Cases in Collective Bargaining and Industrial Relations

A Decisional Approach

Sixth Edition

Sterling H. Schoen Raymond L. Hilgert

Cases in Collective Bargaining and Industrial Relations

A Decisional Approach

Sterling H. Schoen
Professor of Management

Raymond L. Hilgert
Professor of Management and Industrial Relations

1989 Sixth Edition

IRWIN

Homewood, IL 60430
Boston, MA 02116

Sponsoring editor: William R. Bayer
Project editor: Suzanne Ivester
Production manager: Stephen K. Emry
Cover Design: Studio M
Compositor: Better Graphics, Inc.
Typeface: 10/12 Century Schoolbook
Printer: R. R. Donelley & Sons

LIBRARY OF CONGRESS
Library of Congress Cataloging-in-Publication Data

Schoen, Sterling Harry, 1918-

Cases in collective bargaining and industrial relations : a decisional approach / Sterling H. Schoen, Raymond L. Hilgert.—6th ed.

p. cm.

Includes bibliographies and indexes.

ISBN 0-256-06990-5 (pbk.)

1. Collective labor agreements—United States—Cases.
I. Hilgert, Raymond L. II. Title.
KF3408.A4S3 1989
344.73'0189—dc 19
[347.304189] 88-21824
CIP

Printed in the United States of America
5 6 7 8 9 0 D O 5 4 3 2

Preface

This sixth edition provides a convenient but extensive set of cases in a variety of union-management problem situations. The book is probably most appropriate as a supplementary text in basic or survey courses in collective bargaining, labor economics, and industrial relations. The cases vary in length, complexity, and numbers of issues. Therefore, the collection of cases is of sufficient magnitude and depth that the book would be suitable for advanced courses or case courses in the field of collective bargaining and labor relations.

A major objective is to provide a means by which students can apply principles, concepts, and legal considerations that they have learned to realistic decision situations and confrontations between labor and management. We have used the cases in seminars and classes and have found them to be challenging and fascinating learning instruments.

The cases are representative of the types of problems that continue to confront management and labor unions. Cases such as these test analytical ability in dealing with challenging human relations and union-management situations in a way useful even for students who do not have a management or labor relations career in mind.

In an effort to reflect the impact of recent trends, we have collected representative cases dealing with problems that focus upon current issues both in the private and public sectors. Some 30 percent of the cases in the sixth edition are new to this collection. The cases we have retained from previous editions provide continuity and balance, and these cases are "timeless" in the evaluation of union-management relations.

Part One of the book presents a collection of National Labor Relations Board cases as restructured from published reports of the NLRB and court decisions. Our intent has been to describe each situation from the perspective of impartial writers reporting the facts and issues of the case. The case format has been developed as follows: the background information of the case is first presented, including relevant legal issues; the position of the union(s) or person(s) is stated; and the position of the management or company is stated. An introductory discussion and important and substantive sections of the Labor Management Relations Act (as amended) are included at the outset of Part One to enable students to become familiar with the provisions of the Act that are applicable throughout the cases.

We believe that the legal obligations and responsibilities of unions and management under the Labor Management Relations Act con-

tinue to be among the most dynamic and important areas of collective bargaining today. Case studies such as those in the first section enable the student to appreciate the nature of this Act, its application in numerous union-management situations, and the duties and legal obligations of management and union representatives to carry out their bargaining responsibilities in good faith.

Part Two consists of cases adapted from grievance-arbitration decisions. We are grateful to the Bureau of National Affairs, Inc., (Stanley E. Degler, vice president and executive editor) for permission to adapt certain published cases from *Labor Arbitration Reports*. Here, too, the approach has been to restructure these actual arbitration cases in a convenient format. The highlights and issues of each case are provided through relevant background information, including the contractual clauses, rules, practices, and the like, which are pertinent. Principal arguments of the union and management sides are then presented. Cases in this part demonstrate complexities and controversial areas that continue to manifest themselves in the ongoing relationships between management and union personnel. We also have included a brief introductory discussion of the major considerations involved in grievance-arbitration procedures from which these cases emanate.

For both the NLRB and labor arbitration cases—which have not been selected with any intent of presenting "good" or "bad" or "right" or "wrong" union-management practices—the student should ask, "What are the problems or principal issues?" "What is at stake between the parties?" "What is justice or equity in the situation?" "What does the law require?" "What does the contract say on the issue(s)?" "How have previous NLRB decisions or previous labor arbitration decisions handled similar circumstances?" These types of questions, and the more specific questions we have developed at the conclusion of each case, urge students toward a deep analysis of issues. Decisions of the NLRB, the courts, and labor arbitrators for these cases are included in an instructor's manual. It has been the authors' experience that most students want to compare their decisions and approaches with those of authorities in the field.

Index and classification tables are included in each section of the book prior to the cases. These tables briefly cite the major issues of each case; for the NLRB cases, legal provisions are indicated. Selected bibliographies are also provided for more detailed reading in areas that either directly or indirectly are involved in the cases and materials in both sections of the book.

Although we cannot recognize everyone who has had a part in developing this book, we wish to acknowledge the following professors who reviewed the text and instructor's manual and who offered numer-

ous helpful suggestions and insights: Geraldine Ellerbrock of California Polytechnic State University at San Luis Obispo; Brian Heshizer of Cleveland State University; Stanley Huff of Denison University; Chalmer Labig of Oklahoma State University; and Mitchell Novit of Indiana University. We are particularly grateful to Karl Sauber of the St. Louis office of the National Labor Relations Board, whose assistance in developing several cases for Part One was invaluable. The cooperation of Charles Riley of the St. Louis office of the Federal Mediation and Conciliation Service in providing us with FMCS materials is similarly acknowledged.

Sterling H. Schoen
Raymond L. Hilgert

Contents

PART ONE

Legal Aspects of Collective Bargaining

National Labor Relations Board Cases

Introduction to The Labor Management Relations Act (LMRA)

This introductory section will briefly introduce the principal provisions of the Labor Management Relations Act (LMRA) of 1947 as amended. A partial text of this Act follows this introductory section. For even more analytical understanding of the provisions of the Act and its applications, a selected bibliography for reading is included at the end of this introductory section. It also is recommended that the student of collective bargaining and industrial relations contact a regional or national office of the National Labor Relations Board (NLRB) to obtain various NLRB publications that explain detailed principles and procedures involved in administration of the law. For example, a publication included in the bibliography entitled, *A Guide to Basic Law and Procedures under the National Labor Relations Act,* is prepared by the Office of the General Counsel of the NLRB; this booklet is very helpful for understanding many of the day-to-day activities of the Board and some of its most recent thinking. Parts of this publication have been excerpted and included in this introductory section.

The LMRA of 1947, also known as the Taft-Hartley Act in recognition of the principal congressional authors of the law, is the principal labor legislation governing the "rules of the game" of collective bargaining for the private sector of the U.S. economic system.[1] The LMRA of 1947 constituted a major amendment and revision of the National Labor Relations (Wagner) Act of 1935. The Act since has been amended a number of times (1951, 1958, 1959, 1969, 1973, 1974, and

[1] The Railway Labor Act of 1926 (as amended) governs collective bargaining in the rail and airline industries. Although the Railway Labor Act is not widely applicable and some of its provisions are considerably different from those in LMRA, its premises and procedures were drawn upon by the framers of the National Labor Relations (Wagner) Act of 1935, upon which the Act of 1947 subsequently was based. The student is encouraged to study the provisions of the Railway Labor Act, as well as a history of labor laws in the railroad industries, which led to the passage of the Railway Labor Act of 1926.

1980); the 1974 amendments primarily focused upon health care institutions. As it stands today, the Act is the fundamental legislative basis for the majority of union-management relationships in the United States.[2] The LMRA is an extremely complex document in and of itself. Of even greater complexity, however, is the body of administrative laws and decisions that has evolved over the years of its existence in hundreds of thousands of union-management cases. The Act is constantly being tested, evaluated, and reevaluated by the NLRB, the courts, and by the Congress of the United States in the light of changing times, new confrontations, and new decisions. It is not the purpose of this section to completely interpret the Act nor to present it in its entirety. Rather, selected parts of the Act will be discussed to underscore the major elements of the Act governing the collective bargaining process. An understanding of these parts of the Act should provide sufficient insights on which analysis of various aspects of specific union-management cases may be based.

EXCERPTS AND COMMENTS ON THE TEXT OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

Section 1. The Statement of Findings and Policy

The LMRA begins with a statement to the effect that industrial strife interferes with the normal flow of commerce. The purpose of the Act is to promote the full flow of commerce by prescribing and protect-

---

[2] One of the major developments in contemporary labor relations has been at the federal government employee level. Executive Order 10988, originally signed by President Kennedy in 1962, was replaced by Executive Order 11491, issued by President Nixon in 1970. (Executive Orders 11616 and 11636 issued by President Nixon in 1971, and Executive Order 11838, issued by President Ford in 1975, amended Executive Order 11491.) These orders provided federal employees with union representation and collective bargaining rights. Subsequently, in 1978, Title VII of the Civil Service Reform Act replaced these Executive Orders and consolidated into law provisions for civilian federal government employees to govern collective bargaining in the federal sector. Title VII of the Civil Service Reform Act (Public Law 95-454) closely parallels the LMRA in many fundamental areas, with many of its provisions similar to various provisions in LMRA governing union-management relations in the private sector. Of course, federal government employees do not have the right to strike nor to have a "union shop," and a number of key areas remain outside the scope of bargaining in the federal sector. For example, most wages and certain working conditions are set by Congress, and a number of areas of employee concern are handled under federal and civil service regulations. Further, this Act created a new administrative agency, the Federal Labor Relations Authority (FLRA), whose functions are similar to those of the National Labor Relations Board (NLRB). Numerous cases decided in the federal sector have drawn heavily for precedent and policy from decisions of the NLRB in the private sector. Included in the bibliography

ing rights of employers and employees and by providing orderly and peaceful procedures for preventing interference by either with the legitimate rights of the other.

This statement of public policy also points out that the labor law of the land is designed to regulate both unions and employers in the public interest. The Act encourages employees to exercise their right to organize labor unions and to bargain collectively with their employers as a means of balancing bargaining power. At the same time, the Act encourages union and employer practices that are fundamental to the friendly adjustment of industrial disputes, with the objective of eliminating some union and employer practices that impair the public interest by contributing to industrial unrest and strikes.

The NLRB, which is the federal agency administering the Act, has consistently interpreted this section to mean that the public policy of the United States is to promote and encourage the principle of unionism.

Section 2. Definitions

This section of the Act defines various terms used in the statement of the Act, and also outlines the coverage of the Act. By its terms, the Act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. In addition, the Act specifically states that it does not apply to the following:

Agricultural laborers, as defined by the Fair Labor Standards Act (Wage-Hour Law).

Domestic servants.

Any individual employed by one's parent or spouse.

Government employees, including those of government corporations or the Federal Reserve Bank, or any political subdivision such as a state or a school district.[3]

---

at the end of this introductory section are a number of sources to consult for public sector bargaining law, cases, and decisions.

The U.S. Postal Service was brought under partial coverage of the LMRA through enactment of the Postal Reorganization Act of 1970 (Public Law 91-375). This law granted the NLRB jurisdiction over the U.S. Postal Service for various aspects of bargaining unit determination, unfair labor practices, and related matters. The authors have included one case from the postal sector in this part of the text.

[3] A number of states have laws—which vary widely in scope and coverage—to provide collective bargaining rights and procedures for state and local government employees, including teachers and employees of government operated health care facilities. In 1984, Illinois became the most recent state to enact a comprehensive labor relations law for its public employees. *(continued on next page)*

Independent contractors who depend upon profits, rather than commissions or wages, for their income.

Employees and employers who are subject to provisions of the Railway Labor Act.

Supervisors are excluded from the definition of employees covered by the Act. Whether or not a person is a supervisor is determined by authority rather than by title. The authority required to exclude an employee from coverage of the Act as a supervisor is defined in Section 2(11) of the Act.

All employees properly classified as "managerial," not just those in positions susceptible to conflicts of interest in labor relations, are excluded from the protection of the Act. This was the thrust of a decision of the Supreme Court in 1974.

The 1974 amendments to LMRA (Public Law 93-360) brought all private health-care institutions, whether or not operated for a profit, under the coverage of the Act. Section 2(14) defines a private health care institution as, "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person."

An *employer* is defined in the law as including "any person acting as an agent of employer, directly or indirectly." A *person* is defined to include "one or more individuals, labor organizations, partnerships, associations, legal representatives, trustees, trustees in bankruptcy, or receivers."

The term *labor organization* means any organization, agency, or employee representation committee or plan in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work.

Section 2(12) defines the meaning of the term *professional employee,* for which specific organizational rights are guaranteed in a later section.

The following sources are recommended for a review of legislation governing collective bargaining for state, local, and municipal government employees: Marvin J. Levine, *Labor Relations in the Public Sector: Readings and Cases,* 2d ed. (Columbus, Ohio: Grid, 1985); and Michael T. Leibig and Wendy L. Kahn, *Public Sector Organizing and the Law (Washington, D.C.:* The Bureau of National Affairs, Inc., 1987).

Sections 3, 4, 5, 6. The National Labor Relations Board

Section 3 creates the NLRB as an independent agency to administer the Act. The NLRB consists of five members appointed by the President of the United States.

Section 3 also authorizes the appointment of a General Counsel of the Board, who is given supervisory authority over the Board attorneys and officers and employees in the regional offices of the Board.

Sections 4 and 5 outline certain compensation, procedural, and administrative authorities granted to the NLRB by the Congress.

However, the key section is Section 6, which gives the Board authority to establish rules and regulations necessary to carry out provisions of the LMRA. *In effect, this section empowers the NLRB to administer and interpret the labor law in whatever manner it deems appropriate to the situations encountered.*

In order to do this, the Board has developed various standards—for the most part, dollar sales or volume standards—by which it determines whether or not a business enterprise is deemed to be interstate commerce and thus covered under the provisions of the Act.[4]

---

[4] For example, the NLRB has used a standard of $500,000 total annual volume of business to determine whether a *retail enterprise* should be considered interstate. For *nonretail businesses* the Board uses two tests: *(a)* direct sales to consumers in other states or indirect sales through others, called outflow, of at least $50,000 a year; or *(b)* direct purchases of goods from suppliers from other states or indirect purchases through others, called inflow, of at least $50,000 a year.

Among the NLRB jurisdictional standards in effect since July 1, 1976, are the following:

Office buildings: Total annual revenue of $100,000, of which $25,000 or more is derived from organizations that meet any of the standards except the indirect outflow and indirect inflow standards established for nonretail enterprises.

Public utilities: At least $250,000 total annual volume of business, or $50,000 direct or indirect outflow or inflow.

Newspapers: At least $200,000 total annual volume of business.

Radio, telegraph, television, and telephone enterprises: At least $100,000 total annual volume of business.

Hotels, motels, and residential apartment houses: At least $500,000 total annual volume of business.

Transit systems: At least $250,000 total annual volume of business.

Taxicab companies: At least $500,000 total annual volume of business.

(continued on next page)

The Board has developed detailed rules, policies, and procedures by which it determines appropriate collective bargaining units, holds representational elections, investigates labor disputes, and other such matters. *The NLRB by its policies and rulings in effect can and does reshape the Act, subject only to review of the federal courts.* The Appendix to this introductory section will provide an overview of the general operations of the NLRB and the magnitude of those operations.

Privately operated health care institutions: At least $250,000 total annual volume of business for hospitals; at least $100,000 for nursing homes, visiting nurses' associations, and related facilities; and at least $250,000 for all other types of private health care institutions defined in the 1974 amendments to the Act.

Associations: These are regarded as a single employer in that the annual business of all association members is totaled to determine whether any of the standards apply.

Enterprises in the territories and the District of Columbia: The jurisdictional standards apply in the territories; all businesses in the District of Columbia come under NLRB jurisdiction.

National defense: Jurisdiction is asserted over all enterprises affecting commerce when their operations have a substantial impact on national defense, whether or not the enterprises satisfy any other standard.

Private universities and colleges: At least $1 million gross annual revenue from all sources (excluding contributions not available for operating expenses because of limitations imposed by the grantor).

Symphony orchestras: At least $1 million gross annual revenue from all sources (excluding contributions not available for operating expenses because of limitations imposed by the grantor).

Ordinarily if an enterprise does the total annual volume of business listed in the standard, it will necessarily be engaged in activities that "affect" commerce. The Board must find, however, based on evidence, that the enterprise does in fact affect commerce.

The Board has established the policy that if an employer whose operations affect commerce refuses to supply the Board with information concerning total annual business, and so on, the Board may dispense with this requirement and exercise jurisdiction.

Section 14(c) (1) authorizes the Board, in its discretion, to decline to exercise jurisdiction over any class or category of employers where a labor dispute involving such employers is not sufficiently substantial to warrant the exercise of jurisdiction, provided that it cannot refuse to exercise jurisdiction over any labor dispute over which it would have asserted jurisdiction under the standards it had in effect on August 1, 1959.

Finally, the NLRB has adopted other standards and policies that it uses in determining its jurisdiction, depending upon various types of businesses and unique conditions involved. For example, in 1976 the NLRB changed its policy of exempting nonprofit, noncommercial, and charitable institutions from coverage of LMRA. The Board asserted that it would use the same general revenue standards for these types of institutions to determine whether an employer's operations "substantially affect interstate commerce" and thus should be subject to provisions of the Act.