

# COLLECTIVE BARGAINING FAQs

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## Other Useful Internet Resources:

- [The National Labor Relations Act, 29 U.S.C. Chapter 7, \[PDF\] \[PDF \(Chinese\)\]](#)
  - [The National Labor Relations Board's Web Site](#)
  - [The Freedom to Form a Union](#)
  - [Unions Affiliated with the AFL-CIO](#)
  - [How to Unionize or more info.](#)
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## **NATIONAL LABOR RELATIONS ACT**

History has shown that organization has been an effective way for working people to change their social environment and to protect their interests. The story of workers' efforts to form labor organizations is long and filled with struggles. From a legal point of view, labor organizations have moved from being outlawed as criminal conspiracy in the nineteenth century to being highly regulated by law today.

- **What Are the Basic Rights of Employees?**

Section 7 of the National Labor Relations Act clearly states the rights of American workers:

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

Section 7 also protects workers' rights to join labor unions which will best represent their interests and/or to take other collective action to defend their rights in the workplace. Taft-Hartley amended this section by adding that employees "shall also have the right to refrain from any or all such activities."

The act officially recognizes that under modern economic conditions "an individual unorganized worker is commonly helpless to exercise actual liberty," so that a worker must be free to organize collectively. As a declared national policy, the NLRA encourages collective bargaining, defines the rights of employees and employers in this process, and seeks "to eliminate certain practices on the part of labor and management that are harmful to the general welfare."

- **Can Employers Oppose Union Activities?**

The National Labor Relations Act places legal restrictions on the kinds of actions employers can take. Violations of this law are called unfair labor practices. In general, an employer unfair labor practice is any act which interferes with, restrains, or coerces employees in the exercise of their rights to organize which are guaranteed in Section 7 of the act. It is an unfair labor practice for an employer to discriminate or retaliate in any way against a worker for exercising his or her rights as a union member, or for taking lawful collective action around workplace issues. This applies to workers in both organized and unorganized workplaces, and covers all aspects of employment, such as hiring, firing, job assignment, promotions, benefits, and discipline.

Some examples of employer unfair labor practices are threatening to close down a plant or subcontract work if a union is organized, questioning employees about union activities in an effort to intimidate them, harassing union activists, refusing to reinstate employees to open jobs because they took part in a lawful strike, or demoting a worker for testifying in support of a co-worker's grievance or complaint to the National Labor Relations Board.

- **If There Is No Labor Organization, Can One Be Started?**

Yes, workers in any place of employment are free to join an existing organization or start their own. Workers could join an international union, an area association, or start an organization in just one work site.

It is an unfair labor practice for an employer to control or favor a particular labor organization. "Company unions" are definitely against federal law. Labor organizations must be free, independent, and worker controlled.

- **Is "Talking Union" Protected?**

The right to form a labor organization is protected by the National Labor Relations Act. This means it is illegal for any employer to ban discussion about unions or to retaliate against a worker for trying to organize. Generally, a worker has the right to talk about organizing, and to pass out union membership cards, anywhere in the workplace as long as it does not disrupt production. Handing out leaflets is legally protected as long as it is done on a worker's own time and in non-work areas like the cafeteria, locker rooms, or parking lot.

If a union election is to be held, employers may be required to provide the union with the names and addresses of workers who may be eligible to form the union. In addition, professional organizers may have the right to enter the workplace if it is open to other members of the public.

It is illegal for an employer to threaten or intimidate employees or try to bribe them with pay raises or other special benefits in order to discourage unionization. It is often difficult to prove all but the most flagrant abuses, and many management consultants are using subtle psychological techniques to defeat the purposes of the act.

- **How Is the Labor Organization Formed?**

The National Labor Relations Act sets up a straightforward procedure for organizing. The first step is to demonstrate that a labor organization has support. This is usually done by "authorization cards" which are signed by workers who want to join the union. Usually, authorization cards are presented to the [National Labor Relations Board](#) as evidence of the workers' desire to join a labor organization.

If the employer sees that many of the employees have indicated a desire to join the union, the employer may voluntarily agree to bargain collectively with the organization and the process is complete.

Employers often do not voluntarily accept the signed cards as proof of union interest. There are many legal tactics available to employers to delay recognition of the union. When an employer refuses to voluntarily recognize the labor organization, the labor organization, any employee, or the employer may file a "representation petition" requesting an election with the regional office of the National Labor Relations Board.

The board determines if there is sufficient interest (30 percent of the work force having signed authorization cards) among the workers forming a union. If so, the board will determine the potential bargaining unit and set the date for an election. Determining who should be in the bargaining unit is often a complicated and time-consuming process, with both the employer and the labor organization trying to increase their strengths. The basic test is that all unit members have a "community of interest" in terms of job responsibilities, wage rates, benefits, and other common aspects of work.

- **How Is an Election Held?**

The National Labor Relations Board works to ensure a fair election. There are many rules surrounding an election and if an employer or union violates these rules, it is grounds for objections to the validity of the election or an unfair labor practice charge. "If the board determines that objectionable conduct has been committed, it will order a rerun election. If a union has obtained proper authorization cards from a majority of employees in the bargaining unit and the employer subsequently commits serious unfair labor practices precluding a fair election, the board may require the employer to recognize the union without holding an election."

The election is held by secret ballot and gives workers a choice between one or more unions and no union. If no choice receives a majority of the votes, a runoff election may be held.

*See also* the NLRB page: [What you can expect when a petition is filed.](#)

- **What Happens after the Election?**

If over 50 percent of the employees voting choose to join a particular union, the organization is "certified" and the employer is required to bargain with the organization.

- **If the Union Loses, Can There Be Another Election?**

Yes, another election can take place a minimum of twelve months after the first election. In cases where the National Labor Relations Board finds that the employer engaged in objectionable conduct, a rerun election will be ordered without the waiting period.

**GROUNDINGS for Objection to Election:**

After an election has been held, the losing party has 7 days to file objections if it believes the election should be overturned. The NLRB may set aside the results of an election for the following reasons:

- Threats or reprisals.
- Reproduction of NLRB Documents in such a way as to suggest that the Board endorses a particular choice.
- Misrepresentations of NLRB action.
- Employee questioning, polling or surveillance.
- Visiting of voters residences by the employer.
- "Captive Audience" speeches on the eve of election.
- Benefits and Inducements: Promises of benefits (e.g. wage increases if the union loses)
- Appeals to racial prejudice.
- Electioneering near the polls.
- Mis-representation in pre-election statements.

- **If the Union Wins, Can There Be Another Election?**

Yes. After twelve months from the first election, another election can be held. Any worker or employee group can request it.

The methods for initiating and conducting an election to change the bargaining agent (union), or to return to "no representation," are the same as the original election. If the employees vote against the labor organization, it is "decertified," i.e., eliminated. However, if the union and employer have negotiated a contract within twelve months from when the union was certified, then no election can be held until after the expiration of that contract, or three years, whichever comes first. It is illegal for an employer to sponsor any action encouraging a union's decertification.

- **Does the Employer Have to Bargain with the Union?**

An employer is required to bargain in "good faith" with the certified labor organization representing the employees. Collective bargaining can be divided into three separate areas: the duty to meet and confer; the duty to bargain in good faith; and the duty to cover certain subjects. The employer is not required to agree to any particular contract provision, no matter how reasonable or fair it appears to the union. However, refusing to meet at reasonable times; refusing to discuss grievances; refusing to discuss wages, benefits, or other mandatory subjects of bargaining; "take it or leave it" bargaining; or attempts to make deals behind the backs of the negotiating committee would be unfair labor practices.

- **Does the Employer Have to Give Information?**

The National Labor Relations Act requires that an employer, upon request, supply the union with relevant information needed for bargaining. This means, for example, that the union can obtain the cost of wage and benefit packages from the employer during contract

negotiations. A particularly significant rule is that a company claiming financial inability to meet a union's demands may be required to prove its claim by showing its financial records to the union.

In addition, the duties of the employer extend beyond the period of contract negotiations and can be an effective tool for resolving problems which arise during the life of the contract. For example, a union may be entitled to personnel records or other relevant information it needs to represent its member in grievance proceedings. The National Labor Relations Board has also held that an employer planning to subcontract work or close a plant may be required to give the union the financial data on which it is basing its decision, and an opportunity to bargain over the decision. In some cases, the National Labor Relations Board has required an employer to provide the union with statistics on employment of women and minorities, which can be used to fight discrimination.

- **What Is a Labor Contract?**

A labor contract is a private agreement entered into by an employer and a labor organization for the purpose of regulating certain work-related issues. The provisions of the labor contract are binding on both sides for a mutually acceptable period of time and are enforceable through procedures such as the grievance procedure, arbitration, the National Labor Relations Board, or finally, state or federal courts.

This agreement takes the form of a legal contract for several reasons. Employees need to know in advance about wages, fringe benefits, discipline proceedings, and other matters. Employers need to know the same things, plus want protection from strikes for a certain period of time.

In the vast majority of cases both parties to the agreement comply with its contents and the law never enters the picture. In some cases serious abuses do occur, and workers may turn to the National Labor Relations Board or the courts to seek protection.

See Cornell's "LABOR CONTRACT DATABASE" at (<http://iir.berkeley.edu/library/contracts>); see also [What Goes in a Contract](#) at the Hawai'i State AFL-CIO web site.

- **What Are Mandatory Subjects of Bargaining?**

Both the employer and the employee representative are required to bargain over "wages, hours, and other terms and conditions of employment." This has been defined over the years to include wages and fringe benefits, grievance procedures, arbitration, health and safety, nondiscrimination clauses, no-strike clauses, length of contract, management rights, discipline, seniority, and union security.

### **Wages, Hours, and Fringe Benefits**

These provisions are the most important to the average employee. The wages and hours clauses are subject to legal limitations, such as laws concerning minimum wage (state and federal) and consecutive hours (overtime, ICC regulations, and other pertinent laws).

Possible fringe benefits are limited only by the imagination of the workers. Usual fringes are vacations, holidays, pensions, and health insurance. Others are sick pay, severance pay, reporting pay, day-care facilities, financial services, educational loans, and sabbaticals. All of these subjects are proper topics of the give and take of negotiations.

### **Health and Safety**

An increasing number of unions are negotiating health and safety provisions into their contracts. Typical provisions might establish the right of a union health and safety committee to make inspections and examine records, or the right of a worker to refuse unsafe work.

### **Non-discrimination clauses**

There is also a duty to bargain over elimination of discriminatory employment practices. A

good non-discrimination clause can often provide the fastest remedy for a worker who is discriminated against by reason of age, race, sex, religion, disability, or national origin. This type of clause can be used as the basis for a grievance about any of these discrimination issues, including sexual harassment, discriminatory health benefits relating to pregnancy, or lower pay for traditionally "women's jobs."

### **Length of Contract**

An important item of every contract is how long it will be binding. This is strategically important for both sides and often must be determined in light of the rate of inflation, the financial health of the employer, and other similar considerations.

### **Management Rights**

Employers traditionally work to retain broad control over the operational activities of their business. Management rights usually include decisions such as corporate structure, production levels, and plant size. What is and what is not a "management right" is negotiable, and may be defined in the contract.

### **Discipline**

Contracts usually include a clause reserving the right of the employer to discipline workers by firing, suspension, notation on work records, and other forms of reprimand. Labor organizations traditionally try to limit this clause by requiring that "just cause" be shown for the discipline. Unions also work for procedural safeguards such as notice, hearings, and review in an attempt to protect the employee. These safeguards are often written in conjunction with the grievance procedure. The goal of the discipline clause is to insure that all facts are heard and that the punishment is not arbitrary or unfair.

### **Seniority**

The seniority clause is a method by which senior employees protect their jobs in work areas involving transfers, promotions, bumping, filling vacancies, and layoffs. Seniority rights can be established on a department or plant-wide basis and may be conditioned on the worker's ability to perform on the job. These clauses are often the most complicated in a contract and vary with the kind of work.

### **Dues Collection**

Union and management may negotiate a mutually agreeable means of union dues collection. The most convenient method is the "check-off" system by which the company automatically deducts the amount from the employee's paycheck. Such a practice is negotiable.

### **Union Security**

A labor organization often seeks to protect its strength by insisting on a union security clause. Long ago, the closed-shop agreement by which an employer could only hire members of a particular union was declared illegal. In Hawai'i, management and labor can negotiate a contract which requires that when a worker is hired into a job covered by the contract, he or she must join the union within a short period of time. This is called a union shop. It should be noted that this is an area where the National Labor Relations Act allows state control. A state may enact a so-called "right to work" law and declare union security clauses illegal. Hawai'i is one of 29 states that has no such law.

A contract may also provide for a weaker form of union security. Under an agency shop, for example, no employee is required to join the union. However, any worker who does not join must pay a "service fee" or "fair share" to cover the expense the union incurs by representing all members of the bargaining unit, as it is legally required to do.

These clauses vary greatly from contract to contract and industry to industry. Often they do not exist at all.

### **Grievance Procedure**

Because contracts cannot foresee every problem that will arise at work, most collective bargaining agreements include the establishment of a mutually agreeable procedure to settle differences in contract interpretation. Furthermore, the grievance procedure is usually the means a worker has of enforcing the contract.

### **Arbitration**

If the parties cannot agree on contract interpretation or proper enforcement, they may wish to call in an impartial outsider, or "arbitrator," to settle the question. This is only possible when an "arbitration clause" is negotiated into the contract. An arbitration clause provides an alternative to time-consuming lawsuits.

This category of contract language will often define how the arbitrator will be selected, who will pay what share, and what the arbitrator's scope of authority will be. Often, both sides will agree that the arbitrator's decision is final or "binding." This means the courts cannot review the arbitrator's decision unless it is clearly contrary to law.

### **No-Strike Clause**

Most employers insist that the labor organization agree not to strike for the duration of a contract. Such an agreement is enforceable in court and enables the employer to plan production without fear of work stoppages. This makes "wildcat strikes" illegal and may even require that the union discipline the strikers.

No-strike clauses have been interpreted to ban almost all strikes during the life of the contract, except strikes in response to abnormally dangerous working conditions (see the chapter on occupational safety and health). Strikes are still legal, of course, when the contract expires.

### **• What Kinds of Acts Are Unfair Labor Practices?**

Employers may be charged with Unfair Labor Practices if they attempt to deprive their workers of the right to form, join or assist a labor union; the right to bargain collectively through representatives of their own choosing; or the right to engage in "concerted activity" for the purpose of collective bargaining or other mutual aid or protection. Specifically, section 8(a) of the National Labor Relations Act makes it unfair for the employer to prevent workers from exercising the above rights by:

- interfering, restraining or coercing their workers;
- dominating or seeking to control the union;
- discriminating against workers for union activity;
- discharging a worker who files a ULP or testifies to a ULP;
- refuses to bargain in good faith with a duly elected union.

Since the passage of the Taft-Hartley Act in 1947, labor organizations have been restricted in ways similar to employers. This amendment to the National Labor Relations Act makes it illegal for a union to:

- coerce people to become union members;
- use threats, intimidation, or violence;
- force an employer to punish a worker because he/she doesn't get along with the union;
- charge excessive union dues;
- refuse to bargain in good faith with the employer.

In addition, a union cannot force a worker to use the union grievance procedure, although it may have a representative present at the grievance meeting. Any worker who wants to try to settle a problem directly with the employer may do so unless specifically prohibited by the bargaining agreement.

- **Can a Union Punish Employees Who Disagree with Union Policy?**

Unions commit an unfair labor practice if they "restrain or coerce" any organization rights of employees. For example, if an employee seeks to decertify a bargaining unit (i.e., kick out the union by a new election), there is nothing the union can legally do to get the worker fired or to harm his or her job status.

A labor organization does have broad power to make and enforce its own rules, and such rules can provide for fines or expulsion from membership for anti-union activity. However, these sanctions are totally internal affairs. A union cannot legally have a person fired for breaking union rules or refusing to pay union fines.

Where union membership is a condition of employment ("union shop"), expulsion from the union does not lead to expulsion from the job except for failure to pay dues. As long as an employee continues to pay dues, discharging the employee for violating union rules would be an unfair labor practice by the union and the employer.

- **What Is the Union's Responsibility to the Members of the Bargaining Unit?**

The union must represent all the workers in the bargaining unit fairly and equally, whether or not they belong to the union. This is known as the duty of fair representation, and a union which violates this duty may be subject to an unfair labor practice charge or lawsuit by an aggrieved member.

A union can meet its responsibilities under the duty of fair representation by representing everyone in the bargaining unit equally, handling similar cases consistently, investigating each grievance and problem thoroughly, keeping written records, observing time limits, and maintaining an internal process of appeal.

- **What If the Union Violates the Duty of Fair Representation?**

An employee who has been treated unfairly by his/her union can file an unfair labor practice charge with the National Labor Relations Board or sue the union and/or employer in state or federal court. Before the board or courts will hear such a claim, the employee must do all he/she can through the contract's and union's procedures. If the board or courts uphold an employee's charge of unfair treatment by the union, lost pay, reinstatement, or other compensation can be awarded.

- **What If an Unfair Labor Practice Has Taken Place?**

Any employer, employee, or group of employees may file an unfair labor practice charge with the regional office of the National Labor Relations Board.

If anyone believes a violation has occurred, he/she should write to:

Officer-in-Charge  
National Labor Relations Board  
Prince Kuhio Federal Building, Room 7318  
300 Ala Moana Boulevard  
Honolulu, HI 96850  
(808) 541-2814

This office will send the appropriate forms and information to file a formal charge. The formal charge must be filed and served on the charged party within six months of the

violation and contain a brief general description of what happened. Under the NLRB rules, the charging party has the responsibility for insuring that the charge is timely served on the charged party. Any employee, whether in a union or not, may file. No lawyer is required and there is no filing fee or other cost to the employee.

- **What Will Happen After the Charge is Made?**

An NLRB investigator will look into the charge. This will involve determining jurisdiction, researching the facts of the case, and interviewing workers, union representatives, the employer, and other witnesses. The employer or labor organization is guilty of an unfair labor practice if it interferes with the investigation.

The investigator will then make a full report to the NLRB's regional office where it will be studied. If the regional office finds there was no violation, it will ask for the charge to be withdrawn. If not withdrawn, it can dismiss the charge and this decision is appealable to the General Counsel of the National Labor Relations Board in Washington, D.C.

If the regional office feels a violation did take place, it will issue a complaint to the charged party. The charged party can demand a hearing, which is much like a trial. The board will provide attorneys at such a hearing who will argue in favor of the complaint. The decision of the hearing can also be appealed.

Of course, the problem may be solved informally at any point along the way.

- **What If an Unfair Labor Practice Has Been Determined?**

If the National Labor Relations Board finds that an unfair labor practice has been committed by either an employer or a labor organization, it has the power to order the practice stopped and to compensate the victim.

Common remedies ordered by the board include reinstatement to a job with or without back pay, ordering new elections, or requiring employers to post notices concerning the rights of their employees. Each party has the right to appeal any of these orders, and it often takes years before a case is resolved.

- **What Other Laws Protect the Rights of Union Members within Their Unions?**

The [Landrum-Griffin Act](#) (officially called the Labor-Management Reporting and Disclosure Act of 1959) is the basic federal law protecting individual rights of union members. It contains a "bill of rights" for union members and sets up procedures for union elections, discipline, and financial reporting.

- **Who Is Covered by the Landrum-Griffin Act?**

The [Landrum-Griffin Act](#) applies to all members of unions in the private sector and to those federal, state, or local government employees who belong to unions representing both public and private employees.

- **Must a Union Be Run as a Democracy?**

Yes. The [Landrum-Griffin Act](#) insures all union members a voice in the affairs of the union. Employees have complete freedom to "express any view, arguments, or opinions" at union meetings or functions without punishment. This includes the right to hand out leaflets to other union members or to seek publicity, as long as the union member doesn't advocate supporting a rival union or breaking the contract with the employer.

Freedom of assembly is also protected. Union members may meet outside of regular union meetings and discuss union affairs without fear of reprisals from union officials.