Open Source Unionism

Beyond Exclusive Collective Bargaining

Richard B. Freeman and Joel Rogers

To increase density in the private sector, unions should explore a form of unionization that is open to nonmajority memberships. This form—which the authors call “open source” unionism—would make extensive use of the Internet to deliver individual services to workers. This article describes current union activity heading in this general direction. It assesses the legal and administrative feasibility of open source unionism and suggests ways unions could develop it further.

Private-sector unionization, once the mainstay of the U.S. labor movement, is heading toward extinction as an important institution of American working life. With union membership concentrated in shrinking industrial sectors, and union density now down to 9 percent—below the level of a century ago—private-sector unions have effectively become “ghettoized.” Collective bargaining agreements no longer guide the terms and conditions of work in broader labor markets. And
union representational services are not available to tens of millions of workers who say they want them.

Unions look healthier in the public sector, where their density is four times higher. But public-sector union growth is stalled and has natural bounds on its importance. Public employment is only 15 percent of national employment, and public-sector unions cannot indefinitely maintain wage and other work norms at odds with the private economy. To have an important impact on working people, unions must turn private-sector membership around.

Six years into John Sweeney’s “new voices” leadership at the AFL-CIO, there is little evidence of that needed turnaround. In 1999, data suggested that the decline in private-sector density had finally been halted by new organizing efforts, albeit at a low level of 9.4 percent. Since then, however, private density has resumed its downward path. As we write—in the midst of a national recession, and on the heels of an election year in which the federation poured most of its discretionary resources into political campaign work rather than organizing—the 1999 stabilization seems to have been a temporary blip. Under almost any plausible assumption, the fall in private-sector density will continue, with “ghetto unionism” perhaps finally settling at some equilibrium of 4–5 percent.²

The sheer number of new members needed to break out of this ghetto, and the amount of money needed to recruit them by conventional means, is daunting. Merely to maintain their present share of the workforce, unions need to add about 500,000 new members each year. To add a point of density, they need to organize close to 1 million. To get back to the level where they were when Ronald Reagan first took office, they would need to do that twelve years running. But no one has organized on this scale since the 1930s, when plant size and industry concentration, among other conditions, were radically more favorable to
big growth than they are now. And present organizing falls far short of such a target. National Labor Relations Board (NLRB) election statistics show that unions win less than 100,000 workers annually, of whom perhaps two-thirds eventually end up with collective bargaining contracts. The AFL-CIO’s *Work in Progress* reports higher numbers, but only by including new AFL-CIO affiliations of previously organized workers. Of the 463,000 “new members” reported in 2001, for example, about 310,000 came from such affiliations. The actual number of new unionists for the year was a bit over 150,000, and the number of new members in the private sector close to the NLRB numbers.

On money, the amount needed is within labor’s means, but practically beyond its grasp. A workable rule of thumb puts the cost of a new member at close to $1,000 in organizing expense. So adding 1 million new members annually would mean spending $1 billion, or about 20 percent of total annual union dues. With the exception of a handful of internationals, in any case, most unions are not prepared to pay this freight. Most are coming nowhere close to Sweeney’s declared goal of dedicating 30 percent of all union revenues to organizing; some, like the Teamsters, are actually cutting their organizing budgets; and even where, as with the Steelworkers, unions have made the commitment to increase organizing and have amassed huge budgets for it, they seem to have trouble finding campaigns where large expenditures will pay off. Nor have the most publicized and federation-supported organizing efforts in the past few years—from strawberries to apples to California airport extensions—posted much membership success. The biggest organizing breakthroughs, as in the important Service Employees International Union (SEIU) victory in Los Angeles for home health-care workers, have again come in the public sector, and then through the use of local political clout that translates less easily to private industry.
So what should unions do? One suggestion—Sweeney's own, when asked at the recent national convention about labor's future plans—is "more of what we've done before." That means continued augmentation of the national political program and continued calls for affiliates to "change to organize." As a distinctly secondary effort, it means building the capacity of labor's regional bodies, in particular the central labor councils (CLCs), and providing technical assistance and other support to unions interested in getting into workforce and other economic development issues, or making more concerted use of their pension savings.\(^5\)

As long as management opposition remains as determined as it is today, and national labor law does not change dramatically—both outcomes that seem certain—unions have little or no chance of gaining substantial new membership by conventional means.

All this is well and good. But, in our view, it will not reverse labor's decline. As long as management opposition remains as determined as it is today, and national labor law does not change dramatically—both outcomes that seem certain—unions have little or no chance of gaining substantial new membership by conventional means. To grow labor into a force again able to help a large proportion of American workers, and one felt throughout American society, more radical change than we have seen thus far is almost certainly required. Eventually this will likely mean sweeping organizational change that shifts internal incentives and power relations, alters membership, and in time forces different political and organizing strategies. Whether existing unions are up for such change, or would survive it in rec-
ognizable form, is an open question. To draw an analogy, we are still in the perestroika phase of labor’s internal reform, with Sweeney an embattled Gorbachev.

What is clear enough, however, is that the apparent inability of existing programs to do more than slow labor’s decline calls for analysis and debate within labor—more than is now happening—about how those programs might be amended or augmented. We offer this discussion as one contribution to the debate.

Our central argument is that unions should explore, with seriousness and at some scale, alternatives to their present traditional model of worker representation: collective bargaining for workers in settings where the union has demonstrated majority support. That model effectively premises an employment relation, once dominant in the United States, in which individual employers were a source of near-continuous employment over a working lifetime, where earnings grew yearly, and where the employer was a source of health insurance, retirement pensions, and other nonwage aspects of worker welfare. In this context, the first and last goal of unions has been to get a “seat at the table” with a particular employer—majority support among their workers and legal recognition as those workers’ exclusive bargaining representative—from which they could build, through collective bargaining, a private welfare state with that employer. However, fewer employers offer such employment conditions today than in the past. Work is generally less secure, less characterized by steady income advance, and less embodied in employer obligation to provide health and retirement benefits. The speed at which these conditions are being lost or disturbed in the organized sector, moreover, outpaces the speed at which unions can organize new workers. Majorities-based collective bargaining effectively leaves out the millions of union-friendly workers who find themselves in employment situations other than the old norm, millions who find their pro-union sentiments
not yet shared by a majority of their colleagues, and millions who once enjoyed collective bargaining benefits but have lost them through employer reorganization or disappearance.

To reach such workers, unions need to develop forms of membership and representation suitable to them through a strategy of what we call “open source unionism.” The membership and representational activities associated with this strategy are understood as supplemental to existing membership and representation, not competitive with them. Still, a union movement widely open to this alternative would be different enough from existing unionism to warrant its own name.

The term “open source” is drawn from the open source computer programming movement. The idea there is that programmers create and share core functionalities and modules that others can build upon and add to. Adherents expand the reach of the code, find things wrong with it and correct problems, and post their visions and ideas and concerns for all to share. The outcome is a common, collaborative platform and language that everyone can share. Analogously, open source unionism would build a common collaborative platform, language, and practice among workers and union activists—often operating at some distance from one another, or at different work sites, or moving across multiple sites over their working lifetimes—as part of a more unified labor movement defined by shared values more than by present employment.

As its name suggests, an open source union movement would look for support anywhere it could find it. It would in consequence have more extended and networked dealings than present unionization. Without European-style extension laws but with members in more workplaces than current unions, this new unionism would seek to moderate differences across work sites. As part of its program, the promotion of such general standards would explicitly complement the negotiation of particular collec-
tive bargaining agreements. The search for such standards and norms would be natural for a movement often without great power in particular work sites. And from that process would also flow its naturally greater attention to the community and other alliances needed to make political action successful.

In contrast to the current union movement, based almost exclusively on workers in majority-member collective bargaining arrangements with employers, open source unionism would also include groups of workers who want union representation and advice but who fall shy of a majority at their workplace. Such workers would still be full-fledged members of the labor movement. As against traditional members in majority settings, however, they would bargain only for themselves, or engage in union activities other than collective bargaining, such as enforcement of statutory worker rights. And they would provide support for actions outside their workplace—preeminently, political action—that would affect conditions in it. Membership would take different forms in different settings and with different union affiliations—sometimes dues paying at regular dues, sometimes at less, or none at all, sometimes with governance rights, sometimes not. In most cases, such nonmajority members and formations would be tied to and supported by one or another traditional union. But they could also take forms not contemplated by those unions—for example, along occupational or geographic lines rather than by employers.

If changes in the economy and the decline of existing unionization help create a demand for representation of nonmajority workers, the advent of new communication technologies, most notably, the Internet, makes the supply of that representation more feasible. Historically, unions have shied away from providing services to minority groups of workers because those workers could not be expected to pay full dues for membership absent collective bargaining, and without such dues, unions
could not afford union services, outside traditional collective bargaining, that members would truly value. But the Internet makes it cost-effective for unions to deliver highly specialized, individualized, and interactive services to minorities of workers across workplaces, and for individual workers or groups of minorities of workers, essentially without cost, to coordinate with each other without management surveillance. By reducing to near zero the marginal cost of providing information, advice, and at least some direct service to members, and permitting confidential exchanges among employees and between nonmajority worker formations and supportive “outside” unions, the Internet has fundamentally changed some of the economics of organizing. Organizing should be rethought in light of it.

Nor does the observation of widespread Internet use apply only to “wired” workers in high-tech enclaves, or professionals, or even the middle class. The August 2000 Current Population Survey Internet and Computer Use Supplement showed that 79 percent of unionized workers regularly use the Internet from home, as do 86 percent of nonunion workers. The percentages have undoubtedly risen since then. For many in the minority that do not use the Internet, their children do. The Net is part of everyday life for most workers and their families.

Let us underscore two points about our proposal.

First, and in contrast to past abortive efforts by unions to develop “associate members” by delivering non-work-related services to workers, such as low-interest credit cards, open source unionism would center on the representation and servicing of workers in their employment and role as workers. In this focus, open source unionism would be fully recognizable as unionism as traditionally understood. It would simply enable organized labor to perform this traditional function in new ways, and through new institutional and membership forms. The new membership forms and institutional aspect of this is what for us is the most
### Table 1. Traditional vs. Open Source Unionism

<table>
<thead>
<tr>
<th>Organization</th>
<th>&quot;Traditional&quot; Collective Bargaining-Centered, Majority Unionism</th>
<th>Open Source Unionism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary activity</td>
<td>Collective bargaining</td>
<td>Individual representation and advice; political mobilization, collective bargaining where possible</td>
</tr>
<tr>
<td>Mode of building organization</td>
<td>Worker majorities at particular sites</td>
<td>Any worker, anywhere, everywhere in the economy</td>
</tr>
<tr>
<td>Primary organizational linkages</td>
<td>Locals integrated to national unions, organized on loosely industrial lines; weak regional bodies</td>
<td>&quot;High-tech&quot; cyberspace, coupled with &quot;high-touch&quot; geographic coordination and political action</td>
</tr>
<tr>
<td>Type of member</td>
<td>One, in majority settings, generally inactive</td>
<td>Potentially many, with graduated power and dues proportionate to commitment, and services offered</td>
</tr>
<tr>
<td>Duration of membership</td>
<td>As long as the CBA holds</td>
<td>As long as possible</td>
</tr>
<tr>
<td>Delivery of services</td>
<td>Workplaces</td>
<td>Workplaces, Web, communities</td>
</tr>
<tr>
<td>Who/what delivers</td>
<td>Services delivered by business agents, stewards</td>
<td>Services delivered by in-plant organizers, internationals, central labor councils, Web</td>
</tr>
<tr>
<td>Content of services</td>
<td>Outcomes depend on collective bargain with employer; wages, hours, working conditions, insurance of various kinds</td>
<td>Outcomes depend on worker interest and local political power, as well as workplace strength; wages, hours, working conditions, insurance, career advice, families services, etc.</td>
</tr>
<tr>
<td>Method of dispute resolution or tactics</td>
<td>Arbitration, strikes, slowdowns and job resistance, public campaigns, pension money pressure</td>
<td>Cyber picketing, direct action, public campaigns, community pressure, pension money pressure, &quot;members only&quot; arbitration</td>
</tr>
<tr>
<td>Union democracy</td>
<td>Qualified, with unions heavily bureaucratic, &quot;top down,&quot; and unresponsive</td>
<td>Stronger, with members able to force greater accountability by leaders, and in better communication with each other; more &quot;market driven&quot; and more decentralized political governance</td>
</tr>
</tbody>
</table>
important difference. It is fine for labor to announce its openness to workers in nontraditional (now, in fact, the majority of) workplace settings or employment relations. It is something different to devise ways of fully integrating workers who find themselves in such situations into the membership status and representational routine of a broader labor movement. Such organizational integration is the major change connoted by open source.

Second, we are not technological determinists who believe the Web will transform unions any more than it will transform business or politics. Nor are we crackpot optimists. We recognize that no technological innovation, even one as sweeping as this, can by itself create a new union form, much less one that we envisage as going beyond a technocrat’s “e-union.” For the open source union to extend services to workers outside of collective bargaining, unions will have to do more than develop a sparkling up-to-date Web site. Even cyber-supported members need some hands-on attention. Members’ loyalty and willingness to act on behalf of others, even more to recruit others, requires human contact and engagement and the shared experience of struggle. To work, open source unionism must go beyond provision of information and service provided by the Net. Members must get together and do things together occasionally. Union staff and organizers will have to make sure that such events happen. What the Internet provides is enormous reach and leverage on their actions of a sort that was unimaginable even a few years ago.

Open Source Unionism in Action

How would open source unionism actually function compared to the traditional, majorities-based, collective-bargaining-oriented unionism? Table 1 summarizes some of the key differences.

First, and again, the open source union would not limit its primary activity to collective bargaining, as current unions do.
It would provide information and representation to workers as individuals and in broader political groups. It would organize locals in a more diverse way than current unions do—by workplace or firm, by craft or occupation, and by geographic community, depending on what best fits the needs of workers—rather than on the basis of NLRB determination of “appropriate bargaining units.” It would try to follow the individual, not the job or workplace or even employer—keeping contact and providing services to members as they changed jobs or careers.

Accordingly, organizing—the sine qua non of union growth—would also differ between open source unionism and the current union form. Rather than seeking to organize workers solely at work sites where the organizer believes it is possible to win 50+ percent and a collective contract, organizers would seek members wherever workers are interested in gaining union support and advice on workplace problems. Organizers would turn away no prospective member, regardless of the probability that they could get a collective contract at the place of work. The message to firms would be simple: Unions have chapters and members everywhere and they support those workers everywhere. The notion that firms can establish a union-free workplace by defeating unions in NLRB elections would become ancient history.

Under the new form of unionism, the meaning of being a union member would widen and grow fuzzier. Consider someone who supports the union by providing it with contact detail such as email and agrees to back the union in a particular campaign, but who pays no dues. Member or not? What about the person who pays minimal dues—far below that of a worker covered by collective bargaining—but who receives services provided largely through the Internet at low cost to the union. Member or not? Or the activist who obtains a new job or promotion and leaves his former coworkers but wants to remain part of the movement—member or not? Under collective bargaining, member-
ship is limited to workers in a given unit, and all members are the same. Under open source unionism, that limit on membership would fall, and there would be greater variation in the types of membership and service fees that resulted.

The prevailing mechanism for collecting dues—by employers under union security clauses in collective bargaining contracts—would obviously not fit members who lack contracts. Instead, dues or fees for services would be handled the way most financial transactions are handled now—individually, and at a dis-

Open source unions would use cyberspace as a major tool for connecting to members and delivering services. The union Web site would be the equivalent of the union hall, but open twenty-four hours a day, seven days a week.

tance, through the use of credit cards, bank drafts or debits, or other means. Given the ubiquity of credit cards and the ease of making payments over the Internet or by mail or telephone, we see no great administrative problem here. In fact, it may very well be better for union solidarity if the worker, not the employer, directly pays the union. But it would be different.

The critical question is, what sort of services can unions provide members other than majority-based collective bargaining? Open source unions would have to ask themselves not only what they can win from management, as current unions do, but also what they can deliver to workers outside the workplace, through the Internet or through local communities, where any particular management is irrelevant.

Open source unions would use cyberspace as a major tool for
connecting to members and delivering services. The union Web site would be the equivalent of the union hall, but open twenty-four hours a day, seven days a week. The Internet is great at delivering information and permitting members to respond and otherwise interact with union staff and elected leaders. The open source union would necessarily place great emphasis on providing members with the most accurate and up-to-date information about economic conditions affecting them. At firm-based locals, this capacity would require the union to gather information from members as well as to make use of the regular business and economic news services.

The union would provide advice to members through frequently asked questions (FAQs) and queriable online “knowledge-base” systems, as indeed many unions do today. The natural end product of this line of services is an artificial-intelligence union expert system (“Walter Reuther,” the friendly union AI robot, at your beck and call) that would respond to specific queries. Members would click on the union expert program for interactive sessions that would bring union expertise to workplace problems. As unions develop such services for members with collective bargaining contracts, they can readily extend them at low cost for members without contracts. The services would also necessarily be broader than those covered by a particular contract, extending to information about training outside the workplace, family services, and so on.

The extent to which workers will respond to personalized information and advice is indicated by the experience of the British union UNISON, which in 1998 established UNISON-Direct, a help-line call service that provides advice and support to union members eighteen hours a day, six days a week except Sunday. The advice system uses a seventeen-seat call center rather than computer linkages to respond to members’ problems, but the call-center workers use computerized access to more than 300
scripts to guide members through common problems, as well as a database holding personal membership details. Union members made approximately 150,000 calls to the center in 2001, immediately stretching its capacity with a demand that surprised the union. In the United States, where a larger proportion of workers are on the Internet than in the United Kingdom, the natural way to deliver many of these services would be the Internet.

Still, as anyone who surfs the Web knows, there are many Web sites that provide information about jobs and the world of work, and that do so freely. Internet recruitment firms such as Monster.com or Hotjobs.com offer advice to workers as well as listings of jobs. Government agency Web sites contain information on laws, working conditions, and so on. Labor law firms have FAQs on legal issues in the hope of attracting clients. And various nonprofit groups offer information and advice on labor matters as on other aspects of life.

But information is not representation. The latter requires detailed attention to the circumstance of individual workers, their particular problems, their particular work setting, and the like. Such “local” knowledge can be partly gleaned through interactive Internet services, but will in most cases also require a union organizer or other staff member who can talk issues through with workers. Representation also means fighting for someone, not just giving automated options. And that requires organization, trust, commitment, solidarity—all those “usual” sorts of union things. Again, even the most advanced Internet services will be no substitute for human contact, exchange, debate, and proof of presence and reliability.

These observations underscore the comparative advantage of unions in providing services of the sort that we imagine. As representatives of workers, unions have greater credibility than commercial interests, the state, or other groups in informing workers about what is happening at their workplace and in the
labor market at large. Unions have the expertise to advise and lead workers about how to handle problems through collective action, as well as through individual exercise of rights. And they have a bricks-and-mortar reality—live members who would benefit from exchanging information and experiences. Unions alone can combine the human network with the digital network.

Because open source unions will invariably complement enhanced Internet servicing with face-to-face contact, and because it is cost-effective to get people together locally, open source unionism would work best with labor’s regional organizations. Without necessarily becoming “mixed lodges” like the Knights of Labor, they suggest a bigger role particularly for central labor councils—to coordinate nonmajority union organizations crossing different work sites, to keep workers informed of relevant activities on a community basis, to gather them for offline discussion or actions. In most cities today, central labor councils do not effectively perform those activities, given their very limited capacity. This does not make the idea of geographic community-wide unionism less attractive, but rather points to the additional capacity building that would need to be done.

In the area of disputes, the open source union would typically not have the clout inside the firm of a majority-status collective bargaining union. But this lack does not mean that it would be a pushover for management at particular workplaces, industries, or geographic areas. It would use its reputation for accuracy in providing information to shape public discourse and to marshal resources from outside a unit to support workers in disputes. It could forge meaningful alliances with community groups outside itself and engage in local political activity, much as public-sector unions did when they were governed by meet-and-confer legislation. And it would be a union movement that explicitly sought a social role and public face. Open source unions would not be able to turn inward when they faced struggle, but would have to
look outward. They would be pressured to develop a more coherent and attractive public face and become a more visible source of stewardship and moral value in the broader economy. Open source unions would gain the political clout and social influence that would come of its playing a broader public role.

Is There a Market for Open Source Unionism?

The available evidence shows that a large proportion of the workforce wants union representation or workplace services that unions are uniquely situated to give. While unions would have to test what best meets the needs of different groups of workers, the magnitude of unmet worker demand for representation and help is so big that capturing even a small portion of it would make a big difference to present membership numbers.

Approximately 100 million American workers—including 91 percent of the private-sector workforce—have no collective representation at work. Our mid-1990s survey of worker attitudes found that close to 90 percent of such workers wanted some organization speaking to their everyday concerns at work, ranging from unions to workplace committees of various forms (see Figure 1). Applying those survey results to today’s actual workforce, our results specifically suggest that about 42 million workers, or six times the size of present private-sector union membership—want an organization with elected representatives and arbitration of disputes with management, for which unions are the natural provider. Another 42 million or so workers want an organization more focused on information, career assistance, or consultation with management, but still operating independently of management. The enormous representation gap in American workplaces also extends beyond the “bread and butter” issues of pay and benefits—to better enforcement of statutory rights, more control and say in the organization of work and use of new
Figure 1. The Market for Representation

Based on the Worker Representation and Participation Survey questions: "Thinking now about any kind of employee organization, not just unions, how would you like it to work? If it was your decision alone to make, and everybody went along with it, would you prefer an organization that can use an outside referee or arbitrator to settle issues? An organization in which management makes the final decisions about issues? An organization in which the key participants are volunteers? An organization in which the key participants are elected? An organization in which the key participants are appointed by management?" Respondents were coded "strongly independent" if their desired organization had elected representatives and arbitration of disputes; "somewhat independent" if they favored weaker combinations of arbitration and representative selection (e.g., volunteer representatives with or without arbitration); "not independent" if they chose both management selection of representatives and settlement of disputes; "no organization" if they expressed no desire for representation on any of the above questions. See Richard B. Freeman and Joel Rogers, What Workers Want (Ithaca: Cornell University Press, 1999), Exhibit 7.2.

technology, better access to training or other career assistance, and better information on the company, among other concerns.

But we need not rely on surveys to see the demand for representation. Consider the number of workers who contact unions, vote for union representation in NLRB elections that unions lose, or report favorable past experience with unions even though they now hold a nonunion job. These, too, disappear almost entirely from membership today. In the private sector, approximately twice as many workers are past union members as present ones. These former members are modestly more inclined than other nonunion workers to say they would "vote union tomor-
row” if given a chance, and close to 40 percent of them report their past experience with unions as “very good” (14 percent) or “good” (24 percent). Putting these numbers together, there are two-thirds as many former members (excluding retirees) who had good or very good experiences with unions as there are current members. Surely, a substantial proportion of those workers would be favorably inclined toward some affiliation with the union movement. But at present, there is no place for them.

Again, different workers prefer different forms of workplace organization, depending largely on the labor practices of their employer. But the numbers behind any of the different forms are so big that even partial capture of them would substantially raise current union membership totals. For example, if just one in ten of the workers who say they want elected representatives and arbitration joined an open source labor movement, private-sector union membership would increase by 50 percent. If just one in ten of the workers who say they would “vote for a union tomorrow” joined, it would increase it by 30 percent. If just one in ten of the workers who have been unionized in the past and reported it as a “good” or “very good” experience joined again, membership would increase by 7 percent.

Does the Law Support It?

Unions generally behave as if the only members worth having are majority members in an exclusive collective bargaining relationship with an employer, and they seem to believe that only workers in those organizations are protected by law. They fear that inviting workers to join minority union organizations amounts to a “children’s crusade” inviting innocents to slaughter. This self-limiting conception of unionism is at odds with American labor history and established labor law.

In terms of history, nonmajority or “members only” unionism
was once common in the United States and widely used by unions as a natural platform for additional organizing. In the 1880s the Knights of Labor established “mixed lodges” that included workers from many occupations and firms in the same geographic area as well as single-craft–based lodges. The early organizing of most of the industrial trades, and of early industrial unions like the mineworkers and steelworkers, rested centrally on “members only” minority organizations. In the 1960s and 1970s public-sector unionism developed from minority representation in organizations that did not bargain collectively. Teachers unions grew to several million in membership, for example, initially off agreements negotiated only with members of nonmajority associations. The same is true of many state and local employee unions, which achieved some size and power under “meet and confer” provisions in state laws. These laws did not impose binding duties to bargain on employers or restrict the bargains made to majority organizations.

On the legal side, there is a widespread perception that U.S. labor law greatly privileges union activity when a majority of workers support the union, whereas workers in unions without majority support have little or no protection. This perception is wrong on at least two counts.

The first is that, in fact, the law provides very little protection of workers from aggressive anti-union employers. The provisions of the National Labor Relations Act (NLRA) are neither punitive nor self-enforcing. Employer violations of the law go on routinely—tens of thousands of basic violations a year—and largely with impunity, with enormous delays even in getting the administrative “remedy” of an order to the employer to behave. Many employers do not respect the letter and spirit of the act. Virtually all organizing drives feature some sort of employer harassment of union supporters. Virtually all include “captive audience” speeches to workers—from which unions or workers
supporting them are excluded—that warn workers of the dangers of voting union. And there is a continual flow of more overt illegal employer action against worker efforts of workers to organize, including outright firing for their union support.

A well-resourced anti-union employer can, with sufficient effort, prevent all but the most dedicated workers from gaining a union even when they want it. If the employer does not defeat a union in an organizing drive, it can stall in bargaining or simply close a facility. The present law has no way to deal with this behavior. The weakness of the law is indeed one of the reasons unionism cannot grow out of the currently organized ghetto.

This conclusion brings us to the second point. Acknowledging the above, the fact is that the law protects the concerted activity of workers to engage in union activity regardless of whether they have minority or majority status. Commonly, unions think otherwise. They are simply wrong in doing so.

The crucial statement of worker rights in the National Labor Relations Act is found in its §7:

Employees shall have the right to self organization, to form, join and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities, for the purpose of collective bargain or other mutual aid and protection. (italics added)

This provision covers all workers who “concert” to deal with issues as a group. There is nothing in it about majority or minority status. Moreover, as the italicized phrase above indicates, the law is open-ended on the form and function of such collective activity. All the protections of the NLRA apply to workers active in nonmajority situations, which include, among others: protection from discrimination against union activity, the right to strike without being discharged, the right to present demands and request negotiations with management, the right to designate
union stewards, and the right to bargain and make a collective agreement for members. In addition, members of the union can refuse to discuss terms and conditions of employment with the employer and insist that negotiations be with their union representative and that fellow employees or union representatives accompany them at disciplinary proceedings. They can act together to enforce statutory rights of immediate application to workplace situations—for example, OSHA rights. And union dues money can be spent in political canvassing and communicating with minority members as much as it can with members in a majority collective bargaining relationship.

In short, the legal protection for union organization applies identically to members of minority unions as to members of majority unions. Indeed, it applies to workers acting together absent any formal union organization.

How, then, does majority status change anything at law?

For the union, it imposes the power and responsibility of “exclusive representation” for all workers in the unit—including the “duty of fair representation” of workers who oppose it. For the employer, Section 9 of the NLRA establishes the “exclusivity principle” that a union showing majority support is the only one with whom the employer should deal. Along with the §8(a)(2) ban on “company unions,” this provision was introduced as a remedy to the situation of the mid-1930s to mid-1940s when AFL and CIO unions were often at war with each other for the same workers, and when some employers created unions that they dominated. The law says that the union with majority worker support takes all, and that the employer should stay out of picking winners and losers, or fabricating winners of its own. Bargaining, meanwhile, is statutorily presumed to proceed in good faith. Employer violation of such duty is an unfair labor practice under §8(a)(5) of the NLRA.

It is uncertain whether this last “duty to bargain” applies
to nonmajority unions. Nothing in the statute says that it does not, and neither the NLRB nor the courts has ever directly ruled as such. Indeed, the legislative and drafting history of the NLRA shows that its framers formulated, and then rejected, language that would have so limited the duty to bargain. But the practice of nonmajority unionism has been so long neglected in the private sector that legal clarification is probably needed.

But whatever its precise legal status regarding nonmajority unions, the “duty to bargain” gets majority unions relatively little anyway. Like everything else in the NLRA, violation of the provision carries no punitive remedy. It merely produces an order to commence lawful behavior. And the force of this directive is suggested by the current failure of some one-third of newly organized sites even to get to first contract. The “duty to bargain” is, at best, a “duty to talk and talk.” Worker power, not the statute, forces an unwilling employer to agreement, just as worker power, more than the law, decides every other aspect of collective bargaining and recognition dealings.

In sum, workers acting together in nonmajority unions are at law treated identically as workers in majority unions in all of their union activities, save perhaps for the duty to bargain, which is too weak to gain unions much in any case.

But there is an important operational difference, which comes from the potential extent of open source unionism. A small struggling union in one work site may have little power to oppose employer abuse, given the lack of effective protection of the law. But if it is connected to many other similarly situated nonmajority unions in the same sector or geographic locale, and to a base of internationals with a hold on some majority settings, and to a range of community and other groups that think of themselves as part of its fight, the balance of power will be quite different.
Can Unions Reach the Market?

The best evidence for the ability of unions to develop this new form of unionism that we suggest—exploiting modern technology and enlarging the meaning of membership—is found in the growing activity of innovative unions in the United States and other countries with similar labor relations systems: the United Kingdom, Australia, and Canada. We summarize briefly a few such examples here.¹⁴

The most striking example of an open source union at a traditional nonunion firm is Alliance@IBM (www.allianceibm.org), a chartered local of the Communication Workers of America (CWA). Alliance@IBM developed from Web-based protests by IBM employees in response to IBM’s 1999 unilateral change in the company pension system, which greatly harmed some future retirees. The workers protested in chat rooms and sounding boards around the Web, impelling IBM to restore some of the pension benefits. Alliance@IBM has a small number of voting members, a larger number of “subscribers” to e-mail messages and visitors to its Web site. The Alliance site provides discussion groups, mailing lists, links to related sites, and information about company issues of concern to workers—all developed by local members. Among the Internet-based accomplishments of IBM workers was an e-mail campaign to raise the allowance per mile driven for IBM customer engineers, who pay for their own vehicle costs when traveling to repair customer machines. When management did not respond to individual complaints about rising costs, the customer engineers planned a one-day e-mail and phone-call campaign to contact the manager in charge. The one-day campaign succeeded in getting the mileage allowance increased.¹⁵

An extended union that is closer to a craft union or occupational association is WashTech (www.washtech.org), also asso-
icated with the CWA, which represents the interests of Silicon Valley and related high-tech industry workers. This organization raised the issue of overtime pay for contract employees at Microsoft and other firms that hire many software engineers as contractors. It provides discounted-cost training courses, information about developments in the industry on its Web site, contract advice, and legislative advocacy. It delivers the WashTech News, a free digest of news, bimonthly via e-mail to subscribers who are promised that the list membership will be kept confidential. The form for subscribing says, “Yes! I support the basic goals of WashTech and believe that workers need a collective voice in the high-tech industry. Please subscribe me to the WashTech News,” which aligns the subscribers with the union.

Another example is the Australian IT Workers Alliance established in October 2001 (www.itworkers-alliance.org). As their Web site explains, “The idea of the IT Workers Alliance is to provide a space for IT workers to share information and ideas and receive advice on workplace issues” and to “create a culture that workers will want to be part of” rather than simply “attempting to recruit members up front.” It includes a forum for discussion, news about the information technology sector, information on independent contractor issues, and numerous frequently asked question (FAQs) sections so that the IT workers learn about their rights and ways to redress problems. Three weeks after the launch of the IT Workers Alliance, the Australian Computer Society (ACS) formed a special-interest group for contractors in New South Wales, indicating that the IT specialists took the new union seriously.

Outside IT, the National Writers Union (NWU, www.nwu.org), which is part of the United Automobile Workers, has organized some 7,000 freelance writers, for whom it provides information and generic assistance via the Web. The writers are spread out around the country and across the world, so the union almost has to deliver services to them via the Internet. The NWU views
its web site as the “cyberspace equivalent of the union hall where members (and prospective members) can find the information they need and conduct union business.” The NWU e-mails the entire membership several times a month, and its Web site averaged some 125,000 page views a month in early 2001. The site includes a national job hotline, which lists freelance writing projects that members can apply for. In 2001, the NWU won a Supreme Court case on copyrights of written material on the Web against the New York Times. In addition to constantly updating its Web site, which it regards as a common gathering place for members, NWU e-mails the entire membership several times a month. One basic service, also Web-maintained, is a national job hotline that lists freelance writing projects that members can apply for.16

Workers in these settings are unlikely to gain a collective contract—indeed, neither the NWU nor the Australian IT Alliance has any intention of seeking such. But these unions can become permanent fixtures in their company or occupation—a union at IBM!—and can affect the way the companies treat those workers as well as help build a greater labor movement.

Such formations can also be tied to unions with majority collective bargaining status, perhaps organized at the same employer. The CWA has developed WAGE (Workers at GE, www.geworkersunited.org), a new organization for workers not covered by collective bargaining at that company, in part by linking them to the minority of GE’s national workforce that is under collective bargaining contract. This case shows the natural links between an ongoing union-organizing drive and the extension of the reach of that drive through new services and networking to unorganized workers, supported by the established core of union workers under contract. WAGE invites GE workers from around the world to “join us in building worker power at this mammoth corporation” and offers them online ability to sign on as mem-

32 Working USA—Spring 2002
bers. This effort—which seamlessly combines messages from fourteen different international unions on a Web site offered in English, Spanish, Portuguese, Italian, and Japanese—shows what can be done on the Internet to organize. It suggests what a combination of traditional, nonmajority, and Internet-supported or linked open source unionism might look like.

On the geographic front, King County Labor Council in Seattle (www.kclc.org) or Progressive Wisconsin (www.progressivewisconsin.org) explicitly extends the bounds of traditional union activity to embrace a wider community. King County Labor Council, like many other CLCs, has developed a Web site that increasingly functions as a broader community means of communication around political programs, organizing, and other activities. Progressive Wisconsin is building a statewide “activist list” of progressives for regular postings—program support, with explicit coordination between labor and outside groups, to create a statewide cyber-based progressive community. By bringing different pro-labor groups together, these organizations represent the extension that characterizes open source unionism.

Extending services in a different direction, in the United Kingdom, UNISON has worked with the National Union of Students to develop a Web site that provides information and advice on work-related problems to student workers (www.troubleatwork.org.uk). The site contains contact information to unions, but its essence is free provision of union expertise to a largely nonunion group. Given the success of union-student activist collaborations in the United States, it would be natural to extend membership to activist students, even though they themselves may not be working in a collective bargaining setting.

Finally, recognizing that some local union services can best be delivered to members over the Web, SEIU has developed Locals on Line (www.localsonline.org), which provides Web site design
and other technical assistance to them. This program benefits the international as well as locals, since the international can now effectively broadcast to individual members through the consistently formatted local sites, all manner of updates, legislative analysis, training materials, and other things. There is nothing in these kinds of services that requires collective bargaining. SEIU could at low cost provide the same technical assistance to union activists at work sites that failed to gain majority representation.

These examples are just the tip of an iceberg of what innovative unions, union activists, and union-associated groups are doing today. Extrapolated into the near future, they show that at least some unions are moving in the direction of open source unionism. No single union has put all the pieces together to create the full-fledged new form that we envisage, but there is enough experience to demonstrate that this form is not “pie in the sky.” Whether job-based, occupation-based, international/local-union-based, or geographically based, the Internet has become a way of mobilizing and organizing workers and labor and broader communities, and of delivering union services that did not exist even a few years ago.

The examples show some of the unique advantages unions have as providers of information and as a mode for workers’ informing others about particular conditions. Unions potentially have access to the “local knowledge” that millions of wired workers can provide. Members trust their union in ways they would not trust other organizations. In the Web world, where firms pay millions to develop a brand, unions already have the high visibility and network gains that come of that. Open source unions could easily gain a reputation as being the best source of accurate and up-to-date data about trends and opportunities in the world of work, and as the place for workers in work sites not covered by collective bargaining to go to for advice, representation, and assistance in struggles with employers, if necessary.
Seizing the Opportunity

For some, our suggestion of a new form of unionism may seem simply to extend and name impulses already evident in the labor movement. For others, it may seem a radical suggestion, threatening the established routines and governance of America’s greatest social movement. We intend it to be both.

Certainly many in labor recognize that present unionism is ill-equipped to deal with today’s economy and politics. While unionism based on collective bargaining does millions of workers much good, it cannot expand in the private sector with current economic and political realities. Trade unions cannot take up new positions in the economy as fast as they occur, and they continually lose portions of their older base—not because workers have turned against them, but typically because the firm itself has changed and because they face strong employer opposition. Politically unions generally play a defensive game at the national level, which has little or no chance of helping them reestablish their position in the private sector.

This article has offered a new way for unions to relate to workers, to develop alternative means to represent them, and to extend themselves to surrounding communities which—given labor’s declining clout with business—is necessary to make substantive gains for workers.

Open source unionism provides new worker representation concretely as nonmajority and individual representation, and ways to sustain representation by combining services through the Internet and representation through geographic proximity and action. While it does not give all of the answers to labor’s problems—employers who fight tooth and nail against unions that seek collective bargaining contracts will fight against open source unions—it does offer a way to change the locus of organizing battles and to open unions to workers currently excluded.
The same cannot be said for "doing more of the same."

Open source unionism would be disruptive of established union structures. This should not be as dramatic as the fight of the AFL with the Knights of Labor, or the CIO with the AFL, or of the emergence of public-sector unions with a labor movement that first thought of them as weak employee associations rather than real unions. But it would induce tension, as labor seeks to change its own way of doing business to get better aligned with the real economy, and the thoughts and concerns of working families within it.

The new form would disrupt settled attitudes and routines and shift power in unions. It would open the door of the house of labor to many workers and groups that would create changes greater than those the current AFL-CIO leadership team has struggled to effectuate. It would threaten the hegemony of union functionaries heavily invested in the old bureaucratic system and unwilling to embrace the new form. Union Web sites would be more open to criticism of leadership. Members outside of collective bargaining would demand greater attention to local political activities and labor-community alliances that could influence their work sites. Weak and often ineffective regional bodies, notably CLCs, would have to be strengthened, which could produce new intermediate union associations that would further shake up the existing dominance of the traditional nationals.

The new form of unionism would be a less inner-directed labor movement, and a more experimental one. It would be less centered on actions at particular work sites and more on representing workers broadly in their career and economic life. This would give it a different look and feel and organizational culture. Union leaders and activists providing advice and assistance would play a greater role than lawyers negotiating contracts. As open source unions sought reach in the society and economy, labor would become more decentralized and varied in how it operated and less
respectful of settled union routines on policing jurisdiction. But these difficulties notwithstanding, if our analysis is correct, unions could make considerable progress by pushing further the new form, be it firm based, industry based, or geographically based. The cost would be modest compared to the costs involved in standard organizing campaigns. The technical expertise exists within virtually every union today. Young activists and volunteers could be recruited at workplaces from the millions who want unions and cannot gain union representation under the current system.

Are we certain open source would work? No, of course not. But we think the argument here (improved, we hope, by others), and the failure of present strategies, should shift the burden of evidence against those who would not be willing even to give it a serious try. And what might that look like? Concretely, the AFL-CIO, or some consortium of member unions, or a single member, for that matter, could develop a limited series of tests. Pick out some firms that have been giving unions trouble for a long time—Beverly nursing homes, Compaq computers, Sprint, and so on. Pick out one or two major industries where organizing has been a challenge—health care, financial services, food processing. Pick out a handful of cities with CLCs with active Union Cities programs and some other signs of life—LA, Cleveland, San Jose, Seattle, Milwaukee—or offer participation in this effort, as SEIU did with Locals on Line, with any CLC interested in making the effort.

In each case, the moving labor organization would gather together people knowledgeable of worker demographics and concerns in those areas, do a “power map” of sorts about critical players, develop a range of relevant content and mechanisms for interaction with feedback from online. The union would get agreements in each “site”—be it firm, industry, or geography—on the division between direct actions and gatherings of workers and the provision of Internet-based material. It would train
some staff and gain volunteer activists to manage the different Web sites and communication infrastructure, and perhaps set up a centralized call center to permit off-line assistance and handling of questions (1-800 or 888 GO CYBER).

If this cost a lot of money, it would be a sign that something is going wrong. The key to Internet-based organizing and communication is not expensive hardware or software, but content: inviting people into an attractive experience, getting committed volunteers and activists talking to others who share it. And developing content is a matter of finding out what workers want and need, and providing them with the tools to develop matters on their own.

If initial tests were successful, the union innovators would benefit from network economies, as workers in different workplaces learned about what others were doing. There would be a buzz that unions were embarked on something new and exciting and experimental and that they wanted help from others in doing it best. In place of the dismal news about falling density or membership would come a very different sort of news: new and different members joining a new and different sort of organization. Most important, the process of unionization in the United States would change from a world where management has disproportionate power to determine who is or is not a union member to a world where workers would have that power, once again. Opening up unions, making it easier for the millions who want union services and representation to join unions, at different levels and in different ways, is what open source unionism is all about. "The new union movement. Working for all workers, everywhere." It has a nice ring, doesn’t it?

Notes

1. The industrial structure has changed since the early twentieth century. But even the direction of that difference—from craft to industrial, albeit often service, production—does not brighten the implied assessment of present union fortunes.
Private unionization today is below levels not seen since a largely "premodern" American economy during the first years of the twentieth century. The same cannot be said of any other advanced industrialized country.

2. This prediction is based on a stock-flow model of union organization of the sort that economists typically use to assess union growth. The model treats membership as a stock, and new organizing as an investment, and allows for the natural "depreciation" of the stock of members through the natural closure of plants. As noted in the text, we assume that about a third of newly organized sites fail to reach first contract, and ordinary rates of decline or disappearance in existing sites are due to "natural" economic change.

3. The largest such affiliations that year came from the California State Employees Association (175,000) and the United American Nurses (100,000).

4. Of course, organizing at this scale would likely change the cost rules, but the direction of that is unclear. On the one hand, economies of scale could reduce per-member costs (though we also think this unlikely without innovations in membership suggested here). On the other, the likely anti-union management campaign that such an effort would stimulate might easily raise the per capita costs. In any case, the money needed vastly exceeds what is currently being spent or that unions as a whole show any intention of spending.

5. On strengthening regional bodies, see the activities of the New Alliance, Union Cities, Union Community Fund, and related efforts, centered in the Department of Field Mobilization. On the economic development and pension work, we have in mind the work of the Department of Corporate Affairs, and its allied Center for Working Capital and Working for America Institute.

6. We chose this name after some debate, but are not wedded to it. If anyone has a better one, that is more than fine with us. We toyed with "network," "networked," and "extended" unionism, and "extended network," as in Paul Osterman, Thomas A. Kochan, Richard M. Locke, and Michael Piore, Working in America: A Blueprint for the New Labor Market (Cambridge: MIT Press, 2001), which makes an argument analogous to our own. Despite its possibly "trendy" cyber sound, however, we settled on "open source" as signaling some of the Internet use that we think important, and as best conveying the spirit of the proposal, which is to seek and harness pro-union energies anywhere they are to be found, and to link them in construction of the common project of restoring worker voice in American affairs.

7. In 2000 there were 120 million employed wage and salary workers: 104 million nonunion members and 16 million union members. In the private sector, there were 102 million workers, 9 million in unions and 93 million not in unions.

8. See Richard B. Freeman and Joel Rogers, What Workers Want (Ithaca: Cornell University Press, 1999). Other claims about worker attitudes made here, unless otherwise footnoted, can be assumed to come from this same source.

9. The majority of ex-members viewed their experience as mixed, while 13 percent described it as bad and 12 percent as very bad (ibid., p. 74).

10. In our 1994–1995 survey there were 1.45 times as many ex-members as members, but since then, private-sector density has fallen from 10.9 percent to 9 percent, which would raise the number of ex-members and lower the number of members. Our estimate is a crude one.
11. In this paragraph and throughout this discussion, we draw on Clyde Summers, “Unions Without Majority—A Black Hole?” Chicago-Kent Law Review 66 (1990): 531–48. This important work has since spawned a small industry of law review articles on minority unionism, with important contributions made by, inter alia, Samuel Estreicher, Matthew Finkin, Alan Hyde, and, most recently, Charles Morris.

12. Here we benefit from Charles Morris’s painstaking reconstruction of this history, as presented in his Democracy at Work: Restoring the Right of Association in the American Workplace (Ithaca: Cornell University Press, forthcoming).

13. Summers thinks that contrary understanding or practice has gone on long enough that explicit statutory amendment is required to clarify this right. Morris, while welcoming NLRB clarification of it, emphatically disagrees on any need for such amendment. Our own view is that the statute is clear, and the burden of amendment should be on those who would wish to deny the right. What is most important in any case is to get some practice going—that is, to attempt things with nonmajority organizations—before turning it over to the lawyers.


17. Jurisdiction is far from a “settled” issue inside labor and continues to impede a vast amount of organizing, with raiding still common and, even more common, unions “sitting” on their declared area of jurisdiction without organizing workers within it, but resisting the attempts of others to do so. At the AFL-CIO, meanwhile, the consolidation of many internationals has not been associated with comparable consolidation of power to adjudicate their disputes. So labor appears more centralized than in the past, but still behaves in a highly fragmented way. In addition, some of the dispute over jurisdiction is driven by familiar changes in industrial structure. With more people working in doctors’ offices than steel mills, for example, it’s not surprising that unions representing workers in traditional industries are looking to move out beyond their original jurisdiction.

18. Nor are we alone in thinking so, even as applied to a national labor movement. See the recommendations of the British Trades Union Congress (TUC)’s Promoting Trade Unionism Task Group, “Reaching the missing millions,” submitted in September 2001 (www.tuc.org.uk/the_tuc/tuc-3642-f0.cfm).