

Preface

This book discusses the legal issues that arise from the use of strikes, lockouts, boycotts, and other concerted activities in the private sector. Our system of industrial relations favors the peaceful settlement of labor disputes, but these tools and weapons of labor-management confrontation play an important role in sustaining or resolving those disputes.

Although the National Labor Relations Act has not recently been amended, the law continues to evolve as the National Labor Relations Board and the courts try to adapt a New Deal-era statute to the challenges of the 21st Century workplace. Times of political change, too, lead to changes in policy and interpretive philosophy, especially at the Board. In recent years, for example, we have seen major changes in the standards governing withdrawal of recognition from an incumbent union and the rules governing union access to private property; new interpretations of the law governing lockouts resulting from its growing use as a bargaining weapon; a reconsideration of secondary boycott rules as they apply to new forms of union informational activity including banner- ing, street theatre, and other displays; new and narrower standards for when the NLRB will defer to the awards of labor arbitrators; fluctuations and uncertainties in how the Board will determine joint employer status; and application of the antitrust laws to multiemployer bargaining group revenue sharing arrangements. This new edition covers these and other changes in the law and incorporates material from previous editions and supplements. As we did last year, we have updated the entire text rather than burden the reader with the need to consult supplements. We hope that you are finding this to be a more user-friendly format.

The law of strikes, lockouts, and boycotts remains relevant in today's industrial relations environment. Although they are extreme measures, they are still used. The explicit or implicit threat to use these economic weapons helps steer parties involved in collective bargaining in a wide range of industries toward agreement. Even when resort to these weapons can be avoided, employers, unions, and the employees they represent must take action, or refuse to act, against the background of the law governing strikes, lockouts, and boycotts.

We have made a particular effort to note and demonstrate the interrelationships between legal issues. As with most of labor

law, the key to grasping the law's complexity is to understand the relationship of one issue to another. Labor law is like a house of cards; changing the location of one card near the foundation (or the outcome of one central issue) can cause an entire structure to collapse. For example, this book addresses the reinstatement rights of strikers, which depend in part on whether the employer has hired permanent replacements, which depends in part on whether the strike is classified as an economic strike or an unfair labor practice strike.

We have also made a conscious effort to focus on recent cases and to stress decisions of the NLRB (as well as controlling Supreme Court precedent). Board decisions have the most immediate impact on the Section 7 rights of employees. We have also tried to go beyond providing general rules in areas of current importance. In the area of secondary boycotts and reserved gates, for example, we discuss the details of cases involving the setup and breakdown of a reserved gate system rather than merely setting forth general rules. Finally, we have tried to avoid making ideological judgments about these important and often emotional issues. Whether one or all authors believe an area of law to be “rightly” or “wrongly” decided is not the focus of this book. Rather, our goal is to help the reader clearly identify the applicable doctrine and how it may be used to resolve the myriad legal issues facing actors in labor disputes. By so doing, we hope to improve the reader's understanding of national labor policy in this important area—and with it, the cause of labor peace.

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October 2025