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Voice of the Employer: A Mixed-Methods Study of Winning Messages for NLRB Elections

John Mark Codd

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Voice of the Employer: A Mixed-Methods Study of
Winning Messages for NLRB Elections

by

John Mark Codd

A Dissertation Presented to the
College of Arts, Humanities, and Social Sciences of Nova Southeastern University
in Partial Fulfillment of the Requirements for the Degree of
Doctor of Philosophy

Nova Southeastern University
2020

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College of Arts, Humanities, and Social Sciences

This dissertation was submitted by John Mark Codd under the direction of the chair of the dissertation committee listed below. It was submitted to the College of Arts, Humanities, and Social Sciences and approved in partial fulfillment for the degree of Doctor of Philosophy in Conflict Analysis and Resolution at Nova Southeastern University.

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Table of Contents

List of Tables	v
List of Figures	vi
Abstract	vii
Chapter 1: Introduction to the Research Study	1
The Impact of the Workplace Representation Election System	2
Unions' Reliance Upon Workplace Representation Elections	3
The Representation System Process	7
Problem Statement	14
Purpose Statement.....	15
Research Questions	15
Nature of the Study	15
Definitions.....	17
Assumptions.....	17
Scope and Delimitations	18
Significance of the Study	18
Summary	19
Chapter 2: Literature Review.....	20
Governing System for Workplace Representation Elections.....	23
Election Messaging by Employers.....	43
Changes in Workplace Representation Elections	49
Systems Theory and the Workplace Representation Election	50
Winning and Losing Parties in the Election Conflict	57

Theories on Employee Vote Influencers.....	58
Structural Violence	59
Strategies Employed by Unions and Employers.....	61
Employer Tactics to Win Elections	71
Summary	78
Chapter 3: Research Design and Methodology	79
Research Rationale & Design	80
Mixed Methods Research Design	80
Quantitative Methodology	82
Correlational Research Methodology	83
Correlational Research: Null Hypothesis Testing.....	86
Dependent Variable	88
Independent Variables	89
Survey Research Methodology	90
Survey Population and Sample	91
Qualitative Methodology	101
Participant Selection Rationale	101
Structured Interviews: Participation & Instrumentation	103
Ethical Procedures	108
Record Retention and Audit Facilitation	108
Summary and Conclusions	109
Chapter 4: Presentation of the Research Findings	111
Correlational Quantitative Research Methodology: 305 Elections	112

Correlations between Dependent and Independent Variables	115
Election Period and Percent of the Vote in Favor of the Employer for 300	
Elections.....	127
Survey Research Methodology	132
Instrument Design and Data Collection.....	133
Results.....	135
Survey & Database Quantitative Research: Research Questions	142
Qualitative Method: Semi-structured Interviews.....	145
Demographics	145
Data Collection	146
Data Analysis	148
Results.....	151
Summary	159
Chapter 5: Discussion, Conclusions, and Recommendations.....	162
Interpretation of the Findings.....	164
Limitations of the Study.....	168
Recommendations.....	169
Implications.....	171
Conclusions.....	172
References	174
Appendix A: Glossary of Labor Relations Terms	195
Appendix B: Pilot Study Participation Agreement.....	210
Appendix C: NLRB Election – Voice of the Employer Survey©	214

Appendix D: Booklet Accompanying Survey Mailed to Employers.....	216
Appendix E: Election Campaign Poster Examples.....	223
Appendix F: Example of Form LM-0 Report, 2015	225
Appendix G: Interview Respondent Participation Agreement	228
Appendix H: Semi-Structured Interview Guide	230

List of Tables

Table 1. Comparison of Pre-2015 and Revised 2015 Procedures	25
Table 2. NLRB petitions, elections, and results, FY 2008-2017	84
Table 3. Captive audience and employer win rate (Wilson, 1998, p. 198).....	97
Table 4. Correlation strength of association continuum	116
Table 5. Correlations: Study's dependent variable with 3 independent variables.....	117
Table 6. Frequency chart of the election period in 305 elections	120
Table 7. Descriptive election period data for 305 elections (including outliers).....	124
Table 8. Descriptive election period data for 300 elections (excluding outliers)	125
Table 9. Descriptive election period and employer win data for 300 elections.....	126
Table 10. Correlations: Election period and employer win data, 300 elections	126
Table 11. Descriptive election period data, 294 elections (excluding 11 outliers).....	128
Table 12. Descriptive election period data, 291 elections (excluding 14 outliers).....	129
Table 13. Correlations: Election period and employer win data, 291 elections	131
Table 14. Correlations: Unit size and percent of the vote in favor of the employer data, 300 elections	132
Table 15. Dependent variable and 3 independent variables, 32 elections	136
Table 16. Dependent variable and 3 independent variables, 305 elections	136
Table 17. Voice of the Employer Survey© independent variables.....	138
Table 18. Themes and Sub-themes from Subject Matter Expert Interviews	151

List of Figures

Figure 1. Union win rates in NLRB elections, 1988-2019	4
Figure 2. Union win rates by campaign days, elections 2004-2014	5
Figure 3. U. S. union membership, 1973-2019.....	6
Figure 4. Voice of the Employer© study's mixed methods research design	16
Figure 5. NLRB representation case system process flow	24
Figure 6. Example of union representation authorization card.....	36
Figure 7. Laborers' union advice on ambush organizing: Keep it quiet!	40
Figure 8. Sample NLRB official secret ballot	46
Figure 9. NLRB election cycle time, 2009-2018.....	53
Figure 10. Map of NLRB Regions 10, 12, 15, and 16.....	85
Figure 11. Fall 2018 CUE conference flyer.....	92
Figure 12. Union campaign poster, Walgreens 2019 election.....	98
Figure 13. Vote in favor of employer in 100 elections	114
Figure 14. Vote in favor of employer in 305 elections	114
Figure 15. Turnout for 305 elections	118
Figure 16. Histogram: Election period and percent of the vote in favor of the employer data, 300 elections.....	127
Figure 17. Scatterplot: Election period and percent of the vote in favor of the employer data, 300 elections.....	127
Figure 18. Scatterplot: Election period and percent of the vote in favor of the employer data, 291 elections.....	130
Figure 19. Voice of the Employer - Winning NLRB Elections© model.....	168

Abstract

This dissertation studied the conflict associated with National Labor Relations Board (NLRB) elections from the perspective of employers. Using systems and structural violence theories, the influences that foment conflict were identified and solutions were proffered through the lenses of both theories. This mixed methods study contributed to the scholarship of NLRB campaign messaging and tactics by incorporating the heretofore-omitted voice of the employer, through quantitative correlational analyses of a 300 NLRB elections database as well as a survey of over 30 employer representatives. A third portion of the study incorporated qualitative thematic analysis of semi-structured interviews of seven subject matter experts who provided insight into winning NLRB election campaign messaging and tactics. Key findings for employers included the importance of stipulating or contesting the petitioned-for unit of employees as well as extending the campaign duration. For communication of campaign messages employers experienced greater success with group meetings and 1-on-1 supervisor/employee meetings as well as with letters to employees' homes. Employers also benefitted from explaining the collective bargaining process and the use of strikes, and by providing comparisons of employee pay and benefits offered at unionized companies. These findings enabled development of the *Voice of the Employer: Winning NLRB Elections*© model graphically illustrating evidence-based winning campaign messaging and communication tactics. *Keywords:* NLRB elections, campaign messaging, appropriate unit size, campaign duration, collective bargaining, persuaders, semi-structured interviews, thematic analysis, correlational analysis.

Chapter 1: Introduction to the Research Study

The objective of this study was to develop a model to assist employers for what is arguably the most contentious conflict that can exist in the American workplace: a workplace representation election, supervised by the National Labor Relations Board (NLRB). The intent of a workplace representation election is to determine whether a petitioning union has sufficient support to unionize a unit of employees within a workplace. This research study developed a model to assist employers in assessing the efficacy and success of election-related messages and communication tactics, in order to achieve an increase in votes in favor of the employer and a successful election outcome.

This research study builds upon previously published findings on the topic of conflicts inherent within workplace representation elections. While much has been studied about why employees join unions and why unions are successful in workplace representation elections, little research exists regarding employers' successful strategies during workplace representation elections. Moreover, as detailed below in Chapter Two, most research that has addressed employer strategies was not sourced from the employer but rather from secondary, tertiary, or other far-removed sources of information. Indeed, prior studies detailing employers' election messaging and other tactics exclusively sourced their data directly or indirectly from the union organizer rather than from employers. Studies utilizing NLRB allegations of unlawful activity filed by the union typically are based upon the perspective of the union organizer filing the charges.

This study in contrast sought out the voice and opinions of the employer in workplace representation elections. Data obtained and analyzed by the researcher provided the basis for a proposed model detailing the multivariate influences on winning

workplace representation elections, from the important and heretofore often omitted perspective of the employer.

The Impact of the Workplace Representation Election System

As detailed in Chapter Two, the literature review conducted for this study of conflict within workplace representation elections examined the perspectives of scholars, researchers, labor relations practitioners, and most importantly, of employees and employers. The literature review examined prior studies on election outcomes conducted from the perspective of the union organizer. These prior studies exist in contrast to this research study's findings that analyzed both quantitative and qualitative data collected to include light on the employers' viewpoint.

The researcher conducted a systems theory analysis of the workplace representation election system, as well as a review of the parties' interests that may foment conflict during such elections. A systems theory analysis of the workplace representation election system relies on its description as outlined in the regulations for the National Labor Relations Act (1935); the government agency therein tasked with the responsibility of regulating workplace representation elections is the National Labor Relations Board (NLRB).

In April 2015 the system for conducting workplace representation elections was significantly overhauled at the urging of unions, despite their 60%-plus win rate (McConville, 2015). One firm that has long represented management before the Board characterized the 2015 revisions as the "most significant changes in election practice in the history of the [National Labor Relations] Act—and the most controversial" (Bloom, Rosen, & Walsh, 2018, p. 1). As detailed further in the literature review below, the 2015

revisions also introduced greater complexity and conflict associated with the revised election system process. In recognition of the complexity of the 2015 revised system, the NLRB itself has sought to resolve criticisms of those changes. Recently on December 18, 2019, the NLRB published a new set of revised regulations—with a initially scheduled effective date of April 16, 2020—that altered many of the April 2015 election revisions. In this research study these new revisions will be designated the 2020 revisions.

Unions' Reliance Upon Workplace Representation Elections

Labor organizations and unions utilize representation elections as their primary mechanism for achieving increased membership. Union membership is the primary, if not the only, source of revenue for organized labor as an ongoing entity. This revenue occurs in the form of union dues; a review of Department of Labor (DOL) Labor Management (LM) reports accessible online reveals that union dues typically equal 1½ to 2 hours of wages per month and are paid directly to the union (Union Reports, n.d.). Most often union dues are deducted directly from an employee's paycheck in what is referred to as dues checkoff. This process of payroll deduction ensures that unions receive their monthly payment without having to rely upon the employee writing a personal check. The employer incurs the full administrative costs to process the dues checkoff revenue on behalf of the union.

According to a Bureau of Labor Statistics report of October 18, 2017, the median annual average wage rate for all jobs (union and non-union) in the United States is near \$44,148 (bls.gov, 2017). The corresponding hourly rate of pay is approximately \$20 per hour, which can yield nearly \$500 in dues per employee per year. Obviously the larger

the unit of employees represented by a union, the more dues obtained—and the greater costs to employers to administer the dues processing.

In the same way that corporations are constantly in pursuit of increased sales and revenue sources, unions continually seek to increase their membership through the use of the workplace representation system regulated by the NLRB. As a result, as compared to employers, unions are much more adroit at messaging and communication tactics in the highly contentious conflicts associated with workplace representation elections. Since unions participate in workplace elections so much more frequently than any employer, their skill at winning elections far exceeds that of employers.

The election win rate is the percent of the time when the union receives a majority of the vote; or when the employer receives either a tie or a majority of the vote in a workplace representation election. As seen in Bloomberg Law’s graph of union win rates (purple line) over time as reproduced in Figure 1 below, the win rate for unions under the April 2015 revised election system is near 70%.

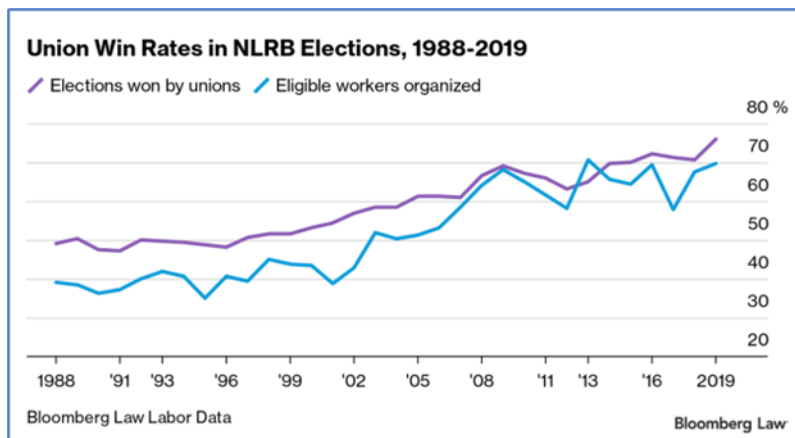


Figure 1. Union win rates in NLRB elections, 1988-2019.

Source: <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-deceleration-defines-2019-state-of-the-unions> (see Combs, 2020).

Conversely the win rate for employers under the April 2015 revised election system is near 30%. Moreover, as shown in Figure 2 below, a Labor Relations Institute (LRI) 2015 analysis of union win percentage by campaign days—for elections during the previous decade—shows that the shorter the election period, the greater the union win rate. The less time an employer and its employees have to campaign in an election, the greater the likelihood the union wins and the employer loses, as do those employees who seek to remain union free.

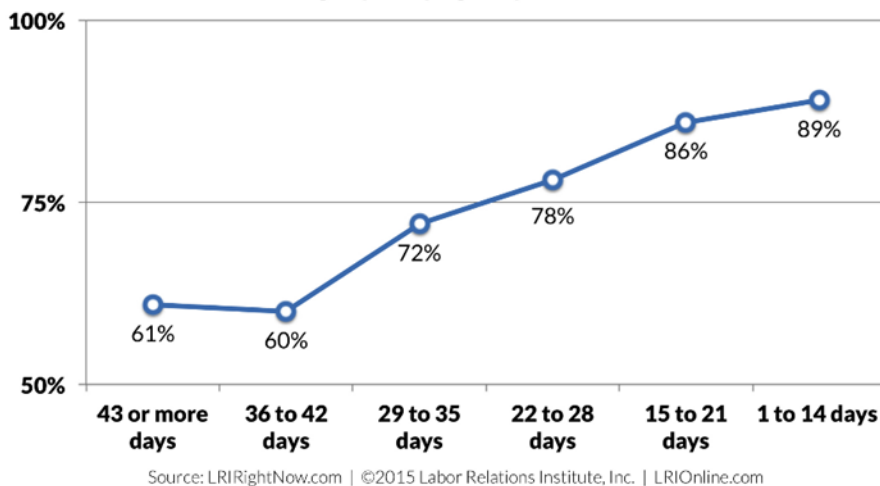


Figure 2. Union win rates by campaign days, elections 2004-2014.

(LRIOnline.com, 2015). LRI's analysis shows that in election campaigns lasting just two weeks, the union wins nearly 90% of the time.

A union win rate of 70% indicates that the win rate for employers is only approximately 30%. In the private sector, more than 93% of all workers are not unionized and therefore not represented by a labor union. According to a Bureau of Labor Statistics 2018 report on union density, the union representation rate for private employers is now less than 7% and 13% when combined with government workers, as shown below in Figure 3.

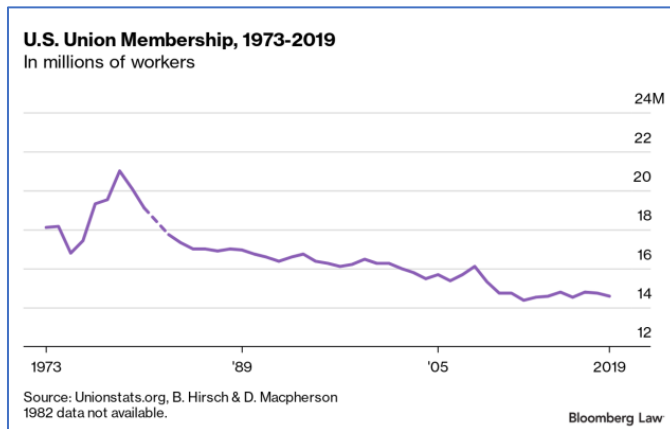


Figure 3. U. S. union membership, 1973-2019.

Source: <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-deceleration-defines-2019-state-of-the-unions> (see Combs, 2020).

Consequently, most all employers will never experience a single workplace representation election and thus will not develop sophistication regarding the workplace representation election process. Instead employers faced with an election largely rely upon expensive consultants and persuaders.

The NLRB election win rate for employers in comparison with the union win rate ably illustrates that there is a vast difference in sophistication between the parties of the election. For the union, success is defined as an election win enabling the union to intervene between the employer and the employee at the expense of the interests of the company and instead to the benefit of employees and unions. For the employer, success is defined as an election win that maintains a direct relationship with its own employees without the intervention of a union in its relationship with its employees—in other words, remaining union-free. Given their lack of sophistication it is fortunate that relatively few employers will undergo a workplace representation election supervised by the NLRB; as previously noted, NLRB data indicates most employers will lose their election (nlrb.gov).

The Representation System Process

Analysis of the election representation process begins with the recognition of some conflict in the workplace, conflict often fomented by both parties that escalates to extremes during the workplace representation election. Again, both direct and structural violence manifesting in a contentious spiral are a byproduct of the win/lose system as required by the NLRB.

In its simplest form the workplace representation election system is the system by which a union comes to represent employees at an employer's worksite. The system is described at length on the NLRB website (<https://nlrb.gov/>). Unions typically are familiar with the NLRB election system as it is the primary mechanism for unions to increase their membership and finance their operations through union dues of new and existing members. Most unions maintain an organizing department that identifies employer organizing targets and develops campaign strategies, including messaging and communication tactics to persuade employees that there is a need for their respective union to intervene in the relationship between the employees and their employer. An example of the duties and responsibilities of a typical organizing department can be found at Boston Teachers Union job advertisement, retrievable at:

https://btu.org/wp-content/uploads/BTU_DirectorOfOrganizing_Job_Description.pdf

Unions prompt a representation election by collecting employee signatures on authorization cards from at least 30% of an appropriate unit of employees. An appropriate unit is typically found on a shift, a department, or other means of illustrating a community of interest among a group, a unit of employees. The union then files a petition for election with the NLRB requesting an election to unionize [represent] a group of

employees, otherwise known as “an appropriate unit” of employees. The petition for election must be accompanied by a statement that at least 30% of the select employees have signed authorization cards extending the right for the petitioning labor organization [union] to represent the employees for the purposes of collective bargaining and workplace representation. The petitioning union must also then notify both the employer and the NLRB to begin the formal process.

Once notified, the employer’s first decision of the election process is to decide whether to agree (or not) to the union’s assertion regarding which selected employee unit(s) are scheduled to vote. This decision has the potential to either speed the election period (number of days before the vote), or lengthen the election period if the decision is to “contest” the election. The employer’s decision results in either a “stipulated” or “contested” election, meaning the employer has agreed or instead contests the union’s petitioned employee unit. According to the NLRB, in 92% of all elections conducted under the April 2015 election revisions, a stipulated agreement between the employer and the union occurred. Therefore, in only 8% of all elections was the union’s petition for election contested (National Labor Relations Board, 2019, n. 2).

If the employer does contest the composition of the union’s petitioned unit, both parties are required to participate in a representation hearing to determine those job classifications that will be eligible to vote as an employee unit, otherwise known as the potential bargaining unit. This hearing is typically held in a Regional Office of the NLRB and is facilitated by a hearing officer who is an employee of the NLRB. Under the 2015 revisions, the hearing could occur as early as the eighth calendar day following notification to the employer that a petition for election has been filed. According to

attorney C. Thomas Davis, the April 2015 “ambush” election regulations attempted to speed up the entire process of scheduling a union election by shortening the time between the date a union filed its petition and the date on which the pre-election hearing (in which disputes related to the election details are theoretically resolved) was scheduled to open. Under the “ambush” rules, the pre-election hearing was generally scheduled to begin eight calendar days from the Notice of Hearing. Under the 2020 newly revised rules, the pre-election hearing would generally be scheduled to open 14 business days from the Notice of Hearing (Davis, 2019).

Since the union initiated the process, its position on the desired unit would be known. If that position is contested (typically 8% of the time), the employer is required to provide a “Statement of Position” detailing what it believes is an appropriate unit of employees. Under the 2020 revisions, the NLRB introduced a new requirement that the petitioning union must respond in writing to the Statement of Position filed by the employer. In this new 2020 requirement (referred to as the Responsive Statement of Position), the petitioning union must respond to the issues raised within the employer’s Statement of Position. In this 2020 revision, the NLRB “serves the purpose of transparency by removing any impression that the Board is imposing an onerous pleading requirement on the non-petitioning parties without extending a similar requirement to the petitioner” (National Labor Relations Board, 2019).

To assist the hearing officer and the union in the hearing, the employer is required to provide a list of voters within the unit requested by the union. The list of voters must include a list of names and other personal contact information regarding each member of the union’s proposed employee unit, along with a similar list of any alternative proposed

employee unit by the employer. This personal contact information must include cell phone or home phone numbers if available to the employer, as well as personal email and physical home addresses of each employee in the proposed units. This list is referred to as the “Voter List.” Bloomberg Law reported that the NLRB’s Chairman John Ring announced at the American Bar Association conference in March of 2020 that more changes are in store for the voter list requirements (Iafolla, 2020b).

There is significant case law and regulatory guidance to identify the community of interests for hearing officers to assist the NLRB Regional Director in rendering the decision on an appropriate bargaining unit. The NLRB Regional Director’s decision determines which job classifications will be eligible to vote in the workplace representation election. The NLRB Regional Director also establishes a date, time, location and method for the election in what is referred to as the Decision and Order [to Election]. Most often the location of the vote is held on the premises where the employees work, though other options might include mail ballots or other voting locations. During the pandemic of 2020, the NLRB changed its balloting practice. From April 1 to May 5, 2020, the Board directed that 16 elections be held. In contrast to past practice, 15 of those 16 elections will be held using mail ballots rather than an in-person election (see Kanu, 2020a).

An example of a Decision and Order for a workplace representation election can be found at

<https://bloximages.chicago2.vip.townnews.com/helenair.com/content/tncms/assets/v3/editorial/0/8a/08a43382-8249-5229-8744-0778d09c8ac4/56a0652411f73.pdf.pdf>

Once in receipt of the decision by the NLRB hearing officer, the employer's messaging and communication tactics formally begin in order to win the employees' vote. Bloomberg Bureau of National Affairs (BNA) reports that historically the cycle time for these workplace representation elections from the date of the petition filing to an actual vote by employees have ranged from a high of 42 days to its 2018 average of 24 days (Combs, 2020; Ferguson, 2018). In December of 2019 the NLRB updated the election cycle time data stating that in FY14, the last full fiscal year under the former rules, the median number of days from a petition to an election was 37 days in cases where the parties reached an election agreement, 59 days in contested cases, and 38 days overall. In FY16, the first full fiscal year in which the April 2015 amendments were in effect, the median number of days from a petition to an election was 23 days in cases with an election agreement, 36 days in contested cases, and 23 days overall ("Median Days from Petition to Election," retrieved at <https://www.nlr.gov/news-outreach/graphs-data/petitions-and-elections/median-days-petition-election>; see National Labor Relations Board, 2019, p. 69528, fn. 15). The literature review described below in Chapter Two demonstrates that the most impactful of the April 2015 changes to the election system was a shorter time period for employers to campaign.

Traditionally the workplace representation election is referenced as a conflict between the employer and the petitioning union. This overly simplified characterization of the workplace organizational conflict ignores the wrenching conflict among employees themselves. A review of the elections in this study demonstrates that in 95% of the 305 elections, employees were in conflict with each other in their desire on whether to unionize or remain union-free.

The campaign messaging exemplifying this conflict follows what Wilmot and Hocker (2011) would describe as an escalatory contentious cycle, as both the union and employer communicate persuasive messages to the employees to influence their vote. Additionally, employees' desire for unionization, or their desire to avoid unionization, also prompts communication among employees supporting or railing against the messages of the union or the employer. In one of the most popular union songs Pete Seeger characterized the conflict with a refrain asking, "Which side are you on, boy, which side are you on?" (Pete Seeger, 1967).

In selecting messages and communication tactics, unions typically possess an advantage as they participate in numerous elections throughout the year and have honed and tested their messages for optimal success. As previously noted, most unions are supported by an organizing department that specializes in the system of organizing workplace representation elections. Such is not the case for a particular employer who lacks the experience, background, and competence to excel in this contentious conflict environment. Instead employers typically rely upon a small cottage industry of consultants and persuaders who support employers who may lack both knowledge about the process and a model for election success. Recently, on December 11, 2019, the Economic Policy Institute published a study by Celine McNicholas and colleagues of 3,620 election campaigns and what was referred to as the "union avoidance consultant" industry (p. 13). Their review of the Department of Labor reports for the study yielded the calculation that employers spent over \$338 million per year on workplace representation consultants in 2016 alone; McNicholas and colleagues surmised that the \$338 million spent by employers per year on "union avoidance consultants" is an

underestimate. Dividing this estimate of the \$338 million spent on union avoidance consultants each year into the number of elections held annually yields an approximate cost of \$186,740 spent by employers per election, without regard to a win or loss.

With less than a 7% union representation in the private sector, nearly all employers lack experience interacting with unions in the workplace. This lack of awareness and familiarity with unions, coupled with the financial ramifications of losing an election, create the need for advice and guidance on how to respond in the conflict with the union during the election. The data of the referenced study by McNicholas et al. (2019) indicated not only that it is expensive for employers to participate in an NLRB election; it is even more expensive for the employer to lose.

The costs associated with losing an election can increase an employer's labor costs significantly. In *Union Proof: Creating Your Successful Union-Free Strategy*, author Peter Bergeron (2008) noted that "it is generally accepted that administrative costs are 25-35% higher in the unionized facilities" (p. 12). Because of both these financial ramifications and a general lack of competence on the part of employers, there is a need for this mixed methods research study to provide guidance for successful employer responses to the workplace representation election process.

In *Organizing to Win: New Research on Union Strategies*, editors Bronfenbrenner and colleagues (1998) acknowledged numerous studies focusing primarily on worker attitudes towards unions and union organizing success. Wheeler and McClendon (1991) noted that most studies focused on primary factors, such as job satisfaction attitudes towards unions, individual characteristics, campaign characteristics, and the organizing

climate. Although older, these early studies still form the basis for much of the philosophical tone and research designs of today.

Bronfenbrenner and colleagues (1998) in *Organizing to Win: New Research on Union Strategies* and others (e.g., Youngblood et al., 1984) have criticized these earlier studies as reflecting voter intent rather than results of the election. As further detailed in Chapter Two, studies conducted since then addressing workplace elections also typically reflect the strategies, messaging, and communication tactics of the union without regard to the same options for the corresponding employer in the midst of the election conflict. Employers face a problem—with strong financial consequences—of a lack of structured guidance for their own strategies for this very costly workplace representation election system. This mixed methods study was designed to address that problem as summarized below.

Problem Statement

The financial consequences of a failed campaign, coupled with an employer's lack of NLRB election sophistication and experience, complicates an employer's selection of messages and tactics for use in the conflict inherent within the workplace representation election system. Employers' lack of experience and competence in the conflict associated with workplace representation elections make them an easy target for real or fomented conflict. More often than not employers are left to rely on consultants and persuaders to respond in this contentious conflict environment, rather than attempting to devise their own untested communication strategies. The messages and tactics utilized by campaign consultants are driven by anecdotal and qualitative rather than quantitative information supporting the likelihood of campaign success. There is a need for

quantitative and qualitative data to knowledgeably inform employers' consideration of useful and effective messages and tactics in a workplace representation election.

Purpose Statement

This mixed methods research study developed a conceptual model to provide guidance that would assist employers' decisions regarding messaging and communication tactics during conflicts associated with workplace representation elections.

Research Questions

This study's five research questions (RQ) asked:

RQ1 – Do shorter election periods result in more or less employer victories in NLRB elections?

RQ2 – Do contested or stipulated elections favor employers in NLRB elections?

RQ3 – What type of messages result in an increase of the vote in favor of the employer in National Labor Relations Board (NLRB) elections?

RQ4 – What modalities of communication tactics result in an increase of the vote in favor of the employer in NLRB elections?

RQ5 – Does relying on a campaign consultant increase the vote in favor of the employer in NLRB elections?

Null Hypotheses: There is no significant predictor for NLRB election votes in favor of the employer by election periods, contested or stipulated elections, type of messages, modalities of communication tactics, or use of campaign consultant.

Nature of the Study

Informed by prior studies as discussed in Chapter Two, the investigator selected a mixed methods research design. According to Creswell (2013), in order to more fully

understand a particular topic of study, mixed methods research valuably combines the advantages of two approaches, those of qualitative research methods to explore a specific phenomenon, and those of quantitative methods that can provide statistical information informing causality, prediction, or generalizability. For this study of worker representation elections conflict the investigator conducted an explanatory sequential research design (Creswell, 2013), utilizing first quantitative and then qualitative analytical processes. Specifically, as diagrammed below in Figure 4 this study's explanatory sequence research design consisted of: 1) a quantitative analysis of over 300 elections, 2) supported by a detailed analysis of a survey of messages and communication tactics in 32 of said elections, and 3) further informed with qualitative interviews of subject matter experts.

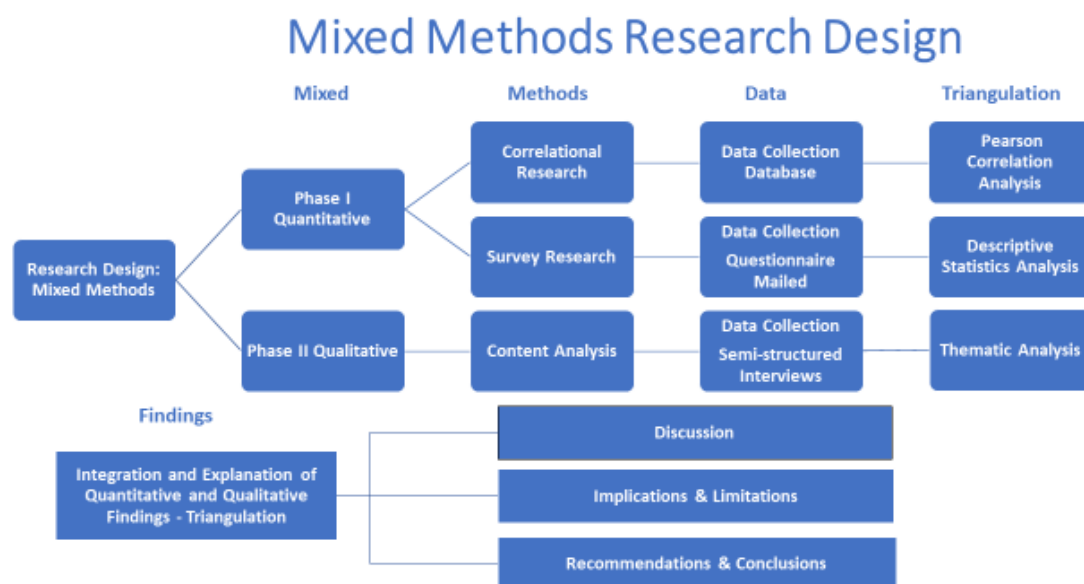


Figure 4. Voice of the Employer© study's mixed methods research design.

The independent variables identified as employer messaging and communication tactics were informed by prior research featured within the literature review. These

messaging and communication tactics, identified as the independent variables, were then included in both the survey and the interviews of the subject matter experts, to assess their impact on the identified dependent variable, election outcome. Specific steps taken to conduct and integrate this study's triangulation of research components are further detailed in Chapter Three.

Definitions

There are a substantial number of phrases as well as legal and technical jargon that are unique to the workplace representation system. A list of these terms along with operational definitions are included in a glossary within Appendix A.

Assumptions

The study assumed that the inclusion of a third-party labor organization [union] inserted between the employer and its employees acts to escalate conflict, as it is the workplace conflict itself which justifies the third party's inclusion. Consequently, it was assumed that the third-party labor organization seeks to foment workplace conflict in order to justify its existence and create added value in the workplace. This circular loop of fomenting and resolving conflict can be a continuing outgrowth of an employer loss in a workplace representation election.

The study also assumed that the employer representative responding to the survey had knowledge of the workplace representation election in question and followed instructions included within the survey or interview. It was also assumed that the employer is the foremost authority to explain the employer's actions during a workplace representation election. Finally, this study assumed that all parties within the workplace

representation election will act within their own self-interest to achieve an election victory.

Scope and Delimitations

The focal period of this study of workplace representation elections was limited to April 14, 2015 to May 1, 2017. This period represents the major portion of the effective period of the 2015 election rule; the defined studied period occurred prior to the announcement of the Dec 18, 2019 revisions to the current election system.

There are many decisions which employers must make during the workplace representation election process; under the April 2015 election system revisions employers had very little time to do so. Along with messaging and communication tactics, the employer must also decide whether to employ consultants and lawyers to guide the employer's campaign decisions. Deciding whether to hire consultants or lawyers has important consequential financial ramifications; this research study's collected quantitative and qualitative data contributes insight into the employers' related election campaign decisions. This study also yielded data providing insight into whether an employer's election outcome is influenced by the duration of the election itself, as well as the employer's decision whether to stipulate or contest the union's proposed bargaining unit.

Significance of the Study

Given the potential costs associated with an employer's loss of a workplace representation election, the potential significance of this study's proposed evidence-based conceptual model to guide employer messaging and communication tactics and thereby win workplace representation elections is invaluable, if not incalculable. The study's

incorporation of the employer's perspective enabled the researcher's findings and recommendations that will contribute to knowledge for scholars, policy makers, and labor relations practitioners alike, in anticipation of ample opportunities for testing of the study's contributions in future elections.

Summary

The National Labor Relations Act (the Act) was passed in 1935, and its regulations have been the subject of some of the most violent and intense workplace conflict for over 80 years. The Act has been revised in only a few instances with the most significant revision occurring in April 2015, and again recently on December 18, 2019. As detailed below in Chapter Two, while there is substantial research and literature supporting and informing employees' and unions' election decisions, unfortunately they have not sourced reliable data from employers regarding NLRB election messaging and communication tactics. This research study's findings contribute to the academic body of knowledge by including an ignored perspective, that of the employer. Additionally, the findings developed in this study were designed to assist employers in their allocation of dollars to efficiently and effectively achieve election victories. The researcher believes that the cost savings to employers associated with awareness and implementation of this study's findings and recommendations are significant.

Chapter 2: Literature Review

This study addressed the organizational conflict inherent within workplace representation elections, which determine whether a union will intervene in the relationship between an employer and its employees. The purpose of this study's research design was to utilize a mixed methods approach to gather and analyze data, thereby providing guidance that would assist employers' decisions regarding messaging and communication tactics during conflicts associated with workplace representation elections supervised by the National Labor Relations Board or NLRB (hereinafter, a.k.a. "NLRB elections").

The foundational theories, data, and practical information upon which this research study relied are contained in this literature review of previously published findings on the topic of conflict inherent within workplace representation elections. While much has been studied about why employees join unions and why unions are successful in workplace representation elections, relatively little research exists on the employers' successful strategies during workplace representation elections. A review of the available literature revealed that information regarding employer strategies relied upon therein was not sourced from the employer, as discussed below.

This literature review synthesizes the perspectives of scholars, researchers, practitioners, and most importantly, both sides' perspectives on the conflict within workplace representation elections. A review of the literature details the system associated with the workplace representation election procedures as outlined in the regulations for the National Labor Relations Act (nlrb.gov; see Higgins, Jr., 2019). The government agency tasked with the responsibility of regulating these workplace

representation elections is the National Labor Relations Board (NLRB), formed in 1935 by the National Labor Relations Act.

In June of 2011 the University of California Berkeley Labor Center published an article entitled “New Data: NLRB Process Fails to Ensure a Fair Vote,” declaring that the NLRB’s workplace election system—in place since 1947—was biased against unions. The article summarized Kate Bronfenbrenner’s 2009 study entitled “No Holds Barred: The Intensification of Employer Opposition to Organizing,” among others, and succinctly noted that “the current NLRB election process fails to ensure that workers can freely form unions” (Logan, Johansson, & Lamare, 2011, p. 1). In response to the Bronfenbrenner 2009 study and many other calls for reform, in April 2015 the system for workplace representation elections was significantly overhauled at the urging of unions, which at the time enjoyed a 60% plus win rate (McConville, 2015). The 2015 revised election rules were met with much derision by employers, and the 2015 revised election system began to take on the moniker of “ambush elections” (Iafolla, 2020a, para. 7), since unions now could determine whenever and however long they would like to start campaigning to unionize. Once the union decided to notify the employer formally through a petition for election, an election could in theory be held within 10 calendar days (Kanu, 2018a; Yager, 2015).

Employers have contended the 2015 “ambush” election system prioritized the speed of the election in order to limit the time employers have to respond to the union’s campaign, which has no time constraints since a union can file a petition whenever filing is convenient for the union. After changes in the political party leading the executive branch of the federal government in 2016, the NLRB switched from a majority of

Democrat members to a majority of Republicans. This Republican composition of the NLRB sought to overturn many of the revisions made in the prior Democratic administration (Detrick, 2017). In December 2017 the NLRB published a notice accepting public comment on revisions to the election system revised in 2015. Over 7,000 different comments were received, providing advice and guidance on whether change was needed and what changes should occur (Iafolla, 2018). One employer organization summarized the 2015 “ambush election” amendments as follows:

This rule was designed to ambush both workers and employers in an effort to tip the scales in favor of unions at the expense of open debate. The rule degrades the election process by blocking employers’ due process rights and workers’ ability to hear from both sides during an organizing drive. The NLRB now has an opportunity to undo this inappropriate rulemaking and reestablish balance in representation elections. (Coalition for a Democratic Workplace, 2018, p. 1; see also Hayes, Duffield & Kisicki, 2018)

Despite the interests of employers and those of over 7,000 commenters, the NLRB in 2018 prioritized changing the 2015 election system as sometime in the “long term agenda” in order to prioritize other matters (Kanu, 2018b, p. 1). Nonetheless and to the surprise of many, the NLRB on December 18, 2019 issued a final rule revising the April 2015 system. This literature review outlines both the 2015 election system as well as the relevant significant changes for representation elections announced December 18, 2019, initially effective April 16, 2020. The status of the effective date of the revisions may however be in doubt, as the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) recently filed a lawsuit on March 6, 2020, in the U.S. District

Court for the District of Columbia, arguing the NLRB violated administrative law by issuing the election revisions without utilizing the rulemaking process (Iafolla, 2020c).

Once a review of the literature revealed the established rules, regulations, and the winners and losers in the workplace conflict here studied, the researcher examined theories that support victories for the employees and their union as well as those theories that support victories for the employers. The literature reviewed included the only textbook offering strategy, messaging, and communication tactics for employers: Don Wilson's (1998) *Total Victory! The Complete Management Guide to a Successful NLRB Representation Election*. The literature reviewed also featured prior quantitative studies on election outcomes, comprised of data gathered and analyzed from the perspective of the union organizer(s). This data was the subject of comparison with this dissertation's collected data, gathered and analyzed to reflect the employers' viewpoint.

Governing System for Workplace Representation Elections

Much of the research and general explanations for the rules governing workplace representation elections were available online and in the literature as provided directly by NLRB regional directors. However, the most detailed information came directly from the regulations as published by the NLRB and available to the public on its website www.nlr.gov. A fact sheet and the published request for information can also be found at: <https://www.nlr.gov/news-publications/publications/fact-sheets/nlr-representation-case-procedures-fact-sheet>. A visual flowchart diagram of the NLRB workplace representation system is included below as Figure 5, for an overview of how union representation is approved or denied by voting employees.

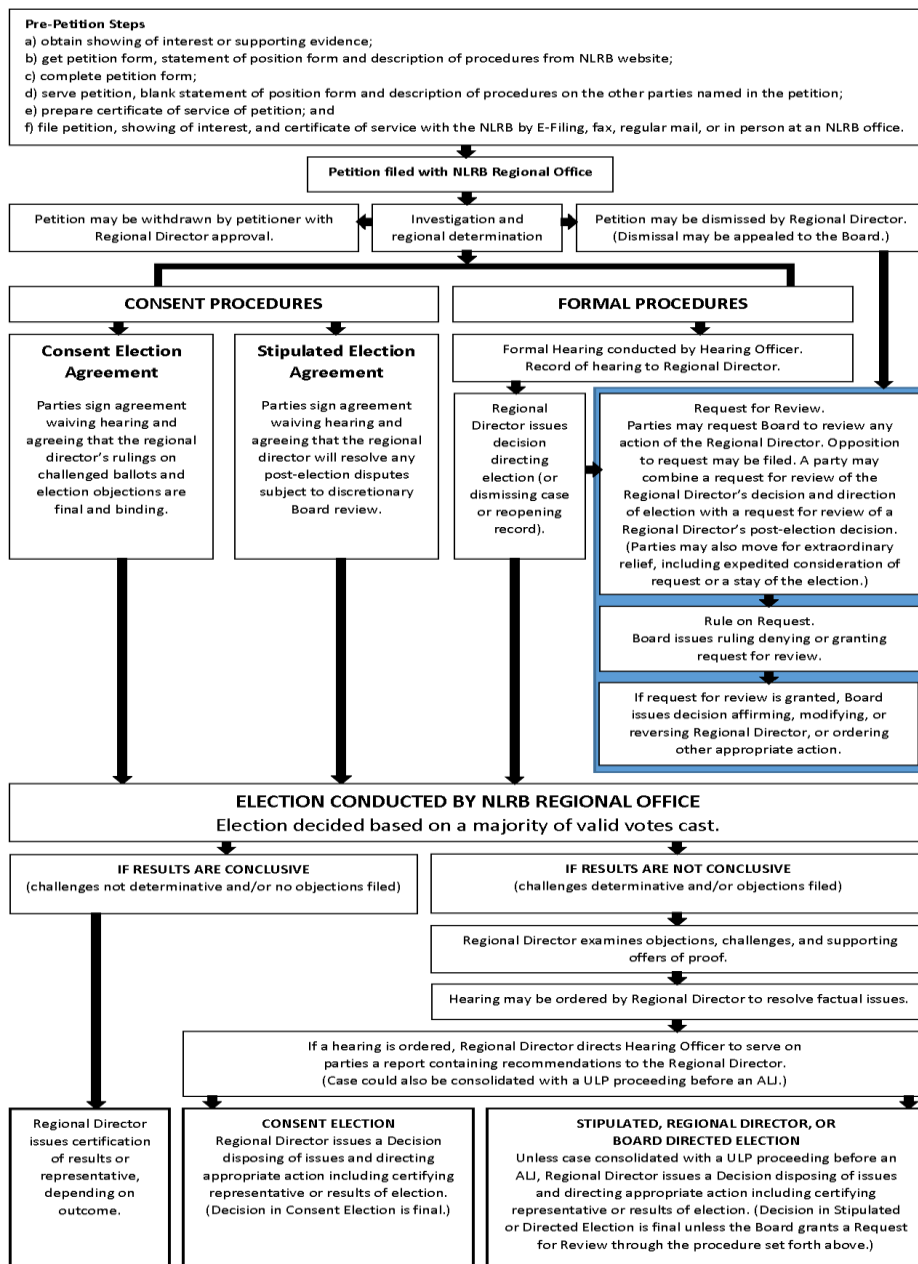


Figure 5. NLRB representation case system process flow.

Source: <https://mysullys.com/election-flow-chart/the-nlr-process-nlr-6/>

The system described in Figure 5 has been in existence for decades; it is the system under which many labor relations professionals were trained and have become accustomed to

navigating. The 2015 revisions upended that system with the net effect of speeding up the election process (Ferguson, 2018).

Because both the 2015 and the December 2019 election procedures are relatively recent, there existed very little corresponding research on representation elections in peer-reviewed journals. There was, however, a substantial amount of information published by law firms, consultants, professors, and other practitioners in the labor relations profession. This literature review included information from these practical applied sources as well as information directly from the NLRB itself. A chart published by the NLRB on its website, here reproduced as Table 1, provides a comparison of the election system in place before and after the 2015 changes.

Table 1

Comparison of Pre-2015 and Revised 2015 Procedures

Pre-2015 Procedures	New 2015 Procedures
Parties cannot electronically file election petitions. Parties and NLRB regional offices do not electronically transmit certain representation case documents.	Election petitions, election notices and voter lists can be transmitted electronically. NLRB regional offices can deliver notices and documents electronically, rather than by mail.
The parties and prospective voters receive limited information.	Parties will receive a more detailed description of the Agency's representation case procedures, as well as a Statement of Position form, when served with the petition. The Statement of Position will help parties identify the issues they may want to raise at the pre-election hearing. A Notice of Petition for Election, which will be served with the Notice of Hearing, will provide employees and the employer with information about the petition and their rights and obligations. The Notice of Election will provide prospective voters with more detailed information about the voting process.

Pre-2015 Procedures	New 2015 Procedures
<p>The parties cannot predict when a pre- or post-election hearing will be held because practices vary by Region.</p>	<p>The Regional Director will generally set a pre-election hearing to begin 8 days after a hearing notice is served and a post-election hearing 21 days after the tally of ballots.</p>
<p>There is no mechanism for requiring parties to identify issues in dispute.</p>	<p>Non petitioning parties are required to identify any issues they have with the petition, in their Statements of Positions, generally one business day before the pre-election hearing opens. The petitioner will be required to respond to any issue raised by the non-petitioning parties in their Statements of Positions at the beginning of the hearing. Litigation inconsistent with these positions will generally not be allowed.</p>
<p>The employer is not required to share a list of prospective voters with the NLRB's regional office or the other parties until after the regional director directs an election or approves an election agreement.</p>	<p>As part of its Statement of Position, the employer must provide a list of prospective voters with their job classifications, shifts and work locations, to the NLRB's regional office and the other parties, generally one business day before the pre-election hearing opens. This will help the parties narrow the issues in dispute at the hearing or enter into an election agreement.</p>
<p>Parties may insist on litigating voter eligibility and inclusion issues that do not have to be resolved in order to determine whether an election should be held.</p>	<p>The purpose of the pre-election hearing is clearly defined and parties will generally litigate only those issues that are necessary to determine whether it is appropriate to conduct an election. Litigation of a small number of eligibility and inclusion issues that do not have to be decided before the election may be deferred to the post-election stage. Those issues will often be mooted by the election results.</p>
<p>Parties may file a brief within 7 days of the closing of the pre-election hearing, with permissive extensions of 14 days or more.</p>	<p>Parties will be provided with an opportunity to argue orally before the close of the hearing and written briefs will be allowed only if the regional director determines they are necessary.</p>
<p>Parties waive their right to challenge the regional director's pre-election decision if they do not file a request for review before</p>	<p>Parties may wait to see whether the election results have made the need to file a request for review of the regional director's pre-</p>

Pre-2015 Procedures	New 2015 Procedures
the election. This requires parties to appeal issues that may be rendered moot by the election results.	election decision unnecessary and they do not waive their right to seek review of that decision if they decide to file their request after the election.
Elections are delayed 25-30 days to allow the Board to consider any request for review of the regional director's decision that may be filed. This is so even though such requests are rarely filed, even more rarely granted and almost never result in a stay of the election.	There will be no automatic stay of an election.
The Board is required to review every aspect of most post-election disputes, regardless of whether any party has objected to it.	The Board is not required to review aspects of post-election regional decisions as to which no party has raised an issue, and may deny review consistent with the discretion it has long exercised in reviewing pre-election rulings.
The voter list provided to non-employer parties to enable them to communicate with voters about the election includes only names and home addresses. The employer must submit the list within 7 days of the approval of an election agreement or the regional director's decision directing an election.	The voter list will also include personal phone numbers and email addresses (if available to the employer). The employer must submit the list within 2 business days of the regional director's approval of an election agreement or decision directing an election.

Note. <https://www.nlr.gov/news-publications/publications/fact-sheets/nlr-representation-case-procedures-fact-sheet>

While the NLRB again elected to provide an overview of the 15 major changes included within its 302-page lengthy revisions of December 18, 2019, the Board did so in narrative form rather than in a chart, as was provided for the 2015 revisions (NLRB, 2019):

1. The pre-election hearing will generally be scheduled to open 14 business days from notice of the hearing, and regional directors will have discretion to

postpone the opening of the hearing for good cause. Under the prior rules, pre-election hearings were generally scheduled to open 8 calendar days from the notice of hearing. The additional time will permit parties to more easily manage the obligations imposed on them by the filing of a petition and to better prepare for the hearing, thus promoting orderly litigation. The additional time is also necessary to accommodate changes to the Statement of Position requirement (summarized below); in conjunction with those changes, the additional time will also help facilitate election agreements and further promote orderly litigation.

2. The employer will now be required to post and distribute the Notice of Petition for Election within 5 business days after service of the notice of hearing. The prior rules required posting and distribution within 2 business days. The additional time will permit employers to balance this requirement with the other obligations imposed on them by the filing of a petition, and—in conjunction with the additional time between the notice and opening of the hearing—will guarantee that employees and parties have the benefit of the Notice of Petition for Election for a longer period of time prior to the opening of the hearing than is currently the case.
3. Non-petitioning parties are now required to file and serve the Statement of Position within 8 business days after service of the notice of hearing, and regional directors will have the discretion to permit additional time for filing and service for good cause. Non-petitioning parties were formerly required to file and serve the Statement of Position 1 day before the opening of the pre-

election hearing (typically 7 calendar days after service of the notice of hearing). The additional time will permit non-petitioning parties more time to balance this requirement with the other obligations imposed on them by the filing of a petition, and it will also permit them slightly more time to prepare the Statement of Position, which will in turn promote orderly litigation.

4. The petitioner will also be required to file and serve a Statement of Position on the other parties responding to the issues raised by any non-petitioning party in a Statement of Position. The responsive Statement of Position will be due at noon 3 business days before the hearing is scheduled to open (which is also 3 business days after the initial Statement(s) of Position must be received). Timely amendments to the responsive statement may be made on a showing of good cause. The prior rules required the petitioner to respond orally to the Statement(s) of Position at the start of the pre-election hearing. Requiring the response in writing prior to the hearing will facilitate election agreements or result in more orderly litigation by narrowing and focusing the issues to be litigated at the pre-election hearing.
5. Although acknowledging that the primary purpose of the pre-election hearing is to determine whether there is a question of representation, disputes concerning unit scope and voter eligibility—including issues of supervisory status—will now normally be litigated at the pre-election hearing and resolved by the regional director before an election is directed. The parties may, however, agree to permit disputed employees to vote subject to challenge, thereby deferring litigation concerning such disputes until after the election.

The prior rules provided that disputes “concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.” The final rule represents a return to the Board's procedures prior to the 2014 amendments, and it will promote fair and accurate voting as well as transparency by better defining the unit in question prior to the election. Further, by encouraging regional directors to resolve issues such as supervisory status prior to directing an election, the final rule will give better guidance to the employees and parties and will help avoid conduct that may give rise to objections or unfair labor practices. At the same time, expressly permitting the parties to agree to defer litigation on such issues continues to honor the Act's fundamental interest in encouraging agreement between parties where possible, which promotes promptness and efficiency. The choice is theirs, not mandated by the Board.

6. The right of parties to file a post-hearing brief with the regional director following pre-election hearings has been restored and extended to post-election hearings as well. Such briefs will be due within 5 business days of the close of the hearing, although hearing officers may grant an extension of up to 10 additional business days for good cause. Under the prior rules, such briefs were permitted only upon special permission of the regional director. Permitting such briefs as a matter of right after all hearings will enable parties more time to craft and narrow their arguments, which will in turn assist the regional director (and the hearing officer, in post-election proceedings) in focusing on the critical facts, issues, and arguments, thereby promoting

orderly litigation and more efficient resolution of disputes. Extending the right to file post-hearing briefs to post-election proceedings also promotes uniformity.

7. The regional director's discretion to issue a Notice of Election subsequent to issuing a direction of election is emphasized. The prior rules provided that regional directors “ordinarily will” specify election details in the direction of election. Reemphasizing the regional directors' discretion in this area will eliminate confusion that may have led to unnecessary litigation and may facilitate faster issuance of decisions and directions of election in some cases, although the Board anticipates that regional directors will still “ordinarily” include the election details in the direction of election.
8. The regional director will continue to schedule the election for the earliest date practicable, but—absent waiver by the parties—normally will not schedule an election before the 20th business day after the date of the direction of election. As explained in item nine below, this period will permit the Board to rule upon certain types of requests for review prior to the election. The prior rules simply provided that the regional director “shall schedule the election for the earliest date practicable.” The final rule is largely consistent with Board procedures prior to the 2014 amendments, which provided that the regional director would normally schedule an election 25 to 30 days after the issuance of the direction of election. Permitting the Board to rule on disputes prior to the election will reduce the number of cases in which

issues remain unresolved at the time of the election, thereby promoting orderly litigation and fair and accurate voting.

9. Where a request for review of a direction of election is filed within 10 business days of that direction, if the Board has not ruled on the request, or has granted it, before the conclusion of the election, ballots whose validity might be affected by the Board's ruling on the request or decision on review will be segregated and all ballots will be impounded and remain unopened pending such ruling or decision. A party may still file a request for review of a direction of election more than 10 business days after the direction, but the pendency of such a request for review will not require impoundment of the ballots. This represents a partial return to the Board's procedures prior to the 2014 amendments, which removed the provision for automatic impoundment. By reinstating automatic impoundment in these narrow circumstances, the final rule promotes transparency by removing the possibility for confusion if a tally of ballots issues but is then affected by the Board's subsequent ruling on the pending request for review. Consistent with the 2014 amendments, however, parties remain free to wait to file a request for review until after the election has been conducted and the ballots counted. By preserving this option, which encourages parties to wait to see whether the results of the election moot the issues for which they would otherwise seek review, the final rule also continues to promote efficiency.
10. Formatting and procedural requirements for all types of requests for reviews have been systematized. All requests for review and oppositions thereto are

now subject to the same formatting requirements. Oppositions are now explicitly permitted in response to requests for review filed pursuant to § 102.71. And the practice of permitting replies to oppositions and briefs on review only upon special leave of the Board has been codified. All of these provisions are consistent with the Board's longstanding practice and promote transparency and uniformity.

11. A party may not request review of only part of a regional director's action in one request for review and subsequently request review of another part of that same action. The prior rule was not clear whether parties were permitted to proceed in such a fashion. Disallowing such a piecemeal approach promotes orderly litigation, administrative efficiency, and more expeditious resolution of disputes.
12. The employer now has 5 business days to furnish the required voter list following the issuance of the direction of election. Under the prior rule, the employer had only 2 business days to provide the list. Permitting additional time for the voter list will increase the accuracy of such lists, promoting transparency and efficiency at the election and reducing the possibility of litigation over the list.
13. In selecting election observers, whenever possible a party will now select a current member of the voting unit; when no such individual is available, a party should select a current nonsupervisory employee. The prior rules simply provide that parties may be represented by observers. Providing guidance for the selection of observers promotes uniformity and transparency and will

reduce litigation over parties' choices of observers and thus promote administrative efficiency.

14. The regional director will no longer certify the results of an election if a request for review is pending or before the time has passed during which a request for review could be filed. Under the prior rules, regional directors were required to certify election results despite the pendency or possibility of a request for review; indeed, in cases where a certification issued, requests for review could be filed up until 14 days after the issuance of the certification. As a result, a certified union would often demand bargaining and file unfair labor practice charges alleging an unlawful refusal to bargain even as the Board considered a request for review that, if granted, could render the certification a nullity. By eliminating the issuance of certifications until after a request for review has been ruled on, or until after the time for filing a request for review has passed, the final rule eliminates confusion among the parties and employees and promotes orderly litigation of both representation and consequent unfair labor practice cases. To promote transparency and uniformity, the final rule also provides a definition of “final disposition.”
15. The final rule also makes a number of incidental changes in terminology, and updates internal cross-references, consistent with earlier changes that were effective on March 6, 2017(see 82 FR 11748). In addition, for the sake of uniformity and transparency within the representation case procedures, the Board has converted all time periods in subpart D to business days, and it has also updated § 102.2(a) to define how business days are calculated, including

clarification that only *federal* holidays are implicated in time period calculations (NLRB, 2019)

Since 1947 there have been three methods by which a workplace is unionized:

1. Most employees vote to be unionized through a workplace representation election overseen by the NLRB, the subject of this research study;
2. A majority of employees sign cards authorizing the union as their representative for the purposes of collective bargaining, and the employer recognizes the union's majority status voluntarily (Schwartz, 2003); and
3. By acquiring a previously unionized workforce, where the acquiring employer becomes a successor employer and is required to recognize the union. (see NLRB v. Burns, 1972)

Of the foregoing listed methods, the most complicated is unionization through a workplace representation election overseen by the NLRB. To petition for an election, a group of employees, or a union, must obtain authorization card signatures from at least 30% of an appropriate unit within the workplace to authorize the union as their representative for the purposes of collective bargaining. To obtain authorization cards from the required minimum of 30% of an appropriate unit within the workplace, it is necessary for the union to solicit employees' signatures. Figure 6 is an example of an authorization card utilized by the International Brotherhood of Electrical Workers union:

AUTHORIZATION FOR REPRESENTATION

I authorize Local Union No. _____ of the **International Brotherhood of Electrical Workers** to represent me in collective bargaining with my present and future employers on all present and future jobsites within the jurisdiction of the Union. This Authorization is nonexpiring, binding, and valid until such time as I submit a written revocation.

Name _____ Soc. Sec. No.: _____

Home Address: _____ Phone: _____

City: _____ State: _____ Zip: _____

_____ Date of Authorization _____ Signature _____


Form 140 

Figure 6. Example of union representation authorization card.

Source: <http://ibewlu363.org/htdocs/index.html>

There is not now nor has there ever been a requirement that unions notify management that an organizing campaign of authorization card signing is underway. Most unions attempt to conduct their organizing without the employer's knowledge, in what employers typically refer to as an "ambush election" (Hayes et al., 2018). Reclaim Democracy, an organization opposed to corporate influence, published Walmart's guidance to managers for responding to union organizing. In "Walmart: A Manager's Toolbox to Remaining Union Free," Walmart advises its managers that: "Most union organizing will begin as 'covert' (undercover) activity. By keeping all union activity covert, the organizer is hoping management will not be alerted to his/her organizing efforts" (<http://reclaimdemocracy.org>). In his book *A Troublemaker's Handbook: How to Fight Back Where You Work and Win*, author Dan La Botz (1991) extensively addressed the strategies and procedures for influencing employees to sign union authorization cards.

Numerous additional literature sources provided insight into the tactics that unions use to obtain signatures on authorization cards. In one example, Professors Ruth

Milkman of UCLA and Kim Voss of UC Berkeley (2004) wrote *Rebuilding Labor: Organizing and Organizers in the New Union Movement* to provide specific guidance to unions on organizing messaging and tactics to obtain the required 30%. The first chapter featured Kate Bronfenbrenner's 2004 study "Changing to Organize: A National Assessment of Union Organizing Strategies", which prophetically summarized the future:

The coming years will be a period of enormous risk and challenges for the American labor movement. Almost all unions, locally and nationally, understand that both their political power and their bargaining power will be severely undermined unless they organize on a massive scale across every sector of the economy. (Bronfenbrenner & Hickey, 2004, p. 53)

This literature review conducted for this study primarily focused on what occurs after a sufficient showing of interests (a minimum 30% of an appropriate unit) is obtained. Often it is only after the petition is filed publicly with the NLRB that an employer first becomes aware of the union organizing campaign. In her article "Three Lessons for Winning in November and Beyond: What Union Organizers can Teach Democrats," Jane McAlevey (2018) noted that the workplace representation election system "makes people associate the unionization election itself with the pain and discomfort of the polarized, harsh language coming at them from all sides: 'The sooner the election goes away the better they will feel'" (p. 1). The language McAlevey used to describe the election process validates the notion of organizational conflict inherent within representation elections. Pain, discomfort, polarized and harsh language—all are descriptions which Galtung (1967) himself might characterize as both direct and structured violence.

Understanding that the company will likely campaign against unionization, most unions file their petition with well over 30% of an appropriate unit. A study by Mehta and Theodore (2005) entitled *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns* found that in over 91% of the workplace representation elections studied, the union filed its petition for election with over 50% of the workers having signed authorization cards denoting their interest in authorizing the union to represent their interests in collective bargaining.

Companies vary in the extent of their acceptance of the unions' right to organize the employer's employees. Some employers have a reputation for fighting stringently against employee unionization (Greenhouse, 2015). In one example, *Gizmodo* magazine analyzed Amazon's "anti-union" tactics in a 45-minute video. Illustrating Amazon's "anti-union" approach, according to *Gizmodo*, the video quotes Amazon as saying: "We do not believe unions are in the best interest of our customers, our shareholders, or most importantly, our associates. Our business model is built upon speed, innovation, and customer obsession—things that are generally not associated with unions" (Menegus, 2018, p. 1). Similarly, John Mackey, the co-founder and CEO of Whole Foods, described his opinion of unions: "The union is like having herpes. It doesn't kill you, but it's unpleasant and inconvenient and it stops a lot of people from becoming your lover" (Keller, 2013, p. 1). Robert Slater (2003), author of the *The Wal-Mart Decade: How a New Generation of Leaders Turned Sam Walton's Legacy into the World's #1 Company*, claimed that "[Sam Walton] would not permit anyone to unionize a store, passing word that he would rather close the place than accept unions" (p. 33). It is perhaps the vehement assertions of Walmart's founder that act as a catalyst to organizing activity, and

for many, it is personal. As the largest private business in the world, Walmart is indicative of employers' response to organizing activity, and therefore attracts union organizing campaigns from multiple unions (Hemphill, 2008).

According to union organizing consultant Jason Mann (2012), unions:

... aim to have at least 60% of cards signed prior to filing a certification application. Generally, through employer interference, [unions'] support level will drop by 10 percentage points. To have a shot at getting 50% of the vote [unions] can't go in with less than 60% of cards signed at the application [for a petition for election]. (p. 11)

A 2005 study of workplace representation elections revealed that in 31% of the elections studied, the union and workers abandoned their organizing campaign after management became aware of the organizing effort, which then prompted the union to withdraw their petition without a vote (Mehta & Theodore, 2005).


Much of the strategy of collecting signatures for authorization cards is conducted by what Cornell University professors Fletcher and Hurd (1998) referred to as volunteer internal organizers. These are typically unpaid organizers who are employees of the subject employer. Their chief objective is to obtain as many signed authorization cards without the knowledge of the employer (Bronfenbrenner, 1998). Figure 7 presents an example of guidance provided to organizers from the Laborers International Union, explaining the need for organizing secrecy and advising them to "Keep it Quiet."

HOW TO ORGANIZE WITH LiUNA LOCAL UNION 1290PE

1. Keep it quiet! You do not want your bosses to become suspicious. When bosses hear "UNION" they go quickly into action to squelch any activity.
2. Develop a list of everyone who works in a job that will be covered by your union. Keep the list quiet.
3. Identify a couple of your co-workers who you completely trust to keep the organizing quiet, and who you feel will support organizing a union.
4. Call LiUNA Local Union 1290PE at (913) 432-7738 or email us at jhendrickson1290PE@gmail.com. We will answer any questions you have.

*REMEMBER: For most groups of workers, it is your lawful right to organize and Collectively Bargain a UNION Contract.

THE UNION IS YOU AND YOUR CO-WORKERS!



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

Figure 7. Laborers' union advice on ambush organizing: Keep it quiet!

Source: <http://www.liunlocal1290pe.com/Local1290PE/Organizing>

It is this secretive and non-transparent approach to workplace organizing that is most onerous to employers. A systems theorist might suggest a solution requiring unions to publicly register their card-signing campaign with the NLRB, thereby enabling employees and the employer to campaign simultaneously. The NLRB subsequently could prohibit elections in circumstances where the card signing period was not publicly announced to employers and employees and other stakeholders. This would resolve the problem of a lack of transparency by unions. In the current system a union can campaign indefinitely without the knowledge of the employer, and the signed authorization cards are good for approximately one year (Knuth, 2017). Consequently, the union can campaign secretly; once it is both the most optimal time for the union and the most disadvantaged time for an employer's business operations, the union can file a petition for election and "ambush" the employer with a short election period.

It is the unions' ability to disadvantage the employer with the unscheduled distraction from the organizational mission that potentially has been the cause of the union's tremendous election success rate. Petitioning for a union election just before Christmas or Black Friday is an ideal strategy for unions attempting to organize retail employers. A system theorist might suggest a strategy for equilibrium that mandates elections must be spread out or available during only certain portions of the year. Unions themselves recognize the value of this system control, as evidenced by the common union practice that only allows members to withdraw their membership from the union for just one specified month per year (Wallender, 2019). This system control enhancement would create efficiencies within the system, as it eliminates surprise and creates more transparency and predictable demands upon the election system and the actors within it. This forces the employer to reprioritize its business operations as was required by the 2015 revisions, since it must respond to the election within two days and the election vote can occur within as little as 10 days (Yager, 2015).

In its response to the NLRB's Request for Information regarding the 2015 revised election procedures (Griffin & NLRB, 2015), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) solicited Craig Becker, a former member of the NLRB's five member board, who admitted that "the [2015] amendments shortened the time between petition and election" (Becker & Rhinehart, 2017, p. 3). In the AFL-CIO's most recent study of workplace representation elections, John-Paul Ferguson (2018) analyzed 2.5 years of data collected both before and after the 2015 amended election system was revised. In a report entitled "Assessing the Impact of the April 2005 [sic] Amendments To the NLRB Representation Case Procedures," Ferguson

found that “it becomes immediately obvious there was a major reduction (nearly half) in election lag (elapsed time between petition and vote) in the immediate wake of the rule change. The reduction happened quickly and persisted for the rest of the study period” (p. 2).

Understanding that it is one of the most significant decisions a worker will make in their entire career, companies seek to provide as much information about unions as possible during the short period of what employers refer to as the “ambush” election system. A systems theorist would lengthen rather than shorten the time to allow for an election. If the mark of a righteous argument is one comfortable with scrutiny, then the system should allow for robust debate on what may be the most important decision a worker will make in their career. Put succinctly, once an employer becomes aware of the card-signing activity, an employer response is imminent (Hurd, 2004; Hurd & Uehlein, 1994). A systems theorist might suggest a minimum 42-day election period to create equal input by both sides of the election conflict. The 2015 election system enabled one party—the union—to obtain a system advantage by capitalizing on a lack of transparency of its campaign, followed by a quickie election. A minimum 42-day campaign, the average of the election cycle time prior to the 2015 revised election system, provided a historically adequate electioneering period, even though unions won in excess of 60% of the elections. The 2020 revisions to the election system add greater transparency to the election by extending the time period for electioneering by all parties (see National Labor Relations Board, 2019, p. 69525).

Election Messaging by Employers

Much has been written regarding the content, tone, pace, and structure of the employer's response to the union's petition for election. There are few accounts of campaign tactics as bombastic as those of the self-described unethical union buster Martin Jay Levitt. His co-authored book *Confessions of a Union Buster* was a hot seller among union circles and contains a compendium of "dirty tricks" he employed in his 18-year career as a consultant to employers during workplace representation election campaigns (Levitt & Conrow, 1993).

Perhaps one of the most successful organizations providing consultation to employers involved in workplace representation elections is the Labor Relations Institute. Its founder Donald P. Wilson in 1998 literally wrote the book on how employers should respond. Entitled *Total Victory! The Complete Management Guide to a Successful NLRB Representation Election*, Wilson's approach truly does cover all facets of the election process. The majority of the employers' messaging and communication tactics identified and examined as independent variables in this research study are listed in Wilson's 1998 book.

Once a group of employees or a union files a petition for election, the NLRB requires the union to submit its minimum 30% sufficient showing of interest to process the petition for election. In the interim, the NLRB requires the union to then notify the employer that a petition for an election has been filed. Then the NLRB seeks the employer's position on whether it stipulates (agrees) or contests the union's petitioned appropriate unit of employees. Specifically, the NLRB seeks to know whether the

employer accepts the list of job titles of employees who should vote in a workplace representation election on whether to accept union representation.

If the employer and the union agree on the appropriate unit, an “uncontested” or “stipulated” election is then scheduled (NLRB, 2016). If the employer and the union do not stipulate to the appropriate unit, a contested election will occur. This means that it is necessary for the NLRB to determine the appropriate unit of employees. To do so, the NLRB will conduct what is referred to as an “R Case” (representation case). As described in the NLRB’s Casehandling Manual (2017) in section 11428, the NLRB takes testimony and evidence from both the union and the employer to decide which employees will be eligible to vote in an appropriate unit. Typically, these R Case hearings are held at the office of the NLRB and can last anywhere from a portion of a day to several weeks. After the last portion of testimony is taken, both parties historically each could submit a written brief outlining legal support for its position. However, the 2015 revised rules did not require the hearing officer to allow post-hearing briefs from the parties. Again, a systems theorist would suggest that the adjudicator of the election conflict should not disadvantage either’s system input and consequently should be required to enable both parties to the hearing to submit post-hearing legal briefs. The December 2019 revised rules did exactly this and adopted a systems theory approach, creating equilibrium through increased rather than decreased information for the decisions that are to be made during elections.

The NLRB’s Casehandling Manual (2017) states that the NLRB will then consider the testimony from the hearing, along with written briefs if appropriate, and render a decision on the appropriate unit (Section 11430). This decision is referred to as a

Decision and Order (Direction to Election) and is explained in detail in Section 11436.

The NLRB's decision also includes notification regarding the date on which the election will be held as well as the manner of the vote (e.g., voting on the premises, mail ballot). A systems theorist would suggest that all elections be held on the premises of the employer where the employees work. This enables the NLRB personnel that remains on the premises for the vote to monitor the election and electioneering behavior. Such controls do not exist with mail ballots. Before the 2015 revised election rule changes, the goal was that the election would be held within 42 days of the petition for election filing. Since the 2015 revised election rule, the time allowed for employers to campaign has been cut nearly in half (Ferguson, 2018). The newly revised 2020 rules will certainly allow more time for all parties to campaign during the election.

After the Decision and Order (Direction to Election) is issued, the NLRB provides the employer with posters in the workplace to notify the voters within the appropriate unit of the election location and date. Most of the time this election is held on the employer's premises, often in training rooms, conference rooms, or even warehouses. The hearing officer has the discretion though to order alternative means to vote, including mail ballots.

Once the Decision and Order (Direction to Election) has been issued by the NLRB, both parties—the union and the employer company—begin their campaigns in earnest (Bergeron, 2008).


On the day of the election, to coordinate the election the NLRB seeks the assistance of observers that are designated by both the employer and the union. These observers are required to be employees of the employer and they serve as the first point

of contact when a voting employee enters the voting area. The voting employee will approach the observers, who review the list of names within the appropriate unit to determine the eligibility of the voting employee. If either the union or the employer's observers feel that the voting employee is not eligible to vote, each can challenge the ballot of the voting employee. If the voting employee is to vote a challenged ballot, the employee receives a ballot from the NLRB (see Figure 8 below) and then walks to the voting booth.


DATE, TIME AND PLACE OF ELECTION		
Thursday, January 29, 2015	5:00 a.m. to 8:00 a.m. and 7:30 p.m. to 9:30 p.m.	Facilities Department Breakroom on the Employer's premises located at 3828 Delmas Terrace, Culver City, CA

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

ALL BALLOTS WILL BE MINGLED AND COUNTED IMMEDIATELY AFTER THE CONCLUSION OF THE LAST VOTING SESSION.



UNITED STATES OF AMERICA
National Labor Relations Board
31-RC-143046



OFFICIAL SECRET BALLOT

For certain employees of
SOUTHERN CALIFORNIA HEALTHCARE SYSTEMS, INC. DBA SOUTHERN CALIFORNIA HOSPITAL AT CULVER CITY

Do you wish to be represented for purposes of collective bargaining by
SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS - WEST?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES <input style="width: 40px; height: 30px; margin: 5px auto;" type="checkbox"/>	NO <input style="width: 40px; height: 30px; margin: 5px auto;" type="checkbox"/>
---	--

DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.
If you spoil this ballot, return it to the Board Agent for a new one.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

Figure 8. Sample NLRB official secret ballot.

Source: <http://sternburgerwithfries.blogspot.com/2015/02/seiu-uhws-dave-regan-loses-another-nlr.html>

After marking their ballot, the voting employee then places the ballot in an envelope rather than in a ballot box, and provides this envelope to the Election Coordinator from the NLRB. The coordinator ensures the envelope is sealed correctly and places the ballot

envelope inside the box under the watchful eyes of the voting employee and all observers.

As is evident in Figure 8, the ballot itself is a simple one. The wording on the ballot is different for every election, as it includes the unique name of the company and the union. Nonetheless every ballot simply asks one question, whether the voting employee seeks to be represented by the union, allowing for a YES or NO vote. Beneath the representation question are two boxes, one for marking YES and the other for NO. (see e.g., https://www.google.com/search?q=NLRB+Election+Ballot&client=firefox-b-l-d&source=lnms&tbn=isch&sa=X&ved=0ahUKEwj63pWixszgAhVGmuAKHerQCyUQ_AUIDygC&biw=1366&bih=604#imgsrc=7vsjvUbaGYWTGM). While voting is underway, only voting employees, the observers (both union and company observers), and the NLRB representatives are allowed in the voting area. The NLRB does not allow electioneering in the voting area or while individuals are in line waiting to vote.

Once the voting period has expired, regardless of whether any or all employees have voted the voting portion of the election is completed. As it is often necessary for the observers and election coordinator to leave the voting room for brief periods of time after the polls close, the ballot box is sealed to prevent tampering. The process for sealing the ballot box is an elaborate one that requires the observation of all election observers. Typically, the box is taped shut; seams joining the sides of the cardboard box are taped strongly to close any crevice or opening. The observers sign the tape covering the seams to enable anyone to determine if the tape was replaced, thus indicating an adulteration of the security of the ballot box. Once the ballot boxes are secured to the satisfaction of the observers and the NLRB Election Coordinator, the voting room location is opened. It is

only after the polls close that the employer's representatives and the union's representatives are allowed in the voting room. Often the ballots are counted immediately after the closing of the polls.

To count the ballots, the observers monitor the NLRB Election Coordinator who opens the ballot box and removes the ballots. Sometimes the ballots are dumped into a pile and sometimes the NLRB Election Coordinator neatly stacks each ballot. With all parties watching, the NLRB Election Coordinator reads aloud the ballot indication, either a Yes or No. The observers then affirm the NLRB Election Coordinator's decision on the voter's intent. In those circumstances when a ballot does not allow the determination of the voter's intent, such as when both the Yes and No choice contain marks of some kind, the NLRB on May 14, 2020, determined that such ballots will be designated void and not included within the ballot count (see Bloomberg Law, 2020; Kanu, 2020b).

After all votes are tallied, if the petitioning union receives the most ballots cast, it becomes the employees' elected representative for the purpose of collective bargaining. In other words, the union won the election. The challenged ballots, placed separately in individual envelopes within the ballot box, are not counted as part of the initial tally. However, if the number of challenged ballots is determinative of the outcome of the vote, it becomes necessary to resolve the challenge for each ballot. The forum for resolving these challenges is a hearing typically held at the regional office of the NLRB.

Once a determination is made on the challenged ballots, meaning it is determined that they are either in the appropriate unit or not in the appropriate unit, it then becomes necessary to ascertain the intent of the challenge ballot. The tally of the challenged ballots is added to the tally of the non-challenged ballots to arrive at the election outcome, either

a win for the union or the company. Both sides have seven calendar days to challenge the results of the election by filing objections with the NLRB. If no objections are filed, the election ballot tallies are certified (Higgins, Jr., 2012). Prior to the 2015 revisions, on average this process historically took from 42 to 38 days (Dowd, 2012). Many unions claimed, however, that the workplace representation system took too long and was manipulated by employers. As a result the system was revised in 2015, resulting in far less time for employers and employees to campaign. Again, a systems theorist would suggest returning to a minimum of the 42-day average for campaigns; the 2020 revisions will likely accomplish this objective.

Princeton University's Henry Farber (2015) conducted an extensive quantitative analysis of over 140,000 workplace representation elections coordinated by the NLRB between 1973 and 2009. Farber (2015) contended that a deteriorating [election] environment prompts unions to focus on larger potential bargaining units and on elections where they have a larger probability of winning. It was the deteriorating election environment that prompted the NLRB in 2015 to change its long-standing workplace representation election procedures (Walsh & Rosen, 2015).

Changes in Workplace Representation Elections

Understandably, given the relative newness of the revised election procedures—those occurring in 2015 as well as those effective in 2020—there is little research on workplace representation elections in peer-reviewed journals. There is, however, a comparably substantial amount of information published by the federal government, law firms, consultants, professors, and other practitioners in the labor relations field. Since the focal period of the elections in this study occurred during the active period of the 2015

election revisions, it is important to understand the details of the system and structural violence of the 2015 revised election system.

On April 14, 2015 the NLRB changed its rules and procedures governing the elections it oversees to determine workplace representation by unions. It was perhaps the biggest overhaul of the election process since the formation of the NLRB on July 5, 1935. The most significant change to the new election system was the reduced cycle time from the petition for election to the tally of the ballots (Ferguson, 2018). Under the prior election procedures, the cycle time was decreasing from 42 to 38 days. However, the 2015 revised regulations resulted in a cycle time of a mere 23 days (Becker & Rhinehart, 2017; Hardie and Murphy, 2016; National Labor Relations Board, 2019). In theory an employer faces the possibility of a workplace representation election vote within 10 days (Yager, 2015). Along with a change in political leadership at the NLRB, it was the overwhelming criticism of the business community which may have prompted the Board to revise the election system in 2019 to lengthen the cycle time of electioneering.

Systems Theory and the Workplace Representation Election

Workplace representation elections are a fulfillment of the democratic process. Former NLRB Regional Director Bernard Samoff (1968) succinctly stated that the workplace representation system enables workers a process for self-determination on whether a majority of voting employees seek or reject union representation. The end result is a recognized and certified vote which reflects the wishes of the voting employees.

While systems theorists seemingly view life and all within it as systems process flows, the workplace representation system maintained by the NLRB lends itself readily

to analysis within systems theory. The foundation of systems theory is its focus on stock and flow. It is a simple theory dealing with physical exponential growing systems, in which a reinforcing loop drives system growth, and a balancing loop constrains the growth in order to achieve systems process equilibrium (Meadows, 2008). A systems stock is the present status of the flow within the system. It is the number of elections existing without a finalized certified vote result.

Systems process anomalies occur when process flow is insufficient, and an over accumulation of stock occurs. Disruptions in the process flow can occur for a number of reasons. An increase or decrease in the number of petitions for elections in the NLRB system flow can occur based upon general economic conditions, as well as on the collective behavior of either unions or employers. Perhaps most influential are the changes in regulations, making it easier or more difficult for one or all parties to the election system. Navigating the system regulating the behavior of unions and employers during the workplace representation system process is a complex process requiring the expertise of experienced campaigners. Lawyers are an important resource to both understand and utilize the process flow within the system (Elite Lawyer, n.d.). Major regulatory changes to the election system, particularly after decades of system stability without major change, can have a confounding effect on all parties seeking to navigate the system process. Such changes can inhibit the input to the system process flow. Similarly, such regulatory instability can also slow or speed the processing of the stock (elections).

The workplace representation system is directed through a five-member regulatory agency which is subject to political influence. This influence can change

dramatically depending upon which political party oversees the executive branch of the federal government. Some view that political oscillation as amplifying its impact on the flow of the workplace representation election system. This effect was lamented by Labor Law Professor Samuel Estreicher (1985) writing in the American Bar Association's *Administrative Law Review*:

The NLRB (NLRB) has made the labor law professor's job a nightmare. A labor law professor's dream, like that of any other serious academic, is to deal with a relatively inert body of law, to be able to read the decisions and statutes once—and only once—and then work up a fairly decent set of notes which can be used year after year, leaving time for the more worthwhile pursuits of life. This federal agency simply won't let us be. These days the BNA [Bureau of National Affairs] labor service treats us to a reversal a week by the NLRB.

While Estreicher's heartfelt complaint was widely shared in 1985, the actions of the NLRB in 2015 that revised the regulations impacting the stock and flow of the workplace representation election system have been similarly denounced by employers claiming the reduced cycle time of allowable campaigning inhibits employees' ability to participate fully in the election system (Bernstein & Vickery, 2019; Hayes, Duffield, & Kisicki, 2018; National Labor Relations Board, 2019).

This reduced cycle time meant the median election period for employers to campaign was reduced to an average of 23 days since the revised election rules were made effective in April 2015. A history of the election cycle time is vividly demonstrated in the NLRB's own election data, as shown below in Figure 9.

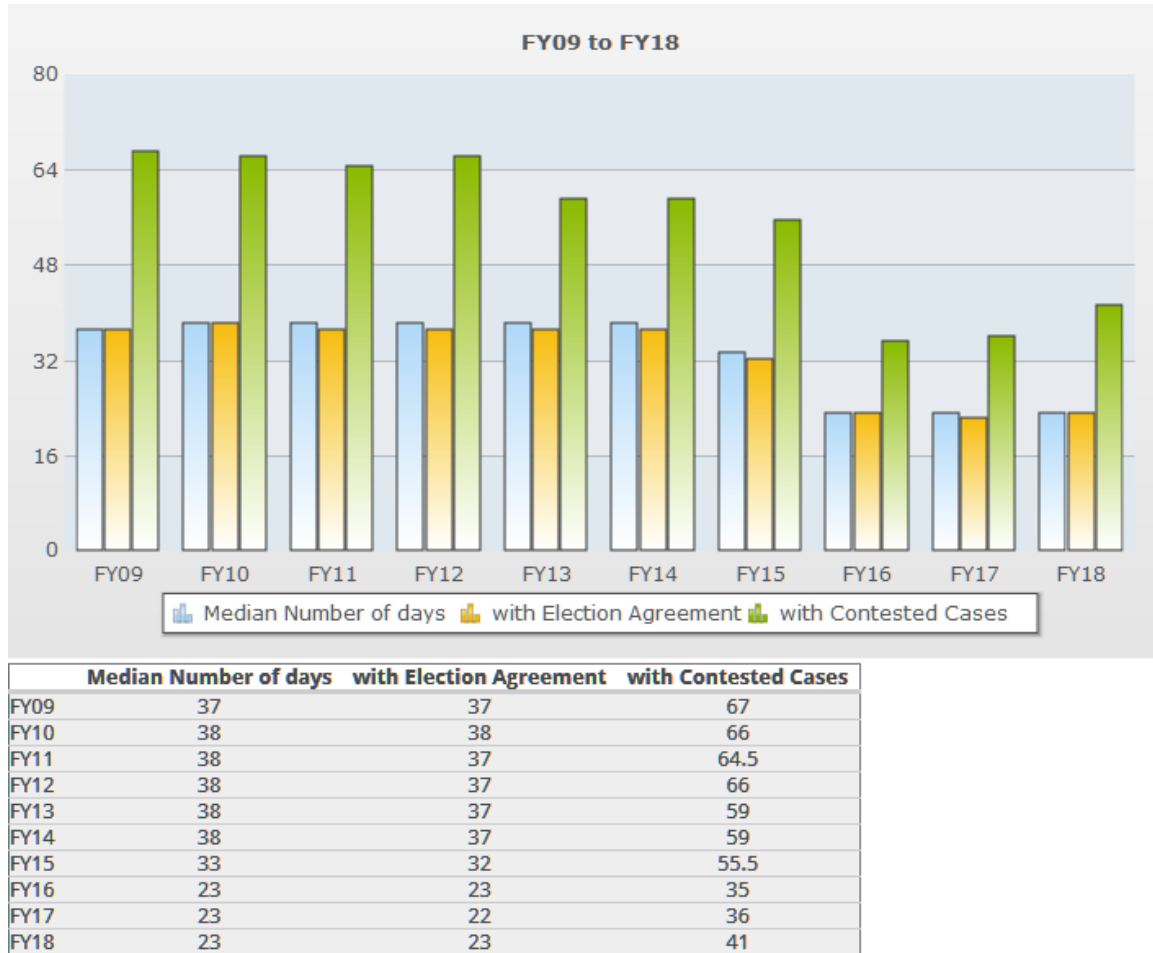


Figure 9. NLRB election cycle time, 2009-2018.

Source: <https://screenshots.firefox.com/OOUM8lfxPLw3OWu/www.nlr.gov>

It is a central tenet of systems theory that there are natural and physical limitations on the growth of any system (Meadows, 2008). However, unnatural influences, anomalies, and oscillations can be readily introduced by those overseeing the system, which can tilt the stasis in favor of one of the parties to the conflict. With unions winning nearly three of every four elections, it is no wonder that employers sought the overhaul of the 2015 workplace representation election system. Kuhn and Hacking (2012) suggested that:

If an anomaly is to evoke crisis, it must usually be more than just an anomaly.

There are always difficulties somewhere in the paradigm-nature fit; most of them are set right sooner or later, often by processes that could not have been foreseen.

The scientist who pauses to examine every anomaly he notes will seldom get significant work done ... We therefore have to ask what it is that makes an anomaly seem worth concerted scrutiny. (p. 82)

The April 2015 major changes to the workplace representation election system were viewed by employers as just such a system anomaly warranting “concerted scrutiny.”

Bernstein and Vickery (2019) further characterized the 2015 revised regulations as having removed long-standing due process rights that had been available to employers, shrinking the election timeframe and limiting employers’ ability to educate workers on the facts surrounding union representation.

Given the rising win rate for unions within the shorter cycle time of the workplace representation election process, it was reasonable to believe that more petitions for elections would have been filed by unions thus increasing their membership and dues collection. Absent the 2020 regulatory revisions, the expedited cycle time for elections and resulting failure from an excess flow of elections could have had dire consequences to the actors within the system. A popular episode of *I Love Lucy* depicts her productivity on the candy manufacturing assembly line which is insufficient to process the speed and flow of the assembly line. In the YouTube video *I Love Lucy: Candy Factory*, comedy ensues as Lucy attempts to mitigate the bottleneck of the assembly line by eating the chocolates on the fast-moving line. This attempt to eliminate the excess flow is a

common response by actors in a nonfunctioning system. Employers may be concerned that they were the chocolate on the NLRB assembly line.

Ideally successful equilibrium is created when the system stock and flow are free of bottleneck, equilibrium is established, and the stock and flow move as designed. Employers argued that the April 2015 major changes to the system were the equivalent of expediting elections without regard to allowing employees the full benefit of a campaign of information sharing. Reversing the 2015 election revisions will return the election system to a closer state of equilibrium. It is important to remember that the actors within the system are critical in determining the process flow. However, author Donella Meadows (2008) reminded us that “the bounded rationality of each actor in a system may not lead to decisions that further the welfare of the system as a whole” (Meadows & Wright, 2008, p. 110). It is reasonable to believe that the employer actors sought to act and influence the NLRB to act in the interests of the employer and at the expense of unions or employees. It is reasonable to expect that the unions will similarly seek to revise and overturn the 2019 election revisions and return to the 2015 revisions.

Unlike the humor of the *I Love Lucy* episode, the 2015 major changes in the workplace representation election system created system process complications, such as:

- Employees voting with less information otherwise shared in a longer campaign;
- A perceived inequity of the process by all actors effected within the systems; and
- An unstable flow of elections as actors advance through the learning curve of the revised election system.

From a system theory perspective, several solutions that can create system homeostasis include:

- The greater transparency resulting from the NLRB having revised the April 2015 election system on December 18, 2019;
- Congress should amend the National Labor Relations Act requiring that every workplace election campaign period enable affected employees a minimum of 42 days from petition to vote for consideration of the representation issue;
- The NLRB should accept petitions for election only during a short period of time in any one NLRB Region. For example, in NLRB Region 10 petitions should be accepted only during a particular month, with Region 12 accepting petitions the following month;
- The NLRB should create systems revisions to spread out the elections held during the year by eliminating year-round acceptance of election petitions;
- Unions should create additional transparency in the system by registering their intent to organize on a public clearinghouse website maintained by the NLRB and viewable by all, in order to enable all actors within the system to avoid the surprise or ambush of an election;
- In order to change whether a unit of employees is unionized or not, the NLRB should require a majority of all unit employees' support, not just a majority of those voting; and
- A myriad of additional recommended employer solutions can be found in the CDW's response to the NLRB's request for information (see Hayes, Duffield, & Kisicki, 2018).

Winning and Losing Parties in the Election Conflict

To better understand the context for this workplace conflict it is necessary to understand the winners and losers in the 2015 revised election system. It is the elections held during the active period of the 2015 election system that were the focus of this study, as further detailed in Chapter 3.

Prior to April 14, 2015, unions were winning in excess of 60% of workplace representation elections. However, the economy was growing at rates faster than the percentage of elections that were both filed and won by organized labor (Multinational Monitor, 2003). Consequently, unions gained more dues-paying members, although not at the rate the rest of the union-free economy was growing. While the labor movement's percent of the workforce which is unionized (known as union density) declined from 1955 to today, union leadership salaries remained substantially above those whom they represented (Sherk, 2015). Additionally, in order to demonstrate their efforts to support workers, unions negotiated for provisions in contracts which limited the flexibility of companies and their ability to compete (Sherk, 2009). Notably, during the decline of unions American companies became increasingly more regulated by the federal government and undertook workplace improvements to remain competitive to recruit and hire (Zickar, 2004). Over time the collective actions of employers have decreased the demand for workplace representation elections. In order to compensate for their decreased representation, unions have sought to disadvantage employers by eliminating the employers' ability to campaign about whether their employees should obtain union representation.

Theories on Employee Vote Influencers

A portion of the literature review presented in Chapter Two examined system theory and other theories associated with an employee's decision to vote on behalf of the union rather than the employer. The literature review conducted also focused on leadership theories applicable to the conflict within workplace representation elections. A workplace representation election is one of the most significant conflict events that can occur in an organization's history. The election itself demonstrates a loss of trust and faith in executive leadership. American leadership scholar Warren Bennis stated: "Trust is the lubrication that makes it possible for organizations to work" (Newhouse, 2014, p. 36).

University of Minnesota Professor John Fossum (2012) has chronicled the labor movement that declined since 1955 when union membership was near 35% of the American work force. Today's membership—approximately 10.3% of the combined government and private workforce—represents a dire circumstance for the future of organized labor (U. S. Bureau of Labor Statistics, 2020). Fossum contended that as a result unions have come to the realization that their decline was supported by legislation that inhibited unions' ability to organize. In the foreword of his book *The Twilight of the Old Unionism*, Leo Troy (2004), an economics professor at Rutgers University, suggested that the basis for the decline in union density is neither management exploitation of rules nor an unfavorable political and legal climate. Economist Troy instead suggested the unions' steady erosion of union representation density is "largely due to market forces and competition rather than managerial resistance" (p. xi); he further termed this decline "Old Unionism" (p. xi).

A Pew Research Center study in 2018 noted the long-term decline of unionization has affected most parts of the U.S. economy, but not uniformly. Pew further noted the biggest declines in unionization are in industries that were and still are “the foundations of the American labor movement” (DeSilver, 2018, para. 3). The decline of unionism however is not uniform throughout the nation. A more recent comparison of workplace representation elections by Bloomberg Law’s Robert Combs and Gayle Cinquegrani (2018) observed that the first half of 2018 showed the win rate for unions was 68.9%, a slight decline behind the 2017 union win rate of 70.8%. Additionally, the authors noted that the win rate in states without right-to-work laws had a union success rate of 71.1%, in comparison to the 64.1% union win rate in states with right-to-work laws (Devinatz, 2015).

Structural Violence

Organizational conflict researchers note there is structural violence associated with the conflict within workplace representation elections that results in changes in union density. Any actor who has participated within the workplace representation election system recognizes there is much conflict involved in the system. Technically in this modern era relatively few employees are victims of direct violence, as Johan Galtung (1969) defined the term in *Violence, Peace, and Peace Research*. His article defined four distinctions of violence.

The first distinction is between physical and psychological violence. It is the distinction involving somatic hurt to human beings and can include violence against the soul – brainwashing, indoctrination, and threats, etc. The second distinction is between negative and positive approaches to influence; it is simply the tendency to reward or

punish noncompliance. The third distinction is whether or not there is an object that is hurt. Galtung (1969) notes that the mere threat of violence is sufficient to constitute “structural violence” (p.171). The fourth distinction is the most important one and hinges upon whether or not there is a subject (person) who acts (see pp. 169 -170). Galtung referred to the type of violence where there is an actor that commits the violence as personal or direct. This is the type of violence most consider when defining violence – physical violence. Violence where there is no such actor is structural or indirect violence (see p. 170).

Johan Galtung (1969) is recognized as a preeminent theorist on peace research. He developed two typologies of peace – positive and negative peace. He defined negative peace as the absence of violence, absence of war, the absence of direct violence. He defined positive peace as the integration of human society. Galtung defined peace as something attainable rather than a utopian construct. Few however would suggest that the absence of a workplace representation election within any particular workplace denotes positive peace. Most would prefer the term “labor harmony” rather than Galtung’s positive or negative peace. He suggested peace is not only the absence of personal violence but also the absence of structural violence, which he defined as the cause of the difference between the potential and the actual. To illustrate, Galtung used the example of a death of tuberculosis in the 18th century, which would not result from structural violence. However, in the 21st century, given our ability to prevent tuberculosis, a corresponding death *would* constitute structural violence. With the difference between the potential and the actual defined as structural violence, the very violence associated with

workplace representation elections—whether structural or direct—itself epitomizes structural violence.

All actors in the workplace representation system seem resigned to accept the existing process with its tendency for violence. Galtung (1969) might suggest that each of the actors in the workplace representation election system is a participant in the structural violence associated and perpetuated by the NLRB and the election system it regulates.

To eliminate the structural violence inherent within the existing workplace representation election system, structural violence theorists might suggest the elimination of any and all advantages either party possesses when implementing their strategies within the system. A structural violence theorist would develop a system to represent the interest of all employees without the violence associated with a workplace representation election system. Such solutions would include:

- Creating greater transparency of information within the election system;
- Requiring any union seeking to represent [unionize] a group of employees to register their interest on the NLRB's website, which is publicly available to all actors within the workplace representation system; and
- Revising the National Labor Relations Act to mandate that any change in representation status within a workplace require a majority vote of all employees within an appropriate workplace unit, rather than a majority of those voting.

Strategies Employed by Unions and Employers

The literature reviewed in this chapter provided insight into the traditional and successful strategies utilized by both unions and employees to achieve victory over

employers in workplace representation elections. This information forms the context for the corresponding counter-strategies identified for use by employers which were the chief focus of this research study. The literature reviewed featured several professors' prior research regarding employers' strategies used during the election. However, this researcher supports the notion that it is biased to collect data from secondary, tertiary or other actor/observers far removed from the actual employer itself. It is equally inaccurate to collect data on the unions' strategy, not from the union but from the employer. This study addressed the described data collection insufficiency evident in the literature of utilizing union organizers' perceptions of the employers' actions while omitting the employer's perceptions.

One of the most preeminent, prolific, and prominent researchers in the field of labor relations is Kate Bronfenbrenner. Most labor relations practitioners are familiar with her work: she is recognized for her decades of research on workplace representation election behavior and strategies. Her research and opinions are continuously sought by academics, practitioners, and journalists, and she is a featured columnist or media commenter on seemingly a near-weekly basis. Her work over the last 30 years continues to frame the analysis of workplace representation elections. As recently as December 11, 2019, researchers at the Economic Policy Institute recreated her significant 2009 study entitled *No Holds Barred; The Intensification of Employer Opposition to Organizing* (Bronfenbrenner, 2009; see McNicholas et al., 2019).

Kate Bronfenbrenner is Director of Labor Education Research and a senior lecturer at Cornell University's School of Industrial and Labor Relations, where she teaches and conducts research on union and employer strategies in organizing and

bargaining in the global economy. Bronfenbrenner has also done extensive research on the impact of trade policy on employment, wages, and unionization. Prior to joining the Cornell faculty in 1993, Bronfenbrenner was an assistant professor in labor studies at Penn State University; she worked for many years as an organizer and union representative with the United Woodcutters Association in Mississippi and with Service Employees International Union (SEIU) in Boston, as well as a welfare rights organizer in Seattle, Washington.

Bronfenbrenner, who received her Ph.D. from Cornell in 1993, is the co-author and editor of several books on union strategies, including *Global Unions: Challenging Transnational Capital Through Cross Border Campaigns* (2007); *Union Organizing in the Public Sector: An Analysis of State and Local Elections* (1995); *Organizing to Win: New Research on Union Strategies* (1998); and *Ravenswood: The Steelworkers' Victory and the Revival of American Labor* (2000). She also has published numerous articles, book chapters, and monographs on labor policy, employer and union behavior in public and private sector organizing and first contract campaigns, comprehensive campaigns, union leadership development, women and unions, and global trade and investment policy. Her most recent study on the timing of employer serious unfair labor practices—"Election Timing, Employer Free Speech, and Unfair Labor Practice Occurrence: Whose Rights are at Risk?"—played a central role in informing the NLRB's 2015 election revisions (see Bronfenbrenner, 2016, para. 2).

Because of her expertise in contemporary labor issues and her research on union and employer behavior in certification election campaigns, Bronfenbrenner has been brought in to testify as an expert witness at Labor Department and Congressional

hearings and is frequently quoted in the major news media. An example of her contemporary impact is provided by Mark Gruenberg (2016), who reported on Bronfenbrenner's lobbying the NLRB to prohibit management's unilateral use of captive audience meetings where workers sit in closed meetings to hear what Bronfenbrenner has referred to as antiunion rhetoric. Bronfenbrenner noted that unions get no right of reply, and such meetings can often contain explicit or implied threats of closure of the plants and loss of jobs. Gruenberg further reported that her 2016 study found that nine of every 10 union organizing drives are subjected to what Bronfenbrenner referred to as intimidating and one-sided captive audience meetings by employers.

Bronfenbrenner's 2016 study also found a 73% union-win rate in representation elections without captive audience meetings, and a 47% union-win rate in campaigns that did include them (Gruenberg, 2016). As a result, Bronfenbrenner's findings were included in a January 15, 2016 proposal to the NLRB that unions should be given equal time and an equal voice at employers' so-called "captive audience" meetings that are used in a workplace representation election campaign; the proposal was authored by Bronfenbrenner and 106 other labor law professors asking that the NLRB engage in rule-making to level the playing field.

Bronfenbrenner's early involvement in the study of organizing tactics was influenced by a study funded by the AFL-CIO of 189 union election campaigns in units of over 50 eligible voters between 1986 and 1987. Unfortunately, the AFL-CIO sample excluded or underrepresented several major unions, especially those organizing in the service sector (Bronfenbrenner, 1991a). In a two-part study entitled *Successful Union Strategies for Winning Certification Elections and First Contracts - Report to Union*

Participants, Bronfenbrenner (1991a, 1991b) in cooperation with the AFL-CIO surveyed 100 chief negotiators regarding the unions' election victory and first contract status. The quantitative study resulted in quantifiable guidance to union organizers to maximize their success in workplace representation elections. The study generated the following pertinent findings and recommendations (see Bronfenbrenner, 1991a, p. 13, Table 5) for union organizers with regard to organizing variables:

Impact of Organizing Survey Variables on Election Outcome in Favor of Unions

Variables showing strongest positive impact on election outcome

1. Number of days between election and petition
2. Other units of the employer unionized
3. Percent minority in unit
4. Lead organizer on international staff
5. Union had representative organizing committee
6. Percent of units sign up on cards when petition was filed
7. Majority of unit house called before the election
8. Solidarity days used
9. Bargaining committee chosen before election
10. Union focused on issues such as dignity, discrimination and quality

Variables showing moderate positive impact on election outcome

1. Percent unemployment rate
2. Percent union density
3. Unit average wage \$5.00 or less
4. 60% or more of the unit is female

5. Organizer has 1-5 years rank- and-file experience
6. Union used small group meetings
7. Percent of units surveyed regarding contract before the election

Variables showing slight positive impact on election outcome

1. Employer offered good benefit package before the election
2. Lead organizer female or minority
3. Rank-and-file volunteers from other unionized firms did house calls

Variables showing strong negative impact on election outcome

1. Number of eligible voters in unit
2. Average age of unit
3. Company profitable before the election
4. Organizer has a college degree
5. Company gave wage increase during campaign
6. Company made promises during the campaign
7. Company used anti-union committee
8. Number of captive audience meetings by company
9. Number of union letters mailed

Variables showing moderate negative impact on election outcome

1. Stipulated or board ordered unit different than unit union petition for
2. Company had participation or QWL plan before campaign
3. Number of company letters during campaign

Variables showing no statistically significant impact on election outcome

1. Unit in manufacturing sector

2. Organizer class background
3. Management consultant used
4. Workers discharged for union activity, not reinstated before the election.

The results of this two-part study by Kate Bronfenbrenner were published in 1991; it remains still today one of the most significant and important studies conducted on strategies for unions' winning workplace representation elections. However, the limiting factor of the study was the unilateral collection of data from only one party to the workplace representation election: the union organizer. Additionally and as previously noted, Bronfenbrenner has addressed the fact that the union organizer is not granted equal access within the workplace and therefore is dependent upon others' descriptions of developments occurring within the campaign. Most often those reporting such employer actions are not labor relations professionals; consequently, data corruption is a potential result. Again, another hallmark of Bronfenbrenner studies is the failure to directly contact employers regarding their own messaging and tactics employed during the campaign and an overreliance on, at best, second-hand information as reported by the union organizer.

Bronfenbrenner published another survey in 1994 involving a random sample of 261 NLRB workplace representation elections with 50 or more eligible voters that took place between July 1986 and June 1987. The study was reported in a chapter entitled "Employer Behavior in Certification Elections and First-contract Campaigns: Implications for Labor Law Reform" (Bronfenbrenner, 1994). This 1994 study documented the union organizers' perceptions of the pervasive nature of aggressive employer antiunion behavior during organizing campaigns. Again, the described study

unfortunately relied exclusively on representations made by the lead union organizer for each campaign.

With a dependent variable of “union win rate” the 1994 Bronfenbrenner survey study considered several independent variables (see Bronfenbrenner, 1994 [2001 electronic], p. 79, Table 5.1):

1. Number of days from petition election
 - a. 60 days or less
 - b. 60 – 180 days
 - c. 180 days or more
2. Percent sign the cards
 - a. More than 50%
3. Pre-campaign participation plan
4. Unit changed after petition
5. Management consultant used
6. Discharge is not reinstated
 - a. All units with discharges
7. Company gave wage increase
8. Company made promises
9. Antiunion committee used
10. Number of captive audience meetings
 - a. No captive audience meetings
 - b. 20 or more meetings
11. Number of company letters

- a. No company letters
 - b. More than five letters
12. Supervisor campaigned one on one
13. ULP charges filed
- a. Complaints won on charges filed

This 1994 study of the union organizers' responses found that more than 75% of the employers engaged in active antiunion tactics. These tactics included discharging union supporters, captive audience meetings, supervisor one-on-one meetings, wage increases, promises of improvements in wages benefits or other working conditions, antiunion committees, and letters. The study found that each of these independent variables resulted in statistically significant impacts on the election outcome.

Bronfenbrenner's 1994 study also found that 71% of the employers in the sample utilized a labor relations consultant during the election campaign. Under the Labor Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, a labor relations consultant is defined as "[a]ny person who for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing or collective bargaining activities" (Public Laws, 1959). Ironically the win rate for unions in which the employer used an outside consultant was 40%, in comparison with a union win rate of 50% in campaigns where no employer outside consultant was used. The independent variable of the use of an external consultant was not statistically significant; the researcher surmised that it was a result of employers hiring such competencies in-house or relying on staff, rather than outsourcing to an external consultant. The future for outsourcing the labor relations support for employers may increase though, as the union

density continues to decrease in the American workplace. Outsourcing solutions, instead of hiring or maintaining in-house labor relations specialists, is one strategy accounting for the decreased number of available labor relations jobs. In September of 2019 the US Bureau of Labor Statistics forecast that the available number of labor relations specialist jobs will decrease by 8% from 2018 to 2028 (U.S. Bureau of Labor Statistics, n.d.).

In April 2019 Ruth Mayhew published an article on the advantages of employing labor relations professionals, alleging that there is a relationship between which party is leading the country and the potential increase in union organizing, which in turn drives the demand for hiring labor relations professionals. If Mayhew is correct then low union density rate today (less than 7% in the private sector) bodes poorly for those labor relations professionals seeking in-house jobs. Employers instead are likely to hire such consultants only when needed, as in an NLRB election.

An earlier study of the use of labor relations consultants predated the aforementioned 1994 Bronfenbrenner study. Thomas Patrick Frazier's 1984 dissertation study entitled *Consultants, Unions, and NLRB Elections* chronicled the use and efficacy of consultants in workplace representation elections held during 1982, noting that their use resulted in increased success for employers. His study relied on data collected by the AFL-CIO, which again sourced its information from union organizers. Frazier's work foreshadowed the weakness of most studies that would follow, noting the data collected from the union organizer "reflect the subjective judgments of the field organizer involved in the election. Obviously, care should be taken in any interpretation of results based upon these subjective judgments" (p. 28).

The previously noted and recently published 2019 study by McNicholas and colleagues analyzed, among other topics, employers' use of workplace representation election campaign consultants. While the study did not address the percentage of elections featuring a consultant, it estimated that over \$338 million was spent by employers annually during the span of the 2015 revised election rules.

Employer Tactics to Win Elections

According to the lead union organizers surveyed in the Bronfenbrenner (2009a, 2009b) study, union supporters in 30% of the workplace representation election campaigns were terminated from their employment during the campaign. Interestingly, however, charges were filed in 87% of the earlier referenced 30% of campaigns. Of that 87% of the 30%, the NLRB rejected 57% of these charges. It is noteworthy that the author could have reported after the above-mentioned statistics that only 11.6% of all campaigns contained the termination of a union supporter during the campaign.

The more recent aforementioned study by McNicholas and colleagues (2019) examined unfair labor practices (ULP) allegations, charges, and filings; the authors found employers are charged with illegally firing workers in nearly a third (29.6%) of all NLRB supervised elections. Unfortunately, it is not until a late-appearing footnote that the study notes "the filing of a charge itself is not a determination of a violation of the National Labor Relations Act" (p. 14, fn. 2). The lead union organizers reported that employers granted wage increases in 30% of the workplace representation election campaigns, and made promises to improve wages, hours, and working conditions in 56% of the campaigns. Both of these actions are unlawful. The study indicated that the number of captive audience meetings and number of company letters sent also significantly

impacted the union's ability to win the workplace representation election. Union win rates declined dramatically as the number of employer captive audience meetings and employer letters to employees' homes increased. This resulted in a 40% union win rate for campaigns in which no captive audience meetings were held or letters sent, down to an 18% union win rate when the employer held 20 or more captive audience meetings and a 37% union win rate where the company sent more than five letters during the campaign (see Bronfenbrenner, 2001).

In 2004 Cornell University published a study by researchers Satish Deshpande and Christina Stamper who similarly studied a set of variables influencing union win rates in workplace representation elections within the hospitality industry. With the dependent variable of a union win rate, their study identified the following independent variables that most affect the election outcome:

- union involved;
- number of unions on the election ballot;
- the number of days from petition filing for the election until the election is held;
- whether the employer is in a Right-to-Work state;
- size of the prospective bargaining unit; and
- percentage of eligible unit members who vote in the election (turnout).

(p. 198).

The researchers studied 190 workplace representation elections occurring between January 1999 and December 2001, and research findings were published in the *Cornell Hotel and Restaurant Administration Quarterly* on May 1, 2004. For each of the

identified independent variables studied, researchers found that there were two factors predominantly impacting the union success rate: 1) the size of the prospective bargaining unit, and 2) the presence of more than one union on the ballot seeking to represent the employer's employees. The study's authors presented their findings for each of the independent variables identified. For unit size, of the 190 elections studied the average unit contained 56 employees. Unions won 54% of the elections with an average 77% of the votes. The researchers found that multi-union elections were positively correlated with union victories. Interestingly, of the 190 elections studied the researchers found that the ballots were counted on average 61 days after the filing of the petition for election and that voter turnout averaged 88% (Deshpande & Stamper, 2004).

On May 20, 2009, the Economic Policy Institute published perhaps the most significant Bronfenbrenner (2009a) study, *No Holds Barred: The Intensification of Employer Opposition to Organizing*. This study included a random sample of 1,004 workplace representation elections with 50 or more employee voters conducted January 1, 1999 to December 31, 2003. Bronfenbrenner again surveyed lead union organizers only, using mail, phone, email, personal interviews; she correlated her findings with NLRB charges [of unlawful conduct] and election data. Bronfenbrenner reported her study provided "a well-documented portrait of the legal and illegal tactics used by employers in NLRB representational elections" (Bronfenbrenner, 2009a, p. 2).

The findings of this Bronfenbrenner (2009a) study are routinely reported even today. A notable excerpt in said findings stated: "Employers threatened to close the plant in 57% of elections, discharged workers in 34% and threatened to cut wages and benefits in 47% of elections... In 63% of elections employers used supervisor one-on-one

meetings to interrogate workers about who they or other workers supported, and in 54% used such sessions to threaten workers" (p. 2).

Ironically Bronfenbrenner (2009a) anticipated criticism of her study's data collection methodology that focused on the lead organizer's supposed knowledge of others' experiences in the workplace. She acknowledged some critics have raised questions as to the reliability of union organizers as a data source. Her response was that university institutional review boards would not approve any study of employees due to risks to the worker. Additionally, she suggested that "it is simply not possible to use employers as an alternative source" (p. 5). She elaborated:

As we have demonstrated in previous studies, the overwhelming majority of employers are engaging in one or more illegal behaviors (at minimum 75% of the employers in the current sample are alleged to have committed at least one illegal action). Not only would it be next to impossible to get employers to complete surveys in which they honestly reported on illegal activity, but that kind of question would not be permitted by university institutional review boards.

(pp.5-6). Bronfenbrenner defined such illegal activity by the allegations and charges filed by the lead organizers or representatives. An accusation of an unlawful act is not proof of its existence, however.

An ongoing criticism of the Bronfenbrenner (2009a) study is again the sole reliance on only one side to the conflict within workplace representation elections. The suggestion that employers would not respond to surveys in opposition to their interests is seemingly not considered as a driver of behavior for both sides of the conflict.

Nonetheless, even with their shortcomings Bronfenbrenner's studies remain today among the most significant workplace representation election analyses ever conducted.

On March 26, 2014, Jonathan Lepie published a study entitled "Is There a Winning Formula for Union Organizing" as an extension of the Bronfenbrenner studies conducted between 1995-2004. Lepie asserted that no other literature was as influential on union strategies as the Bronfenbrenner studies. Bronfenbrenner sought to provide union organizers with tactics that would increase their win rate by interviewing union organizers and learning what worked and what did not. Lepie stated that Bronfenbrenner "claimed to have discovered a winning formula for certification elections" (p. 138). Chief among the winning strategies included house calling or the process of unannounced visits to the homes of employees who will vote in the workplace representation election. However, Lepie pointed out that even after Bronfenbrenner's widely-read study, union win rates declined (p. 138).

Lepie (2014) reminded readers that three years later Bronfenbrenner and Juravich (1998) further refined their formula in "It Takes More Than Housecalls: Organizing to Win with a Comprehensive Union-building Strategy." After a continued decline in union win rates, he noted, Bronfenbrenner again refined the union organizing formula in 2004 with a co-authored chapter entitled "Changing to Organize: A National Assessment of Union Strategies" (Bronfenbrenner & Hickey, 2004). Again union win rates were not improved with the release of this 2004 study. Lepie noted that Bronfenbrenner and Hickey interviewed hundreds of organizers, identifying their tactics and quantifiable correlating tactics with election wins. Lepie stated "nobody claimed to have detected flaws in Bronfenbrenner's methodology" (p. 138).

Lepie (2014) spent the bulk of his career as a union organizer and retired from the Service Employees International Union (SEIU) as Director of Organizing in 2001. Lepie sought in his own work to advance the Bronfenbrenner studies but again elected to interview only the union organizers for perspective. His rationale for doing so would seem to hinge upon his adversarial perception of management. As a result, he interviewed 10 and only 10 union organizers as the basis for his study. Lepie deliberately limited his 2014 study to ten organizers to ensure he captured the opinions of only lead organizers with more than ten campaigns and who had won at least one campaign opposing a professional “union buster” (p. 140). The phrase “union buster” is typically a reference to a consultant hired by the employer to consult and manage the employer's response to a workplace representation election. Union organizers presume that union busters seek to eliminate unions, although ironically doing so would eliminate the "union busters" profession. Lepie's use of the “union buster” phrase provides insight into his perspective as a researcher.

Not surprisingly, Lepie's 2014 study of lead union organizers found that the number one predictor of organizing success is the quality and skill of the organizer. However, Lepie did critique Bronfenbrenner's formulaic approach to unions' winning strategies in workplace representation elections. He noted that elections are two-party contests, so studying the strategy of one player to the contest without assessing the context of the other is ineffective. He suggested the context of an election should drive the determination of the union's campaign strategy. However, Lepie's characterization of the election as a two-party contest fails to acknowledge the important role that employees themselves have in campaigning amongst themselves. Employees are effectively the most

important actors in the election system. They are not only the sole party to vote; employees themselves also campaign to persuade other employees to join or not join a union.

Lepie (2014) noted another problem with Bronfenbrenner's model is that it assumes not only that employers behave the same, but also that voting employees behave the same in workplace representation elections. Lepie concluded by noting Bronfenbrenner's dissatisfaction with national union leadership for failing to adopt her formulaic list of tactics that she correlated with union success in workplace representation elections.

Lepie (2014) suggested that union success in workplace representation elections hinges on placing greater value on the cooks rather than the cookbook. However, a more recent example illustrates the frustration of unions and their distaste for employers' use of management consultants. In October of 2018 a majority of the 1,400 employees at Luxottica Group's McDonough, Ga., distribution center voted against the union in the workplace representation election (Wallender, 2019). The employees are part of the world's largest eyewear company, which owns brands that include Ray-Ban, Oakley and others. The Milan-based company released a statement on October 22, 2018, declaring their support for the employees' decision to eschew union representation. Edgar Fields, president of the Retail, Wholesale and Department Store Union Southeast Council, stated that the employer "had consultants there around the clock talking to employees, and it worked" (Wallender, 2018, p. 1).

Summary

The National Labor Relations Act was passed in 1935 and its regulations have been the subject of some of the most violent and intense workplace conflict ever since. There is substantial research and literature supporting employees' decisions to vote in favor of unions, unfortunately without regard to reliable data on the employers' strategies and messaging. As indicated in the review of the literature discussed, an employer's viewpoint has been largely ignored in academic research studies on winning strategies for workplace representation elections coordinated by the NLRB. The general premise of the prior studies examined is that employers had a vested interest in justifying the legality of their actions. This of course presumes that employers are individually and collectively disingenuous. Such a subjective assertion cannot be proved. However, to completely ignore the perspective of the employer creates and extends a gap in credible research. It can also be said that the source of information in prior studies, the union organizers themselves, share the same potential for bias. This dissertation research study contributes to the existing academic and professional bodies of knowledge by including an ignored perspective, that of the employer. While the ultimate value of this research is admittedly difficult to predict, it is believed that this mixed methods study may aid and assist employers in reducing the conflict associated with an NLRB election loss.

Chapter 3: Research Design and Methodology

This mixed methods research study developed a conceptual model to further inform contentious workplace conflict of representation elections supervised by the National Labor Relations Board (NLRB elections). As previously noted, the intent of a workplace representation election is to determine whether a petitioning union has sufficient support to unionize a unit of employees within a workplace. Such a unit might include a department, job classification or any other means of identifying a group of employees sharing a community of interest.

This dissertation research study built upon previously published findings on the topic of conflict inherent within workplace representation elections. While much has been studied regarding why employees join unions and why unions are successful in workplace representation elections, there is little research on employers' successful strategies during workplace representation elections. There has not been a study yet representing the perspective of the employers; that perspective is the central focus of this research. As noted in Chapter Two, information related to employer strategies was not sourced in previous studies from the employer but instead from secondary, tertiary, or other far-removed sources of information. Specifically, prior studies detailing employers' election messaging and tactics exclusively sourced their data from the union organizer rather than the employers themselves. This study therefore included the heretofore omitted voice of the employer to identify multivariate influences upon winning workplace representation elections.

Research Rationale & Design

As described below in each section of this chapter on methodology, for this study the researcher systematically collected and analyzed information from three sources in order to triangulate their meaning and implications for a model that could assist employers to understand key factors that influence the percent of the vote in their favor during workplace representation elections.

Mixed Methods Research Design

The selection of the research design in this study involved a mixed methods approach, employing both quantitative and qualitative methodology to answer the research questions identified, as those questions are further detailed below. Mixed methods was selected as an appropriate research design for the instant study because the researcher determined that both quantitative and qualitative data, together, provided a better understanding of the research problem than either type by itself (see Creswell, 2008). A mixed methods approach was appropriate here to build from previous study phases by following up quantitative research qualitatively, to obtain more detailed information (see Creswell, 2012).

For the researcher's investigation of variables affecting the outcomes of worker representation elections, understanding their aspects from the perspective of the employer was facilitated by a particular design within the mixed methods approach, that of triangulation. The term 'triangulation' was originally coined by two quantitative psychological methodologists, Donald Campbell and Donald Fiske (1959), who used the term to advocate for the use of additional measurement instruments to capture psychological traits (Kelle, Kühberger, & Bernhard, 2019). Qualitative social researcher

Norman Denzin (1977) took up this idea and expanded the concept in his monograph *The Research Act: A Theoretical Introduction to Sociological Methods*, explaining that methodological triangulation would involve “a complex process of playing each method off against the other in order to maximize the validity of field efforts” (p. 310).

One way to understand the concept of methodological triangulation is as a “combination of methods and/or data with the aim of describing a research field or a topic more comprehensively and explaining it better with the help of different but complementary results” (Kelle et al., 2019, p. 11, citations omitted). In triangulation research design the results obtained through different methodologies can be viewed in combination to provide a richer or more accurate description of the phenomenon being studied. By mixing both quantitative and qualitative research and data, this researcher gained understanding in breadth and depth of aspects of the subject phenomenon more accurately by approaching it from different vantage points.

Successful triangulation required careful analysis of the type of information provided by each method, including its strengths and weaknesses. The combination of the advantages of each methodology applied in the instant study and outlined in this chapter (e.g., large sample sizes for both quantitative research efforts, rich contextual explication gleaned from qualitative structured interviews of experts) greatly worked to overcome disadvantages of each (e.g., information limitations of NLRB database, survey response rate, or the relative size of the expert pool consulted). Those advantages and disadvantages will be addressed in the analyses for each methodological component as discussed in Chapter 4.

As first introduced and visually presented in Figure 4 in Chapter One, the methodological processes followed for this mixed methods study allowed for the compilation, analysis, and triangulation of information on workplace representation elections available from three different sources. The specifics of the explanatory sequential (Creswell, 2013) methodological steps followed for the study are here more fully described. First, the researcher collected information from the literature reviewed to identify and then quantitatively analyze independent variables in an existing governmental database available on the National Labor Relations Board website (<https://www.nlr.gov/>; hereinafter NLRB database) that permitted specific focus on information available for elections in certain jurisdictions over a certain period of time. The researcher next developed, piloted, and administered an original survey instrument that gathered data on campaign messaging and communication tactics, yielding detailed information regarding the campaign messages and communication tactics in 32 elections. The study finally utilized qualitative methodology to conduct semi-structured interviews of subject matter experts in campaign strategy, regarding their perspectives on employer campaign messaging and communication tactics, in order to then conduct thematic analysis of the interview responses and contribute those findings to this study's enhanced understanding of the examined topic.

Quantitative Methodology

Two quantitative research methodologies were applied to investigation of the subject phenomenon: correlational research and survey research.

Correlational Research Methodology

Informed by the review of the literature as described in Chapter Two, an analysis of those independent variables (IVs) existing within the governmental database described below (specifically, 305 elections contained therein) was conducted using quantitative analyses, including correlation coefficient analysis. Certain IVs for which data was not available within the 305 elections database were addressed separately in the design of the original survey entitled *Voice of the Employer Survey*©, discussed below in the section on survey research.

Population. The population for this study's quantitative research included the 305 representation elections supervised by the National Labor Relations Board (NLRB) in Regions 10, 12, 15 and 16 for private non-government employers' workplaces. The population is the southeastern portion of the United States, which constitutes the largest percentage of states that allow right to work, itself an important demographic population to be studied. In states allowing right to work, employees cannot be compelled to join a union as part of their employment terms and conditions. If the employee is employed in a unionized workplace, the employee also cannot be required to financially support the union (Wallender & Smith, 2019).

As is evident from data in Figure 10 reproduced and described below, since 2008, across the entire United States on average 1,434 NLRB supervised elections occur each year. The number of elections actually held is approximately one-third less than the 2,108-average number of elections annually requested (petitioned). These elections are conducted under the auspices of the Regional Directors of the NLRB within each of the 26 regions of the NLRB (www.NLRB.gov/who-we-are/regional-offices). Employees or a

union may file a petition for a representation election (RC) after collecting signatures from at least 30% of workers in the potential bargaining unit. Petitions that are not withdrawn or dismissed result in an NLRB-conducted election. A simple majority of votes decides the outcome, and in order for the petitioning union to win the election it must have a majority of the votes cast. Conversely if an employer receives a majority or even a tie in number of votes cast, it results in a win for the employer. On its website (<https://www.nlr.gov>), the National Labor Relations Board publishes the database of all workplace representation elections for a ten-year period. It should be noted that some petitions filed in a given year may not have had an election until a subsequent year; the number of petitions thus may not equal the total number of dispositions in a given year. Table 2 charts workplace representation election activity for every single NLRB region across the United States and its territories for the recent decade of fiscal years 2008-2017.

Table 2

NLRB petitions, elections, and results, FY 2008-2017

<https://www.nlr.gov/news-outreach/data/petitions-elections/representation-petitions-rc>

Fiscal Year	Petitions Filed	Elections Held	Won by Union	Lost by Union	Petitions Dismissed	Petitions Withdrawn
FY08	2418	1614	1028	586	48	784
FY09	2082	1335	915	420	46	657
FY10	2380	1571	1036	535	37	725
FY11	2108	1398	935	463	43	667
FY12	1974	1348	868	480	38	597
FY13	1986	1330	852	478	27	607
FY14	2053	1407	952	440	24	586
FY15	2198	1574	1120	480	39	663
FY16	2029	1396	1014	401	38	610
FY17	1854	1366	940	375	29	493

The National Labor Relations Board website provides a listing of the employer and union involved in all of its supervised workplace representation elections. This study in particular focused its election outcome inquiries on data available for elections within National Labor Relations Board Regions 10, 12, 15 and 16, specifically stakeholder employers experiencing elections during the period of April 1, 2015 through May 1, 2017. These NLRB Regions represent the southern portion of the United States and include 305 elections during the period of study. The dates of the period of the study coincide with the April 2015 enactment date of the major changes to the NLRB election process as described in Chapter Two and include two years of election activity.

Figure 10 illustrates the four regions' jurisdictional coverage in the maps below.



Figure 10. Map of NLRB Regions 10, 12, 15, and 16.

Source: <https://www.nlr.gov/who-we-are/regional-offices>

According to the NLRB's website, Regions 10, 12, 15, and 16 serve the states of Florida, Georgia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Louisiana, Arkansas, Alabama, Mississippi, Tennessee, Missouri, Texas, Georgia, North Carolina, Alabama, and Tennessee (<https://www.nlr.gov/who-we-are/regional-offices>). As noted, for the regions considered during the time period described, the size of the population studied numbered 305 elections.

Correlational Research Results. In the quantitative data that was available for this research study, it was the size of the population and sample, 305 elections, that readily lent itself to the study of the relationships among available variables and specifically to correlation coefficient analysis. This methodology afforded quantitatively identifying the strength of the relationships of the variables. This in turn enabled the testing of a null hypothesis for research questions 1 and 2:

RQ1 – Do shorter election periods result in more or less employer victories in NLRB elections?

RQ2 – Do contested or stipulated elections favor employers in NLRB elections?

Correlational Research: Null Hypothesis Testing

The importance of null hypothesis testing cannot be overstated. Null hypothesis significance testing is a widespread method for assessing any hypothesis or theory. One hypothesis suggests that an effect exists (the alternate hypothesis) and the other says the effect doesn't exist (the null hypothesis). This testing is accomplished by creating a test statistic that represents the alternative hypothesis, and then calculating the probability that one would get a value as big as the one obtained if the null hypothesis were true. If the probability is less than .05 we reject the null hypothesis and represent that a statistically significant finding exists. If the probability is greater than .05 we do not reject the null hypothesis and represent that a non-statistically significant finding exists (Field, 2013).

In *Hypothesis Testing and Sampling*, Peter Rogerson (2001) suggested studies should begin by establishing a null hypothesis. In this study the null hypothesis was:

H_0 : The percent of election vote is not influenced by any identified independent variable, the election period, voter turnout, or the size of the unit.

There are two results that this study relied upon:

- The null hypothesis is true, and the employers' decisions do not influence the workplace representation election vote percentage in favor of the employer; or
- The null hypothesis is false, indicating that statistically significant data shows how precisely unusual it would be to obtain our sample if the null hypothesis were true (see Rogerson, 2011).

A correlation coefficient analysis was conducted on 305 elections to determine if the independent variables involved shorter election periods and whether elections contested or stipulated covary with the percentage of vote in favor of the employer. Informed by the review of the literature as described in Chapter Two, identification and then analysis of certain independent variables (IVs) existing within the described governmental database (specifically, 305 elections contained therein) was conducted. It should be noted here that certain IVs of possible influence on workplace representation election outcomes for which data was not available within the 305 elections database were addressed separately, through the design of the original survey entitled *Voice of the Employer Survey*®, as discussed below in the section on survey research.

The dataset of the 305 elections provided by the National Labor Relations Board is presented in categorical variables (see <https://www.nlrb.gov/reportsguidance/reports/election-reports>), among them importantly one continuous dependent variable and 3 continuous independent variables within the dataset. As further detailed below, Percent of the Vote in Favor of the Employer was the dependent variable for this study. The independent variables selected for assessment of their relationship to that dependent variable were:

- Election Period, the cycle time or duration of the election campaign leading to the vote,
- Number of Eligible Voters, a measure of the unit size in the workplace, and
- Turnout, the percent representing of the Number of Eligible Voters that voted.

Dependent Variable

Percent of the Vote in Favor of the Employer. The named dependent variable for this study's quantitative analysis of the NLRB dataset—Percent of Vote in Favor of the Employer—is the principal objective of the employer involved in the election, and the sole determinant of success for a party's campaign messaging efforts. The question presented to voters is whether the voting worker seeks to be represented by the petitioning union; the voting worker is only presented with a single choice: Yes or No.

The dependent variable is mathematically determined by dividing the total number of NO votes by the total number of all votes cast. This dependent variable is used to assess the strength of its relationship to the independent variables, those variables influencing the dependent variable. The practical significance of the Percent of the Vote in Favor of the Employer, to unions, employees and employers, is one threshold determination: whether the petitioning union obtains a majority of the vote. If so, the petitioning union wins the election and the right to represent the workers; conversely, the employer loses the election. In other words, an employer victory in an NLRB election only occurs when the employer receives as many, or more, votes than the petitioning union.

The significance of an employer election loss manifests itself in financial costs and continued conflict, as the petitioning union along with workers seek to exert power to

influence the employer to agree to the union's contractual negotiations. Additionally, while the conflict between the union and the employer may continue or even escalate, it is important to remember that the overwhelming majority of elections contain differences of opinions among the workers themselves on whether union representation is desired in the workplace. Thus, whether the employer wins the election or not (as measured by the Percent of the Vote in Favor of the Employer) is one of the most substantive variables a worker or employer will encounter in their career.

Independent Variables

This study's quantitative analysis of the data for the described 305 elections in the NLRB database sought to assess the strength of influence of the following independent variables on the described dependent variable.

The Election Period. This independent variable is simply the elapsed time between the date on which the union files its petition for an election and the date on which the vote occurs. This independent variable is measured in number of days. As noted in the literature review, the duration of the election period is a strong predictor of whether the employer will lose the election. The less time an employer has to campaign with its messaging on why workers should reject union representation, the smaller will be of the Percent of the Vote in Favor of the Employer. As noted in the literature review, if the petitioning union can obtain an Election Period of 14 days or less, the union has a near 90% win rate; conversely the employer wins only 10 % of the time when the election period is 14 days or less in length. The Election Period length thus is perhaps one of the most controversial variables in an NLRB election and it is the variable that affected parties most seek to change to create advantage.

Number of Eligible Voters. The independent variable Number of Eligible Voters is colloquially known as Unit Size; it is the number of workers in the voting unit. Often this is a portion of a department, a location, or even an entire company. It is simply measured in number of people eligible within the workplace to vote. Most understand the simple concept that it is easier to obtain a consensus of a few rather than to obtain a consensus among thousands of workers. Analysis of this variable in the database of the 305 elections addressed the relationship strength to election outcome of size in number of votes cast, as discussed in Chapter Four.

Turnout. This independent variable is measured as the percent of the Number of Eligible Voters who submit a ballot to vote. Historically NLRB elections have high turnout; it is an objective of the employer to convince employees of the importance of their vote. A correlation coefficient analysis of this independent variable in comparison to the dependent variable Percent of the Vote in Favor of the Employer was conducted to yield the extent to which these two independent variables covary when changes occur in turnout.

In response to research questions RQ1 and RQ2, results of the quantitative analysis of the 305 elections listing the relationship between the dependent and three independent variables discussed are presented in Chapter Four.

Survey Research Methodology

Unions view the workplace representation election as the mechanism for taking power away from management (Bradbury, Brenner, & Slaughter, 2016). From the perspective of the employer, the workplace representation election system presents conflict involving whether to utilize election campaign messages and communication

tactics in an attempt to retain power and prevent having it seized by a union. In turn employees are affected to varying degrees by the employer's campaign messaging and communication tactics, such as through website statements, social media, letters to homes, and other means of communication.

Because information on certain independent variables (IVs) with possible influence on the outcome of workplace representation elections were not available within the 305 elections database, the researcher addressed those IVs through the design of an original survey entitled *Voice of the Employer Survey*©, discussed below.

Survey Population and Sample

The *Voice of the Employer Survey*© instrument was designed to be administered to employers who participated in a workplace representation election during the research period. The survey population and sample size were the same for this methodological component of the study as it was for the study's correlational research component previously described: 305 employers experiencing a workplace representation election in NLRB Regions 10, 12, 15, and 16 during the research period of April 1, 2015 through May 1, 2017.

Pilot Test. In the course of the *Voice of the Employer Survey*© instrument's design and before its administration to identified employer representatives for the 305 elections, pilot testing of the instrument was a methodological necessity. As Litwin (2003) noted in *Pilot Testing –The Survey Kit: How to Assess and Interpret Survey Psychometrics*, “pilot testing is a necessary and important part of survey development” (p. 58). It enables the researcher to identify the context and process by which subjects will understand and provide responses (and thereby data) to the researcher's instrument.

Litwin suggests the pilot test is among the most critical steps in assessing the practical application of the instrument. In Pamela Alreck and Robert Settle's (2004) *The Survey Research Handbook*, the authors noted that the advantages of a pilot survey include the ability to understand the degree of variance and confidence intervals that can be expected from the actual survey. They also observed that the pilot survey "need not even use the same data collection method as that for the main survey, and [pilot surveys] can often be completed easily, quickly and inexpensively" (p. 69).

To conduct the pilot study, three subject matter experts were selected from program speakers on the topic of labor relations and workplace representation elections at recent industry and professional conferences during 2018; one such conference is reflected below in Figure 11.



Figure 11. Fall 2018 CUE conference flyer.

Source: <https://www.cueinc.com/fall-2018-cue-conference-powerful-and-resilient-ensuring-success-together/>

The advantage of such an approach is the validation of the subject matter experts' knowledge as recognized by their peers within the industry or profession. Each of the three individuals was contacted by phone requesting their review of the drafted

instrument (Appendix B). The subject matter expert was asked to complete the survey as a would-be respondent while on the phone with the researcher. The objective of the pilot test of the instrument was not data collection but rather testing of the instrument. This then enabled the researcher to accomplish the objectives of the pilot study, which included:

- observe the completion of the sample survey under controlled conditions;
- identify the elapsed time to complete the survey;
- identify any misunderstandings of the wording, context, or operational definitions within the items; and
- identify any problematic format design choices.

The input provided by three different iterations of the pilot test of the survey instrument reinforced the utility and understandability of the instrument as drafted (Appendix B).

Procedures for Recruitment and Data Collection. The final version of the survey is included in Appendix C. The accompanying packet of information included a welcome, definitions of the independent variables, an explanation of participant rights, and a thank you letter unique to each survey recipient (Appendix D).

The survey itself was administered utilizing traditional paper and pencil methodology. While it is understood that this surveying methodology is atypical of modern research, there are distinct advantages to using the traditional paper and pencil method. The chief benefit is that the survey respondent has an immediate understanding of the complexity and time required to complete the survey. An additional benefit of using a paper and pencil survey was the ability to brand the survey to increase the likelihood of an employer's response.

Employers received the survey instrument mailed through the U.S. Postal Service inquiring about their specific election experience. A traditional mail survey can expect no better than a 20% response rate when no response incentives are provided (Bourque & Fielder, 2003). The 32 respondent employers considered for analysis within this study have a significant vested interest in the study results. Access to a model of winning employer campaign messaging and communication tactics would be particularly beneficial to employers and no doubt influenced some or all to volunteer for this research study by submitting their election experience and information. The response rate and data obtained are addressed in greater detail in Chapter Four.

Dependent Variable. The dependent variable identified to assess its relationship to the independent variables was defined as the Percentage of the Vote in Favor of the Employer. This dependent variable importantly indicates the election outcome, specifically whether the employer won or lost. This was measured by the percent of the votes obtained by the employer. An employer victory in a representation election supervised by the NLRB occurs when the employer receives more votes than the petitioning union or when the vote is a tie. In other words, the petitioning union must receive most of the votes for the employer to lose the election.

Independent Variables. Below are the operational definitions of the independent variables that the literature review anticipated to be the best predictors of the election outcome, namely the percent of the vote in favor of the employer that is determinative of either winning or losing the election. These independent variables were the subject of inquiry for the survey instrument design.

As noted in Chapter Two, in his book *Total Victory! The Complete Management Guide to a Successful NLRB Representation Election*, Donald Wilson (1998) chronicled and defined typical employer communication messages and tactics (e.g., meetings, letters, posters, Facebook, Twitter). Wilson described many of the independent variables that were determinative of employers' election success. The book was published after a long career of providing consultation to employers both directly and indirectly in 3,500 elections. Drawing on his extensive experience, Wilson highlighted the recommended messages and communication tactics most predictive of the vote in favor of an employer. Unfortunately, his book has not been updated nor generated repeated published studies since its initial 1998 release. This mixed methods research study expanded upon and may be compared with Wilson's research, as well as with other studies included within the literature reviewed addressing the contemporary election environment faced by employers during the 2015 – 2017 timespan covered by the 2015 election revisions.

Chief amongst Wilson's (1998) identified independent variables determinative of employer's election success are the following, providing guidance for the independent variables used in this study.

Posters. Wilson (1998) defines a poster as literature displayed conspicuously throughout the workplace. Typically, such employer campaign posters include no more than a few words and can be easily understood, require only a moment to read, and are posted in the workplace for only a short time – one or two days. Such posters vary significantly in tone and purpose (cf. Appendix E). A rather benign but thematically integrated poster might include a photo of a bowling ball and bowling pins with the phrase “only this kind of strike is fun” (Wilson, 1998, p. 167). For this study measures of

the independent variable posters included asking employers if posters were used in their campaign, and if so to identify the total number of posters used: 0-5; 6-10; 11-15; 16+.

Captive Audience Meetings. The captive audience meeting is simply a gathering of employees in which management conveys its position or persuasive communication supporting its position in the workplace representation election. Such meetings are facilitated by the employer's management and conducted "on the clock" (paid time), often in small groups of typically 10 or less employees. In his book *Total Victory* Wilson (1998) referenced the experience of over 3,500 representation elections. He suggested there is a direct correlation between the number of captive audience meetings and the likelihood that management will win the representation election. He stated that his company, Labor Relations Institute, has shown a correlation between the number of captive audience meetings conducted by the employer and the prediction that management will receive more of the vote, a greater chance that management will win the election. His data provided an excellent operational measurement and inquiry for the employer regarding number of captive audience meetings held: 0, 1, 2, 3, 4, or 5+.

Wilson's (1998) data showed the following operational link to the chance that management will win the election, as reproduced below in Table 3.

Table 3

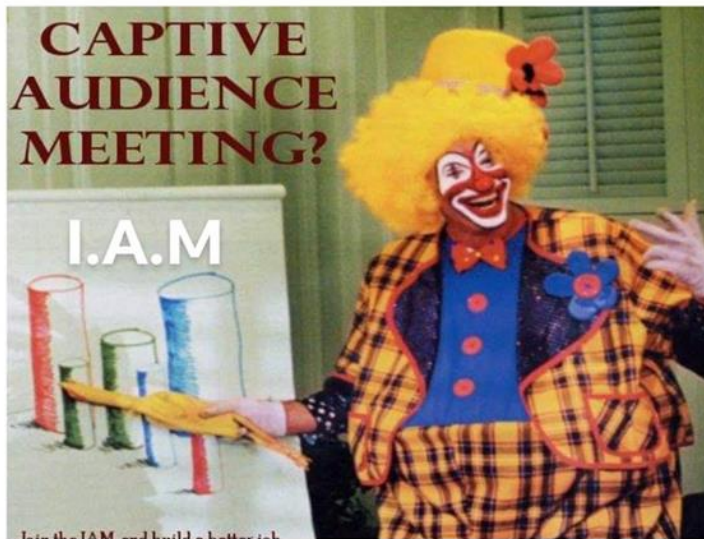
Captive audience and employer win rate (Wilson, 1998, p. 198)

Number of Captive Audience Meetings	Chance Management Will Win Representation Election
5+	92.7%
4	79.6%
3	69.5%
2	58.9%
1	45.2%
0	32.1%

However, given the importance and predictive ability of captive audience meetings, the use of such a communication tool is the subject of ridicule by unions.

Figure 12 presents an image that is a recent example of the International Association of Machinists' Facebook page; it provides the union's viewpoint of captive audience meetings in a campaign communication for its February 2019 election.

**Ask yourself why does Walgreens union buster
Katie Lev have a contract with Walgreens but is
trying to convince you that you don't need one?**



**Katie thinks you all are a bunch of clowns and will believe anything
she tells you. She will say and do anything to convince you that you
don't deserve what she has, a contract with her employer walgreens
DONT BE A CLOWN VOTE YES ! Feb 13 14, and 15**

Figure 12. Union campaign poster, Walgreens 2019 election.

Source:

www.facebook.com/goiamwalgreens/photos/a.840379849334575/2448496711856206/?type=3&theater

Letter to Employees' Homes. To reach not only the employee but also influential members of the employee's family, employers often will mail letters to employees' homes communicating the employer's position. Such an independent variable lent itself to a simple measure of the number of different types of letters mailed to employees during the campaign. This independent variable provided an operational measurement for the employer's use of different types of letters mailed to employees' homes: 0, 1, 2, 3, 4, 5+.

The Strike Calculator. A common employer message centers upon the extent and context for unions' use of strikes to pressure employers at other companies. A strike is one of the more effective tools that unions can use to influence and impact the employer's bargaining position. However, strikes can have a significant financial and economic impact upon employees of the employer. During a strike, employees do not receive pay and often do not receive benefits. During representation campaigns employers often use a strike calculator to illustrate the amount of money an employee would lose from a strike. The calculation is based upon their wages and a potential wage increase, along with the estimated strike duration, which then yields a calculation of how long it will take to recover the lost income. This dichotomous independent variable was measured simply by whether it was used or not.

Use of Attorney, Consultant, or Paid Persuader. The use of an attorney, consultant or paid persuader was amongst the chief independent variables identified by the subject matter experts as most predictive and impactful upon the percentage of the vote in favor of the employer. The use of an attorney, consultant or paid persuader represented three different dichotomous variables.

The operational definition for attorney includes the hiring of a licensed professional to provide legal advice and guidance for the employer's strategy and decisions made throughout the workplace representation election. The attorney's chief asset is the knowledge and use of the employment and labor law. The operational definition for a consultant includes that person who chiefly guides the strategy and decisions made throughout the campaign. The chief difference between an attorney and a consultant is that a consultant's chief asset is experience during campaigns, which may or

may not include legal expertise. Finally, the operational definition for a paid persuader includes an individual who is chiefly hired to speak directly to employees to persuade employee votes. The chief asset of paid persuaders is their experience in campaigns and ability to relate to the voting employees.

Notably, consultants and paid persuaders are not inexpensive; \$3,000 per day fees plus travel and expenses are common charges. To illustrate, the government issues reports called LM-20 reports, in which consultants and persuaders are required to disclose the scope of their services and their fee to each client employer (Greenhouse, 2016). An example of such a report is reproduced in Appendix F. The LM-20 report reflects the consultancy fees (\$3,000 per consultant per day, plus travel expenses) charged the employer for the Walgreens workplace representation election in February 2019 in Jupiter, Florida; Walgreens won the election, with 280 votes cast in favor of Walgreens and 210 votes cast in favor of voting for union representation by the International Association of Machinists union.

Each of the aforementioned dichotomous independent variables was measured by whether the employer utilized any of these three types of campaign experts. Descriptive statistics were conducted to describe each of the independent variables. It should be noted that the use of descriptive analyses can create methodological limitations and such representations may yield correlations and yet not represent causal relationships (Mondore et al., 2011). These were then presented in the form of frequency tables including measures of central tendency and dispersion when applicable to each variable, as further discussed in Chapter 4.

Qualitative Methodology

To collect qualitative data for this study's mixed methods approach seeking answers to the identified research questions, the researcher first reviewed all available and applicable prior studies; Chapter Two contains extensive information on prior studies regarding employers' use of messaging and communication tactics during NLRB elections. The researcher then utilized a specific and highly informative qualitative research methodological tool, the semi-structured interview, to inform, supplement, and complement this study's collected quantitative survey data about said messaging and communication tactics. A thematic analysis was conducted on the semi-structured interview data following the method outlined by researchers Virginia Braun and Victoria Clarke (2006), as detailed in Chapter Four. As next discussed, the specific population and sample of subject matter experts provided information critical to a fuller understanding of the conflict topic that is this study's focus.

Participant Selection Rationale

For the qualitative component of this mixed methods research study, purposive sampling criteria was based upon choosing participants who are recognized as subject matter experts by virtue of their selection as industry or professional conference presenters on the topic of this research study. Bernard (2006) defines this purposive or judgment sampling as "you decide the purpose you want informants to serve, and you go out and find some" (p. 189). The seven employer representative interviewees selected have significant experience in numerous workplace representation elections; each participant was a speaker at one or more professional conferences on the subject of

workplace representation elections. Each has numerous campaign elections in their career experience and is recognized in the labor relations profession as a subject matter expert.

To participate in this study each of the seven subject matter experts was provided the Interview Respondent Participation Agreement (Appendix G). During the interviews each expert reflected upon their experience and actively shared the rationale for decisions they had employed regarding campaign messaging and communication tactics with the ability to influence the named dependent variable, the Percent of the Vote in Favor of the Employer.

While the database and survey quantitative research portions of this study collected information from employers and their representatives, the qualitative interviews with the described seven subject matter experts provided a third and complementary methodological component for triangulation (see Creswell, 2013, p. 251) of data to more fully describe a conflictual topic or phenomenon: employer decisions regarding the selection of election campaign messaging and communication tactics. The subject matter experts themselves have used or considered using each of the independent variables listed in the survey, and thus were uniquely capable of responding to this study's remaining three research questions:

RQ3 – What type of messages result in an increase of the vote in favor of the employer in National Labor Relations Board (NLRB) elections?

RQ4 – What modalities of communication tactics result in an increase of the vote in favor of the employer in NLRB elections?

RQ5 – Does relying on a campaign consultant increase the vote in favor of the employer in NLRB elections?

The subject matter experts commented on each of these three research questions that were the primary focus of the interviews and their qualitative analysis. The resulting collective responses were synthesized into a unified statement for each of the foregoing research questions, as discussed in Chapter Four.

Structured Interviews: Participation & Instrumentation

While there are numerous qualitative approaches available to study the phenomenon of workplace representation election messaging and communication tactics, Creswell (2013) recommends the researcher starts with the outcome: what the approach is attempting to accomplish. For workplace representation election messaging and communication tactics, it was important to enhance the researcher's understanding of the quantitative analyses conducted on both the database and the survey administered to employers. Semi-structured interviews provided a tremendously useful additional qualitative research tool to fulfill this study objective.

Researchers Barriball and While (1994) noted that the semi-structured interview method is "well suited for the exploration of the perceptions and opinions of respondents regarding complex and sometimes sensitive issues and enables probing for more information and clarification of answers" (p. 330). The conflict within the NLRB election system is fraught with complexity and nuances, thereby rendering the semi-structured interview as an ideal methodology for capturing the opinions of the subject matter experts.

When presented with the opportunity to inform this study all seven subject matter experts yielded 100% participation. Each was contacted by email or phone and presented with the Interview Respondent Participation Agreement (Appendix G). The format of the

guide prompted the researcher to confirm each participant's understanding of the study, their receipt of the agreement as well as their understanding of voluntary participation and their ability to terminate the interview at their discretion, and finally that their identity would be coded and anonymous in order to facilitate open, forthright comments. The subject matter experts' knowledge and experience, along with their availability and willingness to share perspectives on their historical use of NLRB election campaign messaging and communication tactics, were all crucial factors satisfying the purposive judgment sampling criteria for this research study (see Bernard, 2006, pp. 189-190).

The researcher determined that conducting structured interviews by telephone would be highly conducive to successful acquisition of information. Telephone conversations naturally follow an agenda-driven format that is initiated by the caller, similar to the process followed in semi-structured interviews. Cachia and Millward (2011) found that the telephone medium and the semi-structured interview modality are complementary. Notably, the previously discussed introductory statements provided to participants remained separate and apart from the subsequent interview questions (see Appendix H; see also Frey, Fink, & Oishi, 1995). For these initial portions of the interview the researcher used a smooth conversational tone for instructions, probes, and prompts. As Frey, Fink, and Oishi (1995) noted, the interview's beginning establishes the tone for the entire interview, creating a "rapport effect" (p. 100) that builds trust and enhances willingness to participate in the interview.

With the participants' approval, the interviews were audio recorded and transcribed. The interviews lasted approximately 15 to 25 minutes in duration. Each of the interviewees were assigned a participant number in order to maintain confidentiality

and eliminate the possibility of potential harm from their participation in this research study, in accordance with ethical obligations as discussed below. However, as a subject matter expert each interviewee was known to the researcher, and all interviewees know each other well. Each of the interviewees was offered and each requested a copy of the final research study.

In conducting the participant phone interviews, it was important to establish a degree of comfort between the researcher and participant. This was accomplished by asking how long the participant had been involved in campaign messaging and communication tactics, and then proceeding afterward with the other focal points of inquiry. Depending upon the interviewee's response, follow-up inquiry followed Moustakas' (1994) technique of inquiry, asking open-ended questions such as "How successful did you feel each campaign messages or communication tactics were at the time you typically decided on its use? How has the campaign messaging and communication tactics experience affected how you feel about your involvement in workplace representation elections?"

Role of the Researcher. Qualitative research required a commitment to ethics and reflexivity on the part of the researcher, with particular attention paid to the subjective nature of this study.

Researcher as Observer. Given this researcher's experience serving as both a former union member as well as the employers' representative in numerous NLRB elections, a reliance upon document review, database analysis, and the opinions of subject matter experts was critically important to ensuring the reliability and validity of

the instant research. The researcher's role in this study was solely that of an observer; the researcher did not participate in any election included within this research study.

Relationships Between Researcher and Research Participants. The researcher is known within segments of the employers' labor relations community; he is known to each of the subject matter experts, who also are acquainted with each other. However, the researcher maintains no contractual relationships with any of said participants.

Researcher Bias. As noted previously, this researcher was a union member for years; he has served as employer representative in over twenty NLRB elections. For several years before and during the course of this research study, the researcher served on the Labor Relations Expert Panel of the Society for Human Resources Management and participated in several other labor relations-oriented professional organizations. The researcher is an adjunct full professor and teaches labor relations for an international university. He has published articles on the subject of labor relations and is a frequent speaker at conferences on the subjects of labor relations and NLRB elections. For all the foregoing reasons it was critically important that the researcher recognize and evaluate his own assumptions and biases, in order to most objectively support the research and findings in this mixed methods research study.

To recognize, assess, and maintain awareness of researcher bias, the researcher engaged in a collaborative reflexivity exercise with fellow researcher Bruce Lilyea, PhD, whose expertise resides in qualitative methodology involving organizational conflict. The reflexivity exercise acknowledged the researcher's participation in over 20 workplace representation elections, along with the researcher's involvement in selecting messaging and communication tactics to influence the percent of the vote in favor of the respective

employers. The exercise included a review of the researcher's career history, participation in election messaging and communication tactics, and teaching experience on the subject of NLRB elections, as well as an exploration of the researcher's biased assumptions based upon prior experience. The objective of the exercise was to reflect and maintain an awareness of the existing bias in order to design and evaluate the qualitative data collection from an objective perspective. Understanding the need to periodically review the result of the reflexivity exercise, the following bracketing statement was created to guide the data collection and analysis:

The researcher will reflect upon and eschew preconceived rationale for the use and efficacy of all campaign election messaging and communication tactics for the design, collection, and analysis of qualitative data obtained from subject matter experts.

The researcher reviewed this bracketing statement prior to each interview of the seven subject matter experts, to carefully and deliberately eschew the influence of his own readily available perspectives stemming from personal experience in numerous workplace representation election campaigns.

The focus of the qualitative portion of this study was not on the subject matter expert individual participants but rather on their experiential representative comments, in order to add insight to the obtained employer survey responses previously discussed. Each interview supported an understanding of the collective experience of the subject matter experts. The net result of the qualitative portion of this study was generation of a meaningful narrative to enhance the understanding of the quantitative survey employer response and generate a triangulated response to the research questions.

Ethical Procedures

The researched complied with all requirements of ethical research training as mandated by Nova Southeastern University, completing CITI Program training for the protection of human subject research participants on May 27, 2018. Further and as detailed above, the researcher carefully acknowledged and complied with ethical requirements in the wording, instrumentation, and conduct of the interviews with each participant, and used bracketing to avoid the influence of researcher bias.

Record Retention and Audit Facilitation

To support the credibility of the quantitative survey analyses and qualitative structured interview study findings, it was necessary to apply the highest standards of organization and structural record retention to facilitate post-research audits and avoid duplication of results. The organization and format for this record retention included the preservation of:

- the study's bracketing statement;
- notes of all interviews;
- interview notes of identified horizons;
- all documents in which the horizons were coded and categorized into thematic clusters;
- all analytic memos;
- the textural descriptions written for each participant; and
- copies of all drafts, along with the final dissertation study research report.

All of the foregoing described procedures followed for each methodology described in this mixed methods research study was approved by the Nova Southeastern University Institutional Review Board (IRB) on May 9, 2019, and on February 25, 2020.

Summary and Conclusions

Chapter 3 described the three-part mixed methods approach of this research study.

The three research components included:

- a quantitative research design for a governmental database of 305 NLRB-supervised elections,
- a survey of employer representatives involving 32 elections, and
- semi-structured interviews with seven subject matter experts, supplemented with thematic analysis of content data.

These three critical quantitative and qualitative research components were designed to contribute to a triangulated view of the relationship between the percent of the vote in favor of the employer and several independent variables. The investigator's correlational research, analysis of the survey of employer messaging and communication tactics, as well as the thematic analysis (Braun & Clarke, 2006) of the subject matter expert semi-structured interviews—detailed next in Chapter Four—achieved the triangulation (Creswell, 2013) so useful in the mixed methods approach.

Chapter Three addressed the researcher's role and personal experience involving NLRB elections, outlining steps taken to maintain the reliability and validity of this research study's analyses and findings through the utilization of bracketing techniques to mitigate the researcher's biases, paradigms, and assumptions. The chapter also described

steps taken to comply with the ethics protocol of Nova Southeastern University's Institutional Review Board.

The quantitative and qualitative analytical processes applied to each of the three foregoing described and approved data sources along with the researcher's resultant findings are presented in Chapter Four, with implications and recommendations regarding workplace representation elections from the perspective of the employer following in Chapter Five.

Chapter 4: Presentation of the Research Findings

The objective of this study was to develop a model to assist employers for what is arguably the most contentious conflict that can exist in the American workplace: a workplace representation election, supervised by the National Labor Relations Board. The intent of a workplace representation election is to determine whether a petitioning union has sufficient support to unionize a unit of employees within a workplace. This mixed methods research study sought to develop a model to assist employers in assessing the efficacy and success of election-related messages and communication tactics, in order to achieve an increase in votes in favor of the employer and a successful election outcome.

The developed model is the product of a triangulation between three analytical research components of the study: 1) quantitative analysis of an existing dataset of 305 elections, 2) quantitative analysis of results obtained for the researcher's survey of 32 elections, and 3) qualitative research thematic analysis of interviews of seven NLRB subject matter experts. These analyses were conducted to gain understanding and answers for the study's five research questions:

RQ1 – Do shorter election periods result in more or less employer victories in NLRB elections?

RQ2 – Do contested or stipulated elections favor employers in NLRB elections?

RQ3 – What type of messages result in an increase of the vote in favor of the employer in National Labor Relations Board (NLRB) elections?

RQ4 – What modalities of communication tactics result in an increase of the vote in favor of the employer in NLRB elections?

RQ5 – Does relying on a campaign consultant increase the vote in favor of the employer in NLRB elections?

Correlational Quantitative Research Methodology: 305 Elections

In this first portion of the study's research, 305 elections in four NLRB Regions as represented in an existing governmental database were analyzed to extract and better understand their numerous descriptive and demographic characteristics. Through this descriptive data many portions of the research questions were answered. The statistical analysis of the database below included scatterplots and the production of a correlation coefficient table. The results of the correlation analysis are presented to assess the relationship of the percentage of the vote in favor of the employer in comparison with three independent variables available in the original 305 elections database.

As is apparent in the literature reviewed, an NLRB election is one of the most contentious conflicts that occurs in the workplace. There is a tendency to frame the workplace representation election conflict as one of labor unions versus management. However, it is important to remember that the elections are determined by the workers, the employees themselves. More often than not the employees themselves are at odds, in conflict with each other on whether unionization is desired for their respective workforce. The 305 elections studied for this research reflect the decisions of 19,519 employees who voted in those 305 NLRB elections. Of these 305 elections studied, only 55 or 18% of these were decided by a unanimous vote of the employees. Of these 55, the employer received zero votes in an overwhelming 53 of these 55 elections. In only two of the elections did the employees unanimously reject union representation. The remaining 250 (305-55) elections decided by non-unanimous vote illustrate organizational conflict

existing not only between the employer and union but also among the employees, since some portion wanted union representation and some portion did not. Thus in those 250 elections with less than 100% of the vote in favor of either the employer or the union, a total of 19,134 employees were in conflict with each other, as there was disagreement among employees on the question of union representation.

The 305 elections included within this research occurred between 2015 and 2017 in four Regions of the NLRB, in what are known as the Right to Work states. In a study of all elections across the United States in the first half 2018, employers on average won 31% of the workplace representation elections. This rate was a slight increase in comparison to the 2017 employer win rate of 29% (Combs & Cinquegrani, 2018). In this study of 305 elections, the employer won 32.7 percent of the 305 elections studied for a total of 100 elections. The minimum percent of the vote in favor of the employer is 50% and in these 100 elections where the employer won, the largest percent in favor of the employer is 100%. The mean percent of the vote in favor of the employer in the 100 elections when the employer won the election was 65.35%. The median was 63.1% and the most frequent percent of the vote in favor of the employer was exactly 50%, as can be seen in the histogram below in Figure 13. With over one-third of the workforce in disagreement with the election results, workforce representation elections understandably are rife with conflict.

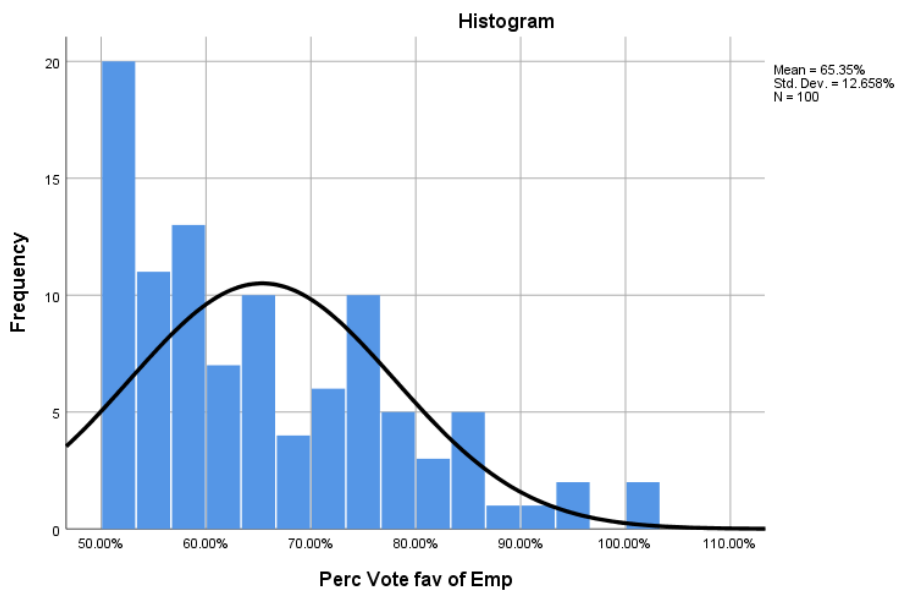


Figure 13. Vote in favor of employer in 100 elections.

The mean percent of the vote in favor of the employer in all of the 305 elections held in the four NLRB Regions was 35%, as illustrated in Figure 14 below.

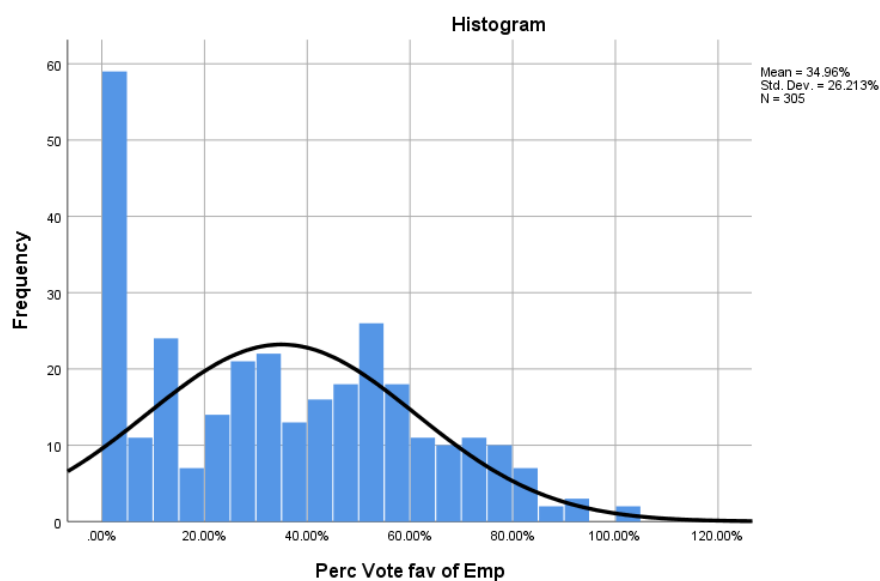


Figure 14. Vote in favor of employer in 305 elections.

A review of the dataset of the 305 elections revealed categorical variables appropriate for this study's focus of inquiry, most importantly a dependent variable and

three continuous independent variables included within the dataset provided by the National Labor Relations Board. Notably these selected variables include:

- **Dependent Variable:** *Percent of the Vote in Favor of the Employer*;
- **Independent Variable:** *Turnout*, which is the percent of the number of eligible voters which vote;
- **Independent Variable:** *Election Period*, meaning the cycle time or duration of the election campaign leading to the vote; and
- **Independent Variable:** *Number of Eligible Voters (Unit Size)*, a measure (known as the unit size) of the employees eligible to vote in the workplace.

Field (2013) noted that outliers can bias estimates of parameters such as the mean. A review of the 305 elections in the database indicated 5 elections were outliers because of their extended election period (exceeding 200 days). After removal of the 5 outliers the mean for the election period of the remaining 300 elections averaged 29 days in length.

Correlations between Dependent and Independent Variables

Before assessing the strength of the relationships between the dependent and independent variables, the researcher assessed whether a correlational analysis was appropriate. Laerd Statistics, a publisher of SPSS Statistics guides, publishes seven assumptions necessary for the use of the Pearson r statistic used to assess the relationship of two variables. Each of these seven assumptions must be satisfied in order to utilize the Pearson r statistic or it becomes necessary to utilize a different statistic. The seven assumptions address: level of measurement, related pairs, absence of outliers, and linearity. The chart below summarizes the seven assumptions, each of which was met by the data within this study.

1. Data is measured on a continuous scale;
2. Each case has two values [data points], one for each variable;
3. There is an independence of cases, meaning there are two observations for each single case;
4. There is a linear relationship between the two measured continuous variables;
5. Both continuous variables follow a bivariate normal distribution;
6. Homoscedasticity exists as the variances along the line of best fit remain similar throughout the line; and
7. There are no univariate or multivariate outliers. (Laerd Statistics, 2020)

To assess the strength of the association between any two variables researchers utilize descriptive labels to represent this continuum. Generally, the strength of association is represented as a small, medium, or large correlation. While researchers sometimes vary slightly in their designations, this researcher utilized the Laerd Statistics model for designating the strength of correlation as indicated below in Table 4.

Table 4

Correlation strength of association continuum

Strength of Association	Coefficient, r Positive	Coefficient, r Negative
Small	.1 to .3	-0.1 to -0.3
Medium	.3 to .5	-0.3 to -0.5
Large	.5 to 1.0	-0.5 to -1.0

Source: <https://statistics.laerd.com/statistical-guides/pearson-correlation-coefficient-statistical-guide.php>

A correlation matrix of the three identified continuous independent variables for the 300 elections revealed relationships as illustrated in Table 5. A review of the Pearson r correlations indicates there is a small positive correlation between the dependent variable *Percent of the Vote in Favor of the Employer* and each of the three identified independent variables. Specifically, there is a small though highly significant relationship with the *Number of Eligible Voters (Unit Size)* with an $r = .200$, $p = .000$; a small though significant relationship with *Turnout* having an $r = .136$, $p = .019$; and lastly a small though not significant positive correlation for *Election Period* with an $r = .074$, $p = .204$.

Table 5

Correlations: Study's dependent variable with 3 independent variables

Correlation Coefficients for the 300 Elections: Study Variables					
Variable		1	2	3	4
1. Percent of Vote in Favor of Employer	Pearson Correlation Sig. (2-tailed)	1			
2. Turnout (Percent of eligible voters who voted)	Pearson Correlation Sig. (2-tailed)	.136*	1		
3. Election period (Duration of the election campaign)	Pearson Correlation Sig. (2-tailed)	.074	-.066	1	
4. Number of Eligible Voters (aka Unit Size)	Pearson Correlation Sig. (2-tailed)	.200**	-.004	.040	1

**Correlation is significant at the 0.01 level (2-tailed).

*Correlation is significant at the 0.05 level (2-tailed).

Below are results of the analysis of each independent variable. The order that the independent variables are reported here was determined by, and corresponds to, the ascending significance of each one's relationship to the dependent variable. Consequently, *Turnout* is addressed first, *Election Period* second, and last—but most importantly—*Number of Eligible Voters*, which is also known as *Unit Size*.

Turnout. An important part of the employers' campaign is to encourage employees to vote when provided the opportunity (Wilson, 1998). Correlating the *Percent of the Vote in Favor of the Employer* with *Turnout* yields a Pearson r of .136, which is statistically significant at $p = .019$. As illustrated in Figure 15, ambivalence about voting is a rarity in these workplace representation elections.

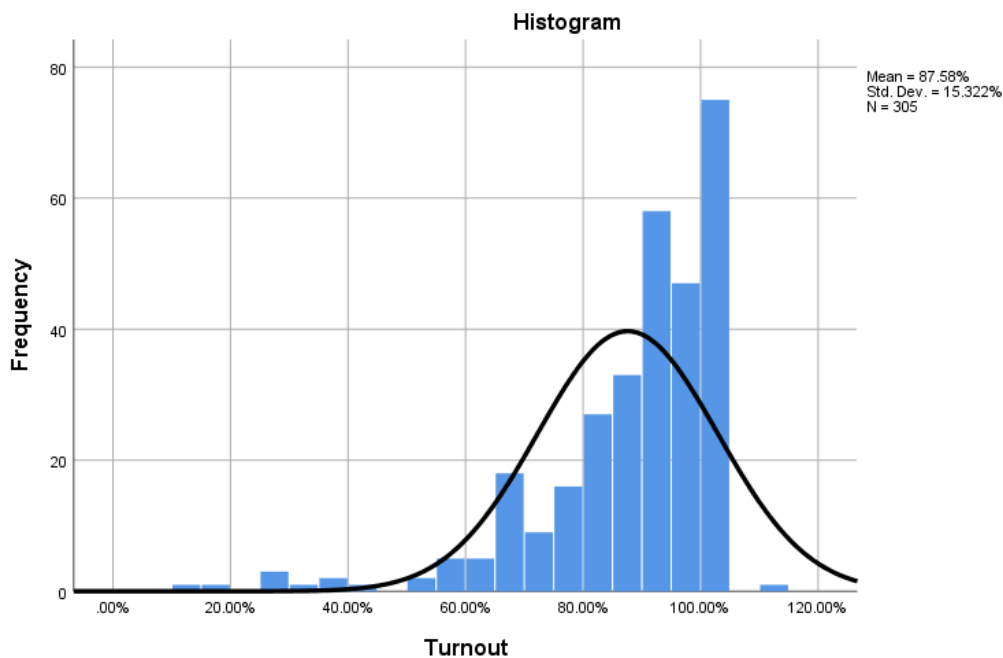


Figure 15. Turnout for 305 elections.

On average 87.5% of eligible employees voted in the 305 elections studied, which had a median 92.8% of the employees voting in the election. The most frequent turnout

(voting) percent is 100%, thus illustrating the importance of the election to the voting employees.

Election Period (Elapsed Cycle Time of the Election). Many of the complaints that employers had regarding the 2015 revised NLRB election rules centered upon the shortened election period (Hayes, 2018). Prior to the 2015 election changes, nationwide workplace representation elections averaged 38 days. However, the 2015 revised regulations resulted in an average cycle time of a mere 23 days (see Becker & Rhinehart, 2018, p. 3; Hardie & Murphy, 2016, p. 1; National Labor Relations Board, 2019). Employers were adamant that a mere 23 days was an insufficient period of time for employees to make the most important decision of their career (Hayes, 2018).

It is for this reason that this study asked the important research question:

Do shorter election periods result in more or less employer victories in National Labor Relations Board elections? The null hypothesis states that no difference exists; therefore, any positive or negative correlation will result in a rejected null hypothesis. The resulting correlation indicates a positive relationship between the dependent variable, *Percent of the Vote in Favor of the Employer*, and the independent variable *Election Period*, with $r = .074$, $p = .204$. While not statistically significant there is practical significance in the positive relationship between the variables.

Table 6 below is a frequency chart of the number of calendar days, also known as the cycle time for each of the 305 elections studied. As predicted by employers, at least one election occurred in as little as 10 days (Yager, 2015). In that election of 11 employees only one voted in favor of the employer. Table 6 reveals at least 5 of these elections exceeded over 200 days and are certainly outliers to the most frequent election

period with a mode of 21 days. These 305 elections illustrate that over one half of the elections occurred in 24 or less days. Within these 305 elections, over 11,047 days were spent in election conflict.

Table 6

Frequency chart of the election period in 305 elections

Frequency Chart of Election Period for 305 Elections					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	10	1	.3	.3	.3
	12	1	.3	.3	.7
	14	2	.6	.7	1.3
	15	2	.6	.7	2.0
	16	8	2.4	2.6	4.6
	17	9	2.7	3.0	7.5
	18	4	1.2	1.3	8.9
	19	7	2.1	2.3	11.1
	20	13	3.9	4.3	15.4
	21	37	11.1	12.1	27.5
	22	27	8.1	8.9	36.4
	23	29	8.7	9.5	45.9
	24	26	7.8	8.5	54.4
	25	10	3.0	3.3	57.7
	26	8	2.4	2.6	60.3

Frequency Chart of Election Period for 305 Elections

	Frequency	Percent	Valid Percent	Cumulative Percent
27	14	4.2	4.6	64.9
28	15	4.5	4.9	69.8
29	7	2.1	2.3	72.1
30	7	2.1	2.3	74.4
31	6	1.8	2.0	76.4
32	1	.3	.3	76.7
33	3	.9	1.0	77.7
34	2	.6	.7	78.4
35	4	1.2	1.3	79.7
36	9	2.7	3.0	82.6
37	5	1.5	1.6	84.3
38	6	1.8	2.0	86.2
39	1	.3	.3	86.6
41	2	.6	.7	87.2
42	10	3.0	3.3	90.5
43	2	.6	.7	91.1
44	2	.6	.7	91.8
45	3	.9	1.0	92.8
47	1	.3	.3	93.1
48	1	.3	.3	93.4

Frequency Chart of Election Period for 305 Elections				
	Frequency	Percent	Valid Percent	Cumulative Percent
50	1	.3	.3	93.8
52	1	.3	.3	94.1
54	1	.3	.3	94.4
57	1	.3	.3	94.8
59	2	.6	.7	95.4
63	1	.3	.3	95.7
79	2	.6	.7	96.4
136	1	.3	.3	96.7
139	2	.6	.7	97.4
144	1	.3	.3	97.7
171	1	.3	.3	98.0
179	1	.3	.3	98.4
202	1	.3	.3	98.7
264	1	.3	.3	99.0
363	1	.3	.3	99.3
670	1	.3	.3	99.7
724	1	.3	.3	100.0
Total	305	100.0	100.0	

A better illustration of the impact that the allotted *Election Period* has on *Percentage of the Vote in Favor of the Employer* is a comparison of the shortest elections

with the longest elections. To accomplish this, the percentage of the vote in favor of the employer for the 30 shortest elections was compared with the 30 longest elections. In the 30 longest elections, employers received 50% or more of the vote in 27 of the 30 elections for a 90%-win rate. In contrast, in the 30 shortest elections employers received 50% or more of the vote in only four of the 30 elections, for a win rate of only 13%. A review of these 60 elections strongly demonstrated and validated employers' concerns that the shorter the election cycle, the smaller the percent of the vote in favor of the employer. Consequently, the employer acts in its own interests by lengthening the election cycle time and providing employees as much time to interpret campaign messages prior to voting on whether to unionize or remain union-free.

Thus, the answer to the following research question is distinctively clear: *Do shorter election periods result in more or less employer victories in National Labor Relations Board elections?* Yes, shorter election periods result in less employer victories in National Labor Relations Board elections.

In 5 cases within the 305 database elections cases (see Table 7 below) the election period exceeded 200 days; their distinction from the other 300 elections warranted excluding each as an outlier (Field, 2013) and the correlation output which included those five was not significant.

Table 7

Descriptive election period data for 305 elections (including outliers)

Descriptive election period data: 305 elections (including outliers)		
N	Valid	305
	Mean	36.22
	Std. Error of Mean	3.589
	Median	24.00
	Mode	21
	Std. Deviation	62.685
	Variance	3929.468
	Skewness	8.610
	Std. Error of Skewness	.140
	Kurtosis	84.142
	Std. Error of Kurtosis	.278
	Range	714
	Minimum	10
	Maximum	724
	Sum	11047

Removal of outliers left 300 elections for study (see Table 8) to further assess the relationship between the independent variable *Election Period* and the dependent variable *Percent of the Vote in Favor of the Employer*, as shown below in Table 9.

Table 8

Descriptive election period data for 300 elections (excluding outliers)

Descriptive election period data for 300 elections (excluding 5 outliers)		
N	Valid	300
	Mean	29.41
	Std. Error of Mean	1.156
	Median	24.00
	Mode	21
	Std. Deviation	20.016
	Variance	400.631
	Skewness	4.979
	Std. Error of Skewness	.141
	Kurtosis	29.097
	Std. Error of Kurtosis	.281
	Range	169
	Minimum	10
	Maximum	179
	Sum	8824

Table 9

Descriptive election period and employer win data for 300 elections

Descriptive Statistics			
	Mean	Std. Deviation	N
Election Period	29.41	20.016	300
Percent of Vote in Favor of Employer	34.69%	26.23%	300

As can be seen in Table 10 below illustrating the correlation between the election period and the percent of the vote in favor of the employer for the 300 elections, the relationship of the variables remained skewed by the outliers. However, there was a positive correlation of .074 between the *Percent of the Vote in Favor of the Employer* and the *Election Period*, though it was not statistically significant with a p value of .204.

Table 10

Correlations: Election period and employer win data, 300 elections

		Election Period	Percent of Vote in Favor of Employer
Election Period	Pearson Correlation	1	.074
	Sig. (2-tailed)		.204
	N	300	300
Percent of Vote in Favor of Employer	Pearson Correlation	.074	1
	Sig. (2-tailed)	.204	
	N	300	300

A histogram of the frequency of election period or duration of the election campaign illustrates the extent that outliers exist, as seen in Figure 16 below.

Election Period and Percent of the Vote in favor of the Employer for 300 elections

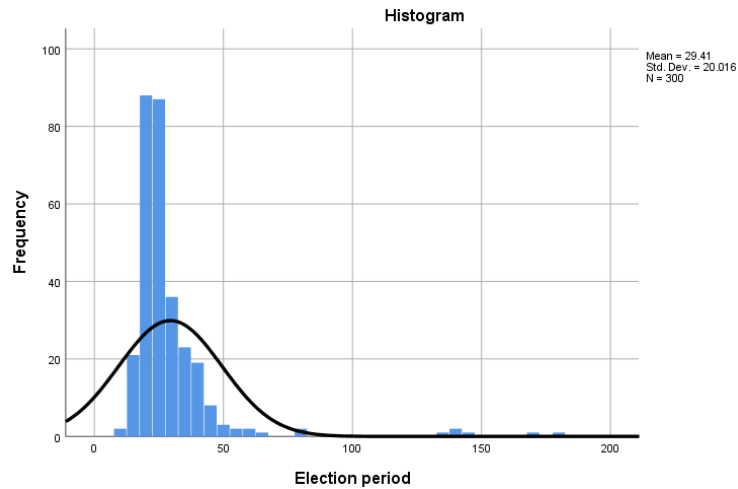


Figure 16. Histogram: Election period and percent of the vote in favor of the employer data, 300 elections.

A scatterplot illustrates the impact of the correlation and illustrates six outliers skewing the relationship, as seen below in Figure 17.

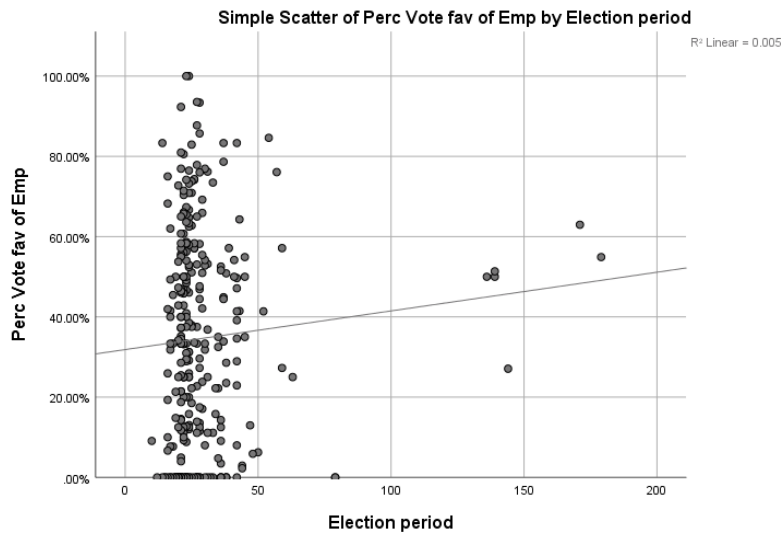


Figure 17. Scatterplot: Election period and percent of the vote in favor of the employer data, 300 elections.

Excluding only 11 outliers of the 305 elections enabled a study of all remaining 294 elections with an election period of 80 days or less. The most frequent election

period remained at 21 days with a median of 24 days and a mean of 26 days. The 294 workplace representation elections in Table 11 represent over 7,900 days spent in election conflict.

Table 11

Descriptive election period data, 294 elections (excluding 11 outliers)

Election Period		
N	Valid	294
	Mean	26.93
	Std. Error of Mean	.560
	Median	24.00
	Mode	21
	Std. Deviation	9.606
	Variance	92.274
	Skewness	2.057
	Std. Error of Skewness	.142
	Kurtosis	6.365
	Std. Error of Kurtosis	.283
	Range	69
	Minimum	10
	Maximum	79
	Sum	7916

There was virtually no correlation between the dependent variable *Percent of the Vote in Favor of the Employer* relative to the independent variable *Election Period* due to the continued inclusion of outliers; consequently the data set was further reduced to exclude any outliers beyond 60 days. The resultant exclusion of 14 outliers resulted in 291 elections, again with the most frequent election period lasting 21 days. The mean was 26 days with a median of 24 days. These 291 elections in Table 12 below represent nearly 7,700 days of workplace representation election conflict:

Table 12

Descriptive election period data, 291 elections (excluding 14 outliers)

Descriptive Election Period Data for 291 Elections (excluding 14 outliers)		
N	Valid	291
Mean		26.44
Std. Error of Mean		.490
Median		24.00
Mode		21
Std. Deviation		8.355
Variance		69.806
Skewness		1.373
Std. Error of Skewness		.143
Kurtosis		2.012
Std. Error of Kurtosis		.285
Range		49

Minimum	10
Maximum	59
Sum	7695

A scatterplot of the correlation for 291 elections between the dependent variable *Percent of the Vote in Favor of the Employer* and the independent variable *Election Period* is presented as Figure 18 below.

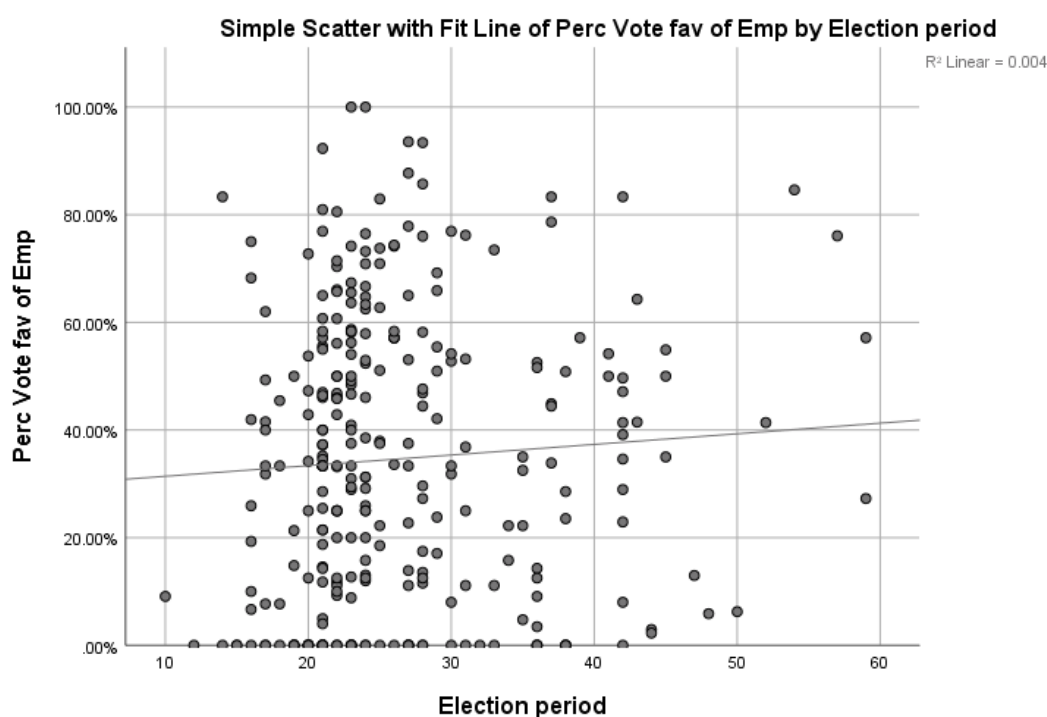


Figure 18. Scatterplot: Election period and percent of the vote in favor of the employer data, 291 elections.

As employers might expect, there was a positive (though very small) relationship (a Pearson r of .063) between the election period and the corresponding percent of the vote in favor of the employer, as shown below in Table 13. However, this relationship

was not statistically significant at .287, even though there was a slightly positive slope evident in the fit line in the Figure 18 scatterplot above.

Table 13

Correlations: Election period and employer win data, 291 elections

		Election Period	Percent of Vote in Favor of Employer
Election Period	Pearson Correlation	1	.063
	Sig. (2-tailed)		.287
	N	291	291
Percent of the Vote in Favor of Employer	Pearson Correlation	.063	1
	Sig. (2-tailed)	.287	
	N	291	291

The encouraging observation for employers is that once notified by the formalized filing of a petition for election that a union organizing campaign has begun, an employer can influence the election outcome by negotiating with the union and the NLRB for an extended rather than shortened election cycle time.

Unit Size or Number of Eligible Voters. After notification of the filing of a petition for workplace representation election, the employer can also influence the size of the unit by negotiating with the union and the NLRB regarding which job titles are to be included within the unit of eligible voters. A review of Table 14 below illustrates the important impact of the decision regarding how many should be eligible to vote in a workplace representation election.

Table 14

Correlations: Unit size and percent of the vote in favor of the employer data, 300 elections

		Percent Vote Favor of Employer	Number of Eligible Voters
Percent of Vote in Favor of Employer	Pearson Correlation	1	.200**
	Sig. (2-tailed)		.000
	N	300	300
Number of Eligible Voters (aka Unit Size)	Pearson Correlation	.200**	1
	Sig. (2-tailed)	.000	
	N	300	300

The *Number of Eligible Voters* and its corresponding relationship with the election outcome, the *Percent of The Vote in Favor of the Employer*, indicates that *Unit Size* is the most influential independent variable of those studied. The relationship of these two variables, with a Pearson r of .200—although a small strength of association indicates a change in the unit size—is a statistically significant covariant with the percent of the vote in favor of the employer ($r = .200$, $p = .000$).

Survey Research Methodology

Once the employer has negotiated the number of eligible voters as the appropriate size of the unit and the duration of the election period, the employer and union commence their respective campaigns in earnest (Bergeron, 2008). Employers begin their campaign by selecting communication tactics to both communicate messages of the campaign as well as messages that persuade employees. This chapter describes the *Voice of the Employer Survey*© instrument used to collect additional information from 32 of the

identified and previously discussed a database of 305 elections regarding messaging and communication tactics employers used during their NLRB elections. This section presents the process for survey instrument design, identification of respondents, collection of survey data, and the analysis of results obtained.

Instrument Design and Data Collection

There are many communication and messaging tactics options available to employers facing workplace representation elections; Don Wilson's (1998) book, *Total Victory! The Complete Management Guide to a Successful NLRB Representation Election*, detailed many of those options. Although only one of numerous sources reviewed in the literature, the book was instrumental in identifying the independent variables used for development of this researcher's *Voice of the Employer Survey*© submitted to employers and their representatives in the 305 elections (as referenced in this chapter's previous section on database research methodology). The survey sought to determine whether messages or communication tactics identified through the literature review were used and if so, how influential they were perceived to be at the time of their use. This information enabled greater understanding of the election results in an employer win or loss outcome.

In the process of developing the researcher's *Voice of the Employer Survey*©, a pilot study was conducted to assess the appropriate parameters regarding comprehension and time completion for this original instrument. This allowed the researcher to identify the context and process under which subjects best could provide response data to the researcher's instrument (Litwin, 2003). Three subject matter experts were identified from their involvement in presentations at professional conferences, as described in chapter 3.

Each subject matter expert completed the survey while on the phone with the researcher.

The researcher's focal points for the pilot survey included:

- observing the completion of the instrument under controlled conditions;
- identifying the elapsed time to complete the survey;
- identifying any misunderstandings of the wording, context, or operational definitions within the items; and
- identifying any problematic format design choices.

(Litwin, 2003). The resulting input from three iterations of the pilot test of the *Voice of the Employer Survey*© instrument reinforced the utility and understandability of the instrument as drafted, and further contributed to ensuring the reliability and validity of the final survey instrument (Litwin, 1995). The measured time for completion of three pilot study iterations ranged between six and seven minutes, thereby enabling the researcher to allow comfortably a six-minute time for survey completion by potential respondents.

In the second quarter of 2019, the survey was mailed to the 305 identified employers and their representatives at the physical addresses listed by the National Labor Relations Board on the 305 elections dataset utilized for this study. Follow-up reminder phone calls were made to available non-respondents throughout the third and fourth quarter of 2019. Both methodologies resulted in a combined total response rate of 32 elections, or 11% of the election database population of 305. The value of the 32 surveys is that it provided information regarding the employer representative's knowledge of the messaging and communication tactics used during their election. As noted in Chapter Three, no more than a 20% response rate was anticipated given the average for written

surveys distributed through the mail to individuals without awareness or anticipation of the forthcoming survey. Nonetheless, certain descriptive insights into employer messaging and communication tactics were obtained from the sample 32 responses and are next discussed.

Results

Given the 11% response rate that yielded information on 32 elections, the number of responses was insufficient to conduct inferential statistics on the data. However, the responses received did supply information about employer messaging and communication tactics. When compared to all elections held during the same time period, the percent of the vote in favor of the employer for the 32 elections subset compared similarly. For example, in the studied 305 elections employers won 32.7%% of the time; in the 32 survey responses, employers were slightly more successful, winning 39% of the time. This 39% win rate became the baseline for comparison of the efficacy of a particular campaign message. Those messages which yielded a 39%+ win rate therefore were deemed practically and descriptively important for purposes of this study.

Before reviewing the messaging and communication tactics, descriptive statistics characterizing the 32 elections for this study's three identified independent variables (*Turnout, Election Period, and Unit Size*) and their relationship to the dependent variable (*Percent of the Vote in Favor of the Employer*) are each here addressed, in the order of their significance as identified in the larger database of the 305 elections. Tables 15 and 16 below respectively display the descriptive statistics derived from the database for the 32 employer representative respondents and for the 305 elections in the database.

Table 15

Dependent variable and 3 independent variables, 32 elections

	Percent of the Vote in Favor of Employer	Turnout	Election period	No. of Eligible Voters
No. of Elections	32	32	32	32
Mean	38.9%	92.2%	38.2	171.2
Median	43.4%	94.4%	26.5	50.5
Mode	0.0%	100.0%	28	59

Table 16

Dependent variable and 3 independent variables, 305 elections

	Percent of the Vote in Favor of Employer	Turnout	Election period	No of Eligible Voters
Number of Elections	305	305	305	305
Mean	34.9%	87.5%	36.2	73.3
Median	33.3%	92.8%	24.0	31.0
Mode	0.0%	100.0%	21	4 ^a

a. Multiple modes exist as 10 elections each had 4, 6, 8, & 15 voters. In the chart the smallest number of voters at 4 is shown.

With regard to the percent of the vote in favor of the employer for the 32 elections surveyed, the 38% mean compared similarly with the 34% mean for the 305 elections population. The 43% median for the 32 responding elections was higher than the 33% median for the 305 elections. In both the 32 responding elections as well as the 305

elections, the most common percent of the vote in favor of the employer was 0% of the voting employees.

In reviewing the turnout of the 32 survey responses, the mean 92% turnout compared favorably with the 87% mean for the 305 elections population. The 94% median turnout for the 32 responding elections compared favorably to the 92% median for the 305 elections. In both the 32 responding elections as well as the 305 elections, the most common turnout of voting employees in the elections was 100%. That complete participation by voting employees once again represents the extent of engagement by employees on the decision whether to unionize or remain union-free.

In reviewing the election period of the 32 survey responding elections, the mean 38-day election period compared favorably with the 36 day mean for the 305-election population. Given the long duration of two outlier elections included in both datasets, a better measure of the election period was the median duration of the campaign period, which is 26 days for the 32 responding elections. This compared favorably with the slightly shorter election median election period of 24 days for the 305 elections. The most common election period of the 32 responding elections was 28 days, although the second most common (in 3 of the 32 elections) occurred in just 24 days. Both of these periods in the 32 responding elections compared favorably with the 21-day mode for election period in the 305 elections.

Reviewing the number of eligible voters, also known as the unit size, of the 32 survey respondents, the mean unit size of 171 was significantly larger than the 73 employee unit size mean for the 305 elections population. For the 32 responding elections, the median unit of 50 voting employees was still larger than the 31 median

voting employee unit size for the 305 elections. For the 32 responding elections the most common unit size was 59 eligible voters, as compared to the multiple modes identified for the 305 elections database, the largest of which was only 15 votes (see Table 16, note a).

Campaign Messages: 32 Elections. The primary value of the 32 elections survey dataset of responding employers was the information obtained regarding employer messages and communication tactics, when compared to the net result: a win or loss of the election for the employer. As mentioned above, 13 of the 32 respondents won their elections, a 39%-win rate.

The *Voice of the Employer Survey*© identified messages used by both employers that won their elections and employers that lost. The administration of the survey enabled a comparison of these two groups, thereby adding insight into employer strategies for messaging and communication tactics as well as responding directly to the research questions. The variables for comparison include the following independent variables measured within the *Voice of the Employer Survey*©, as listed in Table 17 below.

Table 17

Voice of the Employer Survey© independent variables

Independent Variables	Winning		Losing	
	Used	Not Used	Used	Not Used
Campaign Messaging				
What is/Definition of a Union	9		13	5
What is Collective bargaining? May include gambling with and realities of bargaining	10		16	2
Benefits you have now	9		10	6

Independent Variables	Winning		Losing	
	Used	Not Used	Used	Not Used
The Union is a business and needs your dues	8		13	5
Layoffs at union companies/Job security	6		13	5
Comparing existing company benefits/wages with union's contracts elsewhere	6		9	7
Analysis of the unions constitution /Bylaws	8		8	10
Unions strike history	7		7	11
Calculators showing how much dues costs or amount lost in a strike	7		10	8
Give us [employer] another chance	6		11	7
Get out the vote/You need to vote	11		15	3
Communication Tactics				
Captive Audience/Group meetings of employees (How many with different themes)	11		14	3
Posters posted in the work areas (How many with different messages)	6		5	11
Letters to employees' homes (How many letters with different themes)	8		8	9
1 on 1 meetings (Manager with Employee) to discuss election issues	7		5	10
Videos to persuade employees	2		8	10
A Website to persuade employees	1		4	14
Text Messaging to employees as company election communication tool	1		2	16
Facebook as company election communication tool	1		1	15
A podcast featuring company election messages	0		0	16
Online/conference calls to employees at remote locations with campaign messaging	0		2	14
Twitter for communicating persuasive campaign messages	0		1	15
Demographics for Company & Election				

Independent Variables	Winning		Losing	
	Used	Not Used	Used	Not Used
Was this the first election at this company location?	4	5	12	4
Is the company unionized at other locations?	9	2	15	2
Is the company unionized at portions of this location?	3	8	5	12
Did the company hire a consultant to guide the company's election strategy?	4	8	6	13
Did the company hire an attorney to assist in the company's election strategy?	9	2	16	1
Did the company hire a persuader to communicate directly to employees?	4	7	6	12
Did the company contest the union's petitioned for unit of employees? (e.g. have a hearing to decide the unit)	3	7	3	14
Did the company implement a pay increase to employees during the election?	0	11	0	17
Did the union file challenges to the election result?	1	10	2	14

With a 39%-win rate among the 32 election respondents, it was important to evaluate any messages that yielded a win rate outperforming the overall 39% employer win rate. A review of the chart in Table 17 indicated that six of the 11 messages inquired about in the survey had a win rate which exceeded the 39% overall win rate. These winning messages and their respective win rate included:

- Analysis of the union's Constitution/Bylaws (50%)
- Union's strike history (50%)
- Benefits you have now (47%)
- Get out the vote/ You need to vote (42%)
- Calculators showing how much dues costs or amount lost in a strike (41%)

- Comparing existing company benefits/Wages with union's contracts elsewhere (40%)

A review of the chart in Table 17 indicated that all of the independent variables included in the surveys were used in more than half of the elections, with the exception of the message labeled "union's strike history," which was used in only 48% of the elections but yielded a 50% win rate for the employer, outperforming the 39% overall win rate by 25%.

Communication Tactics: 32 Elections. A review of the communication tactics used by the 32 election respondents indicated there were four communication tactics most frequently used among the 32 elections. Each of the four will be addressed below in the order of their frequency of use rather than their possible contribution to a win or loss; their frequency of use is shown in Table 17 above.

With 86% of the 32 elections, by far the most frequently used communication tactic was group meetings of employees, often referred to as "captive audience" meetings. Although most frequently used, employers only won 44% of their elections using this communication tactic.

The second most frequently used communication tactic was the use of letters to employees' homes in order to convey the employer's election campaign message. Of those elections featuring letters to employees' homes, the success rate was 50-50. Literally half of the elections featuring letters to employees' homes resulted in victories for the employer and half of the time resulted in employer losses.

The third most frequently used communication tactic involves a manager meeting one-on-one with an employee to discuss the employer's campaign messaging and election

issues. While this communication tactic was only the third most frequently used communication tactic, employers who used it in the 32 elections won in 58% of those elections. Of all of the communication tactics examined, this proved to be the most successful.

Lastly posters were used to communicate the employer's campaign messages in 40% of the 32 responding elections. Those employers utilizing posters in their campaigns won 55% of the responding elections. The effectiveness of this communication tactic as measured by the win rate at 55% outperformed and exceeded the overall 39% win rate.

Included among those communication tactics found to have been used infrequently were numerous social media platforms. For example, just a single winning employer employed a website while one other used text messaging. In these cases, although seldom used at just 17% and 10% respectively of the 32 responding elections, the corresponding win rate for employers was just 20% and 33% respectively. Similarly, as popular as Facebook is among the general population, only two employers used Facebook as a communication tactic within their elections. The resulting success outcome was literally 50-50, with one employer winning and the other losing. What is clear is that social media had not been adopted as a campaign communication tactic among the 32 responding elections. None of the employers surveyed who responded utilized Twitter, a podcast, or online conference calls to communicate campaign messaging.

Survey & Database Quantitative Research: Research Questions

1. What type of messages result in an increase of the vote in favor of the employer in National Labor Relations Board elections? The following six

messages and their win rate outperformed the 39% win rate of the studied 32 responding elections:

- a. Analysis of the union's Constitution/Bylaws (50%)
- b. Union's strike history (50%)
- c. Benefits you have now (47%)
- d. Get out the vote/ You need to vote (42%)
- e. Calculators showing how much dues costs or amount lost in a strike (41%)
- f. Comparing existing company benefits/Wages with union's contracts elsewhere (40%)

2. What modalities of communication tactics result in an increase of the vote in favor of the employer in National Labor Relations Board elections? The four communication tactics which outperform the overall win rate for all 32 elections studied included:

- a. Group meetings of employees, often referred to as "captive audience" meetings (44%)
- b. Letters to employees' homes in order to convey the employer's election campaign message (50%)
- c. A manager meeting one-on-one with an employee to discuss the employer's campaign messaging and election issues (58%)
- d. The use of posters in the workplace to visually communicate the employer campaign messaging (55%)

3. Does relying on a campaign consultant increase the vote in favor of the employer in National Labor Relations Board elections? The survey was very

clear in distinguishing between consultants, attorneys, and persuaders and provided unique definitions for each. Among the 32 elections, attorneys were hired by employers nine out of every 10 elections. However, employers won only slightly over one third of those elections. While just nearly a third of the employers hired a persuader to speak directly to employees during the campaign, the use of a persuader resulted in winning 40% of the surveyed elections. Clearly persuaders outperformed their usage. Lastly, consultants were hired in just over one third of the elections and resulted in winning 40% of the elections. The data obtained raises the possibility that survey respondents did not distinguish between the definition of consultant and persuader. It is possible that survey respondents viewed persuaders as also consultants. Regardless both types of resources outperformed their usage. Consequently, the research question was answered in the affirmative.

4. Do shorter election periods result in more or less employer victories in National Labor Relations Board elections? Yes. As previously noted, the data from the NLRB database of 305 employer's resoundingly answers this question in the affirmative: shorter election periods result in fewer employer victories in NLRB elections. As expected by employers there is a very slight, though positive relationship (Pearson r of .063) between the election period and the corresponding percent of the vote in favor of the employer; however, this relationship was not statistically significant at .287.
5. Do contested or stipulated elections favor employers in National Labor Relations Board elections? The data indicated that contesting the unions'

petitioned-for unit favors the employer. In 22% of the responding elections, the employer contested the unions' petitioned-for unit of employees. Of that 22%, half of the employers won their elections and half lost their elections. Since a significant reason for contesting the union's petitioned-for unit of employees is to expand and enlarge the size of the unit, it was important to analyze whether the number of eligible voters would increase the percentage of the vote in favor of the employer. Among the 305 elections within the NLRB database, the correlation between the *Number of Potential Voters* (a.k.a. *Unit Size*) and the *Percent of The Vote in Favor of the Employer* revealed the most significant independent variable impacting the percentage of the vote in favor of the employer, at a Pearson r of .200; it is statistically significant at .000. Therefore, the NLRB database of 300 elections indicated very clearly that the larger the size of the unit, the greater the percent of the vote in favor of the employer. Conversely the smaller the unit size, the smaller the percent of the vote in favor of the employer.

Qualitative Method: Semi-structured Interviews

In order to triangulate the information obtained from the large NLRB database of 305 employer elections and from the 32 election respondents to the *Voice of the Employer Survey*©, it was necessary to interview subject matter experts to provide insight and interpretation of the quantitative data.

Demographics

Seven subject matter experts were selected from conference speakers on the subject of NLRB elections. These seven subject matter experts are frequent speakers at

industry and professional association conferences. Each subject matter expert has directly participated in numerous NLRB elections, collectively amounting to over 150 elections. Four have also advised employer representatives contractually in a significant number of elections as a consultant or persuader. This study's group of consultants and persuaders included a mix of five men and two women.

In keeping with the interview participant agreement and in order to protect the anonymity of each of the interview subject matter experts, each subject's identity was coded. Without regard to a participant's gender, each was assigned a name from the 2020 hurricane season (Farmers' Almanac, n.d.). Each subject matter expert was assigned the name of a hurricane alphabetically based upon the order in which each was interviewed. For example, the very first subject matter expert interviewed is coded as Arthur, without regards to the actual gender of the subject matter expert. The coded list of names for the subject matter experts included:

- Arthur
- Bertha
- Cristobal
- Dolly
- Edouard
- Fay
- Gonzalo

Data Collection

Interviews of the subject matter experts were conducted in the first quarter of 2020. Given the prominence of each subject matter expert, and since the subject matter

experts are known to the researcher as well as to each other, there was a risk of coordination among the interviewees. In order to prevent coordination or collaboration amongst interviewees, it was necessary to conduct one interview after another in relatively quick sequence to minimize the potential for collaboration amongst the interviewees. All interviews were conducted within a four-day period; in only one circumstance was an interviewee aware that another subject matter expert had been interviewed. In that case when questioned it was discovered that the subject matter expert was only aware an interview had taken place; the content of the interview had not been discussed among the subject matter experts.

At the request of two of the seven subject matter experts, the interview was conducted in person; the remaining five interviews were conducted over the telephone. Each interview lasted between 15 and 30 minutes. Each interview conversation was recorded on a handheld recorder and transcribed thereafter. The researcher maintained copious notes during the interview in order to inform the transcribed conversation as well as to account for any technological recording mishap.

Immediately prior to each interview, the researcher reviewed the reflexive exercise and bracketing statement discussed in Chapter 3. At the beginning of each interview it was confirmed the subject matter expert had read and consented to the interview participant agreement, understood participation was voluntary, and further that they could terminate the interview at any point (see Appendix G). Each subject matter expert agreed, and all completed their interviews.

Each interview was conducted utilizing the semi-structured interview guide of subject matter experts in NLRB election campaigns (Appendix H) containing eight

interview questions designed to add insight to the quantitative data findings and to help answer the five research questions.

Data Analysis

In “Using Thematic Analysis in Psychology” researchers Braun and Clarke (2006) outlined a six-phase process for conducting thematic analysis of transcribed interviews to a full qualitative report. That analytical six-phase process was followed for this study’s methodology, as described below.

PHASE 1: Familiarizing yourself with the data. Braun and Clarke (2006) emphasized that in this phase that it is vital to immerse oneself in the data in order to maintain familiarity with the depth and breadth of the content. It requires a repeated reading of the data while searching for meanings and patterns. It is a time-consuming process; the researchers suggested it is the bedrock for the other phases of thematic analysis. In order to accomplish this first phase the recorded interviews were transcribed, printed on paper, and read and reread in order to achieve the awareness necessary for the next phases.

PHASE 2: Generating initial codes. After familiarization of the data from Phase 1 it was necessary to produce initial codes from the data, in essence organizing the data into meaningful groups. Braun and Clarke (2006) noted that the organizing occurring during this phase is not the development of themes, which are often broader. To accomplish Phase 2 the printed transcripts from Phase 1 were again each reviewed, in the order in which the interviews occurred. Each of the major operative points of the first interview were highlighted, noting a descriptive phrase for each within the margin. All subsequent interviews similarly underwent the same process. While coding each of the

seven interviews this researcher did not attempt to limit the potential themes annotated as the full spectrum of potential categories would not emerge until the last interview was completed.

PHASE 3: Searching for themes. Braun and Clarke (2006) suggested this phase requires the sorting of the different codes into potential themes. It is in this phase that an analysis of the data begins as it is necessary to consider how the different codes can combine to form a more generalized set of themes. The net outcome of this phase of coding the data from the seven interviews was the collection of candidate themes.

The coded data of the seven subject matter interviews was sorted into the following codes:

- Academia is biased and distrusted by business
- NLRB is biased
- NLRB database may list front-line supervisors, not campaign decision-makers
- Employers must protect their brand
- It is logistically easier to obtain the experience from a small group of organizers
- Antagonize a union with which they have an existing relationship
- Campaign messaging has a more positive emphasis
- Standard messaging in a campaign
- Collective bargaining process
- Each election is unique
- Elections are emotional/personal
- Trust

- Factual information
- Face to Face
- Communication tactics
- Family and spouses
- One-on-one meetings
- Junk mail
- Frontline supervision
- It's complicated and expensive to challenge the unit
- Compromise
- Educate not persuade
- Credibility as former union organizers

PHASE 4: Reviewing themes. In this phase it is necessary to refine the candidate themes from Phase 3. It is in this phase in which it is important to evaluate the themes' subject and essence in relationship to each other. This often results in a thematic map, although in this particular research endeavor a map was deemed unnecessary given the influential nature of the research questions upon the interview questions. At the end of Phase 4 the emergent themes became evident.

The major themes identified within this phase included:

- Sourcing employer data
- Communication messaging
- Communication tactics
- To stipulate or not to stipulate
- Hiring a consultant or persuader

PHASE 5: Defining and naming themes. After having identified the relationship between themes from Phase 4 it became necessary to “define and refine” in order to identify the “essence” (Braun and Clarke, 2006, p. 99) of each theme, what it is that is interesting about each theme and why. The net outcome of this phase was to clearly define the identified themes as well as to identify respective comments for each theme included in the Phase 6 report below.

PHASE 6: Producing the report. Braun and Clarke (2006) suggested that this phase creates the story that consists of the collection of the data accompanied by selected vivid examples; for this study relevant quotations from subject matter experts were included in the results below.

Results

Braun and Clarke’s (2006) six-step analysis resulted in the following summarized themes and sub-themes from the interviews of seven subject matter experts, as shown in Table 18.

Table 18

Themes and Sub-themes from Subject Matter Expert Interviews

THEME	SUB-THEME
1. Sourcing employer data	<ul style="list-style-type: none"> • Academia is biased and distrusted by business • NLRB is biased • NLRB database may list supervisors, not campaign decision-makers • Employers must protect their brand • It is easier to obtain the experience from a small group of organizers • Antagonize a union with which

	they have an existing relationship
2. Communication messaging	<ul style="list-style-type: none"> • Campaign messaging has a more positive emphasis • Standard messaging in a campaign • Collective bargaining process • Each election is unique • Elections are emotional/personal • Trust • Factual information
3. Communication tactics	<ul style="list-style-type: none"> • Face to Face • Communication tactics • Family and spouses • One on ones • Junk mail • Frontline supervision
4. Stipulate or not stipulate	<ul style="list-style-type: none"> • It's complicated and expensive to challenge the unit • Compromise
5. Hiring a consultant or persuader	<ul style="list-style-type: none"> • Educate not persuade • Credibility as former union organizers

The developed five major themes outlined above in Table 18 are described in detail with accompanying comments below.

Theme 1: Sourcing Employer Data. In this theme respondents provided their speculations and understanding about why researchers typically do not collect information from employers. The subject of bias was frequently mentioned by nearly all respondents, explaining that both academia as well as the NLRB are not to be trusted, due to their pro-labor sentiments. As Gonzalo put it: “When you’re dealing with the NLRB, you don’t know if the guy investigating you is the union steward for his unit back at the NLRB.”

Another emergent sub-theme centered upon an employer’s interest in protecting its brand. The subject matter experts pointed out that employers are reluctant to comment

for fear of how the information will be used or edited. Two of the subject matter experts noted that we in society are all busy, and that to give up time with family or work for strangers is just not likely.

An additional sub-theme that emerged was the practical efficiency and ease of collecting information from union organizers involved in numerous elections rather than having to contact each individual company participating in an election. Thus, Dolly noted: “Union organizers have a strong motivation to participate in these types of surveys in order to explain and justify why they may have lost the election or why it was so costly to campaign.”

Theme 2: Communication Messaging. Based upon their numerous prior NLRB election experience the subject matter experts relayed their guidance for selecting campaign messaging to increase the vote in favor of the employer. Among the seven there was a wide variety of opinions regarding overall strategies and the tone of campaigns. All subject matter experts indicated that there is typically a standard set of communication messaging. Arthur indicated there are approximately 10 standard messages and named some: “...definition of a union, the union is a business and needs your dues, analysis of the union’s constitution and bylaws, what you have now may not be what you end up with, analysis of the union’s existing collective bargaining agreements...”

Subject matter expert Edouard uses only three to five major themes or messages in a campaign, stating: “It’s important to listen to the employees and respond to their request. I also focus significantly on the realities of collective bargaining, especially that workers can get more, less, or stay the same. Often employees don’t understand 8d

[Section 8d of the National Labor Relations Act] that neither party can be compelled to agree with the other party.”

Most of the subject matter experts commented to various degrees upon the importance of including trust in the major themes and specifically in messaging for the employer. Each mentioned the importance of rebuilding trust, as the election decision by employees is an emotional decision. Bertha commented that ultimately the employees have to decide “who can you trust the most – the company or the union?” Cristobal added, “the campaign starts with acknowledging the loss of trust in the employer. The employer has to reacquire that trust by supporting its assertions with facts during its campaign messaging.” Edouard stated, “It’s not that the standard messaging isn’t important, but people want to trust their company. The employer, though, has to win back the trust of the employees.” Dolly summed up the subject matter experts’ reliance and emphasis on the use of messages involving trust:

We used a lot of the standard messaging and lost elections. Once we shifted our messaging to rebuilding trust, before we could ever provide the facts about unionization we saw a shift to remaining union-free and winning elections. The union is not the solution to the lack of trust in the workplace.

Only one subject matter expert referenced the importance of the voting employees’ happiness after the conclusion of the election, which is ultimately the intended consequence of the NLRB election. Edouard noted: “It’s also important to provide factual information on how the relationship changes once a company is unionized. I showed them their own satisfaction data from our surveys that illustrate a significant difference in job satisfaction between the unionized portion of the workforce

and the union-free portion of our company. Union members are vastly less satisfied in their work.”

In conversation subject matter experts were quick to add that reliance solely on traditional or standard messaging in a campaign is unartful and not likely to lead to success. A common phrase used among the subject matter experts was “each election is unique” and dependent upon the campaign issues, company culture, and the relationship between the workers and management. Over half of the subject matter experts, however, had a specific messaging each felt was critical to campaign success for the employer. Most of the interviewed participants felt it is the responsibility of the employer to accurately describe the realities of collective bargaining, with a description of the logistics, legal requirements of the participants, and possible outcomes. This was summed up in a statement by Fay:

Many employers focus on the tried and traditional messaging that I no longer use. They’ll talk about strikes, union corruption, the salaries of the union leaders, super seniority, and on and on. And I no longer discuss those because I view them as ineffective. I think what employees want to hear about is whether they can trust their management, what their leaders are feeling, and it’s especially important that they understand the intricacies and nuances and frankly, the realities of collective bargaining.

Theme 3: Communication Tactics. In discussing the subject of communication tactics, or how messages should be delivered to the employees who will vote on whether to unionize or, it was not surprising that the subject matter experts were quite animated and opinionated. All subject matter experts conveyed that face-to-face communication is

the single most effective communication tactic available to the employer. One suggested it is the only way management can be present when the message is delivered to the employee.

Without prompting, several of the subject matter experts referenced the importance of utilizing front-line supervisors to communicate factual information regarding the union experience. Edouard said, “You’ve really got to use every communication method available in today’s world. Social media is an excellent method of communicating to employees’ families. But the bottom line is you can’t run a campaign by flyers alone.”

However, two of the interview participants cautioned that if frontline supervision is not committed to remaining union-free, “you’re going to end up losing the election” (Fay). Gonzalo also felt that frontline supervision is not as committed to remaining union-free as it has been historically.

Only a couple of the subject matter experts referenced the importance of maintaining a website, and only Edouard referenced the importance of social media. Both experts’ comments seem to center on the importance of including the familial impact of the employee’s decision on whether to unionize or remain union-free. Bertha noted, “It’s very important to communicate to the family and spouses, so we sent postcards to employees’ homes that also included the website address so the entire family could see our messaging.”

Arthur relied upon the website as foundational for all of the campaign communications, utilizing it as a link to create integration of all messaging and to involve the family:

I have found websites to be very effective ... using emails and text messages to remind people to go to the website. The website was a home base for the campaign communication and other communication tactics were designed to send people to the home base website. Once we used this hub and spoke communication method, we found our website hits went up dramatically.

Theme 4: To Stipulate or Not to Stipulate. The importance of this theme cannot be understated. It is the first of the decisions an employer is required to make once it becomes aware that a petition for election has been filed with the NLRB. The stipulation decision involves two major subcomponents: the size of the unit, meaning the number of employees eligible to vote, and the opportunity to negotiate a duration for the election, meaning the time period for which employees will be able to campaign amongst each other and the duration that the employer will be allowed to deliver campaign messaging to employees. It is the initial decision an employer makes in the campaign, and it must decide first whether or not to accept, to stipulate to the size and scope of the unit/group of employees who the union believes should be eligible to vote on representation by the union. Second, the employer must decide whether it wants to stipulate to the first decision (the unit) and gain the opportunity to potentially negotiate a longer period to campaign in the hopes that it can convince employees to remain union-free. Fay summarized this important—perhaps the most important—employer decision of the campaign, stating: “if they’re [the employer] stipulating to the unit, they obviously believe they’ve got a chance at winning.”

Every single subject matter expert referenced the complexity associated with challenging the union’s petitioned-for unit. It can be extremely expensive, as Dolly

observed: “A community of interest may be worth fighting for, but that is, and can be, a lot of time and money.”

As the literature review revealed, in less than 10% of all NLRB elections employers challenge rather than stipulate to the union’s petitioned-for unit. Edouard stated:” You can negotiate with the NLRB and the union, and obtain concessions. It’s probably better than going to a hearing, since the NLRB is biased against employers anyway, and an employer may not get a favorable hearing and decision.”

Theme 5: Hiring a Consultant or Persuader. As might be expected, the consultants and persuaders among the subject matter experts believed strongly in the value of hiring consultants and persuaders for NLRB elections. Cristobal opined: “if you don’t use a consultant, you going to get your lunch eaten by the union because it has lots of experience in elections.”

Several of the subject matter experts conveyed the concept that effective persuaders do not seek to persuade but rather to educate on the union experience: “good persuaders don’t persuade, they educate” (Cristobal). However, as evident in the literature reviewed in Chapter 2, consultants and persuaders are not inexpensive. Thus Fay observed: “The most important determinant of the company’s success in an NLRB election is the company’s commitment by its senior leadership. Specifically, on whether it wants to remain union free and whether it’s willing to incur the significant costs associated with hiring consultants and persuaders to influence the outcome of the election.”

There was universal agreement on the value and necessity for using consultants and persuaders; it was also mentioned that hiring an attorney is a must, should an

employer decide to contest the election. In Fay's view, "Hiring an attorney, and a separate consultant or persuader (pause)... that's an easy answer because the NLRB election process is so complex, highly technical, and fraught with dangers for employers whose mistakes can be extremely costly, and have long-term ramifications for the viability of the employer."

Collectively the group of subject matter experts were highly opinionated and animated; without exception each was enthusiastic to participate in this research project. Each and every interview participant was thankful for the research study and indicated they looked forward to receiving a copy of the project's results.

Summary

The quantitative portion of this study analyzed a database of 305 NLRB elections and identified three critical independent variables impacting the percent of the vote in favor of the employer: the percentage of the voting unit of employees who turn out to vote, the duration of the election, and lastly the size of the voting unit of employees. While each of the three independent variables had small positive correlations, it was the size of the unit which was statistically significant as a covariant for the percentage of the vote in favor of the employer.

The second most covariant variable was the election duration. In the 30 longest elections, employers received 50% or more of the vote in 27 of the 30 elections for a 90%-win rate. In contrast, in the 30 shortest elections employers received 50% or more of the vote in only four of the 30 elections for a win rate of only 13%.

Lastly, the greater the percent of the turnout the greater the percent in favor of the employer. Consequently, these three variables are an important part of the

recommendations for action by employers as more fully detailed in Chapter 5: increase the number of voters, increase the duration of the campaign, and increase the turnout of employees voting.

The data triangulated in this study included that collected from a survey involving 32 elections, in which employer representatives provided information on the campaign messages and communication tactics used during their election. Armed with the surveyed election results, a practical rather than statistical comparison was conducted to evaluate the success of different campaign messages and communication tactics.

The most frequently used campaign messaging centered upon first, the realities of collective bargaining and an analysis and comparison of the union's collective bargaining agreements at other companies. A second most frequently used message for employers centers upon the union's strike history and the realities of a strike. The third most frequently used message for employers was to educate employees on their current benefits and to compare those with the benefits offered at other companies which are unionized.

The net result of the interviews with the subject matter experts yielded recommendations to employers on how to use the messaging and communication tactics identified in the survey. Their practical tips and recommendations are further detailed next in Chapter 5. A summary of the findings of the interviews of the subject matter experts regarding employers' campaign messaging includes: explanations of the collective bargaining process along with examples and comparisons of the union's other negotiated agreements, a thorough discussion of strikes, and educating employees on their benefits as compared to benefits offerings with other unionized companies.

The most frequently used communication tactic was group meetings; they were used in 86% of the elections although their use yielded only a 44% win rate for employers. As previously noted, these meetings are often referred to as “captive audience” meetings. However, the most effective tactic included one-on-one meetings with individual voting employees. The benefit these one-on-one meetings offer is to communicate the company’s messaging as well as to answer the individual employee’s questions. Although only 46% of the surveyed employer’s representatives used one-on-one meetings, those employers which did use this tactic won 58% of the time.

The qualitative methodology portion of this mixed methods research study contributed to a model to assist employers in assessing the efficacy and success of election-related messages and communication tactics, in order to achieve an increase in votes in favor of the employer and a successful election outcome. This study’s approach of methodological triangulation integrated both quantitative and qualitative methods yielding the results of the study (see Patton, 1990). The researcher’s resultant model is the product of a triangulation between an analysis of a quantitative dataset of 305 elections, a survey of 32 elections, and qualitative interviews of seven subject matter experts. This triangulation of quantitative and qualitative methodology, when combined with the theoretical solutions involving structural violence and systems theory, will benefit not only employers who are responding to an NLRB election but also all actors within the NLRB election system, as further discussed in Chapter 5.

Chapter 5: Discussion, Conclusions, and Recommendations

The objective of this study was to develop a model to assist employers for what is arguably the most contentious conflict that can exist in the American workplace: a workplace representation election, a process supervised by the National Labor Relations Board. The intent of a workplace representation election is to determine whether a petitioning union has sufficient support to unionize a unit of employees within a workplace. This research study developed a model, the *Voice of the Employer Model for Winning NLRB Elections*®, to assist employers in assessing the efficacy and success of election-related messages and communication tactics, in order to achieve an increase in votes in favor of the employer and a successful election outcome.

This research study built upon previously published findings on the topic of conflicts inherent within workplace representation elections. While much has been studied about why employees join unions and why unions are successful in workplace representation elections, little research exists regarding employers' successful strategies during workplace representation elections. Moreover, as detailed in Chapter Two, most research that has addressed employer strategies was not sourced from the employer but rather from secondary, tertiary, or other far-removed sources of information. Indeed, prior studies detailing employers' election messaging and other tactics exclusively sourced their data directly or indirectly from the union organizer rather than from employers.

This study analyzed a dataset of 305 NLRB elections held between 2015 through 2017 in four NLRB regions. A survey was conducted of the representatives of employers involved in the 305 NLRB election population. That data collection instrument entitled the *Voice of the Employer Survey*® resulted in identifying campaign messages and

communication tactics used in 32 NLRB elections. In order to inform the quantitative information contained in the study, interviews with seven subject matter experts in NLRB elections were conducted to add insight to the quantitative information collected regarding campaign messages and communication tactics and to directly respond to the study's research questions. Data obtained and analyzed from each of these three sources provided the basis for a model detailing the multivariate influences on winning NLRB workplace representation elections, from the important and heretofore often omitted perspective of the employer.

Triangulation of all three data sources yielded the following key findings for employers when confronted with an NLRB petition for election:

- the NLRB election process is complex and complicated, and mistakes can be extremely costly for employers;
- NLRB elections are expensive to win and even more expensive to lose;
- the larger the group of employees in a voting unit of employees, the greater the percentage of votes in favor of the employer;
- the longer the duration of the campaign, the longer employees can campaign with each other, as well as listen to and respond to the campaign messaging of all actors within the NLRB election system;
- there is a wide variety of campaign election durations, and no defined minimum campaign duration;
- employer campaign messaging should focus first and foremost on re-establishing the trust of the voting employees;

- it is important that voting employees fully understand all aspects of collective bargaining;
- it is important that voting employees fully understand the union's use of strikes;
- employees ultimately want to know whether they will get more, less, or stay the same in their pay and benefits through unionization;
- employees need to understand their existing pay and benefits as well as how they compare with similarly situated employees at other companies which are unionized; and
- the regulations governing NLRB elections in 2015 significantly reduced the election period, the time allowed for employer and employee campaigning.

Interpretation of the Findings

The literature review indicated that there is an absence of information which is sourced directly from the employer. Having mailed the short six-minute survey to employers experiencing elections during the 2015–2017 period in the four NLRB Regions, the difficulty of obtaining information from employers was realized and understood. The qualitative portion of this study overwhelmingly revealed that there exists a distrust of the NLRB, academia, and others who would seek such information, and that a perception of anti-employer/pro-union bias exists that inhibits an employer response.

The resulting 11% survey response rate inhibited statistical findings, including a wave analysis and other means of comparative testing. The response rate limitation

thereby prohibited inferential statistics and generalizable comparisons beyond the scope of this study.

However, other significant findings of the survey yielded important interpretations for employers. For example, in order to increase the percent of the vote in favor of the employer, this study's research found that employers should retain an attorney and consultant to guide campaign legal strategies and communicate with employees. The inclusion of an attorney is critically important because the attorney has more experience in responding to NLRB elections. The need for employers to avail themselves of appropriate legal expertise was made clear during the course of this study's research process, as next described.

The literature review indicated that less than 7 percent of the private workforce is unionized; therefore the overwhelming majority of private employers (93%) are not unionized and lack experience in NLRB elections. The findings of this study indicated the earliest decisions of the employer are among the most important of the whole campaign. Once notified that a petition for election to determine whether a company should be unionized has been filed, the employer is immediately thrust into a circumstance in which it is likely the least experienced and adept at handling the matter at hand, since the NLRB and unions literally handle thousands of elections. It is first necessary for the employer to review the union's petition to identify the group of employees the union seeks to unionize. At this point the employer or their designee begins discussion with the union's leadership to accept the union's assertion by stipulating to the unit or negotiating a more favorable unit that represents a larger community of interest within the employer's operations. This decision impacts the size of

the unit, which this study determined is the most significant variable impacting the percentage of the vote in favor of the employer. Given the magnitude and ramification of this decision and potential legal pitfalls and consequences, employers should hire an attorney to handle communications with the union and the NLRB in order to negotiate for a more favorable unit or to contest the unit in an NLRB hearing.

Should an employer contest the unit rather than stipulate, the process to adjudicate an appropriate unit likely increases the election period. This allows more time for employees to campaign amongst each other as well as enables the employer to distribute its own campaign messages. Unions contend that employers who avail themselves of this legal process to adjudicate the union are using a delay tactic. However, since unions can determine when to file a petition for election it is likely the only people surprised by the petition are both the employer and those employees who were not solicited by the union. Another major finding of this study is the greater the election duration, the greater the percentage of the vote in favor of the employer. One interpretation of this parameter is that if employees and employers are given more time to campaign, employers have a greater chance at winning the election.

When the campaign does occur, it is evident that at least some portion of the workforce seeks a representative to interact with their employer on their behalf. The resounding message from the NLRB election subject matter experts interviewed for the study was that an employer must first and foremost reestablish trust with their employees. It was suggested this be accomplished by ensuring that any campaign messaging and assurances should be fact-based and supported by references which enable employees to verify and validate the employer's assertions.

Another important campaign message addresses the issue of collective bargaining. In the survey of employers in 32 elections, a key finding was that a focus on collective bargaining is a message which wins election at slightly greater percentages than its frequency of use. Some of the NLRB election subject matter experts asserted that employees do not understand that the collective bargaining process can result in more, less, or even the same pay and benefits. In one interview it was asserted that employees believe that they will simply get more as a result of unionization. Consequently, it is important in any NLRB election that employers thoroughly explain the collective bargaining process to voting employees.

A collective bargaining process is intended to result in a collective bargaining agreement between the employer and the union. This study found that it is important to provide voting employees with examples of union contracts and comparisons of their own pay and benefits with similarly situated employees at other unionized companies. Again this is a message which was the most frequently used in 87% of the 32 elections and it resulted in exactly 39% employer election wins.

This study also found it important that employer campaign messaging explain why unions engage in strikes and most importantly the resulting impact on striking employees.

In order to communicate campaign messaging, this study found employers should utilize group meetings paired with one-on-one meetings featuring a persuader or supervisor communicating directly with employees to answer employees' questions.

The foregoing recommendations are graphically illustrated in the model below in Figure 19.

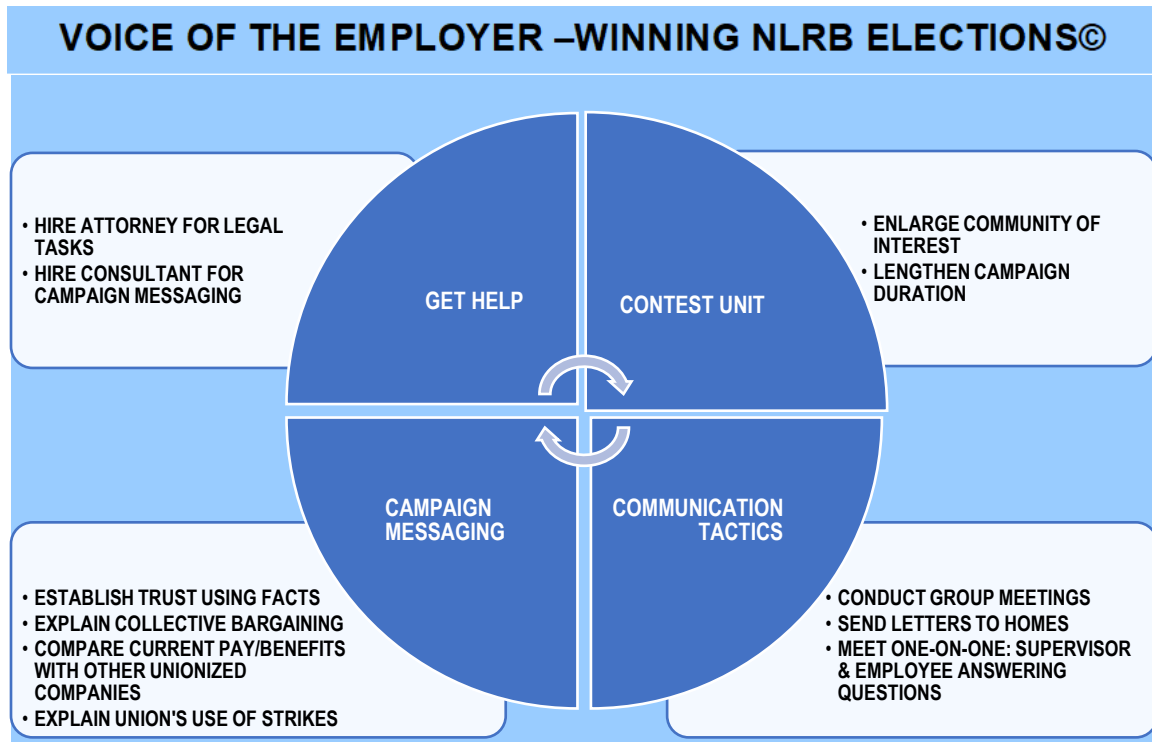


Figure 19. *Voice of the Employer - Winning NLRB Elections®* model.

Limitations of the Study

While this study generated a conceptual model for employers responding to NLRB elections, the research itself was not without limitations. First, the focal period of this study of workplace representation elections was limited to April 14, 2015 to May 1, 2017. As noted, this period represents the major portion of the effective period of the 2015 election rule, before the announced Dec 18, 2019 revisions to the election system, effective May 31, 2020.

Second, the database of 305 elections provided no information regarding employer messaging and communication tactics. This researcher does not foresee that such information will likely be contained on the NLRB database and makes no such respective recommendation.

Third, to collect information regarding employers' use of campaign messaging and communication tactics in NLRB elections it was necessary to conduct a survey. Unfortunately, the survey yielded only an 11% response rate. While this response rate was sufficient for the practical and descriptive comparisons included within this research, it was limited by the 11% response rate which prohibited statistically significant findings and the ability to represent these results beyond this study. As a result, the findings of this research are limited to the data and election information included within the scope of this study and are not generalizable to predict or forecast elections outside the scope of this study.

A fourth limitation is that revealed by the interviewed seven NLRB election subject matter experts, who consistently theorized that employers elected not to participate in this study's survey questionnaire due to distrust of academic organizations as well as their own perceived inability to control the data or messaging included in the study. Employers were reluctant to reveal information the use of which they could not control; the basis for their concern was damage to their employer brand.

Lastly, another important limitation of this study is the researcher's own background and biases in support of employers. Through reflection and bracketing, a self-awareness was maintained throughout the data collection, data analysis, and interpretation phases of the study. This bias was addressed in an effort to limit subjectivity and to increase reliability and validity.

Recommendations

This study validated the difficulty in obtaining employers' input and willingness to discuss or reveal the messaging and communication tactics used in NLRB elections.

Interviews with the NLRB election subject matter experts consistently theorized that employers elected not to participate due to distrust of academic organizations as well as an inability to control the data or messaging to be included in the study. It is recommended that future research should resolve this limitation through a sponsorship or direct involvement by an employer association such as the Society for Human Resource Management or any other supportive labor relations-related employer association.

Additional future research should attempt to ascertain the rationale regarding employers' practice of stipulating to the unit petitioned for by the union. There is likely benefit in greater transparency on the benefits and costs of the stipulate or contest employer decision.

Most importantly, after the NLRB regulations published in December 2019 become effective, future studies should assess the impact on all parties of the NLRB election system. While there is a tendency to view the actors in the NLRB election system as participants in a conflict of management versus labor, there is another forgotten voice, that of the employee. Future research should study representative samples of those employees involved in NLRB elections who did not support unionization, in order to learn of their lived experience.

When an employer receives the notice that a petition for election has been filed with the NLRB to decide whether its workers will unionize or remain union-free, it must decide first whether to stipulate and agree to the unit of employees the union seeks to represent. This decision is perhaps the most significant finding of this study and perhaps the most valuable recommendation for employers. The larger the unit the greater the percent of the vote in favor of the employer.

Implications

While many of the theoretical recommendations included within Chapter Two have been proposed by the National Labor Relations Board since the initiation of this research study, the December 2019 revisions with planned implementation in 2020 are subject to litigation. In March of 2020 the AFL-CIO filed litigation arguing the NLRB violated administrative law by issuing a substantive rule without going through the full notice-and-comment rulemaking process. The labor federation also filed a preliminary injunction to block the rule (Opfer, 2020, p. 1; Iafollla, 2020c). The National Labor Relations Board has responded to the litigation by delaying any changes to the April 2015 NLRB election regulations until May 31, 2020. As of the conclusion of this study, the court on June 7 struck down a limited portion of the 2020 regulations (AFL-CIO v. NLRB, 2020; see also Kanu, 2020c; Kanu, 2020d; National Labor Relations Board, 2020).

There is a lack of transparency in the NLRB election process as a petitioning union can file a petition at any point of the year without prior notification to either the employees in the petitioned for unit or the affected employer. The NLRB should require transparency.

Unionization is determined by whether a majority of voting employees elect to unionize rather than a majority of the unit of employees. Since all of the unit of employees will be bound by the result of those who vote, a system theorist would expand the requirement that unionization is determined by all of the unit employees rather than just those who voted.

The employer's decision on whether to stipulate or to contest the unit can expedite or potentially extend the campaign duration. The effect of the decision carries numerous implications. The first decision an employer makes in a campaign conveys its willingness to agree with the union. A decision whether to stipulate or contest may reveal the employer's negotiation posture, or even whether the employer will contest the unit in favor of a larger group with a greater community of interests. The data in this study indicates that a company which does not expand the number of eligible voters is minimizing its opportunity to win the election. The National Labor Relations Board's most recent data indicates employers contest the union's petitioned unit size in approximately only one of 10 elections (NLRB, 2019).

An understanding of the correlations of the 305 elections would prompt unions to focus upon lobbying for rules which enable unions to petition for smaller and smaller units of voters. Conversely employers should lobby regulatory bodies in order to inhibit smaller units of employees.

Conclusions

The purpose of this study was to capture the voice of the employer regarding its messaging and communication tactics in response to the conflict associated with an NLRB election. Results of this study indicated there are practical steps included within this research model that are available to any and all employers faced with responding to an NLRB election.

This triangulation of a quantitative (database and survey) and qualitative (semi-structured interviews) methodology, when combined with theoretical solutions involving structural violence and systems theory, will bring transparency: greater opportunity for all

actors in the NLRB election system to freely participate and benefit from the discourse and messaging made possible by longer election periods.

The most important statistical finding of this study is that with one decision employers can increase the percent of the vote in favor of the employer. The employer can increase the size of the unit and increase the duration of the election—either through negotiations with the union and the NLRB or through contesting the unit in order to gain a unit that logically has a larger community of interests. Given the complexity of such negotiations as well as the potential pitfalls associated with contesting the petitioned-for unit, hiring an attorney is strongly recommended. After the employer obtains the NLRB decision on the size of the unit and duration of the election the campaign will begin in earnest (Bergeron, 2008). Figure 19 above provides a summarized result, a graphical model that is directed by the answers to the research questions in Chapter Four and meets the objectives of the study.

Despite a dismal 31% national employer win rate in NLRB elections, employers are not without options to win. This study—informed by the voice of employers who have won and lost such elections—provides an evidence-based path to victory.

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Appendix A: Glossary of Labor Relations Terms

Many terms listed below can be found at the website maintained by International Brotherhood of Teamsters at <http://www.teamster.org/join/glossary.htm>

Accretions: Employees added to the bargaining unit once a union is certified as a representative of the bargaining unit.

Administrative Law Judge (ALJ): A civil service appointee of the National Labor Relations Board who conducts unfair labor practice hearings in the region where such cases originate

Area Standards Picketing: A form of picketing with the purpose of encouraging an employer to observe the standards in that industry in that locality. This kind of picketing has legal restrictions.

Authorization Card: A union card filled out by pro-union workers during a representation campaign. The card usually specifies the union as a collective bargaining agent of the employees and must be dated and signed. The National Labor Relations Board will accept 30% of the employees signatures on cards or petitions as the sufficient “showing of interest” required to conduct an election. Usually unions will not file for an election unless a majority of the bargaining unit members have signed authorization cards.

Bargaining Agent: Union designated by a government agency, such as the National Labor Relations Board, or recognized voluntarily by the employer, as the exclusive representative of all employees in the bargaining unit for the purposes of collective bargaining.

Bargaining Rights: The rights outlined in section 7 of the National Labor Relations Act. Rights of workers to negotiate the terms and conditions of employment through their chosen representatives. The bargaining agent is designated by a majority of the workers in a bargaining unit to represent the group in collective bargaining.

Bargaining Unit: A group of workers who bargain collectively with the employer. The unit may include all the workers in a single location or in several locations or it may include only the workers in a single craft or department. Final unit is determined by the National Labor Relations Board, or agreed to jointly by the union and the employer.

Blocking: A National Labor Relations Board decision not to proceed with an election in a bargaining unit where there are unresolved Unfair Labor Practice charges.

Boycott: A concerted refusal to work for, purchase from, or handle the products of an employer. Where the action is directed against the employer directly involved in the labor dispute, it is termed a primary boycott. In a secondary boycott, the action is directed against a neutral employer in an attempt to get him/her to stop doing business with the company with which the union is having a dispute. Secondary boycotts are illegal under the Taft-Hartley Act.

Business Agent (B.A., Union Representative): A full-time representative of a local union whose job is to represent members in the local.

Campaign Consultant or Persuader: Individuals or businesses utilized by employers for their expertise and sophistication in guiding the strategy, tactics, and messages to respond to the conflict inherent within a workplace representation election.

Canvass: A method of talking individually to every member of a bargaining unit to either convey information, gather information on the survey, or plan for united action.

Canvass Coordinator: A term sometimes used for the person at the top of a member to member action network. Other terms include “network coordinator” or “campaign coordinator”. This person is responsible for establishing the one on one network and for planning and scheduling activities of the network.

Captive Audience Meeting: Typically, a union term for a meeting held on company time and property, between employees and the employer’s representative to explain the benefits of maintaining a direct relationship between employees and the employer- without the influence of a party unaffected by the success or failure of the employer or its employees. In other words the purpose of the meeting is to persuade employees to vote against union representation.

Card Check: Procedure whereby signed authorization cards are checked against the list of employees in a prospective bargaining unit to determine if the union has majority status. The employer may recognize the union on the basis of this card check without the necessity of a formal election. Often conducted by an outside party, e.g. a respected member of the community.

Certification: Official designation by the National Labor Relations Board of a labor organization entitled to bargain as the exclusive representative of employees in an appropriate unit

Certification Bar: The National Labor Relations Board and many public sector agencies will prohibit another election in a bargaining unit for one year after a union has been certified following a workplace representation election.

Certified Union: A union designated by the National Labor Relations Board as the exclusive bargaining agent of an appropriate unit of employees.

Check-Off: A contract clause authorizing the company to deduct union dues from paychecks of those members who so authorize deductions. The company then transfers the money to the union.

Collective Bargaining: A process which employees, through their bargaining committee, deal as a group to determine wages, hours and other conditions of employment.

Normally, the result of collective bargaining is a written contract which covers all employees in an appropriate unit.

Communication Tactics: For employers engaged in the conflict of a workplace representation election, communication tactics are the modalities, or methods by which it will communicate its messages to the voting members of the bargaining unit. Such communication tactics can include captive audience meetings typically held on the employer premises while employees are on the clock, posters, home mailings, websites, social media platforms and applications, as well as other communication modalities.

Company Union: An employee organization, usually in one company, that is dominated by management. The National Labor Relations Act declared that such employer domination is an Unfair Labor Practice.

Complaint: Formal papers issued by the National Labor Relations Board to start an Unfair Labor Practice hearing before an Administrative Law Judge. The complaint states the basis for the National Labor Relations Board's jurisdiction and the alleged Unfair Labor Practice.

Concerted Activity: The rights, protected by the National Labor Relations Act, of two or more employees acting in concert to form, join, or assist labor organizations to affect their wages, hours or work or working conditions.

Consent Election: An election for union representation agreed to by management, employees, and the union. The National Labor Relations Board oversees the election

Corporate Campaign: The use of strategic pressure on an employer's weak areas to gain leverage during a contract campaign or organizing drive. These campaigns involve analyzing an employer's social, financial, and political network and mobilizing union members and community members in a comprehensive approach which does not rely on the strike alone as the basis of the union's power.

Decertification: Withdrawal by a government agency, such as the National Labor Relations Board, of a union's official recognition as the exclusive bargaining representative. The National Labor Relations Board will withdraw certification if a majority of employees vote against union representation in a decertification election.

Double Breasted Operation: A condition where an employer operates two closely related companies – one with the union contract and one without. Under such operation, the employer will normally assign most of the work to the non—union segment of his two companies.

Duty of Fair Representation (DFR): A union's obligation to represent all employees in the appropriate bargaining unit as fairly and equally as possible. This requirement applies both in the creation and interpretation of collective bargaining agreements. A union is said to have violated its Duty of Fair Representation when a union's conduct toward a member of a collective bargaining unit is arbitrary, discriminatory, or in bad faith. A union steward, for example, may not ignore a grievance which has merit, nor can that grievance be processed in a perfunctory manner. It should be noted, however, that the employee in the bargaining unit has no absolute right to have a grievance taken to

arbitration. The union is obligated to give fair representation to all union members, and also to collective bargaining unit members who have not joined the union in right-to-work states or in public service units.

Excelsior List: Established in the case of “Excelsior Underwear”, the list of names, addresses and other personal information of employees eligible to vote in a union election. It is normally provided by the employer to the union within 10 days after the election date has been set or agreed upon at the National Labor Relations Board. NOTE: The requirements of this list, now referred to as a Voter List after the 2015 changes to the election system, must be provided to the union within eight days of the petition for election.

Exclusive Bargaining Rights: The right of the union which is been certified by the National Labor Relations Board or other government agency to be the only union representing a particular bargaining unit.

Exempt Employee: An employee who is not covered by the Fair Labor Standards Act and is therefore not eligible for time-and-one-half monetary payments for overtime. Exempt employees are generally paid a salary rather than an hourly rate.

Fact Finding: Investigation of labor – management disputes by a board, panel, or individual. A report is issued by the panel describing the issue in dispute, and may make recommendations for a solution.

Fair Labor Standards Act (FLSA): The 1938 federal Wage –Hour Law which establishes minimum wage and overtime pay requirements for industries engaged in interstate commerce. The law also prohibited the labor of children under 16 years of age.

Federal Mediation and Conciliation Service (FMCS): Independent agency created by the Taft – Hartley Act in 1947 to mediate labor disputes which substantially affect interstate commerce.

Field Examiner: An employee of the National Labor Relations Board whose primary duties are to conduct certification elections and carry out preliminary investigations of Unfair Labor Practices.

Free Riders: Used in an open shop to refer to non—union members who receive all the benefits derived from collective bargaining without paying union dues or equivalent fees.

Good Faith Bargaining: Negotiations in which two parties meet and confer at reasonable times with open minds and the intention of reaching agreement over a new contract.

Housevisits, Homecalls and Housecalls: Terms used to describe visits by union staff, volunteers, or organizing committee members to the homes of employees they are attempting to organize. Such visits give organizers an opportunity to discuss the union and answer questions of unorganized employees in a relaxed and secure atmosphere.

Industrial Union: A union whose membership includes all employees in a particular industry, regardless of the particular skills the employee exercises.

Informational Picketing: Picketing done with the express intent not to cause a work stoppage, but to publicize either the existence of a labor dispute or information concerning the dispute. Picketing done with the express intent not to cause a work stoppage but to publicize either the existence of a labor dispute or information concerning the dispute.

Injunction: A court order which either imposes restraints upon action, or directs that a specific action be taken and which is, in either case, backed by the court's power to hold disobedient parties in contempt.

Inside Strategy: The use of mass grievances, working to rule, rolling sick outs, informational picketing, and other forms of resistance designed to pressure an employer to meet the union's demands without the union resorting to a strike.

Intervenor: A union which wants to be on the ballot when another union has already petition for an election.

Job Action: A concerted activity by employees designed to put pressure on the employer without resorting to a strike. Examples include: wearing T shirts, buttons, or hats with union slogans, holding parking lot meetings, collective refusal of voluntary overtime, reporting to work in a group, petition signing, jamming phone lines, etc.

Jurisdiction: The specific industry, craft and/or geographical area which a local union is chartered to organize or represent.

Jurisdictional Dispute: A conflict involving a dispute between two unions over which union shall represent a group of employees in collective bargaining or as to which union's member shall perform a certain type of work.

L-M Reports: The annual financial statement of income and expenses submitted to the Department of Labor's Office of Labor Management Standards. The reports include the salaries of union officers and staff. Unions are required by law to file annually.

Mass Picketing: Patrolling by large numbers of people in close formation, often preventing access to company premises.

Member-to-Member Network: A communication system designed to allow the leaders of a local union to communicate rapidly and personally with the members. A coordinator at the top of a pyramid communicates with approximately 10 leaders, each of whom communicates with approximately 10 members, each of whom may communicate with 10 other members, etc. See also Canvass.

Messages: The statements and themes used by employers in order to respond to the conflict within the workplace representation election. Messages are intended to persuade the employees to accept and support the employer's position.

National Labor Relations Act of 1935 (NLRA): Federal law guaranteeing employees the right to participate in unions without management reprisals. It was modified in 1947 with the passage of the Taft – Hartley Act, and modified again in 1959 by the passage of the Landrum – Griffin Act.

National Labor Relations Board (NLRB): Agency created by the National Labor Relations Act of 1935, and continued through subsequent amendment whose functions are to define appropriate bargaining units, to hold elections, to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the Act's provisions prohibiting certain employer and union Unfair Labor Practices, and otherwise to administer the provisions of the Act.

Occupational Safety and Health Act (OSHA): The law which authorizes the Occupational Safety and Health Administration agency to set standards, obligates employers to provide a safe workplace, and provides for enforcement of the standards.

The law encourages the states to develop their own safety laws which displace the federal law.

Open Shop: Where employees do not have to belong to the union or pay dues to secure or retain employment in a company, even though there may be a collective bargaining agreement. The union is obligated by law to represent members and non—members equally regardless of whether it is an open shop or a union shop.

Organized Labor. As defined by the National Labor Relations Act, organized labor is the organization elected by employees to represent their interest and to engage in collective bargaining with their employer, also known as a union.

Organizing Committee: The employees in a non—union shop who are designated to represent their co – workers during the representation campaign. Organizing committee members, among other things, usually sign up their coworkers on authorization cards or petitions, hand out leaflets, attend meetings and visit employees at home to gain support for the union effort.

Organizing Model of Unions: The concept that the primary function of a union’s officers and staff is to organize members to exert collective power to solve problems. This is in contrast to the Service Model of Unions.

Pattern Bargaining: Collective bargaining in which the union tries to apply identical terms, conditions, or demands to several employers in an industry although the employers act individually rather than as a group.

Permanent Replacements: Under current labor law, when employees engage in an economic strike, the employer has the right to hire permanent replacements. After the strike has ended, if there is no back to work agreement reached between the union and the

employer, employees replaced during the strike are put on a preferential hiring list and must wait for openings to occur.

Phone Banking: The organized telephoning of large numbers of members to inform them of a union policy or action or to gather information. This is often done by volunteers who come into the union hall and telephone members during a certain time period.

Phone Tree: A network of volunteer members in which one member calls a list of members, each of whom calls another list of members, etc.

Raiding: A union's attempt to enroll employees belonging to or represented by another union.

Racketeering Influenced and Corrupt Organizations Act (RICO): Federal law allowing the federal government to place in trusteeship organizations which are convicted of being dominated by racketeers of organized crime. The U.S. Department of Justice filed suit against the International Brotherhood of Teamsters under the RICO Act, and this lawsuit was settled by the 1989 Consent Decree.

Rank and File: The members of a union.

Recognition: Employer acceptance of the union as the exclusive bargaining representative for all employees in the bargaining unit.

Recognition Picketing: Picketing to pressure or coerce an employer to recognize a union as a bargaining agent for the employees. Recognition picketing is subject to certain restrictions under the amendments to the National Labor Relations Act.

Replacement: Workers hired to replace employees on strike. In the case of economic strikers, the strikers retain their employment status while on strike; However,, the

company may hire permanent replacements, and may legally refuse to reinstate strikers who have been permanently replaced. In this situation, if there are permanent replacements, economic strikers are generally entitled to reinstatement when the replacements leave. In the case of unfair labor practice strikes, the strikers must be reinstated with few exceptions.

Representation Election: Election conducted to determine by a majority vote of the employees whether they want to be represented by a union. Whether to vote or not is voluntary and the employee must mark a paper ballot with an “X” on a square for yes or no.

“Right to Work” States: States which have passed laws prohibiting unions from negotiating union shop clauses in their contracts with employers covered by the National Labor Relations Act. Unions often refer to these as “right to work for less” states.

Runaway Shop: A plant transferred to another location, usually another city, to destroy union effectiveness and evade bargaining duties. The best block to a Runaway Shop is unambiguous contract language which prohibits any move or relocation of a plant.

Secondary Activities: Strikes, picketing, boycotts, or other activities directed by a union against an employer with whom it has no dispute, to pressure that employer to stop doing business with, or to bring pressure against another employer with whom the union does have a dispute.

Service Model of Unions: The concept that the primary function of the union, its staff, and its officers is to service the members or solve the member’s problems for them. This is in contrast to the Organizing Model of Unions.

[Sufficient] Showing of Interest: A requirement by the National Labor Relations Board that must be met by the union when a union wishes to represent a group of employees.

There are several showing of interest requirements used by the National Labor Relations Board. A) A petitioning union needs 30% of the eligible members in the unit. B) Where a union has petitioned and another union wishes to intervene, the second union must have 30% of the unit it seeks. C) Where a union petitions and another union wishes to intervene in the same unit to the extent of blocking a consent election agreement, it must have 10%. D) Usually, a showing of one or two cards is enough for a second union to intervene only to have their name on the ballot or to participate in a hearing. E) A current or recently expired contract is also a criterion for showing of interest.

Sitdown Strike: A work action which is currently illegal in which strikers refuse to leave the employer's premises.

Strike Force: A group of volunteer members who have agreed to help picket or leaflet in support of an organizing drive, strike, or other campaign which the local has initiated.

Struck Work: A term to define a product which is produced by an employer during the period of a labor dispute with its employees. An employee who refuses to handle struck work is engaged in a sympathy work action. Employees who refuse to do the work of employees engaged in a strike may be replaced; However,, they generally cannot be discharged. A struck work clause in some collective bargaining agreements protects the rights of employees not to handle goods of a struck employer. There are limitations on such clauses in section 8(e) of the National Labor Relations Act.

Successor Employer: An employer which has acquired an already existing operation and which continues those operations in approximately the same manner as the previous employer, including the use of the previous employer's employees.

Supervisor: Those employees who have management rights such as the right to hire, fire, or recommend such action. The employees who are defined as supervisors under the National Labor Relations Act are not permitted to become members of the bargaining unit at the work location. In organizing campaigns, most employers will try to enlarge the ranks of their supervisory personnel. The employer will try to keep a certain group of supervisors as an anti—union workforce for future labor disputes.

Taft-Hartley Act or Labor Management Act of 1947: An amendment of the National Labor Relations Act which added provisions allowing unions to be prosecuted, enjoined, and sued for a variety of activities, including mass picketing and secondary boycotts.

Unfair Labor Practices: Those employer or union activities classified as “unfair” by federal or state labor relations acts. Under the National Labor Relations Act, an employer Unfair Labor Practices include employer threats against protected concerted activity, employer domination of unions, discrimination against employees for collective activity, and employer failure to bargain in good faith with union representatives. Union Unfair Labor Practices include failure to represent all members of the bargaining unit and failure to bargain in good faith, and secondary boycotts. The Railway Labor Act and many state and public sector labor laws contain definitions of unfair labor practices which are similar to the National Labor Relations Act definitions.

Union Buster: A professional consultant or consulting firm which provides tactics and strategies for employers trying to prevent unionization or to decertify unions.

Union Shop: A form of union security provided in the collective bargaining agreement which requires employees to belong to or pay dues to the union as a condition of retaining their employment. It is illegal to have a close shop which requires workers to be union members before they are hired. The union shop is legal, except in right-to-work states, because it requires workers to join the union or pay dues within a certain time period after they are hired.

Volunteer Organizing Committee (VOC): A term sometimes used to describe union members who volunteer for the union during organizing campaigns. Volunteers may donate their time and/or be compensated for lost wages while they assist the campaign by visiting workers at their homes, distributing leaflets, and attending meetings, etc.

Wildcat Strike: A strike undertaken without official union authorization. Although not necessarily illegal, they are not necessarily protected by the National Labor Relations Board.

Workplace. The physical and abstract environment represented by the employment of employees within a company.

Appendix B: Pilot Study Participation Agreement

Each participant in the pilot study will be required to agree to a participation letter for the research study entitled: *Reducing Organizational Conflict: A Quantitative Study of the Multivariate Determinants of Employer Workplace Representation Election Success*.

The agreement provided to research participants will include the following information:

What is the study about?

This study will develop a mathematical model to identify winning campaign themes and messages as well as communication tactics which lead to an employer victory in workplace representation elections supervised by the National Labor Relations.

The researcher postulates that the results of this study can direct employers' financial allocations during the highly contentious and costly workplace representation election for optimal success. While there is significant anecdotal and qualitative guidance that employers rely upon to expend significant financial resources in this conflict, there is not a quantitative model in existence. There is a whole industry of consulting and persuasion that exists to exploit and profit from an employers' inability to rely upon a quantitative model for responding to workplace representation elections supervised by the National Labor Relations Board. This dissertation will bring clarity to heretofore ambiguous and ill-defined significant employers' financial decisions that increase organizational conflict within the workplace.

Why are you asking me?

You are identified as a subject matter expert in workplace representation elections from your selection as a speaker at industry and professional organizations and conferences. As a result, your participation in this research is critically important to and will be instructive to both the researcher and all other employers may face similar elections in the future. Your participation in this research and survey is strictly voluntary and is greatly appreciated again by this researcher and all other employers who will face such an election in the future.

Your role is simply to complete the pilot study of the drafted survey instrument to aid in assessing participants ability to understand and complete the instrument. This pilot study asks no questions about you or your experience but is instead limited to the completion of the survey instrument. The pilot study is expected to last less than 15 minutes of your time.

What will I be doing if I agree to participate in this study?

As a participant in this research you will complete a pilot survey instrument and provide information regarding the extent you understood the questions or had any difficulty navigating the instructions or instrument. Your participation entails a phone call expected to last less than 15 minutes.

Will there be audio or video recording of the focus groups?

The conference call with the pilot study participant will not be recorded, though research notes will be taken in order to incorporate any potential changes to the survey instrument.

Are there dangers to the research participants?

No, participation is voluntary and there is no foreseeable danger to the participant. Any pilot test participant may refuse to participate and can withdraw from the study at any time.

What if I have questions about the research?

If you have any questions about the research, your research rights, or have a research related injury, please contact this researcher or the IRB contact numbers listed above to learn more about your research rights.

Will I be paid or receive other for benefits participating in this study?

No pilot study participant will be paid. Results of this study will be compiled and reported in academic and professional publications. Participants name and contact information will not appear in the study. Participants will receive a copy of the report and summary findings upon request.

How will you keep my information private?

The confidentiality of the pilot study participants is of the utmost importance. All information obtained in this pilot study is strictly confidential unless disclosure is required by law. However, the Internal Review Board regulatory agencies and or may review the handwritten research records if deemed necessary.

All printed notes and material will be maintained under lock and key. Should any pilot study research participant choose to withdraw from the study, their information will be destroyed at the conclusion of the study and not included within the reported results.

Acknowledgement

I have thoroughly read this consent form and by my own admission without being coerced, acknowledge my voluntary participation in this research project.

PARTICIPANT SIGNATURE AND DATE

[illegible]

Posters posted in the work areas (How many with different messages)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Letters to employees homes (How many letters with different themes)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Communication Tools, continued									
Please indicate whether or not your company used each of the following tools to communicate with employees during the campaign.							Did your company use this messaging tool?		
							Yes	No	Don't know
1 on 1 meetings (Mgr with Employee) to discuss election issues							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Videos to persuade employees							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A Website to persuade employees							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Text Messaging to employees as company election communication tool							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facebook as company election communication tool							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A podcast featuring company election messages							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Online/ conference calls to employees at remote locations with campaign messaging							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Twitter for communicating persuasive campaign messages							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other social media communication tool not listed above							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information about the company and election campaign									
							Yes	No	Don't know
Please provide your email address in order to receive the study results _____									
Was this the first election at this company location?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is the company unionized at other locations?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is the company unionized at portions of this location?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the company hire a consultant to guide the company's election strategy?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the company hire an attorney to assist in the company's election strategy?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the company hire a persuader to communicate directly to employees?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the company contest the union's petitioned for unit of employees? (e.g. have a hearing to decide the unit)							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the company implement a pay increase to employees during the election?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the union file challenges to the election result?							<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Thank you for completing this survey and for returning it in the SASE.									

Appendix D: Booklet Accompanying Survey Mailed to Employers



DATE:

EMPLOYER NAME: [Column H]
 [Column C]
 [Column D]
 [Column E]

Regarding NLRB ELECTION CASE NUMBER [Column A]

DATE FILED: [Column Q]
 DATE VOTE: [Column R]
 VOTES IN FAVOR OF PETITIONER: [Column AB]
 VOTES IN FAVOR OF COMPANY: [Column AE]

[Column H] Representative:

Thank you in advance for completing this quick survey about your company's experience in the NLRB election referenced above. This survey is part of a PhD dissertation study designed to assist employers in future elections by providing a quantitative predictive analytic model regarding election messaging themes and other factors which influence a victory for the employer. Approximately 350 other elections are also included as part of this study. Your name was obtained from the NLRB database as the employer representative during the election. If someone else in your organization is more knowledgeable of the company's election messaging themes and other factors of the campaign, please forward this survey to that person for completion.

Again, thanks for your participation on this study, and all those companies who return this survey in the self-addressed self-stamped envelope will **receive a copy of the results free of charge** to the email you provide.

Should you have questions about the study or the survey instrument please feel free in contacting me at (863) 286-7239. If you would like more information about my research or work history, you can access my resume/CV on LinkedIn by searching for Mark Codd, Director of Labor Relations, where you would note my role supporting major corporations.

I sincerely thank you for helping my research and for helping other employers faced with an NLRB election.

John Mark Codd

APPROXIMATE DESCRIPTION OF MESSAGING THEMES

NOTE: The question regarding influence refers to how influential the employer believed the theme was at the time the message theme was delivered.

- What is/ Definition of a Union.

A popular theme generally that can include the description of what a union is, how it makes its revenue and the scope of union's authority and other close variations of this theme.

- What is collective bargaining?

Employers often learn that employees misunderstand that collective bargaining is simply the right of the union, and the obligation of the employer to listen and bargain in good faith. Neither side can be compelled to agree to the terms of the other. This theme often includes phrases like "horse trading" and "gambling" with the benefits employees currently have.

- Benefits you have now.

This theme focuses on educating employees on the benefits that employees possess without a union.

- The union is a business and needs your dues

This theme focuses on the financial status of the union and how it both earns and spends dues money.

- Layoffs at unionized companies/ Job security

This theme often focuses upon the closure, or bankruptcy or layoffs at unionized businesses as a comparison to the existing job security of the employer in the campaign.

- Comparing existing company benefits/wages with union's contracts elsewhere

Employers in NLRB elections often obtain contracts the union has negotiated elsewhere and provide comparisons to voting employees.

- Analysis of the union's Constitution/Bylaws

This theme centers upon the rules that unions use to hold their members accountable. This often focuses upon dues amounts, fines, fees, assessments and disciplinary hearings for those members who violate union rules.

- Union's strike history

This theme focuses upon the union's experience in past strikes at other companies. This theme is not always limited to the union involved in the campaign, but often showcases strikes by unions in general.

- Calculators

This theme is often referred to as Dues Calculators or Strike Calculators. A dues calculator yields the amount of dues an employee or even the group of employees will pay over some period of time- often annually. A strike calculator asks the employee to enter their wage, the monetary amount of raise in dispute which prompts the strike, the duration of the strike and it calculates the amount of time necessary to earn back the money the employee lost in the strike. This payback period is often compared with the duration of other strikes and is often a surprise to employees.

- Give us another chance

This theme recognizes the mistake of the employer's culture and decisions and requests that employees vote no to unionization. Since the union and employees can file a petition for election one year from the election vote in question, the employer seeks another chance from employees to create the culture supporting a non-union environment.

- Get out the vote/ You need to vote

This theme recognizes that the union is urging its own supporters to vote and consequently the employer is prompted to urge as many of the eligible voters to go to the poll and vote.

APPROXIMATE DESCRIPTION OF COMMUNICATION TOOLS

NOTE: The questions ask about the number of unique themes for each communication tool. Examples include how many different captive audience meetings were held that included a different theme (not how many meetings of the same theme were held).

- Captive Audience

A union term for meetings of workers called by management and held on company time and property. Usually the purpose of these meetings is to persuade workers to vote against union representation.

- Posters

Typically wall hangings in the workplace designed to communicate the employer's theme. Again, the question asks how many different themed posters were used.

- Letters to employees' homes

Again, referencing the number of unique themes. For example, a round of letters sent to employees' homes showcasing the current benefits the company offers followed later in the week with another explaining how and when to vote would count as two letters.

- 1 on 1 meetings

Some employers task managers to campaign 1 on 1 (1 manager/1 employee) with given themes to discuss with individual employees.

- Videos

During meetings employers often use videos to illustrate its thematic messaging.

- Website, text messaging, Facebook, podcasts, Twitter are self-explanatory, and the questions ask whether the employer used each as a communication tool.
- Online/conference calls include employer tools such as gotomeeting, WebEx, and other video or conference call tools to reach remote employees during the campaign.

Survey Respondent Participation Agreement

Reducing Organizational Conflict: A Quantitative Study of the Multivariate Determinants of Employer Workplace Representation Election Success

What is the study about?

This study will develop a predictive analytical model to identify winning campaign themes and messages as well as communication tools which lead to an employer victory in workplace representation elections supervised by the National Labor Relations Board.

This researcher believes that the results of this study can direct employers' financial allocations during highly contentious and costly workplace representation elections.

While there is significant anecdotal guidance that employers rely upon to expend financial resources in election conflicts, there is not a predictive analytical model in existence.

Why are you asking me?

Your organization is listed as having participated in a workplace representation election between April 14, 2015 and May 1, 2017, the research period of this study. You were listed as the employer representative within the NLRB database found at nlrb.gov. As a result, your participation in this research is critically important to both the researcher

and all other employers who may face similar elections in the future. Your participation in this research and survey is strictly voluntary and is appreciated by this researcher and all other employers who will face such an election in the future.

Your role is simply to enable someone familiar with the details of the election to complete the survey. This survey asks no questions about you or your experience but is instead limited to the company messaging themes, tools used in election communication and general information about the employer facility. The anticipated time to complete this survey is less than 10 minutes of your time.

Are there dangers to the research participants?

No, participation is voluntary and there is no foreseeable danger to the participant. Any survey respondent may refuse to participate and can withdraw from the study at any time.

What if I have questions about the research?

If you have questions about the research, your research rights, please contact this researcher at (863) 286-7239, or the IRB contact Elena Bastidas Ph.D., Associate Professor, Department of Conflict Resolution Studies at (954) 262-3021.

Will I be paid or receive other for benefits participating in this study?

No, survey respondents are not paid, however every survey respondent who provides an email address will receive an electronic copy of the report and summary findings. The results of this study will be compiled and reported in academic and professional publications. Participants name and contact information will not appear in the study.

How will you keep my information private?

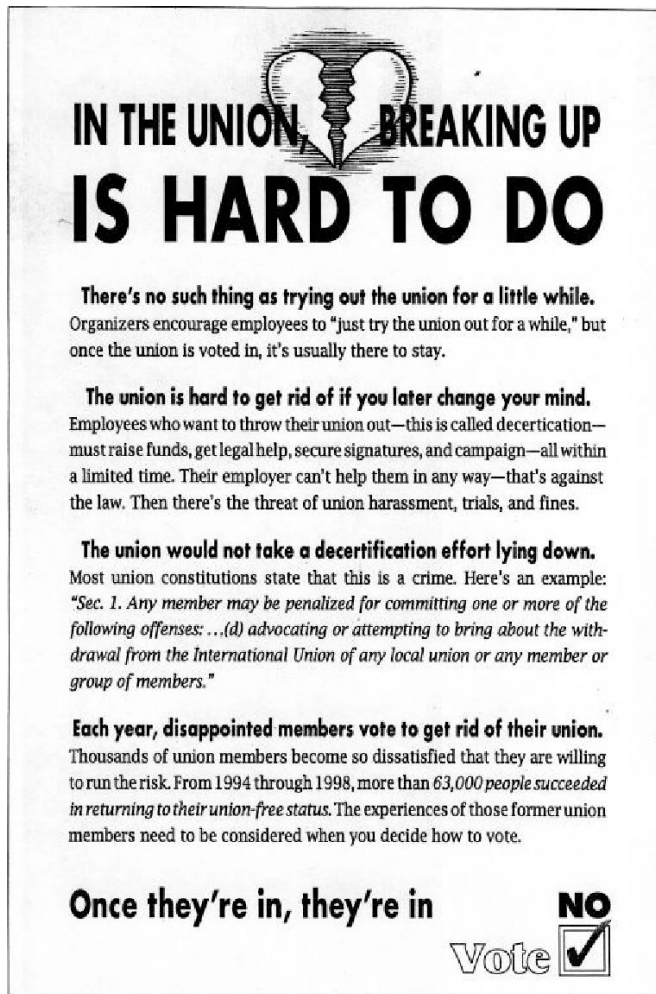
The confidentiality of this study's participants is of the utmost importance. All information obtained in this study is strictly confidential unless disclosure is required by law. The University's Internal Review Board may review the handwritten research records if deemed necessary. All printed notes and material will be maintained under lock and key. Should any survey participant choose to withdraw from the study, their information will be destroyed at the conclusion of the study and not included within the reported results.

Acknowledgement

I have thoroughly read this consent form and by my own admission without being coerced, acknowledge my voluntary participation in this research project as evidenced by my completed survey submission.



Appendix E: Election Campaign Poster Examples



Source: https://www.researchgate.net/figure/Anti-union-flyers_fig1_228799876

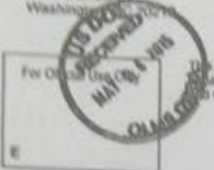
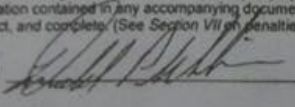
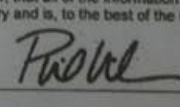
Below is a copied screen shot of a google search for "anti-union posters." There are hundreds of images available to employees and employers with a simple Google

search at: <https://www.google.com/search?q=Anti->

Union+Posters&safe=active&source=lnms&tbm=isch&sa=X&ved=2ahUKEwipsvPEgJj

oAhUQQq0KHSymDaIQ_AUoAXoECAwQAw

Appendix F: Example of Form LM-0 Report, 2015

U.S. Department of Labor Office of Labor-Management Standards Washington, D.C. 20340		FORM LM-20 AGREEMENT AND ACTIVITIES REPORT		Form approved Office of Management and Budget No. 1245-0003 Expires 10-31-2013
		This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440. Required of persons, including Labor Relations Consultants and Other Individuals and Organizations, Under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended. (LMRDA)		
For Official Use Only		592196 READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.		
1. File Number: C- 00525				
Person Filing				
2. Name and mailing address (include ZIP Code): Name Title Organization LRI Consulting Services, Inc. P.O. Box, Bldg., Room No., if any Street 7850 South Elm Place, Suite E City Broken Arrow State Oklahoma ZIP Code + 4 74011			3. Any other address where records necessary to verify this report are kept: Name Title Organization P.O. Box, Bldg., Room No., if any Street City State ZIP Code + 4	
4. Date fiscal year ends: Dec / 31		5. Type of person: a <input type="checkbox"/> Individual b <input type="checkbox"/> Partnership c <input checked="" type="checkbox"/> Corporation d <input type="checkbox"/> Other (Specify):		
Nature of Agreement or Arrangement				
6. Full name and address of employer with whom made (include ZIP Code): Name Organization Walgreen Company Trade Name, if any P.O. Box, Bldg., Room No., if any Street 104 Wilmot Road, MS# 1416 City Deerfield State IL ZIP Code + 4 60015			7. Date entered into: 2 / 16 / 2015	
8. Name of person(s) through whom made: Name Chris Murray Name Name Name Name			Signatures	
Each of the undersigned declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section VII on penalties in the instructions.)				
13. Signed  Title CEO		14. Signed  Title President		
On 4/22/2015 918-455-9995 Date Telephone Number		On 4/22/2015 918-455-9995 Date Telephone Number		

Fair LRI Consulting Services, Inc.		File Number C- 00525
9. Check the appropriate box to indicate whether an object of the activities undertaken, is directly or indirectly:		
a. <input checked="" type="checkbox"/> To persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.		
b. <input type="checkbox"/> To supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.		
10. Terms and conditions (Explain in detail, see instructions. Written agreements must be attached.) Verbal agreement. \$3,000 per day per consultant plus reasonable travel expenses.		
Specific Activities to be Performed		
11. For each activity, separately list in detail the information required (See instructions):		
a. Nature of activity. Engaged to communicate to employees regarding exercising their rights to organize and bargain collectively.		
11.b. Period during which performed: various days beginning 3/2/15	11.c. Extent performed: Fully Performed	
11.d. Name and address through whom performed: Name Joseph Brock Organization East Coast Labor Relations LLC P.O. Box, Bldg., Room No., if any Street 151 Forge Road City Delran State NJ ZIP Code + 4 08075		Additional Name and address through whom performed, if any: Name Eric Vanetti Organization Vantage Point Alliance P.O. Box, Bldg., Room No., if any Street 18632 River Crossing Blvd City Davidson State North Carolina ZIP Code + 4 28036
12.a. Identify subject groups of employees: Pickers, Sorters, Shipping and Receiving, Forklift drivers, Janitorial, Utilities, and Maintenance Technicians		12.b. Identify subject labor organizations: Machinists & Aerospace Workers

LRI Consulting Services, Inc. 915 395-9996

Terms and Conditions

The fee for consulting is \$3,000 per consultant per day (plus travel expenses). For purposes of this proposal a consulting day means each calendar day worked by each consultant. If more than one consultant is working on your case the parties understand and agree that multiple consulting days may be worked on each calendar day.

Payment Terms

All fees are due upon the delivery of the consulting services and are nonrefundable. Consulting fees and expenses incurred by consultant will be billed to you and you agree to pay those invoices upon receipt and to settle those statements within 14 days. You agree and acknowledge that failure to pay fees or expenses associated with this project under these terms will result in reassignment of consultant(s), a penalty of the maximum allowable interest rate per month plus any costs we incur to collect an outstanding balance, until all outstanding invoices are paid in full.

It is further understood that all materials included in or with the above referenced items or programs are fully covered and protected by federal copyright laws. Federal law provides civil and criminal penalties for the unauthorized reproduction, distribution or exhibition of protected products.

You further acknowledge that no representation by LRI or its representatives were relied on by you or any member of your company in entering this agreement, and that this document represents the full understanding of the parties. You also acknowledge and agree that we have informed you of the obligation to report any direct persuader activity performed on your behalf to the United States Department of Labor by both our firm and your firm and that failure to timely file these reports can subject your company to criminal penalties. Your payment, in the absence of your signature below, indicates your acceptance of this project and the terms and conditions as stated herein. The terms and conditions on this proposal are good for 90 days from the date on this proposal unless specified otherwise. The parties agree that Oklahoma law governs any dispute between them and to resolve any disputes by arbitration in Tulsa, Oklahoma under the American Arbitration Association rules.

Acceptance

We accept the proposal above and the intervention selected:

_____ Campaign Consulting

<p>For LRI Consulting Services, Inc.</p> <p>Phillip B. Wilson, President/General Counsel</p> <p>Date: April 22, 2015</p>	<p>For DirectSat USA, LLC</p> <p>Lauren Dudley, Human Resources Manager</p> <p>Date: <u>Lauren Dudley</u></p>
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Page 2 of 2 (Initial PD)

Inc.

Labor Relations Institute, Inc.
7850 S. Elm. Pkwy. - Suite E
Broken Arrow, OK 74011

CNBC

LM-20 reports are available on the OLMS.gov website and were also posted by the IAM for Walgreens employees to review during the February 2019 election.

Source:

<https://www.facebook.com/goiamwalgreens/photos/a.840379849334575/1334596176579604/?type=3&theater>

Appendix G: Interview Respondent Participation Agreement

Each participant in the interview is required to receive a notice regarding their participation for the research study entitled:

Voice of the Employer: A Mixed-Methods Study of Winning Messages for NLRB Elections

What is the study about?

This study will develop a model to identify winning campaign themes and messages as well as communication tools which lead to an employer victory in workplace representation elections supervised by the National Labor Relations Board.

The researcher believes that the results of this study can direct employers' financial allocations during highly contentious and costly workplace representation elections. While there is significant anecdotal guidance that employers rely upon to expend significant financial resources in election conflicts, there is not a model obtained from employer representatives' input in existence.

Why are you asking me?

Your organization is listed as having participated in a workplace representation election between April 14, 2015 and May 1, 2017, the research period of this study. You were listed as the employer representative within the NLRB database found at nlrb.gov. As a result, your participation in this research is critically important to and will be instructive to both the researcher and all other employers who may face similar elections in the future. Your participation in this research and Interview is strictly voluntary and is greatly appreciated again by this researcher and all other employers who will face such an election in the future.

Your role is simply to consider your experience and career as an employer representative involved in NLRB elections and to comment on the efficacy of a select group of messaging and communication modalities. This interview asks no questions about you personally other than to establish that you were involved in NLRB elections. The anticipated time to complete this interview is approximately 15-20 minutes of your time.

Are there dangers to the research participants?

No, participation is voluntary and there is no foreseeable danger to the participant. Any interview respondent may refuse to participate and can withdraw from the study at any time.

What if I have questions about the research?

If you have any questions about the research, your research rights, please contact this researcher at (863) 286-7239, or the IRB contact numbers listed to learn more about your research rights.

Will I be paid or receive other for benefits participating in this study?

No, interview respondents are not paid, however every interview respondent who provides an email address will receive an electronic copy of the report and summary findings. The results of this study will be compiled and reported in academic and professional publications. Participants name and contact information will not appear in the study.

How will you keep my information private?

The confidentiality of the pilot study participants is of the utmost importance. All information obtained in this study is strictly confidential unless disclosure is required by law. The University's Internal Review Board may review the handwritten research records if deemed necessary. All printed notes and material will be maintained under lock and key. Should any interview participant choose to withdraw from the study, their information will be destroyed at the conclusion of the study and not included within the reported results.

Acknowledgement

I have thoroughly read this consent form and by my own admission without being coerced, acknowledge my voluntary participation in this research project as evidenced by my completed interview.

Appendix H: Semi-Structured Interview Guide

NAME Thank you for participating in this interview to support the research study of the multivariate determinants of employer workplace representation election success. Did you have a chance to review the interview respondent participation agreement?

You were selected to participate in this interview because of your prior presentations about responding to union organizing campaigns and because you are a subject matter expert in responding to NLRB election campaigns. I will ask a couple of very general questions about your experience in responding to NLRB elections and follow up with questions about specific campaign messages and different communication tactics within campaigns.

This study seeks to evaluate the effectiveness of messages used by employers in NLRB elections.

Q 1. Why do you think prior studies have not obtained information from employers directly before?

Q 2. Over your career how many elections would you guess you have been involved as an employer or employer representative? If you had to guess, what is your win/loss ratio?

Q 3. How similar are these elections with respect to the employer's messages and communication tactics?

Q 5. Recent data shows employers stipulate to the unit in 92% of the elections. Why would an employer do that? What are the advantages in challenging the petitioned-for unit?

Q 6. What is the single most effective message an employer utilizes to influence the vote in favor of the employer?

Q 7. Of the many different communication methods available to employers, such as meetings, letters, Facebook, Twitter etc. which in your experience is the most effective in increasing the vote in favor of the employer and why?

Q 8. Why should employers hire a consultant to guide the employer's response to the union's campaign?

Ask whether the participant has any questions of the researcher. Then close the interview by thanking the participant.