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COMMON OBSTACLES TO ORGANIZING UNDER THE NLRA: COMBATTING THE SOUTHERN STRATEGY

JONATHAN G. AXELROD†

Historically, the percentage of unionized workers has always been lower in the South than in any other region of the country. As a result, many employees, seeking to avoid the unionization of their workforces, have developed a "Southern Strategy"—moving existing plants to the South and targeting southern states for future expansion. In this Article, Mr. Axelrod first examines the Southern Strategy and then carefully examines the obstacles faced by unions that attempt to unionize southern workforces. Mr. Axelrod focuses primarily on the tactics used by employers to resist union organizing efforts, tactics that he believes are made more effective by the National Labor Relations Act. He argues that the NLRA facilitates rather than discourages delay in the unionization process and does not adequately remedy labor law violations. He concludes, therefore, that Congress must soon enact meaningful labor law reforms.

Between 1968 and 1978, the number of union members in the United States increased by almost seven percent.¹ During the same period, however, the unionized percentage of the total labor force decreased from 23.0 percent to 19.7 percent.² Several factors contributed to this decline in relative significance: the total labor force increased by more than twenty million people,³ reflecting the post-World War II baby boom and the emergence of women in the workforce; the job mix began to change, with service-type jobs replacing the traditionally organized industrial and craft base; international economic changes accelerated the export of thousands of jobs to low-wage nations; and, with increasing frequency, management lawyers and consultants revived the antiunion atmosphere of the 1930's and developed comprehensive programs for making unions unnecessary, defeating union organizing campaigns, and promoting the decertification of incumbent unions. Not surprisingly, many of these programs were at best marginally lawful and at worst blatant violations of the National Labor Relations Act (NLRA).⁴ Finally, there was "the

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1. Total union membership in 1968 was 18,916,000, and in 1978 it grew to 20,238,000. U.S. BUREAU OF LABOR STATISTICS, DEP'T. OF LABOR, Release No. 79-605, Table 5 (Sept. 3, 1979).

2. *Id.*

3. *Id.*

4. 29 U.S.C. §§ 151-169 (1976).

South."

The South represents the labor movement's last geographic frontier. Each of the former Confederate States has enacted a "right-to-work" law,⁵ and employers in each state except Louisiana, which did not adopt a "right-to-work" law until 1976, paid manufacturing employees significantly less than the national average hourly wage.⁶ In addition, each state enjoyed a workforce that was remarkably fearful of union organizers. For example, in 1974 unions represented 26.2 percent of all nonagricultural employees. In no former Confederate State, however, did unions represent more than 19.1 percent of nonagricultural employees, and in North Carolina unions represented only 6.9 percent of the workforce.⁷ Not surprisingly, employers in these states lost less time to strikes than did employers nationally.⁸

Given these statistical advantages, employers began to develop a "Southern Strategy." This strategy essentially involved moving existing plants south and targeting the South for future expansion.⁹ Important to the success of this plan was the southern states' aggressive use of federal funds to develop a favorable climate for business relocation and expansion.¹⁰ These states also offered an alluring package of tax advantages and incentives, including facilities financed with tax-exempt bonds at low interest rates, to attract new business. But not all new business receives governmental favors: industry is actively discouraged if the community feels its management is insufficiently antiunion.¹¹ In such a climate one would expect to find a few weak unions struggling to maintain a meager existence.

The Teamsters in the Carolinas and Virginia belie that expectation. During the ten year period between 1968 and 1978, Teamster membership in the United States increased by 9.63 percent.¹² During that same period, Teamster membership in South Carolina increased by 179.44 percent, in North Carolina by 25.83 percent, and in Virginia by 40.13 percent.¹³ Clearly the Teamsters must be doing something right. Success, however, has not come easily. Not every organizing campaign results in recognition. Not every certification results in a contract. And, in almost every campaign, employees are fired because of their union activity. The Teamster success, therefore, is based largely upon the courage of employees who are willing to risk discharge to introduce democracy and countervailing power into their everyday, working lives.

5. STATISTICAL ABSTRACT OF THE UNITED STATES, 1979, at 427.

6. See U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 2000, HANDBOOK OF LABOR STATISTICS 1978, at 333 (1979).

7. STATISTICAL ABSTRACT OF THE UNITED STATES, 1978, at 430.

8. See U.S. BUREAU OF LABOR STATISTICS, *supra* note 6, at 544-45.

9. See generally BUS. WEEK, May 17, 1976, at 108.

10. See generally NORTHEAST-MIDWEST INSTITUTE, THE NEGLECTED RESOURCE: THE USE OF EMPLOYMENT AND TRAINING PROGRAMS IN ECONOMIC DEVELOPMENT STRATEGIES (Sept. 1979).

11. See, e.g., Sloan & Hall, *Its Good to Be Home In Greenville . . . But It's Better if You Hate Unions*, VII S. EXPOSURE No. 1, at 82, 89-90 (1979).

12. See U.S. BUREAU OF LABOR STATISTICS, *supra* note 1, Table 7.

13. Office Memorandum from Michael F. Miles to Jonathan Axelrod (Oct. 23, 1979) (on file in North Carolina Law Review office).

Teamster local unions have also demonstrated their initiative and imagination in devising strategies to help workers organize and to counter the heavy-handed employer response to organization. They constantly fight to overcome the fear that employers and the community have systematically instilled in the employees.

The problems faced by Teamster organizers in the South are best illustrated by incidents drawn from several North Carolina campaigns. The common element in each campaign was the employers' strident opposition to dealing with the Union. Many of the elements of this opposition combined in one campaign—the Union's effort to organize a production and maintenance unit at a PPG Industries, Inc. facility in Lexington, North Carolina.

PPG is one of many large corporations that have developed a southern strategy since the mid-1960s. For years PPG was a northern-based conglomerate enjoying harmonious relationships with a number of unions, including the Teamsters, at its northern facilities. At some point, however, management decided that it was more profitable to fight than to deal with unions. As a result, after a strike by the Glass Bottle Blowers Association, PPG closed its plant in Shelbyville, Indiana, and many management personnel transferred to nonunion plants in North Carolina. At the same time, PPG decided to fight union organizing efforts at its nonunion facilities. PPG thus developed a double-breasted, or southern, strategy. Expansion focused in the South, or abroad, where unions presented few problems, and when unions attempted to organize the southern facilities, PPG bitterly opposed them.¹⁴ In the North, however, the company has attempted to maintain relatively peaceful labor relations.

PPG is a highly diversified corporation, and, as a result, deals with a number of local and national unions on a plant-by-plant basis. Because PPG's products are so diversified, unions dealing with the company have never coordinated their efforts across the AFL-CIO's jurisdictional boundaries. Until recently, therefore, even national unions failed to realize the impact of the frustration of southern unionization on their Northern wage rates.¹⁵ This myopia began to change when the Teamsters started to organize PPG's fiberglass plant in Lexington, North Carolina.

At PPG, several employees indicated their desire to join the Union, and an organizer scheduled a meeting to explain the benefits of unionization. At the first meeting, as at each subsequent meeting, the organizers asked employ-

14. See, e.g., *Teamsters Handbill PPG Plants, Eye Prospective New Organizing*, TEAMSTER, July, 1980, at 6-7.

15. In sharp contrast, national unions dealing with major corporations with a relatively homogeneous product recognized the southern strategy much earlier. Thus, for example, the United Auto Workers negotiated a neutrality agreement with General Motors. In addition, the Teamsters' National Master Freight Agreement has long contained a provision requiring the union to be recognized at new terminals upon the submission of authorization cards signed by a majority of the employees at the terminal. Neither provision could prove effective with an employer dealing with a number of unaffiliated unions. Moreover, a union needs a solid base of support to negotiate such clauses. The Teamsters, which has a number of small distribution and warehouse contracts with PPG, could not expect to exercise the leverage necessary to obtain a neutrality or cardcheck clause covering a major production facility.

ees to volunteer for the "in-plant organizing committee."¹⁶ The committee serves two purposes. First, committee members receive some protection against employer retaliation. An employer's first defense to an unfair labor practice charge alleging the discharge of a key union activist is to plead ignorance of his or her union activities, and unless the union can demonstrate the employer's knowledge, the charge will be dismissed. Therefore, the organizer will notify the employer in writing of the membership of the in-plant organizing committee. Second, committee members generally have indicated their willingness to support the Union actively at rallies and meetings both inside and outside the plant.¹⁷ After the first meeting with PPG employees, the organizer and the committee went to the plant to begin soliciting employee support during a shift change. The campaign had begun.

At PPG, 321 of the approximately 1400 unit employees ultimately joined the committee. Of course, membership in the committee does not guarantee protection. In fact, within days of receiving the first notice of committee membership, PPG fired its first Union supporter,¹⁸ and in the ensuing two years, PPG fired several members of the committee. Other members resigned from PPG for a variety of reasons. Some members, apparently frightened by the company's anti-union campaign, resigned from the committee by notifying company personnel officials to "clear" their records but never informed the union of their change of heart. Disappointingly, the Regional Office of the National Labor Relations Board has issued complaints challenging the legality of only five discharges and two warning letters.¹⁹

16. PPG Indus., Inc., NLRB Div. of Judges, JD-736-79, at 3 (Nov. 5, 1979) adopted by NLRB, PPG Indus., Inc., 251 NLRB No. 156 (Aug. 27, 1980).

17. PPG later argued that members of the in-plant organizing committee, as well as any employee who distributed union authorization cards or handbills, were union agents whose conduct, such as threats or misrepresentations, bound the Union. The National Labor Relations Board rejected this contention, noting the voluntary manner in which employees who joined the committee, and the presence of admitted union agents at all meetings, handbill sessions, and outside the plant gate to answer questions. PPG Indus., Inc., NLRB Case No. 11-RC-4508, at 2 n.5 (1979). It is also relevant that the Union neither paid committee members nor reimbursed them for their actual expenses, that committee membership did not obligate any employee to participate in any union event, and that employees resigned from the committee by notifying PPG, not the Union. *Id.*

In any event, the inherent dangers in PPG's proposition are self-evident. Under PPG's theory, a union organizer must personally solicit every card and distribute every handbill or else risk the possibility that every employee who helps organize his fellow employees will become a union agent whose untutored mistakes will invalidate a union election victory. On the other hand, by explaining the "do's and don'ts" to the employees, the union would bind itself even closer to any inadvertent mistakes made by the employees. The dilemma is especially severe because union organizers have no access to company property and must, therefore, depend upon employee assistance. Nor could the union organize exclusively with mass meetings run by paid professionals, for PPG's theory would bind the union to any misunderstandings carried away by any listener. The adoption of PPG's position would substantially, if not fatally, impede union organizing efforts, by reducing communication among employees and mandating organizing based upon mass ignorance and confusion.

18. 251 N.L.R.B. No. 156, at 12 (Aug. 27, 1980). After her discharge, Terri Drake sought employment at a number of local companies. Each employer rejected her application. One personnel officer told Mrs. Drake that she need not fill out an application because she would not "get hired around here for quite some time." Young Hinkle Corp., 224 N.L.R.B. No. 45 (1979).

19. The Union filed its first unfair labor practice charge on April 18, 1978, with a complaint issuing on June 28. The Board hearing opened on February 12, 1979. In part, the Board's normal

Within two weeks of the first organizational meeting, the Union wrote PPG demanding recognition as the representative of a majority of its hourly production and maintenance employees. When PPG did not respond, the Union filed a representation petition with the Regional Office of the NLRB. Two problems immediately arose. First, the Glass Bottle Blowers Association (GBBA), an AFL-CIO affiliate, had previously attempted to organize the plant and threatened to intervene. While Labor Board statistics indicate that unions win a significantly higher percentage of multi-union representation elections than single union elections and that Teamsters do very well in head-to-head contests with AFL-CIO affiliates,²⁰ the introduction of an intervenor increases the risks for each union. One union's withdrawal from the campaign is, therefore, highly desirable. Accordingly, the Teamsters and the GBBA agreed that the Teamsters would have no opposition in Lexington, while the GBBA would have an equally unopposed campaign at the sister plant in nearby Shelby, North Carolina.²¹

In addition, the filing of a union representation petition triggers two immediate employer responses. First, the employer will often attempt to delay the proceedings by refusing to accept the Union's definition of the bargaining unit. This is often an effective tactic because, as employers realize, a union's

scheduling problems prompted this delay. But the Regional Office postponed the hearing each time the Union filed an additional charge against PPG. The Region mistakenly asserted that it must investigate and process all pending charges against an employer before trying the case. In fact, the Region must dispose of all charges arising from the same operative facts, but it need not delay hearings for the duration of a union organization drive. Such delays only permit an employer to postpone a hearing by committing additional violations. Ultimately, the Union declared a moratorium on all new charges until the hearing opened. The Union also filed a complaint in federal district court to enjoin further postponements of the unfair labor practice proceeding. *Teamsters Local 391 v. Irving*, No. 78-2376 (D. D.C., filed Dec. 15, 1978). The complaint was later dismissed without prejudice by stipulation after the trial began.

The amended third complaint alleged three discriminatory discharges, two discriminatory warning letters, and 45 separate incidents of unlawful threats and interrogations. After a lengthy hearing, the Board found that PPG had unlawfully discharged Terri Drake and another employee, had discriminatorily warned two Union supporters, had unlawfully threatened to close the plant if the Union won the election, and had committed numerous other violations of § 8(a)(1) of the Act. National Labor Relations Act § 8(a)(1), 29 U.S.C. § 158(a)(1) (1976). The case is now before the Board on exceptions and cross-exceptions filed by all parties. PPG Indus., Inc., 251 NLRB No. 156 (Aug. 27, 1980).

On January 13, 1980, the Region issued another complaint alleging that PPG interrogated a Union supporter and discharged another Union supporter because of his union activities. PPG Indus., Inc., N.L.R.B. Case No. 11-CA-8815 (1980). On December 10, 1980, the Region issued a complaint alleging the discriminatory discharge of another committee member. NLRB Case No. 11-CA-9493(1980).

20. See, e.g., NLRB ANN. REP. Table 13 (1979); *id.* (1978).

21. The GBBA lost the first election in Shelby. When the GBBA filed objections, PPG consented to a second election, which the union lost by a vote of 329 to 870. The Board then refused to set the second election aside. PPG Indus., Inc., 247 N.L.R.B. No. 114 (1980). The GBBA then waived its exclusive claim to the plant, and the Teamsters are planning a future campaign there.

Such cooperation is neither unique nor the general rule. In contrast, for example, when the Teamsters won its first election at Hanes Dye and Finishing Co., which no AFL-CIO affiliate had sought to organize, the head of the North Carolina AFL-CIO criticized the Teamsters' entrance into the textile field, which is traditionally reserved for the Amalgamated Clothing and Textile Workers Union, an AFL-CIO affiliate. On balance, however, the Teamsters and the AFL-CIO have a satisfactory relationship, which can only improve with the current discussion concerning the Teamsters' reaffiliation with the AFL-CIO.

support generally peaks early and will deteriorate during a lengthy election campaign. By refusing to accept the union's proposed definition of the unit, the employer gains at least six weeks to "campaign."²² The representation procedures involve a hearing, briefs with extensions, and a time consuming decision making process, which can extend for months if either party appeals the Regional Director's decision to the Board. Clearly these procedures facilitate, if not encourage, the employer's use of this delaying tactic. Second, the employer will often attempt to gerrymander the unit by including employees presumably opposed to the union or by excluding employees who support the union. PPG used both tactics. By requesting a hearing, PPG gained three weeks. Moreover, at the hearing PPG sought to include 200 salaried employees and 100 part-time student employees. In a decision issued ten weeks after the petition was filed, the Regional Director accepted PPG's definition of the unit.²³ The Union did not seek review before the Board, reasonably concluding that months of additional delay would harm its organizing effort more than the votes of 300 extra employees.

Once the campaign began and during the proceedings before the Board, the Union worked to maximize its employee support. Some union organizers favor detailed listings of employees by shifts and departments, with personal solicitations of employees who have not signed union cards. This "low profile" approach involves direct mailings to employees and telephone calls or personal visits rather than public handbillings. With time and a dedicated core of union supporters, this system works well. Other union organizers favor mass rallies outside the plant. Because this "high profile" approach had been successful at a number of North Carolina plants in the previous year, the Union adopted this technique at PPG.

At PPG, however, this tactic activated the peculiar relationship between the county's main employer and the community political structure. Shortly after a series of rallies outside the Lexington PPG facility, the company moved its fences out about fifteen feet, flush with the property line. Suddenly, "no parking" signs appeared along the roads to the plant where Union organizers and supporters had parked during the rallies. The Union, however, was able to make arrangements for parking spaces with friendly nearby landowners.²⁴ Local ordinances present similar problems. Rocky Mount, North Carolina,

22. Because of the effect that a lengthy campaign will have on a union's support, a union should not file a representation petition without first obtaining at least majority support. This cautious approach is necessary because, since the union's support does deteriorate during a lengthy campaign, which will be further lengthened when the employer contests the bargaining unit, a union that does not have majority support before filing the petition will rarely win an election, even if it prevails in defining the bargaining unit. In addition, the union may be able to obtain a bargaining order if it can demonstrate that it initially had majority support but that its support was dissipated because of the employer's unfair labor practices. *See NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

23. *See PPG Indus., Inc.*, N.L.R.B. Case No. 11-RC-4508 (Sept. 11, 1979).

24. Noting the close relationship between their employer and the town political leaders, some employees considered running for political office, but their enthusiasm did not survive until the next election. In time, however, employees aroused by the labor and civil rights movements will form a potent political bloc.

for example, has an ordinance requiring permits for parades, picket lines, and group demonstrations.²⁵ When the 1979 national trucking strike reached Rocky Mount, the city did not require permits for peaceful picketing at truck terminals. Only two days later, however, when the same Teamsters Union established a peaceful picket line at Seaboard Foods to obtain a first contract, police arrested fifteen pickets because they had failed to obtain permits seventy-two hours in advance as required by the ordinance.²⁶ Apparently the city did not enforce the ordinance to protect national corporations that had relatively stable relationships with the union and only incidental operations within the community. It would seem, however, that it did seek to protect an essentially local business seeking to avoid initial dealings with the Union. Similarly, the PPG campaign exerted within the community considerable economic pressure against the union. For example, a discharged employee was black-listed, and, when the Union attempted to rent an office in Lexington, suddenly there were no vacancies.²⁷ While such economic pressure is not unique to the South, it is applied there on an "overkill" basis.

During the union's campaign, of course, the main goal is winning the hearts and minds of the employee electorate. Each side will distribute literature to influence the undecided voters and reassure its supporters. The union must identify and emphasize the potential benefits of unionization—usually wages and fringe benefits. As PPG paid the highest wages and provided the most desirable jobs in Davidson County, however, the key issues were seniority, the elimination of favoritism by supervisors, and the establishment of an objective grievance system.²⁸

Conversely, the employer and its supporters among the employees will attack members of the labor movement as corrupt outsiders who will eliminate the personal relationships between workers and management and who will seek union dues but provide no benefits. One employer (not PPG), for example, created a "Teamster felon of the week" club.²⁹ Another employer posted an armed guard in front of a trophy case filled with money and labeled "union dues for one month." It is difficult to assess the impact of such tactics, but Teamsters have responded in two ways. First, as a rule, Teamster unions do not collect dues until after employees ratify their first contract. Employees unhappy with the increased benefits negotiated by the union can reject the contract or refuse to join the Union if the contract is ratified. Second, the union can accurately assert that the union dues for a month equal the em-

25. ROCKY MOUNT, N.C. CODE art. II, §§ 12-42 to -55 (1979). These ordinances apparently date to the 1960's when southern towns sought to limit civil rights marches.

26. *Id.* § 12-43.

27. See generally *Congress Learns of PPG's Anti-Union Tactics*, TEAMSTER, April, 1980, at 4-5.

28. Surprisingly, the least effective Union literature alleged health hazards at the plant and indicated the union's efforts to improve those conditions. Clearly, each organizing campaign presents different issues, and a union must target the causes of employee dissatisfaction at each facility. Misplaced emphasis on safety, for example, apparently caused employees to fear that expensive safety requirements would jeopardize their high-paying jobs.

29. Fortunately, Carolina Teamster officials can point with pride to a long record of honesty. Their response, "but not here," works.

ployer's extra profit for each week it avoids signing a contract that would increase labor costs by only fifty cents an hour.³⁰

The employer's campaign tactics are sometimes illegal. In fact, between March and October of 1978, PPG committed approximately twenty separate unfair labor practices, including a corporate vice-president's threat, delivered to 250 employees one week before the election, to close the plant if the union won the election.³¹ Despite this onslaught of illegality, or perhaps because of it, the Union won the PPG election by a vote of 698 to 639.³²

Frequently the union is unable to overcome the employer's unlawful or improper tactics. At a Wake Forest University seminar in February, 1978, antiunion consultant Charles Imberman told a group of executives: "It's absolutely legal to scare the bejesus out of your female employees with threats of strikes, violence and picket lines, and I suggest to you that is a very good way to scare the hell out of them."³³ Taking that advice seriously, five days before the election Fiber Industries sent each employee a recorded "dramatization" of a Teamster strike at Fiber Industries. The sound track featured the voice of the plant manager announcing that the plant was closing because of union violence and featured gunshots, screams, and breaking glass. Most of the "union supporters" were black, while the "victims" of the union violence were usually white. This further frightened employees in a plant that was overwhelmingly white and in which blacks were not prominent union supporters. The record's documentary approach allegedly was based on a 1966 Teamster strike in Tennessee. After losing the election by a vote of 833 to 1272, the Union filed election objections and unfair labor practice charges against Fiber Industries. The Union argued that the recording improperly emphasized the inevitability of a strike and violence if the Teamsters won the election and unlawfully polluted the preelection atmosphere. The Union also argued that the "documentary" misrepresented the facts of the Tennessee strike as well as the law concerning the reinstatement rights of striking workers. The Regional Director refused to issue a complaint based on the recording but did hold that the record's devastating portrayal of union violence was per se objectionable because it created an atmosphere of fear and violence. The Board upheld the Regional Director's decision to set the election aside,³⁴ and the General Counsel directed the Region to issue a complaint.³⁵

30. For example, PPG's 1400 employees work rotating shifts seven days a week. Assuming that an equal number of employees work each shift, there are 8400 man-hours per day and a \$0.50 per hour increase in labor costs totals \$4200 per day. Further, assuming an average hourly wage of \$8.00 and the Teamsters dues structure of two hours' pay per month (frequently lower in new organizing campaigns), the monthly dues would be \$16.00. Finally, assuming that every employee joined the union (highly unlikely in a "right-to-work" state), the Union would receive \$22,400 in monthly dues. PPG increases its profit, however, by \$22,400 every five and 1/3 days it avoids increasing its labor costs by \$0.50 per hour. As a practical matter, if the average wage rate is lower and only 90% of the employees join the union, the break-even point is drastically lower.

31. PPG Indus., Inc., 251 N.L.R.B. No. 156, at 7-8 (Aug. 27, 1980).

32. PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508, at 1 (Supplemental Decision 1979).

33. NEWSWEEK, January 18, 1980, at 68.

34. Fiber Indus., Inc., N.L.R.B. Case No. 11-CA-4714 (1980).

35. Fiber Indus., Inc., N.L.R.B. Case No. 11-CA-8517 (1980). The Union won the second

In addition to the sophisticated and expensive techniques used to frighten employees away from unions, other more subtle tactics are sometimes used. For example, although the Board will set aside an election in which either party injects racism into the campaign,³⁶ employers sometimes suggest to employees that unpopular whites or blacks will become stewards if the union wins and will discriminate against the opposite race. According to the Board, these "divide and conquer" tactics are not sufficiently inflammatory to be illegal. On the contrary, they are "relevant" and permissible, even when the employer "failed to state any basis for its assertion that a potential steward was against blacks or thus failed to demonstrate that its statement to employees was reasonably based in fact."³⁷ As a result, unfounded accusations of racism arguably are now lawful expressions of opinion and mere propaganda. This situation cannot improve racial harmony among workers and serves only to promote groundless accusations as a viable campaign tactic.

Personal attacks on union organizers is another tactic that often surfaces during a campaign. Every union organizer faces certain occupational hazards: By definition, he is an "outsider" at the plant, "money-hungry," a "thug," or a "crook." If, as in the motion picture "Norma Rae," he is employed by the national union rather than a local, he is a "carpetbagger," set apart from the community by geographic, religious, ethnic, or racial distinctions. These outsiders are especially noticeable in the more ethnically homogeneous South.

The case of Vicki Saporta graphically illustrates the hazardous role of the union organizer. For almost two years Ms. Saporta was one of the primary Teamster organizers in North Carolina and enjoyed both consistent success³⁸ and conspicuous publicity. She always locked her car doors, fearing that some employer would plant drugs or liquor in her car to discredit her. The bombshell came, however, from a totally unexpected direction. Shortly before the Fiber election, rumors began circulating at the plant and at PPG that Ms. Saporta would be a defendant in a lawsuit. A management attorney then issued a press release announcing that Ms. Saporta had been named as a defendant in an alienation of affection suit.³⁹ The suit was filed several hours later amid great publicity.⁴⁰ Naturally, when the Saporta suit was withdrawn two weeks later, there was little publicity.⁴¹ Until management's use of the

election by a vote of 1005-998, with one challenged ballot. The Regional Director scheduled a hearing on one of the employer's objections, and that hearing has been consolidated with a hearing on an extensive unfair labor complaint issued against Fiber. The hearing is scheduled for February 17, 1981.

36. See, e.g., *Sewell Mfg. Co.*, 138 N.L.R.B. 66, 71 (1962). See generally *Coca-Cola Bottling Co.*, 232 N.L.R.B. 717 (1977).

37. *Coca-Cola Bottling Co.*, 232 N.L.R.B. 717, 718 (1977).

38. Over a 22 month period, the Teamsters won each of the seven valid representation elections in which she participated. In one instance the union won the third election after the Labor Board had set aside two employer victories. In the Fiber campaign the Board recently set aside the union's defeat and directed a second election.

39. *Piedmont Associated Industries*, Confidential Management Report (May 17, 1979) (on file in North Carolina Law Review Office).

40. No. 79CVS473 (Super. Ct. Rockingham Cty., filed May 16, 1979).

41. Many union officials have alleged that the southern press is blatantly antiunion and emphasize every report of union violence or corruption. In this instance, however, the disparate

suit against Ms. Saporta, the personal life of a union organizer was private, both in the North and in the South. Now, however, every union organizer is a walking target for every possible attack to weaken his or her organizing efforts. Similar scrutiny of the private lives of management officials, supervisors, and consultants may be forthcoming.

The Central Piedmont Employers Association and Piedmont Associated Industries played a significant role in publicizing the Saporta suit. The day after the suit was filed, Piedmont Associated Industries distributed a "Confidential Management Report"⁴² concerning the suit, a report that had no purpose other than to alert its members to use the suit if the Teamsters tried to organize their employees. The Central Piedmont Employers Association is a nonprofit group "dedicated to maintaining and promoting a favorable climate for business and industry."⁴³ Its emphasis, of course, is a nonunion climate. To this end, it provides a number of services including representation in certain Labor Board proceedings and contract negotiations, the conducting of employee attitude surveys, and communication of employee benefit programs. Such associations are rare in the North, where profit-making entities usually provide similar services.

Despite these obstacles, the Teamsters have won a high percentage of their representation elections in North and South Carolina. Experience indicates, however, that the union can successfully negotiate contracts after only half of their election victories. Although the NLRA imposes a duty on the employer to bargain in "good faith" with Union representatives,⁴⁴ that definition is so nebulous as to be unenforceable. Prominent management attorneys can spare only one or two days per month to negotiate for a particular client. Furthermore, the Act requires neither concessions nor agreement.⁴⁵ A skilled negotiator, therefore, can consistently reject clauses significant to the union—for example, meaningful arbitration, seniority, and dues checkoff—and make meaningless offers on wages and benefits. When a year's "negotiations" prove fruitless, antiunion employees can circulate a petition for a decertification election. Given the major difficulties in persuading the Board to issue a complaint alleging surface bargaining, the almost overwhelming burden of proof at the trial, and the trivial notice-posting remedy, it is surprising that so many employers violate the Act before the election, when they could frustrate and eliminate a union lawfully by skillful negotiations, or even risk surface bargaining, with no back pay remedy and without creating "examples" or martyrs.

On the other hand, several "examples," discharged employees who have

publicity was probably inadvertent since retractions generally receive less publicity than the initial allegation. More important, the local press was instrumental in uncovering several links between management attorneys and the filing of the suit. On balance, the North Carolina media has given the Teamsters fair treatment.

42. See note 39 and accompanying text *supra*.

43. Central Piedmont Employees Association, Inc., at 6 (1978) (on file in North Carolina Law Review office).

44. See 29 U.S.C. § 158(a)(5) (1976); see also *NLRB v. Garment Workers*, 274 F.2d 376 (3d Cir. 1960).

45. See *H.K. Porter v. NLRB*, 397 U.S. 99 (1970); 29 U.S.C. § 158(d) (1976).

lost homes and cars and have been forced onto welfare, help deter future union campaigns, because mere backpay can never remedy the secondary economic and emotional effects of discharge. In fact, few victims of discrimination are willing to spearhead a second union organizing campaign. More important, a significant percentage of discharged employees will waive reinstatement in return for prompt backpay, and those who accept reinstatement frequently leave, voluntarily or involuntarily, within a short time.⁴⁶ The remaining employees, the indirect victims, do not forget their former co-worker's problems. Thus, backpay may be a small price to pay for the fear of unions instilled by the timely discharge of a key prounion employee. Moreover, the Regional Office's reluctance to issue a complaint without a near perfect case increases an employer's incentive to violate the Act with impunity.⁴⁷

Throughout the union organizing effort, and indeed to this day, PPG has maintained that it will negotiate a reasonable contract after exhausting all legal challenges to the union's election victory, a process that may take four years. There is some historical basis for accepting these promises. In 1967, the Teamsters began to organize an Owens-Corning Fiberglas plant in Aiken, South Carolina. After three years of litigation,⁴⁸ Owens-Corning Fiberglas negotiated the first in a series of excellent contracts and has maintained a harmonious relationship with the union. Similarly, in 1969, the Teamsters organized Litton Industries' Landis Tool plant in Waynesboro, Pennsylvania, and, after a five year legal struggle⁴⁹ and a strike, negotiated its first contract. Nevertheless, the lengthy litigation process has obvious harmful effects. During this period, the employer may withhold or limit wage increases and thereby foster employee dissatisfaction with the union. Delay itself frustrates employees and promotes additional dissatisfaction. Even normal employee turnover works against the union; if the union survives the lengthy legal process, it is often too weak to negotiate a good contract because the employer has replaced union supporters with docile "beautiful people."⁵⁰ Even the most cooperative

46. See Aspen, *Legal Remedies Under the NLRA: Remedies Under § 8(a)(3)*, PROCEEDINGS OF THE 23D ANN. MEETING OF THE INDUSTRIAL RELATIONS RESEARCH ASS., at 264 (1971).

47. A martyr can, however, create problems for the unwary employer. When PPG discharged Terri Drake within days of the start of the union's campaign, the union distributed handbills vowing to fight forever for her reinstatement. The Teamsters then widely publicized each stage of the Labor Board proceedings: the issuance of the complaint, the trial, and the Administrative Law Judge's decision. When the union opened a sub-office in Welcome, Mrs. Drake became a Union employee, helping to rally employee support for the organizing effort. Following the Union's election victory and certification, Mrs. Drake became an effective symbol of PPG's unlawful resistance to the Union. As a symbol, Mrs. Drake has had a greater effect on PPG than she ever would have had absent her discharge. With great fanfare, Ms. Drake returned to the plant on September 16, 1980 after the Board ordered her to be reinstated. See *PPG Boycott: Keeping up Pressure*, XV VOICE TEAMSTERS at 2 (Nov. 1980); *Around the Country, The PPG Boycott Begins*, TEAMSTERS, Dec., 1979, at 9.

48. Owens-Corning Fiberglas Corp., 181 N.L.R.B. 575, *enforced*, 435 F.2d 960 (4th Cir. 1970); Owens-Corning Fiberglas Corp., 179 N.L.R.B. 219 (1969); Owens-Corning Fiberglas Corp., 172 N.L.R.B. 148 (1968), *enforced*, 407 F.2d 1357 (4th Cir. 1969). See also Owens-Corning Fiberglas Corp., 185 N.L.R.B. 75 (1970).

49. Landis Tool Co. v. NLRB, 203 N.L.R.B. 1025 (1973), *enforced*, 497 F.2d 684 (D.C. Cir. 1974); Landis Tool Co. v. NLRB, 190 N.L.R.B. 757 (1971), *enforced*, 460 F.2d 23 (3d Cir.), *cert. denied*, 409 U.S. 915 (1972).

50. Antiunion consultant Charles Hughes recently advised employers not to fight unions, but

employer will assess the union's strength before establishing its bargaining position. Delay, therefore, is a major part of the game.

PPG is playing this game to the limit. Following the Union's victory, PPG filed thirty-one objections to conduct affecting the results of the election.⁵¹ These objections alleged that the Union's mass rallies outside the plant during the election period were coercive, that the Union offered to waive an initiation fee only for employees who signed authorization cards before the election, that the Union misrepresented the position of the Labor Board and had alleged that PPG had violated employees' rights, that the Union had solicited employees to sign cards at night when the employees could not read the cards, that pro-Union employees forged signatures, and that the Union or its supporters engaged in a variety of other acts that warranted the voiding of the election.⁵² After a two month investigation, the Regional Director issued a decision dismissing each objection and certifying the Union.⁵³ PPG then filed a lengthy request for review supported by affidavits from fifty employees. Two months later, the Board sustained the Regional Director's dismissal of twenty-eight objections. Nevertheless, the Board directed the Region to conduct a hearing on allegations that the Union had threatened to negotiate a contract covering members only, that Union committee members had threatened employees with violence and discharge unless they supported the Union, and that Union supporters had threatened employees with toy pistols at election rallies outside the plant. The Regional Director then scheduled a hearing for December 12, a full five months after the election.

Faced with a hearing on its objections, counsel for PPG tried a novel tactic. Within a week of the scheduled hearing, PPG filed unfair labor practice charges alleging that the Union had violated section 8(b)(1)(A)⁵⁴ of the NLRA by conduct raised in the election objections. While section 10(b)'s⁵⁵ six month limitation period clearly precluded the issuance of a complaint based on conduct occurring before the last month of the pre-election period, the Region held that the charge blocked the election objection hearing.⁵⁶ The day after PPG filed the charge, the Region postponed the hearing for one month, began investigating the charge, and informed the Union that if the charges had merit, the election objection hearing would be consolidated with the trial on

to hire "beautiful people who do what they are told" in an "environment so programmed that the union can't even communicate." Celarier, *The New Face of Union Busting*, Seattle Sun, January 23, 1980, at 7.

51. PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508 (Supplemental Decision, 1979).

52. *See id.*

53. PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508 (Sept. 11, 1979).

54. 29 U.S.C. § 158(b)(1)(A) (1976).

55. *Id.* § 160(b).

56. The Board's Rules and Regulations authorize a regional director to stay proceedings on a representation petition because of pending concurrent unfair labor practice charges. 29 C.F.R. § 102.71(b) (1979). The Board's Representation Case Manual further explains that the blocking charge rule applies when a charge alleges "conduct of a nature which would have a tendency to interfere with the free choice of the employees in an election, were one to be conducted on the petition. . . ." NATIONAL LABOR RELATIONS BOARD, REPRESENTATION CASE MANUAL § 11730 (1975). These rules were adopted after litigation culminating in *Bishop v. NLRB*, 502 F.2d 1024 (5th Cir. 1974).

the unfair labor practice complaint. Given the Board's problems in scheduling unfair labor practice trials, this consolidation could have caused a six-month delay. The Union immediately requested the Board to direct the Region to hold the objections hearing as scheduled, arguing that the blocking charge rules do not apply to a post-election hearing on objections and that the Regional Director had abused his discretion by postponing the hearing.⁵⁷ By telegram, a divided Board denied the request. Immediately thereafter the Union filed a complaint in federal district court against the Board and the Regional Director seeking to enjoin the postponement of the representation hearing.⁵⁸ On the day the Union filed its complaint, the Region dismissed the charges against the union, but PPG's prompt appeal revived the blocking charge. After negotiations between the Board's General Counsel and the Union, the General Counsel agreed to stay the appeal pending the Board's resolution of the objections, which resolution would control the issuance of the complaint.

The hearing began on January 9 and continued until January 19, 1979. The hearing officer refused to restrict the company to witnesses presented to the Region during the investigation, and, as a result, PPG shuttled sixty-six witnesses before the Hearing Officer. Some of these witnesses had responded to notices that sought witnesses to Union misconduct, which were placed on the company bulletin board the week before the hearing.

Three months after the close of the hearing, the Hearing Officer issued his report recommending that the three objections be overruled in their entirety and that the Union be certified. He found that no union official had threatened non-Union employees with disparate treatment or violence, and that members of the in-plant organizing committee were not Union agents. Finally, he concluded that the Union's election eve mass rallies were family outings conducted in an atmosphere "reminiscent of the rivalry between cross-town high school football teams." Placed in this context, pro-Union employees' use of a plastic gun and a "Star Wars" baton as a comical response to the alleged connection between the Union and the Mafia would not threaten a reasonable employee.⁵⁹

PPG obtained an extension and then filed lengthy exceptions to the Hearing Officer's report.⁶⁰ Two months after filing its exceptions, PPG moved to reopen the record because of the Saporta alienation of affection suit. While acknowledging that the suit had been withdrawn and without alleging that its allegations were true, PPG sought an investigation of the impartiality of a television reporter who had testified under subpoena by the Union and whose wife had filed the suit. PPG's motion did not explain, however, that the new evidence was not "newly discovered" within the meaning of the Board's

57. See PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508 (Sept. 11, 1979).

58. Teamsters Local 391 v. Fanning, No. 78-2377 (D.D.C., filed Dec. 15, 1978). The Complaint was later dismissed without prejudice by stipulation after the hearing opened.

59. See PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508, at 23-24 (Supplemental Decision, 1979).

60. PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508 (Sept. 11, 1979).

rules.⁶¹ Since PPG had waited almost two full months after the suit was filed to move to reopen the record, its goal was clearly further delay.

As the Union chafed under the Board's deliberate pace, it contacted Congressman Frank Thompson, Chairman of the House Subcommittee on Labor-Management Relations, to protest the delay. The Union notified the Subcommittee that PPG had managed to delay the Union's certification for more than a year and asked the Committee to conduct oversight hearings concerning the delay in processing representation cases. Chairman Thompson informed Board Chairman Fanning of the Union's request for oversight hearings, but expressly denied any involvement in the merits of the dispute. Nevertheless, he requested expeditious treatment of the case.⁶²

Almost two months after Congressman Thompson's letter and after four months of deliberation, the Board adopted the Hearing Officer's findings and recommendations and certified the Union.⁶³ PPG immediately posted a notice informing its employees that it would continue to litigate the matter and would not recognize the Union. In a spontaneous demonstration of solidarity, the employees walked off their jobs in a one day protest.⁶⁴ Because the Union had promised that there would be no strike without a two-thirds vote of the members, it persuaded the employees to return to work.⁶⁵

Two weeks later PPG filed a motion asking the Board to decertify the union because of Chairman Thompson's *ex parte* communication with the Board.⁶⁶ After two months of further deliberations, the Board denied PPG's motion. The company, however, has continued to refuse to bargain with the Union.

At a point such as this, a union faces a crucial decision. It can either initiate the enervating litigation process or elect economic pressure. One form of economic pressure is, of course, a strike. Unions, however, have not won a major strike in the South in some time. While it is true that the Teamsters have successfully struck a car rental agency, such an operation is a service- or labor-intensive business. The union has also "won" a major strike against Gilbarco, an Exxon subsidiary which manufactures gasoline pumps.⁶⁷ The Gilbarco strike, however, involved economic pressures that extended into the North and that included a major consumer boycott, employing airplanes and hearses bearing the message "Don't Buy Esso" and "The Tiger is a Scab."

61. 29 C.F.R. § 102.65(e)(1), (2) (1979).

62. See *Congressman Thompson Urges Action in PPG Case*, XIV VOICE TEAMSTERS at 1 (August 1979).

63. PPG Indus., Inc., N.L.R.B. Case No. 11-RC-4508 (Sept. 11, 1979).

64. Raissman, *PPG Won't Bargain; Workers Call Strike*, Winston-Salem J., Sept. 29, 1979, at 1.

65. Special Notice from R.V. Durham to Lexington, N.C. PPG Employees (Oct. 1, 1979) (on file at North Carolina Law Review office).

66. The Board's regulations prohibit the making or solicitation of *ex parte* communications "relevant to the merits of [a] proceeding." 29 C.F.R. § 102.126(a). The rules specifically permit *ex parte* written requests for information. *Id.* § 102.130.

67. EASTERN CONFERENCE OF TEAMSTERS, THE GILBARCO STORY (Jan. 27, 1969) (on file in North Carolina Law Review office).

After four months, Gilbarco capitulated.⁶⁸

Any strike poses obvious problems. For example, the economic stakes are high, as employers are quick to emphasize. Although the International Union provides between twenty-five and forty-five dollars per week in strike benefits, and several local unions provide additional supplemental or hardship benefits, few strikers are prepared to support their families during a long strike. To dramatize this problem, one employer distributed a chart illustrating the cost of a three-week strike to employees at various wage levels and demonstrating the number of weeks needed to recoup the loss, assuming the strike produced specified across-the-board increases. Added to the financial cost is the possibility of permanent replacement, for every employer quickly announces that it will replace all strikers in order to keep the plant operating. Under these circumstances, the union attempts to emphasize the gains obtained through good faith negotiations, the relative infrequency of strikes, and the need for a two-thirds vote to strike. In contrast, employers emphasize that a strike is inevitable for the union to obtain its "outrageous" demands.

A second major problem is strike violence. Obviously, the union does not condone violence and repeatedly warns employees against violence during organizing campaigns or strikes. But strikes produce tension and, sometimes, violence.⁶⁹ At one North Carolina plant, for example, the union's strike resulted in intermittent violence, and union supporters found a bomb near their strike shack. In addition, strike breakers were allegedly threatened with physical harm. On another occasion, nonstrikers followed several strikers from the picket line to a nearby grocery. After an argument in which a nonstriker apparently threatened a picket, another picket killed the man threatening his companion.⁷⁰ Such violence, or the mere fear of violence, is a powerful weapon against the union in any organizing campaign, although it may make a strike more effective.

These problems combine to militate against a strike's success. Furthermore, southern employees lack the strong tradition of unionism, the belief that all employees should respect a primary picket line regardless of their lack of personal involvement in the dispute. The lack of unity is particularly signifi-

68. *Id.*

69. At one North Carolina plant, the employer responded to alleged sabotage by announcing a series of lie detector tests for all employees. The Union filed suit and obtained a temporary restraining order prohibiting the use of lie detector tests. *Teamsters Local 391 v. Haynes Dye & Finishing Co.*, No. 79-CNS-4697 (Superior Court, Forsyth County). The court found that the involuntary lie detector test can constitute a tortious invasion of privacy and the intentional infliction of emotional distress in contravention of state law and would inevitably chill employee rights under the state and federal constitutions. Under similar circumstances in Virginia, the union did not oppose the use of a polygraph examination administered by the employer at the request of local police officials. In that situation, however, the employer gave the union the questions in advance and notified the employees of their right to consult with the union prior to taking the test. Moreover, under Virginia law, the employee had an absolute right to a copy of the transcript and the evaluation of the test. VA. CODE § 54-729.016:1 (repealed 1975) (The same requirement has been revived in a regulation of Virginia Commonwealth Department of Commerce, License L. Reg. POR-22-8 (August 1, 1975).)

70. After a trial, the union supporter was convicted of voluntary manslaughter and given a 15 year sentence. The conviction is on appeal.

cant when a union has won a narrow victory in the representation election and the employer can, therefore, assume that a large number of employees will cross a picket line to maintain the business. The Teamsters' requirement of a two-thirds strike vote ensures only that the membership supports the strike. Because nonmembers do not vote, the strike vote is not always a real indication of general employee sentiment.

For these reasons, the Union decided not to strike PPG. Instead, in October, 1979, the Union announced a consumer boycott directed against specific, identifiable PPG products.⁷¹ In addition, the union, capitalizing on the success of Pittsburgh's professional athletes, took to the air over Three River Stadium with a plane towing a banner so that fans could read "PPG is anti-union to Teamster workers in North Carolina" or "PPG Like J.P. Stevens in N.C."⁷² Teamsters in major cities distributed leaflets asking the public to support the boycott, and employees from the Lexington plant visited Pittsburgh to meet with corporate officials. Also, with the cooperation of Teamster and other labor and community organizations in Pittsburgh, a multi-million dollar tax abatement sought by PPG for its new corporate headquarters has been blocked.⁷³ All of these measures were designed to put economic pressure on PPG.

Terri Drake, the PPG employee fired for her Union activity, was also active during this period. She testified before the Ohio Legislature concerning PPG's antiunion tactics. Responding to the increasingly prevalent management tactic of maintaining unionized plants in the North while at the same time building new plants and transferring operations to the sunbelt and "right-to-work" states where employers pay lower wages and provide fewer benefits, the Ohio Legislature passed a bill to debar persistent labor-law violators from bidding on state contracts.⁷⁴ A number of states have similar laws.

The union also presented testimony to the House Subcommittee on Labor-Management Relations during its hearings on "pressures in today's workplace."⁷⁵ In December 1979 Local Union President R.V. Durham described to the Subcommittee PPG's southern strategy and the company's unlawful campaign to avoid dealing with the union.⁷⁶ He reported that the union had met with PPG management at the Pittsburgh headquarters and offered to have an impartial observer compare the union's authorization cards with the employee roster, to have a strike to determine the union's majority support, or to negotiate a one-year contract, after which employees could vote to decertify the union, but that the company had declined each option. In February Mrs. Drake and several PPG employees testified on the pressures on pro-union em-

71. See *Around the Country, The PPG Boycott Begins*, TEAMSTER, Dec. 1979, at 7; see also *Teamsters Shout 'No' to Unfair Labor Tactics of PPG Industries, Inc.*, TEAMSTER, Feb. 1980, at 6.

72. *Teamsters Shout 'No' to Unfair Labor Tactics of PPG Industries, Inc.*, TEAMSTER, Feb. 1980, at 6.

73. *In Pittsburgh, A Costly Tax Loss for PPG*, TEAMSTER, Apr. 1980, at 6.

74. *PPG Boycott: Keeping up Pressure*, XV TEAMSTERS at 2 (Nov. 1980).

75. *Congress Learns of PPG's Anti-union Tactics*, TEAMSTER, Apr. 1980, at 4.

76. *Durham Testifies on PPG*, XV TEAMSTERS 1 (Jan. 1980).

ployees to abandon the union. A former supervisor recounted the instructions transmitted by PPG's attorneys and management to first-line supervisors concerning the segregation and conversion of union supporters.⁷⁷ Both PPG and its lawyers were invited to respond but declined to appear, although counsel submitted a written statement of position.

Although the union's tactics have not driven PPG to the bargaining table, they have produced a peculiar response. In November 1979 a PPG employee who had vigorously opposed the union during the election campaign and who had testified against the union in Board hearings filed an unfair labor practice charge accusing PPG of unlawfully refusing to bargain with the union. The union opposed the issuance of a complaint, arguing that the charge was contrary to the union's plan for economic pressure and would undermine the union's certification as exclusive bargaining agent. When the Regional Director refused to issue a complaint, the employee submitted, over her own signature, a seven-page appeal citing numerous Board and court cases.⁷⁸ The union urged the General Counsel to dismiss the appeal, but asked for an investigation into the circumstances of the appeal if a complaint were to be issued. After the General Counsel denied the appeal, the union filed charges accusing PPG of providing an attorney to draft the appeal. The Regional Director dismissed the charge because the union could provide no direct supporting evidence. On appeal, the union argued that the employees' appeal was ipso facto evidence of outside assistance and that the integrity of the Board's processes required an investigation to determine the forces motivating and financing the appeal.

The struggle between PPG and the union is not over. The union will persist as long as the employees seek representation. PPG will resist until economic pressure or the threat of judicial sanctions force recognition of the union and the start of negotiations.

The PPG story is not unique to North Carolina or nationally, yet it illustrates several distinctions between organizing in the North and in the South. First, southern communities aggressively seek plant relocations, provide economic incentives, and advertise a low-wage, union-resistant workforce. The community power structure supports any employer fighting to remain union-free; thus, southern employees know that the real threat of blacklisting compounds the danger of discharge from union activity. Northern communities, on the other hand, have failed to offer incentives to retain or attract new businesses. More important, in the northern industrial states, a single plant rarely dominates the community, so that a union can frequently help discharged supporters find other, often better, jobs.

Second, "right-to-work" laws affect only southern union organizing. Such laws technically prohibit only union security agreements and, therefore, affect only the negotiation and administration of a collective bargaining agree-

77. *Congress Learns of PPG's Anti-Union Tactics*, TEAMSTER, Apr. 1980, at 4.

78. Letter from Katherine Crover to Norton J. Come (Dec. 28, 1979) (on file at North Carolina Law Review office).

ment. In that respect their impact is not severe, for almost ninety percent of all employees covered by Teamster contracts voluntarily join the union. "Right-to-work" laws, however, dramatically affect the organizing process by symbolizing the political system's opposition to unionization. There is absolutely no stigma attached to violating labor laws in the South. On the contrary, the community supports the recalcitrant employer and isolates the prounion employee.

Third, the slower paced southern lifestyle facilitates mass organizing rallies. In the more urban and suburban North, plant gates frequently front on major traffic patterns and preclude large rallies. In addition, northern unions face greater competition for the employees' leisure or entertainment time. As a result, fewer northern employees will attend a mass rally or meeting. In the South, however, a union campaign and rally can be a major event in the community.

Fourth, mass meetings are more necessary in the South where employees have no union tradition. Fear and ignorance of the benefits of unions are slow to erode. Mass rallies, therefore, can be a valuable learning experience. Employees see that they are not alone in desiring union representation and that as a group they have more influence than they would as individuals.

Finally, and most significantly, the "southern strategy" is a national, rather than regional, problem. The low-wage South necessarily holds down wages in the North, since unions fear plant removal if the disparity outpaces the cost of relocation. In addition, southern communities have aggressively reduced the cost of relocation by offering tax benefits and grants that are ultimately derived from taxpayers nationally. This places additional burdens on northern communities, which must bear the social cost of displaced workers. As long as employers believe that they can violate the labor laws with impunity, especially in the South, the pressure on northern employees to moderate their positions and the incentive to develop southern strategies will increase.

Today, as Mr. Bumble once said, "the law is [still] a[n] ass."⁷⁹ Employers flout it on a grand scale and, instead of punishment, they receive large government contracts. Corporations that advocate discharge of employees who exercise their section 7 rights receive millions of dollars per year in Defense Department contracts. Any employer can delay the representation process until employees become discouraged with the union and lose faith in the Labor Board's ability to protect their rights. While Congress fails to enact meaningful labor law reforms, congressmen wonder why tensions are increasing in the workplace.

Eventually there will come a day when each labor law violator pays for its misconduct and each victim obtains a meaningful remedy. This change must be accomplished by the rule of law, for the alternative is chaos. The very future of our economic system hangs in the balance. If the system cannot

79. C. DICKENS, *THE ADVENTURES OF OLIVER TWIST* (London 1835).

provide employees with fundamental rights and guarantee their realization, it will not long survive.

