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# UNEASY TERRAIN: THE IMPACT OF CAPITAL MOBILITY ON WORKERS, WAGES, AND UNION ORGANIZING

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## EXECUTIVE SUMMARY

In May 2000, the United States Trade Deficit Review Commission contracted with Cornell University to conduct a study updating Cornell's previous research on the impact of plant closings and threats of plant closings on union organizing campaigns in the U.S. private sector. Through surveys, personal interviews, documentary evidence, and the use of electronic databases, the Cornell researchers were able to collect detailed data on the extent, nature, and impact of plant closings and plant closing threats for a random sample of more than 400 NLRB certification election campaigns that took place between January 1, 1998 and December 31, 1999. By examining the relationship between capital mobility and union organizing, this study conclusively demonstrates that capital mobility and the threat of capital mobility have had a profound impact on the ability of American workers to exercise their rights to freedom of association and collective bargaining.

Highlights of the study include:

Despite the longest economic expansion in history, American workers today are feeling more insecure about their economic future than they were during the depths of the 1980-1991 recession. There is increasing evidence that this persistent worker insecurity is in large part a function of rapid increases in the extent and frequency of capital mobility and the corporate restructuring and employment upheaval that follows in its wake. This specter of capital mobility, and the economic insecurity it engenders, has served to constrain both wages and union activity in a period of tight labor markets.

We found that the recent acceleration in capital mobility has had a devastating impact on the extent and nature of union organizing campaigns. Where employers can credibly threaten to shut down and/or move their operations in response to union activity, they do so in large numbers. Overall, more than half of all employers made threats to close all or part of the plant during the organizing drive. The threat rate is significantly higher, 68 percent, in mobile industries such as manufacturing, communication, and wholesale/distribution, compared to a 36 percent threat rate in relatively immobile industries such as construction, health care, education, retail, and other services.

The high rate of plant closing threats during organizing campaigns occurred despite the fact that in the last five years unions have shifted the focus of their organizing activity away from the industries most impacted by trade deficits and capital flights, such as apparel and textile, electronics components, food processing, and metal fabrication, where plant closing threats during organizing campaigns average more than 70 percent. Instead, unions are concentrating their resources in less mobile sectors of the economy such as health care and social services where plant closing threats average less than 30 percent.

The study found that not only are threats of plant closing an extremely pervasive part of employer campaigns, they are also very effective. The election win rate associated with campaigns where the employer made plant closing threats is, at 38 percent, significantly lower than the 51 percent win rate found in units where no threats occurred. Win rates were lowest, averaging only 32 percent, in campaigns with threats in mobile industries such as manufacturing, communications, and wholesale distribution where the threats are more credible. In contrast, threats had much less of an impact in less mobile industries such as health care or passenger transportation, where win rates, even in campaigns with threats, averaged close to 60 percent.

Threats of plant closing were found to be unrelated to the financial condition of the company, with threats no less likely to occur in companies in a stable financial condition than in those on the edge of bankruptcy. Instead threats seemed to be primarily motivated by employer anti-union animus. More than three quarters of the campaigns where threats occurred also involved aggressive legal and illegal employer behavior such as discharges for union activity, electronic surveillance, illegal unilateral changes in wages or benefits, bribes, threats to refer undocumented workers to INS, promises of improvement, and promotion of union activists out of the unit.

Not surprisingly, given that direct unambiguous threats to close the plant in response to union organizing activity are often found in violation of labor law, most of the employers chose to make their threats indirectly and verbally. Still, 11 percent of the election campaigns with threats included specific unambiguous written threats ranging from newspaper articles, posters, and videos of union plants that had closed, to letters and leaflets which specifically mentioned that the plant would close if the union came in. Another 51 percent involved specific and unambiguous verbal threats such as the employer stating clearly in captive audience meetings that, if the employees voted in favor of union representation, the plant might shut down, or supervisors asking individual workers whether their families were ready to move to Mexico.

In 18 percent of the campaigns with threats, the employer directly threatened to move to another country if the union succeeded in winning the election. As expected, Mexico was the country most often mentioned in plant closing threats.

The study found that unions are increasingly reluctant to file unfair labor practice charges in response to plant closing threats, both because of the difficulty in documenting and proving that verbal threats occurred, and because the remedies available for threats under U.S. private sector labor law are so limited. Unions filed charges in only 14 percent of the campaigns in the sample where plant closing threats occurred. Although complaints were issued in 63 percent of the campaigns with threats where charges were filed, unions were able to get elections overturned in only 3 percent of all lost elections where plant closing threats occurred.

Despite the high percentage of plant closing threats during organizing campaigns, after the election, employers followed through on the threat and shut down all or part of their facilities in fewer than 3 percent of the campaigns in our sample where threats were made. Although it is too soon after the elections were held to estimate the total number of plants that will close after the election is won, this extremely small percentage reflects the fact that most employers have no intention of following through on the plant closing threats they make during organizing campaigns. Instead, for most employers, plant closing threats are just another tactic in their anti-union campaigns, one that very effectively plays on the real fears of workers living and working in an increasingly mobile economy.

The study finds that the cost of these plant closings and plant closing threats goes well beyond broken unions and failed organizing and first contract campaigns. Absent any hope of collective power to demand real improvements in wages, benefits, working conditions, and long term job protections, workers' insecurity about their position in the current economy and their prospects for the future will continue to rise. The resultant insecurity will continue to constrain wage and benefit demands and hold down inflation, but it will not be good for American workers, their families, and their communities. Without the collective voice and power that unions bring, the global economy becomes little more than a worldwide race to the bottom in wages, working conditions, and living standards, that no nation can win.

The study concludes that international trade and investment policies, combined with ineffective labor laws, have created a climate that has emboldened employers to threaten to close, or actually close their plants to avoid unionization. The report suggests two paths to break the hold that capital mobility has on the economic confidence and security of America's workers. The first is the establishment of trade and tax policies which incorporate strong and enforceable labor standards in trade agreements and provide disincentives to companies that seek to move employment out of the country in response to union campaigns. The second requires changes in U.S. laws which provide for substantial financial penalties and injunctive relief for the most egregious employer violations, particularly plant closings and plant closing threats, as well as amendments that allow for card check recognition and first contract arbitration.



## **Introduction**

For the last decade the U.S. has experienced the longest and most dramatic peace time economic expansion in its history. Since 1991 an estimated 22 million jobs have been added to the economy while the Gross Domestic Product (GDP) has increased, on average, 4 percent each year. Corporate profits have soared while unemployment has dropped toward 4 percent and labor productivity has increased at nearly double the rate it did in the nation's last economic expansion, more than thirty years ago (Greenspan, 1999; Greenspan, 2000; *The Economist*, 2000).

Although widely celebrated, this economic boom carries with it some disturbing contradictions. With unemployment extremely low, labor markets are as tight as or tighter than they have been since the 1960s (Greenspan, 1999). According to the most basic precepts of labor economics, these tight labor markets should have resulted in rising wages and increased job security for America's workers, and increased density and bargaining power for America's unions. Yet real wage gains have come only recently and are extremely modest, and recent polls show American workers are more, not less, anxious about job security.

By examining the relationship between capital mobility, worker insecurity, union organizing, and wages, this study offers important insights into the puzzle of why the average American worker has shared so little in the fruits of the current economic expansion. The study was commissioned by the U.S. Trade Deficit Review Commission (USTDRC). When the Commission was established by an act of Congress in October 1998, part of its charge was to examine "the relationship of the merchandise trade and current account balances to the overall well-being of the United States economy, and to wages and employment in various sectors of the

economy” (USTDRC, 2000: not paginated). Our research collected detailed information on the impact of capital mobility on union organizing, which is fundamental in understanding the relationship between trade deficits, worker insecurity, and wages. This report summarizes the preliminary findings for the USTDRC-sponsored study.

### **Wages, Worker Insecurity, and Capital Mobility**

The current economic expansion began in 1992. Yet for the first four years of the expansion, most Americans watched their wages stagnate or fall, continuing the decline in real wages that had begun in 1973. While real wages increased by 2.6 percent from 1996 to 1999, the median wage did not surpass the 1989 level until mid-1999, and it remains substantially below the median wage reached in 1973 when the downturn in wages began. In 1999, the average wage increase of 3.6 percent (not adjusted for inflation) was considerably lower than it was during similarly tight labor markets in the 1960s and early 1970s (Mishel, Bernstein and Schmitt, 2000; *The Economist*, 2000).

These limited wage gains have also had little impact on reducing poverty levels among the working poor. As the Economic Policy Institute reports “in 1998, 29 percent of all workers were in jobs paying poverty-level wages, a larger share than in the past” (EPI, 2000a:1).

As reported by the Bureau of Labor Statistics, the percent change in real weekly earnings for all industries increased faster than the percent change in real hourly earnings over the last decade (BLS, 1993-1999). Thus, to keep their real wages rising, even at modest levels, American workers are having to work longer hours and more overtime.

According to the International Labor Organization, American workers now lead the industrialized world in hours worked, with the average American reporting that he or she worked 83 more hours, or 4 percent, more than he or she did in 1980 (Olson, 1999). Families, in particular, are working harder to sustain their income, working on average 247 more hours, approximately six more week per year than they worked in 1989 (EPI, 2000b).

More Americans are also working without benefits as employers fail to offer health insurance and other benefits to certain classes of employees. A recent survey of 5,000 Americans found that 19 percent of working adult Americans lack health insurance and 32 percent of Americans with incomes less than \$35,000 per year are uninsured (Williams et al., 1999). The share of the work force receiving employer-sponsored health insurance fell from 80 percent in 1979 to 75 percent in 1998, while in 1998 just 49 percent of workers fell under an employer-sponsored pension plan (Mishel, Bernstein, and Schmitt, 1999).

Why are American workers working longer hours, getting fewer benefits, and failing to recoup past wage losses in such a strong economy? As Federal Reserve Chair Alan Greenspan explained in his testimony before the Senate Banking Committee in February 1997, our "sustainable economic expansion" is thanks, in large part, to "atypical restraint on compensation increases [which] appears to be mainly the consequence of greater worker insecurity" (Greenspan, 1997: 2). Greenspan's fellow Federal Reserve Board member, Laurence H. Meyer, explains Greenspan's argument:

According to this theory, corporate restructuring, globalization, and technological change have increased workers' insecurity about their jobs. As a result, workers have been willing to accept some restraint on their real wages in order to increase their prospects of remaining employed, leading to a more moderate rate of

increase in wages than would otherwise have occurred at any given rate of unemployment (Meyer, 1997:10).

Thus, in the midst of the economic boom, for the last two years “Work Trends Surveys” conducted by the John J. Heldrich Center for Workforce Development at Rutgers University and the Center for Survey Research Analysis at the University of Connecticut have found that nearly nine out of every ten Americans report that they are concerned about job security for workers currently employed and eight out of every ten Americans are concerned about employment prospects for the next generation (Van Horn, 2000). Similar studies conducted by the Chicago-based International Survey Research group found that workers today are three times more insecure about losing their jobs in the current economic boom than they were in the depths of the 1980-81 recession (Belton, 1999).

While there has been only limited research on the nature and root cause of persistent worker insecurity in a period of economic prosperity, there is increasing evidence that the persistence of this uneasiness among American workers is in large part a function of rapid increases in the extent and frequency of capital mobility and the corporate restructuring and employment upheaval that follows in its wake (*The Economist*, 2000; Belton, 1999).

The statistics on what *New York Times* business columnist Louis Uchitelle calls the “shifting workplace” are staggering (Uchitelle, 2000: A1). In the first five years since the North American Free Trade Agreement (NAFTA) was passed in 1994, the Economic Policy Institute estimates that more than 440,000 U.S. jobs were lost to Canada and Mexico (Scott, 1999). Meanwhile, the *Wall Street Journal* estimates that U.S.-based multinationals have hired 600,000 workers in plants in Mexico since NAFTA went into effect (Millman, 1999). According to U.S.

Department of Commerce reports, in 1999 alone a total of 341,000 manufacturing jobs were lost in the U.S. (O'Meara, 2000).

Foreign direct investment (FDI) has also skyrocketed in the last decade.<sup>1</sup> According to data from the Organization for Economic Cooperation and Development (OECD) released this year, cross-border mergers and acquisitions worldwide have increased fivefold since 1990. FDI by U.S.-based multinationals, primarily in the form of mergers with and acquisitions of foreign companies and operations, reached \$122 billion, three times the FDI by U.S.-based multinationals in 1991. During the same period, the direct investment of foreign-based multinationals in U.S. companies and operations increased to \$189 billion, more than seven times what it was in 1991 (OECD, 2000). Within the U.S., jobs and companies are moving as well. According to the Brandow Company's *U.S. Interstate Business Migration Report*, over the three-year period from 1996 to 1999 "16,728 firms representing more than 517,000 jobs relocated between states" and "about six times that number probably relocated to new county jurisdictions inside their home states" (The Brandow Company, 1999: 1).

A significant portion of this job loss and dislocation can be directly traced to changes in trade policy and the soaring trade deficits that have followed. At the end of 1999 the U.S. trade deficit reached \$264,971 billion. This is a 38 percent increase over the trade deficit in 1998 and more than double the \$101,718 billion trade deficit for 1991 (U.S. Census Bureau, 1999). Counter to claims that trade has been a driving force in creating millions of new jobs since the

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<sup>1</sup>By foreign direct investment (FDI) we mean the investment in firms in one nation by a multinational corporation based in another nation including mergers and acquisitions, capital expansion, and new technology.

early 1990s, EPI economist Robert Scott argues that, once we take imports into consideration, the effect of trade on job growth in the U.S. in the last decade has been negative, not positive.

Trade includes imports as well as exports. Looking at exports while ignoring the effects of imports is like trying to keep score in a baseball game by adding up the runs scored by one team and ignoring those scored by the other. In this case, the score, i.e., the trade balance, is the difference between exports (which create jobs) and imports (which destroy them). If imports increase more rapidly than exports, as they have in this economic expansion, the net effect of trade will be to reduce growth and employment (Scott, 2000: 2).

Of the estimated 21 million new jobs created in the U.S. domestic economy since 1992, it is estimated that 4.1 million were created by rising exports. However, increases in imports resulted in the loss of 7.3 million jobs, for a net loss of 3.2 million jobs due to trade since 1992 (Scott, 2000).

The effect of NAFTA on trade deficits has been particularly dramatic. At the same time that gross exports increased 92 percent to Mexico and 57 percent to Canada since NAFTA went into effect in 1994, imports from Mexico increased 139 percent and imports from Canada increased 59 percent. This resulted in a net export deficit of \$47.3 billion, a 169 percent increase over the export deficit between the U.S. and Mexico and Canada in 1993, and led to job losses in all fifty states and the District of Columbia totaling more than 440,000 nationwide (Scott, 1999).

Further compounding the problem of export deficits, since 1995 a growing number of imports have a high percentage of U.S. content -- parts and materials made in the U.S. Under what is called "production sharing," parts for these goods are exported by U.S. companies to Latin American, Caribbean, and Asian countries for cheaper assembly and then imported back,

either duty free or with greatly reduced tariffs, to the U.S. for sale. While more than half of the goods imported under production sharing agreements are assembled in *maquiladora* plants in Mexico, in recent years production sharing has also increased with other countries in Asia, Latin America, and the Caribbean. By 1998 the total dollar value for the U.S. content of imports had risen to more than \$25 billion, dollars no longer paid to U.S. workers for final assembly and production (International Trade Commission, 1999).

International trade tends to be concentrated in the manufacturing sector where wages for jobs tied to both imports and exports tend to be significantly higher than wages for jobs in sectors of the economy such as hospitality and health care, which are not tied to international trade. As economist Robert Scott explains, this means that “the net loss of manufacturing jobs due to trade has naturally had the effect of depressing U.S. wages in this period” (Scott, 2000: 2). It is not surprising then that in 1998 polls conducted by Peter Hart Associates found that “for the first time ever, Americans say the U.S. trade deficit is the most important economic issue facing the country, more important than taxes, the federal budget deficit, and inflation. In 1993, only 7 percent of Americans thought the trade deficit was the most important economic issue facing the country, trailing unemployment, the federal deficit, and taxes” (Public Citizen, 1998: 2).

The emotional and financial havoc wreaked by this capital mobility and the trade deficits goes well beyond the thousands of individual workers whose jobs are lost each year. Every worker in America knows of plants that have shut down, companies that were bought out, or work that was outsourced as U.S. corporations migrate across the country and around the globe in search of lower and lower labor costs and higher and higher profit margins. And it is that specter of corporate migration and rapidly accelerating changes in patterns of multinational

corporate ownership and investment that has distilled the economic insecurity that Greenspan and others argue has held wage inflation in check. As Harvard economist Lawrence F. Katz told the *New York Times*, “not just greater mobility, but the threat of it helps hold down wages” (Uchitelle, 2000: A1).

### **Worker Insecurity, Union Organizing, and Wage Demands**

The relationship between worker insecurity and restraint of wage demands is both individual and collective. Not only are individual workers afraid to ask for significant wage increases in the uneasy terrain of America’s “shifting workplaces,” that same specter of capital mobility haunts the union organizing process for unorganized workers and collective bargaining over wages and benefits for workers already in unions. As I found in my 1996 study commissioned by the Labor Secretariat of the Commission for Labor Cooperation (NAALC), under the cover of trade agreements and the need to stay competitive in the global economy, a majority of employers use the threat of plant closure and capital flight in organizing drives and at the bargaining table (Bronfenbrenner, 1997).

The NAALC study found that half of all employers involved in private sector certification election campaigns threatened to shut down all or part of their operations if workers voted for a union. This number increased to 62 percent in more mobile industries such as manufacturing and communications, where the threat is more credible than it is in industries such as health care or hotels. Fifteen percent of employers actually followed through on the threat and shut down all or part of their operations after the union was voted in. Another 18 percent threatened plant shutdowns during the bargaining process for the first agreement after the union

won the election and was certified by the National Labor Relations Board (NLRB). Certification election win rates were only 33 percent and first contract rates were only 40 percent in units where employers made plant closing threats during the organizing and first contract campaigns, compared to a 47 percent election win rate and 63 percent first contract rate without plant closing threats (Bronfenbrenner, 1997).

These findings reveal that the majority of employers consistently, pervasively, and extremely effectively tell workers either directly or indirectly that if they ask for too much, or don't give concessions, or try to organize, strike, or fight for good jobs with good benefits, the company will close, move out of state, or move across the border, just as so many other plants have done before.

U.S. employers engage in these aggressive actions with little fear of significant legal penalties from the NLRB or the courts. The recently released report by Human Rights Watch on "Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards" explains,

The reality of NLRA enforcement falls far short of its goals. Many workers who try to form and join trade unions to bargain with their employers are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized in reprisal for their exercise of the right to freedom of association . . .

In the United States, labor law enforcement efforts often fail to deter unlawful conduct. When the law is applied, enervating delays and weak remedies invite continued violations. Any employer intent on resisting workers' self-organization can drag out legal proceedings for years, fearing little more than an order to post a written notice in the workplace promising not to repeat the unlawful conduct and grant back pay to a worker fired for organizing. . . . As a result, a culture of near-impunity has taken shape in much of U.S. labor law and practice (Human Rights Watch, 2000: 9).

As the past decade has made all too clear, employers do not grant wage increases simply because their companies are doing well economically. On the contrary, employers grant raises because their employees make demands and have the power in the workplace and the community to enforce those demands. If workers and unions are too afraid to hold out for raises, or if workers are too afraid to organize into unions, then wage gains become increasingly difficult to achieve.

The restraining effect of capital mobility on union organizing and bargaining serves to only further exacerbate economic insecurity among all American workers, both organized and unorganized. Economists Lawrence Katz and Alan Krueger explain:

One reason for the increased insecurity might be the decline of unions in the United States. Union membership has fallen steadily since reaching a peak in the mid-1950s. In 1973, 24.6 percent of private-sector workers belonged to a labor union. By 1998 that rate had fallen to 9.6 [percent].

In their heyday, unions had great bargaining power, increasing wages not only for their members, but also for nonmembers through the threat of unionization. . . . If workers have become more timid in their wage demands in the 1980s and 1990s, the lower level of private-sector unionization would seem a prime explanation: they lack the representation to press for wage gains (Katz and Krueger, 1999: 4).

In the 1960s, when American workers last experienced the kind of economic expansion and tight labor markets we have today, unions represented 30 percent of the workforce. Because they were concentrated in some of the nation's largest and most prosperous industries, it was union workers who were able to capitalize on the tight labor markets of that era, forcing employers to share their soaring profits and creating the dramatic union/non-union differentials

that drove employers to raise wages for unorganized workers as well (Mishel, Bernstein, and Schmitt, 1999; BLS, 1960-1970).

Today, union workers still earn 30 percent more than non-union workers, but outside of a few industries such as auto and paper, they do not represent enough of the workforce to leverage significant wage gains for their non-union counterparts (BLS, 2000). In recent years increasing numbers of unorganized workers state that they would vote for a union if an election was held in their workplace. By 1999, 43 percent of unorganized workers said they would vote for a union compared to 30 percent in 1989 (AFL-CIO, 2000). Yet when faced with the brutal and aggressive employer opposition, including plant closing threats, that has become routine in union organizing campaigns today, fewer than 500,000 of the nation's millions of unorganized workers attempt to organize a union each year, and fewer than a third of those who attempt to organize succeed in gaining union representation under a collective bargaining agreement (Bronfenbrenner, 2000a).

Absent union representation, individual workers have neither the courage nor the power to overcome employer resistance to transferring their profits to workers' wages. Yet, without protection from employer threats of plant closing, workers in mobile industries remain constrained and intimidated from exercising their legal right to organize into a union to bargain collectively for wage increases. And without the ability to organize significant numbers of workers in their industries, unions lack the market power to overcome employer threats to close all or part of the firm in response to union bargaining demands for increased wages.

When we first conducted research on plant closing threats and plant closings during organizing and first contract campaigns, NAFTA had just gone into effect and the current wave

of multinational restructuring and expansion had just escalated. Today, in the post-NAFTA climate of expanding trade agreements, skyrocketing levels of corporate migration and foreign direct investment, and burgeoning trade deficits, anecdotal evidence suggests that the percentage of plant closing threats during organizing campaigns and the percentage of actual plant closings during or in the aftermath of organizing campaigns have actually increased in the last five years. Absent updated data, however, there is no conclusive or reliable documentation for those assumptions.

Because of this lack of more recent data, in May 2000 the U.S. Trade Deficit Review Commission contracted with us to update our earlier research on employer behavior in certification and first contract campaigns, with a specific emphasis on collecting detailed data on the impact of the threat of capital mobility during the organizing process. With this information we can then examine these threats in the context of company structure and characteristics and other employer behavior during the organizing process, as well as their broader impact on U.S. worker insecurity and wages in the global economy.

## **Research Methods**

The study is based on surveys of lead organizers from a random sample of 600 NLRB certification elections.<sup>2</sup> The sample is derived from data compiled by the Bureau of National

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<sup>2</sup>Due to the Commission's legislated reporting date of mid-November, this study focuses solely on those campaigns that actually went through to an NLRB certification election. This means that this data does not include either those units where plant closings or plant closing threats caused the union to withdraw their petitions before the election was held nor units where the plant closings or plant closing threats resulted in organizing campaigns never getting off the ground. This study also does not examine employer behavior during the first contract process because for many of the cases in the sample the union and the employer are still in the process of bargaining the first agreement.

Affairs (BNA) of all NLRB single-union certification election campaigns in units with 50 or more eligible voters<sup>3</sup> which took place in 1998-1999. Lead organizers in these campaigns were mailed surveys asking them a series of questions about plant closings and threats of plant closings along with data on election background, organizing environment, bargaining unit demographics, company characteristics and tactics, labor board charges and determinations, union characteristics and tactics, and election and first contract outcomes. Surveys were completed either by mail or by phone. In-depth follow-up phone interviews were also conducted for all cases where plant closings or threats of plant closings were reported by the organizers to have played a role in the organizing process.

For each case in the sample we also conducted computerized database searches to determine the parent corporation, any foreign sites or locations, the countries in which the firm's customers and suppliers are located, and the firm's global and U.S. employment totals. In addition, we used the AFL-CIO UNICORE database, financial filings, newspaper and trade journal reports, and reports from union organizers to identify whether or not there is a current collective bargaining agreement in another unit or units at the location where the representation election took place and any other units or sites of the parent corporation.

To gauge the financial condition of the publicly-held firms in the sample, we used annual and quarterly Securities and Exchange Commission reports to identify key financial indicators such as annual revenue, net income, earnings per share, and changes in these measures over the past several years. For privately-owned firms, we relied on computerized corporate and

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<sup>3</sup>The study focuses on units with 50 or more eligible voters because data on bargaining unit demographics, company characteristics and tactics are much more difficult to reliably analyze in units with only a small number of voters.

periodical databases such as Lexis-Nexis and Dun and Bradstreet to acquire similar information on the company's financial condition. For comparable financial data for the non-profits in the sample, we utilized data from 990 forms that we had requested from the Internal Revenue Service for each of the non-profit companies in our sample. For all cases, we utilized financial statements, credit reports, and news articles to identify some of the most recent events and trends that impact the firms in the sample to understand more fully the current challenges, opportunities, and difficulties facing the company at the time of the election, such as bankruptcy, massive layoffs, or corporate mergers, acquisitions, or takeovers.

To determine whether unions filed unfair labor practice charges (ULPs), and the disposition of those charges when they did, we relied on survey responses from organizers as well as a database of ULP cases published by the Food and Allies Service Trades (FAST) Department of the AFL-CIO, published NLRB decisions, and news articles about union campaigns. Whenever possible, we obtained NLRB documents, either from the organizers or through requests to Regional Offices of the NLRB filed under the Freedom of Information Act (FOIA). Only those charges that were confirmed by either the organizer or NLRB documents received as part of a FOIA request were included in the final data analysis. Because most of the FOIA requests were still outstanding at the time of this report, these findings may under-report the percentage of campaigns in which charges were filed.

In the three months since we started data collection in May 2000, we collected surveys on 407 certification election campaigns out of our total random sample of 600 campaigns. This represents a response rate of 68 percent, and at 407 campaigns is the largest comprehensive database on private sector union certification election campaigns to date. In addition we were

able to collect corporate ownership, structure, and financial information for 99 percent of the 407 cases in our sample. NLRB data was compiled from the FAST database for 65 percent of the 136 cases where NLRB charges were filed, while NLRB documents were collected for 46 percent.

### **Background Information on the Population and Sample of NLRB Elections, 1998-1999**

According to BNA records, 1998 and 1999 showed some of the highest levels of NLRB certification election activity in the last two decades (BNA Plus, 2000). During this period unions participated in more than 6200 elections (3229 in 1998 and 2976 in 1999) involving more than 450,000 workers. This represents a 14 percent increase over the number of certification elections held in 1995 and a 21 percent increase over the number of eligible voters who participated in certification elections in 1995. Union win rates, after hovering just under 50 percent since the 1980s, increased to 51.2 percent in 1998 and 51.3 percent in 1999. The number of eligible voters in elections won by unions also increased to 105,624 in 1998 and 95,238 in 1999, compared to only 66,753 in 1995.

This increased organizing activity reflects significant initiatives by the AFL-CIO and its national and local affiliates to improve union organizing capacity and success through shifting staff and financial resources into organizing, mobilizing leaders and members to support organizing campaigns, and developing and implementing more effective organizing strategies and tactics. Yet, despite these gains, these numbers still show that fewer than half of all workers eligible to vote in union elections achieve union representation. Furthermore, because private sector first contract rates average 60 percent, only 26 percent of workers who attempt to organize

under the NLRB end up being covered under a collective bargaining agreement (BNA Plus, 2000; Bronfenbrenner, 2000a).

According to BNA Plus reports, NLRB election activity continues to be increasingly concentrated in service sector units in the health care, social service, business service, and hospitality industries. Just over 30 percent of all NLRB elections in 1998 and 1999 were in service sector units, including 14 percent in health care alone. This compares to 25 percent in manufacturing, 16 percent in transportation and utilities, 10 percent in construction, 6 percent in retail sales, 4 percent in wholesale, 2 percent in communications, 2 percent in finance, insurance, and real estate, and 1 percent in mining. In 1998 win rates averaged 62 percent in health care and 61 percent in all services combined, compared to 42 percent in manufacturing, 52 percent in transportation, communications, and utilities, 51 percent in construction, 52 percent in retail, 39 percent in wholesale, 78 percent in finance, insurance, and real estate, and 39 percent in mining (BNA Plus, 2000).

While the majority of union organizing activity in the private sector continues to be concentrated in units with fewer than 50 eligible voters (64 percent of all elections in 1998 and 71 percent in 1999), in recent years unions are running more campaigns and winning more elections in units with 500 or more eligible voters (1 percent of all elections in 1998 and 2 percent of all elections in 1999). Still, win rates continue to be lower in these larger units, averaging only 39 percent in 1999 for units with 500 or more eligible voters.

As in past years, AFL-CIO affiliates are on the ballot in more than 90 percent of all NLRB certification elections. While local independent unions account for 5 percent of the elections, national independent unions such as the National Education Association (NEA) and

the American Nurses Association (ANA) account for the remaining 3 percent. The Teamsters (IBT) remain the most active union, accounting for 29 percent of the elections in 1998 and 30 percent of the elections in 1999. However, because most of their elections are concentrated in very small units, and because their win rate averages only 41 percent, they account for only 17 percent of workers in units where the union won the election. The other most active unions include Service Employees (SEIU), Autoworkers (UAW), Steelworkers (USWA), Food and Commercial Workers (UFCW), Union of Needle Trades, Industrial and Technical Employees (UNITE), and Hotel and Restaurant Employees (HERE) (BNA Plus, 2000).

Although for purposes of analysis the sample is limited to elections which occurred in units with 50 or more eligible voters, summary statistics for the sample reveal that it is extremely representative of the combined population of all NLRB certification elections which took place between January 1, 1998, and December 31, 1999. As we can see in Table 1, 49 percent of the elections in the sample took place in 1998 and 51 percent took place in 1999. The average win rate for elections in the sample is 44 percent, exactly the same as the 44 percent win rate for the population of all elections in units with 50 or more eligible voters which took place in 1998-1999. Similar to the population, 32 percent of the elections in the sample are in manufacturing, food processing, printing, and fuel and chemical processing, while 26 percent are in health care and another 16 percent are in social services, education, hospitality, entertainment, and other services. Just as in the population, more than 90 percent of the elections involved AFL-CIO affiliates. We are therefore confident that, with a response rate of 68 percent, the sample is a reliable representation of the population of NLRB elections in units with 50 or more eligible voters that took place in 1998-1999.

## **The Extent and Nature of Plant Closing Threats during Certification Election Campaigns**

In the late 1980s, prior to the passage of NAFTA and other trade agreements and the escalation in capital mobility and corporate restructuring that followed, employers made plant closing threats a primary focus of their anti-union campaigns in 29 percent of NLRB certification elections. By the mid-1990s, when NAFTA first went into effect, the plant closing threats during organizing campaigns had increased to 50 percent of all elections and 62 percent in more mobile industries such as manufacturing where the threat to move all or part of a facility either within or outside of the U.S. was much more credible (Bronfenbrenner, 1997).

As we can see from Tables 1-3, by the end of the 1990s plant closing threats had become an even more pervasive and effective component of employer anti-union strategies. Consistent with our 1993-1995 findings, 51 percent of all employers made threats to close all or part of the facility if the union was to win the certification election campaigns. The overall threat rate, however, underestimates the extent that employers use plant closing threats during organizing drives because it includes industries and sectors of the economy where threats to shut down or move facilities to another town or state and/or out of the country are much less prevalent and carry less weight simply because the industry or product is less mobile. While workers in an auto parts plant, textile mill, or telecommunications call center can easily believe an employer's threat to move their jobs to Mexico or even Southeast Asia, an employer's threat to shut down and/or move has much less credibility for workers in a nursing home, retail store, social service agency, or hotel.

Just under a third of the campaigns were in manufacturing units, 42 percent in services, 3 percent were in retail, 11 percent in transportation, 9 percent in warehouse and wholesale

distribution, and the remaining five percent were in mining, construction, communications, and utilities (Table 2). This is a significant change in organizing focus from the 1993-1995 data where 43 percent of the campaigns were in manufacturing units and 28 percent were in services. These data reveal that unions are shifting their focus from organizing targets in industries with high threat rates, such as garment and textiles, electronics, communications, and auto parts, toward less mobile industries such as health care, passenger transportation, social services, education, and laundries. UNITE, for example, which in past years has concentrated most of its efforts in organizing in textile and apparel manufacturing, where the threat rate is 100 percent and the percent of plant closings and jobs moved overseas from already organized units increases each year, has shifted its focus to laundries and distribution warehouses where the threat rate is 50 percent and 43 percent and the ability of employers to move work out of the country is much more restricted. Similarly, the percentage of campaigns in the health care industry has doubled since the 1993-1995 study from 13 percent to 26 percent.

When we look just at campaigns with threats, we find that 45 percent of the campaigns with threats were concentrated in manufacturing units while only 27 percent were in service sector units. The plant closing threat rate was lowest in industries such as social services (8 percent), entertainment (25 percent), health care (31 percent), passenger transportation (37), and hospitality (33 percent), while it was 75 percent or higher in industries such as aerospace, auto and auto parts, electronics, food processing, garment and textiles, metal fabrication and production, household and recreational products, printing, communications, and gas and electric utilities. For the least mobile industries, such as health care and passenger transportation, the win rate for campaigns with threats averaged close to 60 percent. This contrasts sharply with the

average win rate in campaigns with threats in much more mobile industries such as manufacturing (28 percent), communications (0 percent), and wholesale distribution (30 percent), reflecting how much less credible and effective plant closing threats are in companies where workers feel it is unlikely, or much less likely, that employers will be able to follow-through on the threat.

If we limit our analysis to mobile industries<sup>4</sup> we find that, at 68 percent, the plant closing threat rate in the 1998-1999 sample was substantially higher than the 62 percent threat rate we found for mobile industries in the 1993-1995 study. The plant closing threat rate particularly increased in manufacturing industries (71 percent in 1998-1999 versus 64 percent in the 1993-1995 study), food processing (78 percent in 1998-1999 versus 21 percent in 1993-1995), and communications (100 percent in 1998-1999 versus 11 percent in 1993-1995).

The nature of the plant closing threats is examined in more detail in Table 3. Overall, we find that 40 percent of employers in our sample made veiled verbal threats, while 26 percent made specific unambiguous verbal threats. Thirteen percent of the employers made veiled written threats and 5 percent of the employers made specific unambiguous written threats.

Not surprisingly, given that direct unambiguous threats to close the plant in response to union organizing activity are often in violation of the law<sup>5</sup>, most of the employers chose to make

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<sup>4</sup>Mobile industries are defined as those workplaces that perform work that could be transferred with relative ease to another location while those we identify as immobile are workplaces with work that cannot reasonably be moved to another location due to the localized nature of the services performed. For example, we categorized manufacturing, mining, and communications as mobile industries. Immobile industries, such as social services, health care, passenger transportation, and hospitality, rely on clients, patients, or customers that necessitate keeping the work performed at the current locations in order to continue to serve these markets. In total, 47 percent of the cases in our sample were in mobile industries while 53 percent of the cases were in immobile industries.

<sup>5</sup>See page 28 for a discussion of the law relating to plant closing threats during union organizing campaigns.

their threats indirectly and verbally. Thus, 79 percent of the election campaigns where threats were made involved veiled verbal threats, while 51 percent of campaigns with threats involved specific and unambiguous verbal threats. Whether specific or veiled, verbal threats are extremely difficult to document and prove in an unfair labor practice case, particularly when they are made as part of a one-on-one meeting with supervisors or other managers. Still, 11 percent of the election campaigns with threats included specific unambiguous written threats, which are much easier to document and are more likely to be found in violation of the NLRA<sup>6</sup>.

Specific unambiguous written threats ranged from newspaper articles, videos, and photographs of union plants that had closed to letters and leaflets which specifically mentioned plant closings. During a Sheet Metal Worker campaign at Gerald Industries in Gerald, Missouri, management posted a list of union companies that had closed and then sent a letter from the plant manager to all employees stating, “If our company cannot agree to union demands, which in our judgment will make us non-competitive . . . Gerald Industries may simply have to shut down and go out of business if an acceptable agreement cannot be reached” (Gerald Industries, 1998). Similarly, in the NLRB decision ordering the rerun election at Fieldcrest Cannon (now Pillowtex), the Board describes how the company contracted with a public relations firm to circulate advertisements which “clearly conveyed to employees threats of job loss and plant closure if the Union won the election.”

The advertisements created by B & C Associates were displayed on telephone poles in the City of Kannapolis and within the plant. One advertisement features

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<sup>6</sup>The percentages listed for types of threats made do not add up to 100 percent because many employers gave multiple threats in multiple formats during the course of the organizing campaign.

a picture of a nuclear explosion with the caption, ‘There’s more than one way to destroy a community. VOTE NO.’ Another advertisement shows a group of workers standing outside of a plant gate with the sign ‘closed’ hanging on the gate. The caption reads, ‘In the past decade, scores of textile plants have closed in North Carolina. Thousands of workers have lost their jobs. Fieldcrest Cannon lost \$41 million last year. Vote NO Union.’<sup>7</sup>

In 9 percent of the elections in the sample and 18 percent of the campaigns with threats, employers made specific threats to move to another country. As expected, Mexico was the country most often mentioned in plant closing threats. Fourteen percent of the campaigns with threats included specific mention of Mexico, while the remaining 4 percent included threats to move to Canada, Puerto Rico, China, or an unspecified foreign country.

For example, Mexican Industries, a leading auto parts supplier based in Detroit, Michigan, made the threat of moving to Mexico a central theme of its anti-union campaign. During an earlier organizing campaign in 1995, which the UAW lost, company spokesperson Bob Copley sent a letter to employees which, according to *Crain’s Detroit Business*, stated that “the UAW’s efforts could upset a delicate balance at the company. Mexican Industries’ Detroit jobs are a big cost to a company, which could obtain lower labor expenses in Mexico” (Sherefkin, 1995: 1). According to the NLRB, four years later the company’s owner, managers, and first line supervisors made direct threats “that the plant would close and move to Mexico if employees voted for the UAW” in a series of captive audience meetings and supervisor one-on-ones at three of their facilities involved in the organizing campaign. All told, the Board alleged fifteen separate violations of plant closing threats committed by the employer at Mexican

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<sup>7</sup>See *Fieldcrest Cannon, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO*, 318 NLRB 470, 152 LRRM 1173 (1995).

Industries. In one case the NLRB held that the employer had threatened plant closure “by asking them [the employees] if they planned to wear their T-shirts with the Charging Union’s logo in Mexico” (NLRB Region 7, 2000).

Companies also made direct threats to transfer work to unorganized plants of the same company, both in the U.S. and abroad, if the union was successful. For example, during the Steelworkers’ campaign at Valeo Sylvania, a vehicular lighting manufacturer that is part of a joint venture between Valeo Sylvania and the German multinational Siemens AG, managers continuously spoke to workers about their new facility in Mexico. An entire product line had been sent to Mexico prior to the organizing drive and during the campaign the company sent equipment from the plant to Mexico, with the full knowledge of the employees (Plant Closing Threat Appendix A: Case 585).

Similarly, early in the UAW campaign at Mitsubishi Heavy Industries Climate Control in Franklin, Tennessee, the management consultant discussed a plant that Mitsubishi was building in Mexico and the possibility of some work being transferred to that facility. During the last two weeks of the campaign, a poster was put up under glass on a plant bulletin board showing an Indiana plant closed, with a lock on the gate and the caption “This is what happened to hundreds of strikers in Indiana.” In the last two weeks of the campaign, supervisors escalated the threats in individual conversations with workers, asking one worker, “Is your family ready to move to Mexico?” (Plant Closing Threat Appendix A: Case 449).

For some campaigns, the mere existence of other sites and operations in other countries made specific mention of moving work to that country unnecessary. For example, according to the USWA organizer of the 1998 campaign at Continental General Tire in Mt. Vernon, Illinois,

management made threats in captive audience meetings and supervisor one-on-ones stating, “We are not competitive as a company and we can’t afford to pay the wages and benefits the union will impose on us. We will have to close, and we already have facilities overseas.” The threats were effective because workers knew through rumors that several other General Tire plants were moving to Mexico at the time of the organizing campaign (Plant Closing Threat Appendix A: Case 552).

Clear, unambiguous threats were not limited to the more mobile manufacturing industry. There were several hospital campaigns in the sample where the employer specifically mentioned in captive audience meetings and supervisor one-on-ones that the hospital would shut down if the union won the election. In one nursing home campaign management posted photographs of closed union facilities around the worker dining area during the campaign. During the NEA campaign for faculty at the Center for Psychological Studies (CPS) at Nova Southeastern University, in Fort Lauderdale, Florida, management sent a letter which discussed the union campaign and urged the employees to consider the fact that

The only really effective power of the union as a bargaining agent is its ability to call a strike. Strikes within academic settings are difficult to effectuate. While a strike is on, academic activities cease, classes are curtailed, and the program may be crippled. With a situation such as CPS, a crippling of the program could well lead to dissolution of CPS (Nova Southeastern University, 1998).

Ambiguous verbal and written threats tended to focus on examples of union facilities that had closed down, or implications that the company would lose business or be unable to remain competitive in the global economy if the union was to win the election. During the Teamsters

campaign at Premix in North Kingsville, Ohio, the company posted a list of “Ashtabula County Industrial and Employment Losses” with a caption: “Unionized plants do not secure jobs” (Premix, 1999). During the Steelworkers’ campaign at Excel Mining Systems in Marion, Illinois, the company circulated more than thirty newspaper clippings of the many Steelworker plants that had closed around the country over the past decade. The articles included sensational headlines such as “Final Bell tolls for Flagg,” “Kunkle workers ‘devastated,’” “Bethlehem closes last hometown plant,” and “Ala. Town loses coke plant; a mainstay since 1912, processing facility lays off 300” (Supporting Documents Appendix B: Case 586).

Employers also made threats that unionization would threaten existing contracts with customers or suppliers. In some cases, such as the UAW campaign at auto parts manufacturer ZF Industries, representatives from the customer or supplier company passed on the threat to employees. According to the organizer for the ZF Industries campaign, two days before the election 80 percent of the workers were actively and visibly supporting the union. The day before the election a representative from Mercedes Benz, ZF Industries’ principal customer, visited the plant and held a meeting with first line supervisors. Following this meeting, supervisors circulated among workers saying that Mercedes had told them that they would not do business with a union supplier and showed workers a letter stating the same thing. The union lost the election at ZF Industries two to one (Plant Closing Report Appendix: Case 431).

In another campaign, the company being organized had a housekeeping contract with an anti-union pharmaceutical company. The contract had expired before the organizing campaign and was continuing on a month-to-month basis while it was out to bid. During the organizing campaign workers were warned in one-on-one meetings with supervisors that if they organized,

the pharmaceutical company would drop their contract (Plant Closing Threat Appendix: Case 251).

Employers also sought to distance themselves from the threats by spreading plant closing rumors either through the anti-union committee or supervisors. During the UAW campaign at Tower Automotive, a technician passed around a leaflet outlining “the union’s track record on job security for Tower plants.” The leaflet listed five union plants with the notation “CLOSED!” next to each one and noted that “None of 11 non-union have closed.” Detailed corporate and collective bargaining information contained in the leaflet suggests that management assisted in the preparation of the document (Tower Automotive, 1999).

During the UAW campaign at Daiken Clutch Corporation, the company issued a regular “Employee Information Bulletin” answering questions from employees about the campaign. Although management said in one of the bulletins that they “have no intention of closing or moving this plant, and certainly not to avoid the union,” the bulletins served to reinforce and more broadly distribute plant closing threats rumored to have been made by supervisors or fellow workers. For example, Question 42 in the April 16, 1999, bulletin asked,

. . . Why does Pam Baker keep telling us her opinion about unions? She has said that the Japanese would never keep a factory open that was a union shop. Being in management, shouldn’t she keep her opinion to herself?

Answer: Even the labor law permits constitutional free speech and personal expression by managers and supervisors, so long as the statements made by managers and supervisors are not threats or promises as interpreted by the NLRB. Since we weren’t there, we don’t know exactly what Pam said. We’re confident, however, that whatever was said was her personal opinion (Daiken Clutch, 1999a).

As expected, union election win rates were significantly lower in units where plant closing threats occurred (38 percent) than in units without plant closing threats (51 percent). Win rates were especially low (24 percent) in those campaigns where employers made specific threats to move to another country. Win rates were also significantly lower in mobile industries where the threat of closure was more credible. Overall, win rates in mobile industries averaged 34 percent compared to a 54 percent win rate for immobile industries, while in campaigns in mobile industries with threats the win rate averaged 32 percent, compared to a 46 percent win rate in immobile industries with threats.

However, even in campaigns in mobile industries without threats the win rate averaged only 37 percent, in contrast to immobile industries without threats, where the win rate averaged as high as 58 percent. What these numbers reveal is that in mobile industries such as manufacturing, communications, wholesale distribution, and some business services, the threat of capital mobility need be neither spoken nor written to have an impact. Workers in industries such as textiles, electronics, telecommunications, food processing, or computer technical support do not need any reminder from their employers that they work in an insecure industry where companies shut down and move in search of lower labor costs, higher profits, and a non-union workforce. Similarly, in some of the largest multinational companies in our sample, such as Mitsubishi, Pepsico, Royal Dutch Shell, Owens Corning, Georgia Pacific, Pratt and Whitney, or Siemens AG, workers didn't need a direct plant closing threat to worry that these companies might move all or part of their work to sites in Asia, Latin America, Africa, Europe, or Canada. An increase in shipments to other countries or a visit from company officials from other countries could serve as a very credible threat of plant closure during an organizing campaign.

## Unfair Labor Practice Charges Filed on Plant Closing Threats

The NLRB and the courts have held that employer threats to close the plant if the union succeeds in organizing can be unlawful under certain circumstances. For example, *Guardian Industries Corp. v. NLRB*<sup>8</sup> held that it was unlawful for a supervisor to say to an employee, “If we got a union in there, we’d be in the unemployment line.” However, under the “employer free speech” provisions of the Taft-Hartley Act, the courts have permitted the employer to predict a plant closing in situations where it is “carefully phrased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control” (St. Antoine, 1985: 639). For example, as Human Rights Watch described in its recently released report,

One prediction a court found to be ‘carefully phrased’ was made by the owner of an Illinois restaurant where workers sought to form a union and bargaining collectively. In a tape-recorded speech in a captive-audience meeting the owner stated, ‘If the union exists at [the company], [the company] will fail. The cancer will eat us up and we will fall by the wayside . . . I am not making a threat. I am stating a fact . . . I only know from my mind, from my pocket book, how I stand on this.’ The NLRB found this statement unlawful. A federal appeals court reversed the board, finding the employer’s statement a lawful prediction that did not interfere with, restrain, or coerce employees in the exercise of the right to freedom of association.

At an Illinois auto parts plant where workers began organizing, a supervisor told workers, ‘I hope you guys are ready to pack up and move to Mexico.’ Again, the NLRB found that the statement was a plant closing threat. And again the appeals court overturned the finding by the NLRB. The court said the statement was ‘a joke, not a threat’ . . . (Human Rights Watch, 2000: 108-109).

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<sup>8</sup>*Guardian Ind. Corp. v. NLRB* 49 F3d 317, 322, 148 LRRM 2665 (CA 7, 1995)

Thus, employer plant closing threats are not considered by the NLRB to be illegal “where the financial condition of the company supports an objective opinion that unionization may cause business failure” (Hardin, 1997: 38). For example, in *House of Raeford Farms* (308 NLRB 362), the Board held it was lawful for an employer to say it would be forced to close if there was a strike that shut the plant and there was a loss of customers.

While the Board and Courts have made plant closing threats illegal under certain circumstances, they have upheld the right of employers to completely shutdown operations and go out of business for the purpose of avoiding unionization, if the shutdown is complete. Under this standard, partial shutdowns or the transfer or subcontracting of work to avoid unionization are not legal, but full shutdowns are<sup>9</sup>.

When an employer is found guilty of making an unlawful threat of plant closure, the typical remedy is a cease and desist order coupled with the posting of a notice promising not to make such statements in the future. If the employer chooses to litigate the charge it can take months and even years before such a remedy takes place. However, such notices do not state that the employer will not close the plant if the employees unionize, or even that it would be illegal for the employer to relocate its operations because employees unionized. They only indicate that the employer promises not to make further threats in the future. And, if the employer violates the cease and desist order and continues to make threats, any further legal sanctions, such as contempt citations, are extremely rare, and take years to process through the courts.

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<sup>9</sup>See *Textile Workers v. Darlington Mfg. Co.* 380 US 263 (1985).

In effect, the posting of the notice or even a cease and desist order, can serve as a reminder and reinforcement of the earlier threat, advertising to all employees, in writing, that this employer has threatened to close the plant if the union wins.

As in the case of the UNITE campaign at Pillowtex, unlawful threats of a plant closing can also be the basis for setting aside the results of an election and calling for a new one. However, as shown in Table 10, this occurred in only 11 percent of the campaigns with threats where objections were filed, and normally only in the most egregious cases, such as Pillowtex, where the plant closing threats were clear and unambiguous and were coupled with numerous other egregious violations including repeated discharges, surveillance, threats, and harassment of union activists and supporters.<sup>10</sup> Unions were not able to win any of the rerun elections in our sample for campaigns where the employer had made plant closing threats.

The strongest Board remedy in the aftermath of a union loss after plant closing threats is to reverse the election and issue a certification and bargaining order, without requiring the union to go through a rerun. These are extremely rare, occurring in only one campaign in our sample (Table 10).

As we can see in Table 3, unions filed charges in only 14 percent of the campaigns in the sample where plant closing threats occurred. This is a dramatic decrease from our earlier study which found that in 1993-1995 unions filed charges on a third of all elections with plant closing threats. The difference suggests that many unions are using the NLRB much more strategically, both because they understand the difficulty in winning Board charges relating to plant closing

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<sup>10</sup> Fieldcrest Cannon, Inc. and Amalgamated Clothing and Textile Workers Union, *AFL-CIO*, 318 NLRB 470, 152 LRRM 1173 (1995). During the campaign the company name changed from Fieldcrest Cannon to Pillowtex and the union name changed from ACTWU to UNITE.

threats, particularly the large number of veiled threats or verbal threats made in one-on-one meetings with supervisors and other management, and because they recognize the limited value of Board remedies. This is especially true in cases where it looks likely that the union is going to win the election and organizers want to avoid filing charges that might unnecessarily delay or block the election, and in cases where the union is certain to badly lose the election and is unlikely to be able to reverse the loss even if a rerun is ordered.

According to Fred Feinstein, former General Counsel to the NLRB, in recent years the Board has actively encouraged unions to be more discriminating in their filing of unfair labor practices.

Starting in the mid-1990s, when the budget was being squeezed at the NLRB, one of the things we said to people who filed charges before the Board is that they should try to weed out cases in which it was difficult to prove merit because our resources were tight and we wanted to concentrate on the cases that we could do something about (Interview with Fred Feinstein, August 30, 2000).

The disposition of unfair labor practices relating to plant closing threats provides further evidence that organizers are being more strategic and selective about filing charges. Unions withdrew charges before a complaint was issued in 13 percent of the campaigns with threats where charges were filed, and settled before a complaint in 10 percent (Table 3). Charges were dismissed by the Board without a complaint being issued in 7 percent of the cases, while a complaint was issued on at least some charges in 63 percent of the campaigns with threats where charges were filed. Charges were settled after the complaint was issued in 7 percent, and the final determination was in the union's favor in 13 percent of the campaigns with threats where

charges were filed, while the final determination was not in the union's favor in 13 percent. The significantly lower rate of charges withdrawn (13 percent in 1998-1999 compared to 33 percent in 1993-1995) and significantly higher rate of complaints issued by the Board (63 percent in 1998-1999 compared to 48 percent in 1993-1995) confirm that unions are being more cautious about filing charges in cases that they are unlikely to win.

When asked why they did not file charges over a plant closing threat, by far the most prevalent answer (51 percent) given by organizers was that they did not think the case was strong enough to win the charge. Twenty-eight percent reported that they did not file charges because they thought the union would win the election and did not want a delay, while 9 percent failed to file charges because they felt that it was not worth the effort and expense since the union was going to lose the election anyway. Another 9 percent reported that, although they believed they had a strong case, it was not worth filing a charge because they did not have confidence that the Board would rule in their favor. In 3 percent of the cases where the union did not file charges they were unable to convince witnesses to come forward to testify.

What these data suggest is that while plant closing threats have dramatically increased in more mobile industries, organizers have much less faith in the NLRB process and are less willing to devote the union's efforts and resources to a process that they are unlikely to win. Unions also may be less likely to file unfair labor practice charges in response to plant closing threats because of the changing nature of those threats. Follow-up interviews with organizers, in both the current study and the study conducted for the NAALC, reveal that in the first years after NAFTA went into effect, employers were much more blatant and unsophisticated in both the content of their threats and the way in which they were carried out.

Twice as many employers in 1993-1995 made specific unambiguous written threats that they would shut down all or part of the plant or contract out all or part of the work force if the union was to win the election. Several employers posted maps on the wall with bright red arrows pointing from the U.S. to Mexico. Others put up banners and signs or even distributed T-shirts with the plant closing threat boldly emphasized (Bronfenbrenner, 1997). In almost every one of these more blatant and visible examples of plant closing threats from the 1993-1995 sample unions were able to win either postings, rerun elections, or bargaining orders. However, in the years since our earlier report came out, it appears that employers have discovered that in the current climate of increased capital mobility, more subtle and veiled threats can be just as effective and less open to union unfair labor practice charges.

### **Corporate Structure and Company Characteristics**

Tables 4 and 5 provide us a more detailed picture of the corporate structure and characteristics of companies involved in certification election campaigns. Consistent with earlier research, the majority of union private sector organizing campaigns are concentrated in relatively small units in U.S.-owned for-profit companies. However, in the last five years there have been significant shifts in the ownership structure of private sector companies where organizing is taking place, reflecting both changes in union targeting strategies and changes in corporate ownership worldwide. Compared to five years ago, companies targeted for organizing campaigns are more than twice as likely to be non-profits and 50 percent more likely to be subsidiaries of large multinational parent companies. They are also much more likely to have

foreign sites and locations, foreign suppliers and customers, and less likely to have all sites and operations based in the U.S.

Eighty-four percent of the companies in our sample were subsidiaries of larger parent companies. This is a dramatic increase over the 57 percent which were subsidiaries of larger corporations in our 1993-1995 sample. Seventy-seven percent of the companies in our sample were for-profit companies, a slight majority of which (40 percent of the sample) were publicly held corporations traded on the stock exchange, while the remaining 37 percent were privately held.

Only one third of the campaigns occurred in for-profit companies solely based and operating in the U.S., compared to 52 percent of the 1993-1995 sample. Another 31 percent of organizing campaigns occurred in U.S.-based multinational corporations and 13 percent were in foreign-based multinational corporations in Canada (4 percent), Europe (6 percent), Latin America/Caribbean (1 percent), Asia (2 percent), and Australia/New Zealand (less than 1 percent).

Twenty-three percent of all certification election campaigns took place in non-profit companies such as hospitals, social service agencies, or educational institutions, compared to just 11 percent in the 1993-1999 sample. This reflects both the surge in organizing activity among unions who normally dominate the non-profit sector, such as SEIU, and traditionally public sector unions such as AFT and AFSCME that are now following public sector work as it is contracted out and shifted to the private sector. It also reflects a continuing trend among industrial and building trades unions who are finding their traditional sectors more and more

difficult to organize and so are branching out into non-profit units in search of greater organizing success.

The attraction of non-profit companies is not surprising given the fact that win rates average as high as 56 percent in organizing campaigns in non-profits, compared to a 40 percent win rate for all for-profit companies combined. Among for-profit companies, win rates were highest for U.S.-based companies with all sites in the U.S. (46 percent), and lower for foreign-based multinationals (31 percent) and U.S.-based multinationals (39 percent). Win rates were also much higher (63 percent) in the 17 percent of the companies in the sample which were not a subsidiary of a larger parent company, compared to a 41 percent win rate for companies that were subsidiaries.

Forty-eight percent of the companies in the sample had other sites and locations in foreign countries. Of particular note is the fact that 29 percent had sites in multiple countries and continents around the globe. Three percent had sites in both Canada and Latin America/Caribbean and another 3 percent had sites in both Europe and North America. The win rates were lowest (31 percent) for the most global companies with sites in multiple continents.

Fifty-one percent of the companies in the sample had foreign customers. Once again, the largest percentage (35 percent) were mixed-global companies with customers in multiple countries and continents, and they had an average win rate of only 30 percent. Similarly, 48 percent of the companies in the sample had foreign suppliers, of which nearly a third were mixed-global companies with suppliers in multiple countries and continents and an average win rate of 35 percent. In combination, as many as 57 percent of the companies in the sample had some foreign sites, suppliers, or customers. The win rates for these companies averaged 37

percent compared to a 54 percent win rate for companies with all sites, suppliers, and customers in the U.S.

When we examine the campaigns where plant closing threats occurred, we find that the threat rates were highest for U.S.-based multinationals (64 percent) and multinationals based in Latin America (100 percent), Asia (78 percent), and Australia/New Zealand (100 percent). The threat rate for U.S.-based for-profits with all sites and locations in the U.S. was 53 percent, while the threat rate for non-profits was only 28 percent. The threat rates for companies with foreign sites and locations, foreign customers, and foreign suppliers all averaged slightly above 60 percent, but were especially high (69 percent) for the most global companies with sites, suppliers, and customers in multiple countries and continents around the globe. Win rates for these global multinational companies all averaged around 30 percent, whether or not there were plant closing threats. This may be because simply the existence of other sites in Latin America, Asia, or Africa, or customers or suppliers in these countries, serves as an unspoken threat of plant closing for many workers.

As we can see from Table 5, unions are organizing in slightly larger units than they have in the past. The average unit size for union campaigns in units with fifty or more eligible voters was 189 eligible voters in 1998-1999 compared to 173 eligible voters in 1993-1995. The average size of units in campaigns with threats (203 eligible voters) was slightly larger than the unit size in campaigns without threats (174 eligible voters). In one of the more significant changes from earlier research, the 1998-1999 data suggest that increases in unit size are no longer associated with lower win rates. Instead of win rates decreasing as the unit size increases, they remain fairly consistent, and actually are highest (48 percent) in the 5 percent of the units

with 500 or more eligible voters. This change reflects the greater staff and financial resources that unions are putting into these larger campaigns (Bronfenbrenner, 2000a).

In terms of the financial condition of the company prior to the election, 25 percent of the companies in the sample were in excellent financial condition, 40 percent were in good condition, 30 percent were in fair condition, and only 4 percent were in poor condition prior to the election taking place. Consistent with earlier research, win rates were slightly lower (39 percent) in companies in excellent financial condition, reflecting the employer's ability in those companies to shift significant resources into undermining the union's campaign. Plant closing threat rates are only slightly higher in companies in poor financial condition and vary only one or two percentage points between the 50 percent threat rate for companies in fair condition to the 52 percent threat rate for plants in excellent financial condition. These findings indicate that the majority of these threats are a direct component of the employer anti-union campaign and do not result from the deteriorating financial condition of the company.

If we examine the annual revenue information, we find that the majority of campaigns with threats were concentrated in companies where the annual revenue of the parent corporation was greater than \$250 million per year. Only 22 percent of the companies had annual revenues of less than \$25 million per year. At 44 percent, the threat rate is lower for companies with annual revenue of less than \$25 million a year. This is to be expected given the large number of small service sector units and non-profit companies which have lower annual revenue. Thus, while smaller for-profit manufacturing companies may be more likely to threaten plant closing than some of the extremely large for-profit multinational corporations in the retail, hospitality, or health care industry, the threat rate is lowest in smaller non-profit and service sector units such as

hospitals, nursing homes, and retail stores. Threat rates were highest (60 percent) for companies with annual revenue of \$5 billion or more per year. This is not surprising given that these are some of the largest multinational companies with sites and locations around the globe.

Thirty percent of all the companies in our sample, but only 19 percent of the companies in campaigns with threats, had negative net income in the year prior to the election taking place. Once again, threat rates were highest (63 percent) for the large companies with net income of \$100 million or more, and win rates were only 23 percent for these companies. For publicly-held companies in our sample the estimated price per share was \$2.73 for campaigns with threats compared to only \$1.55 overall.

Fifteen percent of the elections in our sample were in units where there were organized workers in other units at the same location and 61 percent were in units where there were other organized units at other sites, locations, or divisions of the company. Not unexpectedly, employer threats of plant closing were considerably less common in companies where other units at the same location were already under contract (40 percent), simply because to threaten to close the plant in response to unionization carries much less weight under those circumstances. Threat rates were slightly higher (51 percent) in companies which had unionized units at other sites, reflecting the fact that many employers with only a small number of unionized facilities are committed to keep their remaining sites union free, and so threatened to close down operations rather than have another site unionize.

There have been some significant changes in the regions of the country where organizing activity has taken place. While earlier research found organizing activity to be highest in the Midwest and lowest in the West Coast and Mountain states (11 percent), we find that, in 1998-

1999, 29 percent of elections were in the Northeast, 24 percent in the Midwest, 22 percent in West Coast and Mountain States, 20 percent in the Southeast, and only 4 percent in the Southwest. Election threats rates were fairly consistent across all regions, ranging from 47 percent in the Southwest to 53 percent in the Midwest. However, win rates in elections with threats drop much lower in the Southeast (28 percent) and the Southwest (29 percent) than they do for other regions of the country, possibly because threat rates are more credible the closer the company gets to the Mexican border.

### **Bargaining Unit Characteristics**

Table 6 summarizes the characteristics of the bargaining units in our sample, providing important information on which workers are organizing and which workers are most impacted by plant closing threats during organizing campaigns. As expected, given the large number of service sector units, there has been a significant increase in the percentage of service and maintenance and professional/technical units which predominate in the service sector, while there has been a drop in traditional blue collar production and maintenance units. In the 1998-1999 election data, 15 percent of the units were service and maintenance, 15 percent were professional/technical, and 44 percent were in production and maintenance units. In contrast, in the 1993-1995 data, 10 percent of the units were in service and maintenance, 5 percent in professional/technical, and 51 percent in production and maintenance units.

Consistent with past research, win rates were highest in service and maintenance (61 percent) and nonprofessional units (84 percent) and lowest in production and maintenance (33 percent), craft (25 percent), and guard units (0 percent). Threat rates were highest in production

and maintenance units (70 percent), which tend to be concentrated in the manufacturing industry, while they averaged below 30 percent in service and maintenance and white collar units, which tend to be in the service sector.

Organizing is increasingly concentrated in units with a majority of women and people of color. Half of the units in the sample had a majority of women workers and 39 percent had a majority of workers of color, while 31 percent of the units had more than 75 percent women workers in the unit and a quarter of the units had 75 percent or more workers of color in the unit. Only 10 percent of the units were all male or all white, while 18 percent had a majority of women workers of color. In keeping with the growth in service sector units, the proportion of units with 75 percent or more women and 75 percent or more workers of color increased substantially from 1993-1995 when only 20 percent of the units had 75 percent or more women and 19 percent had 75 percent or more workers of color. The proportion of non-English speaking workers in the unit also increased from 5 percent in 1993-1995 to 15 percent in the 1998-1999.

Consistent with earlier research, win rates increased substantially as the proportion of women and people of color increased in the unit. The highest win rates were 83 percent for units with 75 percent or more women workers of color, while win rates were lowest in units where women (31 percent) or workers of color (40 percent) represented a minority of the unit.

Threat rates were lower in units with a majority of women and in units with a majority of people of color, reflecting the fact that these units are concentrated in health care and other service sector units. However, threat rates were still as high as 52 percent for units that included 75 percent women of color, most likely because some of the more mobile manufacturing

industries such as food processing, garment, and electronics employ significant numbers of African-American, Hispanic, and Asian women.

Ninety-four percent of the workers involved in the elections in the sample were hourly workers with an average wage of \$10.58, while the average yearly earnings for salaried workers was \$32,847. Win rates were slightly higher (52 percent) and threat rates were lower (46 percent) in the 23 percent of the units where the average wage was less than \$8.00 per hour, reflecting the fact that most of the low wage jobs are concentrated in less mobile service sector jobs in health care, hospitality, and other service industries.

### **Company Practices Prior to the Petition Being Filed**

In addition to inventorying current plant closing threat levels, it is important to put them in the context of the history of company labor relations practices. As shown in Table 7, most of the units in the sample experienced major upheavals in company structure, working conditions, and employment stability in the two years prior to when the union first filed the petition for the certification election in this study. Many of the units experienced changes in wages and benefits in the two years before the petition was filed. Seventeen percent had received an annual wage increase of 3 percent or more and 3 percent had received significant benefit improvements, while 39 percent had a wage freeze, 9 percent had a wage cut, and 40 percent had significant cuts in benefits.

In 21 percent of the campaigns employers made threats of full or partial plant closing in the two years before the petition, while they instituted major layoffs in 11 percent of the campaigns, threatened major layoffs in 16 percent of the campaigns, and contracted out more

than 10 percent of the unit in 12 percent of the campaigns. Forty-eight percent of the units reported a significant increase in the pace of work, 18 percent reported changes in company ownership, 30 percent reported changes in management staff, 13 percent reported changes in equipment and technology, and 22 percent reported job combinations. Nearly a third of the units already had an employee involvement or team system in place before the election.

Threat rates were especially high in units which had had threats of plant closing (84 percent), serious threats of major layoffs (75 percent), major layoffs of 10 percent or more (62 percent), contracting out of more than 10 percent of the unit (66 percent), wage cuts (69 percent), and significant benefit improvements (77 percent) before the petition was filed.

When all of the changes in company structure and employment practices, with the exception of wage increases and benefit improvements, are combined into an additive variable measuring the number of changes in place before the petition was filed, we find that the cumulative effect of these changes appears to be related to both win rates and plant closing threats. The average number of changes before the petition was filed is 3.10 for all campaigns, 3.12 for elections won by the union, and 3.50 for elections with threats. The win rate for units with more than five changes in company structure and employment practices before the petition was filed is 48 percent for all elections, compared to a 44 percent win rate for campaign which had five or fewer changes before the petition was filed. The threat rate for units with more than five changes is 67 percent, compared to a threat rate of only 48 percent in units with five or fewer changes in company structure or employment practices before the petition was filed. Union win rates are actually higher in campaigns with plant closing threats during the election campaign where there had been more than five changes in company structure and employment

practices before the petition was filed (44 percent) than they are in campaigns with plant closing threats where there had been five or fewer company structure and employment changes before the petition was filed.

What these data reveal is that while changes in company structure and employment practices which directly threaten employment security and job quality are associated with a more aggressive employer campaign after the petition is filed, including plant closing threat rates, these changes can also be the driving force motivating workers to initiate a union campaign and vote for a union. The negative impact of plant closing threats was slightly muted in these campaigns because the workers knew that their job security and job quality were in jeopardy before the union campaign began, and so had less reason to believe employer threats that choosing a union would make their jobs any more insecure than they were before the campaign began. At the same time they had more reason to believe that achieving union representation might be a hedge against some of the more negative effects of these changes in company structure and practice.

### **Employer Behavior**

As we can see from Table 8, consistent with earlier research the overwhelming majority of the employers in our sample aggressively opposed the union's organizing efforts through a combination of threats, discharges, promises of improvements, unscheduled unilateral changes in wages and benefits, bribes, and surveillance. We also find that, individually and in combination, these tactics were extremely effective in reducing union election win rates. In addition to plant closing threats, one in every four employers in our sample discharged workers for union activity,

while 48 percent made promises of improvement, 20 percent gave unscheduled wage increases, and 17 percent made unilateral changes in benefits and working conditions. Sixty-seven percent of the employers held supervisor one-on-ones with employees at least weekly, 11 percent promoted union activists out of the unit, 34 percent gave bribes or special favors to those who opposed the union, 31 percent assisted the anti-union committee, and 10 percent used electronic surveillance of union activists during the organizing campaign. Employers threatened to refer undocumented workers to the Immigration and Naturalization Service (INS) in 7 percent of all campaigns and 52 percent of cases where undocumented workers were present in the unit.

As we can see from the bottom of Table 8, 62 percent of the employers in election campaigns ran anti-union campaigns using more than five of the tactics listed, and 20 percent of the employers ran extremely aggressive campaigns using more than ten tactics. Employers ran no campaign whatsoever against the union in only 3 percent of the campaigns, all of which were won by the union.

Although most of the findings regarding employer behavior are consistent with earlier research, we find that there has been a drop in percentage points for some of the most egregious employer actions. Most notable of these is the percentage of campaigns where employers discharged workers for union activity, which dropped from 32 percent in 1993-1995 to 25 percent in the 1998-1999 study. Other differences include a drop from 25 percent to 20 percent for unscheduled raises, 27 percent to 17 percent for unilateral changes in benefits, 16 percent to 11 percent for promoted union activists, and 13 percent to 10 percent for electronic surveillance. Although the percentage of employers who used more than five anti-union tactics and the percentage of employers who used more than ten anti-union tactics remained fairly constant, the

1998-1999 data include many additional tactics such as holding raffles, purchasing ads, involving community leaders and politicians, and using e-mail to communicate anti-union messages to employees. When those additional tactics are removed for comparison purposes, we find that percentage of employers using more than five employer tactics dropped from 59 percent in 1993-1995 to 53 percent in 1998-1999, while the percentage using ten or more tactics dropped from 13 percent in 1993-1995 down to 10 percent in 1998-1999.

Although this appears to suggest that employer opposition has declined since the earlier study, when we examine the data more carefully we find that the change in employer behavior is primarily a function of the shift in union organizing activity toward non-profit companies. As we mentioned earlier the proportion of campaigns in non-profit companies more than doubled since the 1993-1995 study, from 11 percent of all campaigns in 1993-1995 to 23 percent in 1998-1999. Although some non-profit employers, particularly hospitals and universities, have long been known for their opposition to unions and the substantial resources they spend on anti-union campaigns, the nature of anti-union campaigns in these industries is quite different because they are much more accountable and accessible to the clients they serve. Thus, where non-profit employers are more likely to use extensive unit challenges and public media campaigns, they are less likely to engage in more clearly identifiable illegal tactics such as discharges for union activity, bribes, or illegal unilateral changes in wages than their counterparts in the private sector (Bronfenbrenner, 2000b).

For example, employers discharged workers for union activity in only 14 percent of campaigns in non-profits compared to a 29 percent discharge rate in campaigns in for-profit companies. Yet, for those units in the 1998-1999 sample where employers did discharge

workers for union activity, the number of workers discharged actually increased from 2.94 in 1993-1998 to 4.09 in 1998-1999. Non-profit employers were more than twice as likely to use television, radio, and print media in their campaigns than for-profit employers (10 percent of non-profits versus 4 percent of for-profits), yet less likely to make unscheduled unilateral increases in wages during the organizing campaign (17 percent of non-profits versus 20 percent of for-profits).

Nine percent of employers in non-profits used no anti-union tactics at all during the campaign compared to less than 1 percent of employers in for-profit companies. Only 48 percent of employers in non-profit companies used more than five anti-union tactics compared to 67 percent of for-profit employers, and only 15 percent of employers in non-profit campaigns used more than ten anti-union tactics compared to 21 percent of employers in for-profit campaigns.

The election win rate drops to 36 percent for units where employers used more than five tactics, compared to 58 percent where they used fewer than five tactics. However, in marked contrast to the 1993-1995 study where election win rates dropped to 28 percent when the employer used more than ten anti-union tactics, in the 1998-1999 study win rates averaged 38 percent where they used more than ten tactics compared to 46 percent where they used ten or fewer anti-union tactics. What these data reveal is that at a time when unions are running more aggressive and sophisticated campaigns, and where worker trust in corporations is declining, the aggressive anti-union behavior of employers may reach a point of diminishing returns in some units (Bronfenbrenner, 2000; Marist Institute, 1997).

Consistent with earlier research, we find that threats of plant closing tend to occur in the context of other aggressive anti-union behavior by employers. Employers who make threats of

plant closings are more likely to hire outside consultants, discharge union activists, hold captive audience meetings and supervisor one-on-ones, establish employee involvement committees during the organizing campaign, make unilateral changes in benefits and/or working conditions, use bribes and special favors, use electronic surveillance, threaten to report workers to INS, and show anti-union videos. Almost every one of these tactics was associated with a plant closing threat rate that, at 60 percent, is 10 percentage points higher than the overall plant closing threat rate. Plant closing threats were especially high (72 percent) in units with undocumented workers where the employer made threats to refer the workers to INS for deportation, compared to only a 46 percent threat rate for units with undocumented workers where the employer did not make threats to refer them to INS.

While employers used five or more tactics in 62 percent of the elections, the percentage of election campaigns with threats where they used more than five tactics was 78 percent. Similarly, the percentage of elections with threats where employers used more than ten anti-union tactics was 29 percent, compared to 20 percent of all elections and 10 percent of campaigns without threats. Overall the percent threat rate was 75 percent for campaigns where employers used more than ten tactics, 64 percent where they used more than five tactics, and 0 percent where they used no anti-union tactics.

Although win rates overall were lower in campaigns with plant closing threats, the negative impact of plant closing threats on the election win rate decreases as the number of anti-union tactics used by the employer increases. Thus the win rate for campaigns with threats where the employer used more than five tactics was 34 percent and 50 percent when they use five or fewer tactics. Yet, the win rate increased to 38 percent in campaigns with threats where

the employer used more than ten tactics, compared to a 37 percent win rate in campaigns with threats where they used ten or fewer anti-union tactics. These findings suggest that the more the plant closing threat appears to workers to be just one more tactic in the arsenal of the employer's anti-union campaign, the less credible the threat becomes to the workers being organized, and the less impact it has on their vote for or against the union.

### **Unfair Labor Practices Filed on Employer Behavior**

Unions filed unfair labor practice charges about other employer behavior in only a third of all elections and 35 percent of the elections with threats (Table 9). In 25 percent of the elections with threats, charges were filed on other employer violations, but the plant closing threats were included as part of the union charges. The percentage of campaigns where unions filed charges on employer behavior other than plant closing threats is less than in 1993-1995, when it was 48 percent. Once again, this decrease in charges filed is most likely a function of organizers being more strategic about filing unfair labor practice charges during organizing campaigns.

Unions withdrew charges before the election in 15 percent of the campaigns where charges were filed, charges were dismissed without a complaint being issued in 11 percent of the elections where charges were filed, and charges were settled before the complaint was issued in 7 percent of the campaigns. Similar to charges relating to plant closing threats, the proportion of charges that resulted in a complaint rose from 50 percent in 1993-1995 to 63 percent in 1998-1999. However, the proportion of charges won by unions in a final determination from the NLRB dropped from 31 percent in 1993-1995 to 19 percent in 1998-1999. The proportion of

charges dismissed by the NLRB stayed the same as in 1993-1995, at 11 percent. The NLRB reinstated discharged workers before the election in 12 percent of the campaigns in which employers discharged workers for union activities. Overall, unions won at least a complaint or a settlement for 70 percent of all charges filed, or 23 percent of all election campaigns during 1998-1999.

### **Final Status of Units in Organizing Survey**

Table 10 outlines the final status of the units in the 1998-1999 study. There was a significant drop between the proportion of the unit that had signed cards or petitions before the petition was filed and the number of votes cast for the union, particularly in campaigns with plant closing threats. Unions were able to sign up two-thirds of the bargaining unit on cards or petitions before the petition was filed for all elections including those where the employer made plant closing threats after the petition was filed. Yet, unions received, on average, only 46 percent of the vote in elections with threats compared to 51 percent of the vote in elections without threats. Although unions won only 38 percent of the elections with threats, they lost by less than 6 percentage points in 10 percent of the campaigns with threats, suggesting that if more employers were constrained from making threats, the union win rate could move up considerably. Unions won the election with an overwhelming margin of more than 75 percent of the vote in only 8 percent of the campaigns with threats, compared to 13 percent of the campaigns without threats.

### ***Election Losses***

Unions lost the election in 56 percent of the campaigns in the sample and 63 percent of

the campaigns with threats. Unions filed election objections on 21 percent of the elections lost. As mentioned earlier, objections were upheld and the union certified in only one (2 percent) of the losses in the sample where election objections were filed.

Objections were upheld and a rerun election was ordered by the NLRB in 6 percent of all losses and 28 percent of all losses where objections were filed. For those elections where a rerun election was ordered by the NLRB, unions won only 23 percent of the rerun elections held. Since most reruns were only recently ordered by the NLRB, elections have yet to be held in 15 percent of the units where the NLRB ordered a rerun election. Unions did not win any rerun elections in units where the employer made plant closing threats during the organizing campaign. This finding reveals the inadequacy of the rerun election remedy in cases where the employer has made credible, albeit illegal, threats of plant closing during the earlier organizing campaign. The vestiges of worker insecurity left over from those threats do not easily fade away.

In the 7 percent of campaigns with threats where the organizer filed objections, the Board remedy was a posting listing employer promises to refrain from engaging in labor law violations in the future, but no rerun was ordered. Election objections were dismissed by the NLRB in the majority of campaigns with plant closing threats (52 percent) and in 45 percent of all elections where objections were filed.

In the aftermath of losing the election, unions attempted to return for a second campaign in nearly a third of elections lost, including campaigns with plant closing threats. For more than half of the campaigns with threats where the union went back for a second election, the campaign has yet to get off the ground and the second election has not yet been scheduled. In 10

percent of campaigns with plant closing threats where the union went back for a second election, the employer shut down the plant before the second election could be held.

To date, second elections have been held in only 7 percent of the elections lost by the union in the original sample. The win rate in these second elections averaged 44 percent, consistent with the overall win rate for the sample. Unions were able to win voluntary recognition in another 1 percent of elections lost. However, given that less than a year has passed since some of the elections in our sample were lost, it is too early to reliably predict the final outcome of the many second election campaigns that are still pending.

### ***Election Wins***

Unions won 44 percent of all the elections in the sample and 38 percent of elections with threats. Ninety-nine percent of those election victories have been certified by the NLRB within two years of the election being held. Unions were able to win a first contract in only 52 percent of all elections won and 47 percent of elections won with threats. However, as discussed earlier, the 68 percent first contract rate for all 1998 elections and the 61 percent first contract rate for 1998 elections with threats are more reliable predictors of the overall first contract rate given the short time that has passed since many of the 1999 elections were certified.

The second page of Table 10 outlines the current status of those units where the union won the election but still has not reached a first agreement. The election objections are still pending for 1 percent of all elections won by the union and for 2 percent of units where the union won the election but has yet to achieve a first agreement. For nearly three-quarters of the units where the union has not been able to bargain a first agreement (72 percent), negotiations are still in process, albeit in many cases little progress has been made. In another 6 percent of the units

negotiations never started because the employer refused to accept certification and bargain with the union.

The remaining 20 percent of the units where the union has been unable to bargain a first contract have lost certification since the election, including 4 percent due to a full or partial shutdown, 2 percent due to work being contracted out, 4 percent because the union withdrew, 1 percent because the union lost a strike, 4 percent because of change in company ownership, and 5 percent because the union was decertified. For the 53 percent of the campaigns with threats where the election was won by the union but a first contract has yet to be reached, 71 percent are still bargaining, 7 percent were decertified, 5 percent had a full or partial shutdown, and another 5 percent had bargaining unit work contracted out.

Of the original 407 campaigns in the sample, in five campaigns (1 percent) the employer shut down all or part of the plant after the election was won. In another five campaigns (1 percent) the employer shut down all or part of the plant after the election was lost. This brings the total number of full or partial plant closings since the elections took place in 1998-1999 to 10 (3 percent). This is substantially lower than the 15 percent of units in the 1993-1995 sample which had closed within three years of the election being held, most likely because not enough time has passed since the 1998-1999 elections to accurately predict the actual post-election plant closing rate. Follow-up research a year from now will provide a more reliable assessment of the current plant closing rate. Yet, given the dramatic increase in plant closing threats in more mobile industries, it is very telling that so few of the firms in our sample have yet to follow-through on their threat to close down all or part of their operations in response to the union campaign. It suggests that for most employers, plant closing threats are just another tactic in

their anti-union campaigns, one that extremely effectively plays on the real fears of workers living and working in an increasingly mobile economy.

## **Conclusion**

The results of this study conclusively demonstrate that capital mobility and the threat of capital mobility have had a profound impact on the ability of American workers to exercise their rights to freedom of association and collective bargaining. Despite strategic initiatives by many unions to target their organizing activity in industries and firms less vulnerable to global markets, the majority of all employers continue to threaten to shut down all or part of their operations if workers try to organize. In industries such as manufacturing, communications, and wholesale distribution, where the rate of capital mobility in and out of the country skyrocketed in the second half of the 1990s, the proportion of employers making plant closing threats during organizing campaigns has risen to more than 70 percent.

In the current climate of corporate restructuring, burgeoning trade deficits, constantly shifting production, and the fear of job loss they have engendered, these data suggest that most workers take even the most veiled employer plant closing threats very seriously. When combined with other anti-union tactics of employers, as they are in the overwhelming majority of employer campaigns, plant closing threats are extremely effective in undermining union organizing efforts, even in a context where the majority of workers in the unit seem predisposed to support the union at the onset of the organizing campaign. These workers cannot be certain of what we know from these data – namely that the vast majority of employers have no intention of shutting down their operations if the union wins the election, but rather that plant closing threats are just one more extremely effective tactic in their arsenal against union organizing campaigns.

For more than three-quarters of the certification election campaigns in our sample, unions filed for the election with at least 60 percent of the unit signed up on cards. With election win rates averaging only 44 percent and first contract rates averaging under 70 percent, fewer than 30 percent of the 76,833 workers involved in the elections in our sample ended up being covered under a collective bargaining agreement.

Yet, because this research focuses on organizing campaigns where the union was able to gain enough support from bargaining unit members to petition the NLRB for a certification election, these data cover only a fraction of those workers who want a union but are unable to achieve one. They do not include the many organizing campaigns that never get to the point where a petition is filed because of the chilling effect of aggressive employer opposition. Nor does it include the many campaigns where the union withdrew the petition before the election was held because the employer campaign had so intimidated the workers that the union had lost all hope of winning the election. Thus we do not know the full extent or impact of employer plant closing threats or plant closings during the organizing process. Nor have we captured the magnitude of the effect that plant closings during or after organizing campaigns have on other workers who contemplate bringing a union into their workplaces.

Even when unions do win organizing and first contract campaigns in the aftermath of plant closing threats, these victories can be fleeting. Too many times in the last decade industrial unions watched some of their most celebrated organizing victories turn into shattering losses as newly organized plants, with a first, or even a second, agreement in place, shut down and moved out of the country.

For many in the labor movement, the most devastating example of this was the January 2000 shut down of three Tultex Corporation plants in Virginia and North Carolina. UNITE's 1994 election victory for 2500 workers at Tultex Corporation, a fleece-wear manufacturing plant in Martinsville, Virginia, was widely celebrated as labor's largest organizing victory in manufacturing in more than a decade. The union had won the victory after five very difficult organizing attempts, including repeated threats of plant closing in captive audience meetings and videos. The victory in Martinsville, was followed quickly by a series of organizing victories at Tultex facilities in South Boston, Virginia, and Mayodan, North Carolina, and solid union contracts were bargained at all three facilities. But by early 2000, Tultex had shut down all three facilities, moving production to Mexico and Jamaica, and leaving more than 2600 union workers out of a job (Dart, 2000; Bronfenbrenner, 1997; Curran, 1998).

Although Tultex may be the most dramatic, it is just one among many stories of the challenges unions face in organizing in the nation's most mobile industries such as apparel and textile, auto parts, electronics, telecommunications, steel fabrication, and food processing. For so many workers in those industries, any organizing activity is quickly stifled, with the first veiled threat from the employer that the plant might close or work might be shifted out of the country, if the union comes in.

In a climate of constantly escalating capital mobility, it is only natural that many unions are turning toward less mobile sectors of the economy. But what of the workers in the nation's most mobile industries? Whether they work in garment shops in the nation's largest cities, textile and food processing plants in the rural South, electronics component plants in Southern

California, or metal fabrication plants in the Midwest, these are the American workers hit hardest by globalization.

Thirty years ago, these were the kinds of jobs that benefitted most from tight labor markets and helped drive the economic expansion and build the middle class. But today workers in these industries operate in the shadow of the economic boom, sharing in little, if any, of its fruits. They work ever longer hours in workplaces beset by serious job injury and health problems, with declining pay, few benefits, and little security. Many are recent immigrants from Latin America and Asia, or women, or both, and few have the skills or education needed to transfer to better jobs in the “new economy.” They are the workers who would benefit most from the collective power and voice that a union provides. Yet, in a climate where capital mobility and the threat of capital mobility are driving unions to seek targets in less mobile industries, these are the workers who are most likely to be left behind.

As our study found, industrial workers are not the only workers who face threats of job loss and plant closings if they attempt to organize. More than half of all employers across a wide range of industries use these threats as part of their anti-union strategy. And, while a nursing home, hotel, or retail store are unlikely to move to Mexico, they can be merged with or acquired by another company, have work contracted out, or shut down to reopen in another facility or another town.

This is what happened in February 2000 when meat cutters in Jacksonville, Texas, became the first U.S. Wal-Mart employees to win a union election in the company’s thirty-eight year history. Within months meat cutters at several other Wal-Mart stores in Texas and Florida followed suit by filing petitions with the NLRB. But by April their hopes for unionization were

dashed when Wal-Mart announced that it would be shifting to prepackaged meat and so would shut down meat cutting operations in their stores nationwide. Although the company claimed that it was a business decision made long before the union vote came through, the impact on these and other workers in the retail industry was the same. Another employer had shut down part of its operations in the aftermath of a union victory, reinforcing the perception that Wal-Mart -- like so many of its corporate counterparts in industries across the country -- was willing to do what ever was necessary to remain union-free (Zimmerman, 2000).

The cost of these plant closings and threats of plant closings in response to unionization goes well beyond broken unions and failed organizing campaigns and first contract campaigns. Absent intensive efforts to organize the nation's most mobile industries, density will plummet further, causing working conditions to worsen even more, as workers lose their only hedge against the worst effects of the global economy. And, absent any hope of collective power to demand real improvements in wages and benefits, more reasonable hours and pace of work, and long term job protections, workers' insecurity about their position in the current economy and their prospects for the future will continue to rise. The resultant insecurity will continue to constrain wage and benefit demands and hold down inflation, but it will not be good for American workers, their families, and their communities. Without the collective voice and power that unions bring, the global economy becomes little more than a worldwide race to the bottom in wages, working conditions, and living standards, that no nation can win.

There are two paths toward breaking the hold that capital mobility has on the economic confidence and security of America's workers. The first path focuses on establishing international trade and tax policies which incorporate strong and enforceable labor standards in

trade agreements and provide disincentives to companies that seek to move employment out of the country as part of their effort to break existing unions and prevent new unions from organizing. These new labor standards must include both restrictions on the ability of companies to shift their operations to other countries to avoid unionization and guarantees for the right to organize free of management interference and intimidation. Moreover, the new standards must include meaningful penalties for violations of these rights.

The second path requires changes in U.S. labor laws to allow workers and unions to diffuse, or disarm, the ability of employers to use capital mobility and threats of capital mobility to thwart unionization efforts among their employees. Substantial financial penalties and injunctive relief will be required to restrain the most egregious employer violations, particularly plant shutdowns and the threat of plant shutdowns. In addition, the current lengthy election and first contract process will need to be replaced with card check recognition and first contract arbitration, thereby restraining employers from using the threat of capital mobility to intimidate workers from voting for the union and bargaining a first agreement.

As we enter the new millennium, the question is not whether we should fully reject or wholeheartedly embrace globalization. Instead the question is whether the disparate benefits and impacts of globalization can be reordered so that our trade agreements and labor law policies no longer serve to primarily benefit corporations at the expense of workers and communities in the U.S. and around the globe.

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