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TRADE UNIONISM UNDER GLOBALIZATION: THE DEMISE OF VOLUNTARISM?

Samuel Estreicher*

Trade unionism is the institutional expression of the self- or third-party-aided organization of workers to advance their economic and social objectives at their workplace or industry; unions tend to fund themselves through membership dues; and their achievements tend to be measured in collective bargaining agreements and their enforcement. Political organizations, whether political parties or nongovernmental organizations, sometimes also claim to represent the interests of workers who are members or those aligned with their members; both tend to be funded by membership dues and other sources; and their achievements tend to be measured in legislation and regulations and their enforcement. Unlike Europe, the United States has no enduring labor party tradition and the U.S. labor movement has historically kept separate its role as collective bargaining agency from its “political action” contributions to candidates for government office. Over the last several decades, trade unions are increasingly unable to realize their objectives at the bargaining table and have turned more and more to politics. This has been true of labor movements in many European and developing countries for quite some time. Because of the great decline in U.S. manufacturing, and the much weakened position of trade unions in the private sector – due in significant part to globalization -- it is also increasingly the story in the United States.

I.

Trade unionism in private companies is a declining phenomenon in nearly all developed countries. In the United States, for example, union contracts cover a little over eight percent of workers in the private sector; over half of the members of the two leading union federations (the AFL-CIO and Change to Win) are workers in government offices even though public-sector employment is only one-sixth of the overall workforce.¹ The rate of

* Dwight D. Opperman Professor of Law; Faculty Director, Center for Labor and Employment Law, New York University School of Law. An early version of this paper was presented as “Employee Representation that Makes Sense in Today’s World,” keynote address at the Conference on Competition in the Global Workplace: The Role of Law in Economic Markets, St. Louis University School of Law, April 3, 2009. Contact: Samuel.Estreicher@nyu.edu ALL RIGHTS RESERVED. Copyright © 2009 by Samuel Estreicher.

¹ In 2008, union members accounted for 12.4 percent of employed wage and salary workers, a slight rise from the previous year; in 1983, the first year for which comparable data are available, the union membership rate was 20.1 percent. (Because of the effect of union security clauses, the percentage of employees by union contracts is usually a percentage point higher than the membership rate.) Workers in government offices had a union membership rate (36.8%) nearly five times that of private sector employees (7.6%), and account for nearly half of total union membership even though government work is about one-fifth the size of the private workforce. See U.S. Dept. of Labor, Household Data Annual Averages, Table 42 (“Union affiliation of employed wage and salary workers by occupation an industry”), available at <ftp://ftp.bls.gov/pub/special.requests/lf/aat42.txt> (last visited Aug. 5, 2009). The split within the U.S. labor movement (which may soon be repaired) is evaluated in Samuel Estreicher, *Disunity*

decline may be slower in other developed countries, but the story of private-sector unionism decline is nearly universal, at least if viewed in terms of membership as opposed to contract coverage (where because of multiemployer bargaining structures and extension laws such coverage far outstrips union membership).² What started as a movement of workers against private capital is, in a sense, now increasingly a movement of government workers (and government contractors and aid recipients) against public capital.³

Unions also are decreasingly able to influence the terms and conditions of private employment in negotiating labor contracts. More and more, the turn is to the state to legislate (and guarantee) wages, hours and benefits. What started as an expression of the self-organization of working people seeking what U.S. labor law terms “true freedom of contract” increasingly has taken the form of organized participation in the pluralist group bargaining process that is our political democracy. The fabled “voluntarism” of Samuel Gompers, the founding president of the American Federation of Labor (AFL), the first successful union federation in this country – that workers have to improve their lot by their own struggle and secure those gains through their own efforts and cannot depend on the state -- no longer expresses the view of any major labor organization. The increasing importance of politics to labor and vice versa finds expression in the influence of labor unions in the Barack Obama administration and in its drive to legislate a public right to healthcare coverage and subsidize certain industries. We see a similar phenomenon in other countries. Recently, Germany has enacted minimum wage laws in certain industries replacing what had been a system based the “normative” force of industry-wide collective bargaining agreements⁴; early in the Blair administration the United Kingdom instituted minimum wage councils because collective bargaining agreements were not effectively setting minimum standards. Indeed, one could view much of the European Union project as an attempt to substitute public law for contract in great many areas of economic life.

Of course, the dedication of U.S. trade unions to private market solutions, even in the supposed halcyon days of the Gompers presidency of the AFL, was never absolute.⁵ For along with opposition to certain legislative solutions, such as social insurance, the Federation supported workers’ compensation laws and “prevailing wage” laws for government contractors.⁶ Moreover, with the onset of the Great Depression, which undermined faith in

within the House of Labor: Change to Win or to Stay the Course?, 27 J. LAB. RES. 505, 506 (2006).

² See Jelle Visser, *Union Membership Statistics in 24 Countries*, MONTHLY LAB. REV., Jan. 2006, at 38. See also Barry T. Hirsch, *Sluggish Institutions in a Dynamic World: Can Unions and Industrial Competition Coexist?*, 22 J. ECON. PERSP., Winter 2008, at 153; David G. Blanchflower, *A Cross-Country Study of Union Membership*, (Inst. for the Study of Lab., IZA Discussion Paper No. 2016, 2006). See also Table 4 below.

³ See Samuel Estreicher, *Negotiating the People’s Capital*, 25 J. LAB. RES. 189, 191 (2004).

⁴ See Friederike Gobbels, *German Minimum-Wage Law Enacted*, 2 Jones Day European Labor & Employment Law Update 3 (Issue 1, Aug. 2009) (discussing Mindestarbeitsbedingungen – MiArbG (Minimum Working Conditions Act), ver. of April 22, 2009, Bundesgesetzblatt – Teil I – Seite 818, Federal Law Gazette – Part I – Side 818).

⁵It has been argued that the voluntarism of Gompers and the early AFL reflected not deeply or sincerely held ideology but the brute reality of courts hostile to maximum hours and other social legislation. See William E. Forbath, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* (1991).

⁶ See Theron Schlabach, *Rationality & Welfare: Public Discussion of Poverty and Social Insurance in the United States 1875-1935* (available <http://www.socialsecurity.gov/history/reports/schlabach6.html>) (last visited Oct. 22,

unregulated markets, both the AFL and the breakaway federation, the Congress of Industrial Organization (CIO), broadened their political aims, developed strong political action committees and made significant contributions in cash and kind largely to Democratic candidates for the White House, Congress and state houses, Indeed, with the AFL-CIO merger in 1954, organized labor's political influence expanded beyond purely labor relations concerns to include its critical backing of important social legislation such as the civil rights laws in the 1960s and thereafter.

Organized labor thus rejected narrow conceptions of voluntarism by the onset of the New Deal, but the essential focus of U.S. trade unionism until the recent period was reaching and maintaining strong contracts in existing bargaining units, with some limited organizing of new units. Politics was an adjunct, a supplement to trade unionism.

We are now beginning to see a qualitative change in labor's relationship to the state: trade unionism as a supplement to politics. Labor's economic objectives have not changed; the means are undergoing change. The thesis of this paper is that largely in response to the deepening of competitive forces in private markets in the U.S. – from deregulation, changing technology and the opening up of global labor and product markets (due to decreasing transportation and communication costs and the lowering of trade barriers) -- organized labor increasingly will function predominantly as a political organization. Collective bargaining will continue to provide an institutional *raison d'être* and critical funding source for unions but only one (and a diminishing one) of several means for advancing the interests of its members and other constituencies. This is not to suggest the emergence of a labor party on the European model; it is an American variant: the fortunes of the labor movement will become ever more tightly tied to the fortunes of the Democratic Party and economic goals increasingly will be achieved not at the bargaining table but through the provision of public resources.

II.

The turn to politics is not necessarily a good or bad development; it is understandable, if not unavoidable, given the challenges that unions face in private firms.

The unions' problems are not in the public sector. In 2008, 36.8 percent of government workers were union members and 40.7 percent were covered by collective bargaining contracts.⁷ This is a quite remarkable achievement since not all states or localities recognize collective bargaining rights for their employees. Unions continue to register gains in this sector – most recently, by convincing a number of state governors and legislatures to establish an agency or commission to represent government interests in collective bargaining with home health care workers.⁸

2009).

⁷ See note 2 *supra*.

⁸ See, e.g., State of Illinois Exec. Order 09-15, "Collective Bargaining by Individual Providers of Home-Based Support Services (June 29, 2009) (Gov. Pat Quinn).

Labor's problems are in the private sector. Unions will continue to represent segments of the labor force where the costs of delay place a significant premium on avoiding labor stoppage (e.g., big-city commercial construction, airlines), where barriers to entry by other firms give incumbent firms some ability to absorb labor cost increases without losing patronage (e.g., construction, airlines, licensed engineers), or where regulation of acquisitions and new areas of service give unions special leverage to extract concessions (e.g., healthcare and communications). For manufacturing generally and the vast majority of private sector companies, however, the unions' task both to organize the workforce and insulate the unionized firm from the ravages of product market competition seems daunting. Most unions, voting with their feet in terms of how they invest organizing resources, have essentially concurred by investing those resources elsewhere.

It is difficult to determine how much globalization as such has contributed to this phenomenon.⁹ No doubt the ability of U.S. consumers to purchase high-quality goods made abroad at lower prices than charged for U.S.-made goods and the ability of U.S. companies to manufacture goods in places like China for sale back to the U.S. has contributed to a shrinking of the manufacturing sector.

Let us look at the decline of private sector unionism in this country. A substantial literature has developed to attempt to explain this phenomenon.¹⁰ My own view is that

⁹ The existing empirical literature on union density and globalization does not clearly indicate a strong, unequivocal relationship. See, e.g., Hirsch, *supra* note 10; Matthew J. Slaughter, Globalization and Declining Unionization in the United States, 46 *Indus. Rels.* 329 (April 2007); Dale Belman & Paula B. Voos, Changes in Union Wage Effects by Industry: A Fresh Look at the Evidence, 43 *Indus. Rels.* 491 (July 2004); David G. Blanchflower & Alex Bryson, The Union Wage Premium in the US and the UK (Center for Economic Performance, London School of Economics and Political Science (Feb. 2004); Elizabetta Magnani & David Prentice, Did Globalization Reduce Unionization?: Evidence from US Manufacturing, 10 *Labour Econ.* 705 (2003).

¹⁰ Four major explanations have been offered: (1) Employer Opposition, see PAUL C. WEILER, *GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW* (1990); Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 *HARV. L. REV.* 1769 (1983); John Schmitt & Ben Zipperer, CENTER FOR ECONOMIC & POLICY RESEARCH, *DROPPING THE AX: ILLEGAL FIRINGS DURING UNION ELECTION CAMPAIGNS 1* (Jan. 2007) (claiming that one in five union organizer or activists are fired because of their activities in a union organizing campaign); (2) Changes in Worker Attitudes, see Henry S. Farber & Alan B. Krueger, *Union Membership in the United States: The Decline Continues*, in *EMPLOYEE REPRESENTATION: ALTERNATIVES AND FUTURE DIRECTIONS* 105-34 (Bruce E. Kaufman & Morris M. Kleiner eds., 1993); Sharon Rabin Margalioth, *The Significance of Worker Attitudes: Individualism as a Cause for Labor's Decline*, in *EMPLOYEE REPRESENTATION IN THE EMERGING WORKPLACE: ALTERNATIVES SUPPLEMENTS TO COLLECTIVE BARGAINING: PROCEEDINGS OF NEW YORK UNIVERSITY 50TH ANNUAL CONFERENCE ON LABOR* 41-116 (Samuel Estreicher ed., 1998); but see SEYMOUR MARTIN LIPSET, NOAH M. MELTZ, RAFAEL GOMEZ & IVAN KATCHANOVSKI, *THE PARADOX OF AMERICAN UNIONISM: WHY AMERICANS LIKE UNIONS MORE THAN CANADIANS DO BUT JOIN MUCH LESS* 94-95 (2005) (noting that 48.2% of nonunion workers would "definitely" or "probably" vote for a union if they had the opportunity); RICHARD B. FREEMAN & JOEL ROGERS, *WHAT WORKERS WANT* 69 (1999) (noting that 32% of nonunion workers say that they want a union); (3) Structural Change, see Henry S. Farber & Bruce Western, *Round Up the Usual Suspects: The Decline of Unionism in the Private Sector* (Princeton Univ. Dept. of Econ., Working Paper No. 437, 2001); Leo Troy, *Is the U.S. Unique in the Decline of Private Sector Unionism?*, 11 *J. LAB. RES.* 111, 137-138 (1990); also Leo Troy, *The New Unionism in the New Society: Public Sector Unions in the Redistributive State* (1994); but see Richard B. Freeman, *Contraction and Expansion: The Divergence of Private Sector and Public Sector Unionism*, *J. ECON. PERSP.*, Spring 1988, at 63, 67; and (4) Global Labor and Product Market Competition, see Samuel Estreicher, "Think Global, Act Local": Employee Representation in a World of Global Labor and Product Markets, 4 *Va. L. & Bus. Rev.* 81 (2009); and his *Labor Law Reform in a World*

unions have trouble in competitive markets to the extent they are net cost-adding institutions and are not able to neutralize those costs by organizing the entire product market or by tariffs or “prevailing wage” laws dampening down product market competition.¹¹ This is ultimately the cause of both employer opposition and withdrawal of capital from the union sector and these, in turn, help explain why there is so little natural growth of union membership or union organizing in private firms.

The basic story set forth in Table 1 is one of tremendous job growth in the private sector (at least until very recently), from 61.8 million jobs in 1973 nearly doubling to 108 million jobs in 2008, with the total number of union members declining by around six million members during the same period:

Table 1. Union Membership, Coverage, Density and Employment Among Private Sector Workers, 1973-2008 (thousands)

Year	Employment	Members	Covered by CBAs	% Members
1973	61,886.5	14,954.1	N.A.	24.2
1980	71,440.7	14,331.6	15,525.7	20.1
1990	86,122.5	10,254.8	11,366.4	11.9
1995	91,680.5	9,432.1	10,359.8	10.3
2000	101,809.9	9,147.7	9,968.5	9.4
2005	105,508.46	8,225	8,961.6	7.8
2008	108,072.6	8,265.2	9,084.4	7.6

Source: Adapted from Barry Hirsch & David Macpherson, Union Membership and Coverage Database from the CPS, available at unonstats.gsu.edu (visited Oct. 6, 2009) (Hirsch & Macpherson).

If we look at the fortunes over the same period of a historically union density-rich sector like manufacturing, which has been substantially affected by globalization, the picture is somewhat different in that manufacturing employment has declined (whereas overall private sector employment has grown substantially). As Table 2 indicates, private manufacturing lost around five million jobs, while unions lost nearly six million members during this period.¹²

Table 2. Union Membership, Coverage, Density and Employment Among Private Sector Manufacturing Workers, 1973-2008 (thousands)

Year	Employment	Members	Covered by CBAs	% Members	%Covered
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of Competitive Product Markets, 69 CHI.-KENT L. REV. 3, 10 (1993); Hirsch, *supra* note 6; Michael Wachter, *Labor Unions: A Corporatist Institution in a Competitive World*, 155 U. PA. L. REV. 581, 582 (2007).

¹¹ For my most recent article along these lines, see Samuel Estreicher, “Think Global, Act Local,” *supra* note 9.

¹² Barry Hirsch suggests that focusing on the overall decline in private sector manufacturing ignores the actual growth in nonunion manufacturing employment (an additional 1.5 million jobs) between 1973 and 2006, despite a 2.5 million decline after 2000). See Barry T. Hirsh, *Sluggish Institutions in a Dynamic World; Can Unions and Industrial Competition Coexist?*, 22 J. Econ. Perp. 153, 156 (Winter 2008). For a positive account of the state of U.S. manufacturing, see Daniel Ikenson, *Thriving in a Global Economy: The Truth About U.S. Manufacturing and Trade* (Cato Institute, No. 35, Aug. 28, 2007).

1973	20,107.6	7,827.7	N.A.	38.9	N.A.
1980	20,850.4	6,726	7,251.9	32.3	34.8
1990	20,338.6	4,197.3	4,514.1	20.6	22.2
1995	19,520	3,439.6	3,657.3	17.6	18.7
2000	19,167.3	2,831.8	2,999.4	14.8	15.6
2005	15,518.4	2,016.9	2,127.3	13.0	13.7
2008	15,131.4	1,723.5	1,862.5	11.4	12.3

Source: Adapted from Hirsch & Macpherson.

Table 3 combines reports to indicate the extent to which manufacturing workers during this period changed from being a central force in the overall trade union movement to account for more than one-fifth of total union membership.

Table 3. Overall Private Sector Union Membership Compared to Union Membership in Private Manufacturing, 1973-2008 (thousands)

Year	Total Employment in Manuf.	Members	Manuf. Employ.	Members	%Total Memb
1973	61,886.5	14,954.1	20,107.6	7,827.7	.523
1980	71,440.7	14,331.6	20,850.4	6,726	.469
1990	86,122.5	10,254.8	20,338.6	4,197.3	.409
1995	91,680.5	9,432.1	19,520	3,439.6	.364
2000	101,809.9	9,147.7	19,167.3	2,831.8	.309
2005	105,508.46	8,225	15,518.4	2,016.9	.245
2008	108,072.6	8,265.2	15,131.4	1,723.5	.208

Source: Adapted from Hirsch & Macpherson.

Table 4 offers a glimpse at the relevant importance of private and public sector membership to the overall trade union movement: from a ratio of one public sector member for every five private sector members in 1973 to near parity in 2008 despite the fact that public employment is only 20% of the overall labor market.

Table 4. Overall Private Sector Union Membership Compared to Public Sector Membership, 1973-2008 (thousands)

Year	Total Private Employ.	Members	Total Public Employ.	Members	Public/Private
1973	61,886.5	14,954.1	13,134.5	3,134.5	.209
1980	71,440.7	14,331.6	16,038.8	5,763.6	.400
1990	86,122.5	10,254.8	17,782.3	6,485	.632
1995	91,680.5	9,432.1	18,357.6	6,927.4	.734
2000	101,809.9	9,147.7	18,975.7	7,110.5	.777
2005	105,508.46	8,225	20,380.9	7,430.4	.903
2008	108,072.6	8,265.2	21,304.6	7,832.3	.947

Source: Adapted from Hirsch & Macpherson.

Unions have taken a number of steps to attempt to reverse their fortunes in the private sector – all of which involve coalitions with nonlabor groups as well as other unions. First, they have fashioned a strategy called the “corporate campaign” as an adjunct to traditional organizing. Unions here identify vulnerabilities in target corporations – whether the need for shareholder approval of executive compensation, anti-takeover devices, or a “going private” decision; the need for government approval to build a new wing of a hospital or enter into a new line of service; the scrutiny of regulators over some organizational mishap; or wage-hour, antitrust or other difficulties warranting systemic litigation.¹³ They then organize a campaign of adverse publicity and religious and community boycotts directed at the target and its executives. The objective is to wrest from the target a “neutrality” and “card-check” agreement that facilitates union organization in some of the target’s facilities. Sometime the union’s leverage comes from pension fund managers and other allies in institutional shareholder community that organized labor has cultivated over the last two decades.¹⁴

Second, the unions have made important strides in forging alliances with critical constituencies within the Democratic party both through their monetary and in-kind contributions to candidates¹⁵ and their support of key causes pressed by those constituencies, including universal healthcare and legalization of undocumented aliens. The objective is to promote a widespread understanding among Democratic politicians and activists that broad-gauged labor law reform to facilitate union organization is essential. We see this, of course, in the current campaign for the “Employee Free Choice Act” and the vocal support of most of the media, activist NGOs like Human Rights Watch and moveon.org and even some Democrats in business circles.

Third, unions have also forged ties with state and local legislators (some of whom may be especially indebted to public employee organizations) and community groups to promote enactment of “living wage” ordinances that like “prevailing wage” laws in government-financed construction arguably help mitigate some of the cost disadvantages of

¹³ For a critical view, see Jarol B. Manheim, *The Death of a Thousand Cuts: Corporate Campaigns and the Attack on the Corporation* (2000).

¹⁴ See Stewart J. Schwab & Randall S. Thomas, *Realigning Corporate Governance: Shareholder Activism and Labor Unions*, in *Employee Representation in an Emerging Workplace: Alternatives/Supplements to Collective Bargaining: Proc. of NYU 50th Ann. Conf. on Labor* 341-429 (Samuel Estreicher ed., 1998).

¹⁵ Eight labor organization figured among the top 20 political action committees (in terms of total expenditures in 2009-10 election cycle); the Service Employees International Union (SEIU) came in third at \$5,404,421, the American Federation of State, County & Municipal Employee (AFSCME) came in fifth at \$54,684,957. See OpenSecrets.org, Center for Responsive Politics, “Top PACs: Election Cycle 2010” (available at <http://www.opensecrets.org>). Eleven labor organizations are listed among the top 30 “All-Time Donors” for 1989-2010; AFSCME came in second with a \$40,965,173 total, 98% of which went to Democratic candidates; the National Education Association, not an affiliate of either labor federation, came in seventh at \$29,908,625, 92% of which went to Democratic candidates. Candidates. See id., “Heavy Hitters: Top All-Time Donors 1989-2010 Summary”. Among top so-called “527” committees, SEIU came in first with \$27,839,177 in expenditures. See id., “527S Committees: Top 50 Federally Focused Organizations: 2008”. The SEIU’s extensive “microtargeting” effort in the 2008 campaign is described in Catalist, *Aggregate Activities of Progressive Organizations in 2008* (Summer 2009) (available at www.catalist.us); Marc Ambinder, *SEIU’s Data Footprint in 2008 – The Atlantic Politics Channel* (http://politics.theatlantic.com/2009/10/seius_data_footprint_in_2008.php).

union representation.¹⁶ Similarly, they have with limited success urged that relaxation of trade barriers be accompanied by enforceable labor standards, as exemplified by the recent decision of the Obama administration to impose sanctions on Chinese tire imports.¹⁷

This is a partial list but sufficient for present purposes to illustrate the kinds of efforts unions and their allies are engaged in to gain a stronger position in the U.S. private sector.

III.

Are these union efforts to retake the commanding heights of the private sector likely to succeed? It is too early, of course, to tell definitively. Conceivably, within a year or two, an Obama administration success on healthcare reform will promote sufficient public support for Democratic objectives to embolden U.S. Senators put in office with the help of labor dollars and efforts to vote for an unadulterated version of EFCA, thus smoothing the path for union organizers. There is reason to believe, however, that even with such an enactment, labor's problems in the private sector will essentially continue, and that labor's turn to the political may produce less fruit than hoped.

The experience of Canadian unions in their private sector suggest that even with passage of EFCA as initially proposed and enactment of other laws on labor's wish list, such as protections against strikebreakers, organizing rights for low-level supervisors, and mandatory bargaining over some permissive subjects, labor's fortunes in private firms are not likely to be reversed any time soon. Strong pro-union laws can slow down deunionization but the Canadian experience provides little basis for hope it will lead to significant increased membership or labor contract coverage.¹⁸

This is because, if I may be allowed to lapse into old materialist ways of thinking, law can only do so much to curb material forces. A law like EFCA does not change the basic underlying economic dynamic. If unionization represents significant net labor costs

¹⁶ See generally Zachary D. Fasman, Living Wage Ordinances and Traditional Labor Law: An Uneasy Conjunction, in Compensation, Work Hours and Benefits: Proc. of N.Y.U. 57th Ann. Conf. on Labor 109-16 (Jeffrey Hirsch ed. 2009); Scott Cummings & Steven A. Boutcher, Mobilizing Local Government Law for Low-Wage Workers, UCLA School of Law Research Paper No. 09-23 (2009) (available www.ssrn.com);

¹⁷ See U.S. Office of the Trade Representative, Exec. Office of the President, Information Regarding Application of Transitional Product Specific Safeguard Measure to Chinese Tires (Sept. 17, 2009) (available <http://www.ustr.gov/node/5068>). "Buy American" provisions in recent economic crisis recovery legislation is discussed in Angelo A. Paparelli & Te J. Chiappari, Employ America Workers Act: Protectionis Turducken, N.Y.L.J., Feb. 23, 2009, p. 3, col. 1; Laura M. Baughtman & Joseph F. Francois, Trade Action – or Inaction: The Cost for American Workers and Companies (U.S. Chamber of Commerce, Sept. 15, 2009).

¹⁸ In 2004, the unionization rate in the Canadian "commercial sector" (which includes public services but includes quasi-governmental Crown corporations and the publicly financed healthcare industry) hovered around 20% -- a 10% drop from 1981. See Rene Morissette, Grant Schellenberg & Anick Johnson, Diverging trends in unionism, Perspectives (Statistics Canada, April 2005), p. 5. In 2007, the unionization rate for private sector workers declined to 17%; for the first half of 2008, it declined to 16.3%. See Perspectives on labour and income: unionization (Statistics Canada, Aug. 2008), p.4 (Table1). The figures for employees covered by collective agreement is a percentage point higher.

(taking into account the quality and productivity of unionized labor) and unions cannot impose the same costs on the competition, legal employer opposition will continue unabated. It may come earlier in the game under EFCA, for employers of any significant size are likely to engage in a continuous anti-union educational campaign among their workforce. Many employees, once informed that unions cannot in fact deliver job security, will hesitate to sign union authorization cards even under a card-check regime. Moreover, even if a unionization drive at a particular facility succeeds, this will be a bit like being hit by lightning because under EFCA as proposed an arbitrator will decide contract terms which, if the experience of the U.S. public sector is instructive, will have little relation to actual economic constraints on the organized firm. Companies are likely to do whatever they lawfully can to escape this fate. There is, moreover, no guarantee against “capital flight,” no guarantee that the company will make needed capital investments in the unionized sector of its business rather than invest in other parts of the country or other countries where labor costs are considerably lower.

Concern about such a dynamic coming about helps explain why labor is urging passage of single-payer universal healthcare along with EFCA. This campaign is also a reflection in part of labor’s diminishing bargaining power in private firms. Labor fears, rightly, that firms will seek to cut healthcare benefits even in the union sector and that union resistance is likely to be costly, if not futile. By establishing a public entitlement to substantial healthcare benefits, this item is removed from the bargaining table and labor can, if it wishes, negotiate some enhancements to the publicly funded package.

The turn to the political thus seems promising but may not deliver on the hoped-for contribution to organizing the private sector. Labor may find that its considerable contribution to enactment of healthcare reform also helps, paradoxically, diminish interest on the part of the unorganized in seeking union representation. Why pay for something you are getting for free? Moreover, the need to find funding sources for greater public access to healthcare may lead Congress to cut back on the exclusion of employer-paid healthcare benefits from the taxable income of recipients, likely in many cases to be union members. Thus, to pay for a healthcare benefit that will be available to all regardless of their union affiliation, labor’s allies in Congress may cut the legs out from underneath union-negotiated healthcare benefits.

Familiar to students of U.S. labor history, such a dynamic was one of the reasons Gompers and the old AFL resisted social legislation and urged labor to negotiate its way -- through its own economic muscle, scope of organization and appreciation of the economic constraints on organized employers -- to a better life for its members.

