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**STATE AND LOCAL POLICIES AND SECTORAL LABOR STANDARDS:
FROM INDIVIDUAL RIGHTS TO COLLECTIVE POWER**

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Abstract

The United States enterprise-based collective bargaining regime creates substantial limitations for organizing workers where supply chains are increasingly disaggregated in ways that reduce worker power. Federal labor law generally preempts state and local policies that directly address private sector bargaining. State and local governments, however, are not preempted from setting general labor standards. We look at four cases of recent experiments at the local level with sectoral standards. Our cases show that sectoral standards have the potential to expand new forms of social bargaining at the state and local level through public policy in areas of the country where worker organizations are already strong. They can do so in ways that promote worker organization and build institutional power, especially when combined with robust worker organizing. In doing so they show both the potential power, and limitations, of federalism in US workplace regulation.

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Unions, policymakers, and academics in the United States are increasingly interested in sectoral standards setting as a way to strengthen worker organizations and raise labor standards for low- and middle-wage workers. With uncertain prospects for change in federal labor law, new experiments in setting sectoral labor standards are emerging at the state and local level. Setting sectoral labor standards at the state and local level, ideally, can improve outcomes of enterprise-level collective bargaining. The sectoral standards strategy may also address gaps in federal labor law for key issues facing many workers in the United States—workplace fissuring and exemption from federal labor or employment law.

This follows increased attention in recent decades by practitioners and scholars to state and local governments as loci of workplace regulation, with some arguing for a progressive vision of federalism, which uses the power of states and local government to expand rights and regulate business. Employment law in the US, which regulates individual workplace rights, provides a clear example of how this can work. The federal government sets the floor. States or local governments can choose to regulate above that floor. By contrast, labor law, which regulates collective action, is a centralized system. The federal government preempts lower levels of government from legislating labor rights for most private-sector workers.

This raises important questions about the potential role of state and local policy in fostering forms of sectoral standards setting across supply chains. Scholarship focused on Europe explores the multiple ways in which workers set standards across entire sectors, and theorizes that this standard-setting marks a distinct form of worker power, institutional power. Emerging domestic research is delving into past models for sectoral standards setting, including sectoral collective bargaining, from our own history. Yet little research explores current models in the US that show some promise for sectoral standards as a way to build and institutionalize worker power. What can current experiments in sectoral standards teach us about various forms of

worker power? What best practices are emerging from strong cases of standards-setting campaigns? How do the most successful crucial cases reflect on common critiques of sectoral strategies? What promise do these models hold for future worker organizing efforts? What are the lessons for federalism in workplace regulation?

Individuals from across the political spectrum have advocated sectoral bargaining, though what they mean by the term varies considerably. Senator Bernie Sanders, Service Employees International Union (SEIU) President Mary Kay Henry, Lyft President John Zimmer, and conservative author Oren Cass have all publicly called for some type of sector-based negotiation structure (Sanders nd; Henry, 2019; Luna 2020; Cass 2020).

Using cases from four sectors—hospitality, airlines, ridehailing, and domestic work—we review models of sectoral standards setting seen in nascent experiments in the US. These new models, examples of an understudied trend, offer a potential roadmap for a progressive federalism that enables workers to build and secure institutional roles in setting working conditions, and ultimately to create new sources of power in their sectors. These cases also demonstrate some of the limitations of a federalist approach under our current legal framework. We start with a review of the literature on sectoral bargaining and worker power, including the major critiques of sectoral strategies. We then outline our methods for the study. We follow with a brief primer on sectoral strategies drawing examples from across the globe. We then look at four cases of sectoral bargaining in the US. We close with a discussion of our findings.

SECTORAL STANDARDS, POWER, AND CRITIQUES

Sectoral bargaining is common in Europe and enjoys a relatively deep field of study there. However, it is a relatively new area of inquiry domestically, and requires a rethinking of sources of worker power. We situate our work in the growing dialogue around the possibilities,

limitations, and potential applications of sectoral bargaining in the United States. This review will explore domestic scholarship on sectoral standards, frequently found in legal scholarship, and put those in dialogue with key texts interrogating sectoral labor relations from Europe. We close with a discussion of the most common critiques of sectoral bargaining.

The US labor law regime privileges enterprise-level collective bargaining, which plays a major role in employer resistance to unions. The vast differential in labor costs between union and non-union competitor firms in low-density sectors puts unionized establishments at a disadvantage, creating an incentive for employers to take extreme measures to stay union-free (Doussard 2013; Weil 2014). Even when single-enterprise workers form a union, they often struggle to improve wages and benefits in low-density sectors since they are always bargaining against workplace standards primarily set by non-union competition. Some argue that regional or sectoral bargaining can address these issues (Madland 2016; Block & Sachs 2019).

Workplace fissuring weakens workers' bargaining power and poses challenges to organizing (Weil 2014). Fissuring shifts risks and liability away from the firm holding the economic power in a supply chain. This may be done through contracting out, use of temporary workers, franchising, or, at the most extreme, classifying workers as independent contractors. Fissuring poses challenges for subcontracted firms as well as for workers. A low-margin contractor firm at the bottom of a contractual chain in a highly competitive industry cannot raise labor costs to any meaningful degree and expect to continue winning bids. As a result, outsourcing puts downward pressure on wages in occupations like janitors, security guards, apparel, food service, and airline service contractors—sectors which disproportionately employ workers of color and/or women (Dietz, Hall, & Jacobs 2013; Dube & Kaplan 2010; Hinkley, Bernhardt, & Thomason 2006). One way to realistically raise standards across such a sector

would be through a regional or sector-wide standard which all firms had to obey, regardless of where they lie on the contractual chain.

Historically, most European labor law situated the sector as the key site of collective bargaining. However, austerity-imposed labor reform following the last global economic downturn has devolved bargaining in many European nations from the sector to the enterprise (Marginson, 2015). Perhaps because things are changing so quickly, sectoral standards-setting mechanisms and how they manifest worker power have become key areas of inquiry for scholars.

European scholars are increasingly interested in the prospects of state institutions for reducing precarity in low-wage or otherwise challenging sectors, where workers may not enjoy significant structural power resources (Doellgast, Lillie & Pulignano 2018). Although US unions do not have formal roles in public governance to the same degree as their European counterparts, North American scholarship also explores the value of exerting power through the state and shifting public policy over labor relations regardless of membership status, particularly in sectors blighted with precarious work. State and local governments seem the most promising for union intervention (Madland & Rowell 2017). This strategy is sometimes called “community unionism” (Fine 2005) or “social bargaining” (Andrias 2017).

The term “sectoral bargaining” is used by different scholars and practitioners to cover a wide range of standards-setting mechanisms. Some scholars argue that sectoral standards setting through state mechanisms, even those that involve workers or their representatives in a formal capacity, are wholly distinct from collective bargaining which requires two parties at a table negotiating (Slinn 2019). Others leave room for sectoral bargaining as a category to include wage boards and other models where the state legislates standards (Andrias & Rogers 2018). We define sectoral bargaining as the establishment of legally binding labor standards across a sector where workers and employers have formal institutional roles in the standards-setting process. We

use sectoral labor standards to cover the broader set of cases where the law enshrines standards governing a sector, with or without a formal role for workers or employers.

In practice, several distinct policy frameworks have established sectoral standards in the US and in Europe. Common sectoral standards-setting mechanisms include: bargaining extenders (the state extends conditions negotiated between unions and employer associations); standards boards (the state hosts tripartite bargaining); and sectoral minimums (the state imposes sector-specific standards without formal bargaining) (OECD 2017). All of these systems rely at least in part on the state as a key player.

Despite the potential upshot of sectoral approaches in mitigating issues of workplace fissuring, labor law pre-emption, and other concerns, some have articulated well-founded critiques of the strategy. Formal research and scholarship on some of these questions is still sparse, demonstrating a need for further research inquiry. As such, we here draw as much on non-academic sources and conversations with practitioners to summarize the primary lines of opposition thought below. Though these critiques are not in an extensive or cohesive dialogue, they broadly fall into five categories.

First, some argue that sectoral standards-setting regimes cannot succeed where worker movements do not already enjoy sufficient power, limiting their potential to places where unions are already strong. One recent comparative case study argues that even in New York City, a relative bastion of union strength, worker political power has been insufficient to promote true change in union power through a wage board (Marzán 2020). As a practical matter, unions have not had the power to win even modest reforms to the current collective bargaining regime on the federal level, making a total overhaul towards a sectoral system a likely non-starter.

Second, sectoral standards could create a free-rider issue, since workers across a sector enjoy benefits of unionization without contribution to the union itself. If workers fail to join

whichever union represents the sector, the union will run into the classic fruits of this issue—a lack of dues revenues. The sectoral bargaining experience in Europe paints a somewhat mixed picture on this question. Countries with the highest union densities all have some form of sectoral standards regimes, though these are generally accompanied by other institutional factors that affect membership decisions (Dimick 2019). Sectoral bargaining and bargaining coverage have a well-established relationship (Visser 2016; OECD 2017) and a worker is much more likely to join a union when covered by a collective bargaining agreement (CBA; see Scheuer 2011), though there are certainly some outliers. At any rate, the European experience certainly demonstrates that sectoral bargaining can co-exist with high union membership, even if the causal relationship is less established.

Third, some argue that sectoral standards regimes can create an opportunity for employer cartels to suppress wages or benefits. This criticism often mentions calls for sectoral bargaining by Uber in California in the lead-up to this year’s fight over whether drivers would be classified as workers or contractors (West 2019). Some in labor privately question the concept of sectoral bargaining on these grounds alone (Luna 2020).

Fourth, sectoral standards regimes in practice can lead to both raising and lowering standards. Indeed, one of the primary conservative thinkers associated with sectoral bargaining, Oren Cass, points to this possibility as a primary point of appeal for business (Cass 2020). This problem has real practical precedent which still casts a shadow over the California labor movement. The state operated a sectoral wage and standards board well into the early 2000s through its Industrial Welfare Commission (IWC). Labor itself pushed to defund the Commission in 2004 when it tried to undercut a higher minimum wage and roll back meal breaks (Andrias 2017).

Finally, some question the connection between sectoral standards and worker power because the state supersedes the shop floor as the terrain of struggle. Traditional analyses of union power in the US tend to focus on associational power, structural power, and symbolic power. While a full recap of these concepts is beyond the scope of this review, associational power is the power of numbers—what unions gain by having people connected to the organization itself. Structural power is the power workers enjoy over productive processes, either through their ability to dominate production chokepoints or through their control of labor inputs across a market (Silver 2003). Symbolic power streams from workers’ ability to engender public support against employers by exposing unfair treatment (Chun 2009). Examples of tactics associated with these sources of power might include, in respective order, voter mobilization, strikes, and protests.

Sectoral standards setting does not fit neatly into any of these categories of worker power, but may rely on all of them. Since the state frequently takes a prominent role in sectoral bargaining, either by facilitating discussions or imposing standards, workers and their organizations must have some degree of power over and within the state itself. Scholars focused on the European context call this “institutional power”—the ability of workers and their representative organizations to participate as key players in institutions (Schmalz, Ludwig, & Webster 2018). Institutional power is often, though not always, wielded through the state and its branches, but can also appear in non-state organizations. Yet unlike discussions in Europe, North American scholars tend to omit discussions of how sectoral approaches build institutional power, with some notable exceptions (Andrias 2017; Andrias & Rogers 2018). Our piece will attempt to bridge these discussions.

This paper joins other scholars in arguing that sectoral bargaining is not a panacea for all worker issues in all industries. Sectoral bargaining requires political power, and some degree of

social norms where employers will participate (Marzán 2020). Some argue that mechanisms of sectoral standards setting, like wage boards, can foster institutional power where workers lack structural power (Dube 2018), but without sustained associational power and organizational political influence institutional power can quickly fade. The case of Europe's withering sectoral standards regime provides ample testimony. However, to counter any argument that this may be a special hallmark of institutional power, we join scholars in arguing that other forms of power can also ebb without sustained vigilance, difficult organizing, and ultimately worker direct action (McAlevey 2016).

METHODS

This paper draws on multiple sources to examine four comparative cases on the cutting edge of sectoral bargaining in the United States. We rely on existing literature for our discussion of historical models of sectoral standards setting. For our case studies, we rely on interviews with key practitioners from our cases, supplemented by legal documents, statutory language, and press clippings. In addition, we draw on our own experiences as practitioners in several initiatives for sectoral standards.

This study is exploratory. The cases together speak to the five core critiques, discussed above, levied by practitioners against sectoral standards setting strategies: the question of origin power, the free-rider issue, the employer cartel issue, the ratcheting up or ratcheting down of standards question, and the supersession of shop-floor power. We explore the question of whether all sectoral standards-setting strategies inevitably become entangled in one of more of these issues, or if careful design and implementation can provide for successful navigation between these pitfalls and effectively build worker power in the workplace. Using the framework

of power, we hope to better understand this evolving model through an exploration of a few of its most promising examples.

We chose four crucial cases for particular focus: airport workers in multiple sites across the country; hospitality workers in several cities; domestic workers in Seattle; and ridehail workers in the same city. We selected these cases for their variety of sectoral standards typologies. The first two cases use sectoral standards to improve worker power in sectors governed by the National Labor Relations Act (NLRA). The third case is an effort to build institutional power for workers currently excluded from bargaining rights under the NLRA. The final case covers evolving strategies in a sector where employers claimed exemption from the NLRA. For the purposes of this study, we agree with critics who argue that without robust organizing, sectoral standards setting does not build sustained power. In all four of our cases, unions or worker centers were actively engaged in organizing before and after the policy victory; we chose these cases in part because they were consciously linked to broader worker organizing strategies.

For this study we explicitly chose the most promising examples. Our objective is to learn from practitioners in the most successful efforts at consolidating institutional power, not to analyze efforts that have come up short. As such, this study does not suffer from selection bias. Relatively few cases in the selection pool met our criteria, as the strategy is still nascent and perhaps only viable in certain sectors or regions. While we do not present these cases as broadly representative, we do hope to draw initial conclusions about promising best practices through pattern-matching, assess how the problems posed in the five critiques of sectoral standards strategies were managed, and outline potential avenues for future research.

We recognize that sectoral standards strategies are still evolving models, and many of the processes and effects must play out before any analysis can capture a full picture. Nonetheless,

the below cases show that sectoral standards setting, while not a panacea, can drastically increase worker power and, in tandem with more traditional organizing models, effectively move the needle in raising workplace standards or regulating sectors not regulated under federal law.

MECHANISMS FOR SECTORAL STANDARDS

Unions and governments set sectoral standards using various mechanisms that span the continuum between individual and collective rights. In this section, we will briefly describe four types of sectoral standard setting—multi-employer bargaining, bargaining extension, sectoral standards, and labor standards boards in the US and internationally—each of which relies in varying degrees on state rules.

Multi-Employer Bargaining

Historically, US unions engaged in sectoral wage-setting mainly through multi-employer master agreements. A master agreement covers most or all firms in a sector either by region or nationally. High union-density industries—like trucking, coal, steel, automobiles, and meatpacking—commonly had nationwide agreements. Unions reached master agreements by bargaining with multi-employer organizations or through pattern bargaining, in which an agreement negotiated with one employer becomes the standard for negotiations with other employers. Most major industries dropped nationwide master agreements in the 1980s as union density declined and the power to set sectoral standards through collective bargaining fell sharply (Herod 1991; Katz 1993). However, some unions still maintain region-specific master agreements, especially in high-union density subsectors like property services and construction (Erickson et al. 2002; Erlich & Grabelsky 2005).

Bargaining Extension

Outside the US, other wealthy democracies expand the terms of collective contracts by extending wage standards and other conditions across a sector, covering union and non-union employers alike—a process called bargaining extension. Although rules vary, generally the state uses bargaining extension when multi-employer agreements already cover a significant part of a sector. Unions and employers negotiate the specific terms privately; the state sets and enforces the rules. Extension policies level the playing field between competing firms by turning the main elements of the collective bargaining agreement (CBA) into sector-wide legal mandates. In some countries extensions are automatic, often upon meeting statutorily-defined membership density thresholds; in others, extensions may require a petition from worker or employer organizations. Workers' rights are both individual and collective, with enforcement mechanisms for each (Bray & Macneil 2011).

Extension increases collective bargaining coverage primarily by stabilizing multi-employer bargaining (Hayter & Visser 2018). Employers have an incentive to participate in collective bargaining processes rather than suffer statutorily imposed outcomes of a competitor's bargaining process.

The concept of bargaining extensions is not entirely alien in the United States. In some localities, prevailing wage laws serve a roughly analogous function for construction firms. Under a prevailing wage system, private firms must meet specific wage and benefit standards to be eligible to bid on a publicly-funded job. A survey of local wage rates in the sector generally sets standards. In some states with high construction union density, such as California, union CBAs effectively set the prevailing wage (CA DIR nd). Prevailing wage laws raise construction wages across the board, even outside of the public construction projects covered by the policies (Kessler & Katz 2001).

Legislated Sectoral Standards

Direct government regulation can set wages or other standards for a sector without any collective bargaining, though mechanisms vary. Australia has taken sectoral standard-setting the furthest, through a complex system of “modern awards” that detail minimum wages and other working conditions for 156 industry groups (AFWC nd).¹ With legislated sectoral standards, the policy mechanics, rules, and enforcement are all public processes. Rights are individual, not collective, and state enforcement creates the main source of power. Nonetheless, legislated standards may involve forms of collective power, which often plays a key role in the initial passage of the laws. In some cases, worker organizations receive contracts by the state for enforcement, or organize workers around collectively experienced violations in their workplaces (Fine 2008).

Wage and Standards Boards

The fourth method, wage boards or labor standards boards, typically involves tripartite negotiations between employers, workers, and the government to set standards for workers in a sector (Andrias 2016). Wage boards usually include employer and worker representatives, with government representatives either acting as voting or ex officio members. The authority of the boards varies; in some cases, they take on a quasi-legislative role, while others make recommendations that must then go through a legislative process.

A few US states have formal statutory provisions for wage boards or commissions. A New York wage board provided the structure for approval of a \$15 minimum wage for fast-food workers in that state (NY Lab. Law § 655.1).² Some states authorize wage boards to set

¹ Australia’s system originated with extensions of CBAs, but was later divorced from any union action and set by an appointed Fair Work Commission, an appointed board without direct worker participation (Bray & Macneil 2011).

² An agreement on a New York statewide \$15 minimum wage suspended the board. (Andrias 2016).

standards beyond the minimum wage. For example, the Connecticut and New Jersey statutes authorize a wage board to recommend overtime or part-time rates, and may establish variable minimum wages by sector (Conn. Gen. Stat. § 31-61(e); N.J. Stat. Ann § 34:11-56a13).

A labor standards board goes beyond the wage board concept, with a broad mandate to set wages, terms and conditions of employment, and benefit contributions. This could include wage scales with steps for experience and training, benefits, paid time off, scheduling, training, and workload. Such boards could apply sectoral standards regardless of whether workers are considered employees or not.

Labor standards boards are generating interest among organizers and advocates for a number of additional reasons. Unlike enterprise-level collective bargaining, standards set by a board take wage and other core labor standards out of market competition by equalizing labor costs across a sector. Like minimum wage and living wage laws, they are a form of social bargaining which relies on the political process. But unlike minimum wage laws, they set policy through a tripartite process which institutionalizes worker participation, and, in some cases, creates infrastructure for organizing. As such, labor standards boards have the potential to go beyond individual rights to promote collective action and support permanent institutions of worker power.

The standard-setting process itself can provide a focal point for organizing. In New York, the state Fast Food Wage Board held hearings across the state in 2015. The Fight for \$15 mobilized large numbers of workers to participate and testify about the effects of low wages on their lives (Andrias 2016). The tripartite structure also provides worker organizations with direct representation in the bargaining process. This is an important distinction with wage commissions, which are generally made up of a panel of experts with no direct role for worker organizations.

Similar to legislated standards or commissions, wage boards and other tripartite wage setting mechanisms are subject to the politics of who is in office. This can act as a double-edged sword. California's IWC provides one such example, as a previously friendly commission turned towards lowering standards. Conversely, New York Governor Andrew Cuomo convened the wage board that established a \$15 minimum wage for fast-food workers, avoiding a hostile legislative process in the Republican-controlled Senate.

Labor standards boards, then, are a hybrid approach to sectoral standards setting, combining elements of multi-employer bargaining, sectoral minimum wages, and bargaining extension. Unlike statutory employment laws, they include an institutional role for a collective worker voice, and as such create opportunity for institutional power over working conditions. Standards become law and apply to all firms in the sector, potentially helping worker movements in areas with little structural power. Finally, boards can set standards in sectors with strong worker organizations but little traditional collective bargaining, such as domestic work, and may cover workers regardless of whether they are classified as employees or independent contractors.

FOUR CASES OF LOCAL SECTORAL LABOR STANDARDS

Airport Workers

Airline service workers and airport concessions workers have successfully set industry standards as a pathway to collective power, despite organizing under federal labor laws which privilege enterprise-level solutions.³

Airlines began outsourcing ground-based airport jobs in the United States following deregulation, and have continued the practice to the present day. Between 2002 and 2012, average

³ Some airline and airport workers are covered by the Railway Labor Act (RLA), a federal law passed before the NLRA with its own labor relations regime and regulating agency. The RLA typically requires national firm-specific CBAs.

real wages for workers in US airports fell by 15%, largely due to outsourcing of jobs previously performed by airline employees. Wages of baggage handlers fell by 45% as the share of the jobs outsourced to contract companies more than tripled, from 25 to 84%. Outsourcing of vehicle and equipment jobs doubled, from 30 to 84%, while wages fell by a quarter. In one especially dire example from 2005, average wages for baggage handlers at the Seattle-Tacoma International Airport fell from of \$13.41 an hour to \$8.76 overnight when Alaska Airlines contracted the work out to non-union Menzies Aviation (Dietz, Hall, & Jacobs 2013). Low wages for ground-based workers at US airports resulted in high turnover rates, creating concerns for the safety and security of the flying public (Reich, Hall, & Jacobs 2005).

The Los Angeles Alliance for a New Economy (LAANE) led the effort to pass the first living wage law at a US airport in Los Angeles in 1997; Miami and San Francisco followed suit soon after. The San Francisco Quality Standards Program (QSP) required month-to-month permits for airline contracting agencies, mandating wage and training standards as a condition. Following passage of the law, worker turnover rates fell dramatically (Reich, Hall, & Jacobs 2005). Since that time SEIU and UNITE HERE have succeeded in winning labor standards policies at 20 US airports, including in Washington DC, New York, Chicago, Philadelphia, Denver, and Houston (Jacobs 2018; Rudiger 2019). While minimum wages and existing wage boards have generally been justified on the basis of workers' economic necessities, supporters justify airport policies on the basis of a public interest in reducing worker turnover and improving airport safety and security (Airport Workers United 2017).

SEIU estimates that during this period 120,000 airport workers—including some union members—received pay increases and 30,000 won unions with SEIU (Rudiger 2019). Amy Sugimori, Director of Policy and Legislation at SEIU 32BJ put it: “It is possible to organize workers around a common demand for higher standards — if just an individual employer, that

employer will lose the contract at the next opportunity. Organizing around a floor where all employers have to meet the standards, there is less volatility, contractors compete on the areas you would want them to: quality and service.”

Similar to SEIU, UNITE HERE jumpstarted an organizing drive of catering workers in Los Angeles while campaigning for an airport living wage policy at LAX. Unions now represent over 80% of airline catering jobs in Los Angeles; the increased wages brought stability to the industry and allowed unions to successfully build up membership. Interview subjects involved in the Los Angeles campaign argued that leveling the playing field through a sectoral minimum reduces incentives for employer opposition to organizing drives, and thus allowed organizers to successfully build unions in non-union shops.

Hospitality Workers

UNITE HERE also had success with sectoral minimum wages in the hospitality sector. Together with the LAANE, in 2009 UNITE HERE helped pass a hospitality minimum wage ordinance for hotels near LAX. The union has since successfully exported the strategy to five other California cities with significant hospitality sectors. In 2018, the rate in Los Angeles and Santa Monica was \$16.10 an hour.

As with airports, many of the hotel living wage campaigns were accompanied by successful union organizing drives. Century Boulevard, the primary corridor near LAX and site of the first such policy, and the city of Santa Monica both experienced dramatic increases in unionization, with Santa Monica going from 0% to 70% union density for large hotels. In areas where active drives did not exist, membership increased more gradually, though the elevated minimum did relieve pressure in bargaining at existing contracts due to a stabilization in wage levels. LAANE Executive Director Roxana Tynan did not see any evidence that sectoral

standards dampened worker interest in organizing: “Since then, there have been ongoing victories—more success since it was passed than prior. Four years later, the policy is still helpful.” In part, this is because companies routinely violate the law in the absence of a worker organization: “There are always violations until workers speak up.”

Several interview subjects from both the hospitality and airport campaigns stressed that active worker organizing was essential to making the strategy successful. Sugimori stated: “If there was a standard that just dropped from the sky, there would be a risk that workers might not connect that to the importance of the organization in fighting and winning. Our wins are not just coming from charity, they are coming from workers coming together. We have to have a robust culture of organizing. We wouldn’t have won any of this without it.” Previous research on the effects of the SFO policy found that Airport workers who had contact from union organizers prior to the passage of the policy were more likely than their counterparts to attribute the gain to collective action, rather than the beneficence of politicians (Reich, Hall, and Jacobs 2003).

Interview subjects in both New York and Los Angeles stressed the continual nature of these types of campaign. Rather than passing a policy and resting on laurels, successful sectoral standards campaigns involve ongoing organizing, constant dialogue with members about issues, and assessing new opportunities for raising standards. Sugimori noted, “even with a policy, there is a point where workers will need to come back and fight again, which becomes a culture of organizing.”

We argue that this ongoing process moves such campaigns closer to sectoral bargaining, as worker organizations incrementally raise the floor with policy and push the ceiling with traditional collective bargaining. Interview subjects stressed that member engagement must occur on both fronts—in traditional contract campaigns, but also in moving policy for higher sectoral minimums.

Seattle Domestic Workers

In July 2018, after a seven-month campaign, the Seattle City Council passed the Domestic Worker Ordinance. The law established a Domestic Workers Standards Board tasked with making recommendations on a broad range of working conditions for the approximately 30,000 domestic workers in the city (Seattle Municipal Code (SMC) §14.23). The National Domestic Workers' Alliance (NDWA), SEIU Local 775, CASA Latina, and Working Washington, along with a broad coalition of local and national organizations, backed the ordinance. The coalition saw a wage board as an opportunity to set standards, focus their organizing, and, eventually, to be a conduit for workplace benefits that would enable them to expand membership. Most importantly, interview subjects stressed the need for a permanent forum for addressing future workplace issues.

A survey of Seattle's domestic workers, released in conjunction with the campaign, found that 81% were very low income and 77% had difficulty making ends meet some or most of the time. Only half of domestic workers received overtime pay for extra hours, most worked with little or no benefits like health insurance or paid family leave, and 85% had no access to workers' compensation in case of injury. Of those workers who had raised concerns with their employers, half felt their employers did not take their concerns seriously and 16% faced retaliation for speaking up (Diddams 2018).

The Seattle ordinance is unique in a number of ways. First, it covers domestic workers whether or not they are technically the 'employees' of a household or some other entity, by simply defining 'domestic worker' and 'hiring entity,' and assigning certain responsibilities to the latter. Second, to address the exclusion of domestic workers from virtually all existing labor standards, the ordinance guarantees certain bedrock labor rights to nannies, housekeepers,

caregivers, gardeners, cooks, and household managers. The ordinance guarantees workers a minimum wage, meal and rest breaks, protection against confiscation of documents, anti-retaliation protections, and, through a related statute passed in September of that year, anti-discrimination protections (SMC §14.04.020). The Board will negotiate standards to layer on top of these core labor rights, potentially including: wages; pay differentials; access to paid time off; accreditation; portable retirement and health care benefits; and outreach and enforcement strategies.

Additionally, campaigners took care to ensure that the domestic workers can access the Board process and that representation is authentic. The ordinance carefully outlines the organizations that may nominate members to the Board: they must be nonprofit organizations that engage in advocacy on behalf of domestic workers and have a governing structure that promotes workers' decision-making. In case of multiple applicants, the ordinance gives preference to those organizations which engage the most dues-paying members. Six members of the board must be domestic workers. The ordinance directs the Mayor and City Council, who share the appointment-making authority, to consider representation from vulnerable communities, such as the elderly, disability rights advocates, and youth communities. In order to ensure participation by workers, the legislation requires the city agency that oversees the Board to provide translation, outreach, and travel expenses (SMC §14.23.030).

Advocates had initially hoped for a Board with binding decision-making power, but in the end the policy authorizes only an advisory role. The original draft of the authorizing ordinance included language obligating the City Council to accept Board recommendations unless the recommendation did not conform to the Board's mandate. The Board now makes recommendations for possible legislation or policy change, to which the Mayor and City Council must respond within 120 days by adoption or rejection. This advisory status makes the Board

unlike some other wage boards, like the now defunct IWC in California or New York's Fast Food Wage Board.

In an interview, Domestic Workers Standards Board participant Silvia Gonzales, revealed that plans are progressing well, although the COVID crisis has delayed implementation substantially. In July of 2020, the Board submitted its workplan to the Mayor. Following another survey of member needs, the Board decided to first focus on creating portable benefits for members. Worker organizations used the survey as an organizing tool, taking it as an opportunity to engage with domestic workers around possibilities under the Board. A core organizing committee came together around the provision of benefits, and activists successfully engaged with an employer organization during discussions. Negotiations are ongoing about exactly which benefits will be mandatory and how much employers will be required to provide.

Interview subjects stress that a major component of this policy effort includes changing the culture of domestic worker employment in Seattle, both for employers and employees. While such change may be incremental and prolonged, subjects believe that a permanent institution with the power to set and re-evaluate policy and minimum working standards will help legitimize domestic work.

Interview subjects believed that such a policy would be impossible in a political context which did not recognize the value of domestic work and exhibit openness to community-based enforcement. In domestic work, as in many informal sectors, enforcement is always a key concern; without the political will to enforce laws, they may end up as simply paper fiat.

Seattle Transportation Workers

Drivers for transportation network companies (TNC) such as Uber and Lyft operate in a highly fissured industry. TNCs typically classify drivers as independent contractors, which they

argue makes NLRA-based collective bargaining impossible. Nonetheless, TNC drivers in Seattle with the Teamsters Local 117 have engaged in a multi-year effort to enact local policy for sector-level bargaining.

Worker advocates had initially attempted to promote a local enterprise-level collective bargaining regime for these workers whom the companies treated as outside the scope of the NLRA, and therefore, outside NLRA preemption. The city passed the collective bargaining bill in 2015, but courts overturned the policy on technical grounds.⁴ By the time the ruling emerged, however, workers associated with Teamsters 117 had already decided to take a sector-focused approach to standards setting, one that would allow workers to assume a role in standards setting and enforcement. Teamsters Co-Director of Organizing Leonard Smith reported that workers and their advocates had seen the writing on the wall: “Even before the Ninth Circuit decision, we had realized that traditional collective bargaining would not work in our industry and that a sectoral bargaining structure is the only one that would work.”

Between September 2019 and December 2020, following efforts by the Teamsters, the city passed a series of ordinances that established a process to set minimum pay standards and address unfair dismissals. This process is not a formal standing wage board, however. Policymakers instead opted for an agency-led study (completed in summer of 2020) and later implementation of the new standards (SMC §14.33). Companion legislation prohibits unwarranted “deactivation,” a preferred misnomer for termination, and establishes an independent Driver Resolution Center which is funded by a \$0.51 per ride surcharge (SMC §14.32; §SMC 5.39). Requiring cause for termination enshrines in law an important worker

⁴ The courts ruled that the State of Washington had not delegated authority to cities to regulate collective bargaining, and thus Seattle’s policy ran afoul of anti-trust regulations.

protection normally provided through collective bargaining. The Driver Resolution Center will outreach to drivers and provide representation in deactivation disputes.

In the meantime, the union and its members have elected to institutionalize their power in other key ways. In order to continue exerting political influence when necessary, the Teamsters helped drivers set up a non-profit 501(c)(4) organization. Interview subjects argue that, since traditional collective bargaining is not on the table for drivers, constant organizing and political action are both critical.

Interview subjects report that it is still too early to tell if the ordinances will increase membership or not. TNC drivers report that threat of deactivation is the most salient issue in the sector; organizers believe this will make the Resolution Center an important nexus for worker organizing in the future. If not, however, interview subjects report that continued work with membership will be vital to making the most of the new legal framework. According to Smith, “The key to winning is constant organizing because we lack the structure of a traditional union with a CBA and a security agreement.” To Seattle TNC drivers and their advocates, this means a constant blend of inter-member organizing coupled with political action and advocacy.

DISCUSSION

In the cases discussed in this paper, campaigns for mandated sectoral standards enabled workers to overcome problems posed by the federal enterprise-level bargaining regime. We first considered workers covered under the NLRA. In the airport case, the use of subcontractual chains resulted in a sharp decline in labor standards in the sector. Airport mandated standards leveled the wage floor, mitigating downward pressure on wages from outsourcing. Workers were then able to negotiate on better terms in a more stable industry without putting their direct employer in jeopardy of losing their contract. As described in our second case, UNITE HERE

was able to lower hotels' resistance to bargaining demands through sectoral standards, again by mitigating the competitive effects of non-union wages, and by building strong community support for the workers' demands. While workplace organizing proved critical in both cases, sectoral standards setting and its resultant institutional power added to other sources of worker power. As emphasized by some of our informants in the airport case, traditional enterprise-level organizing could not have achieved these types of changes alone.

Our other two cases involved workers denied access to organizing rights through the NLRA; either formally, in the case of domestic workers; or, in the case of ridehail workers, because the companies treat workers as independent contractors exempt from the NLRA.⁵ For TNC drivers, formal collective bargaining became impossible at the city level with an adverse court ruling, after which the Teamsters turned to public policy to impose labor standards on their employers. More than simply establishing standards, TNC driver representatives sought to institutionalize their power at the local level through a permanent self-funded freestanding worker center.

Domestic workers, who are exempt under the NLRA, used sectoral standards setting to institutionalize their power at the local level. Rather than attempting the impossible task of bargaining with the thousands of Seattle area domestic worker employers individually, domestic workers created a permanent institutional presence where they could set standards. Once again, sectoral standards setting enabled workers who otherwise would be unable to collectively bargain to establish working conditions that workers in other industries might seek at the negotiating table.

⁵ The question of TNC workers' rights under the NLRA is far from settled at the time of writing, and may be revised by the Biden appointed NLRB in the near future.

Through the lens of our case studies, we can re-examine the core critiques of sectoral strategies that were delineated above. First is the question of whether workers must enjoy a significant degree of political power that comes from strong worker organization before even beginning a sectoral standards-setting campaign. Our cases indicate this argument has merit: all involved directly or relied heavily on existing unions with some degree of political power in the geographic area (in the case of the domestic workers, NDWA had support from SEIU). Until federal labor law is reformed, sectoral standards setting may admittedly be best practiced in places where workers and their organizations already enjoy some degree of political influence. To our knowledge, no programs similar to those in Seattle have come to fruition in any less progressive milieu.

The second major critique concerns the free-rider question. In each of the cases, the fight to win mandated standards was a focal point for worker organizing, bringing workers closer into the organization. In the cases involving airport and hotel workers, the policy campaigns were often accompanied by union organizing efforts. We do not see any evidence that mandated standards reduced the demand for workers to join a union. Both UNITE HERE and SEIU continued to grow membership in locations covered by the policies in subsequent years. In fact, rather than creating a free-rider problem, interview subjects saw the airport standards as essential to creating conditions in which workers could successfully achieve their demands. The TNC and domestic worker cases both include currently untested elements in the policies that may undergird sustained worker organization. For the TNC workers, there is the independent driver's resolution center, which will receive funding through surcharges. Domestic workers in Seattle used the political fight for their Standards Board as an opportunity to sign up new members in the equivalent of an open-shop environment, and see the potential for training programs, a portable benefits structure, and the periodic standards-setting process built into the Board as

avenues for supporting sustained organization. Both of these policies are too new to draw definitive conclusions on their efficacy.

The third concern is that employers might seize the levers of power under a tripartite sectoral standards-setting system in the absence of strong worker organization. Both Uber and Lyft have at various times expressed interest in sectoral bargaining, but fought the possibility tooth and nail in Seattle where the process would have provided workers with meaningful power. This is ultimately less an argument about the merits of sectoral standards in and of themselves and more a question of what worker organizations can achieve with existing levels of power, what trade-offs would be needed to win such standards, and if the cost is worth the benefit. The answer to these questions is necessarily case specific. The cases discussed above all resulted in labor standards for workers in their sector that were higher than those under existing law.

The fourth issue is that standards set through a political process can be lost under a hostile administration, as in the case of the IWC system in California. Formal laws permanently established hotel wages, most airport policies, and Seattle TNC standards, insulating gains from changes in a single branch of government. For tripartite wage-setting structures, the rules will matter. Advocates might protect against this possibility by setting baseline standards in the very rules governing the board, as in the Seattle domestic worker policy, or by explicitly prohibiting the board from going below previously approved standards.

Finally, and perhaps most importantly, some critics argue that efforts to move towards sectoral bargaining put the cart before the horse by ignoring worker organizing itself. To borrow from Jane McAlevey (2016), as did one of our interview subjects, there are “no shortcuts” to building worker power. None of the informants argued that sectoral standards were sufficient in and of themselves for building worker power.

Our cases all argue against a simplistic either/or framing of building worker power. In the case of the hotel and airport campaigns, practitioners described an iterative process. Increased worker organization on the shop floor (structural power) and increased political mobilization (associational power) led to the enactment of sectoral standards (institutional power). Yet the struggle for and implementation of new standards also provided opportunity to engage more workers in the organization itself, fortifying and increasing structural and associational power. Practitioners from the domestic workers and TNC drivers campaigns in Seattle reported similar results: the fight for sectoral standards enabled the organization to grow its membership, itself a worthwhile end. At the same time, sectoral standards setting on its own was less effective for building associational or structural power. In the case of hotels, interview subjects argued that, in markets where new worker organizing was not part of the campaign to pass the policy, sectoral standards did not yield equivalent gains in membership.

These findings thus point to the potential value of sectoral strategies as a meaningful tool for workers struggling with the many downsides of enterprise-level bargaining—misclassification, contractual chains, or excision from policy entirely. Like any other tool, institutional sources of power are not ends but rather a means to organize and, when successful, to improve working conditions.

CONCLUSION

In an economy with growing workplace fissuring, labor relations structures that rely on enterprise-based bargaining will face substantial limitations in promoting worker organization and improving wages, benefits, and working conditions. Workers in some sectors fall through the cracks of US national labor and employment law. The American labor law regime is highly limited even under the best-intentioned federal government; with a Senate subject to the

filibuster, the immediate prospect for changes at the federal level are uncertain (Andrias & Rogers 2018).

At the same time, as this study shows, workers are experimenting with innovative approaches at the local level, including labor standards boards and other forms of sectoral standard setting. One of the greatest strengths of a federalist approach is the opportunity for experimentation which allows regulatory frameworks to be honed at the state and local levels and expanded upward.

Workers in our cases have been able to use these strategies in combination with, and in furtherance of, both existing and new forms of worker organizations. In heavily fissured industries, sectoral standards fixed by public policy can take wages and other core labor standards out of marketplace competition, leveling the playing field between employers while raising standards for workers. As the examples discussed in this paper show, they can be applied regardless of employment status. Sectoral standards may be especially effective in highly fissured industries where law or circumstance impairs enterprise-level bargaining, as two of our cases indicate. They may also reduce incentives for worker misclassification.

Beyond merely setting workplace standards, sectoral strategies have the potential to institutionalize worker organizations and worker power. This can occur through new state institutions, as in the case of the domestic workers. Yet even without a formal role in a state apparatus, other forms of sectoral standards setting have increased worker power, by levelling the playing field for union employers, or through building non-state institutions with state-delegate roles, as with the drivers resource center. The above so-far successful efforts include a few key common aspects: the use of sectoral standards as one element of a larger organizing and power-building strategy; a willingness to push into gaps in federal law and extend organizing protections to sectors that fall between the cracks; a willingness to bring stability to otherwise

chaotic fissured industries where even employers may not be able to effectively set labor standards due to hyper-competition in the market; and a commitment to ongoing organizing. Success will depend both on the strength of existing worker organization within the sector, which brings bargaining power to the table, and on the specifics of policy design.

While we have found evidence that institutional power can supplement other forms of power and help to further worker goals, the cases of this study also argue against a strategy which relies wholly on institutional power in workplace struggles. Associational power helped to build up institutional power, to be sure, but also served to engage the sector locally and mobilize direct support for organizing workers. Similarly, structural power played a critical role in sectors where workers enjoyed it. But we also found that the process of building institutional power augmented other types of worker power. Organizations could grow and accumulate resources, manifestations of associational power. Organizations could also attract new members for potential workplace actions, structural power. Finally, the public nature of the policy fights increased the visibility of worker plights, building symbolic power. This finding argues that these forms of power are highly interrelated and may supplement each other as they grow.

Interest in labor standards boards and other forms of sectoral bargaining is on the rise in the US. The COVID-19 pandemic demonstrates the importance of a strong worker voice in protecting the health and safety of workers and the public, and emerging models are building worker power in this area (Koonse, Jacobs & Ray 2020). Many sectoral strategies are rapidly evolving, and not all may succeed. Local policies and organizing efforts can serve as essential spaces for experimentation that may expand to broader geographies.

Our cases also point to some of the limitations of federalist approaches. Sectoral standards do not depend on the federal government, but are only realistic in those states or cities where the political climate is favorable to workers' interests. As with all local strategies that

depend on public policy, their reach will be limited to those jurisdictions where state law permits local labor standards. As of May 2017, 26 states had laws preempting local governments from setting local minimum wages (EPI 2019). The Miami airport living wage policy was greatly narrowed by a Florida Appeals Court in 2019 on the basis of state preemption (*Ultra v. Cruz* 2019). State preemption has strong racial implications. When urban areas like Detroit, St. Louis, Birmingham, and Atlanta—with disproportionately African-American populations—moved to set local labor standards, predominantly white state governments took actions to preempt them (Lakhani 2017). In the end, for progressive federalism to be progressive, national standards will need to set a strong regulatory floor, which state and local governments can build upon. In the meantime, workers may have rediscovered a powerful tool for change where the conditions are right.

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