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Pete Becker

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Memorandum and articles relating to the role of union-avoidance consultants and modern management methods, 1979

Abstract

West Coast Industrial Relations Association memo to consultants including articles: Hauser, Dedra. "The Union-Busting Hustle: Pinkertons with bats have been replaced by consultants with psychological weapons". The New Republic, 25 August 1979; Warren, James; Kelly J. Brian. "Law memo". Chicago Sun Times, 16 July 1979; "AFL-CIO Attack, On Labor Consultants". Labor Relations Reporters, 16 April 1979.

LEN SCOTT



WEST COAST
INDUSTRIAL RELATIONS ASSOCIATION, INC.

NEWPORT BEACH OFFICE • 2121 CAMPUS DRIVE • IRVINE, CALIFORNIA 92715

[714] 752-7401

TO: All Consultants
FROM: Pete Becker
SUBJECT: Newspaper Article
DATE: September 4, 1979

*file
Campaigns*

I came across an interesting article in "The New Republic" concerning Modern Management Methods and I must say it was not very complementary.

Inasmuch, as we are facing competition from this group periodically, I think the attached information will be helpful. I have also attached an article from the "Chicago Sun Times" regarding Seyfarth, Shaw, Fairweather and Geraldson.

As you will note, they are taking some heat from the unions. I am working jointly with Mr. Joe Hermann on a case in Southern California. He is our senior partner in the Los Angeles branch, which has fifteen (15) labor attorneys. He passed on some interesting information. Their firm has been taking some pressure from the unions, however, maintains an acceptable profile with the top union leaders, thus will not be as vulnerable as ourselves and Modern Management.

PJB:rt

TO: ALL S/C CONSULTANTS
CC: ONE COPY TO ALL WCIRA,
SEEA & MEMA OFFICES

S/R 4/16/79

after which the Service will issue detailed regulations, to be followed by a 60-day comment period.

The first proposal would give parties to a dispute the option of jointly submitting to FMCS a list of arbitrators or other individuals "who would be acceptable Board of Inquiry members" to both parties. Names would have to be submitted to the Service at least three months before the expiration of a contract. The Service then would make "every effort" to select BOI members from the list, although their appointment would not be guaranteed.

The second procedure, one which is now used informally by the Service, would allow parties to establish and use their own private factfinding or interest arbitration procedures, instead of a Board of Inquiry. The reasons given by parties for the use of this alternative procedure range from dissatisfaction with the time limits on BOI procedures to a preference for binding arbitration over the nonbinding BOI procedures, FMCS said.

companies big and small"—has undertaken a "deliberate, calculated campaign to destroy" the labor movement. Although consultants and industrial relations psychologists aid employers in denying workers the right to form unions, "many of today's new order of union-busters are lawyers," Donahue remarked.

He added that, "despite the fact that lawyers are bound by oath to be 'officers of the court' and to promote the primacy of law, they regularly and repeatedly counsel employers to bend the law, to flaunt the law, to ignore lawful court orders, to twist the law for personal gain." A lawyer who counsels an employer to "weed out undesirables" during an organizing campaign is an "accessory to a crime," and should be punished, Donahue declared.

CONSULTANTS

Section 203(b) of the Landrum-Griffin Act requires that those who enter into agreements with employers for the purpose of persuading employees not to exercise their right to organize and bargain collectively must file annual reports with the Labor Department disclosing the terms and conditions of those agreements. Donahue told the convention that the AFL-CIO will "seek to have the Labor Department enforce the law requiring consultants to register and make financial disclosure." He warned that those lawyers who counsel illegal actions with respect to union organizing drives will be made to account for their activities, either in the courts or before the ethics panels of local bar organizations.

At the AFL-CIO Executive Council's annual mid-winter meeting last month, the Federation announced that its National Organizing Coordinating Committee has begun a major campaign to counter the activities of the labor-management consultants which have sprung up in recent years (100 LRR 159).

Donahue commented that in less than a month, the committee has collected information on 108 firms and 125 individuals. "We are finding out what tactics they use, who profits from their advice, how much they are making and who controls them," he said. "Then we'll be better able to provide unions with materials on what to expect and how to counter the tactics of individuals and firms."

AFL-CIO Attack On Labor Consultants

Reporting and disclosure requirements of Landrum-Griffin Act should be enforced against lawyers and consultants who advise employers on how to avoid unionization, AFL-CIO says

Lawyers and consultants who advise companies on how to avoid unionization should be forced to register with the Labor Department and file financial disclosure reports as required under the Landrum-Griffin Act, according to Thomas Donahue, executive assistant to AFL-CIO President George Meany.

"Despite the fact that union-busting is a growth industry in this country, few so-called 'labor relations consultants' actually register with the Labor Department," Donahue said. "That means there are literally hundreds of lawyers and consultants running around this country, 'persuading' workers not to join unions, who are in direct violation of the law."

In an address to the convention of the Louisiana AFL-CIO in Baton Rouge, Donahue charged that the business community—in "a war unilaterally declared by



file
Union Campaign

Pinkertons with bats have been replaced by consultants with psychological weapons.

The Union-Busting Hustle

by Dedra Hauser

"Weed 'em out. Get rid of anyone who's not going to be a team player. And don't wait eight or nine months. I'd like to have a dollar for every time there's union organizing and the employer says, 'I should have gotten rid of that bastard three months ago.'"

Lawyers from the New York law firm Jackson, Lewis, Schnitzler and Krupman hammered this message home at a management seminar infiltrated by Nancy Stiefel of the National Union of Hospital and Health Care Workers. Sponsored by the New Jersey Association of Health Care Facilities, the seminar covered the current state of the art in a growing industry: union busting.

Herbert Melnick, a founder and chairman of a consulting firm called Modern Management Methods, eschews the label "union busters." An urbane, meticulously polite man, Melnick says his firm "guides companies through labor union avoidance" by helping employers communicate with workers during a union organizing campaign. "We feel it is the obligation of employers to help their workers make an informed choice about the union."

Modern Management Methods, known as 3M (but not connected to the large industrial conglomerate with the same nickname), is the largest "employee relations consulting firm" in the country, according to an internal memorandum of the Equitable Insurance Co., a 3M client. "In 1977," says the memo, "they participated in well over 100 union representation elections, compiling a success record of 98%." The memo lists Allstate, Prudential, Travelers, and Aetna as 3M clients.

Modern Management Methods participates in 30 to 35 union campaigns a month. The nine-year-old firm employs about 70 consultants and specializes in working with health care institutions, universities, banks, and insurance companies. Based in Illinois, 3M has offices in California, and recently opened a branch in London. Its consultants command per diem fees of \$500 to \$800, plus expenses. Boston University, which had half a dozen consultants working full time during a recent unionization effort, paid \$270,000 for 3M's services.

Over tea in one of New York's most elegant and expensive hotels, Herbert Melnick waxed eloquent about his firm's role as "marriage counselor" between workers and management. "We don't believe workers vote for a union. Rather they vote against management." Since a union drive is usually caused by workers'

dissatisfaction, he explained, 3M consultants help management to resolve employee complaints and communicate the strengths of existing personnel policies. In some cases, he said, "the employers may have to ask for a chance to repair their mistakes."

In helping management to orchestrate an anti-union campaign, Melnick said, 3M's "primary tool" is the front-line supervisor who directly oversees employees. At management meetings and in individual interviews, the consultants prepare supervisors to discuss union issues with their employees. "You have to make the supervisors enthusiastic about campaigning against the union," he said. If a supervisor is "recalcitrant," the consultants look for another supervisor to do the job.

Consultants from 3M teach supervisors the legal ground rules for waging an anti-union campaign. They also provide and explain the union constitution, by-laws, a record of strikes, and in some cases a union contract for supervisors to give to employees. The consultants *never* deal directly with employees.

Melnick claims that the union is a minor part of the campaigns his firm runs. "Our primary goal is to establish ongoing patterns of talking and listening between management and employees," he said. The consultants do this by setting up regular (mandatory) one-to-one meetings between supervisors and their workers. "Our philosophy is that you don't buy dignity for four cents to 10 cents an hour. Relationships buy dignity."

Supervisors, employees, labor lawyers, and union organizers sharply contradict Melnick's benign portrayal of his firm. Modern Management Methods is a main target of organized labor's campaign against union busters. Dick Wilson of the AFL-CIO said 3M's tactics "have become the sophisticated standard of the union-busting industry." The firm's goal, he says, is to create a climate of fear and confusion in the workplace, which is blamed on the union.

A typical 3M campaign begins with an anti-union letter composed by the consultants and signed by top management, according to Wilson. The letter explains that the company is one big happy family with no need for outside interference. Management makes it clear that it strongly opposes the union. In subsequent letters, management often points out that the union's ability to improve, or even maintain, working conditions depends entirely on management's willingness to negotiate. As a result of these letters, Wilson said, many employees equate support of the union with dangerous disloyalty to their employer.

Dedra Hauser is a New York writer.

The core of a 3M campaign, as Melnick said, is the mobilization of supervisors as an anti-union organizing committee. The consultants attempt to convince supervisors that a union victory would jeopardize their power and possibly their jobs. At group and individual management meetings, the consultants reportedly stress several themes: if the union wins, the supervisors will lose all of their authority to hire, fire, and discipline workers; responsibility for defeating the union rests primarily with the supervisors; if a supervisor cannot handle this job, 3M will find someone who can; supervisors who cooperate will be rewarded for their loyalty.

The consultants distribute an Employer Freedom of Speech Guide that spells out what supervisors can and cannot legally say to their employees. (Under the National Labor Relations Act, management cannot spy on, threaten, make promises to, or interrogate employees regarding their rights to organize and bargain collectively.) The consultants provide a steady stream of anti-union literature. Supervisors are instructed to hand deliver the material to each employee and discuss it, all on work time. Each supervisor has to report back to a consultant, often daily, about the reactions of employees. If a supervisor misses one employee, he or she is sent back to finish the job. There are as many as 20 to 25 meetings with each employee during a union campaign.

For the past five years, 3M has been hired by St. Elizabeth's hospital outside Boston to fight two unions that have attempted to organize employees there. Last year, after an initial defeat for the unions, the NLRB filed 38 unfair labor practice complaints against the

hospital. These included the discriminatory firing or suspension of five union activists; surveillance, isolation, interrogation, and harassment of other pro-union employees; and misrepresentation of the collective bargaining process by top management. The complaints were dropped after the hospital agreed to hold a second election in June, which the union lost by a small margin.

At the hearings, employees blamed 3M for the tenor of the campaign. A lab technician said the supervisors were "transformed into shock troops, creating an atmosphere of hysteria in the hospital."

A respiratory therapist described the consulting firm's strategy of planting false rumors. Supervisors returned from a 3M briefing and asked employees known to be talkative: "Is it true that the union is threatening to beat people up if they don't vote for the union?"

Josephine Coughlin was a gregarious and popular employee at the hospital until she began talking out in favor of the union. Overnight she found herself alone at coffee breaks and lunchtime, the victim of a whispering campaign. Within a month or so, she was transferred to an isolated part of the hospital, where her only co-worker was also a union activist.

The worst blow to the employee organizing campaign was the firing of three pro-union employees and the suspension of two others. Larry Breslow, one of the fired employees, says that although they were eventually reinstated in their jobs, their temporary removal cast a permanent pall on the employee organizing drive. "After that experience it was just harder to associate yourself with the union."

William Skerry, the executive director of St. Elizabeth's, denies the employees' charge that 3M caused the hospital to violate labor laws. "If you review these NLRB complaints, it becomes obvious that they were made up. The union deliberately created unfair labor practice charges so they could hold another election." He says the supervisors did less disciplining than usual during the campaign. "The whole thrust of 3M's advice was to have us bend over backwards not to violate the law."

Melnick of 3M says his firm warns management that by firing union activists, they are breaking the law and creating a martyr. Nancy Mills, the organizer who ran the campaign at St. Elizabeth's, disagrees. "3M coaches supervisors to justify all disciplinary actions with oral and written warnings. This makes it difficult to prove discriminatory firing."

The viciousness of 3M's campaigns in Boston led the New York State School of Industrial and Labor Relations at Cornell to ban the firm's advertisements from the school's placement bulletin boards. Michael Reid, the school's placement director, said, "I have been instructed by the administration to not post job listings for organizations that violate the school's charter to promote labor management understanding

The New American Hustler

America is still the land of opportunity, but the opportunities have changed somewhat under conditions of what some call "late capitalism." This is another article in an occasional series examining new opportunities for riches created by the post-industrial age and the mixed economy.

The principal characteristic that distinguishes these modern entrepreneurs from their counterparts of a century ago is that what they are selling tends to be amorphous and ephemeral, and several steps removed from the production of goods and services that add directly to the national prosperity. They build consulting firms, not railroads; they sell words, not steel. Conservatives commenting on this phenomenon sometimes use the term "new class." They suggest that this class is composed of leeches on capitalism, who arrogantly reject its values and work to subvert it, even while they enjoy its benefits. The accompanying article provides a counter-example.

and industrial peace."

About 2000 professionals are working in this area, according to James Farmer, executive director of the Coalition of American Public Employees. The National Association of Manufacturers is trying to standardize and disseminate union-busting strategies. Two years ago NAM formed the Council on Union Free Environment, an information clearinghouse and "secure forum" for the exchange of ideas. In addition to holding its own programs, CUE provides critiques and summaries of anti-union seminars and training programs, and maintains a bibliography and index of the available literature.

Seminars are a major promotional vehicle for union busters. For \$595, a manager can attend a three-day seminar put on by a firm called Advanced Management Research, about how to maintain a non-union status. The program is held in three different cities each month. This seminar company also offers an in-house training program at a negotiable price, and sells a newsletter about avoiding unions. Lawyers from Jackson, Lewis serve as faculty lecturers, accompanied by other experts.

Another firm, Executive Enterprises Inc., offers an anti-union seminar in a different city every month. Its two-day, \$450-program features a star of the union-busting industry, Charles Hughes. Billed as "one of the best known behavioral scientists working with industry," Hughes peddles a system of behavioral modification that allegedly discourages employees from supporting a union. His system is based on an elaborate method of classifying employees by their value systems, using categories such as "tribalistic," "manipulative," and "conformist." Like most union busters, Hughes recommends the use of "carrot and stick" incentives to discourage interest in a union.

A subject of growing popularity on the seminar circuit is decertification. This is a legal process by which workers can oust a union that already represents them. Under the National Labor Relations Act, management is strictly forbidden to initiate a decertification petition. Lawyers are finding ways to circumvent this restriction. Charles Baird of the Chicago law firm of Seyfarth, Shaw, Fairweather & Geraldson told the audience at a seminar sponsored by the Illinois Chamber of Commerce: "This [decertification] is a forbidden subject. We're not supposed to care, but obviously we do. So this is off the record. If you say we said it, we didn't say it." Baird warned the audience against explicitly sponsoring decertification petitions. "We'll talk about how to set it up so the employee comes in and asks the all important question on his own. . . ."

Firms like Seyfarth, Shaw are reconsidering "management strikes" to set the stage for decertification, according to Dick Wilson of the AFL-CIO. Their strategy is purposely to bring about an impasse in collective bargaining. This forces employees out on

strikes, which are frequently long and very costly to the union. Seyfarth, Shaw has written a 200-page strike manual on how to conduct a strike that weakens the union. (This firm represents the *Washington Post* in labor controversies.)

These strategies have been effective. The number of decertification elections quadrupled between 1966 and 1978. Last year, unions lost representation rights in three out of four of these decertification elections.

The labor movement achieved its first major victory against 3M last year at Boston University, where the Distributive Workers of America won the right to represent more than 800 employees. The union made 3M's presence a major issue in its organizing drive. "We took a lot of the mystery and menace out of 3M's line of attack," said Barbara Rahke, who ran the Boston University campaign. The union published a Boston University invoice that listed daily consulting fees of \$500 to \$800, and a monthly fee of more than \$16,000 for five consultants. A supervisor who requested anonymity said, "BU's credibility was strained after they hired these union busters. After a while, even the more conservative supervisors couldn't blame their employees for wanting a union."

At Corning Hospital in upstate New York, the supervisors revolted against 3M's tactics, leading to the dismissal of the 3M consultant during the middle of an organizing campaign, according to pro- and anti-union sources. The union eventually lost the election after a hospital campaign that culminated with a teary speech by a top administrator asking the employees for a second chance.

Robert Swinnerton, the top administrator at Corning, denied that 3M was fired, but answered "No comment," to all other questions regarding the consultant. Roberta Smith, who was president of Corning Hospital's board of trustees during the campaign, said, "It was an unhappy situation, which left many bad feelings. I don't care to discuss it."

Pro- and anti-union sources separately recounted the following events that took place in the four weeks that a 3M consultant worked at the hospital: three supervisory nurses were fired; a top administrator admitted herself to the hospital for "exhaustion"; another administrator requested a leave of absence; and supervisors threatened a wildcat walkout in protest against the consultant and the hospital's executive director. "3M had a devastating impact on the hospital," one head nurse said.

The 3M consultant left Corning six months ago, but a nurse said the tension has lingered. "I would quit the hospital if he came back today. I would never, never, never subject myself to that kind of intimidation again."

When Americans first tried to organize unions, companies called in the state militia and recruited thugs to shoot down union activists. Today they hire high-priced lawyers and consultants instead to wage legal and psychological warfare against unions.

Law memo/

By James Warren and Brian J. Kelly

In the hard-nosed world of labor law, there's a thin line between advising a client how to deal tough with a union and advising him how to break that union. Some unions claim that Chicago's Seyfarth, Shaw, Fairweather and Geraldson has been tottering on the edge of that line.

The firm is advising its management clients to take an aggressive stance in dealing with unions. In the process, it has exposed itself to a barrage of criticism from union organizers and bargainers who contend that the firm is a leading "union busting" consultant—criticism which Seyfarth denies.

Labor law has never been a nice guy's business. It has always required the kind of grueling, sweaty bargaining sessions where the pin-stripe coats come off and the sleeves are rolled up as the hour gets late.

In the past few years, things have gotten even less gentlemanly as economic conditions prod management and labor to fight fiercely for every penny. When management wants to know how to take on the union, it increasingly seeks a handful of law firms and labor consultants, led by Seyfarth, the nation's largest labor law firm.

Founded in the mid-1940s during the Taft-Hartley labor reform era, the 140-member firm has prospered in the past five years—due both to labor strife and the proliferation of labor laws. The firm has more than doubled in size, and opened offices in Washington, New York, Los Angeles and Miami as companies across the country clamor for its services. The Seyfarth style has been much copied, to the point that AFL-CIO organizers such as Dick Wilson see the "Seyfarth influence" in a majority of organizing efforts or disputes.

He claims that partners such as R. Theodore Clark Jr. and James Baird have pioneered techniques for neutralizing unions or decertifying them. "They teach people how to manage a strike," said Wilson. "They tell them just what kinds of things they can get away with. I don't see that as legal advice."

Some of this advice has resulted in bitter disputes. It was Seyfarth which helped Tenneco break a shipbuilders strike in Newport News, Va., with what has been called classic management strategy. Across the continent, it helped Tenneco fight a farmworkers strike in the California lettuce fields. When the Washington Post decided to take on its pressmen's union, it turned to Seyfarth, which advised the company through a successful strike.

It's big in newspaper representation, having advised management in strikes in New York, St. Louis, Madison, Wisc., and Wilkes-Barre, Pa. In addition, the Newspaper Guild says it's on retainer to such papers as The Sun-Times, Philadelphia Inquirer, Seattle Times and Detroit News as well as smaller operations such as the Dover (N.J.) Advance.

According to union officials, Seyfarth is really at its best in the area of municipal government. Union power has expanded phenomenally in the last decade and, one leading labor law professor contends, inexperienced municipal negotiators frequently "gave away the shop" to unions. Now, firms like Seyfarth are called in by beleaguered officials.

"They come in to situations where the employers are usually not that experienced so they end up running the show," said Wilson. Seyfarth says it does not act as consultants and print literature for their clients. Wilson implies that's not true, saying "whenever they show up, the literature suddenly seems to get professional."

It was Seyfarth which advised the town of Normal in last year's firefighters strike that ended up with the entire fire department spending 42 days in jail. Normal Mayor Richard Godfrey said he was "reasonably pleased with their work—on a scale of one to 10, I'd put them at six or seven. They did give us some advice that I thought was inappropriate."

Seyfarth was also involved in such actions as the 60-day St. Louis teachers strike, last summer's City Colleges teachers strike here and a long list of Illinois municipal strikes including Danville and Joliet.

What has surprised union organizers is the recent aggressive shift in Seyfarth's strategy. "Since the failure of the labor law reform bills, management thinks they've got us on the run and people like Seyfarth really press that advantage," said Rex Hardesty, an editor with the AFL-CIO.

Unions claim Seyfarth advises management not to bargain in good faith and to take strikes. The firm dismisses the union criticism as "without foundation." Senior partner Richard Ostrow claims unions are lumping his firm with a number of anti-union consultants, "and we've got nothing to do with those consultants. We just practice law."

He continued: "We haven't busted a union in any city that I'm aware of. And remember, it's the union that chooses to go out on strike." Ostrow notes that in recent years unions have been losing ground and that "this may give them the impetus to criticize us."

Yet even the unions don't have all bad words for the firm. "Only a couple of the guys at Seyfarth are bastards, the others we get along with fine," said the general counsel of a major international union.

And some neutral observers are also complimentary. Former New York Times reporter A.H. Raskin, an eminent labor analyst, says Seyfarth is "damn good. It's a highly professional firm."