

# **EMPLOYMENT RELATIONS IN THE UNITED STATES**

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In accord with the relatively strong role that market forces have played in American economy history, the United States has long been noted for a high degree of diversity in the conditions under which employees work. Yet in recent years the amount of labour market diversity has increased markedly, spurred in part by the share of the labour force represented by unions continuing to decline (from a peak of 35 per cent in the early 1950s to 20 per cent in 1983 and to 12 per cent in the early twenty-first century) (Bureau of Labor Statistics 2008a).

Diversity also appeared because, while union representation declined, parts of the American labour movement engaged in revitalisation efforts. Thus, although facing continuing difficulties in organising new members, the American labour movement has been engaged in innovation and experimentation. Diversity was also apparent in collective bargaining outcomes as, although many workers and unions lost devastating strikes or were forced into severe concessions, at least some other unions were winning significant contractual gains, at times as a result of innovative collective bargaining strategies.

As shown by its GDP of US\$14 294 billion (Bureau of Economic Analysis 2008) and its labour force of 154.7 million (Bureau of Labor Statistics 2008b), the American economy is the largest of any considered in this book. Because of the size of the US economy and its important role in global political affairs, the United States has played an important role in the development of other national systems.

## **THE HISTORICAL CONTEXT**

American skilled craftsmen started to form unions even before industrialisation, which began in the 1790s.<sup>1</sup> The skilled trades nature, practical goals and economic strategy of these

early pre-factory unions had a lasting legacy in American unions (Sturmthal 1973). Yet, from the time of the American revolution in 1776, there has also been an element of radical egalitarianism in the US labour movement. Also, in the early years of the nineteenth century many workers were attracted to various utopian schemes (Foner 1947).

The widespread establishment of the factory system in the 1850s and 1860s brought into the industrial system large numbers of rural women and children, and many immigrants from Ireland, Britain, Germany and other countries. These early factory workers did not unionise. This may have been partly because their pay was generally comparable to American farm earnings and higher than those of factory workers in Europe. It may also be that the high rate of worker mobility to other jobs and considerable social mobility hindered the development of the solidarity among workers that would have facilitated the widespread organisation of unions (Lebergott 1984: 373, 386-7; Wheeler 1985). In addition, as often occurred later in US history, vigorous repression of unionisation by employers, both directly and through government action, inhibited unionisation (Sexton 1991).

In spite of these difficulties, skilled craftsmen did form national unions in the 1860s. These pragmatic 'business' unions quickly drove competitors from the field, and in 1886 the craft unions organised on a national basis into a peak organisation, the American Federation of Labor (AFL) (Taft 1964).

Around 1900, building on a large home market made accessible by an improved transport system, large corporations achieved dominance in American industrial life. These complex, impersonal organisations required systematic strategies for managing their workers. Responding to this need, Frederick Taylor, the father of 'scientific management', and his industrial engineer

disciples gained a powerful influence on the ideology and practice of management in the United States (Hession & Sardy 1969: 546-7). These ideas were widely accepted before they became influential in Europe and other parts of the world. By declaring 'scientific' principles for the design of work and pay, the Taylorists undermined the rationale for determining these matters by power-based bargaining by unions. Added to this difficulty for the unions was the continuing vigorous opposition of the capitalists, who had enormous power and high prestige (Sexton 1991).

The craft unions survived and prospered in the early part of the twentieth century, partly because of cooperative mechanisms put into place during World War I and their patriotic support of the war. Yet by the 1920s a combination of the influence of Taylorism, employer use of company-dominated unions as a union-substitution device, tough employer action in collective bargaining, widespread use of anti-union propaganda by employer groups and a hostile legal environment had reduced even the proud and once-powerful craft unions to a very weak position, although unions in a few industries such as railroads and printing continued to have some success.

It was not until the 1930s, during the Great Depression, that US unions first arose as a broadly influential and seemingly permanent force. Then, for the first time, they penetrated mass production industry, organising large numbers of factory workers. A fateful conjunction of circumstances led to this. Working conditions and pay had deteriorated. There was a changed political environment with the election of Franklin D. Roosevelt as President in 1932. A wave of strikes, many of which were successful, took place in 1933-34. The *Wagner Act* 1935 gave most workers a federally guaranteed right to organise and strike for the first time. Under these conditions, the strategy of mass campaigns by unions organised not by craft but by industry (United Automobile Workers, United Mine Workers, United Steel Workers) and united in a new

labour movement—the Congress of Industrial Organizations (CIO)—led to unionisation of cars, steel, rubber, coal and other industries (Bernstein 1970; Wheeler 1985).

In the 1940s and 1950s, the unions continued to grow, although federal legislation of this period restricted and regulated them. It was during this time that they developed the collective bargaining system, with the support of the War Labor Board, which institutionalised collective bargaining and related dispute-resolution mechanisms due to the need for wage (and price) stabilisation and uninterrupted war production. The post-World War II period saw general prosperity and improving standards of living accompanied by industrial peace. Union automatic wage increases (cost of living adjustment, or COLA, clauses) in major industries contributed to the rise in living standards during this period. A wave of organising in the 1960s and 1970s, led by school teachers, transformed government employment in many parts of the country into a sector with strong unions.

## **THE MAJOR PARTIES**

In the United States, all of the participants in the employment relations system retain some influence. However, it is the employers that have generally been the most powerful of the actors and, as will be argued below, it is the employers that are becoming increasingly dominant.

### **Employers and their organizations**

As large corporations expanded in the twentieth century in the United States, structured and bureaucratic ‘internal labour markets’ appeared within those ‘primary sector’ enterprises. This included well-defined job progressions and formal pay and fringe benefit policies (Doeringer & Piore 1971; Jacoby 1985). Jobs found in the union sector, even in industries such as construction

that faced substantial cyclical economic volatility, led the way in developing structured and high-pay employment practices.

Yet the United States also retained more unstructured employment practices, often in smaller or rural firms, where pay was lower and administered in a less formal manner. Furthermore, job progressions, dispute-resolution procedures and other employment practices were also relatively informal and of lower quality in these 'secondary sector' enterprises, especially when compared with the work practices found in large private or public sector employers.

Employers' organisations are relatively unimportant in the United States (Adams 1980: 4). In contrast to many other countries, there have never been national employers' confederations engaging in the full range of industrial relations activities. There have, however, long been employers' organisations that have the mission of avoiding the unionisation of their members' employees. The National Association of Manufacturers was formed for this purpose in the nineteenth century. In addition, many regional Chambers of Commerce include union avoidance in their activities. These employer groups and others engage in anti-union litigation, lobbying and publicity campaigns.

In contrast to the relative weakness of employers' organisations, management consultants and law firms that represent employers play important roles in the United States. Management consultants are active in advising employers on human resource policies. For example, in wage-setting, employers commonly rely on consulting firms to supply information from compensation surveys. Management consultants, along with management-oriented law firms, also engage in the lucrative business of educating employers in techniques of union avoidance.

## The unions

The US labour movement is generally considered an exceptional case because of its apolitical 'business unionism' ideology, focusing rather narrowly on benefits to existing members. The most convincing explanations for this are historical (Kassalow 1974). First, there is no feudal tradition in the United States, which has made the distinctions among classes less obvious than in much of Europe. Second, US capitalism developed in a form that allowed fairly widespread prosperity. Third, the diversity of the population, divided particularly along racial and ethnic lines, has hampered the organisation of a broad-based working-class movement. Fourth, the early establishment of voting rights and free universal public education eliminated those potential working-class issues in the nineteenth century. Fifth, social mobility from the working class to the entrepreneurial class blurred class lines, creating a basis for the widely held belief in the 'log cabin to White House' myth. In consequence, the labour movement has seldom defined itself in class terms. Additionally, the historic experience of unionists was that class-conscious unions (i.e. those that assumed the 'burden of socialism') tended to be repressed by the strong forces of US capitalism (Sexton 1991).

American unions have relied upon collective bargaining, accompanied by the strike threat, as their main weapon. This strategy has influenced the other characteristics of the labour movement. It has provided the basis for an effective role on the shop floor, as the day-to-day work of administering the agreement requires this. It has required unions to be solvent financially in order to have a credible strike threat. It has resulted in an organisational structure in which the power within the union is placed where it can best be used for collective bargaining— the national

union, the regional or the local union, depending on the locus of collective bargaining (Barbash 1967: 69).

Centralisation of power over strike funds in the national union has been a crucial source of union ability to develop common rules and to strike effectively. It has facilitated, and perhaps even required, an independence from political parties that might be tempted to subordinate the economic to the political. It is one reason why there is a relatively low total union density, as collective bargaining organisations need to have a concern about density only as it pertains to their individual economic territories.

Although unions have emphasised collective bargaining, they have also engaged in politics. Their political action has for the most part taken the form of rewarding friends and punishing enemies among politicians and lobbying for legislation. They have avoided being involved in the formation of a labour party. The American Federation of Labor-Congress of Industrial Organizations' (AFL-CIO) Committee on Political Education (COPE) and similar union political agencies are major financial contributors to political campaigns, most frequently in support of Democratic Party candidates. The goals of such political activity have often been closely related to unions' economic goals, being aimed at making collective bargaining more effective. However, the labour movement has also been a major proponent of progressive political causes such as laws on civil rights, minimum wages, plant-closing notice, social security and other subjects of benefit to citizens generally.

The structure of the labour movement is rather loose compared with that of other Western union movements, as the national unions have never been willing to cede power over the function of collective bargaining to the AFL-CIO. The AFL-CIO is a federation of national unions



that includes a substantial share of union members. The AFL-CIO serves as a national-level political and public relations voice for the labour movement, resolves jurisdictional disputes among its members, enforces codes of ethical practices and policies against racial and sex discrimination, and is US labour's main link to the international labour movement.

Two major changes have occurred in the AFL-CIO in recent years. In 1995, there was an unprecedented election challenge for the federation's presidency by John Sweeney. As president of the Service Employees International Union (SEIU), Sweeney successfully organised a coalition of union leaders within the federation's member unions and defeated the chosen successor of the previous president who had retired as a result of the Sweeney-led challenge. In an effort to address the decline in union density, the Sweeney administration of the AFL-CIO has emphasised organising new membership through a variety of new initiatives. The most innovative of these measures are described in more detail later in this chapter. Although the Sweeney administration entered office as a reform movement, divisions continued among the national unions around issues such as political and organising strategies. These divisions came to a head in 2005 when a group of major national unions withdrew from the AFL-CIO and formed a new union federation called Change-to-Win. This split in the labour movement and the formation of Change-to-Win will be described in more detail later in this chapter.

Within the labour movement, the national unions have been described as occupying the 'kingpin' position (Barbash 1967: 69). They maintain ultimate power over the important function of collective bargaining, in large part through their control of strike funds. The national unions can establish and disestablish local unions. They can also withdraw from the national federations if they wish, as happened with the formation of Change-to-Win.

Continuing a trend that began in the early 1980s, several mergers and proposals for mergers among national unions have occurred. Recent examples of mergers include the combination of the two largest textile unions. In addition, many small independent unions have begun to choose to be absorbed into national unions, further consolidating the union structure of US unionism (McClendon et al. 1995).

The local unions perform the day-to-day work of the labour movement. They usually conduct bargaining over the terms of new agreements and conduct strikes, although in some industries national unions do this. They administer the agreement, performing the important function of enforcing the complex set of rights that the collective bargaining agreement creates. Social activities among union members take place at the local level, where there is a union culture (Barbash 1967: 26-41).

## **Government**

The rapid increase in public sector unionisation in the 1960s and 1970s was probably the most important development in the US labour movement since the 1930s. Teachers led the way as they successfully protested about declines in their salaries and benefits relative to those of other workers. Rapid expansion in public sector union membership and militancy followed.

In the mid-1970s, a taxpayers' revolt emerged and slowed the gains of public employee unions—although union representation as a share of the total public sector workforce held steady. Then, in the mid-1980s, teachers and other public-employee groups benefited from public concerns over the inadequacy of public services and saw their bargaining power rebound. In the 1990s, calls to reinvent the public sector led to diverse strategies that ranged from downsizing and privatisation to efforts to bring empowerment and a quality focus to public service provision.

Federal, state and local government employees are excluded from coverage under the *National Labor Relations Act* (NLRA). Separate legal regulations govern collective bargaining in each of these sectors. Federal employees received the rights to unionise and to negotiate over employment conditions other than wages or fringe benefits through Executive Order 10988, signed by President Kennedy in 1962. In 1970, as part of its effort to reform the postal service, Congress provided postal employees the right to engage in collective bargaining about pay, hours and working conditions. Then, in 1978, Congress replaced the executive orders of President Kennedy (and a related order of President Nixon) with the first comprehensive federal law providing collective bargaining rights to federal employees. Subsequently, collective bargaining in the federal sector has been regulated by the Federal Labor Relations Authority. Responsibility for impasse resolution is vested in the Federal Services Impasse Panel. The panel may use mediation, fact-finding or arbitration to resolve disputes. The right to strike is prohibited.

As of 2006, all but nine states had legislation providing at least some of their state or local government employees with the rights to organise and to bargain collectively. Twenty-four states have passed comprehensive laws that cover a range of occupational groups; the others that have not yet enacted public sector bargaining laws are primarily in the south. With the help of favourable state laws the public sector became the most heavily unionised sector with slightly more than one-third of employees organised (Bureau of Labor Statistics 2008a).

In addition to its role as an employer, the US government has two other main roles in industrial relations: the direct regulation of terms and conditions of employment and regulation of the manner in which organised labour and management relate to each other.

The direct regulation of terms and conditions of employment was limited to the areas of employment discrimination, worker safety, unemployment compensation, minimum wages and maximum hours, and retirement (Ledvinka & Scarpello 1991). In 1964, the government prohibited discrimination in employment on the grounds of race, colour, sex, religion or national origin. This law was subsequently strengthened and broadened to prohibit discrimination against disabled workers.

Unusually, compared with other developed market economies (DMEs), disputes involving employment laws in the United States are resolved through the general court system, rather than through specialised labour courts or employment tribunals. This means that employment law enforcement in the United States reflects the nature of American litigation, being a system with relatively high procedural complexity and requiring long periods of time for dispute resolution, while at the same time producing awards that are at times remarkably large in comparison to those of other countries. The combination of high process costs, great variability in outcomes and potential for major damage awards results in employment litigation being a major concern for employers in the United States (Colvin 2006).

From the 1980s onwards, there was a great deal of legislative activity in the broad field of employment relations, in part to fill gaps created by the weakening influence of unions. Legislative initiatives in the areas of minimum wages, termination of employment, race and sex discrimination in employment, pensions, health and safety, plant closing, drug testing, discrimination against disabled workers, polygraphs (lie-detector machines), and family and medical leave have all attracted attention and produced a plethora of new laws. At the same time, the general rule of employment in the United States continues to be that of employment-at-will,

meaning there is no requirement for just cause for dismissal or any general entitlement to reasonable notice or severance pay on dismissal.

Unemployment benefits are provided for on a state-by-state basis, but with some federal control and funding. They involve payments to persons who have become involuntarily unemployed and are seeking work. The duration of payments is less than in most other countries. Federal and state wage and hour laws provide for a minimum level of pay and a premium pay rate for overtime work, although many workers are excluded from the coverage of these laws.

Retirement benefits are regulated in two main ways. First, through the social security system, employers and employees are required to pay a proportion of wages into a government fund. It is out of this fund that pensions are paid by the government to eligible retired employees (*Social Security Act*). The second way in which the government controls pensions is by regulation of the private pension funds that are set up voluntarily by employers. The *Employee Retirement Income Security Act 1974* (ERISA) requires retirement plans to be financially secure, and insures these plans. It also mandates that employees become permanently vested in their retirement rights after a certain period. In recent years, ERISA's provisions focusing on defined benefit retirement plans are increasingly being bypassed with the growth of defined contribution plans that are not subject to as extensive regulation (Salisbury 2001).

Government regulation of the private sector labour-management relationship consists largely of a set of rules through which these actors establish, and work out the terms of, their relationship. Through the *National Labor Relations Act* (NLRA) of 1935, as amended in 1947 and 1958, government provides a structure of rules establishing certain employee rights with respect to collective action.

The process and rules established by law for union certification and bargaining in the private sector represent one of the more unusual features of US labour-management relations. The NLRA specifies a multi-step organising process ordinarily culminating in a secret- ballot election by employees to determine whether they want union certification. The objective of the law regulating union representation elections is to ensure employees have a free choice. To achieve this objective, the National Labor Relations Board (NLRB) determines the appropriate voting unit, conducts the secret ballot election, certifies the union as the exclusive bargaining agent for the unit when the union achieves a majority of the votes cast, and rules on allegations of unfair labour practices such as employer retribution against employees who support the union. When the union is victorious in the election, the NLRB issues a certification that requires the employer to bargain in good faith with the union. The union has the same obligation.

Much controversy has focused on whether or not the election process is working in accordance with the original legislative intent. This has led to a continuing debate over the adequacy of laws protecting workers' rights to form and join unions. The Commission on the Future of Worker-Management Relations (Dunlop Commission), reporting in 1994, reached the conclusion that the labour laws should be changed to facilitate union organising. Little has come to date from these and other related recommendations to reform US labour laws, however—in part because most employers remain reasonably satisfied with the outcomes of the present legal framework. The return to Democratic Party control of Congress and the Presidency in 2009 raises the prospect of renewed attention to labour law reforms, such as the proposed *Employee Free Choice Act* (EFCA) designed to remove barriers to union organising.

The government plays a very limited role in the collective bargaining process in the private sector. Although it requires 'good faith' bargaining efforts, government generally takes a 'hands-off' position—with the notable exception of the railroad and airline industries, which are covered by separate legislation—in influencing contract outcomes achieved between labour and employers in private sector collective bargaining.

## **THE MAIN PROCESSES OF EMPLOYMENT RELATIONS**

In the *non-union sector*, employers have devised a set of management practices to determine pay and conditions of work systematically. In terms of pay, a combination of job evaluation and individual performance evaluation systems is widespread. The range of possible pay rates to be paid to workers in, say, a clerk's job is determined by an assessment of the worth of the job to the firm (i.e. job evaluation). A particular employee is assigned a pay rate within this range depending upon seniority, performance or other factors. In addition to pay, fringe benefits such as health insurance, pensions, vacations and holidays are determined by company policy. All of this is done with an eye to the external labour market, with total compensation having to be adequate to attract and keep needed workers (Gomez-Meija et al. 1995).

In the *union sector*, the structure of collective bargaining is highly fragmented, and this fragmentation is increasing. As is the case in many other DMEs, trends discussed in more detail below suggest the locus of collective bargaining is shifting downward towards the enterprise or workplace level (Katz 1993). Single-company or single-workplace agreements are the norm in manufacturing. Most collective bargaining takes place at such levels. Even where there are companywide agreements, as in the car industry, substantial scope is left for local variation.

While the government plays only a very limited role in determining collective bargaining agreements in the private sector, mediators employed by the national government through the Federal Mediation and Conciliation Service (FMCS) are active in the negotiation of new agreements, and their work is generally popular with the parties. In negotiations involving government employees, some state laws provide for binding arbitration of unresolved disputes over the terms of a new agreement. This is especially common where the government employees involved, such as fire fighters or police officers, are considered to be 'essential' such that a work stoppage involving those employees would do substantial harm to the public. Interest arbitration of the terms of a new agreement is rare in the private sector.

Although there is considerable variety in collective bargaining agreements (contracts), the majority share certain features. Most are very detailed. Agreements generally cover pay, hours of work, holidays, pensions, health insurance, life insurance, union recognition, management rights, the role of seniority in determining promotions and layoffs, paid time off, and the handling and arbitration of grievances. Most agreements have a limited duration, usually of one to three years.

In both the private and public sectors, nearly all agreements provide a formal multi-step grievance procedure that culminates in rights arbitration. The formal procedure specifies a series of steps through which the parties can settle disagreements about the application and interpretation of an existing collective bargaining agreement. The procedures are almost always capped by the provision for an independent arbitrator to be selected jointly by the union and the employer. Compared to most DMEs, the emphasis on formal grievance arbitration represents one of the more unusual features of employment relations in the United States. A substantial body of private 'law' has grown up through arbitral decisions, providing employment relations with a set



of norms that are often used in the non-union sector as well as the union sector. Decisions of arbitrators historically have been treated by the courts as final, binding and unappealable (Feuille & Wheeler 1981: 270-81).

In 1991, through its decision in the *Gilmer* case, the Supreme Court allowed statutory employment rights claims to be solved in arbitration. This spurred the spread of 'alternative dispute-resolution' procedures, particularly in the non-union sector, to settle disputes over matters such as dismissals or racial discrimination. In 2001, further impetus to so-called employment arbitration was provided by the Supreme Court's *Circuit City* decision. Some analysts charged that the replacement of court procedures with private justice violated employee rights (Stone 1996). Employment arbitration has proven attractive for many employers because it allows them to avoid the uncertainties and risk of large awards in the litigation system. Research suggests that employment arbitration procedures cover more employees in the United States than are represented by unions (Colvin 2007; Lewin 2008). What is less clear is whether employment arbitration will simply serve as a substitute for litigation or will represent a more substantial change in the nature of employment relations in non-union workplaces in the United States.

### **The 2000s: Growing pressures on employment relations**

The 2000s saw a combination of growing pressures on the US employment relations system, yet relatively limited changes in response to these pressures. Polarisation in both incomes and collective bargaining continued to intensify. Growing cost pressures on health care and retirement benefits dominated many collective bargaining relationships. Pressures from globalisation became particularly acute, even though exports of goods constitute only 12 per cent

of US GDP—smaller than any other OECD country (Economic Report of the President 2001). The relative lack of importance of exports to the economy reflects the large US home market, which creates considerable potential for self-sufficiency. However, international trade and investments have become increasingly important to United States-based MNEs. The wage and other cost control pressures resulting from increased international competition have led to more aggressive management behaviour towards unions. Regional trade pacts, particularly the North American Free Trade Agreement (NAFTA), helped spur further globalisation.

Benefit issues emerged as a key topic for collective bargaining in the 2000s. Due to the US system, in which most working-age individuals and retirees under 65 years of age receive health insurance through employer-provided plans, health insurance is a major labour cost item for many employers. As health-care costs grew rapidly in the 1990s and 2000s, significantly outpacing overall inflation, this put increasing pressure on employer cost structures. Employers sought to control cost increases through measures such as requiring employees and retirees to pay larger portions of premiums, reducing benefits and increasing co-pays. Whereas these changes could be introduced unilaterally for non-union employees, employer attempts to negotiate similar measures for unionised employees often produced major tensions in collective bargaining. One of the largest labour disputes of the 2000s, the five-month strike by 70000 grocery store workers in Southern California in 2003-04, stemmed in large part from employer efforts to reduce health-care costs and benefits (Katz et al. 2007: 215).

Retirement benefits were also a major issue in collective bargaining, particularly for industries such as autos and steel that had sizeable retiree 'legacy' costs dating from earlier decades when they supported much larger workforces. In the steel industry, the steelworkers'

union negotiated an agreement with employers and the federal government to transfer retiree benefit obligations on to a Voluntary Employee Benefit Association (VEBA). In the auto industry, the efforts of General Motors to lower its retiree health care costs led to a major strike in 2007 and eventually resulted in an agreement whereby General Motors, Ford and Chrysler were scheduled to transfer their retiree health insurance obligations to a union-run VEBA from 1 January 2010 (Bureau of National Affairs 2007). The Union of Automotive Workers (UAW) came under further pressure to reduce benefit (and wage) costs when General Motors and Chrysler received federal 'bail-out' funds in late 2008 in an effort to forestall their bankruptcy.

Globalisation continues to be a major force affecting the US economy. The trade deficit reached a record level of \$753 billion in 2006 (US Census Bureau 2008). Outsourcing was a growing concern in employment relations—particularly in the service sector, which previously had been more insulated from international competition. For example, in 2004 two major service sector unions, the Service Employees International Union (SEIU) and the Union of Needletrades, Industrial, and Textile Employees and Hotel, Entertainment and Restaurant Employees (UNITE-HERE), launched a joint plan to address outsourcing of service work through organising outsourcing firms and creating alliances with unions in other countries. In 2006, the Communications Workers of America (CWA) negotiated an agreement with AT&T to bring back offshored technical service support jobs (Katz et al. 2007: 395). At the political level, organised labour has been active in lobbying for the inclusion of labour rights provisions in trade agreements.

Despite these various pressures, the US employment relations system remained relatively stagnant in the 2000s. No major new pieces of labour or employment legislation were passed at

the federal level, reflecting President Bush's pro-business administration. It also reflected the business communities' general satisfaction with its power position, and the lack of political strength of labour and its allies. Some innovations occurred at the state level, such as California's enactment of the first paid maternity leave program in the United States, albeit with a relatively low six-week paid leave benefit. With the return of Congress to Democratic Party control in 2006, expectations for new policy initiatives increased.

Efforts continue to enact the labour movement's major labour law reform initiative, the *Employee Free Choice Act* (EFCA). The EFCA was a key aspect of the Democratic platform in the 2008 elections, raising the possibility of further action in this area under the post-2008 Obama Administration and with increased Democratic majorities in the US Congress (Bureau of National Affairs 2008). The EFCA's major provisions, which are modelled on some features of Canadian labour law, involve allowing unions to organise through card-check recognition, speed the processing of unfair labour practice charges involving dismissals, increasing penalties on employers who unlawfully discharge employees, and providing for interest arbitration if the parties are unable to negotiate a first contract. Although the EFCA would remove some of the major impediments to union organising and potentially increase union membership levels, the ultimate effects of the Act (if it were to pass) on union membership and power remain unclear. In addition, the Act would represent a relatively limited change in the nature of the US labour-management relations system. In particular, it would not change the relatively decentralised and adversarial nature of the US collective bargaining system or the lack of mandated consultative or participatory structures in US employment relations.

## **CHANGING EMPLOYMENT RELATIONS**

The non-union sector has continued to grow in the private sector as management has aggressively resisted union organisation and taken advantage of new technologies and relatively lax enforcement of labour laws to shift work within or outside the United States, or rely on outsourcing or 'contingent labour' to meet competitive pressures and union organising efforts.

### **Union revitalization**

Faced with a growing non-union sector, since the mid-1990s the labour movement has initiated innovative efforts to stimulate new organising. Union organisers have been elected to leadership positions in several unions. National unions and the AFL-CIO have begun to spend more on organising, and innovative organising tactics—including efforts to organise on a community or regional basis outside the NLRB procedures—have been launched (Turner et al. 2001).

One of the purposes of the AFL-CIO organising initiatives is to diffuse throughout the labour movement some of the successful organising strategies used by affiliated unions. Unions such as UNITE-HERE and the SEIU have had above-average success in their organising. The campaigns of these unions use young, well-educated organisers and involve extensive direct communication with prospective members and links to community groups such as churches.

This approach to organising has been labelled a rank-and-file' style, and contrasts with more top-down traditional organising that relied on appointed organisers and formal communication strategies. Rank-and-file organising also tries to modernise and broaden the issues around which employees are attracted to unions by confronting childcare, equal pay and other issues that are of concern to the current workforce. Research suggests that this method of

union organising has been more successful than traditional methods in the private sector (Bronfenbrenner 1997).

During the 1990s and early 2000s, there was little evidence of any widespread effect from these new organising initiatives as union membership rates continued to decline, reaching a low of 12 per cent in 2006. However, in 2007, union membership numbers increased by 311000—the largest increase in over 25 years—and the union membership rate increased slightly (Bureau of Labor Statistics 2008a). Although the percentage increase was very small (0.1 per cent), it is noteworthy that this was the first year in which the US union membership rate had increased since the 1950s. Preliminary estimates indicate that the union membership rate increased further in 2008 (Milkman & Kye 2008). While it is too early to tell whether this trend will continue, it is worth noting that the declining manufacturing unions now represent a smaller proportion of the US labour movement than at any time in the past. By contrast, the growing service sector unions such as SEIU and UNITE-HERE, where much of the new organising activity has been concentrated, represent a larger portion of organised labour in the United States.

### **Division in the AFL-CIO and the formation of the Change to Win Coalition**

Declining union membership rates has been accompanied by divisions within the labour movement about how best to rebuild union strength. In 1995 John Sweeney was elected as President of the AFL-CIO on a reform platform challenging the existing direction and leadership of the AFL-CIO. A decade later, a new group of union leaders in turn emerged to challenge the Sweeney administration leadership of the AFL-CIO and propose a new direction for the labour movement. In 2001, the Carpenter's Union had withdrawn from the AFL-CIO over disagreements about the pace and nature of change inside the labour movement. By 2004, a number of major

unions began issuing calls for changes in the AFL-CIO to devote greater resources to organising and to encourage the merger of smaller unions to form larger, more powerful unions (Katz et al. 2007: 146-9).

During 2005, conflicts over the future direction of the AFL-CIO came to a head. In May 2005, four major unions—the SEIU, UNITE- HERE, the International Brotherhood of Teamsters (IBT), and the Laborers’ Union (LIUNA)—issued a joint proposal for reforms of the AFL-CIO. These reform proposals focused on three main areas. First, they argued that greater resources needed to be devoted to organising activity. To encourage this, they proposed that half of the dues paid to the AFL-CIO by any unions that were active in organising be rebated. Second, they argued that many existing unions were too small to devote adequate efforts to organising. The reforms proposed designating ‘lead unions’ for organising particular industries, crafts or employers and encouraging the merger of smaller unions to form larger unions. Third, they argued that the AFL-CIO was devoting too much of its political activities to getting candidates of one political party, the Democrats, elected. Instead labour’s political efforts should be focused on building the labour movement and worker power, including supporting pro-labour Republican or third-party candidates.

The executive committee of the AFL-CIO rejected the proposed reforms and instead adopted a counter-proposal offered by President Sweeney. Among the objections to the proposed reforms were concerns that shifting resources away from political activities and towards organising would undermine the ability to get more pro-labour candidates elected, and pushing for merger of smaller unions would deny workers freedom of choice in representation.

In June 2005, the four dissenting unions, along with the United Food and Commercial Workers (UFCW), announced the formation of a new organisation, to be called the Change to Win Coalition (CTW). At the beginning of the July 2005 convention of the AFL-CIO (which ironically was supposed to be a celebration of the 50th anniversary of the formation of the federation by the merger of the formerly competing AFL and CIO), both the SEIU and Teamsters announced they were leaving the AFL-CIO, soon to be joined by the other members of the CTW Coalition. In September 2005, the founding convention of the CTW Coalition was held in St Louis, Missouri, signalling that for the first time in half a century there were now two different major labour federations in the United States. In addition to its initial five members, the CTW Coalition was also joined by the Carpenters Union and the United Farm Workers. Together, the seven unions in the CTW Coalition represent some six million workers, compared with the nearly nine million workers represented by unions that were still members of the AFL-CIO.

Supporters of the CTW Coalition argue that with the decline in unionisation levels, a new, more dynamic and innovative union movement is needed and that the existing AFL-CIO federation was unable to provide this. By contrast, critics of the split have argued that dividing the labour movement into two competing federations will undermine the strength and unity of the movement. Some supporters of the existing AFL-CIO leadership have argued that the split is really a dispute about leadership and control of the labour movement. Much noted has been the split between John Sweeney, who was president of SEIU before assuming the leadership of the AFL-CIO, and Andy Stern, the most prominent leader of the CTW Coalition, who took over as president of SEIU following Sweeney in 1995.



One major concern following the split was that the two federations would compete with each other and be unable to work together on issues of common interest to unions. However, the initial experience has been that the two organisations are able to work together in some areas, such as on some political campaigns.

What are the implications of this dramatic split in the labour movement? For the labour movement, a danger is that its voice in the political realm will be weakened by such a division. This is a concern that has been strongly articulated by critics of the split amongst unions that have stayed within the AFL-CIO. As United Steelworkers President Leo Gerard commented at the time of the split: 'Today is a tragic day because those who left the house of labor are weakening our house, and shame on them' (Bureau of National Affairs, 2005). At the same time, there have been competing union federations at earlier points in American history. Indeed, the most dramatic growth in union membership occurred during the period from 1935 to 1955 when the labour movement was split into competing AFL and CIO federations. The initial Change to Win Coalition Statement, issued in June 2005, harkened back to precisely that experience in invoking the historical example of the formation of the Committees for Industrial Organization in the 1930s to organise the new mass production industries of the time. Whether the CTW will be able to fulfil a similar role in the future, and also whether there may be some future equivalent of the 1950s merger of the competing AFL and CIO, are important issues that remain.

### **Variation in employment practices**

Economic pressures have induced a substantial increase in the amount and nature of the variation in employment practices. Some of the increased variation has been spurred by a decline in unionisation and the differences between the union and non-union sectors. Perhaps most

striking is the fact that, even within the union and non-union sectors, variation has been increasing through the spread of a diverse array of employment practices. Another divergent aspect of collective bargaining is that union representation is much more substantial in the public sector, where the union density was about 36 per cent versus 7.5 per cent in the private sector in 2007 (Bureau of Labor Statistics 2008a).

A key factor promoting variation in employment relations has been a substantial decline in the level of unionisation and growth in various types of non-union employment. The density of unionisation in the United States never approached the higher levels found in many other countries. As a result of a lower level of unionisation, and the limited influence of other constraints on managerial behaviour, the United States generally has had a relatively large low-wage employment sector. Nevertheless, there were other non-union firms that chose to pay more, often as part of employment strategies that followed either bureaucratic, human resource management or Japanese-oriented employment patterns.

The downward trend in unionisation increased the variation in employment conditions given that, where it existed, unionisation brought a high degree of standardisation in employment conditions. Job-control unionism put a high premium on contractual rules and pattern bargaining, linking contractual settlements within and between industries (Katz 1985: 38-46). In contrast, a common feature of non-union employment systems has been procedures that relate pay and other employment terms to individual traits and organisational goals. The result has been much higher variation in employment practices across individuals, companies and industries compared with union employment systems.

## **COLLECTIVE BARGAINING INITIATIVES**

Unions have struggled in recent years to extend their membership and maintain their influence in unionised settings. To do so, unions have made significant changes in the process and outcomes of collective bargaining, including corporate campaigns and the linking of collective bargaining to organising and political strategies. While corporate campaigns historically had been used sporadically by the US labour movement, the use and intensity of these campaigns increased in the 1990s and later as unions struggled to find ways to counteract the power advantages management had gained through factors such as the availability of outsourcing, globalisation and the use of permanent striker replacements (Block et al. 2006).

Corporate campaigns are characterised by the use of media, political, financial, community and regulatory pressures to build bargaining power. The United Steel Workers (USW) have been particularly aggressive in developing these tactics and have successfully used corporate campaigns in disputes with the Ravenswood Aluminum Corporation (Juravich & Bronfenbrenner 1999) and, after their merger with the United Rubber Workers, in the Bridgestone dispute (settled in 1996). Unions painfully learned through lost strikes at Phelps Dodge (Rosenblum 1995) and International Paper (Getman 1998) that corporate campaigns had to be well developed and started early in order to succeed.

The revitalisation efforts of the Communications Workers of America highlight the advantages of a triangular agenda linking organising, politics and collective bargaining (Katz et al. 2000). In such a triangulation strategy, union activities in any one of these three spheres interact with and complement activities in another sphere. It is, for example, through novel language won in collective bargaining agreements in the telecommunications industry (with the Regional Bell

phone companies) that the CWA gained card check recognition and employer neutrality in representation elections, key parts of the union's organising initiative. Similarly, the CWA has linked political actions towards public agencies that regulated pricing and access in the telecommunications industry with efforts to strengthen the union's strike leverage (and win more at the collective bargaining table).

The labour movement will have to find ways to extend triangulation linkages into the international arena. The expansion of international trade and the accelerated expansion of MNEs extend the market internationally. In his classic analysis of early union formation among American shoemakers, John R. Commons (1909) explained that, as the extent of the market expanded, to counteract 'competitive menaces' and retain bargaining power, unions at the beginning of the twentieth century shifted to a national structure. This provided a structure of representation that was parallel to the emerging national structure of markets.

The problem confronting labour movements all over the globe is that they need cross-national unionism, but their efforts to create such unionism face substantial barriers. These barriers include divergent interests (i.e. each labour movement wants the employment) and national differences in language, culture, law and union structure. Yet unions will need to find an international parallel to the sort of domestic sphere linkages being pursued by the CWA. There are some recent signs of increased international activity among US unions. Several cases where American unions have engaged in cross-national pressure campaigns involve NAFTA provisions (Katz et al. 2007: 390-1). The United Steelworkers, which has significant membership in Canada as well as the United States, announced an alliance with two major British unions, partly in response to the increasing dominance of the steel industry by multinational employers. However, union

gains from such international alliances in the United States are limited and the barriers remain daunting.

While it is important to note the extent of innovative bargaining strategies being developed by unions, unions still successfully use traditional collective bargaining pressure tactics such as strikes (or strike threats) to make gains. One example is the bargaining involving machinists represented by the International Association of Machinists and Aerospace Workers (IAM) at Boeing, where the machinists used bargaining leverage due in part to a sizeable back order of planes and the limited ability Boeing had to shift the production of its technologically complex products to alternative sites to gain a favourable contract (though these contract gains came after a long strike).

Pay is perhaps the most important employment outcome, and there is clear evidence of growing earnings variation (Levy & Murnane 1992: 1333). While increasing income inequality is a trend common to many countries, the increase is particularly large in the United States. There is growing evidence that a mixture of market and institutional factors (most importantly the low level of unionisation and decentralised structure of collective bargaining) have caused income inequality to rise and help explain why the rise in equality is so large in the United States (Blau & Kahn 1996).

### **The decentralisation of collective bargaining structures**

While there were diverse outcomes in collective bargaining, there were also significant changes underway in the structure of US collective bargaining, perhaps the most important of which is decentralisation (Katz & Darbishire 2000). Until the early 1980s, the structure of bargaining affecting unionised employees was a mixture of multiemployer, company-wide and

plant-level bargaining (Kochan et al. 1994). After that, however, the structure of collective bargaining began to decentralise as formally centralised structures broke down, the locus of bargaining shifted to the plant level within structures that maintained both company- and plant-level bargaining to some degree, and pattern bargaining weakened. Differing corporate strategies and product market pressures resulting in diverging interests among once- similar firms also contributed to this decentralisation.

Simultaneously, there has been a shift to plant-level, and away from company-wide, collective bargaining agreements. In many cases, such as the tyre and airline industries, this involved the negotiation of local pay and/or work rule concessions. Often these negotiations included whipsawing by management, with local unions and workers being threatened with the prospect of a plant closing if adequate concessions were not granted (Cappelli 1983; Kochan et al. 1994: 117-27). In some cases, concessions on work rules have been accompanied by new arrangements that provide extensive participation by workers and local union officers in decisions that had formerly been made solely by management. With increasing frequency, work rule bargaining has come to involve a decision about whether or not to implement a joint team-based approach or involve disputes that arise during the implementation of that type of work organisation.

Even where company-level collective bargaining has continued, greater diversity in collective bargaining outcomes has appeared across companies. This diversity has replaced the pattern bargaining that informally had served to centralise bargaining structures to the multi-employer level. In the aerospace and agricultural implements industries, for example, pattern

bargaining weakened and significant inter-company variation in wages and other contractual terms emerged (Erickson 1992, 1996; Block et al. 2006).

There was even wider variation appearing in work practices across companies and industries in light of the uneven spread of work reorganisation. Some plants adopted team systems of work while others did not. Wide differences appear in the form and role of any work teams. In some places, there was much bargaining at the plant and work group level, involving team systems, pay-for-knowledge and other contingent compensation mechanisms, and changes in work time arrangements (Kochan et al. 1994: 146-205). More direct communication between managers and workers also spread in many parts of the union sector. The increased role for localised bargaining and work-rule adjustment contributed to the emergence of a 'participatory' employment system in a number of unionised settings. Perhaps the most elaborate service-sector example of a participatory employment pattern is the Kaiser Permanente-AFL-CIO partnership (Katz et al. 2007: 324; Bureau of National Affairs 2000).

Yet in some workplaces, employee and union participation in business decisions or other forms of work restructuring have been limited. Even some renowned examples of worker and union participation, such as that in GM's Saturn division, failed (Rubinstein & Kochan 2001). Osterman (2000: 186) finds that while the overall incidence of innovative work practices increased, the rate of penetration of work teams actually fell during the period he studied. Applebaum and Batt (1994) provide a rich description of the diversity of work practice changes and an insightful analysis of why there has been sluggishness and variation in the diffusion of new work practices.

## CONCLUSIONS

Diversity in employment relations is growing as a product of the growth in non-union employment and the variety of union and non-union employment practices. The breakdown of pattern bargaining across enterprises and industries in the union sector, and the spread of contingent forms of pay and associated greater reliance on individualised rewards, are all contributing to increased variation in work rules and pay. The changes in pay practices have contributed to the unusually large increases in income inequality in the United States.

While team systems have spread and operate as a critical part of the employment systems in some firms, more traditional forms of work organisation continue in other firms.

Decentralisation, more direct management-employee communication and increased employee (and union) involvement in business decisions all have contributed to the wide variation of work practices.

There is also wide variation in the tenor of recent collective bargaining. In some companies, heightened conflict has appeared, while in others partnerships have been forged. Some workers suffered greatly as management took advantage of a power imbalance provided by globalisation and the growth of non-unionised enterprises. In other contexts, unions used innovative bargaining or traditional strike leverage to make gains.

Unions have shown a willingness to cooperate with workplace changes that attempt to increase productivity and product/service quality where the innovations also include attention to the union's goals. As such, consistent with US 'business unionism', the collective bargaining process has shown flexibility in responding to competitive pressures. The challenge faced by the labour movement is to find ways to combine collective bargaining successes and revitalisation



efforts to further promote high-end employment outcomes and limit the growth of low-wage employment patterns and income inequality.

## **NOTES**

- <sup>1</sup> The authors thank Hoyt Wheeler for permission in this historical section to draw from material in the US chapter co-authored by him, which appeared in the prior edition of this volume.

## A CHRONOLOGY OF US EMPLOYMENT RELATIONS

- 1794 Federal Society of Cordwainers founded in Philadelphia—first permanent US union.
- 1828 Working Men’s Party founded.
- 1834 National Trades Union founded—first national labour organisation.
- 1866 National Labor Union formed—first national ‘reformist’ union.
- 1869 Knights of Labor founded. This is a ‘reformist’ organisation dedicated to changing society, which nevertheless was involved in strikes for higher wages and improved conditions.
- 1886 Formation of the American Federation of Labor (AFL), a loose confederation of unions with largely 'bread-and-butter' goals. Peak of membership of the Knights of Labor (700000 members), which then began to decline.
- 1905 Formation of the Industrial Workers of the World— the ‘Wobblies’—an anarcho-syndicalist union.
- 1914-22 Repression of radical unions because of their opposition to war, and during ‘Red scare’ after the Russian Revolution.
- 1915 Establishment of the first company-dominated union, Ludlow, Colorado.
- 1920 Decline and retrenchment of the American labour movement.
- 1932 Election of Franklin D. Roosevelt as President—a ‘New Deal’ for unions.
- 1935 *National Labor Relations Act* (Wagner Act) gives employees a federally protected right to organise and bargain collectively. Formation of Congress of Industrial Organizations (CIO), a federation of industrial unions.

- 1935-39 Rapid growth of unions covering major mass production industries.
- 1941-45 Growth of unions and development of the collective bargaining system during the war.
- 1946 Massive post-war strike wave in major industries.
- 1947 Enactment of Taft-Hartley Act, prohibiting unions from certain organising and bargaining practices.
- 1955 Merger of AFL and CIO to form the AFL-CIO.
- 1959 Landrum-Griffin Act, regulating the internal operations of unions.
- 1960 New York City teachers' strike—the beginning of mass organisation of public employees.
- 1962 Adoption of Executive Order 10988 by President John F. Kennedy, providing for limited collective bargaining by federal government employees.
- 1960-80 Growth of unionism of public employees. Decline in union density in the manufacturing sector.
- 1977-78 Defeat of Labor Law Reform Bill in Congress, as employer movement in opposition to unions gains strength.
- 1980 Election of President Ronald Reagan—new federal policies generally adverse to organised labour.
- 1981 Economic recession.
- 1988-89 Federal legislation on drugs, lie detectors, plant closing, minimum wages. Court decisions on drug testing and termination of employment.

- 1991 Federal legislation prohibiting discrimination against disabled workers. Federal legislation strengthening employment discrimination laws.
- 1991 Through the Gilmer and related decisions, the Supreme Court allows statutory employment rights disputes to be resolved through (private) arbitration. Alternative dispute resolution then spreads, particularly in the non-union sector.
- 1991-92 Extended economic recession.
- 1992 Election of President Bill Clinton. A more labour- friendly national Administration comes to power.
- 1992-2000 Sustained economic growth with low unemployment, low inflation and limited real wage growth.
- 1994 The Commission on the Future of Worker- Management Relations (Dunlop Commission) recommends that a number of changes be made in the nation's labour laws, but these recommendations are ignored by the US Congress.
- 1994 Republicans win Congressional elections. A very conservative Congress comes into being.
- 1994 NAFTA removes tariff and other trade barriers among the United States, Canada and Mexico.
- 1995 Increases in the minimum wage voted by Congress.
- 1995 John Sweeney elected president of the AFL-CIO spurring accelerated union revitalisation.
- 2000 George W Bush elected President in an extremely close election. Republicans subsequently gain control of the Senate and House.

- 2001 Economic recession; 9/11 terrorist attacks.
- 2002-07 Slow economic recovery with limited real wage and job growth.
- 2005 Change to Win split from the AFL-CIO.
- 2006 Democrats win Congressional elections.
- 2008 Barack Obama elected President. Democrats expand majorities in Congress.

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