9.3: Labor Law

Labor relations is the general term used to describe the relationship between employers and employees, as well as governance of that relationship. It refers to the micro-level interactions that take place between workers and individual managers, as well as the macro-level relations that occur between the external institutions that are tasked with governing such relations. This understanding of labor relations acknowledges the fact that there is a plurality of interests that must be taken into account in the processes and procedures of negotiation, bargaining, and dispute settlement relating to the workplace. It also recognizes that employees and employers' representatives are fundamental to the process of industrial relations, and that the state plays a key role in the development of labor laws, the regulation of collective bargaining, and the administration of disputes. There has been considerable flux and development in the nature of U.S. labor over the past century. However, the most substantial changes have occurred since the 1950s. Changes have been particularly evident in the role that the state has been expected to play in employment relations between workers, their representatives, and their employers. This section introduces some of the key milestones in labor relations in the United States, and describes the role played by **trade unions** in governing the relationship between employers and employees.

What Is a Trade Union?

A trade union, or labor union, is an organized group of workers who come together to lobby employers about conditions affecting their work. There currently are around 60 unions representing 14 million workers across the United States. Unions are organized according to the type of work that workers do. For example, the American Federation of Teachers is the labor union for teaching personnel, while the the International Association of Fire Fighters covers fire fighters. Many unions in the United States are organized as **local unions**. This type of union is a locally (i.e., company or region) based group of workers who organize under a charter from a national union. For example, Affiliated Property Craftspersons Local 44 is the Los Angeles union of entertainment professional craftpersons, chartered under the International Alliance of Theatrical Stage Employees.

Timeline of Developments in Labor Law

- **1886**. The American Federation of Labor was formed in Columbus, Ohio. This group was a national federation of labor unions who came together to bolster their power in industrial unionism. The AFL was the largest union grouping in the United States well into the twentieth century. However, the Federation was craft-dominated, such that only craft workers like artisans and silversmiths were allowed to belong.
- **1932**. The Norris-LaGuardia Act was passed. This Act prohibited **yellow-dog contracts**, or contracts that prevented workers from joining labor unions. In addition, federal courts were barred from issuing injunctions to prevent groups of workers from engaging in boycotts, strikes, and picketing.
- **1935**. The Congress of Industrial Organizations was established. This establishment extended the union movement because it allowed semi-skilled and unskilled workers to become members.
- **1935**. The Wagner Act, or **National Labor Relations Act**, was passed. This Act is the major statute of United States labor law. The Act established that employees have the right to form, assist, and join labor organizations, to engage in collective bargaining with employers, and to engage in concerted activity to promote those rights.
- **1947**. The Labor-Management Relations Act, also known as the Taft-Hartley Act, imposed restrictions on the power of labor unions. It made changes to union election rules and outlined and provided remedies for six unfair practices by labor unions (see box below).
- **1959**. The Labor Management Reporting and Disclosure Act, or Landrum-Griffin Act, was passed, which regulates the internal affairs of trade unions, as well as their officials' relationships with employers. All union members are granted equal rights to vote for candidates, take part in membership meetings, and nominate candidates for office.
- **1988**. The Worker Adjustment and Retraining Notification (WARN) Act requires that employers with more than 100 employees give workers at least 60 days notice before engaging in layoffs or plant closings.

Table 9.3.1

Amendments of the TaftHartley Act	Description
1	Protects employees from unfair coercion by unions that could lead to discrimination against employees.

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2	States that employers cannot refuse to hire prospective workers because they refuse to join a union. This amendment also grants the employer the right to sign an agreement with a union that requires the employee to join the union before the employee's 30th day of employment.
3	Unions must bargain in good faith with employers.
4	Prevents unions from engaging in secondary boycotts.
5	Prevents unions from taking advantage of either employers or members. For example, unions cannot charge members excessive membership dues or cause employers to pay for work that has not been performed.
6	Grants employers the right to free speech. Expressed opinions about labor issues do not constitute unfair labor practices, as long as the employer does not threaten to withhold benefits from, or engage in, retribution against the worker.

The National Labor Relations Board

The National Labor Relations Board (NLRB) was established to administer, interpret, and enforce the terms of the National Labor Relations Act. It has jurisdiction over all workers, except for government employees and employees in the transportation industry, who are governed under a separate statute (The Railway Labor Act). Other workers not covered by the NLRB include agricultural workers, confidential employees (employees who develop or present management's position or who have access to confidential information related to bargaining employees), independent contractors, and those employed by a spouse or a parent. The NLRB has three main functions:

1. To monitor the conduct of unions and employers during elections to determine whether employees wish to be represented by a union
2. To remedy and prevent unfair labor practices by unions or employers
3. To establish rules interpreting the NLRA

Figure 9.3.1: Under the terms of the National Labor Relations Act, employees have the right to strike as part of their efforts to secure better working conditions. (Credit: Geralt/ pixabay/ License: CC0)

Organizing a Union

For a union to be formed and organized, the union must identify an **appropriate bargaining unit**. This term is used to describe the group of workers that the union is looking to represent. Under the terms of the **inaccessibility exception**, employees and union officials have the right to engage in union solicitation on the firm's property if they cannot otherwise access employees to communicate with them. The next stage is to run an election. There are three types of elections:

- **Consent election**. This election is held when there are not any substantial issues under dispute between the union and the employer. Both parties agree to waive the pre-election hearing.
- **Contest election**. This election is for a union that is contested by the employer. The NLRB is required to supervise this kind of election.
- A **decertification election** is held when employees indicate that they wish to vote out the union or join another.

In order to try to bolster their power, elected unions often attempt to install a **union security agreement**. This agreement pertains to the extent to which the union can demand that employees join the union, and whether the employer will be required to collect fees and dues on behalf of the union. A **closed shop** is a workplace where union membership is a requirement for employment. A **union shop** is a place of employment where the employee is required to join the union within a specified number of days after being hired. An **agency shop** is a workplace that does not require the employee to join the union, but where agency fees to the union must be paid. Union security agreements are the outcome of collective bargaining agreements.

Collective Bargaining

Collective bargaining involves the union and the employer negotiating contract terms. The outcome is known as a **collective bargaining agreement**. The types of terms that are usually negotiated are wages and salaries, hours, and the terms and conditions of employment. If union members dispute working conditions, unfair labor practices, or economic benefits, they have the right to participate in a cessation of work activities, known as a **strike**. There is a mandatory cooling off period of sixty days before a strike can commence. Some collective bargaining agreements include no-strike clauses. Although strikes are permitted according to the NRLA, some strikes are illegal:

- Violent strikes
- Sit-down strikes
- Wildcat (unauthorized) strikes
- Intermittent, or partial strikes

In addition to striking, union members have the right to picket. This process involves walking in front of the employer's premises with signs that advertise the strike and the union's demands. Picketing is lawful as long as it does not:

- Involve violence
- Prevent customers from entering the premises
- Prevent non-striking workers from entering the premises
- Prevent the business from receiving deliveries or pickups

Secondary boycott picketing occurs when the union pickets the employer's customers or suppliers. This type of picketing is legal if it is product picketing, but illegal if the picket is directed against a neutral business.

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