

Legal Principles Concerning Mid-term Collective Bargaining and Union Representation

The National Labor Relations Act Section 7 - Right to Organize and Collectively Bargain

“Employees shall have a right to self-organization, to join, form, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.”

Note: The duty to bargain and the union’s rights under bargaining law, exist at all times, not only at contract time. The Supreme Court has ruled in *Conley v. Gibson* 355 U.S. 41 that: *“...collective bargaining is a continuing process, involving day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract...”* In *NLRB v. Acme Indus. Co.* 385 U.S. 42 the court stated: *“Similarly the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of the agreement.”* Section 8(a)(5) of the NLRA makes it an Unfair Labor Practice (ULP) for the employer *“...to refuse to bargain collectively with the representatives of his employees...”*

The Duty to Bargain

- What it is
- The employer and the union must “meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.”
- The terms of the union contract are fixed for the duration of the contract; there is no duty to bargain over these terms until the contract is due to expire.
- The employer has a continuous duty to bargain over any wages, hours, and other terms and conditions of employment that are not covered by the contract.

- Mandatory and non-mandatory subjects
- "Mandatory subjects" of bargaining are any "wages, hours, and other terms and conditions of employment." The parties must be willing to bargain over these issues in good faith.
- A “non-mandatory subject” is anything else, such as matters concerning those concerning the nature and direction of the business or internal union affairs. There is no duty to bargain over such subjects under the law.

- No unilateral changes
- The employer must give the union adequate notice and an opportunity to bargain.
- If the union demands to bargain, the employer may not make a change without either gaining agreement from the union or reaching a good faith impasse in bargaining
- If the employer makes a change without meeting one of these conditions, it has made a “unilateral change”, and the union may file an unfair labor practice charge.

- Management rights and deferral to arbitration
- Management rights clauses may waive the union’s right to bargain
- The NLRB only finds a waiver when it is “clear and unmistakable”

- The NLRB usually defers to the arbitration process to decide disputes over the interpretation of management rights clauses.
- NLRB Remedies
- Cease and desist
- Restore *status quo ante*
- Make whole
- Order to bargain in good faith
- Post a notice to employees
- The union's right to information
- The union has a right to most information that the employer has which is relevant to bargaining over mandatory subjects.
- Few exceptions
- No deferral to arbitration if employer fails to provide
- No impasse if request has not been met
- When connected with unilateral change, NLRB may refuse to defer both charges

Exclusive Representation

- Once employees have chosen a union to represent them, no other organization can represent the members of the bargaining unit.
- Any committee on which bargaining unit members serve, that in any way deals with mandatory subjects of bargaining, is legally an extension of the union.

No Employer Domination of a Labor Organization

- Any committee or organization of any kind that deals with mandatory subjects of bargaining is considered a labor organization under the law.
- Management may not dominate or interfere with a labor organization.
- If management sets up a committee without full agreement of the union, and if that committee deals with any issue concerning wages, hours, or other terms and conditions of employment, then that committee is illegal.
- A committee set up by management is illegal even if it doesn't engage in actual bargaining. Even if all the committee does is to discuss issues, the committee is illegal.

The "Equality Principle"

- Under the law, anyone who represents the union in any way is considered to be the equal of management when engaged in representational activity.

No Retaliation or Threats

- It is illegal for employers to "interfere with, restrain, or coerce employees" in the exercise of their rights as employees and union representatives.