

PRIVATE SECTOR LABOR LAW

INTRODUCTION

Numerous labor laws have come and gone over the past two centuries. While it would take a book to detail all of the federal statutes, amendments, and regulations that have been implemented, amended, and repealed, private sector labor law today can be summarized by three important pieces of legislation – the National Labor Relations Act of 1935, Taft-Hartley Act of 1947, and Railway Labor Act of 1927.

NATIONAL LABOR RELATIONS

President Franklin Roosevelt signed the National Labor Relations Act (NLRA) into law in 1935, cementing the framework for labor relations that most of the private sector has operated on ever since (3). NLRA applies to most private sector companies and employees, except for a few select industries like railway, airline, and agriculture.

NLRA promises employees three basic protections. First, employees can form a union with representatives of their choosing. Secondly, the union can collectively bargain with their employer over wages, benefits, and working conditions, and their employer is obligated to negotiate. Thirdly, employees are protected from unfair labor practices by their employer, such as discouraging or interfering in the formation of a union or its elections.

Today, NLRA's provisions are enforced by the National Labor Relations Board (NLRB) in over thirty regional offices across the nation. NLRB is charged with conducting union elections and investigating unfair labor practices on the local level, as well as adjudicating complaints on the national level. If NLRB determines that a labor violation has been made either by a union or employee it assists the injured party in filing a complaint through administrative court. If NLRB is then unsatisfied with the court's ruling, its five person board in Washington can review the case and either uphold or overturn the decision. However, NLRB's subsequent verdict is also reviewable by the U.S. Court of Appeals.

The final check on NLRB's adjudicating power has provoked a lot of accusations of bias the past few years, as numerous decisions by the Board have been overturned. Most notably, NLRB's "ambush election" rule, which allowed unions to be formed in as little as 10 days, was annulled on appeal (4). Indeed, congressional hearings have been held investigating NLRB's bias, with congressmen submitting recent decisions like the right for employees to create numerous "micro-unions" within a company as evidence that the Board is beholden to union bosses and the Democratic Party (5).

TAFT-HARTLEY AMENDMENTS

While most of the NLRA's provisions are still in place today, the Taft-Hartley Act amended some to the 1935 law's severest requirements in an effort to ease its burden on businesses (6). Most importantly, the law banned "closed shop" contracts where companies were required to only hire members of their union. States still have the option to adopt "union shop" laws, where an employee is required to join the company's union within a certain time after their hire. However, Taft-Hartley also allows states to adopt right-to-work legislation where workers have the option to opt-out of union membership if they so choose. As a result, 24 states and Guam today have right-to-work laws in place, giving workers greater freedom and their state greater economic growth as a result (7).

QUICK FACTS

- As of 2015, 14.8 million Americans are union members, comprising 11.1% of the workforce (1)

NOTABLE & QUOTABLE

"The only true labour leader is the one who leads labour to work and to wages, and not the leader who leads labour to strikes, sabotage, and starvation. The union of labour which is coming to the fore in this country is the union of all whose interests are interdependent—whose interests are altogether dependent on the usefulness and efficiency of the service they render."

-Henry Ford

Taft-Hartley also included other provisions, such as banning unions from contributing to electoral campaigns, requiring unions to give employers notice of their intent to strike weeks in advance, and allowing employers to express their opposition to unionization so long as they do not interfere in their formation.

RAILWAY LABOR ACT

President Calvin Coolidge signed the Railway Relations Act (RRA) in 1926, regulating labor relations for employees of railroads and, subsequently, airlines (8). Like NLRA, the act gave employees the right to form unions, collectively bargain, and strike. However, considering that transportation strikes can endanger interstate commerce, RRA is more restrictive on how collective bargaining is carried out.

If a union and its company cannot reach an agreement, they can request arbitration from the National Mediation Board created by RLA (9). If the parties still cannot reach agreement and have ultimately exhausted all negotiation, the union then has the right to strike. However, if the President of the United States determines that such a strike would threaten essential transportation, he can form a Presidential Emergency Board to mediate the dispute.

CONCLUSION

While there are many labor laws on the books today, NLRA and RLA still serve as the foundation for labor relations in the private sector. Although NLRA and its subsequent amendments in the Taft-Hartley Act seem to give a good balance of power between companies and unions in negotiations, recent decisions by the NLRB raise concerns that arbitration could be tilted in favor of the latter. While RLA imposes greater restrictions on collective bargaining in the transportation sector, it ultimately is aimed at preserving the flow of interstate commerce throughout the country.

Endnotes:

1. BLS <http://www.bls.gov/news.release/union2.nr0.htm>
2. Henry Ford, *My Life and Work* (1922) (online at <http://www.gutenberg.org/cache/epub/7213/pg7213.html>)
3. National Labor Relations Board, "National Labor Relations Act" (online at <https://www.nlr.gov/national-laborrelations-act>)
4. Chamber of Commerce vs. National Labor Relations Board (online at <http://www.chamberlitigation.com/sites/default/files/cases/files/2011/chamber%20of%20commerce,%20et%20al.%20v.%20NLRB%20%28%29.pdf>)
5. Education & the Workforce Committee, "Expanding the Power of Big Labor: the NLRB's Growth Intrusion into Higher Education" (September 12, 2012) (online at <http://edworkforce.house.gov/calendar/eventsingle.aspx?eventid=307454>)
6. "Taft-Hartley Act" (online at <http://vi.uh.edu/pages/buzzmat/tafthartley.html>)
7. Americans for Prosperity Foundation, "Need to Know: Right to Work" (online at http://www.americansforprosperityfoundation.com/files/right_to_work.pdf)
8. "The Railway Labor Act" (online at <http://railwaylaboract.com/rla.htm>)
9. National Mediation Board, "Collective Bargaining Under the Railway Labor Act (RLA)" (online at <http://www.nmb.gov/publicinfo/collbarg2.pdf>)

Americans for Prosperity Foundation's "Need to Know" informational series explores current events and recent scholarship on public policy issues from a free-market economics perspective. A full list of "Need to Know" briefings is available at www.AmericansForProsperityFoundation.org/NeetToKnow.
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