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### **Labor and Corporate Governance: Initial Lessons From Shareholder Activism**

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# **Labor and Corporate Governance:**

*Initial Lessons From Shareholder Activism*

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## Abstract

The recent crisis in the financial markets has revealed serious, systematic flaws in corporate governance and has cost union pension funds billions of dollars. However, the labor movement has begun to take charge of governance reform by mobilizing their pension assets, organizing other investors and launching company-specific shareholder campaigns. Through a detailed comparative case study and a larger empirical study of labor's 2002 shareholder campaigns, this paper examines and outlines the factors that influence the success of these efforts.

## Introduction

In recent years, many labor scholars have highlighted trends regarding shrinking union membership and density in important sectors of American life.<sup>1</sup> Although unions do not hold a powerful membership presence in the private sector, they have begun to exercise influence over corporate governance practices in new ways. For example, within the last two years, the labor movement has been able to articulate and implement corporate governance reforms at corporations such as Apple Computers, Bank of America, and Goldman Sachs.

In these early stages, unions have primarily relied on shareholder relations to reform governance policy, and have experienced both successes and failures in their efforts. Yet to date, there has not been a systematic comparison of these experiences to examine what factors account for the success of shareholder resolutions. This paper seeks to understand the conditions that allow labor unions to successfully bring about corporate governance reforms. The first portion of this paper compares the labor movement's successful shareholder campaign against Stanley Works Inc. with that of the failed Nabors Industries case. The second portion presents an analysis of a large sample of union-led shareholder resolutions that were submitted to corporate boards during the 2002 proxy season.

An important question that is posed throughout this paper is: why are some corporate shareholder campaigns more successful than others? I argue that what differentiates unions' successful shareholder campaigns from the unsuccessful ones is their ability to form partnerships with key parties outside of the labor movement. Other factors that are important, albeit to a lesser degree, are the type of corporate governance issue and labor's history of constructive dialogue with the corporation.

## Labor, Corporate Governance and Social Embeddedness: A Tale of Two Companies

### *Background*

For years, American labor unions have pushed corporations to adhere to sound principles of governance in order to safeguard worker pension assets and to promote ethical, international labor standards. The concerns of unions focused on going beyond the short-term goal of maximizing members' pension asset returns, and creating long-term shareholder value. Shareholder value, in turn, has centered on managerial transparency and accountability of corporations, and on the adoption of corporate labor standards in developing countries. As large institutional investors in the capital markets, the American Federation of Labor (AFL-CIO) and its affiliate unions have mobilized their pension capital to pressure publicly traded corporations to reform corporate governance policies. However, unions have not accomplished reform alone. Rather, the AFL-CIO has formed coalitions with other institutional investors in its quest for governance reform. I argue that the quality of the partnerships and networks that unions were able to “embed” themselves in with key investors and public persons, serve as an explanatory variable for the outcomes of shareholder campaigns.

This paper extends the social embeddedness argument to a key issue that was the focal point of the AFL-CIO's corporate governance campaign during 2002. The issue was the question of corporate reinversion, or reincorporation to foreign tax havens. In order to determine whether broad-based coalition building was the key link in the AFL-CIO's successes, it is necessary to compare “success” cases with “failure” cases and to examine the conditions, key players and institutions that were dominant in each case. I will compare the AFL-CIO's unsuccessful campaign against Nabors Industries with the more successful campaign against Stanley Works, Inc.

## ***Literature Review***

Traditional labor relations research has focused on union efforts to influence corporate policy through collective bargaining or constructive engagement with company management. More recently, however, there is growing recognition that labor is embedded in a broader set of relationships with other groups in civil society. Thus, there is a considerable amount of academic literature regarding the topic of social embeddedness. Primarily, this literature supports the claim that labor unions do not act alone in their efforts to promote social and economic change. Rather, unions' actions are prominently influenced by the salient pattern of concrete social, political, economic and institutional relationships in which actors are embedded.<sup>2</sup> Unions seek to form broad-based coalitions with other interest groups and influential bodies and use these coalitions to collectively mobilize and demand concessions. In addition, the pattern of social embeddedness allows unions to develop the process of identity formation in such a way as to shape the strategic action of others to conform with their own interests.<sup>3</sup> Viewed in this light, the networks that unions form with other interest groups and actors in society also enhance the prospects for union revitalization, as unions receive increased media attention for their activism because their actions converge with the actions of other prominent actors in society. Moreover, by widely embedding themselves, unions are able to make appeals to the larger classes in society and are thus more likely to revitalize themselves. Building on this work, I hypothesize that unions that develop key links with a wider set of actors in the community will be more successful in influencing company-specific governance campaigns and related shareholder activities.

## ***Research Methodology for Case Studies***

In what follows, I will examine a matched-pair comparison between two cases involving the question of corporate reinversion that were of central interest to the American Federation of Labor (AFL-CIO) during the summer of 2002. These two cases were the focal points of the Federation's "No More Business As Usual" campaign, which focused on corporate governance reform in the US. Moreover, this paper is meant to study the extent to which the "successes" of union campaigns can be attributed to links with key

investors and institutions and larger broad-based coalition building during the recent crisis in governance policy. Most of the information regarding the actors involved in the corporate reinversion debate is taken from media reports, including newspaper and magazine articles that were published during the summer and early fall of 2002. Additional information is taken from primary sources, such as letters or the texts of regulatory measures taken by prominent actors.

In order to better classify the information, I will define an effective coalition between union and non-union actors, as one in which unions reached out, forged and actively maintained networks with crucial, prominent non-union actors prior to a campaign. In other terms, I can consider the union to be “embedded” under these circumstances. I argue that an embedded union will be successful, for both the unions and non-union actors will assume active roles to stop reincorporation and will have effective resources and means to influence the reinversion debate. Evidence of active roles includes direct communication to address grievances to the management of the corporation, the filing of lawsuits, or the use of militancy. Conversely, a “narrow” coalition is one in which union actors were not priorly embedded with the non-union actors, or lacked key links with influential parties. In this case, unions made no apparent effort to reach out and form networks with non-union actors prior to a given shareholder campaign. The result, I argue, will be unsuccessful because non-union actors will only passively support labor's objectives, or will fail to support labor's objectives at all.

### ***Changing Times: The AFL-CIO and the Charge for Corporate Governance Reform***

Since the 1980's, unions, who now collectively invest \$5 trillion dollars in American corporations<sup>4</sup>, have held a tremendous stake in the capital markets. The AFL-CIO, the umbrella federation of 66 unions, representing 13 million workers, in particular, has long voiced concern regarding the quality and safety of investments of constituent union members who represent a large percentage of shareholders in American corporations. As

organized labor's pool of capital in the financial markets expanded, the AFL-CIO created new institutions and social structures to leverage this source of power.

Thus, in 1997, the AFL-CIO started the Center for Working Capital (CWC). The CWC is a non-profit organization with the stated objective of fostering education for pension fund trustees. But, by creating the CWC, the AFL-CIO was able to forge new partnerships between labor unions and public pension funds, which were also large stakeholders in the equity markets.

The CWC formed crucial networks between unions, public fund trustees and state officials by developing and organizing regional pension trustee education forums. The CWC was able to articulate unions' national voting guidelines to trustees through its education forums, and in doing so, built networks among trustees and increased information sharing. With trustees agreeing to certain proxy voting standards and reaching consensus about the importance of active pension fund ownership, unions were able to coordinate large-scale shareholder campaigns. Moreover, unions were also able to count on assistance from trustees of public pension funds. The CWC specifically included prominent public pension funds such as CalPERS and NYCERS in the decision-making and education process. Furthermore, the CWC also created a "Board of Directors," composed of educators, union leaders and state officials. One prominent director was the Connecticut State Treasurer, Denise Nappier. By reaching out to Nappier and including her as a "director," of the CWC, the AFL-CIO was able to create a key link with state officials in Connecticut, which later resulted in dependable financial and political leverage and a victory for the AFL-CIO's Stanley Works campaign.

In addition, the AFL-CIO further solidified its ties to state officials who controlled large public pension funds by creating initiatives to improve the accessibility of services such as public housing in inner cities, and by pledging to rebuild public schools. As a result of these initiatives, the AFL-CIO and its affiliate unions were able to successfully embed themselves in a broad network of state officials and public pension trustees. This later

allowed organized labor to depend on active assistance during its corporate governance campaigns.

### ***The Strategies of Labor***

Unions have engaged in a variety of initiatives to reform corporate governance policy. Labor has targeted specific governance problems and has partnered with lawmakers to act on these issues; it has launched company-specific investor campaigns and has also lead media campaigns to publicly “shame” known abusers of governance policy. The most visible strategy that union pension funds have utilized however, and the strategy that will be examined in this paper is the shareholder, or proxy vote. As owners of equity in publicly traded corporations, shareholders are entitled to vote regarding key corporate issues, such as the election of board members and executive compensation policies. In addition, shareholders who hold \$1000 or more in corporate equity, are entitled to submit non-binding shareholder resolutions or proposals to proxy vote. The extent to which union-led shareholder voting campaigns were successful in winning corporate concessions depended on the quality and quantity of shareholder support that unions were able to garner.

### ***Offshore Reincorporations: Trouble in Paradise?***

During the last two years, a considerable number of high-profile American corporations have elected to move to off shore tax havens such as Bermuda, Luxembourg and the Cayman Islands. Companies as Accenture, Tyco International, Ingersoll-Rand, Nabors Industries and Stanley Works have opted to move their mailboxes to Bermuda as a tax-avoidance strategy that allows corporations to “transfer profits earned in the US to a paper company located in a tax haven that has a special tax treaty with the US.”<sup>5</sup>

Although the tax-avoidance strategy may seem beneficial in terms of the financial performance of the corporation, unions have vehemently objected to this practice. The rationale for labor's opposition to such reincorporations is the contention that offshore moves jeopardize shareholder rights and corporate accountability. Legal counsel for the

AFL-CIO have stated that corporate moves to Bermuda would “limit their ability to seek appropriate legal remedies on behalf of worker beneficiaries,”<sup>6</sup> because the corporations would essentially be protected under Bermuda law. In addition, shareholders would also lose the right to raise derivative “class-action” suits on behalf of all shareholders against the management of corporations. Evidence of diminished rights for shareholders in Tyco Corporation and Accenture also provided impetus for the AFL-CIO to organize against corporate reinversions. In the case of Accenture, management clearly stated that shareholders of Bermuda companies “do not generally have rights to take action against directors or officers of the company, and may only do so in limited circumstances.”<sup>7</sup> Furthermore, the indictment of Tyco executive, Dennis Kozlowski, for sales tax evasion and the possible misuse of company funds, made it difficult for shareholders to pursue suits against the Tyco Board and against Kozlowski.

Thus, the AFL-CIO carried out proxy campaigns against two high-profile corporations that decided to put the question of reincorporation to shareholder vote in May and June of 2002.

### ***Nabors and Stanley: The Comparison***

Nabors Industries and Stanley Works, Inc. provide a telling example of the different outcomes that result from unions acting in narrow networks and unions acting in broad social networks. These two corporations are an ideal test for the hypothesis of social embeddedness, as they are very similar in numerous respects. First, both Nabors and Stanley management opted to move their respective headquarters to Bermuda, thus agreeing to adopt the same legal code, with the same consequences for shareholders. Second, both corporations were of comparable size and stature within their respective sectors. Nabors Industries (AMEX:NBR), incorporated in Delaware, is one of the world's largest land drilling contractors, with annual revenue of approximately \$2.1 billion and 141 million shares outstanding. Stanley Works, Inc. (NYSE:SWK) is a leading tool maker, based in Connecticut, with annual revenue of approximately \$2.6 billion and 84.7 million shares outstanding.<sup>8</sup> The management of both corporations also decided to reincorporate to Bermuda during the months of 2002. In addition, both

Stanley and Nabors scheduled their annual meetings in May and June, respectively. Moreover, Institutional Shareholder Services (ISS), the largest independent proxy advisory service to large voting clients, favored both corporations' decisions to move offshore. Both corporations also had a relatively small percentage of unionized employees at the time of the 2002 Annual General Meeting (AGM).

### ***Nabors' Decision to Reincorporate***

Nabors Industries decided to put the issue of reincorporation to shareholder vote on January 2, 2002, citing significant tax savings as the impetus for the move. Under its reinversion plan to Bermuda, Nabors was to keep its headquarters in Delaware and was to continue to pay income taxes on profits generated in the US. However, the Company would no longer pay taxes on profits earned in foreign countries, which would have been substantial, as “142 of the company's 596 land drilling rigs and 16 of its 60 offshore rigs operated outside of the US.”<sup>9</sup> Although it failed to quantify the tax savings in its proxy statement to shareholders, Nabors management argued that the reincorporation would give the company financial, tax and strategic advantages, including greater cash flow, profitability and enhanced competitiveness. On May 31, 2002, ISS endorsed Nabors' decision to reincorporate to Bermuda, by citing that “there (were) sufficient protections embodied in Bermuda law to preserve director and officer accountability and provide mechanisms for redress (to shareholders).”<sup>9</sup>

### ***Labor's Response to Nabors***

In June 2002, weeks before Nabors' AGM, the AFL-CIO, the union-owned Amalgamated Bank, the Central Laborers' Pension Fund and the Laborers' International Union of North America formed a coalition to oppose the reinversion to Bermuda. The rationale for opposing the move was simple: the reincorporation to Bermuda would adversely affect shareholder rights and because a cost-benefit analysis would be difficult.<sup>6</sup> All four groups urged other institutional investors and Nabors shareholders to oppose the move, and joined with traditional allies throughout the nation, including public and pension fund trustees and prominent state officials. Nabors' opponents ranged from the Comptroller of

the State of New York, who controlled approximately 558,000 shares of Nabors stock, to the California Public Employees' Retirement System (CalPERS), to one of the more active opponents, Denise L. Nappier, the Treasurer of the State of Connecticut and principal fiduciary of the Connecticut Retirement Plans and Trust Funds.<sup>10</sup>

Although Labor's broad-based coalition pledged to vote against the reincorporation, the AFL-CIO and its affiliate unions lacked direct, key links to Nabors Industries. As a result, the nature of the AFL-CIO's embeddedness was limited and the labor movement was unable to take any further or more drastic measures to stop the reincorporation.

Fearing that Nabors would win the majority vote for the Bermuda move, the AFL-CIO joined a shareholder in filing a temporary restraining order to postpone the Nabors move during early June. The lawsuit cited misleading and insufficient information about the reinversion's benefits.<sup>11</sup>

### ***Congressional Response to Nabors***

Much like organized labor, the US Congress also had great stakes in stopping corporate reinversion. Both Democrats and Republicans in the House and the Senate opposed moves off shore, as US companies were seen as fleeing their "patriotic" duty by avoiding tax payments. Many senators such as Charles Grassley (R-Iowa) believed that in a time of war, "[companies] ought to have their hearts and properties in America and pay their fair share."<sup>12</sup> In addition, the 2002 congressional elections were at hand, and many incumbent senators and representatives who faced re-election endorsed a strong position against corporate reinversion in order to strengthen their chances of winning majority votes in their respective districts.

There was substantial congressional activism before the Nabors shareholder vote to decide the fate of the corporation's headquarters. In particular, both Representative Jim Maloney (D) and Nancy Johnson (R) of Connecticut supported separate measures to end off shore moves, but postponed any decisive action. Representative Jim McCrery (R-LA) and Representative Bill Thomas, Republican Chairman of the House Ways and Means

Committee, also endorsed a stop to reincorporation. Thomas's legislation, H.R. 5095, proposed a three year moratorium on reinversions. However, instead of uniformly taking measures to prevent American companies from moving abroad, congressional efforts to address the issue of reinversion dissolved in partisan meltdown just a week before the Nabors shareholder vote. During a House Ways and Means Committee Hearing, Rep. Thomas barred Rep. Maloney from testifying, while other Congressmen argued about the relevance of testimony from state officials in Connecticut.<sup>13</sup> In the end, Congress took no decisive actions to stop corporate reinversion and did not ally itself with the AFL-CIO.

### ***The Nabors Outcome and Analysis***

On June 14, 2002, the labor movement faced defeat. Nabors' shareholders voted to reincorporate to Bermuda by a narrow margin. Nearly 66% of voters supported management's decision, and on the same day, US District Judge Lee Rosenthal denied the TRO. In retrospect, the Nabors' outcome was not surprising. The AFL-CIO lacked direct, key networks with state officials and institutions in Nabors' state of incorporation. Although unions shared broad-based support from public pension funds and state officials, none of labor's allies were linked to Nabors Industries in a way that could have stopped the reincorporation. There was a lack of direct communication with Nabors' Board of Directors, an absence of lawsuits from Labor's allies, public rallies, and other active measures. In addition, Congress was not unified in its opposition to corporate reinversion.

### ***The Stanley Works***

The AFL-CIO entered the Stanley Campaign relatively late in comparison with the Nabors Campaign. By May 9, 2002, the Connecticut-based Stanley Works had already held its shareholder vote, and a majority, or 79% of shareholders approved the reincorporation plan.<sup>14</sup> Like Nabors, Stanley management also cited greater operational

flexibility, better international cash flows and enhanced competitiveness as driving forces for the decision to move to Bermuda. ISS had also endorsed the offshore move, providing essentially the same rationale as the Nabors decision. Moreover, the tax advantages of the reinversion, an increase of 23-28% of the share price, were quantified to Stanley shareholders in its proxy statement.<sup>15</sup> However, from the start, state officials in Connecticut took a deep interest in the Stanley case. In fact, it was Treasurer, Denise Nappier, and Attorney General, Richard Blumenthal, who initiated the battle against Stanley. Immediately following the May 9<sup>th</sup> shareholder vote in favor of reincorporation, Nappier and Blumenthal filed a lawsuit against Stanley Works for misleading shareholders. Connecticut officials alleged that the proxy statement sent to shareholders contained “conflicting and confusing” statements<sup>16</sup> regarding how votes would be counted. At first, shareholders were told that an abstention from voting would be interpreted as a vote against the reinversion; however, a week before the actual vote, Stanley management informed shareholders that abstentions would count as a vote in favor of the Bermuda move. Nappier and Blumenthal personally called on the Securities and Exchange Commission (SEC) to conduct an investigation into the matter. As a result, on May 10, 2002, Stanley Works announced a shareholder re-vote and postponed the vote until the SEC investigation was complete.

### ***Labor's Stanley Strategy***

It was after May 10<sup>th</sup> that the AFL-CIO and the International Association of Machinists and Aerospace Workers (IAMAW) organized to campaign against Stanley's reincorporation plans. In the usual manner, organized labor urged its traditional allies to vote against the move to Bermuda. Just as in the Nabors campaign, the AFL-CIO and the IAMAW also attempted to rally large Stanley shareholders, which included financial institutions such as Fidelity Investments. However, this time, the battle for unions was much simpler.

The AFL-CIO and the IAMAW were able to rely on strong, broad-based networks with their traditional allies, and labor unions were directly linked to Stanley Works. The link was the crucial network with Nappier, who was a personal stakeholder in Stanley, and a

long-time “friend” of the AFL-CIO.<sup>17</sup> More specifically, Stanley Works was a Connecticut company and Nappier stood to lose millions of dollars in tax revenue for her state if Stanley were to move offshore. Nappier also rallied fellow Democrat and Connecticut Attorney General, Richard Blumenthal, to actively oppose Stanley's reincorporation plans. In addition, CalPERS trustee, Philip Angelides, publicly proposed in July that his “mammoth employee and teacher pension funds divest investments in US companies that reincorporate to overseas tax havens.”<sup>18</sup>

### ***The Coalition with Congress and the Stanley Advantage***

By the end of July, the pressure against corporate reinversion reached an unprecedented level in Congress. Although some politicians remained polarized regarding the issue, the congressional stalemate had ended, and a growing number of lawmakers opposed corporate reinversion. In particular congressmen from Connecticut actively took steps to write legislation and communicate with Stanley's management. On July 26<sup>th</sup>, Representative Nancy Johnson (R-CT) wrote a personal letter to Trani, urging him in the “strongest possible terms to withdraw his proposed reincorporation to Bermuda.”<sup>19</sup> Moreover, at the end of July, the AFL-CIO openly endorsed Representative Jim Maloney's (D-CT) to “end the tax savings lure of overseas moves.”<sup>18</sup> Maloney's bill was co-sponsored with Democrat Richard Neal, and garnered nearly 141 co-sponsors. Connecticut legislators were not alone in proposing an end to corporate reinversion. In June 18, the Senate Finance Committee voted for Democrat Max Baucus and Republican Charles Grassley's bill to remove the tax distinction between reincorporating firms and American firms (S. 2119).<sup>20</sup> Moreover, at the end of July, Representative Rosa De Lauro (D-CT) overwhelmingly succeeded in attaching an amendment to the Homeland Security Bill, which banned reincorporating companies from receiving contracts from the new Homeland Security Department.<sup>18</sup> Furthermore, the Senate also voted, at the end of July, to bar companies that reincorporate from receiving Defense Department contracts.<sup>21</sup>

The high level of activism from Connecticut congressmen is no coincidence, and state officials put some degree of pressure on Connecticut Democrats to hasten the passage of

anti-reinversion legislation, just in time to stop the Stanley Works move. In turn, the activism of Connecticut Democrats regarding the issue of reincorporation may have quite plausibly prompted Connecticut Republicans from proposing competing legislation to end the Stanley Works. This process is likely to have increased the overall level of anti-reincorporation sentiment in Congress and serves as a likely explanation for the Stanley success.

On July 29, the AFL-CIO and the IAMAW began a three-day rally at Stanley's headquarters in Connecticut. There, AFL-CIO President, John Sweeney, IAMAW President, Thomas Buffenbarger, Nappier and hundreds of union members protested Stanley's decision to reincorporate. At the high profile event, Sweeney made an appeal to the workers by stating that the battle of Stanley Works “was a part of a much bigger war, a war between working families and the corporate crooks who plundered our markets, perverted our companies and polluted our government.”<sup>18</sup> The protest drew a vast amount of press attention and placed organized labor at the forefront of the anti-reinversion battle. The same day, Sweeney demonstrated on Wall Street, denouncing corporate malfeasance across from the New York Stock Exchange. Afterwards, he was given the opportunity to meet with New York Stock Exchange President, Richard Grasso and Henry Paulson, chief executive of Goldman Sachs.<sup>22</sup> On July 30, Sweeney brought his rally to Boston, where he demanded that Fidelity Investments, the largest mutual fund provider in the world, publicly disclose the votes it casts on proxy statements. At the end of the day, Fidelity management agreed to negotiate with the AFL-CIO. Sweeney framed the Fidelity rally in terms of the reincorporation issue because Fidelity was a large holder of Stanley stock. However, the AFL-CIO was able to further its own interests through the Boston rally. Labor unions stood to be uniformly benefited by forcing Fidelity and other mutual funds to publicly disclose its votes. Traditionally, labor's shareholder battles have depended on mammoth shareholders, such as Fidelity, who often represent “swing” votes and have significant influence over proxy results. Thus, by forcing Fidelity to disclose its votes, organized labor won considerable gains for its future and lifted the veil of voter secrecy.

In the beginning of August, it was clear that congressional sentiment was deeply hostile towards Stanley's plans to reincorporate to Bermuda. Congressmen not only acknowledged that reincorporation was “unpatriotic,” but they also took decisive actions to make the option unappealing to Stanley Works. These measures, such as personal letters to the CEO and a ban on government contracts, were not taken prior to the Nabors move. In addition, the state officials of Connecticut and other powerful public pension funds actively worked to stop Stanley's move by filing lawsuits and threatening to divest funds from the Company. Because of the wave of active opposition, the AFL-CIO and the IAMAW were able to form broad-based coalitions with other groups. Labor was able to take advantage of the fact that its interests converged with the interests of other actors. As a result, the AFL-CIO and the IAMAW were able to campaign against Stanley in a highly publicized manner that actually bolstered labor's position at the bargaining table with management and in the eyes of the public. Thus, unions were able to structure the anti-reinversion sentiment in ways that were advantageous to their own interests.

### ***Victories for the Labor Movement***

On August 2, Stanley Works formally abandoned its plans to reincorporate to Bermuda. Trani cited the pending federal rule changes as a disincentive to eliminate the tax benefits of such a move.<sup>23</sup> The Stanley outcome was clearly a large success for organized labor. However, success was hardly a surprising result. The AFL-CIO and the IAMAW were able to succeed because of the broad-based coalitions that they formed with non-labor actors. State officials, who were personal stakeholders in Stanley Works' Connecticut domicile, and served as direct links to Stanley Works, were long-time allies of the AFL-CIO. In addition, pension funds, such as CalPERS, took active steps, such as threatening divestment, to keep Stanley from moving offshore. Moreover, Congress, and in particular, representatives from Connecticut, took an active stand against the reinversion. The coalition that labor was able to form with other actors, whether fortuitous or not, was a highly successful, broad-based network.

The gains for labor did not stop at Stanley's decision to abandon the Bermuda move. The AFL-CIO was able to take advantage of the anti-reinversion momentum by framing its

other interests in terms of the Bermuda question. The Federation was able to gain publicity by siding with America's workers on Wall Street, a major symbolic feat. Moreover, the AFL-CIO was also able to enact major regulatory changes with the mutual fund proxy disclosure issue in August and win a spot on the bargaining table with influential financial institutions.

### ***Social Embeddedness and Its Impact on Shareholder Campaigns***

The case studies of Nabors Industries and Stanley Works, Inc. suggest that the key difference between union-led shareholder campaigns is the degree to which labor unions share key links with non-union actors. The AFL-CIO actively campaigned against both corporations' initiatives to move offshore, and both campaigns occurred at roughly the same time. There were also many similarities between the two corporations such as size, percentage of unionized employees and profit margins. However, the only difference was that the AFL-CIO purposefully reached out to the Treasurer of Connecticut during the mid 1990's, and did not make any efforts to reach out to the Treasurer of Delaware. I hypothesize that the "embedded" relationship with the Treasurer of Connecticut provided many advantages to unions during its campaign against Stanley Works, Inc. The AFL-CIO was able to garner shareholder power from the state of Connecticut, and was also able to use the Connecticut Treasurer's influence on the State Attorney General, and on numerous state legislators, who proposed laws to stop corporate reinversion to tax havens. I have included a chart at the end of this paper to illustrate the extent to which the AFL-CIO's embedded relationship with the Connecticut Treasurer impacted its shareholder campaign against Stanley Works. The same chart for Nabors Industries shows that a key link was missing, and this key link may very well have been responsible for Nabors' move offshore.

### ***Applying the Lessons from Nabors and Stanley to Other Shareholder Campaigns***

Throughout the case studies, I have argued that the ability of unions to successfully influence corporate behavior through shareholder relations depends on the extent to

which they have formed networks with critical non-union actors in society. These are the conclusions that can be drawn from the Nabors and Stanley cases. However, can the same conclusions be generalized to most union shareholder campaigns? Or, are there other significant factors that influence the outcome of labor's shareholder proposals. In order to draw conclusions based on a larger set of data, I analyzed 57 shareholder resolutions that various unions submitted to corporate boards.

## **Labor and Corporate Governance: An Empirical Study of Shareholder Proposals**

Through the course of the 2002 proxy season, labor unions put forth well over 300 shareholder resolutions to corporate boards. The overwhelming majority of the resolutions focused on issues such as board election guidelines, auditor and director independence and executive compensation. For simplicity, I will classify these sets of issues as the financial and organizational aspects of corporate governance. However, a considerable number of proposals concerned employee discrimination, global labor and environmental standards. I will classify these latter issues as workplace standards, or ethical aspects of corporate governance. The rationale for my system of classification is described in further detail below.

### ***Selection Criteria***

The best available source of information on resolutions submitted by labor unions is found on the Council of Institutional Investors' website<sup>24</sup> and The Corporate Library's Website.<sup>25</sup> Together, the websites contained in excess of eighty resolutions submitted by labor unions and the AFL-CIO's affiliate bank, the Longview or Amalgamated Bank. Moreover, the websites' databases contained vital information regarding shareholder resolutions such as the voting results, the date of the vote, the list of sponsor(s) of

resolutions and sometimes, the actual text of the resolution. I considered proposals to be complete if they contained all of the aforementioned data, and I only included complete proposals in my sample. This provided a sample of 57 resolutions. The study was comprised of proposals sponsored by:

- *The International Brotherhood of Teamsters' General Fund*
- *The United Brotherhood of Carpenters*
- *The Service Employees' International Union's (SEIU) Master Trust*
- *The Hotel Employees and Restaurant Employees International Union (HERE)*
- *The Communication Workers of America Pension Fund*
- *The Laborers' International Union of North America (Laborers)*
- *The International Brotherhood of Electrical Workers (IBEW)*
- *The AFL-CIO*
- *The American Federation of State, Country and Municipal Employees (AFSCME), and*
- *The Longview Bank.*

In addition, I also conducted telephone interviews with officials from the AFL-CIO's Office of Investments, the AFSCME, the Teamsters' Corporate Affairs Offices, and the International Brotherhood of Carpenters Union. With the exception of the Carpenters, all of the unions that are part of this study are affiliated with the AFL-CIO.<sup>26</sup> However, I included the Carpenters in this study because they rely on the same social networks and campaign strategies as the AFL-CIO affiliates during proxy seasons. Furthermore, I relied on a preliminary version of the AFL-CIO's annual *Key Votes* publication to get additional details regarding company-specific resolutions.

### ***Hypothesis and Variable Selection***

Based on my preliminary data regarding the resolutions and my interviews, I defined several variables for my empirical study. They are listed as follows: degree of success, issue, external embeddedness, internal embeddedness and the union's history with the company. For simplicity, I assigned each variable a binary value, which made linear multivariate and logistic regression feasible. The details regarding each variable and the rationale for their selection are described below:

**\*Outcome (Dependent Variable):** There is no single way to measure whether a resolution is “successful.” Ideally, if a union is truly successful, it will be able to resolve its demands with a corporation before the issue settles to a shareholder vote. However, since there is no concrete way of measuring successful negotiation, as it often occurs behind closed doors, I have divided success into two categories that are not mutually exclusive. The first indicator of success is the voting outcome, or the percentage outcome in favor of the resolution. Although the majority of shareholder resolutions are non-binding, a strong voice from investors can send an important signal to corporate management to adopt change. Thus, I consider the vote as an indicator of success.

The question that must be subsequently addressed is what percentage of votes is indicative of a successful shareholder campaign. Although most corporate bylaws state that a vote exceeding 50% is considered a majority, many companies have implemented a supermajority clause, requiring as many as 85% of shareholders to ratify a resolution before it is considered a “passing” proposal. There is therefore no static indicator of the outcome of a shareholder resolution. However, based on my interviews with union representatives, I have concluded that a vote of 30% or greater is usually considered to be quite successful, from the perspective of labor unions. Thus, I will classify a successful proposal as one that garnered over thirty percent of shareholder support.

Dependent Variable: Success (Binary Representation): Voting result.

1	- Significant vote (30% or greater percentage of shareholders approve the resolution)
0	- Low vote (less than 30%)

**\*Issue (Independent Variable, x1):** The subject of the shareholder resolution may have an influence on the outcome of the resolution. It was my assumption that certain corporate governance issues would be more popular than others during the 2002 proxy season and may have reflected public policy trends. After speaking to officials from

unions, I decided to simplify the classification of resolution issues, into two sets: pressing corporate governance topics of the 2002 season and miscellaneous corporate governance topics or ethical matters. The rationale for this classification is not simple and followed from the fact that at the beginning of a proxy season, unions, as a collective unit, decide to pinpoint certain issues during a shareholder season. Those decisions stem from extensive research and reflect unions' views of the most pervasive governance problems of the year. During 2002, the primary focal points of labor-led investor activism were executive compensation, auditor and director independence, classified boards and the poison pill issue. Issues such as director strategy, workplace standards, etc, did not receive the same amount of attention as the issues listed above. The case study of the United Brotherhood of Carpenters in the next section reflects that the issue does play a crucial role in the union's ability to push forward public opinion regarding corporate governance and to win shareholder campaigns.

Independent Variable: Issue (Binary Representation)

1	-Corporate Governance Issues (director independence, auditor independence, classified Board, poison pill).
0	- Misc. Governance and Workplace Standards (ILO Conventions, child labor, environmental standards, code of conduct).

**\*External Embeddedness (Independent Variable):** This variable serves to test the theory of social embeddedness. After speaking to many union representatives, I have determined that the opinion of Institutional Shareholder Services (ISS) is highly esteemed by the investment community. ISS is an independent proxy advisory service that holds enormous influence over the outcome of shareholder votes. ISS advises its clients, who include large mutual funds, pension funds and individual investors how to vote on shareholder proposals. Thus, I have included ISS support as an indicator of external embeddedness.

The relationship between ISS and labor unions is complex. The extent to which ISS and unions are embedded depends on the perspective of the actors involved. Representatives

from the AFL-CIO Office of Investments and Center for Working Capital have made the claim that there are “informal networks” between ISS and unions.<sup>27</sup> Moreover, unions are able to “test the waters” with ISS, by querying about and understanding their methodology for casting support for resolutions. Unions are also able to “get a sense for where ISS is” on key issues by developing ties with ISS personnel.<sup>28</sup> As a result, unions may have the opportunity to formulate the text of shareholder resolutions in ways that appeal to ISS.

Since ISS was unanimously regarded as an important link in union shareholder campaigns, I included ISS support as its own variable. I divided this category of external embeddedness into two classes: whether or not the resolution won the support of ISS.

Independent Variable: ISS Support: (Binary Representation)

1	Resolution received ISS support
0	Resolution failed to receive ISS support

It would be wise to consider other variables as indicators of “external embeddedness” as well, such as the number of shareholder coalition partners is probably a good determinant of shareholder success. However, after interviewing union representatives, I have realized that most unions reach out to the same coalition partners repeatedly before a shareholder resolution goes to vote. All unions have formed networks with the same investors, or “the usual suspects”– the AFL-CIO and its affiliates, the Amalgamated Bank, NYCERS, CALPERS, State of Connecticut Pension Fund, the State of Ohio Pension Fund, the State of Wisconsin Pension Fund and the NYSCF. Louis Malizia of the International Brotherhood of Teamsters Union was careful to note that most public pension funds agreed to consider the Teamsters’ shareholder proposals when the union reached out for support; however, public pension funds often failed to vote in favor of these resolutions on several occasions. The poor voting outcome in certain shareholder proposals has been ample evidence of this phenomenon.<sup>29</sup> For this reason, I did not consider the number of coalition partners as a strong indicator of shareholder outcome. Conversely, it was unreasonable to completely omit this factor. Therefore, I included another component of “external embeddedness” in this model. Namely, if a public

pension fund or another one of the “usual” coalition partners had also targeted the same company with a shareholder proposal, I would consider it to be an indicator of external embeddedness.

Independent Variable: External Embeddedness: (Binary Representation)

1	Public pension fund or other usual coalition partner has targeted the same corporation as a union, or has also submitted a shareholder proposal to that corporation.
0	A usual coalition partner has not targeted the same corporation as a union.

**\*Internal Cohesiveness (Independent Variable):** This variable serves to test whether unions are more effective in “winning” shareholder resolutions if they work together and target the same corporation together. The rationale for including this variable in the analysis followed from an extension of the social embeddedness argument. Perhaps if unions build coalitions with each other and target corporations, they will be able to increase communication and information-sharing and place more pressure on a corporate behavior by exacting concessions more successfully and systematically.

In order to test this hypothesis, I divided this variable into two classes: whether or not multiple unions submitted shareholder proposals to the same corporation.

Independent Variable: Internal Cohesiveness: (Binary Representation)

1	More than one union has submitted a resolution to the same corporation.
0	Only one union has submitted a resolution to a corporation.

**\*History (Independent Variable):** History is intended to capture the extent to which unions have already built a rapport with the corporation that they are targeting. I argue that corporations that have received shareholder proposals regarding the same or similar issues in previous years from the same union will be more likely to implement changes. If unions manage to repeatedly place the same proposals on corporate proxy statements,

they may very well create public embarrassment and negative publicity for the corporation. In addition, I believe that shareholders will be inclined to vote for a resolution if they have repeatedly seen in it in past years' proxy statements. If a union has submitted a related issue to the corporate board in previous years, it has essentially started a "history" with the corporation. This history provides the unions with more leverage and grants them bargaining power to extract concessions from the company.

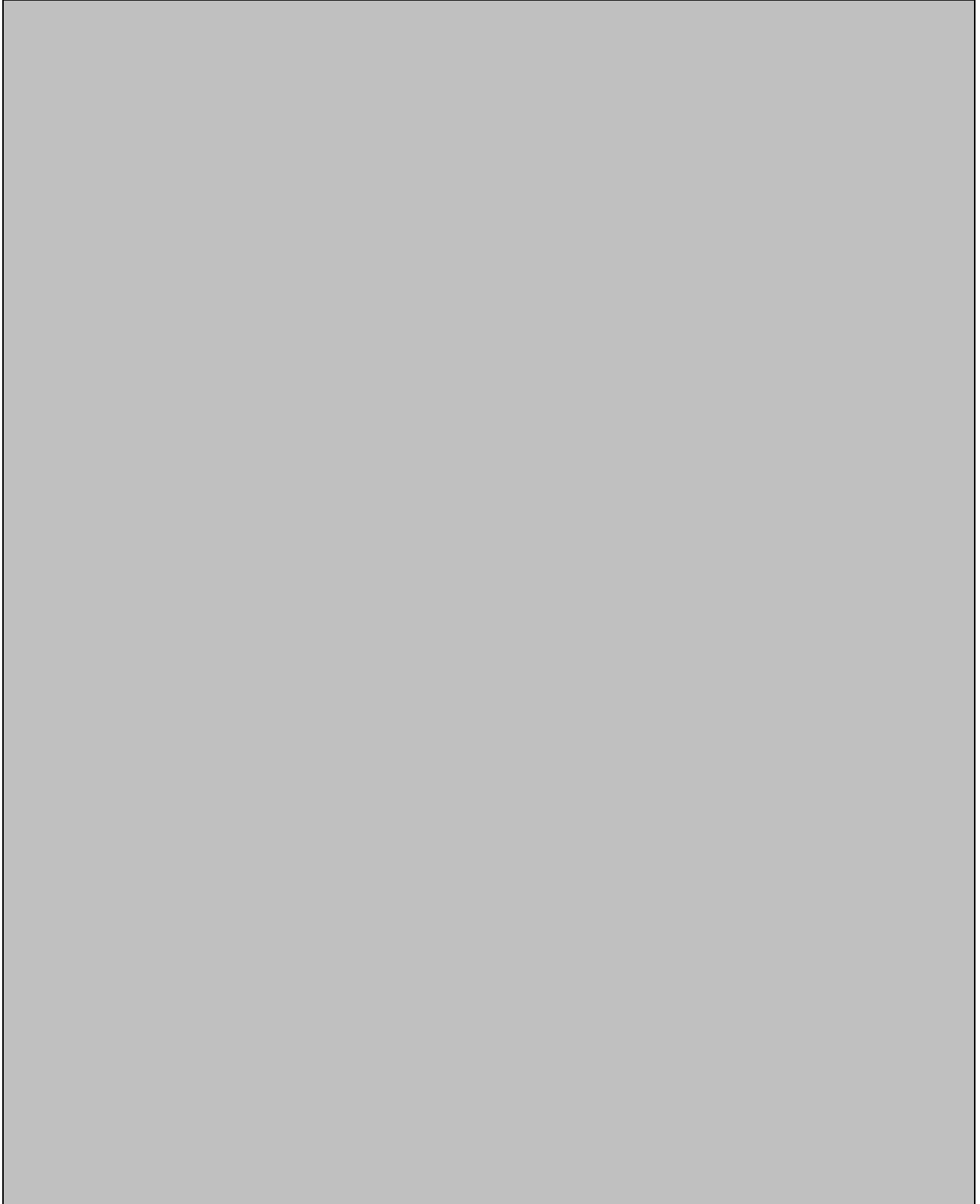
Again, I divided this variable into two categories. The first class includes resolutions that have repeatedly appeared on corporate proxy statements during multiple years. The second class includes resolutions that are appearing on the proxy for the first time. The case study of the International Brotherhood of Teamsters in the next section portrays the dynamics of constructive engagement with corporate management and shows that unions can benefit from sharing a history with a corporation.

Independent Variable: History: (Binary Representation):

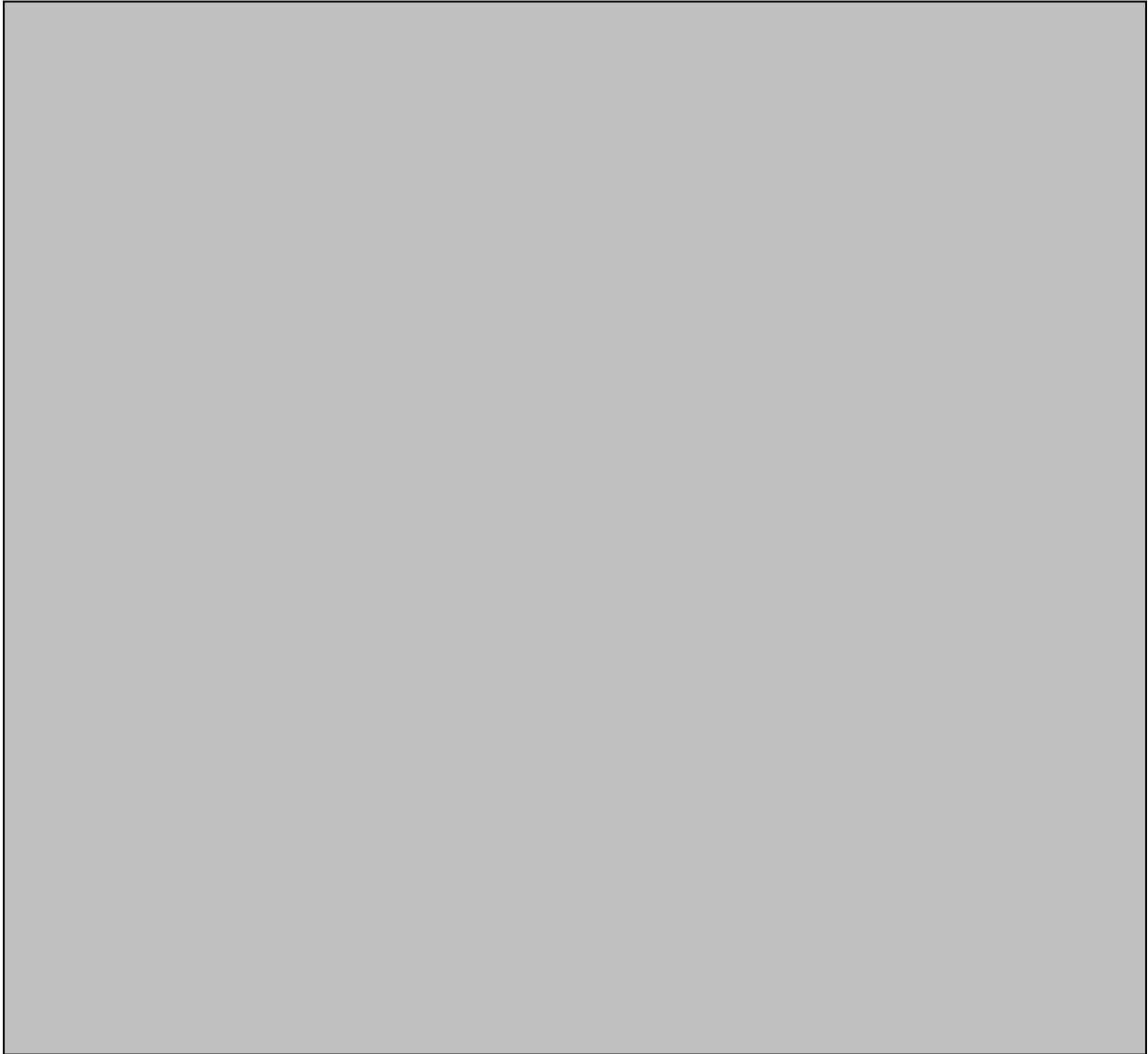
1	Union has repeatedly submitted resolutions on the same issue or similar issues in previous years' proxy statements.
0	Resolution is appearing on proxy for the first time.

**Variables in Action:**

*Case in Point: The Carpenters*



*Case in Point: The Teamsters*

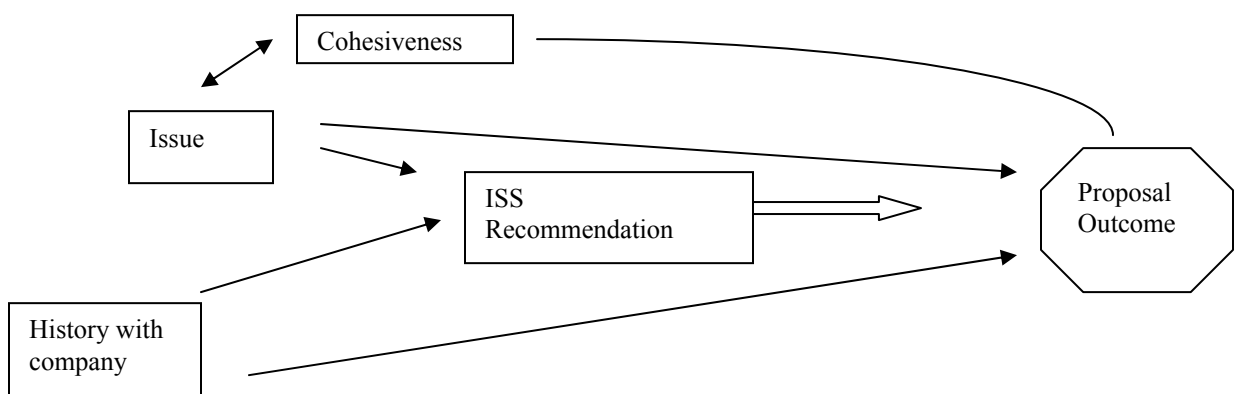


## Results

The results from the standard multivariate regression and the logistic regression that were performed on the data point to the same conclusions as I had found in the case studies. If the dependent variable, the outcome of the shareholder resolution, is regressed against the independent variables, or the issue, ISS support, measures of cohesiveness and history, the only significant variables appear to be ISS support, history with the corporation and issue.<sup>30</sup>

ISS support is the dominant determinant of union-led shareholder outcomes. The results also suggest that the issues and the union's history with the corporation, to some extent, also affect the success of resolutions. The measures of cohesiveness have very little statistical significance in the study. However, it is important to note that some of the variables may be interdependent, and factors such as issue and history may indeed influence whether or not a union receives ISS support. These results show that issue, history, external cohesiveness and ISS support are interrelated and that ISS may favorably view certain corporate governance issues over others. Similarly, ISS may also consider a unions' history with a corporation, the issue itself or labor's key allies when making a decision regarding a shareholder resolution.

The diagram below illustrates the relationships between various variables:



## ***Conclusions and Recommendations***

The labor movement has just begun to exercise its role as an active shareholder in the capital markets. Although the precise dynamics of union shareholder campaigns that are not yet fully understood, there is clearly a positive connection between a union's ability to build coalitions with key non-union actors and the success of the shareholder initiative. The matched-pair comparison of Nabors Industries and Stanley Works, Inc. in the first portion of this paper qualitatively reflects this relationship. The ties and networks that unions form with prominent non-labor actors in society are extremely crucial and the case studies provide anecdotal evidence for this phenomenon. My empirical study strengthens this claim, as it is evident that support from ISS matters most for individual shareholder proposals. In addition, the study also reveals nuances of the labor movement's role in corporate governance reform. A strong tie with ISS is not the only variable that leads to shareholder success. Although it is the strongest indicator of shareholder success, it is only one ingredient. Numerous other factors such as unions' history with the corporation and the subject of the shareholder proposal play a smaller, but important role in the success of shareholder relations.

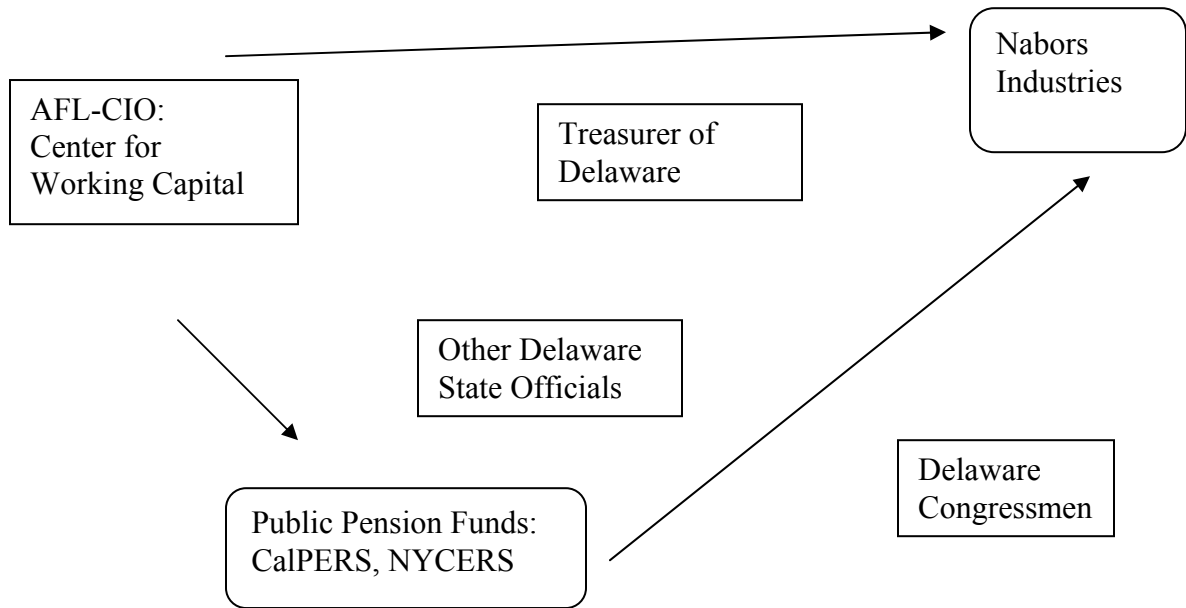
Based on my study, if labor is to continue to lead corporate governance reform and secure a place for itself at the company bargaining table, it must continue to embed itself with key non-union actors in civil society. Unions should especially reach out to ISS, an institution that has tremendous influence over proxy voting results. Further development of ties with ISS can improve the labor movement's understanding of ISS's decision-making process, and this understanding can enhance the prospects for ISS support in future shareholder campaigns. Even something as simple as the text of a proposal should be formulated carefully, in such a way that union resolutions can be better appreciated by ISS. Unions should also not be afraid to "test the waters" with ISS, by proposing new topics for shareholder proposals and gauging the institution's reaction.

The “issue” is another factor that is clearly very important for union success. The case of the United Brotherhood of Carpenters reflects that unions are more effective if they systematically study the most pressing governance issues that are likely to coincide with current public policy debates. Thus, it would be advantageous for unions to invest more resources into researching trends and anomalies on corporate financial statements that may very well reflect pervasive governance problems. This will most likely push the policy debate into implementation. After building ties with ISS and pinpointing key governance problems, the labor movement should collectively attempt to frame the “unpopular” governance issues such as workplace standards in terms of more widely accepted governance issues.

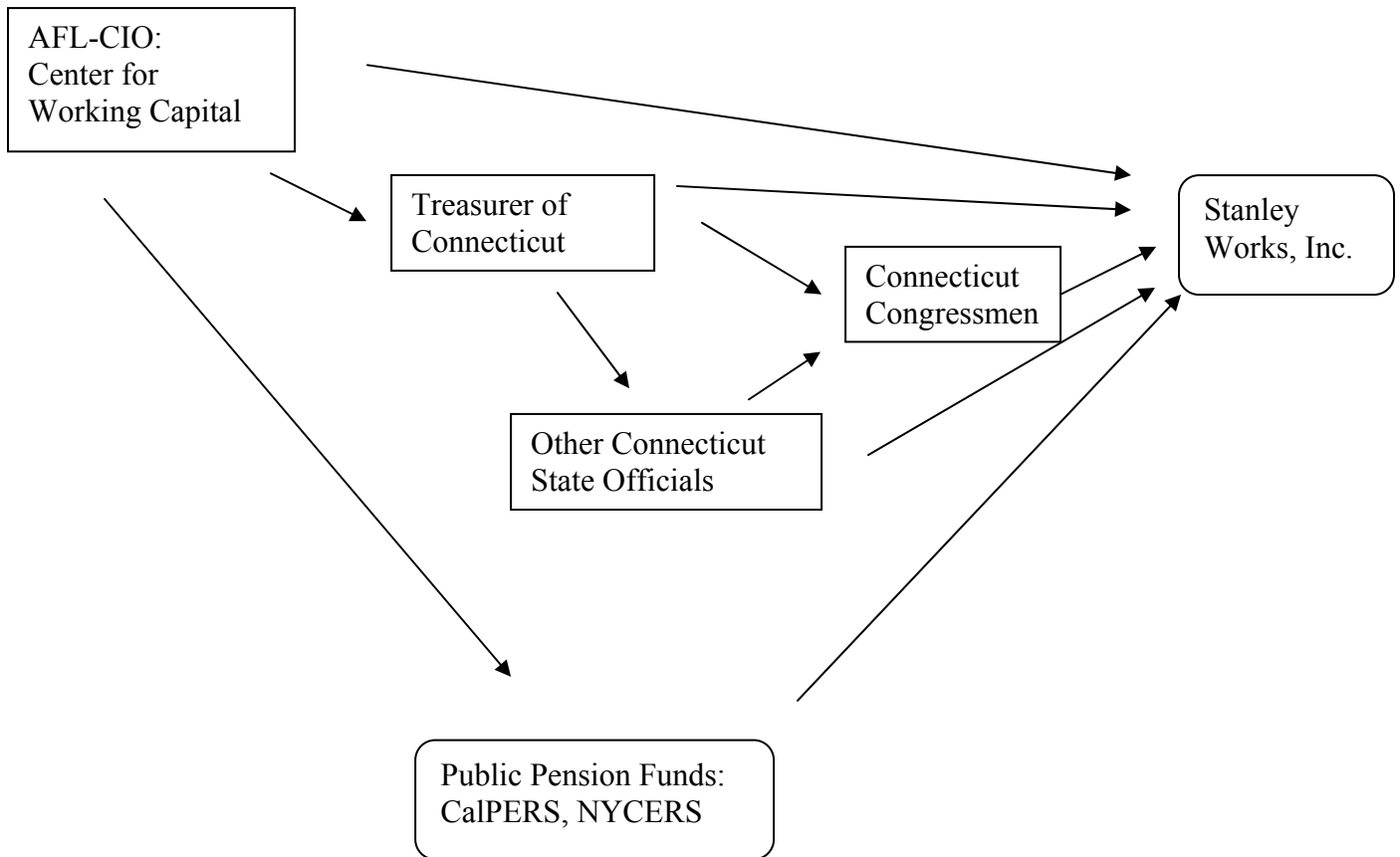
Other important conclusions from the 2002 proxy season concern broad-based coalition building with institutional investors and constructive engagement with corporations. In order to increase cooperation and collaboration between investors, unions must continue to broaden their shareholder base by creating more networks with key public pension funds, state officials and other powerful investors. This will inevitably increase labor’s financial and political leverage. Clearly, external support from such coalition partners can make the difference between winning and losing investor campaigns. Unions should also maintain the trustee education forums through the CWC. The forums are an excellent way to educate trustees about important governance issues and to build consensus for voting guidelines on new issues.

The case of Teamsters shows that the maintenance of constructive a dialogue with companies regarding governance keeps the pressure on corporate behavior and also begins the process of generating real results. If unions emphasize this aspect of investor activism with others, the labor movement will be able to continue to reform governance on a large scale and will be in a better position to negotiate with and exact concessions from corporations.

*Appendix A: Diagram of Nabors Embeddedness*



*Appendix B: Diagram of Stanley Works Embeddedness*



*Appendix C: Summary Statistics of Voting Outcomes*

<i>Independent Variable</i>	<i>Regression Coefficient</i>	<i>Standard Error</i>	<i>t -Value</i>	<i>Significance Level</i>
Issue	0.24487	0.09947	2.46	.0172
ISS Support	0.64435	0.09170	7.03	< .0001
Internal Cohesiveness	-0.02176	0.09837	-0.22	0.8258
External Cohesiveness	0.16599	0.10939	1.52	0.1352
History	0.09937	0.10200	0.97	0.3345

R-Square: 0.6483
Adj R-Square: 0.6145

## Notes

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<sup>1</sup> Freeman, Rogers: 2002; Safford, 2002; Kochan, 2003.

<sup>2</sup> Granovetter, Mark. "Economic Action and Social Structure: A Theory of Embeddedness." *American Journal of Sociology*, 91, 1985: 478-513.

<sup>3</sup> Safford, Sean. "Unions on the Rebound: Social Embeddedness and the Transformation of Building Trades Locals." 2002: 4-6.

<sup>4</sup> Fung, Archon. Working Capital: The Power of Labor's Pensions. New York: Cornell University Press, 2001. 4-6, 67.

<sup>5</sup> Wallace, Simeon. "Tax Havens." Institutional Shareholder Services, 2002. Lexis-Nexis Academic Universe.

<sup>6</sup> AFL-CIO Press Release. "Statements by AFL-CIO Secretary General Richard Trumka Regarding Concerns Over Reincorporation to Bermuda." May 9, 2002.

<sup>7</sup> Johnston, David Cay. "Bermuda Move May Sound Good, But Investors Could Get Burned." *The New York Times*. June 13, 2002.

<sup>8</sup> Hoovers Online. "Company Capsule of Nabors Industries." (2001). <http://www.hoovers.com>, (AMEX: NBR), "Company Capsule of Stanley Works, Inc." (2001), (NYSE: SWK).

<sup>9</sup> Institutional Shareholder Services Report: Proxy Analysis. Nabors Industries, Inc. May 31, 2002, Investext Online Database.

<sup>10</sup> AFL-CIO Press Release "Pension Funds Blast Offshore Reincorporations," June 6, 2002.

<sup>11</sup> The Associated Press, "Driller Nabors Industries Ready to Incorporate in Bermuda." June 14, 2002. Lexis-Nexis Academic Universe.

<sup>12</sup> Alpert, Bruce. "Bermuda Tax Shelter Making Waves; Congress May Turn Up Heat on U.S. Firms." *The Times-Picayune*. June 22, 2002.

<sup>13</sup> Rosenblum, David. "Partisanship Dissolves Tax Shelter Hearing." *The New York Times*. June 6, 2002.

<sup>14</sup> The Stanley Works Website: "Company News: The Stanley Works Shareowners Overwhelmingly Approve Change in Place of Incorporation to Bermuda," [http://www.stanleyworks.com/a\\_news\\_050902.asp](http://www.stanleyworks.com/a_news_050902.asp). May 9, 2002.

<sup>15</sup> Stanley Works 2002 Proxy Statement to Shareholders. Investext Database.

<sup>16</sup> Johnston, David Cay. "Stanley Works Faulted Again by 2 Officials of Connecticut." *The New York Times*. July 4, 2002.

<sup>17</sup> Interview with Michael Garland, Corporate Transactions Coordinator, AFL-CIO Office of Investments, December 6, 2002.

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- <sup>18</sup> The Teamsters 1150 Local Website: <http://www.teamsters1150.org/Connecticut.pdf>, August, 2002.
- <sup>19</sup> United States House of Representative's Website: "Text of Rep. Nancy Johnson's Letter to John Trani." [http://www.house.gov/nancyjohnson/pr\\_traniletter.htm](http://www.house.gov/nancyjohnson/pr_traniletter.htm). July, 2002.
- <sup>20</sup> Text of personal letter of John Sweeney to Stanley Board of Directors. July, 2002.
- <sup>21</sup> All Things Considered, Transcript, "Stanley Works Drops Plan to Move Offshore for Tax Purposes." August 2, 2002. [Lexis-Nexis Academic Universe](#).
- <sup>22</sup> Morrison, Dan. "Labor Chief Rallies at 'Corporate Pirates.'" *The Seattle Times*. July 31, 2002.
- <sup>23</sup> Kerber, Ross. "Stanley Abandons Move to Bermuda; Now Sees Little Benefit to Reincorporation." *The Boston Globe*. August 3, 2002.
- <sup>24</sup> Council of Institutional Investors' website: <http://www.cii.org>
- <sup>25</sup> The Corporate Library's website: <http://www.thecorporatelibrary.com>
- <sup>26</sup> It should be noted that even though the United Brotherhood of Carpenters is not affiliated with the AFL-CIO, it still shares the same social partnerships with public pension funds and other institutional investors as the AFL-CIO affiliates.
- <sup>27</sup> Telephone Interview with Robert Kellogg, Affiliate of Proxy Voting Services and Special Liaison to Taft-Hartley Clients, Division of ISS, December 6, 2002 and Interview with Michael Garland, AFL-CIO Office of Investments, December 6, 2002.
- <sup>28</sup> Telephone Interview with Ed Durkin, International Brotherhood of Carpenters Union, February 19, 2003.
- <sup>29</sup> Telephone Interview with Louis Malizia, Corporate Affairs Office of the International Brotherhood of Teamsters Union, January 31, 2003.
- <sup>30</sup> Results of Logistic Regression are featured in Appendix C.