

Labor Unions and Collective Bargaining

CHAPTER OBJECTIVES After completing this chapter, students should be able to:

- 1. Discuss why unions exist.
- 2. Explain why employees join unions.
- 3. Describe the basic structure of a union.
- 4. Summarize the prevalence of unions.
- 5. Describe organized labor's strategies for a stronger movement.
- 6. Discuss laws affecting collective bargaining.
- 7. Identify the steps that lead to forming a bargaining unit.
- 8. Describe the collective bargaining process and explain collective bargaining issues.
- 9. Describe preparation for negotiations and negotiating the agreement.
- 10. Discuss breakdowns in the negotiations process.
- 11. Describe what is involved in reaching, ratifying, and administering the labor-management agreement.
- 12. Describe the grievance procedure in a union environment.
- 13. Explain union decertification.
- 14. Describe collective bargaining in the public sector.
- 15. Discuss labor unrest in China.

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Unions are organizations that exist to represent the interests of employees in the workplace and to ensure fair treatment when conflicts arise between one or more employees and management.

Collective bargaining is the process in which labor union leadership enters into good faith negotiations with management representatives over terms of employment such as work hours, pay, and job security.

Collective bargaining agreements are documents that describe the terms of employment reached in negotiations between management and labor.

OBJECTIVE 11.1
Discuss why unions exist

★ Learn It

If your professor has chosen to assign this, go to mymanagementlab.com to see what you should particularly focus on and to take the Chapter 11 Warm-Up.

Labor unions and the process of collective bargaining are important considerations in the human resources (HR) field, which, as we described in Chapter 1, is the business function of managing people. **Labor unions** refer to organizations that exist to represent the interests of employees in the workplace and to ensure fair treatment when conflicts arise between one or more employees and management. Labor union leadership enters into good faith negotiations with management representatives over terms of employment such as work hours, pay, and job security. This process of negotiation is referred to as **collective bargaining**. The results of a successful collective bargaining process is the **collective bargaining agreement** or contract, in which the negotiated terms of employment are written.

In this chapter, we will explore a variety of important issues pertaining to labor unions, such as why labor unions exist and why employees join unions, the organizational structure of unions, laws affecting the relationship between unions and management, the collective bargaining process, and how unions can be decertified if members do not feel that their best interests are being served.

Why Do Unions Exist?

Labor unions in the United States came about out of necessity. Family agricultural farms and small family craft businesses were the bases for the U.S. economy before the early part of the twentieth century. The turn of the twentieth century marked the beginning of the Industrial Revolution in the United States. During the Industrial Revolution, the economy's transition from agrarian and craft businesses to large-scale manufacturing, or factory systems, began. Increasingly, individuals were becoming employees of large factories instead of self-employed farmers or small business owners. Factory owners, also referred to as *capitalists*, sought profits; profits refer to the money that capitalists enjoy after deducting the costs of doing business (for example, raw materials, employee wages). Highly efficient workforces were therefore an essential part of the capitalist's profit motive.

The profit motive and the sheer size of factory employment gave rise to divisions of labor based on differences in worker skill, effort, and responsibilities. In other words, many people held



positions performing the same job (for example, multiple employees perform the work specified in the job description for assembler) and the job types were diverse (for example, management, production, and clerical). The growth in the size of the workplace necessitated practices to guide such activities as hiring, training, setting wages, handling grievances, and terminating employment for work rule violations or poor job performance. Factory owners sought out the expertise of mechanical engineers to promote efficient production systems and productive workers. The work of these engineers defined the scientific management movement. Ultimately, scientific management practices contributed to labor cost reductions by replacing inefficient production methods with efficient production methods.

Although a variety of unions had existed for decades, management was not obligated to recognize them. The industrialization of the U.S. economy when business owners sought out efficiency while sacrificing the welfare of workers and the economic devastation during the Great Depression placed workers at a disadvantage. Workers were subject to poor pay, unsafe working conditions, and virtually no job security. During the Great Depression, scores of businesses failed and most workers became chronically unemployed, giving management even greater power because many workers would accept substandard employment terms as an alternative to unemployment. Some workers banded together to negotiate better terms of employment, but employers were not willing to listen because collective action could jeopardize employers' control over the terms of employment. Still, employees experienced poor working conditions, substandard wage rates, and excessive work hours. As we discuss shortly, Congress enacted the National Labor Relations Act (NLRA) of 1935 to remove barriers to free commerce and to restore equality of bargaining power between employees and employers.

Throughout the years that followed, unions successfully negotiated favorable terms of employment for its members as well as job security provisions in collective bargaining agreements, particularly during economic recessions. However, as we discuss shortly, unionization has declined dramatically over the past several decades along with the need for greater compromise.

OBJECTIVE 11.2

Explain why employees join unions.

Why Employees Join Unions

Individuals join unions for many different reasons, which tend to change over time, and may involve job, personal, social, or political considerations. It would be impossible to discuss them all, but the following are some of the major reasons. From an HR professional's standpoint, the issues associated with employees' dissatisfaction with management are most relevant.

Every job holds the potential for real dissatisfaction. Each individual has a boiling point that can cause him or her to consider a union as a solution to actual or perceived problems. Union organizers look for arbitrary or unfair management decisions and then emphasize the advantages of union membership as a means of solving these problems. Some of the other common reasons for employee dissatisfaction are described next.

Compensation and Employee Benefits

Employees want their compensation to be fair and equitable. Wages are important because they provide both the necessities and standard of living. If employees are dissatisfied with their wages, they may look to a union for assistance in improving their standard of living. An important psychological aspect of compensation involves the amount of pay an individual receives in relation to that of other workers performing similar work (employee equity). If an employee perceives that management has shown favoritism by paying someone else more to perform the same or a lower-level job, the employee will likely become dissatisfied. Union members know precisely the basis of their pay and how it compares with that of others.

Employees who are covered under a collective bargaining agreement enjoy higher wages and are more likely to participate in a variety of employee benefit programs. In 2013, private sector employers whose employees were covered by a union contract spent an average \$41.54 per employee per hour worked for wages and benefits.¹ This compares to \$28.48 for nonunion employees. Of this amount, the average hourly wage rate was \$24.83 and \$20.37 in union and nonunion settings, respectively. Figure 11-1 shows the percentage of workers in private industry who had access to various employee benefits in 2013. In every case, union workers were more likely to have benefits than nonunion employees.

FIGURE 11-1
Percentage of Employees
Who Have Access to
Employee Benefits in
Union and Nonunion
Settings

<i>Employee Benefits</i>	<i>Union (%)</i>	<i>Nonunion (%)</i>
<i>Retirement</i>	94	61
<i>Medical Care</i>	95	67
<i>Medical Care (share of Premiums)</i>		
<i>Employer pays</i>	87	78
<i>Employee pays</i>	13	22
<i>Life Insurance</i>	86	54
<i>Paid Leave</i>		
<i>Paid sick leave</i>	71	60
<i>Paid vacation</i>	91	75
<i>Paid holidays</i>	92	76

Source: U.S. Bureau of Labor Statistics. Employee Benefits in the United States – March 2013 (USDL 13-1344). Accessed April 5, 2014, at <http://www.bls.gov>.

Job Security

Historically, young employees have been less concerned with job security than older workers. Young employees seem to think, “If I lose this job, I can always get another.” But if they witness management consistently terminating older workers to make room for younger, lower paid employees, they may begin to think differently about job security. If the firm does not provide its employees with a sense of job security, workers may turn to a union.

Attitude of Management

People like to feel that they are important. They do not like to be considered a commodity that can be bought and sold. Employees do not like to be subjected to arbitrary actions by management. In some firms, management is insensitive to the needs of its employees. In such situations, employees may perceive that they have little or no influence in job-related matters. Workers who feel that they are not really part of the organization are prime targets for unionization. About 100 hourly workers at North Tonawanda’s Smurfit-Stone Container Corporation’s corrugated box plant voted to join the United Steelworkers union, claiming the company’s disciplinary and promotional policies reflected favoritism.² Organizations that treat people with dignity and respect are typically difficult to organize.

Management’s attitude may be reflected in even small actions. Employees may begin to feel they are being treated more as machines than as people. Supervisors may fail to give reasons for unusual assignments and may expect employees to dedicate their lives to the firm without providing adequate rewards. The prevailing philosophy may be: “If you don’t like it here, leave.” A management philosophy that does not consider the needs of employees as individuals makes the firm ripe for unionization. Management must keep in mind that unions will be less likely to gain a foothold if management is not abusive of its power. Companies that are pro-employees are not likely to be unionized.

Union Structure

The labor movement has developed a multilevel organizational structure. This complex of organizations ranges from local unions to the two principal federations—the AFL-CIO and the Change to Win Coalition.

Local Union

The basic element in the structure of the U.S. labor movement is the **local union** (or, the *local*). To the individual union member, the local is the most important level in the structure of organized labor. Through the local, individuals deal with the employer on a day-to-day basis. A local union may fill a social role in the lives of its members, sponsoring dances, festivals, and other functions. It may be the focal point of the political organization and activity of its members.

OBJECTIVE 11.3

Describe the basic structure of a union.

local union

Basic element in the structure of the U.S. labor movement.

craft union

Bargaining unit, such as the Carpenters and Joiners Union, which is typically composed of members of a particular trade or skill in a specific locality.

industrial union

Bargaining unit that generally consists of all the workers in a particular plant or group of plants.

national union

Organization composed of local unions, which it charters.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Central trade union federation in the United States.

**HR Web Wisdom**

Change to Win Coalition
<http://www.changetowin.org>

Topics related to "What they say they stand for, campaigns, strategic organizing, key facts, and who we are" are included on the Web site.

Change to Win Coalition

Union federation consisting of seven unions that broke from the AFL-CIO and formally launched a rival labor federation representing about 6 million workers from seven labor unions.

There are two basic kinds of local unions: craft and industrial. A **craft union**, such as the Carpenters and Joiners Union, is typically composed of members of a particular trade or skill in a specific locality. Members usually acquire their job skills through an apprenticeship-training program. An **industrial union** generally consists of all the workers in a particular plant or group of plants. The type of work they do and the level of skill they possess are not a condition of membership in the union. An example of an industrial union is the United Auto Workers.

The local union's functions are many and varied. Administering the collective bargaining agreement and representing workers in handling grievances are two very important activities. Other functions include keeping the membership informed about labor issues, promoting increased membership, maintaining effective contact with the national union, and when appropriate, negotiating with management at the local level.

National Union

The most powerful level in the union structure is the national union. As stated previously, most locals are affiliated with national unions. A **national union** is composed of local unions, which it charters. As such, it is the parent organization to local unions. The local union, not the individual worker, holds membership in the national union. Each local union provides financial support to the national union based on its membership size. The Service Employees International Union (SEIU) is the largest and fastest-growing national union in North America, with 2.1 million members in the United States, Canada, and Puerto Rico. According to the SEIU Web site, the SEIU has more than 1.1 million members in the health care field, including nurses, LPNs, doctors, lab technicians, nursing home workers, and home care workers. The International Brotherhood of Teamsters indicates that it has about 1.4 million members.

The national union is governed by a national constitution and a national convention of local unions, which usually meets every two to five years. Elected officers, aided by an administrative staff, conduct the day-to-day operations of the national union. The national union is active in organizing workers within its jurisdiction, engaging in collective bargaining at the national level, and assisting its locals in their negotiations. In addition, the national union may provide numerous educational and research services for its locals, dispense strike funds, publish the union newspaper, provide legal counsel, and actively lobby at national and state levels.

American Federation of Labor and Congress of Industrial Organizations

The **American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** is the central trade union federation in the United States. It is a loosely knit organization of national unions that has little formal power or control. The member national unions remain completely autonomous and decide their own policies and programs.

The AFL-CIO is a voluntary federation of 56 national and international labor unions representing 12.5 million members according to its Web site, including about 3 million members in Working America, its community affiliate. It represents the interests of labor and its member national unions at the highest level. The federation does not engage in collective bargaining; however, it provides the means by which member unions can cooperate to pursue common objectives and attempt to resolve internal problems faced by organized labor. The federation is financed by its member national unions and is governed by a national convention, which meets every two years.

The structure of the AFL-CIO is complex. National unions can affiliate with one or more of the trade and industrial departments. These departments seek to promote the interests of specific groups of workers who are in different unions but have common interests. The federation's major activities focus on improving the image of organized labor and lobbying on behalf of labor interests. Also, politically educating constituencies is crucial, as is resolving disputes between national unions and policing internal affairs of member unions.

Change to Win Coalition

The **Change to Win Coalition** is a union federation consisting of unions that broke from the AFL-CIO and formally launched a rival labor federation representing 6 million workers from seven labor unions. The mission of the Change to Win Coalition is "to unite the 50 million American workers who work in industries that cannot be outsourced or shipped overseas into strong unions that can win them a place in the American middle class—where their jobs provide good wages, decent working conditions and a voice on the job."³

The coalition, led by the SEIU, focuses its energies on new membership growth and not as much on lobbying. Also included in the new coalition are the International Brotherhood of Teamsters, Unite Here, the United Food and Commercial Workers International Union, United Brotherhood of Carpenters and Joiners of America, the United Farm Workers of America, and the Laborers' International Union of North America. The coalition wanted to direct its efforts at workers in industries in which employers could not easily outsource jobs. The primary targets for organizing included industries in cleaning, health care, hotels and restaurants, retailing, and transportation, whereas the AFL-CIO focused on electoral politics as a strategy to promote the labor movement. For example, the AFL-CIO typically invests resources into helping union-friendly politicians being elected into political office.

OBJECTIVE 11.4

Summarize the prevalence of unions.

Prevalence of Unions

The latest figures from the Labor Department's Bureau of Labor Statistics showed that the percentage of wage and salary workers who were members of a union was 11.3 percent.⁴ The number of wage and salary workers belonging to unions is at approximately 14.5 million. In 1983, the first year for which comparable union data are available, the union membership rate was 20.1 percent and there were 17.7 million union workers. The unionization rate and the number of employees who are protected by unions is declining steadily.

In 2013, 7.2 million public-sector employees belonged to a union, compared with 7.3 million union workers in the private sector. Public-sector workers had a union membership rate of 35.3 percent—more than five times higher than that of the private-sector workers rate of 6.7 percent. Private-sector industries with high unionization rates included utilities (27.1 percent) and construction (14.0 percent), whereas low unionization rates occurred in agriculture and related industries (1.2 percent) and in financial activities (2.6 percent). Clearly, the statistics show a noteworthy decline in unionization. There are possible reasons for this trend, and we consider five of these.

First, in decades past, unions often intimidated workers to become members even if they did not care to do so. Unions used such tactics to boost their membership, thus, their power to negotiate with employers over terms of employment. Quite simply, it is more difficult to ignore the voices of many rather than the few. Over time, legislation outlawed unions' use of intimidation, after which the prevalence of unions began to decline.

Second, historically, unions provided a voice to protect the rights of disadvantaged groups, including women, older workers, and racial minorities. However, starting in the 1960s, antidiscrimination laws such as Title VII of the Civil Rights Act instituted protections. The array of legislation lessened the role of unions.

Third, globalization of business is believed to have contributed substantially to the decline in unionization in a variety of ways. For example, higher quality automobile imports (such as Toyota and Honda automobiles) than U.S. automobile manufacturers required greater investments quality control and workforce flexibility, which unions tend to resist. Unions resist giving management too much discretion over employee assignments and pay out of concern that they would treat them unfairly; however, the survival of companies required that unions accept flexibility. Unions' willingness to permit greater management discretion raised questions about the ability of unions to protect workers.

Globalization through offshoring activities threatens unionization. In Chapter 5, we discussed offshoring as the migration of all or a significant part of the development, maintenance, and delivery of services to a company located in another country. With rare exception, employees do not move with the jobs. Traditionally, the reason given for offshoring is to reduce costs. Many of the lost jobs in the United States were unionized, which, as we showed, are most costly to employers than nonunion jobs. Moreover, the absence of or less restrictive labor laws (for example, minimum wage laws) in other countries generally permit U.S. companies to lower employment costs.

Fourth, large companies such as Boeing, which have highly unionized workforces, are establishing new facilities in states where unionization rates are low. German automobile manufacturer Volkswagen built a state-of-the-art factory in Tennessee, which possess right-to-work laws. **Right-to-work laws** prohibit management and unions from entering into agreements requiring union membership as a condition of employment.

right-to-work laws

Laws that prohibit management and unions from entering into agreements requiring union membership as a condition of employment.

Fifth, unionization is substantially higher in the public or government sector than in the private sector. Still, public sector unionization is being challenged throughout the country. Traditionally, there was much less resistance to unionize in the public sector than in the private sector. But the tide is changing. For example, Wisconsin Governor Scott Walker signed a law in 2011 that eliminated most union rights for government workers. The state lost nearly 50,000 public sector union members between 2011 and 2013.⁵ In Indiana, where a new right-to-work law took effect in 2012, lost about 52,000 union members in both the private and public sectors.⁶ Michigan lawmakers approved a right-to-work law a few months later, losing approximately 40,000 union members in both the private and public sectors.⁷

OBJECTIVE 11.5

Describe organized labor's strategies for a stronger movement.

Organized Labor's Strategies for a Stronger Movement

Even though the labor movement has suffered setbacks over the past few decades, it is likely that union membership would have been even lower if the following strategies had not been used.

Strategically Located Union Members

The importance of the jobs held by union members significantly affects union power. For instance, an entire plant may have to be shut down if unionized machinists performing critical jobs decide to strike. Thus, a few strategically located union members may exert a disproportionate amount of power. The type of firm that is unionized can also determine a union's power. Unionization of truckers or dockworkers can affect the entire country, and subsequently, enhance the union's power base. This is precisely what the longshoremen did in the Baltimore, Maryland, strike of 2013, which affected about 15,000 individuals employed in port-related businesses and several tens of thousands more employees who work for the port. Through control of key industries, a union's power may extend to firms that are not unionized.

Pulling the Union Through

One union tactic that has worked effectively at times is to put pressure on the end user of a company's product to have a successful organizing attempt. The United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) authorized a strike against four Johnson Controls Inc. (JCI) factories that made interior parts for some of the country's best-selling vehicles. The quick two-day strike cost workers little lost income, but it hurt General Motors Corporation by shutting down production of their popular Chevy Trail Blazer sport utility vehicle. Worried about lost sales in a profitable segment and desiring to preserve good relations with the UAW, GM played an active behind-the-scenes role by pressuring JCI to settle the dispute. The result was a major UAW victory.

Political Involvement

The political arm of the AFL-CIO is the **Committee on Political Education (COPE)**. Founded in 1955, its purpose is to support politicians who are friendly to the cause of organized labor. The union recommends and assists candidates who will best serve its interests. In presidential and congressional elections, union support may have a significant impact. Union members also encourage their friends and families to support those candidates. Joshua Freeman, professor of labor history at the City University of New York Graduate Center, said, "Unions have gotten weaker, but that weakness is not reflected in the political arena. They are very effective in mobilizing their members and families. It's now fairly common to have one out of four votes in an election coming from a union household."⁸ The union's political influence increases as the size of the voting membership grows. With friends in government, the union is in a stronger position to maneuver against management. Political involvement means more than endorsing candidates at all levels of politics, and then attempting to deliver the union membership's vote. Unions give money to candidates who pledge to help pass pro-labor legislation. Of the top 10 biggest political donors at the federal level over the past 34 years, eight are unions while only two are corporations. Among the unions, the American Federation of State, County and Municipal Workers contributed more than \$60 million.⁹

Committee on Political Education (COPE)
Political arm of the AFL-CIO.

union salting

Process of training union organizers to apply for jobs at a company and, once hired, working to unionize employees.

Union Salting

Union salting is the process of training union organizers to apply for jobs at a company and, once hired, working to unionize employees. An employee who serves this role is known as a “union salt.” Although traditionally used by blue-collar labor unions within the construction and building industries, it is a strategy labor unions are also using in other sectors, such as the hotel and restaurant industries. There have been a variety of court cases regarding legal protections for union salts. In general, a company cannot terminate these employees solely because they also work for a union. However, if productivity suffers, the worker can be terminated.

flooding the community

Process of the union inundating communities with organizers to target a particular business.

Flooding the Community

Flooding the community is the process of the union inundating communities with organizers to target a particular business in an organizing attempt. With their flooding campaigns, unions typically choose companies in which nonunionized employees have asked for help in organizing. Generally, organizers have been recruited and trained by the national union. They are typically young, ambitious, college-educated people with a passion for the U.S. labor movement. Organizers meet with employees in small groups and even visit them at home. They know every nuance of a company’s operations and target weak managers’ departments as a way to appeal to dissatisfied employees who may be willing to organize.

public awareness campaigns

Labor maneuvers that do not coincide with a strike or organizing campaign to pressure an employer for better wages, benefits, and the like.

Public Awareness Campaigns

Public awareness campaigns involve labor maneuvers that do not coincide with a strike or an organizing campaign to pressure an employer for better wages, benefits, and the like. Increasingly, these campaigns are used as an alternative to strikes because more employers are willing to replace their striking employees. Employers have less recourse against labor campaigns that involve joining political and community groups that support union goals or picketing homes of a company’s board of directors. They are also defenseless in dealing with the union’s initiating proxy challenges to actions negative to labor, writing letters to the editors of the local newspapers, and filing charges with administrative agencies such as the Occupational Safety and Health Administration and the National Labor Relations Board (NLRB). These types of public awareness campaigns, which are not tied directly to labor gains, are often effective methods of developing union leverage. Also, fighting such campaigns is time consuming and costly for companies.

Building Organizing Funds

To encourage workers to come together, the AFL-CIO often asks its affiliates to increase organizing funds. The federation may also increase funding to its Organizing Institute, which trains organizers, and even launches advertising campaigns to create wider public support for unions. National unions also create organizing funds.

Unions Partnering with High Schools

Some high schools are pairing up with labor unions to prepare students for a career. Ten students from Saydel High School’s construction shop class have entered a pilot program that allows them direct entry into the United Association Plumbers and Steamfitters Local Union 33 once they graduate. As Local 33, apprentices receive training in plumbing, heating, air conditioning, medical gas, high purity piping, and water treatment. Greg Foshe, business manager of Local 33, said, “The goal of this program is to bring people into the union at a younger age. When students go from high school directly into their trade, they are going from learning situation to learning situation, creating a fast track educational experience.”¹⁰

Organizing Younger Workers

A major strategy now being pursued by union organizers is to recruit younger workers, and it may be coming at the right time because the lowest union membership rate is occurring among this group. In fact, according to the Bureau of Labor Statistics, the lowest union membership rate occurred among those ages 16 to 24 (4.4 percent). In the past, younger organizers were often considered second-class citizens. Consider what Rachael Hunt, a young union organizer, said: “Too many times, more experienced trade unionists have spoken to me as if I were a

blank slate: ready to mold and be shaped to meet older organizers' viewpoints and goals. The same top-down, stale, bureaucratic organizational model that is crippling unions is also the biggest barrier to recruiting young people."¹¹ Richard Trumka, AFL-CIO president, said the following regarding including the ideas of younger workers: "I'm not suggesting that the labor movement ought to abandon all its traditions. But what I am saying is that nostalgia for the past is no strategy for the future. Tradition should always have a vote; we just can't let it have a veto."¹²

Organizing through the Card Check

card check

Organizing approach by labor in which employees sign a nonsecret card of support if they want unionization, and if 50 percent of the workforce plus one worker sign a card, the union is formed.

The **card check** is an organizing approach by labor in which employees sign a nonsecret card of support if they want unionization, and if 50 percent of the workforce plus one worker sign a card the union is formed. This organizing method is based on management not objecting to the use of card check. It permits workers to decide in a nonsecret election their union status. Essentially, organizations decide to remain neutral and peacefully permit their employees to decide whether they want to unionize and not interfere as the union passes out authorization cards.

In 2013, the UAW launched a card-check campaign at the Volkswagen manufacturing facility in Tennessee. The card check procedure avoids holding a secret ballot by having workers sign cards to join a union. A majority of workers in a bargaining unit must sign cards, which are then certified, before the company recognizes the union. The union failed when eight workers represented by the National Right to Work Legal Defense Foundation filed charges with the NLRB alleging that the UAW had lied to workers and bullied them into signing cards.¹³ The NLRB dismissed the charges; however, many workers protested the card-check approach, which pressured Volkswagen to hold a secret-ballot election. In 2014, workers elected not to unionize. Some card check campaigns lead to unionization. In 2008, Teamsters union launched a nationwide card-check campaign. Bargaining units from across the country signed authorization cards and were recognized as a union.¹⁴ The largest was the drivers and dockworkers employed by UPS Freight, which added more than 9,900 members.¹⁵

OBJECTIVE 11.6

Discuss laws affecting collective bargaining.

Laws Affecting Collective Bargaining

A variety of laws influence the collective bargaining process and outcomes. Some are geared specifically toward the process and others are laws that we have previously discussed that influence outcomes.

National Labor Relations Act

The National Labor Relations Act (NLRA) of 1935 (also known as the Wagner Act) is one of the most significant labor-management relations statutes ever enacted. The act declared legislative support, on a broad scale, for the right of employees to organize and engage in collective



ETHICAL DILEMMA

A Strategic Move

You are the plant manager for a medium-sized manufacturing company that has been experiencing growing employee tensions, and there has been a lot of talk among workers about forming a union. You have even seen what appear to be authorization cards being passed out around the plant. Sandy Marshall, one of the workers in your plant, has been seen talking to many of the workers, obviously about forming a union. Sandy is influential with the workers throughout the plant and appears to be a natural leader. You believe that if Sandy continues to promote the union, she will have a major impact among the workers in organizing the union. You

have a supervisory position that has just come open. It pays a lot more than what Sandy currently makes. You think, "If I make her a supervisor, she won't be able to use her influence to help get the union started." However, there is another worker in your department who is more qualified and has been with the firm several years longer than Sandy, although he is less influential with other workers throughout the plant.

1. What would you do?
2. What factor(s) in this ethical dilemma might influence a person to make a less-than-ethical decision?

bargaining. The spirit of the Wagner Act is stated in Section 7, which defines the substantive rights of employees:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities, for the purpose of collective bargaining or other mutual aid or protection.



HR Web Wisdom

National Labor Relations Board

<http://www.nlr.gov>

The NLRB is a federal agency that administers the National Labor Relations Act.

The NLRA created the National Labor Relations Board (NLRB). At the time, the board helped the labor movement, which at times resulted in heated and sometimes violent management resistance.¹⁶ The NLRB was given two principal functions: (1) to establish procedures for holding bargaining unit elections and to monitor the election procedures (representation elections), and (2) to investigate complaints and prevent unlawful acts involving unfair labor practices. Much of the NLRB's work is delegated to 33 regional offices throughout the country. Appointments to the NLRB are made by the President and confirmed by the Senate. They decide on detailed rules governing union and management behavior and how elections should be conducted.

Section 8 is a key part of the NLRA because it defines unfair labor practices. Unfair labor practices may result from an employer's or union's actions. There are five employer practices deemed to be unfair to labor:

1. Interfering with or restraining or coercing employees in the exercise of their right to self-organization.
2. Dominating or interfering in the affairs of a union.
3. Discriminating in regard to hire or tenure or any condition of employment for the purpose of encouraging or discouraging union membership.
4. Discriminating against or discharging an employee who has filed charges or given testimony under the act.
5. Refusing to bargain with chosen representatives of employees.

Unions are prohibited from conducting unfair labor practices. Primarily, unions are barred from forcing employees not to exercise their rights as defined in Section 7. Also, unions are prohibited from encouraging employer discrimination against employees who have been denied union membership unless such a denial was the result of failure to pay union membership dues.

Following passage of the Wagner Act, union membership increased from approximately 3 million to 15 million between 1935 and 1947.



HR BLOOPERS

Stopping Unionization at Packer Industries

It appears that the rumors about a union organizing effort at Packer Industries are true. Jay Golden, the Director of HR, just confirmed with a supervisor that the employees have started signing authorization cards. Jay suspected this was coming because he had received an increased number of complaints about pay and working conditions over the last several months. He learned that a small group of employees are leading efforts to build interest in a union and Jay is very concerned. He is convinced that a union would create long-term challenges for the company and his instincts tell him he should do whatever is necessary to discourage employees from

organizing. The company's CEO agrees with Jay and together they have started efforts to convince employees that they are better off without the union. The CEO started by holding a mandatory meeting where she made it very clear that if the union is certified, they can all count on a reduction in pay and benefits. Jay also has identified one of the leaders of the unionizing efforts. He's decided to transfer him to the second shift where there are fewer employees for him to talk to about the union. Jay is sure that this employee's transfer will make it clear to all employees that Packer Industries will do whatever it takes to prevent them from unionizing.

★ If your professor has assigned this, go to mymanagementlab.com to complete the HR Bloopers exercise and test your application of these concepts when faced with real-world decisions.

Labor—Management Relations Act

In 1947, with public pressure mounting, Congress passed the Labor–Management Relations Act (Taft–Hartley Act). The Taft–Hartley Act extensively revised the NLRA. A new period began in the evolution of public policy regarding labor. The pendulum had begun to swing toward a more balanced position between labor and management.

Some of the important changes introduced by the Taft–Hartley Act included the following:

1. Modifying Section 7 to include the right of employees to refrain from union activity as well as engage in it.
2. Prohibiting the closed shop and narrowing the freedom of the parties to authorize the union shop.
3. Broadening the employer's right of free speech.
4. Providing that employers need not recognize or bargain with unions formed by supervisors.
5. Giving employees the right to initiate decertification petitions.
6. Providing for government intervention in national emergency strikes.

Another significant change extended the concept of unfair labor practices to unions. Labor organizations were to refrain from the following:

1. Restraining or coercing employees in the exercise of their guaranteed collective bargaining rights.
2. Causing an employer to discriminate in any way against an employee to encourage or discourage union membership.
3. Refusing to bargain in good faith with an employer regarding wages, hours, and other terms and conditions of employment.
4. Engaging in certain types of strikes and boycotts.
5. Requiring employees covered by union-shop contracts to pay initiation fees or dues in an amount which the board finds excessive or discriminatory under all circumstances.
6. *Featherbedding*, or requiring that an employer pay for services not performed.

One of the most controversial elements of the Taft–Hartley Act is its Section 14b, which permits states to enact right-to-work legislation. In the 26 states without right-to-work laws, it is legal for an employer to agree with the union that a new employee must join the union after a certain period of time (generally 30 days) or be terminated. This is referred to as a "union-shop agreement." Right-to-work laws prohibit management and unions from entering into agreements requiring union membership as a condition of employment. These laws are state statutes or constitutional provisions that ban the practice of requiring union membership or financial support as a condition of employment. They establish the legal right of employees to decide for themselves whether or not to join or financially support a union. Twenty-three states, located primarily in the South and West, have adopted such laws, which are a continuing source of irritation between labor and management.

Antidiscrimination Laws and Executive Orders

In Chapter 3, we discussed a variety of federal laws and executive orders that are designed to protect employees from illegal discrimination. Some of these federal laws include the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, and the Equal Pay Act. We also noted that a variety of state and local laws provide similar or enhanced protection. These laws and executive orders made it easier for unions to protect the rights of many members.

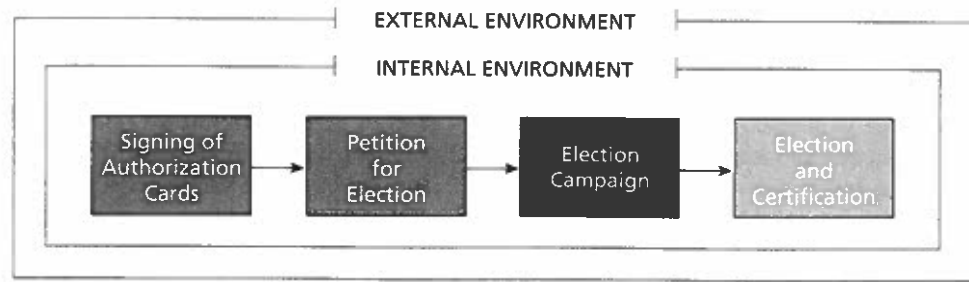
Steps That Lead to Forming a Bargaining Unit

Before a union can negotiate a contract, it must first be formed or certified. The primary law governing the relationship of companies and unions is the NLRA, as amended. Collective bargaining is one of the key parts of the act. Section 8(d) of the act defines collective bargaining, which we described as the process of negotiation between union representatives and representatives of management to agree on a collective bargaining agreement or contract. The act specifies that both the employer and representatives of employees meet at reasonable times to confer in good faith with respect to wages, hours, and other terms related to conditions of employment, or to negotiate an agreement.

OBJECTIVE 11.7

Identify the steps that lead to forming a bargaining unit.

FIGURE 11-2
Steps That Lead to
Forming a Bargaining Unit



The act further provides that the designated representative of the employees shall be the exclusive representative for all the employees in the unit for purposes of collective bargaining. A **bargaining unit** consists of a group of employees, not necessarily union members, recognized by an employer or certified by an administrative agency as appropriate for representation by a labor organization for purposes of collective bargaining.

bargaining unit
Group of employees, not necessarily union members, recognized by an employer or certified by an administrative agency as appropriate for representation by a labor organization for purposes of collective bargaining.

A unit may cover the employees in one plant of an employer, or it may cover employees in two or more plants of the same employer. Although the act requires the representative to be selected by the employees, it does not require any particular procedure to be used so long as the choice clearly reflects the desire of the majority of the employees in the bargaining unit. The employee representative is normally chosen in a secret-ballot election conducted by the NLRB. When workers desire to become the bargaining representative for a group of employees, several steps leading to certification have to be taken (Figure 11-2).

Prior to observing the distribution of authorization cards, there are usually signs of an upcoming union organizing attempt. Some indications might be an increase in the number or intensity of employee complaints on wages, hours, working conditions, or management practices; unusual or more frequent employee challenges to management authority; and an increase in the number of formal complaints to government agencies such as Occupational Health and Safety Administration, U.S. Department of Labor, and state or federal equal employment agencies.

Signing of Authorization Cards

A prerequisite to becoming a recognized bargaining unit is to determine whether there is sufficient interest on the part of employees to justify the unit. Evidence of this interest is expressed when at least 30 percent of the employees in a work group sign an authorization card (Table 11-1). The **authorization card** is a document indicating that an employee wants to be represented by a labor organization in collective bargaining. Most union organizers will not proceed unless at least 50 percent of the workers in the group sign cards.

authorization card
Document indicating that an employee wants to be represented by a labor organization in collective bargaining.

Petition for Election

After the authorization cards have been signed, a petition for an election may be made to the appropriate regional office of the NLRB. When the petition is filed, the NLRB will conduct an investigation. The purpose of the investigation is to determine, among other things, the following:

1. Whether the board has jurisdiction to conduct an election.
2. Whether there is a sufficient showing of employee interest to justify an election.
3. Whether a question of representation exists (for example, the employee representative has demanded recognition, which has been denied by the employer).
4. Whether the election will include appropriate employees in the bargaining unit (for instance, the board is prohibited from including plant guards in the same unit with the other employees).
5. Whether the representative named in the petition is qualified (for example, a supervisor or any other management representative may not be an employee representative).
6. Whether there are any barriers to an election in the form of existing contracts or prior elections held within the past 12 months.¹⁷

TABLE 11-1**Example of an Authorization Card**

YES, I WANT THE UNION
I, the undersigned, and employee of
(Name of Company)

Hereby authorize the (Name of the Union) to act as my collective bargaining agent with the company for wages, hours, and other terms and conditions of employment.

NAME _____ DATE _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

JOB TITLE _____

SIGN HERE _____

NOTE: THIS AUTHORIZATION IS TO BE SIGNED AND DATED IN EMPLOYEE'S OWN HANDWRITING. YOUR RIGHT TO SIGN THIS CARD IS PROTECTED BY LAW.

If these conditions have been met, the NLRB will ordinarily direct that an election be held within 30 days. Election details are left largely to the agency's regional director.

Election Campaign

When an election has been ordered, both union and management usually promote their causes actively. Unions will continue to encourage workers to join the union, and management may begin a campaign to tell workers the benefits of remaining union free. The supervisor's role during the campaign is crucial. Supervisors need to conduct themselves in a manner that avoids violating the law and committing unfair labor practices. Specifically, they should be aware of what can and cannot be done during the pre-election campaign period. Throughout the campaign, supervisors should keep upper management informed about employee attitudes.

Theoretically, both union and management are permitted to tell their stories without interference from the other side. At times, the campaign becomes quite intense. Election results will be declared invalid if the campaign was marked by conduct that the NLRB considers to have interfered with the employees' freedom of choice. Examples of such conduct include the following:

- An employer or a union threatens loss of jobs or benefits to influence employees' votes or union activities.
- An employer or a union misstates important facts in the election campaign when the other party does not have a chance to reply.
- Either an employer or a union incites racial or religious prejudice by inflammatory campaign appeals.
- An employer fires employees to discourage or encourage their union activities or a union causes an employer to take such an action.
- An employer or a union makes campaign speeches to assembled groups of employees on company time within 24 hours of an election.

Election and Certification

The NLRB monitors the secret-ballot election on the date set. Its representatives are responsible for making sure that only eligible employees vote and for counting the votes. Following a valid election, the board will issue a certification of the results to the participants. If a union has been chosen by a majority of the employees voting in the bargaining unit, it will receive a certificate showing that it is now the official bargaining representative of the employees in the unit. However, the right to represent employees does not mean they have the right to dictate terms to management that would adversely affect the organization. The bargaining process does not require either party to make concessions; it only compels them to bargain in good faith in collective bargaining.

Collective Bargaining

Once the NLRB certifies the union, labor and management can engage in collective bargaining. Most union-management agreements in the United States are for a three-year period though contracts may be in effect for as long as seven or eight years. The bargaining structure can affect the conduct of collective bargaining. The four major structures are one company dealing with a single union, several companies dealing with a single union, several unions dealing with a single company, and several companies dealing with several unions. Most contract bargaining is carried out under the first type of structure. The process can become quite complicated when several companies and unions are involved in the same negotiations. However, even when there is only one industry involved and one group of workers with similar skills, collective bargaining can be very difficult.

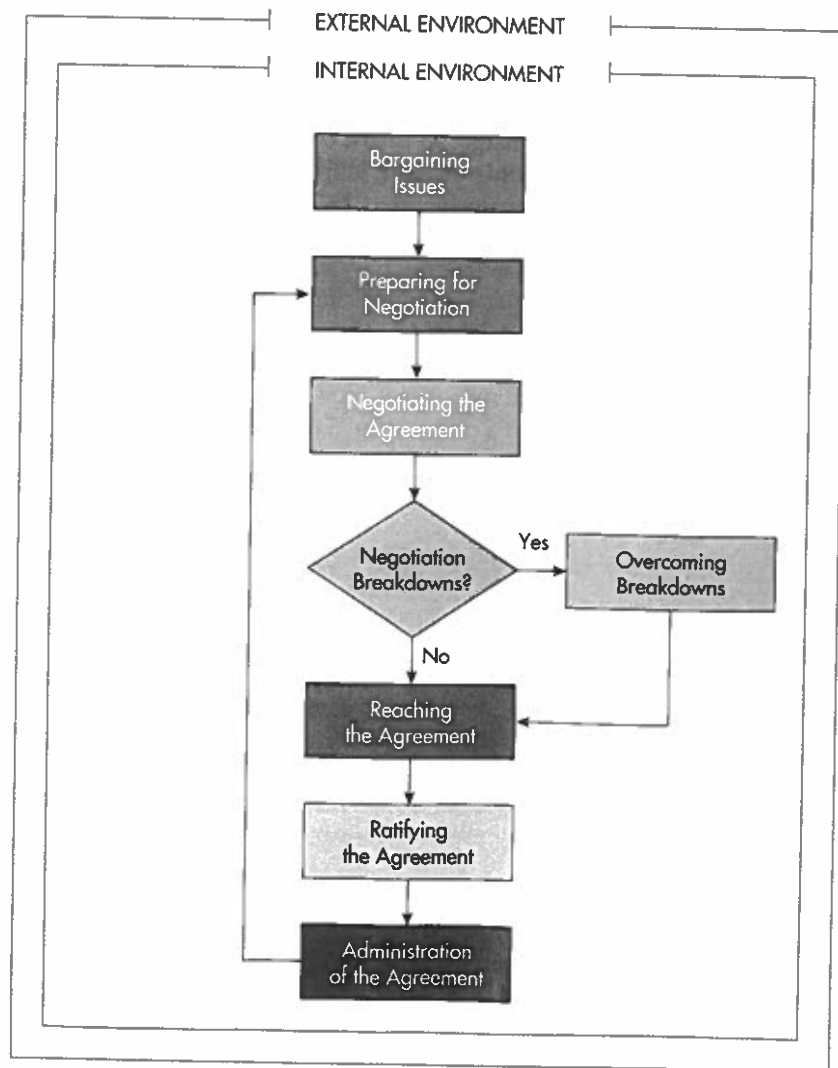
OBJECTIVE 11.8

Describe the collective bargaining process and explain collective bargaining issues.

Collective Bargaining Process

The collective bargaining process is fundamental to union and management relations in the United States. Regardless of the current state of labor-management relations, the general aspects of the collective bargaining process are the same and are illustrated in Figure 11-3. Depending on the type of relationship encountered, the collective bargaining process may be relatively simple, or it may be a long, tense struggle for both parties. Regardless of the complexity of the bargaining issues, the ability to reach agreement is the key to any successful negotiation.

FIGURE 11-3
Collective Bargaining Process



As you can see, both external and internal environmental factors can influence the process. The first step in the collective bargaining process is preparing for negotiations. This step is often extensive and ongoing for both union and management. After the issues to be negotiated have been determined, the two sides confer to reach a mutually acceptable contract. Although breakdowns in negotiations can occur, both labor and management have at their disposal tools and arguments that can be used to convince the other side to accept their views. Eventually, however, management and the union usually reach an agreement that defines the rules for the duration of the contract. The next step is for the union membership to ratify the agreement. There is a feedback loop from "Administration of the Agreement" to "Preparing for Negotiation." Collective bargaining is a continuous and dynamic process, and preparing for the next round of negotiations often begins the moment a contract is ratified.

Bargaining Issues

Because of the complex issues facing labor and management today, negotiating teams must carefully prepare for the bargaining sessions. Prior to meeting at the bargaining table, the negotiators should thoroughly know the culture, climate, history, present economic state, and wage and benefits structure of both the organization and similar organizations. Because the length of a typical labor agreement is three years, negotiators should develop a contract that is successful both now and in the future. This consideration should prevail for both management and labor, although it rarely does. During the term of an agreement, the two sides usually discover contract provisions that need to be added, deleted, or modified. These items become proposals to be addressed in the next round of negotiations.

Bargaining issues can be divided into three categories: mandatory, permissive, and prohibited. **Mandatory bargaining issues** fall within the definition of wages, hours, and other terms and conditions of employment. These issues generally have an immediate and direct effect on workers' jobs. A refusal to bargain in these areas is grounds for an unfair labor practice charge. At times, collective bargaining toward new wage, rules, and benefits agreements may drag on for a long time. **Permissive bargaining issues** may be raised, but neither side may insist that they be bargained over. For example, management may want to bargain over health benefits for retired workers, but the union may choose not to bargain over the issue. Another permissive bargaining issue might be the union wanting management to provide child-care arrangements.

Prohibited bargaining issues, such as the issue of the closed shop, an arrangement whereby union membership is a prerequisite, are statutorily outlawed. The Taft-Hartley Act made the closed shop illegal. However, the act was modified 12 years later by the Landrum-Griffin Act to permit a closed shop in the construction industry. This is the only exception allowed.

Despite much dissimilarity, certain topics are included in virtually all labor agreements. Each topic discussed in the following section may be an issue in negotiations.

Recognition

This section usually appears at the beginning of the labor agreement. Its purpose is to identify the union that is recognized as the bargaining representative and to describe the bargaining unit—that is, the employees for whom the union speaks. A typical recognition section might read as follows:

The XYZ Company recognizes the ABC Union as the sole and exclusive representative of the bargaining unit employees for the purpose of collective bargaining with regard to wages, hours, and other conditions of employment.

Management Rights

A section that is often but not always written into the labor agreement spells out the rights of management. If no such section is included, management may reason that it retains control of all topics not described as being able to be bargained in the contract. The precise content of the

mandatory bargaining issues
Bargaining issues that fall within the definition of wages, hours, and other terms and conditions of employment.

permissive bargaining issues
Issues that may be raised, but neither side may insist that they be bargained over.

prohibited bargaining issues
Issues that are statutorily outlawed from collective bargaining.

management rights section will vary by industry, company, and union. When included, management rights generally involve three areas:

1. Freedom to select the business objectives of the company.
2. Freedom to determine the uses to which the material assets of the enterprise will be devoted.
3. Power to take disciplinary action for cause.

Basically management has the right to determine what work is to be done and where, when, and how it is to be done, to determine the number of employees who will do the work, to supervise and instruct employees in doing the work, to correct employees whose work performance or personal conduct fails to meet reasonable standards, and to hire, dismiss, and promote workers based on performance.

Union Security

Union security is typically one of the first items negotiated in a collective bargaining agreement. The objective of union security provisions is to ensure that the union continues to exist and perform its functions. A strong union security provision makes it easier for the union to enroll and retain members. Some basic forms of union security clauses are next described.

CLOSED SHOP A **closed shop** is an arrangement whereby union membership is a prerequisite for employment. As noted previously, closed shops are illegal in every industry except for the construction industry.

UNION SHOP A **union shop** arrangement requires that all employees become members of the union after a specified period of employment (the legal minimum is 30 days) or after a union-shop provision has been negotiated. Employees must remain members of the union as a condition of employment for the duration of the contract. The union shop is generally legal in the United States, except in states that have right-to-work laws.

MAINTENANCE OF MEMBERSHIP With **maintenance of membership**, employees who are members of the union at the time the labor agreement is signed or who later voluntarily join must continue their memberships until the termination of the agreement as a condition of employment. This form of recognition is also prohibited in most states that have right-to-work laws.

AGENCY SHOP An **agency shop** provision does not require employees to join the union; however, the labor agreement requires that, as a condition of employment, each nonunion member of the bargaining unit pay the union the equivalent of membership dues as a kind of tax, or service charge, in return for the union acting as the bargaining agent. The NLRA requires the union to bargain for all members of the bargaining unit, including nonunion employees. The agency shop is outlawed in most states that have right-to-work laws.

OPEN SHOP An open shop describes the absence of union security, rather than its presence. The **open shop**, strictly defined, is employment on equal terms to union members and nonmembers alike. Under this arrangement, no employee is required to join or contribute to the union financially.

CHECKOFF OF DUES Another type of security that unions attempt to achieve is the checkoff of dues. A checkoff agreement may be used in addition to any of the previously mentioned shop agreements. Under the **checkoff of dues** provision, the company agrees to withhold union dues from members' paychecks and to forward the money directly to the union. Because of provisions in the Taft-Hartley Act, each union member must voluntarily sign a statement authorizing this deduction. Dues checkoff is important to the union because it eliminates much of the expense, time, and hassle of collecting dues from each member every pay period or once a month.

Compensation

This section typically constitutes a large portion of most labor agreements. Virtually any item that can affect compensation may be included in labor agreements. Some of the items frequently covered include the following:

closed shop

Arrangement making union membership a prerequisite for employment.

union shop

Requirement that all employees become members of the union after a specified period of employment (the legal minimum is 30 days) or after a union-shop provision has been negotiated.

maintenance of membership

Employees who are members of the union at the time the labor agreement is signed or who later voluntarily join must continue their memberships until the termination of the agreement as a condition of employment.

agency shop

Labor agreement provision requiring, as a condition of employment, that each nonunion member of a bargaining unit pay the union the equivalent of membership dues as a service charge in return for the union acting as the bargaining agent.

open shop

Employment on equal terms to union members and nonmembers alike.

checkoff of dues

Agreement by which a company agrees to withhold union dues from members' paychecks and to forward the money directly to the union.

WAGE RATE SCHEDULE The base rates to be paid each year of the contract for each job are included in this section. At times, unions are able to obtain a cost-of-living adjustment (COLA), or escalator clause, in the contract to protect the purchasing power of employees' earnings.

OVERTIME AND PREMIUM PAY Another section of the agreement may cover hours of work, overtime pay, hazard pay, and premium pay, such as shift differentials.

JURY PAY For some firms, jury pay amounts to the employee's entire salary when he or she is serving jury duty. Others pay the difference between the amount employees receive from the court and the compensation that would have been earned. The procedure covering jury pay is typically stated in the contract.

LAYOFF OR SEVERANCE PAY The amount that employees in various jobs or seniority levels will be paid if they are laid off or terminated is a frequently included item.

HOLIDAYS The holidays recognized and the amount of pay that a worker will receive if he or she has to work on a holiday is specified here. In addition, the pay procedure for times when a holiday falls on a worker's normal day off is provided.

VACATION This section spells out the amount of vacation that a person may take based on seniority. Any restrictions as to when the vacation may be taken are also stated.

Grievance Procedure

Virtually all labor agreements include some form of grievance procedure. A **grievance** can be broadly defined as an employee's dissatisfaction or feeling of personal injustice relating to his or her employment. A **grievance procedure** (discussed later in this chapter) is a formal, systematic process that permits employees to express complaints without jeopardizing their jobs.

Employee Security

This section of the labor agreement establishes the procedures that cover job security for individual employees. Seniority is a key topic related to employee security. **Seniority** is the length of time an employee has been associated with the company, division, department, or job. Seniority may be determined companywide, by division, by department, or by job. Agreement on seniority is important because the person with the most seniority, as defined in the labor agreement, is typically the last to be laid off and the first to be recalled. The seniority system also provides a basis for promotion decisions. When qualifications are met, employees with the greatest seniority will likely be considered first for promotion to higher-level jobs.

Job-Related Factors

Many of the rules governing employee actions on the job are also included. Some of the more important factors are company work rules, work standards, and rules related to safety. This section varies, depending on the nature of the industry and the product manufactured.

Preparation for Negotiations

The union must continuously gather information regarding membership needs to isolate areas of dissatisfaction. The union steward is normally in the best position to collect such data.¹⁸ Because they are usually elected by their peers, stewards should be well informed regarding union members' attitudes. The union steward constantly funnels information up through the union's chain of command, where the data are compiled and analyzed. Union leadership attempts to uncover any areas of dissatisfaction because the general union membership must approve any agreement before it becomes final. Because they are elected, union leaders will lose their positions if the demands they make of management do not represent the desires of the general membership.

Management also spends long hours preparing for negotiations. All aspects of the current contracts are considered, including flaws that should be corrected. When preparing for negotiations, management should listen carefully to first-line managers. These individuals administer the labor agreement on a day-to-day basis and must live with errors made in negotiating the

grievance

Employee's dissatisfaction or feeling of personal injustice relating to his or her employment.

grievance procedure

Formal, systematic process that permits employees to express complaints without jeopardizing their jobs.

seniority

The length of time an employee has been associated with the company, division, department, or job.

OBJECTIVE 11.9

Describe preparation for negotiations and negotiating the agreement.

contract. An alert line manager is also able to inform upper management of the demands unions may plan to make during negotiations.

Management also attempts periodically to obtain information regarding employee attitudes. Surveys are often administered to workers to determine their feelings toward their jobs and job environment. Union and management representatives like to know as much as possible about employee attitudes when they sit down at the bargaining table.

Another part of preparation for negotiations involves identifying various positions that both union and management will take as the negotiations progress. Each usually takes an initially extreme position, representing the optimum conditions union or management would prefer. The two sides will likely determine absolute limits to their offers or demands before a breakdown in negotiations occurs. They also usually prepare fallback positions based on combinations of issues. Preparations should be detailed because clear minds often do not prevail during the heat of negotiations.

A major consideration in preparing for negotiations is the selection of the bargaining teams. The makeup of the management team usually depends on the type of organization and its size. Normally, labor relations specialists, with the advice and assistance of operating managers, conduct bargaining. Sometimes, top executives are directly involved, particularly in smaller firms. Larger companies use staff specialists (a HR manager or industrial relations executive), managers of principal operating divisions, and in some cases, an outside consultant, such as a labor attorney.

The responsibility for conducting negotiations for the union is usually entrusted to union officers. At the local level, rank-and-file members who are elected specifically for this purpose will normally supplement the bargaining committee. In addition, the national union will often send a representative to act in an advisory capacity or even to participate directly in the bargaining sessions. The real task of the union negotiating team is to develop and obtain solutions to the problems raised by the union's membership.

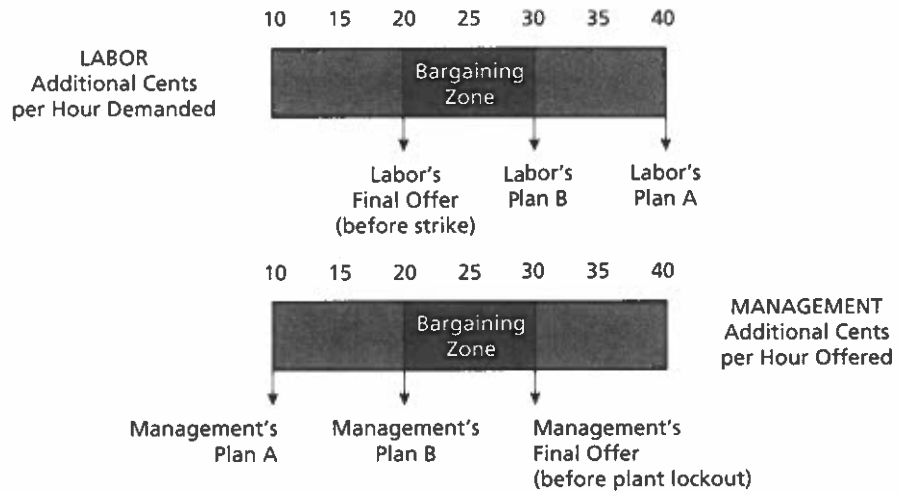
Negotiating the Agreement

There is no way to ensure speedy and mutually acceptable results from negotiations. At best, the parties can attempt to create an atmosphere that will lend itself to steady progress and productive results. For example, the two negotiating teams usually meet at an agreed-on neutral site, such as a hotel. When a favorable relationship can be established early, eleventh-hour (or last-minute) bargaining can often be avoided. It is equally important for union and management negotiators to strive to develop and maintain clear and open lines of communication. Collective bargaining is a problem-solving activity; consequently, good communication is essential to its success. Negotiations should be conducted in the privacy of the conference room, not in the news media. Often in the media, the unions belittle management and naturally management strikes back. The results can be harmful, often to both sides. If the negotiators feel that publicity is necessary, joint releases to the media may avoid unnecessary conflict.

The negotiating phase of collective bargaining begins with each side presenting its initial demands. Because a collective bargaining settlement can be expensive for a firm, the cost of various proposals should be estimated as accurately as possible. Some changes can be quite expensive, and others cost little or nothing, but the cost of the various proposals being considered must always be carefully deliberated. The term *negotiating* suggests a certain amount of give-and-take, the purpose of which is to lower the other side's expectations. For example, the union might bargain to upgrade its members' economic and working conditions and the company might negotiate to maintain or enhance profitability.

One of the most costly components of any collective bargaining agreement is a wage increase provision. An example of the negotiation of a wage increase is shown in Figure 11-4. In this example, labor initially demands a 40-cent-per-hour increase. Management counters with an offer of only 10 cents per hour. Both labor and management, as expected, reject each other's demand. Plan B calls for labor to lower its demand to a 30-cents-per-hour increase. Management counters with an offer of 20 cents. The positions in plan B are feasible to both sides, as both groups are in the bargaining zone. Wages within the bargaining zone are those that management and labor can both accept, in this case, an increase of between 20 cents and 30 cents per hour. The exact amount will be determined by the power of the bargaining unit and the skills of the negotiators.

FIGURE 11-4
Example of Negotiating
a Wage Increase



The realities of negotiations are not for the weak of heart and at times are similar to a high-stakes poker game. A certain amount of bluffing and raising the ante takes place in many negotiations. The ultimate bluff for the union is when a negotiator says, "If our demands are not met, we are prepared to strike." Management's version of this bluff would be to threaten a lockout. Each of these tactics will be discussed later as a means of overcoming breakdowns in negotiations. The party with the greater leverage can expect to extract the most concessions.

Finding solutions to conflict can be win-win or win-lose. In the case of win-win, both parties to a conflict receive something of value even if it is not the most each party wanted. For example, workers and management are at odds over a request for a higher hourly pay rate from \$5 to \$10. Management claims that raising wages to the \$10 level could threaten job security if company sales declined by any amount. If workers and management can agree to a compromise increase (say, a pay raise to \$7.50 per hour), then this would be a win-win situation. This is a win-win situation because workers received a pay raise and management provided more to employees while limiting compensation cost increases. Had management not agreed to any raise, the situation would have been win-lose because labor costs would have been contained at the expense of employee morale. In the Watch It Video, the importance of finding a win-win outcome to resolve conflict is discussed.

★ Watch It I

If your professor has assigned this, sign into mymanagementlab.com to watch a video titled *Rudi's Bakery: Conflict and Negotiation* and to respond to questions.

Even though one party in the negotiating process may appear to possess the greater power, negotiators often take care to keep the other side from losing face. They recognize that the balance of power may switch rapidly. By the time the next round of negotiations occurs, the pendulum may be swinging back in favor of the other side. Even when management appears to have the upper hand, it may make minor concessions that will allow the labor leader to claim gains for the union. Management may demand that workers pay for grease rags that are lost (assuming that the loss of these rags has become excessive). To obtain labor's agreement to this demand, management may agree to provide new uniforms for the workers if the cost of these uniforms would be less than the cost of lost rags. Thus, labor leaders, although forced to concede to management's demand, could show the workers that they have obtained a concession from management. Each side usually does not expect to obtain all the demands presented in its first proposal. Labor can lose a demand and continue to bring it up in the future. Demands for benefits that the union does not expect to receive when they are first made are known as **beachhead demands**.

beachhead demands
 Demands that the union does not expect management to meet when they are first made.

OBJECTIVE 11.10

Discuss breakdowns in the negotiations process.

Breakdowns in Negotiations

At times negotiations break down, even though both labor and management may sincerely want to arrive at an equitable contract settlement. Several means of removing roadblocks may be used to get negotiations moving again.

Third-Party Intervention

Often an outside person can intervene to provide assistance when an agreement cannot be reached and the two sides reach an impasse. The reasons behind each party's position may be quite rational, or the breakdown may be related to emotional disputes that tend to become distorted during the heat of negotiations. Regardless of the cause, something must be done to continue the negotiations. The two basic types of third-party intervention are mediation and arbitration.

MEDIATION In **mediation**, a neutral third party enters the negotiations and attempts to facilitate a resolution to a labor dispute when a bargaining impasse has occurred. A mediator serves a facilitator role. The objective of mediation is to persuade the parties to resume negotiations and reach a settlement. A mediator has no power to force a settlement but can help in the search for solutions, make recommendations, and work to open blocked channels of communication. Successful mediation depends to a substantial degree on the tact, diplomacy, patience, and perseverance of the mediator. The mediator's fresh insights are used to get discussions going again. Mediation is voluntary at every step of the process. The mediator serves as an informal coach, helping to ensure that the discussions are fair and effective.

The principal organization involved in mediation efforts, other than some state and local agencies, is the Federal Mediation and Conciliation Service (FMCS). The Taft-Hartley Act established the FMCS as an independent agency. Either one or both parties involved in negotiations can seek the assistance of the FMCS, or the agency can offer its help if it feels that the situation warrants it. Federal law requires that the party wishing to change a contract must give notice of this intention to the other party 60 days prior to the expiration of a contract. If no agreement has been reached 30 days prior to the expiration date, the FMCS must be notified.

ARBITRATION In **arbitration**, a dispute is submitted to an impartial third party for a binding decision; an arbitrator acts as a judge and jury. There are two principal types of union management disputes: rights disputes and interest disputes. Disputes over the interpretation and application of the various provisions of an existing contract are submitted to **rights arbitration**, which will be discussed shortly under the heading of "Grievance Procedure in a Union Environment." This type of arbitration is common in the United States.

The other type of arbitration, **interest arbitration**, involves disputes over the terms of proposed collective bargaining agreements. In the private sector, the use of interest arbitration as an alternative for impasse resolution has not been a common practice. Unions and employers rarely agree to submit the basic terms of a contract (such as wages, hours, and working conditions) to a neutral party for disposition. They prefer to rely on collective bargaining and the threat of economic pressure (such as strikes and lockouts) to decide these issues.

For either rights or interest arbitration, the disputants are free to select any person as their arbitrator, so long as they agree on the selection. Most commonly, however, the two sides make a request for an arbitrator to either the American Arbitration Association (AAA) or the FMCS. The AAA is a nonprofit organization with offices in many cities. Both the AAA and the FMCS maintain lists of arbitrators. When considering potential arbitrators, both management and labor will study the arbitrator's previous decisions in an attempt to detect any biases. Obviously, neither party wants to select an arbitrator who might tend to favor the other's position.

After the arbitrator has been selected and has agreed to serve, a time and place for a hearing will be determined. The issue to be resolved will be presented to the arbitrator in a document that summarizes the question(s) to be decided. It will also point out any contract restrictions that prohibit the arbitrator from making an award that would change the terms of the contract.

At the hearing, each side presents its case. Arbitration is an adversarial proceeding, so a case may be lost because of poor preparation and presentation. The arbitrator may conduct the hearing much like a courtroom proceeding. Witnesses, cross-examination, transcripts, and legal counsel may all be used. The parties may also submit or be asked by the arbitrator to submit formal written statements. After the hearing, the arbitrator studies the material submitted and

mediation

Neutral third party enters the negotiations and attempts to facilitate a resolution to a labor dispute when a bargaining impasse has occurred.

arbitration

Process in which a dispute is submitted to an impartial third party for a binding decision; an arbitrator basically acts as a judge and jury.

rights arbitration

Arbitration involving disputes over the interpretation and application of the various provisions of an existing contract.

interest arbitration

Arbitration that involves disputes over the terms of proposed collective bargaining agreements.



HR Web Wisdom

American Arbitration Association

<http://www.adr.org/>

Provides services to individuals and organizations who wish to resolve conflicts out of court.

testimony given and is expected to reach a decision within 30 to 60 days. The decision is usually accompanied by a written opinion giving reasons for the decision.

The courts will generally enforce an arbitrator's decision unless (1) the arbitrator's decision is shown to be unreasonable or capricious in that it did not address the issues; (2) the arbitrator exceeded his or her authority; or (3) the award or decision violated a federal or state law. In one arbitration case that ultimately went to the Supreme Court, the arbitrator's decision appeared to run counter to public policy of prohibiting workers who had tested positive for drugs from operating heavy machinery or being permitted to return to work. However, the Supreme Court wrote, "We recognize that reasonable people can differ as to whether reinstatement or discharge is the more appropriate remedy here. But both employer and union have agreed to entrust this remedial decision to an arbitrator."¹⁹

Union Strategies for Overcoming Negotiation Breakdowns

There are times when a union believes that it must exert extreme pressure to get management to agree to its bargaining demands. Strikes and boycotts are the primary means that the union may use to overcome breakdowns in negotiations.

STRIKES When union members refuse to work to exert pressure on management in negotiations, their action is referred to as a **strike**. A strike halts production, resulting in lost customers and revenue, which the union hopes will force management to submit to its terms. In recent times, strikes have rarely been part of contract negotiation processes. There were 15 strikes involving 1,000 or more workers in 2013 idling approximately 55,000 workers.²⁰ This stands in comparison to the more than 200 strikes each year in the 1970s.²¹

The timing of a strike is important in determining its effectiveness. An excellent time is when business is thriving and the demand for the firm's goods or services is expanding. However, the union might be hard-pressed to obtain major concessions from a strike if the firm's sales are down and it has built up a large inventory. In this instance, the company would not be severely damaged.

Contrary to many opinions, unions prefer to use the strike only as a last resort. During a strike, workers have little income. The strike fund may only pay for items such as food, utilities, and motor fuel. In recent years, many union members have been even more reluctant to strike because of the fear of being replaced. When a union goes on an economic strike and the company hires replacements, the company does not have to lay off these individuals at the end of the strike. For example, Edw. C. Levy Co., headquartered in Detroit, Michigan, hired permanent replacements for the 130 members of the International Union of Operating Engineers Local 150 who struck the contractor's operations at Mittal Steel Company's Burns Harbor plant.²²

A union's treasury is often depleted by payment of strike benefits to its members. In addition, members suffer because they are not receiving their normal pay. Striking workers during one General Motors strike got paid about \$150 a week strike pay instead of the roughly \$1,000 a week that they normally took home. Although strike pay helps, union members certainly cannot maintain a normal standard of living with these minimal amounts.

Sometimes during negotiations (usually at the beginning), the union may want to strengthen its negotiating position by taking a strike vote. Members often give overwhelming approval to a strike. This vote does not necessarily mean that there will be a strike, only that the union leaders now have the authority to call one if negotiations reach an impasse. A favorable strike vote can add a sense of urgency to efforts to reach an agreement.

Successful passage of a strike vote has additional implications for union members. Virtually every national union's constitution contains a clause requiring the members to support and participate in a strike if one is called. If a union member fails to comply with this requirement, he or she can be fined as high as 100 percent of wages for as long as union pickets remain outside the company. However, the Supreme Court has ruled that an employee on economic strike may resign from the union and avoid being punished by the union. In today's economy, union members are using more subtle measures, such as sick-outs and work slowdowns, to successfully avoid the impact of a strike while still bringing pressure on the company to meet union demands.

BOYCOTTS The boycott is another of labor's weapons to get management to agree to its demands. A **boycott** involves an agreement by union members to refuse to use or buy the firm's products.

strike

Action by union members who refuse to work in order to exert pressure on management in negotiations.

boycott

Agreement by union members to refuse to use or buy the firm's products.

A boycott exerts economic pressure on management, and the effect often lasts much longer than that of a strike. Once shoppers change buying habits, their behavior will likely continue long after the boycott has ended. At times, significant pressures can be exerted on a business when union members, their families, and their friends refuse to purchase the firm's products. This approach is especially effective when the products are sold at retail outlets and are easily identifiable by brand name. For instance, the classic boycott against Adolph Coors Company was effective because the name of the product, Coors beer, was directly associated with the company. Ultimately, the AFL-CIO signed an agreement with Coors that ended a labor boycott of the company.²³

The practice of a union attempting to encourage third parties (such as suppliers and customers) to stop doing business with the company is known as a **secondary boycott**. The Taft-Hartley Act declared this type of boycott to be illegal.

secondary boycott

Union attempt to encourage third parties (such as suppliers and customers) to stop doing business with a firm; declared illegal by the Taft-Hartley Act.

Management Strategies for Overcoming Negotiation Breakdowns

There are times when management believes that it must exert extreme pressure to get the union to back away from a demand. The lockout and operating the firm by placing management and nonunion workers in the striking workers' jobs are the primary means management may use to overcome breakdowns in negotiations.

lockout

Management keeps employees out of the workplace and runs the operation with management personnel or replacements.

LOCKOUT Management may use the lockout to encourage unions to come back to the bargaining table. In a **lockout**, management keeps employees out of the workplace and runs the operation with management personnel or replacements. In 2013, Kellogg's Memphis cereal manufacturing plant locked out more than 200 union workers and began hiring temporary workers to fill any voids.²⁴ The company insists that it will continue the lockout until the union agrees to new contract terms that will permit growth in temporary workforce employment at lower wage rates and less generous benefit offerings. The National Football League and the National Basketball Association used a lockout in an attempt to get players to return to negotiations. Unable to work, the employees do not get paid; the fear of a lockout may bring labor back to the bargaining table. A lockout is particularly effective when management is dealing with a weak union, when the union treasury is depleted, or when the business has excessive inventories. The lockout is also used to inform the union that management is serious regarding certain bargaining issues.

CONTINUE OPERATIONS WITHOUT STRIKING WORKERS A course of action that a company can take if the union goes on strike is to operate the firm by placing management and nonunion workers in the striking workers' jobs. The type of industry involved has considerable effect on the impact of this maneuver. If the firm is not labor-intensive and if maintenance demands are not high, such as at a petroleum refinery or a chemical plant, this practice may be quite effective. When appropriate, management may attempt to show how using nonunion employees can actually increase production. At times, management personnel will actually live in the plant and have food and other necessities delivered to them. This was the situation that occurred when the 900 members of Local 470 of the International Association of Machinists struck at the PPG Plant in Lake Charles, Louisiana. Management continued to run the plant with management and contract labor personnel. The union members struck because of an increase in insurance payments and a new hiring-in rate for entry-level workers. Prior to the strike, the local had taken a strike vote, and an overwhelming number of workers had voted in favor of the strike. Later on in negotiations, the union permitted members to vote on whether to accept or reject management's proposal. It was rejected by a majority of the workers. Then management sent registered letters to all union members suggesting that they were not willing to maintain the current work situation, and the company was considering hiring replacement workers. Another vote was taken and the contract was accepted. Prior to the final vote, approximately 100 workers had resigned from the union and crossed the picket line.

OBJECTIVE 11.11

Describe what is involved in reaching, ratifying, and administering the labor-management agreement.

Reaching the Labor-Management Agreement

The document that emerges from the collective bargaining process is known as a "labor-management agreement" or "contract." It regulates the relationship between employer and employees for a specified period of time. It is still an essential but difficult task because each agreement is unique, and there is no standard or universal model.

Ratifying the Labor-Management Agreement

Most collective bargaining leads to an agreement without a breakdown in negotiations or disruptive actions. Typically, agreement is reached before the current contract expires. After the negotiators have reached a tentative agreement on all contract terms, they prepare a written agreement covering those terms, complete with the effective and termination dates. The approval process for management is often easier than for labor. The president or CEO has usually been briefed regularly on the progress of negotiations. Any difficulty that might have stood in the way of obtaining approval has probably already been resolved with top management by the negotiators.

However, the approval process is more complex for the union. Until a majority of members voting in a ratification election approve it, the proposed agreement is not final. At times, union members reject the proposal and a new round of negotiations must begin. Many of these rejections might not occur if union negotiators were better informed about members' desires.

Administration of the Labor-Management Agreement

Negotiating, as it relates to the total collective bargaining process, may be likened to the tip of an iceberg. It is the visible phase, the part that makes the news. The larger and perhaps more important part of collective bargaining is administration of the agreement, which the public seldom sees. The agreement establishes the union-management relationship for the duration of the contract. Usually, neither party can change the contract's language until the expiration date, except by mutual consent. However, the main problem encountered in contract administration is uniform interpretation and application of the contract's terms. Administering the contract is a day-to-day activity. Ideally, the aim of both management and the union is to make the agreement work to the benefit of all concerned. At times, this is not an easy task.

Management is primarily responsible for explaining and implementing the agreement. This process should begin with meetings or training sessions not only to point out significant features but also to provide a clause-by-clause analysis of the contract. First-line supervisors, in particular, need to know their responsibilities and what to do when disagreements arise. In addition, supervisors and middle managers should be encouraged to notify top management of any contract modifications or new provisions required for the next round of negotiations.

The HR manager or industrial relations manager plays a key role in the day-to-day administration of the contract. He or she gives advice on matters of discipline, works to resolve grievances, and helps first-line supervisors establish good working relationships within the terms of the agreement. When a firm becomes unionized, the HR manager's function tends to change rather significantly and may even be divided into separate HR and industrial relations departments. In such situations, the vice-president of HR may perform all HR management tasks with the exception of dealing with union-related matters. All nonunion employees would go to the HR professional for assistance needed. The vice-president of industrial relations would likely deal with all union-related matters.

OBJECTIVE 11.12

Describe the grievance procedure in a union environment.

Grievance Procedure in a Union Environment

As previously defined, a *grievance procedure* is a formal, systematic process that permits employees to express complaints without jeopardizing their jobs. A grievance procedure under a collective bargaining agreement is normally well defined. It is usually restricted to violations of the terms and conditions of the agreement. There are other conditions that may give rise to a grievance, including the following:

- A violation of law
- A violation of the intent of the parties as stipulated during contract negotiations
- A violation of company rules
- A change in working conditions or past company practices
- A violation of health or safety standards

Grievance procedures have many common features. However, variations may reflect differences in organizational or decision-making structures or the size of a plant or company. Some general principles based on widespread practice can serve as useful guidelines for effective grievance administration:

- Grievances should be adjusted promptly.
- Procedures and forms used for airing grievances must be easy to use and well understood by employees and their supervisors.
- Direct and timely avenues of appeal from rulings of line supervision must exist.

The multistep grievance procedure is the most common type. In the first step, the employee usually presents the grievance orally and informally to the immediate supervisor in the presence of the union steward. This step offers the greatest potential for improved labor relations, and a large majority of grievances are settled here. The procedure ends if the grievance is resolved at this initial step. If the grievance remains unresolved, the next step involves a meeting between the plant manager or HR manager and higher union officials, such as the grievance committee or the business agent or manager. Prior to this meeting, the grievance is written out, dated, and signed by the employee and the union steward. The written grievance states the events, as the employee perceives them, cites the contract provision that allegedly has been violated, and indicates the settlement desired. If the grievance is not settled at this meeting, it moves to the third step, which typically involves the firm's top labor representative (such as the vice-president of industrial relations) and high-level union officials. At times, depending on the severity of the grievance, the president may represent the firm. Arbitration is the final step in most grievance procedures. In arbitration, the parties submit their dispute to an impartial third party for binding resolution. Most agreements restrict the arbitrator's decision to application and interpretation of the agreement and the final decision is binding on both parties. If the union decides in favor of arbitration, it notifies management. At this point, the union and the company select an arbitrator.²⁵

When arbitration is used to settle a grievance, a variety of factors may be considered to evaluate the fairness of the management actions that caused the grievance. Some factors include:

- Nature of the offense
- Due process and procedural correctness
- Double jeopardy
- Past record of grievant
- Length of service with the company
- Knowledge of rules
- Warnings
- Lax enforcement of rule
- Discriminatory treatment

The large number of interacting variables in each case makes the arbitration process difficult. The arbitrator must possess exceptional patience and judgment in rendering a fair and impartial decision.

Labor relations problems can escalate when a supervisor is not equipped to handle grievances at the first step. Because the union steward, the aggrieved party, and the supervisor usually handle the first step informally, the supervisor must be fully prepared. The supervisor should obtain as many facts as possible before the meeting because the union steward is likely to have also done his or her homework.

The supervisor needs to recognize that the grievance may not reflect the real problem. For instance, the employee might be angry with the company for modifying its pay policies, even though the union agreed to the change. To voice discontent, the worker might file a grievance for an unrelated minor violation of the contract.

Any disciplinary action administered may ultimately be taken to arbitration, when such a remedy is specified in the labor agreement. Employers have learned that they must prepare records that will constitute proof of disciplinary action and the reasons for it. Although the formats of written warnings may vary, all should include the following information:

1. Statement of facts concerning the offense
2. Identification of the rule that was violated

FIGURE 11-5
Example of a Written
Warning

Date:	August 1, 2013
To:	Wayne Sanders
From:	Judy Bandy
Subject:	Written Warning

We are quite concerned because today you were thirty minutes late to work and offered no justification for this. According to our records, a similar offense occurred on July 25, 2013. At that time, you were informed that failure to report to work on time is unacceptable. I am, therefore, notifying you in writing that you must report to work on time. It will be necessary to terminate your employment if this happens again.

Please sign this form to indicate that you have read and understand this warning. Signing is not an indication of agreement.

Name

Date

3. Statement of what resulted or could have resulted because of the violation
4. Identification of any previous similar violations by the same individual
5. Statement of possible future consequences should the violation occur again
6. Signature and date

An example of a written warning is shown in Figure 11-5. In this instance, the worker has already received an oral reprimand. The individual is also warned that continued tardiness could lead to termination. It is important to document oral reprimands because they may be the first step in disciplinary action leading ultimately to arbitration.

OBJECTIVE 11.13

Explain union decertification.

decertification

Reverse of the process that employees must follow to be recognized as an official bargaining unit.

Union Decertification

Until 1947, once a union was certified, it was certified forever. However, the Taft–Hartley Act made it possible for employees to decertify a union. **Decertification** is the reverse of the process that employees must follow to be recognized as an official bargaining unit. It results in a union losing its right to act as the exclusive bargaining representative of a group of employees. As union membership has declined, the need for decertification elections has also diminished.

Members of a union's bargaining unit typically choose to decertify a union when it feels that the union is not creating an advantage such as in wage rates, benefits, and other employment-related matters. Bargaining unit members may also choose to decertify a union when it disagrees how money is spent. For example, in 2014, the police union in New Haven, Connecticut, overwhelmingly voted to decertify from AFSCME Council 15. Union members were dissatisfied with the use of the lump-sum payments it made to the union (for its members' education and legal representation of police officers if needed) because the Union spent a portion of these payments to subsidize activities for small police forces rather than to the exclusive benefit of its members.²⁶

The rules established by the NLRB spell out the conditions for filing a decertification petition; it is essentially the reverse of obtaining union recognition. At least 30 percent of the bargaining unit members must petition for an election. As might be expected, this task by itself may be difficult because union supporters are likely to strongly oppose the move. Few employees know about decertification and fewer still know how to start the process. Also, although the petitioners' names are supposed to remain confidential, many union members are fearful that their signatures on the petition will be discovered. The timing of the NLRB's receipt of the decertification petition is also critical. The petition must be submitted between 60 and 90 days prior to the expiration of the current contract. When all these conditions have been met, the NLRB regional director will schedule a decertification election by secret ballot.

The NLRB carefully monitors the events leading up to the election. Current employees must initiate the request for the election. This is what happened regarding professional football when the National Football League Players Association (NFLPA) decertified in March 2011. If the NLRB determines that management initiated the action, it will not certify the election. After a petition has been accepted, however, management can support the decertification election attempt. If a majority of the votes cast is against the union, the employees will be free from the union. Strong union supporters are all likely to vote. Thus, if a substantial number of employees is indifferent to the union and chooses not to vote, decertification may not occur.

In the Watch It video, UPS provides a balanced perspective on the value of union representation from the standpoint of costs and benefits to employees and the company. Ultimately, employees maintain a choice with or without a union. If employees were dissatisfied with union representation, they could easily choose to decertify it.

Watch It 2

If your professor has assigned this, sign into mymanagementlab.com to watch a video titled UPS: Union Management and to respond to questions.

OBJECTIVE 11.14

Describe collective bargaining in the public sector.

Collective Bargaining in the Public Sector

Executive Order 10988 established the basic framework for collective bargaining in federal government agencies. Title VII of the Civil Service Reform Act of 1978 regulates most of the labor-management relations in the federal service. It establishes the Federal Labor Relations Authority, which is modeled after the NLRA. The intent of the Federal Labor Relations Act is to bring the public-sector model in line with that of the private sector. Requirements and mechanisms for recognition and elections, dealing with impasses, and handling grievances are covered in the act. Collective bargaining for federal unions has traditionally been quite different from private-sector bargaining because wages were off the table. President Franklin D. Roosevelt recognized that the bargaining relationship that exists in the private sector cannot also exist in the public sector saying, it "cannot be transplanted into the public service. . . . The employer is the whole people."²⁷ Title V of the U.S. Code, the law that dictates rules for federal employees, did not allow bargaining over wage issues, except for the U.S. Postal Service.

There is no uniform pattern to state and local bargaining rights. More than two-thirds of the states have enacted legislation granting public-sector collective bargaining rights to some groups such as teachers, police, and firefighters. However, the diversity of state labor laws makes it difficult to generalize about the legal aspects of collective bargaining at the state and local levels.

In the public sector, most governmental jurisdictions prohibit their employees from striking. This was vigorously pointed out in the 1981 strike by air traffic controllers when President Ronald Reagan used replacement workers to end the first declared national strike against the federal government. The Professional Air Traffic Controllers Organization (PATCO) sacrificed a substantial pay increase, a generous benefit package, and its existence in its attempt to legitimize strikes in the public sector.²⁸ As a result, interest arbitration is used to a greater extent than in the private sector, although there is no uniform application of this method.

final-offer arbitration

An arbitration procedure used in the public sector whereby the arbitrator must select one party's offer either as a package or issue-by-issue selection.

A procedure used in the public sector is **final-offer arbitration**, which has two basic forms: package selection and issue-by-issue selection. In package selection, the arbitrator must select one party's entire offer on all issues in dispute. In issue-by-issue selection, the arbitrator examines each issue separately and chooses the final offer of one side or the other on each issue. Final-offer arbitration is often used to determine the salary of a professional baseball player. Both players and management present a dollar figure to an arbitrator. The arbitrator chooses one figure or the other.

OBJECTIVE 11.15

Discuss labor unrest in China.

Labor Unrest in China

The All-China Federation of Trade Unions (ACFTU) is China's only government-recognized union. The recent recession caused the ACFTU to hold up its unionization drives, but it appears that it has resumed its efforts to unionize foreign-invested enterprises. The ACFTU is putting pressure on foreign-invested enterprises to establish unions and sign collective contracts with their employees. Under the People's Republic of China (PRC) Trade Union Law, the employer, not employees, contributes union dues if the company is not unionized. The pressure to unionize through the collection of union dues is likely to continue with the support of ACFTU.²⁹

Perhaps because of the renewed push to promote collective bargaining agreements, strikes and protests at factories have become more commonplace. *Outlook Weekly*, an official government publication, reported that labor disputes in Guangdong in the first quarter of 2009 had risen by nearly 42 percent over 2008; and in the Zhejiang province, the annualized increase was almost 160 percent.³⁰

A succession of strikes occurred at several factories in Guangdong and China's coastal regions. The strike that received the most attention happened at Honda Motor Company factories in several Guangdong cities. Workers demanded higher wages and better working conditions. Honda gave in, providing a 24 percent pay increase, which prompted work stoppages at several other facilities.³¹

Humiliation caused by a series of suicides at Foxconn, a subsidiary of Taiwan's Hon Hai Precision Industry Company, forced the company to give a 30 percent pay increase. The suicides were apparently in response to poor working conditions at the firm.³² The new generation of Chinese factory workers, born during the 1980s and 1990s, are more sensitive to social issues and workplace rights than their parents. Previous generations might have taken any job available, even for low salaries. But these young workers are seeking jobs that not only pay well but also provide a better life for their families, provide career development, and treat employees with respect.

By 2009, 85 percent of the *Fortune 500* companies operating in China had been unionized, including Walmart, a firm that has gained a reputation as being anti-union. Chinese union membership grew from 87 million members in 1999 to 212 million members in 2008.³³ The ACFTU reported that by the end of 2009, more than 1.2 million collective contracts were signed involving more than 2 million enterprises and nearly 162 million workers nationwide.

Two years after the strikes and suicides that rocked manufacturers in China, labor problems are again occurring and appear to be happening daily. For example, in late 2011, approximately 7,000 workers at a Taiwanese-owned New Balance supplier in Dongguan protested plans to relocate production to Jiangxi province and cut bonuses. Willie Fung, chairman of Hong Kong bra-maker Top Form International, said, "As the environment goes from bad to worse, a lot of factories want to find a way out. They want to downsize, shut down, or move somewhere else, and this sparks labor disputes." China's leaders are generally not in favor of these strikes because they fear that they will cause social unrest.³⁴

Summary

1. **Discuss why unions exist.** Labor came about out of necessity. Employers often set unfavorable terms of employment (for example, low wages) and unsafe working conditions. The collective effort of employees provided them with greater power to negotiate better terms of employment.
2. **Explain why employees join unions.** Employees join unions because of dissatisfaction with management, the need for a social outlet, the need for avenues of leadership, forced unionization, and social pressure from peers.
3. **Describe the basic structure of a union.** The basic element in the structure of the U.S. labor movement is the local union. The national union is the most powerful level, and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is the central trade union federation in the United States.
4. **Summarize the prevalence of unions.** The latest figures from the Labor Department's Bureau of Labor Statistics showed that the percentage of wage and salary workers who were members of a union was 11.3 percent. The number of wage and salary workers belonging to unions is at approximately 14.5 million. In 2013, 7.2 million public-sector employees belonged to a union, compared with 7.3 million union workers in the private sector. Public-sector workers had a union membership rate of 35.3 percent—more than five times higher than that of the private-sector workers rate of 6.7 percent. The unionization rate and the number of employees who are protected by unions is declining steadily.
5. **Describe organized labor's strategies for a stronger movement.** Organized labor's new strategies for a stronger movement include strategically located union members, pulling the union through, political involvement, union salting, flooding the community, public awareness campaigns, building organizing funds, partnering with high schools, and organizing through the card check.
6. **Discuss laws affecting collective bargaining.** The National Labor Relations Act of 1935 (also known as the Wagner Act) is one of the most significant labor-management relations statutes ever enacted. The act declared legislative support, on a broad scale, for the right of employees to organize and engage in collective bargaining. The Taft-Hartley Act extensively revised the National Labor Relations Act. A new period began in the evolution of public policy regarding labor.
7. **Identify the steps that lead to forming a bargaining unit.** The steps involved include signing authorization cards, petitioning for election, campaigning, winning the election, and being certified.
8. **Describe the collective bargaining process and explain collective bargaining issues.** The negotiating phase of collective bargaining begins with each side presenting its initial demands. The term *negotiating* suggests a certain amount of give-and-take. The party with the greater leverage can expect to extract the most concessions.
Bargaining issues can be divided into three categories: mandatory, permissive, and prohibited. Certain topics are included in virtually all labor agreements. These are recognition, management rights, union security, compensation, grievance procedure, employee security, and job-related factors.
9. **Describe preparation for negotiations and negotiating the agreement.** The union must continuously gather information regarding membership needs to isolate areas of dissatisfaction. Management also spends long hours preparing for negotiations. The negotiating phase of collective bargaining begins with each side presenting its initial demands. The term *negotiating* suggests a certain amount of give-and-take. The party with the greater leverage can expect to extract the most concessions.
10. **Discuss breakdowns in the negotiations process.** Breakdowns in negotiations can be overcome through third-party intervention (mediation and arbitration), union tactics (strikes and boycotts), and management recourse (lockouts and continued operation without striking workers).
11. **Describe what is involved in reaching, ratifying, and administering the labor-management agreement.** The document that emerges from the collective bargaining process is known as a "labor-management agreement" or "contract."
The approval process for management is often easier than for labor. The president or CEO has usually been briefed regularly on the progress of negotiations. However, the approval process is more complex for the union. Until a majority of members voting in a ratification election approve it, the proposed agreement is not final.
The larger and perhaps more important part of collective bargaining is administration of the agreement, which the public seldom sees. The agreement establishes the union-management relationship for the duration of the contract.
12. **Describe the grievance procedure in a union environment.** A grievance procedure under a collective bargaining agreement is normally well defined. It is usually restricted to violations of the terms and conditions of the agreement.
13. **Explain union decertification.** Decertification is essentially the reverse of the process that employees must follow to be recognized as an official bargaining unit.

14. Describe collective bargaining in the public sector.

Executive Order 10988 established the basic framework for collective bargaining in federal government agencies. Title VII of the Civil Service Reform Act of 1978 regulates most of the labor-management relations in the federal service. It establishes the Federal Labor Relations Authority, which is modeled after the NLRA. The intent of the Federal Labor Relations Act is to bring the public-sector model in line with that of the private sector. Requirements and mechanisms for recognition and elections, dealing with impasses, and handling grievances are covered in the act. Collective bargaining for federal unions has traditionally been quite different from private-sector bargaining because wages were off the table.

15. Discuss labor unrest in China. The All-China Federation of Trade Unions (ACFTU) is China's only government-recognized union. The recent recession caused the ACFTU to hold up its unionization drives, but it appears that it has resumed its efforts to unionize foreign-invested enterprises. The ACFTU is putting pressure on foreign-invested enterprises to establish unions and sign collective contracts with their employees. Under the People's Republic of China (PRC) Trade Union Law, the employer, not employees, contributes union dues if the company is not unionized. The pressure to unionize through the collection of union dues is likely to continue with the support of ACFTU.

Key Terms

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INCIDENT 1 Break Down the Barrier

Yesterday, Angelica Angulo was offered a job as a waitress with GEM Hotel Corporation, located in Las Vegas, Nevada. She had recently graduated from high school in Milford, a small town in New Mexico. Because Angelica had no college aspirations upon graduation, she had moved to Las Vegas to look for a job.

Angelica's immediate supervisor spent only a short time with her before turning her over to Laurie Rader, an experienced waitress, for training. After they had talked for a short time, Laurie asked, "Have you given any thought to joining our union? You'll like all of our members."

Angelica had not considered this. Moreover, she had never associated with union members, and her parents had never been members either. At Milford High, her teachers had never really talked about unions. The fact that this union operated as an open shop meant nothing to her. Angelica replied, "I don't know. Maybe. Maybe not."

The day progressed much the same way, with several people asking Angelica the same question. They were all friendly, but there seemed to be a barrier that separated Angelica from the other workers. One worker looked Angelica right in the eyes and said, "You're going to join, aren't you?" Angelica still did not know, but she was beginning to lean in that direction.

After the end of her shift, Angelica went to the washroom. Just as she entered, Stephanie Clements, the union steward, also walked in. After they exchanged greetings, Stephanie said, "I hear that you're not sure about joining our union. You, and everyone else, reap the benefits of the work we've done in the past. It doesn't seem fair for you to be rewarded for what others have done. Tell you what, why don't you join us down at the union hall tonight? We'll discuss it more then."

Angelica nodded yes and finished cleaning up. "That might be fun," she thought.

Questions

- 11-20. Why does Angelica have the option of joining or not joining the union? *Hint:* Nevada is a right-to-work state.
- 11-21. What are the pros and cons regarding Angelica joining the union?
- 11-22. How are the other workers likely to react toward Angelica if she chooses not to join? Discuss.

INCIDENT 2 You Are Out of What?

Marcus Ned eagerly drove his new company pickup onto the construction site. His employer, Kelso Construction Company, had just assigned him to supervise a crew of 16 equipment operators, oilers, and mechanics. This was the first unionized crew Marcus had supervised, and he was unaware of the labor agreement in effect that carefully defined and limited the role of supervisors. As he approached his work area, he noticed one of the cherry pickers (a type of mobile crane with an extendable boom) standing idle with the operator beside it. Marcus pulled up beside the operator and asked, "What's going on here?"

"Out of gas," the operator said.

"Well, go and get some," Marcus said.

The operator reached to get his thermos jug out of the toolbox on the side of the crane and said, "The oiler's on break right now. He'll be back in a few minutes."

Marcus remembered that he had a five-gallon can of gasoline in the back of his pickup. So he quickly got the gasoline, climbed on the cherry picker, and started to pour it into the gas tank. As he did so, he heard the other machines shutting down in unison. He looked around and saw all the other operators climbing down from their equipment and standing to watch him pour the gasoline. A moment later, he saw the union steward approaching.

Questions

- 11-23. Why did all the operators shut down their machines?
- 11-24. If you were Marcus, what would you do now?