



Hardball: The Tactics of Union Corporate Campaigns



U.S. CHAMBER OF COMMERCE
Employment Policy Division



U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

Copyright © 2018 by the United States Chamber of Commerce. All rights reserved. No part of this publication may be reproduced or transmitted in any form—print, electronic, or otherwise—without the express written permission of the publisher.

Hardball: The Tactics of Union Corporate Campaigns

INTRODUCTION

“Corporate campaigns swarm the target employer from every angle, great and small, with an eye toward inflicting upon the employer the death of a thousand cuts rather than a single blow.”

—Richard Trumka, then-Secretary-Treasurer, AFL-CIO (1992)¹

The National Labor Relations Act (NLRA), passed in 1935, struck a careful balance between the rights of workers and employers. This applies not just to collective bargaining but also to demands for recognition and strikes, under which workers deny their labor to a business. Unions have long argued that this balance is shifted against them, and in recent years they have attempted to expand the leverage afforded to them by the NLRA. One means of doing so is through corporate campaigns, during which unions engage in behavior that is not just unseemly but sometimes crosses the lines of legality entirely.

As the quote from Richard Trumka suggests, corporate campaigns are carefully designed and executed operations that seek to overwhelm employers from all angles. Instead of building support among workers from the ground up, they seek to impose recognition from the top down by forcing management into giving unions valuable organizing concessions not guaranteed by law. For example, a consistent demand across nearly all corporate campaigns is that an employer agree to recognize a union based on card check rather than a secret ballot election. Under card check, all a union needs to do is get a bare majority of employees to sign a card indicating a desire for representation by a union. These cards can be collected in public in full view of union organizers and co-workers, creating a potential atmosphere of coercion and intimidation. In addition, corporate campaigns typically include a demand for employer neutrality, meaning that the employer agrees not to get involved with the election or make negative comments about a union.

Neither of these concessions are required under the NLRA, and most employers will not grant them willingly. Thus, the corporate campaign is intended to bring so much pressure on a business that the employer decides that capitulating to the union’s demands is less painful than the alternative. The playbook for corporate campaigns was perhaps most famously brought to light by the Service Employees International Union’s (SEIU’s) *Contract Campaign Manual*.² Yet most Americans are unfamiliar with just how vicious these corporate campaigns can get. To bring more attention to this subject, this report describes some of the most notorious corporate campaign tactics that unions have used in the recent past.

The playbook for corporate campaigns was perhaps most famously brought to light by the Service Employees International Union’s (SEIU’s) *Contract Campaign Manual*. Yet most Americans are unfamiliar with just how vicious these corporate campaigns can get.

While these campaign tactics may seem unsavory, threatening, or unruly, they have at least been subject to the restrictions of Sections 8(b)(4) and 8(e) of the NLRA, which prohibit unions from engaging in picketing, boycotts, strikes, or other overt pressure tactics against employers with whom they do not have a labor dispute. In other words, unions cannot engage in “secondary” activity against the vendors, suppliers, financiers, and others with whom a targeted company has a relationship. Corporate campaigns, as currently practiced, are supposed to be limited by these restrictions.

But these limits are now under attack. Two bills have been introduced in Congress that would repeal Sections 8(b)(4) and 8(e), allowing unions to unleash the corporate campaign tactics described in this report against all types of businesses regardless of whether they are the actual employer a union is seeking to organize.³ Doing so would be a recipe for chaos and thoroughly undermine one of the fundamental purposes of the NLRA, which is to promote the “free flow of commerce.”⁴

CORPORATE CAMPAIGN TACTICS

“What is clear is that the term [corporate campaign] encompasses a wide and indefinite range of legal and potentially illegal tactics used by unions to exert pressure on an employer. These tactics may include, but are not limited to, litigation, political appeals, requests that regulatory agencies investigate and pursue employer violations of state or federal law, and negative publicity campaigns aimed at reducing the employer’s goodwill with employees, investors, or the general public.”

—U.S. Court of Appeals for the District of Columbia Circuit ⁵

Tactic 1: Undermining Client and Customer Relationships

Unions are theoretically limited in the scope of their corporate campaign tactics; however, they are constantly pushing these limits and seeking to redefine them. But while unions can often deploy campaign tactics with little or no consequence, an exception occurs when the employer obtains a legal judgment declaring the tactics outside the bounds of the NLRA or other laws.

This is the path that Sodexo, Inc. was forced to pursue when the SEIU waged a vicious campaign against the employer from 2009 to 2011,⁶ a campaign that was described as “[o]ne of the most egregious” cases of union pressure tactics.⁷ Sodexo operates food and janitorial services on college campuses and other locations across the country. As a large employer in the service industry, it became a significant organizing target for the SEIU, which launched a comprehensive campaign against the company. The campaign was noteworthy for the overt nature of the threats and the malicious nature of the attacks.

In a lawsuit filed by Sodexo, the company detailed several face-to-face meetings with specific union leaders during which the union “point-blank” and unambiguously asked Sodexo to consent to unionization outside of the NLRB’s secret ballot process. The union communicated that its “threats, intimidation, smears and other attacks would never stop” unless the company did so.⁸ The union specifically threatened to use its corporate campaign as a “weapon” and to “apply pressure wherever we can” to force Sodexo’s capitulation, stating that the union could either “help” or “hurt” Sodexo with current and future business opportunities depending on whether Sodexo acceded to its demands.⁹ While simultaneously threatening Sodexo, the union promised to make the “echo chamber” of allied

After Sodexo declined the SEIU’s requests for card check recognition, the union “unleashed an avalanche of malicious attacks on every aspect of Sodexo’s business affairs” through which it sought “to decimate the client and consumer relationships on which Sodexo depends for survival.”

groups it had created around Sodexo’s business practices “go away” only if Sodexo agreed to the union’s demands.¹⁰ In clear terms, the union told Sodexo’s executives that if the company resisted the corporate campaign, it would “continue to fight” and would “go after Sodexo’s clients.”¹¹

After Sodexo declined the SEIU’s requests for card check recognition, the union “unleashed an avalanche of malicious attacks on every aspect of Sodexo’s business affairs” through which it sought “to decimate the client and consumer relationships on which Sodexo depends for survival.”¹² Despite the limits of Section 8(b)(4) and 8(e), these malicious attacks included swarming Sodexo’s customers—hospitals, colleges, and schools—with disruptions and protests.¹³ For example, the SEIU used false pretenses to infiltrate a prestigious medical conference catered by Sodexo and once inside threw plastic roaches onto the food being served. In another instance, the union engaged in a physical altercation with security guards.¹⁴ The SEIU also attempted to frighten hospital patients and their loved ones by passing out “patient surveys” asking—without a shred of factual justification—whether patients had encountered “bugs, rat droppings, mold or flies” in the food they were served by Sodexo employees.¹⁵ Another incident involved tampering with food intended to be served to hospital patients in an attempt to obtain “evidence” that Sodexo was serving unsanitary meals at hospitals.¹⁶ In other instances, the union attempted to cause alarm among Sodexo’s clients and investors, as well as the public, regarding the

cleanliness of its facilities by falsely claiming that Sodexo’s food production plants had “rodent problems,” and that Sodexo’s unsanitary food preparation practices led to an infestation of maggots in a California hospital.¹⁷

A number of the SEIU’s actions could be considered criminal acts according to court filings. On more than one occasion, union representatives gained or attempted to gain technological or physical access under false pretenses, including misrepresenting themselves as Sodexo employees in order to bypass security and obtain access to elementary school grounds.¹⁸ The SEIU also reportedly hacked into a Sodexo education website to embed within it a link to the union’s own website, on which malicious and disparaging claims were made about the company.¹⁹

The SEIU’s campaign against Sodexo was waged at multiple client sites across the country. At George Mason University, for example, the SEIU launched a substantial effort to force the university to terminate its contracts with Sodexo.²⁰ This effort included orchestrating public demonstrations and mass disruptions, pressuring individual managers, using third parties such as students and politicians to disguise its role in the attacks, and utilizing the news media to publicize the disputes.²¹

The SEIU went to great lengths to garner support in the university community, including urging students to write letters to the student government and university president, personally harassing the *neighbors* of the university president with disparaging statements about Sodexo, and distributing hundreds of flyers repeating these same remarks.²² This neighborhood infiltration, labeled by the SEIU as Reverse Trick-or-Treating, culminated in demonstrations at the university president’s home, where the SEIU and its entourage harassed the president and his family until the university police arrived.²³ In addition to legal and business pressure, the SEIU launched a Clean Up Sodexo Campaign, which masqueraded as a social movement intended to improve the working conditions of Sodexo employees and published reports that portrayed the company in a negative light.

This effort included orchestrating public demonstrations and mass disruptions, pressuring individual managers, using third parties such as students and politicians to disguise its role in the attacks, and utilizing the news media to publicize the disputes.

These tactics were egregious and, just as the AFL-CIO’s Trumka described, targeted Sodexo from “every angle, great and small” in attempt to inflict “death of a thousand cuts.”²⁴ Yet after nearly two years of the SEIU’s coordinated attacks, on March 17, 2011, Sodexo fought back by filing a detailed tort and Racketeer Influenced and Corrupt Organization lawsuit against the union and its officials, uncovering and publicizing the SEIU’s *Contract Campaign Manual*, and waging its own public relations campaign. Although the SEIU portrayed its corporate campaign as one of “justice,” it decided not to defend itself through litigation on the merits but, instead, reached a settlement six months after being sued. While the terms of settlement were confidential, as part of the agreement, the SEIU ended its corporate campaign against Sodexo and agreed not to use tactics that have the purpose of or are likely to interfere with or impair Sodexo’s relationships.²⁵

Tactic 2: Damaging the Target’s Reputation With Meritless Government Complaints

Interfering with a target company’s clients and causing misleading publicity are not organized labor’s only tactics. The SEIU’s *Contract Campaign Manual* dedicates an entire section to generating and exerting Legal/Regulatory Pressure, which supposedly gives management “added incentive to cooperate” due to the expense, delays, exposure, and damage to the company’s public image that it causes.²⁶

A textbook case of Legal/Regulatory Pressure involved Professional Janitorial Service (PJS), a cleaning company located in Texas. As part of the SEIU’s Justice for Janitors campaign, SEIU Texas demanded that PJS agree to card check recognition rather than the traditional secret ballot election method. To pressure the company into accepting its demand, the SEIU used and recruited several government agencies—the Occupational Safety and Health Administration (OSHA), the Wage and Hour Division, and the National Labor Relations Board (NLRB)—to ratchet up the legal pressure in conjunction with its targeting of the company’s relationships.

Between October 2013 and February 2014, OSHA compliance officers appeared at four separate PJS worksites accompanied by two to three union officials who did not appear to have any specialized training or knowledge of industrial safety.²⁷ Though OSHA did not substantiate an allegation that PJS did not provide gloves and goggles, it issued citations to PJS for paperwork and poster issues, the first OSHA citation PJS had received in 26 years.²⁸ The union also filed 25 claims with the Wage and Hour Division, asserting that PJS employees were forced to work off the clock. An additional 19 unfair labor practice charges were filed with the NLRB alleging that PJS engaged in unlawful labor practices. With one exception (a finding of \$1,854 in back wages), *all* of the union's charges and government filings were resolved in the company's favor or withdrawn.²⁹

Although ultimately shown to be frivolous or completely unwarranted, the charges all served their purpose. They allowed the SEIU to claim publically that PJS was under federal investigation and engaged in unfair labor practices. The SEIU broadly distributed these messages by faxing the allegations directly to PJS' customers, placing defamatory flyers on cars in parking lots belonging to PJS' customers, placing a giant inflatable rat in the building of one PJS customer, and confronting individuals who did business with PJS.³⁰ It also authored a document titled *Report on Professional Janitorial Service (PJS)* and issued press releases citing the charges, which major news organizations,

Though it probably had the opportunity to settle on favorable terms after the union's pretrial effort to dismiss the case failed, PJS instead put the SEIU's organizing tactics in front of a jury. At trial, the jury voted 10-2 to award the company \$5.3 million in damages, finding that the union's corporate campaign unlawfully maligned PJS' reputation.

including the Associated Press, picked up and distributed.³¹ As found by the Court of Appeals of Texas, "[t]he union's admitted goal in publishing these accusations to PJS' customers and others was to cause PJS to lose business to union contractors."³² According to PJS, the company lost more than a dozen accounts due to the union's actions.³³

Like Sodexo, PJS fought back and won. The company filed a defamation, tortious interference, and business disparagement lawsuit in Texas. Though it probably had the opportunity to settle on favorable terms after the union's pretrial effort

to dismiss the case failed, PJS instead put the SEIU's organizing tactics in front of a jury. At trial, the jury voted 10-2 to award the company \$5.3 million in damages, finding that the union's corporate campaign unlawfully maligned PJS' reputation. In September 2016, a Texas judge added \$2.5 million in interest to PJS' award, for a total award of \$7.8 million. The jury apparently had no problems looking beyond the union's claimed defense of free speech and finding what should have been apparent to the SEIU itself, that its tactics were reprehensible.

Of course, the tactic of filing frivolous government complaints was not limited to the PJS campaign. In another example, the SEIU threatened the CEO of the company Executive Management Services, Inc. (EMS) with economic ruin if he did not consent to a neutrality agreement. Under the terms of the agreement, the SEIU demanded that the company provide the names of all its employees and their contact information, agree not to say anything negative about the union or otherwise interfere with its attempts to organize the company's employees, and agree to card check certification.³⁴ When the company declined, the SEIU barraged EMS with 36 NLRB and 3 OSHA charges, including one falsely alleging that the company's employees were forced to carry human body parts out of biology laboratories.³⁵ The SEIU, and not the employees, had filed each of the charges and then distributed flyers indicating that EMS was under investigation by the federal government for unfair labor practices such as intimidation of employees.³⁶ Of the 36 NLRB charges, 24 were dismissed or voluntarily withdrawn as having no merit.³⁷ After nearly two years of harassment, EMS and the SEIU entered into a voluntary settlement agreement.³⁸ The SEIU agreed not to picket or threaten to picket EMS, and EMS agreed to abide by the NLRA, which it had been doing anyway.³⁹

Tactic 3: Provoking and Intimidating

One of the most noteworthy examples of union harassment tactics in recent years is the “Top Chef” extortion case in Boston, Massachusetts. The case arose in 2014 when a production company filming the celebrity cooking show “Top Chef” decided to hire its own employees, including drivers. Teamsters Local 25 objected even though the production company was *not* a signatory to a collective bargaining agreement and had every right to hire non-Teamsters labor.

After turning down Local 25’s repeated demands to use union labor, union members swarmed the “Top Chef” crew using profane language and threats during filming in Milton, Massachusetts.⁴⁰ The protestors’ actions included a threat to “smash” the “pretty face” of a celebrity host,⁴¹ who testified at trial that she was “terrified” and “petrified” when a Local 25 member confronted her. Specifically, while she was a passenger in a vehicle outside the restaurant, a group of men formed a line to block vehicles when one man leaned his arm on her door and said, “Oh, lookie here, what a pretty face” and “What a shame about that pretty face.”⁴² The show’s producer described how protestors “swarmed [the host’s] vehicle and surrounded it.”⁴³ Evidence included a video that prosecutors played in court in which one of the protestors used racial epithets and profanities to describe the host.⁴⁴ Local 25 protestors also allegedly showered the film crew with racial, sexist, and homophobic slurs.⁴⁵ One of the show’s judges testified that she was “incredibly afraid” as she arrived at the restaurant and saw the men block the vehicle’s path while one man called her “a scab.”⁴⁶

Nevertheless, racial taunts and provocations were not the only tactic employed. Local 25 members also reportedly used physical violence against crew members. Three union members were said to have entered the production area and walked “in lockstep toward the doors of the restaurant where they chest-bumped and stomach-bumped” crew members in an attempt to forcibly enter the restaurant.⁴⁷ Another blocked a food truck from delivering food to the crew. At trial, a producer testified that she heard the driver of a delivery truck say that one of the Teamsters threatened to “put a bomb in the truck” if the driver tried to make his delivery to the restaurant and that the Teamsters paid him \$20 to leave.⁴⁸ Local 25 members were also seen in close proximity to vehicles belonging to crew members, and nine of those vehicles were later found to have slashed tires.⁴⁹

Although four members of the Teamsters were ultimately acquitted by a jury, the federal judge overseeing the case urged them to pay closer attention to the boundaries of the law.⁵⁰

Tactic 4: Sending ‘Letter Bombs’

Ironically, the reason the “Top Chef” production company ended up at the restaurant in Milton was because of Local 25’s previous intimidation. Filming was initially set to occur at a hotel in Boston, but the hotel rescinded its filming agreement after being informed of the union’s planned picketing.

Contacting hotel customers through what can be referred to as ‘letter bombing campaigns’ appears to be a tactic unions increasingly use. The goal is simple: to exert pressure on a hotel by intimidating its customers until they cancel bookings. In numerous cases, unions have directly contacted current and previous hotel clients. For example, in October 2017, Unite Here Local 11’s ‘Customer Outreach’ employee informed a previous hotel client by email: “From what I understand, you or your organization have held events or stayed at the hotel in the past and may plan to in the future. Consequently, I want to let you know that workers at the resort approached management yesterday to request a fair process to organize a union, one where management would agree to let workers decide whether to unionize without fear of harassment or retaliation while employees would agree not to exercise their rights to picket and otherwise protest the hotel.”⁵¹ The message continued by explicitly informing the client about planned disruptions: “Due to management’s intransigence and refusal to treat workers with the respect they deserve by agreeing to a fair process, employees are planning to exercise their first amendment rights at

Contacting hotel customers through what can be referred to as ‘letter bombing campaigns’ appears to be a tactic unions increasingly use. The goal is simple: to exert pressure on a hotel by intimidating its customers until they cancel bookings.

the hotel by staging protests and pickets. This could result in considerable activity at the property. Would you feel comfortable crossing a picket line?”⁵² Finally, the union requested that the hotel’s customer contact the hotel and demand that it “stand with workers as they fight for dignity and respect.”⁵³ Though politely phrased as an invitation to support workers, the obvious purpose of the union’s message was to intimidate customers and convince them to cancel any reservations to avoid planned disruptions.

There are numerous other examples of letter bombing campaigns, particularly in Nevada, where customers of one resort in the Las Vegas area received emails asking them if they would feel comfortable doing business at a hotel that allegedly violates workers’ rights, or if they wish to see their event disrupted by labor disputes.

Tactic 5: Disparaging Posters

In a case involving franchisees of the Jimmy John’s sandwich chain, unions employed a new version of an old-fashioned weapon in response to narrowly losing an organizing campaign: plastering the area around a targeted business with thousands of posters.

The case originated in the Minneapolis-St. Paul area where two local residents owned and operated MikLin Enterprises, Inc. (MikLin), a franchisee consisting of 10 Jimmy John’s stores.⁵⁴ The Industrial Workers of the World (IWW) union had narrowly lost a campaign among MikLin’s workers but did not want to take no for an answer. After the loss, the IWW and pro-union employees engaged in an escalating public relations campaign to pressure the employer.



The IWW’s chosen campaign issue was paid sick leave. It purposely launched its campaign during flu season in late January and early February by hanging posters that prominently featured two identical images of a Jimmy John’s sandwich.

On the day before the IWW could request a redo of the election,⁵⁵ the union and its supporters distributed a press release, a letter, and the sandwich poster to more than 100 media contacts at the Associated Press, Reuters, Bloomberg, and NBC News, among others. The press release highlighted “unhealthy company behavior” and warned that “[a]s flu season continues, the sandwich makers at this 10-store franchise are sick and tired of

putting their health and the health of their customers at risk.”⁵⁶ The release also reported on a survey, which the union administered, purportedly finding that “Jimmy John’s workers have reported having to work with strep throat, colds and even the flu.”⁵⁷ The release threatened that if MikLin’s owners would not discuss IWW’s demands, supporters would proceed with “dramatic action” by “plastering the city with thousands of Sick Day posters.”⁵⁸

Though MikLin subsequently met with organizers, announced that it would revise its sick leave policy, and took steps to implement the leave policy well within the union-imposed deadline, IWW supporters once again plastered the city with Sick Day posters. However, the new poster incorporated one change. Rather than asking for customer support for paid sick leave, the posters listed the personal telephone number of MikLin’s owner and instructed customers to call him to “LET HIM KNOW YOU WANT HEALTHY WORKERS MAKING YOUR SANDWICH!”⁵⁹

Organizers placed 3,000 posters in various locations near MikLin stores, including on lamp posts, trash cans, and mailboxes. MikLin’s owner testified that he was “bombarded by phone calls” for close to a month from people who thought it was unsafe to eat at Jimmy John’s.⁶⁰ Concerned about the effect on MikLin’s business, managers took down the public posters and discharged six employees who had coordinated the campaign.

The employer’s legitimate actions, however, only resulted in increased attacks from IWW, which issued several misleading press releases and initiated litigation that lasted years. In one of the press releases, a discharged

employee stated, “It just isn’t safe—customers are getting their sandwiches made by people with the flu, and they have no idea [R]ather than safeguard public health and do the right thing for their employees and their customers, Jimmy John’s owners ... are trying to silence us.”⁶¹ In another, an employee stated that the “unfettered greed of [the] franchise owners ... jeopardizes the health of thousands of customers and workers almost every day. We will speak out until they realize that no one wants to eat a sandwich filled with cold and flu germs.”⁶²

In July 2017, after years of litigation, the Eighth Circuit concluded “that the means the disciplined employees used in their poster attack were so disloyal as to exceed their right to engage in concerted activities protected by the NLRA” and therefore declined “to enforce the determination that MikLin violated the Act by disciplining and discharging those employees and by soliciting removal of the unprotected posters.”⁶³

Tactic 6: Trespassing ‘Flash Mobs’

Unions have taken trespass to new levels in their campaigns against retailers. Since at least 2011, the United Food and Commercial Workers International Union (UFCW) and the Organization United for Respect at Walmart (OUR Walmart) have run an expensive, highly visible, and coordinated attack against Walmart.⁶⁴ The tactics used have been aggressive, dangerous, and found illegal even by a state court in California, considered among the most union-friendly states in the nation.⁶⁵ In six other states—Arkansas, Florida, Texas, Colorado, Ohio, and Maryland—OUR Walmart was banned from entering Walmart stores for any purpose other than shopping due to its activities.⁶⁶

As one example, during protests in California, demonstrators picketed near store entrances and in store parking lots and also entered Walmart stores in groups of up to 100 at a time. Inside the stores, the demonstrators used tactics designed to maximize attention and disturb customers. These included loud chanting, singing, marching, carrying posters or placards, confronting managers or supervisors, taking photographs, recording video footage, and distributing written materials or business cards. In one incident, demonstrators entered a store and released dozens of helium balloons bearing campaign-related messages and ignored requests to leave the store. In another incident, described as a flash mob, a group of people entered the store and at a prearranged time engaged in coordinated, attention-seeking activities such as singing and dancing. They often used bullhorns to project their voices. In other cases, the demonstrators patrolled the sales floor and handed flyers to customers and employees, initiated confrontations, blocked customer traffic, carried banners and signs, and even collected perishable goods in shopping carts then walked away.⁶⁷

A California court found these tactics to constitute illegal trespassing, stating that the “union and its supporters committed and threatened to commit ‘unlawful acts,’ including ‘blocking ingress and egress and aisle ways and customers’ mobility inside the store, littering balloons and flyers throughout stores, and blowing air horns, screaming and conducting flash mobs. ... As part of Defendants’ use of flash mobs inside Walmart’s stores,

A California court found these tactics to constitute illegal trespassing, stating that the “union and its supporters committed and threatened to commit ‘unlawful acts,’ including ‘blocking ingress and egress and aisle ways and customers’ mobility inside the store, littering balloons and flyers throughout stores, and blowing air horns, screaming and conducting flash mobs.”

Defendants have gathered and organized demonstrators who have shown up unannounced and entered Walmart’s stores to demonstrate by marching around the store, performing loud songs and yelling chants or slogans and exiting the store.”⁶⁸ The court found the union’s conduct substantially or irreparably harmed Walmart, and the store had no adequate remedy at law. Therefore, it entered an injunction against the union, which the Court of Appeals later upheld.⁶⁹

In Maryland, the UFCW and others also demonstrated inside the stores in several cities and in adjacent parking areas owned or leased by Walmart. The Maryland demonstrations were also organized as flash mobs, described by the court as demonstrations in which participants “were notified by social media or cell phone text messages to quickly gather at a particular store. The demonstrators then arrived at the store en masse in a coordinated effort.”⁷⁰ During the demonstrations, these flash mobs marched through the stores while chanting, singing, blowing whistles, shouting into bullhorns and megaphones, and littering the stores with flyers.

At a Walmart in Laurel, Maryland, an activist group promoted by the SEIU performed a jazz arrangement of Aretha Franklin's "Respect," complete with singers, dancers, a near-full band, a camera crew, and a microphone with a speaker.⁷¹ A video of the event shows approximately 20 to 40 dancers, singers, cameramen, and others parading and dancing through the store as confused customers looked on. Not surprisingly, demonstrators also confronted Walmart managers, at times forcing themselves into meeting rooms and videotaping the managers' efforts to get them to leave. Some of these demonstrations lasted over an hour and involved over 100 people.

The union's tactics, however, were not limited to Walmart employees and managers. The demonstrators also interfered with Walmart's customers by blocking access to the cash registers and restrooms, causing some to abandon their shopping carts full of items in the store and leave without paying. They also blocked ingress and egress to parking lots, parking spaces, and store entrances. At one demonstration, 40 demonstrators formed a human chain stretching from the first to the last checkout counter. They also disrupted and solicited customers, including in one case by using a van in Walmart's parking lot that contained a large mounted screen that played videos and piped music through speakers.

Like its California counterpart, a Maryland court enjoined UFCW from entering Walmart's private property "to engage in activities such as unlawful picketing, patrolling, parading, demonstrations, flash mobs, handbilling, solicitation, customer interference, and manager confrontations."⁷²

Although the campaign against Walmart has since died down, these examples show the lengths to which unions will go in an attempt to interfere with legitimate business.

Tactic 7: Salting

As far back as 1987, International Brotherhood of Electrical Workers (IBEW) President Jack J. Berry invited local unions to "drive the non-union element out of business" through a coordinated salting campaign and even provided a union organizing manual containing guidance on how to do it.⁷³ So-called salting campaigns involve sending union members to apply for jobs at non-union firms. If the union members are hired, they attempt to organize a business from the inside, often causing havoc along the way. If the union applicants are not hired, the union then files unfair labor practice charges alleging that the employer discriminated by refusing to hire the individuals due to their union status.

So-called salting campaigns involve sending union members to apply for jobs at non-union firms. If the union members are hired, they attempt to organize a business from the inside, often causing havoc along the way.

A variation on this tactic is to have a union member apply for a position in person and openly declare their union affiliation and his or her intent to organize the workplace—essentially baiting the employer into expressing an anti-union animus that can be the basis for filing an unfair labor practice charge. Often, there is another union member there to video the encounter.

IBEW Local 98 in Philadelphia is proof that the salting tactic exploits loopholes in the NLRA and can cause significant

disruption. Local 98 is perhaps one of the few unions that even an NLRB lawyer described as "masters when it comes to unlawful . . . conduct, intimidation and coercion."⁷⁴ The union has, among other tactics, led aggressive salting campaigns that have put companies out of business.⁷⁵

Local 98 used salting against Hard Hat Services, LLC, an electrical services provider in Norristown, Pennsylvania, beginning around 2015, only five years after the company was founded. According to the company's owners: "It's like this whole big scam. You might have one opening and they flush you with six applicants. Even if you hire one, they'll file [NLRB] charges on the other five."⁷⁶ According to NLRB records, 13 unfair labor practice charges were filed against Hard Hat Services between January 12, 2015, and April 13, 2017.⁷⁷ On June 12, 2018, the NLRB ordered Hard Hat Services to pay damages to several alleged salts.⁷⁸

The owner of Greywolf Electric in Concordville, Pennsylvania, unknowingly hired several Local 98 salts in 2016, four of whom subsequently went on strike. The company was hit with 19 NLRB charges filed in a four-month period,

and the salts then successfully organized a union. On the day of the election, the salts were reportedly joined by a group of Local 98 members who did not even work at the company. They cast votes as well, claiming that they had the right to vote because they had applied for a job at Greywolf and were not hired due to their union affiliation. “Guys I’ve never even seen before were showing up to vote,” Greywolf’s owner told *The Philadelphia Inquirer*.⁷⁹

The same salting crew then went on to target another local business, this time family-owned Cook’s Service Co. Inc., an HVAC, plumbing, and electrical services company in Avondale, Pennsylvania. “They kind of played us like a fiddle,” said the owner of the company after learning that his business was targeted by the same crew as Greywolf, “I know they’re doing what they have to do to stay in the local, but I don’t know how they sleep at night.”⁸⁰ As the owner explained, the union would send his company an application for employment, and if the salts were not hired, they would immediately file discrimination charges with the NLRB.

Tactic 8: Engaging in Violence

Local 98 illustrates another type of disturbing conduct, namely violence or the threat of violence. For example, in October 2016, MCON Electric, LLC, an electrical contractor in Philadelphia, sued Local 98 in federal court alleging that Local 98’s leader had tried to threaten and coerce a developer who opted to use non-union labor in the construction of townhomes.⁸¹ The union reportedly launched a website attacking the developer, which displayed that individual’s cell phone number.⁸² The union also deployed a 12-foot inflatable rat, which displayed more personal attacks, blockaded the road to the developer’s worksite, and threw bricks at non-union bricklayers. Due to the actions of Local 98, an electrical contractor at the site decided it could not finish the work, as “his guys no longer felt safe.”⁸³

As a result, MCON Electric, LLC was brought in as the new electrical contractor. Shortly after, an employee of MCON was repeatedly approached by a Local 98 member who attempted to pressure him to join the union. Later, that union member was observed rummaging through the employee’s work van without authorization. On another occasion, three union members were found trying to forcibly remove a sticker from the employee’s van. According to the lawsuit, the union members then told the employee, who was African-American, that non-union workers were not welcome in South Philadelphia and “we don’t want [racial expletive] here.”⁸⁴ The union members then reportedly struck the employee over 10 times, breaking his nose. Later, in January 2016, a union member approached the employee and offered to “get him the money” if he was willing to forget about the intimidation and battery he suffered.⁸⁵ The MCON employee declined the offer and filed suit, although the litigation was later dropped.⁸⁶

Perhaps not surprisingly, Local 98’s tactics have resulted in at least two FBI investigations and an ongoing inquiry by the state Attorney General’s Office.⁸⁷

Tactic 9: Manufacturing Alleged Safety Hazards

One of the United Auto Workers’ (UAW’s) ongoing campaigns involves its attempt to unionize Tesla Motors’ assembly plant in Fresno, California. Though no election has been called or set as of this writing, the UAW has worked for months to try and recruit workers by focusing on alleged problems with safety and health standards at the plant.

On May 24, 2017, a California-based workers’ advocacy group called Worksafe issued a report titled “Analysis of Tesla Injury Rates: 2014 to 2017,” which claimed that the Tesla plant had an unusually high rate of worker injuries. “The discrepancies in these numbers demand at least an explanation from the company,” Worksafe Executive Director Doug Parker said in a conference call, adding that California’s workplace safety agency “would be an appropriate entity to get to the bottom of that.”⁸⁸ Ostensibly an independent report, Worksafe published the analysis after being approached by the UAW, which subsequently placed the report on the front page of its website.⁸⁹ As with other union campaigns, a Tesla employee also participated in the call.⁹⁰

Those pushing for unionization, including the front group the Tesla Workers’ Organizing Committee, have used the report to apply pressure on Tesla and rouse workers. The Committee, for instance, sent a letter to the Tesla board of directors on July 31, 2017, asking the company to release up-to-date safety data from third-party auditors⁹¹

and has solicited stories from Tesla workers on the issue.⁹² The union has used claims of alleged injuries and the Worksafe report to generate abundant news coverage, including cherry-picked stories about alleged worker injuries and one article that portrays the UAW as a savior of sorts.⁹³

The Tesla effort is still in its infancy compared with other organizing efforts, and moving forward, the corporate campaign will undoubtedly spread beyond safety issues. The UAW, operating from its standard playbook, has already launched a website, and given its campaign a catchy name, Driving for a Fair Future. Lawsuits and labor charges have been filed against the company alleging race discrimination and unfair labor practices in connection with workers who were allegedly terminated for their pro-union activities.⁹⁴ Based on those alleged firings, a rally was held on October 24, 2017, where Alameda County Supervisor Richard Valle told demonstrators, “What you’re

The union has used claims of alleged injuries and the Worksafe report to generate abundant news coverage, including cherry-picked stories about alleged worker injuries and one article that portrays the UAW as a savior of sorts.

doing today represents the American workers’ deepest power that we have available to us.”⁹⁵

The UAW’s ongoing campaign against Tesla comes after a high-profile campaign against Nissan in Canton, Mississippi. Although the UAW set the public relations groundwork for years, it ultimately lost the election held in August 2017. Leading up to that campaign, the UAW reportedly played a role in OSHA’s establishment of a Regional Emphasis Program focusing on auto suppliers in the Southeast.⁹⁶

Besides focusing on safety, the UAW’s campaign tactics against Nissan included overt appeals to civil rights issues⁹⁷ and labeling Nissan a violator of human rights based in part on an NAACP report alleging that Nissan violated the International Labor Organization’s core labor standards.⁹⁸ To further inflame its public relations campaign against Nissan, the UAW, along with a global labor group, asked the U.S. State Department to mediate.⁹⁹ Not surprisingly, Nissan declined the government’s offer to do so.¹⁰⁰

Tactic 10: Disrupting Business with Technology

The Laborers’ International Union of North America’s (LIUNA’s) pressure tactics used against Pulte Homes, Inc., a Michigan-based homebuilding company, would have fit nicely within the SEIU’s handbook. Ironically, LIUNA was not even attempting to organize Pulte but, rather, had its eye on the company’s subcontractors. Essentially, Pulte was an innocent bystander.¹⁰¹

In 2009, a division of Pulte Homes terminated a construction crew employee for misconduct and poor performance, which included disregarding company safety rules, allowing unauthorized workers to work on his crew, and altering identification markings on Pulte Homes property.¹⁰² LIUNA alleged that the employee was terminated for wearing a union T-shirt to work. The union went further by asserting that Pulte Homes had similarly fired seven other employees for supporting the union, an allegation that was not only false but, in fact, was believed to have been effectuated and perpetuated by the terminated employee himself.¹⁰³ Though Pulte Homes’ general counsel contacted LIUNA to explain that the termination was for misconduct and poor performance and that the company had never fired the seven others, LIUNA began a targeted effort to sabotage the company’s business.¹⁰⁴

LIUNA’s corporate campaign consisted of a website that encouraged LIUNA members to “fight back” against the “attack” by Pulte Homes¹⁰⁵ and an email and telephone campaign that the Sixth Circuit stated was “intended to disrupt Pulte’s business by bogging down its computer systems.”¹⁰⁶ “LIUNA instructed its members to send thousands of emails to three specific Pulte executives” based on Pulte Homes’ alleged unfair labor practice and also employed an “auto-dialing service to generate a high volume of calls.”¹⁰⁷ The corporate campaign was effective in wreaking havoc in addition to being swift and intimidating.

In the course of just several days, Pulte Homes began receiving thousands of emails and hundreds if not thousands of telephone calls at its headquarters and at other offices. One employee received over 80 emails in the course of 15 to 20 minutes, and receptionists at Pulte Homes’ headquarters as well as sales associates received dozens

of calls.¹⁰⁸ The phone calls and messages repeated the untrue allegations about Pulte Homes' alleged unfair labor practices, while others were intimidating, obscene, and even threatening.¹⁰⁹

Due to the volume of calls and emails, the company's phone and voicemail systems became jammed, thus interfering with Pulte Homes' ability to conduct day-to-day business with its customers and vendors. Like Sodexo, however, Pulte Homes fought back and filed a lawsuit against LIUNA alleging violations of the Computer Fraud and Abuse Act and state tort claims. The Sixth Circuit found that LIUNA's actions as alleged by Pulte Homes' testimony "suggests that such a slow-down was at least one of its objectives. ... LIUNA—motivated by its anger about Pulte's labor practices—intended to hurt Pulte's business by damaging its computer systems."¹¹⁰ Perhaps the best part, however, is the Sixth Circuit's response to LIUNA's arguments:

LIUNA attempts—but fails—to justify its conduct. Though it maintains that the calls and e-mails are "fully consistent with an ongoing, lawful, organizing campaign" through which it "is attempting [only] to organize Pulte employees," LIUNA offers no explanation of how targeting Pulte's executives and sales offices—rather than employees eligible for recruitment—advances its campaign. And an equally, if not more, plausible explanation is that LIUNA intended to disrupt Pulte's business by bogging down its computer systems.¹¹¹

The Sixth Circuit found that LIUNA's actions as alleged by Pulte Homes' testimony "suggests that such a slow-down was at least one of its objectives. ... LIUNA—motivated by its anger about Pulte's labor practices—intended to hurt Pulte's business by damaging its computer systems."

Tactic 11: Damaging Public Relations Through Sham Organizations

The corporate campaign against Bashas' Supermarkets chain in Arizona is notable for its "win at all costs" approach.¹¹² The United Food and Commercial Workers Union (UFCW) campaign began in 2001 when it filed a petition with the National Labor Relations Board to represent Bashas', which the Board rejected since the bargaining unit was inappropriate.¹¹³ A month later, the UFCW withdrew its petition, presumably because it would lose a fair, secret ballot election of an appropriate bargaining unit.¹¹⁴ Its corporate campaign began shortly after, ending years later with Bashas' closing 30 stores and declaring bankruptcy in 2009.¹¹⁵

Central to the UFCW's campaign were claims that a purported third-party organization, Hungry for Respect, made against Bashas'.¹¹⁶ Among others, Hungry for Respect alleged that it found expired infant formula being sold in 58% of the 105 Bashas'-owned stores it investigated,¹¹⁷ that Bashas' management flouted the law, shut down debate and created an atmosphere of fear,¹¹⁸ and that employees found "rats, maggots, and cats" at a food distribution center.¹¹⁹ The UFCW even suggested that the Arizona Women, Infants, and Children Program (WIC) had issued a Special Edition Alert over Bashas' alleged sale of expired formula based on Hungry for Respect's findings¹²⁰ despite the director of WIC saying that random inspections of 120 Arizona stores only found 11 cans of expired formula at nine different establishments owned by at least two separate companies.¹²¹ Interestingly, the UFCW had made the same allegation about expired baby formula against Food Lion in the early 1990s, a claim that subsequent government inspections also failed to substantiate.¹²²

Hungry for Respect, which Bashas' maintained was a sham for the UFCW, also mailed flyers to local Maricopa County homes alleging that Bashas' stores had "significant health hazard[s] that could cause contamination or food borne illness" notwithstanding the fact that Bashas' received better inspection scores than its unionized competitors from January 2005 to September 2007 according to the Maricopa County Health Department.¹²³ Its website also hinted that Bashas' sold tainted Chinese milk and peanut butter laced with salmonella.¹²⁴

Hungry for Respect's negative publicity of Bashas' was focused on alleged safety hazards but by no means limited to them. It also organized rallies and boycotts where members suggested Bashas' was anti-immigrant and treated its Hispanic employees and customers poorly.¹²⁵ Further, as with past campaigns, the UFCW filed a series of NLRB charges against Bashas', only to withdraw at least three of them later, purportedly for lack of evidence.¹²⁶

After years of malicious attacks that Bashas' claimed drained the company's energy and finances, Bashas' filed for bankruptcy protection.¹²⁷ It emerged from bankruptcy protection in 2009, albeit 30 stores lighter, when the UFCW agreed to end its years-long campaign and the parties agreed to resolve the claims they had filed against each other, including claims filed with the Equal Employment Opportunity Commission alleging discrimination against Hispanic workers and with the National Labor Relations Board alleging unfair labor practices, in addition to a lawsuit filed by Bashas' against UFCW alleging defamation.¹²⁸

In the end, the UFCW had failed to unionize a single Bashas' store, obtain the card check it allegedly wanted, or call a single vote.¹²⁹ Meanwhile, Bashas', which just years earlier was named Progressive Grocer's Retailer of the Year and Best Place to Work,¹³⁰ nearly went out of business.¹³¹

RESTRICTIONS ON SECONDARY ACTIVITY AND NEW LEGISLATION

Until passage of the Taft-Hartley Act in 1947, unions seeking to organize a business or force concessions during contract talks were not limited to strikes, pickets, or boycotts against just the targeted company. Instead, they could unleash disruptive tactics on any employer doing business with the target. For example, if a union were seeking to organize a large retail business, it could decide to shut off the retailer's access to products by picketing trucking firms that delivered these products, or it could launch raucous protests at banks that lent money to the retailer. Likewise, it could boycott any company that performed maintenance on the retailer's facilities. The goal was to pressure these unrelated employers into urging the targeted retailer to give in to union demands so

... there are some members of Congress who wish to return to pre-Taft-Hartley days and allow unions to once again target businesses with no role in a labor dispute, thereby unleashing chaos across whole economic sectors.

that they would not see their own businesses disrupted. Alternatively, the lack of supplies, capital, and maintenance could force the targeted company to its knees much faster. Either way, the collateral damage to employers that had no actual involvement in a labor dispute could be substantial.


The Taft-Hartley Act prohibited these activities by amending the NLRA. Under Section 8(b)(4) of the

amended law, it became an illegal unfair labor practice for a union to pursue secondary boycotts or other actions directed at parties other than the target employer with whom the union is negotiating or trying to organize.¹³² Similarly, Section 8(e) states the following:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void.¹³³

For more than 70 years, Sections 8(b)(4) and 8(e) have meant that the types of unsavory activities described in this report were supposed to be directed only at the employer with whom a union actually had a labor dispute. But there are some members of Congress who wish to return to pre-Taft-Hartley days and allow unions to once again target businesses with no role in a labor dispute, thereby sowing chaos across whole economic sectors.

The so-called Workplace Democracy Act, introduced by Sen. Bernie Sanders (I-VT) in May 2018, includes, among its many other harmful provisions,¹³⁴ language amending Section 8 of the NLRA by striking Section 8(b)(4) and repealing subsection 8(e).¹³⁵ Likewise, the Workers' Freedom to Negotiate Act, introduced by Sen. Patty Murray (D-WA) would strike Section 8(b)(4) and rewrite subsection 8(e) completely.¹³⁶ In lieu of the current Section 8(e) that prohibits secondary boycotts, the bill's new proposed Section 8(e) would ban employment arbitration agreements that limit class action lawsuits. The Murray bill euphemistically describes these amendments, which would



allow unions to unleash their tactics on what are, in effect, innocent bystanders, as intended to “repeal specific prohibitions on collective action and peaceful expression.”¹³⁷

The bottom line is that under both of these bills, 70 years of law would be undone. No longer would the NLRA serve to promote the free flow of commerce through stable labor-management relations, which is its overarching purpose. Unions would instead be given an unrestricted license to attack employers doing nothing more than pursuing business opportunities. Given the types of behavior that some unions have engaged in over the years, as described in this report, no responsible public official should want to grant such permission.

CONCLUSION

For years, unions have sought ways to evade the limits the NLRA imposes on their activities. The corporate campaign is one such vehicle, and these campaigns have often resulted in behavior reflective of an “ends justify the means” philosophy that tests the limits of legality. Now, however, some members of Congress want to remove the legal checks that constrain the tactics used in corporate campaigns to just the targeted company and give unions a license to sow disruption across the economy. Given what unions have already been able to do under existing law, such changes would seem most unwise.

ENDNOTES

- 1 “Union Officials Stress International Scope of Organizing, Bargaining Campaigns,” *Daily Lab. Rep. (BNA)*, at A-5 (Nov. 16, 1992).
- 2 A copy of the SEIU’s *Contract Campaign Manual* is available at Dkt. No. 1-8, Case No. 1:11-cv-00276-CMH-IDD (E.D. Va., March 17, 2011). For an excellent history and description of the corporate campaign see generally Jarol B. Manheim, U.S. Chamber of Commerce, *Trends in Union Corporate Campaigns* (2005), available at <https://www.uschamber.com/trends-union-corporate-campaigns>; see also Paul Jarley & Cheryl L. Maranto, *Union Corporate Campaigns: An Assessment*, 43 *Indus. & Lab. Rel. Rev.* 505, 506 (1990); Jarol B. Manheim, *The Death of a Thousand Cuts: Corporate Campaigns and the Attack on the Corporation*, 167 (2009).
- 3 The two bills are the Workplace Democracy Act, (S. 2810) (115th Congress) introduced by Sen. Bernie Sanders (I-VT) and the Workers’ Freedom to Negotiate Act, (S. 3064) (115th Congress) introduced by Sen. Patty Murray (D-WA).
- 4 National Labor Relations Act, 29 U.S.C. §151.
- 5 *Food Lion v. United Food & Commer. Workers Int’l Union*, 103 F.3d 1007, 1014 at n.9 (D.C. Cir. 1997).
- 6 *Sodexo, Inc. v. SEIU, et al.*, Case No. 1:11-cv-00276-CMH-IDD (E.D. Va., March 17, 2011).
- 7 Mallory Factor & Elizabeth Factor, *Shadowbosses: Government Unions Control America and Rob Taxpayers Blind* (2012).
- 8 Complaint, *Sodexo, Inc. v. SEIU, et al.*, Case No. 1:11-cv-00276-CMH-IDD (E.D. Va., March 17, 2011), Dkt. No. 1, at ¶ 10.
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 *Id.* at ¶ 2.
- 13 *Id.* at ¶ 11.
- 14 *Id.* at ¶ 12.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 *Id.* at ¶ 177.
- 21 *Id.* at ¶¶ 177-79.
- 22 *Id.* at ¶¶ 180-82.
- 23 *Id.* at ¶ 182.
- 24 “Union Officials Stress International Scope of Organizing, Bargaining Campaigns,” *Daily Lab. Rep. (BNA)*, at A-5 (Nov. 16, 1992).
- 25 Micha Gaus, “SEIU Settles Sodexo’s Racketeering Suit, with Organizing Gains Uncertain,” *Labor Notes*, <http://labornotes.org/2011/11/seiu-settles-sodexo%E2%80%99s-racketeering-suit-organizing-gains-uncertain>. (November 14, 2011).
- 26 *Contract Campaign Manual*, at 3-21.
- 27 Complaint, *National Federation of Independent Business v. Dougherty, et al.*, Case No. 3:16-CV-02568-D (N.D. Tex., September 8, 2016), Dkt. No. 1, at ¶¶ 23-30.
- 28 Jillian Kay Melchior, “SEIU Uses Federal Inspections to Target Houston Small Business,” *National Review*, <https://www.nationalreview.com/2014/03/seiu-uses-federal-inspections-target-houston-small-business-jillian-kay-melchior/> (March 24, 2014).
- 29 Any party may file an unfair labor practice charge with minimal evidence needed at the time of filing.
- 30 *Professional Janitorial Service of Houston, Inc. v. Service Employees International Union Local 5, et al.*, Plaintiff’s Original Petition and Application for Temporary Injunction and Permanent Injunction, Case No. 2007-27181 (District Court of Harris County, May 3, 2007), at ¶ 9.
- 31 *SEIU, Local 5 v. Prof’l Janitorial Serv. Of Hous.*, 415 S.W.3d 387, 402-03 (Tex. App. 2013).
- 32 *Id.*
- 33 *Id.*
- 34 *Corporate Campaigns and the NLRB: The Impact of Union Pressure on Job Creation Hearing Before the House Education and the Workforce Subcommittee on Health, Employment, Labor and Pensions* (2011) (written testimony of David Bego, President and CEO of Executive Management Services, Inc., Indianapolis, Ind.), available at <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=242129>.
- 35 *Id.*
- 36 *Id.*
- 37 *Id.*
- 38 *Id.*
- 39 *Id.*
- 40 *United States v. John Fidler, et al.*, Report And Recommendation Re: Defendants’ Motion To Dismiss Indictment, Dkt. No. 132, Case No. 1:15-cr-10300-DPW (D. Mass., Sept. 1, 2016).
- 41 Brian Amaral, “Teamsters Acquitted In ‘Top Chef’ Extortion Case,” *Law 360* (Aug. 15, 2017), available at <https://www.law360.com/articles/953231/teamsters-acquitted-in-top-chef-extortion-case>.
- 42 Associated Press, “Teamsters acquitted in ‘Top Chef’ alleged extortion case,” *USA Today* (Aug. 15, 2017), available at <https://www.usatoday.com/story/life/2017/08/15/teamsters-accused-extortion-top-chef-padma-lakshmi-acquitted/568540001>.
- 43 Ken Shepherd, “Padma Lakshmi, ‘Top Chef’ judge, threatened with racist taunts by Teamsters on picket line: Report,” *The Washington Times* (Aug. 14, 2017).
- 44 Lindsay Kimble, “Padma Lakshmi Testifies That She Was ‘Threatened’ By Teamsters In Top Chef Trial: I Thought ‘He Was Going to Hit Me,’” *People* (Aug. 7, 2017), available at <http://people.com/food/padma-lakshmi-testifies-top-chef-extortion-trial>.
- 45 David Robb, “Defense Rests In ‘Top Chef’ Teamsters Trial; Closing Arguments Set For Thursday,” *Deadline*, (Aug. 8, 2017), available at <http://deadline.com/2017/08/top-chef-teamsters-trial-defense-rests-closing-arguments-thursday-padma-lakshmi-1202144697>.
- 46 Lindsay Kimble, “Padma Lakshmi Testifies That She Was ‘Threatened’ By Teamsters In Top Chef Trial: I Thought ‘He Was Going to Hit Me.’”

- 47 *United States v. John Fidler, et al.*, Report And Recommendation Re: Defendants' Motion To Dismiss Indictment, Dkt. No. 132, Case No. 1:15-cr-10300-DPW (D. Mass., Sept. 1, 2016).
- 48 David Robb, "Defense Rests In 'Top Chef' Teamsters Trial; Closing Arguments Set For Thursday," *Deadline* (Aug. 8, 2017), available at <http://deadline.com/2017/08/top-chef-teamsters-trial-defense-rests-closing-arguments-thursday-padma-lakshmi-1202144697>.
- 49 *United States v. John Fidler, et al.*, Report And Recommendation Re: Defendants' Motion To Dismiss Indictment, Dkt. No. 132, Case No. 1:15-cr-10300-DPW (D. Mass., Sept. 1, 2016).
- 50 The Associated Press, "4 Teamsters acquitted in Boston in 'Top Chef' extortion case," *Boston Globe* (Aug. 15, 2017), available at <https://www.boston.com/news/local-news/2017/08/15/teamsters-acquitted-in-top-chef-extortion-case>.
- 51 This was a private and hitherto unpublished message sent by Unite Here Local 11 to a hotel client.
- 52 Id.
- 53 Id.
- 54 *MikLin Enters., Inc. v. NLRB*, 861 F.3d 812, 815 (8th Cir. 2017).
- 55 After the initial election, MikLin and the union settled. Under the settlement agreement, however, the union could redo the election within 18 months.
- 56 *MikLin Enters.*, 861 F.3d at 816.
- 57 Id.
- 58 Id.
- 59 Id. at 817.
- 60 Id.
- 61 Id.
- 62 Id.
- 63 Id. at 815-17.
- 64 In 2015, OUR Walmart split into two groups. The Making Change at Walmart campaign remains affiliated with the UFCW. OUR Walmart is now an independent entity.
- 65 *Wal-Mart Stores, Inc. v. United Food & Commercial Workers Internat. Union*, 4 Cal. App. 5th 194.
- 66 Making Change at Walmart, <http://changewalmart.org/> (last visited March 14, 2018). The footer of the Making Change at Walmart states: "Legal Notice: Courts have enjoined non-Associate UFCW agents from entering any Walmart property, except to shop, in Arkansas, Florida, Texas, Colorado, Ohio, and Maryland from entering inside stores. A court has enjoined non-Associate UFCW agents from entering the insides of stores in California to engage in activities, such as picketing, patrolling, marching, parading, flash mobs, demonstrations, handbilling solicitation, manager confrontations or customer disruptions."
- 67 *Wal-Mart Stores, Inc.*, 4 Cal. App. 5th at 197-200.
- 68 Id. at 199-200.
- 69 Id. at 197-200.
- 70 *United Food & Commer. Workers Int'l Union v. Wal-Mart Stores, Inc.*, 453 Md. 482, 489 (2017).
- 71 Tiffany Gabbay, "Anti-Walmart Flash Mob Turns Up at Store Demanding Pensions & Benefits for Employees...or Else," *The Blaze* (July 21, 2011), available at <http://www.theblaze.com/news/2011/07/21/anti-walmart-flash-mob-turns-up-at-store-demanding-pensions-benefits-for-employees-or-else>.
- 72 *United Food & Commer. Workers Int'l Union*, 453 Md. at 489-94.
- 73 *Toering Elec. Co.*, 351 NLRB No. 225 (2007).
- 74 Nathan Gorenstein, "Local 98's hardball tactics bruise city's image," *The Philadelphia Inquirer* (Feb. 10, 2002).
- 75 William Bender & Craig R. McCoy, "Electricians union's tactic for organizing suburbs: 'salting,'" *The Philadelphia Inquirer* (Nov. 1, 2016).
- 76 Id.
- 77 <https://www.nlrb.gov/search/cases/Hard%20Hat%20Services>.
- 78 *Hard Hat Services, LLC*, 366 NLRB No. 106 (June 12, 2018).
- 79 William Bender & Craig R. McCoy, "Electricians union's tactic for organizing suburbs: 'salting,'" *The Philadelphia Inquirer*, at A01 (Nov. 1, 2016).
- 80 Id.
- 81 *Joshua Keesee, et al. v. John J. Dougherty, et al.*, Dkt No. 1, Complaint, Case No. 2:16-cv-05422-MMB (E.D. Pa. Oct. 17, 2016).
- 82 Craig R. McCoy, Mark Fazlollah, and Dylan Purcell, "Dougherty's long-running feud at 3rd & Reed," *The Philadelphia Inquirer* (March 13, 2016).
- 83 *Joshua Keesee, et al. v. John J. Dougherty, et al.*, Dkt No. 1, Complaint, at ¶ 25, Case No. 2:16-cv-05422-MMB (E.D. Pa. Oct. 17, 2016).
- 84 Id. at ¶ 48.
- 85 Id. at ¶ 75.
- 86 *Joshua Keesee, et al. v. John J. Dougherty, et al.*, Dkt No. 8, Notice of Voluntary Dismissal, Case No. 2:16-cv-05422-MMB (E.D. Pa. Dec. 27, 2016).
- 87 Craig R. McCoy, Mark Fazlollah, and Dylan Purcell, "Johnny Doc and Local 98 face state grand jury probe of alleged threats, intimidation," *The Philadelphia Inquirer* (Aug. 7, 2016).
- 88 Alan Ohnsman, "Labor Group Says Tesla Plant's Worker Injury Rate Tops Industry Average," *Forbes* (May 24, 2017), available at <https://www.forbes.com/sites/alanohnsman/2017/05/24/labor-group-says-tesla-plant-has-31-higher-injury-rate-than-average/#4e7467423ba6>.
- 89 "Automaker Tesla Hit by Union Charges of High Worker Injury Rate," *Insurance Journal* (May 25, 2017), available at <https://www.insurancejournal.com/news/national/2017/05/25/452107.htm>.
- 90 Joseph Szczesny, "UAW Focuses on Safety in Tesla Organizing Effort," *Wards Auto* (May 30, 2017), available at <http://wardsauto.com/industry/uaw-focuses-safety-tesla-organizing-effort>.
- 91 Luke Stangel, "Tesla factory workers demand safety and pay data from board," *Biz Journals* (July 31, 2017), available at <https://www.bizjournals.com/sanjose/news/2017/07/31/tesla-factory-workers-safety-pay-data-uaw-union.html>.
- 92 David R. Baker, "Tesla workers allege sloppy chemical training at Fremont plant," *The San Francisco Chronicle* (Aug. 31, 2017), available at <http://www.sfchronicle.com/business/article/Tesla-workers-allege-sloppy-chemical-training-at-12165379.php>.
- 93 Alan Ohnsman, "Unionizing Tesla? Worker Says UAW Help Sought For Factory Pay And Conditions," *Forbes* (Feb. 9, 2017), available at <https://www.forbes.com/sites/alanohnsman/2017/02/09/unionizing-tesla-worker-says-uaw-help-sought-for-factory-pay-and-conditions/#66e783bb396f>.

- 94 David Dayen, "UAW Files Complaint Against Tesla, Claims Workers Were Fired For Being Pro-Union," *Fast Company* (Oct. 26, 2017); Daniel Wiessner, "Tesla hit by class-action lawsuit claiming racial discrimination," *Reuters* (Nov. 13, 2017), available at <https://www.reuters.com/article/us-tesla-lawsuit/tesla-hit-by-class-action-lawsuit-claiming-racial-discrimination-idUSKBN1DD2RS>.
- 95 David Dayen, "UAW Files Complaint Against Tesla, Claims Workers Were Fired For Being Pro-Union."
- 96 OSHA Regional Notice, Regional Emphasis Program for Safety Hazards in Auto Parts Industry—NAICS 3363XX (Motor Vehicle Parts Manufacturing), Directive Number DPL 14/08, Effective Jan. 15, 2014; see also U.S. Department of Labor, Ford, UAW, ACH-LLC Renew Partnership with OSHA (June 11, 2007), available at <https://www.osha.gov/news/newsreleases/brief/06112007>.
- 97 "UAW, Bernie Sanders, Danny Glover to Lead Historic Civil Rights Protest on Nissan Factory in Canton, Miss.," *UAW* (March 1, 2017), available at <https://uaw.org/bernie-sanders-danny-glover-lead-historic-civil-rights-protest-nissan-factory-canton-miss>; Noam Scheiber, "Racially Charged Nissan Vote Is a Test for U.A.W. in the South," *The New York Times* (Aug. 2, 2017), available at <https://www.nytimes.com/2017/08/02/business/economy/nissan-united-auto-workers-mississippi.html>.
- 98 "Report Outlines How Nissan in Canton Violates Workers' Human Rights Standards to Organize and Bargain Collectively," *Mississippi NAACP* (Oct. 8, 2013), available at <http://naacpms.org/report-outlines-how-nissan-in-canton-violates-workers-human-rights-standards-to-organize-and-bargain-collectively>.
- 99 Bernie Woodall, "Nissan rejects U.S. government offer to mediate Mississippi UAW row," *Reuters*, (Feb. 2, 2015), available at <https://www.reuters.com/article/us-nissan-uaw/nissan-rejects-u-s-government-offer-to-mediate-mississippi-uaw-row-idUSKBNOL624V20150202>.
- 100 Id.
- 101 *Pulte Homes, Inc. v. Laborers' International Union of North America, et al.*, Case No. 2:09-cv-13638-LPZ-MAR (E.D. Mich., Sept. 15, 2009), Complaint, Dkt. No. 1, at ¶ 15.
- 102 Id. at ¶ 16.
- 103 Id. at ¶ 17.
- 104 Id. at ¶¶ 18-19.
- 105 Id. at ¶ 21.
- 106 *Pulte Homes, Inc. v. Laborers' Int'l Union of N. Am.*, 648 F.3d 295, 303 (6th Cir., 2011).
- 107 *Pulte Homes*, 648 F.3d at 30; see also Complaint, Dkt. No. 1, at ¶¶ 22-28.
- 108 Complaint, Dkt. No. 1, at ¶¶ 25, 29.
- 109 Id. at ¶ 29.
- 110 *Pulte Homes, Inc.*, 648 F.3d at 303.
- 111 Id.
- 112 "Bashas' Family of Stores Files Lawsuit against United Food & Commercial Worker's Union; Hometown Grocer Cites Defamation, Intentional Interference with Business Operations," *Business Wire* (Dec. 18, 2007).
- 113 Id.
- 114 Id.
- 115 Bob Christie, "Bashas' bankruptcy exit delayed," *Tucson.com* (April 8, 2010), available at https://tucson.com/business/local/bashas-bankruptcy-exit-delayed/article_bdbb0d09-1840-5699-972e-7b5cbbf320c4.html.
- 116 "Bashas' Family of Stores Files Lawsuit against United Food & Commercial Worker's Union; Hometown Grocer Cites Defamation, Intentional Interference with Business Operations." *Business Wire* (Dec. 18, 2007).
- 117 "Hungry for Respect Study 'Nothing more than a Smear Campaign' Bashas' Proulx," *Progressive Grocer* (July 3, 2007), available at <https://progressivegrocer.com/hungry-respect-study-nothing-more-smear-campaign-bashas-proulx>.
- 118 "Why Bashas' Inc. employees are Hungry for Respect and calling for a voice at work," *Hungry for Respect* (June 2007).
- 119 Ray Stern, "In its war for new members, a labor union is using dirty tricks to turn Hispanics against Bashas," *Phoenix New Times* (Jan. 24, 2008), available at <https://www.phoenixnewtimes.com/news/in-its-war-for-new-members-a-labor-union-is-using-dirty-tricks-to-turn-hispanics-against-bashas-6430593>.
- 120 "WIC Issues Consumer Alert On Outdated Infant Formula," *Business Wire* (Aug. 14, 2007), available at <https://www.businesswire.com/news/home/20070814006266/en/WIC-Issues-Consumer-Alert-Outdated-Infant-Formula>.
- 121 Ray Stern, "In its war for new members, a labor union is using dirty tricks to turn Hispanics against Bashas."
- 122 Id.
- 123 "Bashas' Family of Stores Files Lawsuit against United Food & Commercial Worker's Union; Hometown Grocer Cites Defamation, Intentional Interference with Business Operations." *Business Wire* (Dec. 18, 2007).
- 124 Max Jarman, "Bashas', union halt 4-year-old-dispute," *The Arizona Republic*, at A1 (Dec. 5, 2009).
- 125 Id.
- 126 Elliot Zwiebach, "Union Drops Charges vs. Bashas," *Supermarket News* (May 25, 2009), available at <https://www.supermarketnews.com/retail-amp-financial/union-drops-charges-vs-bashas>.
- 127 Max Jarman, "Bashas', union halt 4-year-old-dispute."
- 128 Id.
- 129 Id.
- 130 *Progressive Grocer*, "Hungry for Respect Study 'Nothing more than a Smear Campaign': Bashas' Proulx," *Business Wire*, "Bashas' Family of Stores Files Lawsuit against United Food & Commercial Worker's Union; Hometown Grocer Cites Defamation, Intentional Interference with Business Operations."
- 131 Id.
- 132 National Labor Relations Act, 29 U.S.C. §§ 151-169.
- 133 National Labor Relations Act, 29 U.S.C. §158.
- 134 The Workplace Democracy Act would also expand the NLR's coverage, authorize card check in lieu of secret ballot elections, codify joint and several liability among joint employers, and increase penalties for employers that engage in unfair labor practices.
- 135 S. 2810, 115th Congress (2017-2018), the Workplace Democracy Act.
- 136 S. 3064, 115th Congress (2017-2018), the Workers' Freedom to Negotiate Act.
- 137 Id.



U.S. CHAMBER OF COMMERCE
Employment Policy Division

1615 H Street NW | Washington, DC 20062