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## Are Union Co-op Labor Negotiations a Win-Win and for Whom?

Contents: 1. Introduction. 2. Background. 3. Union Co-op Negotiations. 4. Theoretical Framework. 5. Analysis. 5.1. Union Co-op Labor Negotiations are Likely to be More Interest-Based. 5.2. Encouraging Participation in Civic Society and Political Democracy. 5.3. Recognizing Community and External Interests. 5.4. Technological Change. 5.5. Addressing Racism and Other Systemic Discrimination. 5.6. Climate Change and Environmental Sustainability. 6. Conclusion.

### I. *Introduction*

Are union co-op labor negotiations in the United States more similar to the interest-based win-win negotiation framework popularized by *Getting to Yes*<sup>1</sup> than traditional labor negotiations? If they are, do co-op labor negotiations and resultant collective bargaining agreements (CBAs) address some of the grand challenges of this historical time? Do they grapple with challenges, such as climate change, technological advancements like genera-

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<sup>1</sup> FISCHER, URY, PATTON, *Getting to yes: Negotiating agreement without giving in*, Penguin, 2011.

tive AI, and combatting racism and anti-democratic leadership, in similar or different ways than traditional negotiations? This article explores how union negotiations in worker-owned co-ops compare to more traditional labor negotiations. The theoretical analysis addresses possible synergies between practices traditionally considered as alternative, employee ownership and collective bargaining, and the development of collective bargaining in new business models.

In the United States the development from master-servant doctrine to a more contract-based employment framework occurred during industrialization in the 19<sup>th</sup> century and overlapped with the time period when the U.S. abolished chattel slavery<sup>2</sup>. The law diverged from that of Britain which presumed an annual contract with termination during the term only for cause<sup>3</sup>. Employment at will is the default employment relationship in the United States<sup>4</sup>. The relationship is terminable by either party, without any notice, at any time and for any or no reason<sup>5</sup>. Unlike Western Europe where the default employment relationship generally requires notice and a reason<sup>6</sup>, any contract in the U.S. that requires just cause for termination is an exception to the default relationship<sup>7</sup>. Collective bargaining takes place in this context, and a minority of the workforce, less than 7% of the private sector, are unionized<sup>8</sup>.

The law governing unionization and collective bargaining in the private sector is the National Labor Relations Act. Bargaining in the U.S. is

<sup>2</sup> SUMMERS, *Individualism, Collectivism and Autonomy in American Labor Law*, in *EREPLJ*, 2001, 5, p. 453; TIPPETT, *The Master-Servant Doctrine: How Old Legal Rules Haunt the Modern Workplace*, 2025, p. 36.

<sup>3</sup> LIN, *Race, Solidarity, and Commerce: Work Law as Privatized Public Law*, in *ASLJ*, 2023, 55, p. 834; BALLAM, *Exploding the Original Myth Regarding Employment-at-Will: The True Origins of the Doctrine*, in *BJE&LL*, 1996, 17, pp. 92–93 (While scholars debate when and why the U.S. default diverged, they agree it did diverge).

<sup>4</sup> RAY ET AL., *Understanding Labor Law*, Carolina Academic Press 6th ed., 2025, p.46.

<sup>5</sup> TIPPETT, *cit.*, p. 36.

<sup>6</sup> JACOBS, *A Key to Comparative Labour Law in Europe*, 2021, p. 78 (“open-ended contracts of employment may only end if there is a valid reason for termination connected with the capacity or conduct of the worker or based on the operational requirements of the enterprise”); SMYTH, *European Employment Law: A Brief Guide to the Essential Elements*, Business Expert Press, 2017, pp. 15, 17.

<sup>7</sup> RAY ET AL., *cit.*, p.47.

<sup>8</sup> <https://www.bls.gov/news.release/pdf/union2.pdf> (private sector membership in 2024 5.9%); <https://cepr.net/publications/union-membership-stagnated-in-2025/> (private sector coverage density in 2025 6.8%).

shop by shop, or in other words enterprise by enterprise or firm by firm<sup>9</sup>. It is not sectoral like in Germany and other European countries;<sup>10</sup> no default rule, such as in some European countries, requires employees of non-signatory companies be governed by the standards set in collective bargaining<sup>11</sup>. When multiple employers in an industry bargain and sign on to a contract, it is only by employer choice<sup>12</sup>.

The framework for bargaining under the NLRA is also known as “business unionism” or “bread and butter unionism” because it focuses on bargaining for better economic conditions and job security<sup>13</sup>. Unions do not normally bargain over having board-level control, firm ownership, or input into management decisions<sup>14</sup>. The reasons for unionism taking this trajectory include the legal framework of the NLRA and the jurisprudence interpreting it<sup>15</sup>.

Because of the focus on job security, collective bargaining agreements in the U.S. generally contain a provision that mandates that employees may be disciplined, including discharged, only for cause<sup>16</sup>. Scholars in the field of U.S. law and economics have long asserted that substituting just cause protections for an employer’s ability to terminate at will is less efficient<sup>17</sup>. Many

<sup>9</sup> NAHMIA, *Innovations in Collective Action in the Labor Movement: Organizing Workers Beyond the NLRA and the Business Union*, in *MIT Work of the Future*, Working Paper No. 13-2021, 2021, p. 5.

<sup>10</sup> ESTLUND, *The Case for Sectorial Co-Regulation*, in *ABAJL&EL*, 2025, 38(3), pp. 391-93; ANDRIAS, *An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act*, 128 in *YLJ*, 2019, 128(3), p. 622.

<sup>11</sup> JACOBS, *cit.*, p. 40 (“The procedure of extension erga omnes now exists in the majority of European countries (e.g., BE, CZ, DE, ES, FR, FI, GR, LU, NL, PO, SI, LV, SL)”).

<sup>12</sup> *Charles D. Bonanno Linen Serv. v. NLRB*, 454 U.S. 404/1982, p. 412.

<sup>13</sup> REDDY, *After the Law of Apolitical Economy: Reclaiming the Normative Stakes of Labor Unions*, in *YLJ*, 2023, 132, p. 1392; PAUL M. SECUNDA, *Promoting Employee Voice in the New American Economy*, in *MLR*, 2011, 94, p. 757.

<sup>14</sup> PALLADINO, *Economic Democracy at Work: Why (and How) Workers Should be Represented on US Corporate Boards*, in *J. JL&PL.*, 2021, 1, p. 373; MATTHEW T. BODIE, *Income Inequality and Corporate Structure*, in *SLR*, 2016, 45(1), p. 70.

<sup>15</sup> REDDY, *cit.*, pp. 1396-1397, 1405 and 1414; LOGAN, *The Union Avoidance Industry in the United States*, in *BJJR*, 2006, 44, pp. 651-52.

<sup>16</sup> *Elkouri & Elkouri, How Arbitration Works*, BNA, Dec. 2020 §15.2A.ii; SUMMERS, *Individualism, Collectivism and Autonomy in American Labor Law*, in *EREJ*, 2001, 5, p. 478; *Basic Patterns in Union Contracts*, BNA 14th ed., 1995, p. 7.

<sup>17</sup> EPSTEIN, *In Defense of the Contract at Will*, in *UCLR.*, 1984, 51, p. 951; REDDY, *cit.*, pp. 1426-1427.

U.S. employers tend to be anti-union and fight organizing voraciously<sup>18</sup>. Similarly, the traditional collective bargaining process is adversarial – “part and parcel” of the process is putting economic pressure on the other party to submit to demands<sup>19</sup>. The negotiation involves brisk and contentious conversations at the bargaining table, and behind closed doors each party tries to ascertain the true position, rather than interests, of the other party<sup>20</sup>. As described by one scholar, attributes of traditional collective bargaining shield “bargainers from opponents’ distributive power tactics” and include:

- Developing positions in advance of negotiations
- Overstating opening positions
- Committing to the positions early and publicly
- Using coercive forms of power
- Keeping the other side off balance<sup>21</sup>

Interviews with participants in union co-op collective bargaining and a review of several union co-op collective bargaining agreements suggest that many union co-op labor negotiations are more similar to interest-based negotiations than traditional labor negotiations. Those involved described these negotiations as more transparent, involving greater exchange of information, and oriented more toward cooperative problem-solving than traditional negotiations. Some agreements reference interest-based negotiations and others cooperative principles. The structure of the union cooperative may facilitate interest-based negotiations because of the greater sharing of information, including financial information, than in traditional negotiations and the orientation toward cooperative principles<sup>22</sup>. Resultant advantages may include: 1) higher satisfaction from participants with the

<sup>18</sup> RACABI, *Balancing Is for Suckers*, in *CLR*, 2023, 109, p. 67–68.

<sup>19</sup> *NLRB v. Int’l Union of Agents*, 361 U.S. 477/1960, p. 489; BROMMER ET AL., *Cooperative Bargaining Styles at FMCS: A Movement toward Choices*, in *PeppDRLJ*, 2002, 2(3), pp. 465–466.

<sup>20</sup> FRIEDMAN, *Front Stage Backstage: The Dramatic Structure of Labor Negotiations*, MIT Press, 1994, pp. 4–5.

<sup>21</sup> CUTCHER–GERSHENFELD, *How Process Matters A Five-Phase Model for Examining Interest-Based Bargaining*, in KOCHAN, LIPSKY (Eds.), *Negotiations and Change: From the Workplace to Society*, 2019, ILR Press, p. 143; BROMMER ET AL., *cit.*, pp. 466 and 479 (describing FMCS providing assistance in around 5,275 traditional negotiations annually and around 300 interest-based negotiations annually).

<sup>22</sup> See LEVINSON, *Union co-op negotiations: True integrative bargaining* (working paper on file with author) (finding more sharing of information and suggesting union co-ops offer “an opportunity to make the necessary types of entity-wide change for interest-based bargaining to succeed.”).

process and outcomes, and 2) workers gaining financial literacy and practicing problem-solving skills transferable to other settings<sup>23</sup>.

Perhaps more interest-based negotiations and resultant CBAs also address grand challenges of this historical time differently than negotiations with a traditional non-cooperative business. Traditional union negotiations foster leadership and independent thinking and, along with other aspects of unionization, such as information sharing and voting, may lead to more active participation in political democracy<sup>24</sup>. Co-op labor negotiations have the potential to address the larger societal issues in a more direct and cohesive manner by drawing on cooperative principles and utilizing the integrative bargaining approach. In particular, the use of open book negotiations and a problem-solving approach suggest that workers involved in these negotiations will have models and tools to use in democratic leadership. A possible spill-over effect is more workers participating in civic society and political democracy.

Traditional negotiations tend to focus on workplace issues rather than issues of concern to the community in which they operate, or other external interests. Union co-op negotiations may have the potential for greater attention to community concern. A couple of the interviewed participants in negotiations reported addressing community concerns. Three of the resultant CBAs appear to integrate more concern for the community than more traditional CBAs<sup>25</sup>. While a different and relatively new approach to traditional bargaining, Bargaining for the Common Good, more directly addresses community concerns, union co-op negotiations also appear to sometimes address community concerns. Perhaps integrating Bargaining for

<sup>23</sup> DEMOCRACY AT WORK INST., *Becoming employee owned: Options for business owners interested in engaging employees through ownership*, 17 Dec. 2014, [https://institute.coop/sites/default/files/COT\\_BecomingEmployeeOwned\\_FINALweb.pdf](https://institute.coop/sites/default/files/COT_BecomingEmployeeOwned_FINALweb.pdf); *Cooperative Education Fund grants include financial literacy for Spanish speaking worker-owners*, 20 Dec. 2021, <https://www.cdf.coop/post/cooperative-education-fund-grants-include-financial-literacy-for-spanish-speaking-worker-owners>.

<sup>24</sup> BECHER, STEGMUELLER, *Cognitive ability, union membership, and voter turnout*, 2019, p. 2 (IAST working paper available at [https://sites.duke.edu/stegmueller/files/2019/04/Becher\\_Stegmueller\\_UnionTurnout.pdf](https://sites.duke.edu/stegmueller/files/2019/04/Becher_Stegmueller_UnionTurnout.pdf)) (“there is nonetheless robust evidence that unions increase the propensity of their members to participate in elections”). See also BOOTH, LUP, WILLIAMS, *Union membership and charitable giving in the United States*, in *ILRR*, 2017, 70(4), p. 848 (finding union members 3% more likely than non-union members to donate to charitable organizations).

<sup>25</sup> See text accompanying notes 136–140.

the Common Good into union co-op negotiations would provide synergy to focus on community concerns.

Traditional negotiations tend to address technological change by focusing on job security and retraining<sup>26</sup>. None of the union co-op CBAs contain provisions that proactively address how to redistribute wealth as work becomes more automated, although some union co-ops may work with the larger labor and cooperative movements on addressing this challenge. Two of the CBAs reflect a cooperative approach to technological change while one reserves the right to management<sup>27</sup>. The union cooperatives may be innovating around technological change in spheres other than negotiations, such as their ownership structure, as reflected in the interview of one participant<sup>28</sup>.

Environmental concerns are often encompassed in traditional negotiations to the extent they affect the health and safety of the workers. Traditional CBAs often contain health and safety provisions to protect workers from dangers such as chemicals and other environmental pollutants or conditions, such as extreme heat. Two of the union co-op CBAs express a focus on environmental sustainability, and the participants in these negotiations confirmed that while, in the round of negotiations explored, sustainability was not a topic of discussion, it is a primary focus of the businesses<sup>29</sup>. On the other hand, most of the CBAs do not address environmental sustainability or focus on the pending large-scale changes to work that climate change may portend, although sustainability is a core principle for at least one of the other union co-ops.

Finally, most traditional CBAs contain non-discrimination clauses. Often these are analogous to the protections provided by anti-discrimination laws in the United States, such as Title VII. Sometimes however, they provide more protections, such as for those disabled by work<sup>30</sup>. The interviews and

<sup>26</sup> CHA, *A Just Transition: Why transitioning workers into a new clean energy economy should be at the center of climate change policies*, in *FordELR*, 2017, 29(2), pp. 203-204 (“The opposition some labor unions have to climate change mitigation efforts is rooted in the need to protect their members.”).

<sup>27</sup> See text accompanying notes 142-149.

<sup>28</sup> See text accompanying note 150.

<sup>29</sup> See text accompanying notes 178-181.

<sup>30</sup> See LEVINSON, *What the awards tell us about labor arbitration of employment discrimination claims*, in *UMIJLR*, 2012, 46(3), p. 834 (“Other cases indicate that arbitrators sometimes apply the law even less restrictively than the courts in favoring discriminatees”).

resultant union co-op CBAs suggest that in limited circumstances the cooperative principle of non-discrimination results in inclusion of even stronger contract terms to combat racism and other systemic discrimination.

This paper next provides background about the operations of more traditional labor negotiations in the United States and about the limited instances and business frameworks where collective bargaining and employee ownership intersect. The third part of the paper briefly describes union co-op labor negotiations to familiarize the reader with negotiations in this sector. In the fourth part, the paper expounds the theoretical framework from which the union co-op labor negotiations will be explored – the dispute resolution theories of distributive versus interest-based bargaining. In the final part, the paper analyzes several union co-op negotiations and resultant CBAs and addresses the questions posed at the outset of the research and this paper.

## 2. *Background*

In the United States, collective bargaining is normally an adversarial process where each party uses economic power to pressure the other to reach agreement<sup>31</sup>. In the private sector, employers may lawfully lock out and replace their employees, and union workers have the right to strike<sup>32</sup>. An example of this process is the most recent negotiations between the United Auto Workers and three automobile manufacturing companies in the United States: Stellantis, General Motors, and Ford. During these negotiations, the union adopted a new method of economic pressure, termed the “Stand Up Strike”. In a stand-up strike, rather than all workers of one target company striking in unison, the workers incrementally pressure the employers by striking at certain facilities of all three companies based on how far from meeting the unions’ demands each employer remains. In addition, the union and its president, Sean Fain, used a variety of media, from traditional media

<sup>31</sup> See generally *NLRB v. Ins. Agents’ Int’l Union*, 361 U.S. 477/1960; BROMMER ET AL., *cit.*, pp. 466, 479 (describing FMCS providing assistance in around 5,275 traditional negotiations annually and around 300 interest-based negotiations annually).

<sup>32</sup> NLRA section nos. 7, 8(a)(1), 8(a)(3) (29 U.S.C. section nos. 7, 8(a)(1), 8(a)(3)); See generally *NLRB v. Erie Resistor Corp.*, 373 U.S. 221/1963; See generally *NLRB v. Brown*, 380 U.S. 278/1965.

to announcements in virtual media and videos posted on social media to reach a wide audience. This media likely contributed to the majority of residents of the United States supporting the UAW's demands rather than the automakers' positions<sup>33</sup>. At issue in the bargaining were pay, benefits, and profit-sharing<sup>34</sup>. Another contested topic of negotiation was how to maintain job security as the world transitions to green energy, in the face of climate change, and as the auto industry opens new, possibly non-union, plants to produce electric batteries<sup>35</sup>. The parties ultimately reached an agreement that eliminated the existing tiered wage scheme, granted significant raises, and contained a means through which employees at newly opened battery plants could unionize<sup>36</sup>.

Another example of a traditional bargaining process is the Writers Guilds' (both the Guild of America West and the Guild of America East) most recent negotiations with the media production studios, such as Walt Disney Co. and Netflix, Inc.<sup>37</sup> The parties exerted economic pressure with the workers striking for over four months. Again, beyond wages, one of the key issues was job security. For the writers, job security is threatened by the significant advances in artificial intelligence in recent years. The Guilds were able to negotiate not only for increased revenue from streaming shows, but also for guarantees that scripts for movies and television/streaming shows will be written by humans rather than generative AI<sup>38</sup>.

<sup>33</sup> SULLIVAN, *Americans broadly support auto, Hollywood strikes, Reuters/Ipsos poll shows*, 21 Sept. 2023, <https://www.reuters.com/world/us/americans-broadly-support-auto-hollywood-strikes-reutersipsos-poll-2023-09-21/>.

<sup>34</sup> SULLIVAN, *cit.*

<sup>35</sup> COMBS, *Analysis: The big 3-UAW pay raise of (TBD)% will make history*, in *BLNews*, 22 Sept. 2023, <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-the-big-3-uaw-pay-raise-of-tbd-will-make-history>; CHIEM, *UAW steps up GM and Stellantis strike, notes Ford progress*, in *Law360*, 22 Sept. 2023, <https://www.law360.com/articles/1724757/uaw-steps-up-gm-and-stellantis-strike-notes-ford-progress>; MACLEOD, YUSUF, *Ford CEO: UAW demands regarding EV battery plants holding deal "hostage"*, in *MemBJ*, 29 Sept. 2023, <https://www.bizjournals.com/memphis/news/2023/09/29/ford-ceo-uaw-demands-ev-battery-plants.html>; SULLIVAN, *cit.*

<sup>36</sup> WOODS, *UAW wins big contract after bold strike approach*, in *ABALELN*, 08 Aug. 2025, [https://www.americanbar.org/groups/labor\\_law/resources/magazine/2023-fall/uaw-wins-big-contract-after-bold-strike-approach/](https://www.americanbar.org/groups/labor_law/resources/magazine/2023-fall/uaw-wins-big-contract-after-bold-strike-approach/).

<sup>37</sup> GOLUM, *Screenwriters approve deal, end strike after months of talks (2)*, in *DailyLR*, 27 Sept. 2023, <https://news.bloomberglaw.com/daily-labor-report/hollywood-union-boards-ok-new-deal-send-contract-to-member-vote>.

<https://www.bargainingforthecommongood.org/> (consulted 03 Nov. 2025).

<sup>38</sup> GOLUM, *cit.*

One more recent development in collective bargaining in the United States is a growing number of unions that explicitly consider community and external interests in preparing for negotiations. In the Bargaining for the Common Good framework, the union involves community members and finds intersections between their interests and those of workers and formulates bargaining proposals to address these mutual interests<sup>39</sup>.

While in traditional negotiations the issue of job security is addressed by bargaining, unions less commonly bargain for ownership rights in a company. Managerial decisions, ownership rights, and union participation on company boards are permissive subjects of bargaining to the extent they do not relate to terms and conditions of employment. Employers are not bound to bargain over permissive subjects, and unions may not insist on an employer agreeing to a permissive subject<sup>40</sup>. Nevertheless, some U.S. companies and unions have experimented with union representatives holding positions on company boards and with worker ownership. For example, in the 1980s, the UAW and General Motors partnered to launch the manufacture of Saturn automobiles with the union having representatives on Saturn's board<sup>41</sup>. The Saturn partnership involved "over 400 union members, jointly selected by the local and the company" performing operations tasks that would traditionally be considered management positions<sup>42</sup>. Workers completed 92 hours of training annually in "production methods, team dynamics, leadership, and problem solving, or related topics"<sup>43</sup>. Unlike a cooperative, the Saturn employees did not have an ownership stake in the company, but the workers received compensation contingent on company performance<sup>44</sup>.

<sup>39</sup> <https://www.bargainingforthecommongood.org/> (consulted 03 Nov. 2025).

<sup>40</sup> See generally *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666/1981; *Pieper Elec., Inc.*, 339 NLRB 1232/2003 1235; *Harrah's Lake Tahoe Resort Casino*, 307 NLRB 182/1992 182; NLRB Gen. Coun., Advice Memo: *Pac. Lumber Co.*, No. 20-CA-22433, 1989 WL 241589, p. 1.

<sup>41</sup> CUTCHER-GERSHENFELD, *How process matters: A five-phase model for examining interest-based bargaining*, in KOCHAN, LIPSKY (eds.), *Negotiations and change: From the workplace to society*, Cornell Univ. Press, 2003, p. 158 (UAW-Saturn agreement was 28 pages that established joint governance structure rather than 700 plus pages of master agreement that served as starting point).

<sup>42</sup> RUBINSTEIN, HECKSCHER, *Partnerships and flexible networks: Alternatives or complementary models of labor-management relations*, in KOCHAN, LIPSKY (eds.), *Negotiations and change: From the workplace to society*, Cornell Univ. Press, 2003, p. 19.

<sup>43</sup> RUBINSTEIN, HECKSCHER, *cit.*, p. 193.

<sup>44</sup> *Ibid.*

Also, during the late 1970s and early 1980s, unions experimented with purchasing and managing large companies to avoid shutdowns, such as in the instance of Rath Packing Company<sup>45</sup>. Rath was a meatpacking company in Iowa<sup>46</sup>. The United Food and Commercial Workers Local 46 orchestrated a buy-out of the company by an ESOP (employee stock ownership plan)<sup>47</sup>. A majority of the members of the ESOP's board of trustees were workers, and the company's board of directors consisted of workers and union-named representatives<sup>48</sup>. Although initially successful, the company ultimately declared bankruptcy and liquidated its assets in 1985<sup>49</sup>.

Many unions and employers, however, maintain traditional roles during negotiation. Management retains rights of ownership, board participation, and decisions about the direction of the company. Unions bargain for better terms and conditions of employment, such as wages, benefits, health and safety, schedules, and job security.

On the other hand, in many U.S. companies, employees are beneficial owners through an ESOP<sup>50</sup>. Some ESOPs are set up to provide employees with input at the board level and about managerial decision-making, but most are not. Over the last decade, workers in the United States have increasingly turned to worker-owned cooperatives to provide a living wage, job security, company ownership, and a voice in decision-making. One of the earlier projects created worker-owned cooperatives in Cleveland<sup>51</sup>. In that project, a large foundation led initiative recruited anchor institutions, such as hospitals and universities, to purchase from worker-owned co-ops<sup>52</sup>.

<sup>45</sup> GUNN, *Workers' self-management in the United States*, Cornell Univ. Press, 1984, p. 136; ELLERMAN, PITEGOFF, *The democratic corporation: The new worker cooperative statute in Massachusetts*, in *NYURLSC*, 1983, 11(3), p. 448 n. 33; OLSON, *Union experiences with worker ownership: Legal and practical issues raised by ESOPs, TRASOPs, stock purchases and co-operatives*, in *WiLR*, 1982, 5, pp. 753-760; ROSEN, WILSON, *Employee ownership: A new strategy for economic development*, in *NYURLSC*, 1986-1987, 15(1), p. 219.

<sup>46</sup> GUNN, *cit.*, pp. 133 and 134.

<sup>47</sup> GUNN, *cit.*, p. 135.

<sup>48</sup> HAMMER, STERN, *A yo-yo model of cooperation: Union participation in management at the Rath Packing Company*, in *ILRR*, 1986, 39(3), p. 341, DOI: 10.2307/2524094; GUNN, *cit.*, pp. 139-140.

<sup>49</sup> HAMMER, STERN, *cit.*, pp. 345 and 346.

<sup>50</sup> BLASI, FREEMAN, KRUSE, *The citizen's share: Reducing inequality in the 21<sup>st</sup> Century*, Yale Univ. Press, 2014, p. 119.

<sup>51</sup> <https://www.evgoh.com/> (consulted 06 Feb. 2024).

<sup>52</sup> *Ibid.*

In 2018, the state of Colorado enacted statutes to incentivize incorporation of worker-owned cooperatives<sup>53</sup>. During the COVID pandemic, New York City established a hotline to assist owners convert their businesses to worker-owned cooperatives<sup>54</sup>. At most of these cooperatives, the workers are not represented by a union.

Some worker-owners, and other employees of worker-owned cooperatives, are unionized and negotiate collective bargaining agreements with the cooperative employer. The oldest union cooperative currently operating in the United States is Cooperative Home Care Associates, where the workers are represented by SEIU (Service Employees International Union) 1199<sup>55</sup>. A prominent example of an organization incubating union cooperatives is Co-op Cincy. Mondragon Corporation was an inspiration and model for Co-op Cincy<sup>56</sup>. Most of the companies in the Mondragon cooperative are not unionized, but the grocery, Eroski, is. Mondragon uses a system of social councils to provide worker voice and decision-making power.<sup>57</sup> Co-op Cincy substitutes the social council with a union<sup>58</sup>. United States labor law prohibits company unions, including many employee committees in non-unionized companies<sup>59</sup>. When, however, workers unionize, companies can lawfully implement work-councils negotiated in partnership with the union. For examples of unionized coops in the United States, see A Bookkeeping Cooperative (ABC) (location not identified on their website)<sup>60</sup>, Anytime Union Taxi (Rockville, MD)<sup>61</sup>, Community Printers

<sup>53</sup> WIENER, PHILLIPS, *Colorado - "The Delaware of cooperative law:" Benefits to incorporating a worker cooperative in Colorado*, in *Fifty by Fifty*, 29 May 2018, <https://medium.com/fifty-by-fifty/colorado-the-delaware-of-cooperative-law-babedc9e88eb>.

<sup>54</sup> KAHN, *Employee ownership key to NYC recovery strategy*, in *Fifty by Fifty*, 25 Jan. 2021, <https://www.fiftybyfifty.org/2021/01/employee-ownership-key-to-nyc-recovery-strategy/>.

<sup>55</sup> PINTO, *Building community, forging respect: Home care co-ops show a better way*, in *CoopBJ*, 2022/2023, p. 20, [https://ncbaclusa.coop/content/uploads/2023/02/Fall-2022\\_Winter-2023-Cooperative-Business-Journal\\_FINAL-v2.pdf](https://ncbaclusa.coop/content/uploads/2023/02/Fall-2022_Winter-2023-Cooperative-Business-Journal_FINAL-v2.pdf).

<sup>56</sup> BARKER, VERA, *"Co-op Cincy": A Living Lab for the 1worker1vote Movement*, in CLAMP, PECK, *Humanity@Work & Life: Global Diffusion of the Mondragon Cooperative Ecosystem Experience* Oak Tree Press, 2023, p. 224.

<sup>57</sup> BARKER, VERA, *cit.*, p. 227.

<sup>58</sup> See generally LEVINSON, *Breaking new ground: Social movement theory and the Cincinnati union co-ops*, in *ERSJ*, 2022, 34, p. 213.

<sup>59</sup> NLRB section nos. 2(5), 8(a)(2) (29 U.S.C. section nos. 152(5), 158(a)(2)).

<sup>60</sup> <https://bookkeeping.coop/home/> (consulted 03 Nov. 2025).

<sup>61</sup> <https://anytimeuniontaxi.coop/> (consulted 03 Nov. 2025).

(Santa Cruz, CA)<sup>62</sup>, Democracy Brewing (Boston)<sup>63</sup>, Design Action Collective (San Francisco Bay Area)<sup>64</sup>, Gimme Coffee (Ithaca, NY)<sup>65</sup>, New Era Windows Cooperative (Chicago)<sup>66</sup>, Time of Day Media (New York City)<sup>67</sup>, White Electric Coffee Co-Op (Providence, R.I.)<sup>68</sup>, and Working Systems (Olympia, WA)<sup>69</sup>.

Practitioners debate whether unionization of a worker-owned co-op is necessary or a good idea. Prior articles address the ways that a union worker-owned co-op benefits the workers as owners and the workers as workers and is beneficial for both the union movement and the cooperative movement<sup>70</sup>. This paper turns to exploring the process of collective bargaining in unionized worker-owned co-ops.

### 3. *Union Co-op Negotiations*

Participants in union co-op negotiations have generally described bargaining that is more interest-based than traditional distributive collective bargaining. The parties have shared goals and are interested in financial viability of the business and welfare of the workers. The process is often collaborative. Sometimes the union and employer negotiate for a more continuous bargaining process rather than set terms governing health and safety or scope of work, for instance<sup>71</sup>. One participant, Ra Criscitiello, described the negotiations: The negotiations resembled a very good mediation where a talented mediator engages in sincere listening, recognizes and furthers the overall goal, uses the energy of conflict to drive momentum, and ultimately

<sup>62</sup> <https://comprinters.com/> (consulted 03 Nov. 2025).

<sup>63</sup> <https://www.democracybrewing.com/> (consulted 03 Nov. 2025).

<sup>64</sup> <https://designaction.org/> (consulted 03 Nov. 2025).

<sup>65</sup> <https://gimmecoffee.com/> (consulted 03 Nov. 2025).

<sup>66</sup> <https://newerawindows.com/Content/newerawindows.com.html> (consulted 03 Nov. 2025).

<sup>67</sup> <https://www.timeofdaymedia.com/> (consulted 03 Nov. 2025).

<sup>68</sup> <https://www.whiteelectriccoffee.com/> (consulted 03 Nov. 2025).

<sup>69</sup> <https://workingsystems.com/> (consulted 03 Nov. 2025).

<sup>70</sup> LEVINSON, *Breaking new ground*, cit., pp. 217–219.

<sup>71</sup> See, e.g., United Healthcare Workers - West (UHW) Collective Bargaining Agreement with Nursing and Caregivers Cooperative, Inc. (NCC), Dec. 1, 2016 - Dec. 1, 2017 (on file with author).

the parties resolve their issues.<sup>72</sup> In contrast, in traditional negotiations generally the employer focuses on keeping down costs, and the union focuses on winning a greater share of the economic pie for the workers.

Union co-op negotiations are often quicker than traditional adversarial negotiations, and parties, particularly union representatives, appear more satisfied with the process and outcomes. One union attorney, Casey Whitten-Amadon, described the negotiations as the quickest and easiest of the hundreds of negotiations in which he has participated<sup>73</sup>. Lewis Connell, another union negotiator, concluded that if he ever had to negotiate a manufacturing CBA, he would be “so spoiled” he would be “wondering why there is such a problem and what is the big deal – why don’t they just listen”<sup>74</sup>.

The workers involved in co-op negotiations tend to participate more actively than in traditional negotiations and gain problem-solving and leadership skills<sup>75</sup>. The co-ops generally provide full financial information to the union representatives, unlike in most traditional negotiations where the law does not require an employer to provide financial information unless the employer insists it has no ability to pay its employees more than it has offered<sup>76</sup>.

Of course, not all union co-ops are the same and not all engage in interest-based negotiations. Some participate in coordinated or multi-employer bargaining, and others do not engage in collective bargaining. These cooperatives likely reap different benefits from their relationship with the union, other than those resulting from interest-based negotiations and the resultant CBAs. One example of a union co-op that signs onto a multi-employer master agreement is Time of Day Media, a party to the 2023 Writers Guild of America Theatrical and Television Minimum Basic Agreement<sup>77</sup>.

<sup>72</sup> Interview with Ra Criscitiello, Deputy Director of Research, SEIU United Healthcare Workers West, 29 Apr. 2024.

<sup>73</sup> Interview with Casey Whitten-Amadon, Attorney for IUE-CWA, 24 Apr. 2024.

<sup>74</sup> Interview with Lewis Connell, Unit Chair & VP, USW Local Union 14734-16, 10 May 2024.

<sup>75</sup> LEVINSON, *Union co-op negotiations*, cit.

<sup>76</sup> LURIE, FITZSIMMONS, *A union toolkit for cooperative solutions*, Cmty & Worker Ownership Project at the CUNY Sch. of Lab. & Urb. Stud., 2021, [https://slu.cuny.edu/wp-content/uploads/2021/11/28283961\\_Union\\_Toolkit\\_final\\_11-2021.pdf](https://slu.cuny.edu/wp-content/uploads/2021/11/28283961_Union_Toolkit_final_11-2021.pdf).

<sup>77</sup> For example, Time of Day Media is a party to the 2023 Writers Guild of America Theatrical and Television Minimum Basic Agreement, available at <https://www.wgaeast.org/>

CHCA has recently decided, at the union's request, to participate in coordinated bargaining and will start multi-employer bargaining. Many reasons indicate that multi-employer bargaining will be preferable for certain union co-ops, even though it likely results in the loss of interest-based bargaining. For instance, in a worldwide economy, surviving as a small co-op can be challenging and joining a large group of employers with a union contract can provide the advantages of large horizontal scale that multi-nationals have without giving up the ability to function as a democratically-run enterprise. Likewise, when a large worker-owned co-op operating in the mixed public/private sector must obtain resources through the legislature, legislatures are more likely to listen to a larger group of employers and workers than one employer and its worker-owners. And multi-employer bargaining can still sometimes allow for a side-letter agreement that institutes democratic governance and care for community in the relationship between the co-op and the union representing its workers.

Some union co-ops do not have collective bargaining agreements at all. Snow Bloom Coffee, for instance, stated that: "Our collective bargaining agreement would be our by-laws (we don't have an employer to bargain against) and you can find all of those documents on our website under the transparency tab"<sup>78</sup>. A review of their by-laws indicates that the union who represents them, UE 1011, is not mentioned<sup>79</sup>. Snow Bloom's *Transparency Report* for 2023 has a page devoted to the role of the union<sup>80</sup>. It explains that the co-op workers are able "to participate in the union's national elections" and to support other food-service workers who unionize and collectively bargain through the contribution of dues<sup>81</sup>.

Similarly, Collective Copies relies solely on their bylaws, which were approved by the union, to resolve "shop floor" disputes. Their by-laws in-

guild-contracts/mba/download/; E-mail from Angad Bhalla, Worker/Owner, Time of Day Media, to Kelsey Hammon, research assistant to Ariana Levinson, Professor of Law, Louis D. Brandeis Sch. of L., Univ. of Louisville, 12 Feb. 2024 (on file with author).

<sup>78</sup> Email response to online inquiry form submission, 24 Mar. 2024 (on file with author).

<sup>79</sup> See Amended and Restated Bylaws of Slow Bloom Coffee Cooperative Corporation: Adopted December 3<sup>rd</sup>, 2023, <https://static1.squarespace.com/static/650bc396043d117e215b-f99b/t/6573958e3a1e3c0365a0f390/1702073743120/Amended+and+Restated+By-laws+of+Slow+Bloom+Coffee+Cooperative+-+Draft+20230607.docx+%285%29.pdf>.

<sup>80</sup> SLOW BOOM COFFEE CO., *Transparency report 2023*, p. 22, <https://drive.google.com/file/d/1bgJgLRXd8k9gS5Ju97RYwoE89IoSIUnL/view>.

<sup>81</sup> *Ibid.*

corporate provisions that address topics more commonly seen in CBAs than bylaws, such as pay differentials, maintenance of a healthful workplace, holiday and vacation pay, health benefits, non-discrimination, a just cause guarantee, and the right to due process, including notice and an opportunity to be heard, before termination of a worker/owner<sup>82</sup>. The relationship with the union would enable them, in rare instances where they cannot internally resolve a dispute, to call on the expertise of the union and to mediate the dispute with the help of an outside neutral party<sup>83</sup>. For all of these union cooperatives, even those that do not have a traditional CBA, a potential advantage is being embedded within the larger labor movement with the ability to pool resources for material benefits, such as retirement plans or mutual aid during emergencies, such as a pandemic, and also to push for social and legal change benefiting more democratic workplaces.

Even when the agreements do not manifest significant differences, interviews about the process reveal significant differences between worker-owned co-op labor negotiations and traditional negotiations. While change may be gradual when starting with an already-existing CBA, the potential to adopt more interest-based solutions over the years remains.

#### 4. *Theoretical Framework*

The dispute resolution literature describes two distinct types of negotiation to better enable understanding of the bargaining process. In traditional bargaining, each party begins negotiation with an offer seeking more than they realistically anticipate obtaining. Each party then makes gradual concessions until reaching agreement. In this type of negotiation, the parties envision an inelastic amount of resources, for which they each bargain for the greatest amount. This bargaining is sometimes termed “competitive,” “rights based,” “positional,” “zero-sum,” or “distributive”<sup>84</sup>. I will use the term “distributive” to describe this type of bargaining. Advantages of distributive negotiations are they can result in one party obtaining a great share

<sup>82</sup> By-laws of Collective Copies, Inc. (on file with author).

<sup>83</sup> Interview with Randy Zucco, owner Collective Copies, 29 July 2024.

<sup>84</sup> FOLBERG, GOLANN, STIPANOWICH, REYNOLDS, SCHMITZ, *Resolving disputes: Theory, practice, and law*, Aspen, 2022, pp. 47 and 49-50.

of resources and that they can counterbalance differentials in bargaining power<sup>85</sup>.

In *Getting to Yes*<sup>86</sup>, the authors popularized an alternative type of negotiations, termed variously in the literature as “cooperative,” “win-win,” “integrative,” or “interest-based” negotiations<sup>87</sup>. I will use the latter term. In this type of negotiation, the parties envision an elastic amount of available resources, share differences in which resources are most valuable to them and why, and create solutions that will satisfy all the parties’ interests<sup>88</sup>. Rather than focusing on the parties’ positions – the bottom-line outcome each party wishes for – the bargaining focuses on the parties’ interests – the underlying reasons for their positions. Parties work together to generate and evaluate options that might address their interests<sup>89</sup>. Parties commit themselves to settling conflicts based on objective criteria rather than raw economic power.

In distributive negotiations, the parties risk overlooking certain resources or solutions because they are narrowly focused on dividing money and other assets<sup>90</sup>. Additionally, after concluding, distributive negotiations can leave parties feeling as though they were “forced” to compromise and therefore dissatisfied<sup>91</sup>. Interest-based negotiations are designed to address these disadvantages. Focusing on the parties’ interests will more easily address emotional needs in addition to economic needs. For these reasons, interest-based negotiations are well-suited to situations in which the parties have an ongoing relationship.

<sup>85</sup> GOODPASTER, *Primer on competitive bargaining*, in *JDR*, 1996, 2, pp. 375-376.

<sup>86</sup> FISCHER, URY, PATTON, *cit.*

<sup>87</sup> While there may be differentiation among integrative or cooperative approaches, the level of detail necessary to analyze between a distributive and an interest-based approach does not require delving into those particular nuances. See, e.g., GIFFORD, *A context-based theory of strategy selection in legal negotiation*, in *OhStLJ*, 1985, 46(1), p. 43 (differentiating between cooperative and integrative approaches).

<sup>88</sup> FOLBERG, GOLANN, STIPANOWICH, REYNOLDS, SCHMITZ, *cit.*, pp. 53-56; Cf. CUTCHER-GERSHENFELD, *cit.*, p. 146, Table 8.4 (listing behaviors involved in one form of interest-based collective bargaining).

<sup>89</sup> See LEVENTHAL, *Implementing interest-based negotiation: Conditions for success with evidence from Kaiser Permanente*, in *DRJ*, 2006, 61(3), p. 55.

<sup>90</sup> See generally Chapter 2 of LAX, SEBENIUS, *The manager as negotiator: Bargaining for cooperation and competitive gain*, Free Press, 1986.

<sup>91</sup> MENKEL-MEADOW, *Toward another view of legal negotiations: The structure of problem solving*, in *UCLALR*, 1984, 31(4), pp. 813-814.

As a descriptive matter, much negotiation conducted by attorneys, whether in litigation settlement or closing a transaction, opens with interest-based negotiation. At some point, the negotiation then transitions to distributive negotiation and dividing the available money and other resources<sup>92</sup>. Litigation settlement might start off with a brief interest-based approach focused on the form and timing of payment and then rapidly shift to distributive negotiation over the settlement amount. On the other hand, a transactional negotiation, such as negotiating between partners opening a business, might start with a long interest-based phase. The parties discuss non-economic terms such as what they desire from the partnership and how they will work well together. Then, toward the end of the negotiation, the parties transition to discussion of amounts of assets each party will contribute to establishing the business.

Within this theoretical framework, traditional private-sector collective bargaining in the United States integrates more distributive than interest-based negotiation<sup>93</sup>. The bargaining often starts with non-economic terms such as health and safety or scheduling, where each side might offer a creative idea to address the other side's interests. The bargaining then turns to the crux of the negotiations, which focuses on economic terms, such as wages and benefits. Each party focuses on obtaining the largest share of the available resources, and uses economic power, such as strikes and lockouts, to obtain their desired outcome.

<sup>92</sup> WHITE, *The pros and cons of "Getting to Yes"*, in *JLE*, 1984, 34(1), p. 116; CRAVER, *Negotiation ethics for real world interactions*, in *OhStJDR*, 2010, 25(2), p. 316; GIFFORD, *cit.*, p. 57; See also SANCHEZ, *Back to the future of ADR: Negotiating justice and human needs*, in *OhStJDR*, 2003, 18(3), pp. 684-693 (explaining how historically Mary Parker Follett, Richard Walton, and Robert McKersie advocated for more integration, or interest-based bargaining, in labor negotiation).

<sup>93</sup> See LEVENTHAL, *cit.*, p. 56 (describing difficulties with using interest-based negotiation in traditional collective bargaining); CUTCHER-GERSHENFELD, *cit.*, p. 143 Table 8.1 (listing characteristics of traditional labor negotiations); But see GIFFORD, *cit.*, p. 89 (describing collective bargaining as more suitable for integrative bargaining than some other types of negotiation in which lawyers are involved, yet recommending management attorneys take competitive approach initially); Cf. WESTERGARD, *Federal union bargaining power explained*, in *ULVLR.*, 2022, 43(2), p. 91 (noting that federal unions, which cannot bargain over wages or strike, use interest-based negotiation and political lobbying to influence collective bargaining); CLARK, *Labor relations: Past and future trends affecting K-12 employment relations: A management perspective*, in *JLE*, 2001, 30(2), p. 232 (describing wide spread adoption of interest based bargaining in public sector education labor negotiations).

Scholars have recognized that implementing interest-based collective bargaining with a traditional company is not possible, even if the parties so desire, unless interest-based negotiation is implemented throughout the company and workplace<sup>94</sup>. Additionally, successful integrative bargaining requires disclosure of information, so companies must be willing to share financial information<sup>95</sup>. However, the law in the United States does not require companies to share financial information in collective bargaining.

In fact, as a theoretical matter, confirmed by at least one empirical study, implementing interest-based collective bargaining with a traditional U.S. business may disadvantage the union and workers. The legally backed bargaining power of employers may disadvantage workers without legally backed ownership or decision-making power.<sup>96</sup> The union co-op offers an opportunity to make the necessary types of structural business and workplace change for interest-based bargaining to succeed<sup>97</sup>. The strategies suggested for successful bargaining in situations between unequal parties, such as “establishing default rules and disclosure requirements,” are more likely to be found in union co-op negotiations than traditional collective bargaining<sup>98</sup>. Participant’s descriptions of collective bargaining in unionized worker-owned co-ops sounds more similar to interest-based bargaining.

<sup>94</sup> See LEVENTHAL, *cit.*, p. 57; SUSSKIND, LANDRY, *Implementing a mutual gains approach to collective bargaining*, in *Negot.*, 1991, 7(1), p. 8 (describing mixed results of implementing interest-based negotiations in five labor negotiations and recommending institutionalizing approach to deal with all employment issues); Cf. CUTCHER-GERSHENFELD, *cit.*, p. 160 (concluding that without preparation interest-based labor negotiation is likely to fail). But see DUVALL, *Making friends of foes: Bringing labor and management together through integrative bargaining*, in *JDR*, 2009, 1, p. 197 (arguing that collective bargaining is “an ideal setting for integrative bargaining”).

<sup>95</sup> DUVALL, *cit.*, p. 198; GIFFORD, *cit.*, p. 61.

<sup>96</sup> HAFIZ, *Structural labor rights*, in *MiLR*, 2021, 119(4), p. 656, DOI: 10.36644/mlr.119.4 (“workers’ collective rights have eroded to the point where they lack any substantive ability to function as counterstructure – as effective countervailing power against employers.”).

<sup>97</sup> Cf. BARENBERG, *The political economy of the Wagner Act: Power, symbol, and workplace cooperation*, in *HLR*, 1993, 106(7), p. 1392 (concluding that “the relation between power and trust should be a central focus in the current debate over collaborationist labor relations”). But see RUBINSTEIN, HECKSHER, *cit.*, at 196 (arguing that in economy where horizontal flexibility to diminish number of workers is required render co-management with a union infeasible).

<sup>98</sup> HAFIZ, *cit.*, p. 697.

## 5. Analysis

The dispute resolution theoretical framework indicates that interest-based negotiations for collective bargaining will result in both the cooperative owners' interests and the interests of the cooperative workers being met<sup>99</sup>. The transparency of the process will enable understanding that when interests were not met, the outcome resulted from necessary compromise given the market, clients, community, and other external constraints. The worker-owners and the workers represented by the union (even when they are the same workers) should feel more satisfied with the outcome of the bargaining.

The dispute resolution literature also indicates that using interest-based collective bargaining will result in the parties utilizing beneficial options they might otherwise have overlooked<sup>100</sup>. For example, worker owners' interest in generating increased revenue and job security, rather than a plant closure, might be addressed differently than in traditional effects collective bargaining which typically results in laying workers off in reverse seniority order. The parties might instead discuss an option to transfer production to a different product with a growing market and work together to find a way to implement changes to the production line and work schedule to accomplish this goal.

For this analysis, nine union co-op collective bargaining agreements, including those of eight worker-owned cooperatives were reviewed:

- Cooperative Home Care Associates and 1199 SEIU New York's Health

<sup>99</sup> Cf. CUTCHER-GERSHENFELD, *cit.*, p. 143 (issues such as "quality, job security, continuous improvement, work and family issues, new pay systems, work redesign, benefit restructuring, training, new technology and strategic investment choice" benefit from "joint problem-solving dialogues").

<sup>100</sup> While no study directly addresses whether resulting terms of a contract negotiated through interest-based rather than distributive based negotiation are different or better, the theory suggests that more creative terms that are more satisfactory to both parties likely will result. See, e.g., BOOTH, MCCREDIE, *Taking steps toward "Getting to Yes" at Blue Cross and Blue Shield of Florida*, in *AME*, 2004, 18(3), p. 110, ("The change in mindset to be collaborative vs. competitive in the development of this solution was critical to the formation and ongoing success of the joint venture"); SHONK, *5 win-win negotiation strategies*, in *Harvard Program on Negotiation Daily Blog*, 02 Oct. 2025, <https://www.pon.harvard.edu/daily/win-win-daily/5-win-win-negotiation-strategies/> (providing examples of creative proposals for contract clauses that further interest-based negotiation); See BAZERMAN, NEALE, *Negotiating rationally*, Free Press, 1992, p. 22 (discussing generating alternate proposals rather than assuming a fixed pie).

and Human Service Union, AFL-CIO Collective Bargaining Agreement for the period Dec. 11, 2022 through Dec. 31, 2022 (hereinafter CHCA CBA).

- Our Harvest & UFCW Local 75 2020-2023 Collective Bargaining Agreement (hereinafter Our Harvest CBA).

- Retail, Wholesale and Department Store Union (RWDSU) UFCW and A Bookkeeping Cooperative, Inc. Collective Bargaining Agreement effective Jan. 1, 2020 (hereinafter Bookkeeping CBA).

- SEIU-UHW (United Healthcare Workers – West), CTW, CLC with AlliedUp Cooperative, Inc. 2021-2023 Collective Bargaining Agreement (hereinafter AlliedUp CBA).

- Snow River Cooperative and Local #800 IUE-CWA, AFL-CIO 2021-2024 Collective Bargaining Agreement (hereinafter Snow River CBA)

- Sustainergy Cooperative and USW, AFL-CIO, on behalf of Local.

- Union 14734-16, Collective Bargaining Agreement for the period July 1, 2022 through June 30, 2025 (hereinafter Sustainergy CBA).

- United Healthcare Workers – West (UHW) Collective Bargaining Agreement with Nursing and Caregivers Cooperative, Inc. (NCC) for the term Dec. 1, 2016 – Dec. 1, 2017.

- Worx Printing LLC & United Steel Workers 2022-2026 Collective Bargaining Agreement (hereinafter Worx CBA).

The review also included one multi-stakeholder union cooperative's, a grocery owned by both the consumers and workers, collective bargaining agreement<sup>101</sup>.

CHCA's agreement is included in the analysis because until the most recent session this CBA was bargained between the cooperative and union. Collective Copies' bylaws were included because they treat the bylaws as their collective bargaining agreement. Time of Day Media's CBA, where the cooperative is simply a signatory to the multi-employer minimum standard CBA, was not included in the review. Information from interviews with participants in union co-op negotiations, which are reported in the article *Union Co-op Labor Negotiations: True Integrative Bargaining*<sup>102</sup>, supplement the analysis based on the review of the CBAs.

<sup>101</sup> UFCW 3000 and Central Co-op Grocery Unit Collective Bargaining agreement effective 3/1/2022-12/31/2024 (on file with author) (hereinafter Central Co-op).

<sup>102</sup> LEVINSON, *Union Co-op Labor*, cit. (draft on file with author).

The article first briefly summarizes how the interviews and resultant CBAs suggest that many union co-op labor negotiations are more similar to interest-based negotiations than traditional labor negotiations. The paper then suggests that interest-based negotiations and the resultant CBAs may have a spillover effect and encourage the worker-owners to engage in civic society and political democracy. The CBAs contain various types of provisions promoting democratic decision-making and political participation, and union co-op negotiations appear to hold significant promise toward enabling workers to more fully participate in political and community democracy.

The paper then turns to considering whether union co-op labor negotiations have the potential to address some of the other grand challenges of our times differently than traditional negotiations. First examined are the ways in which the CBAs address community concerns. Next, the ways in which the CBAs address advancing technology are summarized, concluding that while some adopt more interest-based approaches – others do not – and none address head on the issue of how to redistribute wealth as work becomes more automated. Then the paper examines the ways in which the CBAs address race and other invidious discrimination. The union co-op CBAs do not generally suggest more active measures to combat systemic race discrimination but rather reflect a similar commitment to nondiscrimination in the workplace that results from traditional negotiations. Finally, examples of CBAs that promote environmental sustainability are discussed. While a few of the union co-op CBAs reflect a commitment to environmental sustainability, none explicitly address the dramatic social and economic shifts likely occurring because of climate change.

#### *5.1. Union Co-op Labor Negotiations are Likely to be More Interest-Based*

The interviews with those involved in union co-op negotiations suggest negotiations are more interest based than traditional collective bargaining. The interest-based negotiations result in direct reflection of that approach in some of the CBAs as well as commitments to continue to use interest-based negotiation to resolve problems arising during the term of the CBAs. For some, although the commitment to interest-based negotiations is not explicitly reflected in the CBAs, the CBAs include cooperative principles suggesting that an interest-based approach is commonly used during the parties' relationship, as well as in negotiations.

Several of the contracts explicitly acknowledge using a different more interest-based approach to negotiation of the contract. For example, the Worx CBA states that it “is the result of a collaborative effort among the worker-owners [...] with the guidance of Union staff and leadership”<sup>103</sup>. The AlliedUp CBA states: “Enshrined in this collective bargaining agreement is an alternative employment model for the healthcare staffing industry: the worker-owned union cooperative. While the foundation of this model is not new, the partnership and details of this model are unprecedented. This agreement represents an innovative partnership, designed to forge a new frontier of unionized labor in the healthcare staffing industry. SEIU/UHW and AlliedUP are proud to create this collective bargaining solution for Allied Healthcare professionals”<sup>104</sup>.

In fact, the Our Harvest CBA explicitly referencing interest-based negotiations. Article 1: Intent and Purpose states: “A special role of the collective bargaining process should be focused on continuous resolution of problems rather than adjudicating claims. This attitude of collective bargaining is remarkably different than what exists in private industries in most cases in North America where adversarial collective bargaining and adjudicating claims and grievances where there are winners and losers is the norm. The goal of continuous problem solving and win-win bargaining should be the style and substance of collective bargaining in the union co-op agreement”<sup>105</sup>.

The Our Harvest CBA also commits the parties to a non-traditional interest-based form of dispute resolution known as binding mediation<sup>106</sup>. Most traditionally negotiated CBAs use arbitration as the final method of dispute resolution. Binding mediation is different than a stepped process including mediation before arbitration and different than the process known as med-arb. In binding mediation, the neutral simply makes a decision about how to resolve the grievance if the mediation fails. There is no process of

<sup>103</sup> Worx Printing LLC & United Steel Workers 2022-2026 Collective Bargaining Agreement, Article 1 - Intent and Purpose, at \*1 (on file with author) (hereinafter Worx CBA).

<sup>104</sup> SEIU-UHW (United Healthcare Workers - West), CTW, CLC with AlliedUp Cooperative, Inc. 2021-2023 Collective Bargaining Agreement, Article I: Purpose and Philosophy, at \*1 (on file with author) (hereinafter AlliedUp CBA).

<sup>105</sup> Our Harvest & UFCW Local 75 2020-2023 Collective Bargaining Agreement, Article I: Purpose and Philosophy, at \*2 (on file with author) (hereinafter Our Harvest CBA).

<sup>106</sup> Our Harvest CBA, *cit.*, Article 6 Problem Solving, Grievance, & Binding Mediation Procedure, Sub-Part 6.3, at \*8.

adjudication as in arbitration, and the neutral has access to information the parties provide during mediation that might not be permitted or presented during arbitration<sup>107</sup>.

Other contracts also mention the use of interest-based negotiations throughout the term of the CBA. The Central Co-op CBA implements bargaining during the term of the agreement. It states: “Based on their mutual desire to increase collaborative engagement, Central Co-op and the Union agree to establish a Labor-Management Council (“LMC”) [...]. The LMC shall meet at least twice annually for the purpose of resolving matters in the workplace that may not be covered by the terms of the parties’ collective bargaining agreements”<sup>108</sup>.

The Central Co-op CBA explicitly recognizes that workers will need to spend time in Co-op meetings and will be paid for that work<sup>109</sup>. It further provides that workers can attend voluntary meetings without pay<sup>110</sup>.

The Snow River CBA has at least five provisions explicitly requiring continuous collective bargaining during the term of the CBA. Continuous bargaining is required for the following topics: all temporary positions are reviewed after 60 days to determine whether a full-time position should be created; positions can be determined to involve “broad-based responsibility” so that seniority is only one factor in selection; four-day flex hours work week will be implemented; holiday work will be voluntary if possible and discussed prior to scheduling; and a safe and healthful workplace will be maintained<sup>111</sup>.

The Snow River CBA repeats the commitment to cooperative principles in its preface and in one of the governing Articles. It states, for example: “Snow River Cooperative, its employees and the Union will work

<sup>107</sup> *Lindsay v. Lewandowski*, 139 Cal. App. 4th 1618/ 2006 1622, 43 Cal. Rptr. 3d 846/2006 848; SHER, WITKIN, HILBERMAN, MARCUS, STEELE, *Other Forms of Dispute Resolution*, in *GPSolo*, 2015, 32(1), p. 61.

<sup>108</sup> Central Co-op, Letter of Understanding #1, at \*24 (on file with author).

<sup>109</sup> Central Co-op CBA, *cit.*, Article 5, Hours of Work and Overtime, 5.6 Mandatory Meetings and 5.8.3 Voluntary Meetings, at \*11.

<sup>110</sup> Central Co-op CBA, *cit.*, Article 5, Hours of Work and Overtime, 5.6 Mandatory Meetings and 5.8.3 Voluntary Meetings, at \*11.

<sup>111</sup> Snow River Cooperative and Local #800 IUE-CWA, AFL-CIO 2021-2024 Collective Bargaining Agreement, Article IV Seniority, at \*6 & \*8-9, Article VIII General, 8.10 Flex Hours, at \*24, Article IX Holidays at \*25, Article XIII Health and Safety, at \*31 (on file with author) (hereinafter Snow River CBA).

continuously and cooperatively toward our long-term common goals of being a low-cost, high-quality manufacturer, with quality customer service. In addition, Snow River Cooperative, its employees and the Union will work toward secure employment through a cooperative partnership based on mutual respect. Snow River Cooperative will ask employees to share in the direction of the Company and participate in decision making through the use of term positions, teams and other means of employee empowerment”<sup>112</sup>.

Additionally, even when a contract does not explicitly mention interest-based collective bargaining or continued interest-based negotiation during the term of the agreement, the terms indicate that structurally the cooperative business principles (as distinguished from the interest-based negotiation framework) are used throughout the entity, which should reinforce the use of interest-based labor negotiations. The Bookkeeping CBA explicitly incorporates the International Cooperative Principles. It states: “The Union and the Coop agree to work together in partnership to serve the interests of the membership as both workers and owners. This partnership is guided by the principles of solidarity, accountability, and community in alignment with the International Cooperative Principles, which are:

1. Voluntary and Open Membership
2. Democratic Member Control
3. Member Economic Participation
4. Autonomy and Independence
5. Education, Training and Information
6. Co-operation among Co-operatives
7. Concern for Community and the Cooperative Values of *self-help, self-responsibility, democracy, equality, equity, and solidarity*”<sup>113</sup>.

The CHCA CBA states that: “The Union recognizes the unique nature of the Employer as a worker-owned cooperative corporation and agrees to continue to cooperate with the Employer and the Employees to

<sup>112</sup> Snow River CBA, *cit.*, at \*1 and Article VIII General, 8.8 Common Goals, at \*24.

<sup>113</sup> Retail, Wholesale and Department Store Union (RWDSU) UFCW and A Bookkeeping Cooperative, Inc. Collective Bargaining Agreement effective 2020, Article 3 – Union Cooperative Partnership, at \*4 (on file with author) (hereinafter Bookkeeping CBA). For more on the International Cooperative Principles, see The International Co-Operative Alliance: Statement on the Co-Operative Identity, 23 Sept. 1995, <https://www.gdrc.org/icm/coop-principles.html>.

perpetuate and enhance the Employer's unique culture reflecting worker ownership"<sup>114</sup>. The CBA specifies: "All Employees shall continue to have the opportunity to purchase and own Class A or other classes of stock in the Employer as designated by the Employer's Board of Directors and to become and remain worker-owners of the Employer in accordance with the Employer's by-laws and practices as now in effect or as they may be modified by the Employer's Board of Directors in its sole discretion"<sup>115</sup>.

The CBA establishes "a Committee on Worker-Ownership to discuss and explore issues surrounding the development and maintenance of positive Employer-Union relations at a worker-owned enterprise [...]"<sup>116</sup>. The parties entered a Sideletter Regarding Worker-Ownership because the "worker-owned cooperative corporation is in many respects a unique entity," with a "special nature [...]" recognized as a valuable characteristic which the parties wish to nurture and preserve [...]"<sup>117</sup>. The Sideletter Agreement includes a provision that "Employees who are or who become worker-owners of the Employer may continue without limitation to participate in (a) worker-owner activities and decisions, including voting on major company decisions (including by way of example but not limitation, significant policy changes, wage and benefit levels, and the distribution of the Employer's year end profits, if any), (b) the election of the majority of the membership of the Employer's Board of Directors and (c) all other worker-owner activities and decision making in accordance with the provisions of the Employer's By-laws and practices ("By-Laws"), as they are now in effect or as they may be modified in the future. Employees who are worker-owners shall participate in such activities in their capacities as worker-owners and not as officers, stewards, representatives or other agents of the Union"<sup>118</sup>.

<sup>114</sup> Cooperative Home Care Associates and 1199 SEIU New York's Health and Human Service Union, AFL-CIO Collective Bargaining Agreement for the period December 11, 2002 through December 31, 2003 Article I Recognition, at \*3 (on file with author) (hereinafter CHCA CBA).

<sup>115</sup> CHCA CBA, *cit.*, Article V Employer Procedures, at \*9.

<sup>116</sup> CHCA CBA, *cit.*, Article XXIX Committee on Worker-Ownership, at \*50.

<sup>117</sup> CHCA CBA, *cit.*, Article XXIX Committee on Worker-Ownership, at \*50.

<sup>118</sup> CHCA CBA, *cit.*, Sideletter Regarding Worker-Ownership, at \*52.

## 5.2. *Encouraging Participation in Civic Society and Political Democracy*

In the United States, union membership is associated with higher rates of voting<sup>119</sup>. This may be because union members are more familiar with engaging in democratic processes, like collective bargaining, at work or because unions educate their members and encourage solidarity<sup>120</sup>. Engagement in democratic processes and ongoing education should be even greater in a union cooperative than in a non-cooperative business, suggesting that union co-op collective bargaining has potential to encourage participation in political democracy. Unions and co-ops traditionally promote democratic processes<sup>121</sup>, and the spill-over effect likely increases political activism and democratic processes. One study sets out three ways that workplace democracy may have a spillover effect to civic society and political democracy<sup>122</sup>. First, when workers participate in democracy at work it may increase “personal efficacy”<sup>123</sup>. Second, participating in group decision-making may increase workers “social orientation” and “sense of commonality”<sup>124</sup>. Third, workers may gain democratic skills at the workplace that can be transferred to other settings<sup>125</sup>.

One item included in several of the union co-op CBAs – and also included in many traditionally-negotiated CBAs – is paid time off for jury

<sup>119</sup> BECHER, STEGMUELLER, *Cognitive ability, union membership, and voter turnout*, 2019, p. 2 (IAST working paper available at [https://sites.duke.edu/stegmueller/files/2019/04/Becher\\_Stegmueller\\_UnionTurnout.pdf](https://sites.duke.edu/stegmueller/files/2019/04/Becher_Stegmueller_UnionTurnout.pdf)) (“there is nonetheless robust evidence that unions increase the propensity of their members to participate in elections”). See also BOOTH, LUP, WILLIAMS, *Union membership and charitable giving in the United States*, in *ILRR*, 2017, 70(4), p. 848, DOI: 10.1177/0019793916677595 (finding union members 3% more likely than non-union members to donate to charitable organizations).

<sup>120</sup> See BOOTH, LUP, WILLIAMS, *cit.*, p. 839–840 (explaining that being part of civil organization leads to more awareness of civic opportunities, more group participation in civic activities through organization, and self-identity that includes civic mindedness).

<sup>121</sup> But see RYBNIKOVA, *Spillover effect of workplace democracy: A conceptual revision*, in *FIP*, 2022, 13, p. 10, DOI 10.3389/fpsyg.2022.933263 (“research on cooperatives demonstrates a huge diversity of cooperatives and shows that cooperatives are not necessarily democratic organizations since their aims, values, and ways of organizational decision-making are highly varying and oligarchic tendencies are one of the essential struggles in cooperatives”).

<sup>122</sup> RYBNIKOVA, *cit.*, pp. 10 and 11.

<sup>123</sup> RYBNIKOVA, *cit.*, pp. 10 and 11.

<sup>124</sup> RYBNIKOVA, *cit.*, pp. 10 and 11.

<sup>125</sup> RYBNIKOVA, *cit.*, pp. 10 and 11.

duty<sup>126</sup>. In the United States, courts pay a very low fee to those serving on jury duty, and many individuals do not participate in jury duty, even when directed to do so, due to the fact that this jury pay is in lieu of their regular wages. Unions negotiate provisions for pay during jury duty, which permits the workers to engage in the democratic process and experience decision-making as a group of citizens, a jury.

The AlliedUp CBA also demonstrates commitment to enabling workers to participate in political democracy more explicitly by enabling workers to voluntarily contribute a portion of their wages to the union's Committee on Political Education fund<sup>127</sup>. Likewise, the Sustainergy CBA enables workers to voluntarily contribute to the United Steelworkers Political Action Committee, which "supports various candidates for federal and other elective office"<sup>128</sup>. The Central Co-op CBA enables contribution to the "UFCW Active Ballot Club political action committee"<sup>129</sup>, and the CHCA CBA enables contribution to "the 1199 Political Action Fund"<sup>130</sup>.

The bargaining process where financial information is shared with all workers and assessed by the union and workers from the perspective of their impact on workers as workers, rather than owners, also encourages democratic decision-making. It requires that those workers involved in negotiations be financially literate and hone their analytical skills. It also helps those workers involved view financial information and the workplace from different angles – both as owners and as workers.

Our Harvest CBA provides an example of open-book labor negotiations. The CBA states: "Therefore, the main goal of union co-op man-

<sup>126</sup> See, e.g., Worx CBA, *cit.*, Article 11 - Paid Time Off, at \*4 (providing pay of "normal wage rate for the first three days of jury duty"); Our Harvest CBA, *cit.*, 10.7 Jury Duty, at \*12 (providing pay of "up to one week's worth of hours [...] in addition to jury fee remuneration."); Snow River CBA, *cit.*, Article VI Hours of Work, 6.8 Jury Pay, at \*14 (providing compensation less jury pay received); Sustainergy Cooperative and USW, AFL-CIO, on behalf of Local Union 14734-16, Collective Bargaining Agreement for the period July 1, 2022 through June 30, 2025, Article 8 Miscellaneous Provisions, Section 7 Jury Duty, at \*12 (on file with author) (hereinafter Sustainergy CBA); Central Co-op CBA, *cit.*, Article 10 Leaves of Absence, 10.4 Jury Duty Leave; Cf. CHCA CBA, *cit.*, Article XVII Jury Duty, at \*19 (providing pay for only three days of jury duty).

<sup>127</sup> AlliedUp CBA, *cit.*, Article 14: Union Membership, at \*7.

<sup>128</sup> Sustainergy CBA, *cit.*, Article 3 Check Off, Section 4 PAC, at \*5-6.

<sup>129</sup> Central Co-op CBA, *cit.*, Article 2 - Union Security and Activities, 2.1 Active Ballot Club, at \*4.

<sup>130</sup> CHCA CBA, *cit.*, Article III, Check-Off, at \*5.

agement relations in the union co-op model should be the continuous ongoing resolution of grievances, complete honesty by both sides and open financial books (virtually nonexistent in so called normal industrial relations in the United States), and a constant effort to improve the lives of the worker owners in the context of increasing the value of the co-op<sup>131</sup>.

These open-book negotiations are an aspect of running the cooperative with the finances available to all workers to enhance decision-making. The process is reflected in the Salary and Wage provision of the CBA.

“Hourly and salaried yearly increases are based on productivity and profitability. Financial information is available for review to all employees. Between January 1<sup>st</sup> and January 15<sup>th</sup> annually, the end of year finances will be evaluated in order to determine appropriate wage increases. Such raises will take effect on February 1<sup>st</sup> annually<sup>132</sup>.”

The training established by the Our Harvest CBA also promotes democratic decision making. The CBA states: “Our Harvest believes in training on being part of a cooperative. Key topics will include communications, team building, problem solving, decision making, and leadership. As Mondragon practice demonstrates, this type of organizational training cannot and must not be a one-time event, but rather constitutes a continuous ongoing learning and reinforcement process<sup>133</sup>.”

Similarly, the AlliedUp CBA establishes training for “professional development” and “employee advancement<sup>134</sup>.” The Co-op makes a regular contribution of one percent of the “annual gross payroll” to the SEU United Healthcare Workers West and Joint Employer Education Fund<sup>135</sup>. The CBA states that: “as a worker-owner company, members are able to position themselves in leadership roles to ensure fellow workers have a voice representing themselves and one another<sup>136</sup>.”

The processes outlined in the Our Harvest CBA for addressing workplace issues also involve teamwork to a greater extent than traditional union grievance arbitration. Rather than a shop steward, an elected union committee negotiates with union representatives on the workers’ behalf

<sup>131</sup> Our Harvest CBA, *cit.*, BACKGROUND, at \*1.

<sup>132</sup> Our Harvest CBA, *cit.*, Article 14.3 Salaries and Wages, at \*18.

<sup>133</sup> Our Harvest CBA, *cit.*, Article 11.7 Training/Apprenticeship, at \*16.

<sup>134</sup> AlliedUp CBA, *cit.*, Article 10: Joint Training and Education Trust Fund, at \*5.

<sup>135</sup> AlliedUp CBA, *cit.*, Article 10: Joint Training and Education Trust Fund, at \*5.

<sup>136</sup> AlliedUp CBA, *cit.*, Article I: Purpose and Philosophy, at \*1.

and advocates for the individual workers when they have discipline issues or other grievances<sup>137</sup>. The Union Committee meets regularly with the other workers so that others can “provide their input into the Cooperative’s decision-making process and an opportunity to express their concerns [...]”<sup>138</sup>. Similarly, the Snow River CBA emphasizes teamwork. It states: “We will achieve this goal through a strategic alliance of the employees, the Union and Snow River Cooperative working together for continuous improvement using team management, employee empowerment, and mutual respect”<sup>139</sup>. The Snow River Cooperative also establishes an elected three-person grievance and bargaining committee to work with Snow River and includes the Union Business Agent and President as participants in the meetings<sup>140</sup>.

Social science research indicates that to counter the rise of authoritarian leaders, including in the United States<sup>141</sup>, individuals must learn to engage in deliberative dialogue and practice empathy as well as engage in the politics of cooperation<sup>142</sup>. Other research hypothesizes a spillover effect where participating in workplace democracy leads to greater participation in political democracy<sup>143</sup>, as supported by the literature regarding union membership discussed above. To the extent social science suggests that peo-

<sup>137</sup> Our Harvest CBA, *cit.*, Article 3, Union Shop Conditions & Checkoff, 3.8 Union Committee, at \*5.

<sup>138</sup> *Id.* at \*5–6.

<sup>139</sup> Snow River CBA, *cit.*, Preface, at \*1.

<sup>140</sup> Snow River CBA, *cit.*, Article VII Grievance Procedure, at \*14–15.

<sup>141</sup> See generally, MACWILLIAMS, *Donald Trump is attracting authoritarian primary voters, and it may help him to gain the nomination*, in *LSE Blog*, 27 Jan. 2016, <https://blogs.lse.ac.uk/usappblog/2016/01/27/donald-trump-is-attracting-authoritarian-primary-voters-and-it-may-help-him-to-gain-the-nomination/>.

<sup>142</sup> GALAMBA, MATTHEWS, *Science education against the rise of fascist and authoritarian movements: towards the development of a pedagogy for democracy*, in *CSSE*, 2021, 16, p. 584, DOI: 10.1007/s11422-020-10002-y. Cf. COHEN, SMITH, *Do authoritarians vote for authoritarians? Evidence from Latin America*, in *RAP*, 2016, 3(4), p. 7, DOI: 10.1177/2053168016684066 (finding authoritarians support right, but not left, wing authoritarians, and education is best predictor to reduce authoritarianism).

<sup>143</sup> BUDD, LAMARE, TIMMING, *Learning about democracy at work: Cross-national evidence on individual employee voice influencing political participation in civil society*, in *ILRR*, 2018, 71(4), p. 979 (2018), DOI: 10.1177/0019793917746619. (“we find that employees with greater levels of individual autonomy and voice at work are indeed significantly more likely to engage in a broad array of pro- democratic behaviors”); But see RYBNIKOVA, *cit.*, p. 02 (whether workplace democracy has spillover effect to political democracy is understudied and contested).

ple are more susceptible to authoritarian leadership when they are used to taking direction rather than problem solving and developing leadership skills, union co-op negotiations hold promise toward enabling workers to more fully participate in political and civic democracy.

### 5.3. *Recognizing Community and External Interests*

Beyond the interests of the owners and the co-op and the workers and the union, the dispute resolution literature suggests that an interest-based approach may be more responsive to the interests of those external to the negotiations. While an underexplored area of study, distributive approaches to negotiation may be less likely to consider negotiating parties' internal conflicts and the external factors, like relationships with family or friends, reputation in the community, or impact on the neighborhood than interest-based approaches<sup>144</sup>. In terms of collective bargaining, the interest-based approach of a union co-op might create terms and conditions of work that are more responsive to community concerns and other externalities such as climate change<sup>145</sup>.

One participant in negotiations described community concerns about healthy food in schools as an integral part of negotiations. Paige Stephens explained how a plan to increase the potential markets for Our Harvest produce aligned with the union's political agenda to increase the healthiness of food for children in the Cincinnati school district<sup>146</sup>. The union worked with the School Board to pass a good food purchasing policy, which encourages schools to procure local food from unionized workforces, among other criteria<sup>147</sup>. The policy improves the quality and healthiness of the food eaten by 70,000 school children<sup>148</sup>. Similarly, Kevin O'Brien, who participated in Worx negotiations, relayed that the parties had many discussions to

<sup>144</sup> See, e.g., FOLBERG, GOLANN, STIPANOWICH, REYNOLDS, SCHMITZ, *cit.*, p. 5 (describing how triangle of negotiation interests involves environmental social considerations such as party to divorce negotiations having concern with how children, grandparents, and neighbor will think about new parenting arrangement).

<sup>145</sup> CUMMINGS, *Catalytic localism: What is new about the Green New Deal*, in *CKLR*, 2022, 97(2), p. 293.

<sup>146</sup> Interview with Paige Stephens, Business Agent, UFCW Local 75, 09 July 2024.

<sup>147</sup> Interview with Paige Stephens, Business Agent, UFCW Local 75, 09 July 2024.

<sup>148</sup> Interview with Paige Stephens, Business Agent, UFCW Local 75, 09 July 2024.

educate the outside union representative and themselves about how their cooperative business operates and what their larger societal goals are<sup>149</sup>.

Other participants did not explicitly address community concerns in the rounds of negotiation in which they were involved. The interviews suggest that a different approach, such as Bargaining for the Common Good<sup>150</sup>, might more often address community concerns. Perhaps providing even more promise, the Bargaining for the Common Good approach might be integrated with the interest-based approach already in use by union co-ops. In fact, several of the union co-op CBAs recognize the obligation to give back to the larger community, which is one of the seven cooperative principles. The Worx CBA and the Bookkeeping CBA explicitly recognize “community” as a core principle that guides the partnership between the Union and the Co-op<sup>151</sup>. The Bookkeeping CBA also commits the Union and Co-op “to work cooperatively together with other unions, community groups, cooperatives, and businesses to encourage the growth of the cooperative sector and the solidarity economy”<sup>152</sup>. The Our Harvest CBA requires prioritizing solidarity with “individual ownership” as “a close second”<sup>153</sup>. The CBA states: “The union-co-op model, in order to be successful, cannot divorce itself in any way from the broader worker rights movement and therefore it is absolutely essential that the worker owners be good union members in the broadest sense of the term, participating in the union to uplift the conditions of workers around the world. If workers in some corner of the globe are building your product for a \$1/hour then it undermines your ability to make the same product, sell it in the marketplace, and maintain your same standard of living”<sup>154</sup>.

It establishes a union committee to “keep members informed and connected to the workers movement in the city, the country, and the world, and also to develop competitive best practices in each relevant market sector”<sup>155</sup>.

<sup>149</sup> Interview with Kevin O’Brien, General Manager, Worx Printing, 14 May 2024.

<sup>150</sup> See generally VELAZQUEZ, *Bargaining for the common good in bankruptcy*, in *LSJ*, 2025, 50(4), DOI: 10.1177/0160449X251324433.

<sup>151</sup> Worx CBA, *cit.*, Article 4 - Partnership, at \*1; Bookkeeping CBA, Article 3 – Union Cooperative Partnership, at \*4.

<sup>152</sup> Bookkeeping CBA, *cit.*, Article 21 – Cooperative and Solidarity Economy Growth, at \*14.

<sup>153</sup> Our Harvest CBA, *cit.*, Background, at \*2.

<sup>154</sup> Our Harvest CBA, *cit.*, at \*2.

<sup>155</sup> Our Harvest CBA, *cit.*, Article 3 – Union Shop Conditions & Checkoff, 3.8 Union Committee, at \*5.

#### 5.4. *Technological Change*

Addressing some of the grand challenges of this historical time, such as technological advancement of AI and the growth of the gig economy<sup>156</sup>, might be better addressed with the big-picture thinking of interest-based negotiation. As to technological change, some union co-op CBAs provide a more creative approach than the traditional focus on job security. None of the CBAs contain provisions proactively addressing how to redistribute wealth as work becomes more automated, although some union co-ops may work with the larger labor movement on addressing this challenge. One of the ways that Mondragon addresses technological change is by consisting of a network of cooperatives that constantly innovate and provide retraining and different jobs to workers, and this could be a possible future means for union co-ops to address these challenges.

The Our Harvest CBA takes a more cooperative and proactive approach to addressing technological change than the focus on maintaining jobs that results from some more traditional negotiations. It specifies: “12.3 The Union recognizes the need for improved methods and output in the interest of the employees and the business and agrees to cooperate with the Cooperative in the installation of such methods, in suggesting improved methods and in the education of its members in the necessity for such changes and improvements”<sup>157</sup>.

Paige Stephens explained that while in the round of negotiations that she described technology was not specifically discussed, everyone involved is aware they are negotiating against the backdrop of being a small urban farm that must compete with major food producers who have technology. Our Harvest does not<sup>158</sup>.

The Nursing and Caregivers Cooperative, Inc. (NCC) CBA provides another example of an interest-based approach to addressing technological change. Traditionally in the United States, homecare work is quite precarious. SEIU United Healthcare Workers -- West has pioneered the use of the union co-op and ongoing interest-based collective bargaining to improve

<sup>156</sup> See ESTLUND, *What should we do after work? Automation and employment law*, in *YLJ*, 2018, 128(2), p. 254.

<sup>157</sup> Our Harvest CBA, *cit.*, Article 12. Union Cooperation, at \*16.

<sup>158</sup> Interview with Paige Stephens, Business Agent, UFCW Local 75, 09 July 2024.

the workers' working conditions and provide job security<sup>159</sup>. The collective bargaining agreement with the Nursing and Caregivers Cooperative, Inc. (NCC) provided: "This Agreement recognizes NCC's right to revise, rescind, or supplement the employee policies contained in the Employee Handbook from time to time as well as policies regarding eligibility for worker-owner status (as opposed to worker non-owner status).

However, NCC will meet and confer with UHW before implementing changes to:

1. Clinical protocols and scope of work performed by LVNs
2. Supervisory relationship between LVNs and MDs (or other providers)
3. Operational protocols that substantially affect LVNs' day to-to-day work (e.g., app vendor, transportation to client visits, particularities of clinical partners)
4. Substantial changes to hiring criteria for LVNs<sup>160</sup>.

Ra Criscitiello, Assistant Director of the Research Department, reports that the listed issues were "broad enough to encompass all the issues that did – in real life – arise that required the creation of committees"<sup>161</sup>. While the other CBAs do not explicitly mention technological change or AI<sup>162</sup>, the committees established, such as the Worx Partnership Committee or the AlliedUp Joint Labor Management Committee, operate to address issues that arise during the term of the CBAs, so should offer a way to address technological change<sup>163</sup>.

On the other hand, the Snow River CBA reserves to the Board of Directors, as traditional negotiations often do, the management right to

<sup>159</sup> Cf. RUBINSTEIN, HECKSHER, *cit.*, p. 200 (suggesting that viable unions in horizontal economy need to "provide information, help with job movement, support access to improved skills" and pressure employers for worker participation in decision-making).

<sup>160</sup> United Healthcare Workers – West (UHW) Collective Bargaining Agreement with Nursing and Caregivers Cooperative, Inc. (NCC) for the term Dec. 1, 2016 – Dec. 1, 2017 (on file with author).

<sup>161</sup> E-mail from Ra Criscitiello, Deputy Dir. Rsch., SEIU-United Healthcare Workers-West to Ariana Levinson, Professor of Law, Louis D. Brandeis Sch. of L., Univ. of Louisville, 12 July 2021 (on file with author).

<sup>162</sup> The Bookkeeping CBA, *cit.*, Article 1 – Recognition, at \*3.

<sup>163</sup> See Worx CBA, *cit.*, Article 4 – Partnership, at \*1. AlliedUp CBA, *cit.*, Article 12: Labor Management Partnership, at \*6.

“introduce new or improved methods or facilities”<sup>164</sup>. While labor negotiations may not reflect a more cooperative approach to technological change, the Board of Directors being made up of employee owners will nevertheless provide worker control over this type of technological change. When a CBA exists prior to the conversion to a worker-owned co-op, as with Snow River, it may take multiple iterations of bargaining to reflect the full impact that the CBA can have to address technological change and other issues.

Overall, several CBAs reflect the possibility that the union co-op negotiations will result in provisions that address technological change in a more cooperative way than the traditional focus on job preservation. Unions and cooperatives may also be addressing such challenges in ways other than through collective bargaining. One interview participant, Kevin O’Brien, described how the parties discussed technology at the broadest level, “realizing that robotic automation is here – a dribble of water that is about to become a tidal wave”<sup>165</sup>. They understand their work will train and be replaced by robots and to benefit, they must own the company, including the robots.

### 5.5. *Addressing Racism and Other Systemic Discrimination*

In the United States, a correlation between race and income inequality and other social determinants of health exists, as well as a history of chattel slavery and economic exclusion of racial minorities<sup>166</sup>. To the degree that

<sup>164</sup> Snow River CBA, *cit.*, Article III Rights of Management, at \*4.

<sup>165</sup> Interview with Kevin O’Brien, General Manager, Worx Printing, 14 May 2024.

<sup>166</sup> See generally BOWDLER, HARRIS, *Racial Inequality in the United States*, U.S. Dept. of the Treasury, 21 July 2022, <https://home.treasury.gov/news/featured-stories/racial-inequality-in-the-united-states> (correlation between race and wealth inequality); ALADANGADY, FORDE, *Wealth inequality and the racial wealth gap*, in *FEDS Notes*, 22 Oct. 2021, <https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.html> (correlation between race and wealth inequality); COGBURN, *Culture, race, and health: Implications for racial inequalities and population health*, in *MilbQ*, 2019, 97(3), pp.736-761, DOI: 10.1111/1468-0009.12411 (correlation between race and social determinants of health); NDUGGA, HILL, ARTIGA, *Key data on health and health care by race and ethnicity*, 11 June 2024, <https://www.kff.org/racial-equity-and-health-policy/key-data-on-health-and-health-care-by-race-and-ethnicity/?entry=executive-summary-introduction> (correlation between race and social determinants of health); BRACE, *The politics of property: Labour, freedom and belonging*, Edinburgh Univ. Press, 2004 (chattel slavery); SANTUCCI, *Documenting racially restrictive covenants in 20th Century Philadelphia*, in *Cityscape*, 2020, 22(3), pp. 241-268 (racially restrictive covenants in

interest-based negotiations enable consideration of community interests, union co-op negotiations might conceivably address these systemic inequities more directly than traditional labor negotiations. Anti-discrimination was mentioned by two participants in negotiations as a topic of negotiation<sup>167</sup>. With one exception, the union co-op CBAs do not suggest anything other than a similar commitment to nondiscrimination in the workplace that results from traditional negotiations<sup>168</sup>. One participant explicitly confirmed that the union proposed the union's standard non-discrimination clause for other traditional CBAs for their language in the CBA with the co-op<sup>169</sup>. The Bookkeepers CBA provides an example of how, even within the strictures of the inadequate legal framework in the United States, union co-op negotiations can result in proactive measures to promote anti-discrimination<sup>170</sup>. And, of course, in their business practices and participation in community and political affairs, union co-op workers may be more likely to work toward systemic change than other union workers, but it is not yet reflected in the CBAs.

Each of the CBAs has a non-discrimination clause, as do most CBAs resulting from traditional labor negotiations<sup>171</sup>. The clauses prohibit discrimination against a worker because of race or gender, which in the United States generally includes gender identity and sexual orientation<sup>172</sup>, and disability, among other standard non-job-related characteristics<sup>173</sup>. Some of

Philadelphia); ARNOLD, POWELL, FOSSL, ROTHSTEIN, *Racial justice in American land use*, Cambridge Univ. Press, 2025, p. 1 (land use policies in U.S. marginalize non-whites).

<sup>167</sup> Interview with Kevin O' Brien, General Manager, Worx Printing, 14 May 2024; Interview with Paige Stephens, Business Agent, UFCW Local 75, 09 July 2024.

<sup>168</sup> The exception is discussed immediately below. Bookkeepers CBA, *cit.*, Article 5 – Equal Employment Opportunity – No Retaliation, at \*10.

<sup>169</sup> Interview with Ra Criscitiello, Deputy Director of Research, SEIU United Healthcare Workers West, 29 Apr. 2024.

<sup>170</sup> Bookkeepers CBA, *cit.*, Article 5 – Equal Employment Opportunity – No Retaliation, at \*10.

<sup>171</sup> *Ninth Circuit finds discrimination claims may be arbitrated*, in *AzEmpLL*, 1998, 5(5), p. 4.

<sup>172</sup> SPERINO, *The early days of the Ending Forced Arbitration Act*, in BALES, GROSS (eds.), *The Federal Arbitration Act: Successes, failures, and a roadmap for reform* Cambridge Univ. Press, 2024, pp. 175, 184.

<sup>173</sup> Worx CBA, *cit.*, Article 12 – Non-Discrimination, at \*6; Snow River CBA, *cit.*, 8.4 Equal Opportunity, at \*23; Sustainergy CBA, *cit.*, Article 8 Miscellaneous Provisions, Section 5 Discrimination, at \*11-12; Central Co-op CBA, Article 3 – Employment Practices, 3.1 Equal Opportunity Policy, at \*4-5; By-Laws of Collective Copies, Inc., *cit.*, Article II, Worker-Members' and Workers' Rights, section 10, at \*3.

the CBAs have no further provisions addressing systemic discrimination than the baseline requirements of their state or federal law<sup>174</sup>. Others include broader categories than generally required by U.S. law such as marital status<sup>175</sup>, parental status<sup>176</sup>, Appalachian origin<sup>177</sup>, political beliefs or affiliation<sup>178</sup>, immigration status<sup>179</sup>, citizenship status<sup>180</sup>, personal appearance<sup>181</sup>, or family responsibilities<sup>182</sup>.

The Bookkeepers CBA takes a more proactive approach to foster anti-discrimination<sup>183</sup>. It prohibits asking a candidate about salary history<sup>184</sup> – a practice which has been recognized by studies as contributing to the continuing gender pay gap in the United States<sup>185</sup>. The Bookkeepers CBA also requires: “The Coop shall provide all vendors, workshop leaders, and professional development contractors who may be required to interact extensively with Employees a written primer on how to appropriately and respectfully interact with the Employees, including anti-discrimination and sensitivity language regarding race, creed, color, sex, nationality, (dis)ability, sexual orientation, age, gender expression, identity, and pronouns”<sup>186</sup>.

<sup>174</sup> See, e.g., Worx CBA, *cit.*, Article 11 – Paid Time Off, at ★4 (providing paid sick leave and time off to the extent required by state law); Snow River CBA, *cit.*, Article X – Insurance Coverage, at ★27 (requiring compliance with family medical leave laws).

<sup>175</sup> Sustainergy CBA, *cit.*, Article 8 Miscellaneous Provisions, Section 5 Discrimination, at ★11–12.

<sup>176</sup> Central Co-op CBA, *cit.*, Article 3 – Employment Practices, 3.1 Equal Opportunity Policy, at ★4–5.

<sup>177</sup> Sustainergy CBA, *cit.*, Article 8 Miscellaneous Provisions, Section 5 Discrimination, at ★11–12.

<sup>178</sup> Our Harvest CBA, *cit.*, Article 4. Conformity to Law, 4.1, at ★6; Bookkeepers CBA, *cit.*, Article 5 – Equal Employment Opportunity, at ★10.

<sup>179</sup> Our Harvest CBA, *cit.*, Article 4. Conformity to Law, 4.1, at ★6.

<sup>180</sup> CHCA CBA, *cit.*, Article IV No Discrimination, at ★7.

<sup>181</sup> Bookkeepers CBA, *cit.*, Article 5 – Equal Employment Opportunity, at ★10.

<sup>182</sup> *Ibid.*

<sup>183</sup> Bookkeepers CBA, *cit.*, Article 3 – Union Cooperative Partnership, at ★4 (establishing values of equality and equity).

<sup>184</sup> Bookkeepers CBA, *cit.*, Article 5 – Equal Employment Opportunity – Ban on Salary History, at ★10.

<sup>185</sup> See generally NATIONAL WOMEN’S LAW CENTER, *Asking for salary history perpetuates pay discrimination from job to job*, Dec. 2018, <https://nwlc.org/wp-content/uploads/2018/12/Asking-for-Salary-History-Perpetuates-Discrimination-1.pdf>; *Greater Phila. Chamber of Com. v. City of Phila.*, 949 F.3d 116/ 2020 (3d Cir.).

<sup>186</sup> Bookkeepers CBA, *cit.*, Article 5 – Equal Employment Opportunity – No Retaliation, at ★10.

Finally, the CBA affirmatively requires that the Co-op, union, and workers “will endeavor to treat all people with dignity and respect”<sup>187</sup>.

The Collective Copies Bylaws, while not a periodically negotiated CBA, contains provisions that other union co-ops might adopt in their CBAs. In addition to a traditional CBA-like nondiscrimination provision, the bylaws contain two provisions which might address structural inequities in pay and working conditions. One provides for an hourly pay differential no greater than a ratio of 2:1<sup>188</sup>. The other states “In its formal structures for sharing work, the Collective shall in principle strive toward equalization of work, participation, and status”<sup>189</sup>.

### 5.6. *Climate Change and Environmental Sustainability*

In the United States, some unions are involved in working toward sustainability by addressing climate change through a “just transition” while others are concerned that a just transition will eliminate well-paying union jobs<sup>190</sup>. The just transition is “a political theory of how economic and racial equity principles are built into policy shifts from fossil fuels to clean energy”<sup>191</sup>. Addressing the vulnerabilities of fossil fuel workers and communities is a priority in a just transition to sustainable energy production<sup>192</sup>. Interest-based union co-op bargaining with consideration of community interests has the potential to directly incorporate a commitment to environmental sustainability. A few of the union co-op CBAs reflect a commitment to environmental sustainability. None explicitly address the massive changes in types of work, work methods, and redistribution of wealth required to address climate change in a way that prioritizes working people, especially workers of color and low-income workers.

The Worx CBAs explicitly mentions “sustainability”. That CBA commits the Union and Co-op to work together “guided by core principles of

<sup>187</sup> Bookkeepers CBA, *cit.*, Article 10 – Dignity and Respect, at \*9.

<sup>188</sup> By-Laws of Collective Copies, Inc., *cit.*, Article II, Worker-Members’ and Workers’ Rights, section 4, at \*2.

<sup>189</sup> *Ibid.*

<sup>190</sup> CHA, *cit.*, p. 204; CUMMINGS, *cit.*, p. 301.

<sup>191</sup> CUMMINGS, *cit.*, p. 293.

<sup>192</sup> CHA, *cit.*, p. 198.

sustainability, solidarity, accountability, and community”<sup>193</sup>. Kevin O’Brien explained that while environmental issues were not explicitly discussed during negotiations, they choose to be a print-on-demand business because it is an ecologically friendly printing process, and they store and have a service dispose of the liquid discharge in an environmentally safe manner<sup>194</sup>.

The Our Harvest CBA directly addresses environmental concerns stating: “The Union recognizes the need for conservation and the elimination of waste and agrees to cooperate with the Cooperative in suggesting and practicing methods in the interest of conservation and waste elimination”<sup>195</sup>. Paige Stephens mentioned that while in the round of negotiations she described environmental issues were not discussed, as an urban farm, the worker-owners are very conscious of environmental issues and use sustainable agricultural practices<sup>196</sup>. The Collective Copies bylaws may incentivize the use of environmentally safe products through a provision that states: “The Collective will within financial means maintain a healthful workplace in accordance with standards determined by worker-members. Workers will have access to current information regarding supplies and product safety”<sup>197</sup>.

While the other CBAs do not explicitly mention sustainability or climate change, some of the union co-ops such as Sustainergy, an insulation and solar panel installation company, are very committed to sustainability and addressing environmental concerns. Lewis Connell pointed out in his interview that while environmental concerns were not explicitly raised during negotiations, sustainability is a core principle on which Sustainergy operates<sup>198</sup>. As with addressing technological change, the various committees established by the CBAs may provide a way to raise and implement sustainable practices in the business.

<sup>193</sup> Worx CBA, *cit.*, Article 4 - Partnership, at \*1.

<sup>194</sup> Interview with Kevin O’Brien, General Manager, Worx Printing, 14 May 2024.

<sup>195</sup> Our Harvest CBA, *cit.*, Article 12 - Union Cooperation, at \*16.

<sup>196</sup> Interview with Paige Stephens, Business Agent, UFCW Local 75, 09 July 2024.

<sup>197</sup> By-Laws of Collective Copies, Inc., *cit.*, Article II, Worker-Members’ and Workers’ Rights, section 7, at \*3.

<sup>198</sup> Interview with Lewis Connell, Unit Chair & VP, USW Local Union 14734-16, 10 May 2024.

## 6. Conclusion

The review of several union co-op CBAs, and interviews with participants in the negotiations resulting in those agreements, reveals that the collective bargaining process is more interest-based than traditional more distributive labor negotiations and that commitment to cooperative principles enhances a problem-solving approach in the union and co-op relationship. The negotiations and resultant CBA terms may enhance participants' likelihood of engaging in civic society and in democratic political processes, and ultimately countering the rise of authoritarian leaders. Some of the CBAs resulting from these union co-op negotiations also reflect a commitment to concern for the community. The likelihood of the union co-op negotiations addressing other interrelated primary challenges of this historical time, such as advances in technology, systemic racism, and climate change, is varied and not yet as developed as ideal, but holds promise.

Traditional labor negotiations may be equally if not more limited in addressing these challenges, and interest-based negotiation in that context is unlikely to alleviate those limitations. The dispute resolution literature recognizes that when parties have uneven bargaining power, interest-based negotiation may not be fruitful. Indeed, at least some labor negotiators believe, given the labor laws and the capitalist economy in the United States (and most of the world), interest-based negotiations will not lead to positive results for workers at traditional firms<sup>199</sup>. Only through adversarial bargaining with demonstrations of strong solidarity and readiness to strike will material and other gains be made. For example, some in the labor movement believe that the UAW-represented workers' wages stagnated, different tiers of workers were created, and their pension was lost because the prior union leadership was not militant enough and compromised too often with the automotive employers<sup>200</sup>. But compromises are different than interest-based

<sup>199</sup> PAQUET, GAÉTAN, BERGERON, *Does Interest Based Bargaining (IBB) really make a difference in collective bargaining outcomes?*, in *Negot.*, 2000, 16(3), p. 292, <https://doi.org/10.1111/j.1571-9979.2000.tb00219.x>; FONSTEAD, MCKERSIE, EATON, *Interest-based negotiations in a transformed labor-management setting*, in *Negot.*, 2004, 20(1), pp. 9-10 (2004) <https://direct.mit.edu/ngtn/article/20/1/5/122179>.

<sup>200</sup> BROOKS, *How the UAW went from a militant, trailblazing union to a corrupt, dealmaking one*, in *In These Times*, 05 Mar. 2020, <https://inthesetimes.com/article/uaw-history-militant-corruption-concessions-gary-jones-indictment>; FAIN, *The UAW's Shawn Fain on union*

negotiations, and a poor compromise can happen in traditional negotiations as well.

By prohibiting company unions and requiring unions to single-mindedly represent the workers they represent in collective bargaining<sup>201</sup>, U.S. labor law protects somewhat against the use of interest-based negotiations that would sell short the represented workers. Moreover, in the context of a union worker-owned cooperative, workers make financial and operational decisions and have access to full financial information. Their unions advocate for their interests as workers and provide a link to the larger union movement and community. The combination of ownership and unionization, as reflected in the reviewed CBAs, can result in provisions addressing technological change, participation in democratic political processes, prohibiting racial and other discrimination, and promoting environmental sustainability. As this sector of the U.S. economy continues to grow, further research on its impact, through labor negotiations and other work mechanisms, on the grand challenges of our historical times is warranted.

*growth and union power*, in *Jacobin*, 25 Sept. 2025, <https://jacobin.com/2025/09/fain-uaw-union-power-billionaires>.

<sup>201</sup> *Centerville Clinics, Inc.* 181 NLRB 135/1970 139; *Teamsters, Loc. 249*, 139 NLRB 605/1962, 607.

## Abstract

This paper explores how union negotiations in worker-owned co-ops compare to more traditional labor negotiations. The theoretical analysis addresses possible synergies between practices traditionally considered as alternative, employee ownership and collective bargaining, and the development of collective bargaining in new business models. Initially, the theoretical framework that provides the basis for the comparison – the dispute resolution theories of distributive versus interest-based bargaining – is described. Interviews with several participants in union co-op collective bargaining suggest that many negotiations are more similar to interest-based negotiations than traditional labor negotiations. Additionally, some collective bargaining agreements (CBAs) reference interest-based negotiations.

The paper then addresses whether union co-op labor negotiations, implementation of the resultant CBAs, or both, have the potential to address some of the grand challenges of our times differently than traditional negotiations. Many of the CBAs explicitly recognize the interests of community as important. Many of the negotiations involve high levels of worker-participation, and the CBAs contain various types of provisions promoting democratic decision-making and political participation. Union co-op negotiations, thus, appear to hold significant promise toward enabling workers to more fully participate in political democracy and civil society. Some union co-op CBAs address advancing technology with an interest-based approach. None explicitly address how to redistribute wealth as work becomes more automated. On the other hand, the CBAs do not generally suggest more active measures to combat systemic race discrimination but rather reflect a similar commitment to nondiscrimination in the workplace that results from traditional negotiations. A few of the CBAs reflect a commitment to environmental sustainability; none explicitly address the dramatic social and economic shifts occurring because of climate change.

## Keywords

Worker-owned cooperative, Collective bargaining, Interest-based negotiation, U.S. labor law, Dispute resolution.

