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### The Pressure is On: Organizing Without the NLRB

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## The Pressure is On: Organizing Without the NLRB

### Abstract

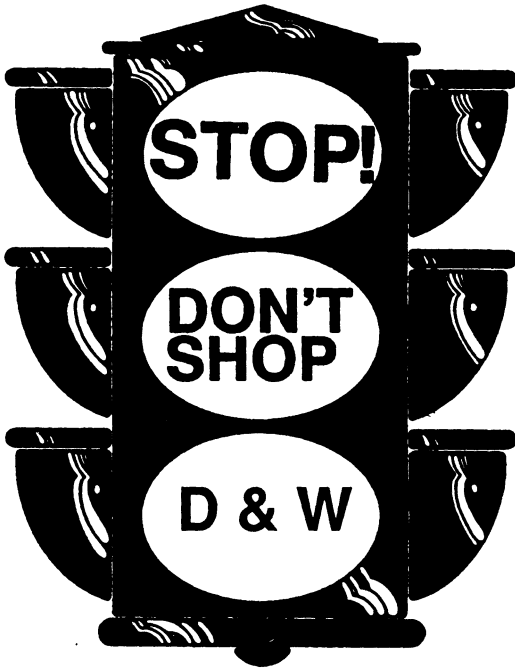
[Excerpt] Ask the typical union organizer to define success and he or she will probably say, "Winning elections." Many labor organizations, including ours, have found out that winning a National Labor Relations Board (NLRB) election does not mean that the workers involved are going to receive the benefits of a union contract. One third of representation elections won by unions do not result in a collective bargaining agreement.

In fact, just winning an NLRB election is a tough proposition. In 1990 the union win rate was only 47.6%. Even more alarming is the drop in the number of elections held in 1990 – 3,423, the lowest since 1984. In the 1960s and '70s, there were twice this number of elections each year. This trend is truly alarming when you consider that at the end of 1990 unions represented only 16.1% of the nation's workforce – quite a drop from 35% of workers with a union contract in the mid-1950s. What can the labor movement do to reverse the trend of fewer and fewer workers being represented by unions?

### Keywords

union organizing, NLRB, elections, collective bargaining agreements

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# The Pressure is On:

## Organizing Without the NLRB

■ *Joe Crump*

Ask the typical union organizer to define success and he or she will probably say, "Winning elections." Many labor organizations, including ours, have found out that winning a National Labor Relations Board (NLRB) election does not mean that the workers involved are going to receive the benefits of a union contract. One third of representation elections won by unions do not result in a collective bargaining agreement.

In fact, just winning an NLRB election is a tough proposition. In 1990 the union win rate was only 47.6%. Even more alarming is the drop in the number of elections held in 1990—3,423, the lowest since 1984. In the 1960s and '70s, there were twice this number of elections each year. This trend is truly alarming when you consider that at the end of 1990 unions represented only 16.1% of the nation's workforce—quite a drop from 35% of workers with a union contract in the mid-1950s. What can the labor movement do to reverse the trend of fewer and fewer workers being represented by unions?

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■ *Joe Crump is Secretary-Treasurer of United Food and Commercial Workers Local 951, based in Grand Rapids, Michigan.*

## **THE UFCW WAY: AVOIDING THE BOARD**

We need to start by redefining what we believe successful organizing to be. It is not "winning NLRB elections." Since 1987 the United Food & Commercial Workers (UFCW) has adhered to a publicly stated policy of avoiding the use of NLRB elections as a way to organize workers. This position is based on the belief that since the beginning of the 1980s, the NLRB has become, for the most part, an advocate of management's rights and does everything it can to frustrate workers' attempts to unionize.

The UFCW policy of not using the NLRB has produced favorable results. In a period when most unions are losing members, the UFCW is experiencing membership gains. More specifically, from 1987 to 1990 the UFCW organized 417,085 workers. Only 7.4% of these joined our union through a Board election.

My local, UFCW 951 in Michigan, subscribes to this policy by defining successful organizing in one of two ways: either a ratified, signed collective bargaining agreement with a previously non-union employer or a significant curtailment of a nonunion operator's business, including shutting the business down. Neither of these outcomes will occur by relying on the NLRB.

Our definition of successful organizing came about after we lost an NLRB election in 1988 at a supermarket chain in Kalamazoo, Michigan, called Family Foods. During the six-month campaign, Family had carried out the typical anti-union strategy. Union supporters were singled out for various types of "special treatment"—discharge, threats, refusals to promote or transfer, surveillance, coercion, etc. We, of course, filed numerous charges with the NLRB, and the Board eventually ruled in our favor on virtually every violation we said the employer committed. The NLRB ordered another election and the employer appealed the Board's decision. In the meantime, as the days and months dragged on, some committee members quit and others were co-opted by management. The high turnover typical of the supermarket industry hurt us too.

We realized that the traditional method of organizing wasn't going to work, but we didn't want to walk away from this campaign. After thorough research, we decided to launch a consumer boycott. We took our message to various groups that made up part of Family's customer base and asked them not to patronize a corporate "law breaker."

When talking to senior citizens' groups, the issue of siphoning off excess pension funds was very effective. Information on how to spot and receive rebates for Family's violations of the state item

pricing laws went over well with shoppers on a budget. The absence of minorities in management positions and the termination of a long-term minority employee was used to galvanize support in the African-American community. Of course, many area local unions supported the boycott strictly because of the unfair labor practices, but we found that labor support is not automatic. We had to "sell" other unions' members on the boycott. Just because union officers say they are with you doesn't mean the bulk of their members are.

After a three-year struggle, the battle with Family Foods is over. Do we represent the employees? No. The company went out of business. The good news is that some of the stores were purchased by companies already under a Local 951 contract. A couple stores are empty, but I am sure that many of their former patrons are now shopping in unionized stores. Perhaps even more important is the message that has been sent to nonunion competitors: There is no "free lunch" in our jurisdiction.

### **ORGANIZE EMPLOYERS, NOT EMPLOYEES**

Nonunion employers have no fear of violating the National Labor Relations Act. They have two advantages—little or no enforcement of the law and, when they occasionally get caught, penalties that are laughable. It's no wonder that the standard advice most union-busters give their clients is to break the law. The almost guaranteed reward of a "union free environment" is certainly worth the possibility of a posting on the wall, a re-run election or a few dollars in back pay. As with most things in business, thwarting workers' organizing drives is a matter of money, not morals. Nonunion employers are convinced that it is cheaper to oppose unionization than it is to provide fair and equitable working conditions for their employees through a collective bargaining agreement.

Nonunion employees, on the other hand, have a lot to lose by signing an NLRB authorization card—like their jobs, their very livelihoods. Though we say the Labor Relations Act protects them, we know it often doesn't.

The need for a change in our mindset about organizing is clear. Who do we really need to convince of the advantages of being union? Employees or employers?

Organizing is war. The objective is to convince employers to do something that they do not want to do. That means a fight. If you don't have a war mentality, your chances of success are limited. Organizing without the NLRB means putting enough pressure on

employers, costing them enough time, energy and money to either eliminate them or get them to surrender to the union. This is what the UFCW calls a pressure campaign.

Before beginning a pressure campaign, a power structure analysis must be done. Simply put, a power structure analysis is the process of determining the strengths and weaknesses of your opponent.

The power structure of any corporation is a series of relationships with people and organizations outside the company. No employer operates in a vacuum. If you can have an impact on enough of these relationships in ways that adversely affect the company, you may find that a violently anti-union employer will decide that being fair to workers isn't such a bad way to conduct business after all.

If you think of the targeted employer as being the sun and all the entities that have dealings with that employer as being planets surrounding the sun, then you have a model of what a corporate power structure looks like.

### Power Structure Analysis



Among the planets revolving around this corporate sun are: suppliers/vendors, creditors/lenders, shareholders, owners, board of directors, competitors, analysts, the media, the courts, regulatory agencies, consumers, politicians, community groups, labor organizations, churches, and the employees of the company.

Which of these various entities is the employer least concerned about? Which is the lowest priority? The answer in most cases is the employees. Who do we spend the most time and resources on during an NLRB-style organizing drive? The answer: employees.

Let's take a look at employees for a moment. What do employees want? Do they feel free to change their minds about what they want? At any time? For any reason? Do they all want the same things? Are they influenced throughout the organizing process? Does a commitment to sign an authorization card mean that the card is going to be signed? Is a signed authorization card a guarantee of a "yes" vote on election day? Is a vote in favor of unionization an indication that a majority of the workers are "with" the union and will make whatever sacrifice is necessary to prevail against their employer?

Now let's take a look at employers. Question: What do employers want? Answer: Money. Call it profit, net income, return on investment or any other fancy term, but the bottom line for virtually all American businesses is getting as much hard cold cash as they can lay their hands on. Will that ever change? Probably not in our lifetimes!

Conclusions: Employees are complex and unpredictable. Employers are simple and predictable. We can use these conclusions to our advantage in a pressure campaign.

## **ELEMENTS OF A PRESSURE CAMPAIGN**

Pressure campaigns to convince anti-union employers to "do the right thing" should be viewed as an alternative to, not a replacement for, traditional organizing.

When we are lucky enough to find "hot shops," then it makes sense to develop rank-and-file shop committees who sign up their co-workers, pass out educational leaflets, go on house calls, take on the boss in captive audience meetings, and take on whatever leadership roles are required. But when a nonunion competitor is beating your brains out and the union employers are looking for concessions or, worse, going out of business, then I don't believe we have the luxury of sitting around and hoping that employees trapped in a "union free environment" will come knocking on our door looking for a solution to their problems.



If organizing is the lifeblood of the labor movement, then we have to create our own reality, by making our own breaks. And that means focusing on employers and making them pay for operating nonunion.

Pressure campaigns are complex and multifaceted, and each campaign is different from every other because it must be developed around the strengths and weaknesses of a targeted employer. I can do little more here than outline some of the key elements of such a campaign.

### **Research:**

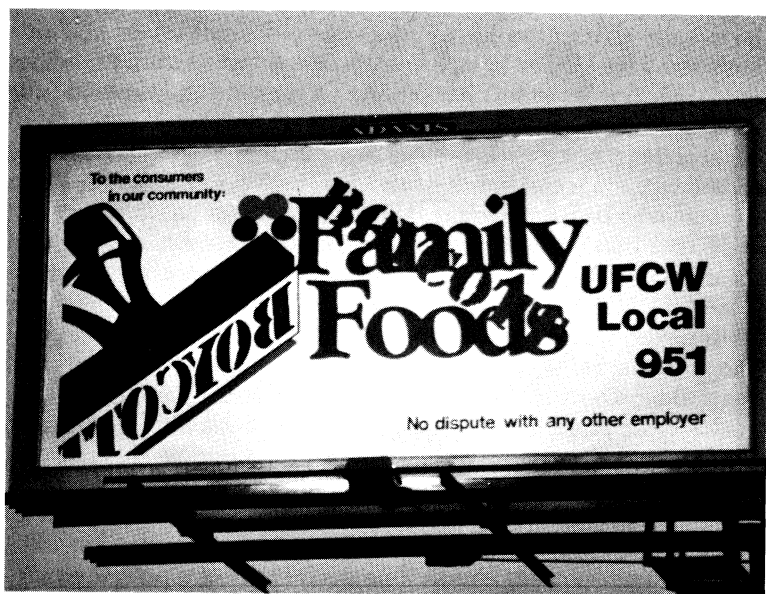
You can't mount a successful pressure campaign without good, solid, ongoing, comprehensive research. If you are going to shirk or shortcut in any area, don't do it in this one. You have to know everything that it is possible to know about a company in order to identify its strengths and weaknesses, develop a plan of attack, and effectively implement the plan. A power structure analysis cannot be formulated without the information that comes from good research.

What is the targeted employer's source of capital? Are they profitable? What's their market share? Who are their suppliers? Customers? Officers? What laws or regulations must the employer comply with? Are they in compliance? What's the employer's image in the community? Is image important to their business? Are lawsuits pending? Who are the plaintiffs? Who is the employer connected to in the community? Who is the competition? Is the employer politically active? With whom? Are charitable contributions made? To whom? These questions and many others need to be answered before any action is taken. Research doesn't end when the campaign begins; it should be continuous. But it needs to be thorough from the start.

### **Using All the Laws:**

Virtually all companies are wholesale law breakers. Even "good" ones, even organized ones. Talk about the law to the average organizer, and he or she will cite you chapter and verse of the National Labor Relations Act. What about all the other laws and regulations employers are supposed to follow?

There's civil rights laws and wage-and-hour laws. Safety-and-health laws and right-to-know. Unemployment compensation and workers compensation requirements, and Social Security, plant closing and pension laws. There's public health and environmental laws. And at the local level, there's zoning and fire codes and various ordinances. At all levels, there are tax laws.



Why are most employers so cavalier about violating the law? Because they know their competition is doing the same thing. If a company complies with every single regulation and its competitors don't, the extra cost will hurt profitability, curtail expansion and maybe even put it out of business. Besides, what are the chances of getting caught? Enforcement of most corporate laws depends on knowledgeable, fearless employees who know their rights or on government agencies with aggressive inspectors who have a manageable workload. Most employers correctly assume that the risks of detection aren't that high. A pressure campaign can exploit this situation.

In 1987 the UFCW won an NLRB election at Delta Pride Catfish Farm in Mississippi in spite of the typical unfair labor practices that occurred during the campaign. The company wasn't very concerned about the NLRB complaints and both the company and the union knew there wasn't support for a strike. The employer's strategy was to drag out "negotiations" for a year, show the employees how fruitless their attempt to unionize was, and eventually have the union decertified. This strategy was derailed by the union's creative use of another law.

Workers at Delta Pride were required to be at work at a specific starting time and then wait anywhere from one to three hours for the fish to be delivered for processing. They were not paid during this waiting period. The union developed a form that could

be used to determine each employee's potential losses and that authorized the UFCW to represent the employee in a lawsuit under the Fair Labor Standards Act (FLSA). Organizers and rank-and-file committee members were dispatched to get the forms signed by all 1,200 active employees and by as many former employees as could be located. A special handbill and mailing was distributed. Even workers who had opposed the union signed up for the "free money."

Under FLSA you can go back two years to collect lost pay and three years if the violation is deemed willful. Some 1,800 people signed the UFCW forms: 1,800 times 12 hours, times \$6 an hour (at time-and-a-half), times 150 weeks. Wow, that's a lot of catfish! The potential liability was estimated at several million dollars. All of a sudden Delta Pride no longer wanted to stall, and a fair contract for the employees seemed like good business. The cost of wage increases, benefits and fair working conditions was cheaper than retaining an army of lawyers and paying damages.

### **Consumer Boycotts:**

A consumer boycott can be a powerful part of a pressure campaign. It can be particularly effective in the retail food industry because of the union's ability to have direct and sometimes face-to-face contact with the customer. In retail food, with its miniscule profit margins and its need for high volume and repeat business, the customer is worshipped. If a supermarket loses 10% of its customers, its profitability is probably eliminated. Any more than that over a protracted period, and it's out of business.

Consumer boycotts are sometimes referred to as "reverse marketing." The idea is to give customers as many reasons as possible why they should not patronize the targeted employer. In order to do this effectively, the union must communicate in as many ways as possible. Because consumers have different backgrounds and attitudes, the messages the union sends must be diverse and multifaceted as well. Unless you are lucky enough to be in a heavily unionized marketing area, the theme "don't shop here because it's nonunion" is the least effective appeal. Instead of communicating what your problem is and what the customer can do to help you, the message should be why it is in the customer's or the community's interest for this employer not to be patronized.

UFCW Local 1 in Utica, New York, conducted a campaign around the issue of short-weighted food items like meat and produce, and also questioned the store's use of publicly funded Industrial Revenue Bonds. Customers were provided with a special form, "Help Stop Food Shopper Rip-Offs," and were asked to send them to the Governor's Office and the Consumer Affairs Com-

mittee of the state assembly.

After researching the employer and deciding what issues have a chance of appealing to customers, the most effective way of communicating with them must be determined, given the financial and people-power constraints of the union. Television may be the most effective medium, but unless you have a lot of money, purchased TV time is out of the question. However, if you dig up some "juicy" information on a targeted employer's business practices, a local TV investigative reporter may be interested in revealing the details to the viewing public.

Paid radio advertising is surprisingly cost effective. We have purchased "drive time" 60-second spots for as little as \$39 per spot in a town of 100,000 people. A UFCW local in a small town in Missouri did an entire radio campaign for less than \$400. Radio also gives you the ability to target specific audiences.

A tactic we call telepicketing can also be part of the customer communications process. This is where you really need your members to be part of the campaign. In the supermarket industry, the typical marketing area is in a 4.4-mile radius around the store. That is a lot of people to contact, so you need lots of volunteers working the phones over a relatively short period of time for maximum impact. The idea is to talk to as many people in the marketing area as possible to convince them to consider shopping elsewhere.



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**F**or those of you who are nostalgic about the "good old days" of organizing or believe that the only way to be successful is through a "fair" NLRB, I recently ran across some information that you might find enlightening. In 1937 more than 3 million workers joined unions in this country. Of those, only 2,470 used NLRB elections as the vehicle to gain their collective bargaining rights. The rest employed "other means."

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Getting invited to speak to various civic, church, neighborhood, union and consumer groups is a time-consuming, but inexpensive way to get your message out. Addressing groups that your members and their families belong to is a good place to start. Membership participation is an obvious necessity for this approach also.

All of these communication methods are designed to influence customers before they make the decision to go to a store. Picketing and handbilling should be used to educate and dissuade customers

who are already at the employer's place of business.

Because a successful consumer boycott requires support from the community, if you haven't already done so, get involved with community groups now. Don't wait for a crisis to be your catalyst. It's a lot easier to go to friends for help rather than strangers, no matter how just your cause is.

### **PRESSURE CAMPAIGN ADVANTAGES**

One of the concerns organizers might have about waging economic war on an unorganized company is that it might turn employees against the union. I look at it this way: If you had massive employee support, you probably would be conducting a traditional organizing campaign. Additionally, it always amazes me how easy it is to talk to employees about the benefits of unionization when their employer has adopted and enforces a position of neutrality on the "union question."

Besides, the advantages of a pressure campaign in today's environment overwhelm whatever problems you might think of:

- 1) They get the attention of the employers you already have under contract. You can show your unionized employers that you have the ability to make war without having to kill the goose that lays the golden eggs. Plus they love to see their nonunion competitors having such a tough time.
- 2) It's an opportunity to build membership participation in the local union—through handbilling, rallies, picketing, tele-picketing, letter writing, assisting with research, attending stockholder meetings, contacting politicians and community groups and other unions, and all the tasks that potentially need to be carried out as part of a pressure campaign. It is also an effective way to educate the rank-and-file about the reality of the marketplace.
- 3) You don't have to wait for a "hot shop" to organize. You create your own reality by determining what nonunion company is hurting your organized shops and by taking action to protect your members' working conditions. It allows you to be proactive rather than reactive. You aren't forced to wait for the "right time."
- 4) It can help prevent concessionary bargaining by:
  - a) causing the nonunion employer to spend unouidgetted money to fight you. (Sometimes they even give out wage-and-benefit increases in an attempt to keep the union out.)

- b) curtailing the unorganized employer's expansion, causing reductions in existing operations, or even putting them out of business.
- 5) If you research and target properly, it's cheaper in the long run.
  - 6) You can avoid subjecting union supporters to the "ultimate test" of risking their jobs in order to win the union.
  - 7) You don't need a majority or even 30% support among the employees. A few people inside and outside are all that's necessary to be successful. (Note: Fired employees are a great source of information. They're not afraid and they're motivated!)
  - 8) If you do get a contract, it not only benefits the new members, it makes it easier to bargain with organized employers in the same industry and it brings new resources (including an enhanced reputation) into the local union to help escalate the fight elsewhere.
  - 9) Finally, practice makes experts out of amateurs. Look at how long it took for us to become proficient at enforcing the National Labor Relations Act. We are just getting our feet wet on this type of organizing approach. Some of us are going to get very good at it.

## **CONCLUSION**

According to the AFL-CIO publication *The Changing Situation of Workers and Their Unions*, "The norm is that unions now face employers who are bent on avoiding unionization at all costs and who are left largely free to do so by a law that has proven to be impotent and a Labor Board that is inert." Pressuring nonunion employers to "do the right thing" by making it more costly to be unfair to their employees than it is to provide decent wages and working conditions is one way to counter the decline in organizing by most American unions.

For those of you who are nostalgic about the "good old days" of organizing or believe that the only way to be successful is through a "fair" NLRB, I recently ran across some information that you might find enlightening. In 1937 more than 3 million workers joined unions in this country. Of those, only 2,470 used NLRB elections as the vehicle to gain their collective bargaining rights. The rest employed "other means." It worked then, and it can and does work now. ■