ANTONE ABOUD ASSOCIATES, INC.

A PRIMER ON LABOR RELATIONS

written by,

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This document is a primer on labor relations that we believe will provide guidance to those who experience a union organizing campaign. We would like to stress that this is a "primer", not a manual or otherwise exhaustive set of rules and interpretations which should govern every decision about this subject. It certainly is not a substitute for competent legal advice about any particular issue facing your agency. We have written this to provide an historical, legal and theoretical perspective that will help organizations better understand the labor relations environment in which they work.

What is a Union?

A union is an organization which seeks to help employees improve their terms and conditions of employment. Such organizations traditionally have used three primary methods to achieve this objective:

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1. Collective Bargaining: a negotiations process involving representatives of employees and management who create a collective bargaining agreement containing provisions which regulate the employment relationship.

2. Legislative Enactment: lobbying and other political activities resulting in public policy regulating labor relations and employee benefits.

3. Mutual Assistance: development of insurance and other employee organized activities providing benefits and opportunities for individual growth and development.

Generally, American unions have engaged in collective bargaining as the primary means of helping their members. The provisions of the National Labor Relations Act [NLRA], which we will discuss in following sections, represent the framework within which labor and management establish collective bargaining processes.

Political activities, including lobbying, occur at every level of union structure: local, state and national. At the national level, lobbying and other political action also occur under the auspices of the American Federation of Labor-Congress of Industrial Organizations [AFL-CIO], a confederation of national and international unions, as the primary political action vehicle. State AFL-CIO organizations operate within each state to represent statewide concerns. Similar federations engage in political action within most large cities.

Prior to the New Deal, labor unions were careful to remain relatively detached from permanent alliances with the major political parties. The doctrine was simple: reward friends, punish enemies. Such a doctrine allowed labor to be quite discriminating during campaigns. Since the New Deal organized labor has been more frequently an ally of the Democratic Party. In some states -- and within some major urban areas in other states -- organized labor provides an extraordinary number of people to help in voter registration drives and other partisan activities. At the same time, the fact

that labor unions themselves have taken such positions does not by itself mean that members have always voted Democratic in the same proportion. In fact, a good many of the "Reagan Democrats" have been members of labor unions in the Northeast and Midwest. The fact that unions have organized into confederations for purposes beyond collective bargaining provides members with opportunities to easily communicate and coordinate initiatives with other labor organizations. With respect to even local strikes, that ability can help marshal resources to workers on a picket line.

Finally, mutual insurance -- establishment of benefit programs for members -- has existed from the earliest moments of labor history in this country. Virtually every union provides some form of supplemental insurance program for members. In many cases such involvement extends beyond insurance. Some unions provide extensive educational opportunities; others organize union sponsored credit unions.

EMPLOYEES, UNIONS, EMPLOYERS AND THE LAW

Modern labor law dates from the New Deal. Prior to that decade there was virtually no legislation promoting collective bargaining with the exception of the Railway Labor Act which was passed in the 1920's.

The Right to Engage in Collective Bargaining

The public often assumes that employees in this country have a constitutional right to join unions. That belief is incorrect. The right to join unions is a product of Section 7 of the NLRA which provided as follows:

Employees shall have the right to self- organization, to form, join or assist labor

> organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...

That statement of right was revolutionary as a public policy during the 1930's. The only industry that had practiced such tolerance of collective bargaining in law had been among the railroads. In 1926 Congress had passed similar, although not identical language, for railroad employees. In every other industry, no employee had the right to join a union or engage in collective bargaining. Where such practices existed -- primarily in the building trades and other occupations using highly skilled employees -- employees joined unions at great peril to at least their jobs. In fact, what employees wanted was not in some cases even considered in determining whether collective bargaining would exist. Sometimes an employer would agree to recognize a union even though there was no evidence the employees preferred that union, another union or no union at all.

In 1947 the law was amended to also insure that employees would have the right to refrain from union activities if they wished. The only exception was the obligation to abide by union security clauses -- or, commonly, the "union shop" provisions of labor agreements -- which labor and management might have negotiated regarding the paying of dues and fees to the elected bargaining representative.

Nonetheless, not all employees in this country received whatever protection that the NLRA provided. For example, the law exempted public employees -- federal, state and local -- from coverage. It still does. State and local employees, if covered at all, must rely on the public policies of their individual states. Federal employees engage in a variant of collective bargaining, originally as a consequence of a series of Executive Orders, codified as Section VII of the Civil Service Reform Act of 1978.

Interestingly, individuals working in not-for-profit health care establishments were exempted from the law when written. As such, employees in this industry only had the rights associated with Section 7 if each of their states had passed "Little Wagner Acts", state-by-state legislation duplicating most of the provisions of the NLRA [Wagner Act] for non-covered private sector employees. New York State had such a statute. However, during the 1970's, Congress amended the NLRA to remove this exemption. Currently, health care employees in the not-for-profit sector have the right enjoyed by virtually all other employees under the NLRA.

The Role of Elections

Under the NLRA employee desires finally became the vehicle for determining whether collective bargaining would exist. Section 9 of the statute provided an election mechanism to measure that desire. If a group of employees within an organization wanted such an alternative, they could make such a demand on the employer. If the employer had a good faith doubt that the union representing the employees was truly a majority choice, the employer could refuse recognition. The union could then petition the National Labor Relations Board [NLRB] to hold an election. The NLRB would determine if the union sought representation with a unit of the employer's organization that was "an" appropriate unit for purposes. One should note that the law does not require the single best unit for such purposes. At this point the "unit", or identification of job titles, represents the range of individuals who will be permitted to vote in the election. Hence, we can identify this as the "election unit". The touchstone for determining whether a unit is appropriate is whether the employees in the unit share a "community of interest".

Obviously the composition of the election unit can be crucial in determining the outcome of

an election campaign. Generally unions have sought to represent only that portion of the organization where they believed they could find a majority of votes [of those present and voting] to win. Thus the notion of "an" appropriate unit was compatible with many different possibilities, giving unions a chance to use a "building blocks" approach to organization. They could start with a small foothold in an establishment and seek to represent additional employees as they grew in strength.

Again, the community of interest standard was one issue associated with the composition of an election unit. At the same time the law operated in another significant way to affect this decision. Section 2[3] of the original statute -- a section which has never been amended -- excluded supervisors from coverage. If the law had permitted such coverage, an employer might otherwise have an advantage during an election period since most employers believe supervisors are more likely to vote against representation than rank-and-file employees. [Of course, if supervisors were in the election unit and the union won, the resulting alliances between supervisors and rank-and-file employees create a more complex management structure.]

In addition, the law provides a definition for "professional employees" which is critical for determining election unit possibilities. Unlike supervisors, professional employees are covered if they themselves are not a supervisor; however, the law explicitly provides that professional employees can not be forced into an election unit with non-professional employees without their [the professional employees'] consent.

Employer and Union Conduct during Organizational Campaigns

In a later section we will discuss the reasons why individuals choose to belong to unions and the factors which affect the way employees vote in NLRB elections. Nonetheless, employers must

be aware of several sections of the NLRA, as amended, with respect to both employer and union conduct, particularly during union organizational campaigns.

When the NLRA was first passed in 1935, the law contained a series of employer unfair labor practices. These provisions, all contained in Section 8 of the statute, were a product of what policy makers believed to be legitimate concerns based on the history of labor and management relations in the then preceding decades. In 1947, the NLRA was amended to include union unfair labor practices. Today the law contains both, with the employer ULP's numbered as Section 8[a] and union ULP's numbered as Section 8[b] of the Act.

There are five employer ULP's:

1. Section 8[a]1 contains a general prohibition against an employer's interference with an employee's rights established by Section 7 of the Act. [Each of the succeeding ULP's represents a specific type of interference.] There are a number of common ways in which an employer might violate this section. For example, an employee might distribute union literature during a lunch hour in an employee lounge. Generally it would be a violation of Section 8[a]1 to prohibit the employee from such activity. However, it generally would not be a violation to prohibit such distribution at the lunch counter of a restaurant, for example, if other types of canvassing were similarly prohibited.

   Another common, although easily understandable error, is what the NLRB has described as illegal polling of employees in the face of a union's demand for recognition. Let's suppose a union asks to represent employees, showing the employer the list of employees who have signed union authorization cards. Perhaps the

employer decides to check the accuracy of the sentiments reflected on the cards by calling some of the employees on the list into hi/r office to discuss the issues. The NLRB would consider that activity as a violation of Section 8[a]1 since the Board has come to accept the notion that an employee, when asked alone in the employer's office about the decision to join the union, might be intimidated -- even where the employer does not display hostility -- into saying "no, I don't favor the union". The law does not prevent any canvass of employees, but the NLRB has developed a series of rules which govern such a poll.

We should add that Section 8[c] of the act gives an employer the right to "free speech" as long as such speech does not violate other sections of the law. Section 8[c] was added because at one point the NLRB was likely to find any statement from the employer which sought employee support for a no-union vote to be a violation of Section 8[a]1.

Other common violations include employer behavior, such as:

- Spying or condoning spying on employees as they seek to engage in otherwise protected activities;
- Promising benefits to employees if the union loses an election.
- Suggesting that the enterprise will be forced out of business if the union wins the election.

2. Section 8[a]2 makes it illegal for an employer to set up a company union or dominate an existing union in a way that compromises its ability to independently represent employees' interests.

The legislature included this section of the statute because of the common employer practice, particularly during the 1920's, of creating company unions as a means of combatting employees' interest in a legitimate union. Company unions ordinarily existed only with the assistance of the employer. The employer might provide start-up money, effectively appoint officers and subsequently be privy to all of the union's decision making processes. In less extreme cases the employer might provide only financial support. Under the law, either circumstance would be a violation.

3. Section 8[a]3 make it illegal to penalize any employee as a consequence of that employee's lawful Section 7 protected activities.

To understand this section, we must first start with the employment-at-will doctrine enunciated by one jurist in the context of a Section 8[a]3 case: an employer can fire an employee for a good reason, a bad reason, or no reason at all, as long as the discharge is not for a reason outlawed under Section 8[a]3. In other words, the NLRA did not prevent employers from firing individuals who are union members; it only prevented employers from firing individuals because they are union members.

In including the specific prohibited practice, the law was taking into account the common employer practice prior to 1935 of not only firing employees who joined unions, but also distributing the names of such known "trouble makers" to other employers: i.e. the notorious practice of "blacklisting". Obviously, the fear of being fired is an extraordinarily effective way of keeping someone "loyal" to the employer. Without such a prohibition, it has always been unlikely that unskilled and semi-skilled

workers could organize unions.

This same provision makes it a violation if an employer creates hiring practices which discriminate against individuals who are members of unions or are believed to have "pro-union" sympathies.

But before leaving this provision, we must emphasize that the law does not prohibit the disciplining of an employee if the employer is not motivated illegally. In one case I recall, an employee was active in seeking to establish a union at his workplace. In fact, the union won the election. At the same time the employee made substantial errors in work related performance. The employer engaged in progressive discipline. The employee continued to make errors resulting in dismissal. The NLRB refused to find a violation when provided the clear- cut record associated with the employee's performance. In essence, the employee established the union but lost his job. Merely being a union member or advocate does not protect one from accountability.

4. Section 8[a]4 makes it illegal for an employer to discriminate against any covered employee who gives testimony at a hearing under the Act.

5. Section 8[a]5 makes it illegal for an employer to refuse to bargain in good faith where a union has been selected by a majority of employees for the purpose of bargaining collectively.

When the NLRA was first passed, the law did not contain any listing of union unfair labor practices analogous to those noted above. In 1947 the Congress -- over President Truman's objection

-- passed a number of amendments to the law. A number of those outlawed certain union behaviors.

Section 8[b]1 of the law now makes it illegal for a union to interfere with employees' rights under Section 7. In essence, this section is the equivalent of Section 8[a]1, but directed at union activity. It explicitly recognizes the possibility that a group of employees may be improperly affected in their exercise of their right to choose not only between union and no-union, but also among competing unions. In essence, the law agreed that "union" and "employee" were not synonymous.

Generally there have been many fewer cases of union interference under this section than under the equivalent employer ULP. [Later in this section we will identify other ways in which the law significantly affected union conduct.]

Section 8[b]2 prohibits a union from causing an employer penalize an employee because of the employee's union activities. Such a provision most commonly is used to prevent the firing -- or other adverse action -- against an employee who has thrown support to a competing union. Nonetheless, the union could demand, without violating this section, that an employer fire an employee who failed to pay dues and fees as required by a lawful union shop agreement.

Section 8[b]3 makes it illegal for a union to refuse to bargain in good faith once it has been certified or recognized as the majority representative. [Again, we will discuss the meaning of this provision at a later point in this document.]

But the most onerous of all provisions directed against unions, the provisions which significantly reduced unions ability to influence certain employers, were the extensive restrictions on union strikes and boycotts. Under present labor law, unions enjoy the right to strike. Unions might also picket the employer's place of employment and seek to enforce a boycott against an employer's products, all ways to force the employer to bend to union demands during an impasse in negotiations.

However, the 1947 amendments made the use of such devices against secondary employers illegal. A secondary employer is one which is not the employer with which the union has a dispute. For example, suppose a union and an employer could not reach agreement during negotiations. The union could call a strike against the employer. The union could ask other businesses not to do business with the employer. But, the union can not seek a boycott or strike against any other employer -- perhaps a local grocery wholesaler who continued to sell food to the employer -- for failing to support the union's position.

Such a limit on the union is substantial, particularly in some communities where local labor councils are well organized and committed to helping each member union during their individual labor disputes.

Why Do Employees Join Unions?

The research approaches this question from a number of directions: employee attitudes toward unions, employee attitudes toward work and working conditions, election procedures, the content of the election campaigns. The danger for an employer is seeking to use any piece of research without understanding its implications in the larger context of public policy.

For example, in one article summarizing research in this area, the author writes that, "[t]here is a tremendous organizing opportunity for the labor movement among unorganized minority employees and white-collar women because of their prounion attitudes...." The author had previously noted that there was a significant correlation between attitudes toward unions and a pro-union election vote. To an employer seeking to maintain a non-union work environment, the message might be clear: don't hire minorities or white-collar women. However, such a tactic would immediately place

one in violation of Title VII of the Civil Rights Act of 1965. A similar analysis could be made of restrictions on the hiring of employees who previously worked in unionized environments. If the NLRB were to determine that the employer's motive was to prevent the hiring of individuals supposed to harbor pro-union sentiments, the employer would likely have violated Section 8[a]3 of the NLRA.

Actually, the possibility of adopting such employment policies, even if not illegal, would result in self-defeating effects at work. It is not likely that any employer would benefit the search for excellent candidates by excluding individuals based on demographics. The single best candidate could be among those not considered.

Other research suggests a more important relationship over which employers have an exceptional amount of influence which is not illegal, or, for that matter, unethical. The relationship is best illustrated by an anecdote a full-time Teamsters' Representative once related about his attempt to organize a small trucking company. He had tried unsuccessfully for years to solicit employee interest. After several such attempts, he received a call from the group and within three days had signed up a majority using standard authorization cards. Why? Because the employer -- always previously believed by the employees to be fair -- withdrew a particular benefit without warning or explanation to employees. According the Teamsters' Rep, "I didn't organize those employees, the employer did!"

In essence this story illustrates perhaps the most powerful indicator of a pro-union vote where employees are otherwise positively predisposed toward unions: the employees' satisfaction with working conditions. Such a relationship is hardly surprising. Most human resource management theory has identified a strong relationship between rewards and job satisfaction. The relationship is positive: employees who believe that they receive valued rewards tend to have higher job satisfaction;

employees who believe they do not receive valued rewards tend to have lower job satisfaction.

There is another issue which helps to determine satisfaction in these circumstances: equity or perceived fairness. Even if someone receives valued rewards and otherwise would be satisfied, the person's feelings will be influenced by the degree to which the reward appears fair. For example, does someone else get the same reward for less work? Does someone get a greater reward for the same work?

Having established this relationship, research indicates that job dissatisfaction results in a variety of performance issues: higher absenteeism, higher turnover, higher number of complaints or grievances, a higher likelihood to choose a union to correct such perceived conditions. Such sources of dissatisfaction involve more than simply wages and promotion opportunities, although these are significant issues. They also include questions about the manner in which supervisors treat employees.

All things being equal, an employer with wage and promotion policies which appear unfair to employees -- perhaps appearing so because they are so, or because the policies have not been adequately communicated -- is more likely to be unionized than one that does not exhibit the same condition. All things being equal, an employer which tolerates insensitive treatment by managers of rank-and-file employees is more likely to be unionized than one does not tolerate the same condition.

What Happens if the Union Wins the Election?

Once an election takes place, the result -- pending any challenges -- defines the nature of the subsequent relationship between the employer and union.

If the union loses, the employer does not have to maintain a business relationship with the union. This, however, does not mean that the law can be ignored. For example, the employer cannot

at this point punish employees who were union organizers (a violation of Section 8[a]3) or set up a company union (a violation of Section 8[a]2). In addition, the union is generally unable to file a subsequent certification petition for a period of one year.

If the union wins the election, both parties are now required to bargain in good faith. In this respect, an employer and union must bargain about "wages, hours and other terms and conditions of employment". Clearly, any obligation phrased in terms such as "good faith" creates some difficult problems for those seeking not only to enforce the law, but those seeking to understand and use it properly. Generally, the NLRB and the courts have held the following about this provision:

1. An employer or union does not violate the provision merely because they do not reach an agreement. In fact, the law never creates the presumption that the parties will in every case do so; the law assumes only that if people bargain "in good faith", they are likely to find common ground.
2. An employer or union must discuss and consider any item which the NLRB identifies as a mandatory subject of bargaining [i.e. wages, hours or other terms and conditions of employment]. A refusal to address such a topic raised by the other party would be a per se violation of the law. For example, suppose a union asked for a 12 per cent wage increase and an employer responded: "We will not discuss wages with you this year." The employer would probably have violated the law. On the other hand, the employer could say: "We understand that you want a 12 per cent wage increase. We simply are unwilling to agree to any increase this year; in fact, we are seeking a reduction in wages." In this latter case, the employer has not violated the law.

3. In reviewing duty to bargain cases, the NLRB will also consider the union or management's totality of conduct. In this circumstance, the Board is looking to determine if each party has arrived at the table with the requisite intention of seeking to reach an agreement. The Board will ask questions, such as: Did one or the other refuse to agree to even the most simple of provisions? Did one or the other constantly cancel or delay meetings? Did one or the other behave in meetings in a manner which suggests a willingness to negotiate? Did the parties send individuals to the bargaining table who had the authority to negotiate?

[In this regard, I remember one negotiations where the employer sat next to his attorney the entire evening reading the daily newspaper as the attorney said "no" to everything the union raised as an issue. Of course, reading the newspaper was not a per se violation of the law, and merely saying "no" was likewise not a violation. But I've always been convinced that taken together the behaviors would have been evidence of an attitude which is inconsistent with the requirement of good faith negotiations.]

Once agreements are made, the parties must reduce them to writing. Generally we describe the resulting document as the labor contract. Ordinarily the parties reference this document in identifying the rights and responsibilities of labor and management during its term. Nonetheless, this does not mean that an employer can not continue to publish related documents, such as an employee handbook. The labor contract, however, supersedes the provisions of any other document which conflicts with it. For example, suppose the labor agreement provides 4 weeks vacation for individuals with 20 years service and the employee handbook provides 3 weeks for the same category of employee. Employees

would be entitled to the 4 weeks in the contract.

We should add that because the union is the exclusive representative of employees, the employer cannot provide alternate benefits or conditions for one or more individuals in the bargaining unit different from the negotiated agreement. For example, suppose an employee decides that s/he would be willing to work for less than the wage rate assigned hi/r job title. That employee would not be free to make such a contract with the employer. In essence, the labor contract establishes a common rule by which all must abide.

In addition, if an employer desires to change any aspect of the handbook not addressed in the labor contract -- or any other policy relating to wages, hours and other terms and conditions of employment -- during the period a labor contract is in force, the employer must first negotiate with the union. The actual application of this responsibility is so complex, however, we reiterate with exceptional force our warning on page #1: this primer is not a substitute for legal advice when you have questions about any particular issue facing your agency.

Almost universally, the parties enforce agreements using a grievance procedure established in the contracts. Such procedures generally include a number of levels, from consideration by first- line supervisors through executive level management. The final step is commonly final and binding arbitration, a procedure that involves a third-party neutral, paid equally by labor and management, whose decision can only be reviewed in court on an extremely narrow basis. For virtually all issues presented at this level, the arbitrator's decision is the last word.

Concluding Remarks

The issue of unionization is one of the most emotional questions which will confront either

employers or employees at work. Unfortunately too often individual "feelings" overwhelm "reason" when contemplating the choices which public policy offers.

This is particularly true with respect to choices an employer can make. Put bluntly, the remedies available to employees and unions under the NLRA, as amended, are relatively weak. An employer motivated by animus against unions might make choices which are illegal -- or perhaps, "sort of" legal -- and not pay a significant penalty under the law. However, one might pay a significant penalty in employee morale, related human resource management problems and the quality of the services one's organization is able to provide.

Our best advice is two-fold. On the one hand, be assertive about what, after study, you believe as an employer is in the best interest of the mission of your organization. If, after study, you determine that a union's winning the election would make achieving that mission unlikely, speak honestly and often during any organizing campaign. And, if the union wins the election, we additionally remind you that an employer is not obligated to say "yes" to everything requested. At the same time, we ask that you not respond in a knee-jerk fashion to unionization. Such an emotional response would make it unlikely that during a campaign you will make choices which are consistent with good management, let alone ethical conduct. And emotional choices beget similar responses. The most difficult relationships exist where adults so easily forget what we teach children every day: we will reap what we sow.

Interestingly, many organizations have extremely constructive relationships with unions representing the agency's employees. Usually these situations mature as both parties accept the other in what amounts to a business relationship. As with any other "supplier", they find ways to solve problems rationally, seeking solutions which represent, wherever possible, the "win/win" objective of

modern bargaining constructs. I would add that in my personal labor relations experience, the overwhelming majority of union representatives understand that employers are not merely a roadblock to better wages, but, in the end, an opportunity for all staff to earn a living. As in many other parts of our life, those from whom we seem most distant often share common values on which we can build a constructive future.

Glossary of Common Terms

AFL-CIO

The AFL-CIO is an acronym for the American Federation of Labor-Congress of Industrial Organizations. This is the organization to which the vast majority of national and international unions[1] belong.

As an association of unions, the AFL-CIO does not conduct collective bargaining activities, but instead focuses efforts on lobbying federal, state and local governments on behalf of its affiliates. The present day configuration consists of the 1955 alliance of the American Federation of Labor -- the oldest association, primarily representing skilled workers in craft unions -- and the Congress of Industrial Organization -- the association of unions which emerged as a competitor of the AFL during the depression and generally representing unions composed primarily of unskilled or semi-skilled workers in the mass production industries.

Agency Shop

A form of union security, agency shop refers to the type of agreement in a labor contract which requires members of the bargaining unit to pay to the certified bargaining agent [i.e., union] dues and/or fees required of all union members. Such an agreement would not require all individuals to become "full members" of the union. Agency shop members would not, therefore, be required to take an oath in support of union activities nor be subject to union

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[1] Unions in the United States use the title "International" because many American unons have active locals in Canada.

discipline; however, such members would also have no opportunity to participate in union activities such as voting in elections and attending internal meetings on union policy and procedure.

Arbitration

Arbitration is a dispute settling mechanism based on the assignment of a third party to hear and then decide a dispute between a union and an employer. This procedure became the option of choice during the Second World War as an alternative to the the use of strikes to settle disputes. Generally courts will assume that if the parties have created a grievance procedure in their contract concluding with arbitration as the final step, then the arbitrator's decision in the matter will be **final and binding**. Rarely does a contract contain the type of explicit language which would establish a procedure to resolve disputes under the agreement as an **advisory** [i.e., **advisory arbitration**] activity.

Bargaining Agent

The bargaining agent is the union which a majority of employees in the certified bargaining unit have chosen to represent them with respect to issues addressing wages, hours and other terms and conditions of employment.

Bargaining Unit

A bargaining unit is that group of employees for which a labor contract is negotiated. Often the bargaining unit and **election unit** are equivalent. However, the employer and/or

union sometimes have sought a particular election unit in order to enhance the possibility of winning the election. The union will generally seek a smaller, the employer a larger election unit. Once the election is settled and if the union wins, the ability of both parties to negotiate effectively may require that they merge the new bargaining unit which resulted from the election with other already certified bargaining units. In some cases a union which negotiates with several employers in the same industry might arrange a multi-employer bargaining structure, even though the NLRB would never certify a multi-employer election unit.

Closed Shop

A closed shop is that type of agreement between an employer and a union which requires that any person who is hired is already a member in good standing of the union. This arrangement gives the union the largest amount of control over the hiring process of any union security arrangement. The 1947 amendments to the National Labor Relations Act outlawed such clauses.

Craft Union

A craft union is one representing those individuals sharing a common skill. We often refer to such individuals as skilled workers: carpenters, plumbers, glass blowers. Historically skilled workers were able to organize into unions, at least during periods of general prosperity, without the benefit of state or federal law. They have also suffered from erosion in types and numbers of members due to mass production techniques. The term “trade union” is equivalent to the term “craft union” inasmuch as the word “trade” refers to a discrete craft.

Dues Check-off

One common form of union security which may exist in a collective bargaining agreement is dues check-off. This arrangement requires that union dues be automatically deducted from an employee's pay check -- much as income tax or social security payments. The deduction is then transferred to the union. Generally unions seek such provisions for two reasons. It is a more efficient way to collect union dues rather than constantly seeking individual members for payment or sending monthly invoices. It also avoids the inevitable conflict in seeking payment, particularly from disgruntled members who might create political controversy around the dues collection issue. Employers, understanding how desirable such an arrangement is for a union, often find this a relatively inexpensive way to give the union a desirable benefit during the give and take of the negotiating process.

Duty of Fair Representation

A union, if it wins an election, is certified as the exclusive bargaining agent of the employees in the resulting bargaining unit. Judicial interpretations have created the concomittant responsibility of the union to treat all bargaining unit members fairly, even those that might not be full members of the union. According to one case, the union may not make decisions based on "invidious discrimination," for example, negotiate a differing wage scale based on race or gender. [The likelihood of such an agreement occuring after Title VII of the Civil Rights Act is small.] The courts have also held that the duty of fair representation also requires that a union not represent members in the grievance process in what amounts to a perfunctory manner.

Duty to Bargain in Good Faith

If a union wins an election, the employer and union then have a duty to bargain in good faith under Sections 8[a]5 and 8[b]3 of the National Labor Relations Act, as amended. Such bargaining will take place concerning wages, hours and other terms and conditions of employment. It is important to understand that the law does not require that the parties must reach an agreement. In other words, an employer or union or both might bargain in good faith but not be able to reach agreement. The NLRB will review a variety of factors to determine whether the parties made a good faith effort, including their availability for meetings, the nature of the proposals and counter proposals they offer and the individual demeanor or negotiators.

Election Unit

The election unit is that group of employees which the National Labor Relations Board determines to be eligible to vote in the election for a common bargaining agent. The law gives the NLRB the discretion to choose "**an** appropriate" unit. In other words, the Board is not required to always choose all employees, or only craft employees, or only employees at one particular location of an employer's enterprise. The law also exempts supervisors from coverage, thus making it impossible for an election unit to be composed of anyone but a rank-and-file employee.

Exclusive Representation

If a union wins an election among a majority of employees voting, the NLRB certifies

that union as the exclusive representative of that group of employees for issues relating to wages, hours and other terms and conditions of employment. Not only does that mean that no other union is legally free to meet with the employer on behalf of some or all the members of the resulting bargaining unit, it also means that no individual employee can "cut a deal" for himself, either better or worse than the agreement struck by the union and employer for all employees. For example, a member of the bargaining unit who is not a union member in good standing might offer to work for less than the wage rate established in the contract. The law would prohibit the employer from making individual agreements of this sort.

Factfinding

Factfunding is a dispute settling process which assigns a neutral third party to a dispute. The factfinder will hold hearings to collect relevant facts and then offer an opinion on how to resolve the outstanding issues. His or her report, however, is not binding on the parties. Generally where used -- commonly in public sector disputes -- factfinding occurs to resolve interest disputes.

Industrial Union

An industrial union is one which represents all rank-and-file employees within the individual companies in a discrete industry. Unlike craft unions, which historically sought only to represent members of a particular craft employed by an employer, industrial unions understood that unskilled or semi-skilled workers could be so easily replaced that they could not effectively negotiate without participation from the skilled workers as part of the

negotiating unit itself. Thus, the United Auto Workers generally included among its members both assembly line workers and individuals employed as skilled craftsmen doing both production and support work.

Interest Arbitration

Interest arbitration is the presentation of a dispute about the interpretation of a contract to a third party [see, **Arbitration**]. This type of arbitration is not particularly common in the United States. It has been most often used as a form of **compulsory arbitration** where certain employers and unions are unable to negotiate a collective bargaining agreement. For example, many states have required employers and unions in police and fire settings to use this final dispute resolution process as an alternative to a situation generating what would otherwise be an illegal strike. Generally arbitrators in such situations are asked to determine the exact nature of the agreement under which the parties will live, or, in other words establish each party's "interest" as reflected in the resulting agreement. We often distinguish interest arbitration from **rights arbitration**.

Maintenance of Membership

A maintenance of membership agreement in a labor contract is a form of union security which requires that any person who is member in good standing of the union at the commencement of the term of the labor contract must maintain that membership during the period of the contract.

Mediation

In certain cases parties in a collective bargaining situation are unable to reach agreement. Mediation will occur where the parties use a neutral third party to attempt to facilitate an agreement. Unlike an arbitrator, the mediator has no authority to impose his or her will on the outcome of the discussions.

Open Shop

An employer which establishes an open shop creates by its own policy a commitment not to agree to union security provisions requiring union members of employees in any collect bargaining agreement. The 1947 amendments to the NLRA contained the controversial Section 14b, which allowed states -- regardless of other provisions of the NLRA -- to pass laws outlawing union security arrangements of any sort. We refer to states which have passed such statutes as “right to work” states.

Rights Arbitration

Rights arbitration is the presentation of a dispute about the interpretation of a contract to a third party [see, **Arbitration**]. The term “rights” refers to the arbitrator’s determination with respect to who is entitled [i.e., has a right] to certain outcomes based on the language of the contract and other evidence, such as the parties intent and established past practices. We often distinguish rights arbitration from **interest arbitration**.

Union Security Agreements

Most clauses in a labor contract contain information about the rights of employees and the employer. There are certain clauses, however, which speak to the security of the union as an organization. Historically the most common have been some variation of the **union**, **closed** or **agency** shop or a **maintenance of membership** agreement. Each puts the employer in the position of requiring some level of employee support of the union as an organization. Another form of support is a dues check off agreement, which places the problem of actually collecting union dues in the hands of the employer.

Union Shop

The union shop is that union security arrangement which requires that any person hired by an employer who is a member of the bargaining unit must join and become a member in good standing of the exclusive bargaining agent [i.e., union]. Generally such provisions allow the person 30 days to actually join the union. The present state of labor law appears to allow union shop agreements to exist -- except in those states which outlaw all union security arrangements. However, judicial interpretation of the existing law essentially has held that a union can only dismiss a person from membership, and, therefore, cause his or her termination from employment, if the person has failed to profer payment of dues and fees required of all members. In other words, although many people describe the law as permitting a union shop, it for all practical purposes only allows the eqivalent of an **agency shop**.