

# *Connecting the Dots: Coordination in Decentralised Trade Union Organising*

ASSAF BONDY AND GUY MUNDLAK

## I. INTRODUCTION

COLLECTIVE BARGAINING SEEKS to simultaneously achieve several goals, not all of which call for the same strategies. On the one hand, it seeks to provide actual voice to workers' preferences, encourage active participation and provide a mechanism for ongoing dispute resolution.<sup>1</sup> On the other hand, bargaining for small units in which there is active participation suffers from noticeable drawbacks for the workers themselves, to an extent that remains empirically contested.<sup>2</sup> The coverage of enterprise (or smaller) units creates enclaves with higher wages than those in competing organisations and a distinct co-management system that many employers view as a disadvantage. Consequently, the targeting of enclaves may lead to a relative disadvantage of the unionised employer, with potential repercussions for the workers themselves.<sup>3</sup> Adjustments to the bargaining outcomes to offset such a disadvantage may include outsourcing and the incremental diminution of the bargaining unit, or various methods of differentiating between privileged insiders at the expense of outsiders, such as agreements to layoffs or multi-tier agreements.<sup>4</sup> In addition, bargaining targeted at the enterprise (or smaller unit) level is based on a small solidarity basis and may therefore enjoy less leverage; combined with increased resistance from targeted employers, this may risk an ineffective

<sup>1</sup>Richard B Freeman and Robert L Medoff, *What Do Unions Do?* (New York: Basic Books, 1984).

<sup>2</sup>James T Bennet and Bruce Kaufman, *What Do Unions Do? A Twenty-Year Perspective* (New Brunswick, NJ: Transaction, 2007).

<sup>3</sup>Harry C Katz, 'The Decentralization of Collective Bargaining: A Literature Review and Comparative Analysis' (1993) 47 *ILR Review* 3.

<sup>4</sup>Julian Walker, 'Two Tier Wage Systems' (1987) 51 *Research and Current Issues* 2.

bargaining round.<sup>5</sup> Finally, legal instruments that allow the extension of collective agreements are for the most part limited to high-level collective agreements, not enterprise agreements.<sup>6</sup>

Assessing the gains and losses from bargaining at the enterprise level is contingent on the institutional options provided by the industrial relations system.<sup>7</sup> At one end of the continuum, systems that are based on enterprise bargaining, such as the United States or Japan, do not provide a significant alternative, leading to low levels of membership and coverage of collective agreements.<sup>8</sup> At the other extreme, countries with a highly centralised system of bargaining, Austria for example, hardly enable enterprise bargaining and opt for highly coordinated bargaining instead. Consequently, despite declining membership rates, the union wage premium is less relevant and the coverage of collective agreements remains high.<sup>9</sup>

As regards the two stylised extremes – a highly decentralised system on the one hand and a highly centralised system on the other – the assumption is that each needs to compensate for its weaker aspect. A decentralised system needs to engage in some form of coordination, while highly centralised systems need to develop enterprise (or occupational) engagement of workers to satisfy many of the voice advantages that trade unions provide.

This chapter draws on Israel as a case study to demonstrate a ‘hybrid’ system, positioned in the middle of the de/centralised continuum.<sup>10</sup> In a hybrid system we should expect to observe the two shortcomings described at the outset. Where peak-level coordinated bargaining persists, there is a need to forge a strong presence at lower levels to ensure the advantages of active, organic solidarity, the fulfilment of peak-level agreements by ongoing monitoring and compliance mechanisms, and active labour-management relations.<sup>11</sup> Where enterprise bargaining has emerged, there is a need to develop methods of coordination that transcend the boundaries of the firm. These are required to avoid excessive differentiation between employers and allow the internalisation of public concerns favouring economic sustainability of the individual

<sup>5</sup> The extent of power, whether characterised as voice or monopoly, is dependent on industrial features, such as the level of competition in the sector. David Blanchflower and Alex Bryson ‘What Effect Do Unions Have on Wages Now and Would Freeman and Medoff Be Surprised?’ in Bennet and Kaufman (eds) (n 2).

<sup>6</sup> Franz Traxler, Sabina Blaschke and Bernhard Kittel, *National Labour Relations in Internationalized Markets* (Oxford: Oxford University Press, 2001).

<sup>7</sup> John Pencavel, ‘Unionism Viewed Internationally’ (2005) 26(1) *Journal of Labor Research* 65–97.

<sup>8</sup> ICTWSS – Collective Agreements Date Center. Anthony Ferner and Richard Hyman, *Changing Industrial Relations in Europe* (Oxford: Blackwell Publications, 1998).

<sup>9</sup> Ferner and Hyman (n 8).

<sup>10</sup> Guy Mundlak, ‘Organizing Workers in “Hybrid Systems”: Comparing Trade Union Strategies in Four Countries – Austria, Germany, Israel and the Netherlands (2016) 17 *Theoretical Inquiries in Law* 163.

<sup>11</sup> Guy Mundlak, ‘Addressing the Legitimacy Gap in the Israeli Corporatist Revival (2009) 47 *British Journal of Industrial Relations* 765.

enterprise, but also of the industry and of the labour market as a whole (eg, reduction of unemployment, and high levels of inequality between insiders and outsiders).<sup>12</sup>

In the following pages we focus on the latter – the means of coordination. Hybrid systems were previously highly coordinated but are suffering from a continuous loss of membership.<sup>13</sup> Attempts at trade union revitalisation by means of organising workers in greenfield sites are focused on the enterprise level. While the option of sector-level bargaining remains, there is a growing resistance on the part of employers and their associations to negotiating at higher levels.<sup>14</sup> How can trade unions forge a higher level of coordination in times of decentralisation? What could be gained by bringing centralised bargaining back into the trade unions' revitalisation efforts? And under what circumstances could employers acquiesce in bargaining at the sector level?

To answer these questions, this chapter proceeds as follows: in Section II we discuss the importance and prevailing methods of coordination. Section III briefly describes the transformation and hybridisation of the Israeli system of industrial relations. In Section IV we look into clusters of enterprise bargaining in four sectors – cellular phone companies, insurance, public transportation (buses), and fast food chains. In the four sectors, there has been a concentration of organising efforts at the enterprise level, and bargaining followed suit at the enterprise level as well. This empirical part of the study observes organising drives from the last five years, some still pending. It is based for the most part on the study of first collective agreements, with only a few enterprises that have already reached a second round of bargaining. To understand the current patterns of negotiated norms, the study further draws on informants from the trade unions who described the process of bargaining in each of the sectors, as well as the organisational objectives and their personal subjective assessment. Section V concludes, integrating the findings with the objectives of coordination and providing some answers regarding the importance and feasibility of coordination in the context of new organising.

## II. COORDINATION: OBJECTIVES AND MEANS

In Marx's manifesto, he declares that the workers of the world should unite.<sup>15</sup> A universal organisation can benefit the labour movement in two ways. First, it

<sup>12</sup>Maarten Keune, 'Decentralizing Wage Setting in Times of Crisis? The Regulation and Use of Wage-related Derogation Clauses in Seven European Countries' (2011) 2 *European Labour Law Journal* 86.

<sup>13</sup>Mundlak (n 10).

<sup>14</sup>Lucio Baccaro and Chiara Benassi, 'Throwing Out the Ballast: Growth Models and the Liberalization of German Industrial Relations' (2017) 15 *Socio-economic Review*.

<sup>15</sup>Karl Marx and Friedrich Engels. *The Communist Manifesto* (London: Penguin, 2004).

increases and multiplies the power of labour. Second, it prevents the shifting of the costs of organising from one group of workers to another. As labour costs increase, following the exercise of labour's collective power, employers may use various strategies to reduce labour costs again – shifting from labour to technology, layoffs or reliance on an international reserve army of (cheap) labour.<sup>16</sup> Universal representation and bargaining is necessary to offset the wide range of strategic responses available to businesses.

As a practical matter, rather than a strict prescription, the trajectory of universalisation is translated into a more pragmatic direction in labour's strategies – namely expanding the bargaining domain and the coordination among multiple bargaining domains. From the global to the enterprise level, increasing coverage and coordination poses both an objective and a challenge. At the global and regional levels, concerns of a 'race to the bottom' and cosmopolitan values point at attempts to raise the floor of rights across countries, despite the Westphalian separation between nationally based industrial systems.<sup>17</sup> At the national level, national pacts, state-wide bargaining that is class-based (blue- or white-collar), the use of extension orders, compulsory measures to ensure extensive membership and sector-wide bargaining are all institutions that cater to extending coverage and coordination across the economy.<sup>18</sup> Enterprise bargaining suffers from the lowest level of coordination, although splitting the enterprise into smaller bargaining units on an occupational level, carving out part-time and temporary workers, outsourcing and fragmentation are all measures that even further marketise and decrease coordination. 'Uberisation' and other forms of fragmented work are therefore the ultimate marketisation of work as a commodity, resistant to collective coordination altogether.<sup>19</sup>

Between marketisation and individualisation on the one hand and the national pact on the other, there is a range of measures that seek to establish coordination. Some are institutionalised, such as sector-wide bargaining. Others are dependent on labour's strategies: for example, when engaging in pattern bargaining, the trade union resorts to a strategy of sequential bargaining, choosing the first establishment, occupation or sector over which to negotiate,

<sup>16</sup> Michael Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge: Cambridge University Press, 1979).

<sup>17</sup> Barbara Bechter, Bernd Brandl and Guglielmo Meardi, *From National to Sectoral Industrial Relations: Developments in Sectoral Industrial Relations in the EU* (European Foundation for the Improvement of Living and Working Conditions, 2011). Aristeia Koukiadaki, Isabel Tavora and Miguel Martinez Lucio (eds), *Joint Regulation and Labour Market Policy in Europe During the Crisis* (Brussels: ETUI, 2015).

<sup>18</sup> Michael Wallerstein, Miriam Golden and Peter Lange, 'Unions, Employers' Associations, and Wage-setting Institutions in Northern and Central Europe, 1950–1992' (1997) *50 Industrial and Labor Relations Review* 379. Jelle Visser, *Wage Bargaining Institutions – From Crisis to Crisis*, European Commission – Economic Papers 488 (2013).

<sup>19</sup> Brishen Rogers, 'The Social Costs of Uber' (2017) 82(1) *University of Chicago Law Review Online* 85.

and then replicating, adapting and benchmarking others (establishment, occupation or sector).<sup>20</sup> Hence, pattern bargaining can be used as either an inter- or intra-sectoral form of bargaining, depending on the dominant level of bargaining. In the former case, which is widespread in western and northern European states (eg, Germany, Sweden), bargaining for the labour conditions and wages of metalworkers may be chosen, and then other sectors are arranged in accordance with the gains of the leading sector.<sup>21</sup> In the latter, mainly found in several sectors in the US, a trade union can choose one company in the sector with which to negotiate and then use the bargaining outcomes as the benchmark for the bargaining rounds with other companies in the sector.<sup>22</sup>

Enterprise-level pattern bargaining is not a formal institution, never grounded in law, and rarely found as a formal policy. It does not expand coverage (universalisation) and is focused mostly on coordination between existing bargaining units. It has other variations. Notably, the well-known Japanese practice of labour's 'spring offensive' (Shuntō) is a method of inter-union coordination in what is an otherwise highly decentralised system of bargaining.<sup>23</sup> Similarly, linking collective agreements, so that one agreement adopts arrangements that were negotiated in another and the parties agree that changes in one will automatically affect the other, is another method of coordination.<sup>24</sup> Law can act as a coordinating mechanism when drawing on collective agreements by reference to the most representative agreements as a focal point for statutory and judicial norms, or by drawing on commonly negotiated norms as the 'law of industry'.<sup>25</sup>

Employers may prefer uncoordinated bargaining, mirroring the trade unions' preference for coordination, notably as a means of weakening the power basis of the trade union. In sectors that are exposed to global competition, employers may further object to coordinated bargaining (or to any form of bargaining) if competition extends the local bargaining domain.<sup>26</sup> In areas where there is a labour surplus, employers may see fewer advantages in coordination, as the labour force is easily replaceable.

<sup>20</sup> Bernd Brandl and Franz Traxler, 'Labour Relations, Economic Governance and the Crisis: Turning the Tide Again?' (2008) 52 *Labor History* 1. Stephen Wood, 'The Cooperative Labour Strategy in the US Auto Industry' (1986) 7 *Economic and Industrial Democracy* 415; Robert C Marshall and Antonio Merlo, 'Pattern Bargaining' (2004) 45 *International Economic Review* 239.

<sup>21</sup> Bernhard Ebbinghaus and Bernhard Kittel, 'European Rigidity Versus American Flexibility? The Institutional Adaptability of Collective Bargaining' (2005) 32 *Work and Occupations* 163.

<sup>22</sup> Wood (n 20).

<sup>23</sup> Kathleen A Thelen and Ikuo Kume, 'Coordination as a Political Problem in Coordinated Market Economies' (2006) 19(1) *Governance* 11.

<sup>24</sup> In Israel this was the prevailing method for public-sector bargaining in the past, and it is also extant in some of the private-sector collective agreements, such as in banking.

<sup>25</sup> Edward B Rock and Michael L Wachter, 'The Enforceability of Norms and the Employment Relationship' (1996) 144 *University of Pennsylvania Law Review* 1913.

<sup>26</sup> Baccaro and Benassi (n 14).

However, employers may also have opposing interests that align with the trade unions' interests in coordination: where stronger employers wish to crowd out employers who are undercutting labour costs and driving investment in the labour force downwards; when there is a shortage in the qualified supply of labour (in which case sectoral agreements may be effective in halting upwards pressures and competition among employers); where investment in human capital is of particular importance and workers' retention is a high priority; when other forms of centralised pressures are involved, such as state regulation; when law accords particular privileges to coordinated collective agreements (eg, the permission to derogate or adapt statutory arrangements); and when coordinated bargaining is a key to extension orders that can leverage all of the abovementioned advantages.<sup>27</sup>

The plural forms of coordination in bargaining can be distinguished along several axes: Traxler et al mention two strategies which are particularly important in the present context.<sup>28</sup> First, coordination can be an intentional strategy or merely an outcome of market forces. Second, coordination can be determined by a single agent (for example, the central governing body of a federation of trade unions), or negotiated by several unions. A looser form of coordination is exhibited in sequential, non-linear bargaining rounds, where one union learns and adopts the outcomes of other unions' achievements. Hence, this well-studied form of coordination by means of pattern bargaining can be characterised as an intentional strategy, which is initiated by a single agent on labour's side, who determines the sequence of bargaining and sets the pattern for all subsequent negotiations.<sup>29</sup> However, this common form of pattern bargaining is not the exclusive form of enterprise-level bargaining coordination, as we will demonstrate in the following sections.

### III. THE HYBRIDISATION OF THE ISRAELI INDUSTRIAL RELATIONS SYSTEM: THE CHALLENGE POSED BY DECENTRALISATION

Israel's industrial relations system was modelled on corporatist premises.<sup>30</sup> Pre-dating statehood, and later in formalised fashion with the legislation of the Collective Agreements Law (1957), bargaining was recognised at multiple levels. Public-sector bargaining was, and remains, to a large extent

<sup>27</sup> Peter Swenson, 'Bringing Capital Back In, or Social Democracy Reconsidered: Employer Power, Cross-class Alliances, and Centralization of Industrial Relations in Denmark and Sweden (1991) 43 *World Politics* 513. Brandl and Traxler (n 20).

<sup>28</sup> Franz Traxler, Bernd Brandl and Vera Glassner 'Pattern Bargaining: An Investigation into Its Agency, Context and Evidence' (2008) 46(1) *British Journal of Industrial Relations* 33.

<sup>29</sup> Wood (n 20); Marshall and Merlo (n 20).

<sup>30</sup> Arie Shirom, *Introduction to Industrial Relations in Israel* (Tel Aviv: Am Oved, 1983). In Hebrew. Guy Mundlak, *Fading Corporatism in Israel* (Ithaca, NY: ILR Press, 2007).

coordinated – through centralised bargaining and legal (financial) regulation – and usually detached from private-sector bargaining.<sup>31</sup> Private-sector bargaining was more fragmented to begin with, but various methods of coordination existed. State-wide coordination of wages and industrial practice covered areas such as minimum wages (until 1987) and cost-of-living adjustments (COLA) (for some years). State-wide legal norms evolved from separate and distinct collective agreements, later becoming universal standards.<sup>32</sup> Sector-level bargaining developed at different periods, and although it declined in some sectors, notably in industry, it is still a prominent form of bargaining and coordination in the service sectors.

Coordination was never perfect; there were always tensions, in both the public and the private sector. On the one hand, the General Histadrut (the largest federation of trade unions) and the employers' associations wanted to level the playing field across enterprises and sectors (hence intra-sectoral and inter-sectoral coordination). On the other hand, there were pressures from workers' committees at the enterprise level who resisted the outcomes of coordination and from employers who did not realise any gains from coordination.<sup>33</sup> Some of the pressures against coordination were relieved by extension decrees, which imposed uniform outcomes on all employers and their employees. At other times, coordinated bargaining efforts gave way to decentralised and fragmented bargaining, whether formally (attested to by a shift to enterprise bargaining) or informally (local 'wage drift').<sup>34</sup>

Starting from the mid-1980s, and peaking in 1995, the Israeli system transformed considerably, downplaying some of its corporatist features and developing pluralist ones instead. The 'Ghent system', which tied healthcare provision with trade union membership, was removed; the pensions system that had been under the sole control of the General Histadrut was opened to market competition; the General Histadrut sold off its vast economic holdings; and the symbiotic political liaison between the General Histadrut and the ruling political party was terminally disconnected.<sup>35</sup> One of the important implications of the change in the system was the relatively rapid drop in membership rates and, to a lesser extent, in the share of workers who are covered by collective agreements. While in the early 1980s most workers were members of trade unions (more than 80 per cent, with the majority belonging to the General Histadrut) and covered by collective agreements (more than 80 per cent), by 2006 the share

<sup>31</sup> Lev L Grinberg, *Split Corporatism in Israel*, (New York: CUNY Press, 1991).

<sup>32</sup> Mundlak (n 30).

<sup>33</sup> Lev L Grinberg, *The Histadrut Above All* (Jerusalem, Nevo Publishers, 1993). In Hebrew.

<sup>34</sup> Tali Kristal, 'Decentralization of Collective Agreements in Israel, 1957–1998' (2002) 9 *Work, Society and Law*. In Hebrew.

<sup>35</sup> Yitzhak Haberfeld, 'Why do Workers Join Unions? The Case of Israel' (1995) 48 *Industrial & Labor Relations Review* 656. Mundlak (n 30).

of members was down to 31 per cent (two-thirds of them in the Histadrut) and the share of workers who were covered by collective agreements was down to 51 per cent. These figures are indicative of a deep change in the nature of the system, which became more pluralist, decentralised, decentred, conflictual and juridified.<sup>36</sup>

With the removal of the Ghent system, the General Histadrut attempted to organise workers in greenfield sites, but for the most part these organising drives failed.<sup>37</sup> During these initial attempts, the Labor Courts and the legislature developed the law and secured the workers from retaliation and unfair labour practices.<sup>38</sup> However, lack of experience in organising, coupled with a slow judicial response and the unfamiliar terrain for all concerned, can account for the failure of the first wave of enterprise organising attempts.

In 2008 a second wave of organising attempts started. Motivated by the entry of a new trade union ('Power to the Workers') that sought to democratise trade union representation and emphasise grassroots bargaining, the General Histadrut and another veteran federation – the National Histadrut – started developing new strategies for organising and devoted resources accordingly.<sup>39</sup> Unlike the first wave, the second wave can be considered a triumphant success, with a host of organising drives in greenfield sites that were concluded with a collective agreement. Trade unions entered establishments in sectors that were considered to be almost immune to trade union activity. The success of the trade unions was exponential and as more workers succeeded in organising, other workers began to view the trade union as a feasible option they could consider.

According to the Law of Collective Agreements, in order to bargain at the enterprise level a trade union must reach the status of an exclusive bargaining agent, which requires the fulfilment of two major conditions: (a) being the trade union with the most members in the bargaining unit, and (b) with at least a third of the overall number of workers employed in the bargaining unit.<sup>40</sup> The latter condition makes organising difficult as the trade union must achieve a critical mass.

Sector- and national-level bargaining continues and technically remains feasible for greenfield sites as well. From an organising perspective, sector-level bargaining may seem much easier. The Law of Collective Bargaining only requires that the representative trade union be the union with the most *organised workers* in the bargaining domain (ie, that it meet condition (a) for enterprise

<sup>36</sup>Tali Kristal, Guy Mundlak, Yitzhak Haberfeld and Yinon Cohen, 'Union Density in Israel 2006–2012: The Split of the Industrial Relations System' (2015) 14 *Work, Society and Law* 9. In Hebrew.

<sup>37</sup>Mundlak (n 11).

<sup>38</sup>Israel National Labor Court (Appeal) No. 64/09. Israel Law of Collective Agreements (1957, 8th Amendment, 2009).

<sup>39</sup>Kristal et al (n 36).

<sup>40</sup>Israel Law of Collective Agreements (1957).



bargaining, *supra*, but not condition (b)). Hence, if only a handful of workers in a sector are organised in one union, and there are no competing unions, that union has the legal licence to negotiate a sector-level agreement with an employers' association. A sector-level agreement can then be extended to employers who are not members of the employers' association at the request of the negotiating parties.<sup>41</sup>

Despite the legal ease of gaining representative status for sector-level agreements, trade unions do not organise for the purpose of achieving a sectoral agreement. There are several interrelated reasons for the mismatch between organising and coordinated bargaining at a level that extends beyond the single enterprise. First, sector-wide agreements require an employers' association on capital's side. This requires the affirmative interest of employers to coalesce, organise and coordinate. Hence, the association of employers is in fact more important than the organisation of workers. Second, organising workers is based on methods of building solidarity from the bottom up. Enterprise bargaining requires attending to the workers' needs, both as a successful strategy of voice and as an instrument to preserve the necessary support of the workers. Sector-level bargaining is a method of governance that is based on central representation, far removed from the workers' active voice in negotiations. To conclude a sector-wide agreement, the trade union needs to be a good 'social partner' to elicit the cooperation of business, more than it needs to organise the workers.

The new organising wave did not abolish sector-level bargaining altogether. Some sectors, such as hospitality, construction and agriculture, are continuously governed by sectoral agreements. In the cleaning and security sectors, new sectoral agreements play an important role and have been negotiated in tandem with increased responsibility that was placed on employers by the Law on Enforcement of Labor Laws (2011). But in the new sectors, the greenfield sites, where most organising takes place, sector-wide bargaining was never considered an option. This is the result of trade unions' modes of operation, the fascination with new forms of collective action, competition between unions, and employers' reluctance to negotiate at the sectoral level.

The advantages of the new enterprise-based organising are clear. They are an essential ingredient of the labour movement's revitalisation efforts in Israel, highlighting a localised version of industrial democracy, workers' voice and direct participation.<sup>42</sup> At the same time, the new focus on organising and enterprise bargaining risks losing the advantages of coordinated bargaining.

Presenting enterprise bargaining and sectoral bargaining as two diametrically opposed forms of association and bargaining may be a good way to stylise differences, underscoring the challenges facing trade unions in hybrid systems. But is there a continuum between them? The discussion on coordination in

<sup>41</sup> *ibid.*

<sup>42</sup> Mundlak (n 10).

the previous section suggests there may be. In the following section we seek to describe the clustering of enterprise bargaining in a single sector, asking: to what extent, and by which mechanisms, can a cluster of bargaining rounds in a single sector elevate the level of intra-sectoral coordination, and to what extent can a cluster of enterprise agreements lead to highly coordinated sectoral bargaining?

#### IV. CONNECTING THE DOTS: THE STUDY OF ENTERPRISE BARGAINING IN FOUR SECTORS

To answer the research question, we chose four sectors in which several new organising drives have succeeded and reached a collective agreement at the enterprise level: cellphone companies, insurance companies, public transportation (bus companies), and the work of youth in the hospitality industry – fast food chains, restaurants and catering. The study traces forms of coordination *within* each of the sectors (and not *between* sectors). The primary source for the study are the collective agreements that were concluded in each of the sectors. To make sense of the comparison between the detailed agreements, interviews were held with relevant union officials.

Collective agreements of the kind studied here are long and detailed, and comparing them is difficult as both differences and similarities appear throughout. To facilitate the comparison, we distinguish two categories:

- (a) *Quantitative subjects – wages and benefits*: wage setting, compensation methods (individual, team and corporate-wide bonuses), and fringe benefits; in this category we also observe wage flexibility – the leeway afforded to the employer to change the wage structure.
- (b) *Qualitative subjects – organisational aspects*: numerical flexibility – including exclusions from the coverage of the agreement, hiring, the termination of the employment relationship (collective layoffs and individual dismissals), the use of subcontracting and temp workers; functional flexibility, which includes consultation, negotiations and co-determination rights with regard to changes in employment conditions, organisational change (such as mergers and the acquisition of other companies), technological change, and the rights accorded to the trade union (office-space and paid hours for the trade union representatives among the workforce) and the employer (notably industrial peace). To focus the comparison, we demonstrate coordination with regard to protections from various types of dismissals.

##### A. The Cellphones Sector

Cellphone companies started operating in the mid-1990s, after the removal of the Ghent system, and the newly established companies emerged as part of a

new sector that is outside the organised economy. A three-company oligopoly gradually emerged, who remain to date the largest players. In 2010 the Ministry of Communications opened the sector to competition, lowering the price of cellphone services significantly and encouraging the entry of new players.<sup>43</sup> Consequently, there are at present approximately eight small companies beside the big three. Profit margins in the sector have gone down considerably due to the reform.<sup>44</sup>

Shortly after the 2010 reform, the workers in one of the large companies – Pelephone – launched what was one of the most visible and studied organising drives in Israel.<sup>45</sup> Its visibility was due to the size of the company (at the time, over 3,000 employees), the collapse of the common perception that the new industry and services were outside the collective bargaining zone, and the legal precedent that was established during the organising drive – severely curtailing employers’ speech against employees’ organising. Following a volatile organising drive, a collective agreement was concluded with Pelephone, and shortly thereafter employees in the other two large companies got organised and concluded a collective agreement. In two of the smaller companies a collective agreement had already been concluded at the time of writing, and only a few of the smallest companies remain unorganised at present. All of the agreements in the sector were negotiated on labour’s side by the General Histadrut, except for the latest negotiations, which were concluded by the rival National Histadrut. The concentration of organising drives and agreements in the cellphone and ancillary sectors (new telecommunications and internet, high-tech) led to the establishment of a new trade union under the roof of the General Histadrut – representing employees in these fields.

The three major agreements display a high level of similarity. They were negotiated in different years (2013, 2014, 2015) and therefore are to be renegotiated at different times (unlike traditional forms of pattern bargaining). According to the head of the cellphone/internet trade union, the first agreement created the basic platform and consecutive rounds generally matched and topped the previous rounds, thereby achieving incremental improvement. This creates a variation on pattern bargaining whereby the workers’ committees in each of the companies on the one side and the human resource managers on the other side emulate previous rounds and negotiate any incremental changes.

With regard to wages, at the time of concluding a first agreement, there is an approximately 10 per cent wage hike, a one-time signing bonus (compensating for the delay in the months of negotiations), and then an annual wage improvement of approximately 3 per cent (2.8–3.1 per cent). While the overall

<sup>43</sup> Joshua D Margolis, Amram Migdal and Kerry Herman, ‘Moshe Kahlon: Telecommunications Reform and Competition in Israel’s Cellular Market (A)’, *Harvard Business School Case 417-017* (2016).

<sup>44</sup> Interview with the head of the Cellular and IT union.

<sup>45</sup> Pnina Alon-Shenker and Guy Davidov, ‘Organizing: Should the Employer Have a Say?’ (2016) 17 *Theoretical Inquiries in Law* 63.

wage package, as a whole, is relatively similar, differences are noticeable with regard to its internal distribution among the workers. The wage hike is split in all companies into a flat wage raise and a component that is left to managerial discretion. The overarching principle is that the least compensated workers should not be hurt by inflation, and the wages of the best compensated workers (enjoying the most rewards emerging from managerial discretion) should be contained within bounds. While the trade union respects the employers' demand for differentiation, in return it has negotiated for visibility of the differential reward methods, the criteria and method of administration.<sup>46</sup>

With regard to the qualitative aspects, the agreements provide management much leeway, demanding consultation and negotiation rights that are in line with the general duties of collective labour law in Israel. The qualitative aspect covers all matters from hiring to firing, as well as temporal and functional flexibility. On most matters it provides certain procedural safeguards, but leaves the managerial prerogative intact. To single out an important aspect of the qualitative (or so-called 'organisational') aspect of the agreements, the protection from dismissals is the most significant. The collective agreements translate the general legal duty to act in good faith<sup>47</sup> into a highly detailed protocol, emphasising the trade union's rights in the process. The protocol distinguishes between individual dismissals, for reasons of lacking performance or for disciplinary reasons (with a separate protocol for each of the two), and collective dismissals, notably for the purpose of downsizing. All the agreements refer to each of these situations and construct a similar model. Some variations include an extension or shortening of the period given to the employee for improvement before dismissal hearings can be launched; a distinction between serious and light disciplinary claims in disciplinary dismissals; or a method to overcome an impasse in negotiations over the list of workers to be dismissed at a time of collective layoffs.

Coordination, leading to similarity in the agreements, is fostered by the fact that there is a single hierarchical agent. Since the launch of the new organising drives, the General Histadrut has established a system in which all enterprise-level collective agreements must conform with its guidelines on wages, organisational matters (such as dismissals)<sup>48</sup> and pensions. Deviations from the general

<sup>46</sup> Interview with the head of the economic dept. in the Histadrut.

<sup>47</sup> The Labor Court held that an employee must be provided with the reason for considering the termination of the employment relationship and the necessary facts to substantiate the alleged reason. The employee must be given enough time to prepare and is allowed to be represented at the hearing. The employer must listen to the employee wholeheartedly and consider the employee's claim in good faith.

<sup>48</sup> Other organisational matters that are heavily coordinated by the General Histadrut include the list of occupations that are exempted from the coverage of the collective agreement, priority in hiring from within the internal labour market (promoting the existing workforce), consultation and bargaining rights, and the industrial peace clause.

guidelines must receive the approval of the higher echelons in the relevant trade union and on occasions even the head of the General Histadrut.<sup>49</sup>

The two remaining agreements are in mid-size companies. One was concluded by the General Histadrut and is structured according to the same template that was created in the agreements of the 'big three'. However, it is weaker on the quantitative aspects. By contrast, in one company (Golan) the collective agreement was concluded with the competing National Histadrut. The quantitative aspect is significantly weaker, as no wage supplements are specified at all, and the organisational chapter extends more flexibility to the employer in hiring and firing. This agreement is strikingly different from the others, reflecting either the economic vulnerability of the particular company, which was in a process of acquisition and regulatory supervision at the time the agreement was concluded, or the more business-accommodating position of the trade union representing the workers there.

To summarise, the 'big three' companies, comprising a large part of the sector (in terms of workers employed), exhibit a form of incremental pattern bargaining that was structured from the bottom up. The organising drives were initiated by the workers themselves, but the workers' committees that were established after the recognition of trade unions' representativeness coordinated their demands. The General Histadrut developed a top-down coordinating method, demanding that the workers' committees negotiate on the basis of the General Histadrut's list of essential claims and economic framework. The agreements in the large companies also dictate the benchmark for the smaller companies. Unorganised companies are few and can be organised if workers wish to do so.

The trade unions have not shown any significant interest in sectoral bargaining, despite the similarity of the existing agreements that could be useful in setting an agreed-upon floor in all the companies. The trade union considers the current incremental (pattern) bargaining to offer an advantageous opportunity to raise the wage floor and improve the trade union's involvement in the companies. That, together with the responsiveness to the workers' interests that are confined to their own company and the possibility of covering the whole sector by organising at each company, removes the trade union's interest, even if negotiations for such an agreement are claimed to be easier. The rival National Histadrut clearly does not want a sectoral agreement, which may crowd it out at the enterprise level as well.<sup>50</sup> Without the unions' direct interest in sectoral bargaining, employers are not reacting by means of a business association, and have not shown any particular interest in minimising the effects of enterprise bargaining by switching to the sectoral level.

<sup>49</sup> Interview with the head of the economic dept. in the Histadrut.

<sup>50</sup> Interview with the head of the cellphone and IT union.

## B. The Insurance Sector

The insurance sector was previously almost totally unorganised. Following several organising drives that were initiated by workers in the insurance companies themselves, a number of collective agreements were set in place. While the initial organising drives were supervised by high officials in the Histadrut and the head of the Service Workers Union (Maof; belonging to the General Histadrut), the concentration of new organising in the sector led to the establishment of an Insurance Chapter in the Maof trade union (since 2014).<sup>51</sup>

Unlike the cellphone sector, on the employers' side, there are two relevant associations – the Israeli Insurance Association, which organises all the insurance *companies*, and the Association of Insurance Brokers and Agents in Israel, representing the insurance *agents*. Both are well-established organisations with a comprehensive membership but they do not engage in employment matters. In the past, however, they have signed nationwide collective agreements (for example, with regard to COLA). Furthermore, there are insurance agents who are members of the Chamber of Commerce (a recognised and active employers' association). All of these institutions can evolve over time into an employers' association for the purpose of sectoral bargaining but they do not qualify as such at present.

To understand the current coverage of enterprise agreements, it is important to split up the sector according to several parameters: (a) distinguishing insurance companies from insurance agents; (b) distinguishing traditional insurance companies from direct insurance companies that sidestep the need for an agent; (c) distinguishing insurance companies by size, as large insurance companies may employ 3,000 employees, while a small insurance agency may be a family-run business with a few employees. Collective agreements that were already signed or being negotiated at the time of writing concentrate on the larger and medium-sized companies. These agreements reveal similarities along the same pattern as in the cellphone companies. The same coordination methods that were described in the cellphone sector prevail here as well: (a) incremental pattern bargaining, with one workers' committee learning from another; and (b) hierarchical coordination by the General Histadrut.

Two organising attempts among the insurance companies failed. According to the head of the Insurance Chapter, this is because the workers are satisfied with their working conditions. This implies that the union premium is not significant in comparison to the higher bracket of working conditions prevailing in the sector. The coordination of successful organising drives upscaled working conditions in other insurance companies to the level of the more generous employers in the sector but did not surpass them. This indicates that even in enterprise bargaining, coordination is both driven and constrained by market conditions.

<sup>51</sup> Interview with the head of the insurance chapter in the Histadrut.

When asked about the efficacy of a sectoral agreement, given the similarity among the existing agreements (and the working conditions in the non-organised firms), three considerations were articulated by the trade union. First, two agreements provide a lower level of benefits and organisational protections. One agreement was negotiated with a smaller struggling company. That agreement, it was explained, was the best that could be obtained for and by workers without crowding the company out of the market. A sectoral agreement would likely have had a crowding effect. A second agreement that was concluded with a direct insurance company adapts the wages and organisational protections to the unique composition of the workforce. Most of the workers are employed in call centres and work at a low hourly wage, topped by benefits that are tied to performance (eg, the number of insurance policies sold). A sectoral agreement that is modelled on the composition of the workforce in the large full-fledged insurers may inhibit alternative forms of insurance provision.<sup>52</sup> This is considered to be detrimental to coordination through sectoral bargaining.

Second, it appears that one of the agreements in the large insurance companies is considerably more generous to the workforce than the others. It covers non-traditional issues (eg, affirmative action for people with disabilities, or sorting the rights and duties of workers with regard to privacy on the company's computers and email boxes) and extends benefits that are outside the prevailing norm (eg, with regard to severance pay and pensions). The effect of a sectoral agreement on such a company is uncertain. It may be neutral because it is always possible to supplement the sectoral bargaining with additional organisational rights and wages. Just the same, it may also be negative as a sector-wide agreement may serve as a focal point for negotiations and inhibit negotiations for extraordinary arrangements and supplemental rights.

Finally, the coverage of collective agreements in the insurance sector is considerably lower than in the cellphone sector, but the number of insurance companies is still manageable and can still be organised in the future, thereby reaching a comprehensive coverage level on the basis of enterprise bargaining.<sup>53</sup>

As opposed to the limited number of insurance companies, there are a vast number of insurance agents. Despite sporadic organising in a few of the more established agencies, it is recognised that without a sector-level agreement, the coverage of collective agreements will remain spotty at best. The more established agencies will also be reluctant to raise wages over and above the prevailing norm in the small agencies. Hence, a sectoral agreement may be the only feasible method of coordination among insurance agencies. A sectoral agreement may also make it possible to forge a distinct set of organisational rules and wage norms that are suited to the particular nature of the sector. For example,

<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

insisting on the prevailing template for dismissals that requires six months' trial for improvement may be too demanding for small establishments. Moving to sectoral coordination can open the door to deliberations and rationalise norms that are better adapted to the sector. At present, however, agencies prefer the sector to remain non-organised, and there are no hard incentives for utilising employers' associations to advance the recognition of joint gains from a sectoral agreement.

To summarise, unlike the cellphone companies, the insurance sector illustrates two important aspects: (a) greater heterogeneity between establishments (size, the nature of the work being conducted and the working methods), and (b) partial coverage. The trade union can achieve some gains by moving to a sectoral agreement, particularly where significant coverage of enterprise bargaining is not feasible (small insurance agencies). There is less interest on the employers' side to develop their institutional capacity, currently lacking, for sector-level negotiations. A concern of both sides is that a sectoral agreement may crowd out some companies, and inhibit technological change that affects the means of service provision in the sector. The various interests may explain the relative lack of consideration for the option of coordination through sectoral bargaining. Coordination among organised companies remains partial when the heterogeneous sector is observed as a whole.

### C. The Public Transportation (Bus) Sector

Buses account for approximately 90 per cent of the public transportation in Israel. The bus system was never operated directly by the state as the sector was dominated from its inception by two cooperatives, which later underwent a process of degeneration and started recruiting employees. Both co-ops had collective agreements for their workers, and during the 1990s a two-tiered structure was developed, granting the new generation of hired drivers lesser rights.

In 1997 the state opened existing and new bus routes to competition, and by blocking veteran cooperatives from participating in the competition it opened the sector to new companies. A few years later a procurement process commenced and new bus companies competed over lines previously assigned to the two monopolist co-ops (which were banned from participating). The procurement documents detailed the companies' obligations, including minimum wages for bus drivers. Bus drivers can work in either the public transportation system or in private transport firms (providing on-demand bus rides for tourism, schools, the military and the like). While our focus here will be on the public transportation system – which consists of both the established cooperatives and some of the new private companies – we will later compare it to the separate and distinct on-demand transport firms.<sup>54</sup>

<sup>54</sup> Interview with the coordinator of the transportation union in the Histadrut.



Unlike the drivers in the two large co-ops, all the new public transportation companies that were established after the state's decision in 1997 evolved outside the domain of collective relations. All attempts to organise the transport companies and public transportation after the removal of the Ghent system in 1995 failed.<sup>55</sup> Following the organising drive in Pelephone (cellphone), organising drives started gradually in several public transportation companies. However, the current level of coverage by collective agreements in the public transportation sector (including those that are being negotiated at the time of writing), while relatively high, still falls short of the more comprehensive coverage in the cellphone sector. Moreover, this is a sector where three different unions – the General Histadrut, the National Histadrut and Power to the Workers – are somewhat equally active in organising and negotiating. Consequently, inter-union rivalry is common.

The new agreements in the sector, and to some extent the collective agreements that were concluded in the two large cooperatives, share one important similarity in common – the drivers' wages. This is because the minimum wage established by the procurement system has become the *de facto* maximum wage as well. Because the public transportation companies compete for bus routes, their offers are assessed according to several measures of quality and costs. The cost factor is crucial and a company cannot realistically compete if it raises the drivers' wages. At the time of writing the wages that appear in all the collective agreements, as well as in individual contracts in the non-unionised companies, are 39 NIS per hour (equivalent to 145 per cent of the statutory minimum wage). All other wage components are standardised as well and are equivalent to the minima in the procurement documents or the statutory minima (overtime, working hours on days of rest, convalescence pay).<sup>56</sup> Non-regulated benefits (subsidised meals, holiday gifts and other company welfare benefits) are at relatively negligible sums, with slight differences between the companies. The trade unions have little or no leverage to raise labour costs over and above the minima that are established in the procurement documents and in statute.

With regard to the qualitative (organisational) aspects in the collective agreements, there are variations. As regards protection from dismissals, some of the agreements allow a flexible and easy dismissal process, while others are more in line with the General Histadrut's common protocol for the three types of dismissal. There are variations between trade unions, and over time. However, current negotiations adhere to the General Histadrut's protocol and there is a recognisable process of incremental emulation.

The identical wages and labour costs in the different companies could justify a sectoral agreement. Despite their strong competition, the public transportation companies also have shared interests. Because of a state-wide shortage of

<sup>55</sup> Alon-Shenker and Davidov (n 45).

<sup>56</sup> Interview with the coordinator of the transportation union in the Histadrut.

drivers, the public transportation companies, usually in competition with each other, established in 2015 a business association to pressure the state to raise the wages established in the procurement documents as a means of attracting new drivers. The association's efforts (backed by drivers' organising) to raise the wages and subsidies were successful, enabling a wage hike from 32 NIS per hour (123 per cent of the minimum wage at the time) to 39 NIS per hour (145 per cent of the minimum wage at present).<sup>57</sup>

Despite what seems to be fertile ground for coordination and joint action on both sides, there is no discussion of a sector-level agreement. Several explanations can be inferred indirectly from the interviews. First, there is a sense that the sector is gradually reaching comprehensive coverage similar to that of the cellphone sector. Although organising drives in the sector on an enterprise basis drains the trade unions' resources due to employers' resistance and inter-union rivalry, collective agreements are becoming the norm of the sector. Moreover, the trade union informants explained that they view the procurement process as the major target for change. This, they explain, they can achieve as political lobbyists, together with the employers, and do not need the coordinating method of sectoral bargaining. The workers' committees in the various companies, despite rivalry between the trade unions, sought to draw on their joint industrial power but as they prepared for a state-wide strike the procurement wages were raised at the last moment, rendering further coordinated action unnecessary. Hence, the trade unions concede the benefits of formal coordination but exhibit optimism as regards alternative and available strategies such as enterprise bargaining and political lobbying.

Another tension that accounts for the hesitant attitude towards a sectoral agreement is rooted in two conflicting interests. On the trade union side there is an interest in creating a continuity of employment rights when drivers move from one company to another, particularly when one company loses its routes to another company. The uniform wage in the sector allows easy transitions of drivers from one company to another. Such coordination can only be achieved by means of a sector-level agreement as it requires arrangements that are external to any particular company.<sup>58</sup> At the same time, the shortage of drivers leads to increased investment in bus companies that offer driving courses and entry bonuses to attract new drivers. Consequently, on the employers' side, there is an interest in retaining workers and preventing transitions, and they are therefore opposed to sector-wide coordination. Hence, the uniform wages in the sector serve not only as an incentive for sectoral bargaining, but also as a deterrent to it.

<sup>57</sup> *ibid.*

<sup>58</sup> For example, sectoral seniority was recently negotiated in the cleaning and security sector-level agreements and has appeared for a long time in the construction sector agreement.

The deterrents to formalised sectoral coordination in the public transportation sector can be highlighted by a different dynamic in the on-demand transport sector. A few hundred companies operate transport services, operating different types of vehicles – from minivans to luxury tour buses. The wages and working conditions are generally at a lower level than those of the public transportation sector. The working schedules are also different. However, despite the variance, which may seem to be a deterrent to sectoral bargaining, a sector-wide agreement was concluded.<sup>59</sup> This exceptional agreement in a previously unorganised sector was the result of distinct interests. On the trade union side, the number of companies and their diverse sizes render them more difficult to organise. On the employers' side, there is an interest of the larger transport companies to self-regulate the field and to crowd out the smaller companies that discount on labour costs, *inter alia* by means of avoiding minimum statutory standards.

To summarise, the regulatory basis to which the public transportation companies are bound serves as the primary coordinating mechanism in the sector. The existing organising drives operate within very strict margins, and differences in the content of agreements are due to competing trade unions but have a lesser impact on the payroll. The homogeneity of the primary occupation in the sector (bus drivers), severe shortage of bus drivers, and the need for labour–management coordination *vis-à-vis* the government are all considered to be an incentive for sector-level cooperation. Coordination among the trade unions and employers is mostly at the political level and not at the bargaining table. The option of sectoral bargaining is deterred by competition and rivalry over drivers. By contrast, coordination is sought in the adjacent sector of on-demand transport companies. The fragmentation and heterogeneity created an incentive for coordination in an effort to secure workers' rights as part of the joint interest of some employers and the trade unions to prevent a race to the bottom.

#### **D. Youth in the Hospitality (Fast Food, Restaurant and Reception Halls) Sector**

The fast food sector was chosen for the study because of the trade union's purposeful and proactive consideration of moving from enterprise bargaining to the sector level. The relevant trade union is the youth branch of the Histadrut. It is a unique trade union that operates at a distance from the central headquarters, and is also part of a youth movement (Study and Work Youth) that was

<sup>59</sup> Following primary interviews with the coordinator of the transportation union in the Histadrut, a sectoral agreement was signed in the transport sector, in July 2017.

established alongside the state's apprenticeship system in the 1950s.<sup>60</sup> Over the years, the apprenticeship system was dissolved and the youth movement now deals mostly with social organisation of youth throughout the country. Sticking to its original objective, it also offers individual aid and legal representation to working youth and engages in lobbying regarding working youth in the Knesset, Israel's parliament.<sup>61</sup>

The leading assumption motivating organising was that a stronger presence of the trade union in establishments that commonly employ youth can increase compliance – through a joint mechanism of rights enforcement. To that extent, the major target was the fast food chains which commonly employ high-school students and young adults. These chains were not organised until recently. At the same time, other attempts at organising were made in catering services that are operated by reception halls, grocery chains and restaurants.<sup>62</sup> In all of these economic fields, employment is usually on an hourly basis, short term and unskilled, with few opportunities for advancement. The few existing collective agreements that have been negotiated, as well as the sector-level agreement at the reception halls, can be described as 'minimum plus' agreements. They guarantee minimum wage and a slight improvement in wages after several months of work. The agreements address common problems that youth face in these jobs, such as being 'on call' and the requirement that they show up for work on short notice; the number of shifts they are assigned; and a guarantee of a minimum number of hours for which they must be compensated. Other issues include a subsidised meal at work, social activities and a reward programme. At the qualitative level, the agreements provide for respecting the law on good faith in dismissals and leave intact the managerial prerogative on all matters. They also provide several side-benefits, such as the opportunity for the employers to hire by using an internet-based employment service that is managed by the trade union.

Interviews revealed that the agreements' purpose is to enable the trade union to set a foot in the workplace and provide an opportunity to act from within to improve compliance. To that end, the agreements establish a parity commission that is responsible for periodic inspection of wages and complaints. The trade union's actual presence in such establishments is unprecedented and viewed as a necessary stepping stone towards greater representational power in the future.<sup>63</sup>

From the employers' point of view, there are two components to the costs associated with these agreements: (a) the marginal progression of wages and welfare benefits, and (b) the costs of increased compliance with the minimum legal standards. From the unions' point of view, the effects of greater compliance are claimed to be twofold: within the collective domain and outside it.

<sup>60</sup> <https://noal.org.il/about/noal>.

<sup>61</sup> <https://noal.org.il/about/avoda>.

<sup>62</sup> Interview with the head of the trade union dept. in the Work and Study Youth Movement.

<sup>63</sup> *ibid.*

The secured and formalised access of employees to the trade union explains the former. These agreements also impact non-union establishments as the result of a spillover effect. First, youth who are moving from one workplace to another take with them the knowledge they have gained and the sense of entitlement to their wages and benefits. Second, employers who are concerned that they may become the target of an organising drive may try to demonstrate compliance with minimum rights, thereby refuting the trade union's claim that organising is necessary to satisfy the workers' rights.<sup>64</sup>

Given the numerous employers in the hospitality and restaurant sectors and the similar problems encountered by young workers in the various sectors, there is a significant advantage to a broad sectoral agreement. To overcome the employers' resistance, the union deliberately chose to organise the biggest fast food chains first. High public visibility should encourage these employers to act as leaders in the field, subsequently to be emulated by smaller employers. This strategy succeeded with two employers, but the attempts to negotiate an agreement in two others failed, including the symbolic attempt at organising at McDonalds, which is the largest and most visible chain.

A sector-wide agreement with an extension order is the only way to forge new norms for the sector. Enterprise bargaining can only serve as a launching pad or a model for others to follow. There are, however, two complications with such a strategy. First, there already is a sector-wide agreement with an extension order for reception halls (last negotiated in 2006). The 'minimum plus' agreement has the advantage of directly addressing some of the contested problems in the sector – the relationship between tips and wages, number of hours (minimum and maximum), night work and the like.<sup>65</sup> As noted at the outset, however, when the major problem in the sector is slack compliance, then the negotiations at the sectoral level are too far removed from daily practices to address the problem. Second, coordinating for the purpose of extending protection for youth requires a very broad notion of a sector that cuts across various establishments but with no tradition of being recognised as an industrial sector to target. The variations among the relevant establishments extend beyond just the focus on the employment of youth. Indeed, the current state of organising demarcates between fast food chains, coffee chains, reception halls and restaurants.

To summarise, as regards the work of youth, the hospitality sector is one in which enterprise bargaining is scarce and the main mechanism of coordination is the minimum statutory wages and benefits towards which agreements gravitate. There are no real substitutes for the coordination offered by sector-wide agreements in these sector(s). Coordination is visible in the programme

<sup>64</sup> *ibid.*

<sup>65</sup> Such sectoral agreements in the past had one major advantage – the guarantee of pension. However, since 2008 there has been a state-wide collective agreement with an extension order that secures pension for all employees in the country. The contribution of the sectoral agreement in this respect is therefore no longer of much importance.

developed by the trade union, but problems in carrying out the actual organising have not enabled it to carry out the strategy. Moreover, even if sectoral agreements can be concluded, they will not solve the overarching problem of lacking compliance.

#### V. CONCLUSION: INSERTING COORDINATION IN DECENTRALISED BARGAINING

With the decline in membership, trade unions are constantly seeking ways to extend their influence. There is a growing interest in organising workers in countries where such practices were neglected in the past, partially because of the broad coverage of collective agreements. Trade unions relied on the convenience of coordinated bargaining and were not sufficiently active in the field. But as trade unions are starting to correct past practices, organising drives are happening at the enterprise level.<sup>66</sup> It has been claimed that these organising drives contribute to the revitalisation of trade unions and considerably change the meaning of membership in and identification with the trade union as an agent that aids workers in actively pursuing shared goals. But with the enthusiasm over new enterprise bargaining, the advantages of coordinated bargaining across firms, within sectors and across sectors are being neglected. The current study has sought to identify partial coordination mechanisms in sectors where there are clusters of enterprise agreements, and to understand whether they can substitute for the traditional coordination of a sector-level agreement.

The strongest forms of coordination, leading to an almost complete substitute for a sectoral agreement, was found in the cellphone and insurance (providers, as opposed to agencies) sectors. These are characterised by:

- (a) Coverage: almost full coverage of the sector and potentially even fully comprehensive coverage, given the finite number of establishments.
- (b) Vertical coordination: the largest union dominates organising in the sector and is therefore responsible for most of the agreements. Internal hierarchy, a newly established policy on the General Histadrut's demands in bargaining and de facto organisational oversight of the negotiations all lead to a high level of uniformity.
- (c) Horizontal coordination: workers' committees that are active in the organisation drives share information; workers are informed through Facebook groups and are well aware of what workers in competing firms receive. There is an incremental pattern bargaining, although not in the American

<sup>66</sup> Mundlak (n 10). Paul De-Beer and Maarten Keune, 'Dutch Unions in a Time of Crisis' in Steffen Lehndorff, Heiner Dribbusch and Thorsten Schulten (eds), *Rough Waters: European Trade Unions in Time of Crisis* (Brussels: ETUI, 2016).

sense, or in the form of a strategically organised Blitz (ie, simultaneous proactive organising by the trade union), because the trade union does not push to cover the sector and remains responsive to local initiatives.

- (d) Market mechanisms serve for the purpose of coordination. Market-related institutions, such as a private company that provides detailed information on the prevailing wage levels (for a fee), and market constraints (level of competition, labour supply) prescribe the brackets that define the space for negotiations.

Another form of coordination was found in the public transportation sector, which adds to some of the above-listed components another option:

- (e) Strong state regulation of the sector limits the space of negotiations, leading to a greater level of coordination in bargaining.

The forms of coordination are compared in Table 4.1.

**Table 4.1** Comparison of the forms of coordination in the four sectors

	A Coverage	B Vertical coordina- tion	C Horizontal coordina- tion	D Market mechanisms	E State regulation
Cellphone sector HIGH	Comprehensive	One dominant union	Emulation by strong workers' committees	Information on wages on both the labour and management sides	No
Insurance companies MEDIUM- HIGH	Partial, but potentially comprehensive	One dominant union, but this may be changing	Emulation by strong workers' committees; variations between companies due to different modes of operation and size	Information on wages on both the labour and management sides	Strongly regulated sector that requires transpar- ency, although not neces- sarily with regard to labour conditions of most workers. A 'culture of response' to regulation

(continued)

Table 4.1 (Continued)

	A Coverage	B Vertical coordina- tion	C Horizontal coordina- tion	D Market mechanisms	E State regulation
Insurance agencies LOW	Very low and with no potential for full coverage	One dominant union, but this may be changing	Unknown at present	General market conditions. No particular method of coordination	Not regulated
Public transportation HIGH	Gradually becoming comprehensive	Multiple and competing unions	Some coordination, but partially inhibited by inter-union rivalry	Heavily regulated market	
Transport companies LOW	None → a sector agreement was concluded				
Fast food chains LOW	Low	One union, but concentration and fragmentation are applied	Weaker workers' committees. Major role is that of vertical coordination	Mostly around minimum wages and employment standards	None
Reception halls HIGH but slack enforcement	Scarce at the enterprise level <b>but there is a sector-level agreement</b>	One union	Weaker workers' committees. Major role is that of vertical coordination	Mostly around minimum wages and employment standards	None

The effects of the various mechanisms are difficult to quantify with precision. To the extent that coordination is expected to govern and equalise working conditions in the sector, there are indirect effects of enterprise bargaining, with partial coverage in the sector as a whole. For example, despite low levels of organising in the fast food sector, there is a spillover effect on employers who



seek to improve compliance with prevailing norms to prevent further organising attempts. Similarly, in the public transportation sector, where there is a shortage of drivers, unorganised companies cannot avoid the norms that have developed in the organised segment because drivers will prefer alternative employment opportunities.

To summarise, coordination that evolves from enterprise bargaining ranges from low to high, and is usually based on a conjunction of several factors. The more factors that are operating together, the higher is the level of coordination that can be reached.

Where the level of coordination is high, a sector-level agreement may be redundant. It may reduce transaction costs and relieve some of the tension between employers and employees that characterises enterprise bargaining (cell-phone and insurance companies). It can also aid in establishing a strong political basis that brings together employers and employees to lobby for political change (public transportation). But nonetheless, a sectoral agreement will not increase coordination levels in these sectors.

At the other extreme, where coordination is low, a sectoral agreement is necessary. The major factor responsible for the low levels of coordination and uniformity in the sector is the low level of coverage. Hence, this is crucial for insurance agencies, on-demand transport companies, and the fast food chains (and similar fields). These sectors feature at least some of the following characteristics: multiple employers, differentiation in employers' sizes and modes of operation, constrained profit margins and a surplus of labour supply. Another gain that can be achieved in sectoral agreements is when there is a need to coordinate employment standards across the boundaries of the firm, particularly in sectors where the workforce is highly mobile. This was demonstrated with regard to the public and on-demand transport sectors.

While sectoral agreements remain a useful form of coordination, they also have some disadvantages that can be partially addressed through enterprise bargaining. For example, a sectoral agreement may inhibit the development of new forms of service provisions (eg, the direct insurance companies, or the smaller and leaner cellphone companies); it may crowd out weaker companies (eg, insurance); and cannot function without a strong organisational basis at the enterprise level that ensures compliance (reception halls). Even as we recommend reconsidering the neglect of sectoral bargaining, it is important to be mindful of its drawbacks. Mirroring the challenge of coordination is the challenge of creating an active culture of solidarity and activism at the shop floor level.

