

United States

Introduction

In 1935, the U.S. Congress enacted and President Franklin Roosevelt signed into law the National Labor Relations Act, (NLRA), 29 U.S.C. §§151 et. seq., a/k/a Wagner Act, as part of the “New Deal” legislation addressing the Great Depression. Amended again in 1947 and 1959, the NLRA covers most private sector employers. (Railroad and airline employees are covered by the 1926 Railway Labor Act, 29 U.S.C. §§ 151 et. seq.)

The only rights conferred under the NLRA are to “employees” who are free to choose whether to engage in “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...[or] to refrain from any or all such activities.” 29 U.S.C. §157.

The percentage of union represented private sector employees peaked in 1953 at 35.7%. In 2008, private sector union density was 7.6%, up from 7.5 % in 2007 and 7.4% in 2006. Private sector union density varies by state and generally reflects whether the state has a “right-to-work” law allowing employees to remain employed without paying union dues or fees where there is a union collective bargaining agreement in place requiring union membership and/or payment of union dues/fees. In 2008, union density ranged from New York state’s 26.6% to North Carolina’s 3.5%. Investment and site selection decisions often consider union density statistics.

Under the NLRA, the term “employee” excludes “any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as supervisor, or any individual employed by an employer subject to the Railway Labor Act...or by any other person who is not an employer as herein defined.” Notably, the definitions and exclusions of “independent contractor” and “supervisor” continue to generate much litigation under U.S. labor and employment laws. Pending Congressional legislation, if enacted and signed into law, would severely limit the number of workers qualifying for NLRA exempt “independent contractor” or “supervisor” status. Employers and unions in the health care, high-technology, trucking, and

insurance industries contest whether doctors, interns, residents, computer technicians, drivers, and agents/brokers qualify as independent contractors to be excluded from NLRA coverage and protections. Similarly, employers, as well as unions, may challenge the definition and exclusion of “supervisor” in any case where exclusion may be contrary to their interests.

All private sector employers whether or not unionized, with the exception of agriculture, railroad, and airline industry employers, are covered by the NLRA regardless of whether their employees are union represented. Unrepresented employees, like represented employees, have the right to engage in concerted activities (two or more or one employee acting on behalf of others) provided such activities are “protected,” not unlawful, violent, in breach of contract, or indefensibly injurious to employer interests. The definition in 29 U.S.C. §152(2) of a covered “employer” includes “any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation, or any Federal Reserve Bank, or any state or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.” Occasionally, the exempt status of state political subdivisions or government-funded entities is contested. The National Labor Relations Board (NLRB), the federal agency administering, adjudicating, and enforcing the NLRA, may exercise its discretion to decline jurisdiction over enterprises considered to have an insubstantial effect on interstate commerce. The NLRB maintains certain minimum dollar volume standards by industry: non-retail annual outflow or inflow, direct or indirect across state lines of at least US\$50,000; retail with a gross annual volume of at least US\$500,000; interstate transportation of passengers or freight of at least US\$50,000 annual gross revenue or value of services performed. Under 29 U.S.C. §160(a), where jurisdiction is declined, state statutory provisions may apply if parallel to the NLRA.

Specific, covered industries are treated uniquely. Under 29 U.S.C. §§152(14) and 158(d),(g), a health care institution/employer is specifically defined and special provisions apply: (1) for initial contract bargaining following certification or voluntary recognition, a 30-day advance notice must be provided to the U.S. Federal Mediation and Conciliation Service (FMCS) and to any state mediation agency of any declaration of impasse, (2) a 90-day advance notice must be provided to the other party and a 60-day notice to the FMCS and state agency in advance of the contract’s

termination date where there is a desire to terminate or renegotiate the contract, and (3) a minimum 10-day notice is required by a trade union before commencing any strike, picketing, or other concerted refusal to work. Under 29 U.S.C. §158(e), because the construction industry is deemed unique, it is exempt from the NLRA's prohibition of hot cargo agreements (agreeing to do business only with certain unionized employers on the construction site). Also, under 29 U.S.C. §158(f), because construction employers hire employees for jobs of limited terms and generally perform services at multi-employer work sites, the NLRA permits pre-hire agreements with construction unions before employees are hired or before union majority status is established. The apparel and clothing industry is exempt from the NLRA's secondary boycott and hot cargo provisions under 29 U.S.C. §158(e).

The NLRA defines "labor organization" in 29 U.S.C. §152(5) as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Under 29 U.S.C. §158(a)(2), employee committees, quality circles, employee involvement activities, and/or codetermination programs are at risk of being deemed a labor organization where the employer is viewed as having dominated, interfered with, or supported the formation or administration of the "labor organization."). Under NLRB case law, "dealing with" is considered broader than the concept of bargaining, thus extending the reach of a "labor organization" as defined and increasing the potential for an employer's unlawful interference.

Of interest are the reported NLRB case decisions concerning the role of agency. The NLRA notes in 29 U.S.C. §152(13) that in determining whether any person, individual, union, or business entity is acting as an agent of another, "whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." While the NLRA's definition of employer in 29 U.S.C. §§ 152(2)(5) includes "any person acting as an agent," the definition of labor organization does not include such reference. Reviewing courts apply common law principles in assessing evidence of express, implied, or apparent authority. Unions are not found liable for every act of stewards and business representatives merely by virtue of their positions, and unions frequently escape liability for employees' actions because proving agency is often illusive.

The NLRA is administered, adjudicated, and enforced by the NLRB. The NLRB is an independent federal agency with two principal functions: (1) to determine, through secret-ballot elections, whether employees in an appropriate unit wish to be represented by a trade union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful unfair labor practices, by either employers or unions. Headquartered in Washington, D.C., the NLRB conducts its activities nationwide through 32 regional and 19 subregional and resident offices.

The NLRB has two major functional components – the Board (adjudication of unfair labor practices and election matters and the conducting of secret ballot elections) and the General Counsel (investigation and prosecution). The Board, a quasi-judicial body of five members appointed by the President and confirmed by the U.S. Senate to staggered five year terms, decides cases on appeal from formal proceedings and decisions of administrative law judges or Regional Director decisions regarding election matters and approves requests for injunctions by the General Counsel. Board unfair labor practice decisions may be appealed to federal appellate courts and the U.S. Supreme Court. The General Counsel, also appointed by the President and confirmed by the U.S. Senate to a four year term, is an independent prosecutor responsible for investigating and prosecuting unfair labor practice cases and for the general administration of the field offices. Customarily, the General Counsel and a majority of the Board is comprised of persons of the sitting President's political party. The President designates one member as Board Chairman.

Trade Unions

The General Role Of A Trade/Labor Union

United States trade or labor unions (1) organize workplaces using traditional “bottoms up” methods and/or modern “top down” corporate campaign tactics; (2) serve as the exclusive bargaining representative for employees within “an appropriate unit” regarding wages, hour, and terms and conditions of employment; and (3) administer and enforce the collective bargaining agreement. “Bottoms up” organizing refers to leveraging existing employee discontent and workplace concerns to win majority support for union representation. “Top down” organizing is a frontal attack on a company's reputation by using negative media attention and pressuring investors, corporate officers, and board members; local, state, and federal governments; and consumers to pressure the company to consent to union organizing without objection and/or to persuade employees of unfair company treatment where little or none was perceived.

Unless and until a labor union organizes employees in “an appropriate unit” (sharing a community of interest and, presumptively at a single location depending on managerial design) by obtaining either (1) a majority of votes cast in an NLRB conducted secret ballot election or (2) an employer’s voluntary recognition of proof of employee majority by signed cards or a petition, it has no legitimate authority or duty to represent employees and the employer has no obligation to extend recognition. However, in the rare case where an employer’s unfair labor practices are deemed “outrageous and pervasive,” the NLRB may order the parties to bargain provided the union achieved majority status at some point during the campaign or “critical period” prior to the scheduled election.

Organization of the workplace is the first and foremost task for unions. The NLRA and NLRB case law impose standards and procedures for how a trade union obtains the right to represent employees without employer or union interference, restraint, or coercion. Typically, a union solicits written support, files a formal petition with the NLRB signed by 30% or more of the targeted unit employees, and then attempts to win an NLRB conducted secret-ballot election by a majority of votes cast by eligible employees. Elections are usually conducted within 42 calendar days of the petition filing. If the union wins the secret ballot election, the results are certified by the NLRB, insulating the union to enable bargaining for a first contract for one year from rival union petitions or employee petitions to decertify the union. If the union loses the election, NLRB case law prevents the union from refiling an election petition for one year. Alternatively, a union may present to the employer signed cards from a majority of unit employees desiring union representation and the employer may voluntarily recognize the union or decline recognition leaving the union to file an election petition with the NLRB. In the past decade, unions have attempted to avoid contentious campaigns by pressuring employers to agree to remain neutral during the critical period leading up to a scheduled election or, alternatively, to agree to card only recognition and remain neutral during the card signing. Card recognition protects the union from rival union or employee decertification petitions for a reasonable period not to exceed six months.

Pending Congressional legislation entitled the “Employee Free Choice Act” (EFCA) would, if enacted and signed in to law, effectively eliminate secret ballot elections in favor of mandatory card-check recognition. Organized labor views restoring the middle-class through unionization as essential. Unions want to bypass the Board’s secret ballot election process to make organizing easier. EFCA would amend the

NLRA requiring an employer to recognize and bargain with any union that is certified by the Board following presentation to the Board by an employee or a group of employees or an individual or a union of 50% plus one or more employee signed cards. EFCA would also introduce civil penalties and liquidated damages for employer unfair labor practices which interfere with organizing or bargaining. Finally, EFCA would mandate interest arbitration without appeal if a first contract is not agreed-to within 120 days of mandatory recognition and require a two year contract term barring employee decertification or rival union petitions during the life of the contract.

Under the existing NLRA, once employees are unionized and the union requests recognition by the employer, the union becomes the employees' exclusive bargaining representative, and the employer is prohibited from dealing directly with any represented employee concerning terms and conditions of work. A represented employee may exercise his or her right to have a union representative present at any investigatory interview where the employee reasonably believes the investigation will result in discipline or discharge. Under 29 U.S.C. §§158(a)(5), 8(b)(3), 8(d), the union's initial duty is to request the employer to meet, confer, and negotiate in good faith regarding "mandatory" subjects: wages, hours, and terms and conditions of work. Topics other than the mandatory subjects are deemed either unlawful or permissive, in which case either party may refuse to consider them. Under 29 U.S.C. §158(d), while the NLRA neither requires a party to agree to a proposal nor to make concessions, both parties must meet at reasonable times and confer in good faith.

To inform the bargaining or subsequent contract administration process, requested information must be provided in a timely manner. Requested information is subject to a liberal standard of relevance and necessity, and, in appropriate circumstances, may be treated as confidential or denied as privileged. Core financial data is not deemed necessary unless the employer pled financial inability to pay in rejecting a union bargaining demand. Once an agreement is reached, it must be reduced to writing if requested by either party. NLRB case law provides "contract bar" protection from rival union petitions or employee petitions to decertify the union for the length of the contract term not to exceed three years.

If no agreement is reached, economic leverage may be used by either party – a union strike and/or an employer lockout while continuing to operate with supervisory personnel and/or replacements. If a good faith impasse was not achieved prior to

the strike or lockout and unfair labor practice charges are filed, the NLRB, upon review, may order the parties to resume negotiations and require the employer to reinstate striking employees upon request with back pay.

A collective bargaining agreement sets forth the terms and conditions governing union represented employees' employment. While agreements often vary by employer, workplace, locality, and industry, certain contract terms or clauses tend to be standard including: recognition (description of unit represented and covered by the contract); union security (describing required union membership and/or dues, fees and assessments); management rights (describing each, specific management prerogative exempt from negotiation and union agreement); grievance/arbitration process (dispute resolution of employee discipline or termination and contract interpretation); wage rates; overtime rates; work schedules; seniority provisions; no-strike and no-lockout; discipline and discharge (usually limited to good or just cause); "zipper" (agreement to preclude bargaining during the contract term over topics agreed-to, discussed but not agreed upon, and the effect of past practices); and term of agreement (commonly three years). It is not uncommon for mid-term negotiations, if not prohibited by a "zipper" clause, to result in additional agreed-upon contractual language frequently included as "side agreements." As a contract term nears expiration, the parties begin the process of negotiating a new contract. Should the contract expire before a new or "rollover" agreement is reached, the expired terms continue in effect except for a no-strike clause and grievance/arbitration clause regarding any qualifying event arising post contract expiration.

Once a collective bargaining agreement is achieved, the union has a legal duty to administer and enforce the contract on behalf of the covered employees. This duty includes presenting legitimate grievances on behalf of disciplined and/or discharged employees and, if the contract language allows, matters regarding the interpretation of contract terms/language. Where the grievance cannot be resolved between the union and the employer, the trade union typically processes the grievance through binding arbitration by presenting the case on behalf of the employee before a neutral arbitrator agreed upon by the parties. The NLRA imposes on trade unions a strict duty of "fair representation" to represent each unit employee "fairly, impartially, and in good faith." If a union fails to satisfy this duty, the employee can bring a lawsuit under 29 U.S.C. §301 against the trade union in the U.S. District Court. If the employer refuses to arbitrate and/or violates contract terms, the union may sue under the same provision for breach of contract.

With the expiration of a collectively bargained contract approaching, no party to the contract may terminate or modify it unless that party (1) serves a written notice upon the other party at least 60 days in advance of contract expiration (or if no termination date, 60 days prior to the time proposed to make such termination or modification), (2) offers to meet and confer to negotiate a new or revised contract, (3) notifies the FMCS and any state agency established to mediate disputes within 30 days after notice to the other party, and (4) continues the existing contract without resort to strike or lockout for 60 days after such notice is given to the other party or until expiration of the contract, whichever occurs later.

Distinct from single employer bargaining is multi-employer bargaining with single or multiple unions. Establishment of a multi-employer unit and agreement to be bound by group bargaining is consensual by all parties, employers and unions. To withdraw from group bargaining, unequivocal written notice must be provided prior to the date for modification of the contract or prior to the date negotiations actually begin.

Where a joint employer relationship exists, typically in the case where temporary or leased employees work alongside regular employees, consent of both employers is necessary for the petitioned-for unit to be found appropriate. However, the treatment of joint employment has been the subject of litigation with NLRB precedent vacillating over time.

Constitution Of The Trade Union

Under the 1959 amendments, a/k/a Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§411 et. seq., each union is required to adopt a constitution and by-laws, file same with the U.S. Secretary of Labor, and report annually each fiscal year's assets and liabilities, receipts, salaries, disbursements, and loans including same for union officers and employees. The law also requires labor organizations to ensure: equal rights; freedom of speech and assembly; transparency regarding dues, fees, and assessments; protection of the right to sue; and safeguards against improper disciplinary action. Union constitutions and by-laws address these protections and democratic processes in addition to detailing the union's management structure.

The Scope Of Trade Union Rights In Businesses

As part of its right to organize, a trade union has the right to approach employees, ask for support, obtain employee signatures on union authorization cards or an election petition, hold meetings, and distribute campaign literature. In addition, as part of the NLRB secret ballot election process, a union has the right, following the filing of an election petition, to obtain a list from the employer of the names and addresses of each employee performing the job functions in the appropriate unit targeted by the union.

NLRB case law allows employers to prohibit non-employee union organizers from physically accessing company property or entering the workplace to speak with employees or to distribute union literature provided the employer maintains lawful no-public access, no-solicitation, and no-distribution policies. Lately, litigation is challenging whether the employer's premises may be public or quasi-public property to facilitate access by non-employee union organizers. For organizing activities by employees, the NLRA and NLRB case law prohibits employers from maintaining and enforcing rules restricting the distribution of pro-union literature or oral solicitation of trade union support from fellow employees at times other than actual working time or interfering with others engaged in work or in places other than actual working areas at any time.

Currently, a popular union organizing tactic to create employee interest in third-party representation is filing unfair labor practices claiming employer policies and rules in employee handbooks and policy manuals interfere, restrain, or coerce employees in the exercise of their rights to organize and/or engage in concerted activities. Frequently challenged are employer policies requiring: confidentiality or limiting employee speech regarding wages; working conditions or discipline; restricting certain off-duty conduct; limiting off-duty access; proscribing the wearing of buttons or insignias without a lawful uniform appearance policy; limiting complaints only to management; prohibiting comments to the media or to customers; requiring the reporting of union activities and/or harassment; and disparate treatment of communications including restrictions on e-mail usage for union purposes but not for other, similar, non-work related entities or purposes.

Once a workplace is successfully organized by secret ballot or voluntary recognition, employers must bargain with the representative union concerning "mandatory" terms and conditions of employment addressing wages, hours, and working conditions.

Moreover, a unionized employer cannot unilaterally implement changes to employment terms, including employment policies, affecting wages, hours, and working conditions, unless and until it has first bargained to agreement or lawful impasse with the representative trade union. During the term of a collective agreement, an employer must abide by the contract terms and not make changes to terms and conditions of work unless specifically provided for in the written agreement or with union agreement in advance.

To avoid reopening negotiations during a contract's term, or to circumvent a "zipper" clause precluding mid-term negotiations, it is common practice for employers to bargain for the inclusion of a "management rights" clause reserving the right to manage the workplace as long as the exercise of that right does not violate or conflict with the terms of the collective bargaining agreement. Presently, there continues to be a heated debate at the NLRB concerning the proper legal theory supporting reserved rights language. Management interests advance a common law contract theory of "reserved rights" while labor interests argue a "clear and unmistakable waiver" is required with specific language ceding union interest for each and every alleged, reserved, management right.

Depending on the terms of the collective bargaining agreement, trade unions may impose many demands and restrictions that affect an employer's direct and indirect business costs and operations including: payroll deductions from employees' pay to fund union dues and contributions to benefit funds; procedures for selecting employees for promotion, overtime, and layoff; restrictions on discharge for good or just cause; limits or prohibitions on subcontracting and outsourcing; and restrictions on the sale or transfer of ownership. Trade unions have the right to raise challenges whenever they believe that an employer has violated the collective agreement by filing a grievance or a breach of contract action or, if the agreement does not contain a no-strike provision, call employees out on strike.

Occasionally, management must make fundamental business decisions that appear to address only the economic profitability or scope or direction of the enterprise, including whether to remain in business. Such matters are generally not addressed by a collective agreement and do not appear to be a mandatory bargaining subject. Nonetheless, such decisions may require bargaining with the union representative regarding the effects of the decision. Other decisions, like relocating unit work, may pose a decision bargaining obligation depending on a detailed burden shifting

analysis under NLRB case law. Failure to properly assess whether there exists a decision and/or effects bargaining obligation with strategic business decisions can result in an injunction and a costly order to reinstate the status quo ante.

Many collective bargaining agreements also contain provisions obligating employers to notify the trade union in the event of a corporate acquisition or mass layoff and, in some agreements, require the successor to be bound by the seller's/acquired company's collective bargaining agreement. NLRB case law generally binds a stock purchaser to the seller's collective agreement while an asset purchaser is bound if its new workforce consists of a majority of the seller's workforce in a continuing appropriate unit. A seller bound by a "successors and assigns" clause remains liable for any resulting breach, which often affects the pricing and finality of the transaction.

The Function Of Trade Union Representatives

In the United States, trade unions have various levels of representative agents and organizational bodies. At the workplace, unions generally designate certain employees as union stewards to act as the "eyes and ears" of the union on a day-to-day basis. Stewards typically have the authority to raise concerns with a supervisor or manager concerning issues affecting individual employees. In addition to stewards, trade unions directly employ persons to serve as union "business representatives" to conduct communications and relations with the employer. Business representatives are usually assigned to oversee union interests for particular employer workplaces and engage in systematic dialogue with the employer's human resources, labor relations, or plant manager as designated by the company. On a practical level, the business representative is often viewed by the employer and the employees as the regular voice of the union for issues ranging from organizing to bargaining to strikes. Unions also have executive management and elected officials to conduct the union's internal operations, administration, and relationships with other unions and affiliated labor federation.

Finally, most trade unions in the United States are organized in a hierarchical manner. Typically, there is a parent organization, known as the international organization. Under the parent can be a regional, state, or industry specific organization and numerous local organizations, each having a specific geographical jurisdiction. Generally, collective bargaining agreements are executed between the employer and the local union organization. Each local union's collective bargaining agreements tend to include some model contract language recommended by the international

organization. Sometimes, employers are asked to sign two agreements – a master agreement with the international organization and a subordinate agreement with the local organization. During contract negotiations, especially for a first contract, the international union often provides assistance with skilled financial and legal advice.

Works Councils

Unlike many European countries, U.S. labor law does not specifically provide for Works Councils. The only statutorily created employee representative entity is a trade union or labor organization as defined in 29 U.S.C. §152(5). Furthermore, under 29 U.S.C. §§152(5), 158(d), the duty to bargain does not mandate agreement, and the scope of bargaining is both defined and limited.

Employee Protections From Employer And Union Unfair Labor Practices

In addition to the rights of covered employees to engage in or refrain from union organizing and/or concerted activities for their mutual aid and protection, the NLRA protects employees from employer and union unfair labor practices. Employers are prohibited under 29 U.S.C. §158(a)(1),(2),(3),(4), and (5) from:

1. Interfering with, restraining, or coercing employees in the exercise of their rights to organize or engage in concerted activities for their mutual aid or protection;
2. Dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to the union;
3. Discriminating in the hiring or tenure (discipline or discharge) or term or condition of employment to encourage or discourage union affiliation;
4. Discharging or otherwise discriminating against an employee for filing charges or giving testimony under the NLRA; and,
5. Refusing to bargain collectively with the union and in good faith.

The NLRA in 29 U.S.C. §158(b)(1),(2),(3),(4),(5),(6), and (7) prohibits trade unions and their agents from:

1. Restraining or coercing employees in exercising their rights to refrain from union organizing or concerted activities for their mutual aid or protection without, however, impairing the union's right to prescribe its own rules regarding membership or an employer in the selection of its representatives for collective bargaining and/or adjusting grievances;
2. Causing or attempting to cause an employer to discriminate against an employee on some basis other than his failure to tender periodic dues and initiation fees as required if employed in a non "right-to-work" state;
3. Refusing to bargain collectively with the employer and in good faith;
4. Encouraging, threatening, coercing, or restraining employees to strike or refuse to use or work on any goods or perform services or to force or require an employer to agree not to do business with or deal with the products of any other employer (hot cargo agreement) or to force bargaining with a union if another union is the certified representative (secondary boycotts) or to force an employer to assign particular work to employees in a particular labor organization rather than to employees in another union (jurisdictional dispute), provided that it is not unlawful for any person to refuse to enter upon the premises of any employer other than his own if the employees of such other employer are on strike ratified or approved by the striking employees' representative and required to be recognized by such employer and, provided further, it is not unlawful to publicize by means other than picketing to advise the public that a product(s) is produced by an employer with whom the labor union has a primary dispute and is distributed by another employer as long as the publicity does not induce employees of any employer, other than the primary, to refuse to handle or provide services for the distributing employer;
5. Requiring excessive or discriminatory fees for membership;
6. Requiring an employer to pay or deliver or agree to pay or deliver money or thing of value for services not performed or to be performed;
7. To picket, threaten to picket, or cause to be picketed any employer where an object is forcing the employer to recognize or bargain with a union or forcing employees to accept or select the union as their collective bargaining representative where the employer has lawfully recognized another union and a question concerning representation cannot be raised or where there was a

valid election within the preceding 12 months or where picketing has occurred for a period not to exceed 30 calendar days without an election petition filed (organizational or recognitional picketing), with the exception of picketing or publicity to truthfully advise the public that an employer does not employ members of or have a contract with a labor organization, unless the effect of such picketing is to induce any employee of another employer not to handle any good or perform any services.

Other Types Of Employee Representation

U.S. labor law rarely recognizes non-traditional labor union representation in the workplace. The NLRA under 29 U.S.C. §158(a)(2) prohibits employer domination or interference of, or financial support to, the formation or administration of any labor organization as defined. Workplace committees and quality circles are often found unlawful by the NLRB because they were created by and controlled by management. However, where the group merely makes recommendations without employer counter responses (“dealing”) or where final, unreviewable authority is conferred, no employer domination or interference is present.