

UNIONIZATION ATTEMPTS IN SMALL ENTERPRISES. By Morton Gitelman.<sup>1</sup> Chicago: Callaghan & Co., 1963. Pp. iii, 203.

This work, prepared under the auspices of the Small Business Studies Program, Duke University School of Law, is designed to acquaint the small businessman and his attorney with the important practical and legal problems which arise in the course of a union organizational campaign.

The necessity for such a book cannot be gainsaid. Virtually all sizeable businesses are now unionized. As a result, small concerns are increasingly the target of organizational movements. Lack of experience, however, renders the small businessman ill equipped to evaluate and effectively combat an organizational campaign without violating applicable law. Since such violations may deprive the employer of his right to require an election by secret ballot on the representation issue, it is obvious that some understanding of these problems must precede a decision to resist the organizational effort.

In a brief introductory chapter, Gitelman enumerates the various social and economic factors which, in his view, influence the receptiveness of individual employees to the cause of unionism. Here he makes the valid but often overlooked observation that contacts between unions and employees are initiated more often than not *by the employees themselves*—a fact which he contends is less frequently attributable to economic dissatisfaction than to the desire of each employee for job security and non-discriminatory treatment.

The organizational techniques used by the union to stress such “rough spots” in the employer-employee relationship are the subject of an illuminating exposition by the author. The typical union organizer today, Gitelman notes, is a trained professional, a combination actor-salesman who knows how to evaluate the human equation and, hence, how to assemble a nucleus of key employees whose efforts are essential to the success of the organizational campaign. Obviously, an adequate comprehension of the organizer’s *modus operandi* is important to an effective employer campaign.

When the employer learns of an organizational campaign, he is faced with what may be a most difficult decision—should he resist or desist? Gitelman briefly examines the various social, economic and

---

<sup>1</sup>Assistant Professor of Law, University of Denver.

legal factors which must be considered in the synthesis essential to this determination. If the threshold question is answered affirmatively—does the National Labor Relations Act apply?—additional complications emerge. In this connection the author includes a lucid discussion of the *Joy*<sup>2</sup> recognition doctrine under which an employer who violates the act may be required to recognize and bargain with the union without the benefit of an election to determine its majority status.

Assuming that the employer's interest is best served by countering the union drive with an organizational campaign of his own, what steps can and should he take to that end? The main emphasis of the work is directed to this important subject. According to Gitelman, the employer should (1) determine the areas of dissatisfaction and take immediate corrective measures, thereby gaining the initiative while demonstrating a sincere willingness to admit and correct his mistakes; (2) attempt to demonstrate to his employees that they are better off without a union, rather than circulate "negative" predictions of economic disaster if the union were successful; and (3) educate his supervisory forces with respect to their role in the employer's campaign, because the supervisors are only one step removed from the employees themselves, and particularly because the employer is legally responsible for his supervisors' statements and acts toward the union. At least the first two of these suggestions are questionable. In many situations remedial action by the employer after the union campaign has commenced may be construed as a sign of weakness or fear and an indication of strength on the part of the union. Furthermore, Gitelman's reservations concerning the merits of negative arguments seem unwarranted, at least where economic injury may in fact be a likely prospect.<sup>3</sup>

The complex legal problems faced in the course of the employer's campaign are discussed by the author within the context of the National Labor Relation Act's unfair labor practice provisions. These provisions forbid employer threats and coercion,<sup>4</sup> discrimination

---

<sup>2</sup> *Joy Silk Mills v. NLRB*, 185 F.2d 732 (D.C. Cir. 1950), *cert denied*, 341 U.S. 914 (1951).

<sup>3</sup> That is, in the case of a marginal company or where the union has made economic promises to the employees which the employer could not reasonably fulfill and remain competitive.

<sup>4</sup> National Labor Relations Act § 8 (a) (1), 49 Stat. 452 (1935), as amended, 29 U.S.C. § 158 (a) (1) (1958).

against employees for union activities,<sup>5</sup> and interference with labor organizations.<sup>6</sup> At this point Gitelman also includes a concise discussion of the employer's right to disseminate anti-union views to his employees, pursuant to sections 8 (a) (1) and 8 (c) of the act. Typical of his approach elsewhere in the book, Gitelman's discussion of the law follows a literal and nonanalytical vein which the legal scholar may eschew but the layman and general practitioner will appreciate.

The substantive portion of the work concludes with a chapter devoted to National Labor Relations Board elections, and post-election procedures. As Gitelman indicates, a proper grasp of these matters is important for several reasons. It may enable an employer to schedule an election at the time deemed by him to be most advantageous, and he may avoid an unnecessary second battle by virtue of having done or said something during the campaign which, in the view of the Board, constitutes grounds for setting the original election aside. Gitelman provides various examples of such transgressions in this discussion.

Among other things appended to the work are a table of cases and a useful bibliography. Selected examples of organizational materials utilized by unions and companies in past campaigns are also included for illustrative purposes.

Generally speaking, Mr. Gitelman has done an excellent job in the preparation of this book. He writes perceptively but unpretentiously. His expression is precise and his material is compact and skillfully organized. The book is authoritative as well as documented by selective citations of authorities. Since there is no provision for pocket supplements, however, some aspects of his legal discussion will soon be outdated. In any event, the work is in no sense an encyclopedic guide to labor relations law and as Gitelman himself recognizes, it is *no substitute* for the judgment and experience of the labor specialist. Furthermore, calculated legal risks are part of the fabric of virtually every major employer decision during the campaign, and must be evaluated in the light of constantly changing Board and court interpretations. Obviously, therefore, a more penetrating and comprehensive legal analysis is essential to the

---

<sup>5</sup> National Labor Relations Act §§ 8 (a) (3)-(4), 49 Stat. 452-53 (1935), as amended, 29 U.S.C. §§ 158 (a) (3)-(4) (1958).

<sup>6</sup> National Labor Relations Act § 8 (a) (2), 49 Stat. 452 (1935), as amended, 29 U.S.C. § 158 (a) (2) (1958).

organizational decision-making process than can be provided by a work of this kind.

On balance, the work is a most worth-while contribution to the scant literature on the subject of union organizational campaigns. Its appeal to the legal scholar may be limited, but it is invaluable to the small businessman and his attorney who, with a minimum investment of time and effort, may recognize many of the complex and pressing problems presented in an organizational campaign in time to obtain specialized advice and guidance, thereby avoiding costly mistakes.

JOHN J. COLEMAN, JR.\*

---

\* Member, Alabama Bar.

