

Excerpt from:

## The Union Avoidance Industry in the United States

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### **3. Union avoidance law firms**

In recent years, as the US system of union recognition has become vastly more legalistic, management law firms have played an even more important role in the union avoidance industry than have consultants (Kaufman and Stephan 1995). In the 1970s, large law firms such as New York-based Jackson Lewis, Chicago-based Seyfarth Shaw, San Francisco-based Littler Mendleson, Nashville-based King & Ballow, Atlanta-based Fisher & Phillips, New Orleans-based Kullman & Lang, and Greenville, South Carolina-based Ogletree Deakins became the nation's first law firms to conduct aggressive union avoidance campaigns (*National Law Journal* 1979; Thorner 1980). Prior to the 1970s, this type of work had been conducted largely by consultants rather than by law firms. Lawyers are much less likely than consultants to conduct 'direct persuader activity' (i.e. have face-to-face contact with employees), and, thus, large law firms often work closely with consultants that are known for conducting persuader activity. Union avoidance law firms have grown enormously in size over the past few decades. Seyfarth Shaw's labour and employment law section, for example, employs 300 attorneys (out of a total of 600). Many lawyers who specialize in union avoidance have previously held positions with the national or regional offices of the NLRB. Although he lacked formal legal training, Nathan Shefferman headed the Philadelphia office of the pre-NLRA labour board, and LRA employed lawyers who had previously worked for the NLRB.

Described by one AFL-CIO official as the 'devil incarnate' (Braverman 2002), Jackson Lewis is one of the oldest and largest law firms specializing in union avoidance. The firm employs 378 attorneys in 23 offices throughout the country, and publishes several newsletters (including one devoted entirely to union avoidance, *union kNOw*). Jackson Lewis lawyers have written dozens of papers on how to remain union free. In 1972, Jackson Lewis partners Robert Lewis and William Krupman published the union avoidance handbook, *Winning NLRB Elections*, which, now in its fourth edition, is probably the best-known guide to defeating organizing campaigns (Lewis and Krupman 1997). Jackson Lewis runs union avoidance seminars throughout the country, which typically last two to three days and cost over US\$1,000 to attend. In the 1970s and 1980s, its lawyers appeared at hundreds of seminars alongside other union avoidance 'gurus', such as psychologist Charles Hughes and lawyer Alfred DeMaria. Calling itself 'management's number 1 choice for union avoidance training', the firm uses its seminars to solicit new clients, stressing that 'militant organizing unions' such as SEIU are targeting firms in hitherto union-free sectors of the economy.

According to its web site, Jackson Lewis has placed 'a high premium on preventive strategies' for over 45 years, and has 'assisted many employers in winning NLRB elections or in avoiding union elections altogether'. Jackson Lewis lawyers charge US\$200–300 per hour for their services, and their campaigns frequently cost between tens of thousands to several million dollars. The firm's clients have included several of the nation's largest and best-known

corporations (McManus 1997; Rudmin 2004). Between 70 to 80 per cent of the firm's practice consists of employment-related litigation. The firm has been involved in several campaigns involving allegations of unfair labour practices, such as the infamous *New York Daily News* campaign in the mid-1990s. As part of an industry that profits from promoting conflict in labour-management relations, Jackson Lewis, in common with many union avoidance firms, has used militant anti-union rhetoric when marketing its services to employers. It has encouraged employers to treat union organizers like they would treat a 'contagious disease' and to inoculate their employees against the 'union virus' (Jackson Lewis 2003). Since 2001, the firm has been running seminars titled, 'Union Avoidance War Games'. Alongside a graphic of a bomb dropping, the seminar brochure warns employers not to be 'lulled into a false sense of security — *this is war*'. It states that participants will experience 'first-hand the *battlefield conditions* of union organizing', and suggests that, when dealing with the union 'threat', 'War is hell . . . pful' (Jackson Lewis 2001).

London-born lawyer, Louis Jackson, formed the firm together with New York-born Robert Lewis in 1958. According to one veteran labour arbitrator, Jackson and Lewis were 'anti-union from the start. And they win' (Braverman 2002). Jackson learned his union avoidance trade with Nathan Shefferman's LRA, heading the firm's New York office. After it became the subject of congressional investigations, Jackson left LRA in 1957 and quickly recruited several of LRA's consultants, including his New York assistant, Robert Lewis, and its client base. The firm added two additional partners, Thomas Schnitzler and William Krupman, in the 1960s and 1970s (Thorner 1980). Like many union avoidance firms, Jackson Lewis expanded significantly in the 1970s and 1980s, a period when employers aggressively opposed efforts to organize non-union workplaces, rolled back union gains and, in some cases, unloaded existing unions. The decisions of the Reagan NLRB in the 1980s expanded both the scope for employer campaigns and the influence of union avoidance law firms such as Jackson Lewis (Brudney 2005a; Coleman 1987; Flynn 2000; Gross 1995: 242–77). One of the nation's first law firms to specialize in union avoidance, Jackson Lewis conducted hundreds of campaigns at hospitals and nursing homes in the 1970s and 1980s, and quickly developed a reputation for no-holds-barred campaigns (*National Law Journal* 1979; Thorner 1980). In more recent years, the firm has run union avoidance campaigns in, among others, the non-profit, hospitality and gaming industries.

While conducting its healthcare campaigns, Jackson Lewis has been paid millions of dollars by employers who receive public funds. In the late 1970s, Jackson Lewis received hundred of thousands of dollars of state Medicaid funds to orchestrate union avoidance and strike-breaking campaigns at several nursing homes in New York State. As a result, the New York State Legislature held hearings into the public subsidy of union avoidance activities, but declined to pass legislation restricting the practice (New York State Legislature 1981). More recently, the Center for Cerebral Palsy in Albany, NY, another major recipient of state Medicaid funds, hired Jackson Lewis to fight a UNITE organizing drive. This campaign led indirectly to the enactment of New York State's 'labour neutrality' law in December 2002, which prohibited the use of public funds for the payment of union avoidance law firms and consultants. In May 2005, in a ruling that Jackson Lewis called 'an enormous victory for employers', a district court judge struck down New York's labour neutrality law as pre-empted by the NLRA (*Healthcare Association of New York State, Inc. v. Pataki, N.D.N.Y., No. 1:03-CV-0413, 5/17/05*).

In late 2004, Jackson Lewis made headline news when one of its clients, EnerSys, a multinational manufacturer of industrial batteries, accused the company of malpractice and of advising it to engage in an illegal anti-union campaign (Greenhouse 2004). After an eight-year campaign against the International Union of Electrical Workers (IUE) at its Sumter, South Carolina battery plant, the company agreed to a US\$7.75 million-dollar settlement with the union. Federal officials had accused the firm of committing 120 labour law violations. According to the IUE, Jackson Lewis was 'pretty much running the plant' when management sacked union supporters, illegally assisted a decertification campaign, fired supervisors unwilling to carry out illegal activities, improperly withdrew union recognition and moved production to non-union plants in retaliation for union support. The company had paid Jackson Lewis US\$2.7 million for its services. The EnerSys case has provided a rare insight into the behind-the-scenes role of union avoidance law firms because the company revealed detailed information about Jackson Lewis's campaign (Thirteenth Judicial Circuit, State of South Carolina 2004). At the end of Jackson Lewis's eight-year campaign against the IUE, one ex-EnerSys employee stated: 'After all this . . . I don't think you could pay the people here to join a union' (Greenhouse 2004).