Intensity of Management Resistance: Understanding the Decline of Unionization in the Private Sector

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I. Introduction

Management resistance to unionization has long been considered a deterrent to the growth of private sector unions (Perlin, 1928). Generally, attempts to stop unions from organizing have included sticks and carrots offered to employees of the firm (Leonard, 1987). Sticks available to management to stop potential unionization efforts include captive-audience speeches by supervisors, harassment of potential union leaders, firing of union leaders, and failing to bargain seriously over first contracts (Bronfenbrenner, 1997; Freeman and Kleiner, 1990). Carrots offered to employees as part of the effort to stop organizing drives from occurring include pay increases, employee involvement programs, and other types of financial participation in the profits of the firm. For example, employees are 14 to 20 percent less likely to vote for a union when there is an employee participation program compared to where there is none (Freeman et al., 2000). One issue for this symposium is whether these policies have contributed to the decline of private sector unions in the U.S. I focus on the stick portion of employer resistance to unions and its impact on union decline.

Private sector unionization has declined to around 9.4 percent, but has remained at almost 40 in the public sector where negative management resistance to unions is significantly lower (Freeman, 1986; Hirsch and Schumacher, 2001). Among the many negative consequences of this decline is the diminution of the benefits often associated with the voice face of unionization (Freeman and Medoff, 1984). This includes the decline in the percentage of union-directed labor arbitration available to all workers and employee power at the work site that has the full power and legitimacy of a union to enforce decisions and reduce retribution by management (Pleasure and Greenfield, 1993). Moreover, unions give workers a voice in government and on social policy issues that is much greater than its negative effects on the allocation of resources (Rees, 1963). Public policy concerns from social security reform to health and safety issues have an organized and well-funded advocate in unions within the public arena that allows workers to have a voice to counterbalance the views of management or consumers. As unions have declined as a percentage of the work force in the private sector, their voice benefits have declined both at the workplace as well as in society.
Moreover, given the impact that unions have in reducing national income inequality, the decline in union power has had a role in the growth of income inequality because of the lack of political power to support legislation such as minimum wages and health and social employee benefits (Fortin and Lemieux, 1997). As a consequence, the fall in union membership and the resulting decline in their impact at the workplace and in society has resulted in the negative societal externalities which are associated with decreasing membership in private sector unions.

Initially, I show the rationale for firms' behavior in the face of union organizing. The growth in the intensity of this opposition is shown through both the hiring of consultants to stop unionization and the use of unfair labor practices. Next, evidence from previous studies and new case-study data using qualitative comparative analysis show how employers can use tough anti-union practices to stop employees from getting a labor contract. Moreover, the penalties in the NLRA are small in comparison to other labor laws, which further explains the growth of employer opposition. Finally, comparisons are made between the European Union (EU), Canada, and the U.S. The arguments presented show that incentives for opposition are greater in the U.S. relative to these other nations, and this may be a major factor in the more rapid decline of U.S. unions.

II. Rationale for Management Avoidance of Unions

Although there may be social benefits for higher levels of unionization, there are significant costs to firms in the private sector unions that are organized through NLRA procedures. There have been several ways of understanding the rationale for why firms attempt union-avoidance strategies. In an approach popularized in the 1980s a strategic-choice framework was presented by Lawler (1990) following Kochan et al. (1986). The basic model assumes that there are contextual influences that affect both employer and union actions and that this influences the employees' propensity to organize as well as the organization's likelihood of unionization (Lawler, 1990). In this model it is not only the managerial behavior of using consultants and allocating time by supervisors, but also the union's use of the union consultants, organizers, and the resources of the AFL-CIO that determine union wins. In large part these factors are all assumed to be endogenous variables to the eventual decision to organize.

A more neoclassical economic approach to the issue of employer behavior in the face of union organizing drives was presented by Freeman and Kleiner (1990) whose model assumes standard neoclassical economic motivations by the firm, which is the principal actor in the determinants of organizing. More specially, the firm makes economically rational choices based on the costs and benefits of events. Regarding unionization, however, the use of managerial tactics is not similar across organizing drives. If unions have either an extremely high or low chance of winning an election, managers would be less likely to use the organization's resources to stop the campaign to unionize. On the other hand, if the election outcome is uncertain, then the firm is more likely to fight the union because of the potential for high economic losses. A basic solution to the economic model of employer opposition to unions shows that employer
opposition is a function of potential union wage gains and consequent loss in profits, combined with the innate probability that the union will win the election (Freeman and Kleiner, 1990). Empirical tests of this management-focused approach using data from U.S. organizing drives were consistent with this model (Freeman and Kleiner, 1990).

III. Workers’ Views of Employer Opposition to Unionization

From the employee’s perspective, union organizing also presents several potential scenarios. If the union is chosen as the bargaining agent for the firm and then raises wages, this would benefit more senior workers at the potential expense of those who might lose their jobs because of lower seniority (Leonard, 1992). This may be a case where the median voter gains through higher wages, but where the marginal employee loses through job loss or fewer hours (Hirsch, 1991). A significant segment of the literature on the decline of private sector unions attributes the decline of unions to these avoidance policies by firms that reallocates the firm’s resources to the nonunion parts of a business (Farber and Western, 2001).

During organizing drives the threat of employer resistance and the use of threats and intimidation can be a major deterring factor for employees seeking representation. Although illegal, threats of a plant shut down or layoff may cause employees to reconsider their support for a union, and these tactics are often used by management in organizing drives (Suskind, 1992). Furthermore, employees perceive that management will use intimidation to try to stop an organizing drive.

In a survey by the AFL-CIO-sponsored Wilson Institute, more than 150,000 nonunion employees in 360 large nonunion bargaining units were asked via in-depth telephone interviews their views on joining a union prior to or during an organizing drive (Comstock and Fox, 1994). The findings indicated that employer resistance is increasing and that this tactic frustrates demand for union representation. For example, one question asked, “How do you feel [company name] is most likely to respond to the issue of union representation?” An average of 42 percent out of more than 13,800 workers chose the response that the company will “make an all-out effort” to defeat the union, and an additional 21 percent said the company will “try to persuade workers to oppose union representation but stop short of an all-out effort.” In this survey only 24 percent of the employees in these large firms responded that the employer would “let the employees decide on their own.”

In the more recent and scientifically representative sample of larger American companies, Freeman and Rogers (1999) find similar results on the importance of employer resistance. They use information on employee attitudes taken from the Worker Representation and Participation Survey (WRPS), a sample of more than 2,400 workers in private/nonprofit organizations with 25 or more employees who are not part of upper management. Freeman and Rogers focused on the legal issues surrounding employee representation. For example, 53 percent of the respondents thought that employee rights to form unions and employee associations were too low, compared to 24 percent who thought that the legal restrictions were excessive. Although the ques-
tions asked in the WRPS and in the Wilson survey are different, the results consistently indicate that workers who are considering engaging in a collective action feel intimidated by potential employer behavior. Overall, employer resistance would tend to dampen worker demand for representation (Farber and Krueger, 1993).

IV. Estimates of the Economic Incentives for American Managers to Stop Private Sector Unions

U.S. firms spend more than $200 million annually on direct payments to consultants and lawyers hired specifically to try to stop organizing drives by unions (Lawler, 1990). Estimates in a Bureau of National Affairs report indicate that during the 1980s employers spent about $500 per person per bargaining unit for consultants in election campaigns (BNA, 1985). From the 1950s through the 1980s this area of management consulting was one of the fastest growing areas (BNA, 1985). Tactics that these firms use vary from illegal practices to the use of large pay incentives to stop organizing drives (Levitt and Conrow, 1993). Freeman (1985) estimates that approximately 40 percent of the decline in union membership can be explained by tough management opposition, which is about the same percentage attributed to the structural factors in the Lipset and Katchanovski (2001) article in this symposium. Presumably firms that hire consultants to stop organizing drives do it to enhance economic returns to shareholders. Their managers think that unionization would reallocate the firm’s resources away from the owners of capital toward additional labor costs. Moreover, leaders of the private sector firms must also think that these consulting and legal firms have certain specialized knowledge that can reduce the likelihood of unionization and that unions would reduce profits. Within the context of the standard economics of the theory of the firm, a rational firm would only engage in union avoidance activity if it thought that this behavior was in its financial interests. Consequently, this basic financial expenditure and use data indicate that firms assume that putting the firm’s resources into stopping organizing drives provides benefits by reducing labor costs and enhancing the managerial prerogatives within the firm.

Beyond the use of consultants there has also been an increase in the level of violations of the NLRA that deals with discrimination during organizing drives, overall discrimination against employees, and refusal to bargain new contracts. If the law is the major deterrent to employer use of intense opposition, then its effect has been declining in recent years. For example, there has been a major increase in the use of illegal tactics in the U.S. as was documented in the proceedings of the Dunlop Commission (1994). Evidence provided by the Commission showed that unfair labor practices increased from 9,067 to 24,075 from 1960 to 1990 in spite of a steady or declining level of union organizing (Commission on the Future of Worker-Management Relations, 1994). Using a simple simulation that adjusted for the number of certification elections and union voters, the incidence of illegal firings increased from one in every 20 elections adversely affecting one in 700 union supporters in the 1950s — the height of U.S. union strength — to one in every four elections affecting one in every 50 union
supporters in 1990 (Lalonde and Meltzer, 1991; Commission on the Future of Worker-Management Relations, 1994). Figure 1 shows this relationship over time and updates the results that were presented in the Commission's findings. The trend in illegal firings continued through 1995 and increased to a ratio of more than one in every 25 union supporters during the mid-1990s. In addition, Figure 2 shows the number of unfair labor practice charges involving discharges or employment discrimination for union activities and failure to bargain in good faith. The ratio of charges that have merit remained about the same at 40 to 45 percent during the period examined so the number of violations cited by the NLRB increased in proportion to the results presented in the Table (Commission on the Future of Worker-Management Relations, 1994). The results show major increases in the number of charges by employees and unions through the early 1980s and then a leveling off of charges for both dismissal charges or 8(a)(3) charges and for good-faith collective bargaining or 8(a)(5) charges. Overall, Figures 1 and 2 show that employer resistance to unions, as measured by violations of public policies designed to protect employees and unions, have increased significantly over the past half century, and this also tracks the decline in unionization rates in the private sector for the same period.

Two factors may have contributed to this increase in unfair labor practices. First, the growth in the union/nonunion wage gap has increased over the past decades, but with some leveling off during the 1990s, and this has provided greater incentives for

Figure 1

*Ratio of Workers Offered Reinstatement to Workers Voting for Unions: Data from NLRB Annual Reports, Various Years*
firms to stop unions (Hirsch and Schumacher, 2001). Second, there have been relatively stable fines on management as a consequence of violations of the National Labor Relations Act. For example the average back-pay award in 1990 was $2,733 plus legal expenses (Commission on the Future of Worker-Management Relations, 1994). This amount is much less than an economic gain that a firm might reasonably expect to capture from stopping an organizing drive. Although most firms are not likely to fully use illegal tactics, their ability to use many of the "sticks" to stop organizing has been a major impediment to unions attempting to organize as well as workers to join a union. This growth in illegal activities by employers over time is likely to have contributed to the representation gap discussed by Freeman and Rogers (1999), while 32 percent of nonunion workers and 90 percent of current union workers would vote for a union in the private sector, only 9.4 percent of private sector workers now belong to a union.

Not only are there the theoretical arguments for employer resistance to union activities presented in the prior section, there has also been a substantial body of empirical evidence on this issue. In Table 1 the major studies in this area, by author, by the empirical approach used, and by the outcome of the analysis are presented. The most comprehensive review of findings on the effects of unions on business was the 1989 study by Addison and Hirsch, who reviewed 16 studies and found that they all showed that unions negatively affect profits. Updates of this comprehensive review are provided in the table and show that unions still are associated with lower profits and lower levels of investment (Becker and Olson, 1992; Hirsch, 1992). Nevertheless, there is no
clear association with unions putting firms out of business or causing workers to become unemployed because of large layoffs or plant closings (Freeman and Kleiner, 1999). The results from these estimates clearly suggest that there is a reasonable economic rationale for firms employing consultants and lawyers to attempt to stop employees from organizing if they reduce the probability of a union win and improve the financial situation of the firm.

Given these potential economic loses as a consequence of unionization as shown in Table 1, it would be in the interests of the owners or shareholders to provide incentives for managers to be responsible to the principals, or shareholders, relative to other stakeholders, like employees. Consequently, shareholders, through their agents within firms, attempt to create incentives for U.S. managers to oppose unionization by threatening their jobs or career enhancement. For example, managers in U.S. firms are much more likely to lose their jobs, be sent out for further training, or dramatically reduce their chance of being promoted if unions attempt to organize their establishment or obtain a collective bargaining agreement (Freeman and Kleiner, 1990). The estimates show that a manager whose establishment experiences an organizing drive is about four times more likely to be fired as one who does not experience an organizing drive. It is

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<th>Author</th>
<th>Data and Methods</th>
<th>Results</th>
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<td>Addison and Hirsch</td>
<td>Compares and summarizes selected econometric analyses of union effects on profitability</td>
<td>Reviews 16 studies from 1983–89. Confirms lower profitability among unionized firms. (See Table 1, p. 88 of the paper)</td>
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<td>Becker and Olson</td>
<td>Regression on 1977 Standard and Poor Compustat file for firm- and industry-level unionization</td>
<td>Firms that are 100% unionized have an “excess value” [(market value + book value debt) – book value tangible/sales] £ of 18 points below mean.</td>
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<td>Hirsch (1991)</td>
<td>Regression on employer survey data on extent of collective bargaining coverage among publicly traded companies.</td>
<td>Union coverage at firm level exhibits a strong negative relationship with company earnings and market value.</td>
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<td>Hirsch (1992)</td>
<td>Regression on survey data on union coverage impacting capital and R&amp;D investment</td>
<td>Firm-level collective bargaining is associated with significantly lower physical capital and R&amp;D investment, with unionized companies investing from 10 to 16 percent less than similar non-unionized firms.</td>
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<tr>
<td>Freeman and Kleiner</td>
<td>Estimates on Compustat and CPS Data from the 1980s and 90s.</td>
<td>Although unions reduce profits, there are no consistent significant effects on plant closures or major layoffs.</td>
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hard, however, to disentangle the effects of poor management causing an organizing drive from the direct signals to managers from the owners that there are clear incentives within the firm to stop unionization. However, managers whose establishment experienced an organizing drive are much less likely to be promoted. As a result, whenever unions attempt an organizing drive, great pressure is put on managers to stop the organizing drives or their careers may be jeopardized.

The role of management resistance has gained greater force as a consequence of the change in the structure and efficiency of financial markets as well as the short-term focus on profit maximization in response to the greater role for equity traders and investment bankers in determining firm values. Moreover, technological change has resulted in greater pressure for firms to reduce costs and raise efficiency (Gordon, 2000). Perhaps the union effect on profits or the information an organizing drive sends about the quality of management affects the financial markets' negative reactions to organizing drives (Becker and Olson, 1987).

V. How Employer Resistance Works: Analyzing Case Studies

In order to see if high-intensity managerial tactics in an organizing drive works, I report the results of an analysis of data gathered from the detailed, sworn testimony and questioning of labor-oriented witnesses who participated in organizing drives during the 1980s and 1990s in Minnesota. These cases identify employer tactics that were linked to employee and union inabilities to obtain collective bargaining contracts.

The case-study information was gathered from 33 individuals who were asked to testify before the Working Organizing Rights Commission, of which I was a member, and this allowed me to have access to the data and transcripts which described their views of management resistance to organizing and contract negotiations. The commission members consisted of labor leaders, government officials, academics, and managers of unionized establishments. The dominant group, however, was union leaders who were aware of the examples of employer behavior during organizing drives and contract negotiations and attempted to get persons to testify who were involved in contentious labor relations. The individuals who testified represented 26 organizations in the private, public, and nonprofit sectors. Each person gave a minimum of a 30-minute presentation about what happened to them during an organizing drive, during attempts to get a contract, or in negotiations following the expiration of an existing contract. The individuals were then questioned regarding their experiences focusing on managerial, government, and union behavior, and the outcomes of the process of the organizing drive or contract negotiations. This case-study information provides more depth on each case study than is found in large data sets, but it comes at the expense of only having a limited number of observations.

These detailed case-study data were obtained under oath from the testifier who presented information, and is consistent with the kind of information needed to perform Qualitative Comparative Analysis (QCA). QCA uses set theory and Boolean algebra and requires that information about an event be known with a high degree of
certainty and that there is similar information about each event in the data set. There are two conditions or states in Boolean algebra; one indicates the presence of an event and zero indicates the absence of the condition. The QCA approach examines the logical consistency of relationships relative to their outcomes by determining whether there are inconsistencies in variables leading to events or outcomes. Causes are not viewed in isolation with the QCA approach, but always within the context of the presence or absence of other causally relevant conditions. Each combination of causes produces a particular outcome such as a union win in an organizing drive or a negotiated contract. Unlike most other data-analysis approaches or surveys, QCA requires more in-depth knowledge of events, as well as a higher standard of hypothesis testing than, for example, regression analysis. With QCA an illogical or inconsistent outcome for an observation relative to theory negates or rejects the theory.

For the 26 organizations for which there was detailed information, I determined, based on the testimony and other conversations with the participants in the WORC, that actions such as the termination of employees, harassment of workers, captive-audience speeches by management, and NLRB involvement in the investigation of unfair labor practices seemed to be important to the likelihood that an agreement was negotiated. Although other issues were discussed as part of the testimony during the hearings, these issues were presented in reasonable detail for all the cases brought before the WORC (Workers Organizing Rights Commission, 1995). From the union’s perspective, a successful outcome within this methodological construct was reaching a collective bargaining agreement.

This detailed case testimony provides an in-depth sequence of events and key issues that are often not available in surveys or national administrative data sets from agencies like the NLRB or the Federal Mediation and Conciliation Service (FMCS), which maintains organizing and collective bargaining agreements as part of their normal record keeping on labor relations events. Only through detailed case studies on the intensity of managerial actions can analysts become fully aware of the various kinds of negative tactics and their interactions that management uses to stop organizing drives from culminating in a labor agreement. Moreover, these detailed cases can complement information from analysis that uses data sets with many observations, but contains less depth.

Table 2 summarizes employer behavior during the organizing drives or contract negotiations that were marked by some form of employer resistance. Clearly, many tactics were common when there was management opposition. Charges of discrimination that were perceived to have sufficient merit to be investigated by the NLRB and then found to have merit at the regional directors level (though some were overturned later on appeal), captive-audience speeches, and surface bargaining also were used a great deal by employers. Though many of these tactics are legal, they do require effort and money by the employer to implement these policies during an organizing drive. It was surprising, given that the sample contained only cases where there was employer effort to stop a union from organizing or getting a new contract, that firing
an employee was used in only a little more than one-third of the cases, but in none of these cases did the union obtain a contract for the employees.

Table 3 presents the QCA results in the form of a Truth Table, which has as many rows as there are logically possible combinations of values on the causal variables. The frequency of each combination is included to show that each row is not a single case but a summary of all the cases with a certain combination of input values. In this way the row of a Truth Table is like a cell from a multi-way cross-classification of several categorical independent variables (Ragin, 1987). The frequency of those combinations of conditions, where there were many tactics used, is presented in the last column. All the observations’ presented in Table 3 are bivariate and the outcome variable means reaching a collective bargaining contract. One of the basic assumptions of this QCA analysis is that a combination or interaction of the behaviors by the management of an organization is necessary to determine whether a collective bargaining agreement will be reached. The results show that collective bargaining agreements were reached in only three of the 19 combinations of outcomes presented in Table 3. The cases in Table 3 marked N/A are public sector organization drives where the NLRB provisions do not apply. The Truth Table shows that the use of all the potential employer resistance practices is consistent with an outcome of no contract. Furthermore, the QCA minimization procedure in the Truth Table which checks for logical inconsistencies is presented in Table 3, and it shows that there was no evidence of contradictions regarding the managerial policies implemented during the organizing drive and the outcome of a contract being negotiated by labor and management. This result shows that when management is intent on stopping a union organizing drive or obtaining an agreement
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<th>Harassment of Employees</th>
<th>Captive Audience Speeches</th>
<th>Surface Bargaining</th>
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0 = Did not occur 1 = Did occur  N = 26 organizations
and their full arsenal of tactics is deployed, it is almost impossible for workers to get a contract.

These results of the QCA, which analyzes case studies, are consistent with other empirical work that examined the impact of employer behavior in the face of union organizing drives (Cooke, 1983; Freeman and Kleiner, 1990; Lawler, 1990; Kleiner, 1994). Specifically, employer tactics that include the use of first-line supervisory personnel to give captive-audience speeches and the use of unfair labor practices, particularly threats and terminations of employees in combination with one another, have serious detrimental effects on the ability of unions to represent employees in collective bargaining. The results presented in Table 3, using a unique data set and a “non-traditional” methodology, are similar to many of the findings revealed by more familiar statistical methods (e.g., regression analysis).

The main advantage of the QCA approach is that it is based on more in-depth knowledge of each particular event. This approach also has a lower tolerance for inconsistency in the outcomes than traditional regression approaches. The drawbacks include fewer observations than traditional approaches because of the time it takes to learn about each case study in considerable detail. Furthermore, the case studies reported only include observations where employers engaged in potentially coercive behavior. Cases where employers did not engage in this kind of action are not included in this analysis. Moreover, instances where there were no elections because employers stopped the drive at the card-signing stage or before unions obtained a majority of the potential bargaining units are not in this data set. This lack of a formal control group may limit the ability to generalize to cases where unions attempt to organize establishments without explicit or formal resistance or where employees do not seek formal representation for an entire bargaining unit. Nevertheless, these cases show that employers who use the full arsenal of weapons available to them can stop an organizing drive before a contract is reached. Intense opposition by employers seems to be capable of stopping employee attempts at organizing, and this could explain the growth in the use of management consultants who can plan strategic policies in the face of unionization efforts.

VI. Managerial Compliance with the National Labor Relations Act

If there are the benefits to firms in the U.S. in the form of higher profits from stopping organizing efforts as was documented above and managerial anti-union policies are known and work well in stopping union penetration, then why do firms not continually engage in concerted activity to stop the organizing drive? One potential reason is the role of public policy through the NLRA which forbids certain actions on the part of firms and their managers regarding employees and unions. However, there has been a great deal of controversy over the effectiveness of the NLRA in reducing employer resistance to unions.

Illustrative of the dispute over the effectiveness of the NLRA was a major study completed during the early 1970s which examined employer behavior during organ-
izing drives (Getman et al., 1976). Although the results showed that the average impact of managerial opposition did not reduce union wins, a re-analysis of the data in the 1980s showed that when management spent a considerable amount of effort and used tough tactics it mattered a great deal during close elections (Dickens, 1983). This result is consistent with the analysis by Freeman and Kleiner discussed above. In larger firms, where unions may have more clout, management has had even greater incentives to hire consultants, engage in illegal activities, and hold captive-audience speeches to try to stop organizing drives. Moreover, one reason for the decline of union strength has been the decline in the union win rates by size of the unit. This can have a statistically significant negative effect on the percentage of wins, beyond that which exists within the typical costs and benefit calculus of joining a union (Farber, 1999). These studies further illustrate that in order to have a real understanding of the decline in union organizing and union membership, it is essential to include management behavior as an important explanatory variable.

Beyond the effects of labor law on managers, the perceived impacts are great on employees as well. For example, there is a wide gap between the rights employees believe they have and the rights they actually enjoy. Freeman and Rogers show that about 74 percent of employees think that there are guaranteed rights at the workplace when in fact none of these rights are in federal law. These distorted perceptions that spill over to union organizing and employee rights are unlikely to benefit employees or to have a major impact on organizing. If, on the other hand, employers know their rights or have attorneys and management consultants who can tell them how to circumvent the law, this can greatly contribute to the overall decline of unionization in the U.S. private sector.

VII. What Does It Cost? Penalties for Violating the NLRA and Other Labor Policies

The Dunlop Commission suggested that one of the major reasons for the increase in the violation rate under the National Labor Relations Act is the low cost or penalty for violating the Act. However, are the penalties for violating this federal provision less than for other statutes? In Table 4, I show the costs to firms of the average violations for six labor policies at either the federal or state level. Table 4 presents comparisons of the federal equal employment (EEOC) statutes, the federal occupation safety and health act (OSHA), the federal Worker Adjustment and Retraining Notification Act (WARN), the federal Fair Labor Standards Act minimum wage provisions (FLSA), state Employment-at-Will/wrongful discharge, and the federal National Labor Relations Act. Since violations of a policy can have direct penalties as well as provide information to financial markets on the economic condition of the firm, I give both values where it is available.

Next to each statute is the average cost of violating the policy from studies of the policy, but litigation costs and lost productivity expenses are not included. For example, the cost of violating the EEOC provisions of the Civil Rights Act (imposed mainly
Table 4

Comparisons of Employer Costs of Violations of the NLRA with Other Labor Related Federal and State Policies

<table>
<thead>
<tr>
<th>Author</th>
<th>Data and Methods</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEOC: average back pay</td>
<td>average back pay from 109 decisions between 1964 and 1986 was $8.5 million (1982 $s) and the average back pay from 160 settlements during the same period was $4.9 million (1982 $s) (Hersch, 1991)</td>
<td>Value of firms involved in class action suits fell 15.6 percent on average around the time of the suit.</td>
</tr>
<tr>
<td>OSHA: Average fine $50</td>
<td>$50 per violation; each inspection results in just under 2 violations (Viscusi, 1995) OR: in 1993, average penalties were $275 per violation, $366 per serious violation (Weil, 1997)</td>
<td></td>
</tr>
<tr>
<td>Davidson (1994)</td>
<td>Event methodology to examine shareholders reactions to announcements of penalties from 1979 to 1989.</td>
<td>Finds negative reactions immediately following announcements but also found that the ensuing decrease in firm value was unrelated to the size of the penalty, number of violations, or instance of injury or death.</td>
</tr>
<tr>
<td>WARN: noncompliance</td>
<td>costs: up to 60 days’ back pay and benefits for each affected employee, plus, in some cases, fine of $550 per day that notice should have been given, up to $30,000</td>
<td></td>
</tr>
<tr>
<td>Alexander et al. (1997)</td>
<td>Event study methodology and multivariate regression to examine stock market reactions to announcements leading to the eventual enactment of WARN.</td>
<td>Finds negative effects on stock returns of small firms.</td>
</tr>
<tr>
<td>FLSA, minimum wage</td>
<td>violations: average backpay per employee (1988); $169 (Lott, 1995)</td>
<td>The effective penalty for a first-time violator averaged zero dollars because the fines are a fraction of the amount of underpayment and addl. “punitive measures” are not applied to first-time violators.</td>
</tr>
<tr>
<td>Ashenfelter et al.</td>
<td>Profit-maximizing model of compliance on DOL data from 1970s.</td>
<td></td>
</tr>
<tr>
<td>(1979)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lott (1995)</td>
<td>Estimates expected costs of violating min. wage law using DOL data from 1973 to 1988</td>
<td>Contradicting Ashenfelter et al. finds that actual penalties paid exceed the underpayments reported. For private court suits, payments (including double damages plus court costs) averaged four times the amount of underpayment reported.</td>
</tr>
<tr>
<td>Employment-at-Will/Wrongful discharge</td>
<td>survey of average awards in unjust dismissal cases showed average initial award to be $180,000 (Addison et al., 1997)</td>
<td>Average payment (including legal fees and post-trial reductions) was $208,000.</td>
</tr>
<tr>
<td>NLRA: average amount</td>
<td>average amount of backpay awards for 16,082 awards in 1990 was $2,733. (Dunlop Commission Fact Finding Report, p. 83)</td>
<td>General: Increasing wages to mean in the area for violators would reduce number of violations by 13 to 29 percent. Meta-analysis using 23 regressions estimates reviewed shows a t-ratio that was a statistically significant 2.93. See table 9.1, p. 141.</td>
</tr>
<tr>
<td>Kleiner (1994)</td>
<td>Examines range of estimates from economic literature on types and levels of penalties for violating NLRA.</td>
<td></td>
</tr>
</tbody>
</table>
in the form of class-action back-pay awards in large firms) was $8.5 million in 1982 dollars. In contrast, at the other end of the cost compliance spectrum are OSHA penalties, which averaged $50 per violation according to one estimate, and only between $275 and $366 for serious violations according to another. While penalties for violating WARN can range from $550 to $30,000 per day that notice should have been given, these fines are not assessed in all violation cases, and data on average back-pay awards were not available. Although the average for violations of the minimum wage statutes was low at $169 per employee, an establishment with 100 employees at the minimum wage could pay almost $17,000. At the high end of the penalty spectrum, violations of the Employment-at-Will/wrongful discharge statute (a state-level law), carry average awards of about $180,000 (Autor, 1999). These costs are high because they are determined in court and often include punitive damages. For NLRA violations the average award was $2,733 — a figure that puts violations of this federal statute toward the lower end of costs to employers. Moreover, if unions are likely to raise wages even close to the union/nonunion wage differential over a long time period, the benefits to firms of violating this statute may have the highest benefits-to-costs of the labor policies reviewed in Table 4.

Beyond the direct costs of penalties, there are also costs associated with the potential signals that these statutes give to financial markets. Below the listing of the statutes and their direct costs in Table 4 are references to studies showing additional economic effects of violating the law and paying a penalty through financial market losses, profit losses, or wage increases. The results show again that EEOC violations carry the greatest economic costs. The other federal violations appear to have minimal effects on the economic value of the firm. The wrongful discharge provisions of the Employment-at-Will statutes are costly, but there is no information on the effects of this violation on the overall value of the firm. For the NLRA to have any meaningful economic effects, it would need to provide penalties equal to the average wage in the area. This would be similar to the provisions of the Davis Bacon Act that applies mainly in the construction industry for federal projects. Given the costs of unions to firm profitability, the incentives are great to violate the NLRA for both management-strategy reasons and for profit maximization.

Unions may also serve to limit managerial prerogatives which may further managerial resistance. Firms that have employed these tactics that test the limits of the law are more likely to use these policies that are at the edge of legal acceptance again. In part the reason that the use of unfair labor practices as a tactic is growing is that there is a learning curve which has resulted in greater use of these policies over time as just another cost of doing business (Kleiner, 1983).

III. Cross-National Comparisons of Employer Resistance

Given the decline in American unions and the potential role for managerial resistance, are there similarly large incentives in other developed countries to intensively resist unions? In this symposium, Lipset and Katchanovski (2001) suggest that since the
Canadian and American industrial structure are so similar, a likely suspect for the differences in unionization rates may lie in the managerial attitudes of American and Canadian managers. However, they find that they are remarkably similar, and if there are differences, they lie in the fact that American managers have an even more favorable attitude toward unions. However, unionization rates are declining more rapidly in the U.S. than in other industrialized countries. This means that perceptual data alone do not take into account the legal weapons available to American managers to fight organizing drives or the incentives for U.S. managers to use them.

Although wage costs of unionization are similar in the U.S. and Canada, the costs of resistance are much higher for Canadian firms, and the institutional structure favors collective bargaining (Riddell, 1993). In a 1997 study examining the constraints on management on collective bargaining in the U.S. and Canada, Block and Roberts found that Canadian provincial public policies constrained managers more than five times as much as U.S. policies. The factors examined include certification of unions, quick and final decisions in unfair labor practice cases, and first-contract certification (Taras, 1997). All of these policies are different in Canada versus in the U.S., and constrain or impose costs on managers in attempting to stop organizing drives. Failing to account for these factors and only focusing on managerial attitudes and structural societal factors are significant omissions. Managerial behavior is an important, albeit not the only, determining factor in the striking decline in U.S. unionization, as well as the divergence of the U.S. relative to other developed countries.

Perhaps the starkest contrast to the American industrial relations system lies in the more heavily regulated countries in the European Union (EU). In most EU countries bargaining takes place at the national or industry level, and managers whose firms are organized have fewer additional management constraints with unions than those imposed by works councils or other labor relations provisions under the EU social contract. Consequently, standard wages and benefits are established at the national or industry level, and not at the firm or establishment level. There is little incentive for managers in a EU country to try to stop an organizing drive because the national or industry-wide agreement would cover the establishment's compensation policies and the works council would deal with local work-related issues. Beyond economic factors, these works councils provide workers with voice and due process, further reducing the need to fight union organizing efforts to reduce managerial prerogatives at the workplace. Blanchflower and Freeman (1992) document this narrow wage gap between union and non-union organizations in the EU versus the U.S. For example, the union/nonunion wage gap is about 20 percent in the U.S. compared to 10 percent in the U.K. and 7 percent in West Germany. Given the social contract for labor in the EU, there is a greater social acceptance of unions even though employers may have the same negative attitudes toward labor organizations. While penalties for violating the EU social contract are determined by each member country and tend to be low, the benefits of violating the law are minimal, and would incur the wrath of the large, powerful, well-organized unions in countries like Germany, Austria, or Belgium. As a result, even though unionization may have declined somewhat in the EU (except in Scandinavian countries), this
loss in membership has been much less than in the U.S. where the economic benefits and control of the workplace incentives to fight unionization are more pronounced.

Since the 1950s the union/nonunion wage gap in the U.S. has grown from 10 to 15 percent to more than 20 percent in the 1990s, giving management an even greater incentive to stop an organizing drive (Blanchflower and Freeman, 1992; Hirsch and Schumacher, 2001). If union productivity effects are similar across countries, U.S. employers are more likely to have more funds reallocated from capital or profits to union wage gains than their European counterparts. Although the attitude-survey results presented in the survey conducted by Lipset and Meltz show many similar results for the U.S. and Canada, the survey fails to take into account the larger economic incentives that American managers have to engage in tough anti-union tactics, to give employee involvement voice benefits, or the low costs to American firms of failing to follow standard labor laws (Lipset and Meltz, 1996; Kleiner, 1994).

In 1999 the U.K. passed the Employment Relations Act which made the union representation process and procedures similar to those in the NLRA. Early evidence suggests that this may lead to outcomes similar to the U.S. with the growth of management consultants, who will advise firms on how to remain nonunion (Metcalf, 2000). The incentives for management to become more aggressive in dealing with unions in the U.K. may grow as globalization and competition for trade and foreign direct investment requires more productive uses of labor resources in order to attract capital (Kleiner and Ham, 2000). Estimates suggest that private sector unions may be on the same downward trend as their American counterparts in the private sector as wage gaps widen (Machin, 2000).

Overall, if wage gains to unionization are relatively higher in the U.S. than in other countries, all else equal, one would expect the actual intensity of opposition by firms to be higher in the U.S. relative to other industrialized countries. If, unlike Canada, the U.S. has few penalties for violations of the law, one would expect to see a declining level of unionization in the U.S. relative to other nations where the union/nonunion wage gap is high. Therefore, examining only general views of satisfaction or attitudes of managers toward unions would not capture the economic realities of the intensity of opposition or the effects on managerial careers of those who fail to stop organizing drives.

IX. Conclusions

Although Lipset and Katchanovski present many of the major societal and structural causes that have influenced the decline of private sector unions, they have unfortunately omitted a factor that can account for as much as 40 percent of the decline in private sector union membership, i.e., intensity of management opposition. The managerial incentives to stop unionization are formidable because unions raise wages and reduce profits. Economic reasons for American managers to stop unionization have grown as the wage between union and nonunion workers has widened over the past 40 years especially relative to EU nations. In addition, as managerial accountability to shareholders has risen and pay related to performance has grown, top executives have
attempted to raise productivity through high-performance workplace practices or lowering real wages. Since many of these practices rely on top-level executives being able to make decisions on personnel quickly without challenges from employees or due process, they have fought unions more vigorously in order to maintain this discretion over workplace decisions. Although this behavior by management may result in a more efficient allocation of resources from both a micro- and macroeconomic perspective, the losses to society occur in terms of greater income inequality and less employee voice at the workplace and in the political arena.

Evidence from data gathered from employees in Minnesota who experienced intense managerial opposition to an organizing drive or contract negotiations were analyzed using a Qualitative Comparative Analysis to show that firms using the most intense approaches to stopping drives can succeed in all the case studies that were examined.

The relatively low costs and high benefits to managers of illegally stopping organizing drives, especially when compared to public policies that attempt to stop age and gender discrimination and wrongful discharge, make employer resistance to unions a high pay-off strategy. These public policies have been a major contributor to declining unionization rates in the U.S. This reduction in employee voice at the workplace and in the public policy arena may be an unintended consequence of the decline of private sector unions as well as contributing to the growth of income inequality.

Public policy approaches that could help reverse union membership fortunes include programs that raise compensation at the lower end for nonunion workers, as well as policies to increase the cost of noncompliance with labor laws. The goal of optimal public policies should follow the prescription established by Freeman and Medoff (1983) to maximize the voice face of unions while minimizing the monopoly face which seeks to reallocate the economic rents of the firm. As part of this approach, care should be taken to not have financial penalties which put small firms out of business or directly favor high-wage organizations. However, increasing the baseline benefits to workers in the U.S. through social policies, such as the minimum wage or health and pension benefits, would help reduce the union/nonunion wage gap, and decrease the economic incentives for employers to fight unions. Other changes such as granting courts the ability to raise the wages of employees in firms that habitually violate the NLRA or punitive damages for the worst violators would greatly increase the costs of opposing union organizing efforts. These potential policy changes would enhance the ability of unionists and employees to organize workers and would bring the actual level of unionization in the private sector closer to the desired level based on the expressed preferences of U.S. workers, which is closer to 30 percent, rather than the less than 10 percent which is the current level of private sector organization. However, without significant changes in public policies to enhance the ability of employees to organize, it will be difficult for private sector unions to reverse the decline in the percentage of workers who are covered by collective bargaining agreements. Growth spurts in unionization, which have occurred in the U.S. and in other industrialized countries, could happen either through economic downturns, greater concen-
tration of industry, or wars that would be then be reflected in changes in public poli-
cies toward unions (Freeman, 1998).

NOTES

*I thank Sandy Donovan, Hwikwon Ham, and Keith Vargo for their assistance with this paper, and Richard B. Freeman and Bruce Kaufman for comments and conversations on earlier drafts.

1For a discussion of the relative importance of employer resistance in a historical perspective see Kaufman (2001) in this symposium.

2This only includes direct money spent on consultants. When time away from work and managerial time is included the allocation of time to stop union organizing or first contract has been estimated to be more than $1 billion (Lawler, 1990). Lawler also provides information on the breakdown of who are these consultants by occupation, industry, firm size, and fee structure. Kaufman and Stephen (1995) give background and tactics of legal consultants.

3More recent estimates of the growth of the management consultant industry shows that there are more than 7,000 consultants who charge between $1,000 to $1,500 per day; between $300 to $700 per hour is the fee for attorneys (Levitt and Conrow, 1993).

4In order to maintain consistency with the 5-year time periods presented, the last time period presents data over the 1991 through 1998 period, the last year for which I could get NLRB annual report data.

5QCA requires binary data, a Truth Table to represent the data, Boolean addition and multiplication, combinational logic, and Boolean minimization and is subject to the necessary and sufficient conditions of standard empirical analysis (Ragin, 1987, pp. 85-102). The technique requires that all cases be logically consistent. The violation of this assumption requires that the theory be reevaluated or the observations checked for errors.

6To illustrate the kinds of cases studies that were used in the construction of the QCA analysis, I briefly sketch one case and the outcome of the process. In this case a delivery worker for Frito-Lay, a subsidiary of PepsiCo, was terminated along with a number of coworkers for attempting to organize a union affiliated with the Teamsters in the Minneapolis-St. Paul area. The person who testified noted that her evaluations prior to the organizing drive were among the top ones in the organization. During the organizing drive she was harassed by management during work hours and received intimidating phone calls at home in large part because of her leadership role in the organizing drive. Additional managers from Frito-Lay were flown in from around the country to meet with employees on a one-on-one basis. Some employees were offered bonuses if they would retract their earlier signature card for an election. Threats were made that the distribution center would close if a union were voted in and a contract was signed. When the worker said that she would file an NLRB charge, the manager responded by saying “Go ahead and file. They don’t fine us. They don’t throw us in jail. All they do is tell us to stop doing it.”

7In order to protect the identity of the individuals of those who were asked to testify, only numerical values are presented rather than the names. The complete listing of the individuals who were asked to testify are available in the WORC’s final report, and can be requested from the Minnesota AFL-CIO.

8For example, in the analysis by Cooke (1983) and Freeman and Kleiner (1990) elections and contracts are included for organizations where unfair labor practices and other forms of potential intimidation occurred, as well as where none of these activities happened. These earlier studies also had observations where there were no elections.
REFERENCES


———. “Unionism Comes to the Public Sector.” Journal of Economic Literature 24 (March 1986): 41-86.


