SPECIAL REPORT

Rite Aid, Oliver J. Bell & Associates, and the Case for the Employee Free Choice Act

JOBS WITH JUSTICE

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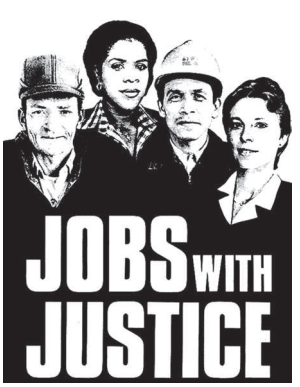

Jobs with Justice is nationwide network of individuals and organizations dedicated to promoting policies that will ensure more justice for working families.

IN THE WEEKS AND MONTHS AHEAD, Congress will debate the need to reform America's antiquated labor laws. Current laws have become so distorted that most employers are able to effectively deny workers their rights to collectively bargain through a union.

This report sheds light on the secretive world of union-busting consulting firms, showing how they exploit these outdated laws and policies to prevent workers from exercising their right to improve wages and working conditions through a union. The experience of 600 workers at the Rite Aid warehouse in Lancaster, California is a prime example of the way union-busting consultants work in concert with employers for this purpose. The decision by Rite Aid officials to hire Oliver J. Bell & Associates – a well-known union buster – is, unfortunately, typical of the way most employers respond when workers express interest in joining a union.

Reforming America's outdated and distorted labor laws is the best way to restore rights that workers have lost, and help working families make improvements that are urgently needed to restore justice and fairness in our nation's workplaces.

EXECUTIVE SUMMARY

Rite Aid, Oliver J. Bell & Associates, and the Case for the Employee Free Choice Act

This report analyzes the experience of 600 warehouse workers employed by the Rite Aid drugstore chain at the company's Southwest Customer Support Center in Lancaster, CA.

Our report covers a three-year period, beginning in 2006 when workers first decided to form a union, to the present time as workers try to negotiate their first contract with an employer determined to delay negotiations and decertify the union.

Since workers first decided to join the International Longshore and Warehouse Union (ILWU), Rite Aid has mounted a continuous, well-funded, and intensive anti-union campaign. The company has utilized both legal and illegal means to stop workers from establishing their union.

In April 2007, the National Labor Relations Board (NLRB) authorized complaints against Rite Aid for 49 violations of federal labor law.[1] Instead of facing a hearing, Rite Aid was allowed to settle the charges by reinstating two workers who were illegally fired for supporting the union, and posting a notice promising to obey the law in the future.[2] There were no punitive fines, no jail time for corporate executives, and no court order to hold company officials accountable. Rite Aid is now facing another round of charges for violating federal labor laws.[3]

Like most employers with a workforce seeking union representation, Rite Aid hired a professional anti-union consulting firm, Oliver J. Bell & Associates, to advise the company how to thwart the effort by workers to negotiate a fair contract in Lancaster. Oliver J. Bell & Associates is based in Austin, Texas and led by Oliver Bell, a "labor consultant" who has worked on numerous anti-union campaigns since the 1990s. Bell has founded a number of consulting firms, each specializing in helping employers remain "union free." While Bell's firm claims to offer employers seemingly benign information and advice, Bell is in business to attack workers who support unions and his firm employs individuals with a history of illegal and improper conduct that has been documented in NLRB proceedings.[4]

While Oliver J. Bell & Associates is in many ways a typical anti-union consulting firm, the history of the Rite Aid warehouse workers in Lancaster is exceptional because the employees have survived daily rounds of threats, discrimination, anti-union propaganda, and stalling tactics – all intended to frustrate the majority of workers who simply want union representation.

Since early 2009, Rite Aid has conspired with Oliver J. Bell & Associates to organize a small committee of warehouse workers whose stated goal is to "decertify" the union. While such company-sponsored anti-union groups are illegal, they are commonly used by labor consultants who advise clients how to skirt the law without fear of prosecution.

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[1] Alleged violations are outlined in Case Nos.: 31-CA-27920; 31-CA-28025; 31-CA-28026; 31-CA-28029; 31-CA-28031; 31-CA-28032; 31-CA-28033; 31-CA-28035; 31-CA-28093; 31-CA-28136; 31-CA-28142; 31-CA-28156.

[2] United States Government National Labor Relations Board Settlement Agreement in the matter of Rite Aid Corporation – Case Nos.: 31-CA-27920; 31-CA-28025; 31-CA-28026; 31-CA-28029; 31-CA-28031; 31-CA-28032; 31-CA-28033; 31-CA-28035; 31-CA-28093; 31-CA-28136; 31-CA-28142; 31-CA-28156.

[3] Case Nos.: 31-CA-28862; 31-CA-28992; 31-CA-29064; and 31-CA-29223.

[4] For example: Exelon Generation Company, LLC, 347 NLRB 815 (2006); Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154 (1995).

It is in this context of a continuing, company-funded, anti-union campaign to decertify and destroy the union that workers are now attempting to negotiate a union contract with Rite Aid officials.

The experience of Rite Aid workers in Lancaster, CA provides important insights into the state of America's labor relations laws and the need to reform those laws so that powerful corporations and consultants cannot continue to violate the rights of workers seeking to form unions and negotiate contracts.

This report reaches the following conclusions:

1. Existing labor laws are so ineffective and so widely ignored that employers – not workers – are effectively deciding whether or not employees will be represented by a union. In the case of Rite Aid, the company has employed a combination of legal and illegal means to continuously attack workers who support the union. And, while a majority of Rite Aid workers continue to support their union, the current law allows management a virtual free hand to interfere with the employee decision-making process concerning union representation.

2. Anti-union consulting firms, such as *Oliver J. Bell & Associates*, advise employers how to violate the spirit – and sometimes the letter – of labor laws on a daily basis. In some cases employees of the firms themselves also violate the law. However, typically, the offending employer and/or consultant faces few or no consequences – no punitive damages, jail time, or other punishment that might serve as a deterrent.

3. While the unlawful behavior of anti-union consulting firms is well known and has been extensively documented, these firms remain largely unregulated, unaccountable, and extremely lucrative. In the case of Oliver J. Bell & Associates, the firm has a documented history of involvement with labor law violations, but has never paid a dime in fines, or been threatened with jail for its unlawful activities.

4. Based on the experience of Rite Aid employees in Lancaster, the *Employee Free Choice Act* is an appropriate and necessary remedy to correct the widespread abuse and fundamental imbalance of power that now exists between employers and employees who seek to exercise their legal right to form a union and negotiate a contract.

5. Any increase of fines on employers who violate the law, as proposed in the *Employee Free Choice Act*, must be substantial and punitive in order to serve as an effective deterrent against employers like Rite Aid who have demonstrated a willingness to spend vast sums of money on anti-union consultants, and therefore could not be reasonably expected to be deterred by fines alone. For this reason, penalties including jail time for company officials and consultants who repeatedly violate the law should be considered.

6. The experience of Rite Aid workers, who have faced years of anti-union attacks and the refusal of their employer to negotiate a contract in good faith, validates the necessity of binding arbitration as a reasonable and appropriate remedy to assure fairness and prevent the endless delays and stalling that characterize most first contract negotiations.

7. Given the extensive, documented history of violations by Rite Aid and its anti-union consultants, and the inherent difficulty in enforcing labor laws in general, the use of a "majority sign-up" procedure would protect the rights of workers to decide for themselves if they want union representation – free from the employer threats and interference that dominate current procedures.

INTRODUCTION

Big corporations and the business lobby are portraying the *Employee Free Choice Act* as a serious threat to business as usual – and have called for the defeat of this labor law reform.

Working people, labor leaders, and union members across the country, however, consider the reforms long overdue. They argue that labor law has long been weighted in favor of employers, making it extremely difficult for workers to secure their rights to collectively bargain for better working conditions and a voice on the job.

In most organizing campaigns, employers violate the law – often with impunity – because the consequences of doing so are minimal. For example, 30 percent of employers illegally fire pro-union workers during union organizing drives.[5] The length of time it takes to bring an employer to justice – typically through a National Labor Relations Board hearing – and the relatively minor penalties imposed are far outweighed by the chilling effect the employer's actions have on the organizing campaign.

To defeat employees' unionizing efforts most companies engage the services of high-priced anti-union consultants to advise them on strategies and tactics to remain "union-free." And, even if workers succeed in unionizing despite employer opposition, in many cases they never get a contract. In fact, in 32 percent of cases where workers vote for union representation, they still lack a collective bargaining agreement a year after the election.[6]

This report describes an organizing campaign that took place at the Rite Aid distribution center in Southern California and the subsequent contract campaign that is ongoing at the facility. It also documents the role played by Oliver J. Bell & Associates, an anti-union consultant, in Rite Aid's efforts to prevent workers and their union from obtaining a collective bargaining agreement.

What's happening at the Rite Aid facility is not new nor is it unusual. The consultants working for Rite Aid have plied their trade for many years as hired guns for numerous corporations that seek to deny workers their right to have a union. The examples of these consultants' activities illustrate why comprehensive labor law reform is so urgently needed in this country.

Background on the Rite Aid Campaign

In April 2006, workers at Rite Aid's Southwest Customer Support Center in Lancaster, CA asked International Longshore and Warehouse Union (ILWU), Local 26 to help them organize a union for their workplace. The workers sought union representation as a means of addressing issues of job security, mandatory overtime, arbitrary production standards, extreme heat and cold in the facility, and a lack of respect on the job.

Over the next two years workers met, discussed solutions to problems at work, and spoke to their co-workers about the benefits of having a union. In response, the company attacked them, threatening, disciplining and even firing some employees. Rite Aid tried to convince the workers that their efforts to form a union were futile.

The two-year process to form a union was difficult and stressful for the workers, who faced daily opposition from the retail drug giant. In April 2007, the National Labor Relations Board authorized complaints against Rite Aid for 49 violations of labor law and was ready to take the company to a hearing before an administrative law judge. Rite Aid settled with the Board, rather than face a hearing. As part of the settlement, the company had

[5] Chirag Mehta and Nik Theodore, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," Center for Urban Economic Development, University of Illinois at Chicago, December 2005.

[6] Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," U.S. Trade Deficit Review Commission, 2000.

to rehire two union supporters it had illegally fired and pay them close to $40,000 in back pay. In addition, the company had to promise not to violate the law.[7]

Despite continuous harassment from the company, in March 2008 a majority of workers at the distribution center voted in a National Labor Relations Board election to join the ILWU.

In June 2008, a bargaining committee of workers elected by their fellow employees began contract negotiations with Rite Aid management. Progress has been very slow because the company has no real intention of negotiating a contract. As of August 10, 2009 more than 40 bargaining sessions have been held, but there are tentative agreements on less than half of the 43 articles. These articles pertain only to non-economic issues, such as seniority, non-discrimination and the location of union bulletin boards inside the plant. There has been no agreement on economic or health and welfare proposals.

Rite Aid claims it is bargaining in good faith as required by law. However, the company's recent hiring of a well-known labor consultant, Oliver J. Bell & Associates, calls into question Rite Aid's commitment to negotiating a fair contract with its workers. Since January, two Oliver J. Bell & Associates consultants – Manny Gonzalez and Bill Jonas – have been training managers, supervisors and non-bargaining-unit "leads" at the facility.

The ILWU has long contended that the purpose of this training is to assist the company in carrying out a campaign to decertify the union before a first contract is reached. The union believes this has been the company's goal since it lost the election over a year ago. The union's contention was borne out when a decertification petition was filed with Region 31 of the NLRB on March 27, 2009.

Prolonging the bargaining process is a common strategy among companies that lose union elections. As noted above, in almost one-third of cases where workers vote for union representation, there is no collective bargaining agreement after one year.

Rite Aid denies that it is stalling negotiations and explains that it has enlisted the services of Oliver J. Bell & Associates because "(t)he fact that management must work within the parameters of a collective bargaining relationship necessitates guidance from those with an expertise in that area." According to Rite Aid, the company is "always looking for ways to improve how we operate and manage."[8] However, a closer look at Oliver J. Bell & Associates' history of attacking unions illuminates Rite Aid's true motives for partnering with this firm.

Who Is Oliver J. Bell & Associates?

Oliver J. Bell & Associates is an Austin, TX-based labor-consulting firm. Both Oliver Bell, who founded the firm, and his wife Stacee Bell (also known as Stacee Pierson), work for the company. The firm has at least nine other employees, including Gonzalez and Jonas, mentioned above. Bell and his wife previously operated at least two other anti-union labor consultancies – Direct Labor Training Corp. and Global Labor and Employment Strategies, Inc.

Oliver J. Bell & Associates promotes itself as a neutral purveyor of labor relations training for corporate managers. According to the company's website, Oliver J. Bell & Associates has a "Pro-Employee/Pro-Employer" philosophy. "We are not an anti-union firm," the site states.[9]

In a filing to the Department of Labor the firm describes its services to one employer in the following way: "To inform employees of their right to support or not support a labor organization."[10] Although the company

[7] United States Government National Labor Relations Board Settlement Agreement in the matter of Rite Aid Corporation – Case Nos.: 31-CA-27920; 31-CA-28025; 31-CA-28026; 31-CA-28029; 31-CA-28031; 31-CA-28032; 31-CA-28033; 31-CA-28035; 31-CA-28093; 31-CA-28136; 31-CA-28142; 31-CA-28156.

[8] Written correspondence from Traci Burch, Rite Aid's Senior Director, Labor Relations and Labor Counsel, to Peter Olney, Director of Organizing, ILWU. February 24, 2009.

[9] Oliver J. Bell & Associates; http://oliverbell.com/company_overview.html

[10] Form LM-21, Receipts and Disbursements Report, filed March 2008 for the period 04/01/2007 – 12/31/2007.

purports to take a neutral position with regard to labor unions, its own statements indicate that Oliver J. Bell & Associates is anything but impartial.

"Our take on this is very simple. Employees don't vote unions in… they vote management out. Most union-free employers have worked, in good times and bad, to earn employee trust and confidence such that *employees deem unions unnecessary.* (Emphasis added) Employers with unions have breached employee trust at some point and, regardless of subsequent efforts, were not able regain employee confidence."[11]

The company goes on to say, "We focus on leader practices that will make a difference in the eyes of employees and managers and will minimize your exposure to *unnecessary outside interference*."[12] (Emphasis added). The message in these statements is that workers do not necessarily consider unions a positive alternative but, rather, simply the lesser of two evils. Oliver J. Bell & Associates clearly gears its services toward assisting its clients in developing union-avoidance strategies. These services include helping:

- "…identify unresolved issues that can cause your employees to look to others beside your leaders for solutions"
- "…your management team with positive behaviors to improve the workplace (instead of other behaviors that cause employees to look outside the company for relief)"
- "… put in place practices and policies that can make union and regulatory intervention unnecessary and uneventful…"[13]

[11] Oliver J. Bell & Associates; http://oliverbell.com/company_overview.html
[12] Oliver J. Bell & Associates; http://oliverbell.com/company_overview.html
[13] Oliver J. Bell & Associates; http://oliverbell.com/company_overview.html

Oliver J. Bell, Associates – A Long History of Anti-Union Activity

Despite claims to the contrary, Oliver Bell and members of his team at Oliver J. Bell & Associates have been involved in numerous anti-union campaigns over the years. The examples that follow involve a number of current Oliver J. Bell & Associates employees – including Bell himself – during stints at the Bell's former companies Direct Labor Training Corp. and Global Labor and Employment Strategies, and also at other union-busting firms, including The Burke Group and Labor Information Services, all of which specialize in attacking workers who try to form unions.

IBEW and Exelon Generation Co., LLC

In 2005, the International Brotherhood of Electrical Workers (IBEW) Local 614 lost an election at Exelon Generation Co. in Pennsylvania by a vote of 328 to 325. The IBEW filed both unfair labor practice (ULP) charges and Objections to the election.[14]

ULP charges and Objections included:

- Threatening employees with job loss and changes in their work hours and shifts if they supported the union;
- Requiring employees, against their will, to use vacation time, rather than unpaid leave, to attend NLRB hearings;
- Telling employees that selection of the union would be futile, including implying that the company would not bargain in good faith;
- Engaging in captive audience communications within 24 hours of the election and during the election; and
- Engaging in unlawful surveillance and electioneering.

On March 10, 2006, after a hearing on the Objections and ULPs an administrative law judge found that Exelon had committed unfair labor practices and also sustained six of the union's Objections to the election. The NLRB affirmed the judge's rulings, findings and conclusions and ordered that the election results be set aside and a new election held.[15]

The judge concluded that both members of Exelon management and the company's hired guns – Direct Labor Training Corp. consultants Oliver Bell and Manny Gonzalez – had violated the law. Specifically, with regard to Objections 2 and 3, alleging "…that Exelon unlawfully affected the outcome of the election and interfered with, restrained, and coerced employees by implying that the selection of the Union would be futile and that the Company would not bargain in good faith,"[16] the judge concluded:

[14] Exelon Generation Company, LLC, 347 NLRB 815 (2006).
[15] Exelon Generation Company, LLC, 347 NLRB 815 (2006).
[16] Exelon Generation Company, LLC, 347 NLRB 815, 830 (2006).

"…Respondent's consultants Gonzales[17] and Bell crossed the line into objectionable conduct. The clear implication of their statements to employees was that it would be futile to select the Union as they would only get what was in the Fossil contract[18] or worse. Gonzales reinforced this message of futility by stating that bargaining would start at zero, that it is probable that terms and conditions of employment would be worse after bargaining, and that if the employees voted in the Union, the company could take benefits away and the Union would have to negotiate to get them back." [19]

The judge went on to criticize Gonzalez and Bell for their conduct, which he concluded had tainted the union election process:

"Gonzales and Bell certainly refuted any statements by management to employees that collective bargaining was a give and take proposition and that anything was possible. As far as I can tell from this record, Respondent did not effectively repudiate the statements of the consultants and I find that their objectionable conduct could well have affected the outcome of the extremely close election."[20]

United Brotherhood of Carpenters and the Reno Hilton

In 1993 workers at the Reno Hilton Hotel in Nevada tried to exercise their right to establish a union with the help of the United Brotherhood of Carpenters. The workers were prevented from doing so due to the unlawful conduct of company management and their consultant, Manny Gonzalez, who is now employed by Oliver J. Bell & Associates. After the NLRB-supervised election the union filed unfair labor practice charges and Objections to the election.

In a decision issued on February 22, 1995, an administrative law judge found the company had committed numerous unfair labor practices and sustained a number of the Objections to the election filed by the union.[21] The NLRB affirmed the judge's decision and cited three additional violations, noting that "(I)n implementing its antiunion campaign, the Respondent (Reno Hilton) violated the (National Labor Relations) Act no fewer than 55 times, a number which, in itself, indicates a significant disregard for the statutory rights of its employees."[22] The judge ruled that, because of the unlawful behavior of management and the consultant, the election results should be set aside and a new election held.

Violations committed by the Reno Hilton included:[23]

- Soliciting grievances and implicitly promising to rectify them;
- Interrogating employees about their union sympathies;
- Threatening loss of benefits if workers voted for the union;
- Threatening that the hotel would close if workers supported the union;
- Threatening that pro-union employees could be fired if the workers voted to join the union;
- Enforcing the no-solicitation/no-distribution policy in a disparate manner, by denying pro-union workers the right to distribute their literature, while allowing anti-union workers the right to do so; and
- Coercing employees by indicating that the company would not bargain in good faith with the union.

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[17] In various NLRB documents, Manny Gonzalez is referred to as "Manny Gonzales." However, the web site of Oliver J. Bell & Associates lists him as "Gonzalez."
[18] The "Fossil" contract refers to a first-contract Local 614 had negotiated with Exelon's fossil-fueled generation plants in Pennsylvania.
[19] Exelon Generation Company, LLC, 347 NLRB 815, 832 (2006).
[20] Exelon Generation Company, LLC, 347 NLRB 815, 832 (2006).
[21] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154 (1995).
[22] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154, 1160 (1995).
[23] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154 (1995).

The judge also found other serious violations of the law, which included:[24]

- Threatening loss of employment opportunities in the hotel and casino industry if the union was voted in – in other words that pro-union workers would be "blacklisted";
- Creating an atmosphere of fear and violence by spreading unfounded rumors about union, officials, including rumors that union officials had vandalized vehicles belonging to anti-union workers;
- Providing an incomplete and inaccurate Excelsior list (the list of names and addresses of workers in the bar gaining unit);
- Appointing as an election observer an employee closely identified with the employer; and
- Conducting surveillance on union officials.

Bell associate Gonzalez, who at the time was working for The Burke Group, a notorious anti-union consulting firm, was part of the Hilton's team fighting the union.[25] According to testimony by David Burke, the firm's principle, the mission of The Burke Group was to assist company executives "on ways to defeat the union."[26] The judge found that Gonzalez had violated the law by soliciting employee grievances and implying that the company would remedy them if the workers voted "no" on the union.[27]

As these two examples illustrate, Bell and Gonzalez have been directly implicated in illegal activity as part of anti-union campaigns. In addition to personally committing labor law violations, Bell, Gonzalez and other employees of Oliver J. Bell & Associates have trained and advised managers of numerous companies in union-avoidance strategies and tactics. In some cases these managers also have violated the law.

United Steelworkers of America and Carpenter Technology Corp.

In 2004, Bill Jonas, an Oliver J. Bell & Associates employee who has worked closely with management at Rite Aid's Southwest Customer Support Center on its anti-union campaign, was engaged as an "independent labor consultant" to advise managers at Reading, PA-based Carpenter Technology Corp.[28] Carpenter Technology was fighting its workers' efforts to join the United Steelworkers of America. After the NLRB-supervised election in November 2004, the union filed unfair labor practice charges and Objections to the election.[29] In his decision, filed in August 2005, an administrative law judge found the company had committed unfair labor practices by:

- Threatening that employees would lose benefits, including the 401(k) plan and the employee stock ownership plan, if they voted for union representation; and
- Unfairly issuing a warning to a pro-union employee for distributing union literature off work time in a non-work area.

The judge's decision also upheld one of the union's Objections to the election, which was based on the threats related to loss of benefits, and ordered a new election. The NLRB upheld the judge's ruling.[30]

[24] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154 (1995).
[25] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154 (1995).
[26] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154,1165 (1995).
[27] Reno Hilton Resorts Corporation D/B/A Reno Hilton, 319 NLRB 1154 (1995).
[28] Carpenter Technology Corporation, 346 NLRB 766 (2006).
[29] Carpenter Technology Corporation, 346 NLRB 766 (2006).
[30] Carpenter Technology Corporation, 346 NLRB 766 (2006).

SEIU and the Jewish Home for the Elderly of Fairfield County

In 2003, Manny Gonzalez, at the time a consultant for Direct Labor Training Corp. (DLT), one of Bell's earlier companies, helped the Jewish Home for the Elderly in Fairfield County, Connecticut in its campaign to defeat its workers' efforts to join New England Health Care Employees Union, District 1199, SEIU (Service Employees International Union).

Again, an administrative law judge found the employer had committed numerous unfair labor practices, among them:[31]

- Maintaining overly broad solicitation and distribution rules that restricted employees' rights to engage in protected concerted activities;
- Telling employees that they could not talk about the union during work while permitting employees to discuss other non-work-related subjects;
- Creating the impression that employees' protected, concerted activities were under surveillance;
- Interrogating employees about their union activity and support;
- Threatening employees that the facility would close if they voted for the union;
- Granting a wage increase and promising additional wage increases if the employees voted "no" on the union; and
- Requiring employees to engage in anti-union activity.

The judge also concluded that there was validity to numerous Objections to the election, a number of which were also the basis for the ULP charges. In addition to those Objections, the judge found evidence supporting other Objections filed by the union, including those claiming that managers at the facility had violated the National Labor Relations Act (NLRA) during the critical period leading up to the election by:[32]

- Imposing more onerous working conditions on and denying a reference to one employee, a known union supporter;
- Terminating another employee, also a known union supporter; and
- Refusing to permit the union's election observers to work on the day of the vote, while allowing the Home's own observers to work.

In a December 2004 decision, the NLRB affirmed the judge's decision, set aside the results of the election, and ordered that the election be re-run.[33] The judge's decision contains references to Direct Labor Training Corp. (DLT) consultants, including Manny Gonzalez, holding meetings with employees during the period leading up to the election at the facility. Employees testified at the NLRB hearing, that Gonzalez misled them by presenting himself as a representative of the Labor Board. The judge found this testimony credible, stating in his decision, "I credit the Union's witnesses that the DLT representatives made statements and engaged in conduct that conveyed to the employees that they were 'from the labor board.'"[34]

Ultimately, the ruse Gonzalez attempted to perpetrate was unsuccessful because employees realized he was actively opposing the union. According to several workers who testified in the NLRB hearing, "Gonzalez only made negative comments about unions."[35]

[31] The Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069 (2004).
[32] The Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069 (2004).
[33] The Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069 (2004).
[34] The Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069, 1117 (2004).
[35] The Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069, 1117 (2004).

NNOC/CNA and Flagstaff Medical Center, Inc.

The Flagstaff Medical Center in Arizona provides another example of an anti-union campaign in which an Oliver Bell company – Global Labor and Employment Strategies, Inc. (GLES) – participated and in which the result of the NLRB-supervised election had to be set aside due to the employer's serious violations of labor law.[36]

Employees at the Flagstaff Medical Center decided to exercise their right to join a union and contacted the National Nurses Organizing Committee/California Nurses Association (NNOC/CNA). After workers reported experiencing widespread violations of labor law leading up to the NLRB election in June 2006, the union filed Objections to the election. Following a hearing, an NLRB Hearing Officer determined that high-ranking officials at the Medical Center, at more than 40 meetings, had indeed threatened employees with the loss of benefits, including annual merit increases, if they voted for the union.[37] In the Hearing Officer's report, she states, "A threat of loss of benefits is serious misconduct. The threats made at employee meetings affected almost all the employees. Thus I find it would interfere with employee free choice in the election."[38]

In February 2007 the Flagstaff Medical Center asked the NLRB to set a new election date as quickly as possible, but a pending decision by the Labor Board on a complaint filed by NNOC/CNA regarding the Medical Center's establishment of a sham union has prevented that happening. NNOC contended that a free and fair re-run of the election likely would be difficult to ensure considering the hospital had once again retained the services of Global Labor and Employment Strategies. "The re-hiring of the union-busting firm of Global Labor Employment Strategies does not indicate the hospital is in the mood to 'repair' any damages done due to its misinformation and deception," said NNOC/CNA's Director of Organizing David Monkowa.[39]

UFCW and Sweet Street Desserts

The participation of Oliver J. Bell & Associates consultant Manny Gonzalez in yet another anti-union campaign dating back to 1994 provides further evidence that he has made a career out of helping companies fight their workers' efforts to join unions.

Workers at Sweet Street Desserts in Reading, PA asked the United Food and Commercial Workers Union (UFCW) to help them form a union. Gonzalez, who at the time worked for Labor Information Services, an anti-union consulting firm, was retained by Sweet Street to train supervisors at the company.[40] Gonzalez reportedly conducted more than a dozen "voluntary" meetings with workers "for the purpose of providing information to employees on their rights under the National Labor Relations Act."[41]

While the description of Gonzalez's activities is innocuous enough, the assessment of company management's behavior is far from it. After the election, which the union lost, the UFCW filed unfair labor practice charges and Objections to the election. The administrative law judge's decision noted that the company had committed ULPs and also upheld some of the union's Objections based on these practices, including unlawfully:[42]

- Restricting distribution of union literature in non-work areas during non-work time;
- Suspending a union supporter;
- Interrogating employees about their union sympathies; and
- Implying loss of benefits if the employees unionized.

Once again, the result of the election was set aside.

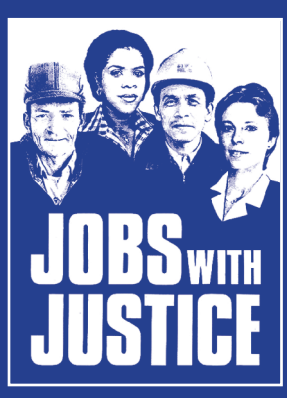
[36] Flagstaff Medical Center, Inc. Flagstaff, AZ, 28-RC-6448 (2007) (unpublished Decision and Direction of Election).
[37] Flagstaff Medical Center, Inc. Flagstaff, AZ, 28-RC-6448 (2007) (unpublished Decision and Direction of Election).
[38] Flagstaff Medical Center, Inc. Flagstaff, AZ, 28-RC-6448, 14 (2007) (unpublished Decision and Direction of Election).
[39] Ferguson, J., February 23, 2007. New Vote on FMC Nurse Union Delayed, *The Arizona Daily Sun*.
[40] Sweet Street Desserts, Inc., 319 NLRB 307 (1995).
[41] Sweet Street Desserts, Inc., 319 NLRB 307, 313 (1995).
[42] Sweet Street Desserts, Inc., 319 NLRB 307 (1995).

CONCLUSION

The experiences of workers at the Rite Aid distribution center in Lancaster, and of those at workplaces across the U.S., speak to the urgent need for significant labor law reform in this country. Current labor law is so weak and so weighted in favor of employers that company managers effectively get to make the decision about whether or not workers can form a union. Even when companies break the law, the penalties are so minimal they are considered just a cost of doing business.

Anti-union consulting firms like Oliver J. Bell & Associates, many of which have a long history of attacking workers and denying them their right to join unions, play a crucial role in companies' anti-union campaigns. In addition to advising employers how to violate the spirit of the law, these consultants often engage in illegal acts. However, again, because they face few or no consequences, their behavior continues unmitigated.

Company anti-union campaigns typically have a devastating and long-term impact on workers who try to exercise their legal right to form a union. Even in cases where the employer is brought to "justice," usually after months or years of legal procedures, the workplace is tainted. Any remedies imposed, including the order of a new election, are effectively useless, as workers often feel fighting for their rights and their union is just not worth the stress and the trouble. Effectively, they are denied their right to union representation. Labor law reform, such as the Employee Free Choice Act, while insufficient by itself, would go a long way toward reining in employers and restoring workers' rights.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