

ORGANIZING IN THE NAFTA ENVIRONMENT: HOW COMPANIES USE "FREE TRADE" TO STOP UNIONS

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In the early afternoon of July 14, 1994, after securing the building with extra security guards, the president of Sprint's Hispanic marketing division in San Francisco announced over the loudspeaker that Sprint had decided to shut down its La Conexión Familiar (LCF) office. With no advance notice, LCF's 235 employees were told to collect their belongings, undergo a search by company security guards, and immediately vacate the premises. The mostly women, all Latino LCF workers included many single parents with no other source of support. Many were legal immigrants from countries like Chile and El Salvador, who worried that without a job they would be forced to return to an uncertain future at home. Shocked and distraught at the sudden shutdown, many workers wept openly. One woman fainted and paramedics had to be brought in.¹

Management blamed the shutdown on financial losses, but the workers knew better. The shutdown happened just eight days before a scheduled National Labor Relations Board (NLRB) vote at the facility for representation by the Communications Workers of America (CWA), which Sprint knew the union would win. Throughout the campaign, management had threatened the workers that if they voted the union in, LCF would shut down. But with an expanding customer base, major office renovations, and a new president brought in only a month before, the LCF workers regarded the threats as just one more element in LCF's very aggressive effort to undermine the union campaign.

The NLRB found Sprint in December 1996 guilty of more than 50 different egregious labor law violations, including fabrication of evidence, interrogation, bribes, threats, surveillance, and closing its facility, transferring operations, and firing workers in direct response to the union campaign. However, rather than forcing Sprint to reopen the facility and recognize the union, the final Board remedy 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. Sprint had lost the NLRB case but had kept their marketing division "union free." The workers at LCF never got the union for which they had fought so hard.

The North American Free Trade Agreement (NAFTA) and the specter of jobs moving to Mexico has led to a pervasive sense of job insecurity among American workers, undermining union bargaining power and weakening wage demands. Until the LCF shutdown, few outside the labor movement had reflected on the equally chilling effect these plant closings, and the threat of plant closings, have on union organizing in the U.S. But, as an outgrowth of the Sprint case, these issues became the focus of a tri-national study on the impact of plant closings and plant closing threats on workers' rights to organize.

In February 1995, the Mexican Telephone Workers Union (STRP), the union representing all the workers at Telmex, the (National Mexican Telephone Company), filed a complaint against Sprint under provisions of the NAFTA labor side agreement. In filing the charge, STRP's General Secretary, Francisco Hernandez Juarez, noted the "ineffectiveness of U.S. law to comply with the principles contained in (the NAFTA labor side agreement) to which the U.S. is now obligated." Juarez called on the Mexican Administrative Office for the North American Agreement on Labor Cooperation to "declare that Sprint will not be allowed to establish itself in Mexico given its track record of abuses against workers" (CWA News 1995).

In response to the STRP complaint, in December 1995, the Secretaries of Labor of the United States, Mexico, and Canada, gave the tri-national Labor Secretariat 180 days to "conduct a study on the effects of the sudden closing of a plant on the principle of freedom of association and right of workers to organize in three countries" (NAALC 1995).

As part of their larger study, "Plant Closings and Workers' Rights," the NAFTA Labor Secretariat asked me to conduct a study of the effects of plant closings or threat of a plant closings on the right of workers to organize in the United States. This study, completed September 30, 1996, involved an in-depth examination of private sector union organizing and first contract campaigns over the three-year period from January 1, 1993 through December 31, 1995. Its purpose was to learn as much as possible about the role played by plant closings and threats of plant closings during the certification election and first contract process, and in doing so determine whether Sprint's actions at LCF were an aberration or reflected a pervasive pattern of employer behavior in the 1990s.

The study was based on an in-depth survey of lead organizers in more than 500 certification election campaigns which took place between January 1993 and December 1995, including campaigns which went to an election as well as those where the union withdrew the petition before the election was held. For all 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 the first contract process. In the short time period provided by the Secretariat for this

study, my research team and I were able to collect surveys on 376 election campaigns, 149 withdrawals, and 112 first contract campaigns, making this the largest comprehensive database on union organizing campaigns to date.

In addition to survey data, phone interviews were conducted for all cases where plant closings or threats of plant closings were reported by the organizers and other union representatives in order to collect documentation and more detailed information on the nature of the plant closing threats. Computerized database searches were also used to collect company ownership and revenue data.

THE EXTENT AND NATURE OF PLANT CLOSING THREATS

The results of this study show that plant closing threats are an extremely pervasive and effective component of employer anti-union strategies. Employers threaten to close the plant in 50% of all elections and 52% of all withdrawals. Plant closing threats also have a devastating impact on union win rates, with unions only able to win 33% of the campaigns where plant closing threats occurred, compared to a 47% win rate in campaigns where no threats occurred. More than half the organizers in cases where threats occurred reported that threats of plant closings contributed to the union withdrawing the petitions before the campaign went to an election.

Yet these overall percentages underestimate the extent to which employers use plant closing threats. That's because they include industries and economic sectors where threats to shut down and move facilities out of state and/or out of the country are much less likely, simply because the industry or product is less mobile. When we limit our analysis to mobile industries such as manufacturing, transportation, and warehouse-distribution, we find that the percentage of organizing campaigns with plant closing threats is 62%, compared to 36% in relatively immobile industries such as construction, health care, education, retail, and other services. In these more mobile industries the win rates with threats averaged only 23%. Thus, where employers can credibly threaten to shut down and/or move their operations in response to union activity, they do so in extremely large numbers and the threats can have a devastating impact on union organizing campaigns.

We also found that the majority of these threats are a direct component of the employer's anti-union campaign and do not result from the companies' deteriorating financial condition. Plant closing threats were no less likely to occur in companies in strong financial shape than in those in extremely poor financial condition. Instead, threats of plant closings tend to occur in the overall context of aggressive anti-union behavior by employers, including a combination of other threats, interrogation, surveillance, discharges, bribes, and promises. Overall, 64% of employers surveyed ran aggressive anti-

union campaigns, but in campaigns with plant closing threats, the percentage of employers who ran aggressive campaigns reaches 83%. Win rates are as much as 10 percentage points lower in units where plant closing threats were combined with other anti-union tactics.

Given that direct unambiguous threats to close the plant in response to union organizing activity are clearly in violation of the law, most employers chose to make their threats indirectly and verbally. Whether specific or veiled, verbal threats are extremely difficult to document and prove in an unfair labor practice case, particularly when they are made as part of a one-on-one meeting with supervisors or other managers. Still, 19% of the election campaigns with threats included unambiguous written threats, which are much easier to document and are more likely to be found in violation of the NLRA.

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 some of these cases, the plant manager or company official stated clearly in captive audience meetings that if the employees voted in favor of union representation, they would lose their jobs.

More than 10% of the organizers we interviewed reported that the employer directly threatened to move to Mexico if the workers organized. The most blatant example of this involved a United Auto Workers (UAW) campaign at ITT Automotive in Michigan in March 1995, where the company parked 13 flat-bed tractor-trailers loaded with shrink-wrapped production equipment in front of the plant for the duration of the campaign with large hot-pink signs posted on the side which read "Mexico Transfer Job." The equipment came from a production line they had closed down over the weekend without warning. ITT also flew employees from their Mexican facility to videotape Michigan workers on a production line which the supervisor claimed they were "considering moving to Mexico." According to UAW organizer Diane Ketola, as the Mexican crew began filming the ITT workers at their jobs "shivers went down the back of each worker" (Ketola 1997).

Another company provided statistics to 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. They also showed an overhead visual with a large red arrow pointing from their location to their plant near Mexico City.

The President of AJM Packaging and Roblaw Industries of Folkston, GA, announced a more subtle but no less direct unambiguous threat in a captive audience meeting speech during a Teamsters organizing campaign:

"[W]hat brings me here today is the current union organizing drive which I understand is underway. I say it is unfortunate because 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 and I guess it is unfortunate because we can't, 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 implications that the company would lose business if the union was organized. Examples include showing videos to captive audiences with footage 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) 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 showed the same video on the local cable access station.

In other cases the threats were much less complicated. In a Union of Needletrades, Industrial and Textile Employees (UNITE) campaign at a Fruit of the Loom plant in the Texas Rio Grande Valley, the company 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. The company often claimed that union wage and benefit demand would easily be underbid by non-union companies, forcing the employer to close or lay off workers. Other companies charged that unions' rigid wage rates and inflexible work rules would put them at a competitive disadvantage. Another less frequent company threat was the claim that many firms which accept bids for contracts have explicit (or non-explicit) policies that forbid them to do business with unionized contractors. This threat was made by a delivery company whose sole contract was with Whirlpool, Inc., even though Whirlpool has numerous unionized employees and contractors. Other employers argued that their parent company would not permit any of their subsidiaries to go union.

Despite the clearly illegal nature of plant closing threats in the context of union organizing campaigns, less than a third of the union organizers filed unfair labor practices (ULPs) in response to threats. Many organizers reported that they did not file charges because the climate of fear and intimidation generated by employer campaigns made it impossible to collect corroborating evidence or get witnesses to testify. Because the penalties for employers found to be committing unfair labor cases are so minimal and because ULP charges can delay elections and first contracts for months, if not years, many unions questioned the value of devoting scarce union organizing resources to a legal victory that would be pyrrhic at best. In fact, the final Board decision was in the union's favor in less than a third of the campaigns where the union filed charges in response to plant closing threats and unions were only able to win Board-ordered re-run elections in a handful of cases.

PLANT CLOSING THREATS DURING THE FIRST CONTRACT CAMPAIGN

As earlier research has shown, employer opposition to unions does not stop after the election is won. Of the 174 campaigns in our election and withdrawal sample where the union either won the election or won voluntary recognition, only 57% had won a first contract by September 1996.

We found that employers threatened to close the plant in 18% of the first contract campaigns. Several union representatives reported that the employer simply stated, "We told you we couldn't operate union and we won't." For some employers, this meant filing objections to the election and absolutely refusing to bargain with the union. These companies made 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. One employer threatened bargaining unit members during post-election captive audience meetings, saying that they could hire another company to do their deliveries and completely bypass the bargaining unit. Another company repeatedly threatened workers that they would contract out all sanitation work being done by bargaining unit members if they were compelled to recognize and bargain with the union.

More common was the threat that the employer might go out of business or have to contract out work if the union succeeded in its collective bargaining goals. We interviewed union representatives who reported that these threats had a chilling effect on union contract demands and on the willingness of union leaders and bargaining unit members to aggressively pressure the employer. They thereby seriously undermined 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 union's ability to reach a first agreement without severely risking their job security.

PLANT CLOSINGS

With union win rates as low as 33% in units with plant closing threats, only a small number of employers carried out those threats. Only two percent of union election withdrawals resulted from the employer closing the plant before the certification election took place. Our most dramatic finding was that full or partial plant closings took place before the first contract was reached in 12% of the units where the union won the election. In 85% of the shut down 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.

Seven percent of the plant closings during the first contract campaign were full plant shut downs and five percent were partial closings. In only one of those cases, a partial closing, was the union able to bargain a first agreement and continue representation. In another four 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. This means that out of the 112 campaigns included in the first contract sample, 17 units (15%) had a full or partial plant closure within three years of winning the election.

This finding is striking because previous research on first contract campaigns in the late 1980s and the early years of the 1990s has consistently found the post-election plant closing rate to average five percent. But the post-election plant closing rate has more than doubled in the years since NAFTA was ratified. This suggests that NAFTA has both amplified the credibility and effectiveness of the plant closing threat for employers, and emboldened increasing numbers of employers to act upon that threat. In several campaigns, employers used media coverage of the NAFTA debate to threaten workers with the fact that they had the power to move the plant to Mexico if workers were to organize.

Unions only filed unfair labor practices in a third of the cases where the plant was shut down. Although the Board issued a complaint in 60% of those cases, the Board only ruled in the union's favor in 20% of those cases where charges were filed. Unions were unable to achieve a first contract in any of the cases where they filed charges, including in cases where they received a favorable Board ruling. The majority of the union representatives veyed reported that they did not file charges because they knew that they could not win, given that the plant had already shut down or the work had been contracted out.

CHALLENGES AND OPPORTUNITIES FOR THE LABOR MOVEMENT

This research conclusively demonstrates that 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 12% of employers follow through on the threat to close the plant once the union has won the election. Further, 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 under-mining union organizing efforts, even where the majority of workers in the unit seem pre-disposed to support the union at the onset of the organizing campaign. This means that in the context of aggressive employer opposition, including plant closing threats and plant closings, less than a quarter of the 300,000 private sector workers who attempt to organize each year end up covered by a collective bargaining agreement.

This research does not even cover the many organizing campaigns that never get to the point where a petition is filed because of the chilling effect of aggressive employer opposition. Thus we do not know how many employers effectively use plant closing threats to stop a fledgling organizing drive before it gets off the ground. Nor do we know the chilling effect that plant closings during organizing campaigns have on other workers contemplating bringing a union into their own workplace. We do know that in our follow-up interviews with organizers in campaigns where plant closing threats occurred, one of the most effective components of employer threats were the photos, newspaper clippings, and video footage of plants which shut down after 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. We also know that widespread media coverage of the more than 400,000 jobs lost to NAFTA have reinforced this climate of fear and insecurity, making organizing an increasingly frightening and difficult exercise for American workers.

Yet, despite these alarming statistics, a third of unions still win elections, even in campaigns where employers combine threats of plant closings with intimidation, surveillance, firings, bribes, and general harassment for union activity. When we examine these campaigns more closely, we find that unions who win in the context of plant closing threats tend to run much different campaigns than those who lose. Union victories like the Electronic workers' (IUE) 1995 campaign to organize 200 production workers at a Hilite Industries auto parts plant in Texas, or the Steelworkers' (USWA) 1995 campaign to organize 500 Unarco wire fabricating plant production workers in Oklahoma, occurred despite clear

threats to shut down and move to Mexico. They were able to overcome the negative effect of the plant closing threats because of the intensity and quality of their organizing campaigns.

Unions who won elections in campaigns where the employer threatened to close the plant were much more likely to build an active representative rank-and-file committee; to use rank-and-file volunteers from already organized units to help with housecalls or small group meetings; to hold actions such as solidarity days, rallies, and community forums; and to survey members one-on-one about what they wanted in the first contract. In contrast, unions who lost the election in the context of plant closing threats tended to run much less aggressive campaigns with a primary emphasis on mass mailings, leafleting, and large meetings.

These findings are in keeping with my earlier research on union strategies which found that unions can only overcome aggressive employer opposition when they utilize a comprehensive union-building strategy involving a significant commitment of staff and financial resources, an emphasis on rank-and-file leadership development and personal contact, a focus on issues of dignity and justice, the use of escalating internal and external pressure tactics, and building for the first contract during the organizing campaign. This rank-and-file intensive strategy becomes even more important in the context of plant closing threats because it is the only way to generate the worker participation and commitment necessary to counteract the fears and misinformation created by employer threats. Representative rank-and-file organizing committees are particularly critical in campaigns with plant closing threats because they are the only way to build membership support and inoculate against the employer campaign well before it gets into full swing. Person-to-person contact through housecalls and small group meetings is an essential means for organizers to listen to workers' concerns, allay their fears, and mobilize them around the justice and dignity issues that matter to them enough to challenge the employer and win, even in the context of plant closing threats. Rank-and-file volunteers from other units can speak credibly and powerfully from their own experiences of organizing and winning a first agreement that it is not only possible to organize and win, but it is worth the risks, the fear, and the conflict it takes to get there. Escalating workplace and community pressure tactics like petitions, mass grievances, t-shirt or button days, rallies, or public forums are effective ways to build worker solidarity and campaign commitment. They're also a good way to pressure the employer to scale-back opposition to the union organizing effort.

Our data shows that in election campaigns with threats, where unions run comprehensive campaigns incorporating 10 or more union-building tactics,² the win rate reaches 64%. This compares to

a 17% win rate in campaigns with threats where the union fails to use any union-building tactics, and a win rate of 42% where they use more than five tactics.

Yet unions still win only a third of campaigns with plant closing threats. That's because most unions continue to run fairly traditional organizing campaigns that focus on staff-dominated tactics of mass meetings, mailings, and house calls. We found that 73% of the organizers surveyed used fewer than five union-building tactics, while only seven percent ran comprehensive campaigns using 10 or more union building tactics. In the withdrawal campaigns, where unions withdrew the petition without ever making it to an election, there was not a single campaign in the sample where unions used 10 or more union-building tactics. Unions used more than five union-building tactics in only three percent of the campaigns. Although most organizers surveyed pointed to employer opposition, including plant closing threats, as the primary reason they were forced to withdraw from the campaign, the weakness of the union campaign appears to have played an equally important role.

These findings point to both an enormous challenge and a great opportunity for American unions. Clearly, under NAFTA and other free trade agreements more and more employers will feel emboldened to threaten to close the plant during organizing campaigns, and workers and unions will find organizing increasingly difficult. At the same time, unions have an opportunity to overcome these barriers to organizing if they commit enough resources to run large-scale, aggressive campaigns which mobilize the rank-and-file workers to build a union in their workplace, regardless of the intensity of the employer's campaign.

True, if an employer, such as Sprint Corporation, is determined to stay union-free, even at the risk of shutting down a financially successful operation, it is extremely unlikely that either the NLRB or the courts would order them to reopen the workplace, rehire all the workers, and recognize the union. Yet, the CWA campaign at Sprint, including both the NLRB penalties and the negative publicity generated by the NAFTA charges, did engender financial costs and public relations problems which could make other employers think twice about full or partial shut-downs to avoid unionization. As we saw from our study, although 12% of employers did shut down operations rather than accept the outcome of the union election, a majority of employers who had made threats to close the plant during the organizing campaign bargained a first agreement with the union after the election had been won.

The American labor movement cannot wait for labor law reform to stop the devastating impact plant closing threats and plant closings have on union organizing success. Without organizing millions of new members, unions lack the political power to force the kind of sea change in labor legislation necessary to legally curb employer use of threats and plant closings in organizing campaigns. Organizing

in the global economy will continue to be extremely difficult. And some employers, such as Sprint, will continue to be willing to risk significant fines and legal sanctions in order to remain union-free. Yet unions must continue to aggressively organize, and organize well, if they are to succeed in reversing the tide of organizing decline.

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Notes

1. This article is based on a study commissioned by the Labor Secretariat under the North American Agreement for Labor Cooperation (NAALC) in May 1993. A full report summarizing the findings from the study/The Effect of Plant Closing and Threat of Plant Closing on the Right of Workers to Organize," was submitted to the Secretariat on September 30, 1 996. A condensed version of the report, "We'll Close! Plant Closing, Plant-Closing Threats, Union Organizing and NAFTA," was published in Multinational Monitor (March 1 997). Research assistance for the study was provided by Katie Briggs, Nicole Lindstrom, Clay Samford, Megan O'Brien, Chad Apaliski, Cara Beardi, Beth Berry, Jason Coulter and Becky DeMarinis. Tom Juravich, Director of the University of Massachusetts at Amherst Labor Relations and Research Center, provided consultation on research design.
2. Union-building tactics include filing with more than 70% signed up on cards, having an active representative committee, housecalling the majority of the unit, holding more than 1 0 small group meetings, bringing in more than 10 rank-and-file volunteers from other units, surveying more than 70% of the unit one-on-one about what they want in the first contract, using solidarity days, holding rallies, running job actions in the workplace, establishing the bargaining committee before the election, developing first contract proposals before the election, using a

written assessment system to monitor and test worker support, working with the mass media, building coalitions with community groups, and building coalitions with other unions.