

Collaboration between Unions in a Multi-union, Non-exclusive Bargaining Regime: what can Canada learn from New Zealand

## COLLABORATION BETWEEN UNIONS IN A MULTI-UNION, NON-EXCLUSIVE BARGAINING REGIME: WHAT CAN CANADA LEARN FROM NEW ZEALAND?

**Mark Harcourt**

*University of Waikato*

**Helen Lam**

*Athabasca University, Canada*

### **ABSTRACT**

*The Canadian union certification system guarantees workers rights to organise, bargain collectively, and strike only when a majority of co-workers favours unionisation. This contravenes International Labour Organisation standards, in which the freedom to associate is unqualified by majority support. In recent years, the Supreme Court of Canada has drawn on ILO principles to interpret constitutional rights as covering organising and collective bargaining activities related to freedom of association under section 2(d) of the Charter of Rights and Freedoms. However, it has not as yet ordered Canadian governments to enact labour relations laws consistent with these new constitutional rights. Neither has there been a general call for such legislative change. Instead, many fear that statutory support for non-majority unionism would lead to multi-union representation and intensified inter-union competition, but fail to consider that sharing the workplace might actually promote inter-union cooperation against a common adversary in management. This study addresses this shortcoming by looking at the extent and nature of inter-union collaboration in New Zealand, where non-majority, non-exclusive representation exists already. Collaboration was found to be common, not only over bargaining and lobbying, but also in organising. Implications for Canada are explored.*

### **INTRODUCTION**

Canadian union certification and representation are characterised by majoritarianism and exclusivity. The system is majoritarian in the sense that workers' access to union representation critically depends upon whether the union can secure majority support from the relevant bargaining unit of workers, either through an election or, in most jurisdictions in Canada, 'on the

cards.’<sup>1</sup> If a union can only garner minority support, workers are denied union representation; they must continue to contract individually with the employer. The system is exclusive in the sense that, once a union is certified to represent a particular bargaining unit, no worker in that bargaining unit may be represented by another union in negotiating an alternative collective agreement. The exclusivity principle also gives the certified union sole control over pursuing personal grievances on behalf of one or more workers in the bargaining unit. Although unions have a duty to fairly represent employees in personal grievances cases, unions still maintain the final say on how, when, and whether to pursue such grievances. Such a system is the polar opposite of New Zealand’s, where multiple unions may represent workers from the same work group, even when there is no majority support for any particular union. Drawing on the New Zealand experience, this paper explores the implications for Canada of legislatively supporting multi-union and non-majority union representation. In particular, this paper examines the issue of inter-union collaboration, an area largely under-studied because of a general belief that multi-unionism is necessarily associated with chaos and conflict rather than cooperation.

The majoritarian and exclusivity principles contravene the International Labour Organisation’s (ILO) conventions #s 87 and 98 (Adams, 2009a; 2009b). These conventions together establish rights to organise into unions (workers’ organisations), bargain collectively through these unions, and strike, as fundamental human rights. For instance, Convention 87 states that “workers and employers, without distinction whatsoever, shall have the right to establish, and subject only to the rules of the organisation concerned, to join organisations of their own choosing...” Because of majoritarian exclusivity, Canadian workers may not bargain collectively through an organisation of “their own choosing”, if a majority of the co-workers in their bargaining unit has chosen (for example, voted for) a different union. However, the ILO’s Committee on Freedom of Association and its Committee of Experts are prepared to accept such a restriction on freedom of association as reasonable, because workers in these circumstances have some access to collective representation, even if it is not their most preferred (Adams, 2009a, 2009b). On the other hand, if a majority of co-workers opposes having a union (for example, votes against it), workers in the minority have no right to organise

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<sup>1</sup> Employees sign the cards and pay a nominal fee (for example, \$1) to show that they want a particular union to represent their interests. The cards are then presented to the relevant labour relations board to prove that a majority of employees in a given bargaining unit favour the union. In many Canadian jurisdictions, card evidence can be sufficient to justify certification, as long as a minimum percent (for example, 55%, 60%) of employees in the unit have signed a card. An election is therefore not always or even usually necessary.

into workers' organisations (such as unions, staff association), bargain collectively, and strike. It is this scenario which is seen as particularly problematic by the ILO committees, because it effectively denies any form of collective representation to those in the minority who might want it (ILO, 1994).

In recent years, the Supreme Court of Canada (SCC) has invoked ILO principles in deriving a constitutional right to organise and bargain collectively as key dimensions of the freedom of association in section 2(d) of the Canadian Charter of Rights and Freedoms (Fudge, 2008). In *BC Health Services*, the SCC alluded to ILO documents in acknowledging that the freedom of association encompasses the activities of labour unions such as organising and collective bargaining (Fudge, 2008). It also argued that "the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified,"<sup>2</sup> again referring to ILO documents. With this in mind, the Court determined that the state, as employer and legislator, ought not to "substantially interfere" with the "association activities" of workers; in particular, the "intent or effect" of the state's actions "must (not) seriously undercut or undermine the activity of workers joining together to pursue the common goals of negotiating workplace conditions and terms of employment."<sup>3</sup> In this case, the British Columbia government should not have suspended health workers' right to bargain collectively via their unions, as a precursor to lowering wages and conditions in order to cut healthcare costs and improve the government's poor fiscal position. A constitutional right to bargain collectively has been established (Adams, 2009a, 2009b; Fudge, 2008).

Likewise, in the *Dunmore* case<sup>4</sup>, the SCC concluded that the state should not have excluded Ontario agriculture workers from the labour relations legislation protecting the right to organise. The rights of minority and vulnerable groups must not be readily circumscribed to advance the interests of other groups; in this case the owners of economically marginal family farms. More generally, the state was held to have a positive obligation to "extend protective legislation to unprotected groups" to make the freedom to associate truly meaningful.<sup>5</sup> In other words, the Court stands prepared to compel the state to enact labour laws, extending workers' constitutional rights to organise and bargain collectively to non-statutory and non-majority unions (Adams, 2010). However, at this juncture, the SCC has furnished no indications of how this

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<sup>2</sup> *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, (2007) 2 S.C.R. 391, 2007 SSC 27, at para 70.

<sup>3</sup> *B.C. Health Services*, *supra*, note 2, at paras 91 and 92.

<sup>4</sup> *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016.

<sup>5</sup> *Ibid.*, at para 20.

might be achieved; it has not endorsed any particular system of labour relations regulation.<sup>6</sup>

Courts, unionists, academics, and others have been slow to embrace the idea of non-majority, non-exclusive union representation. Many fear that it would breed inter-union rivalry, with unions vying for members in the same workplaces. The Ontario Appeal Court, in *Fraser v Ontario*, perhaps most clearly and publicly articulated this view in stating: “(i)t is not overstating the point to say that to avoid chaos in the workplace to the detriment of the employer and employees alike, it is essential that a representative organisation be selected on a majoritarian basis and imbued with exclusive bargaining rights.”<sup>7</sup> Interestingly, the issue involved in this case was whether the *Agricultural Employees Protection Act* (AEPA), enacted in response to the Dunmore case to protect the agricultural workers’ collective bargaining rights outside of the *Ontario Labour Relations Act* (LRA) without prescribing majority exclusive representation, was constitutional or not. Although the Appeal Court ruled the AEPA unconstitutional, the decision was overturned by the SCC<sup>8</sup>, which stated that “(f)arm workers in Ontario are entitled to meaningful processes by which they can pursue workplace goals” even if the “AEPA does not provide all the protections the LRA extends to many other workers”<sup>9</sup>. As well, “(l)egislatures are not constitutionally required ... to enact laws that set up a uniform model of labour relations imposing a statutory duty to bargain in good faith, statutory recognition of the principles of exclusive majority representation ... What is protected is associational activity, not a particular process or result.”<sup>10</sup> The significance of this recent decision is beyond question as it finally brings the issue of non-exclusive representation to the forefront and throws into doubt the legality of continuing not allowing such. It awaits to be seen the reactions of the legislatures, given the fact that exclusive representation has been in existence for over seven decades and the widespread belief the multiple union representation will inevitably cause problems and conflicts.

However, few practitioners or academics, if any, have recognised the opposite possibility, that non-majority, non-exclusive representation could actually drive unions to collaborate more closely with each other in coping with common employer adversaries. If two or more unions, negotiating for workers in the same occupations in the same organisation, had to negotiate with the same management, there would be many, and potentially large, benefits to

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<sup>6</sup> *B.C. Health Services*, *supra*, note 7, at para. 91.

<sup>7</sup> *Fraser v Ontario (Attorney General)*, 2008 ONCA 760, 92 O.R. (3d) 481 at 92.

<sup>8</sup> *Ontario (Attorney General) v Fraser*, 2011 SCC 20.

<sup>9</sup> *Ibid.* at paras 116 & 117.

<sup>10</sup> *Ibid.* at 8.

cooperating. Various types of inter-union collaboration, and the potential advantages of such collaboration, are reviewed further below.

How much, and what kinds, of inter-union collaboration could be realistically expected if Canadian governments provided legislative support to non-majority, non-exclusive union representation? New Zealand's experience of such union representation since 1991 is highly suggestive. Data were collected via interview from one or more senior officials in 14 of some of the largest unions in New Zealand to gain an understanding of the form and extent of inter-union collaboration for the unions interviewed.

Before proceeding, a further point is worth mentioning. Some may wonder why inter-union collaboration cannot be examined in Canada. Although Canadian workplaces may have more than one union, the exclusivity principle requires these unions to represent different worker groups, typically in different locations or occupations, and so they have little in common as a basis of cooperation. In contrast, New Zealand's system of non-majority, non-exclusive unionism allows co-workers in the same work group to be represented by different unions.

### THE NEW ZEALAND CONTEXT

For nearly a century from 1894 to 1991, New Zealand unions were regulated by a state-sponsored, compulsory dispute resolution system, which accorded them exclusive collective bargaining rights for workers in their bargaining unit (exclusive jurisdiction), similar to Canada. Moreover, union membership was basically compulsory for private sector workers during this period, other than in the 1930s and early 1980s (Deeks & Boxall, 1989). Sweeping changes then came in 1991 with the enactment of the *Employment Contracts Act*, which in effect removed unions' exclusive bargaining rights, leading to a drastic drop in union density and increase in income inequality (Charlwood & Haynes, 2008; Podder & Chatterjee, 2002). Ultimately, to strike a better balance between "protecting the integrity of individual choice" and "promoting collective bargaining,"<sup>11</sup> the *Employment Relations Act* came into effect in 2000. Under this current system, multiple unions, big or small, may represent workers (members only) in the same work units/occupations for bargaining and grievances. Only registered unions may legally enter into, or enforce, collective agreements, but union registration is not cumbersome. Workers may associate with a union and be covered by its collective agreement, or choose to be employed on an individual agreement (contract). In other words, the concept of open shop applies as "a contract, agreement, or other arrangement between persons must not require a person (a) to become or remain a union

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<sup>11</sup> *Employment Relations Act* 2000, s. 3.

member of a union, (b) to cease to be a member of a union, or (c) not to become a member of a union.”<sup>12</sup> Workers on individual contracts, however, are entitled to the same terms and conditions of employment as their co-workers doing the same or similar work under union collective agreements, at least for the initial 30 days of employment (where there are multiple unions involved, the provisions under the collective agreement with the most union members applies).

Why are New Zealand experiences of inter-union collaboration particularly relevant to Canada? New Zealand is similar to Canada in many respects. First, and most obviously, New Zealand and Canada are relatively developed, predominantly English-speaking countries. Second, both are ethnically diverse, ‘new world’ countries but remain influenced by Britain and its associated legal and political traditions. Third, New Zealand and Canada are both liberal market economies (Hall & Soskice, 2001) with considerable dependence on resource extraction and manufacture. Fourth, unions in both countries have a business orientation, focused on bargaining gains for members rather than broader political objectives. Fifth, union density rates, at 30% of the workforce in Canada and 21% in New Zealand, are at similar levels (OECD, 2010). Sixth, and perhaps most importantly, Canadian and New Zealand cultural values are also similar (Adler, 1994).

## **CONCEPTUAL FRAMEWORK FOR INTER-UNION COOPERATION**

There are a number of reasons why unions may want to cooperate with each other. For instance, there may be gains for the overall labour movement, the unions involved, as well as for the membership. In this section, we examine the different areas of collaboration, including collaboration over bargaining, organising, policy issues, and others.

### **COLLABORATION OVER BARGAINING**

Sharing the same workplace can induce unions to collaborate as a strategy to counter the employer’s power and improve the union’s bargaining leverage. Indeed, 29% of responding worker representatives in the 1980 UK Workplace Industrial Relations Survey considered joint bargaining an effective means of avoiding the problems of ‘divide and rule’ by the employer (Machin, Stewart, & Van Reenan, 1993, p.282). Akkerman (2008) notes that “(w)hen interests converge and overlap in membership is absent or only moderate, unions may see opportunities to join forces” such as through joint bargaining and coordination in strikes (p. 450). Martins (2005), using a model of union coalition, concludes that when there are only two unions representing the same worker group, cooperation between them resembles a monopoly

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<sup>12</sup> *Employment Relations Act* 2000, s. 8.

situation and that “collusion is always superior to competition” from the union perspective (p. 371). More specifically, Horn and Wolinsky (1988) demonstrate that groups of workers can raise wages by bargaining together if the groups are labour substitutes, and by bargaining separately if they are labour complements. So, there are certainly circumstances in which inter-union cooperation is beneficial to workers.

Union cooperation over bargaining can take many forms from tacit coordination (such as harmonising bargaining agendas, sharing information, joint planning and mutual consultation, respect for each other’s picket lines, as well as tangible and intangible support to striking members of other unions) to formal coalition in bargaining with the same demands, joint negotiation process, and common settlement (Hildebrand, 1968). Moreover, joint union negotiation is nothing new, dating at least as far back as the 1880s in the American construction industry and 1902 in the American railways (Hildebrand, 1968, p. 524).

Cohen (1976) identified at least seven major factors that have stimulated the growth of joint or coordinated bargaining. They are the expansion of corporations (and the corresponding increase in employer power), centralisation of labour policies in multi-plant companies, union weakness due to fragmentation, growth in the complexity of labour relations issues, standardization of organisation or industry-wide terms of employment, inability of individual unions to push for changes independently, and the need to design a bargaining structure that maximises union bargaining power.

#### **COLLABORATION OVER ORGANIZING**

Unionists and industrial relations scholars have been concerned about the drastically declining union density rate across much of the developed nations, but especially in the US, which has seen private sector union density drop from a peak of 35.7% in 1953 to a moribund 7.2% in 2009 (Bureau of Labor Statistics, 2010; Troy, 2004, p. 4). This has prompted many calls for union revival, with a heavy emphasis on organising. Schenk (2004) argues that it is not enough to simply re-direct resources into organising. Unions need to begin “to work cooperatively on organizing efforts”, ranging from “tacit agreements among several unions on sectoral/workplace targets” to “major joint organising drives; and establishing organising institutes to bring union organisers together for common training and sharing experiences on organising successes and failures” (Schneck, 2004. 182-183). Similarly, Dobson (1997) suggests that unions coordinate member recruitment either by jointly campaigning for members across an industry or by separately campaigning but on the understanding that potential recruits are referred to other unions if there is a better occupational match.

Where there is overlapping membership coverage, unions are normally expected to fight rather than cooperate. Why? It is commonly assumed that each union wants as large a slice of the membership pie as possible, and so competing for members is inevitable. Any thought that they might collaborate in organising is therefore dismissed immediately. However, this premise has not been systematically tested and remains questionable for a number of reasons. First, inter-union competition for members is ordinarily kept in check by union federation codes of conduct, which require adherence to 'no poaching' or 'no raiding' rules as a condition of membership. Such 'no raiding' pacts require unions to forego a degree of self-interest for the sake of harmonious co-existence. Second, it makes good sense from the cost-effectiveness perspective that unions would avoid organising members whose occupation or industry are a poor fit with the existing membership base and the union's strategic plans for achieving or maintaining influence over employers. Third, unions are likely to avoid costly conflicts over members, because they sap resources and deter non-union workers from joining any union. If conflict is not so dominant, is there room for unions to cooperate, as Schenk (2004) and Dobson (1997) have proposed, even if they have overlapping coverage of worker groups? This is certainly an issue worth exploring.

#### **COLLABORATION OVER POLICY ISSUES**

Union cooperation is also evident in political lobbying activities, when unions share a common social vision (Greer, 2006). According to Hurd and Pinnock (2004, p. 211), "(i)deologically, all unions are tied together by the objective of securing workers' fight in our society". Inter-union collaboration increases the strength of the labour movement, and a stronger labour movement, in turn, helps in influencing "public policy and budgetary decisions at all levels of government." In particular, at times when government enacts legislation perceived as thwarting union representation or rolling back worker gains, it is important for unions to engage in joint lobbying, petitioning, and protesting to make a more powerful stand and attract more public support.

Joint union actions on policy issues are often facilitated and supported by union federations and councils. These organisations can provide affiliates with the leadership resources, and support needed to advocate public policy changes for the good of the working class and union solidarity. They offer opportunities for affiliates to meet, interact, and collaborate through, for example, the running of workshops, seminars, and conferences. They can also set up specific task forces to work on problem areas, such as health and safety, of common interest to several unions and their members.



## **COLLABORATION OVER OTHER AREAS**

Sharing the same workplace can also prompt two or more unions to jointly offer common benefits (for example, health insurance and product discounts) and services (for example, grievance handling) to their members. There is also the potential for sharing limited resources, such as facilities and equipment. Such collaboration provides economies of scale, leading to greater efficiencies and cost-effectiveness. Unions can also collaborate by sharing their knowledge and expertise, which are often scarce but essential resources.

Overall, although the literature available on union cooperation is not extensive, the above review suggests that there are many potentially good reasons why unions might want to work with each other. However, few studies have focused specifically on inter-union collaboration in a non-majority, non-exclusive unionism context. This is because of the predominant focus on conflict in such situations, and because this particular context is unavailable for study in North America. For this reason, we are interested in empirically exploring if, when, why, and how unions cooperate in the multi-union setting of New Zealand. More specifically, to what extent do unions cooperate with each other? What types of cooperation do they engage in? What are the perceived advantages of cooperating? What facilitates cooperation? What hinders it? Finally, what policy changes might foster greater cooperation across and between unions? A good understanding of the New Zealand union situation has potential lessons for Canada, in terms of expected changes to inter-union relations and appropriate policy responses, if multiple and non-majority unionism were to receive legislative support.

## **METHODS**

### **SAMPLE**

Our sample, as shown in Table 1 (see Appendix) includes 14 of New Zealand's 172 registered unions.<sup>13</sup> The size of these unions varied from just below 1,000 to 56,000, which is considered relatively large given that the majority of New Zealand's unions were formed after the passage of the 2000 Employment Relations Act and have fewer than 1,000 members (Barry, 2004). Together, these 14 unions represented about 246,800 members (as at August 2008 when the data were collected), or roughly 65% of the 382,000 union member population in New Zealand (Feinberg-Denali & Lafferty, 2008, p. 33).

The union sample was selected on the basis of a few key criteria. First, we selected the bigger and more well-established unions, as their insights and experiences would likely be more representative of the New Zealand labour movement. Therefore, we included in our sample the largest four unions: the

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<sup>13</sup> Figure from the Registrar of Unions, Department of Labour, February, 2008

PSA (civil service), NZEI (primary school teachers), EPMU (manufacturing and other sectors), and NZNO (nurses). Second, for a similar reason, we need the unions to represent a broad range of industries, including, for example, public administration (PSA), health care (NZNO), manufacturing (EPMU), and financial services (FINSEC). Third, logistically, the union headquarters had to be easily accessible in downtown Wellington, New Zealand's capital city, so that the interviews could be conducted efficiently in terms of both time and cost.

## **DATA COLLECTION**

We interviewed the senior executives of the unions, usually the general secretary or someone in a comparable position. Semi-structured interviews lasting about one hour each were conducted at the unions' headquarters. A list of the basic interview questions is included in Table 2 (see Appendix). Semi-structured interviews allowed us the flexibility to direct attention to relevant areas and ask follow-up questions as new information came to light. The recorded interviews were transcribed verbatim for detailed analysis, which was done separately by the two co-authors in order to ensure independence and greater objectivity. Main themes were identified, coding was done accordingly, and key responses were summarised and compared across unions. An iterative process was adopted in the data analysis whereby the themes, coding categories, and key findings went through cycles of discussion and refinement. An analysis of the interviews is presented in the next section. Although we have no corresponding interview data for Canada, we make comparisons to the Canadian context wherever appropriate to set the stage for discussing the implications for Canada in the subsequent section.

## **RESULTS AND ANALYSIS**

There is a lot of collaboration between and among New Zealand unions. The lion's share of it involves potential rivals in the same sector; close relationships are almost exclusively with those who share the same problems and opportunities. Unions in unrelated sectors are generally 'off the radar' completely. Furthermore, the unions you help, and are closest to, are often the unions you have the biggest arguments and fights with, much as in a family situation. Collaboration and conflict are not mutually exclusive; they are part and parcel of the same normal relationships. For instance, two unions in the sample squabble over some bargaining and policy issues, and yet routinely join forces in presenting a united front to employers or the government. In several respects, the same situation applies to two other pairs of unions in other sectors.

Most collaboration relates to bargaining, though some unions cooperate over a wide range of issues, even organising. Their reasons for collaboration generally include a desire for more bargaining power to obtain better

contractual terms of employment, a more credible voice for lobbying, greater cost-effectiveness in organising, and fairness in bargaining outcomes. These areas are further discussed in the following analysis.

#### **COLLABORATION OVER BARGAINING**

All 14 unions admitted to some form of cooperation over collective bargaining with at least one other union. Why do they collaborate in bargaining? Four interviewees stated that they collaborate mainly to establish a stronger bargaining or lobbying stance. When unions act in unison, they can exert more pressure to get what they want. In the same vein, two other interviewees argued that bargaining together enabled unions to achieve higher wages and better conditions through the latent threat of concerted industrial action. One interviewee indicated that “(t)he settlements we have (had) in the last two to three years, when the cooperation has grown, are .... a good percentage point on average higher (than settlements) in the previous years.”

Two interviewees also pointed out that bargaining together was fairer, because it meant the same outcomes for the same types of workers or better outcomes for unskilled workers. One interviewee made several remarks about this, of which the following was typical: “And so unskilled workers have to strike just to be able to get a decent tea break, and when you bring all of those unions together under an agreement that says there are certain principles, then the gains for unskilled workers can be much greater.” The other interviewee said “ I think that was the other unions benefiting from our union, actually. Yeah! And certainly the less skilled staff benefited from this situation affecting more skilled staff. And you know the insistence by the unions that new money had to be given to less skilled staff as well, even if it was a lesser proportion.” In a related point, interviewees claimed that coordinated or joint bargaining was particularly advantageous, and hence appealing, to weaker unions. This point is potentially very relevant to Canada. Under current Canadian labour laws, weaker unions representing vulnerable workers often cannot even get certified as exclusive bargaining agents, because they lack majority support. In contrast, a multi-union system like New Zealand’s offers opportunities for establishing a workplace presence from a much more limited membership base while leveraging collaborations with other, more powerful unions to secure better terms and conditions for their poorly paid members.

As for the degree of collaboration in bargaining, it varies considerably. At one extreme, unions only share bargaining information and there is no joint coordination; bargaining occurs independently and at different times. For instance, five unions share a lot of bargaining-related information with their rivals. The following remark was typical: “we let them know when our bargaining is happening and what sort of money we’re getting.” One of these

five unions even allows its much smaller rival to observe the actual negotiations. Why share information? Most unions shared information as a courtesy, a goodwill gesture of potential benefit to the recipient union. However, one union stated that information sharing was a first step towards closer coordination in bargaining. Another union suggested that information sharing, especially about positive outcomes achieved through bargaining, enabled it to covertly market its services to other unions' members. At the time of data collection, a large union had just received an interesting request from a couple of smaller unions to provide them with training and advocacy in bargaining. Thinking that "the more allies you have got, the better", the union was actively considering the request and seemingly favourably disposed to it. A higher level of bargaining collaboration involves coordination of bargaining claims and demands, as well as strategies and tactics. Eight of the 14 unions indicated that they engaged in some form of joint coordination. Most commonly, they tried to negotiate at roughly the same time and/or with the same kinds of bargaining demands. For instance, one official admitted that "... we always sit down and have pre-bargaining sessions ... Each union brings their own log of claims, and (we) sit down and identify what each union must have .... and what we might support and what we might not necessarily ... support." However, coordinated strike action was much less common. Only two of the unions admitted to ever having jointly decided to strike against the same employer at the same time. A third union had offered support to a striking union by not crossing its picket lines. A fourth union indicated that its members had provided a striking union with moral support, mostly through letters and emails.

The highest level of collaboration entails joint bargaining for a multi-union collective agreement or MUCA. Thirteen of the 14 unions indicated that they had negotiated MUCAs with one or more other unions. For some, MUCAs represent a high proportion of all collective agreements. In one case, MUCAs were 85% of all collective agreement, and in two others, approximately 40%. For others, MUCAs play a less important role. Three unions used MUCAs for about 20% of their agreements, and four used them for about 10%. Three unions used them less than five percent of the time. As a general rule, MUCAs were employed if unions had overlapping membership coverage and so shared representation. As an example, one union reported having overlapping coverage, or nonexclusive representation, for 25% of its collective agreements. MUCAs were used in 80% of these overlapping coverage situations, or roughly 20% of all collective agreements. In contrast, unions which had few MUCAs normally had sole bargaining representation for 80% or more of their collective agreements. In one typical case, one large union bargained alone for the 80% of agreements where it had no overlapping bargaining coverage with other unions. Where coverage overlapped, the union coordinated bargaining with

other unions for about 10% of agreements, and jointly negotiated a MUCA for the other 10% of agreements. However, there are exceptions. One of the large unions seldom engages with other unions in any form of coordination. Why? Basically, it is the dominant union in almost all workplaces. As a result, getting together with anyone else offers little prospect of increasing strike power, resources, or expertise. On the downside, bargaining coalitions mean higher transaction costs, longer delays, sharing control over bargaining, and more opportunities for a rival to take unwarranted credit for good settlement outcomes. Another union, the only one not to have negotiated any MUCAs, gave similar reasons for not coordinating or jointly negotiating with its puny rival.

MUCAs play a much more limited role in the Canadian context, given exclusive bargaining representation. When unions do coordinate their bargaining, it is generally across different bargaining units, in different occupations and/or locations, but all working for the same employer. A more common practice in the Canadian context is leap-frogging, where unions representing different groups of workers in different bargaining units nevertheless compare settlements and attempt to out-do each other in obtaining higher increases and greater improvements from the same or similar employers.

#### **COLLABORATION OVER ORGANISING**

Nine of the 14 unions had helped their rivals with recruitment. All nine had referred prospective members to other unions in a better position to service particular types of members, because of bargaining coverage, bargaining unit size, and/or industrial/occupational fit. The following was a typical comment about this practice: "...it just didn't feel ethically right to take the membership of ... another occupation and not offer them the full advantages of being in our union. So, we made a very explicit decision to.... say you have to go ... and to support them moving out to a different union." One union helped fund a weaker union's organising campaigns. Several unions had each campaigned to recruit members for all unions in the sector. Other unions had divvied up the recruitment task, so that one union had recruited for two unions, itself and a potential rival in one workplace, and, as a quid pro quo, the other union had done the same in an alternative workplace.

Four interviewees felt that collaboration was essential to membership recruitment, given the scale economies of organising and the negative effects of unions competing for members on workers' willingness to join any union. One interviewee had this to say: "My observation and experience always is, particularly when non-members see at least two unions squabbling with each other, they just turn off. I've had that feedback, not just from non-members, but members as well." Another interviewee made a similar comment: "... (o)ur

union's view is that active contestability essentially only leads to de-unionisation and, as a result of that, we have a pretty clear policy that we will not actively contest other unions."

In an exclusive bargaining system like Canada's, helping another union recruit can severely jeopardise one's own survival. In fact, the winner-take-all character of this system promotes fierce competition among unions. Raiding situations are not uncommon, in which one union seeks to use the certification/decertification process to displace an incumbent union as the sole agent for a particular bargaining unit. The worst thing about raiding is that both unions, incumbent and raider, can lose out if neither is certified, leaving the workers in a particular bargaining unit with no union representation at all. According to a U.S. study, this happens in 11% of all raiding situations (Scott, Arnold & Odewahn, 1992).

#### **COLLABORATION OVER POLICY**

Ten interviewees indicated that they had cooperated in some way with other unions to change government policy. When unions speak as one, their voice becomes more credible. In general, policy-oriented unions had more than one way of trying to influence government jointly with other unions. Most of this inter-union cooperation was limited to just three sectors, with the government acting as employer in two of these. All three sectors are heavily unionised.

Six interviewees indicated that they worked through the NZCTU to lobby government. All had participated in NZCTU-organised workshops, councils, committees, and/or forums. Many of these concentrate exclusively on the problems of particular industries.

Seven interviewees indicated that their union had worked closely with employers and the government in tripartite structures to develop and/or implement policies for their industry. In one case, the employers, unions, and relevant ministry discussed the "(f)uture needs of the industry and, in particular, the amount of labour requirements and capacity," especially training capacity. Another tripartite group focused on the registration and discipline of professionals in the industry. Yet another discussed "... a whole range of issues: staffing, funding, (and) resourcing." With one union, the focus was more operational, with the parties agreeing on how they were going to interact with each other and make decisions. Finally, joint action in one industry had been precipitated by a ministerial inquiry into health and safety. Seven interviewees said that their union had joined forces with at least one other union to lobby government directly for policy change. For instance, one union had coalesced with another to petition parliament. In a different situation, two unions had successfully lobbied parliament to have a proposed

funding structure revoked. Two other unions had made joint select committee submissions, opposing or supporting various bills before Parliament. Finally, as Labour Party affiliates, several unions had used party channels to speak more directly and less publicly to senior ministers about their policy concerns.

In Canada, interactions between unions are less frequent, because unions do not serve the same bargaining groups and so have less in common. As such, coordination over policy areas is accomplished largely through labour federations, or among different locals within the same national union, rather than directly between individual unions.

### **OTHER COLLABORATION**

Unions also cooperate in other ways. Four unions hold joint branch meetings with other unions. One union provides free advice to other unions' members via its call centre. Two unions share the same offices in one city. Three unions work with other unions in their industry on human resource issues as diverse as training, health and safety, and dismissal. Several unions have signed so-called relationship agreements to work with each other in good faith. Two unions, ASTE and AUS, had even agreed to amalgamate, something that had already occurred at the time of writing.

### **INHIBITING FACTORS**

The interviewees identified several factors which had prevented them from collaborating more often and on a greater scale with other unions. Five interviewees blamed personality conflicts, usually between union leaders, for creating barriers to cooperation. Many of these personality conflicts were historical, reflecting clashes over events that had in some cases occurred decades earlier. In some cases, these fights had been generated by so-called turf protection, with union leaders anxious to preserve their own high-ranking jobs.

Three interviewees talked of snobbery and elitism, often associated with pay differentials between the members of one union and another, as an impediment to working together. Another interviewee felt that the many, small, company unions<sup>14</sup> in his industry simply didn't have the expertise to meaningfully collaborate, especially with respect to lobbying over policy issues. Five interviewees cited differences in union culture, reflected in member attitudes and values, as a major hurdle to developing positive relationships with rival unions. As one union official put it, "(t)here is, rightly or wrongly, ... a perception of a difference of culture between the two unions. ... (Our union)

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<sup>14</sup> Company unions, also referred to as house or yellow unions, can be registered as bona fide unions under New Zealand law.

has been regarded as more militant.” Three interviewees argued that weak unions were often reluctant to work with stronger counterparts, for fear of losing members to these rivals. One interviewee further commented that small unions might see collaboration in a situation of unbalanced power as more like a takeover. Two unions in the same sector both blamed sensational media reporting for generating occasional frictions between them.

In contrast to Canada, smaller unions still normally fare better in New Zealand, even if they feel over-shadowed by their larger counterparts. At least, they can easily and quickly establish bargaining representation rights with as few as two union members in a given workplace, and then gradually build their membership base over time (Harcourt and Haynes, 2011). Unlike Canadian unions, they do not have to have the hefty resources to launch a certification drive and/or fight a certification election. Personality conflicts and union culture differences exist everywhere and, in this respect, Canada and New Zealand are unlikely to differ substantially. The legislative framework, however, certainly affects the opportunities for unions to work together, with Canada’s situation at the lower end.

#### **ENABLING FACTORS**

The union officials identified a number of factors which had facilitated cooperation between and among the unions. Some of these involved law changes, brought about by the 2000 Employment Relations Act. For example, two officials thought that the special legal provisions for multi-union collective agreements (MUCAs) in the Act had made joint collective bargaining easier. Similarly, five interviewees felt that the good faith provisions in the 2000 Employment Relations Act had induced unions to act more openly and honestly with each other. One official explained it this way: “So it has made a difference ... knowing that good faith applies between unions as well. We often trot that out ourselves to unions that are difficult. (We say) ‘listen, we are bound by this’.” Three officials spoke more generally, arguing that the more supportive environment for collective bargaining, ushered in by the 2000 Employment Relations Act, had encouraged unions to collaborate rather than compete.

Five officials acknowledged the key role employers can play in getting the unions together. Four claimed that, with the Labour Government in power, public sector employers were far more committed to working cooperatively with all stakeholder groups, including unions. One official put it this way: “(if there had been) ...no chance of a (government-sponsored) tripartite forum, for example, we (would) not even meet with the other union.” Two union leaders also suggested that some employers, keen to reduce the transaction costs of contracting and stop the leap-frogging of settlements, had pushed



unions into coordinated and/or joint bargaining. For example, one official noted that "... if it is two unions, they just want to have one bargaining round, one collective agreement; make it simple..." However, three officials commented that, in their experience, employers often prefer to deal with unions separately. Sometimes, this is part of a 'divide and rule' strategy to weaken unions. Sometimes, this reflects a desire to avoid being accused of bad faith or of having violated workers' freedom of association.

Other officials attributed collaboration to factors associated with the labour movement itself. Four ascribed a key role to the NZCTU in bringing about inter-union dialogue. The NZCTU policy groups were seen as critical to inducing unions in the same industry to meet, discuss, and formulate concrete policy proposals for government. In addition, the NZCTU's protocols were lauded for preventing and resolving petty disputes over organising members, and encouraging unions to re-focus on 'bigger picture' issues. Former NZCTU boss, Ross Wilson, was heavily praised for fostering inter-union cooperation. On a smaller scale, other union bosses were also praised for their team-building personalities.

In comparison, Canada does not have the legislative framework to support MUCAs. Furthermore, the notion of good faith only applies to union-management relationships, and not to union-union relationships. Tripartite forums are not common, and government involvement is generally limited to the conciliation of bargaining impasses. The one similarity between Canada and New Zealand is the role of the trade union federation(s) in promoting and supporting positive relationships among unions. If Canada were to adopt a non-exclusive representation system, this role would likely grow in significance.

#### **RECOMMENDATIONS FOR MORE COLLABORATION**

The interviewees had some suggestions for increasing inter-union collaboration. Three officials felt that the NZCTU should play a stronger role in developing and implementing coordinated bargaining and organising strategies for different sectors of the economy. The general belief was that the NZCTU should be better resourced to carry out such roles, though no one was clear on how this might be done. No direct government policy change was envisioned in achieving this goal. As one union official said, "(t)here are a lot of things that could happen to promote collaboration. The bigger question is could you actually regulate or policy-prescribe those things and I am not sure that you could." Another echoed a similar view: "I think we have to do it (facilitating greater collaboration) ourselves. I don't think you can legislate for it completely. It's a battle that has got to go on inside the (labour) movement."

Some suggestions focused on enhancing the power and effectiveness of joint action in order to make it more meaningful and potentially attractive. For, instance, two officials favoured legalising secondary picketing; another supported legalising secondary strikes. Likewise, two officials felt that more unions would collaborate in bargaining, if it were easier to opt for a multi-employer collective agreement or MECA. Specifically, they favoured leaving this decision to union executives rather than having it decided through a membership ballot.

Other officials felt that collaboration would be easier, if there were fewer potential rivals and these rivals were larger, stronger, better resourced, and clearly not aligned with management. Five officials recommended that, as a condition of registration, every union should have to satisfy a minimum size requirement, possibly of as few as 100 members. One official provided the following justification for this stance: “(a) lot of people have said maybe greater membership, minimum membership. The reason they are saying that is because they think some of the defensive posturing by some of the unions is related to their small size... power. They are too weak, and they see cooperation as a takeover.” Three union bosses also argued that the Department of Labour should periodically audit unions to ensure that they are democratically controlled and financially self-sufficient, and not therefore dependent upon management.

## **DISCUSSION AND IMPLICATIONS**

What can Canada learn from New Zealand’s experiment with non-majority, non-exclusive union representation, which began with the enactment of the 1991 Employment Contracts Act? Several major findings emerge from this exploratory study. Perhaps the most important is that inter-union collaboration is pervasive in the multi-union setting of New Zealand. Moreover, collaboration extends across bargaining, organising, and policy-related activities like lobbying. Almost all of it occurs within sectors, inasmuch as unions are united by common industry-related concerns. There is conflict as well, to be sure, but this is occasional and mostly subdued.<sup>15</sup> When asked about inter-union conflicts, the same 14 union executives generally perceived these as minor irritants rather than as anything major. Unions tended to avoid fighting with each other, because to do so would violate NZCTU protocols, waste resources, and frighten potential members away. Active poaching of members was surprisingly uncommon. Some unions even had informal agreements about recruitment along occupational or industry boundaries to avoid conflicts. Moreover, most felt that there was little to be gained from aggressive inter-union competition, since there was no North American-style

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<sup>15</sup> Inter-union conflict is the focus of another paper.

certification system which would enable a raiding union to completely supplant a rival incumbent and acquire its exclusive representation rights in a given bargaining unit. When conflicts did occur, which happened from time to time, unions would usually resolve disagreements informally among themselves, sometimes with the help of the NZCTU. As such, any fears of serious union rivalry, arising out of non-majority, non-exclusive unionism, may be largely unfounded. Countries like Canada should therefore at least consider the feasibility of minority and multi-union representation.

The New Zealand unions interviewed, much like many of their British counterparts (Machin, Stewart, & Van Reenen, 1993), generally believe that they can get more of what they want by speaking with one voice and by making the same or similar demands simultaneously. It makes more sense to work together to increase the size of the proverbial pie, far less to squabble about respective shares. As Martins (2005, p. 371) says, "collusion is always superior to competition" from a union viewpoint. Interestingly, this logic applies just as much to organising as bargaining, contrary to the common Canadian belief that overlapping coverage would only lead to inter-union fighting over members. The unions in this study often help each other with recruitment, and usually sufficiently respect another union's established presence in a given workplace not to poach its members. It is usually more cost-effective for a union to specialise in representing large numbers of workers in particular workplaces than to divert its efforts and resources into poaching small numbers of members from rival unions, especially if there is no obvious benefit to the labour movement, overall. Furthermore, it is a commonly held belief that fighting over members only leads to de-unionisation, and so is in no union's interest.

If anything, nonexclusive representation, or overlapping coverage as it is called in New Zealand, drives unions to cooperate even more closely, especially in bargaining. Specifically, when two or more unions represent the same group of workers, they are likely to bargain together for a multi-union collective agreement. At the very least, some form of joint coordination or information sharing can usually be expected. The exception is the generally large union which represents a high proportion of a given group of workers compared to its much smaller rival or rivals. In this situation, the dominant union typically feels that the perceived benefits of joint action, in terms of increased bargaining power, are outweighed by the costs, in terms of delays, decision-making difficulties, and the loss of kudos to the other union(s) for having bargained a good settlement.

Certain institutions have helped facilitate collaboration. Perhaps chief among these is the multi-union collective agreement or MUCA. The procedures in the

2000 *Employment Relations Act* have made it easy for union executives to opt for a MUCA; very crucially, employers cannot stop them from doing so. The law also requires unions to treat each other in good faith, and, in particular, not to deliberately mislead or deceive each other. Likewise, the NZCTU provides various councils, forums, workshops, and working groups to facilitate dialogue between unions, especially when they occupy the same sector. It has also developed highly effective protocols for resolving disputes between affiliates, especially over the organizing of each other's members. These protocols provide a procedure for repatriating recently arrived members defecting from a rival union, which requires both unions to mutually address the issues that prompted the members to leave.

So, what are the implications for Canada? Since having a non-majority, non-exclusive union representation system has the potential to offer major benefits for unions and workers through union collaboration and freedom of association, and there are some exploratory findings in a parallel study by the authors which suggest that inter-union conflict under such a system is far from severe, moving towards a more open representational regime allowing for minority unions may be at least worth considering. Certainly, overhauling the existing Canadian system would cause uneasiness for many people, particularly for unions which have already established themselves as exclusive bargaining agents. Moreover, with Canadian union density fairly stable at about 30% of the non-agricultural paid workforce (Human Resources and Skills Development Canada, 2011), there are definitely some good protective measures in the current system worth retaining. Hence, rather than just maintain the status quo or move to an entirely new representational system like New Zealand's, a third course, a blend of Canada's and New Zealand's systems, could provide major representational improvements. Under this proposed hybrid, the existing system of exclusive representation for all unions able to obtain majority support 'on the cards' or through an election would be preserved. Established unions, which had secured representation status possibly decades ago, would not therefore be threatened by the possibility of newly arrived union raiders attracting their members and draining their resources. Maintenance of this arrangement is also compatible with ILO standards, as already stated in the introduction of this paper.

For workplaces without majority support for any particular union, the hybrid system would allow unions with minority support to represent workers on a members-only basis, thereby offering more options to workers and respecting individuals' freedom to associate with their preferred union. Free-riding would be limited, as only members would qualify for union services like grievance handling. Members-only representation would also focus union attention on effectively serving their members as a strategy to build and grow their support

base. Individual workers not wanting union representation could remain on individual employment contracts. If minority unions wanted to work together, they could coordinate their bargaining and enter into a multi-union agreement with the same employer. At the same time, they would have the same rights as majority unions to access the workplace to serve their members, to strike over an expired collective agreement, and to be protected from discriminatory or unfair labour practices by the employer.

This hybrid system would make it much easier to organise traditional non-union sectors like banking and insurance, where it has been difficult to establish majority support, especially for a new union trying to enter the workplace. Initial minority representation would then act as a springboard for majority representation later on, as more workers get to know about their union and the benefits it offers. Under this hybrid system, union density would inevitably rise, with membership numbers in currently represented workplaces remaining unchanged, and new members added in currently unrepresented workplaces, following the spread of minority unionism. Overall, Canadian workers would gain from the greater availability of, and access to, collective representation.

If and when a minority union subsequently gained majority support, it would acquire the rights, benefits, and duties of an exclusive agent. For example, it would have the right to negotiate union security clauses, as well as the duty to fairly represent all members of the bargaining unit in bargaining and grievance handling. The current system for majority unions would be maintained, while allowing and supporting a separate, parallel system for minority unions. The legislative changes required to enact this hybrid system would be minimal, involving a few additional provisions to the existing labour relations statutes. If New Zealand employers can handle a totally non-exclusive representation system, allowing multiple union agents, Canadian employers should be able to handle a hybrid system where workplaces with majority support still only had one union.

## **LIMITATIONS AND FUTURE RESEARCH**

As an exploratory study of inter-union collaboration, only 14 interviews with union executives were conducted. On the one hand, 65% of New Zealand's union members belong to these 14 unions, and so their experiences are in many ways representative of the labour movement as a whole. On the other, the sample comprises none of the very small unions, which together still account for a significant portion of union members (Barry, 2004). These unions may have very different views of, and approaches to, collaboration. As some interviewees have indicated, smaller unions may fear losing members or being taken over, if they start collaborating with larger rivals. At the other extreme,

smaller unions may benefit substantially from the greater resources and expertise of the larger unions, if they opt to affiliate or work with them. This would be an interesting area for future research.

Union collaboration is certainly dynamic. Although the current study did touch on historical aspects, it is mostly a snap shot of the current situation. It would be useful to study how unions develop relationships with others, and how these relationships evolve over time, particularly with changing environmental factors. For example, with the global financial meltdown in 2008, are unions tending to work together more or less than before?

This study is also limited by its total focus on New Zealand. Its findings may need to be corroborated by studies of other nations with non-majority, non-exclusive representation. Better yet, a comparative study across different nations with such representation would help identify what is typical and what is not in New Zealand's experience of multi-unionism. The studies could look at both the collaboration and conflict aspects of the inter-union relationship. For the next stage of research, the authors plan to develop and administer a broader and more comprehensive survey of all New Zealand unions, which would capture the views of not just the large unions, but also the smaller ones.

## **CONCLUSION**

Inter-union collaboration is a common phenomenon in New Zealand, where a non-exclusive, non-majority union representation system has been adopted and multiple unions may represent members of the same worker group. Collaboration over bargaining was found to be the most pervasive form of collaboration, and common to all the unions interviewed. It ranged from tacit coordination through information sharing to joint bargaining for a multi-union collective agreement. Most unions also collaborated over policy issues, particularly when lobbying the government. The most intriguing finding was that unions actually cooperated in organising members too. Contrary to the belief that multi-unionism prompts competition and chaos, the unions in this sample were generally respectful of each other's territory and expertise and comfortable to organise only in areas that made the most sense, in terms of both effective representation for the workers and cost-effectiveness for the unions. Some unions are even willing to recruit for each other, and refer potential members to other unions if there is a better fit.

The results of this exploratory research and the discussion of the merits of a potential hybrid system should help to allay fears about the supposed perils of Canada moving away from its majority-based, exclusive union representation system. Under the hybrid model proposed, new and existing unions with exclusive representation rights predicated on majority support would remain

relatively protected. The big gain for both workers and unions would be in other workplaces where majority union support has not been established. The hybrid system affords workers in such workplaces the opportunity to freely associate with their preferred union and obtain the collective power to bargain with their employer. In terms of advancing workplace democracy, such a change can only be a positive one. Therefore, at the very least, we hope that what we have found and proposed in this study will prompt unionists, academics, and law-makers to question the rationale for rigidly adhering to the status quo of exclusive representation based on majority support, and consider alternative, more open bargaining regimes which may have a lot more to offer.

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## APPENDIX

**TABLE 1**

**UNIONS**

Amalgamated Workers Union

Association of Senior Medical Specialists (ASMS)

Association of Staff in Tertiary Education (ASTE)

Association of University Staff (AUS)

Engineering, Printing, and Manufacturing Union (EPMU)

Financial and Information Workers Union (FINSEC)

Maritime Union of New Zealand (MUNZ)

New Zealand Merchant Service Guild

New Zealand Nurses Organisation (NZNO)

New Zealand Educational Institute (NZEI)

New Zealand Post Primary Teachers Association  
(NZPPTA)

Police Association

Public Service Association (PSA)

Rail & Maritime Transport Union (RMTU)

**TABLE 2**

**INTERVIEW QUESTIONS**

1. How much cooperation/ collaboration is there between your union and other unions?
2. What is the nature of the cooperation (eg is it on-going or ad hoc, is it about joining forces, or administrative convenience, etc?)
3. Why does your union cooperate/ collaborate with other unions? What are the causes of cooperation/ collaboration between your union and other unions?
4. To what extent is cooperation/ collaboration between your union and other unions an advantage or benefit (eg a source of strength, a way of conserving resources)?
5. How do you cooperate? How do you make it work?
6. What factors (eg policies, practices of unions, employers, government etc), if any, facilitate cooperation/ collaboration between your union and other unions?
7. What factors (eg policies, practices of unions, employers, governments etc), if any, hinder or discourage cooperation / collaboration between your union and other unions?
8. What changes (eg in practices or policies), if any, would facilitate greater collaboration/ cooperation between your union and other unions?