

ALFRED T. DE MARIA WINNING ORGANIZATIONAL CAMPAIGNS

Communicating Adverse Consequences of Unionism: The Board's View

In an unheralded but extremely significant decision, the National Labor Relations Board has seriously limited an employer's right, during an election campaign, to communicate such adverse consequences of unionization as strikes, violence, and plant closings.

Surprisingly, there has been little or no comment on this decision, which has the practical effect of restricting management's statutory right to free speech: every employer campaign now runs the serious risk of being adjudged unlawful if such subjects as strikes, violence, and plant closures have been unduly emphasized in the employer's communications to its employees.

The decision was issued in a recent case, 250 NLRB No. 96 (1980). The *General Dynamics Corporation* conducted a vigorous campaign consisting of numerous speeches and distributions of campaign literature that truthfully depicted its own experience with the petitioning union and caused the union to lose the election.

Characterizing the union as the organization that presided over the closedown of some of the company's facilities, management published the following poster on all bulletin boards:



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IUE'S TRACK RECORD IS POOR Here's Their Record at Our Company:

| Elections Lost | Elections Won | Strikes | Plant Closings |
|-------------------|------------------|---------|-------------------|
| 11 | 3 | 3 | 3 |

Don't Vote for a Loser!

Later in its pre-election campaign, management distributed several handouts to employees. One of these reported the number of jobs that had moved from plants in other locations after those plants had become unionized and noted that some plants where employees were represented by the union had closed. The handbill stated that "In fourteen elections held at General Dynamic's facilities, the union has been successful in only three. And look how they have guaranteed job security to the employees who voted for them." The handbill then described job losses at the three closed plants.

In the same communications, however, the company made it clear that "the mere fact of a union being elected will not cause this or any other facility to close," and that "this plant will continue to operate so long as it is able to build a quality product at a competitive cost, with or without the IUE."

At the bottom of the handbill was this statement:

Only the company can GUARANTEE job security, and General Dynamics has demonstrated it at Camden. The IUE can talk about it, and they should—but not to you. They should be explaining it to the former employees at Stromberg-Carlson-Rochester, General Dynamics-Newark, and General Dynamics-San Antonio.

STRIKES AND VIOLENCE

The employer also posted a notice headed, "IUE STRIKE . . . Violence, Threats, and Costly Unemployment . . . Read About It." Beneath the heading were reproductions of newspaper accounts of violence in connection with strikes by the petitioning union.

In addition, during talks with employees, the company cited actual experiences with union activities at its various locations. These are examples of what the company said:

- Substantive bargaining on a contract did not begin until the lawyers from both sides spent

eighteen months talking merely about how they would negotiate.

- At the end, what was gained? The union settled for exactly what was on the table seven weeks earlier. There was not one penny gained by the employees during that seven weeks of time, except that they lost seven weeks of pay.
- Three years later, roughly, the same union decided to go out on strike again. . . . This time the strike lasted thirteen weeks. During that time there was a lot more violence. There were people who were injured, there were cars damaged.

After noting these experiences, the employer's official stated:

I don't want to imply that if a union is successful in organizing this plant we're going to see violence or strikes, because there are many companies that have never seen violence or strikes. But I want to point out that there is always that possibility when there is a union present.

Another company spokesman made statements regarding the realities of collective bargaining:

Let me make it clear—we have ninety-nine collective bargaining agreements. Many of those agreements work out extremely well, without strikes, without rancor. The fact of life is that some will go well and some go badly. But what we're going to look at now is, what are the risks?

In addition, management reminded employees that although the union "can promise anything in the world," it "can't deliver a thing until the company says yes." A spokesman pointed out that:

The law does not require employers to agree to any specific demand of the union which the employer doesn't believe is in its best interests. The law does not require that the benefits and wages go up. They can go down, or they can remain the same. It's a give-and-take relationship.... It becomes a business transaction. General Dynamics would deal with the IUE in good faith, but we'll bargain with them as businessmen.

Other company spokesmen made statements, as well:

- After the last election the union won at one of our plants, it took approximately two-and-a-

half years to reach an agreement.

- We've had cases where we've been able to get the benefits back.

THE BOARD'S DECISION

On the basis of all the comments, speeches, handbills, and written communications issued by the company during the campaign, the Board found that the company had conducted a campaign that created a coercive atmosphere and tended to give the impression that strikes, plant closure, job losses, and other adverse consequences would result from unionization.

The Board agreed with the union charges that the company's repeated references to union violence, strikes, loss of business, loss of jobs, and loss of benefits created an illegal atmosphere of fear by means of veiled threats. It held that the cumulative effect of the communications and the linking of the union with plant closures at other locations where the union was the bargaining representative had a coercive impact on employee free choice.

The severe implications of this decision on the future campaigns of employers seeking to resist unionization arise from the fact that the employer's statements were entirely truthful and were grounded on actual experiences with the petitioning union. With this decision, the Board has undercut the ability of an employer to relate its own experience with collective bargaining and with the union, thus seriously impairing an employer's ability to use one of its strongest weapons in an election campaign.

The Board's apparent disregard for the employer's qualifying statements is also disturbing. The company spokesmen took great pains to stress that if the union was successful in the election, strikes and violence would not necessarily occur, although they were a possibility in a unionized organization. The Board, reasoning that employees are "particularly sensitive" to suggestions of job losses made by the employer, found that these disclaimers did not negate the fears generated by the employer's statements.

The Board's decision in this case effectively removes a large part of the employer's free speech rights—rights previously assumed to be guaranteed by the National Labor Relations Act. ■