Labor Law: An Introduction

Teamster local union officers and business agents are not expected to be lawyers, but knowledge of labor law is essential to your work. The major activities of the union--bargaining, organizing, servicing and political action--have numerous legal precedents and restrictions governing them.

Most importantly, local union officers and business agents should readily be able to recognize infringements of workers' rights, both in workplaces the local represents and in workplaces it seeks to organize. Active servicing frequently requires on-the-spot assessments of what the union is able to do within the confines of labor law.

Knowledge of the law will help the local union officer or business agent's work be less reliant on lawyers. When the officer or business agent understands what facts are important in a legal case, he or she can do a better job of case preparation. Having a good legal sense also means knowing when you need to contact a lawyer and being able to work effectively with the lawyer.

Remember that labor law is fluid--cases that change interpretation are being decided all the time. We will attempt to update this booklet as needed.

This booklet is designed to introduce you to major laws regulating labor and management relationships, wages, hours and working conditions, the internal operations of unions and other areas of union activity. Sources of additional information are listed at the end.

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Collective Bargaining Laws

Railway Labor Act of 1926

This was the first federal law giving a group of workers collective bargaining rights. Employers were required to bargain collectively and employees were guaranteed the right to select their representatives without discrimination because of union activity. Railway labor disputes were to be settled through a mediation system. A national mediation board was established to handle disputes involving representation, bargaining units and contract terms. If mediation failed, voluntary arbitration was provided for. An emergency disputes procedure was provided. Recommendations are not binding. Airlines were later included under the provisions of this act.

Norris-LaGuardia Act of 1932

Congress restricted the power of the Federal courts to issue injunctions in labor disputes and, therefore, gave unions greater freedom to apply economic pressure against employers. Unions could now use the boycott, strike and picket line against employers with less fear of intervention by the courts. This restriction on the use of injunctions did not apply to state courts. Subsequently, about one-third of the states enacted similar laws limiting the use of injunctions in labor disputes.

However, the Norris-LaGuardia Act does not bar an injunction against a strike in violation of a no-strike clause in a contract. Also, under the Taft-Hartley Act, the NLRB can seek injunctions against strikes, picketing and boycotts in some situations.

National Labor Relations Act

In 1935 Congress enacted a law guaranteeing workers the right to bargain collectively through representatives of their own choosing and "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." The law placed restrictions on employer opposition to unions and enumerated employer "unfair labor practices." Enforcement of the Wagner Act, was vested in the National Labor Relations Board which was created under the Act to: 1) investigate complaints of unfair practices, and 2) to supervise elections to determine whether a majority of the workers desired union representation.

The Wagner Act outlawed the formation of company unions. Employers could not fire or otherwise penalize employees for union activity, force employees to sign "yellow dog" contracts, hire labor spies or circulate blacklists.

The Wagner Act was the basic labor-management relations law from 1935 until it was amended in 1947 by the Taft-Hartley Act. The 1947 amendments, in an effort to weaken unions, outlawed the closed shop, jurisdictional strikes and the secondary boycott, and

established other union "unfair labor practices." Taft-Hartley also contained section 14(b) permitting states to pass "right-to-work" laws denying unions and employers the right to negotiate union shop agreements. In a strike which threatened the national health and safety, the President was empowered to appoint a board of inquiry and seek a temporary injunction for 80 days.

Health Care Amendments

In 1974, Taft-Hartley was amended to delete the provision excluding nonprofit hospitals from the Act's coverage. This means that both profit and nonprofit hospitals are now covered.

Religious Belief Exemption

The 1974 Health Care Amendments added Section 19 to the Act which provided that a health care industry employee who has religious objections to join a labor union cannot be required to join or financially support a union as a condition of employment. Effective December 24, 1980, Section 19 was extensively revised and the religious objection exemption was extended to all employees, not just to those in the health care industry. To qualify for the exemption, an employee must be a member of a bonafide religious organization that historically holds conscientious objection to joining or financially supporting a labor union.

Prepaid Legal Services

The right to negotiate employer contributions to trust funds established to pay for day care services and legal services for union members and their families was established by recent amendments to the National Labor Relations Act.

Labor Management Reporting and Disclosure Act of 1959

While the Taft-Hartley Act restricted the power of unions to organize, bargain with employers and seek help from sympathetic trade union brothers and sisters during a strike, it did not regulate the internal affairs of unions.

With the enactment of the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) Congress for the first time made the day-to-day affairs of unions a subject of federal regulation. The new law contained a so-called "Bill of Rights" to protect union members. However, the rights set forth were already provided by most union constitutions. It covers such things as the right to nominate candidates, vote, attend union meetings, procedures for increasing dues and assessments, the right to a copy of the collective bargaining agreement. Specific procedures on conducting elections are spelled out.

A detailed system of reporting on financial affairs of unions and union officers is established along with financial regulations on union investments and use of union funds. The last section of this law amended the Taft-Hartley Act strengthening such anti-union

provisions as those on secondary boycotts, virtually banning the "hot-cargo" clause and further restricting picketing.

Labor Management Relations in Federal, State and Local Service

The machinery for collective bargaining for federal government employees was established by Executive Order 10988 issued by President Kennedy in 1962. President Nixon revised this Executive Order in 1969 (E.O. 11491) and by President Ford in 1975 (E.O. 11838). Federal agencies have the responsibility to recognize and bargain collectively with unions representing their employees.

Many states have adopted some form of legislation covering labor-management relations. However, less than 20 states have comprehensive collective bargaining laws covering the bulk of public employees within the state. (see Right to Work States addendum.)

Postal Reorganization Act of 1970

This act contains a system of collective bargaining for postal employees generally similar to that applicable to employees in the private sector. It placed the U.S. Postal Service under the jurisdiction of the NLRB to determine employee representation issues and provided that labor relations be governed by the LMRA. It provides for settling negotiation impasses and grievances through procedures of fact-finding and final and binding arbitration outside of government control. Postal employees are still forbidden to strike and may not be compelled to join a union.

Federal Mediation and Conciliation Service

This independent agency of the federal government provides mediators to assist the parties involved in negotiations or labor disputes to reach a settlement. Services of this agency are limited to disputes affecting commerce. It has no power to compel a settlement. Some state agencies also provide mediation services.

Wages, Hours and Working Conditions

Fair Labor Standards Act

A federal law fixing a statutory minimum wage and maximum hours for workers engaged in interstate commerce was enacted in 1938. The new law applied to men as well as women and minors and provided that employers covered by the act must pay time and one half for overtime. The original act in 1938 provided a minimum wage of 25 cents an hour and a maximum workweek of 44 hours, gradually declining to 40 hours.

The act has been amended periodically to increase the hourly minimum and extend its protection to workers in industries previously excluded from the act. .

The act also requires that hours worked over 40 in most industries be paid at time-and-a-half. Children under age 18 may not work in hazardous employment, and children under 16 are limited in the number of hours that they can work, as well as being restricted from working in manufacturing, mining and most construction.

Equal Pay for Equal Work

A long-standing goal of the labor movement was reached in 1963 when Congress enacted a law requiring equal pay for "equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions, except where a wage differential is based on any factor or factors other than sex," such as seniority, merit or piece-work. The law prohibits any wage equalization by wage reductions. This law applies to employers covered by the Fair Labor Standards Act.

Equal Employment Opportunity

Under Title VII of the 1964 Civil Rights Act, as amended in 1972, employers, unions, and employment agencies are required to treat all persons equally without regard to race, color, religion, sex or national origin. This applies to all phases of employment including hiring, promotion, firing, apprenticeship and other training programs or job assignments. Employers and unions with 100 or more workers were covered in 1965 and coverage was extended each year until coverage was extended to employers and unions with 15 workers.

The law provides for a five-member Equal Employment Opportunity Commission to handle complaints of discrimination and try to promote compliance with the law. If the EEOC cannot bring about a voluntary settlement that is agreeable to all parties involved in the dispute, it can go to court on behalf of the charging parties. Union members are urged to take grievances regarding sex and race discrimination to their union first and only to EEOC after the grievance route has been thoroughly pursued.

Pension and Welfare Plan Reform

Effective Labor Day, 1974, pension reform law established minimum federal standards for the administration of private pension plans. The Employee Retirement Income Security Act sets vesting standards, funding requirements, fiduciary responsibility and establishes a federally guaranteed program to protect workers rights to pensions when an employer goes out of business. This labor-backed law sets forth the duties of those who control workers' pensions funds and all other trust funds. The Department of Labor has the principal enforcement responsibility in reporting and disclosure standards, although administration of the law is shared jointly with the Internal Revenue Service and the Pension Benefit Guarantee Corporation.

Federal Consumer Credit Protection Act of 1968

Best known for its "truth in lending" provisions, this Act contains significant restrictions on wage garnishment, which became effective in 1970. The law restricts garnishment of wages to a maximum of 25 percent of "disposable earnings" and prohibits firing a worker on account of garnishment for "any one indebtedness." The first $69 of a worker's weekly wage after taxes may not be garnished at all. State laws with more favorable provisions for workers take precedence.

Wage Collection Laws

Most states have enacted laws providing for action against the employer by the State Labor Commissioner to collect wages denied to an employee.

Service Contract Act

Under this 1965 act workers employed on service contracts for the federal government are to be paid no less than the prevailing wages and fringes for that type of work in the locality (as determined by the Labor Department). Wages cannot be less than the federal minimum wage.

Davis-Bacon Act

In 1931 legislation was enacted requiring that workers employed on federally supported construction projects must be paid prevailing wage rates as determined by the U.S. Department of Labor. This prevented the undercutting of union wages. In the following years building and construction workers won fringe benefits in the health, welfare and pension area that were primarily financed by employer contributions. But those employers who were not paying fringe benefits had an unfair advantage in bidding on federally aided construction contracts. In 1964, Congress remedied this by including fringe benefits in the prevailing wages rates determined by the Secretary of Labor.

Walsh-Healey Public Contracts Act

Companies that are awarded government contracts amounting to more than $10,000 are required to pay prevailing minimum wages as determined by a public hearing held by the Department of Labor. Companies are also required to pay time and a half for overtime after 40 hours a week or eight hours a day. This federal law passed in 1936 also requires the maintenance of certain health and safety standards.

Social Legislation

Social Security

The first program to provide a national system of social insurance was enacted in 1935 to provide protection for wage earners and their families against loss of income due to unemployment, old age and death. A system of federal aid for relief for specified groups was also included in the original act. The scope of the act has been extended over the years to provide more services for more people.

Social Security was amended to provide benefits for totally disabled workers. In 1965 a system of hospital and nursing home care for the aged was added along with a program for voluntary medical care insurance, financed jointly by the federal government and individuals. The old-age, disability, survivor's insurance and Medicare are financed by a tax on workers and employers and benefits are determined by Congress.

Supplementary Security Income (SSI)

Amendments to the Social Security Act in 1972 provide a guaranteed federal minimum income for blind, disabled and elderly persons. This federal program removes many restrictions imposed by harsh state laws and establishes minimum benefits for the first time in all parts of the nation. Minimum benefits are still very low and are supplemented in a number of states. Unfortunately, Aid to Families with Dependent Children (AFDC) still remains a cooperative effort with federal, state and local government sharing costs and setting standards for eligibility and payments. It is administered by the states and benefits vary widely.

Medicaid provides matching federal dollars for health services for welfare recipients and other medically needy persons.

Unemployment Insurance

Unemployment insurance is a joint federal-state program to provide weekly benefits for unemployed workers covered by the law. Each state determines eligibility, amount and duration of benefits and the program is financed by a payroll tax paid by employers only.

To modernize this law, the AFL-CIO supports federal legislation which would improve the benefit structure to reflect current wage levels, establish reasonable qualifying and duration standards, improve the financing of the system so that the program would not be critically under funded during periods of high unemployment, and extend coverage to all wage and salary workers. State legislatures have failed to adequately improve this program. As a result, benefits frequently fall below the poverty level and many state funds are depleted during periods of high unemployment.

Age Discrimination in Employment Act of 1976 (ADEA)

The ADEA prohibits discrimination against employees over age 40. The ADEA prohibits age discrimination in hiring, discharge, pay, promotions and other terms and conditions of employment. The ADEA applies to private employers of 20 or more workers, federal, state and local governments, employment agencies and labor organizations with 25 or more members. Labor organizations that operate a hiring hall or office that recruits potential employees or obtains job opportunities also must abide by the law. The ADEA is also enforced by the EEOC.

Americans with Disabilities Act (ADA)

The ADA prohibits private employers and state and local governments with 25 or more employees (15 or more after July 26, 1994), employment agencies and labor unions from discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, fringe benefits, job training and other terms, conditions and privileges of employment. The EEOC and the Department of Justice enforces the ADA.

Rehabilitation Act of 1973 (RA)

This Act prohibits discrimination based on disabilities and applies only to government contractors. It requires affirmative action to employ and advance qualified individuals with a disability.

Family Medical Leave Act (FMLA)

The FMLA was passed to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. The FMLA entitles employees to up to twelve (12) weeks of unpaid, job guaranteed leave in a twelve-month period for medical reasons, the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition. The FMLA is enforced by the Wage and Hour Division of the Department of Labor.

Health, Safety and Workers Compensation

Occupational Safety and Health Act of 1970

Until 1970, primary responsibility for job safety has always rested with the states, with the federal government giving leadership and technical assistance. While some states established general safety standards for all industries, the trend toward special enforcement codes for particular industries was spotty. Now, under the provisions of the Occupational Safety and Health Act of 1970, the federal government has the power to

establish and enforce national standards in all states.

The enactment of this law is a major step forward in the protection of workers against job-related deaths, diseases, and injuries. The law covers all farm and non-farm workers not already covered by other federal laws, as well as most state and local public employees. The Secretary of Labor has the responsibility of setting and enforcing occupational safety and health standards. The U.S. Labor Department will make inspections with authority to halt violations and invoke penalties if violations continue. The law establishes a three-member commission, appointed by the President, to enforce job safety standards set by the Secretary of Labor. State governments are allowed to enforce the act if their plans meet the requirements of eligibility set forth in the act as determined by the Secretary of Labor.

Hazard Communication Standard

Issued by OSHA in 1983, this standard ensures that employers and chemical manufacturers evaluate the hazards of all chemicals. Once a manufacturer or an employer designates a chemical or material as “hazardous”, any employer using it must give workers information concerning these hazards. The standard specifies three ways employers must communicate with employees, through Material Safety Data Sheets (MSDS); Labeling of Hazardous Materials; and worker training.

Toxic Substances Control Act

New federal legislation to control poisonous chemicals was enacted in 1976. The law gives the Environmental Protection Agency (EPA) authority to keep dangerous chemicals off the market. EPA is authorized to require testing by the manufacturer of new or existing chemicals and requires pre-market notification of any new chemical product or new use of existing chemicals.

Worker's Compensation

Workers covered by these state laws receive medical care and cash benefits when they are injured on the job. This is an entirely state-controlled program and laws vary widely in coverage, amount and duration of cash and medical benefits provided the injured worker. Benefits have not kept pace with rising wages and only a few states have maximum benefits for temporary total disability equal to two-thirds of the state's average weekly wage, the original goal of the laws. Not one of the state laws covers all employed persons. Shop stewards must be familiar with the provisions of their state law and how to file claims promptly. AFL-CIO continues to urge the establishment of federal standards so that adequate protection is provided in all states.

Coal Mine Health and Safety Act of 1969

A comprehensive coalmine health and safety law replaced the 1962 law providing for mandatory federal inspection and safety provisions. The 1969 law charges the Secretary of Interior with administering and enforcing the Act and developing safety standards. Compensation is provided for victims of coal miners' "black lung" disease and strict standards designed to prevent coalmine disasters are established.

Other Legislation

The labor movement is concerned with a wide range of social and economic legislation in areas ranging from civil rights to conservation. Union leaders are continuously involved in developing training and skill development programs.

Union leaders should also become familiar with rehabilitation programs for people with disabilities. Check with your state rehabilitation services, mental health clinics, and private agencies for specific information on services available. Community Services representatives in your area can be helpful in putting you in touch with the agency you need.

How Much Do You Know About Representing Your Members?

1. What section of Taft-Hartley requires unions to fairly represent all of the employees in the bargaining unit?

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2. What remedies do employees have when they feel there is a breach of their collective bargaining agreement?

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3. What are some of the consequences facing local unions as a result of the increase in the number of employee suits?

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4. What are some legitimate reasons unions can consider for NOT continuing to process a member's grievance?

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5. Name some examples that are clearly breaches of the union's duty of fair representation.

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6. What can unions do to protect themselves from charges that they did not adequately represent the members' interests in the grievance process?

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Answers To Questions On Duty Of Fair Representation

1. Section 8(b)(1)(A) of the National Labor Relations Act which forbids a labor organization from restraining or coercing employees in the exercise of their rights under the law. This section does not contain the words "fair representation," nor does it specifically spell out the union's obligation in this regard.

2. Section 301(a) of the Labor Management Relations Act provides that a suit for violation of the contract may be brought in any district court of the United States. Employees may, for example, bring breach of contract actions because they have been discharged by their employers in violation of a contract clause. It is important to note, however, that if the contract has a grievance or arbitration procedure the employee normally must also allege, and subsequently prove, either that they have attempted to use the procedure established, or that there is acceptable reason for their failure to exhaust their contract remedies.

3. (a) Unions may be inclined to process non-meritorious grievances; (b) arbitration channels become clogged with these unresolved grievances; (c) more employees are charging unions with unfair labor practices based on little more than the fact that the employee feels he/she has been treated unfairly; (d) unions and employers could become subject to substantial monetary damages; (e) a union may have problems recruiting stewards and officers.

4. (a) Cost of further processing the grievance; (b) withdrawing the grievance if the employer produces evidence that substantially undermines the case; (c) when the majority interest of the union outweighs the individual interest of the grievance. (The grievance, once formally initiated, is "controlled" by the union.)

5. (a) Discriminatory conduct: Deciding on a case based on race, color or sex of grievant, or because of personal animosity, or because of intra-union activities, or because of employee's non-membership in the union. (Unions cannot use the cost argument discriminatorily.) (b) Arbitrary conduct: Perfunctorily handling of an apparently meritorious grievance; refusal to support an employee if there is a contract clause which clearly and unambiguously supports the employee's position. (The union's inquiry into the facts need not be the kind one would expect from a skilled investigator; the union need not reach the same conclusion as the grievant, but must base its conclusion on some basis of fact or reason.) (c) Gross negligence: union fails to file the grievance in time; failure to adequately investigate the grievance (Hines v. Anchor Motor Freight); failure to notify employee that his/her grievance would not be taken to arbitration, thereby leading him/her to reject a settlement offer he/she would otherwise have accepted.

6. (a) Obviously avoid any examples noted above; (b) thoroughly investigate the

grievance beginning with step one; (c) keep good records on the entire grievance process; (d) be sure the grievant is informed throughout the process; (e) base your decision or judgment on the facts of the case.