INTRODUCTION

Collective Bargaining = Mutual Determination of the Terms and Conditions of Employment between the Management of an employer and the exclusive bargaining representatives of the employees. (Defined in Section 8(d) of the National Labor Relations Act).

Labor Relations is the term used to describe the negotiations and contract administration association with collective bargaining.

There are substantial institutional differences between the U.S. and other industrialized countries in the substance and conduct of Labor Relations.

- Japan has national closed shop and Wage and Hour councils – the U.S. has none of this
- European have co-determination – the U.S. has none of this.
- Canada has far greater legal protections for workers than the U.S.
- Australia and New Zealand have far great legal protection, compulsory arbitration, and some forms of co-determination

In other words, the U.S. is not similar to most advanced, industrial economies in matters of Labor Relations, we are unique – some better areas, some far worse.

Labor History in the U.S. is one of suppression of worker rights, illegalizing unions, and a judiciary which is activist and anti-worker; anti-union. In fact, not until 1932 was unionization tolerated by the government and courts in general industry. The labor history is a blot on American History.

HISTORY and LABOR LAW
Chapter 1, Carrell and Heavrin

U.S. Labor History

First Unions in the U.S.

   Guild System
   Cordwainers etc.

Civil and Criminal Conspiracies

   Philadelphia Cordwainers (1806)

   Commonwealth v. Hunt (1842)

   Demise of Conspiracy doctrine

      1. Commonwealth v. Hunt
          A. Legal Means and Legal Ends
      2. Brits outlaw it
      3. Injunctive relief

Injunctions – court order

   Contempt
      Criminal
      Civil

   Injunctions In re Debs, Bucks Stove (Gompers)

Yellow - dog contracts

Pre-Civil War

   Political organizations – Andy Jackson etc.
   All gone

National Labor Union William Sylvis, National Molders – eight hour day movement

Knights of Labor – 1869 – secretive Terrence Powderly – social issues

American Federation of Labor – craft unions
IWW – Western Federation of Miners

Anti-trust cases

Sherman Act (1890)
   Rule of Reason
   Amstar
   Standard Oil

Danbury Hatters (Loewe v. Lawler) - secondary boycot

Clayton Act (1914) – to remove labor from prosecution
   Section 6 - nothing in antitrust laws applicable to labor as though labor were a commodity
   Section 20 - No injunctions in labor disputes

Duplex v. Deering (1921) - secondary boycott - no installing repairing etc. of Duplex machinery. Court didn’t believe Clayton Act changed anything with respect to organizing campaigns.

Coronado Coal (1922)
   Union not guilty of AT violation because of no substantial impact on commerce – case was tried again

Coronado Coal (1925)
   5000 tons of coal per day – interstate commerce affected – hence guilty this time.

Bedford Stone (1927)
   Unreasonable restraint of trade, hence an injunction was issued to stop cutters from refusing to handle Bedford Stone

American Plan – propaganda movement - open shop
   Palmer raids

Industrial Unions – CIO
   Sit down strikes
   One big union – skilled trades and unskilled together
Protective Legislation:

1926 Railway Labor Act

*Texas and New Orleans Railroad*

1932 Norris-LaGuardia Act

*Hitchman Coal v. Mitchell*

1933 NIRA Section 7

Mohawk Valley Formula

*Schecter Poultry*

1935 NLRA- Wagner Act

*Jones & Laughlin Steel (1937)*

Section 7

Section 8 – employer unfair labor practices

Enforcement

Jurisdictional Disputes

Taft-Hartley

Section 8 a and b

Federal Mediation & Conciliation Service

Right-to-work 14 b

Teamsters

Hoffa

Landrum-Griffin Act 1959

Reporting and disclosure

mostly unconstitutional

Executive Order 10988, Civil Service Reform Act

FLRA

Striker Replacement erosions of Congressional Intent
PATCO Mess

1938 *McKay Radio* - replacement of economic strikers

Phelps Dodge mess

1974 Health Care Amendments to Taft-Hartley

Nonprofit Hospitals

**National Labor Relations Act**

Section 1 - Policies of the Act

Section 2 - Definitions

Sections 3 through 6 - Creation of the Enforcement and the NLRB

Cease and Desist

Make Whole

**Section 7 - Employee Bill of Rights**

*Employees have the right to self-organization, to form join, or to assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or for other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.*

Section 8 a : It shall be an unfair labor practice for employer to:

1. Interfere with, restrain or coerce employees in the exercise of their Section 7 rights

2. Employers may not dominate or interfere with labor organizations or financially contribute to them

3. Discriminate in the hire or tenure of employees because of union membership

4. Discharge or discriminate against employees for filing charges or giving testimony under the Act.
5. Refuse or fail to bargain collectively with the exclusive representative of the bargaining unit

Section 8 b: It shall be an unfair labor practice for a labor organization to:

1. Interfere with, restrain or coerce employees in the exercise of their Section 7 rights.

2. Causing an employer to discriminate against an employee in violation of Section 8a(2).

3. Must bargaining in good faith with respect to terms and conditions

4. Forbids secondary boycotts and certain strikes and picketing involving third parties.

5. No excessive or discriminatory union dues or fees

6. No featherbedding

7. No organizational strikes or picketing

Section 8 c Free speech

Section 8 (e) No Hot Cargo Agreements

Section 8 (f) 7 day hiring hall arrangement made legal

Section 8 (d) defines the obligation to bargain collectively – wages hours & other terms and conditions of employment, meet at reasonable times and places for the purpose of bargaining in good faith, and reduce any agreements to writing if either side so demands

Section 9 Defines procedures in Representational elections

Section 10 are the ground rules for the investigation, prosecution and remedy of unfair labor practices.

Section 11-12 are the investigatory powers of the NLRB

Section 13-18 are limitations on the board’s powers

Section 19 - conscientious objections to joining or supporting unions – Amish or Orthodox Jews

Section 201-205 Creates and outlines functions of FMCS

Section 206 - 210 National Emergency Impasse Procedures
Section 301 - Suits for enforcement

Section 303 - Authorizes suits for damages for secondary boycotts and third party strikes

Objectives of the Law: peaceful Labor-Management Relations

NLRB -

General Counsel - represents complaining party

Regional Offices

ALJ

Board

Board enforcement goes to CCA

Postal Reorganization Act of 1970

State Labor Laws

Kansas
Ohio, Iowa
California
Indiana

Politics

Gissel Doctrine - order bargaining where ULP destroys a majority
Summer and Snow Doctrines

Reagan NLRB - Gourmet Foods - dismantled Gissel

Otis Elevator - NLRB order than bargaining had to occur concerning sub-contracting
Now no such requirement can be enforced

Meyers Industries - a single employee acting on behalf of others is no longer protected unless clearly authorized to act on their behalf

Milwaukee Springs II - a contract unless it specifically permitted reopening was final, now an employer may demand reopening over any economic issue
Epilepsy of Northeast Ohio - all employees have Weingarten rights, IBM decision under Bush Board, no Weingarten rights for nonunion employees.

Collyer Insulted Wire - deferral to private arbitrators

NLRB becoming a political football and losing effectiveness

CHALLENGES AND OPPORTUNITIES
Chapter 2, Carrell & Heavrin

Workplace Challenges:

Corporate protection of discretion – regardless of issue – primal over democracy
Globalization – mobility of capital, immobility of labor

Why do employees form Unions?

Representation (voice), job security (concerted action), and improvement in career job conditions

Demographics of industry and work force

80% of economy is service sector today – 12.5% union membership
1956 50% of economy is service sector – 30% union membership

Public Sector has largest concentration of Union membership 40%
Private Sector has lowest concentration of Union membership just under 11%

Minorities and women are nearly half of union membership

Threat - Cohesiveness model

Class Consciousness

Spill overs

Union free movement, right-to-work etc.

Business Unionism

Public Sector

Services, generally low value added
Much of service sector is public sector

Other Issues

Quality of Work Life
Fomoco Case
Teams

Independent Contractors

Outsourcing

Union protections being made universal
FLSA (1938) – wages and hours

1963 amendments “EQUAL PAY ACT”

Civil Rights Act of 1964

FMLA (1993)

ADA (1990)

ADEA prohibits age discrimination

Older Workers Benefit Protection Act

Issues of Little Importance

Sports

Professional Employees

ESTABLISHING A BARGAINING UNIT

Chapter 3, Carrell & Heavrin

What is Bargaining?

Section 8d of Taft Hartley: Bargaining in Good Faith: Meet and Confer at reasonable times and place concerning hours, wages & other terms and conditions of employment – and if contract is
reached reduced to writing if either party so demands.

Bargaining unit – union is exclusive representative.

**Jurisdiction of NLRB**

Affecting Interstate Commerce

Appreciably affecting - dollar standards

Private Sector – not covered by RWLA

Definitions of Employers, employees (not managerial, etc.) Labor Organizations

Public sector laws
States - federal preemption of private sector
Federal - Civil Service Reform Act 1974

**Bargaining Unit Determination**

Globe Doctrine:

1. Community of Interest
2. History of bargaining
3. Desires of employees
4. Prior union organizing
5. Relationship of unit to organizational structure of company
6. Public interest
7. Community of interest
8. Accretion – adding to established units according to above criteria
9. Statutory considerations

Craft v. Industrial Units

Multiple Employer Units
One employer - multi-site

Residual units

Health care problems - eight units
MD, RN, other professional, technical, clerical, maintenance (skilled), guards, others

Public Sector Issues Civil Service Reform Act
similar conditions of employment
maintenance of pattern
craft and professional lines
representational rights

Types of Unions

Industrial (CIO) inclusive  Craft (AFL) exclusive

put a kink in the supply curve at  controls apprentice programs, shifts supply curve
minimum acceptable wage

Levels of Unions

Federation AFL-CIO

National Union - UAW, USWA

many are international unions - meaning Canada and Mexico

Local Union

Election Procedures:

Representation petition – bargaining cards

Investigation

Secret Ballot if demanded

Voluntary Recognition

**GENERAL SHOE DOCTRINE**

*General Shoe Corp.* 77 NLRB 124 (1948) Set aside elections when “conduct that creates an atmosphere
which renders improbability a free choice in an election [could occur] . . . “

*Employee interviews*

*NVF Company, Hardwell Division* 210 NLRB (1974) interview with in employees in the plant in
groups of five or six permissible
The Hurley Company 130 NLRB (1961) company officials visit employees at their home to discuss upcoming certification election is not permissible

James Lee and Sons 130 NLRB 290 (1960) where Chamber of Commerce, a local newspaper and local bank make public statements that unions were not welcome – the election is set aside when employer wins

Al Long, Inc. 173 NLRB 447 (1968) where union activity became unruly election is set aside

Lies etc.

Sewell Manufacturing Co. 138 NLRB 66 (1962) employer appealed to racial hatred – election set aside when employer won

Allen Morris 138 NLRB 73 (1962) truthful statement concerning union’s position on desegregation was not deemed reason to set aside an election when union lost

Hollywood Ceramics 140 NLRB 221 (1962) lies, distortions and misrepresentation was originally deemed a reason to set aside an election.

Bausch & Lomb 185 NLRB 263 (1970) where material representation occur too close to an election the NLRB will set the election aside if union cannot reasonably respond – otherwise if union can respond it will not be set aside

Shopping Kart Food Markets 228 NLRB 1311 (1977) Board will no longer inquire into the truth of the matter – you can lie, distort etc. simply because the “truth in election campaigns was too difficult to administer”

ABW Metal 306 NLRB 109 (1992) NLRB will throw out elections if the falsehood is egregious and occurs within 24 hours of the election.

Employer Threats

Standard Knitting Mills, Inc. 172 NLRB 1122 (1968) outright threats of plant closures if union is voted in – election set aside if employer wins

Somismo, Inc. 133 NLRB 1310 (1961) makes inference that company will go out of business if union wins – election set aside

Economic Predictions

TRW, Inc. 160 NLRB 21 (1968) can make economic predictions of affect of union as long as based in evidence and sound economic analysis – otherwise election set aside

Testing Service Corp. 193 NLRB 617 (1971) if prediction of economic consequences is presented in a coercive or threatening manner, or manner in which reprisal appears possible – election set aside if employer wins
**Ohmite Manufacturing Co.** 217 NLRB 435 (1975) “sincere belief that if this union were to get in here it would not work to your benefits but to your serious harm.” permissible

**Futility**

**Donn Products Inc. and American Metals Corp.** 229 NLRB 116 (1977) if the union wins “I am not inclined to be forced to do anything” “a lot of it is for show” where you induce the idea that you may not bargain in good-faith if union loses, election set aside.

**American Telecommunications** 249 NLRB 1135 (1980) representation was futile in no event could this union improve working conditions in this plant – election set aside

**Union Threats**

**Sciosa Home and Industrial Disposal Service** 266 NLRB 100 (1983) Union business agent made threatening remarks about persons going to the hospital if they supported the employer – union won election set aside

**Sequatchie Valley Coal Co.** 281 NLRB 726 (1986) Union threatened employees who did not support their cause – union won – election set aside

**Announcement of Benefits**

**Great Atlantic & Pacific Tea Company** 166 NLRB 27 (1967) Employer granted benefit increases to employees during election campaign and won - election set aside - bribery

**Savair Manufacturing** 414 U.S. 270 (1973) Thou shalt not promise dues and fees waivers for those who sign bargaining authorization cards.

**Lau Industries** 210 NLRB 182 (1974) May waive dues and fees for all employees, not dependent on signing bargaining authorization cards being signed

**Other Reasons**

**Strucksnes Construction** 165 NLRB 1062 (1967) employer cannot poll employees concerning their support for union after an election petition is filed

**Wall Colmonoy Corp.** 173 NLRB 40 (1968) employer cannot use surveillance of union supporters

**Captive Audience – equal access rule**

No solicitation rule – in company open to public is permissible - if applicable to all solicitation

**Bonwit Teller** 96 NLRB 608 (1951) – however, cannot prohibit solicitation in general industry
where areas not open to public Republic Aviation v. NLRB 324 U.S. 793 (1945)

**Livingston Shirt** 107 NLRB 400 (1953) if the employer uses a captive audience and has a no solicitation rule it must provide current list of names, addresses and telephone numbers of all bargaining unit employees sustained in the 1966 case in **Excelsior Underware Inc.** 156 NLRB 1236 - no dual representation, coercion, etc.

**Elson Bottling Co.,** 155 NLRB 846 (1965) cannot solicit members withdraw from union in captive audience or threaten employees

**J.P. Stevens** 219 NLRB 850 (1975) totality of conduct - union has equal right to use captive audience when employer has an established history of unfair labor practices and anti-union animus

**GISSELL DOCTRINE**

Both cases involve refusal to bargain and other unfair labor practices which destroy majority support illustrated by bargaining authorization cards

**Joy Silk** 85 NLRB 1263 (1949); 185 F. 2d 732 (DC Cir. 1950) no election held and majority by cards – bargaining order issued

**Bernal Foam** 146 NLRB 1277 (1964) election lost, majority by cards - bargaining order issued

**Gourmet Foods** 270 NLRB 578 (1984) no more bargaining orders regardless of the nature of the unfair labor practice committed by employers    [Reagan Board]

**UNION SECURITY**

Closed Shop – illegal in U.S., mandatory most other industrialized countries hiring hall, 7 day agency exception

Union Shop - members after 31st day of employment

Agency Shop - not have to join, but pay service fee if not a member

Maintenance of Membership - WWII compromise – don’t have to join, but if do, stay until escape period

Open Shop - absence of union security

Free Rider Effect

Right to Work Laws Section 14(b):
Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

March 1, 1957 Indiana passed a Right-to-Work law:

No corporation or individual or association or labor organization shall solicit, enter into or extend any contract, agreement or understanding, written or oral, to exclude from employment any person by reason of membership or non-membership in a labor organization, or to discharge or suspend from employment or lay off any person by reason of his refusal to join a labor organization or by reason of his failure to maintain his membership in a labor organization or by reason of his resignation or expulsion or suspension from a labor organization.

(Ind. Acts (1957), Chapter 19.)

**NLRB v. General Motors** (1963) 373 U.S. 734:

We do not regard the “agency shop arrangement” as being something lesser than a “union shop.” We believe it is entirely different. A Union security agreement is premised upon membership in a labor organization. An “agency shop” on the contrary is based upon an employee paying charges in lieu of union membership as a condition of employment.

The burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues.

Perfect Circle strike in 1955 in New Castle, and the 1957 Princeton Indiana violence probably did much to contribute to the passage of the “right to work law” in Indiana. UAW reported a loss of about 700 members out of 27000 in its nine GM plants.

However, Fort Wayne, had a company who went out and employed anti-union activitists so as to destroy a majority status union. (Witney p. 88).

There were significant numbers of employers who left the state:

However, the fact remains that, as a result of the wave of extensions, full and accurate evaluation of the impact of the law cannot be made until some time after these extended contracts expire. It is somewhat ironic that the most startling development immediately following the law’s enactment was the haste of some employers and unions to avoid its consequences.

Right to Work States
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<th>State</th>
<th>Weekly Earnings</th>
<th>Union %</th>
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<th>DW</th>
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<td>8.6</td>
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**Duty of Fair Representation**

Unions may be sued for breach of fair representation of any member of a bargaining unit – they must provide exactly the same services for non-members or those who don’t pay as they do for those who do.

**Checkoff**
UNFAIR LABOR PRACTICES
Chapter 4, Carrell & Heavrin

National Labor Relations Act provides for enforceable prohibited practices, these are:

Section 8 a : It shall be an unfair labor practice for employer to:

1. Interfere with, restrain or coerce employees in the exercise of their Section 7 rights
2. Employers may not dominate or interfere with labor organizations or financially contribute to them
3. Discriminate in the hire or tenure of employees because of union membership
4. Discharge or discriminate against employees for filing charges or giving testimony under the Act.
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1. Interfere with, restrain or coerce employees in the exercise of their Section 7 rights.
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Section 8 (f) 7 day hiring hall arrangement made legal
Section 8 (d) defines the obligation to bargain collectively – wages hours & other terms and conditions of employment, meet at reasonable times and places for the purpose of bargaining in good faith, and reduce any agreements to writing if either side so demands

Union Avoidance Strategies

General Shoe and Gissel doctrines, and these are serious problems today

A whole industry has developed to do these sorts of things on behalf of well-healed employers

Employer Domination

Union ULPs

Coercion & Restraint of employees

Good Faith Bargaining

Direct Employer Contact

Surface Bargaining

*Borg Warner-Wooster Div. (1959)*
Mandatory, Voluntary, and Illegal Issues of Bargaining

Boulwarism

*GE 1964*

Duty to Furnish Information

*Truitt Manufacturing Case (1955)*

NLRB Enforcement Authority

Injunctions from Circuit Court of Appeals – teeth

**NEGOTIATING AN AGREEMENT**
Chapter 5 Carrell & Hearvin

Bargaining Process

1. Preparation
   a. Data Gathering,
   b. Generating Goals and Objections

2. Stages of Negotiations
   a. Exchange of Proposals
   b. Posturing
      1. Interdependence – (Attitudinal Structuring) – Walton & McKersie
         (Integrative Bargaining) – Walton & McKersie
      2. Concealment – valued items become targets etc.
      3. Package Bargaining – economic, security etc.
      4. Throwaway Items – smoke screens
      5. Causing – everyone on same page
      6. Flexibility – opportunistic advantage
      7. Compromise (Distributive Bargaining) Walton & McKersie
      8. Face Saving – executory relationship
   c. Crisis Bargaining – J.R. Hicks resistance - concession model

Drivers of the model:
   a. Cost of Agreement v. Cost of Disagreement
   b. Bargaining Power
   c. Learning
   d. Agreement, hence contract
1. Proof reading
2. Testing

Interest Bargaining

1. Issues of Bargaining
   a. Borg Warner Doctrine
      1. Mandatory Issues - wages, hours, and terms & conditions
      2. Permissible Issues - core of entrepreneurial discretion & union business
      3. Illegal Issues - barred by statute typically
      Ford Motor Case - Chicago Stamping Plant

2. Five Elements
   1. Target Point
   2. Resistance Point
   3. Initial Offer
   4. Settlement Range
   5. Settlement Point

Experimental Forms

Interest Based Bargaining - Joint Problem Solving – Cooperative Model - interesting concept, practical application is difficult because it is driven by shared pain.

Principle Negotiations - Getting to Yes, Harvard Negotiations Experiment - “hard on merits, soft on people” “Warm glow”

Collective Bargaining by Objectives - adjunct to MBO, setting priority, joint gains – but recognizes the essential adversarial nature of collective bargaining.

Pressure Bargaining

1. Various forms – the “old time religion” so to speak
   a. Good guy/bad guy
   b. High ball/low ball
   c. Nibbling – small concessions to elicit reciprocal concessions
   d. Games of chicken
   e. Awfulisms - fall back positions after shock

Strikes
1. Nature of Strike Activity
   a. bargaining power
   b. test of economic strength or organizational strength
      1. Stocks and Flows
      2. Strikes occur because of economics – flows
      3. Strikes continue because of organizational considerations - stocks

2. Management responses
   a. preparations
      1. Inventory
      2. Subcontracts
      3. Alternative supplies
   b. Replacements
   c. Lock-outs

3. Types of Strikes
   a. Primary Strikes – direct pressure
   b. Secondary Strikes – third party pressure – general illegal
   c. Economic Strike
   d. ULP Strike
      1. Protected activity – strike breakers at peril
         MacKay Doctrine
   e. Rolling Strike - construction

4. Illegal Strikes
   a. Sit-downs
   b. Wildcat
   c. Slowdowns etc
   d. Sick-outs- blue flu etc.

5. ULPs
   a. Jurisdictional Strikes
   b. Featherbedding Strikes
   c. Recognitional Strikes

No Strike, No Lock-out

1. FMCS Mediation
a. Facilitation of success in negotiations OMS

2. Interest Arbitration
   a. State and Federal Impasse Procedures
      1. Fact Finding
      2. Final Offer Arbitration
      3. Interest Arbitration

3. Med-Arb Experiments

Public Sector

1. Federal - Civil Service Reform Act
   a. Issues
   b. Collective begging

2. State and Local
   a. Complex and variable
   b. Sovereignty still an issue
   c. Public services sometimes critical nature

3. Scope
   a. Terms & Conditions
   b. Impact
   c. Economics
   d. Right to strike

History
Recognitional Strikes
1958 GM-UAW
1977 Coal Strikes
1994 Baseball
PATCO

WAGE AND SALARY ISSUES

Chapter 6 Carrell & Hearvin
Types of Pay Programs

Pay for Time Worked
   Hourly wage
   Annual Salary

Piecework

Union Wage Concerns

Pay Equity

Eight Dimensions of Union Wage Effects
   a. Union goals - more and keep jobs
   b. Union-nonunion wage differentials- 15% roughly
   c. Intertemporal wage differentials - since Reagan gone down
   d. Wage rigidity - no give-backs
   e. Wage structure - skilled/unskilled compression
   f. Form of Compensation - hours rather than output
   g. Employments effects - create or maintain employment
   h. Pattern bargaining - within industry - same wages

Industrial Differentials
   a. MRP
   b. Value added concept

Wage Laws

Fair Labor Standard Act of 1938
   a. minimum wages
   b. overtime compensation
   c. breaks & lunch
   d. nonexempt
   e. erosion of urgency for union representation

Overtime pyramiding
Mandatory overtime

Davis-Bacon Act of 1931
   a. Construction
Walsh-Healy of 1936

b. general industry

**Wage Adjustments**

Standard rate

a. Job classification
   i. Skills, risk, responsibility, training, etc.

b. Pay ranges

Piece rate system

a. falling rate - increases in productivity shared between employee & firm
b. rising rate - greater than proportional increase in wage from productivity
c. standard hour plan, paid by job in essence

Deferred Wage Increases

Back-loaded contracts

Lump sums

Annual Improvements

COLA 1¢/.25 protects $4.00 of wage

a. roll-ins

Profit sharing

Scanlon Plans - efficiency gains - shared by some formula negotiated between management and union.

Two-tier schemes - airline pilots etc.

Economic theory

In an otherwise competitive labor market

\[
MRC = \frac{Lcost}{QL}
\]

\[
MRP = \frac{TP}{QL}
\]
W/P
Supplies = MRC

w/p
Demand = MRP

Labor

\[ Q \]

Institutional Wage Standards

a. Ability to pay - Accounting Information
b. Comparative norm - Wage Surveys
c. Standard of living - ACCRA Index

Costing proposals

a. Base
b. Roll-up
1. Social Security, employment security
2. Life insurance
3. Overtime premiums
4. Pension contributions

Public employees wages were less because of better job security - disappearing differential

EMPLOYEE BENEFIT ISSUES

Chapter 7 Carrell & Hearvin

Concessions - troubled industries & employers
a. bargaining power
b. global economy

Government programs

Unemployment Security

Payroll tax formula
Trust Fund by State

Social Security

Burial Expenses
Survivors
Disability
Retirement
Medicare

Workers compensation

OWCP
Injuries
Disability

Family Medical Leave

Pensions
a. Defined benefit v. defined contribution
b. ERISA - vesting, portability, and leaving workforce, reporting

SUB benefits
a. guaranteed income, severance pay

Private Death and Disability Programs

Health Care programs
a. Cost containment
b. PPOs, HMOs, Traditional fee for service
c. Wellness programs
d. COBRA

Time off issues
a. vacation
b. paid holidays
c. various leaves  
d. personal authorized absence  
e. military leave etc.  
f. death in family  
g. union business  
h. sick leave  

Employee services  
a. cafeteria plans  
   1. child care  
   2. educational benefits  
   3. credit unions  
   4. EAP  

Today employers transferring risk to employees  

JOB SECURITY AND SENIORITY  

Chapter 8 Carrell & Hearvin  

Seniority  
a. Competitive  
   1. Department, plant etc. - units
2. Calculation
   b. Dovetail issues
   c. Superseniority issues
   d. Use of competitive seniority
      1. Promotion – posting & bidding processes
      2. Layoff, recall

**WARN Worker Adjustment and Retraining Notification Act**
   a. Notification requirements 60 days 50 f.t. emps. or 33% of workforce

**Shared Worked**
   a. two people one job

**Ability determinations**
   a. Tests, trial periods, education, physical fitness, attendance - objective
   b. Production records, supervisor opinions, experience - subjective

**Company mergers**
   a. Surviving group, length of service, follow the work, absolute rank, ratios etc.

**Subcontracting**
   a. contract language

**Outsourcing, relocating**

**Successor employer**
   a. bound by contract *Fall River Dying* tests
      1. Substantial continuity
      2. Appropriate bargaining unit
      3. Predecessor’s workers

**Drug & Alcohol Testing**
   a. Notification, no rescheduling, test validity & control and confidentiality
   b. Random testing, probable cause, after accident
   c. Refusal

**IMPLEMENTING THE COLLECTIVE BARGAINING AGREEMENT**

Chapter 9, Carrell & Hearvin

**Duties**

Bargaining in Good Faith required during life of contract
Grievances
Discipline

Management Rights

Residual Theory

Union Rights

Delineated or restricted

Contract

Executory
Bar to competition from other unions
Enforceable by suit
Bankruptcy equities

Enforcement

NLRB Enforcement
Arbitration
Court Enforcement

Case Law will be done with next chapter material

Section 7 rights

Representation free from threats coercion etc.
Refrain from concerted action
Concerted action
Fair Representation

Negotiations for new rights during contract

Zipper Clause – contract coverage then live with it

Opener – wages in public sector
Separability

Employer Unilateral Action
If contract covers - then notice requirements

Prohibited activities

   Secondary boycotts
   Featherbedding
   Shop-ins
   Hot-cargo agreements
   Double breasting
   Jurisdictional disputes

GRIEVANCE AND DISCIPLINE

Chapter 10, Carrell & Hearvin

Grievance processes

Collective bargaining exists during the life of the contract – contract administration

Grievance definitions – will be defined in the contract
Broad – any dispute between the parties  
Narrow - dispute over the contract

Grievance Causes

Support for future negotiations  
Policing contract  
Show of power  
Testing language

Multiple Step Process

Discuss with Supervisor (cannot be required – union is exclusive bargaining rep)  
Reduce to Writing – Steward & Supervisor  
Second and Subsequent Steps – higher authorities in both organizations  
Arbitration

Time limits, at each step for both grieving and responding

Shell Oil (1949) *quid pro quo* arbitration with no strike clause

**Discipline**

Employment at Will Doctrine

Public Policy Exception 44 states - Indiana included  
Implied Contract exception 38 states - Indiana not included  
Good faith and Fair Dealing 10 states - Indiana not included

**Discipline**

corrective  
extinction where not correctable

**Progressive Discipline**

Promulgated rules  
Warning  
Suspension  
Discharge

**Incidental Offenses**
Rules - Industrial Offenses - insubordinate
Moral Turpitude - should know not to do
Crimes

Written Rules - fair warning of expectations

Management Rights
Union rights involve terms and conditions

Daugherty’s seven tests of Just Cause

Just Cause - Proper Cause same/same

Enterprise Wire 46 LA 359

Notice
Reasonable rule or order
Investigation
Fair Investigation
Proof
Equal treatment
Penalty

Answer to any “no” then no just cause.

Mitigating Circumstances

Management also at fault
Long and Faithful Service - bank of good will
Prospects for rehabilitation
Others

Due Process considerations

Weingarten rights
Disparate Treatment
Facing accuser
Discovery

Quantum of Proof

Preponderance of evidence - progressive matters
Clear and convincing - necessary with more serious matter
Beyond a reasonable doubt - crime situations
Burden of proof and win/loss rates

ARBITRATION OF RIGHTS

Chapter 11, Carrell & Hearvin

Arbitration

Quasi-judicial process

Rights Arbitration

Interest Arbitration
Case Law

*Lincoln Mills of Alabama* (1957)

Steelworkers Trilogy (June 1960)

*Warrior & Gulf Navigation* – Broad Arb Clause  
*American Manufacturing* – Processing a grievance  
*Enterprise Wheel & Car* – Contract Expired

*Shell Oil* (1949) - quid pro quo  
*Boys Markets* (1970) no strike clause injunctive relief  
*ATT & CWA* (1986) injunctive relief to enforce arbitration  
*Misco Inc.* (1987) public policy exception to arbitral review  
*Litton Financial Printing* (1991) issue not under the expired contract not covered by *Enterprise Wheel & Car*

Deferral

*Speilberg* (1955) deferral to an existing award  
*Collyer Insulated Wire* (1971) broad deferral  
*Olin* (1984) deferral as long as ULP was considered and not “Palpably wrong”  
*Alexander v. Gardener Denver* (1981) two bites off the apple

Arbitrability

Substantive  
Procedurally

Arbitrator Selection

Ad Hoc

Panel Acceptability  
Party Acceptability
Permanent Panels

Umpireships

Sources and Qualifications of Arbitrators

Administrative Agencies

FMCS - NLRA

AAA - Private

NMB - RWLA

Professional Association

National Academy of Arbitrators
50 in 5
Neutrality
Renowned Expert

Case Prep

Evidential Rules

Parole Rules of Evidence

Contract

Practices
History

Outside evidence

Residual Principle

Direct v. circumstantial evidence

Creeping Legalism

Burden of Proof

Awards
Afterword

1. Globalization
   a. Capital is mobile, labor is not

2. Institutionalized hostility toward organized labor
   a. Great Depression and New Deal
   b. Loss of income and dual worker households approaching the problems of 1930s
      1. Structural changes resulting in less secure and less well paid jobs
2. Competition among sectors

3. Potential loss of middle class

3. Close to home

   a. Right-to-work potential in Indiana

      1. Loss of more high paying jobs and high value added industries

4. Little public discourse on the important issues

   a. Abortion and social mores type issues supplanting the issues government has normally dealt with and is effective with

   b. Media problems, FOX, talk shows, CNN and the anti-union networks

   c. Keep public eye off the ball and the real issues