

SYLLABUS
G545 and E445, Collective Bargaining

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Department of Economics
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COURSE POLICIES

1. In all respects, the policies of the School, Department, IPFW and the University shall be applied in this course.
2. Office hours will be posted on the professor's door, appointments may also be arranged. The Professor's office is Neff 340D.

GRADING UNDERGRADUATES:

3. The following grade scale will be applied in this course for determination of final grades:

A	100 - 90 percent
B	89 - 80 percent
C	79 - 70 percent
D	69 - 60 percent
F	below 60 percent

All final grade calculations shall be rounded up. In other words, 69.01 and 69.99 percent are both considered 70 percent and will earn the student a grade of C.

4. The majority of undergraduate economics courses this professor has taught have had average final grades that fall within the range centered on 2.55 on a 4.0 scale.
5. Course requirements:

The mid-term examination is worth 40% of the final grade, the final examination is worth 50% of the final grade, and there will be at least three quizzes, the best two scores on these quizzes will be worth 10% of the final grade.

- A. Examinations will consist of six short essay questions, you pick four - each worth twenty-five points.
- B. Quizzes are worth twenty points each, and will consist of three

multiple choice questions (four points each) and four true false questions (worth two points each)

- C. If there is a 10 point improvement on the final exam over what was earned on the midterm, then the weights will be change to the midterm being worth only 30 percent and the final exam being worth 60 percent of the final grade.

GRADING GRADUATES:

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A	100 - 90 percent
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D	69 - 60 percent
F	below 60 percent

All final grade calculations shall be rounded up. In other words, 69.01 and 69.99 percent are both considered 70 percent and will earn the student a grade of C.

- 4. The majority of graduate economics courses this professor has taught have had average final grades that fall within the range centered on 3.25 on a 4.0 scale.

- 5. Course requirements:

The mid-term examination is worth 30% of the final grade, the final examination is worth 40% of the final grade, and there will be at least three quizzes, the best two scores on these quizzes will be worth 10% of the final grade.

- A. Examinations will be worth 100 points, and will consist of five questions, one is required of every one and you may select any three of the remaining questions (each is worth 25 points).
- B. Quizzes are worth twenty points each, and will consist of three multiple choice questions (four points each) and four true false questions (worth two points each)
- C. If there is a 10 point improvement on the final exam over what was earned on the midterm, then the weights will be change to the midterm being worth only 20 percent and the final exam being

worth 50 percent of the final grade.

- D. Graduate Students must also write a short paper, not to exceed 8 pages double-spaced, (with 1 inch margins, 12 point font.) The subject of the paper is: "HOW RELEVANT ARE LABOR UNIONS IN TODAY'S ECONOMY." You must support your opinions with legitimate scholarly research, from at least eight different sources. This is a position paper, and it must be scholarly with proper citations and no, O'Reily and Limbaugh are not legitimate sources!!!!!!!!.
6. The final examination will be given at the time and place scheduled by the university. No exception is possible.
 7. No make-up exams will be permitted. If you cannot attend class at exam time you must make prior arrangements to take an equivalent examination before your classmates. Exceptions may be granted for cases where there was no possibility for an earlier examination, i.e., injuries or illnesses, etc – things clearly beyond the student's control.
 8. Academic dishonesty in any form will result in a course grade of F and other sanctions as may be authorized by the university. The over whelming preponderance of students do not engage in dishonesty, and the professor owes it to these students to strictly police this policy.
 9. The provisions of these policies and the course objectives are subject to testing. These policies are also subject to change at the discretion of the professor and do not constitute a binding contract.

COURSE OBJECTIVES

This is an introductory collective bargaining course. Beside the mastery of the course content there are specific objectives which are intended for this course:

All students:

1. To have a foundation upon which to understand labor markets in the United States, and the role that organized labor has played in establishing a middle class in the United States.
2. Develop an understanding of the evolution of the labor law in the United States.
3. To be able to critically evaluate contracts, the enforcement of those contracts,

and employment within union, nonunion, and other work environments.

4. To develop an understanding of and appreciation for the institution of collective bargaining.
5. To develop an understanding of and appreciation for the various theories of negotiations as they apply to labor-management relations.
6. Critically thinking is particularly important in this course. Unions and collective bargaining are often emotional issues for people. However, unions and collective bargaining are landmarks in any politically democratic and economically free society. Often where bias exists in examining issues of economic importance it will most easily be apparent when discussing these matters. One needs to develop an ability to be objective, particularly when analyzing and discussing these issues.
7. Communication is also an important issue in this class. Lexicology is an important part of contract law, and negotiations, so we will spend time on being precise with words, undergraduates in both written and verbal forms, and graduates, even more with both.

REQUIRED TEXT

William H. Holley, Jr., Kenneth M. Jennings, and Roger S. Wolters, *The Labor Relations Process, eighth edition*. Mason, Ohio: Southwestern-Thompson, 2005. [Herein HWJ]

TENTATIVE COURSE OUTLINE

ENTRIES IN BLACK BOTH GRADUATE & UNDERGRADUATE STUDENTS.

READINGS IN RED ADDITIONAL ASSIGNMENTS FOR GRADUATE STUDENTS.

OPTIONAL READING ASSIGNMENTS ARE IN GREEN

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1. Introduction to Labor-Management Relations

HWJ, Chapter 1

Selig Perlman, *The Theory of the Labor Movement*. New York: Augustus M. Kelley Publishers, 1970, original Macmillan, 1928, Chapters I and V.

Paul Krugman, *The Age of Diminished Expectations, third edition*. Cambridge, MA: MIT Press, 1997, Chapters 1-3.

2. Labor History

HWJ, Chapter 2

Orley Ashenfelter and John H. Pencavel, "American Trade Union Growth: 1900-1960," *Quarterly Journal of Economics*, (August 1969) Vol. 83, pp. 434-48.

David A. Dilts and Clarence R. Deitsch, *Labor Relations*. New York: Macmillan, 1983, Chapters 2 & 3.

3. Labor Law

HWJ, Chapter 3

Stanley W. Elsea and David A. Dilts, "Unfair Labor Practice Charges under State Bargaining Laws: Indiana, Iowa and Kansas," *Labor Law Journal*. Vol 41, No. 6 (June 1990) pp. 376-380.

Clarence R. Deitsch and David A. Dilts, "NLRB v. Yeshiva University: A Positive Perspective," *Monthly Labor Review*. Vol. 106, No. 7 (July 1983) pp. 34-38.

4. Unions & Management as Institutions

HWJ, Chapter 4

Victor G. Devinatz, "From Industrial Unionism to General Unionism: A Historical Transformation?" *Labor Law Journal*. Vol. 44 (April 1993) pp. 2523-256.

5. Unions & Union Organizing

HWJ, Chapter 5

David A. Dilts, Mark Crouch, and Mashaalah Rahnama-Moghadam, "Effectiveness in Grievance Arbitration: Are There Differences in Union?" *Journal of Collective Negotiations in Public Sector*. Vol. 26, No. 4, (1997) pp. 333-339.

Henry S. Farber and Bruce Western, "Accounting for the Decline of Unions in the Private Sector, 1973-1998" *Journal of Labor Research*, Vol. XXII, No. 3 (Summer 2001) pp. 459-84.

Victor G. Devinatz, "Reflections of a Rank-and-File Faculty Union Organizer at a Public University," *Journal of Collective Negotiations in the Public Sector*, Vol. 30, No. 3, 2003, pp. 209-221.

6. Negotiations

HWJ, Chapter 6

David A. Dilts and Clarence R. Deitsch, *Labor Relations*. New York: Macmillan Publishing Co., 1983, Chapter 7.

Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labor Negotiations*. New York: McGraw-Hill Book Company, 1965.

Herve Queneau and Michael Marmo, "Work-Family Benefits: What Women Want and Negotiators Should Know," *Journal of Collective Negotiations in the Public Sector*, Vol. 30, No. 2, 2003, pp. 183-97



MIDTERM EXAMINATION



7. Economic Issues

HWJ, Chapter 7

David A. Dilts and Clarence R. Deitsch, *Labor Relations*. New York: Macmillan Publishing Co., 1983, pp. 7-12.

David A. Dilts, "The Consumer Price Index as a Standard in Negotiations and Arbitration," *Journal of Collective Negotiations in the Public Sector*. Vol. 23, No. 4 (1994) pp. 279-286.

David Neumark and William Wascher, "Minimum Wages and Employment: A

Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Comment," *American Economic Review*. Vol. 90, No. 5 (December 2000) pp.1362-96.

David Card and Alan B. Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Comment," *American Economic Review*. Vol. 90, No. 5 (December 2000) pp. 1397-1420.

8. Administrative Issues

HWJ, Chapter 8

David A. Dilts and Clarence R. Deitsch, "Absent Workers Back on the Job: The Case of GM and the UAW," *Business Horizons*. Vol. 29, No. 2 (March/April 1986) pp. 46-51.

9. Interest Disputes

HWJ, Chapter 9

David A. Dilts, "Strike Activity in the United States: An Analysis of Stocks and Flows," *Journal of Labor Research*. Vol. VII, No. 2 (Spring 1986) pp. 187-199.

10. Contract Administration

HWJ, Chapter 10

Defense Financing and Accounting Service and American Federation of Government Employees, 122 LA 43 (2006) David A. Dilts.

11. Rights Arbitration

HWJ, Chapter 11

David A. Dilts and Clarence R. Deitsch, *Labor Relations*. New York: Macmillan Publishing Co., 1983, Chapter 13.

David A. Dilts, "Of Words and Contracts: Arbitration and Lexicology," *Dispute Resolution Journal*. May-June 2005, Vol. 60, No. 2, pp.40-46.

Clarence R. Deitsch and David A. Dilts, "An Analysis of Arbitrator Characteristics and Their Effects on Decision Making in Discharge Cases," *Labor Law Journal*. Vol. 40, No. 2 (February 1989) pp. 112-116.

David A. Dilts and Clarence R. Deitsch, "Arbitrator Win/Loss Rates as a Measure of Arbitrator Neutrality," *The Arbitration Journal*. Vol. 44, No. 3 (September 1989) pp. 42-47

Frank Elkouri and Edna Asper Elkouri, *How Arbitration Works, sixth edition*, Washington, D.C.: Bureau of National Affairs, Inc., 2003. Chapter 1

Tecumseh Corrugated Box Company, 118 LA 309, (2003) Jerry Fullmer

Kroger Co. and Bakery Confectionary and Tobacco Workers, Local 372A, 120 LA 596 (2005) David A. Dilts.

12. Disciplinary Matters

HWJ, Chapter 12

David A. Dilts, Ahmad R. Karim and Mashaalah Rahnama-Moghadam, "The Arbitration of Disciplinary Matters: Do Objective Standards Make a Difference in Proof?" *Labor Law Journal*. Vol. 42, No. 10 (October 1991) pp. 708-712.

Enterprise Wire Company, 46 LA 359 (1966) Carroll R. Daugherty

Coca-Cola Enterprises, Inc., 120 LA 1088 (2004) Clarence R. Deitsch

IBM Corporation and K. Schult et al. 341 NLRB 148 (2004).

Epilepsy Foundation of Northeast Ohio and Arnis Borgs et al. 331 NLRB 92 (2000).



FINAL EXAMINATION



LECTURE NOTES
G545
E445

Collective Bargaining

David A. Dilts
Professor of Economics
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June 2006

CHAPTER 1 - The Players

Collective Bargaining – Mutual determination of the terms and conditions of employment.

Players – employees, management, corporate organization, unions

Adversarial Model – competition between management and labor for resources

Cooperative Models – Japan

Mutual Interests

Post industrial Labor Movement

Capital

Division of Labor

Mass production technologies

Mutual dependence between employers & unions

U.S. Labor Movement distinct character:

Management toleration

Union's see themselves as countervailing power to management

Rivalry for worker loyalties

Bargaining power is sole determinate of relationship

Conflict resolution essential to both sides

Changes in Industrial Relations since the 1950s

17% decline in memberships from 1975 to 1984

26 % union in 1956

12% or slightly less today

Less impact on average wages

Public less supportive in general

Industrial mix changing less manufacturing and goods producing now under 20%

Occupational, fewer skilled trades. - more service workers

Demographic changes – more women, more immigrants, more part-time and school kids

Public Policy Changes

NLRB and Courts have been appointed by Republicans

1. Less pro-union, more anti-union rulings
2. Changes in Public Sector – particularly Federal – Civil Service Reform gutted

Management tactics-

Surface Bargaining

Legal battles

Anti-union campaigns – i.e., Walmart

Dunlap Model

Environmental forces	- participants	- outputs
1. Technology	1. Unions	1. Contract
2. Market constraints	2. Management	2. Relationship
3. Dist. Of Power	3. Government	
	Resultant Ideology	

Phases of Labor Relations

Union Organizing

Contract Negotiations

Contract Interpretation and Administration

Conflict

Interpretation and Application of Labor Law in Organizing

Negotiations
Strikes

Interest Arbitration

Contract Administration & Interpretation

Rights Arbitration

CHAPTER 2- HISTORY: THE EARLY YEARS

First Unions in the U.S.

Guild System
Cordwainers etc.

National Unions

AFL
CIO
Merger

Union Philosophies
Uplift
Revolutionary
Business
Predation

Civil and Criminal Conspiracies

Philadelphia Cordwainers (1806)

Commonwealth v. Hunt (1842)

Demise of Conspiracy doctrine

1. Commonwealth v. Hunt
 - A. Legal Means and Legal Ends
2. Brits outlaw it
3. Injunctive relief

Injunctions – court order

Contempt
Criminal
Civil

Injunctions In re Debs, Bucks Stove (Gompers)

Yellow - dog contracts

Pre-Civil War

Political organizations – Andy Jackson etc.

All gone

National Labor Union William Sylvis, National Molders – eight hour day movement

Knights of Labor – 1869 – secretive Terrence Powderly – social issues

American Federation of Labor – craft unions

IWW – Western Federation of Miners

Anti-trust cases

Sherman Act (1890)

Rule of Reason

Amstar

Standard Oil

Danbury Hatters (Loewe v. Lawler) - secondary boycott

Clayton Act (1914) – to remove labor from prosecution

Section 6 - nothing in antitrust laws applicable to labor as though labor were a commodity

Section 20 - No injunctions in labor disputes

Duplex v. Deering (1921) - secondary boycott - no installing repairing etc. of Duplex machinery. Court didn't believe Clayton Act changed anything with respect to organizing campaigns.

Coronado Coal (1922)

Union not guilty of AT violation because of no substantial impact on commerce – case was tried again

Coronado Coal (1925)

5000 tons of coal per day – interstate commerce affected – hence guilty this time.

Bedford Stone (1927)

Unreasonable restraint of trade, hence an injunction was issued to stop cutters from refusing to handle Bedford Stone

American Plan – propaganda movement - open shop

Palmer raids

Industrial Unions – CIO

Sit down strikes

One big union – skilled trades and unskilled together

Industrial Unions (inclusive) CIO
UAW, USWA
Kinked demand curve

Craft Unions (exclusive) AFL
IBT IBEW Carpenters
Shift Supply curve

Protective Legislation:

1926 Railway Labor Act

Texas and New Orleans Railroad

1932 Norris-LaGuardia Act

Hitchman Coal v. Mitchell

1933 NIRA Section 7

Mohawk Valley Formula

Schechter Poultry

1935 NLRA- Wagner Act

Jones & Laughlin Steel (1937)

Section 7

Section 8 – employer unfair labor practices

Enforcement

Jurisdictional Disputes

Taft-Hartley

Section 8 a and b

Federal Mediation & Conciliation Service

Right-to-work 14 b

Teamsters

Hoffa

Landrum-Griffin Act 1959

Reporting and disclosure
mostly unconstitutional

Executive Order 10988, Civil Service Reform Act

FLRA

Striker Replacement erosions of Congressional Intent

PATCO Mess

1938 *McKay Radio* - replacement of economic strikers

Phelps Dodge mess

1974 Health Care Amendments to Taft-Hartley

Nonprofit Hospitals

CHAPTER 3- LEGAL ENVIRONMENT

Section 1 - Policies of the Act

Section 2 - Definitions

Sections 3 through 6 - Creation of the Enforcement and the NLRB

Cease and Desist

Make Whole

Section 7 - Employee Bill of Rights

Employees have the right to self-organization, to form join, or to 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 for other mutual aid or protection, and shall also have the right to refrain from any or all 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.

Section 8 a: It shall be an unfair labor practice for employer to:

1. Interfere with, restrain or coerce employees in the exercise of their Section 7 rights
2. Employers may not dominate or interfere with labor organizations or financially contribute to them
3. Discriminate in the hire or tenure of employees because of union membership
4. Discharge or discriminate against employees for filing charges or giving testimony under the Act.
5. Refuse or fail to bargain collectively with the exclusive representative of the bargaining unit

Section 8 b: It shall be an unfair labor practice for a labor organization to:

1. Interfere with, restrain or coerce employees in the exercise of their Section 7 rights.
2. Causing an employer to discriminate against an employee in violation of Section 8a (2).

3. Must bargaining in good faith with respect to terms and conditions
4. Forbids secondary boycotts and certain strikes and picketing involving third parties.
5. No excessive or discriminatory union dues or fees
6. No featherbedding
7. No organizational strikes or picketing

Section 8 c Free speech

Section 8 (e) No Hot Cargo Agreements

Section 8 (f) 7 day hiring hall arrangement made legal

Section 8 (d) defines the obligation to bargain collectively – wages hours & other terms and conditions of employment, meet at reasonable times and places for the purpose of bargaining in good faith, and reduce any agreements to writing if either side so demands

Section 9 Defines procedures in Representational elections

Section 10 are the ground rules for the investigation, prosecution and remedy of unfair labor practices.

Section 11-12 are the investigatory powers of the NLRB

Section 13-18 are limitations on the board's powers

Section 19 - conscientious objections to joining or supporting unions – Amish or Orthodox Jews

Section 201-205 Creates and outlines functions of FMCS

Section 206 - 210 National Emergency Impasse Procedures

Section 301 - Suits for enforcement

Section 303 - Authorizes suits for damages for secondary boycotts and third party strikes

Objectives of the Law: peaceful Labor-Management Relations

NLRB -

General Counsel - represents complaining party

Regional Offices

ALJ

Board

Board enforcement goes to CCA

Postal Reorganization Act of 1970

State Labor Laws

Kansas
Ohio, Iowa
California
Indiana

Politics

Gissel Doctrine - order bargaining where ULP destroys a majority
Summer and Snow Doctrines

Reagan NLRB -Gourmet Foods - dismantled Gissel

Otis Elevator - NLRB order than bargaining had to occur concerning sub-contracting
Now no such requirement can be enforced

Meyers Industries - a single employee acting on behalf of others is no longer protected
unless clearly authorized to act on their behalf

Milwaukee Springs II - a contract unless it specifically permitted reopening was final,
now an employer may demand reopening over any economic issue

Epilepsy of Northeast Ohio - all employees have Weingarten rights, IBM decision under
Bush Board, no Weingarten rights for nonunion employees.

Collyer Insulated Wire - deferral to private arbitrators
NLRB becoming a political football and losing effectiveness

CHAPTER 4 ORGANIZATION OF THE PARTIES

-UNIONS-

Federation (AFL-CIO)

- National Unions
 - Independents
- Local Unions

- Central Labor Councils
 - Fort Wayne

- Splintering of Federation

Democratic Constitutions

- Union corruption

- Rank and File apathy

Iron Law of Oligarchy

- Attitudes change as one advances into controlling positions

Goals and Objectives

- Organizing

1. Corporate Campaigns
2. Exclusive Agency
 - A. Alternatives

- Political Action

1. PACs

Union Mergers

- PACE - Paperworkers, AIW etc.

- Steelworkers
- Teamsters

-MANAGEMENT-

Management - hired labor

Spectrum of Managerial Attitudes

Open Hostility – Controlled Hostility – Accommodation – Cooperation – Collusion

Theory X and Theory Y management

X –
control
Employees dislike work etc.

Y –
Hold hands and get a warm glow

Union-Free Campaigns

Voice openness; try to out-union, the union

Staff versus Line functions

Management Functions and Decisions

Double breasting

CHAPTER 5 WHY WORKERS ORGANIZE

Why?

Intrinsic versus Extrinsic work factors

Extrinsic - context of work

Intrinsic - content of job

Protect jobs, obtain jobs

Working Conditions

Coalition

Protection in groups, individuals powerless

Maslow's Hierarchy of Needs

Physiological and Safety

Social

Esteem and Self-Actualization

Unions can provide these where management doesn't

Expectancy Model of Work Behavior

Expectancy of performance

Performance will result in outcomes – instrumentality

Voice – input into how these things happen

Blue collar - Professional Differences

Blue collar - office worker

Need Deprivation - importance

Why Unions are formed:

Voice and Money

Why Join

Union security arrangements and values

How?

Union Organizing

1. Exclusive Representation
2. National Labor Relations Act

Bargaining Authorization Cards

1. No dual representation
2. Proof of majority status

Appropriate Bargaining Unit

1. Employer's Desires
2. Union's Desires
3. Bargaining history
4. Community of Interests
5. Functional integration
6. Extent of organization
7. Bargaining history
8. Administrative entity

Craft Severance

Same sorts of issues, except desires of the craft employees are also considered

Accretion\existing union bargaining for newly created entity

Successor Organizations

Double Breasting

Bargaining Unit Amendments

Reorganization & Bankruptcies

Organizing Campaign Rules

1. General Shoe –

A. Captive Audience (24 hour rule)

B. No Solicitation (Names and Address lists)

1. Type of Facility

2. Other Solicitation allowed

C. Interrogation

D. Surveillance

E. Firing for concerted action

F. Lies

G. Futility Doctrine

H. Appeals to Religion, Racial Hatred etc.

Gissel Orders

Unfair Labor Practices

1. Categories

Totality of Conduct

Better to win, only 35% of so of union successful in contract negotiations after a Gissel order – can't legislate morality

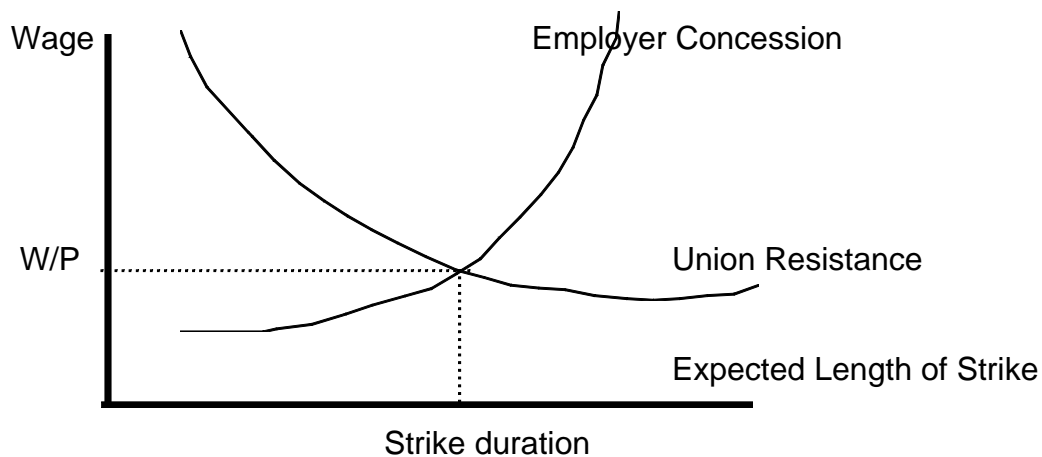
Gourmet Foods

Union successes

Resources

CHAPTERS 6: NEGOTIATING A CONTRACT

1. Preparation
 - a. Data Gathering,
 - b. Generating Goals and Objections
 - c. Building Support ([Intraorganizational Bargaining](#)) – Walton & McKersie - Behavioral Theory
2. Stages of Negotiations
 - a. Exchange of Proposals
 - b. Posturing
 - c. Negotiating
 1. Continuous activities
 - d. The Behavioral Theory of Negotiations broken down into their component parts for purposes of showing phases of negotiations:
 1. Interdependence – ([Attitudinal Structuring](#)) – Walton & McKersie ([Integrative Bargaining](#)) – Walton & McKersie
 2. Concealment – valued items become targets etc.
 3. Package Bargaining – economic, security etc.
 4. Throwaway Items – smoke screens
 5. Causing – everyone on same page
 6. Flexibility – opportunistic advantage
 7. Compromise ([Distributive Bargaining](#)) Walton & McKersie
 8. Face Saving – executory relationship
 - e. Crisis Bargaining – J.R. Hicks resistance - concession model



Drivers of the model:

- a. Cost of Agreement v. Cost of Disagreement
- b. Bargaining Power
- c. Learning
- d. Agreement, hence contract
 1. Proof reading
 2. Testing

Interest Bargaining

1. Issues of Bargaining
 - a. Borg Warner Doctrine
 1. Mandatory Issues - wages, hours, and terms & conditions
 2. Permissible Issues - core of entrepreneurial discretion & union business
 3. Illegal Issues - barred by statute typically Ford Motor Case - Chicago Stamping Plant
2. Five Elements

1. Target Point
2. Resistance Point
3. Initial Offer
4. Settlement Range
5. Settlement Point

Experimental Forms

[Interest Based Bargaining](#) - Joint Problem Solving – Cooperative Model - interesting concept, practical application is difficult because it is driven by shared pain.

[Principle Negotiations](#) - Getting to Yes, Harvard Negotiations Experiment - “hard on merits, soft on people” Warm glow”

[Collective Bargaining by Objectives](#) - adjunct to MBO, setting priority, joint gains – but recognizes the essential adversarial nature of collective bargaining.

Pressure Bargaining

3. Various forms – the “old time religion” so to speak
 - a. Good guy/bad guy
 - b. High ball/low ball
 - c. Nibbling – small concessions to elicit reciprocal concessions
 - d. Games of chicken
 - e. Awfulisms - fall back positions after shock

Lockouts

Offensive

Defensive

Strikes

1. Nature of Strike Activity
 - a. bargaining power

- b. test of economic strength or organizational strength
 - 1. Stocks and Flows
 - 2. Strikes occur because of economics – flows
 - 3. Strikes continue because of organizational considerations - stocks
- 2. Management responses
 - a. preparations
 - 1. Inventory
 - 2. Subcontracts
 - 3. Alternative supplies
 - b. Replacements
 - c. Lock-outs
- 3. Types of Strikes
 - a. Primary Strikes – direct pressure
 - b. Secondary Strikes – third party pressure – general illegal
 - c. Economic Strike
 - d. ULP Strike
 - 1. Protected activity – strike breakers at peril
 - 2. MacKay Doctrine
 - e. Rolling Strike - construction
- 4. Illegal Strikes
 - a. Sit-downs
 - b. Wildcat
 - c. Slowdowns etc
 - d. Sick-outs- blue flu etc.

5. ULPs

- a. Jurisdictional Strikes
- b. Featherbedding Strikes
- c. Recognitional Strikes

CHAPTER 7: ECONOMIC ISSUES

Institutional Wage Standards

- a. Ability to pay - Accounting Information
 - 1. Elasticity
 - 2. Future Stability
- b. Comparative norm - Wage Surveys
 - 1. External Market
- c. Standard of living - ACCRA Index

Real Wage

Truitt Manufacturing Case

Wage Adjustments

- 1. Standard rate
 - a. Job classification
 - 1. Skills, risk, responsibility, training, etc.
 - b. Pay ranges
- 2. Piece rate system
 - a. falling rate - increases in productivity shared between employee & firm
 - b. rising rate - greater than proportional increase in wage from productivity
 - c. standard hour plan, paid by job in essence
- 3. Deferred Wage Increases

4. Back-loaded contracts
5. Lump sums
6. Annual Improvements
7. COLA 1¢/.25 protects \$4.00 of wage
 - a. roll-ins
8. Profit sharing
9. Scanlon Plans - efficiency gains - shared by some formula negotiated between management and union.
10. Two-tier schemes -airline pilots etc.
11. Wage-Reopeners

Pay Methods

1. Pay for Time Worked
 - a. Hourly wage
 - b. Annual Salary
2. Piecework

Union Wage Concerns

1. Pay Equity
2. Eight Dimensions of Union Wage Effects
 - a. Union goals - more and keep jobs
 - b. Union-nonunion wage differentials- 15% roughly
 - c. Intertemporal wage differentials - since Reagan gone down
 - d. Wage rigidity - no give-backs
 - e. Wage structure - skilled/unskilled compression
 - f. Form of Compensation - hours rather than output

- g. Employments effects - create or maintain employment
- h. Pattern bargaining - within industry - same wages

3. Industrial Differentials

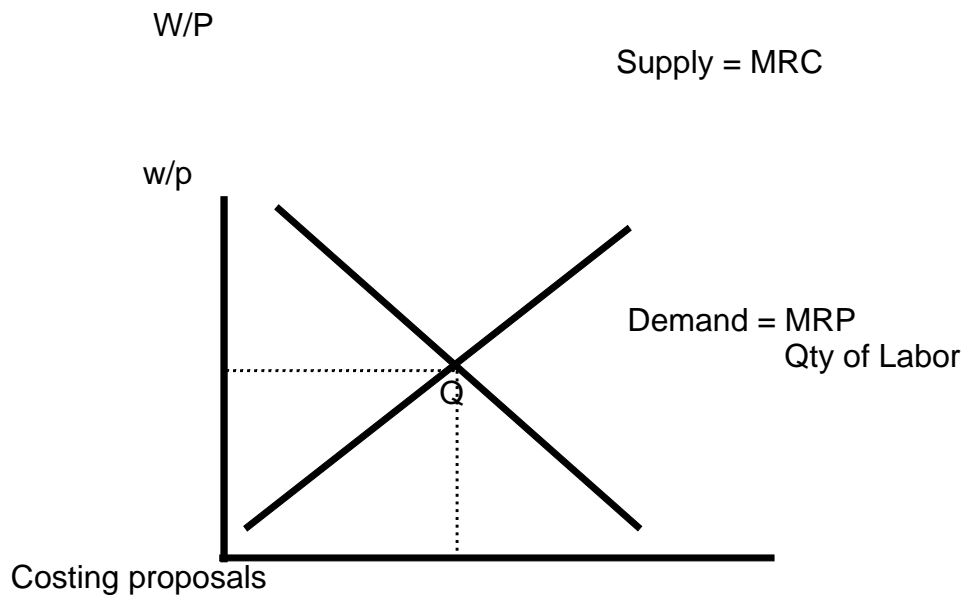
- a. MRP
- b. Value added concept

Economic theory

Marginal Productivity Theory

Demand = MRP

Supply = MRC



- a. base
 - 1. Social Security, employment security
 - 2. Life insurance
- b. Roll-up

3. Overtime premiums
4. Pension contributions

Public employee's wages were less because of better job security - disappearing different

Wage Laws

1. Fair Labor Standard Act of 1938
 - a. minimum wages
 - b. overtime compensation
 - c. breaks & lunch
 - d. nonexempt
 - e. erosion of urgency for union representation
2. Overtime pyramiding
3. Mandatory overtime
4. Davis-Bacon Act of 1931
 - a. Construction
5. Walsh-Healy of 1936
 - a. general industry
6. Equal Pay Act of 1963
 - Non-discriminatory pay practices

Comparable Worth
Employee Benefits

Worker's Compensation

1. Insurance

Social Security

1. Retirement
2. Survivors
3. Disability
4. Part B
5. Pharmaceuticals
6. Financing

Unemployment Security

Experience Rating

Fringe Benefit Issues

1. Concessions - troubled industries & employers
 - a. bargaining power
 - b. global economy
2. Pensions
 - a. Defined benefit v. defined contribution
 - b. ERISA - vesting, portability, and leaving workforce, reporting
3. SUB benefits
 - a. guaranteed income, severance pay
4. Death and Disability programs
5. Health Care programs
 - a. Cost containment
 - b. PPOs, HMOs, Traditional fee for service
 - c. Wellness programs

- d. COBRA
- 6. Time off issues
 - a. vacation
 - b. paid holidays
 - c. various leaves
 - d. personal authorized absence
 - e. Military leave etc.
 - f. death in family
 - g. union business
 - h. sick leave
- 7. Employee services
 - a. cafeteria plans
 - 1. child care
 - 2. educational benefits
 - 4. credit unions
 - 5. EAP

CHAPTER 8: ADMINISTRATIVE AND INSTITUTIONAL ISSUES

Union Security

- 1. Open Shop
- 2. Maintenance of Membership
- 3. Agency Shop
- 4. Union Shop

5. Closed Shop

- a. Illegal except for as provided by Section 8 (f) of the Act
- b. Hiring Hall

Checkoff

- a. Annual Authorization

Management Rights Provisions

- a. Broad
- b. Narrow

Job Security

1. Seniority

- a. Competitive
 - 1. Department, plant etc. - units
 - 2. Calculation
- c. Dovetail issues
- d. Superseniority issues
- e. Use of competitive seniority
 - 1. Promotion – posting & bidding processes
 - 2. Layoff, recall

2. WARN Worker Adjustment and Retraining Notification Act

- a. Notification requirements 60 days 50 f.t. emps. or 33% of workforce

3. Shared Worked

- a. two people one job

4. Ability determinations

- a. Tests, trial periods, education, physical fitness, attendance - objective
 - b. Production records, supervisor opinions, experience - subjective
5. Company mergers
- a. Surviving group, length of service, follow the work, absolute rank, ratios etc.
6. Subcontracting
- a. contract language
7. Outsourcing, relocating
8. Successor employer
- a. bound by contract *Fall River Dying* tests
 - 1. Substantial continuity
 - 3. Appropriate bargaining unit
 - 4. Predecessor's workers
9. Quality Circles
- a. FOMOC Case

CHAPTER 10: RESOLUTION OF BARGAINING IMPASSES

No Strike, No Lock-out Quid Pro Quo *Shell Oil* 1949.

Continuous Bargaining v. Conventional Bargaining

Threat of expiration and strike deadline

Joint Labor Management Committees

Mature Bargaining

Established Relationship and Attitudinal Structuring all in place

Early Bird - Pre-bargaining Fact Finding all are joint and continuous preparation models

Third-Party Intervention:

1. FMCS Mediation
 - a. Facilitation of success in negotiations OMS
 - b. Procedural functions - meetings, third party facilitator
 - c. Communication functions - supplement normal channels, search for ranges of agreement, identify and overcome rigidities,
 - d. Substantive functions - offering suggestions, clarifying priorities, identifying costs of disagreement, recommending packages
2. FMCS's RBO Relationship by Objectives – improve faltering labor-management relations.
3. Interest Arbitration
 - a. State and Federal Impasse Procedures
 1. Fact Finding
 2. Final Offer Arbitration
 3. Interest Arbitration
4. Med-Arb Experiments
5. Private Sector rarely does interest arb.

Public Sector

1. Federal - Civil Service Reform Act
 - a. Issues
 - b. Collective bargaining
2. State and Local
 - a. Complex and variable

- b. Sovereignty still an issue
 - c. Public services sometimes critical nature
3. Scope
- a. Terms & Conditions
 - b. Impact
 - c. Economics
 - d. Right to strike

National Emergency Impasse Procedures

Health and Safety of Nation requirements

60 day cooling off period and Board of Inquiry

NLRB last offer election (15 days) then

President Reports to Congress recommendations for legislation to end the problem

Arsenal of Weapons Approach

Compulsory Arbitration

Europe and Australia

CHAPTER 11: GRIEVANCE PROCEDURES

1. Definitions of Grievances
 - a. Narrow
 - b. Broad
2. Multiple Steps through Hierarchy
 - a. Settle at lowest steps
 - b. Greater objectivity as moves up the process
 - c. Time limits

1. Contract specifies remedy for violation of limits
 2. Always should be in writing
3. Policing the contract
- a. provides evidence of what works, what doesn't
 - b. provides voice
 - c. provides for perceived due process
- a. Types of grievances
- a. Rights
 1. Contract interpretation
 2. Discipline
 - b. Grievant
 1. Individual
 2. Class
- b. Fair but Firm approach both sides
- a. philosophy helps set the culture
 - b. legalistic v. clinical approaches
- c. Protected by Section 7 and 8 of the Act
- d. Fair Representation
- a. *Bowen v. USPS*
 - b. *Anchor Motor Freight*

CHAPTER 11: ARBITRATION OF RIGHTS

Arbitration

Quasi-judicial process

Rights Arbitration

Interest Arbitration

Case Law

Lincoln Mills of Alabama (1957)

trilogy (June 1960)

Warrior & Gulf Navigation – Broad Arb Clause

American Manufacturing – Processing a grievance

Enterprise Wheel & Car – Contract Expired

Shell Oil (1949) - quid pro quo

Boys Markets (1970) no strike clause injunctive relief

ATT & CWA (1986) injunctive relief to enforce arbitration

Misco Inc. (1987) public policy exception to arbitral review

Litton Financial Printing (1991) issue not under the expired contract not covered by *Enterprise Wheel & Car*

Deferral

Speilberg (1955) deferral to an existing award

Collyer Insulated Wire (1971) broad deferral

Olin (1984) deferral as long as ULP was considered and not “Palpably wrong”

Alexander v. Gardener Denver (1981) two bites off the apple

Arbitrability

Substantive

Procedurally

Arbitrator Selection

- Ad Hoc

 - Panel Acceptability

 - Party Acceptability

- Permanent Panels

 - Umpireships

Sources and Qualifications of Arbitrators

- FMCS

- AAA

- NMB

- National Academy of Arbitrators

Case Prep

Evidential Rules

- Parole Rules of Evidence

 - Contract

 - Practices

 - History

 - Outside evidence

- Residual Principle

- Direct v. circumstantial evidence

- Creeping Legalism

- Burden of Proof

Awards

Expedited arbitration

Med-Arb

Therapeutic value

CHAPTER 12: DISCIPLINE

1. Employment at Will Doctrine
 - a. Public Policy Exception 44 states - Indiana included
 - b. Implied Contract exception 38 states - Indiana not included
 - c. Good faith and Fair Dealing 10 states - Indiana not included
2. Discipline
 - a. corrective
 - b. extinction where not correctable
3. Progressive Discipline
 - a. Promulgated rules
 - b. Warning
 - c. Suspension
 - d. Discharge
 - e. Incidental Offenses
 - f. Rules - Industrial Offenses - insubordinate
 - g. Moral Turpitude - should know not to do
 - h. Crimes
4. Written Rules - fair warning of expectations
5. Daugherty's seven tests of Just Cause
 - a. Notice
 - b. Reasonable rule or order
 - c. Investigation
 - d. Fair Investigation

- e. Proof
- f. Equal treatment
- g. Penalty

Answer to any “no” then no just cause.

7. Mitigating Circumstances

- a. Management also at fault
- b. Long and Faithful Service - bank of good will
- c. Prospects for rehabilitation
- d. Others

8. Due Process considerations

- a. Weingarten rights

9. Quantum of Proof

- a. Preponderance of evidence - progressive matters
- b. Clear and convincing - necessary with more serious matter
- c. Beyond a reasonable doubt - crime situations

10. Burden of proof and win/loss rates