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Significant Victories: The Practice and Promise of First Contracts in the Public and Private Sectors

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Significant Victories: The Practice and Promise of First Contracts in the Public and Private Sectors

Abstract

After decades of massive employment losses in heavily unionized sectors of the economy, and the exponential growth of the largely unorganized service sector, the American labor movement is struggling to remain relevant. Despite new organizing initiatives, the combination of US labor law and labor relations practices have made new organizing a tremendously arduous endeavor. Private sector workers, in particular, are routinely confronted with a host of aggressive legal, marginally legal, and illegal anti-union tactics from employers and their representatives.

Keywords

collective bargaining, report, employment, loss, union, American, labor, movement, U.S., law, legal, employer, representative, illegal, private, sector, ILR, Cornell University

Comments

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**SIGNIFICANT VICTORIES:
The Practice and Promise of First Contracts
in the Public and Private Sectors¹**

Paper presented at the
AFL-CIO/Michigan State University Conference on Worker Rights, Lansing, Michigan
October 11-12, 2002

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After decades of massive employment losses in heavily unionized sectors of the economy, and the exponential growth of the largely unorganized service sector, the American labor movement is struggling to remain relevant. Despite new organizing initiatives, the combination of US labor law and labor relations practices have made new organizing a tremendously arduous endeavor. Private sector workers, in particular, are routinely confronted with a host of aggressive legal, marginally legal, and illegal anti-union tactics from employers and their representatives.

This egregious opposition to unions does not stop once the election is won, but continues throughout the first contract bargaining process. With first contract rates averaging less than 75 percent, unions all too often have had to watch organizing victories turn into devastating first contract defeats. Unlike the organizing process, where the law can force even the most recalcitrant employer into an election, little in the law compels employers to negotiate an agreement.

Yet, despite these overwhelming obstacles, workers still organize and win – not just union elections but first contracts as well. Each year unions negotiate thousands of these first contracts in the US, providing union representation for more than one hundred thousand new workers. What do workers and their unions achieve in these first contracts? Why, when confronted with such powerful opposition, do unorganized workers continue to want to belong to unions and newly organized workers want to stay union? What do these first contracts provide that makes the struggle worthwhile?

To answer these questions, we evaluate first contracts across four dimensions. First, we inventory the basic workers' rights provided by these contracts that go beyond the very limited rights provided by federal and state labor law under the “employment at will” system in which unorganized workers operate. But union contracts do more than

simply provide abstract rights. As our second dimension we evaluate how first contracts provide workers and their unions with the institutional power to shape work and the labor process on a day-to-day basis, substituting fairness and due process for unilateral employer power and control. Third, we explore how first contracts codify the presence and power of unions into daily work life, evaluating which institutional arrangements provide a meaningful role for workers and their unions in the operation of their workplaces. Fourth, we examine the kinds of workers' benefits that are both codified and supplemented in first contracts, gaining important insights into what kinds of human resource practices exist in newly organized unionized workplaces. Finally, in the conclusion, we confront the limitations of what first contracts have been able to achieve in the current organizing environment and what it would take for unions to significantly increase bargaining power and improve bargaining outcomes in the first contract process.

Previous Research on First Contracts

There is a growing body of literature on organizing in both the private and public sectors (Bronfenbrenner and Friedman et al., 1998; Bronfenbrenner, 1997a; Bronfenbrenner and Hickey, 2002; Juravich and Bronfenbrenner, 1998; Milkman, 2000; Voss and Sherman, 2000). Some of this research also extends to examining the dynamics of first contract campaigns (Bronfenbrenner, 1994, 1996, 2001; Hickey, 2002). Collective bargaining agreements are regularly evaluated for patterns, outcomes, and emerging basic contract language, yet none of this work distinguishes between first contracts and subsequent agreements (BNA, 1995; Kumar, 1989). A series of studies evaluate the financial impact of unionization and first contracts on employers (Lee and DiNardo, 2002; Freeman, 1981). While not directly focusing on first contracts, the AFL-

CIO regularly gathers data on the wage differential between the union and non-union sectors of the economy (AFL-CIO, 2002).

It is inadequate, however, to focus only on the financial rewards of unionization. Non-financial issues such as dignity, fairness, and workplace control are often the key issues in organizing campaigns and remain central in the development of initial union contracts (Bronfenbrenner, 1996; Bronfenbrenner and Hickey, 2002). In a comparison of firms that faced union organizing drives versus firms at which no such drive took place, Richard Freeman and Morris Kleiner found only moderate wage gains through unionization, but suggest that “newly organized workers made significant gains in the areas of grievance procedures, job posting and bidding, and seniority protection” (Freeman and Kleiner, 1990: S8). To date, however, there is no detailed quantitative assessment of these non-financial, yet crucially important, aspects of first agreements.

Methods

This research is based on content analysis of 175 first contract agreements in the private and public sectors. The first contracts used in this analysis were collected as part of two earlier surveys of private sector organizing and first contract campaigns conducted by Bronfenbrenner and another study of public sector organizing campaigns conducted by Juravich and Bronfenbrenner.² For all 175 first contracts, we evaluated each contract along 296 parameters, measuring the extent and nature of various contract provisions.

² The 55 contracts in the first private sector study were based on the 119 elections and 80 first contracts won in a random sample of 261 organizing campaigns that took place between July 1986 and June 1987 (Bronfenbrenner, 1996). The 39 contracts collected in the second private sector study were based on a survey of the 169 elections and voluntary recognitions and 66 first contracts won from a random sample of 525 NLRB organizing campaigns that took place from 1993 to 1995 (Bronfenbrenner, 1997b). The 81 contracts collected in the third study were based on the 149 election and 129 first contracts won from a

Table 1 provides baseline information on our sample. The first contracts in our sample are almost equally divided between the private sector (54 percent) and public sector (46 percent) and cover a total of 27,651 workers, including 11,453 private sector and 16,198 public sector workers. The vast majority of all contracts (82 percent) were negotiated and signed on a local level with an average duration of more than two years.

Unit scope varied widely, with approximately one third of the agreements (36 percent) covering all full-time and part-time employees and 14 percent covering all employees. Only 3 percent of the agreements covered temporary or per diem workers along with part-time workers. The primary private sector industries represented included manufacturing (32 percent) and health care (31 percent). Not surprisingly, blue-collar units represented the largest proportion (39 percent) of the contracts, followed by service and maintenance units (20 percent), wall-to-wall units (16 percent), and white collar and professional/technical units (11 percent). In the public sector the contracts were highly concentrated among professional/technical workers and service and maintenance workers in public schools and state colleges and universities (53 percent) and blue collar, white collar, and service and maintenance workers in city and county units (44 percent).

Given that the contracts in our sample are primarily based in industries and units where women and workers of color are concentrated, it is not surprising that they represent the majority of the workers covered under these agreements. Women especially dominate in the public sector, where they average 67 percent of the unit compared to 38 percent in the private sector. Workers of color are more concentrated in

private sector units, where nearly half (47 percent) had at least 50 percent workers of color. In 24 percent of our sample, at least a quarter of the unit worked part time.

Beyond Employment at Will

Table 2 summarizes the basic workplace rights provided for in first contracts. Three quarters (73 percent) of the contracts in our sample contained a discrimination clause and approximately two thirds of the contracts in our sample included protections against a variety of types of discrimination including race (70 percent), gender (70 percent), national origin (67 percent), religion (66 percent), age (64 percent), and disability (53 percent). Of the units with at least 25 percent women, 63 percent had gender discrimination language and 73 percent of the units with at least 25 percent workers of color had language covering race discrimination. Contractual provisions that cover other types of discrimination such as sexual orientation (18 percent), political affiliation (22 percent), and veteran status (15 percent) were less common. The lowest percentages were for separate sexual harassment (6 percent) and pay equity (1 percent) language. Although both of these areas are technically covered by gender discrimination language, they are most effective when they are specifically dealt with in separate contract clauses. The lack of sexual harassment and pay equity language is particularly striking given that the majority of workers covered under these contracts are women.

Most of these protections are already “guaranteed” by federal and state legislation. Yet, the importance of contractual anti-discrimination language cannot be understated. Not only does it put the employer, union members, and the broader community on notice that the union is concerned about these issues, but equally important it provides an enforcement mechanism that involves significantly less effort,

cost, and time than it does to file claims under state or federal law. While most grievance and arbitration decisions are resolved in several months, government discrimination claims can take years, particularly in the current political climate.

For nearly all the most common anti-discrimination protections, such as gender, race, national origin, religion, and veteran status, the percentage of public sector contracts including these protections was 10 percent to 20 percent lower than the private sector contracts. Overall, 41 percent of public sector contracts did not provide any of the protections against discrimination covered in Table 2, compared to only 15 percent of the private sector contracts. One possible explanation for this difference is that public sector workers are more likely to be covered by state and local discrimination laws, providing them a more accessible and possibly less costly and time-consuming process for filing anti-discrimination suits than filing through federal protections. Also, because public sector unions are faced with much less employer opposition than their private sector counterparts (Juravich and Bronfenbrenner, 1998), they tend to run much weaker organizing and first contract campaigns, making it more difficult to win on these issues.

One quarter (27 percent) of the first contracts go beyond these basic work place rights to include specific contract language that requires management to treat employees with respect and dignity. While this may appear to be only general language, it is significant. Not only are respect and dignity issues core elements of the most successful organizing campaigns, these clauses are also vehemently opposed by employers who see such language as an opportunity for the union to file grievances and publicly tarnish management's reputation, even when other contract clauses have not been violated.

Table 2 also documents how discipline and discharge are handled in first agreements. In a significant departure from the non-union employment-at-will

environment, nearly three quarters (70 percent) of the contracts we examined require that discipline and discharge must be based on just cause. Just cause protections strike at the heart of management control, by severely constraining their ability to either play favorites or intimidate and threaten those workers who challenge them.

While less common, one quarter (27 percent) of the contracts add an additional requirement to just cause, specifying a requirement and/or outlining a process for progressive discipline. This provision constrains the employer from going outside of the established procedure, but it may also give the union less flexibility in arguing discipline down to a lower level. Because progressive discipline is considered by arbitrators to be a required element of just cause – even when not specified in the contract – some union negotiators may be hesitant to include specific wording.

A sizable number (39 percent) of first contractss also provide for union representation (called Weingarten rights) when union members believe that they will be disciplined. These protections have been long guaranteed to unionized workers by law. However, having the language in the contract serves both to educate members about this right and to provide a more efficient procedure than the labor board process to enforce these vital representation rights. Thirteen percent of all contracts expand upon Weingarten rights, requiring the employer to notify the employee of their right to union representation before the disciplinary meeting begins.

Finally, as we see in Table 2, virtually all the contracts in our sample (96 percent) create a grievance procedure with third party arbitration. Employers, who, before the first contract was settled, retained sole authority to make decisions in the workplace, become bound by a system that allows for independent third party review of disputes between management and employees. This due process language is the most widespread

provision in this study, and, except where specifically waived, it is the enforcement mechanism that guarantees all the other clauses in the first agreement. A quarter of the contracts extend grievance and arbitration rights even further, permitting class action suits where the remedies can be applied to all those affected by the violation.

Union Restrictions on Management Rights

In addition to these basic rights, first contracts contain language outlining a system of rational and equitable rules and procedures for workplace practices. As Table 3 illustrates, it is through these rules and procedures that unionized workers place a web of restrictions on unilateral management power and authority, bringing fairness, openness, consistency, and control to a system of labor relations that, outside of the union workplace, is fraught with favoritism, unpredictability, concealment, and inequity.

Although seniority is important in both sectors, it is less a feature in public sector contracts, in part because it is a central feature of the civil service laws that apply to many public sector workers. Thus seniority is used as a basis for layoff in 84 percent of the private sector but only 65 percent of the public sector cases. These differences are even greater in areas such as recall (75 percent private, 37 percent public), promotions (65 percent private, 27 percent public), vacation scheduling (49 percent private, 21 percent public), transfer (37 percent private and 16 percent public), and distribution of overtime (29 percent private, 11 percent public). In both sectors, seniority protections for part-time workers are much weaker than those for full-time workers.

Forty-two percent of first contracts provide for notice in the event of a long-term layoff, with private sector employers providing, on average, 9.9 days notice compared to 23.7 days notice in the public sector. More than three quarters of contracts in both

sectors provide for recall rights, while almost one half (46 percent) provide for bumping rights. Few contracts, however, provide for retraining or severance pay.

It is important to note that none of the seniority clauses in these first contracts in our sample include affirmative action language to protect women and workers of color from being “last hired, first fired” in workplaces where there had been past race and sex discrimination in the hiring process. This is a sensitive issue for the labor movement, which will become even more important as women and workers of color continue to make up the majority of new workers organized.

The first contracts we examined also contain language laying out the process for promotions and the filling of vacancies that goes beyond basic seniority rights. As we can see from Table 3, more than three quarters (80 percent) of agreements in both sectors provide for the posting of vacancies. In forty percent of the contracts internal candidates are given priority in hiring. More than one third of the contracts (37 percent) provide for provisional transfer to newly posted positions. However, very few contracts (10 percent of units where part-timers make up at least 25 percent of the unit) provide opportunities for part-time employees to bid on full-time work.

Thirty eight percent of the contracts go beyond state and federal wage and hour laws to require overtime pay after eight hours and 6 percent provide for overtime for work beyond an employee’s regularly scheduled hours. This is particularly important for part-time workers, who are frequently asked to work additional hours, but not enough to reach the legislated threshold of forty hours a week.

While expanded overtime hours and more frequent use of mandatory overtime are an increasing problem in today’s workplaces, virtually none of the contracts prohibit mandatory overtime (2 percent) or set limits on mandatory overtime (5 percent), and only

3 percent provide premium pay (double time and a half) for work more than twelve hours a day or work weeks longer than six days. These provisions mirror what is happening in contract negotiations in general, where even after long strikes few unions have succeeded in eliminating twelve hour days or putting significant limitations on mandatory overtime.

A number of contracts in our sample, particularly those in the private sector where weekend and evening shifts are more common, have clauses that both codify and/or expand upon shift differentials (supplemental pay) for those employees who work outside of the regular workday or workweek. Nearly one half (49 percent) of private sector first contracts establish a shift differential for evening work. Twenty-seven percent and 16 percent, respectively, establish differentials for Sunday and Saturday work.

Thirty-three percent of the private sector contracts and 51 percent of the public sector contracts also have language outlining work schedules and hours of work and, in many cases, notice of or protection from changes outside workers' regularly scheduled hours. These clauses are important, both because they grant workers predictability and control over their work schedules, and because they guarantee in writing non-verbal agreements, such as no weekend or night work, that, absent a union contract, are difficult to enforce. Twenty-two percent of the contracts also provide language requiring that schedules be posted, making it much more difficult for employers to make sudden changes or special deals regarding already agreed upon schedules.

More than a third of the contracts provide relief by assuring the higher classification when workers are asked to cover work at a higher grade or cover for a supervisor. This language is important because it restrains employers from cheating workers out of pay due them when they are doing work above their assigned grade. It

also discourages the employer from having workers do non-bargaining unit work, adding additional job duties without upgrading the position, and not filling vacancies.

Workload and minimum staffing, serious issues in almost every workplace, public or private, service or manufacturing, are addressed in only 7 percent of first agreements. This reflects the fact that most employers aggressively oppose any inclusion of staff and work load protections in the contract, frequently arguing that these are absolute management rights and therefore permissive subjects of bargaining.

Health and safety, often one of the key issues driving workers to organize, is another area that dramatically distinguishes union from non-union workplaces. Forty-two percent of all contracts, and 55 percent of private sector contracts have grievable health and safety clauses. Thirty-one percent include language requiring employers to provide protective equipment, and 30 percent establish a joint health and safety committee. A much smaller number of contracts give the workers the right to refuse unsafe work (6 percent), or guarantee workers and unions the right to health and safety information, both items which employers aggressively oppose. At the same time, only 4 percent of the first contracts include language more common to the non-union sector, putting the burden on the employee to report health and safety problems to the employer.

Today, probably the most difficult challenge facing American workers and their unions is protecting job security from a constantly changing economic environment, including global trade and investment policies and the resultant rapid increase in capital mobility, changes in corporate ownership and structure, technological change, new work systems, bankruptcies, privatization, downsizing, and contracting out.

Table 3 suggests that first contracts, particularly those in the private sector, reflect only modest gains in union control over these important issues. Among private sector

first agreements, approximately one third include some language governing restrictions on supervisors doing bargaining unit work (35 percent), successorship (32 percent), restricting the use of temporary workers (27 percent), and subcontracting (27 percent). Much less common are provisions relating to new owners' honoring of the agreement (7 percent), union notification of closure (6 percent), and technological change (9 percent).

Union Rights and Practices Under First Contracts

Table 4 presents data on how union rights and practices become codified and institutionalized after the signing of an initial union agreement. In the private sector almost two thirds (61 percent) of the first contracts establish union shops, and 74 percent require either a union or an agency shop. Only 22 percent of the private sector contracts are open shops, and 91 percent of those are in right-to-work states where open shops are the only option. In the public sector, only 5 percent are union shops, 48 percent are agency shops, and 16 percent are open shops, 69 percent of which are in right-to-work states. In total, nearly two thirds of all the first contracts in our sample have an agency or union shop, thereby laying a foundation upon which the union can more easily establish and maintain its presence in the workplace.

Union security is further strengthened in the three quarters (73 percent) of the first contracts that allow for dues check off – where union dues and/or agency fees are automatically deducted from workers' paychecks. This provides a regular and steady flow of dues dollars for union administration and, in combination with union and agency shops, removes the employers' power to intimidate, threaten, and penalize those workers who do become union members and pay their dues.

Another essential element of union representation is language guaranteeing staff and officers access to the workplace and to bargaining unit members. Fewer than half (45 percent) of private sector first contracts have liberal union access policies allowing union representatives to meet with employees in the workplace without having prior authorization from the employer or being restricted to certain times and certain areas. Twenty-nine percent have restricted access, limiting where, when, and/or under whose authorization representatives have access to the workplace. Twenty percent of the private sector contracts do not include any union access language. In the public sector, fewer than half of all the contracts have any union access language, mostly likely because a combination of open meeting and public access laws provide union representatives, as members of the public, equal access to any public areas or public meetings.

More than 80 percent of the first contracts in both sectors guarantee access to union bulletin boards to post union notices and other information. However, only 10 percent of contracts include language requiring access to information necessary to represent their membership. While this right is already provided under the NLRA, and most public sector information is publicly available, that right is stronger when specified in the contract because it can then be grieved.

The rights of the union's frontline representatives, stewards and rank-and-file officers, are critical to building a lasting institutional presence in the workplace. The more contract language they have expanding their rights to actively and aggressively represent their members, the stronger the union. As described in Table 4, nearly one half (45 percent) of all first contracts provide stewards release time to investigate grievances, although it is more prevalent in the private sector (56 percent) than in the public sector (31 percent). Overall, approximately one-third (32 percent) grant stewards paid release

time to investigate grievances on company time. Fifty-eight percent of first contracts grant stewards release time for grievance processing, with almost one half (47 percent) allowing this to take place on paid company time. Other than grievances, only a quarter of the contracts in our sample provide for paid release time for other meetings with management and only 11 percent of private sector contracts and 1 percent of public sector contracts provide paid release time for members to participate in the grievance process as either grievants or witnesses. Fewer than 10 percent of the contracts in both sectors have contract language authorizing rank-and-file representatives to orient new members. Although such language is of critical importance in any agreement, it is especially important in newly organized workplaces, where everyone is new to the union.

Only a few of the contracts in our sample (9 percent) provide for union leave for officers to conduct union business outside the workplace, while 19 percent provide for union leave to take higher union office, protecting the right to return to work once the employee is no longer in office. A larger percentage (37 percent) of the contracts provide for union leave for officers and 25 percent provide union leave for members to attend union meetings and conventions. Paid union leave for officers to attend meetings and conferences is only included in 17 percent of the agreements, while similar paid leave for members is only found in 10 percent of the agreements.

Benefits in Newly Organized Workplaces

Table 5 summarizes the workplace benefits provided by the first contracts in our sample. Health insurance, pension plans, leaves of absence, pay systems, training, and continuing education are fundamental concerns for unorganized workers, and are areas which have shown a substantial differential between union and non-union workplaces

(AFL-CIO, 2002). Beyond the basic rights, fair and equitable standards, and institutional presence already discussed, these workplace benefits are part of creating and protecting a quality of life for workers and their families. The extent and nature of these contract clauses also inform us about the kinds of human resources practices in operation in newly organized workplaces.

Overall, 89 percent of the first contracts in our sample provide some form of health insurance. Reflecting the spiraling costs of healthcare, relatively few (10 percent) provide fully paid health insurance for workers and dependents. Another 7 percent provide full insurance only for individuals while 14 percent provide full coverage for the individual but only partial coverage for dependents. Less than 1 percent of the employers make contributions to union health and welfare plans. This is a significant departure from union contracts a generation ago, when many newly organized workers were brought into a master or pattern agreement with fully paid family health insurance and fully funded union health and welfare plans.

In addition to basic health insurance, dental insurance is provided in one half (51 percent) of agreements, with vision (10 percent) and drug benefits (13 percent) considerably less common. Disability insurance coverage is also limited, with short-term disability insurance provided in only 22 percent of first contracts and long-term disability provided in 18 percent. Sixty-one percent of the contracts provide for basic life insurance while 31 percent codify the state requirements for worker compensation.

Pension plans are provided for in only 39 percent of first agreements, with employer-sponsored saving plans offered in an additional 12 percent and retiree health benefits offered in only 8 percent. Here, too, we see a significant departure from the kinds of retirement benefits that once were a common element of large industrial and

public sector agreements reflecting, in part, the growing efforts by US employers to cut costs and long-term liabilities by shifting to a more contingent and less costly workforce.

Nearly three quarters (70 percent) of the first contracts in our sample provide for some sick leave benefits. As would be expected, given the high percentage of elementary and secondary school units among the public sector contracts, sick leave benefits are much more common in the public sector (89 percent overall and 88 percent paid) than in the private sector (53 percent overall and 39 percent paid). In the public sector the average number of sick days for new employees (10 days) is more than double the number of days for new employees in the private sector (4 days) and 72 percent have at least ten sick days per year compared to only 15 percent in the private sector. However, sick leave benefits are much more likely to be pro-rated for part-time workers in private sector units where part-time workers are at least 25 percent of the unit (44 percent), than in public sector units (17 percent). In approximately one third of contracts, sick leave may be taken for sick children and other sick dependents, while sick banks are provided for in almost one half (48 percent) of the first contracts in our sample.

Unlike sick leave, vacation and holiday benefits are slightly less common in the public sector than the private sector, partly because most public sector holidays are set by law and, for public school employees, vacations are often taken outside of the nine-month employment period. Seventy-two percent of private sector contracts provide at least five paid holidays and 83 percent provide at least one week vacation, while a minimum of five paid holidays is found in only 42 percent of public sector contracts, and only 62 percent of public sector contracts provide at least one weeks vacation. Vacation benefits were pro-rated for 44 percent and holiday benefits were pro-rated for 28 percent of private

sector units with at least 25 percent part-time employees, compared to only 13 percent for vacation benefits and 8 percent for holiday benefits in public sector units.

A variety of other leaves are provided for in first contracts as well, with jury leave (81 percent), bereavement leave (78 percent), military leave (61 percent), personal leave of absence (65 percent), and disability leave (43 percent) the most common, and parental leave (29 percent) and education leave (15 percent) considerably less frequent.

Table 5 also presents data on the kinds of pay systems established by first contracts. Almost two thirds (61 percent) of agreements provide for step systems. Given the arbitrariness of most non-union pay systems that frequently involve wages being negotiated on a person-by-person basis, step systems are a significant accomplishment. In contrast, only 2 percent of the contracts had merit pay systems, which are the systems that dominate the non-union environment. At the same time, cost of living adjustments (COLA) are provided in only 2 percent of first contracts.

Training benefits are much more limited, with only one quarter (23 percent) of agreements specifying job training or in-service training provided for by the employer. Continuing education is provided in only 17 percent of agreements, while tuition reimbursement is covered in only 26 percent.

Finally, employee involvement clauses were included in 28 percent of the first contracts we examined. However, most of these clauses lack union protections. Only 15 percent specify an equal number of union and management representatives on the committee, and only 5 percent specifically prohibit the discussion of contractual issues. Particularly with the growing management interest in joint programs, unions clearly need to bargain language which ensures that these programs are indeed joint and do not undermine the union or the contract.

Conclusions: Better First Contracts, More Effective Unions

As we have seen, first contracts constitute significant victories for workers and their unions. These contracts provide important basic rights that go far beyond employment at will and institute a grievance procedure that allows for the enforcement of these rights. They also contain important restrictions on management rights, substituting seniority and equitable systems for the assignment of work, promotions, and layoffs, for arbitrary employer control. In addition, they establish an institutional presence for the union and the rank-and-file leadership in the workplace. Finally, first contracts establish health insurance, pensions, and substantial paid leave benefits.

While contracts vary widely and unions are more successful in some areas than others, clearly these contracts provide the foundation for a fundamentally different employment relationship than that which existed prior to the union organizing campaign. We must remember that these agreements are only the first in what typically become stronger agreements over time. The establishment of a grievance system, just cause, union access, and stewards' rights is an enormous accomplishment for workers and unions confronting employers who had for decades clung to their absolute "right to manage," and fought the union organizing effort with everything they could. Even if less than comprehensive, these agreements make significant inroads into management prerogatives and, in future negotiations, leave room to strengthen and expand these inroads into management control.

In order to assess just how comprehensive these first contracts are, we also examined whether and how these individual provisions do or do not cluster together. The findings suggest that, while many contracts include significant contract provisions, relatively few contracts include what we would consider a core set of provisions. For

example, only 24 cases, or 14 percent of our sample, contained all six of what we consider the fundamental elements of a strong first contract—anti-discrimination clauses, grievance and arbitration, steward rights in investigating and processing grievances, union access, and seniority for layoff.³ Clearly, these data suggest that, while unions have made important strides in first contracts, considerably more work needs to be done to achieve strong basic agreements.

We need to recognize that good contracts, like successful organizing, don't just happen. As previous research shows, given the almost rabid employer opposition to union organizing efforts that has become a permanent feature of the American industrial relations environment, unions can win first contracts only when they utilize a comprehensive, multifaceted, union-building strategy throughout the organizing and first contract process (Bronfenbrenner, 1996; Bronfenbrenner and Hickey, 2002). Indeed, a cursory analysis of the data here suggest that, in those units where the union runs a moderately aggressive organizing campaign, the likelihood that any of the six core elements will be included in a first contract rises between 5 to 20 percentage points. Clearly, more aggressive and strategic organizing and first contract campaigns not only increases the probability of winning the organizing campaign and settling the first contract, but also improves the quality and the strength of the first contracts themselves.

As Bronfenbrenner's data on union behavior in first contract campaigns has shown (1996), at the very point the union needs to take the campaign, and the newly organized workers, to the next level, the organizing activity stops and much of the

³ These six fundamentals are defined as follows: race and gender discrimination plus at least one of the following anti-discrimination clauses: union activity, age, sexual harassment, sexual orientation, family status, handicap, or national origin; just cause; steward release time to investigate and process grievances (paid or unpaid); at least some union access (liberal or restricted); and seniority for layoffs.

union's power in the workplace and the broader community to bring the employer to the table and bargain a strong agreement is lost.

Clearly more energy and attention need to be devoted to developing and implementing more comprehensive and strategic first contract campaigns. But even that is not enough if unions fail to set bargaining the best first contract possible as their goal, rather than just the minimum of reaching any first agreement. In addition to running more aggressive first contract campaigns, unions need to work together to share hallmark first contract language and to explore creative avenues to rise to the highest common denominator. One of the discouraging findings of this research was just how few contracts contained language addressing job loss, staffing, mandatory overtime, technological change, contracting out, privatization, and plant closing – some of the most crucial issues facing workers in the global economy. While these are difficult issues to take on even in mature bargaining relationships, unions need to begin addressing these issues, no matter how basic, in first agreements.

It is also important to recognize that the language provided for in first agreements is simply that – language – until and unless the union does what it takes to implement and enforce what they have negotiated in the agreement. Anti-discrimination language is worthless if members of a local union are too intimidated to file and follow through on grievances, or the local leadership fails to take discrimination violations seriously. Seniority and bidding language are meaningless if the union turns a blind eye when less senior workers are moved into higher paying jobs. Stewards' rights or Weingarten language has no effect if unions fail to elect and train stewards and fight for the information, release time, and access that they bargained for.

While we have not gathered data on the operation and effectiveness of the local unions where these first contracts were negotiated, we would suggest that the shape and scope of the organizing and first contract campaign is a major predictor of a local's ability to use and enforce a first contract to its fullest. For example, campaigns that rely primarily on staff, and passive forms of communication such as leaflets and mailings, will tend, at least initially, to create relatively weak local unions. On the other hand, campaigns that develop and utilize representative rank-and-file leadership and start acting like a union long before the first contract is reached, are much more likely to already have in place the leadership structure and membership involvement necessary to make the most of the first contract language they negotiated. Weak organizing and first contract campaigns not only lead to weaker first contract language, but to less capacity to utilize and enforce that language once the first contract is won.

This research does not diminish the accomplishments, the significant victories that the first contracts we studied represent. Rather it reminds us of the promise and potential for strong first contracts and the strong unions that go with them. Workers risk so much to bring a union into their workplace, it is imperative that the labor movement do everything in its power to ensure that the contracts they achieve, and the unions they build, make those risks worthwhile.

Table 1: Characteristics of the Sample

	All contracts		Private Sector		Public Sector	
	Number	Mean or Proportion	Number	Mean or Proportion	Number	Mean or Proportion
Number of contracts	175	1.00	94	.54	81	.46
Duration of contract						
Average number of months	--	28.5	--	30.3	--	26.3
Signatories						
Local	144	.82	82	.87	62	.78
Regional/district	4	.02	2	.02	2	.03
International	3	.02	2	.02	1	.01
Unit Scope						
All employees	25	.14	11	.12	14	.17
Regular full-time employees only	19	.11	15	.16	4	.05
Regular full-time and all part-time employees	63	.36	37	.39	26	.32
Regular full-time plus some part-time	35	.20	22	.23	13	.16
Part-time, per-diem, and/or temporary	5	.03	1	.01	4	.05
Workers covered under contracts						
Number of workers covered	27,651	159	11,453	123	16,198	200
Unit type						
Blue collar	36	.21	37	.39	8	.10
White collar	10	.06	4	.04	6	.07
Professional/technical	21	.12	7	.07	14	.17
Service and maintenance	54	.31	19	.20	35	.43
Wall-to-wall	26	.15	15	.16	11	.14
Other	18	.10	11	.12	7	.09
Industry						
Manufacturing	30	.17	30	.32	0	--
Communications	2	.01	2	.02	0	--
Construction	2	.01	2	.02	0	--
Food processing	1	.01	1	.01	0	--
Printing	1	.01	1	.01	0	--
Retail	5	.03	5	.05	0	--
Transportation	5	.03	5	.05	0	--
Utility	3	.02	3	.03	0	--
Warehouse	1	.01	1	.01	0	--
Health care (both public and private)	31	.18	29	.31	2	.03
Social services	5	.03	5	.05	0	--
Other services	8	.05	8	.09	0	--
City/county government	36	.21	0	--	36	.44
Public education (schools and universities)	43	.25	0	--	43	.53
Bargaining unit demographics						
At least 50 percent workers of color	47	.33	44	.47	13	.16
<i>No workers of color in the unit</i>	37	.21	12	.13	25	.31
<i>Proportion of workers of color in the unit</i>	--	.31	--	.43	--	.18
At least 50 percent women workers	84	.59	38	.40	66	.82
<i>No women workers</i>	10	.06	10	.11	0	--
<i>Proportion women workers in unit</i>	--	.52	--	.38	--	.67
At least 25 percent part-time workers	42	.24	18	.19	24	.30
<i>No part time workers</i>	91	.52	49	.52	35	.43

Table 2: Workplace Rights Provided by First Contracts

	All contracts		Private Sector		Public Sector	
	Number	Mean or Proportion	Number	Mean or Proportion	Number	Mean or Proportion
Anti-Discrimination Protections	128	.73	80	.85	48	.59
Union activity	101	.58	51	.54	50	.62
Race*	123	.70 (.73)	75	.80 (.78)	48	.59 (.62)
Gender**	122	.70 (.63)	74	.79 (.74)	48	.59 (.54)
Age	112	.64	66	.70	46	.57
Disability	92	.53	52	.55	40	.49
National origin	118	.67	72	.77	46	.57
Family status	8	.05	2	.02	6	.07
Marital status	48	.27	17	.18	31	.38
Sexual orientation	31	.18	19	.20	12	.15
Political affiliation	38	.22	14	.15	24	.30
Religion	115	.66	68	.72	47	.58
Veteran status	26	.15	20	.21	6	.07
Separate sexual harassment clause	10	.06	5	.05	5	.06
Pay equity	2	.01	1	.01	1	.01
Compliance with all state, local, and federal laws	9	.05	9	.10	0	--
Respect and Dignity Clause	29	.17	25	.27	4	.05
Discipline and Discharge						
Just cause	122	.70	67	.71	55	.68
Specified progressive discipline procedure	48	.27	19	.20	29	.36
Grievable Weingarten rights (Notification)	22	.15	14	.15	8	.10
Grievable Weingarten rights (No notification)	42	.24	16	.17	26	.32
Grievance Procedure						
Grievance procedure with 3 rd party arbitration	168	.96	93	.99	75	.93
Expedited grievance procedures	50	.29	25	.27	25	.31
Class action grievances permitted	47	.27	11	.12	36	.44

*Numbers in parentheses report the proportion of units with 25% or more workers of color that have race discrimination language.

**Numbers in parentheses report the proportion of units with 25% or more women workers that have gender discrimination language.

Table 3: Union Restrictions on Management Rights

	All contracts		Private Sector		Public Sector	
	Number	Mean or Proportion	Number	Mean or Proportion	Number	Mean or Proportion
Seniority						
Overtime	36	.21	27	.29	9	.11
Layoff	132	.75	79	.84	53	.65
Recall	116	.66	70	.75	46	.37
Transfer	48	.27	35	.37	13	.16
Promotions where minimum qualifications are met	16	.09	10	.11	6	.07
Promotions where equally qualified	72	.41	51	.54	21	.26
Shift assignments	10	.06	6	.06	4	.05
Holidays	3	.02	3	.03	0	--
Vacation	63	.36	46	.49	17	.21
Prorated for part-time employees*	18	.10 (.07)	7	.07 (.11)	11	.14 (.04)
Full seniority for part-time employees*	7	.04 (.05)	4	.04 (.06)	3	.04 (.04)
Layoffs or Reduction of Hours						
Long-term layoff notice	74	.42	41	.44	31	.41
Average minimum number of days notice	--	.17	--	9.9	--	23.7
Short-term layoff without seniority consideration	9	.05	8	.09	1	.01
Bumping rights	81	.46	46	.49	35	.43
Severance pay	7	.04	6	.06	1	.01
Retraining	4	.02	4	.04	0	--
Recall rights	142	.81	82	.87	60	.74
Promotions and Filling of Vacancies						
Posting of vacancies	140	.80	75	.80	65	.80
Internal candidates first priority	70	.40	40	.43	30	.37
Opportunity of temporary trial/return	65	.37	42	.45	23	.28
Part-timers can bid for full-time*	7	.04 (.10)	5	.05 (.11)	2	.03 (.08)
Overtime						
Overtime for over regularly scheduled hours	10	.06	6	.06	4	.05
Overtime pay for over forty hours per week	24	.19	22	.23	2	.03
Overtime pay for over eight hours	67	.38	43	.46	24	.30
Overtime equalization	32	.18	21	.22	11	.14
No mandatory overtime	3	.02	0	--	3	.04
Limits on mandatory overtime	9	.05	8	.09	1	.01
Premium pay for over 12 hours work	6	.03	6	.06	0	--
Premium pay for over six days a week	4	.02	3	.03	1	.01
Shift and other pay differentials						
Evening differential	60	.34	46	.49	14	.17
Saturday differential	24	.14	15	.16	9	.11
Sunday differential	35	.20	25	.27	10	.12
Relief in higher classification	63	.36	33	.35	30	.37
Schedules, hours of work, and minimum staff/workload						
Hours and scheduling specified in the contract	72	.41	31	.33	41	.51
Posting of schedules required	39	.22	29	.31	10	.12
Minimum staffing/workload	13	.07	8	.09	5	.06
Health and Safety						
Right to refuse unsafe work	10	.06	7	.07	3	.04
Employer provided protective equipment	54	.31	33	.35	21	.26
Health and safety committee	52	.30	36	.38	16	.20
Right to information	8	.05	7	.07	1	.01
Grievable health and safety language	73	.42	52	.55	21	.26
Employees will alert employer of safety concerns	7	.04	5	.05	2	.03
Job security and protecting bargaining unit work						
Subcontracting rules	40	.23	21	.22	19	.24
Restrictions on the use of temporary workers	28	.16	25	.27	3	.04
Restrictions on supervisors doing bargaining unit work	41	.23	33	.35	8	.10
Successorship language	35	.20	30	.32	5	.06
<i>Purchaser must honor contract</i>	11	.06	7	.07	4	.05
<i>Union notified, request purchaser to honor agreement</i>	6	.03	6	.06	0	--
New technology language	8	.05	8	.09	0	--

*Numbers in parentheses report the proportion of units with at least 25 percent part-time workers

Table 4: Union Practice After First Contracts

	All Contracts		Private Sector		Public Sector	
	Number	Mean or Proportion	Number	Mean or Proportion	Number	Mean or Proportion
Type of shop						
Union	61	.35	57	.61	4	.05
Agency	51	.29	12	.13	39	.48
Open	34	.19	21	.22	13	.16
Proportion of open shops in right-to-work states	28	.82	19	.91	9	.69
Dues check-off	128	.73	67	.71	61	.75
Union staff access to workplace						
Liberal	62	.35	42	.45	20	.25
Restricted	50	.29	33	.35	17	.21
No access specified in contract	63	.36	19	.20	44	.54
Union Access						
Union bulletin board for union postings	142	.81	82	.87	60	.74
Union right to information	17	.10	12	.13	5	.06
Officer/Steward Rights						
Stewards' time to investigate grievances	78	.45	53	.56	25	.31
<i>Paid release time to investigate grievances</i>	56	.32	32	.34	24	.30
Stewards' time to process grievances	102	.58	62	.66	40	.49
<i>Paid release time to process grievances</i>	83	.47	44	.47	39	.48
Paid release time for other meetings with management	44	.25	13	.14	31	.38
Union orientation	14	.08	8	.07	7	.09
Union leave for officers to conduct union business	15	.09	6	.06	9	.11
Union leave for officers to attend meetings/conventions	64	.37	28	.30	36	.42
<i>Paid union leave to attend meetings/conventions</i>	29	.17	5	.05	24	.30
Unpaid leave for officers to take higher office	33	.19	22	.23	11	.14
Paid leave for members to process grievances	11	.06	10	.11	1	.01
Union leave for members to attend meetings/conventions	43	.25	21	.22	22	.27
<i>Paid leave to attend meetings/conventions</i>	18	.10	3	.03	15	.19

Table 5: Benefits in Newly Organized Workplaces

	All contracts		Private Sector		Public Sector	
	Number	Mean or Proportion	Number	Mean or Proportion	Number	Mean or Proportion
Health and Other Insurance						
Health insurance	156	.89	85	.90	71	.88
<i>Full individual only</i>	12	.07	8	.09	4	.05
<i>Full individual plus full family</i>	17	.10	4	.04	13	.16
<i>Full individual and part family</i>	24	.14	14	.15	10	.12
Dental insurance	90	.51	45	.48	45	.56
Short-term disability	38	.22	27	.29	11	.14
Long-term disability	21	.18	14	.15	17	.21
Employer contribute to union health and welfare plan	11	.06	8	.09	3	.04
Life insurance	106	.61	59	.63	47	.58
Vision insurance	18	.10	6	.06	12	.15
Drug insurance	22	.13	8	.09	14	.17
Workers Compensation provision	55	.31	24	.26	31	.38
Retirement benefits						
Pension plan	68	.39	36	.38	32	.40
Employer-sponsored savings plan	21	.12	20	.21	1	.01
Retirement health plan	14	.08	5	.05	9	.11
Leaves of Absence						
Sick leave	122	.70	50	.53	72	.89
<i>At least ten sick days a year</i>	72	.41	14	.15	58	.72
<i>Average number of days veteran employees</i>	--	11.61	--	9.71	--	12.44
<i>Prorated for part-time workers*</i>	43	.25 (.29)	21	.22 (.44)	22	.27 (.17)
<i>Apply to sick children</i>	63	.36	13	.14	50	.61
<i>Apply to other sick dependents</i>	57	.33	9	.10	48	.59
<i>Sick bank</i>	84	.48	27	.29	51	.70
Vacation	132	.75	82	.87	50	.62
<i>At least one week vacation shutdown a year</i>	128	.73	78	.83	.50	.62
<i>Average number of days new employees</i>	--	6.60	--	6.60	--	6.59
<i>Average number of days veteran employees</i>	--	19.84	--	18.53	--	22.02
<i>Prorated for part-time workers*</i>	47	.27 (.26)	31	.33 (.44)	16	.20(.13)
<i>Mandatory vacation for plant shutdown</i>	9	.05	9	.10	0	0
Holidays	152	.87	92	.98	60	.74
<i>At least five holidays a year</i>	102	.58	68	.72	34	.42
<i>Average number of days new employees</i>	--	7.83	--	7.89	--	7.77
<i>Average number of days veteran employees</i>	--	10.52	--	9.44	--	11.33
<i>Prorated for part-time workers*</i>	33	.19 (.17)	16	.17 (.28)	17	.21(.08)
<i>Premium pay</i>	106	.61	71	.76	35	.43
Parental leave	50	.29	9	.10	41	.51
Bereavement leave	137	.78	80	.85	57	.70
Education leave	27	.15	11	.12	16	.20
Medical/disability leave	76	.43	48	.51	28	.35
Personal leave of absence	114	.65	65	.69	49	.61
Military leave	106	.61	54	.57	52	.64
Jury leave	142	.81	76	.81	66	.82
Pay system						
Step	106	.61	57	.61	48	.61
Merit	3	.02	1	.01	2	.03
Combination of step and merit	5	.03	4	.04	1	.01
COLA step	13	.02	0	--	3	.04
Rate set in contract, not necessarily step	48	.27	30	.32	18	.22
Regular bonuses granted	15	.09	11	.12	4	.05
Profit or gain-sharing	5	.03	5	.05	0	--
Training						
Job training/in-service training paid by employer	40	.23	19	.20	21	.26
Continuing education	30	.17	9	.10	21	.26
Tuition paid	45	.26	15	.16	30	.37
Tuition for children/spouse	5	.03	0	--	5	.06
Employee Involvement						
Labor/management committee	49	.28	25	.27	24	.30
<i>Equal number of union and management</i>	27	.15	13	.14	14	.17 (.58)
<i>No discussion of contractual issues</i>	9	.05	8	.09	1	.01 (.04)
Service/product quality committee	5	.03	4	.04	1	.01
Drug insurance	22	.13	8	.09	14	.17
Workers compensation provision	55	.31	24	.26	31	.38

*Numbers in parentheses represent proportion of units with at least 25 percent part time workers.

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