

Society for Human Resource Management

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Module 5: Employee and Labor Relations

22% PHR (49 questions)
18% SPHR (41 questions)

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Milestones in Employee and Labor Relations

The timeline shows the following milestones:

- Industrial revolution
- Knights of Labor organized 1869
- AFL founded 1880
- Sherman Anti-Trust Act 1890
- Clayton Act 1914
- Railway Labor Act 1926
- National Industrial Recovery Act 1933
- Norris-LaGuardia Act 1932
- Wagner Act (NLRA) and founding of NLRB and Social Security Act 1935
- Taft-Hartley Act 1947
- Union membership peaks 1950s
- Landrum-Griffin Act (also known as the Reporting and Disclosure Act) 1959

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Why People Join Unions

Fairness issues

- Consistent and fair enforcement of company policies
- Follow-through on company promises

Perception of substandard conditions

- Wages or benefits
- Working conditions (safety)
- Comfort issues (eating areas and parking)

Company responsiveness

- Failure to address employee concerns

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Recent Union Trends

- Formation of the Change to Win union
- Concern over health insurance, pension issues, and corporate bankruptcies
- Adoption of aggressive organizing strategies
- New forms of membership (associate members)
- Recruiting of nontraditional members

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National Labor Relations Act (Wagner Act)

- The NLRA was passed for the purpose of protecting and encouraging the growth of the union movement.
- Important!** The Act applies to **all workers**, not just union workers.
- Allows workers to:
 - Organize themselves.
 - Form, join, or assist labor organizations.
 - Bargain collectively.
 - Engage in concerted activity for the purpose of mutual aid and protection.

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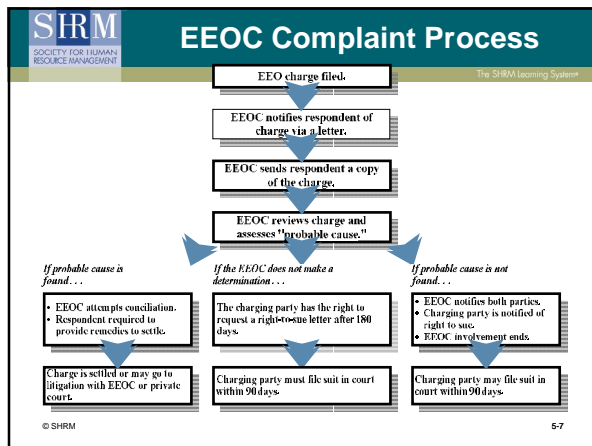
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Employee Relations and EEO Laws

- EEO laws prohibit employment discrimination.
- Laws provide protection that some employees once looked to unions to provide.
- The EEOC is responsible for handling complaints related to discrimination.
- As a general rule, complaint charges must be filed within 180 days of the alleged discrimination.
- EEOC may ask an employer to initiate mediation before it investigates a complaint.**

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The Litigation Process

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- Notification of counsel after delivery of complaint
- Answering the complaint
- Scheduling conferences
- Discovery process
- Summary judgment
- Pretrial and trial

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Common Law

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- Based on **court decisions** rather than statutory law.
- **Employment-at-will (EAW) is one of the most important common-law doctrines.**
 - Employers have the right at any time, with or without prior notice, to hire, fire, demote, or promote anyone they choose unless there is a law or contract to the contrary.
 - Employees may quit at any time for any reason, with or without prior notice.

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Exceptions to EAW

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Public policy	• Allows employees to fulfill legal obligations or exercise their rights (jury duty, whistleblowing).
Implied contract	• Recognizes agreement implied from circumstances (employee handbook).
Implied covenant of good faith and fair dealing	• Requires honesty in transactions (cannot fire an employee shortly before he or she is eligible for a pension).

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Common-Law Tort Claims

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Tort law protects a person's:

- Physical safety and well-being.
- Enjoyment of their property
- Financial resources.
- Reputation.

Tort claims arise when these rights are affected.

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Common Law Tort Claims

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- Negligent hiring/Negligent retention
- Defamation
- Fraudulent misrepresentation
- Duty of loyalty
- Invasion of privacy

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Negligent Hiring/Retention


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The hiring of an employee who the employer knew (or should have known) posed a risk to others

The retention of an employee who engages in misconduct that poses a threat to others during and after working hours

Claims can be prevented by conducting background and reference checks on applicants.

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Defamation

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- Injuring someone's reputation by making a false and malicious statement.
- Statement may be spoken (slander) or written (libel).
- Statement must be shown to be:
 - False and malicious.
 - Harmful to an employee's reputation.
 - Made without a legitimate business reason.

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Fraudulent Misrepresentation


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Intentional deception relied upon and resulting in injury to another person.

May include claims regarding significant terms of a job offer.

Can include silence, innuendoes, or gestures that are deceiving; need not be a positive statement.

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Other Common-Law Tort Claims

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Employee's duty of loyalty

- Employee must not degrade the employer's reputation, service, or products.
- Employee must not harm the employer's business.
- Obligation ceases when employment relationship ends.

Invasion of privacy

- Unreasonable intrusion into seclusion of another.
- Appropriation of a name or likeness.
- Publication that generates unreasonable or false publicity.

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Common-Law Contract Issues

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- **Contract definition:**
 - Agreement between two or more persons to do or not do something in exchange for something of value.
- Contract law provides remedies if the contract is breached.
- Contracts can be written or oral.



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Agreements Enforced by Law

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Express oral contract

Unfair competition and noncompete agreements

Inevitable disclosure

Employee's duty of loyalty and confidentiality

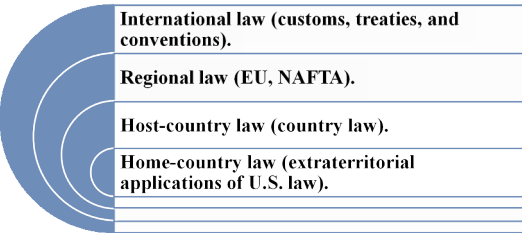
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Global Employee and Labor Relations

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Laws that govern international employee and labor relations include:



- International law (customs, treaties, and conventions).
- Regional law (EU, NAFTA).
- Host-country law (country law).
- Home-country law (extraterritorial applications of U.S. law).

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Key International Labor Relations Terms

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- Codetermination** – Practice in which employees have a role in the management of a company that includes **worker representatives with voting rights on the corporate board of directors**.
- Collective Bargaining** – The process used to formulate labor-management agreements.
- Industrial Democracy** – Employees have **legally mandated rights** to participate in management decisions.
- Shop-floor Participation** – Participatory management approach in which workers have the opportunity to identify problems and help resolve them.
- Social Charter** – Legislation pending before the EU where employment conditions and practices would be standardized throughout the EU.
- Work Councils** – Groups of workers and management representatives charged with examining how to improve company performance, working conditions, job security, etc., but where the company has final right of approval.

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HR's Role in Developing Positive Employee Relations

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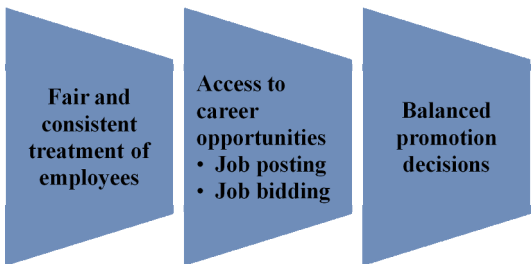
- **Work for the fair treatment of employees**
- **Train management in fairness issues**
- **Maintain and/or improve employee morale**
- **Attempt to resolve employee problems**
- **Treat employees fairly and respect their dignity**

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Positive Characteristics of Union-Free Organizations

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- Fair and consistent treatment of employees
- Access to career opportunities
 - Job posting
 - Job bidding
- Balanced promotion decisions

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Feedback and Communication in Union-Free Organizations

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- Attitude (*climate*) surveys
- HR/labor relations reviews
- *Skip-level interviews*
- Open-door meetings
- Department meetings
- Employee committees, called *employee councils*
- Electronic communications
- Problem-solving procedures
- Counseling

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Total Rewards in a Union-Free Environment

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- **Nonunion companies provide information on:**
 - Compensation and salary data.
 - Market comparisons.
 - Salary grades.
 - How raises are awarded.
 - Cost of health care.
- **Nonunion companies develop:**
 - Performance appraisal systems.
 - Rewards and recognition programs.
 - Train their managers

[To an employee, the company is no better or worse than their immediate supervisor](#)

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Labor/Management Cooperative Strategies

- Greater acceptance of partnerships
- Willingness to share power
- Open and candid sharing of information
- Joint decision making on common issues
- Win-win negotiating
- Shared responsibility and accountability

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Involved Employees

- Empowered employees contribute more to the long-term health of the organization
- Have a more positive attitude
- Can help identify solutions to quality and productivity problems
- Are more committed to organizational goals

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Employee Involvement (EI)

- Links the shared interests of the employee and the company for mutual benefit.
- Gives employees the freedom and responsibility to make job-related decisions.
- Also known as participative management or empowerment.
- HR communicates company goals, develops and maintains EI programs, and helps build trust in employees.

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EI Strategies: Job Design

Aims at balance between:

<ul style="list-style-type: none"> Efficiency <ul style="list-style-type: none"> Division of labor Standardization Specialization 	<ul style="list-style-type: none"> Employee satisfaction <ul style="list-style-type: none"> Skill variety Task identity Task significance Autonomy Feedback Job enlargement, rotation, and enrichment
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Frederick Taylor's concept of Scientific Management (Concern for Efficiency)

- Division of Labor – Jobs are reduced to their smallest components
- Standardization – The most efficient way to do a job is determined and uniformly instituted
- Specialization – As employees performed the same task, they became more proficient
- Although these techniques can develop expertise and lead to economic advantages, they can also lead to boredom and low morale.

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Elton Mayo's Hawthorne Studies (Employee Satisfaction)

- Heralded the beginning of the human relations movement and the study of industrial sociology, which advocated job design as a way to direct work groups toward the goals of the organization.
- Proved that individual behaviors are altered when workers are involved and management shows interest in an employee's work.

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Characteristics of Job Design

- **Skill Variety** – Job requires a variety of different skills (*Meaningfulness*)
- **Task Identity** – Job requires a “whole” identifiable unit of work (*Meaningfulness*)
- **Task Significance** – Job has a significant impact on other people (*Meaningfulness*)
- **Autonomy** – Employee has freedom and discretion in his/her work (*Responsibility*)
- **Feedback** – Clear information is received on job performance (*Knowledge of results*)

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Job Redesign Strategies

- **Job enlargement** – Broadens the scope of a job by expanding the number of different tasks, adding similar operations
- **Job rotation** – Breaks the monotony of routine jobs by shifting employees between comparable but different jobs
- **Job enrichment** – Increases the depth of job by adding responsibility

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EI Strategies: Alternate Work Schedules

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graph TD
    Flextime --- Schedules
    Telecommuting --- Schedules
    CompressedWorkweeks[Compressed workweeks] --- Schedules
    PhasedRetirement[Phased retirement] --- Schedules
    RegularPartTime[Regular part-time] --- Schedules
    JobSharing[Job sharing] --- Schedules
    Schedules --- Center(( ))
  
```

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EI Strategies: Workplace Teams

```

graph TD
    Committees --- Teams
    WorkTeams[Work teams] --- Teams
    ProjectTeams[Project teams] --- Teams
    TaskForces[Task forces] --- Teams
    SelfDirectedTeams[Self-directed teams] --- Teams
    Teams --- Center(( ))
  
```

Teams are accountable for specific objectives and performance goals.

Teams and job design combine to increase productivity and job satisfaction.

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EI Strategies: Workplace Teams

- **Committees** – Have an ongoing charter, cross-functional, consists of volunteers. (ex. Safety Committee)
- **Work Team** – Has an ongoing charter, may be organized by function or across functions, participation is a permanent part of daily work. Cross-functional work team are referred to as “horizontal” teams.
- **Task Force** – (T)emporary, ad hoc assignments, consists of volunteers, address long-term strategic issues.
- **Project Team** – Ad Hoc assignments, cross functional, comes together for a specific project.
- **Self-directed Team** – Assumes complete autonomy in a specific area of work. Participation is a permanent part of daily work.

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Employee Suggestion Systems

To ensure success:

- Publicize the system.
- Collect and evaluate suggestions regularly.
- Develop rules for judging suggestions.
- Respond promptly to suggestions submitted.
- Share viable suggestions with upper management for approval and reward.
- Match the reward to the suggestion.

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Assessment Methods

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- Improving the workplace and increasing employee engagement begins with knowing what employees need and value.
- HR can use two primary tools for assessment
 - Employee surveys
 - Employee focus groups

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Employee Surveys

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Attitude Surveys Measure job satisfaction	Opinion Surveys Measure data on specific issues
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Employees should be guaranteed anonymity and given feedback on results.

Value of surveys is in measuring improvements over regular time periods.

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Benefits of Employee Surveys


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- Provides a direct means of assessing employee attitudes that would otherwise be unreported
- Shows employees that their views are considered important
- Increases levels of trust, if results are acted upon
- Detects early warning signs of workplace issues before they become problems

The value of surveys is in measuring improvements over regular time periods.

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Special Considerations

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- Give feedback on the results of the survey
- Guarantee anonymity
- Employees will be brutally honest, if management cannot accept criticism, don't perform survey
- HR will most likely take a hit
- Employees may not put some issues in proper perspective
- Online surveys yield the highest response rates

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Employee Focus Groups


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- Small group participating in a structured discussion with a facilitator.
- Provide qualitative data on specific issues.
- The qualitative data enriches quantitative results.
- Provide in-depth feedback on specific issues.
- Often used as a follow-up to a survey.



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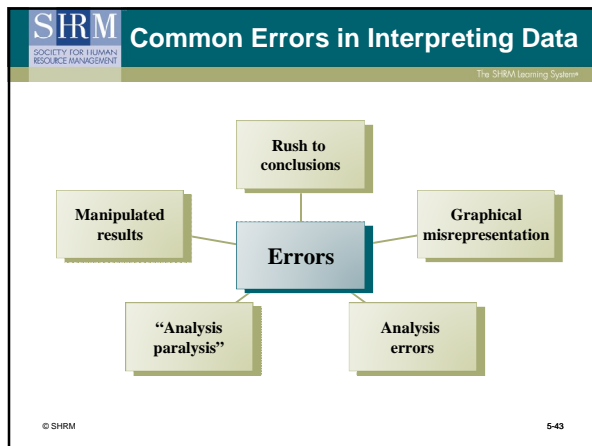
Special Considerations for Focus Groups

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- Planning is critical, work the bugs out first
- The right facilitator is important: should be independent, good listener, know the topic reasonably well, possess facilitation skills, be conscious of time restraints, have enthusiasm for the session
- The importance of participant selection
- Note taking is important

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Policies, Procedures, and Work Rules

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Policy	Broad statement that reflects philosophy, objectives, or standards; general in nature.
Procedure	Detailed, step-by-step descriptions ; specify what, when, where, and who.
Work rule	Reflects management decisions regarding specific actions to be taken or avoided in a given situation.

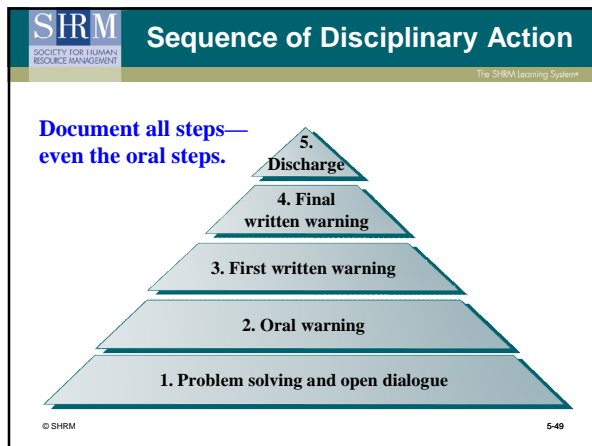
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- ## Guidelines for Employee Handbooks
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- Keep it simple and current, include necessary legalities
 - Distinguish between company-wide policies and job specifics.
 - Accommodate multilingual requirements.
 - Obtain evidence of receipt.
 - Create an appealing, well-written book.
- Improperly drafted handbooks can create an employment-at-will exception.**
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- ## Properly Administered Discipline
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- Transmits rules of the organization
 - Corrects an errant employee's behavior
 - Promotes fairness
 - Preserves respect for management
 - Demonstrates that a terminated employee was treated fairly
 - Should concentrate on the desired results rather on the employee's shortcomings
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- ## Behavior Issues
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- **Absenteeism:**
 - Time lost when employees do not come to work as scheduled
 - **Tardiness:**
 - Time lost when employees report to work late
- When taking disciplinary action for excessive absenteeism or tardiness, do not count absences protected by FMLA, USERRA, or state law.**
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- ## Preventive Measures to Avoid Disciplinary Action
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- Set clear expectations with detailed job descriptions.
 - Establish written policies, procedures, and work rules.
 - Establish a climate of communication.
 - Maintain an open-door policy.
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Alternative Dispute Resolution (ADR)

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- A problem solving and grievance resolution approach that:
 - Is cost efficient
 - Provides employees and employers a fair and private forum to resolve workplace disputes
 - Reduces the number of cases that end up being litigated in court or in formal arbitration, **but it does not preclude litigation.**

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Alternative Dispute Resolution “ADR” Options

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- Open-door policy (preventive)
- Ombudsperson (increases management access but not empowered to settle)
- Peer review (**may not change company policy**, but may recommend changes to company policy; often limited to suspensions and discharges)
- Mediation (nonbinding)
- Arbitration (binding or nonbinding)

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Circuit City Stores v. Adams

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- **The Supreme Court held that a provision in a pre-hire employment application requiring that all employment disputes be settled by arbitration was enforceable under the Federal Arbitration Act (FAA).**

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EEOC v. Waffle House

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- **The Supreme Court held that even if there is a mandatory arbitration agreement, the relevant civil rights agency can still sue on behalf of the employee.**

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Sherman Anti-Trust and Clayton Acts

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Sherman Anti-Trust Act

- Primarily directed at monopolistic employers.
- Resulted in injunctions issued against union activities.

Clayton Act

- Clarified and supplemented the Sherman Anti-Trust Act.
- **Minimally restricted injunctions against labor.**
- Legalized peaceful strikes, picketing, and boycotts.

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Clayton Act


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- Regulated:
 - Price discrimination.
 - Tying contract** – an arrangement in which a seller of one good requires buyers to purchase other goods as well.
 - Exclusive dealing – a producer prohibits customers from purchasing from other sellers.
 - Interlocking directorate** – an arrangement whereby one individual serves on the board of directors of competing firms.
 - Mergers and acquisitions that lessen competition.

Minimally restricted the use of injunctions and legalized peaceful strikes, picketing, and boycotts.

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Railway Labor Act

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- Passed to reduce labor conflict and the possibility of transportation strikes.
 - Gave railroad employees the “right to organize and bargain collectively through representatives of their own choosing.”
 - Seeks to substitute bargaining, arbitration, and mediation for strikes as a means of resolving labor disputes.
- Today it covers both railroad and airline employees.

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Norris-LaGuardia Act

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Restricted federal judicial intervention in labor disputes.


Guaranteed the workers’ right to organize.

Eliminated arbitrary injunctions against nonviolent union activity.

Made yellow-dog contracts unenforceable.

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National Labor Relations Act (Wagner Act)

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Allows workers to organize themselves and bargain collectively.

Prohibits employer unfair labor practices.

Exempts managers, supervisors, agricultural workers, domestic employees, and family workers.

Established the NLRB, which can:

- Conduct secret-ballot elections.
- Remedy ULPs.

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Labor-Management Relations Act (Taft-Hartley Act or LMRA)

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Balanced union and management rights.

Guaranteed employers their right to free speech.


Outlawed sweetheart contracts.

Mandated that unions represent all employees in the bargaining unit.

Allowed unfair labor practice charges to be filed against unions.

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Labor-Management Relations Act (Taft-Hartley Act or LMRA)

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Prohibited the deduction of union dues without written consent.

Outlawed the closed shop.

Established the Federal Mediation and Conciliation Service.

Established provisions for national emergency strikes (80-day cooling-off period).

Permitted states to adopt right-to-work legislation.

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Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act or LMRDA)

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Protects employees from corrupt or discriminatory unions.


Provides a bill of rights for union members.

Permits closed shop exception for construction trades.

Prohibits discrimination against nonunion members.

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Unionization

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- A union is an organization that has the right to represent and bargain for a group of employees.
- Union's primary goal – To gain official recognition from the employer to represent and bargain for a group of employees.

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Recognition

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- Recognition means that an employer recognizes the union as being entitled to conduct collective bargaining on behalf of the workers in a particular bargaining unit.
- Management has a statutory duty to bargain with the union holding such exclusive recognition.

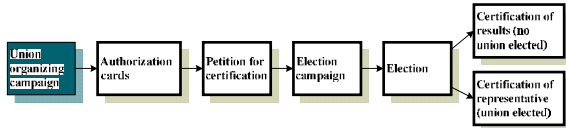
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Road to Unionization

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```


graph LR
    A[Union organizing campaign] --> B[Authorization cards]
    B --> C[Petition for certification]
    C --> D[Election campaign]
    D --> E[Election]
    E --> F[Certification of results (no union elected)]
    E --> G[Certification of representative (union elected)]

```

The process begins with the union organizing campaign.

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Before Launching an Organizing Campaign

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- The seriousness of perceived employee complaints
- Number of potential dues-paying employees
- Estimated cost of the organizing drive and cost of servicing the bargaining unit once it is organized
- Estimated chances of success and cost of servicing the bargaining unit
- Strategic importance of the proposed unit
- Interest by other unions in the unit

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Organizing Campaign

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- Most effective organizing is done inside the workplace by employees.
- Employees can solicit only during non-working time and may distribute literature in non-work areas during non-working time.
- Solicitation rules must apply to all causes and organizations.
- Activities include salting, leafleting, meetings, home visits, phone calls, and internet and media campaigns.

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Salting

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- Process of using paid union organizers to infiltrate an organization and organize its workers.
- An adverse employment action against a salt usually results in the filing of a ULP against the employer.
- Recent NLRB rulings state:
 - An applicant must be genuinely interested in employment to be protected against hiring discrimination based on union activity.
 - The union must provide evidence that supports the period of time a salt would have been employed—the standard used to determine back pay.

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Toering Electric Company

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- NLRB ruled that an applicant for employment must be genuinely interested in seeking to establish an employment relationship with the employer in order to be protected against hiring discrimination based on union affiliation or activity.
- The reasoning: “one cannot be denied what one does not genuinely seek.”
- The NLRB ruled that the NLRB general counsel bears the ultimate burden of proving an individual’s genuine interest in seeking to work for the employer.

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Oil Capital Sheet Metal, Inc.

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- The NLRB ruled placed the burden of proof on the union to provide evidence that supports the period of time it claims a terminated salt would have been employed for the purposes of determining back pay.
- The reasoning: The very purpose of a salt is to attempt to organize a nonunion company and after some period of time, the union will send the salt to the next nonunion company. The union is in a better position to prove the duration of the salt’s employment.

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Inside Organizing Tactics by Unions

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- Meetings off-site
- Home visits – Expensive but one of the most effective techniques
- Telephone organizing – Less effective than home visits, but more economical
- Internet campaign – Can reach a large audience effectively
- Media campaign
- Indirect pressure – Best defense is to have a firmly established and widely communicated response policy.

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Picketing

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- Organizational picketing
 - Induces employees to accept the union as their representative.
- Recognition picketing
 - Obtains employer’s recognition of the union.
- Informational picketing
 - Informs the public that the employer is nonunion.



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Management Rights in a Campaign

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- Management has the right to:
 - Speak out against the organizing attempt.
 - Point out the consequences of a strike and the union’s strike history.
 - Communicate through supervisors and group meetings.
 - Hire consultants to work against unionization.
 - Point out the financial costs of a union.
 - Safeguard employee names and addresses (until the NLRB orders an election).

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Neutrality Agreement

- Contract between a union and an employer under which the employer agrees not to oppose a union's attempt to organize its workforce.
- Common provisions include:
 - Gag rule.
 - No secret ballot election.
 - Union access to employer premises.
 - Union access to personal employee information.
 - Employee attendance at "captive audience" speeches.

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Authorization Cards

```

graph LR
    A[Union organizing campaign] --> B[Authorization cards]
    B --> C[Petition for certification]
    C --> D[Election campaign]
    D --> E[Election]
    E --> F[Certification of results (no union elected)]
    E --> G[Certification of representative (union elected)]

```

- Before ordering an election, the NLRB requires at least 30% of eligible employees to sign authorization cards.
- The union typically wants 50% of eligible employees to sign authorization cards before they petition for an election.

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Petition for Certification

```

graph LR
    A[Union organizing campaign] --> B[Authorization cards]
    B --> C[Petition for certification]
    C --> D[Election campaign]
    D --> E[Election]
    E --> F[Certification of results (no union elected)]
    E --> G[Certification of representative (union elected)]

```

- Petition for certification generally leads to an election supervised by the NLRB.
- Authorization cards are the primary example of evidence that substantial interest exists for supporting a union.
- Union recognition is most commonly the result of an NLRB ordered election.

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Types of Elections

Consent election

- Employer and union waive the preelection hearing.

Directed election

- Ordered by the NLRB when parties cannot consent to an election and after a preelection hearing on unresolved issues.

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NLRB Determinations

NLRB determines:

- If the petition satisfies the requirements.
- If all petitioners are eligible to join a union.
- If the proposed bargaining unit is appropriate.

NLRB sets:

- Date and location of the election.
- Election generally within 30 days of the NLRB decision.

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Voter Eligibility (supervisory status)

- Those excluded from the right to form or join a union:
 - Supervisors and managers
 - Domestic workers
 - Some agricultural workers
 - Confidential employees

(The position title does not determine whether a person is a supervisor)

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The NLRB considers the following factors:

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- Community of interests – The NLRB will consider if the proposed bargaining unit has similar skills, hours, and wages when determining the appropriateness of the bargaining unit.
- Geographical and physical proximity
- Functional integration
- Interchange of employees
- Bargaining history
- Employee desires
- Extent of union organization

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Bars to the Election Process

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- Contract bar
- Statutory bar
- Certification-year bar
- Blocking-charge bar
- Prior-petition bar
- Recognition bar
- Voluntary-recognition bar

2007 NLRB ruling:
Voluntary-recognition bar (which precludes a decertification election for 12 months after union recognition) *does not apply* when recognition is voluntary and based on a card check.

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Voter Eligibility

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- Eligible employees must be on the payroll:
 - During the pay period prior to the direction of election.
 - During the pay period preceding the election date.
- Striking employees who have been permanently replaced:
 - May vote in any election conducted within 12 months after the strike's commencement.
- Election time and place
 - Employers must post NLRB notices.

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Election Campaign

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```

graph LR
    A[Union organizing campaign] --> B[Authorization cards]
    B --> C[Petition for certification]
    C --> D[Election campaign]
    D --> E[Election]
    E --> F[Certification of results (no union elected)]
    E --> G[Certification of representative (union elected)]

```

- Once the election is scheduled, the campaign escalates.
- Both the employer and the union have opportunities to make their case to employees.
- Management has a captive audience advantage and can present speeches during working hours.

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Election

The SHRM Learning System

```

graph LR
    A[Union organizing campaign] --> B[Authorization cards]
    B --> C[Petition for certification]
    C --> D[Election campaign]
    D --> E[Election]
    E --> F[Certification of results (no union elected)]
    E --> G[Certification of representative (union elected)]

```

- Challenges must be made before the vote is accepted into the ballot box.
- NLRB determines validity of challenged ballots after the election if they have potential to affect the outcome.

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Counting of Eligible Votes

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- Unchallenged ballots are counted immediately after the election.
- Of those casting a ballot, a simple majority is required for certification.
- If 1,000 are eligible to vote but only 800 vote, 401 votes are needed for certification.
- A tie results in no certification.

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Certification

```

graph LR
    A[Union organizing campaign] --> B[Authorization cards]
    B --> C[Petition for certification]
    C --> D[Election campaign]
    D --> E[Election]
    E --> F[Certification of results (if union elected)]
    E --> G[Certification of representative (union elected)]
    
```

- If the union loses, the NLRB certifies the election results.
- If the union wins, the NLRB certifies it as the exclusive representative of the bargaining unit.

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Other Paths to Unionization

- Employer volunteers recognition based on proof of majority status in accordance with neutrality agreement.
- Union convinces employer to grant recognition.
- Union convinces employer to witness its majority status.
- NLRB orders employer to bargain with the union if serious ULPs have been committed.

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Union Decertification

- Terminates union representation as provided by the Taft-Hartley Act.
- Management may not guide or support the effort.
- At least 30% of the employees in the bargaining unit must petition for a decertification election.
- If the petition is valid, a secret-ballot election is held.
- A majority of the voting employees must approve decertification (a tie vote also removes the union).

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Union Deauthorization

- Removes the authority of a union to enforce a security clause.
- Management may not guide or support the effort.
- At least 30% of the employees in the bargaining unit must petition for a decertification election.
- If the petition is valid, a secret-ballot election is held.
- A majority of the voting employees must approve decertification. (A tie vote also removes the union.)
- Only one deauthorization election may be held in any 12-month period.

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Rights and Responsibilities

Employer	Employee
<ul style="list-style-type: none"> Exercise freedom of speech. File ULPs. Protect property. Discipline or terminate for just cause. 	<ul style="list-style-type: none"> Sign authorization card. Form a union. Strike. Circulate petition for redress of a grievance.

Agent-principal relationship: Employers are responsible for managers and supervisors; unions are responsible for agents and officers.

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Unfair Labor Practice (ULP)

- The NLRA, or Wagner Act, prohibits employers from engaging in ULPs.
- The LMRA, or Taft-Hartley Act, prohibits unions from engaging in ULPs.

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Unfair Labor Practices

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What

A violation of a right under labor-relations statutes.

Who

Can be initiated by an individual employee, a union, or management.

How

The NLRB adjudicates ULPs in the private sector; the FLRA or state agency processes cases in the public sector.

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Employer ULPs: Interference, Restraint, and Coercion

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The NLRA prohibits employers from:

- Creating an atmosphere of violence.
- Threats of relocation or plant closing.
- Threats that unionization leads to strikes and loss of jobs or benefits.
- Promises of improvements if union is avoided.
- Surveillance or interrogation of employees.
- Inciting antiunion activity.

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What The Employer Can Say

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- The employer has the right to point out a union's strike history and the economic and legal consequences of strikes.
- The employer has the right to point out that while employees may gain from collective bargaining, they also may lose and suffer a reduction in benefits.

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Avoiding ULPs

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- To avoid ULPs, do not:
 - T** Threaten.
 - I** Interrogate.
 - P** Promise.
 - S** Spy.

Be aware of agent-principal relationship.

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Other Employer ULPs

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- Domination and unlawful support of labor organizations
 - *Electromation, Crown Cork and Seal Company, E. I. Dupont & Company*
- Discrimination to discourage union membership
- Retaliation against employees who file charges or testify
- Refusal to bargain in good faith

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Electromation (1992)

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- The employees were not represented by union.
- Electromation's president formed employee "action committees" to solicit employee views about working conditions, attendance and bonus plan, etc.
- NLRB ruled the "action committees" were employer dominated labor organizations formed to deal with employees concerning terms and conditions of employment.

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Crown Cork and Seal Company

- NLRB decision did not overrule *Electromation* but did allow employers some latitude in establishing employee involvement or participation committees. It stated that employee committees may be acceptable if they do not seek to represent employees on issues related to terms and conditions of employment.

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E.I. DuPont and Company (1993)

- Employees were represented by two unions
- DuPont started several employee involvement committees but did not allow the unions to be a formal part of the team process.
- NLRB ruled the committees illegal, DuPont had circumvented the legally chosen employee representatives and usurped the union's right to represent their members.

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Union ULPs:
Restraints and Coercion

The LMRA prohibits unions from engaging in:

- Activities that coerce employees to sign authorization cards or petitions.
- Threats of physical violence.
- Threats of economic reprisals.
- Strikes or boycotts of neutral or third-party employers.

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Union ULPs:
Duty of Fair Representation

- Union must act fairly on behalf of all members.
- Union may not ignore grievances that have merit or base decisions on discrimination or personal feelings.
- Union must represent nonmembers in bargaining and grievance issues in the same way it represents dues-paying members.

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Union ULPs

- Providing inadequate defense in an arbitration hearing
- Delaying a grievance beyond the time line
- Failing to inform an employee that it has accepted a different remedy than the employee sought
- Failing to keep members informed of arbitration awards that affect member's rights

****Unions are not required to take every grievance to arbitration, only those cases involving legitimate differences of opinion between management and union interests.**

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Other Union ULPs

- Forcing unlawful discrimination by the employer → A union cannot force an employer to commit an act in violation of contract provisions.
- Excessive or discriminatory membership fees → Fees must be appropriately based on industry wages and practices.
- Refusal to bargain → The union must bargain in good faith.
- Featherbedding → The union cannot require more workers than necessary.

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Formal System of Adjudication of ULPs

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- Filing charges with the NLRB
- NLRB investigation and possible settlement (Informal and formal settlements)
- Hearing of the complaint
- ALJ decision and appeals
- Judicial reviews and reinforcement, as required

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ALJ Decision and Appeals

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- Offending employer or union must post notices in conspicuous places agreeing not to engage in future illegal activity.
- The NLRB's decision is a final agency order, but it is not self-enforcing. If charged party doesn't comply, the NLRB must seek enforcement of the order in one of the U.S. Courts of Appeals.
- U.S. Supreme Court's decision is final.

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Collective Bargaining

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- The process by which management and union representatives negotiate the employment conditions for a particular bargaining unit.
- Covers bargaining items such as wages, benefits and working conditions and may include other matters deemed important by the members.

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Collective Bargaining Agreement (CBA)

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- A Collective Bargaining Agreement (CBA) governs the day-to-day relationship of the employer and the employees in the bargaining unit for the period of time it specifies.

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Collective Bargaining Process

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The diagram illustrates the Collective Bargaining Process as a central box containing three interlocking puzzle pieces: 'Management representation', 'Bargaining subjects: topics, issues, and goals', and 'Union representation'. This central box is surrounded by four external factors, each with an arrow pointing towards the central box: 'Legal and regulatory factors' (top), 'Economic conditions' (left), 'Bargaining precedents' (right), and 'Public and employee opinion' (bottom).

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Collective Bargaining Subjects

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Mandatory subjects (required by law and NLRB)	Illegal subjects (unlawful by statute)	Permissive subjects (voluntary)
<ul style="list-style-type: none"> Overtime Seniority Vacation/holidays 	<ul style="list-style-type: none"> Closed shops Discriminatory hiring 	<ul style="list-style-type: none"> Benefits for retired union members Settlement of ULPs Neutrality agreements

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Collective Bargaining Patterns

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Pattern or parallel	Coalition/multiple employer	Coordinated
Union negotiates agreements similar to those existing in the industry or region. Referred to as whipsawing .	More than one employer negotiates with the union.	Employer bargains with several unions simultaneously but on a separate basis.

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Types of Contract Negotiations

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Positional negotiation

- People are locked in positions
- Parties lose sight of underlying problems
- Emphasis is on winning

Principled negotiation

- Separates people from problem
- Focus on interests, not positions
- Invent options for mutual gain
- Insist on objective criteria

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Types of Negotiations

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- **Distributive bargaining:** When the parties are in conflict over the issue and the outcome represents a gain for one party and a loss for the other. The dominant activity in the union-mgmt relationship.

- **Integrative bargaining:** Usually takes place when there is more than one issue to be resolved. Focuses on creative solutions to conflicts that reconcile the parties' interests and results in mutual benefit.

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Interest-Based Bargaining (IBB)

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- Form of negotiating where parties look for common ground and attempt to satisfy mutual interests through the bargaining process.
- Attempts to look behind positions to determine the needs of the parties and whether there are mutually acceptable ways that labor and mgmt can satisfy those needs. (**Win-Win bargaining**)
- Relies on techniques such as brainstorming, facilitation and information sharing.
- Objective is to reach agreement by consensus.

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Contract Negotiations

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- Win-win negotiation
 - Principled
 - Integrative
 - Interest-based

- Win-lose negotiation
 - Positional
 - Distributive

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Good-Faith Bargaining Requirements

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- Good-faith bargaining means that both parties enter into discussions with a fair and open mind and a sincere desire to arrive at an agreement.
- It is usually established only by the behavior of the parties during negotiations.

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Violations of Good-Faith Bargaining

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- Surface bargaining
- Lack of concession
- Refusal to advance proposals and demands
- Dilatory tactics
- Imposing conditions
- Bypassing the representative
- Commission of ULPs
- Refusal to provide information
- Refusal to bargain

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Other Bargaining Conditions

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- Unlawful circumvention
 - Bargaining proposals not disclosed to the union may not be discussed with employees.
- Notice requirements
 - The Labor-Management Relations Act requires the party desiring contract renegotiation must notify the other party of its intention to bargain a new agreement.
- Duty of successor employers or unions
 - Selling a majority interest in a unionized company does not affect the company's bargaining obligations.

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Factors NLRB Considers when Determining Successor Status

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- Substantial continuity of same business operations
- Use of the same business plan
- Same workforce, same supervisors, same equipment and production methods
- Same product or service produced
- Same jobs under the same working conditions

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Collective Bargaining Agreement (CBA)

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- A collective bargaining agreement is the outcome of the collective bargaining process.
- Provisions of a labor contract are legally binding for a mutually acceptable period—generally three years.
- Contract provisions are enforceable through internal grievance and arbitration procedures, the NLRB, and state and/or federal courts.


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Contract Clauses

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- Union security clauses
- Dues checkoff
- Management rights
- Employee seniority and security (bumping)
- Compensation, benefits, and working conditions
- Strikes and lockouts
- Zipper clause
- Term of agreement



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Union Security Clauses

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- Unions prefer a **union shop** (a clause that states that when workers take jobs in a specific bargaining unit, they must join the union within a certain period of time).
- An **agency shop** clause states that even if workers do not join the union, they must pay the equivalent of dues to the union.
- With a **maintenance of membership** clause, an worker may or may not join the union, but once they do join, they must maintain membership for the duration of the contract.

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Complaint Resolution

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- Evaluate the workplace for potential problems and address those issues before they become problems
- Know the labor agreement in its entirety, including past practices and local memoranda of understanding
- Know the employees and their problems

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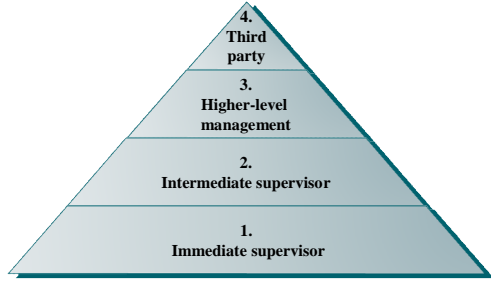
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Formal Grievance Procedure


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The Weingarten Case


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- Deals with the rights of **union** employees to have another person present during investigatory interviews. An investigatory interview occurs:
 - When supervisors ask for information that could lead to disciplinary action
 - When employees are asked to defend their conduct
- Person attending must be affiliated with the union that represents the employee, not an attorney or relative.

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Arbitration

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- A negotiated procedure in which labor and mgmt agree to submit disputes arising under the terms of the contract to an impartial third party.
- Dominant third party method of settling disputes, faster than litigation, informal, designed to permit uninterrupted operations during a contract, substitute for a strike or lockout
- Types of arbitration:
 - **Voluntary** (commonly required by union contract)
 - **Compulsory** (commonly occurs in the public sector where there are limitations on the right to strike)

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The Arbitration Process

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Opening statements

Both parties identify issues, state what is to be proved, and specify relief sought.

Presentation of evidence

Parties present evidence and essential documents to prove their cases.

Summation


Both sides have equal time for closing arguments.

Award

The arbitrator presents the decision in written format and signs it.

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Types of Arbitrators

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- **Permanent arbitrator** is used for all arbitration during the life of the contract.
- **Ad hoc arbitrator** is one who is selected on a case-by-case basis. After the hearing, the relationship is ended unless both parties agree to the arbitrator again.
- **Tripartite panel** is a three party arbitration board. One member represents mgmt, one represents the union, and one is a neutral arbitrator.

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Mediation

- Mediation is also known as **conciliation**.
- A **nonbinding dispute resolution**, also known as **conciliation**, involving a third party who tries to help the disputing parties reach a mutually agreeable decision. Mediators have no power to compel the two parties to reach agreement.
 - Facilitation mediation** - Mediator acts as an observer, helping each side to talk.
 - Fact-finding mediation** - Mediator collects data about the parties and restates their positions. Mediator may recommend terms of a settlement.

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NLRB Enforcement

- NLRB** is a **quasi-judicial agency** with the specialized mission of dealing with ULP's and certification elections.
- ULP's complaints begin in the regional offices and are processed on behalf of the general counsel (the NLRB prosecuting arm).
- Once a case is decided, a compliance officer at the regional level ensures both parties adhere to the NLRB's orders.

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Lockouts and Strikes

Lockout

- Management shuts down operations to prevent union employees from working.
- Attempts to prevent damage to facilities and injury to employees.

Strike

- A refusal by employees to work
- May be based on economics or unfair labor practices.

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Protected Concerted Activities

- The right of a union to strike and picket
- The right of other employees not to cross a picket line
- The right of management to continue operations with:
 - Supervisors
 - Nonstriking regular employees
 - Newly hired replacements

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Strikes

More likely when:

- Proceeding contract duration was for a long period of time
- Bargaining units are large
- Employer can inventory or stockpile goods
- Negotiations have been the pattern for previous agreements

Less likely when:

- Few issues are being negotiated
- Employers/industries employ a large proportion of women
- Employers/industries pay a high wage rate relative to other employers/industries

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Strike Categories

Economic

ULP

Wildcat (unprotected)

Jurisdictional

Sympathy

Strikes

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Strike Categories

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- Economic strikes** – Occur when parties fail to reach agreement over key economic issues during the collective bargaining period.
- Unfair labor practices strikes** – Occur when employees cease work because they believe the employer has committed unfair labor practices, such as refusal to bargain.
- Wildcat strikes** – Work stoppages involving the primary employer-employee relationship that are neither sanctioned nor stimulated by the union and that violate a no-strike clause in the contract.
- Jurisdictional strikes** – Work actions that reflect the possibility of friction between unions. Members of one union strike to force the employer to assign work to them rather than to members of another union.
- Sympathy strikes** – The union engaged in a sympathy strike has no contractual relationship with the struck employer but is acting to support another union that is striking the employer.

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Replacement of Strikers

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Strike occurs as the result of ULPs.

→

Employer must reinstate striking workers.

Strike is an economic strike.

→

Employer is not required to displace permanent replacement workers except as future opportunities become available.

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Legal Picketing During Strikes

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```

graph TD
    Informational --- Picketing
    Consumer --- Picketing
    Area-standards --- Picketing
    Common_situs --- Picketing
  
```

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Legal Picketing

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Informational Picketing

- Aimed at the general public to gain support for the union and strikers

Area Standard Picketing

- Legal as long as its purpose is to inform the public that the picketed employer does not pay union-scale wages and benefits

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Legal Picketing

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Common Situs Picketing

- Picketing of a primary employer who occupies common premises with a secondary employer.
- Employers are permitted to establish a separate gate for the non-struck employer to prevent shutting down the entire site.
- Picket signs must clearly state which is the struck employer.

Consumer Picketing

- Occurs when goods produced by a nonunion or struck plant are consumer products, and picketing is to inform the consumer.
- Pickets signs, handbills, or placards urge customers to refuse to purchase products from a particular retail or wholesale business.

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Secondary Boycotts

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- Directed at the primary party through action against a third party.
- Employers may lose neutrality and be subject to union pressure in the following cases:
 - Ally doctrine
 - Single/joint employer or alter ego doctrines
 - Double breasting
 - Straight-line operations
 - Hot cargo clauses

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- **Ally doctrine** – States that a union may extend its primary picketing to an employer who is an ally of the primary employer.
- **Single employer, joint employer, alter ego doctrines** – The entities have common ownership, common management, or they share employees, equipment, etc.
- **Double Breasting** – A common owner operates a union and a nonunion business.
- **Straight-line operations** – The neutral employer is engaged in operations that are a phase of the struck employer's work.
- **Hot Cargo clauses**– There is an agreement that union members are not required to handle goods made by nonunion labor or a struck plant.