



U.S. DEPARTMENT OF
ENERGY

*Office of the Assistant
General Counsel for
Contractor Human Resources*

Introduction and Overview of The National Labor Relations Act

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Overview

- ❖ History of Labor Relations
- ❖ The National Labor Relations Board and –
 1. Elections and the Determination of the Collective Bargaining Representative
 2. Employer Unfair Labor Practices
 3. Union Unfair Labor Practices
- ❖ Questions

History of the National Labor Relations Act

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The National War Labor Board (NWLB)

- ❖ A federal agency created in two different incarnations, the first by President Woodrow Wilson from 1918–19, during World War I; and the second by President Franklin D. Roosevelt from 1942–45, during World War II.
- ❖ In both cases the Board's purpose was to forestall disruptions in production;
 - ❖ It arbitrated disputes between workers and employers
 - ❖ It opposed the disruption of war production by strikes
- ❖ But - it supported an eight-hour day for workers, equal pay for women, and the right to organize unions and bargain collectively.
- ❖ Decisions of the NWLB generally supported and strengthened the position of labor
- ❖ The NWLB did have any coercive enforcement power over employers.

History of National Labor Relations Act

❖ The Norris–La Guardia Act of 1932

- ❖ Created the right of workers to join trade unions
- ❖ Protected the workers' right to self-organization and to collectively bargain over wages and other terms and conditions of employment.
- ❖ Barred the Federal courts from issuing injunctions against nonviolent labor disputes
- ❖ Banned “yellow-dog contracts” - where workers agree as a condition of employment, to NOT join a labor union

The National Labor Relations Act (NLRA)

29 U.S.C. §§ 151-169

- ❖ Congress enacted the **National Labor Relations Act (NLRA)** in 1935 (Wagner Act) - to protect the rights of employees, employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices.
 - *The* charter of industrial democracy in the US.

- ❖ Why?
 - 1935 – In the midst of the Great Depression
 - Guarantee the right of most workers to bargain collectively
 - Give greater power to labor unions
 - Negotiated “employment contracts” determine terms and conditions of employment (v. statutorily determined T&C)
 - Move more wealth to common people, through higher wages
 - Create a better relationship between labor and management.

NLRA Established

The National Labor Relations Board

- ❖ The National Labor Relations Board (NLRB or “the Board”)
 - **Purpose is to enforce *employee rights***, rather than to mediate disputes or legislate T&C
 - Made up of five members appointed by the President and confirmed by the Senate
 - Its decisions are not self-enforcing – parties must go into federal courts of appeals

- ❖ The NLRB has two basic functions:
 - Overseeing the representation process by which employees decide whether to be represented by a labor organization
 - Determining the unit appropriate for the purpose of collective bargaining and certifies the results of an election for representation

- ❖ Protecting against *employer* unfair labor practices
 - It can lead investigations, collect evidence, Issue subpoenas, and require witnesses to give evidence.



NLRA

Guarantees Rights of Employees

- ❖ Guarantees basic rights of private sector employees to organize into trade unions
- ❖ Endorses the principles of exclusive representation and majority rule
- ❖ Employees have the basic right to engage in collective bargaining for better terms and conditions at work
- ❖ Guarantees employees the right to take collective action, and if necessary to strike
- ❖ Prohibits unfair labor practices committed by employers.



NLRA

Guarantees Rights of Employees

■ Pictures from Amarillo Globe-News



Labor Management Relations Act of 1947 Taft-Hartley Act

- ❖ **Labor Management Relations Act of 1947**, 29 U.S.C. §401-531, better known as the Taft–Hartley Act, enacted June 23, 1947, amended the NLRA.
- ❖ Primarily restricts the activities of labor unions
- ❖ Why --
 - ❖ During World War II unions had been constrained from striking so as to impede the war effort – when the War was over that changed
 - ❖ After WWII about 25% of the workforce was unionized*
 - ❖ There was a large uptick in the number and length of strikes
 - ❖ Reports of abuses of the NLRA by Union Organizations
 - ❖ Businesses were clamoring to obtain some relief and the law was promoted by large business lobbies

* At their peak in 1954, 34.8% of all U.S. wage and salary workers belonged to unions, according to the Congressional Research Service.

Taft-Hartley Act Amendments to NLRA

- ❖ Added a list of union unfair labor practices
- ❖ Individual states may restrict union security clauses (such as the union shop) entirely in their jurisdictions by passing right-to-work laws
- ❖ Allows professional employees to organize, but provided for special procedures before they may be included in the same bargaining unit as non-professional employees
- ❖ Expressly excluded “supervisors” from coverage under the act



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Nuclear Energy

The National Labor Relations Board





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The NLRB, Elections and the Collective Bargaining Representative (Section 9)

The Atomic Trades Labor Council was certified by the NLRB on September 25, 1946, as the bargaining unit for Oak Ridge National Laboratory employees. It was certified to represent Y-12 employees in 1951.





The Collective Bargaining Representative & Elections Section 9

- **Section 9(a) certification:** Employee representatives are selected by majority of employees democratically, through:
 - Election, or
 - Voluntary recognition upon showing that a majority support in proposed bargaining
- Once selected, the union is the exclusive representatives of all the employees in such unit for the purposes of collective bargaining



Supervisors

- ❖ “Supervisors” - as that term is defined under the National Labor Relations Act - are not permitted to unionize. These are the indicia of supervisory status:*
- Hire
- Discharge
- Lay off/Recall
- Assign
- Reward
- Discipline other employees
- Responsibility to direct other employees
- Adjust their grievances
- Promote

*Exercise of such authority must not be routine or clerical and authority must be held in the interest of the employer.

***G4S Government Solutions, Inc., d/b/a WSI
Savannah River Site and International Guards
Union of America, 363 NLRB No. 113
(February 10, 2016)***

- In 2014, approximately 75 sergeants and lieutenants petitioned to unionize.
- The NLRB Regional Director determined they were not supervisors and the Board affirmed in 2016.
- Board determined there was no evidence that the supervisors used independent judgment in the exercise of ANY of the supervisory indicia
 - Focused on
 - No responsible direction (were not held accountable for subordinates' failings).
 - No independent judgment in the assignment function; rather, adjustment of post rotation was routine, SOPs control when OT was authorized.
 - Did not exercise independent judgment to discipline; all discipline approved by labor relations.

Simply Calling Someone a Supervisor is not enough

Supervisor



The National Labor Relations Act (NLRA) Section 7

“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, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].” (Emphasis added.)

Contractor Workforce

Savannah River Site



The National Labor Relations Act (NLRA) Section 8(a)

Unfair Labor Practices by the Employer:

- (1) Interference with, restraint, or coercion of employees in the exercise of the rights guaranteed in section 7;
 - threats of loss of jobs/benefits, or to close a plant if employees join a union; coercively questioning employees about union affiliation
- (2) Domination or interference with the formation or administration of any labor organization or contribute financial or other support to it

The National Labor Relations Act (NLRA) Section 8(a)

Unfair Labor Practices by the Employer:

- (3) to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization
- Examples: Refusal to hire, discharge, demotion, giving less desirable job or work assignments, or withholding benefits – when actions are taken either because of union or group activity, or because an employee refrains from such activity.
- (4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.



NLRA

Section 8(a)(5)

-
- (5) Refusal to bargain in good faith or taking unilateral action about employee terms or conditions of employment (T&Cs); refusal to supply relevant, non-confidential information at request of union
- Bargaining Subjects –
 - Mandatory:
 - wages, benefits (including future retiree benefits for current employees), working conditions
 - Permissive:
 - Basic change in operation or a change in the company's scope or direction; retirement benefits of current retirees
 - May not force other party to bargain over permissive subjects, or insist to impasse over permissive subjects
 - Even for permissive subjects, employers must bargain about effects



No Interference with, restraint, or coercion of employees in the exercise of their rights



The National Labor Relations Act (NLRA) Section 8(f)

Section 8(f): Project Labor Agreement (PLA)

- Employers in the Construction Industry can recognize a union as the exclusive bargaining representative and sign a CBA –
 - before employees are hired or have designated the union as their representative, *and*
 - parties can walk away upon CBA's expiration.
 - Section 8(f) representation and employment pursuant to a PLA may become Section 9(a), allowing for a representation election and collective bargaining, upon the appropriate showing.

The Unfair Labor Practice Process

- Any person can file a ULP allegation, called a “charge”
 - Person Includes: one or more individuals, labor organizations, partnerships, associations, corporations, and legal representatives
 - Allegation is that someone (employer or labor organization) violated the NLRA
- NLRB General Counsel staff (GC) investigates and has discretion whether to prosecute ULPs through a “complaint”
- NLRB ALJ holds a hearing and issues decision
- Board then reviews and enforces or reverses ALJ decision
- Parties can go into federal courts of appeals to enforce Board orders

Remedies Under the NLRA

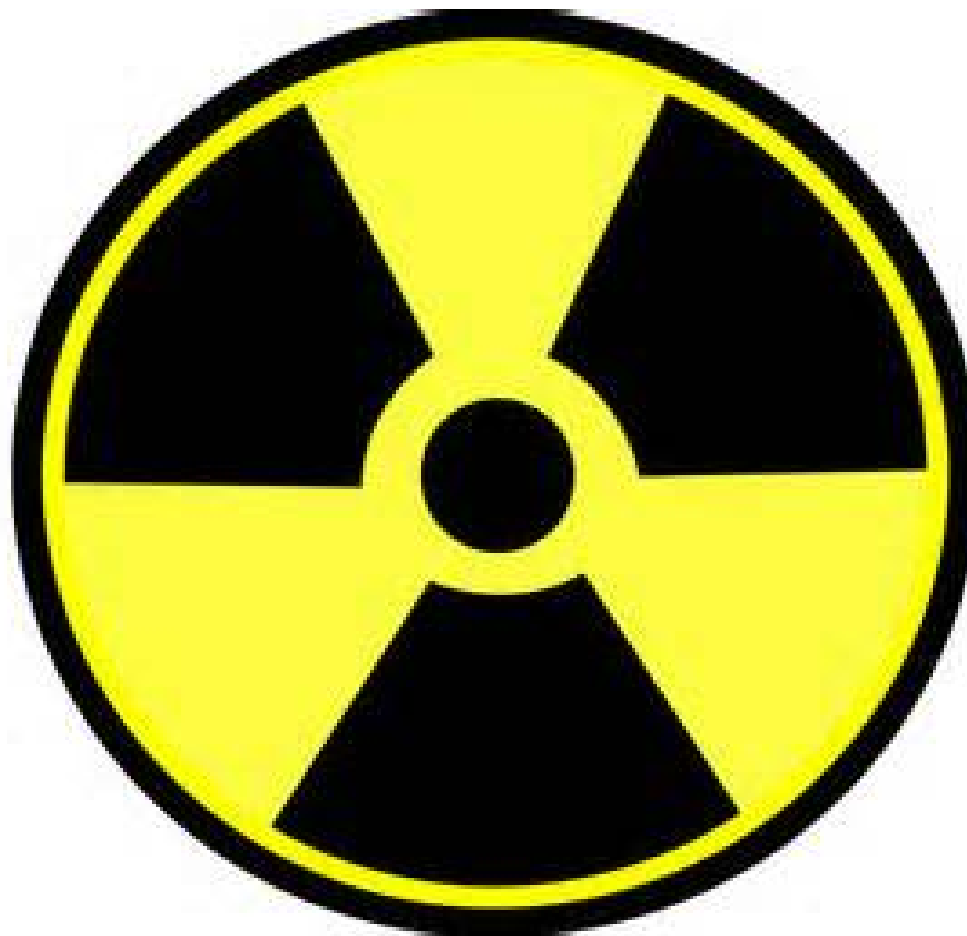
- Primarily to remedy or prevent Unfair Labor Practices; it is not punitive.
- Reinstatement, backpay, notice posting are typical remedies
- Section 10(j) – Authorizes federal courts to grant temporary injunctive relief to stop the actions that may be an Unfair Labor Practice, pending completion of case before an Administrative Law Judge and the Board, where –
 - There is “reasonable cause” to believe a violation has occurred, *and*
 - Injunctive relief is “just and proper”

The National Labor Relations Act

Section 2

Defining the Employer

CAUTION !!



The National Labor Relations Act

Section 2

Defining the Employer

Section 2(2) of NLRA: Employer “includes *any person* acting as an agent of an employer, directly or indirectly ...”

- Excludes governmental entities
- If entity other than the named employer is found to be an employer, it may be obligated to bargain, abide by a CBA, and liable for Unfair Labor Practices.
- Various doctrines regarding defining the NLRA “employer”:
 - Successor employer: continues operations and *succeeds* to its predecessor’s bargaining obligations
 - Alter ego: disguised continuance of old employer, *intent to evade* obligations under the NLRA
 - Joint employer: *codetermines T&Cs of employment*, NLRB currently reviewing standards for joint employer status

The Successor Employer and Section 8(a)(5)

- **Successor employer:** an employer succeeds to bargaining obligation of its predecessor when:
 - (1) new employer continues predecessor business in substantially the same form, *and*
 - (2) a majority of the new employer's workforce were formerly employed by the predecessor
 - Example: Since 1995, DOE has taken the position that a new contractor generally succeeds to the bargaining obligations of its predecessor.

- A successor is ordinarily permitted to set initial T&Cs of employment and need not adopt a predecessor's CBA, unless it is a "perfectly clear" successor (i.e., shows intent to hire all predecessor employees).

- **Nota Bene (Take Note):** The NLRB GC announced (February 25, 2014) that the issue of whether a "perfectly clear" successor is obligated to bargain with the union before setting initial T&Cs should be submitted to him for review.

The Alter Ego

- ❖ Alter ego: typically found when one employer entity effectively ceases to perform an operation and a second entity performs it as a “*disguised continuance*” of the initial employer
- ❖ IS obligated to honor the CBA.
- ❖ Factors where NLRB will find an employer to be an Alter Ego –
 - (1) Where two entities have substantially the same management, business purpose, operation, equipment, customers, supervision, and ownership, *and*
 - (2) Where there is an *intent to evade* obligations under the NLRA.



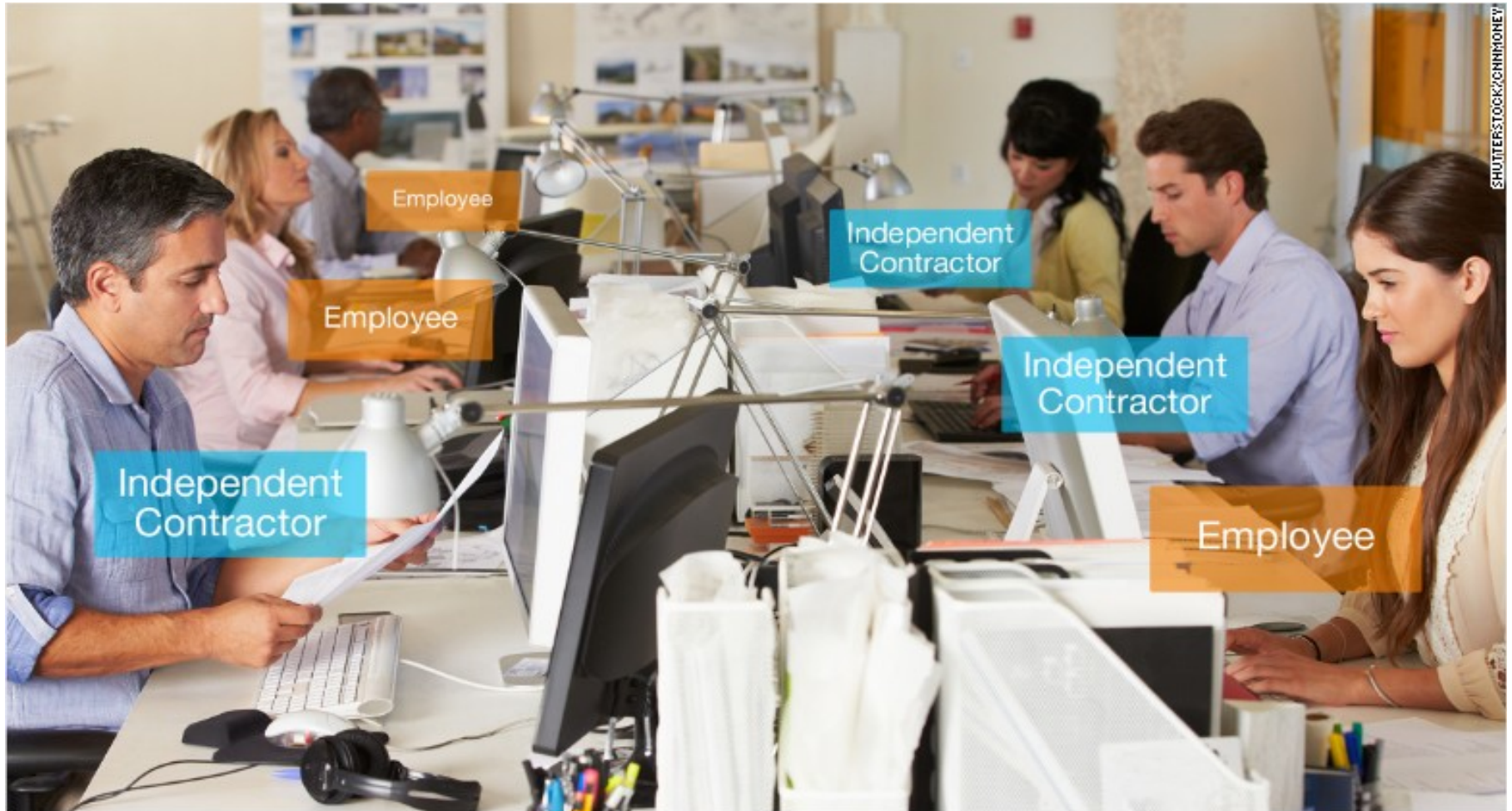
The Joint Employer

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- ❖ Codetermines terms and conditions of employment (T&Cs)
 - Workers employed through staffing/temporary employment agencies
 - *Browning-Ferris Industries*, 362 NLRB No. 186 (Aug. 27, 2015) - The joint employer need not have actually exercised authority over the employees' terms and conditions, so long as it had the right of control over *or* had exercised control directly *or* indirectly through an intermediary.
 - The bare right of control, never exercised, may not be enough – The Board will focus on the existence, extent, and objective of the retained control.



Joint Employer Issues



SHUTTERSTOCK/CONNORHONEY

Joint Employer Issues

- ❖ Does the prime have contingent or temporary employees or staff augmentees who have been on site for years, perhaps working side-by-side with prime employees?
- ❖ Do the prime's employees direct the temporary employees or staff augmentees work?
- ❖ Do the staff augmentees or temporary employees direct the prime's employees work?



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Don't Feel Stuck in the Mud We are here to help





Wrap up

If you have questions on specifics as they relate to your site and your contractors, or unions, please call the individual site leads at GC-63 or the NNSA-GC. If you have forgotten who that is, please check the listing at:

<http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law>

Questions?

