

EMPLOYEE VOICE AND REPRESENTATION IN THE NEW WORLD OF WORK: ISSUES AND OPTIONS FOR ONTARIO

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*This paper represents the views of the author and not necessarily those of the Ministry of Labour.

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EXECUTIVE SUMMARY

In Ontario the model by which employees secure representation and voice contains a set of features that are common to all systems where certified bargaining agents acquire exclusive representation rights and where the employer has no statutory obligation to deal with minority unions.¹ In this system, -- sometimes termed “exclusive representation with majority support” or simply the Wagner Act Model (WAM) -- workers who have certified bargaining agents are commonly referred to as “unionized” or “organized” while those with no certified agent are referred to as “non-unionized” or “unorganized”. Though *different mechanisms* exist across North America for *securing* trade union representation (e.g., some provinces invoke easier rules governing the certification process),² the Ontario model in its essential form displays the following seven characteristics (and associated deficiencies) that are present in *all* WAM based majoritarian representation systems (Weiler, 1989):

i) A non-union / no-voice default setting for employees – e.g., whether working in a bank branch or retail outlet there is no system of worker representation in nascent organizations. That is, private sector workplaces are set up and largely exist in an entirely unorganized, unrepresented, non-union condition. As a result, private sector employees, for the most part, work in non-union workplaces and have no access to formal representation systems.

ii) If any employee has access to some modicum of voice and representation within the workplace, the majority of workers must first be organized to undertake the

¹ In Canada, unlike the US, there is a tradition of “voluntary recognition” in which an uncertified employee association can bargain on behalf of its members with management, so long as management willingly accepts. Such employee organizations sign memorandum of agreements (MOUs) with the employer and confer a considerable range of protection for workers. They can also finance their operations through automatic dues payments much in the same way as certified unions do (Taras, 2006). For the most part, however, Canada operates like our southern neighbour and representation is secured through formal certification procedures.

² Two systems exist in Canada for obtaining union certification: The Card Majority Certification Regime (card system) and the Mandatory Secret Ballot Vote Certification Regime (vote system). Under both systems, the first stage in applying for union certification is proof of support for the trade union in a bargaining unit. Under the Card Majority Certification Regime, adopted by four of the ten provinces (Quebec, New Brunswick, Manitoba and P.E.I.) union certification will succeed if a majority of employees represented by the bargaining unit are signed up. This majority varies among the different jurisdictions: New Brunswick and Manitoba require a super majority of signed cards (60%+1 and 65% respectively), while a simple majority (50%+1) is sufficient for automatic certification in Quebec and Prince Edward Island. Even under this system, should a group not obtain automatic certification; labour law allows a vote when another threshold of signed cards (obviously lower than for automatic certification) is met.

process of joining an independent union, securing certification from the labour board and then signing a first collective agreement with the employer. For the typical worker, possessing no past experience with unions or certification procedures, this process can appear lengthy and complicated. In cases where employers are opposed to unionisation, the process is tilted against workers gaining certification (Doorey, 2013). Johnson (2002, 2004) shows that, in particular, the increasing use of mandatory vote certification procedures across Canadian jurisdictions has had a negative effect on certification success rates and on union density in Canada. Slinn and Hurd (2011) argue that certification delays often arise from unfair labour practices (ULP) applications and hearings related to employer conduct during organizing. Moreover, there is evidence that employer ULPs are substantially more effective at defeating unionization under mandatory elections than under card check certification (Riddell, 2001).

iii) Non-union employers can be quite averse to unionisation drives and as such deploy a variety of tactics in order to head off incipient unionism (Riddell, 2001; Slinn, 2008; Doorey 2012). Though these tactics have been associated more closely with US style labour relations (Logan, 2002), comparative research has actually shown that Canadian managers report equally, if not greater, negative attitudes towards unions than their American counterparts (Campolietl et al., 2007, 2013; Lipset and Meltz, 1997; Saporta and Lincoln, 1995; Taras, 1997). Many non-union employers also engage in sustained efforts to persuade and supplant intendent trade unions while others will coerce and supress incipient unionism (Thomason and Pozzebon, 1998). Furthermore, although there is evidence that major Canadian companies have a lower likelihood of opposing unions with the same kind of zeal as their US counterparts (Thompson, 2001), union acceptance amongst Canadian employers, as Rose and Chaison (1996: 92) presciently observe, ‘is most likely the result of low probability of escaping unions rather than a [less inherent antagonism]’.

iv) As a result of i) to iii) unionisation can be conceived of as an ‘experience-good’ – defined by Nelson (1970) as any good or service whose quality cannot be truly discerned before purchase. For workers (and employers alike) unionisation is an experience good in the sense that most union benefits (procedural justice, job security, the provision of family-friendly policies) are hard to observe before joining a union or

being hired by an organized workplace. Experience goods in turn have certain properties that make them hard to ‘market’ to potential members who have never sampled membership. In our case this means that groups like young workers or immigrants are particularly likely to by-pass union organizing unless otherwise compelled to do so (Gomez and Gunderson, 2004). Moreover, even if attributes are made visible (through information campaigns) union provided benefits are still of indeterminate quality to a non-union worker (i.e., “you don’t know how good a union is until *after* you join”) and hence still subject to the same experiential marketing challenges. The indeterminate nature of benefits associated with unionisation can generate hesitation and skepticism on the part of non-union workers, which means that organizing to join a union is difficult since it is a decision whose payoff is only fully revealed after the fact.

v) Most workers are members of large (more than 100,000 members) unions. This is natural given that in order to establish a critical degree of employee interest and to overcome the sustained resistance of some employers, the attempt to provide voice and representation rarely succeeds on its own. It is instead necessarily taken on by large national (or international) unions³ that have ample resources and experience in leading certification drives under the Wagner model. Large national/international unions are less successful at unionising new firms and small-to-medium sized enterprises; instead they deploy scarce organizing funds to certify large firms with potentially larger bargaining units (Willman, 2001). Rightly or wrongly, larger unions are also perceived by many non-union employees as having a distinct impersonal and bureaucratic flavour (Weiler, 1989).

vi) Partly as a result of i) through v) there has been a steady decline in unionisation in the private sector and a growth in “frustrated demand” for employee

³ Unions in Canada can be divided into four types of labour organizations: national, international, independent local, and directly chartered (see Definitions). The vast majority (94.5%) of covered workers are represented by national (69.5%) and international (25 %) unions. Of the remainder, 3.8% are represented by independent local unions and 1.6% by directly chartered unions. Nonetheless, the number of independent local unions and directly chartered unions account for the majority of all unions in Canada (70.7%). On average, a union in Canada represented 6,142 workers in 2013. However, the distribution was highly concentrated in a small number of large unions. As seen in appendix 6, 46.2% of all unionized workers belonged to only eight major unions, all of which are national or international unions. Each of these unions covers over 100,000 workers with an average size of 273,710 workers. Conversely, only 11.7% of all unionized workers belong to 421 unions, 60.6% of which are independent local unions. Each of these unions covers fewer than 10,000 workers with an average size of 1,299 workers.

representation that is currently not being met (Bryson, Gomez, Gunderson and Meltz, 2005). Frustrated demand for unionisation is generally lowest for older and greater for younger workers. For instance, Bryson, Gomez, Gunderson and Meltz. (2005, 165) found youth representation gaps of 36 percent (50–16 percent) in Britain, 44 percent (57–13 percent) in Canada, and 42 percent (47–5 percent) in the U.S. The corresponding adult representation gaps were 11 percent (46–35 percent), 12 percent (48–36 percent), and 37 percent (53–16 percent), respectively.

vii) This large representation “gap” has been filled, in part, by a growing array of statutory provisions (e.g., minimum notice periods) and regulatory mechanisms (e.g., minimum wage laws). Unfortunately, as pointed out by legal and economic scholarship (Weil, 2007), these universal regulatory standards are subject to the all-to-often problem of unfulfilled legal promise. Unless there is an indigenous base of union representation or workplace oversight, the internal vigilance required to make the universal employment standards programme a reality is often lacking in non-union workplaces and compliance is attenuated (Barbash, 1987; Meltz, 1989).

Given the problems associated with the model above, this report identifies a series of employee/workplace voice options for the unrepresented worker and unorganized workplace. The voice systems cover the gamut of employment relationships: from employees working in traditional workplaces under standard employment relationships (e.g., full-time work with permanent as opposed to temporary contractual arrangements) to employees lacking a clearly defined employer (e.g., temp-agency workers) or workplace (e.g., freelance workers).

A common thread linking all the options is a resetting of the current default, whereby employers (and their associated workplaces) are “voice free” until such time as an indigenous non-union scheme is established or an independent trade union emerges through a formal certification process (Doorey, 2013). An alternative is to fashion a system akin to health and safety whereby all employers are obliged to conform to some minimum requirement for employee consultation and participation. The particulars of which, depending on their size and nature, would be enshrined in standards that apply to all workplaces. Or perhaps consideration should be given to a “minority union model” whereby in an appropriate bargaining unit, the most representative union (or coalition of

unions) with a minimum membership to make it credible, could be certified by a labour relations board as a primary bargaining agent with all of the rights and duties of exclusive agents (Adams, 2015).

Underpinning these and other options in the report is the view, held by many in the employment relations field, that every worker should as a matter of principle be afforded some system of employee voice (Adams, 2008; Budd, 2004), irrespective of whether this form of voice has been adopted by the firm or whether a union representation system has been secured via the certification process that is present in current labour law (Slinn, 2008; Doorey, 2013).

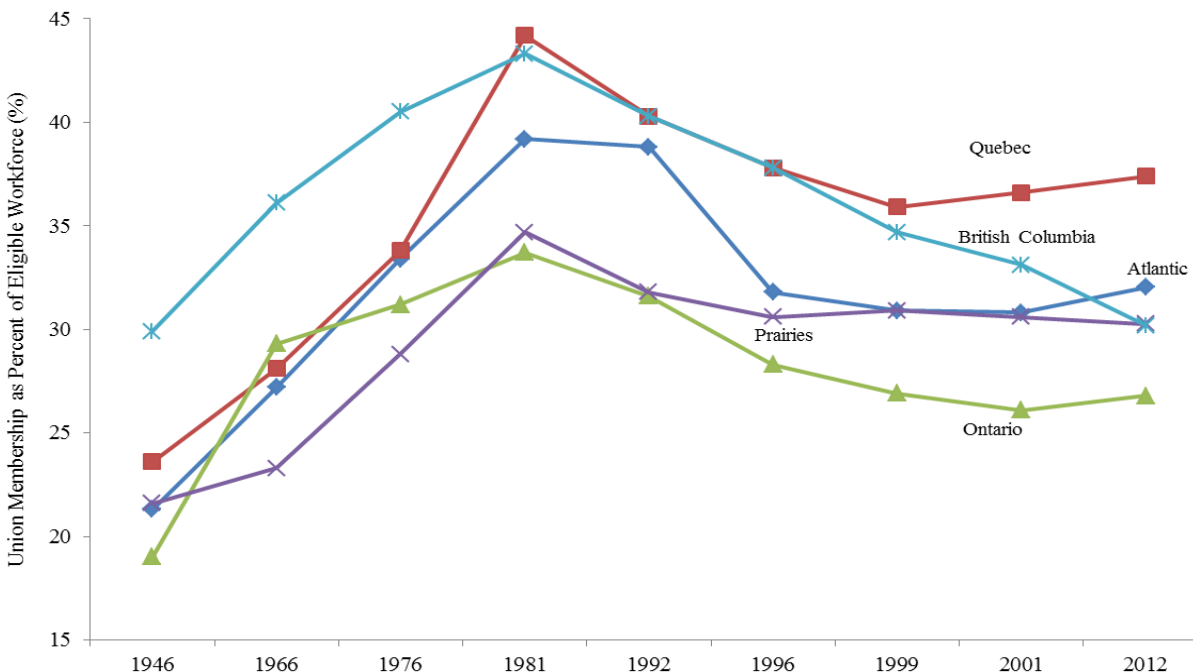
Although a more detailed review of the industrial relations (IR) theory of voice is made later in this study, its impact on models of union representation does bear mentioning at this stage. In particular Budd's (2004) pluralist IR framework (itself built upon the work of the late Jack Barbash and Noah Meltz) posits that the objective of the employment relationship involves achieving a balance among *efficiency* (economic performance or effective use of scarce resources), *equity* (fair treatment and justice) and *voice* (employee participation and influence in decision making). Pluralist industrial relations scholarship recognizes the inherent conflict of interests between employers and unions and the importance of balancing these competing interests (Budd, Gomez and Meltz, 2004). The justification for the provision of voice, in this model, can be made on its own merits, but also on both efficiency and equity grounds.

Ontario, after a long period of post-war stability in which the “Province...steered a middle course, responding to political interests within the province and interpreting the efficacy of labour policies elsewhere” (Rose, 2003), the balancing of efficiency, equity and voice has shifted markedly over the past 25 years. Beginning with the introduction of a number of pendulum swinging labour laws in the 1990's (e.g., Bill 40 under the NDP, Bill 7 under the PCs and Bill 144 under the Liberals) and a potentially more hostile business attitude towards unions, the needle in Ontario has perhaps moved towards greater efficiency at the expense of both equity and voice (Rose, 2003).

1. INTRODUCTION: SETTING THE STAGE

The early 1980s marked the high-water point for union representation in Canada. In 1981 close to two out of five workers were represented by trade unions. By 2012 that number had fallen to just under one in three workers. In Ontario, representation was always on the low end of the national scale (see Figure 1) but more disquietingly perhaps is that this overall union density figure has masked an even sharper decline in private sector union representation. Whereas union density rose in the public sector during the post war period in Ontario, in the private sector⁴ it has been falling continuously since as far back as the 1970s (Figure 2).

Figure 1: Trade Union Density by Region in Canada, 1946-2012



Notes: Atlantic groups Newfoundland, P.E.I., New Brunswick and Nova Scotia. Prairies includes Manitoba, Saskatchewan and Alberta. Source: 1946-1996 data from Lipset and Meltz (2004: Table 7.2). 1999-2012 data from Statistics Canada, Labour Force Survey, 1999 and 2012; Survey of Work History, 1981. See Diane Galarneau and Thao Sohn, 2013. “Long-term Trends in Unionization Catalogue” Statistics Canada, no. 75006X.

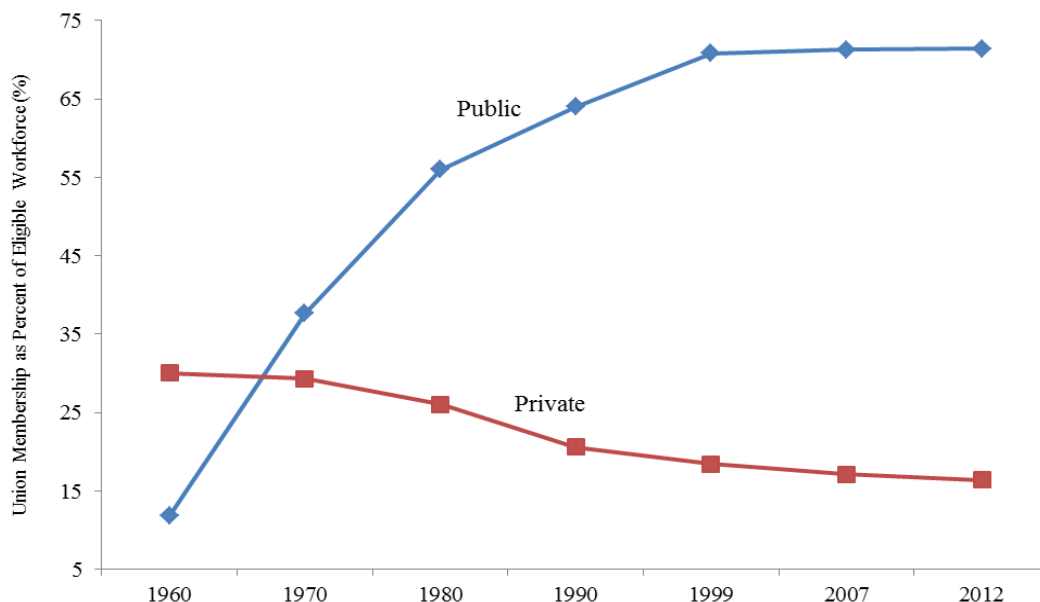
⁴ In this report we will restrict, for the most part, our analysis and description of alternative forms of employee voice and representation to Ontario’s private sector workforce.

Given such a marked decline in such a vital labour market institution several questions arise.

- First and foremost is the question of why? Why such a decline in collective representation especially concentrated amongst private sector workers?
- Second, does this decline call into question the relevance of trade unionism or the need for any other form of employee voice?

Lastly, in light of past practice, current industrial and workplace make up, and more pointedly, given the shifting nature of work and employment under the auspices of what has come to be known as the ‘gig economy’ or ‘new world of work’ what forms (if any) of collective representation and voice might be possible in Ontario?

Figure 2: Trade Union Density by Sector in Canada, 1960-2012



Source: 1960-1990 data from Lipset and Meltz (2004: Figure 3.6). 1999-2012 data from Statistics Canada, Labour Force Survey, 1999 and 2012; Survey of Work History, 1981. See Diane Galarneau and Thao Sohn, 2013. “Long-term Trends in Unionization Catalogue” Statistics Canada, no. 75-006-X.

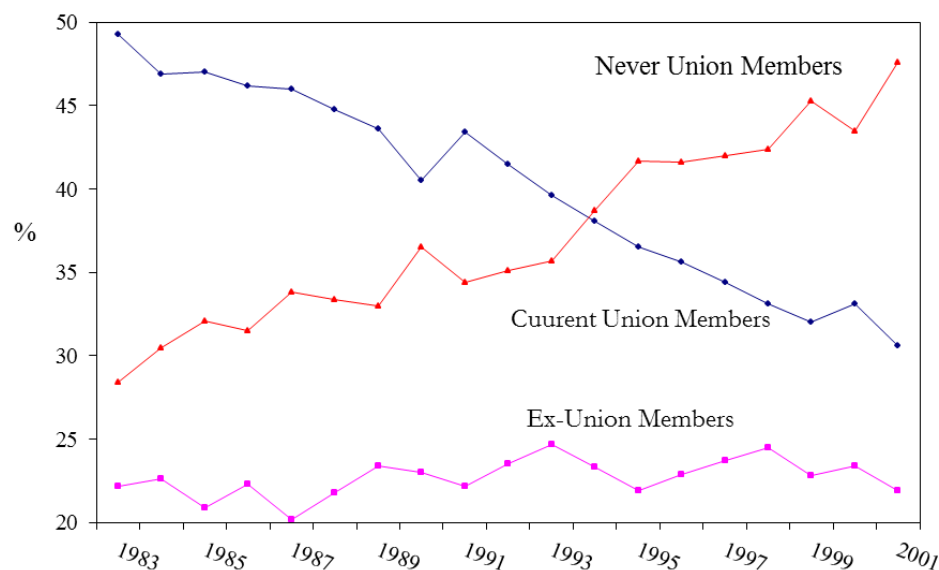
1.1 The Proximate “Reason” for Union Decline in the Private Sector

Though many authors have contributed to the scholarship on union decline (Chaison and Rose, 2002) -- and noting that the reason for union decline in Ontario is evidently multi-causal (reflecting changes in industrial composition, free-trade and the mobility of

capital, low inflation and high unemployment, conservative governments and associated legislative swings etc.) -- I wish to focus on a finding first observed for the United Kingdom. I do this in order to point out that irrespective of *underlying* causes, the *proximate* cause of union density decline has more to do with the nature of Wagner-style representation systems than anything else.

In a paper titled “Why have Workers Stopped Joining Unions?” Bryson and Gomez (2005) tracked the rise in the percentage of employees who never become union members (‘never-members’) since the early 1980s (see Figure 3). The data for Britain showed that never-membership had increased markedly between 1981 and 2001 whilst ex-membership had remained roughly constant. It also showed that by the early 2000s, never joining a union had grown steadily outstripping changes in other major life-course events for young workers (See Table 1) such as marriage and university attendance. Bryson and Gomez (2005) went on to show that it was this reduced likelihood of *ever becoming a member* and not the *haemorrhaging loss of existing members* which lay behind the decline in overall union membership in Britain since the 1980s.

Figure 3: Trade Union Membership by Nature of Union Status in Britain, 1983-2001



Source: Bryson, Alex and Gomez, Rafael (2005) “Why have workers stopped joining unions? Accounting for the rise in never-membership in Britain”. *British Journal of Industrial Relations*, 43 (1). pp. 67-92. ISSN 1467-8543

Table 1: Incidence of Unionisation and Other Life-course Events those aged 30-39 in Britain, 1983-2001

	Incidence of life events as % of total workforce		
	1983	2001	Change (2001 – 1983)
	[1]	[2]	[2]- [1]
Major Life Event by age 30-39			
<i><u>Males</u></i>			
Never union member	26	57	+31
Ever union member	74	43	-31
Bachelor’s degree	17	28	+11
Marriage	78	68	-10
<i><u>Females</u></i>			
Never union member	37	59	+22
Ever union member	63	41	-22
Bachelor’s degree	24	27	+3
Marriage	70	68	-2

Notes: Never membership includes only non-union members who have never experienced membership. Ever membership includes both current and ex union members. Life events in 1983-85 are for birth cohort born 1950-1959 and for 1999-01 the birth cohort born in 1960-69. Source: Adapted from Table 1 in Bryson and Gomez (2005).

Such a view is also consistent with what has occurred in a Canadian context. Since 1997 Canada's unionized workforce has actually grown in absolute terms. Presently, roughly 4.56 million workers are members of unions — or are covered by collective agreements or union contracts — up more than 800,000 since 1997. We also know that de-certification in Wagner-style systems offering first-contract arbitration is rather rare (Baker, 2012).⁵

So why then has union density declined in Ontario and the rest of Canada?

The reason is that union membership expansion has been far outstripped by the growth of the non-unionized workforce, which grew by about 2.5 million over the same period. In other words, new workers are not being organized at a sufficient rate to increase rates of union representation in the overall workforce. Put simply, never-

⁵ Unless a workplace closes or moves, a union voted in by a majority of the workers in Ontario tends to stay in place. As noted by Baker (2012) “Unlike the US, most provinces [such as Ontario] have laws that provide for first contact arbitration in the event of a deadlock in negotiations. Almost half of all successful unionisation drives in the US do not lead to a contract. While the company is legally obligated to negotiate in good faith, this is generally not much of a requirement. Delaying a first contract is an effective way to undermine support for a union and often leads to a union being decertified. Provinces with first contract arbitration have higher rates of unionisation [and lower de-certifications].”

membership is rising in Canada as it has in Britain and in the United States and this has big (mostly negative) implications for the future of the Wagner Act Model (WAM) of representation⁶ (Booth, Budd, and Munday, 2010).

1.1.1 Implications of Rising Never Membership on Wagner-Act Unionisation Models

This rise in never-membership and decline in the overall density rate has several important implications for the future of traditional WAM collective representation. First, it is important to note that unions extend the benefits of union representation to a wider set of workers than just the ones they represent. Whether it is through the “threat effect” – that is, the inclination of non-union employers to match or even supersede certain contractually bargained outcomes in an effort to forestall union interest – or by lobbying government for improved legislated outcomes, a strong union movement also affects labour conditions outside of the organized sector.

Second, to the extent that unions are successful in organizing workplaces when workers possess considerable knowledge concerning what unions do -- the experience-good effect (Gomez and Gunderson, 2004) -- and there is strong demand for collective representation amongst workers (enough to overcome the significant hurdles associated with majoritarian representation) then any decline in the number of workers who have ever sampled unionism makes the task of organizing especially hard.

Third, to the extent that unionism is an “experience good” in the sense that workers can only fully appreciate the benefits of unionization by experiencing it first-hand, or indirectly through familial and collegial relations with other union members, then if the bulk of workers who have never-sampled union membership are concentrated in new sectors of the economy and amongst new workers, it is hard to see how the WAM model-- designed as it was to organize workers with some knowledge of how unionism functions and how certification is achieved -- can ever recover in a private

⁶ As concluded by Budd and Booth (2010) for the US” It does indeed appear that never-unionization rates in the United States are increasing as new cohorts enter the labour market, even after adjusting for demographic and structural changes.”

sector dominated increasingly by new (often hostile) workplaces and new (often uninformed) workers.

In short, gradual union decline is more likely when the default representation system in place is one in which workers have to continually organize workplaces, however small or newly established, with a majority vote. As Bryson and Gomez (2003: 73) assert: “a ‘key feature of unionization’ in decentralised majority-based union representation systems is that ‘increasing the flow of members into unions is far more difficult than maintaining the existing stock’” (Bryson and Gomez, 2003). This of course assumes that the trade union movement, as it stands, is incapable on its own to educate and attract workers in small firms and new industries. This, of course, is not a given and a new strategy by unions may emerge to target these workplaces and workers.

1.1.2 Wagner-Act Model (WAM) in Private vs. Public Sector, Employer Opposition and Workplace Size

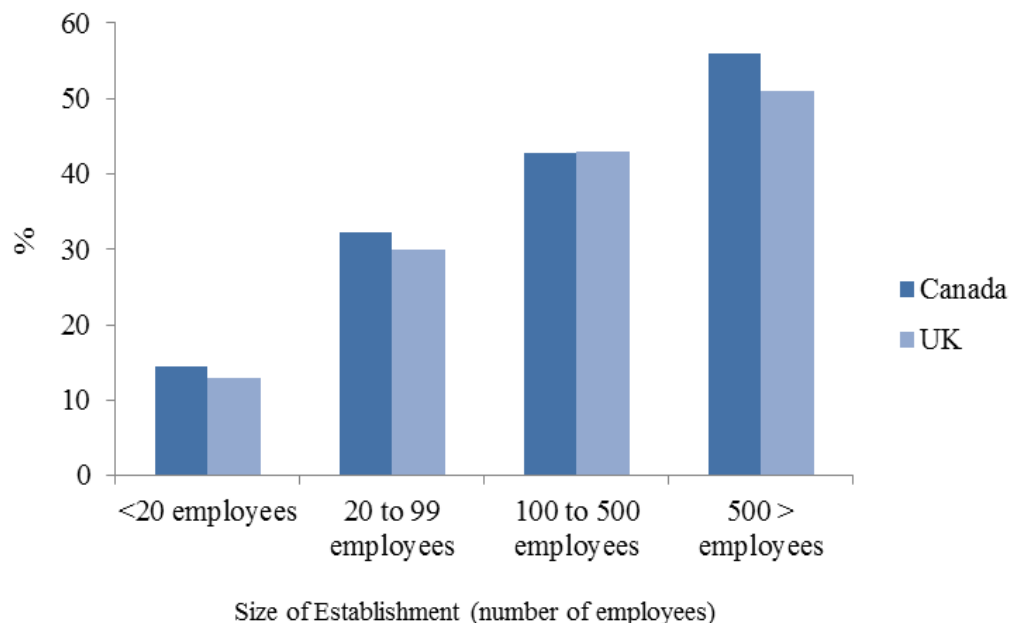
A caveat in the never-membership story has to be added in order to fully account for the sharp declines in unionisation witnessed in the private sector and the wide disparity of trade union representation observed between the public and private sectors. There are two issues here.

The first issue revolves around the role of employer opposition (e.g., requiring employees to attend anti-union speeches by the employer, meeting between supervisors and small groups of bargaining unit employees, the distribution of anti-union literature, threats against union supporters, and promises of higher wage or benefits) in reducing support for the union and the probability of certification. The results of many empirical studies show that the practices used by Canadian employers are effective in reducing the number of employees supporting the union (Thomason and Pozzebon, 1998; Riddell, 2001; Johnson, 2002, 2004). There is also evidence that public sector employers do not resort to the same degree of employer opposition as private employers do (Freeman and Kleiner, 1990). And there is a rational reason (if not a wholly sound one) for this behaviour by private sector employers; unions have been found to impact profitability and shareholder value negatively (Bronars and Deere, 1994;

Becker and Olson, 1989; Connolly, Hirsch, and Hirschley, 1986; Abowd, 1989) There is also the associated evidence that unions may indirectly moderate (downward) the levels and forms of CEO pay (Gomez and Tzioumis, 2013). Given these features of WAM unionism, there is a clear impetus for top management to oppose a unionisation drive. There is some evidence that lower-middle management in unionised settings has less antipathy towards unions than do upper echelons in the firm, in part because there is a compensating differential that appears to be paid to these workers, in contrast to the moderating effect of unions on CEO pay (DiNardo, Hallock and Pischke, 1997).

The second issue has to do with establishment size. As seen in Figure 4, for the largest establishments in Canada (i.e., those with 500+ employees) the incidence of unionisation is well over 50 percent. In other words, roughly one out of every two workers in large employment settings is currently represented by a trade union. These data are all the more striking in their consistency across jurisdictions sharing decentralised workplace model of representation (i.e., UK).

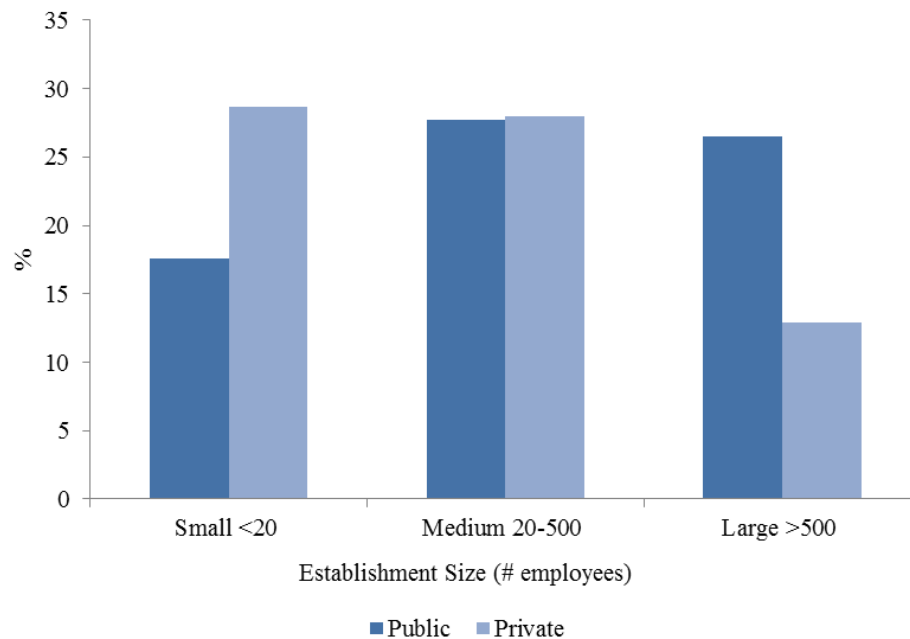
Figure 4: Union Membership Rates by Establishment Size, Canada and UK



Source: For Canada, Statistics Canada, Labour Force Survey and for UK, Labour Force Survey, Office for National Statistics.

In contrast, the level of union representation for the smallest employers (those employing fewer than 20 employees) is 14 percent in Canada, or roughly one in seven workers, a figure almost in line with the overall union density rate observed in the US. This is also where the largest concentration of private sector employment is housed (close to 30 percent) as compared to just over 17 percent in the public sector (see Figure 5).

Figure 5: Distribution of Employment by Establishment Size in Canada, Private vs Public 2014



Source: Statistics Canada. Table 282-0075 - Labour force survey estimates (LFS), employees by establishment size, North American Industry Classification System (NAICS), sex and age group, unadjusted for seasonality, monthly (persons), CANSIM. Notes: Public refers to public administration only and private is represented by all goods producing industries only.

The average establishment size in the public sector is therefore larger than it is in the private sector (see Figure 5), i.e., more public sector workers are employed in large establishments than is the case in the private sector (26 versus 12 percent respectively). There is necessarily then a confounding relationship at work suggesting that part of the reason the public sector is more heavily unionised has to do with a “need for voice” (arising both on the employee and employer side) that emerges in large

establishments. Voice provision, in our labour relation system, is necessarily met by trade union representation.

One implication of these data is that as newer (and presumably) smaller private sector workplaces become the norm in Ontario, it becomes difficult and inefficient for large national unions, from an operating standpoint, to organize these workers. This could therefore provide a justification for a number of remedies such as allowing more informal voice mechanisms to emerge gradually, a “broader” bargaining model and/or expanded powers for labour relations boards to revamp and resize bargaining units. This is essentially the argument Willman (2001) – himself a former union organizer -- made in the context of why UK unions were in decline amongst small private sector establishments.

1.2 Does the Rise in Never-Membership Imply that Workers Are Not Interested in Collective Representation?

This is a rather easy question to address since we actually have evidence, albeit most of it is two decades old now, concerning “what workers say they want” when it comes to worker voice and influence at work⁷ (Lipset, Meltz et al., 2004). The evidence both in the US and Canada is rather clear: there is an underlying representation “gap” that manifests itself in the proportion of non-union workers who say they wish to be unionised and those that actually have access to union representation (Campolieti, Gomez, and Gunderson, 2011). South of the border, the gap is larger than in Canada. Close to 40 percent of workers in the US (38.6) state that they desire union representation and in Canada that number is also 40 percent (39.9). The relevant statistic here is the “implied union density” figure given this unmet desire as opposed to

⁷ In 2001, the Canadian Labour Congress (CLC) commissioned an opinion poll to capture views of Canadians about unions (Jackson, 2004). According to this poll, one-third of non-union workers would vote for a union with about 14% describing themselves as “very likely” to join unions (as opposed to “somewhat likely”). Since the 1996 and 2001 studies use different methodologies (e.g., sampling frames, questions, and interviewing methods), we should be cautious about comparing them. Nevertheless, taking the figures at face-value, they show no decline in the demand for union representation between 1996 and 2001. This is consistent with large-scale representative survey evidence produced in the late 1990s. The Angus Reid (now Ipsos-Reid) survey conducted for Seymour Martin Lipset and Noah Meltz in June and early July 1996, covered a total of 3176 working respondents (1681 in the US and 1495 in Canada) aged 18 and over. Our empirical work is based on the representative workforce sample drawn from this larger 1996 Canada–US Labor Attitudes Survey (described in detail in. Supplementary analysis is also available using the contemporaneous Workplace Representation and Participation Survey (WRPS). The WRPS, nationwide representative sample of 2408 working adults conducted from September to October 1994, is described in detail in Freeman and Rogers (1999).

the actual union membership figure, which if added to the proportion of non-union workers desiring union representation provides a “what if” figure of union representation if there were no barriers placed in front of workers to organizing.

In the US, given that only roughly 10 percent of the overall workforce is represented by a union, that potential union density rate is roughly 30 percentage points greater than actual observed density, while in Canada, even with its higher union membership rates, total unmet demand is still about 10 percentage points higher than what is observed currently. Clearly both economies are falling short of meeting this underlying demand for union representation.

1.2.1 The Union Representation Gap: A Closer Look at the Evidence

In the decades since these nationally representative surveys were taken, union representation in the US private sector fell from 11.3% to 7.4% and in Canada it fell from nearly 20% to just under 17%. Has union density fallen because an increasing proportion of workers no longer want union representation? Or do an increasing proportion of workers want unionism than in the past but cannot obtain it under current labor market and institutional realities?

The answer for Canada can be gleaned from a 2001 opinion poll designed to capture views of Canadians about unions (Jackson, 2004). According to this poll, 30.1 percent (or one-third) of non-union workers would vote for a union with about 14% describing themselves as “very likely” to join unions (as opposed to “somewhat likely”). Since the 1996 and 2001 studies use different methodologies (e.g., sampling frames, questions, and interviewing methods), we should be cautious about comparing them. Nevertheless, taking the figures at face-value, they show no decline in the demand for union representation between 1996 and 2001 in Canada.

In the US, the evidence is even more striking. In an analysis conducted by Freeman (2007) -- based on an updated version of *What Workers Want* (Freeman and Rogers 2006) and the volume *What Workers Say* (Boxall, Freeman, and Haynes 2007), which compares representation and participation in the six advanced English-speaking countries -- three key findings emerged:

1. Workers today want greater say at their workplace as much or more than in the 1990s. Workers continue to want to have much greater say at the workplace than the U.S. labor relations systems gives them.

2. Workers want unions more than ever before. The proportion of workers who want unions has risen substantially over the last 10 years, and a majority of non-union workers in 2005 would vote for union representation if they could. This is up from the roughly 30% who would vote for representation in the mid-1980s, and the 32% to 39% in the mid-1990s, depending on the survey. Given that nearly all union workers (90%) desire union representation, the mid-1990s analysis suggested that if all the workers who wanted union representation could achieve it, then 44% of the workforce would have union representation. The rise in the desire for union representation since then suggests that the share of the non-union workforce wanting union representation in 2005 was 53%. These results, in turn, suggest that if workers were provided the union representation they desired in 2005, then the overall unionization rate would have been about 58%.

3. Workers want a workplace-committee form of representation. Three-fourths of workers desire independently elected workplace committees that meet and discuss issues with management, which some see as a supplement to collective bargaining (having both) and some see as useful as a stand-alone mechanism for voice. Very few workers (14%) are satisfied with their current voice at work and seek no changes although another 10% are unsure about what they want. (Freeman, 2007)

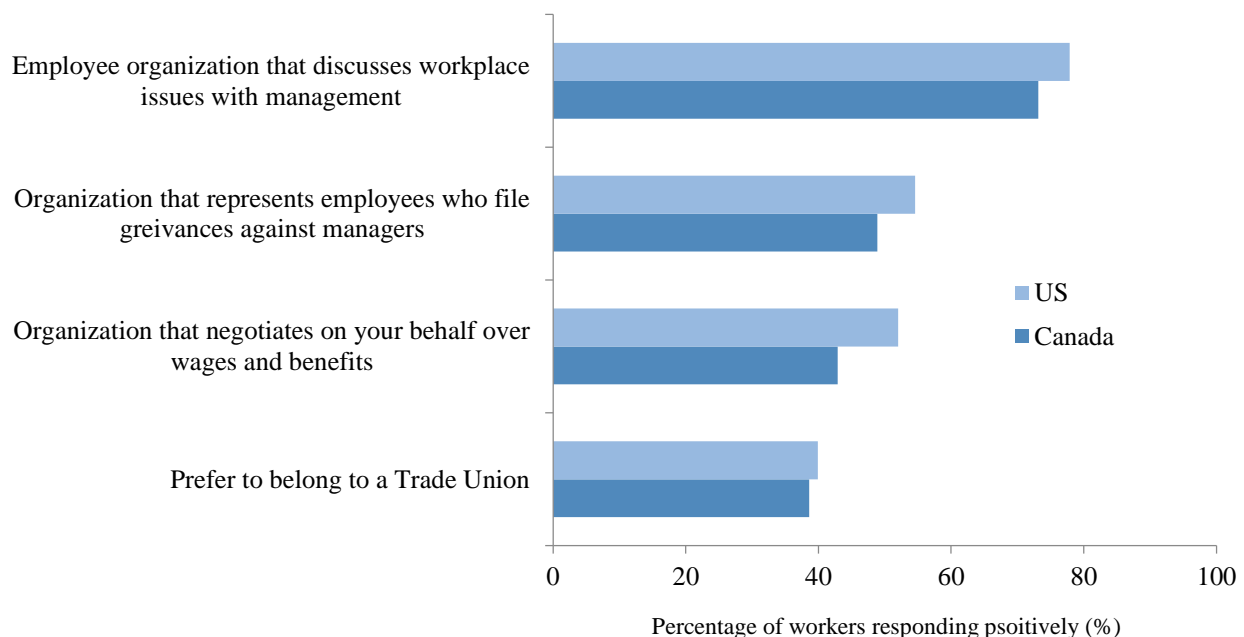
In sum, while worker data since the mid-1990s has not been conclusive⁸, the general pattern clearly shows rising gaps between what firms deliver at workplaces and what workers want in terms of unions and employee representation more generally.

⁸ "From 1996 to 2005, Peter D. Hart Research Associates asked a more nuanced set of questions about the relationship between management and workers. For example, whether management had too much power compared to workers, workers had too much power compared to management, or if there was a pretty fair balance of power between management and workers. The percentage that said management had too much power increased from 47% in 1996 to 53% in 2005, while those judging the relationship to be a "pretty fair" balance declined from 41% to 36%. Just 7% thought workers had too much power in both periods. In its 2005 poll, Hart used a split sample design, substituting the word "corporations" for "management" for half the sample. For this half, 63% of respondents said corporations had too much power, 28% found that the balance with workers was "pretty fair," while just 4% thought workers had too much power. The more negative response to use of the term "corporations" probably reflects people's warmer feelings to management, which consists of real people, than the artificial "person" of the corporation, which is just a legal structure.... Finally, consistent with these findings, the post-WRPS surveys suggest that workers have a greater desire for increasing their influence on their workplace in the past decade or so. The most cogent evidence comes from the California Workforce Survey conducted by the University of California-Berkeley in 2001-02. This asked workers how important it was to them personally to have more respect and fair treatment on the job and how important it was for them to have more say in workplace decisions. Seventy-five percent of workers in the California survey said that it was very important to have more respect and fair treatment on the job. Fifty-one percent said it was very important, and 38% said it was somewhat important to have more say in workplace decisions. The sum of these last numbers, 89%, exceeds the 63% from the WRPS who wanted more influence."

1.2.2 The Desire for Alternative Forms of Representation: A Closer Look at the Evidence

Even more curious than the union desire questions, are the responses workers give when asked directly about a range of workplace representation schemes that do not explicitly invoke the term “union” but in some cases are direct descriptions of what unions do. Here the demand for `non-union` representation is even higher. As seen in Figure 6 below both Canadian and American workers are much more inclined to say “yes” to forms of worker representation that are not in any explicit way linked to traditional organized labour. This includes i) the willingness of workers in both countries to participate in an employee organization that discusses workplace issues with management (73 and 77 percent in Canada and the US either definitely or probably willing respectively); the interest in joining an organization that either ii) engages in collective bargaining on behalf of employees over wages and benefits (43 and 52 respectively in Canada and the US definitely or probably interested) or iii) represents employees who file grievances against their superiors/managers (49 and 54 percent respectively in Canada and the US definitely or probably interested in such an organization).

Figure 6: Desire for Trade Unions and Other Forms of Representation, Canada and US



Source: Authors calculations based on Lipset-Meltz (2004) survey data.

There are several ways to interpret the greater desire for alternative forms of collective representation – e.g., the influence of sustained attacks on organized labour since the 1980s, to simply a reticence on the part of many workers to entertain traditional unionism and its association with large bureaucratic structures – but regardless, it speaks to the desire for more (not less) collective representation than what is currently being expressed in the actual union representation data.

1.3 Possibilities in Light of Past Precedence and the New Realities of Work

Having identified the issue at hand – the substantial and widening gap in the share of workers without access to some formal collective representation and voice at work – the report seeks to provide options for the Ontario government that are both in keeping with past precedence but that also take account of the growing shift from stable full-time workplace based forms of employment to less stable forms.

Coming into sharp focus recently is the growth -- especially for new labour market entrants -- of non-standard employment such as freelancing, contracting, temping and outsourcing. This trend described by some as the “Gig-Economy” (Kessler, 2015) is not new however and has been decades in the making. Nonetheless, it is being given new impetus by tech start-ups such as Uber and Lyft which connect so-called “driver partners” to customers via such things as smartphone apps etc. Essentially these systems mirror the large contingent of own-account self-employed that were present a century ago in Canada and who worked in short-term limited contractual arrangements. Indeed, it may be wise to quickly shed light on what we know about this so called “new world of work” and the trends that are shaping it.

1.3.1 Back to the Future or Charting a New Course: Self-employment, Part-time Work, and Rise of Service Sector Work

It is hard to do justice in quantitative terms to what we all seem to feel *qualitatively* about the shifting nature of work. However, we should strive to place current feelings about the labour market in context and to the best of our abilities, situate them in

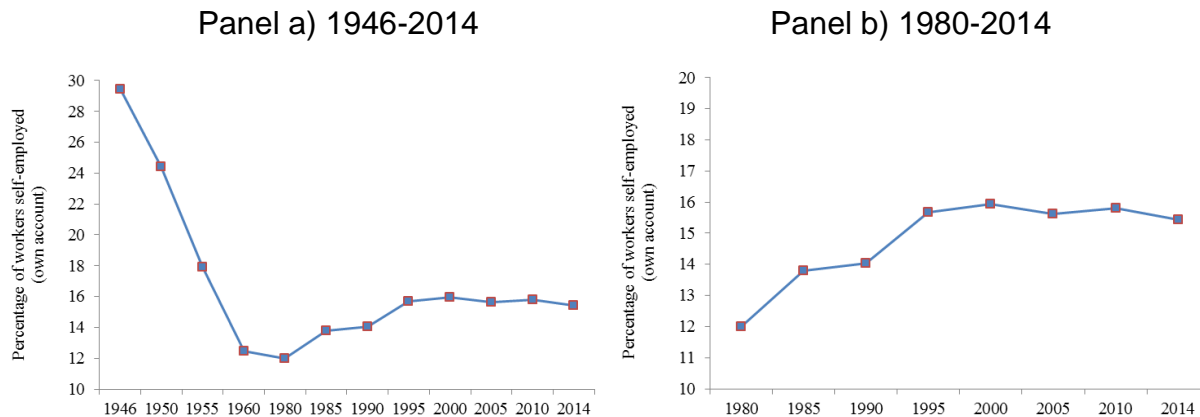
relation to labour market data that stretches back far enough to draw more salient conclusions about the changing nature of work.

Self-employment Trends, 1945-2014

One indicator in this regard that has been fairly reliably and consistently measured in Canada, as far back as the 1930s, is the number of own account self-employed workers (i.e., self-employed with no employees). Though we do not know the nature of this own account self-employment stretching back historically (i.e., is it voluntary or caused by a lack of paid work) we do know that the own-account self-employment rate is decidedly counter-cyclical; it falls when times are good and unemployment is low and rises when times are bad and unemployment is high. This is suggestive that self-employment is cyclical in nature. However, if there has been a “shift” in the nature of work towards the intermittent use of labour and subsequent technological advances that have made self-employed work – such as Uber taxi services or Airbnb hotel services – accessible to small-scale entrepreneurs, we should be seeing that rise reflected in statistics stretching back nearly 80 years.

Figure 7 panel a) shows the share of workers classified as own account self-employed in Canada stretching back to 1946. In this diagram we see that the Canadian economy underwent a profound shift in the early post-war period, ramping up paid employment and decreasing the share of own account self-employed consistently until the early 1980s, when a distinct (albeit much more muted) upward trend in self-employment took hold. This more recent uptick can be seen in starker terms when we exclude the early period from our analysis and look more closely at the contemporary record in Figure 7 panel b) where we see that since 1981 there has been a secular rise in self-employment, something which has spiked following recessions but has not come down to levels seen in the early 1980s. It is worth noting perhaps that the “high-water mark” for union density in Canada coincides with low tide of self-employment (i.e, 1981).

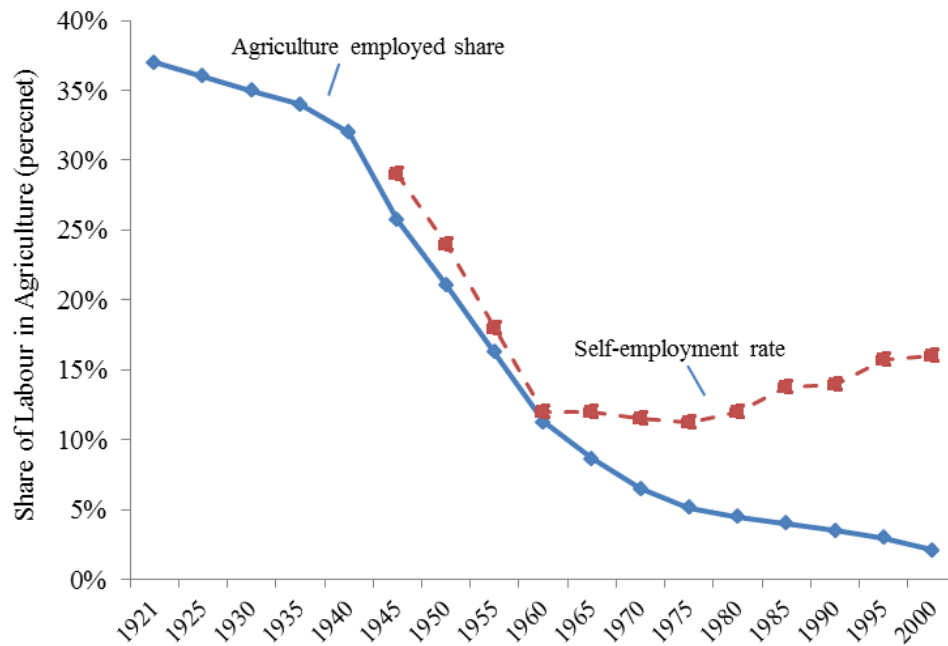
Figure 7: The Fall and Rise of Self-employment (own account) in Canada, 1946-2014



Sources: Data from 1946-1960 Urquhart, M. C. 1., Buckley, K. A. H. (1965). *Historical statistics of Canada*. Toronto: University Press. Data from 1981 to 2014 Statistics Canada table: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor64-eng.htm>

The dramatic falls in self-employment that occurred from 1945 to 1980 and the rise in self-employment since 1981 should also be placed in its proper historical context. Between 1921 and 1980 Canada went through a dramatic shift, moving from a mostly rural to a majority urban nation and as such shedding hundreds of thousands of agricultural jobs in the process. The share of employment occupied by the agricultural sector in Canada was nearly 40 percent in 1921. That figure fell to just over 2 percent by the 2000s (see Figure 8 dark line)). Many of the agricultural jobs were historically considered a form of self-employment. In other words, the modern (1980-present) rise of self-employment has occurred *within an industrial structure* that until the 1980s was largely offering paid employment. This can be seen more clearly in Figure 8 in the superimposed self-employment rate (dotted line) that is measured beginning in 1945. Self-employment falls on par with the fall in agricultural employment, but that trend stops in or around 1980.

Figure 8: Share of Labour Force in Agriculture in Canada vs Self-Employed, 1921-2000



Source: Statistics Canada, Historical Statistics, series D124-133 and Series D134-145

There is scant data of a nationally representative nature on the attitudes of the self-employed so the extent to which their ‘choice’ to be own-account is voluntary or involuntary is not well known. But a 2000 Statistics Canada survey does shed some light on this question. In the survey, respondents were asked if they entered self-employment due to a lack of job opportunities in the paid labour market or whether they were choosing self-employment because of an opportunity in the labour market. Roughly a quarter (25 percent) of respondents answered that they were “choosing” self-employment because of labour market difficulties. These numbers were further bifurcated by immigrant status, with immigrants (33%) more likely than non-immigrants (20%) to report that they entered self-employment due to a lack of job opportunities in the paid labour market.

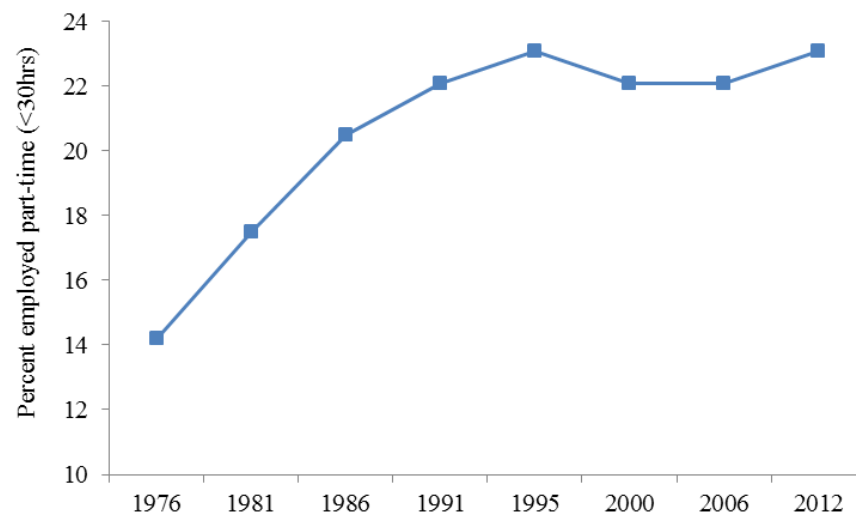
Part-time employment Trends, 1976-2014

What about part-time work, another characteristic of the labour force that has been associated with the rise of precarious work and which can be readily measured and that stretches back many decades? Have we seen an appreciable rise that is linked to

changes in the broader labour market and not solely the result of? Here we define part-time work using the definition employed by Statistic Canada which includes employed persons who usually worked less than 30 hours per week, at their main or only job. We express the share of self-employed as a function of all employed persons.

We see in Figure 9 that since 1976 the trend has indeed been upward. What we do not know from these data is what share of this increase has in fact been linked with shifts in the demand for part time work from workers and how much is linked to involuntary acceptance of jobs that provide less than full time work.

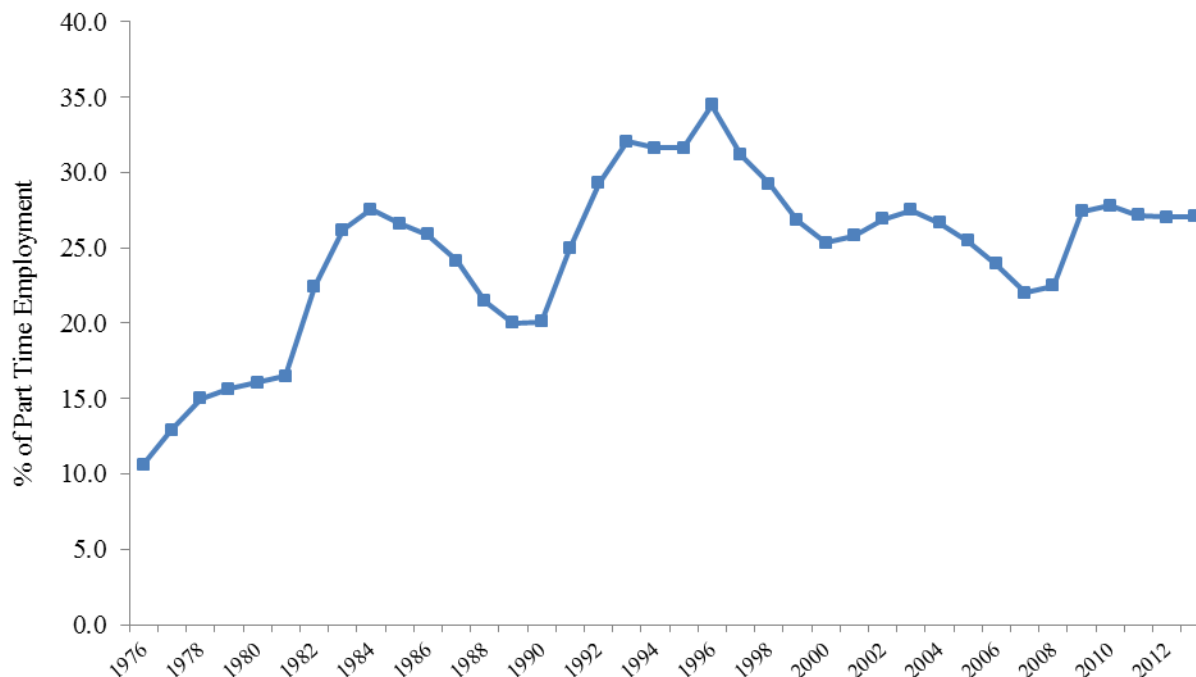
Figure 9: Part time Employment as a share (percent) of all employed, 1976-2012



Source: Statistics Canada. Table 282-0002 - Labour force survey estimates (LFS) annual CANSIM (database).

Fortunately, Labour Force Survey (LFS) questions have been asked of part-time workers since 1976 as to why workers were working part time and in 2014 (the latest figure) the data shows that 27.3 percent (nearly a third) of part-time workers stated that it was due to an inability to find full-time work (Statistics Canada, 2015). This figure is roughly consistent with the average since the 1990s, and part of a trend that has been growing from a low of 10% in 1976 to a high of 35% involuntarily employed part-time in the mid-1990s (see Figure 10).

Figure 10: Share of Involuntary Part-Timers as % of Part-time employment, 1976-2012

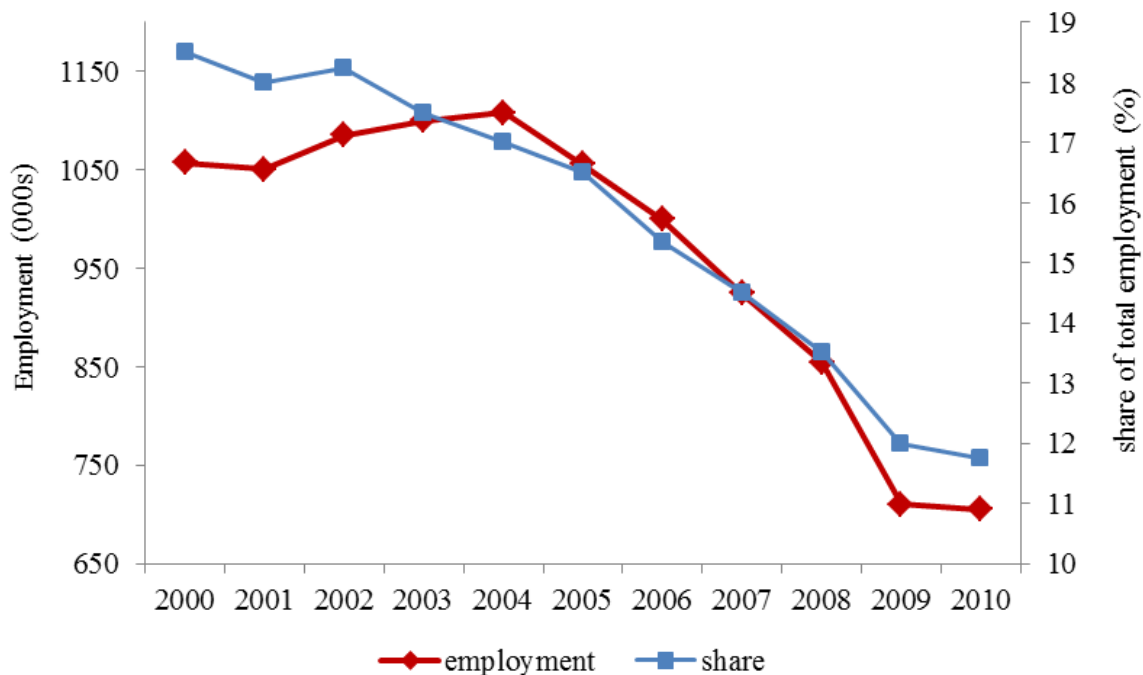


Source: OECD. Data extracted on 16 Nov 2015 23:37 UTC (GMT) from OECD.Stat

Recent Shift in Industry Trends, 2000-14

Another major shift and with great importance in an Ontario context, and (indirectly) linked to the rise of the unrepresented worker, has been the fall of manufacturing employment and consequent rise of service sector employment. By 2010, nearly 80 percent of the workforce was employed in service sector jobs whilst only 12 percent were located in manufacturing (Ministry of Training Colleges and Universities, 2010). The largest increases occurred in health care and social assistance (9.3 percent to 11 percent of total employment).

Figure 11: Decline of Manufacturing Employment in Ontario, 2000-2010

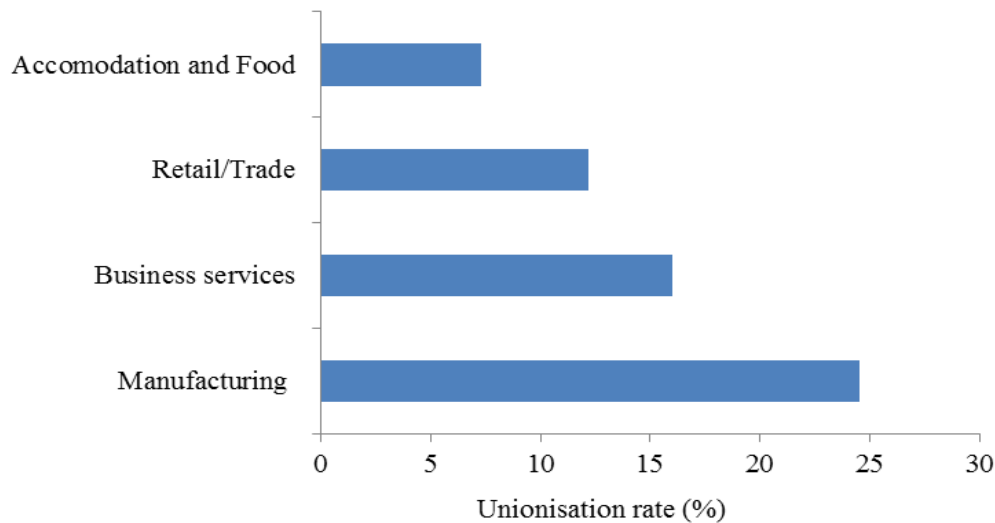


Source: Statistics Canada, Labour Force Survey 2010, January-to-June averages.

As a traditional source of union strength in the private sector, the significant decline of manufacturing jobs in Ontario over the past decade⁹ (see Figure 11 above) does not auger well for the traditional model of trade union representation, based as it is on attaining a majority of support in the workplace and sustaining that support via the adversarial nature of trade union representation. In Ontario the unionisation rate in private service-producing industries such as accommodation and food, business services and retail is in some cases three times lower than that observed in private manufacturing (see Figure 12 below).

⁹ What is of special relevance for Ontario is that although manufacturing employment decline accelerated as a result of the 2008 financial crisis, manufacturing decline was part of a secular trend that began much earlier.

Figure 12: Unionisation Rate across Selected Private Sector Industries in Canada, 2011



Source: Statistics Canada, Labour Force Survey 2011, January-to-June averages.

When we pull these various strands of labour market data together they weave a pattern that for the most part is consistent with the story heard on main-street concerning the ‘new world of work’. As compared to the late 1970s/early 1980s, workers today are more likely to be self-employed (with about a quarter of them involuntarily so), working in part-time jobs (with about a third involuntarily so) and working in service sector jobs that in most cases have, in the private sector at least, significantly lower levels of union representation. It seems that we are indeed charting a new course in labour market trends –away from stable employment relationships to less stable ones -- at least as compared to where we were forty years ago. But this “new course” may in fact be returning Ontario to a pre-war age of threadbare labour protection, not because employment regulation has been weakened but precisely because it has not been modernised.

1.3.2 A Made in “Ontario Framework” for Possible Employee Representation Schemes

To summarize, since the early 1980s a gap has emerged in union representation amongst Canadian and Ontario workers. Though not as large as that which exists south of the border, Ontario stands on the low end of union representation nationally and in

the private sector in particular and is facing an even wider gap brought about by the demise of manufacturing employment and the traditionally strong presence of unions in that sector. There is suggestive evidence, shown in the data above, that if this report were being conducted ten years from now, that the trends outlined above will not likely abate but instead continue.

But these empirical judgements do not in themselves justify the added conclusion that major new policy changes are warranted in order to facilitate the spread of alternative systems of worker representation and collective voice. A different conclusion might be read into the decline of unionisation, the resistance of trade unions by many employers and by the continued demand (though largely unmet) by workers in this institution. Perhaps the solution lies in doing nothing and letting traditional collective bargaining in Ontario run its natural course, i.e., towards a U.S style decline (Troy, 2000). Or perhaps, viewed from the other end of the spectrum, the solution lies in the shoring up of existing labour institutions and enforcement of labour laws already on the books, so as to facilitate a rebound in traditional union representation in sectors that are now under-represented; i.e., this is essentially the view of some prominent labour economists (Weil, 2007).

Within the scope of this report I shall not address all of the pros and cons of collective bargaining nor the contrasting views stated above. However, some brief observations would be useful concerning the contending views surrounding Ontario’s version of the Wagner Act Model (WAM), if only to provide a frame of reference for some of the other important voice alternatives, within a North American labour market context, that could help fill the vacuum left by the decline in traditional union representation.

2. THE ONTARIO WAGNER ACT MODEL (OWAM): SUCCESSES, FAILURES AND THE NEED FOR REPRESENTATION “INFILL”

2.1 Why Regulate Workplace and Employee Voice At All?

We need to distinguish between two sources of possible confusion with regards to the question of whether or not traditional collective representation is working as it should or is in need of reform.

2.1.1 Why Free Markets Can Sometimes “Fail” To Provide Adequate Voice

There is first the global question of whether or not workers are entitled to voice in the workplace and whether we need some form of legally bounded representation system, be it through union majority representation or some other form, to enshrine that voice for workers. This question gets to the heart of whether we believe trade unions or any other legal regimes act as impediments to more naturally forming outcomes (e.g., voluntary recognition and indigenous non-union representation systems). In other words, before discussing the relative merits of labour law reforms, a fundamental question needs to be asked regarding the nature of any policy intervention, i.e., why intervene at all in the market economy? After all, the free-market model stands in opposition to policy intervention in most realms on the basis that markets are generally competitive (regulation therefore reduces welfare), that the appropriate definitions of equity and voice are supplied by the market (so there is little need for regulation) and that individual freedom is more valuable than any other goal (regulation is, therefore, an unwarranted violation of property rights).

In practical terms this means that consumers should be free to maximize utility and firms should be as unconstrained as possible when maximizing profits. Moreover, under such a system, maximum managerial discretion is not considered an unfair advantage which is held over workers, since it is ultimately the discipline of the market place which guards against malevolent and inefficient managerial behaviour. Workers, in a laissez-faire system are mobile, and hence, will simply vote with their feet by choosing good employers over those that are bad. Consequently, bad employers are forced, at the pain of extinction, to adopt more inclusive and more humane labour practices in order to attract high quality workers.

There is a problem, naturally, with the above conception of the economy. The theoretical employee can, it is true, engage in a personal cost-benefit analysis before terminating the employment relationship. In theory, the employee, on the basis of the most personally beneficial outcome, can then decide whether to stay or leave his or her employer. Firms, on the other hand, are faced with a slightly more complicated internal decision making process. Firms - and here one has to make a distinction between the modern corporation as distinct from its early capitalist variant - are composed of many

owners (stockholders) and many individuals (workers and managers). Moreover, these individuals often work within highly bureaucratic and regulated environments. Under conditions such as these, a non-market and internal system of corporate governance is often required to ensure that workers remain committed to the organization’s goals and that managers and CEO’s are attune to the long term viability of the corporation. Such a system is also needed to ensure that resources are allocated efficiently in the rest of the economy. The presence, however, of an internal non-market decision making structure, undermines the “market-discipline” rationale for the maintenance of maximum employer discretion over not only the conditions of work, but also over the whole range of corporate decision making processes.

This state of affairs is not new. The quotation taken below, from a not entirely likely source and written almost 150 years illustrates the classic “political-economic” rationale for state intervention in the market place:

Even in the best state which society has yet reached it is lamentable to think how great a proportion of all the efforts and talents in the world are employed in merely neutralising one another. It is the proper end of government to reduce the wretched waste to the smallest amount possible by taking such measures as shall cause the energies now spent by mankind in injuring one another or in protecting themselves from injury to be turned to the legitimate employment of human faculties, that of compelling the powers of nature to be more subservient to physical and moral good. (Mill, 1920 (1849): 979)

In modern terminology, the elimination of *deadweight loss* – activity dedicated to unproductive purely rent-seeking ends – is viewed by even mainstream economists as providing the most coherent (economic) justification for interventionist public policy. Although J.S Mill believed in some form of limited state involvement as early as 1848, the notion that co-ordinated government intervention could simultaneously enhance efficiency, enhance liberty and improve equity took nearly a century to gain widespread support. It was not until the Great Depression in the 1930s that professional economists and policy makers came to accept the “heretical” arguments of John Maynard Keynes made in the *General Theory of Employment, Interest and Money* (1936).

The *General Theory* argued that economies did not naturally move towards full employment in both labour and capital labour markets. This meant that as a “corrective mechanism” for bad employer behaviour the exit option for workers was effectively off the table and governments, through legislation, regulation and other means (such as direct state control in some cases) had to step in to fill the void left by imperfect competition and an underperforming market. The reinforcing effects of Keynes arguments and the wartime experience stimulated in Canada a progressive growth in the size and scope of government involvement in the economy and in regulatory innovations that continued fairly unabated until the 1980s.

Living in the shadow of labour laws drawn up more than half a century ago, we are therefore perhaps unaware, or have simply forgotten, the impetus that drove past generations to create a system of legislated union rights and responsibilities in the first instance -- e.g., the turbulent and often violent labour strife that came with a lack of statutory protection. It was this legal vacuum and consequent lack of enforcement powers that created the preconditions for violent recognition strikes, wild-cat walkouts and lockouts etc. Ultimately, this industrial chaos spurred the entry of “a visible hand” in the labour relations realm through PC1003 and the various provincial variants of the federal labour relations act (LRAs). This history, I would hope, is self-evidently clear and explains why we are talking about the best “forms” of representation and not the “fundamental” question why representation is still required.

2.1.2 Instrumental and Rights-Based Rationales for Policy Intervention on Employee Voice Provision

The second area of possible concern over the use of public policy (as opposed to just letting the market operate freely) to promote employee representation systems is on what basis can we place “employee voice” on the same plane with other objectives such as efficiency or traditional concerns over equity? There is a lengthier answer to this question provided below, which invokes the model of equity, efficiency and voice proposed by advocates of the pluralist industrial relations paradigm (Budd, 2004), but at its most basic, the public policy rationale supporting workplace voice provision rests on several foundations that invoke the need for human self-determination in the realm of

work if only to promote the healthy, psychological development of workers as human beings (Hodson, 2001).

There are also the instrumental and rights-based arguments for the promotion of information sharing and consultation. Management scholarship has long stressed the value of policies that encourage information exchange and consultation (Hackman and Oldham, 1980). In pluralist IR scholarship, consultative participatory mechanisms at work can also serve as training grounds for broader civic engagement (Bryson, et al, 2013) by creating citizens who value participation (Pateman, 1970).

A second instrumental reason is that employee voice at the workplace is critical for enforcing legislated labour standards, such as working time regulations, health and safety etc., Relying on information disclosure and self-monitoring by employers is largely ineffective for enforcing workplace laws while labour ministry oversight and inspection is highly costly and reactive. What is seen as a preferred method of enforcement in the literature is having strong supportive voice mechanisms for employees that are at least partially independent of their employers (Rogers and Streeck, 1995; Weil et al, 2006). With the proper legal supports, workplace centred committees can provide the needed monitoring mechanism to enhance the enforcement of many existing employment standard laws, while also helping to tailor these regulations to the needs of particular workplace (Rogers, 1995; Weil, 2005).

The final rationale for employee voice is value-based and comes from the belief in the value of self-rule being an essential part of being human and hence a fundamental human right (Adams, 1991, 2008). This ability for self-expression and self-determination should, according to the human rights view, not cease once we pass through the doors of our workplaces.

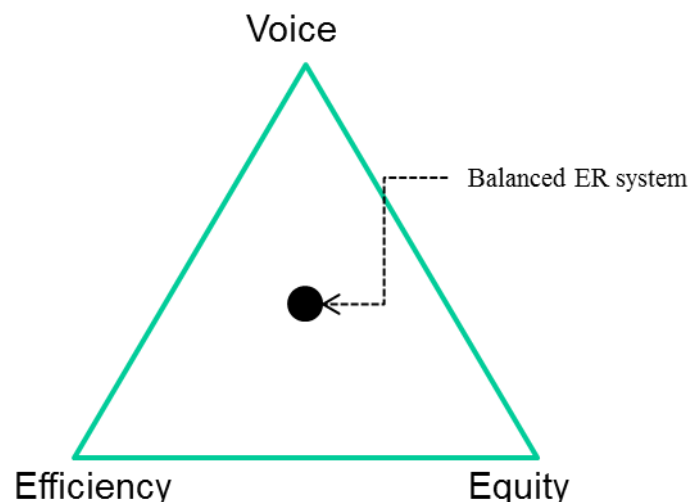
In sum, the instrumental and human rights-based arguments for employee voice posit that such forms ultimately are supportive of an economy, citizens and of democracy. Employee voice at work, however, is not typically produced naturally in a market economy given that most firms are not faced with perfect market competition and instead have considerable market power. Firms are also largely run autocratically, so if autocratic rule produces negative spillovers into society as a whole then there can be a productive role for state action to promote employee voice and participation.

2.2 Equity, Efficiency and Voice as the “Standard” Benchmark

There is a tradition in the “pluralist” industrial relations literature which argues that the objectives of the employment relationship can be boiled down to three elements: efficiency, equity, and voice (Budd, 2004; Budd, Gomez and Meltz, 2004). *Efficiency* is the effective, profit-maximizing use of scarce resources and captures concerns with productivity, competitiveness, and economic prosperity. *Equity* entails fairness in both the distribution of economic rewards and the administration of employment policies. *Voice* is the ability of employees to have meaningful input into workplace decisions both individually and collectively.

Efficiency is therefore a standard of economic or business performance; *equity* is a standard of treatment; and *voice* is a standard of employee participation. All are equally legitimate and must be balanced in the pluralistic framework (Budd et al., 2004) in order for the system to survive over the long haul (see Figure 13). This balance can be achieved in a full employment economy by workers voting with their feet and choosing better working conditions, but in practice it is achieved through a combination of economic conditions and the right mix of public policies and laws. To this end, we define efficiency, equity, and voice in terms of national employment relations systems.

Figure 13: Conceptualising ER Systems using the equity, efficiency and voice model



Source: Budd (2004) and Budd, Gomez and Meltz (2004).

An efficient employment relations system is one that conserves scarce resources, especially time and money and which also enhances productivity (both of labour and the firm). Systems that are slow and take a long time to produce a resolution are inefficient; systems with shorter timeframes that produce a relatively quick resolution are efficient. Similarly, employment relations systems that are costly are inefficient. Costs can stem from various features of a system such as complex legislation requiring the need for high-paid experts or the involvement of numerous participants. For workplace employment relations systems, another aspect of efficiency is the extent to which the system fosters productive employment. Reducing the frequency of strikes or providing latitude for effective managerial decision-making are elements that promote this aspect of efficiency. Costs might also be non-financial—an employment relations system may foster disrupted social relations between employers and employees. These non-financial costs may, in turn, negatively affect organizational efficiency and national competitiveness.

Equity in the context of an employment relations system is a standard of fairness and unbiased decision-making for employees and also an equitable sharing of productive gains between capital and labour. Equity also requires that employees in similar circumstances should receive similar treatment and face similar, though not necessarily identical, resolutions. Moreover, an equitable employment relations system treats the individual employee with respect, sensitivity, and privacy. Equity also includes the existence of safeguards—such as the ability to appeal decisions—and transparency to prevent arbitrary or capricious decision-making and enhance accountability. An equitable employment relations system also has widespread coverage independent of resources or expertise and is equally accessible irrespective of gender, race, national origin, or other personal characteristics.

The voice dimension of employment relations systems captures the extent to which individuals are able to participate in the operation of their workplace and over how to structure their jobs and the day-to-day facets of work. This dimension includes important aspects of due process such as having access to a procedure for settling disputes should they arise between employer and employee. Voice can also include the extent to which individuals have input into the construction of the dispute resolution

system itself and into specific resolutions. As equity and voice might both be casually described as fairness or justice, it can be tempting to combine the two dimensions. But equity and voice are different and require separate analyses. The equity dimension focuses on outcomes whereas the voice dimension focuses on participation as good in and of itself. An employment relations system can be equitable (by producing unbiased outcomes or by generating a fair sharing of economic gains between labour and capital) but lack voice, or can include voice but be inequitable. For example, a system in which a neutral, just decision-maker decides disputes unilaterally could have a significant measure of equity, but it will lack employee voice. This distinction becomes particularly important in analyzing employment relations systems in non-union settings where the question arises of how to categorize a potentially benevolent employer, who treats employees very well, yet dislikes unions and retains strong control over the process and outcome of any complaints or disputes.

Finally, it is important to note that the equity, efficiency, voice model (E-E-V) differs from an alternative (yet seemingly similar) approach for comparing ER systems: the use of distributive and procedural justice concepts. Efficiency, however, is not well captured in the distributive and procedural justice framework, yet is arguably a vital consideration in evaluating the functioning of an ER system. Moreover, distributive and procedural justice focuses on how individuals are treated in terms of outcomes *and* process. In the E-E-V framework, equity captures how people are treated (outcome-wise and procedurally) whereas voice captures participation. In a procedural justice framework, individuals participate to the extent that this promotes fairness. In the E-E-V model, voice means that individuals participate *because* participation is intrinsically important, regardless of the outcomes. In some models of procedural justice, procedural justice can be achieved unilaterally whereas this is never the case with voice in E-E-V.

2.3 Is the Wagner Act Model (WAM) Model of Representation the Best (and Only) System for Ontario’s Workers and Employers?

To its proponents, collective bargaining via majority trade union representation is the only mode of employee representation which best serves the interests of employers and employees. For workers it does two things: First it i) secures a measure of *protection*

from employer malfeasance and the volatility of the labour market i.e. it ensures fair wages and benefits and prevents arbitrary and unfair treatment on the job). In the parlance of modern organizational theory, trade union representation at the level of the workplace ensures both *procedural* and *distributive* justice¹⁰ (Leventhal, 1980) and does so in a way that does not tax the resources of the state in terms of direct enforcement, but rather allows the parties involved – the employer and union – to negotiate a deal that best fits their collective interests. Second, the Wagner Act model ii) secures these procedural and distributive protections for workers through a process of employee *participation* where workers begin by first choosing their union, electing their union officials, contribute to the bargaining agenda, accept a contract or choose to go on strike, and then settle any on-going individual disputes through an internal grievance system. For employers, Wagner style systems do shape and constrain the provision of voice inside firms -- by enabling workers to form an independent trade union and hence pool individual bargaining power so as to extort greater leverage vis-a-vis the firm. However, labour law in decentralised systems like that which prevails in Ontario, does not dictate substantive solutions to workplace problems. Instead it expressly allows – within some prescribed latitude – parties in each individual firm-union relationship to sit down and devise their own voluntary responses to their particular concerns. This is based on the belief that the parties themselves are best at deriving long-lasting solutions that they can live with. The Wagner model does this through measures that can be specifically tailored to individual needs and priorities and which can be revised or discarded as the situation changes.

However, the Wagner model has its critics. In terms of criticisms of the Wagner model they arise from three sources: *market driven critiques*; *progressive critiques* and what I characterise as *pragmatic critiques*. We look at each in turn.

2.3.1 ‘Market-driven’ Critiques of the Wagner Model

On the market driven (neo-liberal side) of the political spectrum the North American collective bargaining process has lost much of its allure. In large part this is because

¹⁰ Distributive justice is generally related with specific material outcomes (e.g. fairness of pay). Procedural justice refers to the transparency and fairness of policies and practices at the workplace as opposed to the outcomes. It predicts more general evaluations of organizations or their representatives (e.g. overall job satisfaction).

unions are typically seen as large, remote, bureaucratic organizations that foster adversarial rather than cooperative solutions. The image typically conjured up is not an active member-run activity but rather an externally run entity directed by distant officials. There is some empirical evidence to back this up. Ten unions, representing 4.7% of the overall number of national and international unions, have memberships over 100,000, and account for 51.4% of union membership. On the other hand, 153 unions, representing 71.8% of national and international unions, have fewer than 10,000 members and account for 8.1% of union membership. In such a large union context, there is inevitably less direct participation afforded employees in their own bargaining, and the process itself addresses a limited slice of the concerns which employees have on the job. And to the extent that the focus of the union contract has evolved into how best to protect employees from arbitrary and unfair employer actions, it leaves out opportunities to enshrine employee engagement and contribute positively to the success of the enterprise. For many present-day employees – especially the so-called “creative class or knowledge worker” -- such a union movement simply does not square with their own experience or self-conceptions.

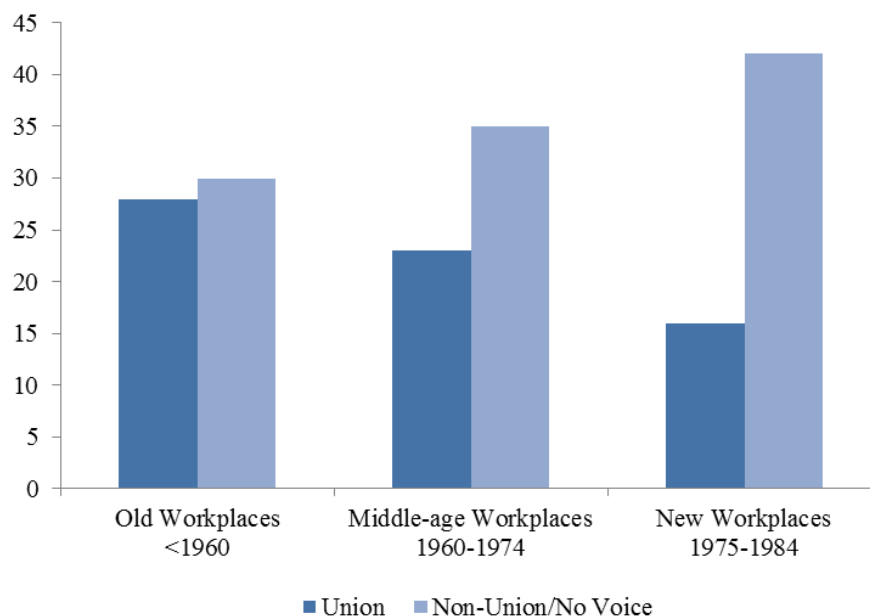
And from the point of view of employers, the North American economy has undergone massive shifts in terms of technological advancements and liberalisation of markets. This has increased the pressure for continual flexible adjustments amongst individual firms and perhaps explains why, in part, top managers see national unions as organizations which are even more insensitive to the operational needs of the modern firm than they are to the concerns of the new breed of workers. Firms complain that unions stick rigidly to the language of contracts which may run, given time, over 1000 pages in length and whose terms have become as outmoded as the technology and product markets that existed at the time the contract was first drafted. This also partly explains why new firms are largely unorganized in Wagner style systems that depend on individual workplace organizing.

Compounding this effect, if new firms are disproportionately concentrated in the knowledge sector, the absence of collective voice is even larger still. In work conducted with UK data using the Workplace Employment Relations Survey (WERS) -- a representative panel dataset of UK workplaces employing 25 or more employees since

1984 – it was found that one of the strongest predictors of whether a firm has traditional collective representation was its set-up date, i.e., the year in which the workplace was first established (Willman, Bryson, and Gomez, 2006). Willman et al (2006) took the earliest year and looked back at the set-up-date of every workplace and coded it into three periods: set-up prior to 1960, set-up 1960-1974, and set-up 1975-1984.

As displayed in figure 14, one can see that the prevalence of union-only representation declines for firms set up most recently (in our case closer to 1984). In firms set up prior to 1960, nearly one in three workplaces (28 percent) collectively bargained with their employees. For firms set up between 1960-1974 the incidence of collective bargaining had fallen to one in six workplaces (16 percent). At the same time, the incidence of workplaces offering indigenous non-union forms of voice or no voice at all was nearly fifty-percent greater for the most recent cohort of firms as compared to the oldest cohort in the group (42 versus 30 percent).

Figure 14: Union versus Non-Union Voice in Workplaces by set-up date, (1984 as base)



Source: Authors' calculations based on British WERS survey, 1984.

2.3.2 ‘Progressive’ Critiques of the Wagner Act Model (WAM)

To critics on the more progressive side, such as Adams (2006; 2008) and Weiler (1990) to name but a few, WAM is sorely outdated in the context of 21st century labour

relations. Requiring employees to certify an exclusive agent via a majoritarian scheme in order to acquire effective bargaining rights, including the right to strike, is a format that is seen as having thwarted the advancement of collective representation for more than three decades (Adams, 2008).

At first blush the progressive critique of WAM can appear a bit paradoxical. To understand the progressive critique a little more clearly, however, one has to step back and see that despite admiring many of the provisions that the Wagner model has afforded workers – e.g., , the requirement that “employers bargain with unions in good faith and to refrain from committing unfair labour practices;” the granting of “legal status to collective agreements,” and ensuring “the mandatory adjudication of workplace grievances;” and establishing “neutral labour relations boards and arbitration tribunals made up of expert adjudicators”(Lynk, 2014, p.79) – progressive critics also understand WAM’s many limitations.

Specifically, the all-or-nothing adversarial nature of the WAM model incentivises non-union employers to institute policies designed to ensure that less than 50% of relevant employees will ever support unionization. Moreover, over time, employers have become increasingly skilled at that task, meaning that new union organizing becomes next to impossible. When unionized enterprises shut down (as many have, for example, in manufacturing) and are replaced by new non-union operations (in, for example, retail and high-tech industries) union density falls and the collective bargaining coverage rate declines as it has almost continuously done for the past several decades. (Adams, 2006).

2.3.3 ‘Pragmatic’ Critiques of the Wagner Act Model (WAM)

According to what can best be characterised as the ‘pragmatic critique’ of union representation in the WAM mode, the deficiencies arise because the certification system (whether by card check or elections) will, by design, only ever serve a small portion of workers. The exclusive representation and winner-take-all approach satisfies only two out of seven categories (see Box 1) of union and non-union workers with different representational preferences.

The “winners” are those who successfully exercise their choice to be either unrepresented or represented by their most preferred union. All others are “losers.” The fact that only two of seven theoretically constructed groups of workers have their interests served by WAM certification buttresses this view (Harcourt and Lam, 2007). In deriving the seven worker categories, authors such as Harcourt and Lam (2007) distinguish between unionism and worker representation, more generally, which can involve non-union forms of representation.

The seven categories provided by Harcourt and Lam (2007) are broken up into two meta-groups: the organized and unorganized. The organized comprise four groups: those represented by the “right” union, those represented by the “wrong” union, those favoring a non-union representative, and those favoring no representation at all. Only the first of these four actually gets their preference from certification. The unorganized comprise three groups: those favoring union representation, those favoring non-union representation, and those favoring no representation. Only the last of these three groups actually exercises their choice in the WAM systems (See Box 1 for details).

Box 1: Who gets what they `want` from the existing Wagner Model of Representation?

Group 1: Organized Workplace and Represented by the “Right” Union: The first group encompasses workers in organized workplaces who favor the incumbent union over any other unions. It is one of only two of the seven groups fortunate to be afforded their representation choice in majoritarian certification systems. However, even members of this group are disadvantaged in that they cannot easily replace the incumbent union, if their preferences shift to another union. Workers represented by the “right” union are also potentially adversely affected by internal conflicts, involving people who do not want the union and/or did not vote for it. Intra-union conflicts can be particularly serious in crisis situations such as strikes.

Group 2: Organized Workplace but Represented by the “Wrong” Union: The problem for this second group of workers is that they want to be represented by a union just a different union from the one they presently have. They belong to an organized workplace, but the union which represents their interests is not one they prefer. Granted not many workers in the overall workforce feel this way. Freeman and Rogers (2006, 22) found that at most one in five (between 23 and 27 percent) of workers in two separate surveys were dissatisfied with their union. Diamond and Freeman (2001, 3) found that only 10 percent of surveyed union members would go so far as to not recertify their union in a representation election. No doubt, many workers in this group would want to retain some form of union representation, even

from the “wrong” union, because the alternative involves no representation at all. In principle, union members in the “wrong” union can attempt to change it to better reflect what they prefer in the “right” union. This should be possible; unions are democracies, after all. In practice, however, union locals conform to the constitutions, conventions, and rules of their national or international parents, and so there is limited scope for internally driven change. Centralization in unions has been criticized for lowering union commitment by hindering communication and diminishing the awareness of, and responsiveness to, rank-and-file problems, interests, and needs.

Group 3: Organized Workplace but Want a Non-union Representative: Some workers in organized workplaces want representation, but not necessarily a union. Freeman and Rogers (2006) note that U.S. workers do prefer representation, but desire for representation is not the same as desire for unionization. In their 1994–1995 survey, they found that, if given a choice, 52 percent of workers would select non-union workplace committees over unions (p. 25). Moreover, these same authors report, based on a 2001 Hart Survey, that 78 percent of workers would vote for a non-union employee association to represent their interests, with 35 percent specifically preferring an association over a union (p. 26). Non-union voice channels are seen as having a number of advantages, including a less adversarial relationship with the employer, greater membership flexibility, more direct representation at the workplace level, and greater ease in setting them up because of their informality. Organized workers with a preference for non-union representation are clearly worse off in the US version of WAM than in the Ontario system (and the rest of Canada for that matter) because traditional procedures in the US provide no opportunities for certifying labor organizations which are not independent labor unions. Most forms of non-union representation are potentially unlawful. In Canada, because non-union voice is neither banned nor encouraged, a representative group of employees without formal certification can legally negotiate with their non-union firm over the conditions of employment including wages and benefits (Taras 2006; Taras and Kaufman 2006). In the United States, a series of decisions and interpretations of Section 8(a)(2) of the National Labor Relations Act (LeRoy 1997, 2000, 2006)—most notably *Electromation Inc.* (Brickley 1992)—have limited the scope of non-union employee representation systems. Having said this, it does appear – in work conducted by Campolieti, Gomez, Gunderson (2013) and in keeping with several union-avoidance “faces” of the non-union function –that the presence of non-union voice systems reduces the total demand for unionization (which includes the unmet or frustrated demand of non-union workers and also the oversupply of union workers). The substitution effect proves to be stronger in Canada than in the US.

Group 4: Organized Workplace but Workers Do Not Want a Representative: These workers belong to an organized workplace and are part of a bargaining unit, but would prefer not to have any kind of representation. This is sometimes referred to in the literature as the oversupplied union worker. Survey results from Diamond and Freeman (2001, 5) and Freeman and Rogers (2006, 20), respectively, suggest that only 10 percent and 13 percent of union members would vote against their union in a

representation election. However, this does not necessarily mean that they do not want participate in decisions of some kind. Representation may just be seen as not worth the time or money, especially if workers are confident about influencing management more directly and informally. Alternatively, they may trust management to protect worker interests because of an established record of doing so in the past. They may also identify with management for personal and/or career reasons. For instance, they may be friends or relatives of managers, or view themselves as managers or as potential managers in the future.

Group 5: Unorganized Workplace but Workers Want a Union: The essential problem for these workers is that they work in an unorganized workplace, but would prefer to be represented by a union. This is not a small problem. Several researchers have identified a wide gap between the percentage of workers saying they want union representation, on the one hand, and the percentage saying they want it and actually already having it, on the other. How wide is this representation gap? The gap is generally narrower for older and wider for younger workers.

Group 6: Unorganized Workplace but Workers Want a Non-union Representative: The sixth group of workers are not in an organized workplace, are not interested in being represented by a union, but do want a non-union representative. Verma, Kochan, and Wood (2002, 377) estimate that, even though some 30 to 40 percent of North American workers report favoring traditional union representation, "twice as many want other forms of voice at work which do not entail the risks of a strike or employer retaliation and resistance encountered in traditional union organizing drives."

Group 7: Unorganized Workplace and Workers Do Not Want a Representative - This is the second of the two fortunate groups afforded their representation choice under the North American certification system. They work in non-union workplaces without any kind of representation, and prefer it that way. Their problem, as with the other favored group under WAM model, is that they cannot easily opt to be represented, if their preferences change. As has been noted already, certification is a lengthy, complex, expensive, and often insuperable process, especially in the U.S., and other forms of representation are available only at management's discretion.

Source: Mark Harcourt and Helen Lam, "Union certification: A critical analysis and proposed alternative," *WorkingUSA: The Journal of Labor and Society*, Vol. 10, No. 3 (August 2007), pp. 327-345.

In short, even for workers who could be potentially served by union representation in the WAM, the rigid system of certification will not easily let them access what they "want" at work. In this pragmatic critique Wagner style systems are: "...akin to a political election in which the electorate is permitted to vote only once, as if people's preferences are forever set in stone. [...] Certification makes unionism a take-it-or-leave-it choice for the

entire bargaining unit, with little regard for the increasingly diverse workforce, their divergent interests, and their diverse preferences for different kinds of representation” (Harcourt and Lam, 2007, p.329).

The pragmatists therefore believe that WAM certification systems have fundamental flaws; they not only neglect individual and minority rights in favour of collective rights, they also rarely fulfil the needs of the majority.

2.3.4 Assessment of Critiques

These, in any event, are the critiques of contemporary collective bargaining in the WAM context. There is clearly validity in some of these critiques – on all three sides of the ledger -- which is why possible changes to the nature and orientation of collective representation have been proposed by many of the critics cited above. It should be immediately added though, that it is always easier to detect in any current set of institutions – in this case Ontario’s Wagner style system of collective representation – the defects rather than to propose better versions.

There is also something of a ‘straw man’ critique of traditional unionism at work in that many critics (mostly on the right of the political spectrum) will use this as a justification for the union’s complete demise. But if we expand our gaze we would see that no human institution performs at anywhere close to its full potential – certainly not private corporations, the banking system, governments, health care providers, etc., -- yet no one suggests that we would be better off without any of the latter (actually in light of the recent Global Financial Crisis and corporate scandals involving prominent companies such as VW and BP more than a few people might actually feel that way about private industry). The real question that must be asked about collective bargaining is whether any alternative institution would do a better job of affording employees both the *protection* and *participation* that they still need and require.

To that end, this half of the report ends with a list of key accomplishments and benefits of the Wagner model -- e.g. Improved wage and working conditions, reduced employee turnover; reduced economic inequality; health and pension benefits, giving voice to workers in the formulation of government policies, protecting workers inside the workplace through mechanisms such as grievance procedures and due-process with

respect to the possible arbitrary and capricious treatment on the part of management and other policies impacting the workplace -- as well as how existing collective bargaining approaches can impact historically vulnerable groups in the labour market, including women, racialized minorities, new Canadians, migrant workers, aboriginal people, and people with disabilities.

Any alternative employee representation options for representing workers in Ontario should meet, at a minimum, the accomplishments of the WAM system.

2.4. Major Accomplishments of the OWAM System that Should be Preserved Under any Alternative Representation System

2.4.1 Overall benefits of existing WAM model of union representation

It is now just over thirty years since the publication of *What Do Unions Do?* In that book Freeman and Medoff (1984) outlined the various effects that unions imparted on workers and workplaces in a North American context. The picture painted was at odds with much of the prevailing economic wisdom. On the whole, on both efficiency and equity grounds, the authors found that unions outperformed the non-unionised sector in every dimension (see below) save for profitability (firms with unions not surprisingly redistribute rents away from capital to labour and thereby lower returns for owners/shareholders). In terms of a whole host of outcomes (see below) unionised workers and firms were better off than their non-union counterparts.

- wages and benefits paid to workers (i.e., pension provision)
- training and turnover
- health and safety outcomes,
- employment equity and distributional fairness,
- provision of family friendly policies¹¹;

¹¹ This was not originally featured in the Freeman and Medoff (1984) book but subsequent analyses by Fernie and Gray (2002) have shown that equal opportunities policies and their monitoring, together with 'softer' family-friendly policies are strongly associated with trade union recognition; this despite the fact that many of these provisions are mandated by law for all workers. It seems that the intended and actual provision of laws itself very much depends on who is “minding the shop floor”.

Lest we view this as an aberrant snapshot of the last vestiges of union impacts in early 1980s, twenty years after the publication of the Freeman and Medoff (1984) volume the *Journal of Labor Research* commissioned a series of papers that in many respects -- albeit not without some criticisms especially over the nature of the union productivity effect – the books essential findings stood up to both the vagaries of time and improvements in data and econometric techniques. The one area that is more contentious now than it was 20 years ago is in the labour productivity effects of unions since it is very difficult to disentangle productivity affects attributable to union presence *per se* from the associated likelihood that unions are more successful in organizing highly productive workplaces to begin with.¹²

2.4.2 Unions and Reductions in Inequality

One of the areas highlighted in the Freeman and Rogers book and which is now – especially in the wake of Picketty’s 2014 bestselling book *Capital* -- often seen as affecting society as whole and not just unions or the workplace *per se*, is wage inequality (Metcalf, Hansen and Charlwood, 2000). Dispersion in pay is lower among union members than among non-unionists. This reflects two factors. First, union members and jobs are more homogeneous than their non-union counterparts. Second, union wage policies, within and across firms, lowers pay dispersion. Unions' minimum wage targets also truncate the lower tail of the union distribution. There is a major consequence of all these egalitarian union wage policies: unions compress the wage structure by gender, race and occupation (Piketty and Emmanuel, 2003).

And why should inequality be seen in such a troubling light? As eloquently stated by Michael Lynk in a special issue of *Just Labour*: “Simply put, because more unequal societies tend to produce greater levels of social dysfunction. They commonly exhibit more crime, higher levels of mental illness, more illiteracy, lower life expectancies, higher rates of incarceration, lower degrees of civic engagement, higher teenage

¹² On the whole, though, the book, according to Colvin (2010): “...was a landmark event in research on labor unions. It challenged existing negative economic conceptions of the role of unions by presenting a two-faced model of unionism in which the negative monopoly face of unions was counterbalanced by a positive collective voice face. For those in the labor movement, this book became a powerful source of academic support for their value to society and the economy. Among academics, WDUD was equally influential, as it encouraged a renewed, more data-intensive and methodologically sophisticated approach to research on unions.”

pregnancy rates, diminished social mobility and opportunities, lower levels of interpersonal trust, lower levels of general health, and weaker social shock absorbers for the poor” (Lynk, 2009).

In several path breaking papers, David Card in the US and colleagues such as Thomas Lemieux and Craig Riddell in Canada have shown the powerful effect that union decline has had on rising income inequality in the US and UK and to a certain extent on the more muted rise in Canada (Card, Lemieux, and Riddell, 2004). In one study looking at the U.S., the U.K., and Canada, Card et al, (2004) find that unions have remarkably similar qualitative impacts in all three countries. In particular, unions tend to systematically *reduce wage inequality*. The authors conclude that unionization helps explain a sizable share of cross-country differences in wage inequality among the three countries. They also conclude that de-unionization explains a substantial part of the growth in wage inequality in the U.K. and the U.S. since the early 1980s.

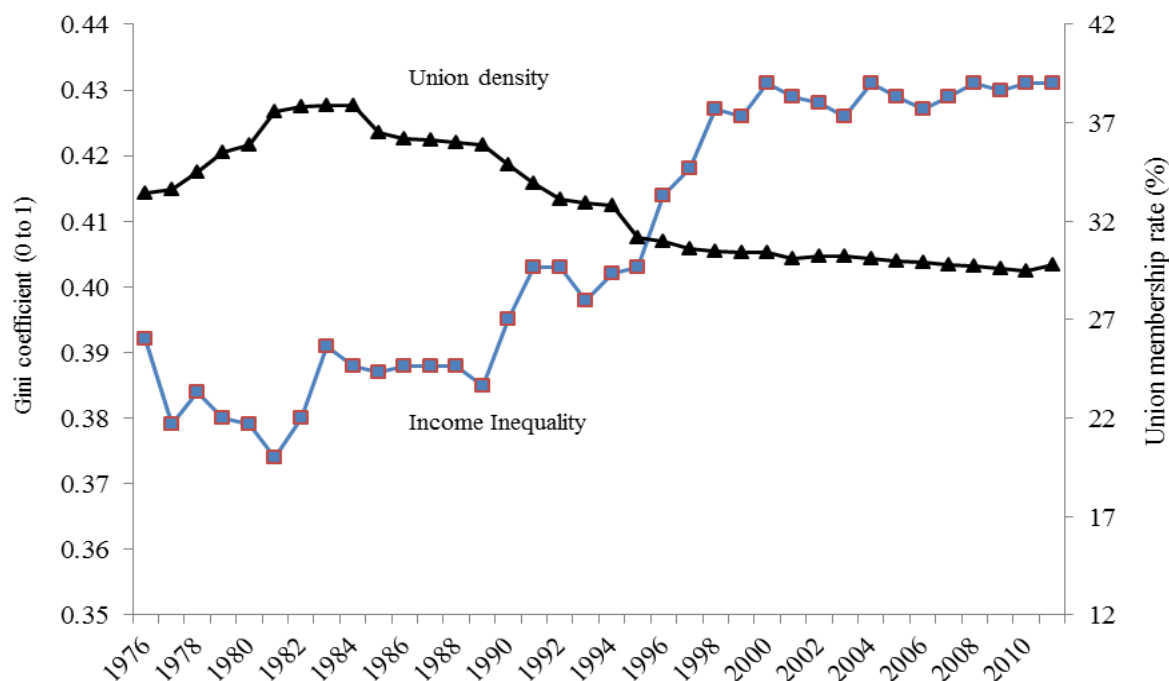
In work with my colleague Konstantinos Tzioumis we also found that unions attenuate the pay of CEOs and top executives. In particular, at the top end of the CEO pay distribution, CEO total earnings are 20 percent lower in unionised firms than in comparable non-union firms. However, there is virtually no difference at the bottom end of the CEO pay scale between executives in the union and non-union sectors suggesting that unions act to reduced “inequality” in top executive pay (Gomez and Tzioumis, 2007).

This link between rising income inequality and declining unionisation is acutely seen in Figure 15 which charts the Gini coefficient¹³ for Canada against the union density rate from 1976 to 2011. Because the Gini index is the most commonly used single summary measure of inequality (Osberg, 2001), and the after-tax total money income of family units is the most common measure of resources, the chart presents trends in the Canadian Gini index between 1976 and 2011. Although the 1980s saw little change in inequality, the 1990s — and in particular the mid-to- late-1990s —

¹³ The Gini coefficient is a number between zero and one that measures the relative degree of inequality in the distribution of income. The coefficient would register zero (minimum inequality) for a population in which each family (or unattached individual) received exactly the same income and it would register a coefficient of one (maximum inequality) if one family (or unattached individual) received all the income and the rest received none. Even though a single Gini coefficient value has no simple interpretation, comparisons of the level over time or between populations are very straightforward: the higher the coefficient, the higher the inequality of the distribution, and vice versa.

showed a strong upward trend inequality, roughly when unionisation began to fall. This graph should not be read as necessarily *directly* causal. It could be that a “third factor” or set of factors (regulatory changes, globalisation, free trade, technological change etc.,) were acting to increase inequality and diminish union strength at the same time. What it does show is that when unions are strong societal inequality tends to be low.

Figure 15: Gini Index of Inequality in Total Income versus Union Membership Rate in Canada, 1976-2011



Sources: Gini data from Source: Statistics Canada, CANSIM table 202-0705. Unionisation data from Statistics Canada, Labour Force Survey, 1999, 2007 and 2012; Labour Market Activity Survey, 1989; Survey of Union Membership, 1984; Survey of Work History, 1981. Data for 1976 are from Lipset and Meltz (2004: Figure 1.1).

2.4.3 Unions and the Enforcement of Existing Employment Standards

What about extensions of statutory benefits currently enjoyed in the unionised sector – such as access to an internal grievance procedure – to the unorganized? Would this not produce a simple and costless way for non-union workers to enjoy the same rights and benefits that are available to unionised workers? It is generally assumed that unless proper enforcement mechanisms are put in place, regulatory changes, in and of themselves; do not translate into corresponding benefits for employees. Even where

statutory laws produce appreciable gains for employees, too often the bulk of these gains are distributed to the better-educated, better paid workers who are thereby better equipped to hire lawyers and can take advantage of any broad ranging legal rights (e.g., wrongful dismissal in common law). There is also a strong body of evidence demonstrating that the actual utilization of legal programmes is sharply tilted in favour of the unionised rather than the non-union worker and workplace.

A recent example of this internal ‘watchdog’ effect is an *Institute for Work and Health* 2015 study of construction industry injury which examined Workplace Safety and Insurance Board (WSIB) claims data between 2006 and 2012 from more than 40,000 construction firms across Ontario. The study shows that unionized workers reported 23 percent fewer injuries requiring time off work than non-union workers. In particular, workers at unionized firms were 17 per cent less likely to experience musculoskeletal injuries (injuries or disorders affecting mobility, especially muscles, tendons and nerves) and 29 per cent less likely to suffer critical injuries (injuries with the potential to place workers’ lives in jeopardy) while on the job.

The factors that might explain the union safety effect include more robust specialized apprenticeships, better safety training requirements for union members; programs and practices that more effectively identify and reduce construction work hazards; ongoing skills training programs that provide a foundation for safer skilled work throughout one’s career; and of crucial importance in the context of this review, greater voice that allows union workers to report (actual and imminent) accidents without fear of repercussions.

The health outcome study is therefore at odds with the aspirations of extending labour law provisions to employment standards in an effort to cover as many workers as possible, irrespective of their union status. It seems that unless workers have some form of representational support located *inside* the workplace – or as part of the employment relationship more generally if workers work from home are employed by temporary agencies -- they will generally lack the knowledge, personal leverage and market resources to ensure that their rights are not being infringed upon, even in a legal regime that is protective of worker interests.

2.4.4 The Important (and Largely Beneficial) Indirect Influence of Union Presence in Wagner style systems

One of the paradoxes of North American unionism in its WAM form is that without setting out to do so, it can seemingly claim significantly more influence on both management decision-making and economy-wide influence through traditional collective bargaining than many European countries with their “sophisticated” works councils and sectoral coordinated systems. An important aspect of this paradoxical “indirect” participation and influence on decisions of management and on the economy at large is that it normally bears on specific, limited areas of decision-making. In other words, it does not constitute an overall evaluation of the managerial decision based on its intrinsic content or broad implications nor, in a North American context, is it founded on ideological options. Union behaviour in the WAM mode is instead based on effects on employee rights and interests in the workplace. As Harold L. Sheppard long ago observed, union influence on management decision making and by implication economy-wide influence is but a “by-product” of the union’s concern over matters directly in *its [the union local’s]* field of responsibility.

The same writer working with colleagues Albert Mayer and Arthur Kornhauser (Kornhauser, Sheppard, and Mayer, 1956) summed up the view that collective bargaining leads and represents a form of direct participation in management and that this is accomplished most effectively by the presence of the union in the workplace via the following four mechanisms:

i) Unlike the continental European system where worker representatives – whether as part of works councils, plant committees, shop stewards – are separated and more or less independent of and even in conflict with the union. In North America the union is “present” in the workplace, everywhere and at all times and as such is in contact with the workers at the level of the workplace issue.

ii) The grievance procedure, which in Ontario is one of the few mandated parts of securing union representation, though admittedly a “reactive” mechanism nonetheless produces an effect on management which tends to “anticipate” worker and union reaction. In so doing, the grievance procedure tends to become a “servo-mechanisms” that effectively “regulates” and “modifies” managerial behaviour in a number of areas.

iii) Following from i) and ii) prior consultation tends to develop endogenously within workplaces in the WAM system even if never mandated in the formal collective

agreement. In some sectors that do have consultation written into agreements it is because prior joint-consultation on major decisions was already established practice in the industry (e.g., pulp and paper).

iv) Collective bargaining in WAM systems deal with a host of “work-related” issues and are normally based on a single enterprise or workplace. As such, problems arising and unresolved during the agreement can be dealt with in contract negotiations at expiration of the agreement.

The above claims offer up a challenge of sorts to any alternative representation system to at least explain how the positive aspects of the WAM model would be met, or at the very least complemented by novel workplace systems of voice and representation.

3.0 EMPLOYEE VOICE AND REPRESENTATION: A CONSIDERATION OF ALTERNATIVE APPROACHES

In this section of the report, I focus on contrasting the existing model of worker representation in Ontario i.e., the Wagner Act Model (WAM) with alternative forms (either in use but not dominant or not available at all to Ontario workers). In so doing, we also will be examining their efficacy in terms of providing genuine voice, economic performance and achieving equity-based objectives such as reduced gender and ethno-racial discrimination.

This discussion and analysis will be augmented with a brief overview of archetypes worker voice and employee representation: i) one representative of the Anglo Saxon model, namely the UK which shares parliamentary and legal traditions similar to Canada’s and relatively flexible labour market regulation; and the others ii) summaries of French, Swedish and German models characteristic of Nordic/continental European approaches, which though having a differing history and tradition of labour relations, nonetheless provide lessons applicable to Ontario.

With this in mind, we’ll move on to a consideration of how the WAM system stacks up with alternative approaches to expanding the scope of worker voice in Ontario, both within existing frameworks of collective bargaining and new models not currently in place within Ontario.

3.1 Approaches to Worker Voice and Employee Representation in Ontario

3.1.1 “Wagner Model” of Collective Bargaining in Public and Private Sectors

Wagner-style statutes which establish the right to collective bargaining on majority employee support for a trade union are, as noted in section 1 and 2 of the report, the prevailing model of employee representation in Ontario. They are also the basis of labour relations legislation in all of Canada’s federal and provincial jurisdictions. This legislation codifies key components of industrial democracy in the province:

- Majority-based certification;
- Exclusive bargaining agent status;
- Defined bargaining units;
- Protection against unfair labour practices;
- Duty of employers to bargain in good faith.

There is little question this model of collective bargaining provides employees with a strong voice in addressing workplace issues including wages and benefits, working hours and scheduling, and health and safety. It also creates a good structure for on-going collaboration between labour and management on concerns regarding workplace HR practices and production processes and systems. Furthermore, many of the provisions gained at bargaining table have since been incorporated into legislation or adopted as standard practice in many non-unionized workplaces; examples include: maternity leave, same-sex benefits, paid vacation and pensions.

This extension of broader workplace protections have also been aided by the major role in advocacy unions have traditionally played in Canada on such issues Medicare, and unemployment insurance. More recently, reflecting demographic changes in Canadian society and their membership, unions have also been strong proponents of policies and programs protecting the human rights of women, racialized minorities and other marginalised communities in the workplace.

Yet, as previously discussed, a combination of structural changes in the economy and a more hostile legislative and business environment have precipitated a major decline in private sector union coverage. The barriers and challenges to

organizing under this workplace model are well documented. From the point of view of societal equity, the lack of worker voice and employee representation disproportionately impacts youth, racialized minorities, recent immigrants and women who are concentrated in sectors of the economy without significant union representation. Additionally, the Wagner model of workplace unionism gives no voice or representation to the growing legions of workers without formal employers or workplaces; i.e., those in low-pay and non-standard employment such as freelancing, contracting, temping, outsourcing and what is increasingly, involuntary part-time employment.

Lastly, the continuing decline in private sector unionization carries with it risks of exacerbating income inequality, a growing concern given its negative impacts on economic growth (Mo, 2000; Aghion et al., 1999) and a range of indicators of human health and societal wellbeing. Consistent with other research findings, a recent International Monetary Fund (IMF) study finds that the decline in unionization in recent decades has fed the rise in incomes at the top, including Canada. It notes that while "de-unionization weakens" the earnings and bargaining power for middle- and low-income workers, it "increases the income share of corporate managers' pay and shareholder returns" (Jaumotte and Buitron Osorio, 2015). It should be emphasized that this is not a CLC pamphlet making these claims, but a report emanating from the IMF.

3.1.2 Sector-Based and Multi-Union/Employer Collective Bargaining

In addition to the Wagner Model, and also part of the labour relations landscape, are sector-based and multi-union/employer systems of collective bargaining whereby multiple employers and/or representative associations negotiate with worker representatives at centralized bargaining tables. Although quite common in Europe, these approaches are not entirely foreign to Canada and Ontario particularly in the construction industry.

For example, in Ontario, collective bargaining in the Industrial, Commercial and Institutional sector of Ontario's construction industry is conducted on a single-trade (e.g., electrician, iron worker) province-wide basis under provisions of the Labour Relations Act. Under the single-trade bargaining model, employers coordinate bargaining with trades unions on a multi-trade basis through CLRAs – Construction

Labour Relations Associations. In Ontario larger and more complex industrial and commercial projects requiring more sophisticated skills are generally performed by the building trades unions (Rose, 2014). The existence of a provincial agreement thus makes it easier to convince workers to join the union, as they can ensure employers are bound by the level of wages and benefits set out in the provincial agreement. It should be noted, however, that there is a large non-union construction sector where these provincial agreements do not necessarily apply.

The model's origins in Ontario's construction industry dates back to the 1970s, when bargaining structures in the construction industry underwent a major transformation due to a major increase in strike activity and to higher wage settlements (Rose, 2014). Policy-makers in Ontario and other parts of Canada believed centralized bargaining would lead to industrial relations stability and thus introduced legislation to promote stronger employer associations and centralized bargaining (Rose, 2014).

Critics of this model contend it increases construction costs and discriminates against non-union contractors from bidding on larger projects. Supporters however, suggest more centralized bargaining produced significant improvements in bargaining outcomes including major declines in the construction industry's share of total strike activity and a shift away from adversarial and confrontational bargaining toward increased labour-management cooperation, flexible collective agreements, and the adoption of alternative dispute resolution procedures (Rose, 2014). While union density in the construction sector has declined as in other sectors since the 1980's, it has stabilized and even increased slightly in recent years, at just under 32 percent (Rose, 2014).

There is of course a potential cloud that hovers over sectoral and multi-employer bargaining: namely the problem of potential anti-competitive side-effects as noted originally by Crispo and Arthurs (1968). Generally speaking, more centralised bargaining is a sound model for certain sectors, like construction and the film and entertainment industry, where employers have long standing industry/trade associations of their own and where work is often project based and where workers possess a strong identification with a craft or trade rather than a place of work. Central bargaining also worked historically in industries such as printing and nursing homes where there were

many small employers. But it can also work with large employers and unions without legislative regulation, such as in the hospital sector. Most recently, though this applies to the public sector, a system of centralised bargain over wages and benefits has been adopted in Ontario (though here local school boards still bargain with their local teachers’ unions over all other aspects of the collective agreement).

What is common to most forms of centralised bargaining is that this approach offers workers the benefits of union representation as they transfer from job to job, while at the same time providing employers with access to a reliable group of skilled workers.

3.1.3 Non-Statutory Voice Models: Voluntary Employer and Employee Associations

Various voluntary and non-statutory employee voice models also exist that can and do co-exist outside the statutory framework of labour relations.

In the private sector, companies are free to establish non-union labour relations approaches which facilitate formalized mechanisms for employee voice outside of a union structure. Such participation systems can provide opportunities for improved up-down communication flow between workers and management, and allow “workers to fine-tune otherwise blunt managerial initiatives to better suit the situations of workers” (Taras, 2002). This is not a system that is available to US employers and employees because of the peculiarities of section 8 2(d) of the NLRA, which prevents most voluntary non-union forms of workplace voice that are not certified unions.

Typically, such non-union forms of employee voice take place via employer-sponsored groups and committees that may deal with issues that are of particular interest to employers such quality, cost issues, or issues related to improving organizational outcomes (Taras, 2006) These approaches can also allow workers to have a voice on their working conditions and create an effective platform for employee-management on workplace productivity and innovation related issues. An example recently in the news is WestJet, which saw its pilots reject certifying as a union and continue under the umbrella of the company’s own non-union labour relations model.

However, company-based voice systems ultimately exist at the discretion of management, and lack the independent oversight role that unions play. Moreover,

there is the fear that these models may not adequately provide for ‘collective voice’ for all employees and instead may foster more individual voice for certain employees (Taras, 2006).

Another non-statutory approach is where employees organize a formalized mechanism for employee voice that is not a recognized union for the purpose of labour relations legislation but which is recognized by the employer. They are considered “voluntary” because an employer is not required by law to bargain with the employee representation in place. This organization may take a form that is substantially similar to a union or may be in the form of an association.

Good examples of this model exist in the Canadian university sector. Historically, both faculty and staff in most Canadian universities formed independent associations that established tailor-made arrangements with their administrations (Adams, 2008). Though many of those associations have become certified as bargaining agents, others have continued as independent entities such as faculty associations at McMaster University and the University of Toronto.

Nonetheless, a major challenge in Canada is to foster in the private sector a *culture with regard to employee representation* much like the one that existed historically in the quasi-public sector and in the university sector in particular (Adams, 2008). Again, as the case with employer initiated voice models, there is the concern such associations would be weak and prone to manipulation by employers (Adams, 2008). That said, surveys indicate many employees prefer informal non-statutory collective representation over certified exclusive agency (Adams, 2008; Thompson, 2015).

3.1.4 Worker Owned Cooperatives¹⁴

Although by no means a new organizational form (cooperatives have a near century history in Canada), the cooperative sector has grown substantially over the last 80 years. Between 1930 and 2007 the number of cooperatives rose from 1,100 to 5,700 with the number of members rising from approximately 756,000 in 1930 to 6,638,000.

¹⁴A distinction needs to be made between cooperatives generally, which can be membership based, versus those solely owned and run by workers.

To place this in perspective, the number of members increased 8.8 times compared to 3.2 times for the Canadian population as a whole.

Worker co-operatives, which are effectively jointly owned and democratically controlled enterprises, are a subset of this cooperative movement which includes building societies and retailers such as Mountain Equipment Co-Op. The worker-owned and managed cooperative is getting renewed attention because of their resilience in not merely weathering the 2008 crisis, but being able to thrive and grow (Birchall and Hammond Ketilson, 2009). Perhaps less known is their global heft. The annual World Co-operative Monitor publication from 2014 surveyed more than 2,000 of the largest co-ops (member and worker) worldwide and reported their total combined turnover (expenditures plus revenues) as about \$2.2 billion in a wide range of sectors such as agriculture, retail, banking and insurance (World Co-operative Monitor, 2014). These numbers are equivalent to the 7th largest national economy, and according to a recent study 250 million people are employed or earn their living thanks to a co-operative.

Presently, there are close to 400 worker owned co-operatives in Canada, employing over 15,000 people, with revenues upwards of \$500 million (Hough, Wilson, and Corcoran, 2010). Overall, the period between 1985 and 2010 has seen a steady growth of the worker co-op sector in all regions of Canada, including the formation of the Canadian Worker Co-operative Federation (CWCF) which has enhanced the networking and support for the sector (Hough, Wilson, and Corcoran, 2010). These co-operatives operate in a wide variety of fields, including forestry co-operatives, which accounted for 58% of the overall volume of business of workers' co-operatives in Canada, a total of \$259.2 million. These numbers include the worker/shareholder co-operatives in Québec. In this type of co-operative, employees can form a co-operative to buy blocks of shares in an existing business, thus enabling them to have a voice at the board of directors' level. Yet another type of co-operative gaining in popularity in Québec is the multi-stakeholder or solidarity co-operative. Membership is made up of different categories of partners: service users, employees and community organizations. In 2007, 91 multi-stakeholder co-operatives were incorporated in Québec. Many provide home care services to seniors and people with minor health problems.

The increasing interest in workers’ co-operatives reflects the determination of educated and informed people to have more control over their jobs and, consequently, their lives and communities. Worker co-operatives have also been identified as an option for business succession, particularly in rural and remote communities.

Despite their presence and fairly wide scope, the number of worker co-operatives in Canada on a per capita basis is comparatively low when compared Western Europe and the US-Canadian Worker Co-operative Federation (CWCF, 2012).

Workers co-operatives arguably achieve the highest degree of workplace voice democracy given its members are both employees and owners of the company. They operate the business together making decisions about important issues including wages, production methods and finances. In terms of governance, “decision-making can take place through direct democracy, can be delegated to an individual or committee, can be placed in the hands of an elected board of directors (representational democracy) or can be any combination of the above. Governance structures can also be changed if the membership feels they are ineffective. The only constant in co-operative governance is a democratic structure” (Ontario Co-op Association, 2013:7172).

Despite their lack of diffusion, where they exist they have a proven track record of economic success and empowering workers and communities. So what explains this disconnect between the promise of cooperatives and their presence in the Canadian economy? The answer is a mix of legislative and start-up finance challenges, as highlighted in a 2010 report by the CWCF (2010):

- Initiating and surviving the start-up period from both a business and co-operative organizational perspective;
- Lack of awareness of co-op structures, training for members, building and stabilizing sales and maintaining enthusiasm and commitment from members in the face of financial insecurity; and
- Managing and financing growth including timely access to capital, securing new quality committed employees for new members and becoming more capable in the areas of financial management and governance as the co-op grows in complexity and size.

3.2 International Approaches to Worker Voice and Employee Representation – Lessons for Ontario

We begin with a high-level overview of country-level systems of employee representation using an approach found in Budd (2004), Budd and Zagelmeyer (2010) and Befort and Budd (2009) that uses the equity, efficiency, and voice model viewed earlier as well as a highly relevant and parsimonious taxonomy first proposed and utilised by Traxler (1998).

3.2.1 Understanding Differing Systems of Representation in OECD Countries: Using the E-E-V model

A useful way of classifying countries on the basis of different forms of employee participation and representation is to ask where they stand in relation to the three principal objective standards of any employment relations system; equity, efficiency and voice (E-E-V). Budd (2004) identifies seven prototypical forms of employee representation systems which include:

1. Social partnerships
2. Sectoral bargaining
3. Centralized awards
4. Enterprise unionism
5. Exclusive representation with majority support
6. Codetermination
7. Voluntarism

The use of these systems varies across countries and many systems are hybrids such that some countries contain a mix three or more of these approaches. A brief description of each and country examples are listed in Box 2 below.

Box 2: The E-E-V Approach to National Employment Relations Systems

1. Social Partnership Model: Peak-levels of labour, business, and government collaborate to agree on a national framework for economic and social development. Areas that are debated and nationally bargained over include wage and pay guidelines, monetary and fiscal policies, exchange rate management, tax reform, government debt reduction, and social issues. Found across Europe but examples include Norway, Denmark and Austria. Scores high on efficiency and equity and even higher on voice

since almost all of decision parameters within a national context fall within the purview of labour negotiating with employers and the state. One could argue however, that individual worker voice is highly mediated by higher level structures.

2. Sectoral Bargaining: Industry-wide collective bargaining that produces a contract for an entire sector. Slightly less centralized approach than social partnerships. Union coverage is divorced from union membership in that 90% of workers might be covered; but only a minority are union members. Implementation of the collective bargaining agreements is often handled through workplace-level works councils. Found across Europe, examples include France, Germany, and Portugal. Sectoral bargaining tends to have wider coverage than does workplace level bargaining. It also equalizes wages for a far greater swath of workers, but it may provide results for smaller employers that may not be as efficient for the firm as could have been negotiated at the workplace.

3. Centralised Awards: Government arbitration commission (or tribunal) issues a binding arbitration award that specifies minimum standards for pay and working conditions. The system can cover workers across occupations, sectors or establishments. Examples of such coverage include Australia and New Zealand (before 1990s). These score high on equity since they cover union and non-union employees but there is very little employee voice involved per se and may hamper business efficiency if not adequately tailored by region, employer etc.,

4. Enterprise Unionism: A system of industrial relations focused at the company level. A union's entire membership is contained within a single company and critically not in a single workplace. Employees identify with an enterprise – its internal labour market and financial performance – not a specific workplace or even job. This is the prototypical system found in Japan. The case of Japan is illustrative. Toyota is famous for its enterprise union and the system of life-time employment matched with continuous improvement (Kaizan) that was pioneered and perfected there with strong employee involvement. But the system of enterprise unionism applies to roughly 20% of the workforce. The rest work in small firms with no comparable union structure.

5. Exclusive representation with majority support (WAM): Already described in some detail but briefly a system where Workers in an explicitly defined bargaining unit can only be represented by a single union. Employers are required to bargain with a union only when majority support among the employees can be demonstrated. In contrast to sectoral bargaining, union representation here is closely linked to union membership. Can be centralized or decentralized. Efficiency depends on union and management strategies. Equity and voice are dependent on majority support.

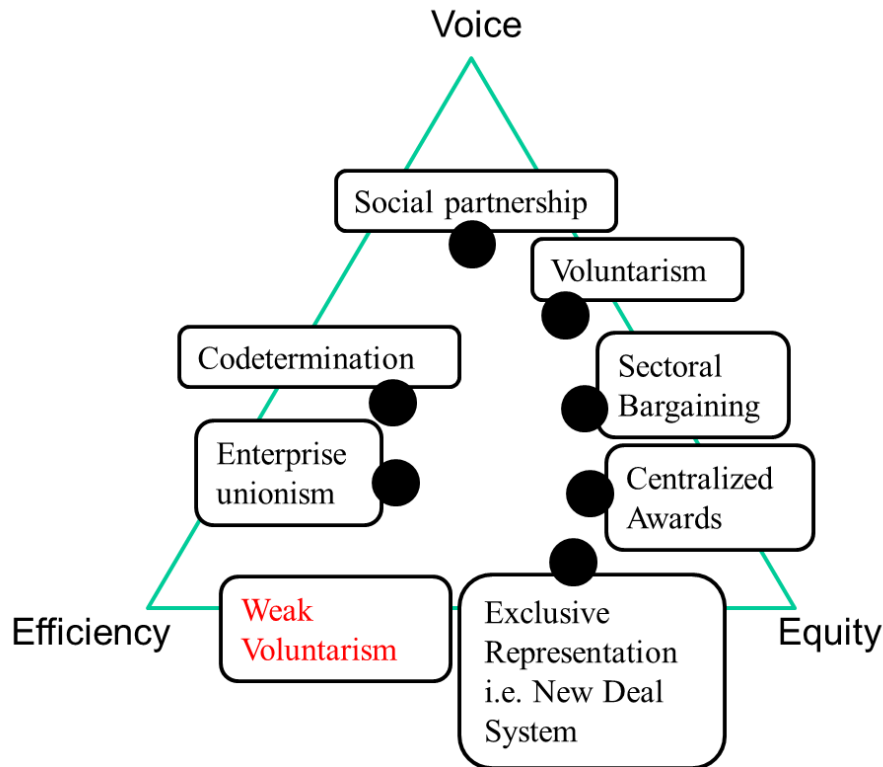
6. Codetermination: An institutionalized system of employee voice in which employees are entitled to participate in workplace decision making. This can take the form of either a works council and/or employee representation on corporate supervisory boards. Efficiency and voice are well-served in this system. Countries such as Sweden and Germany have a long history with this system and in Spain the Mondragon region (largely through the early adoption of co-operatives) is highly noted for this form of active worker participation. It is seen as a means of improving information flows and hence efficiency and voice but not necessarily designed to deal with equity concerns.

7. Voluntarism: Labour and management voluntarily agree (or not) to enter into individual or collective bargaining and to abide by (or not) the agreements are reached.

No legal regulation of IR; contracts may or may not be enforceable. If they are, enforceability is governed by common law. This exists in part in Canada since our WAM model is silent as it relates to voluntary recognition of employee associations for the purposes of bargaining (examples include Imperial Oil and a number of faculty associations). In the United Kingdom, despite the presence of a statutory route to union certification invoked in the early 2000s, voluntary recognition is still the primary way that unions and management bargain at the workplace level. In terms of its position on the E-E-V model, a system of strong voluntarism (that is, a system respected by all parties but principally employers) results in a wide spread of representation and also strong focus on equity. But as with UK in the 1970s, the system in the presence of strong unions led to much labour unrest and drop off in efficiency.

Putting all seven systems in context and comparing across the equity, efficiency and voice dimensions we arrive at the following representation (see Figure 16). Figure 16 is intended as a convenient tool for considering and comparing various systems of employee representation and protection. One can recognize that more precise analyses requires identifying and measuring specific components of efficiency, equity, and voice, but conceptually efficiency, equity, and voice provide an analytical framework for analyzing and comparing different national systems. Following Hyman’s (2001) “geometry of trade unionism” Budd’s (2004) analysis yields the “geometry of the employment relationship.” As such, the seven employment relations systems are located in Figure 16 based on the extent to which they are efficient, equitable, and provide voice. These relative locations are discussed in Box 2 of the paper but disagreements over these locations are of course possible and are in fact desired since the major contribution of this three-dimensional framework is providing a coherent basis for such debates.

Figure 16: Contrasting ER Systems using the equity, efficiency and voice model



Source: Adapted from Budd (2004)

3.2.2 Understanding Differing Systems of Representation in OECD Countries: Using the Traxler model

Franz Traxler was a German industrial relations scholar who did much to simplify and clarify the comparison of employment relations systems across countries. He used as a basis several key variables such as at what level was collective bargaining institutionalised (i.e., the company/plant level; the sector/region; or at a national/central level) and whether the goal of economy-wide coordination of bargaining settlements was an intended policy goal or not. He then created visualisations that could inform readers at a glance. Such a representation system is reproduced below in Table 2. Though Traxler (1998) was using as his basis changes in employment relations systems that occurred through the 1980s into the 1990s, his identification of national systems remains quite useful.

Table 2: Bargaining levels and bargaining Coordination, circa mid-1990s.

	Bargaining level		Economy-wide Co-ordination	
	Institutionalised (Possible) levels (a)	Predominant level (b)	As a goal (c)	Capacity for implementation
Canada	1,2,3	1	Little /No Coordination	Limited/Lacking
France	1,2,3	2	Overt Coordination	Limited
Germany	1,2	2->1	Covert Coordination	High
Sweden	1,2,3	3->2->1	Overt Coordination	High
a) 1= Company/workplace level 2=Sectoral level 3=Central level				
b) → Direction of change				
c) Overt coordination is based on a centralised concentration of bargaining rounds among the peak associations of business and labour (possibly in co-operation with the state). Covert co-ordination relies on intra-associational governance by the peak associations and/or the pace-setting/pattern-based role of bargaining in key sectors.				

Source: Adapted from Traxler (1998: Table 5.1)

In Table 2 we see that countries potentially differ according to which institutionalised (or possible) level of bargaining is available and then on what level is the actual operational norm. In Canada, there are examples of more sectoral approaches such as in construction and more recently in Ontario amongst teachers unions in the negotiating of pay, but for the most part bargaining occurs at the level of the workplace. Similarly, attempts at trying to integrate wage bargaining with wider economy-wide objectives (such as inflation control or most recently in the wake of the financial crisis moderating wage and benefit demands whilst maintaining high levels of employment) is something that Germany has a high capacity for but which is limited in France where there is often strong disagreement and distrust between trade unions and employers.

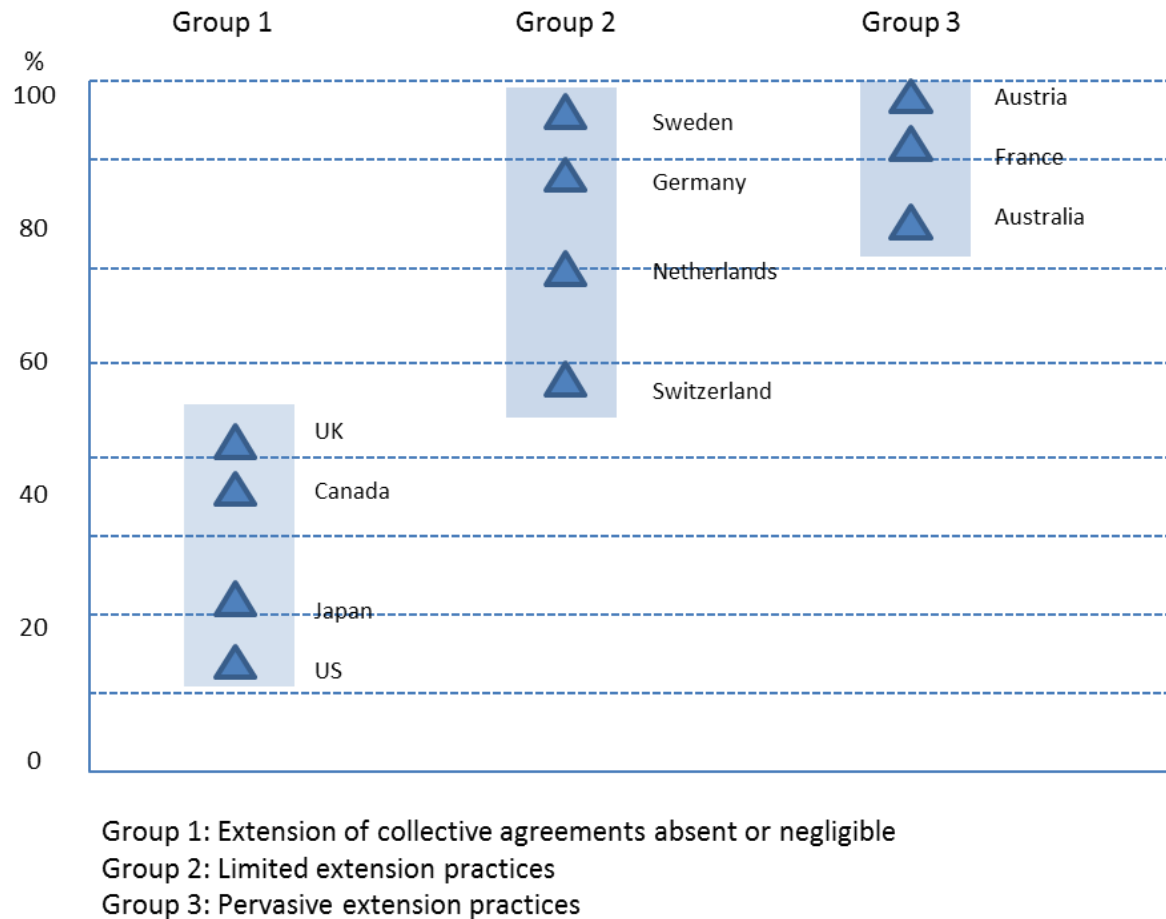
The other upshot of this analysis is that one can begin to understand outcomes in the employment relations system of a given country through this lens. Take France which has a high degree of collective agreement coverage (close to 80 percent in recent estimates and at the time of Traxler’s work nearly 90 percent) but has one of the lowest union densities in the world (less than 5 percent of the French workforce is a paid member of a union). How can this be?

The answer lies in how collective agreements get extended to non-union workers in France. In France the term used is “enlargement” (Despax and Rojot, 1987) and the system is designed to overtly make collective agreements binding on employers and employees in certain geographical or sectoral areas outside of the agreements domain. The stipulation is that employees for whom coverage is extended are economically similar to those covered by the negotiated collective agreements and that there are no parties (employer federations or unions) capable of conducting collective bargaining.

In Germany the practice of extension works somewhat differently (or covertly in the language of Traxler (1998)). In the German case a collective agreement is binding within its domain (i.e., a particular sector or region) and *can* also cover both employers and employees who are not affiliated with the bargaining parties. Generally, this is done by the Ministry of Labour at the request of the bargaining parties. The application of this provision is tied to certain conditions such as when collective agreements already cover more than 40 percent of the employees within the agreements domain (though in the German case the Minister can make exceptions for cases under 50 percent).

One can see therefore in Figure 17 that collective bargaining coverage tends to follow extension rules positively. Canada and the other countries with workplace/enterprise level structures of representation tend to max out their coverage at 50 percent whereas in Germany and France the coverage rates are near universal.

Figure 17: Bargaining Extension rules and Collective Bargaining Coverage



Source: Adapted from Traxler (1998, fig 5.2).

We now go on to examine more closely systems in place for representation of workers in four countries: United Kingdom; Germany; France and Sweden. It should be noted that even this listing leaves out important systems present in other countries that are otherwise similar to Canada, such as Australia. It should also be noted that any comparison of national systems, as noted by Arthurs (2013), must consider that direct legislative transplants are unlikely to “take” in their pure state without appropriate modifications that account for the embedded nature of a national socio-cultural system.

3.2.3 United Kingdom

The UK experienced a significant roll back in the scope of industrial democracy and union representation throughout the 1980’s and early 1990’s due not only to structural

changes in the economy, but also to the introduction of highly restrictive labour legislation, the abandonment of sectoral and tripartite mechanisms of government, labour and business collaboration and privatization of once highly unionized industries such as rail and utilities. In legislative terms, over a 10-year period from 1980 to 1990, the Conservative government of Margaret Thatcher would introduce six acts of parliament that would among other things, restrict picket activity, introduce a myriad of new procedural requirements pertaining to strike ballots and effectively end the practice of the closed union shop (A Chronology of Labour Law 1979 – 2008, 2012).

Although a ‘New Labour’ government from 1997 to 2010 would maintain much of the Conservative government’s labour relations framework, it took some measures to strengthen employee voice and representation in the workplace. The cornerstone of its approach to employment relations was the use of individual employment rights to protect workers which increased the influence of legal regulation in the employment relationship. Much of this new legislation had its genesis in European Union workplace directives.

Trade union density has fallen markedly in the UK from a peak of 56.3% in 1980 to 25% in 2014 and, like Canada, a large difference in trade union density rates is evident between the private and public sectors. As of 2014, trade union density in the private sector was 14.2% and stood at 55.5% in the public sector (Department for Business, Skills, and Innovation, 2015). As well, when considering levels of employment protection against dismissal and the hiring of temporary workers, the UK ranks last amongst its European partners, and only slightly above Canada and the US in a 2013 OECD ranking (OECD, 2013).

In the UK, like Ontario, the dominant level for the setting of pay and working time is the company or plant level in the private sector, though in some areas of the public sector – and in a small section of the private sector – sector-level agreements are negotiated. In 2011, the coverage rate of collective agreements in the UK was 31.2%. There is a large difference between figures for the public and private sectors, with collective bargaining covering 67.8% of public sector employees in 2012, compared with 16.9% for the private sector (Department for Business, Innovation and Skills, 2012).

In 1999 (as described in greater detail below), the Blair government introduced a certification process into what was until then, a voluntarist system. Under this workplace model of collective bargaining there is a right for a union to be recognised for collective bargaining on pay, hours of work and holidays where this is supported by a majority of the workforce in the bargaining unit (Sweeney, 2014). In workplaces where they are recognised for collective bargaining, unions have the right to elect health and safety representatives to jointly manage the safety of the workplace with the employer (Sweeney, 2014). Where there is no recognised trade union, employees can elect non-union representatives (“representatives of employee safety”) for the same purpose (Sweeney, 2014).

Importantly, most workplaces in Britain still operate outside of the 1999 statutory regime, meaning that most collective agreements are still to this day voluntary instruments that are ‘binding in honour only’ (Eurofound, 2014). The terms of collective agreements are normally incorporated into individual contracts of employment which are then legally enforceable (Eurofound, 2014). Compared with other western European countries and even Canada, the UK is notable for the fragmented nature of collective bargaining and the lack of any (universal) formal legal foundation to which collective agreements are subject.

Worth noting in greater detail, however, are features of the “New Labour” era labour relations – 1996 to 2010 -- that facilitated some mechanisms for worker voice and employee representation. For example, legislation passed in 1999 provided for the first time a legal mechanism to compel employers to recognize unions. Unions must prove to an independent body, the Central Arbitration Committee (CAC), that a majority of employees in a “bargaining unit”, which can be a workplace, several workplaces, or part of a workplace, want a union to represent them (Fulton, 2013). They can do this either by showing that more than half the employees are union members, or by winning the support for recognition of a majority of employees in a ballot, although this must also be equivalent to at least 40% of all employees in the bargaining unit. The legislation only applies to employers with 21 or more employees (Fulton, 2013).

Recent research suggests unions are making less use of the statutory recognition procedure. In the majority of cases where unions sought recognition and

the membership support to achieve it, they did so on a voluntary basis, as the employer was aware that the legal avenue was open to the union if they refused recognition.

Additionally, in companies with more than 50 employees, workers also have a right to elect representatives for the purposes of information and consultation under the *Information and Consultation of Employees Regulations* (ICE Regulations), which were introduced in 2004, and designed to implement the EU directive on the Information and Consultation of Employees (2002). In principle, ICE directives mandate that employers must:

- Inform employee representatives about the strategic plans for the business;
- Inform and consult about workforce planning, including potential threats to employment and any “anticipatory” action that might be taken; and, inform and consult with a view to reaching an agreement on significant changes to work organisation and contractual relations.

At the time of its adoption in Britain in 2004/05, the Trades Union Congress (TUC) stated that the Act contained 'significant union victories'. TUC general secretary Brendan Barber said in a statement: “Staff will have to be given information and be consulted over major changes to the business, as they currently are in Britain’s best companies. Trade unions will be able to recruit members in an environment free of underhand, US-style union-busting activities and will find it easier to exclude and expel far-right activists in breach of union rules. The union modernisation funds the [Act] establishes will enable unions to modernise in the same way the government has helped businesses adapt to grow in the modern economy. “

Nonetheless, concerns have been raised that the regulations have a high entry bar – 10 percent of the workforce is required to show interest before the process can be initiated versus just 5 workers to initiate similar processes in jurisdictions such as Germany (Sweeney, 2014). A survey on the impact of the ICE regulations in Britain found some growth in the number firms applying the ICE regulations during the period immediately before and after the initial commencement of the [information and consultation] regulations. Recent evidence seems to suggest that this growth may not have been sustained. This seems to be reflected in UK government figures showing

permanent representative bodies, without union involvement, are extremely rare (7% of non-union workplaces having joint consultative committees (Van Wanrooy et. al., 2013).

As Ontario considers opportunities to strengthen the voice of workers, workplace forums such as those envisaged under ICE could play an important role in supporting employee decision making, encouraging productive employment relations, preventing workplace conflict and resolving disputes early. However, a number of the shortcomings of the UK model would need to be addressed. Most importantly, unlike the UK model there would need to be precise regulations in any Ontario ICE legislation as to how this representation should be structured and organized. In addition, this would require it to be augmented by government capacity-building and support for employers and employees to implement these consultation mechanisms. More broadly, the UK’s experience with labour market deregulation and weakening of workplace unionization is something of a cautionary tale (Sweeney, 2014). The case made both by Conservative and New Labour and their business supporters was that by removing “labour market rigidities” such as closed union shops and job security, firms could become more globally competitive and thereby increase employment, productivity and innovation. For example, they would now be able to “hire and fire” more easily in response to changing market demands and implement new workplace processes and technologies without the legislative, regulatory and structural encumbrances of the past. Additionally, the fast growing economy and vibrant labour markets that these policies create would make the concept of industrial democracy potentially redundant. In such tight labour markets, individuals could freely negotiate with firms the terms and conditions of their employment from a strong bargaining position.

Finally, three other important developments that occurred since 1997 in the UK case should be mentioned:

1) Labour government opts-in to the EU Social Chapter in 1997 and its second requirement (beyond directive on information and consultation rights, ICE) on expanded individual employment rights;

Unlike ICE which Britain does not adopt until 2005, the Labour government immediately begins to implement many of the individual rights provisions of the EU Social Charter including the major four provisions:

- the regulation of working time (48-hour limit after which overtime must be paid),
- a right to urgent family leave and to parental leave,
- a right to equal treatment for part-time workers; and
- protection for fixed-contract workers in the form of extending union membership where it exists in a given workplace and providing the same terms and conditions of employment as full-time workers.

These soon became enforced through the so-called Employment Tribunals (ET) system enacted in 1999 which, although built upon a system established in 1964 called the Industrial Training Act, becomes much more prominent for two reasons:

- Decline of trade union representation; and
- Expansion of employment standards into areas beyond ‘unjust dismissal’

Employment tribunals grew out of industrial tribunals created by the Industrial Training Act 1964. Industrial tribunals were judicial bodies consisting of a lawyer, who was the chairman, an individual nominated by an employer association, and another by the Trades Union Congress (TUC) or TUC-affiliated union. These independent panels heard and made legally binding rulings in relation to employment law disputes, almost exclusively concerning unjust dismissal cases. Under the Employment Rights Act 1999, their name was changed to Employment Tribunals and their remit expanded to include new labour rights enshrined as part of joining the EU Social Chapter provisions.

ii) The associated growth in the use of Employment Tribunals (ET)

The impact of the adoption of the EU Social Chapter on the Employment Tribunal systems has been striking. There has been a huge growth in individual claims against employers. In 2001 there were almost 141,000 claims of legal rights violations. By 2011 the number had increased to 218,000 (Ministry of Justice, 2013).

The decline of union representation means that there are many fewer internal grievance procedures inside firms to resolve disputes, which explains the growth in ET use and why a majority of all ET claims emerge from non-union workplaces.

iii) The establishment in 1997 of the Low Pay Commission and the first national minimum wage.

With nearly 70 percent of the workforce in the Private sector not covered by a collective agreement Britain establishes its first nation-wide minimum wage law in 1999. This is a clear illustration of the so-called “law of equilibrium” in industrial relations, which holds that if a union is not around to assert an institutional interest in advancing and preserving equity and voice, under a pluralist democracy some other institution – the state, management, or informal civil society groups – will try to fill the vacuum created by the union’s absence (Barbash, 1987).

3.2.4 Germany

The basic structures of Germany’s industrial relations system are embedded in the Collective Agreement Act (TVG) of 1949 and the Works Constitution Act (BetrVG) of 1952 (amended in 2001) (Eurofound, 2014). The Collective Agreement Act stipulates that employers and trade unions can conclude collective agreements (Eurofound, 2014).

Collective bargaining is still primarily conducted at the industry/sector level between individual trade unions and employers' organisations (Worker-participation, 2014). This has traditionally been seen as one of the strengths of the German system as it keeps negotiations between the unions and employers associations on pay and conditions at the industry level, while at workplace level, individual employers and workplace employee representatives – works councils (discussion to follow) can develop more cooperative relations on issues that range from quality of work-life to training and job-sharing schemes. There are three kinds of collective agreements:

- Wage agreements that fix the level of wages and their periodic increases;
- Framework agreements that specify wage payment systems; and
- Umbrella agreements that regulate all other conditions of employment (e.g. working time, overtime, holidays)

Figures from the government-backed research body the IAB for 2011 show that 61% of employees in the former West Germany are covered by any one of the three types of collective agreements – 54% signed at the industry level and 7% at the company level

(Worker-participation, 2014). In the former East Germany, the overall figure is lower – 49% covered by any agreement – and only 37% covered by industry agreements, compared with 12% by an agreement signed at a company level (Worker-participation, 2014). However, half of the employees not directly covered by collective agreements work in companies which take account of the agreements in setting terms and conditions for their staff. On this basis almost 60% of all German employees are directly covered by collective agreements (Worker-participation, 2014). Union coverage by the way is the appropriate figure to record as there is no compulsion to join a union or pay dues in Germany; hence their union membership rates of just over 30% (as distinct from coverage rates) are not much higher than that found in Canada.

Industry agreements are normally negotiated at regional rather than national levels, for example, between the regional branches of an employer association and the union associated with that industry. This structure has led to pattern bargaining: pilot agreements in the metal and electrical industry are transferred to other regions (within the same industry) and other sectors (i.e. different industries). As a result, there are slight variations between regions. However, the main elements of the agreements, in particular the size of the pay increase, will normally be the same across all regions.

Worth pointing out as well is legislation which gives the labour minister the power to extend collective agreements, even in cases that do not cover 50% of an industry's workforce, and to set minimum rates in industries where there are no collective agreements if a specially appointed commission decides this is appropriate (Worker-participation, 2014). Minimum rates have been set in this way in a number of key industries, including construction, postal deliveries, cleaning, and refuse collection (Worker-participation, 2014).

Another key pillar of the German industrial relations system -- works councils -- provide further representation for employees at the workplace and they have substantial powers extending to an effective right of veto on some issues. Although not formally union bodies, union members normally play a key role within them. The establishment and operations of work councils are regulated by the Works Constitution Act, key provisions of which include:

- Works councils are employee initiated and can be set up in any establishment with a minimum of five employees.
- As well as works councils at the workplace level, the law also allows for the setting up of a central works council at the company level if a company covers several workplaces. This brings together representatives of the individual plant works councils. It is also possible to set up a works council at the group level, covering all the companies in a group (KBR). However, this can only happen if works councils covering 50% of the total group workforce want to set one up. Group works councils remain relatively rare.
- All employees, except those in executive or similar positions, are allowed to vote for, or stand for election to, work councils. Trade union membership is not a prerequisite.
- The works council has co-determination rights (i.e., where decisions cannot be taken against the wishes of the works council), and information and consultation rights. These include: disciplinary rules; starting and finishing times and breaks; any temporary shortening or lengthening of working time - such as overtime or short-time working; holiday arrangements; the principles used for the payment of wages and salaries - for example, should they be based on bonus or time work; the setting of bonuses and targets; the time, date and method of payment; the introduction of cameras or other devices to measure work or check the behaviour of employees; the arrangements for the operation of works institutions like canteens or sports grounds; the operation of the works suggestions scheme and the introduction of group work. On some of these issues the works council will typically reach written agreements with the employer.
- Issues subject to collective bargaining are excluded from its bargaining powers (unless the relevant collective agreement specifically allows for works council involvement). However, recently works councils have started to have a greater role in these issues, as agreements include “opening clauses”, which allow the works council and local management to agree to variations to the deal reached by the union and the employers’ association at the industry level (see section on collective bargaining).

- Works councils do not, however, have the right to call strikes or initiate other industrial action (Eurofound, 2014).

Of interest from the equity perspective, is the fact that there is also a requirement, introduced in 2001, that the gender which is in a minority in the workforce, must be represented in proportion to its presence in the workforce on all works councils with more than one member. The aim of this change was to increase the number of women in works councils. Research on the 2006 works council elections shows that it could be having some modest effect, with the proportion of women increasing slightly on the previous elections – up from 25.4% to 29.5% (Eurofound, 2014).

Workplaces are not mandated to have works councils and in practice, larger and older workplaces are much more likely to have works councils than newer and small firms. Figures from the government show that in 2011 only 10% of all eligible workplaces had a works council in West Germany (9% in the East), though they did cover 44% of all employees in the West and 36% in the East. In workplaces with more than 500 employees, however, 88% had works councils in West Germany and 92% in East Germany (Ellguth and Kohaut, 2012).

Another well-known feature of German industrial democracy is co-determination: the requirement for employee representation on the supervisory boards of larger companies – one-third in companies with 500 to 2,000 employees, half in companies with more than 2,000 (Worker-participation, 2014). In Germany, the supervisory board can normally appoint and dismiss upper management and reviews its performance (Worker-participation, 2014). Additionally, it gives advice, participates in setting the company’s strategy and is provided with financial and other information (Worker-participation, 2014).

In companies with 500 to 2,000 employees, the employee representatives -- who are elected by the workforce -- are normally company employees. In larger companies, above 2,000, some of the employee representatives come directly from the unions, and usually union officials. These larger companies must also give at least one place on the supervisory board to a senior management representative.

Tripartite collaboration at a public policy level between labour, business and government continues to be an important element of German industrial democracy in

such areas as unemployment, health and pension insurance and vocational training policy.

In assessing the merits of this labour relations model it is important to recognize that Germany faces many of the same economic and labour market challenges buffeting other industrialized economies such as rising inequality and a steep growth in low wage and temporary employment. These trends were in great measure facilitated by labour market reforms in the late 1990's and early 2000's which created new classes of temporary and low-wage employment. As well, there is a fraying of the sectoral bargaining model as firms leave the employers' associations or chose not to join them in the first place in order to be able to pay lower wages (Bosch and Weinkopf, 2009). This has led some to contend Germany's labour market is evolving into an Anglo-Saxon model with a strong right to manage, and a diminishing role for independent labour representation.

While there has certainly been erosion in the protections provided workers in lower skilled service sector and in smaller enterprises (as noted above) the systems of collective bargaining, works councils, and co-determination have been maintained in sectors that contribute most to Germany's comparative industrial advantage, such as advanced manufacturing (Marsden, 2015).

Also when looking at the individual German workers bargaining power vis-à-vis the threat of dismissal or substitution with a new hire as pressure tactics, their position remains considerably better than in the UK and other Anglo Saxon countries. One indicator of this is the robustness of employment protection regulations, and the practice of hiring workers into long-term jobs. Despite the aggregate decline in collective regulation of employment relationships, the OECD's index of the strictness of formal employment protection rules remains considerably stronger in Germany than the UK and occupying the top post internationally. Notwithstanding the retreat of collective regulation of employment, and measures to liberalise labour markets, overall employee job tenures have remained remarkably stable in Germany (East and West) for both women and men over the past 20 years or so (Marsden, 2015). This coupled with Germany's high labour productivity stands in marked contrast to the decline in labour productivity found in Anglo-Saxon economies and the decline in male job tenures in

Britain over the same period, both overall, but also affecting early middle-aged men, aged 35-39, traditionally considered as the prime-aged labour force (Marsden, 2015).

Overall, the German labour relations system provides a variety of mechanisms that guarantee not only worker voice and representation, but that deliver a great many of the benefits of collective agreements to both unionized and non-unionized workers alike. Moreover, Germany’s traditions of tripartite collaboration between unions, government and business have enabled it achieve consensus on structural reforms needed to adjust to a variety of major challenges from reunification in the early 1990’s to the 2008 global economic crisis.

Of course, when looking at the Germany’s model of industrial democracy in its totality, it is clear that a wholesale adoption in Ontario would not be feasible, nor in some respects desirable. There are obvious long-term cultural norms of labour management co-operation that could not easily be imported to Canada or Ontario. That said, its relative success in balancing economic performance with a fairly high-degree of social cohesion make considering certain elements of its labour relations model a worthwhile exercise. Such elements as works councils, sectoral/industry wide bargaining and tripartite collaboration could be considered in an Ontario context as mechanisms for enhancing the voice of workers and strengthening their representation.

3.2.5 France

France on its face presents us with something of a paradox. Internationally it has one of the highest strike rates and also one of the highest collective bargaining coverage rates at over 70 percent of the workforce. Yet, union membership figures continue to decline reaching a new low of 5% in the late 2000s. What explains the French paradox?

The key is to understand that French trade unions are granted legitimacy through simple and long held national registration systems (i.e., these provide unions with various rights such as “special immunities, tax exemptions, the right to have recourse to dispute settlement machinery, the right to be recognized as a bargaining agent, etc.”, see page 82 of this report.). French unions also have the capacity to cause social unrest and to foment political protest. This is because, unlike German unions which have long abandoned their anarchic-socialist roots, French unions preserve an element of radical

perspectives on the economy which can be called upon when unions wish to push for State policy changes.

To use Eric Tucker’s analogy, French trade unions achieve their strength in the “streets” rather than in the company level negotiating round. This does mean that French trade unions are virtually absent from the shop floor and hence why membership figures are so low.

This strength of French unions at high level bargaining is also why employers are compelled to “organize” as well and to join employer associations/federations. This is because under administrative extensions (discussed earlier) the employer must observe wages and standards agreed to by the employer association of her sector/region of economic activity. Individual employers therefore have incentives to join employer organizations to influence these agreements.

The other major difference between France and a country like Germany, is that at the economy-wide level, trade unions have significant co-determination powers (as reflected in statutory law in France). Most state budgets are crafted with union input and tacit agreement. In France, therefore, this is common-place whereas in Germany, apart from times of extreme crisis (the 2008 financial crash) the input from labour on high-level economic policy is like any other interest group (i.e., granted no special role).

3.2.6 Sweden

In Sweden 70% of the workforce is a member of a union and 88% is covered by collective agreements— though that figure has fallen from its peak of 96 per cent in 1995. This coverage figure -- 83% in the private sector and 100% in the public sector -- is unusually high and should be placed in context since, unlike Germany and France, where sectoral bargaining and extension rules are common, in Sweden both sectoral and company bargaining with trade unions is the pattern. No legislated extension agreements to non-union firms exist. Voluntary extension of collective agreements does exist but is not that common., i.e., 86% of employees are employed by organised employers, but the collective agreement coverage is 88%, indicating that voluntary extensions affect 2% of all employees (Kjellberg, 2013).

Collective bargaining is highly centralised in terms of vacation days and pensions but also contains a high degree of decentralisation for other matters relating to hours of work and training. From being mostly centralised through sectoral bargaining, social partners (i.e., “euro-speak” for peak trade unions and employer associations) have started delegating negotiations, primarily regarding wages and working time, to the company level. At the sectoral and cross-sectoral level, social partner confederations still bargain on pension and work environment issues (Kjellberg, 2013). Collective agreements without a fixed pay increase were common after the 2008 Global Financial Crisis as was a greater decentralisation trend. Bargaining also takes place between the individual employee and employer and is common among white-collar workers.

Despite the sectoral centralisation of many bargaining issues, representation for employees in Sweden is through the local union at the workplace. Legislation requires the employer to inform and negotiate with the unions at the workplace before making major changes. Moreover, many of the practical arrangements for doing so, which elsewhere in Europe are fixed by law, are left in Sweden to local negotiations. This aspect of representation in Sweden is enshrined in the Co-determination at Work Act (MBL) which sets out a number of more general requirements and gives unions “the right to negotiate with an employer on any matter relating to the relationship between the employer and any member” of the union (Fulton, 2013). However, it is important to emphasise that although the employer must negotiate before making changes there is no obligation for these negotiations to end with an agreement. As a result, in most cases the union has no veto powers over the employers' plans. The ultimate right of management to manage, initially recognised in the central collective agreement of 1906 – the so-called “December compromise” -- still applies to this day (Fulton, 2013).

Against this backdrop, all employees in Sweden take a minimum of five weeks of paid holidays, receive overtime pay for working weekends and holidays and are entitled to generous parental leaves of up to 16 months. Sweden also, not surprisingly given its high level of union density, has one of the lowest levels of income inequality in the Western world.

Worker Representation on the Ground: The Case of the Swedish Retail Sector

Examining how such a high degree of union density plays out over worker influence and outcomes in one sector of the economy (e.g., retail) can be illustrative of the effect that Sweden’s extensive collective bargaining coverage has on employee outcomes.

In Canada just 12 per cent of retail workers are unionized, compared with 60 per cent in Sweden (Coulter, 2014). Not surprisingly, in Sweden retail work is considered a "good job" and employment is referred to not as “work” but as “working life” to emphasize “that paid work is one part of people’s broader existences and that workers are real people with families with bodies that get sick, with goals and aspirations and rights to their own time and to a decent quality of life” (Coulter as quoted in Freeman, 2015). It should be noted that Norway, Denmark and Finland share many of the same characteristics of the Swedish model and are therefore often referred to as Nordic model countries (Finland is not a Scandinavian country hence the Nordic tag)

The Nordic model of labour relations developed in the early 20th century, at a time of labour unrest, mass migrations and great poverty as compared to continental European living standards. It was at this moment that business leaders and labour unions began to work together on mutually beneficial agreements that avoided recognition strikes and other forms of work disruption. This is known as the central collective agreement of 1906 – the so-called “December compromise” in Sweden. Over time, employers have found that delegating larger responsibility to workers is beneficial and enhances their productivity at work.

Most Swedish-based employers have never tried to fight trade unions. As a result, unions concentrate their efforts on giving employees better employment conditions and steer clear of infringing in employers’ decision-making processes. This also has meant a fairly “light-touch” regulatory environment pervades Swedish labour law (employment law covering non-union workplaces as we know it in Canada is virtually non-existent in Sweden). Statutory employment law protections, with cumbersome carve-outs and exemptions are non-existent in Sweden since collective agreements cover nearly 90 percent of the workforce and shape employer-employee relations.

But what happens in cases where employers resist unionisation and try to avoid collective bargaining?

“The Scandinavian way of trade union action is that if you find an employer without a collective agreement you try to blockade that employer, and if you do that, there are other trade unions that could issue secondary action, so-called sympathy actions towards that employer.” (Brigitta Nystrom as quoted in Freeman, 2015).

Having said this, the relations between firms and labour in Sweden is generally more co-operative and collaborative, and the distinctions between employees and managers less apparent than in the rest of the world. That is partly responsible for higher levels of job satisfaction even in industries such as retail, which North Americans might consider a “low wage ghetto” (Andersson et al., 2011).

In Canada and the United States, governments have had to place a floor on the lowest amount employees can be paid, but the Scandinavian country has no minimum wage law. Wages are instead negotiated by unions and employers’ associations, and, unlike in North America, there are no sectors in Sweden that fall into the definition of low-wage work, where earnings are below two-thirds of the national gross median hourly earnings. This explains why retail sector jobs are not seen as “dead-end” opportunities in Sweden.

A recent study by Anderson et al., (2001) found retail workers in Sweden were as highly satisfied with their tasks as workers in so-called “creative class” occupations. They also generally liked their managers and colleagues, as well as being highly committed to the success of their employers and satisfied with pay, training efforts and opportunities for advancement. “The overall results show that the sector is actively engaged in the general tenets of Swedish working-life, characterized by co-operation, distributed responsibility and fair treatment” the study said. Andersson and his colleagues concluded that the Swedish case suggests that the retail sector does not inevitably have to be one filled with impoverishing working conditions, nor do retailers have to adopt a “lean and mean” strategy to be competitive.

Is Sweden’s success in representation, even in sectors such as retail, easily exportable? Probably not, for as mentioned it is particular to a unique set of historical and cultural proclivities that date back more than a century and has therefore created a

society committed to social solidarity. The other issue has been the historical homogeneity of the population, meaning that issues of equity have largely not centred on ethnicity and race but rather on class since this was the only prominent differentiator.

3.3 Suitability of Alternative Approaches for Ontario

Based on the foregoing discussion the following is an overview of potential alternative approaches to help close the representation gap and strengthen the voice of employees in Ontario’s workplaces. These ideas build upon existing elements of industrial democracy in Ontario and are not to be taken as mutually exclusive of each other. As such, all could conceivably form part of a provincial strategy to promote worker voice.

3.3.1 Strengthening and Modernizing “Wagner Model” of Collective Bargaining in Public and Private Sectors

As detailed earlier, WAM has produced significant benefits for workers, the economy and our democratic and civic institutions. However, its ability to influence workplace issues in Ontario has been restricted in a number ways, including the move away from card-based certification towards mandatory voting and active and unfair employer interference in the organizing process.

With this in mind, various labour relations experts have weighed in and offered a number of reforms which could be considered as a means of once more making workplace unionism a vital piece of industrial democracy in Ontario. These include:

- Restoring easier certification procedures for workers, i.e., return to card-based certification procedures (Johnson, 2002, 2004)
- Directing provincial labour boards to exercise their existing remedial powers and eliminate current incentives for unfair employer interference and wrong-doing in certification drives (Slinn, 2008)
- Utilizing internet, electronic or telephone-based voting procedures as a way of lowering administrative costs and potentially supporting enhanced freedom of choice as a consequence of being able to vote away from the worksite and having one’s confidentiality protected (Slinn and Herbert, 2010)

- Following the lead of the EU Social Charter by extending to contract workers all the rights and privileges afforded to permanent employees in a workplace.

Such measures would undoubtedly be welcomed by some (i.e., labour groups and poverty activists who would see an easier pathway to unionization in particularly in service oriented industries) and disregarded by others (business groups) who argue this would impose too high an economic cost on their operations especially when competing with low-wage “right-to-work” jurisdictions. Clearly a balance needs to be struck as it relates to equity, efficiency and voice and the admonition of pluralist IR scholarship reminding us again of the so-called “law of equilibrium” in industrial relations, which holds that if a union is not around to assert an institutional interest in advancing and preserving equity and voice, under a pluralist democracy some other institution – the state, management, or informal civil society groups – will try to fill the vacuum created by the union’s absence (Barbash, 1987).

3.3.2 Minority Unionization and ‘Thinner Representation’ Models

As pointed out by Harcourt and Lam (2007), the majority/exclusive representation system or the “all-or-nothing approach” of WAM leaves many non-union workers who would like to join unions without representation (see Box 1). As such, some have advocated for minority unions with limited rights such as being able to compel employers to provide information on matters impacting workers and requirements to consult with employees on operational and human resources related issues (Thompson, 1994). Such a model could provide a vehicle for change that builds on current legislation and could enable a future pathway for employees wishing to move towards a more comprehensive model such as WAM.

One major problem, as pointed to by Adams (2015), is that the discussion about minority unionism in North America is hampered by the absence of universally agreed definitions. Braley-Rattai (2013) defines a minority union as “an entity legally entitled to represent less than a majority of a given bargaining unit ...” This definition would exclude the “most representative union” model approved of by the ILO – and discussed below -- since it would have the legal right to represent everyone in the bargaining unit despite having less than 50% membership.

In this regard international law has some important insights into the applicability of minority union models to Ontario. Beginning with the first principle of international labour law -- that collective bargaining is a human right that all nations have a duty to “promote” -- we find it enshrined in the 1998 Declaration of Fundamental Principles and Rights at Work by the International Labour Organization (ILO). In 1998 the ILO declared that “all Members” have “an obligation ... to promote and to realize in good faith” ILO principles regarding “freedom of association and the right to collective bargaining.”

One of the ILO’s basic principles is that “all workers” (with a few exceptions) “have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization” (Adams, 2015). The result of exercising that right may be either a majority or a minority union. Under international law both types of unions are considered legitimate vehicles through which workers may exercise their freedom of association rights. With a view towards “promoting” unionization and collective bargaining the ILO has signalled three options as being consistent with ILO principles.

ILO Option One: Granting Special Rights to Independent Labour Organizations

Many countries do not create formal certification procedures enforced by statutory protection (i.e., the WAM model) but instead have simple “registration systems” that provide unions with various rights such as “special immunities, tax exemptions, the right to have recourse to dispute settlement machinery, the right to be recognized as a bargaining agent, etc.” (ILO, 2012). Under international law, conditions for registration cannot be made excessive. In this regard the ILO has ruled that requirements by certain countries -- such as specifying that “a first level organization” must represent “at least 50 workers to be able to acquire legal personality” -- are not in conformity with ILO standards. This is because such standards would essentially deny collective representation rights to workers in small workplaces. These examples demonstrate that when the ILO uses the term “union” it does not contemplate, as is in Ontario or in any system with the WAM model, a worker organization that has acquired majority support in any particular unit.

To “be unionized”, in the ILO sense, merely means to form and/or join a legitimate, independent workers’ association. In order to qualify for legal protections including the right to bargain collectively, the worker organization only needs to demonstrate a modest but functional membership (i.e., a set of union cards signed by the workers) and be employee initiated (i.e., have some functional independence from management). Moreover, while considering it legitimate that governments establish minimum membership rules for the acquisition of particular legal rights “the exercise of legitimate trade union activities should not be dependent upon registration.” (Adams, 2015).

Unionization, in this first version set out by the ILO, does not depend upon special certification procedures or sanction by the state. Simply stated, version one (or the default option) of the ILO view of collective bargaining asserts that minority unions are entitled to exist and to exercise appropriate trade union functions and member states of the ILO are obliged to ensure that those associations are able to exercise the international human rights to which they and their members are entitled (Adams, 2015).

Speculation about the effects of this kind of minority unionism in a North American context has been mixed. On the negative side one finds academics such as Fisk and Tashlistsy (2011) coming down hard on minority union models that fail to provide statutory enforced duties to bargain on the part of employers. The belief of these critics is that employers, in a North American context, would simply fail to recognize such unions in the absence of a clear certification regime and labour board penalties for opposing unionisation drives and failing to bargain in good faith. What this critique fails to note is that the ILO default minority union option also comes with a legally enforced right to organize, to bargain in good faith with a partner and to strike (without incurring penalties). This set of protections is in effect what exists in countries like Sweden that lack statutorily enforced union certification procedures.

The other critique of this version of minority unionism – that the employer might have to negotiate simultaneously with multiple minority unions and the resulting chaos this could create -- is clearly stated by Justice Winkler in his 2008 *Fraser v. Ontario* decision, when he states:

It is impractical to expect employers to engage in good faith bargaining discussions when confronted with a process that does not eradicate the possibility of irreconcilable demands from multiple employee representatives, purporting to simultaneously represent employees in the same workplace with similar job functions. It is not overstating the point to say that to avoid *chaos* [my italics] in the workplace to the detriment of the employer and employees alike, it is essential that a representative organization be selected on a majoritarian basis and imbued with exclusive bargaining rights.” (para 92)

This largely North American critique, however, ignores a second version of the ILO view of how minority unionism could operate, which is also in keeping with the basic ILO principle that all workers have a right to collectively bargain their terms and conditions of work.

ILO Option Two: The “Most Representative Union” Model

As observed by Adams (2015:14) “If minority unionism were as inflexible and rigid as the critics characterize, then enduring the sort of chaos foreseen by Justice Winkler might be the only way for Canada to conform to ILO and constitutional standards”. Fortunately, pragmatism and flexibility are hallmarks of the ILO, which is why it recognizes that too many trade unions inside one workplace might result in the practical difficulties as noted by Fisk et al (2011) and the “chaos” envisaged by Winkler and others. The ILO has therefore signalled its approval for systems that grant “a variety of rights and advantages” including the granting of a “restricted right” to engage in collective bargaining to the “most representative” trade unions inside an establishment. Restricted in this case could mean anything from excluding wage and benefit bargaining to consultation on major changes to terms and conditions of work to a system of joint decision making over all non-wage issues.

For those looking for precise “numbers” of how many workers (or what share) need to be part of minority unions before they are granted the authority to negotiate terms and conditions “applied to all workers in a sector or establishment” the academic literature is still somewhat inexact. The ILO, however, has said that “too high a percentage for representation” may hamper the promotion and development of free and voluntary collective bargaining and that “50% (the WAM model) is excessive.” (ILO, 2012: 95)

Instead of a specific percentage threshold, the ILO has suggested that an appropriate number might vary with the size of the bargaining unit. Applying that standard, the ILO has promoted the fact that some countries have thresholds at the level of the branch or in large enterprises as low as 10-20 percent. Combining the ILO guidelines for registration with those for “representivity [sic]” it appears that in a small to medium-sized firm, say with 300 employees, a 30-person union (which would have the minimal 10% representation) would have a legitimate claim for statutory recognition as an agent for all workers in the bargaining unit, so long as it had no competition or from other unions or from those with fewer than 30 members (Adams, 2015).

Since the ILO regards collective bargaining as a process primarily intended to conclude with a collective agreement, the most representative union (or coalition of minority unions) acquires the right to negotiate a collective agreement applicable to all members of the bargaining unit, including those who are members of other minority unions. But those minority unions retain their rights to speak for their members and the right to represent their members’ grievances. Coupled with this is the right to strike, which may be exercised by minority unions but only within the terms of the law and the collective agreement. If the agreement or a statute specifies requirements such as notice, arbitration of grievances and strikes only at contract expiry, the minority union would be bound to respect those regulations.

ILO Option Three: The “Majority Union” Model

The third option that the ILO considers is the Wagner-Act Model which the ILO (2012:37) specifically addresses:

...the committee considers that systems are compatible with the Convention under which only one bargaining agent may be certified to represent the workers of any given bargaining unit, which gives it the exclusive right to negotiate the collective agreement and to monitor its implementation, provided that legislation or practice impose on the exclusive bargaining agent an obligation to represent fairly and equally all workers in the bargaining unit, whether or not they are members of the trade union.

The U.S. version of the Wagner-Act Model provides, under section 8 of the NLRA, employees with a path, notwithstanding the obstacles, to certify an exclusive agent. Employees that are not unionised but that are covered by the Act also have the right

under Section 7 to engage in “concerted action” which has been deemed to mean that any group of workers may make demands on the employer and if not satisfied with the response, may engage in a legal work stoppage. They may undertake that action either via an informal group or through a minority union. If they form a minority union, that organization also has the right to represent the grievances of its members so long as it does not offend the collective agreement or the law. According to Stillman (2014) the NLRA’s application of Section 7 over the past decade to the non-union workforce has helped ensure, in light of the steady decline in traditional collective bargaining, that employees are provided with some level of protection when they act together to confront employer abuses or other arbitrary and unfair activity.

The Ontario version of the Wagner Model is less generous on this specific point -

- there is no right to concerted action, nor any right of minority unions to represent grievances in any of the Canadian statutes. Ontario’s labour relations act, however, is “silent” on issues of non-certified employee organizations bargaining with their employers on a voluntary basis -- something which under Section 8(a)(2) of the NLRA is virtually prohibited (Taras, 2006). This Ontario allowance for more associational forms of employee representation, therefore provides employees with either the option of certifying an exclusive bargaining agent via a majoritarian process or allowing some indigenous “non-union” system to exist (this system can be employer formed and initiated). It should be stressed that employees in covered bargaining units who refrain from taking the certification option either because no union is able to win majority support or because the employees prefer to avoid the constraints of the law, may not legally be disadvantaged by their employer if they choose to form a non-certified union, but that organization has no statutory right to be recognized with a view towards negotiating a collective agreement, no right to represent its members grievances and no protected right to strike.

In summary, as pointed out by Adams (2008), the ILO permits member states to operate majoritarian exclusivity statutes but those statutes are intended to provide workers with the *option to certify an exclusive agent* and not *rule out other forms of minority or voluntary representation*. If workers prefer not to go through a prolonged certification drive or if it is easier for them to organize and bargain through internal

associations (i.e., non-union workplace committees or minority unions) then international law (as stipulated by the ILO) provides for that option. As pointed out by Adams (2015) and as stipulated under ILO language, “the existence of a majoritarian exclusivity statute does not “eradicate” the rights of non-majority unions and principles of “voluntarism”, nor does it mean license to refrain from bargaining.”

Made- in-Canada Versions of Minority Unionism: Graduated Freedom of Association (GFA), Graduated Representation and Most Representative Union Models (MRUM)

Despite the many variations on the concept of minority unionism mentioned above, there are at least three that have been proposed by Canadian scholars over the last two decades. One of the clearest for Ontario comes from David Doorey who puts forward a proposal called “Graduated Freedom of Association” (GFA). Under that proposal, a new “thin” model of freedom of association would serve as an alternative to the “thicker” Wagner model. The GFA provides a “minimum bundle of rights and freedoms protected by the Charter without having to opt for a majority union as bargaining agent” (Doorey, 2012). Although imposing “few new substantive obligations on employers” it would help, according to Doorey, address “the large representation gap for employees who want a collective voice at work but cannot realistically acquire it under today’s labour relations statutes” (Doorey, 2012).

UBC Professor Mark Thompson published a paper in 1995 with many of the same elements as Doorey (2013) but with several crucial differences including the fact that Thompson was writing prior to the *Health Services SCC* decision (*Health Services and Support Facilities Subsector Bargaining Association v. British Columbia*, 2007, SCR 391). The basic structure of Thompson’s (1995) model would be three levels of “graduated representation” initiated by workers. The first basic level would be the right to be *informed about employer actions* on specific subjects without any requirement that the employer consult on these subjects. The second level of representation would be *consultation with employees* or their representatives on subjects that in a European context would typically addressed by works council, e.g., layoffs, technological change, training, promotions and transfers and health and safety etc. At the second level compensation would also be subject to consultation. Employers would retain the right to

act unilaterally, but would be required to discuss these matters with an employee committee. The third and final level of representation, which would build on the two previous systems, would add requirements that joint employee-employer committees agree to certain management actions, such as dismissals for cause, major changes in work schedules and economic matters prior to any employer actions.

According to Thompson (2015:3) “Employees could obtain any of these levels of representation by free vote on rather generous terms, i.e., a minority of perhaps one-third for the first level, forty per cent for the second level and a majority for the third. Employee rights to choose among these models would be guaranteed by law. Choices would be valid for a fixed period of time, perhaps as short as two years and as long as four or five years. An administrative body, the labour relations board or a similar agency would determine the appropriate unit for representation and administer elections”

Finally, Adams (2015), who once advocated the abandonment of the Wagner Model (Adams, 1995) has now proffered a detailed minority unionisation model for Canada that would keep the WAM model as is, but would add the ILO idea (option two) of the “most representative union”. In Adams words, the option of certifying an exclusive agent via a majoritarian procedure would continue to exist but:

“...it would no longer be the only form of certification available to workers. In an appropriate bargaining unit, the most representative union (or coalition of unions) with, perhaps, 30% support and a minimum membership to make it credible, could be certified by the labour law authority in each Canadian jurisdiction as primary bargaining agent with all of the rights and duties of exclusive agents but it would not be the exclusive agent. Consistent with ILO norms, in enterprises with certified most representative unions, minority unions would have the legal rights to speak for their own members, represent the grievances of their members and the right to organize legal strikes. Collective agreements would have to allow minority unions to exercise those rights but only within the terms of the agreement (and the law). Thus, for example, minority unions would have to respect the requirements of the grievance system laid out in the negotiated collective agreement and, should the minority association set out to organize a strike, the requirements in both the agreement and the law would have to be honoured. The law would also have to provide for replacement, at appropriate times, of the certified most representative union by another union that had acquired greater support and for decertification.

This proposal would have the great advantage of requiring minimal change to existing procedures. The disruptions feared by Justice Winkler would be kept at a minimum because of the requirement that minority unions operate within the bounds of the collective agreement and the law. Employers would not be accosted with continual contrary demands. The competition from employer-sponsored “company unions,” feared by organized labour as a consequence of legitimizing minority unionism would also be minimized since such unions, unable to pass the independence test, would not be certifiable and any bargaining arrangements established with them could be nullified by the certification of a legitimate most representative union. The result would be that the processes and regulations now in effect under existing Wagner statutes would require only minor adjustment. (Adams, 2015: 17-18)

According to Adams (2015), with the new duties of certifying and regulating (and perhaps promoting) minority unions, provincial labour boards would recapture their central role and thereby reduce the need for costly Supreme Court challenges. Adams (2015) goes on to speculate that one of the likely results of this system, which both practitioners and law theorists would welcome, is the return to ‘authority’ of the labour relations boards and the quieting of freedom of association legislation. Citing Burkett (2013), Adams documents how labour boards have been losing their central role in labour relations due to increased activism by both legislatures and the courts thus, in the view of Burkett and others, destabilizing the system.

Minority Unionism in Practice: A Summary

Under either the Doorey (2012), the Thompson (1995, 2015) or the Adams (2015) approaches, labour relations legislation would not require employee organizations to demonstrate majority support in their workplace in order to be recognized as authorized representatives of certain employees. However, in Thompson (1995, 2015), they would not necessarily have the rights of exclusive representation or the right to strike. However, once recognized, all authors agree that the minority union would have the right to compel employers to provide them with information about human resource policies and terms and conditions of employment. The association would also have the right to compel employers to consult with them on these and other subjects. As noted earlier, a downside from an employer perspective could be the proliferation of multiple worker representatives being present in the workplace and the confusion and

administrative bottlenecks this could create. As such, legislation enabling minority unionization could set voting thresholds (e.g., a minimum number of employees in small workplaces and percentages for larger enterprises, i.e., 20%-30%) before such a group could be recognized as a minority union.

Examples from the US and other jurisdictions highlight such minority unions deploying a variety of techniques to organize workers and influence management, including petitions, plant surveys, and meetings with management (Brooke, 2001).

From employee perspectives these models could be seen positively, offering less confrontation than WAM and providing flexibility and choice about who represents them. However, for labour groups there would of course be concerns about the weak “watchdog role” over management actions these employee groups would have and their ability to deliver tangible benefits for workers. For businesses this could be seen as unneeded intrusion into the workplace resulting in increased costs and administrative burdens and duplicating many existing employer-employee feedback and collaborative mechanisms. However, as noted recently by many labour law scholars, recent Supreme Court Case (SCC) Charter rulings might indeed provide “workers with much more extensive and more deeply entrenched rights than any labour relations statute.” In other words, employers may want (need) to get ahead of the game in the event that a provincial government decides such new forms of representation need to be extended to all workers rather than to those just found in the majoritarian Wagner Act model.

3.3.3 Statutory Voice Provision inside Workplaces (i.e., extending the Ontario Joint Health and Safety Committee Model)

Another approach towards workplace representation would be German-style work councils. These are bodies, elected by all non-managerial employees and entitled to meet with management, are apprised of and consulted with on all matters impacting employees and can participate to some degree in management decisions (Knudsen and Markey, 2001; Wood and Mahabir, 2001; Rogers and Streeck, 1995). Work councils are a mainstay of industrial democracy in many European jurisdictions where they are integrated into larger labour relations systems covering collective bargaining and, in Germany, part of the co-determination model (i.e., worker representation on company

boards of directors). As such, they can be seen as a complement (rather than as a replacement) to collective bargaining.

In Ontario, in order to minimise bureaucratic hurdles and costs, the work council concept could be incorporated into statutory occupational health and safety (OHS) committees and expanded “to codetermine specified critical aspects of work such as training, employment equity, technological change, job sharing and the terms of plant shutdowns and to cooperate with management in improving the efficiency and competitiveness of the enterprise” (Adams, 2008). This proposal could either mimic the German model, which does not statutorily mandate, but rather enables, works council formation by employees, or be more proactive and mandate a minimum of information sharing, akin to Thompson’s (1995, 2015) “first level of graduated representation”.

Expanded health and safety committees with work-council type functions have the potential to provide an effective mechanism for employee voice and input on matters that directly affect them in the workplace. Nevertheless, their ability to deliver on economic and equity based objectives hinges on the commitment of all parties to informed decision-making, fostering cooperation and being committed to achieving various workplace outcomes. As with minority union and thinner representation models, employees would likely welcome works councils and the opportunity they provide for meaningful engagement in workplace issues. Though perhaps still viewed with some reticence by North American labour, it could be seen (as in Europe) as a compliment to existing union voice or in the case of “union free workplaces” as a possible pathway for future unionization in some cases. And if it were to be integrated with existing statutory health and safety committees it could be regarded as less burdensome, though some employers would claim that any work council systems replicate existing employer-driven mechanisms to “garner/elicit” employee feedback through such policies and quality work circles and teams. However, given that the over a forty-year history in Ontario with OHS committees, it is likely that this would be the most politically saleable of any proposal that stands outside of the traditional WAM model.

Having said this, this is not the universal view of the entire industrial relations community. Thompson (2015:4) recently states that “Despite their [works councils] eloquent advocates, workers councils did not fit well into the existing industrial relations

model in Canada, especially the importance of local bargaining and the commensurate lack of higher levels of bargaining structures.”

3.3.4 Promoting and Advancing Worker Owned-Managed Cooperatives

One concrete way of promoting worker voice would be for government to play a role in promoting employee-owned co-operatives, which arguably achieve the highest degree of workplace representation and a variety of well documented economic benefits both for workers and surrounding communities (Jones et al, 2010). This could be achieved in collaboration with the co-op sector through support for capacity building and facilitating access to credit and other financial supports to help co-ops start-up and grow. Some of this activity is already underway through the Province’s Social Enterprise Strategy which promotes growth of the social economy, including member and worker co-operatives in Ontario.

3.3.5 Encouraging Voluntary Employee Voice Models

As surveys indicate, many employees prefer informal non-statutory collective representation over certified exclusive agency (Adams, 2008). Therefore, there could be a case for encouraging employers to voluntarily negotiate and create non-statutory labour management models of co-operation. This capacity building activity could be done in collaboration with business groups, chambers of commerce and firms wishing to highlight their best practices.

Though unions have traditionally regarded such models as being subject to manipulation by management and lacking any power of independent oversight, they nonetheless have the potential of evolving into statutory union representation (Taras and Kaufman, 2006). Another way of viewing non-statutory/voluntary systems of representation is as a complement to trade unionism and not a substitute. This idea of complementarity has been observed in Europe, where work councils handle plant-level issues while trade unions tackle industry-wide matters. Of course for business, promoting a voluntary approach would be welcomed and not seen as unwarranted intrusion into operations. In fact, mapping the diversity of voluntary employee representation systems one finds that “what you believe” non-union/voluntary/non-

statutory employee representation to be depends on the perspective or the “frame of reference” that one is using to evaluate them. Gollan, Kaufman, Taras, and Wilkinson (2014) recently identified four different perspectives that represent the different dimensions or realities of non-union employee representation (see Box3).

Box 3: The “Four” Non-Statutory/Non-Union Forms of Workplace Voice

1. Evolutionary Face of Employer Voice: The first perspective is an evolutionary one, in which non-union employee representation schemes are considered as a mere step in the evolution of employee-employer relations. This implies that non-union employee representation is considered as “an unstable form of voice” that will be supplanted by genuine industrial democracy.
2. Genuine Employer-Based Voice (Lewin, 2014): The second and more positive perspective is to consider non-union forms of employee representation as means to unify the interests of both employees and employers. Proponents of this method of regarding non-union employee representation believe that, in contrast to unions that generally foster a confrontational relationship between management and employees, non-union employee representation encourages cooperation and the pursuit of common interests. Non-union employee representation offers a venue for promoting employee involvement and empowerment while providing a forum to build outcomes providing mutual gain.
3. Complement to Union Voice Face The third perspective on non-union employee representation is to view it as a complement to trade unionism and not a substitute. This idea of complementarity is present in the University sector – the University of Toronto for example– with its many overlapping systems of communication and voice. This type of system has been observed in Europe as well, where work councils handle plant-level issues while trade unions tackle industry-wide matters.
4. Direct Union Avoidance Face: The fourth way of considering employee representation as a way to hinder and limit union introduction in the work place. Proponents of unions consider non-union employee representation as a way for employers to succeed in blocking certification attempts. Indeed, many cases were identified where employers suggested non-union employee representation in reaction to union drives. Of course, union avoidance is an important criterion when management considers adopting a non-union form of employee representation in their organization, but empirical evidence seems to suggest that it is not the only reason, since non-union employee representation has been implemented in organizations where the threat of union certification was low.

Source: P.J. Gollan, B.E. Kaufman, D. Taras & A. Wilkinson, Eds., *Voice and Involvement at Work: Experience with Non-Union Representation*. London: Routledge, 2014.

This varied list of perspectives can help us understand why voluntary employee representation systems do not cover a larger percentage of workers in Canada and Ontario. Indeed, for non-union forms of employee representation and unions both to flourish, it is necessary for policy-makers to adopt a legislative framework that “promotes the optimal mix of the two forms of voice”. Until this type of legislation is explicitly adopted in any North American jurisdiction, the future of non-union employee representation will remain uncertain.

Added to voluntary approaches, and as a means of capturing the self-employed/non-standard worker, governments in conjunction with labour and other community groups could provide support for groups such as the *Freelancers Union* which is backed by Unifor the country’s largest private sector union. Working outside of the traditional framework of union-employer collective bargaining, it provides members access to discounted insurance rates, press credentials, and advocacy in the case of disputes with a contractor. It’s seen as a way of dealing with the isolation that can accompany freelance work and provides voice for these workers at a provincial and national level. Ultimately, this initiative aims to offer protections and benefits that are synonymous with unionized jobs inside of traditional workplaces to freelance “new economy” workers that lack such a specific work site (Canadian Freelance Union, 2015).

3.3.6 The Office for the Promotion of Workplace Democracy and Productivity

Lastly, what needs to be considered is whether the existing structure of governance provincially is fit for the purpose of advancing 21st century workplace democracy. It is evident that if any province is serious about increasing the voice of workers and closing the representation gap, key stakeholders need to view this as part of a broader strategy to create “good jobs” whether in manufacturing or in the service sector. It is also important that governments recognize that they need to challenge the notion that there is always a trade-off between economic efficiency and equity. Unless regulatory policies are pushed to the extreme, many efforts that promote equity can also enhance efficiency. As seen in the Swedish and German cases, dealing with the province’s productivity challenges will simply not be possible without the “shop floor” insights of

Ontario’s workers. In this light, statutory mechanisms that can enable such employee voice to flow from engaged employees to proactive managers would help advance workplace democracy and productivity.

With that in mind, the province could take a leadership role in bringing together industry, labour, the cooperative/non-profit sectors and human resources professionals to advance employee voice and productivity in the workplace. This could be facilitated through a variety of mechanisms such as the creation of a provincial office or council that would have as its mandate the promotion of employee voice and workplace productivity. Such a mechanism would leverage the existing financial and human resources of partners in such ways as:

- Serving as a table or forum for a renewed “social dialogue” on critical labour and economic issues with all stakeholders;
- Acting as clearinghouse for workplace best-practices and innovations from all sectors;
- Developing voluntary provincial standards and criteria defining “democratic workplaces”
- Supporting capacity building amongst partners in all areas of industrial democracy (e.g., collective bargaining, conflict resolution, democratic work processes);
- Implementing a provincial framework or strategy to advance workplace democracy and productivity

It should be noted that some private sector firms are already pushing the boundary in this area and enlarging the scope of worker voice and participation in decision making. Under the banner of “holacracy” firms such as Zappos are abandoning traditional hierarchy but not in favour of so-called “flat management” systems but to a ‘third-way’ that brings structure and discipline to a peer to-peer workplace and employee autonomy.

3.3.7 Hybrid Approaches

Lastly, one should not preclude any number of made-in-Ontario approaches that build upon the above listing of alternative forms of voice and representation. One could

imagine, for instance, a ‘hybrid approach’ in which an expanded information and consultation role for OHS committees is the first stage in a GFA style process in which workers acquire further rights depending on the degree of support that is enjoyed for collective voice. If and when employees in a particular establishment can demonstrate majority support, a workplace committee may elect to become a certified union whereupon it will acquire full WAM collective bargaining rights.

4.0 FUTURE RESEARCH QUESTIONS AND DATA AVAILABILITY

At present, with the discontinuation of the Workplace Employee Survey (WES) in 2006, Canada has no detailed survey instrument designed to obtain representative information on the employment relations activities and behaviour of firms and associated reactions and feelings of employees to such activities. This is, to put it the bluntness of terms, embarrassing and stands in sharp contrast to other major leading economies such as Australia and Britain, which (in the case of Britain) has been producing the Workplace Employment Relations Survey (WERS) – formerly known as the Workplace Industrial Relations Survey (WIRS) – since 1980.¹⁵

As a result, in this review, we have either had to sacrifice representativeness with currency in that the most nationally representative surveys are now one (and in some cases two) decades old whereas newer surveys tend to be one-off, small sample independently funded enterprises. What is required instead is a government funded nationally representative snapshot of employment relations in Canada, sufficiently large such that break-outs by Province or region can be made without comprising anonymity or statistical relevance. If the federal government is not prepared to step up to the plate and fund a replacement for the WES, then provinces should fill the void.

The main objectives of such a survey would be to, in the first instance, map i) workplace employment relations in Canada and changes over time and ii) provide a comprehensive and statistically reliable data on Canadian/Ontario workplace employment relations, which is made publicly available and easily accessible. The ultimate goal, beyond allowing researchers to test various theories and hypotheses,

¹⁵ The WERS is a national survey of people at work in Britain. It is the flagship survey of employment relations in Britain. It collects data from employers, employee representatives and employees in a representative sample of workplaces. WERS has been undertaken 6 times: 1980, 1984, 1990, 1998, 2004 and 2011.

would be to inform policy development and practice, and hopefully stimulate public debate. The information collected in such a proposed replacement for the WES would, like WERS in Britain, come from 3 distinct sources:

- A random probability sample of workplaces in which face-to-face structured interviews are conducted with the most senior manager responsible for employment relations and personnel issues - in each workplace a self-completion questionnaire is distributed before the interview to collate information on the basic characteristics of the workforce, and a second questionnaire is left at the end of the interview to assess the financial performance of the workplace;
- Survey interviews are undertaken in the same workplaces, with 1 trade union employee representative and 1 non-trade union representative (where present)
- A self-completion survey with a representative group of up to 25 employees, randomly selected from each workplace participating in the survey

Some of the information and research questions that would be produced and answerable by this kind of survey include:

- how workplaces are managed and organised
- individual and collective representation at work
- trade union recognition and membership
- dispute resolution and fair treatment at work
- family-friendly policies and employment equality, selection and recruitment
- how learning and training activities are undertaken
- adoption of high involvement management practices
- the extent of non-standard employment and
- the extent to which it is precarious with vulnerable workers,
- preferences for different types of voice

These are all questions that could be useful in measuring the overall economy-wide effectiveness and compliance with various employment standard legislative reforms and longstanding policies such as health and safety and minimum wage legislation.

5.0 CONCLUSION

Revitalizing worker voice and increasing employee participation in the workplace is an essential and critical first step to addressing large economic, social, political and public health related challenges we face as a province. As this paper highlights, issues from rising inequality, sagging productivity to widespread voter disengagement are in large measure the result of an economy too often treating labour as a variable (rather than as a fixed) business input and therefore devoid of any meaningful voice in the workplace. The issue of a lack of employee representation and voice at work needs to be cast by government in these stark terms. However, in much the same way that political democracy includes different variants (e.g., direct, indirect, proportional), achieving a more engaged and participatory workplace can be achieved through a variety of institutional and workplace structures. This can include everything from worker owned and operated cooperatives, to a system of graduated freedom of association, to minority unions to non-union workplace based mechanisms that provide avenues for meaningful employee input.

There is also no sugar coating what Carole Pateman observed more than 40 years ago that the “whole point about industrial democracy is...a modification to a greater or lesser degree of the orthodox authority structure: namely one where decision making is the ‘prerogative’ of management in which workers play no part” (Sanderson, 1979:68). As recent Ontario history highlights, the main actors in the labour relations system are not apt to weaken those “prerogatives” easily.

In order to extend the benefits of worker voice it is important to create a broadly representative multi-actor and multi-sector platform for dialogue and consideration of new legislative vehicles. To help shape this discussion it might be valuable to look at strategies that have both a short and longer term horizon for possible implementation. In this regard, particular short-term emphasis could be placed on approaches and strategies geared at supporting workers in precarious and lower wage service sector employment.

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