How Amazon's Anti-Union Consultants Are Trying to Crush the Labor Movement

Posted on March 22, 2021 by John Logan

Workers at Amazon's distribution center in Bessemer, Alabama are voting in a historic union election — whether to join the Retail, Wholesale and Department Store Union (RWDSU). This is a mail-in NLRB ballot that will end on March 29. Last month, we discovered that, starting in January, Amazon had hired two prominent anti-union consultants, Russell Brown and Melissa Smith of Florida-based Road Warrior Productions (RWP), to assist with its campaign against the RWDSU. [i]

This month, we found out that Amazon is using a second anti-union consultant firm – which is an unusual step, even for an anti-union firm like Amazon: California-based Labor Information Services. Even before it engaged the services of these two anti-union consultant firms, Amazon had hired Morgan Lewis, one of the nation's largest law firms specializing in union avoidance activities.

But who are Amazon's anti-union consultants? A closer examination of the background of Brown and Smith – I have written about the activities of Labor information Services elsewhere– shows their involvement in several high-profile anti-union campaigns, their lobbying efforts on behalf of anti-union legislation, and their sustained efforts to weaken unions and collective bargaining, especially in the transportation and aviation sectors.

1. A Brief History of a "Dirty Business"

Labor relations consultants specializing in "union avoidance" activities have been operated in the United States since at least the 1940s. The first nationally prominent consultant was Chicago-based Nathan Shefferman, who, as Sanford Jacoby described in *Modern Manors* (1997), worked for Sears Roebuck before establishing his own consulting firm, Labor Relations Associates (LRA). After orchestrating hundreds of anti-union campaigns for some of the nation's largest

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companies, LRA was effectively forced out of business due to the negative publicity from the high-profile McClellan Committee hearings, after it detailed LRA's complicity in corruption. The chief result of the hearings, under the guidance of chief counsel Robert Kennedy, resulted in the enactment 1959 Labor-Management Relations and Disclosure Act (LMRDA), which targeted unions, not union-busting firms.

The union avoidance industry continued to grow, and LRA served as a breeding ground for several future superstars of the union-free movement. In the 1960s and 1970s, the industry was spurred on by multiple former LRA personnel, including attorneys Louis Jackson and Robert Lewis of New York-based Jackson Lewis, one of the biggest anti-union law firms of the past four decades, along with Chicago-based consultant John Sheridan and Herbert Melnick, founder and chairman of the notorious Modern Management Methods (3M) firm. In the 1970s and 1980s, 3M conducted thousands of anti-union campaigns with over 70 anti-union consultants, including Marty Levitt, who renounced his former profession in the late 1980s and published a tell-all memoir, *Confessions of a Union Buster*, in which he detailed "a dirty business" which was "populated by bullies and built on deceit."

A Modern-Day LRA — The Labor Relations Institute (LRI) Consulting Connection: Based in Broken Arrow, Oklahoma, Phillip Wilson's LRI Consulting Services, LLC is one of the nation's oldest and most active union avoidance firms in the nation. Both Russ Brown and Rebecca Smith have worked for LRI directly, and continued to do so, even after establishing their own anti-union consultant firms. Brown is a former Vice President at LRI while Smith is a former lead consultant at LRI. LRI works with consultants based around the country, many of whom run their own satellite firms, such as Brown's Road Warrior Productions or Smith's Rock Creek. According to forms filed with the Labor Department in connection with several anti-union campaigns over the past decade, Brown and Smith have worked under Philip Wilson, CEO of LRI. Thus, just as Nathan Shefferman's LRA spawned anti-union consultants and firms that dominated the business in the 1960s and 1970s, so too has LRI acted as a breeding ground for new union avoidance experts over the past two decades.

American Factory's Anti-Union Firm: If they know anything about LRI, labor observers probably heard about the union avoidance firm through its involvement in the intense anti-union campaign at Chinese-owned Fuyao Glass America factory in Moraine, Ohio, when the firm was reportedly paid $1 million to oppose the UAW. The union campaign among 2200 workers at Fuyao Glass, during which the UAW

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complained that workers had faced a "a barrage of anti-labor tactics and intimidation," was the subject of the academy-award winning documentary, *American Factory*, in which the company president talked about firing union supporters. During the bitter anti-union campaign, *Blomberg Law* reported, union activists were fired and all employees were "called into mandatory meetings where the company's anti-union consultant advised them against unionizing."[ii] But LRI's activities extend well beyond its cameo role in the *American Factory* documentary.

Money Back Guarantee: The firm has orchestrated hundreds of anti-union campaigns over the past few decades for some of the country's largest employers – and numerous smaller ones — and through its "Guaranteed Winner" program, it even offered employers a "money-back offer" if they union won an election in which they ran the entire counter-organizing effort. In more recent campaigns, the firm has offered employers a 50% refund in its fees if the union wins[iii] One could not invent better examples to illustrate that, under the current union certification process, the employer and not the employees gets to decide on whether a workplace becomes unionized. This is why the Protecting the Right to Organize (PRO) Act, which passed the House of Representatives earlier this month, is desperately needed to safeguard workers' choice.

2. **Amazon's Anti-Union Consultants: Russ Brown and Rebecca Smith**

Russ Brown: Russ Brown is a long-time anti-union consultant, who worked for many years in labor relations at Delta Airlines, before starting as an anti-union consultant for Oklahoma-based Labor Relations Institute (LRI), Inc. and now runs his own firm, Road Warrior Productions (RWP) Labor, LLC, based in Florida. According to Brown, RWP is the nation's "premier full-service labor relations and management consulting team" that "specializes in keeping companies union free." RWP claims to be a "collaboration of the best of the best labor consultants. From policy making to the shop floor, we know that third party interference makes business less productive and less competitive. We will train your leaders, we will educate your employees." One of Brown's former LRI colleagues says that he's "knows up close and personal, from first-hand experience, what it's like to run a successful campaign to defeat a union organizing attempt." RWP videos warn employers that during union organizing campaigns, "You only have one chance to win," which appears to mirror Amazon's approach at Bessemer.

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The Center for Individual Employees: In addition to running the RWP consulting firm, Brown is president of the Center for Individual Employees (CIE), a "501c(3) non-profit legal defense foundation." CIE, which claims to be active in all 50 states, is "a legal defense foundation that provides free legal services to workers against unionization" Although the organization is secretive about its funders, we know that CIE received $18,000 from the anti-union, billionaire Koch Brothers in 2017. Brown has used CIE to promote decertification campaigns in the airline and other industries, as discussed below, which are campaigns in which he is not being paid directly by the company involved with the decertification effort.

Rebecca Smith: A second consultant working with Russ Brown at Amazon, Rebecca Smith, claims to have worked for unions 20 years, 16 years with the Teamsters, including as Executive Director of Training for Southern Nevada. After leaving the Teamsters – reportedly fired for "gross incompetence"– Smith started working as a anti-union consultant. Smith has an extensive background in conservative political circles: she has published an anti-union book, *Union Hypocrisy*, which is "written in the nature of [right-wing] political authors Laura Ingraham and Michelle Malkin" and she has been a Contributor to the ultra-conservative "Brenner Brief" podcast. Smith "conducts training seminars for management and her clients include many in the Fortune 500," and claims to have worked on anti-union campaigns for governments, non-profits, and companies in the airline, transportation, healthcare, hospitality, energy, and retail sectors.[iv]

"Teamster Avoidance": Since leaving the Teamsters to join the ranks of its adversaries in 2007, Rebecca Smith has been involved in several anti-union campaigns against her former employer, as well as against multiple other unions in transportation, manufacturing, building trades and others. Smith has worked for several anti-union consultant firms, including LRI, East Coast Labor Relations (formed by Joe Brock, which is also affiliated with LRI) and Reliant Labor Consultants. Her Reliant bio page states: "As a consultant, Rebecca has led numerous anti-union campaigns, resulting in a winning record for the companies with whom she partnered, including but not limited to government, non-profit, and for profit organizations within airline, transportation, healthcare, hospitality, energy and retail industries. Despite switching sides on union campaigns, Smith claims she wants to "support" and give a "voice" to working people. Smith has also run several union avoidance firms of her own, including Taltos Consulting and, currently, Rock Creek Consulting, conducting dozens of high-profile anti-union campaigns, including at General Electric.

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Gamekeepers Turned Poachers: Several prominent consultants have claimed to have worked working for unions, including some of Smith's close associates. For example, the president of one anti-union firms with which Smith has worked, Joe Brock of East Coast Labor Relations Consultants (ECLRC) and Reliant Labor Consultants, claims to have worked for the Teamsters Local 830, the largest IBT local in Philadelphia, for over twenty years, before losing a union election in 2007 and becoming an anti-union consultant. Like Smith and Brown, Brock has a long-time association with Oklahoma-based LRI, and he includes "Teamster Avoidance" in his areas of expertise. Among other campaigns, while working under LRI, Brock helped defeat a union campaign at the Trump International Hotel in Las Vegas in 2014 and is currently running a major anti-union campaign at the largest hospital in Maine. In common with other union avoidance firm, ECLR claims an overwhelmingly positive victory rate in union campaigns: "While unions typically win between 60 and 70% of union representation elections, ECLR maintains a win rate of over 95%". Other anti-union consultants claim years of experience working for organized labor, including for the Teamsters, steelworkers, laborers and AFL-CIO. One consultant writes in his *LinkedIn* profile: "To start, I want to make it clear that I own a consulting firm that works exclusively for management to stay union free and promote positive employee relations, but my story did start on the union side with nearly 24 years of experience for unions."

3. Anti-Union Activities at Bessemer

One major difference between union avoidance law firms such as Morgan Lewis and consultant firms such as Road Warrior Productions and Labor Information Services is that consultants conduct so-called "direct persuader activity" – i.e., they have face-to-face contact with employees — while the law firms generally avoid this. Direct persuader activity triggers the reporting requirements (Section 203a) of the Labor-Management Reporting and Disclosure Act (LMRDA), which means that corporations and their consultants are required to report their financial arrangements to the Office of Labor-Management Standards at the Department of Labor, although the requirement has been poorly enforced for several decades.

Captivating Workers: Captive meetings – mandatory group anti-union meetings which employees can be fired for refusing to attend — have been a central feature of Amazon's anti-union campaign at Bessemer. Brown and Smith have reportedly conducted captive meetings under the guise of "education sessions," which caution

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them against the alleged dangers of unionization. Pro-union workers who challenge their claims have had their ID badges photographed. I have written about the message during captive meetings in greater detail elsewhere. The federal PRO Act, which passed the House this month, would prohibit captive audience meetings. Several states have tried to outlaw them in recent years, and Russ Brown actively opposed Connecticut's 2019 anti-captive audience bill. Oregon enacted such a law since 2010, and in November 2020 the Trump NLRB sued for a second time to overturn the law, which has thus far not been actively enforced. Human Rights Watch has criticized captive meetings as a form of legal intimidation, which are unlawful in many developed democracies.

In addition, consultants such as Brown and Smith script anti-union messages for corporate clients, such as the texts that Amazon has been sending to the phones of Bessemer workers several times per day, the anti-union billboards that Amazon has displayed around the Bessemer facility, or the anti-union flyers it has put up inside the stalls of the restrooms in Bessemer.

Amazon's Huge Expenditure on the Bessemer Anti-Union Campaign: Amazon is paying a small fortune for its anti-union consultants. The LM-20 form filled by Russ Brown states that three consultants will be paid a daily fee of $3,200 plus expenses for the duration of the campaign, which started in January. We do not yet know how much Amazon is paying the three consultants from Labor Information Services, but it is likely a similar amount. In addition, Amazon is using one of the nation's most expensive law firms that specializes in union avoidance, Morgan Lewis. There seems little doubt that when the campaign at Bessemer is finally over, Amazon will have paid millions of dollars to its law firm and its union avoidance consultants.

4. Recent Anti-Union Campaigns by Amazon's Consultants

Mission Hospital: A Relentless anti-union campaign during the pandemic:

In addition to the Amazon campaign, Brown and Smith have worked on several other recent high-profile anti-union campaigns, including among nurses at Mission Hospital, owned since 2019 by the for-profit healthcare system HCA, in Asheville, North Carolina. In September 2020, almost 1000 nurses voted to join the NNU in a landslide victory, thereby providing the labor movement's largest hospital victory in

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the South since 1975. Mission nurses encountered relentless and aggressive consultant anti-union tactics during the campaign, including mandatory captive audience meetings and one-on-one anti-union meetings, which kept them from their patient care duties. As with the Amazon campaign, Rebecca Smith's anti-union work on these campaigns was conducted through Russ Brown's Road Warrior Productions. Smith and Rock Creek have been involved in several other anti-union campaign at hospitals – a specialty for several union avoidance consultants — including St Joseph Regional Medical Center and Mad River Community Hospital.

Kumho Tires: Numerous and Egregious Anti-Union Practices: Brown and Smith also conducted an anti-union campaign at Kumho Tires in Macon, Georgia, between 2017-2019. The NLRB found that the company had committed "numerous and egregious" unfair labor practices during its anti-union campaign in a 2017 NLRB election. Among other things, the Macon workers were threatened with losing their jobs if they voted for unionization. In 2019, Kumho workers voted for the steelworkers, after the NLRB ordered a rerun election, and after numerous company efforts to delay, the labor board finally certified their victory in 2021.

5. The Assault on Transportation and Aviation Unions

Russ Brown also runs the North American Transportation Employee Relations Association (NATERA), an organization dedicated to weakening union influence in the transportation sector, on which Rebecca Smith serves as a board member. NATERA seeks to expand knowledge on union expertise issues among its members. In 2017, for example, NATERA's annual conference included a "pre-conference workshop featuring union avoidance and campaign simulation," run by the anti-union law firm, Jackson Lewis, which was "tailored to the transportation industry."

"Looking to kill organized labor in aviation": Brown and Smith have consistently attempted to expand their anti-union crusade into the still heavily unionized airline sector. The country's 11 largest national passenger airlines all have unionized pilots, as do shipping carriers such as UPS and FedEx. Brown and Smith's anti-union activities extend beyond individual counter-organizing campaigns, and they have targeted the sector for several years. Brown has repeatedly lobbied for and written in support of rule changes under the Trump Administration that would have facilitated decertification under the Railway Labor Act. Brown and Smith campaigns worked on a failed attempt to decertify flight

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attendants at Allegiant Air in 2016, which was then the largest decertification attempt in the history of the Railway Labor Act.

Undeterred by this setback, Brown and Smith were involved in a bitter decertification campaign involving pilots at Flexjet LLC in 2018. After first unionizing in 2016, Flexjet pilots voted to decertify the Teamsters, the first time that commercial pilots had ever decertified a union under the RLA, in May 2018. Brown, Smith and James Edwards, general counsel of both CIE and RWP, were deeply involved in the anti-union campaign (After the Flexjet decertification election, the chairman of Cleveland-based carrier, Ken Ricci, stated: "This is a historic moment not only for our company but also for the industry as a whole, since no other pilot group has elected to remove representation by organized labor." Brown also celebrated the "historic" election as "the first time in the 80-year history of the Railway Labor Act that pilots have chosen a direct relationship with their employer rather than have a labor union interfering as a third party."

Union activists agreed that Brown and Smith had played a critical role in the decertification campaign. One commentator wrote about Brown on an online "airline pilots forum": "This guy is the reason American, Southwest, UPS and now ALPA are sending out letters letting us know they are watching this. And he is why we will all be looked upon as pariahs if the Union is decertified. Don't think there won't be repercussions. This guy, Russ Brown, is **looking to…. kill organized labor in aviation**. Flexjet is just their first target."

6. Brown's Anti-Union Policy Advocacy

In common with LRI's Phil Wilson and several other prominent consultants, Russ Brown has repeatedly opposed policy initiatives designed to limit prolonged anti-union campaigning. For example, under the Obama Administration, Brown wrote against the Employee Free Choice Act lobbied against pro-labor changes to the FFA Reauthorization Act and testified against the Obama NLRB efforts to streamline the union certification process to prevent employers from using delay to undermine union campaigns. He also lobbied to make union decertification easier under the Railway Labor, promoted union "deauthorizations", advocated for easier union decertification on the Grover Norquist Show, and testified before the Labor Department on "regulations that threaten the stability of American Businesses." Brown and Smith, along with Russ have also testified in favor of easier

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decertification under the airline industry.

Amazon Campaign Demonstrates Urgent Need for PRO Act

The PRO Act, which passed the House of Representatives for the second time in March,would limit several employer anti-union actions, including captive audience meetings and election delaying tactics, increase penalties for discrimination against union supporters and require prompt reporting by employers who engage consultants and law firms for the purpose of getting employees to reject unionization. Scholars have long-since learned to be pessimistic about the prospects for labor law reform. Under the Obama Administration, the failure of the Employee Free Choice Act demonstrated that labor cannot withstand the lobbying of the anti-union right under normal circumstances. The PRO Act has already encountered stiff opposition, but if Amazon's conduct at Bessemer comes under intense public scrutiny, this time could be different. Thanks to the video criticizing Amazon's anti-unionism tweeted by President Biden and the RWDSU's inspirational campaign at Bessemer, the PRO Act is arguably now in a league that EFCA failed to achieve. Amazon's relentless anti-union campaign will likely play a central role in union messaging on the PRO Act now that they have gotten the country's attention.

Labor rights is an issue whose time has come.

John Logan is Professor and Director of Labor and Employment Studies at San Francisco State University.

[i] https://olmsapps.dol.gov/query/orgReport.do?rptId=740712&rptForm=LM20Form; https://theintercept.com/2021/02/10/amazon-alabama-union-busting-koch/

[ii] https://www.bloomberglaw.com/product/blaw/bloomberglawnews/daily-labor-report/XDO8UHS0000000?bc=W1siU2VhcmNoICYgQnJvd3NlIiwiaHR0cHM6Ly93d3cuYmxvb21iZXJnbGF3LmNvbS9wcm9kdWN0L2JsYXcvc2VhcmNoL3Jlc3VsdHMvYzk5NGZkYWY2Njk3ODRlZWY1ZWMwNDFmNTU4N2I1MWIiXV0–4b7364334cc7ae9ee73746b2a39fefa3bcbfd714&bna_news_filter=daily-labor-report&criteria_id=c994fdaf669784eef5ec041f5587b51b&search32=z06D2qAaUyOlZ5RoTngirA%3D%3DAFxBuzXRrdQ1eS8JhXb75fLUkPDQjTdd3oCq3KwQ-HHDP0xweicPLMSsdCqq59RV_jlTjPNdfq8FAgUVzbrDJ7Oc9jwyLuv_QVo0oiA1us7ZhFnB13ZPEVTUhGezjqnjtiFX8AfvZ8tlbvpuSJmU_A%3D%3D

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[iii] https://files.epi.org/uploads/LM20_C525_01_28_2013_525631-copy.pdf

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Author



- John Logan

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