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How much would US union membership increase under a policy of non-exclusive representation?

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Abstract

Purpose – In light of the low-union density and a huge representation gap in the US representation system. The purpose of this paper is to examine the effectiveness of the system under majority rule and to provide some empirical evidence on how much union membership would increase in the USA if a policy of non-exclusive representation, as adopted in New Zealand, are to be implemented.

Design/methodology/approach – The sample for the study consists of 227 New Zealand organizations, employing over 180,000 workers. Logistic regression is used for the analysis with the dichotomous dependent variable indicating whether there is majority union support.

Findings – If the USA allowed and supported minority unionism, union membership could increase by 30 percent or more. Workers in smaller, private-sector organizations outside healthcare, education, and manufacturing are most disadvantaged by the majority-rule system.

Practical implications – Given that many workers' needs for representation have not been addressed by the current US majority rule system, consideration of minority representation to enhance representation effectiveness and understanding its implications are of critical importance, especially for a democratic society.

Originality/value – The paper offers empirical data on the implications of a change of the US representation system and proposes three options for incorporating minority representation.

Keywords Trade unions, Industrial relations, United States of America

Paper type Research paper

US union membership levels have suffered a precipitous decline over the past four decades, falling from a peak of 32.5 percent in 1953 to a very low 12.1 percent in 2007 (White, 2001). Private sector union density has fallen even more steeply, dropping from 35.7 percent in 1953 (Troy, 2004, p. 4) to a dismal 7.5 percent in 2007 (Bureau of Labor Statistics, 2008). If the decline continues, trade unionism could virtually disappear in the US private sector. For all those who support trade unions and see them as key to defending the rights of workers, this is a very worrying trend. Nevertheless, various surveys suggest that many workers still want union representation across the richer Anglophone world. For example, Bryson *et al.* (2005, p. 165) found that approximately 50 percent of workers surveyed in Britain, Canada, and the USA wanted

union representation. Similarly, Freeman and Rogers (2006, p. 19) report the results of the 2005 Hart Research Surveys as showing that 53 percent of US respondents would "definitely or probably vote for a union," if given the chance.

We argue that the policy of certifying exclusive union bargaining agents, with majority support established through a representation vote, is at least partly responsible for low US union membership numbers. This is seemingly nothing new. Past researchers have often attributed low or declining union membership levels to flaws in how the US union certification system is administered and enforced, especially when compared to Canada. Many of these are discussed and summarized in Godard (2003):

> Crucial differences favouring easier certification in Canada include, but are not limited to, card checks rather than representation votes, shorter delays preceding representation votes, heavier fines for unfair labor practices, first contract arbitration for stalled negotiations, more restrictions on the employer's freedom of speech, and more restrictions on hiring replacement workers (Harcourt and Lam, 2007, p. 334).

Godard (2003, p. 478), using data from a 1997 survey, estimates that if the USA had always had Canadian-style certification procedures, its union density rate would have increased by 12.2 percent, double its current rate. In 2007, the US Government considered its own version of these policies in the Employee Free Choice Act, but this was defeated through a Republican philibuster, despite bipartisan support. No doubt, President Obama's administration will attempt to pass the same or similar legislation again, and some boost to union membership levels will result.

More fundamentally, we argue that the twin policies of exclusive bargaining representation and majority rule, even if made to work as intended, would still deny millions of workers, especially in the private sector, the right (and opportunity) to join and be represented by a union. In contrast, a less-restrictive policy of so-called minority unionism, predicated on nonexclusive representation and the minimum support of two or more workers in any given workplace, would help revive US union membership levels. Giving workers the right to union representation, when only 10, 20, 30 or 40 percent of their co-workers support the same union, would allow unions to reach out to a great many more workers in a great many more workplaces.

How much would US union membership increase under a policy of minority unionism? US data are simply unavailable to directly estimate such an increase. Moreover, one cannot assume that all those professing a desire for union representation would more or less automatically sign up. The richer Anglophone societies, irrespective of their varied labour relations institutions, still have a representation gap, which is the difference between the proportion of workers wanting union representation and the proportion both wanting and having it. However, much can be inferred from union membership data in New Zealand, a country where minority unionism is well established. We estimate how much union membership would decrease, following adoption of a majority rule policy in New Zealand. Likewise, using the same New Zealand data, we infer what would happen to US membership levels, if it adopted the opposite policy of minority unionism. Also using New Zealand data, we examine which industries would be disadvantaged least and most, in terms of a loss of union members, by a majority rule policy. From this, we infer which industries are currently being relatively more or less disadvantaged by the current majority rule policy in the USA.

Sample

The sample consists of 227 New Zealand organizations. Their names were mainly obtained from job advertisements on the web or in the *Wellington Post*, *Wellington Dominion*, or *New Zealand Herald* newspapers over a three-month period at the end of 1999. As well, 55 organizations that had participated in a large-scale survey of small- and medium-size enterprises were also included. At the time of data collection, these organizations together employed an estimated 188,917 workers, more than 10 percent of New Zealand employees (Crawford *et al.*, 2000, p. 294), of whom 84,531 were union members, nearly 30 percent of New Zealand's 302,000 trade unionists (Crawford *et al.*, 2000, p. 294). These organizations reflect a wide range of industry sectors[1].

Variables

The dependent variable is UNION, which takes on the value of 1 if union density is 50 percent or higher (implying majority union support), and the value of 0 otherwise. Union membership figures were obtained directly from unions. Union contact information was obtained from the Registrar of Unions at the Employment Relations Service, Department of Labour. Information about organizational size came mainly from two sources: *The New Zealand Business Who's Who* and *Kompass*. Where information on size was not available from these sources, organizations were contacted directly for their staff numbers. Union density for each firm was calculated by dividing the union membership number by the organization's employment size.

The independent variables include PUBLIC, MANUFACTURING, EDUCATION, HEALTH, HR DEPARTMENT, and LOGSIZE. PUBLIC is a dichotomous variable indicating whether the organization is in the public sector (coded 1) or not. Public sector organizations are expected to be easier to organize because of lower staff turnover and "good employer" obligations to recognise and work in good faith with unions, as required by the State Sector Act (for the civil service) and other public sector statutes. Public sector employers may also be more able to accommodate union demands for higher wages and better working conditions, given the lack of competitive price pressure for most of their services (Brewer *et al.*, 2001). PUBLIC is therefore expected to be positively related to majority union support.

MANUFACTURING is a dichotomous variable indicating whether the employer is in the manufacturing industry (coded 1) or not. Blue collar workers, especially full-time male workers, have traditionally been the main supporters and recruitment targets of unions (Ng, 1992). Unionization is prompted by the limited individual bargaining power and collective solidarity of unskilled workers in this sector, together with the often harsh and unsafe working conditions. MANUFACTURING is therefore predicted to be positively associated with majority union support.

EDUCATION is another dichotomous variable indicating whether the organization is in the education sector (coded 1) or not. Educational organizations have low-staff turnover, which provides a stable environment favourable to unionization. In addition, educational organizations are usually progressive, open, and democratic, and therefore unlikely to be involved in anti-union, unfair labour practices. EDUCATION is, therefore, predicted to have a positive association with majority union support.

Similarly, HEALTH is a dichotomous variable indicating whether the organization is in the health care sector (coded 1) or not. Health sector employers are mainly large, public or quasi-public organizations with low-staff turnover rate, and so offer a potentially

stable source of members for a union to organize. Moreover, the stresses and strains of hospitals and other health-related work environments give rise to grievances and complaints around issues like working hours and workloads, which are conducive to unionization. Hence, HEALTH is predicted to have a positive association with majority union support.

HR DEPARTMENT is a dichotomous variable indicating whether the employer has a human resource (HR) department (coded 1) or not. Information on whether the organization has an HR department came from the respective organization's web site or through direct contact. Having an HR department is suggestive of a highly formalized employment relationship. Where an HR department exists, there may be more systematic and proactive HR practices which lessen the appeal of, or need for, unionization. On the other hand, the formality of rules and contracts in organizations with an HR department may also lead to a counterbalancing employee desire for more formal representation via a union. As a result, the expected impact of HR DEPARTMENT on majority union support is unclear, a priori.

LOGSIZE is the employer's total number of employees, expressed in a logarithm to lessen the skewed distribution of employer staff numbers. In contrast to small firms, larger companies provide economies of scale for union organizing (May and Walsh, 2002). Their lower turnover also provides the stability worthwhile for unionization efforts. Moreover, larger organizations often have high, monopoly, or oligopoly-related rents and so are more likely to afford union pay premiums. For these reasons, LOGSIZE is expected to have a positive association with majority union support.

Analysis

Binomial logistic regression is used to analyze the data. This technique uses maximum likelihood to estimate coefficients for the independent variables which best predict the odds of majority union support (e.g. UNION = 1). The logistic model estimated is as follows:

$$\frac{\text{Probability (majority support)}}{\text{Ln[probability (no majority support)]}} = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \cdots + \beta_n X_n$$

The probability of "majority support" divided by the probability of "no majority support" is an odds ratio, the odds of a union (or unions) obtaining majority support with any one employer rather than not doing so. The $\ln(x)$ of this odds ratio is predicted by the independent variables, the Xs in the above model. The Betas (βs) in the model are the parameter or coefficient estimates and indicate the effect of a one-unit change in the respective independent variable on the log odds ratio.

Results

About 77 (34 percent) employers, together employing 95,670 staff, had a union density level exceeding 50 percent (UNION = 1). In other words, these employers had majority staff support for a union (or unions). They collectively employed 65,239 union members. This suggests that, with an American-style, employer-wide representation vote, they would have been unionized employers.

On the other hand, 150 (66 percent) employers, collectively employing 93,247 staff, had a union density level less than 50 percent (UNION = 0). In other words, these employers did not have majority staff support for a union (or unions), and so, under

an American-style, employer-wide representation vote, would not have been unionized. They collectively employed 19,292 union members. These numbers suggest that, in New Zealand, a representation vote would have denied 23 percent of all union members the right to join a union. The same numbers also suggest that abolishing representation votes and allowing minority union representation could raise union membership numbers in the USA by approximately 30 percent.

Table I provides the results for the logistic regression model. The estimated coefficients, and associated standard errors in parentheses, are recorded in the first column. Changes in the odds ratio are calculated by taking the inverse $\ln(x)$ of each estimated coefficient. These are listed in the second column. A positive (negative), statistically significant coefficient indicates that the odds ratio rises (falls) as the value of the independent variable increases.

The parameter estimate for the constant or intercept is statistically significant. It indicates that when the independent variables are all equal to zero, the odds of majority union support are 7:1,000. In other words, the odds of a union or unions gaining majority support in tiny, private sector organizations without an HR department and not in the education, healthcare, or education sector are nearly 150:1 against.

The estimated coefficient for PUBLIC is positive and statistically significant. It indicates that belonging to the public sector increases the odds of majority support more than 19 times. Similarly, the estimated coefficients for MANUFACTURING, EDUCATION, and HEALTH are all positive and statistically significant. These indicate that belonging to one of these sectors increases the odds of majority support nine, 14, and five times, respectively. The estimated coefficient for HR DEPARTMENT is not statistically significant, meaning that the existence of an HR department has no effect on the odds of majority support.

The estimated coefficient for LOGSIZE is positive and statistically significant, and indicates that a one-unit increase in this variable, equivalent to increasing staff numbers 1 to 10, 10 to 100, 100 to 1,000 or 1,000 to 10,000, more than doubles the odds of majority support.

The classification matrix shows that the estimated logistic regression model correctly classifies 134 of the 150 employers that do not have majority union support (i.e. unions represent less than 50 percent of the workforce), and 44 of the 77 employers that do have majority union support (i.e. unions represent more than 50 percent of the workforce). Overall, the model correctly predicts whether the employer has or does not have majority union support 78 percent of the time.

	Union		Odds ratio
INTERCEPT	−4.893[**]	(0.915)	0.007
PUBLIC	2.970[**]	(0.511)	19.492
MANUFACTURING	2.180[**]	(0.673)	8.846
EDUCATION	2.619[**]	(0.681)	13.722
HEALTH	1.686[*]	(0.732)	5.398
HR DEPARTMENT	−0.262	(0.618)	0.770
LOGSIZE	0.793[*]	(0.353)	2.210

Note: Statistically significant at: [*]0.05 and [**]0.001 (two-tailed tests) levels, respectively

Table I.
Binary logistic regression
results for union
certification success

Discussion

Our New Zealand evidence suggests that abolishing representation votes and allowing, and supporting, minority unionism in the USA could increase union membership numbers by 30 percent, raising union density to something like 16 or 17 percent. How realistic is this possibility? A 30 percent increase in union membership may be an over-estimate, because some New Zealand employers with less than 50 percent union support would nevertheless be partially unionized under an American-style system. Why? The labor relations board usually defines bargaining units along establishment or occupational lines, making it easier to achieve majority support in a representation vote, even in companies where only a minority of staff favours unionization. Permitting minority representation would not greatly increase union membership levels in such companies, especially if their pro-union staff were heavily concentrated in a few establishments or occupations and already organized.

If anything, however, a 30 percent increase in union membership is much more likely to be an under-estimate. Many New Zealand employers with more than 50 percent union support would nevertheless be non-union under the US system. Why? As stated earlier, the US certification system allows employers to launch successful anti-union campaigns, which dissuade or intimidate employees into not voting "union" in a representation vote. For instance, US employers can dismiss union organizers and sympathizers, and the fines for doing so are low. As a result, many US unions are often unable to win representation elections, despite enjoying majority support. Minority unionism would also give them the opportunity to establish union representation rights.

Who benefits under an American-style voting representation system? Our New Zealand results suggest that majority support is more common in larger or public sector employers, and in the healthcare, education, and manufacturing sectors. By contrast, minority representation is clearly more "normal" in smaller or private-sector firms not found in the industries listed above. These findings are generally consistent with US and Canadian findings.

Policy implications and options

Low private-sector union density in the USA and a significant representation gap are clear indications that the majority rule system is failing to effectively address workers' needs for representation. In particular, workers in industries other than healthcare, education, and manufacturing, as identified above, have a slim chance of obtaining union representation, despite conscious union efforts to revive membership density in recent year. For this reason, the only hope for such workers is a change in legislation to allow and support minority representation.

What policy options are available to help make minority unionism a reality? We outline three possibilities. First, the USA could retain exclusive representation, established through a vote, while establishing a parallel system of minority representation. If workers were currently unrepresented, they would have the right to join a union, and that union would have the automatic right, but not obligation, to bargain solely for its members. If other workers in the same workplace wanted to be represented by a different union, they would also have the right to do so. Each union would have automatic workplace access rights to service members in a reasonable way, time, and place, and union members would be granted automatic protection from

the anti-union practices of employers. Both unions and their respective members would have the right to strike under the same or similar conditions as certified, exclusive bargaining agents do at the moment. If either union eventually established majority support through a representation vote, it would then become the sole and exclusive bargaining agent for all the workers in the relevant unit. These reforms would require no major amendments to the National Labor Relations Act, just a broader interpretation of current provisions, and would have no impact on existing majority representation situations. In addition, this version of minority unionism would remain totally compatible with the proposed Employee Free Choice Act amendments to the exclusive representation system, designed to ensure that unions with majority support really are certified as exclusive bargaining representatives.

A second, more radical option would involve completely abolishing the exclusive bargaining agent model and replacing it with something akin, for example, to New Zealand's system. Employees would have the automatic right to join any registered union, and the union would have the right, though not the obligation, to negotiate a collective agreement for two or more employees working for a particular employer. The National Labor Relations Board would no longer be involved in devising the boundaries of so-called appropriate bargaining units. Instead, unions would be required to negotiate coverage clauses, defining the occupational, locational, or other work-related characteristics of the workers they cover. In principle, unions would be free to have overlapping coverage clauses, enabling them to represent the same or similar groups of workers. To help lessen inter-union conflict, two or more unions would be free to choose a multi-union agreement with the same employer either by agreement of their leaders or member referendum. An employee would have the automatic right to (not) join any union, which has negotiated a collective agreement with a coverage clause covering his or her work. Alternatively, the same employee could choose to have no union representation, and instead opt for an individual agreement with his or her employer.

A third, even more radical option would involve what is been called compulsory proportional representation. Under this system, employees would all have to have some kind of collective representation, union, or non-union. The premise of this approach is that employment agreements are functionally collective in nature, because employees usually:

- do the same or similar tasks/roles;
- are administered under the same procedures and processes (e.g. pay increases, promotions, dismissals, and shift allocations); or
- share the same or similar working conditions (e.g. office space, lighting, and air quality).

For these reasons, individual agreements are typically highly standardized, one to the next, with the same terms and conditions typically imposed unilaterally by the employer. Given these realities, it makes sense for all employees to have some form of collective representation. Anyone not wanting a union, or not having access to one, would have the opportunity to formally choose (e.g. by vote) some other type of representative, such as a senior co-worker, consultant, accountant, lawyer, or even member of management.

Consequences of a move to minority unionism

What would happen if the US abandoned exclusivity and majority rule and instead pursued a policy of minority unionism (Option No. 2)[2]? Several legal scholars have argued that, apart from a likely boost in membership, the answer is "not much." When subjected to critical scrutiny, many of the claimed advantages of exclusivity and majority rule appear to be either fallacious or greatly over-stated. In short, there is little for unions to lose in switching to minority unionism. In fact, a new system might perform a lot better in all sorts of ways.

Exclusivity and majority rule were supposed to make unions more powerful by binding workers together in a single bargaining unit, all contributing their dues, all working closely with the one union, and all striking together *en masse*. In reality, this has not happened. In any given bargaining unit, many members (up to 49 percent) will not be there by choice, and so are likely to be apathetic about, or hostile to, the union's activities and goals. In addition, in right-to-work states, members of the unit cannot be compelled to join the union or pay it dues. Neither can they be compelled to go on strike. Furthermore, even though bargaining units rarely overlap, they seldom encompass all or most of the workers in a particular firm or even establishment. The National Labor Relations Board has typically kept units small and specialized to preserve a community of interests likely to support a union in a representation vote. However, efforts to preserve internal cohesion within each unit have generally fragmented labour representation into multiple units within any given firm, thereby rendering coordinated bargaining and strike action difficult (Finkin, 1993; Schatzki, 1975; Summers, 1998).

Minority unionism would offer the potential for greater unity and strength, especially with the right legal institutional supports. For instance, coverage clauses would give unions the freedom to broaden or alter their membership base as circumstances change rather than be locked into a fragmented and obsolete bargaining unit structure imposed by the labour relations board. Multi-union agreements would enable unions to coalesce with other unions, covering the same or similar types of workers within the same establishments and firms (Cohen, 1976; Summers, 1998). Unions would also enjoy more internal cohesion, since each union would represent members only (Delaney, 1998). Non-members on individual contracts would still free-ride on the union's ability to secure improved terms and conditions, just as non-members in the bargaining unit do today. However, without a duty of fair representation, unions would not be obliged to provide legal and other services to non-members embroiled in personal grievances or rights disputes.

If the main objective of a legislative change is to boost union representation, Option 1 is sure to achieve this, and with minimal disruption to already established unions. However, if other objectives are important, such as honouring the freedom not to associate as well as the freedom to associate, Options 2 and 3 are more appropriate. The union representation crisis will not go away without a major overhaul in the representation system, and so it is time that these minority representation alternatives are seriously studied and considered. We expect these alternatives to be particularly appealing to unorganized workers in under-represented industries, who want union representation even when most of their co-workers do not.

Notes

1. These organizations include manufacturing firms (ten); retail and/or wholesale firms (21); professional or business service firms (16); financial firms (15); transportation firms (six);

hotels, motels, or restaurants (nine); communication firms (three); forestry, agricultural, or fishing firms (three); daycares, schools, polytechnic colleges, or universities (35); healthcare organizations (17); volunteer organizations (four); public service departments, ministries, or agencies (59); and some miscellaneous or unclassified organizations which constitute the remainder of the sample.

2. Option No. 1 would fit neatly within the current system, and so would cause little disturbance. Option No. 3 is reviewed more thoroughly elsewhere in articles by Harcourt and Lam (2007, 2008).

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