drops to 36 percent for units where employers used more than five tactics, compared to 58 percent where they used fewer than five tactics.

However, in marked contrast to the 1993-1995 study where election win rates dropped to 28 percent when the employer used more than 10 anti-union tactics, in the 1998-1999 study win rates averaged 38 percent where they used more than 10 tactics compared to 46 percent where they used ten or fewer anti-union tactics. These data suggest that at a time when unions are running more aggressive and sophisticated campaigns, and where worker trust in corporations is declining, the aggressive anti-union behavior of employers may reach a point of diminishing returns in some units.

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, discharge union activists, hold captive audience meetings and supervisor one-on-ones, establish employee involvement committees during the organizing campaign, make unilateral changes in benefits and/or working conditions, use bribes and special favors, use

electronic surveillance, threaten to report workers to INS, and show anti-union videos.

While employers used five or more anti-union tactics in 62 percent of the elections, the percentage of election campaigns with threats where they used more than five tactics was 78 percent. Similarly, the percentage of elections with threats where employers used more than 10 anti-union tactics was 29 percent, compared to 10 percent of campaigns without threats.

Although win rates overall were lower in campaigns with plant-closing threats, the negative impact of plant-closing threats on the election win rate decreases as the number of anti-union tactics used by the employer increases.

Thus the win rate for campaigns with threats where the employer used more than five tactics was 34 percent and 50 percent when they use five or fewer tactics.

Yet, the win rate increased to 38 percent in campaigns with threats where the employer used more than 10 tactics, compared to a 37 percent win rate in campaigns with threats where they used 10 or fewer anti-union tactics.

These findings suggest that the more the plant-closing threat appears to workers to be just one more tactic in the arsenal of the employer's anti-union campaign, the less credible the threat becomes to the workers being organized, and the less impact it has on their vote for or against the union.

— K.B.

plant-closing threats are 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. These workers cannot be certain of what the data show — namely that the vast majority of employers have no intention of shutting down their operations if the union wins the election, but rather that plant-closing threats are just one more extremely effective tactic in their arsenal against union organizing campaigns.

For more than three-quarters of the certification election campaigns in the 1998-1999 data sample, unions filed for the election with at least 60 percent of the unit signed up on cards indicating their support for a union. With election win rates averaging only 44 percent and first contract rates averaging under 70 percent, fewer than 30 percent of the 76,833 workers involved in the elections ended up being covered under a collective bargaining agreement.

Yet, because this research focuses on organizing campaigns where the union was able to gain enough support from bargaining unit members to petition the NLRB for a certification election, these data cover only a fraction of those workers who want a union but are unable to achieve one. They do not include the many organizing campaigns that never get to the point where a petition is filed because of the chilling effect of aggressive employer opposition. Nor does it include the many campaigns where the union withdrew the petition before the election was held because the employer campaign had so intimidated the workers that the union had lost all hope of winning the election. Thus the data presented here understate the full extent and impact of employer plant-closing threats during the organizing process. Nor does the data capture the magnitude of the effect that plant closings during or after organizing campaigns have on other workers who contemplate bringing a union into their workplaces.

Thirty years ago, industrial jobs benefited most from tight labor markets and helped drive the economic expansion. But today workers in these industries operate in the shadow of the economic boom, sharing in little, if any, of its fruits. They work ever longer hours in workplaces beset by serious job



injury and health problems, with declining pay, few benefits and little security. Many are recent immigrants from Latin America and Asia, or women, or both, and few have the skills or education needed to transfer to better jobs in the “new economy.” They are the workers who would benefit most from the collective power and voice that a union provides. Yet, in a climate where capital mobility and the threat of capital mobility are driving unions to seek targets in less mobile industries, these are the workers who are most likely to be left behind.

Not only industrial workers face threats of job loss and plant closings if they attempt to organize. More than half of all employers across a wide range of industries use these threats as part of their anti-union strategy. While a nursing home, hotel or retail store is unlikely to move to Mexico, it can be merged with or acquired by another company, have work contracted out, or shut down to reopen in another facility or another town.

The cost of these plant closings and threats of plant closings in response to unionization goes well beyond broken unions and failed organizing campaigns and first contract campaigns.

Absent intensive efforts to organize the nation’s most mobile industries, density will plummet further, causing working conditions to worsen even more, as workers lose their only hedge against the worst effects of the global economy.

And, absent any hope of collective power to demand real improvements in wages and benefits, more reasonable hours and pace of work, and long term job protections, workers’ insecurity about their position in the current economy and their prospects for the future will continue to rise. ■