

The Making of Shared Capitalism: Business, Labor and Corporate Accountability

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Common theories of the American firm are based on a notion of the corporation as a political entity, in which the executive power of corporate management is held in check by the monitoring functions of the board of directors and the corporation's shareholders. Shareholders, guided by an interest to protect their investment in the corporation from poor management, elect corporate directors to the company, who in turn provide oversight to managerial executives. The resulting political process is known as corporate governance, or "the whole set of legal, cultural, and institutional arrangements that determine what corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated."¹ Shareholders exercise their political rights in the annual general meeting (AGM), a plenary session required by law during which corporate manager and the board present their activities of the past year to the shareholders. During the annual meeting, shareholders vote on managerial proposals for corporate policies and the appointments to the board of directors, set forth in the so-called proxy statement. Moreover, shareholders may suggest their own proposals or resolutions to be included in the proxy statement, when they the board of directors to consider a particular change to corporate policies. This is known as shareholder activism.

Until recently, shareholder activism has been relatively rare in the United States, as most shareholders adhered to a philosophy of passive ownership, automatically voting in favor of managerial proposals and board candidates. These shareholders would only express their

¹ Margaret Blair 1995, *Ownership and Control: Re-Thinking Corporate Governance for the Twenty-First Century*, Washington, DC: Brookings Institution, 3.

discontent with corporate management by selling their shares, a practice known as the Wall Street Walk.² Common explanations of this tradition of passive ownership have focused on the predominance of managerialism in the American corporation. Popularized by Berle and Means' famous *The Modern Corporation and Private Property* (1932), this notion of the corporation emphasized the relative powerlessness of shareholders vis-à-vis managers. The authors attribute this separation of ownership and control to the development of the large, public corporation, which depends on the professional managers for its daily operations and on a large group of dispersed shareholders for its investment capital. As the ownership stakes of shareholders are too small to effectively monitor management, corporate managers face incentives to act as self-serving individuals, at the detriment of corporate profitability and investment return.

This paper details labor's involvement with shareholder activism since the mid-1970s until the early 1990s. American unions have experimented with the submission of shareholder proposals at annual shareholder meetings since the early 1970s. Through shareholder activism, unions have tried to bring about changes in corporate policy. These desired changes have ranged from more traditional union demands for good faith collective bargaining or better employee benefits to demands for changes in corporate governance. At the same time, I argue, shareholder activism also involved an effort at redefining the traditional roles of unions, managers and shareholders within the corporation. Through their shareholder resolutions, unions have made the case that they have the right as shareholders to hold corporate managers accountable for company actions, including labor relations and workplace conditions. Moreover, unions have framed these demands not just in terms of accountability towards shareholders, but rather in terms of accountability towards the broader group of stakeholders in the corporation, in particular the employees.

² Robert A.G. Monks and Nell Minow 1995, *Corporate Governance*, Cambridge: Blackwell Publishers, 108.

With the adoption of a shareholder role to address stakeholder relations in the corporation, these labor unions positioned themselves within a broader movement from the late 1960s to the mid-1980s that challenged the managerialism of the American corporation. On the one hand, activists within the new social movements of the 1960s – such as the civil rights movement, the feminist movement or the student movement – began to place social demands on the corporation, recasting the professional manager as a corporate official acting on behalf “all those affected” by corporate conduct.³ On the other hand, academics in law and economics questioned the flawed connection between dispersed share-ownership and self-serving behavior of corporate managers, as the latter would only be able to attract investors if they kept the value of the shares high. Arguing that the corporation was a nexus-of-contracts, continuously evaluated by financial markets, experts such as Michael Jensen or Eugene Fama claimed that corporate managers would have to demonstrate their commitment to shareholder value through the institutions of corporate governance. Despite adhering to two different notions of the corporation – namely, the corporation as a social institution and a financial conception of the firm – both those within the social responsibility movement and the proponents of contractarian theory predicated their challenges to the American corporation on an increased power of the shareholder vis-à-vis boards of directors and corporate managers.

Managers of targeted corporations generally opposed shareholder activism by labor unions and other political organizations. They considered it inappropriate for these groups to engage politically as shareholders and try to prevent non-financial issues to be addressed in the annual meeting. In these efforts, corporate managers and their interest organizations, such as the American Corporate Secretaries, have attempted to enlist the support of state institutions, in particular the Securities and Exchange Commission (SEC). The SEC is a federal agency, created

³ Vogel 1978, 7.

by the 1934 Securities Exchange Act, responsible for the regulation of the American securities industry. The position of the SEC on labor's shareholder activism has been somewhat ambivalent. On the one hand, the SEC has supported regulation to facilitate small shareholders to raise their voice during annual meetings, as a means to curtail the power of big business. On the other hand, the SEC has restricted these actions to matters of corporate performance or other matters of strategic importance to the corporation. The agency has been less welcoming of shareholder actions addressing social issues or industrial conflicts. In its efforts to free the shareholder process from broadening its scope to workplace matters, the state agency thus found common ground with those business leaders that were facing union-shareholders.

Corporate executives have not just asked the SEC to change the overall regulatory framework surrounding the shareholder process to prevent political organizations to act as shareholders, but have also on occasion requested the agency to block particular union-shareholder campaigns. Managers of public corporations receiving proposals they wish to exclude, can ask the Division of Corporate Finance of the Securities and Exchange Commission (SEC) for an informal opinion to verify if the latter would support the omission of the proposal or it would undertake action against the company. The informal decisions taken by the Division of Corporate Finance in these matters have become known as so-called No Action Letters.⁴ The No Action letters normally consist of the shareholder's initial request to include a resolution on the corporation's proxy statement, the corporation's No Action request to the SEC, the SEC's final decision as well as all other communication between the proponent, the corporation and the SEC. The No Action letters thus particularly contain a wealth of information on not just the

⁴ These letters are named no-action letters because the Division of Corporate Finance would write in the case of a rightful exclusion of a shareholder proposal: "The Division will not recommend enforcement action to the Commission if the Company omits the proposal from its proxy materials". It should be noted that the No Action letters are interpretive in nature and not legally binding. When parties disagree over the outcome of the No Action request, they have to turn to court for a legally binding decision.

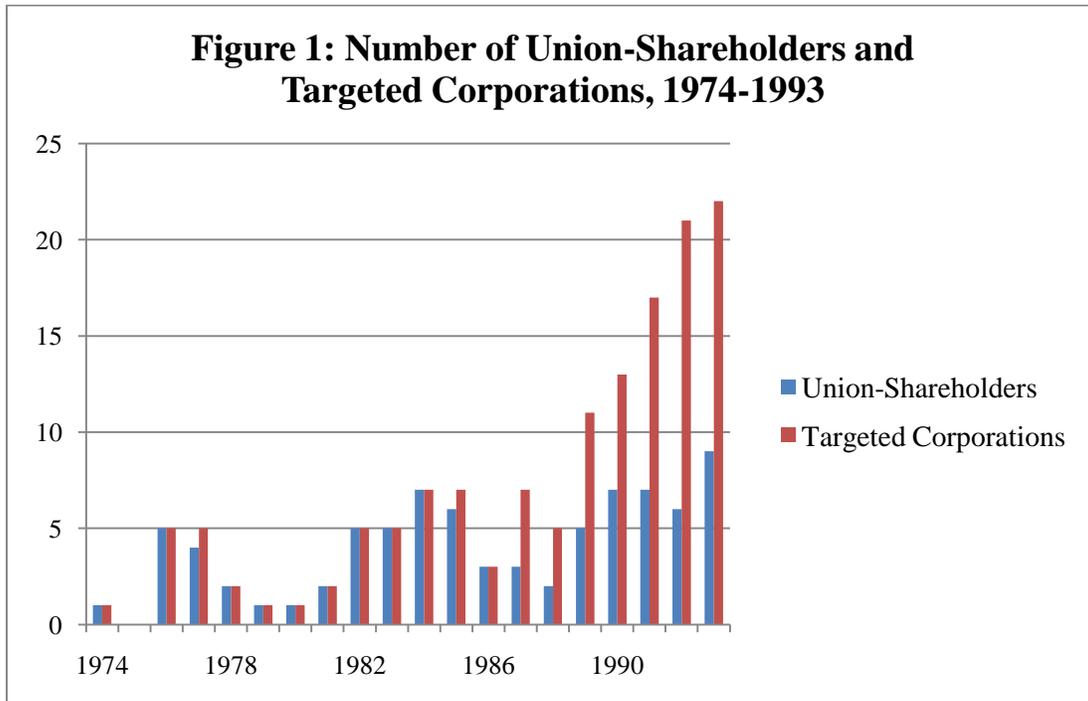
shareholder action itself, but also on the actors' motivation to support or block the resolution as well as the overall context of the shareholder action.

For this paper, I have reviewed 166 No Action letters on shareholder actions proposed by labor unions at American corporations between 1974 and 1993. What the No Action letters reveal is a power struggle between labor unions and corporate managers over the nature of the firm and the relationships with its core stakeholders, arbitrated by the state through the activities of the Securities and Exchange Commission. Although labor's shareholder activism emerged predominantly in labor disputes - as a political strategy supplementary to collective bargaining, the strike or the judicial process - it has developed into a broader political mechanism to reassert the sociality of the American corporation. As labor's shareholder activism has coincided with the increased prominence of the shareholder, both institutionally and ideologically, what is at stake in this paper is therefore not just the development of shareholder activism as an alternative means of worker representation, but also as an important intervention in the emerging balance-of-power within the post-industrial corporation.

1 Corporate Campaigns

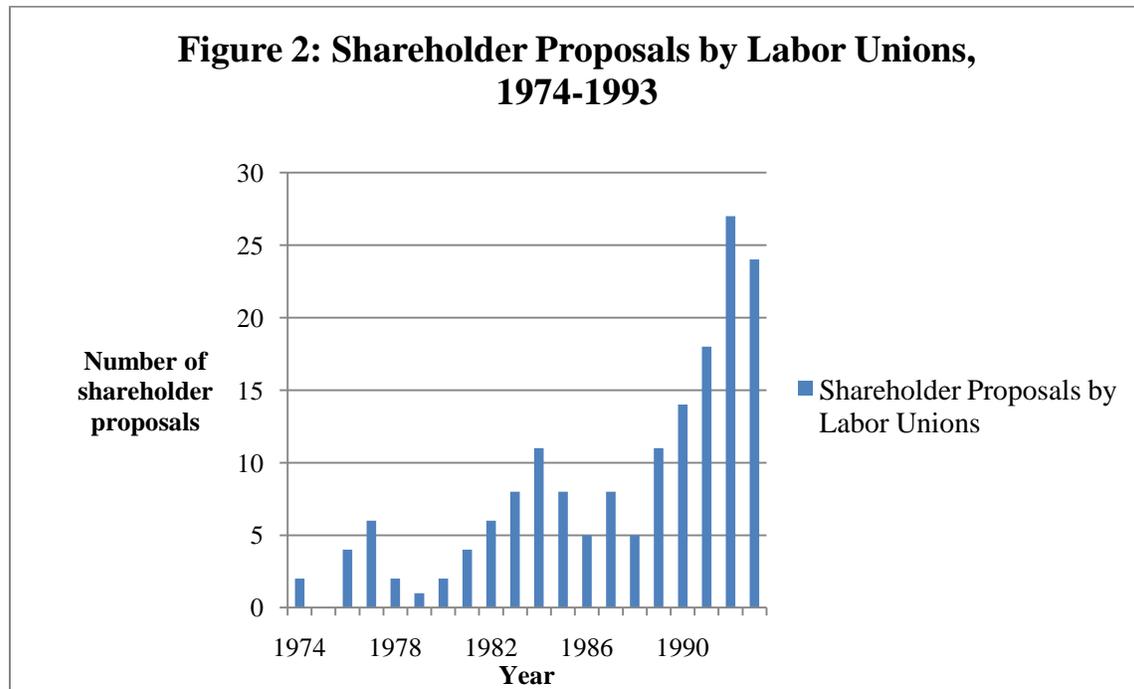
Organized labor in the United States has employed shareholder tactics since the early 1970s. Between 1974 and 1993, a total of 90 corporations were targeted by 26 union-shareholders, as shown by Figure 1. Most of these corporations were targeted during multiple years, totaling 139 shareholder campaigns organized by labor unions. Unions involved in these campaigns included the International Federation of Professional and Technical Employees (IFPTE), the Retail Clerks of America (RC) and the International Brotherhood of Electrical Workers (IBEW). Most of these were union locals, who owned only limited shares in the targeted corporations, suggesting that

the shares were purchased for the specific purpose of engaging in a shareholder campaign against the corporation.



The overall majority of the early shareholder campaigns between 1973 and the mid-1980s were organized in the context of a pre-existing labor conflict. The most prominent of these was the corporate campaign waged by ACTWU against J.P. Stevens. Here, the union hired Ray Rogers, a community organizer inspired by Saul Alinski's *Rules for Radicals*, to use "labor's pension and shareholder power to forcefully alienate corporate and financial supporters from uncompromising situations." At Avon, for instance, a 1978 shareholder proposal from Local 153 of the Office and Professional Employees (OPEIU) requested that two Avon Directors give up their seats on the Board of Directors at J.P. Stevens. The union also succeeded in forcing the resignation of J.P. Stevens' chairman of the board from the board of Manufacturers' Hanover Trust and New York Life Insurance, as well as the resignation of two outside directors from the

J.P. Stevens' board, including Avon's chairman after the union threatened a wide-scale boycott of Avon products.⁵ Rogers used similar strategies in other labor conflicts, for instance those involving the United Electrical, Radio and Machine Workers of America at Litton Industries (UE, 1981-4) and the United Food and Commercial Workers at Seafirst Bank (UFCW, 1981-3).⁶



The Seafirst campaign included a series of resolutions by the United Food and Commercial Workers, submitted at the annual meetings of the Seafirst Bank during the early 1980s. The labor conflict at Seafirst revolved around the corporation's refusal to bargain with the local union, the Financial Institution Employees of America (FIEA). Seafirst's employees had been represented

⁵ Jacob Sheinkman 1979, "The Union Role in the Boardroom," *Employee Relations Law Journal* Vol. 5, No. 1: 14-20; James L. Tyson, "Ray Rogers Hits J.P. Stevens Where It Hurts," *The Harvard Crimson*, September 26, 1979.

⁶ For a good historical overview of corporate campaigns in the United States, see Jarol B. Manheim 2001, *The Death of a Thousand Cuts. Corporate Campaigns and the Attack on the Corporation*, Mahwah (NJ): Lawrence Erlbaum Associates. Manheim 2001, viii-xiv. Manheim is highly critical of the corporate campaign, which he claims is an attack "on the corporation as a social form and as a locus for organizing economic activity," because it is "constructed around a myth that the corporation is a social outlaw" (ibid, xiv).

by FIEA since 1938 and had negotiated contractual benefits with the corporation through the independent union. When FIEA members elected to affiliate with the UFCW in 1978, however, the company refused to bargain in good faith and a protracted labor conflict ensued. Aided by Ray Rogers, the union organized a corporate campaign against Seafirst, which included shareholder actions between 1981 and 1983. In its 1981 proposal, the union stated:

WHEREAS: The employees of Seattle-First National Bank have been deprived of a collective bargaining agreement for over three years. Since November, 1977, these employees have struggled for their right to negotiate a contract with the Bank, but management has refused to recognize or to bargain with the employees' union – the Financial Institution Employees of America (FIEA), Local 1182 of the United Food and Commercial Workers International Union (UFCW).⁷

The union argued that the FIEA members had a right to affiliate with the UFCW “since the employees democratically voted to affiliate their independent union with the UFCW” and the “election was held in accordance with NLRB procedures.” The union added that the corporation’s refusal to bargain with the union had created “hardships” for the employees, “many of whom are Seafirst shareholders.” The proposal concluded: “The shareholders of Seafirst Corporation request that the management of Seattle-First National Bank recognize and bargain with the Financial Institution Employees of America.”⁸ Despite the union’s appeal to its fellowship shareholders, however, the proposal only received 3.78% of the votes cast at the annual meeting.

Like the corporate campaigns organized by Ray Rogers, most union-shareholder campaigns between 1974 and 1993 pertained directly to pre-existing labor conflicts. At ten firms, corporate managers had been involved in NLRB litigation with the proponents of the resolutions, three of

⁷ *Seafirst Corp.*, SEC No-Action Letter, January 27, 1981.

⁸ *Ibid.*

which – Campbell Soup, Litton Industries and Capital Cities - had also been included in the AFL-CIO boycott list for being notoriously anti-labor.⁹ Shareholder actions were also employed during two protracted labor conflicts at Western Publishing (1976-1977) and Rockwell International (1977-1986) respectively. In the case of Western Publishing, two locals of the Graphic Arts International Union were involved in a labor dispute over union recognition with its subsidiary Kable Printing in Mount Morris, Illinois. Following a 1974 strike at the company, the union submitted two shareholder proposals at conglomerate Western Publishing. At Rockwell International, the union-shareholder proponents requested a report on the costs associated with the company's attempts to withhold its professional employees from organizing and the creation of an inter-industry committee in the hope of improving job security in the aerospace industry. The proposals were submitted by an active member of the National Employees and Professionals Association (NEPA-UAW).

This centrality on labor conflicts is confirmed by a second characteristic of union-shareholder activism during this period, namely the very small amount of shares held by the proponents. Of the above-mentioned cases, the National Employees and Professionals Association owned only 39 shares in Rockwell International. Similarly, at several targeted corporations, including AT&T and Bank of America, the union-proponent only owned one share in the corporation. Not surprisingly, the shareholder actions based on limited ownership stakes overlapped with those related to pre-existing labor conflicts. This suggests that the proponents purchased shares in the corporation specifically for the purpose of being able to submit a shareholder proposal at the annual meeting. Rather than being long-term shareholders of the corporations, the proponents

⁹ At Campbell Soup, for instance, the Teamsters were involved in an attempt to organize the companies' salaried employees, while OCAW at Union Oil had brought a NLRB suit against the company for an unfair labor practice related to its employee bonus plan. The other firms were Capital Cities, Eastern Airlines, Florida Power, Litton Industries, Rockwell International, Seafirst, Transamerica.

thus became owners of the corporation as part of a broader union campaign. At these corporations, the proposing unions were able to raise the issue of the labor dispute during the annual meeting by explicitly pointing out the financial consequences of the conflict. Framing the conflict in financial terms made it no longer an issue of personal interest for the unions, but rather emphasized its relevance for the entire body of shareholders.

In addition, unions relied on members and other sympathizers with shareholdings in the targeted companies to propose shareholder resolutions on behalf of the union. This often occurred at corporations with a longer tradition of employee ownership benefit plans. At the above-mentioned Western Publishing, for instance, the president of the local Graphic Arts International Union (GAIU) had called on its shareholding members to come forward and delegate their proxy votes to the labor union. It also assisted one shareholder proponent, Oscar Spink (an employee of the company's subsidiary Kable Printing, a GAIU member, and owner of 748 Western Publishing shares through the company's stock purchase plan), with his proxy solicitation, offering financial support and legal counsel.¹⁰ Proponents like Mr. Spink would most commonly not advertise their union affiliations in the proposed resolutions. In some cases, the No-Action letters shed light on a proponent's connections to a local labor union, when corporations would outline the proponent's involvement with the local union to protest the inclusion of the proposal on the proxy statement. In other cases, individual proponents revealed their union membership by submitting resolutions on union letterhead or relying on the union for legal counsel. Where such union affiliations were made public in a No-Action letter, I have considered the individual proponent to be an intermediary for the labor union and included the resolution in my database.

¹⁰ *Western Publishing*, SEC No-Action Letter, February 10, 1977.

Finally, other union-shareholder campaigns closely reflected on the situation of workers in uncertain economic times. When pensions became strongly politicized as a result of the pension terminations in the 1980s, labor unions began to address the issue of retirement security in their shareholder campaigns. In 1985, for instance, United Airlines announced that it would reclaim its “underutilized assets” in the pension plan to fend off corporate raiders. In response, a flight attendant and active member of the AFA submitted a shareholder proposal at the corporation’s annual meeting, asking for a report on the costs to the company of managerial actions, particularly with regards to its reclaiming of excess assets.¹¹ In the newly deregulated telecommunications industry, labor unionists developed similar initiatives. At Rochester Telephone, for instance, the proponent argued that the protections of pension benefits available to corporate executives in the case of a takeover (known as golden parachutes) should be available to all “have faithfully and respectfully fulfilled their obligations as employees.”¹² Whether related to a labor conflict or otherwise engaging with working conditions, the first generation of unions’ shareholder actions thus maintained a close relationship between financial activism and the representation of employees’ workplace interests.

2 On Shareholders and Stakeholders

Labor’s early shareholder campaigns did not emerge in a social or political vacuum. Rather, they are reflective of a broader political movement in the 1960s and 1970s that questioned the passivity of American managers with regards to a range of social issues, including racial segregation, the War in Vietnam, apartheid in South Africa and the Israeli boycott.¹³ On the left

¹¹ The early 1980s also saw other airlines targeted by shareholder activists, Transamerica (1982), Eastern Airlines (1982), Republic Airlines (1983), Pan Am (1984-5) and Texas Air (1984-5).

¹² Rochester Telephone, SEC No Action Letter, 1992 SEC No-Act. LEXIS 199.

¹³ Vogel 1978, 3.

side of the political spectrum, progressive groups such as the Medical Committee for Human Rights turned their attention to the annual shareholder meeting in an attempt to improve the social accountability of the American corporation. Labor's financial activism should therefore be situated within this broader movement for corporate accountability, characterized by a "concern with *how* the companies they "own" behave as corporate citizens."¹⁴ Not only did labor unions address similar topics as the individuals, churches, universities and other political groups engaging in shareholder activism, but alliances between labor unions and organizations within the corporate responsibility movement were common.

Labor unions thus gladly took advantage of the space created by other social shareholders. Under the Fordist political economy of the New Deal years, the position of organized labor within the corporation had been institutionalized around collective bargaining, the judicial process and the legislative process. Where recognized, labor unions engaged in collective bargaining with corporate managers over workers' wages and benefits, while lobbying and undertaking other political activities to influence the legislative process in Congress and hence the broader institutional framework in which collective bargaining would occur. In either case, labor unions had no direct involvement in electing and monitoring corporate management, a task deemed the prerogative of shareholders under corporate law. Unions and shareholders operated within the separate realms of industrial relations and corporate governance respectively. By adopting the shareholder campaign, rather than solely confronting corporate managers in collective bargaining negotiations or through strikes and organizing campaigns, unions stepped

¹⁴ Richard Marens 2002, "Inventing Corporate Governance: The Mid-Century Emergence of Shareholder Activism," *Journal of Business and Management* Vol. 8, No. 4 (Fall): 365-389. According to Marens, the gadflies dominated shareholder activism until the early 1970s, accounting for around two-thirds of submitted proxy resolutions at American corporations.

outside the boundaries of what was considered the legitimate repertoire of political action for labor unions and tried to exert influence over corporate managers by other means.

Corporate managers did not take kindly to shareholder activists. General Motors executives, for instance, began an extensive public relations campaign against the Project for Corporate Responsibility. Focusing on the corporation's accomplishments in the areas of safety, air pollution and "social welfare," the corporation sent informational material to its 1.3 million shareholders and published full-page advertisements in 150 newspapers. Moreover, GM "officials" contacted banks directly to check the status of their clients' proxy statements. All in all, the company would spend an estimated \$500,000 to block the two shareholder proposals (against PRC's \$35,000).¹⁵ Likewise, corporate managers almost uniformly expressed their dismay with labor's financial activism. First, corporate managers considered labor's shareholder activism an infringement on their managerial discretion within the corporation. Second, they questioned the legitimacy of labor unions to appear as shareholders before the annual meeting. Corporate managers argued that the adoption of the role of shareholders by labor unions was merely industrial relations in disguise: Union-shareholders could not have the best interests of the corporation at heart, as their interests as employee representatives were antithetical to those of managers, shareholders and – by extension - the firm at large.

Where organized labor crossed the boundaries between unions and shareholders, corporate managers were fast to object to their activities. Between 1974 and 1984, for instance, Local 81 of the International Federation of Professional and Technical Engineers (IFPTE) submitted several shareholder resolutions at AT&T to ask for employee representation on the Board of Directors. The union argued:

¹⁵ Vogel 1978, 82-83.

The Company is unique with respect to its large number of worker-shareholders. Business executives, bankers and lawyers cannot properly represent the best interests of the worker-shareholder. Labor unions provide workers with democracy on the job and should also be given a voice in the Board of Directors.¹⁶

By presenting the union as the common ground between workers as employees and workers as shareholders, the union tried to make labor representation on the Board compatible with its role in the collective bargaining process. It mentioned examples of co-determination practices in Western Germany to demonstrate that worker representation on the Board could foster cooperative relations between management and union, leading to the mutual benefit of both parties. AT&T's legal counsel, however, denied the legitimacy of Local 81's request, arguing that the union's ownership of a single share of AT&T proved that the union was pursuing its "labor" interests rather than the interests of the shareholders.¹⁷

In response to unions' shareholder campaigns, American corporations thus worked to retain the strict lines of demarcation between shareholders and unions. First, corporations targeted by the labor unions denied the legitimacy of these unions acting as shareholders. When Capital Cities was targeted by three proposals from the International Typographical Union (ITU) and affiliated organizations in 1983, for instance, it argued that managerial responsibilities with regards to employee rights should not be subjected to shareholder approval, because the submission of shareholder resolutions was an "improper modus operandi" for labor unions:

Management of the Company cannot and should not be held accountable to unions' whims advanced by lone shareholders, who have acquired shares of common stock of the Company for the sole purpose of attempting to advance collective bargaining goals outside of the confines of

¹⁶ *AT&T*, SEC No-Action Letter, January 16, 1976.

¹⁷ "The union owns only one share of the Company's stock and its interest is clearly that of a labor union rather than that of a shareholder. [...] Since the union is only a nominal shareholder, it is clear that it is acting here in its capacity as a labor organization, and the proponent does not suggest otherwise." *Ibid.*

the bargaining table or the laws already in existence directing how collective bargaining should be conducted.¹⁸

The corporation thus not only refused to take the union's concerns seriously, referring to them as "whims," but also argued that the shareholder process was an unnecessary addition to traditional means of protecting the rights of workers, namely collective bargaining and labor law. It did not want the union involved in the relationship with its shareholders.

Targeted corporations also argued that shareholders should not get involved in labor disputes. This was the case, for instance, at Rockwell International in 1977, when representatives of the National Engineers and Professionals Association International Union (NEPA) submitted a shareholder proposal following a labor dispute.¹⁹ Rockwell's legal counsel denied the validity of these proposals on the grounds of the undesirability of shareholder involvement in a labor dispute. Here, they argued that shareholders should not get involved in the dispute, because this prerogative belonged to management:

The Board of Directors directly and through the Company's management traditionally has had responsibility with respect to the Company's employees. The proposals seek, directly or indirectly, to insert stockholders in a traditional management function and to become involved in the Company's personnel administration.²⁰

Transamerica's lawyers also used this argument in response to a campaign by the Association of Flight Attendants in 1982. Here the company protested the union's request for a fact-finder to

¹⁸ Capital Cities Communications, SEC No-Action Letter, March 16, 1983.

¹⁹ The labor conflict at Rockwell International pertained to the job classifications of employees (and corresponding compensation practices).

²⁰ *Rockwell International*, SEC No-Action Letter, December 3, 1976. To this, the proponents responded: "The parties submitting Proposal No. 1 do have a threefold character: employees, as stockholders, and as member of NEPA. However, the company application that our roles as employees and as NEPA members precludes our having legitimate concerns as stockholders has no legal basis. We reject this argument and assert that our role as employees makes us privy to certain matters, which quite naturally excites our concern as stockholders." Ibid.

help appease the company's hostile labor relations, claiming that shareholders lacked the expertise to make a well-informed decision on this topic:

The decision whether to employ a "fact-finder" is one that requires careful consideration by management employees who have detailed knowledge of the collective bargaining process. Stockholders are not generally situated or qualified to obtain such knowledge.²¹

Not only did Transamerica's corporate management thus assert its discretionary right to be the sole party involved in dealing with the company's workers, but it also justified this standpoint by claiming that shareholders were not capable of this because they were not part of the collective bargaining process. Managers at Transamerica, but also at other corporations targeted by union shareholders, thus worked to maintain the boundaries between the three categories of unions, managers and shareholders. They tried to restrict the role of the union to the workplace, while keeping the annual meeting exclusively for the shareholder.

Under labor's financial activism, the corporation's annual meeting emerged as a site of contention between managers, union representatives and shareholders. Here, two distinct notions of the firm were at play. On the one hand, union-shareholders asserted the social nature of the firm by demanding attention for the corporations' other constituencies besides the shareholders, most importantly its employees. On the other hand, unions' dependence on the vehicle of stock ownership to assert their claims reinforced the idea that shareholders had a political right to question managerial conduct with regards to business operations, as the primary goal of the corporation consisted in providing financial return for its owners. The labor unions engaging in shareholder activism – as well as their colleagues from the corporate accountability movement – therefore challenged the narrow financial conception of the firm, while at the same time

²¹ *Transamerica*, SEC No-Action Letter, February 8, 1982.

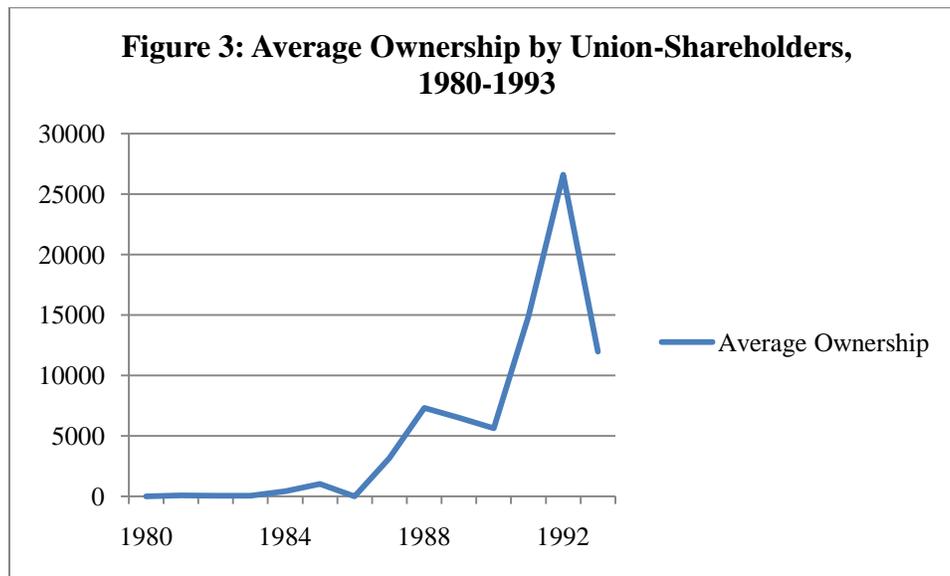
affirming the primacy of the shareholder within the corporation through their chosen political repertoire.

3 The Professionalization of Labor's Shareholder Activism

Over time, union's shareholder activism underwent three broad changes. First, there was a rise in ownership stakes held by union-shareholders. As previously stated, throughout the 1970s and early 1980s, shareholdings by labor proponents of shareholder proposal were very limited. Although very few ownership numbers are mentioned in the No-Action letters for the years 1974 to 1979 – the reporting of shareholdings for shareholder activists did not become a requirement until 1983 – ownership stakes often amounted to only a dozen or even a single share. Figure 3 shows the average ownership stakes in number of shares held by union-shareholders for the years 1980 until 1993.²² The figure shows how remains very modest in the early 1980s with unions owning between 1 and 100 shares, such as UFCW Local 233 at Stewart Sandwiches in 1981 (10 shares) and Local 301 of IEU at General Electric in 1983 (36 shares). Rising slightly in the mid-1980s to averages of several hundred shares, large ownership stakes do not occur until the late 1980s, when union pension funds get involved in shareholder activism, in particular the regional funds associated with the United Brotherhood of Carpenters. The UBC New York City District Pension Fund, for instance, targets Boise Cascade in 1987, in which it owns a total of 31,300 shares. These activist pension funds, however, continue to coexist with union-activists owning smaller shareholdings, including the United Mine Workers at Carolina Power in 1988 (92

²² Admittedly, the numbers presented in Figure 3 only give a rough overview of unions' ownership stakes, as their true value depends on the total number of shares offered. For example, an ownership stake of 1 share can be considered much larger/more substantial if the number of shares released totals 10 rather than 10 million. However, since union-shareholders have predominantly targeted the more prominent public corporations in the United States that offer millions of shares on the stock market, it can be assumed that Figure 3.3 nonetheless indicates a substantial growth of union shareholdings in these corporations, albeit imperfectly.

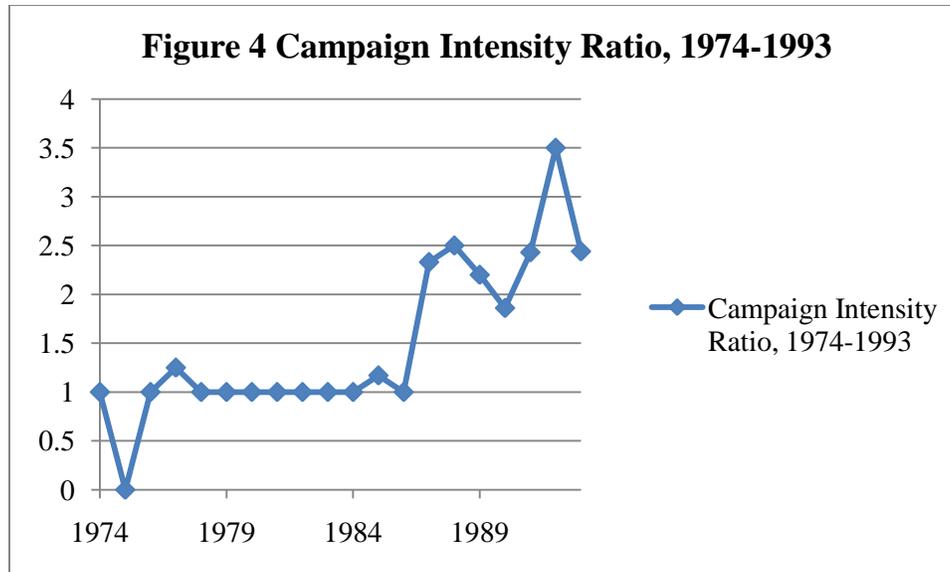
shares), the Soft Drink Workers Local 812 at Pepsico in 1989 (31 shares), and the IBEW at Potomac Electrical Power in 1992 (121 shares).



Second, unions began to target more corporations simultaneously. Figure 3.4 shows the campaign intensity ratio for the years 1974-1993. The campaign intensity ratio refers to the number of corporations targeted by union-shareholders in proportion to the number of union-shareholders active during a given year. A campaign intensity ratio of 1 indicates a so-called “exclusive target”: Each of the corporations subject to a union-shareholder campaign in that year is targeted by a single labor union. Where the campaign intensity ratio is higher than 1, individual unions will target more than one corporation during a single year. Such a ratio indicates that the union no longer uses shareholder actions as a supplemental political strategy in singular labor disputes, but rather has broadened its use financial activism as part of its standard political repertoire. Is the campaign intensity ratio lower than 1, however, then multiple unions

are targeting the same corporation. In this scenario, a corporation may have such negative standing that more unions see cause to organize a shareholder campaign against it. This may also reflect a concerted effort by these unions to target this poorly performing corporation. A low campaign intensity ratio may therefore reflect an increase in coordination among union-shareholder activists.

Figure 4 shows that the campaign intensity ratio of labor's shareholder campaigns up to the year 1987 often equaled or approximated one, indicating that the corporations subjected to unions' shareholder actions were often exclusive targets. This confirms the above-mentioned characteristic of the early shareholder campaigns, which often involved only a single local union chapter and a single corporation in the context of a labor dispute. After 1987, however, the campaign intensity ratio increases, as union-activists began to target multiple corporations at the same time. In 1991, for instance, the Communication Workers of America proposed shareholder resolutions at AT&T, NYNEX, and United Telecommunications, whereas the Amalgamated Clothing and Textile Workers Union held shareholder actions at Wellman, Wal-Mart and Dayton Hudson. In none of the years in this period did the campaign intensity ration drop under 1, hinting at an absence of coordinated campaigns among the union-shareholder activists.



Both developments - increasing ownership stakes and a broadening of labor's shareholder campaigns - indicate a professionalization of the unions involved in financial activism. The Carpenters, for instance, initiated a special Corporate Governance Project in 1986. Purpose of the project was to "more effectively exercise the stockownership [sic] rights possessed by the nearly two hundred pension funds in which UBC members are participants." Coordinated by Edward Durkin, its directors of corporate affairs, the Carpenters' engaged in shareholder activism through an extensive training project of the trustees of the unions' pension funds (with combined assets of \$38 billion). Likewise, the ACTWU had William Patterson, its national field director for the J.P. Stevens, to coordinate the union's shareholder campaigns. Patterson explained the professionalization of union-shareholder campaigns as follows: "Unions are learning to speak the language of Wall Street because there's a sense that we've been the victims of weak management. Business decisions are too important to leave to management."²³ Both the

²³ Kenneth B. Noble, 'Organized Labor; Taking the Fight to the Shareholder', *The New York Times*, March 20, 1988.

Carpenters and the Textile Workers thus began to institutionalize practices of shareholder activism within their own union organizations.

The two developments described above – growing ownership stakes of union-shareholders and increased campaign intensity – were not, however, solely the result of the professionalization of unions’ financial activism, but also followed important changes in the regulatory landscape around shareholder rights in the United States. The next section will detail the changes in the so-called shareholder proposals rule (Rule 14a-8 of the 1934 Securities Exchange Act) that reduced the possibilities for shareholders, particularly the small shareholders, to address labor conflicts in their shareholder resolutions.

4 Everyone a Shareholder?

In the efforts to advance their own interpretation of what role labor unions and shareholders should play in the overall governance of the American, corporations found support by the Securities Exchange Commission (SEC). The SEC is a federal agency, created by the 1934 Securities Exchange Act, responsible for the regulation of the American securities industry. The SEC has the authority to regulate the shareholder process and significantly shape the nature of shareholder activism through Rule 14a-8 of the Securities Exchange Act, which is known as the shareholder proposal rule. The rule states under what conditions shareholders may submit resolutions to be included in the proxy statement of a public corporation for all shareholders to vote on during the annual meeting of that corporation. It also regulates under what conditions corporations are allowed to exclude proposals from their annual proxy statements.

The shareholder proposal rule includes both procedural and substantive grounds for the exclusion of shareholder resolutions. Procedural grounds for exclusion range from missing the

deadline to submit proposals to including a supporting statement that exceeded the 100-word limitation. Substantive grounds for exclusion included those proposals that were in violation of law or proxy rules or that were submitted “primarily for the purpose of general economic, political, racial, religious, social or similar causes.”²⁴ Two other substantive grounds for exclusion have been of particular importance for labor’s shareholder activism: The *personal grievance rule* and the *ordinary business rule*. The personal grievance exclusion (1948) states that shareholder proposals dealing with “the enforcement of a personal claim or grievance” can be excluded from the proxy statement, including labor disputes.²⁵ The ordinary business rule (1954) prohibits proposals dealing with the ordinary business of the corporation or the daily responsibilities of corporate management, including employment conditions and labor-management relations.²⁶ Despite its commitment to promoting shareholder democracy, the SEC thus limited the possibilities for activist shareholders to advance causes beyond the overall performance of the corporation.

In the decades following the formulation of the substantive and procedural grounds for exclusion, the SEC’s commissioners and staff began to accept shareholder democracy more and more.²⁷ In 1970, a US Appeals Court in the District of Columbia Circuit overturned an SEC decision to exclude a proposal against the manufacturing of napalm by Dow Chemical (known as

²⁴ IRRC 1987, 2.

²⁵ The agency has been reluctant to use the personal grievance rule, as it was difficult for corporations to prove a direct connection between a grievance held by the proponent against the company and the motivation behind the proposal.

²⁶ Mathiasen 1994, 9-10; Richard Marens 2004, “Waiting for the North to Rise: Revisiting Barber and Rifkin after a Generation of Union Financial Activism in the United States,” *Journal of Business Ethics* Vol. 52, No. 1: 109-123; Phil Nicholas 2002, “The Securities and Exchange Commission and the Shareholder Proposal Rule: Agency Administration, Corporate Influence, and Shareholder Power, 1942-1998,” dissertation, University at Albany – SUNY, pp. 132-133.

²⁷ Nicholas describes how staff members of the Division of Corporate Finance would advise proponents how to correct flaws in their proposals and resubmit them, even after the official deadlines had already passed. Nicholas 2002, 162-7.

the Medical Committee Decision).²⁸ Subsequently, the SEC removed the “for the purpose of” restriction and replaced it with the rule excluding proposals dealing with topics that are “not significantly related to the business of the issuer” or “not within the control of the issuer.” Moreover, the SEC made minor adjustments to the procedural requirements for shareholder proposals, such as lengthening the deadline for shareholders to submit proposals, limit the number of proposals to two per shareholders per corporation, and imposing a 300-word limitation on shareholder proposals. The SEC also allowed shareholders to request the formation of a committee or production of a report on workplace-related issues, stating that these were such extraordinary activities to be undertaken by corporate management that they could not be considered part of the ordinary business of the corporation.²⁹

The shareholder proposal rule has allowed corporate managers to exclude shareholder proposals dealing with workplace issues from proxy statements. Managers of public corporations receiving proposals they wish to exclude, can ask the Division of Corporate Finance of the Securities and Exchange Commission (SEC) for an informal opinion to verify if the latter would support the omission of the proposal or it would undertake action against the company. The informal decisions taken by the Division of Corporate Finance in these matters have become known as so-called No Action Letters.³⁰ For the period 1974-1993, I identified a total of 166 union-shareholder proposals that were challenged by corporations and presented to the Division

²⁸ The Court argued in this case: “We think there is a clear and compelling distinction between management’s legitimate need for freedom to apply its expertise in matters of day-to-day business judgment, and management’s patently illegitimate claim of power to treat modern corporations with their vast resources as personal satrapies implementing personal political or moral predilections. It could scarcely be argued that management is more qualified or more entitled to make these kinds of decisions than the shareholders who are the true beneficial owners of the corporation.” Cited in IRRC 1987, 3.

²⁹ IRRC 1987, 3-4.

³⁰ These letters are named no-action letters because the Division of Corporate Finance would write in the case of a rightful exclusion of a shareholder proposal: “The Division will not recommend enforcement action to the Commission if the Company omits the proposal from its proxy materials”. It should be noted that the No Action letters are interpretive in nature and not legally binding. When parties disagree over the outcome of the No Action request, they have to turn to court for a legally binding decision.

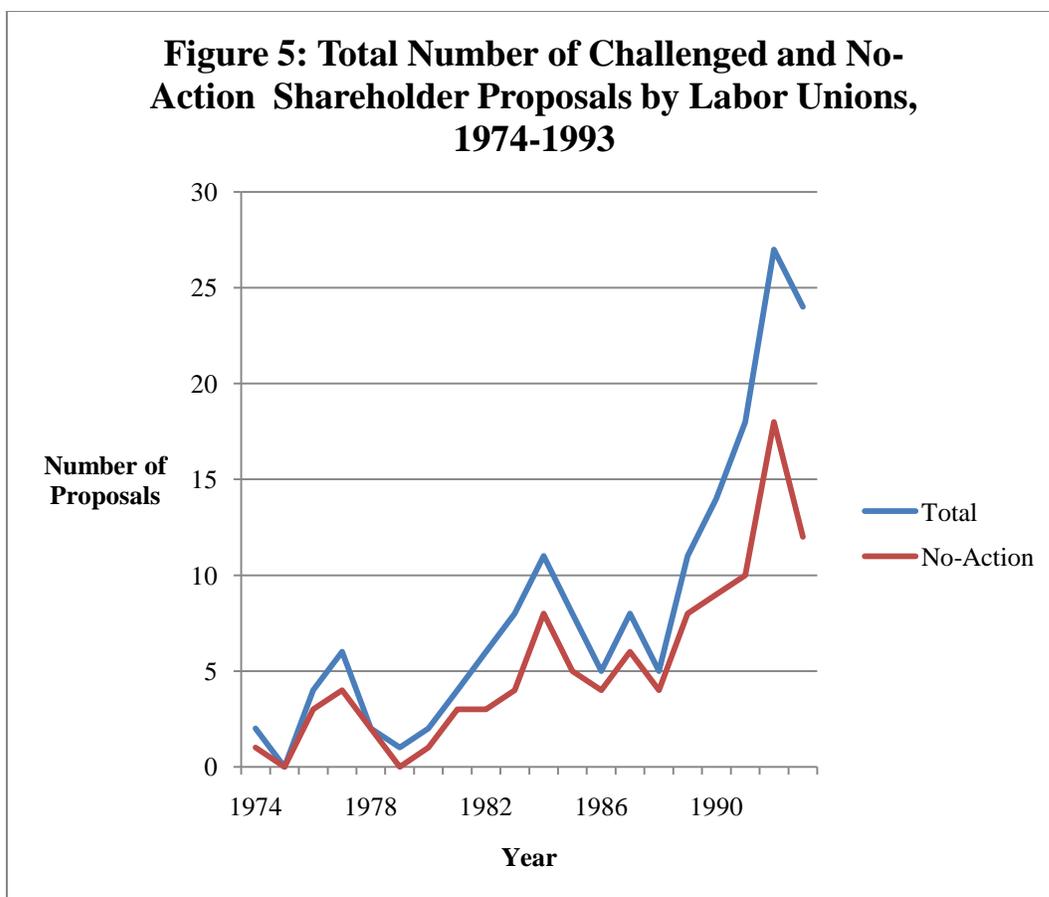
of Corporate Finance for a No-Action decision.³¹ Figure 5 shows that the Division staff issued a No-Action decision for the majority of challenged proposals (63.3%). Moreover, a closer look at the SEC's motivations for issuing these No-Action decisions reveals that the ordinary business exclusion was the most common reason for omitting union-shareholder proposals (in 48.57% of the cases). These omissions were related to the fact that many shareholder proposals dealt with labor conflicts or other employment related issues, a topic considered "not a proper subject" for shareholders to decide on.³² Finally, union-shareholder resolutions were more likely to receive a No-Action decision in the earlier years of shareholder activism than in the late 1980s and early 1990s. This may hint at an increased familiarity of union proponents with the eligibility criteria for shareholder proposals, consistent with the professionalization of union-shareholders described in the previous section.

Despite the Division's support for corporate No-Action requests, the staff's motivation were largely driven by a reformist ideology of curtailing the power of business by strengthening the position of the shareholder as countervailing power to corporate management.³³ The Commission welcomed shareholder access to the proxy statement as long as this involvement pertained solely to issues of corporate government. This was particularly evident in the agency's activities to keep labor conflicts out of the annual shareholder meeting. Proposals submitted in the context of a labor conflict were resolutely excluded for advancing a "personal grievance." At Capital Cities,

³¹ I recovered these resolutions through a Lexis-Nexis search based on the following keywords: "Union," "labor," "rule 14a-8," plus the names of individual labor unions (both AFL-CIO affiliates and those within the current Change to Win coalition). Although my search was meant to be exhaustive, I may not have been able to identify all union-shareholder proposals for this time period. Consequently, the numbers presented here are likely to underestimate the total extent of labor's shareholder activism for the period under investigation.

³² The second most common reason for omitting shareholder proposals were procedural (24.76%), often for missing the deadline to submit shareholder proposals.

³³ It is therefore not coincidental that the shareholder proposal rule was initially met with substantial opposition from American corporations. Corporate managers of publicly owned firms generally wanted a requirement to only allow shareholders who owned a minimum amount of stock to propose resolutions. They also wanted a limit on the number of resolutions that could be submitted by an individual shareholder. These concerns were expressed through a public comment procedure, following the publication of a draft version of Rule 14a-8, and through a committee of five business executives established by the SEC during World War 2. See: Nicholas 2004, 225 and 231.



for instance, the lawyer for the Division of Corporate Governance ruled that the request to commit to good faith collective bargaining at a subsidiary corporation was not relevant for the shareholder meeting, because it pertained to a managerial prerogative and not to an issue of general interest to the shareholders.³⁴ In the absence of workplace disputes, however, the Division of Corporate Finance proved to be more tolerant of labor's proposals. In the multiple No-Action requests of AT&T against IFPTE Local 81, for instance, it decided in favor of the union on several occasions, stating that the mere fact that the proponent is a labor union was not by itself a reason to omit the resolution from the company's proxy statement. The Division did

³⁴ *Capital Cities Communications*, SEC No-Action Letter, March 16, 1983.

not see an inherent conflict of interest between labor unions as representatives of workers as employees and of workers as shareholders.³⁵

The SEC's permissive attitude towards labor's shareholder activism changed in the 1980s, when Ronald Reagan appointed new commissioners to the SEC, including James Treadway Jr. (Republican, previously representing investment funds and brokerage firms as a lawyer), Bevis Longstreth (a lawyer and Democrat, who had previously worked for the IRRC), and chairperson John Shad (1981-1986). These appointments resulted in a substantial change in the political outlook of the SEC. The Republican Shad in particular – a vice-Chairperson of a large brokerage firm and former chair of Reagan's New York campaign finance committee - shared corporate America's opposition to the "lone shareholders" of the previous decade. He commented: "For \$25 to \$50, an individual can become a shareholder and impose thousands of dollars of expenses on all of the other shareholders in airing his pet peeve or concern."³⁶

Shad's criticisms resonated with American businesses that had been targeted by shareholder activists. Already in 1981, the American Society of Corporate Secretaries had urged the Division of Corporate Finance to make changes to the shareholder proposal rule on behalf of America's large, public corporations.³⁷ Some of these corporations were flatly opposed to the shareholder proposal process in the first place. Dow Chemical, the corporation that had been the target of one of the first social shareholder proposals in 1968, wrote in its comment letter to the SEC that shareholder proposals were "material in search of a soapbox... at the expense of all the stockholders (most of whom don't particularly care about the issue) and in the hope of

³⁵ "In our view, you have not met your burden of proving that the proposal relates to a specific personal claim or grievance by the union against the Company, its management, or any other person". In: *Ibid.*

³⁶ Cited in Mathiasen, 25.

³⁷ Nicholas 2004, 185.

humiliating management”³⁸ Others complained about the costs of these shareholder proposals. AT&T, also a common target for shareholder activists, reported that it had spent \$22,450 to communicate five proposals to its shareholders in addition to \$41,500 to exclude eleven other proposals.³⁹ A final group of corporate commentators objected to the relative ease with which shareholders could propose resolutions to the proxy statement. General Motors, another early target of the social shareholders, found in particular that the 3% of the vote in favor was too low a threshold to allow proposals to be submitted a second year, writing that “a 3 percent vote ‘for’ is so small it may be largely or entirely accounted for by voter error.”⁴⁰

The Commission decided to amend Rule 14a-8 to reserve the shareholder process for corporations’ “true shareholders.”⁴¹ The agency restricted the possibilities for shareholder activism by making procedural and substantial adjustments to Rule 14a-8. First, shareholders would need to own either 1% of \$1000 worth of company stock for at least one year in order to submit a resolution at the shareholder meeting. Second, shareholders could only sponsor one resolution per company per year. Third, proposals would have to receive at least 3% of the vote in order to be resubmitted the following shareholder meeting.⁴² With regards to the substantive requirements to shareholder proposals, the SEC specified personal grievance as involving an interest that is not shared by shareholders at large and it tightened the ordinary business rule to

³⁸ IRR, 1987, 23.

³⁹ Lad Kuzela, “Cluttering Up the Annual Meeting,” *Industry Week*, February 21, 1983, 43.

⁴⁰ IRR, 1987, 23.

⁴¹ Kuzela 1983, 43. Longstreth opposed the 1983 amendments and he was the only Commissioner to vote against them (Shad voted in favor along with Commissioners John Evans and Barbara Thomas, Treadway was absent). In fact, Longstreth was in favor of abandoning the restrictions to shareholder proposals altogether, only excluding proposals that violate state law or relate to the election of board directors. IRR 1987, 17.

⁴² Other changes include: Proposals needed to deal with at least 5% of a company’s assets or net earnings; and shareholders were not allowed to communicate with more than 10 other shareholder if they wanted to avoid a formal solicitation.

include employment- and compensation-related issues.⁴³ It prohibited the submission of proposals asking for reports of the creation of a shareholder committee on an employment issue. Whereas the new procedural rules thus made it more difficult for local organizations to use share purchase to gain access to the proxy statement, the substantive restrictions reduced the possibility to address labor issues during the annual meeting.

5 Corporate Accountability and Corporate Governance

A major effect of the changes in Rule 14a-8 was the professionalization of unions' shareholder activism, as the use of shareholder campaigns by local union chapters declined, while national union organizations and affiliated pension funds began to organize large-scale shareholder campaigns. This shift manifested itself in several new developments. First, as the ownership requirements for submitting shareholder proposals became more stringent, new players entered the scene. The different regional pension funds of the United Brotherhood of Carpenters and Joiners of America (UBCJA) were by far the most prolific with 61 proposals between 1986 and 1993, followed by the Communications Workers of America (CWA, 11 proposals) and the Amalgamated Clothing and Textile Workers Unions (ACTWU, 9 proposals). Shareholder activists acting on behalf of these three unions submitted two-thirds of all challenges union proposals. Not coincidentally, these three unions were headed by leaders – Sigurd Lucassen, Morton Bahr and Jacob Sheinkman - who were simultaneously active in the AFL-CIO Committee for the Investment of Union Pension Funds. At the same time, the three unions had easy access to capital accumulated in Taft-Hartley and staff retirement funds. The three unions thus not only had the financial and organizational resources to coordinate shareholder actions in

⁴³ Mathiasen 2004, 29; "SEC Adopts New Rules for Shareholder Resolutions," *Labor and Investments*, September 1983, 1.

the post-1983 institutional framework set by the SEC, but also a leadership convinced that unions should behave like shareholders in order to improve labor's political efficacy.

Second, union-shareholders began to adjust the content of the proxy resolutions following the 1983 amendments. As the SEC had ruled out labor disputes and working conditions as proper topics for shareholders to address, union-shareholders took their shareholder proposals in two different directions: 1) A return to the public purpose proposals, as used by the social shareholder activists of the 1960s and 1970s; and 2) The corporate governance proposal, common to value-oriented institutional investors. With regards to the former, union-shareholders addressed broader social issues than labor conflicts or other workplace-related concerns through the shareholder process. Between 1991 and 1993, for instance, the three unions mentioned above – UBC, CWA and ACTWU - submitted 11 proposals requesting company boards to evaluate different proposals for health care reform, a topic that had been at the center of Bill Clinton's presidential campaign prior to his election in 1992. In the same period, ACTWU submitted several proposals at retailers Wal-Mart and Dayton-Hudson to request insight in the corporations' equal opportunity and affirmative action policies, while the UBC requested corporations to establish an Environmental Affairs Committee, including corporate giants such as International Paper, Dupont, and Dow Chemical. Each of these resolutions emphasized the social responsibility of the corporation towards its employees and society at large.

Even where the working conditions of employees themselves were involved, unions more explicitly expanded the notion of the firm itself, beyond its responsibility towards shareholders and employees, to include the common good of the community in which the corporation was located. In the mid-1980s, for instance, a series of shareholder proposals on the establishment of Facilities Closure and Work Relocation Committees at several corporations was submitted by the

Communications Workers of America. The main task of these committees would be to evaluate the impact of plant closings on the wider community in which the company was located. In one request, the union suggested the formation of a “committee, composed of employees and outside directors” to “objectively weigh the impact” of moving or closing facilities.⁴⁴ It thereby appealed to the corporations’ stakeholders:

The communities in which the facilities of the Corporation's local telephone companies are located are home to the Corporation's customers. [...] Truly, these communities that house the Corporation's facilities are populated by stakeholders of the Corporation. The Corporation would benefit from the input of a committee structured to objectively weigh the impact of the movement of work or the closure of a facility on the Corporation. Such a committee, composed of employees and outside directors, would conduct its deliberations apart from the immediate and short-run operating concerns, and would focus on the larger concerns of the Corporation and its major constituents and stakeholders.⁴⁵

Here the union thus specifically proposed a social conception of the firm, emphasizing the impact of corporate conduct not only for the corporation’s employees and shareholders, but also its customers and the communities in which it was located. These Facilities Closure and Work Relocation Committee proposals were commonly accepted by the SEC, either in original or revised format, as the agency decided that plant closures had become a matter of social policy rather than just matters of the day-to-day operations of the firm.⁴⁶

The other social shareholder proposals – on health care, environmental affairs, and equal employment opportunity - were not uniformly accepted by the Securities and Exchange Commission. Only one of these proposals was accepted by the Securities and Exchange Commission. Thirteen proposals were excluded, whereas six more were withdrawn by the proponents. Reasons for exclusion were twofold. In the case of the health care and equal

⁴⁴ *United Telecommunications*, SEC No-Action Letter, January 31, 1991.

⁴⁵ *Ibid.*

⁴⁶ The SEC stated: “In reaching a position, the staff has particularly noted that the proposal appears to address the significant economic and other considerations attendant to facilities closing decisions by the Company in general and does not involve matters relating to the Company's ordinary business operations specifically.” *United Telecommunications*, SEC No-Action Letter, January 31, 1991.

opportunities proposal, the SEC considered the proposals an infringement on managerial discretion to deal with the ordinary business of the corporation. The staff of the Division of Corporate Finance interpreted “ordinary business” broadly as it argued that the health care proposals were “directed at involving the Company in the political or legislative process relating to an aspect of the Company’s operations.”⁴⁷ With regards to the equal employment resolutions, the staff letters stated: “The proposal involves a request for detailed information on the composition of the company’s work-force, its employment practices and policies as well as its relationships with suppliers and other businesses. Accordingly, this Division will not recommend enforcement action to the Commission if the proposal is excluded from the Company’s proxy materials.”⁴⁸ Finally, in the case of the environmental affairs resolutions, the SEC considered the proposals moot, as corporate managers successfully argued that they had already implemented substantial environmental policies in their businesses.

The exclusion of social shareholder proposals from corporate proxy statements stimulated union-shareholders to rephrase their resolutions, emphasizing a connection between the issue at hand and the financial interest of the corporation and its shareholders. Consider the following shareholder proposal on health care, submitted by the Carpenters’ funds at several corporations (including Pepsico, 3M, Albertson’s, Merck, Amoco). During the 1991 proxy season, the union proposed the following:

WHEREAS: [The Company] is concerned with remaining competitive in the domestic and world marketplace, acknowledging the positive relationship between the health and well being of its employees and productivity, and the resulting effect on corporate growth and financial stability; and

WHEREAS: Sustained double-digit increases in health care costs have put severe financial pressure on a company attempting to continue to provide adequate health care for its employees and their dependents; and

⁴⁷ *Pepsico*, SEC No-Action Letter, February 10, 1992.

⁴⁸ *Wal-Mart*, SEC No-Action Letter, April 10, 1992.

WHEREAS: The Company has a societal obligation to conduct its affairs in a way which promotes the health and well being of all; Be it therefore

RESOLVED: That the shareholders request the Board of Directors to establish a committee of the Board consisting of outside and independent directors' for the purpose of evaluating the impact of a representative cross section of the various health care reform proposals being considered by national policy makers on the company and their competitive standing in domestic and international markets.

In the proposal, the union made an active connection between the financial fate of the corporation and the fate of the employees. It also proposed a definition of the corporation that was fundamentally different than accepted in the United States (corporation for the purpose of shareholders). The union stated that the corporation had a social obligation to its employees, thereby suggesting a view of the corporation as a *social institution* rather than a “nexus of contracts” for the purpose of increasing shareholder value. In the case of the health care proposal, for instance, the labor union argued that the proposal did not address benefits for Pepsi employees. Stating that health care had become “well beyond the reach of a growing number of working families,” the union argued that the Pepsi proposal did not deal with “a routine or mundane matter concerning the establishment, negotiation, modification or administration of an employee benefit plan.” Rather, it dealt with “an issue of urgent national concern and corporate policy.”

After the SEC excluded the health care proposal on the basis of the ordinary business exclusion, the union rephrased its proposal and resubmitted it during the 1992 proxy season. The proposal now read:

WHEREAS: The shareholders of [the Company] are concerned that the Company remain competitive in the United States and worldwide, and are concerned about the effects of the health care crisis in the United States on long-term shareholder value; and

WHEREAS: The crisis in U.S. health care costs has led to a public policy debate, and to legislative proposals, including single-payer and employer-mandated models, that might significantly alter the structure of the Company's health care policies; and

WHEREAS: A major cost factor for our Company-health care costs-is likely to be decisively affected by the course of the current public policy debate; accordingly, a policy-level analysis is necessary for our Company to be prepared for the possible effects on shareholder value; Therefore be it

RESOLVED: That the shareholders request the Board of Directors to establish a Health Care Review Committee ("Committee") of the Board for the purpose of evaluating the impact of various health care reform proposals on the Company. Further, that this Committee should be directed to prepare a report of its findings within a reasonable period. The report should be made available at a reasonable cost to any shareholder upon written request.

The union thus removed any connection between corporate performance and employee contributions. It also removed the “societal obligation” of the corporation. Instead, it prominently displayed the shareholder as the central actor. First, it made clear the significance of the proposal to shareholders by connecting health costs with shareholder value. Second, it made it look as the proposal was the request of the entire body of shareholders, not coming from the labor union. As a result, the social implications of the health care proposal were buried in a value-oriented discourse in which the shareholder took central stage.

Second, union-shareholders began to address corporate governance issues in their shareholder resolutions. Corporate governance refers to the “relationship among various participants in determining the direction and performance of corporations,” most importantly the shareholders, managers and the board of directors.⁴⁹ Between 1986 and 1993, union-shareholders submitted 51 proposals dealing with corporate governance. The overwhelming majority of these proposals addressed institutional changes to improve the monitoring capacity of shareholders and the overall transparency of managerial behavior. Topics ranged from the removal of poison pills, declassification of boards of directors, the introduction of confidential voting at the annual

⁴⁹ Monks and Minow 1995, 1.

meeting to a board composition with a majority of independent members and the separation of the positions of CEO and Chairperson of the board.⁵⁰

The UBC was one of the first unions to focus on corporate governance issues through its Corporate Governance project. Unlike the corporate campaigns, which were linked to specific collective bargaining processes, the project focused on corporate governance issues with shareholder proposals questioning the entrenchment of unaccountable management. The UBC wrote in its 1986 proposal to Boise Cascade: “It is our belief that the issues associated with corporate governance have grown increasingly important in recent years as we have witnessed a growing number of challenges to incumbent corporate managements, most frequently in the form of “hostile” corporate takeovers.”⁵¹ The union motivated its interest in corporate governance by outlining its concern, as “an organization, which represents workers who are both employees and long-term corporate shareholders,” for the negative consequences of hostile takeovers, particularly any “disruptive employment impacts” that may follow. At the same, however, the union proved attentive to shareholders’ right to vote, as this would have “a direct impact on the present value of the shareholders’ investments and the holders’ opportunities to realize stock price premiums in the event of a takeover attempt.”⁵² Here the union thus not only presented itself as a representative of capital-owning employees, but also as a “true” shareholder, whose financial concerns were identical to those of other shareholders.

⁵⁰ Although these topics – as issues typically reserved for shareholder approval during the annual meeting – would assume that corporate governance proposals were more easily accepted by the SEC, a majority of 62.8% of these union-shareholder proposals were rejected (against 63.3% of all shareholder proposals). Contrary to the total body of omitted shareholder proposals, however the main reason for exclusion was not substantive, but rather procedural: In 56.3% of the cases was the proposal omitted for missing the submission deadline, exceeding the allotted number of words or insufficient share ownership to be eligible to submit a shareholder resolution.

⁵¹ *Boise Cascade*, SEC No-Action Letter, November 28, 1986.

⁵² *Ibid.*

Conclusion

As the above shows, both the changes in the regulatory framework surrounding shareholder activism and the subsequent professionalization of union-shareholders effectively closed off the possibility to reinsert a social definition of the American corporation through the annual shareholder meeting. This paper has shown a shift in labor's shareholder activism from a commitment to industrial relations by different means, such as Financial Institution Employees of America did in the early 1980s, to a focus on corporate governance, as exemplified by the Carpenters ten years later. As of the mid-1990s, shareholder value thus became entrenched as a legitimate and ultimate pursuit of corporate conduct, even for labor unions such as the UBC and ACTWU. Subsequently, throughout the 1990s, union-shareholders have struggled to combine their requests for corporate accountability with the paradigm of shareholder value.

To be sure, the primacy of shareholder value over corporate accountability has not solely been the result of opposition by business actors and the SEC who successfully defended the status quo. Unions' dependence on the vehicle of stock ownership to assert their claims reinforced the idea that shareholders had a political right to question managerial conduct with regards to business operations. The labor unions engaging in shareholder activism therefore challenged a narrow conception of the firm, while at the same time affirming the primacy of the shareholder within the corporation through their chosen political repertoire. To conclude: By becoming a financial player itself, American labor has become firmly rooted within a political economy organized around the same logic of shareholder value it intended to critique.