Is there policy delivery variation across the administrative regions of the National Labor Relations Board?

Michele M. Hoyman, Ph.D.
Political Science Department
The University of North Carolina at Chapel Hill
hoyman@unc.edu

Diane Schmidt, Ph.D.
Political Science Department
Cal State University, Chico
dschmidt@csuchico.edu

Jamie R. McCall, M.P.A.
Public Administration Ph.D. Student
North Carolina State University
jamiermccall@gmail.com

ABSTRACT

This study is an examination of National Labor Relations Board charges filed and findings of cause (merit rate) across 33 administrative regions. Two frames of analysis are considered: a national set of rights framework, positing that the NLRB will have no variation across its administrative regions, and a federalist framework, which proposes the bureaucracy is porous and will be subject to regional variation. The research suggests a federalist framework, with notable variations by NLRB region both in charges filed and merit rate. The authors found that institutional context, such as the 14b status of the region, is associated with low levels of filing activity. In contrast, the merit rate was not influenced by the institutional context of the region, but by total investigation time and the identity of the charging party. Finally, some regions have a pro-labor and some have a pro-management leaning in the disposition of their unfair labor practices.

I. INTRODUCTION

This study examines variation in the number of charges filed with the National Labor Relations Board (NLRB) by administrative region. The National Labor Relations Board is the enforcement agency for the National Labor Relations Act (2000). A charge is an allegation that there has been a violation of the National Labor Relations Act (NLRA), U.S.C. § 151–169, in other words an allegation of an unfair labor practice (u.l.p.). This paper also examines variation in the rate at which the charges are found to have cause, known as the merit rate. The merit rating is a legal finding of an unfair labor practice or a violation of the NLRA.

Our analysis of NLRB variation provides a theoretically rich way of understanding whether employees and employers have a substantively important national set of rights under NLRA Section 7 or a federalized implementation of them that overrides universal rights and connotes a porous institutional culture. This echoes the work of other scholars in their analysis as to whether the bureaucracy is a neutral administrator (Weber 1965) or a political actor, porous to its environment (Rourke 1984). Additionally, it sheds light on whether labor rights are de facto national rights in the U.S. or are subject to the dictates of diverse regional institutional or organizational culture – including political predispositions. When considering the national labor law it is interesting to note that Compa (2004) has argued that, because of weak penalties and administration, United States labor law may not meet international human rights standards. Given the weakness in the law, we note that our examination of whether or not regional variation exists in NLRB regions may further exacerbate these perceived weaknesses in the law.

Beyond theoretical applications, there is an additional reason why we believe this study is important: variation in merit findings is more than just an academic issue. These findings could provide practical insight for practitioners, labor organizers, and management attorneys. In the same manner that interest groups go "venue shopping" among circuit courts, if substantial regional differences exist then this research can add to the practical understanding of the field and offer interesting avenues for further research. This study could add to the practical guides such as Frankiewitz's (1995) book entitled *Winning at the NLRB* and Busman's union representative's guide (1984). If variation indicates that the probability of success (merit finding) is differential across NLRB regions, then employers and unions may engage in strategic planning for case filings so that they file in institutionally friendly venues whenever possible or where jurisdiction is relevant. This opportunity will be important for the parties involved because it may be critical in determining whether a party gets access to what are supposedly federally guaranteed rights under the Labor Act. A finding of this sort would refute the presumption that there is universalism in the implementation and adjudication of disputes involving the NLRA.

Compliance with regulatory agencies in the United States is not enforced by requirements that companies must file compliance reports, although this is the case in some other countries. The NLRB is not proactive in its investigations; it cannot instigate a charge to compel compliance. There are three potential outcomes for a charge that has been filed: 1) dismissal by the NLRB for lack of evidence; 2) finding cause, in which the NLRB finds evidence of an u.l.p.; or finally 3) withdrawal by the party filing the charge. There are two stages involved in enforcing compliance with the NLRA: the first is filing a charge that the NLRA has been violated; and the second is the investigation of the alleged unfair labor

practice by the NLRB and finding of merit or dismissal. The first can be seen as pro-compliance activity and the latter as a pro-compliance outcome. Filing is a necessary but not sufficient condition for compliance. Filing a charge *and* having it found to be meritorious are the necessary and sufficient causes for compliance. We ask two key empirical questions: 1) is there variation in filing rates, and if so, is this variation linked to institutional context, and 2) is there variation in merit rates, and if so, what factors explain that variation? We stress the need to examine both filing activities and the NLRB's finding of merit because the NLRB only investigates and enforces the NLRA if a charge is filed.

II. ANALYSIS FRAMEWORK OVERVIEW

There are two frameworks through which we can study this phenomenon. The first is the National Rights framework that posits the right to organize and engage in collective bargaining is a nationally guaranteed substantive right. The original act is characterized by what Gross (1974) calls a pro-worker and pro-collective bargaining rather than a neutral broker between labor and management. Regulatory decisions, under this framework, would be universally implemented with a neutral bureaucracy enforcing it (Weber 1965). This hypothesis is the null hypothesis: it posits that there is no variation in charge filing or in merit rates across regions. In practical application, the National Right framework holds that if a possible violation occurred in San Francisco, there is the same probability of the party filing an unfair labor practice charge and the same probability of finding merit, as if the event occurred in the Atlanta (a different administrative region of the NLRB).

Since the passage of Taft Hartley, formally called the Labor Relations Management Act of 1947 (2000), it has been possible to have both unfair labor practice complaints filed by employers and unions (previously, only unions could file). It has also been possible for

individual states to choose to exercise their 14b right to work option, which leads us to a more federalist framework. These changes in the legal environment lead to our second frame of analysis, the federalist rights or institutional context framework. In this frame, the institutional environment of each NLRB administrative region is determinative of the filing of charges rate and of the disposition of the cases (merit rate). One possible explanation for this is that the institutional culture or context of the region in which the NLRB administrative region exists will have an effect on outcomes (merit rate). We test for this explanation.

The broad goal of this project is to determine if administrative regions of the NLRB vary with regard to unfair labor practice charges. If administrative regions vary in the degree to which charges are filed and to the degree to which they find merit, then we may want to re-conceptualize statutory rights under Section 7 not so much as national but as federal, with administrative regions perhaps being influenced by institutional and cultural factors.

III. THE NLRA, NLRB, AND CRITIQUES OF THE ORGANIZATION

Development of the NLRA and Critiques of the Law

From the earliest years of the Roosevelt administration, far-reaching reforms were enacted. Among these were greater government oversight of industry and increased public works expenditures. One institution to emerge from the Great Depression was the National Labor Relations Board. In fact, the National Labor Relations Act (which established the NLRB) was the first statute in the New Deal's package of legislation to gain the blessing of the Supreme Court, even though the Court declared earlier statutes unconstitutional. The Court's position changed in *N.L.R.B. vs. Jones & Laughlin Steel Corp.* (1937), when the majority finally conceded that Congress had the authority to regulate labor relations after President Roosevelt threatened to pack the court. The impact of the NLRA during the roll out

of the New Deal has been noticed by scholars, who note that strikes during the era were very effective because workers had the power to take previously unprecedented actions against firms (Cole and Ohanian 2004).

Given this historical context, it is perhaps unsurprising to note that the NLRA has been subject to frequent criticism from many organizations since its historical beginnings (Goldfield 1989; Robertson 2000). Criticism has come from all sides, including: the federal judiciary, a variety of conservative organizations, lawmakers, and employers (Gross 1981). Scholars, practitioners, politicians, and some in the labor movement have offered criticism by pointing out the weaknesses in the remedies of the Act, as well as the consequences of delays (Brofenbrenner 1994; Compa 2004; Friedman, et. al. 1994; Gross 1974; Gross 1994; Gruenberg 1994; Kleiner 1994).

Scholars like Gross (1974, 1981, 1996) argue the weaknesses of the NLRA were sown into law through the Taft-Hartley amendments. The original version of the NLRA was pro-worker and pro-collective bargaining, but the Taft-Hartley bill viewed government‘s role instead as being pro-collective bargaining through being a neutral guarantor, which is quite different and more conservative (Friedman, et al. 1994). The 1947 Taft-Hartley amendments injected state’s rights into the law by the 14b provision of the statute, which allowed individual states to curtail the right to bargain union security in what would otherwise be a system of volunteerism. Gross (1994) believes these changes were a fundamental value shift in the legislation. As such, he argues for a return to the original purpose of the NLRA with the idea that social justice should be the centerpiece of new legislation and the law should recognize collective bargaining as being in the public interest.

Gross also mentions employer resistance and weaknesses in the labor law's penalties as being two of the major reasons for the drop in union density since the failure of the Labor Law Reform effort in 1978. Unions within the labor movement, such as Change to Win which seceded from the AFL-CIO, are so disenchanted with the NLRB's procedures that they have circumvented the Board's representation procedures and embraced more of a community organizing and direct pressure approach to recognition and to reaching an agreement (Friedman, et. al. 1994). Kleiner (1994) maintains that the reason employers flaunt the law is that it is irrational for the employer to comply because the penalties are so low. Kleiner reports that an employer doing a cost-benefit analysis would decide to "take the penalty", rather than endure the perceived costs of unionization. Thus, the costs of not complying are low and the rewards (to remain union-free) are high.

Other scholars concur that the Act needs reforming. Gruenberg (1994) expresses grave concerns with the fact that u.l.p. charges against employers are on the rise. She points out that charges against unions for unfair bargaining charges (8b.3) have never been more than 17 percent of all total u.l.p.s. She also notes that 8a.5 charges (charges that the employer has not bargained in good faith) have risen to be as high as 43% of all charges. Comparatively, before 1980 25% of all charges were u.l.p.s and 75% were representation cases. Gruenberg uses these statistics to demonstrate that the trend appears to now be reversed. To stop this growing trend, Gruenberg recommends punitive damages be allowed for violations of not bargaining in good faith, a removal of the distinctions between mandatory and permissive subjects for bargaining, and finally, to language change in Section 8d. that is watered down and does not promote collective bargaining.

Interactions Between the NLRB and Regional Offices: Organizational Structures

The NLRA formed the National Labor Relations Board, which has regional offices that exist within a rigid hierarchy. Like most independent regulatory boards, implementation of legislative mandates is highly decentralized. Most of the routine decision making takes place at the 35 regional offices; the national board makes the precedent setting decisions. The five members of the NLRB are appointed and confirmed by the Senate to six year staggered terms on a bi-partisan basis. The president appoints the General Counsel of the NLRB, subject to confirmation by the Senate; General Counsels serve a four-year term and remain in office at the will of the sitting president. The regional offices are generally only permeable to targeted interests when the structure is quite decentralized (Schmidt 1999).

As implemented, the NLRB's regional office staff investigate abuse only after a formal complaint is made. Once a complaint is filed at one of the board's regional offices, the staff investigate and apply precedents set by board decisions. Over ninety percent of cases are disposed of in the regional offices, often within forty days of filing (American Bar Association 1995).

Although only about three percent of cases of cases receive a hearing (Cooke and Mishra 1995), when a hearing is granted the judge makes recommendations to the NLRB concerning his or her findings. This recommendation can be appealed to the Regional Director and finally to the General Counsel (NLRB 1987). If the General Counsel accepts the case, it proceeds to board review. If the General Counsel, whose decision is unreviewable and final, refuses the case, it is dismissed.

Because the filing behavior of labor and employers determines their caseloads, regional staff have discretion in determining the merit of complaints. The decentralized structure of the NLRB's regional offices, combined with the clientele discretion to file cases

and staff discretion to find merit, provides opportunities for variation by filing office. Filing behavior and the range of complaints can be specific to each region and narrowly focused on the respondents' relationships to each other and the community (Schmidt 1999).

Interactions Between the NLRB and Regional Offices: Partisanship and Bias

It is well established in the literature that partisan changes in the White House lead to policy changes in the labor area. Much has already been written about the political and partisan influences at the national level that can affect National Labor Relations Board decisions. For example, Board policy changes have been attributed to the majority of Board members being dominated by one party and (independently) due to an appointment of a General Counsel of the NLRB by a particular President. It appears that Gissell bargaining orders, for example, are more likely to be granted when Democrats control the NLRB and the same applies with the use of 10j. injunctions (Gould 2000).This is a lagged effect because the Board is a commission style structure with staggered appointments. However, we do know that the party of the appointing President for Chair of Board and for General Counsel can make a great difference to efficiency and to policy delivery (Gould 2000).

We note that due to perceptions of partisanship at the NLRB, the organization is often accused of being biased. However, we believe this is not usually a characteristic that would apply to regional office staff for many reasons. First, at the regional level staff are unlikely to have an obvious bias toward industry or labor, although some agents are naturally more biased toward whatever party files a charge. In most cases unions file more charges than employers, so agents are more likely to appear pro-labor because they are more likely to be advocates for the charging party. Second, regional agents are likely to have a bias against those who are perceived as repeat offenders that break the same rule (Busman 1984;

Franckiewicz 1995). As employers are usually repeat offenders over unions, employees biased against employers in this context is actually a reaction against recidivism. Finally, due to organizational differences in training across regions, field staff often work hard to establish merit in order to increase their merit finding metrics. While there are perceptions of bias against the NLRB, we believe the research shows that at the regional level these biases are contextually dependent and vary widely over time. These biases could change as staff become more familiar with their clients and issues specific to their region (Gould 2000).

Influences on Regional Office Decision Making

At the national level, research shows that economic forces can impact regional regulatory decisions (Fesler 1949; Hedge and Scicchitano 1994; Scholz 1984). Prevailing economic conditions for certain industries and labor unions can impact policy enforcement across administrative regions. At the state level, industrial duress has historically occurred in varying intermittent patterns that has the potential to impact NLRB decisions in favor of industry and management. The research suggests that some economic indicators, such as rising unemployment, can cause regional staff to be less strict with employers. (Delorme, Hill, and Wood 1981; Moe 1985). The high visibility some industries have in their communities due to their importance to the local economy, combined with de-centralized decision making at the NLRB, can create a relationship of corporatism between regional staff and employers (Schmitter and Lanzalaco 1989). In the context of such relationships, staff and industry may end up supporting each other against nationalized pressures.

The research suggests that patterns of influence within interest groups and the characteristics of regional offices are important when examining why decision-making varies (Lane 1993; Mazmanian and Sabatier 1980; Sabatier 1975). In a situation where both

government employees and their clients have different levels of competency and different goals, the results of interactions between the two groups characterize policy implementation. Concurrently, the nature of the interaction between the government and its clients in NLRB regions is such that communication is frequent and there knowledge of each party's interests is common (Hart and Kleiboer 1995). Research has confirmed that when interest groups organize, they have a notable advantage in ensuring policy decisions are made in their favor (Lowi 1979; Heclo 1975; Heinz, et. al 1993; Moe 1980; Salisbury 1993).

Research has indicated that the more aggressive labor representatives are in filing cases, less likely staff are to be pro-labor in their decisions. (Delorme, Hill, & Wood, 1981; Moe, 1985). Given this tendency and since regional offices are staffed by caseload (USOPM 1980), it is interesting to note that unions file twice as many unfair labor practice charges as employers.

IV. HYPOTHESES

We have explored our two frameworks for this analysis as well as the literature on the history, criticisms, and the organizational relationship between the NLRB and its regional offices. We now explain the hypotheses that derive from our two frameworks:

Hypothesis 1 - National Rights Framework (Null Hypothesis):

Administrative regions of the NLRB will not vary significantly in charge filing activity or in merit activity. No significant difference among filing rates by region or merit rates by region will indicate that there is universal set of national rights (Section 7 rights under the NLRA). Rather than assume that there will be regional variation, we need to mention the factors that would support a finding of the null hypothesis. Support for the null hypothesis can be drawn from the following factors: there is a national placement system

within NLRB, there is a central hiring system, and there is a strong level of socialization and professionalization across the agency.

Hypothesis 2 - Federalist Rights/Institutional Context Framework:

Administrative regions will vary significantly such that we cannot say that we have a well-enforced set of national rights. Due to the contextual differences by region, there will be a significant difference in both filing rates and merit rates. In support of this proposition, we find many works on federalism and intergovernmental relations that consider implementation as a variable, and not as a constant (Pressman and Wildavsky 1984;Wright and White 1984). Scholars have found that the control exerted by bureaucracies can often be decentralized, and officials at lower levels have the capacity to make independent decisions due to the degree of discretion they are granted. Deil Wright (1990) finds that there is a complex relationship between federalism and concepts of intergovernmental relations. He also finds that the shift of focus towards private business models in government has had the effect of many actors having to "fend for themselves" even though their actions are simultaneously being regulated by congress and the judiciary. Intergovernmental relations in the context of federalism creates constant power dynamics within bureaucracies that alternate between national level regulation and agency level discretion. Scholz, Twpmbly, and Headrick (1991) find government influence over bureaucratic decision making is directly related to the management level at which the decision is made. For example, while Congress is likely to have much influence over decisions involving the national operations of an agency, local level officials carry a notable level of influence over local agency decisions. In the context of our research, this suggests that the administrative regions of the NLRB may be influenced by contextual regional variables.

One explanation for why variation by administrative region may exist for both filing and merit rates is the institutional context, as exemplified by right to work (14b status). We know from various studies that the environment, particularly the organized interests in the environment, is important to decision outcomes. (Lowi 1979; Heclo 1977; Heniz et. al. 1993; Moe 1980). These studies were reinforced by studies of the NLRB where political culture was proved to be important (Schmidt 1994, 2002, 2003). As we noted in the above section under the description of the NLRB, other studies suggest that it is logical to think a regional variation would exist (Fesler 1965, 1983; Moe 1987).

Hypothesis 2A - Institutional Context (14b/right to work):

The regions which have a right to work culture will have both a lower charge filing rate and a lower merit rate than administrative regions which have a predominantly non-right to work culture. When the14b option is exercised by the state, unions are prohibited from negotiating a union security clause which solves the "free rider" problems of unions; this means that 14b states will have a lower household income, as well as a lower percentage of union membership and a more hostile legal atmosphere to labor.

V. METHODOLOGY: SAMPLE AND DESCRIPTION OF VARIABLES

Regional offices, as covered in this analysis, may cover a single state or be assigned by population. The NLRB has 35 regional and subregional offices in 27 states. Some states have more than one office. What defines a NLRB region has changed over time. For example, the Arizona office changed locations from New Mexico, and the Oakland and Hartford offices were added in the 1970s.

Prior to 2000, the NLRB contained data entry for case information that was compiled by the national office staff but was unavailable to the regional staff for any other office other

than their own. After 2000, the NLRB created the CATS (Case Activity Tracking System) computerized data entry system for tracking cases across regions. The data used here reflects the unique period in the history of the NLRB where information was limited about activities or decisions made in other regional offices. This is no longer the case and the data compiled prior to CATS are not compatible with data collected through the CATS format.

The data in this paper was collected directly from the National Labor Relations Board by a Freedom of Information Act request. Originally, there were two data sets: one was the entire population of unfair labor practice charges filed (but not representation charges) from 1964 to 1997 by region and the second which was a 2% random sample of the charges. This gave a total sample size of 9,761 charges.

The second data set had region as the unit of analysis and included merit ratings. The authors combined these data sets into one, where the unit of analysis was administrative region. Combining the data allowed us to move to one data set where region is our unit of analysis, which is required to connect certain independent variables such as institutional culture to merit ratings. To do this, we took a mean score across years, after checking that there were no systematic variations across years by region. To determine that there was no systematic variation, we performed a one-way ANOVA. Each year was entered as an independent variable. The F-Test indicated no significant difference across years in the merit unfair labor practice rate, indicating there was no underlying trend across years in merit rates.

For our analysis, the independent variables consist of the aforementioned hypothesis variables in hypothesis 1, 2, and 2a. The first dependent variable in our analysis is the merit rate, or the proportion of charges filed found to have merit. The unit of analysis for the merit

rate is administrative region, and the merit rate variable is the mean of all the merit rates across all years for one region. This data set does not include any representation cases.

Although the merit rate can point to how aggressive the agency is in terms of seeking compliance, this rate does include both the merit finding against employers and against unions. So it made sense to disaggregate the merit unfair labor practice rating into two more dependent variables: a merit rating of cases against employers and a merit rating against unions. One might expect that if a region had a high merit rate against the employer, that it would have a low merit rating for the cases against unions (and vise versa), if the notion of the external environment influencing institutional culture is true.

VI. RESULTS AND DISCUSSION

Our analysis and discussion of relevant findings includes two main components. First, we will examine the data to see if there is a difference in filing rates across NLRB administrative regions with a short examination of relevant geographical factors. Next, we will examine whether merit rates vary by region. Finally, we will briefly consider in turn each of the factors that were previously hypothesized to influence filing and merit rates.

Findings: Filing Charges

There are two types of regions for the purposes of explaining our results. The first is the common definition of region, by which we mean the geographical region, covered in Chart 1. The second is the breakdown by administrative regions of the NLRB offices displayed in Chart 2. Looking first at geographical regions, we see that the regional breakdown by five large regions of the U.S. of unfair labor practice charges is as expected.

The South and the Southwest regions, as would be expected in regions with weak unions, have a low number of charges filed with the NLRB. Those states in the "rustbelt"

region - such as Ohio, Michigan, and Pennsylvania - have a greater number of charges due to their history and tradition of unionization and their manufacturing intensiveness. The Northeast, with its strong industrial history and continued strong labor representation in many jobs, also has a relatively high number of charges. Other regions, such as the Pacific, have a fairly strong union presence, relative to the Southwest and South, although the authors suspect that Hawaii and California contribute disproportionately to the filing of charges.

Charts 1 and 2 About Here

As you can see from Chart 2, there is significant variation in the number of charges filed by administrative region. The three regions with the highest charge filing rates are: Region 7 (Detroit); Region 13 (Chicago); and Region 21 (Los Angeles). These are regions we would expect to be high in charge filing activity. It is noteworthy that Peoria, Illinois is among those with the lowest number of charges. This may be because Peoria had changed over the years from a district to a lower level and then back up.

Next we can turn to the institutional context hypothesis, that in right to work (14b) states there will be significantly less filing activity than in non-right to work regions of the NLRB. Chart 3 strongly confirms that the 14b status of a region has a powerful chilling effect on filing charges for violations of NLRA. The number of charges filed in non-right to work states is 8,508, compared to only 1,283 charges filed in right to work regions. It should be noted that only a total of six regions are right to work. Given the uneven distribution of this quality, the impact of right to work status would have to be very strong for the impact to be this significant.

Chart 3 About Here

Findings: Merit Rates

Chart 4 displays the overall disposition of all charges entering the system. It shows that one third of all cases are found meritorious, one third are withdrawn, and one third are dismissed. A separate analysis of the data, which is not presented here, shows that this ratio is remarkably stable over the years. In terms of actual investigation, only one third involve a full investigation, although another one third are investigated well enough to know that a dismissal is warranted. It is not clear from the data we have whether the withdrawals are encouraged by the field examiner or may be classified as "strategic u.l.p.s" during organizing or bargaining.

Chart 4 About Here

Table 1 shows that there is significant variation in the merit rate by region. Some administrative regions are well above the average, such as Boston, while others might have lower merit rates than we would expect. The Atlanta regional office is the lowest (in contrast to having one of the highest filing rates) and St. Louis is low, which is unexpected. There are some regions where we would have expected low ratings: the Southwest and west have a fairly conservative political culture toward labor. The range of merit ratings is notable, extending from 28% in Atlanta to 42% in Minneapolis and Boston. Examining the regions in the high merit group, we find no obvious anomalies. All of the regions appear to be Northeast or Rustbelt or regions with a high union density and a strong union tradition. It makes sense that these regions would have a high merit rating.

Table I About Here

If there were much variation by year, then we could be more convinced that the real world varies, meaning that the charges coming into the agency vary year by year in how meritorious they are. In response, critics might argue that the variation we attribute to regional

differences is really coming from change in exogenous factors, like the distribution of charges being filed. However, the data show that there is more variation by region than by year. The yearly variation by merit ranges is from 0.33 (in 1985, 1992, and 1993) to 0.38 (in 1997). The only notable exception to this range is for 1988, which had an anomalous rate of 0.45. This fact strongly suggests that there is more regional administration variation in disposition of cases (at least as indicated from year by year total variation). All the meaningful variation in finding merit is occurring across administrative regions of the National Labor Relations Board; the merit percentage is not varying across year or administration.

Recall that our analysis includes three different merit rates depending on who the respondent is, or whom the charge is filed against: overall merit rating (all respondents or the total), the merit rate against employers, and the merit rate against unions. As such, we can determine whether the regions that have an overall high merit rating are also finding merit more frequently when the employer is the respondent than when labor is the respondent. This is an initial check for the bias in merit findings, or the valence of the region. For example, if the merit rate is positive for overall charges and there is a strong negative and significant relationship between the overall merit rating and merit rate against unions, this would indicate that the region is having more anti-labor outcomes than would be expected. If the overall merit rate and rate against employers had a negative and significant relationship, then that would suggest a bias in the other direction. Similarly, if there is some kind of systematic valence or bias of the region, it is expected that the relationship between the two rates (employer and union merit findings) would be negative.

The data show the relationship between overall merit findings and merit findings against employers are positive and significant ($R = .583$, $p = .000$, $n = 33$). In Table III below

the correlation between merit findings against unions and overall merit rates is also positive and significant (R = 0.725, p =.000, N=31). The fact that these measures co-vary so closely suggests, at least in a preliminary way, a lack of systematic bias, on the basis of who is the charging party.

Table III About Here

Interpreting these results is difficult. One possibility is that there may be inherent differences in the quality of the charges coming in to the system by region. Alternatively, there may be differences in zealousness of enforcement across regions or in staffing to case load ratios. Regions that are zealous will naturally find merit more often, so they find merit both in charges brought against unions and in charges brought against employees. It is also possible this could be consistent with past studies that showed no discernible bias toward labor or management, but did show a bias toward the charging party. This assumes that the merit and non-merit ratio of all charges filed is the same and that the "quality" of charges filed in terms of merit does not vary systematically.

We wanted to confirm this finding, so we constructed a second measure of bias or regional leaning. This measure of bias is constructed by taking the merit rate against the employer respondents minus the merit rate against union respondents. This is what we label as pro-labor bias or a pro-labor leaning across the regions. The results of this are shown in Table IV. A positive number indicates a pro-labor direction. A negative number indicates a pro-employer bias. The closer to zero the score is the more balanced (or unbiased) the merit findings of a region are.

Table IV About Here

Findings: Predictors of Filing and Merit Rates

We now briefly examine whether the institutional context of NLRB regions impacts merit or filing rates. The results are reported in Table 2 and briefly described below:

Right to Work Influences on Merit Rates

We hypothesized that the institutional context of the region, as indicated by its right to work status (14B), would affect merit rates. However, we find that the right to work status of a region does not predict merit for the any of the three merit measures.

Right to Work Influences on Filing Rates

Institutional context as defined in this analysis does predict the filing of charges as indicated by the right to work culture in the region, manufacturing density, employer organization (as indicated by National Association of Manufacturers (NAM) strength in the region), and the strength of labor.

Pro-Labor Bias Influence on Merit And Filing Rates

Our initial measure of bias or imbalance found did not find anything substantial. This was based on the finding that regions which have a high merit rating overall have a high merit rating against employers as well as a high merit rating against unions. This suggests that regions aggressive in compliance via merit findings are equally aggressive whether the respondent is employer or union.

In light of these findings we used a second measure of imbalance, the previously described pro-labor bias variable. Using this measure, there are some regions that are pro-labor leaning (positive numbers), and others which were in the direction of the employer (negative numbers).

One surprising finding was that, unlike with charge filings, none of the institutional context variables in the regions predicted merit ratings. The only variable strongly associated

with the merit ratings or the pro-labor bias variable is length of time: the longer it takes to process a charge the higher the probability of finding of merit against the union (the employer is the charging party).

VII. POLICY IMPLICATIONS AND CONCLUSIONS

We started with two opposing frameworks. One was that the NLRA Section 7 rights guaranteed a national set of rights. This model suggested some degree of uniformity across regions in filing and in merit finding patterns. The other framework was a more federalized model, with different regions performing differently based on institutional context. Our findings suggest a federalist framework, with charge filing activity varying directly within the institutional context of the regions.

There are also patterns across regions in terms of dispositions of cases. On merit findings, we also found a federalizing framework. However, when we examined our hypothesis list using the institutional context factors, none of our predicted factors caused the variation.

If one supports a strong national commitment to the right to organize or to choose not to organize, our findings will cause some concern. The probability of a charge being found meritorious in Boston is 42% whereas it is 28% in the Atlanta region. A prior causal link to compliance is whether a charge is filed at all: the probability of exercising one's rights under the NLRA by filing a charge also varies by administrative region and is seemingly directly linked to the institutional context of the region. Institutional culture does matter - and it is impacted in the hypothesized directions - for filing charges. We did not find it mattered in the disposition of cases (merit rates).

We end the study with a mystery: administrative regions of the NLRB appear to have a "valence" or bias in terms of merit rates, yet merit rates do not seem to be related to the institutional context of the region. Conversely, filing rates vary by region and do seem to be related to institutional context, in particular 14b status. Merit ratings do not correlate either positively or negatively with any other variable except the length of time to investigate and the fact that the charging party is an employer. This suggests other factors are influencing regional merit variation. In future research, we will endeavor to look other factors like the internal characteristics of regions, particularly the differences in personnel, values, and standard operating procedures.

REFERENCES

American Bar Association. 1995. *The story of the National Labor Relations Board, 1935-1995*. Washington, DC: American Bar Association.

Brofenbrenner, K. 1994. Employer behavior in certification elections and first contract campaigns: Implications for labor law reforms. In *Restoring the promise of American labor law*. Edited by S. Friedman, R.W. Hurd, R.A. Oswald, and R.L. Seeber, 75-89. Ithaca, NY: IILR Press.

Busman, G. 1984. *Union representative's guide to NLRB RC and CA Cases*. Los Angeles: University of California Press.

Cole, H.L., and L.E. Ohanian. 2004. New Deal policies and the persistence of the great depression: A general equilibrium analysis. *Journal of Political Economy* 112(4): 779-816.

Compa, L. 2004. *Unfair advantage: Workers' freedom of association in the United States under international human rights standards*. Ithaca, NY: Cornel University Press.

Cooke, W.N. and A.K. Mishra. 1995. The determinants of the NLRB decision-making revisited. *Industrial and Labor Relations Review* 48: 237-257.

Delorme, C.D., R.C. Hill, and N.J. Wood. 1981. The determinants of voting by the National Labor Relations Board on unfair labor practice cases: 1955-1975. *Public Choice* 37(2): 207-218.

Fesler, J.W. 1949. *Area and administration*. Tuscaloosa: The University of Alabama Press.

Fesler, J.W. 1965. Approaches to the understanding of decentralization. *Journal of Politics* 27(August): 536-566.

Fesler, J.W. 1983. Politics, policy, and bureaucracy at the top. *The Annals of the American Academy of Political and Social Science* 466(1): 23-41.

Frankiewicz, M.M. 1995. *Winning at the NLRB.* Washington: Bureau of National Affairs.

Friedman, S., R.W. Hurd, R.A. Oswald, and R.L. Seeber. 1994. *Restoring the promise of American labor law*. Ithaca, NY: IILR Press.

Goldfield, M. 1989. Worker insurgency, radical organization, and new deal labor legislation. *American Political Science Review* 83(4): 1257-1282.

Gould, W.B. 2000. *Labored relations: Law, politics, and the NLRB – A Memoir*. Cambridge, MA: MIT Press.

Gross, J. 1974. *The making of the National Labor Relations Board: A study in economics, politics, and the law - 1933-1937.* Albany, NY: SUNY Press.

Gross, J. 1981. *The re-shaping of the National Labor Relations Board: National labor policy in transition - 1937-1947.* Albany, NY: SUNY Press.

Gross, J. 1994. Demise of national labor policy: A question of social justice. In *Restoring the promise of American labor law*. Edited by S. Friedman, R.W. Hurd, R.A. Oswald, and R.L. Seeber, 45-58. Ithaca, NY: IILR Press.

Gross, J. 1996. *Broken promise: The subversion of American labor relations policy - 1947-1994*. Philadelphia: Temple University Press.

Gruenberg, G. 1994. Status of workers' rights to bargain collectively. In *Restoring the promise of American labor law*. Edited by S. Friedman, R.W. Hurd, R.A. Oswald, and R.L. Seeber, 177-192. Ithaca, NY: IILR Press.

Hart, P., and M. Kleiboer. 1995. Policy controversies in the negotiatory state. *Knowledge and Policy* 8(4): 5-25.

Heclo, H. 1975. OMB and the presidency: The problem of neutral competence. *The Public Interest* 38: 80-98.

Heclo, H. 1977. *A Government of Strangers: Executive Politics in Washington*. Washington: Brookings Institution.

Hedge, D.M., and M.J. Scicchitano. 1994. Regulating in space and time: The case of regulatory federalism. *The Journal of Politics* 56(1): 134-153.

Heinz, J.P, E.O. Laumann, R.L. Nelson, and R.H. Salisbury. 1993. *The hollow core: Private interests in national policy making*. Cambridge: Harvard University Press.

Kleiner, M. 1994. What will it take? Establishing the economic costs to management of noncompliance with the NLRA. In *Restoring the promise of American labor law*. Edited by S. Friedman, R.W. Hurd, R.A. Oswald, and R.L. Seeber, 137-146. Ithaca, NY: IILR Press.

Labor-Management Relations Act, 29 *U.S.C.* 186 (2000).

Lane, J. 1993. *The public sector: Concepts, models, and approaches*. London: Sage Publications.

Lowi, T. 1979. *The end of liberalism*. 2nd ed. New York: W.W. Norton.

Mazmanian, D.A., and P.A. Sabatier. 1980. A multivariate model of public policy Making. *American Journal of Political Science* 24: 439-493.

Moe, T.M. 1980. *The organization of interests*. Chicago: University of Chicago Press.

Moe, T.M. 1985. Control and feedback in economic regulations: The case of the NLRB. *American Political Science Review* 79: 1094-1116.

Moe, T.M. 1987. Interests, institutions, and positive theory: The politics of the NLRB. *Studies in American Political Development* 2: 236-299.

National Labor Relations Act, 29 *U.S.C.* § 151–169 (2000).

National Labor Relations Board. 1987. *A guide to basic law and porocedures under the National Labor Relations Act.* Washington, DC: U.S. Government Printing Office.

N.L.R.B. v. Jones and Laughin Steel Corp., 301 US 1 (1937).

Pressman, J.L, and A. Wildavsky. 1984. *Implementation: How great expectations in Washington are dashed in Oakland; Or, why it's amazing that federal programs work at all*. Berkeley, CA: University of California Press.

Robertson, D.B. 2000. *Capital, labor, and state: The battle for American labor markets from the Civil War*. New York: Rowman and Littlefield Publishers.

Rourke, F. 1984. *Bureaucracy, politics and public policy*. 3rd ed. Boston, MA: Little, Brown and Co.

Sabatier, P. 1975. Social movements and regulatory agencies: Toward a more adequate - and less pessimistic - theory of clientele capture. *Policy Sciences* 6: 301-342.

Salisbury, R. 1993. Must all politics be local: Spatial attachments and the politics of place. Paper presented at the American Political Science Association.

Schmidt, D.E. 1994. NLRB regional office decision-making: Independence, partisanship, and caseloads. *American Review of Public Administration* 24(2): 133-147.

Schmidt, D.E. 1999. Politicization and responsiveness in the regional offices of the NLRB. Paper presented at the annual meeting of the American Political Science. Atlanta, GA.

Schmidt, D.E. 2002. Politicization and responsiveness in the regional offices of the NLRB. *The American Review of Public Administration* 32(2): 188-215.

Schmidt, D.E. 2003. Political influence and policy variation. *Administration and Society* 35(3): 379-314.

Schmitter, P. and L. Lanzalaco, 1989. Regions and the organization of business interests. In *Regionalism, business interests and public policy*, edited by W. Coleman, 201-230. London: Sage.

Scholz, J.T. 1984. Reliability, responsiveness, and regulatory policy. *Public Administration Review* 44: 145-153.

Scholz, J.T., J. Twombly, and B. Headrick. 1991. Street-level political controls over federal bureaucracy. *American Political Science Review* 85(3): 829-850.

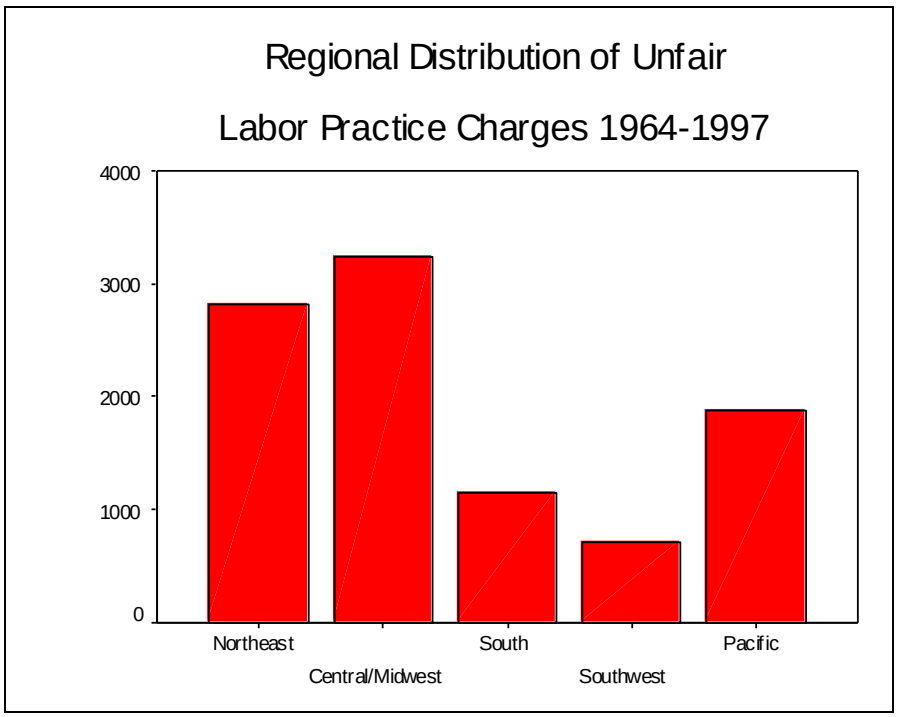
United States Office of Personnel Management. 1980. *Case management in the NLRB's office of the general counsel*. Government Printing Office: Washington DC.

Weber, M. 1965. Essay on bureaucracy. In *Bureaucratic Power in National Politics*. Edited by F. Rourke, 3-13. Boston: Little, Brown and Co.

Wright, D.S. 1990. Federalism, intergovernmental relations, and intergovernmental management: Reflections and conceptual comparisons. *Public Administration Review* 50(2): 168-178.

Wright, D., and H.L. White. 1984. Federalism and intergovernmental relations: 1940-1983. Washington: American Society for Public Administration.

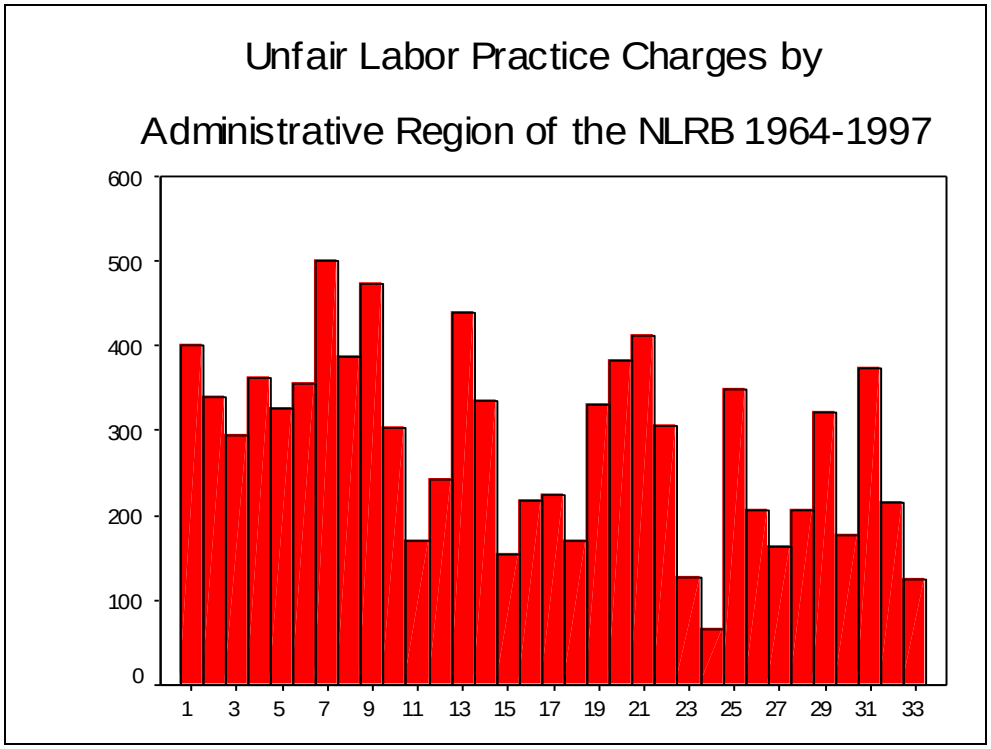
Chart 1.



Regions

Northeast	Central /Midwest	South	Southwest	Pacific
Maine	Minnesota	Virginia	Arizona	California
Massachusetts	Kansas	N. Carolina	New Mexico	Oregon
Connecticut	Ohio	S. Carolina	Nevada	Hawaii
New York	Wisconsin	Florida	Utah	Alaska
New Jersey	Michigan	Alabama	Texas	
Delaware	Nebraska	Mississippi	Colorado	
Pennsylvania	North Dakota	Arkansas		
New Hampshire	South Dakota	Georgia		
Rhode Island	Montana	Maryland		
West Virginia	Illinois	Kentucky		
Vermont	Idaho	Tennessee		
District of Columbia	Oklahoma	Louisiana		
	Wyoming			
	Iowa			
	Indiana			
	Missouri			

Chart 2.



Regions

1 Boston	11 Winston-Salem	21 Los Angeles	31 Los Angeles
2 New York	12 Tampa	22 Newark	32 Oakland
3 Buffalo	13 Chicago	23 Houston	33 Peoria
4 Philadelphia	14 St. Louis	24 Santruce	
5 Baltimore	15 New Orleans	25 Indianapolis	
6 Pittsburgh	16 Fort Worth	26 Memphis	
7 Detroit	17 Kansas City	27 Denver	
8 Cleveland	18 Minneapolis	28 Phoenix	
9 Cincinnati	19 Seattle	29 Brooklyn	
10 Atlanta	20 San Francisco	30 Milwaukee	

Chart 3.

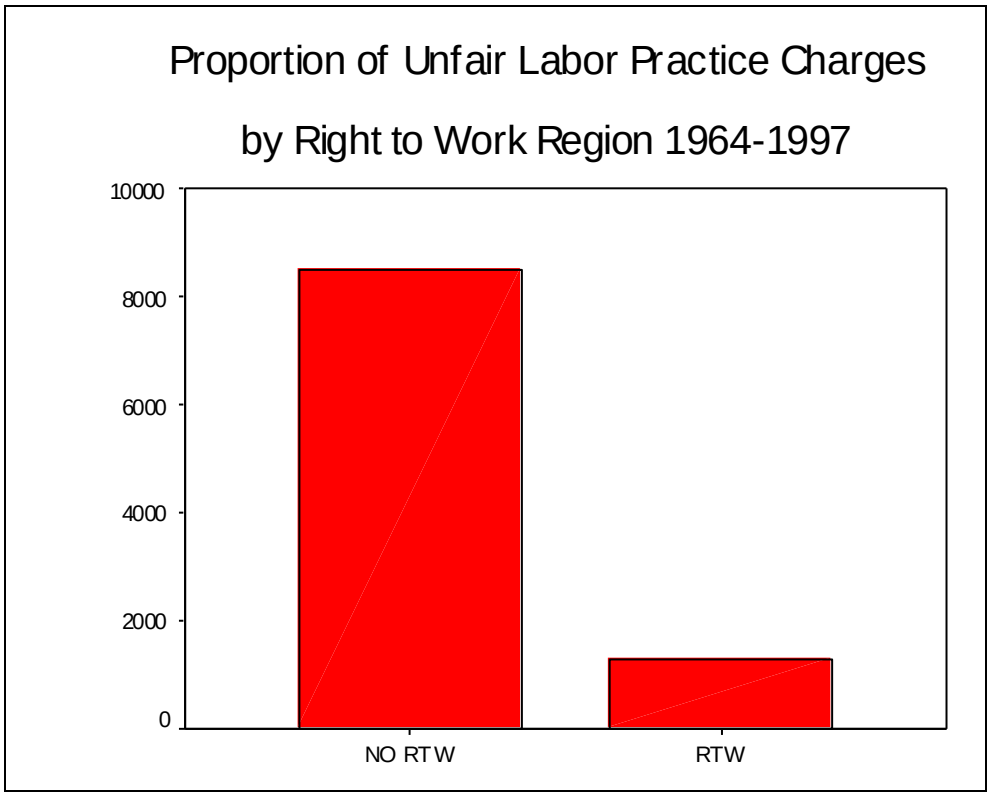

Proportion of Unfair Labor Practice Charges
by Right to Work Region 1964-1997
10000
8000
6000
4000
2000
0
NO RTW
RTW

Chart 4.

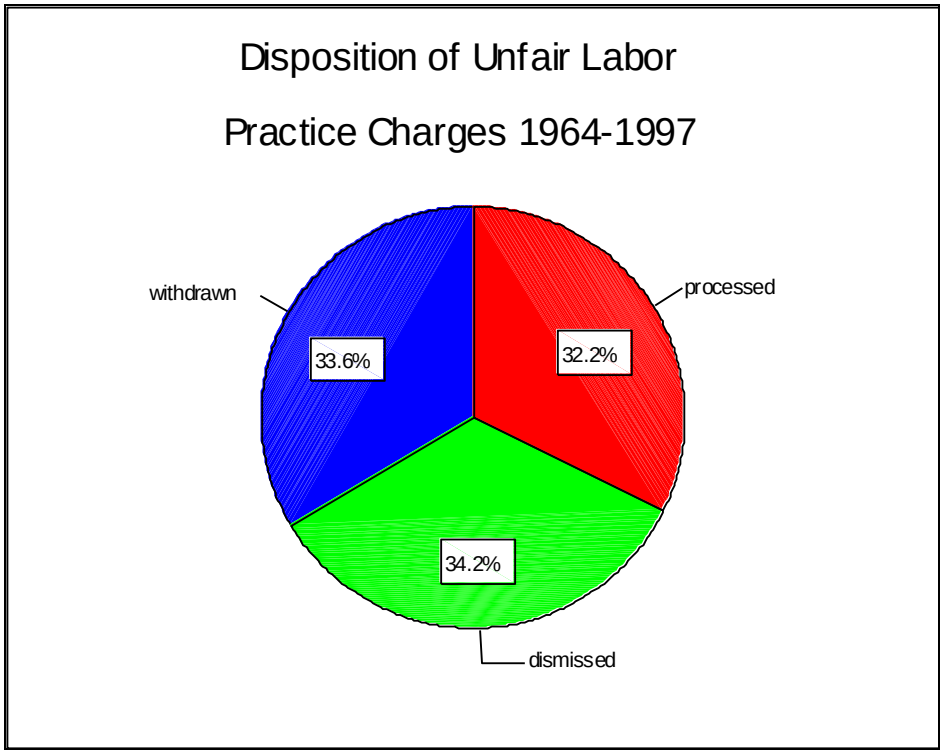

Disposition of Unfair Labor
Practice Charges 1964-1997
withdrawn
processed
33.6%
32.2%
34.2%
dismissed

Table I.

Overall Merit Unfair Labor Practice, by Region[1]

High		***Region***
Minneapolis	.42	18
Boston	.42	1
New York	.39	2
Philadelphia	.40	4
Buffalo	.40	3
Newark	.38	22
Brooklyn	.38	29
Detroit	.38	7
Pittsburgh	.38	6
Medium		
Cleveland	.36	8
Milwaukee	.36	30
Cincinnati	.36	9
Ft. Worth	.34	16
New Orleans	.34	15
Tampa	.33	12
Baltimore	.34	5
Kansas City	.35	17
San Francisco	.33	20
Denver	.33	27
Seattle	.33	19
Low		
Memphis	.32	26
Phoenix	.32	28
St. Louis	.32	14
Winston-Salem	.32	11
Indianapolis	.30	25
Los Angeles	.29	21
Chicago	.29	13
Atlanta	.28	10

Mean: .35
Median: 33.5

Source: Previously unpublished data from the NLRB

Table II. Correlations of Institutional Context Independent Variables With Merit Dependent Variables and Pro-Labor Bias

		Merit Rate (Against Employer)	Merit Rate (Against Union)	Merit Rate (Overall)	Pro-Labor Bias	Right to Work Status
Merit Rate (Against Employer)	Correlation	1.000	0.583	0.643	0.232	0.057
	Significance	.	.000*	.000*	0.193	0.754
	N	33	33	31	33	33
Merit Rate (Against Union)	Correlation	0.583	1.000	0.725	-0.655	0.018
	Significance	0.000*	.	0.000*	0.000*	0.922
	N	33	33	31	33	33
Merit Rate (Overall)	Correlation	0.643	0.725	1.000	-0.276	-0.215
	Significance	0.000*	0.000*	.	0.133	0.246
	N	31	31	31	31	31
Pro-Labor Bias	Correlation	0.232	-0.655	-0.276	1	0.032
	Significance	0.193	0.000*	0.133	.	0.862
	N	33	33	31	33	33
Right to Work Status	Correlation	0.057	0.018	-0.215	0.032	1
	Significance	0.754	0.922	0.246	0.862	.
	N	33	33	31	33	33

*Significant at the 0.05 level.

Table III. Pro Labor Bias score by Administrative Region

Region	*pro labor bias*	*Region*	*pro labor bias*
1. Boston	.05	23. Houston	.11
2. New York	.13	24. Santruce, PA	.18
3. Buffalo	.12	25. Indianapolis	.15
4. Philadelphia	.00	26. Memphis	.09
5. Baltimore	.11	27. Denver	.21
6. Pittsburgh	.03	28. Phoenix	.05
7. Detroit	.06	29. Brooklyn	.08
8. Cleveland	.06	30. Milwaukee	.25
9. Cincinnati	.03	31. Los Angeles	.11
10. Atlanta	.24	32. Oakland	.11
11. Winston-Salem	.00	33. Peoria, Ill.	.13
12. Tampa	.13		
13. Chicago	.12		
14. St. Louis	-.06		
15. New Orleans	.07		
16. Fort Worth	-.29		
17. Kansas City	.16		
18. Minneapolis	.07		
19. Seattle	.05		
20. San Francisco	.03		
21. Los Angeles	.07		
22. Newark	.07		