

CHAPTER 1 INTRODUCTION TO LABOUR RELATIONS

Chapter Overview

Chapter 1 defines labour relations and considers the importance of labour relations for employers, employees, unions and the public. A systems framework for labour relations is presented. This chapter also summarizes the history of the labour movement and the resulting legislative changes enacted to protect the interests of employees, employers and unions.

Chapter Websites

Website	Web link reference
Chartered Professionals in Human Resources	https://cphr.ca/
Human Resources Professionals Association	https://www.hrpa.ca/
Canadian Labour Congress	http://canadianlabour.ca/

Chapter Outline

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Chapter Summary

I DEFINING LABOUR RELATIONS, INDUSTRIAL RELATIONS, AND EMPLOYEE RELATIONS

One of the purposes of this introductory chapter is to indicate the importance of labour relations into contemporary work settings. Approximately 30 percent of the Canadian workforce is unionized; however, labour relations affect all Canadians. Labour relations affect the costs, productivity and profitability of employers. It also impacts the wages and working conditions of both union and non-union employees. Union–management relations affect the public through occasional strikes and lockouts, and influence prices in the marketplace. In this chapter, we will: define key terms related to labour relations; discuss why this programming area is important to human resources management (HRM) professionals; outline how employment relations differ in union and non-union work settings; explore the historical development of unions in Canada; outline the legislative changes implemented that affects labour relations in Canada; and outline several models of labour relations that illustrate its dynamism and interplay with society and the economy, in particular the distribution of power.

Labour relations is distinguished from industrial relations. Industrial relations is defined as a broad field of study encompassing employment in both union and non-union organizations. Labour relations is defined as referring to all aspects of the union-management relationship including the establishment of union bargaining rights, the negotiation process, and the administration of the collective agreement. It is acknowledged that some individuals and organizations may ascribe a different meaning to the terms labour relations and industrial relations, and some people may use the two terms interchangeably. Lastly, Employee Relations refers to activities and processes aimed at maintaining a productive workplace while meeting the needs of employees.

II HRM PROFESSIONALS AND LABOUR RELATIONS

Human Resources management is defined as a set of interrelated workplace programs and services that attract, retain, and motivate the desired number of people required by the workplace. Labour Relations is defined as a part of human resources management.

There are several methods these programs and service can be provided by a company. These include specialists mostly in larger organizations, generalists in smaller organizations, with support from other legal consultants or advisors.

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

- 1. False. Some students begin a course in labour relations or industrial relations with a mistaken view that a non-union employer must have a valid reason to dismiss an employee. They may have heard the phrase "wrongful dismissal" and assumed that an employer must have a reason to terminate a non-union employee and a court will order reinstatement. Some students refer vaguely to a body they call a "Labour Board", which they may be confusing with an office that processes complaints relating to employment standards legislation. Except in the federal jurisdiction and Nova Scotia, there is no review process to determine whether a dismissal is "fair" in a non-union workplace. It should be emphasized that in a unionized workplace a grievance could be filed when an employee is dismissed, and the employee could be reinstated. The possibility of reinstatement for a unionized employee is one of the key features of labour relations.*
- 2. True. The purpose of this question is to highlight the importance of human rights legislation. Although it is later emphasised that a variation from the collective agreement is not the primary way to accommodate employees; it is possible. Discrimination and the duty to accommodate are referred to in Chapter 2.*
- 3. False. Union membership has declined dramatically in the United States. Although union density has declined in Canada, the decline cannot be described as dramatic. Union membership numbers are referred to in Chapter 3. At several points in the text possible reasons for the difference between the two countries, including the legal environment, are referred to. For example, the U.S. does not provide for first contract arbitration, which is available in several Canadian jurisdictions.*
- 4. True. Students may be familiar with situations where employers have paid non-union employees wages equivalent to unionized workers. The reasons why employees join unions are reviewed in Chapter 3. Employer responses to unionization, including union avoidance, are referred to in Chapters 4 and 6.*
- 5. False. Chapter 5 refers to the critical role that government's play in labour relations. Although it is exceptional, a few strikes in the private sector have been ended by back-to-work legislation. The implications of strikes are referred to in Chapter 10. Students could be referred to the significance of strikes by asking why a government might pass back-to-work legislation.*
- 6. Depends on jurisdiction. The issue of whether a union should be certified by relying on membership cards or a representation vote is critical. The certification process, including the issue of cards v. a vote, is examined in Chapters 6.*
- 7. True. Students may have opinions regarding this issue. Chapter 7 deals with the terms of collective agreements including union security.*

8. *True. Chapter 8 deals with the negotiation of the collective agreement, including the duty to bargain in good faith. It will be emphasised that labour negotiations are not the same as other business negotiations and there is a legislated duty to bargain in good faith, which requires employers to disclose information to unions. For example, employers who plan to move and do not disclose this to the union are guilty of bargaining in bad faith.*
9. *True. Strikes, which are referred to in Chapter 10, are heavily regulated. There is a requirement for a strike vote and all employees in the bargaining unit are entitled to vote.*
10. *False. This question deals with the issue of the ownership or control of the grievance and arbitration procedure. The administration of the collective agreement is referred to in Chapter 9. In most cases it is the union that has the ownership or control over the grievance and arbitration process, and the union can determine whether a grievance is referred to arbitration. This is subject to the union's duty of fair representation in many jurisdictions, which is referred to in Chapter 9.*
11. *True. Chapter 11 covers important points in public sector labour relations. Some jurisdictions provide for a regulated or controlled strike where some employees in the bargaining unit are required to work during a strike. The issue of which, if any, public sector employees should be allowed to strike could be asked. For example, should teachers be allowed to strike?*
12. *False. The statement lumps productivity and profitability together, and they should be considered separately. The effects of unions on productivity and profitability are referred to in Chapter 12. It will be noted later that on average unionized firms are less profitable; however, the effects of unions on productivity are less clear. In some situations unions have increased productivity. It may help students to understand this if they recognize that productivity refers to the amount produced per worker. If employers make technological improvements so that the number of workers is reduced but output remains the same or increases, productivity has been increased, although employment may have been reduced.*

III THE EMPLOYMENT RELATIONSHIP IN NON-UNION AND UNION SETTINGS

A The Employment Relationship

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

Unionized Employees: Terms and Conditions of Work

The unionization of employees has significant implications for the terms and conditions of work. The effects on compensation, working conditions, job security and job satisfaction are elaborated upon in subsequent chapters. The ability of an employer to effect discipline, including termination

of employment are also significantly impacted. These effects include the concepts of just cause vs summary dismissal, wrongful dismissal, reasonable notice.

IV THE DEVELOPMENT OF UNIONS AND LABOUR RELATIONS IN CANADA

A Early Unions

The first unions established in the early 1800s were local organizations of skilled craft workers such as printers and shoemakers. The first craft unions did not attempt to spread unionization to industrial workers. Early unions were organized in a hostile legal environment. Unions were initially an illegal conspiracy in restraint of trade. There was no legal requirement that employers recognize or bargain with unions. Employers often opposed the unionization of employees through measures such as yellow dog contracts and blacklists. The first unions were concerned with the protection of their craft status and basic working conditions such as hours of work.

B Entry and Influence of International Unions

International unions began organizing Canadian workers in the 1860s, and by 1902, 95 percent of Canadian union members belonged to international unions. The U.S. based international unions wanted to avoid the possible threat of non-union Canadian labour. The international unions were attractive to Canadian workers because they had more resources and some Canadians worked in both Canada and the United States.

The AFL was established in the U.S. in 1886 and subsequently influenced the Trades and Labour Congress in Canada. One area of U.S. influence was union philosophy. The dominant philosophy in the United States was business unionism, the focus of which is improving compensation and working conditions of union members through contract negotiation. This contrasts with social unionism, which is concerned with broader economic and social issues such as education and health care and involves unions pursuing these objectives outside of contract negotiations.

In the early 1900s the legal environment continued to be unfavourable for unions. The federal government passed the *Industrial Disputes Investigation Act* in 1907; however, this legislation dealt with the conciliation of contract disputes and did not establish the right to bargain or require employers to recognize unions. In 1925 the federal government's authority in labour relations matters was challenged in the *Snyder* decision. The *Snyder* case established that labour relations is primarily a provincial matter and established the divided jurisdiction which is a key feature of the Canadian labour relations system.

C Early Labour Legislation and the Rise of Industrial Unions

The establishment of industrial unions in Canada was influenced by U.S. labour organizations. The Knights of Labour organized workers in Canada starting in 1875. Subsequently, the divisions in the labour movement and the influence of the U.S. were illustrated when the Knights of Labour were expelled from the TLC under pressure from the AFL.

The Winnipeg general strike in 1919 may have been a major turning point for Canadian unions. The failure of the general strike could be viewed as the end of a more radical approach to unionization. Some industrial unions were organized in Canada later in the 1930s, again influenced by developments in the United States. In 1935 the *Wagner Act* in the U.S. established collective bargaining rights including mandatory bargaining. In 1944 *PC 1003* was passed in Canada. This is viewed as a major turning point in the development of labour relations and is the foundation of current day labour relations. The features of *PC 1003* are listed on page 10 of the text.

D Public Sector Unionization

Most public sector workers did not have the right to unionize until the 1960s. In 1965 the federal government provided federal employees with the right to unionize in the *Public Service Staff Relations Act*. Subsequently, the provinces granted their public sector employees the right to unionize. This public sector unionization caused a significant increase in union membership.

V. FRAMEWORK FOR LABOUR RELATIONS

A Industrial Relations Systems Approach – John Dunlop

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

B “Open-system” Industrial Relations – Alton Craig

Alton Greg provided a simplified model of John Dunlop's approach based on the concept of an open system. His framework has five elements: the environment that may directly or indirectly influence all other aspects of the model, the actors or parties involved in labour relations, the processes or activities in which the parties are engaged, the outputs or results of the parties' activities, and feedback to the first four elements.

1. Actors or Parties

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

2. Processes and Activities of the Parties

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

1. The Environment

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

- a) *Economic Environment.* The economic environment includes the economy of the nation and the competitive position of a firm in its industry.
- b) *Technological Environment.* The technological environment includes developments in knowledge that lead to new products and services and changes in methods of production.
- c) *Social Environment.* The social environment includes the values and beliefs of Canadians relating to work, unions, and employers.
- d) *Political Environment.* The political environment includes the parliamentary system of government and a divided jurisdiction between the provinces and the federal government.
- e) *Legal Environment.* The legal environment refers to the laws that affect employees, unions, and employers. In subsequent chapters the importance of the legal environment in Canada, which is more favourable to unions than the legal environment in the United States, will be noted.

2. Actors or Parties

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3. Processes and Activities

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4. Outputs or Results

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

5. Feedback

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

C Political Economy Approach

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

VI OVERVIEW OF THIS BOOK

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

Answers to Review Questions

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

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

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

2. What are two likely consequences of unionization? Explain why these outcomes may be perceived as having a positive or negative impact on those affected by this change.

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

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

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

b) Can a unionized employee be constructively dismissed? Explain why or why not.

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

4. How did the *Wagner Act* influence labour relations in Canada?

In 1935 the *Wagner Act* in the U.S. established collective bargaining rights including mandatory bargaining. In 1944 *PC 1003* was passed in Canada. This is viewed as a major turning point in the development of labour relations and is the foundation of current day labour relations. The features of *PC 1003* are listed on page 70 of the text.

5. Identify three factors in the “environment” and for each one, explain the impact of such forces on one of the “processes and activities” or “the outputs or results” seen in the Framework for Labour Relations described in this chapter.

Economic Environment—the **economic environment** refers to the economy of the nation and the competitive position of a firm in a particular industry. For example, if there is an increase in inflation or new competitors in an industry, the union and the employer will be affected when considering pay rates for bargaining unit members.

Technological Environment—the **technological environment** refers to developments in knowledge that lead to new products and services that could influence, for example, methods of production. Technological developments can also affect union and employer objectives in a number of areas, including job security, training and health and safety.

Social Environment—the **social environment** refers to the values and beliefs of Canadians relating to work, unions and employers. These values and beliefs may make communities more or less inclined to join or support unions. This is seen in variations in union density across provincial jurisdictions in Canada: for example, 24.5 percent in Alberta compared to 37.3 percent in Newfoundland and Labrador.

Political Environment—the **political environment** refers to the Canadian political system and the effect it has on labour relations. The political system directly affects the legislation that regulates unions and employers. In November 2017, the Ontario government passed back-to-work legislation ending a five-week strike by community college faculty, librarians and counsellors. Public pressure on the Liberal government to end the strike, affecting some 500,000 students, contributed to this action.

Legal Environment—the **legal environment** refers to all of the law that affects employees, unions and employers. In later chapters, we will see that unions and employers are heavily regulated by labour relations legislation, which governs matters such as how a union organizes employees and how employers are allowed to respond. Human rights legislation is playing an important role in the administration of collective agreements. For example, addiction to alcohol or drugs is considered a disability under human rights legislation, requiring employers to reasonably accommodate employees in such circumstances.

Answers to Discussion Questions

1. If you have worked in a unionized work setting, to what extent is the relationship between unions and employers collaborative and to what extent is it adversarial?

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

2. If you have not worked in a unionized environment, to what extent do you believe the relationship between unions and employers is collaborative and to what extent is it adversarial? What influences have shaped your opinions?

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

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

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

4. If you were a union member, would you want your union to have a philosophy of social unionism or business unionism? Explain.

Business unionism focuses on improving the compensation and working conditions for unionized employees through collective bargaining with the employer. In contrast, an alternative union philosophy known as social unionism was concerned with improving the compensation and working conditions of bargaining unit members, while also seeking broader economic and social change. This question demonstrates that individuals will have varying concepts of the purpose of unions based on their personal experiences and philosophies. Historically, unions have had a significant impact on social change.

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

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

Comments on Web Research

Student responses will vary depending on their preconceptions of unions and their impact on the work environment. The CLC website provides insight to the history of unions and their benefits to all workers regardless of being unionized. The CLC website also describes the current initiatives they have prioritized which may be of interest to students. Advantages will typically include providing greater power to workers, providing better pay and benefits, and being involved in community or social issues.

Case Incident: Could This Happen To Me?**1. What are some legal questions that would need to be answered regarding the changes in the terms and conditions of work for Johanna's and Marlie's work colleagues?**

In Johanna's case the typical legal questions would be the terms of her employment contracts, the length of employment, and what severance was provided. In Marlie's case the typical legal questions would include the terms of his employment contracts and if he was willing to accept this change in duties and pay to his employment contract. If not, this could be viewed as a constructive dismissal.

2. After looking at the website for employment standards in your province, state the amount of reasonable notice that is required in the situation described by Marlie in this case. What information is needed to determine your answer here?

Provinces will vary in the amount of notice required in this situation. Factors typically include how long the employee has worked for the company, and in some cases the size of the company and number of employees being terminated.

3. Johanna's manager may get legal advice to file a claim against his employer. Describe what this action is called and what would this individual be seeking in light of his announced job change.

This action is called a summary dismissal and it highlights one of the aspects of the Employment Standards Act and Common Law. Employers may terminate an employee with providing a reason as long as they provide the appropriate notice, or pay in lieu of notice. Students should also be aware that Common Law will typically provide a greater notice period than the Employment Standards Act.