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## DEBATES

### **Editorial Note:**

*The editorial committee is pleased to introduce 'Debates', a new section in Just Labour. 'Debates' is a space for conceptual work on challenges workers presently face. Reflective rather than empirical, the articles provide historically and socially grounded commentary on various labour issues. 'Debates' does not focus on obscure points. It is not adversarial for the sake of being adversarial. Instead, it engages researchers, workers and students in an accessible way that illuminates current, difficult choices confronting organised labour.*

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## THE UNION AND THE NON-UNION ZONE: A FRAMEWORK FOR THE CHALLENGE TO UNIONS TO ORGANISE

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For Labour Day 2003 the *National Post* published a series of articles gloating over the travails of the Canadian labour movement (Brieger 2003; Corcoran 2003; Milhar 2003a and b). The articles reported on a poll commissioned by the notoriously anti-union *Union Watch* but conducted by Leger Marketing. The *Post* claimed, among many other things disturbing to unions, that organised labour's share of Canadian workers had dropped dramatically from the 1970s, that a large majority of non-union employees did not want a union and that only about ¼ of union members are "very satisfied" with their union's representation of their interests.

Many of the poll questions and much of the *Post's* analysis were driven by antipathy to unions, it is true. The poll results do not always

support the conclusions that the *Post* draws. It is also interesting to note that among *union members* polled, 81% want to stay in their unions (the exact same proportion of non-unionists who reject unions). An earlier poll by Americans Richard Freeman and Joel Rogers (1999) calls some of the Canadian results into question. In their American poll, the authors found 32% of non-union employees would choose a union. Does this make Canadians more anti-union than Americans? More importantly, Freeman and Rogers found a powerful desire among workers for representation of their interests in the workplace. Over half of the workers polled wanted *more influence in their workplace than they actually had*.<sup>1</sup> Whether such influence could be achieved through unions or not is a challenge to unions.

My main purpose here is not to quarrel with the *National Post* articles. There is enough truth in what they report to make thoughtful Canadian trade unionists and supporters of trade unions think deeply and uncomfortably about the future. But amid the bad news are many encouraging signs if only unions will rise to the challenge. Can they rise to the challenge?

As a former trade union organiser and now industrial relations academic, I myself have been thinking long and hard about these questions. As with any difficult and complex question, sometimes it is useful to get above the myriad of facts and figures and try to think *conceptually* about the problem.

What follows is a modest intellectual framework that may help explain recent losses in union membership and approaches to future organising challenges.

The model takes its inspiration from John Godard's *Industrial Relations: Economy and Society*, a book I have used in my teaching of introductory industrial relations courses. Godard puts forward a two-by-two matrix categorising management policies and practices (Godard 2000, 108-138, but page 111 in particular.)

As I used this model with my classes, I changed it, to simplify and make it more a reflection of the dynamic between workers and management and less a typology of management. Then I overlaid a second dimension beyond Godard's

management styles. This involved finding where trade unions are most likely to be found, the "union zone."

The corollary to the "union zone" is a "non-union zone." Why are unions seldom found here? What strategies might unions use to expand into them and what strategies do employers use to resist?

What seemed to emerge was a strategic blueprint of the contested terrain of unionisation.

The model begins from the premise that all employers have two fundamental problems in "employing"<sup>2</sup> labour: the quality of labour power and maintaining order in the workplace.

#### THE QUALITY OF LABOUR POWER (QLP)

All employers need to be concerned that their workforce is skilled, healthy, educated, robust and motivated enough to do the work required in their particular workplace. Employers have always differed in the quantum of *their own* resources they put into the QLP. Some choose to invest a lot in their QLP; others choose to invest very little.

What made the earliest capitalism so dynamic compared to preceding economic regimes is that it relieved employers of legal obligation to provide workers anything beyond a wage for hours worked. A capitalist did not need much wealth to start with nor was he burdened with the

maintenance, protection or overhead costs of the human beings who worked for him. He could start small, and take on or lay off labour in marginal amounts.

Yet almost as soon as capitalism began, this laissez-faire arrangement proved as problematic as it was fortuitous. Some employers soon found that providing part of workers' overhead costs reaped greater productivity. Other employers were animated by religious or humanitarian motives. So, even from the earliest days of capitalism, some employers provided housing, schooling, health care, better pay and benefits and indemnity against catastrophic cessation of the ability to work. Moreover, some groups of employees, even in those early days, could unite into unions to force their employer away from naked exploitation.

Of course, other employers would offer as little as possible, leaving it mainly to the workers, their organisations (unions and friendly societies), and the workers' communities to palliate the rigours of life in factory and home. Moreover, even the "good" employers might revert to this model given a change in whim, ownership or economic conditions.

However, the variance between those employers who provided and those who did not was not efficient for the development of modern industrial state. The problem of the quality of labour power moved

beyond the realm of the individual capitalist into the realm of the collective capitalist.

In modern industrial economies a general level of health care, public health provision and education (at least to the end of secondary school) among the population became essential. Moreover, "good" employers increasingly resented in effect, subsidising "bad" employers.

And so the state began to take over this subsidy to capital. Important basic amenities like education, health care, unemployment insurance, pensions and sickness and accident compensation were provided from a combination of taxation, worker premiums and employer premiums.<sup>3</sup>

However, even in the modern era, the state has never provided the *full* quantum of amenities that employees or employers needed. Moreover, since the highwater mark of the "welfare state" in the 1970s, the state itself has retreated in all industrialised countries. So the provision of amenities to improve the quality of labour power is still very much a problem for employers and employees. And it is still a subject of negotiation between employers and workers.

#### THE PROBLEM OF WORKPLACE ORDER

The second problem for all employers is the maintenance of workplace order. As simple as the operation of an enterprise might be,

no employer can afford to reinvent the workplace every morning. Even the least skilled workers need to be ready and willing to begin work every shift without being re-told precisely what to do. No matter how unskilled the workforce, no matter how much power the employer can wield, no matter how coercive the workplace regime, order is not assured. Because workers can refuse to co-operate. And if they do, then the employer's enterprise will falter and perhaps fail.

Think, for example, of work environments where the employer has tremendous power. In slave labour camps and prison workshops, a refusal by workers to co-operate may result in punishment for workers but can also result in production problems. Even the most restrictive and high-security jail cannot run effectively without the co-operation of the inmates. The *Wooden World* (Rodger 1986) contains an excellent discussion of discipline and order in the British navy of the Seven Years War period (1755-63) challenging the conventional wisdom that life on board was full of oppressive officers, vicious punishment, poor rations and misery. From ample contemporary documentation, it finds that, despite recruitment by press gangs and complete isolation at sea, sailors were relatively well-treated and discipline was relaxed, even by today's standards.

Indeed, there is a sizeable literature on the subject of consent in industrial relations and work sociology (Burawoy 1979, 1987; Chun 2001; Collinson 1994; Edwards 1986; Haiven 1994, 1991; Manwaring and Wood 1985).

The point is that *just because* an employer has the physical opportunity to use unalloyed coercion to run the workplace does not necessarily mean that it can be done. Order comes at a price.

#### THE PROCESS OF NEGOTIATION

Maintaining quality of labour power and workplace order in sufficient amount are achieved through a process of negotiation between employer and employee(s). Negotiation is not synonymous with collective bargaining. That is merely a more sophisticated and legally-protected form of what goes on at lower levels. Employers negotiate at several different levels: with a) individual workers, b) groups of workers and c) groups of workers through unions.

By negotiation we mean the trading of favours, indulgences and effort. In every workplace, unionised or not, every day, every hour, negotiation goes on. Some workplaces have a lower level; others have a very high level. But there is *always* negotiation.

The state may make this negotiation easier or more difficult depending on the amenities it itself provides and on the power and

vehicles it offers employees to carry on these negotiations.

**THE MATRIX OF NEGOTIATION**

We can think of the vector of negotiation as proceeding amid a matrix that depicts the employer-worker relationship. The matrix consists of two dimensions.

The vertical dimension is called “worker autonomy.” This measures the extent to which workers have personal control over their work. At the lower extreme, they have no control and are subject to constant instruction and supervision by their employer. At the upper extreme, they have complete control, not supervised at all. They may even work outside the employer’s premises, in their own premises.

The horizontal dimension is called “employer solicitude to employee needs and concerns.” This measures the extent to which the employer must engage in providing amenities which workers want or need. At the

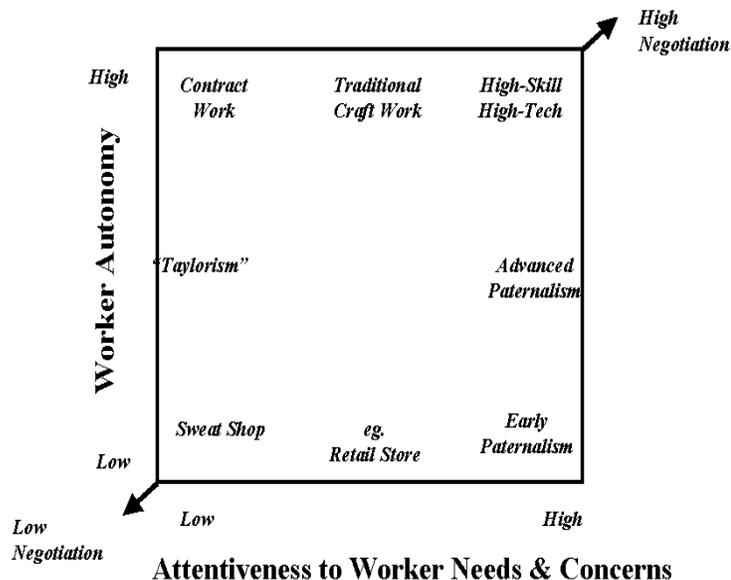
lower extreme, the employer provides little in the way of amenities. At the upper extreme, the employer is exceedingly concerned about keeping the workers indulged and happy.

In our model the negotiation vector moves diagonally through the matrix, with “low negotiation” at the bottom left and “high negotiation” at the upper right. i.e. at the lower left, where worker autonomy and employer solicitude are low, the need to negotiate is low; at the upper right, where worker autonomy and employer solicitude are high, the need to negotiate is very high.

When we combine these two dimensions, we can place various types of work environment at different spots on the matrix.

In the upper left area are workers completely outside of the employment relationship. They are contract workers. They are highly autonomous in that the employer does not supervise them except for

**Employer-Worker Negotiation**



delivering the specifications of the work required. They rely on their own expertise to complete the job. However, in this case, the employer needs to offer no solicitude about their wants and needs. The only amenity the employer provides is payment for the specific product or service produced. All overhead costs are borne by the worker.

Contract workers may be highly skilled, (e.g. accountants, web designers, graphic artists) less skilled, (automobile mechanics, plumbers) or low skilled (contract cleaners). They have in common their work outside of the employment relationship. What varies is the degree of specification by the employer necessary for them to complete their contract.

What makes contract workers especially difficult (and sometimes impossible) to unionise is the missing legal employment relationship. The vast majority of jurisdictions in Canada allow only employed people to be unionised. Theoretically contract workers can band together and attempt to negotiate with their "employer." But there is usually no legal recourse if the employer refuses to deal with them. Moreover, so long as the employer pays them for the specific job(s) they have been retained to do (or pays them off in advance), the employer owes them nothing more under common law.

What also makes them difficult to organise is their isolation and independent-mindedness. While

not all of them choose to work alone, there is often a sense of pride in privacy. Moreover, their non-employment gives them some tactical tax advantages.

At the lower left we have the classic sweatshop. Employees are under close supervision, with little discretion. And the employer provides little in the way of amenities. But even groups of ditch diggers or simple factory assemblers are not totally without negotiation resources as their non-co-operation can hamstring the employer.

At the upper right we have quite the opposite -- a very special type of work environment - what might be called the "very high tech, very high skill" workplace. Here workers are very autonomous -- with skill levels over and above those available even to their employer, making the employer very dependent upon their knowledge. The boss must also be extremely concerned with their welfare. Indeed, at the extreme, the needs of these workers and their ability to demand satisfaction might earn them the moniker "prima donnas."

An example might be a group of very highly skilled computer program designers working on a new product. Their employer relies heavily on their knowledge and initiative.

The employer in the upper right corner must strive to know and attempt to satisfy not only the collective needs of these workers but perhaps more importantly their

*individual needs.* Imagine a group of dot.com techno-dweebs beavering away throughout the night on a new software project. Each has a different junk food addiction - one likes frozen Mars® Bars, another Nacho Cheesier Doritos®, another Choco-Leibniz® cookies. While it might be an annoying inconvenience for an ordinary employer to provide workers with such delicacies, the boss here gladly provides these snacks, even in the middle of the night, so that the prima donnas can keep working and producing value.

Toward the top middle, we have traditional craft workers, like tradespeople (e.g. carpenters, plumbers, millwrights.) They have a high degree of skill and autonomy. But they are still either in a legal employment relationship or are under the effective care or control of their employer. The employer has a middling concern with these workers' needs.

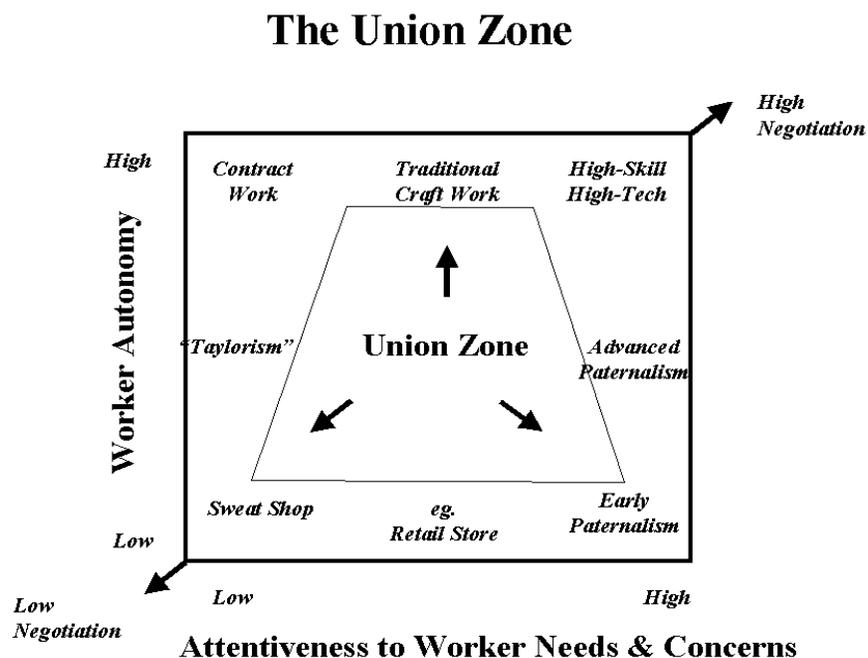
Along the bottom of the matrix,

we have workplaces whose denizens have less skill and exercise considerably smaller degrees of discretion. Toward the left we have workplaces where the employer shows little concern with workers' well-being. At the far left, we have a traditional sweatshop. At the far right, we have paternalistic employers of the old school, employing low-skilled workers but offering a high level of amenities. These might be remnants of paternalistic companies from yesteryear (e.g. the Quaker chocolate firms in the UK) or those whose owners have developed paternalism more recently.

In the bottom middle, we have the bulk of the personal service and small manufacturing sector, where the employer exercises middling concern for employee welfare.

THE UNION ZONE

It is now time to add "the union



zone.” The union zone looks somewhat like a rounded triangle, with its apex at the top, found near the top middle of the matrix. Alternatively, the “*non-union zones*” would be in the upper left corner, the upper right corner and most of the bottom area.

We know that there is some correlation between unionisation and the need for negotiation. We have already postulated that negotiations take place not only with unions but also their absence. We also know that employees have more power to negotiate if they take advantages of the power and legal protections that unions afford them. But does that mean that unions are likely to be found in the upper right, where negotiation is at its height? Not necessarily. It depends on the content of what can be negotiated and on the relative openness of the workplace to unionisation.

The content of negotiations can be divided into *individual* issues, those exclusive from one worker (or small group) to the next e.g. leaves of absence, pay for individual performance and training based on skill and *collective* issues those more amenable to negotiation en masse e.g. basic education pay, benefits, pension plans, grievance procedures, just cause for discipline etc.

The relative openness of a given workplace to union organising depends on three major factors: how much workers need and want a union; how much resistance

employers are willing to put up to unionisation; and how much unions need and want to organise the workers. All three in turn depend on the content of negotiations. How might these factors affect the location of the union (and the non-union) zone?

As the negotiation vector rises through the matrix, the need of workers for unions rises. But that need reaches a peak not at the upper right but near the *middle* of the matrix, where the issues in dispute are mostly *collective*. Workers have some skills and hence bargaining power, but they are able to bargain more readily as a group, by threatening to withhold their skills en masse. They have little individual power to demand *individual* attention from the employer.

As the negotiation vector rises further, into the upper right corner, the issues become more individualised. In the upper right, the workers are so skilled *individually* and the threat of withdrawal of their labour individually so powerful that the need for a collective organisation drops.

But the need and *desire* of workers for a union is not the only determinant of unionisation. Another important factor is the will of the employer to *resist* unionisation. Few employers of any type actively desire and fewer still seek unionisation. But there are differences in the extent to which

employers will resist unionisation. Employer resistance to unions might be said to be lowest where the union performs a useful function for the employer. In the middle of our matrix, where employers *must* negotiate collective benefits with their workers, unions can and do play a useful function for employers. The time and effort required of employers to negotiate individually those amenities that are mostly collective can be a drain on employers. By taking over the details and much of the work of formulating employee concerns and of filtering out the more frivolous demands, unions can be very helpful to employers in this area of our matrix. This fact may not induce employers to welcome unions with open arms. But it does alter the cost-benefit calculus of opposing unionisation.

Employers are most ready to oppose unionisation at the lower part of our matrix as the “union effect” on employee compensation is greatest (and hence the benefit of keeping the union out) greatest among the lowest-skilled and lowest-paid (Card, Lemieux, and Riddell, 2003).

The final factor in unionisation is the willingness of unions themselves to organise a given group of workers. While it is dangerous to ignore the altruistic and solidaristic reasons unions have for organising a group of workers, it is also dangerous to underestimate the cost-benefit equation that unions

must calculate in making organising decisions. The more that the benefits exceed the costs, the more enthusiastic unions will be. The smaller the gap between costs and returns, the less enthusiastic they will be. And if the costs outweigh the benefits, unions can be downright hesitant about organising.

Unions and their activists made many sacrifices against fierce employer resistance to organise the industrial unions of the 1930s, 40s and early 50s. But once they broke through, the industrial union or “Wagner model”<sup>4</sup> seemed to work well. A successful campaign in a typical industrial workplace of that era delivered hundreds, thousands, and sometimes tens of thousands of workers – mostly male, mostly white. After the initial shakedown cruise that might involve a strike, the first contract would be signed. The dues checkoff spelled instant security. The collective agreement provided collective benefits for a mass of workers. The law protected unions’ right to organise workplaces of this type. While maintenance of this model might involve the occasional strike, it worked for unions for a long time.

This type of unionism has been called, perhaps unfairly, “business unionism.” It is true that it resulted in a drop in union militancy during the forty-year post-war period in which unions were accepted as part of the mainstream of North-American life. The point is that it

worked while it lasted. But that period has long passed and the employer offensive against trade unions has been the norm for the past two and a half decades. The tragedy is that old habits die hard. While the business unionism model may still work for many existing unionised workplaces, it prevents unions from embracing new models of organising.

The “union zone” in our matrix comprises most of these traditional workplaces. Not surprisingly, unions became comfortable with and used to this model, even as its incidence dwindled. It is understandable why unions themselves were less than enthusiastic to take on organising in the “non-union zone,” which has been growing for more than 30 years.

Here is what makes workers in the non-union zones so unattractive to organise:

Workers in the upper left workers are not employees at all so unions have no recourse to collective bargaining law.<sup>5</sup> This does not mean that unionisation is impossible but in the absence of collective bargaining law, a very high level of commitment and resources by the union is required to organise such workers. Without the requisite change in outlook and commitment, unions will have little promise of success with this group. Yet the potential for organising here could be great.

What about the upper right? Unions might like to have these workers as members because they are highly skilled, earn high salaries (and thus can pay high union dues). However, those workers do not generally clamour for unionisation. They have too much individual bargaining power. As well, these workers are more concerned with *individual* rather than *collective* benefits. The concept of conducting individual negotiations is foreign to unions’ sensibilities. Moreover it simply takes a lot more time and trouble to negotiate individual benefits compared to collective benefits.

As for the bottom portion of the matrix, these workplaces are marked by small size, dispersion, hostile employers willing to fight against unions, often past the point of rationality and staffed by employees often with weak attachment to the labour market, who are easily intimidated or sweet-talked (or both) by their employers. Even where such workers are keen to be organised (and this is not always a certainty) organising them is very difficult. Moreover, even when the union is successful in winning certification, the first collective agreement can be an elusive target. Employers in this area often force unions into set-piece battles for the first contract. But because the workplaces can be so isolated, it is difficult to win these strikes. Collective bargaining law and labour relations boards usually insist

that the most appropriate bargaining unit is the single workplace, making it very difficult for unions to build effective combinations of workplaces for collective bargaining. Even if the union is successful in negotiating the first collective agreement, the servicing costs can be very high, sometimes even outweighing the income that can be obtained from the low dues.

It is not hard to understand why unions themselves are very leery of organising in this area.

#### THE DILEMMA FOR UNIONS

The biggest dilemma for unions is that in the Canadian economy the union zone is shrinking while the non-union zone is growing. Those areas of employment that are shrinking are the smokestack industries and large workplaces of the past. Three fast-growing areas of employment are contract work (upper left), high skill-high tech work (upper right) and low-skill services and small manufacturing work (bottom).

Unions have no choice. If they wish to survive and prosper, they need to organise in the non-union zone. While all three factors are working against unionisation in the non-union zone, unions will have to overcome them.

#### NOTES

1. The two authors claim that a similar but unreported Canadian poll showed very similar results.

2. In all of this, I am using the term “employ” in its widest sense and not denoting merely the legal employment relationship. Those who “employ” labour may do so through various forms of legal relationship, from a formal contract of employment to a contract of service. In this sense, even workers who are independent contractors are “employed” by a person or organization who wants to use their services.
3. One recalls that it was not in laissez-faire Britain that these were first introduced, but rather in those countries eager to catch up and overtake Britain in industrial might. The United States began taxing citizens to provide secondary education in the 1820s. German Chancellor Bismarck introduced a range of “welfare” measures in the 1880s.
4. The “Wagner Model” is named after the National Labour Relations (or Wagner) Act introduced during US President Roosevelt’s New Deal.
5. That is, unless the government passes a law specifically giving them this right, and that is very rare. The governments of Quebec and Canada have established laws that give individual artists, musicians, actors and the like, who usually act as independent contractors, the right to group together and name those who use their services as “employers.” The employers then have a duty, similar to labour law, to meet and negotiate with the workers. At a bargaining impasse, the law gives either party the right to commence pressure actions, such as strikes or lockouts.

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