
PART 1

The Strategic Level of Labor Relations

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Demographic Environments

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LABOR
RELATIONS
IN A
GLOBALIZING
WORLD

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1 A Framework for Analyzing Labor Relations

A PERSPECTIVE DRAWN FROM THE FIELD OF INDUSTRIAL RELATIONS

Whether we are at work or at leisure, we are affected by the conditions under which we work and the rewards we receive for working. Work plays such a central role in our lives and in society that the study of relations between employee and employer cannot be ignored.

This book traces how labor, management, and governments acting as individuals or as groups have shaped and continue to shape the employment relationship. Employment is analyzed through the perspective of **industrial relations**, the interdisciplinary field of study that concentrates on individual workers and groups of workers, unions and other forms of collective representation, employers and their organizations, and the environment in which these parties interact.

The discipline of industrial relations differs from other disciplines that study work because of its focus on labor-management interactions. Thus, this book describes how unions and other forms of collective representation (such as works councils) influence working conditions and workplace outcomes and helps explain, for example, why workplaces have high wages in one situation and low wages in another. It also identifies how effective labor-management relations can contribute to improved economic performance, both in specific workplaces and enterprises and in the national economy.

Although the agricultural sector in emerging countries involves work and the production of food, we do not address the relationship between those who work on farms and those who own or manage those farms. Even though

many of the concepts addressed in this book have some relevance in describing agricultural work, work of that type is sufficiently distinct from other forms of work to warrant separate consideration.

The study of labor relations focuses on the key participants involved in the employment relationship, the role of industrial conflict, and the performance of unions and other forms of collective representation. This chapter defines these key components of labor relations and describes how this book analyzes them.

THE PARTICIPANTS

The key participants (or parties) involved in labor relations in emerging countries are management, labor, government, international agencies, and non-governmental organizations (NGOs).¹

Management

The term **management** refers to individuals or groups who are responsible for promoting the goals of employers and their organizations. Management encompasses at least three groups: (1) owners and shareholders of an organization; (2) top executives and line managers; and (3) labor relations and human resource staff professionals who specialize in managing relations with employees, unions, and other forms of collective representation. Management plays key roles in negotiating and implementing a firm's work practices and employment outcomes.

Labor

The term **labor** encompasses both employees and the unions and other entities that represent them. Employees are at the center of labor relations. They influence whether the firms that employ them achieve their objectives, and they shape the growth and demands of the entities that represent them.

Government

The term **government** encompasses (1) national, regional, and local political processes; (2) the administrative agencies responsible for making and enforcing public policies that affect labor relations; and (3) roles and activities through which the interests of the public are represented. Government policy shapes how labor relations proceeds by regulating, for example, how workers form unions, what rights unions may have, and how workplace disputes are resolved.

International Agencies and Nongovernmental Organizations

Labor relations in any country are greatly influenced by the globalization of economic activity. This raises the importance of two sets of institutions: international (quasi-governmental) agencies and NGOs. Key international agencies, such as the World Bank and International Monetary Fund (IMF), influence the economic policies and economic development strategies of emerging countries in part through the loans they provide and the conditions attached to those loans. The World Trade Organization (WTO) also is critical because its policies affect tariffs, import and export quotas and rules, and other issues that influence the flow of goods and services across national boundaries. The International Labour Organization (ILO) establishes standards and principles for employment through negotiations that involve the employers, governments, and union representatives that make up its governing body. These international agencies both constrain and support emerging countries as they design and implement labor relations policies and practices.

History shows that these quasi-government agencies frequently propose and seek different (and sometimes conflicting) objectives related to labor relations. The ILO, for example, influences international labor standards through conventions and recommendations. Once ILO conventions are ratified by a country, they become legally binding international treaties, whereas the organization's recommendations are simply nonbinding guidelines for its members. The ILO also has proclaimed a set of four basic principles for workers that it calls core labor standards. The ILO calls on all its member countries to comply with these core standards, regardless of whether those countries have formally ratified the relevant conventions. The core labor standards are (1) freedom of association and the right to collective bargaining; (2) the elimination of forced and compulsory labor; (3) the abolition of child labor; and (4) the elimination of discrimination in the workplace.

The ILO has mechanisms for monitoring compliance with its labor standards, such as the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association. The latter receives complaints against any state deemed to be in violation of the principle of freedom of association. However, despite the existence of these mechanisms, the ILO faces difficulties in enforcing the core labor standards, since it lacks effective means to sanction countries that do not comply with these standards.

The IMF and the World Bank have more tools to effectively influence the design of national labor policies. Although the IMF's primary goal is to ensure international monetary stability in order to facilitate international trade and

the World Bank seeks to provide sustainable private sector investment in emerging countries, promoting these objectives ends up affecting national labor policies. This occurs because both the IMF and the World Bank can and sometimes do impose conditions on critically needed loans. Whether they like the recommended labor policies or not, governments often adhere to IMF and World Bank recommendations related to labor relations in order to gain access to these loans.

The World Bank and the IMF have favored government policies that promote labor market flexibility, which often comes down to giving employers more authority to hire, fire, and regulate work hours. In recent years, the IMF and the World Bank have also promoted pension system cuts and pay cuts and layoffs in the public sector. These policies generally place the burden of economic adjustment on workers and unions.²

In reaction to the World Bank and the IMF's promotion of labor market flexibility, various international labor federations and unions tried unsuccessfully to compel the WTO to incorporate adherence to the ILO's core labor standards in its policy recommendations. The labor movement has argued that violations of labor rights in export sectors constituted unfair trade advantages that should have triggered WTO trade sanctions.³ Labor supporters reactivated efforts to get the IMF and the World Bank to promote the ILO's core labor standards after high unemployment followed the 2008 financial crisis in many countries. In recent years, as discussed in box 1.1, in response to further criticism for inappropriately promoting labor market flexibility, the World Bank modified the construction of a key indicator used to compare country economic performance to include measures related to workers' rights.

BOX 1.1

How the World Bank's Employing Workers Indicator and *Doing Business* Report Were Modified in Response to Criticisms

The *Doing Business* report is the most popular World Bank publication. When the first edition was published in September 2003, the World Bank defined it as a report "investigating the scope and manner of regulations that enhance business activity and those that constrain it." One of the goals of the report, which compared data from 130 different countries, was to motivate reforms through country benchmarking.

Among the five indexes the 2003 report measured, countries were evaluated on their rules about the hiring and firing of workers, based on the argument that rigid employment regulation is associated with more poverty in developing countries. Countries were ranked according to the flexibility of their hiring and firing rules, and the report presented reforms that established the employment “at will” rule or that eliminated limits on fixed-term contracts as examples of good reform practices.

During the following years, other measures were added to the Employing Workers Indicator (EWI), but always with the basic idea of ranking countries according to the extent to which they promoted flexibility in the labor market. In the 2007 report, the United States and the Marshall Islands shared the top EWI ranking.

Concerned that the *Doing Business* report was leading to socially and economically harmful labor reforms, the International Confederation of Free Trade Unions (ICFTU) and later the International Trade Union Confederation (ITUC) sent ten statements to the World Bank from 2004 to 2008 that called attention to the fact that the *Doing Business* reports by the World Bank and the IMF were promoting the destructive deregulation of labor markets in many countries. The ILO also attacked the *Doing Business* report’s methodology and the absence of concrete evidence showing that labor market deregulation was associated with employment growth and higher economic performance.

In 2009, responding to these and other critics, the World Bank decided to review the EWI and convened a consultative group to provide advice on appropriate changes to the EWI and suggestions for a new Worker Protection Indicator (WPI). As a result, in 2011, the World Bank removed the EWI as a guidepost from its Country Policy and Institutional Assessment questionnaire and instructed its staff not to use the indicator as a basis for providing policy advice or evaluating country development programs. Moreover, rankings in the EWI were abandoned, and since 2008 tables showing the extent to which each country had ratified ILO core labor standards was also a part of the report.

Currently, the EWI continues to be a part of the World Bank report, but the indicator includes assessment of alignment with the four key ILO labor rights conventions.

Sources: H. Murphy, “The World Bank and Core Labour Standards: Between Flexibility and Regulation,” *Review of International Political Economy* 23, no. 2

(2013): 1–33; P. Bakvis, “World Bank Orders Suspension of Doing Business Labour Market Deregulation Indicator,” *Transfer: European Review of Labour and Research* 15, no. 2 (2009): 319–322; World Bank, *Doing Business 2004: Understanding Regulations* (Washington, D.C.: World Bank Group, 2003); World Bank, *Doing Business 2011: Making a Difference for Entrepreneurs* (Washington, D.C.: World Bank Group, 2011); World Bank, *Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises* (Washington, D.C.: World Bank Group, 2013).

NGOs are organizations that operate as quasi-political or social organizations that work to improve labor rights and working conditions in emerging and less-developed countries. A key focus of a number of NGOs in recent years has been on improving workers’ safety in the apparel sector in the face of the deadly fires and building collapses that have unfortunately plagued that sector. NGOs exercise their influence through lobbying, mounting pressure campaigns, generating and circulating information, and in some cases, engaging in direct negotiations and/or collaboration with employers, unions, and governments.

NGOs often focus on promoting and improving one particular labor right or work condition or on serving one disadvantaged segment of the work force. GoodWeave, for example, is an NGO that has helped bring about significant reductions in child labor (see box 1.2). The important roles that NGOs play in promoting labor rights and other examples of active NGOs are discussed more fully in chapter 11.

BOX 1.2

GoodWeave International: An Example of an NGO Focused on Reducing Child Labor

In the 2010 International Labour Organization publication *United States Policies to Address Child Labor Globally*, the authors write, “It would cost \$760 billion to end child labor, but the benefits to the economy would be more than six times that—an estimated \$5.1 trillion in economies where child laborers are found.” Child labor has been a rampant and common practice in various South Asian economies because of a variety of factors that include traditional or historical norms, lack of government oversight, government corruption, and the inability of

international entities such as the United Nations to oversee these practices. Thus, several nongovernmental organizations have been established for the purpose of working to eradicate child labor in select industries in South Asia. One of the most celebrated and influential NGOs that expressly works to eliminate child labor is GoodWeave International.

Founded in 1994, GoodWeave works to end child labor in the South Asian rug industry by establishing a child-labor-free certification program through which the organization works with businesses, retailers, and importers to demand only child-labor-free rugs from manufacturers in India, Nepal, and Afghanistan. The United States, the United Kingdom, and Germany also participate in the program as consumers of rugs from these countries. GoodWeave ensures that fewer rugs produced with child labor are bought and sold in these countries through the following techniques:

1. **Standard-Setting**—GoodWeave has established a standard for ending child labor in the production and consumption of rugs. These standards include absolutely no child labor in production of the rugs, environmental criteria for businesses and importers, minimum wage legislation, and benefits for all workers, including health care coverage.
2. **Monitoring and Certification**—Local inspectors are paid by GoodWeave through subsidies by local governments and private donations to visit licensed manufacturers on a surprise and random basis. Employers that meet GoodWeave's standard of no child labor are given certification labels for all of their rugs.
3. **Rehabilitation and Education for Child Laborers**—GoodWeave inspectors rescue child laborers from employers. They then offer children various programs for rehabilitation, therapy, access to education, and eventual job placement. In order to pay for the expenses of such programs, exporters have a contract with GoodWeave by which they pay 0.25 percent of the export value of each rug, while importers pay 1.75 percent of their shipment value to GoodWeave. These funds are vital for schooling and rehabilitation programs for these young children.
4. **Child Labor Prevention**—GoodWeave provides several programs to prevent child labor in manufacturing companies and to raise awareness among consumers in developed countries about the toll

of child labor on the development of these children. Such programs include providing subsidies for daycare, after-work education programs, early childhood education, and sponsorship for at-risk children to attend school.

5. International Governance and Accountability—In conjunction with GoodWeave, local and national governments form representative councils in both producer and consumer countries that serve to enforce the no-child-labor standards that GoodWeave has maintained. These councils enforce the issuing of certifications from GoodWeave.

As a result of these programs, GoodWeave reports that “since 1995, 11 million child-labor-free carpets bearing the GoodWeave label have been sold worldwide, and the number of ‘carpet kids’ has dropped from 1 million to 250,000.” While GoodWeave has been remarkably successful, the child labor and human trafficking industries still flourish, and corruption in government oversight and regulation continues in many South Asian countries.

Sources: “Child-Labor-Free Certification,” GoodWeave, http://www.goodweave.org/about/child_labor_free_rugs; “One in a Million: GoodWeave’s Campaign to End Child Labor,” GoodWeave, http://www.goodweave.org/child_labor_campaign/about.

ASSUMPTIONS ABOUT LABOR AND CONFLICT

More Than Just a Commodity

One of the most important assumptions guiding the study of labor relations is the view that labor is more than a commodity, more than a marketable resource. For instance, because workers often acquire skills that are of special value to one firm and not to another, the possibilities for them to earn as much in the labor market as they can at their existing employer are limited. In addition, changing jobs often costs workers a lot: moving locations can be expensive and can also entail large personal and emotional costs. For these reasons and others, labor is not as freely exchanged in the open competitive market as are nonhuman market goods.

Furthermore, labor is more than a set of human resources to be allocated to serve the goals of the firm. Employees are also members of families and communities. These broader responsibilities influence employees’ behaviors and intersect with their work roles.

A Multiple-Interest Perspective

Because employees bring their own aspirations to the workplace, labor relations must be concerned both with how the policies that govern employment relations and the work itself affect workers and their interests and the interests of the firm and the larger society. Thus, the study of labor relations takes a **multiple-interest perspective**, which includes a particular perspective on the nature and role of labor conflict.

The Inherent Nature of Conflict

A critical assumption underlying analysis of labor relations is that there is an inherent conflict of interest between employees and employers. That conflict arises out of the clash of economic interests between workers seeking high pay and job security and employers pursuing profits. *Thus, conflict is not viewed as pathological.* Although conflict is a natural element of employment relations, society does have a legitimate interest in limiting the intensity of conflicts over work.

Common and Conflicting Interests

There are also a number of common interests between employers and their employees. Both firms and their work forces can benefit, for example, from increases in productivity through higher wages and higher profits.

At the workplace there is no single best objective that satisfies all the parties. The essence of an effective employment relationship is one in which the parties successfully resolve issues that arise from their conflicting interests and successfully pursue joint gains.

Collective negotiations are one among a variety of mechanisms for resolving conflicts and pursuing common interests related to work. In fact, collective negotiations compete with alternative employment systems. Not all employees, for example, perceive deep conflicts with their employers or want to join unions. In dealing with their employers, some workers prefer individual over collective actions. Other workers choose to exercise the option of *exit* (quitting a job) when dissatisfied with employment conditions rather than choosing to *voice* their concerns, either individually or collectively.⁴

One of the roles of public policy is therefore not to require one form or another of collective representation for all workers but to provide a fair opportunity for workers to choose whether one means or another is what they prefer to use to resolve conflicts and to pursue common interests with their employer.

Since many of the goals of the major actors—workers, unions, employers, and the government—may conflict, it is not possible to specify a single

overriding measure of the effectiveness of labor relations. Focusing on any single goal would not accommodate the multiple interests of workers, employers, and society.

THE THREE LEVELS OF LABOR RELATIONS ACTIVITY

This book uses a three-tiered approach to analyzing the operation of labor relations.⁵ Figure 1.1 provides the framework for this approach. This framework argues that various factors—the economic context and the actions of governments, NGOs, and international agencies—shape the context in which labor relations occurs. The framework also argues that there are three tiers (or levels) at which labor relations takes place.

The top tier of labor relations, the **strategic level**, includes the strategies and structures that have long-term influences on employment levels and work conditions. Business strategies are critical factors because they influence investment and product strategies, which in turn shape employment systems and workplace outcomes. Businesses also influence the strategic direction of labor relations through their interactions with unions, governments, international agencies, and NGOs. Unions also take strategic actions related to their

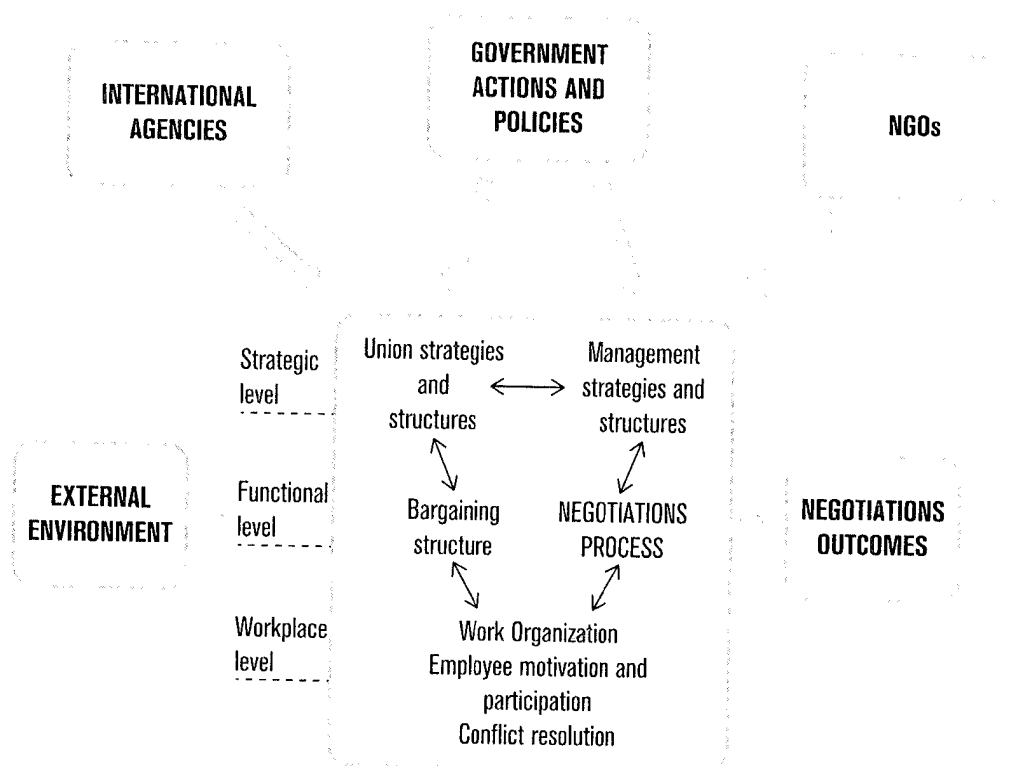


Figure 1.1. The three-tiered approach to the study of labor relations in emerging countries

representation strategies and their interactions with governments, international agencies, and NGOs. Governments are also critical strategic actors in their direct role as employers in the public sector and by shaping the laws and public policies that influence labor relations in both the private and public sectors. In recent years a number of NGOs and international agencies also have come to play critical roles in labor relations in emerging economies.

The middle tier of labor relations activity, the **functional level**, involves the process and outcomes of collective negotiations. Strikes, bargaining power, bargaining structure, and wage determination processes all feature prominently at this level.

The bottom tier of labor relations activity, the **workplace level**, involves activities through which workers, their supervisors, and their representatives relate to one another on a daily basis. At the workplace level, adjustment to changing circumstances and new problems occurs regularly. A typical question at this level, for example, is what form of conflict resolution is used to deal with disputes that arise between workers and managers.

It is through the joint effects of the environment and the actions of the parties in this three-tiered structure that a labor relations system either meets the goals of the parties and society or comes up short.

THE INSTITUTIONAL PERSPECTIVE

The perspective that guides our analysis of labor relations was first developed by institutional economists at the University of Wisconsin. John R. Commons (1862–1945) identified the essence of institutional economics as “a shift from commodities, individuals, and exchanges to transactions and working rules of collective action.”⁶ Commons and his fellow institutionalists placed great value on negotiations and compromise among the representatives of labor, management, and society.

The thinking of institutionalists was heavily influenced by Sidney and Beatrice Webb, two British economists and social reformers who were members of the Fabian socialist society. They viewed unions as a means of representing the interests of workers through the strategies of *mutual insurance*, *collective bargaining*, and *legal enactment*.⁷

In following the Webbs, the institutionalists rejected the arguments of Karl Marx, who had argued that the pain of the exploitation and alienation the capitalist system inflicted on workers would eventually lead to the revolutionary overthrow of the system. Marx believed that workers would eventually develop a class consciousness that would pave the way for revolution and the ultimate solution to their problems—a Marxian economic and social system.

Marx supported unions in their struggles for higher wages, but he believed that they should simultaneously pursue the overthrow of the capitalistic system.

There were, however, some interesting similarities in the views of Commons, Marx, and the Webbs. Like Marx and the Webbs, Commons and other institutional economists rejected the view of labor as a commodity, for two fundamental reasons. First, the institutionalists saw work as being too central to the interests and welfare of individual workers, their families, and their communities to be treated simply as just another factor of production.⁸

Second, the institutionalists echoed the Webbs and Marxist theorists by arguing that under conditions of "free competition," most individual workers deal with the employer from a position of unequal bargaining power. That is, in the vast majority of employment situations, the workings of the market tilt the balance of power in favor of the employer.

The institutionalists concluded that labor required protection from the workings of the competitive market and that unions could materially improve the conditions of the worker. This led them to advocate two basic labor policies: legislation to protect the rights of workers to join unions and legislation on such workplace issues as safety and health, child labor, minimum wages, unemployment and workers' compensation, and social security.⁹ Thus, in addition to making scholarly contributions, the institutionalists served as early advocates of the legislative reforms that sought to bring improvements in working conditions, including fair wages.

THE PERFORMANCE OF LABOR RELATIONS

The performance of a labor relations system can be assessed by looking at how well it serves the goals of the parties including the public interest.

Labor's Goals

To see if a labor relations system is meeting labor's goals, we can examine wages, benefits, safety conditions, and employee job satisfaction. Workers are also concerned with the quality of their work and the effects the organizations they work for have on the ecological environment and on other social outcomes.

Management's Goals

Management is concerned with the effects of labor relations practices on labor costs, productivity, profits, product quality, and the degree of managerial control. Management also has goals for various human resource issues, such as

employee turnover, motivation, and performance. All of these indicate the extent to which labor relations practices aid or hinder employers' quests for competitiveness in the product market.

Society's Goals

Identifying the goals of labor relations for the public and the government is a more difficult task. Government labor policies seek to maintain industrial peace and protect workers' rights. In addition, the government is concerned with how labor relations affect economic growth, inflation, unemployment, and working conditions such as safety and health, equal employment opportunity, and income security.

A free labor movement is important to any political democracy. So it is also necessary to assess whether a government's public policies and private actions are producing a labor relations system that strengthens democracy at the workplace and in the society at large.

THE ROLE OF THE INFORMAL SECTOR IN EMERGING COUNTRIES

In emerging countries, the informal sector constitutes a much larger share of employment than is the case in more advanced and mature economies. In many emerging countries, about half of the employed urban population works in the informal sector. Informal employment is particularly high among migrants who are new entrants to the urban labor force in developing countries. These migrants often create their own employment or work in small-scale family-owned enterprises. Self-employment is also common in the informal sector and involves activities such as street vending or workers such as mechanics, carpenters, small artisans, barbers, and personal servants. Unfortunately, common informal activities often also include prostitution or drug sales.¹⁰

The informal sector is characterized by a large number of small-scale production and service activities that are individually or family-owned and use simple, labor-intensive technology. Usually the self-employed who work in this sector have low levels of formal education, are generally unskilled, and lack financial resources.

Moreover, workers in the informal sector commonly do not enjoy job security, unemployment insurance, or pensions. Many workers in this sector also are recent migrants from rural areas who are unable to find employment in the formal sector. Their motivation is often to obtain sufficient income for survival, relying on their own resources to create work. Often as many

members of the household as possible are involved in income-generating activities, including women and children, and they often work very long hours. A large fraction of urban informal workers inhabit shacks and small cinder-block houses that they themselves have built in slums and squatter settlements that commonly lack even minimal public services such as electricity, water, sewers, transportation, and education and health care services. Some informal sector workers are even less fortunate; they are homeless and are living on the street. They find sporadic temporary employment in the informal sector as day laborers, but their incomes are insufficient to provide even the most basic shelter.

Since informal employment often entails self-employment or employment in very small organizations, it does not involve the sort of labor-management interactions that are the main focus of labor relations. At the same time, especially given the poor work conditions that are common in the informal sector, labor rights and the impact of government employment regulations are critical issues. Although our analysis recognizes the important economic role of the informal sector and efforts to improve work conditions in that sector, there is not much exercise of various key labor relations factors such as bargaining power or negotiations processes in the informal sector.

THE PLAN OF THE BOOK

The chapters that follow analyze labor relations by simultaneously moving across and downward through figure 1.1. The framework in figure 1.1 is broader and more dynamic than most models of labor relations. In particular, it emphasizes the range of choices management, labor, and government policymakers have in responding to environmental changes (such as increased competition or changes in technology) instead of viewing these changes solely as constraints.

The following discussion provides a more elaborate description of the terms used in figure 1.1. This material also sketches out in more detail the topics included in each chapter and their connections. The reader may wish to return to this material from time to time as a review strategy to put the individual topics and chapters in perspective.

THE ENVIRONMENT

Labor, management, and governments have complex interactions with each other, especially in emerging countries. These interactions are determined by factors such as whether a labor party and/or other political parties aligned

with the labor movement exist in the country. Governments set the stage for labor relations by shaping laws and public policies that regulate work conditions, how workers and managers interact, and how unions and other forms of collective representation function. Governments also sometimes take direct action to intervene in strikes and other labor disputes in emerging countries.

Governments matter as strategic actors in part through their influence on the state of the economy (i.e., macroeconomic policies). Government policies also influence the degree of competition that exists in a particular industry (i.e., whether the industry is a monopoly or an oligopoly or is competitive), which, as we will discuss, influences labor and management's power in that industry.

Governments also are critical actors in guiding working conditions in the public sector and in determining which economic activities will take place in public enterprises and which will take place in private enterprises. Recent increases in privatization and the denationalization of formerly public or state-owned enterprises, such as airlines, telecommunications companies, and public works (oil exploration, water, or energy generation), have heavily influenced workplace outcomes in those sectors.

The World Bank, the IMF, and other international agencies have played significant roles in shaping economic and trade policies in emerging countries in recent years. Their roles have come to the fore in particular as countries have had to adopt one form or another of structural adjustment policies that often involve reductions in government ownership and public employee pay and public pensions; in some cases, these policies restrict union rights. NGOs also been active in the burgeoning labor rights movement, putting pressure on employers and governments to improve work conditions, including workplace safety.

Given the direct and indirect influence that political processes have on labor relations in emerging countries, our analysis of how labor, management, and government interactions affect labor relations comes early on, in chapter 2. The political power management has, for example, might influence public policies toward strikes or whether the government intervenes to limit a strike. Or unions might successfully lobby the government for improvements in pensions or vacation policies and thereby have less reason to address those issues at the firm or workplace level.

The labor movement has been at the forefront of the sweeping political changes that have occurred in a number of countries in recent years, as discussed in chapter 2. In these countries, where the labor movement is as much concerned with political change as it is with determining working conditions on the factory floor, the role labor plays deserves special attention.

The **external environment** sets the context for labor relations and strongly influences workplace outcomes and collective negotiations. It includes several key dimensions: the laws that regulate unions and conflict resolution, the economic environment, demographic factors, and the technological context.

In chapter 3 we analyze the role of laws and public policies that are shaped by national, regional, and local governments. In some countries, public policies regulate many aspects of employment terms, while in other countries public policies regarding pay, vacation, pensions, or other employment conditions are extremely limited. As discussed in chapter 3, the ILO plays an especially important role in helping governments design labor policies in emerging countries through the principles and standards it pronounces and disseminates and through technical assistance activities.

Among the laws that are examined in detail in chapter 3 are those that regulate how unions are formed and the rights those unions have. Some countries also have laws that provide for forms of worker representation at the workplace through elected works councils. Furthermore, various employment rights concerning discrimination and due process affect work conditions, and these rights vary significantly across countries. All of these types of public policies are examined in chapter 3.

As chapter 4 outlines, the other environmental factors (the economic, technological, and demographic environments) influence labor relations through their effects on the **bargaining power labor or management has**. For example, the economic environment will influence the power labor and management have, and the power the parties have will in turn determine the outcomes of collective negotiations. Workers and unions, for example, have more bargaining leverage and are able to win higher wages during contract negotiations when it is easier for striking workers to find temporary or alternative employment. In this way, an aspect of the macroeconomy (the unemployment rate) influences workers' bargaining power and one outcome of bargaining (the wage settlement).

Today, many product and labor markets are global in scope. This makes it easier for firms to locate or to move work across national boundaries and serves as an illustration of how globalization affects labor relations.

As the book traces how the various components of the environment affect the negotiations process and outcomes, the discussion moves across the middle tier of the framework outlined in figure 1.1. At the same time, it is important to be aware of how the strategies and structures of labor, management, and government shape the middle tier of labor relations activity and how they affect the workplace. The framework starts at the top by first considering the role played by the strategies labor, management, and governments use.

THE STRATEGIC (TOP) TIER

At the top tier are the strategies and structures that guide the long-run direction of labor relations.

Management Strategies

The strategies of management are critically important in shaping the evolution of labor relations. For instance, is a company's top management willing to negotiate with employee representatives over the long term or is it fundamentally committed to exercising unilateral authority? Does management see the advantage of the internal flexibility that can be achieved by working with employee representatives to promote flexible work organizations and adaptive training? Is management interested in investing in the skills of its current employees, or is it attracted more by outsourcing strategies and other approaches that rely on low pay?

For multinational companies (MNCs) that purchase goods and services that go into their final products from multiple countries, additional strategic questions come into play. How much discretion and variation should be allowed in their operations in different countries? Should the MNC have a global labor strategy and if so, what should it include? How much responsibility should the MNC take for the labor practices and outcomes in companies and contractors in its global supply chain?

Labor Strategies

Labor's strategies also have a critical influence on the course of labor relations. For example, is there a labor party that tries to promote workers' interests in the political arena or is the labor movement aligned with particular political parties? Is labor focused on forming unions at the workplace level or does labor prefer to emphasize sector-, industry-, or company-level bargaining? Is a given union leadership committed to maintaining a distanced and adversarial posture in negotiations or is it interested in exchanging new forms of flexible work organization for greater control over the design of the production process? Or does the labor movement put primary emphasis on social protests and political leverage and in improving work conditions through government regulation or public legislation? Where the latter strategy prevails, there may be low levels of union representation but extensive coverage of collectively negotiated employment terms through legislative extension of those terms.

Government Strategies

Governments also matter, particularly in the long run, through the economic development strategies they promote. For example, the location of a nation's industries in global supply chains is heavily influenced by the skill and

education levels of a country's work force. These in turn are strongly influenced by public policies, including public investments in education. We postpone analysis of the long-run effects of government policy on economic development until chapter 12 because addressing these matters first requires that we develop a more complete understanding of how labor relations works.

THE FUNCTIONAL (MIDDLE) TIER

Chapter 5 analyzes the various employment systems that exist in emerging countries. Employment and work practices typically cluster into distinct patterns and are not randomly associated. Pay practices tend to link with and reinforce particular employment security, work organization, and complaint procedures. The parties must thus choose between a set of distinct work patterns. The informal employment pattern prevails among self-employed people who sell their wares on street corners or those who are involved in manufacturing garments and other goods through homework. Generally, the informal sector is unregulated or is characterized by weak enforcement of public laws and policies.

The bureaucratic pattern includes more structured forms of determining pay and procedures for processing complaints. As described in chapter 5, there are "low-end" and "high-end" versions of some of the employment patterns. For example, the bureaucratic pattern exists in a low-end form in the supply firms that are used in the apparel sector and in industries where the outsourcing of core production work has spread. In contrast, in the public sector, where bureaucratic practices prevail, the work conditions, including pay and safety conditions, are more advantageous to workers. As described more fully in chapter 5, unionized variants of the bureaucratic employment pattern are often found in firms that make use of the high-end versions of that pattern.

In the human resources management pattern, professional and technical employees commonly gain the benefit of work practices that are shaped to fit individual needs and are tailored to ensure that highly skilled employees will be recruited and retained. Many multinational firms use a human resources management approach, and some use a Japanese variant of this pattern that is oriented more to the needs and goals of an organization, as opposed to those of individuals.

Negotiations Processes and Impasse Resolution

Where there is a union or other forms of collective representation, the middle tier of activity includes a role for negotiation processes, the subject of chapter

6. A critical factor that shapes the form and often the outcomes of any negotiations that occur between labor and management is the particular structure the parties use in their negotiations. For example, are a number of different employers covered by a single collective agreement? Does a given company bargain with one union or with many? Do the workers a given union represents have diverse or with homogeneous skills?

The Negotiations Process

At the heart of union-management relations is the negotiation of a collective agreement. If a union or unions represent a group of workers, a critical phase in their relationship is the bargaining process used to negotiate a collective agreement. The **negotiations process** is a complicated affair that involves the use of tactics, strategies, and counterstrategies by both labor and management. Given the mixed-motive nature of collective bargaining, the parties are often torn during negotiations between their “distributive” and “integrative” impulses, as described in chapter 6.

Analysis of the process of negotiation in chapter 6 considers the following issues:

1. How can the dynamics of the negotiations process be described and explained?
2. What causes strikes to occur in some negotiations and not in others and to vary in frequency and intensity over time and across industries?
3. What roles do union and business strategies play in shaping the negotiation process?
4. How can the parties increase the joint gains that could benefit both labor and management?

Chapter 6 examines the complete cycle of negotiations, starting with the presentation of opening offers and demands and proceeding through the signing of the final agreement. Although management strategies are important, so are the various structures management uses to organize itself for negotiations. Chapter 6 also includes consideration of how management organizes its labor relations staffs.

Impasse Resolution

When labor and management reach an impasse in contract negotiations, a variety of techniques can be (and have been) used to settle the dispute. Chapter 7 describes various **impasse resolution** techniques and some of the strengths and weaknesses of each.

THE WORKPLACE (BOTTOM) TIER

The management of conflict and the delivery of due process are two of the key activities that occur on a continuous basis at the workplace level of labor relations activity. In chapter 8 we examine the various ways labor relations conflicts are resolved in emerging countries.

Wage, employment security, and health and safety outcomes are also shaped by interactions between labor and management that occur at the workplace level. For example, how large is the impact of unions on wages? Does this vary by industry or type of employee or over time? In chapter 9 we discuss the measurement issues that arise when one sets out to clarify these impacts and summarize the existing evidence on how unions impact workplace outcomes. We also review how government policies affect workplace outcomes more directly through, for example, minimum wage laws and health and safety regulations.

SPECIAL TOPICS

Chapters 10, 11, and 12 address selected topics that complete our understanding of labor relations in emerging countries.

Public Sector Labor Relations

The rules and procedures governing public sector labor relations, examined in chapter 10, differ from those used in the private sector in virtually all countries. The public sector employs employees at a variety of national, regional, and local levels. Public employees include public school teachers, police, firefighters, and the office staffs of various governments. In the past, in the public sector in many emerging countries also included a number of state-owned enterprises that existed as monopoly providers in sectors such as telecommunications, mail, oil, and water.

Public employees are often covered by separate laws and are often subject to different conflict resolution procedures, and in a number of countries they have more limited negotiation and union representation rights. Chapter 10 includes a review of trends in the size and form of the public sector, a review made necessary by the recent downsizing that has been driven by privatization and other structural adjustment policies.

International Unions, NGOs, and Multinational Corporations

International trade and competitiveness have moved to the forefront of public attention. At the center of these developments is the increasing influence of

MNCs through their greater investments in emerging countries and the expanded role global supply chains play. How MNCs shape their labor relations policies and practices and whether decision-making authority regarding labor relations is left in the hands of local or country managers or is put under the control of regional or global managers are some of the issues chapter 11 addresses.

Concern about the effects of globalization and the increasing influence of MNCs has spurred unions to act regionally and globally in a more coordinated manner. This has led to various cross-national union- and worker-led campaigns and, in a few industries, international collective negotiations. Chapter 11 examines the consequences of the increased cross-national activities of corporations, unions, and NGOs.

Economic Development Strategies and Policies

Chapter 12, the concluding chapter, assesses economic development strategies and policies and their long-term effects on the evolution of labor relations. The key question addressed here is whether particular approaches to economic development can provide superior economic performance while also promoting workers' rights and well-being.

Summary

The framework presented in figure 1.1 provides a way to understand how various factors typically influence labor relations in emerging countries. It also gives appropriate recognition to the particular historical events at play in each country. With the benefit of this framework we can see the role of the common processes that affect employment systems and the interactions between labor, management, and governments within countries. A full understanding of labor relations requires recognition of the influence of both common factors and country-specific events and actors.

One cannot gain an understanding of recent labor relations developments without recognizing the interactions that occur between labor, management, and governments. Chapter 2 reviews those interactions, highlighting common trends while also providing illustrations of how events have played out in practice.

In the next chapter, as in subsequent chapters, we make heavy use of examples from four countries—China, India, Brazil, and South Africa. We frequently refer to examples from these countries because each has a large economy and provides illustrations of the diversity that exists across countries in terms of how labor relations occur. To provide context for these

country-specific examples, the next chapter includes an overview of the core features and the key recent trends in the labor relations systems in each of these four countries.

Discussion Questions

1. Name the actors, generally and specifically, who are involved in labor relations.
2. Figure 1.1 is essential in understanding how this book is arranged and proceeds in its analysis of labor relations. Describe the three tiers of this framework.
3. One of the fundamental aims of labor relations is reducing conflict between employees and employers. What are some basic assumptions about labor and conflict in the field of labor relations and in this book?
4. What are some of the ways we judge the effectiveness of collective negotiations in terms of the goals of the different actors involved in the process?
5. How do international agencies affect labor relations in emerging countries?

Related Web Sites

LabourStart (global labor news source): <http://www.labourstart.org/2013/>
LaborNet 2000 Directory of Labor Unions on the Internet: <http://www.labornet.org/links/directory.html>
Cornell University's School of Industrial and Labor Relations: <http://www.ilr.cornell.edu/>

Suggested Supplemental Readings

Dunlop, John T. *Industrial Relations Systems*. New York: Holt, 1958.
Kaufman, Bruce. *The Origins and Evolution of the Field of Industrial Relations*. Ithaca, N.Y.: Cornell University Press, 1993.
Kochan, Thomas A., Harry C. Katz, and Robert B. McKersie. *The Transformation of American Industrial Relations*. 2nd ed. Ithaca, N.Y.: Cornell University Press, 1994.
Todaro, Michael P., and Stephen C. Smith. *Economic Development*. 11th ed. Boston: Addison-Wesley, 2012.
Webb, Sidney, and Beatrice Webb. *Industrial Democracy*. London: Longmans, Green and Co., 1920.

Notes

1. See John T. Dunlop, *Industrial Relations Systems* (New York: Holt, 1958).
2. M. Anner and T. Caraway, "International Institutions and Workers' Rights: Between Labor Standards and Market Flexibility," *Studies in Comparative International Development* 45, no. 2 (2010): 151–169.
3. Mark Anner, "The International Trade Union Campaign for Core Labor Standards in the WTO," *WorkingUSA* 5, no. 1 (2001): 43–63.
4. See Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Declines in Firms, Organizations, and States* (Cambridge: Harvard University Press, 1970).
5. For a summary of the theoretical and empirical research on which this model is based, see Thomas A. Kochan, Harry C. Katz, and Robert B. McKersie, *The Transformation of American Industrial Relations*, 2nd ed. (Ithaca, N.Y.: Cornell University Press, 1994).
6. John R. Commons, *Institutional Economics: Its Place in the Political Economy* (New York: Macmillan, 1934), 162.
7. Sidney Webb and Beatrice Webb, *Industrial Democracy* (London: Longmans, Green and Co., 1920).
8. Commons, *Institutional Economics*, 559.
9. For a discussion of the policies advocated by the early institutionalists and ultimately passed in the wave of New Deal legislation, see Joseph P. Goldberg, Eileen Ahern, William Haber, and Rudolph A. Oswald, *Federal Policies and Worker Status since the Thirties* (Madison, Wisc.: Industrial Relations Research Association, 1977).
10. The description of the informal sector in this section draws heavily from Michael P. Todaro and Stephen C. Smith, *Economic Development*, 11th ed. (Boston: Addison-Wesley, 2012).

2 Labor, Management, and Government Interactions

AN OVERVIEW OF HOW LABOR, MANAGEMENT, AND GOVERNMENTS INTERACT

Labor, management, and government engage in complex interactions in emerging countries, and these interactions strongly influence the evolution of labor relations in those countries. For example, unions and other workers' movements in some countries have aligned with a particular political party or in some cases are the core constituents of a labor party that is active in the political arena. This chapter will discuss cases where particular unions were aligned with the governing leaders or party. Another way unions and workers have influenced governments is through their involvement in protests or other political actions that are part of democratization campaigns or movements. As will be discussed in this chapter, some of these efforts to promote democracy have succeeded in recent years and have led to major political transformations in particular countries.

On the other hand, governments in some countries have acted to sharply curtail trade union activities and power. They have done so by outlawing union activities or by directly intervening to stop a strike or an effort to organize a union. In some countries, although unions are allowed, they are controlled by governments or are sharply constrained in what they can do. We describe some of those cases and in doing so differentiate between independent trade unions and those dominated by a government. In Latin America, governments have at times dominated unions through a process called incorporation.

Governments also significantly affect labor relations in companies and sectors that are government owned or run. Historically, nationalization of the telecommunications, airlines, or banking industries or resource extraction enterprises, for example, has influenced the labor relations and employment conditions in those companies and sectors (as discussed in chapter 10). And as discussed in chapter 3, governments also have a significant influence on labor relations through the laws and public policies that regulate the conduct of labor relations, in particular through laws that regulate the right to strike and other union activities.

Management and the interest groups that represent employers are also often active participants in political processes in emerging countries that strive to promote employers' interests. For example, in some countries, the business community is strongly aligned with particular political parties or is part of a governing coalition. Management can use its influence to promote the labor laws it favors or policies related to taxes, trade, and other economic issues.

We also discuss how tripartite discussions involving government, labor, and management takes place in some countries as a vehicle for addressing economic and social policy issues and specific labor relations matters.

Another key external actor in labor relations are NGOs and various other groups in civil society. These groups have been particularly active in pushing for improvements in workers' and union rights and employment conditions, as have various international agencies. We address the influence of NGOs, other civil society groups, and international agencies in detail in chapter 11, as the influence of these groups is interconnected with global pressures exerted by multinational corporations and international unionism, topics that also are further developed in latter parts of this text.

THE ROLE OF THE NATIONAL GOVERNMENT IN LABOR RELATIONS

The role of the national government in labor relations varies greatly, both across countries and over time. China provides an important example of a country where the national government and the Communist Party play a central role in the functioning of the economic system and employment relations. Yet the role of the national government and the Communist Party has changed over time, particularly as a result of the economic reforms that led to a greater role for market forces, as described in box 2.1.

BOX 2.1**China: The Evolving Role of the Government and the Communist Party**

Prior to market-oriented economic reforms, China had a planned economy in which the national government was the single employer. In the planned economy, the government set up detailed national- and firm-level plans that included production and wage levels. Communist Party secretaries were the primary figures in enterprises; they helped maintain the influence and political power of the Communist Party and oversaw economic and social activities in enterprises. In this system, since the Communist Party (and the national government) claimed to represent the interests of the working class, there was no representative role for trade unions.

Economic reforms introduced from the 1980s on led the national government and the Communist Party to gradually withdraw from the micromanagement of workplaces. This is particularly true for the private sector, where employers were given autonomy in business operations and employment, although within the constraints provided by laws. In state enterprises, management no longer needs to fulfill political functions for the government. Nonetheless, the government still maintains considerable influence in state enterprises, particularly through its appointment of top managers. Appointed managers still hold the status of Communist Party officials and can be transferred to other Communist Party or government posts at any time.

In addition, the national government in China continues to act as a regulator, arbitrator and mediator, and inspector in the employment system. The Chinese government's role in labor disputes, for example, is discussed in chapters 3 and 7.

Source: Mingwei Liu, "China," in *Comparative Employment Relations in the Global Economy*, ed. C. Frege and J. Kelly (New York: Routledge, 2013).

How National Governments Can Shape Labor Relations: The Case of Incorporation in Latin America

In the early twentieth century, modern labor movements in Latin America coalesced and became influential through a process called incorporation. In

the incorporation process, national governments became the primary shapers of labor conflict and labor policy by creating systems of participation and representation for workers and the working class. Before the periods of incorporation, governments and employers primarily relied on repression to deal with workers' demands for social rights and economic improvements. Through incorporation, governments, either through political parties (such as the Institutional Revolutionary Party [PRI] in Mexico) or populist leaders (such as Juan Perón in Argentina), sought to pacify rising labor militancy and at the same time ensure the political support of urban industrial workers by establishing negotiations systems, passing labor-friendly legislation, and offering political appointments to union leaders particularly in the 1950s through the 1970s.

Unions grew in size and power after periods of incorporation, and in many Latin American countries they became political partners and helped shape national economic and social policies. Through unionization, workers gained significant improvements in their living conditions such as social security, pensions, and steady wage increases. Union leaders were appointed to prestigious government posts. National governments and political parties gained political support during electoral campaigns and a loyal and energetic membership. Employers profited from the economic growth that accompanied industrial peace and protection from foreign competition.

By the 1970s, however, cracks had appeared in the initial systems of incorporation. Military dictatorships in Argentina, Chile, Brazil, and Uruguay jailed and killed union leaders, imposed legislation that curtailed collective bargaining and the right to strike, and reduced the power of labor unions in the workplace. By the 1980s a combination of hyperinflation, high national debt, and pressure from foreign economic competition had pushed many political leaders (many of whom had formerly been aligned with or who had come from traditional labor-based parties) to embrace neoliberal economic policies. These types of policies favored multinational companies over domestic employers (often through the privatization of state enterprises); reduced spending on social security, pensions, and wages; and sought the political favor of business leaders rather than unions. Union leaders were often caught between opposition to neoliberal reforms and their ties to political parties and leaders as a legacy of the incorporation period.

While economic liberalization has weakened the power of unions in many countries, unions remain influential political and social actors throughout Latin America. Incorporation helps explain why labor unions have remained key political and social institutions. It also helps explain the close relationship between labor movements and political parties, such as the PRI in Mexico,

despite the shift of many political parties to neoliberal or more business-friendly economic policies. Despite losses in membership and bargaining power, unions remain key actors in the political life of many emerging countries.

The Recent Push by Governments for Market Reforms and Liberalization

Since the 1990s, multinational corporations in most emerging countries have been moving toward greater market liberalization and openness to international trade and investments. The push for market liberalization has often been associated with a decline in government ownership and, related to this, a decline in the share of the work force in the public sector or working in state-owned enterprises. In association with a greater reliance on markets to set employment terms, many governments have made it easier for firms to lay off workers and have reduced mandated benefits such as vacations and pensions. This has come in tandem with reductions in various social welfare benefits, such as unemployment insurance and health care.

In some countries the push for the reduction in government ownership or public benefits has come at the urging of the IMF, the World Bank, or other international development agencies. A frequent scenario has been the introduction of market reforms and liberalization during an economic or financial crisis, although the policy changes introduced in emergency periods often have persisted far beyond any financial or economic emergency.

UNIONS AND POLITICS

Unions and other entities that support workers' and union rights have not been passive as governments have promoted market liberalization. To appreciate the influence of parties in promoting improvements in workers' rights and working conditions we first consider how unions commonly are involved in politics in emerging countries.

In a number of countries, labor unions are aligned with particular political parties. Union leaders may even serve simultaneously as political party officials. In these cases, the union may be more oriented toward promoting a political agenda than toward promoting improvements in working conditions. The close interaction between unions and political parties in India is described in box 2.2, including recognition of the key role that unions played in the struggle against colonial rule and thereby in the introduction of democracy to the country.

BOX 2.2**The Nexus of Trade Unions and Politics in India**

One of the defining characteristics of the union movement in India is its close affiliation with political parties. In India, as in other colonized emerging countries, unions played a major role in the struggle against colonial rule. Some of those who led the freedom struggle also led the union movement, including Mahatma Gandhi and Subhash Chandra Bose. As a result, political leadership in early twentieth century—particularly during the interwar years—promoted a large welfare state.

This close association of unions and political parties resulted in a constitution that emphasized “justice, liberty, and equality for all” and an activist role for the state in guaranteeing these rights. In the mixed (public/private) economy after independence, the state pursued socialist objectives, assigning public sector enterprises a dominant role in the nation’s quest for high economic growth. This policy nationalized critical industries such as insurance, banking, and mining, and the government made new investments in large-scale public enterprises.

As they adapted to a nascent democracy, politicians needed the votes of the working classes, and political parties formed alliances with unions. For their part, union leaders felt that if they aligned with political parties—particularly the ruling party—they would be better able to defend their members’ interests vis-à-vis management.

Although the alliance between unions and political parties has served the mutual interest of both sides in many ways, there have been some negative consequences. First, unions became fragmented whenever there was fragmentation in the political parties. Within states, for instance, the Indian National Trade Union Congress became divided whenever there was a division in the ranks of the Congress Party. The communist union movement also became divided because of divisions in the party.

Second, union unity suffered because of political polarization. In India, the public sector suffers most if the ruling party in a state is different from the party ruling at the center. The state government machinery has often been used to take on the central public sector in an attempt to settle scores with the central government. This has been possible because in most cases, with the exception of such sectors as banking, insurance, atomic energy, space, petroleum, oil field, railway, and mining/quarrying, the state government is the appropriate authority for

enforcing labor laws and maintaining labor relations and law and order. Not infrequently, labor relations issues also become law-and-order problems. By delaying action or using discretion rather unwisely, governments at both central and state levels have enormous power to influence the dynamics at the local/enterprise/establishment level.

Third, in the context of liberalization and globalization, having their own party in power is becoming a liability for unions because political parties of all ideological hues tend to follow policies of wooing investors and encouraging cost-based competition, and workers bear the brunt of those neoliberal policies.

Source: C. S. Venkata Ratnam and Anil Verma, "Employment Relations in India," in *International & Comparative Employment Relations: Globalisation and Change*, 5th ed., ed. Greg J. Bamber, Russell D. Lansbury, and Nick Wailes (Australia: Allen & Unwin, 2011), 333–334.

Democratization The labor movement has played key roles in the introduction or deepening of democracy in a number of emerging countries. (A similar role was played in a number of European countries in earlier periods.) Events in South Africa and Korea are described in boxes 2.3 and 2.4 below. A common theme in these and other countries is that the labor movement and unions often have aligned with student groups and other active members of civil society and in the process have propelled democracy. In the case of South Africa, pressure from these groups helped end apartheid. This leads many to question what will happen if union membership continues to decline, possibly to the point that the political influence of unions is greatly weakened. What forces or social groups, if any, will then replace the positive contribution unions make as a defender and proponent of democracy?

BOX 2.3

The Role of Unions and Labor Protests in Bringing an End to Apartheid in South Africa

Apartheid was a racial segregation system enforced by the South African government from 1948 to 1994. Under apartheid, the rights of black and mixed-race South Africans were severely restricted. The National Party controlled the economic and social systems of South Africa during the apartheid period.

Founded in 1912, the African National Congress (ANC) was a major force of opposition to the apartheid system. Throughout the first forty years of resistance, the ANC focused on using legal tactics and nonviolent direct action as its method of protest. However, the perseverance of apartheid even in the face of these tactics led the ANC to shift to advocating violent resistance activities, such as bombings of government facilities, as long as these tactics avoided civilian deaths. Then labor protests emerged as a key challenge to apartheid. Black trade unions and eventually trade unions that organized white workers led these protests.

During apartheid, the government sought cheap labor on mines and farms, which led to the formation of a migrant labor system among the black population and a set of laws reserving specific and separate job sets for workers based on race. In response to such legislation, unions such as the South African Congress of Trade Unions (SACTU) emerged in the 1960s, only to be brutally oppressed by the state. However, in the late 1960s, leaders of the Black Consciousness Movement, who realized the potential of union activity, joined with unions to take more aggressive actions to try to bring an end to apartheid.

A turning point came in 1973 at a large industrial complex in Durban, South Africa. On January 9, all 2,000 workers at the Coronation Brick and Tile plant went on strike, demanding wage increases and presenting an elected committee to negotiate with management. The resulting wage settlement spurred widespread union activity throughout the city of Durban and then in many parts of South Africa. Transport and then municipal workers followed suit, and within one month, 30,000 workers in Durban were on strike. The apartheid system, which depended on black labor to keep its economy running, was facing a serious challenge to its continuation for the first time.

The Durban-inspired strike wave led to the establishment of several large trade union federations, including the Federation of South African Trade Unions (FOSATU) and the Congress of South African Trade Unions (COSATU). Subsequent strikes organized by these federations led the South African government to launch investigations of wage levels and eventually to pass amendments to the Labour Relations Act, which defined unfair labor practices and permitted the legal formation of black trade unions.

Significantly, worker militancy was based in the manufacturing, commerce, construction, transport, and communication sectors. These sectors were the most feasible to organize because the rising cost of white

labor meant that employers were increasingly dependent upon black African workers. On the whole, the manufacturing and service industries constituted the highest-paid sectors in the economy, reflecting the developing power and strategic location of black semi-skilled labor. Meanwhile, because Colored and Indian working-class minorities were incorporated into the labor relations system (albeit as racial subordinates), the newly emerging democratic trade unions premised their initial growth upon the organization of African labor.

Although the new unions faced severe repression and were always challenged by the availability of a mass of surplus labor because of a very high level of unemployment among black workers, they managed to survive, grow, formalize, make wage gains, and erode the foundations of despotism in the workplace.

The apartheid regime faced a severe challenge to its authority in 1973, when the United Nations General Assembly denounced apartheid, followed by a vote of the UN Security Council to impose an embargo on the sale of arms to South Africa in 1976. Facing growing international pressures, the National Party instituted several reforms, and in 1994 a new constitution was adopted that enfranchised blacks and other nonwhite racial groups through democratic elections. A key step in the final end of apartheid was the release from prison of Nelson Mandela, a leader of the anti-apartheid movement, who became the head of the first post-apartheid democratically elected government. Although Mandela had been imprisoned for twenty-seven years, he was able to live a long and highly influential life (he died at age 94 in 2013).

Although many factors contributed to the ending of apartheid, it is clear that unions and labor protests contributed much to this transformation.

Sources: "Apartheid," History.com, <http://www.history.com/topics/apartheid>; Lester Kurtz, "The Anti-Apartheid Struggle in South Africa (1912–92)," International Center on Nonviolent Conflict, June 2010.

BOX 2.4

The Role of Korean Unions in Democratization and Political Change

The post–World War II history of Korea was marked by authoritarian rule by governments in league with the military. Nevertheless, violent

political protests erupted periodically to challenge that rule. Labor unions have played leading roles in those political protests. In 1960, trade unions played an important part in the violent protests that culminated in the fall of the government of Syngman Rhee. Later, in 1980, violent protests again swept the country as workers demanded workers' and union rights and improved wages and working conditions. In 1987, Roh Tae-Woo, the ruling Democratic Justice Party's presidential candidate (and eventual victor in a subsequent election) pledged his support for popular elections to determine a new president of the Republic of Korea. The subsequent democratization process unleashed popular protests and demands among Koreans, particularly in the trade union movement.

A massive strike wave followed, along with a rapid rise in union membership. On May 2, 1990, for example, there were violent protests in the port city of Ulsan when 30,000 workers from affiliated Hyundai companies held rallies at work sites to protest a massive police raid that had occurred earlier on strikers at the Hyundai Heavy Industries Company.

Workers' protests were in part directed at existing trade unions and union leaders. Although an array of unions was affiliated with the Korean Confederation of Trade Unions, protesting workers opposed the complicity that had existed between these unions and the government and employers. Workers not only demanded higher wages and better working conditions but also sought procedures that would allow the emergence of unions that were independent from government and managerial dominance.

The protest wave cooled down in the early 1990s, but then another wave of labor protest occurred in early 1997, spurred by government efforts to change Korea's labor laws in order to bring more flexibility to the labor market and address problems related to international competition that had begun to surface.

Labor protests erupted in January 1997 after a secret session of the National Assembly (held without the elected members of the opposition parties and with the support of the president of Korea) imposed a harsh bill that, among other things, made it easier for firms to lay off employees. A three-week strike wave followed with strikes concentrated among workers at large firms, including Hyundai Motor Car Company. The strike wave cooled and was followed by months of negotiations that

often took place behind the scenes. These negotiations led to a new labor law bill that was adopted in March 1997 with the support of the opposition and the government. In recent years, changes to labor laws in Korea have included legalization of collective negotiations for public school teachers and the creation of an unemployment fund. As discussed in chapter 9, Korea has also witnessed a sharp rise in the number of irregular and nonstandard workers in recent years. While the labor movement has not been happy with all of these developments, unions have tried to influence events through normal democratic political channels.

Sources: Wonduck Lee and Joohee Lee, "Will the Model of Uncoordinated Decentralization Persist? Changes in Korean Industrial Relations after the Financial Crisis," in *The New Structure of Labor Relations: Tripartism and Decentralization*, ed. H. Katz, W. Lee, and J. Lee (Ithaca, N.Y.: Cornell University Press, 2003), 143–165; and Byoung-Hoon Lee, "Employment Relations in South Korea," in *International & Comparative Employment Relations: Globalisation and Change*, 5th ed., ed. Greg J. Bamber, Russell D. Lansbury, and Nick Wailes (Australia: Allen & Unwin, 2011), 281–306.

Another critical role that unions play in emerging countries is their efforts to promote favorable social protections and labor rights. In recent years, as unions have come to realize the importance of informal sector workers for economic activity and development and the harsh working conditions in that sector, some unions have increased their efforts to organize and represent workers in that sector. And as discussed more fully in chapter 11, union efforts here often link with the efforts of various NGOs and self-help workers' organizations. See especially box 11.7, which describes several NGOs operating in India that have taken on some union-type activities, for example, by negotiating for wage increases while also pressing governments for basic social benefits and reforms.

EMPLOYERS

Employers and the business community also take actions that shape and influence the course of labor relations in emerging countries. Employers can exert this influence through political lobbying of governments that is done on an individual and personal level, in some cases facilitated by family ties, or through employer associations. These associations include industry or trade associations or chambers of commerce. In some countries employers or segments of the business community are supporters of a particular political party.

The business community typically looks to governments to promote trade and markets and to take actions that favor employers through tax policies or expenditures. Employers generally prefer laws and regulations that make it difficult for unions to organize and limit the rights of any unions that do exist.

Employers in some countries use their power to suppress union formation and limit union power. In Mexico, for example, “protection contracts” are common. These are agreements between employers and employer-dominated unions that provide minimal protection for workers covered by a contract and discourage the formation of independent unions.¹

Employers also typically prefer that governments make only limited efforts to raise wages and improve working conditions and commonly use their political influence toward these ends. Employers can also hire contract or temporary workers to undermine existing unions or decrease interest in union formation, as those workers often are hard to enlist as union members because of the unstable nature of their employment and fear of reprisals.

However, as discussed more fully in chapter 12, some employers have come to appreciate that improvements in working conditions and in workers’ and union rights can be part of an economic development strategy that is oriented toward creating a highly skilled and motivated work force and is linked to business strategies that are based on using sophisticated technologies and producing high-quality goods.

TRIPARTITE INTERACTIONS BETWEEN GOVERNMENT, LABOR, AND MANAGEMENT

In some countries and at some moments there has been one form or another of tripartite discussions involving representatives of government, labor, and management. Often the central focus of these tripartite discussions is wages, although at times discussions have included labor laws and other social and economic policy issues and reforms. Box 2.5 highlights the history of tripartite discussions in India. In chapter 12, we look at other examples of how tripartite discussions have addressed economic development policies.

BOX 2.5

Tripartite Discussions in India about National Economic and Wage Policy

During his speech to the 2013 Indian Labor Conference, Indian prime minister Manmohan Singh proclaimed that “further dialogue with

Trade Union leaders appears necessary, including tripartite discussions. We have set up a Group of Ministers under the Finance Minister to go into the whole gamut of demands raised by the Trade Unions." This affirmation of tripartite discussions between the Indian federal government, state governments, and trade unions signifies the importance of tripartite discussions in the Indian labor movement. This has been the case since the first days of independence in 1947.

In 1948, the Indian Parliament passed the Minimum Wages Act, which set up India's first government-sanctioned tripartite committee, the Committee on Fair Wage. This committee consisted of representatives of the government (which at the time was led by the Indian National Congress Party) and the Central Trade Union Organizations (CTUO) and was formed to establish wage structures in the country by introducing public policies about living wages, minimum wages, regional minimum wages, and wage fixation. Prior to 1948, representatives of the Indian National Congress had formed the Standing Labor Committee and had held three Tripartite Labor Conferences, in 1943, 1944, and 1946. Although India was still under British sovereignty and these conferences were not sanctioned by the government, many of the issues that were addressed by the Minimum Wages Act of 1948, such as the establishment of state and regional wage boards for the purpose of regulating wages in different industries, were first discussed in the pre-1947 Standing Labor Committee.

After the passage of the Minimum Wages Act, the next most significant Indian labor conference occurred in 1957. During these proceedings, the Congress Party and the CTUO revised the Minimum Wages Act by specifying that 20 percent of any total regional minimum wage must be sufficient to cover workers' fuel, lighting, and other miscellaneous expenses and that the wage should cover the price of housing as determined by the government's Industrial Housing Scheme. One aspect that is unique to the Indian government's labor relations policies with regard to tripartite discussions is that since India has over 2,000 ethnic groups, India tends to hold regional tripartite discussions that encompass states with similar demographics, religious groups, and economies rather than overarching federal policies. For example, in the 1985 labor conference report, the government and labor leaders agreed to form the Regional Labor Ministers' Conference, which "made a number of recommendations which include reduction in disparities in minimum wages in different states of a region, setting up inter-state

Coordination Council, consultation with neighboring states while fixing/revising minimum wages etc.” Five regional committees constitute the Regional Labor Minister’s Conference and represent all twenty-eight states and seven territories.

A recent example of tripartite discussions in India is the discussion at the 2007 Indian labor conference of ILO Convention 188, which deals with increasing, safeguarding, and expanding safety and health practices for all workers in the fishing and maritime industry. To facilitate ratification of the convention, the Task Force for the Gap Analysis of Work in the Fishing Sector Convention was formed, which set policy workshops between workers in the fishing industry, union leaders, nongovernmental organizations, and representatives of the Ministry of Labour & Employment and the Ministry of Agriculture. After the task force did research and took in the input of all those who would be affected by the increased regulations for fishing work that make up Convention 188, the Indian government ratified the convention in 2009.

Another recent example of a tripartite discussion in India was the 2010 National Trade Union Conference on the Ratification of the ILO Core Labour Standards. During this tripartite discussion between the Indian National Congress, major central trade union organizations in India, and global union federations (international organizations of trade unions in specific industries), the unions lobbied the federal government to ratify conventions 138 and 182, which deal with the elimination of child labor and federal government enforcement of child labor laws in villages and less industrialized areas, where federal enforcement is lacking. This tripartite discussion is a clear example of trade unions and leaders in the labor movement using resolutions and conventions of the ILO to lobby and compromise with the government in making political and economic changes. Additionally, the trade unions sought to persuade Parliament to implement the UN’s Millennium Goal 2, which seeks to increase the rate of children attending primary school in the developing world from 82 percent to 90 percent.

Sources: Manmohan Singh, “PM’s Address at 45th Session of the Indian Labour Conference,” May 17, 2013, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=96045>; “Minimum Wages Act, 1948,” http://labour.nic.in/upload/uploadfiles/files/Divisions/wage_cell/4fd9bebab42a0mwact.pdf; “Thirty Sixth Session of the Tripartite Committee on Conventions,” New Delhi, September 25, 2012, Government of India, Ministry of Labour and Employment,

http://labour.gov.in/upload/uploadfiles/files/latest_update/what_new/5056a62160211Agendaof36thCOCNIC.pdf; "Conference Resolution," National Trade Union Conference on the Ratification of ILO Core Labour Standards, August 24–26, 2012, New Delhi, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_145074.pdf.

BRIEF DESCRIPTIONS OF THE LABOR RELATIONS SYSTEMS AND KEY CONTEMPORARY ISSUES IN BRAZIL, CHINA, INDIA, AND SOUTH AFRICA

The sections that follow provide brief descriptions of the key features of the labor relations systems in Brazil, China, India, and South Africa and highlight the key issues that have surfaced in those countries. It is, of course, difficult to accurately summarize these complex labor relations systems. Readers can find more complete descriptions of the systems and contemporary issues in the sources provided at the end of this chapter. Readers also may find it useful to revisit these summaries when a specific current issue or event is discussed in later sections of this book.

Brazil

The end of the military dictatorship and the enactment of the 1988 constitution ushered in the contemporary era in Brazilian employment relations.² The key change for Brazilian labor relations was that the state no longer significantly intervened in the internal affairs of unions, as it had in the past.

Following the return to democracy after 1988, the new constitution of Brazil and the labor code granted private and public sector workers the right to form trade unions (with the exception of the members of the military, uniformed police, firefighters, and some other state employees). Public sector workers could organize and, with certain limitations, strike. Labor reforms gave job security to union leaders, reduced the maximum work week from 48 to 44 hours, increased overtime pay from 20 to 50 percent, and added profit-sharing provisions to the human resource practices of firms. There was a growth in union membership after these constitutional reforms. Most of the new union members were civil servants who had previously been prohibited from forming unions. This growth in membership was accompanied by a significant increase in the number of unions, reflecting a growing fragmentation of the union movement.

At the same time, core aspects of the traditional Brazilian corporatist-style labor relations system remained unchanged and continue to this day. These include limits on union formation to one union per economic activity per territorial unit and a union tax that requires all workers in the unionized economic or sectoral category (e.g., metal workers, chemical workers) to pay a union tax regardless of whether they are union members. A portion of this union tax is paid to union federations and confederations. Some unions refused to accept the income from the union tax, preferring instead to rely exclusively on voluntary union membership dues.

Several efforts have been made since the early 1990s to promote tripartite negotiations involving representatives of the government, management, and unions, but none of these efforts have had significant or lasting effects. In the first decade of the twenty-first century, tripartite discussions were also used to promote labor law reform during the presidency of Luiz Inácio Lula da Silva, a former union leader. However, in these discussions major divisions emerged, not only between employers and the unions but also between the unions. For example, unions were divided about whether to reform the “union exclusivity” rule that allowed only one union per sector and per territory. Some unions had gained representation rights several decades earlier in key sectors and firms, and as their membership levels declined, they saw any change to the law as detrimental to their interests, since they stood to lose representation rights.

Trade unions in Brazil have maintained their membership strength over the last decades and have enjoyed increased political influence as the Workers’ Party entered its third term in office in 2011 with President Dilma Rousseff. The overall rate of unionization has held steady at around 18–21 percent of the work force. Approximately twice this number of workers is covered by collective bargaining agreements. While overall the unionization rate has remained steady, the rate of unionization in the manufacturing sector has been in decline. In contrast, public sector unionism has risen since the enactment of the 1988 constitution. At the same time, there has been a growth in national trade union centers and a proliferation of small unions and unions that remain outside the purview of the country’s main labor confederations. These developments have contributed to a fragmentation of the labor movement.

Yet behind these general trends, the neoliberal reforms that began in the 1990s, notably privatization and economic openness, have transformed and weakened the Brazilian labor movement. In particular, increased market liberalization and industrial restructuring significantly affected the geography of industrial production in Brazil. Many major new plants that were built in the

1990s and early 2000s were situated outside the core industrial district of greater São Paulo, in regions where unions were weaker and wages were lower.

China

China's economic reforms, now in their fourth decade, have transformed the country from a planned economy to a mixed economy in which elements of both market mechanisms and central planning remain prevalent.³ While market mechanisms have become increasingly important in resource allocation, the state still plays a critical role in economic coordination, and its role has even been strengthened since the 2008 global financial crisis.

Market-oriented reforms have significantly changed China's employment structure. In contrast to a significant decline in employment in the agricultural sector, employment in the industry and service sectors has sharply increased (see table 2.1). Employment in state-owned enterprises has dropped from 60.4 percent of total formal employment in 1978 to 14.5 percent in 2010, whereas employment in the private sector, including private-owned enterprises, foreign-invested enterprises, and township and village enterprises, has rapidly increased.

Along with the change in the employment structure there has been a transformation in labor relations in China. Under the planned economy, the Chinese labor relations system was extremely rigid and centralized. In general, workers in state-owned enterprises and collective-owned enterprises enjoyed lifetime employment, egalitarian wages, and cradle-to-grave welfare benefits that provided free housing, medical benefits, pensions, and various social and entertainment needs. Over the last three decades, however, the so-called iron rice bowl has gradually been smashed. First, there has been a change from lifetime to contract-based employment. Management now has the autonomy to hire and fire employees, though legal procedures have to be followed and there are still significant limits on large-scale dismissals in state-owned enterprises. Second, the state-administered reward system has been moving toward full autonomy of management in terms of wages. Although the state still intends to influence wage levels and wage growth at the macroeconomic level and in state-owned enterprises, this influence has been declining. Third, contributory social insurance schemes, including pensions; medical, unemployment, work injury, and maternity insurance; and housing funds, have been introduced to replace the former cradle-to-grave welfare system. However, these benefit schemes have been introduced to varying degrees across sectors and regions, and a huge number of workers—especially migrant workers—do not receive social benefits.

Table 2.1. China's changing employment structure, 1978–2010 (selected years)

	Total Employment (in millions)	Agricultural (%)	Industry (%)	Service (%)	Total formal employment (in millions)	State-owned units (%)	Collective- owned units (%)	Private- owned units (%)	Foreign- invested enterprises (%)	Township and village enterprises (%)	Individual- owned businesses (%)
1978	401.5	70.5	17.3	12.2	123.4	60.38	16.60			22.91	0.12
1985	498.7	62.4	20.8	16.8	197.9	45.43	16.80		0.03	35.27	2.27
1990	647.5	60.1	21.4	18.5	256.0	40.42	13.86	0.66	0.26	36.20	8.22
1995	680.7	52.2	23.0	24.8	337.2	33.39	9.33	2.83	1.52	38.14	13.68
2000	720.9	50.0	22.5	27.5	318.8	25.41	4.70	7.55	2.01	40.21	15.90
2005	746.5	44.8	23.8	31.4	362.2	17.91	2.24	16.08	3.44	39.40	13.53
2010	761.1	36.7	28.7	34.6	450.8	14.45	1.32	20.89	4.05	35.25	15.54

Sources: Adapted from a table in Mingwei Liu, "China," in *Comparative Employment Relations in the Global Economy*, ed. C. Frege and J. Kelly (New York: Routledge, 2013). The data is from the *China Statistics Yearbooks*, various years.

Note: Foreign-invested enterprises include investments from Hong Kong, Taiwan, and Macao.

The All-China Federation of Trade Unions (ACFTU), the single official union in China, has a pyramidal top-down structure consisting of three tiers: the national, regional, and primary levels. At the bottom level, primary unions are organized according to the principle of enterprise unionism, while regional level unions are set up both along industrial lines and within geographical boundaries, in a structure that parallels that of the government administration. Trade unions at all levels are under the leadership of the Communist Party, and this structure has largely remained unchanged since the 1950s. The ACFTU plays a dual role; it represents the interests of both the state and labor. At the workplace, unions traditionally perform two functions: they promote production and deal with social welfare issues.

The Chinese labor dispute resolution system is characterized by “mediation, arbitration, and two trials.” When a labor dispute arises, the parties may bring the case before the enterprise labor dispute mediation committee. The second stage is arbitration, which is mandatory before the case can go before a court. If either party is dissatisfied with the arbitral award, he or she may enter the third stage and bring the case to a court unless the case is of a certain type (e.g., claims for a small amount of unpaid wages). If either party is dissatisfied with the court verdict, they may appeal to a higher court, whose verdict is final.

The number of labor dispute cases brought to arbitration sharply increased after the 2008 labor law reform. Voluntary mediation has been emphasized as the preferred method of resolving labor disputes by the government. More mediation organizations have been established, especially at the community level, and the mediation function of regional union federations has been significantly strengthened.

India

India has long had an interventionist state. This is codified in the key labor relations law in India, the Industrial Disputes Act of 1947. Under this law, the state can prohibit even a legal strike and refer any industrial dispute to compulsory arbitration or adjudication without the consent of employers or unions. However, following the balance-of-payment crisis in 1991, the government of India embarked upon economic reforms that shifted the focus in national economic policies from import substitution to exports.⁴ The economic policies of liberalization, privatization, and globalization marked a new beginning for the Indian economy, which up to that point had been based on an inward-looking socialist-style import substitution strategy. This shift in economic policies has been successful. The country's GDP growth increased from a low rate of increase of 2–3 percent per year before the 1980s

to an average of 8 percent per year for a decade and half starting in the early 1990s.

The trade union movement in India is highly fragmented. Until the 1980s, most trade unions in India were affiliated with a political party through a national federation (these are also known as central trade union organizations). For instance, the Indian National Trade Union Congress is affiliated with the Congress Party while the All India Trade Union Congress is affiliated with the Communist Party of India.

There are about 400 million workers in the Indian labor market. Of these, only about 7 percent are employed in the formal sector. The remaining 93 percent are employed in agriculture or in small- and medium-size enterprises in the informal sector of the economy. Historically, politically affiliated unions have shown little or no interest in organizing workers in the informal sector and have concentrated their resources on organizing and representing workers in the formal sector in both the public and private sectors. In recent years, many workers in the informal sector or those employed as casual and contract workers in the formal sector have formed their own politically independent unions, sometimes with the help of nongovernmental organizations (see box 11.7).

Of the total labor force of around 400 million in India, about 28 million are employed in the public sector and are covered by various pay commissions that decide on their wage levels. The commissions are government appointed and hear representations from employer associations and trade unions. Thus, negotiations over wages in the public sector in India take place within the limits and terms set by the pay awards sanctioned by the pay commissions.

The average duration of collective agreements in the public sector is now around ten years. In the private sector, however, collective agreements usually last two or three years. In some sectors of the economy, negotiations over wages and conditions of work take place at the industry or sector levels. For example, banking and insurance, ports and docks, and coal mining all have industry-level collective negotiations.

South Africa

The early history of labor relations in South Africa was heavily influenced by the apartheid system, which kept blacks and mixed-race people politically disenfranchised and out of skilled and higher-paying jobs.⁵ By 1994, however, the democratic union movement had established itself as a major force in the labor relations system in South Africa. The country's 201 registered unions had a membership of 2.89 million, and 50 unregistered unions had a

membership of 528,000 workers, bringing the total union membership to 3.2 million, or 27 percent of the economically active population. COSATU, by far the largest union confederation, had some 15 affiliate unions and 1,317,496 members (compared to some 400,000 at its inception in 1985). The second large union confederation was the National African Congress of Trade Unions, which had around 327,000 members in eighteen affiliates and was aligned with a political party (the Pan-Africanist Congress) whose internal struggles had reduced its influence. Three other union confederations (the Federation of Salaried Staff Associations, the Federation of Independent Trade Unions, and the South African Confederation of Labour), represent a mix of white-collar unions, white unions, and long-established craft unions and account for a large proportion of the remainder of trade union membership.

South Africa's Labour Relations Act of 1995 (LRA) sought to replace the adversarial culture that had characterized labor relations with a new policy of codetermination that had five key features. First, it brought all employees together in a single system that provided for collective bargaining that would take place in bargaining councils. These were to replace the industrial councils that had been established in 1924 to serve as forums for bargaining at the industry level but had barred labor unions with black members from participating.

Critically, such participation enabled the new unions to have a say in working conditions throughout an entire industry, even covering employers with whom no formal recognition agreement had been concluded and/or factories where a union had little presence. Importantly, the LRA extended the right to participate in bargaining councils to farm, domestic, and public employees; under the industrial council system, these workers had been excluded.

Second, the LRA promoted collective bargaining by guaranteeing rights to unions in the workplace, such as giving them with access to employer premises, granting them the right to meet and the facilities to do so, and allowing them to have closed shops (compulsory union membership agreements) under certain conditions. It also compelled employers to disclose information relevant to collective bargaining to unions that represented the majority of workers in a workplace. In addition, the act protected the right of employees to strike, picket, and engage in sympathy strikes, although it also introduced compulsory procedures and timetables for **dispute resolution**.

The LRA also sought to promote centralized bargaining and a coherent system of bargaining councils. Key to these goals was the extension of collective agreements to all firms and workers in an industry, for otherwise agreements could be undermined by nonparticipating employers. Accordingly, the minister of labor was bound by the act to extend an agreement at the request

Table 2.2. Number of trade unions and trade union membership in South Africa, 1994–2010 (selected years)

Year	Number of registered unions	Total trade union membership (in registered unions)	Registered trade union members as a proportion of total workers
1994	213	(2,470,481) 2,980,481	31.0
2000	464	3,552,113	29.0
2005	n.a.	3,112,000	25.3
2010	200	3,057,772	23.3

Source: Adapted from a table in Roger Southall, "South Africa," in *Comparative Employment Relations in the Global Economy*, ed. C. Frege and J. Kelly (New York: Routledge, 2013).

of a council to all firms and workers in an industry if the agreement met certain requirements, notably that the concerned parties covered a majority of employers and employees.

Nonetheless, despite the strong thrust of the LRA in favor of centralized bargaining, the number of bargaining councils has steadily diminished, from seventy-seven in 1996 to forty-seven in 2010. This is despite the establishment of five councils in the public sector (which previously had been outside the system) and a small number of new councils in the private sector. Management increasingly favors decentralized bargaining in South Africa. The growth of informal employment has also served to undermine various councils and contributed to decentralization in bargaining.

Events at the Marikana mines in 2012, when police opened fire on striking miners, killing thirty-four and wounding seventy, illustrated well many of the recent tensions in the South African labor relations system. The unofficial strike at the Lonmin mine involved some 3,000 workers. Workers had demanded a pay increase of up to 50 percent, a demand was well in excess of an existing agreement already in place between COSATU's National Union of Mineworkers (NUM) and Lonmin and was reflective of a far more generalized sense of workers' discontent with wages and working conditions that reached across the entire platinum mining belt.

Crucially, it appears that the NUM had lost the confidence of the workers, who had repudiated the pleas of union representatives who were sent to negotiate with them about returning to work. Into its place stepped the leadership of the Association of Mineworkers and Construction Union (AMCU), a breakaway union from the NUM that was not recognized by the employer and that pushed its way forward as the workers' representative. The volatility of the situation, which was compounded by strikers' violence against those who wanted to work and against NUM officials, was ratcheted up by the

initial refusal of the employer, the NUM, and the government to talk to the AMCU, arguing that it lacked formal status.

Ultimately, however, in the aftermath of the shooting, the impasse gave way to concession, and eventually—some six weeks after it had begun—the strike was brought to a close when Lonmin conceded a hefty 22 percent pay increase after negotiations involving both the AMCU and the NUM. However, this agreement failed to prevent labor unrest from spreading rapidly, and employers, unions, and the government alike scrambled to douse fires throughout the mining sector.

Marikana appears to represent a major challenge to the established labor relations system. First, it indicated the development of a yawning gap between miners and the leadership of the NUM (its officials were accused of living comfortably while failing to service the union's membership). Second, it exposed an increasing gap between workers and the ANC in government; the latter's leaders were accused of siding with management and being careless of their core constituency. Third, it raised major questions about the role of the police, who were widely accused of reverting to an apartheid-style reliance upon brute violence on behalf of the state. Finally, it posed serious problems for employers, who were ambivalent about the strike's consequences. The Marikana strike was cited by some advocates as a good reason to overhaul the LRA and for the employers to be given the right to negotiate with minority unions alongside majority ones, a call that some unions opposed.

Summary

This chapter has provided an overview of how labor, management, and governments interact in emerging countries. Even though these interactions are heavily influenced by the historical and political traditions in each country, some common themes arise. A key issue that underpins labor, management, and government interactions in emerging countries is the fact that how to create and sustain more democratic and stable labor relations is a major political and economic issue in these countries. While in some countries unions have been dominated by governments or sharply limited in their influence, history suggests that the outlawing of truly independent unions (i.e., unions that are free from the dominance of governments or employers) does not eliminate labor conflict and in some ways only postpones and intensifies it. In the end, all countries are forced to wrestle with how to structure labor relations in a way that provides workers with enough representation to satisfy them while also maintaining social stability and economic growth. We return to these policy issues in chapter 12.

This chapter has also provided summary descriptions of the labor relations systems that operate in Brazil, China, India, and South Africa. Readers may find it useful to refer back to these summary descriptions when issues or examples related to these specific countries appear later in the text. For now our task is to more fully describe how a labor relations system works and the various forces and factors that shape its evolution. We begin by examining the laws and legal systems that shape labor relations in emerging countries.

Related Web Sites

“About the World Bank”: <http://www.worldbank.org/en/about>

“About the IMF”: <http://www.imf.org/external/about.htm>

“Labor Rights in Mexico”: <http://www.usleap.org/usleap-campaigns/labor-rights-mexico>

“Organizational Structure of the All-China Federation of Trade Unions”: <http://english.acftu.org/template/10002/file.jsp?cid=64&aid=213>

Discussion Questions

1. What is meant by the term “incorporation” and how does such incorporation affect labor relations?
2. Give an example of how the labor movement helped promote democracy in a particular country.
3. What are some of the ways governments commonly affect labor relations in emerging countries?
4. How do employers and the business community influence the course of labor relations in emerging countries?

Suggested Supplemental Readings

Anner, Mark. *Solidarity Transformed: Labor's Responses to Globalization and Crisis in Latin America*. Ithaca, N.Y.: Cornell University Press, 2011.

Bamber, Greg J., Russell D. Lansbury, and Nick Wailes, eds. *International & Comparative Employment Relations: Globalization and Change*. 5th ed. Australia: Allen & Unwin, 2011.

Frege, Carola, and John Kelly, eds. *Comparative Employment Relations in the Global Economy*. New York: Routledge, 2013.

Notes

1. Susan Schurman and Adricenne Eaton, “Trade Unions Organizing Workers Informalized ‘from Above’: Case Studies from Cambodia, Colombia, South Africa, and Tunisia,” 36, report

to the Solidarity Center, January 2013, <http://smlr.rutgers.edu/research-centers/research-partnership-with-solidarity-center>.

2. This section draws heavily from Mark S. Anner and João Paulo Cândia Veiga, "Brazil," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 265–284.

3. This section draws heavily from Mingwei Liu, "China," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 324–247.

4. This section draws heavily from Vidu Badigannavar, "India," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 305–323.

5. This section draws heavily from Roger Southall, "South Africa," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 348–366.

3 The Law and Legal Systems

THE ROLE AND IMPORTANCE OF THE LAW AND LEGAL SYSTEM

This chapter examines how legal systems and the law influence labor relations. The law is a primary mechanism through which governments affect and regulate the conduct of labor relations. We focus on both collective labor law, which regulates unions and collective negotiations (what is referred to as labor law in the United States), and individual labor law, which regulates individual employment contracts and establishes employment standards (what is referred to as employment law in the United States).

Legal systems are primarily national in scope, since the ability to enact and enforce laws is a basic function of a sovereign state. As a result, the primary reference point for understanding the impact of law on labor relations is the specific laws of the country in question. However, in recent decades international labor law has also assumed increased prominence in labor relations. Labor law is important both for regulating the process of union formation and establishing collective negotiations (this is referred to as the constitutive function of labor law) and for regulating and influencing the relative bargaining power of the parties (this is referred to as the power-broker function of labor law). In this chapter we will examine both the constitutive and the power-broker functions of labor law and consider how law operates across the three-tiered framework of labor relations.

SOURCES OF LEGAL SYSTEMS AND THE LAW

As a function of its national sovereignty, each country establishes its own system of laws to govern its territory, its population, and the economic activity

that occurs within its boundaries. The foundation of legal systems in most countries is a written constitution (the British concept of an unwritten constitution of historical conventions, understandings, and past practices is the most famous exception to this). Constitutional law establishes the system of government for a country and commonly enunciates the foundational individual and (in some countries) social rights of its citizens. While constitutional law provides the broad structure of the legal system, specific statutes or legal codes provide the more detailed labor laws that govern the relationship between employers and employees. Within this system of statutes or codes, the complexity and range of issues of labor relations typically require further elaboration through more specific regulations and decisions of courts, tribunals, and administrative agencies. These substantive laws are enforced by various actors, including the courts, government officials such as labor ministry officials and inspectors, and private parties such as lawyers, unions, and NGOs. All of these elements combine to form the labor law system of a country that the actors in the labor relations system must understand and operate within.

Legal systems can be divided into two broad categories: common law systems and civil systems. Common law systems trace their origin to the British legal system and are found in countries that were historically part of the British Empire, such as the United States, Australia, and India. Common law systems are premised on judicial interpretation of the law based on precedents of decisions in past cases. The original English common law developed prior to and in the absence of statutes. Even as statutes came to be enacted in many areas, common law rules based on case law continue to be important. For example, in the United States the common law test continues to be the default rule for determining employment status under most statutes.

Civil law systems trace their origin to Roman law and (more recently) to the Napoleonic Code, which was adopted widely in continental European countries and their colonies during the nineteenth century. Civil law systems are premised on general codes of law that govern economic and social activity. Under a civil law system, the role of the judge is to decide a case by direct reference to and application of the legal code instead of basing decisions on precedents from past cases, as in the common law systems.

In addition to the broad differences between common law and civil law systems, national labor law systems reflect the specific history and influences of individual countries. For example, Japan became a civil law system in the 1890s when it adopted a new civil code explicitly modeled on the German civil code, which was in turn based on the Napoleonic Code. Subsequently, elements based on U.S. labor law were introduced into Japanese labor law in the late 1940s during the period of U.S. occupation following World War II.

By contrast, India has a legal system based on common law because of the influence of its long period of British rule. Even though it has been over half a century since India gained its independence, current Indian labor law includes elements that reflect the legacy of labor law from the colonial period. We also see similarities in labor law systems in different regions of the world. For example, the systems of labor law in the countries of South and Central America have many similarities, due in part to the legacy of their common Spanish and Portuguese colonial histories but also due to cultural, economic, and political links between the countries.

INTERNATIONAL LABOR LAW

A long-standing body of international labor law is composed of generally recognized principles that have been elaborated primarily through the work of the International Labour Organization (ILO). This body of labor law has received increased attention in recent years as concern has grown about respect for basic labor rights in an era of globalization and transnational production chains. International labor law has also become an important component of regional economic systems such as the European Union or the North American Free Trade Agreement, and it is an element of increasing numbers of bilateral trade agreements between individual countries.

The ILO is the primary international agency tasked with developing international labor law standards. Originally founded in the 1919 under the League of Nations, the ILO is now an agency of the United Nations. It is structured as a tripartite organization with representatives of government, employers, and organized labor from each of its member countries.

The guiding principles of the ILO were set out in the 1944 Declaration of Philadelphia, which became part of the constitution of the ILO. The Declaration of Philadelphia echoes the basic principles of the field of industrial relations that we discussed in chapter 1, including the ideas that

- (a) labor is not a commodity;
- (b) freed of expression and association are essential to sustained progress;
and
- (c) poverty anywhere constitutes a danger to prosperity everywhere.

Central to the work of the ILO is the drafting and promulgation of conventions designed to guide the development of labor laws of its member nations. The two central conventions for labor relations and collective bargaining are Convention 87, Freedom of Association and the Right to Organise, and

Convention 98, Right to Organise and Collective Bargaining. For an ILO convention to come into force, it must be ratified by the individual member nations. The degree to which Conventions 87 and 98 have been adopted is a key marker of the influence of the ILO on the development of national labor law and of the spread of international standards in labor law. One hundred fifty-two countries had ratified Convention 87 by the beginning of 2014 and 163 had ratified Convention 98. Two notable exceptions are the United States and China; despite their many other differences, neither country has ratified these two key conventions on labor relations and collective bargaining.

BOX 3.1

Provisions of ILO Conventions 87 and 98

CONVENTION 87:

PART I. FREEDOM OF ASSOCIATION

Article 1

1. Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.

Article 3

3. (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programs.
3. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

11. Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

CONVENTION 98:

Article 1

1. (1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
1. (2) Such protection shall apply more particularly in respect of acts calculated to—
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

2. (1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Sources: ILO Convention 87: Freedom of Association and Protection of the Right to Organise, http://www.ilo.org/dyn/normlex/en/f?p=NORML EXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO; ILO Convention 98, Right to Organise and Collective Bargaining Convention, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C098.

In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. This declaration formally recognized four categories of rights at work as fundamental workers' and human rights. They are:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labor;
- (c) the effective abolition of child labor; and
- (d) the elimination of discrimination in respect of employment and occupation.

The adoption of the declaration has been influential in promoting an international consensus that these four categories constitute core labor standards that apply in all countries. Some critics worry that by enunciating these four specific categories as core labor standards, the ILO is implying that other labor standards such as minimum wages and workplace health and safety are not equally fundamental. Others have argued that labor rights other than those listed in the declaration should also be considered as core labor standards.¹

Among the main activities of the ILO is monitoring compliance with international labor standards. Individual member nations must make annual reports to the ILO about the measures they have taken to implement its conventions. In addition, the ILO conducts investigations in response to complaints of noncompliance with ratified conventions. These investigations can lead to reports that indicate whether a member country is in violation of its duties under a convention and, in serious cases, a determination of violation of treaty obligations. A major limitation of the ILO's investigations and monitoring of compliance with international labor standards is the lack of effective enforcement mechanisms beyond moral suasion and the pressure of international public opinion.

In recent years the ILO has begun to experiment with new approaches to protecting labor rights in emerging countries. One particularly promising initiative is the ILO's Better Work program, which provides certification for factories that comply with labor rights as outlined in ILO conventions. Box 3.2 describes the origins of this program in a pilot project in Cambodia.

BOX 3.2**Better Factories Cambodia**

Historically, the economy of Cambodia had been dominated by agriculture. However, since the mid-1990s, the country has experienced rapid industrialization, especially in the garment industry, which is infamous for its sweatshop working conditions. In January 1999, the United States made an effort to improve working conditions in the garment industry in Cambodia by providing economic incentives. The U.S.-Cambodia Textile Agreement established a three-year trade agreement between the two countries: Cambodia's garment export quota to the United States would be increased if the country's garment factories improved working conditions and furthered compliance with core labor standards. The ILO was brought in to monitor and evaluate progress in Cambodian factories.

This agreement led to the ILO Garment Sector Working Conditions Improvement Project, the objective of which was to reduce poverty and improve working conditions in the Cambodian apparel industry by encouraging compliance with ILO core labor standards and Cambodian labor law. Three years later, in 2004, the project was renamed Better Factories Cambodia (BFC).

BFC has a tripartite structure that includes the representatives of the Cambodian government, apparel manufacturers, and unions in the Project Advisory Committee (PAC). The PAC approved a 500-item checklist that encapsulates decent working conditions and that ILO inspectors use to conduct evaluations. Teams of two inspectors arrive unannounced at voluntarily registered factories and monitor the workplace for two days. The results are compiled in a report that is subsequently recorded in an Information Management System (IMS). Manufacturers are entitled to dispute evaluations. International buyers can then access reports in the IMS, which enables them to exercise corporate social responsibility when deciding which factories to use. Semi-annual summary synthesis reports are publicized that allow all consumers to follow trends in the Cambodian garment industry.

BFC activities have evolved to include not only monitoring but also training, advisory services, research, and social change initiatives. Training is offered to managers to develop their human resources practices and leadership techniques and to workers to inform them of their rights in the workplace. Following an inspection, BFC sends out advisors to

establish Performance Improvement Consultative Committees (PICC), which are composed of both management and workers and are responsible for formulating a plan for improvement and discussing labor issues. BFC furnishes stakeholders with research results that explain the impact of the program. Most recently, the BFC has instituted social change initiatives to resolve workplace issues such as fainting and to educate workers about labor law. These extensions of BFC activities demonstrate its objective to not only make factory working conditions safer and more humane but also to bolster productivity and job satisfaction.

In January 2007, the ILO partnered with the International Finance Corporation to launch the broader Better Work program, building on the BFC's experience. Similar to BFC, the objective of Better Work is to enhance compliance with internationally recognized labor standards and country-specific labor laws in order to improve working conditions while at the same time maintaining (and even increasing) productivity and global competitiveness. Better Work officials assess factory compliance, develop labor-management relations, and engage stakeholders (including governments, producers, unions, employees, and buyers) in improving working conditions. Better Work first operated in the apparel industries of Jordan, Lesotho, and Vietnam. The program has since been expanded to include Haiti, Indonesia, Nicaragua, and Lesotho.

Although BFC has been hailed as a success, the real effect on garment workers remains to be determined definitively. Workplace injuries and illnesses, factory fires, and even building collapses are still common. Critics point to the ILO's lack of enforcement. Unlike the U.S.-Cambodia Textile Agreement, the BFC and Better Work are not directly linked to specific trade quotas. Instead, these programs rely on international buyers to contract exclusively with high-compliance factories. The only incentives for buyers to do so are a sense of social corporate responsibility and whatever consumer pressure can be brought to bear on their brands.

Source: Axel Marx, Private Standards and Global Governance: Legal and Economic Perspectives (London: Elgar, 2012).

CONSTITUTIONAL LAW

National constitutions provide the basic structure of government and establish the legal system in most countries. Constitutional law issues typically focus on

questions such as election processes, the powers granted to different parts of the government, and the rights of individual citizens. For labor relations this may include questions of which branch or level (in federal systems) of government has the power to regulate labor relations and the rights of individual workers, especially public employees, in relation to the government.

In addition, some countries, particularly those with systems based in civil law, go further and embed other general social rights, which may include basic principles of labor law, in their national constitutions. An example of this approach of including positive social rights in a national constitution is Article 123 of the Mexican constitution, which provides a positive right to employment: "Every person has the right to dignified and socially useful work. To achieve this, the creation of jobs and social organization will be promoted conforming to the law."

This broad right to employment in Article 123 is followed by a series of more detailed provisions concerning, among other issues, minimum wages, the right to organize unions, and protections against unfair dismissal. These provisions are important for labor relations throughout the economy because the Mexican constitution applies to private actors, not just to the public sector. In contrast, in the United States and in most other countries with common law legal systems, constitutional provisions typically apply only to the government and other public sector actors, thereby sharply limiting the relevance of constitutional laws for private sector labor relations in these countries. Another example can be found in Canada, where a Charter of Rights and Freedoms that includes freedom of association is included in the constitution. The Canadian Supreme Court used this constitutional protection to reverse the attempt of a provincial government to void a collective agreement with a public employees' union and impose different terms and conditions of employment.²

In Brazil, as in a number of other Latin American countries, provisions related to labor and union rights are included in the national constitution. For example, Article 8 of the Brazilian constitution provides that "the law may not require authorization of the State for a union to be founded, except for authorization for registration with the competent agency, it being forbidden to the Government the interference and intervention in the union." These constitutional provisions provide specific protections against government interference with union activity that cannot be overridden by statutes. However, this does not mean that complete freedom of association guaranteed by labor laws exists in Brazil. For example, the union registration system that is allowed under Article 8 permits a labor law structure that constrains and directs the nature of union organization and activity.

COLLECTIVE LABOR LAW

Collective labor law refers to the laws governing unions and collective negotiations in the unionized sector of the economy. Governments regulate unions and collective negotiations for a number of reasons, including protecting the right to freedom of association, promoting positive economic development, and avoiding the negative social and economic consequences of labor relations problems.

Although the specific rules and structures vary widely across countries, all collective labor law systems perform two generic functions. Katherine Stone has described these as the constitutive function and the power-broker function of labor law.³ In its constitutive function, collective labor law provides the rules for organizing unions and establishing collective bargaining policies. This includes rules about union membership and internal union activities and policies that obligate employers to recognize union representation for purposes of collective negotiations. In its power-broker function, collective labor law establishes rules for conducting collective negotiations and regulating industrial conflict that influence the relative bargaining power of the parties. This includes rules about the use of strikes, lockouts, and other economic weapons by the parties and provisions for government intervention to help resolve labor disputes. How a nation's labor law performs each of these two functions is an important factor that influences the status of unions and the relative bargaining power of workers in that country.

The Constitutive Function of Collective Labor Law

The first key task in the constitutive function of collective labor law is to determine the legal status of unions. An important stage in the economic and political development of many countries has been a change from treating unions as entities that lack legal status to recognizing them as legitimate representatives of workers. In the United States this occurred in the 1840s, when the courts moved away from viewing unions as illegal criminal conspiracies and toward viewing unions as legal entities that would be judged by the content of their actions. Over time most countries developed systems in labor law for formally recognizing and in some cases registering unions as legal organizations entitled to represent workers.

Despite widespread recognition of the importance of legally recognizing the status of unions as organizations, the particular procedures for recognizing unions vary widely even among the advanced countries. In North America, the United States and Canada use a system that legally recognizes a union when majority support for the union exists among a designated group of

workers, such as the employees at a particular factory or service establishment. This is determined through secret ballot elections or, in some Canadian provinces and some U.S. state public sectors, by checking membership cards. This produces a system of exclusive representation in which the union represents all the workers in a workplace or none of them. Individual union membership is of little significance in this system and levels of union membership and coverage in collective negotiations are relatively similar. It also tends to produce vigorous contests in organizing campaigns when a union seeks to represent a group of workers, since the employer is faced with an all-or-nothing collective legal determination of union status. By contrast, in Britain, union recognition has traditionally been done on a voluntary basis; a statutory scheme for recognizing unions was not introduced there until the late 1990s as a supplement to the more typical voluntary recognition process.

Union recognition procedures also vary in European countries that have systems based in civil law. For example, in Germany, unions exist as associations under the civil law system. Workers choose whether or not to join a union on an individual basis, much as they would any other voluntary association. The status of German unions as representatives of workers is a function of the collective agreements they sign with employers, most commonly under the auspices of employers' associations that bargain with the unions on behalf of their employer members. Under this system, whether or not workers are covered by collective agreements is driven by whether or not the employer is a member of an employers' association that has signed an agreement with the union rather than by whether the individual worker is a union member.

Emerging countries have adopted systems that include some aspects of these models but also include other distinctive features for providing the constitutive function of labor law. In Latin American countries, independent labor unions generally have recognized status in labor law, but they are commonly required to register with the relevant government labor ministry to claim that status. The right of a union to represent workers is not determined on a majoritarian basis, as it is in North America; instead, the law often requires a minimum number of union members in the workplace. For example, in Mexican labor law, an employer is required to bargain with a union when it has twenty members employed in the employer's workplace. Registration requirements for unions in Latin America can restrict how many unions employees can choose from to represent them. For example, in Brazil, which union represents employees is determined by the predominant activity of their employer, with a few exceptions, such as lawyers, engineers, or secretaries. So, for instance, in a textile industry, all the employees of the company

will be represented by the union of textile workers of the territory, no matter what their profession is or what activities they perform for the company. Hence, blue-collar and white-collar workers in the same company are represented by the same union.

Moreover, although the state in Brazil is prohibited by the constitution from intervening in union creation, so the government could not pass a law prohibiting workers from organizing a union, unions still have to be registered with the Ministry of Labor in order to be recognized as legal unions to guarantee that the union unity rule will apply to them. If two unions attempt to represent the same category of employees in the same territory, the one that registered earlier with the Ministry of Labor will keep the representation rights, although some discussions about territorial coverage and category definitions may still be resolved by the labor courts.

In China, the situation is very different in terms of union recognition and status. Under the traditional communist system of government, the All-China Federation of Trade Unions (ACFTU) was the official representative of workers' interests in the system. ACFTU leaders are appointed by the Communist Party at national and local levels and often are part of the human resource management staff in specific enterprises. Employers fund the ACFTU through a 2 percent payroll tax. Thus, the ACFTU is not a democratically elected or independent trade union.

The ACFTU continues to hold a monopoly on legal recognition as the only official labor union in China. Efforts that are made to organize independent labor unions in China occur outside the framework of existing collective labor law, and independent unions lack legal status or the protections of labor law. At the workplace level, the official legal status of the ACFTU means that it is automatically entitled to representational rights and there is no need to determine membership support in order for it to act on behalf of employees in that workplace. As we will discuss more fully in later chapters, the roles of the ACFTU and of other emerging groups that seek to give voice to Chinese workers are evolving and are sources of considerable debate among labor, government officials, and Chinese legal and labor relations scholars.

The Power-Broker Function of Collective Labor Law

In the power-broker function, collective labor law regulates the use of economic weapons by the parties and influences the bargaining power of each party in collective negotiations. One of the most basic ways that labor law can influence the relative bargaining power of the parties is by requiring them to engage in collective negotiations. The specific nature of a duty to bargain varies in scope and content among the countries that have adopted it as an

element of their labor law. In the United States, a duty to bargain in good faith exists for both employers and unions once a union has won a representation election based on majority support of employees in a bargaining unit. By contrast, as mentioned earlier, in Mexican labor law, a duty to bargain arises when the union represents at least twenty employees in the workplace. At the far end of the spectrum, in New Zealand the duty to bargain arises when an individual employee is a union member.

Another way that collective negotiations affect the relative bargaining power of the parties is by determining who is covered by bargaining. In American labor relations, unions often bargain on behalf of employees in individual workplaces. This reduces the relative bargaining power of the unit, as unions are less able to exert economic pressure on larger employers and are vulnerable to being forced into competition with other establishments that may be nonunion and pay lower wages. By contrast, the more centralized bargaining systems that are found in most European countries enhance union bargaining power by increasing the threat of economic action by the union and reducing the danger of labor cost competition between different employers or establishments. In Europe, labor law provides an important mechanism that supports a more centralized bargaining system. For example, in Germany, centralized bargaining is encouraged; collective agreements are binding on all members of employers' associations, and because of extension laws, these agreements are implemented at the industry level if they cover a majority of the industry. Similarly, in South Africa, labor law supports more centralized bargaining structures that enhance the bargaining power of unions by providing for negotiations and agreements at the industry or sector level. By contrast, in India the lack of support in labor law for more centralized bargaining structures weakens the relative bargaining power of unions.

In Brazil, collective negotiations mostly occur between employers' associations and the legally registered union, which is determined by the main activity of the employers. The union typically negotiates a collective agreement for all the employees of the professional or economic category in a defined territory. The collective agreement is binding for the employer if it is signed by the employers' association that represents the economic category of the company in a defined territory, regardless of whether or not the company is a member of the association. The agreement covers all workers, whether they are union members or not. It is also possible for the union to negotiate a specific agreement with one or more companies instead of negotiating with the employers' association. Since each union represents workers in a certain territory, companies with plants in more than one city may have to use different collective agreements, negotiated with different unions, in each plant. These

agreements may or may not have similar provisions, since unions representing the same employee category in different regions may be affiliated with different union centers and thus use different strategies and priorities.

Collective labor law also influences bargaining power by regulating the use of economic weapons by the parties. Although the right to strike is recognized in the labor laws of most countries, in a number of nations limitations are placed on this right. These limitations are often argued to be based on considerations of the potential harm of labor conflicts to the public interest, though they also can significantly alter the relative bargaining power of employers and unions. For example, in the United States, the substantial limitations courts had placed on strikes through the use of labor injunctions were overturned in the 1930s by new labor laws that protected the right to strike. However, this shift in bargaining power in favor of unions was partly reversed when the U.S. Supreme Court in its decision in *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938) interpreted the National Labor Relations Act (NLRA) as allowing employers to hire permanent replacement workers to keep a factory operating during a strike, effectively taking away the jobs of the strikers. A further limitation on the right to strike and the bargaining power of unions is a provision added to the NLRA that bars secondary boycotts, strikes directed at employers other than the primary employer involved in collective negotiations. This limits the ability of unions to launch more widespread economic actions that could put pressure on business partners or allies of the primary employer involved in collective bargaining.

The extent to which the right to strike is recognized and regulated varies widely in emerging countries. South Africa is an example of a country that explicitly recognizes the right to strike and places relatively few limitations on it in labor law. In Brazil, the right to strike is guaranteed by the constitution, but limitations on strikes that affect essential services or activities are allowed. In order to be legally protected in Brazil, the work stoppage must follow a series of procedural requirements, including that efforts to negotiate an agreement first be exhausted, that union members vote in favor of the strike at a union general assembly, and that forty-eight hours' notice be given to the employer.

Brazilian law also prohibits the termination of any employment contract during the strike. Replacement workers may be hired only in exceptional cases, such as an unacceptable refusal of unionized workers to attend to the maintenance of the equipment, devices, and services necessary to prevent any loss by the employer during or at the end of the strike or the prolongation of the strike after a new collective agreement has been reached by the parties or imposed by the labor courts. While wildcat strikes are considered illegal in

Brazil, there is some debate about the legality of the union strategies of work to rule, sit-ins, secondary boycotts, solidarity, and political strikes, since the law does not expressly prohibit them.

Unlike these other countries, Chinese labor law does not currently recognize a worker's right to strike or engage in other forms of economic action. In this respect, collective labor law in China reflects the government's policy goal of minimizing social unrest. The lack of legal protection obviously does not mean that strikes and other protest actions do not occur in China but rather that they lack explicit support in labor law and leave workers vulnerable to legal consequences for engaging in these actions.

INDIVIDUAL LABOR LAW

Individual labor law includes the general set of laws that govern individual employment contracts and terms and conditions of work. Common subjects covered by a country's individual labor laws include minimum wages, hours of work and overtime pay, unfair dismissal, employment discrimination, and workplace health and safety.

Individual labor laws can serve as substitutes for or complements to the employment protections negotiated by unions in collective negotiations. In some areas, individual labor laws may serve as substitutes by establishing basic terms and conditions of employment that unions would otherwise have to use bargaining power to negotiate. For example, if a country guarantees all workers overtime pay at a time-and-a-half rate, then unions do not need to expend scarce bargaining power to obtain this at the negotiating table. However, there is also a danger to unions in that employees may come to view individual labor laws as a substitute for unions to such a degree that they no longer view union membership and collective negotiations as necessary for providing adequate workplace rights and protections. It is noteworthy that in many advanced industrialized countries, rates of union membership and collective negotiations have declined in recent decades over the same period that individual labor laws have expanded.⁴ On the other hand, individual labor laws can also operate as complements to the protections negotiated by labor unions. Unions can negotiate provisions in collective agreements that supplement the provisions of individual labor laws. For example, a union might negotiate supplements to public unemployment insurance or retirement systems or bargain for protections against categories of employment discrimination that are not covered by individual labor law statutes. Research has also found that unions help facilitate the ability of employees to take advantage of the protections of individual labor law through mechanisms such as providing information about

the provisions of these laws and protecting employees from retaliation by management when they seek to enforce the provisions of laws.⁵

As with collective labor law, individual labor law has both constitutive and power-broker functions. In its constitutive function, individual labor law shapes the individual employment contract by answering questions such as who has formal status as an employee. In its power-broker function, individual labor law influences the relative bargaining power between individual employees and employers and affects the terms and conditions of employment.

The Constitutive Function of Individual Labor Law

Who has formal status as an employee? For those who work in the formal sector of the economy in standard long-term employment relationships, this may seem like a simple question. These individuals clearly have status as employees and a well-defined employment relationship with a specific employer. However, for workers in the informal sector of the economy and for those who lack the conditions of a standard employment relationship, the issue of who labor law considers an employee and thereby receives the benefits of legal protections is a central concern. In its constitutive function, individual labor law addresses the issue of who is included in the benefits of formal employment status and, conversely, who is excluded from legal protections and benefits.

Determination of who is an employee and who is an independent contractor can be a contentious issue. Resolving disputes over these issues is an important function of labor courts in many countries. Box 3.3 provides an example of how a Brazilian labor court resolved this issue in one case.

BOX 3.3

Brazilian Labor Court Employment Status Decision

REGIONAL LABOR COURT OF THE SECOND REGION

CASE NUMBER 0000454-91.2012.5.02.0029

APPEAL

Appellant: Drogaria Onofre Ltda.

Appellee: Leo Hashimoto

Summary of the case: A worker, whom the defendant defined as an independent contractor, filed a lawsuit in order to be recognized as an

employee, a status that would enable him to claim all the labor law protections for the employment relationship. The lower court granted him employee status and ordered the employer to pay some employment rights and social benefits guaranteed by law to all employees, such as an extra month's wages each year. The defendant appealed to the regional labor court in an attempt to overturn the decision that considered the plaintiff an employee.

Discussion of the case: The defendant had the burden of proving that the plaintiff was an independent contractor, thus denying the existence of the employment relationship. However, the defendant was not able to satisfactorily fulfill the requirements of this burden. There was no evidence to corroborate the defense theory that the plaintiff had pursued his activities as an independent contractor, since the alleged autonomy of the plaintiff or the substitutability of the service delivery could not be demonstrated. In Brazilian law, specifically Article 3 of the Consolidation of Labor Laws, an individual who personally works for another individual or entity on a regular basis and is subject to the direct orders and supervision of that individual or entity is considered an employee.

The statements of the witnesses the plaintiff and the defendant brought to court were in agreement that the plaintiff had never been replaced by others. In addition, the work routines witnesses described fit that of an employee, not an autonomous independent contractor. A witness invited by the plaintiff declared that the plaintiff "worked on-site daily, from Monday to Friday; that the witness on average would work from 8:30 AM to 6:30 PM; that the plaintiff used to arrive before the witness and when the witness would leave, the plaintiff would remain on-site working."

Another witness stated that "the [plaintiff] reported to the owners of the company," which denotes legal subordination, the main characteristic of the employment relationship, since the defendant could direct and supervise the working hours and tasks performed by the plaintiff. This witness also described the absence of flexibility and autonomy of the worker with regard to his workday.

The payment element of the employee relationship was satisfactorily proved, given that the defendant stated that the plaintiff was paid for his services.

Finally, with respect to the continuity element, even though the witnesses disagreed on the number of days the plaintiff worked per

week—some said five, some said four days—that does not affect the factual and legal test for continuity. The continuity element requires only that the work performed is not sporadic. Disruption of work activities does not matter, provided there is some permanence in the delivery of service.

In this context, given the fact that the plaintiff's work situation matched the factual and legal elements contained in Article 3 of the Consolidation of Labor Laws, which characterizes the employment relationship, the original decision that the plaintiff was an employee was upheld.

Source: Based on Tribunal Regional do Trabalho da 2ª Região, 10ª Turma, Recurso Ordinário, Processo Nº 0000454-91.2012.5.02.0029, Relator: Des. Marta Casadei Momezzo, October 7, 2013.

Many emerging countries have much larger informal economies than is typical in advanced industrialized countries. Status differences between workers are a crucial feature of the operation of labor markets in these countries. While individual labor laws provide relatively generous protections and benefits in many Latin American countries, these countries are also characterized by relatively large informal economies that sometimes employ as much as half of the labor force. For example, an estimated 42.2 percent of the workers in Brazil are employed in the informal sector, and these workers lack the protections of labor laws.⁶

Different types of status differentials divide the work forces of other countries, and efforts to address these problems in labor law have been mixed. Historically, South Africa suffered under the explicit legal racism of the apartheid system, which categorized workers' labor law rights according to their racial group. After the end of apartheid and the emergence of multiracial democracy in South Africa, these formal status differentials in the law were eliminated. However, South Africa continues to struggle with the legacy of divisions in its society, and the progressive elimination of racial inequalities is a key concern of individual labor laws in that country. India has struggled with the issue of how to eliminate caste-based status differentials in society and the economy. The Indian constitution includes explicit prohibitions against discrimination based on caste; the more common prohibitions against discrimination based on race, sex, and religion; and a prohibition of the concept of "untouchability," which affected those in the lowest rung of the caste system. However, discrimination based on caste lingers on, particularly in the

large rural population, and efforts to eliminate it have included court rulings that provide remedies in this area.⁷

In China, one of the most important status differentials in employment is between local workers in cities and migrant workers from rural areas. Household registration, the attachment of an individual to a particular locale, is a key concept in Chinese law. A worker's entitlement to social benefits derives from the region in which he or she is registered rather than where he or she works. This is causing major problems for the large population of Chinese workers who have migrated from rural areas to the cities in search of employment in the factories of the booming urban economy. Migrant workers who are employed in urban areas lack legal entitlement to social benefits from the cities where they work.

The Power-Broker Function of Individual Labor Law

In its power-broker function, individual labor law sets or constrains terms and conditions of employment and influences the determination of the contents of the individual employment contract. It does these things both directly by setting standard or minimum terms for employment contracts and indirectly by regulating the process through which employment contracts are negotiated.

One of the most common components of individual labor law are laws that establish minimum or standard wage levels. Most nations enact a law that sets a general minimum wage below which the hourly or daily wage is not supposed to fall. Additional elements of minimum wage laws sometimes include a lower minimum wage for younger workers, a provision that is designed to promote the employment of youth, and varying minimum wages for different industries. An important recent variant on the minimum wage concept is the idea of a living wage, the establishment of a minimum wage level that is sufficient to provide for the basic needs of a worker and his or her family. Supporters of the living wage idea argue that many existing minimum wages are too low to provide for the basic needs of life. Although living wage principles have not yet been incorporated in many laws, they have been adopted in some corporate codes of conduct and are included in international labor standards proposals.

Another important area of minimum standards enactment is the regulation of hours of work. Some countries address this topic by enacting maximum daily or weekly hours of work. For example, in China, individual labor law establishes a maximum number of hours that an employee can be required to work in week, although enforcement of this requirement is very weak.

Others, such as the United States, do not limit maximum hours but instead create incentives for limiting hours by requiring overtime pay for hours worked beyond a certain daily or weekly amount. (For example, workers must be paid at one-and-a-half times the usual rate for hours worked in excess of forty hours in a week in the United States.) A closely related component of individual employment law is the establishment of basic holiday and vacation entitlements. Many countries require employers to observe national holidays; this may require them to close their businesses and provide time off work for employees. Depending on the country, there may also be separate or overlapping entitlements to time off work for annual vacations.

So far what we have discussed are specific terms that are required in employment contracts. These enhance the bargaining power of employees since they do not need to be negotiated separately. Individual labor law can also structure how the employer and employee interact throughout the employment relationship. The most prominent example of this is employment discrimination law. These laws prohibit the consideration of factors such as race, religion, sex, and national origin in any employment decisions, such as hiring, compensation, promotion, and firing decisions. In some countries this list of prohibited grounds includes other factors such as age, disability, sexual orientation, family status, class, and caste. Employment discrimination laws can have a broad influence because they prohibit consideration of these criteria throughout the formation, conduct, and termination of the employment relationship. This includes prohibiting the mistreatment of employees based on specified grounds and provides the basis for prohibiting sexual harassment in the workplace.

For example, Brazilian law has several protections against employment discrimination. Brazil's constitution includes a "prohibition of any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, color or marital status" (Article 7, XXX) and prohibits discrimination due to disabilities or between classes of workers. Brazilian labor law also prohibits reference to gender, age, color, or family status in job postings and the use of any of these elements or pregnancy status in decisions about hiring, wages, promotions, or dismissals. Moreover, other laws make it a crime to create obstacles to employment because of disabilities and obstacles to hiring, promotion, and wage increases because of race or color. It is also illegal to demand a pregnancy test from an employee. Sexual harassment of subordinates by managers is also considered a crime under the Brazilian Criminal Code. Brazilian law also provides monetary compensation, the possibility of reinstatement, and punitive damages to employees who are victims of discrimination. Even though all these protections exist and legal quota policies

for employees with disabilities are in place, these policies suffer from a lack of effective enforcement.

Another important category of legal protections in the workplace is regulations related to workplace safety and health. These laws are part of individual labor law protections that all employees are entitled to, but they also have a collective element in that the regulations are often enforced at the workplace level. Employees will have an obvious direct interest in having a safe and healthy workplace. Workplace health and safety laws establish minimum requirements that all workplaces must meet. They also provide protections for employees who raise health and safety concerns; in this sense, they increase the bargaining power of employees who attempt to ensure the safety of their own workplaces. As noted earlier, this is an area where research has found that union representation increases the effectiveness of the health and safety provisions of individual labor law.⁸

LABOR LAW ENFORCEMENT

An old legal maxim states that it is a vain thing to imagine a right without a remedy. This principle certainly holds true for labor law. The labor laws of many countries include relatively strong formal protections of employees but relatively weak enforcement mechanisms, resulting in low levels of compliance. The United States is a prime example of this problem. Extensive research has documented how weak enforcement mechanisms have undermined the legal protections of the right to organize and contributed to the declining membership of American labor unions.⁹ Weak enforcement mechanisms are also a problem for collective and individual labor law in many emerging countries.

PUBLIC POLICY OBJECTIVES OF LABOR LAW

One of the most important decisions nations make is how freedom of association and collective negotiations fit into their political system. One view that is deeply embedded in many Western governments is that the ability of individuals and groups to freely express and negotiate their rights and interests at work is a core feature that is essential to a democratic society. Two U.S. legal scholars put it this way: "One way of defining a free society may indeed be: a society the members of which are free to assert their individual interests collectively."¹⁰

One of the most famous and important examples of this function of an independent labor movement was the role of the Solidarity trade union in opposing the Communist regime in Poland in the 1970s and 1980s. The development of this independent labor union and its opposition to the

Communist government played a central role in the demise of Communist rule in Poland and throughout the rest of Eastern Europe.

Yet not all governments include the rights to freedom of association and collective bargaining in their labor policies (or their economic and social policies). Approaches range from an outright ban on unions and collective actions (e.g., in various countries in the Middle East) to government-controlled unions (as in China) to allowing some sectors or occupations to unionize (e.g., outlawing collective actions for government employees or, as in Bangladesh, for employees in key export sectors) to expansive rights of association (as provided, for example, in the Canadian constitution). As we will note frequently in later chapters, outright bans or suppressions of freedom of association and collective actions at work become harder to maintain and justify as a nation's economy develops and it becomes active in global trade.

A similar range of choices can be observed across nations about which, if any, groups of employees have the right to strike, how strong the protections are for those who exercise this right, and what, if any, limits are put on strike activity.

Some Western scholars have written eloquently about the importance of the right to strike as a logical extension of freedom of association. Milton Konvitz stated this well in an article that explored the philosophical bases for the right to strike:

Without the power to affect the course of events, a person or a group lacks the responsibility to reach decisions. Power is the source of responsibility. Without the right to strike, unions will lack the foundation for voluntary negotiation and agreement. If a free labor agreement—free collective bargaining in a free enterprise system—is in the public interest, so is the right to strike, which makes the free labor agreement possible.¹¹

Few, if any, countries allow an unlimited right to strike. Some ban strikes of public employees, especially employees who provide essential services, such as police, firefighters, military, and employees engaged in national security work or in situations where a strike might impose significant threats to the safety, health, or economic well-being of the nation. Others require unions and employers to use various dispute resolution procedures before they can legally strike. We will discuss these procedures in chapter 7.

Thus, we must be careful not to view the rights to form unions and to strike as unconditional. The exercise of these rights can, of course, conflict with other objectives of the larger society, including the public's interest in industrial peace and social stability.

Even though society has an interest in limiting conflicts that create social costs and social inconvenience, the mere existence of public inconvenience is not sufficient grounds to limit labor and management's right to negotiate and labor's right to engage in a strike if they cannot agree.

Labor relations scholars have offered three additional justifications for promoting and protecting collective negotiations. First, it is often argued that employees and employers have a better understanding of their needs, priorities, and problems than outsiders do. This suggests that more effective solutions to problems or compromises that are more workable and acceptable to the parties will be found in a bargaining process than in situations where third parties constrain the participants from pursuing their own interests. Second, and perhaps more important, the parties may lose the capability to resolve their own problems once they begin to rely on outsiders for resolving their differences. The notion here is that effective problem resolution is a dynamic process that requires continual contact between the parties in dispute. Third, there is good reason to believe that when employees feel as though they have a say in the determination of their working conditions, morale is raised and productivity is increased.

Summary

This chapter described how the legal environment shapes the conduct of labor relations and influences the relative bargaining power of the parties. While labor law is still primarily national in focus, international labor law has become more important in recent decades. The International Labour Organization has helped spread the principle that core labor standards exist that are internationally recognized and should be part of each country's national labor laws. International trade agreements and, in recent decades, international financial institutions have played increasingly important roles in pressuring national governments to modify labor law. The media awareness that accompanies globalization also puts national labor laws in the global spotlight and thereby pressures countries that want to participate in global trade to meet standards of internationally accepted labor law and human rights.

The laws regulating labor relations include both collective labor law, which governs unions and collective negotiations, and individual labor law, which governs individual employment contracts and general workplace rights and protections. In each of these areas, labor law has both a constitutive function, determining how the relationship between the parties is structured, and a power-broker function, influencing the relative bargaining power between

the parties. In the final chapter of this book we will discuss a third function that some argue should become a central part of national labor policy—one that seeks to improve the quality of labor relations in ways that contribute to economic growth and development and improvements in the standard of living.

Discussion Questions

1. Describe the ILO's guiding principles and its Declaration on Fundamental Rights and Principles of Work. Discuss how the labor laws of different countries do or do not comply with these principles.
2. Collective labor law serves both constitutive and power-broker functions. Discuss how labor law can support or hinder union and labor relations activity through these functions.
3. In many countries the number and scope of individual labor laws is expanding. Do you think individual labor law supports or substitutes for the activities of unions and collective negotiations?
4. Discuss the public policy purposes of labor law. What are the purposes of labor law in your own country? Does this system of labor law successfully further these objectives?

Related Web Sites

Better Work factory monitoring program: <http://www.betterwork.org>

International Labour Organization: <http://www.ilo.org>

NATLEX (national labor law database): http://www.ilo.org/dyn/natlex/natlex_browse.home

NORMLEX (information about international labor standards: <http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:1:0::NO::>

Suggested Supplemental Readings

Atleson, James, Lance Compa, Kerry Rittich, Calvin Sharpe, and Marley Weiss. *International Labor Law: Cases and Materials on Workers' Rights in the Global Economy*. St. Paul, Minn.: Thomson/West, 2008.

Blanpain, Roger, Susan Bison-Rapp, William R. Corbett, Hilary K. Josephs, and Michael J. Zimmer. *The Global Workplace: International and Comparative Employment Law*. New York: Wolters Kluwer, 2012.

Comparative Labor Law and Labor Policy Journal, published by the International Society for Labor Law and Social Security.

Notes

1. Sarah H. Cleveland, "Why International Labor Standards?" in *International Labor Standards: Globalization, Trade, and Public Policy*, ed. Robert J. Flanagan and William B. Gould IV (Redwood City, Calif.: Stanford University Press, 2003), 129.
2. *Health Services and Support—Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391.
3. Katherine Van Wezel Stone, "Labor and the Corporate Structure: Changing Conceptions and Emerging Possibilities," *University of Chicago Law Review* 55 (1988): 73.
4. Some have argued that this change represents a general shift toward an era of individual employment rights in labor relations. See Michael Piore and Sean Safford, "Changing Regimes of Workplace Governance, Shifting Axes of Social Mobilization and the Challenge to Industrial Relations Theory," *Industrial Relations* 54, no. 3 (2006): 299–325; and Alexander Colvin, "American Workplace Dispute Resolution in the Individual Rights Era," *International Journal of Human Resource Management* 23, no. 3 (2012): 459–475.
5. See, for example, David Weil, "Are Mandated Health and Safety Committees Supplement or Substitutes for Labor Unions?" *Industrial and Labor Relations Review* 52, no. 3 (1999): 339–360; and John W. Budd and Brian P. McCall, "The Effect of Unions on the Receipt of Unemployment Benefits," *Industrial and Labor Relations Review* 50, no. 3 (1997): 478–492.
6. This estimate is based on: "Statistical Update on Employment in the Informal Economy," International Labour Organisation (ILO) – Department of Statistics, June 2012.
7. The Indian Supreme Court has developed an important area of public interest litigation decisions, similar to the role of the U.S. Supreme Court in this respect. For example, in the case of *Bandhua Mukti Morcha v. Union of India* 1984 AIR 802, 1984 SCC(3) 161, the Supreme Court ordered a series of strong affirmative remedies to address the problem of bonded (forced) labor in the state of Haryana in a case brought by an NGO that advocated on behalf of bonded laborers.
8. David Weil, "Enforcing OSHA: The Role of Labor Unions," *Industrial Relations* 30, no. 1 (1991): 20–36.
9. See, for example, Paul Weiler, *Governing the Workplace* (Cambridge, Mass.: Harvard University Press, 1990); and John-Paul Ferguson, "Eyes of the Needle: A Sequential Model of Union Organizing," *Industrial and Labor Relations Review* 62, no. 1 (2008): 3–21.
10. Walter Oberer and Kurt Hanslowe, *Labor Law: Collective Bargaining in a Free Society* (St. Paul, Minn.: West Publishing, 1972), 42.
11. Milton R. Konvitz, "An Empirical Theory of the Labor Movement: W. Stanley Jevons," *Philosophical Review* 62 (January 1938): 75.

4 The Role of the Economic, Technological, and Demographic Environments

THE IMPORTANCE OF BARGAINING POWER

This chapter examines how various forces in the environment influence labor relations in emerging countries. We focus in particular on how factors in the economic, technological, and demographic environments influence the bargaining power of both labor and management. In doing so we are moving downward in our three-tiered framework by examining how external environmental factors influence the functional level of labor relations.

Bargaining power is a central concept in labor relations because it is the key determinant of bargaining outcomes related to wages and other work conditions. The influence of power is most evident in settings where employees are represented by unions because unions exercise their power through the formal mechanism of negotiations. And where there are negotiations, as we will discuss, there is always the threat of strike action (or strike-like actions) whether or not strikes are legal. The legality of strikes varies across countries and often also across different types of employees and employment relationships. A union will be better able to gain a high wage and other favorable contract terms when it has relatively high bargaining power. Often something in the environment determines whether a union has a lot of bargaining power in one situation and little power in another. Thus, we start this chapter with a discussion of how the environment influences bargaining power and the bargaining process. The text will show how a low unemployment rate (an aspect of the economic environment), for example, strengthens workers' ability to hold out when they are on strike and thereby gives a union greater bargaining power.

An examination of bargaining power in unionized settings will also clarify what factors determine wages and working conditions where employees are not represented by unions and even where the employment relationship is not formally structured. (As discussed in chapter 6, unstructured employment relationships exist in what are labeled informal employment systems.) Even in the absence of unions and collective negotiations, some types and sources of bargaining power exist.

A CONCEPTUAL FRAMEWORK FOR ANALYZING THE ENVIRONMENT

This book uses as a framework an extension of the model proposed by John Dunlop. Dunlop theorized that three main influences shape the labor relations environment: (1) the **economic context**, (2) the **technological context**, and (3) the **locus of power** in the larger society.¹ This book also considers the influence of the **demographic context**. The underlying theme is that labor and management can influence the environment and that the environment also influences them.

The external environment both incentivizes and constrains labor and management in their efforts to meet their goals. Thus, it is important to consider how the environment shapes the power of both parties. The parties involved in the employment relationship also seek to mold their environment to better serve their needs. Thus, environmental influences are not entirely outside human control.

For example, in recent years many employers have created global supply chains that typically involve increased outsourcing of production and use labor in a variety of countries and regions. They do so in large part to take advantage of a more favorable economic environment (such as lower labor costs or greater availability of resources). Many firms also have expanded internationally by investing abroad, forming partnerships with suppliers, or entering other types of joint ventures. These firms have directly shaped the economic environment for their labor relations.

The ability of the parties involved to influence their environment is even more pronounced in the case of public policy because both labor and management work to influence the public policies that regulate their own behaviors. Thus, in the long run, the environment is to some extent influenced by the both parties involved in employment relationships. Only in the short run should the environment be viewed as external and relatively fixed.

BARGAINING POWER DEFINED

The environment is particularly influential through the effects it exerts on the bargaining power of labor and management. Three aspects of **bargaining power** come into play: the total power, the relative power, and the political power of both labor and management. **Total power** concerns the total profits that are available to labor and management. The greater the total power is, the more profit is available for labor and management to divide up. Both labor and management prefer situations with greater total power. **Relative power** has to do with the relative strength of labor and management; in other words, the ability of either side to gain a larger share of a given amount of profit. Here the interests of labor and management conflict. **Political power** concerns the ability of labor or management to influence government actions—either the public policies governments adopt that influence labor relations or the actions governments take as an employer.

Determinants of the Total Power of Labor and Management

The total power of management is heavily influenced by two factors—the degree of competition the employer faces and the state of the economy. The degree of competition means the amount of competition the employer faces from both domestic and international competitors. Firms that face few competitors and thereby have market power earn greater profits and thus have more resources for labor and management to divide up. In the most concentrated industries, a firm can become a monopoly and earn monopoly profits. In this case the total power of labor and management is at its maximum and bargaining is made easier by the fact that both high wages and high profits can be funded from the firm's monopoly profits.

The state of the economy influences total power by affecting the level of demand (i.e., sales) and profits. The interests of labor and management with regard to total power are similar as both sides prefer less competition and a strong economy.

Determinants of the Relative Bargaining Power of Labor and Management

The relative bargaining power a union has is heavily influenced by the ability of the union and its members to withdraw their labor, usually (though not always) through a strike. Workers are more likely to win higher wages and other gains when they are willing and able to sustain a strike. Moreover, strikes are more likely to succeed if the cost of the strike to the employer is

significant. Thus, the employer's relative bargaining power is heavily influenced by his or her ability to withstand a strike. The simplest measure of relative bargaining power is the amount of strike leverage each party holds.

Workers can also withdraw their labor through more informal actions, such as working to rule (following rules strictly rather than pursuing effective work practices), enacting a strategy called the "blue flu" (large-scale worker absenteeism), and other means of slowing production. The discussion that follows focuses on the effects of strikes that involve workers who fully withdraw their labor. However, many of the points raised carry over to less extreme forms of labor withdrawal.

How Strike Leverage Influences Relative Bargaining Power The relative degree to which workers and the employer are willing and able to sustain a strike is their **strike leverage**. To measure each party's strike leverage, one needs to know what costs a strike would impose on each party and what alternative income sources are available to each party to offset any income losses induced by a strike. The discussions of the environmental contexts that follow help us understand what determines strike leverage.

THE ECONOMIC CONTEXT

Economic factors significantly influence both total and relative bargaining power. Economic factors can be separated into those that operate at the macrolevel (economy-wide) and those that operate at the microlevel (relevant only to a specific bargaining relationship).

Microeconomic Influences on Total Bargaining Power

Microeconomic factors influence the total bargaining power of a particular employer or union through the effects of competitive conditions on a firm. The greater the market power of a firm (i.e., the less competition it faces in the markets in which it competes) the greater will be its profits. With greater profits, there are more resources for the parties to divide based on their relative power. A firm's market power is affected by the degree of domestic and international competition it faces. With regard to total bargaining power, labor and management have common interests; both sides prefer that the firm have market power. (This is true if other factors are held constant, especially factors that affect the relative power of labor and management.) The existence of these potential common interests explains why unions sometimes join with the management of a firm to push for government regulations that enhance the market power of the firm. For example, frequently unions representing

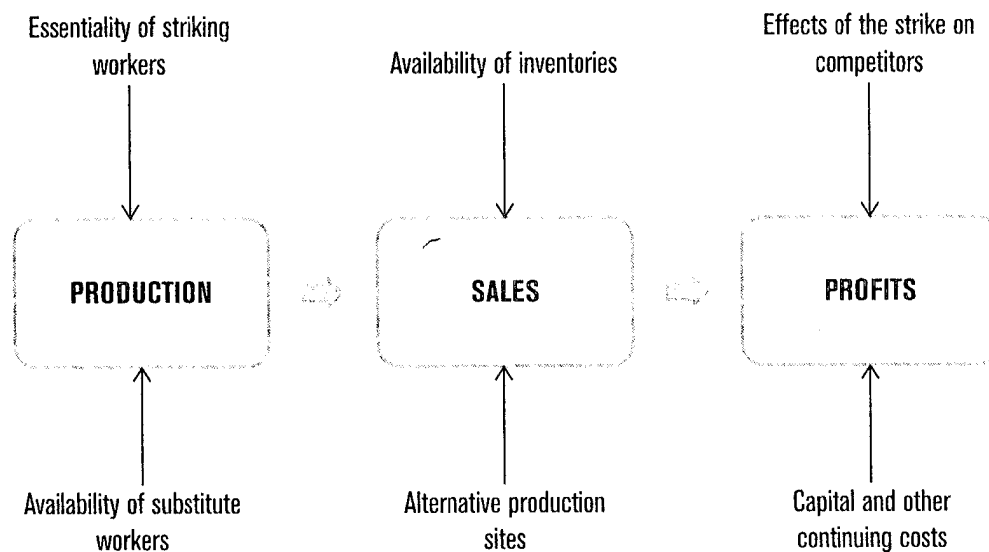


Figure 4.1. Determinants of management's strike leverage

steel workers join with steel companies to lobby their national government to restrict the importation of foreign steel and impose higher tariffs on those imports.

Microeconomic Influences on Relative Bargaining Power

Microeconomic factors influence the relative bargaining power of labor and management through effects on the strike leverage of the parties and the elasticity of demand for labor (the wage-employment trade-off).

Management's Strike Leverage The more an employer is willing and able to sustain a strike, the more likely the work force will be to settle a strike before achieving all of the union's goals. The strike leverage of employees derives from the strike's influence on firm profits. The greater the profits lost by the firm, the more ready the firm will be to give in to labor's demands. During a strike, a firm's profits are, in turn, shaped by the strike's effects on production and sales. Figure 4.1 diagrams the principal determinants of an employer's strike leverage. These include the ability of workers to harm production, sales, and profits and the ability of management to find alternative means to maintain production, sales, and profits.

The effects of a strike on production: Once a strike has begun, the first indicator of workers' bargaining power is the degree to which the strike has impaired production and/or service. Workers who succeed in actually halting production because there are no readily available labor substitutes—supervisors, employees from another plant, strikebreakers, or automated equipment—have substantial strike leverage and bargaining power. In other words, these

workers are essential to the production process. Craft workers, who are typically very difficult to replace because of their skills, often have significant strike leverage. For example, the high skill levels of electricians and repair machinists help explain why they earn so much more than production workers in the auto, steel, and textile industries.

The effects of a strike on sales: The power of a striking work group is tempered, however, if the halt in production does not lead to a reduction in sales. Employers can sever or at least weaken the link between production and sales if inventories are high or if alternative production sites can be used to produce what normally would be produced at the site where the strike is taking place. Whether alternative production is available is influenced by the bargaining structure (whether other sites are covered by the same union or contract) and by the extent to which other workers at other sites join or support the strike.

The effects of a strike on profits: Even if production and sales are stopped by a strike, the firm may not necessarily experience a serious decline in profits. For example, firms with relatively low ongoing capital or interest expenses will have an easier time withstanding a loss of income caused by a strike. Also, firms facing a strike that also shuts down all the competitors' operations have an easier time withstanding a strike because sales and profits may be largely postponed rather than permanently lost. Firms that have substantial savings or alternative income sources (such as from other lines of business) can more easily absorb the costs of a strike. Later sections of this chapter discuss how the recent growth in employers' nonunion operations has improved their strike leverage through this channel.

The Union's Strike Leverage Consider the other side—the union's strike leverage. A union's strike leverage is determined by the ability and willingness of the work force to stay out on strike. The longer workers are willing and able to stay on strike, the greater the bargaining power the union has and the more likely it is to win favorable employment terms from an employer, other factors being constant.

Alternative sources of worker income: Workers' willingness to stay out on strike is heavily influenced by the degree to which alternative sources of income are available to them. Obviously, workers in unions that offer ample strike benefits can afford to stay out on strike longer than those in other unions. Likewise, when striking workers can more readily find temporary or part-time work that supplements union strike benefits or when they have substantial savings or assets, they are more able to sustain a strike action.

Worker solidarity: Another factor that influences workers' strike leverage beyond the microeconomic environment is the attitude of union members.

Workers' feelings of solidarity with one another influence whether picket lines will be honored, and any pent-up frustrations will influence workers' willingness to stay out on strike. In brief, strikes are highly emotional undertakings and they depend on numerous factors, not simply the microeconomic environment.

The Wage-Employment Trade-Off

Strike leverage determines whether workers are able to press for a higher wage settlement or other contractual provisions. But higher wages often bring cuts in employment, and thus unions may in some cases choose not to raise wages as much as they could. This is called the **wage-employment trade-off**.

The key point is that wage increases can bring employment effects as well as direct wage gains. Unions sometimes moderate their wage demands because of employment effects. For example, management often threatens unionized apparel workers with the claim that if they succeed at pushing wages significantly higher, the company will shift its production to other countries. In recognition of this threat, apparel unions in various countries have at times moderated their wage demands. This trade-off between wages and employment is thus another important microeconomic influence on bargaining power and outcomes.

Marshall's Four Basic Conditions and How Each Affects the Wage-Employment Trade-Off Unions are more likely to consider the employment effects that result from a wage increase when these effects are greater. Why a wage increase leads to large reductions in employment in one situation and to small reductions in another situation is explained by **Marshall's conditions**. In his seminal analysis of the relative bargaining power of labor and management, Alfred Marshall argued that unions are most powerful when the **demand for labor** is highly **inelastic**—that is, when increases in wages will not result in significant reductions in employment in the unionized sector.² Marshall further proposed four basic conditions under which the demand for union labor would be inelastic: (1) when labor cannot be easily replaced in the production process by other workers or machines; (2) when the demand for the final product is price inelastic (that is, demand is not sensitive to changes in the price of the product); (3) when the supply of nonlabor factors of production is price inelastic; and (4) when the ratio of labor costs to total costs is small.³ Below we address each of these conditions in turn.

The difficulty of replacing workers: The first condition, the degree to which workers are difficult to replace, depends on the production technology. The more

difficult it is to replace workers with machines or other workers, the less apt the workers will be to fear that they will be displaced.

Unions can try to limit the ease with which management can introduce new technology by raising the cost of substituting other factors of production for union labor, but that strategy presents a dilemma. Collectively bargained constraints on technological change may keep unions from losing jobs, but slowing that rate of technological change may also constrain the rate of productivity growth, limiting the long-run potential for wage increases.

The demand for the product: Workers face less of an employment decline from raising wages if the demand for the product produced by these workers is not sensitive to the price of the product. This sensitivity (what economists call the *elasticity of product demand*) is a second key condition Marshall identified. This condition is somewhat different from the other three in that it is influenced by consumer preferences and not by the actions of the firm or the union. The elasticity of product demand depends on the willingness of consumers to substitute other products.

A modern-day illustration of this principle is the threat to union power raised by less expensive foreign imports that become more attractive to domestic consumers as wages and prices in the unionized domestic economy rise. The lower prices of goods produced in the auto, apparel, steel, and electrical appliance industries in many emerging countries have put pressure on producers in more industrialized countries and thereby illustrate this aspect of Marshall's conditions. Many unions try to influence consumer actions through "Buy Union" campaigns and counteract the pressure of lower priced goods.

The supply of other inputs: Marshall's third condition is the responsiveness of the price of other inputs in the production process to the demand for those inputs (what economists call the *elasticity of supply of other factors of production*). When an employer turns to alternative inputs such as machines or other factors of production in order to economize on the cost of labor, unions will be more able to push up wages (with less fear of employment cutbacks) if the price of those other inputs increases as their use increases. Thus, the more inelastic the supply curve for alternative inputs is, the greater is union power. Whereas Marshall's first condition concerns the degree to which it is *technologically feasible* to substitute other factors of production for unionized labor, his third condition concerns the costs to the firm of increasing its use of alternative factors.

Labor's share of total costs: Marshall's fourth condition is that unions are more powerful when labor costs represent only a small proportion of total costs. This condition has often been restated as "the importance of being unimportant." An employer is less likely to resist union pressure if a given wage

increase affects only a very small proportion of the total cost of the product. Thus, a small craft unit, such as the skilled maintenance employees in a plant, is often less likely to meet management resistance to its wage demands than would a broad bargaining unit that represents all production and maintenance employees.⁴

Bargaining in the public sector illustrates the difficulties unions experience when labor costs represent a large proportion of total production costs. Labor costs for governments often run between 60 and 70 percent of the budget, and for some occupations such as firefighters these costs run as high as 90 percent of the budget. When government officials seek to control total budget costs, they take a very hard line in collective negotiations because the wages and salaries of public employees represent their largest controllable cost.

All of Marshall's conditions are based on the assumption that workers and unions are concerned about the employment effects of wage increases. If union members are willing to accept a slow rate of growth in employment or a decline in the number of union jobs as a trade-off for higher wages, the sources of power discussed above are less important. The extent to which unions factor in the wage-employment trade-off in their negotiations depends on factors such as the political dynamics in the respective union and whether or not macroeconomic conditions provide good alternatives in the labor market. If favorable labor market alternatives prevail (i.e., a low unemployment rate and strong economic growth), then workers and their union are likely to be less concerned with potential employment reductions that would follow wage increases in a particular negotiation.

Macroeconomic Influences on Total and Relative Bargaining Power

Economists refer to unemployment and the growth in national productivity as macroeconomic factors. The overall state of the economy affects bargaining power through a variety of channels. A firm is likely to be earning higher profits (greater total power) when the economy is strong and demand is growing.

A union's strike leverage depends in part on the availability of jobs, for both the striking workers and their spouses or other family members who might help support the strikers. The higher the unemployment rate, the less likely it is that striking workers or family members will be to find substitute employment and the more likely it is that other family wage earners will be out of work. Thus, unions generally gain strike leverage during the upswing of a business cycle, when the unemployment rate declines. Conversely, the relative power of unions declines during periods of rising unemployment.

The factors at work here include those discussed earlier regarding striking workers' needs for alternative income sources and employers' vulnerability to strikes when product demand is high. During periods of slack demand employers may, in fact, welcome a strike because they can lower their inventories during the strike and use the strike as a substitute for layoffs.

POLITICAL POWER

The power of labor and management is influenced by their respective political power through a variety of channels. As mentioned above, one example of how politics matters is through the influence of public policies on the macroeconomic policies that affect the total and relative power of labor and management. Yet, as discussed in chapters 2 and 3, the legal system and a number of public policies significantly shape labor relations. So the political power of labor and management matters because that power influences the laws and public policies that regulate labor relations. In many emerging countries, public policies also directly affect government regulation of pay and social welfare policies, such as pensions, vacations, and health care. This provides another channel through which political power affects the bargaining power of labor and management. In addition, as will be discussed more fully in chapter 10, in emerging countries governments are often significant employers. Political power thus also influences employment terms and conditions through its effects on the role governments play as an employer.

THE ECONOMIC ENVIRONMENT

The power and influence that labor, management, governments, and other actors have in labor relations is shaped by the economic environment in which those parties operate. In the sections that follow in this chapter, we examine the key components of the economic environment in emerging countries, including the role of demographic factors such as population and urbanization trends, child labor, and educational attainment.

Size and Quality of the Labor Force

A key factor that will affect a country's labor relations system is the size of the work force. Economists point out that a larger work force can contribute to economic growth in the long run by increasing the supply of labor. At the same time, an increase in the supply of labor can lead to downward pressures on wages in the short run because it often takes time for the effects of an increase in the labor supply to produce economic growth and the increases in the demand for labor that lead to wage growth over the longer term.

The supply of labor, which has both quantity and quality dimensions, is the key determinant of the size of the work force. The quantity of labor in the labor market is influenced by the size of the working population, by the extent of rural-to-urban migration (which is commonly linked to a shift away from farm work), and by the amount of child labor. The quality of labor is influenced by the educational attainment of the work force. We discuss each of these key components below and highlight several policy issues related to labor supply that have recently surfaced in emerging countries, such as the discrimination urban migrants face and the labor market difficulties college graduates face.

Population Trends

In many emerging countries, the rate of population growth is faster than in most advanced industrialized countries, and this has contributed to growth in the labor forces of those countries. More than three-quarters of the world's people now live in emerging countries.

The average life span remains about twelve years greater in the advanced industrialized countries as compared to emerging countries, although this gap has been sharply reduced in recent decades. In 1950, life expectancy at birth for people in emerging countries averaged 35 to 40 years, compared with 62 to 65 years in advanced industrialized countries. However, average life expectancy has been increasing in many emerging countries. In East Asia and Latin America, for example, life expectancies are now an impressive 74 and 73 years, respectively.

Because of high birth rates, populations are relatively youthful in emerging countries. Children under the age of 15 constitute more than 30 percent of the total population of emerging countries, but this group constitutes just 17 percent of the total population in advanced industrialized countries. In fact, in at least ten emerging countries, children under the age of 15 constitute over 44 percent of the total population. As a result, the work force in emerging countries must support almost twice as many children as it does in advanced industrialized countries.

Urbanization and Migration Trends

Generally, the more economically advanced the country, measured by per capita income, the greater the share of population living in urban areas. While individual countries become more urbanized as they develop, it is also the case that today's poorest countries are far more urbanized than the advanced industrialized countries were when they were at a comparable level of development, and on average emerging countries are urbanizing at a faster rate than emerging countries did in the past.

One of the most significant modern demographic phenomena is the rapid growth of cities in emerging countries. The most rapid urbanization is now occurring in Asia and Africa. It is forecast that before 2030, more than half of all people in these regions will live in urban areas.⁵

A key source of the significant urban population growth in emerging countries is large-scale rural-to-urban migration. This migration has led to high rates of unemployment, as rates of rural-to-urban migration in emerging countries have exceeded rates of urban job creation and have strained urban social services. Another problem caused by these high rates of migration is that a high proportion of well-educated young people make up the migrant population and this depletes the rural countryside of skilled workers.

Rural-to-Urban Migration in China In China, migration of former farm peasants into urban areas has greatly increased the size of the work force in industrial enterprises in urban areas in recent years. This sort of migration was highly restricted before market reforms were introduced in China in the 1980s. Under the *hukou* system, individuals were required to be registered with the local authority where they were born and lived. Rural residents were not allowed to move to urban areas for employment. Although this restriction has gradually been eased during the reform era, rural migrants continue to suffer severe discrimination when they seek employment, legal protections, or public benefits in an urban area (see box 4.1).

BOX 4.1

The *Hukou* Registration System in China

The number of Chinese workers moving from rural areas to large cities is large and increasing. In 2012, there were 262 million migrant workers in China (a 3.9 percent increase from 2011). Of these, 163 million had left their home province to work in other provinces.

When the Communist Party came to power in 1949, the government made restrictions on migration to urban areas to ensure that enough people were working in rural areas. In 1958, the government placed stricter control on internal migration of workers through a permanent registration process called the *hukou system*, a series of measures to prevent citizens seeking higher living standards from moving to cities without permission.

Under the *hukou* system, the social benefits a person receives are tied to where he or she was born. The rigidity of the *hukou* system makes it nearly impossible for internal migrant families to reap the benefits of urban life. Without an official *hukou* (household registration record), a migrant worker's family is denied access to a range of city services, including medical care, pensions, government services, and education. The strict registration system deprives families of the supports they need to live. After the *hukou* system was made stricter in the 1950s, police began periodically enforcing the law by placing those who did not have legitimate registered permits in detention centers. Migrant workers without legal documentation were expelled from the city.

A large number of activist youths were relocated to rural areas during the Cultural Revolution of the 1960s and 1970s as punishment for their political activism. The government of China eventually permitted the young revolutionists to return to cities.

With the advent of increased technology it has been easier for police to enforce the *hukou* system using a national database of official *hukou* registrations. The denial of benefits to some migrant families in cities creates a major division between permanent residents and migrants. Migrant workers in cities are stigmatized and discriminated against. Migrant workers are restricted from access to public services, and they are often blamed for urban crime and unemployment.

Migrant workers also face discrimination from permanent residents who speak to them in public as if they are children. The workers are often banned from entering expensive restaurants and hotel lobbies. Adding to the discrimination, the Chinese word for these migrant workers, *nongmin*, refers an inferior educational and cultural status and inferior economic competencies.

In the last five years Chinese authorities have made some efforts to make it less difficult for migrant workers to move their *hukou* to the cities where they work. They are also trying to provide services in cities to all permanent residents. At the same time, the trend toward internal migration in China does not seem to be decelerating. Migrant workers now constitute about 20 percent of China's total population. It is expected that in the next several years, an additional 100 million more rural residents will migrate to cities.

Sources: National Bureau of Statistics of China, http://www.stats.gov.cn/was40/gtjj_en_detail.jsp?searchword=migrants&channelid=9528&record=3;

Bob Davis and Tom Orlik, "China Seeks to Give Migrants Perks of City Life," *Wall Street Journal*, March 5, 2013, <http://online.wsj.com/article/SB10001424127887324178904578341801930539778.html?cb=logged0.39725737390108407>; Hsiao-Hung Pai, "China's Rural Migrant Workers Deserve More Respect from the City Dwellers," *The Guardian*, August 25, 2012, <http://www.theguardian.com/commentisfree/2012/aug/25/china-rural-migrants-more-respect>; PRI's The World, "China's Hukou System Puts Migrant Workers at Severe Economic Disadvantage," May 1, 2013, <http://www.pri.org/stories/politics-society/social-justice/china-s-hukou-system-puts-migrant-workers-at-severe-economic-disadvantage-13676.html>; Wu Zhong, "How the *Hukou* System Distorts Reality," *Asia Times*, April 11, 2007, <http://www.atimes.com/atimes/China/ID11Ad01.html>.

The difficult economic and social conditions migrants face has emerged as a key public policy issue in a number of countries, not just in China. Box 4.2 highlights the problems migrants face in Singapore and the protests that are surfacing as migrants there seek improvements in their work lives and status.

BOX 4.2

Frustrations Surface in the Ranks of Singapore's Migrant Workers

Frustration among Singapore's unappreciated and underpaid migrant workers has been building in recent years as their numbers have grown faster than the country can accommodate them. Tensions boiled over earlier this month, after a 33-year-old Indian migrant worker was killed by a bus in the Little India neighborhood. A crowd of fellow workers from South Asia gathered at the scene. Their anger quickly escalated, with some 400 people pelting stones, attacking emergency responders and setting fire to vehicles. It was the worst riot to hit Singapore, one of the world's most orderly countries, since 1969. . . .

Migrant laborers are paid as little as 2 Singapore dollars, or \$1.60, per hour. Few speak fluent English, the country's working language, and most live in crowded dormitories away from residential areas. They typically are at the mercy of employers, owe high debt to hiring agents and have few means of expressing grievances. Last year, 200

Bangladeshi workers protested unpaid wages and Chinese bus drivers refused to report to work to protest salaries lower than their Singaporean and Malay counterparts.

Source: Reprinted from New York Times Editorial Board, "Singapore's Angry Migrant Workers," *New York Times*, December 27, 2013.

Educational Attainment

The education levels of workers are an important factor in labor relations. Educational systems vary from country to country. There are differences in the age when students typically begin and end each phase of schooling, the duration of courses taken, and what students are taught and expected to learn. These differences make it extremely complicated to draw international comparisons based on education.⁶

There have been dramatic improvements in education throughout the world. Today, 82 percent of all people are literate, compared to 63 percent as recently as 1970. Since 1950, there have been significant reductions in education inequality based on gender in emerging countries, although the need for further progress remains, as two-thirds of the world's illiterate people are women.

At the same time, education levels in emerging countries continue to seriously lag behind levels in advanced industrialized countries. For example, in Europe, North America, or Japan, children can expect to receive more than twelve years of schooling. The average child in sub-Saharan Africa and South Asia, in contrast, can expect to spend less than five years in school.

Since 1950, the average years of schooling among the total population 15 years and older in emerging countries has increased significantly, from 2.1 years to 7.1 years. In South Asia and the Middle East/North Africa regions, average years of schooling have more than doubled since the 1980s. The improvements in completion and enrollment ratios at all levels among the younger cohorts in every generation contribute to a continual increase in the average years of schooling as these cohorts mature over time. The biggest improvement in average years of schooling among the younger cohorts was recorded during the period 1970 and 1990 in both emerging and advanced industrialized countries.

The more rapid the rate of population growth, the greater the proportion of dependent children in the total population and the more difficult it is for people who are working to support those who are not.

A key fact is that while emerging countries contain more than 80 percent of the world's population, they account for only half of the world's population that has attained some form of higher education. At the same time, improvements in education will not lead to sustained improvements in standards of living if there are not adequate jobs that require the higher skills of the better educated. Box 4.3 describes recent concerns about a potential oversupply of college-educated individuals in China. Similar concerns have appeared in other emerging countries recently.

BOX 4.3

The Oversupply of College Graduates in China

Prior to the 1990s, only the top 4 percent of Chinese students were able to attend college and there were plenty of college graduate-level jobs to go around. However, in the past few decades, enrollment in public universities in China has increased rapidly, which has increased the number of students eligible for a college degree. The number of university graduates has nearly doubled since 2002. The percentage of college-age people attending university went from 4 percent to about 20 percent since 2002. However, this number still lags behind the comparable figures for advanced industrialized countries, where 40 percent or more of college-age students are enrolled in universities.

The oversupply of students first emerged in 1999, when Chinese authorities initiated policies to increase college enrollment in order to prepare young Chinese adults for a twenty-first-century economy. Although China's economy is growing rapidly, there are not enough jobs for the number of university graduates. The total number of graduates for the current decade is expected to reach 94 million, which is nearly double the graduate rate of the previous decade. Graduates are extremely disappointed in their quest to find quality work, make good money, and live a comfortable lifestyle.

As a result of the lack of jobs, some college graduates are seeking to leave China and work abroad. Pressures are building among graduates whose skills are not being fully utilized.

Source: Sophie Song, "Future of Chinese Graduates Is Bleak: More Than Half Will Have to Take Blue-Collar Jobs by 2020," *International Business Times*, June 10, 2013, <http://www.ibtimes.com/future-chinese-college-graduates-bleak-more-half-will-have-take-blue-collar-jobs-2020-1298875>.

Gender Gaps in Education Young females receive less education than young males in most emerging countries. The gender gap in education is especially great in emerging countries in Africa, where female literacy rates can be less than half that of men. In most emerging countries, women make up a minority of college students.

There are several reasons why closing the educational gender gap by increasing the educational opportunities for women is economically desirable. First, the increase in earnings due to education is greater for women than it is for men in most emerging countries. Another reason why it is economically desirable to close the educational gender gap in emerging countries is that increasing women's education not only increases their productivity in the workplace, it also results in greater labor force participation, later marriage, lower fertility, and greatly improved child health and nutrition, thus benefiting the next generation as well. Further, because women carry a disproportionate burden of poverty, any significant improvements in their role and status through education can have an important impact on breaking the vicious circle of poverty and inadequate schooling. Studies also show that mothers' education plays a decisive role in raising levels of nutrition in rural areas.

In summary, while significant improvements have occurred in the level and spread of education in emerging countries in recent years, these countries still face great challenges as they seek to improve access to education.

Child Labor

Another critical aspect of the economic environment that has particularly large effects on labor relations in emerging countries is child labor. The volume of child labor matters in part because of the effects it has on increasing the supply of labor. In addition, child labor nearly always takes place under very poor work conditions that include low pay and unsafe work. Child laborers are not the only workers affected by these poor conditions; they spread and affect other workers at the low end of the labor market.

A comprehensive report on child labor published by the International Labour Organization in 2013 documents that 168 million children worldwide are laborers; this group accounts for almost 11 percent of the child population as a whole.⁷ Children in hazardous work that directly endangers their health, safety, and moral development make up almost half of all child laborers, about 85 million. Child labor is most common in the agriculture sector, but the ILO report shows that the numbers of child laborers in services and industry are by no means negligible.

The largest absolute number of child laborers is found in Asia and the Pacific region, but sub-Saharan Africa continues to be the region with the

Table 4.1. Total number of child laborers and number of child laborers doing hazardous work by region, 5–17 age group, 2012

<i>Region</i>	<i>Child laborers</i>		<i>Child laborers doing hazardous work</i>	
	<i>(millions)</i>	<i>%</i>	<i>(millions)</i>	<i>%</i>
Asia and the Pacific	77.7	9.3	33.9	4.1
Latin America and the Caribbean	12.5	8.8	9.6	6.8
Sub-Saharan Africa	59.0	21.4	28.8	10.4
Middle East and North Africa	9.2	8.4	5.2	4.7

Note: The numbers in the second and fourth columns are the percentages of children as a whole in each region.

Source: International Labour Office, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012* (Geneva: International Labour Office, 2013).

highest proportion of child laborers; one in five children are laborers there. As shown in table 4.1, for the overall 5–17 age group, child laborers number almost 77.7 million in Asia and the Pacific. For the same age group, there are 59 million child laborers in sub-Saharan Africa, 12.5 million in Latin America and the Caribbean, and 9.2 million in the Middle East and North Africa.

Not surprisingly, the incidence of child labor is highest in poorer countries. Twenty-three percent of children in low-income countries are child laborers, compared to 9 percent of children in lower-middle-income countries and 6 percent of children in upper-middle-income countries.

The agricultural sector is by far the most significant employer of child laborers; it employs over 98 million children, 59 percent of the world's child laborers. But the numbers of child laborers in the services and industry sectors are by no means negligible. A total of 54 million are found in the services sector (of which 11.5 million are in domestic work) and 12 million are found in industry.

The ILO report also shows that the number of child laborers has declined somewhat in recent years. There were almost 78 million fewer child laborers at the end of the 2000–2012 period than at the beginning, a reduction of almost one-third. The decrease in the number of female child laborers was particularly pronounced.

The ILO report identifies a number of actions that have driven progress in the reduction of child labor, including the political commitment of governments to reducing child labor, an increasing number of ratifications of ILO conventions, and progressive new public policies in a number of countries. The ILO report concludes that “policy choices and accompanying investments that have been made in two areas appear particularly relevant to the

decline in child labor over the last 12 years. The first is education. The worldwide Education For All movement has helped marshal major new investments in improving school access and quality, which in turn has provided more families with the opportunity to send their children to school rather than to the workplace and has made it worthwhile for them to do so. It is not chance that the rapid decline in child labor since 2000 coincided with a major increase in school attendance."⁸

The second policy area is social protection. While extending access to social security remains a pressing challenge globally, there is clear evidence from multiple countries that investments in social security are associated with lower levels of child labor. This is not coincidental: social security can be essential in mitigating the social and economic vulnerabilities that can lead families to resort to child labor. Many countries also have recently been taking action to establish or revise their lists of what constitutes hazardous work and are including prohibitions of these kinds of work for anyone under 18 years of age as part of enforceable legislation.⁹

THE TECHNOLOGICAL CONTEXT

Technological change had a major role in workers' early efforts to use unions and other means to improve their employment conditions. It also is clear that across the globe ongoing technological changes will have huge effects on future employment conditions. Yet many people still disagree over how and why technology influenced labor-management relationships and what current technological changes imply for the future of labor relations.

The Historical Debate over the Influence of Technology: Commons versus Marx

Both Karl Marx and John R. Commons believed that workers were spurred to join unions by technological change, the shift from craft systems of production to wage labor, and the rise of the modern factory system. But they disagreed sharply over exactly why changes in technology and the organization of work had that effect.

For Marx, the critical event in industrialization was the chasm that capitalist methods of production opened between workers and the owners of the means of production. That chasm, according to Marx, would inevitably result in a worsening of working conditions, a profit crisis, and the emergence of a revolutionary class consciousness among workers. Followers of Marx went on to argue that it was the loss of control that workers experienced as a result of shifts in production methods and ownership that led them to form unions. To

those observers, collective negotiations was (and is) a continuing battle between workers and managers over control of the production process. Harry Braverman built on this argument and claimed that technological change typically leads to a lowering of the skills required in jobs (**deskilling**) as part of this battle for control.¹⁰

Commons, on the other hand, observed that the shift in production methods was a product of an expansion of the market brought about by urbanization and new transportation methods. To Commons, as the market expanded and the ownership of production changed, workers encountered a host of competitive menaces such as prison labor and child labor. Workers then turned to unions to protect themselves and improve their standard of living. Commons and his students argued that unions and workers sought income and job security rather than control of the production process.¹¹ Thus, although Marx and Commons differed sharply over the interpretation of unions' objectives, both saw the rise of capitalism as the spur to unionization.

To Clark Kerr, John Dunlop, Frederick Harbison, and Charles Myers, it was the process of **industrialization** and not capitalism per se that brought about the changes in the relationship between workers and employers that led to unionization.¹² They argued that modern technology produced a need for rules that would govern relations between workers and employers. Collective negotiations were a logical way to formalize and structure the rules required in modern industry. Within this framework, specific technological changes are important in collective negotiations because they result in changes in the relative bargaining power of management or labor. In this regard, the industrialization thesis is closer to the ideas of Commons than to Marx's theories.

The Influence of Microelectronic Technology on Skill Levels

The recent growth in the use of microelectronic technology has reignited the debate over the effects of technological change. Some believe that this technology can open the way to less hierarchical, higher skilled work and further growth in real incomes. To others, the new technology is being used to wrest control away from the work force and to deskill workers.¹³ These latter observers see little evidence of a shift away from the hierarchical forms of work organization. In fact, these modern proponents of the deskilling thesis argue that much of the concessionary negotiations that has occurred in recent years is the result of the efforts of managers to increase the pace of work and use new technology to weaken workers' bargaining leverage and skills. Proponents of

the deskilling thesis also predict that new technology will lead to significant employment displacement and unemployment.

A number of behavioral scientists believe that new technologies serve to “unfreeze” existing practices and open up a variety of options for reconfiguring the organization of work, career ladders, compensation criteria, and other aspects of the employment relationship.¹⁴ According to this view, there is no single effect of technology on skills or workers’ power; rather, its effects depend on the choices made by decision makers and the way the new technology is implemented.

Summary

This chapter examines how the environment influences labor relations in emerging countries. The key issues the chapter addresses are that labor relations are critically shaped by the bargaining power of labor and management and that bargaining power has three key components—total, relative, and political power. The environment shapes all three of these sources of power. This chapter covers the role of the economic, demographic, and technological environments.

Important economic factors include those that operate at the firm level (microeconomic influences) and the state of the labor market and the overall economy (macroeconomic influences). The economic environment is most important through the effects it exerts on the bargaining power of labor and management. Bargaining power is heavily influenced by strike leverage and the extent to which an increase in wages leads to a decline in employment (the wage–employment trade-off).

Major demographic issues include the growth in population and the labor force, the extent of rural-to-urban migration, and the educational attainment of the work force.

Technology influences employment levels and bargaining leverage. In recent years there has been much debate over how technology is affecting the skill levels of workers. On the shop floor, labor relations play an important role in shaping how well new technology is implemented.

How well a labor relations system serves the interests of labor, management, and society often depends on its ability to adapt to changes in the environment. Economic pressures on labor relations systems have grown steadily along with globalization and the expansion in international trade. There are also pressures from the other key environmental dimensions. To help build a better understanding of how labor relations can respond to these environmental challenges, the next chapter examines how collective negotiations function.

Discussion Questions

1. Define bargaining power and strike leverage.
2. Several microeconomic factors play a part in the strike leverage of both unions and employers. Briefly describe some of these factors.
3. Describe some policy measures emerging countries have initiated in recent years that have contributed to a reduction in child labor.
4. Contrast the positive and negative effects of technology on workers and working conditions.

Related Web Sites

Hazardous Child Labour page of the ILO-IPEC Web site: <http://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm>
ILO's Global Wage Report: <http://www.ilo.org/global/research/global-reports/global-wage-report/lang--en/index.htm>
U.S. Department of Labor, International Child Labor: <http://www.dol.gov/dol/topic/youthlabor/intlchildlabor.htm>

Suggested Supplemental Readings

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Todaro, Michael P., and Stephen C. Smith. 2012. *Economic Development*. Boston: Addison-Wesley.

Notes

1. John T. Dunlop, *Industrial Relations Systems* (New York: Holt and Company, 1958).
2. Elasticity of demand refers to the slope of the demand curve for labor. The more inelastic the demand, the more vertical the demand curve and the less responsive the demand for labor is to any change in the price of labor. A perfectly elastic demand curve would be horizontal. Alfred Marshall, *Principles of Economics*, 8th ed. (New York: Macmillan, 1920), 383–386.
3. Others have pointed out that for a low labor cost ratio to act as a source of power, as Marshall hypothesized, the elasticity of demand for the final product must be greater than the elasticity of substitution of nonlabor inputs in the production process. See Richard B. Freeman, *Labor Economics*, 2nd ed. (Englewood Cliffs, N.J.: Prentice Hall, 1979), 67–71.

4. A small bargaining unit can be affected by employers who consider the spillover effects of a settlement negotiated with one small unit on the rest of the firm's work force.
5. Michael P. Todaro and Stephen C. Smith, *Economic Development* (Boston: Addison-Wesley, 2012), 313.
6. The United Nations has created a standardized system called the International Standard Classification of Education for the purpose of comparing different education systems.
7. International Labour Office, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012* (Geneva: International Labour Office, 2013).
8. *Ibid.*, 10.
9. Several reports about and tools for eliminating hazardous child labor are available at the Hazardous Child Labour page of the ILO-IPEC Web site: <http://www.ilo.org/ipec/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm>.
10. Harry Braverman, *Labor and Monopoly Capital* (New York: Monthly Review Press, 1984).
11. Selig Perlman, *A Theory of the Labor Movement* (1928; repr., Philadelphia: Porcupine Press, 1979).
12. Clark Kerr, John T. Dunlop, Frederick Harbison, and Charles A. Myers, *Industrialism and Industrial Man* (Cambridge, Mass.: Harvard University Press, 1960).
13. David F. Noble, *Forces of Production* (New York: Oxford University Press, 1986); Harley Shaiken, *Work Transformed* (New York: Holt, Rinehart & Winston, 1984); Erik Brynjolfssohn and Andrew McAfee, *The Second Machine* (New York: Norton, 2014).
14. Richard Walton, "Work Innovations in the United States," *Harvard Business Review* 57 (1979): 88–98; Barry Wilkinson, *The Shopfloor Politics of New Technology* (London: Heinemann Educational Books, 1983); Stephen Barley, "Technology, Power, and the Social Organization of Work," in *Research in the Sociology of Organizations*, ed. Samuel B. Bacharach and Nancy DiTomaso (Greenwich, Conn.: JAI Press, 1990).