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4391

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 Sixteenth Street, N.W., Washington, D. C. 20006

copy given

MEMORANDUM

Date: November 30, 1981

To: Lane Kirkland

From: Ray Denison RD

Subject: John Van de Water

As you know, the Senate Labor and Human Resources Committee on November 19 rejected the nomimation of John Van de Water to be chairman of the National Labor Relations Board. The committee voted three times on motions by Chairman Orrin Hatch. They were: to report favorably; to report without recommendation and to report unfavorably. In each case the vote was 8 to 8 to reject. Democrats Kennedy, Williams, Randolph, Pell, Eagleton, Riegle and Metzenbaum were joined by Republican Weicker in opposing the nomination.

Now, Senator Hatch has prevailed upon Majority Leader Howard Baker to seek to discharge the committee from further consideration of Van de Water's nominiation and bring it before the Senate. No doubt the White House supports Baker's move.

A review of the precidents indicates that the Senate has never in its history discharged a committee for acting unfavorably on a nomination. In fact, the Senate has approved only two discharge petitions on nominations, both in situations different from the present and neither providing a basis for the action by the majority leader.

A Dear Colleague letter is being circulated arguing that approval of the discharge petition would undermine the institutional integrity of the Senate's structure.

Baker sought to bring up the issue last week but Minority Leader Byrd objected, causing it to lay over until this week. Baker has promised to give notice when he will seek to move the issue to the floor. We have alerted Senators and we are in the process of making a nose count on two possible votes: (1) Will they vote against an attempt to invoke cloture, and, (2) Will they oppose Baker's motion to seek to discharge the Committee. The count is inconclusive as yet. We believe that the realization by Baker that the Democrats intend to filibuster could be sufficient to put the matter over until Congress returns in January. Time is short if the December 15 adjournment date is to be met. If cloture is invoked, 100 hours is available for debate. After that, the Senate would turn to Van de Water's nomination itself. The filibuster-cloture procedure could be used again for a second 100 hours.

Attached is a copy of the Dear Colleague letter and copies of Tom Donahue's testimony and two supporting letters to Hatch.

RD/rw
Attachments

Draft

ORRIN G. HATCH, UTAH, CHAIRMAN
ROBERT T. STAFFORD, VT.
DAN QUAYLE, IND.
PAULA HAWKINS, FLA.
DON NICKLES, OKLA.
LOWELL P. WEICKER, JR., CONN.
GORDON J. HUMPHREY, N.H.
JEREMIAH DENTON, ALA.
JOHN P. EAST, N.C.
EDWARD M. KENNEDY, MASS.
JENNINGS RANDOLPH, W. VA.
HARRISON A. WILLIAMS, JR., N.J.
CLAIBORNE PELL, R.I.
THOMAS F. EAGLETON, MO.
DONALD W. RIEGLE, JR., MICH.
HOWARD M. METZENBAUM, OHIO
GEORGE W. PRITTS, JR., CHIEF COUNSEL
REID M. PATCH, STAFF DIRECTOR AND GENERAL COUNSEL
LAWRENCE C. HOROWITZ, M.D., MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, D.C. 20510

Dear Colleague:

The purpose of this letter is to ask you to join with us in opposing the unprecedented and unwise effort to discharge the Labor and Human Resources Committee from further consideration of the nomination of John Van de Water to be Chairman of the National Labor Relations Board.

On Thursday, November 19 after lengthy and careful consideration the Committee rejected Mr. Van de Water's nomination by a vote of 8 to 8. The petition to discharge the Committee was filed by the Majority Leader on Tuesday, November 24.

Our review of the precedents indicates that the Senate has never in its history discharged a committee for acting unfavorably on a nomination. Indeed, the Senate has approved only two discharge petitions on nominations. In one instance a petition was filed because the committee with jurisdiction had refused to take any action on the nomination in question. See 78 Cong. Rec. 10816, 10836 (Nomination of Reford G. Tugwell to be Under Secretary of Agriculture). In the second the petition was used to expedite floor consideration of a nomination which had been approved by the Committee but could not be considered due to the floor manager's absence. See 79 Cong. Rec. 7684-7685 (Nomination of Michael L. Igoe to be United States Attorney for the Northern District of Illinois).

In short both of these instances are readily distinguishable from the present situation and they clearly do not provide a basis for the unwarranted action proposed by the Majority Leader.

Approval of the discharge petition in this case would undermine the institutional integrity of a basic component of the Senate's structure. The committee system is integral to the Senate's ability to perform its constitutional duties in a careful and considered fashion. That system cannot function properly if the Senate adopts a practice of discharging committees that have acted promptly and responsibly.

As you know, nominations to the NLRB have generated substantial controversy in the last several years. Present national labor policy balances the competing interests of

labor and management in order to further democracy in the work-place and promote industrial place. Because of the nature and delicacy of the Board's responsibilities in this scheme, Congress has recognized that impartial administration of the act is a matter of paramount importance and has sought to ensure that Board members would be perceived as both throughly objective and impartial. For this reason neither a labor-management consultant who has actively opposed union organizing efforts nor a union organizer has ever been appointed to the Board.

During our consideration of Mr. Van de Water's nomination we learned that from the early 1960's through at least 1976 the nominee was an active labor management consultant who regularly assisted employers in opposing legitimate employee efforts to form a union.

Furthermore, serious questions were raised as to whether Mr. Van de Water had met his obligation to register and file as a "persuader" under the Landrum Griffin Act - requirements Congress enacted for the precise purpose of assuring that labor management consultants make public their activities in the representation election area.

Finally, and perhaps most importantly, while Mr. Van de Water acknowledged that he had represented management in 130 representation elections, he failed to provide the committee wth the detailed information which would have permitted a final evaluation of his role in these elections. A nominee, of course, has the obligation to provide the committee reviewing his nomination with facts peculiarly in his possession on substantial questions that have been raised concerning his qualifications. Despite numerous requests, Mr. Van de Water provided little information on these matters.

For these reasons we concluded that Mr. Van de Water did not meet the standards applied to previous Board nominees and therefore voted not to approve his nomination.

As members of the Labor and Human Resources Committee we believe the committee fulfilled its responsibility to the Senate to carefully and conscientiously consider the nomination. and that, in view of the precedents, the effort to discharge the nomination from the Committee is entirely unjustified.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

LABOR'S CENTENNIAL AFL-CIO 1881-1981

LANE KIRKLAND
PRESIDENT

815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

THOMAS R. DONAHUE
SECRETARY-TREASURER

LEGISLATIVE ALERT!

(202) 637-5075

November 25, 1981

Dear Senator:

The AFL-CIO opposes the nomination of John Van de Water to be Chairman of the National Labor Relations Board.

Our testimony, and the later letters we submitted to the Labor and Human Resources Committee detail the basis for our opposition. For your convenience these materials are attached.

Very simply stated Mr. Van de Water for many years made his living planning and leading employer anti-union campaigns in response to employee efforts to organize, by his own admission, as a labor management consultant, he advised employers to use tactics that went to the very edge of the law and sometimes beyond; and it is our view that he engaged in direct efforts to persuade employees to vote against representation and yet did not, as the law requires, register with and report to the Department of Labor.

Mr. Van de Water in sum does not have the proven record of fair minded impartiality toward management and labor required to serve as the head of the agency whose primary responsibility is to set the rules that govern employers and unions during representation campaigns. The Labor and Human Resources Committee was right in rejecting his nomination to hold that office.

We, therefore, ask you not to support the effort to discharge the Committee from further consideration of the Van de Water nomination and if the discharge petition is brought up not to support cloture.

Sincerely,

Ray Denison

Ray Denison, Director
DEPARTMENT OF LEGISLATION

Attachments

President
Lane Kirkland
Secretary-Treasurer
Thomas R. Donahue
Vice Presidents
John H. Lyons
Peter Bommarito
Thomas W. Gleason
Frederick O'Neal
Jerry Wurf
S. Frank Raftery
Al H. Chesser
Martin J. Ward
Murray H. Finley
Albert Shanker
Glenn E. Watts
Sol C. Chaikin
Edward T. Hanley
Angelo Fosco
Charles H. Pillard
William H. McClennan
J. C. Turner
Lloyd McBride
David J. Fitzmaurice
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Wm. W. Winpisinger
William H. Wynn
John J. O'Donnell
John DeConcini
Wayne E. Glenn
Robert F. Goss
Daniel V. Maroney
William Konyha
Joyce D. Miller
John J. Sweeney
Douglas A. Fraser

American Federation of Labor and
Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

October 5, 1981

The Honorable Orrin G. Hatch, Chairman
Senate Labor and Human Resources Committee
4230 Dirksen Senate Office Building
Washington, D. C.

Re: The Nomination of John R. Van de Water to be Chairman of the National Labor Relations Board

Dear Senator Hatch:

In conformity with your request following my testimony stating the AFL-CIO's opposition to the above-noted nomination, let me make the following points:

1. Mr. Van de Water, in his article "How To Deal With The Union", admits that as of the time of that article (the early 70s), he had been personally involved in 130 employer campaigns to block organizing efforts. The AFL-CIO, of course, is not privy to any information concerning the identity of all of the employers for whom Van de Water Associates acted, the time and place of the organizing efforts involved, the nature of the employer campaign, or Van de Water Associates' role in the employer campaign. Obviously Mr. Van de Water is the best source of that information. And, equally obvious, this information is highly relevant in determining whether this nomination should be confirmed. We believe that the Committee should obtain full information from Mr. Van de Water on these campaigns and on all others in which he has been involved and believe that that information could then be examined and weighed by the members of the Committee in forming their judgments on Mr. Van de Water's suitability for this office. He should be judged on all the facts of his career and obviously only a small part of the relevant record is before the Committee.

2. I am enclosing a list compiled by the Federation's Los Angeles-Orange County Organizing Committee of eighteen instances during the period 1964-1972 in which Van de Water Associates was the management consultant to employers attempting to defeat efforts by their employees to organize. We are unable to tell whether these eighteen campaigns are included in the 130 Mr. Van de Water referred to his article or whether they are in addition to that number.

3. The materials attached to my testimony and those used by employers in these campaigns all argue the view that union representation and collective bargaining are bad for employees, for employers and for the society in general. That premise is directly contrary to the principles stated by Congress in the National Labor Relations Act and Labor Management Relations Act. Those Acts read most narrowly, while respecting employee free choice and recognizing that employers may, within specified limits, oppose organization if they wish, stand for the proposition that the right of working men and women to form and join labor organizations is a proper means of expressing their aspirations for a fair return for their labor and for a measure of control of their working lives and that collective bargaining contributes to industrial peace and justice. An individual who does not accept these central aspects of the national labor policy that Congress has devised should not head the agency with the primary responsibility for administering that policy.

4. Several of the questions you posed when I appeared raised the issue of whether the AFL-CIO opposed Mr. Van de Water's nomination on the ground that he has engaged in wrongdoing that disqualifies him from serving in government office. That is not the basis of the Federation's opposition. So far as we know, Mr. Van de Water has not broken the law. (I should add, however, that our attorneys believe that portions of Mr. Van de Water's "How To Deal With The Union" article and his view of what constitutes persuader activity requiring registration under the Landrum-Griffin Act as stated at the hearing are not consistent with either the letter or spirit of the law. We would be pleased to amplify on this point if the Committee believes that desirable.)

We oppose Mr. Van de Water to be NLRB Chairman because his management consultant activities, as we understand them, show him to be an active anti-union partisan, opposed to the exercise by employees of their right to choose union representation, and opposed to people's efforts to gain access to collective bargaining. We do not believe that union organizers or management opposers of organization should serve on the NLRB.

5. In my testimony I noted that the AFL-CIO has stayed with the position that the Board's institutional integrity is best served by denying membership to active partisans for either side, even though management has not. It is our view that our position is the only one compatible with the criteria to be applied to Board nominees you stated during the last Congress. Unless we misunderstood the facts, if those criteria are applied in this instance, Mr. Van de Water cannot be confirmed. Thus, if on this record confirmation ensues, we will have no choice but to take the Senate's action as a final repudiation of our position on the status of partisans and a renunciation of the test of complete objectivity and independence.

6. Finally, I ask you to look with close attention at the two fliers prepared by the Pharmaseal Laboratories Workers' Committee and addressed to Mr. Van de Water which express rather clearly the frustration of those employees with Mr. Van de Water's efforts to persuade them to be against the union and their frustration with the fact that while he was apparently holding "captive audience" meetings, he refused to engage in open debate. (Here again we are unable to judge from the information now available whether Mr. Van de Water's activities in this campaign might be judged by the Department of Labor to constitute "persuader activities." The fliers do put into question Mr. Van de Water's statement at the hearing that he never engaged in such activities.) Is it fair and proper to ask those employees and the others like them who are struggling for union representation against employer opposition to accept the same Mr. Van de Water as their judge?

I would ask that this presentation be entered in the record. I have distributed copies of this letter to all members of the Committee. I further request that the hearing record remain open for a reasonable period of time for the purpose of adding additional documentation which we may receive.

Very truly yours,

Thomas R. Donahue

Secretary-Treasurer

ORGANIZING CAMPAIGNS IN WHICH THE RECORDS OF THE AFL-CIO LOS ANGELES-ORANGE COUNTY ORGANIZING COMMITTEE SHOW THAT VAN DE WATER ASSOCIATES ASSOCIATES ACTED AS MANAGEMENT CONSULTANTS TO THE EMPLOYER

UNION	COMPANY	CAMPAIGN YEAR
Auto Workers	*National Screw	1964-1966
	Cadillac Gage	
	ITT Gilfillan	
	Weston-Borg-Warner	1963
	IMC Magnetics	
Steelworkers	*ITT Canon	1972
Brick & Clay	**Pharmaseal	1962, 63 & 64
Intl. Br. Electrical Workers	*Transval	1964
	*Litton Systems	1966
	Tevco aka Carole Cable	1964 (in U.E. as of '69)
	*Pacific Electricord	1963-65
	ITT General Controls	
	TIC (Canejo Valley)	1968
Intl. Union Electrical Workers	Packard Bell	Dec. 1965
Machinists	*Don Baxter, Inc.	1964
	General Controls	
	Burns Aero Seat	1965
Marine-Shipbuilding	U.S. Divers Corp.	March 1969

*The asterisk indicates campaigns from which the Committee preserved employer propaganda.

**The double asterisk indicates a campaign from which the Committee preserved both employer and union materials.

February 5, 1964

OPEN LETTER TO MR. VANDERWATER

FROM: THE PHARMASEAL WORKERS

Dear (Professor) Van:

Our last open letter to you, dated January 22, 1964, was quite clear, we hope. In that letter we asked you politely if you would be decent enough to meet our Union representatives face-to-face in an open meeting.

Our reasons should also be quite clear to you. We heard you say that it is the American way to listen to both sides of any issue and then judge for yourself. Isn't this what you teach your students at UCLA, professor?

But, as this is written, we still have not had an answer from you to the following questions --

1. Why do you contract yourself out like a hired gun to bust Unions? Do your students at UCLA know about this "other life" of yours?

2. Do you think it honorable to frighten working men and women with twisted words which may lead them to believe that they will lose their jobs if they form a Union? How do you think some of the UCLA students who come from Union families would react to this?

3. What about the challenge to an open debate which we issued to you in our last letter? If you are so sure of yourself and your so-called "high ideals" regarding the distruction of Unions, why don't you and/or your close associate, Ken Simon, come into the open and face those who are capable of punching big holes into your "twisted" arguments?

4. Why are you against collective bargaining through a Union?

By day you teach your students courses in laws which govern labor, economics, etc., at the University. By night you distort the very courses you teach to decent, unsuspecting students. What kind of a double-headed monster are you, anyway?

When are we going to hear both sides of the issues raised from the floor of a shop meeting of the workers? Or are you going to continue holding "captive," one-sided, undemocratic meetings of the workers behind the closed plant doors?

Yours truly,

Pharmaseal Employees Committee
for a Strong Union

February 12, 1964

Dear Mr. Vanderwater:

The workers in the Pharmaseal plant tell us that you and your boy, Ken Simon, are still pushing the strike issue in the plant.

Haven't you learned by now that Pharmaseal workers do not "swallow" the fear-tactics you are trying to use.

Why do you try to talk us into wanting a strike?

The workers don't want a strike. The Union doesn't want a strike and we do not believe that the company wants a strike.

THERE WERE FEWER MAN-DAYS LOST IN 1963 BECAUSE OF STRIKES AND WALKOUTS THAN IN ANY YEAR SINCE WORLD WAR II. DON'T YOU READ THE NEWSPAPERS, VAN?

THE PRESIDENT OF THE UNITED STATES, LYNDON JOHNSON SAID: "This record illustrates how far industrial democracy has advanced in this country in recent years. I know of no better confirmation of the vitality, the strength and the promise of the free enterprise system than that shown by the ability of labor and management to work out their destinies in a free and peaceful manner."

For your education, Van

Van, please read this to Ken.

But, you apparently do not agree with the President of the United States. We honestly believe you are trying to push us into a strike because you would probably make "mucho dinero" if it ever happened.

Your actions have convinced us that you do not believe that workers should have the right to peacefully bargain for higher wages, health insurance and better working conditions. If you did believe in peaceful negotiations, you would not be pushing for a strike. DO YOU BELIEVE IN THE "FREE ENTERPRISE" SYSTEM PRESIDENT JOHNSON SPEAKS OF? WE DOUBT IT.

Wouldn't it be a terrible thing if we did not have a democracy, Van? If we had a Dictator in this country we would not have the right to have our union. WHAT WOULD YOU DO THEN?

There would be no unions for you to fight -- no workers for you to hurt -- no companies to "mis-represent" -- no "dinero" for your big, fat bank account.

But, maybe you could find a way to make a "money deal" with the Dictator and learn some newer ways to hurt workers. Yes, maybe you could!!!

PHARMASEAL WORKERS UNION COMMITTEE

A Thought for Today:

How much respect can we have for a man who makes a profit from human misery? SHAME ON YOU, VAN!

President
Lane Kirkland
Secretary-Treasurer
Thomas R. Donahue
Vice Presidents
John H. Lyons
Peter Bommarito
Thomas W. Gleason
Frederick O'Neal
Jerry Wurf
S. Frank Raftery
Al H. Chesser
Martin J. Ward
Murray H. Finley
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Edward T. Hanley
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Charles H. Pillard
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American Federation of Labor and
Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

November 12, 1981

The Honorable Orrin G. Hatch, Chairman
Senate Labor and Human Resources Committee
4230 Dirksen Senate Office Building
Washington, D.C.

Re: The Nomination of John R. Van de Water to be Chairman of the National Labor Relations Board

Dear Senator Hatch:

I have had the opportunity to review your letter to Mr. Van de Water dated October 5, 1981 and his response. I wish to take this occasion prior to the close of the period during which you have generously kept the record open to add — to my t stimony and to my earlier letter on this nomination - information which fur.her reinforces our position that Mr. Van de Water does not meet the criteria applied by the Senate in passing on prior NLRB nominees. Simply stated, Mr. Van de Water cannot meet the test you stated last year — that a nominee to the NLRB be "perceived as objective and, most important, independent."

Van de Water Associates, for nearly a decade in Los-Angeles-Orange County, California and elsewhere, served as management consultants to numerous employers who actively opposed their employees attempts to organize. Mr. Van de Water participated directly in that work.

In his article "How To Deal With The Union" — the only available full statement of his views on union organizing — Mr. Van de Water stressed that organization is an evil which management should fight and which, where employees have chosen a union, should be undone. That article shows too that Mr. Van de Water abused the labor law by luring a second union into an organizing campaign involving his employer client to split the vote and defeat both unions. The article further describes his instructions to management personnel on how to encourage employees to seek decertification of their union, in violation of the spirit and perhaps the letter of the law.

The hearing on this nomination concluded on September 30 with members of the Committee expressing concern over the scope and character of the nominee's representation of employers. We are disappointed at Mr. Van de Water's failure to be forthcoming in providing information from which the Committee and the labor movement could obtain a clear picture of his activities. One would have thought that the nominee himself would be the person in the best position to detail his own activities.

In your letter of October 5, you asked Mr. Van de Water to provide the Committee with the particulars on his activities on behalf of employers whose employees were engaged in union organizing campaigns. His response was that his records do not go back to the time in question, that his activities "probably" took place prior to 1973, and that he could recall only eleven corporate clients, whose names he listed, giving no further details.

While the AFL-CIO lacks the investigative authority of the Committee, we have uncovered an additional situation which took place in December of 1976, certainly well within the time a business firm retains its records, that puts into question the extent to which Mr. Van de Water has searched his files and his memory, and that supports our contention that he is not the person to serve as NLRB Chairman.

As we remember the hearing, you recalled Mr. Van de Water to state that he had never engaged in "persuader" activity and therefore had not registered under §203 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §433, which provides in relevant part as follows:

> Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly —
>
> to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; ***
>
> shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. ***
>
> Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such

employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

The record shows that Mr. Van de Water acted as a company representative to "persuade" employees to reject union representation and that he did so as recently as December 1976.

On February 8, 1977, Wilford W. Johnson, Regional Director, National Labor Relations Board, Region 21, issued his report on objections filed by the International Chemical Workers Union, AFL-CIO in Bell Helmets, Inc., NLRB Case No. 21-RC-14829. That report states in pertinent part:

> The investigation disclosed that on the afternoon of Monday, December 13, 1976, 3 days prior to the election scheduled for December 16, 1976, the Employer had a campaign meeting at which its representative, Van De Water, spoke. In support of its objections, the Union presented several employee witnesses who had attended the meeting.
>
> According to these witnesses, Van De Water stated that he was there as a representative of the Employer and he would explain some things about the Union or tell them some facts about the Union. The statements allegedly made by Van De Water that were remembered by the witnesses are as follows:
>
> 1. During a strike the Emp yer could call in replacements and the employees could be permanently replaced.
>
> 2. The Union could raise the employees wages as well as increase them.
>
> 3. If the Union wanted to build a new building, it could raise the employees dues to pay for the building.
>
> 4. If the employees were on strike and the Union called a strike at another employer, the Union could require the employees to picket at the other employer's plant.
>
> 5. At one plant the Union dues were increased from $8 to $28 per month.
>
> 6. In some cases the Union could get employees fired if they didn't pay their dues or cases in which employees would not be allowed to work until their dues were paid.

7. If another plant at the same local union went on strike, the employees of that plant might get money from the Employer's employees strike fund.

8. The Union could make the employees go on strike by fines or assessments.

Mr. Van de Water's speech in Bell Helmets was not intended as, nor received by the participants as, a neutral presentation of the entire law stated in the NLRA; rather, his remarks were pointed to convincing the Company's employees not to join a union. Presentations for that purpose are persuader activity covered by §203 of the LMRDA. That is plain on the face of the statute and is confirmed by the attached opinion in Wirtz v. Fowler, 372 F.2d 315 (C.A. 5, 1966) and by the attached Department of Labor opinion letter both of which deal with conduct indistinguishable from that outlined in the Bell Helmets opinion.

In Fowler, the Fifth Circuit outlined the underlying facts as follows (the footnotes and the facts concerning incidents that do not involve addressing groups of employees are omitted):

> The Court below summarized [the facts] in such a general fashion as to mask the real nature of Appellees' persuader activities. Because these facts vividly portray these activities and are so essential to the applicability of the Act, we deem it appropriate to describe in some detail Appellees' activities on behalf of the four named clients.
>
> L. D. Plante, Inc.
>
> In 1960, Appellees [lawyers] represented L. D. Plante, Inc., and Paul Saad, an attorney associate in the firm and an agent of Appellees, performed certain services for that company. During a labor dispute arising out of a unionization drive, Paul Saad, on at least two occasions, spoke to groups of employees during working hours. At one meeting, held in Mr. Plante's office, Saad, introduced as Plante's attorney, discussed the union that the employees were trying to form. Saad advised the four employees present that, under certain conditions, the Company would have the right to fire any employees who went on strike and that he would recommend that it do so. Saad also told the employees that, if they interfered with the railroad serving the Company, they could be put in the federal penitentiary. He also pointed out the benefits the Company was giving. At a second meeting, many of the plant employees were assembled to hear Mr. Saad. Saad discussed what the union would mean to those who joined it and what the employees would stand to gain and what they would stand to lose. He raised the issue of strikes and what they would mean to the employees, and when the Company could replace employees on strike.
>
> Plant City Steel Corp.

* * *

Granville M. Alley, Jr., an Appellee, Glen L. Greene, Jr., and Paul A. Saad, both associates in the firm and agents of Appellees, rendred services to Plant City during 1960-1961. In 1960, Saad and Greene attended group meetings of Plant City employees. Saad spoke to the employees assembled at those meeting. *** Saad was introduced by a company vice president as a company attorney. *** Saad told the employees *** that the company was paying its attorneys a large sum of money each year and that if there were no organization drive that money could be in the employees' pay checks. Saad also told the employees that they could lose jobs over trying to organize the union. Saad also discussed the cost of dues and said that the employees might not gain anything by joining a union.

As had his activities at Plante, Saad's efforts at Plant City left no doubt in the minds of the employees who heard him that his purpose was to dissuade them from joining the union. ***

Speed Sprayer Plant

Late in 1960, a union conducted an organizational drive among Speed Sprayer's employees. During 1960 and 1961, Appellees and Donald M. Hall, an associate in the firm and agent of Appellees, rendered services to Spee. Sprayer and during this period Hall appeared and spoke at several meetings with employees. At a meeting, held early in November or late in October 1960, one employee testified that Hall "told us that the union couldn't do anything for us and we had fair wage — we was getting fair wages and if we joined the union we would be just paying dollars and could be taxed money and some of the people was going to strike and we could be made to support them until they go back to work." A witness, called by the Appellees, testified that Hall "made it plain, you know, that the company could do more for us than the union." At another meeting, Hall talked about what the union was not good for and stated that the union was out after the employees' money. He also talked about the Kohler strike which had gone on for several years, and told the employees that they too could be thrown out on the street. He had talked about benefits which the Company gave and the union could not — Blue Cross and Blue Shield, paid holidays and picnics. At a third meeting Hall talked on "What Can The Union Do For You." Hall told the employees that the Company

could give them more benefits than the union could. At several of these meetings Hall, in addition to talking about the union, pased out to the employees a booklet entitled "What Are Union Promises." [372 F.2d at 320-322.]

On these facts, the Court of Appeals concluded:

***Without belaboring the point, we think it clear beyond doubt that Appellees pursuant to arrangements with their four employer-clients undertook, and, in fact, performed, activities with the object — and it is difficult to conceive of a case where the object could be more "direct" — of persuading the employees not to join the unions. ***

* * *

*** Generally [Congress] *** felt that the giving of legal advice to employers was something inherently different from the exertion of persuasion on employees, and §203(c) was inserted only to remove from the coverage of §203(b) those grey areas where the giving of advice and participation in legal proceedings and collective bargaining could possibly be characterized as exerting indirect persuasion on employees *** not to remove activities which are directly persuasive but indirectly connected to the giving of advice and representation. [Id. at 324, 330.]

Consistent with that authoritative construction of §203, on April 17, 1981 John A. LeMay, Area Administrator, U. S. Department of Labor, Labor-Management Services Administration, Seattle, Washington, issued the following letter to an attorney in Yakima, Washington:

As you may know, this office has been conducting an to determine if some of the services you provided Washington Beef, during a period of union attempts to organize their employees; warrant the filing of disclosure reports under Title II, Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).

* * *

During the course of the investigation, several Washington Beef employees who were in attendance at an employer sponsored meeting, held in the McKinley Grange in July 1980, were interviewed. These employees stated you were present at the meeting and made what was considered a presentation of the mechanics of a representation election and you prseented both sides of the union issues as it related to wages and benefits. In

fact, each interviewee stated they felt you projected a subtle attempt to influence their voting in the coming election.

In light of the statements regarding your participation, it appears that a reportable activity was performed by you on behalf of the employer, and disclosure reports are required per the provisions of the LMRDA.

The Committee has the obligation to ask the Department of Labor to investigate Mr. Van de Water's failure to file persuader reports in this and all similar instances and, if the Department's investigation bears out the facts just detailed, the Department has the obligation to require the filing of such reports and to seek redress as provided in the statute for the failure to file.

The Bell Helmets campaign shows that Mr. Van de Water was, as late as December 1976, an active employer agent in opposing organization. It is not fit nor proper for such an agent to be entrusted with the Chairmanship of the Agency that sets the rules that govern representation campaigns and elections and that passes on the conduct of the parties in such campaigns.

Bell Helmets, we believe, shows also that the answer to the question you stressed during the hearing — whether Mr. Van de Water, while acting as an employer agent, complied at all times with the applicable federal law — is "no". While a mere showing that a nominee has abided by the law is hardly a sufficient qualification for office, a failure to abide by §203 of the LMRDA, which was passed specifically to regulate representation campaigns and to clearly identify those who are active non-union employer agents, is certainly a disqualification for the NLRB Chairmanship.

Sincerely

Thomas R. Donahue

Secretary-Treasurer

READING COPY OF STATEMENT BY THOMAS R. DONAHUE, SECRETARY-TREASURER, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE ON THE NOMINATION OF JOHN R. VAN DE WATER AS CHAIRMAN OF THE NATIONAL LABOR RELATIONS BOARD

Mr. Chairman, I would like to cover some highlights of my testimony and ask that the full statement be entered in the record.

My purpose today is to urge that the Senate reject the nomination of John R. Van de Water to be Chairman of the National Labor Relations Board on the ground that he does not meet the criteria applied in passing on past appointments. I wish to begin by mentioning a few of the issues which arose in the consideration of the last two nominess for the Board. During the August 5, 1980 floor debate on the nomination of Don A. Zimmerman to be a Board Member, Senator Hatch said:

> Never before, in the agency's history, has there been a more compelling need to have a Board Member who is perceived as objective and, most important, independent.

During the August 22, 1980 hearing on the nomination of John C. Truesdale for a full term as a Board Member, Senator Hatch said:

> More than any other agency or arm of the Federal Government, the responsibility inherent in the purpose of the National Labor Relations Board can be symbolized in a scale. Its purpose is certainly less activist than judicial. *** [TheBoard] is a national policymaking institution that can make the difference whether or not we have labor-management chaos, or a just management-labor relations.

To refresh the recollection of any who may have forgotten on the basis of the test of "fitness to serve" followed in the last Congress, no action was taken on Mr. Truesdale's nomination, with the result that the nomination lapsed, and the vote on Mr. Zimmerman's confirmation was 68 in favor, 28 opposed, including in the latter group Senators Hatch, Armstrong, Hayakawa and Humphrey.

I would note also that Mr. Truesdale's nomination was made after extensive consultations by President Carter's Administration with both management and labor, that he had served the Board for 23 years, including five as the Executive Secretary, and had worked for the National Academy of Sciences, that while the question of whether he had shown "balance" in his three years as a Board Member was extensively debated, it is a fact that in the cases in which The Board's members split on the proper result he voted for the position favorable to labor 55% of the time and against that position 45% of the time, and that he has never spent a moment on the payroll of any labor organization.

With regard to Mr. Zimmerman, it should be noted that similarly there were extensive Administration consultations with management and labor, that he spent his professional career with the Office of the Secretary of Defense, Office of Management and Budget, the Trustee in Bankruptcy of the Penn Central Railroad, and then as a legislative assistant to that distinguished Republican former Senator Jacob Javits, and as counsel to the Republican members of this Committee, and that he too has never spent a moment on the payroll of any labor organization.

The labor movement agrees with the basic points made last year — that in making nominations to the NLRB, which is indeed a "judicial" body that in Senator Hatch's words "can make the difference whether or not we have labor-management chaos or a just labor-management relations," that the Administration should attempt, in the words of the Counsel of the Chamber of Commerce, Mr. Thompson, to "find some kind of consensus" and that there is, as Senator Hatch said, a "compelling need to have a Board member who is perceived as objective and, most important, independent." We submit that since the Senate, in applying those criteria, concluded that Mr. Truesdale's nomination should not be confirmed and that Mr. Zimmerman's confirmation was subject to serious question, Mr. Van de Water should not have been nominated and cannot be confirmed.

In the first place, while as is usual with any pending government appointment, there was some "gossiping about" concerning several potential nominees for NLRB Chairman, so far as I am aware organized labor's views on Mr. Van de Water were never sought. Indeed, I do not know of a single chief officer of a single AFL-CIO national union who had heard of Mr. Van de Water prior to the day his nomination was announced. So much for the effort to "find consensus between management and labor."

Of far greater moment, the AFL-CIO's consistent position, as stated by George Meany in his May 8, 1970 testimony to this Committee opposing the nomination of Edward Miller to be Board Chairman, has been and remains:

> The Board has a specialized jurisdiction: it handles only matters involving employers, or unions, or both. *** In unfair labor practice cases, more often than not unions and employers are on opposite sides.***
>
> The same is true in representation proceedings. They always involve employers and unions, and employers and unions are usually on opposite sides.
>
> Moreover, labor cases are often sharply controverted, with emotions running high on both sides.***

> It seems apparent to us, therefore, that great care should be used in selecting members of the Labor Board, to avoid persons who are so identified with either unions or employers that they may not be able to hold the balance even between them. We believe, specifically, that no one should be appointed to the Board from the ranks of labor or management, ***.

We have followed the counsel that a decent respect for the opinion of the parties regulated by the NLRB calls for the appointment of individuals whose careers have been devoted to bringing management and labor together, not of individuals who have been employed by one side or the other to advance that side's interest or who intend to seek such employment when they leave the Board. We see that principle as properly applying the axiom that "justice should not only be done but that it should appear to be done."

The labor movement has had some influence with certain Administrations, but we have not pressed for the appointment of a union lawyer to the NLRB and there has never in the Board's 45 year history been such an appointment. Management, to be sure, has not shown similar self-restraint. The result has been, to cite the recent instances, the appointments of Chairman Edward Miller, General Counsel Peter Nash, and Board Member Peter Walther — men who have interrupted careers as employer lawyers for a short stint at the NLRB. The spectacle of Mr. Miller and Mr. Nash trading on their Board credentials as they lobbied on behalf of their management clients against the labor law reform bill is perhaps the clearest example of how this practice of using Board appointments to further management's private advantage undermines the Board's integrity.

Be that as it may, so far as we are aware, the employer-agents previously loaned to the public service had engaged in the relatively removed role of a legal counsel handling litigation. Mr. Van de Water has played a far more active and partisan role on the management side.

The records of the AFL-CIO Los Angeles-Orange County Organizing Committee for 1963-1972 indicate that, at least during that period Van de Water Associates served as management consultants to numerous employers who actively opposed their employees' attempts to organize. The role of such consultants, most narrowly conceived, is to denigrate unions and collective bargaining and to play on the insecurity bred by "the economic dependence of the employees on their employers ***." (NLRB v. Gissell Packing Co., 395 U.S. 575, 617).

A majority of the Labor-Management Relations Subcommittee of the House of Representatives in a 1981 Report on "Pressures in Today's Workplace" (at pp. 25-26) concluded:

> Perhaps the most distressing aspect of the emergent consultant industry is the perspective it brings to labor-management relations. It is a philosophy of labor-management relations which is first and foremost anti-union. The defeat of unions is an end in and of itself and in many instances consultants come dangerously close to justifying whatever means are necessary to accomplish that end. The consultants promote a perspective of labor-management relations which exalts the short-run over the long-run, presuming that workers will vote against a union if management exercises the correct combination of manipulation, persuasion and control during the relatively brief duration of an organizing campaign.

In preparing for this hearing and reviewing my formal statement, it seemed to me that the statement does not provide the flavor of such an employer campaign. It is, therefore, my desire to add to that testimony four relatively brief passages from a pamphlet put out by the Alloy Die Sink Co., Buena Park, California, in connection with its effort to get certain of its employees to vote against representation by Local 325 of the Aluminum Workers International Union in an NLRB election — an effort in which Van de Water Associates was the Company's management consultant:

The pamphlet begins:

> YOU ARE NOT THE UNION.
>
> YOU ARE YOU, with your own feelings, needs and desires.
>
> The UNION, on the other hand, is a group of PAID PROFESSIONAL ORGANIZERS whose JOB it is to get as many dues-paying members — like you — as they can] It is an INTERNATIONAL ORGANIZATION with POWER over local unions all over the United States, including Local 325, City of Industry, which is now looking for your money.

Later the pamphlet states:

> Promises are worth what they cost: NOTHING. Ask yourself — Can this union guarantee me specific improved wages, benefits and working conditions? The answer is NO. No union can guarantee anything. Why? Because all they have the right to do if they win the election next month is talk. They win only the right to talk to us as your representative — to ask your company to make changes. ***

Further on:

> And what if the union can't keep all the promises it has made and will make between now and the election, and can't deliver? Usually, a union in that fix asks you — its members — to help them deliver by going on strike, to force your Company to grant its demands. ***

And finally in a big wind-up in all capital letters:

> THESE ARE THE SNARES THAT THE UNION LAYS FOR YOU. THE ORGANIZERS AND PAID BUSINESS AGENTS DON'T MENTION THEM WHEN THEY ATTEMPT TO SWEET-TALK YOU INTO VOTING AWAY YOUR RIGHTS AS EMPLOYEES AND CITIZENS.
>
> ONLY AFTER THE GATES OF UNIONISM SLAM SHUT BEHIND YOU, DOES THE IRON RULE OF UNION DOMINATION CLAMP DOWN ON YOU.
>
> AND THEN IT'S TOO LATE.

Of course, these passages are hedged about with careful pro forma disclaimers of any intent to break the law or interfere with employee free choice and with fullsome statements of employer concern for the well-being of the employees. The sugar-coating for the bitter pill. For the Committee's convenience, I have 25 copies of the pamphlet with me and I would ask that a copy be included in the record.

The issue here is not whether such activities and materials are, as we believe they are, offensive, small-minded and mean-spirited. It is not even whether such activities and materials are, as we believe they are, inconsistent with the NLRA's "policy" stated in Section 1 of the Act:

> [to] encourag[e] the practice and procedure of collective bargaining and [to] protect[] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Rather, the question for this Committee and for the Senate is whether it is proper to appoint, as Chairman of the quasi-judicial agency charged with running representation elections and with judging the legality of the conduct of the parties to such elections, a man who has devoted a substantial part of his professional career to putting together anti-union campaigns and anti-union materials.

To put that question in perspective, let me ask another: Would management and the members of the general public who believe that management should be

treated with scrupulous fairness accept a union organizer of unimpeachable reputation — such as AFL-CIO Organizing Director Alan Kistler or the late CIO Organizing Director Allan Haywood — as NLRB Chairman?

Under the standards formulated by Senator Hatch, the answer to the question posed by Mr. Van de Water's nomination and by my hypothetical question is that the NLRB's institutional integrity is best served by consistent application of the rule that no one should be appointed to the Board from the ranks of management or labor.

One side's armorer should not make or enforce the rules governing both sides in the ensuing contest.

In conclusion, Mr. Chairman, I wish to bring to your attention an article entitled "How To Deal With The Union" in which Mr. Van de Water provided an insight into the theories behind his management consultant activities. Again, I have copies of the article with me for the Committee and I would ask that a copy be included in the record. There are several points Mr. Van de Water made that I wish to note.

First, at every juncture, Mr. Van de Water stresses that union organization is an evil which management should fight and that where organization has already occurred it can and should be undone.

Aside from the success of the United Mine Workers in the coal fields, he apparently cannot think of any occasion in which an exercise of the right to organize has served the public interest. Collective bargaining is viewed as follows:

> All kinds of problems confront the company which has to deal with the union, such as: an irresponsible calling of a strike ... or the many, many hours and days involved in collective bargaining ... having to turn our attention inwards to look at these problems rather than outward building the business ... interference in employee activities.
>
> Now think of the cost of attorneys in grievances and arbitration which you want to avoid if you possibly can. And I'm for you ... I don't want to see anybody having to be involved in having a bunch of lawyers, if they can avoid having to. All these are costs the union caused, together with the dependency of the employees to look to the shop stewards for their relationships, rather than to their supervisor. And all this does not build a healthy human-relations atmosphere.

The following situation in which a decertification of an affiliated union had taken place is presented as an ideal:

> The complaining workers had wanted to have a new association, though they didn't have to. This new group won. After these years, I think these people now pay 75 cents a month dues. This goes into the recreation program. And the bargaining with the union now takes about 20 minutes a year.

There is no recognition by Mr. Van de Water that this is the type of cozy relationship brought about by employer control of labor organizations that §8(a)(2) is intended to prohibit. Indeed, §8(a)(2) is not part of Mr. Van de Water's version of the NLRA. Representing an employer faced with a union organizational picketing he "went right down to the NLRB, called for an election, called the Teamster's union and said, 'Don't you want to get involved in this battle, too?' They went in and had a fight trying to organize their people — who happened to be the office workers —and the office workers union that started the picketing was there." The result according to Mr. Van de Water was that both unions lost.

Mr. Van de Water defined good faith bargaining for his audience:

> Let us look at another case.
>
> The company bargained with the union, as required after certification. (Certification is good for only one year.) The company stood its ground. They did not offer one cent of pay increases. They did not offer more paid holiday ... not anything.
>
> Good-Faith Bargaining
>
> And you wonder: is that lawful? Of course it is.
>
> Good-faith bargaining simply means that you listen to the union's arguments with yours. That's all that good-faith bargaining is. You don't have to give one cent.
>
> * * *
>
> Your duty is simply to bargain in good faith giving your arguments in response to theirs — and show that you have an open mind to answer their arguments with yours. That's all the law requires.

There is not a hint in these remarks that good-faith bargaining requires negotiation based on a sincere desire to reach a mutually acceptable agreement.

And, Mr. Van de Water offers helpful limits on how to get around the law. The Act does not permit employers to instigate or support employee decertification effots. It is, therefore, suggested that management should seize on an employee complaint about union representation:

> WHAT TO DO.
>
> You go onto the floor. Don't call them into your office because that's a hearsay coercion by law to talk about union matters in your office. Go out and talk to them on the floor. Have a couple of other members of management there — so that you have witnesses as to how you talked to them. (By the way, you who are unionized can always find some who feel this way. You are responding to their initiative, you are not taking the initiative. It is their initiative; they have to come to you.) Go out and talk to these people — the two or three people. Say something like this: "Fellows, I want you to know how grateful I am to you that you feel the way you do about having a union here, that you trust us and feel we play fair. I'm deeply grateful for this. Now I want to tell you this: It's none of our business whatsoever whether you have a union here or not. We have no right by law to have any part in this. If you don't want the union, here is what we suggest you do:

Go down to the National Labor Relations Board. Here's their address on South Broadway in Los Angeles. Tell the NLRB that you want to find out what the process is to de-certify a union. Do not tell the personnel at the Board what company you work for. Don't tell them what union is involved — because even though it is a breach of good faith for them to disclose, somebody might talk.

There is also the inconvenience that the Act prohibits employer threats.

That, according to Mr. Van de Water, is a matter of small significance:

You cannot threaten your employees with illegal conduct — by threatening to cut their pay or fire them if they join the union. BUT, you can explain what the cost of a labor union could be to them.

* * *

One thing I find is that you can almost always tell the employees what you want to ... you just have to find the right way to say it.

The following handy examples are provided:

"Fellows and ladies, I want to let you know — as a matter of company policy — that even though we would bargain in good faith with the union, if it were voted in, if after good-faith bargaining we could not reach an agreement — and the union called you out on strike — we would immediately hire replacements for strikers. And you people would be out of a job."

Almost nobody knows you can say this.

CLOSING DOWN

It is illegal to threaten to close down if you become unionized, but you can explain that in the event we are unionized and we bargain in good faith and we can't reach an agreement with the union and if this was it: we couldn't operate as during a situation when they called a strike, then for economic reasons we may be forced to shut down and close this operation completely.

You see, one way you are threatening them if they vote for a union, you'll cose down the place. The other situation, you've just been explaining your legal rights for economic reasons ... not because of "union vs. no union". But for economic reasons, you have the right to move to a new location.

The sum of Mr. Van de Water's approach is captured in the following boast:

In the last 130 union elections I've been involved in, where we had to go to an election — I couldn't even begin to count those situations where we got the union to withdraw after they had enough signups to have an election but they found that they couldn't win it. So they withdrew their elections or they couldn't get enough signups to have an election held — in the last 130 elections I've personally been involved in, the unions have lost the election in 125 of the cases. The only cases where they've won the election was where there was no more than two weeks or less to plan management's campaign.

No one, and certainly not an employer nor a management consultant, is required to accept Congress' judgment, embodied in the National Labor Relations Act and carried forward by the Labor Management Relations Act, that the exercise by workers of the right to organize is a social good, not a threat to the Nation. But, we submit, that a man who views it as his mission to thwart organization at every turn is not fit to administer those laws.

HOW TO DEAL WITH THE UNION

By
JOHN R.
VAN de WATER

Highlights from WAM Seminar Address

One of the outstanding seminars at the WAM Show this year — one which is of intense interest to practically all needletrades manufacturers — was entitled: "THE UNION — What to do if you have them; what to do to keep from having them."

Because of its extreme importance to the industry — and because we felt it would be of enormous value to our readers — we are publishing, in this and in succeeding issues, excerpts from the lecture which was given by Dr. John Van de Water.

Dr. Van de Water, an attorney, has an outstanding background in government and industrial management-labor relations. He is Professor of Industrial Relations and Management at the graduate school of USC, a lecturer, author and prominent in labor-management arbitration and collective bargaining since 1943. — Editor's Note

What we do in situations where we have no unions—in building our relationships with employees, in our communication program, in developing understanding with employees —makes a tremendous difference, at times, in whether the union comes in or not.

I recall being called by one of my client companies some time ago, saying, "We're unionized, and the reason we are is that it was recommended by one of our garment manufacturers, in the field, who maintained that it is inevitable. They said, 'You are going to be unionized anyway. Why don't you go ahead and sign up now.' So we did. And now we need seven cutters to do the job of two cutters. We've had to go out of the business and become a jobber." *Isn't that a tragedy?*

You know, people assume that that kind of thing can happen to them. Or, at the same time, if they *are* unionized, very often people assume that with the union, this kind of a hardship need come to an employer. I can give you many examples where—with sound managerial leadership—this kind of negative result has not occurred.

When we talk about how to deal with union-organizing campaigns, this will be important for every man and woman in the room.

Of Prime Importance

It is vitally important for those of you who do have unions to listen to what we are going to talk about, because you still have some non-union areas. Further, I don't mean this as an anti-union bust, nor do I advise some illegal conduct, but rather on the basis of the freedom of your employees to choose for themselves whether they want to be unionized or not.

There is also the law and the conduct of strategy that legitimately governs the question of whether you feel that the union is harmful to your company and you would prefer to be non-union. *You have every right and your employees have every right to know what you can do about de-certification of unions.*

And today, we are not going to pull a single punch in dealing with each of these issues as realistically as possible. We are going to be talking about two primary fields today. One is, what do you do if there is a union-organizing campaign under way? Secondly, what do you do—and everyone here is involved in this — with your non-union people, to build a correct relationship of mutual trust, confidence and understanding, so they do not feel that they need a union to represent them?

So, if you are in a unionized situation and expect to continue that way, you can see that *you should build a relationship with your employees that calls for responsible unionism.*

We'll talk about each of these areas in turn.

Negotiations have been going on in the industry across the country. They re-opened possibility of strikes occurring in the Ladies Garment Workers groups among the dress manufacturers in January, with the Ladies Garment Workers Union in New Jersey apparel makers in February. The same is opening up for the ILGWU in New York in the coat and suit firms in May. There are problems coming up here in Los Angeles involving negotiations, but with the small number of manufacturers in this group that are actually unionized, I believe that you would like to spend more of your time, not on what you have to do and how to deal with these problems in negotiations, but rather in talking about these other areas of *building quality relationships in communications in union and non-union situations, for mutual trust and confidence with your employees, and how to avoid being unionized if you are not now unionized.*

I think it would be good to emphasize this point right at the outset: I am an attorney-at-law and I teach this field—and have for thirty years in universities. And I am *not* here to suggest that anyone ought to violate the law or interfere with the rights of their employees to make a free choice. As a matter of fact, let me say this: I believe that there are labor unions in this country that have done a lot of good for this nation. In the old coal towns, for example, where the people were virtually enslaved by the industry. Unions have done a lot of good in cleaning up some of these situations.

But equally, unions have done a lot of bad. You have enormously increased costs that have terribly hurt our country in terms of our competitive position today.

What I want to emphasize is: *Don't get a "class war" attitude that any guy in the union is necessarily an evil man.* Nor, among the unionists, should they have the attitude that any man who owns a company or is responsible to the owner is necessarily bad because he is a member of management.

I can tell you this in all honesty: In the last 130 union elections I've been involved in, where we had to go to an election—I couldn't even begin to count those situations where we got the union to withdraw after they had enough signups to have an election but they found that they couldn't win it. So they withdrew their elections or they couldn't get enough signups to have an election held—in the last 130 elections I've personally been involved in, the unions have lost the election in 125 of the cases. The only cases where they've won the election was where there was no more than two weeks or less to plan management's campaign.

So, the employees just didn't know the issues, because the company hadn't had a chance to clarify them.

Texas Challenge

Now we have a great challenge going on in Texas, right at the border. Massive strike activity is going on, being backed up by employees who cannot be proven to want the union. Where there were charges of illegal practices against the company, the company has won before the National Labor Relations Board, proving that they had not acted illegally. Yet, the union is going after the company now by nation-wide consumer boycotting, which can include picketing of outlets to get people to refuse to purchase those products and causing the retailer to say, "Well, we better do away with those products that can hurt us if we have them in our store."

On this point, we're also finding around the country consumer picketing going on and organizational picketing going on at the manufacturer's location. We've had several of those activities in Los Angeles recently.

Under the Labor Reform Law of 1959, it stipulates that unions do have a right to engage in organizational picketing for thirty days, unless you can demonstrate that they are engaged in threats of violence or actual violence, in which case you can stop that picketing very quickly. Otherwise, they have the right to picket for organizational purposes for thirty days.

That doesn't mean that you have to have the situation keep going this way.

For example, at Disneyland, where they put up an organizational picket line, we went out and counted 336 Disneyland customers turned away the first half hour, because a lot of people won't cross picket lines. We went right down to the NLRB, called for an election, called the Teamster's union and said "Don't you want to get involved in this battle, too?" They went in and had a fight trying to organize *their* people—who happened to be the office workers — and the office workers union that started the picketing was there.

We got both of them involved in this particular campaign, had an election held, and the vote was only 17% of Disney employees for the two unions combined, an overwhelming decision that they didn't want to be unionized. And then we got a certification of *no union*—and from that point on, *they had no right to engage in organizational picketing for even one minute.*

So, sometimes this organizational picketing can be overcome.

On the other hand, the unions—if they try this method of organizational picketing—knowing that they are limited to thirty days—wait for the peak season and try to put pressure on you by picketing outside your manufacturing locations, for the purpose of getting you to say, "Well, I guess I better go ahead and sign up, because it will be too costly if they interfered with our work processes."

You Are Protected

I want to suggest again that you have every right of protection to stop that activity, if there is interference with your work, and likewise, if they engage in secondary boycott activities where they go to your outlets and if you can prove that when they picket your retailers their motive is to get them not to handle your products. Picketing the retailer to cause him not to do business with you by causing a strike of his boys against him is a secondary boycott and can be stopped.

But, if you cannot prove at the retail outlet that the picketing is for the purpose of causing interference with work, and they claim it's only boycotting to reach the consumer to say, "Don't buy that company's garments," then you cannot stop that kind of picketing . . . according to a decision of the United States Supreme Court. This is directly contrary to the intent of the law as written in the Labor Reform Law, at least as interpreted by Bob Griffin (a member of the House which passed the Landrum-Griffin Act—the Labor Reform Law—and who is now a United States Senator from Michigan) . . . and also according to Landrum, who is a co-author of that statute, and also—I might say—according to Jack Kennedy, when he was a member of the Labor Committee in the United States Senate. Both Kennedy and Griffin talked before the Senate and said the purpose of the Labor Reform Law was to stop all picketing in retail outlets other than by the employees of the retail outlet in disputes they had with that retailer. But the Supreme Court has reversed this viewpoint, expressed by the members of Congress who were the leaders in organizing that law, causing Bob Griffin in the House to get up in a violent rage and say, "They've thrown away the American dictionary in interpreting the statute and what we meant." So, we have this terribly dangerous situation of retail picketing—which can have an enormous influence.

Union-Organizing Campaigns

Let's move on to the question of *union-organizing campaigns.* Those of you who have blue collar unions still have to be concerned about the possibility of attempts to unionize your white collar people. We now have organizing campaigns going on for engineers, for example. I have been involved in about five campaigns just in recent months involving engineers and scientists. So, the campaigns are hot and heavy in this area, too.

The first question is: *Why is it that in probably ninety-nine and forty-four hundredths per cent of the companies in this country, the management groups prefer — if at least by honest and lawful means they can do so—to avoid being unionized?*

Why do people want *not* to be unionized? Is there something immoral about this? Is it wrong for people to want not to have a union?

A lot of people think that because you prefer not to be unionized, you are against your employees and are trying to hurt them. *This is not at all necessarily true.* It *can* be. There *can* be employers that want to keep wages depressed way below normal competition. And that's what a union is for—to try to get people in line with normal wage rates. There is nothing illegal about this; it is a perfectly proper function of the union.

But, for the most part, compan-

ies take the stand that says, "Look, our aim in getting good employees and in keeping good employees is to give them the going rate and to pay them benefits. We know we can't get good people and keep them unless we do. It makes common sense. And we don't feel we need a union here, because the union — if it came in — just might get in the wrong hands, if it's not in the wrong hands now."

All kinds of problems confront the company which has to deal with the union, such as: an irresponsible calling of a strike . . . or the many many hours and days involved in collective bargaining . . . having to turn our attention inwards to look at these problems rather than outward building the business . . . interference in employee activities.

Now think of the cost of attorneys in grievances and arbitration which you want to avoid if you possibly can. And I'm for you . . . I don't want to see anybody having to be involved in having a bunch of lawyers, if they can avoid having to. All these are costs the union caused, together with the dependency of the employees to look to the shop steward for their relationships, rather than to their supervisor. And all this does *not* build a healthy human-relations atmosphere.

The Law Says . . .

Now the law is typically in accord with the right of every one of you in management here, should you seek to avoid unionization. When the Wagner Act was written back in 1935, its aim was to encourage unionization. And the law says that it is a right of employees to engage in organizing, to get strike benefits, to hold conferences, to urge that others be unionized, and to engage in other activities for mutual aid. This is the law. It protects the right of the employee to unionize and engage in this conduct, non-violent in nature.

But the Taft-Hartley Act came along twelve years later, in 1947, and stated that that right has now been changed in this way: They *still* have the right to unionize, to collect strike funds, etc., but they equally have the right as employees *to refrain* from these activities . . . and that has become a legally protected right.

No longer does the law—by its statement—favor or encourage unionization. Rather, it encourages free choice by employees to unionize or not.

And when labor unions pass out literature outside your location, you will note that that literature only quotes the Wagner Act: they have a right to unionize.

Never have I seen a union quote that part that says that they also have a legal right to refuse to unionize, and that they have the protection of the Federal government if attempts are made to force them into unionization against their will. This isn't quoted by the labor unions.

GETTING OUT OF A UNION

Let us look at the possibility of certifying an end to a union . . . so that you who are now unionized may know that this will apply to you and your right of free speech.

Employees who are now unionized may go out of unionization! . . . Perfectly lawfully. This is their free choice!

And let me tell you the ways this can occur:

Perhaps it would be best to illustrate by example. We had a problem at the Astronautic Division of General Dynamics Corporation when they built the Atlas missile.

Negotiations started in July—with a union of 4500 employees. Most of you have a much smaller group of employees—though some have larger corporations. But, remember this: While I am presenting examples and you may say: "That's not my industry, that doesn't apply to me," the point I want to emphasize is this:

Case Histories

I wish to give you realistic examples so that you may see their true facts and know they apply to you no matter what your size. And they apply to you though you are not in the same industry as the example I am using.

At Astronautics, after bargaining from July 1 until the following February 1, the industrial vice-president of the corporation—who happened to be a student in a graduate class I was teaching at UCLA—asked:

"What can I do? We want to put in the pay increase we offered the union. The union doesn't want to go along with it. They want to cut the pay increase we're willing to give in order to get more paid vacation plans. We can't afford to accede to their demands because people seeking employment ask right away: What are your wage rates?

"We must keep competitive on this, and we're way ahead of others in terms of vacation plans. What should we do?"

Have you bargained in good faith, in the sense that you have listened to every argument of the union? Have you responded with your arguments to every argument they advance?

Time and again!

If you are hurting now because you can't give the pay increase because you are still bargaining and, therefore, can't keep your wages up —so that your people are going elsewhere—you are behind the times.

As soon as you have argued with the union open-mindedly, listening to any argument they raise and every argument they want to raise, at that point you have reached which the law calls "a legitimate impasse."

At that point the union can go on strike, and—at that point *you can put into effect the wage raise you offered last July.*

You can act on your own and say: "Look, we have reached an impasse. We are going to act unilaterally, since we have reached an impasse."

You have the right to do that!

And that's what happened at Astronautics.

We announced that we were giving the wage increase which had been offered the previous July 1. According to company policy, "it will be non-retroactive. Therefore, the employees of this company have lost one million two hundred and ten thousand dollars."

And the wage increase went into effect.

The union charged the company with an illegal practice: *failure to bargain in good faith.*

Class Warfare

The federal government through the National Labor Relations Board ruled in favor of the company. They had bargained in good faith, and—with a legitimate impasse — they could say: "Now we will act on our own."

Then the union started a real hate-building campaign against management. The firm went further than this. They called the employees together in groups—35 groups in 24 hours, to cover the 4,500 employees. They said: "This union is building a class war—with its attacks on management. We built Atlas missiles to protect our nation against the nations that represent the class-war ideology abroad, if necessary.. And here we have class war fomented right here."

What I am emphasizing is: there is a principle being violated in their hate-building. You go out after that.

You're firm against the things that would destroy by false techniques like this.

The president of the company pointed out: "Look what the union has done. It has put out a great big cartoon of a guillotine with the blade marked 'Management.' A rope is attached to the blade over the top of the scaffold being held by a man with the union's name across his chest. Another worker is tied down underneath the blade—being ready to be cut in half if the union lets go of the rope.

"That cartoon is saying something. I ask you to vote this union out. We have just gone to the National Labor Relations Board. We have filed a request for a de-certification election. We have proved to them that we have a good-faith doubt. Even though you people have been unionized now for twelve years and voted this union in by majority choice, you gave the proof of a good-faith doubt by slowing the check-off of union dues substantially down. Therefore, the employees seem to be disenchanted with the union."

Good-Faith Doubt

You must have evidence of this, if you are to have a good-faith doubt—before you can get a new election.

In the case I mentioned, the board said. You have demonstrated a good-faith doubt; you have a right to a new election.

The election was held, and the union was voted out by better than 70%. They have been non-union [illegible].

I might say that the president of the local union broke down in tears when the union was voted down. He was a sincere man. Tearfully he stated that the company was going to "absolutely crucify us now." When the union came around three years later to attempt the re-unionization of the plant, one of the leaders of the opposition was that former union president. He said he didn't have any idea the company would do what they promised, that they would treat the workers fairly. In his words, "they proved to us that they kept us up with going rates, and we didn't have to worry about nine or ten months of negotiations to reach the point where we finally received an increase. They gave it to us at a normal time and kept us up with going rates. They treated us fairly, and I am surprised." So, he became a leader of the non-union movement.

There are several points I wish to stress.

Decertification

Number One: **DECERTIFICATION CAN OCCUR BY WHAT IS CALLED AN RM—REPRESENTATION MANAGEMENT PETITION.**

An RM petition is made to the National Relations Board.

Number Two: Let's take a case in point here . . . a well-known motors company. It was unionized, but there is no reason whatsoever for the union to have obtained a majority, according to the firm's rate of pay and the benefits given its employees.

Let me tell you why the union probably won.

When the unionization campaign was being waged, the company repeatedly told its employees during that campaign: "We want to let you know that no matter how the election comes out, we will never sign a union shop contract that means our people will have to pay dues or initiation fees to the union—regardless of whether we are unionized or not. Our company is paying better than union scale—we always have. We have bowling alleys for our employees; they can come to our beautiful cafeteria—and bring their families—and pay only 75 cents a piece for a full-course dinner. All these benefits—and more—we have given our employees—plus a beautiful location and the safest working conditions in the industry."

Why were they unionized? Probably *because the company so strongly emphasized that it would never sign a union contract.*

Since the employees were assured that they would never have to pay dues there, they said to themselves: "Well, why don't we sign up with the union? Maybe it will get us something else. It won't cost us anything."

Let us look at another case.

The company bargained with the union, as required after certification. (Certification is good for only one year). The company stood its ground. They did not offer one cent of pay increases. They did not offer more paid holiday . . . not anything.

Good-Faith Bargaining

And you wonder: *is that lawful?* Of course it is.

Good-faith bargaining simply means that you listen to the union's arguments with yours. That's all that good-faith bargaining is. You don't have to give one cent.

Consider the auto firm in Detroit that called up Jimmy Hoffa and said: "Look, I just found out that your boys are demanding a forty-cent-per-hour increase in wages. Unless you, Mr. Hoffa, agree with us—and I'll show you the books to prove it—agree to a new contract calling for a twenty-cent-an-hour *reduction*, I am going on national TV and blast your union for bankrupting a company."

And Hoffa agreed to cut the wages 20 cents an hour based on proof.

Good-faith bargaining doesn't mean you have to give anything more. If you think you should, of course you should. We shouldn't hold back on employees; we should do what is right. We should treat our employees fairly. *But, good faith bargaining has nothing to do with saying you have to give pay increases or benefit increases.*

Your duty is simply to bargain in good faith by giving your arguments in response to theirs—and show you have an open mind to answer their arguments with yours. That's all the law requires.

In this instance, the company continued to tell the employees: "Look, folks, you unionized. And dealing with the union as you requested is costing us thousands of dollars to go ahead with negotiations. We will continue to negotiate. But, as we told you, we're paying over union scale, and we have nothing to offer with union help."

The union tried to call a strike to force the company to give what the union demanded. They got a four percent turnout for the strike meeting. After the year was up, the company then took the second method . . . because at this point we have now bargained for the full year. We have not reached an agreement. Our duty to bargain has ended, because we have a good-faith doubt that you still represent a majority. If the company did not have a good-faith doubt, they would have the duty to keep on bargaining ad nauseam.

If you have a good-faith doubt, you can refuse to bargain!

The union, that is, the auto workers union, charged the company with an illegal practice. The decision by the National Labor Relations Board was in favor of management. They had bargained in good faith for the full year required by certification. They had a reasonably good-faith doubt, when the union had only 4 percent show up for a strike meeting. The decision said the company can—if it wants to—rather than file a petition, just stop bargaining . . . and the union has to go out and get a new sign-up. If the union can get 30% or more to sign up, then they can get a new election. The union tried and couldn't even get a 30% sign-up.

They have been non-union since. But a couple of years later, they got a new election, but they lost that election because a substantial major-

ity of the workers voted not to unionize. That's the second method.

A Third Method

Now, let's take a look at *the third method*.

In this case, a manufacturer who had been a student of mine at UCLA in previous years and who headed the largest manufacturer of street sweepers in this country and in Europe, told his tale as follows:

"You know, we've been dealing with a machinist union for a long time. The other day two or three of my older employees came up to me and said: 'You know, Joe, the relationship with the firm was so satisfactory before the union, but now the people are screaming and pounding the table and building bitterness —and threatening all kinds of technical grievances rather than working things out with the bosses. We don't like this atmosphere—it's not like what it used to be. Do we have to keep the union here?' "

Joe wanted to know what to say.

What To Do!

You go onto the floor. Don't call them into your office, because that's a hearsay coercion by law, to talk about union matters in your office. Go out and talk to them on the floor. Have a couple of other members of management there—so that you have witnesses as to how you talked to them. (By the way, you who are unionized can always find some who feel this way. You are responding to their initiative, you are not taking the initiative. It is their initiative; they have to come to you.) Go out and talk to these people—the two or three people. Say something like this: 'Fellows, I want you to know how grateful I am to you that you feel the way you do about having a union here, that you trust us and feel we play fair. I'm deeply grateful for this. Now I want to tell you this: It's none of our business whatsoever whether you have a union here or not. We have no right by law to have any part in this. If you don't want the union, here is what we suggest you do:

Go down to the National Labor Relations Board. Here's their address on South Broadway in Los Angeles. Tell the NLRB that you want to find out what the process is to de-certify a union. Do not tell the personnel at the Board what company you work for. Don't tell them what union is involved — because even though it is a breach of good faith for them to disclose, somebody might talk.

Keep it secret—as to what you are planning to do.

Now, some might feel that I am suggesting devious means—conspiracy. I'm talking about *strict obedience to law—about giving employees a right to make a choice on whether they want to be unionized or not. There's nothing illegal or immoral about what I am suggesting.*

Don't tell them where you came from . . . simply so they won't have the union to go after you.

When you go down to the Board, the Board will ask you: *Did the company suggest you come down here?"*

You tell them: *"Yes."*

Then, they will ask:

"Did the company suggest you get rid of the union?"

You tell them: *absolutely not. The company had nothing to do with it. We went to the company and told them we didn't want the union. The union told us 'It's none of our business. We have no right to talk to you about this. If you want to talk to people who handle problems like this, speak to the federal government."*

And then they will tell you what you can do.

In the case we spoke about previously, the complaining workers were told: "Just get a petition made up, get it signed by at least 30% of the employees in the production and maintenance units. Then we'll hold a new election. We'll put on that ballot: no union; the machinist union; and a new association this group would like to have, called the Wayne Employees Association."

The complaining workers had wanted to have a new association, though they didn't have to. This new group won. After these years, I think these people now pay 75 cents a month dues. This goes into the recreation program. And the bargaining with the union now takes about 20 minutes a year.

The union leader said to the president of the firm: "If you are ever dishonest with us, all we have to do is re-affirm with one of the big unions and strike the hell out of you."

And the boss replied: "Why sure, if I don't treat you fairly, that's what I deserve. What are unions for?"

When You May Respond

For those of you who have unions, keep this in mind: *you cannot initiate getting your employees to kick a union out . . . but you can respond to their instituting such action.*

You can initiate refusal to bargain if you have a good-faith doubt that a majority wants the union after the certification year is up. And the certification is good for only the first year.

Certainly, if you have a good-faith doubt, you have the right to file a petition, but it has to be at a time between 90 days and 60 days before the expiration of the contract . . . because you have to bargain without this interference during the 60 day period before the contract expires. If you have not reached an agreement and the contract has expired, as in the case of Astronautics, you can go to the Board after the contract expires—with a good-faith doubt—and set a new election.

Between 90 days and 60 days before the contract expires, you can file the petition for a new election.

If you haven't filed the petition before the 60 days, then that 60-day period is perfected for the purpose of bargaining without NLRB involvement other than to require bargaining in good faith.

But, if you haven't reached an agreement, then you can go ahead under the conditions mentioned before.

Now, let us proceed to a few other points.

THE BASIC RIGHTS OF FREE SPEECH

During the union organizing drive and before, you in management have every legal right to talk to your employees, in written, printed, graphic, oral form. You can say anything you want to during the union campaign—BUT the limitations are these:

You cannot threaten harm or promise a benefit.

So often you get from groups like the National Association of Manufacturers a document of what NOT to do that's illegal. It goes on for several pages—about 75 things not to do. People become anxious — so fearful of saying something, afraid they might violate a law.

Four Tips

Let me tell you how to solve this problem with your people, to train them on what to do and what not to do in a union campaign.

REMEMBER THESE FOUR TIPS:

Don't do any of the following four tips—which violate the law—and then you'll find you'll be completely free to do anything you wish to do . . . without fear:

1. No threat to treat people worse if they take a stand in favor of the union or if they vote for the union.

It would be illegal to call your employees together and say. "I understand you are talking about a union here. Don't you realize we could shut this plant down any time we wanted to and farm the work out?"

Sure, you have the right to shut a plant down and farm the work out . . . but you can't threaten to do so, to influence whether or not to vote

for a union. That's illegal.

You can't threaten people to do them worse if they vote for the union.

2. No interrogation, no asking questions about whether they are in favor of the union or not. "How are you fellows going to vote in the union election?"—you can't ask them that question.

Nor can you ask them: "How many went to the union organizing meeting last night? Who was there?"

Also, you can't have a supervisor sit across the street in his car and take down the license numbers of those at the meeting. That's illegal.

Don't question your people whether they're for or against the union, or question them about what the union is doing in its organizing campaign.

3. No promises to treat people better if they vote against the union.

For example it would be illegal for you to call your employees together in the cutting room and say: "I understand there's a union campaign going on, fellows and gals. By the way, we are thinking about giving a 10-cent across-the-board wage increase. We are waiting to see how the election comes out." That's illegal—you can't do that.

4. No spying.

As I told you previously, you can't take down license numbers. You can't have espionage agents working for you.

I've told you the four things not to do . . . so as not to violate the law.

In 30 years of working in this field, the NLRB has never found a client of mine in violation of the law —not once. We have been charged with it—sure. But we won every one of them.

I have told you the four steps—what you cannot do. Now let me tell you *what you can do.*

And some of you—if you have false teeth—are going to drop your teeth—in excitement—when I tell you. You have no idea what your legal rights are!!!

WHAT YOUR RIGHTS ARE . . .

You cannot threaten your employees with illegal conduct — by threatening to cut their pay or fire them if they join the union. *BUT, you can explain what the cost of a labor union could be to them!*

Tell them what the initiation fees are. Tell them what their dues are per month. Tell them that the UAW in their last report to the federal government — out of the workers' pay — paid to the union for strike funds spent more than 141 million dollars in strike funds out of the workers' pockets in one year . . . at the cost of the workers.

Now, this will surprise you: you probably knew that you could explain all the above on the cost of the union . . . and also the costs of picketing and the costs of activities that are the bases of getting wage increases, etc. You can say all this . . . But, you must explain that you are talking about what can happen—not something that is going to automatically happen. You can only explain these as possibilities.

Also, this:

How many of you knew that you could call together your employees and tell them the following:

"Fellows and ladies, I want to let you know—as a matter of company policy—that even though we would bargain in good faith with the union, if it were voted in, if after good-faith bargaining we could not reach an agreement — and the union called you out on strike — we would immediately hire replacements for every striker. And you people would be out of a job."

Almost nobody knows you can say this.

Closing Down

It is illegal to threaten to close down if you become unionized, but you can explain that in the event we are unionized and we bargain in good faith and we can't reach an agreement with the union and if this was it: we couldn't operate as during a situation when they called a strike, then *for economic reasons* we may be forced to shut down and close this operation completely!

You see, one way you are threatening them if they vote for a union, you'll close down the place. The other situation, you've just been explaining your legal rights for economic reasons . . . not because of "union vs. no union." But for economic, reasons, you have the right to move to a new location.

One thing I find is that you can almost always tell the employees what you want to . . . *you just have to find the right way to say it.*

Another point on explaining the limitations of the law:

You can tell them—

1. It is illegal for a union to threaten discrimination against any employee because he refuses to join a union.

2. It is illegal for a union to force the non-union employees not to walk through a picket line. Police protection will get you through that picket line.

3. If they do call a strike against us and we can't get enough of our non-union people to come through the picket line to work, we will advertise — we promise you this — and we will advertise to bring in other workers to replace the strikers so we can keep operating. They're not going to put us out of business.

Secondary Boycott

4. If we can't get enough others to operate this way, we're going to farm work out to other companies and let them carry out the work for us. In this case, by the way — because they become an ally then in farmed-out work — the union could throw a picket line in front of the place to try to induce the employees not to handle your products. That's lawful. That's a secondary boycott which is lawful, because it's farmed-out work and they're your allies.

But—you farm out work to other shops that are non-union, where the picketing wouldn't result in work stoppage.

Another point . . . you're getting supplies from this certain supplier and you're selling products to a certain company. If they were to picket here to induce these people to refuse to work supplying your goods or to get the employees to refuse to work for this retailer to sell your goods, we can nick them under Section 8B4D and under Section 10K for an injunction to stop that secondary boycotting. We can sue them under Section 303 of the statutes for damages for all the costs they made to us in situations like this.

Miscellaneous Points

To deviate and make a few more pertinent points:

Even though you cannot engage in spying on the union, you can keep people under surveillance to see that they do not violate company rules.

Re-Solicitation

Let me tell you about the strongest no-solicitation rules (backed up by Congress and the U.S. Supreme Court) that will be allowed:

This is the wording—as far as you can go by law, though you do not have to go this far—

It is a violation of company rules for any individual working for this company to engage in solicitation for any private purpose whatsoever, by all means during working time . . . or by distribution of literature in working areas during working and non-working time.

This applies to what they can't do. However, the union would have the legal right to do many things. You tell your workers what they can't do. Don't tell them what the union can do . . . let the union do that.

Let the union be the one to tell them what can be done by the union. The union could tell them: "Look, you have the right on company property during rest breaks, during lunch periods, walking back and forth to their jobs when they first come and when they leave . . . you have the right to engage in all solicitations and you have the right to pass out literature in non-working areas when the people are not working during their breaks, — because that's a legally-protected right. And if you tried to stop these activities and if you won an election—or if you put in a rule that said "No solicitation for any private purpose whatsoever on company property at any time," then if you won the election—the Board would void the election and order a new one.

WHAT CAN YOU — WITH YOUR UNIONIZED AND NON-UNIONIZED EMPLOYEES — DO WITH PROPER METHODS TO BUILD A RELATIONSHIP OF MUTUAL TRUST AND CONFIDENCE . . . to overcome what otherwise could be militant unionism and union power to shut down your plant?

(We could not possibly cover this subject in one morning. For those who are interested, we do have cassette programming on all subjects covered, including this one . . . procedures to enormously improve competency of management operation. All are available in cassettes.)

Building Bridges

I wish to stress, though, a few points on how to build a satisfactory relationship.

In this field, I find that *one of our greatest challenges is to help build a right relationship* and sometimes a fair one—with understanding.

Let me tell you of an example. In the U.S., we had a plant of 25,000 employees where the union was totally controlled by 19 extremely well-trained ideologists whose aim was to build subversiveness, and build hate between black and white, and between Chicano and white. The danger was that they would tear the corporation apart. As a matter of fact, the union lawyer I dealt with was the attorney who represented the Comintern at the Reichstag trials in Berlin. Their union's recording secretary-treasurer was the wife of the Los Angeles County Communist party chief. We had a situation where the best trained people you can imagine were, spreading hate. We established a program there to build human relationships, and as a result of this new program — 15 months later — every single one of those 19 people who had controlled that union walked in and voluntarily quit . . . because they became totally powerless to build subversiveness and hatred.

Now, this is the sort of thing you should be doing even when you don't have that kind of "pretty" situation. Even if you have no picket lines threatened, you should build positive relationships.

Number one point to keep in mind is this:

We always will have problems in communicating.

Suppose, for instance, you are the supervisor, and you wish to get an idea that's in *your* mind into the mind of one of your subordinates. Suppose you want to get a picture of a rosy, ripe apple from your mind into this person's mind . . . an apple that spits back when you bite it — from your mind into this person's mind.

The process you have to go through is this: You have to take that image and put it to work. So—you have to pass it through your biases, prejudices, mental limitations, training and experience — and it comes out of your mouth as a molecular servant that impedes you when the other fellow is given the message. At that time, he has to decode it through *his* biases, prejudices, mental limitations, training and experience . . . and it comes to his mind as an *orange*.

Communication

Even if you are a perfect communicator, you cannot communicate perfectly — because you cannot climb into the other man's skull and re-arrange the furniture in his mind.

Remember this: *my language may not be the same as yours.*

(Mr. Van de Water then told of an example of a large firm. Bloody warfare continued for three and a half years — union vs. company. Then, at a meeting called to try to discover why so much trouble occurred, it was brought out that the employees felt the firm did not tell the truth to its workers. Tracing back, they learned that an executive—in speaking to the employees when a crisis had appeared — had said to them: "Not one of you guys will lose his job with the company." He had meant that all would be employed—and they were. But, to the rock crusher—for example—"no one losing his job" meant that he would keep his job as a rock crusher, the job he had held since high school days—not just *work* in the firm. Nobody lost his job, but *many workers felt* they had lost their jobs — *all through a misunderstanding in communication.* As a company head put it: ". . . 3½ years later . . . a misunderstanding of a three-letter word . . . and a $4,000,000.00 loss."

(In summarizing this example, Mr. Van de Water stated: "So, folks, what we are talking about is this: We *cannot* communicate perfectly.")

We must find a way to open up communications . . . one of the best ways I know is this:

Interviewing

We find the best service we can give to your company is *to do some interviewing — spot interviewing — with different individual employees, different supervisors with different functions. We want to find out what's on their minds—what suggestions they have to improve the organization and the work-flow* and authority relationships and delegating authority and getting feedback and controls and better discipline and fair treatment to people. What suggestions do they have? We promise we won't quote anyone. If they want to voice a grudge—fine. But what we're looking for are suggestions for improvement.

The ideas are passed on to top management . . . information — at low cost — given to top management and discussed.

Even in a matter of a few days of interviewing, you can get help — enormously—in knowing what your workers have on their minds.

We do this in unionized and non-unionized plants, to delve into the thinking of the employees. This is not just an attitude survey — where they check off things — but a chance for the workers to do their best and tell what's on their minds.

What I am suggesting is:

Improve your individual communication . . . but, likewise, find the ways to get the information to top management, without putting anyone on the spot.

You go ahead . . . and improve managerial confidence . . . and then give the training in listening skills, communication skills, leadership, motivation — all fields, including management by objectives and basic

management procedures that help the company do a better job.

Supervisor

Some urgent points on what to expect from a good supervisor:

1. The supervisor in the highly selective department generally is employee-centered apart from being job-centered. Basically, he gets the job done.

2. He has high enthusiasm for the job.

3. He has obviously a belief in the value of the job the department is doing.

4. A high-performance goal.

5. A lack of a feeling that the goals are unreasonable.

6. A lack of a personality conflict between him and the boss.

7. —and most important: The use of general rather than close supervision.

That doesn't mean that when you are training a person, you don't take time to train a person. Of course you do. Take time to train him — then stop breathing down his neck.

After he is trained, take your claws off him. Let him think creatively, control his own ideas on how to do better for himself and have his own thought control.

Next—8. The highly-productive supervisor is deeply—as seen by his subordinates — and genuinely concerned for the workers' welfare.

Next—9. Interest in the workers' personal problems without intruding on their sense of privacy. Gimmicks won't work — you need genuine concern.

Next—10. Taking time to train people on a new job . . . including leadership in training.

Next—11. The educational above the punitive use of mistakes.

In addition to the 11 human qualities I have just enumerated for you, I wish to add two more:

Organization skill.
Technical competence.

Now, here's my final point:

How do you build a motivational atmosphere so that people are motivated from within to want to work with you to accomplish the enterprise's objectives . . . and to want to stand up to the union if it tries to undercut the company's activities and make demands that are unreasonable?

How do you build a motivational atmosphere?

Here are the results of research.

1. Ask yourself these questions:

Can the people who work for you say honestly that to the fullest extent that the job could permit, on that job my boss allows me to develop my full potential?

If I prove myself, will he delegate to me jobs he used to keep back? He looks to me for new ideas. If I suggest something, he doesn't say I am stupid. He says: "That's fine, Joe. I'm glad you're creative. Let's talk about it." And he listens to me.

2. As your people fill out their personal life goals . . . *what do they want out of life? What are their goals?*

As regards the company, what would they like to become in the company?

Some would like to become supervisors; others would not like to become supervisors.

Find out from your people what they want. Be sure the people understand their goals, why they are working for this company. They understand clearly, that they are working and earning money — working to provide for their families, for their families' safety, for vacations — for all these things. They know what their personal life goals are. But, do they fully understand *your organizational goals?* Have you included them in thinking through what your goals should be?

3. Set your goals with your employees involved. Involve them in thinking with you.

4. Do they know—or have reason to know, because of your practice—that their chance will best be served during the time they are working for you — to accomplish their personal life goals . . . by pay increases, promotion, recognition, bigger jobs? Do they know that all these intrinsic and extrinsic rewards are given—based on superior performance?

They really must know. Does the squeaky wheel get the grease? Does the person with the glib lip or with a good personality get the reward — or the fellow who gets the results for you?

5. Do you have a management system — a performance evaluation method based on who cuts the mustard?

As part of this system, do you have workers themselves take a part in evaluating themselves?

They are not thus making the decision — the boss makes the decision — but listen to them. Of course, we want the boss to make the final decision, though. I do hope in your company you have the golden rule: he who has the gold, rules.

But, be certain you don't downgrade *Performance Evaluation!*

Conclusion

As a final note, I wish to relate to you a story told to me by a friend who had just returned from England. While visiting an ancient graveyard, this party was intrigued by a particular gravestone, dated 1699, where the deceased had evidently written his own epitaph. It read:

"As you are now, so once was I.
As I am now, you soon shall be.
So, may I say, if there's a Lord,
'Prepare for death and follow me.'"

But careful examination revealed that at the bottom of the epitaph, some unknown had deeply scratched these two lines:

"To follow you I'm not content,
Until I know which way you went."

So — it is important — whether we are unionized or not unionized — *it is important which way we go.* Building relationships will determine, frequently, what happens between the union and the company. *What we give is the basis of what we get.*

file LABOR

Teamsters Meeting - Cabinet Rm - 12-1-81 10:30

Donovan (Chr), VP, Dole, Roy Williams, EM

Remarks by Roy Williams - introductory

Overview by V.P.

- desire to listen, get to a more conventional relationship

Elizabeth Dole

- stresses the "open door"; Labor Dept is the 1st step

Williams

- desire to get their people back to work
- feel President is on the right track; takes hard-nosed stands; like us -- one of us -- in that respect

President arrives; remarks

- gratitude not only for campaign support, but for support of economic and defense programs
  = Geneva negot most dep. on Soviets believing US is serious about rearming = this is why Def Approp Bill is so critical
- mention memo sent to all Depts to be open to Labor

Williams

- have had utmost coop from WH staff
- would help if we could get controllers back if Pres could feel comfortable doing that = lesson's been learned

Pres:

- appreciate that; Lewis's away; when he gets back we'll talk about that sit.; prim oblig is to those who stayed
- waiver possible on fed employment, then come as reg new employees

Williams

- want Pres. to be comfortable w/ it above all

≠ Master Freight Agreement coming up, opened early

- worried about those out of work / concentrate on fringes, not more money / one of ways to help get our people back to work

≠ Dorey: don't understand it; perhaps admin of act itself is what problem is; more competition, but not that much work; major problems; tighter supervision, perhaps by more restrictive re-entry; maybe nothing wrong, but needs to be looked at

≠ Canada pipeline; Union VP. Lawson

Pres re Dereg.

= criticized last Admin's process of dereg, need to phase-in not by one stroke; agree we will look at it.

Lawson re pipeline

- nat. gas from Canada - position?

Pres: realize a commitment was made, waiting on waivers in Congress ...

EM: support project, any legis help on mine would be desirable

Pres: because of other prob's recently, Teamsters may be in better posit to help in Congress

Williams: ICC openings, staff has letter w/ recommendations

≠ indep. contractors are "eating our breakfast"

≠ appreciate being asked to talk; may disagree but won't be disagreeable

Pres: remembers Communist-dominated motion picture unions, post WWII; violence; besieged meeting, when RR came out, 6 big guys escorted him to car -- Teamsters!

re ICC - names in pipeline

National Association
of Manufacturers

FORREST RETTGERS
Executive Vice President

Dept. of Labor

DEC 12 1980

File
Inaction

December 11, 1980

Mr. James E. Baker, III
Presidential Transition Office
1026 M Street, N.W.
Washington, D.C. 20270

Dear Jim:

Enclosed are letters to two of the transition teams who have requested our assistance in identifying qualified individuals for positions within the Department of Labor and related agencies.

I thought you might be interested in our efforts, and again, I enjoyed our breakfast.

To you, Jim, I send my very best wishes for a Happy Holiday Season.

Sincerely,

FORREST

FIR/gc

Enclosures

1776 F Street, N.W.
Washington, D.C. 20006
(202) 626-3700

National Association
of Manufacturers

RANDOLPH M. HALE
Vice President and Manager
Industrial Relations Department

December 10, 1980

Mr. Wayne Roberts
Presidential Personnel
1726 M Street, N.W.
5th Floor
Washington, D.C. 20036

Dear Mr. Roberts:

In our letters to you, dated December 3, 1980, the National Association of Manufacturers submitted the names of individuals we considered highly qualified for various positions within the Department of Labor. We wish to expand upon those earlier recommendations.

The names of candidates who we did not previously suggest are indicated by an asterisk. Where we have resumes available, they are enclosed for your perusal. Otherwise, they shall be mailed to you under seperate cover.

Deputy Under Secretary for Legislation and Intergovernmental Regulations

John A. Casciotti:	presently Minority Labor Counsel, Senate Committee on Labor and Human Resources
Ronald B. Clements:	Congressional Liaison, Edison Electric Institute
Arthur A. Fletcher**:	President, Arthur A. Fletcher and Associates

For positions within the office of the Deputy Under Secretary

Annette P. Fribourg**:	Legislative Assistant, Office of the Honorable Jacob Javits
John Dean**:	Minority Counsel, House Education and Labor Committee

1776 F Street, N.W.
Washington, D.C. 20006
(202) 626-3700

Solicitor of Labor

Mary T. Matthies:	Labor Lawyer in private practice, Tulsa, OK
Marilyn Maledon**:	Assistant General Counsel, Rockwell International, Pittsburgh, PA
Sue Robefogel**:	Partner, Harris, Beach, Wilcox, Rubin & Levey, New York
Tim Ryan**:	Counsel, Pierson, Ball & Dowd Washington, D.C.

Assistant Secretary for Policy, Evaluation and Research

Robert Collyer**:	Executive Assistant, UBA, Inc.
John M. Smokevitch:	General Counsel, A. S. Hansen, Inc.
Jack Meyer:	American Enterprise Institute
Richard G. Woods:	Legislative Assistant, Office of the Honorable Henry Bellmon
Armond Thiebolt**:	Associate Professor, College of Business & Management, University of Maryland

Assistant Secretary for Employment and Training

Nathaniel M. Semple:	Senior Legislative Associate, House Education and Labor Committee
Pat Holloway**:	Personnel Consultant, R. J. Evans & Associates, Cleveland, OH

Assistant Secretary for Labor-Management Relations

John M. Smokevitch

Susan Cahoon**:	Partner, Kilpatrick, Cody, Rogers, McClatchey & Regenstein

Within Office of Assistant Secretary, for position of Administrator, Pension and Welfare Benefit Plans

Russell J. Mueller**: Actuary and Minority Legislative Associate, House Task Force on Welfare and Pension Plans

(Note: Mr. Mueller's resume sent in December 3 letter. ** indicate clarification of position for which he is being recommended.)

Assistant Secretary for Employment Standards

Mary T. Matthies

John R. Serumgard: Vice President, Industrial Relations, Rubber Manufacturers Association

Lester L. Cooper: Director of Political Action, Motorola, Inc.

Thomas J. Walsh**: Labor lawyer in private practice, Washington, D.C.

Deputy Assistant Secretary, Employment Standards

Donald L. Rosenthal**: Consultant, Organization Resources Counselors, Inc.

For high level position within Office of Assistant Secretary

Robert Collyer**

Assistant Secretary for Mine Safety and Health

Frank Zimmerman**: Corporate Director of Safety and Environmental Health, National Gypsum Company, Dallas, TX

Robert B. Lagather**: Assistant Secretary for Mine Safety and Health

(Note: While Mr. Lagather is with the current Administration, he does enjoy widespread respect within the business community.)

Assistant Secretary for Occupational Safety and Health

Frank R. Barnako:	Member, Occupational Safety and Health Review Commission
Bert M. Concklin:	McKinsey & Company, Inc.
Paul Kotin, M.D.:	Senior Vice President, Health, Safety and Environment, Johns-Manville Corporation

Deputy Assistant Secretary for OSHA

William Blasier**:	Associate General Counsel, National Association of Manufacturers

Director, Office of Federal Contract Compliance

Dwight Zook**:	Director, Urban Affairs, Rockwell International, Pittsburgh, PA

(Note: We have been unable to reach Mr. Zook to confirm his availability.)

Deputy Director, OFCCP

Connie Murry-O'Neal**:	Administrator, Government Relations and Consumer Affairs, Michigan Department of Transportation
Annette Fribourg**	

Chairperson, Equal Employment Opportunity Commission

Jewel R. Lafontant**:	Partner, Stradford, Lafontant, Fisher, and Malkin, Chicago, IL

Member, National Labor Relations Board

Milo Price**:	Regional Director, NLRB, Phoenix, AR
George Smith**:	Partner, Constangy, Brooks & Smith Atlanta, GA
Curtis Mack**:	Regional Director, NLRB, Atlanta, GA
Susan Robefogel**:	Partner, Harris, Beach, Wilcox, Rubin, and Levey, New York State

Executive Secretary, NLRB

Thomas J. Walsh**

OSHA Review Commission

William Blasier**

Federal Mediation and Conciliation Service

Bill Usery**:	Bill Usery Associates, Inc. Washington, D.C.
Eric Jensen**:	Vice President, Government and Labor Relations, ACF Industries, New York City

Considered for Retention

Ken Moffett**:	Deputy Director, Federal Mediation and Conciliation Service
Nicholas A. Fidandis**:	Director of Mediation Services, FMCS

We consider these candidates to be exceptionally qualified for the positions for which they are recommended and appreciate your consideration of our suggestions.

With kindest regards,

Sincerely,

RMH/kd

Enclosures

National Association
of Manufacturers

RANDOLPH M. HALE
Vice President and Manager
Industrial Relations Department

December 10, 1980

Mr. Baker Armstrong Smith
The Center on National Labor Policy
5211 Port Royal Road
Suite 400
N. Springfield, VA 22151

Dear Mr. Smith:

The National Association of Manufacturers appreciates the opportunity to submit the names of candidates we consider to be highly qualified for positions within the National Labor Relations Board, the Federal Mediation and Conciliation Service, and the Occupational Safety and Health Review Commission. Where we have resumes of the individuals recommended, they are enclosed. Others will be sent under seperate cover.

National Labor Relations Board

While we consider the position of Member, NLRB, to be extremely important, we do want to draw your attention to equally important, non-political, positions of Regional Directors to the NLRB. There currently exist approximately 4 vacancies in these positions throughout the country, and we would like to stress how critical it is that those who fill these positions be balanced individuals. (It should be noted that efforts are being made by the current Administration to fill these appointments as quickly as possible.) Consequently, we urge that the list of candidates ultimately provided by the General Counsel to the Board be carefully scrutinized, and that if such candidates do not possess the necessary balance, the Board be urged to reject them. We can provide a list of these vacancies should you desire.

Member:

Susan Robefogel:	Partner, Harris, Beach, Wilcox, Rubin and Levey, New York
Milo Price:	Regional Director, NLRB, Phoenix, AR
George Smith:	Partner, Constangy, Brooks & Smith Atlanta, GA

1776 F Street, N.W.
Washington, D.C. 20006
(202) 626-3700

Curtis Mack:	Regional Director, NLRB, Atlanta GA
John Penello:	Member, NLRB (Democrat)
Stephan Gordon:	General Counsel, Federal Labor Relations Authority, Washington, D.C.

While all are exceptionally qualified, we particularly recommend Member Penello for Chairman, given the current Republican composition, and Mr. Price to replace Member Truesdale.

Executive Secretary

Thomas J. Walsh:	Danzansky, Dickey, Tydings, Quint and Gorden, Washington, D.C.

Federal Mediation and Conciliation Service

William J. Usery:	Bill Usery Associates, Inc., Washington, D.C.
Eric Jensen:	Vice President, Government and Labor Relations, ACF Industries, New York

Considered for Retention

Ken Moffett:	Deputy Director, FMCS
Nicholas A. Fidandis:	Director of Mediation Services, FMCS

Occupational Safety and Health Review Commission

William Blasier:	Associate General Counsel, National Association of Manufacturers

We believe the above-referenced individuals to be exceptionally qualified and appreciate your consideration of them for these most important positions.

With kindest regards,

Sincerely,

Randolph M. Hale

RMH/kd

Enclosures