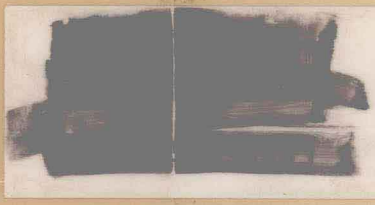

L. HILGERT
H. SCHOEN

COLLECTIVE BARGAINING & INDUSTRIAL RELATIONS

A DECISIONAL APPROACH

8TH EDITION

3TH
EDITION

Cases in Collective Bargaining & Industrial Relations

A Decisional Approach

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Preface

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

Our major objective has been to provide a means by which students can apply principles, concepts, and legal considerations they have learned to real decision situations and confrontations between labor and management. We have used these cases in seminars and classes and have found them challenging and fascinating learning instruments.

The cases are representative of the types of problems that perennially confront management and labor unions. These cases test analytical ability in dealing with challenging human relations and union-management conflicts 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 current issues both in the private and public sectors. About 35 percent of the cases in the eighth edition are new. Those we have retained from previous editions provide continuity and balance, and are "timeless" in their elucidation of union-management relations.

Part I of the book presents 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. For the most part the case formats are developed as follows: the background information of the case is presented, including relevant legal issues; the position of the union(s) or person(s) and the position of the management or company are then stated. An introductory discussion and important and substantive sections of

the Labor Management Relations Act (as amended) are included at the outset of Part I to enable students to become famililar with the provisions of the Act applicable throughout the cases.

We believe that the legal obligations and responsibilities of unions and management under the Labor Management Relations Act continue to be among the most dynamic and important issues 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 various union-management situations, and the duties and legal obligations of management and union representatives to carry out their bargaining responsibilities in good faith. These principles are applicable for the most part in public sector labor relations where other statutes provide the legal framework for collective bargaining.

Part II consists of cases adapted from grievance-arbitration decisions. We are grateful to the Bureau of National Affairs, Inc. (Judith Springberg, Permissions Manager), 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 that are pertinent. Principal arguments of the union and management sides are then presented. Cases in Part II demonstrate complexities and controversial areas that manifest themselves in the ongoing relationships between management and union personnel. We have included a brief introductory discussion of major considerations in the grievance-arbitration procedures from which these cases emanate.

In studying both the NLRB and labor arbitration cases—which have been selected without 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 questions, and the more specific questions we have developed at the conclusion of each case, urge students toward analysis of issues. Decisions of the NLRB, the courts, and labor arbitrators for these cases are provided 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 open each part of the book. These tables cite the major issues of each case; for the NLRB cases, legal provisions are indicated. Selected bibliographies provide more detailed reading in areas either directly or indirectly involved in the case materials.

Although we cannot recognize everyone who has had a part in developing this book, we wish to acknowledge the following professors who reviewed the previous editions of the text and instructor's manual and who offered numerous helpful suggestions and insights:

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Case Problems in Union-Management Relations: Cases from Grievance Arbitration

PART I

Legal Aspects of Collective Bargaining: National Labor Relations Board Cases

Introduction to the Labor Management Relations Act (LMRA)

This introductory section will briefly explain the principal provisions of the Labor Management Relations Act (LMRA) of 1947 as amended. A partial text of the Act follows. For more detailed understanding of the provisions of the Act and its applications, a selected bibliography 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 adapted and included here.

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 1980); the 1974 amendments focused primarily on health care institutions. As it stands today, the Act is the fundamental legislative basis for private sector union-management relationships in the

[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 that led to the passage of the Railway Labor Act of 1926.

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

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[2]A major component of public sector labor relations is 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. Federal government employees do not have the right to strike or to have a "union shop," and a number of key areas remain outside the scope of bargaining in the federal sector. For example, general compensation levels, benefit entitlements, and certain general conditions of employment are largely determined by congressional legislation; many areas of employee concern are handled under federal and civil service regulations. The Civil Service Reform 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). Some cases decided in the federal sector have drawn for precedent and policy from decisions of the NLRB in the private sector. Included in the bibliography 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 Postal Reorganization Act contains provisions for negotiation of collective bargaining agreements between the Postal Service and labor organization bargaining representatives. These provisions include a procedure for mediation and even binding arbitration of disputes when the parties are unable to reach a negotiated agreement.

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.

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]

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

Individuals employed by an employer 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.

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[3]About half the 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. For example, in 1984 the state of Illinois enacted a comprehensive labor relations law for its public employees, which contains many provisions that are comparable to provisions within Title VII of the Civil Service Reform Act for federal employees.

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,* 2nd ed. (Columbus, Ohio: Grid, 1985); Michael T. Leibig and Wendy L. Kahn, *Public Employee Organizing and the Law* (Washington, D.C.: Bureau of National Affairs, 1987); and Benjamin Aaron, Joyce Najita, and James L. Stern, *Public Sector Bargaining,* 2nd ed. (Washington, D.C.: Bureau of National Affairs, 1988).

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 an 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.

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 as it deems appropriate to the case 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 or some other form of enterprise is deemed to be interstate commerce and thus covered under the provisions of the Act.[4] The Board has developed detailed rules, policies, and

[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 at the time of writing this text 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.

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

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.

Law firms and legal assistance programs: At least $250,000 gross annual revenues.

Employers that provide social services: At least $250,000 gross annual revenues.

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, the NLRB asserts jurisdiction over gambling casinos when these enterprises are legally operated and their total annual revenue from gambling is at least $500,000.

Section 7. Rights of Employees

This section is perhaps one of the most significant in the Act. It guarantees employees the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in (or refrain from) certain other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Examples of employee rights protected by Section 7 are:

Forming or attempting to form a union among the employees of a company.

Joining a union.

Assigning a union to organize the employees of any company.

Going out on strike for the purpose of attempting to obtain improved wages, hours, or other conditions of employment.

Refraining from joining a union (in the absence of a valid union shop agreement).

An individual does not have to be a member of a labor union or involved in promoting a labor union in order to be protected by Section 7. Included in Part I are a number of cases in which individual employees claimed that what their employers had prohibited them from doing were "protected concerted activities."

Unfair Labor Practices: Employers

The unfair labor practices of employers are listed in Section 8(a) of the Act; those of labor organizations in Section 8(b). Section 8(e) lists an unfair labor practice that can be committed only by an employer and a labor organization acting together.

Section 8(a) (1). Employers are forbidden from engaging in practices that would interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7.

Section 8(a) (1) constitutes a broad statement against interference by the employer; employers violate this section whenever they commit any unfair labor practices. Thus, a violation of Section 8(a) (2), (3), (4), or (5) also results in a violation of Section 8(a) (1).

Various acts of an employer may independently violate Section 8(a) (1). Examples of such violations are:

Threatening employees with loss of jobs or benefits if they should join or vote for a union.

Threatening to close down the plant if a union should be organized in it.

Questioning employees about their union activities or membership in such circumstances as will tend to restrain or coerce the employees.

Spying on union gatherings, or pretending to spy.

Granting wage increases deliberately timed to discourage employees from forming or joining a union.