

Two-Tier Wage Settlements and the Legitimacy of American Unions

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ABSTRACT

Two-tier wage settlements are clauses in collective bargaining agreements stipulating that new workers will be hired at lower wage rates than those paid to present workers doing the same jobs. In this paper I explore the implications of two-tier wage plans for American unions by using legitimacy as a focal point for analysis. This provides a more revealing perspective than studies dealing solely with the attitudinal or financial implications of two-tier plans. I contend that two-tier wage settlements reduce wages in ways that challenge the fundamental legitimacy of the unions. They erode the pragmatic legitimacy of unions by undermining the unions' apparent effectiveness as bargaining agents and they reduce the moral legitimacy of unions by diminishing the social contract at work.

INTRODUCTION

Two-tier wage settlements are clauses in collective bargaining agreements stipulating that new workers will be hired at lower wage rates, often 20 to 30 percent lower, than those paid to present workers doing the same jobs (Walker 1987; Martin and Heetderks 1990). The wage plans can be permanent (in which case there will always be a lower tier) or temporary (the lower tier will eventually fold into the higher tier).¹ Workers voting for two-tier wages during contract ratification are essentially deciding that future hires--workers not yet present to vote--should be paid less and assigned to a lower wage tier because this will reduce labor costs and protect present workers' jobs.

Two-tier wage plans are inherently controversial. They are criticized for reducing union solidarity by creating a lower-tier of cheaper, second-class union members (Malveaux 1986; Buccheri and Englander 1987; Rose and Chaison 1996; Slaughter 2003; Merx 2007), denying fair representation to newly hired workers ("Two-Tier Wage Discrimination..." 1985), and violating the cardinal union principle of "pay uniformity across workers" (Bell 1989) or "equal pay for equal work" (Malveaux 1986; Kelber 2004; UE 2008). Nonetheless, some union leaders claim that two-tier wage settlements are the only alternative to eventual wage cuts and plant closures. They argue that either a few entry-level workers must have lower paying jobs or all workers, regardless of seniority, could lose their jobs (Barkholz 2007; Chaison 2007).

Employers avoid two-tier plans when they believe the plans reduce the newly hired employees' incentive to work (Salpukas 1987; Gallun 1999), or raise turnover rates (Walker 1987; Davies 2007; Weir 2007). But there are many who believe that two-tier wage plans, despite their drawbacks, are the only way to systematically cut labor costs and survive low-wage competition (Jacoby and Mitchell 1986; Walsh 1988). They point to factories that were able to remain open, store chains that expanded, and airlines that continued to fly because of the savings from two-tier settlements (Martin and Heetderks 1990; Salpukas 2005; Bunkley 2008). For example, as it presented its 2007 collective bargaining agreement, the Ford Motor Company declared: "Competitive entry level wages [i.e., a lower tier paid less than half the compensation of the higher tier] will enable the insourcing of new work..." (Ford Motor Company 2007, p. 17).²

Two-tier wage systems lead to opposition movements within unions (e.g., the Campaign to Oppose Two-Tier Wages formed among unionized automobile workers in 2008) ("Eliminate Two-Tier Workplaces." 2008; CLR Working Group Opposing Two-Tier Workplaces 2008) but they are also accepted by majorities of members in large and important bargaining units (such as those of auto and auto parts makers, and grocery workers). One union's officers might try their hardest to resist employers'

demands for two-tier wages (e.g. Keenan 2008a, b), while another union's officers might launch a sophisticated marketing campaign to "sell" a second wage tier as the only way out of a strike that is going badly (Cleeland and Peltz 2004; Chaison 2007).

In this paper, I explore the nuances of these controversial two-tier wage settlements by using the legitimacy of unions as a focal point for interpretation. This leads to a fresh and more revealing perspective than studies dealing exclusively with the attitudinal or financial implications of two-tier settlements (e.g., Jacoby and Mitchell 1986; Martin and Peterson 1987; Capelli and Sherer 1990; Cooper 1990; Martin and Heetderks 1990; Thomas and Kleiner 1992; Gordon *et al.* 2008)

TWO-TIER WAGE SETTLEMENTS

Although early two-tier wage systems at unionized firms can be traced back to airline negotiations in the 1970s when companies explored new ways to cut labor costs (Gallun 1999), they were most prominent during the concessionary bargaining during the following decade (Jacoby and Mitchell 1986; Martin and Heetderks 1990). In the 1980s, two-tier wage plans covered from 2 percent (in 1981) to 33 percent (1985) of employees under new collective agreements. Plans were often found in industries facing significant global competition or deregulation (e.g., manufacturing and transportation) (Malveaux 1986; Walsh 1988; Capelli and Sherer 1990) or industries such as retailing where turnover was high and the lower tier could quickly expand. Concessionary bargaining in general (i.e., negotiations over freezes and reductions or "givebacks" in compensation, and the slackening of work rules) declined by the end of the 1980s (Bell 1989; Gallun 1999; Thomas and Kleiner 1992; Chaison 2007) but the frequency of two-tier wage settlements held steady. In their annual review of collective bargaining agreements, the Bureau of National Affairs found that 28 percent of the sample of agreements had two-tier wage plans in 1989, followed by 27 percent in 1992 and 29 percent in 1995 (Bureau of National Affairs 1995). In 2008, 31 percent of the contracts had a lower wage tier for recent hires (Bureau of National Affairs 2008).³

Concessionary bargaining was a pragmatic reaction to hard times; union officers and members believed that an industrial crisis was near and layoffs and plant closings could be avoided by temporary sacrifice. Unions agreed to concessions when the employers' claims of hardship seemed credible, concessions would likely save jobs, and concessions would be adequate to revive companies and would not have to be repeated (Chaison and Plovnick 1986). Much of the research on two-tier wage plans dates from the 1980's during the initial wave of concessionary bargaining

A second wave of major concessionary bargaining occurred two decades after the first wave (Chaison 2007). Two-tier wage systems were agreed to in some high profile negotiations—for example, the California grocery workers at Vons, Ralphs and Albertsons in 2004; the major auto parts makers in 2004-2008 (Delphi, Dana, Visteon and American Axle); Caterpillar in 2005; and the Detroit Three (General Motors, Ford and Chrysler) in 2007. Although the settlements were often complex and allowed for some movement from one tier to another, they had the basic two-tier configuration. For example, under the 2007 collective agreements of the Detroit Three, non-core new hires receive second-tier wages equal to 50-60 percent of the current first-tier wage. They also receive a different benefit package which does not have a defined-benefit pension and company liability for health care benefits for retirees. If the new hires are transferred to *core jobs*, they receive the higher-tier wage but retain the lower-tier benefits package (*Beyond the Big Leave* 2008).⁴

UNIONS AND LEGITIMACY

The full implications of all types of two-tier settlements are best understood in the context of the legitimacy of unions. As a status conferred on organizations, legitimacy is derived from the belief of the organizations' constituencies that what it does is desirable, proper or appropriate according to their values and expectations. Organizations that are deemed legitimate have greater access to resources (whether monetary or human, tangible or intangible) needed to reach their goals. The failure to maintain legitimacy can lead to an organization's loss of resources and credibility. Consequently, legitimacy is a valuable resource for organizations because it enables them to withstand challenges to what they do. But it is also a constraint on organizations' actions because those engaged in "inappropriate" activities can lose their legitimacy (Chaison, Bigelow and Ottensmeyer 1993; Chaison and Bigelow 2002).

Suchman (1995) distinguishes between three forms of organizational legitimacy. First, *pragmatic legitimacy* is legitimacy derived from self-interested calculations. Constituencies support

organizations that provide specific favorable exchanges; they either expect something of value for their support of the organization or they believe the organization is responsive to their interests. Second, *moral legitimacy* is based on the constituencies' judgments about whether the organizations' activities are the "right thing to do". Do organizations accomplish something of social value, use socially acceptable techniques and procedures, or have features or structures that are socially valued? Moral legitimacy is conferred on organizations if they are seen to be promoting societal welfare. A third form of legitimacy, *cognitive legitimacy*, evolves from the constituencies' acceptance that the organizations are necessary and inevitable. Organizations are supported *not* because of their constituencies' own self-interests or social valuation but because the organizations have a "taken for granted" quality.

The union constituencies that confer legitimacy include the union members and potential members, the public, employers, legislators and the broader labor movement (e.g., labor activists and members of workers' rights organizations). Legitimacy is especially important to unions because their effectiveness is difficult to evaluate in a systematic and standardized manner (Rose and Chaison 1990, 1996; Fiorito, Jarley and Delaney 1993; Hammer and Wazeter 1993). For acceptance and support, unions must constantly gain and maintain legitimacy from their constituencies (Chaison, Bigelow and Ottensmeyer 1993).

Chaison and Bigelow (2002) contend that American unions have *pragmatic legitimacy*. This type of legitimacy is usually the easiest to manipulate because unions only have to persuade their constituencies that what they offer is valuable or that they can respond to their needs. But the unions' pragmatic legitimacy is also a narrow and unsteady foundation because it lacks an ideological underpinning that either equates unions with social values or claims that unions as unassailable. Legitimacy is threatened when unions no longer produce something of value or when there are changes over time in what the constituencies see as valuable (Chaison, Bigelow and Ottensmeyer 1993; Chaison and Bigelow 2002).

Moral legitimacy is also problematic for unions because what they do is not deemed to be morally right in any abstract sense; "unionization and representation in bargaining are not commonly seen [in the United States] as the inherent, inviolable civil right of workers" (Chaison and Bigelow 2002, p. 95). Unions must seek both pragmatic and moral legitimacy simultaneously because neither can be pursued to the neglect of the other. As Chaison and Bigelow (2002) show with case study evidence, moral legitimacy is often crucial for gaining the support necessary to achieve instrumental goals (e.g., winning strikes, organizing among new group of workers, lobbying effectively through political coalitions)—the basis for pragmatic legitimacy.⁵

TWO-TIER WAGE SETTLEMENTS AND THE EROSION OF UNION LEGITIMACY

Two-tier arrangements diminish the legitimacy of American unions in its pragmatic and moral forms. Unions cannot gain legitimacy or protect against the loss of legitimacy when they negotiate two-tier wage settlements that cast doubt on both their effectiveness and fairness as bargaining agents.

Two-tier systems breed dissent and divisiveness. We would expect workers to be disgruntled by their inclusion in a lower wage tier because of their concern about *relative wages* (Gordon *et al.*, 2008).⁶ But they would also be upset by their fellow workers' willingness to confine them, without their consent, to a lower wage tier even if they did so by a democratically-run contract ratification process. Workers may also believe that their union acquiesced to a two-tier settlement so that the union it would appear to be a reasonable and management would not oppose it during organizing at their non-union plants (Barkholz, 2007; Slaughter 2008).

Second, two-tier systems shape future bargaining priorities. Employers will insist that the lower-tier remain or be expanded but unions will urge higher-tier workers to forgo wage increases so the lower-tier can be raised or eliminated ("Two-Tier Wage Discrimination", 1985; Walsh 1988). In the midst of such opposing pressures, lower-tier workers will become "a single-issue constituency", intent on eliminating the lower tier above all else (Walsh 1988). They might even feel sufficiently aggrieved to someday negotiate away the benefits of retired higher-tier workers. For example, a higher-tier auto worker observed: "After we retire, the next generation may ask, 'Why should we defend your pensions? You didn't defend our pay when we were young'" (Slaughter 2006).

For these reasons, two-tier wage plans reduce the apparent effectiveness of unions, diminishing their pragmatic legitimacy. But the moral legitimacy of unions is also threatened because two-tier wage systems are incompatible with the doctrine of the *social contract* of employment.⁷

Kochan (2000, p. 4) defines the social contract of employment as “the expectations and obligations that workers, employers, and their communities and societies have for work and employment relationships”. It assumes that the benefits of economic growth would be widely shared through collective bargaining and government programs for income security (e.g., minimum wages and social security) (Faux 2008). The social contract evolves from an implicit *quid pro quo*: “If one worked hard, the expectation of a livable income and basic securities for oneself and one’s family was the implicit understanding of this social contract” (Shulman 2000, p. 13).⁸

Union support of two-tier wage systems erodes the social contract by reducing the number of “good jobs” and blocking the movement of workers into the middle-class (Merx 2007). It contradicts the usual presumption that workers in successful companies, particularly those in manufacturing, can “achieve a secure, relatively prosperous middle-class life for themselves and their families...” (Uchitelle 2006, p.C1). Accordingly, the moral legitimacy of unions—the shared belief that unions have goals and accomplishments that promote societal welfare—declines (or is never established) as union members, following the recommendations of union officers, choose to block the economic advancement and upward mobility of future generations of workers (“Two-Tier Wage Discrimination...” 1985; Chaison 2007; Greenhouse 2008a, b). When they agree to two-tier plans, unions are creating a *reverse economic revolution*—workers’ wages become lower than those of the previous generation (Greenhouse 2008a).

Unions have negotiated a number of measures to dilute the impact of two-tier settlements:

- (a) restrictions on the number or proportion of workers on the lower-tier;
- (b) *buy-downs* or reimbursements to offset wage cuts that have the effect of delaying the lower tier until the end of the agreement;
- (c) *buy-outs* or payments to the most senior higher-tier workers to encourage them to leave their jobs;
- (d) *snap-backs* that combine the higher and lower tiers at the higher level by the end of the agreement, or *grow-ins* that combine the two tiers gradually before the end of the agreement;
- (e) second tiers for compensation other than direct wages, such as health care benefits, or for workers other than bargaining unit members such as retirees, so that the magnitude of the differences between tiers might not be readily discernable, and;
- (f) restricted lower tiers in which some but not all of newly hired workers are placed (e.g., only new workers in certain departments or job classifications are on the lower tier).

In some cases, the workers on the lower-tier are simply told that higher-tier workers are being “grandfathered” until they depart and are actually the ones with special pay rates, and that the lower-tier rates are the new standard (Uchitelle 2006).

These approaches dampen but do not erase the impact of two-tier plans on legitimacy. Harsher alternatives of two-tier plans can be proposed by employers in future negotiations. Moreover, at the heart of either the weakest or strongest form of two-tier wage plans, there is a fundamental scenario; workers vote, in their own self-interest, to disadvantage those not yet hired and without a voice in the matter. The damage is done when the door to a two-tier plan is opened, no matter how wide it was opened or how quickly or completely a union attempts to shut it. This year’s partial, temporary, delayed or disguised two-tier wage settlement can become next year’s full, permanent, and unrestricted two-tier plan.

CONCLUSIONS

The erosion of legitimacy by two-tier wage settlements poses serious limitations to union growth and revival. First, the loss of pragmatic legitimacy directly affects organizing success because non-union workers evaluate unionism in terms of instrumentality (Kelloway, Barling and Harvey 1998). “Most workers think about unionism in a pragmatic way—estimating and comparing its costs and benefits—so unions must point to bargaining achievements in similar work places” (Chaison 2006, p. 64). Two-tier wage settlements provide clear, indisputable evidence of the unions’ inability, when pressed by employers, to maintain or extend bargaining gains.

Moreover, two-tier settlements are not simply an internal union matter. Unions cannot claim to be progressive organizations if they defy the social contract by allowing a disproportionate share of the burden of concessionary bargaining to fall on the shoulders of new hires. They will lose the support of

coalition partners, so vital to their political effectiveness and the eventual passage of legislation reforming the organizing process (Chaison 2006). Organizing will remain difficult, expensive and time consuming unless there are legislated changes in how organizing elections are conducted (e.g., expedited elections) or how the majority support for unions can be demonstrated (e.g., by signed union membership cards). By detracting from moral legitimacy, the spread of two-tier wages settlements reduces the possibilities of political alliances and the labor law reform needed for eventual union revival (Chaison 2006).

More than just another bargaining concession to be appraised in terms of its financial implications, two-tier wage settlements cut wages in ways that challenge the fundamental legitimacy of unions as workplace representatives and the voice of workers in the broader society. This is a big price to pay to deflect employers' demands for concessions. When we look at their effects on the legitimacy of unions, the true cost of two-tier plans becomes readily apparent, and too great for the unions to bear.

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ENDNOTES

¹ Jacoby and Mitchell (1986, p. 222) argue that the line between "permanent" and "temporary" two-tier wage plans is often blurred because contracts are finite and even for apparently permanent plans the tiers might be merged in some future negotiation of the contract. Moreover, if it takes several years to merge the two-tiers of a "temporary" plan, some employees may never be around long enough to reach a single higher tier. These points are also made by Walker (1987).

² On the other hand, when the auto-makers were presenting their case for a federal bailout to avoid bankruptcy, the fact that the United Auto Workers had agreed to a two-tier wage plan a year earlier (2007) was not very impressive "because the Detroit Three are shedding rather than creating jobs" (Simon 2008, p. 1).

³ In 80 percent of these contracts, the lower wages are temporary, lasting only for the duration of the agreement. The two-tier wage systems are most often found in manufacturing (49 percent of expiring agreements versus 22 percent for non-manufacturing) (Bureau of National Affairs 2008).

⁴ Core work includes specifically defined machining and assembling positions. The purpose of the two-tier plan at the Detroit Three was to make the companies more competitive with the international producers by reducing the costs of non-core workers. International producers had very few non-core workers (their work was usually done by their outside suppliers). ("Beyond the Big Leave", 2008). However, the producers were not able to take full advantage of the two-tier plan because they were hiring so few new workers (Garsten and Clanton 2005).

⁵ There have been a few recent studies of the legitimacy of unions modeled after Chaison and Bigelow (2002) or using similar terminology. Baugher (2007) studied the impact of employee teams in an automobile plant on pragmatic and moral legitimacy. Cohen (2008) applied the concept of legitimacy to demonstrate the links between ethics training and union effectiveness. In addition to pragmatic and moral legitimacy, she examined legal legitimacy (i.e., the status conferred on unions because of their compliance with the law). For a treatise on the philosophical foundations of legal union legitimacy, see Levine (2001).

⁶ Martin and Peterson (1987) concluded that "Lower-tier employees perceived significantly lower pay equity and instrumentality of the union regarding pay than higher-tier employees." In contrast, however,

Cappelli and Sherer (1990) found that workers on the lower tier were more satisfied with their pay than those on the higher tier because they have lower expectations and workers on the higher tier were more inclined to compare their conditions of employment with conditions of similar workers at similar companies. Their study dealt primarily with temporary two-tier systems.

⁷ As a central concept in political philosophy, the *social contract* deals with the expectations and consent of the governed. This is the primary use of the term. For a review and critique of the concept of the social contract, see D'Agostino and Gaus (2008),

⁸ The American automobile industry, with its high compensation and promises of job security, was a pioneer in developing the social contract at work, auto workers' expectations were dashed with the decline of the industry over the past decade (Hakim 2005).