WHY UNIONS ARE LOSING: THE ROLE OF TODAY'S LABOR CONSULTANTS

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Early this year, at its annual mid-winter meeting, the AFL-CIO Executive Council announced that its National Organizing Coordinating Committee had begun a major counter attack against the activities of labor-management consultants which have sprung up throughout the U.S. in recent years. At that meeting, Thomas Donahue, Executive Assistant to AFL-CIO President, George Meany, charged that the business community, in "companies big and small", has undertaken a "deliberate, calculated campaign to destroy" the American labor movement. His speech was heavily laced with invectives against so-called "union busters" and the "hundreds of lawyers and consultants running around this country, 'persuading' workers not to join unions...". Since that time, the proliferation of news articles and editorials across the country that emanated from that meeting, all appear to deal with the "threat" posed by labor consultants to the gargantuan institution of labor unions.

To begin with, as members of "the growing army of labor-management consultants", we would certainly agree with the basic premise posed by these articles that unions are losing far more elections by any rational standard than ever before. The National Labor Relations Board recently summarized in its 1978 fiscal year report that out of a total of 8,380 conclusive representation and related elections in the U.S., involving 424,679 employees, unions were rejected in 4,538, or over 54% of those elections, not counting hundreds of other losses through withdrawn or dismissed petitions. In addition, out of 807 decertification elections in that same period, unions lost representation rights for 19,884 employees in 594 elections, over 73%, that they did not win. In contrast to having won 57% of their representation elections ten years ago, it would appear that unions today are clearly losing.

In speaking for our own firm, West Coast Industrial Relations Association, and other responsible consulting and labor law firms, we would also agree with the contention that labor consultants are winning far more elections than pure chance would say is possible, and certainly far more than the nationwide average. What we do not agree with, however, are such allegations as those made by Mr. Donahue to the effect that labor consultants and lawyers "regularly and repeatedly counsel employers to bend the law, to flaunt the law" and to "twist the law for personal gain". Such charges would lead one to believe that either: (1) the labor consultants can do the impossible and win every election; or, (2) that the techniques used, because they are so effective, are by their very nature unlawful.

WCIRA was founded a little over five years ago with one major principle in mind; to help employers understand that by rededicating themselves to their singular, most important resource - their people - they can not only minimize such destructive and costly forces as high turnover, grievances, unionization drives, low morale and poor attitudes, but optimize employee performance

and that "bottom line" word - productivity. Our success has been achieved by assisting employers in recognizing the self-esteem, worth and needs of today's employees. Contrary to the "union busters" image that the AFL-CIO would lay on our firm, the majority of our client assignments fall within the management consulting categories of labor relations, contract negotiations and administration, organizational and manpower planning, compensation and benefit programs, governmental relations, affirmative action plans and to a significant degree, management and supervisory training.

Each of the staff members at WCIRA is a serious student of labor law and of the labor movement in the United States and around the world. We understand that when employees invite in a union or appeal for help to a union organizer, they are communicating to management that they have a problem. But a union can be likened to a fever. It is an indication that there is a problem. Like a fever, a union is a symptom, not a cause. It is the underlying problem and not the symptom which, in our view, must be treated. If trying to communicate with employees who have a problem constitutes flaunting the law, then there is something seriously wrong with the system. But happily, that is not the case. An employer does not have to wait until he arrives at the bargaining table to learn that his employees have concerns, and he does not have to wait for the union to bring him the message in the form of bargaining demands.

As to allegations that consulting firms such as ours deliberately counsel employers to violate the law, the claim is simply unfounded. WCIRA cannot, of course, speak for all who emulate our concepts, but we strongly encourage employers not to discharge employees, threaten them, spy on them, make promises or interrogate them. Such tactics are both unlawful and counterproductive.

Today's employees will not and should not stand for such tactics. Today's employees have had thirty years of experience with unions and union organizing. They know what rights are granted by the National Labor Relations Act and similar statutes. They will not be coerced into submission. They will articulate serious needs or concerns so long as they are absolutely sure that no retaliatory action will be taken. The real test of an employer's dealings and relationship with his people in a union representation election is that moment when each of those employees, alone, marks his or her secret ballot in the privacy of a voting booth. Elections, therefore, are won not through intimidation...but with credibility.

Why then has there been a terrific increase in the filing of unfair labor practice charges if consulting firms such as WCIRA do not counsel employers to, or directly themselves, commit unfair labor practices? One explanation is that the number of unfair labor practice charges filed is in reverse relationship to the number of elections unions lose. A union simply does not file charges when it wins. Charges are filed when the union loses or withdraws from the election, recognizing that a loss is

imminent. Since WCIRA does win the overwhelming number of elections in which it is involved, it follows that WCIRA may face charges as do other counselors in the labor field. But there is another factor involved.

There is a very fuzzy relationship between the First Amendment to the Constitution and the National Labor Relations Act. Today's employer who wishes to talk to his employees during an election campaign needs a consultant just to advise him of what he can say. An employer cannot always and simply speak the truth. To do so would often be considered an unfair labor practice by the NLRB. The employer cannot, for instance, tell employees that the parent company of a particular facility fully intends to move its manufacturing facility to Taiwan, Japan, Mexico or elsewhere if a union comes in and restricts its freedom to operate. Even though that may be the truth, the employer cannot communicate that to the employees. This is only one example, but there are hundreds of other situations in which an employer may, completely unwittingly, put his foot in his mouth. In contrast to a union which spends every one of its living, breathing moments dealing with labor law, an employer rarely steps into this arena in which he has little or no experience. Hence, the complexity of the Act itself virtually mandates the use of a technical advisor during an election campaign.

Thus, before any unionization attempt, an employer has two choices. The company can try to resolve the problems which may lead to a unionization attempt, or take the ostrich position. Taking the ostrich position has certain inherent risks - namely you leave a vital portion of the anatomy exposed. Taking the affirmative approach also has inherent risks: you are not going to be very popular with the union that wants to organize you and a natural recourse for the union is to head straight for the National Labor Relations Board.

The employer of today faces a growing dilemma of dealing with an ever-increasing number of institutions and agencies who want to sit at his desk and tell him how to run his business. In addition to the army of federal and state, administrative, tax, labor, environmental, safety, legislative and regulatory agencies, labor unions pose a demand for one more important chair at that desk. All of this, of course, is incidental to the increasing technological, legal and financial problems he must cope with in trying to survive in today's competitive business world. Considering these perplexing and trying conditions, it is not too difficult to realize why some employers may sometimes lose touch with that singular most important resource - their people.

On balance, we at WCIRA believe it is better for an employer to convince his employees that he will do right by his actions, by well-trained, effective supervisors, by fair policies and practices and of course, the employer must follow through. Otherwise today's employee will brand him for what he is and saddle him with a union. For if an employer is going to lose an election today, it is because his employees voted against him - not for the union.

To a great extent, one of the reasons that labor unions are losing the greatest percentage of elections today is that the unions are often their own worst enemies. They have abdicated one of their major roles, particularly in the U.S., by demanding and lobbying for more protective legislation from the federal and state governments, who have obliged them through the creation and expansion of such agencies as the Department of Labor, Occupational Safety and Health, Equal Employment Opportunity, Workers' Compensation, Wage and Hour, and so on. Is it any wonder that today's employee questions the need to pay initiation fees and dues for services and protection that he can get free of charge right around the corner?

A union really constitutes one more layer of government to regulate employees' lives. It comes complete with officers, courts, an internal revenue service and regulations of many different types. Employees, like employers, are basically sick of big government and it is increasingly difficult to convince an employee of the need for this whole new government to control his employment life. Moreover, considering the reputation that organized labor has created for itself through weekly headlines of corruption, violence, embezzlement and other violations of law, is it surprising that more and more employees are reluctant to attach themselves to those kinds of affiliations?

In summary, perhaps labor consulting firms may pose a threat to the union movement. We are fully aware that as leaders in a field, we will be subjected to criticism. We know that by winning union elections, we stir some rancor in union quarters and that this can come out in unfair labor practice charges and publicity attacks. We are aware that our concepts may cost more than other approaches because we insist on treating not only the symptom but the actual cause of the problem. We know that by attempting to hold the union accountable for its statements, just as we are held accountable, the unions will not be happy. But as we face the promised onslaught of public criticism brought on by unions, we generally ask all; employers, employees, unions and government agencies, not to jump to any hasty conclusions about WCIRA or other consulting groups. We do believe that we are offering a responsible service and we hope to maintain an affirmative, professional relationship with the unions with which we deal. But neither unions, consulting firms or employers will decide who or what is right.

Ultimately, the decisions will not be made by the public, by government agencies or by the contestants. The ultimate decision, presuming the system works correctly, will be made by employees. It is for them to decide whether or not a union in their facility is really necessary.