

**LECTURE NOTES**  
**G545/E445**

**Collective Bargaining**

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## **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 boycott

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

*Schechter 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. Forbides 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  
minimum acceptable wage

controls apprentice programs, shifts supply curve

### 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 31<sup>st</sup> 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 activists 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

State	Weekly Earnings	Union %	U	DW
U.S.	935	12.0	8.6	10.9
Non RtoW	998	16.9	9.0	7.9
Total RtoW	776	7.4	8.2	13.3
Ex TX & VA	758	7.5	8.9	13.9
Alabama	766	6.9		
Arkansas	715	6.3		
Arizona	837	5.9		
Florida	794	6.6		
Georgia	885	7.2		
Idaho	659	7.5		
Iowa	738	13.3		
Kansas	748	9.3		
Louisiana	798	7.8		
Mississippi	650	6.9		
Nebraska	721	8.0		
Nevada	802	16.7		
North Carolina	825	3.7		
North Dakota	748	7.2		
Oklahoma	739	8.4		
South Carolina	722	4.9		
Tennessee	793	7.8		
Texas	946	5.7		
Utah	659	7.5		
Virginia	968	5.3		
Wyoming	808	7.4		
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:](#)

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Section 8 c Free speech

Section 8 (e) No Hot Cargo Agreements

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

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### 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

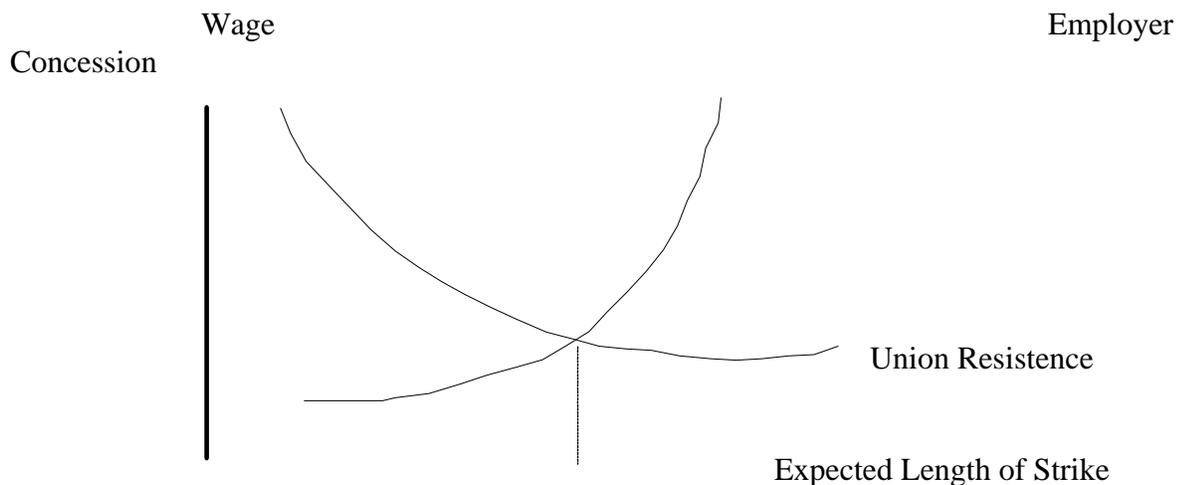
Injunctions from Circuit Court of Appeals – teeth

## **NEGOTIATING AN AGREEMENT**

## Chapter 5 Carrell & Hearvin

### Bargaining Process

1. Preparation
  - a. Data Gathering,
  - b. Generating Goals and Objections
  - c. Building Support (**Intraorganizational Bargaining**) – Walton & McKersie - Behavioral Theory
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. Recognition 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 bargaining
- 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
  - 1. 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.

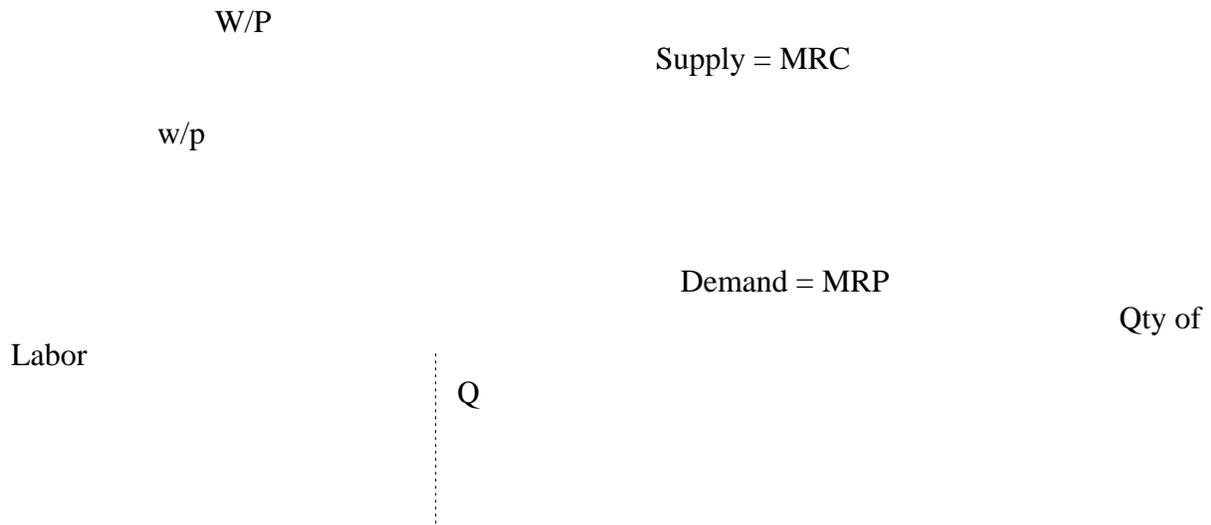
Two-tier schemes -airline pilots etc.

Economic theory

In an otherwise competitive labor market

$$MRC = \frac{\Delta L_{\text{cost}}}{\Delta QL}$$

$$MRP = \frac{\Delta TP}{\Delta QL}$$



### 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

Expedited arbitration

Med-Arb

Therapeutic value

## **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