

Preface

Few areas of the law are both as complex and as volatile as labor law. Constructed of a bewildering maze of often conflicting statutes, common-law doctrines, contract-established rules, and administrative agency edicts, labor law can be extraordinarily frustrating for attorneys who seek symmetry and clearly discernible patterns in the law. Even within a narrow area, the applicable law can vary tremendously, depending on whether one is litigating before the National Labor Relations Board (NLRB) or seeking enforcement of an NLRB decision in one of the Circuit Courts of Appeal. In short, there is no simple way to learn the law in this area or to avoid the necessity of constantly keeping abreast of developments in the field to update one's knowledge.

This is not surprising, since few areas of the law encompass issues of such central importance to the society as a whole. The conflict between labor and management is at the heart of our economic system, which, in turn, is at the heart of the entire social structure. For that reason, labor law can be fairly said to be among the most political of legal areas. Laws and court decisions in this area historically have reflected the shifting balance of forces in the economic arena.

The original National Labor Relations Act, the Wagner Act, was passed in 1935—a time when the workers' movement was organizing and developing its influence as never before. As the society sought to contain the organizing upsurge within acceptable legal channels, the Act that was passed was relatively pro-labor: It legalized union organization and gave union organizers certain rights; it contained provisions outlawing certain employer "unfair labor practices"; and it contained no similar sanctions against union activity.

In 1947, however, with the union movement on the defensive and the Cold War and McCarthy eras on the horizon, the Taft-Hartley Act was passed, drastically revising the National Labor Relations Act. Provisions of the Taft-Hartley Act defined certain conduct by unions as unlawful for the first time, and its Section 14(b), the antiunion "right to work" provision, allowed states to enact legislation outlawing union contracts that require employees to join the union within a designated time period.

Similarly, the powerful civil rights movement in the fifties and sixties was able to win passage of the Civil Rights Act of 1964, with its Title VII prohibitions against hiring and job discrimination based on race, religion, national origin, or sex. However, as the activity of the civil rights movement diminished

in the seventies, a period of government retrenchment and retreat began. This has been accompanied by court decisions chipping away at the law's teeth, raising ever more difficult standards of proof for the antidiscrimination advocate.

In 1988 the Worker Adjustment and Retraining Notification Act (WARN) was enacted, dealing with the ever increasing problem of plant closings and mass layoffs. Scorned by its opponents as an interference in the delicate and volatile affairs of business, WARN nevertheless serves as the sole source of federal regulation of plant closings and mass layoffs.

It is the political essence of labor law, then, that explains its vast, sprawling jumble of rules. And it is this character that helps to explain why it is such an important, exciting, and challenging field to many of the attorneys who practice it.

We would not suggest here that labor law has ever been the solid ally of the worker. Far from it. At best, it has established procedures and channels through which the labor movement can obtain redress as part of its overall political battle. Unfortunately, even these procedures often fail to provide meaningful remedies, and employers often find it economically profitable to violate the law. At its worst, labor law has shackled the workers' struggle, placing financially and organizationally draining obstacles in the way of organizing and legitimizing the intervention of the courts and government on the management side of the conflict.

It has been suggested that the United States is virtually unique among industrialized nations in the extent to which the labor struggle is channeled into legal procedures. It is thus a fact of life that almost any serious effort by workers directed against their employers, be they unionized or not, will require them to deal with the legal system. Often, workers and their unions find themselves facing batteries of corporate lawyers, who have virtually unlimited resources with which to pursue the antiunion struggle.

This problem has been exacerbated in recent years by the explosive growth of professional "union-busting" concerns. Often integrated into large corporate law firms, this multimillion-dollar industry has developed through its ability to help employers stay at the very edge of the law in their conflicts with their workers. These concerns aim to use every possible legal and quasi-legal tactic to frustrate organizing, drain precious resources into interminable legal battles, and make a mockery of the "legal rights" of workers.

Such a situation places unions at a great disadvantage. With resources far more limited than those of employers, unions must constantly assess how much they can allocate to the legal struggle, aware that every penny they divert cannot be used for the important work of organizing and serving their members.

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The problem is even worse for individual or unorganized workers. Their concerns might be varied: fighting the employer around an individual discharge or grievance, organizing in opposition to discrimination or unsafe conditions on the job, or fighting for reform within their union. In any case, their resources are the most limited, and the legal battle can be the most draining. They often seek assistance from general practitioners or legal services attorneys, some of whom might be inexperienced in the field or limited in the resources they can devote to the case.

In such a situation, we know that the Employee and Union Member Guide to Labor Law cannot be a panacea. It would be totally impossible to encompass the field of labor law in three volumes. Nevertheless, we do hope to make a contribution to the legal component of the labor struggle.

This treatise was written by dozens of members and friends of the National Lawyers Guild who have special expertise in their field. We have aimed at providing advice that gives the important parameters of the law in a practical context. The topics covered were chosen for both the frequency with which they arise and the context in which they arise. Because we recognize that the law is, at best, a tool for the labor movement to use in its development, we have chosen areas that we think are related to that development.

It is our hope that this work can be useful to the experienced and inexperienced practitioner alike. For the inexperienced practitioner, our aim is to provide a practical manual that will help start serious research, answer basic questions, and help avoid some common pitfalls. For the more experienced attorney, we hope to provide a useful desk reference for quick answers to important questions.

We will be updating, revising, and expanding this manual on a regular basis. We welcome suggestions on how it can be improved in order to better fulfill its goals. We would be delighted to receive suggestions for new topics to include, or better ways to present those we have included. The editor, Christina Hatzidakis, can be reached at christina@hatzidakislaw.com.

The Employee and Union Member Guide to Labor Law is a publication of the National Labor and Employment Committee of the National Lawyers Guild. Nationwide, there are more than 20 local labor committees affiliated with the National Lawyers Guild and hundreds of affiliated attorneys, legal workers, and law students.