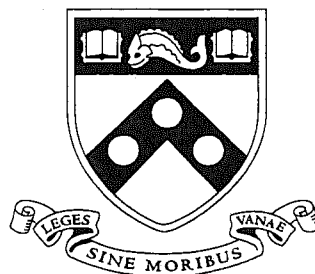


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Success Through Political Action: A Review of Collective Bargaining in the Private Sector

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**SUCCESS THROUGH POLITICAL ACTION:
A REVIEW OF *COLLECTIVE BARGAINING IN THE PRIVATE SECTOR***

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Book Review

Success Through Political Action: Collective Bargaining in the Private Sector

Paul F. Clark et. al eds.

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Reviewed by César F. Rosado Marzán†

We all know that labor unions in the private sector are in untrammelled decline. From about twenty-five percent in the 1950s, today the percent of employees in the private sector that are members of a labor union is less than nine percent.¹ It is expected that the decline will continue until union density reaches an equilibrium point of about three percent.² The future is not bright. However, unions in certain industries have been more capable than in others to stop the disorganization of workers. In *Collective Bargaining in the Private Sector*, a number of industrial relations experts show how the organization of workers has changed in particular industries. On one end of the spectrum, there are professional team sport players and airline pilots enjoying high levels of unionization, while, on the other end, truck drivers and newspaper workers are all but disorganized. The book helps us understand the issues and challenges facing particular labor unions in specific industries of the United States.

The editors maintain that the crux of unionization lies in workers' bargaining power.³ Thus, unionism in the private sector is becoming extinct because the bargaining power of unions is in steadfast decline. With no changes in American labor law that would provide more leverage to workers, such as an end to contestable National Labor Relations Board

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1. Henry S. Farber & Bruce Western, *Accounting for the Decline of Unions in the Private Sector*, in *THE FUTURE OF PRIVATE SECTOR UNIONISM IN THE UNITED STATES* 28 (James T. Bennett & Bruce E. Kaufman eds. 2002).

2. *Id.*

3. Paul F. Clark et. al, *Private Sector Collective Bargaining: Is This the End or a New Beginning?*, in *COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 1 (Paul F. Clark et. al. eds., 2003).

(NLRB) union elections, the demise of unions seems to have no end.⁴ Indeed, the authors show that the unions that have made inroads in collective bargaining, such as some hotel unions, telecommunications and health care workers, have done so by bypassing some of the hurdles imposed by traditional federal labor laws, including contested union elections monitored by the NLRB.⁵

Keeping the contrasting outcomes in unionization trends in United States industries in mind, one question that *Collective Bargaining in the Private Sector* raises, is what has determined, structured or defined bargaining power across the different sectors? Although the book provides a thick description of the state of eight industries and their unions, it does not provide a general theoretical framework to understand bargaining power. Here, I will suggest a power model based on the work of sociologist Charles Tilly and his students as a way to "read" and interpret the thick descriptions in the book. A general theory of union power lets us understand why the different industries have experienced different trends in collective bargaining, better comprehend why some unions have made inroads while others continue to slip down the road of disorganization, and think about organizational alternatives for the future.

Succinctly stated, the Tilly model of power⁶ states that power is obtained through a process of group contention. In that process, challengers' contentious actions buttress their power, but counter-actions by the powers that be, in the case of labor relations, capitalists, demobilize and constrict union power. As such, union power is not only a process spurred by unions' actions, but also by those of capitalists. As such, the model suggests cyclical trends in labor union power, where union power may go through bust and boom periods that depend on its organizational actions and the responses of capitalists. The power model not only helps us understand differences across industries, but also through history, suggesting that the current period of union decline is but one historical point of the labor movement which may likely change in the future, provided organized labor continues to challenge, mobilize and act collectively in the interest of workers.

4. For a detailed account of how American labor laws are imposing undue hurdles on union organization attempts see Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769 (1983); Paul Weiler, *Striking a Balance: Freedom of Contract and the Prospects for Union Representation*, 98 HARV L. REV. 351 (1984).

5. Clark, *supra* note 3.

6. See generally, CHARLES TILLY, *FROM MOBILIZATION TO REVOLUTION* (1978); CHRIS TILLY & CHARLES TILLY, *WORK UNDER CAPITALISM* (1998).

I. THE WORST LOSERS AND THE BETTER LOSERS (AND THE ONE WINNER) IN EIGHT AMERICAN INDUSTRIES

Collective Bargaining in the Private Sector surveys industrial relations in eight central industries: airlines, automobile, health care, newspapers, professional sports, telecommunications and trucking. According to the authors, of the eight industries, all but one, professional sports, have experienced some kind of decline in the overall power of unions to negotiate wages and working conditions. Of those unions that have lost bargaining strength, as perhaps best exemplified by union density levels, trucking and newspapers have fared the worst. The reasons for the decline of newspaper unions are attributed to labor saving technologies and industry consolidation aided by specific tax regulations.⁷ Industry mergers and technological changes led to employment declines in specific sectors of the industry where unions were concentrated, such as production areas, newsrooms and distribution departments, leading to losses in union membership levels.⁸

Union membership in trucking has been curbed by deregulation and free trade. Increased competition among American trucking companies, and, since NAFTA, with Mexican trucking companies, has made it increasingly difficult for trucking unions to keep leverage in the bargaining table.⁹

Another industry where unionism continues to erode is in the automobile industry. The United Auto Workers (UAW) was able to maintain a high level of bargaining power when it unionized workers in the entire American auto industry, the "Big Three" car manufacturers, Ford, General Motors and Chrysler. With such industrial unionism it was able to exert "pattern bargaining" strategies that effectively took wages out of competition.¹⁰ In other words, it imposed similar wage and work conditions on all car manufacturers, making the manufacturers indifferent as to labor costs, as long as these costs could be passed down to the consumers. However, with increased outsourcing to small parts manufacturing in recent decades, relocation to the anti-union, U.S. South and Third world nations, and the transplant of Japanese and European auto

7. Howard Stranger, *Newspapers: Collective Bargaining Decline Amidst Technological Change*, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR 179, 184-88. (Paul F. Clark et al. eds., 2003).

8. *Id.* at 189.

9. Michael Belzer, *Trucking: Collective Bargaining Takes a Rocky Road*, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR 311, 330-33 (Paul F. Clark et al. eds., 2003).

10. Harry C. Katz et al., *Autos: Continuity and Change in Collective Bargaining*, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR 55, 69-70 (Paul F. Clark et al. eds., 2003).

manufacturers to the U.S. South, the power of the UAW has been curbed.¹¹ In response, the UAW has attempted a number of cooperative agreements with management, such as the famous Saturn work teams,¹² but even such concessions have not helped the union stop the bleeding of its bargaining strength.

Even though unions have lost bargaining power and relative membership, not all have fared as ill as in newspaper, trucking and auto unions. Airline pilots have among the highest rates of union membership in the United States, fifty-nine percent.¹³ Their high level of union membership has been maintained in spite of deregulation in the 1970s. The success of pilots has been attributed to their highly specialized and hard to replace skills. Pilots can strike and halt airline traffic quite effectively given that replacement pilots are difficult to find.¹⁴

Another industry where labor unions are making some gains has been in health care. Physician unions, for example, have are beginning to surface as a result of the development of HMOs that attempt to unilaterally establish industry prices and rules to physicians, professionals that, until then, controlled such decisions in the industry. Like pilots, physicians are able to effectively combat the power of HMOs because of their monopoly on very sophisticated and difficult to replace labor power. In fact, physicians' strongest enemy may be themselves, as many find labor unionism incongruent with professional norms, even in light of HMOs' increasing power. It was not until 1999 that the American Medical Association (AMA) officially sanctioned a collective bargaining body within its organization, still to the criticism of many of its members.¹⁵

Some health care workers have inevitably gone to the courts to obtain collective bargaining rights.¹⁶ The National Labor Relations Act (NLRA), the statute that gives most private sector workers the right to unionize, excludes supervisory and managerial employees from the right to unionize. An employer uses such exclusions to try to deny professional workers such as physicians and nurses the right to unionize. Recently, in a landmark decision, the NLRB gave the right to organize to physicians that are solo practitioners.¹⁷ The NLRB held that given the control of HMOs over solo practitioners' salaries, working conditions and patient care activities, solo

11. *Id.* at 57-60.

12. *Id.* at 78-79.

13. Nancy Brown Johnson, *Airlines, Can Collective Bargaining Weather the Storm, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 15, 22-23, 36-38 (Paul F. Clark et. al. eds., 2003).

14. *Id.* at 22.

15. Paul F. Clark, *Health Care: A Growing Role for Collective Bargaining, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 91, 105 (Paul F. Clark et. al. eds., 2003).

16. *Id.* at 106-09.

17. *Id.* at 109 (citing *AmeriHealth HMO v. UFCW Local 56*, 326 N.L.R.B. 55 (1999)).

practitioners were de facto employees of HMOs and, as such, could organize unions.

Yet, perhaps the most important and interesting inroads made by health care unions have been attained by other health care professionals, home care workers. These very low-paid employees have been able to unionize through innovative political strategies that pressured state governments to increase Medicaid funding to nursing homes and long-term care programs. The funds were passed from the state budgets to the employers. With such funds, the unions were able to obtain wage concessions from their employers. In return for their lobbying efforts for Medicaid funds, long-term care unions obtained card checks and neutrality agreements from their employers. As such, the unions could bypass traditional NLRB supervised union elections where employers could challenge the union with lengthy and expensive administrative and legal procedures. Unionization became simpler for the unions, and inroads were made.¹⁸

Other unions that have employed similar political strategies effectively to obtain neutrality agreements and card checks include those in the hotel and casino industries. Here, unions lobbied and exerted pressure on state governments to obtain specific zoning regulations and appropriations to help build hotels and casinos in the state. In return for these lobbying efforts, hotel and casino unions obtained neutrality agreements and card checks.¹⁹

A third industry that has employed a local or state political strategy to obtain neutrality agreements and card checks has been the telecommunications industry unions. Telecommunications unions, particularly the Communications Workers of America (CWA) have pressured state governments to facilitate management aims for the re-consolidation of the industry after the breakup of AT&T and deregulation. Different from the newspaper and trucking industries, where consolidation had a negative effect on union membership, communications unions have at least been able to maintain their hold on wire communication collective bargaining through their political activities and joint union-management efforts.²⁰

Professional team sports are perhaps the most anomalous case of the eight industries studied in *Collective Bargaining in the Private Sector*.

18. Clark, *supra* note 15, at 123-25.

19. C. Jeffrey Waddups & Vincent H. Eade, *Hotels and Casinos: Collective Bargaining During a Decade of Expansion, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 137, 150 (Paul F. Clark et. al. eds., 2003).

20. Jeffrey Keefe & Rosemary Batt, *Telecommunications: Collective Bargaining in an Era of Industry Reconsolidation, in COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 263, 287, 300-01 (Paul F. Clark et. al. eds., 2003).

Most unions have not been able to make deep inroads in recent history, even those that have instituted politically-based strategies. Yet professional sport unions have made great gains. Professional sport unions, particularly in baseball, have been able not only to secure collective bargaining rights to players, but also free agency. This double-barreled status for players has enabled unions to set a floor for all players while, concurrently, enabling those that can negotiate better contracts to do so. To no surprise, the average baseball player salary was over \$2.26 million in 2001.²¹

Reasons for the effectiveness of baseball unions, as other professional sports, include that professional sport players have practically irreplaceable skills. They can bring the game to a halt in the case of a strike in a way that other workers cannot. How can one replace the Sammy Sosas of the world?

Moreover, and perhaps more importantly, the professional sports industry is subsidized to the point that it is hard to describe it as a truly competitive industry. Stadiums, for example, are now built with public funds. Cities vie for professional baseball teams by building better facilities to house them.²² These subsidies make wage concessions easier for the teams. Moreover, multi-billionaires now increasingly own many professional sports teams. These magnates have as a goal to build a championship team, even at a loss, in order to win the prestige and acclaim of owning such a team. Making money is, therefore, less of a motivation for building teams and retaining players. As Dworkin and Posthuma state, "Just as big-game hunter spends big bucks to bag an exotic animal, today's team owners want winning teams, even if it means sometimes operating at a net loss."²³ Professional sports teams have been practically taken out of the profit system. As such, the professional sports industry, different from other industries, contains a different, non-profit economic logic that enables players to obtain salaries much larger than those of workers in other industries where profitability matters.

II. TYING IT ALL TOGETHER WITH A POWER MODEL OF UNIONIZATION

We can generalize from the eight cases by using Tilly's model of power.²⁴ Charles Tilly developed a model of collective action that has been generally applied to labor mobilization and other forms of collective

action.²⁵ As Tilly's model suggests, power, in our case measured as the percentage of workers in a labor union, or union density, is acquired by workers from their *organization, mobilization, and collective actions*. Organization refers to "the structure of the group, and in particular those aspects that affect its capacity for collective action."²⁶ The organization of work is perhaps the most important organizational condition that impacts the possibilities that workers have to stop production and exert power against capital.²⁷ Mobilization refers to the process by which the union acquires control over the resources needed for collective action. In the American labor union scene, for example, most resources that are attained by unions are labor power, or the workers' capacity to work, and union dues. Collective actions refer to the particular types of concerted activities that unions undertake. These may include direct actions such as strikes or pickets, or representative actions, such as legal suits, arbitration proceedings and lobbying.

Tilly's power model also suggests that the ability of incumbents to counter-mobilize, or repress the challenger, affects the challenger's power. Counter-mobilization includes changes in the organization of work in the industry, replacement of workers with machines or repressive actions that try to thwart union activities, such as injunctions or police repression.²⁸ As Tilly's model shows, counter-mobilization can impact the challenger at the organizational level, its mobilization of group resources, and the collective actions that it undertakes.

III. APPLYING THE MODEL

Collective Bargaining in the Private Sector, gives us rich information regarding the organization of work in eight industries. We see that the organization of work aided or hindered particular workers from mobilizing group resources, mostly in the form of labor power, and performing collective actions, such as strikes. Negative responses from employers to these actions have repelled workers from making further inroads in collective bargaining and demobilized many.

Let us start analyzing those unions that have lost the most union membership. These were trucking and newspapers, with auto workers trailing not too far behind. Trucking workers were able to exert pressure on employers when the industry was national in scope. Specific

21. James B. Dworkin & Richard A. Posthuma, *Professional Sports: Collective Bargaining in the Spotlight*, in *COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 217, 233 (Paul F. Clark et al. eds., 2003).

22. *Id.*, at 227-29.

23. *Id.*, at 222-23.

24. See CHARLES TILLY, *FROM MOBILIZATION TO REVOLUTION* (1978).

25. See ROBERTO FRANZOSI, *THE PUZZLE OF STRIKES: CLASS AND STATE STRATEGIES IN POSTWAR ITALY* 350 (1995); see also JOHN KELLY, *RETHINKING INDUSTRIAL RELATIONS: MOBILIZATION, COLLECTIVISM AND LONG WAVES* (1998).

26. KELLY, *supra* note 25, at 24-25.

27. CHRIS TILLY & CHARLES TILLY, *WORK UNDER CAPITALISM* 242-49 (1998).

28. KELLY, *supra* note 25, at 24-25.

regulations established rules of how trucking companies were hired, and how many trucking companies a customer could hire.²⁹ Competition ensued when the industry was deregulated and the market's logic was placed on the industry. Increased competition led to wage pressures, and with Mexican trucking companies joining in after NAFTA, the capacity of workers to pressure employers for concessions waned. In other words, even if truck drivers struck, the market pressures made it impossible for the industry to provide wage concessions to them. The reorganization of the industry as a competitive venture made workers' capacity to mobilize labor power ineffective, and their union membership began to corrode.

Similar events occurred in the newspaper industry. Technological changes and industry mergers have led to layoffs and the replacement of workers with machines. The power of unions to remain large and effective thus waned as a result of organizational changes brought by industry heads. Counter-mobilization strategies at the point of organization effectively reduced the power of newspaper unions.

In the automobile industry, the situation has been similar. Industry decisions to outsource production of auto parts to small producers, setting up shop in the southern United States and the Third World, and the transplant of Japanese and European manufacturers to the southern United States led to the relative loss of union membership in the U.S. auto industry. Prior to such actions, the organization of work in the Big Three companies made it possible for unions to create industrial unions that set standard wages and working conditions across the industry, taking wages out of competition. Counter-mobilization strategies at the organization level, again, led to the demise of unions.

However, some unions have not lost members to the extent that newspaper, trucking and auto industries have lost union members, even though their industries experienced deregulation and increased market pressures. These include the telecommunications industry and airlines industry. The reason why airline pilots did not suffer the same fate as truckers, auto workers and newspapers is that even with the counter-mobilization strategy of deregulation, they remained hard to replace. Their skill levels remain too complex to be easily found in replacements. The organization of work in the airline industry, therefore, still depends on highly trained pilots, even under deregulation. This has kept pilot unions strong.

Yet, telecommunication workers do not have such hard-to-replace skills. What enabled their unions to maintain a slower pace of disorganization than truckers and newspaper workers when their industry deregulated and when they had replaceable skills? Here it seems that

telecommunication unions maintained higher relative power given the type of collective actions that they undertook as a response to deregulation. Different from newspaper unions and trucking unions that kept the strike as the most crucial collective action aimed at forcing management to provide concessions, telecommunications unions took *political* strategies to tackle changes in the organization of work in the industry. The CWA entered into "strategic partnerships" with management, where the union obtained card checks and neutrality agreements from management when the union lobbied at the state level to obtain regulatory changes to help the industry.³⁰ CWA had mixed results with the strategy, but at least did not experience the disorganization levels that newspapers and trucking unions experienced. Union density levels in the telecommunications industry were twenty-eight percent in 1998, much higher than the national average of about thirteen percent in that year.

Similarly, unions in the healthcare industry and the casino and hotel industries obtained card check and neutrality agreements as a result of their local political actions. Political actions aided unions in bypassing the traditional NLRB elections process, where employers can stall the union building process through administrative and legal obstacles. The type of collective action unions take, therefore, has a strong impact on their capacity to amass power even in light of counter-mobilization strategies that erode their economic bargaining power.

Finally, in addition to airline pilots, who seem to have maintained relatively high collective bargaining power, professional sport players have kept bargaining strength. In fact, they have obtained more bargaining rights and wage concessions than ever before. In the case of baseball players, the power model suggests that, first, the changes in the industry, including public subsidies to stadiums and the industry's ability to operate at a loss helps the industry provide more concessions to players. No other industry detailed in *Collective Bargaining in the Private Sector* underwent such a radical elimination of the profit motive as professional sports. With the profit motive curbed, players' bargaining power increased. Moreover, the ability of players to stop the industry through their irreplaceable skills has made them a powerful force to reckon with. The mixture of an industry driven by something other than profits and irreplaceable skills has made professional sport players uniquely powerful union members.

IV. CONCLUSION: POLITICS FOR UNION POWER FOR THE PRESENT AND THE FUTURE

Not all workers can be professional baseball players or airline pilots.

29. Belzer, *supra* note 9, at 311.

30. Keefe & Batt, *supra* note 20, at 287.

This does not mean, however, that they have to see their unions completely disappear. Some workers, such as telecommunications workers, hotel and casino workers and long-term, home care workers have been able to make some inroads in collective bargaining by easing their way out of NLRB contested elections through local, political collective actions. This is perhaps the most important lesson that we learn through a comparative Tillyan power analysis of the experience of unions detailed in *Collective Bargaining in the Private Sector*. Negative counter-mobilization forces in the form of industrial organizational change has been confronted by some audacious union leaders with new political strategies that have given them an edge to organize in hard times.

Studying the book helps us learn from the successes and failures of others to build strategies for the future. At this day in age, bypassing old organizational strategies seems imperative. In fact, it has helped the unions that have tried. Further use of political opportunities may provide ways to make inroads in today's anti-union environment. Hopefully, those opportunities will be taken with the hope that, at some point, a new national convergence can occur to change national labor laws in ways that they become more relevant to United States workers.