



# U.S. Anti-Union Consultants: A Threat to the Rights of British Workers

**John Logan**

Employment Relations and Organizational Behavior Group,  
Department of Management,  
London School of Economics and Political Science

## Introduction

Over the past three decades, U.S. employers have conducted what Business Week has called “one of the most successful anti-union wars ever” with spectacular results – private sector union membership now stands at just 7.5 percent, and there are now between 50 million and 60 million Americans who say that they want union representation but are unable to get it. But employers have not conducted this offensive alone -- so-called “union avoidance consultants” have been at the epicentre of the sustained assault of unions and collective bargaining. They have conducted thousands of no-holds-barred counter-organizing campaigns – which have frequently been marred by allegations of unfair management practices – and have encouraged American employers to view attempts by their employees to organize as a “declaration of war” or an “attack on your company.” The overwhelmingly majority of US employers recruit outside consultants when confronted by a union organizing campaigns. Many firms have internalized the extreme anti-union attitudes of the consultants and adopted as their own the consultants’ tactics and strategies, while large anti-union firms have developed sophisticated in-house union avoidance programs. Anti-union consultants are the perfect poster children for a system that encourages American employers to treat with disdain their employees’ right to form unions and bargain collectively, and they are now seeking to export their attitudes and activities to several other countries, including the United Kingdom.

This report provides an overview of the impact of union avoidance consultants in the US and discusses their recent activities in the UK. The first section of this report summarizes the development of the union avoidance industry in the US in the past few decades, describes the activities of consultants during counter-organizing campaigns, provides brief details of two anti-union campaigns, and discusses the negative impact that consultants have had on the character of labor-management relations in the United States. The second section discusses the extent of anti-union activity in the UK and describes some recent UK organizing campaigns orchestrated by US consultants. It concludes with an analysis of why of how to stop this unwanted US import from flourishing in the UK. While recent consultant activity in the UK pales in comparison with the scale and intensity of consultant activity in the US, it nonetheless represents a development that should concern anyone who believes in workers’ right to organize and bargain collectively.

## Section 1: Consultant Activity in the United States

### 1.1 Development of the Union Avoidance Industry in the United States

A recent article in the Wall Street Journal reported that, in addition to the problems of the disappearance of unionized jobs, intense employer opposition, weak legal protection, and bad PR, unions are facing a “new” problem: sophisticated union avoidance consultants. Consultants have played a central role in the development and popularization of many tactics that have become standard features of every anti-union campaign, including customized videos and web sites, “vote no” committees, and campaign literature stressing the alleged futility of, and risks associated with, unionization. While sophisticated union avoidance consultants pose a serious threat to workers’ right to form unions, they are not a new problem. Modern-day consultants have operated in the United States since the immediate postwar decades. After the 1935 National Labor Relations Act (NLRA) established the right to join a union and bargain collectively and World War II solidified the position of the new industrial unions, firms seeking to operate union free could no longer use the bare-knuckle tactics of old. They needed more subtle and sophisticated tactics to forestall unionization, which anti-union consultants were able to provide. Until the 1970s, however, professional union avoidance consultants were small in number and consultant activity was not yet part of mainstream industrial relations. Most employers were reticent about hiring consultants. One consultant stated that employers “used to sneak to seminars on keeping your plant nonunion. They were as nervous as whores in church. The posture of major company managers was, ‘Let’s not make the union mad at us during the organizing drive or they’ll take it out at the bargaining table.’”

That mindset changed dramatically in the 1970s and 1980s, a period of significant expansion for the union avoidance industry, when most employers shed their inhibitions about recruiting anti-union consultants. The size of the consultant industry increased tenfold during the 1970s, as employers sought out firms that could help them defeat organizing campaigns or unload existing unions. Consultants orchestrated thousands of anti-union campaigns and developed reputations aggressive opposition to unionization, operating in areas of growing importance to unions: healthcare, white-collar employees, and smaller companies. In the 1980s and 1990s, union avoidance developed into a multi-million dollar industry and consultant campaigns became a standard feature of union organizing campaigns, with over two-thirds of American employers recruiting consultants when faced with an organizing campaign. Consultants often develop specialties in particular industries, such as healthcare, gaming, hospitality, publishing, non-profit and education, or in dealing with particular groups of employees, such as Latinos, African-Americans, or women. Today, consultant firms mostly operate on a contract-by-contract basis and range from locally based practitioners to large firms that employ dozens of consultants and operate nationally or internationally.

## 1. 2 Consultant Tactics During Anti-Union Campaigns

Consultants not only advise employers on how to conduct an anti-union campaign, but also develop, implement and monitor the campaign. They usually work behind the scenes, and train supervisors on how to interrogate, intimidate and terrify employees. They are effectively running the workplace for the duration of the campaign. Consultants use a variety of methods to convey their aggressive anti-union message -- impersonal communication mechanisms, such as anti-union newsletters, and videos, interpersonal mechanisms, such as group “captive audience” meetings (which, in any other walk of life, would be considered a form of unlawful imprisonment), and personal mechanisms, especially one-on-one meetings between supervisors and employees. While consultant campaigns have become significantly more sophisticated in recent years, their fundamental tactics have remained remarkably stable since the 1970s. The most significant innovations in recent years include the greater use of information technology (anti-union videos, DVDs and websites) and the greater diversity of consultant personnel.

Table One: Tactics Used in Employer Anti-Union Campaigns in US (from Lafer 2007)

	<b>Bronfenbrenner (1994)</b>	<b>Rundle (1998)</b>	<b>Bronfenbrenner (2000)</b>	<b>Theodore (2005)</b>
Hired management consultant	71%	87%	75%	
Held forced-attendance meetings	82%	93%	92%	87%
Number of meetings	5.5	10	11.41	
Mailed letters to homes	79%		70%	
Number of letters	4.5		6.51	
Distributed leaflets in workplace	70%		75%	75%
Number of leaflets	6		13.37	
Supervisor 1-on-1's	79%	76%	78%	98%
Promised improvements	56%		48%	59%
Granted unscheduled raises	30%	24%	20%	
Fired union supporters	30%	28%	25%	30%
Number fired		2.7	4.09	3.60
Percentage with fired workers not reinstated by election day	18%	27%	22%	
Bribes/Special favors		42%	34%	51%
Aided anti-union committee	42%	50%	31%	
Used anti-union videos			55%	
ULP charges filed against employer	36%		33%	
Complaint issued on at least some charges	19%		21%	
Threatened full or partial closing			51%	49%

**Sources:**

Kate Bronfenbrenner, "Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform," in Friedman, et al (eds.), *Restoring the Promise of American Labor Law* (Cornell University Press, 1994) 75-89. Kate Bronfenbrenner, *Uneasy Terrain, U.S. Trade De•cit Review Commission, 2000*. James Rundle, "Winning Hearts and Minds in the Era of Employee Involvement Programs," in Bronfenbrenner, et al. (eds.), *Organizing to Win: New Research on Union Strategies*, (Cornell University Press, 1998) 213-231. Nik Theodore, *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns* (American Rights at Work, 2005).

### 1.3 The Message of Consultant Campaigns

The principal objective of anti-union campaigns, according to one leading consultant, is to get the “anti-union message indelibly engraved upon employees’ minds.” Almost all consultants pay lip service to “positive labor relations” and improving communication between management and employees. But the actual content of consultant campaigns reveals that they are neither intended to convey the positive benefits of a union-free workplace nor to inform employees about their legal rights, as consultants claim. Rather, consultants design and implement their campaigns with the sole intention of scaring employees and intimidating them against exercising their right to organize. In the words of one consultant: “Our clients pay a lot of money.... If they want aggressiveness, they are entitled to it.” Consultant campaigns consistently stress the same negative issues: the precariousness of collective bargaining; the negative impact of unionization on job security; the futility of unionization; “union strikes”; and union coercion and invasion of employee privacy. One consultant firm advises that employer communications should repeat one simple, negative theme – such as union corruption -- because if you “say something over and over... people will believe it’s true.”

- Union Invasion of Employees’ Privacy

Employers tell their employees that they are required by law to disclose personal information about them and that the union will abuse this information to harass employees at home. What the employer fails to say is that it has already provided detailed information on them -- far beyond what it is required by law to give to the union -- to consultants to allow them to personalize their anti-union campaign. Consultants relentlessly invade employees’ privacy at the workplace through numerous captive group and one-on-one meetings and screenings of anti-union videos. They exploit fully their exclusive and unlimited access to employees at the workplace and stress to clients that the ability to require employees to attend anti-union meetings is management’s “single greatest advantage,” reminding them that, unlike employers, unions “cannot compel employees to attend meetings.”

- The Precariousness of Collective Bargaining

Consultant campaigns always stress the precariousness of the bargaining process. Among “THE FACTS” on collective bargaining that consultants include in practically every piece of campaign literature are the following: “there is no obligation for the company to agree to the union’s demands”; “there is no time limit to the bargaining process”; “as a result of bargaining, wages and benefits may go up, stay the same, or be reduced or eliminated”; and “everything is subject to the give and take of bargaining – your medical and dental insurance, your paid holidays, and your short and long term disability insurance.” Consultant literature also claims that the union is a business and when it comes to

the bargaining process, the union's agenda will always take precedence over employees' concerns.

- The Futility of Unionization

Consultant literature frequently stresses the general futility of unionization. Even if the union were to win the representation election, the company would continue to oppose it and employees would never enjoy the alleged benefits of unionization. Consultant-led opposition to collective bargaining often continues for months or even years after employees have endured an intensive anti-union campaign, yet still voted for union representation. If management refuses to agree to its demands, employees are warned, the union has but three options, all of them bad: "give up" (i.e., cease representing the employees), "give in" (i.e., accept an unacceptable contract) or strike and face the possibility of replacement.

- The Impact of Unionization on Job Security

Consultants frequently suggest that a union contract would adversely threaten job security and advise employees to vote against unionization as if their job depends on it. Consultants distribute stories of closures of unionized facilities in the same industry or in the same region as the plant facing the organizing campaign. The intention of this consultant literature is to imply that the real choice that employees are facing is not between the union and no union, but between the union and their jobs.

- "Union Strikes"

Consultant campaigns always stress the issue of "Union strikes" -- implying that a vote for unionization is effectively a vote for strikes -- and the related hazards of picket-line violence, loss of earnings and benefits, and the likelihood of permanent replacement. Consultants tell employees that the union's ability to "force" them to strike is its "ONLY real weapon" and distribute newspaper stories of disastrous strike campaigns involving the union that is attempting to organize the workforce. To emphasize the relationship between unionization and strikes, one consultant firm markets anti-union fortune cookies with "humorous" messages such as "Union like bowler – Always on strike."

- Union Coercion

Consultants allege that union organizers are using threats and intimidation to secure authorization cards and votes, and to silence those employees who are opposed to "third-party intervention." Having attempted to convince employees that the union has no real influence over *the employer*, consultants tell employees that, if it were to win, the union would have genuine power over *them*. The message is that instead of getting rid of one boss, employees would effectively be voting in a second boss. One consultant firm states: "When the union says it has all kinds of power, think about what they mean [sic]. The union's power is over you, not the company."

- The Impact of Unionization on Workplace Relations

Consultants deliberately foment dissent in the workplace and tell employees that the union is responsible for the new atmosphere of strife. If the union were defeated, employees are assured, everything would return to normal. But if the union were to win, this new, poisonous atmosphere in the workplace would become permanent. One consultant video purports to “educate” employees on how union representation would introduce “needless conflict and confrontation into their working lives.”



## 1.4 The Cost of Consultant Campaigns:

At the same time as they have defended the role played by anti-union consultants, employers have gone to extraordinary lengths to conceal the enormous amount of money spent on these purportedly legitimate services. The table below provides a summary of the academic and practitioner literature on the cost of anti-union campaigns.

Table Two: Estimated Employer Spending on Anti-Union Campaigns, Per Employee (from Lafer 2007)

Source	Year	Amount Per Employee in \$2004
Consultants Only		
Levitt	1970	\$686
Bureau of National Affairs	1976	\$1,660
Levitt	1992	\$863
Attorneys Only		
Kaufman & Stephan	1995	\$1,240
Consultants & Attorneys		
Levine	1982	\$2,447
Levitt	1990	\$3,753

Sources:

Bureau of National Affairs, *Labor Relations Consultants: Issues, Trends and Controversies* (BNA Special Report, 1985).

Bruce Kaufman and Paula Stephan, "The Role of Management Attorneys in Union Organizing Campaigns," *Journal of Labor Research* 16.4 (1995).

Gene Levine, *Complete Union Avoidance* (Gene Levine Associates, 2005).

Martin Jay Levitt, *Confessions of a Union Buster* (Crown Publishers, 1993).

## 1.5 Consultant Campaigns in the United States

- The Burke Group and the Chinese Daily News Campaign

“It was political terror.... The majority of the employees thought that their phones were tapped. They talked about hidden cameras in the corners. I thought this was a democratic country. You [should be able] to exercise the right to organize – successful or not.”

Former Chinese Daily News employee on TBG anti-union campaign (2003)

The Burke Group (TBG), headquartered in Malibu, California is one of the largest consultant firms in the US specializing in counter-organizing campaigns. TBG “directs” over 60 full-time consultants – who are more akin to independent contractors than employees -- and has conducted over 800 counter-organizing campaigns since its establishment in 1981. It advises employers throughout the country, operates in most sectors of the economy, and claims to have served 1300 clients in 50 industries throughout 10 countries. The firm’s consultants live in 23 different states, thereby allowing it to dispatch consultants efficiently to any “trouble spot.” TBG’s clients have included Coca-Cola, K-Mart, Honeywell, NBC, Mazda, General Electric, Heinz, Bellagio-Las Vegas, Caesar’s Palace, DuPont, MGM Grand, and Lockheed Martin. TBG consultants are paid \$180-250 per hour plus expenses. Typical campaigns involve several consultants and last approximately 10 weeks, but campaigns can – as in the case of the Chinese Daily News -- last several years. Small campaigns cost tens of thousands of dollars; large campaigns cost millions of dollars. TBG has developed specialties in anti-union campaigns in the healthcare sector and amongst immigrant workforces. And it has orchestrated campaigns in which employers have spent millions of public funds resisting unionization, including campaigns involving allegations of egregious unfair labor practices. After the non-profit healthcare corporation Catholic Healthcare West – a major recipient of public money -- paid TBG over \$2 million to fight an organizing campaign, California state legislature passed a law banning the use of public money for anti-union activities.

- When Winning Looks Pretty Much the Same as Losing

TBG’s activities at the Chinese Daily News (CDN), the largest Chinese language newspaper in North America, provides a textbook example of the strategies that have become standard in anti-union campaigns. In October 2000, 152 mostly Taiwanese employees started an organizing campaign after management announced plans to rescind a pay raise, freeze pay levels, and force employees to sign a statement that they were at-will employees who could be fired at any time. Within a month, 95 percent of the employees had signed union authorization cards.

In response, CDN hired TBG consultant Larry Wong, who immediately started an aggressive anti-union campaign. In March 2001, CDN employees voted for union representation, but the anti-union campaign did not end there, as management told employees that it was prepared to spend \$1 million on defeating the union. True to its word, CDN management paid TBG \$221,737 in 2001, \$108,389 in 2002, and \$480,462 in 2004. On the second anniversary of the workers' election "victory" – when the company was still contesting the outcome of the election and refusing to bargain with the union – US Congressman Sherrod Brown praised the immigrant workers' "tireless efforts as they continue to wrestle with the overwhelming resources of a foreign employer committed to silencing their voices and thwarting their right to organize." In September 2005, after an intense anti-union campaign that had lasted almost five years, the union lost a rerun election at the CDN. The head of the Newspapers Guild subsequently described the events at the CDN as "fiercest anti-union campaign I have ever been involved in." In 2007, the Court of Appeals awarded CDN employees \$2.5 million for numerous labor law violations committed by the company, but they will probably never gain union representation. The CDN campaign demonstrates that, for workers facing aggressive and determined consultant campaigns, winning recognition and collective bargaining rights often looks pretty much the same as losing.

- Jackson Lewis and the EnerSys Campaign

*"If you want to keep [the union] out of your place, you've got to work at it day in and day out... Weed 'em out... And don't wait eight or nine months. I'd like to have a dollar for every times there's union organizing and the employer says 'I should have gotten rid of that bastard three months ago.'"*

Jackson-Lewis Attorneys Patrick Vaccaro and Arthur Kaufman (1978)

Consultants are not alone in conducting aggressive anti-union campaigns. In recent years, management law firms have played an even more important role in the union avoidance industry than have consultants. These law firms have grown enormously over the past few decades. Described by one former AFL-CIO official as the "devil incarnate," Jackson Lewis is one of the oldest and largest law firms specializing in union avoidance. The firm employs almost 400 attorneys in 25 offices, publishes several union avoidance newsletters, and runs union avoidance seminars throughout the United States.

For almost four decades, states the firm's website, Jackson Lewis has "assisted many employers" in defeating organizing campaigns and "avoiding union elections altogether." According to one veteran labor arbitrator, Jackson and Lewis were "anti-union from the start. And they win." Jackson Lewis lawyers charge \$200-300 per hour for their services, and their campaigns cost between tens of thousands to several million dollars. Like TBG, the firm has been involved in several campaigns involving allegations of egregious unfair management practices and campaigns in which employers have spent significant sums of public money on anti-union activities.

- A Textbook Example of How to Drive a Union Out

One recent Jackson Lewis campaign attracted widespread media attention. In 1994, the world's largest industrial battery manufacturer, Pennsylvania-based EnerSys, engaged the services of Jackson Lewis to fight workers' efforts to form a union at its plant in Sumter, South Carolina. (South Carolina's 3.3 percent union density is joint lowest of any American state.) After an 8-year campaign against the International Union of Electrical Workers (IUE) – during which EnerSys was charged with 120 labor law violations – the company agreed to a \$7.75 million dollar settlement. Jackson Lewis was “pretty much running the plant” when, according to the IUE, local management sacked union supporters, illegally assisted a decertification campaign, fired supervisors unwilling to carry out illegal anti-union activity, improperly withdrew union recognition, and moved production to nonunion plants in retaliation for a vote in favor of unionization. EnerSys paid Jackson Lewis \$2.7 million for its counter-organizing services. At the end of Jackson Lewis's eight-year campaign of intimidation and coercion, one ex-EnerSys worker stated: “After all this... I don't think you could pay the people here to join a union.” There is no reason to believe that the EnerSys campaign is unrepresentative of consultant campaigns. The only usual aspect to this campaign was that the company subsequently sued Jackson Lewis for malpractice, alleging that its lawyers had orchestrated the illegal anti-union conduct. The subsequent legal case provided an unique insight into the highly secretive world of union avoidance as EnerSys disclosed detailed information about Jackson Lewis's strategies.

Even as it has made hundreds of millions of dollars from its union avoidance work over nearly 50 years, Jackson Lewis clearly recognizes the overwhelming advantage of organizing. In a recent presentation to employers marked “personal and confidential,” Jackson Lewis boasted of its “reputation for aggressiveness” in representing management in labor law issues and outlined the “benefits of collective approach” to labor issues:

- Individual members can speak together with one strong voice
- Union cannot pick off companies one by one
- Economy, efficiency and effectiveness of sharing information and resources
- Distances individual members from controversy

Thus, Jackson Lewis believes that organization is a good thing – for employers!

## 1.6 Consultants' Impact on Labor-Management Relations

According to a recent article in Fortune Magazine, U.S. employers “greet the prospect of unionization with the enthusiasm that medieval Europeans reserved for an outbreak of the Black Death.” While there are complex historic and cultural reasons why US employers are more hostile to unions than are employers in other developed nations, union avoidance experts have contributed to the spread of anti-union attitudes among American management. When the union avoidance industry was in its infancy in the 1950s and 1960s, consultants claimed that they were simply providing the union avoidance services sought by a growing number of employers. By the mid-1970s, however, when the union avoidance industry had developed into a multi-million dollar concern, consultants were no longer simply responding to employer demand for their services. Rather, they were actively and aggressively creating that demand by stressing the allegedly catastrophic consequences of unionization, telling employers they had a “right” to operate union free, and by encouraging them to fight employees’ attempts to organize to the bitter end. In the words of one US government official: “It’s a lot of hogwash that the union-busting attitude comes only from the client.”

- Consultants Promote Destructive and Adversarial Labor Relations

Union avoidance consultants have a self-interest in promoting adversarial labor relations and in encouraging employers to continue to fight the union during organizing, bargaining and beyond. Mostly hired on a campaign-by-campaign basis – which means they do not worry about any long-term negative consequences of their often aggressive tactics -- consultants have a vested interest in billing employers as much as possible for lengthy campaigns and little incentive to accept defeat, even in situations where an overwhelming majority of employees support unionization. The prosperity of the anti-union industry – indeed, its entire existence -- depends on its ability to stop employees from being able to form a union. Moreover, consultants’ reputations, and thus their business success, depend on their claims to be able to defeat virtually any organizing campaign, especially those in which a majority of employees desire union representation prior to their engagement.

- Consultants Tell Employers They Can Win Any Campaign and Encourage Them to Fight to the Bitter End

Most anti-union consultants in the US have claimed campaign victory rates in excess of 90 percent. The largest and most notorious firm in the 1970s and 1980s, Modern Management Methods or 3M, adopted the slogan “We Never Lose.” One consultant firm boasts of winning campaigns in which an overwhelming majority of employees have signed authorization cards, informing clients that its consultants specialize in “the tough ones” and in “come from behind situations.”

Another prominent firm assures clients that it possesses the “resources, skills and experience” required to secure victory “in the face of virtually any union challenge.” TBG claims a 96 percent victory rate. If consultants win anything like 90 percent of organizing campaigns, this demonstrates that the decision to have a union is really one taken by the employer, not the employees. Indeed, one consultant firm is so confident of winning that it offers clients a “money-back guarantee” in the event of a union victory:

*“Here is bottom-line proof of our confidence in the persuasiveness of the NLRB Election Campaign Program. If your organization purchases a Guaranteed Winner Package and the union becomes certified, [we] will **refund the full cost of the package...** Experience has proven that clients who conduct coordinated, diligent campaigns using [our] videos, support tools, and management-training aids consistently win their campaigns—now that investment is fully protected.”*

This example illustrates perfectly how consultants encourage employers to believe that they, not the employees, should determine whether their firm gets a union. Several anti-union consultants go even further, offering to protect employers’ “right” to operate union free, thereby turning the intention of US labor law on its head. One firm warns that, “Few experiences in business are as counter-productive as a union organizing campaign.” But the firm explains that its “unmatched track record” in defeating union campaigns provides evidence of its “effectiveness in preserving” employers’ “right” to a union-free workplace. Another consultant firm offers to protect the “right to manage and operate your company’s business independently.” And a third prominent consultant firm tells employers: “Every Business has the right to operate without the interference of a labor organization... Union Free Is The Way To Be!”

- Consultants Use Extreme Anti-Union Rhetoric

Consultants use militant anti-union rhetoric when marketing their services to employers. Jackson Lewis encourages employers to treat union organizers like they would treat a “contagious disease” and to inoculate their employees against the “union virus.” Also using the disease metaphor, another consultant firm offers an “aggressive therapeutic service in eliminating a union tumor after the tumor has shown itself as a 3rd party union offensive.” Several consultants use military metaphors when describing their counter-organizing services. One firm warns employers that an organizing drive is a “Declaration of War” against their company and asks: “Are you using the most powerful weapon in your arsenal?” The weapon in question is one of the firm’s videos that “launch all-out attacks on unions... to destroy the union’s attractiveness in the eyes of employees.” Jackson Lewis organizes seminars titled “Union Avoidance War Games,” which warn employers not to be “lulled into a false sense of security – this is war.” These seminars offer to prepare management for all contingencies when confronted with an “organizing attack.”

Jackson Lewis states that participants will experience “first-hand the battlefield conditions of union organizing,” and suggests that, when dealing with the “threat” of unionization, “War is Hel...pful.” Adopting similar combative language, another consultant firm offers to defeat this “attack on your company and send the union packing.” One veteran New York union avoidance lawyer tells employers that the “earlier you know that the enemy is out there, the faster you can act to nip it in the bud... When the enemy is at the gate, you got to combat it.” And TBG tells employers that several of its consultants have “Vietnam era” or other military backgrounds.

- **Bad for Workers, Bad for Employees, Bad for Labor Relations**

Consultants’ extreme language illuminates the attitudes that union avoidance consultants bring to organizing campaigns. Consultants encourage employers to view employees’ organizing campaigns as “attacks on their companies” or as “declarations of war” and offer to protect their right to operate free from “third party interference.” The impact of union avoidance consultants and law firms has not been limited to the development and implementation of aggressive counter-organizing tactics. Through their seminars, publications, web pages, videos, and face-to-face contacts, consultants have served as an important conduit for the dissemination of a militant anti-union mindset among American employers, encouraging them to dread unionization and fight it to the bitter end. Consultants advise their clients to consider the union organizing process as a decision that is taken by them, rather than by their employees. By promoting these attitudes, consultants have played a pivotal role in transforming organizing campaigns into bitter struggles that can last months or years.

## Section 2: Anti-Union Consultants in the UK

*“65 years US experience with union organizational experience provides valuable parallels from which UK employers can learn how to stay union free.... [I]t is clear from US experience that worthy UK employers, who are imaginative, nimble and flexible... will be able to defeat union organizing efforts”*

Eversheds Trade Union Roadshow, May 16<sup>th</sup>, 2000, Ironmongers’ Hall

### 2.1: Exporting the US Model of Union Avoidance

Among developed nations, the United States is unique in having a large and sophisticated industry devoted entirely to helping employers undermine their employees’ right to form unions and bargain collectively. But this extreme form of labor-management relations is no longer an exclusively American phenomenon. In recent years, several large union avoidance firms have sought overseas markets for their considerable expertise based on a half-century long experience of circumventing workers’ freedom of association in the United States. TBG has established an international division that operates in Canada, Mexico, South America, United Kingdom, Belgium, France and Germany, telling clients that it enjoys an international reputation for “eliminating union incursions.”

- The Burke Group Arrives in the UK

In recent years, TBG has conducted several high-profile organizing campaigns in the UK, including ones at T-Mobile, Amazon.co.uk, Virgin Atlantic, Honeywell, GE Caledonian, Eaton Corporation, Calor Gas, Silberline Ltd, FlyBe, Cable & Wireless, and Kettle Chips. Many of TBG’s anti-union campaigns have had a devastating impact. The union involved in the organizing drive at Amazon, the Graphical Print and Media Union, stated that the company mounted the most aggressive campaign it had ever encountered and accused management of sacking a union activist and committing other unfair practices. “We had never faced this level of serious professional resistance before,” reported the union’s lead organizer, after it had received fewer votes than it had members in a company-sponsored ballot. Two industrial scholars who studied the campaign – who, like the union, were unaware that TBG orchestrated the anti-union drive – stated that Amazon had run a “sophisticated” and “classic US-style anti-union campaign, based around five key elements: leadership style, supervisory activity, rewards, coercion and new forms of employee representation” (Kelly and Badigannavar, 2004). But the campaign was not only “US-style” – it was orchestrated by TBG consultant Brent Yessin. In 2004, workers at GE Caledonian in Prestwick delivered a “humiliating snub” to Amicus after a five-year organizing campaign. Union officials (who were oblivious to the presence of TBG) stated that they had been “blown out of the water” and had no idea why workers had rejected the union.



After defeating an AEEU campaign in 2001, the general manager at Honeywell-Cheadle reported: “Congratulations are due to the team at TBG who gave us tremendous guidance and support through the whole process.” Also impressed with the anti-union services of TBG was the director of Havant-based European Hydraulics Operation: “Union free activities are high adrenal and time consuming events.... TBG was able to assess the situation and provide confidential shop-floor data that helped drive a successful union free strategy. I was amazed [about] ... the accuracy of the information.... I highly recommend TBG.”

- TBG’s Recent UK Campaigns: FlyBe, Cable & Wireless, Kettle Chips

TBG has conducted several high-profile anti-union campaigns in the UK in the past two years. In 2006, Europe’s largest regional low-cost carrier, FlyBe, hired TBG when 400 cabin crew tried to join the T&G. According to the union, TBG had twenty people working on full-time on the anti-union campaign. The company distributed anti-union videos to employees’ homes and held one-on-one meetings during which workers were told that that they would end up with less pay under the union. The company cautioned that the airline might cut jobs if the union campaign were successful and stated that the union was only interested in employees’ dues money. However, Unite persuaded FlyBe to drop TBG and subsequently won a representation election by a landslide: 94 percent of the workers voted in favor of unionization in an 89 percent turnout in December 2006. Prior to the FlyBe campaign, TGB claimed a 100 percent success rate in the UK.

Other recent TBG campaigns have displayed a similar pattern of aggressive anti-union behavior. In August 2007, the telecom company Cable & Wireless hired TBG in an effort to prevent 331 field service workers from joining the Communication Workers Union (CWU). Cable & Wireless recognizes unions in several European countries, including the Republic of Ireland, but not in the UK. Since it hired the Burke Group, Cable & Wireless has appealed to the courts the appropriateness of the CAC-defined bargaining unit, bombarded employees with anti-union emails, and held one-on-one sessions with local managers in advance of an expected representation ballot. Despite the company’s aggressive and dilatory anti-union tactics, the CWU hopes that the CAC will certify it on the basis of union membership cards, as often happens in the UK. In June 2006, the CAC determined that the union enjoyed about 55 percent support among the bargaining unit employees, and the CWU believes that that figure has subsequently risen slightly. In February 2008, the High Court of Justice rejected the company’s challenge to the bargaining unit.

One recent TBG campaign in the UK attracted national and international media coverage. In October 2007, workers at Kettle Chips -- many of who are immigrants from Eastern Europe, Africa and Portugal -- voted 206 to 93 not to join Unite. Unite officials believe that, by the time they had exposed the role of TBG, most workers had already been “persuaded” to vote against the union. Organizers reported that the most striking aspect of the Kettle campaign was the aggressive use of supervisors to spearhead the anti-union drive and the company’s manipulation of the bargaining unit – tactics that consultants have used in the US for decades. The union was confident of a victory among Kettle’s production workers; after hiring TBG, however, the company persuaded the CAC to include office workers as part of a larger bargaining unit. TBG’s anti-union campaign stressed the threat of strikes in the event of a union victory, and, as intended, it seems that this message scared off many of the office workers. As a result of widespread press coverage of the firm’s actions, two campaign groups -- Boycott Kettle Crisps for Attacks on Workers and Boycott Kettle Chips: the anti-union snack – were established on the social networking web site, Facebook, and these groups attracted nearly 800 people from the UK, Australia and the United States. Kettle Chips, which is owned by the private equity firm, Lion Capital, subsequently hired one of Britain’s leading PR firms to repair the considerable damage to its reputation. In the Kettle Chips and Cable & Wireless campaigns, TBG has claimed that it is merely a “consultant firm” that advises local management on employee communication issues (rather than one whose sole purpose is to prevent workers from being able to form a union).

## 2.2 How Widespread is Anti-Union Behavior in the UK?

Campaigns such as those at FlyBe, Cable & Wireless, and Kettle Chips offer both positive and negative lessons for UK workers and unions. On a positive note, aggressive anti-union campaigns are still relatively uncommon in Britain. Allegations of illegal management practices are much less frequent than in the United States, and instances of legal aggressive employer opposition much less commonplace. One recent study of employer responses to union organizing in the United Kingdom stated that the “most striking finding for an American readership is the fact that positive responses to union organizing are fairly common and are reported more frequently than negative responses.... In about a quarter of cases, the employer has encouraged workers to join the union” (Heery and Simms, 2008). Few US managers would ever encourage employees to join a union, and they would not last long at their company if they did. Several other scholars have reached broadly similar conclusions. One US scholar believes that employer opposition in the UK “pales in comparison to the deep anti-union culture that historically and presently pervades US management” (Kochan 2003), while another finds that management attitudes to unionization in the US are “hostile,” but “mainly tolerant” in the UK (Freeman 2007).

Moreover, the activities of union avoidance consultants are still considered worthy of national press coverage in the UK. Coverage of anti-union activities at Kettle Chips and elsewhere has focused not only on the events of the specific campaigns, but has also discussed the greater significance of the activities of firms such as TBG. Rather than simply functioning as legitimate “consultants” to management, these are firms whose very existence depends on their ability to undermine workers’ right to organize. They browbeat employers into believing that unionization will mean a loss of managerial control and financial ruin for their firms, and they intimidate employees into believing that unions will mean strikes, conflict with management, loss of existing wages and benefits, and possible job losses. In the United States, aggressive anti-union campaigns orchestrated by outside consultants are the norm, and the national press takes interest only in exceptions situations, such as the EnerSys campaign, when the company turned against its own anti-union law firm. Furthermore, Britain’s union recognition law imposes much greater financial penalties on employers who violate workers’ rights; the average penalty for violating the UK Employment Relations Act is about \$150,000. The US National Labor Relations Act, by contrast, provides no penalties against employers who violate the law—only paltry and long-delayed remedial measures for workers who are victims of employer illegality. The absurdly low back-pay award for violating the National Labor Relations Act, for example, averages slightly more than \$2,700 per worker. UK law also provides for the arbitration of first contract disputes. Legal provisions such as these may limit the role played by union avoidance consultants in union recognition campaigns in the UK. CEO and President of TBG, David J. Burke, believes that it is too early to tell if there will be a significant demand for the services of anti-union consultants in the UK.

On the downside, it seems likely that anti-union activity in the UK is more widespread than unions realize. TBG is not the only US union avoidance firm operating in the UK and TBG itself has almost certainly conducted several more UK campaigns than the ones mentioned in this paper. Whenever possible, consultants try to remain secret during unions avoidance campaigns, often with considerable success -- most UK unions were oblivious to TBG’s presence in organizing campaigns during the 2001-2003 period. And the law has proved relatively ineffectual when it comes to discouraging the use of anti-union consultants. TBG consultant Brent Yessin, who conducted the anti-union campaign at Amazon, believes that UK law is more “employer-friendly” than most companies realize and there is “really no excuse for losing” an organizing campaign. With the notable exception of the FlyBe campaign, it appears that unions are losing the vast majority of organizing campaigns involving outside consultants, and these failures may discourage other unions from attempting to organize new workplaces if they anticipate vigorous and sophisticated opposition. And UK employers may be considerably less “tolerant” of unionism than some recent studies have suggested. If more British unions were attempting to organize in non-union sectors of the private economy -- such as the almost entirely non-union hospitality sector -- we would almost certainly see more aggressive employer campaigns like that at Kettle Chips.

One recent study of CAC cases concluded that a minority of UK employers use tactics that “are reminiscent of those advocated by anti-union consultants in NLRB elections and these, in particular the actual dismissal of activists, do influence ballot results” (Moore, 2004). Another more recent survey of organizing campaigns in the UK found that employers used anti-union consultants in about a fifth of Greenfield campaigns. It concluded, moreover, that employer opposition “harms union activity and there is a clear association between the level of opposition and union success in establishing or strengthening a recognition agreement.” Unions failed to win a single campaign in the study in which the employer had recruited the services of a consultant (Heery and Simms, 2008). And a survey of 583 HR professionals and 524 union reps by the TUC and Personnel Today in January 2007 concluded, “Being a union rep can seriously damage your career prospects.” 92 percent of reps believed that their union activism had damaged their career prospects, and, perhaps more surprisingly, 36 percent of HR professionals agreed with this statement (Personnel Today Magazine, January 30, 2007).

It took several decades for the union avoidance industry to establish itself as a permanent and destructive influence in union organizing campaigns in the United States. After less than a decade under the new statutory recognition law, union avoidance firms are establishing a limited presence on the British labor relations scene. When before the Employment Relations Act came into effect in June 2000, many unions believed that UK employers were fundamentally different from their US counterparts and would embrace the concept of partnership at the workplace. After American-based anti-union consultants first arrived on the UK scene, former TUC general secretary John Monks criticized them for promoting a “dubious approach” to union recognition that was “far more suited to the aggressive nature of US industrial relations.” Seven years later, we have growing evidence that some UK employers may not be so different from their American counterparts, after all. British unions need to take steps to prevent organizing campaigns developing into an “escalating arms race” or “war of attrition,” as has happened in the United States over the past few decades.

## 2.3 What Can Be Done to Prevent Abuses by Anti-Union Consultants?

- US Labor Laws Give Free Rein to Anti-Union Consultants

American labor law leaves almost entirely unregulated the activities of the multi-million dollar union avoidance industry. American unions have become much more sophisticated in preparing employees for underhand consultant tactics, but the system of union recognition is so heavily weighted in favor of employers that it is all-but-impossible to stop anti-union consultants from intimidating employees. Many consultant campaigns involve allegations of unfair management practices, especially discrimination against union supporters, the “most potent” weapon in management’s anti-union arsenal. In the late 1970s, one consultant was recorded giving advice on illegal actions: “What happens if you violate the law? The probably is you will never get caught. If you do get caught, the worst thing that can happen to you is you get a second election and the employer wins 96% of second elections. So the odds are with you.” Another US consultant explains that, during anti-union campaigns, “Everything is fair game.” But consultant activities that violate the law are not the only problem facing unions. As one consultant explains, consultants “can do so much within the confines of the law to combat unionism,” they don’t need to break the law. As a result, increasing numbers of US unions are abandoning company-dominated NLRB elections and organizing through voluntary “card check” and neutrality agreements, which effectively eliminate the role of anti-union consultants.

Few American employers agree to remain neutral during the organizing process. Thus, in order to protect employees from employer coercion, American unions and their allies are promoting the Employee Free Choice Act (EFCA), a bill that would strengthen workers’ right to form a union and limit the influence of anti-union consultants. The bill allows for union recognition by majority sign-up, imposes heavier penalties for unfair management practices during the organizing process, and provides for the mediation and arbitration of first contract disputes. If EFCA were to become law, it will not outlaw the multi-million dollar union avoidance industry, but it would make the organizing process less fearful for American workers.

- Anti-Union Consultant Activities Violate ILO Conventions 87 & 98

The activities of union avoidance firms are fundamentally incompatible with ILO Convention 87 (Freedom of Association & Right to Organize Convention and ILO Convention 98 (Right to Organize & Collective Bargaining). Twenty years ago, the International Association of Machinists and Aerospace Workers (IAM), supported by the AFL-CIO, filed a complaint with the ILO’s Committee on Freedom of Association (CFA) against the Reagan government for allowing companies to hire anti-union consultants for the sole purpose of denying workers freedom of association.

In response, the US government claimed that nothing in Convention 98 prohibits companies from hiring anti-union consultants to “assist them in labor negotiations.” The CFA ruled only on narrow issues in the specific case, and declined to comment on the broader and more significant issue of whether the activities of consultants whose sole purpose is to undermine workers’ right to organize and bargain collectively by definition violate ILO Conventions 87 and 98. Since the IAM filed their original ILO complaint, moreover, anti-union consultants have become ever more bold, determined and sophisticated in assisting employers to undermine American workers’ right to organize. As one US lawyer who has specialized in union avoidance for over 30 years stated recently: “There’s never a bad time... I’ve never seen a downturn.”

It is little wonder, therefore, that there are now over 50 million American workers who want union representation but are unable to get it, and that the so-called “representation gap” in the United States is the largest among advanced Anglophone countries, and probably the largest in the developed world. As the sixtieth anniversary of the UN Universal Declaration of Human Rights (2008) and ILO Conventions 87 (2008) and 98 (2009) nears, these anti-union firms, the tactics that they have pioneered, and their militant anti-union attitudes are being exported to the UK and other parts of the world. The ILO magazine, *World of Work*, stated in 2002: “There is nothing abstract about freedom of association.” These companies’ sole reason for existence is to assist employers intent on undermining workers’ fundamental right to join a union and bargain collectively. The ILO’s CFA should reconsider whether a multi-million dollar industry dedicated to undermining workers’ right to organize is compatible with freedom of association and the right to bargain collectively.

- What else can unions do to counter anti-union consultants?

The FlyBe campaign, and many similar campaigns in the US, demonstrates that individual union strategies can and do make a difference. Director of Organizing at Unite, Sharon Graham, believes that UK workers and unions “*should take confidence from successes like FlyBe that show we can beat the underhand tactics of anti-worker, anti-union companies by running effective organizing campaigns.*”

The TUC’s Organising Academy has developed ‘Busting the Busters’ training for union organisers, to equip union officers with the skills they need to counteract anti-union consultants.

In the US, unions such as the California Nurses Association have negotiated agreements with employers that prohibit the use of anti-union consultants during organizing campaigns. But it has often been difficult for unions to counteract consultant activity because they lack information on the consultants and their methods of operation until it is too late to take effective action.

Most anti-union consultants run “cookie-cutter” campaigns – they use virtually the same tactics, fliers, videos, and captive audience speeches in every campaign. Thus, information on previous consultant campaigns would likely prove invaluable to organizers currently facing them.

The AFL-CIO has in the past served as a clearinghouse for information on anti-union consultants, and both it and the TUC could clearly do so in the future. A consultant database could contain a variety of information from both US and UK union anti-union campaigns:

- Lists of previous campaigns the consultants have worked, the outcome of these campaigns, and union contacts for the campaigns.
- Information on consultant tactics and examples of consultant literature, videos, DVDs, and websites.
- Information on how much employers have spent on anti-union consultants in previous campaigns.
- Model letters to employers explaining the negative impact of consultants on both employee relations and companies’ reputations, and model letters to consultants warning them of their obligations under the law.
- Examples of successful union strategies to combat the consultants, such as that at FlyBe and similar campaigns in the US.

As American unions have had 50 years experience of dealing with these firms, they have significant information and advice to share with their UK counterparts. Indeed, the AFL-CIO and TUC recently committed to a joint program to tackle the challenge posed by anti-union consultants. The purpose of the program is to share information on anti-union consultants, train organizers on how to deal with the consultants, lobby governments and international organizations to take action against anti-union firms, promote public awareness of the issue and publicize the names of firms who engage their services, and work with labor movements around the world on tackling this issue (Protocol between the AFL-CIO and the TUC). “*International action to tackle union busting,*” explains Sharon Graham, “*is necessary so that workers... can exercise their fundamental right to organize.*” And as Jackson Lewis points out in its anti-union presentations to American employers, collective action facilitates “*economy, efficiency and effectiveness of sharing information and resources.*”

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Appendix:

Table Three: Timeline of Jackson Lewis’s Anti-Union Campaign at EnerSys

DATE	EVENT
1994	Four hundred production and maintenance workers at EnerSys plant in Sumter, SC, attempt to organize with IUE, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 175 (Complaint 13*).
1994 – 2003	EnerSys retains the Greenville, SC, office of Jackson Lewis to represent it in connection with its labor issues, “including mounting an opposition to the Union’s organizing drive....” (Complaint 13-15).
February 23, 1995	A majority of the 400 EnerSys production employees at the Sumter plant vote for representation by the IUE (Complaint 17).
1995 – 1997	EnerSys appeals the results of the election; IUE accuses EnerSys of dilatory tactics and gaming the appeals process.
December 4, 1995	The NLRB upholds the election result and certifies the IUE as the workers’ representative ( <i>Yuasa Exide, Inc.</i> , 320 NLRB No. 147 (1996); EnerSys refuses to bargain with IUE and challenges the Board Order in an appeal to Federal Circuit Court. (Complaint 17)
1995 -2002	“In the years following the Union’s certification ..., Jackson Lewis ... engineered a relentless and unlawful campaign to oust the Union from the Sumter Plant” (Complaint 28).
Feb 1997	The U.S. Court of Appeals for the 4 <sup>th</sup> Circuit orders EnerSys to comply with the NLRB’s Order that EnerSys bargain with IUE ( <i>Yuasa Exide, Inc. v. NLRB</i> , 120 F.3d 264 (1997), unpublished opinion).
April 1998	Contract agreement reached between EnerSys and IUE which includes a provision for a “Gainsharing” incentive pay plan ( <i>Yuasa, Inc., v. IUE</i> , 224 F.3d 316 (4 <sup>th</sup> Cir. 2000)).
April 1998	IUE files a grievance challenging EnerSys’ implementation of the Gainsharing plan; the grievance is pursued to arbitration; the arbitrator rules in IUE’s favor. EnerSys files a lawsuit in federal court to vacate the award; the court upholds the arbitrator’s decision; EnerSys’ appeal to the U.S. Court of Appeals is denied and the U.S. Supreme Court denies its request for review ( <i>Yuasa, Inc., v. IUE, Local 175</i> , 224 F.3d 306 (4 <sup>th</sup> Cir. 2000), <i>cert. denied</i> , 531 U.S. 1149 (2001)).
Fall 2000	“Jackson Lewis advised EnerSys to work toward the decertification of the Union or a withdrawal of recognition of it ... and worked closely on a campaign to oust the Union....” (Complaint 29)
June 14, 2001	EnerSys withdraws recognition of the IUE as its employees’ representative for collective bargaining (Complaint 37). No NLRB election to decertify is conducted.
July 18, 2001	IUE requests information necessary to bargain with EnerSys regarding its impending decision to relocate work; EnerSys “ignore[s] the request and did not provide the information ... sought” (Complaint 48).
July 2001	IUE files NLRB charges against EnerSys based on the refusal to provide the requested information (Complaint 29).
September 10, 2001	EnerSys announces the closing of the Sumter plant but fails to provide advance notice to the IUE “based upon Jackson Lewis’ advice; IUE files NLRB charges against EnerSys (Complaint 50-53).
2000-2002	EnerSys fires seven union leaders; the NLRB issues a complaint against EnerSys alleging that their terminations are illegal and related to union organizing.

November 1, 2001	EnerSys closes the Sumter plant (Complaint 70).
December 14, 2001	IUE files a class action WARN Act case complaint in U.S. District Court alleging that EnerSys failed to provide prior notice about the plant closure (Complaint 76 - 79).
January 7, 2004	EnerSys signs an agreement with IUE agreeing to pay \$7.75 million to settle the pending WARN lawsuit and NLRB cases, including allegations of unlawful firings, improper implementation of the gain sharing agreement, illegal withdrawal of union recognition, failure to give notice of and bargain about the plant closure (Steven Greenhouse, NYTimes, <i>How Do You Drive Out a Union? South Carolina Factory, Textbook Example</i> (December 14, 2007)).
April 23, 2004	EnerSys files a malpractice suit against Jackson Lewis, which was subsequently settled.
December 14, 2004	The <i>New York Times</i> features the Jackson Lewis/EnerSys story (Steven Greenhouse, NYTimes, <i>How Do You Drive Out a Union? South Carolina Factory</i> , (December 14).

\*Based on allegations in a complaint filed by EnerSys on April 23, 2004 in C.A. No. 2004-CP-23-2685 in the Court of Common Pleas, Thirteenth Judicial Circuit, Greenville County, South Carolina.

Table Four: The Burke Group's UK Campaigns, 2001-2003

Company	Date of Campaign	Result
Amazon.co.uk	August 2001	188-35 against GPMU
Eaton Corporation	June 2001	AEEU withdrew
Honeywell	October 2001	64-25 against AEEU
GE Caledonian	June 2002	449-243 against AEEU
Siberline, Ltd.	November 2002	42-27 against TGWU
Calor Gas	February 2003	43-14 against TGWU
T-Mobile	May 2003	351-170 against CWU/Connect
Virgin Atlantic Airlines	May 2003	450-99 against TGWU

Trades Union Congress  
Congress House  
Great Russell Street  
London WC1B 3LS

[www.tuc.org.uk](http://www.tuc.org.uk)

For further information about the issues contained in this report contact:

Paul Nowak, National Organiser

Tel: 020 7467 1218, e: [pnowak@tuc.org.uk](mailto:pnowak@tuc.org.uk)

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