UNEASY TERRAIN: THE IMPACT OF CAPITAL MOBILITY ON WORKERS, WAGES, AND UNION ORGANIZING

Submitted to the U.S. Trade Deficit Review Commission
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Table of Contents

Acknowledgments i

Executive Summary v

Introduction 1

Wages, Worker Insecurity, and Capital Mobility 2

Worker Insecurity, Union Organizing, and Wage Demands 8

Research Methods 12

Background Information on the Population and Sample of NLRB Elections, 1998-1999 15

The Extent and Nature of Plant Closing Threats during Certification Election Campaigns 18

Unfair Labor Practice Charges Filed on Plant Closing Threats 28

Corporate Structure and Company Characteristics 33

Bargaining Unit Characteristics 39

Company Practices Prior to the Petition Being Filed 41

Employer Behavior 43

Unfair Labor Practices Filed on Employer Behavior 48

Works Cited 59

Tables 64

Table of Tables

Table 1: Surveys Received by Election Outcome, First Contract Rate, and Union 64

Table 2: Industrial Sector, Plant Closing Threats, and Election Outcome 65

Table 3: Nature of Plant Closing Threats During the Organizing Campaign 66

Table 4: Corporate Structure, Plant Closing Threats, and Election Outcome 67

Table 5: Company Characteristics, Plant Closing Threats, and Election Outcome 69

Table 6: Unit Characteristics, Plant Closing Threats, and Election Outcome 70

Table 7: Company Practices Two Years Before the Petition was Filed 72

Table 8: Employer Behavior, Plant Closing Threats, and Election Outcome 73

Table 9: Unfair Labor Practices Filed on Employer Behavior During Organizing Campaign .. 74

Table 10: Final Status of Units in Organizing Survey 75

EXECUTIVE SUMMARY

In May 2000, the United States Trade Deficit Review Commission contracted with Cornell University to conduct a study updating Cornell's previous research on the impact of plant closings and threats of plant closings on union organizing campaigns in the U.S. private sector. Through surveys, personal interviews, documentary evidence, and the use of electronic databases, the Cornell researchers were able to collect detailed data on the extent, nature, and impact of plant closings and plant closing threats for a random sample of more than 400 NLRB certification election campaigns that took place between January 1, 1998 and December 31, 1999. By examining the relationship between capital mobility and union organizing, this study conclusively demonstrates that capital mobility and the threat of capital mobility have had a profound impact on the ability of American workers to exercise their rights to freedom of association and collective bargaining.

Highlights of the study include:

- Despite the longest economic expansion in history, American workers today are feeling more insecure about their economic future than they were during the depths of the 1980-1991 recession. There is increasing evidence that this persistent worker insecurity is in large part a function of rapid increases in the extent and frequency of capital mobility and the corporate restructuring and employment upheaval that follows in its wake. This specter of capital mobility, and the economic insecurity it engenders, has served to constrain both wages and union activity in a period of tight labor markets.

- We found that the recent acceleration in capital mobility has had a devastating impact on the extent and nature of union organizing campaigns. Where employers can credibly threaten to shut down and/or move their operations in response to union activity, they do so in large numbers. Overall, more than half of all employers made threats to close all or part of the plant during the organizing drive. The threat rate is significantly higher, 68 percent, in mobile industries such as manufacturing, communication, and wholesale/distribution, compared to a 36 percent threat rate in relatively immobile industries such as construction, health care, education, retail, and other services.

- The high rate of plant closing threats during organizing campaigns occurred despite the fact that in the last five years unions have shifted the focus of their organizing activity away from the industries most impacted by trade deficits and capital flights, such as apparel and textile, electronics components, food processing, and metal fabrication, where plant closing threats during organizing campaigns average more than 70 percent. Instead, unions are concentrating their resources in less mobile sectors of the economy such as health care and social services where plant closing threats average less than 30 percent.

- The study found that not only are threats of plant closing an extremely pervasive part of employer campaigns, they are also very effective. The election win rate associated with campaigns where the employer made plant closing threats is, at 38 percent, significantly lower than the 51 percent win rate found in units where no threats occurred. Win rates were lowest, averaging only 32 percent, in campaigns with threats in mobile industries such as manufacturing, communications, and wholesale distribution where the threats are more credible. In contrast, threats had much less of an impact in less mobile industries such as health care or passenger transportation, where win rates, even in campaigns with threats, averaged close to 60 percent.

- Threats of plant closing were found to be unrelated to the financial condition of the company, with threats no less likely to occur in companies in a stable financial condition than in those on the edge of bankruptcy. Instead threats seemed to be primarily motivated by employer anti-union animus. More than three quarters of the campaigns where threats occurred also involved aggressive legal and illegal employer behavior such as discharges for union activity, electronic surveillance, illegal unilateral changes in wages or benefits, bribes, threats to refer undocumented workers to INS, promises of improvement, and promotion of union activists out of the unit.

- Not surprisingly, given that direct unambiguous threats to close the plant in response to union organizing activity are often found in violation of labor law, most of the employers chose to make their threats indirectly and verbally. Still, 11 percent of the election campaigns with threats included specific unambiguous written threats ranging from newspaper articles, posters, and videos of union plants that had closed, to letters and leaflets which specifically mentioned that the plant would close if the union came in. Another 51 percent involved specific and unambiguous verbal threats such as the employer stating clearly in captive audience meetings that, if the employees voted in favor of union representation, the plant might shut down, or supervisors asking individual workers whether their families were ready to move to Mexico.

- In 18 percent of the campaigns with threats, the employer directly threatened to move to another country if the union succeeded in winning the election. As expected, Mexico was the country most often mentioned in plant closing threats.

- The study found that unions are increasingly reluctant to file unfair labor practice charges in response to plant closing threats, both because of the difficulty in documenting and proving that verbal threats occurred, and because the remedies available for threats under U.S. private sector labor law are so limited. Unions filed charges in only 14 percent of the campaigns in the sample where plant closing threats occurred. Although complaints were issued in 63 percent of the campaigns with threats where charges were filed, unions were able to get elections overturned in only 3 percent of all lost elections where plant closing threats occurred.

- Despite the high percentage of plant closing threats during organizing campaigns, after the election, employers followed through on the threat and shut down all or part of their facilities in fewer than 3 percent of the campaigns in our sample where threats were made. Although it is too soon after the elections were held to estimate the total number of plants that will close after the election is won, this extremely small percentage reflects the fact that most employers have no intention of following through on the plant closing threats they make during organizing campaigns. Instead, for most employers, plant closing threats are just another tactic in their anti-union campaigns, one that very effectively plays on the real fears of workers living and working in an increasingly mobile economy.

- The study finds that the cost of these plant closings and plant closing threats goes well beyond broken unions and failed organizing and first contract campaigns. Absent any hope of collective power to demand real improvements in wages, benefits, working conditions, and long term job protections, workers' insecurity about their position in the current economy and their prospects for the future will continue to rise. The resultant insecurity will continue to constrain wage and benefit demands and hold down inflation, but it will not be good for American workers, their families, and their communities. Without the collective voice and power that unions bring, the global economy becomes little more than a worldwide race to the bottom in wages, working conditions, and living standards, that no nation can win.

- The study concludes that international trade and investment policies, combined with ineffective labor laws, have created a climate that has emboldened employers to threaten to close, or actually close their plants to avoid unionization. The report suggests two paths to break the hold that capital mobility has on the economic confidence and security of America's workers. The first is the establishment of trade and tax policies which incorporate strong and enforceable labor standards in trade agreements and provide disincentives to companies that seek to move employment out of the country in response to union campaigns. The second requires changes in U.S. laws which provide for substantial financial penalties and injunctive relief for the most egregious employer violations, particularly plant closings and plant closing threats, as well as amendments that allow for card check recognition and first contract arbitration.

Introduction

For the last decade the U.S. has experienced the longest and most dramatic peace time economic expansion in its history. Since 1991 an estimated 22 million jobs have been added to the economy while the Gross Domestic Product (GDP) has increased, on average, 4 percent each year. Corporate profits have soared while unemployment has dropped toward 4 percent and labor productivity has increased at nearly double the rate it did in the nation's last economic expansion, more than thirty years ago (Greenspan, 1999; Greenspan, 2000; *The Economist*, 2000).

Although widely celebrated, this economic boom carries with it some disturbing contradictions. With unemployment extremely low, labor markets are as tight as or tighter than they have been since the 1960s (Greenspan, 1999). According to the most basic precepts of labor economics, these tight labor markets should have resulted in rising wages and increased job security for America's workers, and increased density and bargaining power for America's unions. Yet real wage gains have come only recently and are extremely modest, and recent polls show American workers are more, not less, anxious about job security.

By examining the relationship between capital mobility, worker insecurity, union organizing, and wages, this study offers important insights into the puzzle of why the average American worker has shared so little in the fruits of the current economic expansion. The study was commissioned by the U.S. Trade Deficit Review Commission (USTDRC). When the Commission was established by an act of Congress in October 1998, part of its charge was to examine "the relationship of the merchandise trade and current account balances to the overall well-being of the United States economy, and to wages and employment in various sectors of the

economy" (USTDRC, 2000: not paginated). Our research collected detailed information on the impact of capital mobility on union organizing, which is fundamental in understanding the relationship between trade deficits, worker insecurity, and wages. This report summarizes the preliminary findings for the USTDRC-sponsored study.

Wages, Worker Insecurity, and Capital Mobility

The current economic expansion began in 1992. Yet for the first four years of the expansion, most Americans watched their wages stagnate or fall, continuing the decline in real wages that had begun in 1973. While real wages increased by 2.6 percent from 1996 to 1999, the median wage did not surpass the 1989 level until mid-1999, and it remains substantially below the median wage reached in 1973 when the downturn in wages began. In 1999, the average wage increase of 3.6 percent (not adjusted for inflation) was considerably lower than it was during similarly tight labor markets in the 1960s and early 1970s (Mishel, Bernstein and Schmitt, 2000; *The Economist*, 2000).

These limited wage gains have also had little impact on reducing poverty levels among the working poor. As the Economic Policy Institute reports "in 1998, 29 percent of all workers were in jobs paying poverty-level wages, a larger share than in the past" (EPI, 2000a:1).

As reported by the Bureau of Labor Statistics, the percent change in real weekly earnings for all industries increased faster than the percent change in real hourly earnings over the last decade (BLS, 1993-1999). Thus, to keep their real wages rising, even at modest levels, American workers are having to work longer hours and more overtime.

According to the International Labor Organization, American workers now lead the industrialized world in hours worked, with the average American reporting that he or she worked 83 more hours, or 4 percent, more than he or she did in 1980 (Olson, 1999). Families, in particular, are working harder to sustain their income, working on average 247 more hours, approximately six more week per year than they worked in 1989 (EPI, 2000b).

More Americans are also working without benefits as employers fail to offer health insurance and other benefits to certain classes of employees. A recent survey of 5,000 Americans found that 19 percent of working adult Americans lack health insurance and 32 percent of Americans with incomes less than $35,000 per year are uninsured (Williams et al., 1999). The share of the work force receiving employer-sponsored health insurance fell from 80 percent in 1979 to 75 percent in 1998, while in 1998 just 49 percent of workers fell under an employer-sponsored pension plan (Mishel, Bernstein, and Schmitt, 1999).

Why are American workers working longer hours, getting fewer benefits, and failing to recoup past wage losses in such a strong economy? As Federal Reserve Chair Alan Greenspan explained in his testimony before the Senate Banking Committee in February 1997, our "sustainable economic expansion" is thanks, in large part, to "atypical restraint on compensation increases [which] appears to be mainly the consequence of greater worker insecurity" (Greenspan, 1997: 2). Greenspan's fellow Federal Reserve Board member, Laurence H. Meyer, explains Greenspan's argument:

> According to this theory, corporate restructuring, globalization, and technological change have increased workers' insecurity about their jobs. As a result, workers have been willing to accept some restraint on their real wages in order to increase

> their prospects of remaining employed, leading to a more moderate rate of increase in wages than would otherwise have occurred at any given rate of unemployment (Meyer, 1997:10).

Thus, in the midst of the economic boom, for the last two years "Work Trends Surveys" conducted by the John J. Heldrich Center for Workforce Development at Rutgers University and the Center for Survey Research Analysis at the University of Connecticut have found that nearly nine out of every ten Americans report that they are concerned about job security for workers currently employed and eight out of every ten Americans are concerned about employment prospects for the next generation (Van Horn, 2000). Similar studies conducted by the Chicago-based International Survey Research group found that workers today are three times more insecure about losing their jobs in the current economic boom than they were in the depths of the 1980-81 recession (Belton, 1999).

While there has been only limited research on the nature and root cause of persistent worker insecurity in a period of economic prosperity, there is increasing evidence that the persistence of this uneasiness among American workers is in large part a function of rapid increases in the extent and frequency of capital mobility and the corporate restructuring and employment upheaval that follows in its wake (*The Economist*, 2000; Belton, 1999).

The statistics on what *New York Times* business columnist Louis Uchitelle calls the "shifting workplace" are staggering (Uchitelle, 2000: A1). In the first five years since the North American Free Trade Agreement (NAFTA) was passed in 1994, the Economic Policy Institute estimates that more than 440,000 U.S. jobs were lost to Canada and Mexico (Scott, 1999). Meanwhile, the *Wall Street Journal* estimates that U.S.-based multinationals have hired 600,000 workers in plants in Mexico since NAFTA went into effect (Millman, 1999). According to U.S.

Department of Commerce reports, in 1999 alone a total of 341,000 manufacturing jobs were lost in the U.S. (O'Meara, 2000).

Foreign direct investment (FDI) has also skyrocketed in the last decade.[1] According to data from the Organization for Economic Cooperation and Development (OECD) released this year, cross-border mergers and acquisitions worldwide have increased fivefold since 1990. FDI by U.S.-based multinationals, primarily in the form of mergers with and acquisitions of foreign companies and operations, reached $122 billion, three times the FDI by U.S.-based multinationals in 1991. During the same period, the direct investment of foreign-based multinationals in U.S. companies and operations increased to $189 billion, more than seven times what it was in 1991 (OECD, 2000). Within the U.S., jobs and companies are moving as well. According to the Brandow Company's *U.S. Interstate Business Migration Report*, over the three-year period from 1996 to 1999 "16,728 firms representing more than 517,000 jobs relocated between states" and "about six times that number probably relocated to new county jurisdictions inside their home states" (The Brandow Company, 1999: 1).

A significant portion of this job loss and dislocation can be directly traced to changes in trade policy and the soaring trade deficits that have followed. At the end of 1999 the U.S. trade deficit reached $264,971 billion. This is a 38 percent increase over the trade deficit in 1998 and more than double the $101,718 billion trade deficit for 1991 (U.S. Census Bureau, 1999). Counter to claims that trade has been a driving force in creating millions of new jobs since the

[1]By foreign direct investment (FDI) we mean the investment in firms in one nation by a multinational corporation based in another nation including mergers and acquisitions, capital expansion, and new technology.

early 1990s, EPI economist Robert Scott argues that, once we take imports into consideration, the effect of trade on job growth in the U.S. in the last decade has been negative, not positive.

> Trade includes imports as well as exports. Looking at exports while ignoring the effects of imports is like trying to keep score in a baseball game by adding up the runs scored by one team and ignoring those scored by the other. In this case, the score, i.e., the trade balance, is the difference between exports (which create jobs) and imports (which destroy them). If imports increase more rapidly than exports, as they have in this economic expansion, the net effect of trade will be to reduce growth and employment (Scott, 2000: 2).

Of the estimated 21 million new jobs created in the U.S. domestic economy since 1992, it is estimated that 4.1 million were created by rising exports. However, increases in imports resulted in the loss of 7.3 million jobs, for a net loss of 3.2 million jobs due to trade since 1992 (Scott, 2000).

The effect of NAFTA on trade deficits has been particularly dramatic. At the same time that gross exports increased 92 percent to Mexico and 57 percent to Canada since NAFTA went into effect in 1994, imports from Mexico increased 139 percent and imports from Canada increased 59 percent. This resulted in a net export deficit of $47.3 billion, a 169 percent increase over the export deficit between the U.S. and Mexico and Canada in 1993, and led to job losses in all fifty states and the District of Columbia totaling more than 440,000 nationwide (Scott, 1999).

Further compounding the problem of export deficits, since 1995 a growing number of imports have a high percentage of U.S. content -- parts and materials made in the U.S. Under what is called "production sharing," parts for these goods are exported by U.S. companies to Latin American, Caribbean, and Asian countries for cheaper assembly and then imported back,

either duty free or with greatly reduced tariffs, to the U.S. for sale. While more than half of the goods imported under production sharing agreements are assembled in *maquiladora* plants in Mexico, in recent years production sharing has also increased with other countries in Asia, Latin America, and the Caribbean. By 1998 the total dollar value for the U.S. content of imports had risen to more than $25 billion, dollars no longer paid to U.S. workers for final assembly and production (International Trade Commission, 1999).

International trade tends to be concentrated in the manufacturing sector where wages for jobs tied to both imports and exports tend to be significantly higher than wages for jobs in sectors of the economy such as hospitality and health care, which are not tied to international trade. As economist Robert Scott explains, this means that "the net loss of manufacturing jobs due to trade has naturally had the effect of depressing U.S. wages in this period" (Scott, 2000: 2). It is not surprising then that in 1998 polls conducted by Peter Hart Associates found that "for the first time ever, Americans say the U.S. trade deficit is the most important economic issue facing the country, more important than taxes, the federal budget deficit, and inflation. In 1993, only 7 percent of Americans thought the trade deficit was the most important economic issue facing the country, trailing unemployment, the federal deficit, and taxes" (Public Citizen, 1998: 2).

The emotional and financial havoc wreaked by this capital mobility and the trade deficits goes well beyond the thousands of individual workers whose jobs are lost each year. Every worker in America knows of plants that have shut down, companies that were bought out, or work that was outsourced as U.S. corporations migrate across the country and around the globe in search of lower and lower labor costs and higher and higher profit margins. And it is that specter of corporate migration and rapidly accelerating changes in patterns of multinational

corporate ownership and investment that has distilled the economic insecurity that Greenspan and others argue has held wage inflation in check. As Harvard economist Lawrence F. Katz told the *New York Times*, "not just greater mobility, but the threat of it helps hold down wages" (Uchitelle, 2000: A1).

Worker Insecurity, Union Organizing, and Wage Demands

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 in the uneasy terrain of America's "shifting workplaces," that same specter of capital mobility haunts the union organizing process for unorganized workers and collective bargaining over wages and benefits for workers already in unions. As I found in my 1996 study commissioned by the Labor Secretariat of the Commission for Labor Cooperation (NAALC), 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 (Bronfenbrenner, 1997).

The NAALC study found that half of all employers involved in private sector certification election campaigns threatened to shut down all or part of their operations if workers voted for a union. This number increased to 62 percent in more mobile industries such as manufacturing and communications, where the threat is more credible than it is in industries such as health care or hotels. Fifteen percent of employers actually followed through on the threat and shut down all or part of their operations after the union was voted in. Another 18 percent threatened plant shutdowns during the bargaining process for the first agreement after the union

won the election and was certified by the National Labor Relations Board (NLRB). Certification election win rates were only 33 percent and first contract rates were only 40 percent in units where employers made plant closing threats during the organizing and first contract campaigns, compared to a 47 percent election win rate and 63 percent first contract rate without plant closing threats (Bronfenbrenner, 1997).

These findings reveal that the majority of employers consistently, pervasively, and extremely effectively tell workers either directly or indirectly that if they ask for too much, or don't give concessions, or try to organize, strike, or fight for good jobs with good benefits, the company will close, move out of state, or move across the border, just as so many other plants have done before.

U.S. employers engage in these aggressive actions with little fear of significant legal penalties from the NLRB or the courts. The recently released report by Human Rights Watch on "Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards" explains,

> The reality of NLRA enforcement falls far short of its goals. Many workers who try to form and join trade unions to bargain with their employers are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized in reprisal for their exercise of the right to freedom of association . . .
>
> In the United States, labor law enforcement efforts often fail to deter unlawful conduct. When the law is applied, enervating delays and weak remedies invite continued violations. Any employer intent on resisting workers' self-organization can drag out legal proceedings for years, fearing little more than an order to post a written notice in the workplace promising not to repeat the unlawful conduct and grant back pay to a worker fired for organizing. . . . As a result, a culture of near-impunity has taken shape in much of U.S. labor law and practice (Human Rights Watch, 2000: 9).

As the past decade has made all too clear, employers do not grant wage increases simply because their companies are doing well economically. On the contrary, employers grant raises because their employees make demands and have the power in the workplace and the community to enforce those demands. If workers and unions are too afraid to hold out for raises, or if workers are too afraid to organize into unions, then wage gains become increasingly difficult to achieve.

The restraining effect of capital mobility on union organizing and bargaining serves to only further exacerbate economic insecurity among all American workers, both organized and unorganized. Economists Lawrence Katz and Alan Krueger explain:

> One reason for the increased insecurity might be the decline of unions in the United States. Union membership has fallen steadily since reaching a peak in the mid-1950s. In 1973, 24.6 percent of private-sector workers belonged to a labor union. By 1998 that rate had fallen to 9.6 [percent].
>
> In their heyday, unions had great bargaining power, increasing wages not only for their members, but also for nonmembers through the threat of unionization. . . . If workers have become more timid in their wage demands in the 1980s and 1990s, the lower level of private-sector unionization would seem a prime explanation: they lack the representation to press for wage gains (Katz and Krueger, 1999: 4).

In the 1960s, when American workers last experienced the kind of economic expansion and tight labor markets we have today, unions represented 30 percent of the workforce. Because they were concentrated in some of the nation's largest and most prosperous industries, it was union workers who were able to capitalize on the tight labor markets of that era, forcing employers to share their soaring profits and creating the dramatic union/non-union differentials

that drove employers to raise wages for unorganized workers as well (Mishel, Bernstein, and Schmitt, 1999; BLS, 1960-1970).

Today, union workers still earn 30 percent more than non-union workers, but outside of a few industries such as auto and paper, they do not represent enough of the workforce to leverage significant wage gains for their non-union counterparts (BLS, 2000). In recent years increasing numbers of unorganized workers state that they would vote for a union if an election was held in their workplace. By 1999, 43 percent of unorganized workers said they would vote for a union compared to 30 percent in 1989 (AFL-CIO, 2000). Yet when faced with the brutal and aggressive employer opposition, including plant closing threats, that has become routine in union organizing campaigns today, fewer than 500,000 of the nation's millions of unorganized workers attempt to organize a union each year, and fewer than a third of those who attempt to organize succeed in gaining union representation under a collective bargaining agreement (Bronfenbrenner, 2000a).

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 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.

When we first conducted research on plant closing threats and plant closings during organizing and first contract campaigns, NAFTA had just gone into effect and the current wave

of multinational restructuring and expansion had just escalated. Today, in the post-NAFTA climate of expanding trade agreements, skyrocketing levels of corporate migration and foreign direct investment, and burgeoning trade deficits, anecdotal evidence suggests that the percentage of plant closing threats during organizing campaigns and the percentage of actual plant closings during or in the aftermath of organizing campaigns have actually increased in the last five years. Absent updated data, however, there is no conclusive or reliable documentation for those assumptions.

Because of this lack of more recent data, in May 2000 the U.S. Trade Deficit Review Commission contracted with us to update our earlier research on employer behavior in certification and first contract campaigns, with a specific emphasis on collecting detailed data on the impact of the threat of capital mobility during the organizing process. With this information we can then examine these threats in the context of company structure and characteristics and other employer behavior during the organizing process, as well as their broader impact on U.S. worker insecurity and wages in the global economy.

Research Methods

The study is based on surveys of lead organizers from a random sample of 600 NLRB certification elections.[2] The sample is derived from data compiled by the Bureau of National

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[2]Due to the Commission's legislated reporting date of mid-November, this study focuses solely on those campaigns that actually went through to an NLRB certification election. This means that this data does not include either those units where plant closings or plant closing threats caused the union to withdraw their petitions before the election was held nor units where the plant closings or plant closing threats resulted in organizing campaigns never getting off the ground. This study also does not examine employer behavior during the first contract process because for many of the cases in the sample the union and the employer are still in the process of bargaining the first agreement.

Affairs (BNA) of all NLRB single-union certification election campaigns in units with 50 or more eligible voters[3] which took place in 1998-1999. Lead organizers in these campaigns were mailed surveys asking them a series of questions about plant closings and threats of plant closings along with data on election background, organizing environment, bargaining unit demographics, company characteristics and tactics, labor board charges and determinations, union characteristics and tactics, and election and first contract outcomes. Surveys were completed either by mail or by phone. In-depth follow-up phone interviews were also conducted for all cases where plant closings or threats of plant closings were reported by the organizers to have played a role in the organizing process.

For each case in the sample we also conducted computerized database searches to determine the parent corporation, any foreign sites or locations, the countries in which the firm's customers and suppliers are located, and the firm's global and U.S. employment totals. In addition, we used the AFL-CIO UNICORE database, financial filings, newspaper and trade journal reports, and reports from union organizers to identify whether or not there is a current collective bargaining agreement in another unit or units at the location where the representation election took place and any other units or sites of the parent corporation.

To gauge the financial condition of the publicly-held firms in the sample, we used annual and quarterly Securities and Exchange Commission reports to identify key financial indicators such as annual revenue, net income, earnings per share, and changes in these measures over the past several years. For privately-owned firms, we relied on computerized corporate and

[3]The study focuses on units with 50 or more eligible voters because data on bargaining unit demographics, company characteristics and tactics are much more difficult to reliably analyze in units with only a small number of voters.