

THE LABOR RELATIONS PROCESS

Seventh Edition



William H. Holley, Jr
Kenneth M. Jennings
Roger S. Wolters

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tion of the copyright page.

*The Seventh edition is dedicated to
the memory of Ken Jennings and
to Betty, Allison, Bret, and Jackson,
who hopefully have received at least
a portion of what they have given.*

PREFACE

The seventh edition of *The Labor Relations Process* reflects our original objective in writing the book: to provide students with a textbook that will generate an understanding of and appreciation for union-management relationships. We have attempted to involve the student with the subject matter and to create an interest in related issues that will continue after the student completes the course. A model of the labor relations process (Exhibit 1.2) is presented in the first chapter and expanded in subsequent chapters through extensive references to academics and practitioners that focus on real-world situations and concerns. This provides a balance between concepts and applications for the reader.

As with the first edition and all subsequent editions, the seventh edition of *The Labor Relations Process* continues to be the most comprehensive text on the market.

FEATURES OF THE SEVENTH EDITION

The seventh edition approaches our student involvement objective by enhancing our commitment to application, an emphasis that is unmatched by other textbooks in this area. We believe that application generates student interest in the subject matter while enabling students to demonstrate their understanding of concepts and principles and apply this information to real-world situations. These opportunities and related efforts should sharpen readers' communication skills, a desirable skill for any student, regardless of his or her academic major or intended occupation.

Application has been enhanced through new "Labor Relations in Action" features, National Labor Relations Board cases concerning potential unfair labor practices committed during the three phases of the labor relations process, and arbitration cases. There are new internet exercises called "Crawling the Web" at the end of each chapter to enhance student learning and application and to create interest in independent research. The negotiation exercise with computer applications and the arbitration cases have been prepared for role-playing experience to promote the reality of union-management relations. The book has also maintained many of the previous edition's features: a focus on currency, ethics, international issues, and the "Labor Relations in Action" boxes:

- **Currency.** This edition offers many opportunities for readers to become involved with the current applications of the labor relations process. For example, recent collective bargaining occurred with management and union officials at United Parcel Service, the auto industry, and the U.S. Postal Service.

- *Ethics.* Ethical issues concerning such topics as bargaining behavior, union organizing, employee empowerment and termination for union activities are addressed throughout the book.
- *International Labor.* Chapter 15 has been updated and expanded to include changes which have occurred in Western Europe, Cuba, Korea, Australia, the North American Free Trade Agreement and the European Community.
- *Labor Relations in Action.* The “Labor Relations in Action” boxes integrate current events in labor relations and have been updated with several new applications, discussed further in the next section.

KEY CHAPTER-BY-CHAPTER CHANGES IN THE SEVENTH EDITION

Each chapter has been extensively updated in terms of sources, laws and judicial decisions, studies, and statistics. Additional attention has been given to explaining the labor relations process and influences in Chapter 1 and indicating how this process operates in subsequent chapters. Following are some of the key features and additions to the seventh edition:

- *Chapter 1.* “Getting Online with Labor Relations Research” (introducing students to computerized search possibilities on current labor relations topics) is supplemented by internet exercises in every chapter.
- *Chapter 2.* Organized labor’s role in defeating Proposition 226 in California which would have reduced labor’s political influence in California.
- *Chapter 3.* Recent decisions of the NLRB and courts which overturned previous precedents, such as the reclassification of hospital interns and residents and graduate students in academic institutions as “employees” subject to coverage under the Labor Management Relations Act.
- *Chapter 4.* Updates on union membership and mergers; coverage of the possible merger between the National Education Association and the American Federation of Teachers.
- *Chapter 5.* Coverage of new union organizing tactics, like union salting, and renewed emphasis on union organizing led by AFL-CIO President John Sweeny.
- *Chapter 6.* Expanded coverage of collective bargaining preparation and behavior including a comparison of distributive bargaining versus win-win or mutual gain bargaining approaches.
- *Chapter 7.* Role of the mediator as viewed through the eyes of one of the nation’s prominent labor mediators. Coverage of trends in strike activity, legal decisions affecting striker replacements; the proposed Workplace Fairness Act and Team Act; and President Clinton’s Executive Order regarding striker replacement.
- *Chapter 8.* Grievance mediation and updates on a union’s legal duty of fair representation.
- *Chapter 9.* Exploration of employment arbitration, its advantages and shortcomings; controversy over mandated employment arbitration (as a condition of

- employment); Due Process Protocol; and arbitrator decision's potential conflict and accommodation with public policy.
- *Chapter 10.* Guidelines used by arbitrators in determining “just cause”; updates on *Weingarten* rights, such as its extension to nonunion (unrepresented) employees.
 - *Chapter 11.* Expanded coverage of “financial core” membership rights; “right-to-work” legislation; and updated trends in the relationships between unions and female and minority employees.
 - *Chapter 12.* Expanded coverage of labor-management partnerships and updates on safety and health issues and the Americans With Disabilities Act.
 - *Chapter 13.* Updates on wage and benefit trends, expanded coverage of wage incentive pay plans such as skill based pay, health care cost containment, and pension plans.
 - *Chapter 14.* Updates on public sector bargaining rights, dispute resolution, and privatization of public services.
 - *Chapter 15.* Updates on the North American Free Trade Agreement and European Community countries; new coverage of labor relations in Cuba; and coverage of major developments in Australia.

SUPPLEMENTARY MATERIALS

The new *Instructor's Manual* includes chapter outlines, answers to end-of-chapter discussion questions, case notes, suggested student readings and term projects, and both instructors' and students' instructions for the Collective Bargaining Negotiations Exercise (available on disk). The *Test Bank* has been revised, updated, and expanded. The number of transparency masters has been increased.

A Computerized Test Bank, in Windows format, is also available free to adopters. The Computerized Test Bank enables instructors to select, edit, and add test items and print tests for classroom use.

Five videos on one cassette are available, showing workplace issues for union employees and managers on topics ranging from violence at work to the Americans with Disabilities Act and strikes. Also included is a special CBS report on the state of unions.

South-Western may provide complimentary instructional aids and supplements or supplement packages to those adopters qualified under our adoption policy. Please contact your sales representative for more information.

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Finally, we would like to thank our publisher for its fine work on this book. We are grateful to our acquisitions editor, Tracy Morse, as well as Beverly Dunn, Jana Pitts, and Barrett Lackey.

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- 2 ■ Evolution of Labor-Management Relationships**
- 3 ■ Legal Influences**
- 4 ■ Unions and Management Key Participants in the Labor Relations Process**
- 5 ■ Why and How Unions are Organized**



Union-Management Relationships in Perspective

This chapter first defines the three phases of the labor relations process and then places this process into an analytical perspective. It introduces the activities, focal point, participants, and influences of the labor relations process, which are discussed in detail in subsequent chapters.

PHASES IN THE LABOR RELATIONS PROCESS

The **labor relations process** occurs when management and the exclusive bargaining agent for the employees (the union) jointly determine and administer work rules. It is neither automatically nor uniformly applied across public and private sector organizations in the United States. The labor relations process includes the following three phases:

1. **Recognition of the legitimate rights and responsibilities of union and management representatives.** This phase includes the legal right of employees to join unions (see Chapter 3), union organizing drives (see Chapter 5), and the rights of management and union officials, as well as their responsibilities to abide by related laws and labor agreement provisions.
2. **Negotiation of the labor agreement, including appropriate strategies and tactics and impasse-resolution techniques.** Strikes and mediation are examples of the latter (discussed in Chapter 7). This phase is usually the most publicized by the media, even though phases 1 and 3 are equally essential.
3. **Administration of the negotiated labor agreement—applying and enforcing the terms of the agreement on a daily basis.** This phase of the process (discussed in detail in Chapters 8 and 9) accounts for the most time and energy spent by union and management officials and usually involves a larger number of these officials than the preceding phases.

Clearly, the sequence of the labor relations process is cumulative. Formal negotiations seldom occur if the parties have not first recognized each other's legitimate rights and responsibilities. Similarly, the first two phases are necessary for the existence of the third phase—administration of the labor agreement. This sequence is applied to an increasingly significant topic, employee drug testing, in the "Labor Relations in Action" box.

LABOR RELATIONS IN ACTION

Drug Testing and the Labor Relations Process

Drug testing has been called the “Jar Wars” of the 1980s and 1990s. A nationwide concern over drug use and its accompanying problems has resulted in many businesses taking measures against drug use. In 1982, only 3 percent of Fortune 500 companies were involved in employee drug testing. Ten years later, a 1992 American Medical Association survey found 75 percent of the responding firms testing for employee drug use.

Whether for altruistic reasons—social responsibility or concern for employee welfare—or for monetary advantages—lower insurance rates, increased productivity, or reduction of property damage—concern has been translated into controversy, which illustrates the three phases of the labor relations process.

Recognition of the Legitimate Rights of Union and Employer Organizations The desire for a drug-free workplace appears to be a legitimate one, which would attract opposition only from drug users, pushers, or radical subversives. Yet organized labor is one of the most formidable opponents of the current drug testing movement, contending that random or mandatory testing assumes its members are guilty and must prove their innocence.

The government has partially resolved the first phase. Unions have contended in various legal suits that management’s unilateral imposition of employee drug testing ignores the legal rights of their members and organizations and violates the Fourth Amendment prohibitions against suspicionless search and seizure.

The Supreme Court has not held private sector employers accountable to constitutional restraints.^a However, government agencies have formulated guidelines that can apply to both private and public sector employees. A Supreme Court decision, *Skinner v. Railway Labor Executives’ Association*, ruled that postaccident drug and alcohol testing required by the Federal Railroad Administration did not violate rail

employees’ Fourth Amendment rights even though the regulations did not “individualize” suspicion of drug or alcohol use prior to testing.^b The court contended that the government’s compelling public safety interest in ensuring that rail workers are not impaired on the job outweighed the “minimal” employee rights intrusion.

Another Supreme Court decision, *National Treasury Employees Union v. Von Raab*, upheld the U.S. Custom Service’s policy of testing applicants for promotion for illegal drug use. The majority contended, “Employees involved in drug interdiction reasonably should expect effective inquiry into their fitness and probity.”

Negotiation of the Labor Agreement Unions want to subject drug testing to the second phase of the labor relations process although related efforts in the railroad and airline industries do not come under the National Labor Relations Act (NLRA; discussed more in Chapter 3). The Supreme Court in *Consolidated Rail Corp. v. Railway Labor Executives’ Association* indicated that companies in these industries may add drug screening to periodic physical examinations without having to bargain with unions over this practice.

This situation is not the case for most unionized, private sector companies that are covered by the NLRA and the National Labor Relations Board (NLRB; also discussed more in Chapter 3), a government agency charged with overseeing this labor legislation. The NLRB has made it clear that employee drug testing is a mandatory bargaining issue (discussed more in Chapter 6) where the details of such a program should be negotiated with the union until agreement or impasse. In the case of impasse, an employer may proceed with implementation of the program unless limited by other contract language.

The past practice of “for-cause” drug testing, also, does not give management the go-ahead to implement