

## **Do the Organizing Means Determine the Bargaining Ends?**

**Lisa Jordan and Robert Bruno**

Lisa Jordan, Director of Gender and Diversity Programs  
Labor Education Service  
University of Minnesota

Robert Bruno, Associate Professor  
Labor and Industrial Relations  
Institute of Labor and Industrial Relations  
University of Illinois

In the United States, conventional wisdom among many union organizers is that the style of organizing campaign waged has a significant impact on both the probability of getting a first contract and the quality of the contract. Yet, little academic research has been done to either support or challenge this claim. Based on the scarce scholarship that does exist, the card-check process appears to increase the odds of union certification and the likelihood that the union will get a first contract. However, our review of a limited number of successful union organizing cases suggests that the key variable in gaining certification and ultimately a first contract rests on the ability of the union to leverage power and to do so in a timely manner.

By leveraging power or “levers of power” we mean ways in which the union brings pressure on a company from within the political, economic and social context that collectively supports production. The ability of unions to exercise power in this context is critical to mobilizing pressure against hostile employers. Understanding the relationship between organizing strategies, bargaining outcomes and worker participation in terms of levers of power draws in part from John Kelly’s (1998) application of “mobilization theory” to the industrial relations field. Kelly’s emphasis on the balance of power between capital and labor, and the capacity of the union to mobilize worker

“collective interests” into forms of oppositional action in shaping industrial relations outcomes is born out in the case studies presented below.

The primary strength of the card-check process is its ability to leverage power on its own timetable, and to limit some of the documented problems of National Labor Relations Board (NLRB) elections. But unions certified through Board elections no less than card-check recognitions rely on the capacity to mobilize enough power to compel the employer to sign a labor agreement. Unions that successfully win first contracts usually can identify and exploit an employer’s inability to resist making a deal. Sometimes the employer’s vulnerability originates from its demand for labor (i.e., low unemployment, need for skilled workers, competitive product markets and place in the product production chain); other times it comes from third parties (i.e., consumers, public opinion, other business customers and national corporate objectives); and still on other occasions the state provides a helpful hand (i.e., employment regulations, workplace health and safety law, union friendly government officials and statutes protecting collective worker action).

The following chapter addresses the question: What is the relationship between the method of union organizing and the probability of achieving a first contract? In addressing this question we have participated in discussions with and surveyed union organizers and representatives in the United States from different local unions covering diverse labor markets in which first-contracts were negotiated. We examine how the organizing and contract campaigns were prosecuted, and most importantly, look to identify the key determinants (i.e., levers of power) to the union successfully bargaining an initial agreement. In addition to identifying why first contracts were signed, we

compare the degree of bargaining difficulty experienced by Board certified and card-checked unions. The work also includes a brief report of the state of first-contract bargaining in the U.S. along with descriptions of each case studied. Ultimately, we argue that while unions are using a variety of methods to organize (i.e., card check, neutrality, Board elections) unions are most effective in negotiating strong first contracts when they have mobilized their members. We also point out, however, that a mobilized membership may not be sufficient to win a first contract.

### **Overview of Organizing and First Contracts in the United States**

Union density has been in sharp decline in the U.S. since the 1950's. While public sector unions have grown precipitously, union representation in the private sector has plunged. In 2002 unions represented a scant 13.2 percent of all workers and only 8.5 percent of workers in the private sector; in the mid-1950's, unions represented approximately 32.5 percent of all non- agricultural workers (Lipset and Katchanovski 2001; BNA 2003). Union organizing in the private sector occurs under the authority of the National Labor Relations Act. The traditional means of union certification is through a National Labor Relations Board (NLRB) election. While in 2000, the union NLRB win rate was close to 44 percent by 2003, 57.8 percent of NLRB representation elections ended up in a union win. The figures for 2003 represent the seventh consecutive year that unions have improved their success rate and the highest in twenty years (Cody 2004). Since 1999, 7,391 bargaining units have been certified representing 441,964 workers (National Labor Relations Board 2004). Despite successful NLRB elections, union organizing remains very difficult and union wins continue to fail to cover membership losses.

In an effort to increase organizing some US unions have turned toward non-traditional forms of organizing including card checks, neutrality agreements and non-NLRB elections (Devinatz, 1997; Gould 1993; Murphy 1988). Where unions are now using card check and other forms of alternative recognition, it appears to be a strategic response to changes in the external environment and in many cases the result of changes in the organization's internal notions of how the union should function. For example, in 1997, the Hotel Employees and Restaurant Employees Union (HERE) and the United Needletrades and Textile Union Employees (UNITE) combined for 112 representation elections but in 2003 that figure fell dramatically to just 21 elections. According to UNITE President Bruce Raynor, both unions organized 83 percent of their new 2003 members through card check recognition (Cody 2004).<sup>1</sup> Between 1997 and 2003 American workers have successfully formed at least 511 bargaining units without casting a single NLRB vote (BNA, 2004).

Card-check recognition is a standard National Labor Relations Act procedure that allows an employer to forgo the requirement of an NLRB representation election and voluntarily recognize the existence of a union. The United States Supreme Court has affirmed that voluntary recognition has been “a favored element of national labor policy” (*NLRB v. Lyon and Ryan Ford* 1981) and from the inception of the act “it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation” (*NLRB v. Gissel Packing Co.* 1969). On its face, there appears to

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<sup>1</sup> . As a result of a major union merger in 2004, Raynor is now president of UNITE-HERE. References to separate unions in the text reflect their autonomy at the time of each cases study.

be good reason for avoiding an NLRB election and insisting on the card-check process. One study by Adrienne Eaton and Jill Kriesky (2001) found that card-check campaigns were successful in 67.7 percent of the cases that they examined.

The increased use and success of card-check recognition has been underscored by the NLRB's summer 2004 decision to grant greater scrutiny to voluntary recognition.<sup>2</sup> Not surprisingly, opponents of unionization have legally and politically challenged the legitimacy of card-check procedures. A measure has even been introduced into the US House of Representatives that would outlaw card-check recognition (*Union Labor Report* 2004). As Delaney, Jarley, Fiorito (1996) and Budd (1996) have pointed out; the legal system has often been called on to stifle labor when its efforts have been productive. If the conservative-heavy National Labor Relation Board determines that card-check recognition is unlawful, it will take away a powerful tool unions have increasingly used to avoid the limitations of the Board election process. Such a ruling would significantly shift the balance of power further in favor of the employers. While it would seem to be a bit of an overstatement to declare that American unions are doomed to failure if they are forced to navigate the turbulent waters of the NLRB process, it does make sense that unions must find ways to innovate or they will not be as effective in recruiting and representing new members.

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<sup>2</sup>. On 7 June 2004, in a 3-2 vote, the NLRB's Republican Party members agreed to solicit amicus briefs on the validity of an election "bar quality" for voluntary recognition. The "Order Granting Review" was based on petitions brought by the anti-union National Right-to-Work Legal Defense Foundation in two voluntary recognition cases involving the United Auto Workers (See *www. NLRB.Gov/Decisions*).

Gaining union representation however, does not secure a first contract for the workers. In fact, after successful NLRB elections, less than 70 percent of units achieve first contracts (Cooke 1984; Bronfenbrenner 1997). In cases mediated and closed by the Federal Mediation and Conciliation Service in 2003, only 56.5 percent of new bargaining units had achieved a contract within the inaugural year (FMCS 2003 Annual Report.) In his 1987 study, Eisenscher (1999) estimated that 5 years after recognition only 47 percent of workers were able to win second contracts and according to Gordon Pavy of the AFL-CIO's Center for Collective Bargaining, of the 74,309 workers winning bargaining unit representation in 2003, only 37,000 will still be union members in 2008.<sup>3</sup> In contrast to these overall bleak estimates, Eaton and Kriesky (2001) found that in their examination of neutrality and card-check agreements about 95 percent resulted in first contracts.

Perhaps one of the primary advantages of card check over NLRB elections is in the timing of first contract negotiations. American labor law provides a 12-month "bar" to any formal challenges to the majority representation status of the bargaining unit from the date of National Labor Relations Board certification. But after the month strikes twelve, if no agreement has been reached a showing from one-third of the bargaining unit that there are good reasons to doubt the majority claims of the union triggers an NLRB de-certification election. Achieving a contract however, prohibits any party from filing a petition for an election for up to three years, except in the last 60 to 90 days period before a contract expires and 90 to 120 days in the case of a health care institution. Under card-check recognition much of the power struggle begins before the clock starts ticking. The

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<sup>3</sup> . Pavy's analysis was taken from his comments on union organizing posted on the Industrial Relations Research Association internet listserve, 15 June 2004.

union must leverage enough power in order to persuade the employer to agree to an alternative form of recognition. Within the NLRB process, the employers can delay recognition by appealing election results and after certification they can easily stretch negotiations out to one year by engaging in surface bargaining.

### **Determinants of Union Success**

Forming a union either through NLRB elections or alternative recognition processes like card-check campaigns is terribly hard, but negotiating a contract and then negotiating another is even harder. If one looks only at the numbers of union certifications and first contracts, it seems clear that card check campaigns are the route unions should take. However, with all due regard for the experiences of organizers in the field that believe card-check campaigns are the only answer, our tentative findings suggest that it is not the formal means of union certification that matters most in signing a labor agreement. The key element to securing a first labor deal remains, as it always has, the capacity of the union to signal to the employer that not signing a contract would be more costly than bargaining in good faith. In fact, as Eaton and Kriesky point out unions gain neutrality and card-check agreements by using various forms of political and economic leverage. The point of that leverage is to signal costs to the employer. It is our thesis that those very same leverage points that produce card-check agreements also reduce the employers' resistance to initialing a first contract. Consequently, when unions are strong enough to exercise effective organizing pressure against an employer, they are just as likely to achieve a first contract after winning a representation election as after attaining card-check verification.

Union arguments on behalf of liberalizing labor law to require employers to honor card check procedures would very likely expand the number of organized workers. But it is our contention that if you standardize for power the first contract success rate of both elections and card check approaches may not vary very much.. As Juravich (1999) has pointed out, “(t)he choice between a NLRB and a non-NLRB strategy is not as stark as some have suggested. If...the role of the union is to build on the militancy of the workers that might lead to an NLRB campaign in some instances and a non-Board campaign in others. In this way the choice is as much strategic as it is ideological.”

Organizing and first contract outcomes seem to boil down to the strategic decisions unions make to leverage available power. Successful unions play their best hand. They provide signals to the employer that the cost of disagreeing or fighting the union is ultimately higher than the cost of agreeing and working with the union. Costs are shaped by economic, legal and organizational factors. What alternative recognition processes like card check provide is a way of establishing that power relationship before the one year NLRB clock starts to count down. In the language of economists, the process of achieving card check/neutrality reduces the problem of “limited” information common during first contracts. The fact that the union has convinced the employer to agree to an alternative form of recognition signals that at this stage of the process the union has significant power.

A variety of variables have been considered to explain the outcomes of first contract negotiations. Studies have concluded that the use of union building strategies, including one-on-one organizing, placing rank and file members on the negotiating committee, holding membership solidarity days, as well as the personality style of the

organizer and the percentage of union votes cast in a successful election significantly improved the ability of a union to organize and secure a first contract (Cooke 1984; Reed 1993; Bronfenbrenner 1996). Others, like Markowitz (2000) point to the importance of the organizing process in not only quantitative, but qualitative outcomes. What kind of organizations are we building? What is the relationship between the organizing campaign and the ways in which workers view their unions? The answers to these questions impact the workers' willingness to stay with the union through procedural delays and employer opposition, and their ability to participate in the negotiations phase in an effective manner.

Not surprisingly, timing was also found to be a core determinant in whether or not a first contract was signed. Cooke (1984) found that NLRB procedural delays give the employers more time to reduce majority support and to increase the cost to the union of continuing the fight. In fact, in his statistical analysis he found that for every one-month delay during contract negotiations, the chance of getting a first contract is reduced by approximately 4 percent. It is interesting to note, that Reed (1990) has pointed out that service unions win more first contracts, but that the process of organizing service sector workers is significantly longer than organizing manufacturing workers. Perhaps, the longer process allows for more information sharing between union and employer and the employer has a clearer notion of the union's power. Our contention is that alternative forms of recognition including card check shift the timing of the power calculation on the part of employer and thus increase the likelihood of a first contract.

Hickey (2002) creates a heuristic model that brings together many diverse variables. He argues that there are basically four determinants in getting a first contract:

the union's organizational strength, the impact of external factors, the history of the employment relationship and the role of the NLRB. While Hickey's model is useful as far as it goes, he fails to establish that these same variables are the ones that determine the success of the union organizing campaigns and that rather than being a determinant of success in a first contract, they are in many instances codetermined.

### **Method and Data**

We have drawn on a variety of sources for this study including data from the Bureau of National Affairs and NLRB, and published case studies from a variety of organizing drives, but our primary data is derived from a telephone survey conducted during the summer of 2004. We developed a short survey, which included both Likert scale and open-ended questions. Our survey items were designed to answer the following questions; how do organizers understand the role of the organizing campaign in obtaining the first contract? Are card-check agreements more likely to lead to first contracts? What is the relationship, if any, between power building during the organizing campaign and the union's subsequent ability to "make the employer pay?"

Using two data bases with identifiable contact information – one from BNA which pulled together more than 500 cases in which card-check recognition occurred and a list from the NLRB of elections in which the union was recognized - we contacted more than 100 locals. In each case we asked to speak to either the organizer that worked on the campaign or the union representative that worked with the members in that unit. This proved problematic given the schedules of organizers and the difficulty, at times, of finding those who remembered the organizing campaign. In the end we discussed 32

organizing campaigns -- 16 of them through card check and 16 via NLRB elections. To that data, we added four published case studies.

Contrary to conventional wisdom there was no statistical difference in the first-contract rates of our thirty-two card check and NLRB cases. Each card check drive ended up with a first agreement, while only one of the sixteen NLRB cases ended up without a contract. While noting the small number of cases examined, the near unanimous results allows us to explore the real or imagined critical differences between alternative and conventional approaches to union recognition

### **Is a Win Simply a Win?**

Some unions organize in the manner they do out of habit or tradition; for others the method by which they organize is more strategic. Unions like HERE only do NLRB elections as a last resort; others like the International Brotherhood of Teamsters (IBT) almost always use Board elections. Both unions have been successful in organizing a significant number of members. In 1997, the IBT logged 30.2 percent of all NLRB union representation victories and from 1999 to 2003 the union recorded a little over a fifth (22.7 percent) of all Board election wins. In comparison, from 1997 to 2003 the union organized only fourteen units through the card check process. During that same time period HERE, who does alternative recognition almost exclusively, successfully card certified 115 new units or more than one fifth (22.5 percent) of all unions formed through voluntary recognition.

Unions committed to the card-check process argue as one union organizer from Chicago did, “labor law has been written by the ruling class...we need to work around that...power is about direct action, solidarity, creative actions.” He concluded, “we don’t

do board elections.” The reason is understandable, union organizers complain of endless delays, worker frustration and unresponsive investigators (Minnesota Organizers Roundtable, 2004). At the same time, many organizers seem torn. While all agreed that some contract was better than no contract and that expanding union market share would lead to better contracts in the future, several were concerned that existing card check agreements allowed for worker apathy. They believed that workers needed the “organizing fight” whether in a card check or board election to prepare for the contract fight. Some also expressed dismay with the fact that in order to negotiate agreements with employers that insure card-check recognition and/or neutrality (i.e., accretion agreements), the union typically had to give something up in the current contract.

Those who continue to stress the use of Board elections argue that they are dealing with intractable employers who would never agree to a card-check process. They perceive the card-check process as one that occurs primarily when labor-management relations are good. Moreover, unions like the IBT continue to be quite successful organizing and may well simply not have reason to move to a new process. After all, innovation typically occurs in the face of failure. We use a subset of the cases from our research to consider the diverse relations that exist between employer and union and the range of paths the union can take from organizing through first contract.

One would expect that the union can most easily unionize and get a first contract when an accretion agreement already exists. Such was the case at Kaiser Permanente in Kansas City. When the Service Employees International Union (SEIU) Local 96 decided to organize the facility, the process went easily. The union already had a national card-check/neutrality agreement with Kaiser Permanente and the first contract was easily

negotiated using interest-based bargaining. There was little need for the union to think or act strategically as the union's power had already been signaled on a national level.

Likewise, HERE Local 1 had no problem organizing the Raphael and Tremont Hotels in Chicago. The union already represented four other Starwood properties and had a standing agreement with the company that owned these two small hotels. The union was easily able to get approximately 70 percent of the workers to sign cards and the properties then became part of the citywide collective bargaining agreement. Lead Researcher (union staffer responsible for data collection to support organizing strategy) , Lars Negsted, expressed commitment to the card-check process. "We don't do Board elections...we have a comprehensive strategy of building rank and file leadership." Typically, he said that the union works undercover to build a committee and structure within the hotel. Once recognition is gained, a subset of that committee becomes the bargaining committee working with an experienced negotiator from the local. In this case, the union already had significant leverage due to their market density and a contract would have likely been signed in any case. And yet, based on the union's ideology, they chose to do bottom-up organizing.

An accretion agreement, however, does not necessarily suggest smooth going. When the UNITE began its organizing campaign at the Levi's plant in Georgia, the union had already negotiated a card check/neutrality agreement with the corporate offices. Yet, Mary Evans, the UNITE representative at the plant called it a "very difficult" struggle. The local management waged an anti-union campaign. While no unfair labor practice charges were filed, the local management constantly referred to the area's history of garment and textile strikes. The union was ultimately able to gain majority card status,

but was again faced with a difficult struggle to negotiate the local contract. While the contract signed was seen as “good,” it required worker rallies and in-plant strategies to accomplish. Thus, while the union had previously leveraged its power at the national level in order to achieve card check/neutrality, the union had to again establish a power base at the local level in order to be successful.

In our research we found that the existence of a card-check agreement often signals the existence of a citywide or national pattern agreement. Moreover, unions that principally use card check tend to be very strategic in their targets. For example, HERE has used card check almost exclusively to organize the Las Vegas strip. It is not surprising then that where card-check agreements exist, first contracts come easily. Typically, the pre-existing agreement or pattern becomes a model for the new contract. Essentially, the contract has been negotiated in previous struggles. What is perhaps more surprising is that “voluntary recognition” is not always accompanied by easy negotiations. Between 1999 and 2003 Federal Mediation and Conciliation Service mediators were assigned to mediate in over 1,500 “voluntary recognition” first-contract disputes (FMCS 2004). The number of mediated voluntary recognition cases represents 15 percent of FMCS total caseload since 1999.<sup>4</sup>

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<sup>4</sup> . Of course sometimes card-check agreements never get as far as contract negotiations. A major national neutrality deal between Verizon Wireless and the Communication Workers and Brotherhood of Electrical Workers yielded zero new union members from the company’s roughly 30,000 employees. The pact was in existence from 2000 to 2004 (*Union Labor Report* 2004).

In Minnesota during the early 1990's, both the Hilton and Radisson hotels were organized. In only 31 days, HERE Local 17 organized the workers at the Hilton using a card check process negotiated as part of the hotel's public funding. While the hotel could do little during the organizing process they fought the union vehemently during the prolonged negotiations stage. The Radisson had been a union house when it closed for renovation. Nearly four years later when it reopened, management claimed that the union no longer had majority status and forced the union to go through the card check process again. The union complied but also filed charges with the NLRB. After five years of fighting at the Board the union and company set down to negotiate. Negotiations went on for another two years before a contract was settled. Thus, despite card check recognition, Board delays and management stalling led to a negotiations process that took seven years to complete.

Neutrality agreements might also be expected to make organizing and getting a first contract easier; however, as Eaton and Kreisky (2001) found, these agreements are often simply ignored. Richard Reilly, president of the Amalgamated Transit Union (ATU) Local 998 in Milwaukee, Wisconsin found that a neutrality agreement with a Para-transit firm, Laidlaw, did little to prevent "employees from being threatened with discharge for their union activities." The union charged the company with several ULPs and Laidlaw in turn filed seven objections with the NLRB election hearing officer. Local 998 prevailed in the election, 47-37. The company's resistance may have actually inadvertently assisted the local's efforts to win a labor agreement. By fighting back against the union's organizing campaign the company prepared the workers for a tough contract battle. The effect was to create an "us versus them" mentality among the

workers that helped the union to stage a loud, public strike to protest Laidlaw's intransigence during bargaining. After five months of wrangling an initial three year labor deal was agreed to. A second agreement, however, was negotiated without any hostility in less than half the time of the first and made significant improvements in the areas of wages, shift distribution pay, and an employer contribution to a 401K plan (i.e., pension plan).

Accretion and neutrality agreements essentially signal that some type of power has been leveraged, but unions can also leverage power early in the process of a Board election. An example is the United Auto Workers (UAW) campaign to unionize the nearly 2,300 workers at St. Vincent's Mercy Medical Center in Toledo, Ohio. Health care facilities in America are recognized by union organizers as being one of the most difficult types of workplaces to bring under a union contract. In 1999, the UAW not only organized St. Vincent's but also did it in less than four months in a campaign described by a union official as only "somewhat difficult." While the union did not have a neutrality agreement with the employer, the campaign was not hampered by any unfair labor practices and saw only a few customary employer and union objections to the Board hearing officer's ruling on bargaining unit determination. What the union did have was leverage created by its political and buying power. The autoworkers are a very large consumer of health care and health insurance in the Toledo area; they are also a major player in Toledo's politics. According to a union official, where ever large numbers of their members congregate to have an impact on consumption patterns and electoral outcomes the UAW relies on "top down pressure campaigns" to create an environment conducive not only to successful organizing, but also to attaining a first contract. The

union's focus here is on leveraging its relationship with elected officials and health insurance carriers to pressure the hospital employer to succumb to card-check recognition, as opposed to strictly relying on canvassing every medical employee (i.e., "bottom up") to demand union recognition. The calculus that the UAW is making in these strategic "markets" is that organizing only happens because it will very likely lead to a first contract. In other words, the union had the means to achieve its bargaining objectives during the representation campaign and ultimately secured a contract while it was winning NLRB certification.

A similar but more difficult application of strategic market organizing leading to a first contract is the case of International Brotherhood of Electrical Workers (IBEW) Local 2150 and Cable Locating Services (CLS). CLS had signed contracts with municipal cable companies to detect underground utility lines before the cable provider broke ground to lay cable. When IBEW Local 2150 set out to organize them, the firm operated in eleven states and in the local's full-time organizer's terms was committed to "keeping Wisconsin union free." The union quickly formed a committee of workers from each work location. Despite the union's stealth organizing the company retained a New York law firm and waged a "very contentious" anti-union campaign. The union filed several ULP and after winning the representation election with sixty percent of the vote had to endure numerous company challenges to the election. Over a year dragged on without an agreement before the union rejected a final company offer and staged a four week walkout. The work stoppage had business implications for the state's cable companies and utility firms. One large utility that was affected was WE-Energies, a major purchaser of CLS work. The strike badly backlogged WE's service orders and

caused them to reconsider their relationship with CLS. Under threat of losing WE's business, the cable locator entered into a three year union deal.

Unions like HERE, IBEW and the UAW have taken advantage of segmented market linkages to find vulnerable yet influential employers who can pressure other smaller employers along the production chain to cooperate with unionization. Over the last few years the UAW has organized and negotiated labor agreements covering 7,000 workers with Johnson Controls, a major automotive supplier to the Big Three original equipment manufacturers (i.e., OEM) in Detroit. In addition, the UAW's influence with the OEM has provided enough leverage to organize and negotiate deals with ten other large national suppliers. In each case the UAW's influence with General Motors, Ford and Chrysler helped the union to gain either card check or neutrality agreements from the suppliers, which lead to successful organizing and first contract negotiations.

In the Building Trades, an even more straightforward style of top-down organizing occurs. "We organize the employers," said one Labor's Union organizer. "If the contractor isn't willing...they will bargain to impasse. Strategically, it doesn't make sense for us to do bottom-up organizing due to the short-term nature of our work. The employer would just hire different folks." The recognition is "voluntary" on the part of the employer, but it is often leveraged by the availability of a skilled workforce. This does not necessarily lead to easy negotiations, but otherwise the organizer believed they would never get a contract.

Students of organizing have proposed that the larger the percent vote for the union, the greater the probability that first contracts will be signed. Thomas Reed (1989) theorized that "senior managers may believe that the costs associated with not signing a

contract will increase as support for the union increases” and consequently, found a positive relationship between the union percent vote and rates of first contracts (481). According to his study, a one percent increase in the percent vote increased the “probability of a first contract by five percent” (488). Our cases however, made clear that the relationship is never that simple.

Local 493 in Connecticut is an IBT union that has managed to not only win organizing campaigns in transportation and manufacturing, but also sign labor agreements with its employers. In 2001 the local “easily” organized Longwood Manufacturing but according to local secretary-treasurer, Tom Schlink it had a “very difficult” time getting a first contract. The local had quietly and very quickly gathered signatures from 100 percent of the 86 eligible workers. Standard practice is that the local will not file for an election without at least 75 percent of the workers signing NLRB union cards. That may seem extreme, but Schlink believes that the union’s “winning margin must be wide enough to send a clear message to the employer.” The union easily won the Longwood vote 78 to 6 but within a year of the certification it was embroiled in a two-week work stoppage. When the strike ended Local 493 had secured a three-year deal. In that same year, the local petitioned the Board with “full carding” (i.e., 100 percent) on behalf of fifty-five drivers working for an educational transport company. Signatures were gained in less than five days and the election was a 55-0 union victory. Still, almost one year later it took a union-management agreement to submit their contract issues to binding arbitration before a contract was reached. In both cases the near unanimous worker support for the union marshaled in the organizing phase did not result in an easy path to a first contract. In fact, the second contract was only achieved after

binding arbitration, a procedure that is rare in contract negotiations in the US. It is likely that this occurred only because the workers were working indirectly for a publicly funded organization and reminds us that organizing and collective bargaining have been much more successful in the US in the public than in the private sector. Why though with such high victory margins did it take so long to negotiate first agreements? Perhaps the short nature of these campaigns failed to give the employer sufficient information about the workers' resolve and the potential cost of not working with the union.

In early 1998 a Communication Worker of America (CWA) organizer at Local 1032 was approached by a female company driver and told how her boss "makes demands for sexual favors" in exchange for driving assignments. Her complaint led to the local's year long effort to compile enough union cards to petition the Board for an election to represent approximately 54 drivers at Unique, a taxi service at Newark's International Airport. The election was held in October of 1999 and the union won 72 percent of the vote.

A near three-quarter percent union vote should qualify as a strong deterrent to management bargaining resistance. However, Unique dragged out negotiations for two years, repudiated two tentative agreements, was ordered by the NLRB to "bargain in good faith" and orchestrated an unsuccessful de-certification election. For its part, CWA staged around-the-clock, daily demonstrations at the airport snarling traffic and costing the airport's managing agent nearly \$10,000 a day in police overtime. In the end, CWA's long hard road to a first contract was probably most eased by the large daily disbursements for additional police services caused by the union's airport rallies. The public protests raised the cost of resistance for Unique and more importantly, the airport

authority. Once the union discovered its influence over airport management it had the leverage needed to win an agreement. That leverage was unfortunately stumbled upon only after a frustrating and near calamitous bargaining campaign.

Of course, the inverse is also true: difficult organizing campaigns can lead to easy negotiations. IBT Local 332 in Flint, Michigan confronted a national management consultant, Management Sciences in their efforts to represent approximately 800 nurses and technical staff working at four different hospitals. Local 332 understood the implications of the hospital hiring a “union avoidance” consultant; firms specializing in advising companies in how to stay “union free” have been negatively associated with winning first contracts. The hospitals were planning to merge and reorganize as Genesys Hospital. Unfortunately, prior to the merger only one of the care facilities was unionized. Local 332 initially formed an “inside committee” made up people from every building, unit and shift to educate workers about the need to fully unionize. The local union president stressed that the committee was important because “day-to-day communication was essential to combat the union busters.”

After approximately one year of hard organizing, in May of 1996 the local petitioned the NLRB and sixty days later won the election 406-305 (56.3 percent). IBT Local 332 signed a first contract shortly thereafter and the union has since negotiated two successor agreements with the reorganized hospital. In the opinion of a local union official, organizing and winning agreements at Genesys would not have been possible without the educational work done by the inside committee. The “difference” for the health care workers at Genesys was “building rank-and-file support throughout the hospital system to move the union from the election into bargaining.” Local 332’s

experience seems to underscore our thesis and the work of others (Reed 1989, Markowitz 2000) that one of the keys to gaining first contracts is to be found in the union's actions early in the organizing stage. The "deeper" and more thorough (i.e., home visits, interacting with internal committees) the organizing effort, the more likely internal leadership was developed and according to internal assessments, the better and more likely the first contract.

Union market share or density also plays a significant role in first contract outcomes (Hickey, 2002). In Milwaukee, Wisconsin IBEW Local 2150 has since 1999 won fifteen out of sixteen NLRB elections with election margins that exceeded 70 percent; all without a neutrality agreement. The union's success in the utility industry undoubtedly contributed to its efforts at electrical heavy weight WE-Energies. Organizing 145 workers at WE-Energies followed a surreptitious two-week union campaign to collect enough signatures to petition the NLRB. According to Randy Sawicki the local's fulltime paid organizer, once the company was aware of the organizing drive they "staged a pretty strong anti-union campaign." Nonetheless, in the Board election Local 2150 prevailed by an impressive margin. The union's most potent leverage though was the fact that they already represented two-thirds of the state's utility workers. This meant of course that the company had been and was a signatory to a number of IBEW labor agreements. The company's past labor relations with the IBEW did not preclude union resistance, but it had established a standardized set of wages and benefits for many other union employees that had not hurt the firm's profitability. Bargaining may have taken a year, but at no time did the union fear that a strike would be necessary to reach a labor deal.

The struggle to gain recognition and to organize a first contract is seldom easy and it is usually necessary for the union to find appropriate leverage points. Some companies though are ideologically hostile to unions and are willing to incur almost any cost to avoid unionization. Wal-Mart, for instance, announces to their managerial employees “staying union free is a full-time commitment” and “a goal equal to other objectives within an organization” (Featherstone 2004). When thwarting worker rights is as important a firm objective as making money and selling a quality product or service, then innovation on the part of the labor movement is required. It is particularly important when facing recalcitrant employers that unions be innovative and willing to shift courses where necessary to make the process work.

When HERE Local 17 set out to organize the Four Points Sheraton, a Starwood property, in Minneapolis, Minnesota, they planned on a Board election. On the national level, HERE had a neutrality agreement with Starwood, but the local engaged in interrogation, surveillance, cohesion, bribes and intimidation to avoid unionization. Captive audience meetings were held in rooms where the temperature had been turned up to over 100 degrees. Both the union and management filed unfair labor charges. It was an “ugly campaign” according to Martin Goff, the local’s Director of Organization. The subsequent Board election was lost. The union, which has a 68 percent market share in Minneapolis and 90 percent in St. Paul, did not give up and immediately began looking for points of leverage. That leverage came from contract negotiations going on between HERE and Starwood in Las Vegas and New York. The union made it clear to Starwood, “you can’t be our friend in those markets and our enemy in Minnesota.” The leverage worked. Top management forced the local management to abide by the neutrality

agreement and to conduct a card check. The union was allowed into the hotel and as fear among the workers diminished, they began to sign union cards. When the union went to management and asked for recognition, 84 percent of the workers had signed cards. Goff describes the workers at the Four Points Sheraton as one of the strongest union houses he has ever seen. Reflecting on the struggle, Goff concludes, “the fight sets you up better, but it’s harder to win the fight... Workers who don’t have to fight, don’t have enough knowledge to know how to get what they need at the table.” Interestingly, in 6 to 8 bargaining sessions the first agreement was “easily” settled. The cost to Starwood of not unionizing and agreeing to a first contract in Minneapolis went up significantly when the union brought discussions of Las Vegas and New York into the picture. This long “ugly campaign” points to the time it often takes for unions to develop, figure out or stumble upon points of leverage.

The case of the International Union of Operating Engineers (IUOE) Local 150 and US Steel is the tale of an employer willing to give up everything to keep the union out. In 1990 the local represented machine operators working for an on-site contractor at US Steel’s flagship Gary Works in Gary, Indiana. But that year the steel giant decided to replace the long standing unionized contractor, Levy Ltd., with a non-union operator out of Wichita, Kansas. The new contractor, Koch Minerals, immediately fired the incumbent workforce and demanded that they reapply for their now nonunion jobs. To underline their point the company brought in employees from around the country to replace any uncooperative IUOE members. Dave Fagan, the lead organizer for Local 150 in Indiana explained that Koch “came in to the mill to do battle.”

Local 150 set up twenty-four hour pickets and struck US Steel for two weeks. US Steel struck back by suing the union \$250,000 per hour for every hour they held up work on the site. Their treasury threatened, the union ended the strike and entered into a confidential settlement with the steel maker. Then in 1995 two employees approached Local 150 organizers with some damaging information that reignited a bottom-up organizing campaign. Knowing that US Steel “adamantly backed Koch’s position,” the union decided, with just the bare 33 percent required minimum of signed cards, to petition the NLRB for an election. The election was held on December 7<sup>th</sup> with IUOE Local 150 winning 65 percent of the vote.

Local 150 was now re-certified at the Gary Works. But Koch, determined to never operate on a union basis, asked US Steel to let it out of its contract. US Steel complied and brought back Levy Ltd., which in January of 1996 promptly signed a five-year labor agreement with the union. The company and Local 150 have since renegotiated a second agreement. In this case the firm that was organized was willing to give up everything rather than deal with the union.

One might think a recalcitrant employer would never be a likely target for a card-check recognition campaign; but, in the late 1990’s HERE Local 27 set out to organize the parking lot attendants in Washington D.C. In an eighteen month battle the union was able to win card-check recognition from Central Parking. When the campaign had begun, Central vowed that they would “never be union.” But the union mobilized worker militancy while searching for other points of leverage. By bringing together the community to support the workers, exposing pension irregularities, filing NLRB charges, pressuring facility owners, sending delegations to managers, picketing and holding

community elections, the union was able to force other city parking vendors to recognize the union. From the beginning the union planned to organize the entire industry. Krista Strothmann, lead organizer at the local said, “Once we won, the national labor relations staff (for the employers) didn’t have so much ego, so we could work together” and union and employers have recently completed their third pattern contract.

### **Peanuts, Popcorn, Representation: A Summary**

Interestingly, four of the 32 organizing/first contract cases we gathered information on were in the sports industry. Specifically, in each case HERE was working to organize the concessionaires (i.e., people selling beer, peanuts, team jerseys and programs, and serving food in private suites) at newly built stadiums. In each case the union was faced with determining how to best organize the workers, a decision that had implications for the quality of the contract. In each a somewhat different means was used but the goal in each case was to leverage the power it had to win representation and a first contract.

When Seattle decided to build a new baseball stadium for the hometown Mariners, it did so primarily as a public venture. As part of a public utility, the city chose a vendor that would agree to card check/neutrality and assure labor peace. The HERE organizing drive was uneventful and in less than a month the union had it’s first contract. Just next door, the city’s Seahawks were also having a new football stadium built. Unlike, the Mariner’s, the Seahawk’s stadium was largely privately by Paul Allen, of Microsoft fortune. According to Erik VanRothum, the Local’s Lead Researcher, when the union approached Allen, “he thumbed his nose at us,” and refused the very same card check/neutrality agreement that had been agreed to next door. But Allen’s obstinacy

backfired and served to mobilize a now angry group of workers. While it was “difficult” to organize the workers, the union was eventually able to gain card-check recognition. Like organizing, it was “difficult” to get a first contract. But after four months of negotiations, leaflets, button-up days and threats of pickets the union was able to negotiate a contract that was actually significantly better than the one previously negotiated at the Mariner’s field. According to VanRothum, the fight with Allen was key in mobilizing the members to get the better contract. This goes to the concern expressed by many of the organizers and union representatives we spoke to that existing card check agreements reduce expressions of worker militancy and thus lead to contracts that are less than they might otherwise be.

While in both of the above cases, the union ultimately won card-check recognition; one was done using top-down and the other bottom-up organizing. The use of union top-down economic and political leverage to force a large employer to avoid interfering with workers organizing rights and efforts to attain a first contract is an approach used in both representation elections and card check campaigns. While HERE has almost completely sworn off the NLRB certification process, it has also artfully used many of the tactics plied during its card check or neutrality agreement campaigns to win selected Board elections. The case of HERE Local 10 in Cleveland, Ohio reveals how successful organizing and first contract negotiations very often unfold simultaneously.

In 1990 the Cleveland Indians, a professional baseball team, announced that it would be opening a new stadium in downtown Cleveland, Ohio. The new facility would provide roughly 400 concession workers employed by Sports Services, one of the nation’s largest sports facilities vendors. HERE Local 10 made a feeble effort in 1994 to

protest the use of non-union concessionaires which the vendor simply ignored. But then in 1998, the local joined with the Cleveland Federation of Labor and with the area chapter of Jobs With Justice to build a community coalition to pressure the vendor and the employer of the vendor's services, the Cleveland Indians, to honor the workers' desire to form a union. The team did not agree to insist on a card check, but did pressure Sports Services to "get a deal done with the union." Once the Cleveland ownership made it clear that it would not do business with a company that could not guarantee "in-seat" concessionaires, organizing, according to Local 10 president Ken Ilg, became "easy." By the start of the 1998 season HERE local 10 had petitioned the NLRB and won an election by a handy two to one margin. It had also negotiated in roughly three months a four-year agreement with significant improvements in worker pay and health care benefits.

Local 10's success at Jacobs Field was not the end of the union's sports facility electioneering. Having already leveraged their power at the Indians' stadium, when the city broke ground for a new football stadium, the union requested a card-check agreement. Remembering the "public battle" that ensued with the vendors at Jacobs Field, the football team's labor relations' counsel directed two anticipated vendors at the newly named Cleveland Browns stadium's to sign card-check agreements with Local 10. Nearly every concession worker quickly gathered cards and in short order HERE Local 10 had won representation rights and new labor agreements for 350 workers.

What mattered in the HERE sports facility cases was not whether card check or elections was a better road to a labor agreement, but how the union made strategic choices, developed alliances and used its leverage.

## **Conclusions**

Based on our review of thirty-two positive cases the union's ability to innovate and to find new and effective ways to leverage power is the key to their achieving first-contract success. When the union rallies its workers and uses other points of leverage to gain a card-check agreement, the union has already signaled to the employer its power. In effect the two-stage process of first organizing and then winning a contract has in some ways been collapsed into one. On the other hand, when a card check agreement exists prior to the organizing effort, very often the union is left in much the same situation as if an election had occurred. In this situation the worker's ability to leverage their power has not been tested. Thus, while it does appear that in general by using card check, the union is more likely to get a first contract; the quality of the contract remains dependent on the power of the union to force the employer to pay.

It is our contention that the organizing and negotiating stages of the collective bargaining process should be viewed as mutually determined. In other words, in order to be most successful unions should think of the process from organizing to second contract as a single process. This includes not only the means of organizing, but the structure of the union and the ways in which a unit moves from organizing to negotiation mode, as well as the timing and ways in which power is leveraged. Admittedly however our perspective was not shared by union field organizers. Only one union we spoke with explicitly mentioned the importance of continuity of leadership in the transition from organizing to negotiating and in a discussion with approximately 70 organizers representing 19 unions, only three said their organizations spent time thinking about the

best way to ease the transition. In most of the unions organizing and negotiations remain separate functions and seldom are they unified as a strategic plan.

The difficulty American union's face in achieving a first contract often minimizes the positive consequences for collective bargaining in those minority cases where initial deals are signed. First agreements are not only necessary for establishing a collective bargaining relationship but ideally establish a floor for future bargaining improvements. In nearly all the cases we examined (i.e., NLRB election or card check) an initial labor deal was followed by a second and in some instances a third agreement. These successive deals incrementally improved upon the previous one and matured the relationship between union and management. Whether following Board election or card-check certification, aggressive management opposition to union recognition typically ceased and a period of accommodation followed. Where first contracts may have been a struggle to attain, successive ones were negotiated in a more business-like and less adversarial manner. With each agreement the relationship between management and labor matured. Although this does not assure an enduring partnership -- speculative data suggests that less than half of all union workers ever negotiate more than one contract -- or even a cessation of all hostilities, first agreements build a bargaining foundation that at least temporarily restructures the labor-management relationship.

While the recognition process itself (i.e., NLRB election or card check) leading to a first agreement did not have direct implications for how the union-employer relationship evolved, there is some indication that it did correspond to the representational approach of the union. Unions which featured a full throttle mobilization of rank-and-file members (i.e., HERE, SEIU) during organizing typically

lobbied for community and political support during bargaining campaigns and included member representatives on negotiation teams, as well as using committees to conduct union business. Unions like HERE and SEIU which relied heavily on card-check recognition and to a lesser extent the UAW, also took very public positions on policy questions and actively worked to inspire their members to elect all manner of legislative and executive officials.

But card check is hardly a necessary means to member activism. Unions like the USWA and IBEW which engaged in numerous Board elections have created impressive rank-and-file education, organizing and political action programs. Regardless of the process used to organize the bargaining unit, these unions have mustered the collective strength of the membership to pursue collective bargaining ends. The key seems to be the degree to which the membership is mobilized during the organizing and contract phases rather than the particular procedural process followed. While early research points to the benefits of established card-check agreements the trade-off may well be the degree to which the membership participates over the long run. At the same time, as several organizers pointed out to us, some union representation is better than none.

Mobilizing union resources was not however, always about engaging the full membership in an organizing or contract fight. At times the levers of power included public rallies, demonstrations, voter turn out, solidarity campaigns with community supporters, rank-and-file committees, and in a few NLRB cases, strikes were necessary and well adjudicated. But leveraging power also meant top-down neutrality agreements negotiated by national union leaders, utilization of a union's buying power to persuade an employer, and pressure from third-party employers and government officials. In the

former cases workers were mobilized in Kelly's terms to "attribute" a felt sense of "injustice" to the employer and to take collective action. But in the latter cases, while injustice may have been felt and attributed, it did not require worker activism. In a number of our examples, union leaders were very successful in tapping into employer vulnerabilities to secure labor agreements without having to do more than to threaten disruptive behavior from other concerned parties or their own members.

Where unions, however, did build community coalitions and ask their membership to play an active role in organizing drives (e.g., as in many of the card-check campaigns) and contract battles it is likely that group cohesion and identity was more effectively built than in those cases where employers deals were reached without any grassroots push. The increased intra-union member interaction is described by Kelly (1998) as an important premise in helping union leaders to convert individual union member injustice perceptions into collective action. And as Markowitz (2000) has pointed out it may well be this sense of self as integral to the union and not just simply a "win" that is essential to the long-run viability of the labor movement. Organizing drives characterized by decentralized decision-making, rank-and-file volunteers, community alliances, and linguistic appeals to worker solidarity and class consciousness not only underscore the employer's culpability in committing and injustice, but also in Kelly's (1998) terms present the union as a "collective agency" that can "make a difference" in redressing the wrong. This in turn is likely to increase the union's effectiveness in compelling the employer to pay for a first contract.

Clearly, this research is just a beginning and a more complete analysis of union structure and their organizational decision-making processes needs to be conducted. But,

these thirty-six cases represent a wide range of union activity as unions move from organizing through first contracts. Unions in the United States will need to continue to innovate and grow increasingly self-reflective if they are to survive. If the NLRB goes against long tradition and bars card-check recognition, an important tool will have been lost. At the same time, recent proposed legislation, like The Employee Free Choice Act, would not only protect card-check recognition, but would provide for first contract mediation. Whatever the outcome, it will not diminish workers desire for a union. The ability and willingness of unions to innovate and to empower workers, and the legal and political environment in which they operate will undoubtedly impact the worker's ability to make that desire a reality.

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