Introduction to the Regulation of Labor Unions and Collective Bargaining

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What is a Labor Union?
- Collective Action by employees and their representatives targeted at an employer(s).
  - Craft union: organizes EEs by occupation, such EEs in the building and construction trades or the railroads.
  - Industrial union: organizes all employees by industry, such as the UAW.
- Collective Action by class of workers targeted toward the political establishment.
  - Social democratic parties, in central Europe.
  - Knights of Labor, in the U.S.

Our Knowledge of Labor History
- Why does the rest of the world celebrate Labor Day on May 1st?
  - ...and the U.S. on the first Monday in September?
- What event is being commemorated?
- The Haymarket Riots of May 1 to 4, 1886.
  - In Chicago: @ Deplanes & Randolph Streets
  - Small protest over strike at McCormick Plant
  - Bomb explodes, police killed, strikers beaten, union leaders hung after “show” trials.
Conflict Between Economic and Political Objectives

- Evolve starting with era of "Jacksonian democracy" & economic prosperity.
- Evolution of two views of unions led to two different paths of union development:
  - Traditional view: Unions consist of homogeneous groups of workers with common skills and interests seeking improved living standards and job security.
  - Alternative view: Unions are organizations of wage earners who are subject to the same economic and political relationships regardless of their skill.

Unions Promote Political Objectives

- Government should promote equal opportunity/outcomes through legislation,
  - Instead of through collective bargaining.
  - In addition to collective bargaining.
- Improve living standards by advocating for laws limiting the length of the workday, preventing imprisonment for debt, protection of wages against bankruptcy, free education, and health and safety legislation.

European and U.S. Unions Have Different Traditions & Objectives

- Differences between Continental and Anglo Unions:
  - Continental Unions: The union movement evolves out of Social Democratic parties. Centralized bargaining and strong legislative agenda.
  - Anglo Unions: Decentralized unions organized by skill of worker and industry. A firm might negotiate with several different unions, each representing different groups of employees. Weak legislative agenda.
**Differences between U.S. and U.K. unions**

- Initially both countries outlawed unions.
- Unions illegal conspiracies that interfered with the right to contract freely and restrained the free flow of goods and services.
- Development of U.S. unions followed those in the U.K. by about a generation.
- Gradually, legislation recognizes and "protects" unions and their practices.
- Labor Party evolves in the U.K. by 1900.

**Distinctive U.S. Labor History**

- Most extreme example of decentralization.
- Most effective unions are relatively apolitical.
- Without emphasis on political action to improve living standards, collective bargaining and strikes (or the threat of strikes) are particularly important to improve living standards.
- U.S. labor history characterized by more industrial unrest than in other countries.
- Today, the union-management relationship is heavily regulated, partly as a result of that history. (Contrast with European countries.)

**Characteristics of a Unionized Work Place**

- **Collective Action**
  - Union is the exclusive representative of the employees in the "bargaining unit."
    - No unilateral changes in "terms and conditions of employment" without bargaining with the union.
    - No bargaining with individual members of the "bargaining unit."
- **Collective Bargaining Agreement ("Contract")**
  - Stipulates terms and conditions of employment.
  - Fixed duration.
COLLECTIVE BARGAINING AGREEMENT

- A. Union Security Clause
- B. Management Rights Clause
- C. No Strike/No Lockout Clause
- D. Work Rules, Hours of Work & Overtime
- E. Non-wage Benefits: Pensions & Welfare
- F. Seniority
- G. Base Wage Rates, Wage Increases, Shift and Overtime Premiums
- H. Grievance Procedures and Arbitration

Labor Unions and Federations

- The AFL-CIO, or Change-to-Win are not unions, they are labor federations.
- The United Food and Commercial Workers Union is a union.
- National Union charters Local Unions
  - “franchise” relationships.
  - Authority between national unions and locals varies.

Union Representation in the Workplace

- Private sector: 8%
  - New York: 24%; North Carolina: 2%
- Public Sector: Local government ~ 45%
  - Blue v. Red states.
- 50 years ago: 35%
  - Goods Producing Sector: ~ 60%.
  - Organizational failures lead labor unions to
    - Develop new techniques: "corporate campaigns"
    - Advocate for the Employee Free Choice Act (EFCA).
Evolution of Policy to Regulate Union – Management Relations

- Conspiracy Doctrine.
- Restraint of Trade Doctrine.
- World War I Protections of unions.
- Railway Labor Act (1926).
- Norris – LaGuardia Act (1932).
- The National Labor Relations Act (1935).

The Employment-at-Will Doctrine

- The principle that the employment relationship is symmetric:
  - if an employee can quit without cause
  - an employer can terminate without cause.
- Applies to hiring, promotions, transfers, and terminations.
- Origins in English Common Law

Conspiracy Doctrine

- The precedent for this doctrine rested in British common law.
  - Since the Black Plague during the 14th century, well established that concerted action by either workers or employers was a criminal activity.
  - Court holds that "(A) combination of workmen to raise their wages may be considered in a two-fold point of view: one is to benefit themselves . . . the other is to injure those who do not join their society. The rule of law condemns both."
### World War I Protections

- 1. The right of workers to organize in trade unions and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.

- 2. The right of **employers to organize in associations or groups and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the workers** in any manner whatsoever.

- 3. **Employers should not discharge workers** for membership in trade unions, nor for legitimate trade union activities.

- 4. The workers, in the exercise of their right to organize, **shall not use coercive measures** of any kind to induce persons to join their organization, nor to induce employers to deal therewith.

### Railway Labor Act (1926)

- Congress passes into law a conference report written by railroad and union officials.
- Labor disputes should as much as possible be settled by collective bargaining instead of by a national board.
- "Adjustment & Mediation Boards" were established.
- Union representatives chosen without ER interference.
- After 1930 Supreme Court decision, 1st Congressional success to protect U.S. workers "right" to organize.

### The National Labor Relations Act (The Wagner Act)

  - Adopted from WW I protections
- The National Labor Relations Board.
  - Removes lower level district courts from business of adjudicating labor relations issues.
  - 5 Member Board & General Counsel's office.
- List of employer unfair labor practices.
- Regulates the process for establishing a union.
  - **No protection for organizational strikes.**
Topics in the Regulation of Labor Management Affairs

- Employer Unfair Labor Practices
- Remedies.
- Employee Free Choice Act.
- Structure of the NLRB ("the Board").
- Regulation of Union Organizing.
- Taft–Hartley Amendments.
- Union Unfair Labor Practices.
- Regulation of Strikes.
- Self-regulation: Contract Administration

Section 8(a)(1) of the NLRA

- No interference with "concerted activity."
- & other forms of interference:
  - no threats
  - no spying
  - no selective solicitation rules
  - Weingarten Rights: right to have union official present when disciplined - discrimination

Section 8(a)(3) of the NLRA

- No discharges based on union activities or sympathies.
  - "Salting" is protected activity.
- no other type of discriminatory treatment: denial of overtime, promotions, or vacation time; discipline; refusal to hire; transfer of work to nonunion plants; refusal to hire, etc.
Section 8(a)(5) of the NLRA

- Duty to bargain in "good faith."
- Must bargain with intention of reaching an agreement:
- Must bargain over "mandatory" issues.
- Must provide information
- NO direct bargaining with employees.
- NO unilateral changes: during organizational drives, during negotiations, during term of contract.

Remedies

- Cease and desist orders
- Make whole remedy
  - No punitive damages
  - Return plaintiff to economic status had they been no violation of the NLRA.
  - Responsibility to mitigate damages.
- Remedies for Section 8(a)(3) violations.
- Remedies for Section 8(a)(5) violations.

EFCA and Remedies

- Employee Free Choice Act proposes to:
  - Expedite adjudication of ER UFLP alleged in organizational settings.
  - Double damages.
  - Up to $20,000 civil penalty for each violation of the Act.
The NLRB

Growing the Union

- New employees in a growing unionized firm.
  - If EEs in the same bargaining unit.
  - New EEs or new establishment at another location not automatically part of union.
- NLRB representation election
  - Petition for an election
  - Secret ballot election.
- Voluntary “card-check” recognition.
- Pre-hire agreements (construction only)

Pre-hire Agreements

- In construction, a trade union may go to the employer prior to or during a project and demand that she sign on to a local collective bargaining agreement.
  - Under section 8(f) of the NLRA, legal for construction unions and employers to agree to closed shop.
  - ER can agree to discharge existing EEs and hire union members.
- NLRB representation elections have been uncommon in construction.
  - Project duration too short.
How Do Unions “Organize” Employees During a Campaign

- Workers approach union leaders in their community.
- Union organizers approach workers outside the workplace.
- Build up lists of names, addresses, and phone numbers of employees of targeted employer.
- Designate employees who act as leaders of the organizing effort.
  - Often later become union stewards or members of the union’s bargaining committee.

Petition

- After grassroots work, union officials or employees who are part of the “organizing committee” circulate authorization cards.
- Cards state that EE authorizes the union to represent then or an NLRB supervised election.
- Union must collect signatures from 30% of employees, but always collects more.

Demand Employer Recognition

- (1) Demand voluntary recognition by employer.
  - Only if a majority of EEs have signed authorization cards.
  - "card-check" recognition.
  - management trained not to look at cards.
- (2) Demand employer neutrality in subsequent election campaign.
- (3) Union and employer must bargain over the definition of the bargaining unit.
  - efforts at "gerrymandering."
- (4) NLRB Regional Director (RD) imposes unit, if parties cannot agree.
  - 20% of the time.
  - uses pre-determined "community of interest" standards.
The Election Campaign

- 4 to 6 week campaign
  - conducted under "laboratory conditions:" Speech regulated.
  - Can not make threats and promises that are contingent on the outcome of the election.
  - EE's have "right" to freely choose to be represented by the labor organization of their choice without interference from the ER.

- Possible to have more than 1 union on the ballot:
  - e.g. an AFL-CIO, or a Change-to-Win affiliate or an independent union.

- Secret ballot election
  - Union must secure 50% + 1 of the votes cast.

Objections Filed and Hearings by Regional Director

- Losing party can file with the Board objections to winning party's campaign conduct.
  - What determines whether the RD sustains or overrules losing party's objections?
  - Not did it happen, but did it matter.

- If objections are sustained:
  - (1) Election could be rerun.
  - (2) Gissel Bargaining order.

- NLRB won't hear an appeal to Regional Director's decision in a representation case:
  - To get hearing before a Court of Appeals, ER must refuse to bargain in good faith with the union.
  - The election issues are addressed when the unfair labor practice complaint reaches the court.

Certification

- **Union Wins:**
  - The union is the exclusive representative of the firm's employees.
  - Duty to bargain in good faith.
  - Presumption that union represents workers for at least one year after certification.

- **Union Loses:**
  - No formal organizing activity for one year.
Reality: Few New Union Members Through NLRA Representation Elections

- During FY 2004:
  - 2,240 "RC" elections
  - 159,806 eligible voters
  - 131,253 votes cast
  - Size of bargaining unit:
    - 1 to 10 EEs: 20.3%
    - 11 to 19 EEs: 19.4%
    - 21 to 39 EEs: 20.5%
    - 40 to 99 EEs: 22.0%
  - Unions win - 57%
  - EEs in units unions win - 79,132

Modern Organizing Practice

- Target ER with a Corporate Campaign
  - Designed to put economic pressure on the ER.
  - Union can not directly force the ER to accept the union.
  - Why?
- Pressure from the campaign, ER agrees to
  - Remain "neutral" during NLRB election.
  - Agree to card check recognition.
  - In return the union suspends the campaign.

What Would EFCA Do?

- Allows for involuntary "card check" recognition.
- Union collects "authorization cards"
- NLRB Regional Director verifies, names, authenticity, and majority
- Union is certified.
Anti-EFCA Movement

- What do Saddam Hussein, Local union leader fill in the blank, and Osama bin Laden have in common?
  - They are all opposed to secret ballot elections!

First Contract Negotiation

- Winning unions do not always secure a first contract.
- NLRB does not keep track of such statistics:
  - 20 year old study suggested that union obtains a first contract about 2/3 of the time.
  - Number of workers that will be covered by a CBA less than the # workers in units in which the union is certified as the exclusive representative.
- Strikes more likely at this stage.

What Would EFCA Do?

- Requires that contract impasses be resolved through “binding arbitration.”
- New union & ER have 90 days to reach a contract
- Mediator has 30 days to encourage the parties to reach a voluntary agreement.
- Parties select and arbitrator who will impose a 2 year settlement.
The Taft-Hartley Act

- 1947 Amendments to the NLRA
  - Designed to limit union power.
  - Shift to government "neutrality."
- List of union unfair labor practices under subsection 8(b).
- Creates a "decertification" election process.
- "Devolve" to states regulation of "union security" clauses.
  - "right-to-work" (red) states

Section 8(b) of the NLRA

- (1): To restrain or coerce employees in the exercise of their rights to join or to refrain from joining a labor organization.
  - \( \rightarrow \) Duty to fair representation
- (2): To force an employer to discriminate against an employee (unless the employee refuses to pay union dues).
- (3): To refuse to bargain collectively with an employer.

Section 8(b) of the NLRA

- (4): To engage in a secondary boycott.
- (5): To charge exorbitant initiation fees.
- (6): To force an employer to pay for services that are not performed.
- (7): To engage in "organizational" picketing to pressure an employer to recognize a union without a representation election.
  - Landrum-Griffin Act of 1959
  - Empowers the DOL to monitor & regulate internal union affairs.
### SECONDARY BOYCOTTS

- During a strike, a union seeks to encourage another employer to cease its business with the struck employer.
  - May not picket the "secondary" employer.
  - Contrast with Corporate Campaigns.

- **The Ally Doctrine**: Does the secondary employer cease to be a "neutral" and become an "ally"?
  - When the employer aids a primary employer by doing "struck work."
  - When there is a relationship of "common ownership, and active common control" between the primary and secondary employer.

### REGULATION OF STRIKES

- Recognize as an essential practice used by unions for achieving their bargaining objectives.

- The right to strike is protected if...
  - Union provides adequate notice.
  - No picket line misconduct. (e.g., restrictions on mass picketing, use of "strangers," physical abuse or threats on the picket line).

- **Policy challenge is that the NLRA also acknowledges the employer's right to "maintain operations."**

### Hiring Replacements

- Courts permit employers to hire "temporary" or "permanent" replacements for striking employees.

- **Economic Strikes**: Permanent Replacements
  - An economic strike is for better terms and conditions of employment.

- **Unfair Labor Practice Strikes**: Temporary Replacements
  - Strike is caused by or prolonged by the employer's unfair labor practices. E.g., strike might be precipitated by an employer engaging in "surface" or "sham" bargaining during contract negotiations.
Contract Administration

- Long-term collective bargaining agreements with meaningful "no strike" clauses depend on the parties agreeing to mechanisms for that resolve disputes that arise while the contract is in effect.

- Formal grievance-arbitration procedures.
  - Resolve all disputes that "as to the meaning, interpretation, and application of the provisions of [the contract]." (A. Cox, Labor Law, p. 565).
  - The union agrees not to strike, unless the firm refuses to abide by the decision of the arbitrator.

The Collective Bargaining Agreement is a plan for Industrial Self Government

- Taft-Hartley Act (1947): "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

Supreme Court Strongly Endorses this Policy

- Steelworkers Trilogy (1960): "[t]he function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator."
Summary

- U.S. (and Canadian) labor-management relations are highly regulated.
  - Regulation of relationships/interactions
  - Policy recognizes incentives for and consequences of collective action
  - Encourages decentralized bargaining
  - Little regulation of outcomes
- EEs’ rights to support or join unions and collectively bargain over terms and conditions of their employment is recognized by U.S. law.
- These EE rights & union practices are balanced against employers’ rights to operate & maintain their business operations.
- Decentralized industrial relations environment compared to continental Europe.