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Trade union membership: Can unions grow in the context of inclusive bargaining and 'free-riding' without support from the state?

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ABSTRACT

Union membership decline has prompted theoretical and empirical discussions of how high levels of union membership can be facilitated. It is analysed how – amongst a variety of factors – industry-wide, multi-employer bargaining is constrained or supported by legislative intervention and whether this ameliorates the tension between inclusive bargaining, perceived benefits of union membership and 'free-riding'. The paper's review of recent Danish and New Zealand trends indicate that it is very difficult to overcome the latent propensity to 'free-ride'. Despite a relatively high union density level, Danish unions are concerned about recent changes to the unemployment insurance system and the growth in 'discount unionism' and New Zealand unions are faced with unanticipated outcomes where government policies and legislation supportive of collectivism has coincided with a fall in private sector union density. In the current economic, social and institutional context, considerable state support of a direct and/or indirect nature may be necessary to reverse recent declines in union membership.

INTRODUCTION

The starting point of this paper are recent theoretical and empirical discussions of declining union membership trends in OECD countries and which factors can facilitate higher levels of union membership. In particular, the paper draws on recent Danish and New Zealand issues and trends as it highlights the role of the state to influence trade union interest representation. As argued in the paper, there have been considerable changes in the institutional and legislative context of unionism in many OECD countries which have influenced unionism and collective bargaining. While the legislative context can be crucial in facilitating collective bargaining representation, the paper analyses specifically how industry-wide, multi-employer bargaining can be facilitated or constrained through legislative intervention and if there are other ways of strengthening collective bargaining. Generally, industry-wide, multi-employer bargaining is a cost-efficient way of delivering goods and services to union members but it cuts across the recent rise in workplace bargaining – both as single employer bargaining and decentralised elements of nation-wide collective agreements.

This is of special relevance in countries without the existence of *erga omnes* clauses, such as Denmark and New Zealand. Besides being cost-efficient, multi-employer bargaining also allows unions to influence industry-wide concerns – for example, skill development, occupational health and safety, turnover and retention – and this may entice employers and non-union workers to engage with unions. However, effective multi-employer bargaining is only a necessary but not sufficient pre-condition as union membership 'choices' are complex and influenced by many factors. At the most basic level, employees must perceive (in normative and/or instrumental terms) that union membership is relevant to them. This implies that the latent propensity of employees to 'free-ride' can be overcome which is very difficult in a political environment where compulsory union membership or 'closed shop' arrangements are frowned upon.

In light of this discussion of union membership 'choices', our two country overviews focuses on the existence of multi-employer bargaining, the perceived benefits of union membership and 'free-riding' issues. It is explained why there have difficulties in revitalising trade unions in New Zealand

in new millennium, despite a legislative framework which explicitly promotes unionism and collective bargaining (Rasmussen 2009). It also indicates why the Danish trade unions are worried, despite a high level of union density and the lack of an openly trade union hostile government. A recent decline in union density indicates the crumbling effectiveness of the unemployment insurance system as a 'recruitment machine' for the trade unions (Lind 2004) and leaves the Danish unions in a position where they have to look for other imperatives for union membership.

TRADE UNION MEMBERSHIP: THEORETICAL 'CHOICES' AND EXPLANATIONS

Visser (2002: 406-407) suggests that trade unions may lose members for "two main reasons (a) they do not deliver the goods and services that workers expect; and (b) they are unable to uphold the norm or social custom, which, in the absence of coercion, assures that a sufficient number of workers share the cost of producing these goods and services." While this may sound like a plausible and simple explanation, it hardly does justice to the theoretical and empirical complexity surrounding union membership choices and the recent attempts to reverse the decline in union density in a number of OECD countries. Likewise, many theoretical discussions of union membership have often pointed to three primary explanations for union membership – instrumental, utilitarian and ideological reasons (Wheeler and McClenden 1991). In that sense, becoming a trade union member is often portrayed as a distinct 'choice' between seeking immediate improvements of the employment situation, being based upon economic rationality or some sort of normative reason.

The tension between inclusive bargaining and 'free-riding' has been a major union concern and highlights the difficulties associated with Visser's notion of 'sharing the costs of union services'. In fact, the classical notion that 'free-riding' is a rational economic choice (see Crouch 1982, Olson 1980) has recently been reiterated forcefully by Friedman (2008: 24): "Individual workers can always do better for them selves, they can get more money and better jobs for themselves, by free riding than supporting the collective process." So, to attract members the unions must, according to Friedman (2008: 59), "persuade workers to ignore their own narrow financial interest to contribute to a collective project where success or failure depends on the actions of others."

Although it is unclear how much the collectivist orientation has changed in recent decades – as Waddington and Whitson shows, individual benefits and services have certainly not become the main reason for joining unions (Waddington and Whitson 1997) – it is difficult to 'persuade' workers to apply a collectivist attitude. But it is plausible that some conditions provide a necessary condition for such a process. Among these, industry-wide, multi-employer bargaining, non-contested workplace presence and inclusive bargaining are some obvious factors (Visser 1991) because they strengthen the union presence, visibility and influence at workplaces. The remaining obstacle is, however, the problem of 'free riding'.

This problem of 'free riding' can be solved if collective bargaining gains were exclusive to union members. If union membership gave some clear benefits it would be more attractive for non-union members to join. This could, for example, be solved by means of closed shop arrangements or other sorts of compulsory membership rules. These means have previously been used in Denmark and New Zealand but in the current context of 'free collective bargaining' closed shops and other compulsory arrangements are against the rules.

It appears necessary that the state provide more favourable conditions for unions to recruit members. In most countries trade union membership rates peaked between 1975 and 1985 (France, Germany, Italy, the Netherlands, UK), while unions in other countries were doing well until the mid-1990s (Belgium, Norway, Denmark, Finland, Sweden) where they also started to lose members (Ebbinghaus and Visser 2000, Eironline 2004). Throughout the 1980s and 1990s, unions

searched for new patterns of attracting members by introducing new services and finding new strategies, but the loss of members has continued in almost all countries

Table 1. Trade union membership in New Zealand and Denmark

	1988	1990	1992	1994	1996	1998	2000	2002	2004	2006
<i>Den mark</i>										
Members	1 746	1 756	1 763	1 749	1 816	1 820	1 824	1 786	1 760	1 745
Employees	2 365	2 330	2 326	2 257	2 347	2 410	2 457	2 443	2 454	2 514
Membership rate	74	75	76	77	77	76	74	73	72	69
<i>New Zealand</i>										
Members	659	603	428	376	339	307	319	335	354	383
Employees	1 278	1 235	1 196	1 276	1 382	1 393	1 428	1 538	1 629	1 741
Membership rate	52	49	36	29	25	22	22	22	22	22

Source: OECD.Stat

While the union membership trends in Denmark and New Zealand illustrate some of the membership pressures found in other OECD countries they have clearly ploughed their own path. In particular, the high union density levels found in Denmark and the reversal in the legislative position of collective bargaining and unionism in New Zealand since 2000 indicate the uniqueness of issues and trends associated with collective bargaining and unionism in the two countries. This uniqueness becomes more obvious in our abbreviated overview of recent bargaining and membership changes in the two countries.

AN OVERVIEW OF DANISH AND NEW ZEALAND ISSUES AND TRENDS

Danish unions: high union density under pressure

Traditionally, Danish trade unions have had a good record in recruiting members as the regulation of the labour market has been built upon voluntarism (limited state intervention) and a comprehensive web of industry-wide, multi-employer collective agreements. This provides the foundation of the so-called 'Danish model' (Due et al. 1994). Ever since the first comprehensive employer-union agreement in 1899, the state has been pursuing a *laissez faire* strategy towards collective bargaining parties. In addition, employers' organisations and trade unions have been part of tripartite processes since the 1950s which have provided them with a high level of influence on labour market legislation (Lind 1991, 2007). Currently, the unions have strong representation in most industrial sectors and a high level of legitimacy *vis-a-vis* the state and in the wider society.

Collective bargaining is almost entirely based upon industry-wide, multi employer agreements, covering around 60 per cent of the private sector (around 75 per cent of the entire labour market). Since the early 1990s, company level negotiations (local agreements) have been setting pay levels, working hours and some other employment conditions within the limits specified by national agreements. With a recent (2007) banning of all 'closed shops' (which were very few), the system has become very open for 'free riding'. This is a new situation as for many years union membership rates have been increasing and stayed above 80 per cent. As many unions members are covered by collective agreements (around 25 per cent of the members of the LO-affiliated unions -LO 2000) there have been some attempts by unions to introduce exclusive bargaining in 2007, but they have been rejected by the employers' organisations as well as the Government.

The attempts to introduce exclusive bargaining show that there is considerable concern about 'free-riding' and this has been fuelled by a decline in union density. Until the mid-1990s, trade union membership rates were still increasing, but since then they have been declining for some

important unions within the LO (LO - the Federation of Danish Unions). The other two main peak organisations, the FTF (civil servants) and the AC (academics) have been gaining members and in recent years, trade unions outside the main organisations have also recorded a significant increase in members.

A main reason for the LO loss of members is simply occupational change: relatively fewer people are skilled trades people or unskilled workers and instead a growing part of the workforce has received higher education and work in professional jobs. This has resulted in a shift from LO-affiliated unions in favour of the FTF and AC unions getting more members. Another reason is that more employees have become members of unions outside the three main organisations. Most important is the Christian Trade Union which has existed many years in opposition to the more aggressive trade unionism of the LO. Recently, unions from the so-called Trade Union House have had many new members. These unions have marketed themselves as service providers and without the traditional trade union behaviour and functions (like signing collective agreements).

The membership losses to the 'discount-unions' are considered to be seriously undermining traditional trade unionism. The easy explanation of the 'discount unions' success is that membership fees in these unions are much lower compared to other unions, though this is probably not the whole story. Some trade union leaders have ascribed recent membership losses to the banning of closed shops following a ruling of the European Court in January 2006. This has certainly had an effect. Maybe not directly as very few workplaces were covered by a closed shop agreement. But indirectly as the ruling from the European Court has made it more obvious to many workers that it is their own choice whether to join a union and, if so, which union they want to join.

The other, and perhaps more important, reason for declining union density has been the changes in the unemployment insurance system. As in Sweden and Finland, the unemployment insurance in Denmark is a so-called Ghent system: unemployment insurance is voluntary and based upon membership of unemployment funds. These funds were originally set up by the trade unions and they are still affiliated or associated with trade unions. To a large extent, this unemployment insurance system has functioned as a *de facto* recruitment machinery for the trade unions (Lind 2004, Böckerman and Uusitalo 2006, Kjellberg 2006), and unlike unions in most other countries, the unions in the Ghent-countries tend to benefit from rising unemployment – and tend to lose members at times of lowering unemployment. The latter has taken place since the mid-1990s in all three countries (in Denmark unemployment peaked at 12 per cent in 1994 and was down to 2 per cent in 2008), so the declining unemployment rates is also a reason for membership losses.

In addition, the unemployment insurance has been made less attractive to the unemployed: the unemployment benefit compensation rate (compared to former wages) have been reduced by around 25 per cent since the early 1980s, while stricter availability tests, limitation of the access to membership of unemployment funds, shorter periods of entitlements, disciplining activation schemes are amongst the measures making it less attractive to take up unemployment insurance (Møller et al 2008). On the top of this, the Government made it possible from 2002 onwards for unemployment funds to accept members from a variety of backgrounds where the funds previously had been aligned with certain industries or occupations. The membership of these so-called trade union independent funds has recorded a major upturn. From 2002 to 2008, the LO-affiliated funds lost 19.0 per cent of their members while the unemployment funds affiliated to unions outside the main organisations gained 15.4 per cent. The absolute frontrunner in this change has been the inter-trade unemployment fund, Danish Wage Earners (*Danske Lønmodtagere*), which was established in 2002 as a result of the new legislation. From having no members in 2002, it had over 60,000 members in 2008, and increased its membership by 34 per cent during 2006-2008.

A crucial question is what will happen as the current economic crisis lifts unemployment rates. Will workers join unemployment funds again and will they join the trade union affiliated funds or the

alternatives, the independent and inter-trade funds? The first impression, based on the effect of increasing unemployment figures in early 2009, is that this does not augur well for the unions. While it seems like workers are now joining the unemployment funds again after 15 years of strong employment growth has ended, they are not joining the LO-affiliated funds, but the independent ones (Arbejdsdirektoratet 2009a and 2009b). If this becomes the general trend then the 2002 legislation would have had its intended effect: to make the unemployment insurance system less efficient as a trade union membership recruitment machinery.

Supporting union membership growth in New Zealand: unanticipated outcomes

The historical trends surrounding collective bargaining and unionism in New Zealand indicate that it is difficult – outside the public sector – to sustain high levels of collective bargaining and union density in a country characterised by small and medium-sized workplaces which are geographically dispersed. Normally, the history of New Zealand employment relations can be divided into 4 major phases: prior to the legislative reforms of 1894, the conciliation and arbitration system (1894-1990), the ‘free-market system’ under the Employment Contracts Act in the 1990s, and the legislative and political support of collective bargaining and unionism under the Employment Relations Act in the new millennium.

As the conciliation and arbitration system (1894-1990) mainly provides a historical background, it suffices to say that this system provided a legislative and institutional backing for unionism which made it easy for even weak unions to provide tangible benefits for their members (Rasmussen 2009). As these benefits were predominantly provided through the conciliation and arbitration system – though direct collective bargaining could enhance the minimum pay and conditions stipulated through awards – unions tended to become dependent on the institutional support (‘creatures of the state’). As these benefits were generally available through ‘blanket coverage’ (equivalent to *erga omnes* clauses) on an occupational and industry basis, there was always the issue of how to limit benefits to union members only. This was either dealt with through ‘closed shop’ arrangements and, in certain periods, through compulsory union membership in designated jobs, occupations and/or industries being enshrined in legislation.

This changed with the Employment Contracts Act 1991 which abolished the award system and union registration and curtailed union workplace access (Harbridge 1993). There were few prescriptions for bargaining behaviour and unions were relegated to being ‘bargaining agents’. This facilitated a shift towards individual and workplace bargaining. Legislation also covered all employees, whether on collective or individual employment contracts and all employees were covered by statutory minima, including a personal grievance right which allowed individualised access to employment institutions. This reduced the benefit of being a union member and unions faced a more contested ‘market’ with a strong growth in private sector advisors, consultants and legal specialists. Although the characteristics of the new employment relations system aligned more closely with the Danish employment relations system (see Table 1 in Rasmussen and Lind, 2000), it was with unions accustomed to extensive state support, limited experience of workplace bargaining and with few resources to service and negotiate for their members. This prompted a sharp reduction in union density in the early 1990s, as can be seen from Table 1 above.

In 2000, a new centre-left government introduced the Employment Relations Act, which supported explicitly collective bargaining and unionism within a ‘social democratic’ approach to economic policy, social welfare, and infrastructure and capability development (Rasmussen 2004). Besides stipulating better workplace access for unions and re-introducing strike rights in association with multi-employer bargaining, it restrained union avoidance behaviour by employers through giving unions the ownership of collective employment agreements and by prescribing acceptable bargaining behaviour through the new notion of ‘good faith’. An Amendment Act in 2004 also attempted to constrain the employers’ ability to ‘pass on’ union-negotiated improvements to terms

and conditions (Rasmussen 2009). As can be seen from Table 1, overall union density has stopped falling but it has hardly increased in the new millennium. Furthermore, the overall figures hide that there has been a decline in union density in the private sector where union density has dropped to around 9 percent in 2008.

It is relatively easy to explain the high level of collective bargaining coverage and union density under the conciliation and arbitration system and the rapid decline under the Employment Contracts Act. However, it is more difficult to explain why collective bargaining and union membership has languished under the Employment Relations Act. Research has pointed to the following explanatory factors (Rasmussen 2009: 129):

- Prevalence of small and medium-sized workplaces
- Employer resistance or lack of support
- Employee apathy or lack of interest
- Unions' inability to foster more multi-employer bargaining

The prevalence of small and medium-sized workplaces creates a major organising problem for the unions and this can normally only be overcome through comprehensive multi-employer bargaining arrangements but unions have not been able to progress such arrangements. A major barrier has been the employers' lack of interest in collective bargaining (see Foster et al. 2009) and there have been several instances of open opposition to multi-employer bargaining. Surprisingly, surveys have found that employees are relatively positive about direct, individualised employer-employee bargaining. This has coincided with the 'market' and the government both providing significant benefits to workers. There has been a tight labour market with employment opportunities and above-inflation pay rises and the government has enhanced significantly statutory minima (as well as social welfare improvements). The unions have highlighted the importance of 'free-riding' where collective bargaining is undermined as employers 'pass on' union-negotiated improvements and this has prompted public policy changes. These changes appear to have had limited or no effect.

In short, private sector unions are faced with a situation where they have not been able to: institute effective multi-employer bargaining to overcome the prevalence of small and medium-sized enterprise, 'persuade' employers that collective bargaining is relevant or unavoidable, show employees that collective bargaining and union membership are a positive option. These trends raise several questions. Should the unions be pushed for stronger and/or different legislative changes in support of collectivism? Was it possible for unions to pursue multi-employer bargaining more effectively? Could unions have developed a more effective curbing of 'free-riding'? Has the union support of improved statutory minima been counterproductive by making union membership less attractive? Overall, the unions have been faced with a supportive government and legislative framework and there have been many positive employment trends. However, collective bargaining and unions are probably as weak now as they were at the turn of century and the key issues about 'free-riding', multi-employer bargaining and union-specific benefits have not been tackled. This could be fatal as a centre-right government elected in late 2008 has plans to downgrade the status of unions and make non-union collective agreements legal.

Discussion: Danish and New Zealand issues and trends

The two cases, Denmark and New Zealand, reveal very different stories about trade union membership developments and how their governments have reacted. The truncated overview has bypassed many relevant factors and instead has focused on the role of efficient delivery of gains in employment conditions through multi-employer bargaining and the tension between inclusive bargaining and 'free-riding'. As indicated, the actions by various governments have influenced union density levels, though not always in the anticipated way and/or with the anticipated strength.

The strong position of Danish unions has been built on the historical strength of multi-employer bargaining which goes back to the establishment of a voluntarist system in 1899. Although the current 'Danish model' has become more legislative prescriptive (we have bypassed the influence of European Union regulations in our overview), Danish governments have been less directly involved in promoting or fighting trade unions. Even the Conservative-led coalition governments of the 1980s saw an interest in avoiding a serious attack on unions and the current government has followed a similar course, despite its initial ideological denunciations of collectivism.

However, the Danish overview also indicates the importance of the unemployment insurance system (the Ghent system) as a supportive mechanism. Originally, the Ghent system was not established to strengthen unions, but to alleviate financial pressure on the state (Lind 2004) but it became a major reason for substantial membership growth from the 1960s to the 1990s. Although the 'Danish model' and its high level of union density still exist, recent changes to the unemployment insurance system – as well as the threat of unemployment diminishing in the new millennium – has coincided with slowly declining union density rates. Danish unions – especially the white-collar and professional unions – are trying to establish other incentives to take up union membership but there are clearly some concerns about the ability to reverse the recent decline and maintain the high union density rates if 'free-riding' or 'discount unionism' become more prevalent.

The role of multi-employer bargaining in providing effectively membership benefits is illustrated by the New Zealand overview. New Zealand unions have never developed strong multi-employer bargaining across the economy as they could rely on the conciliation and arbitration system to provide employment gains even for small, weakly organised unions. With the demise of the conciliation and arbitration system and ideological attack on unionism in the 1990s, this prompted sharply falling union density rates. Even a more positive political and legislative situation in the new millennium has failed to increase private sector multi-employer bargaining and surprisingly, unions have not developed an effective campaign. In that situation, union-specific benefits have been difficult to establish, with insufficient constraints on 'free-riding', employers being more generous in a tight labour market, and the government providing substantial increases in statutory minima.

CONCLUDING REMARKS

The theoretical and empirical complexity surrounding union membership implies that there is no simple explanation of why unions have faced declining density levels in many countries and there is also no simple 'cure' for reversing declining density levels. In that light, our discussion has only scratched the surface of the current debates and it has focussed narrowly on trends and issues surrounding the tension between inclusive bargaining, perceived benefits of union membership and the negative impact of 'free-riding'. The truncated overview of changes in Denmark and New Zealand also bypasses a number of fundamental changes in public policy, employment patterns, workplace relationships and, not least, prevailing attitudes to union membership.

Our discussion indicates that recently the economic, social and institutional context has not been supportive of collective bargaining and unionism – both generally and in our two selected countries. It appears therefore, that the efficient delivery of benefits has become even more important and this probably demands a more extensive role of the state. While Danish and New Zealand unions can hardly avoid pursuing inclusive bargaining they are faced with a situation where the existence of perceived benefits has become more difficult to demonstrate. The Danish unions are clearly in a better position with the ingrained role of multi-employer bargaining, a tradition of unions driving improvements in employment standards, and a strong institutionalised presence at workplace level. New Zealand unions have yet to deliver on these 'fundamental' despite a more positive legislative context in the new millennium.

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