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The Negotiation of First Agreements in Ontario: An Empirical Study

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Article abstract

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An Empirical Study

Norman C. Solomon

The purpose of this study is to analyse bargaining units which achieved first agreements and those that did not achieve first agreements in terms of data relating to their OLRB certification experience and in terms of data relating to basic bargaining unit characteristics.

Over the past several years much attention has been directed toward the negotiation of first agreements in Canada. A major concern has been with those situations where the union, although certified by the appropriate labour relations board, has not been able to achieve a first agreement. These situations have led many to question whether labour's legal right to organize and bargain collectively is, in fact, being adequately protected.

The importance of this question to public policy is highlighted by legislative and administrative board concern with first contract negotiations at both the Federal and Provincial levels. Several jurisdictions have recognized the difficulty trade unions have had in securing first collective agreements. Thus the Labour Relations Board of British Columbia has had the authority to impose first collective agreements since 1974; the Canada Labour Relations Board has had such authority since 1978;[1] the Manitoba Labour Board was given this authority in 1982; and Québec legislation has permitted the parties to request binding arbitration of such disputes since 1977. In Ontario, although the Ontario Labour Relations Board (OLRB)

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1 See, S. MUTHUCHIDAMBARAM, «Settlement of First Collective Agreements: An Examination of the Canada Labour Code Amendment», *Industrial Relations/Relations Industrielles* (Laval) Vol. 35 No. 3, 1980, pp. 387-409.

lacks the authority to impose first agreements, in *Radio Shack*[2] the Board made it clear that it would use its extensive remedy powers under the *Labour Relations Act* to deal with illegal employer efforts to avoid negotiation of first agreements.

Policy makers have also encouraged research designed to determine why certain first negotiations result in collective agreements while others do not. Thus George Bain of the University of Warwick was commissioned by Labour Canada to produce the monograph; *Certifications, First Agreements and Decertification: An Analytical Framework.*[3] The present study is based in part, on Bain's framework.

PURPOSE OF THIS STUDY

The purpose of this study is to analyze bargaining units which achieved first agreements and those that did not achieve first agreements in terms of data relating to their OLRB certification experience and in terms of data relating to basic bargaining unit characteristics.

Insight into factors associated with the successful and unsuccessful negotiation of first agreements should aid policy makers in determining what must be done to ensure that the right to representation won in the certification procedure is not lost at the bargaining table.

THE INDEPENDENT VARIABLES

Ten independent variables based on available OLRB data were selected for use as predictors to profile successful and unsuccessful bargaining situations. The variables, listed and discussed below describe the parties' experience in the OLRB certification procedure as well as the basic characteristics of the bargaining unit.

Manufacturing employees

The variable «manufacturing employee» is used as a proxy for union density with manufacturing having a higher density than other sectors. Bain states that union density captures conflicting effects and that it is not possible to specify *a priori* which effect will dominate in practice or whether union density will have a positive or negative impact.[4]

2 *United Steelworkers of America and Radio Shack,* (1980) 1 Can LRBR.

3 George BAIN, *Certifications, First Agreements and Decertifications: An Analytical Framework,* Labour Canada, March, 1981.

4 *Ibidem,* pp. 4-5.

Thus the «saturation effect». This principle holds that it will be more difficult to increase union membership as union density rises, partly because there are fewer workers left to recruit and partly because those still unorganized have less propensity and/or ability to unionize — suggesting that union density will have a negative impact upon union growth.

Alternatively, one may argue that as density increases the «threat effect» will raise non-union wages and employers will have less of an incentive to oppose unionization. Also, the ability of unions to persuade employees to organize and bargain will increase with increased density because of the «demonstration effect» of collectively achieved gains.

Full-time employee

The hypothesis is that full-time workers are more attached to work and work related matters than part-time workers and hence more attached to trade unionism and to the negotiation of a first agreement.

The OLRB tends to place full-time and part-time employees in separate bargaining units and therefore the impact of the variable can be tested here.[5]

Size of the Bargaining Unit

Studies suggest that the size of the bargaining unit has conflicting effects on union growth, because they indicate that unions in small units face a greater likelihood of being both certified and decertified.

Bain states that caution must be exercised in drawing conclusions about the relationship between unit size and union growth and, by inference, between unit size and negotiation of first agreements. This is because:[6]

1) cases coming before the labour board are not a representative sample of all bargaining units in the economy as a whole since they exclude bargaining units in the public sector; and

2) the labour board's case load becomes more and more unrepresentative with the passage of time because it is increasingly composed of small units and those least susceptible to organization.

5 *Ibidem*, p. 8.
6 *Ibidem*, pp. 12-14.

Certification Results in More Than One Bargaining Unit

The hypothesis here is that certifying more than one bargaining unit will weaken employee solidarity and make it more difficult to reach a first agreement.

Hospital Bargaining Units

The hypothesis here is that bargaining units covered by both the *Ontario Labour Relations Act* and by the *Hospital Labour Disputes Arbitration Act* will have a greater likelihood of reaching a first agreement. The latter Act provides for unsettled interest disputes in the hospital sector to be resolved in arbitration.[7]

Union Code

This variable is used to separate out those bargaining units represented by the two unions most heavily involved in the hospital sector, the Canadian Union of Public Employees and the Ontario Nurses Association. It can be argued that these unions can use contracts achieved in arbitration under the *Hospital Labour Disputes Arbitration Act* as persuasive models for negotiations in other sectors.

Statement of Desire Filed; Span; Hours; Days

Studies have shown that the extent of employer opposition has a significant impact on the outcome of union representation elections and by inference the success of first negotiations. Bain states that perhaps the best indicators of these attitudes are generated by various aspects of the process of certification and negotiation itself.[8] The data available here related to the certification process:

Statement of Desire[9]

Evidence for Ontario by Haywood and Forrest[10] and Carter and Woon[11] indicate that:

7 Some might argue that because hospital units are covered by the Arbitration Act the units should be excluded from the sample. As indicated in Table 1 however, not all hospital units achieve a first agreement. Thus there is still some variation in the dependent variable, successful/unsuccessful first negotiations, among the hospital units.

8 BAIN, *op. cit.*, p. 17.

9 «A Statement of Desire» is a petition filed by an employee with the OLRB which may, in some circumstances, be able to prevent his or her membership evidence from being relied upon to issue a certificate without a representation vote.

10 HAYWOOD, L. and A. FORREST, 1979. «Achievement of First Agreements from Ontario Labour Relations Board Certifications.» An unpublished paper. Toronto: Ontario Ministry of Labour.

11 CARTER, D.D. and J.W. WOON, 1980. «Union Recognition in Ontario: Management Conflict During the Establishment of the Collective Bargaining Relationship.» An unpublished paper. Ottawa, Labour Canada.

1. The probability of a union being certified is reduced where a petition is filed and the probability of certification is reduced even more where a petition is examined and accepted by the labour board.
2. A petition accepted by the Board reduces the probability of the union obtaining a first agreement. Haywood and Forrest state that this demonstrates,
   «...perhaps the debilitating effects of a union membership divided over the merits of certification and a management willing and able to capitalize on this weakness»[12].

The data available here were limited to whether or not a petition was filed. The absence of data on board acceptance of the petition and on union signatories may weaken the impact of the variable.

Span (number of days between date hearing opened and date of final disposition: number of calendar days from date of first session to date when final disposition on the case was tabled)

Hours (hearing time: total number of hours that have been spent in hearings for one case)

Days (number of hearing days: total number of days on which people have been convened to a hearing and some of them have gathered, whether the session has lasted a few minutes or the entire day)

The descriptive statistics for our data (see Table 1) indicate that successful negotiations had a higher *hours* figure, on average, than did unsuccessful negotiations. At the same time, however, successful negotiations had a lower *span* and *days* figure, on average, than did unsuccessful negotiations. Thus successful cases were apparently settled at hearings that went on for many hours over a comparatively short number of days. The total time from petition filing to certification was also comparatively short for successful cases.[13]

The hypothesis is that higher *hours* will result in a greater possibility for a first agreement, while simultaneously higher *days* and higher *span* will work in the opposite direction.

Conventional wisdom might lead one to believe that the greater the number of actual hours spent in a hearing the more evidence there is of employer intransigence. Alternatively, one can argue that if the parties are willing to put in long hours at the hearing then they will be able to resolve

12 HAYWOOD and FORREST, *op. cit.*, p. 7.

13 The large standard deviations associated with each of these variables in our data (see Table 1) signal caution in making conclusions. Thus the need for the rigorous test described in the *Methodology* section.

pre-certification difficulties *at* the hearing. Thus negotiation of a first agreement will not be hampered by matters that should have been resolved earlier.

A high Value For *span* and *days* in unsuccessful cases may be indicating that, through a variety of mechanisms, the employer is dragging out the certification procedure to cause the union to lose employee support.

The Dependent Variables

The dichotomous criterion of successful/unsuccessful first negotiation was determined by examining OLRB records to see if a collective agreement had been signed.

METHODOLOGY

The Sample

A simple random sample of 150 OLRB non-construction certifications was selected from certifications issued during the period April 1, 1980 through March 30, 1981. The descriptive statistics for the 130 (86.6%) successful bargains and 20 (13.3%) unsuccessful bargains are provided in Table 1.

TABLE 1

Descriptive Statistics
Mean, (Standard Deviation), [Frequency]

Variable	*Successful Negotiations-N = 130*	*Unsuccessful Negotiations, N = 20*
Manufacturing Employees	[82]	[15]
Full Time Employee	[41]	[10]
Size of the Bargaining Unit	36.6 (48.1)	22.7 (21.2)
Certification Results in More than one Bargaining Unit	[28]	[4]
Statement of Desire Filed	[41]	[8]
Span	23.6, (61.4)	51.2, (104.8)
Hours	33.1, (46.2)	9.2 (24.1)
Days	2.2 (12.0)	6.5 (21.7)
Hospital Bargaining Units	[15]	[2]
Union	[27]	[3]

An examination of the descriptive statistics show differences between the successful and unsuccessful cases on the following variables: manufacturing employees; full-time exployees; size of the bargaining units; statement of desire filed; span; hours; and days.

Thus manufacturing employees were more likely to comprise bargaining units in unsuccessful than in successful cases and full-time employee units were more likely to be found among the unsuccessful cases. Bargaining units in successful cases were likely to be larger, with an average of 37 employees, while bargaining units in unsuccessful cases, had an average of 23 employees. Statements of desire were more likely to be filed in the unsuccessful cases.

The variables span and days were, on average, higher in the unsuccessful cases while the variable hours was higher in the successful cases.

The differences between the successful and unsuccessful cases on the variables, hospital bargaining unit, union and certification results in more than one bargaining unit were minor.

THE ANALYSIS

Step-wise discriminant analysis was used to determine those characteristics which typify bargaining units that negotiated a first agreement and the characteristics of those where one was not negotiated. Since discriminant analysis provides a means of distinguishing statistically between two or more groups, it is a useful technique in developing bargaining unit profiles. To distinguish between bargaining units, the researcher selects a collection of descriptive variables that measure characteristics on which the groups are expected to differ. The mathematical objective of discriminant analysis is to weight and linearly combine these descriptive variables in some fashion so that the bargaining unit groups are differentiated as much as possible.[14] In this study, the bargaining unit groups consisted of those which had first negotiations culminating in a signed agreement and those bargaining units in which a signed agreement was not reached.

Discriminant analysis provides two types of output that are especially valuable in profiling bargaining unit groups. First, it produces a discriminant function, or functions, representing a dimension along which the bargaining unit groups differ. The coefficients of the discriminating variables composing this function, when in standardized form, tell the relative importance of each of the variables.

14 Norman H. NIE, C. Haldai HULL, Jean G. JENKINS, Karin STEINBRENNER and Dale N. BENT, *Statistical Package for the Social Sciences,* 2nd ed. New York: McGraw-Hill Book Company, 1975), p. 435.

The second output results from the use of the discriminant function to classify bargaining units into either of the two groups. Thus, once the discriminant function has been developed, it can be applied to a sample of bargaining units, say, in a new time period, and can predict how many will belong to a particular group.[15]

The utility of discriminant analysis in profiling groups has led to its widespread use and sometimes abuse. An example of the potential problems was presented by R.E. Frank, W.F. Massey and D.G. Morrison.[16] The authors pointed out the existence of two possible sources of bias in discriminant analysis — sample bias and search bias.

The way to avoid these problems is to develop discriminant functions on one part of the data set, referred to as the analysis sample, and apply the obtained functions to the other part, referred to as a hold out sample, to test their validity. This method was used in the development of the profile for bargaining units reported here. The sample of 150 cases was split into two parts — one containing 76 cases, the other 74 cases.[17] A step-wise discriminant analysis using a combination of certification procedures data and bargaining unit data was carried out on the first group. The classification results for the analysis sample are provided in Table 2. The resulting sets of discriminant functions were then applied to the other part for cross-validation.

TABLE 2

Classification Results for Analysis Sample

Actual Group	*No. of Cases*	*Predicted Unsuccessful (0)*	*Predicted Successful (1)*
Group Unsuccessful (0)	10	8 80.0%	2 20.0%
Group Successful (1)	66	6 9.1%	60 90.0%

Percent of Analysis Cases Correctly Classified: 89.47%

15 Joseph F. HAIR, Rolph E. ANDERSON, Ronald L. TATHAM and Bernie GRABLOWSKY, *Multivariate Data Analysis; with Readings,* PPC Books, Tulsa, Oklahoma, 1979.

16 R.E. FRANK, W.F. MASSEY, and D.G. MORRISON, «Bias in Multiple Discriminant Analysis», *Journal of Marketing Research,* 2, August, 1975, pp. 250-258.

17 The sets of descriptive statistics for the analysis and holdout samples were similar to each other and similar to the statistics for the entire sample. Complete listings of the descriptive statistics for the analysis and holdout samples are available from the author.

RESULTS

Table 3 reveals that the cross-validation discriminant functions correctly classified successful and unsuccessful bargaining situations in the holdout sample in 89.2% of the cases. The proportional *chance* criterion for the sample was 76.6%.

TABLE 3

Classification Results for Holdout Sample

Actual Group	*No. of Cases*	*Predicted Unsuccessful (0)*	*Predicted Successful (1)*
Group Unsuccessful (0)	10	8 80.0%	2 20.0%
Group Successful (1)	64	6 9.4%	58 90.6%

Percent of Holdout Cases Correctly Classified: 89.2%

Table 4 lists the canonical discriminant functions. The data indicate that not only are the functions significant at the .00 level but they also explain 32.4% of the variance.

TABLE 4

Canonical Discriminant Functions

Function	*Eigenvalue*	*(Canonical correlation)²*	*After Function*	*Wilkes Lambda*	*Chi-Squared*	*D.F.*	*Signi-ficance*
1	0.47938	.324043	0	0.6759569	28.197	4	0.00

Table 5 lists the standardized canonical coefficients for the discriminant functions and the canonical discriminant functions evaluated at the group means (group centroids).

TABLE 5

Standardized Canonical Discriminant Coefficient and Canonical Discriminant Functions Evaluated at Group Means (Group Centroids)

Standardized Canonical Discriminant Coefficients

Days	1.05607
Hours	-0.74983
Manufacturing Employees (manufacturing/not)	0.72541
Statement of Desire Filed	-0.37088

Canonical Discriminant Functions Evaluated at Group means (Group Centroids)

Group	*Function 1*
0	1.75518
1	-0.26594

Note: The standardized canonical discriminant coefficients represent the relative importance of a particular variable in differentiating between successful and unsuccessful bargaining relationships. Multicollinearity, or interrelatedness among the variables can sometimes cause the coefficients to be unstable and potentially misleading. An examination of the correlation matrix did not show this to be a problem here. The three highest correlations were in fact quite low: hospital bargaining unit and certification results in more than one bargaining unit, .28; days and hours, .27; hospital bargaining unit and days, .26.

The standardized coefficients indicate that the variables which discriminate best are: (1) days; (2) hours; (3) manufacturing employees; and (4) statement of desire filed.

The discriminant coefficient for days is 1.05607 (a negative measure because of the sign of the centroid). Therefore, the likelihood is that the greater the number of hearing days the greater the chance of *not* reaching an agreement. Similarly, because the discriminant coefficient for manufacturing employees is .72541, bargaining units composed of manufacturing employees are less likely to reach agreement.

The discriminant coefficient for hours is -0.74983 (a positive measure because of the sign of the centroid). Therefore the likelihood is that parties that spend a greater number of hours in Board Certification hearings have a greater chance of reaching an agreement in collective negotiations. Similarly, because the discriminant coefficient for Statement of Desire Filed is -0.37088 the likelihood is that where such a petition is filed there is a greater chance of reaching a collective agreement.

DISCUSSION AND IMPLICATIONS

The results on days and hours support the hypothesis stated above. The results on manufacturing employees support the «saturation effect» argument on union density.

The findings that an increased number of hearing days decreases the chance of agreement while an increased number of hours increases the chance of agreement confirms what was stated earlier; that when labour and management iron out problems at the certification hearing they are less likely to have difficulties in the first set of negotiations. Those situations marred by a high number of hearing days may point to employer intransigence that may manifest itself in unfair practices and unfair practice charges by the parties during an initial set of negotiations. The unfair practices, in turn, may prevent the signing of a first agreement.

The manufacturing sector in Ontario has been highly unionized for a number of years. It may be that recently certified units are composed of employees that were difficult to organize. Therefore, recently organized workers may lose their enthusiasm for the union when faced with the rigors of an initial set of negotiations. Alternatively, or concurrently management in such situations may exhibit intransigence in bargaining because they are accustomed to operating union free. Thus unions attempting to organize the unorganized in this sector should be cautioned that a successful certification drive is no guarantee of a signed agreement.

The finding on Statements of Desire, to some extent defies expectations. Union leaders have claimed that Statements of Desire tend to divide the rank and file and have an adverse effect on certification and on the negotiation of first agreements. Haywood and Forrest, in tabulating and analyzing 1977-1978 OLRB data found that:

> In circumstances where a petition attracted no union signatories or where the union was initially in a vote position in any event, the union's ability to negotiate a collective agreement appears to have been unaffected. Alternatively, in units in which petitions were filed with union signatories the success rate in negotiations was dramatically lower.[18]

In the present study data on union signatories for each petition were not available nor was data available on whether the petition was accepted by the Board. Such data may have led to results and conclusions similar to those reached by Haywood and Forrest. On the other hand, it might be that many of the Statements of Desire filed here lacked union signatories and

18 Len HAYWOOD and Anne FORREST, «Achievement of First Agreements from Ontario Labour Relations Board Certifications». Paper prepared for the Twenty-First Annual Meeting of the Statistics and Research Committee of the C.A.A.L.L. May 7-9, 1979, p. 7.

were not accepted by the Board. The latter situation may point to efforts by employers to fend off what they perceived as potentially successful organizing campaigns by encouraging the filing of bogus petitions.

This study has used recorded OLRB certification process and bargaining unit data to examine factors determining the successful and unsuccessful negotiation of first agreements. Future studies should examine the commission of employer unfair labour practices in first negotiations, and perhaps more importantly how the Board deals with these cases. Also, if possible, in-depth interviews should be conducted with labour, management and Board representatives to explore avenues of future research.

La négociation de premières conventions collectives en Ontario

Depuis plusieurs années déjà, on s'intéresse de près au Canada aux négociations des premières conventions collectives. On s'est beaucoup préoccupé de cette situation où des syndicats, bien que dûment accrédités, n'ont pas réussi à conclure une première convention collective. Une pareille situation a incité bien des gens à se demander si le droit reconnu légalement de se syndiquer et de négocier collectivement est véritablement assuré.

L'importance de cette question générale est mise en lumière par l'intérêt que portent les organismes législatifs et administratifs tant au niveau fédéral que provincial à la négociation de la première convention collective. La Colombie britannique, le Québec et le secteur privé de compétence fédérale prévoient, si la chose s'avère nécessaire, l'imposition d'une première convention collective. En Ontario, bien que la Commission des relations du travail de cette province n'ait pas l'autorité d'imposer une première convention collective, dans l'affaire *Radio Shack,* elle affirma clairement qu'elle utiliserait tous les recours possibles prévus par la loi pour contrecarrer les efforts illégaux d'un employeur qui cherchait à éviter la négociation d'une première convention collective.

L'objet du présent article a consisté à analyser les unités de négociation où l'on a réussi à conclure une première convention collective et celles où on n'y est pas parvenu, soit en fonction de faits résultant de l'expérience de la Commission en matière d'accréditation, soit en fonction de faits se rapportant aux caractéristiques fondamentales de l'unité de négociation. La variable dépendante de base est le nombre d'accréditations accordées par la Commission au cours de la période allant du 1er avril 1980 au 30 mars 1981 qui donnèrent lieu à la conclusion d'une première convention collective parmi un échantillon de 150 requêtes hors de l'industrie de la construction. La variable dépendante est dichotomique, par conséquent la méthode de calcul utilisée consiste dans une analyse discriminante.

Les résultats indiquent que les parties qui consacrent en peu de temps le plus d'*heures* d'audition à l'affaire devant la Commission ont plus de chance d'en arriver à la conclusion d'une convention collective. Tandis que celles qui consacrent, en un temps plus long, le plus de *jours* en audition ont moins de chance de conclure une telle convention. Les auditions en matière d'accréditation où les négociations ont été fructueuses étaient caractérisées par de nombreuses heures d'audition comprises dans un délai de peu de jours.

Ces résultats peuvent signifier que les parties désireuses de consacrer de longues heures à l'audition seront capables de résoudre les difficultés qui se sont posées à l'accréditation lors de l'audition. En conséquence, la négociation d'une première convention collective ne sera pas entravée par des questions qui ont été réglées plus tôt. Les cas où on a passé beaucoup de jours mais peu d'heures en audition peuvent refléter les efforts d'un employeur pour faire traîner le processus d'accréditation afin de faire perdre au syndicat l'appui des salariés.

Les résultats indiquent aussi que les unités de négociation formées d'employés d'usine sont moins susceptibles d'en arriver à la conclusion d'une première convention collective à cause de «l'effet de saturation». Ce principe énonce qu'il est plus difficile d'accroître les effectifs lorsque le taux de syndicalisation s'élève, à la fois parce qu'il y a moins de travailleurs à recruter et que ceux qui ne le sont pas sont moins enclins ou ont moins de facilité à s'associer.

Enfin, les résultats indiquent que là où l'on a donné aux salariés l'occasion d'exprimer leurs préférences (statements of desire), les syndicats ont de meilleures chances de conclure une première convention collective. Cette constatation est contraire aux prévisions. Les syndicats n'ont-ils pas soutenu que ce processus a tendance à diviser les travailleurs du rang et qu'il a un effet défavorable sur l'accréditation et sur la négociation d'une première convention collective?

Les études à venir devraient s'efforcer d'examiner le recours aux pratiques déloyales de travail de la part de l'employeur au cours des premières négociations et, peut-être, ce qui est encore plus important, d'analyser la façon dont la Commission des relations du travail dispose de ces affaires. Aussi, autant que possible, des entrevues approfondies devraient-elles avoir lieu avec des représentants des travailleurs, des employeurs et de la Commission en vue d'explorer les avenues de recherches futures.