



Serravallo, V. (2012). Parallel Practices of Union Avoidance in Business and Academia during Union Representation Campaigns. *Workplace*, 20, 1-16.

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PARALLEL PRACTICES OF UNION AVOIDANCE IN BUSINESS AND ACADEMIA DURING UNION REPRESENTATION CAMPAIGNS

ABSTRACT: The strategies and tactics of academic administrators during union representation election campaigns by full-time faculty are described and compared with those of managers of private businesses. Data from private businesses and two northeastern research universities based on content analysis of workplace memoranda and home mailings, and from analysis of management-organized meetings, personal interactions and theatrics show strong parallels in union avoidance conduct. Case studies of this form of workplace control add empirical evidence of a hitherto neglected feature of administration in the “corporatized university,” and help develop critical theoretical perspectives on the restructuring of higher education.

“We can beat their union now or beat them later.”
—university legal counsel, 1985

In response to official unionization attempts by their full-time faculty, how do the actions of academic administrators compare with managers in private business? Scholars have provided thoroughgoing analyses of anti-unionization conduct by private business management and public administrators during union representation campaigns in the post-Wagner Act era, and have more recently studied such conduct for contingent faculty members.¹ The case of challenges to union drives of full-time faculty, however, has yet to be equally explored. Data of the present study evidence that while some contrasts are clear, there are strong parallels between the two spheres with respect to tactics, ideology and intensity: academic administrators have conducted anti-union campaigns with the near identical anti-union arguments, campaign devices and aggression that is documented in the actions of their private business counterparts. The union-avoidance drives in business and academe often appear transferable.

As in the sphere of private business during representation elections, no university’s anti-union campaign can guarantee a majority no-union vote. But, regardless of election results, it is the effort by academic administrators to dissuade the faculty that warrants explanation. While aggressive union-avoidance practices by business managers may seem to be a “natural” feature of opposing class interests in the workplace, such intensity would not seem at home in academia, for even given what has long been commonly identified as that institution’s increased use of entrepreneurial practices, it is not, with the possible exception of for-profit colleges, engaged in capitalist accumulation. The union campaigns by full-time faculty members examined in this study span the time period from the mid-1970s to the early 2000s, a period understood by researchers as marked by the restructuring of U.S. higher education. Critical theoretical orientations on this restructuring over the past three decades have focused on academia’s incorporation of business-like practices for entrepreneurial strategies, but college and university administrators’ strong efforts to block union drives of full-time faculty have not been explicitly examined by such perspectives. The present study attempts to apply the insight of these perspectives on this feature of academic administration.

Methodology

This study’s data on aggressive union avoidance in higher education are based on union campaign material, such as letters and announcements, and campaign tactics. Academic administrators include the highest officers, i.e.,

president, provost and dean, and lower-level positions, such as department chair. All of the written communication by the universities was presented and signed by the provost and president on university letterhead (even if legal counsel composed or assisted in the composing of the letters and memoranda). This material is from two northern public research universities whose full-time faculty members attempted unionization: “Thwarted University,” which experienced several unsuccessful union attempts that were initiated in the mid-1970s and continued until the mid-1990s, and “Victorious University,” which initiated a successful organizing drive in the early 2000s. In addition, e-mail and telephone interviews were conducted with some participants from both institutions, and questionnaires were mailed to the national headquarters of major unions representing college and university faculty and professional staff: The American Federation of Teachers (AFT), The National Education Association (NEA), and The American Association of University Professors (AAUP).

Data from industry are also mainly from primary research based on the author’s two-year personal experience of an unsuccessful union drive by medical claims approvers in a Metropolitan Life Insurance Company (Met Life) branch office in New York State (Serravallo, 1983). Existing data from the large literature on union avoidance conduct are also used.

The data concern workplaces that were seeking first-time union representation, and the focus is on the official union election campaign period, i.e., from the formal National Labor Relations Board (NLRB) announcement of the petition for union representation to the voting day. Thus, “union avoidance” refers to strategies and tactics by managers in specific workplaces during an official unionization campaign period to block the election of the union. To be clear, it does *not* refer to an industry-level political strategy nor to a general anti-union stance by an organization outside the context of an actual unionization drive at its premises. The two universities and Met Life conducted aggressive union avoidance. This is defined as persistent and assertive union avoidance. It may be exemplified by pointed anti-union communication, the systematic use of election delays, the formation of special committees and the heavy reliance on labor relations consultants or legal counsel. It may be nicely seen the audacious statement by Thwarted University legal counsel to the local press: “We can beat their union now or beat them later.”²

I: Shared General Tactics

Between 1998 and 2012 the number of organized faculty members in U.S. colleges and universities increased by 38% (or nearly 112,000 members), and almost one-half of this increase (46%) is due to newly-formed units. A majority (nearly 60%) of the professors in these new bargaining units created since 1998 have full-time status (Moriarty and Savarese, 2012; 2006). While data are not complete for abandoned or failed union attempts, it is clear that full-time faculty members continue to seek unionization in the current era.³ How do their academic administrators respond?

Mailed questionnaire responses from the three main unions in higher education indicate that upon NLRB notification of a union certification attempt, almost half of the colleges and universities since the mid-1960s aggressively challenged full-time faculty’s efforts to establish collective bargaining (Table 1). Two four-year northeastern public universities, one a “full research” institution and one a “Master’s level,” serve as case studies of these national trends. Primary focus is given to a content analysis of the written communication of the administrators, but most of the same typical union avoidance tactics practiced by private business since the mid-1970s were found:

1. employing labor relations consultants;
2. stipulated elections;
3. challenging authorization cards;
4. expanding the bargaining unit;
5. appointing front-line supervisors to execute the anti-union campaign;
6. organizing or legitimizing “vote no” committees;
7. distributing anti-union memos and mailings, including home mailings;
8. surface bargaining to resist the first contract if the union is voted in;
9. and employer-initiated union decertification.

TABLE 1: ADMINISTRATION CONDUCT

Overall Conduct	% of Cases
Support of Union ^a	0
Neutrality ^b	15
Nominal Opposition ^c	20
Aggressive Opposition ^d	45
using in-house, general legal services	“more”
using outside attorneys and/or consultants specializing in union avoidance	“many”
Changed Conduct:	Number
from support to opposition	0
from neutral to opposition	10
from opposition to neutral	0

Note:

^a openly expressed support for the union attempt

^b did not express an opinion, and did not discuss the union attempt with faculty except to provide necessary information by law

^c officially announced opposition to the union attempt, but otherwise mainly remained uninvolved; did not engage in a persistent campaign to stop the union; actions were obligatory

^d aggressively and persistently opposed the union attempt

Labor Relations Consultants and Stipulated Elections

When formally notified by the NLRB of the sufficient number of union authorization cards, most employers refuse to recognize the union and instead call for a union representation election (Mehta and Theodore, 2005). According to my survey data, about half of the colleges and universities demanded an election. Met Life and both universities successfully demanded union representation elections in spite of signed authorization cards from a large majority of employees and faculty members.

Seventy-five percent of businesses facing a unionization attempt employ labor relations consultants—a group that includes lawyers and management consultants—to design their anti-union campaign, if they were not already hired (Bronfenbrenner, 2000). As architects of the union avoidance operation they compose anti-union memoranda and coach managers in numerous ways. Attorneys provide the additional service of legal representation before the NLRB.⁴

Both universities studied here hired such professionals, as did Met Life.⁵ My informants in the top three faculty unions, however, did not provide raw numbers, but only stated that in their experience most colleges and universities employ the consultants and attorneys to orchestrate their vote-no campaign.

Challenges of Authorization Card Count and Bargaining Unit

A common first practice of management is to petition the NLRB for a re-count of the authorization cards, which may be followed by an attempt to expand the bargaining unit. Administrators in both universities and managers in Met Life conducted both of these legal tactics, and both were successful in expanding the bargaining units. In the case of Thwarted University, non-teaching librarians were included in the changed bargaining unit.

Use of Front-Line Managers

As one former labor relations consultant explains, it would be obviously hypocritical if the consultants and attorneys were directly involved in conducting the anti-union campaign because one of management’s dominant arguments is that the union is an outside, third party that does not have the interests of workers in mind (Levitt, 1993). Thus, the consultants

demand the cooperation of front-line managers to carry out the tactics they design. Moreover, since the floor-level managers know the workers the best, it is they who are used to conduct an important early (and illegal) tactic: to discern each worker's position on the union issue.

Bronfenbrenner (1994) found that one-on-one campaigning by supervisors occurred in nearly eighty-percent of representation election campaigns in business. This was the case for Met Life and both universities. In the case of the universities, it was the department chair and, in the case of Thwarted University where the bargaining unit was expanded to include non-teaching librarians, it was that unit's director, who personally executed the campaign face-to-face. For example, in a letter addressed to "deans, directors and department chairs," the provost of Thwarted University provided advanced copies of letters critical of unionization intended for the faculty—including his explicit rejection of the union—and with it he included these instructions:

Considering that the election ballots will be mailed out on February 15, only three weeks from today, I urge you to begin a dialogue with your faculty without delay. It is imperative that you encourage a full and informed exchange of views among all faculty, and that you emphasize how important it is that all eligible faculty vote.

Dialogue, however, was not sufficient. The provost's charge was to also compose letters according to faculty employment status:

I also urge you to write separate letters targeted to your full- and part-time faculties presenting your views on the issue of unionization. Assistance is available in drafting letters, and we can quickly have communications reviewed by legal counsel to ensure that they do not violate fair labor practices. (original emphasis)

To emphasize the importance of their personal influence, he concluded the letter with this:

We believe that personal contact is especially vital, in addition to letters, since faculty may not yet realize how great a stake they have in the election outcome.

Vote-No Committee

Bronfenbrenner (1994) found that forty-two percent of union representation elections were marked by the emergence of an organized group of workers that openly opposed the union. These committees of workers distribute vote-no memoranda yet claim to be independent of the employer. However, the vote-no committee at Met Life, calling itself "The Third Alternative," was found by the NLRB to have been organized and financed by the employer, which is a direct violation of the Wagner Act. As such, it led to a re-run election. A vote-no committee was established at both universities. At Thwarted University it called itself "Teachers for an Independent Faculty" (TIF), and distributed thirteen lengthy bulletins to the faculty and established a scholarship for students. The University legitimized TIF by referencing its work in official university memoranda, but neither the union nor faculty union organizers investigated the involvement of the university with this group's origins and practices. Based on my content analysis, however, TIF's claim of independence from the University warrants much suspicion.

Written Correspondence

The union representation election campaign for Met Life and Thwarted University occurred prior to the advent of electronic mailing. In those cases both managers and academic administrators made good use of memoranda at the workplace and home mailings: at least forty-one by the insurance company; seventeen by the university (excluding press coverage by university and local news sources, which include statements from managers and university administrators). Electronic mailings were heavily used in Victorious University. A more complete examination of the use of written correspondence is provided farther below.

Surface Bargaining and Employer-Initiated Union Decertification

Union representation was selected at Victorious University and rejected at Met Life and Thwarted University. If union representation is voted by the workers, however, employers continue to challenge the union by resisting collective bargaining for the first contract (Bronfenbrenner, 1994; Hurd and Uehlein, 1994). The Mediation and Reconciliation Service (2004) found that forty-five percent of newly certified unions had employers that successfully denied a first

contract. Administrators in Victorious University frustrated first-contract negotiations for nearly three years, after which time the contract was successfully negotiated.

Another tactic by business managers is to facilitate or force the decertification of an existing union. Union organizers at Thwarted University filed a successful unfair labor practice suit against the University based on evidence that the administrators orchestrated a decertification of a previously unionized medical unit within the school.⁶

Divergence in Tactics

There are effective business-management tactics that university administrators do not appear to employ. While eighty-two percent of businesses use captive-audience meetings (Bronfenbrenner, 1994), this tactic is not found in academia (which is undoubtedly due to fact that there are no audiences to be held captive in the academic labor process).⁷ Also, while there is a one in five chance that a worker will be illegally fired for supporting a union (Schmitt and Zipperer, 2007), my union informants were unaware of faculty members being so fired (though tenure and the tenure-track process make this tactic hard both to execute and to prove). Another powerful action, used by over fifty percent of businesses, is to threaten plant closure or relocation. Given its immobility, such threats have not been documented in the case of academia. Furthermore, a variety of creative actions common in business, such as vote no and vote yes artifacts (e.g., tee shirts and buttons) and theatrics (e.g., contests, temporarily shutting off machinery, use of expensive cars, pay envelope stuffers) are absent in academia.

On the other hand, a very effective tactic unique to private universities is to challenge the union drive by evoking the 1980 Yeshiva decision.⁸

Thwarted University argued for but was unsuccessful in its challenge based on Yeshiva. Another feature found in academia but very rare in business is debates and forums on the union election. University administrators in the two universities used their existing governance structures, i.e., academic senates, to allow for open debates on campus that included union supporters and union officials. This is a significant difference between business and academia, and one that strongly benefits the union. For, the Wagner Act grants employers the right to communicate their (anti-union) position but prohibits union organizing activity on company property during business hours. Thus, nearly all employees in business face the burden of accessing direct union information on their own after work. Met Life rejected the Union's requests for workplace debates.

II: Analysis of Union Avoidance Communications by Business Managers and Academic Administrators: Fear and Conflict

Analysis of written anti-union communications demonstrates similar language and nearly identical focus issues by business managers and university administrators. Their message is based on four major issues: unionization will mean strikes; unionization jeopardizes the organization's financial health; unionization creates adversarial relations; unionization will end individual, personal communications. Cohen and Hurd (1998) categorize these repeated themes as the discourse of fear and the discourse of conflict. The communication of fear is what is commonly associated with an anti-union campaign, and it is exemplified in the common tactics of business management to appeal to workers' economic vulnerabilities. It takes the form of threats of union-led strikes, plant relocation or shut down, the likelihood of the organization's loss of revenue, and the financial burden of dues.

The communication of conflict, on the other hand, concerns warnings of the transformation of day-to-day workplace social relations and organization into "a state of perpetual conflict if the organizing campaign succeeds" (Cohen and Hurd, 1998: 182). It appeals to workers' sense of occupational culture and occupational prestige. It is exemplified by management's depiction of unions as fostering adversarial relations, the outcomes of which are rigid and formal contracts; informal relations and open-door policies will supposedly be replaced with impersonal and bureaucratic norms of interaction as a matter of course.

Fear and conflict were communicated in both the insurance company and the two universities. The emphasis and the language, however, varied between the two industries. This may be explained by occupation-level differences, such as differences in power, pay and culture, and firm-level variations, such as differences in organizational mission. That is, the relatively high degree of autonomy faculty members have in their work is likely more important to them than their

financial ability to pay union dues. And, universities are not prone to relocate or shut down to best meet their goals of education, or at least not at all as likely as are private businesses. Accordingly, academic administrators emphasize the discourse of conflict.

Communication of Fear

Warnings of imminent strikes were frequently and pointedly expressed by both Met Life and the universities. Labor relations consultants have long understood the topic of strikes as an “emotional blockbuster” (Dougherty, 1968: 140). Over one-fourth (eleven) of Met Life’s one-page memoranda and letters were dedicated to or made reference to strikes. In the case of Thwarted University, two press accounts of a nearby strike by full-time faculty members totaling twelve pages, and three memoranda dedicated to or referencing strikes were distributed. The points made by both Met Life and Thwarted University were that strikes were the unions’ knee-jerk reaction to negotiation disputes, and they are not democratically decided. Both organizations made heavy use of the question-answer format:⁹

Met Life memo from the office manager:

Q: What happens if the Company and the union can’t agree on proposals during negotiations?

A: Perhaps the most unpleasant possibility is the union calling a strike in an effort to force the Company to agree to its demands.

Thwarted University memo from the provost:

Q: How can the union force the University to reallocate resources as promised in its platform?

A: If the University refuses to accede to union demands, the union may call a strike to attempt to force an agreement, as at [a regional university]

In both cases the union is not treated as a proper noun and capitalized.¹⁰ In both cases, the union forces demands through strikes. The undemocratic nature of union representation is also similar, though university communication is tempered:

Met Life memo from office manager:

Q: Who Calls a strike?

A: Union “helpers” probably say that employees vote on that. But what so often happens is that those employees who attended the “meeting” (and the union “helpers” and noisy people always do) decide—and the next thing you know you are out on the street with a picket sign.

Thwarted University memo from the provost:

We have serious doubts concerning the ability of any group advocating collective bargaining to represent the interests of the whole faculty.... A small group can determine the outcome for all faculty whether or not they are dues-paying members. This very situation has contributed to the devastating circumstances now at [regional university that experienced a strike].

Like the case of Met Life, administrators at Thwarted distributed newspaper articles on strikes to supplement and reinforce the themes of their previously distributed memoranda. Met Life distributed the “Diary of a Strike,” a four-page booklet composed of a collage of newspaper headlines arrayed as hand-written diary entries. The president of Thwarted University distributed an eleven-page newspaper magazine feature story on a strike at a nearby university. The caption of the newspaper article distributed by Thwarted University begins: “A bitter strike has poisoned the university.” Thwarted’s president introduced the article with an explicit threat, stating, “We remind you that the [union] at [the nearby university] is one of the unions seeking to represent you.”

One feature of Met Life’s presentation of strikes missing in Thwarted is the threat of strike violence. As this memo from the office manager states:

Q: Can an employee cross a picket line?

A: Legally, yes. If any of you have ever tried to cross a picket line, you are aware that frequently there is illegal picket line violence in an attempt by striking employees to prevent those who attempt to work from doing so.

And in a memo from the office manager under the title, “Something on the lighter side,” a cartoon was used:

“If I cross yer picket line will I get beat up?” one worker asks another. “Of course not! That’s old hat! It doesn’t happen anymore. But I would watch out for land mines if I were you!”

These were supplemented by the distribution of a 1500-word *Reader’s Digest* article reprint, “Labor Violence: A National Scandal.” I found no mention of strike violence in the two universities’ campaign. Additionally, Met Life posted throughout the interior and exterior of the building sixteen-by-eighteen-inch posters of collages of newspaper headlines of strikes. The posters were visible enough and their letters were large enough that sidewalk pedestrians phoned the Company to ask if there actually was strike.

Another common element in the communication of fear by Met Life and the universities is probable loss of operating revenue due to unionization: business loss for Met Life and retrenchments at Thwarted University. Here the use of fear is equally pronounced in both organizations:

Met Life memo from office manager:

Q: [sic] A union contract would give us more job security.

A: Real job security depends on everyone having steady work [like] a paycheck every week of the year. A union contract won’t get us any business or help us keep the policyholders we now have. Union trouble could scare away some policyholders and cause us to lose business. In the end, job security comes from satisfied policyholders. We take the chance of being involved in work stoppages or walking picket lines.

Thwarted University, letter from the chancellor:

Some union contracts have led to retrenchments; and under the rule of seniority junior faculty members, including women and minorities, can suffer.... In respect to private financial contributions, on which this University is unusually dependent, there is strong reason to believe that unionization would be harmful.

Thwarted University letter from the provost:

Would continuing union pressures in a time of relatively stable resources ultimately force us into retrenchment, with the consequent degradation of all our academic programs?

Thwarted University letter from the dean:

In my opinion, faculty unionization... will also make it harder to attract additional resources for growth in sponsored research funding and fund-raising efforts with individuals, corporations and foundations.

Additionally, fear was expressed by the University as the threat of losing superior candidates in both faculty and administration positions. During the union drive at Thwarted, for example, the University was in the midst of a presidential search:

Thwarted University memo by the provost:

The future leadership of this University will help determine the continuing growth of our institution’s stature and the environment in which our faculty pursue their intellectual and professional achievement. Even the possibility of faculty unionization will deter some candidates with outstanding credentials and experience from seeking the presidency and key academic and administrative positions within our University.

Thwarted University memo by the provost:

The University needs a president who will provide strong academic leadership. I believe that those among the candidates who are best qualified in that regard will be least interested in devoting their energies to working out a collective bargaining agreement with a newly unionized faculty.

Finally, Met Life issued a steady warning of the financial impact that dues and dues requirements would have for workers. The two universities gave far less emphasis on this. Slightly less than one-fourth of Met Life's written communication (six memos or letters) concerned or included some reference to the burden of dues. For example, stuffed inside our personally distributed pay envelopes the morning of the union election at Met Life was this note:

Stop! This is your last paycheck before election.

Look! There are no deductions for union dues, union fines or union assessments.

Listen! Keep it that way; don't let the union gamble with your money, your future.

Its written communication on this issue was strongly reinforced by means of its frequent formal and informal verbal communication. However, I found just two direct references to dues in just one of the universities' campaigns. Lacking the theatrical style of Met Life, Thwarted University used the question-answer memo format to randomly raise the issue of dues. This memo from the provost is an example:

Q: How much are union dues?

A: We don't know what the [Union] would assess, but we can provide dues at certain other colleges and universities for reference:... [dues rates in terms of percentage of salary are provided for three regional universities; dollar amounts are not given]

Thus, while university administrators discussed dues as part of the communication of fear, their treatment was perfunctory.

The Communication of Conflict

For Cohen and Hurd the second dominant message in business managers' vote-no campaign is the warning that under unionization, antagonism replaces harmony. It is important "because the adversarial relationship itself has an impact on undecided workers" (1996:181). Moreover, they believe that conflict arouses anti-union sentiment "especially in organizing campaigns among professional, technical and office workers." An examination of Thwarted University's written communication demonstrates a very heavy use of conflict communication. This discourse is also found in Met Life's written and verbal communication.

Met Life letter from office manager:

The election will determine whether or not we will work together.

Thwarted University letter from president:

In the upcoming faculty union election you will decide whether we continue to work together...

Met Life memos from office manager:

Now, we have the open-door policy and you are free to come in a talk with us. But if the union comes it would mean you would give up your individual freedom to a third party and the horse-trading of negotiations.

I hope all of you will take notice of how just the mere possibility of a union's presence complicates things for all of us. I ask you, if it is like this now, how do you think things will be if the union came between us at Met Life?

Thwarted University letter from the president:

My major reason for opposing the notion of collective bargaining, however, is my belief that it would of necessity lead to an adversarial relationship between the faculty and the administration and the consequent hardening and exaggeration of points of difference at the expense of reasoned solutions of problems that may arise.... One must believe that collective bargaining will surely alter, perhaps irreversibly, the traditional mode of collegial interaction which fosters the concern for the quality of academic programs.

Thwarted University letter from provost:

[S]tudies of campuses that have been unionized show some alarming tendencies: collegiality soon gives way to an adversary relationship between faculty and academic administrators, characterized as they are, under law, as “labor” and “management” (with students on the sidelines), with acrimony and suspicion becoming a serious part of the bargaining game.

According to an informant, the Victorious University provost sent a similar e-mail to the faculty arguing that collegial relations declined after the union was voted in at his former university. When his own staff worker from that same school challenged his statement, the provost responded, “I did not get paid to write a balanced piece.” According to the Union’s analysis of the provost’s document, it originated from a University sponsored anti-union workshop.

Thwarted University enhanced its communication of conflict by emphasizing the replacement of professionalism and collegiality with rigid labor-management roles. It made twenty-two explicit references to this in its written communications. Met Life made this appeal to occupational prestige by making invidious distinctions between its clericals and the janitors that the petitioning union represented. For example:

World Life memo from office manager:

[The Union] is comprised mainly of maintenance workers. The Union may well be appropriate for them, but we would no more expect to know their needs than they would ours.

Thwarted University letters from provost:

Labor unions have done much good in this country for the welfare of millions of Americans. I do question the desirability of the impact this kind of relationship would have on the concept of ourselves as professionals in a unique professional setting and on the many essential values that the collegial system has fostered so effectively both here and at other good universities.

[T]he election will determine whether we preserve the traditional process of institutional collegiality and faculty partnership in academic decisions, or whether we substitute for that system a more rigid and circumscribed structure under collective bargaining.

It is fair to ask what might happen to important values of the academic community and professional self-esteem under the procedures of collective bargaining where the agents of “labor” and “management” face each other across the bargaining table.

Summary

This comparison and contrast of anti-union campaigns in business and academia shows strong parallels in both procedural tactics and written communication. Procedurally, organizations in both spheres employed labor relations experts who began the union-avoidance effort at the earliest possible stage, i.e., they challenged authorization cards, demanded representation elections and expanded the bargaining unit. Use of front-line managers, legitimizing vote-no committees, surface bargaining and decertification initiations were also shared procedural tactics. Here, the architects of union avoidance understand the structural factors common to workers of all occupational categories and all industrial sectors.

The unique cultural features of those occupations and industrial sectors, however, are also well understood by the vote-no experts, and they tailor their campaigns to exploit these differences through the use of written communication. There is greater room for variations in tenor and substance even while the same issue is discussed. Professionalism and collegiality are held as the hallmarks of academe’s workplace relations, while in the case of clerical work the open-door

policy and “one big family” are stressed. And, while business ruin in the form of lost clients serves as fear for the clericals, it is the “excellence” of the university that is risked when effective leadership and funding is lost by the threat of unionization.

Overall, and some thematic variations notwithstanding, academic administrators have borrowed anti-union strategy and tactics practically wholesale from what private-business consultants and lawyers devised starting in the mid-1970s. The final section will consider this corporate emulation in light of some recent critical perspectives on higher education restructuring.

III. Explaining Academic Union Busting

University administrators have challenged faculty unionization attempts as early as 1918 (Cain, 2010). The business-management style, however, emerged by the mid-1970s, within a decade of the sharp rise in full-time faculty unionization from the mid- to late-1960s. By presenting administrators as stern anti-unionists who communicate fear and conflict, this union-avoidance approach directly undermines such traditional academic values as collegiality and the detached pursuit of truth. Or, as one pro-union faculty member at Thwarted University put it in a newsletter to the faculty:

It is galling to hear the Orwellian rhetoric of administrators who invoke “collegiality” while behaving in most uncollegial ways, and who hint darkly about the dangers of “adversarial” relations if the faculty unionizes, while treating faculty and legitimate faculty organizations as if they were enemies. (original emphasis)

Academic administrators could have rejected the corporate paradigm and discourse while still expressing their union-free preference in ways more respectful of or even consistent with academic traditions. But they did not. Why did they instead appear to embody the ways of their counterparts in private business; why did they appear to transform themselves into academic managers? Explanations include the influence of labor relations consultants, the perceived need to apply business management techniques to the “new economy” and fiscal crisis of higher education, and the interlocks between business and academia.

A. Labor Relations Consultants

University administrators may conveniently employ a consultant or legal firm specializing in unionization campaigns and thus entrust them with the job of halting the unionization attempt. Emerging and becoming a “union-busting industry” in the mid- to late-1970s, these firms market highly successful generic anti-union campaign packages that may be tailored to particular firms across various industries. The consultants work directly with provosts, deans and department chairs, for it is they, not the consultants, who actually execute the anti-union campaign; the consultants decline interaction with the employees lest they become an “outside party” like the union they warn about. During the campaign period the consultants intensively coach the administrators on labor law and unions. It is very likely that the consultants are the main or only source of information the academic administrators have on these subjects.

Given the zeal of the consultants’ anti-union campaigns and their close association with the academic administrators for up to two months—and in the case of Thwarted University, several years—and given the administrators’ experience of carrying out the campaign, academic administrators may internalize the business orientation as a consequence. For, it is unlikely that the use of labor relations consultants represents merely a one-time service the impact of which dissolves when the “union matter” is over and all returns to normal. There may be no return to normalcy because the organization likely creates new permanent structures to monitor the faintest signs of renewed organization drives so as to stop them before they take hold, such as new positions in personnel, new policies and new memberships to ongoing union-free workshops. Moreover, the business-style union avoidance busts the myth of collegiality and other traditional academic values and thus risks the radicalization of the faculty (Martin, 1998). The administration’s views become “galling to hear,” as the professor expressed it. In short, the consultant-endorsed business style of union avoidance may initiate a continual and perhaps escalating polarization that in turn grows dependent on a permanent union-avoidance administrative orientation.¹¹

It remains to be shown, however, if the anti-union administrative orientation is the cause or the consequence of employing the labor relations consultants' services. The growing research on higher education administration and policy suggests the use of the packaged campaigns is an expression, not the cause of a transformed academic administration.

B. New Economy, Fiscal Crises and the Perceived Need to Emulate Business

Green (2003) identifies a useful typology of administrative models competing in higher education. One is the professional (i.e., the traditional academic style of governance), and two are business types: traditional, or "machine," and flexible, or lean, post-bureaucratic "ad hococracy."

The traditional higher education style of governance is marked by relatively decentralized power structures and the more or less self-direction of the faculty and professional associations. While not extinct, it has been increasingly eclipsed by the two business models. For Green, higher education's adoption of the "machine," top-down bureaucratic management model since the 1980s has received the lion's share of attention and criticism by researchers. "A business approach to performance assessment, a market approach to distance learning, a more aggressive top-down managerial approach to university planning and organization, and an increasing reliance on (or even preference for) part-time or contingent faculty staffing arrangements" are major manifestations of the machine model (Green, 2003:197).

The "new economy" and the chronic state fiscal crisis appear to be the ultimate source of academia's adoption of this administrative model, given the preponderance of the research and the administrators' own beliefs (Barrow, 2010). Slaughter and Leslie (1997) and Slaughter and Rhoades (2004) have conceptualized higher education's relationship with the emerging political economy as "academic capitalism."

Academic capitalism refers broadly to higher education's growing reliance on entrepreneurial activities to generate revenues, generally manifested in commercializing research. These activities were adopted in an era of reduced state funding to higher education, but they were also facilitated by legislation allowing colleges and universities, like corporations, to treat their academic output, i.e., knowledge, as raw material to be protected by university patents, licenses and copyrights. Thus, the parallels with capitalist production emerge: academic labor creates knowledge that is "rendered alienable" (Slaughter and Rhoades, 2004:16) and therefore academic workers are alienated from the product of their labor; academic labor creates knowledge for exchange value; and academic labor is a factor of production whose costs must be controlled.

To accomplish the profit-oriented activities, Slaughter and Rhoades note, in addition to many other transformations, the rise of an "expanded managerial capacity" of colleges and universities. In part this refers to additional administrative tasks concerning schools' investments in and revenues from research and marketing structures. But, perhaps what is directly related to management-labor relations per se is that the "expanded managerial capacity is also directed toward *restructuring faculty work to lower instructional costs...*" (Slaughter and Rhoades, 2004:1; emphasis added). Likewise, Barrow (2010) identifies the academy's perceived need of a "larger and more coercive administrative apparatus:"

[H]igher education administrators who [monitor academic labor rather than create educational values] increasingly seek to regulate that labor to achieve greater efficiency, because they view it as a net cost to the organization, rather than the producer of its value. Thus, the illusory solution to the fiscal crisis in higher education is to monitor, regulate, and reduce the costs of intellectual production, but to do so requires an ever larger, and more coercive, administrative apparatus (321)

One manifestation of this administrative apparatus is the application of "flexible production" techniques of businesses. Academic capitalism reduces instructional costs by forming a flexible academic workforce composed of increasing numbers of contingent faculty, and by unbundling academic work whereby, for example, distance education and academic advising are taken over by non-instructional specialists and administrators.¹²

Slaughter and Rhoades stress the joint construction of the new profit orientation and the new structures to accommodate it by faculty as well as administration; academics were not simply corporatized from without (11). The "machine" model of business management was thus socially constructed in academia from the process of forming ties with business and the state to become integrated into the very knowledge-based economy and society higher education helped produce. It was not simply dictated from outside businesses forces, nor was it a defensive action to respond to a particular workplace crisis. A unionized faculty obstructs all that flexible production stands for, and in this case an aggressive anti-unionization stance is an embedded feature of the business model of academic administration.

Green's second business form, the post-bureaucratic "adhocracy," is marked by a flexible and innovative flattened hierarchy as theorized in the management literature of the 1980s promoting the reengineered organization. Using the Florida Gulf Coast University as an example, Green (2003: 199) provides some expressions of adhocracy:

The university was to use distance learning and high-tech marketing to deliver its courses to a far-flung population of predominantly nontraditional students. The faculty members involved in such efforts ... were to be deployed within a highly flexible adhocracy, with a strong emphasis on interdisciplinary teams and project management approaches. Full-time faculty members were to be hired on renewable multiyear contracts ... thereby offering the university greater flexibility in its staffing programs and initiatives.

In this model, the university claims to respond to the new economy and fiscal crises by means of a contracted, not expanded "managerial capacity."

Both the traditional-business and adhocracy-business models were practical choices made by academic administrators in the face of real financial problems, but the adhocracy model appears for Green to have been inspired by influential management and organizational theory books, including such classics as Warren Bennis' 1966 *Changing Organizations*, but especially those of the 1980s and 1990s, such as Michael Hammer and James Champy's 1993 *Reengineering the Corporation*.

Unionization is obstructive in both of these business models of administration, but this is explicitly so for the traditional-business form. It is here where the distinctions between administration and faculty are strictly maintained; administrators would have to face a unionized faculty, and they consciously resist this future. It appears best suited for the explicit and aggressive form of union avoidance. But in the adhocracy, where clear hierarchical distinctions are blurred by shifting, short-term and task-oriented interdisciplinary teams, the slow pace and rigid structures of union-mediated governance appear as hindrances to the faculty as well. As new hiring policies emerge (e.g., when contract replaces tenure) and new information technology is required, a more structural and impersonal process of union avoidance emerges.

Both Thwarted and Victorious universities evidenced a mixture of traditional higher education and traditional business forms of administration. The adhocracy management model that Green explains may promise useful explanatory powers for other cases of academic union avoidance.

C. Business-Academic Interlocks

The previous explanation for academia's business-style of union avoidance, whereby the university emulates traditional business management so as to facilitate academic capitalism, takes an institutional perspective. That is, academic capitalism emerges nationally from the networks colleges and universities create with a variety of non-profit organizations, for-profit businesses and government agencies, and from new organizations jointly formed out of these expanded networks. Drawing from this network approach we may identify a third explanation based specifically on ties that bind leaders of business with academic leaders. The focus here is not business domination in university boards of trustees, nor on a particular school's trustees' position on a corporate board. It is instead concerned with relatively new associations formed by business and academic administrators for purposes of national higher education policy formation. Slaughter (1990) conducted a detailed study of the industry-ivy interlocks in one such organization, the Business-Higher Education Forum (here on, the Forum). While her goal was to theorize the higher education policy-formation process, we may explore this organization for its consequences for union-avoidance orientations in academia.

The Forum is a higher education policy-formation organization created in 1978 by "far-sighted academic and corporate chief executives" for the purpose of providing "an opportunity for interchange among its members on matters pertaining to ... the common aspirations and needs of the business and academic communities" (in Slaughter, 1990:20). Membership is by invitation only. Slaughter based her study on the Forum's membership in 1983.

Slaughter found that Forum membership in that year was composed of approximately 40 chief executive officers of business, 90 percent of whom headed U.S.-based multinationals ranked in the top 200 of the Fortune 500, and 40 presidents of postsecondary institutions, over half of whom were presidents of highly-ranked research universities, and another 20 percent presided over highly selective liberal arts colleges and universities. Many of the corporate heads are members of domestic economic policy discussion groups, such as the Committee for Economic Development, the Business Roundtable and the Conference Board. She found that Forum members that year sat on the boards of 107 corporations. Over half of the 40 academic Forum members (55.2 percent) sat on at least one corporate board of

trustees. In total, the academic leaders sat on the boards of forty-one corporations. Most of the corporations on whose boards they served were industrial or financial corporations.

Unsurprisingly, Slaughter found, many shared backgrounds of the business and academic members:

Overall, the social-class background and leadership experience of corporate and university leaders were remarkably similar.... In general, both sets of leader seemed to be the sons and daughters of the middle or upper middle class, attended college at rather undistinguished institutions, and graduate school at more exclusive ones. The [business] CEOs usually made their careers in one or two companies, the [university] presidents at three or more universities. Most shared responsibility for managing major social institutions other than their own, with corporate leaders serving as university trustees and university presidents sitting on corporate boards.... However, what is most remarkable about their activity is the degree to which each set of leaders regularly participates in the routine business of the other” (63-64).

She concludes that Forum data show “leaders of two sets of central social intuitions who appear to be connected closely to each other’s institutions...,” and that the Forum provides “enough attachments to argue for shared opportunities for social intercourse that might facilitate policy formation in settings outside of corporations” (72). If that is true, then that same “opportunity for social intercourse” may facilitate the diffusion of the business model of management within which aggressive stands are accepted as legitimate means to avoid faculty unionization. In this business-academic interlock approach, we may explain academic administrator’s business-like style of union avoidance as emerging from their close and enduring interconnections with the corporate community. Regarding the two universities studied in this paper, the president of Thwarted University served as Chair of the Forum for two years, and Victorious University is indirectly represented in the Forum (in 2011) due to its membership in the Association of Land-Grant Universities, whose president is a Forum member.

Many students of change in higher education deplore the academy’s emulation of business and encourage faculty members to assert traditional academic values through organization and unionization (e.g., Barrow, 2010; Clawson, 2005). Evidence from this case study serves as notice to the probable aggressive opposition to such efforts. And, while the foregoing reflection cannot confirm any one or more explanations for academia’s business-style of union avoidance, it does suggest that stern resistance to organizing efforts is expressed in the particular organization but is forged in new national networks of universities, businesses and government that confront wider crises of the so-called knowledge-based economy.

ENDNOTES

1. In the framework of labor law, the union representation election culminates in the secret ballot language that asks voters to choose between union, yes or union, no; it does not offer a choice between, say, “union” or “employer.” Thus, employers who seek to remain union-free must necessarily engage in an anti-union campaign first and foremost, rather than simply emphasizing a pro-company stance. Some of the major works on union avoidance during election certification campaigns in business that have emerged since the mid-1970s include: Bronfenbrenner, 1994; Dickens, 1983; Freeman and Kleiner, 1990; Hunt and White, 1982; Kaufman and Stephan, 1995; Lawler and West, 1985; and Weil, 1976. For the case of contingent faculty, see Bronfenbrenner and Juravich, 2001; Entin, 2005; Lafer and Gordon, 2003; Lee et al., 2004; and Scheper, 2005.

2. Aside from specific union representation elections, aggressive anti-union efforts by university administrators are found in the policy-planning process at the state level, as exemplified by the Inter-University Council of Ohio that initiated and articulated that state’s 2011 legislation rescinding bargaining rights of unionized faculty (Schmidt, 2011).

3. Telephone discussions with officials of the AAUP, AFT and NEA

4. Bronfenbrenner’s data are nation-wide. In a study focused on Chicago-area employers, Mehta and Theodore (2005) found that eighty-two percent of employers hire labor relations consultants. Kaufan and Stephan (1995), Levitt (1993) and Logan (2002) provide detailed accounts of the tactics these groups use; Kaufman and Stephan’s study compares and contrasts in more detail the roles of attorneys and consultants.

5. According to my informant's estimate, Victorious University paid \$500,000 for its anti-union expertise, \$250,000 per year. While the University's state law limits money used for legal services in labor relations to \$125,000 per year, Victorious hired a member of the firm as a university employee to avoid the dollar limit.
6. Nationally, twenty-five unionized private colleges and universities were decertified in the years just after the 1980 Yeshiva decision that found faculty members at this private university to be managers and thus excluded from Wagner Act rights to unionize. As of yet this large-scale elimination of the unions has not been studied.
7. But, Victorious University instituted "brown bag lunches" that may be academia's closest approximation of the captive-audience talk. It organized seven informal talks in which University experts discussed financial matters via colorful charts and graphs. All administrators attended all of the talks, and they personally greeted all attendees (the number of which was very, very small).
8. This Supreme Court five-to-four decision found that the full-time faculty members were part of management and not employees, and thus not covered by the Wagner Act.
9. Labor relations consultant, Marty Levitt, explained the origins of the question-and-answer memo in his anti-union efforts in private business: "Of course, no employee had asked a thing. I had made those questions up, a fact of which [management] might or might not have been aware. As controller of information, I regulated not only what the employees were told, but when they were told it, by whom, and in what form. I certainly wasn't going to wait for a bunch of cooks and maids to ask the right question at the right time in the right way. With cunningly worded answers to contrived questions, I presented collective bargaining as a protracted, risky, and possibly futile process and warned employees that 'unions have been known to trade away whatever it takes' to win costly little plums for themselves" (1993: 178).
10. Levitt (1993: 58) shares the advice he received from an accomplished labor relations consultant, Phil Lederer: "He recited a few simple rules: Keep the letter simple by addressing only one subject and limiting it to one page; make it readable with clever word play; emphasize strategic words and phrases with capital letters and underlines; never capitalize the name of the union; write the way you talk."
11. This predicament may expand Barrow's (2010) notion of the rationality crisis in higher education wherein the strong focus on formal rationality, in this case the university's emphasis on the means to a union-free workplace, becomes substantively irrational. That is, the university's need to form and maintain new non-teaching and non-research structures of social control drains finances and spurs the rise of conflictual workplace relations that not only inspire future organizing but also hinder the two central goals of higher education, viz, teaching and research.
12. Some (e.g., Waugh, 2003) note that such non-academic, professional administrators (and many academic administrators, too) are increasingly recruited from business, and see this as a source of academia's growing business style of administration. Thus, we might consider tracing business-style anti-unionization to these newcomers. Yet, while professional administrators from the business world are more likely to employ business styles, the fact that they are hired by existing administrators suggests a pre-existing business orientation.

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