Collective bargaining, a core social institution, faces a fundamental transformational challenge. National survey data provide unique insights into the current status of the bargaining process — revealing challenges and opportunities. Awareness and use of interest-based bargaining principles is widespread but complicated by underlying tensions between labor and management. The findings illustrate the value of conducting an institutional-level analysis of a negotiations process.

**Key words:** negotiations, collective bargaining, industrial relations, transformation, National Labor Relations Act, Federal Mediation and Conciliation Service.
Introduction

Collective bargaining is one of the few forms of negotiations to be formally embraced as a matter of national policy in the United States. In June 1935 the U.S. Congress stated in the National Labor Relations Act (NLRA):

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection (italics added).

Following the signing of the NLRA and particularly after World War II, collective bargaining coverage expanded, peaking in 1953 when the Bureau of the Census indicated that 35 percent of the workforce was unionized. On an annual basis, this collective bargaining activity comprised more than 60,000 private-sector negotiations, each with union and management bargaining teams; numerous bargaining sessions and caucus meetings; a contract expiration deadline, with the threat of a strike or lockout at impasse; support from the Federal Mediation and Conciliation Service (FMCS), which was created in 1947 to mitigate the negative impacts of these work stoppages; a web of formal written agreements, ratified by constituents; and ongoing contract administration.

Because patterns established in collective bargaining spilled over into the nonunionized sector, this institutional arrangement has been credited with advancing the growth of the middle class, spurring innovations in wage and benefit provisions, and ultimately helping to ensure fair treatment of workers on the job (Freeman and Medoff 1984). Collective bargaining was seen as an essential foundation for enabling the full human potential of the workforce to be realized (McGregor 2006), as an essential workplace analog to democratic checks and balances in civil society (Shils et al. 1979), and as a primary driver in advancing the American dream (Kochan 2005).

The half-century since the mid-1950s, however, has been marked by continuing decline in the percentage of the workforce represented by unions. Today, of approximately 120 million U.S. workers, 12.9 percent or 15.8 million are unionized, with approximately 23,000 private-sector negotiations and at least half again as many public-sector negotiations taking place each year. This is still a significant number of negotiations that touch the lives of tens of millions of Americans, but this substantial decline in
collective bargaining activity indicates that it is also a negotiations institution at risk.

Our aim in this article is to present evidence from three waves of national random-sample surveys of matched pairs of union and management negotiators, conducted in 1996, 1999, and 2003. These snapshots of negotiations practices open a unique window onto the current state of collective bargaining, which has broad implications for many areas of negotiation. Thus, this article provides an overview of a key domain in the field of negotiations and an illustration of the use of systematic survey data to present a portrait of a bargaining process and its outcomes.

The Transformation of American Industrial Relations

More than twenty years ago, Thomas Kochan, Harry Katz, and Robert McKersie (1986) documented a fundamental shift in U.S. industrial relations, in which the leading force shaping employment relations had shifted from collective bargaining to unilateral actions by employers (via nonunion human resource management policies and practices) and the government (through the protection of an increasing array of individual rights). Even though a negotiated approach to the establishment of wages, hours, and working conditions was still national policy, in their book, Kochan, Katz, and McKersie argued that it was increasingly not the practice. Further, the authors stated that it would take a fundamental institutional transformation at a strategic level, at a collective bargaining level, and at a frontline-workplace level if collective bargaining were to reestablish its preeminent role.

Today, the consequences of this shift are highly visible. Consider the massive restructuring of pension and retirement-benefit rights that has taken place in recent years — not through the give and take of the bargaining table but through unilateral employer announcements. Employment arbitration was pioneered as a voluntary, final, and binding vehicle for resolving union-management disputes. Today an equivalent number of nonunion workers, approximately 13 million, are covered by arbitration agreements. These newer arrangements have been criticized, though, on the grounds that management has primary control of the process, partisan advocates are typically allowed to serve as third-party arbitrators, and such arbitrations are generally limited to matters of alleged improper termination rather than the broad scope of issues that can be appealed to arbitration under a collective bargaining agreement (Feuille and Chachere 1995; Seeber and Lipsky 2006; Wheeler, Klaas and Mahony 2004).

Evidence also indicates that employment arbitrators serving under these employer-mandated systems are more likely to uphold discipline and termination decisions in identical cases than are labor arbitrators with experience under jointly negotiated and managed systems (Klaas, Mahoney, and Wheeler 2006). The exercise by Federal workers of their collective
bargaining rights has been deemed a threat to national security, as reflected in the prohibition of collective bargaining for Homeland Security Department workers (Kochan 2005). Thus, the theory framework guiding this article concerns the capacity for transformation versus the risk of deterioration in this negotiations institution.

**Data Sources**

This article draws on data from a series of three stratified, national, random sample surveys of matched pairs of union and management negotiators. The support for such data collection dates back to the 1993 National Performance Review, initiated under President Bill Clinton, when the FMCS and other federal agencies were required to better serve their “customers” and began such surveys to understand their needs. The three surveys were done by telephone in 1996, 1999, and 2003. (A three-year sampling window was chosen because the average contract in 1996 lasted for three years.) The samples were drawn from the thirty-day notices that the parties are required to send to the FMCS before their contracts expire. In each round of data collection, we over-sampled large employers and parties that had used mediation services. All results reported in this article are weighted to take the oversampling into account.

The 1996 survey had an approximate response rate of 74 percent. Its respondents were 1,557 union and management representatives, of whom 1,050 were matched pairs. The 1999 survey had 2,004 respondents with 1,654 matched pairs and an approximate response rate of 78 percent, as well as a subsample of more than four hundred public-sector negotiations from the handful of states where federal mediators also provide mediation support for state-level public-sector bargaining units. The 2003 survey had 1,718 respondents with 1,168 matched pairs, again with some four hundred public-sector cases and a new subsample of federal sector cases. Response rates were similar to the past surveys.

In this article we present only relatively simple, bilateral relationships among the variables in order to make the patterns and trends clear and accessible. Where appropriate, reference will be made to multivariate models that have been developed and run.

**Evidence for a Transformation in the Data**

Analysis of the 1999 survey data allowed for a preliminary test of the Kochan, Katz, and McKersie (1986) “transformation” hypothesis. In an article reporting on this analysis, we found instances in which the parties report innovations at the workplace level (new, participatory work practices), at the collective bargaining level (use of interest-based bargaining processes and other innovations), and at the strategic level (strategic partnerships) (Cutcher-Gershenfeld and Kochan 2004). Where there was alignment across these three levels, we found that both labor and management
reported improved outcomes. While it was encouraging to see how the parties could transform relations to better serve their respective interests, it was discouraging to find that less than 10 percent of bargaining relationships were moving down this path.

Thus, as we turn to the 2003 data in this article, we look for evidence whether there is continued, deepening institutional decline; increased prevalence of transformation; or other patterns. In contrast to the 1996 and 1999 data, the 2003 data were collected during a period marked by economic downturn. Thus patterns in the data may reflect this larger economic shift as well.

Overall, the trends are clear. The 2003 data point toward more adversarial relationships, greater divergence in the views of labor and management, a decline in workplace innovation, and a decline in preference for interest-based bargaining. This suggests that the stresses on the institution have increased. Figure One features reports on the overall labor-management relationship by the matched pairs of union and management respondents. On the union side, the trend is clear: fewer union negotiators reported very cooperative relationships and more reported very adversarial

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**Figure One**

Perception of Labor–Management Relationship: Matched Pairs, Union and Management Negotiators in U.S. Private Sector Collective Bargaining

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![Diagram showing the percentage of very adversarial, somewhat adversarial, somewhat cooperative, and very cooperative relationships from 1996 to 2003 for both union and management negotiators.](image-url)
relationships. Although there was also an increase in the number of managers reporting very adversarial relationships, there was no fall off in managers reporting very cooperative relationships (in fact, there was a slight increase). Therefore, we first see that the parties do not see the relationship in the same way and that, on the union side of the table, there seems to be a view that relations are deteriorating.

Figure Two illustrates the data on the simplest of bargaining outcomes: was an agreement reached and did it happen before the expiration of the prior agreement? Note that the union and management responses on these items have been combined, with data reported only when both parties in the matched pair were in agreement. The data suggest a substantial increase in the number of cases (now about one in ten) where the parties did not reach agreement — either because the employer went out of business, the bargaining unit was decertified, or the parties were at impasse for more than two years. The additional information on the timing of settlements provides further insight into the falloff in agreements. More than half of the negotiations had not reached agreement thirty days or more past the contract expiration date. This is more than twice the number from the
earlier survey. The contract deadline has apparently lost its focusing effect, perhaps because unions are unwilling or unable to use strikes and employers are unwilling or unable to use lockouts to compel agreement.4

Traditionally, collective bargaining agreements were either annual contracts, with renewal negotiations limited to a small range of issues, or they were two- or three-year agreements with a much larger bargaining agenda. We present the data on agreement length in Figure Three, broken out by region. The traditional three-year agreement was most common in the Northeast and the Midwest. One-year agreements were most common in right-to-work states. Overall, approximately 27 percent of agreements were for more than three years, with a number of five-, six-, seven-, and eight-year agreements. Administering agreements of such lengths changes the institution because the parties need midcontract mechanisms to deal with market-driven shifts.

Figure Four presents comparative union and management data for the negotiation of new agreements on substantive outcomes like wages, benefits, and work rules.5 These are traditional topics of negotiation; unions typically push for wage and benefit increases while employers push for wage concessions, benefit reductions, and work-rule flexibility. The first set

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**Figure Three**

**Length of Agreement, by Region: Matched Pairs, Union and Management Negotiators in U.S. Private Sector Collective Bargaining**

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[Diagram showing agreement length by region]
of bars for each topic represents union respondents; the second set, management respondents. (Again note that the responses are limited to matched union and management pairs.) As noted earlier, the 2003 data span a recession, so it is perhaps not surprising to see increased wage concessions and benefit reductions, as well as a falloff in wage and benefit increases. A question that cannot be answered with these data, but that will be important to track, is whether or not these trends were temporary.6

Figure Five shows similar data on outcomes that professionals in the field see as more innovative and associated with the potential for transformation. These include agreements that feature new language on job security, worker input, new pay systems, team-based work systems, and various forms of joint committees. The data in Figure Five are not encouraging for advocates of these sorts of innovations. With the exception of new pay systems, the 2003 data show a falloff in frequency.7 Most striking about Figure Five, however, is the low share of negotiations that feature new contract language on these topics. This suggests that collective bargaining is not generating a great deal of innovation at the bargaining table.8

In addition to the previously mentioned descriptive data, a set of regression models were run, replicating the analysis of the 1999 data that
was reported in the *Industrial and Labor Relations Review* (Cutcher-Gershenfeld and Kochan 2004). The 1999 data indicated that a combination of innovations at the strategic, workplace, and collective bargaining levels were associated with transformational outcomes. These include the use of team-based work systems, new pay arrangements, employee involvement, labor-management committees, job-security provisions, and other practices. The findings using the 2003 data, however, were weaker in almost every respect, suggesting that a reduced number of cases fit this pattern. Thus, we have provided a window into a key negotiations institution that is not functioning like it used to and, while capable of transformation, does not seem to be on that path in most cases.

**Interest-Based Bargaining in Labor Relations**

Innovations in the bargaining process offer key prospects for accelerating transformation in collective bargaining. Interest-based bargaining, it might be hoped, would increase the capacity of the parties to achieve mutual gains outcomes, which should then enhance the viability of the institution. In most areas of negotiation, we do not have reliable data on the baseline...
levels of interest-based bargaining or on the trends over time. In this regard, this data set is unique. Respondents in all three waves of the survey were asked about their views and use of an approach to bargaining that is sometimes referred to as “interest-based, mutual gains, or win–win” bargaining. In more recent surveys, we also asked about the associated behaviors that might have taken place during bargaining.

As Figure Six illustrates, a remarkably high percentage of union and management negotiators are familiar with the process — between 65 percent and 80 percent of the respondents. A large and growing proportion of respondents report having used this approach at some point in time. Union and management responses showed great disparity when respondents were asked if they used this approach in their most recent negotiations. Nearly one-third of managers reported using it, but only about half as many union negotiators did. This may reflect different views of what constitutes interest-based bargaining; it may also reflect unilateral efforts to use interest-based methods by managers without the concurrence of their

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**Figure Six**


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*Subset of negotiators who are familiar with IBB. **Subset of negotiators with training.
union counterparts. More importantly, this level of use is far lower than the proportion of parties reporting having used this approach at some point.

When we asked if they preferred an interest-based approach, we found a clear trend on both sides of the table, with a falloff in preference across the three waves of the survey. Preference was lowest among union respondents despite their high levels of awareness and experience with it. The data also show a clear shift away from joint training in interest-based bargaining and toward separate training. All of these patterns may reflect the increased tensions associated with the recession, which would be a temporary circumstance, but they may also reflect a more enduring shift away from an interest-based approach. Certainly there is anecdotal evidence of parties referring more to “hybrid” models in which there is a combination of some facilitated brainstorming and some use of joint subcommittees for information sharing and exploring options, combined with more traditional give-and-take through hard bargaining.

A relatively broad range of practices might fall under the umbrella of an interest-based approach. So, in our final set of figures, we focus on two more precise behavioral measures: the use of formal brainstorming of options during the bargaining process and the use of joint subcommittees or task forces to jointly gather data, explore interests, and generate options. Both of these practices represent clear behavioral departures from more traditional, positional approaches. Figures Seven and Eight compare the frequency of selected outcomes, first for cases where there was no brainstorming and no use of joint subcommittees, and then for cases where each of these behaviors did occur. Included in the figures are outcomes around work-rule flexibility and the outcomes noted earlier associated with transformation. Figure Seven presents the results for management respondents and Figure Eight for union respondents. The trend is clear in both cases: the use of interest-based processes was associated with a higher incidence of new negotiated language on these topics. In separate regressions that control for size, economic context, relationship, and other factors, these general patterns still hold.

The findings presented in Figures Seven and Eight can be interpreted as indicating that the bargaining process does matter. Using behavioral approaches associated with interest-based bargaining does not guarantee desired outcomes, but it does increase the odds of success. This is encouraging insofar as it suggests that some transformation of collective bargaining can come from within it, through changes in the bargaining process, without external changes in the legal or regulatory environment. Less encouraging is that “increased success” still happens less than half the time for a small number of cases. Interest-based approaches to bargaining can play an important role in collective bargaining’s future, but they are only partly playing that role now.
A concern that is sometimes expressed by some labor and management negotiators about the use of interest-based approaches to bargaining is that this problem-solving approach might somehow make negotiators vulnerable. In the context of collective bargaining, where management generally has a power advantage, in the present economic context, union negotiators are particularly wary of the process. We saw that the gap between use and preference was greater for union negotiators than for management negotiators. The data on benefit negotiations presented in Figure Nine, on the other hand, may encourage those who favor such approaches.

The union respondents who engaged in joint brainstorming and participated on joint task forces were less likely to report benefit reductions and more likely to report benefit increases. Interestingly, while the counterpart managers also reported benefit increases, they did report some benefit reductions taking place. Because these are matched pairs of negotiators from the same bargaining units, we encounter a difference in perceptions that could be interpreted in three ways: (1) the parties each found different and mutually satisfactory ways to frame the same
agreement (possibly aided by their collaboration); (2) the union negotiators who took the risk of using interest-based bargaining were disposed, because of cognitive dissonance or otherwise, to view whatever outcome they reached as favorable; or (3) the two sides are headed for difficulties when they implement the contract. The differences are relatively small compared to the increased percentages associated with the transformational outcomes, so it does not seem that these interest-based approaches are associated with increased vulnerability on the part of the negotiators.

Conclusion

In this article, we have painted a unique portrait of the current state of collective bargaining in the United States. We see a process in which key institutional elements, such as the focusing effect of contract deadlines and even the ability to reach agreements, show evidence of deterioration. We also see a process in which innovations have the potential to produce transformational outcomes but only seem to occur in a shrinking minority of cases.
Our results have a number of implications for policy and practice. First, we see a need for serious and sustained public debate on the degree to which collective bargaining is still a valued social institution. In 2004, Peter Hurtgen, then director of the FMCS, declared a year of national dialogue on this issue based on a review of these research findings. While there were three regional forums held (one in Philadelphia, one in St. Louis, and one in San Francisco) and other public presentations, these issues have not made it onto a national agenda for policymakers or practitioners.

Second, there is a need to break what has been a policy gridlock for more than three decades on the laws governing collective bargaining and union representation. Despite recommendations from a presidential commission (Report of the Commission on the Future of Worker Management Relations [U.S. Departments of Commerce and Labor 1994]) and findings by a broad range of scholars, no significant policy action aimed at advancing a viable model of collective bargaining consistent with our stated public policy has yet been taken. Alternatively, if the policy consensus is that we
should walk away from collective bargaining as a policy objective, then this too should be a matter of public dialogue and debate.

This article also illustrates how a national, random-sampling survey of matched pairs of negotiators can be used to understand the current state of practice. It yields important insights into the negotiations process and its outcomes, with clear implications for practitioners and policymakers. It would be worthwhile to conduct similar national surveys in other domains of negotiations in order to compare the relative use, preference for, and impact of interest-based approaches to bargaining.

In this analysis, several open questions remain, particularly around the degree to which the 2003 data set reflects a short-term economic downturn or a long-term trend. Should collective bargaining deteriorate further, it is not clear what alternative institutional arrangement(s) will replace it. It could be an expanded array of federal and state laws and government regulations of terms and conditions of employment, enforced by litigation and/or expanded use of arbitration. It could be the nonunion human resource management model, in which employers determine wages, benefits, and working conditions on a unilateral basis, but with the intent of maximizing the engagement and utilization of the workforce. In this model, there is still bargaining for those whose labor market alternatives provide them with individual bargaining power, but it leaves those without good exit options little or no voice in determining their terms and conditions of employment.

It could also be a nonunion model that has been termed a “race to the bottom” toward the lowest possible wages and benefits, combined with minimally tolerable working conditions. Here, in the absence of institutional forces limiting the employer’s ability to choose this option, there is not much room for negotiations — it is the market that mediates most relations in these cases. Finally, it could be a model that emphasizes collective interests, but in new ways, such as via race, gender, sexual preference, religious, age, ethnic, sports, and other “identity” groups, or through collective interests around knowledge and skills.

None of these alternative models, however, represent the sort of check and balance in a democratic society that collective bargaining provided during the middle decades of the last century. Writing in 1960, one of the founders of the human relations movement, Douglas McGregor, observed:

A half century or more ago, industrial management had, in the threat of unemployment, a form of punishment which made the use of authority relatively effective. Discharge as the ultimate punishment was even further reinforced by yellow-dog contract and employer blacklists. The situation today is vastly different. The social legislation of the 1930s, unemployment compensation, the limitations on arbitrary discharge brought about by a generation of widespread collective bargaining, and the far greater
mobility of our citizens all serve to make discharge a considerably less severe form of punishment than it once was (McGregor 2006: 27–28).

It was based on this foundation that he observed:

The limits on human collaboration in the organizational setting are not limits of human nature but of management’s ingenuity in discovering how to realize the potential represented by its human resources (McGregor 2006: 66).

Today collective bargaining and the associated institutional arrangements no longer provide such a foundation. There is evidence in the data that it may still have the potential to do so, but the prospects of this taking place do not appear to be good. We hope, therefore, that the data presented here serve as a wake-up call and spark a broad-based public debate over how to fill the vacuum in employee voice, representation, and constructive negotiations that now is evident in the vast majority of employment relationships in America.

These data may also suggest a larger question for those concerned about negotiations in other settings: Is collective bargaining like the proverbial canary in the coal mine? Is this just the first of a number of institutional contexts in which alternative approaches to negotiations will not be adequate to achieve transformations and innovative solutions needed to solve critical problems? Or, are applications of these principles in other contexts — international relations, technology negotiations, real estate negotiations, family counseling, community relations, supply-chain negotiations, and countless others — achieving institutional transformations that represent widely embraced ways to better deliver mutual gains through interest-based interactions? It is our hope that the data on collective bargaining are instructive in their own right and that they prompt us to ask these similar questions at an institutional level of analysis in other contexts.

NOTES

2. First contracts have been excluded from this analysis because they do not produce thirty-day notices and cannot be sampled like the renewal contracts.
3. Respondents to the 1996 survey were interviewed between October and December 1996; the 1999 survey respondents were interviewed between July and October 1999; and the 2003 respondents were interviewed between October 2003 and January 2004.
4. A regional breakout of these data suggest that the delays are particularly common in the Western states.
5. “Work rules” include restrictions on job assignments based on job classification, seniority, union bargaining unit, or other factors; seniority provisions for the distribution of overtime; and other such rules.
6. It is also noteworthy that a much higher proportion of management respondents than union respondents report agreements that feature increased work-rule flexibility. As we will see

264 Cutcher-Gershenfeld, Kochan, Ferguson, and Barrett Collective Bargaining: An Institution at Risk
shortly, there is a reverse pattern in whether the agreement included new language on job security. At one level, it can be understood how parties might read their hopes into the same contract language and come away with different interpretations. A union might, for example, see agreements on new technology as a form of job security, while the employer might not. At a deeper level, this is still a point of disagreement that is likely to pose challenges in implementing and administering the agreement. It certainly promises full employment for labor arbitrators.

7. The new pay systems show an increase, but a portion of this corresponds to locations where there was not a regular pay increase or a reduced amount of increase — with profit sharing, gain sharing, or pay for knowledge substituting instead.

8. Of course, there could be innovations not covered by the categories listed in the survey, but these are all topic areas that have been demonstrated to be important in case study research and as a focus for practitioners — such as at the National Labor-Management Conference run every other year by FMCS.

REFERENCES


