LABOR BARGAINING UNITS

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Those analyzing and evaluating the labor laws should consider what unions do. Statements, whether descriptive or normative, about the legal regulation of labor-management relations require more rigorous attention to the business of unions and to the markets in which they function. This article develops models of the business of unions and applies the models to issues of bargaining unit appropriateness under the National Labor Relations Act.¹

Bargaining unit configuration is an important element in the labor law regulatory scheme. An election conducted by the National Labor Relations Board among employees in an appropriate bargaining unit is the most common route by which unions secure representation rights for groups of employees. A unit configuration may have decisive effect on a union’s power, on the nature of the goods the union seeks to secure, and on the distribution of those goods. The Labor Board applies a host of factors to decide if a proposed bargaining unit is appropriate. The Board’s general principles are that it will not search for the most appropriate unit, but only “an appropriate unit,” and that it will approve a proposed unit if the employees in that unit share a “community of interest.”² Neither of these principles is very helpful in predicting out-

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² See infra notes 66-68 and accompanying text.
comes; nor do they give much insight into what the Labor Board is trying to accomplish in its unit decisions.

In Part I, this article develops a collective goods model of what unions do. It shows that an elaboration of this model depends on the characteristics of the labor market in which the union finds itself and on the union's choice of which bundle of collective goods to seek. Part I next describes two models of labor markets—the price theory model and the relational contract model. After setting out these models, the article explores the incentives of managers and union officers within them.

Part II begins by describing the Board's bargaining unit criteria and the motives of unions and managers in proposing and opposing particular units. The principal focus of Part II is on the correspondence of the Labor Board's unit criteria to the collective goods model of union activity and to the two models of labor markets, and on an exploration of the theories of optimal units one might derive from these models. Because unions and managers need not confine their collective bargaining to the unit in which the Board conducted the representation election, the final sections of Part II explore the evolution of bargaining structures, emphasizing the distinctive characteristics of multiemployer bargaining, the reasons managers and unions consent to it, and the implications of the Labor Board's benign tolerance of it.

This article does not propose a single theory of optimal units. It sets out to create a framework for future analyses, both empirical and normative, of bargaining unit policy. Indeed, I hope that others may find the models of what unions do useful in analyzing areas of labor law besides determination of bargaining unit policy.

I. THE BUSINESS OF UNIONS

A. Models of Union Activity

1. The Collective Goods Model

Unions secure many kinds of goods for their members: wages and wage systems, seniority rosters for promotions and layoffs, "just cause" disciplinary protection, grievance arbitration, plant safety, plant conveniences, and a host of others. Most of these gains are "collective goods." That is, if a union or an individual employee secures them for any one person in a group, other mem-
bers of the group also enjoy their benefits. For example, the discharge or demotion of a repressive foreman at the complaint of one worker benefits every other worker victimized by the foreman.

There are several reasons why the goods unions ordinarily seek are collective goods. Because all members of a union share the costs of securing a good, the union is unlikely to seek a good that benefits only a single member. In some instances it is physically impossible to exclude any worker in the group from consuming a good. Improved lighting or air purification systems in the plant are examples. Some goods are nonexcludable for psychological reasons. If providing a good to some workers while withholding it from others will make the latter group unhappy and uncooperative, managers may decide that they must extend a good to everyone or to no one. Managers may choose to provide a good to all employees in a group because it is too expensive to administer a scheme of differential treatment. For example, a union might negotiate disciplinary procedures covering its members that require recordkeeping by managers, and the managers might extend the procedures to all employees because it is too expensive to keep track of which employees are covered and which are not. In some instances, the law imposes nonexcludability, as when a statute forbids a firm from treating unionized employees differently from nonunionized employees. A union can also force nonexcludability on a firm as part of the union's demands, perhaps out of notions of solidarity or fear that excluded workers might threaten the union's power. Finally, there are economies of scale in the production of some collective goods. Extension of such goods to nonunion employees carries few additional costs.

Individual workers will spend little to secure collective goods at the workplace. A utility-maximizing worker will spend resources to produce a collective good only if its value to him exceeds its costs. Because the worker cannot be sure that his effort will secure

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3 There are more restrictive definitions of a collective good, but I do not deal with them here. See, e.g., Poulson, Is Collective Bargaining a Collective Good?, 4 J. Lab. Research 349 (1983). For example, if literal nonexcludability is required, it is hard to imagine a good that qualifies.


the good, when comparing costs and benefits, he must discount its value by the probability that his effort will not secure the good and the likelihood that some other worker will successfully obtain the collective good for the group. The total value of a collective good is the sum of the values to all workers who consume the good. Although this total value may far exceed the production cost, absent collectivization, the good may not be produced because a single worker must bear the costs. As a result, collective goods are under-produced by individual action.\(^6\)

For example, a worker in a nonunion firm could in theory negotiate an individual employment contract guaranteeing that the firm will not discharge him without just cause and that an arbitrator will decide whether a discharge is in fact for just cause. Individual employment contracts rarely contain such provisions, but such provisions commonly appear in union collective bargaining agreements. The collective goods model helps explain this apparent discrepancy. An individual worker may not value highly a "just cause" provision if he can enforce it only by costly litigation.\(^7\) The risk of discharge for any particular worker may be small. Moreover, the cost to the firm of maintaining a grievance arbitration system (the alternative to court litigation), which involves educating supervisors and keeping records, for one or a few employees may be so high that no single worker, or even a small group, could "purchase" grievance arbitration by working for the firm at a reduced wage rate. The employee collective, the union, could purchase this benefit. It can pool the discharge risks of all the workers and spread the costs (in the form of reduced wages or other forgone benefits) of protection to the entire workforce. Managers should agree to a "just cause" clause and grievance arbitration if the purchase price, the reduction in total wage bill, exceeds the costs of implementing and maintaining this term of employment. Thus, unions might successfully bargain for these terms when individuals would not secure them.

In a collective goods model, a union exists chiefly to secure col-

\(^6\) Production costs may actually be higher if an individual seeks a collective good than if a union does. Most obviously, collective rather than individual action may frustrate any employer efforts at retaliation.

\(^7\) Moreover, the request can be viewed as a negative signal by managers. See infra text accompanying notes 12-17.
lective goods from firms for the union’s members. A union can secure collective goods in four ways. First, a union can coerce managers by exercising monopoly power. Strikes, picketing, and boycotts are common examples. Second, a union may secure a collective good by collective voice: telling managers what otherwise they might not learn about employee preferences, or might learn only at the cost of expensive quits. Third, a union may secure collective goods in exchange for ensuring employee cooperativeness and productivity. Finally, a union might purchase a collective good by persuading employees to trade off another benefit of lesser value—a certain wage increase, for example.

Three of the methods unions use to secure collective goods are familiar. Some elaboration of the collective voice concept, however, is helpful.\(^8\) Suppose that a firm determines its wage package (hourly rates, pension contributions, vacations, holidays, etc.) and other employment conditions affecting employees by reacting to the exit and entry of workers. If the firm pays too little, retains oppressive foremen, or offers the “wrong” mix of hourly wages, pension contributions and the like, employee quit rates (exits) and employment applications (entries) inform the managers of their error. It is probable, however, that the bulk of a firm’s employees will not quit, even if they prefer a different mix of, say, hourly wages and pension contributions. There may be many barriers to mobility. Length of service with the firm may have given these employees specific skills not valuable to another firm. Other firms may be willing to hire new employees only in entry level jobs. Moreover, given the many variables that have an impact on an employee in a particular firm, searching for a new employer that offers a preferred mix and that has no other disadvantages may be too costly. Of course, not all the employees will feel constrained to stay with the firm; some will exit in order to find the preferred mix of wages and pension contributions. The exit of these “marginal” employees signals to the firm that something is amiss in the employment package. Applicants for employment are also “marginal” employees because the inability to attract sufficient applicants to cover normal attrition is a similar signal.

\(^8\) For an earlier discussion of collective voice, see Freeman & Medoff, The Two Faces of Unionism, Pub. Interest, Fall 1979, at 69, 70-74. See also Freeman, Individual Mobility and Union Voice in the Labor Market, 66 Am. Econ. Rev. 361 (Papers & Proc. 1976).
The characteristics of marginal workers may differ significantly from the characteristics of inframarginal employees. Marginal employees are usually younger than inframarginal employees, have fewer relocation costs, and are less likely to have skills specific to the firm. Inframarginal employees are those less likely to exit because they are older, and the costs to them of exiting are greater. To the extent firms are not constrained to follow customary work rules and observe relative wages, they will tend to tailor their employment packages with the marginal worker in mind because an unhappy inframarginal worker is less likely to act on his dissatisfaction by exiting. When an unhappy inframarginal employee does exit, however, a firm may incur heavy costs, especially when firm-specific skills are prevalent at the firm. Training a replacement worker is generally necessary, and these replacement costs are directly proportional to the firm-specific knowledge or skills of the exiting employee.

The alternative to exit as a device for signalling dissatisfaction (preferences) is voice. To exercise voice is to complain. An employee can tell the firm’s personnel manager that the employee dislikes the current mix of wages and pension contributions. He can complain that the lighting over the assembly line is inadequate or that the food in the firm cafeteria is too salty. Absent a union, however, voice is likely to be underused at the workplace when a collective good is at stake.

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9 Freeman & Medoff, supra note 8, at 72-73.
10 For a discussion of the importance of relative wages and customary work rules, see infra text accompanying notes 28-39.
11 This provides another explanation why a union might produce a guarantee of “just cause” discharge enforced by grievance arbitration. See supra text accompanying note 7. It is plausible that young, mobile employees do not value highly a “just cause” guarantee enforced by grievance arbitration and that a firm that responds only to quits and applications will not offer these terms of employment. The older employee, who is likely to be less mobile, may be reluctant to request the terms for fear that the managers will interpret the request as signalling the employee’s negative evaluation of his past or future job performance. A union may force the firm to respond to the desires of the older employees.
12 This concept is developed in A. Hirschman’s classic book, Exit, Voice, And Loyalty, 36-43 (1970).
13 Of course, unionization may lead to an overuse of voice. Because union officers, if they wish to be reelected, must persuade their members that they are working hard in their interests, they may use union voice even when inappropriate in terms of economic rationality. Further, unions are liable for any portion of damages employees incur due to the union’s breach of its duty of fair representation. Bowen v. United States Postal Serv., 103 S. Ct. 588, 599 (1983). As a result, union officers have an incentive to arbitrate questionable cases that
In the workplace, the subjective estimate of the costs of securing collective goods through voice may be high. Managers may dislike workers who complain, and they may feel threatened by the complaints. A worker may mark himself for retaliation if the complaint is costly to address, especially if it explicitly or implicitly criticizes the manager or threatens his discretionary authority. If, for instance, a firm does not fire or control a complained-about repressive foreman, the complaining worker is likely to be very uncomfortable. A union can reduce its membership's costs of exercising voice by processing complaints on its members' behalf, by keeping secret the identity of the complainer, and by securing from the firm guarantees against reprisals.\textsuperscript{14}

In this analysis of collective voice, unionization of employees and collective bargaining may change the mixture of wages and other benefits (the "employment package") and promote voice over exit as a signalling device. A union is a democratically run collective of workers. As such, its "demands" should tend to reflect the average preferences of the workforce rather than the preferences of marginal workers. If the average preference is for more health insurance in lieu of a portion of salary, unionization makes increased health coverage more likely even though marginal employees prefer wages.\textsuperscript{15} The shift from a marginal calculus to an average calculus is not necessarily efficiency-enhancing or normatively preferable, but it may be both. Richard Freeman presents the following illustration:

Consider, for example, a situation in which management can choose one of two modes of organizing work, which, exclusive of their impact on workers, have equal profitability. Method \textit{A} greatly reduces the well-being of immobile senior workers, while method \textit{B} has no effect on them but displeases the mobile young slightly. In a market where information is conveyed by quits, the behavior of the

\textsuperscript{14} Why, in the absence of a union, managers themselves might not voluntarily adopt similar protections for employees exercising voice is explored infra text accompanying notes 41-50.

\textsuperscript{15} The firm cannot entirely ignore the preferences of marginal employees, lest the firm find itself with no applicants. This would be in neither the firm's nor the union's best interests. The opportunity to exercise voice, however, can make the firm a good long-term prospect for the marginal employee, even when the employment package reflects the preferences of the average employee.
young would lead management to choose method A, despite the loss of consumer "surplus" to older personnel. In a market with collective bargaining, the union might arbitrage the differences in preferences, so that the firm will pick B, with a negotiated redistribution giving the young some compensatory benefit and the old a less onerous loss than under A. This scenario can be expanded, to take account of different frequencies of quitting under A and B with similar results. The greater the difference between the losses under the two modes, the greater is the possibility that a superior bargain could be struck through the voice mechanism. I do not claim that the union will, in fact, arbitrage worker preferences correctly for the behavior of the union will depend on its internal organization, organizational goals, and political power of the various groups which are neglected here. The possibility is, however, there.\textsuperscript{16}

The collective goods model of unionization, standing alone, does not speak to whether the goods produced by unions for their members are beneficial in societal terms. Some collective goods for employees may be societal "bads." A taste for racial discrimination may lead a union to secure racially discriminatory hiring rules from a firm. These rules are collective goods from the standpoint of every worker in the firm with a taste for racial discrimination, even though others would condemn the rules on moral and other grounds. The kinds of collective goods that unions produce depend on the preferences of their members, the responsiveness of the union to member preferences, and the situation in which the members find themselves. An important contextual variable is the nature of the labor market. To say more about the collective goods model of unionization requires, then, an examination of the two current models of how labor markets work.

2. The Price Theory Model

The price theory model\textsuperscript{17} of labor markets is standard fare to economists and its summary here will be brief. This model de-

\textsuperscript{16} Freeman, supra note 8, at 366.

\textsuperscript{17} There is no consensus on an appropriate label to describe the content of this model. Professor Thurow, for example, has described the model as "marginal-productivity analysis," while admitting that as conventional wisdom "[I]t is so amorphous that I have been unable to say what it is." L. Thurow, Generating Inequality viii (1975). Some labor economists refer to the model described here as the price theory model. See, e.g., R. Fearn, Labor
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scribes how wages and employment levels would be set in a competitive labor market. A perfectly competitive labor market presupposes several conditions. First, there must be many firms bidding for workers and many workers bidding for jobs. Second, workers must be informed about job opportunities, including vacancies, wages, and other terms of employment (such as the attitudes of frontline supervisors) at other firms in the relevant market. Workers must also be utility maximizers in responding to differences in wage and nonwage conditions. They must be mobile, and they cannot act in concert. Firms must attempt to maximize profits, and each firm must represent a sufficiently small share of the labor market that its wage and employment levels will not affect the labor market as a whole. Finally, firms must act individually, not by common agreement, in setting wages and employment levels.

Wages and employment levels in a firm are determined by marginal revenue products of workers and competitive wage rates. An employee's marginal revenue product is the contribution to the firm's output occasioned by his employment. The price theory model assumes that many employers and workers populate the market, and that for any given occupational class there is a "going rate." The firm can find as many workers as it needs at this going rate, but it cannot attract workers if it offers less. The firm calculates its level of employment by comparing an applicant's contribution to the firm's revenue with his wage. It will hire only up to the number of employees where the last employee hired contributes a marginal revenue product at least equal to his wage.

The price theory model assumes unions to be wage monopolists. Through the union, the workers control the supply of labor by strikes, boycotts, picketing, and other forms of coercion. When unions are successful, wage rates within the firm rise, but employment levels fall. Some workers who would have been employed in unionized firms no longer are, and increased employment applica-

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20 A useful illustration is found in A. Rees, The Economics of Work and Pay 58-59 (2d ed. 1979).
tions in nonunion firms reduce wages in those firms. Because unions force production inefficiencies onto firms by forcing them to hire at levels other than those dictated by the market, consumer prices increase. Consumers, workers who cannot find jobs because the union has pushed up the wage rate, and nonunion workers who are working at lower wages can be said to be the "victims" of union power.21

In a perfectly competitive labor market an individual firm has no power over the wages it pays its employees. If the firm offers less than the going rate, it gets no applicants, and current employees quit for higher paying positions with other firms. Because a firm has as many applicants as it needs at the going rate, it is not advantaged by offering a higher wage. Many labor markets fail to satisfy these conditions in one or more respects. Workers are often ignorant of precise wage rates and working conditions available elsewhere; indeed, workers are sometimes unaware of wage rates within their own firm.22 Workers may not be willing to risk the uncertainties of a change in employers to capture a small wage or other gain. For a variety of personal reasons, workers may be reluctant to relocate geographically to change employers.23 Some firms

21 There are several reasons why the trade-off between wage rates and employment levels may not be widely perceived. First, an apparent wage increase imposed by union action may not be a real increase at all; it may only reflect monetary inflation and may possibly be matched by a rise in the selling price of products or services. Second, in some situations, had the union not pushed up wages, the firm would have increased employment (because of increased consumer demand for the product, for example). In such a case the new wage rate might reduce or offset entirely an employment level increase and thus not be as noticeable as would be a reduction in the number of employees currently employed. Third, over the short run the firm may be unable to reduce its number of employees because a minimum number is required to operate equipment currently on hand. Finally, the direct effect of a wage increase on employment may be disguised. A firm increases the price of its product because its wages have gone up; it discovers later that sales have fallen off. The decline in sales causes the firm to reduce output and to lay off employees. The firm and the union may attribute the sales downturn to a fall in consumer demand, not appreciating that it is the direct result of the wage increase. This explanation (fallen demand) may be especially plausible when a union forces a wage increase upon all firms producing a particular product (an "industry-wide" wage increase).

22 Professors are commonly ignorant of their colleagues' salaries and this information is often inaccessible. One study found that, like professors, plantation workers in Louisiana were unaware of one another's wages. See Piore, Wage Determination in Low-Wage Labor Markets and the Role of Minimum-Wage Legislation, in Unemployment and Inflation 197, 204 (M. Piore ed. 1979) [hereinafter cited as Unemployment and Inflation].

23 On the length of time that American workers ordinarily spend in a single job, see Hall, The Importance of Lifetime Jobs in the U.S. Economy, 72 Am. Econ. Rev. 716, 716 (1982)
have tacit agreements not to “raid” other firms’ employees. Typical practices in many firms impose costs on employees who would change jobs. These practices include hiring only at bottom level jobs, discriminating against mobile workers (by refusing, for instance, to hire the “man without a family”), and pegging such employment benefits as pensions, vacations, and job and shift bidding to length of service with the employer.

A firm operating in an imperfectly competitive labor market has a degree of monopsony power. The typically discussed example of monopsony power is a firm of great size in a small locality. Unlike a firm facing a perfectly competitive labor market, which attracts no applicants at less than the going wage rate, a firm with monopsony power finds that its supply of applicants varies with the wage rate it offers. As a result, a firm with monopsony power will have fewer workers and pay lower wages than it would have had it been in a competitive labor market. A union (or a government-mandated wage such as that required by the minimum wage law) that forces a firm with monopsony power to raise wages can increase both wages and employment.24

(“The typical worker today is holding a job which has lasted or will last about eight years. Over a quarter of all workers are holding jobs which will last twenty years or more. Sixty percent hold jobs which will last five years or more.”).

24 See, e.g., B. Fleisher & T. Kneisner, supra note 19, at 199. A firm in a competitive labor market will continue to add workers until the marginal product of the next worker to be hired is less than his wage. The fact that a firm has monopsony power does not change the marginal contribution to the firm’s revenue of each additional employee, but the computation of when to stop hiring is more complex. Assume that to attract the first 100 workers a firm must pay $3 per hour. To attract another 50 workers the firm must pay $4 per hour. If it were no more complex than that, the firm would pay each new group of workers a higher wage until the wage rate required to attract an additional worker was greater than the worker’s contribution to revenue. However, it may be impractical for the firm because of administrative costs or potential employee dissatisfaction to maintain more than one wage rate for employees who are, by hypothesis, identical in every respect but their willingness to work at a particular wage. In the likely event that the firm decides to pay these identical employees the same wage, each employee group hired at a higher wage pulls up the wages of existing employees. This means that at some point the firm will be faced with a situation where it could hire the next group of employees at a wage equal to or below the value of their marginal revenue product but it will not do so because of the effect of the hiring on other employees’ wages. Thus in our example assume the marginal revenue product of the group of 50 applicants is just more than $4 per hour per worker. The “cost” of hiring these workers is $6 per hour because existing workers at $3 per hour must also be raised to $4. The firm will continue to employ 100 workers at $3 per hour.

25 See, e.g., id. at 200-01. For instance, if a union in the last example were to force a wage rate on the firm of $4 for all present and future employees, the “cost” of hiring the addi-
Some commentators argue that many labor markets are marked by imperfections that create monopsony power. In many labor markets, some employers attract employees at less than a competitively determined "going rate." It is not necessary, however, that all workers in a labor market be mobile and aware of alternative job openings, wage rates, and working conditions for the market to be competitive. So long as a sufficient number of workers respond knowledgeably to differing terms and conditions of employment, firms will have to observe competitive conditions, and ignorant and immobile workers will share the benefits. Whether most markets are reasonably competitive is both an empirical question and a value judgment as to what is reasonable.

Unionization of a firm having monopsony power in the labor market creates a bilateral monopoly. The firm's monopsony power tends to keep down the wage rate and employment levels, while the union's monopoly power over the labor supply tends to drive up wages and, in this instance, employment levels. The outcome is indeterminate. The resulting wage rates and employment levels may be closer to those of a competitive labor market than if the firm were not unionized, but the union could easily under- or overcorrect the firm's monopsony power. The union's goal is not to duplicate the result of a competitive labor market.

3. The Relational Contract Model

In the price theory model, marginal revenue products and competitive wage rates dictate wages and employment levels in a firm. Consider how a firm might discover and implement these
wage rates and employment levels. The firm might turn to a spot market for employees. So long as the spot market was competitive, all employers and equally qualified workers would observe a "going rate." Wage rates would be equalized in local labor markets and, when corrected for differences in living environments, would be equalized across labor markets as well. If consumer demand for goods and services expanded, wages would rise; if consumer demand contracted, the spot market would absorb this over time, wages would fall, and full employment would continue. If wages in a local labor market are perceived not to be equalized, there are several explanations that are consistent with the model. The wage differences may reflect differences in job content and skills required. There may be differences in the make-up of the wage package across various employers, some having higher weekly wages, others contributing more heavily to worker pensions or offering a more luxurious working environment. Finally, some markets may be subject to short-term imperfections that cause some workers to receive more or less than the competitively determined rate.

Nevertheless, critics find the price theory model incomplete in several respects. Wage differentials in local markets are often found and are not adequately explained. If nonequalization of local wage rates is routinely to be explained by differences in skill and job content, then the price theory model does not yield a testable result. The same criticism applies to the assumption that nonequalization signals market imperfections. Lester Thurow points out that, "[a]n observer of the economic game should be extremely reluctant to label anything that has existed for long periods of time a 'market imperfection.' If the phenomenon has survived, the chances are high that it is an integral part of the game and not a market imperfection." L. Thurow, supra note 17, at 55.

Many union policies that persist seem inconsistent with the price theory model. Why, if unions and managers are rational maximizers, are there strikes over wage offers that differ from a union's wage demand by only a few cents—far less than the predicted cost of the strike to either the union or the firm? Why do unions seek to equalize wages across an industry (take the wages out of competition)? A rational monopolist would seek to drive each firm's wages to the limits of the firm's ability to pay. Why do unions and employers engage in multiemployer bargaining? Because multiemployer bargaining is by law voluntary on both sides, the employer should refuse if it enhances the power of the union and the union should refuse if it diminishes its power. On the latter point, see infra text accompanying notes 133-46.

The contention that wage differences can be explained by differences in the makeup of wage packages seems to be untrue. Many firms that offer high wages also pay high fringe benefits. The most important criticism of the price theory model is its inability to explain wage rigidity in times of unemployment. Wage reductions caused by increases in the supply of workers during periods of declining demand should solve unemployment. All agree that this does not happen and that the labor market regularly experiences downward wage rigidity. Unions cannot be responsible for downward wage rigidity, for too small a percentage of
market rates would determine the wages of current and new employees. Current employees could seek promotions by bidding on jobs at the firm that commanded higher wages, but they would have no advantage over applicants from outside the firm unless they had firm-specific knowledge or skills that would be useful in the new position. A worker with firm-specific knowledge or skills could command a premium for his services because of reduced training costs. A current employee's wage premium might equal the costs of training his replacement, although it is likely to be lower because, as firm-specific skills, his assets would be of no use to any other firm.\(^{30}\)

A firm might, however, wish to enter long-term contingency contracts with its employees instead of relying on a spot market. One reason might be that the firm finds it important that its employees acquire firm-specific skills. Once such skills are acquired, however, employees can demand a premium wage, and the resulting bilateral monopoly could lead to costly renegotiations. Thus, the firm would prefer to have applicants compete for long-term employment contracts that would guarantee the applicant that efforts to acquire new skills would be paid for, but in which the applicant would contract to work at a non-premium wage once the skills were acquired. The applicant and the firm might, in principle, contract for a period of years (perhaps until the worker's retirement age), with the contract providing for the vast array of future events that could affect the employment relationship and setting a schedule of long-term wages tied to market rates. The contract would be complex because the employee would be committing for a long period of time, and the contract would have to specify the conditions of his commitment—for example, the tasks he would be required to perform and the orders he would be required to take. The competitive labor market would set the terms of this contract.

The key premise of the relational contract model\(^{31}\) of labor mar-

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the workforce is unionized, and nonunion sectors also experience unemployment and rigidity.


\(^{31}\) This model draws on the internal labor market model, constructed by P. Doeringer & M. Piore, supra note 28, at 41-63 and by L. Thurow, supra note 17, at 75-128. The relational contract model is a synthesis of the views of these authors, as well as those of Williamson, Wachter & Harris, supra note 28, at 269-76; Williamson, supra note 28. It may not corre-
kets is that many job skills are learned on the job and are specific to the firm. Employees work in teams, and tasks are complex. Skills acquisition is an ongoing process as the workforce adapts to exogenous changes—in product demand, new technology, and the like. Where tasks are complex, learning by doing is efficient.

The spot market contracting of the price theory model is inadequate when specific skills predominate at a firm. An employee has a powerful incentive not to train newcomers because once a newcomer has acquired specific skills he may underbid the current employee in case of a layoff or a promotional opportunity. Forcing a current employee to cooperate in imparting specific skills requires managers to monitor cooperativeness, which is excessively expensive when production is a team effort among employees and lack of cooperation may be subtle.

The goals of a firm’s employment system in such a situation are to reduce bargaining costs, rationalize the internal wage structure in terms of objective task considerations, encourage complete employee cooperation (willingness to train), and encourage the acquisition of specific skills while minimizing the risks of exploitation.

Both the firm and its employees need a mechanism for guaranteeing that employees will cooperate in acquiring firm-specific skills and training other employees, while ensuring that neither the firm nor the employees will be the victim of the other’s opportunism. One ideal mechanism would be a contract between an employee

spond to their individual views. For a discussion of relational contracts outside of labor-management relations, see Goetz & Scott, Principles of Relational Contracts, 67 Va. L. Rev. 1089 (1981).

The authors list a variety of sources of firm-specific tasks:

[T]ask idiosyncracies can arise in at least four ways: (1) equipment idiosyncracies, due to incompletely standardized, albeit common, equipment, the unique characteristics of which become known through experience; (2) process idiosyncracies, which are fashioned or “adopted” by the worker and his associates in specific operating contexts; (3) informal team accommodations, attributable to mutual adaptation among parties engaged in recurrent contact but which are upset, to the possible detriment of group performance, when the membership is altered; and (4) communication idiosyncracies with respect to information channels and codes that are of value only within the firm.

Id.


Williamson, Wachter & Harris, supra note 28, at 270.
and the firm establishing in advance long-term wages and conditions, thereby avoiding later bilateral monopoly bargaining with employees holding those skills. The contract would have to be very complex because it would need to provide for a host of contingencies, such as the nature of managerial orders the employee would be bound to obey, the conditions of discharge and layoff, and standards of promotions and demotions, all under conditions of considerable uncertainty. Such a complete, contingent contract exists only in theory because the firm and the worker would have to anticipate, bargain out, and reduce to writing a vast array of potential future events and conditions to solve ex ante the bilateral monopoly problem caused by firm-specific skills. The inability to foresee all the contingencies and the costs of bargaining them out in advance and reducing them to writing prevents the actual execution of such labor contracts.\textsuperscript{35} Even were it possible to anticipate and provide for all future employer and employee claims, the contract would be too complex for an individual employee to understand.

When a formal, complete, contingent contract is impossible, a firm may still obtain efficiency gains by acting in accordance with an implicit relational contract. In this way, firms avoid strategic behavior by employees by removing wage competition from the job. Wage rates attach to particular jobs, and jobs, not workers, carry marginal products. Hiring occurs only at the entry level, and applicants for entry level positions compete according to their predicted training costs, measured by their relevant experience and training. Seniority ladders control promotion, with the limitation that an employee may be punished if the firm discovers poor work habits. Wage differentials are fixed to facilitate willingness to give and receive on-the-job training. At least in the short run, the firm will not change wages in response to changes in the supply and demand for labor (thus explaining downward wage rigidity). In times of reduced employment, laid-off employees are not permitted to bid back against current employees at a lower wage. When demand for labor is high or supply low, the employer deescalates

\textsuperscript{35} The conditions that give rise to a relational contract such as a collective bargaining agreement are a strong investment by one contractual party to continued good faith performance by the other party and difficulties of specifying obligations and securing enforcement.
his required hiring characteristics; when demand is low or supply high, he escalates them.

The relational contract model maintains that workers care about relative wages and working conditions—traditional relationships between and across job classifications. Real world observations underscore the importance of relative wages. The model need not explain why workers value the continuance of relative differentials, although some plausible explanations come to mind. Perhaps workers consider adherence to relative wages “fair” or “just.” Bounded rationality may provide a more precise explanation. How does an employee determine whether he is being treated fairly? Surveying the labor market to determine the going rate by analyzing wage and benefit packages, assessing the impact of managerial practices on the plant lifestyles, and making the appropriate discounts for, say, locational differences is impractical. So is computing one’s marginal revenue product. Moreover, the employee’s marginal productivity as the market sees it is less than the employee’s marginal productivity to this firm, because of firm-specific skills. How does an employee compute this firm-specific marginal productivity? The best measure of whether one is being paid fairly may be relative wages within the firm (which is easier to ascertain than is internal marginal productivity) developed over a period of time, and the employer’s continued adherence to traditional work rules. In any event, employees are concerned with relative wages and will enforce this concern with uncooperativeness if they become too unhappy.

The effects of unionization in a relational contract model are uncertain. A union could serve as a mechanism for formalizing and enforcing the implicit relational contract. A union would spread the costs of this formalization and enforcement across all of its members. The union could serve as a collector of information

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37 Another feature of the relational contract model is that managers have incentives to adhere to relative wages and traditional work rules. If wages are too low, employee morale and productivity may be affected; if wages are too high, the firm is competitively disadvantaged in the product market. In either event, a manager’s job may be at risk if he misses the optimal wage by much.

38 See P. Doeringer & M. Piore, supra note 28, at 35-36.
about future contingencies and could act as a continuing monitor of managerial good faith and adherence to worker expectations. Thus, the union would reduce the problem of employee bounded rationality through the negotiation and enforcement of collective bargaining agreements, and workers could be assured that traditional wage differentials and customary work rules were maintained or, to the extent that changes in customary differentials and rules would increase the profitability of the firm, that proposed changes by managers were also in the workers' interest. Unions could assist managers in monitoring worker cooperativeness through informal worker social channels. On the other hand, unions can raise barriers to altering customary rules even when the rules interfere substantially with production efficiency.

Because of competitive forces in both the labor and product markets, as well as the lack of firm-specific skills in some industries, some labor markets will more closely resemble the price theory model than the relational contract model. Market forces often dictate wages for entry-level jobs. Moreover, in some industries, especially those marked by low-skill jobs, by a loose attachment to the labor market by workers, and by labor-intensive firms, wage competition and the lack of customary work rules may predominate. Turnover may be so rapid that social norms do not form. Union sanctions against these firms are impracticable because the jobs do not require on-the-job training, substitute workers are readily available with little or no training costs, and employees in low-skill jobs are easily monitored.

The price theory and relational contract models lie on a spectrum. There are firms at each end of the spectrum, but the majority of firms fall between the two extremes. The goods that unions produce in a collective goods model lie along a similar spectrum. Where skills are not firm-specific and a firm acts in accordance with the price theory model, a union may be principally concerned with raising wages through monopoly power. Where firm-specific skills predominate, a union may focus on rationalizing an implicit relational contract. Yet one should not assume that either of these

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39 The construction crafts may be an example of a labor market that is well described by the price theory model. Construction jobs are of relatively short duration. Skills are carried from job to job, and workers do not necessarily continue with the same firm. Thus, very few skills are specific to the firm.
Labor Bargaining Units

descriptions is always accurate. When a firm finds itself in a market that fits the price theory model, a union may attempt to force the managers to adhere to worker desires for relative wages and working conditions. So too, in a market that fits the relational contract model, a union could content itself with raising the levels of relative wages. What a union does may change over time. I suspect that many employees unionize because they feel they are being unfairly treated in such matters as promotions or discipline. Once these problems are corrected, the union looks to wage bargaining to maintain its existence.⁴⁰

B. Implications of the Models for Management and Union Officers’ Behavior

1. Managerial Opposition to Collective Goods for Workers

The collective goods model suggests that workers would be willing to buy some workplace collective goods by substituting them for a portion of their wages or other benefits. A rational firm should offer a collective good if it can offer that good at a lower cost than the value its employees place on the good and if the employees are willing to substitute the good for wages. Yet managers often fail to offer collective goods or oppose union production of such goods. This section explains why market forces might not produce certain collective goods for employees without union intervention. It builds on discussions of the theory of the firm to suggest why some managers would oppose union production of collective goods without being relentlessly punished by competitive product markets or markets for managers.

a. Management Slack and Discretionary Power

Assume that there are workplace collective goods that have value to employees in excess of their production costs so that the firm could do better by offering the collective goods in lieu of a portion of wages. Assume further that managers are slacking⁴¹ by failing to make the collective goods available. A competitive product market might punish a firm whose managers were failing to reduce costs. Moreover, a competitive labor market for managers would elimi-

⁴⁰ I know of no helpful, comprehensive studies of why workers organize.
⁴¹ The term “slack” is used by A. Hirschman, supra note 12, at 10-15.
nate slack if applicants for managerial positions (including those positions available by promotion) could underbid slackers by contracting not to slack. Recent works on the theory of the firm, however, have shown that the existence of managerial slack is plausible. Frank Easterbrook and Daniel Fischel summarize this literature:

Corporate managers (which include both officers and members of the board), like all other people, work harder if they can enjoy all of the benefits of their efforts. In a corporation, however, much of the benefit of each manager's performance inures to someone else, whether it be shareholders, bondholders, or other managers. The investors must be given a substantial share of the gains to induce them to put up their money. Because no single manager receives the full benefit of his work, he may find that, at the margin, developing new ventures and supervising old ones takes too much effort to be worthwhile; each manager may reason that someone else is apt to do the work if he does not or to take the rewards even if he does well. No manager will be completely vigilant. So some managers will find it advantageous to shirk responsibilities, consume perquisites, or otherwise take more than the corporation promised to give them.

The problem of slack is not limited to the corporate form of ownership. It applies whenever ownership and management are separate. To avoid slack, owners must monitor managers, managers must bond their own performance, or both. Monitoring is not a simple and cheap solution, however. Locating managerial slack requires careful and costly study of the firm, but the benefits of reducing managerial slack do not go in their entirety to the particular owner who has invested in locating and reducing the slack. Instead, these benefits accrue to all owners, giving little incentive to any individual owner to monitor. Often a single owner cannot eliminate the slack (by discharging the managers or restructuring the production processes, for example) without the participation of other owners. Coordinating this participation is costly, and some owners may be unwilling to pay their share of the costs for familiar

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free rider reasons. Especially where ownership is spread over a large number of individuals, owners will underinvest in monitoring.

Monitoring devices are available, but at the point where the marginal costs and marginal benefits of monitoring coincide, additional monitoring devices will either be too difficult to implement or their usefulness too circumscribed. High salaries and pensions may reduce managerial slack by giving added bite to the threat of being fired. These monitoring devices presuppose that monitors can distinguish good managerial performances from bad ones, but monitors will find such a task difficult because it requires them to disaggregate the collective actions of teams of managers and to assign to each manager his marginal contribution. Nor can owners expect managers to monitor one another without shirking. As Easterbrook and Fischel note, "Even the most dedicated manager will find it difficult to fire or discipline an old friend when the benefits of ruthlessness accrue to distant and unknown shareholders." Albert Hirschman and Harvey Leibenstein suggest that substantial product market competition can impose stress on managers and diminish slack, but both imply that a sufficiently competitive product market is the exception rather than the rule.

Managers may take their gains from the firm in forms other than explicit compensation, expropriated corporate opportunities, leisure, and favors for friends. For many, the exercise of power in the form of discretion over employment conditions relating to employees is a valuable jobsite benefit. The ability to discharge or otherwise discipline employees without having to justify one's actions, to assign overtime or make promotions on personal criteria, and to control the flow of work without explaining one's choices are important forms of management compensation. The unchecked exercise of this sort of managerial power may increase the firm's costs. When that is so, managers can contract not to exercise managerial power only if cost-effective monitoring or bonding devices are available. If despite the availability of monitoring mechanisms,

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44 Increasing a manager's equity in a firm may also induce more attentive management. See Alchian & Demsetz, supra note 33, at 782; Jensen & Meckling, supra note 42, at 313-16.
45 Easterbrook & Fischel, supra note 43, at 1173.
46 A. Hirschman, supra note 12, at 13.
managers continue to exercise power, then power is a consumption good that comprises part of the managers' compensation package.\textsuperscript{48}

Managers could earn additional money compensation if they chose to relinquish power by adopting monitoring or bonding devices. If cost-effective monitoring and bonding devices do not exist, managerial power is a form of slack. Because it is available to the manager and cannot be monitored, the firm will charge him for it in the form of reduced salary whether or not he exercises it. Even if the manager prefers additional salary to managerial power, inadequacy of monitoring and bonding devices makes substituting money for power too costly. In a firm in which the owner is the manager, managerial power is necessarily a consumption good.

b. Unions as a Monitoring Device

When unions regularize matters such as discharges by demanding "just cause" clauses and grievance arbitration, the fact of management resistance does not necessarily mean that unions are impairing the efficiency of the firm. The gain to employees may be at the managers' and not the firm's expense. The same may be true of employee attempts via the union to participate in production line decisions. Suggestions benefitting the firm will not necessarily be welcomed by managers who see this as diminishing their jobsite discretion while giving benefits only to the firm's owners. Managerial recognition that many union gains come at the expense of managers, not the firm, may explain, in part, the large sums of money spent by some managers in resisting unionization.\textsuperscript{49}

The question remains whether managers who are not owners and for whom power is a consumption good will leave a firm where the union has reduced managerial power by securing collective goods for the workers. Some of these managers will have firm-specific knowledge and skills that have little value elsewhere. Those whose skills are fully marketable have the choice of leaving the firm and joining another where managerial power is still available as a con-


\textsuperscript{49} Corporate fiduciary obligations similarly allow incumbent managers tremendous leeway to spend corporate funds to defend against corporate takeovers that would cost them their jobs. For an account of the problem, see Fischel, Efficient Capital Market Theory, the Market for Corporate Control, and the Regulation of Cash Tender Offers, 57 Tex. L. Rev. 1, 30-45 (1978).
sumption good or of staying with the firm at an increased salary. A union in this situation is a monitoring device forced on unwilling managers. Where managerial power has been the product of slack because monitoring and bonding were too costly, a union is also a monitoring device. A firm need no longer automatically charge managers for exercising managerial power and managers' salaries should increase. Again, those managers who prefer managerial power to increased salary will leave the firm if their skills are fully marketable.

Just as managers may find it difficult to market their skills elsewhere, owner-managers, for whom managerial power is a consumption good, may find it costly, especially over the short run, to withdraw their capital when managerial power is diminished by the firm's unionization. Owners who sell the firm rather than keep a firm that has "gone union" may be selling because they perceive that union monopoly wages will reduce the firm's profitability below the level that an owner could earn elsewhere, or they may be selling because for them power is an important consumption good that they predict will be unavailable after unionization.

Moreover, in the collective goods model, unionization forces managers to develop and use new skills as the firm reacts to increased employee voice and to new ways of dealing with employment relations such as collective bargaining and grievance arbitration. Incumbent managers who do not have those skills and are not optimistic about their ability to acquire them are likely to spend the firm's money resisting unionization, as would managers who value power and find moving to a nonunion firm to be too costly. Unions will find that these managers oppose union or-

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61 It is not necessary to this analysis that managers be aware that they are spending the firm's funds to protect their personal discretion. The theory of cognitive dissonance explains how managers could persuade themselves that they oppose unionization because unions are bad for the firm. The theory is summarized in E. Aronson, The Social Animal 89-98 (1972).

[C]ognitive dissonance is a state of tension that occurs whenever an individual simultaneously holds two cognitions (ideas, attitudes, beliefs, opinions) that are psychologically inconsistent. . . . Because the occurrence of cognitive dissonance is unpleasant, people are motivated to reduce it. . . .

. . . . [H]ow do we reduce cognitive dissonance? By changing one or both cognitions in a way so as to render them more compatible (more consonant) with each other, or by adding new cognitions that help bridge the gap between the original cognitions.

Id. at 92-93. In this context the cognition, "I am a good manager who does not spend the
ganizing efforts and union attempts to bargain for collective goods once the firm is unionized. In such firms unions will find it difficult to produce collective goods by purchase or by collective voice, and they will, instead, need to resort to threats of strikes or other exercises of monopoly power.

2. Internal Union Decisionmaking

a. Union Ends and Means Under Each Model

The union's choice of which collective goods to seek depends on the membership's preferences and on how the union as an institution responds to those preferences. In standard economic models of firms, owners of firms maximize profits. No similar unitary goal can be posited for unions because of the tradeoff between wage increases and employment levels within the firm. Some commentators, working within the price theory model, have suggested that unions seek to maximize the “wage bill” accruing to its members—the hours of employment times hourly earnings. But there is no intuitive reason why this should be so. A union might, for example, weigh hours of employment three times as highly as it values hourly wages. Another suggestion within this model is that unions seek to maximize the wage rate. The United Mine Workers apparently adopted this policy from about 1930 to 1950, notwithstanding the substantial reduction in employment that resulted.

A third possibility is that union goals change as the demand for labor changes. When demand for labor is rising, a union might value jobs for laid-off members more highly than increased wages; when the demand for labor is falling, the same union might protect its current wage rate and accept layoffs. No generalization can be made that holds true for all unions.

In a relational contract model, in contrast, a union's first goal might be the maintenance of its wage rate and customary rules relative to other groups. If the union includes within it groups of em-

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resources of the firm on my own well-being" is dissonant with the cognition, "spending the firm's money to oppose unions is good for me but not for the firm." The dissonance disappears if "unions are (very) bad for the firm and (great) efforts should be made by the firm to oppose unionization" replaces the second cognition.


A. Cartter & F. Marshall, supra note 18, at 280.
ployees with wage expectations relative to one another, union officers seeking to stay in office might emphasize the continuation of current differentials.

In the collective goods model, unions maximize the production of collective goods in their workplace. They do this by expending resources up to the point where the costs of producing more collective goods are equal to the value of the goods times the probability that they can be attained. To the extent the collective good being sought is a monopoly wage, the collective good model does not solve the problem of squaring union goals with the wage-employment tradeoff. The model has the advantages, however, of recognizing that unions secure many goods that are independent of the wage-employment tradeoff, that they secure some of these goods by means other than monopoly power, and that certain collective goods secured through monopoly power—those coming at the expense of managers rather than the firm—may not cause reduced employment.

The analysis under the collective goods model is more complex than under either of the other two models. Unions act under uncertainty in all of the models. For example, they may not know ex ante whether a strike or continued collective bargaining will produce an increase in wages or in collective goods. Thus, even if all union members shared the same preferences—if they each assigned the same value to particular collective goods—the union’s calculation of optimal expenditures would be difficult, and mistakes probable. Further complicating the union’s task in a collective goods model, union members typically differ in the focus and intensity of their preferences. Part II of this article will explore in greater detail the expressions of preferences by union members in the context of optimal grouping of employees in a collective goods model. Several comments of a preliminary nature are in order here, however.

b. Collective Goods Within Unions

Union members can signal satisfaction or dissatisfaction to union officers by either voice or exit. Members use voice when they complain, compliment, cajole, or criticize. Voting for or against a candidate for union office is a form of voice. Exits serve as an inadequate (and underutilized) signal of preferences in the union context because no individual worker can alone choose whether to
purchase unionization. The law requires that a majority of workers in an appropriate bargaining unit must assert the choice. An individual worker in the minority must change employers to exercise a personal choice for or against unionization. Exercising voice by removing a union officer from his office may also be underutilized. A dissatisfied member must form a coalition of like-minded members to mount the campaign to unseat the incumbent. Any such campaign entails start-up costs, which may be considerable, especially if the incumbent is thought to have the power and the inclination to retaliate against political opponents. Also, for reasons discussed below, members will tend not to invest in information gathering and other forms of monitoring that would cause changes in union leadership policies.

Because exit is costly, voice is a particularly critical force for change in unions. Change within unions has the same characteristic as change in the workplace: most changes benefit groups of members and are collective goods. If all members shared both the costs and benefits of seeking these collective goods, they would invest up to the point where the marginal (incremental) cost of obtaining a collective good (for example, the fidelity of a union officer to the union's constitution) just equaled the marginal value of the good. When costs and benefits are not equally shared among all members, many otherwise beneficial collective goods will not be sought. Self-interested individuals will not act to achieve group interests. The individual will calculate the costs to him of his efforts to produce the collective good and compare those costs with the value of the good to him, discounted by the probability that this effort will be unsuccessful and by the probability that some other, similarly situated member will act to secure the good. Especially if the union is large, the probability that one person's efforts will secure the good may be negligible. Thus, absent some special benefit, a purely self-interested individual will not contribute to the

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54 Section 9(e)(1) of the National Labor Relations Act permits an individual employee to file a decertification petition with the Board on a showing that 30 per cent or more of the bargaining unit employees support decertification. 29 U.S.C. § 159(e)(1) (1982). Decertification presents the same difficulties to a disgruntled worker as does the effort to mount a campaign to unseat incumbent officers, discussed in the text below.

55 The following discussion draws on M. Olson, supra note 5, at 5-52.

56 Only the latter discount is properly called the free-rider problem. Even were the member certain that no one else would act, he still might not find it rational to act.
production of collective goods by paying union dues, giving time and effort to union activities, or informing himself about workplace or internal union issues, even though he would benefit from these collective goods.

Clearly, some workers do contribute money, time, and effort to unions. The analysis suggests, however, that because unions are large groups producing collective goods at the workplace and within the union, contributions will be suboptimal.\(^5\) \(^7\) There are several reasons why unions do not falter. Some workers have a sense of loyalty and moral obligation towards their fellows and believe that fair play requires one to pay one's share.\(^6\) A collective bargaining agreement may compel dues contributions. Indeed, the foregoing analysis is the principal argument for allowing unions to coerce dues contributions. Social pressure from one's fellows may compel contribution towards workplace collective goods, as may the more formal pressure of a picket line. In addition to workplace collective goods that cannot be withheld from a noncontributing worker, there may be goods that the union can withhold. In earlier times, the social and recreational opportunities provided by unions were important to many members, but that is probably not typically true today. Some workers may contribute to the union because they mistakenly or correctly believe that union officers will adequately represent them on workplace issues only if they contribute.

Like the managers of firms, union officers have opportunities for slack. Monitoring of officers is a collective good, and the full benefits of monitoring do not go to the monitor. There may be social sanctions that would pressure an individual member to contribute his share towards the monitoring of union officers, but in unions the principal monitors are office-seekers.\(^5\) \(^9\) They get an individual

\(^5\) It is suboptimal in the sense that the total contribution will be less than it would be if the costs and benefits were shared equally.

\(^6\) Notions of worker solidarity are as old as the labor movement and are enshrined in labor's anthems. See, e.g., Chaplin, Solidarity Forever, reprinted in Songs of the Workers: To Fan the Flames of Discontent 4 (Industrial Workers of the World 33d ed. 1970) (IWW Songbook) [hereinafter cited as Songs of the Workers]; Hill, There is Power in a Union, reprinted in Songs of the Workers, supra, at 8. Of course, neither song mentions paying dues or the wage-employment trade-off.

\(^7\) Compare the role of takeovers as a monitoring device. E.g., Bradley, Interfirm Tender Offers and the Market for Corporate Control, 53 J. Bus. 345 (1980); Easterbrook & Fischel, supra note 43, at 1174-82; Gilson, A Structural Approach to Corporations: The Case Against
benefit from their monitoring efforts: the opportunity to replace the incumbent. But especially in a large union, the support of many other members may be necessary to have a realistic chance of replacing an incumbent, and there is no straight-forward mechanism for purchasing that support. This support (which at least requires information gathering) may not be readily forthcoming because of the calculus of individual contribution to collective goods and the feeling by individuals that their single vote, or other contribution, is not likely to be determinative.

This analysis suggests why some union officers, especially at the national level, may be able to dominate union policy with little fear of loss of office or other reprisals. Yet because union officers must stand for reelection periodically, fear of election defeat sets limits on the power of union officers, much as the product market and the market for managers sets limits on the power of firm managers. The analysis also suggests that officers of small unions should be subject to ouster more often than officers of large unions, and there is impressionistic evidence that this is so. Finally, officers or staff members responsible to a small group of workers, such as a job steward, should be more responsive to constituents.

The analysis also shows why it is incorrect to assume that union officers and contract negotiators will necessarily show fidelity to average membership preferences. As is true with any process of group decisionmaking where preferences are nonidentical, coalitions may form within unions, and decisional processes are, at least in theory, very difficult to predict.

II. DETERMINANTS OF LABOR BARGAINING UNITS

Employee elections conducted by the Board are the most important mechanism by which a union secures representation rights for a group of employees. The National Labor Relations Act directs


60 See D. Bok & J. Dunlop, Labor and the American Community 73 (1970).

61 If the firm's managers voluntarily recognize the union, the Board will seldom play a direct role, but its rules may have a decisive influence. For example, if the employees are certain to favor union representation, the unit is clearly appropriate according to Board precedent, and the gains from delay are minor, managers may voluntarily recognize the union.
the Board to conduct elections in appropriate bargaining units upon the request of a union. The Board looks at many facts to decide if a proposed unit is appropriate. When a union wins an election, however, the Act does not require the union and the firm to confine their collective bargaining to the unit in which the election was conducted. A negotiating unit may evolve that is larger or smaller than the election unit, and unions are not limited to negotiating for goods that have an impact only on employees within the unit. A bargaining agreement often affects employees outside the unit. Following traditional, if rough, terminology, I use "bargaining unit" to refer to the group of employees who may vote on representation; "negotiating unit" to refer to the employees whose representative administers the contract with the firm, sets priorities, and decides whether to strike or to use other economic weapons; and "impact unit" to refer to the employees who bear the costs or enjoy the benefits of the union's activities.

This part of the article begins by describing briefly the facts that the Board looks at in deciding unit appropriateness. It then explores the strategies of unions and managers, respectively, in proposing or opposing bargaining units. The principal focus of this part is on theories of optimal units within the context of the models developed in Part I. The final section explores the evolution of bargaining structures, emphasizing the distinctive characteristics of multiemployer bargaining.

A. NLRB Bargaining Unit Criteria

A firm may voluntarily recognize a union as the representative of all or some of the firm's employees, but more typically a union must seek recognition through an employee election in "an appropriate bargaining unit." The statute directs the Board to determine whether a unit proposed by a union is appropriate, but beyond that it provides little detailed guidance. According to the Board's opinions, there are a few applicable presumptions, but there are no hard-and-fast rules respecting unit appropriateness.

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62 § 9(a)-(c), 29 U.S.C. § 159(a)-(c) (1982). An employee or group of employees or, under certain circumstances, the employer, may also request an election. Id. § 159(c)(1).
63 Section 9(a) of the National Labor Relations Act requires "a unit appropriate," and § 9(b) mentions "employer unit, craft unit, plant unit, or subdivision thereof." Id. § 159(a)-(b).
Instead, the Board determines unit appropriateness on a case-by-case basis. Courts of appeals review Board unit determinations, but they pay the Board considerable deference. Some courts have complained that when the Board recites numerous factors without assigning relative weights, it obscures actual rationales; and it has also been argued that the Board’s purpose is to evade meaningful judicial review.

Two stated principles underlie Board bargaining unit determinations. First, the Board need not search for the most appropriate unit, but only must decide if a proposed unit is an appropriate unit. Second, the Board will find a proposed unit appropriate only if the employees in the unit share “a community of interest.” The meaning of this term is not self-evident, and the consequences (presumably bad) of approving a unit in which the employees do not share a community of interest are nowhere specified. The principle does mean, however, that the union’s choice will not necessarily be determinative. It seems also to suggest that the Board will focus on employee interests rather than on

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\textsuperscript{44} Court review is available only if the Board has conducted an election that the union has won. This is so because § 10(f) of the National Labor Relations Act permits only persons “aggrieved by a final order of the Board” to petition for review in a court of appeals, id. § 160(f), and although neither certification of a union nor a refusal to certify constitutes a final order, AFL v. NLRB, 308 U.S. 401 (1940), employers can obtain review indirectly by refusing to bargain with a certified union and provoking a bargaining order that, upon appeal, they can defend by challenging certification.

\textsuperscript{45} See Note, NLRB Rulemaking: Political Reality Versus Procedural Fairness, 89 Yale L.J. 982, 987-89 (1980).

\textsuperscript{46} This rule derives from the language of § 9(a) of the National Labor Relations Act, which requires only that the unit be “a unit appropriate for such purposes.” 29 U.S.C. § 159(a) (1982). For example, consider a store in a grocery supermarket chain. The union might seek an election in one of several potential units: all the store’s nonsupervisory employees, the store’s meat department clerks, a multistore unit of all the chain’s employees in the metropolitan area, or all the meat department clerks in all the chain’s area stores. The Labor Board might deem two or more of these alternative units appropriate and, if so, it will conduct the election in the unit requested by the union, even though one of the other units might satisfy more of the Board’s unit criteria.

\textsuperscript{47} 3 NLRB Ann. Rep. 174 (1938).

\textsuperscript{48} See J. Abodeely, The NLRB and the Appropriate Bargaining Unit 5, 8 (1971). According to Abodeely, allowing employees to choose their own grouping “would be ruinous of long-term industrial relations stability,” id. at 5, and a single bargaining agreement covering employees of diverse interests “would lead to unrest, chaos, and possibly disruption of production.” Id. at 8. These passages are typical of the conclusory nature of the commentators’ analyses of labor bargaining unit issues.
union or firm interests in its determination. Still, it is not a very helpful standard against which to measure the relevance of particular facts or to determine their relative weight.

Although there is no general standard of unit appropriateness, commentators who have researched the case law have compiled a list of factors considered by the Board. A composite list includes:

1. Similarity of pay and method of computing pay (e.g., weekly salary, hourly, piece-work).
2. Similarity of benefits (e.g., common pension plan, vacation schedule).
3. Similarity of hours of work.
4. Similarity of kind of work performed.
5. Similarity of qualifications, skills, and training.
6. Physical proximity and frequency of contact and transfers.
7. Functional integration of the firm.
8. The firm's supervisory structure (common supervision) and organizational structure, especially as it relates to setting and applying labor relations policies.
10. Employee desires.
11. Extent of union organization within the firm.

The Board decides unit issues after a union proposes a unit by filing an election petition. Opposition to the unit comes, if at all, from the firm's managers. It is useful to consider the strategies of unions and managers in unit disputes and to speculate whether they correspond to any plausible public policy objectives.

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60 But see Schatzki, Majority Rule, Exclusive Representation, and the Interests of Individual Workers: Should Exclusivity Be Abolished?, 123 U. Pa. L. Rev. 897, 897-98 (Board's reliance on objective factors rather than employees' subjective sense of their "community of interests" fails to give effect to workers' wishes).
70 See J. Abodeely, supra note 68, at 7-84; R. Gorman, Basic Text on Labor Law 69 (1976).
71 Section 9(c)(5) of the Act forbids the Board to make extent of organization the controlling factor. 29 U.S.C. § 159(c)(5) (1982).
72 It is exceedingly rare that individual employees, either included in or excluded from the proposed unit, object to the unit. Occasionally, a rival union will oppose a unit because it hopes to organize an alternative unit. See, e.g., BP Alaska, Inc., 230 N.L.R.B. 986 (1977); University of Rochester, 222 N.L.R.B. 532 (1976).
1. Union and Management Strategies in Bargaining Unit Determinations

Commentators believe that in general a union will propose the largest unit in which it expects to win a representation election, although they have offered no empirical verification and little discussion of why this should be so. Perhaps it is obvious why a union would want to sweep in as many employees as possible, but the reasons are worth exploring. First, a large membership may enhance the self-esteem of union leaders. Second, dues of new members may exceed the costs of representing them, reducing costs to incumbent union members. Third, if the union is able to pressure its members to strike by legal or social sanctions, when it could not if some were excluded from the bargaining unit, increased membership may enhance the union’s monopoly power. For example, if a supermarket can operate with supervisors when the produce and dairy clerks strike, but cannot operate when the meat department clerks strike, the union has little or no monopoly power representing only produce and dairy clerks. It increases its power representing (unwilling) meat department clerks only if those clerks can be pressured by legal or social mechanisms or persuaded by solidarity arguments to strike.

The union should tend not to seek a broad unit if the costs of representing new members exceed the contributions they make towards the well-being of existing members. If the union “owns” jobs because it is able to limit entry, it will predictably ration future memberships. This seems typical of craft unions in the construction industry, which, in fact, do little organizing of unrepresented employees.

Predicting election results may be difficult for the union. Take, for example, a supermarket with four types of clerks: produce, dairy, meat, and general. Suppose the union confidently predicts that a substantial majority of produce and dairy department clerks will vote for union representation and that there is very little support for the union among the meat department clerks. The union is uncertain whether the general clerks (those stocking canned and packaged goods) support the union, but suspects that they are

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about evenly divided. The union may decide to risk a store-wide election. A victory in that unit gives the union its biggest payoff, but the union gets nothing if it loses. An alternative strategy is to seek an election victory in the store-wide unit, and if it loses that election, to then seek an election in a unit limited to produce and dairy clerks. There are, however, several problems with this strategy. The labor statute forces the union to wait a year after an election loss before it can have another election in the same or a smaller unit.\(^7\) The union’s support among the produce and dairy clerks may slip because of turnover or because an election loss in the larger unit diminishes the union’s prestige. Moreover, if it is costly for the union to conduct an organizing campaign, the union may have exhausted its funds in the first election.

If the Board’s rule on these facts is that no unit smaller than store-wide is appropriate, the union has no choice but to submit to the maximum-payoff/maximum-loss election, if it wants an election at all. The union may also have no support in the supermarket chain’s other area stores. In that instance, the Board ruling most damaging to the union would be that the only appropriate unit is one that includes all the clerks in all the chain’s area stores.

A plausible surmise is that managers want to minimize the union’s power and the costs of collective bargaining, and that they take bargaining unit positions accordingly. On this view, keeping the union out of the firm is the preferred outcome if it can be accomplished at reasonable cost. For managers, the best Board ruling usually is one that designates as the only appropriate unit one that is too large for a union to organize\(^7\) in the supermarket illustration, a unit of all the chain’s clerks in the metropolitan area.

When the goal of the managers is to minimize union power, the strategy of managers towards bargaining units does not depend on which of the two traditional models of labor markets best describes the firm. Assume in the supermarket illustration that the union has petitioned for an election in a store-wide unit. Presumably the managers will agree to the proposed unit if precedent clearly indicates that the Board will find the unit appropriate and if the gains from delay are less than the costs. Suppose, instead, that the man-

\(^7\) This is not invariably true. For instance, managers might agree to a proposed bargaining unit to prevent unionization of the employees by a stronger or more militant union.
agers believe that there is a possibility of persuading the Board that a store-wide unit is too broad. This possibility presents interesting strategic choices. The managers may be willing to accept virtually certain union representation of produce and dairy clerks, by challenging the appropriateness of the store-wide unit, rather than take the risk that the meat and general clerks will be swept into the union. Their decision turns on how powerful the union will be if it is limited to produce and dairy clerks, whether gains secured by the union for represented employees will be extended to nonrepresented employees (because of administrative convenience, physical nonexcludability, or employee expectations), and whether unionization of produce and dairy clerks, once accomplished, is likely to spread to other clerks at this or other stores in the chain.76

2. Applying NLRB Bargaining Unit Criteria to Unit Disputes

The supermarket illustration is also helpful to show the Board’s approach to bargaining unit issues. Assume the union has petitioned for a unit that includes all four groups of clerks, a store-wide unit. The managers argue that the proposed unit is underinclusive because the firm’s administrative subdivision encompasses the entire metropolitan area and that the only appropriate unit is one that includes all of the chain’s clerks in the metropolitan area. Alternatively, the managers argue that even if a store-wide unit is appropriate, it must include checkout personnel. Because the checkout personnel are known not to support the union and because the election may be close, the union opposes their inclusion.

The Board’s rule is that in the retail chainstore industry a single-location bargaining unit is presumptively appropriate, even though it does not correspond to a firm’s administrative or geographic areas.77 For the Board, the important facts are that

76 The administrative costs of bargaining and of conflicts between groups of employees might be important to the managers if they thought that once dairy and produce clerks were represented by the union, another union would seek to represent the meat clerks, dairy clerks, or both. If a single union represented all the clerks, albeit in different bargaining units, it is quite likely that representation would be on a store-wide basis notwithstanding the multiplicity of bargaining units. The negotiating unit would be broader than the bargaining unit.

77 Haag Drug Co., 169 N.L.R.B. 877 (1968); Frisch’s Big Boy Ill-Mar, Inc., 147 N.L.R.B. 551, 553 (1964) (representation), 151 N.L.R.B. 454 (1965) (unfair labor practice), enforce-
employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters that make up their grievances and routine problems. It is in this framework that the community of interest of the employees in a single store takes on significance, for the handling of the day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of the other stores.°

That the chain does its central data processing (payroll, purchase orders, profit and loss records) and purchasing at a central location is thought by the Board to be primarily a matter of recordkeeping, and thus not particularly relevant to collective bargaining. The Board is not persuaded that single-location bargaining is likely to result in a lack of uniformity of wages, hours, and working conditions throughout the chain, or that such a lack of uniformity would warrant rejecting a single-location unit in any event. A prior rule that emphasized the firm's administrative organization is now thought by the Board to have too often frustrated union organizing attempts.°

A proponent of a multilocation unit can overcome the single-location presumption, however. Probably the single strongest countervailing fact would be an existing multistore negotiating unit that appeared to be stable. Assuming no such history, the firm's managers would like to be able to show that all the chain's clerks in the area have the same wage scale and benefit package; that the chain determines hiring, firing, and promotions centrally for all locations; that clerks in all the stores perform the same kind of work and are required to have similar skills; and that there are both permanent and temporary interchanges of clerks among the area stores. On some level of demonstration, these facts will persuade the Board to reject the single-location unit. Moreover, even if the

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Board approves the single-location unit and the union wins the election, a reviewing court may not be hospitable to the Board's single-location presumption.  

If the Labor Board finds the single store unit to be appropriate, it will then consider the managers' argument that it should include the checkout personnel in the unit. The issue, according to the Board, is whether on balance the checkout personnel have a sufficiently separate "community of interest" from the clerks. The same inquiries that determined the single-location issue determine this issue. It is a rare case in which all the factors considered by the Board point to the same result. Usually the Board recites all the facts, declares their relevance, and decides the case in conclusory terms on the basis of a case-by-case balancing. Unsurprisingly, a court of appeals has objected to this subjective balancing untied to explicit policy concerns:

[A unit] determination demands that the Board do more than simply tally the factors on either side of a proposition. The crucial consideration is the weight or significance, not the number, of factors relevant to a particular case. So as to permit proper judicial review, the Board must assign a relative weight to each of the competing factors it considers. The unit determination will be upheld only if the Board has indicated clearly how the facts of the case, analyzed in light of the policies underlying the community of interest test, support its appraisal of the significance of each factor.

Evaluation of the Board's unit criteria is impossible without theories of bargaining unit policy. What does it mean to say that a proposed unit is "too large" or "underinclusive"? Why is it desirable that members of a bargaining unit share a "community of interest"? The sections that follow examine theories of optimal bar-

80 See, e.g., NLRB v. Purity Food Stores, Inc. (Sav-More Food Stores), 376 F.2d 497 (1st Cir.), cert. denied, 389 U.S. 959 (1967); Frisch's Big Boy Ill-Mar, Inc., 356 F.2d 895 (7th Cir. 1966).
82 See supra text accompanying notes 70-71.
84 NLRB v. Purnell's Pride, Inc., 609 F.2d 1153, 1156-57 (5th Cir. 1980).
85 One cannot even gauge consistency in decisions without these theories, for no two cases have precisely the same facts, and deciding whether a factual variance is important requires a theory.
gaining units. They first consider whether the nature of labor markets, as described by the price theory and relational contract models, suggests unit theories. With a similar purpose, the article then examines the collective goods model of what unions do. Each of these areas offers its own insights into bargaining unit theory.

B. Theories of Optimal Bargaining Units

1. Unit Determinations in a Price Theory Model

It is hard to imagine any place for a normative theory of bargaining units in a price theory model because the optimal amount of union monopoly power over wages in a competitive labor market is presumably zero, and the optimal bargaining unit is none at all. Even in an imperfect labor market involving monopsony power, where unionization might be a second-best alternative to wage competition, bargaining unit manipulation is too rough a guide to ensure that union power will be adequate to push wages to a competitive level, yet sufficiently weak so as not to push wages beyond that level. All the same, the single most important factor used by the Board in making unit determinations is that unionization is to be encouraged, despite the obvious difficulty in squaring that factor with the price theory model of unionization.

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86 This is so unless one has some reason for preferring the welfare of unionized workers to that of nonunion workers and consumers.

87 The guarantee that the union will produce a competitive wage in an imperfect market requires not that the government fine-tune a bargaining unit, but that the government control the union's demands and ensure the union's success.

88 The decision in the National Labor Relations Act to promote unionism cannot be sufficiently explained or adequately justified. Congress might have passed the Act to transfer wealth from owners to employees through the mechanism of unionization. Of course, this would have been misguided on a price theory model, which sees the costs of a union's success as borne by other workers and by consumers. Moreover, few firms were prospering in 1935, and historians report that the legislation was not the product of lobbying by politically powerful labor unions. See I. Bernstein, The New Deal Collective Bargaining Policy 40-128 (1950) [hereinafter cited as New Deal Collective Bargaining Policy]; I. Bernstein, Turbulent Years: A History of the American Worker, 1933-1941, at 318-51 (1970); Keyserling, The Wagner Act: Its Origin and Current Significance, 29 Geo. Wash. L. Rev. 199, 199-224 (1960). Nor does it seem likely that Congress was acting to restore industrial peace in the face of widespread or particularly violent strikes—a sort of blackmail rationale. It is true that § 1 of the statute speaks of "promot[ing] the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes." 29 U.S.C. § 151 (1982). Congress included this language, however, to make the best possible case for the constitutionality of the statute to the Supreme Court. New Deal Collective Bargaining Policy, supra, at 90. Moreover, the short-term...
a. Regulating Monopoly Power Over Wages by Unit Determinations

Given certain distributional goals, one could construct a rationale within the price theory model for promoting unionization and enhancing labor’s monopoly power over wages. The point would be to maximize monopoly gains so as to redistribute as many gains as possible to union members. Then one must ask, however, why limit unions to appropriate units at all? Absent miscalculations, a union should be able to maximize its power if permitted to select its own unit.

Adopting a prounion premise, one still might justify restricting a union’s right to select its own unit configuration because some configurations foreclose unionization on a broader basis. For example, one might want to force the union to select a large bargaining unit even though the union itself would choose a smaller one for strategic or administrative reasons. One large unit would be preferable to several smaller units if the managers would have difficulty replacing a large group of strikers, but not a small group. Opting for the larger unit would enhance the union’s monopoly power. On these rationales, a small unit is preferable to a complete absence of unionization, but should two unions seek inconsistent units at the same time a larger unit is preferable. A union’s election victory in a small unit does not foreclose employees outside the unit from union representation, if either it or another union can organize the remaining employees, but it does increase the likelihood that two or more unions will eventually have bargaining rights at the firm.

effect of New Deal labor legislation was to encourage, not discourage, the incidence of strikes. See J. Atleson, Values and Assumptions in American Labor Law 43 (1983).

There was little debate preceding the Act’s passage about its supposed effect on employees, managers, firms, and consumers. Management groups focused their attacks on the statute on arguments that the Act was unconstitutional, and proponents replied in kind. New Deal Collective Bargaining Policy, supra, at 104-06. The statute was not a part of President Roosevelt’s New Deal. Support from the White House was lukewarm, at best, and the President endorsed the statute only after its passage seemed certain. Id. at 89, 118. If there was a rationale for prounionism it is found in statements decrying the inequality of bargaining power between employers and individual workers. Id. at 100-01. This rationale is misguided, of course, in a price theory model of unionization. In that model, when a labor market is competitive, the firm has just as little power over wages as does the employee. When the market is not competitive, there is no assurance that unionization will produce a better result. See A. Alchian & W. Allen, University Economics 427-28 (3d ed. 1972).

See supra note 86.
Predictions are more complex if a union seeks a small unit when no union currently seeks a large one. Representation in the small unit may make organizing on a broader basis more difficult, but rejecting the small unit for this reason leaves all employees unrepresented, even though there is no guarantee that anyone will ever organize a larger unit.\footnote{There is evidence that the Board has had these considerations in mind in some cases. The Board's unit rules in the retail chainstore and the insurance industries first favored broad units. The Board found narrow units inappropriate and refused to conduct elections in them. But as it became clear that few unions were successful in organizing the broad units, the Board began to find smaller units appropriate. See Note, supra note 77. The Board cited the statutory policy favoring unionization, but gave little other explanation.}

Unit configurations also affect employee strike choices. A union's monopoly power depends on the willingness and ability of employees to strike or otherwise disrupt production for an extended period and the competitiveness of the product market in which the firm operates. Assume in the supermarket illustration that the meat department clerks want to unionize, as do the produce, dairy, and general clerks, and that a strike by the meat clerks alone or, a fortiori, by all the clerks, would force the store to close for a substantial period of time. Adding the other clerks to a unit of the meat clerks does not increase their power to extract monopoly wage rents because, by hypothesis, a strike by the meat clerks alone will close the store. But if the choice of whether to strike is made within the union by majority vote, as seems likely, joining all the clerks in the same unit may produce a different result than if the meat clerks alone voted.

The outcome of a strike vote by the meat clerks seldom is certain because no strike is bound to succeed, and the managers may refuse to concede on a wage issue even if the strike closes the store. In voting to strike, a meat clerk must assess the managers' likelihood of concession, estimate the costs of the strike, and factor in his risk preference. Each employee makes this calculation, and the union officers presumably act as collectors of information about the likelihood of the strike succeeding. The presence of other clerks in the unit should not change the cost side of a meat clerk's calculation. This is not a case of a group (the meat clerks) taking action because it reaps all the benefits of the action but shares the risk.

\footnote{This implies that the firm cannot replace the employees easily and cannot easily shift their work to another location or group of employees.}
costs with others (the remaining employees). However, placing all the clerks in a single unit may change the union's demands. A unit of meat clerks, unless it is motivated by altruism, will seek to extract wage gains only for meat clerks. If bargaining goals are formulated by majority vote of the union's members, or some similar but less formal participatory process, a unit that includes all the store's clerks should tend to spread the monopoly gains among all the groups. This may change the benefit side of the calculation, as well as having a distributive effect.

One might prefer a broader unit if spreading monopoly gains is an outcome one hopes to encourage. Similarly, a broader unit might be preferable because a smaller unit with monopoly power could impose costs on employees outside of the unit who receive no benefits from a strike. One might consider it unfair to deny a voice in the strike decision to any employees who will lose hours of work by the strike. Of course, it is common for a strike at one firm to result in layoffs at another firm (a supplier or franchisee, for example), yet the employees of that second firm seldom have a say in the strike decision. A relevant distinction is that the employees in the second firm do not share in the gains of a successful strike and so, unless altruistic or bribed, they will vote against a strike. Employees within the firm can more easily be offered a share of the gains.

I have assumed that the meat clerks could shut down the store if they strike. Now consider the situation if the produce clerks (acting alone) also have that power and are in a separate bargaining unit. Absent coordination between the two groups, there is a danger that each group will seek to extract the entire monopoly gain from the firm. To avoid a situation where the combined wage demands of the two groups exceeds the firm’s ability to pay, the groups must coordinate not only strike strategy but wage demands. It may be that this “demand coordination” is easier when the two groups are in a single bargaining unit. If a single union represents the two groups of clerks, demand coordination occurs within the

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92 This argument is examined infra note 114 and accompanying text.
93 They may have a say in the decision if they are also members of the striking union.
94 In rare situations employees at a second firm might gain from a strike. For instance, demand for their labor may increase as a result of the strike.
95 One form of bribery is log-rolling of the sort, "I will support your strike today if you will support mine when I ask."
union, and for the purpose of deciding goals and strategies, the two bargaining units are functionally a single negotiating unit. The interesting question is whether demand coordination within a single union is likely to be less costly or less subject to misunderstandings and stalemates than is a similar coordination attempt between two unions. Because this question requires a consideration of the nature of the demands, I discuss it later in the paper.\footnote{See infra text accompanying notes 131-32.}

Given particular distributional goals, it is possible to derive plausible norms for bargaining unit determinations from the price theory model. The analysis so far has suggested three: a desire to spread monopoly gains; concern about internalizing the full costs of striking; and the need to facilitate demand coordination. The Board does not appear to consider these norms in its determinations.

b. Price Theory Norms and NLRB Factors

After the general policy favoring unionization, the facts cited most often by the Board in passing on bargaining units are similarity of wage rates, manner of determining wage rates, hours of work, and other compensation benefits. One can group these under the term “compensation similarities.” Returning to the supermarket illustration, assume that all the clerks in the store are paid hourly, that the differential between the highest and lowest paid clerks (seniority held constant) is ten percent, and that the store manager sets all wage rates after consultation with a central office. Also, assume that all clerks participate in a company-wide pension plan, with the firm contributing an amount equal to two percent of an employee's wage to the plan, and that a group health insurance plan is available to all employees, but the firm does not contribute toward the premiums. A union is seeking a bargaining unit of meat clerks, which the managers oppose by arguing that because of the compensation similarities the only appropriate unit includes all of the store's clerks at this location.

It is not clear how the facts cut on the bargaining unit issue. Either similarities or differences could be thought to predominate, and the Board could approve the unit or not by emphasizing or characterizing particular facts. More important, none of the facts
seem relevant if the policy is to designate the unit that optimizes the union's monopoly power over wages. According to the price theory model, the union could produce monopoly wage gains for meat clerks without affecting the wages of other clerks. Over the long run, the store may reduce the number of meat clerks, or competition may force the store out of business, but the clerks' compensation similarities do not affect these possibilities. Nor do they affect the possibility that other clerks will unionize and that there will be a failure to coordinate wage demands. That danger exists whenever managers confront two or more unions each with monopoly power. Nonunion clerks might also be disappointed at a wage disparity favoring the meat clerks. In a price theory model, however, this disappointment has no effect on the firm, and the market continues to set the wage rates of the nonunion clerks. Policies favoring gain-spreading and voting enfranchisement of all employees who would lose work because of a strike apply regardless of compensation similarities. Note that compensation similarities are irrelevant even if the union seeks a unit comprised of only half the meat clerks; that is, if the union proposes a unit based solely on its extent of organization.

Another factor sometimes relied on by the Board is whether the firm is "functionally integrated." The Board examines the firm's organization of production to determine if there is a continuous flow process. For the Board, such a process is one factor favoring a broad unit and disfavoring a narrow unit. The significance of functional integration appears only to be that groups of the firm's employees will be able to shut down the entire firm (one location) independently of one another. A multiplicity of unions, in separate units, each with the capability of shutting down the firm creates no more union monopoly power than does a single, location-wide unit with the same capability. Functional integration could bear indirectly on the need for demand coordination by identifying the groups of employees who are likely to have monopoly power and by channelling them into the same union. Beyond this point, the functional integration factor pours little content into the concept of optimal monopoly power.

Although functional integration may have an indirect connection

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97 See J. Abodeely, supra note 68, at 39-48 (citing cases).
98 See Hall, supra note 73, at 494.
to optimizing union monopoly power, the firm's organizational and supervisory structure and the frequency of employee interchange and contact lack even this connection. Whether the firm's managers determine labor relations policies at the local level or at a regional headquarters does not affect a union's monopoly power over wages; it only affects the traveling costs of collective bargaining. That employees are regularly in contact with one another and that managers often transfer employees from one job to another have no effect on a union's monopoly power.

The Board sometimes holds that bargaining history at a firm supports or precludes a unit proposal. The issue arises when there has been a bargaining unit at the firm and an outside union seeks a new unit either broader or narrower than the historical unit. Either the managers, the incumbent union, or both argue that the historical unit has been stable and successful, and so no change should be permitted. But it is difficult to evaluate bargaining history and even if accurately evaluated, it will not indicate what optimal monopoly power is or whether such power has been obtained. Frequent strikes can signify the effective use of monopoly power, but they can also signify repeated, unsuccessful attempts to raise wages. A lack of strike activity may indicate union strength—the union is powerful enough to raise wages merely by threatening to strike—or the absence of any power. Compounding the difficulty of inferring union strength from the mere fact of incumbency is that the inquiry is a relative one. The power of the incumbent union must be compared to the predicted power of a union in the proposed unit. It may be clear that because of the difficulty of replacing some employees but not others one unit configuration will be stronger than another, but incumbency adds nothing to the analysis unless actual bargaining results are examined, which the Board does not do.

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99 Even if the union's power creates a bilateral monopoly, in a price theory model the central administration of wages does not give the managers a tactical advantage. Absent the union, the market sets wages, and the managers cannot claim that they are precluded from agreeing to a wage increase because it will spread to other locations.

100 Of course transfers can affect monopoly power in the sense that a transfer of employees could defeat a union's strike, but this seems an inadequate reason to foreclose unionization. The Board does not articulate this rationale, or any other, for relying on the factor.

101 Another factor, the extent of the union's organization among the firm's employees, can affect the union's power substantially. Forcing the union to submit to a representation vote in a unit that includes nonsupporting employees makes the union run the risk that the
In short, the Board’s bargaining unit factors are not coherent in a price theory model of unionization. Some of the factors, notably the presumption in favor of unionization, promote union monopoly power over wages. Others, such as the firm’s functional integration, are either irrelevant or they diminish the union’s power. The most important policy arguments to emerge from the analysis are those relating to gain-spreading and demand coordination. Some of the Board’s unit factors can be tied to those arguments but other factors cannot. There is no reason to assume that the Board has had these policies in mind.

2. Unit Determinations in a Relational Contract Market

The relational contract model, like the price theory model, offers some insights into Board bargaining unit determinations. The Board’s factors, however, no more appear to be directed at promoting the policies suggested by this model than they do those suggested by the price theory model. The statutory bargaining unit presumption favoring unionization promotes explicit relational contracting, which has the potential to reduce friction by substituting a single bilateral monopoly for many bilateral monopolies and to encourage employee cooperativeness in acquiring and transmitting firm-specific skills. The presumption does not discriminate, however, between firms on the basis of whether firm-specific skills predominate. The presumption favoring unionization also does not carry with it a rationale for refusing a union its proposed unit. One argument for denying a proposed less-than-location-wide unit is that there may be economies of scale in relational contracting. If a bargaining unit covers only a few employees, they may be unwilling to bear the contracting costs of collecting adequate information and negotiating a comprehensive agreement. A presumption favoring a single-location unit might help to alleviate this problem. If employees favor a unit smaller than location-wide it may mean that they are willing to bear these contracting costs,

union will lose the election and have no rights at all; drawing the unit smaller than the union’s orbit of support may reduce the union’s power by keeping out of the unit employees who, if they struck, might be particularly difficult for the managers to replace.

102 But see the jurisdictional exceptions to the Act’s coverage, especially regarding agricultural workers. 29 U.S.C. § 152(3) (1982).
or it may mean that their purpose in unionizing is wage monopolization.

In a relational contract model, firm-specific skills predominate, and wage differentials and customary rules tend to stabilize over time. The workforce tends to coalesce into "relative groups"—employees with common wage rates and working conditions. Employees in a relative group are conscious of sharing an identity of interests, among which are common expectations of how managers will treat them vis-a-vis other relative groups. The approval of a single-location unit, or the insistence by the Board on such a unit, will put several relative groups together in a single unit.\(^1\) It is unclear how this will affect the ability of managers to secure consent to changes in established wage differentials and customary work rules. The problem resembles the need for demand coordination in a price theory model. Relative groups will resolve their conflicts within the union rather than in a series of separate negotiations with managers. It is unclear, however, whether this will lead to more or less resistance to change.

Board use of compensation similarities as a factor in determining unit appropriateness could tend to make bargaining units correspond to relative groups, but the nature of the similarities is critical if this is to be the Board's purpose. To see how compensation similarities are matters of characterization and emphasis, consider the ordinary case. In the supermarket illustration, assume that all meat and produce clerks receive hourly wages and that they have the same working hours. The store manager sets wage rates. There is an established starting wage for a new meat clerk and a different starting wage for a new produce clerk; the firm does not permit individual variations. There is a set pattern of premium pay above the entry level based on seniority with the store. The differential between the scale for meat clerks and that for produce clerks is $.15 per hour in favor of meat clerks at the entry level and at every seniority level. In addition to possible compensation similarities, there are also matters of skills and training. Meat clerks must be

\(^{1}\) It seems unlikely that there will be but a single relative group at a particular location of a firm, although perhaps a firm with multiple locations would find a relative group at each location. What it requires is a particularly homogenous workforce. Construction industry craft unions might be an example, but even as to them one would have to inquire whether there is but a single classification of journeymen, how apprentices fit into the picture, and so forth.
able to carve beef carcasses into standard cuts and to weigh, package, and price the cuts. Some of these operations are automated. Some of the meat clerks must be experienced in inventory control. Produce clerks must be able to clean and trim a variety of fruits and vegetables and to weigh, package, and price the product. Some of these operations also are automated. Some of the produce clerks must be experienced in inventory control.

If the Board wants to approve a multi-clerk unit (or disapprove a smaller unit), it will reason that all the clerks receive hourly wages, wage scales are close, all clerks perform "clerk"237(221,237),(237,238) functions and run automated equipment, and training for inventory control is in some respects similar for a variety of products. To reach the opposite result, the Board would emphasize that meat and produce clerk classifications are not interchangeable, transfers between classifications require considerable retraining, work uniforms are different, and the groups do not share common supervisors or a common pay scale. In the relational contract model, how the clerks divide into relative groups depends on history, practice, and most importantly, expectations. For example, one would want to know whether the wage scales at the firm expand and contract independently of one another.

The Board's use of functional integration as a unit factor has an effect in a relational contract model similar to its effect in a price theory model. Functional integration means that two or more groups have power to shut down the firm. In the price theory model, the plausible concern was demand coordination; in the relational contract model it is similar. Assume that one relative group, with power to shut down the firm by a strike, unionizes, while another relative group remains nonunion. Should the unionized group seek to alter historical wage differentials, managers will have difficulty maintaining the cooperativeness of nonunion employees. This problem may be more serious when two unions separately represent two relative groups, each with the power to close down the firm. The two unions may play "leap-frog" with wage differentials and make inconsistent demands with respect to customary work rules. Forcing the two relative groups into a single bargaining unit tends to promote more comprehensive relational contracting and to encourage settlement within the union of conflicts between groups. Leaving these conflicts unsettled is more serious if the firm is functionally integrated and if more than one group can shut
down the firm in support of its demands. The critical question is whether conflicts between relative groups settle more easily within a single union or through negotiation between unions.

The Board occasionally relies on a firm’s organizational structure in making unit determinations. It will consider, for example, whether a local or regional manager sets labor relations policies. Managers, and sometimes a union, will cite this factor as support for an argument that the only appropriate bargaining unit is multilocalational, for it corresponds to the firm’s organizational structure. This factor is unimportant in a relational contract market. A network of wage differentials and customary rules is likely to have developed on a single-location, not a multilocation, basis. Tasks and training requiring cooperativeness between employees arise more often at a single location than between locations. Firm-specific skills are most frequently location-specific as well. Multilocalational units tend to lump together groups of the firm’s employees not sharing the same network of wage differentials. How a union will react to such a lumping is unclear. It might treat the two locations as separate negotiating units (perhaps with a single contract but separate terms for each location), or it might attempt to apply the same terms to both locations. If the union does the latter, compromises are necessary to the extent that the networks of historical wage differentials and customary rules differ between the two locations. If two locations of the same firm share the same network, evidence of it should be available. The important point is that centralization of the firm’s labor decisions is not good evidence of such commonality.105

104 Firm-specific skills will not always be location specific. This may be particularly true in those service industries where standardized processes exists. Someone trained to manage the night shift at a McDonald’s will possess skills transferable to other McDonald’s (to the extent that this industry is marked by franchising, these skills are better described as franchise-specific than firm-specific), but may know nothing about the lay-out of any Burger King or about the peculiarities of its machinery.

105 The relational contract model suggests that physical proximity and employee interchange might have some small value as bargaining unit factors because it is unlikely, although possible, that employees who are widely dispersed and rarely have contact with one another will form a relative group. On the other hand, close physical proximity by no means guarantees that employees are part of a single relative group. It is more likely that there will be several relative groups at a single location.

In a relational contract model, as in the price theory model, the only consistent effect of relying on a history of bargaining in determining unit appropriateness is that it assists an incumbent union in retaining its bargaining rights. If the policy is to promote comprehen-
Analyzing bargaining units in a relational contract model does not share the deep contradiction of a similar inquiry in a price theory model. All the same, the analysis is unsatisfying, not because the model is inaccurate, but because the effects of unionization are so uncertain. Unionization may facilitate comprehensive relational contracting with its attendant advantages, but the effects of alternative bargaining structures are unclear. In any event, there is no reason to conclude that the Board has developed its bargaining unit criteria to promote policies that presuppose a relational contract market. Thus, although some of the Board's factors are likely to influence bargaining by clustering or separating relative groups, this does not appear to have been a conscious choice by the Board.

3. Idealized Outputs of Collective Goods

In the previous sections I explored whether the attributes of the labor market, as described by two models, suggest theories of optimal bargaining units. I now consider whether there is an output of collective goods that is on quality or quantity grounds superior to some other output and, if so, whether the Board's bargaining unit criteria tend to promote superior outputs. The central argument is that a union producing collective goods for its members is in some, but not all, respects like a city producing public goods for its citizens. I begin by discussing certain features of the production of public goods in order to show why the coercive power of the state is thought necessary and to show what is meant by an optimal level of public goods production.

a. Optimal Level of Public Goods

A city chooses which public goods to produce at what levels of production. It is the nature of a public good that it is too expensive to exclude people from enjoying the good once it is produced. An individual faced with a choice of producing a public good will, igno-
noring free-rider problems, produce the good when the benefits he would receive outweigh his costs of production. A second individual, now benefited by production of this public good, will make a similar individualized calculation to decide whether to pay the costs of increasing production. If many enjoy the good, the ultimate level of production resulting from these individualized calculations is likely to be far less than the level that a government that summed the value of the good for all the beneficiaries and adjusted the level of production accordingly would produce. There might be various notions of what constitutes optimal production by the government, depending on one’s normative perspective. By optimal production, I mean that which duplicates the result that would occur if purely voluntary cooperation were costless, preferences were honestly revealed, and contributions to costs (taxes) were made according to benefits received.

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107 I offer the following example for those, unfamiliar with the public choice literature, who would like to work through this in greater detail. Assume that there are 100 homes each located near a marsh land that is infested with mosquitoes. (On mosquito repelling as a public good, see J. Buchanan, The Demand and Supply of Public Goods 57-65 (1968). The homes are equally subject to visits from mosquitoes, and the homeowners have identical preferences for mosquito eradication and identical incomes and accumulated wealth. Each homeowner acts in his self-interest and does not act altruistically towards other homeowners. Mosquitoes can be killed by spraying the marsh with insecticide. Each dose of insecticide kills some mosquitoes and mosquito larvae, but spraying is subject to diminishing returns according to the following schedule:

<table>
<thead>
<tr>
<th>Number of Gallons</th>
<th>Cost per Gallon</th>
<th>Total Value of Spraying (per house)</th>
<th>Marginal Value of Spraying (per house)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$46</td>
<td>$60</td>
<td>$80</td>
</tr>
<tr>
<td>2</td>
<td>$46</td>
<td>$105</td>
<td>$45</td>
</tr>
<tr>
<td>3</td>
<td>$46</td>
<td>$125</td>
<td>$20</td>
</tr>
<tr>
<td>4</td>
<td>$46</td>
<td>$129</td>
<td>$4</td>
</tr>
<tr>
<td>5</td>
<td>$46</td>
<td>$129.50</td>
<td>$.50</td>
</tr>
<tr>
<td>6</td>
<td>$46</td>
<td>$129.90</td>
<td>$.40</td>
</tr>
<tr>
<td>7</td>
<td>$46</td>
<td>$129.90</td>
<td>0</td>
</tr>
</tbody>
</table>

A single owner could improve his welfare by $14 if he sprayed the marsh with a single gallon of insecticide, but it is not clear that he will do so. An owner is benefited by $60 if someone else buys the first gallon, and it is thus possible that everyone will abstain from purchasing in the hope of being a free-rider. What is clear is that given the assumptions, once someone buys the first gallon of spray, no one will buy a second gallon. Its cost exceeds the benefit to an individual owner by $1. Yet the value of that gallon to the owners treated as a group far exceeds its cost. Were the owners placed under the coercive control of a city government, each owner contributing equally to the cost, they would purchase five gallons of spray.
If the government's coercive power does not reach all those who benefit from a public good's production, or if it reaches and taxes some who do not benefit, the optimal level of production will not be reached. Failure to sweep in all the beneficiaries results in underproduction, and it allows some people to enjoy the benefits of the public good for free. When the government taxes nonbeneficiaries, public goods are overproduced and beneficiaries do not shoulder the full costs.\textsuperscript{108}

People seldom benefit equally from the production of a particular public good. They are not likely to have identical preferences for levels of production, and a good may not have an equal impact on all beneficiaries. If all beneficiaries do have the same preference schedule for a particular public good but, because of locational or other differences, vary in their ability to enjoy the good, the optimal level of production is reached when the sum of all the benefits equals the costs of production.\textsuperscript{109} This calculation is difficult and costly. Moreover, if equality of treatment is a goal, the government can no longer levy a flat tax. With a flat tax, although each taxpayer may be better off than he would have been if the public good had not been produced at all, the excess of benefits over costs is greater for some than for others. The government can eliminate this inequality if it charges each beneficiary a percentage of the costs calculated according to the benefits that he receives. That, too, is expensive.

The complexities increase if beneficiaries have different prefer-
ences for a particular public good. The government can attain optimal production only if beneficiaries honestly reveal their preferences. If the city taxes according to a percentage of the benefit received, owners may strategically understate their preferences. An owner might reason that if other owners state their preferences honestly, an understatement of his own preference is not likely to reduce by much the level of production of the public good, while he will save in taxes. On the other hand, if other owners understate their preferences, his honest statement will not prompt the city to produce much more of the public good, and he will be paying a higher percentage tax than others will. No matter what others do, he is better off understating his preference. Nevertheless, if the city charges identical, per capita taxes for the public good (that is, not in proportion to the benefit received), owners who are benefited more than the average will have an incentive to overstate their preferences.

A single government often produces many different public goods, and who benefits from their production varies with the characteristics of the good. Because governments have start-up and other administrative costs, it is usually too costly to have a separate government for each public good. A separate taxation scheme for a

the marsh benefit more than do those farther away. To simplify the calculations, assume that sites form concentric circles around the marsh and that there are 20 homes on each circle.

<table>
<thead>
<tr>
<th>Miles from the Marsh</th>
<th>one</th>
<th>two</th>
<th>three</th>
<th>four</th>
<th>five</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$60</td>
<td>$55</td>
<td>$52</td>
<td>$20</td>
<td>$10</td>
</tr>
<tr>
<td>2</td>
<td>45</td>
<td>40</td>
<td>38</td>
<td>12</td>
<td>.42</td>
</tr>
<tr>
<td>number</td>
<td>3</td>
<td>20</td>
<td>15</td>
<td>9</td>
<td>.43</td>
</tr>
<tr>
<td>of</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>.44</td>
<td>.30</td>
</tr>
<tr>
<td>gallons</td>
<td>5</td>
<td>.50</td>
<td>.45</td>
<td>.32</td>
<td>.03</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>.40</td>
<td>.35</td>
<td>.08</td>
<td>.02</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>.10</td>
<td>.05</td>
<td>.04</td>
<td>.01</td>
</tr>
</tbody>
</table>

This schedule yields an idealized solution. The benefits summed over all 100 owners from purchasing a fourth gallon of spray (once three have been bought) exceed the costs of that gallon, but the benefits from purchasing a fifth gallon fall short of the cost of that gallon. The idealized level of production is four gallons.

110 For an individual, engaging in these sorts of strategic behaviors is more costly if the group is small because hiding preferences may be difficult and the social sanctioning of strategic behavior more probable.
particular public good is not uncommon, however.\textsuperscript{111} Such special
treatment, whether it is in the form of a surcharge or an exemption
from sharing the costs of producing a public good, is expensive. A
government must evaluate candidates for special treatment (strategic behavior continues to be a problem) and administer the differential taxation scheme. To avoid these costs, we regularly pay toward goods that do not benefit us, and we also receive without explicit charge goods that do benefit us.

Whether a government will tax nonbeneficiaries for the production of a particular public good depends on more than the costs of ascertaining the impact of the good and the preferences for it. It depends on the government's decisionmaking mechanism.\textsuperscript{112} Assume, for example, that a majority favors production of a particular good. If there is a majority rule, side-payments are not permitted, and there is only a single issue, the majority may dominate the minority and charge the minority, even though they do not enjoy the public good. A unanimity rule under the same conditions results in the minority being able to block all production. Where a single good is produced that benefits a majority but not a minority, it is difficult to describe a mechanism for (believably) expressing intensity of preferences. This suggests that a government that produces several public goods may function in a more fair manner than one that produces but a single public good. Coalitions may form, and logrolling on issues may approximate a registering of preference intensity, although there is no guarantee that this will happen.\textsuperscript{113}

\textsuperscript{111} Sewer and water hook-up charges and street repavement assessments are common examples of taxation of those who benefit most from a particular public good.

\textsuperscript{112} The number of citizens involved may affect government decisionmaking processes. If the number of citizens is relatively low, strategic individual behavior may affect government policy and citizens may exaggerate or understate preferences, especially if tax bills are equal (that is, if taxation is not according to benefits received). Though there are strategic gains from preference concealment when groups are small, preferences are more difficult to conceal when a group is small, citizens are similarly situated, and there is social interaction. Private, cooperative behavior is more likely under these conditions. In large groups, individuals will be more apathetic, but because an individual's expression of preference is unlikely to affect government behavior a citizen will not bother to conceal his preferences unless there is a scheme of taxing according to benefits received.

\textsuperscript{113} Sometimes preferences are inconsistent. In the mosquito illustration, preferences for a dredged marsh and for a marsh left in its natural state are inconsistent. Dredging the marsh is a public good that is a benefit to some people but a detriment to others. In theory, those benefited could compensate those who suffer a detriment, but there are often insuperable
b. Optimality of Collective Goods in Choosing Bargaining Units

It is possible to talk in terms of an optimal provision of public goods, and this notion of optimality is relevant to bargaining units. The argument grows from an analysis of the “publicness” of public goods—that is, the degree to which the members of a group share the costs and the benefits of the goods; its shortcoming is that it tells us nothing about the normative qualities of any particular public good. In this theory, there are advantages in having three groups be coextensive: those who decide which public good will be produced and at what level; those who will benefit from the public good; and those who will pay the direct and indirect (in other words, those who prefer that the good not be produced) costs of producing the good. I refer to this as “coextensive grouping.” Coextensive grouping minimizes positive and negative externalities and improves the chances that the collective good will neither be overproduced nor underproduced. It also minimizes the probability that production of the good will result in an unintended wealth redistribution. Coextensive grouping is the ideal for optimal production, but the costs of separate governments for each public good and the costs of setting individualized taxes for everyone receiving a benefit or suffering a detriment, no matter how small, are likely to be too high. A citizen might agree to a taxing and decision scheme spread across time and across groups if he thought that he would be extra-benefited by the production of some goods and under-benefited by the production of others, that these effects would fall randomly, and that overall there would be an excess of benefits over costs to him.

A union produces collective goods for workers, just as a city produces public goods for its citizens, but unions differ from cities in several critical ways. There is an important distinction between cities and unions with respect to overproduction. When the taxed group is larger than the group that benefits from a public good there will be a tendency to overproduce the public good. It is unclear that this is so when a union produces public goods by striking obstacles to doing so. Leaving aside the problem of converting to dollar terms the loss suffered by those preferring the marsh in its natural state, how can the city discover the identity of those people? An owner who hides his preference for a dredged marsh not only escapes taxation for the costs of dredging, he receives money from the city to compensate him for his claimed loss of the natural marsh.
a firm. Suppose a union's bargaining demand is for a guarantee against discharge without just cause. The value of this guarantee over the life of the agreement is $500 to each of the ten employees in the negotiating unit. A strike over this demand will shut down the firm, and the predicted cost of the strike is $400 in lost wages per employee. Twenty employees outside the unit (who will not enjoy the guarantee even if the strike is successful) will also be put out of work by the strike. It is true that the wages lost by the twenty nonunit employees are costs of producing the collective good, but there is no reason to believe that the failure of the union to internalize these costs leads the union to strike if it otherwise would not do so. It does not matter to purely self-interested union members whether twenty (or 1000) other workers are affected by the strike, unless that fact happens to put additional pressure on the managers to capitulate to the union's demands.\footnote{One might still view such a strike as inefficient, however. The total costs of the strike to all employees are greater than the total benefits, and were all those affected by the strike included within the unit, the union might well decide not to strike. The analysis in the text also applies when a large negotiating unit strikes for a good that benefits only a few employees within the unit, but in that case the decisionmakers presumably have considered all the costs.}

Another respect in which cities and unions differ is that although the residents of a city may be under the coercive control of several governments,\footnote{He will pay taxes to the federal government for a variety of goods. He may pay taxes to a municipality that provides road maintenance, fire and police protection, and other goods. At the same time, he may pay separate taxes for water and sewer service. The school board may be a decisionmaking body distinct from the municipality.} there is no formal equivalent of these separate governments regarding workers. Several unions may have bargaining rights at a firm, but only one union will represent any particular employee.\footnote{This is called the exclusivity principle. It derives from §7 of the National Labor Relations Act, 29 U.S.C. §157 (1982).} Perfectly coextensive grouping at the workplace would require a separate formal bargaining unit for each collective good. Current law does not permit such a scheme. To do so would cause a host of problems in any event.\footnote{The transaction costs in bargaining would probably be insuperable in this scheme, leading one to predict a de facto merger of units. Demand coordination would also be difficult.}

Because of the ways in which unions must charge for collective goods, workers will want to overconsume them. Cities spread the costs of producing public goods in a variety of ways, depending on
the good. Unions tend only to charge per capita taxes. Because unions produce collective goods primarily by exercising collective voice and by using or threatening to use monopoly power, employees pay production costs in the form of dues and in the losses from strife (strikes, for example). Dues are usually uniform across the membership. Although a union may calculate dues amounts by hours worked, it will not assess dues according to the benefit a particular worker receives from the array of collective goods. Strikes and other forms of strife also approximate a per capita tax, and, as with any per capita tax, the impact on a particular worker depends on such individual characteristics as family obligations and savings.\footnote{118} A union could charge for some goods according to the benefit derived by an individual employee. It could, for example, charge for use of the grievance and arbitration procedure, but unions rarely do this. As a result, employees will want to overconsume the good and the union will look for another way to limit consumption.\footnote{119}

There are two other important costs of producing collective goods. First, some collective goods benefit some workers, but harm others. An example is a seniority system that substitutes a neutral selection procedure for one subject to abuse by individual managers, but disadvantages talented employees with little seniority. Second, the opportunity cost of producing a collective good may be high. This happens when a union produces one collective good instead of another more highly valued by some of its members. This can occur when the two goods are inconsistent with one another, or when there is a budget constraint.

c. Relationship Between the Norms of the Collective Goods Model and NLRB Factors

The collective goods model suggests a logic to some of the Board's bargaining unit criteria. The model suggests a rationale for the labor statute's pro-union presumption, because without unions, the model says, many workplace collective goods would not be pro-

\footnote{118}{The more highly paid the worker, the greater is the cost of the strike to him. The point is that the costs of a strike to each individual need not correspond to the benefits predicted to result to him from the strike.}

\footnote{119}{See, e.g., Vaca v. Sipes, 386 U.S. 171, 175 n.3 (1967), where the union rationed access to grievance arbitration.}
duced at all. The election procedures also fit the model. They permit employees to act on their estimate of whether the costs of producing workplace collective goods outweigh their predicted benefits. One might dispense with the unit appropriateness requirement on the ground that the goods produced in a suboptimal unit are better than no collective goods at all. One might retain the requirement, however, because an underinclusive bargaining unit may preclude the unionization later of a more optimal unit.\footnote{In the price theory model, unionization of a unit with little monopoly power may foreclose unionization of a larger unit with more power. To the extent a union in a collective goods model produces goods by exercising monopoly power, all the price theory model arguments against underinclusive units are applicable. See supra text accompanying note 90.}

The ideal bargaining unit policy in a collective goods model would have the Board look at the range of collective goods likely to result from unionization of a firm and approve proposed units that best approximate coextensive grouping. Coextensive grouping facilitates preference revelation, minimizes externalities, and prevents unintended wealth redistributions. Unfortunately, this approach may be impractical. It is difficult to predict which collective goods an organized unit is likely to produce and whether the goods will affect nonunit employees. It is especially difficult to assess the relative importance of particular goods when they point to inconsistent groupings.\footnote{More evidence about these matters is available when there is a history of bargaining at the firm or in similar firms. The Board considers whether past bargaining has been successful, but the question is compared to what? As I have already discussed, see supra p. 395, the presence or absence of strikes is, at best, an ambiguous indicator of the success of collective bargaining. The Board does not examine past bargaining agreements to determine if the collective goods produced involved substantial positive or negative externalities. Absence of externalities suggests that the existing unit was coextensive with the goods produced; still there would be the possibility that a different grouping would produce a different package of collective goods—a package more valuable to employees.}

The Board has no stated presumption favoring either a large unit of employees or several small units. Small units may lead to diversity, innovation, and experimentation in collective goods production. Decisionmakers in small groups are likely to have better knowledge of their constituents' needs. If negotiating and decision units are large but the impact units of many of the collective goods are small, the costs are similar to those associated with governmental decisionmaking: decisionmakers have to be educated and reach an agreement on what to produce. To the extent that small units
lead to a correspondence of decision units and impact units, they have lower communication costs than big units. Moreover, as decision units grow larger, the benefits of monitoring union officers and negotiators are spread across more members, the costs of ousting incumbents increase, and undermonitoring becomes more likely. Too large a unit sometimes prevents unionization because the costs of reaching the employees with information are too great. Finally, if participation in union affairs is a good in itself, it may be more valuable in a small group, and more effective where interests are homogeneous.

Large units have advantages as well, however. Large units internalize the effects of collective goods production, and they may have economies of scale. For example, only large units may be able to afford paid union officers to administer the bargaining agreement or a permanent arbitrator. Large units may have more monopoly power for producing collective goods because managers will find it difficult to replace large groups of strikers, and large units ordinarily spread the gains from exercising monopoly power across more employees. It may be easier to resolve conflicts among groups about which collective goods to produce within a large unit than among several small units.122

Although the Board gives no reason for considering compensation similarities, their use fits the collective goods model well. When these similarities are present, employees are more likely to share preferences for particular collective goods. Even when similarly situated employees do not have identical preferences, the similarities may make it easier to discover strategic overstatement and understatement of preferences. Considering similarities in determining bargaining units may reduce externalities. For example, unionized employees may force a firm to change its method for determining a wage rate, even though the firm’s nonunion workers prefer that the method not be changed. The effect on the nonunion employees is a negative externality, a cost of collective action not considered by the union. Similarities are thus a rough guide to the impact unit, and it is because preferences do differ that it is important for those who will be affected by the collective goods to have a voice in their production.123

122 See infra text accompanying notes 131-32.
123 Voice may be especially critical in the case of unions, where the costs of expressing
The Board's use of geographical separation as a bargaining unit factor probably has a similar effect. Wide geographical separation makes it less likely that there will be externalities in collective goods production. This is so whether wages, hours, and working conditions would, absent unionization, be dictated by local labor markets or by relational contract considerations. Put more simply, where employees are widely separated, it is unlikely that a collective good produced by a union at one location will affect employees at another. When employees are widely separated, moreover, it may be difficult to communicate preferences.

The Board treats transfers of employees between jobs at a firm as indicating that the jobs belong in the same bargaining unit. The Board has not explained its reason for this rule and has been inconsistent in deciding whether temporary or permanent transfers should be more significant.124 In a collective goods model, temporary transfer of employees from one part of a firm to another ordinarily is evidence that employees share the skills necessary to do different jobs and is some indication of common preferences. These transfers would be administratively more costly to the firm if wages and hours were markedly different in jobs between which the transfers were occurring. Thus, managers would tend to apply changes in wages and working conditions caused by unionization of the workers in one job to other jobs to facilitate transfers. As a result, including these jobs in the same bargaining unit will limit externalities. Permanent transfers carry no such implications. The only significance of permanent transfers between jobs is that transfer policy is likely to be a matter of common concern.125

On the bargaining unit question, the collective goods model is

preferences by exit require a worker to leave his job and are quite costly. See supra text accompanying note 8.

124 See Abodeely, supra note 68, at 46-48 (citing cases).
125 That managers set labor relations policies from a central location only indicates that after unionization there will be travel costs in collective bargaining. Labor relations policies that are standardized throughout the firm are far more significant. Putting aside the case where the managers have established uniform policies to set up a bargaining unit that is difficult for the union to organize, managers presumably set uniform labor relations policies because they are cheaper than diversities. When a union seeks a change in wages or other working conditions at a single location, managers must choose whether to forego the gains from uniformity or to extend the change to other locations. In the latter instance, which may be necessary where the firm has a relational contract market, managers will be more resistant to union demands because the collective goods will spread to unrepresented workers.
more satisfying than the price theory or relational contracts models because coextensive grouping, although too costly in its idealized form, suggests a basis for bargaining unit policy. Some of the Board's unit factors square well with this model. Others do not. It bears repeating that the collective goods model is not a description of labor markets, but is a model for analyzing features of the collectivization process. Because it does not purport to say anything about the normative qualities of particular collective goods that a union chooses to produce, nor anything about the fairness of the means a union adopts, the model is limited.

C. The Evolution of Units

Managers and unions are not bound to negotiate in the bargaining unit established by the Board's election processes. Parties may adjust to the dynamics of collective bargaining and seek other units. This section considers whether units will evolve, the incentives of the parties, and theories of optimal unit evolutions. The relevance of these questions to bargaining unit policy rests on hypotheses about the effects of bargaining unit determinations on negotiating units. One possible hypothesis is that bargaining unit determinations affect the probability that there will be unionization at all, but once unionization has occurred, negotiating units will form over time independently of initial bargaining unit configuration. A second hypothesis is that bargaining unit configurations often facilitate or retard the evolution of bargaining units into optimal negotiating units. An analysis of unit evolution that strives to be complete is bound to fail, however, for the inquiry centers on the circumstances under which bargaining units might evolve into optimal negotiating units, but none of the three models of the business of unions yields a complete theory of optimal units. Still, it is possible to make some useful observations. The preceding sections considered a policy of facilitating "demand coordination," and I return to that theme.

The goods a union in any negotiating unit can seek lie along a spectrum. At one end are "global" goods, which affect all the employees in the unit. At the other are "local" goods, which affect fewer than all the employees in the unit. Consider, in a setting where there are both global and local goods, the incentives for the managers and the employees, respectively, of two different negotiating unit configurations: a single negotiating unit that includes all
of a firm's employees, and two negotiating units, each containing one-half of the employees, that negotiate separately and are represented by different unions. I assume that managers seek to minimize the costs of collective bargaining. I also assume that union officers seek to maximize the excess of the value of the goods secured in collective bargaining over the costs of bargaining to employees and to the union as an institution. With these incentives in mind, some comparisons between single-unit (one union) negotiating and multiunit (two or more unions) negotiating are possible.

First, negotiating unit configurations may affect employee strike power. If one group of employees acting alone cannot shut down the firm, or can do so only with difficulty, multiunit negotiating may reduce or even foreclose employee monopoly power. Only if there is effective cooperation between the unions will strike power be as great in multiunit negotiating, and employees may find it difficult to attain such cooperation because each union's officers have an incentive to serve their own members' needs. Union officers may impede cooperation by resorting to strategic behavior.

If each of two or more negotiating units has the power to shut down the firm by striking, multiple strikes are more likely than if only one unit has such power. The question remains whether combining the two negotiating units into one will reduce the number of strikes. In the single-unit configuration, officers or members settle conflicts over bargaining goals and tactics between employee groups within the union, although not necessarily to everyone's satisfaction. In a single-unit negotiating unit there is only a single slate of incumbent officers whose goals are at stake, but where two or more units exist, each has its own set of officers with their own interests. Increasing the number of units, and officer slates may reduce the likelihood that employee groups will come to terms about local issues in negotiations. In single-unit negotiating, a single slate of officers, whose reelection and satisfaction incentives relate to the entire membership, resolves conflicts over the priorities

126 These costs include the costs caused by union strikes and other uses of economic weapons, the goods secured by the union's use of monopoly power, and the administrative expenses of negotiations.
127 The standard argument is that officers do this to enhance their reelection prospects and their feelings of personal accomplishment.
128 Perhaps for a time the firm can operate without these employees.
129 I leave aside the matter of unauthorized (wildcat) strikes.
to be accorded alternative local goods. Single-unit negotiating facilitates logrolling and makes holdouts by particular groups more difficult because the special interests of some groups can be sacrificed so long as the welfare of the membership is protected. In multiunit negotiating, each set of officers is accountable to a different set of employees. Logrolling is still possible, but each slate of officers will seek to protect the special interests of its constituents, making sacrifice for the good of the entire negotiating unit hard to accomplish.

A different analysis applies to global issues. Some global goods benefit all employees, although impact and preferences may differ. When there is multiunit negotiating with respect to these goods, officers from the separate units, each seeking to impress their own membership, may pyramid on global issues, paying inadequate attention to the overall well-being of the firm. Another consideration cuts the other way, however. Because of externalities (a union expending resources to secure a global good pays the costs without capturing all of the benefits), none of the unions may bargain effectively over global issues.

Other global goods benefit one group of employees at the expense of another group. Where the demands of unions are incompatible, and each union has monopoly power, serious damage to the firm is probable unless the unions reach agreement among themselves. On the other hand, incompatibility of demands can work to the managers’ benefit by enhancing the credibility of the managers’ resistance to particular demands.¹³⁰

Thus, one cannot predict in a given case whether employees or managers will prefer a single, large negotiating unit or multiple, separately represented units. When different unions win bargaining rights at a firm, the evolution of the separate units into a single negotiating unit through coordination and cooperation requires local union officers to give up some negotiating autonomy.¹³¹ This is not so when a single union wins bargaining rights in separate units at the same firm, and thus evolution of the separate units into a single negotiating unit in that instance is more probable.¹³² The

¹³⁰ Workers may be more sympathetic under these circumstances to the managers’ argument, “We cannot agree to that because the other union will not let us.”
¹³¹ Managers may offer concessions to reach this result.
¹³² The evolution of plant-wide bargaining units into a single, multiplant negotiating unit
analysis suggests that Board unit determinations affect the evolution of negotiating units.

Multiemployer bargaining is another form of negotiating unit evolution, requiring a different analysis. The legal rules are relatively straightforward. Suppose that there are six separately owned firms in a local industry, and that a single union represents all the employees at each firm. The Labor Board's rule is that if the union and the managers of any or all of the firms consent, the consenting firms may negotiate as a single entity with the union. A firm that consents to multiemployer bargaining may not withdraw from the unit during negotiations without the consent of the union and is bound to honor the agreement. A union may not coerce a firm to enter into multiemployer bargaining; it must respect a firm's decision to go it alone. A union that engages in multiemployer bargaining has a powerful advantage over rival unions that would displace it as the bargaining representative because the Board holds that while a multiemployer negotiating unit is intact, it is the only appropriate bargaining (election) unit. In the example above, the Board will dismiss a rival union's petition for an election in a single firm so long as the incumbent union and the firm are engaged in multiemployer negotiations or are parties to a mul-

is an interesting variant. The analysis in the text seems generally to apply, but local officers in a plant-wide unit may be reluctant to yield autonomy to the national union or other negotiating agent, whereas in a single plant there is likely to be only a single set of officers. Moreover, even where multiplant negotiations are in place, some local issues may have to be settled at the local level.


134 Some courts have held that withdrawal also requires the consent of the other employers. See, e.g., Teamsters Union Local 378 (Olympia Auto. Dealers Assoc.), 243 N.L.R.B. 1086, 1089 (1979), remanded, 672 F.2d 741 (9th Cir. 1982).


136 See, e.g., York Transfer & Storage Co., 107 N.L.R.B. 139, 142 (1953). The Board has technical rules governing when an employer can withdraw from a multiemployer unit to which it has consented. If the union represents only a portion of the employees at each firm, the same rules apply, but the multiemployer agreement will cover only those employees. When employees at a firm are divided among several unions, multiemployer negotiations are still possible if the firms and the unions consent, but no union may be coerced into the negotiations.
Labor Bargaining Units

Because multiemployer bargaining requires the consent of both union and managers, it is something of a puzzle that it is so common. If multiemployer bargaining enhances the power of either side, the other should not consent to it. A number of explanations are possible. Perhaps multiemployer bargaining is a tool by which firms control the product market. When managers meet for the ostensible purpose of formulating responses to union demands, they have the opportunity to discuss product prices, output, and technological competition, and so to coordinate cartel behavior in the product market. The union receives a share of the monopoly rents for agreeing to this form of bargaining. Firms must cast their agreement in terms of product price or output, because common agreement on wage matters alone leaves the firms in competition with respect to other factors of production and yields no supracompetitive profits. If this view of multiemployer bargaining is correct, there should be considerable evidence of employer cartel behavior as firms and unions seek to police output and pricing agreements. The absence of such evidence suggests that the theory probably does not explain most multiemployer bargaining.

An alternative theory of multiemployer bargaining does not depend on product market control to explain managerial incentives. In a perfectly competitive, price theory labor market, the manager of a firm has no discretion over wages and other compensation terms. Unionization changes this. When a union secures bargaining rights at the firm and demands a monopoly wage, the manager now has some discretion. He can resist the union’s demands to a greater or to a lesser extent, while managers in competing firms make similar choices. Assume that his goal is to minimize the sum of wage rents and strike costs imposed by the union. The manager can do better or worse than his competitors, and his wages and job security will reflect how well he does. A risk-averse manager, or one who believes himself to be underskilled in this role, might agree to mul-

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137 The Board applies a similar rule when a single plant engages in multiplant bargaining.
139 Otherwise, the union’s best course is to seek to exercise its full monopoly power vis-a-vis individual firms.
employer bargaining just to avoid this competition. Multiemployer bargaining assures the manager that he and his competitors will pay the same wage rates. The manager might agree to multiemployer bargaining even though the multiemployer rate is higher than the union's average gain would be absent multiemployer bargaining.\textsuperscript{140} The union is compensated by this wage premium.\textsuperscript{141}

In this theory, unions earn a wage premium in multiemployer bargaining, which is negotiated by risk-averse managers.\textsuperscript{142} The resulting upward pressure on product prices lessens product demand, and though no single firm bears the entire loss in demand, the loss is "seen" by the multiemployer association. The association will have an incentive to keep down the union's wage premium.

It is important to the firms in the multiemployer group that a firm outside the group pay the same wage premium. It is no surprise, then, to find a union that has negotiated a wage rate in multiemployer negotiations insisting on that same wage rate from any unionized firm in the same product market that bargains on an individual basis. Moreover, a union that has negotiated a multiemployer wage is usually better able to persuade the employees of a firm not bound by the negotiations of the unfairness of accepting a lesser rate from their employer. Employees who would not have struck over a matter of a few pennies had they been negotiating in isolation will now strike rather than accept less than the multiem-

\textsuperscript{140} This is an instance of managerial slack. See supra text accompanying notes 41-47.

\textsuperscript{141} The analysis is altered only slightly if the labor market was imperfect before unionization of the firms. In an imperfect labor market, managers have some control over the wage rate. If managers have perfect information, the optimal wage/employment level (from the firm's point of view) will be set with no risk to the individual manager, but with imperfect information a manager will be uncertain as to the optimal wage. Presumably some managers will be better at setting the optimal mix than others. In an imperfect market with imperfect information, unionization replaces one form of uncertainty with another. Multiemployer bargaining removes the uncertainty of how a manager will perform in setting compensation rates.

\textsuperscript{142} Risk-neutral managers are better off by staying out of multiemployer bargaining and avoiding the wage premium. That is also true for managers who are especially skilled at setting wages. The union has a strong incentive to force these managers to adopt the wage rate negotiated by the multiemployer group. Although the Labor Board insists that the union refrain from pressuring a firm to join multiemployer bargaining, the statute does not prevent the union from seeking the same wage rate from a firm in the industry that has not agreed to multiemployer bargaining. See United Mine Workers v. Pennington, 381 U.S. 657, 663-64 (1965).
ployer rate. The union's credibility in the single-employer negotia-

tions is enhanced.\footnote{44}

The viability of a significant wage premium in multiemployer

negotiations depends on there being barriers to entry in the appro-

priate product market. Unionized firms cannot pay wage premiums

indefinitely while competing in every other respect with nonunion

firms not subject to the premium. The wage premium theory of

multiemployer bargaining predicts that multiemployer bargaining

would be more prevalent in concentrated industries.

In a relational contract model, unions seek to drive up wages

through the use of monopoly power, but they also facilitate com-

prehensive relational contracting. It is possible that the pervasiv-

eness of multiemployer bargaining shows that wage monopolization

is more important than relational contracting. It seems unlikely

that a network of relative wages and other working conditions

often extends across firms, or that a good secured by a union at

one firm will involve externalities at another. So, one might con-

clude, a multiemployer agreement is unlikely to be a comprehen-

sive relational contract. The counterargument notes that multiem-

ployer bargaining agreements ordinarily contain a host of terms in

addition to wage rates. This may suggest that multiemployer bar-

gaining, like single-firm bargaining, promotes relational con-

tracting, but that the resultant rationalized network of relative

wage and other terms will not be tied to individualized history at

particular firms.\footnote{44} Economies of scale could be a factor.\footnote{45}

The relationship of multiemployer bargaining to the collective

goods model is also instructive. Assume that for wage premium

reasons firms and a union choose multiemployer bargaining. The

union can forgo other collective goods, negotiate those goods into

the multiemployer agreement, or tailor the goods to the needs of

each firm's employees in separate negotiations. Which alternative a

\footnote{44} Getting more is probably equally difficult.

\footnote{44} The historical pattern of relationships at a particular firm is thus supplanted by the terms of the multiemployer agreement, terms applicable to all firms in the multiemployer group. An alternative, but less prevalent, possibility is that the multiemployer agreement contains the important monopoly wage terms, but that equally important nonwage terms rationalizing a particular firm's internal labor market have been negotiated outside the multiemployer agreement.

\footnote{45} Also, multiemployer bargaining can lower transactions costs by reducing the number of negotiating sessions.
union chooses presumably depends on a comparison of transactions costs. When all issues are resolved in multiemployer bargaining, the employees of a single firm lose flexibility in their choice between alternative bundles of collective goods. Still, it may be more costly to bargain on wages alone in the multiemployer negotiations and to leave the negotiation of other collective goods to separate negotiations with a particular firm. To the extent the union must exercise or threaten to exercise monopoly power to secure these collective goods, it must find a way to allocate some of its power to the wage premium issue and the remainder to the individualized collective goods issues. But monopoly power in the form of strikes and other disruptions is not finely divisible. Managers will be reluctant to agree to a wage premium in multiemployer bargaining if the union retains the option to again exercise its monopoly power in individual firm negotiations for tailored collective goods, and the union has no mechanism for guaranteeing that it will exercise its power in the appropriate moderation in those later negotiations. Unions and firms may minimize transactions costs by handling all the issues in multiemployer negotiations and forgoing flexibility.

None of the models of the business of labor unions suggests a very persuasive, benign rationale for multiemployer bargaining. Either it is a mask for employer cartel behavior, or, more probably, a means by which managers slack at the price of a wage premium paid to union workers.

III. Conclusion

Economic models of the business of unions yield no pat solutions to questions of bargaining unit appropriateness under the National Labor Relations Act, but no apology is required. In a complex environment, the payoff of theory is its ability to enrich our understanding of issues and to suggest new research agendas. Each of the three models of the business of unions has considerable descriptive power, and further advancement requires more empirical research. A fuller understanding of bargaining unit policy depends on that development.

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148 Another round of meetings is costly, but this is probably a minor consideration.