CHAPTER 2: PRIVATE SECTOR LABOR RELATIONS: HISTORY AND LAW

LABOR NEWS: HOLLYWOOD WRITERS GUILD STRIKE

CHAPTER 2: OUTLINE

I. Roots of American Labor Movement
- A. Pre-Revolutionary America
  1. Little division between employer and employee—most workers were self-employed
  2. Indentured servants and slaves contributed to early workforce—farming, clearing the wilderness
- B. Post-Revolutionary America
  1. Some skilled workers became shop owners.
     a. Owners employed people to work for them.
     b. Increased competition demanded cheaper production costs and lower wages.
     c. Skilled workers formed associations and societies to protect their handiwork.
     d. Skilled workers agreed on a pay scale and worked only for shop owners who could pay that wage.
  2. Start of "industrialization" and creation of mass production laid foundation for unskilled laborers unions.
- C. Post Civil War
  1. Factories and mills opened needing unskilled labor.
  2. Women and immigrants supplied cheap labor for factories.
  3. Monopolies developed with such legendary "Robber Barons" as Rockefeller and Carnegie increasing the need for workers to unionize to counter their power.

II. Growth of National Unions—Unions, People, Incidents
- A. National Labor Union (NLU)
  1. Formed in 1866, advocated an eight-hour workday, restrictions on immigration, a Department of Labor, legal tender greenbacks. It did not have collective bargaining as one of its aims. It disbanded in 1872.
  2. In the beginning, the NLU advocated women's rights and the unionization of freed slaves, but neither group was admitted into the NLU as full parties. African-Americans formed National Colored Labor Union in response.
- B. "Molly Maguires"
  1. A legendary group of union organizers in the coal mine fields in 1875. After a failed strike, they were accused and convicted of murder and arson.
  2. Prosecution of "Molly Maguires" was aided by the testimony of Pinkerton Detective Agency personnel who had infiltrated the union. Such practices were common as detectives were hired by owners as "Labor Spies."
- C. The Railway Strike of 1877
  1. The railroad companies during this period were providing large dividends to their wealthy stockholders while the railroad company was losing money. To compensate, rates were increased and wages cut. Workers became discontent and after a 10 percent cut in wages was announced in 1877, the workers in Maryland began a strike. The strike spread quickly and violently; it lasted 20

days, more than 100 workers were killed, and the federal troops were called in to suppress the strike.

D. The Haymarket Square Riot
   1. This took place in Chicago in 1886. Laborers were striking to demand an eight-hour workday. A peaceful meeting ended with a bomb thrown into a group of policemen. One policeman was killed along with several strikers.

E. Knights of Labor
   1. The Noble Order of the Knights of Labor (KOL) was founded in 1869. Their goals were higher wages, fewer working hours, and better conditions through legislation. The public, however, began to associate the KOL with violence after it was assumed that they had engineered the Haymarket Square Riot, although they had nothing to do with it. The KOL began to lose support.

F. Homestead, Pennsylvania 1892
   1. A strike against a Carnegie Steel Company lead to violence when the plant owner called in 300 armed guards to protect the plant. The Governor called in the state militia to restore order.
   2. "Old Beeswax" Taylor, a labor leader in Homestead who is credited with organizing the first Labor Day celebration in 1882.

G. The Pullman Strike of 1894
   1. Railroad workers went on strike to demand wages be restored to previous levels and rents lowered. Many other railroad workers went on strike in sympathy. The strike was peaceful and well organized. The owners, with the help of the federal government, added mail cars to the trains. Strikers were then charged with interfering with mail delivery, and federal troops were brought in to break the strike. The strike became violent. The court then enjoined the strike by applying the Sherman Antitrust Act stating that contracts, conspiracies, and combinations formed in restraint of trade and commerce are illegal.
      a. Note—theoretically, the Sherman Antitrust Act was directed at business, not labor unions.

H. Eugene Debs
   1. Founder of the American Railway Union, Debs fulfilled the goal of earlier unions by successfully organizing a national industrial union capable of staging a united strike. Debs became a socialist after witnessing government's intervention on the side of owners in labor disputes.

I. The American Federation of Labor (AFL)
   1. Formed in 1886 under Samuel Gompers, its goal was to improve the position of skilled labor. The AFL dominated the labor scene after the KOL began losing support.

J. Samuel Gompers—founder of AFL, believed the major emphasis for the labor movement was on economic and industrial action in the workplace as opposed to political action.

K. Bunker Hill and Sullivan Mining Incident, Coeur d'Alene, Idaho
   1. Trade unionists gained strength in western mining country. In 1892, miners were locked out of mines when they refused wage reductions. Formed Western Federation of Miners and led series of strikes.
   2. At Coeur d'Alene mine had 12 years of trouble with WFM so that in 1899 WFM dynamited a mine, union members confined to the "bull pen."

L. Industrial Workers of the World (IWW)
   1. Originated in the Colorado mine fields in reaction to the mine owners breaking strikes by bringing in armed guards. IWW, known as "Wobblies,"

advocated both a labor and social agenda, advocating an overthrow of capitalism. After the Russian Revolution, socialist advocates, such as IWW, lost support in the United States.

2. Fannie Sellins, a woman labor organizer, was killed during a 1919 strike against Allegheny Coal & Coke Company. She was allegedly shot in the back by deputies working for mine owners.

M. Women's Trade Union League

1. First national association dedicated to organizing women emerged after 1903 when the AFL failed to fully involve women within its ranks. WTUL was a network of working class and elite women who joined to promote better working conditions and living conditions, advocated eight-hour day, minimum wage, and abolition of child labor.

N. Ludlow, Colorado 1914 Massacre

1. United Mine Workers of America on strike and evicted from company owned town. Miners erected tent colony and coal operators sent in militia who massacred 20 men, women, and children. Called "a day that will live in infamy" for the American labor movement.

O. John L. Lewis

1. Post WWI workplaces had skilled laborers organized in AFL unions. Nevertheless, unskilled laborers turned to the leadership of John L. Lewis, an UMW leader, for a new era in industrial unionizations.

P. Congress of Industrial Organizations (CIO)

1. The CIO was formed in 1935 by John L. Lewis and advocated a workplace agenda for unions of unskilled workers. The CIO supported the first "sit-in strike" when UAW workers occupied an auto plant in Flint, Michigan in 1936.

III. Early Judicial Regulation

A. The Cordwainers Conspiracy Cases

1. The threat of criminal conspiracy charges during the early years of the labor movement greatly hampered the progress of labor.
2. During this period, U.S. judges chose to protect employer's property rights over employee's job rights.
3. In the 1806 Philadelphia Cordwainers case, the court held the mere "combination" of workers to raise wages was an illegal act because the combinations were formed to benefit the workers and injure the nonparticipants.
4. Three years later in the New York Cordwainers case, the court dismissed the idea that it was illegal to combine, but it denounced the combination of workers to strike because it deprived others (employers) of their rights and property.

B. The Use of Labor Injunctions

1. A court order that prohibits an individual or group from performing any act that violates the rights of other individuals concerned. Until 1832, injunctions were primarily used by employers to end boycotts or strikes.

C. The Erdman Act (1898)

1. This act was limited to employees operating interstate trains. It gave certain employment protection to union members and offered facilities for mediation and conciliation of railway labor disputes.

D. Unions Gain a Foothold

1. Courts are still using injunctions as the way to regulate union activity.

a. The United Mine Workers of America wanted to expand union mines. They began organizing miners with the intent of shutting down the mine until the company recognized the union. The company sought and received an injunction against the union's activities. The U.S. Supreme Court upheld the injunction stating that although the union was within its right in asking men to join, it could not injure the company while exercising that right.

2. In 1902, the United Mine Workers organized a strike. President Roosevelt stepped in and offered to establish a President's Commission to arbitrate.
3. In 1913, a strike by mine workers spurred John D. Rockefeller Jr. to institute his own recognized employee organization.
4. Chronology of the most significant events in U.S. labor relations.

IV. Pro-Labor Legislation

A. The Clayton Act
1. This act sought to limit the use of the injunction against labor unions.
2. The act stated that labor organizations were not prohibited by antitrust.
3. This act was not very effective. Courts continued to apply the Sherman Antitrust Act.

B. The National War Labor Board
1. Created by President Wilson to prevent labor disputes from disrupting the World War I effort adopted collective bargaining.
2. Disbanded after the war and unions suffered from the subsequent postwar depression.

C. The Railway Labor Act
1. Required railroad employers to negotiate with their employees' representative and provided for voluntary submission to arbitration.
2. In 1936, the Act was expanded to include the airline industry.

V. Creation of a National Labor Policy

A. The Norris-La Guardia Act (1932)
1. This act took away the power of the federal courts to issue injunctions in nonviolent labor disputes.
2. States that courts cannot restrict the formation of union activities.

B. The National Labor Relations Act (The Wagner Act) 1935
1. Gave most employees the right to organize and bargain collectively through representatives of their own choosing.
2. Defined unfair labor practices on the part of the employer.
   a. Interfered with employee rights under the act.
   b. Refused to bargain in good faith with the employees' representative.
   c. Discriminated against union members for pursuing rights under the act.
   d. Attempted to dominate or interfere with the unions.
3. The National Labor Relations Board (NLRB) was established to administer and interpret provisions of the act.
4. The Wagner Act did not restrict activities of the union.
5. The major provisions of the Wagner Act.

C. The Fair Labor Standards Act (FLSA)
1. Walsh-Healy Act, passed in 1936, foreshadowed the Fair Labor Standards Act and guaranteed that employers with federal contracts would pay their employees time and one-half for any time worked over an eight-hour day.

2. Three main objectives of FLSA:
    a. Federal minimum wage
    b. Shorter working hours
    c. Abolition of child labor

D. The Labor-Management Relations Act (Taft-Hartley Amendments)
1. This act defined unfair labor practices on the part of the union.
    a. Restraint or coercion on employees in exercise of their rights.
    b. Refusal to bargain in good faith.
2. This act prohibited secondary boycotts and strikes.
3. This act gave preference to state right-to-work laws over bargained collective bargaining agreements.
4. The major provisions of the Taft-Hartley Amendments.
5. Definition of a Scab, shows the emotion that can be involved in union settings.

E. The Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act)
1. This act required controls on internal handling of union funds, established safeguards for union elections, and established due process rules for disciplining members.

F. Union Democracy and the Landrum-Griffin Act
1. Assures participation by the rank and file in union affairs.
2. Protects union members' right to participate in election process.
3. Requires high standards of ethical conduct by union officials.
4. Union members given access to financial reports of union.
5. Bill of Rights of Members of Labor Organization enforced this act.

VI. The Employer Free Choice Act
A. EFCA introduced in the U.S. Congress in 2007 when it passed the House of Representatives, but failed in the Republican controlled U.S. Senate.
B. During the 2008 Presidential race, Barack Obama pledged his support of the EPCA and thus gained substantial union support. Thus far, however, President Obama has not put forth the EFCA during his administration.
C. The EFCA contains three primary provisions
1. Card-check recognition
2. First contract
3. Increased penalties

CHAPTER 2: CASE DISCUSSION

Case 2.1 INJUNCTION

1. Remembering this is 1906, how do you think the appeal court ruled?

   For the employer. The courts at the time needed to uphold the private property right of the coalmine owners. It was very unlikely that the unions would have been supported.

2. Do you think that the employer in this case expended its resources wisely by fighting the union in the courts rather than recognizing the union and negotiating wages?

   Yes, because what was involved was not only the expense of the litigation in relationship to the union wage demands but also the cost of allowing the unions to close down the mine during the strike.

3. Was the union fair to the employees of this company who had accepted their jobs under the conditions stated, that is, no unions?

   Company's standpoint: No, the union was not fair. When the employer hired the workers, it was made clear that this mine was a nonunion mine. If the workers could not live with that, they should have gone elsewhere.

   Union's standpoint: Yes, the union was fair. It is naïve to believe that the workers have the power in this or any employment situation. They may not have had a choice on whether to take the job under the circumstances offered by the company, but they certainly have a right to try to better their situation.

Additional Discussion Questions:

1. The company sought to secure a "closed nonunion shop" through individual agreements with employees and the union sought a "closed union shop" through a collective agreement with the union. Why do you think the court upheld the right of the company against the right of the union?

   In its historic context, the case demonstrated:
   a. Courts during this period had an anti-union, pro-management attitude.
   b. No law existed giving unions status.
   c. The individual employment contracts had legal merit and had to be upheld.

2. The union's illegal activity was the threatened strike. The company also threatened economic sanctions by only employing those who were not union members. Why was the union's activities considered coercive and the company's not?

   The company's economic sanctions only affected the potential employee who chose to join the union instead of accepting employment. Nevertheless, the union was a third party who attempted to interfere in the employer-employee relationship by the proposed strike.

3. An injunction is usually issued to prevent an injury that could not be adequately compensated for after the fact. If the union had succeeded in organizing a strike that resulted in a loss of profits for the company, why could the company not have recovered its damages?

By-and-large during this period, neither the unions nor the workers had money so the possibility of recovering lost profits from members was slight-to-none.

CHAPTER 2: END CASE DISCUSSION

Case Study 2.1: Interfering with the Employee's Right to Unionize

Decision:

The judge determined that the union demonstrating union animus was a motivating factor in the employer's disciplinary actions and the issuance of an unfavorable performance evaluation against Fortin. The burden therefore shifted to the employer to show that Fortin would have received the disciplinary actions and the unfavorable evaluation even absent her union activity. The employer's proffered reasons for Fortin's unfavorable evaluation were found by the judge to be pretextual, and because Fortin's layoff was based primarily on an evaluation of Fortin that was tainted by the employer's union animus, it too was unlawful.

Questions for Discussion

1. Do you believe Fortin was the victim of union animus by her employer? Why or why not?

   Yes: Because the nexus between the disciplinary complaints and her very visible union activity was certainly too close to be coincidental.

   No: The employer had a right to discipline Fortin for poor performance. The fact that it coincided with her union activity could perhaps be attributed to her loss of focus for the job she should have been doing rather than her employer displaying any union animus.

2. Fortin's supervisor had no knowledge of her union activity but laid her off on the basis of her poor performance evaluation. Give your reasons why a court should uphold or override the supervisor's decision.

   The court should override the supervisor's decision because the action was based on poor performance reports unfairly given. So even if the supervisor didn't know of the union activity, those making the reports did.

   The court should not override the supervisor's decision. The employee was laid off, not fired. The layoff was not a disciplinary action, but rather a budgetary one. There is nothing here to indicate that Fortin wouldn't have been laid off regardless of her record.

3. Explain why you think employers still demonstrate union animus almost 60 years after the passage of the National Labor Relations Act?

   Unions today are not held in high esteem. Many of the gains unions made for employees have become law and the workforce that benefits from their past efforts are unaware of this history. Employers can be overtly hostile to unionizing efforts because the employee support is not there.

Case Study 2.2: Discriminating Against Union Members

Decision:

The employer committed unfair labor practice when it unilaterally changed work schedule and absenteeism policies while bargaining, where the pronouncement was a change in working conditions upon which there had been no discussions or bargaining. The new attendance policy touched upon and concerned "hours and other terms and conditions of employment," which is a mandatory subject of bargaining, and made reference to automatic termination for failure to report or call, which implicates the just cause provisions of the collective-bargaining agreement.

The employer committed an unfair labor practice when it unilaterally decided that members of the union negotiating committee must work part-time on the day of bargaining, which was contrary to past practice, where management's ostensible need to fill the work schedule was not such a compelling economic consideration as would narrow, mitigate, or eliminate management's duty to bargain over negotiators' schedules.

The employer committed an unfair labor practice when it unilaterally promulgated light-duty policy that changed past practice, and the collective-bargaining agreement. The latter had mandated that employees returning from medical leave must be able to return to the job completely, despite contention that the program was derived from existing job descriptions, where policy affects more than job descriptions and requires attendance when attendance was not previously required.

Questions for Discussion

1. Active union members often have two jobs to do—as an employee and as a union member. How far do you think an employer should be required to go to allow the member to do both jobs?

   The employer should set aside a reasonable amount of time for the employees who are union leaders to represent their members. But those employees should still perform their jobs.

2. The nonprofessional jobs at a nursing home are often hard to fill and there can be a lot of employee turnover. Do you think a having a union at a nursing home helps or hinders in the hiring and retention of employees?

   Helps. The union can negotiate improvements in wages and working conditions so that the employees can earn a respectful living. This will help the employers as well if it cuts back on turnover among the employees.

3. Do you think the company has engaged in an unfair labor practice by instituting a light-duty policy and requiring the union negotiating team to work part time on negotiating days?

   Yes: Certainly the timing of the "light-duty policy," which seems to have been targeted at a union official shows that the employer is antiunion and will attempt to punish union members. And the restriction on taking only one-half day off for negotiating sessions was a limitation on the union officials' ability to represent their members at the negotiating table, as well as a direct interference in the workers' right to unionize.

   No: Neither action would have a significant effect on the union's ability to function. "Light duty" is a program that allows workers who have been injured to continue to work and the length of a negotiating session is not determinative of its effectiveness. At best, this could be seen as a petty approach to union organizing but not an unfair labor practice.

CHAPTER 2: REVIEW QUESTIONS

1. What factors in the 1800s contributed to the growth of the American labor movement?

   Economic growth and industrialization led to the need for unskilled labor and large capital outlays. This resulted in a "factor" system where employees no longer dealt face to face with their employers. In addition, capitalization schemes employed by some industries allowed large dividends to stockholders while the companies went into the red causing wage cuts and unemployment. General social reform movements advocated workers' collective action in addition to such things as universal education and currency reform.

2. Did the Great Depression have any impact on the U.S. labor movement? If so, what?

   Yes, the Great Depression set the stage for passage of legislation at the national level favorable to organized labor. The impact of the unemployed, coupled with organized labor's support for the Democratic candidate, as well as disappointment in judicial response to labor disputes all led to the passage of NLRA. With about one-third of all American workers unemployed and many families homeless, public support for unions rose and helped pass the NLRA in 1935.

3. Why is Fannie Sellins called "Labor's Martyr"?

   Fannie Sellins was killed during a union strike. Deputies, hired by a coal company to "protect" company property, shot her in the back. Their activities included assaulting strikers and Ms. Sellins had pictures to prove it. When she tried to leave the area with the pictures, she was killed.

4. Describe the federal and court actions against union workers in the 1800s.

   a. Criminal conspiracy charges were filed against workers who "combined" to raise their wages. The courts found that the activities of such combinations to strike or boycott an employer deprived the employer of property rights.

   b. Injunctions against labor unions were based on theory of union violation of the Sherman Antitrust Act. The Act declared combinations formed in restraint of trade to be illegal. The courts found that strike activity interfered with interstate commerce and was prohibited.

   c. Even after the Clayton Act and the Norris Act were passed, courts continued to apply the Sherman Antitrust Act to strike activity they considered to be violent and therefore not protected under these acts.

5. Why did the Wagner Act have a major impact on employees' rights?

   In addition to giving employees the right to organize, the Wagner Act required employers to meet and negotiate with their employees. By allowing for strikes, the employees could expect economic pressure upon the employer equal to, and some felt greater than, the economic power of the employer.

6. What circumstances prompted Congress to pass the Taft-Hartley Amendments?

The 12 years following passage of NLRA had given unions time to grow. Union strike activities during and after World War II caused a general concern that the NLRA was one-sided. Congress passed the Taft-Hartley Amendments to balance the approach to labor relations.

The Landrum-Griffin Act?

Charges of racketeering and corruption in some major unions caused Congress to investigate organized labor. The Landrum-Griffin Act attempted to protect union members from corrupt leadership.

What are the important provisions of these acts?

a. Wagner Act (NLRA)
   1. Gave employees the right to organize
   2. Required employers to meet and bargain with their employees
   3. Protected the "right to strike"
   4. Created the National Labor Relations Board

b. Taft-Hartley Amendments (LMRA)
   1. Recognized employees' right not to organize
   2. Required unions to bargain in good faith
   3. Subjected unions to charges of unfair labor practices
   4. Gave preference to state "right-to-work" laws over contract provisions requiring all workers to join a recognized union

c. Landrum-Griffin Act (LMRDA)
   1. Put controls on the power of union officials
   2. Established safeguards for union elections
   3. Established due process rules for disciplining members

7. What were common objectives of the early labor unions?

Regardless of any other objectives, early unions worked for an eight hour day, the end of child labor, workers compensation for injury on the job, collective bargaining, and a grievance process.

8. Why was April 20, 1914, "a day that will live in infamy" in labor history?

Coal miners in Colorado and other western states had been trying to join the United Mine Workers of America. In April 1914 in Ludlow, Colorado, the miners went on strike, and the coal operators evicted them and their families from their company-owned houses. The miners quickly erected a tent colony on public property. The coal operators called in the Colorado militia, and together with an army of thugs hired as strikebreakers, they staged a well-planned attack, without warning, they surrounded the tents and massacred 20 men, women, and small children in the tent colony. The exact date of April 14 was chosen because the miners had planned a celebration—it was Greek Easter.

9. Why was the relationship between unions and African Americans one of advances and defeats?

Labor union members recognized that freed slaves were a source of cheap labor. With African

Americans moving from the rural south to northern cities, they were not accepted into existing unions, so they began to form their own. When African American unions peaked during the Civil Rights Movement, the AFL-CIO changed its "whites only" clauses in its affiliated unions and African Americans today are more unionized than the workforce as a whole.

10. In which industry did women enjoy the most organizing success in the early 1900s?

During the early 1900s, the Women's Trade Union League had the most success in organizing the garment industry.

CHAPTER 2: YOU BE THE ARBITRATOR!

MANAGEMENT RIGHTS

1. As arbitrator, what would be your award and opinion in this arbitration?

   The Company had the right to eliminate the three job classifications and to subcontract the work because it was not part of its core business. It was certainly "reasonable" to eliminate these classifications when it was determined that it did not want to continue to handle its sanitation needs in the same way. The Company did not lay off any employees so it is clear the intention was to change a particular operation without negatively affecting the employees.

2. Explain why the relevant provisions of the CBA as applied to the facts of this case dictate the award.

   The Management Function clause was not as narrowly drawn as the union proposed. It is really the first sentence that gave the Company the right to proceed as it did: "The Management of the Plant and all Company operations shall be vested exclusively in the Company. . ." It was management's prerogative to stop handling its sanitation needs the way it had previously done it.

3. What actions might the employer and/or the union have taken to avoid this conflict?

   The union's concern seems to be that the Company will do this same thing and eliminate other job classifications and contract out work. The union could ask that the CBA be amended to provide for a specific process for eliminating job classifications.

CHAPTER 2: EXTRA CASES

Union Discipline

Facts:

Local 100 of the CL & G Union represented employees at the Kaiser Cement Corporation. The CL & G merged with the International Brotherhood of Boilermakers, and the Local became Local D-100 of the Boilermakers. The local president, both before and after the merger, and three other union members, had not favored the merger. They were also angered by how the Boilermakers had treated some long-term local union representatives. The four union members began actively opposing the Boilermakers. They met with management and proposed that 37 or 38 jobs covered by the contract be changed to nonunion positions; they began the process for a decertification election, and they presented management's proposals on eliminating union positions to the employees.

A union member filed charges against the four with the Boilermakers, and the union found them guilty. The discipline imposed was to suspend them from holding any local union office, bar them from holding office in the future, and prohibit them from attending union meetings, except when a vote on a contract was to be held. The four informed the union that because they had been "suspended" from the union they would no longer pay union dues.

The union warned them that if they failed to pay union dues, the union would ask the employer to discharge them. Under the collective bargaining agreement, a "union security" clause required employees to be members of the union in order to stay employed. However, under the NLRA, paying dues directly related to the collective bargaining activity is the only obligation a union can impose on the workers subject to such a union security clause.

The four disciplined union members filed a grievance charging that the union had violated the Labor Management Relations Act (LMRA). The LMRA gave employees the right not to be discriminated against if they chose not to engage in union activities. Both the discipline and the threat of being discharged amounted to discrimination, they contended.

The union's position was that their discipline was an internal union matter protected under the Labor-Management Reporting and Disclosure Act of 1959 and that the LMRA allows for union security clauses in collective bargaining agreements so long as the employee is required to pay only those union dues that actually reflect the collective bargaining service provided by the union.

Decision:

The court ruled in the favor of the Boilermakers' Union stating that it had the right to discipline the members and call for their dismissal if they failed to pay their dues.[1]

Questions for Discussion

1. <u>As the judge in this case, would you agree with the four disciplined union members or the union? Why?</u>

   For the union: The union has to be able to control its members to be effective representatives. Union security clauses are a way to protect the union membership. The four employees obviously enjoyed the benefits the collective bargaining agreement gave them. Now they need to adhere to the requirements.

[1] Adapted from *Boilermakers*, 144 LRRM 1121 (1993).

For the four union members: The union discharged them, why should they have to pay dues? This is not the same thing as a member of the bargaining unit just not being interested in the union. These four were active union members and the discipline should have relieved them of the obligation to pay dues.

2. The efforts of the four union members to either switch union positions to nonunion positions or vote the new union out were not supported by the employees. Do you think the union should have ignored the four rather than disciplining them?

   Yes: The employees were not swayed by their actions and the subsequent dispute was surely more disruptive to the union.

   No: The union had a duty to be the *only* bargaining agent for the employees, and it could not be as long as the four continued to talk to the employer, and make proposals—albeit futile ones.

3. Do you think it is right for a union and an employer to agree in a collective bargaining agreement that all of the workers subject to the collective bargaining agreement have to join the union in order to keep their job?

   Yes: Once a collective bargaining agreement is in place, it is easy for the workers to forget, or for new workers to never realize, what it took to get the agreement in place. Without union security clauses, all of the gains made could disappear.

   No: The employer should make decisions on discharging employees purely based on the work performed. To be denied employment because one does not choose to join a union, even with a minimum commitment, is wrong.

(You might want to take up the section on Right-to-Work laws from Chapter 3.)

The National Labor Relations Act

Facts:

The corporation manufactures and sells products made from rare metals and is clearly subject to the commerce definition of the NLRA. A group of employees organized a union that the corporation refused to recognize. The union organized a sit-down strike in which about 95 employees occupied two essential buildings of the corporation's facility. All work stopped. The corporation asked the employees to leave—and when the employees refused—the company fired them. It obtained an injunction that the employees ignored; law enforcement officials forcibly ousted and arrested them.

Production resumed, and some of the strikers were hired back. Others, however, refused to return unless their union was recognized. The corporation had supported the organization of another independent union which the NLRB found to be a company union in violation of the act.

In light of that finding, the NLRB ordered the corporation to stop interfering with the rights of employees to organize and to select their own bargaining representatives, not to dominate their labor organization, and to stop refusing to bargain with the employees' union.

The NLRB went one step further to effectuate its policies by ordering the corporation to reinstate all the striking employees with back pay, even if it involved discharging people hired since the strike. The corporation appealed the NLRB order.

Decision:

The U.S. Supreme Court upheld the finding of an employer unfair labor practice for refusing to bargain with the union. It also pointed out that the employer's discharge of the employees was proper because the employees illegally took and held possession of the employer's property while engaging in the strike.

The Court was left to examine the authority of the NLRB to order the reinstatement of the strikers. The NLRB's reasoning was that because the strike was in response to an unfair labor practice, the act provided that the employees retained their status despite discharge for illegal conduct or, that as an alternative, the NLRB's authority was broad enough to order reinstatement to effectuate the purposes of the act.

The Court found that the NLRA's protection of employee activity is limited to lawful conduct. A lawful strike, the exercise of the right to quit work, is protected, and the employees retain their employment status. However, an illegal strike, one that includes the seizure of buildings to prevent their use by the employer, is outside the scope of the act.

The Court found that the NLRB's authority under the act was broad but not unlimited. The Board's authority to order affirmative action is limited to orders that will in fact restrain unfair labor practices; it does not extend to punishing the employer for past practices. Therefore, an affirmative order requiring the employer to recognize and bargain with the union was within its authority because of the impact on the employer's future actions. Reinstatement of certain strikers who participated in an illegal act, however, would not effectuate the purposes of the NLRA to encourage peaceful resolution of labor disputes.[2]

Questions for Discussion

1. How valid is the Court's distinction on the Board's authority to order the employee to take affirmative action that "effectuates" the purpose of the Act?

   Pro side: The Court, by limiting the Board's authority because the employees resorted to illegal activity. If they had been reinstated, they would have reason to believe such activity was acceptable, although in reality, the Act is for the peaceful resolution of labor disputes.

   Con side: The Court rightfully limited the Board's authority, relieved employers of much of their potential liability for engaging in unfair practices. If all of the remedies are prospective, the employer has little incentive to resolve a labor dispute quickly.

2. This case was decided a few years after the Act was passed. Do you think the newness of enforcement under the Act had a significant impact on the Court's attitude? Why?

   Yes: The Court may have been influenced by the "newness" of the law and proceeded to decide this case in favor of both the employer and the union.

   No: Actually, the NLRB may have been overreaching in its authority because of the "newness" of the laws. Promoting unlawful conduct, even in support of a lawful strike, would not increase peaceful acceptance of the Act.

[2] Adapted from *NLRB v. Fanstead Metallurgical Corp.,* 83 L.Ed. 627 (1938).

The Sherman Antitrust Act

Facts:

The Apex Hosiery Company manufactured hosiery that was often shipped in interstate commerce. The company was not unionized and only 8 of its 2,500 employees were union members. William Leader, a union official, demanded a closed-shop agreement that the company rejected. Leader and union members from nearby industries staged a sit-down strike, seized and held the plant for over a month. The strikers were forcibly ejected following a court injunction. As a result of the strike, the company's production was suspended for three months and interstate shipment of finished hosiery was delayed.

According to the Sherman Antitrust Act, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal."

The lower court's decision that the union had violated the Sherman Antitrust Act was appealed by the union and went to the Supreme Court.

Decision:

The Supreme Court found sufficient evidence to support the contention that the union intended to prevent shipment of the hosiery and that interstate commerce was affected. However, the Court had to decide whether Sherman Antitrust should be applied to laborers seeking to enforce their demands against the employer if their actions affect interstate commerce.

The Court analyzed the Sherman Antitrust Act in light of its legislative and judicial history noting: the Act was not passed to regulate interstate transportation but to prevent restraints to free competition evidenced by trusts and combinations of business; the Act had never been applied to labor organizations unless the Court found some restraint upon commercial competition in marketing goods or services; and finally, the Act had not been applied to local strikes where commercial competition was not restrained even if interstate shipments were prevented.

Under this analysis, the Court reversed the lower court's finding.[3]

Questions for Discussion

1. Do you think the Court would have found the union in violation of the Sherman Antitrust Act if the price of hosiery had been affected by the strike?

   Even if the price of hosiery had been affected, the Court would probably *not* have found a violation of Antitrust because the interstate shipment aspect of this case would have applied to so many other incidents. Such a finding would have crippled the labor movement that had so recently been buffered by the NLRA.

2. The dissenting judge felt the Court's interpretation of the Sherman Antitrust was too narrow. This case was decided after the National Labor Relations Act was passed. Do you think that affected the outcome? Why?

   Yes: the Court's attitude must have been influenced by the national attitude evidenced by passage of the NLRA. Without that attitude, any strike limiting interstate shipments should be found in violation of Antitrust because the shortage of goods could arguably affect prices.

[3] Adapted from *Apex Hosiery Company v. William Leader,* 84 L.Ed. 1311 (1939).

CHAPTER 2: EXERCISE AND EXERCISE GUIDANCE

Sources of Labor Relations Information

This exercise is most effective if conducted individually, but may be assigned to groups. If there is a local labor issue of interest to the community, you might focus the research toward issues related to it.

Purpose:

For the student to gain practice in the library research of labor relations topics.

Task:
Choose a labor relations topic of interest to you (or you may be assigned one by your instructor) from the following list. After choosing a topic, complete the following steps:

1. Find at least six recent references (or more, depending on your instructor's wishes) that pertain to your topic. Do not use a reference (e.g., *Monthly Labor Review*) more than once.
2. For each reference, indicate the title of the book, journal, and so on; the title of the journal article (if applicable); the author's name; and the publisher and the publication date. In addition, indicate how you located each reference (e.g., *Business Periodicals Index.*)
3. Write a one-paragraph abstract for each source. (If your source is a book, review at least one important chapter and write the abstract for that chapter.

TOPICS:

Airline industry/unions
Boycotts
Change to Win Coalition
Cost-of-living adjustments (COLAs)
Craft unions/industrial unions
Drug testing
Duty of fair representation
Grievance arbitration
Health-care issues
Job security issues
Just cause
Mediation
NHL 2004-05 season
NLRB certification/decertification elections
Outsourcing
Pension issues
Permanent replacement workers
Plant closing
Professional sports unions
Profit-sharing plans
Public-sector unions
Recent strikes
Right-to-work states
Rolling strike
Salting
Seniority systems
Sick leave provisions
Subcontracting
Successorship
Termination at will (employment at will)
Trends in union membership
Two-tier wage contracts
UPS/Teamster 2002 agreement
Wages (newly contracted)