

Labor Law: The Basics

LAWS GOVERNING LABOR RELATIONS

From the ILCA

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NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act (NLRA) covers labor relations in most private sector industries. The NLRA refers to three separate laws:

.The *Wagner Act*, enacted in 1935 to promote collective bargaining as a means for reducing economic strife. The act created Section 7 rights to form, join, or assist labor unions and engage in other concerted activities, and created employer unfair labor practices (ULPs).

.The *Taft-Hartley Act*, enacted in 1947 by a Republican Congress over President Truman's veto. It was designed to curtail union growth and power resulting from the Wagner Act. Taft-Hartley established the right of employees to refrain from union activities, and established a long list of union unfair labor practices.

.The *Landrum-Griffin Act*, passed in 1959. Landrum-Griffin amended the NLRA to limit organizational and recognition picketing, and also established strict guidelines for regulation of internal union affairs.

The NLRA established the five-member National Labor Relations Board (NLRB), based in Washington, D.C. The board has a general counsel, who has authority to act on behalf of the board on investigating charges and issuing complaints. The board also has regional, subregional, and resident offices throughout the country.

The agency's two main functions are to conduct representation elections and certify the results, and to prevent employers and unions from engaging in unfair labor practices. Board orders are not self-enforcing. The board must go to federal court to enforce orders, or the charged party can seek review of a board order in federal court

RAILWAY LABOR ACT

The Railway Labor Act (RLA) governs labor relations for employees in the railroad and airline industries. It gives them the right to organize and bargain collectively. The law is designed to ensure prompt and orderly settlement of disputes between air and rail carriers and their employees. The RLA is administered by two government agencies and the federal courts.

.The three-member National Mediation Board (NMB), based in Washington, D.C., handles "major disputes"--those arising from the designation of a bargaining representative and formulation of collective bargaining agreements. The NMB conducts representation elections through mail ballots, and determines appropriate units on a national basis by "class or craft"

.The 36-member National Railroad Adjustment Board (NRAB), based in Chicago, handles "minor disputes"--grievances involving railroads and interpretation of existing contracts. In the airline industry, minor disputes are handled through private arbitration, normally "system boards."

.Unlike under the NLRA, Railway Labor Act unfair labor practices must be pursued in federal court from the outset.

FEDERAL LABOR RELATIONS ACT

The Federal Labor Relations Act governs labor relations of federal government employees. The Federal Labor Relations Authority (FLRA) functions like the National Labor Relations Board, but has less overall authority. The FLRA oversees federal labor relations, conducts elections, and processes unfair labor practice complaints.

Individual workers, unions, and agencies can file unfair labor practice charges against government agencies or labor organizations with the FLRA regional offices. The Office of General

Counsel investigates cases at the regional level to determine whether the charges have merit. If they do, then a complaint is issued and handled in the same way the NLRB does.

OTHER LEGAL ISSUES

DUTY OF FAIR REPRESENTATION

Since laws give unions the right to be selected as the "exclusive representative" of all bargaining unit employees, unions are obliged to represent all bargaining unit employees, including those who are not union members. This is called "Duty of Fair Representation" (DFR). DFR applies during the negotiation, administration, and enforcement of collective bargaining agreements.

Legal doctrine gives unions considerable discretion -- described as "a wide range of reasonableness" -- in servicing the units they represent. Workers do not have an absolute right to have a grievance taken to arbitration. A union, however, may not arbitrarily ignore grievances with merit, or process them in a perfunctory or bad faith fashion.

Violations of DFR generally are determined where a union's conduct is deemed to be arbitrary, discriminatory, or demonstrates bad faith.

UNION SECURITY

Both the NLRA and the RLA authorize union security clauses which require all bargaining unit employees to pay monthly fees to the union.

.Under NLRA Section 14(b), state "right-to-work" laws preempt union security clauses.

.Under the RLA, union security clauses are permitted regardless of state "right-to-work" laws.

Standard union security clauses refer to "membership," but unions legally cannot require individuals to actually become members; they can only require payment of monthly fees.

As a result of several Supreme Court cases decided during the last decade (*Ellis v. BRAC* and *CWA v. Beck*), non-members can be required to pay for only costs that are "germane to collective bargaining" or for "representational activities."

There can be three categories of employees under union security agreements.

.*Full members* who sign membership applications

and take the union oath.

.Agency fee payers who pay the full equivalent of monthly dues but do not become union members.

.Dues objectors who file proper objections under their union's procedures and pay a reduced monthly fee.

Unions are required by law to spell out the rights and obligations of bargaining unit employees covered by union security agreements at least once a year. Some unions print notices in their national publications; others include them in new member orientation information or other formats.

The notice clearly spells out what non-members are not entitled to, including: the right to attend meetings, vote on contracts, vote to strike, run for local union office, take advantage of Union Privilege benefits, etc. The union still is obligated under the Duty of Fair Representation doctrine to represent dues objectors.

Regardless of membership status, members, fee payers, and dues objectors all are required to pay their dues in a timely fashion, and may be terminated for delinquency under due process rules that each union has established.

Unions may negotiate checkoff provisions with employers under which the employer deducts employees' dues/fees from their paychecks and remits the money directly to the union. Where such provisions exist, employees must sign a checkoff authorization form giving consent for the employer to deduct the amounts owed.

LAWS GOVERNING INTERNAL UNION AFFAIRS

LANDRUM- GRIFFIN ACT

The Landrum-Griffin Act is the primary law that regulates internal affairs of labor unions. It requires regular financial reports and sets forth strict rules governing union elections.

Title I spells out a "bill of rights" for union members that includes the right of free speech and the right to sue the union.

Union members have the right to express any views, arguments, or opinions, to attend meetings, and to express views on candidates in an election. The courts have ruled that this free speech right applies to oral statements, written flyers and leaflets distributed

to other union members, and internal union political activity. Title IV establishes internal union election procedures, including terms of office, timing of election notices, and the right to equal opportunity to distribute campaign materials.

LAWS GOVERNING PLANT CLOSINGS, BANKRUPTCIES, AND RELOCATIONS

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)

The Worker Adjustment and Retraining Notification Act (WARN) requires employers to provide workers, unions, and communities 60-day advance notice of a plant closing or major layoff. Application of the law is based on how many employees are affected. Exceptions to the notice requirement include "unforeseen business circumstances" and "natural disasters." Employers that fail to give notice are liable for back pay and benefits for the period of violation for up to 60 days. The law must be enforced in federal court.

BANKRUPTCY LAWS

When an employer files for bankruptcy--reorganization (Chapter 11) or liquidation (Chapter 7)--unions are advised to move quickly to file employee wage claims. Employers are not permitted to abrogate collective bargaining agreements without demonstrating a compelling need for labor cost savings at hearings in bankruptcy court (Section 1113 hearings).

If a company is sold to another company and the new owner performs basically the same work at the same location, and the new company hires 50 percent plus one of the predecessor's employees, then the new company must recognize and bargain with the union. The new owner does not have to assume the previous owner's collective bargaining agreement, even if it has a successorship clause. It is the predecessor owner's obligation to sell the company with the agreement. If it fails to do so, then the union must sue the predecessor to enforce terms of that agreement

SUBCONTRACTING AND RELOCATION DECISIONS

An employer's decision to subcontract bargaining unit work is considered by the NLRB to be a mandatory subject of bargaining when it involves substituting one group of workers for another to perform the same work, and does not represent a change in the scope and direction of the business.

An employer's decision to relocate bargaining unit work also may be a mandatory subject of bargaining if the decision does not involve a fundamental change in the nature, scope, or direction of the operation; if labor costs were a determining factor in the decision; and the union could have offered concessions which may have changed the company's decision.

The impact of an employer's decision to close, relocate, or subcontract is always a mandatory subject of bargaining, and the employer must respond to union requests for information. An employer's failure to bargain over mandatory subjects is an unfair labor practice.

LAWS GOVERNING WAGES AND BENEFITS

FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (FLSA), passed in 1938, sets minimum employment standards for workers employed in industries engaged in interstate commerce, and covers nearly all private sector employers in the U.S. It sets a federal minimum hourly wage rate, requires overtime compensation for all hours worked over 40 hours per week, and restricts the employment of minors. The FLSA is enforced by the Wage and Hour Division of the U.S. Department of Labor.

SERVICE CONTRACT ACT

The Service Contract Act was created to protect service workers hired by private contractors who serve the federal government. It prevents contractors from cutting wages for purposes of underbidding on federal contracts. The act stipulates that government contractors must pay wages and benefits equivalent to those prevailing in the locality. The Labor Department determines what those prevailing wages and benefits are, and issues a wage determination. Complaints about violations are filed with the Labor Department's Wage and Hour Division, which can withhold pay-

ments due on the contract until employees are paid in full and in some cases, prevent the contractor from doing further government business.

EQUAL PAY ACT

The Equal Pay Act amended the Fair Labor Standards Act to make it illegal to discriminate against anyone on the basis of sex by paying different wages to men and women who perform substantially equal work. The Equal Employment Opportunity Commission enforces the act.

ERISA

The Employee Retirement Income Security Act (ERISA) governs employer-provided pension and retirement plans. ERISA enforces rules and standards for employers to ensure that workers' pension rights are protected and that retirement plans are securely funded. ERISA guarantees employees the right to obtain information about their benefits, copies of plan documents, and annual reports.

ERISA is enforced by the Labor Department, Treasury Department, and the Pension Benefit Guaranty Corporation (PBGC). Participating workers also can enforce their rights through federal court suits.

COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers to offer workers who are laid off or terminated (for reasons other than gross misconduct) the option to continue their group health plan coverage from 18 to 36 months. COBRA requires health plans to notify employees of their right to choose continuation of coverage, to explain all associated costs and benefits, and to explain the claim and appeal procedures. Beneficiaries may be required to pay up to 102 percent of the cost of the premium payment

LAWS GOVERNING DISCRIMINATION

TITLE VII

Title VII of the Civil Rights Act of 1964 is the basic law that outlaws discrimination by employers or unions based on race, color, religion, sex, or national origin in virtually every aspect of employ-

ment and union membership.

Sexual harassment is considered a form of sex discrimination under Title VII.

Title VII is enforced by the five-member Equal Employment Opportunity Commission (EEOC), headquartered in Washington, D.C., with regional offices throughout the country. Victims of discrimination also may request "right to sue" letters and pursue their claims in federal court

AGE DISCRIMINATION

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against workers over age 40. It specifically prohibits employers from refusing to hire, discharging, limiting employment, or any other discrimination involving compensation, terms, conditions, or privileges of employment because of age.

PREGNANCY DISCRIMINATION

The Pregnancy Disability amendment to Title VII requires employers to treat pregnancy and childbirth the same as other causes of disability. It prohibits terminating or refusing to hire a woman solely because she is pregnant. The law also bars mandatory leave for pregnant workers and protects reinstatement rights, including seniority, for women on leave for pregnancy-related reasons.

DISABILITY DISCRIMINATION

The Americans with Disabilities Act (ADA), passed in 1990, covers all private sector employers with 15 or more workers.

The Rehabilitation Act of 1973 applies to any activity or program receiving federal funding, such as federal agencies, government contractors, and recipients of federal aid.

Both laws prohibit employment discrimination against qualified applicants and employees with disabilities who are capable of performing the essential functions of the job. Employers are required to provide qualified employees with reasonable accommodations unless doing so would place an undue hardship on the employer. Charges must first be filed with the EEOC. If not resolved within 180 days, the victim can request a "right to sue" letter to pursue action in federal court.

FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA), passed in 1993, entitles eligible employees to take up to 12 weeks of unpaid, job protected leave within a 12-month period to care for a newborn or newly adopted child, a seriously ill family member, or for an

employee's own serious health condition. Employers also are required to continue group health plan coverage for employees who take FMLA leave.

FMLA sets minimum labor standards. Employers must continue to provide any greater family or medical leave benefits provided under collective bargaining agreements, employee benefit plans, and state laws.

LAWS GOVERNING PERSONAL PRIVACY

DRUG AND ALCOHOL TESTING

The Transportation Department recently adopted regulations that require alcohol and drug testing of employees who perform safety-sensitive jobs in the aviation, highway, railroad, transit, and special programs administration. Each federal agency defines "safety-sensitive function" differently, but generally, the rules require testing for new employees and newly transferred employees, as well as after accidents, when returning to duty, and following alcohol and drug treatment.

Testing is allowed only when a trained supervisor has reasonable suspicion based on the employee's appearance and actions that he/she has violated the rules. Random testing is allowed under narrow circumstances spelled out in the rules. In all situations, alcohol and drug testing is a mandatory subject for collective bargaining.

POLYGRAPH PROTECTION

The Employee Polygraph Protection Act, passed in 1988, bars most polygraph ("lie detector") tests for pre-employment screening and for current employees, except for security guards and workers with access to controlled substances.

The law bars employers from disciplining, discharging, discriminating against, or denying employment or promotions to prospective or current workers solely on the basis of polygraph test results. However, employers that suffer economic loss may test employees who had access to the property under investigation, if there is reasonable suspicion that the employee was involved and if the employer provides a written statement of its reasons for testing certain individuals.

The law is enforced by the Labor Department, and also can be enforced by private law suit.

ELECTRONIC SURVEILLANCE

No federal laws currently exist to protect workers from electronic surveillance by their employers. Congress has considered legislation to require employers at minimum to notify employees of monitoring activities, but it was not enacted.

Some state laws offer worker protections from surveillance. Generally, surveillance is an issue of contract interpretation handled through the grievance procedure.

Arbitration decisions generally hold that when cameras are present in private areas such as restrooms or locker rooms, it is easier for unions to challenge employer monitoring activities. If cameras or recorders are located on the shop floor, however, then it is difficult to show that the employees' needs for privacy outweigh the employer's interest in worker productivity and safeguarding inventory.

(This section was adapted from material provided by the International Association of Machinists.)