as well as the employees themselves. This not only provides an atmosphere where families can get healthy together, but it also reduces possible medical costs for the dependents. And finally there is the issue of employee input. If programs are designed without considering employees' needs, even the best ones may fail. Supervisors need to invite participation by asking employees what they'd use if available. Although many supervisors know that exercise is beneficial, few initially addressed how to get employees involved, but after finding out that employees would like such things as on-site exercise facilities or aerobics, they were able to begin appropriate program development.

Comprehension Check 13-2

5. Which one of the following is *not* an accident prevention mechanism?
   a. Skills training
   b. Protection
   c. Valid selection criteria
   d. Regulation enforcement

6. Workplace homicide is the number _____ cause of work-related deaths in the United States.
   a. four
   b. three
   c. two
   d. one

7. An unhealthy work environment is best described as a(n)
   a. OSHA violation.
   b. sick building.
   c. imminent danger.
   d. none of the above.

8. Injuries sustained by continuous movements of a body part are called
   a. musculoskeletal problems.
   b. carpal tunnel syndrome.
   c. eye–hand coordination disease.
   d. none of the above.

9. What two factors must be present for stress to exist?
   a. Importance and uncertainty
   b. Importance and certainty
   c. Unimportance and certainty
   d. Unimportance and uncertainty

CHAPTER 16

Supervision and Labor

Key Concepts

After completing this chapter, you will be able to define these supervisory terms:

- agency shop
- authorization cards
- collective bargaining
- dues checkoff
- economic strike
- fact-finding
- Federal Mediation and Conciliation Service (FMCS)
- grievance procedures
- grievance (rights) arbitration
- interest arbitration
- labor relations
- Landrum-Griffin Act
- lockout
- maintenance of membership
- National Labor Relations Board (NLRB)
- open shop
- Racketeering Influenced and Corrupt Organizations (RICO) Act
- representation certification (RC) election
- representation decertification (RD) election
- secondary boycott
- Taft-Hartley Act
- union
- union shop
- Wagner Act
- wildcat strike

Chapter Outcomes and Learning Objectives

After reading this chapter, you will be able to:

16-1. Define *union*.

16-2. Explain the various types of union security arrangements.

16-3. Discuss the effect the Wagner and Taft-Hartley acts had on labor–management relations.

16-4. Describe the union-organizing process.

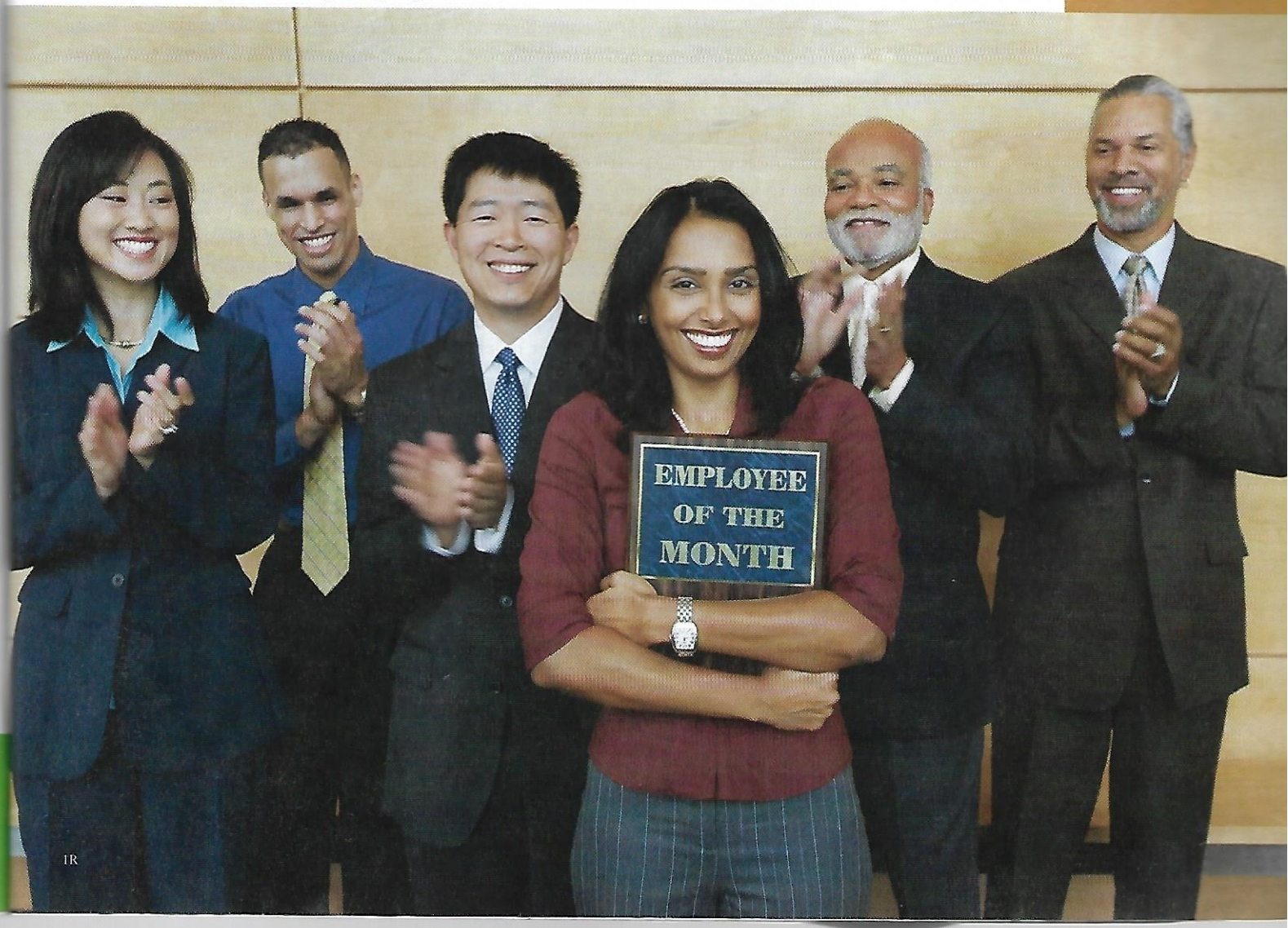
16-5. Describe the components of collective bargaining.

16-6. Identify the steps in the collective bargaining process.

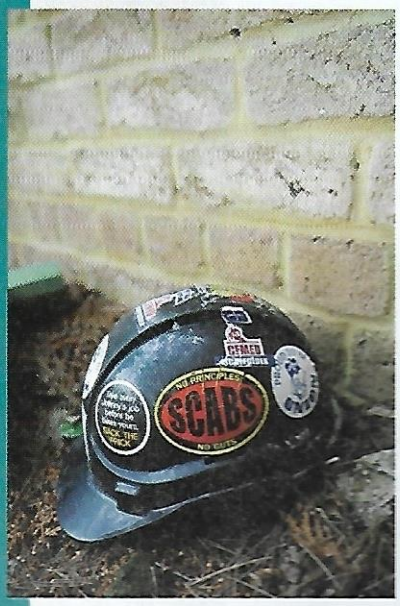
16-7. Describe the role of a grievance procedure in collective bargaining.

16-8. Identify the various impasse resolution techniques.

Jon Feingersh/Blend Images/Getty Images



Responding to a Supervisory Dilemma



Sheldon Levis/Alamy

Inherent in collective bargaining negotiations is an opportunity for either side to generate a power base that may sway negotiations in its favor. For example, when labor shortages exist or when inventories are in short supply, a strike by the union could have serious ramifications for the company. Likewise, when the situation is reversed, the company has the upper hand and could easily lock out the union to achieve its negotiation goals. In fact, two primary labor–management pieces of legislation attempted to make the playing field as level as possible by requiring both sides to negotiate in good faith and permit impasses if they should be warranted.

For decades, this scenario played itself out over and over again. Timing of a contract's expiration proved critical for both sides. For example, in the coal industry, having a contract expire just before the winter months—when coal is needed in greater supply for heating and electricity—worked to the union's advantage, unless the coal companies stockpiled enough coal to carry them through a lengthy winter strike. This game, although serious to both sides, never appeared to be anything more than a bargaining strategy—one that could show how serious both sides were. And even though a Supreme Court case from 1938, *NLRB v. MacKay Radio*, gave employers the right to hire replacement workers for those engaged in an economic strike, seldom was that used. In fact, to settle a strike, and for the organization to get back its skilled workforce, one stipulation would often be that all replacement workers be let go.

But in the early 1980s, the situation began to change. When then-President Ronald Reagan fired striking air traffic controllers and hired their replacements, businesses began to realize the weapon they had at their disposal. As their union-busting attempts succeeded, some organizations, such as Caterpillar, the National Football League, and John Deere, realized that using replacement workers could be to their advantage. The union members either came back to work on company officials' terms, or they lost their jobs—period.

Undoubtedly, in any strike situation, a company has the right to keep its doors open and to keep producing what it sells. Often that may mean using supervisory personnel in place of striking workers or in some cases bringing in replacements. But does a law that permits replacement workers undermine the intent of national labor laws? Does it create an unfair advantage for companies, who can play hardball just to break the union? Should a striker replacement bill (which would prevent permanent replacement workers from being hired) be passed? Should striking workers' jobs be protected while they exercise their rights under federal law? What's your opinion?

In this chapter, we discuss the unique supervisory elements that exist when a labor union is present. We look at what unions are, the laws regulating this process, why employees join unions, and the unique role supervisors play in the labor relations process.

What Is Labor Relations?

OBJECTIVE 16-1
Define *union*.

labor relations
All activities within a company that involve dealing with a union and its members.

Labor relations is a term used to include all activities within a company that involve dealing with a union and its membership.[1] The key component in this definition is a union.

[1]Material in this chapter is adapted from D. A. DeCenzo and S. P. Robbins, *Human Resource Management*, 8th ed. (Hoboken, NJ: John Wiley & Sons, 2005), Chapter 16.

A union is an organization of workers, acting collectively, seeking to promote and protect its mutual interests through collective bargaining. However, before we can examine the activities surrounding the collective bargaining process, it is important to understand the laws that govern the labor–management process, what unions are, and how employees unionize. Although it is true that just less than 12 percent of the private-sector workforce is unionized, the successes and failures of organized labor's activities affect most segments of the workforce in two important ways. First, because major industries in the United States—such as automobile, steel, and electrical manufacturers, as well as all branches of transportation—are unionized, unions have a major effect on some of the important sectors of the economy (see Exhibit 16-1). Second, gains made by unions often spill over into other nonunionized sectors of the economy. So, the wages, hours, and working conditions of nonunion employees at a Linden, New Jersey, lumberyard may be affected by collective bargaining between the United Auto Workers and General Motors at one of the latter's North American assembly plants.

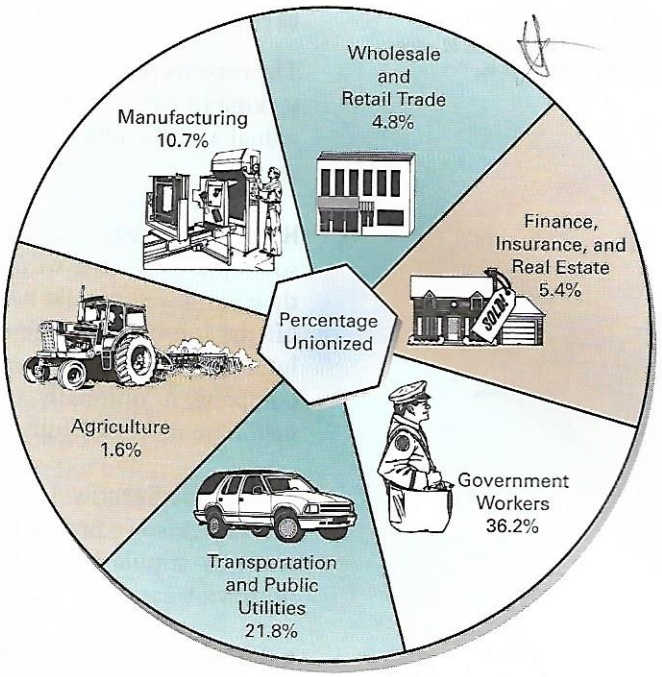


Exhibit 16-1

Union membership by industry concentration.

Source: Adapted from Bureau of Labor Statistics, "Table 3. Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry," *January 21, 2011, http://www.bls.gov/news.release/union2.t03.htm (accessed May 27, 2011).*

union
An organization that represents workers and seeks to protect their interests through collective bargaining.

In 2013, the union membership rate, the percentage of wage and salary workers who were members of a union, reported by the U.S Bureau of Labor Statistics, was 11.3 percent, which was the same as in 2012. The number of wage and salary workers belonging to unions, at 14.5 million, was little different from 2012. 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.

According to the 2013 data, the union membership rate for public sector workers (35.3 percent) is more than five times higher than that of private-sector workers (6.7 percent). Workers in education, training, and library occupations and in protective service occupations had the highest unionization rate, at 35.3 percent for each occupation group. Black workers were more likely to be union members than were white, Asian, or Hispanic workers. Among states, New York continued to have the highest union membership rate (24.4 percent), and North Carolina had the lowest rate (3.0 percent).[2]

For many supervisors, activities in a unionized organization consist chiefly of following procedures and policies laid out in the labor contract. This labor contract was agreed to by both management and the labor union, stipulating, among other things, the wage rate, the hours of work, and the terms and conditions of employment for those covered by the negotiated agreement. Decisions about how to select and compensate employees, employee benefits offered, procedures for overtime, and so on are no longer unilateral prerogatives of management for jobs that fall under the union's jurisdiction. Such decisions are generally made at the time the labor contract is negotiated.

The concept of labor relations and the collective bargaining process may mean different things to different individuals depending on their experience, background, and so on. One means of providing some focus in these areas is to understand why people join unions and the laws that serve as the foundation of labor–management relationships.

[2]United States Department of Labor, U.S. Bureau of Labor Statistics, Division of Labor Force Statistics, "Union Members Summary," *Economic News Release*, January 24, 2014, http://www.bls.gov/news.release/union2.nr0.htm (accessed May 17, 2014).

OBJECTIVE 16-2
Explain the various types of union security arrangements.

WHY DO EMPLOYEES JOIN UNIONS?

The reasons people join unions are as diverse as the people themselves. Just what are they seeking to gain when they join a union? The answer to this question varies with the individual and the union contract, but the following discussion captures the most common reasons.

Higher Wages and Benefits There are power and strength in numbers. As a result, unions sometimes are able to obtain higher wages and benefits packages for their members than employees would be able to negotiate individually.[3] One or two employees walking off the job over a wage dispute is unlikely to significantly affect most businesses, but hundreds of workers going out on strike can temporarily disrupt or even close down a company. Additionally, professional bargainers employed by the union may be able to negotiate more skillfully than any individual could on his or her own behalf.

Greater Job Security Unions provide their members with a sense of independence from the supervisor's power to arbitrarily hire, promote, or fire. The collective bargaining contract stipulates rules that apply to all members, thus providing fairer and more uniform treatment.

Influence on Work Rules Where a union exists, workers can participate in determining the conditions under which they work and have an effective channel through which they can protest conditions that they believe are unfair. Grievance procedures and rights to third-party arbitration of disputes are examples of practices that are typically defined and regulated as a result of union efforts.

Compulsory Membership Many labor agreements contain statements that are commonly referred to as *union security clauses*. When one considers the importance of security arrangements to unions—importance brought about in terms of numbers and guaranteed income—it is no wonder that such emphasis is placed on achieving a union security arrangement that best suits their goals. Such arrangements range from compulsory membership in the union to giving employees the freedom in choosing to join the union. The various types of union security arrangements—the union shop, the agency shop, and the right-to-work shop, as well as some special provisions under the realm of union security arrangements—are briefly discussed in this section and summarized in Exhibit 16-2.

union shop
An arrangement that stipulates that employers, although free to hire whomever they choose, may retain only union members.

The most powerful relationship legally available (not legally available in right-to-work states[4]) to a union is a union shop. This arrangement stipulates that employers, although free to hire whomever they choose, may retain only union members. That is, all employees hired into positions covered under the terms of a collective bargaining agreement must, after a specified probationary period of typically thirty to sixty days, join the union or forfeit their jobs.

agency shop
An agreement that requires nonunion employees to pay the union a sum of money equal to union fees and dues as a condition of continuing employment.

An agreement that requires nonunion employees to pay the union a sum of money equal to union fees and dues as a condition of continuing employment is referred to as an agency shop. This arrangement was designed as a compromise between the union's desire to eliminate the "free rider" and the organization's desire to make union membership voluntary. In such a case, if for whatever reason workers decide not to join the union (religious beliefs, values, etc.), they still must pay dues. Because workers will receive the benefits negotiated by the union, they must pay their fair share. However, in a 1988 Supreme Court decision involving union dues, the Court ruled that a union

[3]Find out more at AFL-CIO, available online at www.aflcio.org/joinaunion.
[4]Currently, twenty-four states are right-to-work states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan (Private/Public), Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. See National Right to Work Legal Defense Foundation, Inc., *Right to Work States*, http://www.nrtw.org/rtws.htm (accessed May 17, 2014).

Union Shop	Strongest of the union security arrangements. Mandates that employees join the union within a specified period of time–or forfeit their jobs. Union shops are illegal in right-to-work states.
Agency Shop	Union membership is not compulsory, but nonunion workers in the bargaining unit must still pay union dues. These workers do have the right to demand that their monies be used for collective bargaining purposes only. Like the union shop, the agency shop is illegal in right-to-work states.
Open Shop	The weakest form of union security. Workers are free to choose to join the union or not. Those who do join must pay union dues. Those who do not join do not have to pay dues. Leaving the union typically can occur only during an escape period at the expiration of a contract. In right-to-work states, the open shop is the only permissible union security arrangement.
Maintenance of Membership	In an open shop, membership is required for the duration of an existing contract.
Dues Checkoff	Involves the employer deducting union dues directly from a union member's paycheck. The employer collects the money and forwards a check to the union treasurer. Management typically offers this service free of charge to the union.

Exhibit 16-2
Union security arrangements (and related elements).

may be violating rights of nonmembers who are required to pay "agency fees" for union representation if it uses those fees for political and other activities not directly related to collective bargaining.

The least desirable form of union security from a union perspective is the **open shop**. This is an arrangement in which joining a union is totally voluntary. Those who do not join are not required to pay union dues or any associated fees. For workers who do join, there is typically a maintenance-of-membership clause in the existing contract that dictates certain provisions. Specifically, the agreement of a **maintenance of membership** states that should employees join the union, they are compelled to remain in the union for the duration of the existing contract. When the contract expires, most maintenance-of-membership agreements provide an escape clause—a short interval of time, usually ten days to two weeks—in which employees may choose to withdraw their membership from the union without penalty.

open shop
An arrangement in which joining a union is totally voluntary.

maintenance of membership
An agreement that should employees join the union, they are compelled to remain in the union for the duration of the existing contract. Such an agreement often provides an escape clause when the contract expires in which employees may choose to withdraw their membership from the union without penalty.

A common provision in union security arrangements is a process called the dues checkoff. A **dues checkoff** occurs when the employer withholds union dues from the members' paychecks. Similar to other pay withholdings, the employer collects the dues money and sends it to the union. There are a number of reasons employers provide this service, and a reason the union would permit them to do so. Collecting dues takes time. A dues checkoff reduces the "downtime" by eliminating the need for the shop steward to go around to collect dues. Furthermore, recognizing that union dues are the primary source of income for the union, knowing how much money is in the union treasury can tell the company whether a union is financially strong enough to endure a strike. Unions agree to these procedures because it guarantees their revenues. By letting the company deduct dues from a member's paycheck, the union is assured of receiving its monies.

dues checkoff
A provision that often exists in union security arrangements whereby an employer withholds union dues from members' paychecks.

Being Upset with the Supervisor One of the many reasons employees join a union appears to be management. If employees are upset with the way their supervisor handles problems, upset over how a coworker has been disciplined, and so on, they are likely to seek help from a union. It is reasonable to believe that when employees vote to unionize, it's often a vote against their immediate supervisor rather than a vote in support of a particular union.[5]

OBJECTIVE 16-3
Discuss the effect the Wagner and Taft-Hartley acts had on labor–management relations.

Labor Legislation

The legal framework for labor–management relationships has played a crucial role in their development. In this section, therefore, major developments in labor law are discussed. An exhaustive analysis of these laws and their legal and practical repercussions is not possible within the scope of this book. However, we focus our discussion on two important laws that have shaped much of the labor relations process. We then briefly summarize other laws that have helped shape labor–management activities.

THE WAGNER ACT

Wagner Act
Also known as the National Labor Relations Act, this act gave employees the legitimate right to form and join unions and to engage in collective bargaining.

The National Labor Relations Act of 1935, commonly referred to as the Wagner Act, is the basic "bill of rights" for unions. This law guarantees workers the right to organize and join unions, to bargain collectively, and to act in concert to pursue their objectives. In terms of labor relations, the Wagner Act specifically requires employers to bargain in good faith over mandatory bargaining issues—wages, hours, and terms and conditions of employment.

National Labor Relations Board (NLRB)
A group that has primary responsibility for conducting elections to determine union representation and to interpret and apply the law against unfair labor practices.

The Wagner Act is cited as shifting the pendulum of power to favor unions for the first time in U.S. labor history. This was achieved, in part, through the establishment of the National Labor Relations Board (NLRB). This administrative body, consisting of five members appointed by the president of the United States, was given the responsibility for determining appropriate bargaining units, conducting elections to determine union representation, and preventing or correcting employer actions that can lead to unfair labor practice charges. The NLRB, however, has only remedial and no punitive powers.

Unfair labor practices (Section 8[a] of the Wagner Act) include any employer tactics that

- interfere with, restrain, or coerce employees in the exercise of the rights to join unions and to bargain collectively;
- dominate or interfere with the formation or administration of any labor organization;
- discriminate against anyone because of union activity;
- discharge or otherwise discriminate against any employee because he or she filed or gave testimony under the act; or
- refuse to bargain collectively with the representatives chosen by the employees.

Although the Wagner Act provided the legal recognition of unions as legitimate interest groups in U.S. society, many employers opposed its purposes. Some employers, too, failed to live up to the requirements of its provisions. That's because employers recognized that the Wagner Act didn't provide protection for them from unfair union labor practices. Thus, the belief that the balance of power had swung too far to labor's side, and the public outcry stemming from post–World War II strikes, led to the passage of the Taft-Hartley Act (Labor–Management Relations Act) in 1947.

[5]See, for instance, M. Romano, "Hospital Accused of Iron-Fist Tactics," *Modern Hospital,* January 8, 2001, 16.

THE TAFT-HARTLEY ACT

The major purpose of the **Taft-Hartley Act** was to amend the Wagner Act by addressing employers' concerns in terms of specifying unfair union labor practices. Under Section 8(b), Taft-Hartley states that it is an unfair labor practice for unions to

Taft-Hartley Act
A law passed in 1947 that specified unfair union labor practices and declared the closed shop to be illegal.

- restrain or coerce employees in joining the union, or coerce the employer in selecting bargaining or grievance representatives;
- discriminate against an employee to whom union membership has been denied, or cause an employer to discriminate against an employee;
- refuse to bargain collectively;
- engage in strikes and boycotts for purposes deemed illegal by the act;
- charge excessive or discriminatory fees or dues under union-shop contracts; or
- obtain compensation for services not performed or not to be performed.

In addition, Taft-Hartley declared illegal one type of union security arrangement: the closed shop. Until Taft-Hartley's passage, the closed shop was dominant in labor contracts. The closed shop was an arrangement in which a union "controlled" the source of labor. Under this arrangement, an individual would join the union, be trained by the union, and sent to work for an employer by the union. In essence, the union acted as a clearinghouse of employees. When an employer needed a number of employees—for whatever duration—the employer would contact the union and request that these employees start work. When the job was completed and the employees were no longer needed on the job by the employer, they were sent back to the union.

By declaring the closed shop illegal, Taft-Hartley began to shift the pendulum of power away from unions. Furthermore, in doing so, the act enabled states to enact laws that would further reduce compulsory union membership. Taft-Hartley also included provisions that forbade secondary boycotts and gave the president of the United States the power to issue an eighty-day cooling-off period when labor–management disputes affect national security. A **secondary boycott** occurs when a union strikes against Employer A (a primary and legal strike), and then strikes and pickets against Employer B (an employer against which the union has no complaint) because of a relationship that exists between Employers A and B, such as Employer B handling goods made by Employer A. Taft-Hartley also set forth procedures for workers to decertify, or vote out, their union representatives.

secondary boycott
A union strikes against Employer A (a primary and legal strike) and then strikes and pickets against Employer B (an employer against which the union has no complaint) because of a relationship that exists between Employers A and B, such as Employer B handling goods made by Employer A.

Whereas the Wagner Act required only employers to bargain in good faith, Taft-Hartley imposed the same obligation on unions. Although the negotiation process is described later in this chapter, it is important to understand what is meant by the term *bargaining in good faith*. This does not mean that the parties must reach agreement, but rather that they must come to the bargaining table ready, willing, and able to meet and deal, open to proposals made by the other party, and with the intent to reach a mutually acceptable agreement.

Realizing that unions and employers might not reach agreement and that work stoppages might occur, Taft-Hartley also created the **Federal Mediation and Conciliation Service (FMCS)** as an independent agency separate from the Department of Labor. The FMCS's mission is to send a trained representative to assist in negotiations. Both employer and union are responsible for notifying the FMCS when other attempts to settle the dispute have failed or contract expiration is pending. An FMCS mediator is not empowered to force parties to reach an agreement, but he or she can use persuasion and other means of diplomacy to help them reach their own resolution of differences.

Federal Mediation and Conciliation Service (FMCS)
A government agency that assists labor and management in settling their disputes.

OTHER LAWS AFFECTING LABOR–MANAGEMENT RELATIONS

Whereas the Wagner and Taft-Hartley acts are the most important laws influencing labor–management relationships in the United States, some other items are pertinent to our discussion: the Landrum-Griffin Act of 1959 and the Racketeering Influenced and Corrupt Organizations Act of 1970. Let's briefly review the notable aspects of these two laws.

Landrum-Griffin Act
Also known as the Labor and Management Reporting and Disclosure Act, this legislation protects union members from possible wrongdoing on the part of their unions. Its thrust is to require all unions to disclose their financial statements.

Landrum-Griffin Act The Landrum-Griffin Act of 1959 (Labor and Management Reporting and Disclosure Act) was passed to address the public outcry over misuse of union funds and corruption in the labor movement. This act, like Taft-Hartley, was an amendment to the Wagner Act.

The thrust of the Landrum-Griffin Act is to monitor internal union activity by making officials and those affiliated with unions (union members, trustees, etc.) accountable for union funds, elections, and other business and representational matters. Restrictions are also placed on trusteeships imposed by national or international unions, and conduct during a union election is regulated. Much of this act is part of an ongoing effort to prevent corrupt practices and to keep organized crime from gaining control of the labor movement. The mechanisms used to achieve this goal are requirements for unions and individuals employed by unions to file annual reports to the Department of Labor regarding administrative matters—reports such as their constitutions and bylaws, administrative policies, elected officials, and finances. This information, filed under forms L-M 2, L-M 3, or L-M 4[6] with the Department of Labor, is available to the public. Furthermore, Landrum-Griffin includes a provision that allows all members of a union to vote irrespective of their race, sex, national origin, and so forth. This provision gave union members certain rights that were not available to the general public for another five years until the passage of the Civil Rights Act of 1964. Landrum-Griffin also requires that all who vote on union matters do so in a secret ballot, especially when the vote concerns the election of union officers.

Racketeering Influenced and Corrupt Organizations (RICO) Act
Legislation whose primary emphasis with respect to labor unions is to eliminate any influence exerted on unions by members of organized crime.

Racketeering Influenced and Corrupt Organizations (RICO) Act Although this act has far-reaching implications, the Racketeering Influenced and Corrupt Organizations (RICO) Act of 1970 serves a vital purpose in labor relations. RICO's primary emphasis with respect to labor unions is to eliminate any influence exerted on unions by members of organized crime. Over the past decade, RICO has been used to oust a number of labor officials in unions who were alleged to have organized crime ties.

Comprehension Check 16-1

1. An organization of workers acting collectively, seeking to promote their mutual interests is called a
   a. workgroup.
   b. work team.
   c. union.
   d. labor group.
2. Approximately what percentage of the workforce is unionized?
   a. 12
   b. 16
   c. 17
   d. 21
3. Which one of the following is *not* a reason people join unions?
   a. Seeking increased wages and benefits
   b. Seeking an individual voice with employers
   c. Seeking to influence work rules
   d. Seeking to create greater job security

[6]L-M 2 reports are required of unions that have annual revenues of $200,000 or more and those in trusteeship. L-M 3 reports are a simplified annual report that may be filed by unions with total revenues of less than $200,000 if the union is not in trusteeship. L-M 4 is an abbreviated form and may be used by unions with less than $10,000 in total annual revenues if the union is not in trusteeship. These reports are due within ninety days after the end of the union's fiscal year.

4. A union shop
   a. requires nonunion employees to pay a sum of money equal to union dues.
   b. stipulates that an employer may retain only union members.
   c. makes union membership voluntary.
   d. is illegal.
5. Which labor act gives employees the legitimate right to join a union?
   a. Wagner Act
   b. Taft-Hartley Act
   c. Landrum-Griffin Act
   d. Labor–Management Relations Act
6. Which one of the following is *not* an unfair labor practice for unions?
   a. Restraining employees in joining the union
   b. Charging excessive union dues
   c. Refusing to bargain collectively with employee representatives
   d. None of the above

How Are Employees Unionized?

OBJECTIVE 16-4
Describe the union-organizing process.

Employees are unionized after an extensive and sometimes lengthy process called the *organizing campaign*. Exhibit 16-3 contains a simple model of how the process typically flows in the private sector. Let's look at these elements.

Efforts to organize a group of employees may begin with employee representatives requesting a union to visit the employees' organization and solicit members; or the union itself might initiate the membership drive. In some cases, unions are using the Internet to promote their benefits to workers. Regardless of how, as established by the NLRB, the union must secure signed **authorization cards** from at least 30 percent of the employees it wishes to represent. Employees who sign the cards indicate that they wish the particular union to be their representative in negotiating with the employer.

authorization card
A card signed by prospective union members indicating that they are interested in having a union election held at their work site.

Although at least 30 percent of the potential union members must sign the authorization card prior to an election, unions are seldom interested in bringing to vote situations in which they merely meet the NLRB minimum. Why? The answer is simply a matter of mathematics and business: To become the certified bargaining unit, the union must be accepted by a majority of those eligible voting workers. Acceptance in this case is determined by a secret-ballot election. This election held by the NLRB, called a **representation certification (RC) election**, can occur only once in a twelve-month period; thus, the more signatures on the authorization cards, the greater the chances for a victory.

representation certification (RC) election
The election process whereby union members vote in a union as their representative.

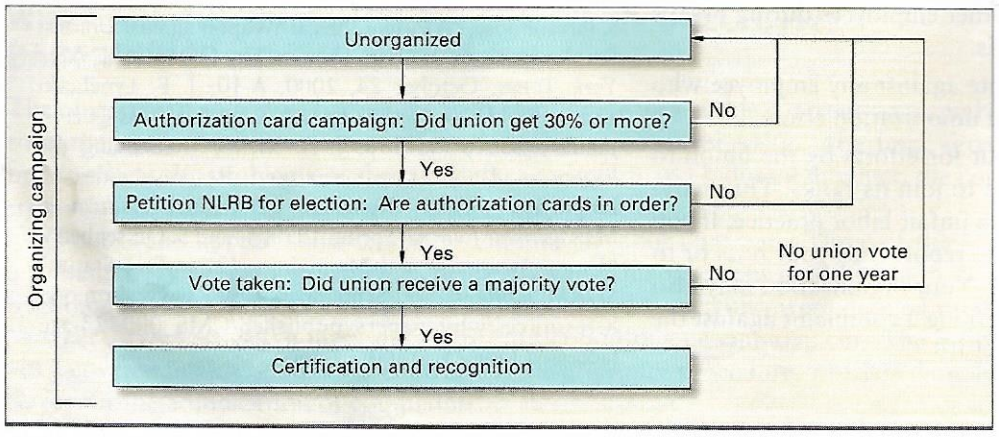


Exhibit 16-3
The labor relations process.

Even when a sizable proportion of the workers signs authorization cards, the victory is by no means guaranteed. The company often is not passive during the organization drive (see "News Flash! When the Union Arrives"). Although laws govern what supervisors can and cannot do, supervisors in the organization may attempt to persuade the potential members to vote no. Union organizers realize that some initial signers might be persuaded to vote no, and thus unions usually require a much higher percentage of authorization cards so that they can increase their odds of obtaining a majority.

When that majority vote is received, the NLRB certifies the union and recognizes it as the exclusive bargaining unit. Irrespective of whether the individual in the certified

News Flash!

WHEN THE UNION ARRIVES

What can company representatives do when they learn that a union-organizing drive has begun in their organization? Under labor laws, although they are permitted to "defend" against the union campaign, they must do so properly. Here are some suggested guidelines for what to do and what not to do during the organizing drive.

- If your employees ask for your opinion on unionization, respond in a neutral manner. For example, "I really have no position on the issue. Do what you think is best."
- If contacted directly by a union representative, you should not look at any list of employees they may attempt to give you, or any cards or letters with names on them, or any papers employees may attempt to hand you.
- You can prohibit union-organizing activities in your workplace during work hours only if they interfere with work operations. This may apply to the organization's e-mail, too.
- You can prohibit outside union organizers from distributing union information in the workplace.
- Employees have the right to distribute union information to other employees during breaks and lunch periods.
- Don't discriminate against any employee who is involved in the unionization effort.
- Be on the lookout for efforts by the union to coerce employees to join its ranks. This activity by unions is an unfair labor practice. If you see this occurring, report it to your boss or to human resources. Your organization may also want to consider filing a complaint against the union with the NLRB.
- Supervisors should remember TIPS at all times. TIPS reminds supervisors not to do the following:

  T—Threaten. Don't make any threats that are related to the possibility of unionization—for example, "If this union effort succeeds, upper management is seriously thinking about closing down this plant. But if it's defeated, they may push through an immediate wage increase."

  I—Interrogate. Don't question employees publicly or privately about union-organizing activities—for example, "Are you planning to go to that union rally this weekend?" But if an employee freely tells you about the activities, you may listen.

  P—Promise. Don't promise incentives to any who refrain from joining the union or who may oppose organizing activities.

  S—Spy. Don't spy on employees' union activities—for example, by standing in the cafeteria to see who is distributing pro-union literature.

Sources: Adapted from M. K. Zachary, "Labor Law for Supervisors: Union Campaigns Prove Sensitive for Supervisory Employees," *Supervision*, May 2000, 23–26; S. Greenhouse, "A Potent, Illegal Weapon against Unions: Employers Know It Costs Them to Fire Organizers," *New York Times*, October 24, 2000, A-10; J. E. Lyncheski and L. D. Heller, "Cyber Speech Cops," *HR Magazine*, January 2001, 145–150; J. A. Mello, "Redefining the Rights of Union Organizers and Responsibilities of Employers in Union Organizing Drives," *SAM Advanced Management Journal*, Spring 1998, 4; and S. Quisenberry, "Union Awareness and Maintaining Union-Free Status," *SHRM white paper*, September 1997, www.shrm.org/hrresources/whitepapers_published/CMS_000223.asp (accessed June 25, 2008).

bargaining union voted for or against the union, each worker is covered by the negotiated contract and must abide by its governance. Once a union has been certified, is it there for life? Certainly not. On some occasions, union members may become so dissatisfied with the union's actions in representing them that they want to turn to another union or return to their nonunion status. In either case, the rank-and-file members petition the NLRB to conduct a representation decertification (RD) election. Once again, if a majority of the members vote the union out, it is gone. However, once the election has been held, no other action can occur for another twelve-month period. This grace period protects the employer from employees decertifying one union today and certifying another tomorrow.

representation decertification (RD) election
The election process whereby union members vote out their union as their representative.

Even more rare than an RD is a representation decertification election initiated by management, or RM. The guidelines for the RM are the same as for the RD, except that the employer is leading the drive. Although RDs and RMs are ways of decertifying unions, it should be pointed out that most labor agreements bar the use of either decertification election during the term of the contract.

Organizing drives may be unsuccessful, but when unions do achieve their goal to become the exclusive bargaining agent, the next step is to negotiate the contract. In the next section, we look at the specific issues surrounding collective bargaining.

Collective Bargaining

OBJECTIVE 16-5
Describe the components of collective bargaining.

collective bargaining
A process for developing a union contract, which includes preparing to negotiate the contract, negotiating the contract, and administering the contract after it has been ratified.

The term collective bargaining typically refers to the negotiation, administration, and interpretation of a written agreement between two parties that covers a specific period of time. This agreement, or contract, lays out in specific terms the conditions of employment; that is, what is expected of employees and the limits in management's authority. In the following discussion, we take a somewhat larger perspective—we also consider the organizing, certification, and preparation efforts that precede actual negotiation.

Most of us hear or read about collective bargaining only when a contract is about to expire or when negotiations break down. When a railroad contract is about to expire, we may be aware that collective bargaining exists in the transportation industry. Similarly, teachers' strikes in Cleveland or baseball players striking against Major League Baseball owners remind us that organized labor deals with management collectively. In fact, collective bargaining agreements cover about half of all state and local government employees and one-ninth of employees in the private sector. The wages, hours, and working conditions of these unionized employees are negotiated for periods of usually two or three years at a time. Only when these contracts expire and company representatives and the union are unable to agree on a new contract are most of us aware that collective bargaining is a very important part of a supervisor's job.

WHAT ARE THE OBJECTIVE AND SCOPE OF COLLECTIVE BARGAINING?

The objective of collective bargaining is to agree on an acceptable contract—acceptable to management, union representatives, and the union membership. The final agreement reflects the problems of the particular workplace and industry in which the contract is negotiated.

Four issues appear consistently throughout all labor contracts. Three of the four are mandatory bargaining issues, which means that management and the union must negotiate in good faith over these issues. These mandatory issues were defined by the Wagner Act as wages, hours, and terms and conditions of employment. The fourth issue covered in almost all labor contracts is the grievance procedure, which is designed to permit the adjudication of complaints.

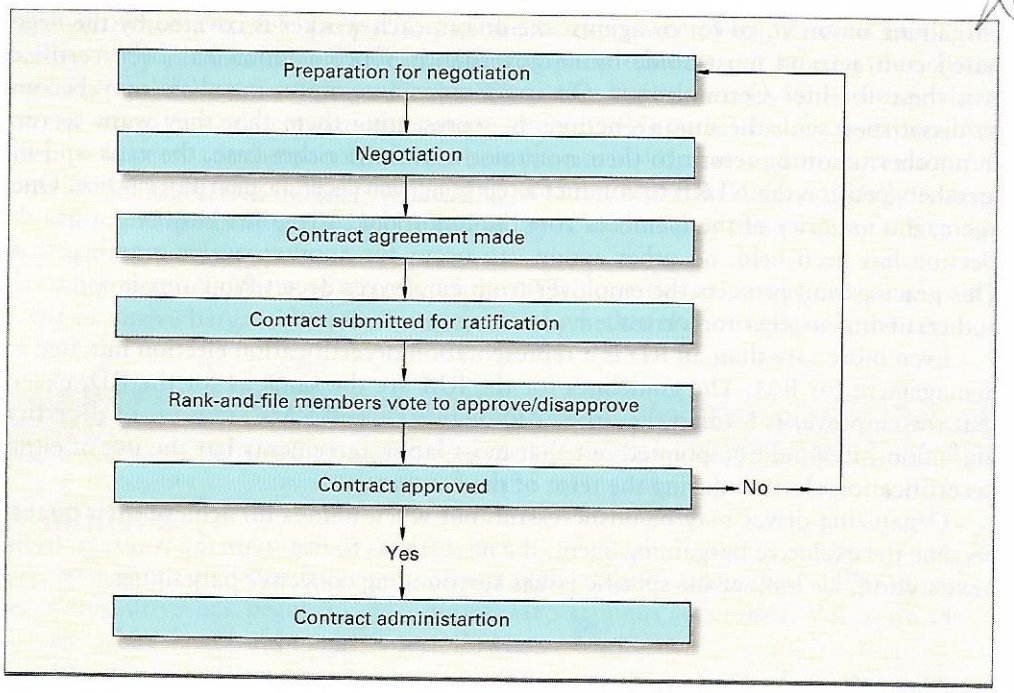


Exhibit 16-4
The collective bargaining process.

OBJECTIVE 16-6
Identify the steps in the collective bargaining process.

WHAT IS THE COLLECTIVE BARGAINING PROCESS?

Exhibit 16-4 contains a simple model of how the collective bargaining process typically flows in the private sector—which includes preparing to negotiate, actual negotiations, and administering the contract after it has been ratified.

Preparing to Negotiate Once a union has been certified as the bargaining unit, both union and company representatives begin the ongoing activity of preparing for negotiations. We refer to this as an *ongoing* activity because ideally it should begin as soon as the previous contract is agreed on or union certification is achieved. Realistically, it probably begins anywhere from one to six months before the current contract expires. We can consider the preparation for negotiation as composed of three activities: fact gathering, goal setting, and strategy development.

Information is acquired from both internal and external sources. Internal data include grievance and accident records; employee performance reports; overtime figures; and reports on transfers, turnover, and absenteeism. External information should include statistics on the current economy, both at local and national levels; economic forecasts for the short and intermediate terms; copies of recently negotiated contracts by the adversary union to determine which issues the union considers important; data on the communities in which the company operates (cost of living, changes in cost of living, terms of recently negotiated labor contracts, and statistics on the labor market); and industry labor statistics to see which terms other organizations, employing similar types of personnel, are negotiating.

With homework done, information in hand, and tentative goals established, both union and management must put together the most difficult part of the bargaining preparation activities—a strategy for negotiations. This includes assessing the other side's power and specific tactics.

Negotiating at the Bargaining Table Negotiation customarily begins with the union delivering to company officials a list of "demands." By presenting many demands, the union creates significant room for trading in later stages of the negotiation; it also disguises the union's real position, leaving management to determine which demands are adamantly sought, which are moderately sought, and which the union is prepared to quickly abandon. A long list of demands, too, often fulfills the internal political needs of the union. By seeming to back numerous wishes of the union's members,

union administrators appear to be satisfying the needs of the many factions within the membership.

Although both union and company representatives may publicly accentuate their differences, the real negotiations typically go on behind closed doors. Each party tries to assess the relative priorities of the other's demands, and each begins to combine proposals into viable packages. What takes place, then, is the attempt to get management's highest offer to approximate the lowest demands that the union is willing to accept. Hence, negotiation is a form of compromise. When an oral agreement is achieved, it is converted into a written contract. Negotiation finally concludes with the union representatives submitting the contract for ratification or approval from rank-and-file members. Unless the rank-and-file members vote to approve the contract, negotiations must resume.

OBJECTIVE 16-7
Describe the role of a grievance procedure in collective bargaining.

Contract Administration Once a contract is agreed on and ratified, it must be administered. Four stages of contract administration must be carried out: (1) getting the contract terms out to all union members and management personnel; (2) implementing the contract; (3) interpreting the contract and grievance resolution; and (4) monitoring activities during the contract period.[7]

When providing information to all concerned, both parties must ensure that changes in contract language are spelled out. For example, the most obvious would be hourly rate changes; company officials must make sure that the payroll system is adjusted to the new rates as set in the contract. But it goes beyond just pay: Changes in work rules, hours, and the like must be communicated. If both sides agree to mandatory overtime, something that was not in existence before, all must be informed of how it will work. Neither the union nor the company can simply hand a copy of the contract to each organization member and expect it to be understood. It is necessary to hold meetings to explain the new terms of the agreement.

The next stage of contract administration is ensuring that the agreement is implemented. All communicated changes now take effect, and both sides are expected to comply with the contract terms. One concept to recognize during this phase is *management rights*. Typically, management is guaranteed the right to allocate organizational resources in the most efficient manner; to create reasonable rules; to hire, promote, transfer, and discharge employees; to determine work methods and assign work; to create, eliminate, and classify jobs; to lay off employees when necessary; to close or relocate facilities with a sixty-day notice; and to institute technological changes.

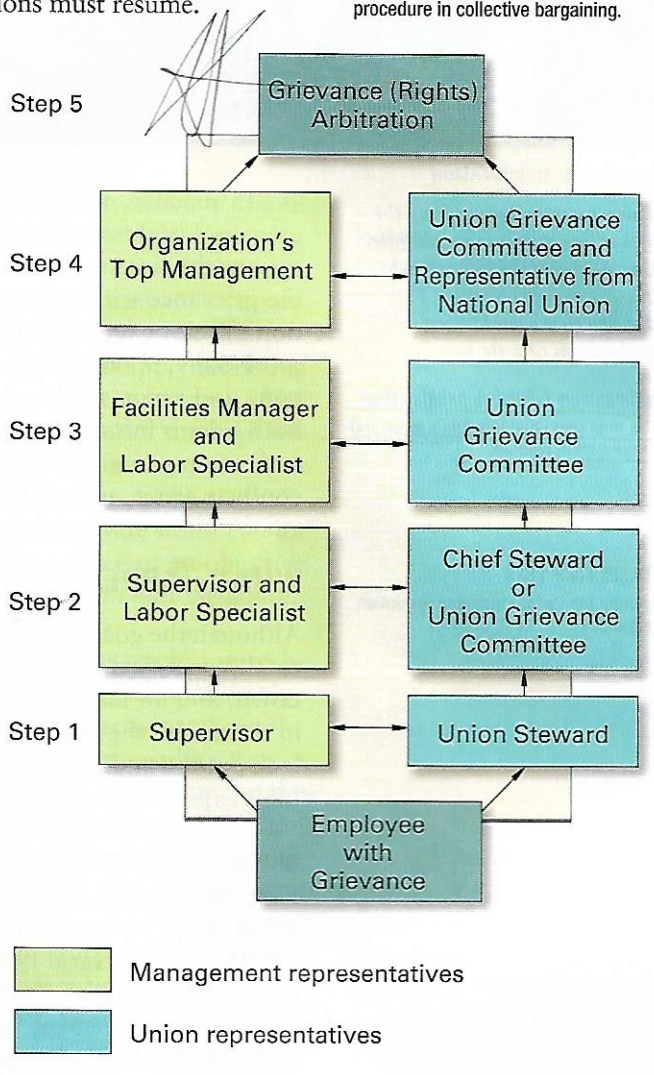


Exhibit 16-5
A typical grievance procedure.

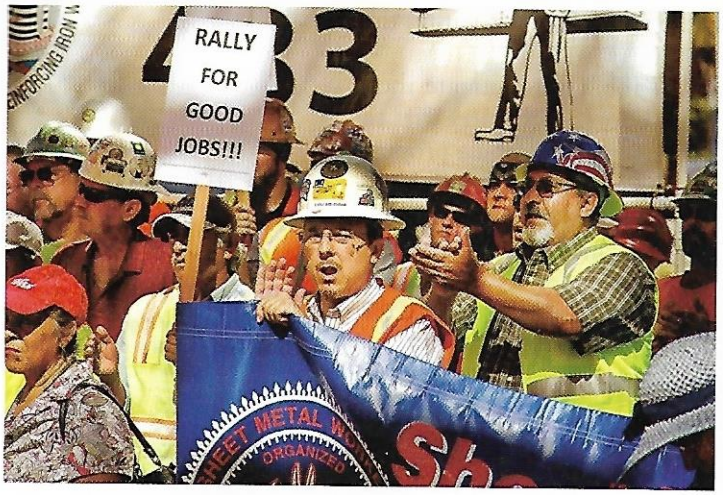
Probably the most important element of contract administration relates to spelling out a procedure for handling contractual disputes. Almost all collective bargaining agreements contain formal procedures to be used in resolving grievances about the interpretation and application of the contract. These contracts have provisions for resolving specific, formally initiated grievances by employees concerning dissatisfaction with job-related issues.

grievance procedures
Procedures designed to resolve disputes as quickly as possible and at the lowest level possible in the organization.

Grievance procedures are typically designed to resolve grievances as quickly as possible and at the lowest level possible in the organization (see Exhibit 16-5).[8] The first

[7]M. H. Bowers and D. A. DeCenzo, *Essentials of Labor Relations* (Upper Saddle River, NJ: Prentice Hall, 1992), 101.

[8]See also M. I. Lurie, "The 8 Essential Steps in Grievance Processing," *Dispute Resolution Journal* 54, no. 4 (November 1999), 61–65.



Marmaduke St. John/Alamy

These workers are walking the picket line over a labor dispute. Unable to reach an agreement in contract negotiations, they decided to withhold their labor in the form of a strike.

step almost always has the employee attempt to resolve the grievance with his or her immediate supervisor. If it cannot be resolved at this stage, it is typically discussed with the union steward and the supervisor. Failure at this stage usually brings in the individuals from the organization's industrial relations department and the chief union steward. If the grievance still cannot be resolved, the complaint passes to the facilities manager, who typically discusses it with the union grievance committee. Unsuccessful efforts at this level give way to the organization's senior management and typically a representative from the national union. Finally, if those efforts are unsuccessful in resolving the grievance, the final step is to go to arbitration—called **grievance (rights) arbitration**.

grievance (rights) arbitration
The final step used to settle a labor and management dispute.

In practice, we find that almost all collective bargaining agreements provide for grievance (rights) arbitration as the final step to an impasse. Of course, in small organizations the five steps described tend to be condensed, possibly moving from discussing the grievance with the union steward to taking the grievance directly to the organization's senior executive or owner, and then to arbitration, if necessary.

Finally, in our discussion of preparation for negotiations, we stated that both company and union need to gather various data. One of the most bountiful databases for both sides is information kept on a current contract. By monitoring activities, company and union can assess how effective the current contract was, when problem areas or conflicts arose, and what changes might need to be made in subsequent negotiations.

OBJECTIVE 16-8
Identify the various impasse resolution techniques.

WHAT HAPPENS WHEN AGREEMENT CANNOT BE REACHED?

Although the goal of contract negotiations is to achieve an agreement that is acceptable to all concerned parties, sometimes that goal is not achieved. Negotiations do break down, and an impasse occurs. Sometimes these events are triggered by internal issues in the union, the union's desire to strike against the company, the company's desire to lock out the union, or the company's knowledge that striking workers can be replaced. Let's explore some of these areas.

Strikes versus Lockouts Negotiations have only three possible preliminary outcomes. First, and obviously preferable, is agreement. The other alternative, when no viable solution can be found to the parties' differences, is a strike or a lockout.

There are several types of strikes. The most relevant to contract negotiations is the economic strike. An **economic strike** occurs when the two parties cannot reach a satisfactory agreement before the contract expires. When that deadline passes, the union leadership will typically instruct its members not to work—thus leaving their jobs.[9] Although in today's legal climate replacement workers can be hired, no disciplinary action can be taken against workers who participate in economic strike activities.

economic strike
An impasse that results from labor and management's inability to agree on the wages, hours, and terms and conditions of a new contract.

Another form of strike is the **wildcat strike**. A wildcat strike generally occurs when workers walk off the job because of something management has done. For example, if a union employee is disciplined for failure to call in sick according to provisions of the contract, fellow union members may walk off the job to demonstrate their dissatisfaction with management's action. It is important to note that these strikes happen while a contract is in force—an agreement that usually prohibits such union activity. Consequently, wildcat strikers can be severely disciplined or terminated. In the past,

wildcat strike
An illegal strike in which employees refuse to work during the term of a binding contract, often as a result of ambiguities in the current contract.

[9]To be accurate, a strike vote is generally held at the local union level, in which the members authorize their union leadership to call the strike.

the most powerful weapon unions in the private sector had was the economic strike. By striking, the union was, in essence, withholding labor from the employer, thus causing the employer financial hardships.

After the strike is underway, a form of protest referred to as *picketing* usually begins in an attempt to prevent dissident members of the union, members of other unions, and nonunionized workers from crossing the picket line to work. Picketers congregate outside a place of work to draw public attention to their cause and pressure the company to meet their demands. The pressure comes from harm caused to the business through loss of customers and negative publicity that prevent it from operating normally.

A strikebreaker is someone who crosses the picket line and works despite the strike. Strikebreakers may also be referred to as *scabs* or *rats* and are usually individuals who are not employed by the company prior to the strike, but rather hired prior to or during the strike to keep production or services going. Strikebreakers must be willing to deal with taunts, threats, and even violence from strikers. The most effective union action is a strike, and strikebreakers render a strike useless. Employers focused on breaking the union consider strikebreakers as one of their best tools.

In contemporary times, we have witnessed an increase in company officials' use of the lockout. A **lockout**, as the name implies, occurs when the organization denies unionized workers access to their jobs during an impasse. A lockout, in some cases, is the company's predecessor to hiring replacement workers. In others, it's the company officials' effort to protect their facilities and machinery and other employees at the work site.

lockout
A company action equivalent to a strike; when management denies unionized employees access to their jobs.

In either case, the strategy is the same. Both sides are attempting to apply economic pressure on their "opponent" in an effort to sway negotiations in their direction. And when the strategy doesn't work, negotiations are said to have reached an impasse. When that happens, impasse resolution techniques are designed to help.

Impasse Resolution Techniques When labor and management in the private sector cannot reach a satisfactory agreement themselves, they may need the assistance of an objective third-party individual. This assistance comes in the form of *conciliation and mediation, fact-finding*, and *interest arbitration*.

Conciliation and mediation are two very closely related impasse resolution techniques in which a neutral third party attempts to get labor and management to resolve their differences. Under conciliation, however, the role of the third party is to keep the negotiations ongoing. In other words, this individual is a go-between—advocating a voluntary means through which both sides can continue negotiating. Mediation, on the other hand, goes one step further. The mediator attempts to pull together the common ground that exists and make settlement recommendations for overcoming the barriers that exist between the two sides. A mediator's suggestions, however, are only advisory. That means that the suggestions are not binding on either party.

Fact-finding is a technique whereby a neutral third-party individual conducts a hearing to gather evidence from both labor and management. The fact finder then renders a decision as to how he or she views an appropriate settlement. Similar to mediation, the fact finder's recommendations are only suggestions; they, too, are not binding on either party.

fact-finding
A technique whereby a neutral third-party individual conducts a hearing to gather evidence from both labor and management.

The final impasse resolution technique is called **interest arbitration**. Under interest arbitration, generally a panel of three individuals—one neutral and one each from the union and management—hears testimony from both sides. After the hearing, the panel renders a decision on how to settle the current contract negotiation dispute. If the three members of the panel are unanimous in their decision, that decision may be binding on both parties.

interest arbitration
Arbitration in which a panel of three individuals hears testimony from both sides and renders a decision on how to settle a contract negotiation dispute.

In public-sector impasse resolution techniques, some notable differences do exist. For instance, in many states that permit public-sector employee strikes, some form of arbitration is typically required. The decisions rendered through arbitration are binding on both parties. Moreover, in the public sector, a particular form of arbitration, called *final-offer arbitration*, is witnessed. Both sides present their recommendations, and the arbitrator is required to select one party's offer in its entirety over the other. There is no attempt in final-offer arbitration to seek compromise.

Something to Think about (and promote class discussion)

CAN BOEING SHIFT THE WORK?

Boeing Corporation, builder of some of the world's finest airliners, wants to build its newest commercial jet in South Carolina instead of Washington state. Boeing is planning to shift some production of its new 787 "Dreamliner" from its union-represented plant to the right-to-work (meaning workers can choose whether or not they want to be unionized) plant. These plans are polarizing Republicans and Democrats as well as union and right-to-work supporters over the issue of job creation.

The NRLB filed suit claiming that Boeing's intent was to punish the International Association of Machinists (IAM) for the union's past strikes because Boeing allegedly moved to open the new factory after failing to win a nonstrike promise from the IAM union. Boeing insists that the 23,000 machinist union members in Washington will not lose work to the 1,000 nonunion workers at the South Carolina plant. South Carolina is on line to build three of the ten 787 jets now being built each month while workers in Washington will be put to work on other aircraft. The first jet from the South Carolina plant is scheduled to roll off the line in the fall of 2012.

Boeing's position, expressed by spokesman Tim Neale, is that the Dreamliner is too important to risk interruptions from union disputes. Boeing needs to ensure its production, and he points out that the IAM union, which struck against Boeing for fifty-eight days in 2008, is "starting to give us a reputation as an unreliable supplier. We pay penalties to the customers when we're late delivering the planes." Boeing estimates losses from the 2008 strike at $1.8 billion. Neale stated that even if some of the Dreamliner production were shifted to South Carolina, hourly employment at the Washington plant is still on the rise. "We're in a hiring mode across the board," he said.

The IAM general counsel Chris Corson has concerns that "Once that plant is up and running, our members in Puget Sound will be saying, 'That's what happens if we strike, if we negotiate hard at the bargaining table, they take our work away.'" He points out that starting pay at the South Carolina plant will be about $14 an hour compared to $15 an hour at the Washington plant, where a veteran worker can earn about $27 an hour, or about $56,000 a year before overtime.

The NLRB filed a complaint, charging that Boeing broke the law when it decided to shift production. "A worker's right to strike is a fundamental right," said NLRB acting general counsel Lafe Solomon when he issued the complaint. "We also recognize the rights of employers to make business decisions based on their economic interests, but they must do so within the law." The NLRB says it's not trying to prevent Boeing from opening the plant altogether, it just doesn't want Boeing to shift work away from the union-represented workers in Washington.

Although both Boeing and the IAM express confidence they will prevail in the ultimate legal battle, the IAM is concerned that the union could win the legal fight and lose the public relations war. "Boeing is so far pretty successfully using this case to throw some red meat at the larger debate in this country about labor and capitalism," said Corson. "I think our message is getting out, but I don't think we have as much money and connections as Boeing does." The case is scheduled to go before an administrative law judge in June 2011 and will likely be followed by a decision from the full NLRB. Boeing and the IAM both vow they will appeal the case to a federal court if they lose before the bipartisan board.

What do you think? Do organizations have the right to locate manufacturing facilities where they feel they get the best deal? Should they be constrained to continue production where they originally located? Should the government intervene in the decisions of business? Do workers have the right to choose whether or not they want to be unionized?

UPDATE: The labor board's acting general counsel, Solomon, said he had decided to end the case after the union that represents 31,000 Boeing workers in Washington urged the board to withdraw it. That union, the IAM, had originally asked the board to file the case, but changed its mind after striking a deal with Boeing last week to raise wages and expand jet production in Washington.

Sources: C. Isidore, "A tug-of-war over middle-class jobs," *CNNMoney*, May 20, 2011, http://money.cnn.com/2011/05/20/news/companies/boeing_nlrb_jobs/?section=money_latest (accessed May 26, 2011); R. Lowry, "The Persecution of Boeing. The NLRB's Claims Are Laughable on Their Face," *National Review*, May 2011, http://www.freerepublic.com/focus/f-news/2719339/posts (accessed May 27, 2011); The New York Times, "Boeing and the N.L.R.B.," *The Opinion Pages*, April 25, 2011, http://www.nytimes.com/2011/04/26/opinion/26tue2.html (accessed May 27, 2011); R. Lowry, "Boeing faces NLRB persecution," *The Columbia Daily Tribune*, May 26, 2011, http://www.columbiatribune.com/news/2011/may/26/boeing-faces-nlrb-persecution (accessed May 27, 2011); S. Greenhouse, "Labor Board Drops Case Against Boeing After Union Reaches Accord," *The New York Times*, December 9, 2011, http://www.nytimes.com/2011/12/10/business/labor-board-drops-case-against-boeing.html?_r=0 (accessed May 17, 2014).