



EMPLOYEE AND LABOR RELATIONS  
INSTRUCTOR'S MANUAL

**SHRM**<sup>®</sup>  
SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

The Student Collective  
Bargaining Act

*By Patrick P. McHugh, Ph.D.*

## PROJECT TEAM

|                           |                                |
|---------------------------|--------------------------------|
| Author:                   | Patrick P. McHugh, Ph.D.       |
| SHRM project contributor: | Bill Schaefer, SPHR, CEBS      |
| External contributor:     | Sharon H. Leonard              |
| Copy editing:             | Katya Scanlan, copy editor     |
| Design:                   | Terry Biddle, graphic designer |

© 2010 Society for Human Resource Management. Patrick P. McHugh, Ph.D.

**Note to HR faculty and instructors:** SHRM cases and modules are intended for use in HR classrooms at universities. Teaching notes are included with each. *While our current intent is to make the materials available without charge, we reserve the right to impose charges should we deem it necessary to support the program.* However, currently, these resources are available free of charge to all. Please duplicate *only* the number of copies needed, one for each student in the class.

For more information, please contact:  
SHRM Academic Initiatives  
1800 Duke Street, Alexandria, VA 22314, USA  
Phone: (800) 283-7476 Fax: (703) 535-6432  
Web: [www.shrm.org/education/hreducation](http://www.shrm.org/education/hreducation)

# Case Overview

## INTRODUCTION

This exercise explores the labor relations process in the United States, including union organizing, contract negotiations and contract administration. In the United States, the labor relations process is a set of interdependent activities guided by an often confusing regulatory framework, the National Labor Relations Act (NLRA). This exercise will help instructors navigate students through the labor relations process in an effective and engaging way.

This exercise requires the active participation of students and instructors. Students are given the opportunity to form a fictitious union (the Student Solidarity Union) and engage in collective bargaining with the instructor over the terms and conditions of the final exam. The rules governing the exercise are based on the Student Collective Bargaining Act (included in this manual and the student workbook). The Student Collective Bargaining Act (SCBA) is a fictitious act created to help students understand the NLRA and the labor relations process. It identifies the rights of students and instructors regarding the collective bargaining process over the final exam. The exercise works best when started just before coverage of labor relations course material. The exercise follows the labor relations process and, as such, is a progressive exercise. Instructors may use the discussion questions included in this manual at various points during the exercise or at the conclusion of the exercise.

It is recommended that instructors read the student workbook before attempting the exercise. The instructor may modify the exercise to suit his or her class. The exercise is most effective if students are exposed to labor relations course materials and readings as they participate in the exercise. Most introductory human resource management (HRM) textbooks include a chapter or two on labor relations, and this will provide sufficient background for students to successfully engage in the exercise. Instructors may consider using one of the following textbook chapters: Chapter 15 in Fisher et al. (2006), Chapters 14 and 15 in Gomez-Mejia et al. (2007), Chapter 14 in Noe et al. (2010), or Chapter 13 in Stewart and Brown (2009). Full references for these textbooks are provided in the “Recommended Readings” section on the next page.

## TARGET AUDIENCE

The exercise is geared to undergraduate students in an introductory or survey HRM course.

## LEARNING OBJECTIVES

By the end of this exercise, students will be able to:

- Explain the labor relations process and the interdependence of different phases of the process.
- Analyze the strengths and weaknesses of the union organizing process under the NLRA.
- Understand current labor law and recognize why labor law changes can have a significant effect on the labor relations process.
- Understand key elements of negotiations involved in collective bargaining.
- Examine the role of dispute resolution mechanisms, either through the National Labor Relations Board (NLRB) or through procedures such as mediation and arbitration.

## TIME ALLOTMENT

Since the exercise is progressive, it should be conducted over portions of four to seven class sessions, depending on decisions made during the exercise. This assumes that the class is scheduled to meet twice a week. Instructors will need to adjust the exercise for alternative class schedules. It will take *at least* three hours of class time to complete the exercise. A detailed schedule of activities for each class session and the time requirements for each activity are provided in the “Activities and Time Requirements” section on the next page.

## INSTRUCTOR MATERIALS

The following materials are included in this manual:

- a. An outline of activities and time requirements.
- b. Instructor’s notes.
- c. Student Collective Bargaining Act.
- d. Discussion questions.
- e. Authorization petition.
- f. Authorization card.
- g. Secret ballot.

## RECOMMENDED READINGS

Instructors should select and assign chapters from one (or more) of the following introductory HRM textbooks:

Fisher, C. D., Schoenfeldt, L. F., & Shaw J. B. (2006). *Human resource management* (6th ed.) (chapter 15). Boston: Houghton Mifflin Company.

Gomez-Mejia, L. R., Balkin, D. B., & Cardy, R. L. (2007). *Managing human resources* (5th ed.) (chapters 14 and 15). Upper Saddle River, New Jersey: Pearson Prentice Hall.

Noe, R. A., Hollenbeck, J. R., Gerhard, B., & Wright P. M. (2010). *Human resource management: Gaining a competitive advantage* (7th ed.) (chapter 14). New York: McGraw-Hill Irwin.

Stewart, G. L. & Brown, K. G. (2009). *Human resource management: Linking strategy to practice* (chapter 13). Hoboken, New Jersey: Wiley.

### **Additional Resources**

Instructors and students may find these resources useful in providing additional background information.

Budd, J. W. (2008). *Labor relations striking a balance* (2nd ed.). Boston: McGraw-Hill Irwin.

Friedman, R. A. (1994). *Front stage, backstage: The dramatic structure of labor negotiations*. Cambridge, MA: MIT Press.

Holley, W. H., Jennings, K. M. & Wolters, R. S. (2009). *The labor relations process* (9th ed.). Mason, Ohio: South-Western College Learning.

The AFL-CIO: [www.aflcio.org](http://www.aflcio.org)

The Change-to-Win Federation: [www.changetowin.org](http://www.changetowin.org)

The National Labor Relations Board: [www.nlr.gov](http://www.nlr.gov)

## **ACTIVITIES AND TIME REQUIREMENTS**

### **Session 1**

Distribute and review the student workbook, which includes the Student Collective Bargaining Act (SCBA), at least one session before covering labor relations material in an HR survey course (15-20 minutes of class time). To create excitement about this exercise, do not include it in your syllabus or talk about it in advance. Students will be excited by the opportunity to influence the nature of the final exam, and it will motivate students to be engaged when reviewing the assigned reading. Be sure to complete all the blank spaces in the SCBA before distributing it to your students. Assign discussion questions 1-3 as either a written assignment due for Session 2 or as a class discussion for Session 2.

## **Session 2**

Allow 10-15 minutes of class time for students to discuss union organizing without the instructor present. This empowers students to realize they may have the potential to change the final exam. Use this opportunity to clarify the sequence of events. Be prepared to answer questions like “Is this the way it works in the real world?” If you intend to discuss questions 1-3, allocate 15 additional minutes of class time for the discussion. Assign discussion questions 4-5 as either a written assignment due for Session 3 or as a class discussion for Session 3.

## **Session 3**

Allow five minutes of class time for students to sign authorization cards or the authorization petition. The students can use the authorization cards from their workbooks, or you can photocopy authorization cards for distribution. Alternately, you can distribute a copy of the authorization petition. If you intend to discuss questions 4-5, allocate 15 additional minutes of class time for the discussion. Assign discussion questions 6-8 as either a written assignment due for Session 4 or as a class discussion for Session 4.

## **Session 4**

Have the NLRB role player collect the authorization cards or petition. If significant interest is shown, allow 5-10 minutes for the NLRB role player to conduct a certification election. If no significant interest is shown, debrief the exercise (30-55 minutes of class time). Suggestions for debriefing the exercise are included in the instructor notes. If you intend to discuss questions 6-8, allocate 15 additional minutes of class time for the discussion. Assign discussion questions 9-12 as either a written assignment due for Session 5 or as a class discussion for Session 5. Alternatively, you could spread out discussion questions 9-12 over the remaining class sessions, depending on the progression of the exercise.

## **Session 5**

If students vote for union representation, allow 15 minutes to select bargaining committee representatives. Allow 15 more minutes for students to discuss negotiations with bargaining committee representatives without the instructor present. If the students vote against union representation, then debrief the exercise (30-55 minutes of class time). Suggestions for debriefing are included in the instructor notes. If you assigned discussion questions 9-12, allocate 20 -25 additional minutes of class time for the discussion.

## **Session 6**

In this session, you will negotiate with the bargaining committee over the terms of the final exam (45 minutes to one hour).

## **Session 7**

Debrief the exercise (30-55 minutes). Be sure to have students compare and contrast the exercise’s fictitious labor relations process with the actual labor relations process. Suggestions for debriefing the exercise are included in this manual. If necessary, allocate additional time to discuss any questions not yet covered in previous class sessions.

# The Student Collective Bargaining Act (SCBA)

The SCBA gives students the right to engage in collective bargaining on mandatory bargaining subjects and the right to refrain from collective bargaining activities. Mandatory bargaining subjects include issues related to the final exam. All other class-related issues are permissive bargaining subjects.

All of the processes and rules of the SCBA follow the National Labor Relations Act (which includes the Wagner Act, Taft-Hartley Act and the Landrum-Griffin Act), except those limited by this document. Students are not permitted to strike, picket, protest, engage in work slowdowns or boycotts or use avenues other than the National Labor Relations Board (NLRB) to resolve class-related disputes. The \_\_\_\_\_ will act as the NLRB. Of course, individual students can use whatever processes are available under university or college guidelines.

If students desire union representation, they must first show significant interest in being represented by the Student Solidarity Union for collective bargaining purposes in order for the NLRB to conduct a certification election. Significant interest is shown when at least 30 percent of students sign either an authorization petition or authorization cards. An authorization petition or authorization cards will be circulated during the following class period, \_\_\_\_\_, to assess interest in union representation. If significant interest is shown by this date, \_\_\_\_\_, a certification election supervised by the NLRB will be held on \_\_\_\_\_. If the 30 percent threshold is not met, the instructor may implement his/her terms for the final exam.

If 50 percent plus one of those students voting in the certification election indicate support for union representation, the Student Solidarity Union will be certified as the sole representative of all students for the purposes of collective bargaining. In addition, if the union is certified as the bargaining representative, the instructor is obligated to bargain in good faith with the Student Solidarity Union on the following date: \_\_\_\_\_. If 50 percent or less of those voting in the certification election vote for union representation, the instructor may implement his/her terms for the final exam.

If students desire union representation (as shown by the results of the certification election), they will be required to elect (through a secret ballot process) a bargaining committee consisting of \_\_\_\_\_ students on the following date: \_\_\_\_\_. If a bargaining committee of \_\_\_\_\_ students is not identified, the instructor has no obligation to bargain in good faith and can implement his/her terms for the final exam. The bargaining committee will represent students at the bargaining table. Time will be provided for the bargaining

committee to meet with all students to better understand key issues before starting negotiations.

Contract negotiations between the bargaining committee and the instructor will take place on \_\_\_\_\_ (date) in the following location: \_\_\_\_\_. The negotiations will last for approximately 45 minutes. During negotiations, students who are not members of the bargaining committee will not be permitted to speak, groan, voice approval or disapproval, picket or in any other way attempt to influence bargaining during negotiations. Any of these actions will be interpreted as not bargaining in good faith, and the instructor can withdraw from negotiations and implement his/her terms for the final exam.

The bargaining committee and the instructor can call for a five-minute caucus at any time during the negotiations. A caucus is a bargaining timeout (each side is limited to a maximum of three caucuses). During caucuses, the bargaining committee can discuss negotiations with their student constituents and seek feedback from them regarding proposals made at the bargaining table. It is during caucuses that students will be given the opportunity to guide the bargaining committee without the instructor present.

If the parties reach a collective bargaining agreement, the agreement must be in writing and signed by the student bargaining committee and the instructor. The contract must be ratified by the union membership. The contract is officially ratified after a vote is taken that shows a majority of those voting support the contract. All students in the class will be covered by the terms of the collective bargaining agreement. If no agreement is reached during the bargaining period, or if the contract is not ratified, an impasse is reached. At that point, the instructor will have the authority to implement his/her terms and conditions for the final exam.

Any disputes regarding the administration of the collective bargaining agreement will be resolved by final and binding arbitration. The arbitrator will be \_\_\_\_\_.

# Instructor's Notes

The SCBA is a fictitious law intended to help students understand the National Labor Relations Act and the labor relations process. During class discussions about the exercise, take advantage of opportunities to compare and contrast the National Labor Relations Act with the SCBA.

There are a number of blank spaces in the SCBA. This gives you discretion over the dates and time allotments for the various sequences involved in the exercise and designation of participants in the exercise. For example, who plays the role of the National Labor Relations Board (NLRB) is at your discretion. For simplicity, you may want to act as the NLRB. For a more realistic scenario, you could enlist a graduate student or colleague to act as the NLRB. If the latter option is chosen, have the person playing the NLRB role attend the class where the SCBA is distributed to students. It is important for you to note the differences between the NLRB used in the exercise versus the actual NLRB. Likewise, you could assume the arbitrator role or enlist a graduate student or colleague to act as the arbitrator (the NLRB role and arbitrator role could be held by the same person).

At the conclusion of the exercise, discuss the arbitrator's role—especially arbitrator selection. Ask the following questions:

- What would be a better way to select an arbitrator that would imply greater arbitrator neutrality?
- Is it important that the arbitrator not have a conflict of interest?

In addition, discuss the benefits of having an additional step in contract administration by using mediation first and then arbitration. Again, mediator selection and neutrality are critical. In mediation, the parties are in control of the agreement/decision, whereas in arbitration, the arbitrator has ultimate control of the agreement/decision.

You may wish to modify the parameters for mandatory and permissive bargaining topics—for example, making the final exam a permissive topic but designating another class component as a mandatory topic. However, whatever the issue(s) you identify as a mandatory bargaining topic, consider what concessions or changes you are willing to accept on that issue. For example, if the final exam is the mandatory bargaining topic, would you be willing to accept any of these changes to the final exam: create a take-home exam; allow an open-book, open-notes exam; substitute a group project in lieu of a final exam; extend exam time; reduce the grade value of the exam; allow crib notes during the exam; run additional review sessions; make the final exam voluntary, etc. You may be surprised at the creativity of the proposals offered by students during negotiations. You will need to come to the bargaining

table prepared with some proposals for modifications to the final exam from its current form as outlined in the syllabus.

An authorization petition and authorization card are included in this manual and the student workbook. To increase the fidelity of the exercise, it is recommended that you use the authorization card option.

**What do I do if students decide not to have union representation?** Typically, students want to negotiate the terms of the final exam (or some other major class project). If less than 30 percent of students sign the authorization cards or petition, however, there is not sufficient interest in union representation. Likewise, if 50 percent or fewer students vote for union representation in the certification election, this also indicates insufficient interest in union representation. You must prepare for this possibility because this opens up 1 to 1.5 hours of class time that was allocated for the completion of the exercise. While these outcomes will result in a less dynamic class experience, you still can identify important lessons from the exercise. All of the discussion questions can still be assigned. In addition, as part of the debriefing, speculate on what may have happened if significant interest was shown and if the majority had voted for union representation. Furthermore, ask students why there was a lack of interest in representation:

- Are unions corrupt?
- Are unions weak?
- Are unions un-American—socialistic?
- Are students influenced by the media portrayal of unions?
- Are students influenced by their personal experiences with unions?
- Are students influenced by parents or other family members' views of unions?
- Do students prefer to negotiate individually with the instructor rather than collectively?

On the day of the certification election, the person playing the NLRB role should bring a ballot box (a cardboard shoebox with a slit cut in it will suffice) for the election, along with secret ballots. Interestingly, many actual NLRB elections use a similar ballot box. A secret ballot is included in this manual but not the student workbook. You should make sufficient copies of the secret ballot for all students to vote on the day of the certification election.

If students elect union representation, this is a good opportunity to discuss whether they would vote for union representation in their current or future employment situation. Ask students to identify the major differences in these two situations. Ask students:

- What if the instructor campaigned rigorously against union representation?
- What kind of activity could the instructor use to avoid unionization?

- Do you think this would have changed the election results?

Students may be reluctant to serve on the bargaining committee for several reasons (e.g., the role is somewhat vague, it requires public speaking, it looks like extra work, etc.). To motivate students to serve on the bargaining committee, consider awarding extra credit points for students elected to the committee. This not only rewards those students who put forth additional effort during the exercise, but also creates an incentive for students to get elected to the committee. This adds a political dynamic to the exercise and gives you an opportunity to highlight the political nature of unions. Five (or fewer) bargaining committee members may be appropriate for classes with fewer than 30 students.

Allow the bargaining committee to meet with all students for at least 15-20 minutes in class before the contract negotiation date (without the instructor present). If scheduling permits, you may want to offer two 15-minute meetings during two different class dates. After the exercise is completed, ask students about the interaction of the bargaining committee and the student membership. For example, was it difficult to agree on what proposals to put forward and/or accept? How did the bargaining committee handle individual student interests versus collective interests? Do you think this process is similarly challenging for real-world unions?

The negotiations can take place in front of the entire class or with just the bargaining committee in a breakout room in close proximity to the class room (this allows the bargaining committee to meet with the entire student membership if they desire). The latter option is recommended because it has more real-world fidelity; negotiations rarely occur in front of constituents. At the conclusion of the exercise, discuss how an audience affects negotiations (perhaps you could ask them if they act differently in front of their boss versus co-workers or in front of parents versus friends). It may add an interesting dynamic if the class had the authority to vote on whether bargaining committee members should receive extra credit points—in other words, do students believe the bargaining committee did a good job achieving bargaining objectives? What incentive do union leaders have to do a good job representing their members?

Here are some examples of possible exam structures negotiated by students:

- Offer more/fewer multiple-choice questions with fewer options.
- Permit some form of crib notes (e.g., index card).
- Give a choice of essay questions (e.g., select two of the following three questions).
- Reduce the percentage of the final exam that is comprehensive.
- Give advance notice of topic areas covered by case analyses or essay questions.
- Give essay or cases in advance of the exam.
- Reduce the value of the final exam.
- Offer a complete or partial take-home exam.

# Discussion Questions

*1) What is the National Labor Relations Board (NLRB)? Are there important differences between the NLRB in the National Labor Relations Act and the one identified in the SCBA?*

The NLRB is an independent federal agency charged with administering U.S. labor law. The NLRB's two primary functions are a) to supervise and conduct certification elections, and b) to adjudicate unfair labor practices. In the SCBA, the NLRB lacks independence from the employer and may easily be accused of bias. This would undermine the credibility of the NLRB in particular and labor law in general.

*2) What is the difference between the Wagner Act, the Taft-Hartley Act and the Landrum-Griffin Act?*

The Wagner Act (passed in 1935), also known as the National Labor Relations Act (NLRA), is a federal law designed to protect employees' rights to form or join unions and engage in concerted activity—concerted in terms of employees acting together to effect wages and working conditions. In other words, employees do not have to be union members or be trying to form a union to be protected by this law. An employer may violate the NLRA when it prohibits (and subsequently disciplines) employees from discussing compensation among themselves. The Wagner Act identified unfair labor practices of employers (like discriminating against employees to discourage union membership).

The Taft-Hartley Act, passed in 1947, amended the NLRA by identifying unfair labor practices for unions (e.g., restraining or coercing employees in the exercise of their rights under the NLRA) and several other pro-employer provisions (e.g., permission for states to enact right-to-work laws).

The Landrum-Griffin Act, passed in 1959, amended the NLRA by regulating union governance and member participation (e.g., unions must report financial activities to the Department of Labor).

*3) Are students “employees” under the National Labor Relations Act (NLRA)? What about graduate teaching assistants?*

You must be employed and considered an employee to be protected by the NLRA. The NLRA specifically excludes agricultural workers; workers covered by the Railway Labor Act (rail and airline workers); domestic workers (e.g., nannies); individuals employed by a parent or spouse; public-sector workers (federal, state and local); independent contractors; and supervisors. Some states, such as California, have enacted state-level collective bargaining laws to cover agricultural workers. Likewise, some states have enacted state-level collective bargaining laws governing

union activity in the public sector (e.g., police and teachers). For federal employees, collective bargaining is governed by the Civil Service Reform Act.

Since students in a class are not employed by the university, they are not protected by the NLRA. However, the NLRB has made conflicting decisions regarding graduate teaching assistants in private universities. The NLRB under President Clinton determined that they were employees and protected by the NLRA. The NLRB under President Bush reversed this decision and determined them to not be employees. It is worth noting that public universities are covered by state collective bargaining laws. This explains why graduate teaching assistants at the University of Michigan, for example, engage in collective bargaining with the university.

*4) What is the difference between mandatory and permissive bargaining topics? What is bargaining in good faith?*

There is a duty to bargain in good faith over mandatory bargaining topics. In this exercise, mandatory bargaining topics were identified by the instructor. In reality, the NLRB has determined that a wide range of issues are mandatory bargaining subjects (wages, hours of work, overtime, funeral leave pay, seniority rights, paid lunch periods, child care assistance, employee drug testing, health insurance, grievance/arbitration procedures, promotion criteria, performance evaluation methods). There is no duty to bargain in good faith over permissive bargaining topics. So, if students wanted to negotiate the class attendance policy, that would be a permissive bargaining topic and the instructor could agree or not agree to negotiate the issue. Examples of real-world permissive bargaining topics include marketing promotion plans, pension benefits for retired (former) employees, union representation on the board of directors, contract ratification procedures.

Bargaining in good faith means that each party must demonstrate a sincere attempt to reach an agreement and be reasonable in its bargaining activities. It does not mean that either party is compelled to agree to a proposal or required to make a concession. In other words, no one is compelled to reach an agreement. Identifying bad-faith bargaining can be somewhat subjective; however, refusing to meet with the other side is clearly not bargaining in good faith.

*5) Why is prohibiting the right to strike (picket and protest) an important element of the SCBA?*

The right to strike is the strongest source of bargaining leverage that employees have with their employer. Picketing and protesting are ways for employees to gain bargaining power and achieve solidarity. As noted in question 4, the employer is not compelled to reach an agreement in collective bargaining. The SCBA does not provide much incentive for the instructor to reach an agreement. In the public sector, employees often do not have the right to strike. For example, in some states, police and firefighters can engage in collective bargaining but are not permitted to strike. Likewise, federal employees (like air traffic controllers) are not permitted to strike. In return for giving up the right to strike, public-sector law often allows arbitration to settle impasses in negotiations.

6) *What does “significant interest” and “certification election” mean?*

Significant interest is shown if 30 percent of those eligible to vote in a certification election sign authorization cards. At that point, the NLRB can be petitioned to initiate a certification election. The certification election, conducted and supervised by the NLRB, allows eligible voters to cast secret ballots to determine support for union representation. At least 50 percent plus 1 of those who cast ballots must vote for union representation. If that threshold is met, the union is certified as the exclusive bargaining representative for all eligible voters (including those who cast ballots against union representation—is that fair?). If the threshold is not met, the union is not certified and none of the eligible voters can be represented by the union (including those who cast ballots in favor of union representation—is that fair?).

7) *Would the methods used under the SCBA be legal under the National Labor Relations Act?*

No. Under the NLRA, the employer may neither discourage nor encourage union representation. Clearly, under the SCBA, the employer (the instructor) is assisting in the process of union formation. The NLRA wants the selection of a union representative to be free of employer influence, control and domination. Moreover, the NLRB would likely find that a petition or authorization cards seen by the employer were unfair labor practices. One objective of the union organizing process is to allow employees to freely choose a bargaining representative without concern about the employer knowledge of individual employee preferences.

8) *Why use a secret ballot?*

It is believed that employees are more likely to indicate their true interest in a secret ballot. If the ballot is not secret, employees may be concerned about employer retaliation, unwanted social pressure from co-workers and union coercion.

9) *What purpose does a bargaining committee play?*

Organizations need leaders. Therefore, the union needs to choose members who lead the union to attain member goals (e.g., improved wages, benefits and working conditions). One leadership role requires effectively negotiating with the employer. The bargaining committee centralizes the bargaining voice of the membership, making negotiations with the employer more pragmatic. The bargaining committee composition should be democratically elected because the results of negotiation will more likely be accepted (ratified) if members are responsible for selecting their bargaining representatives. Moreover, the Landrum-Griffin Act requires unions to adopt democratic procedures. In the real world, a union may hire an individual with negotiation expertise to be the main spokesperson at the bargaining table along with the bargaining committee. In this exercise, the incentive to be on the bargaining committee is extra credit points. What kind of dynamic does that create? Do you think there is a similar dynamic in the actual practice of selecting bargaining committee members?

10) *What role do caucuses play in negotiations? Does it matter if contract negotiations are conducted in front of the entire union membership versus only between the bargaining committee and the employer?*

Caucuses play an important role in negotiations. They give participants an opportunity to discuss proposals without the other party present. Moreover, they can reduce tension, introduce new topics and identify potential concessions. Some have suggested that collective bargaining negotiations are like theatre. There is the front stage, where parties interact with constituents (e.g., telling the constituents how unreasonable the other party is being), and a backstage, where the actual negotiations occur. If a negotiator is bargaining in front of the membership, he or she is likely to “perform” for the audience. This can create distracting and irrelevant posturing during negotiations. Likewise, if an employer negotiator is bargaining in front of the boss, he or she is likely to engage in theatrical actions unrelated to the achievement of an acceptable agreement.

11) *After a collective bargaining agreement is reached, there is a need for contract administration. When administering the agreement, disputes can arise. What kinds of disputes could arise if both sides have agreed to a contract? How should these disputes be resolved?*

Disputes can arise for several reasons:

- a. Employees and their employer may have different interpretations of specific contract language.
- b. An unanticipated situation could arise that is not specifically addressed by the contract.
- c. One side may believe that the other side violated the contract.

Rather than rely on the judicial system (which is a cost burden on society, is often slow and is reliant on precedent), labor and management often use an arbitration process. An arbitrator is a neutral third party who makes a determination regarding a contract dispute. In this exercise, the arbitrator was selected by the instructor. This undermines the requirement of neutrality. In reality, labor and management are both involved in the selection of an arbitrator.

12) *As you can see from the exercise, the labor relations process is heavily influenced by the legal framework provided by the NLRA, which outlines the rights of employees, unions and employers. Suppose the following changes to the NLRA were enacted:*

- a. *The NLRB is required to certify unions if a majority of employees sign authorization cards stating that the employee wants union representation.*
- b. *After 120 days, if no agreement has been reached by labor and management when negotiating their first collective bargaining contract, an arbitration process will determine the content of the two-year agreement.*
- c. *Financial penalties will be imposed on employers for discriminating against employees during a union organizing campaign.*

*How would these changes affect the labor relations process? Under what circumstances would you find these changes to be necessary or unnecessary?*

These changes would likely make union formation easier and lead to increased union density. The extent to which union density would increase is speculative. In Canada, where some of these changes are part of the regulatory framework, union density is higher than in the United States. The following bulleted list may be helpful to understand the different views on whether these changes to labor law are necessary.

**These changes would be viewed as necessary if you believe that...**

- Employer campaigns to deter unionization generally involve discrimination against union advocates and intimidation of employees (evidence suggests that this occurs in many representation campaigns).
- Employers tend to engage in delay tactics to avert unionization, undermining the purpose of the NLRA.
- Union density is currently too low (evidence suggests there is a representation gap; the percentage of employees desiring representation is lower than the percentage of employees represented by unions).
- Employers have unfair advantages in the certification election campaign (e.g., instant and prolonged access to employees).
- Current penalties under the NLRA do not deter illegal employer behavior.

**These changes would be viewed as unnecessary if you believe that...**

- Unions will commit unfair labor practices by coercing employees into signing authorization cards.
- A secret ballot is the only way to know an employee's true desire.
- Union density is a function of employee interest in representation (employees have less interest in union representation because of employee-focused HR policies, other legal protections afforded by statutory law such as EEO and OSHA, and the changing nature of the economy and workforce).
- Unions have sufficient access to employees because they can make visits to the employee's residence.
- Contracts should be entered into freely by both parties, not imposed by arbitrators.
- Employer violations of the NLRA are overstated.

# SAMPLE AUTHORIZATION PETITION

I hereby authorize the Student Solidarity Union to represent me for the purpose of collective bargaining. I petition the National Labor Relations Board to conduct a secret ballot election.

**PRINT NAME**

**SIGN NAME**

|    |  |
|----|--|
| 1  |  |
| 2  |  |
| 3  |  |
| 4  |  |
| 5  |  |
| 6  |  |
| 7  |  |
| 8  |  |
| 9  |  |
| 10 |  |
| 11 |  |
| 12 |  |
| 13 |  |
| 14 |  |
| 15 |  |
| 16 |  |
| 17 |  |
| 18 |  |
| 19 |  |
| 20 |  |
| 21 |  |
| 22 |  |
| 23 |  |
| 24 |  |
| 25 |  |
| 26 |  |
| 27 |  |
| 28 |  |
| 29 |  |
| 30 |  |
| 31 |  |
| 32 |  |
| 33 |  |
| 34 |  |
| 35 |  |



# Sample Secret Ballot

|   |   |
|---|---|
| <p><b>National Labor Relations Board</b></p> <p><b>OFFICIAL SECRET BALLOT</b></p> <p>FOR CERTAIN STUDENTS OF _____ UNIVERSITY</p> |   |
| <p><b>Do you wish to be represented for the purpose of collective bargaining by the STUDENT SOLIDARITY UNION?</b></p>             |   |
| <p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>   |   |
| <p><b>YES</b> <input type="checkbox"/></p>  | <p><b>NO</b> <input type="checkbox"/></p> |
| <p><b>DO NOT SIGN THIS BALLOT.</b> Fold and drop in ballot box.</p>   |   |

SHRM members can download this case study and many others free of charge at  
[www.shrm.org/education/hredemption/pages/cases.aspx](http://www.shrm.org/education/hredemption/pages/cases.aspx).

If you are not a SHRM member and would like to become one, please visit [www.shrm.org/join](http://www.shrm.org/join).



SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

1800 Duke Street  
Alexandria, VA 22314-3499