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INSTITUTIONS OF COLLECTIVE BARGAINING
Revised Chapter 12 of
Human Resource Management:
An Economic Approach

by

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LOS ANGELES

INSTITUTIONS OF COLLECTIVE BARGAINING

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of

Human Resource Management: An Economic Approach

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Chapter 12: Institutions of Collective Bargaining

In previous chapters, although there have been references to the union sector from time to time, unions and collective bargaining have not been explicitly analyzed. Unions represented about 18% of American wage and salary workers as of the early 1990s. They lost substantial membership and strength during the first half of the 1980s, although the proportion of the workforce "organized," i.e., represented by unions, had been declining gradually since the mid 1950s. Yet, despite this downward trend, unions retained a significant influence on the employment relationship in a number of private industries and in government (especially at the state and local levels).

Historically, the union sector has been the source of much innovation in the employment relationship. The widespread use of fringe benefits, for example, was popularized initially at unionized firms, and then spread throughout the economy.[1] Unions have often played an important role in the political process. For example, at the federal level, the passage of occupational health and safety regulation legislation (OSHA) in 1970 was largely the product of union lobbying efforts.[2] Similarly, the establishment of federal regulation of private pension plans under ERISA in 1974 stemmed essentially from union concerns about the safety of the defined benefit pension plans they were negotiating.[3]

Unions are often important political influences at the state and local level, as well. State laws regulate such programs as workers' compensation and unemployment insurance which affect virtually all employers.[4] In addition, local laws and ordinances on such topics as zoning can be important to both employers and unions, e.g., in the building industry. Unions frequently play a major role in determining such state and local policies, especially in states where large numbers of union workers reside. Thus, managers ignore developments and trends in the union sector at their peril, even if they find themselves in totally nonunion firms.

Moreover, the figures on overall unionization of the workforce can be misleading. Large firms are much more likely to deal with unions than small firms. In a period when mergers and acquisitions are common, nonunion firms will often acquire an interest in, or control of, an enterprise which is unionized. For all of these reasons, it is important to devote attention in this chapter and the next one to unions and collective bargaining and their influence on management.

Box A on takeover of a union firm (Eastern)

I. What are Unions?

Box A

The Takeover of a Unionized Airline

The acquisition of a firm involves more than simply buying its physical assets. Whatever labor relations climate the firm has comes with it. Eastern Airlines had at best a mixed labor relations record in 1986 when it was taken over by Texas Air. The airline had some success with worker empowerment experiments but overall the atmosphere was difficult. Texas Air was controlled by Frank Lorenzo, a man detested by union leaders because of his conversion of Continental Airlines into a de facto nonunion carrier through the use of a bankruptcy filing in 1983. Eastern hoped to use the threat of a sale to Texas Air to obtain union concessions but the tactic failed and the sale went through.

Once the takeover was complete, it was a matter of time before a major confrontation occurred. Organized labor viewed Eastern Airlines as a test case. If a strike against Lorenzo could be won, it would send a signal to other employers that labor was no longer weak. A lengthy strike was eventually triggered during which Eastern attempted to fly nonunion. While Eastern did succeed in maintaining many flights, eventually the carrier went into bankruptcy and was finally unable to continue flying. Eastern shut down operations in January 1991 and never resumed.

Source: Aaron Bernstein, Grounded: The Inside Account of How Frank Lorenzo Took Over and Destroyed Eastern Airlines (New York: Touchstone Books, 1991), and related materials.

In simplest terms, unions are associations of employees which are formed to represent workforce concerns and interests in negotiations with management. Often American unions are associated with the AFL-CIO, a central union body which acts as a voice for organized labor and a lobbying organization.[5] About eight out of ten union members were in unions belonging to the AFL-CIO in the early 1990s.[6]

Increasingly, as unions found themselves facing both losses of membership and a severe crisis in their relations with employers, the AFL-CIO began to play a coordinating role in the search for appropriate union responses.[7] However, as can be seen on Table 1, some unions, such as the large and influential National Education Association, are not AFL-CIO members.[8] And there are various small independent unions outside the AFL-CIO framework, sometimes representing workers at a single firm or plant.[9] In the past, management occasionally encouraged the formation of such independent unions, hoping to keep out national unions. This tactic is no longer common, but older independent unions which resulted still exist.[10]

Box B on steel ESOP and independent union

American unions most commonly come to represent a group of employees by means of an election process conducted by a government

Table 1

Membership of Major Labor Organizations, 1992

Organization	Claimed Membership	Affiliation	Major Sectors Covered
International Brotherhood of Teamsters	1,500,000	AFL-CIO	Trucking, foodstores, construction, various mfg.
National Education Assn.	2,000,000	Independent	School systems
United Food & Commercial Workers	1,300,000	AFL-CIO	Foodstores, meatpacking
American Federation of State, County, & Municipal Workers	1,300,000	AFL-CIO	State & local govt.
United Automobile Workers	900,000	AFL-CIO	Autos/parts, aerospace
United Steelworkers	459,000*	AFL-CIO	Metal mfg.
Service Employees International Union	1,000,000	AFL-CIO	Health care, building services, local govt.
International Brotherhood of Electrical Workers	730,000*	AFL-CIO	Construction, electrical mfg.
International Assn. of Machinists	500,000	AFL-CIO	Aerospace, machinery airlines
Carpenters & Joiners	550,000	AFL-CIO	Construction, lumber
American Federation of Teachers	780,000	AFL-CIO	School systems
Communications Workers	650,000	AFL-CIO	Telephone communication

*Two-years' average for period ending June 30, 1991.
Source: Courtney D. Gifford, ed., Directory of U.S. Labor Organizations, 1992-93 edition (Washington: Bureau of National Affairs, 1992), Part III.

Box B

An Independent Union and a Steel Buyout

A box in chapter 8 referred to Weirton Steel, a company formed by an employee buyout through an Employee Stock Ownership Plan. Weirton was originally a plant of National Steel Corporation, which planned to close the plant down. A key mover in the buyout was the Independent Steelworkers Union, a local union whose existence hinged on the survival of the plant. Had the plant been organized by the much larger union in the industry, the United Steelworkers of America, the pressure to keep Weirton going would have been less intense. If Weirton had closed, some of its business would have gone to other unionized steel companies. For a local independent union, such considerations would not have been important. But a large industry-wide union would have had to weigh saving jobs at one location against jobs that might be created or saved at others.

It is worth noting the unique history of the Weirton plant. All of the other plants at National Steel were in fact organized by the industry-wide United Steelworkers. National Steel, anxious to maintain a local independent union, had a history of maintaining friendly relations with the Independent Steelworkers, going so far as to pay premium wages at Weirton. One of the reasons the plant had profitability problems was the higher wage. Thus, in the late 1970s, a decision was made by the company to hold down costs (which led to union-management confrontation).

Still, on the assumption that a buyout involving a larger, industry-wide union would not have been feasible, National Steel received a benefit from its long history of efforts to maintain a local union. The company had accumulated large pension liabilities which would have come into play if the plant had been closed. By keeping it open, the liabilities were deferred and part of the buyout was an arrangement whereby the new Weirton Steel would - after a specified period - take over responsibility for the pension liabilities.

Source: Linda Wintner, Employee Buyouts: An Alternative to Plant Closings (New York: Conference Board, 1983), pp. 29-33, and various subsequent reports.

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agency.[11] If a union wins the election, it becomes the "exclusive bargaining representative" for the workers in the "appropriate bargaining unit" (the election district). No other union may represent those workers with management. And management is legally obligated to bargain in "good faith" about terms and conditions affecting the represented workers. This exclusive representation system is in contrast to that of many other countries. Abroad, it is not unusual to find systems under which multiple unions vie to represent the same group of workers.

Representation of workers by unions takes two forms. First, unions negotiate contracts with employers covering the workers they represent which specify wages, benefits, workrules, and other workplace procedures. Second, within the contractual framework negotiated, there is typically a mechanism whereby employee and union grievances can be aired and adjudicated. Since nonunion firms also often have some form of grievance system, discussion of this latter function is left to a later chapter.

Unions are able to influence management decisions through the bargaining power they possess. At the core of this power is the ability of the union to carry out a strike which imposes significant costs on the enterprise. Under traditional collective bargaining, if management makes concessions, it does so to avoid these costs. That process may sound harsh. But absent the ability to impose costs on the firm, unions would be little more than

consultative bodies. Strikes, however, are not costless to unions - union workers may lose their jobs and, lose income during the strike. Management in some cases may lockout workers in the course of a labor dispute. Thus, the ability to inflict costs operates in both directions.

Indeed, analogies have often been made between union-management relations and relations between nations. In both cases, if "diplomacy" fails, one party can influence another's behavior by actual or threatened infliction of costs. The weapons in the international setting including everything from trade embargoes, to stirring up subversion, terrorism, and military action. In the union-management setting, the older weapons on the union side include work slowdowns, boycotts, and strikes. Newer weapons may include pressure on financial institutions and other companies which deal with the target employer. On the management side, there may be firings, plant shutdowns, and the already-mentioned lockouts.

Of course, some unions are better positioned to inflict strike and other costs on the employers with which they deal than others. But even unions which are well equipped to inflict costs must be aware that the strike threat is costly to themselves and their members, just as nations should remember that war is a two-edged sword. To inflict economics pain requires the ability to endure economic pain.

The strike weapon will be examined in more detail in the next chapter. But it is extremely important to stress that traditional union-management relations in the U.S. have been conducted within an adversarial framework. That framework co-exists with notable (and routine) examples of union-management cooperation. There is nothing remarkable about this co-existence, since it is built into the employer-employee relationship. Both parties to that relationship are adversaries, as are all buyers and sellers. But both also have an investment (stake) in having their relations endure. When a union is present these aspects of the relationship become more overt and explicit.

Although adversarial relations are still the rule, there is growing attention to labor-management strategies that emphasize mutuality of interests, cooperation, and "win-win" bargaining where possible. Common elements in these newer arrangements are mechanisms of worker participation in management, flexibility in job descriptions and reduced job classifications, reduced formality in dispute settling and contractual relationships, and job security.

Box C on NUMMI

II. The Legal Framework Surrounding Unions and Bargaining.

Box C

Union-Management Cooperation at NUMMI

The automobile manufacturing industry, with its traditional assembly-line operations, is often viewed as a prime example of adversarial union-management relations. However, under pressure from foreign (mainly Japanese) competition, a variety of experiments were tried. One widely-cited experiment involved a joint venture - New United Motor Manufacturing, Inc. (NUMMI) - between General Motors and Toyota in Fremont, California, the site of a closed former GM assembly plant.

When it closed in 1982, the Fremont plant had one of the worst reputations for labor-management tensions in the GM system. High rates of grievances and high absenteeism were problems. The plant reopened under NUMMI control with much the same workforce and the same union in 1985. However, the management style and organization of work were quite different and the plant began to achieve levels of productivity and quality similar to comparable Japanese facilities. Overall responsibility for management was left to Toyota with GM using the site as a learning device.

NUMMI relies heavily on work teams of 4-8 members with considerable authority over work standards. In some respects, production is traditional, e.g., time and motion standards are set. However, in others the operation is quite different, e.g., the teams rather than managers set the time and motion standards. A variety of Japanese manufacturing principles have been imported including "continuous improvement" and "just-in-time" inventories. Workers have been given job security; instead of being laid off, workers are given training during low production periods.

Despite the changes, there are dissenters among the workers. A dissident slate of union officers was elected in 1991. However, production continues under the new system and a new contract was negotiated and overwhelmingly ratified the same year. Unfortunately, profitability data are not available for NUMMI since it is a wholly-owned joint venture. However, in 1993, Toyota indicated it would renew the venture with GM.

A big question remains: NUMMI started after a two-year shutdown during which the former GM workers were faced with unemployment and/or alternative jobs at a substantially lower wage. Other Japanese "transplants" have opened in the U.S. at completely new sites and have used similar production techniques. But can NUMMI-like changes be imported into existing, functioning American auto plants?

Source: Bureau of Labor-Management Relations and Cooperative Programs, U.S. Department of Labor, New United Motor Manufacturing, Inc., and the United Automobile Workers: Partners in Training, brief no. 10, March 1987, and various subsequent newspaper and other reports.

An elaborate legal framework, beginning with legislation enacted during the Great Depression of the 1930s, has been erected to regulate unions and collective bargaining. Three major pieces of legislation have been adopted covering most of the private sector.[12] This regulatory mechanism has been imitated in related legislation dealing with unionization of government workers at the federal, state, and local level.

The initial piece of major federal regulatory legislation dealing with unions was the Wagner Act of 1935, also known as the National Labor Relations Act.[13] This Act gave employees the right to organize into unions, provided an election mechanism for workers to choose whether or not they wanted a particular union to represent them, and forbade various employer practices considered to be anti-union ("unfair labor practices"). A federal agency, the National Labor Relations Board (NLRB), was created to oversee the new employee rights, to prevent unfair labor practices by employers, and to hold representation elections. The NLRB responds to petitions and complaints from unions, employers, and workers; it does not have independent inspectors who look for violations of the law on their own initiative.

Box D on highlights of Wagner Act

Box D

Highlights of the Amended Wagner Act

Sec. 7: Employees 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, and shall have the right to refrain from any or all of such activities...

Sec. 8(a): It shall be an unfair labor practice for an employer -

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it...;

(3) by discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization...;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees...

Sec. 9(a): Representatives designated or selected for the purpose of collective bargaining by the majority of employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit...

Although the original Wagner Act aimed at promoting unions and collective bargaining, subsequent federal legislation pulled back from this objective. By the late 1940s, the balance of political forces had shifted in a more conservative direction and the public had been aroused and angered by a series of major strikes following World War II. The outcome of these pressures was the 1947 Taft-Hartley Act (also known as the Labor-Management Relations Act).[14]

Box E on Taft-Hartley Highlights

Taft-Hartley modified the Wagner Act by creating a series of union unfair labor practice prohibitions to parallel the forbidden employer practices specified originally. It created NLRB decertification elections whereby employees could remove unions as their representatives, as well as install them. Responding to public concerns about major strikes, Taft-Hartley created a mechanism whereby the President could enjoin strikes for a temporary period. Finally, union-management contracts were made into legally enforceable documents; either party could sue the other for damages if it felt the contract was being breached.

A series of Congressional investigations into complaints of undemocratic and corrupt practices in certain unions in the 1950s led to still more federal intervention. The Landrum-Griffin Act of 1959 (officially titled the Labor-Management Reporting and

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Box E

Highlights of the Amended Taft-Hartley Act

Sec. 8(b): It shall be an unfair labor practice for a labor organization or its agents -

(1) to restrain or coerce (A) employees in the exercise of rights guaranteed in Section 7 [see box D]... or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause of attempt to cause an employer to discriminate against an employee [on grounds of union membership]. Note: Various provisos apply to this section with regard to "union security" clauses which are discussed in the next chapter. The Act also outlaws so-called "closed shop" agreements which required employers to hire only union members.

(3) to refuse to bargain collectively with an employer...

(4) [to engage in various conduct specified in the Act for the purpose of forcing an employer to recognize a union other than one certified by the NLRB]

(5) to require of employees... the payment of a fee in an amount the Board finds excessive or discriminatory...

(6) to cause or attempt to cause an employer to pay... for services which are not performed or not to be performed;

(7) [to picket for the purpose of forcing an employer to recognize a union when another union is already legally recognized, when an NLRB election has been held in the past year, or when the union has not submitted its own petition for an election on a timely basis.]

Title II: [Creates the Federal Mediation and Conciliation Service to assist bargainers in reaching settlements and to encourage the use of private arbitration to settle grievances when necessary; establishes machinery by which the President can obtain court-ordered injunctions halting strikes and lockouts for a limited period when the President believes the disputes constitute "national emergencies".]

Title III: [Creates a mechanism by which either party to a union contract can sue in federal court for enforcement of the contract, thus giving such contracts legal status they had not previously enjoyed.]

Disclosure Act) provided certain rights to union members within their organizations and regulated unions' internal financial and political affairs. In addition, Landrum-Griffin further refined the election and unfair labor practice procedures of the National Labor Relations Board.

Box F on Landrum-Griffin highlights

This volume will not undertake a detailed examination of the federal regulatory system surrounding unions and bargaining beyond the above description.[15] However, the student should be aware that union-management relations in many ways have taken on an aura of legalism which extends far beyond anything the original Wagner Act framers could have imagined. Many observers have decried this tendency toward legalism over the years.[16] Indeed, concerns have been expressed that the existing legal regulatory system may interfere with innovative experiments in worker participation and labor-management cooperation.[17] Interested students are directed to the Electromation case excerpted in the appendix to this chapter as a much-debated example of these concerns.

Box G on Yeshiva case

Box F

Highlights of the Landrum-Griffin Act

Apart from various technical amendments to the Wagner/Taft-Hartley framework, the Landrum-Griffin Act deals primarily with Congressional concerns about corruption and undemocratic practices in certain unions. Its major provisions are summarized below:

Title I: Provides for a "Bill of Rights" for union members involving such things as free speech at union meetings and due process for union members within unions. Members may sue in federal court if their rights are breached.

Title II: Establishes various financial and administrative reporting requirements primarily for unions and union officers.

Title III: Limits the authority of national unions to take over locals ("trusteeships") except under specified circumstances and procedures.

Title IV: Establishes minimum election frequency for various levels of elections of union officers. Provides authority for the Secretary of Labor to take action in federal court regarding irregularities in elections of union officers.

Title V: Establishes fiduciary responsibility of union officials. Prohibits convicted felons from serving as union officials within designated time periods.

Title VI: Prohibits "extortionate" picketing, i.e., picketing other than in a normal labor dispute which is designed simply to extract money from employers for personal gain.

Box G

Who Is a Manager at Yeshiva University?

In a 1980 decision (444 U.S. 672), the U.S. Supreme Court was faced with determining whether the faculty at Yeshiva University should be classified as managerial employees. Managers (as opposed to supervisors) are not specifically defined in the Wagner/Taft-Hartley Act. However, the courts and the NLRB have long excluded managers from collective bargaining units as a matter of interpretation. Thus, if faculty members were considered to be managers, they could not use the NLRB to force university management to recognize their union.

Managers are basically policy makers and in most major universities, academic senates of various types make, or participate in making, university policies. In the case of Yeshiva University, faculty made or participated in decisions concerning course offerings, grading standards, matriculation standards, etc. The Supreme Court viewed these as managerial policies and thus excluded Yeshiva's faculty from NLRB protection. Since that time, faculty at major private universities have also been denied protection.

Although seemingly a narrow case involving higher education, many observers have noted a potential conflict between the Yeshiva decision and various attempts at union-management cooperation. Often such cooperation involves giving employees in autonomous work teams participation in management decision making. Do they cease being protected employees under the Wagner/Taft-Hartley framework as a result?

A U.S. Department of Labor report on this issue stated:

"In the end, the Yeshiva case is troubling because it is at war with the idea of consensus between professional employees and their administrators - and, by analogy, in other employee-employer relationships as well... Do our labor laws and the decisions they spawn prevent or impede problem solving and the advantages which flow from such an orientation?"

Source of quote: Bureau of Labor-Management Relations and Cooperative Programs, U.S. Department of Labor, U.S. Labor Law and the Future of Labor-Management Cooperation (Washington: GPO, 1986), pp. 15-16.

It is important to note that the laws regarding unions extend to union members and organizers employed in nonunion companies and to situations where workers engage in "concerted activity," even if they are not unionized. For example, a group of workers who form an informal group to complain to management about poor ventilation in the workplace are undertaking protected concerted activity. Management reprisals taken against them for their complaint could be an unfair labor practice. Thus, nonunion employers are affected by the amended Wagner Act in important ways even though they do not engage in collective bargaining. For this reason, academic training for specialists in the human resource field inevitably includes a careful examination of the laws surrounding unions and bargaining.

Box H on concerted activity example

III. Political and Legal Influences on Unionization.

How important have the periodic changes in the legal system been as determinants of union membership? What influence does the political climate have? What other factors may affect the degree to which the workforce is unionized? Substantial literature has been devoted to these questions, but several points emerge.

Box H

Defining Concerted Activity in a Nonunion Hospital

In a 1992 decision, the NLRB considered the case of a registered nurse, Linda Todd, in a nonunion, not-for-profit hospital who had been discharged because of her activities related to the hospital's grievance system. Another nurse had been disciplined and then discharged and various cases stemming from these actions were being handled by the grievance system. Under the system, a committee consisting of management representatives and an employee representative designated by the grievant hears evidence and submits a non-binding recommendation to the grievant and the appropriate departmental head for a resolution. In the view of the hospital, the designated employee was not to serve as an advocate for the grievance but simply as a hearing officer with the other committee members.

During the course of the hearing, Todd was viewed by other committee members as acting as an advocate rather than a neutral. Tensions led Todd to circulate a letter to various hospital administrators and employees. The letter complained about a range of management actions and about particular managers in the context of the grievance. Hospital management viewed Todd's letter as a breach of the confidentiality requirements of the grievance system and terminated her. Todd took her dismissal to the NLRB on grounds that she had been dismissed for "concerted activity."

In making its decision, the Board concurred with the findings of its administrative law judge who first heard the case. The judge placed great weight on the breach of confidentiality and viewed Todd as having waived her protections under the amended Wagner Act by agreeing to function on the grievance committee in accordance with the committee's rules. Thus, although the Board's General Counsel argued that Todd's rights to engage in concerted activity had been violated, the Board ultimately did not agree.

Source: Craig Hospital and Linda J. Todd, 308 NLRB No. 37, August 10, 1992.

First, historically, wartime periods have been conducive to union growth. Union membership rose as a proportion of the workforce during World Wars I and II and during the Korean War, as can be seen on Table 2A. Only during the Vietnam War did this pattern not emerge. The wartime effect appears to be due to the position taken by the federal government with regard to union-management disputes.

During major war efforts, government officials have been anxious to maintain uninterrupted military and related production. Since contractors were under pressure to settle labor disputes, and since they could pass the costs of the settlement to government, union bargaining positions were enhanced. In addition, the government was not sympathetic to employers which provoked strikes by resisting unionization.

A second point which emerges from Table 2A is that the passage of the Wagner Act was at least coincident with a substantial expansion of unionization. Taft-Hartley, on the other hand, is associated with slippage of the union penetration rate (although the Korean War pulled the ratio up again temporarily). Finally, the Landrum-Griffin Act preceded a prolonged period of gradual slippage of unionization.

It is difficult, however, to disentangle the strictly legal effects from the impacts of shifts in the political climate.

Table 2A

Labor Organization Membership Trends, 1915-69

Period	Year	Members as Percent of Nonagricultural Employment		
		Unions Only		Unions and Associations
		Wolman Series(1)	BLS Series	BLS Series
	1915	11.0%	-	-
World War I and immediate aftermath				
	1920	17.5	-	-
Conservative era/employer resistance to unionization				
	1929	9.7	-	-
Onset of Great Depression				
	1933	10.6	11.3%	-
Swing to left/ New Deal era/ Wagner Act				
	1940	-	26.9	-
World War II				
	1945	-	35.5	-
Conservative swing in Congress/Taft-Hartley Act				
	1950	-	31.5	-
Korean War				
Moderate Republican administration (Eisenhower) /Landrum-Griffin Act	1954	-	34.7	-
	1960	-	31.5	-
Liberal era (Kennedy & Johnson)/ Vietnam War				
	1969	-	27.0	29.5%

Sources and Notes: See Table 2B.

Unions benefited from the sympathetic climate of political and public opinion in the 1930s. In less liberal periods, they lost ground relative to the overall workforce. During the conservative era of the Reagan administration in the 1980s, union membership tumbled absolutely as well as relative to the workforce, as Table 2B demonstrates. Slippage continued during the Bush administration.

Figure 1 compares the union "win rate" (the proportion of NLRB representation elections won by unions) with the number of NLRB representation elections held. As can be seen from the figure, the win rate shows little trend in the 1980s, averaging under 50%. But the number of elections held dropped substantially in the early 1980s and did not pick up thereafter.[18] Most elections are union-initiated, so it appears that unions reduced their organizing activity (at least through NLRB channels) facing what they believed to be a hostile climate.[19]

As a result of their sense of a hostile political climate, unions put considerable effort into the election of a Democrat - Bill Clinton - as President in 1992, although his prior record as governor of Arkansas was not considered to be especially "pro-labor." However, Clinton promised support of legislation making replacement of striking workers more difficult for management. And his appointments to government agencies such as the NLRB were expected by organized labor to be more sympathetic to unions.

Table 2B

Labor Organization Membership and Representation Trends, 1969-92(2)

Period	Year	Members as Percent of Nonagricultural Employment	Workers Represented as Percent of Wage and Salary Employment, CPS Series		
		BLS Series	Total	Private	Public
Moderate Republican administration (Nixon & Ford) /end of Vietnam War	1969	29.5%	-	-	-
	1975	28.9	-	-	-
Liberal era(3) (Carter)	1979	25.1	25.7%	21.7%	43.4%
Conservative era (Reagan)	1992	-	17.9	12.5	43.2

Sources and Notes for Tables 2A and 2B:

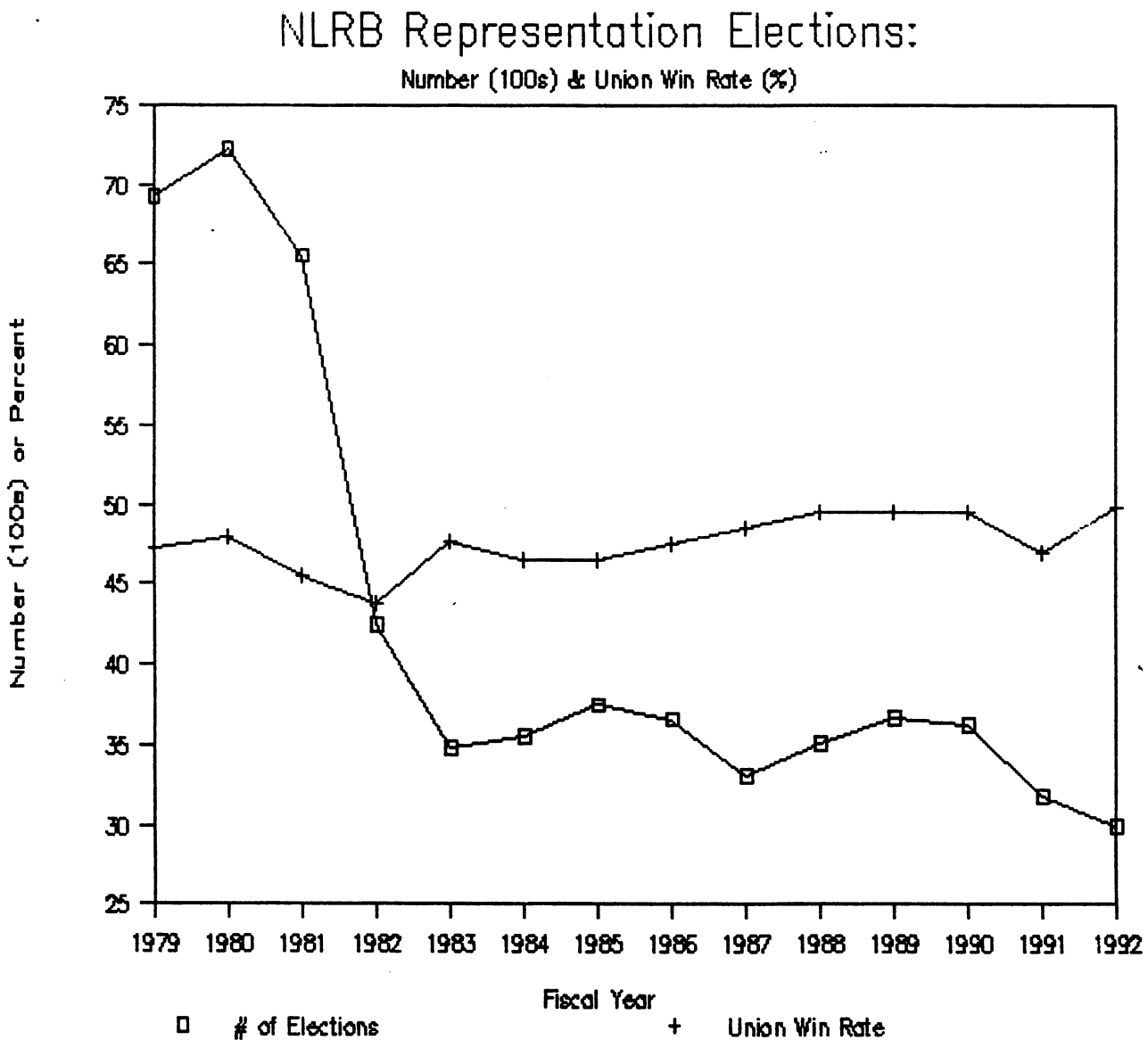
- = data not available.
(1) Membership series developed by economist Leo Wolman divided by an estimate of the nonfarm employed labor force.
(2) Includes unions and associations.
(3) CPS data as of May 1980.

Note: The Wolman series was based on union-reported membership and originally appeared in Leo Wolman, Ebb and Flow in Trade Unionism (New York: National Bureau of Economic Research, 1936), pp. 172-193. The BLS (Bureau of Labor Statistics) series are also based on membership. Figures before 1954 are based largely on union reports to the AFL and CIO. Thereafter, the series is based on a BLS-conducted membership survey. The CPS (Current Population Survey) series is based on responses by households and include some workers who are represented by labor organizations but are not members.

Table 2B - continued

Sources: U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Part 1 (Washington: GPO, 1975, pp. 126, 178; U.S. Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1979, bulletin 2079 (Washington: GPO, 1980), p. 59; Courtney D. Gifford, ed., Directory of U.S. Labor Organizations, 1982-83 edition (Washington: Bureau of National Affairs, 1982), pp. 1, 55, 63; Employment and Earnings, vol. 40 (January 1993), pp. 238-239.

Figure 1



Source: National Labor Relations Board, Election Reports, various issues.

After examining data such as those contained on Tables 2A and 2B, it is hard to come away without a strong impression that changes in the political/legal climate matter a great deal in determining unionization. Some econometricians have sought to explain changes in union representation using regression analysis, and have created variables (such as the proportion of Democrats in Congress) to capture political shifts.[20] However, even in the absence of such evidence, few practitioners on either the union or management sides would doubt the importance of the political and legal environment to union success (or lack thereof) in organizing.

Success in organizing for unions is linked to success in bargaining. If a union represents most of the workers in an industry, its bargaining position is substantially improved. It need not fear competition from low-wage nonunion employers. However, if a union is unable to organize substantial portions of an industry, such competition will inevitably weaken its bargaining position relative to the unionized employers with which it deals. A deterioration in bargaining outcomes from the union perspective may diminish the expectations of nonunion workers about what a union could accomplish for them.[21]

This interconnection between unionization and bargaining power explains much of the rash of concession bargaining in the 1980s. As unions found themselves facing more and more nonunion competition, they were forced to accept wage freezes, wage cuts,

and workrule relaxations at unionized worksites. In economic terms, the linkage can be viewed as a substitution effect. The possibility of substituting nonunion for union workers acts as a check on union bargaining power.

Regardless of whether the substitution is made by a union employer (who switches to nonunion labor sources), or whether the product market makes the substitution (by switching demand to employers with a lower labor cost advantage), pressures will eventually arise which limit what unions can obtain for their members. Unions are likely to find themselves in workplaces growing more slowly than others and experiencing less reinvestment by management.[22] Thus, they must organize new sites or erode relative to the overall workforce.[23]

Box I on concession example

Although an individual employer cannot by itself influence the political/legal climate, management as a group finds it useful to do so. Groups such as the Chamber of Commerce and the National Association of Manufacturers articulate the management interest at the national level, along with industry-level trade associations. Organized labor is also active in the political arena, supporting both legislation and candidates.

Box I

Sharp Concessions at USX

The steel industry was especially hurt by the recession of the early 1980s and foreign competition. At one time, the major steel producers negotiated as a group. But by the early 1980s, this arrangement fell apart. Employment levels in other industries recovered from the recession of the early 1980s but in steel they never came back.

USX, formerly U.S. Steel, underwent a 6-month strike in 1987. When it was over, the United Steelworkers agreed to a contract which initially cut wages and benefits by $2.45 and hour. In exchange, the union accepted a profit sharing plan and management guarantees to limit contracting out of work. However, the contract permitted the elimination of over 1300 jobs.

Source: "Tentative Accord Reached to End Six-Month Work Stoppage at USX," Daily Labor Report, January 21, 1987, pp. A7-A10.

The fact that such activity occurs is perhaps the best proof of the impact of the political/legal climate on the outcomes of collective bargaining. Both sides are convinced of the importance of political activity in pursuing the goals of their constituents. Given this fact of life, managers at the firm level must analyze the general environment for labor relations in formulating their collective bargaining agenda.

IV. Economic Policy and Unions.

Although discussions about public policy toward unions and collective bargaining often revolve around such concepts as "industrial democracy," prevailing economic theories and economic objectives have influenced the course of public policy, too. Indeed, the economic motivation is stronger than many casual observers believe. Changing views on macroeconomic policy have influenced the legal climate surrounding unions which, in turn, has affected unionization.

The original Wagner Act was passed in 1935, when the country was still in deep depression, and when the appropriate economic policies to escape that depression seemed elusive. Macroeconomics as an idea was just being born in the 1930s.[24] And the economic debate concerning how to raise economic activity and lower unemployment was confused. Most economists of the period did not have the tools to state their assumptions about economic

relationships clearly. Moreover, the collection of economic statistics was embryonic, making empirical analysis difficult.[25] Even the most critical economic and social concern of the period - unemployment - was not measured.[26]

During the depression a popular economic theory held if wages were boosted, the economy could be lifted from depression. It was argued that if workers were paid higher wages, they would spend more on consumption and, thus, stimulate economic activity. Some commentators argued that the Great Depression had actually been caused by too-low wages in the 1920s. Given this theory, the Roosevelt administration had followed policies aimed at pushing up wages, even before passage of the Wagner Act.[27]

Since unions could be expected to demand higher wages, the passage of the Wagner Act to promote unions was viewed in part as an economic policy.[28] Indeed, the preamble to the Wagner Act contains the wage-purchasing power theory as a justification for the new law. It argues that "the inequality of bargaining power between employees ... and employers ... burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners..."[29]

There were numerous criticisms made of the wage-purchasing power view during the 1930s and afterwards. For example, it was

pointed out that if wages were pushed up relative to prices, profit margins would be squeezed and workers might be laid off. Thus, aggregate worker purchasing power might be reduced by wage raising, instead of increased. Rather than attempt to review this issue further, it is best to say simply that the wage-purchasing power theory was questionable, and that the debate over it was conducted in the absence of formal models, empirical evidence, and often in polemical terms.

What is more important is the sharp shift in economic thinking and goals which occurred after World War II. Generally, in the postwar period, there has been much more concern about limiting inflation than there was in the 1930s, when mass unemployment was the key problem. In addition, the rise of macroeconomics has led to the view that it is federal government policy (monetary and fiscal) that should be used to deal with inflation and unemployment. Private parties, i.e., businesses, unions, employees, and consumers, are seen as micro actors in the economic system who should not be expected to cure macro problems on their own.

In this new postwar atmosphere, encouraging unions to push up wages was often seen as inflationary, i.e., contrary to public policy rather than supportive of it. Thus, during the Kennedy and Johnson administration, a "voluntary" guidepost for holding back wage increases was issued. In the Nixon years, formal wage

controls were instituted. And during the Carter administration, wage guidelines again were announced. Although each of these programs also placed limits on price increases, and each covered nonunion as well as union wages, all ended up focusing special attention on union wage settlements. And each featured notable confrontations between the President's program and particular unions whose wage settlements exceeded the official standards.[30]

Whether fairly or not, unions tended to be seen as the villains in these confrontations. And union wage settlements were often viewed as contributing to inflation by the general public. Thus, in the postwar period - unlike the 1930s - pro-union legislation could no longer be depicted as furthering macroeconomic objectives. It is not surprising, therefore, that most of the postwar legislation that was passed at the federal level relating to unions and bargaining was opposed by organized labor. And with the resulting less favorable legal climate for organizing new members, it is also not surprising that the unionization rate slipped.

In other ways, economic policy - broadly defined - has been unfavorable to traditional unionization. The kind of unionization that developed after the 1930s was based on ongoing union-management relations in a climate of stability. But a variety of factors have made the product market for many industries more unstable, and thus destabilized the labor market. For industries

involved in international trade (either exporters or import-competing industries), the shift to flexible international exchange rates meant uncertainty in world competitiveness. Swings in the value of the dollar could drastically change American cost structures relative to foreign competitors. During the 1980s, for example, there was a very large dollar appreciation in the first half of the decade (making many industries uncompetitive) followed by a fall in the dollar during the second half.

International economic policy of the U.S. generally has favored freer trade, also opening the American economy to more competition and uncertainty. The emergence of new foreign competition in countries such as South Korea, Taiwan, and Singapore has added to product market pressures and uncertainty. Internally, deregulation of major sectors of the economy (transportation, communications, financial services) also has meant new competition. Finally, new technology puts a premium on keeping up or being left behind.

All of this pressure and uncertainty puts a premium on managerial flexibility and may have contributed to management resistance to unionization. And since the same pressures have occurred throughout the developed world, it might be expected that unionization rates would decline in other countries, not just the U.S. And, indeed, once cross-country data on unionization are

adjusted to remove the insulated public sector, there does seem to be a worldwide tendency for unionization to decline.[31]

V. Patterns of American Unionization.

Table 3A shows the industrial pattern of unionization in the U.S. as of the early 1990s. In private employment, only about 1 out of 8 wage and salary earners was represented by a union (in sharp contrast with local, state, and federal government where over 4 out of 10 workers were union-represented). The private industries with greater than average unionization are generally found in mining, construction, manufacturing, transportation, communications, and utilities. These were the sectors in which unions primarily expanded in the 1930s and 1940s. Thus, the unionized portion of the workforce reflects employment patterns of an earlier era, when the economy had more of an "industrial" base.

i. Industrial, Occupational, and Regional Detail.

Union-representation rates on Table 3A are drawn from the Current Population Survey (CPS). However, because CPS data are not published according to detailed industry classifications, another data set has been used to identify more narrowly defined industries which had above average unionization. The right hand column of the table lists those industries where the ratio of workers estimated to be covered by "major" agreements (those involving 1,000 or more

Table 3A

Union Representation Rates, 1992

Industry	Percent of Wage & Salary Workers Represented by Unions	Selected Industries with Higher than Average Private Major Union Representation Rates(1)
Agriculture	2.8%	
Private nonagricultural	12.7	
Mining	16.1	Coal, metal mining
Construction	21.1	
Manufacturing	21.0	Tobacco products, apparel, paper, petroleum, leather, stone-clay-glass, primary metals, electrical equipment, transportation equipment
Transportation	30.3	Railroads, trucking, air transport, water transport
Communications & utilities	36.3	Telephones, electricity, gas
Wholesale trade	7.5	
Retail trade	7.2	Foodstores
Finance, insurance, real estate	2.9	
Services	7.1	
Government	43.2	
All Sectors	17.9	

Table 3A -- continued

(1) Industries listed are those in which the ratio of workers estimated to be covered by major union agreements (those covering 1,000 or more employees) to total payroll employment in 1987 exceeds the average rate of 6.1%. The number of workers under major union agreements is as of October 1992. Total payroll employment is the average for the entire year.

Source: Representation rates from Employment and Earnings, vol. 40 (January 1993), pp. 238-239. Coverage by major union agreements is from Lisa M. Williamson, "Collective Bargaining in 1993: Jobs Are the Issue," Monthly Labor Review, vol. 111 (January 1988), pp. 11, 13. Total payroll employment is from Employment and Earnings, vol. 40 (March 1993), Table B-2.

employees) to total payroll employment was above the private, nonfarm average.[32]

By providing more detail, especially in manufacturing, the table shows that unionization is not evenly spread around the various sectors. Unionization, for example, is quite low in the textile and furniture industries within manufacturing, but is high in certain "heavy" industries including primary metals (such as steel and aluminum production) and transportation equipment (motor vehicles, aerospace, shipbuilding, railroad rolling stock production).

The pattern of unionization which emerged in the 1930s and 1940s partly reflected firm size. Where relatively few large firms dominated the industry, unions could make substantial gains with a limited number of concentrated organizing campaigns. Geographic location also had an effect. The textile industry, for example, is heavily based in the south where resistance to unions was especially intense. So successes by unions in organizing that industry were limited.

Particularly noteworthy on Table 3A is the high degree of unionization in the government sector.[33] Government employment was the major sector of union membership expansion in the 1960s and 1970s. In various states, and at the federal level, laws were passed which facilitated this development. Generally, union

organizers found government employers less resistant to organization (although not necessarily less resistant to bargaining demands once organized). The fact that the union wage premium generally seems smaller in the public than the private sector may be a factor in this lesser resistance.[34] Also significant is the fact that strikes are often prohibited by law in the public sector, that existing human resource management procedures tend to be formal and "unionesque" in government - even for nonunion workers, and that it is more difficult to fire workers in the public sector.[35]

Unions in the public sector have had significant success in organizing white collar workers including professionals, especially teachers. This success is reflected on Table 3B which reports a relatively high unionization for "professional specialty" workers, a reflection of teacher unionization.[36] The highest rate shown on Table 3B is for "protective service" workers, a classification heavily influenced by police and fire fighters. But in the private sector, with some exceptions, unions have traditionally been concentrated in blue collar occupations. The exceptions in the private sector include such groups as foodstore clerks, airline and railroad clerks, telephone operators, and some aerospace engineers and insurance company personnel.

These exceptions - plus the public sector experience - suggest that union organizing of white collar employees is by no means

Table 3B

Union Membership Rates and Representation Rates by Occupational Characteristics, 1992

Occupational Group	Union Membership Rate	Union Representation Rate
Managerial & professional specialty:		
Executive, admin. & managerial	6.0%	8.2%
Professional specialty	21.7	26.0
Technical, sales & admin. support:		
Technicians & related support	12.3	14.2
Sales	5.0	5.7
Admin. support, incl. clerical	13.2	15.7
Service:		
Private household	0.5	0.7
Protective service	38.7	42.5
Other service	10.6	12.0
Precision production, craft & repair:	25.1	26.8
Operators, fabricators & laborers:		
Machine operators, assemb. & inspect.	26.5	28.0
Transportation & material moving	27.5	29.1
Handlers, equip. cleaners, etc.	22.8	24.3
Farming, forestry and fishing:	5.0	5.7

Source: Computer tables from the Current Population Survey provided by Barry T. Hirsch and David A. MacPherson.

impossible. Indeed, unions have tended to win a higher proportion of white collar representation elections than others.[37] But because unions met early resistance in the white collar field[38] and thus limited their organizing efforts there, they found themselves representing occupations which today make up a declining fraction of the workforce.[39] As the earlier chapter on the workforce indicates, such occupational trends are expected to continue in the future.

On a demographic basis (Table 3C), unionization reflects the industry and occupational patterns just discussed. The male unionization rate is higher than the female, reflecting the greater propensity of men to be found in blue collar employment. Blacks are more concentrated than other workers in blue collar occupations; thus, the black unionization rate is above average.

Unionization peaks in the 45-54 year range as of 1992, an older group reflecting an earlier industrial mix of employment. It is highest for full-timers relative to part-timers; there is relatively little part-time employment in manufacturing blue collar occupations. Workers who have completed high school - but with no further education - are more likely to be unionized than others. With more education, white collar employment becomes more likely. With less, jobs available are often marginal and less likely to be organized.

Table 3C

Union Membership Rates and Representation Rates by Worker Characteristics, 1992

Group	Union Membership Rate	Union Representation Rate
All workers	15.8%	17.9%
Private	11.4	12.5
Public	36.6	43.2
Males	18.7	20.6
Females	12.7	15.0
Whites	15.1	17.1
Blacks	21.3	24.2
Others	14.8	17.2
Full-time	17.8	20.1
Part-time	7.2	8.5
Ages 16-17	3.0	3.5
Ages 18-24	6.1	7.4
Ages 25-34	13.3	15.2
Ages 35-44	19.2	21.6
Ages 45-54	22.7	25.5
Ages 55-64	20.8	23.0
Ages 65+	9.0	10.5
Schooling: < 8 years	12.3	13.4
Schooling: 9-11 years	12.6	13.8
Schooling: 12 years	18.1	19.9
Schooling: 13-15 years	14.7	16.6
Schooling: 16+ years	15.6	18.8

Source: Computer tables from the Current Population Survey provided by Barry T. Hirsch and David A. MacPherson.

Finally, the regional pattern of unionization shown on Table 3D is quite varied. Many of the states with the highest unionization rate are those with significant smokestack industrialization. Hawaii, an exception, has a long history of major unionization in its agricultural and transportation sectors. States with low unionization rates tend to be in the south, a region which was strongly resistant to unionization in the formative years of the 1930s and 1940s. Generally, states with above-average private unionization have higher rates of public unionization than others. The base of private unionization established in the formative years provided the political support needed for public unionization beginning in the 1960s.

ii. Employer and Union Detail.

For larger collective bargaining units (those involving 1,000 or more workers), information is available concerning the schedule of negotiations, the outcomes of negotiations, and whether a strike or lockout occurred in the process of producing those outcomes. Such a unit could be comprised of a group of relatively small employers (as will be discussed below). But in many sectors, larger bargaining units are usually found in larger firms. That is, it is usually easier to obtain information about the bargaining relationship at larger firms than at smaller ones.

Information for Potential Investors.

Table 3D

Union Representation Rate by State, 1992

State	Total Union-ization Rate	Private Union-ization Rate	Public Union-ization Rate
Hawaii	31.9%	24.5%	55.2%
New York	29.6	18.7	72.2
Michigan	27.0	20.6	61.1
Washington	25.7	17.1	59.4
New Jersey	24.7	16.8	63.7
Minnesota	23.3	16.5	56.8
Alaska	22.3	10.7	49.0
Ohio	22.3	16.9	50.4
Illinois	21.9	17.1	51.0
Montana	21.8	13.1	45.5
Pennsylvania	21.6	15.5	58.9
Rhode Island	21.6	14.0	60.2
Nevada	21.6	16.1	50.1
Wisconsin	21.4	14.9	56.4
California	21.1	13.8	57.6
Indiana	20.9	19.3	30.6
Oregon	20.7	13.4	55.2
West Virginia	20.5	17.8	31.4
Connecticut	19.0	12.7	66.9
Delaware	18.5	12.8	50.5
Massachusetts	18.4	11.1	62.7
Maryland	17.8	12.2	35.2
Dist. of Columbia	17.2	10.8	30.2
Maine	17.2	10.2	52.5
Iowa	16.7	11.2	41.9
Alabama	16.2	12.8	32.1
Missouri	15.8	13.4	29.0
Nebraska	15.3	9.4	41.1
Kentucky	14.5	13.0	21.8
Wyoming	14.5	10.7	25.9
Kansas	14.0	10.5	28.3
Utah	13.2	7.3	34.0
Vermont	13.1	4.6	52.0
Tennessee	12.3	9.6	26.7
New Hampshire	12.3	5.7	55.3
Virginia	12.3	9.2	22.5
Colorado	11.9	8.2	27.9
Idaho	11.7	9.0	22.5
South Dakota	11.3	6.0	30.8
Florida	11.1	5.4	37.0
Arkansas	11.0	8.3	23.0
North Dakota	10.9	5.6	27.9
Mississippi	10.9	9.3	17.2

Table 3D -- Continued

State	Total Union-ization Rate	Private Union-ization Rate	Public Union-ization Rate
New Mexico	10.8	6.6	21.2
Oklahoma	10.8	7.5	22.6
Arizona	9.6	6.6	24.2
Louisiana	9.0	6.0	19.5
Texas	9.0	5.9	23.0
Georgia	8.2	6.9	15.1
North Carolina	6.2	3.7	19.7
South Carolina	6.1	4.2	15.3
All States	17.9%	12.5%	43.2%

Source: Computer tables from the Current Population Survey prepared by Barry T. Hirsch and David A. MacPherson.

Apart from individuals directly involved in collective bargaining, information on firm-level industrial relations could be of use to anyone considering investing in, or conducting a business relationship with, a particular firm. For example, a firm with a history of rocky labor relations and disruptions of production might prove to be an unreliable supplier. In a contemplated merger or acquisition situation, the labor relations climate could be an important consideration in appraising the value of the firm in question. Finally, there is empirical evidence that bargaining settlements produce corresponding reductions in stock market valuations of firm worth.[40]

When firms are unionized, it may be easier to obtain information about their human resource management policies than when they are nonunion. Often, for example, union-management agreements can be obtained from the U.S. Bureau of Labor Statistics (BLS). Private organizations, such as the Bureau of National Affairs, Inc. (BNA), may also be able to supply a copy of the agreement. And because union-management settlements at prominent firms are often in the public eye, information may also be available from business periodicals and daily newspapers. In contrast, nonunion firms often deliberately avoid publicity concerning the details of their human resource practices.

Sometimes, the presence of a union can be a proxy for other conditions at the firm which may affect its value. For example, as

will be noted below, unionized firms are especially likely to have defined-benefit pension plans. Such programs may entail significant unfunded liabilities, i.e., there is less in the pension trust than the actuarial value of promised future pension benefits. These liabilities are the responsibility of the employer (even if it is only one of many firms paying into a common multiemployer pension plan). In mergers and acquisitions, considerable attention must be devoted to determining who will carry the burden of the unfunded liability.[41]

Box J on Icahn and TWA pension liabilities and worker ownership

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Unions may also have an interest in the outcomes of merger and acquisition efforts. Successor owners may not be obligated, and may sometimes decline, to honor an existing union-management contract.[42] They may redeploy corporate assets in ways which adversely affect the interests of union-represented workers and the union itself. In the 1980s, as unions became more sensitive to the effects of mergers and acquisitions, they became more likely to intervene as active players in such situations. Unions have been know to oppose takeovers through litigation and to make counteroffers to buy the target company.

Bargaining Calendars.

Box J

TWA's Pension Liabilities and Its Restructuring

Trans World Airlines found itself in severe financial difficulties in the early 1990s, as did other major airlines. Financier Carl Icahn, who had bought the airline, found himself potentially liable for unfunded pension commitments and under pressure from the Pension Benefit Guaranty Corporation, the federal agency which backs defined-benefit pension plans. In addition, Congress passed special legislation preventing Icahn from shedding pension liabilities by reducing his stake in the airline. Thus, simply shutting down the money-losing airline was not an attractive option.

In January 1992, TWA filed for bankruptcy and ultimately came to terms with its unions on a new contract which ended Icahn's control and provided a 45% employee ownership stake in the carrier.

Source: Allan Sloan, "TWA's Bankruptcy Filing Puts Icahn's Bargaining Powers to the Test," Los Angeles Times, February 9, 1992, p. D5, and later sources.

The U.S. Bureau of Labor Statistics maintains a file of major union agreements. Included in the file is the employer and union name, the Standard Industrial Classification (SIC) of the firm, the number of workers covered by the contract, and the contract's beginning and expiration date. Computer listings of this file are available by special order. However, on an annual basis, bargaining calendars are published by the BLS.

Bargaining calendars appear first as a preliminary press release in late fall, next in summary form in the Monthly Labor Review (usually in the December or January issues), and then as a final bulletin. Each calendar is a listing of which contracts will expire during the year. Since union-management agreements rarely run more than three years in duration, a virtually complete listing of major contracts can be obtained from any three consecutive calendars. (The private BNA also prints its own calendar). To determine if a larger firm is unionized, a good beginning step is to check its name in the calendars.

Bargaining Outcomes.

Information on negotiated major settlements is reported by the BLS in a monthly journal, Compensation and Working Conditions (CWC). Generally, it can be expected that a settlement will be reached at roughly the time the contract expires. In any case, CWC contains an annual index which can be used to locate particular

settlements. CWC listings usually indicate the basic wage adjustment (e.g., an increase of 10¢ per hour, or 3%, or no wage change), the presence of an escalator clause and its formula, and changes in other benefits. Apart from the listing at settlement time, CWC lists deferred and escalator adjustments as they occur.

The private BNA publishes a similar listing of settlements and deferred and escalator adjustments on a biweekly basis in the Daily Labor Report. BNA's contract file includes smaller bargaining units - those involving 50-999 workers - as well as the major contracts reported by BLS. However, even with the BNA file, it is likely that the smaller the bargaining unit, the greater the chance it will escape any listing.

Work Stoppages.

Strikes and lockouts are not the only measure of labor relations tensions. But they are the most visible symptom and the only one systematically reported. A poor climate of labor-management relations may indicate that the firm's productivity level is being adversely affected. More importantly, it may suggest difficulties in implementing new technologies and procedures.

The BLS lists strikes involving 1,000 or more workers in Compensation and Working Conditions and in press releases.

Listings show the starting date of the dispute, the number of workers involved, and the number of work days lost. If a strike occurs as the result of a bargaining impasse, it is likely to occur at roughly the contract expiration date. Hence, bargaining calendars can be combined with listings of work stoppages to determine whether peaceful settlements of new contracts are the norm.

Of course, in the case of prominent firms, labor disputes are often discussed in the news media. Generally, settlements involving strikes, large numbers of workers, and government intervention receive more media attention than others.[43] In contrast, nonunion wage decisions are rarely reported on a company-by-company basis, partly because of the lack of drama surrounding such decisions and partly because nonunion employers do not make the information available.

Union Information.

Background information on particular unions is available from various sources. Older specialized reference books provide descriptions of the history of unions and their leadership.[44] But generally it is necessary to update such sources with accounts in the popular press and journals such as the Daily Labor Report. Most major unions publish newspapers at the national level. And local union papers are also often published. These sources provide

information on current union activities and policies. They often provide background on union bargaining objectives. In addition, the BLS' Monthly Labor Review carries articles on leadership changes and policy resolutions and discussions at union conventions. Finally, data on membership and financial information of particular unions are available from specialized directories.[45]

VI. Union Structure and Governance.

Unions are membership organizations which select their leaders through an election process. On a de facto basis, some unions are more democratic than others. But whatever the internal reality of their union's governance may be, union leaders must take cognizance of member opinions and interests, particularly in negotiations and dealings with employers.

Members of unions, like employees generally, have a stakeholder relationship with their employer. In certain respects, however, their stake may be greater than that of similar nonunion workers. The union political process will particularly represent the preferences of senior workers. Within a voting-type process, it is the median voter - the voter who can provide the 50%-plus-1 margin - whose needs will be reflected.[46] In the union setting, such a "voter" will have been on the job for a significant period.

Given the senior worker dominance, the union is likely to negotiate arrangements which favor senior workers, thus giving special rewards to seniority. Thus, the stake of employees in their firm becomes greater and greater as they remain with the employer. In periods when plant closings are occurring, or seem likely to occur, emphasis in union bargaining demands will reflect the senior preference. To a senior worker, a plant closing (or a complete shutdown of the employer), would involve a substantial capital loss, i.e., a loss of the capitalized value of his/her seniority-augmented stake. Thus, in such periods the internal political process of unions will tend to shift demands towards those emphasizing job security and related issues.

Box K on job security settlement

However, the nature of the employee stake will vary with such factors as age, seniority, occupational category, family status, location of work, etc. What serves one group may not serve another. The fact that unions are political organizations, often comprised of such diverse factions and conflicting interest groups, complicates the collective bargaining process. Managers, especially those accustomed to top-down decision making, commonly find it hard to adjust to this complexity.

Box K

A Job Security Settlement

The most elaborate job security arrangements that came out of the concession bargaining of the 1980s were undoubtedly those in the automobile industry. Automobile manufacturing is especially sensitive to the business cycle and efforts by the United Automobile Workers to obtain job security extend back to the 1950s when Supplemental Unemployment Benefits were negotiated as a kind of private unemployment insurance scheme for laid-off auto workers.

In 1982, however, the industry faced both a severe recession and rising foreign competition as the dollar rose in value. Although contracts would normally have expired in the fall, the union and Ford (and later GM) negotiated an early settlement which tore up the old agreement, froze wages, instituted profit sharing, and provided a two-year moratorium on new plant closings and an elaborate program of income security for workers with at least 15 years of seniority.

These provisions were embellished in subsequent contract settlements during the following decade. However, the recession of the early 1990s brought new plant closings in the industry. Ultimately, it is difficult to provide job or income security if cars are not selling.

Source: "Pay Concessions, Job Security Breakthroughs Highlight Historic Pact Between Ford and UAW," Daily Labor Report, February 16, 1982, pp. AA1-AA2, and subsequent sources.

For example, it sometimes happens that management reaches a tentative settlement with union officials, only to find that the union membership rejects the deal in a ratification vote. As in the wider political environment, elected leaders sometimes misjudge their constituents and find that their programs (and even they!) are repudiated at the polls. Generally, negotiating with a union on the terms of a labor-management agreement is a more difficult prospect than negotiating with a supplier about the prices of inputs or with a customer about output prices.

Within unions, the structure of authority tends to reflect the industries and employers with which they deal. National unions (often called "internationals" if they have members in Canada as well as the U.S.) are divided into regional bodies and "locals." In industries such as automobile manufacturing, where only a few national employers sell in a large domestic market, the industry/employer pattern dictates a union structure which puts substantial authority over bargaining goals in the hands of the national union leadership. But where employers are generally local contractors operating in separate product markets, such as in the construction industry, local unions play the major role in negotiating contracts and determining policy.

Even in cases where the national union exercises strong authority, locals will still have a significant voice regarding local issues. Furthermore, the day-to-day climate of industrial

relations in a particular plant of a large firm will reflect the state of relations between local plant management and the local union leadership. It is quite possible, for example, for a relatively cordial relationship to exist between top management and the national union leadership while substantial frictions exist in particular plants or divisions at the local level.

Since empirical studies suggest that the quality of the labor-management relationship can have an important impact on productivity, top managers must be concerned about both levels of their relationship with the union (national and local).[47] And, of course, local management must be especially concerned about their relations with the local union. Ultimately, poor productivity performance stemming from a hostile relationship will reflect badly on local management personnel. The question will be (rightly) asked as to whether another management team is needed to improve the labor-relations climate.

VII. Bargaining Structure.

Various negotiating formats have developed in different industries. In some cases, negotiations are predominantly between a single union and a firm. Once a settlement is reached, its terms may be imitated at other firms in the industry with which the union deals. This is the so-called "pattern bargaining" discussed in a previous chapter. Sometimes, however, a large firm may deal with

various unions primarily on a local basis. In some instances, where multiple unions deal with a single employer, the unions may form a bargaining coalition to present unified proposals to management. Coalition bargaining may involve the various unions forming a unified bargaining team to present their demands to management. Or the individual unions may simply coordinate their demands, even if presented separately.

Employers may also form coalitions. Especially in industries where many small employers deal with a particular union, employers may join in a bargaining association to handle negotiations on their behalf, so-called "multiemployer bargaining." Examples of such employer associations exist in construction and longshoring.

Sometimes, employer associations have been formed at the behest of the union, since the union's administrative task is simplified if it can negotiate a single master contract with an association rather than a host of individual agreements on a company-by-company basis. However, in other cases small employers themselves will have formed the association, hoping that a unified front would strengthen their position in negotiations. If each firm negotiates independently, the union could strike them one at a time, diverting their sales and customers to their competitors. Each individual firm would thus be under great pressure to make concessions to the union, if faced with such union "whipsaw" tactics.

With employer unity, however, the union may be forced to strike many firms at once. Even if the union tries to strike a single firm to whipsaw the others into accepting its terms, allied employers may call a "lockout," i.e., a cessation of production and employment (or sometimes a cessation of use of union members and hiring of nonunion replacements). A lockout effectively converts a single-firm strike into an industry-wide strike.

Individual employers - just as buyers or sellers in the product market - can enhance the profitability of their labor market strategy through coordination. But just as in the case of a product market cartel, there are always pressures to break away from the group and negotiate side deals which undermine group unity. For example, an employer might decide it would prefer to see its competitors do battle with the union while it sits quietly on the sidelines. The employer might negotiate an interim agreement with the union during the strike, maintain its production, and profit from sales diverted from its less fortunate rivals. It could simply agree with the union that after the strike against its competitors ends, it will sign a contract equivalent to theirs.[48]

Box L on coal employer disunity

Box L

Disunity Among Coal Employers

At one time, the United Mine Workers followed a strict policy of no-contract, no-work, i.e., they would strike all coal producers which did not reach a settlement with them when their previous contract expired. Coal operators were organized in a bargaining group, the Bituminous Coal Operators Association (BCOA). Hence, impasses led to strikes against the entire unionized sector of the industry.

From the union's viewpoint, a switch in tactics to encourage employer disunity was seen as more advantageous. Accordingly, the union's 1993 bargaining tactics consisted of continuing to work at many mines while seeking individual operators willing to peel off from BCOA and make side deals with the union. These side deals enabled employers who broke ranks to keep operations going while their competitors continued to bear strike costs. They also permitted the union to keep some of its members working and thus to provide support to those members at struck mines. Not surprisingly, BCOA took a dim view of these tactics and threatened legal action against companies making side deals during the strike.

As in any cartel-like situation, maintaining discipline among the members is difficult; there are always temptations to break ranks.

Source: "UMW Announces Interim Accord With Third Employer from BCOA," Daily Labor Report, June 25, 1993, pp. A3-A4; and related sources.

Employer bargaining associations are not the exclusive province of small employers. In a few cases, larger employers, such as railroads, have formed bargaining associations. More commonly, however, larger employers have agreed to "cooperate" loosely in their bargaining positions, rather than completely delegate their negotiations to an association. Larger firms have occasionally been known to establish "mutual assistance pacts," whereby firms which are struck receive aid from other (non-struck) firms in the industry.[49]

One of the features of collective bargaining in the 1980s was the breakdown of longstanding negotiating structures. Multiemployer bargaining associations were weakened or collapsed in many cases.[50] More generally, employers became less willing to engage in pattern following settlements. Management tended to stress firm-specific goals in its labor-relations strategy.[51] These changes reflected the erosion of union bargaining strength which had been a force for uniformity in many industries. With the arrival of new, nonunion entrants and foreign competitors, unions could no longer guarantee to employers that every firm in the product market would pay the same wages and benefits.[52]

VIII. Representation Structure.

There have been two traditional models of union representation. Craft unions represent workers on the basis of occupations. Examples are the various construction crafts (carpenters, painters, electricians, etc.), the film and TV crafts (writers, actors, etc.), and professional groups such as nurses, teachers, and airline pilots. Generally, management often finds dealing with a multiplicity of craft unions to be a complicating factor in labor relations. The different unions may have rivalries which need to be considered and jurisdictional disputes between the unions sometimes arise. For example, one craft union in construction may "claim" the work performed by another.

The alternative to craft unionization is representation of a group of workers regardless of their occupations. Such multi-occupational representation is called industrial unionism. It is found in such areas as manufacturing, mining, telephone communications, and civil service. Much of the growth in unionization in the 1930s and 1940s came in the industrial format. Many unions which were once craft unions - even those which still have names suggesting their original crafts (Teamsters, Machinists) - are, in reality, industrial unions today.[53]

In the private sector, managerial and supervisory workers are almost never represented by unions in the U.S. Indeed, the American labor law framework excludes such employees from its protections (see Box G), although it does not forbid them from

unionizing.[54] But in other countries, such managerial and supervisory unionization sometimes does occur. Even in the U.S., supervisors and administrators sometimes do have limited representation in the U.S. in the public sector.

IX. Compensation Provisions in Union-Management Agreements.

Virtually any matter that might be the subject of a human resource policy in a nonunion firm may be covered in a collective bargaining agreement. Often, economic models of union behavior have framed the analysis in terms of bargaining over a "wage." This approach can be a useful simplification for modeling purposes. However, even in the wage area much more complexity is involved.

i. Union Wage Effects.

A common question about union wages is whether they are higher than nonunion. Table 4 uses data from the Current Population Survey on median usual weekly earnings to answer that simple question. Union workers are typically higher paid than nonunion, although the ratio varies considerably from one group to another. Generally, the ratios of union to nonunion pay are highest for groups likely receive lower-than-average wages, i.e., women, blacks, and unskilled and semi-skilled blue collar workers (operatives, fabricators, and laborers).

Table 4

Ratio of Union to Nonunion Usual Weekly Earnings of Full-Time Wage & Salary Earners, 1992

Category	Ratio
All wage & salary earners	131%
Males	122
Females	133
White	132
Black	144
Hispanic	156
Private nonfarm	127
Government	120
Managerial/professional	100
Technical & related support	117
Sales	109
Administrative support including clerical	134
Protective service workers	158
Other service workers	144
Precision production, craft and repair workers	141
Operatives, fabricators, and laborers	156
Farming, forestry, fishing workers	152

Note: Union workers are those represented by unions including some workers who are not union members.

Source: Employment and Earnings, vol. 40 (January 1993), pp. 240-241.

Of course, data such as those of Table 4 do not prove conclusively that unions cause wages to be higher than they otherwise would be. In theory, unions might simply happen to represent workers whose personal characteristics would earn them higher pay than others in their groupings, anyway.[55] But the evidence is to the contrary. There have been detailed studies of this issue in which other characteristics, both personal and industrial, are controlled.

The general consensus among economists as a result of such studies is that unions commonly do cause wages to be higher than employers would otherwise pay. There is, in short, a union impact on wages. Moreover, the effects of unions on wages seem to be greater for minority workers, blue collar occupations, and private sector workers, than for (respectively) whites, white collar occupations, and government employees.[56]

Even absent the statistical studies, two casual pieces of evidence strongly suggest that unions affect wages. First, management resistance to unions is strong. Nonunion managements do not want their workers organized and expend considerable sums and energy to prevent unionization when it is threatened. If unions had no effect on wages, it is hard to understand why such employer resistance would occur.[57]

Second, during the wage concession movement which began in the early 1980s, there were notable cases in which unions accepted wage cuts and benefit reductions. If union wages and benefits had been no higher than what the employer would otherwise have determined, why should employers have demanded such cuts? Given the evidence, both statistical and casual, it will be assumed throughout the remainder of this chapter and the next that unions do raise wages relative to "market" levels. The effect may well develop over time, however, so that newly-unionized firms may pay lower premiums than those with a long history of bargaining.[58]

ii. Wages and Premiums in Union-Management Contracts.

Typically, a union-management contract - especially outside the craft union arena - will cover the wage rates for a variety of occupations. So there is not one wage, but rather a multiplicity of wages, to be negotiated. Moreover, rates of pay will vary according to the circumstances under which they are earned. A survey of union contracts in the early 1990s by the Bureau of National Affairs, Inc., found that 86% included pay premiums for late shifts. Eighty percent of contracts provided for "reporting pay" in cases when workers arrived at work, but found none available. Thirteen percent provided for extra pay in hazardous situations. Contracts often also provided for reimbursement of employee expenses for travel, work clothes, and tools.[59]

iii. Wage Schedules and Systems.

Often, workers in a given occupation have a wage schedule rather than a single wage rate. In a previous chapter, wage progression plans were discussed in detail. It was noted than an occupation may have a rate range, i.e., a minimum and maximum wage, under which new entrants begin at the minimum and work their way up to the maximum on the basis of merit and/or length of service.

Union contracts are more likely than nonunion pay systems to emphasis length of service, rather than merit, as the criterion for advancement. In the BNA survey previously cited, 73% of the contracts studied used which specified a wage-rate range for pay grades used length of service to determine progression. Twenty-seven percent used merit as a criterion for progression to the top of the grade.[60]

The service vs. merit distinction between the union and nonunion sectors illustrates the impact of the bargaining process on negotiated outcomes. As noted above, there is substantial evidence that unions do succeed in raising wage and benefit levels of the workers they represent. In other words, unionized employers often pay more for labor than they otherwise would unilaterally determine to do. Whenever a price is raised relative to "market" levels, opportunities for avoiding and evading the floor may arise.

As an example, in the airline industry, prior to deregulation, a federal government agency kept airline fares above market levels on many routes. Airline carriers, therefore, had an incentive to find de facto ways of lowering the effective price to attract business from competitors without overtly appearing to do so. Thus, they might offer discounts on non-airline services such as hotels and rental cars. Or they might look the other way (or even encourage) the arrangement of phony "charter" flights. Periodically, federal regulators had to crack down on such devices by defining new and more complex rules, e.g., defining a charter flight strictly.[61]

The same potential for erosion of the union's bargaining advantage arises in the collective bargaining sphere. If the union raises wages, employers might attempt to "get around" the higher wage indirectly. For example, if "merit" - an inherently subjective judgment - determines pay progression, an employer might be tempted to be especially critical in making merit judgments in the face of union-raised wages. By limiting pay advances for individual workers, the employer could hold down the average rate of pay in the firm, partly offsetting the union wage advantage.

Thus, the union must respond - as did federal regulators used to do in the airline example - with more elaborate rules, in this case concerning pay progression. To avoid the risks of leaving subjective judgments to the employer, the union will press for an

objective criterion for advance, with length of service being the obvious index. More generally, unions will seek to limit managerial discretion over a wide range of issues to avoid employer "chiseling" away of negotiated gains.

Progression in pay by seniority also fits with another aspect of union motivation. As discussed earlier, economic models of union behavior have emphasized "median voter" behavior. As a political process, union policy on wages and other matters will be determined by coalitions which can control just over 50% of the union's electorate. Thus, the views of the median voter are especially significant. Because senior voters have the greatest stake in workplace affairs (since they are least likely to depart voluntarily), the median voter will be a worker with significant seniority, rather than a new entrant. A pay progression plan which explicitly rewards seniority will have obvious appeal to the median voter. Studies have also found that promotions - as well as merit rewards - are more likely to be seniority based in the union sector than in the nonunion sector.[62]

iv. Two-Tier Pay Systems.

As noted in an earlier chapter, the wage concession movement of the 1980s brought with it the development of two-tier pay systems. These systems arose out of the clash between demands by unionized employers for across-the-board pay cuts and union

resistance to such demands. The compromise solution was the establishment of a dual wage arrangement in which current workers would retain their existing wage scales (or in some cases even receive an increase in pay) while new hires would be paid at a new, lower scale. In the BNA survey of union contracts in the early 1990s cited above, 27% contained two-tier plans.[63]

As a pay scheme, the two-tier approach is perhaps the ultimate recognition of the union's political realities and the "insider/outsider" division of interests. New hires are outside the union's political system, until they become employees. They, therefore, do not vote in ratification of two-tier pay plans (since they are not yet hired). So it is easy to see why - if offered a choice between cutting the pay of current voters and cutting the pay of not-yet-voters - unions would pick the former.

Even so, union political mechanisms had an influence on the type of two-tier plan negotiated. Sixty percent of the surveyed contracts had "temporary" two-tier plans under which the wage schedule for new hires (the lower tier) would eventually merge with the wage schedule for current workers (the upper tier). Under such arrangements, the new hires eventually reach the higher pay scale; they do not remain "second-class" citizens indefinitely.

Thirty-seven percent of the surveyed contracts had "permanent" two-tier plans under which the lower tier never catches up with the

upper tier. (Three percent had a mix of permanent and temporary plans for different job categories). Given that the lower tier workers would eventually become a majority in the union's political process, it is easy to see why unions would opt for temporary rather than permanent plans, where it was possible to affect the choice. Of course, the eventual outcome reflects a mix of both union and management preferences.[64] But instances of eliminations of two-tier plans (or of a narrowing of the wage gap between the tiers) began to be reported by the late 1980s.

Box M on Delta ending two-tier

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v. Lump Sum Bonuses.

Concession bargaining in the 1980s also brought with it growing use of lump sum bonuses in lieu of wage increases. Thus, for example, instead of three 3% annual wage increases in a three year contract, an employer might negotiate three 3% bonuses. Three 3% wage increases would raise wages about 9% over the course of the agreement. But three 3% bonuses do not raise wage rates at all and leave compensation paid out only 3% higher in the last year of the contract than in the year just before the contract.

Lump sum bonuses can be specified in many ways. Sometimes, a flat bonus, e.g., $1,000 is paid out to all workers regardless of

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Box M

Delta Ends a Nonunion Two-Tier Plan

The use of two-tier wage plans has been mainly a union-sector phenomenon. However, Delta Air Lines, a carrier which is nonunion except for its pilots, instituted a two-tier plan for its nonunion personnel in 1984. At the time, other unionized carriers were installing two-tier programs to compete with low-cost airlines which entered the market after airline deregulation. However, in 1988, Delta discontinued its two-tier plan. The airline cited competition in the labor market as one reason for its decision,noting that mechanics on the lower two-tier scale were quitting for better paid jobs elsewhere.

Although a spokesperson for Delta indicated that there was not much friction between workers in the upper and lower pay tiers, the ending of the plan came at a time when the Teamsters were attempting to organize Delta's nonunion employees. Delta had earlier acquired a unionized carrier - Western - and the Teamsters were using the former Western workers as an organizing base.

Source: "Delta Will Scrap Two-Tier Wages as Non-union Workers Get Raises," Daily Labor Report, July 26, 1988, pp. A2-A3, and subsequent sources.

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pay level. In other cases, the bonus may be proportionate to annual salary. Bonuses may also have quasi two-tier elements. For example, the contract may indicate that only those who have been on the payroll a full year are eligible for the annual bonus. Thus, new hires must wait at least a year before receiving a bonus payment.

Until the 1980s, bonuses were rarely used in union-management agreements. However, by the early 1990s, 23% of surveyed contracts had lump-sum bonuses as part of their pay packages.[65] The presence of bonuses on a large scale has distorted some commonly used indexes of wage levels and wage change. Bonuses are excluded, for example, from the calculation of average hourly earnings.

It may be that lump-sum bonuses will evolve as a flexible element of pay in the union sector in the future. In principle, unions might negotiate a relatively inflexible base wage, but add a bonus to it which reflected economic circumstances prevailing at the time the bargain was reached. This type of system would amount to de facto profit sharing. Alternatively, firms might give bonuses instead of wage increases in Hard Times and wage increases in Good Times. For example, as aerospace downsized in the early 1990s with the ending of the Cold War, lump sums became prominent in union settlements.[66]

vi. Benefits.

The union emphasis on seniority and the median voter helps explain the richness of benefit packages of unionized workers compared with nonunion. In March 1993, for example, 36% of private-sector union pay went to benefits (private and legally-required) as compared to 27% in the nonunion sector.[67] Some benefits, such as vacation plans, are commonly linked to seniority. Typically, longer-service workers are entitled to longer vacations. Such benefits would have an obvious appeal to unions.[68]

Other benefits are of greater utility for senior workers, even though they are not explicitly linked to seniority. For example, health care benefits will be of greater appeal to older workers (who are more likely to become ill and more likely to have dependents) than to younger workers. And age and seniority are likely to be correlated.

Finally, some plans may actually be indirect mechanisms for transfers from junior to senior workers. Union workers are much more likely than nonunion to be covered by pensions and the plans they have are much more likely to be defined benefit (rather than defined contribution) plans.[69] As noted in a previous chapter, defined benefit plans typically have vesting rules which exclude the most junior employees if they leave the firm or are permanently laid off. And even when vested, workers who depart before retirement age generally take away a lump sum payment which is

worth less than the actuarially adjusted value of their defined benefit.

Thus, union pension plans favor the most senior workers. Moreover, junior workers - on whose behalf contributions to the pension fund are made - may not receive any component of those contributions unless they at least become vested. Contributions of junior workers who depart are effectively reallocated to support the pensions of seniors.

In terms of retirement benefits actually paid, the union effect seems to be a leveling influence. Over half of the pension plans studied as part of the survey cited earlier paid a flat dollar benefit per year of service, regardless of the earnings level of the pensioner before retirement.[70] Notions of equity, expressed through the union bargaining mechanism, may account for this leveling effect.[71]

X. A Preview.

There are many features of union-management contracts which do not involve specification of wages and benefits. Both the stake of the worker in the firm, and the stake of the union in the bargaining relationship, are reflected in contractual provisions. The next chapter reviews these features and then explores

bargaining, conflicts, and conflict resolution in the context of the union-management relationship.

EXERCISE FOR THE STUDENT

Select a prominent bargaining situation (such as the automobile industry negotiations). Then using data sources described in this chapter, trace through the last few rounds of bargaining which have occurred. How many workers were involved? Did strikes occur? What settlements were reached? What can you find out about the background of the union(s) and the industry?

KEY QUESTIONS AND CONCEPTS

1. Within the private sector, what factors seem to account for the change in the level of unionization over time?

2. What factors account for the divergence in unionization between the public and private sectors?

3. Within the private sector, what influences account for the variations in unionization rates between industries?

4. What is the unionization status of white-collar workers?

5. In merger and acquisition situations, what information related to unionization is useful to obtain?

6. What influence does seniority have in the union political process?

7. Why did two-tier pay plans develop in the union sector in the 1980s?

8. What influence do unions have on the level of pay and benefits?

Phrases:

appropriate bargaining unit, coalition bargaining, concerted activity, concession bargaining, craft vs. industrial unions, decertification election, employees as stakeholders, Landrum-Griffin Act, lump sum bonus, insider-outsider model, jurisdictional dispute, lockout, median voter model, multiemployer bargaining, mutual assistance pacts, National Labor Relations Board, pattern bargaining, representation election, Taft-Hartley Act, two-tier pay plan, unfair labor practice, wage controls and guidelines, wage-purchasing power theory, Wagner Act, whipsaw tactics.

FOOTNOTES

1. Fringe benefits did not originate in the union sector. But they did not become widespread until the advent of unionization in the 1930s, 1940s, and after.

2. OSHA stands for the Occupational Safety and Health Act. It will be discussed in a later chapter.

3. ERISA stands for the Employee Retirement Income Security Act. References to it have been made in a previous chapter. ERISA sets basic standards for pension funding and investment, requires that defined-benefit pension plans carry government-sponsored termination insurance, and sets standards for pension eligibility and vesting.

4. States also enact laws dealing with minimum wages, employment of minors, safety on the job, and equal employment opportunity which may overlap (and be stricter than) federal legislation in these areas.

5. The AFL-CIO stands for American Federation of Labor - Congress of Industrial Organizations. The American Federation of Labor was originally founded in 1881. A dissident group split from the AFL and formed the CIO as a separate organization in 1935. The two groups subsequently merged in 1955.

6. For many years, the largest unaffiliated union predominantly in the private sector was the Teamsters. The Teamsters were expelled from the AFL-CIO in the late 1950s on corruption charges, but were readmitted in the late 1980s in an effort at labor unity. More recently, a reform-oriented president was elected by Teamster members in a court-supervised election.

7. Perhaps the most visible sign of this change in the position of the AFL-CIO was the issuance of its report The Changing Situation of Workers and Their Unions (Washington: AFL-CIO, 1985). This report was disseminated to member unions and used as a basis for discussion of future policy and actions.

8. The National Education Association (NEA) for many years considered itself a professional association, not a union, representing teachers and other educators and did not engage in collective bargaining, unlike its AFL-CIO rival, the smaller American Federation of Teachers (AFT). This history partly explains why the NEA has remained outside the AFL-CIO structure. NEA affiliation with the AFL-CIO would require a merger of the NEA and the AFT. Although there have been some cases in which locals of the two unions have merged, national merger would be difficult to accomplish. In this volume, no distinction is made between unions and associations which act like unions.

9. Less than 4% of total private sector union membership was estimated to belong to independent local unions in 1983. Source: Leo Troy and Neil Sheflin, Union Sourcebook: Membership, Structure, Finance, Directory, first edition (West Orange, N.J.: Industrial Relations Data and Information Services, 1985), Tables 3.35, 3.31.

10. Sanford M. Jacoby and Anil Verma, "Enterprise Unions in the United States," Industrial Relations, vol. 31 (Winter 1992), pp. 137-158.

11. Employers may recognize unions without the formality of an election. For example, sometimes employers will agree that new facilities they open will become part of the union-represented bargaining unit. However, management most typically will insist on formal elections in representation disputes. Representation elections may include more than one union on the ballot if more than one is seeking representation rights. Where no choice receives a clear majority, run off elections between the top two choices are held. The initial election always includes the choice of "no union" and "no union" will appear on the ballot in a run off, if it is among the top two choices in the initial vote.

12. There are three major exclusions from this framework. First, the Railway Labor Act, originally passed in 1926 and significantly amended in 1934, regulates union-management relations in the railroad and airline industries. Unions and bargaining in those sectors are not covered by the laws described below in the text, although the Railway Labor Act has many similarities to those laws. Second, agriculture is excluded from federal regulation of union-management relations, but can be regulated at the state level. Some states, such as California, do have regulatory systems for agriculture which largely parallel the federal model for nonagricultural industries. Third, small employers are excluded from coverage of federal regulation, although they may be subject to state laws. Standards for exclusion from federal coverage vary from industry to industry, but are based on dollar volume of business.

13. An earlier piece of legislation, the Norris-LaGuardia Act of 1932 limited the authority of federal courts to issue injunctions (orders to discontinue some activity) in cases of labor disputes. At the time the law was passed, it was felt by Congress that the federal courts too often issued injunctions which supported the management side in such disputes. Passage of the Norris-Laguardia Act signaled a change in the political climate in Congress to a more "pro-union" attitude than had previously existed. Part of the reason for this shift stemmed from anger at the business sector which was blamed for the worsening Great Depression.

14. When considered by Congress, the Taft-Hartley bill was an extremely controversial piece of legislation. It was vetoed by President Truman but passed by Congress over his veto. The Taft-

Hartley Act became a major political issue in the 1948 Presidential election, which Truman narrowly won. However, its major features have never been repealed.

15. Many sources of legal information are available. As examples, Commerce Clearing House, Inc., puts out periodic reference books entitled Labor Law Course and publishes the monthly Labor Law Journal. In addition, textbooks on labor law, aimed primarily at law and business students, are available from various publishers, notably the Bureau of National Affairs, Inc. (BNA). Especially useful for keeping up with current events in labor relations is BNA's Daily Labor Report.

16. Douglass V. Brown, "Legalism and Industrial Relations in the United States" in Gerald G. Somers, ed., Proceedings of the Twenty-Third Annual Winter Meeting, Industrial Relations Research Association, December 28-29, 1970, pp. 2-10.

17. U.S. Bureau of Labor-Management Relations and Cooperative Programs of the U.S. Department of Labor, U.S. Labor Law and the Future of Labor-Management Cooperation, BLMR 113 (Washington: U.S. Department of Labor, 1987).

18. Other NLRB-related measures indicate a drop off in union organizing activity, particularly relative to Canada where unions fared better than in the U.S. See Joseph B. Rose and Gary N. Chaison, "New Measures of Union Organizing Effectiveness," Industrial Relations, vol. 29 (Fall 1990), pp. 457-467.

19. Another analysis of NLRB rulings in cases where union supporters were allegedly screened out from hiring suggested that the chairmanship of the Board by conservative Donald Dotson (1984-85) reduced the probability of a union-favored decision. See Terry L. Leap, William H. Hendrix, R. Stephen Cantrell, and G. Stephen Taylor, "Discrimination Against Prounion Job Applicants," Industrial Relations, vol. 29 (Fall 1990), pp. 469-478.

20. Orley Ashenfelter and John H. Pencavel, "American Trade Union Growth: 1900-1960," Quarterly Journal of Economics, vol. 83 (August 1969), pp. 434-448; William J. Moore and Douglas K. Pearce, "Union Growth: A Test of the Ashenfelter-Pencavel Model," Industrial Relations, vol. 15 (May 1976), pp. 244-247; Farouk Elsheik and George Sayers Bain, "American Trade Union Growth: An Alternative Model," Industrial Relations, vol. 17 (February 1978), pp. 75-79.

21. Henry S. Farber, "The Decline of Unionization in the United States: What Can Be Learned from Recent Experience?," Journal of Labor Economics, vol. 8, (January 1990, Part 2), pp. S75-S105.

22. Jonathan S. Leonard, "Unions and Employment Growth," Industrial Relations, vol. 31 (Winter 1992), pp. 80-94; Barry T. Hirsch, "Firm

Investment Behavior and Collective Bargaining Strategy," Industrial Relations, vol. 31 (Winter 1992), pp. 95-121.

23. There is some evidence that employers are less likely to commit unfair labor practices in states with relatively high unionization. Hence, as unionization erodes, the degree of employer resistance may - paradoxically - increase. See C. Timothy Koeller, "Employer Unfair Labor Practices and Union Organizing Activity: A Simultaneous Equation Model," Journal of Labor Research, vol. 13 (Spring 1992), pp. 173-187.

24. Macroeconomics as a field is usually dated from the writings of the British economist, John Maynard Keynes. Keynes chief book on macroeconomics, The General Theory, did not appear until 1936 although elements of his views were becoming known in the U.S. before then. Much of macroeconomics developed as a refinement and a debate of Keynesian economics, a process which took many years. See John Maynard Keynes, The General Theory of Employment, Interest, and Money (New York: Harcourt, Brace & World, 1936). The state of economic thinking in the 1930s, particularly in regard to labor market issues is discussed in Daniel J.B. Mitchell, "Wages and Keynes: Lessons from the Past," Eastern Economic Journal, vol. 12 (July-September 1986), pp. 199-208.

25. Econometrics was in its infancy in the 1930s, so that even if substantial empirical information had been available, the techniques for interpreting it would have been primitive. And, of course, the computers which are so commonly used for empirical analysis today did not exist.

26. Although historical sourcebooks often present unemployment rates going back to the 1930s, these statistics were not collected at the time. The Current Population Survey - from which modern unemployment and other labor force data are collected - did not begin until 1940. Earlier figures are at best crude estimates.

27. There were, in fact, various economic theories floating around, and it is difficult to say precisely which ones were most favored by the Roosevelt administration at any one time. Some theories suggested that the goal should be raising prices, rather than wages. Initial policies of the New Deal seemed aimed at raising both prices and wages. Under the National Industrial Recovery Act (NIRA) of 1933, industries were organized into cartel-like groups and the antitrust laws were suspended. Increased wages and prices were encouraged through the codes of conduct these cartels established with government blessing.

28. See Daniel J.B. Mitchell, "Inflation, Unemployment, and the Wagner Act: A Critical Reappraisal," Stanford Law Review, vol. 38 (April 1986), pp. 1065-1095.

29. Wagner Act, ch. 372, Sec. 1, 49 Stat. 449, 449 (1935) [current version at 29 U.S.C., Sec. 151 (1982)].

30. On these issues, see Crauford D. Goodwin, ed., Exhortation & Controls: The Search for a Wage-Price Policy, 1945-1971 (Washington: Brookings Institution, 1975); John Sheehan, The Wage-Price Guideposts (Washington: Brookings Institution, 1967); and Arnold R. Weber and Daniel J.B. Mitchell, The Pay Board's Progress: Wage Controls in Phase II (Washington: Brookings Institution, 1978). Comparative little has been written about the Carter program. However, see Daniel J.B. Mitchell, "The Rise and Fall of Real Wage Insurance," Industrial Relations, vol. 19 (Winter 1980), pp. 64-73, for an analysis of one aspect of the Carter wage guideline and U.S. General Accounting Office, The Voluntary Pay and Price Standards Have Had No Discernible Effect on Inflation, PAD-81-02 (Washington: GAO, 1980), for a general review.

31. Leo Troy, "Is the U.S. Unique in the Decline of Private Sector Unionism?," Journal of Labor Research, vol. 11 (Spring 1990), pp. 111-143. There has been a considerable literature comparing the U.S. and Canada (two very similar and economically-interrelated countries) with regard to a seeming divergence in their unionization rates (relatively low and down in the U.S., relatively high and up or flat in Canada). But private sector evidence in fact suggests a decline in Canada roughly parallelling that of the U.S. See Leo Troy, "Convergence in International Unionism, Etc.: The Case of Canada and the USA," British Journal of Industrial Relations, vol. 30 (March 1992), pp. 1-43.

32. The Bureau of Labor Statistics maintains a data file of major union agreements in order to keep track of contract expirations and scheduled wage adjustments.

33. References concerning economic and other factors explaining differences in public and private sector unionization include Edward P. Lazear, "Symposium on Public and Private Unionization," Journal of Economic Perspectives, vol. 2 (Spring 1988), pp. 59-62; Richard B. Freeman, "Contraction and Expansion: The Divergence of Private Sector and Public Sector Unionism in the United States," Journal of Economic Perspectives, vol. 2 (Spring 1988), pp. 63-88; Melvin W. Reder, "The Rise and Fall of Unions: The Public Sector and the Private," Journal of Economic Perspectives, vol. 2 (Spring 1988), pp. 89-110; Richard B. Freeman, "Unionism Comes to the Public Sector," Journal of Economic Literature, vol. 24 (March 1988), pp. 41-86; Richard B. Freeman and Casey Ichniowski, eds., When Public Sector Workers Unionize (Chicago: University of Chicago Press, 1988).

34. On wage premiums, see Daniel J.B. Mitchell, "Collective Bargaining and Compensation in the Public Sector" in Benjamin Aaron, Joyce M. Najita, and James L. Stern, eds., Public-Sector

Bargaining, second edition (Washington: Bureau of National Affairs, Inc., 1988), pp. 124-159.

35. In the private sector, it is an unfair labor practice to fire union organizers and activists. However, the penalties are low and remedies may be slow in coming. In the public sector in contrast, a host of civil service procedures makes it difficult to terminated workers.

36. The data source for tables 3B, 3C, and 3D is described in Barry T. Hirsch and David A. MacPherson, "Union Membership and Coverage Files from the Current Population Survey," Industrial and Labor Relations Review, vol. 46 (April 1993), pp. 574-578. The authors are thanked for providing the data for the tables.

37. The NLRB does not publish breakdowns of representations by white-collar vs. blue-collar status. However, private reporting services sometimes provide such tabulations. In 1988, for example, the union-win rate in white-collar elections was 58%. Source: "Despite Declining Number of NLRB Elections, Union Win-Loss Ratio Held Steady in 1988," Daily Labor Report, April 7, 1989, p. B-1.

38. C. Wright Mills, White Collar: The American Middle Classes (New York: Oxford University Press, 1956 [originally 1951]), pp. 301-323.

39. It might be noted that the Taft-Hartley Act singles out professional employees with regard to union representation. Such workers may not be placed in a bargaining unit with non-professionals unless the professionals agree to be so-included in a special election.

40. John M. Abowd, "Collective Bargaining and the Division of the Value of the Enterprise," working paper no. 2137, National Bureau of Economic Research, January 1987.

41. Firms with pension systems sometimes provide health care benefits to retirees, but typically do not pre-fund these benefits. Accounting standards now require such unfunded liabilities to be appropriately reported on company financial statements. Hence, unfunded health care as well as pension liabilities must be considered in merger and acquisition situations.

42. In general, the legal rule is that if the successor continues the basic business, it must continue to recognize the union as the bargaining representative. However, a new contract may have to be negotiated unless the union's contract with the previous owner specified that it would sell the business only to a new owner who agreed to abide by the existing agreement.

43. Christopher L. Erickson and Daniel J.B. Mitchell, "The Role of Strikes in the Formation of Wage Norms," Proceedings of the Industrial Relations Research Association, January 1993, forthcoming. See also William J. Puette, Through Jaundiced Eyes: How the Media View Organized Labor (Ithaca, N.Y.: ILR Press, 1992).

44. See Gary M. Fink, ed., Labor Unions (Westport, Conn., Greenwood Press, 1977); Gary M. Fink, ed., Biographical Dictionary of American Labor (Westport, Conn.: Greenwood Press, 1984).

45. See Leo Troy and Neil Sheflin, Union Sourcebook: Membership, Structure, Finance, Directory, first edition, 1985 (West Orange, N.J.: Industrial Relations Data and Information Services, 1985); Courtney D. Gifford, ed., Directory of U.S. Labor Organizations, 1992-93 edition (Washington: Bureau of National Affairs, 1992).

46. This statement is an obvious oversimplification. As noted, some unions are more democratically run than others. And it is often the case in unions - as in many other private associations - that many members do not vote, leaving policy in the hands of a smaller, committed group. However, the point of the text is unaffected. Some readers may prefer to substitute the words "inframarginal voter" for "median voter."

47. Casey Ichniowski, "The Effects of Grievance Activity on Productivity," Industrial and Labor Relations Review, vol. 40 (October 1986), pp. 75-89; Norsworthy, J.R., and Craig A. Zabala, "Worker Attitudes, Worker Behavior, and Productivity in the U.S. Automobile Industry, 1959-1976," Industrial and Labor Relations Review, vol. 38 (July 1985), pp. 544-557 [but see also John W.Straka, "Is Poor Worker Morale Costly to Firms?," Industrial and Labor Relations Review, vol 46 (January 1993), pp. 381-394, for a severe critique of Norsworthy and Zabala]; Katz, Harry C., Thomas A. Kochan, and Jeffrey H. Keefe, "Industrial Relations and Productivity in the U.S. Automobile Industry," Brookings Papers on Economic Activity (3:1987), pp. 685-715.

48. Each breakaway firm, however, weakens the position of the remaining struck firms, eventually contributing to a less-favorable settlement from the employer viewpoint. There is a close analogy between such behavior and that of members of a sellers' cartel, such as OPEC (the oil cartel), who produce and sell more than their agreed-upon quota in the expectation that others in the cartel will cut back production and keep prices high. Each defection makes it less likely that the remaining sellers will abide by cartel rules.

49. A mutual assistance pact (MAP) existed in the airline industry until the 1970s when it was effectively outlawed by the same legislation which deregulated air transportation. Under the airline MAP, struck firms received financial aid from others in the pact. Many problems arose, however, since the formula for determining the aid sometimes appeared to make being on strike more

profitable than operating. Firms contributing the aid did not have a direct voice in determining the bargaining posture of the struck firm. In the rubber industry, a MAP also existed, whereby non-struck firms would supply tires to struck firms so that they could meet their customers' needs.

50. In the steel industry, the major producers formed a bargaining association to negotiate master contracts with the United Steelworkers union in the mid 1950s. This arrangement was abandoned in the 1980s, under the pressure of severe foreign competition. Deregulation in the telephone industry, and the break up of the Bell System, led to decentralized (company by company) bargaining in the 1980s, rather than the uniform agreements which had prevailed in the 1970s. Deregulation also influenced negotiations in interstate trucking, where - although a master agreement format was maintained - many employers dropped out of the major employer association. Numerous other examples of these types can be cited.

51. Audrey Freedman, The New Look in Wage Policy and Employee Relations, report no. 856 (New York: The Conference Board, 1985), pp. 7-10.

52. The implications of this development will be explored in the next chapter.

53. The Taft-Hartley Act imposed certain limitations on industrial unionism. For example, professional employees cannot be forced into a bargaining unit with non-professionals unless the professionals vote separately for such incorporation. Plant guards cannot be part of a union of non-guard employees. In the former case, Congress sought to protect what it saw as a separate community of interests of professionals and non-professionals. In the latter case, it was felt that plant guards, who might be called upon to protect employer property during a labor dispute, should not be part of the union engaged in the dispute. Generally, private sector professionals have been resistant to unionization, as have other white collar workers. Requiring a separate union for guards made them difficult to unionize, since guards represent only a small fraction of a typical employer's workforce, and may be employed at scattered locations.

54. The Taft-Hartley Act specifically defines supervisors in order to exclude them from its protections. Management employees (other than supervisors) have been excluded by NLRB interpretation. These exclusions have been based on the assumption that top management needs loyal administrative subordinates, particularly in the event of a labor dispute.

55. Some have argued that it may be that higher paid workers might simply have a "taste" for union services, thus causing the correlation between pay and unionization. However, it is unclear

what "services" might be provided by a union so bereft of bargaining power that it cannot affect wages.

56. For surveys, see H. Gregg Lewis, "Union Relative Wage Effects: A Survey of Macro Estimates," Journal of Labor Economics, vol. 1 (January 1983), pp. 1-27; H. Gregg Lewis, Union Relative Wage Effects: A Survey (Chicago: University of Chicago Press, 1986); H. Gregg Lewis, Unionism and Relative Wages in the United States (Chicago: University of Chicago Press, 1963); and Richard B. Freeman and James L. Medoff, What Do Unions Do?, (New York: Basic Books, 1984), pp. 43-60; Daniel J.B. Mitchell, Unions, Wages, and Inflation (Washington: Brookings Institution, 1980), chapter 3; Richard B. Freeman, "Longitudinal Analyses of the Effects of Trade Unions," Journal of Labor Economics, vol. 2 (January 1984), pp. 1-26.

57. Some observers have argued that management might resist unionization - even absent a wage effect - because unions might impose restrictive workrules and limit managerial discretion in decision making. However, while it is true that managers are concerned about such non-wage issues, it is difficult to conceive of a union which had the bargaining power to impose workrules and other limits on management, but which didn't chose to use any of that power to raise wages.

58. Richard B. Freeman and Morris M. Kleiner, "The Impact of New Unionization on Wages and Working Conditions: A Longitudinal Study of Establishments Under NLRB Elections," working paper no. 2563, National Bureau of Economic Research, April 1988.

59. Bureau of National Affairs, Inc., Basic Patterns in Union Contracts, thirteenth edition (Washington: BNA, 1992), pp. 118-123.

60. Bureau of National Affairs, Basic Patterns, op. cit., p. 118.

61. It is easy to cite similar examples from other regulated fields. For example, when federal regulations limited financial institutions by placing ceilings on interest rates that could be paid on deposits, the institutions would compete by giving away "gifts" to depositors, such as toasters, TV sets, etc. These de facto interest payments had to be restricted by regulation when the gift giving became excessive. Similarly, where rent controls are imposed, landlords react by cutting back maintenance and other services. It becomes necessary to develop regulations specifying what services will be provided, e.g., how often apartments must be re-painted.

62. Katharine G. Abraham and James L. Medoff, "Length of Service and the Operation of Internal Labor Markets" in Barbara D. Dennis, ed., Proceedings of the Thirty-Fifth Annual Meeting, Industrial Relations Research Association, December 28-30, 1982 (Madison, Wisc.: IRRA, 1983), pp. 308-318.

63. Bureau of National Affairs, Basic Patterns, op. cit., p. 117.

64. On management attitudes, see Sanford M. Jacoby and Daniel J.B. Mitchell, "Management Attitudes Toward Two-Tier Pay Plans," Journal of Labor Research, vol. 7 (Summer 1986), pp. 221-237. For a general review of the two-tier issue, see James E. Martin with Thomas D. Heetderks, Two-Tier Compensation Structures: Their Impact on Unions, Employers, and Employees (Kalamazoo, Mich.: Upjohn Institute, 1990).

65. Bureau of National Affairs, Basic Patterns, op. cit., p. 116.

66. Lump sums were first used in aerospace in 1983-84, under pressure from the Department of Defense to hold down labor costs. See Christopher L. Erickson, "Wage Rule Formation in the Aerospace Industry," Industrial and Labor Relations Review, vol. 45 (April 1992), pp. 507-522.

67. Source: "Cost to Employ a Worker Averages $17.88 Per Hour," Daily Labor Report, June 21, 1993, p. B-6.

68. Eighty-nine percent of the vacation plans in contracts in the BNA data base we have been citing use length of service to determine vacation periods. See Bureau of National Affairs, Basic Patterns, p. 107.

69. For discussion of union vs. nonunion pension behavior, see Alan L. Gustman and Thomas L. Steinmaier, "Pensions, Unions, and Implicit Contracts," working paper no. 2036, National Bureau of Economic Research, October 1986.

70. Pension plans are often included in a supplementary contract rather than the basic union-management agreement. For this reason, the survey was confined only to those pension plans for which sufficient information was available. See Bureau of National Affairs, Basic Patterns, op. cit., pp. 27-28.

71. On the influence of an equity-related leveling effect on pay, see Robert H. Frank, "Are Workers Paid Their Marginal Products," American Economic Review, vol. 74 (September 1984), pp. 549-571.

Appendix to Chapter 12

Cooperation or Unfair Labor Practice?

In late 1992, the National Labor Relations Board handed down its Electromation decision involving the legal status of certain employee committees. Since the passage of the 1935 Wagner Act, private employers have been prohibited from having "company unions," i.e., employer-dominated labor organizations. Employers, prior to the Wagner Act, often created various employee representation committees and organizations as alternatives to independent unions. After the Act was adopted, some of these committees and organizations - especially in the steel, oil, and telephone industries become parts of national unions or became legally independent of the companies which formed them. However, various representation plans persisted and from time to time - if complaints were made to the NLRB - were found to be illegal.

The growth in interest in quality circles and worker participation in management raised the largely-dormant company union issue again beginning in the 1970s. If committees were established by management to consult with workers on various issues of quality and productivity, might these not evolve into illegal company unions to the extent they began to drift toward discussion of workplace issues such as wages, benefits, conditions of work, and grievances? The Electromation case was widely seen as a test of NLRB policy in this regard. In its decision, the Board found "action committees" established by the employer to be illegal company unions. The employer, in this case, did not create the committees explicitly to keep a union out during an organizing campaign. However, an organizing campaign began after the creation of the committees and the union complained to the NLRB. Below is an excerpt[1] from the majority decision. What issues do you see raised by the NLRB's stance?

ELECTROMATION, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 1049, AFL-CIO and "ACTION COMMITTEES," Party of Interest,

309 NLRB No. 163

December 16, 1992

This case presents the issue of whether "Action Committees" composed, in part, of Electromation's employees constitute a labor organization within the meaning of Section 2(5) of the Act and whether Electromation's conduct vis avis the "Action

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[1]The decision has been liberally edited to remove footnotes and legal jargon. Substantial material has been omitted. These cuts, and various other wording changes, are not always indicated in the text.

Committees" violated Section 8(a)(2) and (1) of the Act. The Board [has] framed the pertinent issues as follows:

(1) At what point does an employee committee lose its protection as a communication device and become a labor organization?

(2) What conduct of an employer constitutes domination or interference with the employee committee?

For the reasons below, we find that the Action Committees were not simply "communication devices" but instead constituted a labor organization within the meaning of Section 2(5) of the Act and that Electromation's conduct towards the Action Committees constituted domination and interference in violation of Section 8(a)(2). [These sections are described below.] These findings rest on the totality of the record evidence, and they are not intended to suggest that employee committees formed under other circumstances for other purposes would necessarily be deemed "labor organizations" or that employer actions like some of those at issue here would necessarily be found, in isolation or in other contexts, to constitute unlawful support, interference, or domination.

Electromation is engaged in the manufacture of electrical components and related products. It employs approximately 200 employees. These employees were not represented by any labor organization at the time of the events described herein.

In late 1988 Electromation concluded that it was experiencing unacceptable financial losses. It decided to cut expenses by altering the existing employee attendance bonus policy and, in lieu of a wage increase for 1989, distributed year-end lump-sum payments based on length of service. Shortly after these changes were announced, Electromation became aware that employees were displeased with the reduction in benefits. In early January 1989, Electromation received a petition signed by 68 employees expressing displeasure with the new attendance policy. Upon receipt of this petition, Electromation's president, John Howard, met with Electromation's supervisors to discuss the petition and the employees' complaints. At this meeting, Electromation decided to meet directly with employees to discuss their problems. Thereafter, on January 11, Electromation met with a selected group of eight employees and discussed with them a number of issues, including wages, bonuses, incentive pay,attendance programs, and leave policy.

After the January 11 meeting, President Howard again met with his supervisors and concluded that Electromation had serious problems with its employees Howard testified that it was decided at that time that "it was very unlikely that further unilateral management action to resolve these problems was going to come anywhere near making everybody happy... and we thought that the best course of action would be to involve the employees in coming up with solutions to these issues." Howard testified further that

management came up with the idea of "action committees" as a method to involve employees.

Electromation next met with the same group of eight employees on January 18 Howard explained to the assembled group that management had distilled the employees' complaints into five categories. Howard testified that he proposed the creation of Action Committees that "would meet and try to come up with ways to resolve these problems; and that if they came up with solutions that... we believed were within budget concerns and they generally felt would be acceptable to the employees, that we would implement these suggestions or proposals. "Howard testified further that the reaction of the assembled employees to the concept of action committees was "not positive." Howard explained to the employees that because "the business was in trouble financially... we couldn't just put things back the way they were... we don't have better ideas at this point other than to sit down and work with you on them." According to Howard, as the meeting went on, the employees "began to understand that that was far better than leaving things as they were, and that we weren't going to just unilaterally make changes. And so they accepted it." Howard agreed that employees would not be selected at random for the committees based on seniority and that, instead, sign-up sheets would be posted.

On January 19, Electromation posted a memorandum directed to all employees announcing the formation of five Action Committees and posted sign-up sheets for each Action Committee. The memorandum explained that each Action Committee would consist of six employees and one or two members of management, as well as Electromation's Employees Benefits Manager, Loretta Dickey, who would coordinate all the Action Committees. The sign-up sheets explained the responsibilities and goals of each Committee. No employees were involved in the drafting of the policy goals expressed in the sign-up sheets.

Electromation determined the number of employees permitted to sign-up for the Action Committees. Electromation informed two employees who had signed up for more than one committee that each would be limited to participation on one committee. After the Action Committees were organized, Electromation posted a notice to all employees announcing the members of each Committee and the dates of the initial Committee meetings. The Action Committees were designated as:

(1) Absenteeism/Infractions,
(2) No Smoking Policy,
(3) Communication Network,
(4) Pay Progression for Premium Positions
(5) Attendance Bonus Program

The Action Committees began meeting in late January and early February. Electromation's coordinator of the Action Committees, Dickey, testified that management expected that employee members on the Committees would "kind of talk back and

forth" with the other employees in the plant, get their ideas, and that, indeed, the purpose of Electromation's postings was to ensure that"anyone [who] wanted to know what was going on, they could go to these people"on the Action Committees. Other management representatives, as well as Dickey, participated in the Action Committees' meetings, which were scheduled to meet on a weekly basis in a conference room on Electromation's premises. Electromation paid employees for their time spent participating and supplied necessary materials. Dickey's role in the meetings was to facilitate the discussions.

On February 13, the [Teamsters] Union made a demand to Electromation for recognition. There is no evidence that Electromation was aware of organizing efforts by the Union until this time. On about February 21, Howard informed Dickey of the recognition demand and, at the next scheduled meeting of each Action Committee, Dickey informed the members that Electromation could no longer participate but that the employees could continue to meet if they so desired. The Absenteeism/Infraction and the Communication Network Committees each decided to continue their meetings on company premises; the Pay Progression Committee disbanded; and the Attendance Bonus Committee decided to write up a proposal they had discussed previously and not to meet again.

The Attendance Bonus Committee's proposal was one of two proposals that the employees had developed concerning attendance bonuses. The first one, developed at the committee's second or third meeting, was pronounced unacceptable by Electromation's controller, a member of that committee, because it was too costly. Thereafter, the employees devised a second proposal, which the controller deemed fiscally sound. The proposal was not presented to President Howard because the Union's campaign to secure recognition had intervened.

On March 15, Howard informed employees that "due to the Union's campaign, the Company would be unable to participate in the committee meetings and could not continue to work with the committees until after the election," which was to be held on March 31.

On the foregoing evidence, the [administrative law] judge[2] found that the Action Committees constituted a labor organization within the meaning of Section 2(5). He noted that employees, supervisors, and managerial personnel served as committee members and that their discussions concerned conditions of employment. The judge found that Electromation dominated and assisted the committees on the basis of evidence that Electromation organized the committees, created their nature and structure, and determined their functions. The judge also noted that, although

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[2]As do many federal regulatory agencies, the NLRB has an internal quasi-judicial mechanism which hears cases initially. Decisions of the administrative law judges who preside can be appealed to the full NLRB.

management did not dominate meeting discussions, meetings took place on company property, supplies and materials were provided by management, and members were paid for time spent on committee work. The judge found no merit to allegations that Electromation had threatened and interrogated employees.

In its exceptions and brief, Electromation contends that the Action Committees were not statutory labor organizations and did not interfere with employee free choice. It notes that no proposals from any committee were ever implemented, that the committees were formed in the absence of knowledge of any union activity, and that they followed a tradition of similar employer-employee meetings.

Section 2(5) of the Act defines a "labor organization" as follows:

"The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Section 8(a)(2) provides that it shall be an unfair labor practice for an employer:

"to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board... an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

Whenever we are attempting to determine the application of the statute to particular facts, we must first determine whether the statutory language standing alone answers the question. Here, we cannot properly limit our analysis to the statutory language because the terms are not all self-defining. For example, although the "Action Committees" are committees in which "employees participate," the parties have raised questions about the meaning of "representation" in the phrase "employee representation committee." We therefore seek guidance from the legislative history [of the 1935 Wagner Act] to discern what kind of activity Congress intended to prohibit when it made it an unfair labor practice for an employer to "dominate or interfere with the formation or administration of any labor organization" or to contribute support to it.

The legislative history reveals that the provision outlawing company dominated labor organizations were a critical part of the Wagner Act's purpose of eliminating industrial strife through the encouragement of collective bargaining. Early in his opening remarks Senator Wagner stated:

"Genuine collective bargaining is the only way to attain equality of bargaining power... The greatest obstacles to collective bargaining are employer-dominated unions. Such a union makes a sham of equal bargaining power... (O)nly representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees. For these reasons the very first step toward genuine collective bargaining is the abolition of the employer dominated union as an agency for dealing with grievances, labor disputes, wages, rates, or hours of employment."

It has been argued frequently by employers... that an employee representation plan or committee arrangement is not a labor organization or a union but simply a method of contact between employers and employees. But the act is entitled to prescribe its own definitions of labor organizations, for its own purposes, and it is clear that unless these plans, etc., are included in the definition, whether they merely"deal" or "adjust," or exist for the purpose of collective bargaining, most of the activity of employers in connection therewith which we are seeking to outlaw would fall outside the scope of the act. The act would thus be entirely nullified.

Thus, Congress concluded that ridding collective bargaining of employer-dominated organizations, the formation and administration of which had been fatally tainted by employer "domination" or "interference," would advance the Wagner Act's goal of eliminating industrial strife. That conclusion was based on the nation's experience [in the 1930s] that employer interference in setting up or running employee "representation" groups actually robbed employees of the freedom to choose their own representatives. As Senator Wagner stated:

"The question is entirely one of fact and turns upon whether or not the employee organization is entirely the agency of the workers... The organization itself should be independent of the employer-employee relationship."

In sum, Congress brought within its definition of "labor organization" abroad range of employee groups, and it sought to ensure that such groups were free to act independently of employers in representing employee interests.

Applying these principles to the facts of this case, we find that the Action Committees constitute a labor organization within the meaning of Section 2(5) of the Act; and that Electromation dominated it, and assisted it, i.e., contributed support, within the meaning of Section 8(a)(2).

First, there is no dispute that employees participated in the Action Committees. Second, we find that the activities of the committees constituted dealing with an employer. Third, we find that the subject matter of that dealing - which included the treatment of employee absenteeism and employee remuneration in the form of bonuses and other monetary incentives - concerned

conditions of employment. Fourth, we find that the employees acted in a representational capacity within the meaning of Section 2(5). Taken as a whole,the evidence underlying these findings shows that the Action Committees were created for, and actually served, the purpose of dealing with Electromation about conditions of employment.

The Action Committees were created in direct response to the employees' disaffection concerning changes in conditions of employment that Electromation unilaterally implemented in late 1988. These changes resulted in a petition that employees presented to Electromation. President Howard testified that after a January 11 meeting with a group of employees selected by management, he realized that Electromation had serious problems with the employees and that "it was very unlikely that further unilateral management action to resolve these problems" would succeed. Accordingly, the Action Committees were created in order to achieve a bilateral solution to these problems.

Employees on the Action Committees, according to Howard, were to meet with their management counterparts and, "try to come up with ways to resolve these problems." Howard also explained what would happen to any solutions that came out of the Action Committees. Howard testified that if the Committee's solutions satisfied Electromation's budgetary concerns, "we would implement those suggestions or proposals."

Discussions that ensued in the Attendance Bonus Committee, for example, were fully consistent with the process that President Howard envisioned. Thus, an initial proposal formulated by employees was rejected by the Electromation's controller as too costly. A second proposal was presented and deemed fiscally sound by the controller. The proposal was to be reduced to writing, but because of the onset of the union campaign, its presentation to Howard for formal acceptance was side-tracked. The failure to implement any proposals, therefore, was not attributable to the manner in which the Action Committees were created or functioned but rather was due to the unanticipated onset of the union campaign.

The evidence thus overwhelmingly demonstrates that a purpose of the Action Committees, indeed their only purpose, was to address employees' disaffection concerning conditions of employment through the creation of a bilateral process involving employees and management in order to reach bilateral solutions on the basis of employee-initiated proposals. This is the essence of "dealing with"within the meaning of Section 2(5). We find no basis in this record to conclude that the purpose of the Action Committees was limited to achieving "quality" or "efficiency" or that they were designed to be a "communication device" to promote generally the interests of quality or efficiency. We, therefore, do not reach the question of whether any employer initiated programs that may exist for such purposes... may constitute labor organizations under Sec. 2(5).

It is also clear that Electromation contemplated that employee-members of the Action Committees would act on behalf of other employees. Thus, after talking "back and forth" with their fellow employees, members were to get ideas from other employees regarding the subjects of their committees for the purpose of reaching solutions that would satisfy the employees as a whole. This could occur only if the proposals presented by the employee-members were in line with the desires of other employees. In these circumstances, we find that employee-members of the Action Committees acted in a representational capacity and that the Action Committees were an "employee representation committee or plan" as set forth in Section 2(5).

There can also be no doubt that Electromation's conduct vis a vis the Action Committees constituted "domination" in their formation and administration. It was Electromation's idea to create the Action Committees. When it presented the idea to employees on January 18, the reaction, as the Electromation's President Howard admitted, was "not positive." Howard then informed employees that management would not "just unilaterally make changes" to satisfy employees' complaints. As a result, employees essentially were presented with the Hobson's choice of accepting the status quo, which they disliked, or undertaking a bilateral "exchange of ideas" within the framework of the Action Committees, as presented by Electromation.

Electromation drafted the written purposes and goals of the Action Committees which defined and limited the subject matter to be covered by each Committee, determined how many members would compose a committee and that an employee could serve on only one committee, and appointed management representatives to the Committees to facilitate discussions.

Finally, much of the evidence supporting the domination finding also supports a finding of unlawful contribution of support. In particular, Electromation permitted the employees to carry out the committee activities on paid time within a structure that Electromation itself created. [Electromation was] in the position of sitting on both sides of the bargaining table with an "employee committee" that it could dissolve as soon as its usefulness ended and to which it owed no duty to bargain in good faith. By creating the Action Committees, Electromation imposed on employees its own unilateral form of bargaining or dealing and thereby violated Section 8(a)(2) as alleged.

ORDER

The National Labor Relations Board orders that Electromation, Inc., Elkhart, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and Desist from:

(a) Dominating, assisting, or otherwise supporting the

Action Committees created in January 1989 at its Elkhart plant.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by [the Wagner] Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Immediately disestablish and cease giving assistance or any other support to the Action Committees.

(b) Post at its facility in Elkhart, Indiana copies of the attached notice.

(c) Notify the Regional Director in writing within 20 days from the date of this order what steps Electromation has taken to comply.

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board
An Agency of the United States Government

After a trial at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we have violated the National Labor Relations Act, as amended, and has ordered us to post and abide by this notice.

WE WILL NOT dominate or support the organizations known as Action Committees created in January, 1989.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their rights under [the Wagner] Act.

WE WILL immediately disestablish and cease giving any assistance or support to the Action Committees.

Electromation, Inc.
(Employer)

Dated By (representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 575 N. Pennsylvania St. - Room 591, Indianapolis, Indiana, Telephone 317-331-7413.