

# WOMEN, UNIONS, AND NEGOTIATION

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## INTRODUCTION

In a period when union membership is at an all-time low (at least in the private sector),<sup>1</sup> some (or perhaps many) people have given up hope that the labor movement can be revived. I believe that the labor movement still has the potential to be successful but needs to be re-imagined and reinvigorated. One way (among many) of doing this is to increase women's attachment to the labor movement.<sup>2</sup> Now that women comprise nearly 47 percent of the workforce,<sup>3</sup> it makes sense to have a concentrated effort to increase their union participation.<sup>4</sup>

Not only will more women in unions increase the overall union density, but studies indicate that union membership provides even more benefits to women than to men. Women's salaries are affected positively by unionization more than by anything else.<sup>5</sup> This article explores one reason this is true. The primary reason is that many women have been socialized not to negotiate on their own behalf, and indeed, women as a class (with some notable exceptions)

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<sup>1</sup> In 2009, only 7.2 percent of private sector employees were in unions. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, at 429 tbl.663 (2011), available at <http://www.census.gov/prod/2011pubs/11statab/labor.pdf>. See Linda Briskin, *Union Renewal, Postheroic Leadership, and Women's Organizing: Crossing Discourses, Reframing Debates*, 36 LAB. STUD. J. 508, 508 (2011). There is some evidence, however, that union rates have slightly increased. See David Madland & Karla Walter, *Unionization Climbs for Two Straight Years, but Remains a Fraction of 1980s Rates*, CENTER AM. PROGRESS (Jan. 28, 2009), <http://www.americanprogress.org/issues/labor/news/2009/01/28/5409/unionization-climbs-for-two-straight-years-but-remains-a-fraction-of-1980s-rates/>.

<sup>2</sup> See Briskin, *supra* note 1, at 509 (discussing union renewal with a focus on women's leadership).

<sup>3</sup> U.S. CENSUS BUREAU, *supra* note 1, at 377 tbl.585. Another study suggests that women will soon outnumber men working outside of the home. LAB. PROJECT FOR WORKING FAMILIES ET AL., NEW APPROACHES TO ORGANIZING WOMEN AND YOUNG WORKERS: SOCIAL MEDIA & WORK FAMILY ISSUES 4 (2010), available at <http://laborcenter.berkeley.edu/workingwomen/newapproaches10.pdf> [hereinafter NEW APPROACHES TO ORGANIZING WOMEN].

<sup>4</sup> Briskin, *supra* note 1, at 509 (noting that the mainstream union renewal literature has paid little attention to women's involvement in unions).

<sup>5</sup> Marion Crain, *Between Feminism and Unionism: Working Class Women, Sex Equality, and Labor Speech*, 82 GEO. L.J. 1903, 1960 (1994) [hereinafter Crain, *Feminism*].

do not negotiate nearly as often as men.<sup>6</sup> Accordingly, women benefit even more than men from having union representation, where someone else is responsible for negotiating on their behalf for wages, benefits, and job security.<sup>7</sup>

Therefore, because women stand to benefit so significantly from increased participation in unions, I argue that we should work to increase women's membership in unions. One way to increase the percentage of women union members is to increase the number of women union leaders. Increasing women in leadership roles will also bring attention to issues important to women that have historically been ignored.<sup>8</sup> Additionally, women union leaders can bring a fresh approach to organizing and leading unions.<sup>9</sup> Finally, because the studies reveal that women's unique style makes them very good and passionate negotiators when advocating on behalf of others, increasing the number of women who are responsible for negotiating on behalf of unions might work to improve union/management relationships and achieve better results.<sup>10</sup>

Part I will provide a brief history of women's involvement in the labor movement and will also provide a current snapshot of where we are today. Part II will begin with a discussion of the studies indicating that unionization provides significant benefits for women—arguably more significant than for men. Part II will then turn to a discussion regarding *why* women benefit more significantly from unionization than men. Specifically, this Part will discuss the social science literature describing the reality that most women have been socialized to not ask for what they want or need. Because of this tendency, unionization provides even more value to women workers. Finally, Part III will explore how to increase the number of women union members. I argue that increasing women's involvement in union leadership will not only increase the number of women union members but can also help reinvigorate the labor movement. In making this argument, I also rely on some of the success stories involving women union members and leaders.<sup>11</sup> Part IV will conclude.

## I. THE HISTORY OF WOMEN'S PARTICIPATION IN UNIONS

### A. *History of Women's Union Membership*

For a long time in the labor movement's history, unions did not attempt to organize women at all. The male-dominated labor movement initially discriminated overtly against women.<sup>12</sup> Before 1873, nearly all male-dominated unions completely barred women.<sup>13</sup> Initially, unions excluded women in an effort to

<sup>6</sup> See *infra* Part II.B.

<sup>7</sup> See *infra* notes 96–101 and accompanying text.

<sup>8</sup> See NEW APPROACHES TO ORGANIZING WOMEN, *supra* note 3, at 3 (stating that work/life balance issues have not been made a priority at most bargaining tables).

<sup>9</sup> *Id.* at 1 (stating that the “future of the labor movement depends upon fresh approaches to organizing”).

<sup>10</sup> See *Infra* Part III.C.

<sup>11</sup> See generally SUSAN CHANDLER & JILL B. JONES, CASINO WOMEN: COURAGE IN UNEXPECTED PLACES (2011).

<sup>12</sup> Crain, *Feminism*, *supra* note 5, at 1942.

<sup>13</sup> Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155, 1160 (1991) [hereinafter Crain, *Feminizing Unions*].

force them out of the labor market completely based on a fear that female competition would hurt men's wages and harm the family ideology.<sup>14</sup> The American Federation of Labor (AFL) first opened up to women but did not work very hard to organize them.<sup>15</sup> Even those unions that did allow women engaged in tactics to constructively keep them out, such as holding late night meetings in saloons and ridiculing women who were assertive enough to speak out at meetings.<sup>16</sup> The AFL's ambivalence is believed to have been based on concerns of being undercut by cheap female labor as well as a commitment to the stereotypical view of women's role as homemakers.<sup>17</sup> There was also a stereotype that women were not competent enough to understand or appreciate the issues unions sought to address.<sup>18</sup>

Into the early 1900s, the AFL believed in the family-wage ideology.<sup>19</sup> As stated by one AFL member:

We stand for the principle . . . that it is wrong to permit any of the female sex of our country to be forced to work, as we believe that the man should be provided with a fair wage in order to keep his female relatives from going to work. The man is the provider and should receive enough for his labor to give his family a respectable living.<sup>20</sup>

The unions also worried that the atmosphere at work would be "morally corrupting" for women.<sup>21</sup> Finally, women were not thought of as "real" workers—they were relegated to the secondary labor force, performing marginal tasks and receiving lower wages.<sup>22</sup>

Even after World War II, when unions realized they could not completely exclude women, they were still functionally excluded "by the combination of male union leadership, industrial unionism, and women's disproportionate location in unorganized service sector occupations."<sup>23</sup> As stated by Marion Crain: "The movement remains male-dominated, from the highest echelons of its leadership to its rank-and-file."<sup>24</sup> Even though the percentage of union members who were women increased from 18.3 in 1960 to 37 percent in 1992, it appears

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<sup>14</sup> Crain, *Feminism*, *supra* note 5, at 1942; Marion Crain & Ken Matheny, "Labor's Divided Ranks": *Privilege and the United Front Ideology*, 84 CORNELL L. REV. 1542, 1594 (1999) [hereinafter Crain & Matheny, *United Front*] (stating that the family wage ideology reinforced gender distinctions in work roles and divided spheres of home and market along gender lines with the only value being assigned to market work).

<sup>15</sup> Crain, *Feminism*, *supra* note 5, at 1943.

<sup>16</sup> *Id.*

<sup>17</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1161; *see also* Crain & Matheny, *United Front*, *supra* note 14, at 1591 (stating that men have an interest in perpetuating gendered divisions of labor because it reinforces low wages for women and keeps them dependent on men).

<sup>18</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1163; *see also* Crain & Matheny, *United Front*, *supra* note 14 (stating that women were more difficult to organize, docile once organized, and were not committed to union issues).

<sup>19</sup> Molly S. McUsic & Michael Selmi, *Postmodern Unions: Identity Politics in the Workplace (An Essay)*, 82 IOWA L. REV. 1339, 1345 (1997).

<sup>20</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1164 (quoting A. KESSLER-HARRIS, *OUT TO WORK* 153 (1982)).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1166; *see also* McUsic & Selmi, *supra* note 19.

<sup>23</sup> Crain, *Feminism*, *supra* note 5, at 1943.

<sup>24</sup> *Id.* at 1908.

that much of this increase is attributable to women's entry into the public sector labor force, where union density is much higher than the private sector.<sup>25</sup> And the increase, while significant, should not be overstated. Although women were 45.5 percent of the paid labor force in 1992, only 14.9 percent of women were covered by collective bargaining agreements.<sup>26</sup>

When unions did organize women, historically they did not try to prioritize the interests of working women, including sexual harassment,<sup>27</sup> paid leaves of absence, flexible hours, childcare, and other benefits.<sup>28</sup> From the 1960s through the 1980s, there was an increased emphasis on women's rights, which coincided with the rise of feminism.<sup>29</sup> The increase in the total number of women in the workplace obviously increased the percentage of women who were union members.<sup>30</sup> Yet, even in unions whose membership became predominantly female, men still controlled the union leadership and were the union organizers.<sup>31</sup> Women remained "severely underrepresented in union leadership positions, particularly at the national level."<sup>32</sup> This means that unions were and are less likely to negotiate contract provisions that matter to women.<sup>33</sup> For instance, in 1992, only 3.4 percent of workers had contracts dealing with childcare, 7 percent were covered by equal pay provisions, and 14 percent had flexible hour provisions.<sup>34</sup> Part of the reason these issues were ignored is because most unions catered to the largest segment of the workforce, which was composed of male employees who were the family breadwinners and had wives at home to take care of the home life.<sup>35</sup> Thus, unions would emphasize sick leave for the employee rather than family leave, because most of the male workers did not need family leave.<sup>36</sup>

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<sup>25</sup> *Id.* at 1943.

<sup>26</sup> *Id.* at 1944. For much of unions' history, unions represented the universal worker, generally thought to be white, married males. McUsic & Selmi, *supra* note 19, at 1343.

<sup>27</sup> For a thorough discussion of unions' treatment of sexual harassment in the workplace, see Crain & Matheny, *United Front*, *supra* note 14, at 1545–52.

<sup>28</sup> Crain, *Feminism*, *supra* note 5, at 1945. Many collective bargaining agreements excluded discrimination claims from union arbitration clauses, which affirmed the labor movement's lack of commitment to women. Marion Crain & Ken Matheny, *Labor's Identity Crisis*, 89 CALIF. L. REV. 1767, 1802 (2001).

<sup>29</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1167 (describing the increase of militancy among women).

<sup>30</sup> *Id.*

<sup>31</sup> Kate Bronfenbrenner, *Organizing Women: The Nature and Process of Union-Organizing Efforts Among U.S. Women Workers Since the Mid-1990s*, 32 WORK & OCCUPATIONS 441, 461 (2005).

<sup>32</sup> Crain, *Feminism*, *supra* note 5, at 1944; *see also* Briskin, *supra* note 1, at 525 (stating that the struggle to get women into leadership positions is a longstanding one and progress has been slow). *But see id.* at 510 (noting the exception to the general rule that there are not many women in union leadership roles—there are more women in local union leadership roles but not many at a national level).

<sup>33</sup> Crain, *Feminism*, *supra* note 5, at 1944; *see also* McUsic & Selmi, *supra* note 19, at 1344 (stating that the interests furthered by the union were majority interests and individual workers were expected to place the good of the worker community above any individual interests).

<sup>34</sup> Crain, *Feminism*, *supra* note 5, at 1945.

<sup>35</sup> McUsic & Selmi, *supra* note 19, at 1344–45.

<sup>36</sup> *Id.* at 1345.

To be fair, there is some evidence that unions were involved in women's issues. Specifically, commentators have argued that unions were at the forefront of making pregnancy discrimination illegal.<sup>37</sup> First, unions were involved in getting the Pregnancy Discrimination Act<sup>38</sup> passed.<sup>39</sup> After the PDA was passed, unions helped to enforce the provisions of the PDA by including its provisions in collective bargaining agreements and remedying violations through the contracts' grievance procedures.<sup>40</sup> Unions were also helpful in negotiating additional benefits for pregnant women that went beyond what the PDA required.<sup>41</sup>

In addition to how women are treated by unions, women's own perceptions and preferences contributed to the low number of women in unions. One of the reasons that women did not join unions in significant numbers prior to the 1960s is because they saw themselves as secondary wage earners.<sup>42</sup> Women also did not join unions because they believed unions were insensitive to women's issues such as equal pay, childcare and maternity leave.<sup>43</sup> Because unions view these issues as personal issues that only affect women, unions have not taken them seriously.<sup>44</sup> Another difficulty with organizing women was women's double burden of housework and childcare—most women simply had very little time to be involved in organizing campaigns.<sup>45</sup>

Unions were also disfavored by women because of formal and informal policies of discrimination.<sup>46</sup> Labor's primary emphasis on white male workers is evidenced in the "predominantly masculine culture of the labor movement and the corresponding invisibility of women in union practice . . ."<sup>47</sup> This has led to women's ambivalence toward and distrust of unions.<sup>48</sup> Some argue that

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<sup>37</sup> Judith A. Scott, *Why a Union Voice Makes a Real Difference for Women Workers: Then and Now*, 21 YALE J.L. & FEMINISM 233, 234 (2009).

<sup>38</sup> 42 U.S.C. § 2000e(k) (2012).

<sup>39</sup> Scott, *supra* note 37, at 235.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 236.

<sup>42</sup> Crain & Matheny, *United Front*, *supra* note 14 (stating that married women's work was often secondary, reserved for extras and not necessities).

<sup>43</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1172; *see also* McUsic & Selmi, *supra* note 19, at 1340 (stating that recent focus has been placed on how unions were often inattentive to interests that diverged from traditional union interests).

<sup>44</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1179; *see also* McUsic & Selmi, *supra* note 19; Crain & Matheny, *United Front*, *supra* note 14, at 1597 (stating that unions traditionally advocated for issues like wages, hours, and overtime rather than around family-based or gendered concerns such as leave, harassment, and unequal pay).

<sup>45</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1217; McUsic & Selmi, *supra* note 19, at 1349; Gary N. Chaison & P. Andiappan, *An Analysis of the Barriers to Women Becoming Local Union Officers*, 10 J. LAB. RES. 149, 153 (1989); CHANDLER & JONES, *supra* note 11, at 2 (discussing a woman who did not think she had enough time to offer to the union because she had a sick child at home); *id.* at 75 (stating that being a female union leader is "so grueling, and for women with family obligations, it's a big sacrifice").

<sup>46</sup> *See, e.g.*, Anne Forrest, *What Do Women Want from Union Representation?*, 26 HECATE 47, 48 (2000).

<sup>47</sup> Crain, *Feminism*, *supra* note 5, at 1907; *see also* Crain & Matheny, *United Front*, *supra* note 14, at 1542–43 (stating that unions often ignore the diversity of their members).

<sup>48</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1157; Crain & Matheny, *United Front*, *supra* note 14, at 1597 (stating that male union members and leaders did not construct unionism as either accessible to or comfortable for women).

the workplace is now seen as a “battleground among workers and their diverse interests rather than as a struggle for power between the working class and the managers or owners.”<sup>49</sup> Many unions have been reluctant to adapt to the changing workforce, which has led many women to view unions and union leaders as “pale, male, and stale.”<sup>50</sup> Furthermore, prospective female members find it difficult to identify with unions when there is such a small percentage of female union leadership.<sup>51</sup> As aptly summarized by Crain: “In short, unions have failed to fulfill their promise to represent the interests of female workers in the workplace. Instead, women’s interests have been subordinated to those of male union members, while unions have appropriated female support in the struggle against capital.”<sup>52</sup>

Furthermore, there is ample evidence that there is significant backlash against women in traditionally male-dominated jobs in blue-collar industries, which comprise most of the unionized workforce.<sup>53</sup> At one construction site in New York, the men took a woman’s work boots and destroyed them, and another woman was injured by a male co-worker who hit her on the head with a two-by-four.<sup>54</sup> Unions’ focus on the interests of majority male members sometimes led to passive acceptance and even active participation in sexual harassment.<sup>55</sup> Not only do women have a poor image of unions, but many women have internalized the sexist ideology encountered from unions and employers, and in some cases have accepted the naturalness of their own inferior economic and social status.<sup>56</sup> In sum, the message that many women (and minorities) have heard explicitly and implicitly from union organizers is that civil rights laws, rather than labor law, will protect their interests and unions exist primarily for white men.<sup>57</sup>

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<sup>49</sup> McUsic & Selmi, *supra* note 19, at 1341; *see also* Crain & Matheny, *United Front*, *supra* note 14, at 1560 (stating that union solidarity often trumps the needs of women and racial minorities).

<sup>50</sup> NEW APPROACHES TO ORGANIZING WOMEN, *supra* note 3 (internal quotations omitted).

<sup>51</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1168.

<sup>52</sup> *Id.* at 1169.

<sup>53</sup> LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON’T ASK: NEGOTIATION AND THE GENDER DIVIDE* 96 (2003).

<sup>54</sup> *Id.* at 97.

<sup>55</sup> McUsic & Selmi, *supra* note 19, at 1348; *see also* Crain & Matheny, *United Front*, *supra* note 14, at 1545–52 (discussing one case where the union refused to deal with sexual harassment complaints because it did not want their members disciplined). In fact, the female victims of harassment (it is alleged that 500 of 893 women in the plant had suffered from sexual harassment) were often pitted against the union and their harassers. *Id.* at 1546, 1552. One survey indicated that most unions discourage their female members from formally acting on sexual harassment complaints. *Id.* at 1552.

<sup>56</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1211; *see* Ruth Needleman, *Women Workers: A Force for Rebuilding Unionism*, 1 LAB. RES. REV. 1, 8 (1988). In fact, some argue that men use sexual harassment as a way of reminding women of their vulnerability and warning them of the risks of entering male-dominated environments. Crain & Matheny, *United Front*, *supra* note 14, at 1602.

<sup>57</sup> Crain & Matheny, *United Front*, *supra* note 14, at 1613.

### B. Current Snapshot of Women's Union Membership

Despite the turbulent history, over the years, women's union membership has steadily increased relative to men.<sup>58</sup> While the absolute number of union workers and the proportion of the US workforce that is unionized have fallen,<sup>59</sup> union membership among women has nearly kept pace with the rapidly growing female labor force.<sup>60</sup> More recent studies, in fact, indicate that women are now (and may have always been) more organizable than men and that unorganized women workers are more likely to want union representation than men.<sup>61</sup>

Currently, women comprise 45 percent of union members.<sup>62</sup> One report predicts that if the share of women in unions continues to grow at the same rate as it has over the last twenty-five years, women will be the majority of the unionized workforce by 2020.<sup>63</sup> Furthermore, contrary to some arguments made in the past that economics do not matter as much for women because they are secondary earners, the reality is that working mothers are now primary breadwinners in a record 40 percent of households with children; most of these breadwinner mothers are single;<sup>64</sup> and most of the single breadwinner mothers are low-income.<sup>65</sup>

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<sup>58</sup> Ruth Milkman, *Two Worlds of Unionism: Women and the New Labor Movement*, in *THE SEX OF CLASS: WOMEN TRANSFORMING AMERICAN LABOR* 63, 68 (Dorothy Sue Cobble ed., 2007).

<sup>59</sup> Scott, *supra* note 37, at 242. In 1978, unions represented 20 percent of workers in the public sector. *Id.* As of 2007, "less than [8] percent of the overall private sector workforce has a union voice." *Id.* at 242–43.

<sup>60</sup> Milkman, *supra* note 58, at 68–69.

<sup>61</sup> PAM WHITEFIELD ET AL., CORNELL UNIV. ILR SCH., *IS THERE A WOMEN'S WAY OF ORGANIZING? GENDERS, UNIONS, AND EFFECTIVE ORGANIZING* 3 (2009), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1025&context=reports> [hereinafter *WOMEN'S WAY*] (stating that recent data has shown that working women and particularly women of color are more likely than any other demographic group to pursue union representation); *id.* at 7 (stating that beginning in the late 1980s, win rates in the non-manufacturing sector were highest among female-dominated workplaces); Crain, *Feminizing Unions*, *supra* note 13, at 1173; see also CHANDLER & JONES, *supra* note 11, at 6 (discussing the power that women feel when they come together with other workers); *id.* at 58 (stating that it is much easier to organize women than it is to organize men).

<sup>62</sup> JOHN SCHMITT, CTR. FOR ECON. & POLICY RESEARCH, *UNIONS AND UPWARD MOBILITY FOR WOMEN WORKERS* 2 (2008).

<sup>63</sup> *Id.*

<sup>64</sup> Hope Yen, *Working Mothers Now Top Earners in Record 40 Percent of Households with Children*: Pew, HUFFINGTON POST (May 29, 2013, 6:07 AM), [http://www.huffingtonpost.com/2013/05/29/working-mothers-top-earners\\_n\\_3351495.html](http://www.huffingtonpost.com/2013/05/29/working-mothers-top-earners_n_3351495.html).

<sup>65</sup> Rachel Sheffield, *Breadwinner Mothers: The Rest of the Story*, FOUNDRY (June 3, 2013, 3:32 PM), [blog.heritage.org/2013/06/03/breadwinner-mothers-the-rest-of-the-story/](http://blog.heritage.org/2013/06/03/breadwinner-mothers-the-rest-of-the-story/).

Moreover, although finding women in union leadership roles is still relatively rare,<sup>66</sup> there are exceptions. A recent New York Times article discussed some powerful union women who are making strides into union leadership.<sup>67</sup> The article drew attention to three women who have very successful and powerful roles in union leadership.<sup>68</sup> While these women are impressive, the fact that their success in union leadership is notable enough to be discussed in the New York Times furthers the argument that women are still underrepresented in leadership roles. In Part III, I will discuss other stories of women's success in unions, highlighting the argument that unions generally—and women specifically—stand to benefit from women's leadership roles in unions.

## II. WOMEN AND NEGOTIATION: UNIQUE BENEFITS OF UNIONIZATION

This Part will seek to do two things. First, I will demonstrate through recent studies that unions provide some unique benefits to women and, in many cases, women benefit from unionization more than men do. Second, I will use the social science literature to explain why this is so. The reason, simply stated and discussed in much more detail below, is that many women have traditionally been unwilling to negotiate on their own behalf and therefore benefit more significantly from having a union negotiating on their behalf.<sup>69</sup>

### A. *Benefits of Unionization for Women*

Studies suggest that women benefit more significantly from unionization than men. In 2009, union membership increased the weekly median earning of a working woman by \$212 per week or \$11,024 per year.<sup>70</sup> Another study found that union representation raised women's wages by 11.2 percent—or

<sup>66</sup> WOMEN'S WAY, *supra* note 61, at 9 (stating that the union leadership is still predominantly male); Michelle Kaminski & Elaine K. Yakura, *Women's Union Leadership: Closing the Gender Gap*, 11 WORKINGUSA: J. LAB. & SOC'Y 459, 460 (2008) (stating that the number of female union leaders is not nearly proportional to the number of female union members).

<sup>67</sup> Kathleen Sharp, *Redefining the Union Boss*, N.Y. TIMES, Nov. 20, 2011, at BU1, available at <http://www.nytimes.com/2011/11/20/business/women-are-becoming-unions-new-voices.html>.

<sup>68</sup> *See id.*

<sup>69</sup> This is, of course, a gross generalization. Exceptions abound. I recognize that there are plenty of women who do not fit the mold described in this Part and I also recognize that there are likely racial, ethnic, and other differences regarding women's willingness to negotiate. For a good discussion of the willingness of African-American women to negotiate on their own behalf, see CHANDLER & JONES, *supra* note 11, at 50–53 (discussing the profound effect the civil rights movement had on African-American women who came to Nevada to work in casinos). Chief among the African-American leaders was Sarah Hughes, without whom the Culinary Union would not have been built. One casino union leader said this about Sarah Hughes: “[I] knew immediately she was a woman to reckon with: ‘Whenever she spoke, people moved. She was a shaker. And I don’t care if it was management or the maids.’” *Id.* at 52. The *Casino Women* book also discusses immigrant women stating that their stories “mirrored and substantially differed from those of the African American women who preceded them.” *Id.* at 61. Thus, I do not profess to be speaking on behalf of *all* women, but I do think I am speaking about a substantial portion of women.

<sup>70</sup> U.S. CENSUS BUREAU, *supra* note 1, at 429 tbl.664.



\$2.00 per hour—compared to non-union women with similar characteristics.<sup>71</sup> Unionization also significantly affects women's workplace benefits. Women in unions were 19 percent more likely to have employer-provided health insurance and 25 percent more likely to be in an employer-provided pension plan.<sup>72</sup> In fact, unionization is shown to have more of an impact on a woman's chance of having health insurance and pension benefits than having a four-year degree.<sup>73</sup> The benefits of unionization are very significant for women in low-wage occupations—for women in the fifteen lowest-paying occupations, unionization raised wages 14.3 percent.<sup>74</sup> As summarized in one report:

These findings demonstrate that women who are able to bargain collectively earn more and are more likely to have benefits associated with good jobs. The data strongly suggest that better protection of workers' rights to unionize would have a substantial positive impact on the pay and benefits of women in the workforce.<sup>75</sup>

One study suggested that women in unions are much more likely to have benefits that help them balance work and family.<sup>76</sup> "Those who belong to unions are more likely to have job security, health insurance that covers the family, various kinds of paid leave, as well as representation to employers and legislators regarding their issues."<sup>77</sup>

Another study (although a slightly older one) also indicated that coverage by a collective bargaining agreement is associated with higher wages for women.<sup>78</sup> This study indicated that "[u]nionized women earned an average of \$2.50 more per hour than non-unionized women[, which is] equivalent to a union wage premium of 38 percent."<sup>79</sup> Of special interest to me,<sup>80</sup> this study also indicates that the pay gap between men and women is smaller in a unionized workforce.<sup>81</sup>

Other studies point to an even greater benefit to unionization. One study indicated that "women in unions earn nearly a third more than non-union women workers . . . ."<sup>82</sup> Marion Crain has also highlighted the benefits of unionization for working class women. She states that the labor movement has done more to improve women's economic status than any other institution.<sup>83</sup> According to Crain, "Along with education and work experience, unions are

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<sup>71</sup> SCHMITT, *supra* note 62.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 4.

<sup>75</sup> *Id.* at 5.

<sup>76</sup> NEW APPROACHES TO ORGANIZING WOMEN, *supra* note 3.

<sup>77</sup> *Id.* at 6.

<sup>78</sup> JILL BRAUNSTEIN ET AL., CORNELL UNIV. ILR SCH., WHAT DO UNIONS DO FOR WOMEN? (1994), available at [http://digitalcommons.ilr.cornell.edu/key\\_workplace/439](http://digitalcommons.ilr.cornell.edu/key_workplace/439).

<sup>79</sup> *Id.*

<sup>80</sup> I have written about the pay gap between men and women. See generally Nicole Buonocore Porter & Jessica R. Vartanian, *Debunking the Market Myth in Pay Discrimination Cases*, 12 GEO. J. GENDER & L. 159 (2011).

<sup>81</sup> BRAUNSTEIN ET AL., *supra* note 78 (indicating that the pay gap between men and women in a unionized workforce is \$2.77 per hour, compared to \$3.45 per hour for non-unionized workers).

<sup>82</sup> Scott, *supra* note 37, at 236.

<sup>83</sup> Crain, *Feminism*, *supra* note 5.

one of the most significant factors in increasing women's [wages]."<sup>84</sup> Another significant benefit of unionization is the potential to pursue comparable worth strategies.<sup>85</sup> These strategies have proven unsuccessful in litigation, but have received more success through collective bargaining agreements.<sup>86</sup> Many scholars believe that comparable worth strategies are ripe with potential to narrow the pay gap.<sup>87</sup>

Another benefit of unionization for women is the opportunity to "open communication channels between women workers," which "may serve as a vehicle for collective female access to the power structure."<sup>88</sup> The open communication and information about pay and other benefits can also help to shrink the pay gap.<sup>89</sup> Studies indicate that the gender differences in what men and women would assign themselves in pay (with women paying themselves significantly less than men pay themselves) disappear when men and women have full information about the "going rates" for the jobs.<sup>90</sup> Thus, wage transparency is another benefit of unionization.

I want to briefly address why the labor movement might be better suited to dealing with pay inequalities than our current laws. Scholars have argued for all kinds of statutory and individual rights to help women close the pay gap. I have argued for the passage of the Paycheck Fairness Act, which would have amended the Equal Pay Act to give that statute more teeth.<sup>91</sup> Other scholars have, of course, relied on Title VII to protect women who are being discriminated against economically. But even I have acknowledged that this type of litigation can only take care of a small percentage of cases.<sup>92</sup> As stated by Crain: "Although all of these strategies have assisted in significant ways in ameliorating women's economic inequality, they have proved cumulatively inadequate to the task of achieving the goal of economic sex equality."<sup>93</sup> Accordingly, "[c]ollective action is the most powerful and expedient route to female empowerment."<sup>94</sup>

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<sup>84</sup> *Id.* at 1961.

<sup>85</sup> For a general discussion of comparable worth, see Deborah Thompson Eisenberg, *Shattering the Equal Pay Act's Glass Ceiling*, 63 SMU L. REV. 17 (2010).

<sup>86</sup> See Crain, *Feminism*, *supra* note 5, at 1923 ("[C]omparable worth strategies pursued by feminists and unionists may hold the most promise.").

<sup>87</sup> See, e.g., *id.* at 1941; Porter & Vartanian, *supra* note 80, at 162 n.22.

<sup>88</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1194.

<sup>89</sup> See Kaminski & Yakura, *supra* note 66, at 461 (stating that although women earn 81 percent of what men earn across industries, union women earn 85 percent of what their male union counterparts earn).

<sup>90</sup> BABCOCK & LASCHEVER, *supra* note 53, at 59.

<sup>91</sup> Porter & Vartanian, *supra* note 80, at 195–202.

<sup>92</sup> *Id.* at 179–83; see Crain, *Feminism*, *supra* note 5, at 1926 (stating that individual rights are meaningful only for those who have the financial means to enforce them through actual or threatened litigation); McUsic & Selmi, *supra* note 19, at 1359–60 (stating that the recent focus on anti-discrimination laws and individual rights has not brought much success in altering the underlying power structure of the workplace).

<sup>93</sup> Crain, *Feminism*, *supra* note 5, at 1920 (also pointing out that because the law requires only that employers treat likes alike; the disadvantages that are unique to women are not addressed by the statutes); see CHANDLER & JONES, *supra* note 11, at 95 (stating that although legal challenges are helpful in defending workers' rights, "[o]nly by standing together might workers have the strength to demand appropriate compensation").

<sup>94</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1156.

### B. *Women and Negotiation*

As stated above, women benefit significantly from union membership. This subpart describes why. Social science literature demonstrates that women are traditionally not socialized to negotiate on their own behalf, and hence either do not try or are not very successful. A disclaimer is in order: in making these assertions, and relying on the research of social scientists discussed below, I am painting with a broad brush. I recognize that the observations I make below do not apply to all women.<sup>95</sup> I also recognize that there are likely differences based on race, ethnicity, age, social class, education, and other criteria that affect whether or not women are socialized to negotiate on their own behalf and whether or not they in fact do negotiate on their own behalf. But discussing the diversity of the experiences of women with regard to negotiation is beyond the scope of this article. And even if the reader is not convinced with regard to the scope of the problem, it seems everyone would have a difficult time arguing that there is no problem at all.

According to research conducted by authors Linda Babcock and Sara Laschever, there is ample evidence that most women do not negotiate on their own behalf as often or as successfully as men. As stated in the preface of their book, *Women Don't Ask*:

Women don't ask. They don't ask for raises and promotions and better job opportunities. They don't ask for recognition for the good work they do. They don't ask for more help at home. In other words, women are much less likely than men to use negotiation to get what they want.<sup>96</sup>

Many women do not ask for anything at all.<sup>97</sup> In one study, 20 percent of those women surveyed said they never negotiate.<sup>98</sup> Even if women could be very successful at negotiating on their own behalf, they simply do not “ask” at the same rate as men.<sup>99</sup>

There are several factors that contribute to women's discomfort with negotiating on their own behalf. First, researchers studied how men and women compare in their belief that they are in control of their own destiny and in control of their own money. Study after study revealed that women are more likely to believe that their circumstances are controlled by others while men are

<sup>95</sup> See *supra* note 69 and accompanying text.

<sup>96</sup> BABCOCK & LASCHEVER, *supra* note 53, at ix. There has been some strong criticism of this book. For instance, Joan Williams criticizes the book and those who have legitimized it because she believes it is harmful to perpetuate the idea that women have only themselves to blame for their failure to achieve economic equality. Joan C. Williams, *Reconstructive Feminism: Changing the Way We Talk About Gender and Work Thirty Years After the PDA*, 21 YALE J.L. & FEMINISM 79, 106–11 (2009). Instead, Williams alleges that the reason women do not negotiate as often as men do is because women will be penalized for doing so. *Id.* at 107–08 (citing studies where male evaluators penalized women for negotiating their salary and insisted on more likeability from women); *id.* at 108 (stating that women face higher social costs when they negotiate). I discuss some of these issues in Nicole Buonocore Porter, *The Blame Game: How the Rhetoric of Choice Blames the Achievement Gap on Women*, 8 FLA. INT'L U.L. REV. 447, 458–60 (2013). To be clear, even though I argue that the common narrative blames women for their lack of success, I also make clear that placing this blame is not fair because these choices are often constrained. *Id.* at 468.

<sup>97</sup> BABCOCK & LASCHEVER, *supra* note 53, at 1.

<sup>98</sup> *Id.* at 10.

<sup>99</sup> *Id.*

more likely to believe that they can influence their circumstances and opportunities through their own actions.<sup>100</sup> Even children learn very early on that boys are in control of their lives more than girls are.<sup>101</sup> This is not a completely erroneous assumption by women, considering that the “basic reality of life” is that there is an unequal balance of power between men and women.<sup>102</sup> This means that women often do not see the benefit of asking for anything.<sup>103</sup> Many women assume that someone or something else is in control of their situation. “This assumption—the result of powerful social influences that go to work the day a woman is born—has a broad impact on women’s behavior.”<sup>104</sup>

Second, before one is willing to ask for something (more money, promotion, better benefits, etc.), one must be unhappy with what one has.<sup>105</sup> In one study, “psychologists discovered that women’s pay satisfaction tends to be equal to or higher than that of men,” even though they are often earning less than men.<sup>106</sup> It turns out that pay satisfaction correlates more with expectations than with what is possible or what the market would pay.<sup>107</sup> Research reveals that women generally are not unhappy with their income because they expect less.<sup>108</sup> And they expect less because, in many families, they have been brought up believing that they and their tasks are not worth as much.<sup>109</sup> Part of the problem is that, for a very long time, many women have been working at home, which has no financial value attached to it. This means that women enter the traditional workforce without the experience of evaluating their time and abilities in economic terms.<sup>110</sup> Furthermore, even when they recognize that they have market power, they feel uncomfortable using it to their own advantage.<sup>111</sup> Often this is because women have grown accustomed to homemaking as a “labor for love.”<sup>112</sup> Even when not home-making, women feel strange asking for more when they are working at a job that they love.<sup>113</sup> “Having been trained to think that they should work ‘for love’ rather than money also makes gratitude . . . another limiting factor for women. Grateful to be paid at all, many women accept what they are offered without negotiating.”<sup>114</sup> Women also have

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<sup>100</sup> *Id.* at 23–24.

<sup>101</sup> *Id.* at 29. The researchers looked at several studies involving children’s perception of money and power. They found that boys develop beliefs that they are in control of their situations and that they should find ways to get what they want. Girls, on the other hand, learn that they will likely not control their own lives or money and therefore “learn not to behave as if they do.” *Id.*

<sup>102</sup> *Id.* at 27.

<sup>103</sup> *See generally id.* at 17–40.

<sup>104</sup> *Id.* at 18.

<sup>105</sup> *Id.* at 41.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 43.

<sup>108</sup> *Id.* at 42.

<sup>109</sup> *Id.* at 43–44.

<sup>110</sup> *Id.* at 45.

<sup>111</sup> *Id.* at 46.

<sup>112</sup> *Id.* at 47 (internal quotations omitted).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 48.

a tendency to focus on what they need rather than what they are worth, and many women do not feel like they need very much.<sup>115</sup>

Several theories have been posited about why women are happy with less.<sup>116</sup> One theory is that “women focus on their roles as homemakers, rather than on their roles as workers,” and they are more satisfied in the home sphere.<sup>117</sup> Of course, even if that is true, which seems unlikely today, that preference or desire is likely caused by the social stereotypes with which women have been raised. As noted by Crain, the argument that women voluntarily choose low-paying dead-end jobs because they are more interested in raising their families is also influenced by stereotypes regarding the proper roles of men and women.<sup>118</sup> A second explanation for why women generally are happy with less is based on women’s belief in the importance of self-sacrifice. When plagued with this belief, women are prevented from “asserting their economic interests for fear of appearing greedy or ambitious . . . .”<sup>119</sup>

Third, women’s relative lack of self-esteem causes them to be satisfied with less. In order to act in one’s own self-interest, one must have sufficient self-esteem, which many women do not have.<sup>120</sup> Babcock and Laschever provide ample evidence, both empirical and anecdotal, to support what most people (or at least most women) know intuitively—that women’s self-esteem is far lower than men’s self-esteem. Studies revealed that women’s self-worth is very influenced in response to feedback from others.<sup>121</sup> This is one reason why many women do not negotiate—they believe that if others believe in their value, they will be given what they deserve. Women generally have a hard time knowing whether they deserve something unless someone tells them that they do.<sup>122</sup> One study indicated that 52 percent of women and only 29 percent of men suffer from a low sense of entitlement.<sup>123</sup> Many women’s suppressed sense of self is part of the reason women have a hard time negotiating on their own behalf. Because they are not dissatisfied with what they have and they are not sure they deserve more, they settle for less.<sup>124</sup>

There are many anecdotal stories about the effects of women’s lack of self-esteem. For instance, one successful woman who was an engineer had such low self-esteem, she felt like she was “faking it.” When she was offered a job and asked about salary, she was so excited to have the job she said: “I don’t care what you pay me as long as you give me a job.”<sup>125</sup> Another woman, who

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<sup>115</sup> *Id.* at 48–49.

<sup>116</sup> Joan Williams has an explanation that is different from the authors. She believes that women have lower expectations because women have historically been discriminated against. Williams, *supra* note 96, at 109.

<sup>117</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1174.

<sup>118</sup> *Id.* at 1178.

<sup>119</sup> See Crain, *Feminism*, *supra* note 5, at 1950.

<sup>120</sup> See *id.* at 1962 (stating that in a “society that offers women ‘a vision of themselves as dependent upon men for everything from material support to physical protection to a sense of their identities,’ this should not come as a surprise”).

<sup>121</sup> BABCOCK & LASCHEVER, *supra* note 53, at 51.

<sup>122</sup> See *id.*

<sup>123</sup> *Id.* at 54.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 5 (internal quotations omitted).

had a college degree from Princeton and five years of experience working as a lobbyist, applied for two jobs and was so surprised when she received an offer, she simply accepted it without negotiating. It turns out the other company was also going to give her an offer and if she had believed in herself and her worth and waited before accepting the first offer, she would have been able to get a much higher salary.<sup>126</sup>

Although we know women generally have lower self-esteem than men, figuring out what causes that depressed sense of entitlement is another issue entirely. In their aptly named chapter “Nice Girls Don’t Ask,” authors Babcock and Laschever explore the ways in which we teach boys and girls about “gender-appropriate behavior” and pressure adults to abide by those behaviors.<sup>127</sup> Researchers have produced volumes discussing gender stereotypes and how much those stereotypes influence people’s perceptions.<sup>128</sup> Not only do these stereotypes influence the characteristics we think women and men have, they also influence how we think men and women *should* behave. For instance, it is widely believed that women tend to and *should* be more “communal” and focused on others while we accept that men are more focused inwardly, on themselves and their own interests.<sup>129</sup> The researchers also explore the history of how these stereotypes and norms came to be. After describing the significant job segregation we still have today,<sup>130</sup> they point out that the history of assigning men and women to certain tasks actually functions as a self-fulfilling prophecy which exerts pressure on men and women to develop the characteristics and skills needed to perform those jobs.<sup>131</sup>

Researchers describe how often girls were told that asking for things was like begging and that “good girls don’t beg.” Or consider another woman who was taught that if she has something, she should give it to or share it with someone else. Girls are often raised with the message that they are supposed to be generous while boys only have to worry about themselves.<sup>132</sup> The media teaches girls that they are supposed to be coy and indirect about what they want rather than expressing their wishes directly.<sup>133</sup> Furthermore, the perceptions of adults have a significant effect on children’s self-esteem and success. Researchers demonstrated that if a teacher or other adult believes a student is smart and will be successful, they treat the child differently than other children, and this different treatment works to increase that child’s self-esteem and his level of achievement.<sup>134</sup> Researchers believe that the lessons from childhood lead

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<sup>126</sup> *Id.* at 45.

<sup>127</sup> *Id.* at 62; *see also* Williams, *supra* note 96, at 105 (stating that women are under enormous pressure to conform to the descriptive stereotypes of women).

<sup>128</sup> BABCOCK & LASCHEVER, *supra* note 53, at 62–63.

<sup>129</sup> *Id.* at 63.

<sup>130</sup> *Id.* at 65.

<sup>131</sup> *See id.* at 65–66.

<sup>132</sup> *Id.* at 68.

<sup>133</sup> *Id.* at 69.

<sup>134</sup> *See id.* at 72–73. One of the studies involved researchers administering real aptitude tests and fake tests allegedly designed to predict which children were likely to experience an increase in achievement and aptitude. The names of these “spurters” were given to the teachers and when the researchers again tested aptitude a year and a half later, the listed “spurters” saw a significant increase in aptitude because the teachers treated the “spurters” differently,

directly to women's reluctance to believe that they deserve their successes and should fight for what they deserve.<sup>135</sup>

Sometimes stereotypes about women's proper behavior are so subconscious that they can even affect memory. Studies have demonstrated that if a man believes women are not competent at some specific task, he might "remember" events consistent with that stereotype that did not actually occur because we often create memories that conform to our beliefs.<sup>136</sup> Women internalize these negative stereotypical beliefs.<sup>137</sup> Even when they have become very successful in a traditionally male-dominated environment, women secretly worry that they are just "faking it" or that they are an imposter, and they may be discovered at any time.<sup>138</sup> Simply knowing others hold those stereotypical views "can subconsciously influence a person's behavior," even if she does not embrace or internalize those views.<sup>139</sup> One fascinating study explored how making race or gender salient before an exam caused women and racial minorities to do worse on the exam.<sup>140</sup> Accordingly, "stereotypes with negative connotations about the abilities of women may influence a woman's behavior even if she repudiates the stereotype" or believes she is immune from its damage.<sup>141</sup> Even if she believes that these stereotypes are inappropriate and offensive, simply knowing that others hold those beliefs can be sufficient to influence her behavior.<sup>142</sup>

Studies also indicate that women intentionally change their behavior in the workplace, often adopting more permissive and less assertive characteristics. One reason for this is because women have learned since they were little girls that too much assertive behavior is a gender norm violation and can backfire on women.<sup>143</sup> The very behaviors that many think are effective in negotiation, assertiveness and self-confidence, carry risks for women.<sup>144</sup> Knowing this causes women more anxiety when negotiating because they have learned that being assertive might cause them to be punished in subtle and overt ways.<sup>145</sup>

Instead of feeling comfortable being assertive and confident, studies indicate that in order to be effective when influencing others, women need to be liked; yet whether or not men are liked has no effect on men's ability to influence others.<sup>146</sup> Many women have been raised to believe that being liked is more important than anything else. This leads women to avoid asking for any-

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giving them more attention and praising them more. High expectations led to positive results. *Id.*

<sup>135</sup> *Id.* at 72.

<sup>136</sup> *Id.* at 75.

<sup>137</sup> *Id.* at 76 ("[M]embers of oppressed groups internalize aspects of their oppression, coming to believe in the legitimacy of their own inferiority.").

<sup>138</sup> *Id.* at 77. In my experience, this belief is very widespread among women, yet amongst men it has only been expressed to me by one man.

<sup>139</sup> *Id.* at 79.

<sup>140</sup> *Id.* The exception to this was regarding Asians and math tests. *Id.*

<sup>141</sup> *Id.* at 80.

<sup>142</sup> *Id.* at 80–81.

<sup>143</sup> *Id.* at 83–84.

<sup>144</sup> *See id.*

<sup>145</sup> *Id.* at 84; *see also* Williams, *supra* note 96, at 108 (stating that women are worried that they will appear too "bitchy" if they negotiate hard for themselves).

<sup>146</sup> *See* BABCOCK & LASCHEVER, *supra* note 53, at 85–86.

thing because they fear it will affect how much they are liked.<sup>147</sup> Even self-promotion (informing others about achievements) carries risks for women as it might make others like them less.<sup>148</sup> One of society's strongest gender norms is that women "will be modest and selfless[, which means that] attaching a dollar value to their work and time" is considered improper and unattractive.<sup>149</sup> If a woman knows what she is worth and asks for it, she sets herself up to be "scorned and chastised."<sup>150</sup> In one study, participants believed that women in leadership roles were not likeable, perhaps because this leadership behavior clashes with gender norms regarding how women should behave.<sup>151</sup> In fact, a 1998 study indicated that males still held negative views about women in leadership roles,<sup>152</sup> and in a more recent study, male participants considered men to be more effective than women in all leadership behaviors.<sup>153</sup> Because of this, many women tell stories of being told or simply knowing that they should not be obvious about their accomplishments.<sup>154</sup> In other words, women feel like they have to "dumb it down." Many women are conscious of the negative perceptions they face if they are too assertive about their accomplishments so they become self-conscious when being observed negotiating. One study indicated that women request lower salaries for themselves when another person is present than they request when they assume no one else is watching.<sup>155</sup>

Many women report an intolerably high level of discomfort and anxiety when having to negotiate on their own behalf.<sup>156</sup> This anxiety affects even the most powerful and successful women.<sup>157</sup> Not only do women have more anxiety, but research reveals that the anxiety women feel is more disabling than any anxiety men feel.<sup>158</sup> The reason women feel this anxiety is largely because they worry that asking for something they want will harm their relationships, and for many women, relationships play a central role in their lives.<sup>159</sup> If their relationships suffer, their self-esteem suffers.<sup>160</sup>

Not everyone agrees with the messages this book conveys.<sup>161</sup> Joan Williams criticizes it because the authors appear to be blaming women for their

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<sup>147</sup> *Id.* at 88.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 98; *see also* Williams, *supra* note 96, at 108 (stating that women face higher social costs when they negotiate on their own behalf).

<sup>150</sup> BABCOCK & LASCHEVER, *supra* note 53, at 98.

<sup>151</sup> *Id.* at 89–90.

<sup>152</sup> *Id.* at 90.

<sup>153</sup> CATALYST, WOMEN "TAKE CARE," MEN "TAKE CHARGE:" STEREOTYPING OF U.S. BUSINESS LEADERS EXPOSED 10–11 (2005), *available at* [http://www.catalyst.org/system/files/Women\\_Take\\_Care\\_Men\\_Take\\_Charge\\_Stereotyping\\_of\\_U.S.\\_Business\\_Leaders\\_Exposed.pdf](http://www.catalyst.org/system/files/Women_Take_Care_Men_Take_Charge_Stereotyping_of_U.S._Business_Leaders_Exposed.pdf).

<sup>154</sup> BABCOCK & LASCHEVER, *supra* note 53, at 103–04.

<sup>155</sup> *Id.* at 111.

<sup>156</sup> *Id.* at 113.

<sup>157</sup> *See id.* at 115.

<sup>158</sup> *Id.* *See also* Williams, *supra* note 96, at 110 (stating that "masculine workplace norms often make it politically riskier for women to negotiate than for men").

<sup>159</sup> BABCOCK & LASCHEVER, *supra* note 53, at 116.

<sup>160</sup> *Id.* at 122.

<sup>161</sup> *See, e.g.,* Williams, *supra* note 96.



failure to achieve economic equality.<sup>162</sup> To be fair, I think much of Joan Williams's criticism is because of the public's reaction to this book. In other words, Williams acknowledges that the authors themselves recognized that there are social costs when women are assertive and negotiate on their own behalf but when this book was discussed and reviewed by the public, the main message that came through was that women have only themselves to blame.<sup>163</sup> As stated eloquently by Williams: "When conventional femininity is characterized as the voice of women, past discrimination against women (that is, norms that punish women for negotiating) is used to justify future discrimination against women."<sup>164</sup>

Williams is also critical of the message sent by the authors that they should use female-like negotiation styles, such as being cooperative and deferential.<sup>165</sup> She argues that instead of accepting the norm that women will not and cannot be assertive when negotiating, we should change the norm. She states that it is possible to design a compensation system in such a way that does not systematically disadvantage women.<sup>166</sup> Of course, one such system is unionization. As Williams states: "[W]e need to stop depending on a system of giving good starting salaries, good raises, and good teaching assignments only to those people who negotiate hard for them."<sup>167</sup> I made a similar argument when I advocated for the passage of the Paycheck Fairness Act, which, as I argue, would have made it unlawful for employers to justify unequal pay by pointing to the fact that a man negotiated for higher pay when a woman did not.<sup>168</sup> But until that day that we can change that norm by practice or by law, the fact that many women do not negotiate, regardless of the reason, is harmful to women.

### C. *The Harm When Women Do Not Negotiate*

To the extent that many women are uncomfortable and even unwilling to negotiate on their own behalf, the question remains: so what? How does this reluctance to negotiate affect women? This sub-part will address that question. Although many women's lack of willingness to negotiate (relative to men) has always affected women negatively,<sup>169</sup> the overall decline of unionization<sup>170</sup> has even more significant consequences for women. Millions of workers, many of them women, have to negotiate for wages, benefits, job assignments, and vacation time.<sup>171</sup> The financial consequences of not negotiating are huge. "There is

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<sup>162</sup> *Id.* at 106.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 109.

<sup>165</sup> *Id.* at 110.

<sup>166</sup> *Id.* at 111.

<sup>167</sup> *Id.*

<sup>168</sup> Porter & Vartanian, *supra* note 80, at 192–202.

<sup>169</sup> Just to get an idea of the continuing lifetime earnings gap between men and women, as of a study in 2004, women earn "only [38] percent of the lifetime wages of men." Williams, *supra* note 96, at 100 (citation omitted).

<sup>170</sup> BABCOCK & LASCHEVER, *supra* note 53, at xi (noting a decline from 20.1 percent of US workers being union members in 1983, to 13.5 percent in 2001).

<sup>171</sup> *Id.*

an enormous ‘return on investment’ for a *one-time* negotiation.”<sup>172</sup> Some even believe that much of the wage gap between men and women “can be traced to differences in entering salaries” because women did not negotiate their starting salary.<sup>173</sup> If women fail to negotiate their starting salaries, very few employers will insist on paying them more, even if those employers have a committed policy against discrimination.<sup>174</sup> As stated by Babcock and Laschever:

The net result is a huge imbalance in the distribution of resources and opportunities between men and women. Because women ask for what they want less often than men do, and therefore get what they want much less of the time, the inequities in our society, and all the problems they create, continue to pile up.<sup>175</sup>

In fact, the evidence is clear that: “Women as a group earn less than men, progress more slowly through the ranks of most businesses, and rarely rise as high.”<sup>176</sup>

In response to the question of why should we worry about women being paid less if they are not dissatisfied, Babcock and Laschever respond: we as a society are “paying a substantial price for leaving women undisturbed and unaware of how much they might be missing.”<sup>177</sup> We would not be comfortable with a “society in which half of our citizens are arbitrarily undervalued and underpaid[.] Fairness as a principle doesn’t work if applied only in response to demand; it must be safeguarded and promoted even when its beneficiaries don’t realize what they are missing.”<sup>178</sup> The authors identify social costs, including negative health consequences, caused by being undervalued in society.<sup>179</sup> “A negative self-evaluation combined with stress can lead to depression,” which can often lead to other health problems.<sup>180</sup> Another consequence of women being underpaid is that their lower pay can affect perceptions of quality. Just as we assume that a higher-priced bottle of wine will be higher quality, employers tend to assume that applicants with better salary histories are more qualified and capable than those with lower salary histories.<sup>181</sup> Because women’s salary histories are not always reflective of their capabilities, employers often lose out by not hiring the most talented people for their open positions.<sup>182</sup> Furthermore, women’s failure to ask for more “deprives their bosses . . . of valuable information[,] wastes women’s talents[,] and prevents them from reaching their full potential.”<sup>183</sup> The problem is a significant one and it will not abate without concerted, collective action. In the next part, I argue that because many women

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<sup>172</sup> *Id.* at 5.

<sup>173</sup> *Id.* at 5–6.

<sup>174</sup> *Id.* at 6. I believe that an employer’s failure to pay a woman as much as a man in a substantially equal position because she did not negotiate for the higher salary *should* violate the law, but as of now, most likely does not. *See generally* Porter & Vartanian, *supra* note 80.

<sup>175</sup> BABCOCK & LASCHEVER, *supra* note 53, at 8.

<sup>176</sup> *Id.* at 95.

<sup>177</sup> *Id.* at 54.

<sup>178</sup> *Id.* at 54–55.

<sup>179</sup> *Id.* at 55.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 56.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 57.

have been uncomfortable, unwilling, and unsuccessful in negotiating on their own behalf, increasing their involvement in unions will help to alleviate some of the inequalities women face in the workplace.

### III. INCREASING WOMEN'S INVOLVEMENT IN UNIONS

#### A. *The Importance of Increasing Overall Union Membership*

The goal here is two-fold. Based on the benefits of unionization for women, the first goal is to increase the number of women in unions.<sup>184</sup> Second, which will follow from the first, is to increase both overall union density and the strength and power of those unions.<sup>185</sup> As stated by Crain, “[u]nions are painfully aware that they must attract women workers if they are to survive.”<sup>186</sup> In other words, “the future viability of unions is inextricably intertwined with organizing women.”<sup>187</sup> An increase in women union members would help reinvigorate the labor movement.<sup>188</sup> Crain argues: “[a]n influx of women members with new ideas about how unions should be structured, how they can exert economic power, and what they should do for their membership would give labor a much-needed shot in the arm, psychologically and numerically.”<sup>189</sup> A recent article in the *New York Times* also suggested that women in union leadership roles has “rekindled hope that organized labor maybe, just maybe, could stage a comeback.”<sup>190</sup> The article quotes an author and union organizer as saying: “Some of these women might even make unions relevant to the average American again.”<sup>191</sup> Others have argued that an increase in significant female leadership could lead to exciting new legislation and voices at the bargaining table.<sup>192</sup>

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<sup>184</sup> See *WOMEN'S WAY*, *supra* note 61, at 7 (stating that women are an important target for organizing and therefore unions are starting to question old approaches to organizing).

<sup>185</sup> *Id.* at 32 (arguing that we need to pay attention to the needs of women if we want to increase union density); see also *id.* at 10 (stating that we need to prioritize the needs of women workers within the labor movement). Cf. *McUsic & Selmi*, *supra* note 19, at 1353 (arguing that, “[a]bsent solidarity, the notion of workers operating as a community is replaced with ‘the feeble strength of one’ ”).

<sup>186</sup> Crain, *Feminism*, *supra* note 5, at 1956 (“Given the demographic changes in the workforce, the shrinking manufacturing sector and growing female-dominated service sector, and the dwindling union membership in the private sector, the time is ripe for change.”).

<sup>187</sup> *Id.* at 1957–58; see also *NEW APPROACHES TO ORGANIZING WOMEN*, *supra* note 3, at 1 (stating that the “future of the labor movement depends upon fresh approaches to organizing”); *WOMEN'S WAY*, *supra* note 61 (stating that women are “key to the revitalization of the U.S. Labor movement”).

<sup>188</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1156.

<sup>189</sup> *Id.*

<sup>190</sup> Sharp, *supra* note 67.

<sup>191</sup> *Id.*

<sup>192</sup> Chaison & Andiappan, *supra* note 45, at 160.

B. *Addressing Women's Issues*<sup>193</sup>

For years, scholars have advocated for unions to organize women around sex equality issues.<sup>194</sup> When campaigns emphasize issues important to women, these tend to be the most successful organizing campaigns.<sup>195</sup> In fact, some unions have begun noticing that the neglect of women's issues has been a barrier to organizing women, so these unions have worked to increase attention to things that matter to women.<sup>196</sup> One recent study discussed ways to organize women workers. Many women workers are very concerned about work/family balance,<sup>197</sup> and this study reveals that younger workers are even more concerned with work/family balance than older generations of workers.<sup>198</sup> Although unions have not used work/family issues to build their campaigns, the issues unions do focus on, such as benefits, overtime, job security, respect, etc. are very relevant to employees' work/family issues.<sup>199</sup> Thus, when workers are asked about top issues, they mention the normal topics such as job security, wages, and health insurance, but when the employees were asked about their actual interests, many of them mentioned that workers need more support for family.<sup>200</sup> In other words, all workplace issues are related to work/family issues.<sup>201</sup>

Yet, even though 90 percent of women report work/family conflict, many organizers interviewed stated that they "rarely prioritize work and family issues because the women they represent have [more] basic needs such as higher

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<sup>193</sup> While this paper is specifically addressing issues important to women, it is obvious that there are other identity groups that are also interested in organizing around issues important to their identity. *See, e.g.*, Briskin, *supra* note 1, at 521 (discussing the importance of minority networks to further interests important to minority workers); WOMEN'S WAY, *supra* note 61, at 29 (stating that successful organizing must include acknowledging the diversity of women); *id.* at 31 (recommending that unions pay more attention to the intersection of sex with age, ethnicity, and sexual orientation); *id.* at 32 ("If women, young people, and people of color were to collectively design their preferred union, it might look very different from the traditional union.").

<sup>194</sup> *See, e.g.*, Crain, *Feminism*, *supra* note 5, at 1909; *see also* WOMEN'S WAY, *supra* note 61, at 9 (stating that organizing campaigns benefit from focusing on issues of "discrimination, pay equity, respect, dignity, work and family issues, and sexual harassment").

<sup>195</sup> Crain, *Feminism*, *supra* note 5, at 1956–57; WOMEN'S WAY, *supra* note 61, at 15 (stating that it is better if unions address "real priorities" of women, including work/family balance, respect, and prevention of harassment); *id.* at 21 (concluding from the focus groups and studies that focusing on things like upgrading skills, respect, ending harassment, and addressing whole life issues inspired women to get involve in unions). The focus of most unions on wages and other terms and conditions of employment – thereby putting individual benefit over community – disadvantages women because most women have internalized the message of the benefit of self-sacrifice. Crain, *Feminism*, *supra* note 5, at 1950. *See also* BABCOCK AND LASCHEVER, *supra* note 53, at 9.

<sup>196</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1180; *see also* WOMEN'S WAY, *supra* note 61 (stating that to organize women, union organizers and leaders should pay more attention to the entire lives of the workers).

<sup>197</sup> For many great articles on the labor movement for working families, see *Labor Project Publications*, LAB. PROJECT WORKING FAMS., <http://www.working-families.org/publications> (last visited Mar. 25, 2014).

<sup>198</sup> NEW APPROACHES TO ORGANIZING WOMEN, *supra* note 3, at 2.

<sup>199</sup> *Id.* at 21.

<sup>200</sup> *Id.* at 12.

<sup>201</sup> *Id.* at 13.

income, benefits, [and] job security.”<sup>202</sup> This suggests that organizers are looking at work and family issues too narrowly, making them seem marginal and dispensable, rather than core issues.<sup>203</sup> As aptly stated:

The opportunity to strike a chord on work and family issues is evident: the facts show that unionized women get a work family premium and our interviews show that workers care about work and family issues. If unions placed work and family needs as priorities, potential for connecting with women workers and organizing them might be greatly enhanced.<sup>204</sup>

Accordingly, “an effort should be made to reframe work and family issues as core labor issues.”<sup>205</sup> Collective action can also be helpful for mobilizing employees to put pressure on employers to adopt more family-friendly initiatives.<sup>206</sup>

Women in leadership roles can also bring a fresh approach to problems that have persisted for years. As stated by two scholars: “As the pool of potential leaders is expanded—to include more women . . . —the pool of ideas, possible solutions, and approaches to solving the problem is also expanded.”<sup>207</sup> Women have a tendency to question traditional wisdom, look at old ideas from new angles, and often ask if there is a better way of doing things.<sup>208</sup> Allowing women to advance into positions of greater power and influence has the potential not just to improve women’s lives but also to “increase the fund of human knowledge.”<sup>209</sup>

Crain discusses one specific example of the benefits of female collective action: combatting sexual harassment.<sup>210</sup> Women have found it much easier to combat sexual harassment through collective action.<sup>211</sup> I especially love this story: twenty seamstresses together confronted their supervisor for harassing six of the women and refused to begin work until his superior had heard their protest.<sup>212</sup> The story ended with the harassing supervisor abandoning his

<sup>202</sup> *Id.* at 17; *see also* McUsic & Selmi, *supra* note 19 (stating that “worker demands beyond wage gains . . . were considered to fall outside ‘true’ workplace issues . . .”).

<sup>203</sup> NEW APPROACHES TO ORGANIZING WOMEN, *supra* note 3, at 17.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 21.

<sup>206</sup> Scott, *supra* note 37, at 241.

<sup>207</sup> Kaminski & Yakura, *supra* note 66, at 462.

<sup>208</sup> BABCOCK & LASCHEVER, *supra* note 53, at 160.

<sup>209</sup> *Id.* at 163; *see also* Kaminski & Yakura, *supra* note 66, at 462 (stating that women are more likely to be “transformational leaders, which is characterized by being a role model, inspiring others, strategic thinking, innovation, and mentoring and developing others”).

<sup>210</sup> Sexual harassment is even worse in male-dominated industries, which includes a great many unionized employers. Specifically, as stated by Scott Moss, “there is a ‘classic pattern of harassment often directed at women who try to claim male-dominated work as their own’” by entering predominantly male fields. Scott A. Moss, *Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for Both Occupational Segregation and Economic Analysis of Law*, 27 HARV. WOMEN’S L.J. 1, 10 (2004).

<sup>211</sup> Crain, *Feminism*, *supra* note 5, at 1938; Crain & Matheny, *United Front*, *supra* note 14, at 1604 (noting Deborah Greenfield, the associate general counsel for the AFL-CIO, stated that “addressing member-on-member sexual harassment warrants union involvement because sexual harassment is an affront to dignity on the job, which ‘goes to the core of unionism’”).

<sup>212</sup> Crain, *Feminism*, *supra* note 5, at 1938–39 (citing *NLRB v. Downslope Indus. Inc.*, 676 F.2d 1114, 1117 (6th Cir. 1982)).

job.<sup>213</sup> Similarly, some female casino workers expressed similar sentiments about being able to combat harassment through the power of the union.<sup>214</sup> These are just two examples of the strength women gain when working together.<sup>215</sup> One woman who experiences harassment might be afraid to report or protest it for fear of retaliation (even though such retaliation is unlawful), but many women protesting together know that they have strength in numbers—employers are much less likely to retaliate against a large group of employees.

### C. *Advantages of Women Leaders and Negotiators*

As argued above, having more women in unions would benefit those female workers because they would not have to negotiate for their own terms and conditions of employment. Having more women in unions would also increase union membership<sup>216</sup> overall and bring more attention to women's issues.<sup>217</sup> These goals can be furthered by improving the number of female union leaders.<sup>218</sup>

First, as should be obvious, focusing on women's issues has proved most effective when the union leadership has more women.<sup>219</sup> Second, women are more likely to join unions when there are more women leaders.<sup>220</sup> Studies indicate that there is a greater likelihood of women being viewed negatively when

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<sup>213</sup> *Id.* at 1939.

<sup>214</sup> See generally CHANDLER & JONES, *supra* note 11.

<sup>215</sup> But see Crain & Matheny, *United Front*, *supra* note 14, at 1545–52 (discussing a very large sexual harassment case brought by the EEOC against Mitsubishi, wherein the “union played almost no role in the resolution of the problem”). Of course, in one way, this case proves my point made below regarding women leaders in unions. Perhaps if the union in this case had more women in leadership roles, it would have taken a more aggressive stance against the harassment.

<sup>216</sup> See WOMEN'S WAY, *supra* note 61, at 10 (suggesting that the male dominated leadership in unions makes it difficult to attract women members).

<sup>217</sup> Kaminski & Yakura, *supra* note 66, at 461 (explaining that women union leaders tend to focus on different issues and that most women do not believe that women's concerns are adequately represented by male union leaders—concerns such as equal pay, work/family balance, childcare, flextime, and dealing with bullying and harassment in the workplace); see also *id.* (stating that women leaders are more likely to focus on dignity, respect, and pay equity for their members).

<sup>218</sup> See WOMEN'S WAY, *supra* note 61 (stating that the failure of many organizing campaigns is due to the shortage of women organizers and leaders). Furthermore, it is well known that women prefer to work for employers with more women. Moss, *supra* note 210, at 37.

<sup>219</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1180; Patricia A. Simpson & Michelle Kaminski, *Gender, Organizational Justice Perceptions, and Union Organizing*, 19 EMP. RESPS. & RTS. J. 57, 59 (2007).

<sup>220</sup> See, e.g., Kaminski & Yakura, *supra* note 66, at 459 (stating that the proportion of female union leaders should mimic the proportion of female union members); Briskin, *supra* note 1, at 522 (stating that the more active women are in leadership, the “higher is the relative share of women therein”); WOMEN'S WAY, *supra* note 61, at 24 (emphasizing the importance of women leaders to getting women involved in unions); *id.* at 10 (suggesting that male dominated leadership in unions makes it difficult to attract women members). Cf. Crain & Matheny, *United Front*, *supra* note 14, at 1598 (stating that organizing women will require “an understanding of women's life experiences, language, and culture”). Women leaders will be more likely to have this understanding.

their numbers are relatively small.<sup>221</sup> Increasing the number of women in unions (both as members and leaders) would help to alleviate the problem of tokenism.<sup>222</sup> Other research indicates that women who work in male-dominated industries<sup>223</sup> will be better off if they try to reduce their token status by recruiting women to their employers and mentoring those women.<sup>224</sup>

Finally, having more women leaders is beneficial because, even though many women are reluctant to negotiate on their own behalf,<sup>225</sup> women are very willing to and good at negotiating on behalf of others. This is contrary to popular belief. Many assume that men will be better negotiators because men are perceived as assertive, strong, and able to stand firm against compromise while women are viewed as emotional, relationship-oriented and attuned to others' feelings.<sup>226</sup> Women were traditionally perceived as lacking competence in negotiation skills, including assertiveness. Men were more often invited into the union leadership ranks because they are "perceived as more aggressive, uncompromising, competitive, assertive, intelligent, and as having better judgment than women."<sup>227</sup> Stated simply, they are perceived to be better negotiators.<sup>228</sup> The following discussion seeks to dispel that myth.

### 1. *Women are More Willing to Negotiate on Behalf of Others*

While the evidence is clear that women are often not comfortable or successful negotiating on their own behalf, they are much more successful when negotiating on behalf of others.<sup>229</sup> As stated by Babcock and Laschever: "So where is this far and distant land, the place where women can freely assert themselves and negotiate and push and ask? It is the land of advocacy—of

<sup>221</sup> Moss, *supra* note 210, at 40.

<sup>222</sup> BABCOCK & LASCHEVER, *supra* note 53, at 80.

<sup>223</sup> Some occupations have seen virtually no decrease in gender segregation. "Many occupations are less than five percent or more than ninety-five percent female—mainly blue-collar, mechanical, and other stereotypically 'male' work and office assistance or caregiving 'female' work, respectively." Moss, *supra* note 210, at 3.

<sup>224</sup> BABCOCK & LASCHEVER, *supra* note 53, at 108; *see also* Kaminski & Yakura, *supra* note 66, at 470 (discussing the benefits of reducing tokenism).

<sup>225</sup> *See supra* Part III.B.

<sup>226</sup> BABCOCK & LASCHEVER, *supra* note 53, at 74; *see also id.* at 175 (stating that the male approach to negotiation was long seen as the right way and women's approach was seen as inferior).

<sup>227</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1168; *see also* McUsic & Selmi, *supra* note 19, at 1348 (stating that in some unions, women "were excluded from leadership positions . . . because union leaders believed that women [ ] were 'not ready for [leadership] positions'").

<sup>228</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1168; *see also* BABCOCK & LASCHEVER, *supra* note 53, at 150 (indicating that only 16 percent of people responding to an interview said that women were better negotiators than men). This creates a self-fulfilling prophecy. Because people think men are better negotiators, they expect to reach better agreements against women, so when they negotiate against women, they set higher targets, make tougher first offers, press harder, and concede less. *Id.* They negotiate harder against women, and this tougher stance can prevent women from achieving good results, which then perpetuates the notion that women are worse negotiators. *Id.* Of course, this result is more prevalent when women are negotiating on behalf of themselves instead of others. *Id.* at 154.

<sup>229</sup> *See, e.g.,* CHANDLER & JONES, *supra* note 11, at 4 (discussing a female casino worker who believes that you should be fighting on behalf of others, not just for yourself).

asking on behalf of others.”<sup>230</sup> Many people surveyed by researchers indicate that they feel completely comfortable asking their boss for things on behalf of others even though they have a terrible time asking for themselves.<sup>231</sup> Researchers speculate that women are more at ease asking for others because it feels more consistent with existing female gender norms, which include taking care of others.<sup>232</sup>

In one study where the participants were asked to set the amount to pay themselves or to pay other participants for the tasks they were asked to do, women paid others significantly more than they paid themselves and men paid others much less than they paid themselves.<sup>233</sup> In another mock negotiation study, the students were asked to negotiate regarding the hourly wage a retail store would pay for website design. Participants were either asked to play the owner of the web-design firm negotiating on behalf of the student or to negotiate for themselves (when they were playing the role of the student designer).<sup>234</sup> The results mimicked the results of the other studies: women asked for considerably more when they were negotiating on behalf of others than on behalf of themselves.<sup>235</sup> As stated by one woman interviewed: “I am a fierce tigress for others and a lamb for myself. To do that for myself is a foreign thing. I can do it for my children, my patients, for others, but not for myself.”<sup>236</sup>

In another example, a woman who routinely negotiates deals worth millions of dollars for her company did not want to negotiate her own salary. She would rather be given what her employer thought she deserved rather than have to ask for anything. She believed, as many women do, that management should recognize their employees’ contributions and give them what they are worth.<sup>237</sup> An additional anecdote involved a woman who is the general manager of a leading symphony orchestra. This woman regularly negotiates with unions, foundations, record companies, and concert halls on her company’s behalf and is very successful at doing so. Her only fear of negotiating is when she is asking on her own behalf.<sup>238</sup> These studies and anecdotes confirm that women’s inability to set realistic expectations is reserved for themselves and does not apply to others. Women can correctly evaluate and set expectation for others—their low sense of entitlement does not affect what they believe others are entitled to.<sup>239</sup>

Furthermore, women’s tendency to be communal and concerned about the needs of others means that they will work very hard to get other individuals

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<sup>230</sup> BABCOCK & LASCHEVER, *supra* note 53, at 154.

<sup>231</sup> *See, e.g., id.* *See also* Williams, *supra* note 96, at 108 (stating that studies confirm “women’s inability to negotiate disappears when they are negotiating for others” rather than themselves).

<sup>232</sup> BABCOCK & LASCHEVER, *supra* note 53, at 154–55.

<sup>233</sup> *Id.* at 155–56.

<sup>234</sup> *Id.* at 156.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* at 157.

<sup>237</sup> *Id.* at 33.

<sup>238</sup> *Id.* at 112.

<sup>239</sup> *Id.* at 53.



what they deserve.<sup>240</sup> To illustrate the difference between a woman's interests in helping herself versus helping others, consider this quote from a theater production manager: "If it's something that's just for me, only for me, then I go back to, 'do I really need it?' More, it's really, 'how does it affect people around me?'"<sup>241</sup> This woman describes her needs as "group needs" rather than something she needs for herself.<sup>242</sup> Another woman who is very confident and competent at her job indicated that although she had very little trouble asking for things on behalf of her clients, employees, or her children, she still finds it hard to ask for things for herself. She is comfortable being aggressive and capable when she is asking on behalf of others.<sup>243</sup>

## 2. Women Are Very Good at Negotiating on Behalf of Others

Not only are women more willing to negotiate when they are negotiating on behalf of others, which they are doing in the union setting, but women are also very successful at negotiating on behalf of others.<sup>244</sup> Men and women approach negotiation very differently, with men generally viewing negotiation as a game or contest and women often viewing negotiation as a collaborative process.<sup>245</sup> Negotiation experts argue that there are benefits to women's tendency to view negotiation not as a competition but as a chance to share ideas with the other party and work towards a solution that helps both sides.<sup>246</sup> Women are known to approach negotiation through a more collaborative, consensus-building approach.<sup>247</sup> While men are likely to see the "instrumental" side of negotiation, women are more likely to see the interpersonal side where relationships are important.<sup>248</sup> This is especially important in the union/management context, where the parties usually have an ongoing relationship.

While women's collaborative style used to be seen as more of a sign that women were not good negotiators,<sup>249</sup> the new understanding of negotiation as a collaborative process has helped to dispel this myth.<sup>250</sup> In fact, research reveals

<sup>240</sup> See Briskin, *supra* note 1, at 511 (stating that most women union leaders "expressed commitment to improving conditions at the workplace, rather than to the wider political goals") (internal quotations omitted).

<sup>241</sup> BABCOCK & LASCHEVER, *supra* note 53, at 63.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* A union activist and steward at a casino union said this about her role in the union: "You can protect people. You can speak for people who can't speak for themselves. It's more just like helping, you know?" CHANDLER & JONES, *supra* note 11, at 42.

<sup>244</sup> See generally Briskin, *supra* note 1, at 511 (discussing "women's democratic, collaborative, consultative, and less-aggressive styles," often called "transformational leadership").

<sup>245</sup> BABCOCK & LASCHEVER, *supra* note 53, at 165; WOMEN'S WAY, *supra* note 61, at 16. "Women lead with a transformational style that is not the traditional male style . . ." *Id.* While men are more confrontational and competitive, women lead with a more mediational style. *Id.*

<sup>246</sup> See BABCOCK & LASCHEVER, *supra* note 53, at 123–24.

<sup>247</sup> *Id.* at 4.

<sup>248</sup> *Id.* at 119.

<sup>249</sup> In studies and focus groups, some women union leaders described "pressure from other union leaders to conform to stereotypes about the way women 'should' lead." WOMEN'S WAY, *supra* note 61, at 17.

<sup>250</sup> BABCOCK & LASCHEVER, *supra* note 53, at ix. See also WOMEN'S WAY, *supra* note 61, at 18 ("One participant reported that the kinds of community-based and collective organizing

that women have an advantage at negotiation that can make them “outshine men.”<sup>251</sup> Recent research reveals that a cooperative approach, aimed at finding good outcomes for everyone rather than just trying to win, actually produces superior results.<sup>252</sup> When negotiators “take steps to insure that the negotiation conversation unfolds as a collaborative dialogue rather than an adversarial contest, the process of negotiation can become far more productive and lead to solutions that never would have occurred to anyone independently.”<sup>253</sup> Women tend to do well at this type of approach because working together and fostering cooperation is already something many women do well.<sup>254</sup> In fact, negotiation experts often joke that the goal of many negotiation courses is to train people to “negotiate like women.”<sup>255</sup> This is especially true for multi-issue negotiations, which includes most collective bargaining agreements.<sup>256</sup> One negotiation professor said that two-thirds of negotiators have the “mythical fixed-pie bias,” which means that they believe that for every advantage experienced by one party, the other party must be disadvantaged. This is simply not true in multi-issue negotiations.<sup>257</sup>

Many women are also good at getting to know the other side better, which not only improves the outcomes of their negotiation<sup>258</sup> but also improves their relationships, which can be beneficial in ongoing union/management relationships.<sup>259</sup> Most of the recent research confirms that women’s approach of sharing information and understanding one another works better than the way men have traditionally negotiated.<sup>260</sup> Studies reveal that the best approach to negotiating is to increase the flow of information between the parties and find out as much as possible about the other sides’ needs and preferences.<sup>261</sup> Despite the importance of this tactic, only 7 percent of untrained negotiators try to discover information about the other party.<sup>262</sup> The research reveals that integrative tac-

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that seemed natural to women were ridiculed by men in leadership, until the efforts began to pay off.”).

<sup>251</sup> BABCOCK & LASCHEVER, *supra* note 53, at 165.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 123 (internal quotations omitted).

<sup>254</sup> *Id.* at 124. *See also* Kaminski & Yakura, *supra* note 66, at 462 (stating that “women are more cooperative, interdependent, and concerned about the welfare of the entire group”).

<sup>255</sup> BABCOCK & LASCHEVER, *supra* note 53, at 165. Of course, when women negotiate as women normally do, some treat them as though they are not doing anything new or beneficial because they are simply doing what women have always done. Briskin, *supra* note 1, at 518.

<sup>256</sup> BABCOCK & LASCHEVER, *supra* note 53, at 166.

<sup>257</sup> *Id.* at 166–67 (internal quotations omitted).

<sup>258</sup> WOMEN’S WAY, *supra* note 61, at 19 (stating that women bring a level of compassion and understanding to negotiation and are good at figuring out how to find compromise and make everyone happy).

<sup>259</sup> *Id.* at 9 (stating that the women’s way of organizing includes “a less confrontational approach to the employer with a tendency toward partnership models of labor relations”); CHANDLER & JONES, *supra* note 11, at 58 (stating that women are good union leaders because they take care of each other).

<sup>260</sup> One female union leader stated that she would prefer to have women leaders in the union because they are patient and they take time to listen. CHANDLER & JONES, *supra* note 11, at 53.

<sup>261</sup> BABCOCK & LASCHEVER, *supra* note 53, at 167.

<sup>262</sup> *Id.*

tics, such as seeking information and trying to find solutions, can be better than competitive tactics, such as staking out positions and bluffing.

The research is clear that women act more cooperatively than men.<sup>263</sup> In negotiation study after negotiation study, women focused more on the relationship aspects of negotiation—the “needs of both sides and how the outcome of the negotiation will affect other people.”<sup>264</sup> These studies suggest that women “not only employ a more productive process when they negotiate,” but they are also “likely to produce better agreements for both sides.”<sup>265</sup> Women understand that the final agreement should not merely fulfill their own interests; it should also meet the interests of the other party.<sup>266</sup> As stated by one scholar: “Seeking to maximize one’s own profit in any one bargaining episode may result in short-term gain, but may eventually prove harmful to a negotiator’s bargaining position in future episodes. Thus, cooperation may be a superior bargaining tactic because it offers a long-term perspective.”<sup>267</sup> It is easy to see that this would be especially valuable in the union/management context, where negotiation relationships are ongoing.<sup>268</sup>

In fact, men’s negotiation tactics can be counter-productive. Men are often willing to press a point even if it is an outrageous position, which can be a disadvantage in many negotiations.<sup>269</sup> Because men sometimes overestimate their options and aim too high, men end up without agreements more often than women do, which can be a disadvantage.<sup>270</sup> Men are also more likely to be impatient and aggressive in negotiations; this can lead to poor decision-making, which then can leave men with bad agreements, no agreements, or harmed relationships.<sup>271</sup> In one study, a man admitted that “[t]he approach that females take in general is superior and will get better results over time.”<sup>272</sup>

While much of the research discussed above is not specific to union/management negotiating, it is easy to see that it is applicable.<sup>273</sup> Union/management relationships are usually ongoing and a collective bargaining agreement is almost always a multi-issue agreement. Thus, women’s approach of collaborating, listening to the other side’s concerns, and caring about the other side’s interests can be very valuable in the union/management context.<sup>274</sup>

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<sup>263</sup> *Id.* at 167–69.

<sup>264</sup> *Id.* at 169.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 170. Of course, if both negotiators do not view negotiation as a way of improving the outcomes for both parties (in other words, if men behave like men normally do and women behave like women normally do), this could lead women to be vulnerable in the negotiation. *Id.* at 172–73. There are ways to diffuse this problem, including not engaging the aggressive party in his negotiation tactics. *Id.* at 174.

<sup>267</sup> *Id.* at 171.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.* at 136.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 140.

<sup>272</sup> *Id.* at 171.

<sup>273</sup> See Kaminski & Yakura, *supra* note 66, at 462 (stating that research on female leaders generally can be applied to union leadership specifically).

<sup>274</sup> For instance, in *Casino Women*, one woman interviewed stated that she thinks women are always braver when fighting for others because “women have less of a problem with the

### 3. *Example of Women's Effective Leadership in Unions: Casino Women*

There are countless examples that demonstrate women's effectiveness in the union/management context.<sup>275</sup> One of the most inspiring stories of successful women in union leadership roles is highlighted in *Casino Women: Courage in Unexpected Places*.<sup>276</sup> The authors, Susan Chandler and Jill Jones, discuss some of the surprising female heroes in casino unions. They state:

Las Vegas and Reno . . . [are] arguably the most gendered cities in the nation, and for years the enormous profitability of the gaming industry there has ridden on the backs of women assigned classic female occupations—making beds and serving food, on the one hand, and providing sexual allure on the other. It is a world that feminists routinely scorn, but to their loss, for in this world women like Geoconda Kline—maid, immigrant, and now president of one of the most powerful union locals in the country—consistently emerge.<sup>277</sup>

The authors describe the book as an “inside, women-focused look into the world of corporate gaming, on the one hand, and the alternative culture of the workers who make it run, on the other.”<sup>278</sup> They describe stories of women who underwent major transformations,<sup>279</sup> learning that they had power and the ability to control their own lives as well as help the lives of others.<sup>280</sup> Although the authors recognize that there are many forces that contributed to the success of unions in the casino industry, they state that “[they] doubt that anyone would dispute the centrality of women in constructing that legacy.”<sup>281</sup>

Consistent with the discussion above regarding women's tendency to fight hard on behalf of others, many of the women highlighted in *Casino Women* spoke of fighting for others. One woman discussed how she explained to her daughter that she was busy fighting for the union because she wanted to make

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notion of the collective good. They have fewer ego problems.” CHANDLER & JONES, *supra* note 11, at 58.

<sup>275</sup> One article studied and highlighted four union organizing campaigns that were all women-focused and run by women. WOMEN'S WAY, *supra* note 61, at 4. This study involved several rounds of focus groups and roundtable discussions to investigate what made these campaigns successful and how women influenced the campaigns and the unions. *Id.* at 4–5. This article highlighted the incredible successes of unions and organizing campaigns in female-dominated industries, and demonstrated the success that is possible when there are women organizers and leaders and when those organizers and leaders pay attention to issues that are important to women. *See id.* at 11–14 (discussing the accomplishments of those campaigns). *But see* Kaminski & Yakura, *supra* note 66, at 472 (stating that it is difficult to find successful models of unions with significant female leadership except in traditionally female occupations, such as nurses, flight attendants, and teachers).

<sup>276</sup> I chose this example to explore in detail in part because this article was part of a symposium at UNLV Law School and is being published in the Nevada Law Journal. Thus, I found it fitting to pay a tribute to the women who have worked in Nevada's casinos. I also found it to be a wonderfully compelling set of stories.

<sup>277</sup> CHANDLER & JONES, *supra* note 11, at 5.

<sup>278</sup> *Id.* The authors also state that the book is a story of “women moving, and sometimes not moving, in the context of enormous corporate power.” *Id.* at 11.

<sup>279</sup> *Id.* at 5.

<sup>280</sup> *See id.* at 75 (stating that the union is “a place [for women] to thrive and organize”) (alteration in original); *see also id.* (quoting a casino woman who stated that the women leaders “blow you away”).

<sup>281</sup> *Id.* at 76.

things better for others.<sup>282</sup> The authors described many of the “back of the house” women they met as being neither “silent nor invisible,”<sup>283</sup> despite common perceptions to the contrary. Instead, these women (mostly housekeepers) speak out, make connections, and defend each other. In fact, two of the three past presidents of the Culinary Union were women from housekeeping.<sup>284</sup> The authors described housekeeping as a “collective undertaking,” where the women gain confidence in their abilities and learn about the power relationships in the union.<sup>285</sup> Some of these women are “painfully shy” and yet, through the power they gain by being part of the union, manage to stand up for themselves and for others.<sup>286</sup> One woman stated that due to having to assert herself at work for the benefit of other employees, she learned to stand up for herself, stating “[i]t has made me stronger in my whole life . . . .”<sup>287</sup> These women not only discovered their own power, but they also learned about the power of the collective. “[D]espite the magnitude of the power differential, there were always women who found an opportunity to deepen their own and others’ humanity, women who worked for a better world, who learned that collectively they could build power.”<sup>288</sup>

The authors of *Casino Women* also discussed the “front of the house” employees, specifically cocktail waitresses, who are often exploited through having to wear skimpy and provocative uniforms and being made to feel like sex objects rather than competent, hard-working employees. Yet even these women have managed to find power in working together.

Their working-class sensibilities; their traditions of shared pride, strong relationships, and standing up for each other in the most sexist and exploitative of environments; their lack of illusion; and their concern for the welfare of their communities, all led cocktail waitresses, especially in union casinos, to a fairly high degree of solidarity and working-class consciousness.<sup>289</sup>

Cocktail waitresses and women from housekeeping were responsible for starting Nevada’s Culinary Union, and changing the lives of thousands of employees.<sup>290</sup> In the 1990s, union leaders, many of whom were women, were able to bring union density in the casino industry to 65 percent overall and 90 percent on the Las Vegas Strip.<sup>291</sup>

Although women union leaders had a very large effect on all women who were part of the union, that positive effect was magnified for immigrant women who belonged to the union. The authors of *Casino Women* stated that there was a “dramatic difference between union and nonunion immigrant women” they interviewed. Immigrant women in the union described how they had become more outspoken, grown up mentally, and felt more comfortable fighting for

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<sup>282</sup> *Id.* at 17–18.

<sup>283</sup> *Id.* at 18.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.* at 20.

<sup>286</sup> *Id.* at 21 (discussing a situation where women who were normally very shy stood up to the casino to get the casino to provide anti-hepatitis shots).

<sup>287</sup> *Id.* at 22.

<sup>288</sup> *Id.* at 27.

<sup>289</sup> *Id.* at 41.

<sup>290</sup> *Id.* at 43.

<sup>291</sup> *Id.* at 61.

their rights. As the authors state: “It was collective action . . . that provided the real catalyst for change.”<sup>292</sup> And unlike other industries and workplaces that experience a divide between racial and ethnic groups, the casino women recognize the strength in fighting as one: “We work in an industry that would run right over us if we divided ourselves along immigrant and nonimmigrant lines.”<sup>293</sup>

Another area that often divides women, caregiving responsibilities, appeared to be no match for these casino women. As the authors stated: “‘Unencumbered’ as a concept flies in the face of everything that the women workers we interviewed stood for. ‘Encumbrances,’ they would say—. . . [parents, spouses, children, neighbors, friends, etc.]—are all the meaning in life, and the idea of separating them from work or work from them would be absurd.”<sup>294</sup> These casino women, many of whom had families, fought for and won job security, middle-class wages, high quality health coverage, and the opportunity to succeed.<sup>295</sup>

In sharp contrast to the stories about casino women in unions, the authors of *Casino Women* also discuss casino women who are not in unions, such as the dealers. Most of the female dealers had long tenures in the casino but tell dramatically different stories than the stories of the housekeepers and waitresses who usually belonged to a union.<sup>296</sup> Further proving the point made earlier that women who are not in unions are not as good at representing themselves and fighting for their rights, the female dealers “did not fight back and had built no traditions of militancy.”<sup>297</sup> They also did not experience the growth that comes from “actually confronting injustice (a much different process from complaining about it).”<sup>298</sup> These female dealers also experienced a dramatic loss of self-esteem,<sup>299</sup> which, as discussed earlier, has negative consequences on the willingness to negotiate and fight for what they need.<sup>300</sup> The vastly different stories of the casino women who belonged to the union and the women who did not makes a compelling point: real power is best achieved when working together for common goals.

In sum, the casino women learned the value of working together and achieved great satisfaction from the power of their collective strength.<sup>301</sup> “The rank-and-file workers provide an inspiring example. Their courageous acts of resistance suggest that it is through solidarity and community that we are most likely to succeed both personally and collectively.”<sup>302</sup>

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<sup>292</sup> *Id.* at 67.

<sup>293</sup> *Id.* at 73.

<sup>294</sup> *Id.* at 172.

<sup>295</sup> *Id.* at 173.

<sup>296</sup> *See id.* at 119–20.

<sup>297</sup> *Id.* at 119.

<sup>298</sup> *Id.* at 133.

<sup>299</sup> *Id.* at 123.

<sup>300</sup> *See supra* Part II.B.

<sup>301</sup> CHANDLER & JONES, *supra* note 11, at 177 (“[D]on’t sit alone declining to act, for a committed life is so much more joyous than a life of self-protection and consumption, and connection with each other in struggle so much more rewarding than lives lived alone.”).

<sup>302</sup> *Id.* at 169.

## IV. CONCLUSION

Although there are many women who have no trouble negotiating on their own behalf, there are likely many more women who do. For these women, the decline in unionization is especially harmful because they have no one to advocate on their behalf and they will likely not obtain the pay and benefits they otherwise could. Thus, those of us who care about women's equality in the workplace (including pay equality) should strive to improve the number of women in unions. One way of doing this is to increase the number of women in union leadership positions.<sup>303</sup> This is because women are more likely to join a union if there are women in leadership roles. Furthermore, women are more likely to join if the union is focused on issues that are important to women. While not a perfect correlation, women union leaders are more likely to place an emphasis on issues that are important to many women, such as flexible schedules and leaves of absence. Finally, there is ample evidence that women's unique collaborative negotiation style is very effective, especially in the union context where negotiations are generally multi-issue and the relationships between union and management are ongoing. Therefore, making an effort to recruit women union leaders<sup>304</sup> and negotiators will not only benefit the women in those unions but also has the potential to give unions a "much-needed shot in the arm."<sup>305</sup>

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<sup>303</sup> Kaminski & Yakura, *supra* note 66, at 463 (stating that unions would benefit from having more women in leadership positions).

<sup>304</sup> For a good discussion of how to improve the number of women union leaders, see *id.* at 466–71 (providing a specific list of training programs for women union members interested in leadership). Some efforts are underway to increase the diversity of union leaders. *Id.* at 472.

<sup>305</sup> Crain, *Feminizing Unions*, *supra* note 13, at 1156. See also Kaminski & Yakura, *supra* note 66, at 471 ("We also believe that the labor movement needs the type of leadership that women offer.").