

UNDERSTANDING LABOR LAW

FIRST EDITION

RODERICK O. FORD, J.D., SPHR

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A Member of *The Florida Bar*
And
The Human Resources Certification Institute

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About the Author

Roderick O. Ford is the principal and founder of the employment law firm of Ford & Associates, LLC in Tampa, Florida, and serves as labor and employment Of Counsel to the Porter Law Firm in Stuart Florida. Mr. Ford earned his bachelor of arts (B.A.) degree from Morgan State University and his juris doctor (J.D.) degree from the University of Illinois at Urbana-Champaign. He holds the professional designation of Senior Professional in Human Resources (SPHR) from the Human Resources Certification Institute, as well as a graduate certificate in human resources leadership from Cornell University's School of Industrial and Labor Relations. Mr. Ford represents individual consumers and aggrieved workers before state and federal courts and administrative agencies. His law practice also includes human resources risk management for churches, non-profit organizations, and small businesses. In 2016-17, Mr. Ford was nominated to membership in *Lawyers of Distinction* and in *Best Attorneys of America*.

Acknowledgement

I owe much to various bar leaders, university professors, law practitioners, and human resources professionals from throughout the United States. Many of these men and women were conveniently made accessible to me under the umbrella of four great organizations: the Labor and Employment Law Section of the Florida Bar; the Labor and Employment Relations Association (LERA), which is housed on the campus of the University of Illinois at Urbana-Champaign; the Executive Education Program at Michigan State University's School of Human Resources and Labor Relations; and e-Cornell, which is an on-line division of Cornell University's School of Labor and Industrial Relations. I am also very pleased that two landmark publications within the field of labor law, upon which much of the material in this book was derived, were authored by a former and a current tenured professor at the University of Illinois College of Law: *NLRA Rights in the Nonunion Workplace* by Professor Kenneth T. Lopatka and *Basic Text on Labor Law: Unionization and Collective Bargaining* by Professor Matthew W. Finkin. Finally, I am significantly indebted to the law librarians at the James J. Lunsford Law Library in Tampa, Florida.

Introduction

THE IMPORTANCE OF AMERICAN LABOR LAW

The subject of labor law has been of great interest to me ever since the early 1990s, because it complimented my undergraduate liberal arts training in sociology, economics, history, and political science. Even then, I was early and largely interested in the plight of the working classes. But several years later, after I became a practicing attorney, I drifted away from an interest in organized labor toward traditional American employment law and assisting individual workers—especially civil rights lawsuits that were cognizable under Title VII of the Civil Rights Act of 1964. I then concluded that employment law seemed to have more practical significance for the communities of color which I represented before state and federal administrative agencies and courts. But my overemphasis on traditional American employment law was both a mistake and an unfortunate development in my early career as a labor and employment attorney. For I had relegated the entire field of American labor law to a group of federal statutes that I had misperceived as only applicable to labor unions and to union members. I had no idea that this landmark American labor legislation also significantly regulated non-unionized American workers as

well, and that I could utilize this federal labor legislation to significantly assist non-unionized workers who worked in non-unionized workplaces.

Over the years, through trial and error, I learned that the National Labor Relations Board provides to all American workers—and not just labor unions and union members — a potent and powerful weapon to address a large variety of workplace grievances that relate to the terms, conditions, and privileges of employment. Workplace wrongs which may not present a viable charge of discrimination under most state or federal laws, such as Title VII, may nevertheless still pose a very strong labor grievance under the National Labor Relations Act, so long as that labor grievance affects two or more workers who are coordinating their efforts “for other mutual aid and protection” and engaged in “protected concerted activity.”

Hence, knowledge of federal labor law certainly made me a more well-rounded and effective employment litigation attorney. This publication is thus designed primarily to help various professionals within the field of employment law and human resources to attain a much better grasp and understanding of the specialized area of American labor law. The popular cliché among American human resources professionals and employment lawyers is that “traditional labor law” is growing less relevant than “traditional employment law,” due to the rapid decline in labor unions over the past several decades. But this cliché is a tragic misconception of federal employment and labor legislation, because American “employment law” is really integrally interwoven in on American “labor law.” In order to effectively manage employment claims and litigation, one must have a thorough understanding of labor law, and vice versa.

Indeed, federal labor legislation came first, beginning in the early 1930s during the New Deal era. The American labor movement was an outgrowth of economic development since the end of the U.S. Civil War (1861-1865), during the period 1870s-1880s. The United States became less agrarian and more urbanized and industrialized; and millions of American workers became more and more concentrated into urban slums, and left to fend for themselves.

Early efforts at labor organization occurred during the 1870s and 1880s, but both state and federal legislatures routinely crushed these early labor movements, and labeled them to be criminal conspiracies against free trade. In 1890, Congress enacted the Sherman Antitrust Act of 1890 which continued this prevailing trend. This federal legislation was designed to

curtail business monopolies and restraints on trade, but the state and federal courts routinely applied the language of the Sherman Antitrust Act to prevent the formation of trade unions.

Beginning in the early 1900s, support for America's labor unions continued to grow, because the plight of American workers in almost every state and in almost every industry was grim and dire. In 1926, Congress enacted the landmark Railway Labor Act, which dealt with many pressing labor problems within the railroad and transportation industries. In 1932, Congress enacted the Norris-LaGuardia Act, which removed the power of state and federal courts to enjoin labor organizing and labor unions. In 1935, Congress enacted the National Labor Relations Act (NLRA), which extended many of the provisions found in the Railway Labor Act of 1926 to every American industry outside of the transportation industry. The NLRA gave workers the right to engage in various union organizing activities and to be free from reprisal. For the next dozen years, the American labor movement grew influential and the plight of the American worker steadily increased up through the end of the World War II period.

At the end of World War II, the problem of internal union corruption became quite obvious, as union power and influence spread. In 1947, Congress enacted the Labor Management Relations Act (the "Taft-Hartley Act of 1947") in order to curtail various abuses with labor unions and to hold the accountable to individual union members. And in 1959, Congress enacted the Labor Management Reporting and Disclosure Act (the "Landrum-Griffin Act of 1959") in order to comprehensively set forth labor's "Bill of Rights."

All of the above-mentioned federal labor laws continue in operation today, and, taken together, they form the foundation of all American labor and employment legislation, including the Fair Labor Standards Act of 1938, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act, the Family and Medical Leave Act of 1993, and a host of other federal employment laws.

For the aforementioned reasons, *Understanding Labor Law* is the book that I wished I had in my hands twenty years ago, when I was launching my career as a labor and employment attorney. This book takes the entire complex field of American labor law and condenses it to seven, easily readable chapters.

The seven chapters in this book are designed so that the reader can become familiar with the most important labor-law terminology, without becoming bogged down into irrelevant details. (Over the years, I have found that most labor-law publications lack this balance in the presentation of labor law subjects.) The seven chapters in this book are also arranged in a logical sequence that I believe will be most suitable for grasping the material. This chapter-sequence should allow anyone, especially those who are relatively new to the field of labor law, to steadily build their labor-law knowledge upon the information presented in the previous chapters.

The first chapter starts off our discussion with a look at labor's "Bill of Rights," and the remaining chapters steadily builds from that very firm foundation. The second chapter looks at lock-outs, strikes, picketing and boycotts; and the second chapter analyzes "protected concerted activity" and activities that constitute "for other mutual aid and protection." In Chapters four, five, and six, we turn our attention to the negotiation phase and the administration phase of the collective bargaining agreement. In these chapters, we look at issues such as the duty of good faith, labor grievance procedures, labor arbitration, unfair-labor- practice (UPL) procedures before the National Labor Relations Board, and unfair employment practices that relate to other federal statutes such as Title VII of the Civil Rights Act of 1964. And finally, in Chapter seven, we close the book with a detailed discussion on the important union duty of fair representation, discussing its historical development in the case of *Steele v. Louisville & N.R. Co.* (1944); and analyzing its current application to federal labor law and policy.

In addition, as this is the companion book to *Understanding Employment Law* (First Edition), this publication is also designed to supplement the various certification review materials which help to prepare men and women for certification examinations in the field of human resources management, labor relations, and employment law. It is multidisciplinary in scope, covering strategic human resources management principles as well as standard American labor and employment jurisprudence. Many human resources practitioners who are studying for one of the several HRCI or SHRM certification examinations should also find this book to be a very practical and useful supplement to their certification review materials—particularly the PHR or SPHR review materials. This book thoroughly covers the legal aspects of the HRCI and the SHRM body of knowledges. Although it is not designed to be a substitute for any of

the official certification review materials published by HRCI or SHRM, the author believes that this book should be read as a very critical and important supplement in preparation for any one of the various HRCI or SHRM certification examinations. The reason is that those examinations are pragmatic and experiential-based, and the materials presented in this book are written from the perspective of practical experience in the field of labor and employment law and human resources management.

Finally, this book is also designed for rank-and-file employees and workers who need to know what their workplace rights are. Union stewards, labor and industrial chaplains, and worker advocates will find this book to be an indispensable guide as they seek to assist workers. As an experienced labor and employment attorney, the author has presented the material in this book with the common person in mind. The materials are designed for individuals who are not lawyers or experienced human resources practitioners, but who need to attain a working knowledge of labor and employment law within a very short period of time. For example, this book should be very helpful for individuals who are about to face a disciplinary proceeding and need a quick reference guide to understand their rights; or for individuals whose rights under a collective bargaining agreement has been violated and who need to understand what steps to take in order to hold the employer or the labor union accountable.

In closing, I would be remiss if I did not point out that this is the first edition of a self-published work whose general outline and themes were extracted largely from the author's law practice (i.e., news articles, demand letters, appellate briefs, memoranda of law, and motion-hearing notes), I beg all of my readers' forgiveness for any foibles and mistakes contained herein. This book is in essence the author's "white papers" which have been compiled over the course of several years and presented here for the first time to the general public. This publication is an evolving, collaborative, and on-going research project.

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Tampa, FL
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