



# How to Promote Sectoral Bargaining in the United States

By David Madland July 2019



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# Introduction and summary

The United States is facing more than four decades of stagnant wages, near-record levels of economic inequality, and large economic divides across gender and especially race and ethnicity. To address these fundamental economic challenges, many more workers need to be able to collectively bargain. Substantially strengthening unions and workers' rights and thereby increasing the amount of collective bargaining is essential. But America can do more than merely support the worksite-level bargaining that the current U.S. labor relations system emphasizes. Policymakers should also support sectoral bargaining in conjunction with worksite-level bargaining.

Worksite-level bargaining—known as enterprise bargaining—raises wages and benefits; reduces economic inequality; and helps equalize pay for women, African Americans, and Hispanics.<sup>1</sup> But broader-based or sectoral bargaining—which aims to cover all workers in a particular labor market—can do even more, especially in certain sectors and industries, as a number of Center for American Progress Action Fund reports have highlighted.<sup>2</sup>

Achieving multiemployer collective bargaining that occurs at the sectoral or regional level in the United States will require a number of reforms. Increasing overall union density is critical to both supporting sectoral bargaining and boosting worksite-level bargaining; unions need a critical mass of organized workers to successfully bargain and, therefore, policies that strengthen unions are absolutely essential. But more direct support for broader-based bargaining is also required because union density has fallen to near historic lows; the modern economy has shifted in ways that give firms even more ability to avoid bargaining; employers increasingly have monopsony power to set the terms and conditions of employment; and the current system discourages sectoral bargaining. No single policy change is enough, but a range of policies working together can achieve the goal of promoting broader-based bargaining.

This report highlights the three pillars necessary to promote widespread sectoral bargaining in the United States:

1. Policymakers need to strengthen unions and give them more tools so that they have the power to bring multiple employers to the bargaining table. This will require policies that enhance workers' rights as well as enable unions to have a greater say in determining how bargaining is structured. It will also require providing strong incentives for union membership, such as those provided in other countries under the Ghent system.
2. Policymakers should support the use of contract extension, which would spread the gains from union contracts to similarly placed workers such as through the expanded use of prevailing wage laws and the creation of a new policy to promote master contracts. Extension laws can help amplify union strength and ensure that all employers in a particular sector provide workers with similar wages and benefits in areas where unions have been able to maintain, or could reasonably be expected to achieve, a decent level of bargaining coverage.
3. Wage boards—governmental bodies that bring together representatives of workers, employers, and the public—need to be used more extensively to set minimum standards for jobs in particular regions and industries. In sectors where union density is too low and the sector too fragmented for independent collective bargaining to cover many workers, wage boards would ensure higher wage and benefit standards. They could also foster more traditional bargaining through features that build power for workers, as well as by forging a negotiating relationship between employers and worker organizations.

Broader-based bargaining would build upon and complement the existing U.S. worksite-based bargaining system. Indeed, the United States has a long history of multiemployer bargaining working alongside and in conjunction with worksite-by-worksite bargaining. Under the new system, worksite-level bargaining would continue to be available, but workers would also gain new ways to engage in broader-based bargaining. As a result, unions could increase wages and benefits for even more workers and do even more to reduce economic inequality and gender and racial pay gaps. Implementing the pillars of sectoral bargaining would go a long way toward addressing the fundamental economic challenges facing the United States.



# The importance of broader-based bargaining

The current U.S. labor system is designed to fragment bargaining into small units, typically of workers at individual worksites.<sup>3</sup> U.S. labor law allows for broader-based bargaining, such as with multiple employers, but makes this type of bargaining difficult to achieve.<sup>4</sup> When American unions have sufficient power to bring multiple employers to the table, they can overcome various barriers in the law and engage in broader-based bargaining. In the past, the steel, auto, trucking, construction, and mining industries all had a significant amount of broader-based bargaining.<sup>5</sup> In 1980, for example, roughly 10 percent of all workers were covered by multiemployer agreements.<sup>6</sup> This type of bargaining still exists in some industries, such as with hotel workers in a given city or writers within the television business.<sup>7</sup>

Today, unions represent only about 11 percent of all workers—including just 6 percent of private sector workers—in large part because current policies make joining a union very difficult and give employers greater power to fight unions.<sup>8</sup> As a result, unions do not currently have enough power to engage in multiemployer bargaining on a large scale or much worksite-level bargaining. Overall union weakness—combined with a legal regime that is designed to fragment bargaining, as well as the effects of technology and globalization that increasingly enable companies to structure work in ways that make bargaining more difficult means that the United States does not see enough sectoral bargaining.<sup>9</sup>

Broader-based bargaining can take different forms and go by different names, including multiemployer, sectoral, industrywide, supply chain, regional, and national bargaining. While there are differences among these types of bargaining, all of these approaches seek to cover all workers in a particular labor market so that similar work receives similar pay and wages can be taken out of competition. The structure of the labor market and various other factors may influence the exact form that broader-based bargaining takes, but the goal of each form is quite similar.

In most types of broader-based bargaining, workplace-level bargaining continues but as part of a larger whole. Both types of bargaining have strengths. Sectoral bargaining is

good at setting broad compensation floors that cover most workers, while enterprise-level bargaining has the benefit of providing greater flexibility to address workplace-specific issues. Furthermore, strong worker organizations are often based on workplace activities such as collective bargaining. So, while the United States has very little sectoral bargaining and needs more of it, it also needs more workplace-level bargaining. Therefore, the goal of promoting sectoral bargaining is not to end worksite-level bargaining, but rather to complement it and integrate it into a larger whole.

Broader-based bargaining has a number of advantages over purely workplace-level bargaining. Most importantly, it leads to many more workers being covered by collective bargaining agreements. As a report by the Organization for Economic Cooperation and Development explains, “Overall, collective bargaining coverage is high and stable only in countries where multi-employer agreements (i.e. at sector or national level) are negotiated.”<sup>10</sup> Under sectoral bargaining, a far greater percentage of workers receive the higher wages and benefits that unions deliver. While fixing problems with the current workplace bargaining system would help to increase coverage rates, promoting sectoral bargaining would lead to dramatically higher coverage than in a purely enterprise-based system.

As firms increasingly contract out work and organize their business in ways that make worksite-level bargaining less effective, sectoral bargaining is particularly well suited to increase coverage because it is able to cover workers who do not have typical worksites or typical employers. Worksite bargaining can improve conditions for contracted workers, especially through fixes such as improved joint employer standards. Research shows, however, that broader-based bargaining leads to much greater coverage for people employed by small firms and those who work part time or have other kinds of nonstandard employment.<sup>11</sup>

In large part because it leads to greater coverage, sectoral bargaining also reduces economic inequality to a greater degree than does enterprise bargaining. Worksite bargaining is certainly good at reducing economic inequality. Indeed, one study found that about one-third of the rise in inequality among men since 1973 was due to the decline of union membership in the United States.<sup>12</sup> However, sectoral bargaining can achieve demonstrably more. A review of more than one hundred different studies concluded that “[t]he most robust result is that countries with a high level of bargaining coordination tend to have a more compressed wage distribution.”<sup>13</sup>

Sectoral bargaining is also particularly effective at closing pay gaps.<sup>14</sup> Again, workplace bargaining is quite helpful at addressing these issues, but sectoral bargaining is even more powerful.<sup>15</sup> Pay differences between men and women and between white workers and workers of other races and ethnicities tend to be smaller in large part because sectoral bargaining leads to greater coverage, which means pay for more workers is based on objective criteria so that there is less room for discrimination and more opportunity to address drivers of pay gaps. In addition, because sectoral bargaining also leads to lower economic inequality in society, this further reduces pay gaps.

Broader-based bargaining can also do more to boost economic productivity than enterprise-level bargaining. While workplace bargaining also increases productivity,<sup>16</sup> sectoral bargaining tends to do more because it fosters similar pay for similar work, which prevents high-road firms that provide good wages and benefits from being undercut by low-road companies and encourages firms to compete based on productivity rather than low compensation.<sup>17</sup> Sectoral bargaining also creates more opportunities for workforce training, because firms worry less that other employers will poach the workers they have trained.<sup>18</sup>



# Achieving broader-based bargaining

Due to various legal obstacles that discourage multiemployer bargaining, the overall weakness of organized labor, and the effects of modern firms increasingly using independent contractors, no single labor reform is sufficient to promote broader-based bargaining in the United States.<sup>19</sup> The necessary reforms proposed in this report fall into three broad categories: strengthening unions' bargaining position, promoting contract extension, and implementing wage boards. Strengthening unions so that they can engage in independent bargaining is absolutely critical, but it is not enough. Extending union contracts and implementing wage boards are also required. Additionally, contract extension and wage board policies can and should be structured to further strengthen unions so that the process of sectoral bargaining helps support the organizations doing the bargaining.

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## Strengthen unions' bargaining position

In order for any type of collective bargaining to be successful, unions need enough strength to compel employers to bargain with them. Broader-based bargaining, as with any type of bargaining, requires adequate worker power to function properly—and sectoral bargaining usually requires even greater union strength and additional tools because unions need to bring multiple employers to the table. Unfortunately, unions currently represent just 6 percent of private sector workers—a share smaller than before the National Labor Relations Act was passed in 1935—in large part because congressional Republicans and corporate special interests have tilted laws against workers.<sup>20</sup>

Strengthening unions' bargaining position will require a number of reforms to fix flaws in the current laws. Necessary reforms include ensuring that all workers—including domestic, agricultural, and public sector workers, as well as independent contractors—have bargaining rights; increasing penalties on companies and employers that break the law; requiring employers to recognize unions where a majority of workers have signed cards; banning so called “right-to-work” laws that undermine

union finances; ensuring workers have a private right of action to access the courts for violations of their rights; facilitating prehire agreements; and outlawing coercive tactics such as mandatory one-on-one meetings. Workers will also need additional tools to encourage multiple employers to bargain, such as the right to combine bargaining units; the ability to negotiate with companies that set working conditions, even if they are not a direct employer; first-contract arbitration to prevent employer opposition from dragging on endlessly; and significantly improved strike and picketing rights, including against secondary employers. Many of these reforms have been included in recently introduced federal legislation, such as the Protecting the Right to Organize Act, the Workplace Democracy Act, and the Public Service Freedom to Negotiate Act; their passage would provide a critical boost to unions.<sup>21</sup>

However, achieving truly strong unions will also require policies that actively encourage union membership. For example, union membership is notably high and stable in countries that have the Ghent system,<sup>22</sup> in which unions are responsible for delivering unemployment insurance. This system in turn gives unions greater access to workers, enables them to deliver important assistance, and provides a selective incentive for workers to join unions. In the United States, Ghent-like incentives could be provided in a number of ways, including through reforms that promote labor-management workforce training partnerships, allow unions to help workers navigate public benefits, and encourage unions to help enforce workplace laws.<sup>23</sup>

Policies to strengthen unions and actively encourage membership are particularly important to address the free-rider problem that occurs when workers can enjoy the benefits of a union contract without paying for the costs of negotiating the contract.<sup>24</sup> This occurs both in right-to-work states and in the public sector, following the U.S. Supreme Court's 2018 *Janus v. AFSCME* decision that banned agency fees.<sup>25</sup> Sectoral bargaining generally leads to higher levels of union density than worksite-level bargaining—likely because it reduces employer opposition by ensuring that labor costs remain similar between union and nonunion worksites<sup>26</sup>—but it can also engender the free-rider problem. In recent decades, a number of countries that have sectoral bargaining but do not have Ghent-like policies, such as Germany and the Netherlands, have suffered from declining union density.<sup>27</sup> In order to function properly, broader-based bargaining in the United States must be supplemented with policies that encourage union membership.

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## Extend union contracts

Strengthening unions so that they can independently bring enough employers to the table to negotiate for an entire industry is the goal, yet in many sectors of the economy, additional steps are required. Some sectors, such as those comprising primarily of small employers, are set up in ways that make bargaining for the entire sector difficult. And in the modern economy, companies are increasingly able to take steps that make it more difficult for workers to collectively bargain, such as moving factories and contracting out work. Furthermore, even in 1980, when private sector union density was roughly three times higher than it is today, only about 20 percent of private sector workers were covered by any type of collective bargaining agreement, whether worksite specific or multiemployer.<sup>28</sup> While a significant share of bargaining in 1980 was multiemployer, relatively few of these agreements were truly able to cover the entire sector and take wages out of competition.<sup>29</sup> As a result, greater union density would increase multiemployer bargaining, but would probably not be sufficient on its own to lead to widespread sectoral bargaining.

Most countries in which sectoral bargaining covers a significant percentage of workers have what are known as extension laws, which spread the gains of union contracts to similarly placed workers.<sup>30</sup> Extension laws vary across countries, but the basic concept is that once a union contract is considered to represent a sufficient number of workers in an industry or region, its wage and benefit standards are extended through official governmental action to cover all workers in that industry and region, regardless of whether or not the workers are part of the union. This not only helps to spread the gains of union contracts, but also encourages employers to collectively bargain so that they can have input on these industrywide or regional standards. In the United States, the most promising versions of this concept are based on prevailing wage laws that are already used for government contracts and the Baigent-Ready model being considered in Canada that seeks to extend master contracts.

### Prevailing wage laws

In the United States, prevailing wage laws such as the Davis-Bacon Act of 1931 require companies working on government-funded projects to pay wages and benefits that, at minimum, match existing compensation levels in the industry and region. This ensures that government spending does not drive down market wages and leads to high-quality work and good value for taxpayers.<sup>31</sup> It also helps to standardize wages across an industry. Prevailing wage laws are most commonly applied to government-funded construction projects, but they can also apply to service work, as well as to grants, loans, and tax breaks. The federal government, as well as

numerous state and local governments, have prevailing wage laws. The way these are calculated in some localities is particularly supportive of collective bargaining. For example, Jersey City, New Jersey, uses collectively bargained wages from the union contract that covers the most workers in a given classification for prevailing wages for building service workers, provided that the contract covers at least 200 workers.<sup>32</sup>

A step toward promoting sectoral bargaining would be to ensure that all government spending—no matter how it is structured—has prevailing wage standards attached to it and that the prevailing wage is calculated in a way that is supportive of unions. As a second step, the prevailing wage model could be used in the private sector outside of areas with significant government spending. Under this policy, once union contract coverage meets the representation threshold set by prevailing wage laws, employers in the same industry and region must meet the union standards.

Prevailing wage-style extension would be particularly useful in industries and regions where unions already have relatively high levels of density. In those areas, the contracts that unions have negotiated would set the standards that other employers would need to follow. Unions would gain some stability knowing that their bargaining would not be constantly under threat from low-road employers. Unions that were close to the coverage threshold necessary to trigger the contract extension would have a strong incentive to organize additional workplaces. Furthermore, employers in these sectors would have an incentive to bargain, as they would want to have some input on the standards.

Still, many industries and regions are far from having the density levels necessary for prevailing wage-style extension to work and would need different types of extension tools. In lower-density sectors and regions, a kind of master-contract extension being considered in Canada would be necessary to promote broader-based bargaining.

### Baigent-Ready model

Canadian unions and policymakers have increasingly recognized the importance of promoting sectoral bargaining and have been considering a range of alternatives to achieve this goal. The Canadian labor system is quite similar to the U.S. system, and one of the most notable sectoral bargaining proposals there is the Baigent-Ready model, named after two commissioners on a labor reform panel.<sup>33</sup>

Under the Baigent-Ready model, once a union contract covers two different workplaces in a particular industry and region, each additional workplace that organizes is automatically covered by the union contract. This means that if a union bargains

a contract with company X at one worksite and bargains a similar contract with company Y at another worksite in the same industry and region, then each additional worksite where a majority of workers agree to join the union in that industry and region is covered by the same contract.

The policy works a bit like a master contract on steroids. American unions have a long history of creating master contracts, where they create a single contract that they negotiate with multiple employers to sign.<sup>34</sup> However, as unions have become weaker, they have had a harder time getting employers to agree to sign these agreements. Under a Baigent-Ready policy, unions would not have to compel each new employer to sign the master contract—they would only need to organize workers at the worksite to automatically achieve contract coverage, thus making master contracts much easier to extend to other worksites.

This master-contract extension can help get multiemployer bargaining started, particularly in industries with relatively low union density and a number of small employers or firms. In the early stages, when relatively few employers are covered by the master contract, this coverage would not constitute true sectoral bargaining. However, it would create an on-ramp to covering all workers in a sector in a manner that is quite compatible with the current process of worksite-level organizing. Unions would still need to organize worksite by worksite, but the process will be much easier: Workers will be more optimistic and less fearful because once organized, they would immediately be covered by a union contract and employers would not be able to deploy the common tactic of fighting to avoid signing.<sup>35</sup> Thus, the Baigent-Ready model would be a helpful tool to promote multiemployer bargaining in industries where a little push is necessary to get the process moving, as well as helping to strengthen unions.

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## Wage boards and workers' boards

There will still be regions and sectors in which traditional or even Baigent-Ready-style collective bargaining would not be able to gain a strong foothold. Examples include heavily fragmented industries such as domestic work, where worksites are in people's homes, and in the gig economy, where worker turnover is extremely high. As part of a broader strategy to promote collective bargaining, policymakers also need to ensure that all workers—including domestic workers and gig workers—are properly classified through a rigorous test for employment.

Wage boards—which bring together representatives of employers, workers, and the public to set minimum standards—are particularly helpful in these types of cases. In sectors where there is little or no traditional collective bargaining, these tripartite boards can significantly raise standards, as well as help create the conditions that lead to more independent bargaining. Several states, including New York and California, have relatively limited versions of wage boards, but Seattle has a more robust version for domestic workers, and Washington state is considering a particularly strong version for independent contractors.<sup>36</sup> The more robust versions of wage boards are often called workers’ boards.

Workers’ boards would have the ability to set minimum wages and benefits, or floors, for jobs across an industry, as well as institute wage scales requiring higher pay for greater skills or experience. Individual workers and their unions could negotiate for improvements but could not go below set minimums. All workers in an industry would be covered, regardless of whether they are employees or independent contractors and whether or not they are unionized. The workers’ board process would provide strong legal protections for participating workers, as well as incentives to encourage workers to join unions and other worker organizations that represent them on the boards. These incentives would include involving unions in the enforcement of the wage-board standards and enabling worker organizations to help deliver benefits or navigate workers through the process. These essential wage-board elements would help build union strength and potentially lead to more direct bargaining, especially because workers and employers would create a history of negotiating.<sup>37</sup>



# Conclusion

Sectoral bargaining would raise wages and benefits for most American workers, significantly reduce economic inequality, and help close pay gaps between women and men and between workers of color and white workers. Increasing sectoral bargaining requires three coordinated categories of reforms—those that strengthen unions, those that extend the benefits of union contracts, and those that create a bargaining table when none exists. These policies can work together to provide workers with the strength necessary to collectively bargain, tools to promote broader-based bargaining, and mechanisms to foster union strength and set industrywide standards when conditions are particularly hostile to organized labor.

Many of the policies to promote sectoral bargaining require federal action, but there are steps that state and local governments can take, such as increasing the use of prevailing wage laws on government spending and creating wage boards.<sup>38</sup> Increasing broader-based bargaining will not be easy, but there is a clear path forward.

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## About the author

**David Madland** is a senior fellow and the senior adviser to the American Worker Project at the Center for American Progress Action Fund.

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