

YOUR RIGHT TO A UNION

BUILD IT NOW !

Section 7 Unions

" Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..."

National Labor Relations Act

New Hampshire Edition

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“Your Right to a Union, Build it Now”
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Preamble

This pamphlet is intended to provide some basic facts for workers who want to defend or improve their wages, hours and working conditions at their place of work. In order to do this you need some form of organization. This pamphlet is also intended for community activists who realize that everyone will benefit from workers being organized into democratic unions.

1. Introduction

Jimmy and Rachel are mad, as are the other workers at Harry's Machine Shop. The boss just posted a notice stating that starting Monday their pay would be cut by 50 cents per hour. "They can't do that, said Rachel, there's gotta be a law against just cutting our pay." "Let's call someone," said Jimmy.

After asking around they got the number for the National Labor Relations Board, this was the government agency that takes care of workers. Jimmy called up and was transferred to the "Agent of the Day." He explained what happened and the Labor Board agent said, "Do you have a union?" "No" said Jimmy. "Well then you're out of luck, management can do what they want to unless you have a union." ¹

Jimmy relayed this information to Rachel. "We're screwed, she said. There's no way we can get all 200 workers to stick together on this before Monday."

Here's the Rest of the Story

Jimmy and Rachel only got part of the answer from the Labor Board agent.

¹ The exception to this is that management cannot break any other existing laws. They cannot cut workers pay if it is for discriminatory reasons, such as race, nationality, age or sex.

Under U.S. labor law, management can do what they want, unless the workers have a union, BUT workers do have the right to take action protect themselves and their wages, benefits and working conditions even when they are not formally in a union. There's even more. According to the most recent thinking by labor law specialists, workers can form "minority unions", that is unions where less than the majority of workers in a workplace belong, and the employer must negotiate with that union on behalf of its members. More on this later.

2. What is the National Labor Relations Act (NLRA)

This is the basic law that gives workers in the private sector the right to have a Union. It was passed by Congress in 1936 and since then it has undergone many revisions, unfortunately most of them took away workers rights and gave employers more rights to oppress workers.

The heart of the law is Section 7, which says;

" Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title]."

3. What is Important About Section 7?

The law says workers have the right to form, join or help a labor union.

The Law says workers have the right to bargain collectively through representative's of their own choosing. This means the workers get to decide who they want to represent them, not management. It also means that once the workers have chosen their representative, management must bargain with that representative.

The law says workers can engage in other **concerted activities** for the purpose of collective bargaining (with management) and

The law says workers can engage in concerted activity for the purpose of **mutual aid or protection**.

4. **What is “concerted activity?”**

The law refers to groups of workers not individual employees. This is important to remember as the law protects workers who act together but offers no protection to a worker who takes action only for his or her self. Thus under the law if a group of workers go into a boss's office and say, “we want a raise”, they are protected. If one worker goes into a boss's office and asks for a raise, he/she can be fired.

Concerted activity means a group of workers taking action, as in the example above, a group of workers went into the boss's office. This was concerted action.

The employer must know why you are taking concerted action. It cannot be done in secret.

Example: Workers sign a petition demanding the boss meet with them to negotiate a longer lunch period. That is concerted protected activity. It is a group activity, it is about a workplace issue and obviously the boss upon reading the petition knows what it is all about. If a group of workers leave work early because they are mad that the lunch period was shortened, and they never tell the boss why they are leaving, it may not be protected activity. The boss could discipline the workers for leaving work early and truthfully claim that he didn't know they were protesting the cut in the lunch period.

The action (concerted activity) must be taken by workers to make the employer engage in collective bargaining or for some other reason that entails the workers mutually protecting and aiding each other. The issues have to be work related. A group of workers can take action against their employer to protest racial discrimination at work but they cannot take action against their employer to protest racial discrimination that exists in the society at large.

Mutual aid or protection can mean that a group of workers are taking action to help one worker.

Example: A foreman keeps harassing Sara and threatens that he will fire her if she doesn't work faster. Sara is already meeting all the posted quotas. A group of workers along with Sara go into the superintendent's office to complain about the foreman. When asked why they are there, they reply, "We're here because what he is doing to Sara is wrong and if he does it to her he will do it to all of us."

5. "But I thought you had to have a majority of the workers vote for a union?"

That is the common perception, but it is not true. Having a majority of workers join a union or vote for a union gives that union special rights under the NLRB, BUT there does not have to be a majority for workers to gain protection under Section 7.

When a majority of workers votes for a union in an election run by the National Labor Relations Board, then that union has "exclusive rights" to represent all the workers. This means that the employer can only bargain with that union and cannot make deals with workers who chose not to join the union. With this "exclusive rights" comes responsibility for the union. They are obligated by law to equally represent all workers even those who are not in the union. This question of whether a union has "exclusive rights to represent all workers" comes under Section 9 of the NLRA.

When the NLRA was first passed in 1936, most unions organized strictly under Section 7, that is, they fought the employer using their rights to take concerted activity under Section 7 and because they did not have a majority of the workers in the union, they negotiated contracts just for their members. As time went on a majority of the workers joined the union and they gained "exclusive rights under Section 9 of the NLRA.

6. "What kind of concerted activity can we take under Section 7?"

STOP & THINK – Before taking any action be sure to stop and think about what you are doing. Although the list that follows contains actions that the NLRB has ruled were protected concerted activity, every situation is different. The best protection workers have is taking action in large numbers. There is safety in numbers.

Here are some actions workers have taken that the NLRB has deemed were legal actions, providing all the criteria listed above were met. This means the employer should not discipline workers for doing the following.

Wearing Buttons to highlight demands.

Wearing Stickers to highlight demands.

Distributing leaflets to other workers. This can take place inside the workplace. The restrictions are that they should be passed out in non-working areas (break rooms, hallways etc.) during non-working time. An employers “no solicitation” policy, cannot be used to stop workers from using their rights under Section 7 of the NLRA.

Collecting signatures on a petition and delivering the petition to management.

If the employer has a “grievance” or problem solving procedure, then it can be used by groups of workers to pursue an issue.

Wearing of hats or tee shirts proclaiming union membership or about an issue.

Informational picketing before or after work or during lunchtime. This means signs can be held to inform the public about unfair treatment but you cannot ask for a boycott of the business or ask delivery vehicles to stop making deliveries.

Talking Union. You have the right to talk about unions or talk about organizing a protest while you are working if it is not disrupting your work or another person’s work. If people are allowed to talk at work then union talk is also allowed.

Going on Strike. It is legal for workers to go on strike in order to force management to agree to something. There are big problems with this if it is not done properly. The biggest issue is that the employer has the right to permanently replace workers who go on strike. You cannot be fired but you can be replaced. That is why striking must be only done when the overwhelming majority will take part.

7. “What is not allowed under Section 7?”

Intentionally slowing down work to force the employer to act. This of course has always been one of the most powerful weapons that workers possess. Slowing down work hits the employer in the pocketbook, and for most employers that is where their brains are located. Workers in most countries of the world have this right, but not in the USA.

One method that workers use to slow down is called “working to rule”. This means that people begin following every safety rule, and every procedural rule the employer has. Workers become extremely concerned about quality and have to check their work more often and workers have to ask their boss lots of questions. All this generally slows down work while not putting workers in direct defiance of the employer.

Destroying property of the employer.

Assaulting the employer.

Disparaging the employer or the employers’ product. Be-careful of what you say. It is all right to say the employer is treating workers un-fairly, it isn’t to make personal remarks about the boss or to say that the products are unsafe or cheap. Stick to the issue.

Disobeying a direct order. If you are arguing with a boss (one on one) and he orders you to go back to work it is best to do it. Find other ways to protest as a group action.

Disrupting production or the work of others. Remember to do your organizing during non-work areas and non-work time, except remember that you can talk union on the job if it doesn’t interfere with your or your coworkers work.

Buttons and Stickers should contain no vulgarity, and when workers are in jobs that deal with the public they should be normal size, not 4-5 inches across.

8. Using other law's to build your union

Workers can take action under Section 7 to make employers comply with existing State or Federal laws. Often times this is a very safe way to show workers that they can change their situation at work by banding together.

Here's what can be done. First get a group of workers together who feel they have been done wrong by their employer. As a group ask your boss to correct what you think is wrong and when he/she refuses then file a group complaint with the proper state or federal agency. Many retail stores seem to use the trick of having employees finish up some work after they have punched out. In most States this is illegal, and the employers will be held liable for back pay. As a union you should get people to document whenever this happens so there is proper evidence.

Here are some of the State and Federal laws that can be used;

- Health and Safety issues either via OSHA or State health and safety boards
- Workers Compensation
- Laws regulating holidays,
- Overtime pay,
- Use of surveillance cameras,
- Use of lie detector tests
- Drug testing either under the Department of Transportation or State laws
- State laws on payroll issues, such as when checks must be issued or garnishing of paychecks
- EEOC rulings on discrimination based upon race, sex and age
- Regulations on 401K deposits
- Health insurance coverage
- Minimum wage laws
- Maternity coverage and leave from work
- Family Medical Leave Act
- Laws covering break times, clean bathrooms,
- The Americans with Disabilities Act
- The right of employees to access their own personal records

9. Tips on starting your union.

As we have seen, any group of workers banding together for mutual aid or protection is considered a “union” under the law. Union organizers have long known that how a union is started often times sets the stage for what kind of union there will be in the long run.

Make sure that everyone is included.

Professional anti-union consultants are experts in dividing up the workforce and playing one group off against another. They live by the rule, “divide and conquer.”

Right from the start, the group of people who are organizing a union must make it open to all the workers, even if they don’t want to get active right away. If the workforce has different racial groups you must make sure that everyone is asked to be in on building the union from the beginning. The effort must be made up of English speaking and non-English speaking workers. Men and women, Black and white, young and old, first shift and off shifts, high paid and low paid, skilled and unskilled.

Make an effort to find the leaders of each group and talk to them. Even if they aren’t ready to jump right in, it makes a big difference that they are being talked to, and being asked their opinion. Building a union is about uniting all the workers, and it sometimes takes time, but if the effort is made in the beginning, it will payoff in the long run.

Make your union democratic.

Many people are turned off by unions because they had a bad experience or heard stories about unions that paid no attention to the members or the union was run by an outside union representative. Most unions are better than that, but there are enough bad apples to lend credence to the stories.

Start your union by making it democratic. What does this mean? In its most basic form it means that decisions are made collectively by the members. Set up some rules on how decisions will be made, how votes will be taken, and how everyone will be allowed to voice their opinion. Eventually this will become your unions’ constitution.

This accomplishes several things.

One, it makes everybody responsible. It makes the union theirs to build and defend.

Two, it stops any management attack on the visible leaders of the union. Management loves to try to divide and conquer by spreading rumors that the leaders of the union are trying to just help themselves. If all decisions are made by the members, and the leaders are the spokespeople, then it is clear to the workers that managements rumors aren't true.

You will need money to run your union

Experience has shown that a written form of communication is needed to keep all the workers informed of what is going on. A one-page leaflet that goes out monthly is a good way to keep everybody informed. This costs money. Set-up a basic dues structure. Dues can be collected monthly or weekly. Be sure that accurate records are kept and people receive receipts for the dues they spend. When someone spends money and needs to be reimbursed by the union, make sure that they turn in a receipt. The members of the union should vote on spending money.

How do we make the management “bargain collectively” with us?

In most workplaces, even those without a union employees bargain with management, but usually it's an individual bargaining for themselves. “I need to take Monday off” or I can't work overtime tonight but I'll work on Tuesday.”

We are talking about groups of workers bargaining for things that concern everyone.

Here are a few tips for getting management to bargain with your union.

Numbers matter. If it's an issue that affects one department, then the more workers in that department that show their support the better.

Be polite, but firm. A group of workers should present their problem and what they want as a solution to management. Be firm in asking

management to first listen to you, and then to act. If the boss refuses to listen make plans to go to the next level of management.

Be persistent. Changes don't happen overnight.

Be good employees. While you are doing this, don't give the employer any reason to discipline you.

Start small and work up to bigger shows of support. Don't start by talking about a strike, start with something easy that a lot of your co-workers might comfortable doing, like a petition.

Keep good records of what your union does, who is involved and what management says and does. While it is illegal for management to discriminate against an employee for taking part in union activity, remember you have to prove it to the National Labor Relations Board. They want facts. Who did what, how do you know that management knew you are part of a union, who said what and when.

To contact the National Labor Relations Board in your area check out their web site www.nlrb.gov

Appendix A

Some New Hampshire Laws that help workers.

Taken from the New Hampshire Statutes, Title XXIII Labor.

Section 275:1

275:1 Union Membership. – No person shall coerce or compel, or attempt to coerce or compel, any person into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of securing or continuing in any employment.

Section 275:3

275:3 Payment for Medical Examination or Records Furnished. – It shall be unlawful for any employer, as defined in RSA 275:4, to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

Section 275:30-a

275:30–a Lunch or Eating Period. – An employer may not require an employee to work more than 5 consecutive hours without granting him a 1/2 hour lunch or eating period, except if it is feasible for the employee to eat during the performance of his work, and the employer permits him to do so.

Section 275:31

275:31 Making Up Time. – No person shall require or request any employee engaged in any occupation to work more hours in any one day than is limited by law, in order to make up lost time by reason of a legal holiday.

Section 275:37

275:37 Equal Pay. – No employer shall discriminate in the payment of wages as between the sexes, or shall pay any employee in his or her employ salary or wage rates less than the rates paid to employees of the opposite sex for equal work or work on the same operations. However, nothing in this subdivision shall prohibit a variation in rates of pay based upon a marked difference in seniority, experience, training, skill, ability, or difference in duties and services performed, either regularly or occasionally, or difference in the shift or time of the day worked, or difference in availability for other operation, or other reasonable differentiation except difference in sex. A variation in rates of pay as between the sexes is not prohibited where such variation is provided by contract between the employer and the recognized bargaining agent of the employees or, in case there is no such bargaining agent, where such variation is provided by written agreement or contract between the employer and not less than 5 of the employees.

Section 275:37-a

275:37–a Discrimination on Basis of Using Tobacco Products Prohibited. – No employer shall require as a condition of employment that any employee or applicant for employment abstain from using tobacco products outside the course of employment, as long as the employee complies with any workplace policy, pursuant to RSA 155:51–53 and, when applicable, RSA 155:64–77.

Section 275:43-a

275:43–a Required Pay. – On any day an employee reports to work at an employer's request, he shall be paid not less than 2 hours' pay at his regular rate of pay; provided, however, that this section shall not apply to employers of counties or municipalities, and provided further that no employer who makes a good faith effort to notify an employee not to report to work shall be liable to pay wages under this section. However, if the employee reports to work after the employer's attempt to notify him has been unsuccessful or if the employer is prevented from making

notification for any reason, the employee shall perform whatever duties are assigned by the employer at the time the employee reports to work.

Section 275:43-b

275:43-b Payment of Salaried Employees. -

I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(a) Any pay period in which such employee performs no work.

(b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.

(c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

(d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

Section 275:49

275:49 Notification, Posting, and Records. – Every employer shall:

I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment;

II. Notify his employees of any changes in the arrangements specified above prior to the time of such changes;

III. Make available to his employees in writing or through a posted notice maintained in a place accessible to his employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits;

IV. Furnish each employee with a statement of deductions made from his wages under RSA 275:48 for each pay period such deductions are made;

V. Keep posted in a place accessible to his employees an abstract of this subdivision furnished by the commissioner; and

VI. Make such records of the persons employed by him, including wage and hour records, preserve such records for such periods of time, and make such reports there from to the commissioner, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subdivision.

Section 275:56

275:56 Employee Access to Personnel Files. –

I. Except as provided in paragraph III, every employer shall provide a reasonable opportunity for any employee who so requests to inspect such employee's personnel file and further, upon request, provide such employee with a copy of all or part of such file. An employer may only charge the employee a fee reasonably related to the cost of supplying the requested documents.

II. If, upon inspection of his personnel file, an employee disagrees with any of the information contained in such file, and the employee and employer cannot agree upon removal or correction of such information, then the employee may submit a written statement explaining his version of the information together with evidence supporting such version. Such statement shall be maintained as part of the employee's personnel file and shall be included in any transmittal of the file to a third party and shall be included in any disclosure of the contested information made to a third party.

III. The provisions of this section shall not require the disclosure of:

(a) Information in the personnel file of a requesting employee who is the subject of an investigation at the time of his request if disclosure of such information would prejudice law enforcement; or

(b) Information relating to a government security investigation.

Section 275:57

275:57 Reimbursement of Employee Expenses. –

I. An employee who incurs expenses in connection with his or her employment and at the request of the employer, except those expenses normally borne by the employee as a precondition of employment, which are not paid for by wages, cash advance, or other means from the employer, shall be reimbursed for the payment of the expenses within 30 days of the presentation by the employee of proof of payment.

II. Enforcement and administration of this section by the department shall be as provided for wage claims under RSA 275:51.

III. An action by an employee to recover un-reimbursed expenses may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or herself, or themselves, or such employee or employees may designate an agent or representative to maintain such action.

IV. An employer who willfully violates the provisions of this section may be assessed interest and a civil penalty of up to \$1,000 per violation.

V. The commissioner shall adopt rules under RSA 541-A necessary for the administration of this section.