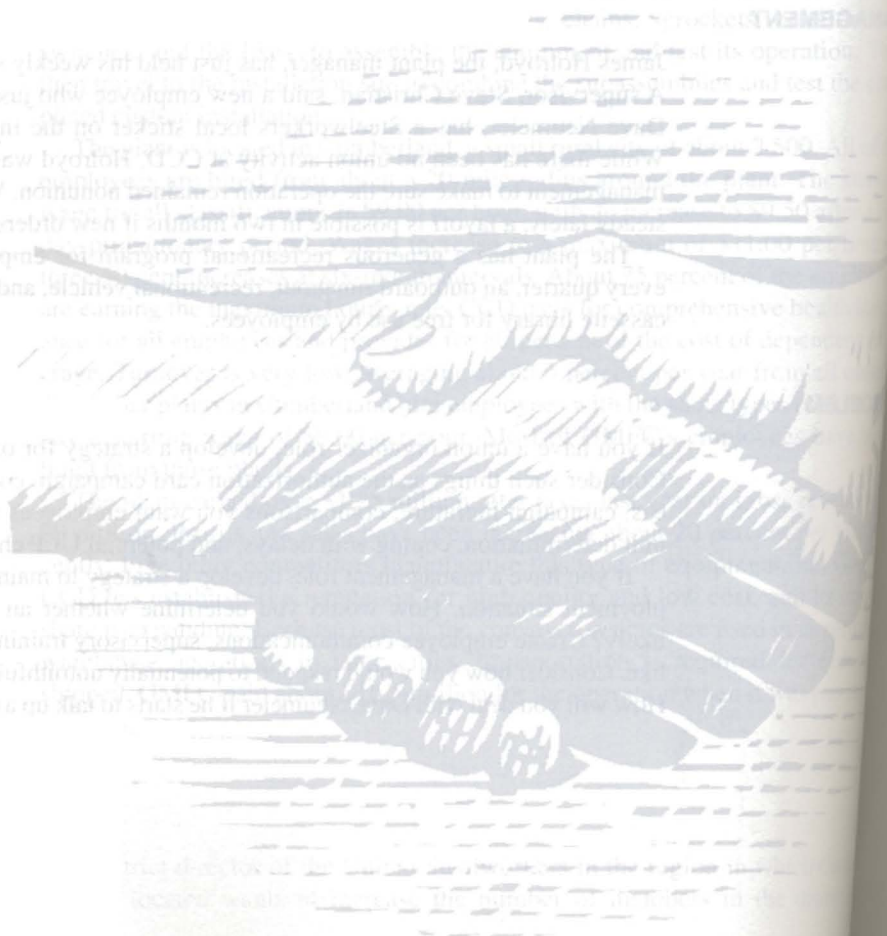


Union Avoidance: Rationale, Strategies, and Practices



Chapter 6 examined union organizing campaigns. The chapter covered the flow of events associated with a campaign, union strategies and tactics, management responses, the role of the NLRB, and the factors influencing election outcomes. At several points in the chapter, it was emphasized that, except in isolated instances, most employers strongly resist organizing drives.

This chapter explores in greater depth the reasons for employers' resistance, strategies that a growing number are using to create and maintain a "union-free" employment environment, tactics that are used to prevent union success in organizing, the role of decertifications in deunionizing partially unionized employers, and the effects of organizational and job structuring on the limitation of unionization within employers.

As you study this chapter, consider the following questions:

1. Are employers increasing or decreasing their opposition to unions in the current era? What is the evidence to support your position?
2. What are the economic effects of initial unionization on the employer?
3. What additional activities appear necessary for an employer to avoid unionization?
4. If an employer faces an organizing campaign, what components and process are included in a typical employer response?
5. What is a decertification election, and how does it differ from other NLRB elections?

HISTORICAL OVERVIEW

The business and labor history of the United States, going back to the Philadelphia Cordwainers, is replete with examples of employer resistance to unionization. The fundamental differences in philosophies, goals, and values of capitalists and trade unionists make this resistance inevitable and accommodation after unionization difficult.

Capitalistic and Trade Union Philosophies

Capitalists (either entrepreneurs or corporations representing collections of investors) use their resources to create mechanisms (productive processes) that will

enable them to develop and sell goods and services in the marketplace at prices great enough to yield a higher return than for other alternative investments. Employees are paid to produce the output. Employees are free to leave at any time, and capitalists would like to have the freedom to terminate them, individually or collectively, as necessary to achieve their business purposes. Capitalists assume the risk that they will not be able to realize a positive yield from their investments and ideas. If they fail, their investments will be diminished or lost. They also expect that if they are successful in the marketplace, that is, their returns are greater than they might realize through riskless investment, that they will be able to keep these returns as a reward for taking the risk.

Trade unionists believe that wealth is ultimately created by the workers that produce the products or deliver the services to the consumer. In cases where the firm is successful in the market (i.e., it makes a profit), unions attribute a large measure of the success to the efforts of employees. Their actions are seen as ultimately adding the value to the inputs that make the products and services attractive in the market. From a union perspective, these gains need to be shared with the employees. While employers would like complete freedom to hire, fire, and assign workers to jobs, unions see employees as becoming increasingly invested in their jobs with their employers. Job property rights are established over time and employers should be constrained in the types of decisions they can make about employees as employees accrue seniority and firm-specific skills. Unions also believe that employees should have a role in determining the rules that will be used to decide how these gains will be distributed and how the workplace will be governed. Employees are seen as investing a substantial part of their lives in employment, often with a particular employer. As such, they are entitled to a role in determining how the social system in which they are involved should be operated.

Employer Resistance before World War II

As Chapter 2 noted, employers used a variety of strategies and tactics to avoid unionization or reduce its power. They used security forces to police the workforce, forcibly keep out organizers, or ferret out internal union activists or sympathizers from the late 1800s up until World War II. Such practices were particularly prevalent in steel and auto production plants.

Employer resistance was greatest and most successful where workers were essentially unskilled, where employers controlled entry to occupations, and where they were the dominant employer in a given location. The organization of the workplace gave a great deal of power to foremen (supervisors) in the direction, control, and discipline of the workforce. The ability of an employee to retain a position depended to a large extent on pleasing the supervisor. This approach has been labeled the "drive system" and held sway in manufacturing for most of the first third of the 20th century.¹

¹D. M. Gordon, "From the Drive System to the Capital-Labor Accord: Econometric Tests for the Transition between Productivity Regimes," *Industrial Relations* 36 (1997), pp. 125–59.

During the 1920s and 1930s, employers implemented their own versions of "community action" plans, the American Plan and the Mohawk Valley Formula. Both of these sought to link labor unions with interests outside the community—especially with foreign ideologies. The Mohawk Valley Formula, in particular, mobilized community leaders and police against organizing and strikes. Both stressed the need for workers to be able to refrain from joining unions and to be able to deal directly with their employers rather than through outside agents. Where unionization seemed unavoidable, employers worked with sympathetic employees to help establish so-called **company unions** that would not be affiliated with a larger international and would be less militant and more familiar and sympathetic with the employer's situation.² The passage of the Wagner Act, however, made employee organizations that were established and assisted by employers illegal.

The Corporatist Period

From the late 1940s through the middle to late 1970s, large U.S. employers and unions moved through a period during which unions were essentially conceded a permanent role in a tripartite employment environment involving employers, unions, and the government as reflected in public policy toward employment. Laws and regulations favored collective bargaining as the method for dealing with industrial disputes. Productivity rose at a steady rate and wage increases could be financed without substantial inflationary pressure until the late 1960s and 1970s.

However, the advent of the oil shocks of the 1970s and their effects on inflation, together with the beginnings of economic globalization, led employers to increase resistance to wage increases and additional unionization. At the same time, productivity gains declined substantially and the economies of Japan and Western Europe were beginning, for the first time, to outstrip major segments of the U.S. manufacturing industries. Economic returns to shareholders had gone flat in the early 1970s and the U.S. economy was stagnating in low productivity, inflation, and uncompetitiveness in an increasingly global economy.

"Union-Free" Employment Employers in newer or more rapidly growing industries such as information technology, financial products and services, discount retailing, and personal services had either never been unionized to any extent or were experiencing many new entrants who were not unionized. Employers in established industries like autos and steel were heavily unionized and faced substantial economic problems. In steel, for example, so-called mini-mills were created that could produce low-end commodity products at substantially cheaper prices with much lower investments and lower-wage nonunion employees.

²S. M. Jacoby, "Reckoning with Company Unions: The Case of Thompson Products, 1934–1964," *Industrial and Labor Relations Review* 43 (1989), pp. 19–40; and D. Nelson, "Managers and Nonunion Workers in the Rubber Industry: Union Avoidance Strategies in the 1930s," *Industrial and Labor Relations Review* 43 (1989), pp. 41–52.

In order to gain increased flexibility in work design and employee assignments and to reduce wage levels, employers embarked on a variety of "union-free" strategies (detailed in this chapter). These were aimed to avoid unionization in currently nonunion facilities and to reduce or eliminate unionization in the rest of their facilities. This approach represented a shift in management strategy from trying to secure the "best bargain" to "union avoidance."³ This process was aided by a shift in public policy under President Reagan's administration away from the corporatist approach and toward labor and management having greater freedom to use whatever legal tactics each wanted to achieve its objectives. Some argue that the scales were tipped to the extent that previously illegal tactics were either reinterpreted to be legal or overlooked as administrative oversight was reduced.⁴

THE ECONOMIC RATIONALE

Chapter 1 noted that unions introduced voice and monopoly power into the workplace. For employers, union monopoly power leads to decreased profitability. Shareholder value declines since higher wages, all else being equal, reduce profits, leading to lower share prices.

Inflexible Rules As Chapter 10 will note, unionization changes the policies and practices employers can use to promote, transfer, and lay off employees. Over time, various work rules and production standards are also established. These have the potential for negatively influencing productivity because they reduce the employer's ability to include merit as a criterion in making personnel decisions, and flexibility in adapting to change might be reduced by restrictive work rules.

Profitability Unionized firms are less profitable than nonunion firms and less profitable subsequent to unionization.⁵ Decreases in profitability may occur as a result of employers extending negotiated wage and benefit increases to nonrepresented employees in order to avoid further unionization. While productivity increases have been found following unionization for represented employees, this may not carry over to nonunion employees who also received increased pay.⁶

Shareholder Value Shareholder returns are reduced following unionization. A study tracking organizing success following passage of the Wagner Act in the 1930s found organized firms had about a 20 percent lower rate of return to shareholders than firms remaining nonunion.⁷ Firms involved in organizing drives and whose securities are publicly traded experience a reduction in share prices when

³A. Freedman, *Managing Labor Relations* (New York: Conference Board, 1979).

⁴W. B. Gould IV, *Agenda for Reform: The Future of Employment Relationships and the Law* (Cambridge, MA: MIT Press, 1993), pp. 11–62.

⁵R. B. Freeman and J. L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984), pp. 181–90.

⁶B. E. Becker and C. A. Olson, "Unions and Firm Profits," *Industrial Relations* 31 (1992), pp. 395–415.

⁷C. A. Olson and B. E. Becker, "The Effects of the NLRA on Stockholder Wealth in the 1930s," *Industrial and Labor Relations Review* 41 (1986), pp. 116–29.

an election petition is filed,⁸ a reduction of about 4 percent following a successful campaign—and a 1.3 percent reduction even if the union lost.⁹ The latter probably occurs because firms facing union activity increase wages more than those who don't, win or lose.¹⁰ If unionization leads to lower shareholder returns, other things being equal, top managers, as the agents of shareholders, could be expected to try to reduce unionization in their firms, particularly if a substantial proportion of their compensation is in the form of stock options.¹¹ On the other hand, lower returns in unionized firms are accompanied by lower risk in that security prices are less volatile, perhaps reflecting increased risk sharing by employees through layoff procedures.¹²

Company Investment Decisions Following unionization employers reduce their historical levels of investment in newly unionized facilities. The reduction is equal to what would occur if the corporate income tax rate were increased by 33 percent.¹³ U.S. employers invest less in and are less likely to locate operations in developed economies with high employment regulation or that impose terms of collective agreements negotiated elsewhere, or resist unionization more strongly than firms headquartered in Europe or Japan. In Korea, relative to United States- and Korean-owned companies, European-owned firms were significantly more likely to be unionized. In Taiwan, relative to United States-owned firms, being Japanese-owned was positively related to being unionized.¹⁴

Industrial Structure Evidence suggests productivity differences between union and nonunion employers are greatest in construction where unionized workers have higher skills than nonunion workers. Relatively speaking, unionized worker quality is lower than their nonunion counterparts in service industries. The service sector is expanding relative to the size of the manufacturing and construction sector. To the extent that lower unionized service worker quality translates into lower productivity, greater resistance to unionization should be seen in the service sector. The service sector's relative growth could be a primary contributor to the increased resistance of employers in general to union organizing.

⁸S. G. Bronars and D. R. Deere, "Union Representation Elections and Firm Profitability," *Industrial Relations* 29 (1990), pp. 15–37.

⁹R. S. Ruback and M. B. Zimmerman, "Unionization and Profitability: Evidence from the Capital Market," *Journal of Political Economy* 92 (1984), pp. 1134–57.

¹⁰R. B. Freeman and M. M. Kleiner, "Impact of New Unionization on Wages and Working Conditions," *Journal of Labor Economics* 8 (1990), pp. S8–S25.

¹¹This and other issues are discussed and analyzed in B. E. Becker and C. A. Olson, "Labor Relations and Firm Performance," in M. M. Kleiner, R. N. Block, M. Roomkin, and S. W. Salsburg, eds., *Human Resources and the Performance of the Firm* (Madison, WI: Industrial Relations Research Association, 1987), pp. 43–86.

¹²B. E. Becker and C. A. Olson, "Unionization and Shareholder Interests," *Industrial and Labor Relations Review* 42 (1989), pp. 246–61.

¹³B. C. Fallick and K. A. Hassett, "Investment and Union Certification," *Journal of Labor Economics* 17 (1999), pp. 570–82.

¹⁴P. Feuille, J. Lawler, J. Bae, and S.-J. Chen, "Unionization Determinants of Multinational Firms," *Proceedings of the Industrial Relations Research Association* 51 (1999), pp. 101–9.

UNION-FREE APPROACHES

A "union-free" organization is one that is entirely unorganized in its U.S. operations. Many companies fit this label, but among very large companies, they are more often in the financial services industry. Among firms with manufacturing operations, IBM and Hewlett-Packard are examples of large firms without organized employees in the United States.

A study of large nonunion organizations identified two types of firms operating without unions. One type is called *doctrinaire*. A **doctrinaire organization** explicitly desires to operate without unions and implements human resource policies it believes will lead employees to resist them. Its human resource policies frequently mimic what unions have won in similar organizations through collective bargaining, for example, paying wages equal to or exceeding what unions have negotiated in that industry.¹⁵ The other type is called **philosophy-laden**. Such companies have no unions, but the lack of organizing is because of the organization's employee relations climate. Management engages in human resource practices it believes are right.¹⁶ The policies are evidently congruent with employee desires because union-organizing activities in these firms are practically nonexistent. These two approaches will be examined as the human resource policies of both are explored.

Environmental Factors Associated with Union Avoidance

A variety of environmental factors are associated with union avoidance, some of which employers consider in making locational choices. Union penetration is highest in the Northeast and Midwest and lowest in the South and rural areas. Employers may locate in lightly unionized areas for two reasons. First, employers may believe employees in areas where unions have relatively little membership may be less willing to join unions. Mixed evidence exists on this point, as discussed in Chapters 1 and 6. Second, plants located in areas without unions seldom enable employees to compare economic benefits provided by union and nonunion organizations, and as a result, they may *not become* involved in organizing campaigns for economic reasons. This assumption rests on the belief employees will choose local plants as a logical comparison, not other plants in the industry. However, the evidence suggests that organizing around justice, fairness, and dignity issues is more successful than when economics are emphasized.¹⁷

Employers may associate plant size as a factor to use in avoiding unions. Evidence on union election success covered in Chapter 6 found plants with fewer than 100 employees more vulnerable to unionization than larger plants. While very large plants are more difficult to organize, employers may also believe the

¹⁵D. G. Taras, "Managerial Intentions and Wage Determination in the Canadian Petroleum Industry," *Industrial Relations* 36 (1997), pp. 178–205.

¹⁶F. K. Foulkes, *Personnel Policies in Large Nonunion Companies* (Englewood Cliffs, NJ: Prentice Hall, 1980), pp. 45–57.

¹⁷K. Bronfenbrenner, "The Role of Union Strategies in NLRB Certification Elections," *Industrial and Labor Relations Review* 50 (1997), pp. 195–212.

type of human resource management they would prefer to implement is difficult to inculcate in a large plant. Thus, the trend appears to be toward siting plants in labor market areas able to support medium-sized operations and planning they will generally not exceed 500 employees unless returns to scale are large. One problem with smaller plants is that they may not be optimally productive given the appropriate capital-labor mix.¹⁸ Plants also should not be smaller than 200 employees because a union can capitalize quickly on an issue in a smaller plant, and the plant population may be relatively homogeneous, enabling quicker and more nearly unanimous agreement among employees on whether to be represented.

Differences also exist among and within industries. Industries with a large proportion of white-collar workers (e.g., finance) are less likely to be unionized. But within industries, some firms have not been organized while others are completely unionized. In construction, relatively new organizations remain nonunion through guaranteed employment during usual layoff periods and through the implementation of human resource policies on the organizational level. Newly incorporated, technically oriented industries also have had a relatively low level of unionization, even when they have been located in traditionally highly unionized areas. Some of this is probably due to employment security resulting from rapid growth, and abundant alternative employment opportunities, while other aspects of resistance to organization may be related to progressive employee relations policies and practices. Further many of these firms locate manufacturing facilities offshore, in lower wage areas away from their technical facilities, or outsource production.

A Philosophy-Laden Approach to Employee Relations

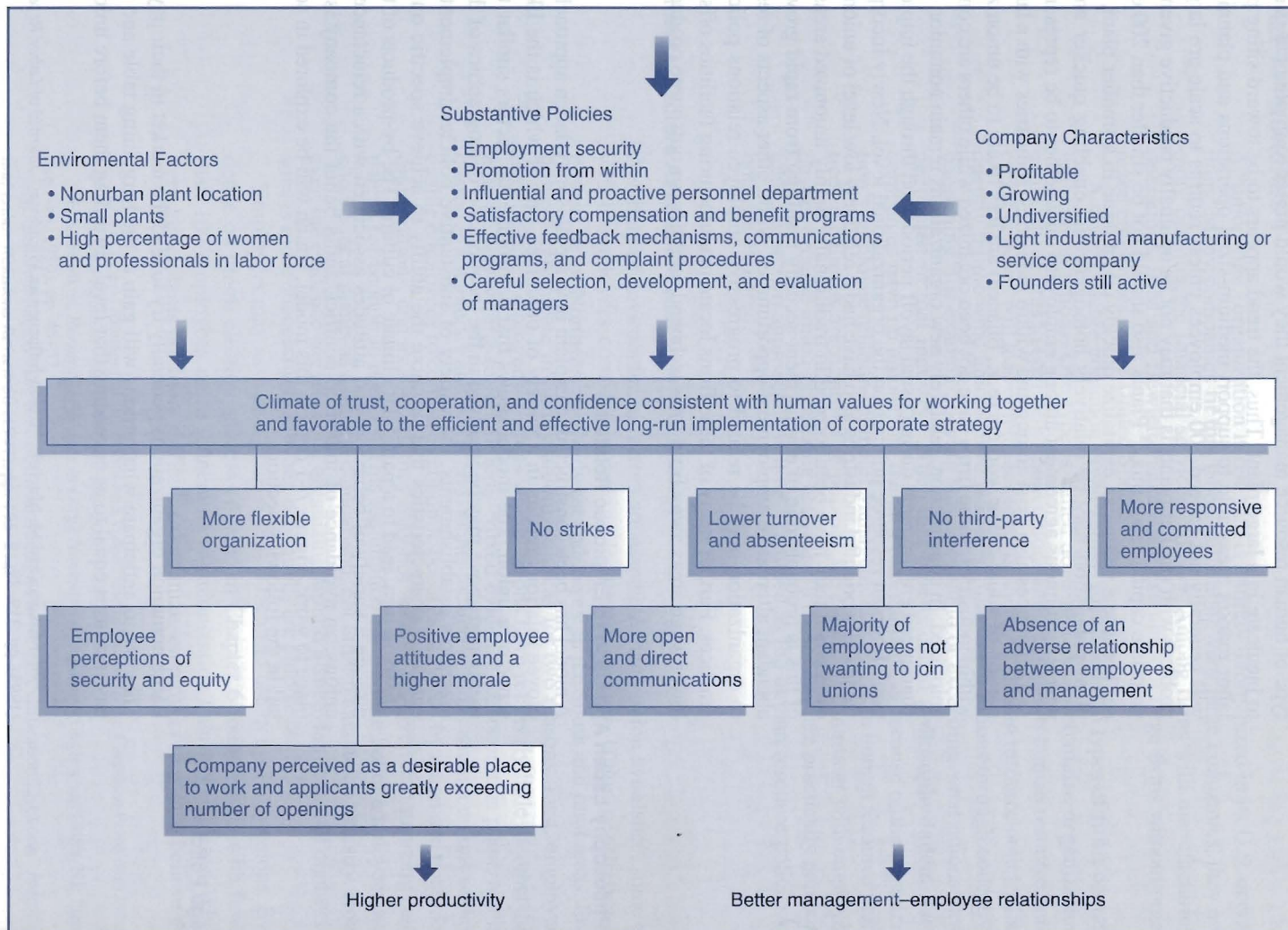
A model has been constructed to explain how a philosophy-laden approach to employee relations results in a variety of outcomes, one of which is the likely absence of a union. The model shows that environmental factors similar to those mentioned above may be involved in the location and demographics of the organization's establishments, the variety of substantive policies implemented, and company characteristics that promote the ability to achieve specific outcomes. These, in turn, lead to a particular climate or culture. The by-products of this culture are a variety of behaviors and attitudes associated with a reluctance to join unions, an avoidance of industrial conflict, and a belief the company is a good place to work. Figure 7-1 depicts this model, which will be explored in some detail in the following sections.

Wage Policies

Large nonunion organizations generally try to lead the market in their pay levels. They try to anticipate what unions will gain at the bargaining table and provide pay increases equal to or exceeding that level, awarding them before unions gain

¹⁸M. Milkman and M. Mitchell, "Union Influence on Plant Size," *Journal of Labor Research* 16 (1995), pp. 319-29.

Figure 7-1 Top Management's Stated Beliefs in the Worth of the Individual, Equity, Leadership by Example, and Other Attitudes, Values, Philosophies, and Goals Concerning Employees



theirs. Nonunion organizations may also implement merit pay policies, using performance measures to differentiate pay increases. Attention is paid to communicating pay and benefit levels and practices to employees.¹⁹ More recently, companies are likely to have implemented skill-based pay programs to support new organizational structures stressing team designs. Additionally, increasing numbers of companies are considering or implementing profit-sharing or gain-sharing programs.

To accomplish these wage goals, an organization must compare favorably with others in its ability to pay.²⁰ Location in a growing industry with relatively high profits or a position as market leader in the industry should enable an organization to maintain its ability to pay. In turn, a high-paying employer may have an advantage in recruiting and retaining high-quality employees who are motivated to retain their high-paying jobs.²¹

If employee preferences are considered, as a philosophy-laden organization is expected to do, then benefit levels in nonunion organizations should closely lead those in union organizations because there won't be any "stickiness" associated with contractual provisions. Companies might be expected to react quickly to changing needs associated with changing age and gender mixes in their workforces.

Nonwage Policies

Union organizations generally have lower turnover and higher rates of internal promotion and transfer than nonunion organizations. If an organization sought to emulate the conditions employees desire, it would have a rationalized internal labor market with high levels of information on job opportunities available to employees.

Nonunion firms studied generally had formalized job-posting systems, with clearly communicated and unambiguous promotion criteria emphasizing both seniority and skills. Development opportunities were emphasized so that employees could develop the skills necessary to take advantage of openings likely to occur.²²

Philosophy-laden firms have generally taken a career-oriented approach toward employment. Full-time nonprobationary employees were assumed to be likely to spend their entire careers with the organization. Thus, nonunion firms frequently require longer probationary periods or hire substantial numbers of part-time employees to provide a buffer for permanent employees during periods of fluctuating product demand.²³ Increasingly, retirement programs are structured to support earlier retirement from full-time employment coupled with part-time or seasonal work with the same employer. Employers are increasingly stressing to

¹⁹Foulkes, *Personnel Policies*, pp. 158-63.

²⁰Ibid., pp. 165-67.

²¹J. Yellen, "Efficiency Wage Models of Unemployment," *American Economic Review* 74, no. 2 (1984), pp. 200-5.

²²Foulkes, *Personnel Policies*, pp. 123-45.

²³Ibid., pp. 99-122.

employees the importance of continual upgrading of skills and assisting them to develop and potentially market themselves to new employers, if necessary.

Human Resource Expenditures In unionized organizations, union representation and the negotiated contract take the place of many human resource programs devised by nonunion employers. Management has less need to attend closely to employee desires because this is the union's responsibility, and the contract spells out how employee relations will be handled. Staffing and development needs are handled through on-the-job training, and retention of employees is gained through negotiated seniority clauses and the employees' initial and continuing interest in being represented.

Nonunion organizations have higher human resource expenditures, and more human resource workers are involved in employee relations. The organization must pay more attention to compensation because it usually tries to match or exceed what unions negotiate or to construct a particular package to attract and retain employees. Development activities are emphasized. Supervisory support for problem solving is offered through the human resource department instead of the grievance system.

Employment Security

Union members have the rules for determining their employment security spelled out in the contract. Almost always, increasing competitive status seniority is associated with greater rights to continued employment in a present job or another job for which one is qualified. Recently, these rights have been of lower value where organizations have opted to close entire facilities—but even there, entitlements to transfers and severance pay are often spelled out in contracts and benefit levels increase with seniority.

Employees in nonunion organizations have their employment rights determined by their employers. Unless otherwise provided, it's legally assumed an employee is hired at the will of the employer and can be terminated for a good reason, a bad reason, or no reason at all as long as the termination is not for a reason prohibited by employment law. However, courts have increasingly narrowed employers' rights to terminate at will, particularly where employers are judged to have acted in bad faith.²⁴ Even where employers have contracts with employees and where a discharge could lead to a breach-of-contract suit, employers may be vulnerable to heavier tort damages for bad-faith behavior associated with a discharge.²⁵

In the reciprocal relationship that develops in employment, employees may come to feel an implied contract exists between them and their employer. With employees' investments in developing skills needed by their present employer and through conscientious application of effort, employees see themselves producing

²⁴E. C. Wesman and D. C. Eischen, "Due Process," in J. A. Fossum, ed., *Employee and Labor Relations*, SHRM-BNA Series, vol. 4 (Washington, DC: Bureau of National Affairs, 1990), p. 4-117.

²⁵M. J. Keppler, "Nonunion Grievance Procedures: Union Avoidance Technique or Union Organizing Opportunity," *Labor Law Journal* 41 (1990), pp. 557-62.

benefits for the employer. In turn, employees may build expectations of long-term employment in return for effort and loyalty.²⁶

Nonunion employers use a variety of methods to enhance employment security for at least some employees. Given the need for flexibility in the workforce, more employers are subcontracting or allocating jobs needing relatively little training about the employer's specific mode of operation to supplemental or complementary workforces of temporary employees. Frequently, these employees are hired on a contract basis for a particular term—usually a year or less. These employees are explicitly told they have no employment security guarantee beyond the period for which they are hired. When faced with a need for major employment reductions, employers have increasingly implemented expanded separation incentives, redeployment to other facilities with or without retraining, training programs for new occupational assignments, expanded personal leaves, and work-sharing programs involving salary and hours cuts to save jobs or provide incentives for those willing to terminate employment.²⁷

Employee "Voice" Systems

Lower turnover in unionized situations (detailed in Chapter 10) might be related to an opportunity to voice needs for change through the grievance and negotiation processes. Where these mechanisms are absent, employees who desire change may be able to achieve it only by "voting with their feet."²⁸

In unionized organizations, employees are able to exercise their voice on immediate issues through grievance procedures and on long-run matters through participation in negotiation committees. Those having the greatest disagreements with the organization's operations might be expected to have the most motivation to be involved in union activities at the employer level.

In nonunion employers, employees have no contractual entitlement to redress grievances or to have a voice in how the organization should be run. Some nonunion organizations, particularly those with philosophy-laden backgrounds, have constructed elaborate systems enabling employees to voice complaints and get action on them.²⁹

A model system enables an employee to communicate directly with the firm's chief executive officer, who has a department that directly investigates causes of complaints and reports its findings. The complaining employee's superiors may be a focus of the investigation, but the employee is not identified, and no reprisals may be taken against the group from which the complaint is made. Exhibit 7-1 is a commentary on how one of these systems works.

²⁶J. A. Fossum, "Employee Relations," in J. A. Fossum, ed., *Employee and Labor Relations*, SHRM-BNA Series, vol. 4 (Washington, DC: Bureau of National Affairs, 1990), pp. 4-12-4-14.

²⁷F. K. Foulkes, "Employment Security: Developments in the Nonunion Sector," *Proceedings of the Industrial Relations Research Association* 41 (1988), pp. 411-17.

²⁸A. O. Hirschman, *Exit, Voice, and Loyalty* (Cambridge: Harvard University Press, 1970).

²⁹For an overview, see R. Bernheim, *Nonunion Complaint Systems: A Corporate Appraisal* (New York: Conference Board, 1980).

Exhibit 7-1

The Open-Door Policy

The Open-Door Policy is deeply ingrained in [the company's] history. This policy is a reflection of our belief in respect for the individual. It is also based on the principle that every person has a right to appeal the actions of those who are immediately over him in authority. It provides a procedure for assuring fair and individual treatment for every employee.

Should you have a problem which you believe the company can help solve, discuss it with your immediate manager or your location's personnel manager or, in the field, with the manager of your location. You will find that a frank talk with your manager

is usually the easiest and most effective way to deal with the problem.

Second, if the matter is still not resolved, or is of such a nature you prefer not to discuss it with your immediate manager or location personnel manager, you should go to your local general manager, regional manager, president or general manager of your division or subsidiary, whichever is appropriate.

Third, if you feel that you have not received a satisfactory answer, you may cover the matter by mail, or personally, with the Chairman of the Board.

Source: Fred K. Foulkes, *Personnel Policies in Large Nonunion Companies* (Englewood Cliffs, NJ: Prentice Hall, 1980), p. 300.

In order to reduce potential employee cynicism about management's commitment to neutral grievance procedures, IBM operates a system that allows employees direct anonymous access to high-level management on complaints. When complaints are received, investigations are required, and the remedial action to be taken, if any, is communicated back to the grievant. Follow-up is monitored by high-level management.

These so-called open-door policies vary substantially in their real access to higher-level managers—in terms of the types of complaints or questions that can be taken up and also the degree to which employees must first contact lower-level supervisors and managers before higher-level managers will see a complaint.³⁰

Another innovative approach is creating an employee review board to act as an impartial group to resolve outstanding grievances. Where this is used, a review board of randomly chosen employees or persons at the same relative organizational level as the grievant hears evidence and renders a decision binding on the employer and the grievant.

Employees may have concerns about due process. For due process to operate, a procedure must necessarily include an objective investigator and decision maker who has the power to make a binding decision on both employee and employer.³¹ Unless the employee believes the employer's procedures allow a valid appeal, the

³⁰D. M. McCabe, "Corporate Nonunion Grievance Procedures: Open Door Policies—A Procedural Analysis," *Labor Law Journal* 41 (1990), pp. 551–56.

³¹D. W. Ewing, *Justice on the Job: Resolving Grievances in the Nonunion Workplace* (Boston: Harvard University Press, 1989).

employee may prefer to take an employment grievance to court as a tort issue.³² Nonunion procedures in the public sector are relatively similar to union grievance procedures. Peer review panels are sometimes included. Their effectiveness is related to encouraging employees to use them, training in their operation, assistance by management in processing complaints and obtaining information for grievants, and full and fair hearings together with an explanation of the decision.³³ Table 7-1 is a summary of characteristics found in several comprehensive nonunion employee grievance programs.

Some large nonunion organizations also periodically conduct attitude surveys to obtain an early identification of potentially troublesome areas. These might include certain employee groups or certain employee relations policies such as advancement, pay, or development opportunities. Given that attitudes may be precursors of subsequent behaviors, the diagnosis of potential problem spots allows management to conduct remedial activities to eliminate the potential areas of contention.

Grievance procedures introduce justice systems to the workplace. Justice can be defined in several ways: distributive (methods used to decide relative shares of an outcome), procedural (methods used to determine how decisions are reached), and interactional (methods used to communicate). Perceptions of organizational justice are influenced by all three, but procedural justice is the strongest, followed by interactional and distributive. Employee input in the process and independence of decision makers are important components of all three justice types.³⁴

In some organizations, supervisors and managers are evaluated by their subordinates as well as by other performance indicators. They are expected to maintain a work environment leading to positive employee attitudes as measured by periodic surveys. When attitude surveys point out a problem, they may be required to devise action plans to eliminate difficulties.

Grievance procedures are found in about half of nonunion firms. Predictors of having a procedure include higher proportions of managers and professional employees, firm size, the value of human resource management to the firm, not having unionized employees, and not being in high-technology industries. Some grievance procedures include binding arbitration if unresolved. Characteristics associated with third-party resolution include union avoidance strategies, smaller firms, low assets per employee, not in manufacturing, and a high-tech firm.³⁵

Other Innovative Techniques

Some organizations have begun to hold mass meetings between employees and top-management officials to get a sense of possible problems. One approach involves meetings between top managers and groups of lower-level employees to

³²Keppler, "Nonunion Grievance Procedures."

³³G. W. Bohlander and K. Behringer, "Public Sector Nonunion Complaint Procedures: Current Research," *Labor Law Journal* 41 (1990), pp. 563-67.

³⁴D. Blancero, "Nonunion Grievance Systems: Perceptions of Fairness," *Proceedings of the Industrial Relations Research Association* 44 (1992), pp. 458-64.

³⁵J. T. Delaney and P. Feuille, "The Determinants of Nonunion Grievance and Arbitration Procedures," *Proceedings of the Industrial Relations Research Association* 44 (1992), pp. 529-38.

Table 7-1 Data on Boards in 11 Companies

	Citicorp	Control Data	Donnelly Corporation	Federal Express	General Electric (Columbia, Maryland, plant)
Name of board	Problem Review Board	Review Board	Equity Committee (5 in company)	a. Boards of Review b. Appeals Board	Grievance Review Panel
Years established	1977	1983	Late 1970s	1981	1982
Number of voting members	5	3	ca. 10-25 each	a. Boards of Review: 5 b. Appeals Board: 3	5
Terms	Ad hoc	Ad hoc	2 years	a. Boards of Review: ad hoc b. Appeals Board: ex officio	Ad hoc
Cases per year	ca. 12	ca. 8	3-4	a. Boards of Review: 37 (1986) b. Appeals Board: 209 (1986)	ca. 19
Number of cases per 1,000 employees	0.23	0.25	3	a. Boards of Review: 1 (1986) b. Appeals Board: 5 (1986)	20
Arbitration allowed as final step?	No	No	No	No	No
Reversal rate	n/a	22% (1985)	n/a	a. Boards of Review: 67% (1986) b. Appeals Board: 28% (1986)	n/a
Complaints processed by personnel staff	1982: 293 1984: 374 1986: 700	n/a	n/a	726 (1986), 62% of decisions appealed overturned	n/a

Source: D. W. Ewing, *Justice on the Job: Resolving Grievances in the Nonunion Workplace* (Boston: Harvard University Press, 1989), pp. 80-81.

present current problems and gripes. This "deep-sensing" approach may give top managers a better reading on the pulse rate of employee morale, and employees in turn might expect more action on their problems.

Another approach, called vertical staff meetings, includes about a dozen employees from various levels who are picked at random to meet with the division's president at a monthly meeting. Problems disclosed by the attendees are followed up by the president's report to the participants.³⁶

³⁶For additional perspectives on employee voice, see T. A. Mahoney and M. R. Watson, "Evolving Modes of Work Force Governance: An Evaluation," in B. E. Kaufman and M. M. Kleiner, eds., *Employee Representation: Alternatives and Future Directions* (Madison, WI: Industrial Relations Research Association 1993), pp. 135-68. For an overview of recent research on nonunion grievance procedures, see R. B. Peterson, "The Union and Nonunion Grievance System," in D. Lewin, O. S. Mitchell, and P. D. Sherer, eds., *Research Frontiers in Industrial Relations and Human Resources* (Madison, WI: Industrial Relations Research Association, 1992), pp. 131-62.

Table 7-1 (concluded)

Honeywell (DSD-USD)	John Hancock	Northrop	Polaroid	SmithKline Beecham (Pharmaceutical Division)	TWA
Management Appeal Committee	Employee Relations Committee	Management Appeal Committee	Personnel Policy Committee	Grievance Procedure	System Board of Adjustment
1981	1981	1946	1946	ca. 1971	Early 1950s
7	5	3	3	3	3
3 years	Indefinite	Ex officio	Ad hoc	Ad hoc	Ad hoc
ca. 2	15-20	15-20	ca. 20	ca. 8	50-75
0.33	1.5-2.0	0.33	2	1.3	7.1-10.7
No	No	Yes—1 case in 1984, 13 in 1986	Yes	No	No
n/a	n/a	60% (1984)	n/a	n/a	Over 50% in 1985; less than 25% in 1987-88
n/a	ca. 120 (1985)	n/a	ca. 1,000- 2,000	n/a	n/a

Employer/Employee Committees Employers have formed various types of management-employee committees. Quality circles are one example. Others involve employees in making recommendations to management regarding hiring, personnel assignments, hours, terms and conditions of employment, and other similar issues, which are the subject of collective bargaining in unionized employers.

Taft-Hartley forbids dominance of a labor organization by an employer. The *Electromation* decision narrows an employer's ability to broadly ask employees to consider employment issues.³⁷ Involvement of employees in nonmandatory bargaining issue areas is unlikely to lead to successful charges of employer dominance.

Communicative activities in some of these committees may be similar to collecting attitude survey data from a sample of the plant population and using these data as a representation of the employees' attitudes. It also enables both groups to

³⁷*Electromation, Inc.*, 309 NLRB No. 163 (1992).

enrich their understanding of what each perceives as problems in the workplace and their causes.

In some situations, employers have also vested some supervisory activities in work groups. For example, General Foods established work groups in one plant in which the group made its own work assignments, created and operated training programs, and made recommendations on staffing decisions.³⁸ These were found not to be employer-dominated labor organizations.³⁹

In Canada, company unions are permitted, and there has been a long history of nonunion employee representation in Imperial Oil. The Joint Industrial Council (JIC) in Imperial dealt with a variety of workplace issues, including wages and benefits. However, when employee JIC members perceived they were losing influence in decision making on employment issues, they organized a union with the former JIC representatives as the new union's officers.⁴⁰ Canadian firms with nonunion representation plans that stray far from offering union type wages and benefits usually find they become organized.⁴¹

Prior to being banned by the Wagner Act, a number of company unions were created, mostly during the 1920s. These were formed with the assistance of management and were operated at the enterprise level. Their outlawing by the Wagner Act was related to the conclusion that they lacked independence and had a compromised ability to represent worker interests. A recent analysis of company unions suggests, however, that they often enhanced worker outcomes and generally benefitted both employees and employers.⁴²

Developing Practices in Nonunion Employee Relations

Increasingly, companies have explicit union avoidance policies and tailor human resource practices to support these goals. Companies that have an explicit union avoidance policy differ from those that do not in several areas, including providing more information to employees regarding their work group's productivity, more work group discussion of quality or productivity issues, more encouragement of participative mechanisms such as quality circles and autonomous work teams, work sharing in preference to layoffs, and the development and operation of formal complaint systems.⁴³ Table 7-2 shows the number of positive responses toward a variety of human resource practices among a sample of large employers.

³⁸R. E. Walton, "The Diffusion of New Work Structures: Explaining Why Success Didn't Take," *Organizational Dynamics* 3, no. 3 (1975), pp. 2-22.

³⁹*General Foods*, 231 NLRB 1232 (1977).

⁴⁰D. G. Taras and J. Copping, "The Transition from Formal Nonunion Representation to Unionization: A Contemporary Case," *Industrial and Labor Relations Review* 52 (1998), pp. 22-44.

⁴¹D. G. Taras, "Evolution of Nonunion Employee Representation in Canada," *Journal of Labor Research* 20 (1999), pp. 31-52.

⁴²B. E. Kaufman, "The Case for the Company Union," *Labor History* 41 (2000), pp. 321-50.

⁴³A. Freedman, *The New Look in Wage Policy and Employee Relations* (New York: Conference Board, 1985), pp. 16-20.

Table 7-2 Company Practices among Nonunion Employees

Company initiative	Number of companies in which:	
	Managers are encouraged to develop or sustain	Practice exists
Information-related		
Employees are given information about competitive or economic conditions of plant or business		431
Employees track their group's quality or productivity performance		264*
Participation-related		
Employee-participation programs (quality circles, quality-of-work-life programs)	364*	
Autonomous work teams	107*	
Employees meet in small work groups to discuss production or quality		340*
Compensation-related		
Profit-sharing, gainsharing, or bonus programs for nonexempt employees	191	
Employees receive productivity or other gainsharing bonuses		121
"Payment for knowledge" compensation systems	107	
All-salaried compensation systems	173	
Miscellaneous		
Formal complaint or grievance system	378*	
Work sharing instead of layoffs	176*	
Flextime or other flexible work schedules	162	

*Statistically significant relationship with a company preference for union avoidance, at .05 or better.

Source: A. Freedman, *The New Look in Wage Policy and Employee Relations* (New York: Conference Board, 1985), p. 17.

Besides differences in communication and participation, new nonunion and traditional unionized employers differ in the way the workplace is organized. To increase flexibility, employers have substantially reduced the number of job classifications. In many situations, employees are organized into teams and the team is responsible not only for production but also for maintenance of its equipment. The team may have only one or two different jobs, which are defined on the basis of skill level rather than the functional specialty of the jobholder.⁴⁴

PREVENTIVE PROGRAMS

In an effort to avoid being organized, employers design programs to influence employees to identify with management and the goals and culture of the organization, control contextual attributes that unions typically argue they can improve,

⁴⁴T. A. Kochan, H. C. Katz, and R. B. McKersie, *The Transformation of American Industrial Relations* (New York: Basic Books, 1986), pp. 81-108.

Table 7-3 Employer Influence, Contextual Control, and Monitoring Tactics

Objective	Employer activities
Influence	<ul style="list-style-type: none"> Orientation programs Quality circles (especially blue collar) MBO (especially for white collar and professional employees) Information sharing Attitude surveys Structuring of group interaction Empathetic management style
Contextual control	<ul style="list-style-type: none"> Plant location Small plant size Outsourcing and use of flexible employment arrangements Employee screening Supervisor selection and training Influential HRM department Desirable working conditions High wages, good fringes Job security Career advancement opportunities Grievance program Restrictions on workplace solicitations by union supporters
Monitoring	<ul style="list-style-type: none"> Attitude surveys Surveillance Reports from operatives and management loyalists Review of employee complaints Review of personnel records

Source: Adapted from J. J. Lawler, *Unionization and Deunionization: Strategies, Tactics, and Outcomes* (Columbia, SC: University of South Carolina Press, 1990), pp. 120–21.

and monitor attitudes and behaviors of employees to gain early evidence of any changes or situations that might encourage organizing.⁴⁵ Table 7-3 lists several initiatives management implements in each of these areas.

Some of the activities under contextual control and monitoring may be traded off or be used with increased emphasis. For example, intensive employee screening may be implemented to reduce the need for later surveillance and to create a workforce with more company-oriented attitudes.⁴⁶ Some activities within contextual control may also be exchanged. For example, high wages and good fringes vary in amounts depending on the location in which the comparison is made. If labor costs are an issue, the firm may decide to locate in a lower-wage area and then pay at rates exceeding the competition. In any case, implementing these activities requires a more intensive employee relations/human resource management effort than it would in a unionized setting. The employer needs to determine that the long-run benefits exceed the costs.

⁴⁵J. J. Lawler, *Unionization and Deunionization: Strategies, Tactics, and Outcomes* (Columbia, SC: University of South Carolina Press, 1990), pp. 118–28.

⁴⁶G. M. Saltzman, "Job Applicant Screening by a Japanese Transplant: A Union-Avoidance Tactic," *Industrial and Labor Relations Review* 49 (1995), pp. 88–104.

Table 7-4 Employer Election Campaign Tactics

Objective	Employer activity
Influence	Captive audience speeches Small group and individual meetings Letters, posters, handbills, and other written communications Threats and/or inducements Films, slide shows
Contextual control	External Use of regulatory agency procedures Election delays Linkages with community institutions (banks, police, newspapers, churches, etc.) Intraunit Supervisor training Discriminatory treatment of union supporters Short-term improvement in wages, working conditions Establish or support employee antiunion committee Refuse workplace access to union organizers Restrictions on workplace solicitations by union supporters Excelsior-list misreporting Neutrality agreements
Monitoring	Attitude surveys Surveillance Interrogation Reports from operatives and management loyalists

Source: Adapted from J. J. Lawler, *Unionization and Deunionization: Strategies, Tactics, and Outcomes* (Columbia, SC: University of South Carolina Press, 1990), pp. 141-42.

MANAGEMENT CAMPAIGN TACTICS IN REPRESENTATION ELECTIONS

Campaign tactics depend to an extent on the size and sophistication of the employer. Smaller employers or units based in more remote locations often rely on labor relations consultants or attorneys to assist in organizing and implementing the campaign. As Chapter 6 noted, the use of consultants has a negative effect on union success rates. As in preventive processes, employers may implement a variety of influence, contextual control, and monitoring activities to reduce the chances of the organizing union gaining recognition.⁴⁷ Table 7-4 lists the activities frequently used by employers. Table 7-5 shows the frequency of a variety of common employer campaign themes that were used in a sample of 201 elections.

Management often uses a variety of consultants in opposing unionization once an organizing campaign begins. Consultants may include attorneys, campaign advisers, advocates of positive labor relations, security services who will provide investigation resources, trade and industry associations who provide expertise

⁴⁷Lawler, *Unionization and Deunionization*, pp. 139-60.

Table 7-5 Relative Frequencies of Common Employer Campaign Themes

Campaign theme	Frequency (%)
Bargaining impact themes:	66
Strikes may occur	40
High union dues	33
Potential for fines and assessments by the union	24
Unions cannot guarantee any changes	14
Possible plant closing	14
Bargaining may actually reduce wages, benefits, and the like	5
Antiunion themes:	35
Union will interfere with good worker-management relations	7
Union dominated by "outsiders"	13
Union has failed elsewhere	6
Union is corrupt	9
Union is radical or leftist	6
Union will subject workers to rules	6
Unionism is inconsistent with employee and community values	1
Procompany themes:	20
Management is a friend to workers	7
Workers already enjoy high wages and/or good working conditions	9
Give company another chance	8

Source: Adapted from J. J. Lawler, *Unionization and Deunionization: Strategies, Tactics, and Outcomes* (Columbia, SC: University of South Carolina Press, 1990), p. 149.

gained from previous campaigns, advocacy groups who oppose unions in general, and educational institutions who might provide union avoidance information.⁴⁸

Tactics such as improving wages, hours, and terms and conditions of employment or treating union supporters in a discriminatory manner are unfair labor practices. Evidence indicates that an aggressive campaign that includes unfair labor practices is associated with management victories.⁴⁹ The fact that the costs of having been found to have committed an unfair labor practice are very low relative to the costs of unions winning elections actually reinforces employer choices to commit them. Extensive advice on how to conduct a legal campaign in opposition to a union is readily available.⁵⁰

The lower an employer's wage is relative to others in its industry, the greater will management's resistance be. Employer resistance increases more rapidly with differentials than does the desire of employees for unionization.⁵¹ An active union

⁴⁸Ibid. p. 90.

⁴⁹W. T. Dickens, "The Effect of Company Campaigns on Certification Elections: *Law and Reality* Once Again," *Industrial and Labor Relations Review* 36 (1983), pp. 560-75.

⁵⁰See, for example, in two parts in successive numbers, M. A. Spognardi, "Conducting a Successful Union-Free Campaign: A Primer (Part I)," *Employee Relations Law Journal* 24, no. 2 (1998), pp. 35-52, and Part II in no. 3 (1995), pp. 31-55.

⁵¹R. B. Freeman, "The Effect of the Union Wage Differential on Management Opposition and Union Organizing Success," *American Economic Review* 76, no. 2 (1986), pp. 92-96.

avoidance strategy for newly built facilities decreases the likelihood of organizing from about 15 percent to 1 percent.⁵²

DECERTIFICATIONS

Once certified, unions face periodic risks in continuing as the bargaining agent. A majority may vote to oust the union after the election bar ends if no contract is in effect. Decertification occurs more often in small units lacking local leadership, with low member involvement in union activities, a higher frequency of strikes, a high turnover of represented employees, low union density in the industry, and affiliation with a large national union.⁵³

Since the 1950s and 60s, decertification elections have increased from 5 percent of all elections to between 12 and 25 percent. Decertifications are strongly related to macroeconomic measures, institutional changes reflected in increasing ULPs, relative reductions in social spending as unemployment increased, and a Republican administration in office.⁵⁴

JOB STRUCTURING

Employers and unions may be involved in a continual battle about whether jobs fall within the jurisdiction of the bargaining unit or not. At the time that an election is held, the NLRB defines what jobs and what employees are within the bargaining unit. As noted, the law requires professionals to affirmatively agree to be part of a bargaining unit before they can be included. If a set of jobs is changed radically and skill requirements are increased, the employer may argue that they are no longer a part of the bargaining unit as it was defined at election time. If at the same time, low-skilled jobs are outsourced, the bargaining unit is gradually hollowed out by job design changes, and bargaining power is lost. Exhibit 7-2 contains information regarding job jurisdiction demands made by the Communications Workers during its 2000 negotiations with Verizon that resulted in a lengthy strike.

SUMMARY

Differences between capitalistic and trade union philosophies related to the operation of the workplace cause inevitable conflicts. Employers have long resisted

⁵²T. A. Kochan, R. B. McKersie, and J. Chalykoff, "The Effects of Corporate Strategy and Workplace Innovations on Union Representation," *Industrial and Labor Relations Review* 39 (1986), pp. 487-501; see also J. J. Lawler and R. West, "Impact of Union-Avoidance Strategy in Representation Elections," *Industrial Relations* 24 (1985), pp. 406-20.

⁵³See J. C. Anderson, G. Busman, and C. A. O'Reilly III, "What Factors Influence the Outcome of Union Decertification Elections?" *Monthly Labor Review* 102, no. 11 (1979); and D. A. Ahlburg and J. B. Dworkin, "The Influence of Macroeconomic Variables on the Probability of Union Decertification," *Journal of Labor Research* 5 (1984), pp. 13-28.

⁵⁴E. A. Nilsson, "The Growth of Union Decertification: A Test of Two Nonnested Theories," *Industrial Relations* 36 (1997), pp. 324-48.

Exhibit 7-2

CWA Position on Job Security in Bell Atlantic/Verizon Bargaining (2000)

CWA wants limitations on the movement of work as Bell Atlantic consolidates its merger with GTE. This would extend the assurances we won in negotiations when Bell Atlantic merged with Nynex.

CWA is fighting for real, enforceable limits on subcontracting. Far from using subcontracting to give it flexibility to handle booming business needs from time to time, Verizon's subcontracting of work is widespread and constant.

CWA is seeking to bolster organizing rights for the company's growing and non-union wireless operation. CWA's goal is to help raise job standards for these workers and increase the opportunity for workers through Verizon to be able to transfer into new areas of the company. Verizon Wireless is the only major wireless operation in the telecommunications industry where such organizing rights language hasn't yet been negotiated.

Source: <http://www.cwa-union.org/telecombarg/verizon/issues.asp>, accessed August 29, 2000.

attempts to unionize, with industrial-type unions having little success in organizing workers until passage of the Wagner Act. Following a "corporatist" period of about 30 years following World War II in which management generally conceded a legitimate role for labor, employers took a harder line against organizing and bargaining beginning in the late 1970s. Currently, many employers have a "union-free" employment goal and implement strategies to avoid new organization and eliminate current unionization in their firms.

Unionization has a variety of economic effects on employers. In general, productivity of unionized workers is higher than nonunion workers in manufacturing and construction, but not in the service sector. Union members earn a substantial pay premium. Where unions have negotiated wage and benefit improvements, employers generally pass these along to unorganized workers as well. Thus, the cost of unionization is not fully related to unionized workers only. Studies of stock price changes associated with unionization and deunionization generally find that share prices fall at a higher than expected rate when unionization or attempts to unionize occur.

Employers implement a variety of practices in an attempt to remain union free. Employers adopting a "philosophy-laden" approach create an employment relationship that fits a particular culture and manner of treating employees. As a result, employees see their situations as being, in most respects, as good as or better than what they would be able to negotiate if they were represented. In other, more traditional approaches, employers may purposely implement a set of employment practices that closely mimic a unionized environment, thereby reducing the likelihood that issues would arise to lead to unionization.

Some of the areas in which nonunion employers focus in their avoidance of unionization include plant location decisions, wage and benefit policies, staffing practices, and employee grievance systems.

Preventive programs involve attitude surveys, surveillance, employee communications, and supervisor training. If an organizing attempt takes place, intensive communications, hiring consultants, and procedural delays are often implemented. If the union wins recognition, the employer may take an intransigent approach to bargaining an initial contract.

Decertifications are an increasing proportion of NLRB-conducted elections. These must be initiated by employees during a period in which a contract is not in effect.

DISCUSSION QUESTIONS

1. Is the increasing resistance of employers to unionization a new phenomenon or simply a return to the historic relationship that's existed between unions and managements in the United States?
2. Would you expect a stronger antiunion response from an employer in manufacturing or a service industry?
3. In today's increasingly competitive employment environment, would you expect to find many (or any) employers taking a "philosophy-laden" approach?
4. Should public policy change in some way so that unions who win representation rights have a guarantee that they will be able to negotiate a first contract?

KEY TERMS

Company union 187

Philosophy-laden 190

Doctrinaire organization 190

CASE: LOCATING THE NEW RECREATIONAL VEHICLE PLANT

GMFC is planning to expand its U.S. operations by building a new plant that will employ about 500 production workers. This new plant will manufacture motorized recreational equipment including all-terrain vehicles, personal watercraft, and snowmobiles. The equipment will assemble mechanical components produced in other GMFC operations or purchased from suppliers. The new plant will fabricate fiberglass body parts and complete the final assembly process.

GMFC would like to operate the new plant "union-free." It's likely that the UAW and perhaps other internationals will attempt to organize the workforce within a year after startup. You are a member of a planning committee for the new plant. Your primary area of responsibility involves issues related to potential unionization and labor costs. What advice would you provide to the company on size, location, staffing, wages and benefits, and other employee relations issues that would help GMFC keep the new plant union-free and competitive?