Emerald Books

Advances in Industrial and Labor Relations
Volume 20

Advances in Industrial and Labor Relations

David Lewin
Paul J. Gollan
Editors

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS

Series Editors: David Lewin and Paul J. Gollan

Recent Volumes:

Volumes 1–2:	Series Editor: David B. Lipsky, Advances in Industrial and Labor Relations
Volume 3:	Series Editors: David Lewin and David B. Lipsky, Advances in Industrial and Labor Relations
Volume 4:	Series Editors: David Lewin, David B. Lipsky and Donna Sockell, Advances in Industrial and Labor Relations
Volume 5:	Series Editors: David Lewin, David B. Lipsky and Donna Sockell, Advances in Industrial and Labor Relations
Volume 6:	Series Editors: David Lewin and Donna Sockell, Advances in Industrial and Labor Relations
Volume 7:	Series Editors: David Lewin, Bruce E. Kaufman and Donna Sockell, Advances in Industrial and Labor Relations
Volumes 8–16:	Series Editors: David Lewin and Bruce E. Kaufman, Advances in Industrial and Labor Relations
Volumes 17–18:	Series Editors: David Lewin, Bruce E. Kaufman and Paul J. Gollan, Advances in Industrial and Labor Relations
Volume 19:	Series Editors: Alison Barnes and Lucy Taksa, Rethinking Misbehavior and Resistance in Organizations

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS
VOLUME 20

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS

EDITED BY

DAVID LEWIN
UCLA Anderson School of Management, Los Angeles, CA, USA

PAUL J. GOLLAN
Macquarie University, Sydney, New South Wales, Australia;
London School of Economics, London, UK

United Kingdom – North America – Japan
India – Malaysia – China

Emerald Group Publishing Limited
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2012

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN: 978-1-78190-377-3
ISSN: 0742-6186 (Series)

Certificate Number 1985
ISO 9001
ISO 14001

ISOQAR certified Management Systems, awarded to Emerald for adherence to Quality and Environmental standards ISO 9001:2008 and 14001:2004, respectively

INVESTOR IN PEOPLE

CONTENTS

LIST OF CONTRIBUTORS

Ariel C. Avgar	School of Labor and Employment Relations and College of Medicine, Champaign, IL, USA
Paul J. Gollan	Macquarie University, Sydney, New South Wales, Australia; London School of Economics, London, UK
Jonathan Hamberger	Faculty of Business and Economics, Macquarie University, Sydney, New South Wales, Australia
Mark Harcourt	Department of Strategy & HRM, Waikato Management School, Waikato University, Hamilton, New Zealand
Geraint Harvey	Swansea University School of Business, Economics and Law, Swansea University, Swansea, UK
Helen Lam	Centre for Innovative Management, Faculty of Business, Athabasca University, Alberta, Canada
David Lewin	UCLA Anderson School of Management, Los Angeles, CA, USA
David B. Lipsky	ILR School, Cornell University, Ithaca, NY, USA
John Logan	San Francisco State University, San Francisco, USA; UC Berkeley Labor Center, University of California, CA, USA
John E. McCarthy	School of Management and Labor Relations, Rutgers University, New Brunswick, NJ, USA

Saul A. Rubinstein School of Management and Labor Relations, Rutgers University, New Brunswick, NJ, USA

Jiong Tu Human Resources and Skills Development Canada, Quebec, Canada

Peter Turnbull Cardiff Business School, Cardiff University, Cardiff, UK

INTRODUCTION

David Lewin and Paul J. Gollan

Volume 20 of *Advances in Industrial and Labor Relations* (AILR) contains seven chapters that deal with important aspects of employment relationships in a variety of industries, countries, and research contexts. The first three papers, each of which analyzes the effects of an exogenous variable (e.g., fiscal adversity, globalization, and new technology) on labor–management relations, have specific industry/sector settings, namely, public schools (primary education), civil aviation, and nursing homes (health care), respectively. The first and third of these chapters are set in the United States, the second in Britain. The next four chapters, each of which analyzes the effects of enacted or contemplated legislation on specific aspects of labor–management relations and workplace dispute resolution, are set in Canada, Australia, New Zealand, and the United States, respectively. The research designs featured in these papers include quasiexperimental, case studies, interviews, surveys, and simultaneous equation modeling.

In the first chapter, Saul A. Rubinstein and John E. McCarthy focus on an issue of major contemporary significance, namely, public school reform in the United States. In citizen debate and media coverage about this matter and in the actions taken by many U.S. state and local governments during the later 2000s and early 2010s, public school teachers, especially unionized teachers, have been portrayed as the leading opponents of reform. This position was (perhaps unwittingly) reinforced by the No Child Left Behind and Race to the Top initiatives undertaken by the George W. Bush and Barack Obama administrations, respectively, which emphasize student achievement on standardized tests to the virtual exclusion of all other factors, and which hold teachers largely responsible for student performance on such tests. In the wake of these initiatives but also as a consequence of the 2007–2009 Great Recession, public school teachers have increasingly been laid off from their jobs and increasingly pressed to improve the quality of their teaching or face various sanctions, including dismissal. (For related

analyses that go well beyond public education, see Lewin, Keefe, & Kochan (2012) and Lewin (2012).)

Running counter to these developments are examples of labor–management cooperation in certain school districts that address both student performance and teaching quality. Rubinstein and McCarthy provide detailed analysis of these labor–management partnership initiatives in six school districts – Cerritos, California; Hillsborough, Florida; Norfolk, Virginia; Plattsburgh, New York; St. Francis Minnesota; Toledo, Ohio. The authors' extensive interview data and archival analysis shows how in each of these school districts the parties chose to collaborate with each other (and sometimes with parents and other community representatives) for the purposes of improving student performance and the quality of teaching. Some of these initiatives were undertaken within the context of collective bargaining, while others occurred outside of bargaining.

An especially notable aspect of the authors' analysis concerns the sustainability of the aforementioned initiatives, which they show is heavily dependent on the stability of school management and union leadership, common identification of strategic priorities, the development of a collaborative culture emphasizing shared governance and decision-making, provision of professional development opportunities and resources to front-line teachers, and sustained support from boards of education, national teacher unions, and local community representatives. Most of all, say Rubinstein and McCarthy, public school education reform and improvement must be seen as a systems-level challenge rather than an isolated student performance or teacher quality or resource shortage problem.

In the second chapter, Geraint Harvey and Peter Turnbull analyze changes in collective bargaining relationships and power in the British civil aviation industry. For this purpose, they concentrate on British Airways (BA) and the British Air Line Pilots' Association (BALPA). Following a succinct review of the research literature on bargaining power, the authors summarize key changes in aviation industry product and labor markets and in regulation as they bear upon bargaining power in this industry. Product market changes notably feature the entry of low cost airlines into the European market, which undermine union bargaining power at traditional air carriers. Deregulation of the civilian aviation industry reinforces this development. By way of example, BA was able to establish a new subsidiary, OpenSkies, which operates with a new, lower-paid workforce – an arrangement that continues despite protests from and legal challenges posed by the BALPA. The market penetration of this and other low cost airlines now exceeds 50% in Britain and in certain other European nations.

At the same time, BA (and other air carriers) has initiated partnership agreements to foster cooperation between management and labor, illustrated by BA–BALPA Guiding Principles specifying mutual trust and respect. These agreements appear similar in concept to the employee participation initiatives adopted by many U.S. companies, sometimes as competitors to unions and at other times in a unionized context. Harvey and Turnbull's survey data, collected from British airline pilots in 2002 and 2010, show that while these pilots agree with the concept of a partnership approach, they are least likely to agree that such an approach should be pursued with airline management. In other words, they agree with the principle but not the practice, which in turn suggests that they don't trust airline management – a conclusion further supported by BALPA members' pronounced willingness to engage in strikes to achieve their bargaining goals.

The authors' survey data also show that BALPA members express strong solidarity with fellow members, in contrast to their diffidence about and even opposition to the actions taken by other civilian industry aviation unions (e.g., ground staff and cabin crews). This analysis indicates that the BALPA is increasingly isolated, both within and outside of its industry. The substantial increase in the low cost model within British and, more broadly, European civil aviation, strongly supported by enabling legislation that includes the loosening of licensing standards for pilots, translates into a reduction in the BALPA's bargaining power. A key question in this regard, posed by Harvey and Turnbull, is whether the BALPA and its counterparts elsewhere in Europe (who are members of the European Cockpit Association) can organize the developing international civil aviation industry labor market and thereby recapture traditional bargaining power.

The third chapter, by David B. Lipsky and Ariel C. Avgar, evaluates the introduction of electronic medical records (EMR) into nursing homes located in the greater New York City region. These organizations were part of an EMR Demonstration Project co-sponsored by the for-profit segment of the nursing home industry in the region and unions that represented frontline staff in these nursing homes. The research, which was conducted over a four-year period, focused on the effects of EMR adoption on employment and labor relations in the participating organizations. The authors' quasiexperimental research design included 15 organizations – nursing homes – that received the EMR technology and five "control" organizations that did not receive the EMR technology. Quantitative and qualitative data were collected at two points in time, namely, pre- and post-ERM implementation. Empirically, the authors find that identical EMR

technologies installed at the same costs in the nursing homes they studied nevertheless produced different healthcare outcomes, enhancing some and detracting from others. Similarly, identical training in the use of EMR that was provided to the employees of these nursing homes also produced differential employee performance outcomes.

Regarding the first of these findings, the authors highlight the importance of pre-existing organizational factors as predictors of EMR-associated outcomes, in particular, leadership capability and organizational EMR adoption strategy. Further, while the effective use of EMR depends to some extent on the technical aspects of EMR, it depends even more on organizational characteristics, physician practices, and staff capability. Stated differently, this study shows that an identical health care technology introduced into a sample of nursing homes produces (i.e., is associated with) differential outcomes, which are in turn strongly influenced by organization-specific characteristics, including health care and employee management policies and practices.

In the fourth chapter, Jiong Tu analyzes the impact of replacement worker bans in Canada on the outcomes of collective bargaining during the period from 1967 to 2009. Following a review of the extant literature on this topic, the author introduces and describes the data that he assembled for this study. It consists of two previously separate databases, one on collective bargaining agreements, the other on work stoppages, both of which were drawn from the Labor Program of Human Resources and Skills Development Canada (HRSDC). Not only does this merged data set allow for the relatively accurate estimation of collectively bargained terms and conditions of employment and the incidence of work stoppages, it also enables the author to fill a methodological gap in the literature by estimating a simultaneous equation model that takes into account interrelationships between work stoppages and wage settlements in Canada over more than four decades. Another notable feature of this research is that it covers the service and nonservice sectors, the former having been largely neglected in prior research and the latter including more than just manufacturing.

Tu finds that under a temporary replacement worker ban, the incidence of work stoppages increases significantly in the service sector but decreases significantly in the nonservice sector. He also finds that, under this ban, work stoppages last significantly longer but wage settlements grow significantly more slowly in both sectors. Turning to the effects of a permanent replacement worker ban, the author finds that the majority of these effects are statistically insignificant. However, a permanent ban is significantly associated with increases in the incidence of work stoppages in the service

sector and with lower wage growth rate in the nonservice sector. Finally and consistent with other studies, Tu concludes that although employers and unions are motivated by economic incentives and appear to behave rationally in this regard, the incidence, nature, and duration of work stoppages in Canada are often driven by psychological factors in the collective bargaining process.

In the fifth chapter, Jonathan Hamberger analyzes workplace dispute resolution procedures (DRPs) in Australian enterprises. Unlike in the United States and the United Kingdom, there is very little empirical research on whether and how Australian organizations use DRPs and on the broader role of such procedures in regulating the employment relationship. Hamberger's research is based on case studies of three large organizations: a bank, a retailer, and a state government agency. These organizations were chosen from a larger group of case studies to illustrate three different approaches to the management of workplace disputes. Data were gathered using a mix of research methods, including interviews with human resource managers and trade union officials and archival analysis of internal as well as publicly available documents (e.g., organizational policies and procedures, enterprise agreements, and court and tribunal records). In addition, one of these three organizations gave the author permission to conduct an online employee survey.

The three organizations share certain features, including the use of DRPs to resolve the great majority of workplace disputes and the adoption of a "dual system" in which specialized internal grievance procedures operate together with DRPs. Hamberger's research, however, indicates that these organizations vary considerably in their underlying approaches to workplace dispute resolution. To illustrate, the Bank's "strategic" approach involves a comprehensive conflict management system whereas the State Government agency's "reactive" approach gives a much greater role to third parties in workplace dispute resolution. The Retailer's "pragmatic" approach incorporates elements from the approaches of the Bank and the State Government agency.

Hamberger's research also indicates that the role of unions is an especially important factor in workplace dispute resolution in each of these organizations. The State Government agency is highly unionized and has very active union delegates. Although unions exist at both the Retailer and the Bank, the levels of union membership and union delegate activity are much lower than in the State Government agency. Further, says Hamberger, the different approaches to workplace dispute resolution taken by these three organizations ultimately reflect the extent to which top

management in each organization takes a strategic view of the management of its human resource. Other notable findings from this research are that most workplace disputes in these organizations are resolved through the use of formal processes without the involvement of industrial tribunals, and that little use is made of third parties beyond that provided by the Australian workplace disputes conciliation framework. Consequently, this research indicates that U.S.-type alternative dispute resolution (ADR) has not emerged and is not operative in Australian workplaces.

In the sixth chapter, Mark Harcourt and Helen Lam analyze interunion conflict in non-exclusive, non-majority representation in New Zealand. Using Section 7 of the U.S. National Labor Relations Act (NLRA) as a comparison, the authors propose that a "new" interpretation could serve as the basis of union renewal by enabling and supporting non-majority, non-exclusive representation as an alternative to union certification and its attendant difficulties. One potential shortcoming of traditional certification of a union as the sole representative of a group of workers is interunion conflict associated with ongoing competition between unions trying to attract each other's members into their respective bargaining units. However, interview evidence collected by Harcourt and Lam from union executives of 14 New Zealand unions, where non-majority, non-exclusive representation already exists, indicates that such conflict is relatively limited. While the authors found that conflicts of various kinds existed among the unions they studied, the level of conflict was generally low and active poaching of members was rare. Hence, the authors conclude that concerns about union rivalry are probably overstated, especially in terms of fights over membership. Sector proximity, rather than overlapping membership coverage, appears to be the leading antecedent of interunion conflict in New Zealand. Further, say Harcourt and Lam, focusing representation on specific areas and issues of most concern to unions and workers, and closely following union federation protocols when interunion conflicts occur, have both contributed to the overall low level of representational conflict among New Zealand unions.

More broadly, these authors draw from their New Zealand-based analysis to propose that the United States allow "minority" unions to represent workers in nonunion workplaces through a re-interpretation of the NLRA, which they say is likely to be within the power of the National Labor Relations Board (NLRB) – a claim that some readers of AILR might challenge. Harcourt and Lam are hardly naive about this matter, acknowledging both policy and practice concerns about minority union representation operating in parallel with exclusive representation for

majority-supported workplaces and workers. Nonetheless, say these authors, minority worker representation of the type they advocate would likely increase union density and enhance democracy in U.S. workplaces. (On this issue, see Gollan and Lewin (2012).)

The Harcourt and Lam chapter serves as a companion to the seventh chapter in this volume, by John Logan, in which he conducts a detailed analysis of an initiative undertaken during the early 1990s under the Clinton administration to reform U.S. labor law. Early in President Clinton's first term, a 10-member commission was appointed to study workplace employment relations and offer recommendations to enhance productivity through labor–management cooperation and employee participation, stimulate cooperative union–management relations, and increase the internal resolution of workplace disputes, thereby reducing the parties' use of regulatory bodies and the courts to settle such disputes. Professor John T. Dunlop, a former U.S. Secretary of Labor, prominent mediator, and a leading labor relations scholar, headed the commission. Unsurprisingly, this commission quickly became known as the Dunlop Commission.

In mid-1994, the commission issued a fact-finding report that addressed such matters as card check-based union recognition (of the type practiced in Canada), the use of interest arbitration in all first contract cases, and the compatibility (or lack of it) of employer-initiated employee participation programs with the National Labor Relations Act (NLRA) prohibition of employer-dominated labor organizations. Logan shows how management and union representatives individually and collectively sought to influence the commission's thinking about these issues as well as its subsequent recommendations. In this regard, the parties initially displayed varying degrees of favorable reactions to the commission's deliberations and interim proposals, but soon began jockeying for greater support for their respective traditional positions on the key issues at hand, thereby demonstrating precisely the type of adversarial, win–lose behavior that the commission disfavored.

It was therefore no surprise that management and labor spokespersons alike vigorously criticized the recommendations for labor law reform contained in the commission's final report (issued in January 1995). Logan shows how the commission itself, especially Chairman Dunlop, miscalculated the strength of management and labor's apparent initial support for certain of its recommendations. Shortly after issuance of this report, two Republican senators introduced the Teamwork for Employees and Management (TEAM) Act, which would have essentially repealed the NLRA prohibition on company unions. This act was later passed by both the U.S.

House of Representatives and the Senate, but was subsequently vetoed by President Clinton. Logan concludes his analysis by showing how these mid-1990 s events contributed to and in some respects replicated the ultimate demise of the Employee Free Choice Act (EFCA) during the mid- to late 2000s.

REFERENCES

Gollan, P. J., & Lewin, D. (forthcoming). Employee representation in non-union firms. *Industrial Relations, 52* (Special Issue).

Lewin, D. (2012). Effects of deep recession on public sector pay, benefits and employment. In: D.J.B. Mitchell (Ed.), *Public jobs and political agendas* (pp. 13–40). Champaign, IL: Labor and Employment Relations Association.

Lewin, D., Keefe, J. H., & Kochan, T. A. (2012). The new great debate about unionism and collective bargaining in U.S. state and local governments. *Industrial and Labor Relations Review*, *65*(4), 747–776.

PUBLIC SCHOOL REFORM THROUGH UNION-MANAGEMENT COLLABORATION

Saul A. Rubinstein and John E. McCarthy

ABSTRACT

Over the past decade the policy debate over improving U.S. public education has focused on market solutions (charter schools, privatization, and vouchers) and teacher evaluation through high stakes standardized testing of students. In this debate, teachers and their unions are often characterized as the problem. Our research offers an alternate path in the debate, a perspective that looks at schools as systems – the way schools are organized and the way decisions are made. We focus on examples of collaboration through the creation of long-term labor-management partnerships among teachers' unions and school administrators that improve and restructure public schools from the inside to enhance planning, decision-making, problem solving, and the ways teachers interact and schools are organized. We analyzed how these efforts were created and sustained in six public school districts over the past two decades, and what they can teach us about the impact of significant involvement of faculty and their local union leadership, working closely with district administration. We argue that collaboration between

Advances in Industrial and Labor Relations, Volume 20, 1–50

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020004

teachers, their unions, and administrators is both possible and necessary for any meaningful and lasting public school reform.

Keywords: Collaboration; school reform; union-management partnership; teachers; public schools

INTRODUCTION

For most of the past decade the policy debate over improving U.S. public education has centered on teacher quality. In this debate, teachers and their unions have often been seen as the problem, not part of the solution. Further, current discourse often assumes that conflicting interests between teacher unions and administration is inevitable. What is missing in the policy discussion, however, is a systems perspective on the problem of public school reform that looks at the way schools are organized, and the way decisions are made. Most public schools today continue to follow an organizational design better suited for twentieth century mass production than educating students in the twenty-first century.

This study offers an alternate path in this debate —a counterstory that looks at schools as systems. It focuses on examples of collaboration among stakeholders through the creation of labor-management partnerships among teachers' unions, school administrators, and school boards. These partnerships improve and restructure public schools from the inside to enhance planning, decision-making, problem solving, and the ways teachers interact and schools are organized.

We base our findings on the analysis of six excellent examples of how teachers and their unions have been critical to improving public education systems in collaboration with administration. This research is an effort to analyze and improve understanding of how these innovative districts have fostered collaborative approaches to curriculum development, scheduling, budgeting, strategic planning, hiring, subject articulation, interdisciplinary integration, mentoring, professional development, and evaluation, among others.

Specifically, we studied how these efforts were created and sustained over the past two decades, and what they can teach us about the impact of significant involvement of faculty and their local union leadership, working closely with district administration, to share in meaningful decision-making

and restructure school systems. The research shows that collaboration between teachers, their unions, administrators, and school boards is both possible and necessary for any meaningful and lasting public school reform.

We hope these findings and examples will be helpful to other school districts and local unions that want to pursue a strategy of collaborative school reform. We also hope it will encourage policy makers to design incentives for greater collaboration among teachers' unions, administrations, and boards of education. In addition, we want to encourage more research into the forms of collaboration that lead to school improvement, and particularly to the unique role that teachers' unions can play in these reform efforts.

BACKGROUND

Overview of Public School Reform Efforts

Reform Through Scientific Management

Public Schools in the United States today continue to carry the legacy of organizational and management principles developed a century ago by Frederick Taylor. Taylor clearly delineated the work of management (planning and thinking) from that of labor (implementing management's plans). His *Principles of Scientific Management*, published in 1911, was heralded by many scholars and education leaders as an objective scientifically grounded means by which to ensure that teachers and teaching methods were efficient, and that the materials that students were taught complied with standards (Brooks & Miles, 2008; Callahan, 1962; Emery, 2007; Nelson & Watras, 1981). Some drew explicit analogues between schooling and factory work, viewing children as the raw materials to be molded by teachers to meet the needs of society, as if progressing along an assembly line[1] (see Rogoff, Matusov and White, 1996).

Just as scientific management in manufacturing attempted to separate labor from decisions regarding the appropriate method of work, scientific management in schools attempted to remove or minimize teachers' influence over important matters regarding children's schooling (Callahan, 1962; Emery, 2007; Nelson & Watras, 1981). This is because matters of curriculum development were believed to be too complex to be left to teachers or laypeople who were unfamiliar with popular managerial theory: "Only those who had studied the textbooks, read the research, taken the courses and

mastered the theories could be permitted to decide what children should learn'', as well as how they should learn it (Ravitch, 2001, p. 164). The model envisioned by proponents of scientific management in education was one in which administrators worked to develop the best curriculum, learning materials, instructional plans, and metrics for evaluation, and then passed these guidelines on to teachers, who were expected to faithfully carry them out. As the University of Chicago's Franklin Bobbitt wrote in 1914, for example, administrators "[…] must find the best methods of work, and they must enforce the use of these methods on the part of workers,'' adding that ''Directors and supervisors must keep workers supplied with detailed instructions as to the work to be done, the standards to be reached, the methods to be employed, and the materials and appliances to be used'' (cited in Callahan, 1962, p. 80).[2]

This movement of applying industrial "efficiency'' techniques to education spread quickly. Principals took on the role of middle managers. Superintendents assumed an executive role, establishing curriculum, instructional practices, and standardized metrics for evaluating performance throughout the district as a whole. In 1913, the *American School Board Journal* published that large school districts throughout the country had implemented elaborate plans to evaluate and improve teacher efficiency. Providing an example, Frank Spaulding, the superintendent of public schools for Newton, Massachusetts, explained during a 1913 speech to fellow administrators how his district had gainfully used pupil-recitations-per-minute to gauge the relative efficiency of teachers across subjects. To Spaulding, the goal of education was to evaluate the value gained per dollar spent on student learning. Upon finding that teachers in his school district only produced Greek recitations at a rate of 5.9 for a dollar, Spaulding insisted that, "the price must go down, or we shall invest in something else'' (cited in Callahan, 1962, p. 72).

The efficiency movement attempted to transition teachers from philosophers of education, actively engaged in determining what should be taught and how to teach it, to passive instruments for fulfilling whatever pedagogical techniques were laid down from up high (Callahan, 1962; Oakes, 1986). Knowledge became divided into ever-smaller areas, sequestered by classrooms and deemed valuable only insofar as it bore association with defined, measurable outcomes (Oakes, 1986). Teacher opposition bubbled to the surface (Callahan, 1962; Oakes, 1986). *The American Educator*, for example, which would become the journal of the American Federation of Teachers (AFT), criticized the efficiency movement on the

grounds that standardized assessments were demoralizing and dehumanizing schools. One teacher wrote in the journal in 1912:

> The organization and the methods of the school have taken on the form of those commercial enterprises that distinguish economic life. We have yielded to the arrogance of 'big business men' and have accepted their criteria of efficiency at their own valuation, without question. We have consented to measure the results of educational efforts in terms of price and product – the terms that prevail in the factory and the department store. But education, since it deals in the first place with organisms, and in the second place with individualities, is not analogous to a standardizable manufacturing process. Education must measure its efficiency not in terms of so many promotions per dollars of expenditure, nor even in terms of so many student-hours per dollar of salary; it must measure efficiency in terms of increased humanism, increased power to do, increased capacity to appreciate. (cited in Callahan, 1962, p. 121)

Teachers objected to the standardization of their craft not just because it undermined their agency as educators but because it miscalculated what was of value, emphasizing cost-per-student and a quantifiable gain at the expense of what was less tangible but nonetheless important.

Child-Centered Progressive Reform

The progressive movement emerged as a counter to the factory model of education. The movement's intellectual leader, John Dewey, chastised the efficiency movement on the grounds that the methods undertaken in the name of measurement were often superficial, with little relation to student learning. As fellow progressive and contemporary of Dewey, William Bagley, of Teachers College, warned:

> … nostrums, panaceas and universal cure-alls in education are snares and delusions. In a field of activity so intricate and so highly complicated as ours, it is both easy and disastrous to lose perspective. […] We must give up the notion of solving all of our problems in a day, and settle down to patient, painstaking, sober and systematic investigation. (Bagley, 1912, p. 281)

Progressives did not believe that reforming education was a matter of tighter oversight or cost management strategies, nor did they believe that a quality education resulted from one-way transactions between a teacher and student, where the teacher spoke and the student memorized. In their view rote learning was unlikely to resonate with children in any meaningful way, and thus student interest was likely to be low, and their comprehension superficial. Instead, a quality education came about from classroom activities and close, personal interactions between educators and students that made learning fun and relatable to life (Gehrke, 1998). Under

progressive theory the teacher should be the conductor – facilitating experiments, drawing connections, and bringing the process of learning to life. And thus at the foundation of an effective school system would be excellent schoolteachers who excelled not in following prescribed plans but in *making* learning dynamic, real, and meaningful to the students they taught (Cote, 2002; Gehrke, 1998).[3]

Many school districts throughout the country adopted programs that incorporated students' interests (Ravitch, 2001), and residues of progressivism endured well into the 1960s and 1970s (Hargreaves & Shirley, 2009). Educators during this period held considerable autonomy, left alone for the most part to carry out teaching as they wished or as they saw fit (DuFour, DuFour, & Eaker, 2008). Those heavily influenced by progressivism eschewed a formal curriculum in favor of cultivating children's interests. Others saw in their teaching an opportunity to improve the world, and so strove to shape students in accordance to their personal visions or values. Still others, traditional and conservative, enjoyed their freedom to teach long, drawn-out lectures that reflected their depth of knowledge about a particular subject, but made little effort to engage students in the materials being taught (Ravitch, 2010). Thus, there was no coherent framework for what American education should look like. And that many teachers continued to work in isolation, a legacy of Taylorism, without conversing or reflecting with other educators, meant that "[f]ads were adopted uncritically." The result was unfortunate: "Many young radicals turned schools upside down during their brief tenures before moving on to greener pastures" (Hargreaves & Shirley, 2009, p. 5).

Reform Through Policy: Standards and Markets

Published in 1983, *A Nation at Risk* (ANAR) was a direct response to the unstructured, freewheeling reforms of the previous decades (Ravitch, 2010). The report warned that American education had been "eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people," and that schools had "lost sight of the basic purposes of schooling …" (cited in Skinner, 1984, p. 947). The report was not federal policy, but nonetheless made strong recommendations for the future of American education. To regain our bearings and ensure the vitality of our economy, for example, the report encouraged more rigorous curricula firmly dedicated to mathematics, English, science, social studies, computer science, and foreign languages. It also encouraged higher learning standards, a longer school year, and a more competitive market for teachers, such that teachers would master specific disciplines as well as earn salaries that were "professional, competitive,

market-sensitive and performance based'' (Kelley & Finnigan, 2004, p. 256). It was thus a warning and a rallying cry. It is unclear the extent to which ANAR actually improved teaching quality (DuFour et al., 2008). Where it clearly succeeded, however, was in bringing education and student achievement center stage and to the forefront of a national debate (Ravitch, 2010).

Since the publication of ANAR, the growing perception in this country has been that America's education system has fallen sharply off course, and that decisive involvement by the federal government is necessary to help America gain its competitive bearings. Active federal involvement in school reform gained momentum in the late 1980s, as the Department of Education, under the presidency of George H.W. Bush, began awarding funding to national organizations of teachers and scholars to develop voluntary standards in science, history, English, and other core subjects. The resultant standards were intended to ''create a coherent framework of academic expectations that could be used by teacher educators, textbook publishers and test developers'' (Ravitch, 2001, p. 432). These efforts fell apart in 1994, however, after conservatives attacked the standards for what they perceived as political bias (Ravitch, 2010). History standards became particularly contentious grounds, viewed by the right as emphasizing our nation's historical shortcomings over our achievements. Although the Clinton administration enacted Goals 2000 in 1994, which gave federal money to states to write their own standards, the actual recommendations that were developed were vague so as to avoid controversy. ''Most of the standards were windy rhetoric,'' explains Ravitch (2010, p. 19), ''devoid of concrete descriptions of what children should be expected to know and be able to do.''

No Child Left Behind (NCLB), passed by congress in 2001 under the presidency of George W. Bush, did away with a federally assigned oversight committee, and allowed states the flexibility to define standards and assessment protocols. In broad terms, NCLB mandated that all students be taught by ''highly qualified'' teachers, with ''challenging'' standards, and that all students test at grade level in reading and math by 2014. All states under NCLB were expected to develop their own assessments for each grade. Any school receiving federal funding was required to administer statewide standardized tests to all students. NLCB rested on the logic that the problem with education was inadequate expectations and accountability. Thus, setting high standards and well-articulated goals, along with greater monitoring through standardized tests, would improve student outcomes across the board. States were provided leeway in determining their

own standards. However, these standards were expected to be "challenging" (Ravitch, 2010) and schools that failed to meet adequate yearly progress (AYP) were to be labeled as being in need for improvement. For schools that repeatedly failed to meet progress standards for 3 years, corrective action would be taken, which might include increased class-time, curriculum changes, or the replacement of the entire school staff. If school failure persisted further, the school might be closed down entirely, turned into a charter school, or transitioned to private ownership.

The most recent major reform initiative, *Race to the Top* (RTTT), which began in 2009 under the Obama administration, creates competition between states and schools to get a stake in $4.35 billion of federal funding. Points are awarded to states for the rigor of their standards and assessments, their use of data to measure and evaluate teachers, and their openness and willingness to accommodate charter schools, or privately run schools who nonetheless receive federal funding. States that are judged to have the best plans across these areas receive funding, based on their size and needs, while other states, that do not make the grade, or that choose not to participate, do not. To qualify for funding states have to agree to evaluate and reward teachers in part based on the results of their students' performance on high stakes standardized tests to accommodate privately run charter schools and to remedy perennially low performing schools by such means as mass firings or school closure.

The federal initiatives of the past decade are essentially bureaucratic and market approaches to reform (Darling-Hammond, 2009). With parallels to the efficiency movement of the early twentieth century, the *bureaucratic approach* operates under the "assumption that if [educators] adhere to the rules – teaching the prescribed curriculum, maintaining the correct class sizes, using the appropriate textbooks, accumulating the right number of course credits – students will learn what they need to know" (DuFour & Eaker, 1998, p. 22). Decision-making about core issues under the bureaucratic model is removed from those who carry out the task of teaching, while student learning and teacher effectiveness are viewed as something distillable to a set of core criteria that can be precisely measured and used for evaluation and comparison. *The market approach*, increasingly interwoven with the bureaucratic model, seeks to expose schools to the forces of the competitive marketplace. By the logic of market strategies, the problem with American education is the withheld discretionary effort by teachers that results from a lack of accountability, incentives, and pressure (Darling-Hammond, 2009). With greater competition through charter schools, vouchers, and privatization, there will be less job security for teachers and

they will be motivated to work harder and more effectively. Schools that lag behind must improve or risk closure. Charter schools are seen to hold special promise because they operate outside the restrictive policies of the district bureaucracy and accompanying union rules (Carpenter & Noller, 2010).

Despite their political popularity, the evidence is at odds with bureaucratic high-stakes testing and market-driven reform strategies. Surveys have shown that few educators view these policies favorably (Sunderman, Tracey, Kim, & Orfield, 2004). Beyond issues of commitment, there is evidence that these policies may directly undermine effective education systems to the extent that discourage deep engagement with subject matter, encourage educators to game the system by recategorizing students or altering their test scores directly, or encourage the best teachers to leave the schools in which students need them the most (Darling-Hammond, 2004).

Performance data are also unremarkable. Achievement gaps between white and minority students have remained roughly static since 1970 (Dillan, 2009), and a comparison of recent SAT scores by demographic categories suggests that they have in fact widened since 1999, not lessened, as intended by NCLB (Tan, 2010). Whatever gains to standardized tests have been realized are undermined by research showing that the gains achieved to certain tests, for which students have been carefully coached, often do not generalize to improvements on other standardized tests with comparable material (Koretz, 2008). Instead of encouraging teachers and schools to work for the best interests of children, there is evidence that these policies are encouraging educators to categorize students as special needs so that they do not "count" and therefore do not lower school averages (Figlio & Getzler, 2002). More emphasis is being given to students who are best able to reach proficiency, while struggling students are effectively "hidden" and given less attention.

Criticism of narrow testing has also re-emerged. Research has demonstrated that reliance on standardized test score gains as the penultimate proxy for student achievement has narrowed the content of curricula, especially as teachers' and administrators' jobs and salaries are becoming contingent on their students' scores (Darling-Hammond, 2004; Ravitch, 2010). Teachers are being driven to teach strategies for answering particular types of questions, rather than taking the time to address the deeper conceptual issues that underlie them. Evaluating teachers based on their students improvement on standardized tests is also questionable statistically since students are not randomly assigned to classrooms but are placed by student or parent preference, or because a certain teacher is better at

handling certain types of children (Ravitch, 2010). A teacher who appears to be a highly effective teacher one year, on the basis of their students' test scores, may be among the worst performers the subsequent year (McCaffrey, Sass, Lockwood, & Mihaly, 2009). It is not surprising, in this light, that widespread cheating has been reported across the country, including in model districts (Ravitch, 2010). Nor is it surprising that the best teachers, with the greatest mobility, are pursuing employment in schools where students are easier to teach, and where school stability is high (Darling-Hammond, 2004).

Instead of standardized test gains, scholars suggest that the most sought after outcome for education moving forward should be systems that promote commitment, continued learning, and informed experimentation among highly trained professionals (DuFour & Eaker, 1998; DuFour et al., 2008; Darling-Hammond, 2004; Evans, 2001; Fullan, 1993, 2001, 2007, 2010). The argument is that educational change, like organizational change, is an inherently human and social endeavor. Reform by mandate neglects the human side of organizations under the assumption that what is forcefully implemented at the top will be faithfully carried out by those in the classroom. However, research shows that successful, sustained reform requires that educators be committed to the goals and strategies that will be collectively undertaken (Evans, 2001). This does not imply that continuous improvement, as an end-goal, is negotiable (Fullan, 2010). It is not progressivism refashioned. It means that teachers should be involved in decisions regarding how standards will be used, which instructional practices and learning materials will be incorporated, and how assessment will be implemented, so as to encourage shared goals and decisions that educators are committed to carrying out (see Stoll, Bolam, McMahon, Wallace, & Thomas, 2006 for review).

The evidence on charter school effectiveness has also been mixed, with positive or negative findings depending on the researcher and particular issue in question (Darling-Hammond & Montgomery, 2008). On the positive side, several studies show some charter schools to be effective and suggest that their quality improves over time, possibly reaching or exceeding the performance of traditional public schools (Hoxby, 2004). However, there is little evidence that charter schools in the aggregate perform any better than traditional schools. Eberts and Hollenbeck (2002) found that students enrolled in charter schools suffered lower performance gains relative to students in traditional public schools, controlling for student, district, building, among other potential confounders. Likewise, a study by BiFulco and Ladd (2006) found that the test score improvements of charter

school students were significantly lower than of students in public schools. One recent and comparatively exhaustive study was conducted by the Center for Research on Educational Outcomes at Stanford University in 2009. This study analyzed 70 percent of the nation's charter schools. It found that 17 percent of the studied charter schools observed significant performance improvements relative to traditional public schools, 37 percent performed significantly worse than traditional public schools, while 46 percent made no significant difference in student scores (Ravitch, 2010, p. 142).

Union-Management Collaboration in School Reform

Finally, an area of school reform that has gone largely unexplored is the potential for collaboration between teachers' unions and administration directed at school improvement. Some researchers have recognized that a quality partnership between district management and the local union may help to create an environment conducive to teamwork and professional community (e.g., DuFour et al., 2008; Fullan, 2007). The underlying assumption is that reform will be more sustainable when both labor and management share the same vision, and agree on the appropriate course for carrying it out.[4] The role of the union in directly promoting district innovations has also been recognized, but to a very limited degree and without much elaboration.[5] Providing an exception, Koppich (2005) has studied a small number of "reform-bargaining" school districts, including Minneapolis, Denver, and Montgomery County, Maryland, in which collective bargaining contracts extend well beyond wages and working conditions into education policy and the quality of teaching and learning. To date, however, with few exceptions (Beach & Kaboolian, 2005), we have very few cases in the literature that deal with collaborative reform efforts and have a broad focus on the improvement of the overall operations of school districts from the school board to the classroom, including teaching and student performance. Our research attempts to fill that gap through exploring cases of successful collaboration between teachers and administrators, and sustained over decades by joint union-management institutional partnerships. This study is also unique in analyzing how these partnerships emerged, were structured, contributed to school quality, and endured over long periods of time.

Market solutions – vouchers, charters and privatization – are often based on a view that teachers unions are not part of the formula for school improvement and instead are part of the problem and promote the interests of their members at the expense of students. For example, a number of

scholars have concluded that while some outcomes of bargaining, such as decreased student-teacher ratios, and greater preparation time for teachers, may bring about better educational environments, these are largely coincidental co-variants between what teachers want, on the one hand, and what improves learning outcomes, on the other. Other outcomes, including those "that strengthen districts' reliance on seniority, reject differentiated roles for teachers, or guaranteed dogged defense of competent and incompetent teachers alike," are unlikely to bring about the same benefits to students (Johnson & Donaldson, 2006, p. 138).

Yet, while privatization and market solutions are being sought by some educators and policy makers, there is a long history in the private sector of joint union-management collaboration to improve organizational performance. For example, this dates back to the 1920s in the textile, apparel, and railway industries (Slichter, 1941). Slichter concluded that these collaborative arrangements could resolve contradictions between industrial jurisprudence, which protects worker's rights through a system of rules, and productivity which can be restricted by those rules. These efforts expanded during the organizing drives after the New Deal, and were extensive in the armaments industries during the early and mid-1940s (Golden & Parker, 1949; Golden & Ruttenberg, 1942; Slichter, Healy, & Livernash, 1960). During the crisis of WWII, more than 600 organizations had labor-management joint committees working together to solve quality and production problems in support of the war effort. Most of these arrangements vanished in the 1950s because the urgent need to bolster war-time production disappeared, and management reasserted its claim to managerial prerogatives.

A more recent literature on labor-management partnerships studied these arrangements over the past 30 years as U.S. industries have restructured their work organizations, human resource management, and labor relations systems in the face of global competition (AFL-CIO, 1994; Eaton & Voos, 1994; Eaton, Rubinstein, & McKersie, 2004; Freeman & Rogers, 1999; Hecksher, 1988; Kochan, Katz, & McKersie, 1986; Levine & Tyson, 1990; Osterman, 2000; Piore & Sabel, 1984; Wilkinson, Gollan, Marchington, & Lewin, 2010). These arrangements have been used in a number of U.S. industries including automotive (Adler, 1995; MacDuffie, 1995; Rubinstein, 2000, Rubinstein & Kochan, 2001), computer and business equipment (Cutcher-Gersenfeld, 1987), steel (Frost, 1998; Hoerr, 1988; Ichniowski & Shaw, 1999; Rubinstein, 2003), healthcare (Kochan, Eaton, McKersie, & Adler, 2009), communications (Heckscher, Maccoby, Ramirez, & Tixier, 2003), and pharmaceutical (Rubinstein & Eaton, 2009). Research has shown

that increased participation in decision-making and problem solving, and the use of collaborative team-based work organization, results in substantial improvements to quality and productivity (Appelbaum, Bailey, Berg, & Kalleberg, 2000; Ichniowski, Kochan, Levine, Olson, & Strauss, 1996).

Organizational networks are increasingly important when change is rapid, and flexibility, responsiveness, and problem solving are critical for success. Union-management collaboration facilitates the creation of such networks, linking people across organizations who have the knowledge and resources necessary for rapid coordination, effective decision-making, and problem solving. When unions use their infrastructure to help create these networks, high levels of trust can be created, and this adds tremendous value to organizational innovation, responsiveness, and effectiveness (Kaufman & Levine, 2000; Rubinstein, 2000, 2001; Rubinstein & Kochan, 2001).

Research Methods

This research is an intermediate-level study looking at common patterns across a set of cases rather than looking in great depth within any particular district. While this study is limited in scope to this group of six districts that have long-term experience in creating a collaborative approach to school improvement, this method allows us to draw comparisons across a highly diverse group of local unions and school districts, and find those patterns that are common.

These case studies – ABC Unified School District, Cerritos, California; Hillsborough, Florida; Norfolk, Virginia; Plattsburgh, New York; St. Francis, Minnesota; and Toledo, Ohio – come from across the country, are both urban and rural, large and small. The six districts included in this study were not selected randomly and are not intended to be a representative sample of all school districts nationally. Rather, the AFT recognized these districts as having a lengthy track record of innovation, and because they appear to have institutionalized a long-term collaborative partnership between administration and the local teachers' union centered around school improvement, student achievement, and teacher quality.

Our research team visited all six districts and conducted interviews that included six union presidents, seven current and former superintendents, 19 central office administrators and principals, 15 union representatives and executive board members, 13 teachers and support staff, six board members, and six members of the business community. In addition, we reviewed

archival data including contracts, memorandums of understanding, student performance data, and internal reports. Interviews were recorded, coded, and categorized to establish the common themes, patterns, and experiences. This methodology provides greater generalizability than do individual case studies alone, and deeper understanding of the dynamics of union-management collaborative partnerships than do surveys. Once common themes and patterns are established, they can be tested through larger samples and surveys.

Long-Term Collaborative Partnerships: Common Themes and Patterns

The following common themes and patterns emerged from this study of six school districts that have developed collaborative partnerships over the past two decades to improve student performance and the quality of teaching. They fall into four broad categories. Following each category are sets of common themes:

I. *Contextual motivation or pivotal events*
- *Crisis* motivated the change in the union-management relationship

II. *Strategic priorities*
- Emphasis on *teacher quality*
- Focus on *student performance*
- *Substantive problem-solving, innovation*, and willingness to *experiment*.

III. *Supportive system infrastructure*
- An *organizational culture* that values and supports collaboration
- *Shared governance and management* of the district and *strategic alignment*
- *Collaborative structures at all levels* in the district
- Dense internal organizing of the *union as a network*
- *Joint learning opportunities* for union and management

IV. *Sustaining factors*
- *Long-term leadership* – both union and management, and *recruitment from within*
- *Community* engagement
- Support from the *Board of Education*
- Support from the *National AFT*
- Importance of supportive and enabling *contract language*

Contextual Motivation or Pivotal Events

Crisis or Pivotal Event That Motivated the Change in the Union-Management Relationship. A strike or a vote to strike was the motivation or critical event for most of the districts to seek an alternative direction in their union-management relations. The districts recognized that the adversarial relationships that led to the strike, or vote to strike, were not productive and certainly not in the best interests of teachers, administrators, or students. The union leadership and top management in each district made a choice to change their relationship, which was the first step in establishing a collaborative approach to school improvement.

Strategic Priorities

Emphasis on Teacher Quality. Every district focused on teacher quality as a core goal for collaborative reform and improvement. This included union-led professional development, new systems of teacher evaluation, teaching academies, peer-to-peer assistance, and mentoring programs. As a result, most of these cases reported very low levels of voluntary teacher turnover. However, districts and their unions did make difficult decisions to not support retaining ineffective teachers.

Focus on Student Performance. All of these districts created opportunities for teachers and administrators to work together to analyze student performance in order to focus on priority areas for improvement. Teachers and administrators collaborated on developing data-based improvement plans at the district and school levels. Teachers were also organized into teams at the grade and department level to use student performance data in directing improvement efforts. Districts reported high levels of student achievement, and improved performance, over the course of the partnerships, including schools with high percentages of students on reduced or free lunch.

Substantive Problem Solving, Innovation, and Willingness to Experiment. As a result of these collaborative efforts, all districts have engaged in substantive problem solving and innovation around areas critical to student achievement and teaching quality. These included jointly establishing reading programs in schools with high percentages of students on reduced or free lunch, peer assistance and review programs, collaboratively designed systems for teacher evaluation that measure student

growth, teacher academies focused on professional development, curriculum development, and sophisticated systems for analyzing student achievement data to better focus intervention. The collaborative partnerships, therefore, are vehicles for system improvement, not ends in themselves.

Supportive System Infrastructure

An Organizational Culture That Values and Supports Collaboration. Over time, most of these districts have established a culture of collaboration that promotes trust and individual integrity, and values the leadership and organization that the union brings to the district. Leaders talk of a culture of inclusion, involvement, and communication, as well as respect for teachers as professionals and for their union. Collaboration is simply embedded in the way the district is run.

Shared Governance and Management of the District and Strategic Alignment. All six districts have established district-level joint planning and decision-making forums that allow the union and administration to work together and develop joint understanding and alignment of the strategic priorities of the district. They have also developed a district-wide infrastructure that gives the union significant input into planning and decision-making around curriculum, professional development, textbook selection, school calendar, and schedules. Management is seen as a set of tasks that union leaders must engage in for the benefit of members and students, rather than a separate class of employees.

Collaborative Structures at All Levels in the District. All districts have created an infrastructure that promotes and facilitates collaborative decision-making in schools through building-level teams, school improvement committees, school steering committees, leadership teams, or school advisory councils (SACs) that meet on a regular basis. These bodies are vehicles for site-based decision-making around school planning, goal setting, budgets, policies, dress codes, discipline, and safety. The teams and committees provide for collaborative leadership at all levels of district decision-making.

Dense Internal Organizing of the Union as a Network. Most of these districts have data teams, grade-level teams, and department teams that are led by union members who participate in substantive decision-making about curriculum, instruction, and articulation on a regular basis. In addition, most

districts have developed extensive peer-to-peer mentoring and assistance programs to support professional development that involve significant numbers of teachers as teacher-leaders, master-teachers, or mentors, as well as professional development trainers. When we consider the number of union members appointed to district or school-level committees or teams, along with individual teachers involved as mentors, teacher-leaders, master-teachers, or professional development trainers, in many cases it represents more than 20 percent of the union membership. This results in the union being organized internally as a very dense network, which provides the district with the ability to quickly and effectively implement new programs or ideas. A union-led implementation network is something the administration could not create on its own. It further institutionalizes the collaborative process in the district by embedding collaboration in the way the district does business.

Joint Learning Opportunities for Union and Management. All of these districts have invested heavily in creating opportunities for union leaders and administrators to learn together through shared experiences. This allows for both knowledge acquisition (human capital) and the development of stronger relationships (social capital) between leaders. These opportunities have included sending large numbers – in some cases hundreds – of union leaders and principals to the AFT's QuEST conference; AFT's Center for School Improvement (CSI): AFT's Educational Research and Dissemination (ER&D), university-based programs for union and management leaders; corporate leadership programs; and extensive educational and planning retreats within the districts themselves. As the educational experience is shared between union and administration, leaders are comfortable that they hear the same message and get the same information at the same time. Further, they experience each other not as adversaries, but as colleagues with overlapping interests who can work together to improve teaching and learning.

Sustaining Factors

Long-Term Leadership – Both Union and Administrative, and Recruitment from Within. All of these districts have enjoyed long-term leadership from their union presidents, some going back several decades. Most have also had long-term leadership from their superintendents as well. This has provided stability for the institutional partnership, and also allowed for an individual partnership to be formed between the union president and the superintendent that establishes the direction and expectation for the rest

of the union leadership, membership, and district administration. Further, most of these superintendents have come up through the districts themselves, some serving as teachers and union members before joining the administration. This use of an internal labor market allowed the culture of collaboration to be carried on seamlessly by allowing trust to be built between leaders who knew each other and worked together for years.

Community Engagement. Most of these districts have engaged the community through involvement of community or parent groups in school-based governance structures, or in district-level planning processes. Some have also involved the community in special programs such as reading, experimental schools, or in establishing community schools.

Support from the Board of Education. In most cases, after a strategic decision to move toward greater collaboration, local unions got directly involved in Board of Education elections by recruiting, supporting, and endorsing candidates, or in some cases helping to defeat board candidates who did not support a collaborative approach to school governance and management. Local unions realized that since the boards hired the superintendent, electing board members interested in promoting collaboration would improve the chances that they would find willing partners. In two cases, the mayor or city council makes Board of Education appointments.

Support from the National Union. In almost all cases the local unions and districts received support and resources from the National AFT that helped foster a collaborative approach to school improvement. In some cases this meant technical assistance in areas such as reading programs, or research-based professional development programs from AFT's ER&D department. In other cases this meant training in collaborative techniques at AFT's CSI, leadership training at AFT's Union Leadership Institute, or educational opportunities at the AFT's biannual QuEST conference. Several of the cases also reported benefiting from the resources AFT provided through its Innovation Fund that supports initiatives for school improvement.

Importance of Supportive and Enabling Contract Language. Most of these districts have negotiated contract language, or memorandums of understanding, that supports their collaborative efforts. In this way real change is integrated into collective bargaining, and institutionalized in concrete language. In some cases the contracts call for the assumption of

collaboration in district-level decision-making by requiring union representation on key committees. In other cases the enabling language in the contract has resulted in expanded opportunities for union involvement in decision-making through board policy. Examples include professional development, textbook selection, hiring, peer assistance, mentoring, and teacher academies. In some cases state regulations for shared decision-making have also become institutionalized through contract language.

SIX CASE STUDIES OF SUSTAINED UNION-MANAGEMENT COLLABORATION IN SCHOOL REFORM AND IMPROVEMENT

ABC Unified School District and ABC Federation of Teachers

Background

Located approximately 25 miles southeast of Los Angeles, ABC Unified School District (ABCUSD) employs 927 teachers and serves 20,801 ethnically and linguistically diverse students throughout 30 schools, including 14 Title I schools. Twenty-five percent of students are English Language Learners. Approximately 46 percent receive free or reduced-price lunch.

Over the past decade ABCUSD's performance on California's Academic Performance Index (API) has been well above the state average, with strong growth in these scores of about 10 percent per year. The district's graduation rate is 89.1 percent, while the statewide rate is 74.4 percent, and the district estimates that approximately 85 percent of high school graduates move on to higher education.

Initiating Collaboration

The partnership between labor and management in the ABCUSD emerged in the aftermath of a tumultuous eight-day strike in 1993 over mounting budget concerns, and the district's plan to slash teachers' health benefits and pay, while increasing class size. The strike was taxing for union president Laura Rico and also for teachers and administrators in the district. The bitterness that resulted motivated the union to become more involved in school board elections, recruiting and campaigning for candidates open to developing a more positive and collaborative relationship with the teachers' union.

When union-backed candidates won, and finally took a majority on the board, the superintendent changed, as did the climate in ABCUSD starting in 1995. The hiring of Dr. Ron Barnes in 1999 as superintendent marked an important step forward in the partnership between the union and administrators. Ron Barnes and Laura Rico recognized that the district's primary goal of educating students and making teachers successful was compromised when union-management relationships were adversarial, and that a more collaborative relationship was the most effective way of improving teaching quality and student performance. In working together to solve substantive problems for students and teachers, they built a relationship grounded in mutual respect and trust.

Strategic Priorities

Superintendent Ron Barnes was able to align the district, including the board of education and administration, around a set of goals and a strategic plan both for the district and each school. Together with Laura Rico, they developed a "partnership," both individually in the way they worked together and institutionally between the district administration and the union. This meant solving problems related to student performance and the teaching environment.

One of the first efforts at collaborative problem solving took place in 1999 at six schools on the southern side of the district, where a much higher percentage of students were on reduced or free lunch. A majority of students at these "South Side Schools" (four elementary, one middle school, and one high school) were English Language Learners and had low proficiency in reading and math. This created new opportunities to collaborate on recruiting, hiring, compensating, and retaining high quality teachers, as well as to improve curriculum and instructional practices and expand research-based professional development. In support of these efforts the union even increased its membership dues to pay for substitute teachers so South Side faculty could be released to take the professional development training. The program became known as the South Side Schools Reading Collaborative, and teaching improved as did student performance. This experience demonstrated to everyone the benefit of union-management collaboration. All parties agreed that it required a joint problem-solving effort to meet this challenge.

Over time, this partnership approach to improving the district expanded to other schools, and encompassed other issues related to teaching quality and student achievement. For example, the district increased use of AFT's research-based ER&D professional development program. As the

partnership expanded, the union and administration collaborated on textbook adoption, interviewing prospective administrators and teachers, curriculum, a new peer assistance, mentoring, support, and evaluation program known as PASS (Peer Assistance and Support System), new teacher orientation, and processes for data-based decision-making regarding student performance. The union also appointed representatives to the district-wide Insurance Committee, Finance and Audit Committee, Strategic Planning Committee, Legislative/Policy Committee, Closing the Achievement Gap Committee, and Special Education Committee.

In 2005 Dr. Gary Smuts replaced Ron Barnes as superintendent, and the partnership deepened further. To guide their collaborative efforts, the parties developed the following six principles emphasizing the importance of student achievement, teaching excellence, and mutual support:

1. All students can succeed and we will not accept any excuse that prevents that from happening at ABC. We will work together to promote student success.
2. All needed support will be made available to schools to ensure every student succeeds. We will work together to ensure that happens.
3. The top 5 percent of teachers in our profession should teach our students. We will work together to hire, train, and retain these professionals.
4. All employees contribute to student success.
5. All negotiations support conditions that sustain successful teaching and student learning.
6. We won't let each other fail.

Supportive System Infrastructure

Over the past decade, the culture of the ABCUSD has become one of shared planning, decision-making, and responsibility. It is built on respect, commitment, and trust at the highest levels of leadership in both the union and administration. In addition to a collaborative leadership style, the partnership is also supported by both formal and informal structures. For example, the superintendent and the union president meet on a weekly basis to discuss issues and keep the lines of communication open. Other leaders from the union and management also speak frequently to each other about their joint work.

Leaders from both the administrative cabinet and the union executive board sit together on a District Leadership Team several times a year. This team and other union representatives and building principals attend an annual retreat where they assess progress, build their team, and plan the

next steps in their partnership. This full-day session, called "Partnership with Administration and Labor" (PAL), has occurred every year since 1999, and the union and district split the cost.

While support at the top has been strong and visible, the parties recognized that an effective and lasting partnership could not be sustained unless it also involved those who were most strongly connected to students – the teachers and principals. At the school level, principals and union building representatives meet weekly on collaborative leadership teams to discuss school issues, solve problems, and engage in site-based decision-making including textbook adoption, school schedules, and the hiring process for each school.

Further, last year the district received a grant from AFT's Innovation Fund to support the development of 10 ABC school-based teams in partnership efforts. These schools will take site-level collaboration, joint governance, and decision-making to an even deeper level. Leaders at these schools have received additional training and are working on specific projects to enhance teaching quality and student performance.

In addition to these site-based collaborative governance structures at the school level, union members also serve as department chairs, mentor teachers, and building representatives. Monthly building representative meetings include updates on the partnership and union president's meetings with the superintendent, so the business of the union is integrated with participation in managing the district through the partnership. This extensive involvement of union members and leaders in the partnership at the district or school level, or through mentoring and professional development, has created a dense network of teacher-and-administrator, and teacher-and-teacher collaboration that contributes to improved communication, problem solving, teaching quality, and student achievement.

An extraordinary investment in joint learning opportunities for administrators, union leaders, and teachers has also helped strengthen the partnership. This has included training by AFT's CSI, in meeting skills, problem solving, and decision-making. Teams have also received training from AFT's Union Leadership Institute. In addition, the district and union consistently sent joint teams to AFT's biannual QuEST conferences. Over 400 district teachers – more than 40 percent of the membership – have attended sessions at CSI or QuEST with their principals.

Further, the PAL Retreat itself has served as an opportunity for shared learning and skill development that also builds communication and mutual understanding. Joint training has not only improved the technical, problem-

solving, and decision-making skills of both teachers and principals, it has also strengthened their relationships as colleagues.

Sustaining Factors

Strong leadership from both the administration and the union has sustained and strengthened the Partnership at the ABC United School District for over a decade. The current superintendent, Dr. Gary Smuts, spent most of his career in the district, starting out as a teacher in 1974, and serving as a negotiator for the union in the 1980s. He entered the administration in 1986, and was a principal at the time of the 1993 strike. After the strike he approached union President Laura Rico to help overturn a rule that allowed principals to be fired for having philosophical differences with their superintendents. The change encouraged debate and collaboration, and helped to build trust.

Dr. Smuts was deputy superintendent in 2005 when the school board selected him as the next superintendent. Thus, he came to this partnership with established relationships, a long history in the district, and an understanding and appreciation of the value collaboration brings to the school system. Similarly, Laura Rico also has had a long history of leadership within the union. She spent 19 years as a child development head teacher, and completed her ninth term as the full-time president of the ABC Federation of Teachers. The stability of leadership in both the administration and the union, and their history of working together, were critical factors in building trust and institutionalizing the culture of collaboration, and the systems of shared decision-making that operate daily in the district.

The community has also supported the partnership, from parent involvement in the South Side Schools Reading Collaborative to volunteers from local businesses and community members in the schools to support by the Board of Education. Since the strike, the union has joined with parents in campaigning for board candidates supportive of increased collaboration by the union with the administration in planning, problem solving, and decision-making for school improvement. While there is little contract language to memorialize the partnership, the union and board have signed off on a mission statement, guiding principles, guiding behaviors, and a charter statement for the district.

Union-administration collaboration has further been aided by technical assistance and resources from the National AFT through training programs

such as ER&D, the Union Leadership Institute, the CSI, and QuEST conferences, as well as through support from the AFT Innovation Fund.

Hillsborough County Public Schools and Hillsborough Classroom Teachers Association

Background

The eighth largest school district in the United States, Hillsborough County Public Schools (HCPS), has more than 25,000 employees, which includes over 16,000 instructional staff and administrators. The district educates an economically and ethnically diverse student population of roughly 191,860 throughout 231 schools, including 142 elementary schools, 44 middle schools, two K-8 schools, 27 high schools, 10 special centers, and four career centers. Teachers in this district are represented by the Hillsborough Classroom Teachers Association (CTA). Fifty-eight percent of district students qualify for free or reduced-price lunch.

HCPS has the highest graduation rate for all large districts in Florida, at 82.2 percent. The district has also achieved an "A" rating by the state based on student achievement three of the past four years. Over the past six years, HCPS has doubled their Advanced Placement (AP) enrollment numbers, as well as doubled the number of AP exams it administers. The district has been on the cutting edge of school reform, as demonstrated by its selection for an "intensive partnership" grant from the Bill & Melinda Gates Foundation to improve effective teaching. These achievements have been made possible by a strong and mutually supportive partnership among district administrators, the board of education, and the teachers' union.

Initiating Collaboration

The emergence of the partnership between the union and administrators in HCPS has roots in a statewide strike in 1968. Rather than an outgrowth of adversarial relations between teachers and administrators within the district, the 1968 strike occurred in response to the attempt by the state government to cut public educational resources. Teachers and administrators recognized the need for additional funding for student programs, and found themselves on the same side of the issue. The district even released Hillsborough teachers so that they could attend a meeting in Orlando to plan for the walkout.

Committed professionals from the union and administration came together over this period to draft legislation for student programs. Although a more formal and widespread collaborative climate took years to solidify,

many from this cohort of strong leaders moved up through the district together, and assumed high-level positions. Some of the teachers later became administrators, while others became union leaders. It is estimated that about half of the current district-level administration are former CTA members.

The strike fostered solidarity of purpose, and made explicit a shared commitment to student achievement. Union-management collaboration around school improvement focused in the early 1970s around curriculum, examinations, and textbook selection. The collaborative partnership strengthened in the early 1990s under the leadership of the superintendent, Dr. Earl Lennard. Dr. Lennard came up through the district, had been politically active during the 1968 strike, and was well respected by both the union and administration. He had a pragmatic approach to leading the district, and wanted to build an environment that best served the interests of students. This meant reaching out to the union to help create a labor-management climate built on transparency, collaboration, trust, and mutual respect. This climate has grown even stronger under the current superintendent, MaryEllen Elia, and union president, Jean Clements, with Yvonne Lyons serving as CTA Executive Director from 2000 until August 2009.

Strategic Priorities

There is clear recognition by the union and administration in Hillsborough that inclusion and collaboration in decision-making are powerful vehicles for educational reform. Both parties are committed to teacher excellence, to data-driven decision-making, and to student achievement, and both parties have demonstrated this commitment repeatedly by their willingness to innovate, change, and experiment on programs focused on improving the quality of education for all students.

Shared decision-making and collaboration has evolved over 30 years, starting with curriculum alignment, exam writing, textbook selection, and professional development. Discussions around innovations in teacher evaluation and compensation began in the 1990s, but attempts were hindered by a lack of funding. The parties began to implement changes in these areas after 2000, and they are still evolving. Further, recognizing that teaching and managerial skills are developmental, collaboration has also given rise to an extensive range of mentoring, peer assistance and review, and training opportunities for teachers as well as principals and other administrators.

Supportive System Infrastructure

The partnership in Hillsborough is supported by a strong culture of inclusion and mutual respect. District leaders speak frequently of widespread participation in decision-making, trust, and how the interests of students are best served when the union, administration, and Board of Education work collaboratively. The deputy superintendent in charge of human resources has monthly formal meetings with the union, and is in frequent (often daily) informal communication to discuss issues, solve problems, and head off concerns long before they reach the grievance procedure. Administrators talk about teachers as professionals, and some even actively encourage new faculty to join the union in this right-to-work state, so they can be appointed to the vast array of committees that have planning and decision-making authority in the way the schools are run.

"It is the culture of collaboration, and trust, and thoughtful consideration of practices that has made it possible for us to get this far, and we are confident will see us successfully through all the hurdles of implementation and comprehensive systemic change," said local union President Jean Clements. This collaborative culture is supported by frequent formal and informal meetings and conversations between union leaders and administrators by transparency and by strong alignment around student achievement. Despite a local population of more than 1 million, the atmosphere in the district is more akin to a small town than a large city.

Shared planning, decision-making, and governance are important elements in Hillsborough's system. Long before the popularity of curriculum and testing standards, CTA members came forward in the 1970s as volunteers to develop rigorous middle school curricula and exams for the entire district. The district has promoted joint planning and site-based decision-making since the 1980s through extensive teams and other collaborative structures at the district and school levels. For example, schools have School Improvement Process (SIP) Teams that focus on student performance, and School Site Steering Committees that convene with the principal to discuss issues such as the budget, best practice instruction, class size, dress code, applicant screening, and teaching assignments, among others. Statutory SACs bring in other stakeholders by linking the union and administration with parents and students. Further, grade-level and department teams are led by teacher-leaders, and meet monthly to discuss exams, curriculum articulation, and student performance.

At the district level, committees composed of union members and administrators meet regularly to discuss the curriculum, school calendar,

professional development, instruction, and materials. For example, a textbook adoption committee composed of a majority of teachers selected by the union convenes to pick a handful of books that they feel best covers the subject matter in question. The selected textbooks are then sent to every school in the district for consideration by relevant faculty members. Each of these teachers receives a weighted vote based on how many of their courses rely on the material. The vote ultimately determines the textbook for the district.

Experienced, highly effective teachers serve as full-time mentors and provide observation and one-on-one feedback to new teachers for their first two years. Mentors themselves receive significant training, including three weeks over the summer and 10 hours per month over the school year. Among other forms of professional development, the union, in partnership with the district, has implemented a collaborative approach to improve teaching quality through a teacher center – The Center for Technology and Education – for technology training. All teachers new to the district are offered two orientation programs centered on lesson design, creating high classroom expectations, effective classroom management, as well as state standards and pacing guides. Training opportunities continue as professionals work their way through the school system, and opportunities for joint learning by union and administration together help to foster the culture of collaboration and shared decision-making.

The union appoints hundreds of teachers to committees, and faculty make up a substantial part of committee membership, in some cases, the majority. These committee appointments, along with faculty in other leadership roles at the school level, including SIP, Steering Committee, and SAC; new teacher support; professional development trainers; and teacher-leaders at grade or department level have created a dense network of teacher leadership in critical areas of the planning and decision-making activities of the HCPS.

Sustaining Factors

One of the most striking features of the collaborative partnership between the union and administration at HCPS is the extraordinary stability of leadership. The district has seen only four superintendents since 1968. Further, most administrators have been hired from within the school system. The current superintendent, MaryEllen Elia, currently in her fifth year in that position, has worked in the district for 23 years, and spent 19 years as teacher – most of that in Hillsborough.

Superintendent Elia and both deputy superintendents were union members. Both deputies are products of, and have spent their entire careers in, HCPS. One of the deputies, Dan Valdez, started teaching in 1968, was a union building representative, and is now a deputy superintendent and director of human resources. The other deputy, Ken Otero, started teaching in 1976. Only about four percent of administrators employed by the district were hired from outside. Continuity was also provided by Yvonne Lyons, who served as Executive Director of the union from 2000 to 2009. Lyons began her teaching career in Hillsborough in 1965, joining the staff of the union in 1980. Jean Clements served four terms as president of the Hillsborough CTA starting in 2002.

Hillsborough's commitment to professional development has created confidence over the years in the labor market within the schools, so the district is able to fill positions with talented employees who are familiar with the culture, have strong working relationships, and already have a track record of managing effectively in a system that values and actively supports inclusion and collaboration. As a result, the culture of collaboration has been sustained and the system institutionalized.

To continue this tradition, the district has recently put in place a rich assortment of high-quality professional development opportunities that foster collaboration and help cultivate a strong cadre of candidates for internal promotion. Administrators receive training in effective hiring methods, as well as in managerial competencies, conflict resolution, classroom monitoring, and performance evaluation. These training programs build capacity and quality within the district, and further support the internal labor markets that are important for the partnership's continuity.

The community has been involved in the partnership through its involvement on School Advisory Councils, and also through efforts by the district to develop strong ties to local businesses. Over the years of developing a more collaborative relationship, the union was actively involved in recruiting candidates for the local school board, and the board has made a priority of hiring superintendents who support a collaborative approach to managing the district.

The contract between the Hillsborough CTA and the HCPS has also helped to sustain the partnership between teachers and administration. It is based on an assumption of collaboration in decision-making, and has called for union appointments to all district decision-making committees since 1971, starting with textbook selection and professional development. The contract sets the tone but the parties have moved beyond it. The union now becomes involved in decision-making even if the issue is not explicitly stated

in the contract, because the board policy and the district culture is one of inclusion and shared governance.

Norfolk Public Schools and the Norfolk Federation of Teachers

Background

The Norfolk Public School (NPS) District is located in southeastern Virginia where the Chesapeake Bay meets the Atlantic Ocean. The district has 36,000 students and more than 3,000 teachers in 35 elementary schools, nine middle schools, and five high schools. Norfolk also includes the world's largest naval station.

The district has achieved improved performance in all subgroups on benchmark tests to determine Adequate Yearly Progress (AYP). Last year 20 schools met all 29 AYP benchmarks. NPS have an overall high school graduation rate of 80.4 percent. Sixty-four percent of the students receive free or reduced-price lunch.

Initiating Collaboration

The process of establishing a more collaborative relationship between the Norfolk Federation of Teachers (NFT) and the NPS goes back 30 years. However, the path has not been without challenges and crises. One particularly critical event occurred in 1991 as tensions between the NFT and the superintendent came to a head. In response to her public criticism of the administration over the lack of raises for her members, the superintendent denied a leave of absence to Marian Flickinger in an attempt to prevent her from continuing as NFT president. A contentious lawsuit ensued over her First Amendment rights, and the membership voted to change the constitution so Flickinger could continue as president but not teach in the district since she could no longer take a leave from her job. The superintendent left the district for another position after the trial. Flickinger continued as NFT president, but sought to find a way to avoid destructive adversarial relations with the administration, and instead find more effective ways to solve problems so the needs of children and teachers were better served. She found like-minded partners in subsequent superintendents who recognized with her that they "agree about more than they disagree."

Strategic Priorities

The administration and union have been aligned for more than 30 years around the priorities of student achievement and performance, and

involving the union in many areas of school improvement. They sought to work together on the use of student performance data to guide goal setting for improvement, on curriculum and teaching quality, and on creating a safe learning environment in the schools. Joint analysis of student test data provided the basis for a common focus.

The union and management shared the common vision that improving teaching quality was critical to student performance improvement, and they established common planning time for teachers so they could work together to help each other develop better teaching methods. They were also innovative in developing a common process to assess schools, teachers, professional development, and each school's Comprehensive Accountability Plan through their "Walkthrough Protocol." This process involves teams of administrators and teachers visiting other schools to evaluate student performance, teaching methods, and instructional practice, and then giving feedback to stimulate a professional dialogue. It is designed to be a model based on nonthreatening peer-to-peer review and collaboration.

Supportive System Infrastructure

Over these years, the union and management at Norfolk have worked to establish a culture of collaborating to improve schools for students. Virginia is a right-to-work state, yet management expresses the strong sentiment that it values the union as a partner in improving student achievement and teaching quality, and the union is extensively involved in shared decision-making committees. The administration and union see relationships, trust, and open communication as the keys to their success. During this time they used a regular policy of "meet and confer" to discuss problems of mutual concern. They have expanded this to meetings at the district level around the budget, and they jointly plan and set goals for the school system.

At the school level, the union and administration have established weekly common planning time for teams to meet in each department or at grade levels. These sessions build capacity and allow teachers to work together to improve their practice with a clear focus on learning, student achievement and curriculum. Schools also have Leadership Teams, Leadership Capacity and Development Teams with teacher-leaders who provide mentoring, and student data-evaluation teams at every grade level. Every teacher in the district serves on a student-data team, and every school develops a comprehensive accountability plan jointly among the teachers, administration, and parents.

The Walkthrough Protocol, established in 2001, promotes the idea of the district as a learning community within and across schools. It is a

collaborative model in which administrators and teachers work together to identify strengths, weaknesses, and best practices in each school and develop joint solutions for improvement. Extensive participation by faculty in the Walkthrough Protocol, student-data teams, school-based leadership teams, and initiatives to improve teaching quality and capacity, have created a dense network of teachers across the district dedicated to school improvement.

District administration, union leadership, and teachers have invested a great deal of time in joint-learning opportunities, which strengthen skills as well as relationships. Teachers have been trained extensively in techniques for analyzing student performance data to identify problems and set goals for improvement. They have also received leadership training. Additionally, the district has benefited from being part of a 10-year corporate program sponsored by Panasonic. This program provides the union leadership, administration, and school board with monthly coaching, facilitation, and training to build a leadership team, and gives them skills in strategic planning, goal setting, problem solving, communications, and working together on areas of common interest. The program also takes them out of the district three times a year for three-day retreats with 10 other districts.

Sustaining Factors

Clearly, one of the keys in sustaining this level of collaboration over 30 years has been the stability of leadership from the union. Marian Flickinger was first elected president of the NFT in 1982. She has provided strong leadership, focus, and commitment to improving student achievement and teaching quality through a partnership with management. In doing so, she had to overcome adversarial relations in the early 1990s that threatened to derail the collaborative approach that she believes better serves both students and teachers. As a result of this approach, the union has had to use the grievance procedure fewer than 10 times in her 28 years as president.

The community has also provided support for collaborative approaches to running the district through the involvement of parents and other community leaders in the Comprehensive Accountability Plans developed for each school, and through a ''Guiding Coalition'' of stakeholders at the district level. The Board of Education, appointed by the City Council, has been supportive of union-management collaboration in planning and decision-making at both the district and school levels, and over the past 20 years they have hired superintendents who embrace that collaborative management style.

While the district does not have collective bargaining and therefore no contract to memorialize collaboration, the parties have established memorandums of understanding on collaborative procedures. Collaboration has been sustained largely as part of the district leadership and culture, however, and is embedded in the way the school system operates on a daily basis.

Plattsburgh City School District and the Plattsburgh Teachers' Association

Background

The Plattsburgh City School District is located in upstate New York on the shores of Lake Champlain, less than 25 miles from the Canadian border. The district has 1,861 students, and 288 teachers and other professional staff members. Students attend one of three elementary schools, and then merge into one central middle school, followed by one central high school. Fifty-two percent of the students receive free or reduced-price lunches, yet student performance exceeds the averages for proficiency across the state in language arts, math, and science. The Plattsburgh high school graduation rate improved from 72 percent in 2004 to 88 percent last year; the statewide average was 73.4 percent.

Ninety-nine percent of Plattsburgh's teaching faculty have been designated "Highly Qualified." Each year the Plattsburgh City School District meets AYP, and also exceeds the averages across the state of New York. For example, 81 percent of eighth graders are above proficiency in language arts, 84 percent of eighth graders are above proficiency in math, 81 percent are above proficiency in science, and there is no statistically significant difference in student performance based on socioeconomic status, gender, or race. The district has a high school graduation rate of 84 percent, and six percent receive a GED. Eighty-five percent of graduates continue their education in four-year colleges or universities, two-year community colleges, or technical schools.

Initiating Collaboration

Collaboration around school improvement and teaching quality began in the aftermath of a strike in October 1975. The strike was a critical event in the history of the district and the community. The Plattsburgh Teachers' Association called the strike over economics and a perceived lack of respect from the Board of Education. Both the union and the administration were

upset that the strike had occurred, and while it continued for only three days, it had a lasting impact on the district.

For the union, it pulled the faculty and staff together, and it motivated the administration and the union to find a new way to work together and improve their relations. The superintendent, Dr. Gerald Carozza, who was new to the district and well respected, was open to embracing a different relationship with the Plattsburgh Teachers' Association, as was its president, Rod Sherman. So, with unity in the union, and a desire for change, the parties came together to build a stronger school district. As part of this new approach, the union also became increasingly involved in school board elections, initially by forming a coalition in 1976 with a parent group and electing two new board members. Two years later they had a supportive majority on the school board. Art Momot, a principal in the district, became superintendent in 1981 with the recommendation of the union. He served as superintendent until 1994 and is credited with solidifying the partnership.

Strategic Priorities

The union and administration focused their collaborative efforts around teacher quality and student performance. They jointly developed a new model for teacher evaluation, and they were early adopters of Peer Assistance and Review, and value-added assessments. Further, the union and administration formed a joint district-level committee to plan professional development, with the chair and the majority of the committee coming from the union.

The District-Wide Educational Improvement Council (DWEIC) was formed that included teachers, administrators, union officials, and parents to facilitate shared decision-making and ensure that joint planning, goals setting, and implementation occurred. The DWEIC meets monthly, seeks alignment around goals, and delegates implementation to the school-site level. The principle that guides the partnership is always to make decisions in the best interests of the students. As a result, the union participates fully in, or leads, committees around textbook selection, professional development, teacher evaluation, mentoring and peer coaching, curriculum development, long-range planning for the use of computer and information technology, and analysis of student test scores and performance. Since 1977, the union has been an integral part of the search and hiring process of teachers and administrators, including the superintendent. In addition, the parties collaborate on legislative issues that affect aid for small city districts.

Supportive System Infrastructure

The Plattsburgh City School District has developed a culture of joint decision-making over the past 30 years that promotes discussion around all important issues that it faces. "It's the way that business is done in Plattsburgh." This has become institutionalized through an infrastructure of committees and teams at the district and school-level.

In addition to the district-wide decision-making and planning committee, every school has a School Improvement Plan (SIP) Committee that sets yearly goals, manages the budget, reviews instructional practices, and facilitates consensus decision-making at the site. The SIP committees include administrators, parents, students (for the high school and middle school), non-instructional staff, and teachers, who make up the largest single group. SIP committees meet every other week. In addition, departments and elementary grade-level teams meet monthly, and since 1976 have been led by elected chairs/reps who remain members of the bargaining unit. Department reps are granted release time and also meet every other week to facilitate cross-department collaboration and articulation. Thus, the Plattsburgh Teachers' Association is deeply involved in shared decision-making and governance of the school system at the district and school levels through joint decision-making and planning committees, chairing departments and grade-level teams, peer assistance and review, and professional development. Union leaders estimate that every teacher in the district has participated in at least one team, committee, or department/grade-level leadership role, which creates a dense network of participation within the union organization. Nonretirement yearly turnover over the past seven years has been about two percent.

In addition to these formal structures, the collaborative system is also supported by shared understanding – the result of investment in joint learning opportunities. Union and administrative leadership have attended training and education sessions together on topics such as shared decision-making, meeting skills, and peer assistance and review. For example, the district has regularly sent board members, and union and management leaders together to AFT's biannual QuEST conference since the local union president and superintendent first attended in 1985, and has also benefited from training given by New York State Union of Teachers (NYSUT), and AFT's ER&D professional development programs. These activities have strengthened skills, created common knowledge and understanding, and built more trusting relationships, all important ingredients in a collaborative approach to school improvement.

Sustaining Factors

Long-term leadership has helped institutionalize the culture and practice of shared decision-making. Rod Sherman has been the president of the Plattsburgh Teachers' Association since 1973, and Dr. James Short, who has been superintendent of the Plattsburgh City School District since 2006, is only the fourth superintendent that the district has hired since the strike in 1975. Together, they have taken collaboration to a new level. The Plattsburgh City School District and the Plattsburgh Teachers' Association have enjoyed stable leadership for more than a quarter century.

In the aftermath of the 1975 strike, the Plattsburgh Teachers' Association partnered with parents to change the composition of the Board of Education. Since that time, parents have been involved in a variety of committees and teams at the district and school-level, linking them with the administration and the Plattsburgh Teachers' Association in planning and decision-making. And the union and parent groups have become increasingly involved in school board elections in order to help elect candidates who value their input in district decision-making. The entire current board was elected with the support of the union. The board is composed of members who consider the union a valuable partner in shared decision-making, and has reflected that value in recruiting and hiring superintendents. The community strongly supports the school district, and has never defeated a school budget or rejected a bond vote or referendum. For 25 years negotiations have adopted "a problem-solving approach."

Since 1987, the contract between the Plattsburgh Teachers' Association and the Board of Education built upon and institutionalized the New York State statute calling for shared decision-making in school districts. District contractual provisions call for union involvement in the District-Wide Education Improvement Committee, School Improvement Planning Committees, planning professional development, and teacher-leads/reps at the department or grade level.

At the national level, AFT has also played a critical role in sustaining the collaboration at the Plattsburgh City School District by providing ongoing training and technical assistance. At the state level, NYSUT gave Plattsburgh courses in shared decision-making and meeting skills to support their efforts. In addition, the collaborative partnership has improved the skills and relationships of its leaders by regularly sending joint union-management teams to AFT's QuEST conferences over the past 25 years.

St. Francis Independent School District and Education Minnesota St. Francis

Background

The St. Francis Independent School District is located about 40 miles north of Minneapolis, Minnesota. The district has approximately 5,400 students and 360 teachers in three elementary schools, one middle school, one central high school, and three special schools. Twenty-eight percent of the students qualify for free or reduced-price lunch.

Last year the district achieved proficiency scores in reading and math that were above the state and county averages, and exceeded those of every neighboring district except one. In 2008, students in grades five through nine scored at least one year ahead of the national average, up from close to the national average four years earlier. Over the last four years, student test scores have increased across the district, and in 2007–2008 the district was named one of the 20 most improved by the Minnesota Department of Education. The high school graduation rate is 96 percent, and college attendance grew from 59.6 percent in 2000 to 76.4 percent in 2006.

Initiating Collaboration

In the fall of 1991, the local union Education Minnesota St. Francis took a strike vote and began preparing for a job action. The strike was ultimately averted but there was general dissatisfaction with both the union and the board of education. As a result, a new team took over negotiations for the union. During the next round of bargaining, the union and board began to work together to focus on teacher quality and professional development.

In 1995, the Minnesota Department of Education required that two percent of the general fund be earmarked for professional development, and the union and administration began to plan new and innovative ways to use these funds. By 1997 the parties had negotiated teacher teams and leaders, and a new provision that allowed teachers to bank 20 hours of professional development for their own use, with unused hours going back to a general pool. Then in 2000, Randy Keillor, chief negotiator for the union, and Mary Wherry, union vice president, attended AFT's ER&D program and developed a plan to create the Teacher Academy focused on teacher quality and professional development, which would be run collaboratively among the union, administration, and board, and funded by the two percent set aside.

Strategic Priorities

The collaborative partnership among the union, administration, and school board in St. Francis has focused on teacher quality, and its impact on student performance. Starting in 1995 with collaboration around professional development, progressing to the development of the Teacher Academy (with a joint union-management governing board) in 2000, the strategic priority has been hiring, supporting, developing, and retaining excellent teachers and continually improving their performance.

In 2005, Minnesota made available a fund called Quality Compensation for Teachers (Q Comp). To receive funding under this program, the district had to revise its teacher evaluation system and create an alternative compensation system based in part on performance pay. Components also had to include a new career ladder and professional development. For the St. Francis Independent School District and Education Minnesota St. Francis, this was a natural evolution of the Teacher Academy, so the union, administration, and board of education created the Student Performance Improvement Program (SPIP) which was funded through Q Comp.

SPIP integrated the professional development of the Teacher Academy with a new evaluation and peer review system, an induction program for new teachers, mentoring, and an alternative compensation system based on a new career ladder and leadership roles. The SPIP also called for school-level academic goal setting for student performance rewarded by bonuses to the school itself. For example, the improvement in math scores reported above took place after math became a site goal for the district.

Supportive System Infrastructure

Professional Development – New Teacher Induction and Teacher Academy. Since the mid-1990s, the St. Francis Independent School District and Education Minnesota St. Francis have been able to work together to find innovative ways of improving teaching quality targeted around improved student performance. In doing so, they have developed a culture of involvement in joint decision-making. In support of this culture, the union and administration have created processes and structures for collaboration throughout the district at all levels. For example, the union-led SPIP provides a process for goal alignment around student achievement and teaching quality at the school and district levels. The program enhances teacher quality through recruitment, professional development, goal setting, retention of quality faculty, and a career ladder that compensates teachers for skill development, goal achievement, and the assumption of leadership roles in the district as a teacher-leader, mentor, or instructor. This voluntary

system allows for customized professional development led by teachers through 12-year-long courses in the Teacher Academy, or through cross-disciplinary, teacher-led study groups that are encouraged to innovate, take risks, and actively improve their practice through a dense network of collaboration.

The Teacher Academy is based on the AFT ER&D professional development courses that have been used widely in the district since 2000. Four years after its introduction, 90 percent of St. Francis teachers have elected to participate in SPIP. New teachers receive a mentor for their first three years, and evaluations and observations take place through peer review teams of teachers with an administrator. One result is low nonretirement voluntary turnover; over the past five years faculty turnover has been less than two percent a year.

The union is deeply embedded in the professional development and teacher evaluation systems through its significant leadership in the Teacher Academy and the SPIP. This system of mentoring, evaluation, and professional development fosters teacher-to-teacher collaboration within and across schools in the district.

Site Staff Development. Elementary school teams, departments, and specialist groups are directed by teacher-leaders, and meet weekly to discuss curriculum, vertical and horizontal articulation, building management, and student achievement. Peer group meetings at each and every grade level occur twice per month involving all faculty and peer leaders analyzing student performance data. Teachers and administrators also collaborate on Site Professional and Curriculum Development Committees at the school level. These committees have an elected teacher chair, and are composed of peer leaders, nonteaching staff, parents, and administrators, as well as a Teaching Academy Coordinator and curriculum facilitators. They oversee planning, evaluating, reporting, and budgeting for school-level professional and curriculum development. So not only do 50 percent of the faculty serve as mentors, but 20 percent of the teachers in the district are in paid leadership positions that contribute to the dense network of union members who have taken on responsibility for creating and running systems to improve teaching quality and student performance.

Sustaining Factors

From 1993 to the present, collaboration between the union and administration has benefited from a great deal of stability, particularly on the part of union leadership. Rosemary Krause was union president from 1993 until

2004, when Jim Hennesy, the current president, took over. Also, beginning in 1993, Randy Keillor led the new negotiating team in playing critical roles in establishing the professional development program, the Teacher Academy, and the SPIP since all were the product of bargaining with the administration and board of education. Collective bargaining and collaboration are fully integrated in St. Francis.

In addition to his role as chief negotiator, Randy Keillor also served as the SPIP Coordinator until his retirement in 2006. His replacement as Teacher Academy Coordinator, Jeff Fink, is also a member of the negotiating team, which has had essentially the same membership since 1993. Edward Saxton was hired as superintendent in 2003, having served in the district since 1995, first as assistant principal of the high school until 2001 and then as principal from 2001 to 2003. Stability of leadership from the union as well as a superintendent with a history of collaboration within the district have been vital factors in building a base for sustained collaboration.

The community and board of education have been very supportive of this partnership between the administration and union. This was demonstrated in their selection of Edward Saxton, the internal candidate for superintendent in 2003, and their ongoing negotiation of additional resources directed toward teacher development, quality, and alternative compensation. Several teachers from neighboring school districts have been elected as board members. The Teacher Academy, SPIP including an evaluation and alternative compensation system, Site Professional and Curriculum Development Committee, Assessment Curriculum and Teaching Committee, and the District Professional Development Committee are all contractual. Finally, through its ER&D professional development program, the AFT has provided ongoing training and technical assistance to both the union and the district in its collaborative approach to improving teaching quality through the creation of the Teacher Academy.

Toledo City School District and the Toledo Federation of Teachers

Background

Located on the west end of Lake Erie in Ohio, the Toledo City School District (TCSD) employs 2,001 teachers and educates 24,345 students throughout 53 schools, including 38 elementary schools, seven middle schools, six traditional high schools, and two specialty high schools. Approximately 77 percent of district students are on free or reduced-price lunch.

The TCSD is a top performer on state performance indexes for grades 3–6, and has among the highest graduation test passage rates for grades 10 and 11, compared against the seven other large urban school districts in Ohio. The district also has the highest graduation rate (83.7 percent) and the second highest attendance rate (94.9 percent) of all of these districts. One of TCSD's specialty schools, the Toledo Technology Academy, ranked second in the state of Ohio on the performance index and in the top 10 percent of U.S. high schools by *US News & World Report*. In 2001, the TCSD and the Toledo Federation of Teachers (TFT) were formally recognized for their innovations around teacher preparation and evaluation, earning the "Innovations in American Government" award from the John F. Kennedy School of Government at Harvard University.

Initiating Collaboration

Union-management collaboration in Toledo began around the issue of teaching quality. Following a strike in the late 1970s, frustration mounted in the early 1980s over teacher evaluation. Principals often found themselves overwhelmed and too busy to successfully complete the requisite number of classroom visits spelled out in the union contract to oust the teachers that they deemed ineffective. The TFT meanwhile tried to uphold due process and ensure that every teacher in the district received sufficient classroom observation. Tensions escalated, and the bitterness between labor and management over terminations carried over into the other goals the district was trying to accomplish. Dal Lawrence, the then TFT president, proposed a collaborative solution in the form of a new system of peer-to-peer review, support, mentoring, and evaluation. By dispersing evaluation responsibilities to teachers, the program would promote professional development, while screening teachers out of the profession who were not effectively serving students. The result was a collaborative effort to initiate the innovative Toledo Plan: Peer Assistance and Review (PAR), in 1981.

Strategic Priorities

Teaching quality and student performance have been at the core of the collaborative efforts between the TFT and the TCSD. The teacher-led PAR system supports new teachers through a rigorous mentoring and evaluation process, and also helps veteran teachers to improve their practice. The process is tied to extensive professional development offered by Toledo teachers who serve as internal consultants.

In addition to coming together to fix the teacher evaluation system and improve teaching quality, the union and administration have also focused on student achievement through the use of student performance data analysis at the school level by the principal, staff, and union building representatives. The labor-management partnership in Toledo has also given rise to performance-based compensation systems, nationally ranked innovative specialty high schools, and collaboration with the local community to help provide more opportunities for children.

Supportive System Infrastructure

As the union successfully took on the challenge of improving teaching quality, the culture of the TCSD became increasingly supportive of teaming and union involvement in decision-making. Frequent communications and shared governance throughout all levels of the school district buttress this culture. Formal and informal conversations are common between union representatives and administrators. Leaders from both sides meet regularly around PAR and professional development. Textbook selection is also a joint process. Committees composed of the superintendent and representatives from the teachers' and administrators' unions also convene regularly to set and monitor implementation of a school improvement plan for the district, and math, reading, and attendance goals for each school.

Union-management teams and committees also exist within each school to analyze student data and to help decide issues related to curriculum and instruction that are important to faculty and students. These formal structures are supported by financial incentives that also promote collaboration. The Toledo Review and Alternative Compensation System (TRACS), for example, grants bonuses based on leadership, which includes helping other teachers, and accepting positions at low-performing schools. Further, the Ohio Teachers Incentive Fund (OTIF) allocates bonuses to schools of up to $2,000 per teacher and administrator, based on whether schools meet their goals for attendance and math and reading scores.

The PAR system supports extensive collaboration as well. More than 200 internal PAR consultants have remained in the schools after serving in the program, and they "have changed the conversations," by focusing on teaching quality. Half of the department chairs, who also remain union members, are former consultants and their relationships with one another, fostered through PAR, facilitate curricular articulation and integration. So well beyond the individual benefits of peer support, mentoring, and professional development, the PAR program also contributes to the

creation of informal networks of teachers sharing information and resources within and between schools. Such exchanges, and the resultant increase in school level capacity, would be much less likely without this union-based teaching quality network.

Union-management collaboration has also resulted in the creation of the Toledo Reading Academy, which is focused on improving early literacy. The Academy includes a summer school for elementary school students, intervention programs for at-risk students, and extensive professional development for faculty. In addition, the union and administration have created a similar Math Academy. Collaboration in Toledo has also benefited from joint union-management training and learning opportunities, particularly AFT's CSI, training on teaming and shared decision-making, and also AFT's ER&D professional development training. These experiences bring both shared knowledge and improved relations.

Sustaining Factors

The stability of leadership, particularly from the union, is one of the key factors that has sustained union-management collaboration in the TCSD. Dal Lawrence, who initiated the PAR program, served as TFT president from 1967 to 1997. He was succeeded by Francine Lawrence who served as president until 2011 and continued the union's deep involvement in peer mentoring and evaluation, and professional development, and also extended the union's involvement in joint decision-making into other areas such as alternative compensation and performance pay plans. This partnership between labor and management has increased trust and mutual respect as the parties recognized the benefits to both students and teachers. Over time it has become core to the district's culture and mode of operating.

Involving the local community to provide additional channels for resources to benefit students and teachers has also strengthened collaboration. For example, a partnership between Toledo City Schools and The University of Toledo helped to align the curricula and the instructional materials used by the university with the district's specific needs, thereby better preparing new teachers for employment opportunities in Toledo schools. Further, one of the district's premier high schools, the Toledo Technology Academy, has garnered support from dozens of local businesses (including General Motors, Teledyne, Owens Illinois, and Toledo Mold and Die) to provide mentoring and internship opportunities for students.

Executives from these companies and other community leaders sit on the school's advisory board.

The National AFT has helped to sustain collaboration through the shared decision-making training it provided to 21 schools through the CSI. In addition, AFT's ER&D professional development program has been of great value to labor-management collaboration at the school level, and to advancing effective teacher practice, and the PAR program. Continued collaboration around PAR is further supported by contractual language that embeds union participation in the process.

CONCLUSION AND LESSONS LEARNED

The experiences of these six districts demonstrate how effective collaboration between teacher's unions and administration can be created and sustained over time to improve teaching quality and student performance. Based on the results of our research, we offer the following conclusions and recommendations to scholars, policy makers, and educators who seek to study, promote, or engage in collaborative approaches to school reform and improvement:

- *Systems*: Education reform and improvement must be seen as a systems problem. In all these cases, unions and administration have worked together, tapping the knowledge and expertise of teachers and administrators within each district, to examine all aspects of their school systems: curriculum, professional development, teaching quality, evaluation, compensation, hiring and retaining quality professionals, school management and site-based decision-making, budgeting, and student performance. No successful district has taken a piecemeal approach by narrowly looking at only one aspect of the system, such as compensation. Further, all of these districts institutionalized and supported collaboration at all levels of the system.
- *Formal structures*: Shared decision-making in school improvement must take place at both the district-level and in the schools themselves. Formal union-management site-based teams can effectively share decision-making around budgets, curriculum, scheduling, professional development, recruitment and hiring, school safety, strategic planning, and student performance data analysis to target areas for improvement.
- *Quality*: Successful union-management collaboration in public school reform must focus on substantive areas affecting the quality of teaching

and student achievement. These districts have used collaborative approaches to experiment and innovate in areas such as professional development, teacher mentoring and evaluation, curriculum development and articulation, teaching methods, instructional materials and textbooks, alternative school- and teacher-based compensation, and data-driven decision-making around student performance.

- *Networks*: The development of peer-to-peer networks to improve teaching provides teachers with better skills, but also with a social network that can continue to support them and the ongoing exchange of ideas and techniques necessary to increase instructional quality. The union is the backbone of this network through its own internal organizing, and through the density of its members who participate in this and other shared decision-making opportunities. However, this requires management partnering with the union as an institution so that it has real input into district- and school-level governance. It also means changes in the strategies, structures, and capacities of local unions as they engage deeply in collaboration and take on responsibility for teaching quality and student performance.
- *Culture*: In addition to formal structures at the district and school level, districts must develop strong cultures of collaboration that inform approaches to planning and decision-making, as well as hiring decisions by school boards and superintendents.
- *Learning organizations*: Shared learning opportunities are critical to building and sustaining long-term collaboration. Districts and unions should provide training and learning experiences for labor-management teams, so that they can acquire knowledge together as well as build their relationships.
- *Stability*: The longevity of all of these cases has benefited from the long-term tenure of union leaders, superintendents, or both. School boards should build this into their planning as they recruit and hire superintendents, and consider the use of internal labor markets.
- *Board of education*: Collaborative systems and management styles require the full support of school boards. Union's support of board candidates who value collaboration is of great value in sustaining long-term partnerships.
- *National union*: Districts and local unions can benefit greatly from the technical assistance, support, training and resources available from their unions at both the national and state levels.
- *Community*: Community support is critical to institutionalizing collaboration. Districts and unions must engage the community in supporting their

collaborative processes, either as stakeholders involved directly in district or school-based planning and decision-making bodies or through their school boards.

We conclude from this study that unions and administrators can *choose* to collaborate to find new ways to improve the performance of the district, teachers, and students. We believe this is a more productive path for reform than the market or bureaucratic strategies that have received so much attention from policy makers over the past decade. This study describes contexts that produce the conditions for collaborative partnerships to take root, the strategies they employ to impact teaching quality and student performance, the structures that promote broad participation, and the factors that have allowed them to endure over decades. However, for collaboration to be sustained over the long-term, and to have a meaningful impact, it must be institutionalized – built into the systems of the district in both policy and practice, and protected from those who benefit from perpetuating the myth that administration and unions, by nature, want different outcomes for students. The teachers' unions in this study added tremendous value through their natural networks, leadership, and ability to organize support and effective implementation of innovative practices. Educators must be continuous learners as they share in school reform, wrestle together with hard questions, and redefine management from a class of employees to a set of tasks that they must engage in together as professionals, since collaboration itself is a means for improvement, not an end in itself.

We hope policy makers see from this line of research the value of pursuing collaborative approaches to school reform, and provide the conditions, resources, and incentives to create union-management partnerships for improvement. We also encourage other scholars to find and examine additional examples of union-management partnerships that have led to school reform to further this line of research. We need to better understand under what conditions these collaborative partnerships lead to improved teaching and student performance, how they can be created and sustained, and the critical role teachers' unions play in these efforts.

NOTES

1. Stanford's Ellwood Cubberly wrote: "Schools [are the] factories in which the raw products (children) are to be shaped and fashioned into products to meet the various demands of life" (cited in Rogoff, Matusov, & White, 1996, p. 392)

2. Bobbitt stopped short of saying that *all* teacher tasks should be standardized. Teachers would receive general instructions that they would follow (see Callahan, 1962, p. 90).

3. Some took this to the extreme by pushing for the abolition of traditional academic subjects in favor of curricula based wholly on children's interests. This was at odds with Dewey's original vision, however. Dewey did not wish to eliminate traditional subjects, such as English, mathematics, and science. He sought to make them more interesting and meaningful to students through activities and experimentation (Gehrke, 1998; Ravitch, 2001).

4. For example, Hord and Sommers (2008, p. 65) caution that "Running amuck of the local educators' union is not a good idea." The authors encourage administrators to cultivate positive, productive relationships with representatives so that union leaders understand school issues and the steps necessary to solve them. Anderson documents 12 key elements to supporting district improvement. One key element is a district-wide culture that supports teamwork and professional community. This productive culture is seen to come in part from positive relationships with the local union. Fullan (2010, p. 95) notes that union leaders want to look after their members while doing good – "in that order," but adds that when districts can figure out how to ensure that "self-interest is met, people will rise to the bigger purpose [given that] altruism becomes a personal and collective goal that humans find deeply meaningful."

5. Hord and Sommers (2008, p. 65) write that "Many union representatives have been very creative themselves in helping to solve regulatory issues and policies that barricade learning opportunities for staff and students." However, the authors add that, as of yet, the vast majority of unions have not played an active role in promoting productive learning communities centered on improving student learning. Little elaboration is offered by the authors.

ACKNOWLEDGMENTS

This research has benefited from the support of many people. We want to thank the union and management leaders of these six extraordinary school districts who arranged our visits, gave freely of their time, patiently answered our numerous questions, and introduced us to many of their colleagues. These leaders include Laura Rico, Gary Smuts, Mary Sieu, Ray Gaer, Richard Saldana, Carol Hansen, Valencia Mayfield, Ruben Mancillas, Steve Harris, Jean Clements, MaryEllen Elia, Dan Valdez, Marian Flickinger, Christine Harris, Michael Spencer, Rod Sherman, James Short, Jim Hennesy, Randy Keillor, Edward Saxton, Francine Lawrence, and Dal Lawrence. In addition, we appreciate the time spent with so many other administrators, teachers, support staff, board members, and union leaders in these districts. We thank the American Federation of Teachers – President Randi Weingarten, Al Davidoff, Kathy Buzad, Cheryl Teare, Rob Weil,

Linda Stelly, Diane Airhart, Joan Devlin, Lynne Mingarelli, Angela Minnici, and Melanie Hobbs – for helping to identify these collaborative districts and local unions, and for their guidance, support, and technical assistance with this research. We are also grateful to Thomas Kochan, Harry Katz, Sue Schurman, David Finegold, Charles Heckscher, Adrienne Eaton, Karen Kevorkian, Deanna Hill, and the Center for American Progress for their helpful comments and suggestions on earlier versions of this study. Funding for this research was provided by the Bill & Melinda Gates Foundation.

REFERENCES

Adler, P. S. (1995). "Democratic Taylorism": The Toyota production system at NUMMI. In S. Babson (Ed.), *Lean work: Empowerment and exploitation in the global auto industry* (pp. 207–219). Wayne State University Press.

AFL-CIO. (1994). *The new American workplace: A labor perspective*. Washington, DC: AFL-CIO Committee on the Evolution of Work.

Appelbaum, E., Bailey, T., Berg, P., & Kalleberg, A. (2000). *Manufacturing advantage: Why high-performance work systems pay off*. Ithaca, NY: Cornell University Press.

Bagley, W. (1912). The need of standards for measuring progress and results. *Journal of proceedings of the fiftieth annual meeting* (pp. 634–639). Ann Arbor, MI: National Education Association of the United States.

Beach, A., & Kaboolian, L. (2005). *Working better together: A practical guide for union leaders, elected officials and managers to improve public services*. Ford Foundation, Public Sector Labor Management Committee, HLS Labor & Worklife Program.

Bifulco, R., & Ladd, H. F. (2006). The impacts of charter schools on student achievement: Evidence from North Carolina. *Education Finance and Policy*, *1*(1), 50–90.

Brooks, J. S., & Miles, M. T. (2008). From scientific management to social justice…and back again? Pedagogical shifts in educational leadership. In A. H. Normore (Ed.), *Leadership for social justice: Promoting equity and excellence through inquiry and reflective practice* (pp. 99–114). Charlotte, NC: Information Age.

Callahan, R. E. (1962). *Education and the cult of efficiency: A study of the social forces that have shaped the administration of the public schools*. London: University of Chicago Press.

Carpenter, D., II., & Noller, S. (2010). Measuring charter school efficiency: An early appraisal. *Journal of Education Finance*, *35*(4), 397–415.

Cote, J. (2002). *Algebra: Themes, tools, concepts*: *An exploration of a progressive curriculum and some thoughts on the future of progressive math reforms*. Retrieved from http://www.mathedpage.org/attc/attc-dewey.pdf

Cutcher-Gershenfeld, J. (1987). Xerox and the ACTWU: Tracing a transformation in industrial relations. In F. K. Foulkes & E. R. Livernash (Eds.), *Human resources management* (2nd ed.). Englewood Cliffs, NJ: Prentice Hall.

Darling-Hammond, L. (2004). Standards, accountability, and school reform. *Teachers College Record*, *106*(6), 1047–1085.

Darling-Hammond, L. (2009, October). Teaching and the change wars: The professionalism hypothesis. In A. Hargreaves and Fullan (Eds), *Change wars*. Bloomington, IN: Solution Tree.

Darling-Hammond, L., & Montgomery, K. (2008, March 17). Keeping the promise?: The debate over charter schools. In L. Dingerson, B. Miner, B. Peterson, & S. Walters (Eds), *Milwaukee, WI: Rethinking Schools, Ltd.*

Dillan, S. (2009). "No child" law is not closing a racial gap. *New York Times*, April edition. Retrieved from http://www.nytimes.com/2009/04/29/education/29scores.html

Dufour, R., & Eaker, R. (1998). *Professional learning communities at work: Best practices for enhancing student achievement* (1st ed.). Bloomington, IN: Solution Tree Press.

DuFour, R., Eaker, R., & DuFour, R. (2008). *Revisiting professional learning communities at work: New insights for improving schools*. Bloomington, IN: Solution Tree Press.

Eaton, S., Rubinstein, S. A., & McKersie, R. (2004). Building and sustaining labor-management partnerships: Recent experiences in the US. *Advances in Industrial and Labor Relations*, *13*, 139–159.

Eaton, A., & Voos, P. (1994). Productivity enhancing innovations in work organization, compensation, and employee participation in the union vs. non-union sectors. In D. Lewin & D. Sockell (Eds.), *Advances in industrial and labor relations* (Vol. 6, pp. 63–109). Greenwich, CT: JAI Press.

Eberts, R. W., & Hollenbeck, K. (2002, April 5). *Impact of charter school attendance on student achievement in Michigan*. Upjohn Institute Staff Working Paper No. 02-78. Retrieved from http://ssrn.com/abstract=316562 or doi:10.2139/ssrn.316562

Emery, K. (2007). Corporate control of public school goals: High-stakes testing in its historical perspective. *Teacher Education Quarterly*, *34*(2), 25–44.

Evans, R. (2001). *The human side of school change: Reform, resistance, and the real-life problems of innovation*. San Francisco, CA: Jossey-Bass.

Figlio, D. N., & Getzler, L. S. (2002). *Accountability, ability and disability: Gaming the system*. National Bureau of Economic Research Working Paper Series No. 9307. Retrieved from http://www.nber.org/papers/w9307

Frost, A. (1998). Variation in labor-management collaboration over the redesign of work: Impacts on work organization and outcomes. In D. Lewin, D. Sockell & B. Kaufman (Eds.), *Advances in industrial and labor relations* (Vol. 8, pp. 89–117). Stamford, CT: JAI Press.

Freeman, R. B., & Rogers, J. (1999). *What workers want*. Ithaca, NY: Cornell University Press.

Fullan, M. (1993). *Change forces: Probing the depths of educational reform*. Levittown, PA: Psychology Press.

Fullan, M. (2007). *Leading in a culture of change*. San Francisco, CA: Wiley.

Fullan, M. (2010). *All systems go: The change imperative for whole system reform*. Thousand Oaks, CA: Corwin Press.

Gehrke, N. (1998). A look at curriculum integration from the bridge. *Curriculum Journal*, *9*(2), 247–260.

Golden, C. S., & Parker, V. (1949). *Causes of industrial peace under collective bargaining*. New York, NY: Harper and Brothers.

Golden, C. S., & Ruttenberg, H. (1942). *Dynamics of industrial democracy*. New York, NY: Harper and Brothers.

Hargreaves, A., & Shirley, D. (2009). *The fourth way: The inspiring future for educational change*. Thousand Oaks, CA: Corwin Press.

Hecksher, C. (1988). *The new unionism: Employee involvement in the changing corporation*. New York, NY: Basic Books.

Heckscher, C., Maccoby, M., Ramirez, R., & Tixier, P.-E. (2003). *Agents of change: Crossing the post-industrial divide*. Oxford University Press.

Hoerr, J. P. (1988). *And the wolf finally came: The decline of the American steel industry*. Pittsburgh, PA: University of Pittsburgh Press.

Hord, S. M., & Sommers, W. A. (2008). *Leading professional learning communities: Voices from research and practice*. Thousand Oaks, CA: Corwin Press.

Hoxby, C. M. (2004). *A straightforward comparison of charter schools and regular public schools in the United States*. HIER Working Paper.

Ichniowski, C., Kochan, T., Levine, D., Olson, C., & Strauss, G. (1996). What works at work: Overview and assessment. *Industrial Relations*, *35*(3), 299–333.

Johnson, S., & Donaldson, M. (2006). The effects of collective bargaining on teacher quality. In J. Hannaway & A. Rotherham (Eds.), *Collective bargaining in education: Negotiating change in today's schools* (pp. 111–140). Cambridge, MA: Harvard Education Press.

Ichniowski, C., & Shaw, K. (1999). The effects of human resource management systems on productivity: An international comparison of U.S. and Japanese plants. *Management Science*, *45*(5), 704–721.

Kaufman, B. E., & Levine, D. I. (2000). An economic analysis of employee representation. In B. Kaufman & D. G. Taras (Eds.), *Nonunion employee representation: history, contemporary practice, and policy* (pp. 149–175). Armonk, NY: M.E. Sharpe.

Kelley, C., & Finnigan, K. (2004). Teacher compensation and teacher workforce development. *Yearbook of the National Society for the Study of Education*, *103*(1), 253–273.

Kochan, T., Eaton, A., McKersie, R., & Adler, P. (2009). *Healing together: The labor-management partnership at Kaiser Permanente*. Cornell University Press.

Kochan, T., Katz, H., & McKersie, R. (1986). *The transformation of American industrial relations*. New York, NY: Basic Books.

Koppich, J. (2005). Addressing teacher quality through induction, professional compensation, and evaluation: The effects on labor-management relations. *Educational Policy*, *19*(1), 90–111.

Koretz, D. M. (2008). *Measuring up: What educational testing really tells us*. Cambridge, MA: Harvard University Press.

Levine, D., & Tyson, L. D. (1990). Participation, productivity, and the firm's environment. In A. S. Blinder (Ed.), *Paying for productivity*. Washington, DC: Brookings Institution.

MacDuffie, J. P. (1995). Human resource bundles and manufacturing performance: Organizational logic and flexible production systems in the world auto industry. *Industrial and Labor Relations Review*, *48*(2), 197–221.

McCaffrey, D. F., Sass, T. R., Lockwood, J. R., & Mihaly, K. (2009). The intertemporal variability of teacher effect estimates. *Education Finance and Policy*, *4*(4), 572–606. doi: 10.1162/edfp.2009.4.4.572

Nelson, R., & Watras, J. (1982). The scientific movement: American education and the emergence of the technological society. *Journal of Thought*, *16*(1), 49–71.

Oakes, J. (1986). Keeping track, Part 1: The policy and practice of curriculum inequality. *Phi Delta Kappan*, *68*(1), 12–17.

Osterman, P. (2000). Work reorganization in an era of restructuring: Trends in diffusion and effects on employee welfare. *Industrial and Labor Relations Review*, *53*(2), 179–196.

Piore, M. J., & Sabel, C. F. (1984). *The second industrial divide*. New York, NY: Basic Books.

Ravitch, D. (2001). *Left back: A century of battles over school reform*. New York, NY: Simon & Schuster.

Ravitch, D. (2010, November 1). *The death and life of the Great American school system: How testing and choice are undermining education* (First Trade Paper Edition, Revised and Expanded). New York, NY: Basic Books.

Rogoff, B., Matusov, E., & White, C. (1996). Models of teaching and learning: Participation in a community of learners. *The handbook of education and human development* (pp. 388–414). Oxford, England: Blackwell.

Rubinstein, S. A. (2000). The impact of co-management on quality performance: The case of the Saturn Corporation. *Industrial and Labor Relations Review*, *53*(2), 197–218.

Rubinstein, S. A. (2001). Unions as value-adding networks: Possibilities for the future of U.S. Unionism. *Journal of Labor Research*, *22*(3), 581–598.

Rubinstein, S. A. (2003). *Partnerships of steel-forging high involvement work systems in the US steel industry: A view from the local unions*. An AILR/LERA Best Papers Competition Winner, *Advances in Industrial and Labor Relations*, Volume 12. Emerald, Bingley, UK.

Rubinstein, S., & Eaton, A. (2009). The effects of high involvement work systems on employee and union-management communications networks. *Advances in Industrial and Labor Relations*, *16*, 109–135.

Rubinstein, S. A., & Kochan, T. (2001). *Learning from Saturn: Possibilities for corporate governance and employee relations*. Ithaca, NY: Cornell University Press.

Skinner, B. F. (1984). The shame of American education. *American Psychologist*, *39*(9), 947–954.

Slichter, S. (1941). *Union policies and industrial management*. Washington, DC: Brookings Institution.

Slichter, S., Healy, J. J., & Livernash, E. R. (1960). *The impact of collective bargaining on management*. Washington, DC: Brookings Institution.

Stoll, L., Bolam, R., McMahon, A., Wallace, M., & Thomas, S. (2006). Professional learning communities: A review of the literature. *Journal of Educational Change*, *7*(November 6), 221–258.

Sunderman, G. L., Tracey, C. A., Kim, J., & Orfield, G. (2004). *Listening to teachers: Classroom realities and no child left behind.* Cambridge, MA: Harvard Education.

Tan, S. (2010). Singapore's educational reforms: The case for un-standardizing curriculum and reducing testing. *AASA Journal of Scholarship and Practice*, *6*(4), 50–58.

Wilkinson, A., Gollan, P., Marchington, M., & Lewin, D. (2010). *The Oxford handbook of participation in organizations*. Oxford University Press.

POWER IN THE SKIES: PILOT COMMITMENT AND TRADE UNION POWER IN THE CIVIL AVIATION INDUSTRY

Geraint Harvey and Peter Turnbull

ABSTRACT

This chapter discusses the power of trade unions within the UK civil aviation industry, focusing specifically on the British Air Line Pilots' Association (BALPA) that represents flight crew. The deleterious effects of the contemporary legislative and competitive environment of air transportation on the ability of BALPA to exact concessions from airline management are discussed as are the changes to the nature of work of flight crew that impact on the structural dimensions from which BALPA derives its power. These are weighed against the associational dimension of BALPA's power base, in particular the willingness of pilots to engage in active militancy. The chapter also considers possible organizing strategies for BALPA in order to challenge managerial prerogative in the industry.

Keywords: Trade unions; industrial relations; power; civil aviation and pilots

Advances in Industrial and Labor Relations, Volume 20, 51–74

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020005

INTRODUCTION

Just how powerful are trade unions in the twenty-first century? In particular, are traditionally well-organized groups who maintain an "exclusive" recruitment, organizing, and collective bargaining strategy still able to exert "power over" management? Take the case, for example, of airline pilots in the UK, a group traditionally well placed to exact concessions from management by virtue of their "strategic skills" (Johnson, 2002, p. 22) and the "immediacy" of any strike action, or even the threat of strike action, on the airline's bottom line (Harvey, 2007, p. 10). Civil aviation is a pro-cyclical industry and is highly susceptible to national and international economic conditions. The industry has been hit especially hard by the current global financial crisis (Harvey & Turnbull, 2009). In such difficult times, are pilots still able to exact concessions from management? Are they still committed to their union and willing to take industrial action against (or do they side with) their employer and concede to increasing demands for concessions as airlines struggle to make a profit or in some cases even survive?

These questions are addressed initially through a consideration of the (international) legal framework and market conditions facing airline management and the British Air Line Pilots Association (BALPA). Although civil aviation, by its very nature, is an inherently international business, unions have in the past been able to rely on domestic action and traditional repertoires of contention (e.g., strikes, lobbying members of Parliament and government ministers, etc.) especially in relation to British Airways (BA), the national flag airline. In more recent years, the shift from national regulation to international (de)regulation has undermined the bargaining power of civil aviation unions and the propriety of traditional repertoires of contention (Turnbull, 2010). Trade union power is understood in the classic Hobbesian sense of "power over" the agents of capital (i.e., airline management) and is expressed by the "outcomes of bargaining" that "reflect the balance of power" (Kelly, 1998, p. 9; see also, Martin, 1992, p. 4). Trade union power is accordingly manifest either in the ability of the union to coerce management (Dahl, 1957) or in terms of "non-decision making" (Bacharach & Baratz, 1963), such that the union is able to suppress certain proposals before they are tabled because they are "either implicitly or explicitly ruled out of bounds" (Clegg, Courpasson, & Phillips, 2006; p. 209; see also Edwards, 1978, p. 1). In this respect, trade union power is determined by a range of (interconnected) factors that includes the environmental context in which capital and labor interact as well as the power resources available to, and mobilized by, trade unions (Batstone, 1988; Blyton & Turnbull, 2004, p. 348; Kelly, 1998; Martin, 1992; Wright, 2000).

In this context, data from two questionnaire surveys of British airline pilots (2002 and 2010) are analyzed alongside qualitative data from a series of ongoing case studies (Harvey, 2007, 2009; Harvey & Turnbull, 2006, 2010; Turnbull, Blyton, & Harvey, 2004). At two critical points in the recent history of civil aviation – in the wake of the terrorist attacks of 9/11 and the recent financial crisis, from which the world economy is yet to recover – surveys were conducted with the cooperation of BALPA. The 2002 survey polled 762 responses from pilots at six airlines: two from each of the principal sectors of UK civil aviation, namely full service/legacy (BA and bmi), low fares (easyJet and Go), and charter (Britannia Airways and Air 2000). Similarly the 2010 survey polled 280 responses from pilots at six airlines representing the three principal industry sectors. Further details are provided in the appendix. The ongoing case studies have focused on BA and several low-cost airlines (e.g., easyJet/Go and Ryanair), drawing on both secondary data sources and semi-structured interviews with management, trade union officials, and airline pilots. Drawing on these data, the (hostile) environment confronting organized labor is considered first, followed by a more direct focus on the power resources of British pilots, their commitment to BALPA, and their "willingness to act."

A HOSTILE ENVIRONMENT FOR TRADE UNIONS

It has long been recognized that trade union bargaining power is conditioned, *inter alia*, by the legal framework for employment contracts and collective bargaining, developments, and demand in the product and labor market, and popular (including political) support. These different factors are considered in turn for ease of exposition, although it is important to note their interaction. For example, there might be more international competition in the product market because of legislative changes that extend the market across national borders. This, in turn, will feed through to the labor market where new technology might be used to greater effect in a more open market (e.g., personnel can now be located in different countries and their flight and duty times managed by new computerized crew resource systems).

Legal Regulation of the Product and Labor Markets

In explaining the decline in union power in the UK since 1979, Kelly (1998, p. 13) focuses on the role of the (capitalist) state and the fundamental

disadvantage faced by trade unions operating in a system that intrinsically favors capital (see also Daniels & McIlroy, 2009; Howell, 2007; Martin, 1992, p. 44). Legislation is central to our understanding of the power of trade unions within civil aviation because the legal framework is now truly international. All airlines in the European Union (EU), for example, are now registered as *European* rather than national carriers[1] and the EU (rather than the nation state) negotiates "open skies" agreements with the United States and other countries around the world such as Canada, Singapore, and India. Historically, union organization has "followed the market" (Commons, 1919), but as markets have been opened up across borders, civil aviation unions have remained wedded to the nation state and their traditional repertoires of contention (Turnbull, 2010).

Globalization has presented airlines and other transport companies with the opportunity to exploit international business and employment law in order to undermine the bargaining power of organized labor. International shipping lines, for example, register their vessel under a "flag of convenience" (FoC) to exploit tax concessions and lower health and safety standards, and employ labor from a third country or many different countries (a "crew of convenience") to exploit lower labor costs (Koch-Baumgarten, 1998; Lillie, 2004). Airlines are now making use of these opportunities to press home their bargaining advantage over labor. Ryanair is perhaps the most prominent example of an airline "leveraging" the new business environment to make a profit on the back of a disorganized workforce (O'Sullivan & Gunnigle, 2009).[2] Although Ryanair operates from 41 bases and serves 150 European destinations, all staff are employed on Irish contracts, which carry much lower social costs, with the exception of its UK-based employees. As a result, a Spanish pilot on an Irish contract might be based in France and fly a regular service to the UK. Ryanair is a vehemently anti-union company, but which union is best placed to represent this pilot? When BALPA sought recognition from Ryanair under the New Labor government's Employment Relations Act (1999), the company "transferred" pilots from other EU countries so that they could vote against BALPA and defeat the recognition ballot.

While the entry of low fares airlines into the European market undermines union bargaining power at traditional (legacy) carriers as a result of price competition in the product market and a "race-to-the-bottom" in the labor market (ECA, 2006; ITF, 2002), established civil aviation unions such as BALPA have faced a more pernicious threat to their bargaining power as a result of legal (de)regulation at the international level. In 2008, for example,

BALPA threatened legal action against BA after Britain's flag carrier announced the establishment of a new subsidiary called OpenSkies that would initially offer flights from Paris and Brussels to New York with a new pilot workforce. BALPA sought to extend the airline's scope agreement – "Schedule K" – to OpenSkies, which protects employment security and career opportunities for all pilots on the BA seniority list. At the time it was agreed (in 2003), Schedule K only covered relevant BA operation in the UK because the regulatory environment did not permit BA to fly from another EU member state to the United States. BALPA's concern was that OpenSkies could provide leverage for BA to reduce or at least restrain labor costs within mainline BA operations – BALPA accepted that OpenSkies, as a new start-up airline, would need to operate with different terms and conditions of employment, but the Association wanted to ensure that OpenSkies pilots were part of the BA pilot community with "two-way" traffic for its members between BA mainline and OpenSkies. In other words, there would be a common seniority list for all BA mainline and OpenSkies pilots (so a BA pilot in London Heathrow, for example, would be able to bid for work in OpenSkies in Paris, and vice versa).[3]

As the disputes' procedure was exhausted without agreement, even after the involvement of ACAS (the UK's arbitration and conciliation service), BALPA organized a strike ballot and secured a mandate for industrial action (86% voted in favor on a 93% turnout). By this stage, BA was already recruiting pilots for the new OpenSkies operation. BALPA issued a 7-day notice of strike action, in accordance with the law, but BA threatened BALPA with an injunction and unlimited damages if it called for any action pursuant to the ballot. The issue was not whether BALPA had acted in accordance with UK employment law – which it had – but that any strike action, if called, would be unlawful by virtue of the European Court of Justice (ECJ) reasoning in the cases of Viking[4] and *Laval*.[5]

The detail of the *Viking* case is worthy of further consideration because of its implications for the legitimacy of international collective action. In this case, the Finnish ferry firm Viking Line launched a successful legal action against the Finnish Seafarer's Union in response to industrial action undertaken by the Seafarers' Union. The industrial action had been called by the seafarers because Viking Line, which had traditionally employed Finnish seamen on Finnish contracts, set up an Estonian subsidiary, re-flagging its ferry as an Estonian vessel and employing Estonian sailors on lower Estonian conditions. The strike by the Union, called to protect its members' terms and conditions and lawful under Finnish national law, was ruled unlawful by the ECJ because it was deemed to be an infringement of

the Viking Line's ''freedom of establishment'' under the European Treaty. In fact, both the Seafarer's strike and the subsequent boycott of the company organized by the International Transport Workers' Federation (ITF) were deemed to impose an unfair restriction on Viking's freedom to establish a business in Estonia. The principle of ''proportionality'' was applied and the right to strike revoked as it ''improperly impeded'' the establishment of a new company by Viking Line. Thus, it was no defense that the industrial action was lawful according to the relevant national (Finnish) law.

The effect of the Viking ruling is that the national courts must consider whether the industrial action taken by unions, against companies operating in two or more EU states, is proportionate. That is, it must be (i) sufficiently within the public interest, (ii) suitable, and (iii) not excessive for purpose. In many cases it will be a matter of speculation as to whether the employer would or would not have conceded to a lesser form of action. Moreover, whereas it may be straightforward enough to quantify the cost of industrial action on an airline (e.g., lost revenue from canceled bookings/flights, disruption to passengers' travel plans, and even the loss of bonuses for staff), it is very difficult to measure the benefit of industrial action in terms of future employee protection (e.g., pilot's seniority). Thus, given the regulatory (market) environment for civil aviation, the advantage overwhelmingly favors the airline in any legal dispute. It is no exaggeration to suggest that the OpenSkies dispute exposed the limitations, if not the very legitimacy, of traditional forms of trade union action in the new European legal environment.[6] In effect, while airlines now operate under international (European) business law, trade unions and their members still toil under domestic (national) employment law.[7]

Developments and Demand in the Product and Labor Markets

Although the future projections for civil aviation are for strong growth, especially in Europe, the pattern of demand is pro-cyclical, which creates recurrent crises as passenger revenue falls more sharply than the decline in general economic activity. When demand is high, workers are more confident and willing to strike. By the same token, profits are rising and management may be more willing to concede to union demands (Martin, 1992, p. 31). Conversely, when demand and profits are falling, labor is less confident and management's will to resist any demands from the workforce is stiffened (*ibid.*). In practice, of course, this relationship is not

straightforward – with higher profits, for example, the firm is better placed to survive a stoppage of work (Batstone, 1988, p. 224), whereas during a downturn the workforce may be confronted by proposals for major changes to their terms and conditions of employment, which intensifies antagonism between the parties. In the case of civil aviation, strikes are more frequent around the peak of the cycle, when labor's expectations are still rising but management's resolve to resist increasing costs is stiffened by the expectation of a downturn (as signaled by a decline in advanced bookings). Labor costs have been a primary target for cost-conscious airlines, not simply because these costs account for such a high proportion of operating costs (Oum & Yu, 1995) but also because of low-cost competition from new entrants such as Ryanair and easyJet.

By 2003, low fares airlines (LFAs) in Europe had accounted for 17% of the market. By 2008 their market share had increased to almost 45%, as illustrated in Fig. 1.[8] Ryanair is leading the "race-to-the-bottom" within Europe, putting pressure on established (legacy) airlines to cut costs. The failure of both the Irish and British pilot associations to secure recognition at Ryanair has seriously undermined their bargaining power with other airlines. As Martin (1992, p. 32) notes, control of the labor market is critical to the power of trade unions, whose organization must "follow the market' if destructive (labor) cost competition is to be avoided" (Brown, 2008). One of the difficulties faced by union organizers is that many Ryanair pilots are simply concerned to accumulate flight time, so they can move on to another airline with better pay, conditions, and career opportunities. This is a genuine option because the labor market for pilots is usually tight, which provides opportunities for labor mobility. Prior to the recent recession, industry commentators were predicting an impending shortage of pilots (Pasztor, 2007; see also Ionides, Endres, Pilling, & Sobie, 2007). More recent analysis also indicates that airlines will face a labor market characterized by a shortage rather than a surplus of flight crew (Learmount, 2010). In general, a tight labor market will enhance the bargaining power of (organized) labor, although pilots have much to lose in terms of service-related benefits if they are made redundant. If an airline goes out of business, whether as a result of economic crisis and/or trade union action, as was the case with Sabena in 2001, the jobs available to redundant pilots are more likely to be with the expanding low fares airlines.

In addition to the negative impact of LFAs on pilots' bargaining power, the control exercised by pilot unions over the labor market has also been eroded by changes to the training and qualifications for commercial pilots. The Multi Crew License, whereby an aircraft might be operated by

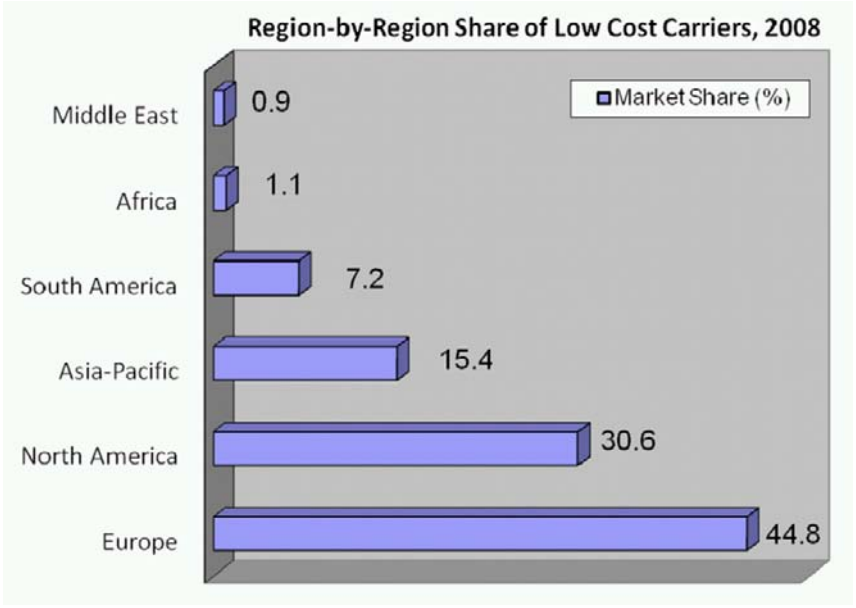

Fig. 1. Market Penetration of Low-Cost Carriers (LCCs).

experienced flight crew alongside less experienced trainees, has been introduced in response to the anticipated shortage of pilots. This policy is crucial as it undermines the ability of the union to ''insulate its members from labor market competition'' and ''competing sources of labour supply'' (Martin, 1992, p. 33). The Multi Crew License is likely to loosen the labor market for pilots, thereby eroding the power of the trade union.

Popular Support

Labor power is bolstered by the political influence of the trade union (Batstone, 1988, p. 237), which in turn is often predicated upon the support of the voting public (Blyton & Turnbull, 2004, p. 348). In general, public support for trade union demands is likely to be higher when the firm is profitable, and is consequently more able to pay (Martin, 1992, p. 29) as opposed to during a recession. However, Martin (1992, p. 44) notes the peculiar relationship between union power and popular support, first citing

the failure of teaching unions to improve the pay of members despite widespread popular support, and second by illustrating the way in which union power can display an inverse relationship with the popularity of the union. For example, "in the 1980s trade unions increased in popularity as they were perceived to decline in power" (*ibid.*).

The recent UNITE (cabin crew) strike at BA is a case in point, coinciding as it did with a global economic recession and a national "tightening of belts" as UK citizens were implored to "do more for less." Thus, in an all pervading discourse of austerity and consequent widespread belief among the public that everyone "must take the medicine," irrespective of how unpalatable in order to remedy the dire economic situation, there was a significant public backlash against striking cabin crew, especially as the initial action coincided with the busy Christmas vacation period. The timing of the strike action by the union was intentional, causing the airline to cancel flights at a very busy period. Unions will often exploit conditions in the product market (e.g., high-demand and/or a perishable product) in order to maximize their bargaining leverage in the labor market (Martin, 1992, p. 32), but in this case any advantage was mitigated by a hostile reaction from the public and politicians. Although UNITE is one of the Labour Party's biggest financial donors, Gordon Brown, then Labour prime minister, castigated the action of cabin crew as "unjustified" and "deplorable."

In the case of flight crew, popular public support for any action taken by BALPA is even less likely given the terms and conditions enjoyed by pilots . In 2009, for example, Civil Aviation Authority statistics show that the average expenditure on pilots at BA was £108,400 compared to an average expenditure of £31,400 on cabin crew. Irrespective of the costs of training to operate commercial aircraft, estimated by BALPA to be around £60,000, and consequently the financial burden to be borne by flight crew after qualifying, public response to industrial action by pilots will be heavily influenced by the large discrepancy between pilot wages and those of other airline personnel.

Firm Profitability

Martin (1992, p. 31) argues that, "In general … union power increases with increases with profits, with management being able to afford higher settlements; conversely management's will to resist is stiffened when profits are low." However, this theory omits the important caveat that profitability

facilitates capital's resistance to sanctions undertaken by labor. Instead of profits leading to concessions, therefore, the financial health of the firm might be used to undermine union power as financial resilience enables management to withstand expressions of union power, such as industrial action, leading to an erosion of the effectiveness of such action and thereby a diminution of union power. As Batstone (1988, p. 224) puts it, the greater the financial resources of capital, the more likely it is that the firm is able to "survive a stoppage of work more easily than can workers."

If the firm is able to "weather the storm" of industrial sanctions such as strike activity, then the power of the union is eroded. At the other end of the spectrum, Martin (1992, p. 31) suggests that low profitability, or heightened firm vulnerability, is associated with diminished union power because of the "stiffened" resolve of management. However, it is as likely that the union leadership will be aware of the vulnerability of the firm and so the sanctions imposed would ultimately be adverse for the membership. The heightened vulnerability of the firm erodes the power of the union not only because of the reduced capability of the firm to meet union demands, but also due to the fact that the precarious position of the firm delimits possible union sanctions, otherwise utilized to exert pressure, for as Batstone (1988, p. 229) puts it, "the union might be expected to become increasingly concerned with the survival of the company … and so may adopt a more co-operative stance." The demise of Sabena shortly after the 2001 aviation crisis provides a cautionary tale of the consequences of individual sanctions in spite of firm vulnerability. The actions taken by the pilots' union at the airline during a period of heightened vulnerability certainly expedited its collapse.

In such a situation, unions are far less able to enforce demands, as experienced by BALPA at BA in 2001. In August that year the General Secretary spoke of possible action against the airline in order to affect a swift recovery of concessions made by the union under the Guiding Principles partnership agreement. Chris Darke, the BALPA General Secretary at the time, claimed that the union had played its part in the agreement, but management had failed to do likewise and so the union was to ballot its members on industrial action to achieve a "snap-back" deal on the terms and conditions of pilots at the airline (*interview notes*, August 2001). Shortly afterward the industry was plunged into crisis by the terrorist attacks of 9/11 and the airline reported record losses, exacerbated by the burgeoning success of the European LFAs. While the leading LFAs have reported healthy profits in recent years (see footnote 2), the profitability of the industry as a whole has only been around 1% – hardly a conducive environment for collective bargaining.

POWER RESOURCES OF LABOR IN CIVIL AVIATION

The power resources of the trade union have been described as the "resources possessed by individual workers and members" and "the union's ability to combine and mobilize these resources" (Batstone, 1988, p. 223) or alternatively the "structural" and "associational" dimensions of labor power (Wright, 2000). Structural power emerges from "the location of workers within the economic system" (Wright, 2000, p. 962), specifically "product markets, labor markets, [the] strategic position of workgroups in the production process [and] degree of labour substitutability" (Kelly, 1998, p. 11). Compare flight crew and cabin crew in this respect. Aircraft cannot fly without a qualified pilot who is familiar with the airline's standard operating procedures, aircraft type(s), destinations, etc. Consequently, any strike by pilots will ground the airline's fleet as it is almost impossible to substitute the flight crew, at least in the short term (Johnson, 2002, p. 22). In contrast, when cabin crew recently struck work at BA, employees from other areas of the business (including pilots and check-in staff) were drafted in to provide "cover" (or "scab" in the words of UNITE, the union that represents BA cabin crew).

The collective or associational dimension of union power depends upon the union's ability to organize and mobilize the support of its members (Batstone, 1988, p. 223). Ultimately, unions need a membership that is "willing to act" in defense of their terms and conditions of employment, and in defiance of management, and not simply a membership that is "willing to pay" for union services (Offe & Wiesenthal, 1980). Associational power encompasses the "structure and sophistication of union organization and depth of collective bargaining" (Kelly, 1998, p. 11; see also, Batstone, 1988, pp. 241–243); group cohesion (Goodman, Armstrong, Davis, & Wagner, 1977); the "readiness of the employee to use the power of the strike" (Brown, 1986); and union density. BALPA enjoys very high membership (typically above 70%) at airlines such as BA, Thomson Airways (formerly Britannia Airlines), and
bmi, but as Batstone (1988, p. 240) points out, union density is necessary but not sufficient for union power (see also Kelly, 1998, p. 10). British pilots are more than willing to strike[9] and they display strong group cohesion, founded on "a sense of themselves as a distinct group, 'we,' defined in opposition to an outgroup, 'them,' which has different interests and values" (Kelly, 1998, p. 30).

Recent employment relation initiatives, such as "partnership agreements," have been designed to foster cooperation between management and

labor by redrawing the boundaries of social identification between "us" and "them." For example, the BA–BALPA Partnership Guiding Principles (signed in January 1997) stated that: "BA and BALPA recognize the importance of behavior which demonstrates mutual trust and respect. They acknowledge the importance of supporting each other in developing new behaviors and will work to help each other understand areas for improvement." However, when pilots were surveyed in 2002, BA pilots were *least likely* to agree with the statement: "The Association should pursue a partnership approach with airline management." Pilots see themselves as professional employees and are attracted by the idea of working in partnership with management, as Table 1 clearly demonstrates, but when a formal partnership agreement "fails to deliver," as at BA, then pilots are quick to identify with "us" against "them" (see Evans, Harvey, & Turnbull, 2012; Turnbull
, Blyton, & Harvey, 2004).

At the time of the 2002 survey, only BA and Britannia had signed a formal partnership agreement.[10] Such was the dissatisfaction with the Guiding Principles Agreement at BA that a "stalking horse" candidate (a BA long-haul pilot) stood against the incumbent General Secretary of BALPA (Chris Darke, the architect of the BA partnership agreement) in the re-election ballot of 2002.[11] The General Secretary was roundly defeated by a margin of 3 votes to 1 (see Harvey, 2007, chapter 8). The dissatisfaction of BA pilots at the time was also evident in their response the statement: "The Association effectively represents my interests within the airline." Only 32% of respondents employed by BA in 2002 agreed with this statement.

Table 1. Attitudes to Partnership ("The Association should pursue a partnership approach with airline management") (2002).

Airline	Disagree	Neither	Agree
Air2000	12	0	88
bmi	12	6	82
Go	15	4	81
Britannia	9	13	78
easyJet	25	10	65
British Airways	32	14	54

Note: Flight crew were asked to respond using a five-point scale (strongly disagree, disagree, neither disagree nor agree, agree, and strongly agree). Responses were coded as 1, 2, 3, 4, and 5, respectively. The data for strongly agree and agree are summed in this table, as are the responses for strongly disagree and agree.

Similarly, less than 30% of pilots reported satisfaction with BALPA's effectiveness when it came to improving pay, while only 36% of respondents felt that BALPA's efforts in improving industrial benefits were satisfactory. Already moribund in 2002, by 2010 the partnership agreement between BA and BALPA had been replaced by a more traditional adversarial ("them and us") approach by the union. Interestingly, data from the 2010 survey indicate a more positive perspective on the effectiveness of the Association. In contrast to the response of BA pilots in the 2002 survey, over half of the respondents employed at the UK flag carrier felt that BALPA had performed satisfactorily in improving pay and industrial benefits by 2010 (55 and 51%, respectively). More emphatically, 63% of respondents at the airline agreed with the statement, "The Association effectively represents my interests within the airline."[12]

BALPA's members stand ready to use the power of the strike. The 2002 survey revealed that 77% of the pilots agreed with the statement, "BALPA should be prepared if necessary to use any form of industrial action which may be effective." In reply to the same question posed in the 2010 survey, over 80% of respondents agreed with this statement, while 73% reported a "willingness to act" by agreeing with the statement "I would participate in any form of industrial action deemed necessary by BALPA." Interestingly, however, only 20% of respondents to the 2010 survey agreed with the statement, "An adversarial approach to management benefits members' interest best." These data illustrate what might appear to be a rather curious paradox of pilot attitudes. Bennet (2006, p. 67) notes that most pilots are likely to have been born into middle or upper-middle class households and thus might be expected to hold "moderate" views on industrial action. Moderation might also be expected because of their desire to be recognized as professionals and for BALPA to be acknowledged as a professional association. This apparent incongruity of the pilot's character was captured succinctly in a report about the threatened industrial action by pilots at BA in 1996. Wolmar (1996) describes an incident between then General Secretary Chris Darke and a BALPA representative thus:

> One pilot coming out of a meeting harangued Chris Darke, BALPA's General Secretary, saying 'Don't sell us out. We are rock solid about this'. Mr Darke, taken aback, said 'You are behaving like Trots', and then said 'sorry, you won't understand that', having realised that a pilot was likely to think a 'Trot' had something to do with his daughter's pony.

This goes some way to explain why the militancy of flight crew is accompanied by a general ambivalence toward the broader labor

movement, exemplified by BALPA's denunciation of the industrial action undertaken by ground staff at BA in 2004 and the response of individual BALPA members (i.e., strike-breaking) to the industrial action undertaken by the cabin crew union, UNITE, at the airline in 2010. Union membership in BALPA is "instrumental" (aspiring social class) rather than ideological (aggressive class consciousness). Put differently, BALPA has solved the Olsonian collective action problem through aspiration rather than altruism. This is reflected in the union's collective bargaining strategy, which is based on separation from, rather than solidarity with, other civil aviation unions. There is in fact widespread support among pilot representatives to abandon the "label" (although not the status) of a trade union for BALPA in favor of the image of a professional association akin to the British Medical Association.[13]

Union commitment is central to the power of the union (Batstone, 1988, p. 240). Irrespective of their motivation, the survey data indicate that pilots are committed to the union. In 2002 union commitment was measured according to items developed by Gordon, Philpot, Burt, Thompson, and Spiller (1980) to determine "belief in unionism," namely: "Flight crew require the assistance of the Association in negotiations with management"; "Without the Association involvement, the airline would be less efficient"; and "The involvement of the Association is mutually beneficial for the airline and the individual pilot." The data reported in Table 2 indicate widespread belief in the value of Association involvement in both the management of the airline and the promotion flight crew interests.

The 2010 survey included the item, "Flight crew need the involvement of BALPA in negotiations with management to get the best outcome." The

Table 2. Union Commitment among Pilots (2002).

Commitment Statements		Disagree	Agree
1.	Without the association involvement, the airline would be less efficient.	19	54
2.	The involvement of the Association is mutually beneficial for the airline and the individual pilot.	10	75
3.	Flight crew require the assistance of the Association in negotiations with management.	2	92

Note: Flight crew were asked to respond using a five-point scale (strongly disagree, disagree, neither disagree nor agree, agree, and strongly agree). Responses were coded as 1, 2, 3, 4, and 5, respectively. The data for strongly agree and agree are summed in this table, as are the responses for strongly disagree and agree.

Table 3. Union Commitment among Pilots (2010).

Commitment Statements		Disagree	Agree
1.	As long as I am doing the kind of work I enjoy, it does not matter if I belong to the Association.	78	9
2.	I find it hard to agree with the policies of the Association.	57	12
3.	I have little confidence and trust in most BALPA members at my airline.	69	13
4.	My values and those of the Association generally are NOT very similar.	59	15
5.	If asked, I would run for an elected representative position in the Association.	65	20
6.	I am willing to put in a great deal of effort beyond that normally expected of a member to make the Association successful.	42	25
7.	Officials at the Association do not seem to consider the wants of the membership to be all that important.	55	26
8.	I feel little loyalty to the Association.	50	30
9.	I doubt that I would do any special work to help the Association.	41	34
10.	If asked, I would serve on a committee for the Association.	43	35
11.	I feel a sense of pride being part of the Association.	23	39
12.	The Association adequately represents the interests of all members.	41	39
13.	I speak highly of the Association to other pilots.	21	42
14.	The Association effectively represents my interests.	31	45
15.	There is a lot to be gained by joining the Association.	20	53
16.	It is the duty of every member to support or help a fellow member who is in dispute with management.	14	59
17.	Joining the Association was a good decision on my part.	7	70
18.	Every Association member must be prepared to take the risk of filing a grievance.	10	70
19.	Based on what I know now and what I believe I can expect in the future, I plan to be a member of the Association for some time.	13	74
20.	It is the duty of every member to report any information that might be helpful to the Association to a relevant representative/official.	4	80
21.	It is the every member's responsibility to see to it that their airline honors the terms of the contract.	1	94

Note: Flight crew were asked to respond using a five-point scale (strongly disagree, disagree, neither disagree nor agree, agree, and strongly agree). Responses were coded as 1, 2, 3, 4, and 5, respectively. The data for strongly agree and agree are summed in this table, as are the responses for strongly disagree and agree.

response from pilots to this statement was similar to the response in 2002 to statement 3 (Table 2), with over 90% agreement. The more recent survey also included measures of union commitment developed by Bayazit, Hammer, and Wazeter (2004). These statements indicate that the majority of BALPA members support the policies of their Association and share its values (items 2 and 4, Table 3). A sense of loyalty (item 8) and even pride (item 11) is reported by a substantial number of members, and 70% of pilots expressed the view that joining the Association "was a good decision on my part" (item 17, Table 3). Full results are presented in Table 3.

The data in Table 3 indicate a widely shared view that union members should be prepared to take direct action in order to ensure the efficacy of BALPA in representing members' interests (items 18, 20, and 21). Moreover, these data demonstrate a widespread sense of solidarity with fellow members (item 16), no doubt arising from trust and confidence between members (item 3).[14] In contrast, 30% feel little loyalty to the Association (item 8) and only a minority (25%) are willing to put in extra effort or special work for the union (items 6 and 9) or work for the union hierarchy (items 5 and 10). Most unions, however, including BALPA, can function very effectively on the back of a committed core of members, especially when they can forcefully articulate the interests and preferences of the rank-and-file.

CONCLUSION

Trade unions in the civil aviation industry face an increasingly hostile environment that erodes the ability of labor to exact concessions from management. Legislative change presents airline management with the opportunity to operate beyond the legal framework of their home nation and to exploit the opportunities of a global market. Consequently, BA was able to create its subsidiary, OpenSkies, employing a pilot workforce on inferior terms and conditions compared with the mainline operations. At the same time, legislative change opens the market to LFAs, who display a preference for nonunion contracts and are driving down pay and conditions across the sector. The rampant success of the low-cost model has "inspired" (some would say "forced") management in legacy and charter airlines to reduce operating cost, which inevitably entails attempts to reduce labor costs. Pilots have not been immune from such endeavors. Moreover, change in the labor market has eroded the structural dimension of union power (Wright, 2000). For example, despite recent predictions by industry analysts

of an impending pilot shortage, the Multi Crew License will surely loosen the labor market for pilots and thereby diminish the power of the union.

Despite this hostile environment, UK pilots retain the capacity and willingness to disrupt airline services in pursuit of their own interests. What is in doubt today is the effectiveness of traditional forms of contention within national borders. Given the ambivalence of pilots toward other employee groups with the civil aviation industry, BALPA is unlikely to develop a "matrix" of solidarity with other unions in a domestic context. On the contrary, the Association's members recently demonstrated their willingness to undermine strike action by their co-workers in the cabin. Instead, transnational occupational solidarity appears to be a more opportune strategy for BALPA, especially with the European Cockpit Association where it is one of the largest affiliated unions. Pilots certainly appreciate the international labor market in which they compete. What they have yet to do is organize this market. In the words attributed to Benjamin Franklin, pilot associations must "all hang together" at an international level, for if they do not then they "shall most assuredly hang separately."

NOTES

1. As a result, any European airline can fly between any two European cities. The single (internal) European market was created by 'three packages' of liberalization (December 1987, July 1990, and July 1992). Details are provided in the appendix. Appendix documents the transition from the "Chicago regime" of bi-lateral air service agreements to a single European market for civil aviation.
2. Between 1998 and 2008, Ryanair's profit was margin was almost 19% (compared to just under 9% at Southwest and 6% at easyJet).
3. The Association's argument was that the distance between London and Paris was little different from London to Edinburgh, so why should the pilots in OpenSkies be on a different seniority list?
4. *International Transport Workers' Federation and the Finnish Seamen's Union v Viking Line ABP*: C-438/05 [2008] IRLR 143.
5. *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet*: C-341/05 [2008] IRLR 160.
6. This dispute has thrown into question the so-called 'golden formula' for strike action in the UK which is that unions are protected from legal action in respect of certain acts undertaken "in contemplation or furtherance of a trade dispute."
7. The "asymmetry" between "market making" (economic) policy and "market correcting" (social) policy is a long-standing feature of European integration (Scharpf, 1999). Historically, the impact of this asymmetry has been to "demobilize" civil aviation unions, although European port (dockworker) unions have mobilized successfully against the liberalization of port services modeled on the EU's deregulation of airport ground handling (Turnbull, 2010).

8. LCCs have more than 50% of the market in Spain, the UK, Poland, and Italy.

9. In recent years, industrial action was threatened by BALPA in response to the introduction of new laws harmonizing flying hours across the European Union; at bmi in response to failed pay negotiations; at bmibaby over a pay dispute; at BA in response to potential changes to the final salary pension scheme, as well as the new OpenSkies subsidiary (as previously discussed); and most recently over a pay dispute at Virgin Atlantic.

10. The difference between the responses of BA and Britannia pilots was statistically significant ($p < 0.01$).

11. Under UK employment law, union general secretaries must stand for re-election every 5 years.

12. There were some differences in the biometric composition of British Airways respondents to both surveys, summarized in the appendix.

13. In a survey of 17 pilot associations affiliated to the European Cockpit Association undertaken by the authors in 2007, seven were found to be registered as a 'professional association' rather than a 'trade union' under their national employment law. In several cases, the association did not enjoy the same protection under the law as a trade union (e.g., the right to strike and/or immunity from damages arising from any dispute).

14. During interviews, pilots often talk about the 'flying community' or 'fraternity of pilots' when describing their work and employment.

REFERENCES

Bacharach, P., & Baratz, M. S. (1963). Decisions and non-decisions: An analytical framework. *The American Political Science Review*, *57*(3), 632–642.

Batstone, E. (1988). The frontier of control. In D. Gallie (Ed.), *Employment in Britain* (pp. 218–247). Oxford: Blackwell.

Bayazit, M., Hammer, T. H., & Wazeter, D. L. (2004). Methodological Challenges in Union Commitment Studies. *Journal of Applied Psychology*, *89*(4), 738–747.

Bennet, S. A. (2006). *A sociology of commercial flight crew*. Aldershot: Ashgate.

Brown, H. P. (1986). *The origins of trade union power*. Oxford: Oxford University Press.

Blyton, P., & Turnbull, P. J. (2004). *Dynamics of employee relations*. Basingstoke: Palgrave.

Brown, W. (2008). The influence of product markets on industrial relations. In P. Blyton, N. Bacon, J. Fiorito & E. Heery (Eds.), *The sage handbook of industrial relations* (pp. 113–128). London: Sage.

Clegg, S., Courpasson, D., & Phillips, N. (2006). *Power and organizations*. Thousand Oaks, CA: Sage.

Commons, J. R. (1919). *Industrial goodwill*. New York, NY: Arno Press.

Dahl, R. A. (1957). The concept of power. *Behavioural Science*, *2*(3), 201–216.

Daniels, G., & McIlroy, J. (Eds.). (2009). *Trade unions in a neoliberal world: British trade unions under new labour*. London: Routledge.

ECA. (2006). *Upheaval in the skies: Low cost carriers in Europe*. Brussels: European Cockpit Association.

Edwards, C. (1978). Measuring union power: A comparison of two methods applied to the study of local union power in the coal industry. *British Journal of Industrial Relations*, *16*(1), 1–15.

Evans, C., Harvey, G., & Turnbull, P. (2012). When partnerships don't "match-up": An evaluation of labour-management partnerships in the automotive components and civil aviation industries. *Human Resource Management Journal*.

Goodman, J. F. B., Armstrong, E. G. A., Davis, J. E., & Wagner, A. (1977). *Rulemaking and industrial peace*. London: Croom Helm.

Gordon, M. E., Philpot, J. W., Burt, R. E., Thompson, C. A., & Spiller, W. E. (1980). Commitment to the union: Development of a measure and examination of its correlates. *Journal of Applied Psychology*, *65*, 479–499.

Harvey, G. (2007). *Management in the airline industry*. London: Routledge.

Harvey, G. (2009). Employment relations in liberal market economy airlines. *Employee Relations*, *31*(2), 168–181.

Harvey, G., & Turnbull, P. (2006). Employment relations, management styles and flight crew attitudes at low cost airline subsidiaries: The cases of British Airways/Go and bmi/bmibaby. *European Management Journal*, *24*(5), 330–337.

Harvey, G., & Turnbull, P. (2009). *The impact of the financial crisis on labour in the civil aviation industry*. Geneva: International Labour Office.

Harvey, G., & Turnbull, P. (2010). On the go: Piloting high road employment practices in the low cost airline industry. *International Journal of Human Resource Management*, *21*(2), 230–241.

Howell, C. (2007). *Trade*
unions and the state: The construction of industrial relations institutions in Britain, 1890-2000. New Jersey: Princeton University Press.

Ionides, N., Endres, G., Pilling, M., & Sobie, B. (2007). The airline wants YOU. *Airline Business*, *23*(1), 40–42.

ITF. (2002). *The industrial landscape of low cost carriers (Low Frills Airlines/Budget Carriers)*. London: International Transport Workers' Federation.

Johnson, N. B. (2002). Airlines: Can collective bargaining weather the storm?. In P. F. Clark, J. T. Delaney & A. C. Frost (Eds.), *Collective bargaining in the private sector* (pp. 15–54). New York, NY: Cornell University Press.

Kelly, J. E. (1998). *Rethinking industrial relations: Mobilization, collectivism and long waves*. London: Routledge.

Koch-Baumgarten, S. (1998). Trade union regime formation under the conditions of globalization in the transport sector: Attempts at transnational trade union regulation of flag-of-convenience shipping. *International Review of Social History*, *43*, 369–402.

Learmount, D. (2010). Future pilot supply for the airline. *Flight International*, September 21.

Lillie, N. (2004). Global collective bargaining on flag of convenience shipping. *British Journal of Industrial Relations*, *42*(1), 47–67.

Martin, R. (1992). *Bargaining power*. Oxford: Oxford University Press.

Offe, C., & Wiesenthal, H. (1980). Two logics of collective action: Theoretical notes on social class and organisational form. *Political Power and Social Theory*, *1*, 67–115.

O'Sullivan, M., & Gunnigle, P. (2009). "Bearing all the hallmarks of oppression": Union Avoidance in Europe's largest low-cost airline. *Labor Studies Journal*, *34*(2), 252–270.

Oum, T. H., & Yu, C. (1995). A productivity comparison of the world's major airlines. *Journal of Air Transport Management*, *2*(3/4), 181–195.

Pasztor, A. (2007). Air transport association calls for better airline-pilot training. *Wall Street Journal Online*, November 29.

Roy, A., & Berger, P. D. (2005). Email and mixed mode database surveys revisited: Exploratory analyses of factors affecting response rates. *Journal of Database Marketing and Customer Strategy Management*, *12*(2), 153–171.

Scharpf, F. W. (1999). *Governing in Europe: Effective and democratic?* Oxford: Oxford University Press.

Turnbull, P. (2010). Creating markets, contesting markets: Labour internationalism and the European common transport policy. In S. McGrath-Champ, A. Herod & A. Rainnie (Eds.), *Handbook of employment and society: Working space* (pp. 35–52). Edward Elgar.

Turnbull, P., Blyton, P., & Harvey, G. (2004). Cleared for take-off? Management-labour partnership in the European civil aviation industry. *European Journal of Industrial Relations*, *10*(3), 281–301.

Witmer, D. F., Colman, R., & Katzman, S. L. (1999). From paper-and-pencil to screen-and-keyboard: Towards a methodology for survey research on the Internet. In S. Jones (Ed.), *Doing internet research: Critical issues and methods for examining the net* (pp. 145–161). London: Sage.

Wolmar, C. (1996). Last call for the captains in blue. *The Independent*, 9 July.

Wright, E. O. (2000). Working-class power, capitalist-class interests, and class compromise. *American Journal of Sociology*, *105*(4), 957–1002.

APPENDIX A

A.1. Surveys of BALPA Members, 2002 and 2010

The 2002 survey was distributed either in hardcopy or in e-format (as a Word file), according to preference, to a census of members at five airlines (Air 2000, bmi, Go, Britannia, and easyJet) and a stratified sample of the very much larger British Airways pilot community. The response rate was on average around 30% with the highest response rate recorded among BA flight crew (at almost 40%) and the lowest at Go (25%). The biometric composition of the respondents at BA in the both 2002 and 2010 survey is summarized below.

Composition of British Airways respondents to the 2002 and 2010 surveys.

	2002 (%)	2010 (%)
Age		
21–35	35	22
36–40	18	18
41–45	15	26
46–50	15	13
>50	18	21
Rank		
Training captain	2	7
Captain	46	36
Senior first officer	32	49
First officer	20	8

Between 2002 and 2010, the two charter airlines merged to become Thomsonfly, while easyJet acquired Go. Data polled by the second survey from pilots at Thomsonfly, easyJet, and British Airways were analyzed along with data from pilots at an alternative low tariff (FlyBE) and charter (Thomas Cook Airways) airline (in order to facilitate a cross-sectional airline sector comparison). A very low response rate from pilots at bmi to the second survey required its substitution by an alternative full service carrier, namely Virgin Atlantic. The second survey was conducted entirely online, open to all members of BALPA, and received a far lower return than the 2002 survey. In sum, 280 responses were received from pilots at the six

airlines in 2010. The union has declined to provide information on the numbers of unionized pilots at the six airlines or on the membership density due to the sensitivity of this information. Using Civil Aviation Authority data on the numbers of pilots employed at the six airlines in the sample and estimating the average membership density at these airlines we arrive at an approximate response rate of 7.5%. This is below the typical response rate (11%) of online surveys (Roy & Berger, 2005; Witmer, Colman, & Katzman, 1999).

A.2. The Principal Legislation in the Three Packages of Air Transport Liberalization

Package 1: (December 14, 1987)

Council decision	602/87/EEC on capacity-sharing between carriers on scheduled air services between Member States and access for air carriers to scheduled intra-Community air service routes
Council directive	601/87/EEC on fares for scheduled air services between Member States
Council regulation	3975/87/EEC determining the application of EEC competition rules to undertakings in the air transport sector
Council regulation	3976/87/EEC further concerning the application of EEC competition rules to certain categories of agreements and concerted practices in the air transport sector

Package 2: (July 24, 1990)

Council regulation	2342/90/EEC on fares for scheduled air services
Council regulation	2343/90/EEC on access for air carriers to scheduled intra-Community air service routes and capacity-sharing between carriers on scheduled air services between Member States
Council regulation	2344/90/EEC amending the application of EEC competition rules to certain categories of agreements and concerted practices in the air transport sector

Package 3: (July 23, 1992)

2407/92EEC on licensing air carriers

Council regulation	
Council regulation	2408/92/EEC on access for EC air carriers to intra-Community air routes
Council regulation	2409/92/EEC on fares and rates for air services
Council regulation	2410/92/EEC amending the application of EEC competition rules to undertakings in the air transport sector
Council regulation	2411/92/EEC further amending the application of EEC competition rules to certain categories of agreements and concerted practices in the air transport sector

A.3. From the Chicago Regime to the Single Market

Policy	Chicago Regime	First Package	Second Package	Third Package
Fares	Agreed by both governments	Zonal system: automatic approval of discount and deep discount fares within defined range	Zonal system extended; conditions on availability of discount fares relaxed	Airlines set own fares; safeguards for excessively high or low fares
Licensing	National rules	No change	No change	EU criteria for ownership, airworthiness and economic fitness
Access				
• Relations between state and own airlines	Governments full discretion	No change	No change	Subject to EU regime
• Relations with foreign carriers	Negotiated bilaterally	Subject to EC rules	Subject to EC rules	Subject to EU rules
• Multiple designation (country to country)	Negotiated bilaterally case by case	Yes under EC rules	Yes under EC rules	Yes under EU rules

A.3. (*Continued*)

Policy	Chicago Regime	First Package	Second Package	Third Package
• Multiple designation (city pairs)	Negotiated bilaterally	Automatic above defined thresholds	Thresholds lowered	Full access allowed
• Safeguard provisions			Provisions for regional development	Provisions for regional development
• Fifth freedom	Rarely	Permitted for 30% traffic p.a.	Permitted for 50% traffic p.a.	Permitted without quota constraint
• Cabotage	Never granted	No change	No change	Full cabotage rights under EU regime from 1 April 1997
Capacity	Generally 50:50	55:45 then 60:40	60:40 plus additional 7.5% p.a.	No limits but safeguard can be triggered

CAREGIVERS AND COMPUTERS: KEY LESSONS FROM THE ADOPTION AND IMPLEMENTATION OF EMR IN NEW YORK STATE NURSING HOMES

David B. Lipsky and Ariel C. Avgar

ABSTRACT

This chapter presents an overview of our evaluation of the introduction of electronic medical records (EMR) in 20 nursing homes located in the New York City region. These organizations were part of an EMR demonstration project cosponsored by the for-profit segment of the nursing home industry in the region and 1199SEIU United Health Care Workers East, the union that represented frontline staff in these organizations. We report central lessons from our evaluation, which took place over the course of four years and included multiple data sources. The primary purpose of our research was to examine the effects of EMR adoption on employment and labor relations in the participating organizations. Findings are based on a longitudinal study of EMR

Advances in Industrial and Labor Relations, Volume 20, 75–104

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020006

adoption in 15 of the 20 organizations that received the EMR technology and five "control" organizations, which did not receive the technology, employing a mixed methodological design with both quantitative and qualitative data collection methods. Results from our research inform the existing EMR adoption discussion in two ways. First, we find mixed evidence associated with EMR implementation. The adoption of this new technology enhances certain organizational outcomes, but it seems to hinder others. Second, findings from our research highlight the importance of preexisting organizational factors as predictors of EMR-associated outcomes. EMR-associated outcomes, positive or negative, are likely to be contingent on key organizational characteristics and on managerial adoption strategies. Our study's findings imply that the meaningful use of EMR needs to take into account not only the technical specifications of EMR but also the organizational characteristics of the physician practices and healthcare facilities adopting the technology. Healthcare organizations vary in their capacity and ability to make optimal use of health information technology, which should be incorporated into public policy and organizational practices designed to increase adoption.

Keywords: EMR; nursing homes; workplace; employment relations; technology acceptance; management strategy

INTRODUCTION: MOTIVATION AND PROJECT BACKGROUND

Motivation

This chapter presents a summary and overview of our evaluation of the introduction of electronic medical records (EMR) in 20 nursing homes located in the New York City region. These nursing homes included in this study participated in the New York State Nursing Home Demonstration Project, which was cosponsored by the for-profit segment of the nursing home industry in the region and 1199SEIU United Health Care Workers East, the union that represented frontline staff in these homes. A significant feature of the demonstration project was the collaboration between the nursing home operators and the union. The two sides in collective bargaining, often adversaries in previous years, worked closely together

throughout the demonstration project. First, the parties jointly lobbied the New York State Legislature and the governor and obtained $9 million in state funding to subsidize the installation and implementation of EMR in 20 nursing homes of approximately 140 for-profit facilities in the New York City region. Second, the parties worked closely together throughout the process of installing and implementing the new technology.

We summarize the central lessons and findings from our evaluation, which took place over the course of nearly four years (2006–2010) and included multiple data sources. The primary purpose of our research was to examine the relationship between EMR adoption, on the one hand, and employment and labor relations in the participating nursing homes, on the other. To our knowledge, there have been no previous studies that have examined the relationship between EMR adoption and these organizational relationships in nursing homes. The findings reported below are based on a longitudinal study of EMR adoption in 15 of the 20 nursing homes that received the EMR technology and five "control" homes, which did not receive the technology, employing a mixed methodological design with both quantitative and qualitative data collection methods.[1]

Assessing the relationship between EMR adoption and key workplace outcomes in 15 nursing homes has the potential to contribute to the broader debate regarding EMR's costs and benefits. An important element in President Obama's economic stimulus package, the American Recovery and Reinvestment Act, passed in February 2009, was the inclusion of $19 billion to support the installation of EMR in U.S. healthcare institutions (Pub.L. 111-5, 2009). President Obama has explained his support of investing federal dollars in EMR on numerous occasions. For example, in discussing his proposed stimulus package in a radio address in December 2008, he said:

> [T]he economic recovery plan I'm proposing will help modernize our health care system—and that won't just save jobs, it will save lives. We will make sure that every doctor's office and hospital in this country is using cutting edge technology and electronic medical records so that we can cut red tape, prevent medical mistakes, and help save billions of dollars each year.

In emphasizing the need for EMR, President Obama has followed the advice of numerous healthcare experts who have pointed out that the healthcare sector lags behind other industries in the use of information technology (Ash & Bates, 2005; Bates & Gawande, 2003; Fiscella & Gelger, 2005). EMR proponents maintain that the widespread use of EMR would help to improve patient safety (Bates & Gawande, 2003), control the costs of

healthcare (Hillestad, Bigelow, Bower, Girosi, & Meili, 2005; Poon et al., 2006), and lead to significant improvements in the quality of healthcare Americans receive (Chadhry et al., 2006). As is evident from the intense public policy discussion around EMR adoption, the expectations from this innovation are extremely high, yet the empirical evidence is still incomplete (Blumenthal & Glaser, 2007; Harrison, Koppel, & Bar-Lev, 2007; Koppel et al., 2005; Linder, Ma, Bates, Middleton, & Stafford, 2007). Thus, we believe the results we report here should contribute to the state of the EMR debate. It is also important to note that much of the research examining the relationship between EMR and healthcare and workforce outcomes (and referenced in this chapter) has been conducted in physician practice and hospital settings. Research on EMR in nursing homes has been much less prevalent (Brandeis, Hogan, Murphy, & Murray, 2007; Pillemer et al., 2011; Subramanian et al., 2007).

Despite high expectations about the benefits of EMR, recent studies have found mixed evidence regarding the effect of EMR on patient care outcomes (Blumenthal & Glaser, 2007; Sidorov, 2006; for mixed evidence in nursing homes, see Pillemer et al., 2011). For example, Linder et al. (2007) examined 17 quality care indicators in ambulatory medical units and found that the adoption of EMR had a significant positive effect on only two of them; one quality indicator was negatively affected. Similarly, DesRoches et al. (2010) examined the relationship between EMR adoption and quality and efficiency outcomes in 3,049 U.S. hospitals and found very modest effects at best. Other scholars maintain that alongside potential benefits, EMR can also have negative consequences, especially with regard to how providers interact and communicate (Harrison et al., 2007; Koppel et al., 2005).

One potential explanation for some of the mixed evidence regarding the effects of EMR rests on the absence of attention, by scholars and practitioners, to the organizational context in which the technology is embedded. Although less emphasized in the research on EMR adoption and implementation, there is also an implicit assumption that the use of this new technology may enhance the quality of employment relations. Previous research on EMR, however, has largely ignored the effects of this technology on employment-related outcomes as well as the link between employment relations and the quality of care (for an exception see Litwin, 2010). The absence of research that linked the adoption of EMR to changes in the workplace and, in turn, linked changes in the workplace to changes in the quality of care was one of the principal factors motivating our nursing home project.

Background

The collective bargaining agreements between 1199SEIU United Health Care Workers East and operators of nursing homes in downstate New York provide for the establishment of the Quality Care Oversight Committee (QCOC), which is directed to "develop and monitor the establishment and performance of the Quality Care Committees [QCC] at the individual nursing homes." The QCOC has several responsibilities, including "the implementation of clinician-centric electronic medical records; automation of assessments, care plans, and prescriptions; improved data collection and provision of accessible consumer information and patient satisfaction."[2]

In March 2006, an arbitration award dealing with the implementation of these agreements between the parties directed the QCOC "to develop and commence research and demonstration programs" in a sample of nursing homes that provide for "the acquisition of electronic monitoring and data collection equipment; professional training of staff members in the use of such electronic equipment; … revision of computerized systems and network communications," and related tasks.[3] The arbitration award prompted the union and the nursing home operators to work together in obtaining funds from the New York State Legislature to support the introduction of EMR in a sample of for-profit nursing homes in the New York City area. The joint lobbying effort by the parties resulted in the State of New York allocating $9 million to support the tasks mandated by the arbitration award. The QCOC demonstration project offered the opportunity to mount a unique, integrated, and multidisciplinary study that would likely have implications for our understanding of how the implementation and diffusion of new technologies affect workplace relationships and, ultimately, outcome measures.

EVALUATION METHODOLOGY AND DESIGN

General

In our evaluation of the Demonstration Project, we employed a longitudinal mixed-method research design using a number of original survey instruments and a detailed qualitative interview protocol.[4] Our research design combined both quantitative and qualitative dimensions at two points in time – pre- and post-EMR implementation. For our quantitative evaluation, we used a quasi-experimental design that incorporated 15 (out of the 20) homes

that received the technology and five control homes that did not. Table 1 provides the name of each treatment and control facility and some basic descriptive statistics about these facilities. As the table shows, all of the treatment and control homes were either in New York City (i.e., the boroughs of Brooklyn, Bronx, Manhattan, Queens, and Staten Island) or on Long Island (i.e., in Nassau or Suffolk County). The organizations ranged in size from a low of 120 beds to a high of 320 beds. The control nursing homes were carefully selected to provide a close match to the 15 treatment nursing homes. Whenever possible, we selected a control home that had common ownership with a treatment nursing home. We designed a number of survey instruments that captured the central constructs examined in this

Table 1. Number of Beds, Number of Residents, and Occupancy Rates in the Treatment and Control Facilities, 2008.

Facility Name	Demographics			
	No. of Beds	No. of Residents	Occupancy Rate (%)	County/ Borough
Treatment facilities				
Four Seasons	270	266	99	Brooklyn
Glengariff	262	227	87	Nassau
Sands Point	180	168	93	Nassau
Keser	200	190	95	Brooklyn
Highfield Gardens	200	187	94	Nassau
Huntington Hills	320	309	97	Suffolk
Terrace	240	235	98	Bronx
Bronx Center	200	194	97	Bronx
Northern Manhattan	320	311	97	Manhattan
Woodcrest	200	191	96	Queens
Park Gardens	200	196	98	Bronx
Port Jefferson	120	116	97	Suffolk
Crown	189	177	94	Brooklyn
Golden Gate	238	221	93	Staten Island
New Surfside	183	178	97	Queens
Control facilities				
Cliffside	218	206	94	Queens
Townhouse	280	270	96	Nassau
Queens Center	179	174	97	Queens
Woodmere	336	315	94	Nassau
Eastchester	200	188	94	Bronx

Source: New York State Annual Survey of Long-Term Care Facilities.

evaluation across different categories of employees. The development of the survey instruments was iterative and benefited from the input and engagement of different project stakeholders, including the QCOC, the EMR vendor (eHealth Solutions), and the project coordinator.

Quantitative Data Collection

Baseline Survey Data Collection

The nursing homes that participated in the demonstration project were required under the terms of the contract they signed with the QCOC to cooperate with the research team conducting the evaluation. Through the office of the project coordinator, we requested that each home provide us with an up-to-date and complete list of all staff employed by the home, including their job title, home telephone number, and e-mail addresses. From these staff lists, we selected all of the direct caregivers (registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs) and allied professionals) in the 15 treatment homes and the five control nursing homes for inclusion in our survey. We excluded from the survey administrators and supervisors who were not usually in day-to-day contact with residents in the nursing homes.

Our baseline survey instrument was administered by Cornell's Survey Research Institute (SRI). We collaborated closely with SRI on the design of the survey instrument and the administration of all the surveys we conducted as part of our study. The baseline and follow-up surveys were conducted by telephone; SRI assumed responsibility for training the interviewers (principally graduate students or part-time employees recruited from the Ithaca area). After conducting a small pilot survey to verify the validity and reliability of our survey instrument, we administered the full survey. With the assistance of SRI, we developed a so-called "announcement letter" that we mailed to the home address of each staff member included in our survey population. The announcement letter, which briefly described the purpose of our survey and assured the respondent of the confidentiality of his or her responses, was mailed approximately seven to ten days in advance of an SRI interviewer calling the respondent at his or her home phone number to administer the survey.

We conducted the baseline survey immediately before the installation of the EMR technology by the vendor in each of the 15 nursing homes we included in our evaluation. Simultaneously, we also conducted a baseline telephone survey in the five control nursing homes. The same baseline

instrument was used in both treatment and control nursing homes. The vendor, eHealth Solutions, installed its EMR technology, called SigmaCare, in two and three homes at a time between June 2007 and the Spring 2008. We timed our baseline survey to occur at that point at which the technology was ready to "go live," but the staff in the nursing home had not yet begun training in its use. In general we had a two- or three-week window at each home in which to conduct the baseline survey. At the time our baseline survey was conducted, the interview population across the 20 nursing homes (the 15 treatment homes and the 5 control homes) included 3,177 employees in the occupational categories we included in our survey. We completed interviews with 1,241 employees; after omitting employees with inaccurate contact information and those who were unable to complete the survey from our sample, our response rate for the baseline survey stood at approximately 50 percent. Table 2 provides the number of completed interviews at each of the 15 treatment facilities and 5 control homes. (To insure confidentiality, here, and in the final report we submitted to the sponsors, we use only letters

Table 2. Completed Surveys Time 1 Data Collection by Facility.

Facility	Total Number of Surveys
A	37
B	65
C	106
D	77
E	52
F	35
G	144
H	37
I	71
J	55
K	44
L	33
M	104
N	51
O	51
P	51
Q	71
R	26
S	89
T	42
Overall	1,241

of the alphabet to identify individual homes in our study; the order of the homes listed in Table 2 does not correspond to the order of the homes listed in Table 1.)

Follow-Up Survey Data Collection

We conducted a follow-up (or "second-wave") survey between August 2008 and July 2009. The follow-up survey was timed to occur approximately one year after the installation of the technology. The procedures we followed in conducting the follow-up survey were virtually identical to those we used in the baseline survey. Again, we aimed to conduct the follow-up survey within a two- or three-week window, so the data for the respondents in the second-wave survey was collected between fifty and fifty-four weeks after the installation of EMR. To evaluate the degree to which the adoption of EMR technology was related to key organizational and employment variables, the primary instruments for the first and second wave were very similar. However, the second-wave instruments included additional items to assess the overall acceptance of the technology and the manner in which it was being utilized by frontline staff. In addition, our second-wave data collection included both employees who had left the organization after the implementation of the EMR technology and new employees who joined after the technology was in place. We tailored specific instruments for both of these categories to evaluate the manner in which EMR technology affected both employees who left the nursing home and employees who were hired in the course of the year. In our follow-up survey our interview population across the 15 nursing homes in the treatment group and the 5 homes in the control group included 3,735 employees in the occupational categories included in our survey.[5] As with the baseline data collection, our response rate for this wave was approximately 50 percent, with 1,276 completed surveys across the different respondent categories. Table 3 provides means for some of the principal descriptive statistics for the Time 1 and Time 2 samples.

Qualitative Data Collection

In addition to collecting individual-level quantitative data through surveys, we also conducted qualitative field visits to 10 of the participating treatment nursing homes. (We limited our field work to 10 homes principally because of budget constraints.) In common with the survey data collection, we conducted pre- and post-EMR implementation interviews. Our first visit to each of the 10 nursing homes took place just prior to the introduction of the

Table 3. Descriptive Statistics (means) from Our Sample at Time 1 and Time 2.

	Time 1	Time 2
Age	47.31	47.7
Tenure (years)	8.31	8.01
Member of union	75.7%	68.2%
Gender		
Female	92%	89%
Male	8%	11%
Education level		
Below high school	45.4%	37.7%
High school and above	54.6%	62.3%
Employment status		
Full	77.1%	71.8%
Part	22.9%	28.2%

new technology. A year later we returned to the same 10 nursing homes and conducted a new round of interviews, usually with the same interviewees we had interviewed a year earlier. In contrast to the survey data collection, we did not conduct field research in control nursing homes. This decision was driven primarily by our interest in focusing on as many of the organizations that were receiving the technology as we possibly could, given our limited resources.[6]

In our field visits, we generally spent at least half a day at each home, and we scheduled our visits based on the availability of the top administrator of the nursing home. We always interviewed the top administrator, and we usually interviewed the director of nursing services, the assistant director of nursing services, and several registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs). In some cases we were able to interview the owner of the nursing home (who was sometimes the administrator as well). We also tried to interview union delegates at each of the nursing homes. Although we developed a protocol for our field interviews (and used variations of the protocol, depending on the individuals we were interviewing), we exercised flexibility in using our protocol. Quite often an interview evolved into an extended conversation about the interviewee's views on relevant matters. Unless the interviewee objected (and very few did), we recorded and then transcribed all of our field interviews. Typically, we interviewed at least a dozen individuals in each of the homes; in some homes (especially in the case of union representatives) we interviewed three or four individuals simultaneously. We interviewed about 150 individuals across the 10 nursing homes.

These field visits inform this evaluation in a number of important ways. It is through this qualitative component of our evaluation that we were able to observe firsthand how the technology was adopted and accepted at the organizational and individual levels. In our interview protocols we included questions designed to elicit information about an organization's implementation strategy. We did our utmost to use "neutral" questions, rather than leading questions, to avoid biasing the answers of the respondents. Although we had hypothesized that management strategy would play a key role in the implementation of the technology, we began our study with no preconceived notions about the types of strategies the nursing homes might pursue.

Finally, we have had the benefit of being involved in the project almost from the outset – shortly after the New York State Legislature funded the project – and therefore we have had an opportunity to attend various meetings at which the project was formed and developed. We had numerous conversations with the chair and members of the QCOC, the coordinator of the project, the vendor's management team, and various other stakeholders throughout the course of the project. Many of the lessons we learned over the course of conducting our research are based not only on the interviews we conducted in the field and the hard data contained in our surveys but also on our interactions with all of the key players during the nearly four years we conducted the evaluation.

KEY LESSONS OF THE STUDY

In this section, we summarize the major lessons that emerged from our nearly four years of immersion in this demonstration project. We offer a set of observations that should inform practitioners and policy makers who are contemplating the use of EMR in healthcare, which are, to be sure, not only based on our survey data and field interviews but also based on all the interactions we have had with all of the players involved in the project.

We need first to note that from a technical perspective the EMR technology was successfully installed and implemented in all 20 homes – an achievement that was in doubt at the start of the project and should properly be considered a threshold test of the success of the project. However, the major theme that emerges from our study of the New York project is one of variation. Its effects on the workplace, the workforce, and the quality of healthcare varied substantially across the organizations studied. In the following sections, we discuss the variation in the effects of EMR as well as other lessons that grow out of our research.

The Adoption and Implementation of EMR Varied Greatly across Homes

Although all the homes adopted and implemented essentially the same technology, and although all frontline staff were required to use the EMR system, the implementation process as well as the manner in which they used the technology varied substantially across the nursing homes in our study. For some of the nursing homes, the use of electronic records did not differ measurably from their previous use of paper records. The administrators and staff in these nursing homes appreciated the greater accessibility of resident records that EMR allowed, and they realized that electronic records had other benefits, such as timeliness and reduction in errors, that paper records did not afford. Administrators in these homes generally recognized that the technology allowed them to monitor staff performance more carefully than they had been able to do using paper records. But these nursing homes did not fully reap the potential benefits available from the use of the technology. They did not appreciate the analytical and learning possibilities in having all resident records easily accessible in a common database.

In other nursing homes, by contrast, the administrators did understand that having resident records in electronic form permitted analysis of the data in ways that would have been nearly impossible when the records were in paper form. In at least a couple of nursing homes, top administrators came to realize that the use of the records for assessing the operation of their nursing homes was limited only by the boundaries of their imaginations. Some of the administrators apparently had some understanding of statistics and research methods, and they undertook "studies" of practices in their homes that they thought might lead to cost savings, more efficient use of staff, or improved resident care. In one home, for example, a rigorous assessment of the use of certain medications led to some significant cost savings.

In sum, there was optimal use of EMR technology in some homes but suboptimal use in others. What accounted for this variation across homes?

The Optimal Use of EMR Is Largely a Function of Leadership and Management Strategy

One of the central findings that emerged from our qualitative and quantitative data was that the managerial strategy of a nursing home's operators and top administrators largely determined how the organization

adopted, implemented and used the technology. By *management strategy*, we mean the degree to which the top administrators in a facility develop and advance their proposed linkages between EMR implementation and use and the achievement of the organization's broader goals and objectives. Furthermore, we found that the greater the extent to which the nursing home's strategy was based on the integral linkage between the EMR technology and the potential for workforce up-skilling and empowerment, the greater the likelihood that the nursing home would make optimal use of the EMR technology. Analysis of field interviews and staff surveys demonstrated that the nursing homes studied followed one of three overarching strategies for the adoption of EMR. We labeled these strategies *command, efficiency*, and *empowerment*. In nursing homes that followed a command strategy for EMR adoption, top administrators viewed the adoption of EMR as a means of increasing their ability to keep staff under surveillance and impose discipline within the organization. These nursing homes had a more traditional top-down management style and regarded EMR as an additional tool that would enhance their control and authority over frontline staff and middle managers. Three of the nursing homes in which we conducted field interviews clearly represented the command approach.

In homes that followed an efficiency strategy, top administrators did not view EMR primarily as a means to increase managerial authority and control. Rather, administrators in these nursing homes focused on the cost savings and financial gains that might be delivered by EMR. In nursing homes adopting an efficiency strategy, administrators viewed EMR primarily as a means of reducing operating costs and increasing Medicare and Medicaid reimbursements. Four of the nursing homes in which we conducted field interviews seemed to be following an efficiency strategy.

In nursing homes that followed an empowerment strategy, top administrators emphasized the link between EMR adoption and employee participation in decision making, skill development, and broader organizational learning. Administrators in empowerment homes saw a direct link between EMR and their ability to increase staff involvement in the care of residents and to improve employment-related outcomes in an industry where staff satisfaction, recruitment, and retention present ongoing organizational challenges. Three of the nursing homes in which we conducted field interviews clearly pursued this strategy.

Critical to our focus on EMR and employment and labor relations, our data also documented that the type of strategy employed by a nursing home was correlated with both the organization's overall employment and labor

relations approach and its adoption of resident-centered care. Our research supports the argument that nursing homes that pursued an employee empowerment strategy were more likely to make optimal use of EMR technology than those that pursued a command strategy (also see Lipsky & Avgar, 2009, pp. 75–95; see also Lipsky, Avgar, & Lamare, 2009).

By "optimal use" we mean whether a nursing home was able to tap the potential uses of the technology in improving clinical and workforce outcomes. Meeting the threshold tests of installation and operation was, in many respects, a *necessary* condition for optimal use but was not a *sufficient* condition. Reaching the full potential of the use of the technology appeared to depend on more than simply demonstrating the technical abilities of the administrators and the staff. Rather, optimal use required a nursing home strategy that viewed EMR adoption as a part and parcel of a broader workforce and quality of care organizational transformation.

Thus our study highlights the critical distinction between the installation and operation of EMR technology and what we term the "optimal use" of that technology, a distinction rarely made in the existing research on the use of EMR in healthcare. Previous research has defined successful implementation of EMR almost entirely in technical terms. Our research and findings regarding nursing home variation strongly suggest that the successful implementation of EMR is not merely a technical matter but is, at its core, an organizational matter.

EMR Had No Effect on Staff Turnover but Improved a Nursing Home's Ability to Recruit New Staff

One of the motivations for the demonstration project was the expectation that the introduction and use of EMR would reduce staff turnover in the demonstration homes. Some skeptics, particularly among the union officials, feared that the use of EMR would increase job dissatisfaction and lead to higher rates of turnover. One year after the introduction of EMR, the evidence suggests that turnover rates were unaffected: although rates varied across the nursing homes. Based on nursing home archival data on turnover and new hires and as reported in Fig. 1, overall the turnover rate was approximately 17 percent in the year preceding the introduction of the technology and remained at 17 percent in the year following the introduction of EMR. As seen in Fig. 2, the overall turnover rate in the five control nursing homes was nearly identical. Clearly, a host of factors externally affect turnover in the healthcare setting. Nevertheless, the fact

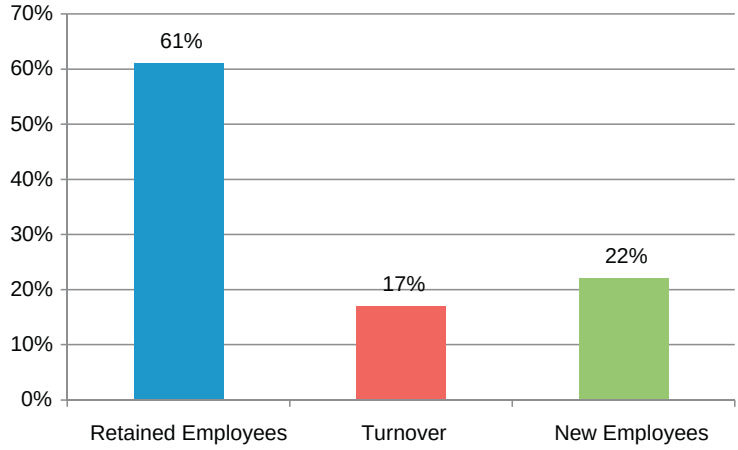

Fig. 1. Turnover and Recruitment Rates for Treatment Facilities.

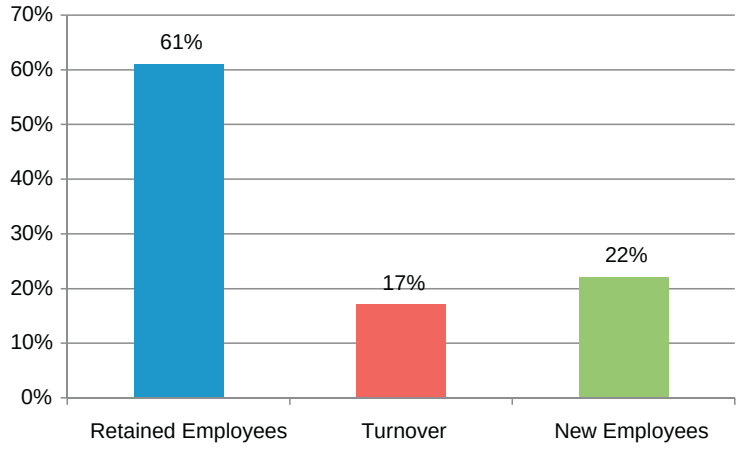

Fig. 2. Turnover and Recruitment Rates for Control Facilities.

that turnover rates remained unchanged both prior to and after EMR adoption as well as in comparison to a control group that did not introduce the technology suggests that EMR does not have a measurable effect on turnover rates, positive or negative. It should be noted that turnover rates in New York City nursing homes are lower than turnover rates in nursing

homes elsewhere in part because wages are higher in these unionized settings (and healthcare and retirement plans more generous) than is the norm for the industry.

Survey data from employees who left their nursing home after the introduction of EMR indicates that this innovation played a minor role in explaining respondents' exit behavior. As shown in Figs. 3 and 4, of the 153 respondents who left their nursing home after the introduction of EMR, only a small minority agreed that this decision was affected by the introduction of SigmaCare in their facility in general (12.5 percent) and by apprehensions of using this technology (5.3 percent). This evidence suggests that the adoption of EMR does not create retention difficulties for nursing homes and that employee turnover is not directly explained by the decision to innovate in this way.

Our Time 2 survey also included 230 employees who had begun their work after the introduction of EMR technology. Our survey data indicates that nearly 80 percent of these new employees were not aware when they applied for a position that the facility that hired them had EMR. Nevertheless, as seen in Fig. 5, of the 20 percent of the new hires who knew the facility used EMR, a clear majority said in our interviews that EMR had a positive influence on their decision to work for the home. On a practical level, this finding suggests that nursing homes would benefit from "marketing" the fact that they use the EMR technology in their recruitment efforts.

Exit Due to Adoption of EMR			
	Frequency	Valid Percent	Cumulative Percent
Strongly Disagree	44	28.9	28.9
Disagree	79	52.0	80.9
Neutral	10	6.6	87.5
Agree	14	9.2	96.7
Strongly Agree	5	3.3	100.0
Total	152	100.0	

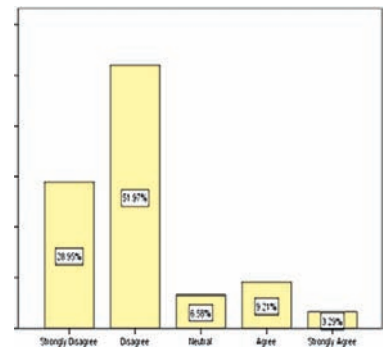

Fig. 3. Decision to Leave Nursing Home Due to Adoption of EMR.

Exit Due to Fear of Using EMR Improperly -			
	Frequency	Valid Percent	Cumulative Percent
Strongly Disagree	55	35.9	35.9
Disagree	75	49.0	85.0
Neutral	15	9.8	94.8
Agree	5	3.3	98.0
Strongly Agree	3	2.0	100.0
Total	153	100.0	

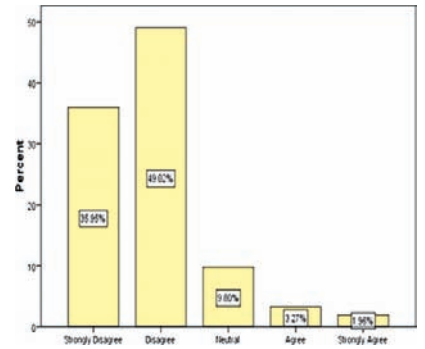

Fig. 4. Decision to Leave Nursing Home Due to Fear of Using EMR.

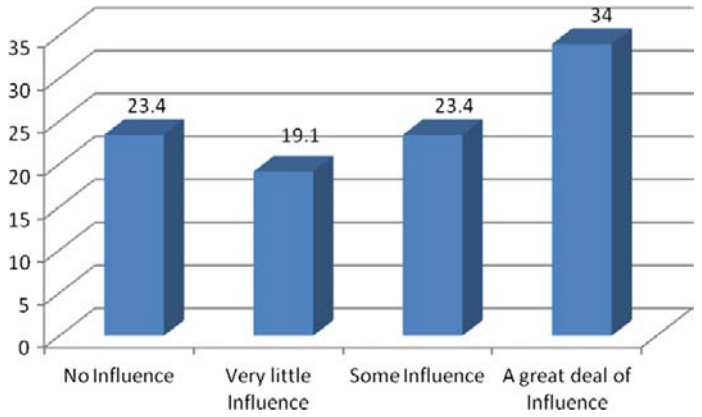

Fig. 5. EMR Influence on Decision to Work for Nursing Home.

The Belief that the Workforce in Nursing Homes Is a Barrier to Successful EMR Implementation Is a Myth

In June 2009, we conducted a workshop dealing with the New York Nursing Home Demonstration Project at a conference sponsored by the American Health Information Management Association in Baltimore, Maryland. One of the participants in our workshop, a top administrator from a major nursing home, expressed her viewpoint in roughly the following terms: ''We

all know that the kind of staff we have in our homes won't be able to learn to use EMR effectively. We are better off using paper records." At the inception of the New York project, some of those involved also believed that learning how to use the technology would be a challenging – and perhaps impossible – task for many of the nursing home employees. As we noted earlier, a substantial proportion of the workforce in the New York homes (45 percent at the start of the project) had less than a high school education and many were recent immigrants who were not fully proficient in English. These workforce characteristics were, for the most part, not a barrier to the successful adoption and implementation of EMR. We did find that the amount of time an employee had spent on a computer outside of work prior to the adoption of EMR significantly affected the employee's view of the ease of using the technology at work. But other variables, such as job satisfaction and organizational commitment, were more important in explaining employee attitudes about the new technology.

The vast majority of the employees across all organizations successfully completed training in the use of the technology and later reported that they preferred to use EMR rather than paper. A handful of the rank-and-file CNAs became so skilled in the use of the technology that they assumed responsibility for training their peers. Only a very small number (in our survey results fewer than 20) left their nursing home jobs because of their dissatisfaction with the technology. Also, our findings on employee acceptance of the technology showed that factors such as age, gender, and education level had no significant effect on employee attitudes about the use of the technology. In sum, we uncovered no evidence in our research suggesting that the nature of the nursing home workforce was a barrier to the adoption and implementation of EMR.

The Union's Participation in EMR Adoption Was Important

The partnership between the union and the nursing home operators was an especially important (and possibly unique) dimension of the New York nursing home demonstration project. In our interviews in the field both top administrators and rank-and-file employees agreed that without the union's commitment to the project it would have been more difficult for the project to succeed. In New York, there was clearly political risk for 1199SEIU's leaders to engage in a partnership with the nursing home operators in a project designed to support the adoption of EMR. That risk was mitigated by an increasingly cooperative relationship between the parties in collective

bargaining. Although it must be acknowledged that the collective bargaining relationship was not free of conflict, nevertheless there had been a growing recognition by both sides that collaborative problem solving was usually a more fruitful approach to the parties' principal challenges than an adversarial one. Some of the factors that helped to promote a collaborative relationship were factors that have affected the healthcare sector more generally: escalating costs, growing concerns over medical errors, increasing regulation, restructuring of the industry, shortages of skilled professionals, high rates of turnover, and the looming prospect of national healthcare reform. It was also universally acknowledged by all the major players that the arbitrator who served as chair of the QCOC had played a unique and especially important role in fostering a cooperative relationship between the parties.

In launching the demonstration project, the operators and the union agreed that it was important to have a labor-management committee at each of the participating homes that would oversee the introduction of the new technology. A facilitator from the 1199SEIU Training and Employment Funds was assigned to each of the local committees. The authors of this chapter were able to sit in on several committee meetings during their field visits. In our field interviews, we also asked our interviewees about the operation of these labor-management committees. The evidence we have suggests that the performance of these committees varied across the organizations studied.

In organizations pursuing an empowerment strategy the labor-management committees seemed to work most effectively, while in homes pursuing a command strategy the local committees seemed to work least effectively. In one of the command homes we visited, we observed that the labor-management committee was more a forum for airing grievances than it was a means of facilitating the introduction of EMR technology. In one of the empowerment homes we visited, we observed that the labor-management committee played an integral role in planning and implementing the new technology; both administrators and union representatives in this home lauded the work of the joint committee. Some of the committees helped to ease the anxieties employees had about the effects of the new technology.

The operators and the union also delegated another key function to the labor-management committees. The operators, the union, and the vendor developed a strategy for introducing the technology in each of the homes that focused on preparing the staff in each home for the transition to EMR. The labor-management committees were delegated significant responsibility for implementing this strategy. Training was, of course, an important part of the preparation for the transition, but another important element focused

on communication: an effort was made in each home to market or "sell" the technology to the members of the staff, and this marketing effort was designed not only to assuage anxieties about the new technology but also to excite the staff about the advantages they would enjoy in a paperless world. The labor-management committee played a major role in overseeing the marketing effort. Absent a more systematic assessment of the work of these committees, it is difficult to gauge the net effect of all of their efforts on the adoption and implementation of EMR. But we do have the impression that the most effective committees made a positive contribution to the successful transition to EMR.

In sum, our evidence suggests that the union role in the success of the New York project was especially important.

Guaranteeing Job Security Was Also Important

At the inception of the New York project, the QCOC required, as a condition for participation in the demonstration project, that no member of a bargaining unit would lose his or her job as a consequence of the introduction of EMR. We believe this requirement was a factor that contributed significantly to the success of the New York project. In particular, the job security condition helped to sustain the union's commitment to the project throughout its duration. In our site visits we observed that the assurance that EMR would not result in the loss of union jobs was a message that had been carried to the rank-and-file by the union representatives. To our knowledge, the nursing home operators and administrators fully complied with the job security condition throughout the project.

The job security agreement, however, did not apply to members of the nursing home staffs that were not represented by the union. In several of the nursing homes there were nonunion employees who were assigned record entry and recordkeeping responsibilities. These employees were not protected by the job security agreement, and in some of the homes the employees were either reassigned or their jobs were eliminated by attrition or layoff.

EMR Probably Has the Potential to Reduce Medical Errors and Increase Quality of Care

Although the focus of our evaluation was on the implications of EMR adoption for workforce-related issues, we also collected data on the effects

of new technology on the reported quality of resident care provided by employees.[7] It is important to emphasize that these data are based on employee responses to survey questions on resident care and are therefore a reflection of frontline employees' and supervisors' perspectives. Two sets of findings reported below support the claim that EMR adoption can improve the quality of resident care provided by employees.

First, as seen in Fig. 6, analysis of our survey data from the treatment facilities documents a statistically significant reduction in the percentage of employees who reported observing medical errors. At Time 1, approximately 25 percent of the respondents reported observing a medical error or near miss in the three months prior to the survey date. At Time 2, the percentage of employees reporting an observed error or near miss in the three months prior to the survey declined by approximately five percentage points to close to 20 percent of the sample. This decrease in observed errors or near misses was statistically significant ($p = .014$). In contrast, analysis of the survey data from employees in control facilities did not document a statistically significant change in the percentage of employees reporting observed errors or near misses.

We also examined the change in number of observed errors and near misses reported at Time 1 and Time 2. As part of our survey, we asked those employees who reported observing errors and near misses at Time 1 and Time 2 how many incidents had they observed. As shown in Table 4, the number of reported errors and near misses decreased at Time 2. At Time 1,

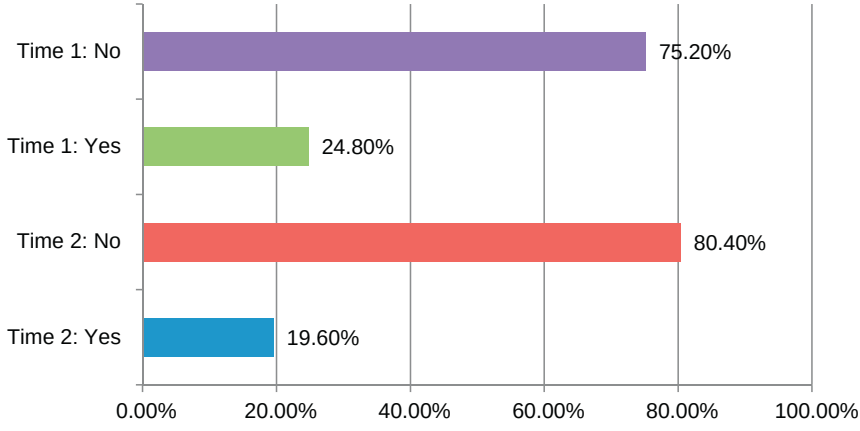

Fig. 6. Percentage of Employees Observing Errors and Near Misses over a Three-Month Period at Time 1 and Time 2.

Table 4. Comparison of Mean Number of Reported Errors or Near Misses and Standard Deviations at Time 1 and Time 2.

Number of Reported Errors or Near Misses	Time 1	Time 2
Mean	6.32	4.45
Std. deviation	13.043	5.981

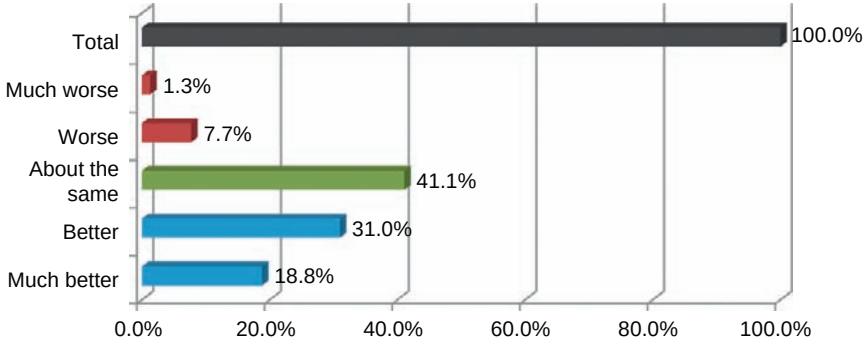

Fig. 7. Employee Perceptions of Quality of Care Provided Using EMR.

the average number of reported errors or near misses over the preceding three-month period was 6.32. At Time 2, the average number of reported errors or near misses reported was 4.45. In addition to a decrease in the average number of reported incidents, Table 4 also documents a dramatic reduction in the variation of employee responses. At Time 1, the standard deviation for reported errors or near misses was 13.04. At Time 2, the standard deviation was 5.98. In other words, there appears to be greater consistency in terms of the reported number of observed errors or near misses at Time 2 than at Time 1.

Finally, in addition to survey items regarding observed errors or near misses, we also asked respondents about how EMR technology affected the resident care they provide. As seen in Fig. 7, close to 50 percent of the 596 employees who responded to this survey question at Time 2 perceived an improvement in the quality of care they were able to provide residents since the adoption of the EMR technology (31 percent reported being able to provide better care and close to 19 percent reported being able to provide much better care). Forty-one percent of the respondents perceived no change in the quality of care they were able to provide. Nine percent of the

respondents perceived a decrease in the quality of care they were able to provide (7.7 percent reported that the care they were able to provide was worse and 1.3 percent reported that the care they were able to provide was much worse). This evidence also supports the claim that the adoption of EMR can enhance the ability of frontline staff to care for their residents.

EMR Can Free Up Time for Staff to Devote to Residents

One of the proposed changes associated with the adoption of EMR is the amount of time spent by frontline staff with residents. According to proponents, the use of EMR should reduce the time spent documenting resident care, allowing for more time to be spent with residents and their families and for conducting tasks more directly related to resident care. To assess whether both of these changes (reduced documentation time and allocation of time to resident care) in fact took place in the 15 treatment nursing homes, we included a set of survey items that explored how technology affected employee allocation of their time.

As shown in Fig. 8, employee responses to the question of technology-related time savings varied. On the one hand, 39 percent of the 596 respondents reported spending either "much less" or "less" time documenting resident care. This suggests that for a relatively large number of employees, technology facilitated a reduction in documentation work. On the other hand, approximately the same percentage of responding employees (40 percent) reported spending either "much more" or "more" time documenting resident care.

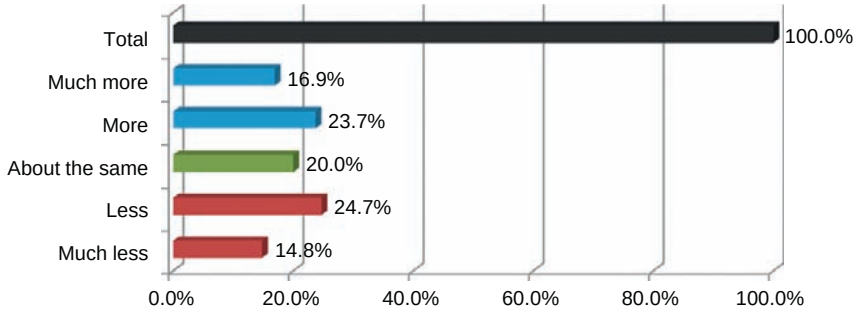

Fig. 8. Time Spent Documenting Resident Care One Year after the Introduction of EMR Technology.

For those employees who reported spending less time on documentation, we asked them to estimate the amount of time they saved per day using EMR. As shown in Table 5, of the 376 employees who said they had saved time on documentation, the plurality reported saving between one and two hours daily (46.5 percent). Another 12.2 percent reported saving between two and three hours daily, and approximately 7 percent reported saving three or more hours daily. However, 128 respondents (34 percent) who initially said they had saved time on documentation then reported that in fact they had saved "almost no time" at all. These findings suggest that although EMR technology has the potential to reduce the time devoted to documentation, it does not achieve this objective uniformly.

We also examined what employees did with the time they saved using EMR. We asked those employees reporting any amount of time saved using the technology how they allocated this additional resource. As shown in Table 6, a significant proportion of responding employees reported using the additional time with residents (83 percent), and by assisting coworkers (68 percent). Table 6 also shows that 26 percent of the responding employees reported spending the time the technology saved them with the residents' families. Thus, where employees were able to use the technology in a manner that reduced the time spent documenting resident care, they devoted more time to other meaningful resident care tasks.

The net effect of our survey findings suggests that about one-third ($.39 \times .83$) of the frontline staff in the nursing homes that installed EMR spent an hour or more daily with residents than they had before the use of EMR. At the same time, however, the fact that 40 percent of the

Table 5. Amount of Resident Care Documentation Time Saved Using EMR Technology Compared.

How Much Time Do You Save Using EMR Daily?			
	Frequency	Valid Percent	Cumulative Percent
Almost no time	128	34.0	34.0
Between 1 and 2 hours	175	46.5	80.6
Between 2 and 3 hours	46	12.2	92.8
Between 3 and 4 hours	17	4.5	97.3
More than 4 hours (specify how many)	10	2.7	100.0
Total	376	100.0	

Table 6. Use of Time Saved by Frontline Staff. "How Do You Use the Time Saved Using EMR?" (All That Apply).

(a) Used Saved Time with Residents			(b) Used Save Time with Residents' Families			(c) Used Saved Time to Help Co-workers		
	Frequency	Valid Percent		Frequency	Valid Percent		Frequency	Valid Percent
No	64	16.6	No	285	74.2	No	120	31.2
Yes	322	83.4	Yes	99	25.8	Yes	265	68.8
Total	386	100.0	Total	384	100.0	Total	385	100.0

respondents reported spending more time on documentation (and presumably less time with residents and coworkers) implies that on balance EMR had virtually no effect on the allocation of staff effort. But if we are correct in assuming that over time EMR will allow a higher proportion of staff to spend significantly less time on documentation and more time with residents, then it is reasonable to believe that in the long run EMR will have a positive effect on the quality of resident care.

Staff Acceptance of EMR Technology Can Be Influenced by the Organization

In our study we examined the factors that influence staff acceptance of EMR technology, using three measures of technology acceptance: usefulness, ease of use, and organizational support. Overall, we found that staff acceptance of the technology was relatively high on all three of the dimensions we measured; however, there was a great deal of variation in staff acceptance across the nursing homes in the New York demonstration project. There was, in fact, a fairly close correspondence between the style of management used in the home and the level of staff acceptance of the technology. In the nursing homes that we placed in the empowerment category staff acceptance of the technology was relatively high, whereas in the homes we placed in the command category staff acceptance was lower. Regression analysis revealed that certain independent variables significantly affected staff acceptance of the technology, although there was no consistent pattern across the measures of technology acceptance we used. In most of our regression models, employment status had a significant

effect on technology acceptance: not surprisingly, full-time employees had higher levels of acceptance than part-time employees. Depending on the dependent variable used in the model, variables such as job satisfaction, employees' commitment to their union, and organizational trust had significant effects on technology acceptance. At the same time, the respondents' personal characteristics (such as age, gender, education, and seniority) had no effect on acceptance.

These results suggest to us that technology acceptance is very much an organizational phenomenon and is largely independent from the personal characteristics of the workforce. If that is the case, then the acceptance of EMR technology is largely under the control of the administrators and managers of the organization (and of union leaders, if there is a union). To the extent that managers and union leaders can build trust and commitment on the part of their employees, the employees will be better prepared to accept new technologies.

CONCLUSIONS AND IMPLICATIONS FOR ORGANIZATIONS AND POLICY MAKERS

The American Reinvestment and Recovery Act, passed by Congress and signed into law by President Obama in February 2009, was designed to stimulate the American economy and help it recover from the deep economic recession that began in 2008. Title XIII of the Act consists of the Health Information Technology for Economic and Clinical Health Act, also called the HITECH Act. The objective of the HITECH Act is to encourage the adoption of electronic health records (EHRs), including EMRs, by providing incentive payments to physicians and healthcare institutions.[8] For example, starting in 2011 physicians became eligible to receive up to $44,000 in incentive payments from Medicare if they could show that they have made "meaningful use" of a certified EHR; physicians reimbursed by Medicaid may receive up to $63,750 based on guidelines defined by the state in which they practice (Hogan & Kissam, 2010; Jha, 2010).

Although the media have generally reported that $19 billion is available under the ARRA to subsidize the introduction of EHRs, the incentive schedules built into the Act could potentially drive that number to $51 billion. The HITECH Act requires healthcare providers to use "qualified EHR" that provides meaningful use of the technology, but does not define the meaning of either "qualified EHR" or "meaningful use." It authorized

the U.S. Department of Health and Human Services (HHS) to set guidelines for determining the meaning of these terms, and HHS established the Health Information Technology Policy Committee (HITPC) to provide it with recommendations on these matters. Through 2009 and 2010 HITPC worked to establish criteria for certifying EHR systems. On July 13, 2010 HHS released the final criteria defining meaningful use. These criteria apply to 700,000 clinicians in 5,000 acute care hospitals in their use of EHR. But to date no meaningful criteria have been established for nursing home facilities, and at the time of this writing there is no prospect that criteria for meaningful use will be established for nursing homes in the near future (U.S. Department of Health and Human Services, 2012; HIT Policy Committee, 2012; U.S. Department of Health and Human Services, 2011).

It appears that the federal government will define "meaningful use" largely in technical terms. In our view a technical definition of meaningful use is certainly a necessary but by no means a sufficient method of allocating taxpayer dollars to support the use of EHRs. Our study of New York nursing homes strongly leads to the conclusion that the meaning of meaningful use needs to take into account not only the technical specifications of EHR but also the organizational characteristics of the physician practices and healthcare facilities receiving the stimulus money. A central theme that emerges from our study of the introduction of EMR in nursing homes is that these nursing homes – and by implication other healthcare organizations, including physicians' practices – vary in their capacity and ability to make optimal use of health information technology. Identical technologies installed at identical costs in different facilities are likely to produce different healthcare outcomes. The extent and nature of the training provided to the workforce in the facility is certainly a critical determinant of the success of the technology, but in the New York project the nature of the training was identical across all the facilities. The difference in the results obtained from using the technology was largely a function, first, of the leadership and management strategy of the facility receiving the technology and, second, of certain key organizational characteristics of the facility.

We recognize that a government agency charged with allocating billions of dollars of public funds to thousands of facilities cannot possibly do an in-depth study of each of the facilities that is a candidate for the funds. In the case of the HITECH Act, allocation of the funds will be delegated to regional organizations. But even regionalization of the task will not allow public officials to identify easily the leadership and management traits that we believe are associated with the optimal use of the technology. Public

agencies virtually always rely on objective – or seemingly objective – factors to allocate public funds, and developing a set of objective factors that are capable of capturing traits associated with visionary and strategic managers would be, to say the least, a daunting task.

But we believe there may be a set of proxies sufficient to help guide public officials who want to identify facilities likely to make the best use of the technology. In the case of the nursing homes in our study, two simple proxies that come to mind are (1) the turnover rate in the facility and (2) the portion of agency or temporary employees employed by the facility. Nursing homes that have low turnover rates and a high proportion of permanent staff are likely to make better use of the technology than nursing homes without these characteristics. Also, staff participation in decision making appears to have an important influence on the optimal use of the technology. That participation might be through a union, but in a nonunion facility it could be through committees or other mechanisms that promote employee participation. Healthcare facilities that also promote the training and professional development of their staffs are probably in a better position to make productive use of EHRs than facilities that do not provide such opportunities. We do not argue here that proxies of this type should be dispositive but only that they might provide guidelines public officials can use in making their decisions.

Allocating public funds on the basis of workforce characteristics would at the very least be inappropriate and might possibly be unlawful, but our study makes clear that workforce characteristics, such as age, gender, and race, are not related to the use of the technology. Policy makers and public officials should take some comfort in knowing that it is organizational and not workforce characteristics that determine the optimal use of EHR technology.

NOTES

1. The selection of 15 of the 20 homes receiving the technology was dictated, principally, by funding constraints.

2. In the Matter of the Interest Arbitration between Southern New York Associates, L.L.C. et al., and 1199SEIU United Health Care Workers East (Martin F. Scheinman, Impartial Chair), March 2006, p. 13.

3. *Ibid.*, p. 14.

4. We obtained the approval of the Institutional Review Board at both Cornell and Illinois to conduct surveys of and interviews with the administrators and staff in the homes included in our study.

5. The interview population in the follow-up survey is larger than the population in our baseline survey because we included both employees who had left their nursing homes and employees who had been hired after the baseline survey. In the aggregate the employment level across the 20 homes did not significantly change between the baseline and the follow-up survey.
6. The co-authors of this chapter jointly conducted the majority of the field interviews in the 10 homes both before and after the implementation of EMR. We were usually accompanied by Kelly Pike, a Ph.D. candidate at Cornell. In a small number of cases only one of the co-authors conducted the interviews with Ms. Pike assisting.
7. It is important to note that our Cornell colleagues, Karl Pillemer and Rhoda Meador, conducted an evaluation regarding the effects of EMR technology on nursing home residents and produced a final report detailing their findings. In general, they did not find a statistically significant EMR effect (positive or negative) on a variety of healthcare outcome measures.
8. The principal difference between EHR and EMR is that EHR allows patients or residents to have access, within the limits of confidentiality, to their healthcare records.

REFERENCES

Ash, J. S., & Bates, D. W. (2005). Factors and forces affecting EHR system adoption: Report of a 2004 ACMI discussion. *Journal of the American Medical Informatics Association*, *12*(1), 8–12.

Bates, D. W., & Gawande, A. A. (2003). Improving safety with information technology. *New England Journal of Medicine*, *348*(25), 2526–2534.

Blumenthal, D., & Glaser, J. P. (2007). Information technology comes to medicine. *The New England Journal of Medicine*, *356*(24), 2527–2534.

Brandeis, G. H., Hogan, M., Murphy, M., & Murray, S. (2007). Electronic health record implementation in community nursing homes. *Journal of the American Medical Directors Association*, *8*(1), 31–34.

Chadhry, B., Wang, J., Shinyi, W., Maglione, M., Mojica, W., Roth, E., … Shekelle, P. G. (2006). Systematic review: Impact of health information technology on quality, efficiency, and costs of medical care. *Annals of Internal Medicine*, *144*(10), 742–752.

DesRoches, C. M., Campbell, E. G., Vogeli, C., Zheng, J., Rao, S. R., Shields, A. E., … Jha, A. K. (2010). Electronic health records' limited successes suggest more targeted uses. *Health Affairs*, *20*, 639–646.

Fiscella, K., & Gelger, H. J. (2005). Health information technology and quality improvement for community health centers. *Health Affairs*, *25*(2), 405–412.

Harrison, M. I., Koppel, R., & Bar-Lev, S. (2007). Unintended consequences of information technologies in health Care—an interactive sociotechnical analysis. *Journal of the American Medical Informatics Association*, *14*(5), 542–549.

Hillestad, R., Bigelow, J., Bower, A., Girosi, F., & Meili, R. (2005). Can electronic medical records transform healthcare? Potential health benefits, savings and costs. *Health Affairs*, *24*(5), 1103–1117.

Hogan, S. O., & Kissam, S. N. (2010). Measuring meaningful use. *Health Affairs*, *29*(4), 601–606.

Jha, A. K. (2010). Meaningful use of electronic health records: The road ahead. *Journal of the American Medical Informatics Association*, *304*(15), 1709–1710.

Koppel, R., Metlay, J. P., Cohen, A., Abaluck, B., Localio, R., Kimmel, S. E., & Strom, B. L. (2005). Role of computerized physician order entry systems in facilitating medication errors. *Journal of the American Medical Association*, *293*(10), 1197–1203.

Linder, J. A., Ma, J., Bates, D. W., Middleton, B., & Stafford, R. S. (2007). Electronic healthcare use and quality of ambulatory care in the United States. *Archives of Internal Medicine*, *167*(13), 1400–1405.

Lipsky, D. B., & Avgar, A. C. (2009). *Caregivers and computers: The effect of electronic medical records on employment and labor relations in nursing homes*. Final Report Submitted to the Quality Care Oversight Committee and 1199SEIU Training and Employment Funds.

Lipsky, D. B., Avgar, A. C., & Lamare, J. R. (2009). Organizational strategies for the adoption of electronic medical records: Toward an understanding of outcome variation in nursing homes. In *Proceedings of the sixty-first annual meeting of Labor and Employment Relations Association*, Labor and Employment Relations Association, Champaign, IL (pp. 73–85).

Litwin, A. S. (2010). *Technological change at work: The impact of employee involvement on the effectiveness of health information technology*. Unpublished working paper. Johns Hopkins University.

Pillemer, K., Meador, R. H., Teresi, J. A., Chen, E. K., Henderson, C. R., Lachs, M. S., …, Eimiche, J. P. (2011). Effects of electronic health information technology implementation on nursing home resident outcomes. *Journal of Aging and Health, 24*(1), 92–112.

Poon, E., Jha, A., Christino, M., Honour, M. M., Fernandopulle, R., Middleton, B., … Kaushal, R. (2006). Assessing the level of healthcare information technology adoption in the United States: A snapshot. *BMC Medical Informatics and Decision Making*, *6*(1), 1.

Sidorov, J. (2006). It ain't necessarily so: The electronic health record and the unlikely prospect of reducing health care costs. *Health Affairs*, *25*(4), 1079–1085.

Subramanian, S., Hoover, S., Gilman, B., Field, T. S., Mutter, R., & Gurwitz, J. H. (2007). Computerized physician order entry with clinical decision support in long term care facilities: Costs and benefits to stakeholders. *Journal of the American Geriatrics Society*, *55*(9), 1451–1457.

The American Recovery and Reinvestment Act. (2009). Pub L No. 111–5.

U.S. Department of Health and Human Services. (2011). *Electronic health records and meaningful use*. Retrieved from http://healthit.hhs.gov/portal/server.pt?open=512&objID=2996&mode=2. accessed on May 19, 2011.

U.S. Department of Health and Human Services, HIT Policy Committee. (2012). HIT Policy Committee (a Federal Advisory Committee). Retrieved from http://healthit.hhs.gov/portal/server.pt?open=512&objID=1269&parentname=CommunityPage&mode=2. Accessed on October 16, 2012.

THE IMPACT OF REPLACEMENT WORKER LEGISLATION ON WORK STOPPAGES AND WAGE SETTLEMENTS ☆

Jiong Tu

ABSTRACT

The merits and demerits of replacement worker legislation continue to be a point of contention. This chapter provides empirical evidence of the impact of replacement worker bans on the outcomes of collective bargaining for the period of 1967–2009. Compared to the existing literature, this study has the advantage of using a merger of two previously separate administrative databases – the collective agreement and work stoppage databases from the Labour Program of Human Resources and Skills Development Canada (HRSDC). Under a temporary replacement worker ban, work stoppage incidence increases in the service sector, but decreases in the nonservice sector; work stoppages last longer but the wage settlements grow more slowly in both sectors. A permanent replacement worker ban increases the work

☆The views expressed in this study are the personal views of the author and do NOT reflect the views of the Government of Canada.

Advances in Industrial and Labor Relations, Volume 20, 105–137

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020007

stoppage incidence in the service sector and lowers the wage growth rate in the nonservice sector.

Keywords: Work stoppage; collective bargaining; replacement worker; wage settlement; legislation

JEL Codes: J52; J58; K31

INTRODUCTION

The use of replacement workers during a work stoppage is a debatable issue. When a firm's production is disrupted by a work stoppage, the loss in current and future business to the employer can be so substantial that it may even threaten the firm's existence. Therefore, firms claim that the hiring of replacement workers may be critical for them to survive and grow. However, on the other side of the bargaining table, unions may argue that the use of replacement workers undermines their legal right to strike – the primary source of their bargaining power.

In Canada, there have been a number of recent discussions about adopting legislation against the use of replacement workers during a work stoppage in firms operating under the federal labour jurisdiction.[1] Two Private Members' Bills, C-257 and C-295, were presented to Parliament in 2006 in an attempt to amend the Canada Labour Code to prohibit the hiring of replacement workers during a strike or lockout. Neither bill passed. Nevertheless, since then there has been renewed pressure on the federal government to adopt such legislation, for example, Bills C-337 and C-386 in 2009. Debate over the merits of replacement worker legislation continues to focus on its potential impacts on the incidence and duration of work stoppages as well as wage settlements. However, there is no consensus on these impacts from studies in the theoretical and empirical literature.

To shed further light on the discussion, this chapter conducts an empirical analysis of these impacts. Specifically, it has the advantage of using a merger of two previously separate administrative databases – the collective agreement and work stoppage databases from the Labour Program of Human Resources and Skills Development Canada (HRSDC). The merged dataset allows for a relatively accurate estimation of work stoppage incidence. It also makes it possible to fill a methodological gap by employing a

simultaneous equation model that takes into account the interrelationship between work stoppages and wage settlements; this dimension is often ignored in the existing literature.[2] In addition, this dataset covers the period from 1967 to 2009, which is longer than those used in other studies.

This chapter also makes a distinction between the service and the nonservice sectors. Previous studies either restrict their samples to a specific industry, such as manufacturing (Budd, 1996; Card, 1990), or use pooled samples of all industries (Cramton, Gunderson, & Tracy, 1999). However, separating the two industrial sectors can provide further insights into the impact of replacement worker legislation for the following reasons. First, the two sectors have different skill requirements. According to the 2006 Census of Canada, the share of university degree holders is 25 percent among employees in the service sector, but only 11 percent in the nonservice sector. On the other hand, 21 percent of workers in the nonservice sector have not completed high school education, while the share in the service sector is only 14 percent. Since workers in the service sector are of higher educational attainments, it is reasonable to believe that they are less substitutable than those in the nonservice sector. Second, as goods are storable and services are not, employers in the nonservice sector are more likely to mitigate the impact of a disruption of operations by building up inventories. Third, employers in the nonservice sector tend to have greater exposure to international competition. Therefore, they are more sensitive to labor policies that could disrupt their operations. Given all these distinctions between the service and nonservice sectors, replacement worker legislation may have different effects on the outcomes of collective bargaining. Since most companies under federal jurisdiction are in the service sector, such as banking, transportation, and telecommunications, the findings with the service sector are more relevant to the Canadian federal government.

This chapter is organized as follows: Section ''Replacement worker legislation in Canada'' overviews the replacement worker legislation in Canada. Section ''Literature review'' summarizes theories and findings in the existing literature on the impact of replacement worker bans. Section ''Data and statistical description'' discusses the databases and provides descriptive statistics. Section ''Econometric framework and regression results'' presents model specification and regression results. Section ''Interrelationship between work stoppages and wage settlements'' uses a simultaneous equation model to account for the interrelationship between work stoppages and wage settlements. Section ''Conclusion'' concludes.

REPLACEMENT WORKER LEGISLATION IN CANADA

The Canada Labour Code governs firms under federal labor jurisdiction, whereas provincial labor laws govern firms under provincial labor jurisdiction. As shown in Table 1, the wide variety of labor relation policies across jurisdictions provides a natural experiment to conduct a difference-in-difference analysis of policy impacts.

This chapter analyzes two types of replacement worker legislation, namely the "permanent replacement worker ban" and the "temporary replacement worker ban." The first type forbids the permanent replacement of striking employees, and includes reinstatement right policies that grant them the right to return to their jobs after the dispute is resolved. Currently, Ontario, Manitoba, Prince Edward Island, Alberta, and Saskatchewan have adopted the permanent ban, which is also applicable to federal jurisdiction. Under such a ban, the temporary use of replacement workers during a work stoppage is *not* restricted.

The temporary replacement worker ban, also named "strike replacement ban" or "anti-scab" legislation, is stricter: besides granting reinstatement rights, it also prohibits the temporary use of new hires or existing workers to

Table 1. Replacement Worker Legislation in Canada, as of the End of 2009.

Jurisdiction	Legislation and Section	Start Date	End Date[a]
Permanent replacement worker ban/reinstatement rights			
Ontario	*The Labour Relations Act*, sec. 75(1)	1971-02-15	1992-12-31
		1995-11-10	–
Manitoba	*The Labour Relations Act*, sec. 11	1985-01-01	–
Prince Edward Island	*Labour Act*, sec. 9(5)	1987-05-14	–
Alberta	*Labour Relations Code*, sec. 88(1)	1988-11-28	–
Saskatchewan	*The Trade Union Act*, sec. 46(1)	1994-10-28	–
Federal Jurisdiction[b]	*Canada Labour Code*, sec. 94(2.1)	1999-01-01	–
Temporary replacement worker ban			
Quebec	*Labour Code, sec.* 109.1	1978-02-01	–
British Columbia	*Labour Relations Code*, sec. 68	1993-01-18	–
Ontario	*The Labour Relations Act*, sec. 73	1993-01-01	1995-11-09

Data source: the Labour Program of Human Resources and Skills Development Canada (HRSDC).

[a]The policy is effective as of the end of 2009 unless otherwise indicated.

[b]Limited replacement worker ban.

do the work of those engaged in a legal work stoppage. Quebec and British Columbia are the only two provinces that currently have such a policy. It was introduced in Ontario in 1993 but abrogated in late 1995. Under federal jurisdiction, strike replacement is only banned when it "undermines" a union's recognition right[3] – a clause that is *not* considered practically binding in the literature (Budd, 2000; Cramton et al., 1999; Dachis & Hebdon, 2010).

The permanent replacement worker ban has been in effect for a long time in most provincial jurisdictions and in the federal jurisdiction (Table 1). The current debate focuses on the legislation against the temporary use of strike replacement, so this chapter puts more emphasis on the analysis of the temporary replacement worker ban.

Supporters of the temporary replacement worker ban argue that it will decrease picket-line violence and other conflicts caused by the use of replacement workers. To help evaluate this claim, a search of the archived news reports is conducted using the *LexisNexis Academy* database. The search result suggests that the numbers of reports on picket-line violence events in British Columbia and Ontario have declined with the adoption of the temporary replacement worker ban (Appendix A).

LITERATURE REVIEW

The adoption of a replacement worker ban will clearly change the balance of bargaining power in favor of unions. However, its expected effects on the outcomes of collective bargaining are theoretically ambiguous because there is no consensus about the economic modeling of the bargaining process and strike activity. There are at least three types of theories dealing with this problem.

The Joint Cost Model

Budd (1996) applies the *joint cost model* (also known as the *standard bargaining model*) developed by Chamberlain and Kuhn (1965) and Kennan (1980). This model explains negotiation and strike activities based on the union's and the employer's relative strike costs and benefits. The cost of a work stoppage to a firm stems from the interruption or discontinuation of its operations, while its expected benefit is a potentially lower wage settlement. Likewise, the costs to union members include losing wages during a work

stoppage and a threat of losing jobs, while the expected payoff is a higher wage settlement. The relative costs and benefits to both sides will then determine the occurrence of a work stoppage, its duration, and the wage settlement. In this model, when the use of replacement workers is not allowed during a work stoppage, the employer's strike cost will increase and the desire to avoid the occurrence or shorten the length of a work stoppage becomes stronger. On the other hand, without the threat of replacement, the union will have a lower strike cost; thereby the likelihood and duration of a work stoppage increase. Given that the union and the employer are motivated in opposite directions, the net impact of a replacement worker ban on the outcomes of collective bargaining is ambiguous.

Empirically, Budd (1996) examines this impact on manufacturing firms, using the 1965–1985 sample of the Labour Program's collective agreement database. His regression results indicate that a temporary replacement worker ban has no significant effect on strike incidence and the level of wage settlement, but it increases the strike duration and the growth rate of wage settlement. However, a permanent replacement worker ban does not seem to affect strike incidence and duration, while it decreases both the level and the growth rate of wage settlement.

The Private Information Bargaining Model

Gunderson, Kervin, and Reid (1989) and Cramton et al. (1999) propose the use of a competing, yet complementary, *private information bargaining model* developed by Fudenberg, Levine, and Ruud (1985), Hayes (1984), and Tracy (1986, 1987). This model treats a strike as a means by which a union screens out the employer's true willingness to pay. When there is asymmetric information between the union and the employer such that the employer's profitability is unknown to the union, the employer will have an incentive to conceal the information and undervalue workers' output with low wage offering. The union may threaten or even initiate a strike in an attempt to force the employer to reveal the information about acceptable wages. Based on the assumption that more profitable firms may experience greater business losses and are more likely to concede than less profitable ones, the union is facing a downward-sloping concession curve where the acceptable wage is negatively correlated with strike duration.[4] In this model, prohibiting the use of strike replacement will increase the union's bargaining power and shift the concession curve out. As a result, strike incidence, strike duration, and wage settlement are all expected to increase.

However, empirical results in line with this model are sensitive to the time span and industrial coverage of the datasets that are used. Gunderson et al. (1989) use a 1971–1985 sample of Canadian collective agreements to find that a temporary replacement worker ban increases strike incidence. Cramton et al. (1999) extend the study to other aspects of collective bargaining outcomes and use a sample with longer time span (1967–1993). They find that a temporary replacement worker ban raises the incidence and the duration of strikes, as well as the wage settlement, but their findings are different in magnitude from Gunderson et al.'s (1989). Their regression results may be dominated by observations from Quebec because observations from Ontario and British Columbia were not covered by the ban until the last year of their sample period. It is then difficult to identify whether the estimated effects are due to the replacement worker legislation or to the difference in business environment between Quebec and other provinces.

Schnell and Gramm (1994) in their study on the relationship between the employers' permanent replacement strategies and strike duration suggest that the *private information bargaining model* is not incompatible with the *joint cost model*. Using the 1985 and 1989 U.S. General Accounting Office survey data, the authors find that the use of permanent replacement workers, as well as the simple announcement of the intent to do so, increases the length of strikes. They argue that, from the *joint cost model*, hiring replacement workers reduces the strike costs to employers and their incentive to end the strikes earlier. From the viewpoint of the *private information bargaining model*, these replacement strategies may signal the employers' unwillingness to reconcile, which corresponds to longer strikes.

The Sequential Model

One limitation with the private information bargaining model is that it assumes a firm's capital investment is independent of whether a work stoppage is expected to occur. Under this assumption, restricting the use of replacement workers will increase the wage settlement. Budd and Wang (1999, 2004) challenge this assumption by developing a *sequential model* to account for the capital adjustment by employers in response to a change in the expected productivity of capital. Prohibiting the use of replacement workers during a work stoppage is expected to lead to more disruption in a firm's operations and lower its capital productivity. Consequently, the firm may invest less in capital and limit its labor demand, which can lead to a downward pressure on its wage offering.[5] When this effect is combined with

the upward pressure from the union's strengthened bargaining power, the net effect of a replacement worker ban on wage settlement becomes ambiguous.

Empirical evidence from a recent study by Dachis and Hebdon (2010) supports the sequential model in that both temporary and permanent replacement worker bans are found to increase the incidence and duration of strikes, but to decrease the real wage settlement in the private sector. They explain the wage decline by a reduction in capital investment in provinces that restrict the use of strike replacement. Since their dataset covers a 30-year period, from 1978 to 2008, their finding can be treated as a measure of the effect of replacement worker legislation in the long run.

Owing to the debate on theoretical framework, the impact of replacement worker legislation on collective bargaining outcomes remains an empirical question. However, since most existing studies, except for Cramton et al. (1999), use separate databases of collective agreements and work stoppages, their findings for work stoppage incidence are subject to substantial measurement errors. This data limitation also hinders them from solving the problem of simultaneity between work stoppages and wage settlements. Moreover, even Cramton et al. (1999) use a dated dataset that has few non-Quebec collective agreements under a replacement worker ban. Therefore, an empirical study using an up-to-date dataset that merges the collective agreement and work stoppage databases is necessary to update our knowledge in this area.

DATA AND STATISTICAL DESCRIPTION

This chapter uses data drawn from the Labour Program's Collective Agreement Information Retrieval System (CAIRS) and Work Stoppage Retrieval System (WSRS) databases. Many other researchers, such as Cramton et al. (1999) and Dachis and Hebdon (2010), use the same sources. However, the dataset used in this study has the following advantages: more complete information about collective agreements and wage settlements; a longer time span (1967–2009); and, most importantly, the merger of these two databases.

The Merged Data

The CAIRS database contains information on the provisions of collective agreements of 500 or more employees under provincial and territorial

jurisdiction, and 200 (100 in some years) or more employees under federal jurisdiction since 1978. An auxiliary wage dataset provides details on wage settlement for most collective agreements covering 500 or more employees. In addition, the Labour Program maintained a similar historical wage dataset since 1961, but it was terminated a few years after the introduction of CAIRS. This study restricts the use of the historical wage data to the period 1967–1980 because of the incompleteness of its collection in the early years. There is an overlap of 3 years from 1978 to 1980 where the historical wage data supplement the CAIRS data.

The WSRS database contains information on strikes and lockouts that have occurred in Canada since 1945. For consistency with the CAIRS and the historical wage databases, the sample is restricted to work stoppages involving at least 200 employees during the period 1967–2009.

Linking the collective agreement and work stoppage databases will provide more dimensions for the analysis of collective bargaining. However, due to the lack of a common identifier of bargaining units in these databases, an official data linking has never been attempted before.[6] Most of the existing literature uses either collective agreement or work stoppage database alone, and the findings are subject to data limitations.

Officers in the Research and Data Development (RDD) and the Workplace Information Division (WID) of the Labour Program merged the WSRS, CAIRS, and historical wage databases for this study. For work stoppages involving 500 or more employees, each record was visually matched to one or more collective agreements based on company name, location, jurisdiction, industry, union code, and time span. About 40 percent of work stoppages before 1978 and 68 percent after 1978 were matched. Most collective agreements have a series of generations (contracts). A work stoppage was linked to the generation that follows because a legal work stoppage usually occurs during the negotiation of a new contract.

For work stoppages with 200–499 employees, a fuzzy matching technique in SAS was used to sort out possible matches that were then verified by officers from RDD and WID. These officers also visually matched the remaining work stoppages that had not been linked to collective agreements by the computer program. Overall, these two steps resulted in a match rate of 44 percent. Table 2 presents the results of data matching.

About half of all work stoppages with 200 or more employees have been linked to at least one collective agreement. The remainder were not matched for three reasons: (a) there is not enough information to validate a link; (b) it is a wildcat strike in support of another striking union; and (c) it involves a bargaining unit under the provincial jurisdiction with less than

Table 2. CAIRS and WSRS Data Matching Results.

	Historical Wage Data (1967–1977)	CAIRS (1978–2009)		Total Number of Work Stoppages
Employees	500 +	500 +	200–499	
Match	503[a]	1,128[b]	828	2,459
No match	757	536	1,058	2,351
Total	1,260	1,664	1,886	4,810
Match rate	40%	68%	44%	51%

[a]Including 22 work stoppages that are linked to multiple collective agreements (58 in total).
[b]Including 16 work stoppages that are linked to multiple collective agreements (75 in total).

500 employees (the CAIRS' threshold for tracking provincially regulated collective agreements).

In the statistical analysis, WORK STOPPAGE (S) is a dichotomous variable that takes the value of 1 if a collective agreement is linked to a work stoppage, or a variable named "LAST NEGOTIATION STATUS" from the collective agreement data indicates the occurrence of a work stoppage. It should be noticed that LAST NEGOTIATION STATUS is an administrative variable used by WID officers to keep track of the (ongoing) progress of collective bargaining. It may or may not be updated once a collective agreement is settled. Using information only from this variable will then underreport the number of work stoppages. Thus, it is combined with the matched records to provide a relatively complete count of work stoppages.

WAGE SETTLEMENT (W) is defined by the annualized wage growth rate from the end of the previous collective agreement to the end of the current one. Although a number of previous studies use the level of real wages to measure wage settlement, it is incorrect when key determinants of wages, such as occupation and education, are not available.

The sample is restricted to private-sector collective agreements settled by bargaining pairs located in areas outside Yukon, Northwest Territories, and Nunavut[7] during 1967–2009. The public sector is not included because strike replacement is rare in this sector, and therefore a replacement worker ban is not expected to have any significant effect on the outcomes of collective bargaining. In addition, the public sector does not fit the above theoretical framework owing to its nonprofit nature and the existence of legislation specific to public services, for example, an essential services' strike ban.

Table 3 summarizes the sample by replacement worker ban coverage. There are 10,713 collective agreements in the nonservice sector, and 4,131 in the service sector. In the nonservice sector, the probability of a work stoppage decreases as the strictness of the ban increases. By contrast, work stoppage incidence in the service sector is the highest under the temporary replacement worker ban, but the lowest under the permanent ban. In both sectors, the stricter the ban, the lower are the annualized wage growth rates. The descriptive statistics of all the other variables can be found in Appendix B.

The Work Stoppage Data

The estimation of work stoppage duration uses all observations of the unlinked WSRS database. Table 4 provides a brief summary of work

Table 3. Statistical Summary for Matched CAIRS and WSRS Dataset by Replacement Worker Ban Coverage, Private Sector 1967–2009.

	Replacement Worker Ban			Total
	No	Permanent	Temporary	
All collective agreements				
Nonservice	3,142	4,732	2,839	10,713
Service	2,215	1,077	839	4,131
Collective agreements with wage information				
Nonservice	2,417	2,662	1,415	6,494
Service	1,915	542	371	2,828
Work stoppage by match and LAST NEGOTIATION STATUS				
Nonservice	539	650	328	1,517
Service	208	62	104	374
Probability of a work stoppage[a]				
Nonservice	17%	14%	12%	-
Service	9%	6%	12%	-
Annualized wage growth rate				
Nonservice	8.2%	5.0%	3.7%	-
Service	5.8%	4.9%	3.3%	-

Notes: The sample is restricted to collective agreements covering 200 or more employees located in nonterritory provinces. Illegal work stoppages are excluded.

[a]The probability of a work stoppage is the number of work stoppages divided by the number of collective agreements.

Table 4. Statistical Summary for WSRS Dataset by Replacement Worker Ban Coverage, Private Sector 1967–2009.

	Replacement Worker Ban			Total
	No	Permanent	Temporary	
Number of work stoppages				
Nonservice	2,137	1,322	511	3,970
Service	419	128	198	745
Work stoppage duration (days)				
Nonservice	34.8	39.9	59.1	–
Service	36.9	40.1	48.3	–

Notes: The sample is restricted to collective agreements covering 200 or more employees located in nonterritory provinces.

stoppages that have involved at least 200 employees. There are 3,970 work stoppages in the nonservice sector, and 745 in the service sector. The second panel of this table shows that the stricter the replacement worker ban, the longer is the average duration of work stoppages.

The descriptive statistics of the remaining variables are presented in the Appendix C. It is important to mention that almost half of work stoppages are due to nonwage clauses. Since the theoretical framework of work stoppages is based on the bargaining pair's expectation of wage settlement, a large number of nonwage work stoppages may lead to spurious coefficient estimates in the work stoppage duration function. However, this might not be a serious problem for the analysis of wage settlement because only a small proportion of observations involve a work stoppage for nonwage causes (less than 10 percent in either industry sector; Appendix B).

The above tables simply report descriptive statistics by replacement worker ban coverage. In order to accurately estimate the effect of replacement worker legislation on the outcomes of collective bargaining, more sophisticated multivariate regression methods are used.

ECONOMETRIC FRAMEWORK AND REGRESSION RESULTS

The empirical analysis starts with separate regressions for the probability of a work stoppage, its duration, and the wage settlement, based on a common assumption that they are independently affected by replacement worker

legislation (e.g., Cramton et al., 1999; Dachis and Hebdon, 2010). Applying their methodology on a better quality dataset helps test the robustness of their findings. The next section will discuss a more pertinent regression system that considers the interaction between work stoppages and wage settlements.

Work Stoppage Incidence

A probit regression function is used to model the probability of a work stoppage, that is:

$$\text{Prob}(S_{iT} = 1) = F(RWB_{iT}, S_{i,t<T}, X_{iT}) \quad (1)$$

where subscript i stands for a bargaining pair, and T for a generation of a collective agreement; $S_T = 1$ if the Tth generation of a collective agreement is settled after a work stoppage, and $S_T = 0$ otherwise.

RWB_T are dummies for the temporary and permanent replacement worker bans, indicating whether a collective agreement is settled during a period when a ban is in effect. Similar to the literature (Cramton et al., 1999; Dachis and Hebdon, 2010), there is no variable representing the limited strike replacement ban under federal jurisdiction because it is not likely binding.

$S_{t<T}$ measures the number of work stoppages involving the bargaining unit in the past. This variable is included to control for historical labor relations: a bargaining pair that is frequently involved in work stoppages is assumed to have relatively uneasy labor relations, and its likelihood of having a work stoppage in the current collective negotiation is expected to be higher.

X_T represents a vector of control variables including the length of the previous collective agreement, the size of the bargaining unit, industrial sector by two-digit NAICS, geographic region, quarterly real GDP growth rate, monthly provincial unemployment rate, trade openness, year dummies, and seasonal dummies.

Quarterly real GDP growth rate is used to control for aggregate demand, and the monthly provincial unemployment rate for local labor market conditions. Trade openness is calculated annually as the ratios of exports and of imports to gross industrial output (categorized by two-digit NAICS code). These variables proxy the intensity of international competition because foreign competitors may reduce a domestic company's profitability and hence the room for wage negotiation. Values of these macroeconomic variables are obtained from Statistics Canada's CANSIM database.[8]

However, due to limitations in the time range of CANSIM database, trade openness is only available between 1971 and 2006, and the provincial unemployment rate after 1976. Therefore, the simultaneous use of these variables will shorten the sample period to 1976–2006.

The regression sample is initially restricted to collective agreements with 200 or more employees. Thereafter, regressions are repeated with the minimum number of employees raised to 500, which tests whether large-sized bargaining units behave differently than smaller ones. In addition, the regression model is estimated separately using subsamples from the service and nonservice sectors.

Table 5. Probit Regressions for Work Stoppage Incidence: Marginal Effects of the Replacement Worker Bans.

	200+ Employees		500+ Employees	
Nonservice sector				
Temporary replacement worker ban	−0.020	−0.039**	−0.048**	−0.083***
	(0.016)	(0.019)	(0.023)	(0.032)
Permanent replacement worker ban	0.003	0.011	−0.032***	−0.010
	(0.016)	(0.018)	(0.012)	(0.019)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	10,712	8,849	6,253	4,598
Log likelihood	−3,949	−3,117	−2,843	−2,034
Service sector				
Temporary replacement worker ban	0.021**	0.028**	0.034**	0.046***
	(0.010)	(0.012)	(0.014)	(0.014)
Permanent replacement worker ban	−0.014	−0.007	0.010	0.024
	(0.011)	(0.009)	(0.024)	(0.016)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	4,116	3,413	2,348	1,744
Log likelihood	−1,174	−928	−774	−567

Notes: Robust standard errors are in parentheses. Significance levels are indicated by * for 10%, ** for 5%, and *** for 1%. The dependent variable is a dummy indicating whether a collective agreement is settled after a work stoppage. Regressions control for the number of previous work stoppages, bargaining unit size, the length of the last collective agreement, industrial sector by two-digit NAICS, geographic region, year effect, seasonal effect, and quarterly real GDP growth. Due to limitations in data availability, the sample is restricted to collective agreements settled during 1976–2006 when trade openness and provincial unemployment rate are controlled for.

[a]The favored models.

Table 5 presents regression results for the replacement worker ban variables. To simplify the interpretation, the marginal effects, instead of the underlying estimated coefficients, are reported.

When trade openness and unemployment rate are both controlled for, a temporary replacement worker ban is found to lower work stoppage incidence in the nonservice sector by 3.9 percentage points for collective agreements covering 200 or more employees and 8.3 percentage points for those covering 500 or more employees. By contrast, in the service sector, work stoppage incidence increases by 2.8 percentage points for collective agreements with a minimum of 200 employees and 4.6 percentage points for those with at least 500 employees. In both sectors, a permanent replacement worker ban does not seem to have a significant effect on work stoppage incidence.

As noted above, the inclusion of trade openness and provincial unemployment rate shortens the sample period. Therefore, it is important to clarify whether the changes in regression results are due to the addition of new variables or due to the sample restriction. For this purpose, a regression model without these variables is estimated using the restricted sample. In general, the estimates are similar to those obtained using the full sample, implying that the sample restriction does not distort the regression results.[9]

Work Stoppage Duration

The duration of a work stoppage is modeled by the following log-linear equation:

$$\ln(S\_DUR_i) = F(RWB_i, LOCKOUT_i, NONWAGE_i, LEGISLATION_i, X_i) \tag{2}$$

where S_DUR_i is the number of days of a work stoppage; $LOCKOUT$ defines a lockout; $NONWAGE$ indicates whether a work stoppage is for nonwage reasons; $LEGISLATION$ indicates whether the work stoppage has been ended by back-to-work legislation; X is the same vector of control variables as that in Eq. (1) except that the length of the previous collective agreement and year dummies are excluded. Since this regression model is applied to the unlinked WSRS data, the estimated duration is conditional on the occurrence of a work stoppage.

OLS regression results are presented in Table 6.[13] In both sectors, a temporary replacement worker ban increases the duration of work stoppages that involves 200 or more employees. When trade openness and

Table 6. OLS Regressions for Work Stoppage Duration: Coefficient Estimates of the Replacement Worker Bans.

	200+ Employees		500+ Employees	
Nonservice sector				
Temporary replacement worker ban	0.367***	0.136***	0.351***	0.114
	(0.066)	(0.038)	(0.045)	(0.091)
Permanent replacement worker ban	0.087	−0.039	0.016	−0.010
	(0.057)	(0.101)	(0.095)	(0.209)
Control for trade openness and unemployment rate	No[a]	Yes	No[a]	Yes
Observations	3970	2214	1,710	946
R-squared	0.238	0.226	0.251	0.234
Service sector				
Temporary replacement worker ban	0.471***	0.279*	0.289**	0.291
	(0.108)	(0.134)	(0.119)	(0.200)
Permanent replacement worker ban	−0.175	−0.289*	−0.240	−0.396*
	(0.134)	(0.133)	(0.264)	(0.208)
Control for trade openness and unemployment rate	No[a]	Yes	No[a]	Yes
Observations	745	473	317	185
R-squared	0.196	0.233	0.200	0.264

Notes: Robust standard errors are in parentheses. Significance levels are indicated by * for 10%, ** for 5%, and *** for 1%. The dependent variable is the logarithm of the days that a work stoppage lasts. Regressions control for lockout indicator, non-wage cause, back to work legislation, bargaining unit size, industrial sector by two-digit NAICS, geographic region, seasonal effect, and quarterly real GDP growth. Due to limitations in data availability, the sample is restricted to collective agreements settled during 1976–2006 when trade openness and provincial unemployment rate are controlled for.

[a]The favored models.

unemployment rate are not controlled for, the estimated coefficient (0.367) in the nonservice sector indicates an increase of 44.3 percent, or 18 days, in the duration of a work stoppage, once it occurs.[10] In the service sector, the impact is bigger. The coefficient (0.471) suggests that a temporary replacement worker ban increases the work stoppage duration by 60.2 percent, or 24 days.[11]

However, these effects become less statistically significant when trade openness and provincial unemployment rate are included. Similar to Section "Work stoppage incidence," an additional regression model without controlling for trade openness and unemployment rate is estimated using the restricted sample (1976–2006).[12] In this case, the estimated effects of the temporary replacement worker ban become smaller and less significant than

those obtained using the full sample, suggesting that the change in estimates is mainly due to sample restriction rather than the inclusion of new variables. Therefore, regressions without trade openness and unemployment rate are favored in this case.

In these favored models, the estimated coefficients of the permanent replacement worker ban are all statistically insignificant. This indicates that although the use of permanent replacement workers may increase strike duration (as documented by Gramm & Schnell, 1994 and Schnell & Gramm, 1994), banning them does not decrease strike duration. Schnell and Gramm (1994) admit that their coefficient estimates of hiring permanent replacement workers and announcing the intent to do so may be subject to a positive endogeneity bias because these permanent replacement strategies are probably the employers' response to prolonged strikes. However, the same problem does not affect the findings in this chapter, as the replacement worker ban is exogenous legislation not determined by the length of individual work stoppages.

Wage Settlement

The annualized wage growth rate over the length of a collective agreement is used as a measure of wage settlement. It is modeled by the following linear function:

$$W_{iT} = F(RWB_{iT}, \ln(CA\_LENGTH_{iT}), COLA_{iT}, S^{w}_{i,T}, S^{nw}_{i,T}, S_{i,T-1}, INF_T, X_{iT}) \tag{3}$$

where W_T is the annualized wage growth rate; CA_LENGTH is the length of the collective agreement; $COLA$ stands for cost-of-living adjustments; S^{w} and S^{nw} are dummies indicating the occurrence of a work stoppage for wage and nonwage reasons, respectively;[14] $S_{i,T-1}$ indicates whether the previous collective bargaining has involved a work stoppage; INF indicates inflation and is derived from the 12-month growth rate of CPI; and X is the same set of control variables as in Eq. (1). Since this model requires information on both collective agreement and work stoppage, the merged dataset is used.

OLS regression results of the wage function (Table 7) do not seem to be sensitive to the inclusion of trade openness and unemployment rate. For collective agreements covering at least 200 employees in the nonservice sector, the temporary and permanent replacement worker bans reduce the annualized wage growth rate by 0.9 and 0.8 percentage points, respectively.

Table 7. OLS Regressions for Annualized Wage Growth Rate: Coefficient Estimates of the Replacement Worker Bans.

Bargaining Unit Size	200+ Employees		500+ Employees	
Nonservice sector				
Temporary replacement worker ban	−0.007**	−0.009***	−0.007**	−0.009***
	(0.003)	(0.001)	(0.003)	(0.001)
Permanent replacement worker ban	−0.008***	−0.008***	−0.009***	−0.008***
	(0.001)	(0.002)	(0.001)	(0.002)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	5879	4222	5607	3953
R-squared	0.652	0.599	0.651	0.611
Service sector				
Temporary replacement worker ban	−0.004	−0.002	−0.004	−0.002
	(0.004)	(0.003)	(0.005)	(0.005)
Permanent replacement worker ban	0.002	−0.001	0.001	−0.001
	(0.002)	(0.002)	(0.002)	(0.003)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	2612	2012	2047	1504
R-squared	0.685	0.635	0.687	0.663

Notes: Robust standard errors are in parentheses. Significance levels are indicated by * for 10%, ** for 5%, and *** for 1%. The dependent variable is the annualized wage growth rate during the life of a collective agreement. Regressions control for the length of the collective agreement, COLA clause, a work stoppage in the previous collective bargaining, inflation rate, bargaining unit size, the length of the last collective agreement, industrial sector by two-digit NAICS, geographic region, year effect, seasonal effect, and quarterly real GDP growth. Due to limitations in data availability, the sample is restricted to collective agreements settled during 1976–2006 when trade openness and provincial unemployment rate are controlled for.
[a]The favored models.

The coefficient estimates remain almost unchanged when the sample is restricted to collective agreements with 500 or more employees.

In the service sector, all the coefficients are statistically insignificant, indicating that restricting the use of replacement workers does not affect the growth rate of wage settlements. This finding is consistent with Dachis and Hebdon (2010).

It should be noted that the negative association between replacement worker bans and wage settlements does not necessarily come through the channel of a work stoppage. It can also be a result from the long-term adjustment by employers in response to the policy change. According to Budd and Wang's (1999, 2004) sequential model, when employers react to

the increased threat of a work stoppage by reducing their capital investment and labor demand, the wage offering will then be adjusted downward to match the lowered production scale.

INTERRELATIONSHIP BETWEEN WORK STOPPAGES AND WAGE SETTLEMENTS

The regression models used in the previous section assume that work stoppages and wage settlements are independent of each other. However, in real-world collective bargaining, the likelihood of a work stoppage may be influenced by the wage offering, whereas the settled wage may reflect the concession of either party after a work stoppage. When work stoppage incidence and wage settlements are endogenously determined by each other, the coefficient estimates from separate regressions may be biased. Therefore, a simultaneous equation system is developed to account for the interrelationship between work stoppage (S) and wage settlements (W).[15]

Consider the following equation system (for simplicity, subscripts indicating the bargaining unit (i) and the generation of a collective agreement (T) are omitted):

$$\text{Prob}(S = 1) = F(RWB, X, Z^s, W) \tag{4}$$

$$W = F(RWB, X, Z^w, S) \tag{5}$$

where Z^s and Z^w are exogenous variables specific to work stoppage and wage settlement models, respectively. As specified in Eqs. (1) and (3), Z^s consists of $S_{i,t<T}$, and Z^w includes $\ln(CA\_LENGTH_{iT})$, $COLA_{iT}$, $S_{i,T-1}$, and INF_T.[16]

A common solution to the endogeneity problem is the use of instrumental variables (IVs). In the first stage, the endogenous variables S and W are regressed against all the exogenous variables (RWB, X, Z^s, Z^w) to obtain the predicted values $\hat{S}$ and $\hat{W}$. By doing so, Z^w and Z^s are IVs for S and W, respectively. In the second stage, the original structural functions (Eqs. (4) and (5)) are regressed, replacing endogenous variables with the predicted values $\hat{S}$ and $\hat{W}$:

$$\text{Prob}(S = 1) = F(RWB, X, Z^s, \hat{W}) \tag{6}$$

$$W = F(RWB, X, Z^w, \hat{S}) \tag{7}$$

Table 8 presents IV probit regression results for models of work stoppage incidence. The marginal effects of the temporary replacement worker ban have the same signs as those from the simple probit regressions (Table 5), but they are larger in magnitude. In the nonservice sector, a temporary replacement worker ban decreases the probability of a work stoppage by about 9 percentage points when both trade openness and unemployment rate are controlled for. However, in the service sector, it increases work stoppage incidence by roughly 6 percentage points.

The effect of the permanent replacement worker ban on work stoppage incidence also varies across industries (Table 8). It is statistically insignificant in the nonservice sector when trade openness and

Table 8. IV Probit Regressions for Work Stoppage Incidence: Marginal Effects of the Replacement Worker Bans.

	200+ Employees		500+ Employees	
Nonservice sector				
Temporary replacement worker ban	−0.059***	−0.086***	−0.061***	−0.092***
	(0.021)	(0.022)	(0.021)	(0.024)
Permanent replacement worker ban	−0.032***	−0.015	−0.036***	−0.020
	(0.010)	(0.018)	(0.011)	(0.021)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	5,879	4,222	5,607	3,953
Service sector				
Temporary replacement worker ban	0.050**	0.067***	0.045*	0.061***
	(0.021)	(0.026)	(0.024)	(0.022)
Permanent replacement worker ban	0.013	0.032***	0.019	0.046***
	(0.015)	(0.012)	(0.021)	(0.013)
Control for Trade Openness and Unemployment Rate	No	Yes[a]	No	Yes[a]
Observations	2,612	1,959	2,001	1,418

Notes: Robust standard errors are in parentheses. Significance levels are indicated by * for 10%, ** for 5%, and *** for 1%. The dependent variable is a dummy indicating whether a collective agreement is settled after a work stoppage. Regressions control for the number of previous work stoppages, bargaining unit size, the length of the last collective agreement, industrial sector by two-digit NAICS, geographic region, year effect, seasonal effect, and quarterly real GDP growth. Due to limitations in data availability, the sample is restricted to collective agreements settled during 1976–2006 when trade openness and provincial unemployment rate are controlled for.

[a]The favored models.

Table 9. IV Regressions for Wage Settlements: Coefficient Estimates of the Replacement Worker Bans.

	200 + Employees		500 + Employees	
Nonservice sector				
Temporary replacement worker ban	−0.011***	−0.014***	−0.011***	−0.014***
	(0.002)	(0.003)	(0.003)	(0.002)
Permanent replacement worker ban	−0.010***	−0.009***	−0.010***	−0.009***
	(0.002)	(0.002)	(0.002)	(0.002)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	5,879	4,222	5,607	3,953
R-squared	0.542	0.437	0.544	0.473
Service sector				
Temporary replacement worker ban	−0.003	−0.002	−0.004	−0.002
	(0.004)	(0.003)	(0.005)	(0.005)
Permanent replacement worker ban	0.001	−0.000	0.001	−0.001
	(0.002)	(0.002)	(0.002)	(0.002)
Control for trade openness and unemployment rate	No	Yes[a]	No	Yes[a]
Observations	2,612	2,012	2,047	1,504
R-squared	0.684	0.630	0.684	0.656

Notes: Robust standard errors are in parentheses. Significance levels are indicated by * for 10%, ** for 5%, and *** for 1%. The dependent variable is the annualized wage growth rate during the life of a collective agreement. Regressions control for the length of the collective agreement, COLA clause, a work stoppage in the previous collective bargaining, inflation rate, bargaining unit size, the length of the last collective agreement, industrial sector by two-digit NAICS, geographic region, year effect, seasonal effect, and quarterly real GDP growth. Due to limitations in data availability, the sample is restricted to collective agreements settled during 1976–2006 when trade openness and provincial unemployment rate are controlled for.
[a]The favored models.

unemployment rate are taken into account. In the service sector, the permanent ban increases the work stoppage incidence by 3–5 percentage points.

The IV regression results for the wage settlement model are reported in Table 9, and they show a similar pattern to the OLS regressions results in Table 7. Both temporary and permanent replacement worker bans lower the annualized wage growth rate of a nonservice sector collective agreement by 1.4 and 0.9 percentage points respectively, but their effects in the service sector are negligible.

CONCLUSION

The legislation against the use of replacement workers during a work stoppage is still under debate. On the one hand, unions argue that the use of replacement workers will undermine their legal right to strike and arouse more picket-line violence. On the other hand, employers fear that the restriction of strike replacement will jeopardize their survival. This chapter updates the literature by examining the impact of replacement worker legislation on the outcomes of collective negotiation. It has the following major contributions to the literature: (a) it uses a unique dataset that merges the Labour Program's collective agreement and work stoppage databases; (b) it allows for differences between the impacts in the service and in the nonservices sectors; (c) it uses a simultaneous equation model to account for the interrelationship between work stoppages and wage settlements. Empirical findings suggest different effects in the service and nonservice sectors. In general, the results from the simultaneous equation model are similar to those from separate regressions.

Work Stoppage Incidence

In the nonservice sector, a temporary replacement worker ban decreases the probability of a work stoppage by roughly 8 percentage points. This can be explained by employers' reaction to the adoption of the ban. When the use of replacement workers is allowed, companies are able to maintain a certain level of operations to minimize their losses caused by a work stoppage. However, when it is restricted to replace striking workers, a work stoppage will significantly interrupt their business operations and result in substantial losses or even business closures. To avoid these outcomes, employers may be willing to offer more generous conditions on wage or nonwage terms in collective bargaining. When the employers' effort in preventing work stoppages exceeds the unions' effort to initiate them, the probability of a work stoppage will then decrease.

In the service sector, by contrast, work stoppage incidence increases by 8 percentage points when a temporary replacement worker ban is in effect. This is probably due to the dominance of unions' inclination to exercise their increased bargaining power. Owing to the relatively high skill requirements in the service sector, it is not easy to replace striking workers even when doing so is legally allowed. Therefore, the adoption of a strike replacement ban may not increase business losses as much as in the

nonservice sector, and will not motivate employers to exert enough efforts to avoid work stoppages. On the other hand, encouraged by the reduced strike costs, unions tend to make more use of their strengthened bargaining power. As a result, the net effect of a temporary replacement worker ban in the service sector is to increase the probability of a work stoppage.

Admittedly, there is a paucity of economic research on the difference in collective bargaining behaviors between the service and nonservice sectors, likely due to a lack of suitable data. Singh, Zinni, and Jain (2005) provide some evidence through their case study of some Canadian work stoppages in the 1990s. In the nonservice sector, Giant Mine locked out the miners one day prior to when their strike was to begin and immediately brought in replacement workers who were mainly unemployed laborers. However, in the service sector, Air Ontario had to spend 3 months in training replacements in the face of a strike threat by flight attendants. When the pilots also went on strike, Air Ontario could not replace them.[17] From these cases, Singh et al. (2005) conclude that the replaceability of the strikers depends on the knowledge and skills specific to their jobs. Considering the higher educational attainment by employees in the service sector (as documented in the introduction), it is reasonable to believe that they are, in general, more difficult to replace than those in the nonservice sector. To shed more light on the difference in skill requirements between industrial sectors and its implication for collective bargaining outcomes, researchers may supplement the collective agreement database with union members' human capital information obtained from individual-level microdata, for example, the Canadian Labour Force Survey. Using the human capital information as a proxy for union members' replaceability, studies based on the supplemented database may provide more evidence of the different effects between the replacement worker bans in the service and in the nonservice sectors.

Work Stoppage Duration

When a temporary replacement worker ban is in effect, the work stoppage duration increases by about 18 days in the nonservice sector and 24 days in the service sector. This finding is consistent with most studies, such as Budd (1996), Cramton et al. (1999), Dachis and Hebdon (2010), and Reza (2010). As the duration of a work stoppage increases, the costs to both the employer and the union increase. The employer then tends to offer higher wages to avoid a longer work stoppage, whereas the union is more willing to accept

lower wages for the same purpose. Therefore, the employer's concession curve is upward sloping, while the union's concession curve is downward sloping. According to the Hicks (1963) model, the equilibrium work stoppage duration is then determined by the intersection of these two curves. The implementation of a replacement worker ban changes the balance of bargaining power in favor of the union. The union's concession curve then shifts to the right, while the employer's curve shifts to the left. Although the net effect on the length of work stoppages is theoretically unclear, the empirical findings in this chapter suggest that the union's response to the ban dominates the work stoppage process once it starts.

Wage Settlement

The impact of a temporary replacement worker ban on wage settlements varies across industrial sectors. In the nonservice sector, the annualized wage growth rate is reduced by 1.6 percentage points, which is likely a result from employers' business adjustment following the legislation. According to Budd and Wang's (1999, 2004) sequential model, employers may respond to replacement worker legislation by reducing their investment in capital and scale of production. This adjustment will lower their labor demand and push wages downward. Considering the above discussion on work stoppage incidence, this finding with wage settlements also implies that employers in the nonservice sector may become more generous on nonwage issues, rather than wage offering, in collective negotiations to avoid work stoppages.

In the service sector, a temporary replacement worker ban does not seem to affect the wage growth rate. This finding is in line with the idea that service sector employers are less impacted by the legislation because of the low level of replaceability in this sector.

The effects of the permanent replacement worker ban are not as strong as those of the temporary ban and are statistically insignificant in most cases. However, the permanent ban increases the work stoppage incidence by 3–5 percentage points in the service sector but has no such effect in the nonservice sector. The permanent ban reduces wage growth by about 1 percentage point in the nonservice sector but does not affect wage growth in the service sector.

Like other economic studies, the analysis in this chapter follows the hypothesis that both employers and unions are motivated by economic incentives and that they behave rationally. However, given the conflictual nature of work stoppages, their occurrence and duration are often driven by

other psychological factors, for example, the negotiators' personalities, attitudes, and emotions. Kaufman (1999) suggests that economists incorporate concepts and methods from other behavioral sciences (e.g., psychology and sociology) into their analysis of labor market phenomena. This may be especially valid for collective bargaining. Future research using interdisciplinary approaches may provide more complete explanations of the relationship between replacement worker legislation and work stoppages.

NOTES

1. Industries under the federal labor jurisdiction mainly include inter-provincial and international transportation, communications, banking, uranium mining, federal public service, and Crown corporations.
2. One exception is Cramton et al. (1999) who address the endogeneity of strike variables in the wage function by an instrumental variable approach.
3. Canadian Labour Code, subsection 94(2.1a): "no employer or person acting on behalf of an employer shall use, for the demonstrated purpose of undermining a trade union's representational capacity, the services of a person who was not an employee in the bargaining unit on the date on which notice to bargain collectively was given and was hired or assigned after that date to perform all or part of the duties of an employee in the bargaining unit on strike or locked out."
4. Empirical examples include Riddell (1980), McConnell (1989), and Jiménez-Martin (2006) who use Canadian, U.S., and Spanish data respectively to show a negative relationship between strike duration and wage settlement.
5. Budd and Wang (2004) find that there has been a decline in new capital investment, particularly in the short term, in provinces with strike replacement bans, using the 1967–1997 Canadian provincial investment data.
6. Cramton et al. (1999) have tried to link these databases. They linked the work stoppage data to the historical wage data (before 1978) and the CAIRS wage data (1978 and after).
7. These territories are omitted because they are least populated in Canada and there is limited information about their economic conditions.
8. CANSIM series v41707125 provides information of real GDP; series 2820001 of provincial unemployment rate; series v499542-v499575 of industry-specific exports and imports; and series v3859617-v3860028 of gross industrial product.
9. Results of these additional regressions are omitted, but available upon request.
10. Due to the nonlinearity of a logarithm function, the exact percentage change is given by $e^{\lambda}-1$ where λ is the coefficient estimate of the variable of interest. In this case, 44.3 percent is calculated by $(e^{0.367}-1)\times 100\%$. Since the average length of work stoppages in the nonservice sector is 39.6 days (Appendix C), the change measured in days is then $39.6 \times 44.3\% = 18$ days.
11. The coefficient estimate of a temporary replacement worker ban is 0.250 in the service sector, so its effect is $(e^{0.471}-1)\times 100\% = 60.2\%$. Multiplied by the average duration of 40.5 days (Appendix C), this impact is roughly 24 days.

12. Results of the additional regressions are omitted, but available upon request.
13. The regression model is also estimated using observations of strikes only, and the results are very similar to those presented in Table 6.
14. The duration of a work stoppage is also considered as an alternative to its occurrence in the regression. However, this method is not supported by the data because the duration is not known for work stoppages that are derived solely from the "*LAST NEGOTIATION STATUS*" variable.
15. The relationship between the length of a work stoppage and the wage settlement is considered one-way in that wage is determined by work stoppage duration. This is because information of wage offering during the process of a work stoppage that may affect its length is not available in the dataset. The observed wage is settled either without a work stoppage or after a work stoppage ends. In either scenario, it is unlikely to affect the length of a work stoppage.
16. Indicators of work stoppages, $S_{i,T}^{w}$ and $S_{i,T}^{nw}$, are obviously not exogenous, and they should be excluded.
17. Air Ontario's parent Company, Air Canada, took over some of the slack operations, but Air Ontario's business was still seriously hindered. Moreover, such a practice is also forbidden under the proposed temporary replacement worker ban.

REFERENCES

Budd, J. W. (1996). Canadian strike replacement legislation and collective bargaining: Lessons for the United States. *Industrial Relations*, *35*, 245–260.

Budd, J. W. (2000). The effect of strike replacement legislation on employment. *Labour Economics*, *7*(2), 225–247.

Budd, J. W., & Wang, Y. (1999). The ambiguity of strike replacement legislation and wages: A sequential investment-bargaining model. *Advances in Industrial and Labor Relations*, *9*, 239–252.

Budd, J. W., & Wang, Y. (2004). Labour policy and investment: Evidence from Canada. *Industrial and Labour Relations Review*, *57*(3), 386–401.

Card, D. (1990). Strikes and wages: A test of an asymmetric information model. *Quarterly Journal of Economics*, *105*(3), 625–659.

Chamberlain, N. W., & Kuhn, J. W. (1965). *Collective bargaining*. New York, NY: McGraw-Hill.

Cramton, P., Gunderson, M., & Tracy, J. (1999). The effect of collective bargaining legislation on strikes and wages. *Review of Economics and Statistics*, *81*(3), 475–487.

Dachis, B., & Hebdon, R. (2010). *The laws of unintended consequence: The effect of labour legislation on wages and strikes*. Unpublished C.D. Howe Institute, Toronto, and McGill University, Montreal.

Fudenberg, D., Levine, D., & Ruud, P. (1985). *Strike activity and wage settlements*. Unpublished. University of California, Berkeley, CA.

Gramm, C. L., & Schnell, J. F. (1994). Some empirical effects of using permanent striker replacements. *Contemporary Economic Policy*, *12*(3), 122–133.

Gunderson, M., Kervin, J., & Reid, F. (1989). The effects of labour relations on strike incidence. *Canadian Journal of Economics*, *22*(4), 779–794.

Hayes, B. (1984). Unions and strikes with asymmetric information. *Journal of Labor Economics*, *2*, 57–83.

Hicks, J. R. (1963). *The theory of wages* (2nd ed.). London: Macmillan.

Jiménez-Martin, S. (2006). Strike outcomes and wage settlements in Spain. *LABOUR*, *20*(4), 673–698.

Kaufman, B. (1999). Expanding the behavioral foundations of labor economics. *Industrial and Labor Relations Review*, *52*(3), 361–392.

Kennan, J. (1980). Pareto optimality and the economics of strike duration. *Journal of Labor Research*, *1*(1), 77–94.

McConnell, S. (1989). Strikes, wages, and private information. *American Economic Review*, *79*(4), 801–815.

Reza, S. (2010). *New empirical results on work stoppage durations*. Unpublished. Human Resources and Skills Development Canada (HRSDC)-Labour Program, Ottawa.

Riddell, W. C. (1980). *The effects of strikes and strike length on negotiated wage settlements*. Department of Economics Discussion Paper 80–82. University of British Columbia, Vancouver.

Schnell, J. F., & Gramm, C. L. (1994). The empirical relations between employers' striker replacement strategies and strike duration. *Industrial and Labor Relations Review*, *47*(2), 189–206.

Singh, P., Zinni, D. M., & Jain, H. C. (2005). The effects of the use of striker replacement workers in Canada: An analysis of four cases. *Labor Studies Journal*, *30*(2), 61–86.

Tracy, J. (1986). An investigation into the determinants of U.S. strike activity. *American Economic Review*, *76*(3), 423–436.

Tracy, J. (1987). An empirical test of an asymmetric information model of strikes. *Journal of Labor Economics*, *5*(2), 149–173.

APPENDICES

Appendix A. Picket-Line Violence

To evaluate the statement that a temporary replacement worker ban will reduce picket-line violence, a search of archived news reports on picket-line violence events in Canada is conducted using the *LexisNexis Academy* database. Figure A1 plots the number of reports since 1978.

Figure A1 is a rough survey of the intensity of picket-line violence across Canada, and the numbers may be subject to incomplete coverage of news papers and inconsistent use of the keywords. However, the fact that the fluctuation of reports echoes the adoption of replacement worker bans suggests that the ban may be effective in reducing violence on the picket line. For example, there was a sharp decline in the number of reports in British Columbia and Ontario in 1993, when both provinces legislated against the use of strike replacement. After its termination in Ontario in late 1995, the province experienced a dramatic rise in violence reports in 1996, but the number dropped to below 20 after 1997. On average, there were 4.7 violence reports in British Columbia and 16.5 in Ontario per year when there was no strike replacement ban, and the numbers declined to 1.6 and 15.2 in British Columbia and Ontario respectively when the ban was in effect.

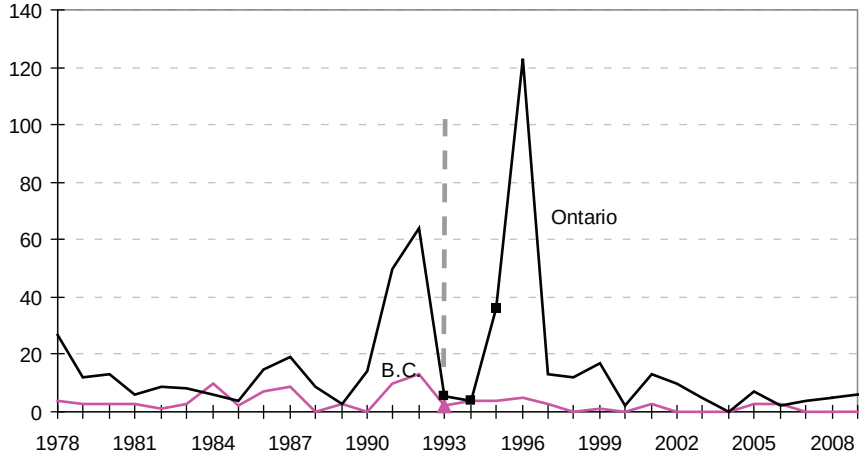

Fig. A1. News Reports on Picket-Line Violence, 1978–2009.

Note: Data source: lexisnexis academy. The search is based on the keywords "picket line violence canada"; "picket line violence British Columbia"; and "picket line violence Ontario." There are a number of duplicate or irrelevant reports in the search results; and they are visually identified and excluded. Since the database dates back to 1978, which happens to be the start year of the replacement worker ban in Quebec; reports in Quebec are then not counted.

Appendix B. Descriptive Statistics of the Matched CAIRS and WSRS Dataset, Private Sector 1967–2009.

	Nonservice ($n = 10{,}712$)		Service ($n = 4{,}131$)	
	Mean	Std. Dev.	Mean	Std. Dev.
Work stoppage (WS)	0.142	.349	0.091	.287
Annual wages growth[a]	0.059	.050	0.053	.053
Temporary replacement ban	0.265	.441	0.203	.402
Permanent replacement ban	0.442	.497	0.459	.498
CA duration (month)	32.2	12.3	32.3	13.6
COLA[a]	0.310	.462	0.149	.356
A WS in the previous bargaining	0.021	.144	0.018	.132
WS for wage causes[a]	0.087	.282	0.052	.221
WS for nonwage causes[a]	0.093	.290	0.052	.221
Bargaining unit size				
200–499	0.416	.493	0.427	.495
500–649 (default)	0.214	.410	0.139	.346
650–999	0.169	.374	0.155	.362
1,000–1,999	0.123	.328	0.126	.332
2,000 or More	0.078	.269	0.153	.360
Duration of last CA				
Less than 2 years (default)	0.097	.296	0.131	.337
2–3 Years	0.317	.466	0.308	.462
3–4 Years	0.345	.475	0.277	.448
4 Years or more	0.063	.243	0.083	.276
First generation CA	0.177	.382	0.200	.400
Number of previous WS				
0 WS (default)	0.634	.482	0.760	.427
1 WS	0.188	.391	0.154	.361
2 WS	0.079	.270	0.044	.204
3 or more WS	0.098	.298	0.042	.200
Industry (NAICS 2-digit)				
Agriculture	0.023	.151		
Mining	0.065	.247		
Utilities	0.025	.155		
Construction	0.135	.342		
Manufacturing (default)	0.739	.439		
Other industries	0.013	.112		
Wholesale and retail trade			0.269	.443
Transportation and warehousing (default)			0.323	0.468

Appendix B. (*Continued*)

	Nonservice ($n = 10{,}712$)		Service ($n = 4{,}131$)	
	Mean	Std. Dev.	Mean	Std. Dev.
Information and cultural			0.115	.320
Finance			0.021	.142
Real estate			0.002	.047
Professional			0.018	.133
Administrative and support			0.046	.209
Education			0.004	.060
Health care			0.028	.165
Arts and entertainment			0.018	.133
Accommodation and food			0.128	.334
Other services			0.024	.152
Public administration			0.005	.071
Region				
Maritime	0.079	.270	0.031	.174
Quebec	0.253	.435	0.199	.399
Ontario (default)	0.439	.496	0.292	.455
Prairies	0.102	.303	0.117	.321
British Columbia	0.107	.309	0.152	.359
Multi-province	0.019	.138	0.209	.407
Toronto	0.038	.190	0.048	.215
Montreal	0.041	.198	0.043	.203
Vancouver	0.006	.079	0.035	.185
Seasonal dummies				
1st Season (default)	0.206	.404	0.235	.424
2nd Season	0.346	.476	0.268	.443
3rd Season	0.253	.435	0.257	.437
4th Season	0.195	.396	0.240	.427
Year dummies				
Year 1967–1970	0.058	.234	0.041	.198
Year 1971–1975	0.074	.262	0.058	.234
Year 1976–1980	0.130	.336	0.104	.305
Year 1981–1985	0.142	.349	0.115	.318
Year 1986–1990 (default)	0.172	.377	0.147	.354
Year 1991–1995	0.137	.343	0.130	.337
Year 1996–2000	0.127	.333	0.163	.370
Year 2001–2005	0.104	.306	0.141	.348
Year 2006–2009	0.057	.231	0.102	.302
Quarterly real GDP growth rate	0.014	.043	0.010	.042
Monthly provincial unemployment rate (percentage)[b]	8.850	2.796	8.518	2.551

Appendix B. (*Continued*)

	Nonservice ($n = 10{,}712$)		Service ($n = 4{,}131$)	
	Mean	Std. Dev.	Mean	Std. Dev.
Trade openness[c]				
Annual export/GIP	0.830	.479	0.111	.170
Annual import/GIP	0.829	.476	0.184	.254

Notes: The sample is restricted to private-sector collective agreements covering 200 or more employees located in nonterritory provinces. Illegal work stoppages are excluded. The default groups are selected on the basis of number of observations and convenience of interpretation.
[a]*Annual Wages Growth, COLA, Work Stoppages for Wage and Non-wage Causes* are based on 5,879 and 2,612 observations (with wage information available) in nonservice and service sectors, respectively.
[b]The *Monthly Provincial Unemployment Rate* is based on 9,297 and 3,723 observations in nonservice and service sectors respectively, ranging from 1976 to 2006.
[c]*Trade Openness variables* are based on 9,583 and 3,664 observations in the non-service and service sectors respectively, ranging from 1971 to 2006.

Appendix C. Descriptive Statistics of the WSRS Dataset, Private Sector 1967–2009.

	Nonservice ($n = 3{,}970$)		Service ($n = 745$)	
	Mean	Std. Dev.	Mean	Std. Dev.
Work stoppage duration (days)	39.6	63.5	40.5	66.8
Ln (work stoppage duration)	2.74	1.44	2.78	1.43
Temporary replacement ban	0.129	0.335	0.266	0.442
Permanent replacement ban	0.357	0.479	0.293	0.455
Lockout	0.052	0.221	0.125	0.331
Nonwage causes	0.505	0.500	0.459	0.499
Back to work legislation	0.127	0.333	0.123	0.329
Bargaining unit size				
Less than 500	0.569	0.495	0.574	0.495
500–649 (default)	0.112	0.316	0.079	0.270
650–999	0.122	0.327	0.082	0.274
1,000–1,999	0.107	0.310	0.130	0.337
2,000 or More	0.089	0.285	0.134	0.341
Industry (NAICS 2-digit)				
Agriculture	0.031	0.175		
Mining	0.094	0.292		
Utilities	0.006	0.074		
Construction	0.176	0.381		
Manufacturing (default)	0.693	0.461		
Wholesale and retail trade			0.248	0.432
Transportation and warehousing (default)			0.341	0.474
Information and Cultural			0.138	0.345
Finance			0.027	0.162
Real estate			0.004	0.063
Professional			0.023	0.149
Administrative and support			0.035	0.184
Education			0.001	0.037
Health care			0.001	0.037
Arts and entertainment			0.031	0.173
Accommodation and food			0.121	0.326
Other services			0.027	0.162
Public administration			0.003	0.052
Region				
Maritime	0.138	0.344	0.047	0.212
Quebec	0.230	0.421	0.364	0.481
Ontario (default)	0.414	0.493	0.211	0.408
Prairies	0.074	0.261	0.059	0.236
British Columbia	0.143	0.350	0.209	0.407
Multi-province	0.001	0.022	0.110	0.313

Appendix C. (*Continued*)

	Nonservice ($n = 3{,}970$)		Service ($n = 745$)	
	Mean	Std. Dev.	Mean	Std. Dev.
Toronto	0.105	0.306	0.091	0.288
Montreal	0.076	0.264	0.209	0.407
Vancouver	0.020	0.139	0.083	0.276
1st Season (default)	0.188	0.391	0.200	0.400
2nd Season	0.369	0.483	0.278	0.448
3rd Season	0.289	0.453	0.283	0.451
4th Season	0.153	0.360	0.239	0.427
Year 1967–1970	0.160	0.367	0.063	0.243
Year 1971–1975	0.275	0.446	0.191	0.393
Year 1976–1980	0.220	0.415	0.173	0.379
Year 1981–1985	0.125	0.331	0.128	0.334
Year 1986–1990 (Default)	0.099	0.299	0.109	0.312
Year 1991–1995	0.041	0.198	0.093	0.290
Year 1996–2000	0.039	0.194	0.097	0.296
Year 2001–2005	0.030	0.170	0.098	0.297
Year 2006–2009	0.011	0.104	0.050	0.217
Quarterly real GDP growth rate	0.023	0.049	0.014	0.046
Monthly provincial unemployment rate (percentage)[a]	8.976	3.126	9.066	2.770
Trade openness[b]				
Annual export/GIP	0.672	0.413	0.106	0.169
Annual import/GIP	0.682	0.396	0.184	0.247

Notes: The sample is restricted to private-sector collective agreements covering 200 or more employees located in nonterritory provinces. The default groups are selected on the basis of number of observations and convenience of interpretation.

[a]The Monthly Provincial Unemployment Rate is based on 2,244 and 494 observations in nonservice and service sectors, respectively, ranging from 1976 to 2006.

[b]Trade Openness variables are based on 3,308 and 668 observations in the nonservice and service sectors, respectively, ranging from 1971 to 2006.

THE DEVELOPMENT OF A DUAL SYSTEM OF WORKPLACE DISPUTE RESOLUTION IN LARGE AUSTRALIAN ORGANISATIONS

Jonathan Hamberger[1]

ABSTRACT

It is over 25 years since the Hancock Report recommended that Australian enterprises implement workplace level procedures for the resolution of disputes and grievances. Legislation now requires that all enterprise agreements contain dispute settlement procedures (DSPs). While most large organisations have enterprise agreements – and therefore DSPs – there is very little empirical research into how and whether Australian organisations use these DSPs – let alone what broader role they may play in regulating the employer–employee relationship. This chapter seeks to provide answers to these questions.

This chapter presents the results of three case studies of large organisations: a bank, a retailer and a state government agency. These organisations have been chosen from a larger group of case studies to illustrate three approaches to the management of workplace disputes. The organisations share certain features such as: the effective use of workplace procedures to resolve the great majority of workplace disputes;

Advances in Industrial and Labor Relations, Volume 20, 139–159

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020008

and the adoption of a 'dual system' with internal grievance procedures playing a role alongside DSPs. However they vary considerably in their approach to dispute resolution. The Bank's 'strategic' approach involves a comprehensive conflict management system. The State government agency's 'reactive' approach to workplace conflict resolution gives a much greater role for third parties, while the Retailer's 'pragmatic' approach incorporates elements from both the other two approaches.

The chapter discusses the implications of this diversity of approach for human resource management, organisational justice and workplace relations.

Keywords: Comparative labour relations; dispute resolution; organisational justice; management strategy; grievance procedures

INTRODUCTION

There has been extensive research in the United States on workplace dispute resolution in both unionised and non-unionised settings (Bingham, 2004; Lewin, 1990; Lipsky & Avgar, 2004; Petersen & Lewin 2000). Unionised establishments have traditionally included formal procedures in their collective bargaining agreement, which usually define the subject matters that may be grieved, specify a series of steps and time limits to regulate the processing of grievances, provide for union assistance to grievants and culminate in arbitration by an outside arbitrator jointly selected by the union and employer (Feuille & Chachere, 1995). While there has been a well-documented decline in private sector union membership and collective bargaining in the United States, there has also been a strong growth in dispute resolution systems in non-union enterprises, particularly using mechanisms such as mediation and arbitration. These are typically labelled alternative dispute resolution (ADR), meaning an alternative not only to unionised employee representation but also to the use of the external legal system for resolving employment disputes (Lewin, 2008).

Lipsky, Seeber, and Fincher (2003) have described a '*new paradigm*', whereby some employers have moved '*beyond ADR to a more holistic, proactive approach*' involving a comprehensive set of policies designed to prevent (if possible) or to manage conflict. Such organisations have introduced what they describe as '*conflict management systems*'.

> Conflict management systems attempt to channel conflict in productive directions, for example, not just to manage its resolution. They spread the responsibility for conflict and its resolution to the lowest levels of the organization. Thus, they require training to be widespread. They seek to transform the organization, not just a set of processes. (p. 9)

They identified several characteristics shared by organisations with effective conflict management systems:

> *A proactive approach*. The organization's approach to conflict management is proactive rather than reactive. The organization has moved from waiting for disputes to occur to preventing (if possible) or anticipating them before they arise.
>
> *Shared responsibility*. The responsibility for conflict (or litigation) management is not confined to the counsel's office or an outside law firm, but is shared by all levels of management.
>
> *Delegation of authority*. The authority for preventing and resolving conflict is delegated to the lowest feasible level of the organization.
>
> *Accountability*. Managers are held accountable for the successful prevention or resolution of conflict; the reward and performance review systems in the organization reflect this managerial duty.
>
> *Ongoing training*. Education and training in relevant conflict management skills are an ongoing activity of the organization.
>
> *Feedback loop*. Managers use the experience they have gained in preventing or resolving conflict to improve the policies and performance of the organization. (pp. 18–19)

The system for resolving workplace disputes in Australia has historically been very different to that in the United States. Up until the 1990s few Australian workplaces had grievance procedures of the type commonly found in US collective bargaining agreements. Instead formal dispute resolution was largely the preserve of industrial tribunals exercising statutory powers of conciliation and arbitration.[2]

However, during the last two decades of the 20th century there was growing tripartite support for the development of enterprise level procedures for the resolution of grievances and disputes that would reduce the need to have recourse to industrial tribunals. The 'Hancock Report' (Hancock, Fitzgibbon, & Polites, 1985), set up by the Hawke Labor Government, envisaged grievance procedures as 'an essential part of the total processes, both formal and informal, which go to an effective industrial relations system. They can provide an equitable means for conducting industrial relations in the workplace, provide a mechanism for avoiding industrial disputation, and encourage acceptance by the parties of greater

responsibility for their own industrial relations'. Following the report's publication, legislation was introduced to promote the inclusion of grievance procedures aimed at resolving disputes at the workplace level in Federal awards and agreements.

The role of workplace dispute procedures was further enhanced with the development of enterprise bargaining in the 1990s, as Australian industrial relations moved away from a centralised system of wage fixation. A gradually increasing proportion of the workforce became covered by enterprise agreements. Consistent with this trend, the *Workplace Relations Act 1996* reduced the capacity of the Federal industrial relations tribunal to arbitrate disputes except where this was pursuant to a dispute resolution procedure in an enterprise agreement.

Despite these developments, there has been relatively little empirical research on the use by Australian organisations of workplace dispute resolution procedures. Van Gramberg has examined the growing use of private mediators in dealing with workplace conflicts, which she suggests has been partly prompted by a reduction in the role of the federal industrial tribunal. She found that the real benefits associated with ADR reside predominantly with employers. The perceived fairness of the ADR process led employees to accept unfavourable outcomes, while hiding the true imbalance of power in the workplace and shielding the workplace from wider scrutiny (Van Gramberg, 2006). Forsyth and others, on the other hand, have emphasised what they see as the continuing pivotal role played by the Federal industrial tribunal (Forsyth, 2012; MacDermott & Riley, 2011). Forsyth in particular has stated:

> Attempts to push Australian employers, employees and unions down an American-style ADR road have been unsuccessful. As well as the limited need for such a shift, the strong reputation and (generally) efficient operation of the public agencies referred to above have meant that the conditions for the growth of ADR have simply not been present. In any event, these public dispute resolution bodies have long practiced many of the techniques associated with ADR in other jurisdictions, such as conciliation, mediation, conferencing, assisted resolution and arbitration.

METHOD

This chapter draws on empirical research conducted by the author. Initially the research was focussed on ascertaining the extent to which large organisations are – consistent with the policy first enunciated in the Hancock Report – using dispute settlement procedures (DSPs) to resolve

disputes successfully without the need to have recourse to an industrial tribunal. However, because of the almost complete absence of previous research in the area an 'open minded' approach was taken to allow additional research questions to emerge as data was collected.[3]

An early decision was taken to focus on larger organisations (i.e. those with over 1,000 employees). Formal human resource practices, including enterprise agreements, are much more common in larger organisations (Morehead, Steele, Alexander, Stephen, & Duffin, 1997). Seven large organisations were selected as case studies, providing a reasonable range of different sectors and industries. Three of the organisations studied operate in the private sector, three in the public sector and one in the not-for-profit sector.

Data was gathered using a range of methods, including interviews with human resource managers and trade union officials, and the examination of internal as well as publicly available documents (such as policies and procedures, enterprise agreements and court and tribunal records). One organisation gave permission for the author to conduct an online employee survey. As data was collected, it emerged that different organisations had taken quite different approaches to workplace dispute resolution. This chapter focuses on three of these case studies, illustrating as they do three different approaches to workplace conflict resolution.

THE LEGAL FRAMEWORK

The main piece of legislation regulating employer–employee relations in Australia is the Federal *Fair Work Act 2009*. While State laws continue to deal with certain matters, such as occupational health and safety, almost all private sector employees, and a substantial proportion of public sector employees come within the scope of the *Fair Work Act*.[4]

Drawing on the most recent data published by the Australian Bureau of Statistics (ABS), it is estimated that 86 per cent of employees of employers with more than 1,000 employees are covered by enterprise agreements.[5] Such agreements need not be, but in practice usually are, negotiated with one or more unions (especially in larger organisations).

Under Section 186 of the *Fair Work Act* an enterprise agreement cannot be approved unless it contains a procedure (a 'DSP') that allows the Federal industrial tribunal, Fair Work Australia (or another agreed independent body or person) to settle disputes about any matters arising under the agreement (or 'the NES'[6]). While DSPs must as a minimum be capable of

dealing with any dispute about a matter arising under the relevant enterprise agreement or the NES, they can also be written in a way that enables them to be used to deal with a wider range of matters.[7] The DSP must allow for employees to be represented for the purposes of the procedure. The powers to be exercised by the independent body or person are limited to those specified by the procedure.

To identify what have types of DSPs parties to enterprise agreements have adopted in practice, the author conducted a random survey of 100 agreements registered by FWA in the first half of 2011. All these procedures provided, as a first step, that disputes should if possible be resolved by direct discussion between the employee or employees involved (or their representatives) and management. About 75 per cent of procedures provided that if disputes were unable to be resolved by discussion at the workplace level, they could be referred to FWA for conciliation, with arbitration by FWA if conciliation was unsuccessful. Only a very small proportion of agreements (3 per cent) made no provision for arbitration; however, 12 per cent provided for arbitration only where both parties agreed ('consent arbitration'). No DSP made provision for final binding arbitration by any person or body other than FWA.

The existence of a DSP does not prevent disputes involving alleged breaches of an enterprise agreement or any other law being taken to a court (though applications to a court alleging a breach of an enterprise agreement are fairly rare). Nor does the existence of a DSP prevent organisations having their own additional internal grievance procedures. Indeed, the implementation of additional procedures appears to be the norm rather than the exception.

Similar legislative arrangements apply in those states which have retained their own industrial relations jurisdiction (with a state industrial tribunal performing a role analogous to that of FWA).

By studying tribunal records it was identified that around 1,600 disputes were referred to FWA to assist with their resolution under the terms of a DSP in the 12 months to 30 June 2011. The majority of these disputes were referred by unions, though some were referred by employers, and a small number by individual employees. Only a small proportion resulted in an arbitrated outcome.

As well as the *Fair Work Act*, employees have rights under a range of other legislation such as that dealing with occupational health and safety and anti-discrimination law. Anti-discrimination law in Australia has generally evolved separately from industrial law. At the Federal level there are separate Acts covering sex discrimination, race discrimination, age

discrimination and disability discrimination. A separate body, the Australian Human Rights Commission has general oversight over this legislation, while equivalent bodies operate at the state level. Breaches of these Acts can lead to a range of remedies, including the imposition of penalties, by the relevant Federal or State Court or tribunal. In general applications made under these statutes lead in the first instance to some form of mediation. There is no general requirement to have a workplace grievance procedure to deal with issues covered by this legislation, though such procedures are encouraged.[8]

THE CASE STUDIES

Three case studies are presented here, each illustrating a different approach to workplace dispute resolution: the Bank, which has a workforce of 38,000 employees, the Retailer with 8,000 employees and the State Government Agency, with 4,700 employees.

All of the organisations have enterprise agreements negotiated with one or more unions. All these agreements have DSPs in accordance with the requirements of the legislation. The State Government Agency operates under that State's industrial relations legislation. The other two organisations are covered by the *Fair Work Act*.

While the initial focus of the research was on DSPs, it became clear early on in the process of data collection that each of the organisations had adopted a 'dual system' of workplace dispute resolution. As well as DSPs each had also implemented their own separate internal grievance procedures. These procedures had the status of organisational policies. To some extent, these procedures could be seen as covering issues not dealt with by the enterprise agreement (such as discrimination, bullying and harassment). None of these internal grievance procedures provide for any external body or person capable of providing a binding decision. However they are clearly important in all of the organisations – indeed in two of the organisations they arguably play a more important in workplace dispute resolution than the DSPs.

This can best be illustrated by looking at the number of disputes/grievances lodged under the different procedures. It should be stated at the outset that records of disputes in the organisations proved very patchy – even when focussing on written grievances and disputes ('formal' disputes and grievances). However, it eventually proved possible to obtain reasonable estimates through discussions with human resources staff.

The DSP at the State Government Agency was used extensively. Typically, around 500 formal disputes are lodged year, with from 6 to 12 referred to the State industrial tribunal. By comparison, an average of around 65 grievances is lodged per year under the internal grievance procedure. The DSP at the Bank is used much less frequently; with only a handful of disputes lodged a year. On average no more than one of these matters would be referred to Fair Work Australia in a 12-month period. This compares to an average of 40 formal grievances lodged under the internal grievance procedure in a year. The DSP was almost never used in any formal sense at the Retailer. However, around 50 matters a year are lodged under the grievance procedure.

The Bank

Most employees of the Bank have their terms and conditions of employment governed by an enterprise agreement. Union membership is around 20–25 per cent of the workforce. This is a significant reduction from past levels. Management ascribed this decline in union membership to a changed workplace environment resulting from a much more employee-focussed management strategy.

The enterprise agreement contains a DSP which applies solely to disputes arising about the agreement or the NES. The procedure provides for disputes to be dealt with initially by discussion at the workplace or company level. If these discussions fail to resolve the dispute, either party can refer the matter to FWA for conciliation. FWA is empowered to make recommendations in relation to the matter in dispute, and the parties will accept any such recommendation as binding, apart from any recommendations having '*a general application*'.

The Bank has in recent years set itself the goal of becoming number one in customer service in the Australian banking industry. The organisation's HR strategy recognises that this will only be achieved with a high level of employee engagement. Employee engagement is measured annually and is a key performance indicator throughout the organisation.

The organisation introduced an internal grievance procedure – the Fair Treatment Review (FTR) process – a number of years ago. It was one element of a new employee relations strategy based on promoting a '*direct relationship*' between employees and the organisation. The goal was for employees to experience '*trust and fairness*' in the relationship with management in effect minimising the extent to which employees felt the need to go to a union or a tribunal.

The general principle behind the design of the FTR process is that wherever possible grievances are resolved as quickly and as close to the workplace as possible, preferably by the management team within the employee's own business unit. While the Bank clearly prefers that employees use the FTR process rather than the DSP, it also recognises that the existence of the DSP acts as a control on the effectiveness of the internal company system. In other words, if the FTR loses credibility employees have the option of lodging disputes through the DSP. There is a considerable degree of overlap in the scope of matters that can be referred under both the DSP and the FTR (though the scope of the latter is wider). The key difference is that the FTR is solely internal; unlike the DSP there is no scope for union representation nor is there access to Fair Work Australia (or indeed any other third party).

Under the FTR, employees who feel they have been treated unfairly are encouraged to have a confidential discussion with a Fair Treatment Contact (FTC). These are trained Bank staff that can talk through the issue with the employee and give them some guidance as to what their options are. They may encourage the employee to resolve the matter informally, rather than initiating a formal review. If, after a discussion with an FTC, an employee decides to pursue a grievance under the FTR, they have to decide whether to pursue an In Line or Out of Line Review. Under an In Line Review (ILR), there is a formal meeting with either the employee's immediate supervisor or that supervisor's own manager at which the employee outlines his or her concerns. The manager must then provide a written response to the employee within a reasonable time frame. If the issue is not resolved, then the employee can progress resolution through successive layers of management in their reporting line. An Out of Line Review (OLR) is an investigation conducted by a Fair Treatment Facilitator (FTF) who is a Bank employee – but is not one of the employee's direct or indirect managers. The FTF will review the matter and make recommendations. An employee can initiate an OLR when they have not been able to resolve their concern in an ILR or they do not feel it is appropriate to raise the issue with their supervisor or their supervisor's immediate manager.

To initiate formally an FTR an Issue Statement must be completed. This must include a desired outcome. The matter is then referred to the FTF. All persons involved in an FTR are required to maintain the confidentiality of the process.

The FTF contacts both the initiating employee and any employees about whom a complaint has been made to set up separate meetings to gather any further details of the matter. An investigation is conducted. The FTF may, if

he or she thinks it would be helpful, interview any relevant witnesses. The process generally takes no more than three or four weeks. The FTF sends draft recommendations to the manager who is two levels above the initiating employee's own supervisor to be reviewed and signed off where the senior manager considers the recommendations are appropriate. The process ensures that the senior management in the line area affected looks at the issues raised. The industrial relations manager explained that the process was used to identify problems with particular managers. Managers with poor people skills '*would be dealt with*'. This would usually take the form of additional training, but in some cases could lead to the manager's dismissal. About 30 per cent of OLRs lead to a finding that is adverse to the manager.

Apart from going to senior management in the line area affected, the recommendations also go to the HR team. If HR considers the review has identified wider concerns a discussion will be held with senior management in the relevant area. There is a process of obtaining feedback from initiating employees, once the review has been completed. They are given an opportunity to complete evaluation forms of their FTR process two weeks and six months after the completion of the review. The complainant is not only asked about the professionalism and independence of the review manager but about whether or not he or she would be prepared to use the FTR system again. The six-month evaluation is also a measure to ensure that any recommendations coming out of the review are acted upon.

Considerable resources are expended to ensure the number and training of review managers and contact persons. All supervisors across the organisation also receive extensive training in performance management and dealing with people management issues.

The number of OLRs equates to an annual usage rate of about 0.1 per 100 employees. This is certainly a low figure though it is higher than the number of disputes lodged under the DSP. Most disputes lodged under the DSP had done so by the union or with union assistance. ILRs are of course more common, though there are no statistics about them.

With the agreement of the Bank, the author was able to conduct an online survey of a cross-section of the Bank's employees. Unfortunately the response rate was only around 15 per cent; and only limited weight can be placed on the precise percentage results. However the respondents broadly reflected the workforce when considered by classification level, gender and length of service. It is reasonable to infer therefore that the results are broadly indicative of opinion amongst Bank employees.

The survey found that 83 per cent of employees agreed that their manager generally gave them a fair hearing if they had a concern relating to their

employment. Eighty-five per cent of respondents also agreed with the proposition that the Bank generally gave a fair hearing to its employees who had a concern about a matter relating to their employment. Eighty per cent of employees said they would generally feel comfortable raising a matter of concern about their employment with their manager.

Awareness of the FTR process was high. Eighty-two per cent of employees indicated they knew about the process. Awareness of the DSP was much lower, at only 48 per cent. Sixty-nine per cent of employees agreed that if they had a concern at work which they could not resolve informally they would seriously consider making a formal complaint. Respondents were most likely to indicate they would be comfortable seeking an OLR in relation to concerns about harassment or bullying by a co-worker (84 per cent) or a manager (80 per cent). Seventy-three per cent indicated they would be comfortable seeking an OLR about a disciplinary matter. Responses did not vary greatly based on length of service, gender or classification level.

In conclusion, Bank management sees its commitment to fair treatment as part of the conditions of employment it offers its employees. It aims to improve customer service by promoting a high level of employee engagement. Employees are encouraged to trust management and are implicitly discouraged from accessing 'third parties' to assert their rights. The FTR process is an integral part of this strategy. The approach to workplace dispute resolution has many of the characteristics identified by Lipsky et al. as constituting a comprehensive conflict management system. The approach is proactive, all levels of management have responsibility for conflict resolution, line managers are trained in preventing and resolving conflict and held accountable when they fail, and there is a 'feedback loop' with management using the experience it has gained in preventing or resolving conflict to improve the policies and performance of the organisation. The employee survey conducted by the author tends to suggest that key elements of the overall strategy have been successful.

The State Government Agency

The State Government agency has around 4,700 employees: of which about 4,000 are blue collar and 700 salaried and senior officers. The blue collar workforce has a union density of nearly 100 per cent. The industrial relations climate was described both by management and the union as adversarial. Management bemoaned the level of union influence but saw this as inevitable, partly because of the (then) political orientation of the State government.

It was hard to discern any clear human resource management strategy. The approach to conflict resolution was largely reactive, with the main goal appearing to be preserving as much managerial prerogative as possible, while limiting the level of industrial disruption. The DSP is used extensively and is a battleground for resolving disputes about managerial prerogative, for example in relation to rostering. Communications between the union and senior management are poor, with a relatively large number of matters being referred to the state industrial tribunal for resolution.

There is also a fairly well used internal grievance procedure. This does not provide for access to any external decision-making body, though of course it does not preclude dissatisfied complainants taking their grievance to a court or tribunal where it has jurisdiction. Employees making complaints under the internal grievance procedure are able to have representation, though in practice the union refuses to participate in the process.

Both management and the union consider that there is, at least notionally, a sharp distinction between '*disputes*' and '*grievances*'. The former concern '*industrial*' issues covered in the enterprise agreement. They are dealt with through the DSP. Grievances, which include matters such as interpersonal conflicts, harassment, bullying and victimisation, are dealt with under the grievance procedure.

Dispute notifications are almost invariably lodged by union delegates on behalf of employees. While no figures are kept, the employee relations manager estimated that around 500 written disputes are lodged at the local level in a 12-month period (i.e. a rate of well over 10 per 100 employees), with about 50 ending up being dealt with by the employee relations area in Head Office. The employee relations manager ascribed this relatively high number of disputes to active delegates who are given a lot of time off for union business and, in his words, '*need to prove their relevance*'. Once a matter is referred to the employee relations manager a full time union official also becomes involved.

If the matter is not resolved at that level it then goes to the general manager of human resources (or the CEO). There are about 10 such cases a year. About half a dozen disputes go to the (State) Industrial Relations Commission in an average year – '*maybe a dozen in a bad year*'. A few of these end up being arbitrated (typically one or two a year).

Mediation is not used for industrial disputes. Arbitration is almost invariably conducted by the State Commission. The State Government agency has used private arbitration of disputes with the union in a very small number of cases (about three to four in the last 12 years).

The employee relations manager considered that having a role for third parties (e.g. external mediators) in the DSP before a matter goes to the Commission would '*defeat the purpose*' of trying to get matters resolved internally.

Management supports the DSP as a way of resolving issues, but can be frustrated by the particular grievances, the number of them and the power they are seen giving the union. Managers are particularly concerned at having to spend time and resources dealing with what they regard as petty matters. The DSP was considered to '*work*', in that the majority of issues are resolved locally and relatively few end up being arbitrated. The employee relations manager acknowledged there was a need for managers to be better skilled (though little was being done about this). There was no system for monitoring disputes lodged under the DSP (apart from those that went to the Commission), let alone any 'feedback loop' to ensure that lessons were learned.

The union official responsible for the State Government agency's work force was critical of how the DSP worked in practice. For example he complained that the employer failed frequently to comply with timeframes set out in the DSP. However the union was very unwilling to take matters to the Commission. The Commission process was too long and too cumbersome. The employer '*would put two lawyers and two barristers in there, they just bury it. The conciliation process takes forever and a day. To be honest with you, our philosophy, in a union like mine with 100% membership on the ground, if I can't fix it on the floor; the Commission isn't going to fix it. That's how I look at it. So quite frankly nine out of 10 times that we end up in the Commission it's because the employer puts us in there*'.

'Grievances' are dealt with by an entirely different process. From an organisational perspective, grievances are managed by the Equity and Diversity Group (E&D) rather than Employee Relations (ER). Grievances are formally documented and put on a confidential database maintained by E&D. At the time I interviewed the relevant staff, the E&D unit had dealt with 65 formal written grievances over the previous 12 months (i.e. a rate of around 1.5 per 100 employees a year).

Under the grievance procedure, if grievances cannot be resolved locally, a Grievance Handler will be appointed (usually from within E&D) who will assess the severity of the allegation. Mediation only occurs where both parties agree. Mediators are usually sourced from an external agency. Little is done to obtain feedback. The E&D Manager recognised that complainants were often not happy with the result of the grievance process. Two

grievances had gone to the State Anti-Discrimination Board in the previous calendar year. According to the E&D manager few people take matters that far, even if they are disgruntled, because of the cost in time and money.

The union was very critical of the grievance procedure. '*The problem with our grievance procedure is that there are never any outcomes*'. They would not represent members in the grievance resolution process itself.

The E&D manager was clear that there was a need to train up line managers to improve their ability to deal with conflict: '… *training, coaching, mentoring is always the way to go and it's much better to have it out there than have it in here. I think that's the next step*'. The organisation was focussed on delivering the service. '*We haven't really put a lot of time into our people and once we do that and get a bit more employee engagement and we up skill the managers, there's no doubt we need to train them in the people side of the business*'.

In conclusion, the State Government agency does not have a comprehensive conflict management system. Its approach to conflict management is reactive rather than proactive. Conflict resolution mechanisms are primarily regarded as things that the organisation (unfortunately) has to have – rather than as providing an opportunity to promote the organisation's human resources or business strategies. Little emphasis is placed on employee engagement, which is certainly not measured.

A lot of the responsibility for disputes – and even more for grievances – is shifted to a centralised human resources function. Little is done to hold managers accountable for the successful prevention or resolution of conflict. There is inadequate training of managers in conflict management skills. There is no systematic feedback loop whereby experience gained in conflict resolution is used to improve the policies and performance of the organisation. Instead there is an adversarial culture where disputes are seen as matters to be won or lost. The main goal of dispute and grievance resolution mechanisms is seen as minimising the number of cases that end up in tribunals and courts, while minimising industrial disruption. Compared to the Bank there is much greater involvement of 'third parties' such as the union and the industrial tribunal and many matters take a long while to be resolved.

The Retailer

The Retailer has around 8,000 employees. Most are sales staff employed in stores around the country, but there are also about 750 head office

executives, 100 clerical employees and around 30 warehouse employees. There is an agreement with the retail industry union that covers the great bulk of employees, though only about 20–25 per cent of employees are union members.

Relations between management and the union are good. The DSP in the enterprise agreement provides for an employee with a concern to raise it for discussion with his or her immediate supervisor. If this does not resolve the matter the employee may take it up with the senior store management. The employee may request that a representative from the union be present at this discussion. If the issue is not resolved at the store level, the head office employee relations unit becomes involved. Matters that still remain unresolved may be referred to Fair Work Australia for conciliation and/or arbitration. In practice, however this DSP is rarely used, at least in a formal sense. (Only one dispute had been formally lodged in the 12 months prior to the interview with the employee relations manager. It was resolved without being referred to Fair Work Australia.) Issues between the union and the Retailer are worked through informally by direct discussion – generally with the employee relations manager – with neither party formally invoking the DSP. The vast majority of disputation is around rosters.

Individual employees who have a concern generally use the Retailer's internal grievance procedure, rather than the DSP. The employee relations manager identified a trend away from traditional industrial disputation towards a greater focus on issues such as harassment and discrimination.

The grievance procedure is set out in the 'Employee Harassment and Discrimination Resolution Procedure'. If a matter cannot be resolved informally with the immediate supervisor it can be referred to the relevant HR manager who is responsible for investigating the matter confidentially. These managers are attached to particular stores. The HR manager may attempt to resolve the matter through conciliation, if this is acceptable to both parties. External conciliators/mediators are not used. If this is unsuccessful, or one of the parties is reluctant to use conciliation, an investigation is conducted. The investigation is usually conducted by the HR manager responsible for the store or division. External investigators are not used. This process means that the HR department is usually involved with grievances at a relatively early stage. HR managers at the store level usually operate under general guidance from head office.

Once an outcome has been decided the HR manager conducts follow-up interviews with the complainant and the person against whom the complaint has been made. The outcome is put in writing and a copy is given to each party with a copy on the complaint file.

According to the employee relations manager there are about 50 formal grievances a year (i.e. grievances that have not been resolved without the intervention of HR). That is equivalent to a lodgement rate of about 0.6 per 100 employees. The union would be involved in less than 20 per cent of cases. Complainants would utilise a lawyer very rarely (once or twice a year). The most difficult complaints would take up to 3 months, however most are resolved within 14–21 days. If the matter is not resolved at the store level it is then formally referred to head office. There are around 10 of these matters a year.

The employee relations manager commented that the internal grievance procedure assisted in minimising the impact of stress-related workers' compensation claims, as it provided a formal process for dealing with concerns about bullying and harassment. It also meant that the organisation could demonstrate that it had properly investigated any such concerns. Grievances would generally be against managers though they could also be against peers.

A fortnightly report of all employee relations matters (including grievances) is made to the general manager of stores and operations and to general counsel. Grievances are monitored and if a problem is identified in an area there might be a briefing of management and/or additional staff training. Individual managers who are found to have been at fault might miss out on promotion as a result. Senior management is generally very supportive of the grievance procedure, particularly because it limits the number of matters ending up before a tribunal. The employee relations manager commented that allowing people to pursue their grievances through an internal process, even if they were unhappy with the final outcome, made them less likely to take the matter further.

The employee relations manager said the procedure allowed a level of consistency between line managers to be maintained. It enabled problems at a store level to be identified and resolved centrally. All managers receive a certain level of training in performance management, conflict resolution and matters such as sexual harassment.

The Retailer has some of the elements of a comprehensive conflict management system. The grievance process is focussed primarily on interpersonal matters and is used to some extent by senior management as a control mechanism vis-a-vis line managers. HR is involved at a relatively early stage in the process. On the other hand relevant training is provided to managers, who are to some extent held accountable for problems in their areas, and grievances are actively monitored. There is limited involvement of third parties.

DISCUSSION

Of course one must be careful in seeking to generalise from case studies. However it is possible to make some tentative findings based on the research. First, there is no evidence that much use is being made of third parties other than FWA (or its state equivalent) to resolve disputes. In one sense, this would suggest that Forsyth is right – American-style ADR has not emerged in Australian workplaces. To the extent that organisations want an external mediator or arbitrator they appear generally to be happy to use the publicly funded industrial tribunal.

However the more important finding is that a large number of disputes are being resolved at the workplace level using formal processes without the involvement of industrial tribunals (at least in large organisations). This is a big change from the situation that prevailed at the time of the Hancock Report.

What perhaps was not envisaged at the time of the Hancock Report was that the nature of workplace conflict has changed. Together with a general decline in the level of unionisation there has been a shift away from 'traditional' industrial disputes towards more interpersonal conflicts. This at least partly explains the emergence of internal grievance procedures, alongside DSPs. Indeed these internal grievance procedures in two out of three of the organisations examined here are rather more important than the DSP.

One of the main differences between these procedures and DSPs is that they generally either make no (or very limited) provision for the involvement of persons external to the organisation, such as mediators – let alone arbitrators. They are the creation of the organisations themselves, and unlike DSPs are neither required nor regulated by legislation.

While the internal grievance procedures at the State Government Agency and the Retailer both purport to cover different types of issues than the DSP, the importance of this difference in scope can be exaggerated. First, the *Fair Work Act* permits DSPs to be used to cover any matter that pertains to the employer–employee relationship. There is no legal reason why DSPs cannot be used to cover complaints about bullying, harassment, discrimination etc.

The real distinction in practice is that, DSPs have come to be regarded as being the procedure of choice for unions while grievance procedures are mainly used by individual employees. This is despite there being nothing legally to prevent individual employees accessing DSPs in enterprise agreements.

Should we be worried about this shift from the use of industrial tribunals and DSPs to internal grievance procedures as the main mechanism for resolving workplace disputes?

Van Gramberg expressed concern that processes that are dominated by management – even if they have an aura of fairness – end up reflecting the imbalance of power in the workplace. One of the concerns expressed at the growth of non-union dispute resolution procedures is the lack of protection they provide to employees compared to more 'public' forms of justice, and the potential for employee interests to be subordinated to those of the employer (van Gramberg, 2006). Similarly, in commenting on the new workplace conflict management systems in the United States, Bingham has noted that employers design them unilaterally, without union participation. '*They are designed by employers in order to meet employer interests*' (Bingham, 2005).

However employees may rationally prefer to use their employer's internal procedure, even if it lacks access to an impartial body such as FWA. One reason for such a preference is suggested by recent research conducted into grievances mediated by the New Zealand Department of Labour (Walker & Hamilton, 2011). The cases selected were ongoing disputes where the parties were still in an employment relationship, where the parties were seeking to maintain or restore that relationship. Yet almost all the cases ended with the employment relationship being terminated. In some cases the employment relationship was terminated at the time of mediation. These employees received some form of compensation as part of the mediated settlement. Other employees initially returned to work with their employer after mediation, but subsequently (usually several months later) terminated their employment as a result of the relationship problem. They typically left with no compensation, but had alternative employment arranged. The only disputes where the employees maintained their employment relationship on a long-term basis were those involving a disagreement about the interpretation of the collective agreement and could be seen as the union's dispute rather that of the individual employee, or where the dispute was technical in nature and did not involve the employee's day-to-day supervision relationships.

This suggests that by the time an individual employee grievance ends up with a third party an often intolerable strain has been imposed on the employment relationship. This reinforces the desirability of implementing the sort of conflict management system described by Lipsky et al. where the emphasis is on preventing conflict in the first place, or at least on getting conflict resolved as close to its source as possible. Organisations may still

need formal procedures to deal with conflicts that have not been able to be resolved locally, but they need to use these procedures to provide a feedback mechanism to take actions designed to minimise the need for the procedure to be used in the future. Managers must receive adequate training in conflict resolution and must be held accountable if they treat people unfairly. The FTR process at the Bank makes no provision at all for any external involvement. Yet the results of the online survey suggest that Bank employees generally regard their employer as fair. Of course the presence of the union and the existence of the DSP and FWA potentially act as a back-stop to keep the Bank honest, if its standards start to slip.

What factors are behind the adoption of the very different approaches to workplace conflict resolution adopted by the three different organisations?

Clearly an important factor is the role played by unions in each organisation. The State Government Agency is highly unionised, with very active union delegates. While unions exist at the Retailer and the Bank, the level of union membership and activity is much lower. Could the State Government Agency adopt the more individualistic approach of the Bank even if it were so inclined? Perhaps not entirely. However a more strategically oriented management team might put more effort into raising the people management skills of its line managers, and holding them accountable for their performance in conflict resolution. Better data collection and analysis and the creation of feedback loops could start the process of moving away from a reactive approach to a proactive approach based more on dispute prevention. It is hard to escape the conclusion that the different approaches ultimately reflect the extent to which the managers in each organisation take a strategic approach to human resource management.

NOTES

1. The author is a Senior Deputy President of Fair Work Australia (FWA). The opinions expressed in this article are his alone and should not be attributed to FWA.
2. While it has had various names over the course of its history, there has been a Federal body charged with resolving industrial disputes since the passage of the *Conciliation and Arbitration Act* 1904. In 1956 a separate Industrial Court and the Australian Conciliation and Arbitration Commission were established. From 1988 the Commission was renamed the Australian Industrial Relations Commission (Isaac & Macintyre, 2004). In 2009 it was again renamed, this time to Fair Work Australia (FWA).
3. This approach was influenced by Glaser and Strauss (1967).

4. The main exceptions are some State and local government employees, and private sector employees employed by unincorporated employers in Western Australia.

5. 6306.0, Employee Earnings and Hours, Australian Bureau of Statistics, 27 January 2011.

6. The NES, or National Employment Standards are certain minimum employment conditions contained in the *Fair Work Act* covering issues such as maximum weekly hours, parental leave, annual leave, personal/carers leave, public holidays and redundancy pay.

7. *Boral Resources (NSW) Pty Ltd v Transport Workers Union of Australia* [FWAFB 8437] 1 November 2010.

8. For example, the *Civil Dispute Resolution Act 2011* requires applicants to civil proceedings to demonstrate to the court what action they have already taken to try and resolve the matter in dispute with the respondent.

REFERENCES

Bingham, L. B. (2004). Employment dispute resolution: The case for mediation. *Conflict Resolution Quarterly*, *22*(1–2), 145–174.

Bingham, L. B. (2005). The impacts on alternative dispute resolution on workplace outcomes. Labour and Employment Relations Association. *Proceedings of the 57th annual meeting*. Philadelphia, Pennsylvania.

Feuille, P., & Chachere, D. R. (1995). Looking fair or being fair: Remedial voice procedures in non-union workplaces. *Journal of Management*, *21*(1), 27–42.

Forsyth, A. (2012). Workplace conflict resolution in Australia: The dominance of the public dispute resolution framework and the limited role of ADR. *The International Journal of Human Resource Management Framework*, *23*(3), 476–494.

Glaser, B. G., & Strauss, A. L. (1967). *The discovery of grounded theory: Strategies for qualitative research*. Chicago, IL: Aldine.

Hancock, K. J., Fitzgibbon, C. J., & Polites, G. (1985). *Australian industrial relations law and systems: Report of the committee of review*. Canberra: Australian Government Publishing Service.

Isaac, J., & Macintyre, S. (2004). *The new province of law and order: 100 years of Australian industrial conciliation and arbitration*. Cambridge: Cambridge University Press.

Lewin, D. (1990). Grievance procedures in non-union workplaces: An empirical analysis of usage, dynamics, and outcomes. *Chicago-Kent Law Review*, *66*, 823–844.

Lewin, D. (2008). Employee voice and mutual gains. In A. Wilkinson, P. J. Gollan, M. Marchington & D. Lewin (Eds.), *The Oxford handbook of participation in organizations* (pp. 427–452). Oxford: Oxford University Press.

Lipsky, D. B., & Avgar, A. (2004). Research on employment dispute resolution: Towards a new paradigm. *Conflict Resolution Quarterly*, *22*(1–2), 175–189.

Lipsky, D. B., Seeber, R. L., & Fincher, R. D. (2003). *Emerging systems for managing workplace conflict*. San Francisco, CA: Jossey-Bass.

MacDermott, T., & Riley, J. (2011). Alternative dispute resolution and individual workplace rights: The evolving role of Fair Work Australia. *Journal of Industrial Relations*, *53*(5), 718–738.

Morehead, A., Steele, M., Alexander, M., Stephen, K., & Duffin, L. (1997). *Changes at work: The 1995 Australian workplace industrial relations survey*. Melbourne: Longman.

Petersen, R. B., & Lewin, D. (2000). Research on unionized grievance procedures: Management issues and recommendations. *Human Resource Management*, *39*(4), 395–406.

Van Gramberg, B. (2006). *Managing workplace conflict: Alternative dispute resolution in Australia*. Sydney: Federation Press.

Walker, B., & Hamilton, R. T. (2011). The Effectiveness of grievance processes in New Zealand: A fair way to go?. *Journal of Industrial Relations*, *53*(1), 103–121.

INTERUNION CONFLICT IN A NON-EXCLUSIVE, NON-MAJORITY REPRESENTATION REGIME: NEW ZEALAND LESSONS FOR UNION REVIVAL IN THE UNITED STATES

Mark Harcourt and Helen Lam

ABSTRACT

A "new" interpretation of Section 7 in the National Labor Relations Act could serve as the basis of union renewal, in enabling and supporting non-majority, non-exclusive representation as an alternative to the difficulties of union certification. One potential shortcoming of this form of representation is interunion conflict associated with ongoing competition between unions trying to attract each other's members in the same bargaining units. However, interview evidence collected from union executives in New Zealand, where non-majority, non-exclusive representation already exists, suggests that such conflict is normally limited. Focusing representation on areas that make the most sense (for both unions and workers) and following union federation protocols, when

Advances in Industrial and Labor Relations, Volume 20, 161–187

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020009

conflicts occur, have both contributed to the overall low conflict level. Lessons for US unionism are explored.

Keywords: Employee representation; non-majority unions; interunion conflict; comparative industrial relations; NLRA reform

US unionism is in a critical condition. The unionized percentage of the workforce has fallen from a high of 34.8% in 1954 (Mayer, 2004: Appendix A) to 11.9% in 2010 (Bureau of Labor Statistics, 2010), and the decline continues. Flaws in the National Labor Relations Act framework, the so-called Wagner system, have been held at least partly to blame for this downward slide. In particular, various characteristics of the union certification process permit employers to successfully counter union organizing drives. First, free speech rights allow employers to denounce unions and cajole or intimidate workers into voting against one. Second, elections slow the certification process, at least compared to Canadian-style certification "on the cards," and give employers the chance to mobilize against a union. Employers can also add to these delays by challenging various aspects of the election process, including the definition of the election (or bargaining) unit. Third, the penalties for unfair labor practices aren't high enough to discourage employers from unjustifiably dismissing union organizers and supporters among their workforce. Finally, employers cannot be easily compelled, as they can in Canada with first contract arbitration, to conclude a collective agreement with a recently certified union. See Godard (2003) for a fuller explanation, as well as a discussion of the empirical evidence, related to each of these issues.

Criticisms of the NLRA, and certification in particular, have precipitated major attempts to amend the legislation to make it easier for unions to acquire, and utilize, representation rights. The first of these was in 1979, during Jimmy Carter's presidency, and the most recent was the Employee Free Choice Act (EFCA), under Barack Obama's presidency. None of these efforts has so far produced real reform. Proposed NLRA amendments are typically passed by a solid majority in the Congress, but then rejected or filibustered by the Senate. Republicans have always had more than the minimum 40 senate seats, filled by either Republicans or conservative Democrats joining in coalition, to stop a Democrat majority from enacting new labor legislation (Logan, 2007). Most recently, EFCA supporters in the Senate were "… nine votes short of the 60 votes needed to limit debate and proceed to final consideration of the measure."[1] Unfortunately,

opportunities for enacting the amendments in the near future have dwindled, following the Republican resurgence in the 2010 mid-term elections.

What else can be done? What other legal strategies are available to realistically provide unions a membership boost over the next few years? One promising possibility is non-majority (or minority), non-exclusive union representation, which would empower unions to bargain collectively and handle grievances on a members-only basis without first having to demonstrate majority support through a certification election. This form of representation has a number of advantages as an addition to the existing Wagner system. For one, it would provide unions the opportunity to establish representation rights without the hassles, costs, and high risk of failure associated with the current system of certification. For another, it would help unions establish themselves in firms or sectors, where they are clearly appreciated and wanted by a minority, if not a majority, of workers. Non-majority representation, at least initially, would also give unions a platform within nonunion firms to demonstrate and market the benefits of unionism to an initially reluctant or hesitant majority, enabling unions to build their membership base gradually. Employer resistance to unionization might also be lower under a non-majority, non-exclusive regime. Why? Union growth (and decline) would occur slowly and incrementally, often from a relatively small and less potentially threatening membership base, and the employer would not be able to exclude a union simply through one election defeat. Lastly, and most importantly for strong advocates of the Wagner system, a new parallel system of minority unionism only for workplaces without majority support would be compatible with exclusive representation based on a majority vote. Unions able to obtain majority support through an election would still retain exclusive powers to represent workers in collective bargaining and personal grievances.

How could non-majority, non-exclusive representation be offered in the absence of major NLRA amendments? A number of labor lawyers and academics (e.g., Adams, 1993, 2009; Hyde, Sheed, & Uva, 1993; Morris, 2005, 2006; Summers, 1990) have argued that the National Labor Relations Act's (NLRA) Section 7 already provides a statutory foundation for non-majority, non-exclusive unionism, in stating that "(e)mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection …". Their view is that the rights to organize, bargain collectively, and strike (e.g., "… engage in concerted activities …"), enunciated in Section 7, are accessible to all unions, including

non-majority ones, because these rights are unqualified by any reference to majority support or certification. The contrary view is that Section 7 and Section 9(a) should be read together, so that the latter limits and qualifies the former. Section 9(a) states that "(r)epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit … shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining … ." When Sections 7 and 9 are considered simultaneously, the obvious implication is that rights to organize, bargain collectively, and strike are only available to unions elected by a majority of voting employees in a bargaining unit.

Professor Charles Morris (2005) argues that a legal analysis of Section 7, based on a plain language interpretation, Congress's intentions, the historical context, and original case law from the 1930s and 1940s, supports the former view, that Section 7 should be read separately from Section 9(a). For instance, the wording of Section 7 clearly suggests that basic union representation rights do not depend on unions obtaining majority support. Likewise, debates around the drafting of the legislation clearly show that Congress never meant to exclude non-majority, non-exclusive representation. Indeed, it was seen as an important stepping-stone, in the manner we have described earlier, to eventual majoritarian exclusivity. The initial case law associated with Section 7 was also consistent with this approach. However, the role of non-majority, non-exclusive unionism was eventually marginalized and forgotten, because certification was relatively easy to achieve in the era prior to the *1947 Labor Management Relations Act* (Taft–Hartley) (Morris, 2005).

In addition, Adams (1993) argues that the drafters of the NLRA always envisioned that most unions, whether supported by a worker majority or not, would be voluntarily recognized by employers, and so Section 9(a) would normally only apply to the few situations where two or more unions were concurrently contesting the right to represent the same group of workers. It follows that Section 7 should be interpreted by itself.

Recent legal challenges involving Section 7 have not definitively resolved the debate, though most decisions have tended to favor the second view that any interpretation of Section 7 should be tempered by an understanding of Section 9(a) (Brooke 2000, O'Brien 2008). For example, in *Dick's Sporting Goods*, the Active Memorandum from the National Labor Relations Board, CASE 6-CA-34821 (2006), concluded that "the employer had no obligation to recognize or bargain with the Council (minority union)" (O'Brien 2008, p. 608).

The debate continues but at the margins of the labor movement. Allegiance to majoritarian exclusivity remains strong, partly because of fears

of what might happen under an alternative. One major concern is that non-exclusive representation for the same groups of workers (e.g., same bargaining units) would give rise to destructive interunion conflicts, which waste recruitment resources, deter workers from joining any union, and give employers opportunities to practice "divide and rule" by playing one union off against the other (see, e.g., Finkin 1993–1994; Krislov, 1960). More generally, interunion rivalry has been blamed for undermining labor movement solidarity and union bargaining effectiveness (see, e.g., Gitlow, 1952; Lane, 1974). Others have claimed that interunion rivalry complicates the collective bargaining process, over-inflates wages, and encourages restrictive workplace practices and procedures, with the overall impact of lowering economic and employment growth (see, e.g., Donovan Commission, 1968; Oswald, 1979; Pohjola, 1984; Webb & Webb, 1897). On a related note, some scholars have also argued that having multiple unions adversely affects the public through a higher incidence of strikes (see, e.g., Akkerman, 2008; Ross & Irwin, 1951; Shils, 1971), though this point is contested or at least qualified by others (e.g., Krislov, 1960; Machin, Stewart, & Van Reenan, 1993; Metcalf, Wadsworth, & Ingram, 1993). In addition, courts have often presumed that the interunion rivalry, spawned by a more open labor relations regime, would be seriously disruptive and therefore economically disastrous. For instance, in *Fraser v Ontario*, the Ontario Court of Appeal colorfully claimed: "(i)t is not over-stating the point to say that to avoid chaos in the workplace … , it is essential that a representative organization be selected on a majoritarian basis and imbued with exclusive bargaining rights."[2]

In this paper, we are particularly interested in reexamining the assumption that non-exclusive, non-majority unionism really is associated with inter-union rivalry, in the hope that we might encourage policy-makers, scholars, labor lawyers, and others to seriously consider the advantages of a parallel system of non-majority, non-exclusive representation. In the next section, the current literature on interunion conflict is reviewed, especially as it pertains to multi-union representation. The empirical part of the paper consists of an analysis of semi-structured interviews with senior union officials, and focuses on conflicts between and among unions, especially in situations where they have overlapping membership coverage. Perspectives from, or implications for, the employer are not the focus of the current study.

The study was conducted in New Zealand, a country with both non-majority (e.g., unions may acquire representation rights without establishing majority support) and non-exclusive representation (e.g., two or more unions may represent the same group of workers, though not the same

individuals within one group).[3] New Zealand's *2000 Employment Relations Act* empowers unions to negotiate collective agreements on a members-only basis with as few as two workers in a given workplace. Hence, majority support, however demonstrated, is not needed to establish representation rights. In addition, two or more unions may recruit members from the same occupational group in the same organization. A union must negotiate a coverage clause in its collective agreement, which typically outlines the occupations of the workers permitted to join the collective agreement and be bound by it. If the coverage clauses in two or more collective agreements overlap, representation is non-exclusive and the workers covered by such clauses have the choice of two or more collective agreements they can join. To join a particular collective agreement, the worker must first join the union which negotiated it. Each union may then represent its own members for both bargaining and grievance purposes, though there are processes in the Act which facilitate joint bargaining. If an employee performs work mentioned in a collective agreement's coverage clause, but opts not to join the union which negotiated it, he or she is placed on an individual employment with the same terms as the collective agreement, at least for the first 30 days of employment.[4]

Why was New Zealand chosen for the study? First, New Zealand has had relatively recent experience of exclusive representation, as this was the representation model prior to the *1991 Employment Contracts Act*. Thus, its unions were quite used to having fiefdoms, and with such a background as a comparison, union leaders are in a very good, possibly unique position to provide insights about interunion relationships under the present non-exclusive regime. Second, like the United States, New Zealand is a liberal market economy, where, in comparison to many western European countries, the state plays a less important role in directing the economy, private-sector business activities are less coordinated through nonmarket institutions, economic relations are more decentralized, short-term, and adversarial, and the public sector is generally smaller (Hall & Soskice, 2001). Third, like their counterparts in the United States, New Zealand unions are generally inclined toward business unionism. There is also a union federation in New Zealand, the New Zealand Council of Trade Unions (NZCTU), which mediates conflicts between affiliates, much as does the AFL-CIO. Fourth, despite having a population of only 4 million, New Zealand has numerous unions, approximately 170 when the interviews were conducted, which often organize in the same sectors and occupations. As a result, the potential for interunion conflict is there, just as in the United States. Fifth, New Zealand shares many cultural similarities with the

United States, having similar scores on Hofstede's (1980) four cultural dimensions: individualism/collectivism, power distance, uncertainty avoidance, and career success/quality of life (Adler, 1997). Finally, much like the United States, New Zealand has a "rainbow" workforce of old and new immigrants from a great many countries, together with a large minority of relatively disadvantaged, indigenous Maori. Hence, if we want to obtain insights concerning interunion relationships in a setting comparable to the United States, knowing full well that no two countries are exactly alike, New Zealand is a good comparison.

INTERUNION CONFLICT

Interunion conflict can arise from many different sources, including ideological and personal differences, as well as competition for membership and limited resources. These conflict sources are discussed in detail below.

Conflicts Over Ideology

Unions can differ in their fundamental philosophy and ideology, such as business unionism versus communist/revolutionary/radical unionism (Chaison, 1972; Gitlow, 1952). In the North American context, where society stresses the "ideals of classlessness, individual initiative, and opportunity" (Bok, 1971, p. 1403), unions are generally concerned with getting their members a good "business" deal by negotiating with the employer. As most workers are believed to join unions mainly for instrumental reasons, the widespread adoption of business unionism is not surprising. Still, some unions may be more concerned about the overall labor movement or working class as a whole. Hence, political involvement and lobbying may vary across unions, depending upon their philosophy. For instance, several major unions departed from the AFL-CIO to form the Change to Win (CTW) federation in 2005, at least in part because of differences in strategy and ideology, especially with respect to structure and resource allocation (Zullo, 2007). Before the separation, CTW leaders, in response to union membership decline, had been pushing for the AFL-CIO to assume authority for union mergers and consolidations in order to form large industrially based unions which could better counter the employers' power as well as to provide additional resources for membership drives through dues rebates, but the Sweeney-led AFL-CIO preferred a strategy that

seemed to rely more heavily on political campaigns, which CTW leaders did not see as effective (Edsall, 2005; Fiorito, Jarley, & Delaney, 2007).

Unions can also differ in their preferences for membership exclusivity. Craft unions historically preferred exclusivity, keeping their membership limited as a strategy to limit the supply of labor and drive up wages. In contrast, industrial unions historically preferred inclusivity, recruiting as many members as possible to minimize the nonunion labor pool as a strategy of taking wages out of competition. Therefore, the way these two types of union treat their members or other workers (who may or may not be their target members) can be quite different and a potential source of conflict. As an industry inevitably comprises separate occupational groups (including craft groups), industrial unions often have to compete with sectional interest (craft) unions, whose primary interest is in reinforcing occupational boundaries to create monopolistic advantages (Streeck, Seglow, & Wallace, 1981).

Conflicts can also occur between locally based independent unions and national unions. National unions tend to assume that "largeness, leadership expertise and a broad bargaining base maximize the gains of union members," whereas independent unions often consider themselves more responsive to the needs of their particular members and capable of providing better benefits for them (Chaison & Rock, 1974, p. 293).

Conflicts Over Members

One problem commonly associated with multi-unionism is the competition for members. Union resources which could have been devoted to representational tasks are diverted into organizing and recruiting. Conflicts can occur either when one or more unions are vying to recruit the same nonunion workers or when one union is trying to poach members from another union (Dobson, 1997). However, such interunion rivalry does nothing to increase overall union membership (Scott, Arnold, & Odewahn, 1992), and so there are no real benefits for the labor movement.

In addition, replacing one union with another, in representing a group of members, generally consumes lots of time, cost, and effort, especially for the raiding union. Chaison's (1976) study of union raiding in the United States suggests that incumbents generally have the advantage over raiders, because they are known to, and normally trusted by, the membership. In a more recent study in British Columbia, Canada, Riddell (2007, p. 280) found that raiding unions were only successful about half the time (56%).

In the worst case scenario, US research suggests that incumbent and raider both end up losing in 11% of union raids, with workers opting instead for not having a union at all (Scott et al., 1992, p. 558). Name-calling, destructive behaviors, and unwarranted allegations against competing unions are common in organizing campaigns involving two or more unions (Barkin, 1961). Such undignified behavior can deter workers from joining any union at all. Clearly, these are net losses for the labor movement as a whole.

Conflicts Over Bargaining

Rival unions sometimes engage in leapfrogging when negotiating with the same employer. Leapfrogging occurs when one union waits for a rival union to settle first, and then afterwards tries to obtain superior terms and conditions in an effort to impress existing members and attract new members. Leapfrogging can have major negative consequences. First, it can greatly lengthen and complicate the negotiating process, as unions deliberately stall bargaining until a rival has settled (Akkerman, 2008; Dobson, 1997). Second, it can prompt unions to bargain aggressively and strike more frequently in their attempts to outdo each other. Third, in an attempt to avoid losing face, the losers in one bargaining round have strong incentives to recover perceived lost ground by surpassing their rivals in the next bargaining round, setting off a vicious cycle of rising wage increases. This is the so-called leapfrogging dimension to the bargaining.

Unions can also have different preferences for industrial action. Most traditional unions still prefer to take an adversarial, distributive approach to bargaining, with continued reliance on the strike weapon to pressure concessions. However, some unions have embraced integrative bargaining, with its focus on problem-solving and closer relations with the employer as an alternative to industrial action, sometimes as a formal partnership strategy. For example, most New Zealand unions formed since 2000 have been small, limited in their range of interests and activities, often close to the employer, and reluctant "to engage in militant actions" (Barry, 2004; Murrie, 2006, p. 39). Some of these New Zealand unions have competed directly with established unions for members, but others have been happy to "free ride" on traditional unions, often obtaining the same terms and conditions from the same employers, but without the extensive collective negotiations and industrial action (Barry, 2004). Both of these situations can be a source of union conflict.

Personal Conflicts between Leaders and/or Members

Conflict can also arise from personal differences between union leaders or competition for professional recognition and union leadership positions (Gitlow, 1952). Such personal conflicts between union executives can easily translate into organizational differences, reflected in a union's goals, strategies, and subsequent actions. A well-known example in the United States involved the split, within the AFL-CIO, of union leaders Walter Reuther and George Meany in 1968. Reuther and Meany had originally brought the AFL and CIO federations together 13 years earlier, but irreconcilable differences in personality and leadership style helped cause the dispute that ultimately led to the UAW (headed by Reuther) leaving the federation (Koziara & Koziara, 1968). Reuther, who was used to union militancy and factional battles, resorted to social demagogy and manipulations in his negotiations, while Meany was a bureaucrat free from union militancy with little or no involvement in strike activities (Lovell, 1968). Personal conflicts, of all the different types, are frequently the most intractable, whereas issue-related conflicts, by contrast, are more amenable to resolution through collaborative, problem-solving approaches.

Conflicts Precipitated by Employers

Multi-unionism affords employers the opportunity to "divide and rule" the labor movement by favoring one union over another (Metcalf et al., 1993). Why would employers practice "divide and rule"? They often have a preference for one union over others, typically when it is smaller, weaker, more cooperative, and easier to control (Chaison & Rock, 1974). The employer can assist its preferred union (Krislov, 1954) by, for example, offering them better pay and conditions, settling grievances promptly with them, allowing them but not others to solicit members on company property, soliciting members or distributing materials for them, intimidating employees who do not want to join these favored unions, and providing facilities such as office space for them (Barry, 2004; Gitlow, 1952). Obviously, such favorable treatment in a non-exclusive, multi-union regime can have a detrimental effect on other unions in their pursuit of members, power, and employer concessions.

METHOD

Sample

The sample comprises senior executives, usually the general secretary or closest equivalent, of 14 of New Zealand's 172 registered unions.[5] Table 1 provides a list of the unions that participated in the interviews, together with their membership numbers. Most of the unions are relatively large, varying in size from just under 1,000 to 57,000 members. At the time of data collection, August 2008, their combined membership was 246,800, equivalent to 65% of New Zealand's 382,000 union members (Feinberg-Danieli, & Lafferty, 2008, p. 33). The sample includes the largest four unions: the PSA (civil service), NZEI (primary school teachers), EPMU (manufacturing and other sectors), and NZNO (nurses). In contrast, more than half of New Zealand's registered unions have fewer than 1,000 members, were only established since the passage of the 2000 Employment Relations Act, and bargain with only one employer (Barry, 2004).

Table 1. Unions and Union Executives.

Union Name	Total Union Membership[a]
Amalgamated Workers Union	4,179
Association of Senior Medical Specialists (ASMS)	3,482
Association of Staff in Tertiary Education (ASTE)[b]	4,310
Association of University Staff (AUS)[c]	6,706
Engineering, Printing, and Manufacturing Union (EPMU)	41,394
Financial and Information Workers Union (FINSEC)	5,381
Maritime Union of New Zealand (MUNZ)	2,507
New Zealand Merchant Service Guild	712
New Zealand Nurses Organisation (NZNO)	42,635
New Zealand Educational Institute (NZEI)	49,481
New Zealand Post Primary Teachers Association (NZPPTA)	17,410
Police Association	10,756
Public Service Association (PSA)	57,736
Rail & Maritime Transport Union (RMTU)	4,383

[a]Union membership figures come from the *Union Membership Return Report, 2009*; Employment Relations Service, Department of Labour, New Zealand.
[b]ASTE and AUS figures are from the *Union Membership Return Report, 2008*; ASTE and AUS amalgamated in 2009 to form the Tertiary Education Union.
[c]*Ibid.*

How were the unions selected for the sample? First, the unions had to be reasonably large and well established, so that their collective experiences of interunion conflict were representative or typical of New Zealand's labor movement. Second, they had to be based in a broad cross-section of industries, from public administration (PSA) and health care (NZNO) to manufacturing (EPMU) and financial services (FINSEC), again to ensure the representative nature of the findings. Third, they all had to have headquarters in Wellington, New Zealand's capital city, to make interviewing each union's leader or leaders face-to-face feasible as well as cost- and time-efficient.

Data Collection

Semi-structured interviews were held with the union officials mainly at their offices, with each interview lasting about an hour. Such semi-structured interviews ensure that fundamental information is collected, but afford the flexibility and time for follow-up questions as information emerges. The list of fundamental questions is provided in Table 2.

The interviews were recorded with the permission of the interviewees and later transcribed verbatim. The authors tested the veracity of interviewee responses through probing questions. Wherever possible, the authors sought details: numbers and examples to illustrate key points. Answers often varied across interviewees (e.g., views of company unions) and sometimes surprised us. Furthermore, the interviewees were generally open in discussing their

Table 2. Interview Questions.

1. Which other unions organize the same types of worker as your union?
2. How much conflict is there between your union and other unions? What is the nature of this conflict (e.g., on-going or ad hoc)?
3. Why does your union have conflicts with other unions? What are the causes of your union's conflicts with other unions?
4. To what extent is conflict between your union and other unions a problem (e.g., a drain on resources or time, a distraction)?
5. How does your union deal with the conflict (strategies, tactics)?
6. What factors (e.g., union, employer, or government policies or practices), if any, worsen your union's conflicts with other unions?
7. What factors, if any, lessen/prevent your union's conflicts with other unions?
8. What changes (e.g., in practices or policies) would help to lessen/ prevent your union's conflicts with other unions?

views, frequently swearing, often using colorful language, and, in one case, occasionally asking for the tape to be switched off (for a major revelation). As a result, the authors have no reason to believe that there was a positive response bias, favoring the underreporting or downplaying of interunion conflict.

To enhance independence and objectivity, the two co-authors analyzed the transcripts separately, identifying the main themes and coding the various interviewee responses accordingly. Further notes were also made on each theme category to help with summarizing the key responses and comparing across unions. The co-authors then went through an iterative process of discussing the key findings and insights, and in this process, redefined the themes, re-analyzed the responses and re-checked the data as necessary. The draft paper manuscript was passed back and forth a number of times between the co-authors before it was finalized.

RESULTS

Interunion conflicts are commonplace in New Zealand. All 14 interviewees reported interunion conflicts principally or exclusively with rival unions in the same sector. Most interviewees described these conflicts as temporary and/or minor, an irritation at worst. However, three officials did identify some particularly negative consequences of interunion conflict. Two suggested that fighting over members frightened workers away from the labor movement, and led to overall de-unionization within the sector. One of the same officials expressed concerns about wasting resources in fighting over members. A third official felt that conflicts in his sector had prevented the unions from developing a unified front in lobbying the government.

Conflicts Over Ideology

None of the 14 interviewees felt that ideology had recently been a major source of interunion conflict. That is not to say that the unions had no ideological differences. One official acknowledged that some unions are politically aligned to the Labour Party and others are not, but that this made no difference to their relationships. Divergences in bargaining strategy were widely discussed (see below), with some unions, for example, seeing themselves as more "progressive" or less militant, but these divergences were generally seen as variations in means or methods rather than ends or goals.

Four union officials were quick to criticize company unions[6] as ineffective patsies of the employer, but conflicts with these unions were not normally described in ideological terms. On the contrary, company unions were condemned for being nonideological, in the sense of not having a clearly defined position or opinion about any issue or policy affecting workers in the relevant industry or the labor movement, more generally. One official had this to say: "(w)ell, they believe they are largely a bargaining and grievance mechanism and nothing else. So, they are completely apolitical, and, for that matter, so are we, but we don't hesitate to say the National Party's legislation is a piece of (obscenity deleted) …"

Conflicts Over Members

Seven of the 14 interviewees revealed that there had been some conflict, though not usually a lot, over the passive recruitment of other unions' members. This typically occurred when disaffected members of one union deserted to another, usually larger, more powerful union, often following the lead of a respected organizer or delegate (steward) in their own union. One interviewee had this to say: "… there will be a disgruntled bunch of members who are dissatisfied with the level of support or service that they have had or a bargaining outcome, (and) believe that it could have been done better, and they tend to search around out to another union" and "… it tends to be delegates, headstrong delegates, who take a different view …" Another interviewee made a similar remark: "… (it) is very unpalatable to us. I mean, our organizer left one night, rung me, and told me he was going, and then also took some of the members across with him."

Most of these defections involved a trickle of members, one or two handfuls per annum, and so conflicts were generally characterized by objections, in principle, to another union "stealing" members, albeit passively. However, two interviewees reported much larger effects of passive recruitment: one of the smaller unions had lost 5% of its members to a larger rival; one of the larger unions had acquired 2% of its members from smaller rivals. The union official from the smaller union was clearly very bothered by this development, but he and the official from the benefiting union both indicated that the two unions had nevertheless maintained a positive relationship, overall.

Conflicts over the active recruitment or poaching of other unions' members have been relatively rare in the 2000s, but were a lot more common in the 1990s after occupational and industry union demarcations ended with

the 1991 Employment Contracts Act. Nevertheless, four interviewees admitted that poaching still occurred, and had been a source of conflict, although infrequently. One official said that other unions' members were generally "off limits," but that his union reserved the right to poach, if (a) another union was largely ineffective at bargaining, (b) its members had approached his union, en masse, about joining, and (c) the same union had failed to organize most of the relevant workers in a bargaining unit. Another official complained that a much smaller rival, with a little more than 1% of the membership, actively organized his members. Although this had caused friction, it was too small in scale to be seriously threatening. The two unions still managed to cooperate at least some of the time. Two other officials said that they had actively recruited the members of company unions. Both heavily criticized company unions as ineffective, because of their smallness and dependence on management, and so felt it totally legitimate to actively recruit their members. One of these officials put it rather colorfully: "(w)e just knocked them (company unions) out." A fifth official revealed that company unions had poached his union's members. However, rather than wage a war against these rivals, his union had instead developed bargaining coalitions with these unions in an effort to sever their dependence on the employer. The same official indicated that his union had lost nearly 10% of its membership to break-away staff associations in the 1990s,[7] even though most of these had subsequently either collapsed or been re-absorbed into the original union, with some former members re-acquired in the process.

Three of the interviewees also reported having had conflicts with another union attempting to organize the same nonunion workers. One interviewee bluntly stated: "… we tend to be quite competitive with each other on the ground, organizing members."

Conflicts Over Bargaining

Eleven of the 14 interviewees reported at least some interunion conflict over bargaining methods and/or outcomes. Unions clearly differ in their willingness to be tough negotiators. Officials from three unions clearly thought that it was unfair and inappropriate that other unions could free ride on their willingness and ability to bargain hard for superior wage increases. In particular, one union was very bothered by the automatic "pass-on" of any hard-won wage increase to a rival in the same sector. In a related point, officials from five unions revealed that conflicts had occurred when one union achieved better outcomes at the bargaining table than its

rivals, generating plenty of envy from the latter's membership. In one situation, conflict arose as one union engaged in militant actions and allegedly made false claims in order to disrupt another union's ratification process. One official also lamented that other unions in the sector didn't have the strength to strike, so undermining everyone's efforts to obtain more from employers. More generally, the officials of six unions commented that pay and status differences between the members of their union and those of at least one other remained a source of enduring friction.[8] One union official provided an amusing, sarcastic impersonation to make the point: "… you don't want to go with them (in an alliance with another union), because they are *higher ranked workers* who will do you over and be rude to you, you know, whereas we (our union) are lovely for *lower ranked workers*."

In other cases, the actual style of bargaining was problematic, especially in combination with the presence/absence of political lobbying and/or public relations campaigning. Two union officials complained that the distributive bargaining tactics and strike propensity of the same rival made all unions appear "unprofessional" and negated their collective attempts to win public and customer support for concessions from employers. A third official complained that the company unions in his sector were uniformly unwilling to use political lobbying to seek improvements for union members, a point that has already been made earlier.

All but one of the interviewees felt that these conflicts were nothing more than minor irritations, fuelled partly by low-level resentment and jealousy, and with no lasting impact on generally positive relations with other unions in the same sector. The following remark was typical: "So, it's not a problem, but it's nuisance level, really. Yeah, it reminds us that everyone is still alive." One union was a clear exception. Its formal adoption of a so-called "partnership for quality" bargaining strategy in the late 1990s alienated thousands of members, who deserted to form sometimes large, break-away unions. Relations with several of these break-away unions remain hostile, although some of their members have drifted back to the original, parent union. The official put it this way: "… they didn't like the … partnership strategy. We were a sell-out … they set up separately, and there was, I think, for a long time, a fairly sort of rugged war."

Personal Conflicts between Leaders and/or Members

Only three interviewees felt that personal differences were a direct cause of interunion conflict. Two interviewees identified the leaders of two other

unions as particularly difficult people to interact with. Each was seen as domineering and somewhat unpredictable. The unions they headed were perceived to be the private fiefdoms of the leaders. However, in most cases, personal differences were seen as obstacles to conflict resolution rather than actual causes of conflict.

Personal conflicts weren't just confined to spats between union leaders. Historical enmity against the organizers and members of other unions was also often singled out as important.

Several of the interviewees recognized that interpersonal clashes were often structurally determined, in the sense that union leaders engaged in personality-oriented turf wars as much to protect their privileged leadership positions as their egos. In discussing a failed amalgamation attempt with another union, one interviewee had this to say: "… (a)nd so we almost got there (amalgamation) two years ago, and as usual it came down to money and people. You know 'I don't see a job in there for me'. That sort of thing."

Conflict Avoidance and/or Resolution

Eleven of the 14 interviewees revealed that their union had used one or more strategies to avoid or resolve conflicts with rivals. Five officials indicated that they had used the New Zealand Council of Trade Unions' (NZCTU) Protocols to handle any frictions over membership. Whenever members leave one NZCTU affiliate for another, the Protocols require the recipient union to attempt repatriation of any defectors and assist in resolving any issues which may have precipitated the member departures.

Five officials also indicated that they normally reconciled informally through meetings and phone calls between the leaders. A further five stated that they had signed a peace or relationship agreement with at least one other union. Another union used Maori conflict resolution processes, normally only applied in-house, to address disagreements with its rivals. Only one union had used the Department of Labour's Partnership Resource Centre to help with any interunion conflict. None of the unions said that they had relied on the Department of Labour's Employment Relations Service to mediate their disputes. Likewise, none of the unions said that they had relied on other NZCTU affiliates to mediate for them.

Three unions said that they avoided fighting for members by not recruiting workers from the same membership pool. In addition, three had

reached informal understandings with other unions about occupational and industry recruitment demarcations to avoid future conflicts over members.

However, not all conflict was perceived as detrimental. Three unions were committed to warring with company unions, generally seen as illegitimate and weak. Some unions, normally committed to using the NZCTU Protocols, said that they were quite happy to risk conflict by poaching members from unaffiliated unions: "…. if they are a CTU union, we are very mindful of the difference with that. We are much less mindful of the sensibilities of non-CTU unions." One union, openly resigned to the inevitability of conflict, admitted to having no formal or informal process of addressing disagreements with other unions. Another union suggested that its large size protected it from most of the negative impacts of conflict, and so it had not invested heavily in conflict resolution strategies.

With respect to bargaining strategies, one union takes the leadership role when it is the primary union in the sector/workplace, providing, for example, training and advocacy to smaller unions. However, the same union plays the follower role when it is the secondary union in the sector/workplace. Such an implicit understanding of primary/secondary roles in bargaining helps to significantly reduce conflicts and save resources.

Conflict Resolution: Recommendations for the Future

Few of the interviewees had thought deeply about how conflicts might be better resolved and prevented in the future. No doubt, this lack of consideration reflects both the low intensity and sporadic nature of the conflict, as well as confidence in current strategies for conflict resolution and avoidance. Nevertheless, when asked further, most interviewees had one or two recommendations. Three options were popular with a number of the interviewees. First, five interviewees strongly favored voluntary, bilateral, and multilateral agreements between and among the unions, perhaps brokered by the NZCTU, to establish informal demarcations along industry and/or occupational lines. The following comment was typical: "(w)ell, one (of) the things I think would be useful … is for the CTU to have a role in … working out a rational long-term plan, not forcible demarcation … ., but saying this is the total workforce, the sectors. Now, what is the most sensible way to go about organizing that, what unions should be involved." Second, five officials favored a minimum membership rule for union registration. A minimum of as few as 100 workers was viewed as an effective way of eliminating the weakest unions, closing down most company unions,

reducing the number of potential rivals, and/ or preventing disaffected members from forming small, ineffective break-away unions. Third, three officials favored more stringent union registration and auditing procedures, requiring more evidence of independence from the employer, to ban company unions. Likewise, one official wanted the NZCTU to be more selective in choosing affiliates that are genuinely independent worker representatives. However, another official opposed such a change and argued that working with company unions at least held out the possibility of collective action, whereas dealing with the same workers employed on individual agreements definitely did not.

The heads of the two unions, ASTE and AUS, which merged at the end of 2008, suggested that other unions should do the same, but none of their other union counterparts regarded the idea as realistic.

One official made a number of suggestions. These included strengthening the good faith rules governing interunion conduct, formally renouncing affiliation to the Labour Party, and providing the Department of Labour with a greater role in mediating interunion disputes. Other officials were less keen; several felt that mediation and good faith rules played a limited, though sufficient, role already. No one else had anything to say about partisan affiliations.

Most of the interviewees did not see a return to the pre-1991 Employment Contract Act policies of compulsory unionism and centralized industry or occupational bargaining as useful or appropriate for resolving or preventing union conflicts. However, there were a few exceptions. One official very much supported the idea of one industry, one union. Another supported a "hiring hall" approach, with all employers buying their labor from the same union-controlled pool. One official felt that it should be lawful to negotiate closed shop clauses, but others felt that this would breed complacency, with few unions actively making the effort to court members or solicit their opinions before bargaining.

Just as importantly, some interviewees were adamant that some changes would be ineffective or even harmful to interunion relations. In particular, four unions expressly opposed any regulation of union demarcation by sector, occupation, or establishment. In their view, regulation had the potential to worsen present conflicts through costly and complicated legal battles over coverage rights and through the forced transfer of thousands of very unhappy members from their current union to a different union with legal coverage rights. One official had this to say: "… there are a couple of things that the ECA (1991 Employment Contracts Act) gave us that are really quite valuable … One of those is it got rid of all that crap around

coverage … Is it the role of the state to determine which union has coverage of which group of workers? No, it should be the role of workers to make that determination.'' Only one person showed any enthusiasm for a return to the regulated industry and occupational union demarcations of the pre-1991 Employment Contracts Act period. None of the officials showed any interest in, or desire to adopt, a US-style exclusive bargaining regime, with bargaining units potentially defined on an ad hoc basis by a statutory board.

DISCUSSION

All 14 of the union interviewees reported experiences of conflict with other unions. Unions sharing the same sector were almost always the main foes in any conflict. A history of antagonism certainly plays a role in perpetuating current conflicts, or hindering attempts at conflict resolution, because people tend to remember past disputes. However, conflict can abate with shifting circumstances, as with a change in legislation, leadership, or the general economy. One official indicated that a more competitive environment for the employer can translate into greater competition among the unions, perhaps because of more limited resources available for union members. Alternatively, another official claimed that a crisis environment can impel unions together in a common fight for survival.

This study contains several main findings that may be of interest to readers. First, the union leaders perceived relatively little conflict between and among unions sharing the same membership pool. Save for one or two unique situations, relationships between unions are usually amicable. When conflicts do occur, they are generally seen as irritants to be either ignored or resolved relatively quickly and peacefully. It is in the interests of unions to avoid fighting and to settle their differences, because doing otherwise wastes resources, frightens away prospective recruits, and induces members to de-unionize. Sensitivity to the bad public relations messages associated with conflict could reflect the media salience of the generally large unions in the sample.

Second, and consistent with the first point, unions generally refrain from engaging in heated battles to organize the same members, despite the myriad opportunities afforded by the non-exclusive representation regime. To some extent, this can be attributed to the protocols NZCTU affiliates are required to follow. As one union official put it, he/she is less sensitive about poaching members of unions unaffiliated to the NZCTU. Unions also have informal agreements among themselves to alleviate unnecessary uncertainties and

conflicts. More intriguingly, most unions have a strategic approach to organizing, preferring only to unionize employees whose organization, industry, and occupation fit with the union's membership, resource base, and plans to exercise influence within their sector. Furthermore, officials more altruistically expressed a general concern for serving members better and doing what was right for the labor movement, overall. Several officials indicated that they had referred prospective members to other unions and, even more surprisingly, had supervised the transfer of their own members to other unions, if the strategic fit were superior.

Third, New Zealand union officials have varied, though not usually strong, views on company unions. At one extreme, an official in a sector with a lot of company unions urged that they all be banned. At the other, another official in a different sector, again with a lot of company unions, thought that they were far preferable to a total absence of collective representation, and stressed that his/her union had worked with them and even absorbed them and their members. This thinking is very much in line with Taras and Kaufman's (2006) study, which suggests that company unions and staff associations can serve as a springboard to future independent, union representation.

Another somewhat surprising finding is the general lack of any union expectation that the government provide legislation or regulation to help reduce interunion conflicts. Although there is some support for tightening union registration requirements and establishing a minimum union membership level, most officials still want unions to continue to informally resolve any conflicts among themselves. They also favor a more active role for the NZCTU, in helping affiliates establish clearer demarcations for membership recruitment, and in offering more resources for effective interunion mediation. Indeed, as one official put it, "I actually think less regulation is better for unions than more, and so I suppose where there are disputes, I would actually endorse that (the) CTU have more teeth."

What are the implications of these findings for American unionism? The low level of conflict in New Zealand strongly suggests that a non-majority, non-exclusive representation system isn't necessarily associated with frequent or intense interunion conflict, or related problems such as ineffective union organizing or representation. Non-majority, non-exclusive representation, established via a "new" interpretation of NLRA Section 7, could work equally well in the United States. Unions, wherever they may be, have strong mutual interests in coalescing against employers, and in avoiding conflicts likely to frighten away members. They can, and do, develop mechanisms to resolve their own conflicts, whether centrally via

union federations or bilaterally through formal agreements or informal understandings. These can work well in the absence of regulation and state support, even when unions have different goals or strategies, as is common in New Zealand. The United States is no different; Riddell's (2007) findings demonstrate that the AFL-CIO's no-raid policy "played a key role in declining raiding activity."

Non-majority, non-exclusive unionism in the United States might even generate less interunion conflict than the present exclusive representation system. Why? With exclusive representation, the winner-take-all and usually once-for-all-time character of union certification means that there can be only one winner in any contest between two or more unions for representation: raiding situations are necessarily heated. In contrast, non-majority, non-exclusive unions, representing workers in the same occupations at the same employer, cannot easily "win" by permanently attracting all or almost all of each other's members. Eradicating the other union is therefore unlikely to be an attractive or feasible option, and so working together against a common adversary, the employer, has more appeal.

Non-majority, non-exclusive unionism would be compatible with the present system of exclusive, majority-based unionism. In fact, the former could be a precursor to the latter, as was envisioned by the law-makers who enacted the NLRA (Morris, 2005). Certainly, Section 9(a), barring any unlikely NLRA amendments, will still apply. Some unions will continue to seek exclusive representation through an election, even if that presently remains difficult to achieve. Essentially, non-majority, non-exclusive unions will only have the right to organize in nonunion workplaces, hardly a threat to established unions, unless their members decertify them. In fact, non-majority, non-exclusive unionism provides existing unions with a new, less restricted, strategy for at least partially organizing nonunion firms.

Non-majority, non-exclusive unionism is not a back door entry for company unionism. Most New Zealand union members belong to large, independent, industrial unions, which organize entire sectors or occupations like their US counterparts. There are some company unions and these do represent a small fraction of members. However, their existence, limited as it is in most sectors, reflects the relatively lax union registration process in New Zealand, which only requires a nominal statutory declaration of independence, rather than any inherent weakness in non-majority, non-exclusive unionism. In the US context, company unions are already prohibited by Section 8(a)(2) of the NLRA, which makes it an unfair labor practice "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

It must be stressed that non-majority, non-exclusive unionism isn't necessarily ideal. Neither is New Zealand some kind of union nirvana: in 2008, its union density rate was 20.8%, though this was higher than the US's 11.9%.[9] However, New Zealand does have many lessons for the United States, when one considers the harsh political realities associated with enacting pro-labor legislative reforms. A revitalized focus on Section 7 of the NLRA does have the potential to deliver genuine gains for the labor movement.

LIMITATIONS AND FUTURE RESEARCH

An obvious limitation of the study is the small number of interviewees, though the 14, mainly large, unions in the sample collectively represent 65% of New Zealand's union members. The bulk of smaller unions, whose views were not sought for this paper, may have very different opinions from those expressed in this paper. With a small membership base, they may perceive another union's raid on their members as more potentially threatening, especially to their very survival. They may also perceive more potential opportunity in raiding other, especially larger, unions for members. More generally, smaller unions may be less hesitant about wrangling with their rivals, knowing that whatever they do is much less likely to attract negative media attention. Overall, the environment is likely to appear less stable and more competitive and conflict-ridden than to their larger rivals. Given these realities, smaller unions suffering a decline in members and/or power may be far more likely to favor government policies that guarantee members and protect them from other unions. Certainly, some are likely to be firm adherents of industry or occupational demarcation rules, providing at least a limited form of exclusive representation. In fact, to some extent, this is already apparent in our findings; two of the smaller, declining unions were much more supportive of protective legislation than their mainly larger, stronger rivals.

Even though this cross-sectional study focused primarily on union officials' opinions of recent conflicts, the interviewees' recounting of the distant past and expressions of hope for the future both suggest that union relationships are dynamic. Further research could focus on specific case studies, looking into the complex sets of factors which influence and transform union relationships, and examine how they alleviate or accentuate conflicts. It would be also interesting to see how union relationships evolve over time.

So far, this study has only focused on conflict situations. However, the interviewees certainly argued that conflict is rarely the defining feature of relationships between and/or among unions. Further study is therefore warranted to explore the other side of the coin, the cooperative relationships among unions in a multi-union setting.

Despite the above limitations, this exploratory study should provide a good basis for developing a much broader and more comprehensive survey that can involve a larger group of participants, including the smaller unions.

CONCLUSION

In line with the union rivalry literature, with its concerns about interunion conflict in a multi-union environment, we did find that conflicts of various kinds exist among the unions interviewed. However, the level of conflict was generally low and the active poaching of members was rare, suggesting that concerns about union rivalry are probably over-stated, especially in terms of fights over membership. Sector proximity, rather than overlapping membership coverage, seems to be the one necessary precondition for any interunion fracas.

If union conflict and labor fragmentation are not well-grounded concerns, it makes sense to at least consider allowing minority unions to represent workers in nonunion workplaces. This can be done quite simply through a re-interpretation of the existing NLRA, which is likely within the power of the National Labor Relations Board, and there would be no need for a long, drawn-out legislative change process. Nevertheless, the steering of this fundamental change in interpretation would still require some policy-making vanguards, who have the courage to break away from the deeply ingrained current interpretation, and the foresight to bring forth a new minority representation system that has many merits. At the very least, such a minority union representation system, running parallel to the existing exclusive representation one for majority-support workplaces, would lift union density and improve overall workplace democracy.

NOTES

1. http://opencrs.com/document/RS21887/.
2. *Fraser v Ontario (Attorney General)*, 2008 ONCA 760, 92 O.R. (3d) 481 at para 92.

3. In the United States, two or more unions may represent the staff at one employer, but only one union may represent the workers in one bargaining unit.
4. If there are two or more collective agreements, the non-union employee is given an individual employment agreement based on the terms of the collective agreement binding the most employees.
5. Figure from the Registrar of Unions, Department of Labour, February 2008.
6. The interviewees often referred to company unions as house unions or, less frequently, yellow unions.
7. Many of these staff associations registered as unions under the 2000 Employment Relations Act. Most of these are perceived to be company (house) unions.
8. Unions representing higher paid workers generally tried to maintain traditional pay premiums for higher education and rank. Unions representing lower paid workers generally tried to erode such pay premiums.
9. Retrieved from http://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN. Accessed on July 18, 2010.

REFERENCES

Adams, R. J. (1993). The North American model of employee representational participation: "A Hollow Mockery". *Comparative Labor Law Journal*, *15*(4), 4–14.

Adams, R. J. (2009). Prospects for labour's right to bargain collectively after B.C. Health Services. *University of New Brunswick Law Journal*, *59*(1), 85–94.

Adler, N. J. (1997). How do cultural differences affect organizations? In *International dimensions of organizational behaviour* (Chap. 2, 3rd ed., pp. 39–66). Cincinatti, OH: South-Western College Publishing.

Akkerman, A. (2008). Union competition and strikes: The need for analysis at the sectoral level. *Industrial and Labor Relations Review*, *61*(4), 445–459.

Bureau of Labor Statistics. (2010). *Union Members – 2010*. U.S. Department of Labor. Retrieved from http://www.bls.gov/news.release/pdf/union2.pdf. Accessed on February 23, 2011.

Barkin, S. (1961). *The decline of the labor movement*. Santa Barbara, CA: Centre for the Study of Democratic Institution.

Barry, M. (2004). New employee representation: Legal developments and New Zealand unions. *Employee Relations*, *26*(1/2), 203–223.

Bok, D. C. (1971). Reflections on the distinctive character of American Labor Laws. *Harvard Law Review*, *84*(6), 1394–1463.

Brooke, C. (2000). Nonmajority unions, employee participation programs, and worker organizing: Irreconcilable differences? *Chicago-Kent Law Review*, *76*, 1237–1269.

Chaison, G. N. (1972). Towards a cost-benefit analysis of union rivalry. *Personnel Journal*, *51*, 576–582.

Chaison, G. N. (1976). The frequency and outcomes of union raids. *Industrial Relations*, *15*(1), 107–110.

Chaison, G. N., & Rock, W. K. (1974). Competition between local independent and national unions. *Labor Law Journal*, *25*(5), 293–297.

Dobson, J. R. (1997). The effects of multi-unionism: A survey of large manufacturing establishments. *British Journal of Industrial Relations*, *35*(4), 547–566.

Donovan Commission. (1968). *Report of the Royal Commission on trade unions and employers' associations*. London: HMSO.

Edsall, T. B. (2005, July 26). Two top unions split from AFL-CIO: Others are expected to follow Teamsters. *The Washington Post*. Retrieved from http://www.washingtonpost.com/wp-dyn/content/article/2005/07/25/AR2005072500251.html. Accessed on July 18, 2010.

Feinberg-Danieli, G., & Lafferty, G. (2008). Unions and union membership in New Zealand: Annual review for 2006. *New Zealand Journal of Employment Relations*, *32*(3), 31–39.

Finkin, M. W. (1993-4). The road not taken: Some thoughts on nonmajority employee representation. *Chicago-Kent Law Review*, *69*, 195–218.

Fiorito, J., Jarley, P., & Delaney, J. T. (2007). Change to win: Can structural reform revitalize the American labor movement? *Advances in Industrial and Labor Relations*, *15*, 359–391.

Gitlow, A. L. (1952). Union rivalries. *Southern Economic Journal*, *18*(3), 338–349.

Godard, J. (2003). Do labor laws matter? The density decline and convergence thesis revisited. *Industrial Relations*, *42*(3), 458–492.

Hall, P., & Soskice, D. (2001). *Varieties of capitalism: The institutional foundations of comparative advantage*. London: Oxford University Press.

Hofstede, G. (1980). Motivation, leadership and organizations: Do American theories apply abroad?. *Organizational Dynamics*, *9*(1), 42–63.

Hyde, A., Sheed, F., & Uva, M. (1993). After Smyrna: Rights and powers of unions that represent less than a majority. *Rutgers Law Review*, *45*, 637–669.

Koziara, E., & Koziara, K. (1968). Conflict within AFL-CIO: The Meany–Reuther split. *Human Resource Management*, *7*(3), 24–29.

Krislov, J. (1954). Everybody's stake in the no-raiding agreement. *Labor Law Journal*, *5*(2), 83–87.

Krislov, J. (1960). Organizational rivalry among American Unions. *Industrial and Labor Relations Review*, *13*(2), 216–226.

Lane, T. (1974). *The union makes us strong*. London: Arrow Books.

Logan, J. (2007). The Clinton administration and labor law: Was comprehensive reform ever a realistic possibility?. *Journal of Labor Research*, *28*, 609–628.

Lovell, F. (1968). The Reuther–Meany split. *International Socialist Review*, *29*(3). Retrieved from http://www.marxists.org/history/etol/document/swp-us/reuthermeany.htm. Accessed on July 18, 2010.

Machin, S., Stewart, M. B., & Van Reenan, J. (1993). The economic effects of multiple unionism: Evidence from the 1984 Workplace Industrial Relations Survey. *Scandinavian Journal of Economics*, *95*, 279–296.

Mayer, G. (2004). *Union membership trends in the United States*. Federal Publications, Paper 174. Retrieved from http://digitalcommons.ilr.cornell.edu/key_workplace/174/. Accessed on February 23, 2011.

Metcalf, D., Wadsworth, J., & Ingram, P. (1993). *Industrial Relations Journal*, *24*(1), 3–13.

Morris, C. J. (2005). *The blue eagle at work: Reclaiming democratic rights in the American workplace*. Ithaca, NY: Cornell University Press.

Morris, C. J. (2006). Back to the future: Reviving minority-union collective bargaining under the National Labor Relations Act. *Labor Law Journal*, *57*(2), 61–70.

Murrie, J. (2006). Not a typical union but a union all the same: New unions under the Employment Relations Act 2000. *New Zealand Journal of Employment Relations*, *31*(2), 31–45.

O'Brien, C. N. (2008). When union members in a member-only non-majority union (MOMMU) want Weingarten rights: How high will the blue eagle fly?. *University of Pennsylvania Journal of Business and Employment Law*, *10*(3), 599–625.

Oswald, A. J. (1979). Wage determination in an economy with many trade unions. *Oxford Economic Papers*, *31*(3), 369–385.

Pohjola, M. (1984). Union rivalry and economic growth: A differential game approach. *Scandinavian Journal of Economics*, *86*(3), 365–370.

Riddell, C. (2007). The nature of union raiding: Evidence from British Columbia, 1978-1998. *Advances in Industrial and Labor Relations*, *15*, 269–293.

Ross, A. H., & Irwin, D. (1951). Strike experience in five countries, 1927–1947: An explanation. *Industrial and Labor Relations Review*, *4*(3), 323–342.

Scott, C., Arnold, E., & Odewahn, C. (1992). Raid elections: Another problems for unions? *Public Personnel Management*, *21*(4), 555–564.

Shils, E. B. (1971). Union fragmentation: A major cause of transportation labor crises. *Industrial and Labor Relations Review*, *25*(1), 32–52.

Streeck, W., Seglow, P., & Wallace, P. (1981). Competition and monopoly in interest representation: A comparative analysis of trade union structure in the railway industries of Great Britain and West Germany. *Organization Studies*, *2*(4), 307–330.

Summers, C. (1990). Unions without majority – A black hole?. *Chicago-Kent Law Review*, *66*, 531–548.

Taras, D. G., & Kaufman, B. E. (2006). Non-union employee representation in North America: Diversity, controversy and uncertain future. *Industrial Relations Journal*, *37*, 513–542.

Webb, S., & Webb, B. (1897). *Industrial democracy*. London: Longman, Green & Co..

Zullo, R. (2007). Labor's divided house: Contextual and theoretical terms of the U.S. divorce. *Advances in Industrial and Labor Relations*, *15*, 333–358.

"ALL DEALS ARE OFF": THE DUNLOP COMMISSION AND EMPLOYER OPPOSITION TO LABOR LAW REFORM

John Logan

ABSTRACT

This chapter examines the rise and fall of the Commission on the Future of Worker-Management Relations (Dunlop Commission) in the early 1990s. It uses the events surrounding the Commission to provide an insight into the dynamics of the struggle over federal labor law reform. The inability of the Dunlop Commission to get labor and management representatives to agree on proposals for labor law reform demonstrated, yet again, that employer opposition is the greatest obstacle to the protection of organizing rights and modernization of labor law. For the nation's major management associations, labor law reform is a life and death issue, and nothing is more important to them than defeating revisions to the National Labor Relations Act (NLRA) intended to strengthen organizing rights. The failure of labor law reform in the 1990s also demonstrated that the labor movement would never win reform by means of an "inside the beltway" legislative campaign – designed to push reform through the US Senate – because the principal employer organizations would always exercise more influence in Congress. Instead,

Advances in Industrial and Labor Relations, Volume 20, 189–218

ISSN: 0742-6186/doi:10.1108/S0742-6186(2012)0000020010

unions must engage with public opinion, and convince union and nonunion members about the importance of reform. Thus far, however, they lack an effective language with which to do this.

Keywords: Labor law reform; employer opposition; Dunlop Commission; union decline; Clinton Administration; AFL-CIO

The recent campaign for the Employee Free Choice Act (EFCA) has demonstrated, yet again, that employer opposition is the greatest obstacle to the protection of organizing rights and modernization of labor law. For the nation's major management associations, labor law reform is a life and death issue: nothing is more important to them than defeating revisions to the National Labor Relations Act (NLRA) intended to strengthen organizing rights. The Chamber of Commerce, for example, described its campaign against EFCA as a "firestorm bordering on Armageddon" (Trottman, 2008). In this respect, the campaign was a virtual replay of every attempt at labor law reform under Democratic Presidents and Congresses since the Johnson Administration. On each occasion, no-holds-barred employer opposition has undermined labor's campaigns. Prior to the Obama Administration, the last effort to revise the NLRA took place under the President Clinton and Democratic Congress of 1992–1994. The Clinton Administration had hoped to trade to employers reforms intended to encourage employee involvement and alterative dispute resolution in exchange for reforms on organizing rights. But nothing was important enough for the business community to accept in return greater legal protection for employee free choice. After the Republican victories in the 1994 midterm elections, "all deals were off" and the Administration's attempts at reform ended in defeat and disarray, a consistent theme in labor law campaigns of the past half-century.

ORIGINS OF THE DUNLOP COMMISSION

With the election of Bill Clinton in November 1992, labor law reform was once again on the legislative agenda in Washington, DC. Clinton's victory provided labor an unexpected second chance to revise the NLRA after its narrow failure to do so under the Carter Administration in the late 1970s, when a five-week Republican filibuster killed a bill designed to facilitate organizing. Throughout the 1980s and early 1990s, hostile Republican

Administrations thwarted labor's legislative agenda. That changed with Bill Clinton's victory. Clinton announced his intention to sign a bill outlawing permanent replacement workers, but never got the opportunity to sign the striker replacement bill into law – a Republican filibuster in the Senate defeated it for a second time in July 2004 (Logan, 2004). Clinton's Secretary of Commerce Ron Brown and Secretary of Labor Robert Reich announced the formation of the Commission on the Future of Worker-Management Relations (Dunlop Commission) in March 1993. Reich wanted to transform workplace relations, move away from the adversarial model, and facilitate the diffusion of productivity-enhancing innovations – the "operative principle" behind the Dunlop Commission – in order to enable American firms to compete more effectively with their German and Japanese counterparts in an increasingly global economy. He believed that in the 90 percent of private sector workplaces were unions did not exist, some form of works council or employee committee arrangement independent of collective bargaining were essential. Only then would firms develop cooperative human resource strategies that took full advantage of workers' skills, empower front-line workers, embrace win–win strategies and create and maintain high skill, high-wage jobs. The "jury was still out," Reich believed, on whether unions would make the high performance model work in practice (Logan, 2007; Reich, 1998).

At the launch of the blue-ribbon presidential commission – whose 10 members included former Secretaries of Labor and Commerce and a non-partisan group from business, labor, and academia – Brown announced that, "Labor and management must become … advocates for an entirely new way for American firms to compete and win in the global marketplace" (United States Department of Labor, 1993). The Commission's "mission statement" was to investigate the state of workplace relations and offer recommendations in three areas: First, what new methods should be encouraged to enhance productivity through labor-management cooperation and employee participation? Second, what changes should be made in the law and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay? Third, what should be done to increase the resolution of workplace problems by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies? Political considerations demanded that these three main areas – employee participation, worker representation and collective bargaining, and regulation and litigation – be addressed simultaneously. The business community opposed reforms to facilitate organizing, but favored employee participation and alternative dispute

resolution (ADR). Labor opposed relaxing the prohibition of company unions and had serious reservations about ADR, but sought reform of the NLRA's representation procedures.

The choice of the Chair of the Commission, Harvard Professor and former Secretary of Labor, John Dunlop, was of critical significance. Widely regarded as one of the nation's premier mediators, the tough-minded Dunlop enjoyed the trust of labor and management leaders and was considered to have the consensus-building skills necessary to prevent the debate over labor law reform from degenerating into the pitch battle of previous campaigns. If anyone could forge a consensus between unions and management on labor law reform, many observers believed, it was the politically realistic Dunlop (Daily Labor Report, 1994f). At the inaugural meeting of the Commission, Dunlop's first question was whether it was possible to develop a more consensual framework for labor-management relations or whether the parties involved were perpetually "doomed" to repeat the current level of discord.[1] Other key members of the Commission included MIT Professor Tom Kochan – a leading expert on high performance work practices – and the Commission's counsel, Harvard law professor Paul Weiler, who had written extensively on labor law and employer opposition to unionization in North America. The Committee had two management representatives: Paul Allaire, CEO of the unionized Xerox Corporation, a firm with cooperative labor-management relations, and Kathryn Turner, President of nonunion Standard Technology, a small high-tech firm.[2]

After holding hearings in Washington, DC and around the nation, and considering written submissions from labor, management, and academic sources, the Dunlop Commission issued a "fact-finding report" in May 1994, and published its final recommendations six months later. Labor would have preferred that the Commission produce its final report in September or October 2004, but the Clinton Administration worried about the political consequences of producing a controversial report immediately before the November election. By the time the Commission issued its final report, it had held 21 hearings, heard from 411 witnesses and working parties, and considered almost 5,000 pages of transcript. But long before the publication of the final report – and before the Republican's 1994 sweeping election victories had rendered its policy recommendations irrelevant – it was clear that the Commission had failed to reach consensus between labor and management on any major issue and would not produce the much-hoped-for breakthrough on labor law reform. Before the 1994 elections, employer organizations saw little reason to countenance comprehensive

reform of the NLRA. After the Republicans gained control of Congress, the only legislative change they supported was a bill repealing Section 8(a)(2) – the NLRA's prohibition of employer-dominated organizations – a proposal that the Dunlop Commission had explicitly rejected (Dunlop, 1995).

A HISTORIC COMPROMISE?

Unions initially held high hopes for the Dunlop Commission. They believed that the current law encouraged employers to frustrate the desire of employees for union representation, and wanted the Commission to produce a powerful intellectual and moral justification for comprehensive overhaul of the NLRA's representation procedures. As a result of the uncertainty surrounding the outcome of the 1994 midterm elections, however, unions were less sure about precisely what they wanted from the Commission's final recommendations. If the midterm elections produced a poor result for the Democrats, thereby making labor law reform beyond reach, unions preferred that the Commission restrict itself to broad recommendations that would lead to the creation of a further commission modeled on the LaFollette Commission (which had investigated employer violations of workers' rights in the 1930s) rather than issue specific proposals for NLRA reform, which would go nowhere under a Republican-controlled Congress.[3] But if the election turned out well for Democrats, and thus labor planned to mount a legislative campaign in early 1995, it wanted the Commission to produce specific recommendations that would form the basis of that campaign. Labor proceeded on the assumption that it wanted concrete policy proposals that it could take to Congress in 1995 (McGlotten, 1994).

But unions were skeptical that employer associations would agree to any meaningful labor law reform proposals, and thus needed to consider their strategy if no agreement with management were possible. Dunlop's models for labor law reform were the Railway Labor Act of 1926 – in which labor and employers had agreed on the need for and structure of reform – and sites picketing during the Ford Administration (when he managed to get the building trades, contractors, and Congress to agree on legislation, only to have President Ford veto it, resulting in Dunlop's resignation as Secretary of Labor). Dunlop sought a report that would be realistic in legislative terms, even if he could not secure the business community's support for reform. But without the business community's support, a moderate report might establish a ceiling for future legislative efforts and thus undermine the long-term prospects for more comprehensive reform. Dunlop favored

recommendations that could be "sold" to the Clinton Administration and to moderate Republicans and conservative Democrats in Congress. However, unless the Commission was able to forge a consensus between unions and management, its recommendations would not define the ultimate compromise on labor law reform but merely establish a starting point for future negotiations. Thus, it was critical that the Commission did not "trade away" too many recommendations to the business community early in the process. If, as expected, Dunlop proved unable to broker a mutually acceptable agreement, labor hoped the Commission would produce a far-reaching agenda for reform, not tempered by Dunlop's sense of pragmatism. The Commission should not attempt to "render some grand political compromise," but produce recommendations that would address the fundamental shortcomings of the existing system of employee representation (Daily Labor Report, 1994f).

FRAMING THE DEBATE

The Commission could play a critical role by redefining the terms of the debate over labor law reform. If, as in the past, labor's allies in Congress promoted NLRA reform as a freestanding package designed to strengthen unions, it stood little change of success. Reforms needed to be sold as an integral part of an overall reform program designed to make the law a force for encouraging workplace democracy, both for its own sake and as a means of improving the performance of American firms. Labor had to frame its labor law reform proposals in broad economic terms and explain why its proposals are "consistent with President Clinton's 'vision' of the US economy and why organized employees enhance rather than detract from the competitive position of American business."[4] The central focus of the Clinton Administration was on economic recovery, so the challenge was to reconnect labor law reform and the health of the labor movement with the economic advancement of the American middle class.[5] The Commission needed to rebut employers' charge that unions undermined firms' competitiveness in a global economy, thereby damaging the economic health of the nation. Labor law reform and the resulting strengthened bargaining power of American workers was a necessary condition for economic recovery, as only then would gains in productivity and the pursuit of a high performance workplace translate into higher wages. If the Commission failed to make this argument, the Clinton Administration, like previous postwar Democratic Administrations, would treat labor law

reform as a peripheral issue of concern only to unions, and the business community, Republicans and conservative Democrats would attack reform as "special interest" legislation.

If the Commission were to recommend permitting forms of employee participation, it was essential that these recommendations include provisions ensuring the election of representatives and meaningful protection for union supporters from discrimination by employers. But labor was divided on this point. Many AFL-CIO-affiliated unions opposed any relaxation of Section 8(a)(2) prohibition, even if the recommendations included minimum standards for employer-initiated committees, and did not believe this was a price worth paying for reform of the NLRA's representation procedures (AFL-CIO, 1994).

The Commission's recommendations needed to go beyond employer violations of the law. Enhanced remedies for discriminatory discharges would protect employees' right to form a union, especially if they provided bargaining and arbitration rights, thereby ensuring that it was no longer beneficial for employers to violate the law. The weak remedies of the NLRA – limited to remedial, rather than punitive, penalties – offered little incentive for employers to comply with the law (Kleiner, 1994). The Commission's counselor, Harvard law professor Paul Weiler, estimated that one in twenty union supporters were unlawfully discharged during organizing campaigns, and the Commission itself had documented the significant increase in unfair management practices over the past three decades.[6] However, the real problem was that the current system permitted aggressive employer opposition that was entirely *within* the law, but nevertheless effectively undermined employee free choice. Employer interference with the right to organize could not be captured by a single measure, such as an increase the number of unfair practices in organizing campaigns. Thus, the ultimate aim of NLRA reform was to make organizing less perilous, and this could not be achieved only by imposing harsher penalties on employers who violated the law.[7] "Mere tinkering" with rules, procedures, and remedies would "not suffice," argued AFL-CIO Secretary Treasurer Tom Donahue (Daily Labor Report, 1994b).

BEYOND ILLEGAL CONDUCT

If the principle shortcoming of the NLRA were its failure to punish illegal conduct, the Commission's task would be a straightforward one. There was no mystery as to why employers violated the NLRA with such regularity:

crime paid great dividends, as most employers considered the law's paltry sanctions a small price to pay to prevent unionization. The financial penalties for violating the NLRA were smaller than the penalties for violating other federal and state employment laws (Kleiner, 2001). Since the 1970s, employers had increasingly appealed unfavorable NLRB decisions, correctly believing that the federal courts were more likely than the labor board to grant them a sympathetic hearing (Brudney, 1999). Labor did not want the Commission to dwell upon delays in the representation process or inadequate remedies. Treating these symptoms would have little impact on employee free choice. The Commission needed to go beyond the "easy issue" of employer violations to deal with the heart of the problem: the implacable hostility with which the vast majority of employers confronted efforts by their employers to form unions and exploited their exclusive control over employees at the workplace to thwart organizing campaigns. So long as there existed a state-administered system for securing representation, employers would remain free to make clear to employees that they opposed unionization and that employees would suffer adverse consequences, individually and collectively, if they chose to organize. Thus, in order to loosen employers' stronghold over the representation system, NLRA reforms needed to reduce fear during organizing.

UNPACKING EMPLOYER OPPOSITION

What explained the intensity of employer hostility to unionization? Employer opposition was explained in part by the significant wage gap between union and nonunion firms (Freeman, 1986; Freeman & Kleiner, 1990; Hirsch & Schumacher, 2001). Unionization meant higher labor costs and – in a system of decentralized bargaining with low union density in most sectors– significant financial incentives for employers to fight organization (Flanagan, 1999; Jacoby, 1991). The impact of the union wage premium was significant in mature and highly organized industries, but less important in newer industries that unions were attempting to organize. Just as important than the wage gap was the "control gap," that is, the fact that in the United States, unlike most liberal democracies, absent a union, employers enjoyed unilateral control of the workplace (Kaufman & Stephan, 1995; Logan, 2006a). But managers not only feared the competitive disadvantage associated with unionization – they feared for their own jobs. Managers whose plants were the target of successful union campaigns experienced setbacks in their own careers, including a four times greater likelihood of

dismissal (Freeman & Kleiner, 1990; Lewin & Sherer, 1993). Changes in the structure of corporate governance since the 1970s – which had heightened pressures to resist changes that threatened the maximization of short-term shareholder value – had also intensified employer opposition to unionization (Jacoby, 2001).

Employer opposition to unionization was also driven by an ideology not based on any tough-minded evaluation of "bottom line" effects, and this commitment to a union-free workplace had intensified since the 1970s, in tandem with the pressures of competitive product markets (Estreicher, 1993; Logan, 2002, 2006b). The major obstacle to workplace democracy was the "dominant management view in the US – as opposed to every other industrialized country – that worker organization is detrimental to the interests of the firm and that the desire of workers to organize represents a failure of management." Employer opposition to unionization in every other advanced democracy paled in comparison with that found in the United States.[8] Although antiunionism among American employers was based on rational economic and job-control considerations (Freeman, 1999; Voos & Mishel, 1992), it was bolstered by a powerful ideological commitment to a union-free environment. What was required to protect employee free choice, therefore, was nothing less than a comprehensive overhaul of the NLRA's representation procedures. Reform could not bring about a fundamental transformation in US corporate culture and could not force employers to be more accepting of unionization. But it could make the organizing process less confrontational and fearful for employees, and this is what unions wanted.[9]

REMEDIAL VERSUS FUNDAMENTAL REFORM

Labor worried that Chairman Dunlop had a "remedial mindset" – he believed that the substantive law regulating organizing was basically sound, or at least as sound as it could be given the Constitutional and other restraints on government regulation of employer behavior. The problem was a lack of prompt procedures and effective remedies against employer violations of the law. Such a mindset would likely lead to policy recommendations to strengthen the remedial and enforcement provisions of the law, but not recommendations to change the substantive rules governing representation proceedings. Labor provided "horror stories" that illustrated the often-insurmountable obstacles that confronted workers attempting to form unions, especially ones involved low-paid or minority workers, to

disavow Dunlop of his "remedial mindset." Employers used their control of the employment relationship to discourage unionization, and that fear and a sense of futility, not a lack of desire for representation, stood in the way of workers forming unions, labor argued. Richard Bensinger of the AFL-CIO stated that any employer "who expends maximum (and even not so maximum) effort to defeat a union can win, anytime anywhere – without breaking the law. The potency of implied threats, the futility of winning first contracts, fear of retaliation, combined with exclusive access to the workforce … is virtually unbeatable … . What this means is that right now it is the boss, not the workers, who decides whether there will be a union."[10]

FACT-FINDING REPORT

In June 1994, the Commission released its "Fact Finding Report,"[11] described by the *New York Times* as a "scrupulously balanced" document that had deliberately "sidestepped controversy" (1994). Business and labor groups both issued statements of praise, with each group stressing those findings that best suit their constituents. Not all reactions to the report were positive, however. The Associated Builders & Contractors cautioned that the final report would likely recommend a comprehensive overhaul of the NLRA, thereby instigating the "mother of all wars" over labor law reform, and even those business leaders who welcomed the interim report remained unconvinced that the Commission could broker a deal on reform (Daily Labor Report, 1994c; Uchitelle, 1994). Praise from labor sources was also far from universal. One labor attorney stated that the "lukewarm" findings were designed not to offend unions, employers "or anybody else who can influence an election" (Gibbons, 1994) Another labor activist called Dunlop's search for consensus a "fool's mission." The behavior of "virtually all" employers when confronted with attempts by their employees to form a union, he believed, indicated "how little support" existed within the business community for meaningful reform (Early, 1994). But Dunlop interpreted the generally favorable responses as an affirmation that he could negotiate an historic compromise (Victor, 1994). Unions saw no reason to dissuade Dunlop from attempting to broker his historic accord, but worried that he intended to offer recommendations aimed principally at "rogue employers." Dunlop believed that he could convince the business community to adopt a tougher stance on employer violations. Consistent with this approach, the report focused on illegal discharges, thereby conveying the impression that a "few bad apples" were causing most of the problems in

representation campaigns. But the fundamental problem with the NLRA system was not the *number* of law-breakers, but the provisions of the law that enabled *all* employers to intimidate workers *without* violating the law.

CARD CHECK AND FIRST CONTRACT ARBITRATION

The difference between Dunlop's "remedial" approach to reform and unions' "comprehensive" approach was most evident with respect to the issues of card check certification and first contract arbitration – issues that reemerged during the EFCA campaign. Most unions believed that the highest reform priority ought to be card check certification. As a result of employers' strong-arm tactics, the election process was ineffective at revealing the true desires of workers. SIEU president John Sweeney "strongly supported demonstration of majority status" by card check, while another union official argued that card check would eliminate an election process that had been corrupted by "union-busting employers and their consultants."[12] Unions had some grounds for optimism as certain members of the Commission had supported card certification in the past. But even the most pro-union member of the Commission, former UAW president Doug Fraser, believed that card check was unattainable. Dunlop, in particular, maintained that prompt representation elections were "superior" to card check and, despite their shortcomings, the best measure of workers' true desires.

Along with card check recognition, the single most important reform the Commission could recommend would be to make interest arbitration available as a last resort in *all* first contract cases (Daily Labor Report, 1994b). Unions provided extensive evidence of employer aggression during first contract negotiations (Ward, 1993). Employer opposition did not end with a union victory: one-third of newly certified unions failed to secure first contracts (Daily Labor Report, 1994e). Consultants advised employers that, "You haven't lost until you sign a contract," and as a result, the NLRA was being undermined by "management attorneys who specialize in bargaining to impasse rather than on reaching agreement."[13] First contract arbitration would remove from employers the argument that organizing was futile and limit their ability to exploit employees' fears about losing preexisting wages and benefits (Daily Labor Report, 1994b). The First Amendment limited the legal regulation of what employers could *say* to workers in organizing

campaigns; thus, the best way to protect employee free choice was to regulate what employers could *do* in ways that would make organizing less perilous and more beneficial for employees. First contract arbitration would do that if it were available in *all* cases as a last resort means of dispute resolution, not simply as a remedy for bad faith bargaining. Under such a system, employers could go through the motions of meeting with union officials at reasonable times and places, as it was frequently impossible for the NLRB to distinguish "bad faith bargaining" from "hard bargaining."

Dunlop favored first contract arbitration as a remedy for bad faith bargaining, believing that if arbitration were available in all cases the parties would seldom reach agreement because they would hold out for a better deal from the arbitrator. Dunlop's approach was flawed in two respects. First, bad faith bargaining was difficult to prove and well-counseled employers could bargain to avoid reaching an agreement *without* violating the law. Second, if interest arbitration were available *only* as a remedy for bad faith bargaining, workers would have no guarantee that organizing would produce an agreement and employers still would be able to argue that organizing was detrimental to their interests. Arguing that difficulties in first contract negotiations were the result of unrealistic promises unions had made during organizing campaigns, employer organizations rejected the need for first contract arbitration, which would result in less incentive to reach agreement, not more.[14]

SECTION 8(A)(2) REFORM

Everyone expected the Commission to produce proposals to modify Section 8(a)(2) – the law's prohibition of employer-dominated labor organizations – for the purpose of encouraging employee participation. The Clinton Administration had established the Commission with the goal of promoting employee committees in nonunion workplaces. Employers claimed that Section 8(a)(2) impeded the establishment of employee participation programs, especially after the NLRB's *Electromation* and *DuPont* decisions, which had ruled that certain participation committees violated the NLRA.[15] These decisions had created uncertainty about the legality of employee committees and provoked widespread calls for a change in the law to permit representation plans. The case for encouraging employee participation, employers argued, was compelling. Survey evidence demonstrated that employees favored greater workplace participation, participation improved quality and productivity, but firms worried that participation programs

might violate the law (Applebaum & Batt, 1994; Daily Labor Report, 1993c; Freeman & Rogers, 1999).

The AFL-CIO had to tread carefully on Section 8(a)(2) reform, as any modification of the provision would likely provoke outrage among its affiliates. Some pro-union commentators, in contrast, believed that Section 8(a)(2) reform might lead to an expansion of employee voice. In addition to the performance benefits associated with employee participation, Section 8(a)(2) reform would provide some collective voice, albeit an imperfect form, for the 90 percent of private sector employees who currently had no workplace representation. Given that most of these employees were unlikely to gain independent representation anytime soon, it made little sense to insist that employees must be represented by bona fide unions or else go without representation. If the choice were independent representation or unilateral employer decision-making, it would mean the latter for the overwhelming majority of workers. Employer-initiated employee committees – less likely to be motivated by union avoidance than in previous decades – might even lead to independent representation, as had happened in the 1930s. Most unions rejected these arguments. Their major concern was not that employees would see employer-dominated representation as something other than it was, but that they would settle for a lesser form of voice because of its easy accessibility in a system that exacted a high price for independent representation. Thus, so long as employers could make independent representation difficult to attain, they should not be permitted to offer the palliative of "employee involvement" (Freeman & Ostroff, 2000).

As recommendations on Section 8(a)(2) reform were virtually inevitable, the AFL-CIO insisted on minimum standards for workplace committees: the election of employee representatives, protection against employer discrimination, and card check recognition for unions attempting to organize the employer. Given the range of opinions within the Commission, minimum standards were preferable to deregulation without minimum standards and easier to achieve than a recommendation to leave Section 8(a)(2) as it was. Opposition within the labor movement to Section 8(a)(2) reform prevented the AFL-CIO from openly advocating this position. But if former UAW president Douglas Fraser were to lobby within the Commission for minimum standards, the end result might well be the status quo. The two management members of the Commission, Paul Allaire and Kathryn Turner, feared that minimum standards would become targets of litigation and undermine workplace flexibility, and thus they would likely oppose any recommendation for committees with standards. But Section 8(a)(2) revision was not that important to business community, whose

testimony had revealed no consistent position on reform, and thus labor suspected that this would not be the ultimate price that it would be asked to pay for reform of the NLRA's representation procedures.

WHAT DID EMPLOYERS WANT?

The Commission appeared uncertain about what the business community wanted from labor law reform. Paul Allaire asked the National Association of Manufacturers (NAM) and Labor Policy Association (LPA) to clarify their positions on Section 8(a)(2) reform, and stated that the Commission was having "some degree of difficulty understanding exactly what management would advocate in this area."[16] Noting that several Section 8(a)(2) cases were pending before the NLRB, both organizations were content to adopt a "wait and see" approach and give the board an opportunity to remove the barriers erected by its *Electromation* and *DuPont* decisions.[17] But the "*Electromation* debate" was largely a red herring. The decision of the *Bush-appointed* NLRB concerned an old-fashioned company union, not work teams, quality circles or other *legitimate* forms of employee involvement that employers alleged were under attack. Since the 1970s, the NLRB had decided on fewer than three Section 8(a)(2) cases per year and all but three had involved other unfair practices.[18] For Dunlop, however, *Electromation* was a useful red herring, one he hoped to trade to employers in return for other reforms.

The LPA and NAM provided no evidence that the existing law impeded employee involvement schemes.[19] Not one employer told the Commission that Section 8(a)(2) repeal was essential for the operation of its participation program. On the contrary, employer representatives stated that Taylorism was being replaced by participatory management, thereby refuting the notion that Section 8(a)(2) represented an obstacle to the diffusion of employer-controlled participation schemes. While stressing its commitment to employee involvement, for example, Toyota management acknowledged that nothing in the law had inhibited its team method of production at its pioneering facility in Georgetown, Kentucky. Certain employer-initiated participation committees that clearly violated Section 8(a)(2) had operated for decades without ULP complaints because of the absence of an aggrieved union, and survey evidence had demonstrated that employee participation programs were widespread and growing (Freeman & Rogers, 1999). Thus, *Electromation* and *DuPont* notwithstanding, Section 8(a)(2) had provided employers with considerable latitude to involve their employees in

production-related issues.[20] The fact that employers could point to "so many current, successful involvement programs" and were unable to provide evidence of any adverse Section 8(a)(2) decisions confirmed that the existing law was "*not* impeding legitimate involvement."[21] Thus, the law did not prohibit the positive forms of participation that employees wanted, but it did prohibit the autocratic forms of participation that some employers wanted. Section 8(a)(2) had prevented employers from using participation programs "as a vehicle to dominate or interfere with the formation or administration of a true, independent worker voice" (Daily Labor Report, 1994d, 1994g).

Employer groups offered one consistent position on reform: they dismissed any suggestion that they should accept reform of the NLRA's representation procedures as a *quid pro quo* for Section 8(a)(2) revision. Daniel Yager of LPA and Howard Knicely of TRW stressed the value of employee involvement and warned of the "dark cloud" cast by the *Electromation* decision.[22] But when questioned about the need for minimum standards if the law were relaxed to allow employee participation, Yager responded that such legal protections were unnecessary because these programs would flounder if they did not give employees a genuine voice. And when the Commission suggested that employee free choice should be strengthened in return for relaxing the prohibition of employer-dominated organizations, Knicely responded that employees already enjoyed a full-fledged right to organize. If employers wanted Section 8(a)(2) reform, they did not want it badly enough that they were prepared to accept in return revision of the law's representation procedures. With 90 percent of the private sector workforce union free, reforms to facilitate organizing were too high a price for employers to pay in return for reforms to encourage greater employee participation.

Employers wanted the Commission to address other labor policy issues. The NAM stressed the need to reduce "non-production costs," such as regulatory compliance, litigation costs and the escalating cost of health care. It extolled the virtues of high performance work systems and participatory management and suggested that nonunion companies were are the forefront of experimentation with employee involvement because of their "greater flexibility." Increased participation could reduce the extent and cost of government regulation of the employment relationship. The LPA repeated the same mantra of deregulation and high performance work systems based on "worker empowerment" – empowering employees to work more effectively for the company – and saw little role for federal mandates. "Worker empowerment" had spread, argued one employer representative, "without government mandates and without massive labor law reform."[23]

The business community also wanted employees to adjudicate employment discrimination claims through employer-created nonunion arbitration schemes. The Commission considered recommending such reforms, providing it could ensure safeguards to assure fairness of the process. The current system of vindicating employees' rights through the courts was costly and many workers were priced out of the system. But it could produce windfall recoveries for employees who made good witnesses and were lucky enough to get a sympathetic jury, which had a significant deterrent effect on employer behavior. The business community's preference for arbitration suggested that employers feared arbitrators' awards much less and may be less likely to obey the law under such a system. Civil rights and women's organizations would likely have resisted any recommendation to remove employment discrimination cases from the courts, as they had done on previous occasions, thereby making the entire issue a "non-starter" (Daily Labor Report, 1993a).

But more than advancing their own agenda, employer groups wanted to thwart labor's proposals. Employers saw no reason to countenance meaningful reform, as overwhelmingly they were the beneficiaries of the forty-year legislative stalemate. Dunlop seemed encouraged that employers were interested in discussing employee participation and ADR, while labor wanted to debate worker representation. But this indicated that no common ground existed for meaningful discussion, not that there existed an opportunity for a historic accord on reform. While not of one mind on Section 8(a)(2) revision, employer groups resolutely opposed reform of the NLRA's representation procedures.

The Chamber of Commerce and National Federation of Independent Business (NFIB) also criticized government regulation for being too complex, costly and burdensome, especially for small businesses. But the Chamber and NFIB were more avowedly antiunion than the NAM and LPA, arguing that unions were no longer necessary because of extensive government mandates and employer benevolence; that unions harmed small businesses; and that unions themselves bore responsibility for their decline in membership.[24] When former labor secretary Bill Usery stated that employers should welcome reforms designed to vindicate the principles of the NLRA, the Chamber responded that reform would prove disastrous for small businesses that "lacked the resources, knowledge and time it takes to defend against sophisticated union campaigns."[25] Standard Technology President Katherine Turner, one of the Commission's two management representatives, sympathized with their attacks on the myriad

of government regulations that failed to "add value" to the employment relationship.

The militancy of the Chamber and NFIB indicated the improbability that the Commission would achieve consensus on reform. Even if some large employers endorsed its final report, the NFIB, Chamber, and Business Roundtable would mobilize to defeat its recommendations on employee representation. The recent campaigns for striker replacement legislation and health care reform had illustrated how difficult it would be to enlist employer support for reform. The AFL-CIO had failed to recruit a single corporate ally for its campaign to ban permanent replacements, while the Chamber, NFIB, NAM, and LPA had organized to defeat its bill. And Clinton's failed health care campaign had demonstrated that a half way committed coalition of large employers was no match for the ferocity of the opposition of the small-business lobby (Logan, 2004).

No constituency existed for the Commission's recommendations among the business community because Section 8(a)(2) reform was simply not that important to employers.[26] While some employers wished to implement employee committees that skirted the edges of the NLRA prohibition, most had no desire to experiment with employee participation. Taylorism may have been discredited in the academy and among some top manufacturers – rhetorically, at least – but it was still practiced by the vast majority of employers, especially in retail and services (Lichtenstein, 2009; Morten, 2009). Celebrated within the academy, participatory management was still the exception rather than the rule. While employers claimed that they desired a high involvement, high commitment, high skill workforce, most were unwilling to cede authority over the terms and conditions of employment. Employers wanted unilateral control of the workplace through a union-free environment, and the current legal regime had gone a long way to delivering that goal. The Congressional impasse on labor law reform that had existed since the 1940s served the interests of nonunion employers, and thus, it was unlikely that they would support recommendations on Section 8(a)(2) revision, ADR or anything else, if the price they had to pay were greater protection for employees' right to form a union. Whatever slim prospects did exist for a deal ended with the Republicans sweeping victory in the 1994 midterm elections. LPA president Jeff McGuiness explained that "all deals are off, all swaps; whatever deals there might have been are now off … ADR is not worth the swap" (Daily Labor Report, 1994f).

"LABOR LAW DEFORMED"

Employer groups warned their members about falling into the "*Electromation* Trap." The *Electromation* decision would not significantly impede employer-initiated participation committees, but the "real danger" facing employers was that those arguing for Section 8(a)(2) revision would play into unions' hands by opening up the entire issue of NLRA reform. In the liberal political environment of 1993-94, it was a "risky business" for employers to urge reform to "correct perceived *Electromation* problems" (Daily Labor Report, 1993e, 1993f). After the 1994 elections, employers had even less reason to discuss reform: they no longer needed the Commission to deliver recommendations on Section 8(a)(2), as the Republican-controlled Congress could now provide them with a "straight legislative fix" on employee participation (Daily Labor Report, 1994f).

Employers associations repeatedly dismissed instances of no-hold-barred antiunion campaigns as anecdotal and unrepresentative (Daily Labor Report, 1994a). Homer Deakins, cofounder of one of the nation's largest management law firms, Ogletree-Deakins, argued that unions were losing NLRB elections because workers no longer wanted or needed them, and because unions could no longer represent their interests at the workplace. Structural changes favoring nonunion employment and rising job satisfaction levels among nonunion employees resulting from new methods of work organization and modern human resource policies best explained union decline over the past two decades, Deakins argued.[27] Tom Kochan accused Deakins of replaying the political battles of the 1970s and refusing to acknowledge the legitimate public interest in curbing illegal employer conduct. But when Kochan suggested that unions could add value to the employment relationship if employers cooperated with them, Deakins expressed deep skepticism. Former chairman of the Nixon NLRB, Edward Miller disparaged "labor law deformed" and questioned the need for an expansion of "union power."[28] The Associated Builders & Contractors found "no empirical evidence" of problems with the law's representation procedures, stating the public was "generally satisfied" with the status quo.[29]

Other employer representatives repeated the same antiunion themes. Unions were pursuing outdated, antagonistic relationships and stood as impediments to employee involvement, insisted Clifford Ehrlich, senior vice president for human resources for Marriott International. Relying on an employer-commissioned opinion poll, Ehrlich suggested that workers themselves no longer wanted unions, and argued that discriminatory

dismissals were "self-defeating" because they had the "opposite effect of galvanizing the remaining workers against the company."[30] Former Solicitor of Labor William Kilberg told the Commission that unions were seeking reform because they were unable to win representation elections; union loses were not due to higher levels of employer coercion than existed during periods when they were more successful; existing legal remedies for unfair practices were adequate and expeditious; employer illegalities were the result of uncounseled employers, not inadequate laws; and excluding employers and consultants from the representation process would lead to uninformed choices by employees (Daily Labor Report, 1993a, 1994a). When Tom Kochan asked what might be done to reduce the significant resources spent on resisting unionism and high levels of antagonism in organizing campaigns that diminished trust between labor and management, management representatives had no suggestions. When Dunlop asked for empirical evidence demonstrating that it was uncounseled employers who committed unfair practices, Kilberg suggested that the fact that unions won more elections in smaller units supported his theory because these employers were more likely to lack counsel and commit unfair practices, thereby turning workers against them. Kilberg's solution was not greater regulation, but more guidance to ensure that employers knew what was and was not permissible behavior during organizing campaigns.[31] Ehrlich and Kilberg both dismissed the need for NLRA revisions designed to protect employee choice.

"TAKING OFF THE GLOVES"

To coordinate employer opposition to reform, a coalition of trade and professional associations, corporate organizations and business groups formed the "Voice for the American Workplace" (VAW), whose "sole purpose" was to "monitor the activities of the Dunlop Commission and publicize its deliberations and findings to the American public." Leading members included the NFIB, Associated Builders & Contractors and Printing Industrial of America. VAW published a newsletter, co-sponsored a seminar on the future of worker-management relations, and encouraged its members to make submissions to the Commission. Warning that labor was seeking to "Europeanize" US labor law, VAW concluded that the "prospects for union-style labor law reform are good in the next Congress." VAW executive director Francis Coleman believed that the composition of the Commission should give employers "cause for grave concern," and

stressed of the need to "balance" its record through the submission of employer testimony, which would expose its "stacked pro-union bias" and challenge its "special interest proposals." Coleman feared the final report would serve as a "stalking horse for labor law reform AFL-CIO style," but stated that VAW would "take off the gloves" to defeat pro-union proposals.[32]

"DEAD ON ARRIVAL"

The Commission produced an initial draft of its final report in November 1994. The recommendations on employee representation were as follows: statutory authority for the NLRB to postpone hearings on disputed issues until after elections; prompt elections – preferably within two weeks; mandatory 10(j) injunctions for discharge or discrimination in the election or first contract stage; a form of arbitration of first contracts that had not been resolved in mediation; and a redefinition of supervisors and managers to reduce exclusions from collective bargaining rights.[33] Although marginally better than what labor had expected a few months earlier, the recommendations on employee representation fell far short of what it had originally hoped for (Silberman & Gold, 1994). Even if every proposal were enacted into law, the impact on employee free choice would be minimal. The report also criticized some of labor's recommendations. Thus, if Democrats made gains after the 1996 or 1998 elections, thereby allowing labor law reform to gain political currency again, unions would have to carry the burden of advocating measures that the Commission had rejected.

The November 1994 election fundamentally altered the dynamics of the Commission. After the Republican victory, which gave the GOP majorities in the House and Senate, labor feared that the Commission's management members, Paul Allaire and Kathryn Turner, might push to weaken the recommendations on employee representation. Dunlop's consensus-building strategy had involved not only getting both labor and management to endorse the report, but also ensuring that all 10 members of the Commission signed off on *every* recommendation. Initially, it appeared unlikely that Allaire or Turner support collective bargaining as the preferred way of achieving employee representation. By the end of the consultation process, Allaire had softened his initial opposition to labor law reform. Allaire had a great respect for Dunlop, who was able to get him to accept many proposals, even as he came under pressure from the business community to renounce the report. Turner was more ideologically opposed to the

Commission's "pro-union" recommendations; she had been appointed in November 1993 as a replacement for Stanford law professor Bill Gould, who had been appointed chairman of the NLRB. Labor viewed Turner – president of a small, nonunion high-tech company – as the "Chamber's representative" on the Commission. Had the election not rendered the final report irrelevant, it is unlikely that Turner would have endorsed the Commission's recommendations on employee representation. She had become more vocal in opposing union-supported recommendations in the lead up to the final report, and labor believed that she was acting at the behest of the Chamber. Several other members of the Commission were demoralized by the midterm election result and its implications for the final recommendations. Knowing the Commission's work was headed for the files to collect dust, some members of the Commission effectively "threw in the towel," recognizing that even its modest recommendations would never see the light of day.

AFTERMATH

When the Commission issued its final report in January 1995, the AFL-CIO lamented that the document fell "far short" of what was required to protect employee free choice. It had four main criticisms. First, although the Commission had found substantial evidence of employer interference, it proposed no new penalties for violators. Second, despite finding fault with the current representation process, the Commission did not recommend card certification, establish firm deadlines for representation elections, or recommend allowing union organizers into the workplace,[34] and limited itself to authorizing pre-hearing elections and recommending that elections be conducted "promptly." Third, it failed to recommend expanding the subjects for bargaining, increase the penalties for bad faith bargaining, or balance the economic weapons available to parties should they be unable to reach agreement. Finally, despite finding a great expansion of contingent work that had contributed to workplace insecurity and income inequality, the Commission failed to minimize the incentives for employers to shift to temporary, part-time, or contract employees (Swinnerton & Wial, 1995).

In stark contrast with their generally favorable comments on the fact-finding report six months earlier, labor and management representatives roundly condemned the final report. The final report provoked "immediate condemnation from both business and labor – for entirely different reasons. What labor liked, business called 'disappointing' and 'flawed.' What

business liked was generally condemned by labor'' (Swoboda, 1995). *Industry Week* (1995) believed that the final recommendations had ''offended everyone.'') The NAM called the proposal for first contract arbitration the ''death knell of democratic collective bargaining,'' while the LPA lamented a ''lost opportunity'' to tackle the real obstacles to enhancing workplace competitiveness.[35] The Chamber expressed its ''bitter disappointment,'' while another employer group believed that the Commission had attempted to split the business community by ''angling'' for the support of those employers adversely affected by the *Electromation* and *DuPont* decisions. But it was confident that employers would see through this transparent strategy and reject the ''limited fix'' on employee participation and ''unhelpful thoughts'' on ADR (Daily Labor Report, 1995b; Verdisco & Cain, 1995). Unions were equally critical. SEIU President John Sweeney lambasted the recommendation on Section 8(a)(2) as a ''grave step backward,'' while CWA President Morton Bahr regretted the failure to tackle ''widespread worker fear and employer intimidation'' (Daily Labor Report, 1995b).

Dunlop acknowledged that the interested parties might deem the recommendations ''below their expectations,'' but remained hopeful that they would find ''something that they liked'' and use the report as *starting point* for further dialogue (Daily Labor Report, 1995a). Press interest in the recommendations focused almost exclusively on the proposal for clarifying Section 8(a)(2) (Daily Labor Report, 1995b). In the conservative political climate of 1995, it was inevitable that the recommendations on employee participation would dominate media coverage of the final report, while those on representation and collective bargaining received short shrift. After the November elections, the AFL-CIO had anticipated that labor adversaries would seize upon any Section 8(a)(2) recommendation to advance their antiunion agenda, and disregard those recommendations they disliked. With antiunion Republicans controlling the Congress, the Commission could not prevent the report from being misused, no matter how much it protested that its recommendations must be treated as a package.[36] Commission members seemed dismayed by the reaction to the final report. Tom Kochan warned against piecemeal reform: ''Any effort to pick and choose only those changes in the law that suits one party's narrow self-determined interest will intensify the polarization that the full set of recommendations is designed to reduce.'' Kochan concluded that only when public opinion demanded reform would we see a breakthrough in the paralysis that had blocked every attempt to modernize America's increasingly antiquated labor laws.[37]

Labor initially had high expectations for the Dunlop Commission. Pro-collective bargaining academics and former labor secretaries dominated its ranks[38] and a Democratic President and Congress stood by waiting to act on its policy recommendations. But their hopes were soon dashed. Labor's allies never got to the stage of introducing a bill based on the recommendations of the Commission. Dunlop's search for consensus and his determination to produce a "politically realistic" report had put paid to labor's hopes of getting a document that would make a powerful moral and intellectual case for comprehensive overhaul of the NLRA. After the Commission published its final report and the AFL-CIO criticized its "pallid recommendations," one conservative critic accused unions of feigning disapproval in order to make its recommendations appear more balanced.[39] But union disappointment was real. When the Commission was first announced, the AFL-CIO wanted the publication of its final report to be a major media event, with endorsements from both traditional and non-traditional allies. By the time the Commission was preparing to publish its recommendations, the AFL-CIO hoped that the final report would attract little attention from the mainstream press. In this respect, it got what it wanted. The final report received little media coverage, with most reports simply noting that, after the Republican's election victory, its recommendations were effectively "dead on arrival" (*Industry Week*, 1995). One academic who had testified before the Commission stated that the final report "sunk leaving barely a ripple."[40] The AFL-CIO did not distribute a detailed critique either to its affiliates or to the press, because it would make the report appear a crushing defeat for labor. Instead, it simply expressed its disappointment with the failure to come to terms with the defects of the law and its objections to the recommendation on Section 8(a)(2) (AFL-CIO, 1995).

On January 30, 1995, just three weeks after the publication of the final report, Representative Steve Gunderson (R-WI) and Senator Nancy Kassebaum (R-KS) reintroduced the Teamwork for Employees and Management (TEAM) Act, which in essence would have repealed the NLRA's prohibition of company unions. Within the space of a few months, labor's lobbying efforts had shifted from advocating comprehensive reform of the NLRA to fighting against a bill that threatened its very existence. The TEAM Act narrowly passed the House of Representatives in September 1995 and the Senate in July 1996 (Daily Labor Report, 1996; Kaufman, 1999). After what one union activist called "frantic lobbying" on the part of unions, President Clinton vetoed the TEAM Act on July 30, 1996 (Early, 2001). The heady optimism of the early days of the Dunlop Commission soon became a distant memory.

TRY, TRY AGAIN

After the debacle of the Dunlop Commission, disaster of the 1994 midterms, and election of reformer John Sweeney to the Presidency of the AFL-CIO in 1995 – which resulted in a greater emphasis on organizing and less on national legislative campaigns – NLRA reform was a dead political issue for the rest of the decade. But organizing under NLRB elections remained extraordinarily difficult, with the number of workers gaining union recognition through official channels reduced to a trickle. Thus, in the late 1990s, senior AFL-CIO officials drew up legislation that formed the basis of the EFCA. After its disastrous experience with an open-ended presidential commission (i.e., one with a mandate asking it *what* to do about labor policy) in the 1990s, labor was determined that, next time round, it would have a bill ready to go if and when reform became politically possible again. After the 2006 midterm elections – which produced Democratic majorities in the House and Senate – EFCA won majority support in both chambers in 2007, though well short of the super-majority of 60 required to force an up-or-down vote in the Senate. With the election of a pro-union President and substantial Democratic majorities in Congress in 2008, labor believed that NLRA reform was attainable. By early 2010, however, its hopes had been dashed. The Republican victory in Ted Kennedy's Massachusetts Senate seat on January 19, 2010 was the night that EFCA died. While the immediate cause of labor's defeat was its inability to win 60 votes in the Senate, the underlying cause was determined and cohesive opposition from the business community. In the early 2010s the prospects for reform are worse than they were during the Clinton era, as there is now nothing that employers would trade in return for stronger organizing rights. And the crisis of union membership continues, which will make it even more difficult to mount national legislative campaigns in the future. Private sector union density is now perilously close to five percent, and public sector union members outnumber their private sector counterparts for the first time. While no one in the labor community is willing to say so, it appears that NLRA reform is a dead letter for the foreseeable future.

ACKNOWLEDGEMENT

The author would like to thank Harry Arthurs, David Brody, James Brudney, Paul Clark, Cynthia Estlund, Fred Feinstein, Douglas Fraser, Julius Getman, John Godard, William Gould, Richard Hyman, Thomas

Kochan, Nelson Lichtenstein, Wilma Liebman, Ray Marshall, Sara Slinn, George Strauss, and Paula Voos for reading previous versions of this chapter.

NOTES

1. David Silberman, Memo to Lane Kirkland, Thomas Donahue, James Baker, Charles McDonald and Laurence Gold, RE: Dunlop Commission Meeting, May 24, 1993. AFL-CIO Archives, Legal Department, Unprocessed collection. Unless otherwise stated, all manuscript sources are from this collection.

2. The full list of members of the Commission was as follows: John T. Dunlop (Chair, Professor Emeritus, Harvard University and former Secretary of Labor), Paul Allaire (Chairman of the Board of Directors, and CEO, Xerox Corporation), Douglas Fraser (Ex-President, United Auto Workers and Professor of Labor Studies, Wayne State University), Richard Freeman (Professor of Economics, Harvard University), Thomas Kochan (Professor of Management, Massachusetts Institute of Technology), Juanita Kreps (Former Secretary of Commerce and Professor of Economics, Duke University), Ray Marshall (Professor of Economics and Public Affairs, University of Texas and former Secretary of Labor), William Usery (former Secretary of Labor), Kathryn Turner (President, Standard Technology, Inc) and Paula Voos (Professor of Economics and Industrial Relations, University of Wisconsin). Paul Weiler was chief counsel to the Commission. Turner had replaced William Gould (Professor of Law, Stanford University) after Gould was appointed to chair of the National Labor Relations.

3. On this point, see Lichtenstein (2007).

4. Ron Carey, General President, International Brotherhood of Teamsters, letter to William H. Wynn, President, United Food and Commercial Workers, December 16, 1992.

5. John J. Sweeney, International President, Service Employees International Union, letter to Rich Trumka, AFL-CIO Labor Law Reform Committee, December 23, 1992.

6. Unfair employer practices had increased in number from 9,067 per year in 1960 to 24,075 in 1990. During the same 30-year period, union-organizing activity had declined significantly. For a conservative critique of Weiler, see LaLonde and Meltzer (1991).

7. John J. Sweeney, International President, Service Employees International Union, letter to Rich Trumka, AFL-CIO Labor Law Reform Committee, December 23, 1992.

8. Statement of David M. Silberman, Director, AFL-CIO Task Force on Labor Law, Before the Commission on the Future of Worker-Management Relations, August 10, 1994; Kochan, (2003); Strauss (1995).

9. Statement of David M. Silberman, AFL-CIO Task Force on Labor Law, Before the Commission on the Future of Worker-Management Relations, August 10, 1994; AFL-CIO (1994); Estlund (2002).

10. Statement of Richard Besinger, Executive Director, AFL-CIO Organizing Institute, Before the Commission on the Future of Worker-Management Relations, August 10, 1994.

11. *Fact Finding Report issued by the Commission on the future of Worker-Management Relations*, June 2, 1994.

12. John J. Sweeney, International President, SEIU, letter to Rich Trumka, AFL-CIO Labor Law Reform Committee, December 23, 1992; David P. Koppelman, International Union of Operating Engineers, letter to Lawrence J. Cohen, General Counsel, Building and Construction Trades Department, May 17, 1993.

13. Kenneth L. Coss, International President, United Rubber Workers International Union, letter to Elmer Chatak, President, Industrial Union Department, AFL-CIO, December 10, 1992.

14. Statement of Andrew M. Kramer, Appearing on Behalf of 'the Management Lawyers Working Group,' before the Commission for the Future of Worker-Management Relations, September 8, 1994.

15. *Electromation, Inc*., 309 NLRB 990 (1992), enforced, 35 F.3d 1148 (7th Cir. 1994); 311 NLRB 893 (1993). Daily Labor Report (1993d).

16. Hearing of the Dunlop Commission, September 8, 1994.

17. Daily Labor Report (1994b); statement of Daniel V. Yager, Assistant General Counsel for Labor Policy Association, Appearing on Behalf of 'The Working Group,'' Before the Commission for the Future of Worker-Management Relations, January 19, 1994.

18. Testimony of David M. Silberman, Director, AFL-CIO Task Force on Labor Law, Before the Senate Committee on Labor and Human Resources on S. 295, February 9, 1995.

19. Statement of David M. Silberman, Director, AFL-CIO Task Force on Labor Law, Before the Commission on the Future of Worker-Management Relations, August 10, 1994.

20. Testimony of David M. Silberman, Director, AFL-CIO Task Force on Labor Law, Before the Senate Committee on Labor and Human Resources on S. 295, February 9, 1995. In support of 8(a)(2) reform, see Estreicher (1994).

21. Testimony of David M. Silberman, Director, AFL-CIO Task Force on Labor Law, Before the Senate Committee on Labor and Human Resources on S. 295, February 9, 1995.

22. Statement of Howard V. Knicely Before the Commission on the Future of Worker/Management Relations on Behalf of the Labor Policy Association, September 8, 1994; Statement of Steven M. Darien, Vice President, Human Resources, Merck & Company, Inc. for the Labor Policy Association Before the Commission on the Future of Worker-Management Relations, August 10, 1994.

23. Statement of Harold Coxson Before the Industrial Relations Research Association, Washington, D.C. Chapter, Issues Forum: ''The U.S. System of Workplace Representation: Is it Broken? How Should We Fix It?'' November 10, 1993.

24. Statement of the U.S. Chamber of Commerce by William A. Stone Before the Commission on the Future of Worker-Management Relations, December 15, 1993.

25. Statement of National Federation of Independent Business on ''Small Businesses and the Work Place,'' Before the Commission on the Future of Worker/Management Relations, December 15, 1993; Daily Labor Report (1993b).

26. Daily Labor Report (2003); J. Peter Nixon, Department of Public Policy, Memo to John J. Sweeney, Service Employees International Union, RE: Meeting of the Staff Group of the Collective Bargaining Forum, September 2, 1992.

27. A few academic studies have stressed declining employee desire for unionization, rather than heightened employer resistance, as a principal cause of union decline. See Farber and Krueger (1993); Farber and Western (2001); R.

28. Statement of Edward B. Miller, Counsel, Seyfarth, Shaw, Fairweather and Geraldson, Before the Commission on the Future of Worker/Management Relations, September 8, 1994.

29. Statement of Joe Ivey, 1993 President, Associated Builders and Contractors, Before the Commission on the Future of Worker-Management Relations, Speaking for the Merit Shop, January 5, 1994.

30. Statement of Clifford J. Ehrlich, Senior Vice President, Human Resources, Marriott International, Before the Commission for the Future of Worker/Management Relations, February 24, 1994; *Daily Labor Report* (1994a).

31. Statement of Kilberg (1994).

32. Francis T. Coleman, Executive Director/Counsel, Voice for the American Workplace, letter to LABNET Conference Participants (no date); *Voice for the American Workplace*, Volume 1, No. 2 (March 1994), p. 6.

33. Thomas A. Kochan, "Using the Dunlop Report to Full Advantage: A Strategy for Achieving Mutual Gains."

34. The exception was privately owned public spaces, such as shopping malls and public parking lots. Here, the Commission was recommending the reversal of the Supreme Court's *Lechmere* decision (139 LRRM 2225). Commission on the Future of Worker-Management Relations, *Report and Recommendations*, p. 23.

35. "LPA Reacts to Dunlop Commission Report," Labor Policy Association, Press Release, January 9, 1995.

36. Douglas Dority, International President, United Food and Commercial Workers, letter to Paul Allaire, Chairman and CEO, Xerxox Corporation, December 28, 1994; John T. Dunlop, "Comments on S.245 and H.R.743: Teamwork for Employees and Managers Act, February, 14, 1995.

37. Thomas Kochan, Professor of Management, Massachusetts Institute of Technology, letter to the editor, *Regulation: The Cato Review of Business & Government* (Volume 18, Number 2).

38. Leo Troy, "Sacred Cows and Trojan Horses: The Dunlop Commission Report," *Regulation: The Cato Review of Business & Government* (Volume 18, Number 1).

39. Northrup (1996); Testimony of Herbert R. Northrup, Prepared for the Commission on the Future of Worker-Management Relations, September 8, 1994.

40. Theodore St. Antoine, Professor of Law, University of Michigan, letter to the editor, *Regulation: The Cato Review of Business and Government* (Volume 18, Number 2).

REFERENCES

AFL-CIO. (1994, February). The new American workplace: A labor perspective.

AFL-CIO. (1995). Dunlop Report pick right targets but falls short. *Press Release*, January 9. Washington, DC.

Applebaum, E., & Batt, R. (1994). *The new American workplace* (p. 152). Ithaca, NY: Cornell University Press.

Brudney, J. (1999). Judicial hostility toward labor unions? Applying the social background model to a celebrated concern. *Ohio State Law Journal*, *60*, 1675–1789.

Daily Labor Report. (1993a). Academics call for consistent national policy on labor, rather than strict labor law reform. *Daily Labor Report*, October 27, p. C-3.

Daily Labor Report. (1993b). Need for change in labor law debated before Dunlop Commission. *Daily Labor Report*, December 16, p. A-15.

Daily Labor Report. (1993c). Dunlop commission told of connection between participation, competitiveness. *Daily Labor Report*, June 22.

Daily Labor Report. (1993d). *Electromation* creates risks for employers who set up employee participation groups. *Daily Labor Report*, May 26, p. AA-1.

Daily Labor Report. (1993e). Former NLRB Chairman Miller calls *Electromation* problem 'myth'. *Daily Labor Report*, October 20, p. A-5.

Daily Labor Report. (1993f). Reich Commission reforms likely to favor organized labor, former NLRB counsel says. *Daily Labor Report*, April 29, p. A-16.

Daily Labor Report. (1994a). Impact of labor law on organizing debated before labor-management panel. *Daily Labor Report*, February 25, p. A-7.

Daily Labor Report. (1994b). AFL-CIO, employers spar over reform of labor laws before Dunlop Commission. *Daily Labor Report*, September 9, p. C1.

Daily Labor Report. (1994c). Business reaction to Dunlop Report ranges from mild skepticism to praise. *Daily Labor Report*, June 3, p. AA-6.

Daily Labor Report. (1994d). Need for change to labor law debated before Dunlop Commission. *Daily Labor Report*, January 20.

Daily Labor Report. (1994e). Need for ongoing bargaining, employee training stressed during Atlanta hearing by Dunlop Panel. *Daily Labor Report*, January 12, p. A-8.

Daily Labor Report. (1994f). Task of Dunlop Panel to meld interests of business, labor. *Daily Labor Report*, November 28, p. C-1.

Daily Labor Report. (1994g). Testimony on employee committees highlights Dunlop Commission hearing. *Daily Labor Report*, January 6, p. A-12.

Daily Labor Report. (1995a). Dunlop Panel urges clarification of Section 8(a)(2), expedited elections. *Daily Labor Report*, January 10, p. AA1.

Daily Labor Report. (1995b). Labor, business both critical of Dunlop Commission report. *Daily Labor Report*, January 10.

Daily Labor Report. (1996). Clinton vetoes TEAM Act despite pleas from business for passage. *Daily Labor Report*, August 5, p. D-19.

Daily Labor Report. (2003). Dunlop Commission findings document need for comprehensive reform, AFL-CIO says. *Daily Labor Report*, June 3, p. AA-4.

Dunlop, J. T. (1995). Comments on S.245 and H.R.743: Teamwork for employees and managers act. February 14. Commission on the Future of Worker-Management Relations, Washington, DC.

Early, S. (1994). Worker abuse is documented; now, action. *Los Angeles Times*, June 14.

Early, S. (2001). How stands the union? *The Nation*, January 4.

Estlund, C. (2002). The ossification of American labor law. *Columbia Law Review*, *102*, 1527–1612.

Estreicher, S. (1993). Employee voice in competitive markets. *The American Prospect*, *14*, 48–57.

Estreicher, S. (1994). Employee Involvement and the 'Company Union' Prohibition: The Case for Partial Repeal of Section 8(a)(2) of the NLRA. *New York University Law Review*, *69*, 125.

Farber, H., & Krueger, A. (1993). Union membership in the United States: The decline continues. In B. Kaufman & M. Kleiner (Eds.), *Employee representation: Alternatives and future directions*. Madison, WI: Industrial Relations Research Association.

Farber, H., & Western, B. (2001). Accounting for the decline of unions in the private sector. *Journal of Labor Research*, *22*, 459–485.

Flanagan, R. J. (1999). Macroeconomic performance and collective bargaining: An international perspective. *Journal of Economic Literature*, *37*, 1150–1175.

Freeman, R. (1986). The effect of union wage differential on management opposition and union organizing success. *American Economic Review*, *78*, 92–96.

Freeman, R. (1999). Do unions make enterprises insolvent? *Industrial and Labor Relations Review*, *52*, 510–527.

Freeman, R., & Kleiner, M. (1990). Employer behavior in the face of union organizing drives. *Industrial & Labor Relations Review*, *43*(4), 351–365.

Freeman, R., & Ostroff, C. (2000, December). *The anatomy of employee involvement and its effects on firms and workers*. National Bureau of Economic Research Working Paper No. 8059. Cambridge, MA.

Freeman, R., & Rogers, J. (1999). *What workers want*. Ithaca, NY: Cornell University Press.

Gibbons, T. (1994). Labor laws should reflect reality. *Chicago Tribune*, June 30.

Hirsch, B. T., & Schumacher, E. (2001). Private sector union density and the wage premium: Past, present, and future. *Journal of Labor Research*, *22*, 433–457.

Industry Week. (1995). Dead on arrival. *Industry Week* (Vol. 244, Issue 3), February 6, p. 56.

Jacoby, S. (1991). American exceptionalism revisited: The importance of management. In S. Jacoby (Ed.), *Masters to managers: Historical and comparative perspectives on american employers*. New York, NY: Columbia University Press.

Jacoby, S. (2001). Employee representation and corporate governance: A missing link. *University of Pennsylvania Journal of Labor and Employment Law*, *3*(3), 449–489.

Kaufman, B. E. (1999). Does the NLRA constrain employee involvement and participation programs in nonunion companies? A reassessment. *Yale Law & Policy Review*, *17*, 729–811.

Kaufman, B. E., & Stephan, P. (1995). The role of management attorneys in union organizing campaigns. *Journal of Labor Research*, (Fall), 439–454.

Kilberg, W. J. (1994). Statement before the commission on the future of worker-management relations. *Employee Relations Law Journal*, *20*(1), 17–28.

Kleiner, M. (2001). Intensity of management resistance: Understanding the decline of unionization in the private sector. *Journal of Labor Research*, *22*(3), 519–540.

Kleiner, M. M. (1994). What will it take? Establishing the economic costs to management of noncompliance with the NLRA. In S. Friedman, R. W. Hurd, R. A. Oswald & R. L. Seeber (Eds.), *Restoring the promise of american labor law* (pp. 137–146). Ithaca, NY: ILR Press.

Kochan, T. (2003). The future of British unions: A perspective from the US. In H. Gospel & S. Wood (Eds.), *The future of british unions*. London, UK: Routledge.

LaLonde, R. J., & Meltzer, B. D. (1991). Hard times for unions: Another look at the significance of employer illegalities. *University of Chicago Law Review*, *58*, 953–1014.

Lewin, D., & Sherer, P. (1993). Does strategic choice explain senior executives' preferences on employee voice and representation? In M. Kleiner & B. Kaufman (Eds.), *Employee representation: Alternatives and future directions* (pp. 235–263). Madison, WI: Industrial Relations Research Association.

Lichtenstein, N. (2009). *The retail revolution: How Wal-Mart created a brave new world of business*. New York, NY: Metropolitan Books.

Lichtenstein, N. (2007). Labor and the new Congress: A strategy for winning. *Dissent*, *54*(Spring), 64–70.
Logan, J. (2002). Consultants, lawyers and the union free movement in the United States since the 1970s. *Industrial Relations Journal*, *33*(3), 197–214.
Logan, J. (2004). Labor's last stand in national politics? The campaign for striker replacement legislation, 1990–1994. In B. Kaufman & D. Lewin (Eds.), *Advances in industrial and labor relations* (pp. 197–256). London, UK: Elsevier.
Logan, J. (2006a). The union avoidance industry in the United States. *British Journal of Industrial Relations*, *44*(4), 651–675.
Logan, J. (2006b). Lifting the veil on anti-union campaigns: Employer and consultant reporting under the LMRDA, 1959–2001. In B. Kaufman & D. Lewin (Eds.), *Advances in industrial and labor relations* (Vol. 15, pp. 295–332). London, UK: Elsevier.
Logan, J. (2007). The Clinton administration and labor law: Was comprehensive reform ever a realistic possibility? *Journal of Labor Research*, *28*, 609–628.
McGlotten, R. M. (1994). Director, Department of Legislation, letter to Members of Congress, July 18, 1994.
Morten, B. (2009). *To serve god and Wal-Mart: The making of Christian free enterprise*. Cambridge, MA: Harvard University Press.
New York Times. (1994). A soothing report on labor relations (Editorial). *New York Times*, June 7.
Northrup, H. R. (1996). The Dunlop Commission report: Philosophy and overview. *Journal of Labor Research*, *17*(1), 1–8.
Reich, R. (1998). *Locked in the cabinet*. New York, NY: Random House.
Silberman, D., & Gold, L. (1994). Memorandum to Doug Fraser, RE: Draft Report, November 25.
Strauss, G. (1995). Is the new deal system collapsing? With what might it be replaced?. *Industrial Relations*, *34*, 329–349.
Swinnerton, K., & Wial, H. (1995). Is job stability declining in the US economy?. *Industrial and Labor Relations Review*, *48*, 293–304.
Swoboda, F. (1995). Panel urges labor law changes. *Washington Post*, January 10.
Trottman, M. (2008). Showdown looms over 'card check' union drives. *Wall Street Journal*, November 29.
Uchitelle, L. (1994). A call for easing labor-management tension. *New York Times*, May 30, p. 33.
United States Department of Labor. (1993). News release: "Brown and Reich announce worker-management commission. March 24.
Verdisco, R., & Cain, M. (1995). Dunlop Report hold few surprises. *Discount Merchandiser*, *35*, 2.
Victor, K. (1994). Try, try again. *National Journal*, July 9, pp. 1624–1625.
Voos, P., & Mishel, L. (Eds.). (1992). *Unions and economic competitiveness*. Armonk, NY: M.E. Sharpe.
Ward, J. (1993). Worker-management panel gets earful in Louisville. *Louisville Courier-Journal*, September 23.