



Labor Unions/Strikes

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Background

Congress in 1935 passed the National Labor Relations Act (Wagner Act), which was the first of the three federal laws that govern labor relations in the United States. The other two laws, passed in 1947 and 1959, respectively, were the **TAFT-HARTLEY ACT** and the Landrum-Griffin Act. These statutes guarantee the right of private employees to form and join unions in order to bargain collectively. The vast majority of states have extended union rights to public employees.

Additional federal statutes affect the labor rights of employees. A summary of the major federal labor statutes is as follows:

- The Norris-LaGuardia Anti-Injunction Act, passed in 1932, restricted federal courts from issuing injunctions in labor disputes except in some very limited conditions.
- The Wagner Act in 1935 set forth many of the basic protections offered under the labor statutes, including the restriction against employers interfering with or otherwise restraining the ability of employees to organize to bargain collectively.
- The Brynes Anti-Strikebreaking Act of 1938 restricted the interstate transportation of anyone being used to interfere with peaceful picketing in the process of [COLLECTIVE BARGAINING](#) or labor dispute.
- The Hobbs Anti-Racketeering Act of 1946 prevented unions from extorting money from nonunion employees.
- The Taft-Hartley Act in 1947 brought a balance between the rights of employees and employers, which was believed to favor employees and unions over employers. Among the provisions included restrictions on un-fair labor practices by unions.
- The Labor-Management Reporting and Disclosure Act of 1959, or Landrum-Griffin Act, established a code of conduct for unions and contained significant amendments to the Taft-Hartley Act. The code of conduct guaranteed certain rights to union members, which was necessary after findings of wrongdoing by unions and their officers. The amendments to the Taft-Hartley Act added some rights to unions and union members but also placed restrictions on union strikes, picketing, and boycotts.

Parties Involved in Labor Relations

Employees

The National Labor Relations Act employs a broad definition of "employee." The term includes anyone currently on a company's payroll and anyone whose employment has ceased due to a current strike or [UNFAIR LABOR PRACTICE](#) and who has not obtained regular employment elsewhere. Several classes of workers are specifically exempted from this definition, including the following:

- Agricultural laborers
- Persons employed in a family's or persons' domestic service in the home
- Persons employed by a spouse or parent
- Independent contractors
- Persons employed by businesses subject to the Railway Labor Act
- Supervisors

The inclusion of supervisory employees on this list is most significant, because supervisors are not protected if they choose to participate in union activity. In some very limited circumstances, however, a supervisor may be protected from termination, if an employer terminates a supervisor to intimidate other employees from exercising their rights.

Employers

The NLRA's definition of "employer" includes any employer that affects interstate commerce. "Affecting interstate commerce" is traditionally a very broad term, and the vast majority of employers fall within this definition. The NLRA excludes several groups of employers from its scope, including the following:

- The Federal Government
- Any wholly owned government corporation or federal reserve bank
- Any state government or political division of a state
- Employers subject to the Railway Labor Act
- Labor organizations, with some exceptions

Unions

Much of the NLRA focuses on the relationship between the employees joining together to bargain collectively and the election of the union that acquires the right to represent these employees through a vote of the employees.

Forming and Joining a Union to Bargain Collectively

A series of complex laws governs the labor representation process. Forming and joining a union to bargain collectively must be completed before the collective bargaining process. The process of forming a union involves numerous considerations, such as the types of employees who would constitute an appropriate bargaining unit, and the selection of the appropriate union to represent the employees.

Bargaining Units

Employees must define an appropriate collective bargaining unit or units to determine how the employees should be represented in collective bargaining. Under the NLRA and other labor statutes, only those individuals who share a sufficient "community of interest" may comprise an appropriate bargaining unit. Community of interests generally means that teachers have substantial mutual interests, including the following:

- Wages or compensation
- Hours of work
- Employment benefits
- Supervision
- Qualifications
- Training and skills
- Job functions
- Contact with other employees
- Integration of work functions with other employees
- History of collective bargaining

Many state statutes set forth requirements or considerations with respect to determinations of bargaining units in the public sector. Moreover, some statutes set forth specific bargaining units.

Representation Procedures

The NLRA provides formal processes for designation and recognition of bargaining units. State statutes include similar provisions. When disputes arise with respect to union representation, many states direct parties to resolve these disputes with the public employment relations board in that state. Once employees organize bargaining units, members may file a petition with the appropriate labor board. The labor board will generally determine that [JURISDICTION](#) over the bargaining unit is appropriate, that the proposed bargaining unit is appropriate, and that a majority of employees approve the bargaining unit through an election. STATUTORY provisions and other rules generally ensure that the votes are uncoerced and otherwise fair. After this election, the labor board will certify the union as the exclusive representative of the bargaining unit. Once a union is certified, usually for a one-year period, neither employees nor another union may petition for a new election.

The Duty to Bargain

Once a union has been elected, both public and private employers are bound to deal exclusively with that union. The elected union must conversely bargain for the collective interests of the members of the bargaining unit. However, neither the union nor the employer is required to agree to any proposal or to make any concessions in the bargaining process.

Good Faith in Bargaining

Both employers and unions must bargain with one another in [GOOD FAITH](#). The duty of parties to bargain in good faith is very important to the collective bargaining process, since negotiations between employers and unions can become very intense and heated. Interpretations of the term "good faith" under the NLRA typically focus on openness, fairness, mutuality of conduct, and cooperation between parties. Many state statutes define "good faith" similarly, though some states provide more specific guidance regarding what constitutes good faith bargaining. Some statutes also provide a list of examples of instances that are considered bargaining in [BAD FAITH](#). Failure or refusal to negotiate in good faith constitutes an unfair labor practice under the NLRA and many other statutes.

Subjects for Collective Bargaining

The NLRA provides that an employer and union must bargain on issues concerning wages, hours, and other terms and conditions of employment. The National Labor Relations Board has established three sets of rules for the following three categories of bargaining issues: (1) illegal subjects, which would be forbidden by the NLRA; (2) voluntary subjects, which fall outside the mandatory subjects; and (3) mandatory subjects that in the category of wages, hours, and other terms and conditions of employment.

The National Labor Relations Board has determined that a number of topics fall within the category of mandatory subjects. Examples of these subjects are as follows:

- Employee discharge
- Working schedules
- Seniority
- Grievances
- Vacations and individual merit raises
- Christmas bonuses and profit-sharing retirement plans
- Plant rules on breaks and lunch periods
- Safety rules
- Physical examinations of employees

In the absence of statutory language specifying the scope of collective bargaining, unions and employers must consult relevant [CASE LAW](#) and labor board decisions to determine whether a subject is mandatory or voluntary. Other limitations to collective bargaining may also be present. A [COLLECTIVE BARGAINING AGREEMENT](#), for example, cannot violate or contradict statutory law or constitutional provisions. Similarly, the collective bargaining agreement should recognize contractual rights that may already exist.

Conflict Resolution

Impasse

When good faith efforts between unions and employers fail to resolve the dispute or disputes between the parties, a legal impasse has occurred. Once this occurs, active bargaining between the union and the parties will typically be suspended, and parties go through a series of options to resolve the impasse.

The first option after an impasse is declared is [MEDIATION](#). A mediator is employed to act as a neutral third party to assist the two sides in reaching a compromise. Mediators cannot make binding decisions and are employed only to act as advisors. Many state statutes require use of mediators in the public sector upon declaration of an impasse. Private sector unions and schools may employ a federal mediator, though federal labor laws do not prescribe further options regarding dispute resolution.

Should mediation fail, many states require the employment of a fact-finder, who analyzes the facts of the bargaining process and seeks to recognize a potential compromise. Parties are not bound by recommendations of the fact-finder, though a fact-finder may influence public opinion regarding an appropriate resolution of a dispute. In some states, fact-finding is the final stage of impasse resolution, leaving the parties to bargain among themselves.

Picketing

Union employees often resort to picketing when there is a conflict between the union and the employer. Picketing in its simplest form is used to provide information to employees and the public that there is a dispute between the union and the employer. However, picketing is also used to coerce action on the part of the employer or to dissuade customers from patronizing the employer.

The National Labor Relations Board permits picketing for purely informational purposes. However, it is unlawful for a union to picket where it seeks recognition for a union or seeks for employees to accept the union when another union has been recognized, and the NLRB would not conduct a new election; a valid election has been conducted within the past 12 months; or no election petition has been filed, and picketing has been conducted for a period of time not to exceed 30 days.

Questions are sometimes raised when the picketing seeks to provide information and seeks recognition of the union. The NLRB has set forth a number of rules, some of which hinge on whether the picketing disrupts pickup from or delivery to the employer.

Boycotts

Unions also employ boycotts when conflicts occur. A primary or simple [BOYCOTT](#) occurs when a union refuses to deal with, patronize, or permit union members to work for the employer with whom the union has a conflict. A secondary boycott occurs when a union refuses to deal with, or pickets, customers or suppliers of the employer. Many secondary boycotts are banned, and others are lawful only when limited conditions are met.

Strikes and Lockouts

Employees may resort to strike in the event of a conflict where other measures have failed. A lockout by an employer is the counterpart to the strike. The right to strike in the private sector is guaranteed under the NLRA. However, only about half of the states extend this right to employees in the public sector. Where public employees are not permitted to strike, state statutes often impose monetary or similar penalties on those who strike illegally. In states where strikes by public employees are permitted, employees must often meet several conditions prior to the strike. For example, a state may require that a bargaining unit has been properly certified, that methods for impasse resolution have been exhausted, that any existing collective bargaining agreement has expired, and that the union has provided sufficient notice to the school board. The purpose of such conditions is to give the parties an opportunity to avoid a strike, which is usually unpopular with both employers and employees.

State Provisions Regarding Labor Unions and Strikes

The NLRA governs labor relations of private employers, subject to some limitations. A union of a private employer should determine whether the NLRA applies to its business. State labor statutes generally govern labor relations between public employers and unions. These provisions are summarized below.

ALABAMA: All employees have the general right to join or not to join a labor organization.

ALASKA: Public employees are permitted to join to bargain collectively, and, subject to restrictions, public employees may strike.

Encyclopedia of Everyday Law: Labor Unions/Strikes

ARKANSAS: It is [PUBLIC POLICY](#) in Arkansas that employees should be free to organize to bargain collectively. However, the [STATUTE](#) has been held not to apply to public employees, and public employees are prohibited from striking.

CALIFORNIA: California provides an extensive statutory scheme governing collective bargaining in that state. Collective bargaining by employees of public employers is generally permitted.

COLORADO: Collective bargaining is permitted by statute, which also provides a limited right to strike.

CONNECTICUT: Connecticut permits bargaining by state and municipal employees, with some exceptions.

DELAWARE: Most public employees are permitted to bargain collectively, but strikes by public employees are generally prohibited.

FLORIDA: Right for public employees to bargain collectively is guaranteed by statute, but public employees are forbidden to strike. Public employers are required to recognize employee organizations with majority status.

HAWAII: Statute permits collective bargaining by all public employees. During impasse, mediation, fact-finding, and binding [ARBITRATION](#) are provided by statute. Strikes are permitted only after other conflict resolution provisions have been completed without success.

ILLINOIS: Public employees are generally permitted to bargain collectively. Strikes are permitted only after certain conditions are met.

INDIANA: Most public employees permitted to bargain collectively, but strikes are generally prohibited.

IOWA: Statute allows bargaining by all public employees. The statute provides a number of procedures for conflict resolution, including mediation, fact-finding, and binding arbitration. Strikes by public employees are prohibited.

KANSAS: Collective bargaining is permitted by all public employees, but subject to some limitations in the process. Strikes by public employees are prohibited.

LOUISIANA: Collective bargaining is neither prohibited nor required in Louisiana.

MAINE: Statue permits collective bargaining by all public employees. Strikes by all state employees are prohibited.

MASSACHUSETTS: Statute allows collective bargaining by all public employees. Strikes or other strike-related activity are prohibited by public employees.

MICHIGAN: Statute permits bargaining by public employees. Strikes by public employees are prohibited.

MINNESOTA: Statute allows collective bargaining by all public employees. Strikes are permitted only after certain conditions have been met.

MISSOURI: Some public employees are granted a right to bargain collectively. Statute does not grant a right to strike.

Encyclopedia of Everyday Law: Labor Unions/Strikes

MONTANA: Statute permits all public employees to bargain collectively. Courts have construed this statute to permit strikes.

NEBRASKA: Statute permits bargaining by all public employees. Nebraska restricts supervisors from joining a bargaining unit, with some exceptions. Strikes by teachers are prohibited.

NEVADA: Statute permits bargaining by all public employees. Strikes by public employees are illegal by statute.

NEW HAMPSHIRE: Statute permits collective bargaining by all public employees. Impasse resolution procedures must be implemented within the same time period specified by the statute. Strikes by public employees are illegal by statute.

NEW JERSEY: Statute permits bargaining by all public employees but excludes standards of criteria for employee performance from the scope of negotiation.

NEW YORK: Statute permits bargaining by all public employees. The statute limits the scope of negotiations to matters related to wages, employment hours, and other terms and conditions of employment. Arbitration is required by statute when an impasse is declared. Strikes by public employees are prohibited.

NORTH CAROLINA: Statute prohibits collective bargaining by all public employees. Statute also prohibits strikes by public employees.

NORTH DAKOTA: Statute permits mediation of disputes between public employees and employees. The statute also specifies the rights of public employees, including membership in a union.

OHIO: Statute permits collective bargaining by public employees. Strikes by public employees are prohibited.

OKLAHOMA: Statutes generally permit collective bargaining by public employees.

OREGON: Statute permits collective bargaining by all public employees. Impasse resolution procedures include mediation and fact-finding. Strikes are permitted after conflict resolution procedures have been implemented.

PENNSYLVANIA: Statute permits bargaining by all public employees under the Public Employee Relations Act. Statute limits which employees may be included in a single bargaining unit. Strikes by public employees are permitted only after conditions set forth in the statute are met.

RHODE ISLAND: Statute generally permits collective bargaining by state and municipal employees. Strikes by some public employees are prohibited.

SOUTH DAKOTA: Statute permits bargaining by all public employees. Strikes by public employees are prohibited.

TEXAS: Statute prohibits public employees from entering into collective bargaining agreements. Strikes by public employees are generally prohibited.

UTAH: Statute permits union membership by public employees.

VERMONT: Statute permits bargaining by all state and municipal employees. Strikes by state employees are generally prohibited.

VIRGINIA: Strikes by public employees are prohibited by statute.

WASHINGTON: State permits collective bargaining by public employees. Strikes by public employees are prohibited by statute.

WISCONSIN: Statute permits collective bargaining by municipal employees. Impasse resolution procedures include mediation and arbitration. Strikes are permitted after impasse resolution procedures have been exhausted.

WYOMING: Statute permits right to bargain collectively as a matter of public policy.

Additional Resources

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