

Case study one: the growth of 'union-busting' techniques in the United States

One of the features of chapter five of the book is a brief discussion of the vigorous anti-union behaviour displayed by a considerable number of employers in the United States. Logan (2002) looks at the increasing incidence and sophistication of anti-union, or 'union-busting', tactics that characterize employment relations there. In particular, he concentrates on the burgeoning industry of anti-union consultants who advise employers on effective ways of keeping their workplaces free of trade unions. Under federal law, unions in the United States are entitled to be recognized for collective bargaining where a majority of the relevant workforce vote in favour in a ballot, or certification election as it is known. Among employers who wish to defeat a union organizing drive, and thus prevent, or win, a certification election, the use of specialist anti-union lawyers and consultants as part of the campaign to defeat trade unionism has become commonplace. As long ago as the 1970s, the consultants themselves, their anti-union ideology, and their vast armoury of counter-organising tactics had all become deeply ingrained in the fabric of labour-management relations with disastrous consequences for unions and for employees exercising their legal right to organise' (Logan 2002: 199).

How, then, do consultants hinder union organizing drives? How do they prevent unions winning certification elections? What techniques do they use to 'bust' unions? One common tactic is to encourage employers to attempt to delay proceedings by making trivial and often unwarranted complaints about union activities to the National Labor Relations Board (NLRB), the federal body charged with operating the certification procedure. Delays, according to Logan (2002: 201), 'extend the duration and effectiveness of the employer campaign and undermine employee confidence in the effectiveness of

both the union and the labour board'. Consultants often advise employers about how to conduct effective counter-organizing campaigns, designed to undermine support for union representation. For example, they may advise supervisors about ways of identifying anti-union employees who are encouraged to mobilize support for a 'no' vote in the certification election. Consultants also produce anti-union propaganda, such as newsletters and videos, which portray trade unionism in an extremely negative way, associating unions with violent industrial action for example. Letters to employees drafted by consultants may also implicitly communicate the threat that unionization would erode the viability of the business and thus jeopardize jobs. Logan (2002: 204) contends that in 'recent years, the threat of plant closures has become a standard feature of employer campaigns' against unionization.

Another facet of union-busting activity that has become more prominent in recent years is the propensity of employers to engage in unlawful activities, such as threats to dismiss union activists as part of campaigns to defeat trade unions, often, though they dispute this, with the encouragement of anti-union consultants. Logan (2002), though, cites examples of consultants advocating breaches of the law, on the basis that, even in the unlikely event that the employer is caught, the likely outcome, a re-run of the certification election is nonetheless likely to go in their favour. Consultants tend to argue that their role is not to interfere in the certification election process; rather their contribution is to communicate to employees the potentially adverse effects of unionization.

Employer opposition to trade unionism, aided by anti-union consultants, often continues after a union's victory in a certification election. They provide managers with advice about how they can counteract the effects of union recognition, by delaying the

bargaining process for example, allowing employee discontent with the union to develop. A notable feature of anti-union consultancy concerns the advice given to unionized employers about effective ways of bringing about the de-certification, and thus the derecognition, of unions. 'At decertification seminars, consultants have frequently taught model firms that have successfully reversed the trend of union representation at their operations, including General Electric and DuPont' (Logan 2002: 210).

Logan (2002) concludes by remarking that the basic principles of anti-union campaigns have remained the same for three decades. While there have undoubtedly been important areas of innovation, the growing use of anti-union videos for example, the basis of counter-organizing campaigns to defeat trade unionism largely lies in undermining union support before, and sometimes after, the certification election. One notable change since the 1970s, though, is the increasing use of the 'war' metaphor by consultants when advising employers on how best to avoid trade unionism. Unions are portrayed as an enemy, who have to be defeated, on an employment relations battlefield. Thus, 'militant employer opposition to unionisation in the US has effectively turned organising campaigns into "war", a war in which unions have frequently been on the losing side and one in which anti-union consultants and law firms have often played a central role' (Logan 2002: 213).

Source: Logan, J. (2002) 'Consultants, lawyers, and the "union free" movement in the USA since the 1970s'. **Industrial Relations Journal**, 33/3: 197-214.

Question

* To what extent are employers justified in using 'union-busting' tactics as a means of trying to forestall union recognition?

