LABOR RELATIONS AND NEGOTIATIONS

Andrew Paasch
Northeast Wisconsin Technical College

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Labor Relations and Negotiations (NWTC)

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1: Why Unions

Learning Objectives

- Identify the reasons workers join unions

There has been a labor movement in America since the late colonial period, with the emergence of a free market system and artisan workers—for example, tailors, shoemakers and machinists—organizing to establish wages, defend against cheap labor and demand a shorter workday. In addition to protecting job-specific interests, the early labor movement had a vision of a "just society," that "fostered social equality, celebrated honest labor and relied on an independent, virtuous citizenship."[1] Although there were periods of segregation and discrimination, the union more or less—sometimes due to social pressure or legislative action—retained this sense of democratic purpose through history. This positioning is still used in union websites—for example, one of the three points listed on the AFL-CIO's What Unions Do page is "Advocate for Economic Justice."[2] A second point listed: "Build Power for Working People." Unions also play a significant role in balancing power. In situations where an employer has market power, a labor union may be able to level the playing field and give employees a voice. That is, indeed, one of the core promises of a union. As the AFL-CIO puts it "All working people deserve good jobs and the power to determine their wages and working conditions."[3]

The modern labor movement emerged as a response to demand side (employer) market power, characterized by hazardous working conditions and exploitative employer practices. During the Industrial Revolution, a 6 day, 12–16 hour work week was common, payment was at a subsistence level—perhaps 10 shillings (cents) per hour for an unskilled man (a little more if skilled), 5 shillings for a woman and 1 shilling for a child. Working conditions were particularly dangerous due to the early stage of technology development, the lack of safety practices or regulation, and, perhaps most damning, workers were considered expendable.[4]

In this hostile environment, unions emerged as champions of the workers, helping to fight for fair wages, reasonable work hours and safer working conditions. And, indeed, the labor movement was instrumental to a number of workplace and worker improvements, including the elimination of child labor and provision of health and safety benefits.[5] To illustrate, the American Federation of State, County and Municipal Employees (AFSCME) includes the following on their list of labor accomplishments:

- The Social Security Act (1935)
- The National Labor Relations Act (1935)
- Fair Labor Standards Act (1938)
- Civil Rights Act/Title VII (1964)
- Occupational Safety & Health Act (1970)[6]

Workers join unions to increase their negotiating leverage and to obtain wages and benefits that they could not achieve on their own, including a degree of employment security. As the AFL-CIO puts it: "Joining

together in unions enables workers to negotiate for higher wages and benefits and improve conditions in the workplace."[7] Although wage and benefit impacts vary significantly by industry, geography and a range of economic, social and political factors, the following are broad benefits of unions:

- 92% of union members have health care coverage versus 68% of non-union employees
- Union members earn an average of 30% more than non-union workers in comparable jobs
- Union workers are more likely to have guaranteed pensions than non-union employees
- Union members may also be protected from firing without just cause, unlike most employees who can be terminated for any reason at any time ("at will" employment).

Interestingly, there are two areas where union membership doesn't improve outcomes: employee engagement and satisfaction, both of which are correlated with performance. Data compiled by employee engagement survey provider Avatar Solutions suggests that unionized employees are less engaged than non-union employees.[8] Management professor and researcher Patrice Laroche conducted a meta-review of the data and confirmed the negative correlation between union membership and job satisfaction.[9] These are particularly important findings since union members tend to remain with an organization longer than non-union employees. To be clear, Laroche concluded that "unions don't cause their employees to be dissatisfied; the dissatisfaction of union members is real, but it's due to the working conditions and the types of workers that tend to be unionized."[10]

? Practice Question

https://assessments.lumenlearning.co...essments/18212

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6. "Labor's Top 10 Accomplishments." AFSCME. Accessed July 19, 2019. ↵
7. "What Unions Do." AFL-CIO. Accessed July 19, 2019. ↵
8. "Assessing Employee Engagement in a Unionized Environment." Avatar Solutions. 2015. Accessed July 19, 2019. ↵
9. Laroche, Patrice. "Research Shows Unionized Workers are Less Happy, but Why?" Harvard Business Review. August 30, 2017. Accessed July 19, 2019. ↵
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2: The Labor Relations Process

Learning Objectives

- Identify the Fundamentals of Labor Relations
- Explore the Legal Framework of Labor Relations
- Navigate the Collective Bargaining Process.

What is a labor union and how is it organized, what is collective bargaining, and what are some of the key negotiation issues?

Tens of thousands of American firms are unionized, and millions of U.S. workers belong to unions. Historically, the mining, manufacturing, construction, and transportation industries have been significantly unionized, but in recent years, service-based firms, including health care organizations, have been unionized.

A **labor union**, such as the International Brotherhood of Teamsters, is an organization that represents workers in dealing with management over disputes involving wages, hours, and working conditions. The labor relations process that produces a union-management relationship consists of three phases: union organizing, negotiating a labor agreement, and administering the agreement. In phase one, a group of employees within a firm may form a union on their own, or an established union (United Auto Workers, for example) may target an employer and organize many of the firm's workers into a local labor union. The second phase constitutes **collective bargaining**, which is the process of negotiating a labor agreement that provides for compensation and working arrangements mutually acceptable to the union and to management. Finally, the third phase of the labor relations process involves the daily administering of the labor agreement. This is done primarily through handling worker grievances and other workforce management problems that require interaction between managers and labor union officials.

The Modern Labor Movement

The basic structure of the modern labor movement consists of three parts: local unions, national and international unions, and union federations. There are approximately 60,000 local unions, 75 national and international unions, and two federations. Union membership has been declining over the past three decades and is now half what it once was. The number of employed union members has declined by 2.9 million since 1983, the first year union statistics were reported. In 1983, union membership was 20.1 percent of workers, with 17.7 million union workers. In 2023, membership declined to 10.60 percent of workers, with 14.2 million members.[12]

A **local union** is a branch or unit of a national union that represents workers at a specific plant or over a specific geographic area. Local 276 of the United Auto Workers represents assembly employees at the General Motors plant in Arlington, Texas. A local union (in conformance with its national union rules) determines the number of local union officers, procedures for electing officers, the schedule of local meetings, financial arrangements with the national organization, and the local's role in negotiating labor agreements.

The three main functions of the local union are collective bargaining, worker relations and membership services, and community and political activities. Collective bargaining takes place every three or four years. Local union officers and shop stewards in the plant oversee labor relations on a day-to-day basis. A **shop steward** is an elected union official who represents union members to management when workers have complaints. For most union members, his or her primary contact with the union is through union officials at the local level.

A national union can range in size from a few thousand members (Screen Actors Guild) to more than a million members (Teamsters). A national union may have a few to as many as several hundred local unions. The number of national unions has steadily declined since the early twentieth century. Much of this decline has resulted from union mergers. In 1999, for example, the United Papermakers International Union (UPICU) and the Oil, Chemical and Atomic Workers Union (OCAW) agreed to merge under the new name of PACE, or Paper, Allied-Industrial, Chemical and Energy International Union. PACE has about 245,000 members.

For 50 years, one union federation (the American Federation of Labor-Congress of Industrial Organization, or AFL-CIO) dominated the American labor movement. A **federation** is a collection of unions banded together to further organizing, public relations, political, and other mutually-agreed-upon purposes of the member unions. In the summer of 2005, several unions (Teamsters, Service Employees International Union, Laborers' International Union, United Farm Workers, Carpenters and Joiners,

Unite Here, and the United Food and Commercial Workers Union) split from the AFL-CIO and formed a new federation named the Change to Win Coalition.[13] The new federation and its member unions represent more than 5.5 million union members. Change to Win Coalition member unions left the AFL-CIO over leadership disagreements and ineffective organizing strategies of the AFL-CIO; one of its primary goals is to strengthen union-organizing drives and reverse the decline in union membership.[14]

Union Organizing

A nonunion employer becomes unionized through an organizing campaign. The campaign is started either from within, by unhappy employees, or from outside, by a union that has picked the employer for an organizing drive. Once workers and the union have made contact, a union organizer tries to convince all the workers to sign authorization cards. These cards prove the worker's interest in having the union represent them. In most cases, employers resist this card-signing campaign by speaking out against unions in letters, posters, and employee assemblies. However, it is illegal for employers to interfere directly with the card-signing campaign or to coerce employees into not joining the union.

Once the union gets signed authorization cards from at least 30 percent of the employees, it can ask National Labor Relations Board (NLRB) for a union certification election. This election, by secret ballot, determines whether the workers want to be represented by the union. The NLRB posts an election notice and defines the bargaining unit—employees who are eligible to vote and who will be represented by the particular union if it is certified. Supervisors and managers cannot vote. The union and the employer then engage in a pre-election campaign conducted through speeches, memos, and meetings. Both try to convince workers to vote in their favor. The table below lists benefits usually emphasized by the union during a campaign and common arguments employers make to convince employees a union is unnecessary.

The election itself is conducted by the NLRB. If a majority vote for the union, the NLRB certifies the union as the exclusive bargaining agent for all employees who had been designated as eligible voters. The employer then has to bargain with the union over wages, hours, and other terms of employment. The complete organizing process is summarized in the exhibit below.

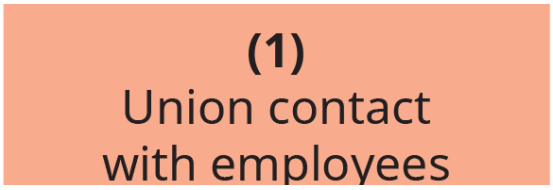
In some situations, after one year, if the union and employer don't reach an agreement, the workers petition for a decertification election, which is similar to the certification election but allows workers to vote out the union. Decertification elections are also held when workers become dissatisfied with a union that has represented them for a longer time. In recent years, the number of decertification elections has increased to several hundred per year.

Benefits Stressed by Unions in Organizing Campaigns and Common Arguments Against Unions		
Almost Always Stressed	Often Stressed	Seldom Stressed
Grievance procedures	More influence in decision-making	Higher-quality products
Job security	Better working conditions	Technical training
Improved benefits	Lobbying opportunities	More job satisfaction
Higher pay		Increased production

Employer Arguments Against Unionization:

- An employee can always come directly to management with a problem; a third party (the union) isn't necessary.
- As a union member, you will pay monthly union dues of $15 to $40.
- Merit-based decisions (promotions) are better than seniority-based decisions.
- Pay and benefits are very similar to the leading firms in the industry.
- We meet all health and safety standards of the Federal Occupational Safety and Health Administration.
- Performance and productivity are more important than union representation in determining pay raises.

Table



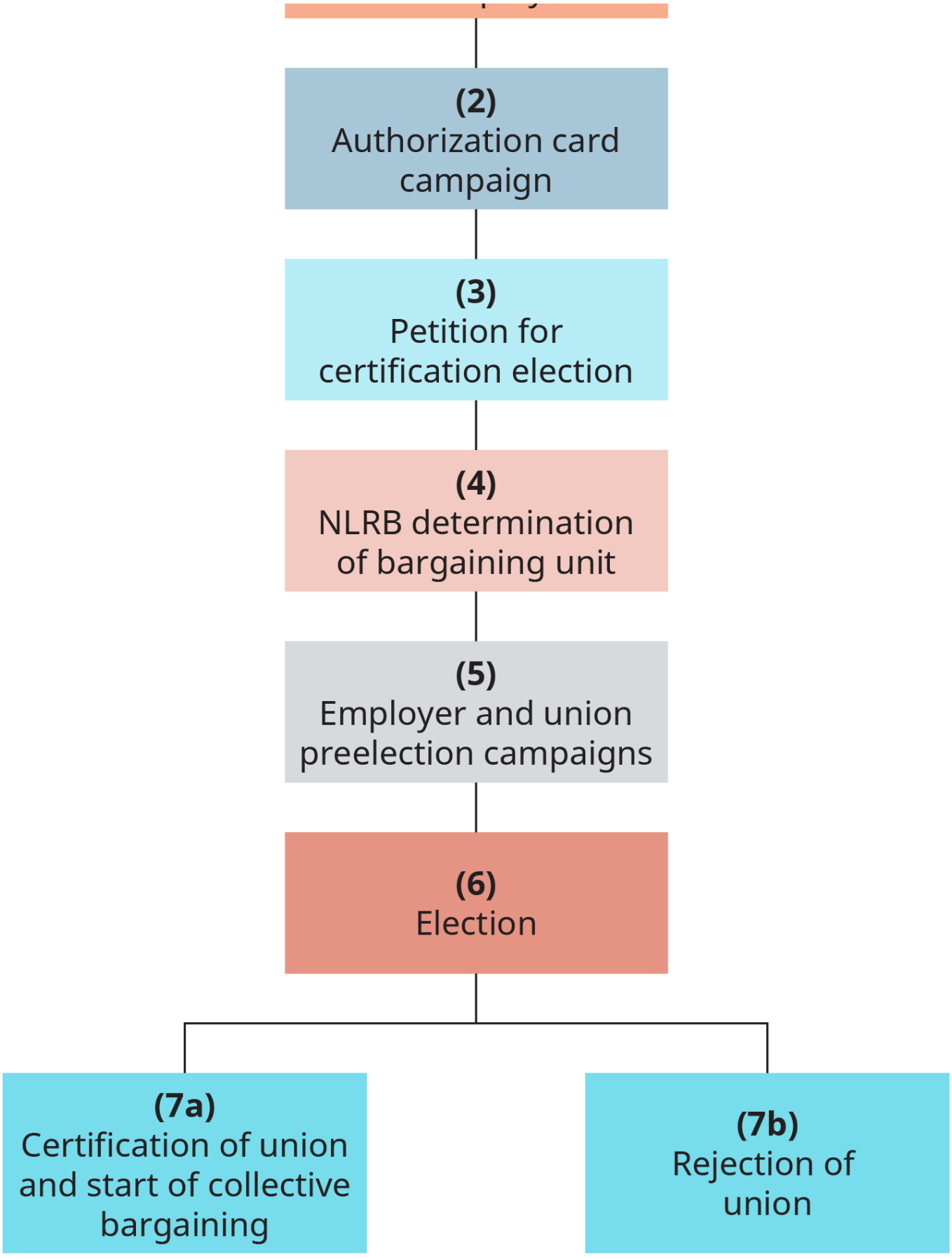

(2)
Authorization card campaign
(3)
Petition for certification election
(4)
NLRB determination of bargaining unit
(5)
Employer and union preelection campaigns
(6)
Election
(7a)
Certification of union and start of collective bargaining
(7b)
Rejection of union

Exhibit: Union Organizing Process and Election (Attribution: Copyright Rice University, OpenStax, under CC BY 4.0 license.)

Negotiating Union Contracts through Collective Bargaining

A labor agreement, or union contract, is created through *collective bargaining*. Typically, both management and union negotiation teams are made up of a few people. One person on each side is the chief spokesperson. Bargaining begins with union and management negotiators setting a list of contract issues that will be discussed. Much of the bargaining over specific details takes place through face-to-face meetings and the exchange of written proposals. Demands, proposals, and counterproposals are exchanged during several rounds of bargaining. The resulting contract must be approved by top management and ratified by the union members. Once both sides approve, the contract is a legally binding agreement that typically covers such issues as union security, management rights, wages, benefits, and job security. The collective bargaining process is shown in the below exhibit. We will now explore some of the bargaining issues.

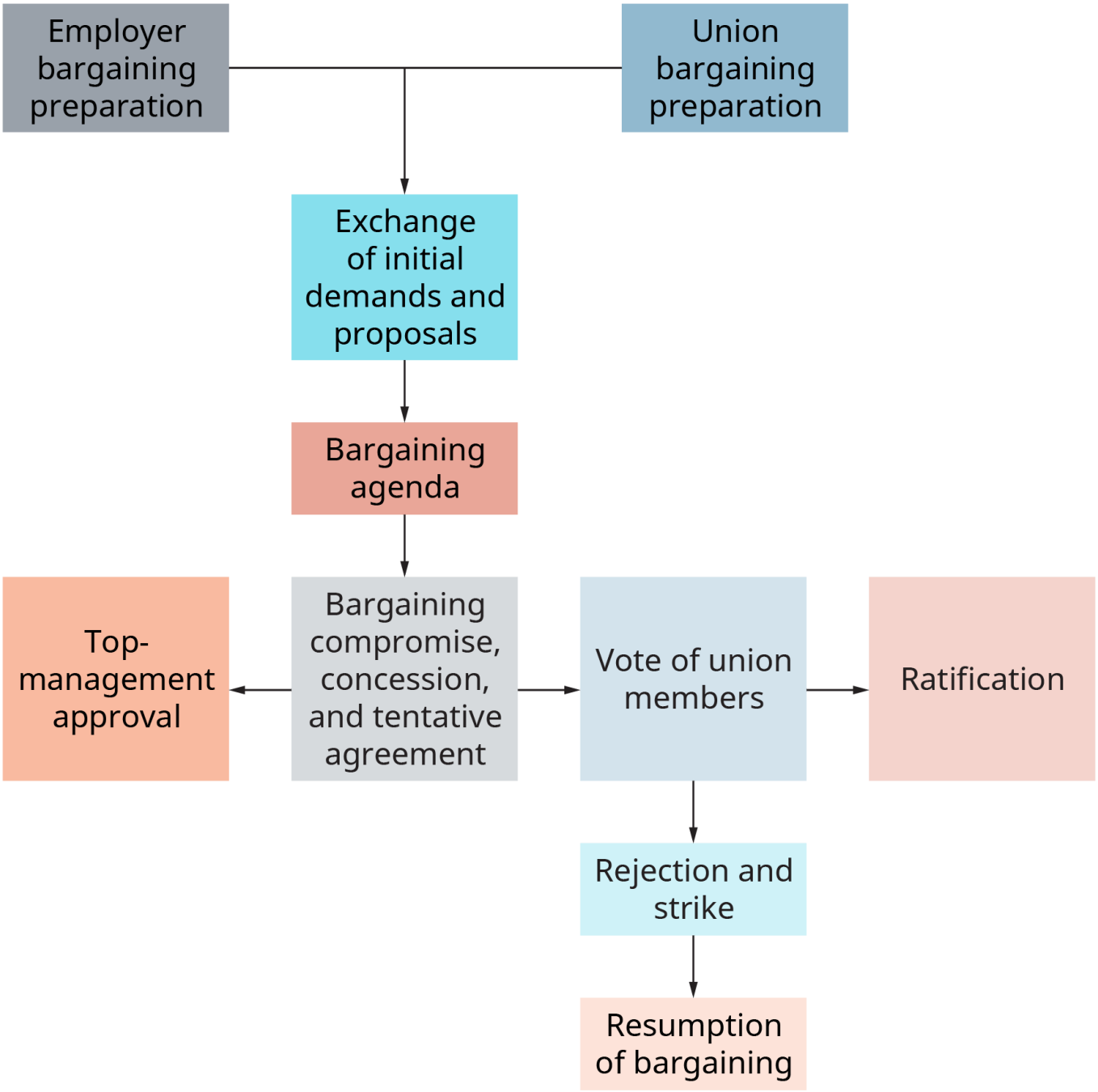


Exhibit The Process of Negotiating Labor Agreements (Attribution: Copyright Rice University, OpenStax, under CC BY 4.0 license.)

Union Security

A union wants all employees to be union members. This can be accomplished by negotiating a union security clause. The most common union security arrangement is the **union shop**, whereby nonunion workers can be hired by the firm, but then they must join the union, normally within 30 to 60 days. An **agency shop** does not require employees to join the union, but to remain employees, workers must pay the union a fee (known as the agency fee) to cover the union's expenses in representing them. The union must fairly represent all workers, including those in the bargaining unit who do not become members.

Under the Taft-Hartley Act of 1947, a state can make any and all forms of union security illegal by enacting a **right-to-work law**. In the 28 states that have these laws, employees can work at a unionized company without having to join the union. This arrangement is commonly known as an **open shop**. Workers don't have to join the union or pay dues or fees to the union.

Management Rights

When a company becomes unionized, management loses some of its decision-making abilities. But management still has certain rights that can be negotiated in collective bargaining. One way to resist union involvement in management matters is to put a **management rights clause** in the labor agreement. Most union contracts have one. A typical clause gives the employer all rights to manage the business except as specified in the contract. For instance, if the contract does not specify the criteria for promotions, with a management rights clause, managers will have the right to use any criteria they wish. Another way to preserve management rights is to list areas that are not subject to collective bargaining. This list might secure management's right to schedule work hours; hire and fire workers; set production standards; determine the number of supervisors in each department; and promote, demote, and transfer workers.

Wage and Benefits

Much bargaining effort focuses on wage adjustments and changes in benefits. Once agreed to, they remain in effect for the length of the contract. For example, in 2015, the United Auto Workers negotiated a four-year contract containing modest hourly wage increases with U.S. car manufacturers; pay hikes were about 3 percent for first and third years and 4 percent in year four.[15] Hourly rates of pay can also increase under some agreements when the cost of living increases above a certain level each year, say 4 percent. No cost-of-living adjustment is made when annual living cost increases are under 4 percent, which has been the case for the early years of the twenty-first century.

In addition to requests for wage increases, unions usually want better benefits. In some industries, such as steel and auto manufacturing, benefits are 40 percent of the total cost of compensation. Benefits may include higher wages for overtime work, holiday work, and less desirable shifts; insurance programs (life, health and hospitalization, dental care); payment for certain nonwork time (rest periods, vacations, holiday, sick time); pensions; and income-maintenance plans. Supplementary unemployment benefits (income-maintenance) found in the auto industry are provided by the employer and are in addition to state unemployment compensation given to laid-off workers. The unemployment compensation from the state and supplementary unemployment pay from the employer together maintain as much as 80 percent of an employee's normal pay.

Job Security and Seniority

Wage adjustments, cost-of-living increases, supplementary unemployment pay, and certain other benefits give employees under union contracts some financial security. But most financial security is directly related to job security—the assurance, to some degree, that workers will keep their jobs. Of course, job security depends primarily on the continued success and financial well-being of the company. For example, thousands of airline employees lost their jobs after the 9/11 terrorist attack in 2001; these were employees with the least seniority.

Seniority, the length of an employee's continuous service with a firm, is discussed in about 90 percent of all labor contracts. Seniority is a factor in job security; usually, unions want the workers with the most seniority to have the most job security.

Concept Check

1. Discuss the modern labor movement.
2. What are the various topics that may be covered during collective bargaining?
3. Explain the differences among a union shop, agency shop, and an open shop.

3: The Nature of Unions

Learning Objectives

- Be able to discuss the history of labor unions.
- Explain some of the reasons for a decline in union membership over the past sixty years.
- Be able to explain the process of unionization and laws that relate to unionization.

There is a good chance that, at some time in your career, you will join a labor union. The purpose of this chapter is to give you some background about unions. Oftentimes, depending on your union involvement, you may have to use a number of human relations skills you have gained so far from reading this book. For example, the ability to work in a team and handle conflict are all aspects you may experience as a union member—or a member of any organization. A **labor union**, or union, is defined as workers banding together to meet common goals, such as better pay, benefits, or promotion rules. In the United States, 10.0 percent of American workers belong to a union, down from 20.1 percent in 1983.[1] In this section, we will discuss the history of unions, reasons for the decline in union membership, union labor laws, and the process employees go through to form a union. First, however, we should discuss some of the reasons why people join unions.

People may feel their economic needs are not being met with their current wages and benefits and believe that a union can help them receive better economic prospects. Fairness in the workplace is another reason why people join unions. They may feel that scheduling, vacation time, transfers, and promotions are not given fairly and feel that a union can help eliminate some of the unfairness associated with these processes. Let's discuss some basic information about unions before we discuss the unionization process.

History and Organization of Unions

Trade unions were developed in Europe during the Industrial Revolution, when employees had little skill and thus the entirety of power was shifted to the employer. When this power shifted, many employees were treated unfairly and underpaid. In the United States, unionization increased with the building of railroads in the late 1860s. Wages in the railroad industry were low and the threat of injury or death was high, as was the case in many manufacturing facilities with little or no safety laws and regulations in place. As a result, the Brotherhood of Locomotive Engineers and several other brotherhoods (focused on specific tasks only, such as conductors and brakemen) were formed to protect workers' rights, although many workers were fired because of their membership.

Labor Union AFL-CIO Perspective

A video from the AFL-CIO shows a history of labor unions, from its perspective.

Video: https://www.youtube.com/watch?v=ubIWyT7nGdU

The first local unions in the United States were formed in the eighteenth century, in the form of the National Labor Union (NLU).

The National Labor Union, formed in 1866, paved the way for other labor organizations. The goal of the NLU was to form a national labor federation that could lobby government for labor reforms on behalf of the labor organizations. Its main focus was to limit the workday to eight hours. While the NLU garnered many supporters, it excluded Chinese workers and only made some attempts to defend the rights of African Americans and female workers. The NLU can be credited with the eight-hour workday, which was passed in 1862. Because of a focus on government reform rather than collective bargaining, many workers joined the Knights of Labor in the 1880s.

The Knights of Labor started as a fraternal organization, and when the NLU dissolved, the Knights grew in popularity as the labor union of choice. The Knights promoted the social and cultural spirit of the worker better than the NLU had. It originally grew as a labor union for coal miners but also covered several other types of industries. The Knights of Labor initiated strikes that were successful in increasing pay and benefits. When this occurred, membership increased. After only a few years, though, membership declined because of unsuccessful strikes, which were a result of a too autocratic structure, lack of organization, and poor management. Disagreements between members within the organization also caused its demise.

The American Federation of Labor (AFL) was formed in 1886, mostly by people who wanted to see a change from the Knights of Labor. The focus was on higher wages and job security. Infighting among union members was minimized, creating a strong organization that still exists today: in the 1930s, the Congress of Industrial Organizations (CIO) was formed as a result of political differences in the AFL. In 1955, the two unions joined together to form the AFL-CIO.

Currently, the AFL-CIO is the largest federation of unions in the United States and is made up of fifty-six national and international unions. The goal of the AFL-CIO isn’t to negotiate specific contracts for employees but rather to support the efforts of local unions throughout the country.

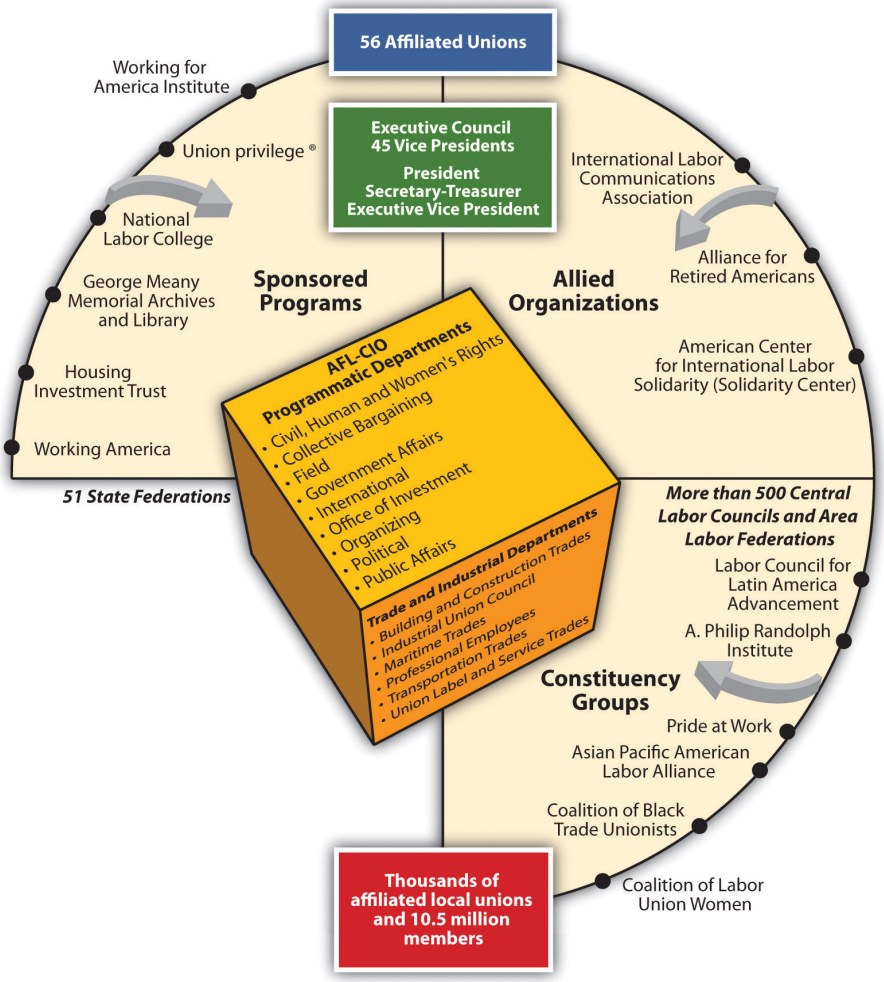


Figure: The Complicated Structure of AFL-CIO. Source: AFL-CIO.

Currently, in the United States, there are two main national labor unions that oversee several industry-specific local unions. There are also numerous independent national and international unions that are not affiliated with either national union:

1. AFL-CIO: local unions include Airline Pilots Association, American Federation of Government Employees, Associated Actors of America, and Federation of Professional Athletes
2. CTW (Change to Win Federation): includes the Teamsters, Service Employees International Union, United Farm Workers of America, and United Food and Commercial Workers
3. Independent unions: Directors Guild of America, Fraternal Order of Police, Independent Pilots Association, Major League Baseball Players Association

The national union plays an important role in legislative changes, while the local unions focus on collective bargaining agreements and other labor concerns specific to the area. Every local union has a **union steward** who represents the interests of union members. Normally, union stewards are elected by their peers.

A national union, besides focusing on legislative changes, also does the following:

1. Lobbies in government for worker rights laws
2. Resolves disputes between unions
3. Helps organize national protests
4. Works with allied organizations and sponsors various programs for the support of unions

For example, in 2011, the national Teamsters union organized demonstrations in eleven states to protest the closing of an Ontario, California, parts distribution center. Meanwhile, Teamster Local 495 protested at the Ontario plant.[2]

Labor Union Laws

The **Railway Labor Act (RLA)** of 1926 originally applied to railroads and in 1936 was amended to cover airlines. The act received support from both management and unions. The goal of the act is to ensure no disruption of interstate commerce. The main provisions of the act include alternate dispute resolution, arbitration, and mediation to resolve labor disputes. Any dispute must be resolved in this manner before a strike can happen. The RLA is administered by the National Mediation Board (NMB), a federal agency, and outlines very specific and detailed processes for dispute resolution in these industries.

The **Norris-LaGuardia Act** of 1932 (also known as the anti-injunction bill) barred federal courts from issuing injunctions (a court order that requires a party to do something or refrain from doing something) against nonviolent labor disputes and barred employers from interfering with workers joining a union. The act was a result of common **yellow-dog contracts**, in which a worker agreed not to join a union before accepting a job. The Norris-LaGuardia Act made yellow-dog contracts unenforceable in courts and established that employees were free to join unions without employer interference.

In 1935, the **Wagner Act** (sometimes called the National Labor Relations Act) was passed, changing the way employers can react to several aspects of unions. The Wagner Act had a few main aspects:

1. Employers must allow freedom of association and organization and cannot interfere with, restrain or coerce employees who form a union.
2. Employers may not discriminate against employees who form or are part of a union or those who file charges.
3. An employer must bargain collectively with representation of a union.

The **National Labor Relations Board (NLRB)** oversees this act, handling any complaints that may arise from the act. For example, in April 2011, the NLRB worked with employees at Ozburn-Hessey Logistics in Tennessee after they had been fired because of their involvement in forming a union. The company was also accused of interrogating employees about their union activities and threatened employees with loss of benefits should they form a union. The NLRB utilized their attorney to fight on behalf of the employees, and a federal judge ordered the company to rehire the fired employees and also to desist in other anti-union activities.[3]

The **Taft-Hartley Act** also had major implications for unions. Passed in 1947, Taft-Hartley amended the Wagner Act. The act was introduced because of the upsurge of strikes during this time period. While the Wagner Act addressed unfair labor practices on the part of the company, the Taft-Hartley Act focused on unfair acts by the unions. For example, it outlawed strikes that were not authorized by the union, called **wildcat strikes.** It also prohibited **secondary actions** (or secondary boycotts) in which one union goes on strike in sympathy for another union. The act allowed the executive branch of the federal government to disallow a strike should the strike affect national health or security. One of the most famous injunctions was made by President Ronald Reagan in 1981. Air traffic controllers had been off the job for two days despite their no-strike oath, and Reagan ordered all of them (over eleven thousand) discharged because they violated this federal law.

The **Landrum Griffin Act,** also known as the Labor Management Reporting and Disclosure (LMRDA) Act, was passed in 1959. This act required unions to hold secret elections, required unions to submit their annual financial reports to the US Department of Labor, and created standards governing expulsion of a member from a union. This act was created because of racketeering charges and corruption charges by unions. In fact, investigations of the Teamsters union found they were linked to organized crime, and the Teamsters were banned from the AFL-CIO. The goal of this act was to regulate the internal functioning of unions and to combat abuse of union members by union leaders.

Figure: Major Acts Regarding Unions, at a Glance

Key Takeaways

- Union membership in the United States has been slowly declining. Today, union membership consists of about 10 percent of the workforce, while in 1983 it consisted of 20 percent of the workforce.
- The reasons for the decline are varied, depending on whom you ask. Some say the moving of jobs overseas is the reason for the decline, while others say unions' hard-line tactics put them out of favor.
- Besides declining membership, union challenges today include globalization and companies' wanting a union-free workplace.
- The United States began its first labor movement in the 1800s. This was a result of low wages, no vacation time, safety issues, and other issues.
- Legislation has been created over time to support both labor unions and the companies who have labor unions. The *Railway Labor Act* applies to airlines and railroads and stipulates that employees may not strike until they have gone through an extensive dispute resolution process. The *Norris-LaGuardia Act* made *yellow-dog contracts* illegal and barred courts from issuing injunctions.
- The *Wagner Act* was created to protect employees from retaliation should they join a union. The *Taft-Hartley Act* was developed to protect companies from unfair labor practices by unions.
- The *National Labor Relations Board* is the overseeing body for labor unions, and it handles disputes between companies as well as facilitates the process of new labor unions in the developing stages. Its job is to enforce both the Wagner Act and the Taft-Hartley Act.
- The *Landrum Griffin Act* was created in 1959 to combat corruption in labor unions during this time period.

Exercise 3.1

1. Visit the National Labor Relations Board website. View the "weekly case summary" and discuss it in at least two paragraphs, stating your opinion on this case.
2. Do you agree with unionization within organizations? Why or why not? List the advantages and disadvantages of unions to the employee and the company.

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4: The Labor Movement

Learning Objectives

- Investigate the Evolution of Labor Relations Movements
- Evaluate the Role of Labor Unions in Historical Context

Figure: Lawrence Textile Strike, 1912. Library of Congress, LC-USZ62-23725.

The ideas of social Darwinism attracted little support among the mass of American industrial laborers. American workers toiled in difficult jobs for long hours and little pay. Mechanization and mass production threw skilled laborers into unskilled positions. Industrial work ebbed and flowed with the economy. The typical industrial laborer could expect to be unemployed one month out of the year. They labored sixty hours a week and could still expect their annual income to fall below the poverty line. Among the working poor, wives and children were forced into the labor market to compensate. Crowded cities, meanwhile, failed to accommodate growing urban populations and skyrocketing rents trapped families in crowded slums.

Strikes ruptured American industry throughout the late nineteenth and early twentieth centuries. Workers seeking higher wages, shorter hours, and safer working conditions had struck throughout the antebellum era, but organized unions were fleeting and transitory. The Civil War and Reconstruction seemed to briefly distract the nation from the plight of labor, but the end of the sectional crisis and the explosive growth of big business, unprecedented fortunes, and a vast industrial workforce in the last quarter of the nineteenth century sparked the rise of a vast American labor movement.

The failure of the Great Railroad Strike of 1877 convinced workers of the need to organize. Union memberships began to climb. The Knights of Labor enjoyed considerable success in the early 1880s, due in part to its efforts to unite skilled and unskilled workers. It welcomed all laborers, including women (the Knights only barred lawyers, bankers, and liquor dealers). By 1886, the Knights had over seven hundred thousand members. The Knights envisioned a cooperative producer-centered society that rewarded labor, not capital, but, despite their sweeping vision, the Knights focused on practical gains that could be won through the organization of workers into local unions.[13]

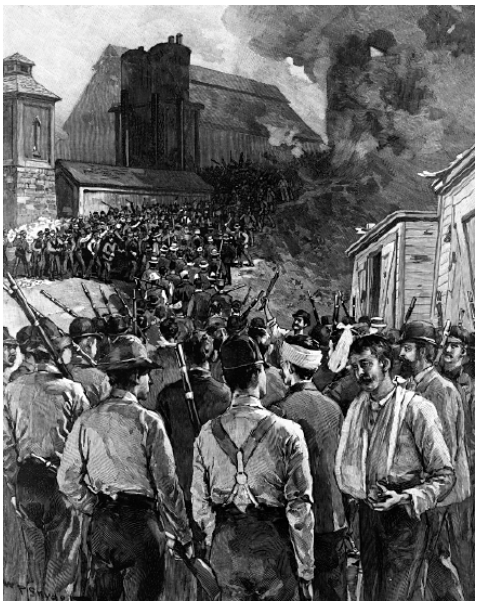

Figure: An 1892 cover of Harper's Weekly depicting the Homestead Riot, showed Pinkerton men who had surrendered to the steel mill workers navigating a gauntlet of violent strikers. W.P. Synder (artist) after a photograph by Dabbs, "The Homestead Riot," 1892. *Library of Congress, LC-USZ62-126046*.

In Marshall, Texas, in the spring of 1886, one of Jay Gould's rail companies fired a Knights of Labor member for attending a union meeting. His local union walked off the job, and soon others joined. From Texas and Arkansas into Missouri, Kansas, and Illinois, nearly two hundred thousand workers struck against Gould's rail lines. Gould hired strikebreakers and the Pinkerton Detective Agency, a kind of private security contractor, to suppress the strikes and get the rails moving again. Political leaders helped him, and state militias were called in support of Gould's companies. The Texas governor called out the Texas Rangers. Workers countered by destroying property, only winning them negative headlines and for many justifying the use of strikebreakers and militiamen. The strike broke, briefly undermining the Knights of Labor, but the organization regrouped and set its eyes on a national campaign for the eight-hour day.[14]

In the summer of 1886, the campaign for an eight-hour day, long a rallying cry that united American laborers, culminated in a national strike on May 1, 1886. Somewhere between three hundred thousand and five hundred thousand workers struck across the country.

In Chicago, police forces killed several workers while breaking up protesters at the McCormick reaper works. Labor leaders and radicals called for a protest at Haymarket Square the following day, which police also proceeded to break up. But as they did, a bomb exploded and killed seven policemen. Police fired into the crowd, killing four. The deaths of the Chicago policemen sparked outrage across the nation, and the sensationalization of the Haymarket Riot helped many Americans to associate unionism with radicalism. Eight Chicago anarchists were arrested and, despite no direct evidence implicating them in the bombing, were charged and found guilty of conspiracy. Four were hanged (and one committed suicide before he could be executed). Membership in the Knights had peaked earlier that year but fell rapidly after Haymarket; the group became associated with violence and radicalism. The national movement for an eight-hour day collapsed.[15]

The American Federation of Labor (AFL) emerged as a conservative alternative to the vision of the Knights of Labor. An alliance of craft unions (unions composed of skilled workers), the AFL rejected the Knights' expansive vision of a "producerist" economy and advocated "pure and simple trade unionism," a program that aimed for practical gains (higher wages, fewer hours, and safer conditions) through a conservative approach that tried to avoid strikes. But workers continued to strike.

In 1892, the Amalgamated Association of Iron and Steel Workers struck at one of Carnegie's steel mills in Homestead, Pennsylvania. After repeated wage cuts, workers shut the plant down and occupied the mill. The plant's operator, Henry Clay Frick, immediately called in hundreds of Pinkerton detectives, but the steel workers fought back. The Pinkertons tried to land by river and were besieged by the striking steel workers. After several hours of pitched battle, the Pinkertons surrendered, ran a bloody gauntlet of workers, and were kicked out of the mill grounds. But the Pennsylvania governor called the state militia, broke the strike, and reopened the mill. The union was essentially destroyed in the aftermath.[16]

Still, despite repeated failure, strikes continued to roll across the industrial landscape. In 1894, workers in George Pullman's Pullman car factories struck when he cut wages by a quarter but kept rents and utilities in his company town constant. The American Railway Union (ARU), led by Eugene Debs, launched a sympathy strike: the ARU would refuse to handle any Pullman cars on any rail line anywhere in the country. Thousands of workers struck and national railroad traffic ground to a halt. Unlike in nearly every other major strike, the governor of Illinois sympathized with workers and refused to dispatch the state militia. It didn't matter. In July, President Grover Cleveland dispatched thousands of American soldiers to break the strike, and a federal court issued a preemptive injunction against Debs and the union's leadership. The strike violated the injunction, and Debs was arrested and imprisoned. The strike evaporated without its leadership. Jail radicalized Debs, proving to him that political and judicial leaders were merely tools for capital in its struggle against labor.[17] But it wasn't just Debs. In 1905, the degrading conditions of industrial labor sparked strikes across the country. The final two decades of the nineteenth century saw over twenty thousand strikes and lockouts in the United States. Industrial laborers struggled to carve for themselves a piece of the prosperity lifting investors and a rapidly expanding middle class into unprecedented standards of living. But workers were not the only ones struggling to stay afloat in industrial America. American farmers also lashed out against the inequalities of the Gilded Age and denounced political corruption for enabling economic theft.

Figure: Two women strikers on picket line during the "Uprising of the 20,000", garment workers strike, New York City, 1910. Library of Congress, LC-USZ62-49516.

5: Current Union Challenges

Learning Objectives

- Explain some of the reasons for a decline in union membership over the past sixty years.

Current Union Challenges

The labor movement is currently experiencing several challenges, including a decrease in union membership, globalization, and employers' focus on maintaining nonunion status. As mentioned in the opening of this section, the United States has seen a steady decline of union membership since the 1950s. In the 1950s, 36 percent of all workers were unionized,[1] as opposed to just over 10 percent today.

Claude Fischer, a researcher from the University of California Berkeley, believes the shift is cultural. His research says the decline is a result of American workers preferring individualism as opposed to collectivism.[2] Other research says the decline of unions is a result of globalization and the fact that many jobs that used to be unionized in the manufacturing arena have now moved overseas. Other reasoning points to management and that its unwillingness to work with unions has caused the decline in membership. Others suggest that unions are on the decline because of themselves. Past corruption, negative publicity, and hard-line tactics have made joining a union less favorable.

To fully understand unions, it is important to recognize the global aspect of unions. Statistics on a worldwide scale show unions in all countries declining but still healthy in some countries. For example, in eight of the twenty-seven European Union member states, more than half the working population is part of a union. In fact, in the most populated countries, unionization rates are still at three times the unionization rate of the United States.[3] Italy has a unionization rate of 30 percent of all workers, while the UK has 29 percent, and Germany has a unionization rate of 27 percent.

In March 2011, Wisconsin governor Scott Walker proposed limiting the collective bargaining rights of state workers to save a flailing budget. Some called this move "union busting" and said this type of act is illegal, as it takes away the basic rights of workers. The governor defended his position by saying there is no other choice, since the state is in a budget crisis. Other states such as Ohio are considering similar measures. Whatever happens, there is a clear shift for unions today.

Globalization is also a challenge in labor organizations today. As more and more goods and services are produced overseas, unions lose not only membership but also union values in the stronghold of worker culture. As globalization has increased, unions have continued to demand more governmental control but have been only somewhat successful in these attempts. For example, free trade agreements such as the North American Free Trade Agreement (NAFTA) have made it easier and more lucrative for companies to manufacture goods overseas. For example, La-Z-Boy and Whirlpool closed production facilities in Dayton and Cleveland, Ohio, and built new factories in Mexico to take advantage of cheaper labor and less stringent environmental standards. Globalization creates options for companies to produce goods wherever they think is best to produce them. As a result, unions are fighting the globalization trend to try and keep jobs in the United States.

There are a number of reasons why companies do not want unions in their organizations, which we will discuss in greater detail later. One of the main reasons, however, is increased cost and less management control. As a result, companies are on a quest to maintain a union-free work environment. In doing so, they try to provide higher wages and benefits so workers do not feel compelled to join a union. Companies that want to stay union free constantly monitor their retention strategies and policies.

The Unionization Process

There are one of two ways in which a unionization process can begin. First, the union may contact several employees and discuss the possibility of a union, or employees may contact a union on their own. The union will then help employees gather signatures to show that the employees want to be part of a union. To hold an election, the union must show signatures from over 30 percent of the employees of the organization.

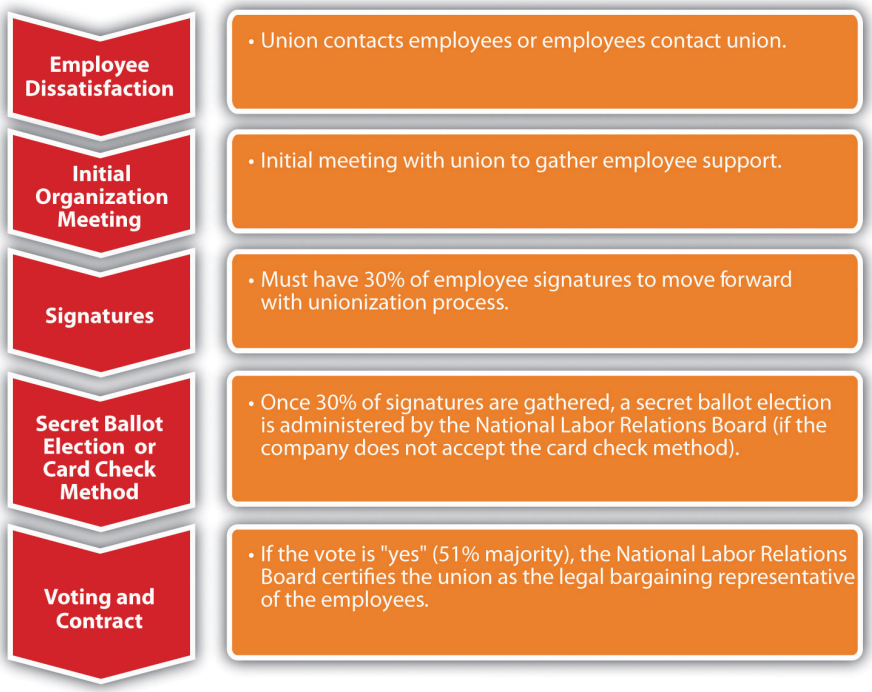

Figure: The Unionization Process

Once the signatures are gathered, the National Labor Relations Board is petitioned to move forward with a secret-ballot election. An alternative to the secret-ballot election is the card check method, in which the union organizer provides the company with authorization cards signed by a simple majority (half plus one). The employer can accept the cards as proof that the employees desire a union in their organization. The NLRB then certifies the union as the employees' collective bargaining representative.

If the organization does not accept the card check method as authorization for a union, the second option is via a secret ballot. Before this method is used, a petition must be filed by the NLRB, and an election is usually held two months after the petition is filed. In essence, the employees vote whether to unionize or not, and there must be a simple majority (half plus one). The NLRB is responsible for election logistics and counting of ballots. Observers from all parties can be present during the counting of votes. Once votes are counted, a decision on unionization occurs, and at that time, the collective bargaining process begins.

Once the NLRB is involved, there are many limits as to what the employer can say or do during the process to prevent unionization of the organization. It is advisable for HR and management to be educated on what can legally and illegally be said during this process. It is illegal to threaten or intimidate employees if they are discussing a union. You cannot threaten job, pay, or benefits loss as a result of forming a union. The Figure below includes information on what should legally be avoided if employees are considering unionization.

Figure: Things That Shouldn't Be Said to Employees during a Unionization Process

Obviously, it is in the best interest of the union to have as many members as possible. Because of this, unions may use many tactics during the organizing process. For example, many unions are also politically involved and support candidates who they feel best

represent labor. They provide training to organizers and sometimes even encourage union supporters to apply for jobs in nonunion environments to actively work to unionize other employees when they are hired. This practice is called **union salting**. Unions, especially on the national level, can be involved in corporate campaigns that boycott certain products or companies because of their labor practices. The United Food and Commercial Workers (UFCW), for example, has a "Wake Up Walmart Campaign" that targets the labor practices of this organization.

Strategies Companies Use to Avoid Unionization

Most organizations feel the constraints of having a union organization are too great. It affects the cost to the organization and operation efficiency. Collective bargaining at times can put management at odds with its employees and cost more to produce products and services. Ideally, companies will provide safe working conditions, fair pay, and benefits so the employees do not feel they need to form a union.

When a union vote may occur, most organizations will develop specific strategies to encourage employees to vote "no" for the union. Some of the arguments that might be used include talking with the employee and mentioning the following:

1. Union dues are costly.
2. Employees could be forced to go on strike.
3. Employees and management may no longer be able to discuss matters informally and individually.
4. Unionization can create more bureaucracy within the company.
5. Individual issues may not be discussed.
6. Many decisions within a union, such as vacation time, are based on seniority only.

Organizations such as Change to Win are in the process of trying to increase union membership. This organization has four affiliated unions, with a goal to strengthen the labor movement. Teamsters, United Food and Commercial Workers, United Farm Workers, and Service Employees International Union are all unions affiliated with this organization.[7] The next few years will be telling as to the fate of unions in today's organizations.

The Impact of Unions on Organizations

You may wonder why organizations are opposed to unions. As we have mentioned, since union workers do receive higher wages, this can be a negative impact on the organization. Unionization also impacts the ability of managers to make certain decisions and limits their freedom when working with employees. For example, if an employee is constantly late to work, the union contract will specify how to discipline in this situation, resulting in little management freedom to handle this situation on a case-by-case basis. In 2010, for example, the Art Institute of Seattle faculty filed signatures and voted on unionization.[4] Some of the major issues were scheduling issues and office space, not necessarily pay and benefits. While the particular National Labor Relations Board vote was no to unionization, a yes vote could have given less freedom to management in scheduling, since scheduling would be based on collective bargaining contracts. Another concern about unionization for management is the ability to promote workers. A union contract may stipulate certain terms (such as seniority) for promotion, which means the manager has less control over the employees he or she can promote.

Working with Labor Unions as Management

First and foremost, when working with labor unions, a clear understanding of the contract is imperative for all managers. The contract (also called the collective bargaining agreement) is the guiding document for all decisions relating to employees. All human resources (HR) professionals and managers should have intimate knowledge of the document and be aware of the components of the contract that can affect dealings with employees. The agreement outlines all requirements of managers and usually outlines how discipline, promotion, and transfers will work.

Because as managers we will be working with members of the union on a daily basis, a positive relationship can not only assist the day-to-day operations but also create an easier bargaining process. Solicitation of input from the union before decisions are made can be one step to creating this positive relationship. Transparent communication is another way to achieve this goal.

Key Takeaways

- The reasons for the decline are varied, depending on whom you ask. Some say the moving of jobs overseas is the reason for the decline, while others say unions' hard-line tactics put them out of favor.

- Besides declining membership, union challenges today include globalization and companies' wanting a union-free workplace.
- To form a union, the organizer must have signatures from 30 percent of the employees. If this occurs, the National Labor Relations Board will facilitate a card check to determine more than 50 percent of the workforce at that company is in agreement with union representation. If the company does not accept this, then the NLRB holds secret elections to determine if the employees will be unionized. A collective bargaining agreement is put into place if the vote is yes.
- Companies prefer to not have unions in their organizations because it affects costs and operational productivity. Companies will usually try to prevent a union from organizing in their workplace.
- Managers are impacted when a company does unionize. For example, management rights are affected, and everything must be guided by the contract instead of management prerogative.

? Exercise

1. Visit the National Labor Relations Board website. View the "weekly case summary" and discuss it in at least two paragraphs, stating your opinion on this case.
2. Do you agree with unionization within organizations? Why or why not? List the advantages and disadvantages of unions to the employee and the company.

1. Gerald Friedman, "Labor Unions in the United States," Economic History Association, February 2, 2010, accessed April 4, 2011,eh.net/encyclopedia/article/friedman.unions.us.
2. Claude Fischer, "Why Has Union Membership Declined?" Economist's View, September 11, 2010, accessed April 11, 2011,http://economistsview.typepad.com/ec...pdeclined.html.
3. Federation of European Employers, "Trade Unions across Europe," accessed April 4, 2011, www.fedee.com/tradeunions.html.
4. "Union Push in For-Profit Higher Ed," *Inside Higher Ed*, May 24, 2010, accessed August 15, 2011, http://www.insidehighered.com/news/2010/05/24/union.

6: Labor and Management Rights under the Federal Labor Laws

Learning Objectives

By the end of this section, you will be able to:

- Describe and explain the process for the National Labor Relations Board to choose a particular union as the exclusive bargaining representative.
- Describe and explain the various duties that employers have in bargaining.
- Indicate the ways in which employers may commit unfair labor practice by interfering with union activity.
- Explain the union's right to strike and the difference between an economic strike and a strike over an unfair labor practice.
- Explain secondary boycotts and hot cargo agreements and why they are controversial.

Choosing the Union as the Exclusive Bargaining Representative

Determining the Appropriate Union

As long as a union has a valid contract with the employer, no rival union may seek an election to oust it except within sixty to ninety days before the contract expires. Nor may an election be held if an election has already been held in the bargaining unit during the preceding twelve months.

Whom does the union represent? In companies of even moderate size, employees work at different tasks and have different interests. Must the secretaries, punch press operators, drivers, and clerical help all belong to the same union in a small factory? The National Labor Relations Board (NLRB) has the authority to determine which group of employees will constitute the appropriate bargaining unit. To make its determination, the board must look at the history of collective bargaining among similar workers in the industry; the employees' duties, wages, skills, and working conditions; the relationship between the proposed unit and the structure of the employer's organization; and the desires of the employees themselves.

Two groups must be excluded from any bargaining unit—supervisory employees and independent contractors. Determining whether or not a particular employee is a supervisor is left to the discretion of the board.

Interfering with Employee Communication

To conduct an organizing drive, a union must be able to communicate with the employees. But the employer has valid interests in seeing that employees and organizers do not interfere with company operations. Several different problems arise from the need to balance these interests.

One problem is the protection of the employer's property rights. May nonemployee union organizers come onto the employer's property to distribute union literature—for example, by standing in the company's parking lots to hand out leaflets when employees go to and from work? May organizers, whether employees or not, picket or hand out literature in private shopping centers in order to reach the public—for example, to protest a company's policies toward its nonunion employees? The interests of both employees and employers under the NLRB are twofold: (1) the right of the employees (a) to communicate with each other or the public and (b) to hear what union organizers have to say, and (2) the employers' (a) property rights and (b) their interest in managing the business efficiently and profitably.

The rules that govern in these situations are complex, but in general they appear to provide these answers: (1) If the persons doing the soliciting are not employees, the employer may bar them from entering its private property, even if they are attempting to reach employees—assuming that the employer does not discriminate and applies a rule against use of its property equally to everyone.*NLRB v. Babcock Wilcox Co.*, 351 U.S. 105 (1956). (2) If the solicitors are not employees and they are trying to reach the public, they have no right to enter the employer's private property. (3) If the solicitors are employees who are seeking to reach the public, they have the right to distribute on the employer's property—in a common case, in a shopping center—unless they have a convenient way to reach their audience on public property off the employer's premises.*Hudgens v. NLRB*, 424 U.S. 507 (1976). (4) If the solicitors are employees seeking to reach employees, the employer is permitted to limit the distribution of literature or other solicitations to avoid litter or the interruption of work, but it cannot prohibit solicitation on company property altogether.

In the leading case of *Republic Aviation Corp. v. NLRB*, the employer, a nonunion plant, had a standing rule against any kind of solicitation on the premises.*Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). Thereafter, certain employees attempted to organize the plant. The employer fired one employee for soliciting on behalf of the union and three others for wearing union

buttons. The Supreme Court upheld the board's determination that the discharges constituted an unfair labor practice under Section 8(a) of the NLRA. It does not matter, the Court said, whether the employees had other means of communicating with each other or that the employer's rule against solicitation may have no effect on the union's attempt to organize the workers. In other words, the employer's intent or motive is irrelevant. The only question is whether the employer's actions might tend to interfere with the employees' exercise of their rights under the NLRB.

Regulating Campaign Statements

A union election drive is not like a polite conversation over coffee; it is, like political campaigns, full of charges and countercharges. Employers who do not want their employees unionized may warn darkly of the effect of the union on profitability; organizers may exaggerate the company's financial position. In a 1982 NLRB case, *NLRB v. Midland National Life Ins. Co.*, the board said it would not set aside an election if the parties misrepresented the issues or facts but that it would do so if the statements were made in a deceptive manner—for example, through forged documents.Midland National Life Ins. Co., 263 N.L.R.B. 130 (1982). The board also watches for threats and promises of rewards; for example, the employer might threaten to close the plant if the union succeeds. In *NLRB v. Gissel Packing Co.*, the employer stated his worries throughout the campaign that a union would prompt a strike and force the plant to close.*NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The board ruled that the employer's statements were an impermissible threat. To the employer's claim that he was simply exercising his First Amendment rights, the Supreme Court held that although employers do enjoy freedom of speech, it is an unfair labor practice to threaten consequences that are not rooted in economic realities.

A union campaign has become an intricate legal duel, heavily dependent on strategic considerations of law and public relations. Neither management nor labor can afford to wage a union campaign without specialized advisers who can guide the thrust and parry of the antagonists. Labor usually has such advisers because very few organizational drives are begun without outside organizers who have access to union lawyers. A business person who attempts to fight a union, like a labor organizer or an employee who attempts to organize one, takes a sizeable risk when acting alone, without competent advice. For example, an employer's simple statement like "We will get the heating fixed" in response to a seemingly innocent question about the "drafty old building" at a meeting with employees can lead to an NLRB decision to set aside an election if the union loses, because the answer can easily be construed as a promise, and under Section 8(c) of the National Labor Relations Act (NLRA), a promise of reward or benefit during an organization campaign is an unfair labor practice by management. Few union election campaigns occur without questions, meetings, and pamphleteering carefully worked out in advance.

The results of all the electioneering are worth noting. In the 1980s, some 20 percent of the total US workforce was unionized. As of 2009, the union membership rate was 12.3 percent, and more union members were public employees than private sector employees. Fairly or unfairly, public employee unions were under attack as of 2010, as their wages generally exceeded the average wages of other categories of workers.

Exclusivity

Once selected as the bargaining representative for an appropriate group of employees, the union has the exclusive right to bargain. Thereafter, individual employees may not enter into separate contracts with the employer, even if they voted against the particular union or against having a union at all. The principle of exclusivity is fundamental to the collective bargaining process. Just how basic it is can be seen in *Emporium Capwell Co. v. Western Addition Community Organization* (Section 17.4.1 "Exclusivity"), in which one group of employees protested what they thought were racially discriminatory work assignments, barred under the collective bargaining agreement (the contract between the union and the employer). Certain of the employees filed grievances with the union, which looked into the problem more slowly than the employees thought necessary. They urged that the union permit them to picket, but the union refused. They picketed anyway, calling for a consumer boycott. The employer warned them to desist, but they continued and were fired. The question was whether they were discharged for engaging in concerted activity protected under Section 7 of the NLRA.

The Duty to Bargain

The Duty to Bargain in Good Faith

The NLRA holds both employer and union to a duty to "bargain in good faith." What these words mean has long been the subject of controversy. Suppose Mr. Mardian, a company's chief negotiator, announces to Mr. Ulasewicz, the company's chief union negotiator, "I will sit down and talk with you, but be damned if I will agree to a penny more an hour than the people are getting now." That is not a refusal to bargain: it is a statement of the company's position, and only Mardian's actual conduct during the

negotiations will determine whether he was bargaining in good faith. Of course, if he refused to talk to Ulasewicz, he would have been guilty of a failure to bargain in good faith.

Suppose Mardian has steadily insisted during the bargaining sessions that the company must have complete control over every aspect of the labor relationship, including the right to hire and fire exactly as it saw fit, the right to raise or lower wages whenever it wanted, and the right to determine which employee was to do which job. The Supreme Court has said that an employer is not obligated to accept any particular term in a proposed collective bargaining agreement and that the NLRB may not second-guess any agreement eventually reached.*NLRB v. American National Insurance Co.*, 343 U.S. 395 (1962). However, the employer must actually engage in bargaining, and a stubborn insistence on leaving everything entirely to the discretion of management has been construed as a failure to bargain.*NLRB v. Reed St Prince Manufacturing Co.*, 205 F.2d 131 (1st Cir. 1953).

Suppose Mardian had responded to Ulasewicz's request for a ten-cent-an-hour raise: "If we do that, we'll go broke." Suppose further that Ulasewicz then demanded, on behalf of the union, that Mardian prove his contention but that Mardian refused. Under these circumstances, the Supreme Court has ruled, the NLRB is entitled to hold that management has failed to bargain in good faith, for once having raised the issue, the employer must in good faith demonstrate veracity.*NLRB v. Truitt Manufacturer Co.*, 351 U.S. 149 (1956).

Mandatory Subjects of Bargaining

The NLRB requires employers and unions to bargain over "terms and condition of employment." Wages, hours, and working conditions—whether workers must wear uniforms, when the lunch hour begins, the type of safety equipment on hand—are well-understood terms and conditions of employment. But the statutory phrase is vague, and the cases abound with debates over whether a term insisted on by union or management is within the statutory phrase. No simple rule can be stated for determining whether a desire of union or management is mandatory or nonmandatory. The cases do suggest that management retains the right to determine the scope and direction of the enterprise, so that, for example, the decision to invest in labor-saving machinery is a nonmandatory subject—meaning that a union could not insist that an employer bargain over it, although the employer may negotiate if it desires. Once a subject is incorporated in a collective bargaining agreement, neither side may demand that it be renegotiated during the term of the agreement.

The Board's Power to Compel an Agreement

A mere refusal to agree, without more, is not evidence of bad-faith bargaining. That may seem a difficult conclusion to reach in view of what has just been said. Nevertheless, the law is clear that a company may refuse to accede to a union's demand for any reason other than an unwillingness to consider the matter in the first place. If a union negotiator cannot talk management into accepting his demand, then the union may take other actions—including strikes to try to force management to bow. It follows from this conclusion that the NLRB has no power to *compel* agreement—even if management is guilty of negotiating in bad faith. The federal labor laws are premised on the fundamental principle that the parties are free to bargain.

Interference and Discrimination by the Employer

Union Activity on Company Property

The employer may not issue a rule flatly prohibiting solicitation or distribution of literature during "working time" or "working hours"—a valid rule against solicitation or distribution must permit these activities during employees' free time, such as on breaks and at meals. A rule that barred solicitation on the plant floor during actual work would be presumptively valid. However, the NLRB has the power to enjoin its enforcement if the employer used the rule to stop union soliciting but permitted employees during the forbidden times to solicit for charitable and other causes.

"Runaway Shop"

A business may lawfully decide to move a factory for economic reasons, but it may not do so to discourage a union or break it apart. The removal of a plant from one location to another is known as a runaway shop. An employer's representative who conceals from union representatives that a move is contemplated commits an unfair labor practice because the union is deprived of the opportunity to negotiate over an important part of its members' working conditions. If a company moves a plant and it is later determined that the move was to interfere with union activity, the board may order the employer to offer affected workers employment at the new site and the cost of transportation.

Other Types of Interference

Since “interference” is not a precise term but descriptive of a purpose embodied in the law, many activities lie within its scope. These include hiring professional strikebreakers to disrupt a strike, showing favoritism toward a particular union to discourage another one, awarding or withholding benefits to encourage or discourage unionization, engaging in misrepresentations and other acts during election campaigns, spying on workers, making employment contracts with individual members of a union, blacklisting workers, attacking union activists physically or verbally, and disseminating various forms of antiunion propaganda.

Discrimination against Union Members

Under Section 8(a)(3) of the NLRA, an employer may not discriminate against employees in hiring or tenure to encourage or discourage membership in a labor organization. Thus an employer may not refuse to hire a union activist and may not fire an employee who is actively supporting the union or an organizational effort if the employee is otherwise performing adequately on the job. Nor may an employer discriminate among employees seeking reinstatement after a strike or discriminatory layoff or lockout (a closing of the job site to prevent employees from coming to work), hiring only those who were less vocal in their support of the union.

The provision against employer discrimination in hiring prohibits certain types of compulsory unionism. Four basic types of compulsory unionism are possible: the closed shop, the union shop, maintenance-of-membership agreements, and preferential hiring agreements. In addition, a fifth arrangement—the agency shop—while not strictly compulsory unionism, has characteristics similar to it. Section 8(a)(3) prohibits the closed shop and preferential hiring. But Section 14 permits states to enact more stringent standards and thus to outlaw the union shop, the agency shop, and maintenance of membership as well.

1. **Closed shop.** This type of agreement requires a potential employee to belong to the union before being hired and to remain a member during employment. It is unlawful, because it would require an employer to discriminate on the basis of membership in deciding whether to hire.
2. Union shop**.** An employer who enters into a union shop agreement with the union may hire a nonunion employee, but all employees who are hired must then become members of the union and remain members so long as they work at the job. Because the employer may hire anyone, a union or nonunion member, the union shop is lawful unless barred by state law.
3. **Maintenance-of-membership agreements.** These agreements require employees who are members of the union before being hired to remain as members once they are hired unless they take advantage of an “escape clause” to resign within a time fixed in the collective bargaining agreement. Workers who were not members of the union before being hired are not required to join once they are on the job. This type of agreement is lawful unless barred by state law.
4. **Preferential hiring.** An employer who accepts a preferential hiring clause agrees to hire only union members as long as the union can supply him with a sufficient number of qualified workers. These clauses are unlawful.
5. **Agency shop.** The agency shop is not true compulsory unionism, for it specifically permits an employee not to belong to the union. However, it does require the employee to pay into the union the same amount required as dues of union members. The legality of an agency shop is determined by state law. If permissible under state law, it is permissible under federal law.

The Right to Strike

Section 13 of the NLRA says that “nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.” The labor statutes distinguish between two types of strikes: the economic strike and the strike over an unfair labor practice. In the former, employees go on strike to try to force the employer to give in to the workers’ demands. In the latter, the strikers are protesting the employer’s committing an unfair labor practice. The importance of the distinction lies in whether the employees are entitled to regain their jobs after the strike is over. In either type of strike, an employer may hire substitute employees during the strike. When it concludes, however, a difference arises. In *NLRB v. International Van Lines*, the Supreme Court said that an employer may hire permanent employees to take over during an economic strike and need not discharge the substitute employees when it is done.*NLRB v. International Van Lines*, 409 U.S. 48 (1972). That is not true for a strike over an unfair labor practice: an employee who makes an unconditional offer to return to his job is entitled to it, even though in the meantime the employer may have replaced him.

These rules do not apply to unlawful strikes. Not every walkout by workers is permissible. Their collective bargaining agreement may contain a no-strike clause barring strikes during the life of the contract. Most public employees—that is, those who work for the government—are prohibited from striking. Sit-down strikes, in which the employees stay on the work site, precluding the employer from using the facility, are unlawful. So are wildcat strikes, when a faction within the union walks out without

authorization. Also unlawful are violent strikes, jurisdictional strikes, secondary strikes and boycotts, and strikes intended to force the employer to sign "hot cargo" agreements (see Section 17.3.6 "Hot Cargo Agreement").

To combat strikes, especially when many employers are involved with a single union trying to bargain for better conditions throughout an industry, an employer may resort to a lockout. Typically, the union will call a whipsaw strike, striking some of the employers but not all. The whipsaw strike puts pressure on the struck employers because their competitors are still in business. The employers who are not struck may lawfully respond by locking out all employees who belong to the multiemployer union. This is known as a defensive lockout. In several cases, the Supreme Court has ruled that an offensive lockout, which occurs when the employer, anticipating a strike, locks the employees out, is also permissible.

Secondary Boycotts

Section 8(b)(4), added to the NLRA by the Taft-Hartley Act, prohibits workers from engaging in secondary boycotts—strikes, refusals to handle goods, threats, coercion, restraints, and other actions aimed at forcing any person to refrain from performing services for or handling products of any producer other than the employer, or to stop doing business with any other person. Like the Robinson-Patman Act (Chapter 26), this section of the NLRA is extremely difficult to parse and has led to many convoluted interpretations. However, its essence is to prevent workers from picketing employers not involved in the primary labor dispute.

Suppose that the Amalgamated Widget Workers of America puts up a picket line around the Ace Widget Company to force the company to recognize the union as the exclusive bargaining agent for Ace's employees. The employees themselves do not join in the picketing, but when a delivery truck shows up at the plant gates and discovers the pickets, it turns back because the driver's policy is never to cross a picket line. This activity falls within the literal terms of Section (8)(b)(4): it seeks to prevent the employees of Ace's suppliers from doing business with Ace. But in *NLRB v. International Rice Milling Co.*, the Supreme Court declared that this sort of primary activity—aimed directly at the employer involved in the primary dispute—is not unlawful.*NLRB v. International Rice Milling Co.*, 341 U.S. 665 (1951). So it is permissible to throw up a picket line to attempt to stop anyone from doing business with the employer—whether suppliers, customers, or even the employer's other employees (e.g., those belonging to other unions). That is why a single striking union is so often successful in closing down an entire plant: when the striking union goes out, the other unions "honor the picket line" by refusing to cross it and thus stay out of work as well. The employer might have been able to replace the striking workers if they were only a small part of the plant's labor force, but it becomes nearly impossible to replace all the workers within a dozen or more unions.

Suppose the United Sanders Union strikes the Ace Widget Company. Nonunion sanders refuse to cross the picket line. So Ace sends out its unsanded widgets to Acme Sanders, a job shop across town, to do the sanding job. When the strikers learn what Ace has done, they begin to picket Acme, at which point Acme's sanders honor the picket line and refuse to enter the premises. Acme goes to court to enjoin the pickets—an exception to the Norris–La Guardia Act permits the federal courts to enjoin picketing in cases of unlawful secondary boycotts. Should the court grant the injunction? It might seem so, but under the so-called ally doctrine, the court will not. Since Acme is joined with Ace to help it finish the work, the courts deem the second employer an ally (or extension) of the first. The second picket line, therefore, is not secondary.

Suppose that despite the strike, Ace manages to ship its finished product to the Dime Store, which sells a variety of goods, including widgets. The union puts up a picket around the store; the picketers bear signs that urge shoppers to refrain from buying any Ace widgets at the Dime Store. Is this an unlawful secondary boycott? Again, the answer is no. A proviso to Section 8(b)(4) permits publicity aimed at truthfully advising the public that products of a primary employer with whom the union is on strike are being distributed by a secondary employer.

Now suppose that the picketers carried signs and orally urged shoppers not to enter the Dime Store at all until it stopped carrying Ace's widgets. That would be unlawful: a union may not picket a secondary site to persuade consumers to refrain from purchasing any of the secondary employer's products. Likewise, the union may not picket in order to cause the secondary employees (the salesclerks at the Dime Store) to refuse to go to work at the secondary employer. The latter is a classic example of inducing a secondary work stoppage, and it is barred by Section 8(b)(4). However, in *DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*, the Supreme Court opened what may prove to be a significant loophole in the prohibition against secondary boycotts.*DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*, 485 U.S. 568 (1988). Instead of picketing, the union distributed handbills at the entrance to a shopping mall, asking customers not to patronize any stores in the mall until the mall owner, in building new stores, promised to deal only with contractors paying "fair wages." The Court approved the handbilling, calling it "only an attempt to persuade customers not to shop in the mall," distinguishing it from picketing, which the Court said would constitute a secondary boycott.

Hot Cargo Agreement

A union might find it advantageous to include in a collective bargaining agreement a provision under which the employer agrees to refrain from dealing with certain people or from purchasing their products. For example, suppose the Teamsters Union negotiates a contract with its employers that permits truckers to refuse to carry goods to an employer being struck by the Teamsters or any other union. The struck employer is the primary employer; the employer who has agreed to the clause—known as a hot cargo clause—is the secondary employer. The Supreme Court upheld these clauses in *United Brotherhood of Carpenters and Joiners, Local 1976 v. NLRB*, but the following year, Congress outlawed them in Section 8(e), with a partial exemption for the construction industry and a full exemption for garment and apparel workers.*United Brotherhood of Carpenters and Joiners, Local 1976 v. NLRB*, 357 U.S. 93 (1958).

Discrimination by Unions

A union certified as the exclusive bargaining representative in the appropriate bargaining unit is obligated to represent employees within that unit, even those who are not members of the union. Various provisions of the labor statutes prohibit unions from entering into agreements with employers to discriminate against nonmembers. The laws also prohibit unions from treating employees unfairly on the basis of race, creed, color, or national origin.

Jurisdictional Disputes

Ace Widget, a peaceful employer, has a distinguished labor history. It did not resist the first union, which came calling in 1936, just after the NLRA was enacted; by 1987, it had twenty-three different unions representing 7,200 workers at forty-eight sites throughout the United States. Then, because of increasingly more powerful and efficient machinery, United Widget Workers realized that it was losing jobs throughout the industry. It decided to attempt to bring within its purview jobs currently performed by members of other unions. United Widget Workers asked Ace to assign all sanding work to its members. Since sanding work was already being done by members of the United Sanders, Ace management refused. United Widget Workers decided to go on strike over the issue. Is the strike lawful? Under Section 8(b)(4)(D), regulating jurisdictional disputes, it is not. It is an unfair labor practice for a union to strike or engage in other concerted actions to pressure an employer to assign or reassign work to one union rather than another.

Bankruptcy and the Collective Bargaining Agreement

An employer is bound by a collective bargaining agreement to pay the wages of unionized workers specified in the agreement. But obviously, no paper agreement can guarantee wages when an insolvent company goes out of business. Suppose a company files for reorganization under the bankruptcy laws (see Chapter 13). May it then ignore its contractual obligation to pay wages previously bargained for? In the early 1980s, several major companies—for example, Continental Airlines and Oklahoma-based Wilson Foods Corporation—sought the protection of federal bankruptcy law in part to cut union wages. Alarmed, Congress, in 1984, amended the bankruptcy code to require companies to attempt to negotiate a modification of their contracts in good faith. In Bankruptcy Code Section 1113, Congress set forth several requirements for a debtor to extinguish its obligations under a collective bargaining agreement (CBA). Among other requirements, the debtor must make a proposal to the union modifying the CBA based on accurate and complete information, and meet with union leaders and confer in good faith after making the proposal and before the bankruptcy judge would rule.

If negotiations fail, a bankruptcy judge may approve the modification if it is necessary to allow the debtor to reorganize, and if all creditors, the debtor, and affected parties are treated fairly and equitably. If the union rejects the proposal without good cause, and the debtor has met its obligations of fairness and consultation from section 1113, the bankruptcy judge can accept the proposed modification to the CBA. In 1986, the US court of appeals in Philadelphia ruled that Wheeling-Pittsburgh Steel Corporation could not modify its contract with the United Steelworkers simply because it was financially distressed. The court pointed to the company's failure to provide a "snap-back" clause in its new agreement. Such a clause would restore wages to the higher levels of the original contract if the company made a comeback faster than anticipated.*Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of America*, 791 F.2d 1071 (3d Cir. 1986). But in the 2006 case involving Northwest Airlines Chapter 11 reorganization,*In re Northwest Airlines Corp.*, 2006 Bankr. LEXIS 1159 (So. District N.Y.). the court found that Northwest had to reduce labor costs if it were going to successfully reorganize, that it had made an equitable proposal and consulted in good faith with the union, but that the union had rejected the proposed modification without good cause. Section 1113 was satisfied, and Northwest was allowed to modify its CBA with the union.

Key Takeaway

The NLRB determines the appropriate bargaining unit and also supervises union organizing drives. It must balance protecting the employer's rights, including property rights and the right to manage the business efficiently, with the right of employees to communicate with each other. The NLRB will select a union and give it the exclusive right to bargain, and the result will usually be a collective bargaining unit. The employer should not interfere with the unionizing process or interfere once the union is in place. The union has the right to strike, subject to certain very important restrictions.

Exercises 6.1

1. Suppose that employees of the Shop Rite chain elect the Allied Food Workers Union as their exclusive bargaining agent. Negotiations for an initial collective bargaining agreement begin, but after six months, no agreement has been reached. The company finds excess damage to merchandise in its warehouse and believes that this was intentional sabotage by dissident employees. The company notifies the union representative that any employees doing such acts will be terminated, and the union, in turn, notifies the employees. Soon thereafter, a Shop Rite manager notices an employee in the flour section—where he has no right to be—making quick motions with his hands. The manager then finds several bags of flour that have been cut. The employee is fired, whereupon a fellow employee and union member leads more than two dozen employees in an immediate walkout. The company discharges these employees and refuses to rehire them. The employees file a grievance with the NLRB. Are they entitled to get their jobs back?*NLRB v. Shop Rite Foods*, 430 F.2d 786 (5th Cir. 1970).
2. American Shipbuilding Company has a shipyard in Chicago, Illinois. During winter months, it repairs ships operating on the Great Lakes, and the workers at the shipyard are represented by several different unions. In 1961, the unions notified the company of their intention to seek a modification of the current collective bargaining agreement. On five previous occasions, agreements had been preceded by strikes (including illegal strikes) that were called just after ships arrived in the shipyard for repairs. In this way, the unions had greatly increased their leverage in bargaining with the company. Because of this history, the company was anxious about the unions' strike plans. In August 1961, after extended negotiations, the company and the unions reached an impasse. The company then decided to lay off most of the workers and sent the following notice: "Because of the labor dispute which has been unresolved since August of 1961, you are laid off until further notice." The unions filed unfair labor practice charges with the NLRB. Did the company engage in an unfair labor practice?*American Shipbuilding Company v. NLRB*, 380 U.S. 300 (1965).

7: Collective Bargaining

Learning Objectives

- Be able to describe the process of collective bargaining.
- Understand the types of bargaining issues and the rights of management.
- Discuss some strategies if you become part of a union.

When employees of an organization vote to unionize, the process for collective bargaining begins. **Collective bargaining** is the process of negotiations between the company and representatives of the union. Many of the tips in that chapter can help you should you ever be in a position to negotiate on behalf of a union or management.

The goal is for management and the union to reach a contract agreement, which is put into place for a specified period of time. Once this time is up, a new contract is negotiated. In this section, we will discuss the components of the collective bargaining agreement.

The Process of Collective Bargaining

In any bargaining agreement, certain management rights are not negotiable, including the right to manage and operate the business, hire, promote, or discharge employees. However, in the negotiated agreement there may be a process outlined by the union for how these processes should work. Management rights also include the ability of the organization to direct the work of the employees and to establish operational policies.

Another important point in the collective bargaining process is the aspect of union security. Obviously, it is in the union's best interest to collect dues from members and recruit as many new members as possible. In the contract, a **checkoff provision** may be negotiated. This provision occurs when the employer, on behalf of the union, automatically deducts dues from union members' paychecks. This ensures that a steady stream of dues is paid to the union.

To recruit new members, the union may require something called a **union shop.** A union shop requires a person to join the union within a certain time period of joining the organization. In **right-to-work states** a union shop may be illegal. Twenty-two states have passed right-to-work laws, as you can see in Figure below. These laws prohibit a requirement to join a union or pay dues and fees to a union. To get around these laws, agency shops were created. An **agency shop** is similar to a union shop in that workers do not have to join the union but still must pay union dues. Agency shop union fees are known as **agency fees** and may be illegal in right-to-work states. A **closed shop** used to be a mechanism for a steady flow of membership. In this arrangement, a person must be a union member to be hired. This, however, was made illegal under the Taft-Hartley Act. According to a study by CNBC, all twenty-two right-to-work states are in the top twenty-five states for having the best workforces."[1] However, according to the AFL-CIO, the average worker in a right-to-work state makes $5,333 less per year than other workers.[2]

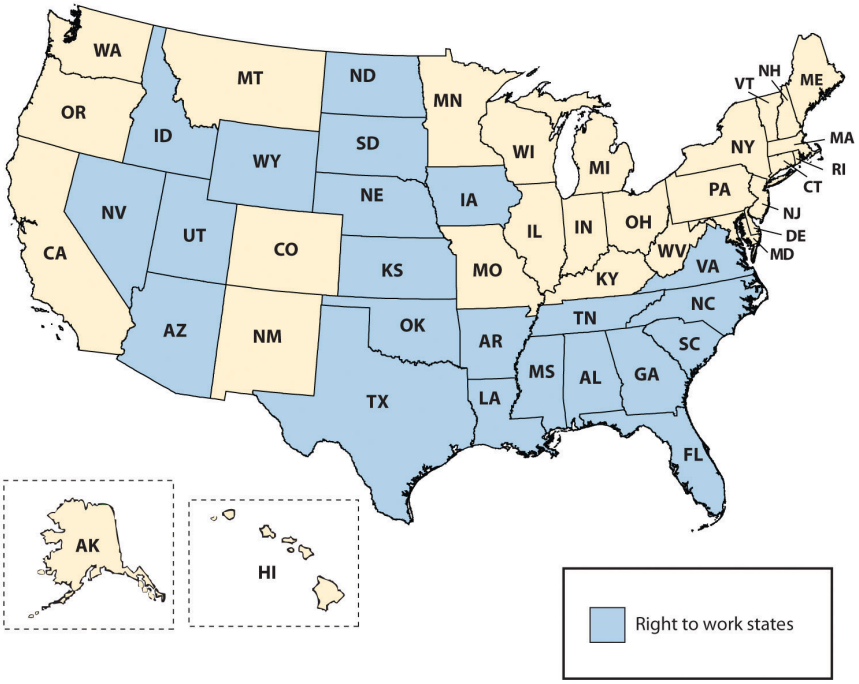

Figure: Map of Right-to-Work States

In a collective bargaining process, both parties are legally bound to bargain in good faith. This means they have a mutual obligation to participate actively in the deliberations and indicate a desire to find a basis for agreement. There are three main classification of bargaining topics: mandatory, permissive, and illegal. Wages, health and safety, management rights, work conditions, and benefits fall into the **mandatory category**. **Permissive topics** are those that are not required but may be brought up during the process. An example might include the requirement of drug testing for candidates or the required tools that must be provided to the employee to perform the job, such as a cellular phone or computer. It is important to note that while management is not required by labor laws to bargain on these issues, refusing to do so could affect employee morale. We can also classify bargaining issues as **illegal topics**, which obviously cannot be discussed. These types of illegal issues may be of a discriminatory nature or anything that would be considered illegal outside the agreement.

Examples of bargaining topics

- Pay rate and structure
- Health benefits
- Incentive programs
- Job classification
- Performance assessment procedure
- Vacation time and sick leave
- Health plans
- Layoff procedures
- Seniority
- Training process
- Severance pay
- Tools provided to employees
- Process for new applicants

The collective bargaining process has five main steps; we will discuss each of these steps next. The first step is the preparation of both parties. The negotiation team should consist of individuals with knowledge of the organization and the skills to be an effective negotiator. An understanding of the working conditions and dissatisfaction with working conditions is an important part of this preparation step. Establishing objectives for the negotiation and reviewing the old contract are key components to this step. Both sides should also prepare and anticipate demands, to better prepare for compromises.

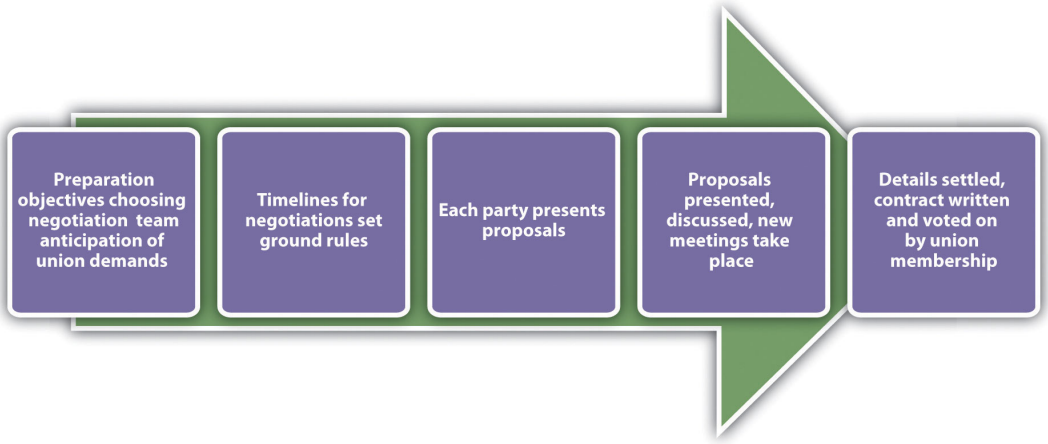

Figure: Steps in Collective Bargaining

The second step of the process involves both parties agreeing on how the timelines will be set for the negotiations. In addition, setting ground rules for how the negotiation will occur is an important step, as it lays the foundation for the work to come.

In the third step, each party comes to the table with proposals. It will likely involve initial opening statements and options that exist to resolve any situations that exist. The key to a successful proposal is to come to the table with a "let's make this work" attitude. An initial discussion is had and then each party generally goes back to determine which requests it can honor and which it can't. At this point, another meeting is generally set up to continue further discussion.

Once the group comes to an agreement or settlement (which may take many months and proposals), a new contract is written and the union members vote on whether to accept the agreement. If the union doesn't agree, then the process begins all over again.

Ramifications of a Bargaining Impasse

When the two parties are unable to reach consensus on the collective bargaining agreement, this is called a **bargaining impasse**. Various kinds of strikes are used to show the displeasure of workers regarding a bargaining impasse. An **economic strike** is a strike stemming from unhappiness about the economic conditions during contract negotiations. For example, 45,000 Verizon workers rallied in the summer of 2011 when contract negotiations failed.[3] The two unions, Communications Workers of America and the International Brotherhood of Electric Workers, claim that the new contract is unfair, as it asks Verizon workers to contribute more to health plans, and the company is also looking to freeze pensions at the end of the year and reduce sick time.[4] Verizon says the telecommunications business is changing, and it cannot afford these expenses. An unfair labor practices strike can happen during negotiations. The goal of an **unfair labor practices strike** is to get the organization to cease committing what the union believes to be an unfair labor practice. A bargaining impasse could mean the union goes on strike or a lockout occurs. The goal of a **lockout**, which prevents workers from working, is to put pressure on the union to accept the contract. A lockout can only be legally conducted when the existing collective bargaining agreement has expired and there is truly an impasse in contract negotiations. In summer 2011, the National Basketball Association locked out players when the collective bargaining agreement expired, jeopardizing the 2011–12 season[5] while putting pressure on the players to accept the agreement. Similarly, the goal of a **strike** is to put pressure on the organization to accept the proposed contract. Some organizations will impose a lockout if workers engage in **slowdowns,** an intentional reduction in productivity. Some unions will engage in a slowdown instead of a strike, because the workers still earn pay, while in a strike they do not. A **sick-out** is when members of a union call in sick, which may be illegal since they are using allotted time, while a **walk-out** is an unannounced refusal to perform work. However, this type of tactic may be illegal if the conduct is irresponsible or indefensible, according to a judge. **Jurisdictional strikes** are used to put pressure on an employer to assign work to members of one union versus another (if there are two unions within the same organization) or to put pressure on management to recognize one union representation when it currently recognizes another. The goal of a sick-out strike is to show the organization how unproductive the company would be if the workers did go on strike. As mentioned under the Taft-Hartley Act, wildcat strikes are illegal, as they are not authorized by the union and usually violate a collective bargaining agreement. **Sympathy strikes** are work stoppages by other unions designed to show support for the union on strike. While they are not illegal, they may violate the terms of the collective bargaining agreement.

Key Takeaways

- A union has two goals: to add new members and to collect dues. A *check-off provision* of a contract compels the organization to take union dues out of the paycheck of union members.
- In a *union shop*, people must join the union within a specified time period after joining the organization. This is illegal in *right-to-work states.* An *agency shop* is one where union membership is not required but union dues are still required to be paid. This may also be illegal in *right-to-work states*.
- Made illegal by the Taft-Hartley Act, a *closed shop* allows only union members to apply and be hired for a job.
- *Collective bargaining* is the process of negotiating the contact with union representatives. Collective bargaining, to be legal, must always be done in good faith.
- There are three categories of collective bargaining issues. *Mandatory issues* might include pay and benefits. *Permissive bargaining* items may include things such as drug testing or the required equipment the organization must supply to employees. *Illegal issues* are those things that cannot be discussed, which can include issues that could be considered discriminatory.
- The collective bargaining process can take time. Both parties prepare for the process by gathering information and reviewing the old contract. They then set timelines for the bargaining and reveal their wants and negotiate those wants. A *bargaining impasse* occurs when members cannot come to an agreement.
- When a bargaining impasse occurs, a *strike* or *lockout* of workers can occur. An *economic strike* occurs during negotiations, while an *unfair labor practices strike* can occur anytime, even during negotiations. A *sick-out* can also be used, which is when workers call in sick for the day. These strategies can be used to encourage the other side to agree to collective bargaining terms.
- Some tips for working with unions include knowing and following the contract, involving unions in company decisions, and communicating with transparency.

Exercises

1. Research negotiation techniques, and then list and describe the options. Which do you think would work best when negotiating with unions or management?
2. Of the list of bargaining issues, which would be most important to you and why?

1. “Best Workforces Are in Right to Work States,” Redstate, June 30, 2011, accessed August 14, 2011, www.redstate.com/laborunionre...ssurvey-finds/.
2. “Right to Work for Less,” AFL-CIO, accessed August 14, 2011,www.aflcio.org/Legislation-an...-Work-for-Less.
3. Dan Goldberg, “Verizon Strike Could Last Months,” *New Jersey News*, August 7, 2011, accessed August 15, 2011,www.nj.com/news/index.ssf/201...ne_differ.html.
4. Dan Goldberg, “Verizon Strike Could Last Months,” *New Jersey News*, August 7, 2011, accessed August 15, 2011,www.nj.com/news/index.ssf/201...ne_differ.html.
5. Steve Kyler, “Division among Owners?” *HoopsWorld*, August 8, 2011, accessed August 15, 2011, http://www.hoopsworld.com/nba-am-div...ng-nba-owners/.

8: The National Labor Relations Board- Organization and Functions

Learning Objectives

By the end of this section, you will be able to:

- Explain the process that leads to recognition of bargaining units by the National Labor Relations Board.

The National Labor Relations Board (NLRB) consists of five board members, appointed by the president and confirmed by the Senate, who serve for five-year, staggered terms. The president designates one of the members as chairman. The president also appoints the general counsel, who is in charge of the board's investigatory and prosecutorial functions and who represents the NLRB when it goes (or is taken) to court. The general counsel also oversees the thirty-three regional offices scattered throughout the country, each of which is headed by a regional director.

The NLRB serves two primary functions: (1) it investigates allegations of unfair labor practices and provides remedies in appropriate cases, and (2) it decides in contested cases which union should serve as the exclusive bargaining agent for a particular group of employees.

Unfair Labor Practice Cases

Unfair labor practice cases are fairly common; some twenty-two thousand unfair labor practice claims were filed in 2008. Volume was considerably higher thirty years ago; about forty thousand a year was typical in the early 1980s. A charge of an unfair labor practice must be presented to the board, which has no authority to initiate cases on its own. Charges are investigated at the regional level and may result in a complaint by the regional office. A regional director's failure to issue a complaint may be appealed to the general counsel, whose word is final (there is no possible appeal).

A substantial number of charges are dismissed or withdrawn each year—sometimes as many as 70 percent. Once issued, the complaint is handled by an attorney from the regional office. Most cases, usually around 80 percent, are settled at this level. If not settled, the case will be tried before an administrative law judge, who will take evidence and recommend a decision and an order. If no one objects, the decision and order become final as the board's opinion and order. Any party may appeal the decision to the board in Washington. The board acts on written briefs, rarely on oral argument. The board's order may be appealed to the US court of appeals, although its findings of fact are not reviewable "if supported by substantial evidence on the record considered as a whole." The board may also go to the court of appeals to seek enforcement of its orders.

Representation Cases

The NLRB is empowered to oversee representative elections—that is, elections by employees to determine whether or not to be represented by a union. The board becomes involved if at least 30 percent of the members of a potential bargaining unit petition it to do so or if an employer petitions on being faced with a claim by a union that it exclusively represents the employees. The board determines which bargaining unit is appropriate and which employees are eligible to vote. A representative of the regional office will conduct the election itself, which is by secret ballot. The regional director may hear challenges to the election procedure to determine whether the election was valid.

Key Takeaway

The NLRB has two primary functions: (1) it investigates allegations of unfair labor practices and provides remedies in appropriate cases, and (2) it decides in contested cases which union should serve as the exclusive bargaining agent for a particular group of employees.

Exercises 8.1

1. Go to the website for the NLRB. Find out how many unfair labor practice charges are filed each year. Also find out how many "have merit" according to the NLRB.
2. How many of these unfair labor practice charges that "have merit" are settled through the auspices of the NLRB?

9: Union Strikes

Learning Objectives

1. Define a labor strike.
2. Consider ethical justifications for striking.
3. Weigh responsibilities set against striking.
4. Consider the rights of employers and strikebreakers.

The Hollywood Writers' Strike

The most contentious area, both economically and ethically, of union action involves **strikes**: workers collectively walking off the jobsite in an attempt to pressure employers to accede to their demands. The Writers Guild of America (WGA) led one of the most publicized recent walkouts when Hollywood script writers put down their pencils and closed their laptops—at least officially—in November of 2007. By the time they returned in early 2008, the economic damage wrought in the Los Angeles basin was massive, $3.5 billion according to some estimates, but the resolution ultimately satisfied most members of the moviemaking community.

During the strike, two constellations of ethical issues came to the fore. First, questions involved

- the right for workers to not work,
- the right of employers to find someone who will work,
- the rights of third parties to go on with their lives and work.

The second set of questions involved responses to the strike:

- Who in Hollywood, if anyone, is obligated to support the writers?
- Is it OK to take a striker's job?

Justifying Not Working

Some Hollywood writers are contracted by faceless studios to churn out rewrites for movies; others generate TV dramas and soap operas. There's work to be done inventing jokes for sitcoms like *The Office*, and opening monologues for Jay Leno's *Tonight* show need to be written a few days every week. As the writers' strike extended, the walkout's effects beamed into living rooms. Almost immediately, Leno went into reruns. *The Office*, which had a few episodes in the can, lasted several weeks. The moviemakers—many of whom live underneath piles of scripts submitted unsolicited by writers—kept going.

Out on the picket lines, Leno zipped around in his vintage sports car to support the stoppage, and occasionally stopped to chat with the strikers and crack good-humored jokes. Of course Leno, who makes millions a year, probably didn't really need his paychecks. Others in Hollywood, however, live from day to day and without much room for unemployment. Set designers, prop companies, on-site catering services, all the people surrounding the now-halted industry saw their income wither. In the face of the injurious consequences, three arguments nonetheless favor and justify the writers' walkout.

1. The *rights argument* in favor of the workers' strike is direct and convincing for many: all individuals have a right to *not* go to work in the morning. Whether we're talking about a union action or just someone who wakes up with a hangover, any ethical theory that takes its bearings from individual rights is generally going to turn in a verdict in favor of the worker's right to stay home.
2. The *last resort argument* affirms that workers are justified in striking when three conditions are met: First, there must be a just cause. The driving issue cannot be petty angers or interpersonal conflicts of some kind; instead, the motive must be wages or working conditions that are out of step with industry norms or reasonable expectations. In the writers' case, this condition may have been met because they represented one of the few talent sectors not benefitting from payments for programming broadcast over new media, especially the Internet. Second, there must be proper authorization, which means the workers themselves must support the action, and have reached a well-deliberated decision. In the writer's case, most did support the action, which had been planned for months. Third, the strike must be a last resort, meaning attempts to find solutions must've been fully explored. Here too writers met the condition as long negotiations had explored most possible solutions.
3. The *marketplace argument* is the rawest of the justifications for striking, and it answers the ethical question with economic facts. If workers can get away with striking, the reasoning goes, then they're justified. The argument is less flippant than it sounds. If workers *really are* being underpaid for their labors, then when an employer seeks others to replace those who've

walked out, none will emerge, at least none capable of doing the work well. On the other hand, if market conditions determine that the striking workers are demanding more than they legitimately should within the current economic context, then when an employer tries to replace strikers with fresh hires, the cost of doing so will be less than the wage increase the strikers are demanding.

On the other side, the kinds of arguments normally set up to obligate striking workers to return to their stations involve responsibilities to the larger community:

1. The *public safety* argument applies only in selected situations. The famous air-traffic controllers' strike in the 1980s involved the safety of fliers. Similarly, police officers, firefighters, and similar may find it difficult to justify a full-fledged strike given the serious suffering that may result. There are many borderline cases, however. For example, in Tennessee some fire departments collect fees directly from those they protect. In one case, a man who hadn't paid found that his house was on fire and called the department; they responded, but only to protect nearby homes from the fire's spread. They watched the flaming home burn to the foundation without intervening because the bill hadn't been paid. Of course, the situation would've been different had a person been trapped inside. In this case, however, the loss and dispute was entirely about money. Jason Hibbs, "Firefighters Watch as Home Burns to the Ground," *WPSD*, September 29, 2010, accessed June 9, 2011, www.wpsdlocal6.com/news/local/Firefighters-watch-as-home-burns-to-the-ground-104052668.html.
2. The *public welfare argument* against workers going on strike weighs in when strikes affect third parties, people outside the initial dispute. The scriptwriters' walkout, for example, left a large chunk of Hollywood unemployed. The most rudimentary way to elaborate the argument is simply to note that the suffering caused across the entire industry by the five-month writers' strike almost surely outweighed the benefits the writers finally obtained. It should also be remembered, however, that if some workers somewhere don't draw the line against owners and employers, those employers will have no incentive to not push *everyone's* wages down, ultimately affecting the welfare of most all the industry's participants.
3. The *immediate welfare argument* against the writers' strike finds support in an ethics of care. An ethics of care values most highly an individual's immediate social web; concern for those people who are nearest outweighs abstract rules or generalized social concerns. In the case of the Hollywood writers' strike, the suffering incurred by families and friends related to particular strikers may be taken to outweigh any benefits the broad union collective won from the action.

Finally, it's important to note that strikes don't need to be long-term walkouts. The dynamic and ethics surrounding the refusal to work change when, for example, a union decides to go on strike for only a single day as a way of pressuring management.

Standing in Line and Crossing It: The Ethics of Supporting Strikes and Breaking Them

The Hollywood writers' strike featured some big-name backing. Jay Leno cruised around in his Bugatti; Steve Carell, star of *The Office*, refused to cross the picket lines; and Sally Field mingled with writers in the Disney Studios lot. These shows of support scored public relations points and provoked this question: what obligation do workers in related fields hold to support strikers?

The range of responses corresponds well with those already outlined to justify the unionization of workers in a particular shop.

- One way to oblige workers in related fields to support strikers is the argument from fairness. When workers in a certain industry strike and win concessions, those gains may be cited by other workers as justifying their own demands. In fact, in Hollywood the writers themselves had used this strategy in the past: instead of going on strike, they'd waited for the directors union (Directors Guild of America) to negotiate demands with the major studios and then used those results to make their own case for concessions. The argument for supporting striking workers based on fairness is that *all* workers for a particular company or across an industry may well benefit when one group makes gains, and if that's so, then those other groups also have a responsibility to support the strikers when they're sacrificing.
- A second argument is based on solidarity, on the idea that an alliance between workers in an industry is ethically natural: there's an obligation to share in a struggle when facing similar challenges. Because other members of the Hollywood community are uniquely positioned to understand the realities and hardships of screenwriting life, they have a duty to act on that empathy.

As events transpired, the WGA did, in fact, receive wide support from across Hollywood, but the solidarity was far from complete. As this outburst from a writer's blog shows, some network studios tried to keep their soap operas in production by hiring **strikebreakers**, or scabs, as they're known to picketers:

The scab writers work under fake names, work from home and use different email addresses so only the executive producer knows the real identities of the scabs. These tend to be experienced soap writers who aren't currently on a show. They are then promised employment after the strike is over. While they're scabbing, they get paid less than union writers. John Aboud, "Scabbing Doesn't

Pay (For Long),” *United Hollywood* (blog), November 8, 2007, accessed June 9, 2011, http://unitedhollywood.blogspot.com/2007/11/scabbing-doesn-pay-for-long.html.

This under-the-table scripting captures a conflict inherent in the union’s attempt to use economic force against employers. On one side, by cutting off their labor, strikers are trying to win concessions through economic force. But their success depends on the suspension of basic economic rules: as this blogger is admitting, there *are* scriptwriters out there willing to work at current wages for the studios. It sounds like they may even be willing to work for less.

For these secretive scriptwriters, what ethical justifications can be mounted for what is, in essence, picket-line crossing? The blog post decrying scab workers actually rallied some to post arguments in the strikebreakers’ defense. One comes from a poster named Jake: “Maybe he [the blogger writing the original post complaining about strikebreakers] has unlimited funds somewhere and can stay out of work forever, but some need to support themselves now.” Jake, November 8, 2007 (6:44 a.m.), comment on John Aboud, “Scabbing Doesn’t Pay (For Long),” *United Hollywood Blog*, November 8, 2007, http://unitedhollywood.blogspot.com/2007/11/scabbing-doesn-pay-for-long.html.

The argument here is that we all have fundamental duties to ourselves that must be served before deferring to others. It’s not, in other words, that scriptwriters should feel no obligation to their colleagues, but all of us have a deeper responsibility to our own welfare (and possibly to that of our family members who may depend on us), and that responsibility takes precedence when the situation becomes extreme, when going without work represents more than just an inconvenience.

Another argument wraps through the following exchange between two blog readers. The first, who registers his comment anonymously, writes, “I’m a little amazed by some of these comments.…Do you guys [who support strikebreakers] not know about unions? Do you not understand what it *means* to cross a picket line?…People need to work for just (as in fair) pay.” Anonymous, November 8, 2007 (8:15 a.m.), comment on John Aboud, “Scabbing Doesn’t Pay (For Long),” *United Hollywood Blog*, November 8, 2007, http://unitedhollywood.blogspot.com/2007/11/scabbing-doesn-pay-for-long.html.

This response comes from a poster named Tim: “Anonymous said, ‘Do you not understand what it means to cross a picket line?’ Yes, it means you are trying to work for someone who wants to pay you. In moral terms, it’s just a voluntary mutually beneficial exchange that for the most part is no one else’s business. Members of a union do and should have the right to refuse to provide a service, but they don’t have a right to prevent others from providing the service.” Tim, November 8, 2007 (8:32 a.m.), comment on Anonymous, “Scabbing Doesn’t Pay (For Long),” *United Hollywood Blog*, November 8, 2007, http://unitedhollywood.blogspot.com/2007/11/scabbing-doesn-pay-for-long.html.

Tim’s argument is based on the principle of free agency and the ethics of freedom. According to him, what’s morally right is any action particular scriptwriters and studio owners agree to undertake. The only ethical obligation individuals have is to *not* violate the freedom of others and, according to Tim, everyone involved in this strikebreaking is acting freely without stopping others from doing the same. The strikers, like the strikebreakers, may go to work—or not go—whenever they like. To the extent that’s right, ethical objections shouldn’t be raised against either choice.

The key phrase in Tim’s response is that the strikebreaking writers’ actions are “no one else’s business.” Those defending the union could choose to intervene here and assert that the claim is fundamentally wrong. Ethics depends on compassionately taking account of others’ interests, and factoring them into your own decisions: what writers decide to do must serve not only their own but also the general welfare. Possibly, Tim could respond to this by asserting that in a market economy the best way to serve the general welfare is for individuals to pursue their own success. There are responses to this argument too, and the discussion continues.

Key Takeaways

- A rights argument and a marketplace argument may lend ethical support to workers’ decision to strike.
- Ethical arguments against striking may derive from broad social concerns, or justifiably privileging one’s own interests.
- Arguments in favor of supporting strikers from outside the union may stand on conceptions of fairness or solidarity.
- Both strikebreakers and employers may claim the right to bypass union demands based on economic realities, or their rights as free agents.

Exercise

1. Explain the marketplace argument in favor of the right for workers to strike.
2. How could a union worker ethically justify not joining companions on the picket lines?
3. Outline an argument from fairness that could be made against strikebreakers.

4. Sketch two arguments that could be made in favor of independent writers swooping in and taking union jobs when the SGA goes out on strike.

10: Grievance Process

Learning Objectives

- Be able to explain how a grievance process works.

A grievance procedure or process is normally created within the collective bargaining agreement. The **grievance procedure** outlines the process by which grievances over contract violations will be handled. As you have probably already identified, the grievance procedure is a formalized conflict. Learning how to handle this type of conflict takes self-management skills—or the ability to avoid taking things personally—and relationship management skills. This will be the focus of the next section.

Procedures for Grievances

A violation of the contract terms or perception of violation normally results in a grievance. The process is specific to each contract, so we will discuss the process in generalities. A grievance is normally initiated by an employee and then handled by union representatives. Most contracts specify how the grievance is to be initiated, the steps to complete the procedure, and identification of representatives from both sides who will hear the grievance. Normally, the human relations department is involved in most steps of this process. The basic process is shown below:

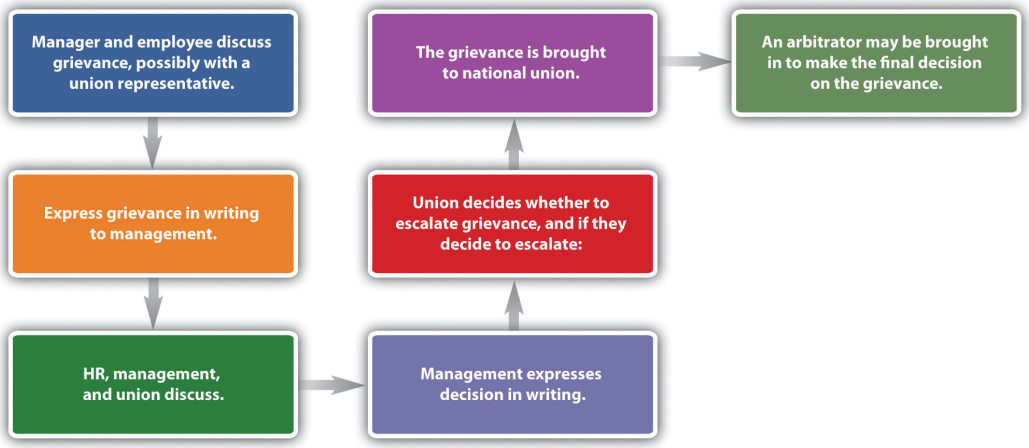

Figure: A Sample Grievance Process

Why Human Relations?

The discussion of labor unions in this chapter applies to many of the human relations skills we have discussed so far—for example, negotiation, handling conflict, teamwork, and communication. Without these important aspects, effective running of unions would not be possible. Because conflicts happen between union and management, the ability to manage the conflict in a positive way (relationship management emotional intelligence skill) can not only help the negotiations but also help you achieve success with a contract everyone is happy with.

While it pertains to all companies, human relations skills become that much more important to those that have a union environment where management and employees must work together. Conflict in these situations can result in major issues on both sides, such as grievances and strikes. Employing effective human relations skills can reduce conflict and raise productivity in a union environment.

The first step is normally an informal conversation with the manager, employee, and possibly a union representative. Many grievances never go further than this step, because often the complaint is a result of a misunderstanding.

If the complaint is unresolved at this point, the union will normally initiate the grievance process by formally expressing it in writing. At this time, HR and management may discuss the grievance with a union representative. If the result is unsatisfactory to both parties, the complaint may be brought to the company's union grievance committee. This can be in the form of an informal meeting or a more formal hearing.

After discussion, management will then submit a formalized response to the grievance. It may decide to remedy the grievance or may outline why the complaint does not violate the contract. At this point, the process is escalated.

Further discussion will likely occur, and if management and the union cannot come to an agreement, the dispute will normally be brought to a national union officer, who will work with management to try and resolve the issue. A **mediator** may be called in, who acts as an impartial third party and tries to resolve the issue. Any recommendation made by the mediator is not binding for either of the parties involved. Mediators can work both on grievance processes and collective bargaining issues. For example, when the National Football League (NFL) and its players failed to reach a collective bargaining agreement, they agreed to try mediation.[1] In this case, the agreement to go to mediation was a positive sign after several months of failed negotiations. In the end, the mediation worked, and the NFL players started the 2011–12 season on time.

If no resolution develops, an arbitrator might be asked to review the evidence and make a decision. An arbitrator is an impartial third party who is selected by both parties and who ultimately makes a binding decision in the situation. Thus arbitration is the final aspect of a grievance.

Some examples of grievances might include the following:

1. One employee was promoted over another, even though he had seniority.
2. An employee doesn't have the tools needed to perform his or her job, as outlined in the contract.
3. An employee was terminated, although the termination violated the rules of the contract.
4. An employee was improperly trained on chemical handling in a department.

Most grievances fall within one of four categories. There are **individual/personal grievances**, in which one member of the union feels he or she has been mistreated. A **group grievance** occurs if several union members have been mistreated in the same way. A **principle grievance** deals with basic contract issues surrounding seniority or pay, for example. If an employee or group is not willing to formally file a grievance, the union may file a **union or policy grievance** on behalf of that individual or group.

The important things to remember about a grievance are that it should not be taken personally and, if used correctly, can be a fair, clear process to solving problems within the organization.

✔ grievance process for flight attendants

Video: https://www.youtube.com/watch?v=agMgB9y7k3w

This video shows a philosophical perspective of the grievance process for the Association of Flight Attendants union.

Chapter Case

To File or Not?

You work in a large logistics company that is also unionized. Because of the union, your organization has very set pay levels and specific rules for promotion. Recently, your organization has received many big orders and as a result, your manager promoted a fellow employee who did not meet the criteria outlined by the union. You felt you would have been good for the job and are disappointed that you were not selected. You are deciding whether or not to file a grievance.

1. What are the advantages and disadvantages of filing a grievance in this situation?
2. What type of grievance would this be?
3. Explain the process you might go through in order to file a grievance.
4. Would you file a grievance or not? Explain your answer.

Key Takeaways

- The *grievance process* is a formal process to address any complaints about contract violations.
- The grievance process varies from contract to contract. It is an important part of the contract that ensures a fair process for both union members and management.
- HR is normally involved in this process, since it has intimate knowledge of the contract and laws that guide the contract.
- The grievance process can consist of any number of steps. First, the complaint is discussed with the manager, employee, and union representative. If no solution occurs, the grievance is put into writing by the union. Then HR, management, and the union discuss the process, sometimes in the form of a hearing in which both sides are able to express their opinion.
- Management then expresses its decision in writing to the union.
- If the union decides to escalate the grievance, the grievance may be brought to the national union for a decision. At this point, an *arbitrator* may be brought in, suitable to both parties, to make the final binding decision.
- There are four main types of grievances. First, the *individual grievance* is filed when one member of the union feels mistreated. A *group grievance* occurs when several members of the union feel they have been mistreated and file a grievance as a group. A *principle grievance* may be filed on behalf of the union and is usually based on a larger issue, such as a policy or contract issue. A *union or policy grievance* may be filed if the employee does not wish to file individually.
- Grievances should not be taken personally and should be considered a fair way in which to solve problems that can come up between the union and management.

Exercise 10.1

What are the advantages of a grievance process? What disadvantages do you see with a formalized grievance process?

1. Associated Press, “NFL, Union Agree to Mediation,” February 17, 2011, accessed August 15, 2011, msn.foxsports.com/nfl/story/N...alks-CBA021711.

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