

## SUMMARY TABLE OF CONTENTS

	<i>Main Edition</i>	<i>Supple- ment</i>
IN MEMORIAM . . . . .	xxxix	—
FOREWORD . . . . .	xxxiii	xxxi
ACKNOWLEDGMENT OF JOHN E. HIGGINS, JR. . . . .	xxxv	—
PREFACE . . . . .	xxxvii	xxxiii

### PART I

#### HISTORY OF THE NATIONAL LABOR RELATIONS ACT

CHAPTER 1. Historical Background of the Wagner Act . . . . .	3	3
I. The Inadequacies of Judicial Regulation . . . . .	4	—
II. The Rise of Federal Regulation . . . . .	8	—
III. An Affirmative National Labor Policy: The Ancestry of the Wagner Act . . . . .	12	—
CHAPTER 2. The Wagner Act Period . . . . .	25	3
I. The Role of Senator Wagner . . . . .	26	—
II. The National Labor Relations Act: The Beginning of an Era . . . . .	27	—
III. Criticism of the Act: One-Sided Legislation . . . . .	30	—
CHAPTER 3. The Taft-Hartley Changes . . . . .	35	3
I. Industrial Unrest and Congressional Response . . . . .	36	—
II. The New Amendments . . . . .	41	—
III. The Reaction . . . . .	47	—

	<i>Main Edition</i>	<i>Supple- ment</i>
CHAPTER 4. The Landrum-Griffin Changes . . . . .	51	3
I. The Impetus Of Legislative Investigation . . . . .	52	—
II. The Political Climate . . . . .	53	—
III. Senate Action . . . . .	54	—
IV. Struggle in the House . . . . .	55	—
V. Reconciling Title VII . . . . .	57	—
VI. The Conference Committee Version . . . . .	60	—
CHAPTER 5. The Post-Landrum-Griffin Period . . . . .	65	3
I. Jurisdiction Over U.S. Postal Service . . . . .	65	—
II. Section 302 Amendments and Additional Bargaining Subjects . . . . .	66	—
III. Health Care Institution Amendments . . . . .	69	—
IV. Court Invalidates Act Giving Religious Conscientious Objectors Exemption From Union-Security Coverage . . . . .	70	—
V. Unsuccessful Efforts to Amend the Basic Act . . . . .	71	—

## PART II

### PROTECTED EMPLOYEE ACTIVITY

CHAPTER 6. Interference With Protected Rights . . . . .	75	7
I. Overview . . . . .	81	11
II. Organizational and Preelection Activity . . . . .	100	15
III. Other Concerted Activity . . . . .	196	44
IV. Union Restraint and Coercion . . . . .	256	62
CHAPTER 7. Discrimination in Employment . . . . .	285	69
I. Discrimination as an Unfair Labor Practice . . . . .	286	—
II. Employer Discrimination . . . . .	289	71
III. Union Inducement of Employer to Discriminate . . . . .	383	91
IV. Discrimination Because of Involvement With NLRB Procedures: Section 8(a)(4) . . . . .	401	93
CHAPTER 8. Employer Domination of and Assistance to Labor Organizations . . . . .	417	97
I. Introduction: Section 8(a)(2) . . . . .	418	—
II. Labor Organization Defined . . . . .	421	98
III. Employer Domination . . . . .	431	—
IV. Employer Interference . . . . .	438	98
V. The Requirement of Employer Neutrality . . . . .	448	102

	<i>Main Edition</i>	<i>Supple- ment</i>
VI. Employer Support Versus Cooperation . . . . .	456	102
VII. The Union as Party to the Employer's Domination, Assistance, or Support . . . . .	461	103
VIII. Remedies . . . . .	463	104

### PART III

## THE REPRESENTATION PROCESS AND UNION RECOGNITION

CHAPTER 9. Restrictions on Preelection Activity: "Laboratory Conditions" . . . . .	471	109
I. Introduction . . . . .	472	111
II. Grounds for Setting Aside Elections . . . . .	483	115
III. Remedies . . . . .	535	125
CHAPTER 10. Representation Proceedings and Elections . . . . .	537	127
I. Questions Concerning Representation . . . . .	540	129
II. Timeliness of Petitions . . . . .	555	131
III. Election Procedures . . . . .	590	135
CHAPTER 11. Appropriate Bargaining Units . . . . .	637	139
I. Background . . . . .	639	142
II. General Factors in Unit Determinations . . . . .	642	—
III. Types of Units . . . . .	650	142
CHAPTER 12. Recognition and Withdrawal of Recognition Without an Election . . . . .	731	147
I. Introduction . . . . .	733	149
II. History . . . . .	736	—
III. Elements of a Bargaining Obligation in the Absence of an Election . . . . .	747	149
IV. Bargaining Obligation Established by Employer Card Checks, Polls, and Other Independent Means . . . . .	778	153
V. Defenses to the Remedial Bargaining Order . . . . .	783	154
VI. Withdrawal of Recognition . . . . .	795	156

### PART IV

## THE COLLECTIVE BARGAINING PROCESS

CHAPTER 13. The Duty to Bargain . . . . .	817	165
I. Introduction . . . . .	820	168

	<i>Main Edition</i>	<i>Supple- ment</i>
II. Per Se Violations . . . . .	832	
III. The Good Faith Requirement . . . . .	855	177
IV. The Duty to Furnish Information. . . . .	920	183
V. Economic Pressure During Bargaining . . . . .	983	190
VI. Bargaining Impasses . . . . .	988	193
VII. Defenses and Exceptions: Waiver, Suspension, and Termination of Bargaining Rights . . . . .	1006	199
VIII. The Construction Industry: Section 8(f) . . . . .	1036	205
IX. Notice to Terminate or Modify the Labor Agreement . . . . .	1046	206
X. Coalition or Coordinated Bargaining . . . . .	1057	—
XI. Bargaining During the Term of an Existing Agreement . . . . .	1061	208
XII. Dual Employer Operations: The “Double-Breasted” Issue . . . . .	1069	209
CHAPTER 14. Effect of Change in Bargaining Representative During the Term of a Collective Bargaining Agreement . . . . .	1081	213
I. Context in Which the Issue Arises . . . . .	1081	—
II. Rights and Obligations of New Bargaining Representative and Employer Under Contract With Prior Representative . . . . .	1083	—
III. Mergers and Transfers of Affiliation. . . . .	1088	213
CHAPTER 15. Effect of Change in the Employing Unit: Successorship . . . . .	1101	217
I. Scope of the Topic. . . . .	1103	—
II. Historical Development . . . . .	1106	—
III. Successorship and the Bargaining Obligation . . . . .	1123	219
IV. Successorship and the Contractual Obligation . . . . .	1182	226
V. Successorship and the Contract-Bar Doctrine. . . . .	1229	—
VI. Liability of Successor for Predecessor’s Unfair Labor Practices . . . . .	1233	229
CHAPTER 16. Subjects of Bargaining. . . . .	1245	231
I. Introduction. . . . .	1247	—
II. Historical Background . . . . .	1248	—
III. Development of the Distinction Between “Mandatory” and “Permissive” . . . . .	1251	234
IV. Mandatory Subjects of Bargaining . . . . .	1263	236

	<i>Main Edition</i>	<i>Supple- ment</i>
V. Permissive Subjects of Bargaining . . . . .	1362	246
VI. Illegal Subjects of Bargaining . . . . .	1393	252

## PART V

### ARBITRATION AND THE ACT

CHAPTER 17. Relation of Board Action to Enforcement of Agreements Under Section 301 . . . . .	1403	255
I. Introduction. . . . .	1404	256
II. Section 10(a) Power of the Board . . . . .	1406	257
III. Scope and Purpose of Section 301 . . . . .	1408	257
IV. Injunctions in Aid of Arbitration: Section 301 Versus Norris-LaGuardia . . . . .	1446	259
V. NLRB Interpretation of the Collective Bargaining Agreement . . . . .	1476	266
CHAPTER 18. Accommodation of Board Action to the Arbitration Process . . . . .	1483	267
I. Introduction and Historical Development . . . . .	1485	269
II. Prearbitral Deferral: Applying the <i>Collyer</i> Doctrine . . . . .	1508	270
III. Post-Arbitral Deferral: Applying the <i>Spielberg</i> Standards . . . . .	1530	271
IV. Other Factors Affecting the Board's Post-Arbitral Deferral Policy . . . . .	1548	272
V. Response of the Reviewing Court to the Board's Deferral Standards . . . . .	1561	—

## PART VI

### ECONOMIC ACTION

CHAPTER 19. The Primary Strike. . . . .	1571	277
I. Introduction: The Right to Strike. . . . .	1572	278
II. Strikes Protected Under the Act. . . . .	1591	278
III. Unprotected and Prohibited Strikes . . . . .	1606	281
IV. Rights of Employees Respecting Picket Lines: Sympathy Strikes. . . . .	1626	—
CHAPTER 20. The Lockout. . . . .	1637	283
I. Introduction: Historical Perspective . . . . .	1638	—
II. Contemporary Law of Lockouts . . . . .	1657	284

	<i>Main Edition</i>	<i>Supple- ment</i>
CHAPTER 21. Picketing for Organization and Recognition . . . . .	1675	287
I. Introduction: Recognitional Picketing in History . . . . .	1676	—
II. Picketing Defined . . . . .	1680	288
III. Proscribed Organizational or Recognitional Objective . . . . .	1686	290
IV. Picketing When Another Union Is Currently Recognized. . . . .	170	—
V. Picketing Within Twelve Months of a Valid Election . . . . .	1716	—
VI. Picketing of Unreasonable Duration Absent a Petition . . . . .	1722	292
VII. The Informational Picketing Proviso . . . . .	1729	293
CHAPTER 22. Secondary Activity: Handbills, Pickets, and Strikes . . . . .	1739	295
I. Introduction: Development of the Law . . . . .	1741	—
II. Section 8(b)(4)(B): Prohibited Secondary Activity Defined . . . . .	1754	297
III. Handbilling . . . . .	1824	302
IV. Consumer Picketing . . . . .	1833	—
V. Actions for Damages Under Section 303 . . . . .	1847	302
CHAPTER 23. Section 8(e): The “Hot-Cargo” Agreement . . . . .	1869	305
I. Introduction: The Law Before Landrum-Griffin. . . . .	1870	—
II. Enactment of Section 8(e): Agreements to Boycott Prohibited . . . . .	1873	—
III. Interpretation and Application . . . . .	1877	306
CHAPTER 24. Jurisdictional Disputes and “Featherbedding” . . . . .	1935	309
I. Introduction. . . . .	1936	—
II. Jurisdictional Disputes. . . . .	1936	310
III. “Featherbedding” . . . . .	1977	—

**PART VII**

**RELATIONS BETWEEN EMPLOYEE AND UNION**

CHAPTER 25. The Duty of Fair Representation . . . . .	1987	315
---	------	-----

	<i>Main Edition</i>	<i>Supple- ment</i>
I. Introduction: Origin of the Duty . . . . .	1988	—
II. Jurisdiction and Procedures to Enforce the Duty . . . . .	1995	316
III. Nature of the Duty . . . . .	2029	319
IV. Statutes of Limitations . . . . .	2066	320
V. Remedies . . . . .	2075	—
CHAPTER 26. Union Security . . . . .	2097	323
I. Introduction: Historical Evolution . . . . .	2098	—
II. Required Membership—The Union Shop . . . . .	2104	—
III. Variations: The Agency Shop and Maintenance of Membership . . . . .	2143	—
IV. Section 14(b) and State “Right-to-Work” Laws . . . . .	2149	324
V. Hiring-Hall and Job-Referral Practices . . . . .	2157	325
VI. The Dues Checkoff . . . . .	2176	326
VII. Constitutional Dimensions and Other Statutory Requirements . . . . .	2188	326

### PART VIII

### ADMINISTRATION OF THE ACT

CHAPTER 27. Jurisdiction: Coverage of the Act . . . . .	2207	333
I. Constitutionality . . . . .	2211	—
II. Statutory Jurisdiction . . . . .	2220	335
III. Definitions and Limitations on Coverage . . . . .	2240	336
IV. Discretionary Administrative Jurisdictional Standards . . . . .	2305	342
CHAPTER 28. Federal Preemption of State Regulation . . . . .	2323	345
I. Introduction . . . . .	2325	—
II. Evolution of Preemption Doctrine . . . . .	2330	347
III. <i>Garmon</i> Preemption in Specific Situations . . . . .	2361	350
IV. Preemption Under Section 301 . . . . .	2379	352
V. Preemptive Effect of Other Statutory Provisions . . . . .	2414	356
CHAPTER 29. Accommodations to Other Federal Enactments . . . . .	2433	359
I. The NLRA and the Antitrust Law . . . . .	2434	360
II. The NLRA and the Bankruptcy Code . . . . .	2466	363
III. The NLRA and Immigration Law . . . . .	2493	371

	<i>Main Edition</i>	<i>Supple- ment</i>
CHAPTER 30. RICO and Labor Law. . . . .	2497	373
I. Introduction. . . . .	2500	—
II. Historical Background of RICO and Its Applicability to Labor Disputes . . . . .	2502	—
III. Overview of the Statute . . . . .	2511	376
IV. Predicate Acts Commonly Alleged in Labor Cases . . . . .	2561	378
V. Issues in Civil Litigation . . . . .	2598	391
VI. Remedies . . . . .	2639	—
CHAPTER 31. NLRB Procedures . . . . .	2655	395
I. Organization of Board and Office of General Counsel . . . . .	2656	396
II. Procedures in Representation Cases . . . . .	2662	397
III. Procedures in Unfair Labor Practice Cases . . . . .	2681	402
IV. Procedures Applicable to All Cases . . . . .	2703	413
V. The NLRB and Rulemaking . . . . .	2712	—
VI. Other Rulemaking Initiatives . . . . .	2716	415
CHAPTER 32. NLRB Orders and Remedies. . . . .	2717	417
I. General Principles . . . . .	2719	—
II. Orders in Representation Cases (Section 9) . . . . .	2722	—
III. Orders and Remedies in Complaint Cases (Section 10) . . . . .	2724	420
CHAPTER 33. Judicial Review and Enforcement. . . . .	2801	435
I. Introduction. . . . .	2802	436
II. Appellate Review and Enforcement. . . . .	2804	436
III. Direct Review and Enforcement. . . . .	2834	438
APPENDIX National Labor Relations Act . . . . .	2851	—
TABLE OF CASES . . . . .	2889	439
INDEX . . . . .	3279	—