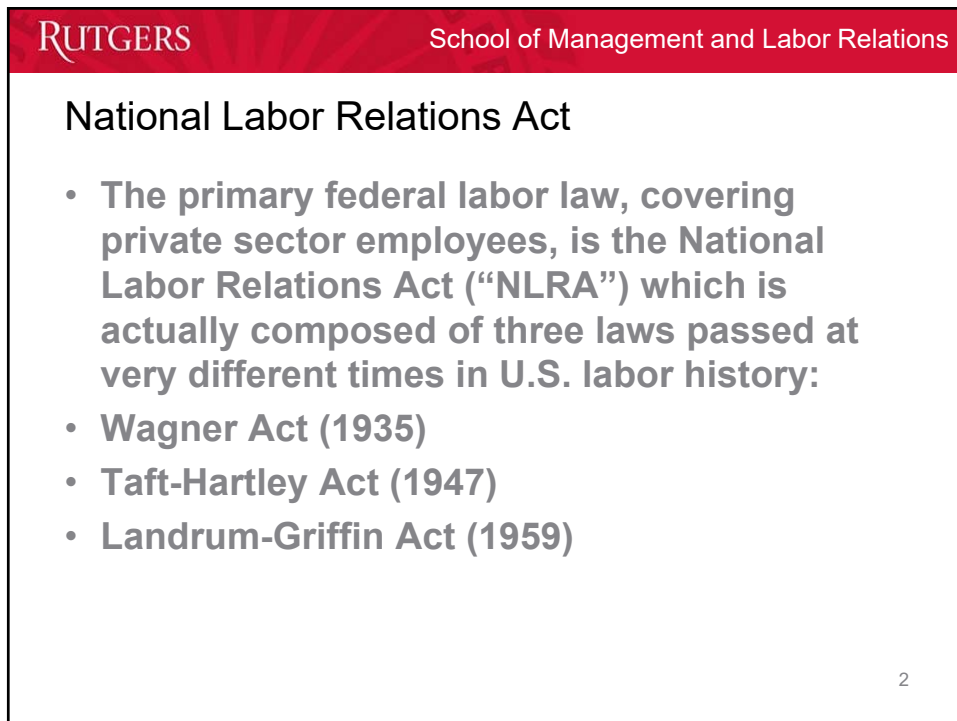


RUTGERS
THE STATE UNIVERSITY
OF NEW JERSEY

IATSE Officer's Institute
"Labor Law Basics"

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National Labor Relations Act

- **The primary federal labor law, covering private sector employees, is the National Labor Relations Act ("NLRA") which is actually composed of three laws passed at very different times in U.S. labor history:**
- **Wagner Act (1935)**
- **Taft-Hartley Act (1947)**
- **Landrum-Griffin Act (1959)**

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NLRA – Wagner Act

- Congress enacted the NLRA in 1935, during Great Depression.
- Authored by Sen. Robert F. Wagner, D-NY.
- Signed into law by FDR over strong Republican opposition.
- Intended to remedy the “inequality of bargaining power” between employers and unions.
- Law created employer “unfair labor practices” and a 3-member “Board.”

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NLRA – Wagner Act

- NLRA provided certain basic legal protections, including the right to:
 - Form Unions;
 - Engage in collective-bargaining;
 - Strike; and
 - Banned “Company Unions.”

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LMRA – Taft-Hartley Act

- **NLRA was subsequently amended in 1947 by the Labor Management Relations Act (“LMRA”), during the Cold War and soon after period of major strikes.**
- **Named after Sen. Robert A. Taft (R-OH) and Rep. Fred A. Hartley (R-NJ).**
- **Vetoed by Pres. Truman, but overridden by Congress.**

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LMRA – Taft-Hartley Act

- **Added Union unfair labor practices.**
- **Prohibited secondary boycotts/picketing and certain strikes (wildcat, solidarity, etc).**
- **Permitted passage of State “RTW” laws.**
- **Banned “Union shops.”**
- **Created an independent NLRB General Counsel, appointed by the President.**
- **Board continued its quasi-judicial functions; increased members from 3 to 5.**

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LMRDA – Landrum-Griffin Act

- **The Labor-Management Reporting & Disclosure Act was passed in 1959, partly in response to concerns over Union corruption and racketeering.**
- **Named after Reps. Robert Paul Griffin (R-MI) and Phillip Landrum (D-GA).**
- **Opposed by Unions since it further strengthened provisions of Taft-Hartley Act.**
- **Signed into law by Pres. Eisenhower.**

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LMRDA – Landrum-Griffin Act

- **The law regulated internal Union affairs, including requirement of:**
- **Secret ballot elections, reviewable by U.S. Department of Labor (“DOL”);**
- **Annual financial reports, filed with DOL;**
- **Minimum due process standards prior to discipline/expulsion of Union members; and**
- **Created Union member “Bill of Rights.”**

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NLRA general provisions

- Section 7 guarantees employees the right:
- to self-organization,
- to form, join, or assist labor organizations,
- to bargain collectively through representatives of their own choosing,

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NLRA general provisions

- Section 7 guarantees employees the right:
- to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and
- to refrain from such activities.

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What constitutes “concerted activity?”

- **EXAMPLES OF PROTECTED CONDUCT:**
- talking with co-workers about pay/benefits
- circulating petition for better working hours
- participating in a concerted refusal to work in unsafe conditions
- joining with co-workers to communicate with an employer, government agency, or media about problems in the workplace

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What constitutes “concerted activity?”

- **EXAMPLES OF UNPROTECTED CONDUCT:**
- making “egregiously offensive” comments about the employer
- making “knowingly malicious and false” statements about the employer
- publicly disparaging the employer’s products or services without relation to a complaint over a labor controversy

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NLRA general provisions (Employer ULPs)

- Employer ULPs:
- Section 8(a)(1) makes it an *unfair labor practice* (“ULP”) for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

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NLRA general provisions (Employer ULPs)

- **Examples of Section 8(a)(1) violations:**
 - Threatening consequences if employees support a union
 - Promising employees with benefits to reject union
 - Prohibiting employees from wearing union buttons, etc.

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NLRA general provisions (Employer ULPs)

- **Section 8(a)(2) makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."**

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NLRA general provisions (Employer ULPs)

- **Section 8(a)(3) makes it an unfair labor practice for an employer, "by *discrimination* in regard to hire or tenure of employment or any term or condition of employment[,] to encourage or discourage membership in any labor organization."**

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NLRA general provisions (Employer ULPs)

- **Examples of Section 8(a)(3) violations:**
 - Firing an employee for engaging in union activity (e.g., serving as a Union Representative)
 - Refusing to hire an applicant because s/he belongs to a Union
 - Closing facility or transferring work to avoid obligations under NLRA (e.g., collective bargaining)

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NLRA general provisions (Employer ULPs)

- **Section 8(a)(4) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act."**

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NLRA general provisions (Employer ULPs)

- **Section 8(a)(5)** makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees."

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NLRA general provisions (Employer ULPs)

- Under this provision, it is generally unlawful for an employer to make a "unilateral change," without first bargaining with the Union over the topic:
- **Examples:**
 - Making changes in wages, hours, or working conditions (mandatory subjects of bargaining)
 - Refusing to provide information to union related to a grievance or bargaining issue

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Subjects of Bargaining

- There are three categories of bargaining established under the NLRA:
- (1) “Mandatory” subjects - - deal with wages, hours, and working conditions;
- (2) “Permissive/Voluntary” subjects - - items not directly related to work; and
- (3) “Illegal” subjects - - would violate the law even if both parties agreed to.

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Examples of Mandatory Bargaining Subjects

- Wages/Overtime/Premium Pay
- Hours of Work/Work Schedules
- Sick Time/Holidays/Vacation
- Promotions/Transfers/Layoffs & Recall
- Bonuses/Incentive Pay
- Health Insurance
- Leaves of Absence
- Job Duties
- Pensions/Severance Pay
- Rest/Lunch Breaks
- Subcontracting
- Management Rights Clause

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Examples of Permissive Bargaining Subjects

- Negotiation ground rules
- Use of Union label/flag
- Pensions for retired members
- Settlement of ULP charge
- Internal Union matters
- Bargaining team make up

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Examples of Illegal Bargaining Subjects

- “Closed shop” provision
- Discrimination against group of employees based on race, sex, disability, age, veteran's status, religion, etc.
- “Hot cargo” clauses (language that prohibits and employer from dealing with any other employer, usually involved in a labor dispute)

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NLRA general provisions (Union ULPs)

Union ULPs:

- **Section 8(b)(1)(A) - Forbids a labor organization or its agents “to restrain or coerce employees in the exercise of the rights guaranteed in section 7.”**

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NLRA general provisions (Union ULPs)

- **Section 8(b)(1)(B) - Prohibits a labor organization from restraining or coercing an employer in the selection of a bargaining representative.**

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NLRA general provisions (Union ULPs)

- **Section 8(b)(2)** - Makes it an unfair labor practice for a labor organization to cause an employer to discriminate against an employee in violation of Section 8(a)(3).

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NLRA general provisions (Union ULPs)

- **Section 8(b)(3)** - Makes it illegal for a labor organization to refuse to bargain in good faith with an employer about wages, hours, and other conditions of employment if it is the representative of that employer's employees.
- This section imposes on labor organizations the same duty to bargain in good faith that is imposed on employers by Section 8(a)(5).

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NLRA general provisions (Union ULPs)

- Section 8(b)(4) -
- Prohibits so-called “secondary boycotts” or strikes against parties other than the primary employer.

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NLRA general provisions (Union ULPs)

- Section 8(b)(5) makes it illegal for a union to charge employees who are covered by an authorized union-security agreement a membership fee “in an amount which the Board finds excessive or discriminatory under all the circumstances.”

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NLRA general provisions (Union ULPs)

- **Section 8(b)(6) - “Featherbedding.”** Forbids a labor organization “to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are *not performed or not to be performed.*”

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NLRA general provisions (Union ULPs)

- **Section 8(b)(7) - Prohibits a labor organization that is not currently certified as the employees’ representative from picketing or threatening to picket with an object of obtaining recognition by the employer (recognitional picketing) or acceptance by his employees as their representative (organizational picketing).**

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NLRA general provisions (ULPs)

- **Section 8(e)** - Makes it an unfair labor practice for an employer or a labor organization to enter into a “*hot cargo agreement*” (i.e., an agreement under which an employer agrees to cease doing business with another entity).

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National Labor Relations Board (“NLRB”)

- The “**Board**” has five members and primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings.

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National Labor Relations Board (“NLRB”)

- **Board members are appointed by the President to 5-year terms, with Senate consent, the term of one member expiring each year.**

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National Labor Relations Board (“NLRB”)

- **Current Board Members:**
- **John F. Ring (R)**
- **William J. Emanuel (R)**
- **Marvin E. Kaplan (R)**
- **Lauren McFerran (D)**
- **(One Seat Vacant)**

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National Labor Relations Board (“NLRB”)

- **“General Counsel”** is appointed by the President to a 4-year term; independent from the Board and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB field offices (divided into “Regions”) in the processing of cases.
- **Current General Counsel:**
- Peter B. Robb (R)

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Unfair Labor Practices - Process

1. Charging party must file ULP charge with Regional Director within six (6) months of the commission of the ULP;
2. NLRB investigates and prosecutes cases;
3. Can appeal to “Board;”
4. Enforcement/appeals thereafter to federal courts.

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Duty of Fair Representation

- **APPLICABLE LAW:**
- **Section 9(a)** of the NLRA grants to designated unions the exclusive power to represent all employees in a particular bargaining unit.
- This “duty of fair representation” is the “obligation to serve the interests of all members [of a bargaining unit] without hostility or discrimination toward any, to exercise . . . discretion with complete good faith and honesty, and to avoid arbitrary conduct.” *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

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Duty of Fair Representation

- **From NLRB website:**
- **You have the right to be represented by your union fairly, in good faith, and without discrimination.**

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Duty of Fair Representation

- Your union has the duty to represent all employees - whether members of the union or not - fairly, in good faith, and without discrimination.
- **NOTE:** A special problem can be posed in cases involving multiple members (such as a sexual harassment claim). The Union will need to assign a different Union Representative to each member.

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Duty of Fair Representation

- This duty applies to virtually every action that a union may take in dealing with an employer as your representative, including collective bargaining, handling grievances, and operating exclusive hiring halls.

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Duty of Fair Representation

- **For example, a union which represents you cannot refuse to process a grievance because you have criticized union officials or because you are not a member of the union.**

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Duty of Fair Representation

- **But the duty does not ordinarily apply to rights a worker can enforce independently - such as filing a workers' compensation claim - or to internal union affairs - such as the union's right to discipline members for violating its own rules.**

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Poll:
Is this a Duty of Fair Representation violation?

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DUTY OF FAIR REPRESENTATION

- **NOTE:** Important for Union Representatives to document any decision/action, reflecting that it was taken in a fair and unbiased manner, and was based wholly on the facts of the matter at hand.
- The current NLRB has placed emphasis on DFR cases and ULPs filed against Unions.

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“WEINGARTEN” RIGHTS

- In NLRB v. J. Weingarten, Inc. (U.S. 1975), employee Laura Collins was questioned over reported thefts at the employer’s store.
- During questioning, she requested Union representation several times. The employer denied her requests.
- Thereafter, the Union filed a ULP, and the NLRB ruled that the employer’s actions violated Section 8(a)(1) of the National Labor Relations Act.

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“WEINGARTEN” RIGHTS

- On appeal, the U.S. Supreme Court agreed with the NLRB, and held that workers have the right to Union representation during investigatory interviews.
- The following principles derive from the case:

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“WEINGARTEN” RIGHTS

- (1) “Weingarten rights” only apply if an employee has a reasonable belief that an investigatory interview/meeting could lead to discipline.

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“WEINGARTEN” RIGHTS

- (2) The employee must expressly request Union representation. An employer is not obligated to inform the employee of his/her rights.

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“WEINGARTEN” RIGHTS

- **(3) Upon an employee’s request for Union representation, the employer may not proceed with questioning without the Union representative being present.**
- **The employer then can choose to: (a) discontinue questioning; (b) continue in presence with Union representative.**

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“WEINGARTEN” RIGHTS

- **(4) The employer does not have a duty to bargain with the Union representative, but cannot insist that the Union representative remain silent either.**

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UNION REPRESENTATIVE RIGHTS

- **QUESTION:**
- **How many of you work full-time in your craft, while also serving in a Union capacity?**

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UNION REPRESENTATIVE RIGHTS

- **1. “Equality rule” – When a Representative interacts with management in his/her Union capacity, he/she does so as an equal.**
- **The Representative has the right to openly disagree, question, and argue with management when necessary, without being disciplined.**
- **Representatives cannot effectively represent workers unless they are able to freely communicate with management as equals.**

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UNION REPRESENTATIVE RIGHTS

- **2. No retaliation or discrimination – Management cannot discipline or intimidate a Union Representative because of his/her activity in that capacity.**
- **For example, management cannot deny a promotion or other benefits, assign extra work or undesirable jobs, or act in other ways that attempt to discourage a Representative from doing his/her job as a Representative.**

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UNION REPRESENTATIVE RIGHTS

- **3. “Equal standard rule” - Management cannot hold a Representative to a higher standard than other workers or harass the representative with extra supervision or stricter rules.**
- **Being a Representative does not allow management to expect more from you or to discipline you when a non-Representative would not face discipline for engaging in similar conduct.**

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UNION REPRESENTATIVE RIGHTS

- 4. Legal right to information – A Union has a broad right to receive relevant information from management at any stage of the grievance process - - including investigations - - to determine whether a grievance exists.
- Management must therefore provide a Union Representative with this information upon request—this is considered part of management’s “duty to bargain.”

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UNION REPRESENTATIVE RIGHTS (Quiz)

- QUIZ:
- 1. You are representing a member at a grievance meeting. At the meeting, your manager refers to you and the member by your first names. At work you usually refer to your manager as Mr. Smith. At this meeting, you decide to call him by his first name. *Do you have a right to do this?*

YES

NO

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UNION REPRESENTATIVE RIGHTS (Quiz)

- **2. While acting as a Union Representative, interviewing a manager to investigate a grievance, you say you think the manager is “bending the truth.” *Does the manager have a right to discipline you for making that comment?***

YES**NO**

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UNION REPRESENTATIVE RIGHTS (Quiz)

- **3. While you are working, your manager tells you to “move it.” In a loud voice you reply, “screw you.” *Is your comment protected?***

YES**NO**

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UNION REPRESENTATIVE RIGHTS (Quiz)

- 4. Management announces that it is closing the cafeteria in the opera house, effective immediately. On your break, you and a few members go to the general manager's office and tell him that if he doesn't talk to the union first he can expect lawsuits, unfair labor practices, grievances and protests. He says, "If you threaten me again, you'll be fired." *Is he within his rights?*

YES

NO

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UNION REPRESENTATIVE RIGHTS (Quiz)

- 5. At a labor management meeting to discuss a controversial issue, the discussion gets very heated. Management calls you, the the Union's Representative, an unreasonable "hard head." You say, "I will personally kick your @#% out in the parking lot." *Is that comment within your rights to say?*

YES

NO

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Union Members' Bill of Rights

- The “Union Members' Bill of Rights” arises under the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act).
- **SUMMARY:**
- Equal rights and privileges to nominate candidates, to vote in elections or referendums, and to attend and participate in union meetings and vote on the business of the meeting, subject to reasonable rules in the union constitution and/or bylaws;

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Union Members' Bill of Rights

- Freedom of speech and assembly, including the right to:
 - -criticize union officials;
 - -express any viewpoint at union meetings (subject to reasonable rules of conduct);
 - -distribute literature outside the union hall or inside the hall if members cannot reasonably be reached from outside;
 - -hold separate meetings without interference from union officials;

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Union Members' Bill of Rights

- -The right to secret ballot vote on rates of dues, initiation fees, and assessments;
- -The right to sue the union, without reprisal, if internal appeals do not produce a satisfactory result within four months, or if you disagree with the union's decision;
- -The right to receive a copy of your collective bargaining agreement, and to inspect copies of all contracts that your local union administers.
- -Members are protected from improper union discipline and must be afforded due process.

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Discipline of Members

- Due process is required in internal union disciplinary hearings, including:
- -the right to specific, written charges;
- -the right to confront and cross-examine accusers;
- -adequate time to prepare a defense;
- -the right to a full and fair hearing and a decision based on the evidence.

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Discipline of Members

- A Union may not discipline a member for exercising protected rights, however a member may be disciplined for the following activities:
 - -participating in wildcat strikes,
 - -advocating decertification of the union,

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Discipline of Members

- -and other acts which interfere with the legal or contractual obligations of the union or which threaten the existence of the union as an institution, such as crossing picket lines.
- Note: Refer to Constitution & Bylaws for applicable, specific procedures.

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NLRB –v- USDOL

- What is the difference, if any, between “the Board” (NLRB) and “the Labor Department?”

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NLRB –v- USDOL

- NLRB:
- -Independent agency
- -Conduct elections
- -Decide cases
- -Enforce orders
- -Facilitate settlements
- -Investigate charges

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NLRB –v- USDOL

- U.S. Department of Labor:
- -Cabinet-level Department
- -Administers wage & hour laws
- -Occupational health & safety
- -Union disclosure & reporting obligations
- -Agencies include: OSHA, Wage & Hour, ETA, BLS, and OLMS - -

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NLRB –v- USDOL

- Office of Labor-Management Standards:
- -Administers/enforces LMRDA (1959)
- -Sets standards for Union officer elections
- -Sets rules relating to Union trusteeships
- -Publicizes Union disclosure reporting
- -Conducts compliance audits
- -Investigates alleged improprieties

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Union Representation Elections

- Pursuant to NLRB case law, a manager may legally:
- Tell employees that the managers and the company are opposed to unionization.
- Tell employees that the employees do not have to sign union cards and that the law says that they have the absolute right to refrain from joining a union.

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Union Representation Elections

- Tell employees about the benefits that they enjoy, and compare those benefits with those in unionized companies.
- Tell employees that with a union they may have to bring their problems to a shop steward instead of dealing with their manager.

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Union Representation Elections

- Tell employees of the disadvantages of belonging to a union, such as the payment of dues and initiation fees and the possibility of fines and assessments.
- Tell employees that, if they engage in an economic strike, they may be permanently replaced and will be reinstated only if an opening occurs.

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Union Representation Elections

- The following employer actions are *illegal*:
- Promise employees pay increases, promotions, improved working conditions, additional benefits, or special favors on the condition that the employees vote against or refuse to join the union.

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Union Representation Elections

- **Threaten employees with loss of job or reduction in wages, or use threatening or intimidating language calculated to influence employees in the exercise of their right to support a union.**
- **Tell employees that they would have received a wage increase except for the start of the union campaign.**

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Union Representation Elections

- **Solicit employees to request the return of their authorization cards.**
- **Visit employees at their homes to urge them to vote against the union.**
- **Prohibit the wearing of union buttons or insignia.**
- **Tell employees that the union will have to strike to obtain concessions from the employer.**

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RECAP:

- **The 3 Laws**
- **Concerted Activity**
- **Employer & Union Unfair Labor Practices**
- **Duty of Fair Representation**
- **Weingarten Rights**
- **Union Representative Rights**
- **Union Member Rights/Discipline**
- **NLRB & USDOL**
- **Organizing & Elections**

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