

Table of Contents

CHAPTER 1. BACKGROUND AND OVERVIEW OF LABOR-MANAGEMENT CONFRONTATION LAW

- § 1:1 Introduction to labor-management relations
- § 1:2 Statutory basis—In general
- § 1:3 —National Labor Relations Act
- § 1:4 ——Development and amendment of the NLRA
- § 1:5 —Norris-LaGuardia Act of 1932
- § 1:6 —State anti-injunction legislation
- § 1:7 —Other federal legislation
- § 1:8 —Other state legislation
- § 1:9 —Proposals for federal, state and local strike replacement legislation
- § 1:10 —Executive Order 12954
- § 1:11 —State unemployment compensation laws
- § 1:12 Strikes
- § 1:13 Lockouts
- § 1:14 Secondary boycott limits on strike and picketing activity
- § 1:15 Consumer picketing and handbilling
- § 1:16 Strike settlement
- § 1:17 National Labor Relations Board enforcement and problems of delay
- § 1:18 Federal Mediation and Conciliation Service
- § 1:19 National emergency disputes
- § 1:20 Resolving disputes under Railway Labor Act
- § 1:21 Current developments
- § 1:22 United Auto Workers-Caterpillar strike
- § 1:23 Teamsters-UPS Strike of 1997
- § 1:24 Boeing strike of 2000
- § 1:25 Southern California grocery strike and lockout
- § 1:25.50 West Virginia and Oklahoma public school teachers strikes of 2018
- § 1:25.75 Charter school walkouts of 2018–2019
- § 1:26 The corporate campaign
- § 1:27 U.S. labor law in the global economy
- § 1:28 Labor disputes in sports
- § 1:29 Public sector employees
- § 1:30 State regulation of public dissent
- § 1:31 Mandatory arbitration agreements and the NLRA

CHAPTER 2. PREREQUISITES TO AND LIMITS ON RIGHT TO STRIKE

- § 2:1 Introduction to strikes
- § 2:2 Notice requirements
- § 2:3 —Sanctions for union failure to give notice before strike
- § 2:4 —Exceptions
- § 2:5 —Health care industry
- § 2:6 —Inconsistent state notice requirements
- § 2:7 —No-strike clause—In general
- § 2:8 ——Status of strikers
- § 2:9 ——Discipline of union officers
- § 2:10 ——Union liability for money damages
- § 2:11 ——Enforcement via injunctive relief (*Boys Markets* injunctions)
- § 2:12 ——Sympathy strikes and *Buffalo Forge* exception to *Boys Markets*
- § 2:13 ——Reverse *Boys Markets* injunctive relief
- § 2:14 ——Political strikes and *Jacksonville Bulk Terminals*
- § 2:15 ——Discipline of sympathy strikers
- § 2:16 ——Safety-related strikes and injunctions
- § 2:17 ——Postexpiration effect
- § 2:18 ——Contract reopeners provisions
- § 2:19 Recognition strikes and organizational picketing—In general
 - § 2:20 —Definition of picketing
 - § 2:21 —Object of picketing
 - § 2:22 —Section 8(b)(7)(A)
 - § 2:23 —Section 8(b)(7)(B)
 - § 2:24 —Section 8(b)(7)(C)
 - § 2:25 ——Defining “reasonable period”
 - § 2:26 ——Expedited election proviso
 - § 2:27 ——Publicity or informational proviso
 - § 2:28 ——Jurisdictional strike
 - § 2:29 ——Protected nature of organizational strike
 - § 2:30 Access to property for organizational or area standards picketing or handbilling
 - § 2:31 No strike provision in Indian tribal law

CHAPTER 3. EMPLOYER’S DUTY TO BARGAIN BEFORE AND DURING STRIKE OR LOCKOUT

- § 3:1 Introduction to employer’s duty to bargain

TABLE OF CONTENTS

§ 3:2	“Good faith” requirement—In general
§ 3:3	—Employer hard bargaining and regressive bargaining during strike
§ 3:4	—Impasse
§ 3:5	—Employer communications with employees
§ 3:6	Subcontracting
§ 3:7	Employer’s duty to provide strike-related information—Replacements and nonstrikers
§ 3:8	—Subcontracting
§ 3:9	—Strike violence and discipline
§ 3:10	Terms and conditions offered replacements
§ 3:11	Suspending employer’s duty to bargain during strike due to improper union activity
§ 3:12	Layoffs
§ 3:13	Government interference in labor disputes

CHAPTER 4. INTERFERENCE WITH EMPLOYEES’ RIGHT TO STRIKE

§ 4:1	Introduction to the right to strike
§ 4:2	Discharge of strikers
§ 4:3	—Salts
§ 4:4	Assigning work to nonunion facility
§ 4:5	Violence and other interference with picketing
§ 4:6	Threats to discharge or replace strikers
§ 4:6.50	—Based on immigration status
§ 4:7	Interrogation of strikers and other threat or coercion
§ 4:8	Treatment of disabled employees
§ 4:9	<i>Erie Resistor</i> and offers to strikers and replacements
§ 4:10	Denial of access to private property
§ 4:11	Provision of benefits during and after strike—In general
§ 4:12	—Discontinuance of benefits to disabled employees
§ 4:13	—Laid-off employees and accrued benefits
§ 4:14	—Discriminatory denial of vacation benefits
§ 4:15	—Holiday pay
§ 4:16	—Poststrike treatment of former strikers
§ 4:17	—Insurance benefits
§ 4:18	—Workers’ compensation
§ 4:19	—Unemployment compensation
§ 4:20	—Pension and 401(k) distributions
§ 4:21	Soliciting strikers to resign from union
§ 4:22	Retaliation against strikers by third parties
§ 4:23	Strikers and civil rights
§ 4:24	Union interference with employee rights

STRIKES, LOCKOUTS AND BOYCOTTS

- § 4:25 —Fines for crossing picket lines
- § 4:26 —Enforcement of fines and other penalties against employees who have resigned from union
- § 4:27 —Limitations on resignation from union during strike
- § 4:28 —Fines on supervisor-members for crossing picket lines

CHAPTER 5. UNFAIR LABOR PRACTICE STRIKES AND ECONOMIC STRIKES

- § 5:1 Introduction to unfair labor practice strikes and economic strikes
- § 5:2 Employer's commission of unfair labor practices
- § 5:3 Causation
- § 5:4 —Employee knowledge of and reaction to unfair labor practice
- § 5:5 —Magnitude and severity of unfair labor practice
- § 5:6 —Link between failure to reach agreement and unfair labor practice
- § 5:7 Conversion of strikes

CHAPTER 6. REINSTATEMENT, VOTING RIGHTS, AND OTHER RIGHTS OF STRIKERS AND REPLACEMENTS

- § 6:1 Introduction to rights of strikers and replacements
- § 6:2 Rights of strikers against temporary replacements
- § 6:3 Classification of striker replacements as "temporary" or "permanent"
- § 6:4 Rights of permanently replaced economic strikers to reinstatement
- § 6:5 —Unconditional application for reinstatement
- § 6:6 —Employer-imposed conditions on reinstatement
- § 6:7 —Order of recall off preferential hiring list
- § 6:8 —Definition of "vacancy"
- § 6:9 —Vacancies and strike replacement layoffs
- § 6:10 —Strikers who have obtained substantially equivalent employment
- § 6:11 —Strikers who have resigned or retired
- § 6:12 —Right to full reinstatement
- § 6:13 —Seniority on reinstatement
- § 6:14 —Duration of reinstatement rights
- § 6:15 —Employer imposed conditions on eligibility for reinstatement
- § 6:16 —Legitimate and substantial business reasons for refusing reinstatement

TABLE OF CONTENTS

- § 6:17 Rights of permanently replaced economic strikers and replacements to vote
- § 6:18 Rights of unfair labor practice strikers
- § 6:19 Reinstatement rights, successor employers and alter egos
- § 6:20 Remedies for improper refusal to reinstate
- § 6:21 Potential claim against union based on representations regarding reinstatement rights
- § 6:22 Potential rights of displaced permanent replacements
- § 6:23 Other rights of permanent replacements
- § 6:24 Treatment of former strikers as evidence of animus
- § 6:25 Transfer of work and reinstatement rights

CHAPTER 7. STRIKE VIOLENCE AND OTHER UNPROTECTED STRIKE CONDUCT

- § 7:1 Scope of chapter
- § 7:2 Injunctions, criminal prosecutions and civil remedies
 - State court injunctions
 - Contempt issues
 - Federal court injunctions
 - Injunctive relief through National Labor Relations Board
 - Criminal prosecution
 - Civil actions
 - RICO and other federal statutes
- § 7:10 Union unfair labor practices
- § 7:11 Discharge of strikers—Misconduct
 - Burden of proof
 - Violence against nonstrikers, replacements, and supervisors
 - Verbal threats, name calling and intimidating conduct
 - Other misconduct
 - Property damage
 - Blocking entrances and trespassing
 - Issues of condonation and selective enforcement
 - In-plant work stoppages
 - Intermittent strikes
 - Slowdowns
 - Disloyalty and disparagement
 - Derogation of representative's status
 - § 7:20.50 Postdischarge conduct

CHAPTER 8. ISSUES OF UNION'S CONTINUING MAJORITY STATUS

- § 8:1 Introduction to majority status of union
- § 8:2 Decertification elections
- § 8:3 Withdrawal of recognition
- § 8:4 —Standard of proof
- § 8:5 —Establishing objective basis
- § 8:6 ——Polling
- § 8:7 —Remedies
- § 8:8 Employer's petition for election
- § 8:9 Employer's satisfaction of standard for withdrawal

CHAPTER 9. LOCKOUT

- § 9:1 Scope of chapter
- § 9:2 Use of lockout weapon—Legality of defensive and offensive lockouts
- § 9:3 —Good-faith bargaining as prerequisite
- § 9:4 —Section 8(d) notice requirements
- § 9:5 —WARN Act notice requirements
- § 9:6 Issue of replacements
- § 9:7 —Legality of temporary replacements
- § 9:8 —Limits on use of lockouts and temporary replacements
- § 9:9 —Partial lockouts
- § 9:10 Locked-out employees' eligibility for unemployment compensation benefits
- § 9:11 Post-lockout issues—Replacements, locked out employees and decertification elections
- § 9:12 —Injunctive relief
- § 9:13 Lockouts: Criminal conduct
- § 9:14 Antitrust liability and immunity

CHAPTER 10. PICKETING AND SECONDARY BOYCOTT ISSUES

- § 10:1 Scope of chapter
- § 10:2 Primary employer status—In general
- § 10:2.50 —Elements of secondary boycott
- § 10:3 —Alter egos and single employer issues
- § 10:4 —Joint employer issues
- § 10:5 —Struck work
- § 10:6 Shared use property and *Moore Dry Dock*—
Ambulatory situs
- § 10:7 —Common situs picketing

TABLE OF CONTENTS

§ 10:8	—Reserved gates
§ 10:9	—Signal picketing
§ 10:10	—Breakdown of reserved gate system
§ 10:11	—Recognitional secondary picketing exception for certified unions
§ 10:12	Neutral on primary's premises
§ 10:12.50	Mixed primary and secondary objectives
§ 10:13	Picketing on neutral's job site
§ 10:14	Jurisdictional disputes
§ 10:15	International boycotts
§ 10:16	Affinity group shopping
§ 10:17	First Amendment and the NLRA's prohibition of secondary boycotts
§ 10:18	Bannering, street theater and other displays
§ 10:18.30	Sound systems, broadcasts and other loud noises
§ 10:18.50	Advertising
§ 10:18.70	Social media
§ 10:19	Discovery issues
§ 10:20	Remedies
§ 10:21	Refusal to enter into a prehire agreement
§ 10:22	State regulation of boycotts and picketing
§ 10:23	Other regulation of boycotts and picketing

CHAPTER 11. CONSUMER PICKETING AND HANDBILLING

§ 11:1	Introduction to picketing and handbilling
§ 11:2	Struck product consumer picketing— <i>Tree Fruits</i> decision
§ 11:3	— <i>Safeco</i> and limits
§ 11:4	Handbilling and other publicity
§ 11:5	—Proviso
§ 11:6	— <i>DeBartolo II</i> and calls for total boycotts of neutral businesses
§ 11:7	— <i>Servette</i> and threat of handbill
§ 11:8	Handbilling and other nonpicketing publicity—Public forums and time, place and manner restrictions
§ 11:9	Access to property
§ 11:10	Consumer boycotts and defamation suits
§ 11:11	Other issues

CHAPTER 12. STRIKE SETTLEMENT AGREEMENTS

§ 12:1	Introduction to agreements to settle strikes
§ 12:2	Strikers' reinstatement rights

STRIKES, LOCKOUTS AND BOYCOTTS

- § 12:3 Strike misconduct issues—In general
- § 12:4 —Arbitrability of striker discharge cases
- § 12:5 —Board deferral to arbitration proceedings
- § 12:6 Court review of arbitrated discharge cases
- § 12:7 Waiver of contractual benefits
- § 12:8 Resolution of outstanding unfair labor practice charges
- § 12:9 Strike settlement and fair representation issues

APPENDICES

- APPENDIX 1. The Norris-LaGuardia Act (29 U.S.C.A. §§ 101 to 115)
- APPENDIX 2. The National Labor Relations Act, as amended (29 U.S.C.A. §§ 151 to 169)
- APPENDIX 3. Labor-Management Relations Act (29 U.S.C.A. §§ 141 to 144, 171 to 197)
- APPENDIX 4. NLRB Statements of Procedure (29 C.F.R. §§ 101.1 to 101.43)
- APPENDIX 5. NLRB Rules and Regulations (29 C.F.R. §§ 102.1 to 102.182)

Table of Laws and Rules

Table of Cases

Index