

CHAPTER 1

INTRODUCTION TO LABOUR RELATIONS

Chapter Overview

Chapter 1 defines labour relations and considers the importance of labour relations for employers, employees, unions and the public. A systems framework for labour relations is presented. The possibility of labour relations being transformed from confrontation to collaboration is provided for the reader to consider over the remainder of the text.

Chapter Websites

[Canadian Association of Administrators of Labour Legislation](#)

[Canadian Council of Human Resources Associations](#)

[Framework of Fairness Agreement](#)

Chapter Outline

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Chapter Summary

I DEFINING LABOUR RELATIONS AND INDUSTRIAL RELATIONS

Labour relations is distinguished from industrial relations. Industrial relations is defined as a broad field of study encompassing employment in both union and non-union organizations. Labour relations is defined as referring to all aspects of the union-management relationship including the establishment of union bargaining rights, the negotiation process, and the administration of the collective agreement. It is acknowledged that some individuals and organizations may ascribe a different meaning to the terms labour relations and industrial relations, and some people may use the two terms interchangeably.

Labour Relations Issue 1-1 on page 3 provides introductory questions that could be referred to at the start of a course. The questions in Labour Relations Issue 1-1 have been provided in the overheads. The answers and comments on the questions are as follows:

- 1. False. Some students begin a course in labour relations or industrial relations with a mistaken view that a non-union employer must have a valid reason to dismiss an employee. They may have heard the phrase "wrongful dismissal" and assumed that an employer must have a reason to terminate a non-union employee and a court will order reinstatement. Some students refer vaguely to a body they call a "Labour Board", which they may be confusing with an office that processes*

complaints relating to employment standards legislation. Except in the federal jurisdiction and Nova Scotia, there is no review process to determine whether a dismissal is "fair" in a non-union workplace. It should be emphasized that in a unionized workplace a grievance could be filed when an employee is dismissed, and the employee could be reinstated. The possibility of reinstatement for a unionized employee is one of the key features of labour relations.

- 2. True. The purpose of this question is to highlight the importance of human rights legislation. Although it is later emphasised that a variation from the collective agreement is not the primary way to accommodate employees; it is possible. Discrimination and the duty to accommodate are referred to in Chapter 2.*
- 3. False. Union membership has declined dramatically in the United States. Although union density has declined in Canada, the decline cannot be described as dramatic. Union membership numbers are referred to in Chapter 3. At several points in the text possible reasons for the difference between the two countries, including the legal environment, are referred to. For example, the U.S. does not provide for first contract arbitration, which is available in several Canadian jurisdictions.*
- 4. True. Students may be familiar with situations where employers have paid non-union employees wages equivalent to unionized workers. The reasons why employees join unions are reviewed in Chapter 3. Employer responses to unionization, including union avoidance, are referred to in Chapters 4 and 6.*
- 5. False. Chapter 5 refers to the critical role that government's play in labour relations. Although it is exceptional, a few strikes in the private sector have been ended by back-to-work legislation. The implications of strikes are referred to in Chapter 10. Students could be referred to the significance of strikes by asking why a government might pass back-to-work legislation.*
- 6. Depends on jurisdiction. The issue of whether a union should be certified by relying on membership cards or a representation vote is critical. The certification process, including the issue of cards v. a vote, is examined in Chapters 6.*
- 7. True. Students may have opinions regarding this issue. Chapter 7 deals with the terms of collective agreements including union security.*
- 8. True. Chapter 8 deals with the negotiation of the collective agreement, including the duty to bargain in good faith. It will be emphasised that labour negotiations are not the same as other business negotiations and there is a legislated duty to bargain in good faith, which requires employers to disclose information to unions. For example, employers who plan to move and do not disclose this to the union are guilty of bargaining in bad faith.*

9. *False. This question deals with the issue of the ownership or control of the grievance and arbitration procedure. The administration of the collective agreement is referred to in Chapter 9. In most cases it is the union that has the ownership or control over the grievance and arbitration process, and the union can determine whether a grievance is referred to arbitration. This is subject to the union's duty of fair representation in many jurisdictions, which is referred to in Chapter 9.*
10. *True. Strikes, which are referred to in Chapter 10, are heavily regulated. There is a requirement for a strike vote and all employees in the bargaining unit are entitled to vote.*
11. *True. Chapter 11 covers important points in public sector labour relations. Some jurisdictions provide for a regulated or controlled strike where some employees in the bargaining unit are required to work during a strike. The issue of which, if any, public sector employees should be allowed to strike could be asked. For example, should teachers be allowed to strike?*
12. *False. The statement lumps productivity and profitability together, and they should be considered separately. The effects of unions on productivity and profitability are referred to in Chapter 12. It will be noted later that on average unionized firms are less profitable; however, the effects of unions on productivity are less clear. In some situations unions have increased productivity. It may help students to understand this if they recognize that productivity refers to the amount produced per worker. If employers make technological improvements so that the number of workers is reduced but output remains the same or increases, productivity has been increased, although employment may have been reduced.*

II IMPORTANCE OF UNIONIZATION AND LABOUR RELATIONS

The Safe Watch Security case incident at the end of Chapter 1 (page 16) illustrates the key point that in a unionized environment the union, not individual employees, deals with the employer regarding the terms of work.

A Employment Relationship

The unionization of employees has important implications for the employment relationship. Some important differences between non-union and unionized workplaces are summarized in Key Considerations 1-1 on page 5.

B Unionized Employees: Terms and Conditions of Work

The unionization of employees has significant implications for the terms and conditions of work. The effects on compensation, working conditions, job security and job

satisfaction are elaborated upon in subsequent chapters. The final chapter summarizes the effects of unionization.

C Employers: Costs and Productivity

The unionization of employees has significant implications for an employer's costs, productivity, profitability, investment and employment decisions. Students could be advised to watch for the implications of unionization for employers in the remainder of the text. The final chapter revisits the issue of the effect of unions on employers including productivity and profitability.

D Non-Union Employees

The unionization of approximately 30 percent of Canadian employees has implications for non-union employees. Some non-union employees may benefit from higher compensation when non-union employers attempt to keep up with unionized workplaces.

E Society

Unions become involved in political and social issues that affect the public.

III FRAMEWORK FOR LABOUR RELATIONS

A Systems Approach

A systems approach to labour relations involves considering the parts of the labour relations framework as a whole and includes the environment as a factor influencing labour relations. Dunlop's outline of an industrial relations system is the foundation for a systems approach.

B Political Economy Approach

A political economy approach emphasizes the distribution of power in society. John Godard is a proponent of the political economy perspective. He contends that conflict is inherent to the employment relationship.

C A Framework for Labour Relations

The framework for labour relations provided in Figure 1-1 on page 10 is a systems approach based on the work of Alton Craig. This framework has five elements.

1. Actors or Parties

The three main actors in the system are unions, employers, and government. These three actors have objectives, power and values which affect the processes they engage in and the methods they use. Chapters 3, 4, and 5 deal with unions, employers, and government.

2. Processes and Activities of the Parties

The three main actors in the system engage in processes and activities such as union organizing, contract negotiation, and enacting legislation which are listed in Figure 1-1. The objectives and methods of the parties are elaborated upon in Chapters 3-5.

3. The Environment

The environment of labour relations is broken down into five areas. These environmental areas are referred to briefly in Chapter 1 and are elaborated upon in Chapter 2.

a) Economic Environment. The economic environment includes the economy of the nation and the competitive position of a firm in its industry.

b) Technological Environment. The technological environment includes developments in knowledge that lead to new products and services and changes in methods of production.

c) Social Environment. The social environment includes the values and beliefs of Canadians relating to work, unions, and employers.

d) Political Environment. The political environment includes the parliamentary system of government and a divided jurisdiction between the provinces and the federal government.

e) Legal Environment. The legal environment refers to the laws that affect employees, unions, and employers. In subsequent chapters the importance of the legal environment in Canada, which is more favourable to unions than the legal environment in the United States, will be noted.

4. Outputs or Results

The fourth component of the framework is the outputs of the system including collective agreements that provide for terms and conditions of work, strikes and lockouts, and legislation.

5. Feedback

The final element of the framework is the feedback component in the system. Figure 1-1 refers to four feedback loops that could be emphasized. The processes engaged in by the parties, such as contract negotiations; affect the subsequent objectives of the parties. The outputs or results, such as collective agreement terms, affect subsequent processes engaged in by the parties such as contract negotiations and also have implications for the environment. The outputs or results of the system, such as a strike or lockout, affect the objectives and values of the actors.

D Confrontation or Collaboration

Labour relations in Canada have traditionally been adversarial in nature. Some observers have called for a more co-operative system. The prospects for more collaboration are reconsidered in the final chapter after we have examined the details of labour relations such as contract negotiation and grievance arbitration. Students could be asked to watch for factors that make the system adversarial, and to keep in mind the possibility of more collaboration.

IV OVERVIEW OF THIS BOOK

After the environmental factors affecting labour relations are considered in Chapter 2, Chapters 3-5 consider the primary actors in the system, unions, employers, and governments. Chapters 6 through 10 consider the establishment of collective bargaining rights, the contents of the collective agreement, the negotiation process, the administration of the collective agreement, and third party assistance in negotiation and strikes. Chapter 11 provides an overview of the distinctive features of public sector labour relations. Chapter 12 reviews the effects of unionization, considers the future of labour relations, and returns to the question of confrontation v. collaboration. Policy alternatives such as certification based on membership cards versus a representation vote are considered through the text, and in the last chapter ten important policy options are reviewed as part of a discussion relating to future union prospects.

Answers to Review Questions

1. Distinguish between labour relations and industrial relations as these terms are defined in this book.

This text defines labour relations as referring to all aspects of the union-management relationship including issues relating to how a union gains the right to represent employees, the negotiation of a collective agreement, and the administration of the agreement. The key point is that “labour relations” is used to refer to some connection with, or aspect of unionization. Industrial relations is a broader field of study which covers all work related issues at both union and non-union workplaces. As the terms are used here, labour relations is a part of industrial relations. The issue of whether unionized teachers should be allowed to strike is a labour relations issue. Controlling absenteeism, a concern in both union and non-union settings, is an industrial relations issue.

The definitions used here should be contrasted to the use of these terms elsewhere. Some academics and practitioners refer to industrial relations as relating to only unionized workplaces. The terms labour relations and industrial relations may not be used with precision in some organizations. For example, an organization might have an individual with the job title of labour relations manager who works with both unionized and non-union employees. The scope of this text is the unionized workplace. When referring to union-management issues some may use the term labour relations and others may refer to industrial relations.

2. Explain why labour relations are significant to all Canadians.

The full significance of labour relations for employers, employees and the public will become apparent as the text deals with issues such as job security and wages in later chapters. At this point, a brief overview of the importance of labour relations is necessary. Labour relations processes such as contract negotiation, and outcomes such as wages and working conditions, affect all Canadians.

Employers and employees are both affected because the employment relationship between the parties is significantly changed. Specifically, individual contracts of employment are replaced by a collective agreement negotiated by the union. The obligation of the employer to provide reasonable notice on termination of individual employees is eliminated. The doctrine of constructive dismissal, which is relevant when employers are dealing with individual employees, no longer applies.

Labour relations are significant for employers because costs, productivity and profitability are affected. In subsequent chapters we note that unionized employees receive a wage premium and unionized firms are generally less profitable.

Labour relations are significant to employees because wages and working conditions are affected. Unionized employees tend to enjoy a wage premium and unions also affect working conditions including safety. Job satisfaction of employees may be lower in unionized firms. Later it is noted that unionization affects the job security and opportunities for advancement of employees.

Labour relations also affect the public. Strikes may affect the availability of goods and services. The wages negotiated by unions and employers impact costs and in turn prices. Labour relations may also affect the quality of services that are provided. For example, a collective agreement might impose rules regarding a student teacher ratio that affects the quality of education. Unions also affect the public by engaging in political activity such as lobbying for better health care or protection of the environment.

3. The effects of unionization are a matter of ongoing concern in this book. Readers should keep the following question in mind and reconsider it after learning more about labour relations: What are the effects of unionization? Distinguish between any negative or positive effects that you perceive.

The purpose of this question is to have students watch for and think about the effects of unionization as they proceed in the text. Students should later see that employer recruiting, selection, training, compensation, ability to manage, productivity, and profitability are impacted by unionization. Unionization also affects employees because it impacts employee job security, job satisfaction, compensation, training and development, and working conditions.

4. Outline the components of the framework for labour relations.

Figure 1-1 is the basis for an answer to this question. The five elements of the framework should be identified:

- 1) the environment
- 2) the actors: employers, unions and government
- 3) processes the parties engage in
- 4) outputs
- 5) feedback

5. a) Explain the meaning of the following statement: “An employer has constructively dismissed a non-union employee.”

A constructive dismissal refers to the employer making significant changes in terms of employment without the consent or agreement of the employee. Employers could constructively dismiss non-union employees when they reduce compensation, change the location of the employment, or impose a demotion. A constructive dismissal may be treated as a termination by the non-union employee, entitling the employee to any notice provisions or payments provided for under employment standards legislation and reasonable notice at common law. At one time it was thought that an employer could avoid a constructive dismissal by providing the employee with reasonable notice of the change in the terms of employment. However, a 2008 decision of the Ontario Court of Appeal, *Wronko v. Western Inventory Service Ltd.*, called this into question. The employer's application to the Supreme Court of Canada to appeal this decision was dismissed. Accordingly, at this time there may be a difference in the law between provinces. In Ontario, providing advance notice will not be by itself be sufficient to avoid a claim for constructive dismissal. The employer will have to go further and advise the employee that if they refuse to accept the change or new terms of employment the existing contract will be terminated the end of the working notice period, and offer to rehire the employee under the changed terms after the working notice period has expired. Courts in other provinces are not bound by this Ontario Court of Appeal decision and it is possible that in some provinces an employer may be able to avoid a constructive dismissal claim simply by providing reasonable notice of the change in the terms of employment.

b) Can a unionized employee be constructively dismissed?

No. The doctrine of constructive dismissal does not apply to unionized employees. The issue for a unionized employee is whether any change complies with the collective agreement. For example, if there was a collective agreement which covered two locations, and an employee was moved from one location to another, a claim of constructive dismissal could not be made - the issue would be whether the relocation was done in compliance with the collective agreement. Similarly, if a unionized employee is demoted in the process of a downsizing, the issue is whether the collective agreement was complied with; the employee cannot claim that there has been a constructive dismissal.

Answers to Discussion Questions

1. Do you agree or disagree with the political economy approach referred to in this chapter? Why?

The political economy approach emphasizes a conflict of interest between employers and employees. Students will have different views on the extent to which employers and employees have a fundamental conflict of interest. The political economy approach emphasizes that labour relations are affected by the distribution of power in society. Some students may be more or less likely to accept the idea that the workplace is shaped by and is a reflection of the distribution of power in society.

2. Readers who have worked in a unionized environment should consider the following question in the light of their experience: To what extent is the relationship between unions and employers collaborative and to what extent is it adversarial?

It is anticipated that the answers to this question will vary. Class discussion could build upon examples of union-management cooperation and hostility. Some of the variables which students could be asked to consider, if they do not raise these points on their own, include the union involved, the maturity of the relationship, and the economic situation. The discussion could explore whether some unions were more or less collaborative, whether the parties became more collaborative as the relationship matured, and whether the relationship was affected by external economic pressure such as the threat of job loss.

3. Readers who have not worked in a unionized environment should consider the following question in the light of media reports: To what extent is the relationship between unions and employers collaborative and to what extent is it adversarial?

This is obviously a question calling for an opinion. It is expected that individuals who do not have any experience with a union and are relying on reports in the media may perceive that the union-management relationship is always adversarial or more adversarial than is actually the case. For example, these individuals may not be aware of joint union-management committees and other collaborative efforts.

4. Compare the students' answers to questions 2 and 3 above. Which group perceives the union-management relationship as more cooperative? More adversarial?

The purpose of this question is to engage the class in a discussion of the nature and effects of unionization, and explore student views towards unions. The discussion could explore why those with union experience (or no union experience) perceive that the union-management is more cooperative.

5. Find a news item involving a union-management issue, and explain it in terms of the framework for labour relations provided in this chapter.

The answers provided will vary with the news item referred to. For example, if a strike or lockout is referred to, the five elements of the framework should be identified:

- 1) the environment
- 2) the actors: employers, unions and government
- 3) processes the parties engage in
- 4) outputs
- 5) feedback

If students have difficulty referring to a current news item, the class could be referred to the opening vignette in Chapter 6, (page 206) dealing with negotiations in the auto industry.

Case Incident: Safe Watch Security

This incident is based upon *ADT Security Services Canada Inc. v. International Brotherhood of Electrical Workers, Local 636* <http://www.canlii.org/en/on/onla/doc/2007/2007canlii73918/2007canlii73918.pdf> The primary purpose of this incident is to illustrate that in a unionized environment the terms and conditions of employment must be negotiated by the union, not individual employees. It should be noted that in the absence of a union there would be nothing to prevent the employer from entering into contracts of employment with individual employees that provided for terms that varied between employees.

1. Explain the basis upon which the union could pursue a complaint on Thornecrest's behalf.

The basis for the union's complaint is that the term of employment requiring Thornecrest to provide her own transportation was void because it involved individual bargaining with the employer.

2. If this dispute goes to a hearing, what arguments will be made by the union and the employer?

The employer's position would be that there was an employment contract that governed the terms relating to the van. The union's position would be that the term of employment requiring Thornecrest to provide her own transportation was void because it involved individual bargaining with the employer as opposed to the terms of employment being negotiated by the union.

3. If you were the decision maker in this situation, explain what your decision would be. Include any remedies that you would order if you decided in favour of the employee.

In the *ADT* case the arbitrator held that the agreement made with the employee at the time of hiring was not enforceable. On the key issue of bargaining with individual employees the arbitrator stated as follows: "... unless it is specifically sanctioned by the collective agreement... no pre-employment agreement between an individual and an employer that concerns a term work condition of employment survives the act of hiring the individual as a bargaining unit employee." The arbitrator declared that the company had violated the collective agreement by refusing to provide Thornecrest with a van on the same terms and conditions as other bargaining unit employees, and ordered the company to provide Thornecrest with a service vehicle on the same terms and conditions as other bargaining unit employees, and further ordered the company to compensate Thornecrest for the additional travel expenses which she had incurred to date.