16 Balancing Flexibility and Rigidity

Do Unions Make Sense in the On-Demand Economy?

Seth C. Oranburg and Liya Palagashvili

A Unionization: Background

Unionization – the organization of workers to act collectively to obtain higher wages or better working conditions – has a storied history. While precursors to trade unions such as guilds existed before the Revolutionary War, the modern union did not come into its own until after the Industrial Revolution. As we move into a new economic era, the necessity and use of unions is once again called into question.

1 History of Unionization

Precursors to trade unions first emerged in the 1800s as journeymen associations attempted to set wage schedules for their trades, although early courts found criminal liability for these "conspiracies."[1] Unionization increased after the Civil War in part as a means to keep nonwhites and women out of skilled trades.[2] But unions did not truly come into the main of American life until the Great Depression, when labor unrest compelled the federal government to pass the National Labor Relations Act (NLRA).[3]

The NLRA authorized workers' rights "to self-organization, to form, join, or assist labor organizations, [and] to bargain collectively" and created the National Labor Relations Board (NLRB) to enforce the regime.[4] The NLRA, which announced that the official policy of the United States was "to encourage the practice and procedure of collective bargaining," was regarded as "perhaps the most radical piece of legislation ever enacted by the United States Congress."[5] Workers staged waves of factory occupations and

[1] Commonwealth v. Pullis, 3 Doc. Hist. 59 (Pa. 1806), also known as the Philadelphia Cordwainers case.

[2] James Gray Pope, *A Brief History of United States Labor and Employment Law*, The Oxford International Encyclopedia of Legal History 477–486 (Stanley N. Katz ed.) (2009) (hereinafter, "*History of Labor Law*"), at 480.

[3] National Labor Relations Act of 1935 §§ 151–169 (2012). *See also* Mark Barenberg, *The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation*, 106 Harv. L. Rev. 1379, 1389 (1993) ("[T] he opportunity for such a dramatic legislative initiative was generated by 'mass politics' in the form of popular electoral realignment, populist political organization, and mass labor unrest . . . . That opportunity was seized by loosely interconnected networks of political-technocratic entrepreneurs driven by progressive ideological commitment and ambition.").

[4] Kate Andrias, *The New Labor Law*, 126 Yale L. J. 2, 14 (2016).

[5] Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 Minn. L. Rev. 265, 265 (1978).

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sit-down strikes while President Roosevelt threatened to pack the Supreme Court with new justices if they did not uphold the NLRA's constitutionality.[6] These unorthodox tactics succeeded, and union membership in the manufacturing sector quadrupled in the first decade of the NLRA.[7]

But World War II changed the economy forever. Before WWII, America's role in the global economy was as primarily a supplier of raw materials and manufactured goods.[8] After the war, Europe was in shambles, and America (to whom the European nations owed a great deal of money) supplanted Great Britain as the financial center of the west as the dollar replaced the pound as the world's reserve currency. Meanwhile, the federal government curtailed union rights[9] and 27 states passed "right-to-work" laws that prohibit mandatory union membership and dues.

The American labor force changed dramatically this century, and unionization has fallen sharply in correlation with the shift from a goods to a services economy. In 1935, when the NLRA was passed, more American workers were employed in production than in services.[10] In 2013, over 83 percent of American workers were employed in the service sector.[11] Union membership as a percent of nonagricultural employment declined from a peak of over 35 percent in 1954 to under 12 percent in 2003.[12] Union membership in the private sector was only 6.7 percent in 2015.[13]

2 *Unionization in the On-Demand Economy*

Today, there is a debate regarding whether further unionization is needed in various sectors of the economy. Companies in the "on-demand economy"[14] (i.e., Uber, Lyft, Task Rabbit, Handy) have come under scrutiny for their employment practices.

Many workers supplying on-demand goods and services are classified as independent contractors as opposed to traditional employees. Traditional employees receive an IRS

[6] *History of Labor Law*, *supra* note 2, at 482.

[7] *Id.*

[8] Guiseppe Berlingieri, *Outsourcing and the Shift from Manufacturing to Services*, Winter 2013/14 CentrePiece 16, 16 (2014), http://cep.lse.ac.uk/pubs/download/cp413.pdf.

[9] For example, Congress passed the Labor Management Relations (Taft–Hartley Act) in 1947, which restricted some union activity and permitted states to enact "right-to-work" laws. In 1964, Congress passed Civil Rights Act, which prohibited unions from discriminating on the basis of race, religion, sex, or national origin. Labor Management Relations Act of 1947 29 U.S.C. § 141 (2012).

[10] U.S. Bureau of the Census, Series D 127-1411, Historical Statistics of the United States, Colonial Times to 1970, Part 1 at 4 (2016) (Year: 1935; Total Non-Farm Workers: 27:035; Mining: 897; Construction: 912; Manufacturing: 9069; Transportation: 2786; Trade: 5431; Finance: 1335; Other Services: 3142; Government: 3481. Total Goods: 10,878; Total Services: 9908 (in thousands)).

[11] Berlingieri, *supra* note 8.

[12] Congressional Research Service, RL 32553, Union Members Trends in The United States *(figure 1) at 11 (2004).*

[13] Megan Dunn & James Walker, U.S. Bureau of Labor Statistics, *Union Membership in The United States* at 4 (2006), www.bls.gov/spotlight/2016/union-membership-in-the-united-states/pdf/union-membership-in-the-united-states.pdf.

[14] Mike Jaconi, *The "On-Demand Economy" is Revolutionizing Consumer Behavior – Here's How*, Business Insider Mag., www.businessinsider.com/the-on-demand-economy-2014-7 (accessed May 31, 2018), (The definition used by the coalition of on-demand companies is as follows: "The On-Demand Economy is defined as the economic activity created by digital marketplaces that fulfill consumer demand via immediate access to and convenient provisioning of goods and services."). "Gig" and "sharing" economy have also been used to describe this platform.

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tax Form W-2, while contractors receive a Form 1099.[15] But the distinction between W-2 Employees and 1099 Contractors is much more than formal. Employees and contractors are treated differently under both tax and labor regulations. For example, employees enjoy protections under the Fair Labor Standards Act (FLSA), the Employment Retirement Income Security Act (ERISA), and the Family Medical Leave Act (FMLA), while contractors generally are not protected by these laws. Furthermore, and more importantly for the purposes of this paper, contractors do not have the same right as employees to unionize and bargain collectively.

Despite the ostensible tax and employment classification of on-demand workers as 1099 contractors, unions are now pushing for the right to represent these workers. Supporters of unionization claim this will allow on-demand workers to bargain for better wages and benefits, and this is necessary because contractors do not enjoy the benefit of employment laws. As one recent example, Seattle passed an ordinance granting labor unions the right to represent drivers for Uber (though Uber does not classify its drivers as employees). The U.S. Chamber of Commerce has sued to challenge the validity of this ordinance on several grounds (e.g., preemption by NLRA, antitrust violations), and the case is currently playing out.[16] In New York City, a group of drivers steered by the International Association of Machinists and Aerospace Workers created the "Independent Drivers Guild" in 2016. Uber has recognized and even funded the guild, but as part of the deal, Uber required that Machinists do not attempt to unionize drivers for five years.[17] The Guild's mission states: "The courts have thus far restricted app-based drivers from organizing as a traditional union, but we believe that the power of a union is workers banding together. With the Guild, we unite to win better working conditions and increase worker's earnings, now."[18]

B Unionization Economics

From an economic perspective, industry unionizations could have both large costs and substantial benefits, depending on the various conditions of the industry. Economists differentiate labor markets into cases that are monopsonistic (or oligopsonistic) versus cases that are competitive, and they draw different theoretical analyses for union harm or benefit depending on these labor market conditions. Unions provide benefits to workers when employers have much more power than employees. By unionizing, otherwise powerless employees can collectively protect themselves from an otherwise dominant employer. Indeed, union rules were developed in the 1930s to protect factory workers from monopolistic manufacturing employers who would unilaterally impose unduly

[15] *See* U.S. Internal Revenue Service, *Forms and Associated Taxes for Independent Contractors* (2017), www.irs.gov/businesses/small-businesses-self-employed/forms-and-associated-taxes-for-independent-contractors; Internal Revenue Service, *Depositing And Reporting Employment Taxes* (2017), www.irs.gov/businesses/small-businesses-self-employed/depositing-and-reporting-employment-taxes.

[16] Chamber of Commerce v. Seattle, 890 F.3d 769 (9th Cir. 2018) (partially reversing grant of Defendants' motion to dismiss and remanding for further proceedings only on antitrust claim).

[17] Miranda Kantz, *How Drivers Are Finally Outfoxing Uber*, WIRED (accessed May 25, 2017), www.wired.com/2017/05/how-drivers-are-finally-outfoxing-uber/.

[18] *About the IDG*, Independent Drivers Guild, www.drivingguild.org (Jun. 1, 2018).

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burdensome working conditions without commensurate pay or benefits. The original goals of union rules was to provide minimum and maximum amounts of hours to be worked so workers could not be exploited by powerful employers. Rigidity in hours and days worked, promotions, benefits, and other conditions of employment are the *sine qua non* of collective bargaining agreements (CBAs).

CBAs give workers certainty about these terms. Immutability is their nature and purpose. The economic literature is replete with examples of how CBAs create rigid rules for work, so this chapter will only briefly exemplify a few of the rules that are pertinent to work in the sharing economy.

While there are many different types of CBAs, we can best understand CBAs in general by looking at meta-analysis of such contracts. The most comprehensive meta-analysis of CBAs is found in the Bloomberg Law series entitled Basic Patterns in Union Contracts. Most recently in its fourteenth edition (1995), this analysis of over 400 CBAs from a variety of industries, type and size of unions, number of employees covered, and geographical areas shows that there are four provisions that are extremely common in traditional CBAs but particularly inapposite to the on-demand and gig economy.[19] To begin, 97 percent of CBAs limit discharge to "cause" or "just cause." All other discharge may be wrongful and is subject to a proceeding that generally have three or four steps. Almost all union CBAs require employers to provide life insurance, some form of medical coverage, and, anachronistically, pension plans. Retirement eligibility is almost always stipulated at age 65. More than half require "income maintenance" (required annual pay raises for everyone), and almost all provide for overtime pay (generally time-and-a-half) when work exceeds 8 hours per day or 40 hours per week, or when work occurs on a holiday or weekend. Seniority is generally the dispositive factor in hiring, firing, promotion, and layoffs. More than half of union employees governed by CBAs get five weeks of vacation per year, and over 80 percent enjoy four weeks per year of paid leave. These rigid rules may benefit workers in certain "monopsony" markets, but they also cause unemployment and higher consumer prices in other "competitive" markets.

1 *Unionization in Monopsony*

Traditionally, the argument for unionization has been strongest in the presence of lopsided bargaining power (i.e. very powerful employers and powerless employees). In economic theory, such "asymmetries" occur when labor markets have single *buyers* of labor – called "monopsonies" (in contrast with monopolies, which are single *sellers*). The classic example of such a monopsonistic labor market is when there is a large company in a small rural town that can exploit workers because workers do not have many other opportunities for employment. Related issues arise where a handful of employers that dominate a market are somehow able to collude to depress wages through their "oligopsony."

Generally, monopsony exists only for jobs in a narrow geographic region or that require a highly specialized skill set, since close alternative occupations are limited. The labor market for nurses, for example, has been cited in the literature as a classic case of monopsonistic power because nurses typically have one buyer: hospitals. As described by Link and Landon, labor markets for nurses approaches "classical oligopsony or

[19] Although the terms gig economy and on-demand platforms do not always overlap, in this chapter we use on-demand and gig economy interchangeably when there is overlap.

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monopsony. This was evidenced by the fact that over 70 percent of the hospitals in the United States are located in a one-hospital community while many other communities are serviced by only a few hospitals."[20] Other special industry examples approaching monopsonistic power are university professors (because of the specialized skill set), coal miners in the twentieth century, and baseball players subject to reverse clauses.[21] Reverse clauses bounded the player to the team, until the contract expired or unless the owner wanted to "free" the player. In other words, players were not "free agents" with the power to change teams. Other sources of monopsonistic power can arise if workers are ignorant of alternatives or incur high costs by changing jobs, or if employees have developed other ties to the employer or the geographic location.

Monopsony can depress worker's wages, benefits, and working conditions. By definition, monopsony means that employees are bound to a certain employer by skill, geography, or other reasons. Workers' dependence on a single employer gives that employer power to lower wages, limit benefits, and otherwise exploit that power asymmetry.

Labor unions are thought to ameliorate some of monopsony's harm to workers. Unions are organizations, backed by governments, that negotiate with businesses or other organizations on behalf of their union members (the workers). If companies are unwillingly to meet various standards that workers want, union members use strikes, sit-ins, and other tools to force the employer to meet such standards. Theoretically, these collective actions can lead to better terms for workers where unions induce pressure for wages increases, better benefits, and improved working conditions. Rees explains that unions are able to do this because "their ability to impose costs on management through strikes, slowdowns, or other pressure tactics, in the short run, are greater than the costs of the wage increase provided through collective bargaining.[22] In relatively monopsonistic labor markets, empirically, it has found that unionization provided greater wage and fringe benefits with registered nurses, practical nurses, and hospital secretaries and housekeepers.[23] From one study, the wage effect of unions on nurses is plus 8 percent, and plus 11–12 percent for hospital secretaries and housekeepers.[24]

2 *Unionization in Competitive Markets*

On the other hand, when labor markets are relatively competitive, the case for unions is "mixed" in terms of demonstrated benefits from unions, and demonstrated harms.[25]

[20] Charles Link & John Landon, *Monopsony and Union Power in the Market for Nurses*, 41 S. Econ. J. 649, 649 (1975).

[21] For university professors, *see*, Michael R. Ransom, *Seniority and Monopsony in the Academic Labor Market*, 83 Am. Econ. Rev. 221 (1993); for coal miners in the twentieth century, *see* William M. Boal, *Testing for Employer Monopsony in Turn-of-the-Century Coal Mining*, 26 RAND J. Econ. 519 (1995); for baseball players subject to the reverse clause, *see* Lawrence M. Kahn, *The Sports Business as a Labor Market Laboratory*, 14 J. Econ. Perspectives 75 (2000) and Gerald W. Scully, *Pay and Performance in Major League Baseball*, 64 Am. Econ. Rev. 915 (1974).

[22] Albert Rees, *The Effects of Unions on Resource Allocation*, 6 J. Lab. & Econ, 69, 69 (1963).

[23] Roger Feldman & Richard Scheffler, *The Union Impact on Hospital Wages and Fringe Benefits*, 35 Indus. & Lab. Rel. Rev. 196 (1982); Charles Link & John Landon, *Monopsony and Union Power in the Market for Nurses*, 41 S. Econ. J. 649 (1975).

[24] Feldman & Scheffler, *supra* note 22.

[25] For a theoretical and empirical analysis on differences of demonstrated benefits between monopsony and competitive labor markets, see Kip Viscusi, *Union, Labor Market Structure, and the Welfare Implications of Quality Work*, 1 J. Lab. Res. 175–192 (1990).

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With competitive labor market processes, economic theory suggests that employees are generally neither substantially underpaid nor substantially overpaid. If, in a particular circumstance, workers are underpaid, not only do they have an unusually strong incentive to search for and accept better jobs elsewhere, but so, too, do profit-motivated competing employers have strong incentives to seek out and recruit underpaid workers, whether by locating near these workers, offering them better pay, or taking other cost-effective measures to entice these workers. These processes of adjustment by both workers and employers generally push employment arrangements and worker pay up to competitive levels. This is not to say that in all competitive markets, at any given moment, wages are precisely efficient. Rather, in labor markets that are characterized by competition, there is a *tendency* toward this outcome. Contrast this with the monopsony. In monopsonistic labor markets, employers do not face strong incentives to increase worker pay, and they might decrease it.

This is again to say that unions can benefit workers in conventional monopsonistic labor markets. But according to economic theory, when unions enter into an otherwise normal labor market, they can pressure firms to provide wages, benefits, and working conditions that are above the competitive levels. Although above-market wages might sound good for workers, such market distortions, in theory, can harm nonunion workers, employers, and even consumers by creating dead weight loss to society.

Unionization can lead to above-market wages because unions "gain market power by obtaining a legal monopoly on the provision of labor services to a particular firm or industry."[26] The degree of impact by unions on prices is directly correlated with unions' power. Unions become more powerful if the firm does not have many alternatives to the labor supply or if other labor supplies are restricted. The main legal instrument that unions use to restrict employment conditions is the CBA. CBAs typically limit working conditions like hours and days worked, require an annual cost-of-living pay increase, limit firing to "cause," and have proceedings for employees who believe they were wrongly terminated. CBAs generally strengthen employee power. In a monopsonistic market, union-negotiated CBAs can restore power symmetry, but in competitive markets, CBAs can require wages above even the competitive levels.[27]

According to economic theory, one negative impact of a union in otherwise normal labor markets is creating unemployment. This is because unions can hold wages above the competitive level, thereby creating a wage floor. Now facing increased union wages, employers reduce their quantity demanded of unionized labor. On the supply side, the wage floors lead to an excess of the supply of workers. The net effect is the creation of unemployment.

Some economists also argue that higher unionized wages create lower wages for nonunionized workers because the supply of nonunionized workers increases, thereby depressing the wages in nonunionized sectors.[28]

[26] Paul A. Samuelson & William D. Nordhaus, Economics 320 (Snehi Kumari ed., 19th ed. 2010).

[27] Where unions are not powerful (i.e. unions cannot restrict the use of nonunion labor), then it is possible (absent other countervailing factors) that competitive forces would drive those firms with above-competitive wages out of the market. However, the use of legislation to preclude nonunion entry (i.e. signifying powerful unions) is one factor that would prevent some of these otherwise competitive forces

[28] H. Gregg Lewis, *The Labor Monopoly Problem: A Positive Paradigm*, J. Pol. Econ. (1951); W. Mellow, *Unionism and Wages: A Longitudinal Analysis*, Rev. Economics & Statistics (1981); For more recent empirical work, see Bernd Fitzenberger, Karstan Kohn, & Alexander Lembcke, *Union Densities and*

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CBAs almost always contain more than just wages. They include provisions on hiring and firing, seniority, benefits, and other stipulations. Provisions that create frictions in the mobility and churn over of labor (for example, by making it more difficult and costly to fire an employee), can benefit the employees, but these restrictions can also decrease productivity, and impose higher labor costs.[29] Some provisions in the CBAs can thus increase costs to employers which may be passed on to downstream consumers or limit purchases from upstream suppliers.

Empirically, scholars found that unions do increase unionized workers' wages, benefits, and working conditions.[30] But on the cost side, they found that greater unionization increases unemployment in the country, and specifically among females, young males, and older individuals.[31] Some studies found that although unions benefit unionized workers, this can come at the expense of harming nonunion members via the surplus of labor effect.[32] Other studies found that unions can help nonunion members through other mechanisms such as the threat of a union: when one company believes that its workers may unionize because another company unionized, it increases worker conditions and wages to appease the threat of unionization by workers.[33]

While some studies found that unions diminish productivity, economic efficiency, and labor market dynamism,[34] countervailing studies found that unions increase efficiency by reducing quit rates and labor turnover, which in turn lowers the cost of training new

Varieties of Coverage: The Anatomy of Union Wage Effects in Germany, 66 INDUS. & LAB. REL. REV. (2013) find both that union wages rise with union density in covered places, but also that higher union density is associated with lower wages in nonunionized firms. Fitzenberger, Kohn, and Lembcke discuss that this finding could either be because of the downward pressure on wages from an increase in labor supply in nonunionized sectors, or because of a decline in investment when union density increases.

[29] On diminishing productivity, economic efficiency, and labor market dynamism, *see* Robert DeFina, *Unions, Relative Wages, and Economic Efficiency*, J. LAB. ECON. (1983); on suboptimal deployment of labor through restrictive practices, *see* David Metcalf *Trade Unions and Economic Performance: The British Evidence*, LSE QUARTERLY 3 (1989); on limiting innovative and investment activities, see Connolly, Hirsh, & Hirshey, *Union Rent-Seeking, Intangible Capital, and Market Value of the Firm*, REV. ECONOMICS & STATISTICS (1986); Grout, *Investment and Wages in the Absence of Binding Contracts: A Nash Bargaining Approach*, ECONOMETRICA (1984); Hirsch and Link, *Labor Union Effects on Innovative Activity*, 8 J. LAB. ECON 8 (1987); on unions having negative impact on profitability, see Barry Hirsch, *Union Coverage and Profitability Among U.S. Firms*, 73 REV. ECONOMICS & STATISTICS (1991); Bronars, Deere, & Tracy, *The Effects of Unions on Firm Behavior: An Empirical Analysis Using Firm-Level Data*, 33 IND. REL. (1994); Pasquale Laporta and Alexander Jenkins, *Unionization and Profitability in the Canadian Manufacturing Sector*, 51 IND. REL. (1996); J. Machin and M. Stewart, *Trade Unions and Financial Performance*, 48 OXF. ECON. PAPERS (1996); Richard S. Ruback & Martin B. Zimmerman, *Unionization and Profitability: Evidence from Capital Markets*, 92 J. POL. ECON. 1134, 1134 (1984).

[30] Richard B. Freeman, *The Effect of Unionism on Fringe Benefits*, 34 INDUS. & LAB. REL. REV. 489, 509 (1981); Richard B. Freeman, *Individual Mobility and Union Voice in the Labor Market*, 66 AM. ECON. REV. 361 (1976).

[31] Giuseppe Bertola, Francine Blau, & Lawrence Kahn, *Labor Market Institutions and Demographic Employment Patterns*, J. POPULATION ECON. (2007); Edward Montgomery, *Employment and Unemployment Effects of Unions*, J. LAB. ECON. (1989).

[32] Lewis, *supra* note 27; Mellow, *supra* note 27; Fitzenberger, Karstan Kohn, & Alexander Lembcke, *supra* note 27.

[33] Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise of U.S. Wage Inequality*, 76 AM. SOC. REV (2011); JAKE ROSENFELD, WHAT UNIONS NO LONGER DO (2014).

[34] Robert DeFina, *Unions, Relative Wages, and Economic Efficiency*, J. LAB. ECON. (1983); David Metcalf (1989), *supra* note 28; Connolly, Hirsh, and Hirshey (1986), *supra* note 28; Grout (1984), supra note 28; Hirsh & Link (1987), *supra* note 28.

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workers and increases productivity.[35] In sum, the empirical debate on unions and productivity is vast, spanning over 60 years and including hundreds of studies with conflicting findings.

In attempting to reconcile some of the mixed findings on unions and productivity, *The Economics of Trade Unions* (2017) provides a comprehensive meta-analysis and sophisticated meta-regressions on the vast literature pertaining to the question of unions and productivity.[36] It reveals that factors such as industry, country, and institutional context matter for how unionization impacts productivity. The authors find that unionization has been beneficial in the United States for the construction and education industries,[37] that unionization has harmed productivity in the UK regardless of industry, and that unions harm productivity in more regulated labor markets than in less regulated labor markets (particularly in the manufacturing sector).[38] In other words, on this last factor, less regulated labor markets can moderate the negative aspects of unions.

In analyzing the channels through which unionization impacts productivity, the authors conclude that productivity is harmed through channels of technology and investment.[39] Specifically, they find a moderate negative effect of unions on physical capital investment and a large negative impact of unions on intangible capital (technology and adoption of it, stock of knowledge, and the know-how), concluding that "unions have an adverse association with productivity and productivity growth through the channel of investment behavior of firms."[40]

In terms of the labor channel, they conclude that less employee turnover is a mechanism by which unions have been found to improve firm performance, though this result is less robust than others given the small number of studies that have successfully disaggregated this employee channel.[41] As applied to the gig economy, however, reducing employee turnover may have a smaller impact on performance of firms. By its very nature, the gig economy is designed to have low costs of onboarding and offboarding employees. Therefore, the improvement that labor unions tend to bring to firm performance through lower employee turnover may have less impact in the gig economy.

Overall, the authors find strong evidence that unions negatively impact most firms' financial performance. This can adversely affect long-term investments and growth, to the extent that the lower financial performance comes from the channel of quasi-rents from long-lived assets, as Doucouliagos and Laroche (2009) have found.[42] However,

[35] Freeman (1976) *supra* note 29; Freeman & Medoff, What Do Unions Do? (1984); S.B. Vroman, *The Union–Nonunion Wage Differential and Monitoring Costs*, 32 Econ. Letters (1990); C. Bauer and J. Lingens, *Does Collective Bargaining Restore Efficiency in a Search Model with Large Firms?*, 113 Econ. J. 113 (2013); E. Barth, K. Moene, and F. Willumsen, *The Scandinavian Model – An Interpretation*, 117 J. Pub. Econ. (2014).

[36] Hristos Doucouliagos, Richard Freeman, & Patrice Laroche, The Economics of Trade Unions: A Study of a Research Field and Its Findings (2017).

[37] Though the authors indicate that studies that include technology in the regressions find less positive effect of unions and that when studies use physical output or efficiency as the "outcome variable" they find larger negative effects.

[38] Doucouliagos et al., *supra* note 35, at 40–71.

[39] *Id.* at 86–109.

[40] *Id.* at 109

[41] *Id.* at 110–129.

[42] Doucouliagos & Laroche, *Unions and Profits: A Meta Regression Analysis*, 48 Ind. Rel (2009).

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even when the focus is on firm performance, unions can have a positive impact. The case for unions is arguably strongest when there is clear lopsided bargaining power in favor of employers. Unions can restore equilibrium and lead to a more efficient outcome. In more competitive markets, there is more of a debate on how beneficial unions can be, and there are large adverse consequences to consider.

C The On-Demand-Economy Is a Competitive Labor Market, Not a Monopsony

The conditions that can lead to monopsonistic power do not exist in the twenty-first century on-demand economy. As discussed above, the classic monopsony occurs where a small rural town has only one employer or where a few employers collude to depress wages. This is virtually impossible in an economy that runs on the global Internet. Indeed, the on-demand economy exists on top of the existing traditional economy. More aptly named, the "gig economy" does not replace traditional work, but provides a competitive alternative to the nine-to-five.

One of the interesting features of the gig economy is that it is not just one industry. Companies from a variety of industries including transportation, housing, food and dining and retail are all in the gig economy. On-demand platforms like Uber, Lyft, Airbnb, TaskRabbit, Handy, etc. generally do not require extensive on-boarding or particular pre-requisite skills, so workers can easily enter and exit these platforms – and they do.

Gig workers typically do not work for just one on-demand platform. Perhaps because labor entry and exit barriers are so low, many companies in this space within the same industries and across industries compete for similar workers. In the ride-sharing space, drivers are typically simultaneously working with Uber, Lyft, Juno, and Via. For example, in a brief filed on behalf of Lyft, a random survey of 10,000 California Lyft drivers found that over half the drivers have driven with another ridesharing company.[43] Moreover, 83 percent of drivers reported driving with Lyft and another ridesharing company in the same week, and of those driving with another ridesharing company in the same week, 75 percent reported they drove with another ride sharing company besides Lyft *in the same hour*.[44] An online survey of 1,200 ridesharing drivers, which was not produced on behalf of any ride sharing company, found that nearly 80 percent of Uber drivers have signed up for two or more services with companies such as Lyft, Postmates, DoorDash, UberEats, and Amazon Flex.[45]

This sort of "multi-homing" (where a user frequently connects to more than one network)[46] is the norm in the gig economy. Workers can sign on up on Handy or on competing on-demand platforms like Amazon Home Services, TaskRabbit, and Fiverr as well as with traditional, local management companies that staff cleaners (i.e. those not in

[43] Declaration of Simona A. Agnolucci in Support of Lyft Inc.'s Brief Regarding Preliminary Approval of Class Action Settlement (Case No. 3:13-cv-04065-VC) at 2.

[44] *Id.* (emphasis added).

[45] *See* "The Ride Sharing Guy," https://theridesharegu y.com/2018-uber-and-lyft-driver-survey-results-the-ride share-guy/.

[46] *See* Jean J. Gabszewicz & Xavier Y. Wauthy, *Two-Sided Markets and Price Competition with Multi-Homing*, (CORE discussion Paper 2004/30, May 4, 2004), http://webdoc.sub.gwdg.de/ebook/serien/e/CORE/dp2004_30.pdf.

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on-demand space). Multi-homing indicates competition between on-demand platforms and between on-demand platforms and traditional bricks-and-mortar employers.

On-demand companies not only contend with multi-homing; they also compete with each other for labor, and with the traditional (non on-demand) companies, too. Handy is competing with the local companies for the same housekeepers and handymen (and for customers); in some markets Uber is competing with taxicabs for the same drivers; Cleanly is competing with local wash-and-fold service providers; Soothe and Urban Massage are competing with each other and the local salons and massage spas for massage therapists. Competition is fostered where gig workers might switch to other on-demand platforms or to traditional non-gig full-time employment.

A recent report found that as the traditional labor market has strengthened, this has narrowed the pool of likely gig economy participants – indicating there is competition for workers between traditional and gig economy workers.[47] The gig economy is thus anti-monopsonistic with regards to the traditional economy.

In fact, by virtue of not having a physical location where workers have to "clock-in" to work, the on-demand economy can ease the instances where large companies in small towns exercise monopsony power. This is because on-demand economy opportunities present an alternative option for workers without workers having to physically move. For example, in a monopsonistic "company town," where workers are tied to a particular location because moving costs are high or because of family and community reasons, on-demand companies present alternative work arrangements for them without workers having to physically move. This will exert pressure on employers in the "company town" to increase wages because they now must compete with on-demand companies. That is, the presence of on-demand economy opportunities in a particular city function as if a new company has opened up. On-demand platforms introduce competition in otherwise monopsonistic labor markets. In this way, the sharing economy lessens the benefits of unions in such markets.

Monopsonistic power can arise when workers have a specialized skillset, but this condition does not describe the sharing economy in general. Gig jobs usually pertain to driving (Uber, Lyft, Juno, etc.), cleaning or other tasks (Handy, TaskRabbit, Cleanly), dog walking (Wagz), valet services (Luxe), and delivery (Postmates, GrubHub, Cleanly, InstaCart, etc.). These are typically considered low-skilled labor, and the consensus in the economics literature is that labor markets in the United States, especially those for low- to medium-skilled workers, are quite competitive.[48] There are some companies, such as Catalant, that create an on-demand feature for services of specialized consultants, but they also operate in a competitive labor market for consultant services, with companies such as McKinsey, Bain, Boston Consulting Group, and Deloitte as the largest firms in this space. Since gigs generally do not require specialized labor, and unspecialized labor generally operates in a competitive market, the gig economy is less likely to be monopsonistic or oligopsonistic.

[47] Diana Farrell & Fiona Greig, *The Online Platform Economy: Has Growth Peaked?*, JP Morgan Inst. 2, 3 (Nov. 2016), www.jpmorganchase.com/corporate/institute/document/jpmc-institute-online-platform-econ-brief.pdf.

[48] Peter Kuhn, *Is Monopsony the Right Way to Model Labor Markets? A Review of Alan Manning's Monopsony in Motion*, 11 Int'l J. Econ. Bus. 369 (2004); Tyler Cowen, Tanner Lecture Comment on Elizabeth Anderson, Feb. 17, 2015.

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In discussion of monopsonies, there are have been efforts to use job search costs as a source of monopsony power. The argument is that even if the geographic or specialized skill set conditions are not present, monopsonistic power can arise when it is difficult for employees to know about and find other jobs.[49] In a similar vein, finite turnover and hiring rate, or other aspects of high costs of changing a job, are all sources of potential monopsonistic power. However, none of these are present in the sharing economy. High turnover rate and high hiring rates are what define many of these industries. A J.P. Morgan Chase study found significantly high churn for gig economy workers: one in six workers in every given month is new, and three in six gig economy workers exit within one year.[50] Contrast this with the Bureau of Labor Statistics showing that traditional employees' median length of time with a current employer is over four years.[51] At Uber alone, Jonathan Hall and Alan Krueger report that there are thousands upon thousands of new active drivers added each month: in November 2014, there were 32,000 new active drivers added; in December 2014, there were almost 40,000 new active drivers added.[52] In total, from a base of near zero in 2012, there were more than 160,000 active drivers by 2015 in the United States.[53] While there were no global numbers in this report, the former CEO of Uber has discussed how Uber adds "hundreds of thousands" of drives globally each month.[54] Hall and Krueger also report that about 45 percent of Uber drivers exit after one year of starting.[55]

Lastly, another conception of monopsonistic labor market conditions comes from Alan Manning (2003), who argues that the existence of job search costs in finding employment implies that there is a monopsony even when employers are small relative to the labor market. Several scholars have pointed out problems in Manning's model and the assumptions upon which it rests.[56] However, even this condition would not apply to the twenty-first century economy, and certainly not to working in the sharing economy given the countless examples of the competition and efforts spent among on-demand companies to recruit workers.[57] As one example, Uber spent $86.6 million on "driver

[49] Alan Manning, Monopsony In Motion: Imperfect Competition In Labor Markets (2003).

[50] Farrell & Greig, *supra* note 36.

[51] U.S. Bureau of Labor Statistics, USDL-16-1867, *Employee Tenure In 2016* (2016) www.bls.gov/news.release/pdf/tenure.pdf.

[52] Jonathan V. Hall & Alan B. Krueger *An Analysis of the Labor Market for Uber's Driver-Partners in the United States*, 71 I.R.L. Rev. 705, 707 (2017).

[53] *Id.*

[54] Ellen Huet, *Uber is Adding Hundreds of Thousands of New Drivers Every Month*, Forbes (Jun. 3, 2015 11:05 PM), www.forbes.com/sites/ellenhuet/2015/06/03/uber-adding-hundreds-of-thousands-of-new-drivers-every-month/#58375b79655e.

[55] Hall & Krueger, *supra* note 41, at 708.

[56] Kuhn *supra* note 37, at 376, points to a number of deficiencies in Manning's model and illustrates how the entire monopsony claim regarding job search costs is predicated on unrealistic assumptions about diminishing returns to scale in recruiting workers. Kuhn also argues that, even if these assumptions about a monopsony might hold in the very short run, the effect disappears in the medium to long run. He explains that the empirical evidence suggests it is quite unreasonable to claim that any individual firm in a labor market as large as those of the United States and United Kingdom will have monopsonistic characteristics in the long run. Kuhn (at 376) concludes that the presence of a monopsony in U.S. and U.K. labor markets is highly unlikely "unless one focuses on workers with very specific skill types in very defined geographical areas."

[57] For example, see case study of how Uber employed controversial tactics to "steal" Lyft drivers: Casey Lewton, *This Is Uber's Playbook for Sabotaging Lyft*, The Verge, (accessed Aug. 26, 2014), www.theverge.com/2014/8/26/6067663/this-is-ubers-playbook-for-sabotaging-lyft.

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incentives" in 2014, and $130.1 million driver incentives in the first half of 2015. Uber also offers extensive sign-up bonuses, and referral bonuses – as one extreme example, in Singapore, Uber offered $2,500[58] for a single referral.[59]

Furthermore, Manning's book was published as Internet job search tools and recruitment were taking off. In the years since, search costs and frictions have been reduced, and no credible claims have been made that the trend will be reversed.

Therefore, the conditions that give rise to monopsony power are virtually nonexistent in the on-demand space. The discussion here does not indicate that workers on the on-demand platform face no problems. They do face problems, but these are a fundamentally different set of problems and conditions than what labor unions are set out to solve. Indeed, the gig economy solves some traditional problems in the economy. By introducing competition, on-demand platforms obviate the need for unions. Therefore, unions may not only be unnecessary, but actually harmful, in gig economy.

D The On-Demand Economy Requires Flexibility

Unions may provide many beneficial work arrangements, though they can come at the cost of rigidifying labor markets. But this rigidity is antithetical to the flexible on-demand gig economy. Gig jobs are by nature flexible, and they provide a competitive alternative to nine-to-five work that also imposes competitive pressure on otherwise monopsonistic labor markets. In other words, by its very definition, the on-demand economy requires flexibility.

The need for flexible labor supply in the on-demand economy is best illustrated by its price system. The most unique feature of on-demand business models is that the companies generally utilize an algorithm that matches supply and demand. To do this, companies require a flexible labor supply because when demand is high, they need quantity supplied to instantaneously increase to meet the greater demand. In markets and in the algorithm of the business models, this is done through the price system. When demand is high, the algorithm generates a higher price per unit to incentivize an increase in the quantity supplied of the good. This strategy is called "dynamic pricing."[60]

Take Uber for example. Within the algorithm, there is a built-in incentive structure that increases the cost to riders and the pay to drivers (i.e. surge pricing) to encourage drivers to provide rides when that service is needed most, and this instantaneous supply-demand matching requires a flexible labor model (along with a nonstandard wage and compensation structure). That is the core of Uber's business model, and it is functionally different to traditional businesses, such as taxicabs, even if taxicabs use an app (as they do in NYC).

In fact, this difference is precisely why economists Judd Cramer and Alan Krueger found that the capacity utilization rate – measured by "the fraction of time a driver has a fare-paying passenger in the car while he or she is working, and by the share of total miles

[58] *Driver Referral Program in Singapore*, Uber, www.uber.com/en-SG/drive/resources/referrals/ (accessed Jun. 13, 2018).

[59] This is not to say that workers have always benefited from the decisions to sign-up with companies such as Uber and Lyft, rather that the presence of these programs indicates there is competition and effort directed to recruit workers.

[60] Jonathan Hall & Chris Nosko, *Dynamic Labor Supply in the Sharing Economy*, (U. Chicago Working Paper, 2016), www.sole-jole.org/16433.pdf.

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that drivers log in which a passenger is in their car"[61] – is significantly higher for UberX drivers than for taxi drivers.[62] That is, "UberX drivers spend a significantly higher fraction of their time, and drive a substantially higher share of miles, with a passenger in their car than do taxi drivers."[63] The paper concludes that part of the reason Uber drivers are able to do so is because Uber's flexible labor model and surge pricing more closely match supply with demand throughout the day.[64] Thus, even "cabs with an app" are still functionally different than Uber (or Lyft) because cabs and other traditional for-vehicles have workers drive around during a given period of time in a given location, waiting for an app or dispatcher to connect them.

Furthermore, in another paper studying how drivers respond to surge pricing, M. Keith Chen and Michael Sheldon conclude that: "Uber partners both drive at times with higher demand for rides, and dynamically extend their sessions when surge pricing raises earnings."[65] Uber drivers are able to respond to the surge pricing because their smartphone interface "allows them to know current prices and session statistics like cumulative earnings, time, and trips."[66] Competitor companies such as Lyft and Juno also include this feature. Companies outside of ride-sharing, such as Handy, also have a "peak pricing" algorithm that incentivizes more Handy cleaners to supply their services at popular times.[67] Economists Jonathan Hall and Chris Nosko provide another investigation of the impact of Uber's dynamic pricing strategy. They find that when demand increases, dynamic pricing allows for quantity-supplied to meet the demand, and when they model a hypothetical case with no surge pricing, this matching effect no longer holds. Hall and Nosko then quantify the resulting inefficiencies in a world with no surge pricing.[68]

E Union Rigidity Is at Odds with On-Demand Flexibility

Because the on-demand economy requires a flexible labor supply to match supply and demand, union rules about when and where work may occur are at odds in this space since they impose greater rigidity on labor. Moreover, a key reason workers participate in the on-demand economy is to set their own schedules, evidencing that rigidity is opposed to their interests.

1 On-Demand Is Not Nine-to-Five

Consider the paid vacation time that most CBAs require. On-demand companies do not require workers to work at any time. On-demand workers are generally free to take

[61] Judd Cramer & Alan B. Krueger, *Disruptive Change in the Taxi Business: The Case of Uber*, 106 Am. Econ. Rev. 177, 177 (2016).
[62] *Id.* at 179.
[63] *Id.* at 177.
[64] *Id.*
[65] M. Keith Chen & Michael Sheldon, *Dynamic Pricing in a Labor Market: Surge Pricing and Flexible Work on the Uber Platform 13*, (UCLA Anderson Working Paper, 2015), www.anderson.ucla.edu/faculty/keith.chen/papers/SurgeAndFlexibleWork_WorkingPaper.pdf.
[66] *Id.* at 15.
[67] *What Is Peak Pricing?*, Handy, https://help.handy.com/hc/en-us/articles/219851127-What-is-Peak-Pricing-, (last visited Jun. 13, 2018).
[68] Hall & Nosko, *supra* note 48.

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50 days of vacation, to never work a holiday, to never work overtime, or to work every Sunday. How would a rule for time-and-a-half on Sundays distort Uber's surge pricing model? If a CBA were to require that on-demand companies forbid workers from working on vacation days, then this would deteriorate the on-demand feature of on-demand companies. The main feature of the industry is that consumers can get a ride, cleaning services, food, laundry services, or dog walking at any time they need it; they get it "on demand." A union rule forbidding workers to voluntarily work on holidays would harm the essence of the on-demand services. And more generally, this type of rule is not applicable to cases where these on-demand companies do not set requirements for their workers on how many hours or how many days a week they need to supply their services. This rule is a better fit in a context where employees were forced to work holidays, for long hours, and with little vacation time off.

Of course, it is possible that gig economy "unions" could have an entirely different focus from traditional unions. For example, the Independent Driver's Guild, a quasi-union for Uber drivers, has organized campaigns to permit tipping and the ability to opt out of Uber Pool (a service that allows shared rides with other passengers). But while these ambitions are unequally tied to Uber's business model, they essentially amount to the traditional priority of seeking higher pay. Other IDG efforts more clearly reflect agenda items similar to traditional union priorities, such as trying to get health care coverage for all drivers. Moreover, traditional unions such the New York Taxi Workers Alliance and the Amalgamated Transit Union are vying for the opportunity to represent Uber drivers alongside their representation of workers in the traditional economy.[69] Therefore, it seems that gig-economy unions can be analyzed as if they would seek collective bargaining agreements similar to those sought by unions in traditional economies.

The 8-hour workday and 40-hour workweek do not make much sense because on-demand workers have the freedom to work any hours they like, whenever they want to work them. They can take time off for long periods of time. In fact, most drivers working for Uber (85 percent) work less than thirty-five hours a week for Uber.[70] And according to a Benenson Strategy Group survey for Uber drivers, 69 percent of drivers have other full-time or part-time work and half of Uber drivers use the platform for less than ten hours a week.[71] Data from the recent Lyft California lawsuit also indicate that less than 1 percent of California Lyft drivers (755 out of 150,000) worked thirty or more hours in at least half of the weeks they drove with Lyft.[72] And, over 100,000 people (more than two-thirds of the class members) "have driven less than sixty hours in total for Lyft."[73]

[69] Will Bredderman, *The Other Uber Fight: Unions Brawl to Rep Drivers*, Crain's New York Business (Jun. 14, 2018).

[70] Jonathan v. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States* 18 (Princeton U. Working Paper No. 22843, 2015).

[71] *Uber: The Driver Roadmap* 2.0, Benensen Strategy Group, www.bsgco.com/insights/uber-the-driver-roadmap, (last visited Jun. 14, 2018).

[72] Cotter v. Lyft Inc., 176 F. Supp. 3d 930, 939 (N. D. Cal. 2016) (Order Den. Mot. for Prelim. Approval of Class Action Settlement).

[73] *Id.*

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2 *On-Demand Workers Prefer Flexibility*

Moreover, one of the main reasons workers join the on-demand platform is precisely because they desire the flexibility of the lifestyle.[74] They may desire to escape the rigidity of traditional labor arrangements. For example, survey data of Uber drivers shows that 73 percent of the drivers said they would rather have a job where they choose their own schedule and where they are their own boss, rather than the traditional model of a steady nine-to-five job with some benefits and a set salary.[75] Furthermore, 63 percent of Uber drivers said they specifically use Uber to have more flexibility so they can balance work and family.[76] Drivers for Lyft look similar. A survey of 3,100 Lyft drivers found that 82 percent of Lyft drivers agreed or strongly agreed with the statement "I like being an independent contractor" and 99 percent of Lyft drivers agreed with the statement "I like to choose when I work."

Furthermore, women particularly benefit from the flexibility of the on-demand economy.[77] This type of lifestyle is especially important for women, who often have family care responsibilities, which they need to balance within the confines of a traditional nine-to-five workday. In a survey of 2,000 US-based female gig workers, the study found that 32 percent of women indicated that they left their full-time jobs for the gig economy because they wanted more flexibility, and another 28 percent indicated that they needed more time to care for a child, parent, or relative.[78] When women were asked to compare the top benefits of being a gig worker, 96 percent placed "flexibility" as the primary benefit.[79] The qualitative answers in the report also indicate the freedom women see in this type of work and importance in having opportunities to earn income outside of traditional workplace.

3 *On-Demand Strikes*

One of the main "sticks" unions carry is the ability to strike and put pressure on employers to agree to certain terms or to change working conditions and pay. Strikes impose large costs on employers as they halt production. The strike pressures employers to acquiesce to union demands. But strikes may be less effective on the Internet than in person. First, striking in the on-demand space is offset by the pricing algorithm: when many workers leave the platform, prices and wages increase, attracting more workers until an equilibrium is reached. Second, strikes are more effective in person, where striking

[74] Elka Torpey & Andrew Hogan, *Working in a Gig Economy*, Career Outlook, U.S. Bureau of Labor Statistics, www.bls.gov/careeroutlook/2016/article/what-is-the-gig-economy.htm.

[75] *See supra* note 57 ("If both were available to you, at this point in your life, would you rather have a steady 9-to-5 job with some benefits and a set salary or a job where you choose your own schedule and be your own boss?").

[76] *Id.*

[77] Natasha Singer, *In the Sharing Economy, Workers Find Both Freedom and Uncertainty*, N.Y. Times (Aug. 16, 2014) www.nytimes.com/2014/08/17/technology/in-the-sharing-economy-workers-find-both-freedom-and-uncertainty.html; Paul Merrion & Fareeha Ali, *Making Inroads: Women Cabbies on the Rise*, Crain's Chicago Business, (Sept. 27, 2014), www.chicagobusiness.com/article/20140927/ISSUE01/309279976/making-inroads-women-cabbies-on-the-rise.

[78] Hyperwallet, *The Future of Gig Work is Female*, Hyperwallet Ecommerce Marketplaces, 1, 9, (May 3, 2017), www.hyperwallet.com/app/uploads/HW_The_Future_of_Gig_Work_is_Female.pdf.

[79] *Id* at 15.

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and picketing is visible. But the on-demand economy functions via apps and web sites, not at physical locations. Therefore, unions' most powerful stick, striking, can be masticated by decentralized work, a hallmark of the gig economy.

Again returning to Uber as an example, if some workers went on strike, that would incentivize other workers to supply more hours driving. When there is a decrease in the supply of workers (from those striking), this would increase the price per ride (i.e. surge pricing), and thus encourage other drivers to go out and work. Theoretically, if surge-pricing is prolonged, this would incentivize new drivers to enter the platform.

Furthermore, as Judge Richard Posner points out, one of the unique features about strikes is that the form of picketing deters other employees from working during strikes.[80] In a picket strike, employees protest outside of a physical location. Everyone can see who is striking and who is not. This pressures other colleagues to strike as well because, once the striking workers return, they will be working side to side with these same people who may have decided not to strike. This social mechanism endogenous to picketing allows for more successful strikes. History confirms that picketing outside a physical location can encourage conformity among worker-strikers.

However, picketing is absent in the on-demand economy because there is no physical location workers must be, which weakens this traditional sanctioning mechanism. In other words, whether workers are striking or not is not "public" information, since the striking picketers do not see other non-striking colleagues face-to-face when they're entering the building to work, as would be the case with a traditional job.[81] This anonymity reduces the pressure for workers in the on-demand space to strike, and they can continue going to work while a "strike" is happening. Therefore, the strike is weakened as an effective tool for change since the firms retains a greater portion of their contractors still working for them.

Thus, taken together, traditional union agreements not only would harm the on-demand economy, but also weaken the enforceability and strength of these rules in on-demand economy space.

F Conclusion

Unions are a powerful force for workers' rights where an overly powerful employer could otherwise force workers to work around the clock, for too little pay, or in unsafe conditions. Unions can also empower workers to exercise their opinions vis-à-vis management. At the same time, powerful unions that restrict competition and use of non-union labor can cause labor markets to become more rigid and harm labor mobility and flexibility. Since unions can be helpful or harmful, depending on various market conditions, it is important to consider the market conditions of the gig economy when thinking about rights for such workers to unionize.

The nature of work in the gig economy is fundamentally different from work in the traditional economy, and many of the problems that traditional unions sought to solve do not exist in the same nature as in the gig economy. For example, for most of the gig economy jobs, work is at-will and on-demand, and concerns about guaranteed eight-hour days or mandatory overtime hours are inapposite. Elaborate protocols for hiring and

[80] Richard Posner, *Some Economics of Labor Law*, 51 U. Chi. L. Rev. 988, 1005–1006 (1984).
[81] Though one area where there could be picketing is by airport waiting areas.

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firing that may protect skilled workers may instead interfere with the low barriers of entry and exit for gig economy work, where it is valuable to easily "sign-up" or "deactivate" from the various different platforms and work with many different platforms at the same time.[82] Concerns about wage rates are less in gig economy jobs where workers set their own "wages" and rates to charge for the various services they provide (i.e. TaskRabbit, Thumbtack); indeed, a union requiring all "Taskers" to receive the same pay for a given service would reduce the incentives to gain elite status on those platforms. Furthermore, gig economy workers are more heterogenous than traditional workers in that while some of them might be working full-time for one platform, others are multi-homing on various platforms or using a platform for supplemental income, so homogenous and mandatory benefits (which come at the expense of higher pay) for all gig workers would make it hard for non-traditional workers to benefit from the gig economy. Therefore, the traditional solution of unionization and the traditional aspects of CBAs may not be applicable as the way forward for this new economy.

This does not mean that gig economy workers face perfect conditions. For example, some gig economy workers do not have an effective channel or avenue to express dissatisfaction, or face problems of "instant deactivation" techniques,[83] or lack adequate knowledge and upfront information about the cost-side of their gig work (i.e. some Uber drivers have expressed that they did not fully understand the cost/expense of driving and car amortization). Of course, gig economy workers also do not receive health and retirement benefits as most traditional employees do.

These sets of problems require a set of solutions that should likely come outside of traditional unionization techniques[84] and traditional CBA agreements because the gig economy is predicated on having a flexible labor supply that adjusts to real-time demand. Such adjustment is not possible where union collective bargaining agreements restrict wage changes, hiring and firing, maximum and minimum hours worked, layoffs, promotions, etc. It is certainly possible that CBAs for gig economy workers will look fundamentally different than traditional CBAs. However, to the extent that unionization and CBAs in the gig economy operate on a similar framework of creating rigid rules that often involve restricting prices or hours-worked and restricting labor mobility via hiring and firing conditions, then it will likely threaten the existence of the gig economy, which needs flexibility of labor supply. This can harm the value of the on-demand economy and reduce the opportunities for people to earn a living or engage in a "side-hustle" on these platforms. Solutions in this new economy should look beyond traditional unionization techniques and should be open to more innovative approaches that can minimize harm while still addressing the needs of gig economy workers.

[82] However, there was a problem that in the early days of Uber, drivers signed up for Uber under potentially false advertising claims, and bought new cars specifically for a job with Uber. These investments and high-fixed costs did create a barrier to exit for Uber drivers.

[83] In some cases, this is warranted, as sexual harassment claims instantly 'deactivate' a driver to prevent this particular driver to be matched with another rider.

[84] For example, there is discussion of reforming labor law to move toward portable benefits solutions that are not tied to employment. And, interestingly, portable-benefits are already beginning to arise in the marketplace place for retirement benefits. Companies such as Honest Dollar and Nestana are providing competitive individualized 401K benefits plans to contractors and freelancers.

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