

16

Union/Management Relations

After you have read this chapter, you should be able to:

- Describe what a union is and explain why employees join and employers resist unions.
- Identify several reasons for the decline in union membership.
- Explain the nature of each of the major U.S. labor laws.
- Discuss the stages of the unionization process.
- Describe the typical collective bargaining process.
- Define grievance and identify the stages in a grievance procedure.

Business versus Labor—Right to Work Laws



(AP Photo/Paul Sancya)

Edward Sioui had always been able to make a living in Michigan, so he did not worry when he had to move to Arizona to help his mother after she had a heart attack. One year later, frustrated by meager paychecks, he and his wife moved back to Michigan. He blamed the lack of good-paying jobs in Arizona on the “open-shop” or “right-to-work” laws in that state. Under such laws, union membership is not required to get a job and employees can choose not to join the union even if the company is unionized. Clearly such laws have a negative effect on union growth. “You aren’t treated with any respect,” Sioui says. “You are dispensable and they know it so they treat you that way.” He was happy to be back in Michigan even though he was laid off and had no job.

Michigan has been a strong union state, with the percentage of workers represented approaching 1 in 5. Generations of people in Michigan have grown up believing that tough unions would protect jobs and incomes. But during the recession, the unemployment rate in Michigan exceeded 15%—the highest in the nation. Business leaders in Michigan have argued that the strong union tradition is part of the economic problem in that state and that making Michigan a right-to-work state would send a message that they are “open for business.” Unions, of course, disagree.

To regain some of its economic strength, Michigan must attract industry. Right-to-work proponents argue that the strong union presence keeps new business away because Michigan is not seen as having a business-friendly environment. That the idea of right-to-work would even be considered in Michigan shows how much power unions have lost in the last decade and a half.¹

Union Formal association of workers that promotes the interests of its members through collective action.

A **union** is a formal association of workers that promotes the interests of its members through collective action. The very existence of unions depends upon laws and legal action.² As a result, politics play a large role in the fortunes of labor unions.³ Traditionally in the United States, one political party has been more favorable toward labor unions than the other.⁴

An economic look at labor unions reveals “two faces.” The “good face” emphasizes the fact that unions give members a “voice” to express dissatisfactions to management that likely would not be expressed otherwise. Some increases in productivity and an increase in earnings for members are typically associated with unionizing. The “bad face” emphasizes the negative effects that union wages have on allocation of resources, decreases in profitability, and productivity decreases when the substantial compensation gains are considered.⁵ But unions clearly have a place in the scheme of things, as they provide a balance to the unchallenged decision-making power of management where needed.

Exactly how economic and workforce changes affect employers and unions will be factors in the future of the labor/management relationship. Even though fewer workers have chosen to be union members in recent years than in the past, employers and HR professionals still need to understand the system of laws, regulations, court decisions, and administrative rulings related to the nature of unions. This is important because unions remain a strong alternative for employees in the event of poor HR management.

UNIONS: EMPLOYEE AND MANAGEMENT PERSPECTIVES

Unions did not seem to have a bright future in the 1930s when the National Labor Relations Act (NLRA) was passed, giving unions a legal right to exist. Then they grew to represent about 36% of the workforce in the 1950s, only to see their strength in the private sector drop to less than 8% recently. However, in the public sector, union strength continues to grow.

In the United States, unions follow the goals of increasing compensation, improving working conditions, and influencing workplace rules. When a union is present, working conditions, pay, and work rules are determined through collective bargaining and designated in formal contracts.⁶ Part of knowing the current state of unionization in the United States is understanding why employees join unions and why employers resist unionization.

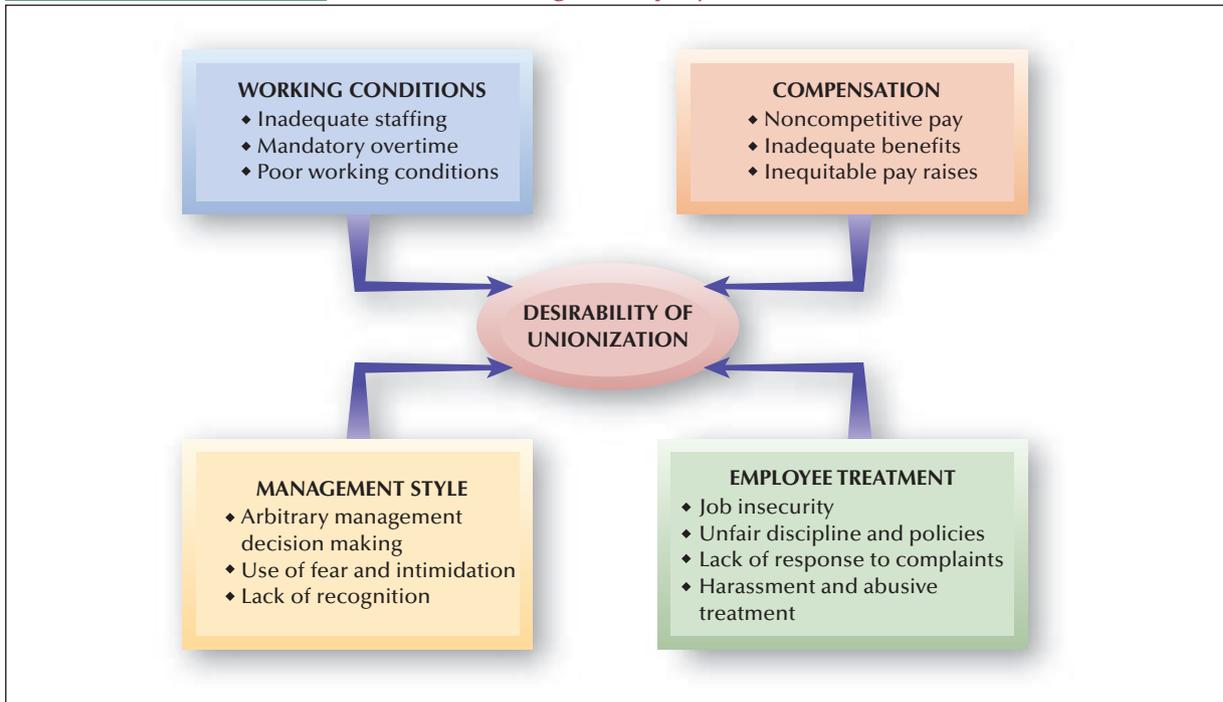
Why Employees Unionize

Whether a union targets a group of employees or the employees request union assistance, the union must win support from the employees to become their legal representative. Over the years employees have joined unions for two general reasons: (1) they are dissatisfied with how they are treated by their employers, and (2) they believe that unions can improve their work situations. If employees do not receive what they perceive as fair treatment from their employers, they may turn to unions for help in obtaining what they believe is equitable.⁷ As Figure 16-1 shows, the major factors that can trigger unionization are issues of compensation, working conditions, management style, and employee treatment.

The primary determinant of whether employees want to unionize is management. Reasonably competitive compensation, a good working environment,

FIGURE 16-1

Factors Leading to Employee Unionization



effective management and supervision, and fair and responsive treatment of workers all act as antidotes to unionization efforts. Unionization results when employees feel disrespected, unsafe, underpaid, and unappreciated, and see a union as a viable option. Once unionization occurs, the ability of the union to foster commitment from members and to remain as their bargaining agent depends on how well the union succeeds in providing the services that its members want.

Why Employers Resist Unions

Employers usually would rather not have to deal with unions because doing so constrains what managers can and cannot do in a number of areas. Generally, union workers receive higher wages and benefits than do non-union workers.⁸ In turn, unions sometimes can be associated with higher productivity, although management must find labor-saving ways of doing work to offset the higher labor costs. Some employers pursue a strategy of good relations with unions, while others choose an aggressive, adversarial approach.⁹

HR Responsibilities and Unionization To prevent unionization, as well as to work effectively with unions already representing employees, both HR professionals and operating managers must be attentive and responsive to employees. The pattern of dealing with unionization varies among organizations. In some organizations, operating management handles labor relations and HR has limited involvement. In other organizations, the HR unit takes primary responsibility for resisting unionization or dealing with unionized employees.¹⁰

UNIONS GLOBALLY



Globalization, which causes economic competition among workers, companies, and nations around the world, is here to stay. The ability of a country to create jobs and attract investments can be affected by its union bargaining arrangements and labor laws.¹¹ Changes in information technology have decreased union bargaining power relative to management bargaining power.¹² However, labor unions and labor movements have not been weakened in all cases, despite such pressures. Different laws and traditions have produced very different arrangements in different countries.¹³

Laws that make it easier and cheaper to hire and fire employees may reduce unemployment. But in many countries, such laws cause discomfort because of the great inequality they create in the balance of power in the employer–employee relationship.¹⁴ As the world economy becomes more integrated, unions worldwide are facing changes. The status of global unions is being affected in several ways.

International Union Membership

The percentage of union membership varies significantly from country to country. The highest is in the Scandinavian countries (nearly 50%). Europe has roughly 10% to 30% union membership, but membership in unions is falling in many advanced countries. Collective bargaining is set in law as the way wages are to be determined in Europe. However, in many European countries, artificially high wages and generous benefits have kept the unemployment rate high. The pressures for change are increasing. The range of labor concerns is quite wide and varies from country to country, with child labor an issue in some countries, and changes in participatory employment practices issues in others.

In some countries, unions either do not exist at all or are relatively weak. In other countries, unions are closely tied to political parties. For instance, in Italy and France, national strikes occur regularly to protest proposed changes in government policy on retirement, pension programs, and regulations regarding dismissal of employees.

Some countries require that firms have union or worker representatives on their boards of directors. This practice, called **codetermination**, is common in European countries. Differences from country to country in how collective bargaining occurs also are quite noticeable. In the United States, local unions bargain with individual employers to set wages and working conditions. In

Australia, unions argue their cases before arbitration tribunals. In Scandinavia, national agreements with associations of employers are the norm. In France and Germany, industrywide or regional agreements are common. In Japan, local unions bargain but combine at some point to determine national wage patterns. Recent labor reform regulations in China are leading to increased union and worker representation in the management of Chinese-owned factories, as discussed in the HR Perspective.

Codetermination Practice whereby union or worker representatives are given positions on a company's board of directors.



LOGGING ON

Cornell Global Labor Institute

This website provides information and projects on union efforts to strengthen the response to globalization challenges. Visit the site at www.ilr.cornell.edu/globallaborinstitute.

Global Labor Organizations

Global labor relations standards are being addressed by several organizations. The International Labour Organization, based in Switzerland, coordinates the efforts of labor unions worldwide and has issued some principles about rights

Unions in China



In any country, the existence and strength of unions depends on their legal environment. In China the legal environment has recently changed, and the way it has changed is interesting. Uncharacteristically, China first presented a draft labor law and then solicited public comments on the draft. It received more than 200,000 comments from Chinese citizens as well as business groups and international labor groups. Business groups were concerned the new law would raise costs and give them less flexibility to hire and fire as necessary. Labor groups felt there was a need for worker protection and that the business groups were trying to water down the law. A labor lawyer who watched this process (also unusual for China) commented that while the process generated heated debate among law professors, unions, and business, the comments did have an effect on the law that was finally passed.

China wanted the new law to bring more order to the workplace as the private sector continues its rapid expansion. Many workers lack contracts, do not get paid on time, and have little chance for advancement. For instance, Wal-Mart in China has been organized with the help of Andy Stern, the head of the second largest U.S. union.

In China, the All China Federation of Trade Unions has long been criticized by international labor leaders as being more aligned with the communist government than with the workers. However, that “official union” has begun to aggressively unionize multinational companies. Despite the fact the union is not seen as part of a free and independent trade union movement, some international unions are urging support. They note that the success of the new law will depend on how vigilant the government is in enforcing it. As a spokesperson for Adidas suggested, “it all comes down to enforcement.”¹⁵

at work. Such coordination is increasingly occurring as unions deal with multinational firms having operations in multiple countries.

Unions separately and sometimes together push import quotas and other measures to their benefit.¹⁶ Throughout the world unions also are linking up as part of global labor federations. The Union International Network (UIN) is an entity composed of unions from numerous countries. This organization and other international groups are working to establish international policies on child labor, worker safety and health, and training. The UIN is also providing aid and guidance to unions in developing countries, such as those in Africa and Asia. Unions in the United States are very active in these global entities. In some situations, establishing agreements with employers based in the European Union has led to more U.S. union membership in the multinational firms.

U.S. and Global Differences

Union management relations in the United States has taken some approaches different from those in other countries. In the United States, the key focuses have been the following:

- *Economic issues:* In the United States, unions have typically focused on improving the “bread-and-butter” issues for their members—wages, benefits, job security, and working conditions. In some other countries, integration with ruling governmental and political power and activism are equal concerns along with economic issues.

- *Organization by kind of job and employer:* In the United States, carpenters often belong to the carpenters' union, truck drivers to the Teamsters, teachers to the American Federation of Teachers or the National Education Association, and so on. Also, unionization can be done on a company-by-company basis. In other countries, national unions bargain with the government or with employer groups.
- *Collective agreements as "contracts":* In the United States, collective bargaining contracts usually spell out compensation, work rules, and the conditions of employment for several years. In other countries, the agreements are made with the government and employers, sometimes for only one year because of political and social issues.
- *Competitive relations:* In the United States, management and labor traditionally take the roles of competing adversaries who often "clash" to reach agreement. In many other countries, "tripartite" bargaining occurs between the national government, employers' associations, and national labor federations.

UNION MEMBERSHIP IN THE UNITED STATES

The statistics on union membership tell a disheartening story for organized labor in the United States during the past several decades. As shown in Figure 16-2, unions represented more than 30% of the workforce from 1945 to 1960. But by 2009, unions in the United States represented only 12.4% of all civilian workers and 7.4% of the private-sector workforce. In fact, for the first time, the number of union workers employed by the government outnumbered union members in the private sector. Local, state, and federal union workers made up 51.5% (7.9 million) of all union members while private-sector union members dropped to 7.4 million.¹⁷ The actual number of members has declined in most years even though more people are employed than previously.

But within those averages, some unions have prospered. In the past several years, certain unions have organized thousands of janitors, health care workers, cleaners, and other low-paid workers using publicity, pickets, boycotts, and strikes.

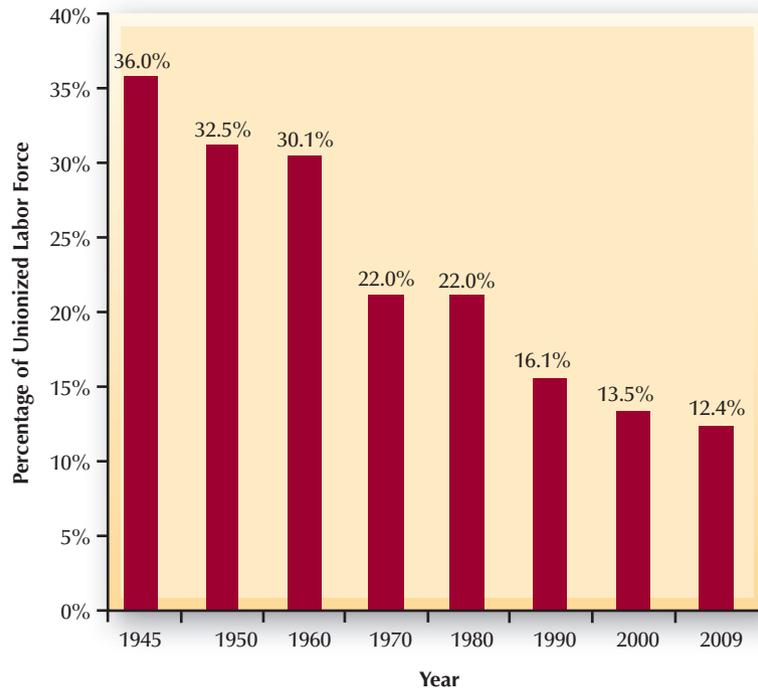
Reasons for U.S. Union Membership Decline

Several general trends have contributed to the decline of U.S. union membership, including deregulation, foreign competition, a larger number of people looking for jobs, and a general perception by firms that dealing with unions is expensive compared with nonunion alternatives. Management at many employers has taken a much more activist stance against unions than during the previous years of union growth, and economic downturns also have had negative impacts.¹⁸

To some extent, unions may be victims of their own successes. Unions historically have emphasized helping workers obtain higher wages and benefits, shorter working hours, job security, and safe working conditions from their employers. Some believe that one cause for the decline of unions has been their success in getting those important issues passed into law for everyone. Therefore, unions may no longer be seen as necessary for many workers, even

FIGURE 16-2

Union Membership as a Percentage of the U.S. Civilian Workforce



Source: U.S. Department of Labor, Bureau of Labor Statistics, 2010.

though those workers enjoy the results of past union efforts to influence legislation that has been a benefit to them.

Geographic Changes During the past decade, job growth in the United States has been the greatest in states located in the South, the Southwest, and the Rocky Mountains. Most of these states have little tradition of unions, more “employer-friendly” laws, and relatively small percentages of unionized workers.

Another geographic issue involves the movement of many low-skill jobs outside the United States. Primarily to take advantage of cheaper labor, many manufacturers with heavily unionized U.S. workforces have moved a significant number of low-skill jobs to the Philippines, China, Thailand, and Mexico. For instance, the passage of the North American Free Trade Agreement provided a major impetus for moving low-skill, low-wage jobs to Mexico. It removed tariffs and restrictions affecting the flow of goods and services among the United States, Canada, and Mexico. Because of significantly lower wage rates in Mexico, a number of jobs previously susceptible to unionization in the United States have been moved there.

Industrial Changes Much of the decline of union membership can be attributed to the shift in U.S. jobs from industries such as manufacturing, construction, and mining to service industries. There is a small percentage of union members in wholesale/retail industries and financial services, the sectors

in which many new jobs have been added, whereas the number of industrial jobs continues to shrink.

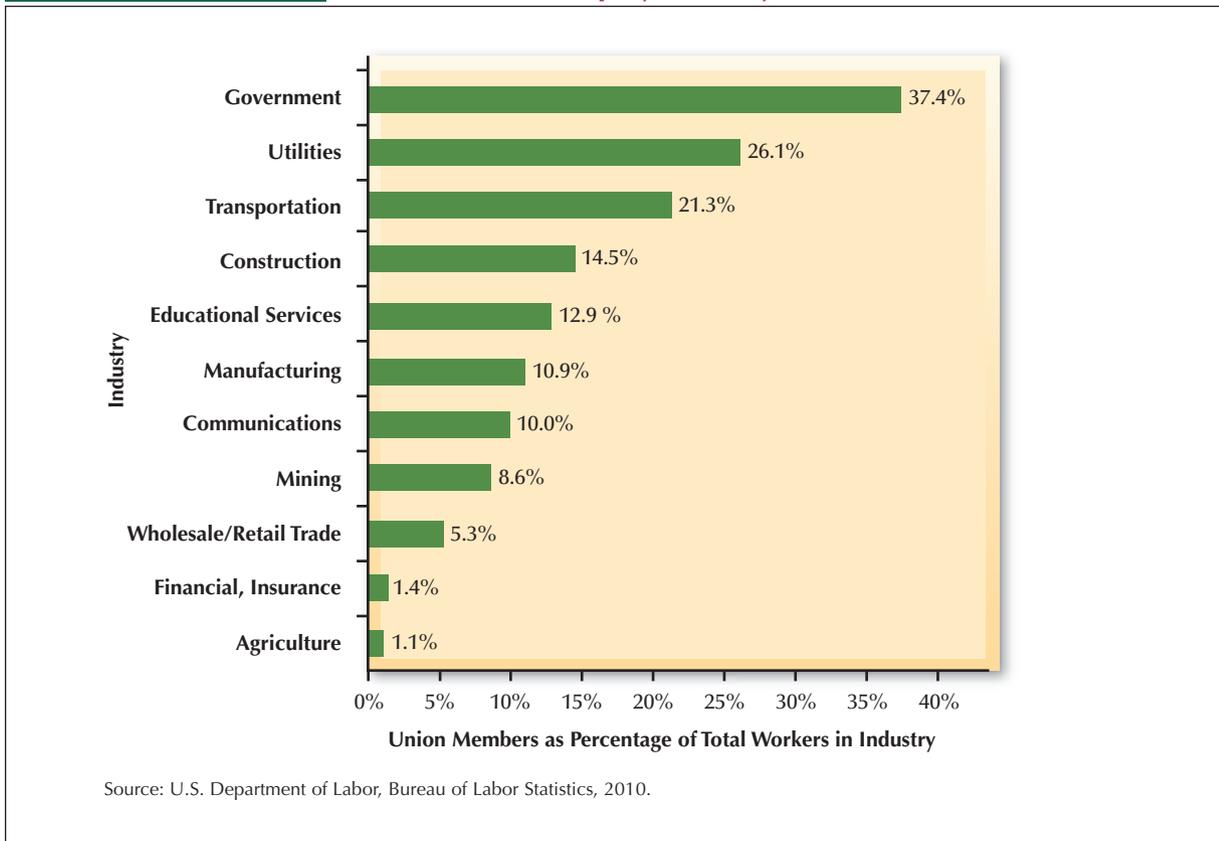
One area that has led to union membership decline is the retirement of many union members in older manufacturing firms. Extremely high retiree pensions and health benefits costs have led employers such as Goodyear Tire, Ford Motor Company, General Motors, and others to face demands for cuts in benefits for both current and retired union employees. They also have led to employers reducing the number of current plants and workers, and unions attempting to maintain benefits costs and job security for remaining workers.

In summary, private-sector union membership is primarily concentrated in the shrinking part of the economy, and unions are not making significant inroads into the fastest-growing segments in the U.S. economy. A look at Figure 16-3 reveals that nongovernmental union members are heavily concentrated in transportation, utilities, and other “industrial” jobs.¹⁹

Workforce Changes Many of the workforce changes discussed in earlier chapters have contributed to the decrease in union representation of the labor force. The decline in many blue-collar jobs in manufacturing has been especially significant. For instance, the United Auto Workers’ membership has dropped from 1.5 million in 1980 to about 600,000 currently.

There are growing numbers of white-collar employees such as clerical workers, insurance claims representatives, data input processors, mental health

FIGURE 16-3

Union Membership by Industry

aides, computer technicians, loan officers, auditors, and retail sales workers. Unions have increased efforts to organize white-collar workers as advances in technology have boosted their numbers in the workforce. However, unions have faced challenges in organizing these workers.

Many white-collar workers see unions as resistant to change and not in touch with the concerns of the more educated workers in technical and professional jobs. In addition, many white-collar workers exhibit attitudes and preferences quite different from those held by blue-collar union members, and they tend to view unions as primarily blue-collar oriented.

The growing percentage of women in the U.S. workforce presents another challenge to unions. In the past, unions have not been as successful in organizing female workers as they have been in organizing male workers. Some unions are trying to focus more on recruiting female members, and unions have been in the forefront in the push for legislation on such family-related goals as child care, maternity and paternity leave, pay equity, and flexible work arrangements. Women in “pink-collar,” low-skill service jobs have been somewhat more likely to join unions than women working in white-collar jobs.

Public-Sector Unionism

Unions have had significant success with public-sector employees. The government sector (federal, state, and local) is the most highly unionized part of the U.S. workforce, with more than 40% of government workers represented by unions. Local government workers have the highest unionization percentage of any group in the U.S. workforce.

Unionization of state and local government employees presents some unique problems and challenges. First, some employees work in critical service areas. It is felt that allowing police officers, firefighters, and sanitation workers to strike endangers public health and safety. Consequently, more than 30 states have laws prohibiting work stoppages by public employees. These laws also identify a variety of ways to resolve negotiation impasses, including arbitration. But government employees seem to believe that unions still give employees in these areas greater security and better ability to influence decisions on wages and benefits than nonunion workers have.

Although unions in the federal government hold the same basic philosophy as unions in the private sector, they do differ somewhat. Previous laws and executive orders have established methods of labor/management relations that consider the special circumstances present in the federal government.

Union Targets for Membership Growth

The continuing losses have led to disagreements among unions about how to fight the decline. Rather than remaining a part of the traditional AFL-CIO labor organization, seven unions split into a new group in 2005. Calling itself Change to Win (CtW), this association has a goal of taking a more aggressive approach to adding union members and affecting U.S. political legislation.

To attempt to counteract the overall decline in membership, unions are focusing on a number of industries and types of workers. One reason why Change to Win split off from the AFL-CIO was to target more effectively the addition of members in the retail, hospitality, home health care, and other service industries.

Professionals Traditionally, professionals in many occupations have been skeptical of the advantages of unionization. However, professionals who have turned to unionization include engineers, physicians, nurses, and teachers.²⁰ The health care industry has been a specific focus for unionization of professionals such as physicians and physical therapists. Another area of union growth in the past few years has been in nursing. The primary reason health care employees consider union membership is the growth of managed care. A frequent complaint of health care professionals is that they have lost control of patient-care decisions as a result of managed care and the spreading drive to reduce health care costs. This and other complaints have led more health care employees to join unions.

Low-Skilled Workers On the other end of the labor pay scale, unions have targeted low-skilled workers, many of whom have lower-paying, less desirable jobs. Janitors, building cleaners, nursing home aides, and meatpacking workers are examples of groups targeted by unions. For instance, in the health care industry, workers in nursing homes dealing with the elderly are a fast-growing segment of the workforce. Many employees in this industry are relatively dissatisfied. The industry is often noted for its low pay and hard, heavy work, and many employees are women who work as nurses' aides, cooks, and launderers and in other low-wage jobs.

Another group of individuals targeted by unions is immigrant workers in low-skill jobs. Some unions also have been politically active regarding legislation to allow illegal immigrant workers to get work permits and citizenship over time. Although these efforts are not always successful, unions are likely to continue pursuing industries and employers with numerous low-skill jobs and low-skilled workers. The advantages of unionization are especially strong for these employees.

Contingent and Part-Time Workers As many employers have added contingent workers instead of full-time employees, unions have tried to target part-time, temporary, and other employees. A decision by the National Labor Relations Board (NLRB) allows temporary workers to be included in firms to be represented by unions. Time will tell if the efforts to unionize part-time workers and other groups will halt the decline of union membership in the United States. When unions are present, collective bargaining agreements frequently limit the amount of contingent labor that may be used.

UNIONS IN THE UNITED STATES

The union movement in the United States has existed in some form or another for more than two centuries. During that time, the nature of unions has evolved because of legal and political changes.

Historical Evolution of U.S. Unions

The union movement in the United States began with early collective efforts by workers to address job concerns and counteract management power. As early as 1794, shoemakers organized a union, picketed, and conducted strikes. In those days, unions in the United States received very little support from the courts. In 1806, when the shoemakers' union struck for higher

wages, a Philadelphia court found union members guilty of engaging in a “criminal conspiracy” to raise wages.

The *American Federation of Labor (AFL)* united a number of independent national unions in 1886. Its aims were to organize skilled craft workers and to emphasize economic issues and working conditions. As industrialization increased in the United States, many factories used semiskilled and unskilled workers. However, it was not until the *Congress of Industrial Organizations (CIO)* was founded in 1938 that a labor union organization focused on semiskilled and unskilled workers. Years later, the AFL and the CIO merged to become the AFL-CIO. That federation is the major organization coordinating union efforts in the United States today despite the split described previously.



LOGGING ON

AFL-CIO

The AFL-CIO home page provides union movement information. Visit the website at www.aflcio.org.

Union Structure

Labor in the United States is represented by many different unions. Regardless of size and geographic scope, two basic types of unions have developed over time. In a **craft union**, members do one type of work, often using specialized skills and training. Examples are the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, and the American Federation of Television and Radio Artists. An **industrial union** includes many persons working in the same industry or company, regardless of jobs held. The United Food and Commercial Workers, the United Auto Workers, and the American Federation of State, County, and Municipal Employees are examples of industrial unions.

AFL-CIO Federation Labor organizations have developed complex organizational structures with multiple levels. The broadest level is the **federation**, which is a group of autonomous unions. A federation allows individual unions to work together and present a more unified front to the public, legislators, and members. The most prominent federation in the United States is the AFL-CIO, which is a confederation of unions currently representing about 10 million workers.

Change to Win The establishment of Change to Win (CtW) in 2005 meant that seven unions with about 6 million members left the AFL-CIO.²¹ The primary reason for the split was a division between different unions about how to stop the decline in union membership, as well as some internal organizational leadership and political issues.²² Prominent unions in the CtW are the Teamsters, the Service Employees International Union, and the United Food and Commercial Workers.

Craft union Union whose members do one type of work, often using specialized skills and training.

Industrial union Union that includes many persons working in the same industry or company, regardless of jobs held.

Federation Group of autonomous unions.

National and International Unions National and international unions are not governed by a federation even if they are affiliated with it. They collect dues and have their own boards, specialized publications, and separate constitutions and bylaws. Such unions as the United Steelworkers of America and the American Federation of State, County, and Municipal Employees determine broad union policy and offer services to local union units. They also help maintain financial records and provide a base from which additional organizing drives may take place. Political infighting and corruption sometimes pose problems for national

unions, as when the federal government stepped in and overturned the results of an officer election held by the Teamsters Union several years ago.

Like companies, unions find strength in size. In the past several years, about 40 mergers of unions have occurred, and a number of other unions have considered merging. For smaller unions, these mergers provide financial and union-organizing resources. Larger unions can add new members to cover managerial and administrative costs without spending funds to organize non-union workers to become members.

Local Unions Local unions may be centered around a particular employer organization or a particular geographic location. The membership of local unions elects officers who are subject to removal if they do not perform satisfactorily. For this reason, local union officers tend to be concerned with how they are perceived by the union members. They often react to situations as politicians do because their positions depend on obtaining votes. The local unions are the focus and the heart of labor/management relations in most U.S. labor organizations.

Local unions typically have business agents and union stewards. A **business agent** is a full-time union official who operates the union office and assists union members. The agent runs the local headquarters, helps negotiate contracts with management, and becomes involved in attempts to unionize employees in other organizations. A **union steward** is an employee who is elected to serve as the first-line representative of unionized workers. Stewards address grievances with supervisors and generally represent employees at the worksite.

Business agent A full-time union official who operates the union office and assists union members.

Union steward Employee elected to serve as the first-line representative of unionized workers.

U.S. LABOR LAWS

The right to organize workers and engage in collective bargaining offers little value if workers cannot freely exercise it. Management has consistently developed practices to prevent workers from organizing employees. Over a period of many years, the federal government has taken action both to hamper unions and to protect them.

Early Labor Legislation

Beginning in the late 1800s, federal and state legislation related to unionization was passed. The two most prominent acts are discussed next.

Railway Labor Act The Railway Labor Act (RLA) of 1926 represented a shift in government regulation of unions. The result of a joint effort between railroad management and unions to reduce transportation strikes, this act gave railroad employees “the right to organize and bargain collectively through representatives of their own choosing.” In 1936, airlines and their employees were added to those covered by the RLA. Some experts believe that some of the labor relations problems in the airline industry stem from the provisions of the RLA, and that those problems would be more easily resolved if the airlines fell within the labor laws covering most other industries.

The RLA mandates a complex and cumbersome dispute resolution process. This process allows either the unions or management to use the National Labor Relations Board, a multistage dispute resolution process, and even the power of the President of the United States to appoint an emergency board. The end

result of having a prolonged process that is subject to political interference has been that unions often work for two or more years after the expiration of their old contracts because the process takes so long.

Norris-LaGuardia Act The crash of the stock market and the onset of the Great Depression in 1929 led to massive cutbacks by employers. In some industries, the resistance by employees led to strikes and violence. Under laws at that time, employers could go to court and have a federal judge issue injunctions ordering workers to return to work. In 1932, Congress passed the Norris-LaGuardia Act, which guaranteed workers some rights to organize and restricted the issuance of court injunctions in labor disputes.

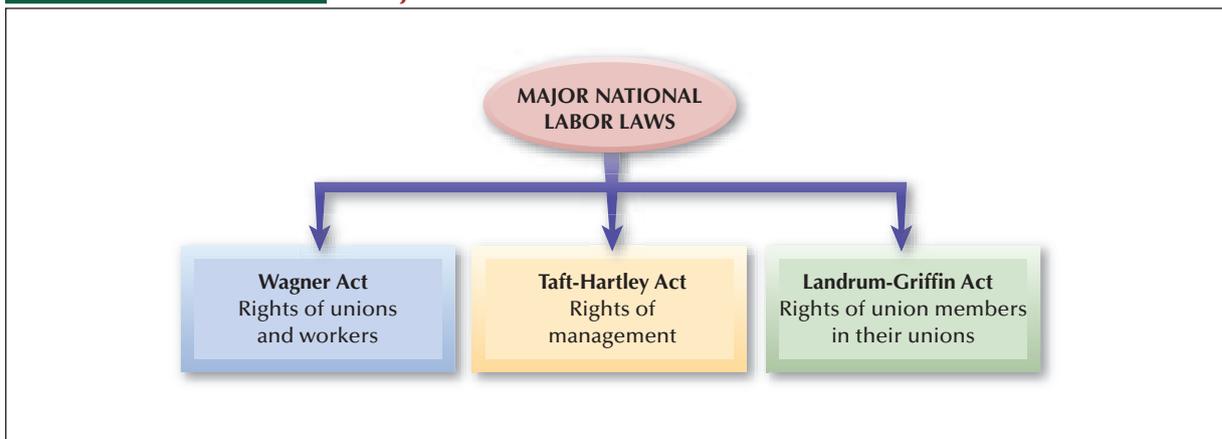
The Next Stage The economic crises of the early 1930s and the continuing restrictions on workers' ability to organize into unions led to the passage of landmark labor legislation, the Wagner Act, in 1935. Later acts reflected other pressures and issues that required legislative attention. Three acts passed over a period of almost 25 years constitute the U.S. labor law foundation: (1) the Wagner Act, (2) the Taft-Hartley Act, and (3) the Landrum-Griffin Act. Each act was passed to focus on some facet of the relations between unions and management. Figure 16-4 indicates the primary focus of each act. Two other pieces of legislation, the Civil Service Reform Act and the Postal Reorganization Act, also have affected only the governmental aspects of union/management relations.

Wagner Act (National Labor Relations Act)

The National Labor Relations Act, more commonly referred to as the Wagner Act, has been called the Magna Carta of labor and was, by anyone's standards, pro-union. Passed in 1935, the Wagner Act was an outgrowth of the Great Depression. With employers having to close or cut back their operations, workers were left with little job security. Unions stepped in to provide a feeling of solidarity and strength for many workers. The Wagner Act declared, in effect, that the official policy of the U.S. government was to encourage collective bargaining. Specifically, it established the right of workers to organize unhampered by management interference through unfair labor practices.

FIGURE 16-4

Major National Labor Laws



Unfair Labor Practices To protect union rights, the Wagner Act prohibited employers from using unfair labor practices. Five of those practices were identified as follows:

- Interfering with, restraining, or coercing employees in the exercise of their right to organize or to bargain collectively
- Dominating or interfering with the formation or administration of any labor organization
- Encouraging or discouraging membership in any labor organization by discriminating with regard to hiring, tenure, or conditions of employment
- Discharging or otherwise discriminating against an employee because the employee filed charges or gave testimony under the act
- Refusing to bargain collectively with representatives of the employees

National Labor Relations Board The Wagner Act established the National Labor Relations Board as an independent entity to enforce the provisions of the act. The NLRB administers all provisions of the Wagner Act and of subsequent labor relations acts. The primary functions of the NLRB include conducting unionization elections, investigating complaints by employers or unions through its fact-finding process, issuing opinions on its findings, and prosecuting violations in court. The five members of the NLRB are appointed by the President of the United States and confirmed by the U.S. Senate.



LOGGING ON

National Labor Relations Board
For information on workplace rights and other issues, visit the NLRB website at www.nlrb.gov.

Taft-Hartley Act (Labor Management Relations Act)

The passage in 1947 of the Labor Management Relations Act, better known as the Taft-Hartley Act, was accomplished as a means to offset the pro-union Wagner Act by limiting union actions. It was considered to be pro-management and became the second of the major labor laws.

The new law amended or qualified in some respect all the major provisions of the Wagner Act and established an entirely new code of conduct for unions. The Taft-Hartley Act forbade unions from engaging in a series of unfair labor practices, much like those prohibitions on management behavior. Coercion, discrimination against nonmembers, refusing to bargain, excessive membership fees, and other practices were not allowed by unions. A 1974 amendment extended coverage of the Taft-Hartley Act to private, nonprofit hospitals and nursing homes.

The Taft-Hartley Act also established the Federal Mediation and Conciliation Service (FMCS) as an agency to help management and labor settle labor contract disputes. The act required that the FMCS be notified of disputes over contract renewals or modifications if they were not settled within 30 days after the designated date.

National Emergency Strikes The Taft-Hartley Act allows the President of the United States to declare that a strike presents a national emergency. A national emergency strike is one that would impact an industry or a major part of it in such a way that the national economy would be significantly affected. The act allows the U.S. President to declare an 80-day “cooling off” period during which union and management continue negotiations. Only after that period can a strike occur if settlements have not been reached.

Over the decades, national emergencies have been identified in the railroad, airline, and other industries. For example, the national emergency provisions were involved in a strike of transportation and dock workers throughout the U.S. West Coast states. During the 80-day period, a contract agreement was reached, so a strike was averted.

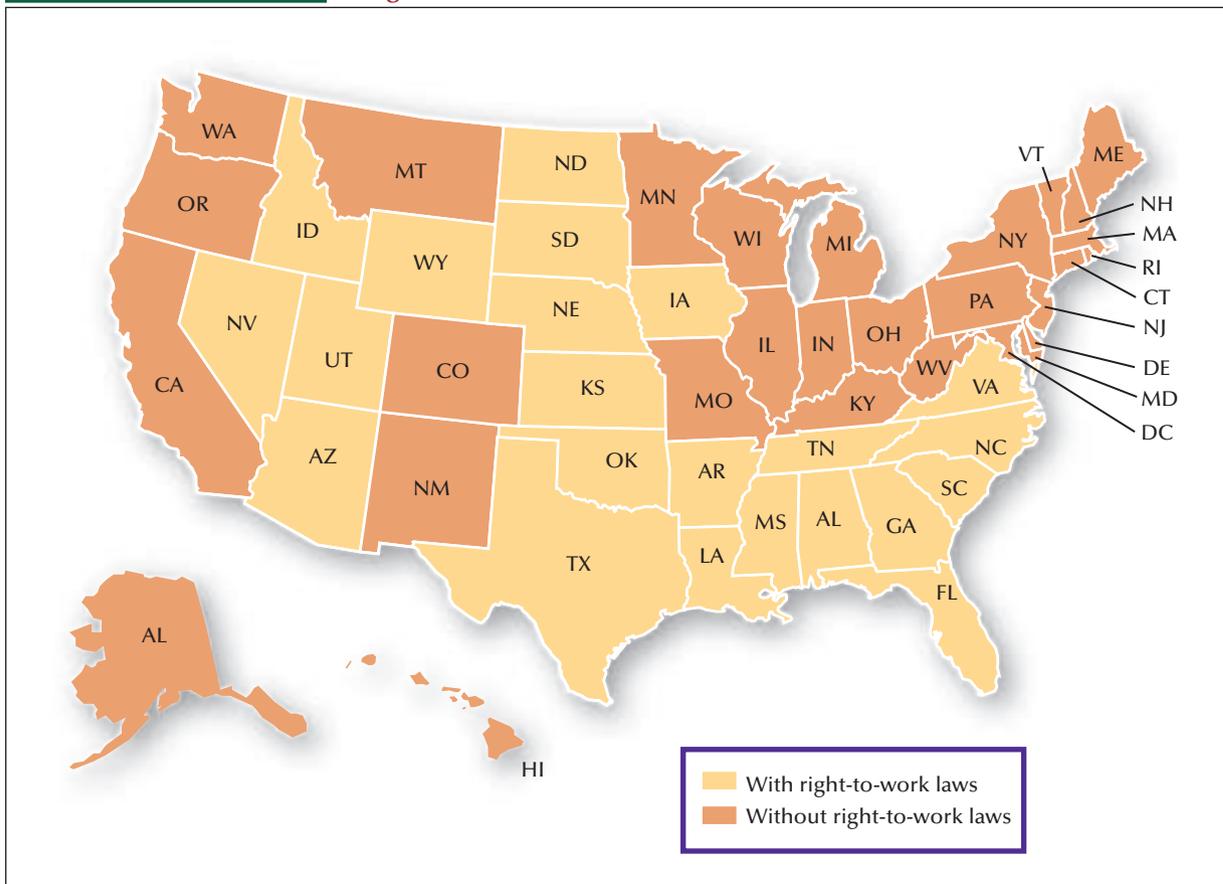
Right-to-Work Provision One specific provision of the Taft-Hartley Act, section 14(b), deserves special explanation. This section allows states to pass laws that restrict compulsory union membership. Accordingly, several states have passed **right-to-work laws**, which prohibit requiring employees to join unions as a condition of obtaining or continuing employment. The laws were so named because they allow a person the right to work without having to join a union.

Right-to-work laws State laws that prohibit requiring employees to join unions as a condition of obtaining or continuing employment.

Open shop Firm in which workers are not required to join or pay dues to a union.

The states that have enacted these laws are shown in Figure 16-5. In states with right-to-work laws, employers may have an **open shop**, which indicates workers cannot be required to join or pay dues to a union. Thus, even though a union may represent an entire group of employees at a company, individual workers cannot be required or coerced to join the union or pay dues. Consequently, in many of the right-to-work states, individual membership in union groups is significantly lower. For instance, at one Midwestern firm where the employee group is unionized, fewer than 25% of the employees

FIGURE 16-5 Right-to-Work States



actually belong to the union and pay dues. There has been no recent change in which states have right-to-work laws, although people on both sides of this issue continue to argue for change.²³

The National Right to Work Legal Defense Foundation is an organization that has lobbied for more states to become right-to-work states. Also, that organization has become involved in lawsuits where workers have claimed to have been coerced to join unions.

The nature of union/management relations is affected by the right-to-work provisions of the Taft-Hartley Act. Right-to-work generally prohibits the **closed shop**, which requires individuals to join a union before they can be hired. Because of concerns that a closed shop allows a union to “control” who may be considered for employment and who must be hired by an employer, section 14(b) prohibits the closed shop except in construction-related occupations.

In states that do not have right-to-work laws, different types of arrangements exist. Three of the different types of “shops” are as follows:

- *Union shop*: Requires that individuals join the union, usually 30 to 60 days after being hired
- *Agency shop*: Requires employees who refuse to join the union to pay amounts equal to union dues and fees in return for the representation services of the union²⁴
- *Maintenance-of-membership shop*: Requires workers to remain members of the union for the period of the labor contract

The nature of the shop is negotiated between the union and the employer. Often employees who fail to meet the requirements are terminated from their jobs.

Landrum-Griffin Act (Labor Management Reporting and Disclosure Act)

The third of the major labor laws in the United States, the Landrum-Griffin Act, was passed in 1959. Because a union is supposed to be a democratic institution in which union members freely vote on and elect officers and approve labor contracts, the Landrum-Griffin Act was passed in part to ensure that the federal government protects the democratic rights of the members. Under the Landrum-Griffin Act, unions are required to establish bylaws, make financial reports, and provide union members with a bill of rights. The law appointed the U.S. Secretary of Labor to act as a watchdog of union conduct.

In a few instances, union officers have attempted to maintain their jobs by physically harassing or attacking individuals who have tried to oust them from office. In other cases, union officials have “milked” pension fund monies for their own use. Such instances are not typical of most unions, but illustrate the need for legislative oversight to protect individual union members.²⁵

Civil Service Reform and Postal Reorganization Acts

Passed as part of the Civil Service Reform Act of 1978, the Federal Service Labor Management Relations statute made major changes in how the federal government deals with unions. The act also identified areas subject to bargaining and established the Federal Labor Relations Authority (FLRA) as an independent agency similar to the NLRB. The FLRA, a three-member body, was given the authority to oversee and administer union/management

Closed shop Firm that requires individuals to join a union before they can be hired.

relations in the federal government and to investigate unfair practices in union organizing efforts.

In a somewhat related area, the Postal Reorganization Act of 1970 established the U.S. Postal Service as an independent entity. Part of the 1970 act prohibited postal workers from striking and established a dispute resolution process for them to follow.

Proposed Legislation

Other laws have been proposed, but at this writing none of them has been passed. One such law would bar companies from replacing workers who go on strike,²⁶ which means that a union could in effect close a business down because strikers could not be replaced. Replacement workers or “scabs” have allowed companies to defeat union strikes in some cases in the past.

Another proposed law, the “Employee Free Choice Act,” would allow unions to sign up workers and become recognized without an election.²⁷ As a result, the “campaigns” against management that unions dislike would be eliminated, because simply getting 50% of the workers in a unit to sign a card would be sufficient to “vote in” the union.²⁸ Further, the proposed law would require a contract to be negotiated within a certain time period or one could be imposed by an arbitrator.²⁹ This approach goes against the U.S. tradition in which negotiated contracts must be agreed to by both parties. The proposed legislation has spawned considerable concern among businesses.³⁰ Several large employers have resorted to direct actions in opposition to the EFCA.³¹

THE UNIONIZATION PROCESS

The typical union organizing process is outlined in Figure 16-6. The process of unionizing an employer may begin in one of two primary ways: (1) a union targeting an industry or a company, or (2) employees requesting union representation. In the first case, the local or national union identifies a firm or an industry in which it believes unionization can succeed. The logic for targeting is that if the union succeeds in one firm or a portion of the industry, then many other workers in the industry will be more willing to consider unionizing. In the second case, the impetus for union organizing occurs when individual workers at an employer contact a union and express a desire to unionize. The employees themselves—or the union—may then begin to campaign to win support among the other employees.

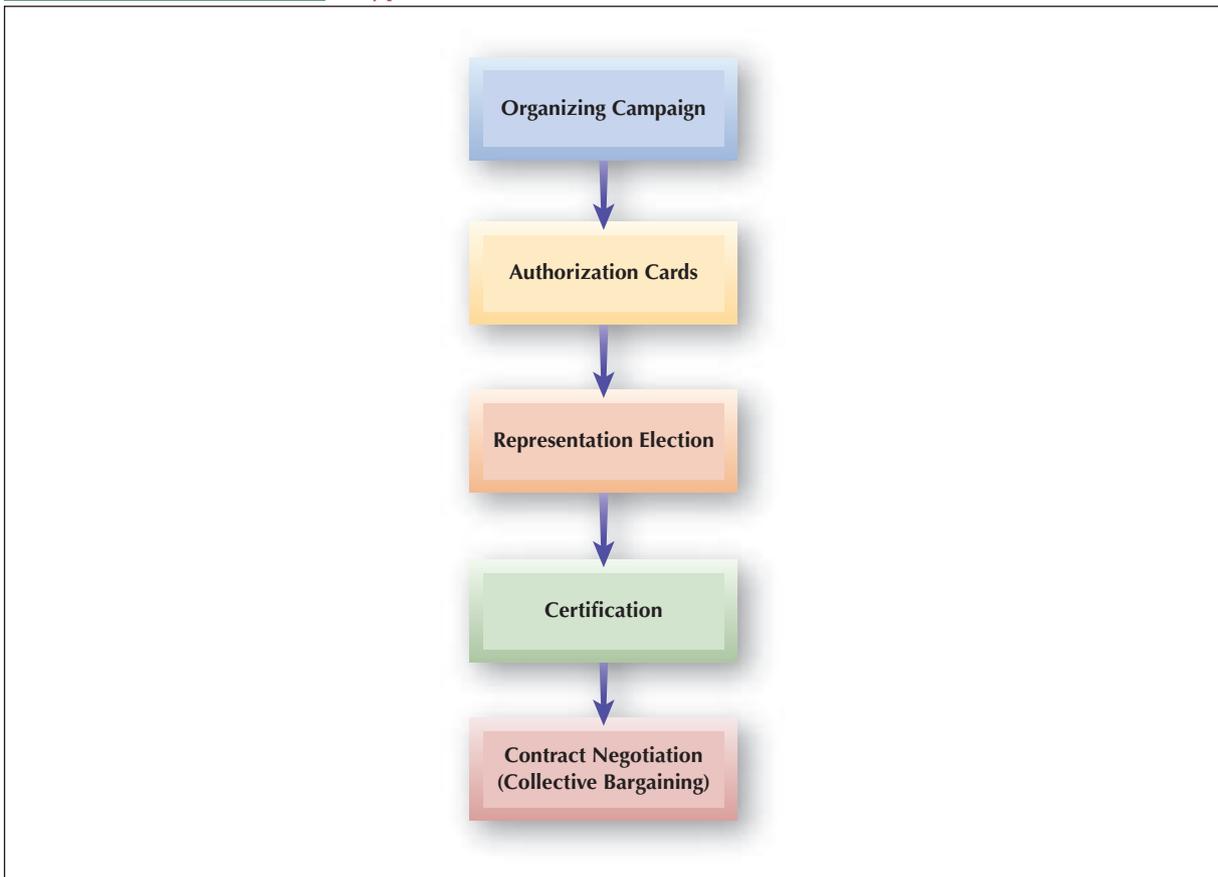
Organizing Campaign

Like other entities seeking members, a union usually mounts an organized campaign to persuade individuals to join. As would be expected, employers respond to unionization efforts by taking various types of opposing actions.

Employers’ Union Prevention Efforts Management representatives may use various tactics to defeat a unionization effort. Such tactics often begin when union publicity appears or during the distribution of authorization cards. Some employers such as Con Agra, Coca-Cola, and Wal-Mart hire consultants who specialize in combating unionization efforts. Using these “union busters,” as they are called by unions, appears to enhance employers’ chances

FIGURE 16-6

Typical Unionization Process



of winning the representation election. Union prevention efforts that may be conducted by consultants or done by management and outside labor attorneys include:³²

- Holding mandatory employee meetings
- Distributing antiunion leaflets at work and mailing antiunion letters to employees' homes
- Providing and using antiunion videos, e-mails, and other electronic communications

Many employers have created a “no-solicitation” policy to restrict employees and outsiders from distributing literature or soliciting union membership on company premises. Employers without such a policy may be unable to prevent those acts. A policy against solicitation must be a long-term, established approach, not a single action taken to counter a specific and immediate unionization attempt. For example, a Steelworkers union sought certification by the NLRB to be the bargaining agent at an Ohio facility. After the union lost the election by one vote, it protested that the company had interfered with the right to organize when just before the election it adopted a rule prohibiting the posting of pro-union material on an employee bulletin board. The NLRB set aside the first election, and the company lost the second election.

Employers may make strategic decisions and take aggressive steps to remain nonunion. Such a choice is perfectly rational, but may require some

specific HR policies and philosophies. For example, “preventive” employee relations may emphasize good morale and loyalty based on concern for employees, competitive wages and benefits, a fair system for dealing with employee complaints, and safe working conditions. Other issues also may play a part in employees’ decisions to stay nonunion, but if employers adequately address the points just listed, fewer workers are likely to feel the need for a union to represent them.

Unions’ Organizing Efforts The organizing and negotiating successes of unions are tied to the economy and economic trends. For example, see the HR Perspective. The persuasion efforts by unions can take many forms, including personally contacting employees outside work, mailing materials to employees’ homes, inviting employees to attend special meetings away from the company, and publicizing the advantages of union membership. Brochures and leaflets can be given to employees as they leave work, mailed to their homes, or even attached to their vehicles, as long as the union complies with the rules established by laws and the NLRB. The purpose of all this publicity is to encourage employees to sign authorization cards.

To encourage individuals to become involved in unionization efforts, unions have adopted electronic means, such as establishing websites where interested workers can read about benefits of unionization. For instance, the Service Employees International Union has websites and chat rooms where nurses at nonunion hospitals can exchange information with unionized nurses. Change to Win and the AFL-CIO both have Web links and blogs available through their websites to provide union information online. These sites explain workers’ rights and give examples of the advantages of being union

Good Times, Bad Times

HR *perspective*

Employees join unions when they feel that unions can improve their lots in life. Although union membership has been dropping, the point at which unions might be able to improve more employees’ lots in work life may reappear.

The recession weakened employees’ bargaining power and that trend is likely to continue. More jobs will be freelance and temporary. As one CEO puts it, “We are all temps now.” Employers create “just in time” workforces that can be turned on and off, allowing them to reduce fixed costs. That means the companies have an edge in bargaining power and the risks are pushed to the employees. It is estimated that 26% of the U.S. workforce has “nonstandard” jobs like that held by some workers. Recessions hasten

the trend. Pay for production and nonsupervisory workers (80% of the workforce) is 9% lower now than it was in 1973 when the pay is adjusted for inflation.

Certainly not all workers are pleased with such jobs, but in bad times they have little choice and unions have little opportunity. However, looking into the future, it is possible to see that better times may be coming for labor. In a decade, retirement of the baby boomers could cause labor shortages. A shortage of workers was widely noted before the last recession, and the underlying dynamic has not gone away. The idea of loyalty to an employer has effectively disappeared in many places, and the mechanisms for labor’s return remain intact—waiting for better times.³³

members. Successes in unionizing groups of employees are described. Also, the differences between wages, benefits, and job security are contrasted before and after unionization occurred. However, an employer can prohibit workers from using its e-mail system for union business.³⁴

Unions sometimes pay organizers to infiltrate a targeted employer and try to organize workers. In this practice, known as **salting**, the unions hire and pay people to apply for jobs at certain companies; when the people are hired, they begin organizing efforts. The U.S. Supreme Court has ruled that refusing to hire otherwise qualified applicants, solely because they are also paid by a union, violates the Wagner Act. However, employers may refuse to hire “salts” for job-related and nondiscriminatory reasons.³⁵

Authorization Cards

A **union authorization card** is signed by employees to designate a union as their collective bargaining agent. At least 30% of the employees in the targeted group must sign authorization cards before an election can be called.

Union advocates have lobbied for changing laws so that elections are not needed if more than 50% of the eligible employees sign authorization cards. As mentioned earlier, the proposed Employee Free Choice Act would eliminate the secret ballot for electing union representation and make it so that the union would automatically represent all workers if more than 50% of the employees signed authorization cards. Some states have enacted such laws for public-sector unionization. Also, some employers have taken a “neutral” approach and agreed to recognize unions if a majority of workers sign authorization cards. Some employers’ agreements allow for authorization card checks to be done by a neutral outside party to verify union membership.

However, the fact that an employee signs an authorization card does not necessarily mean that the employee is in favor of a union. It means only that the employee would like the opportunity to vote on having a union. Employees who do not want a union might sign authorization cards because they want management to know they are disgruntled or because they want to avoid upsetting coworkers who are advocating unionization.

Employers and some politicians argue that eliminating elections violates the personal secrecy and democracy rights of employees. The extent of legislative changes will depend on the political composition of the U.S. Congress and presidential reactions to such efforts.

Representation Election

An election to determine if a union will represent the employees is supervised by the NLRB for private-sector organizations and by other legal bodies for public-sector organizations. If two unions are attempting to represent employees, the employees will have three choices: union A, union B, and no union.

Salting Practice in which unions hire and pay people to apply for jobs at certain companies to begin organizing efforts.

Union authorization card Card signed by employees to designate a union as their collective bargaining agent.

Bargaining unit Employees eligible to select a single union to represent and bargain collectively for them.

Bargaining Unit Before any election, the appropriate bargaining unit must be determined. A **bargaining unit** is composed of all employees eligible to select a single union to represent and bargain collectively for them. If management and the union do not agree on who is and who is not included in the unit, the regional office of the NLRB must make the determination. A major criterion in deciding the composition of a bargaining unit is what the NLRB calls a “community of interest.” For example, at a warehouse distribution firm, delivery drivers, accounting clerks, computer programmers, and mechanics would

probably not be included in the same bargaining unit; these employees have widely varying jobs, areas of work, physical locations, and other differences that would likely negate a community of interest. Employees who constitute a bargaining unit have mutual interests in the following areas:

- Wages, hours, and working conditions
- Traditional industry groupings for bargaining purposes
- Physical location and amount of interaction and working relationships between employee groups
- Supervision by similar levels of management

Supervisors and Union Ineligibility Provisions of the National Labor Relations Act exclude supervisors from voting for or joining unions. As a result, supervisors cannot be included in bargaining units for unionization purposes, except in industries covered by the Railway Labor Act. But who qualifies as a supervisor is not always clear. The NLRB expanded its definition to identify a supervisor as any individual with authority to hire, transfer, discharge, discipline, and use independent judgment with employees. Numerous NLRB and court decisions have been rendered on the specifics of different situations. A major case decided by the U.S. Supreme Court found that charge nurses with RN degrees were supervisors because they exercised independent judgment. This case and others have provided employers and unions with some guidance about who should be considered supervisors and thus excluded from bargaining units.³⁶

Unionization Do's and Don'ts for Managers



Employers can take numerous actions to prevent unionization. All managers and supervisors must adhere

to NLRB and other requirements to avoid unfair labor practices. Listed below are some common do's and don'ts.

✓ DO (LEGAL)

- Tell employees how current wages and benefits compare with those in other firms.
- Tell employees why the employer opposes unionization.
- Tell employees the disadvantages of having a union (dues, assessments, etc.)
- Show employees articles about unions and relate negative experiences elsewhere.
- Explain the unionization process to employees accurately.
- Forbid distribution of union literature during work hours in work areas.
- Enforce disciplinary policies and rules consistently and appropriately.

✗ DON'T (ILLEGAL)

- Promise employees pay increases or promotions if they vote against the union.
- Threaten to close down or move the company if a union is voted in.
- Spy on or have someone spy on union meetings.
- Make a speech to employees or groups at work within 24 hours of the election. (Before that, it is allowed.)
- Ask employees how they plan to vote or if they have signed authorization cards.
- Encourage employees to persuade others to vote against the union.
- Threaten employees with termination or discipline employees advocating the union.

Election Unfair Labor Practices Employers and unions engage in a number of activities before an election. Both the Wagner Act and the Taft-Hartley Act place restrictions on these activities. Once unionizing efforts begin, all activities must conform to the requirements established by applicable labor laws. Both management and the union must adhere to those requirements, or the results of the effort can be appealed to the NLRB and overturned. The HR On-the-Job highlights some of the legal and illegal actions managers must be aware of during unionization efforts.

Election Process If an election is held, the union needs to receive only a majority of the votes. For example, if a group of 200 employees is the identified bargaining unit, and only 50 people vote, only 26 (50% of those voting plus 1) need to vote yes for the union to be named as the representative of all 200 employees. Typically, the smaller the number of employees in the bargaining unit, the higher the likelihood that the union will win.

If either side believes that the other side used unfair labor practices, the election results can be appealed to the NLRB. If the NLRB finds evidence of unfair practices, it can order a new election. If no unfair practices were used and the union obtains a majority in the election, the union then petitions the NLRB for certification.

Certification and Decertification

Official certification of a union as the legal representative for designated private-sector employees is given by the NLRB, or for public-sector employees by an equivalent body. Once certified, the union attempts to negotiate a contract with the employer. The employer *must* bargain; refusing to bargain with a certified union constitutes an unfair labor practice.

When members no longer wish to be represented by the union, they can use the election process to sever the relationship between themselves and the union. Similar to the unionization process, **decertification** is a process whereby a union is removed as the representative of a group of employees. Employees attempting to oust a union must obtain decertification authorization cards signed by at least 30% of the employees in the bargaining unit before an election may be called. If a majority of those voting in the election want to remove the union, the decertification effort succeeds. Some reasons that employees might decide to vote out a union are that the treatment provided by employers has improved, the union has been unable to address the changing needs of the organizational workforce, or the image of the union has declined. Current regulations prohibit employers from initiating or supporting decertification because it is a matter between employees and unions, and employers must stay out of the process.

Decertification Process whereby a union is removed as the representative of a group of employees.

Collective bargaining Process whereby representatives of management and workers negotiate over wages, hours, and other terms and conditions of employment.

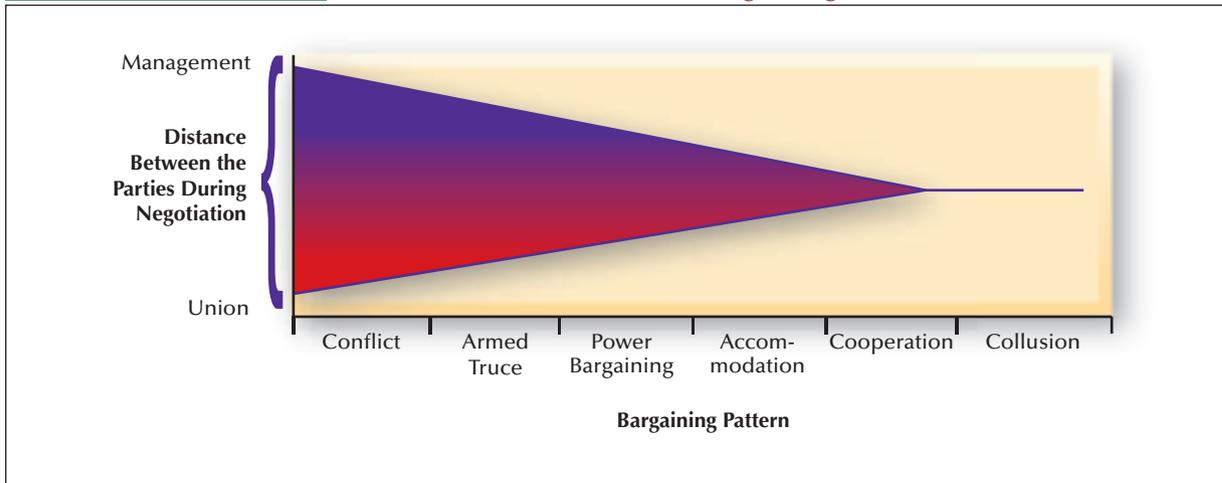
Contract Negotiation (Collective Bargaining)

Collective bargaining, the last step in unionization, is the process whereby representatives of management and workers negotiate over wages, hours, and other terms and conditions of employment. This give-and-take process between representatives of the two organizations attempts to establish conditions beneficial to both. It is also a relationship based on relative power.

Management/union relations in collective bargaining can follow one of several patterns. Figure 16-7 depicts them as a continuum, ranging from conflict to collusion. On the left side of the continuum, management and

FIGURE 16-7

Continuum of Collective Bargaining Relations



the union see each other as enemies. On the right side, the two entities join together in collusion, which is relatively rare in U.S. labor history and is illegal. Most positions fall between these two extremes.

The power relationship in collective bargaining involves conflict, and the threat of conflict seems necessary to maintain the relationship. But perhaps the most significant aspect of collective bargaining is that it is a continuing relationship that does not end immediately after agreement is reached. Instead, it continues for the life of the labor agreement and beyond.³⁷ Therefore, the more cooperative management is, the less hostility and conflict with unionized employees will be present to carry over to the workplace. However, this cooperation does not mean that the employer agrees to all union demands.



LOGGING ON

LaborNet

This website describes unions, news, legislation, and upcoming union events. Visit the site at www.labor.net.org.

COLLECTIVE BARGAINING ISSUES

A number of issues can be addressed during collective bargaining. Although not often listed as such in the contract, management rights and union security are two important issues subject to collective bargaining. These and other issues, common and collective bargaining, are discussed next.

Management Rights

Virtually all labor contracts include **management rights**, which are rights reserved so that the employer can manage, direct, and control its business. By including such a provision, management attempts to preserve its unilateral right to make changes in areas not identified in a labor contract. A typical provision might read as follows:

Management rights Rights reserved so that the employer can manage, direct, and control its business.

The employer retains all rights to manage, direct, and control its business in all particulars, except as such rights are expressly and specifically modified by the terms of this or any subsequent agreement.

Union Security

A major concern of union representatives when bargaining is the negotiation of **union security provisions**, which are contract clauses to help the union obtain and retain members. One type of union security clause in labor contracts is the *no-layoff policy*, or *job security guarantee*. Such a provision is especially important to many union workers because of all the mergers, downsizings, and job reductions taking place in many industrial, textile, and manufacturing firms. However, for these very reasons, management is often unwilling to consider this type of provision.

Union Dues Issues A common union security provision is the *dues checkoff* clause, which provides for the automatic deduction of union dues from the payroll checks of union members. The dues checkoff provision makes it much easier for the union to collect its funds, and without it, the union must collect dues by billing each member separately.

However, federal court cases have been filed that restrict unions from using such checkoff clauses for contributions to political and congressional candidates. A U.S. Supreme Court case supported the constitutionality of state laws that require labor unions to get written consent before using nonmember fees for political purposes. The Court noted that Washington, like many other states, allows public-sector unions to levy fees on nonmember employees, as well as “agency shop” agreements. But it held that under such arrangements, the union must obtain express authorization from the nonmembers to use their agency fees for election-related purposes.³⁸

Types of Required Union Membership Another form of union security provision is *requiring union membership* of all employees, subject to state right-to-work laws. As mentioned earlier, a closed shop is illegal except in limited situations within the construction industry. But other types of arrangements can be developed, including union shops, agency shops, and maintenance-of-membership shops, which were discussed earlier.

Classification of Bargaining Issues

The NLRB has defined collective bargaining issues in three ways. The categories it has used are mandatory, permissive, and illegal.

Mandatory Issues Issues identified specifically by labor laws or court decisions as subject to bargaining are **mandatory issues**. If either party demands that issues in this category be subject to bargaining, then that must occur. Generally, mandatory issues relate to wages, benefits, nature of jobs, and other work-related subjects. Mandatory subjects for bargaining include the following:

- Discharge of employees
- Grievances
- Work schedules
- Union security and dues checkoff
- Retirement and pension coverage
- Vacations and time off
- Rest and lunch break rules
- Safety rules
- Profit-sharing plans
- Required physical exam

Permissive Issues Issues that are not mandatory and that relate to certain jobs are **permissive issues**. For example, the following issues can be bargained over if both parties agree: benefits for retired employees, product prices for employees, and performance bonds.

Union security provisions

Contract clauses to help the union obtain and retain members.

Mandatory issues

Collective bargaining issues identified specifically by labor laws or court decisions as subject to bargaining.

Permissive issues Collective bargaining issues that are not mandatory and that relate to certain jobs.

Illegal Issues A final category, **illegal issues**, includes those issues that would require either party to take illegal action. Examples would be giving preference to union members when hiring employees or demanding a closed-shop provision in the contract. If one side wants to bargain over an illegal issue, the other side can refuse.

COLLECTIVE BARGAINING PROCESS

The collective bargaining process involved in negotiating a contract consists of a number of stages: preparation and initial demands, negotiations, settlement or impasse, and strikes and lockouts. Throughout the process, management and labor deal with the terms of their relationship.

Preparation and Initial Demands

Both labor and management representatives spend considerable time preparing for negotiations.³⁹ Employer and industry data concerning wages, benefits, working conditions, management and union rights, productivity, and absenteeism are gathered. If the organization argues that it cannot afford to pay what the union is asking, the employer's financial situation and accompanying data become relevant to the process. However, the union must request such information before the employer is obligated to provide it. Typical bargaining includes initial proposals of expectations by both sides. The amount of rancor or calmness exhibited may set the tone for future negotiations between the parties.

Core Bargaining Issues The primary focus of bargaining for both union and management is on the core areas of wages, benefits, and working hours and conditions. The importance of this emphasis is seen in several ways.

Union wages and benefits generally are higher in unionized firms than in nonunionized firms. As shown in Figure 16-8, in a recent year median earnings for union members were \$908/week compared with the nonunion amount of \$710/week. The additional \$198/week represents almost \$10,000/year more for union members' wages than nonunion wages. It is common for wages and benefits to be higher in unionized firms.

Continuing Negotiations

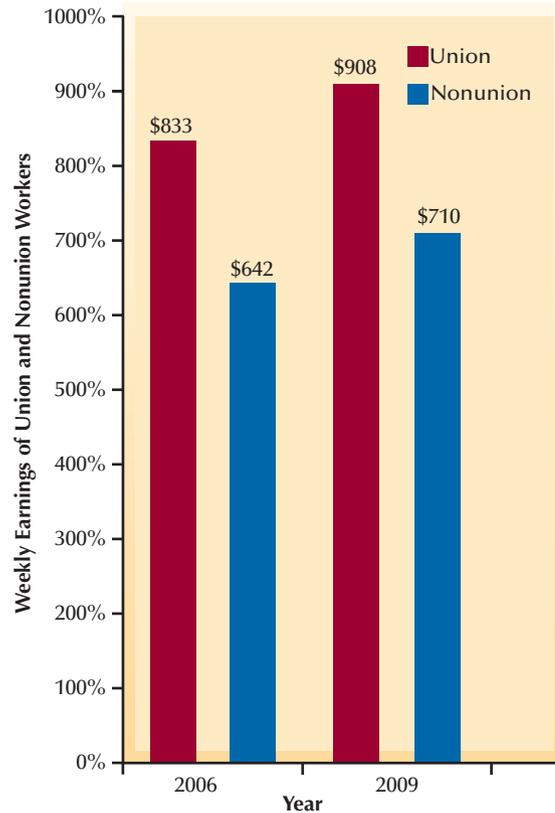
After taking initial positions, each side attempts to determine what the other side values highly so that the best bargain can be struck. For example, the union may be asking the employer to pay for dental benefits as part of a package that also includes wage increases and retirement benefits. However, the union may be most interested in the retirement benefits and may be willing to trade the dental payments for better retirement benefits. Management must determine what the union has as a priority and decide exactly what to give up.

Good Faith Provisions in federal law require that both employers and union bargaining representatives negotiate in good faith. In good-faith negotiations, the parties agree to send negotiators who can bargain and make decisions, rather than people who do not have the authority to commit either group to a decision. To be more effective, meetings between the parties should be conducted professionally and address issues, rather than being confrontational. Refusing to bargain,

Illegal issues Collective bargaining issues that would require either party to take illegal action.

FIGURE 16-8

Weekly Earnings of Union and Nonunion Workers



Source: Bureau of Labor Statistics, "Union Members Summary," January 22, 2010.

scheduling meetings at absurdly inconvenient hours, and using other conflicting tactics may lead to employers or unions filing complaints with the NLRB.

Settlement and Contract Agreement

After reaching an initial agreement, the bargaining parties usually return to their respective constituencies to determine if the informal agreement is acceptable. A particularly crucial stage is **ratification** of the labor agreement, which occurs when union members vote to accept the terms of a negotiated labor agreement. Before ratification, the union negotiating team explains the agreement to the union members and presents it for a vote. If the members approve the agreement, it is then formalized into a contract. Figure 16-9 lists the typical items in a labor agreement.

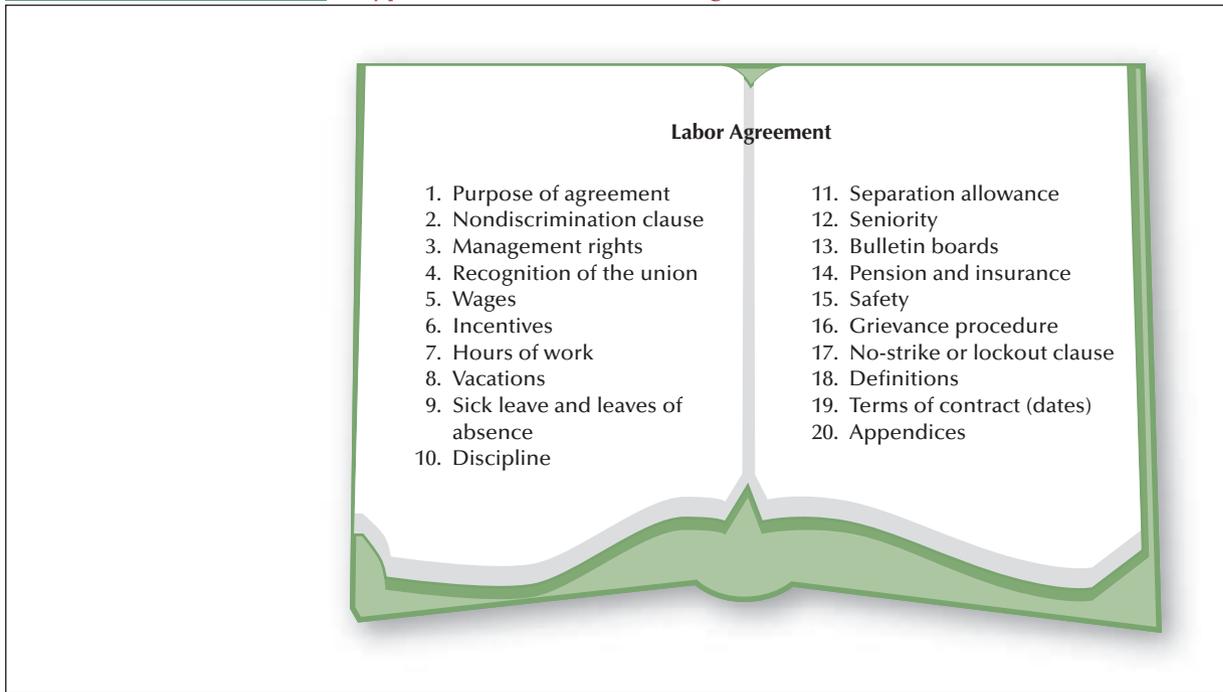
Bargaining Impasse

Regardless of the structure of the bargaining process, labor and management do not always reach agreement on the issues. If they reach an impasse, then the disputes can be taken to conciliation, mediation, or arbitration.

Ratification Process by which union members vote to accept the terms of a negotiated labor agreement.

FIGURE 16-9

Typical Items in a Labor Agreement



Conciliation and Mediation When an impasse occurs, an outside party such as the Federal Mediation and Conciliation Service may help the two deadlocked parties to continue negotiations and arrive at a solution. In **conciliation**, the third party assists union and management negotiators to reach a voluntary settlement, but makes no proposals for solutions. In **mediation**, the third party may suggest ideas for solutions to help the negotiators reach a settlement.

In conciliation and mediation, the third party does not attempt to impose a solution. Sometimes fact finding helps to clarify the issues of disagreement as an intermediate step between mediation and arbitration.

Conciliation Process by which a third party assists union and management negotiators to reach a voluntary settlement.

Mediation Process by which a third party helps the negotiators reach a settlement.

Arbitration Process that uses a neutral third party to make a decision.

Strike Work stoppage in which union members refuse to work in order to put pressure on an employer.

Arbitration In **arbitration**, a neutral third party makes a decision. Arbitration can be conducted by an individual or a panel of individuals. “Interest” arbitration attempts to solve bargaining impasses, primarily in the public sector. This type of arbitration is not frequently used in the private sector because companies generally do not want an outside party making decisions about their rights, wages, benefits, and other issues. However, grievance or “rights” arbitration is used extensively in the private sector. Fortunately, in many situations, agreements are reached through negotiations without the need for arbitration. When disagreements continue, strikes or lockouts may occur.

Strikes and Lockouts

If a deadlock cannot be resolved, an employer may revert to a lockout—or a union may revert to a strike. During a **strike**, union members refuse to work in order to put pressure on an employer. Often, the striking union members picket or demonstrate against the employer outside the place of business by carrying placards and signs.

In a **lockout**, management shuts down company operations to prevent union members from working. This action may avert possible damage or sabotage to company facilities or injury to employees who continue to work. It also gives management leverage in negotiations.

Types of Strikes Five types of strikes can occur:

- *Economic strikes* happen when the parties fail to reach agreement during collective bargaining.
- *Unfair labor practices strikes* occur when union members leave their jobs over what they feel are illegal employer actions, such as refusal to bargain.
- *Wildcat strikes* occur during the life of the collective bargaining agreement without approval of union leadership and violate a no-strike clause in a labor contract. Strikers can be discharged or disciplined.
- *Jurisdictional strikes* exist when members of one union walk out to force the employer to assign work to them instead of to members of another union.
- *Sympathy strikes* take place when one union chooses to express support for another union involved in a dispute, even though the first union has no disagreement with the employer.

As a result of the decline in union power, work stoppages due to strikes and lockouts are relatively rare. In a recent year, only 22 strikes or lockouts occurred nationally, and they were all settled quickly. Many unions are reluctant to go on strike due to the financial losses their members would incur or the fear that a strike would cause the employer to go bankrupt. In addition, management has shown its willingness to hire replacements, and some strikes have ended with union workers losing their jobs.



LOGGING ON

Federal Mediation & Conciliation Service

This service organization provides services and resources to promote stable labor and management relationships. Visit the website at www.fmcs.gov.

Replacement of Workers on Strike Management retains and sometimes uses its ability to simply replace workers who strike. Workers' rights vary depending on the type of strike that occurs. For example, in an economic strike, an employer is free to replace the striking workers. But with an unfair labor practices strike, the workers who want their jobs back at the end of the strike must be reinstated.

UNION/MANAGEMENT COOPERATION

The adversarial relationship that naturally exists between unions and management may lead to strikes and lockouts. However, as noted, such conflicts currently are relatively rare. Even more encouraging is the recognition on the part of some union leaders and employer representatives that cooperation between management and labor unions offers a useful route if organizations are to compete effectively in a global economy.

During the past decade, numerous firms have engaged in organizational and workplace restructuring in response to competitive pressures in their industries. Restructurings have had significant effects, such as lost jobs, changed work rules, and altered job responsibilities. When restructurings occur, unions can take different approaches, ranging from resistance to cooperation. See the HR Perspective for an example of how a union handled a situation at Ford in a cooperative manner.

Lockout Shutdown of company operations undertaken by management to prevent union members from working.

Union Helps Cut Costs at Ford



Jerry Sullivan, head of a United Auto workers local at Ford Motor Company, had fought for job protection, higher pay, and better benefits for his members, but he found himself in a situation in which he agreed to accept the outsourcing of jobs. “Ford is in a desperate situation—if this company goes down I want to be able to look in the mirror and say I did everything I could,” said Mr. Sullivan.

Like the other U.S. auto companies, Ford had fallen behind the Asian companies. A key auto manufacturing report showed that it took Ford 36 hours of labor to assemble a car—5 or 6 hours slower than its Asian counterparts. To avoid disaster, Ford asked for help from the union. The company showed the union representatives how big the cost gaps were: \$2,400 per vehicle, with labor representing \$1,080 to \$1,335 of that. The UAW allowed local unions to tear up existing contracts and negotiate new rules.

The talks between the company and union covered many areas, including some sensitive ones

such as UAW absenteeism rates. The absenteeism rate at Ford had been about 11%, which was double the rate of Toyota and other companies. Each percentage point cost Ford \$20 million a year. Negotiated changes included capping the number of absences per person regardless of the excuse, hiring outside contractors to handle some jobs at one-half the pay, finding outside companies to repair equipment, and moving to four-day, 10-hour workweeks including weekends without overtime.

Further, in some plants, union members agreed to manage operations at work with a raise of only 50 cents per hour. Many more changes occurred as well. About 65% of the employees voted for the changes in Dearborn, Michigan. In other plants, the winning margins were even higher. As a result, when General Motors and Chrysler both had to declare bankruptcy, Ford alone continued on as before.

Mr. Sullivan said, “This is a partnership, right? We are in this together, right?” Apparently he was right.⁴⁰

When unions have been able to obtain information and share that information with their members in order to work constructively with the company management at various levels, then organizational restructurings have been handled more successfully. For example, at General Motors the cost of retiree health care added \$1,400 per car at a time when GM *had to* make major cost cuts to stay competitive.⁴¹ Working with the union, the company set up a voluntary employee benefit association. The \$35 billion trust allowed GM to get the crushing liabilities for retirees’ health care off its books.⁴²

Employee Involvement Programs

It seems somewhat illogical to suggest that union/management cooperation or involving employees in making suggestions and decisions could be bad, and yet some decisions by the NLRB appear to have done just that. Some historical perspective is required to understand the issues that surrounded the decisions.

In the 1930s, when the Wagner Act was written, certain employers would form sham “company unions,” coercing workers into joining them in order to keep legitimate unions from organizing the employees. As a result, the Wagner Act contained prohibitions against employer-dominated labor organizations.

These prohibitions were enforced, and company unions disappeared. But the use of employee involvement programs in organizations today has raised new concerns along these lines.

Because of the Wagner Act, many employee involvement programs set up in past years may be illegal, according to an NLRB decision dealing with Electromation, an Elkhart, Indiana, firm. Electromation used teams of employees to solicit other employees' views about such issues as wages and working conditions. The NLRB labeled these teams "labor organizations," in line with requirements of the Wagner Act. It further found that the teams were "dominated" by management, which had formed them, set their goals, and decided how they would operate. The results of this and other decisions have forced many employers to rethink and restructure their employee involvement efforts.

Federal court decisions have upheld the NLRB position in some cases and reversed it in others. One key to decisions allowing employee involvement committees and programs seems to be that these entities should not deal directly with traditional collective bargaining issues such as wages, hours, and working conditions. Other keys are that the committees should be composed primarily of workers and that they have broad authority to make operational suggestions and decisions.

Unions and Employee Ownership

Unions in some situations have encouraged workers to become partial or complete owners of the companies that employ them. These efforts were spurred by concerns that firms were preparing to shut down, merge, or be bought out. Such results were likely to cut the number of union jobs and workers.

Unions have been active in helping members put together employee stock ownership plans to purchase all or part of some firms.⁴³ Such programs have been successful in some situations but have caused problems in others. Some in the labor movement fear that such programs may undermine union support by creating a closer identification with the concerns and goals of employers, instead of "union solidarity."

GRIEVANCE MANAGEMENT

Unions know that employee dissatisfaction is a potential source of trouble for employers, whether it is expressed or not. Hidden dissatisfaction grows and creates reactions that may be completely out of proportion to the original concerns. Therefore, it is important that dissatisfaction be given an outlet. A **complaint**, which is merely an indication of employee dissatisfaction, is one outlet. If an employee is represented by a union, and the employee says, "I should have received the job transfer because I have more seniority, which is what the union contract states," and she submits it in writing, then that complaint becomes a grievance. A **grievance** is a complaint formally stated in writing.

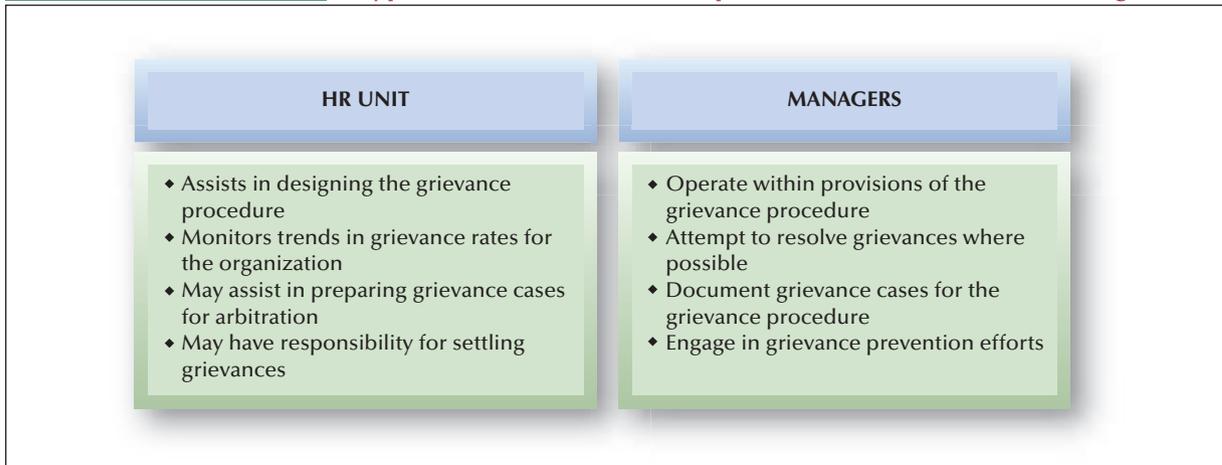
Management should be concerned with both complaints and grievances, because both indicate potential problems within the workforce.⁴⁴ Without a grievance procedure, management may be unable to respond to employee concerns because managers are unaware of them. Therefore, a formal grievance procedure provides a valuable communication tool for organizations, whether a union is present or not.

Complaint Indication of employee dissatisfaction.

Grievance Complaint formally stated in writing.

FIGURE 16-10

Typical Division of HR Responsibilities: Grievance Management



Grievance Responsibilities

The typical division of responsibilities between the HR unit and operating managers for handling grievances is shown in Figure 16-10. These responsibilities vary considerably from one organization to another, even between unionized firms. But the HR unit usually has more general responsibilities. Managers must accept the grievance procedure as a possible constraint on some of their decisions.

Grievance Procedures

Grievance procedures are formal channels of communication designed to resolve grievances as soon as possible after problems arise.⁴⁵ First-line supervisors are usually closest to a problem. However, these supervisors are concerned with many other matters besides one employee's grievance, and may even be the subject of an employee's grievance. To receive the appropriate attention, grievances go through a specific process for resolution.⁴⁶

Union Representation in Grievance Procedures A unionized employee generally has a right to union representation if the employee is being questioned by management and if discipline may result. If these so-called *Weingarten rights* (named after the court case that established them) are violated and the employee is dismissed, the employee usually will be reinstated with back pay. Employers are not required to allow nonunion workers to have coworkers present in grievance procedure meetings. However, employers may voluntarily allow such presence.⁴⁷

Steps in a Grievance Procedure

Grievance procedures can vary in the steps included. Figure 16-11 shows a typical grievance procedure, which consists of the following steps:

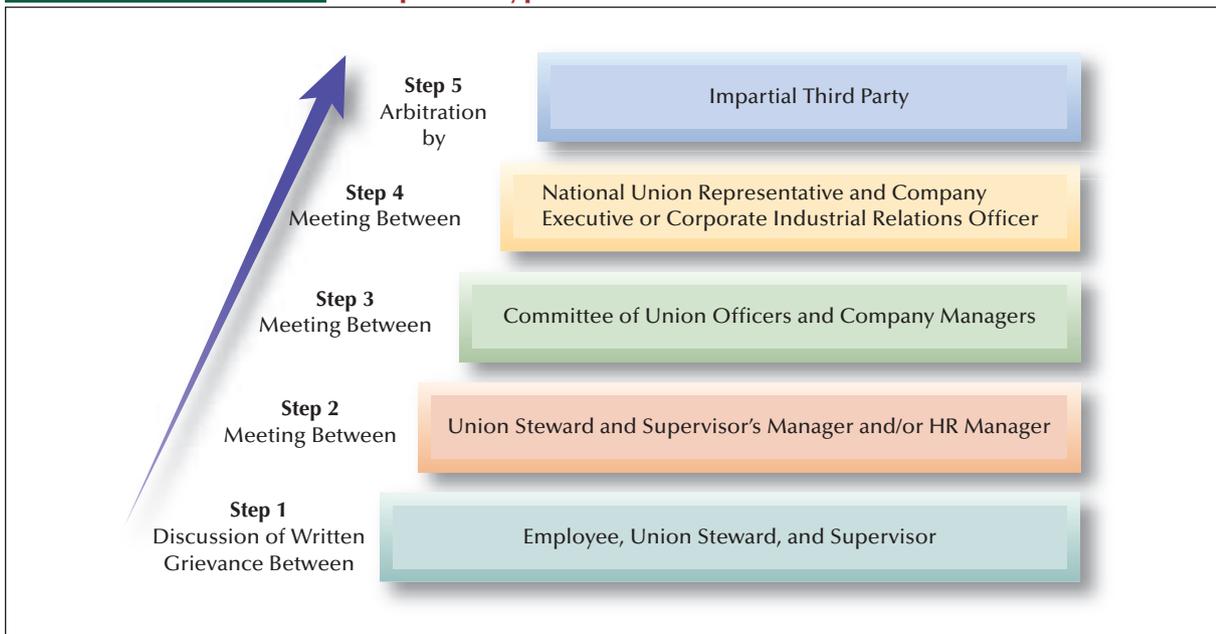
1. The employee discusses the grievance with the union steward (the representative of the union on the job) and the supervisor.
2. The union steward discusses the grievance with the supervisor's manager and/or the HR manager.

Grievance procedures

Formal channels of communication used to resolve grievances.

FIGURE 16-11

Steps in a Typical Grievance Procedure



3. A committee of union officers discusses the grievance with appropriate company managers.
4. The representative of the national union discusses the grievance with designated company executives or the corporate industrial relations officer.
5. If the grievance is not solved at this stage, it goes to arbitration. An impartial third party may ultimately dispose of the grievance.

Grievance arbitration is a means by which a third party settles disputes arising from different interpretations of a labor contract.⁴⁸ This process should not be confused with contract or issues arbitration, discussed earlier, in which arbitration is used to determine how a contract will be written. The U.S. Supreme Court has ruled that grievance arbitration decisions issued under labor contract provisions are enforceable and generally may not go to court to be changed. Grievance arbitration includes more than 50 topic areas, with discipline and discharge, safety and health, and security issues being most prevalent.⁴⁹

Grievance arbitration

Means by which a third party settles disputes arising from different interpretations of a labor contract.

S U M M A R Y

- A union is a formal association of workers that promotes the interests of its members through collective action.
- Workers join unions primarily because of management's failure to address organizational and job-related concerns.
- Unions are becoming more global as the world economy expands, and global labor federations are expanding, despite differences in approaches.
- The history of unions in the United States indicates that they primarily focus on wages, hours, and working conditions.
- In the United States, current union membership as a percentage of the workforce is down dramatically, being about 12% of the civilian workforce.
- While public-sector unions have grown, unions in general have experienced a decline in mem-

- bership due to geographic, industrial, and workforce changes.
- In attempts to grow, unions are targeting professionals, low-skilled workers, and contingent and part-time workers.
 - The history of unions in the United States has evolved, and the structural levels of U.S. unions include federations, national and international unions, and local unions.
 - The National Labor Code is composed of three laws that provide the legal basis for labor relations today: the Wagner Act, the Taft-Hartley Act, and the Landrum-Griffin Act.
 - The Wagner Act was designed to protect unions and workers; the Taft-Hartley Act restored some powers to management; and the Landrum-Griffin Act was passed to protect individual union members.
 - Issues addressed by the different acts include unfair labor practices, national emergency strikes, and right-to-work provisions.
 - The unionization process includes an organizing campaign, authorization cards, a representation election, certification and decertification, and contract negotiation through collective bargaining.
 - Collective bargaining occurs when management negotiates with representatives of workers over wages, hours, and working conditions.
 - The issues subject to collective bargaining fall into three categories: mandatory, permissive, and illegal.
 - The collective bargaining process includes preparation and initial demands, negotiations, and settlement and contract agreement.
 - Once an agreement (contract) is signed between labor and management, it becomes the document governing what each party can and cannot do.
 - When an impasse occurs, work stoppages through strikes or lockouts can be used to pressure the other party.
 - Union/management cooperation has been beneficial in a number of situations, although care must be taken to avoid violations of NLRB provisions.
 - Grievances express workers' written dissatisfactions or differences in contract interpretations.
 - A grievance procedure begins with the first-level supervisor and may end—if the grievance is not resolved along the way—with arbitration by a third party.

CRITICAL THINKING ACTIVITIES

1. Discuss the following statement: "If management gets a union, it deserves one."
2. Suppose a coworker just brought you a union leaflet urging employees to sign an authorization card. What may happen from this point on?
3. As the HR manager, you have heard rumors about potential efforts to unionize your warehouse employees. Use the www.genelevine.com website to develop a set of guidelines for supervisors if they are asked questions by employees about unionization as part of a "union prevention" approach.
4. Public-sector unions now account for more than half of union members, while the private sector accounts for less than half. Why has this change occurred?

HR EXPERIENTIAL PROBLEM SOLVING

There has been some discussion among the employees in your company's manufacturing plant about forming a union. Company management recognizes the discussions may be due to the absence of a formal grievance procedure to assist employees with reporting their concerns and grievances to management. HR has been asked to develop a formal grievance

procedure in an effort to develop better labor relations between the employer and the employees and as an avoidance measure to the formation of a union. To assist HR in developing a formal grievance procedure, visit several websites including the ADR/Conflict Resolution link at <http://community.linchr.com/employmentguide>.

1. Employees in the shipping department have requested the implementation of a “suggestion box” system to help them bring their concerns to the attention of management and to help improve labor relations. Identify the advantages and disadvantages of such a system.
2. If company management determines that the “suggestion box” request will be more cumbersome than helpful, what are some alternative solutions that management can suggest to the employees?

C A S E

Teamsters and the Fraternal Order of Police (FOP)

Unions sometimes compete to represent workers, and that has been the case in Colorado with the Denver Sheriff’s Department. With budget cuts and tightening discipline, about 125 of the 760 deputies have turned to the Teamsters Union. What they have gotten is Ed Bagwell, Local 17’s director of the public service division—a stocky and aggressive person.

Bagwell *is* aggressive. During one meeting, a supervisor looked at his Teamster’s shirt and said, “Nice bowling shirt.” Bagwell responded by looking at the supervisor’s uniform and remarking, “Nice clown suit.” After that, the fight was on, and the meeting became so tense that the department ended up closing the meeting and turning the matter over to internal affairs. During another meeting, Bagwell got so mad he invited a supervisor outside. His behavior so offended an assistant city attorney that the attorney wrote to Bagwell’s boss about “unnecessarily hostile and inappropriate behavior.” At yet another meeting, when Bagwell was asked to tone it down, he roared, “You have no idea how aggressive I can be!”

Such behavior has had the city attorney’s office all atwitter, but it seems to resonate with the sheriff’s deputies. A group of those deputies want the Teamsters to take over for the Fraternal Order of Police (FOP), which has handled collective bargaining for the deputies since 1993. The

momentum is with the Teamsters, which signed up more than 100 deputies in a recent year.

The president of the FOP thinks his union will stave off the Teamsters, who will need votes from more than half of the 700 deputies before the Teamsters can represent them. The Teamsters have insinuated that the existing union is not tough enough, according to the FOP, but the FOP president disagrees. “I think we have in case after case shown that we are willing to fight what we think is a fight,” he said.

Two deputies who have recently switched to the Teamsters disagree with the FOP. One deputy who is accused of lying about what he saw in a discipline case involving another deputy has chosen the Teamsters over the FOP to defend him in his disciplinary hearings. The other has switched to the Teamsters because he feels an outside organization will be more likely to challenge the status quo. He says, “It’s time for a change.”⁵⁰

QUESTIONS

1. Is it good or bad for one union to challenge another to represent these deputies, and why?
2. Discuss whether the aggressive approach of the Teamsters is appropriate and legal under the circumstances.
3. If you were sheriff, which union would you rather deal with? Is there a lesson there?

S U P P L E M E N T A L C A S E S

Wal-Mart and Union Prevention

This case covers Wal-Mart efforts to stay nonunion. (For the case, go to www.cengage.com/management/mathis.)

The Wilson County Hospital

This case deals with labor disputes in a unionized hospital. (For the case, go to www.cengage.com/management/mathis.)

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Appendix A

HUMAN RESOURCE CERTIFICATION INSTITUTE: PHR AND SPHR TEST SPECIFICATIONS

The two most utilized levels of certification are the **Professional in Human Resources (PHR)** and the **Senior Professional in Human Resources (SPHR)**. Examination questions for both levels cover a wide range of topics. PHR questions tend to be at an operational/technical level, whereas SPHR questions tend to be more at the strategic and/or policy level. Each question lists *four possible answers*, only one of which is correct.

The test specifications identify six *Functional Areas* plus a *Core Knowledge* section. After each major functional area are the weightings for that area. **The first number in the parentheses is the PHR percentage weighting, and the second number is the SPHR percentage weighting.** Within each area *responsibilities* and *knowledge* topics are specified. Readers of this book can identify specific content information for the PHR and SPHR topics using the www.hrci.org website. Exams can be taken by professionals either online or at designated physical locations.

FUNCTIONAL AREAS:

01 STRATEGIC BUSINESS MANAGEMENT (12%, 29%)

Developing, contributing to, and supporting the organization's mission, vision, values, strategic goals, and objectives; formulating policies; guiding and leading the change process; and evaluating HR's contributions to organizational effectiveness.

Responsibilities:

- 01 Interpret information related to the organization's operations from internal sources, including financial/accounting, business development, marketing, sales, operations and information technology, in order to contribute to the development of the organization's strategic plan.
- 02 Interpret information from external sources related to the general business environment, industry practices and developments, technological developments, economic environment, labor pool, and legal and regulatory environment, in order to contribute to the

development of the organization's strategic plan.

- 03 Participate as a contributing partner in the organization's strategic planning process.
- 04 Establish strategic relationships with key individuals in the organization to influence organizational decision making.
- 05 Establish relationships/alliances with key individuals and organizations in the community to assist in achieving the organization's strategic goals and objectives.
- 06 Develop and utilize metrics to evaluate HR's contributions to the achievement of the organization's strategic goals and objectives.
- 07 Develop and execute strategies for managing organizational change that balance the expectations and needs of the organization, its employees, and all other stakeholders.
- 08 Develop and align the organization's human capital management plan with its strategic plan.
- 09 Facilitate the development and communication of the organization's core values and ethical behaviors.