

Chapter 3

Legal Issues: The Broad Scope of Our Rights



CHAPTER 3: LEGAL ISSUES: THE BROAD SCOPE OF OUR RIGHTS

As employees, union members and union representatives, you have rights and responsibilities under a broad array of labor and employment laws, as well as under the IBEW Constitution, your local union bylaws and your collective bargaining agreements. This Chapter provides an overview of rights and responsibilities established in the “public laws” promulgated by the U.S. Congress and enforced by federal agencies and courts, and in the “private law” established by your union’s governing instruments and through collective bargaining. This is not intended to be comprehensive or to give you legal advice, but rather to set out the basic contours of these laws and how they are enforced, and to provide links to further information.

Part A: Your Rights Under U.S. Statutes

I. ANTI-DISCRIMINATION LAWS ADMINISTERED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

A. Title VII of the Civil Rights Act Of 1964

Title VII is a part of the **Civil Rights Act of 1964**, one of the most important pieces of federal civil rights legislation passed in the United States. Title VII prohibits employment discrimination and has been used by workers and their representatives to make employment practices more just and humane.

Title VII makes it unlawful to discriminate against any employee or applicant with respect to any term, condition, or privilege of employment based on any of the following characteristics, or based on stereotypes and assumptions about the abilities, traits or performance of individuals who share a particular:

- race
- color
- sex
- religion
- national origin

Title VII forbids discrimination based on the above-listed factors with respect to:

- hiring, firing or disciplining
- wages
- fringe benefits
- classifying workers
- referring workers
- assigning or promoting employees
- extending or assigning facilities
- training or retraining
- apprenticeship
- any other terms, conditions, or privileges of employment

Title VII prohibits employment-related discriminatory conduct by:

- private employers, state and local governments and educational institutions with 15 or more employees
- labor organizations that operate hiring halls or that have 15 or more employees or members
- the federal government
- private or public employment agencies
- joint labor-management committees for apprenticeship and training.

Under Title VII, Indian tribes are exempt as employers. Religious institutions are exempt with respect to religious discrimination but are covered with respect to discrimination based on sex, race, color or national origin.

1. Title VII Forbids Discrimination Based on Race and Color

“Race” and “color” are listed as separate protected categories under Title VII and refer to different concepts under the law. Even within a particular racial category, individuals could be discriminated against in employment decisions because of skin color.

a. Race-Related Characteristics and Conditions

Discrimination on the basis of a permanent characteristic associated with race or color—such as skin color, hair texture, or certain facial features—violates Title VII, even though not all members of a particular race may share the same characteristic. Title VII also prohibits discrimination on the basis of a condition that predominantly affects one race, unless the practice is job-related and consistent with business necessity.

b. Harassment Based on Race and/or Color

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial “jokes,” offensive or derogatory comments, or other verbal or physical conduct

based on an individual's race or color constitutes unlawful harassment if the conduct creates an intimidating, hostile or offensive working environment or interferes with the individual's work performance.

c. Segregation and Classification of Employees

It is a violation of Title VII to segregate minority employees by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. In circumstances where minorities are excluded from employment or from certain positions, the fact that the employer or employment agency has coded applications or resumes to designate an applicant's race may constitute evidence of discrimination.

2. Title VII Forbids Discrimination Based on Sex

Sex discrimination exists when employment decisions are based on an employee's gender or an employee is treated differently because of her or his gender.

The **Pregnancy Discrimination Act of 1978** amended Title VII to make clear that sex discrimination includes discrimination based on pregnancy, childbirth or related medical conditions. It is thus illegal under Title VII for an employer either to discriminate intentionally against pregnant employees or to maintain a policy that adversely affects employees based on their pregnancy, childbirth or related medical conditions. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Thus, as long as a pregnant employee is able to perform the major functions of the job, an employer may not refuse to hire her because of its own prejudices against or assumptions about pregnant workers or the prejudices and assumptions of co-workers, clients or customers.

Similarly, an employer may not single out employees with pregnancy-related conditions for special procedures to determine their ability to work. However, an employer may use any procedure it also uses to assess other employees' ability to work. If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, an employer that offers modified tasks, alternative assignments, disability leave or leave without pay to employees with other temporary disabilities must provide similar options to employees temporarily disabled by their pregnancies.

An employer may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth but must instead hold open a job for a pregnancy-related absence for the same length of time that it holds jobs for employees who are on sick leave or disability leave.

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. If a health insurance plan limits benefit payments for pre-existing conditions when the insured's coverage becomes effective, the plan may impose the same limitations – but not additional ones – on benefits for medical costs arising from an existing pregnancy. Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

Employers may not deny unmarried employees the pregnancy-related benefits that they provide to married employees. Even in an all-female work force or job classification, benefits must be provided for pregnancy-related conditions if benefits are provided for other medical conditions. If an employer provides any benefits to workers on leave, the employer must provide the same benefits to those on leave for pregnancy-related conditions.

Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases and temporary disability benefits.

3. *Title VII Forbids Discrimination Based on Religion*

Title VII prohibits discrimination based on any sincerely held religious, moral or ethical belief. Title VII defines the term “religion” as *all aspects of religious observance and practice, as well as belief*, and requires employers to make “reasonable accommodations” to such observances and practices, unless doing so would cause undue hardship to the conduct of the employer's business.

A major issue raised under this portion of Title VII is the extent to which an employer is required to accommodate a worker's religious beliefs. The employer does not have to adopt an accommodation that would be an “undue hardship” on its business. In some circumstances, an employer must adjust work requirements to accommodate an employee's bona fide religious beliefs. However, Title VII does not require an employer to take steps inconsistent with an otherwise valid collective bargaining contract or to deny senior employees their shift or job preferences to accommodate an employee's religious beliefs.

Unions must also accommodate the religious beliefs of the employees they represent. For example, when confronted with an employee whose religious beliefs prohibit providing the union financial support, the union may not require the employee to pay dues or fees to the union, but may – as a “reasonable accommodation” – require the employee to satisfy his or her union security obligations by making a charitable contribution in an amount equal to dues.

4. Title VII Prohibits Discrimination Based on National Origin

Title VII also protects employees and job applicants against employment discrimination on the basis of national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group.

a. “English-Only” Rules

A rule requiring employees to speak only English on the job may violate Title VII unless an employer shows it is necessary for conducting business. An employer that believes an English-only rule is critical for business purposes must tell employees when they must speak English and the consequences for violating the rule. Any negative employment decisions for breaking the English-only rule will be considered evidence of discrimination if the employer did *not* tell employees of the rule.

b. Speaking with an Accent

An employer must show a legitimate nondiscriminatory reason for denying an employee employment opportunities because of that individual’s accent or manner of speaking. Investigations will focus on the person’s qualifications and on whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and if the rule is not related to job performance.

B. Age Discrimination in Employment Act

The **Age Discrimination in Employment Act of 1967** (ADEA) protects individuals 40 years of age or older from employment discrimination based on age. Under the ADEA, it is illegal to discriminate against a person because of his or her age with respect to any term, condition or privilege of employment, including but not limited to hiring, firing, promotion, layoff, compensation, benefits, job assignments and training. It is also illegal to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding or litigation under the ADEA. The ADEA applies to employers with 20 or more employees, including state and local governments, employment agencies, labor organizations and the federal government.

The **Older Workers Benefit Protection Act of 1990** (OWBPA) amended the ADEA specifically to prohibit employers from denying benefits to older employees. An

employer may reduce benefits based on age, *only if* the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

C. The Equal Pay Act

The Equal Pay Act (EPA) requires employers to pay men and women the same wages for performing “substantially equal work,” that is, work that requires equal skill, effort and responsibility, and is performed under similar conditions in the same establishment. For purposes of the EPA, “wages” include all payments made to or on behalf of employees, including salary, vacation, sick and holiday pay; health and welfare benefits; bonuses; and clothing and food allowances.

The Act permits wage differentials that are based on:

- seniority
- merit
- quantity or quality of production
- a factor other than sex

Many incidents that lead to allegations of sex-based wage discrimination may be violations of both Title VII and the EPA. A sex-based wage discrimination complaint under the EPA also may be filed as a charge under Title VII. The EPA applies to most employers, regardless of the number of employees. Remedies for violations of the EPA include injunctive relief, back pay, and liquidated damages.

As noted, the EPA only applies to wage differentials for “substantially equal” work. Title VII’s reach is potentially broader, although it is not clear what other kinds of wage differentials it would prohibit. In particular, plaintiffs have not been successful in establishing that it violates Title VII to pay employees different wage rates for performing work that is of “comparable worth” to the employer. However, an employee who can demonstrate that the employer utilized different criteria for establishing the wage rates for jobs performed predominately by men and women -- regardless whether the jobs are equal or comparable -- may be able to establish a case of disparate treatment, in violation of Title VII.

D. The Americans With Disabilities Act

Title I of the **Americans with Disabilities Act** (ADA) prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against any “qualified individual with a disability” in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment.

The ADA greatly expanded federal rights for persons with disabilities by prohibiting discrimination not only in public and private employment, but also in public accommodations, public services, transportation and telecommunications. In enacting the

ADA, the U.S. Congress attempted to correct the isolation and segregation that our society had inflicted on persons with disabilities. The language of the ADA states that the legislation was designed “... to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.”

The ADA defines an “individual with a disability” as a person who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

A “qualified individual with a disability” is an employee or applicant who can perform the essential functions of the job in question, with or without “reasonable accommodation.”

The ADA defines a “reasonable accommodation” to include, among other actions,

- making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- job restructuring, modifying work schedules, reassignment to a vacant position;
- acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business.

An accommodation creates an “undue hardship” if it requires significant difficulty or expense when considered in light of factors such as an employer’s size, financial resources and the nature and structure of its operation. An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

1. Medical Examinations and Inquiries Under ADA

Employers may ask job applicants about their ability to perform specific job functions, but may not ask applicants about the existence, nature or severity of a disability that is not obvious. Nor may employers require applicants to undergo medical exams before extending them conditional job offers. An employer may condition a job offer on the results of a medical examination, but only if it requires *all* applicants who receive conditional offers for similar jobs to take the exam. Medical examinations of employees must test abilities that are related to the applicant’s ability to perform the job

and must be consistent with the employer's business needs, and the results must be kept confidential.

2. *Drug and Alcohol Abuse Under ADA*

The ADA does not protect employees and job applicants from adverse employment actions based on their current use of illegal drugs. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees, without making any accommodations to their conditions.

E. The Rehabilitation Act of 1973

Nearly 20 years before the ADA, the **Rehabilitation Act of 1973** established the first substantial federal rights for persons with disabilities. While the ADA reaches private entities, the Rehabilitation Act applies only to the federal government and to employers receiving federal funds.

Section 501 of the Act requires federal agencies to take affirmative action to seek out disabled individuals for employment. Federal government employers also have a duty to make reasonable accommodations for the disability limitations of job applicants or employees.

Section 503 imposes affirmative action requirements on federal contractors "to employ and advance in employment qualified individuals with disabilities," and prohibits contractors from discriminating against individuals on the basis of their disabilities.

Section 504 of the Act prohibits any recipient of federal funds — whether in the private or public sector — from discriminating on the basis of disability.

Section 501 is enforced by the EEOC, under the same procedures that apply to federal employees asserting claims under Title VII and the ADEA. Employees may also sue the federal government directly to enforce their rights under Section 501. Section 503 is enforced exclusively by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP); there is no private right of action. Finally, Section 504 is enforced by the agency that provides the employer with federal aid or by private lawsuits.

F. The Genetic Information Nondiscrimination Act of 2008

President Bush signed the Genetic Information Nondiscrimination Act ("GINA") on May 21, 2008. Title II of the Act prohibits employers, employment agencies, labor organizations and joint labor-management committees from discriminating against applicants or employees on the basis of their genetic information, whether that information is based on tests of the individual or his or her family members, or manifestations of genetic diseases or disorders in the applicant or his or her family

members. GINA also prohibits employers, employment agencies, unions and labor-management committees from requesting, requiring or purchasing an applicant or employee's genetic information, except in certain specified circumstances. As with the ADA, GINA requires employers, etc., to keep any genetic information they acquire confidential and in files separate from other personnel data.

G. Conduct that Violates Anti-Discrimination Laws

A number of forms of prohibited discrimination violate the various civil rights statutes. Each is surrounded by complex legal decisions. The categories are listed here as general background information — not as a substantive legal discussion, and not as a substitute for the advice of legal counsel.

1. *Disparate treatment*

“Disparate” treatment is “different” treatment. The essence of disparate treatment is the employer's motive — *i.e.*, that the employer *intended* to treat members of a protected group differently from other employees. Disparate treatment occurs when an employer treats some members of a group of “similarly situated” individuals differently from other group members, because of their race, color, gender, religion or national origin (in violation of Title VII), their age (in violation of the ADEA), their disabilities (in violation of the ADA), or their genetic make-up (in violation of GINA).

Title VII contains a very narrow exception to the ban on religious, sex and national origin discrimination, when any of those classifications “is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of that particular business or enterprise.” The ADEA similarly permits age-based discrimination when age is a BFOQ. To establish that religion, sex, national origin or age is a BFOQ, the employer must show that (1) all or substantially all members of the excluded class cannot perform the duties of the job, or that it is nearly impossible to determine on an individual basis whether they can perform those duties; and (2) that the required job classification goes to the “essence” of the business operation. These are very difficult tests to satisfy.

2. *Disparate Impact: Policies or practices with an adverse impact on members of a protected group, not justified by business necessity.*

This type of discrimination focuses on the discriminatory *results* of employment policies or practices, regardless of the employer's intent. A policy or practice that is neutral on its face may nonetheless be unlawful if it has an adverse, disparate impact on a group protected either by Title VII or by the ADA. An employer may justify such a policy only by demonstrating that it is a “business necessity,” *i.e.*, that the policy is necessary to the proper performance of the job.

Examples of disparate impact include requiring applicants to achieve a certain score on a screening test, which disproportionately excludes members of particular

minority groups and cannot be shown to be job-related; or requiring applicants to weigh above a certain amount, when the requirement adversely affects a man or woman's job prospects and is not related to job performance.

There is no disparate impact claim available under GINA.

3. *Harassment*

The EEOC defines harassment as unwelcome conduct based on race, color, sex, religion, national origin, disability, genetics and/or age. Harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Ethnic slurs, racial "jokes," offensive or derogatory comments or other verbal or physical conduct based on an individual's race, color, religion or ethnicity violates Title VII when it interferes with an employee's ability to do his or her job, or creates a hostile work environment. By the same token, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes unlawful sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects the employee's employment or work environment.

For more information, see http://www.eeoc.gov/types/sexual_harassment.html.

4. *Failure to make "reasonable accommodations": Disability and Religious Discrimination*

Title VII requires employers to make reasonable accommodations to employees' religious practices. The ADA similarly requires employers to make reasonable accommodations to enable otherwise qualified individuals with disabilities to perform the essential functions of the job. While both statutes permit employers to defend their failures to make accommodations by showing that doing so would constitute an "undue hardship," the tests under the two statutes are quite different. Under Title VII, an employer refusing to accommodate an employee's religious practices need only show that doing so would involve more than a "de minimis" cost. By contrast, the ADA requires an employer to demonstrate that accommodating an employee's disability would involve significant difficulty or expense, taking into account the size, financial resources and nature of its enterprise and the nature of the accommodation. For example, the same accommodation might be "reasonable" under the ADA for a large employer with significant resources, but an "undue hardship" for a small enterprise.

5. *Retaliation for asserting rights*

Title VII, the ADA and the ADEA all prohibit employers and other covered entities (including labor organizations) from retaliating against employees for opposing employment practices that are unlawful under those Acts, for filing charges with the

EEOC, or for participating in any way in an investigation, proceeding or hearing under the statutes.

H. Enforcement of the Discrimination Laws by the Equal Employment Opportunity Commission

The EEOC enforces Title VII, the ADEA, the employment provisions of the ADA and GINA, the EPA and Section 501 of the Rehabilitation Act.

With the exception of the Equal Pay Act, all of the statutes the EEOC enforces require individuals who believe their rights have been violated to file charges with the agency *or* with a state fair employment practices agency *before* they may take their complaints to court. The EEOC procedures for filing and processing charges are detailed on the agency's website – <http://www.eeoc.gov>. What follows is a brief summary of the main points to keep in mind when considering whether to pursue a charge under one of these statutes. *Please keep in mind that this summary is for informational purposes only and is not intended to provide legal advice.* Be sure to check the agency's rules if you want to pursue a charge.

1. Coordination with State Agencies

Many states and localities have anti-discrimination laws and agencies responsible for enforcing those laws, which are referred to as "Fair Employment Practices Agencies" (FEPAs). The EEOC and FEPAs have work sharing agreements to ensure that a charging party's rights are protected under both federal and state law. They operate as follows:

- If a charge is filed with a FEPA and is also covered by federal law, the FEPA "dual files" the charge with EEOC to protect federal rights. The FEPA will usually retain the charge for handling.
- If a charge is filed with EEOC and also is covered by state or local law, the EEOC "dual files" the charge with the state or local FEPA, but ordinarily retains the charge for handling.

2. Filing a Charge with the EEOC

- Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with EEOC. In addition, an individual, organization, or agency may file a charge on behalf of another person to protect the aggrieved person's identity.
- A charge may be filed by mail or in person at the nearest EEOC office or, where applicable, the office of the nearest FEPA.

3. *Time Limits for Filing a Charge*

The statutes impose strict time limits for filing charges. An aggrieved employee who fails to file on time will be barred from pursuing a complaint before the agency *and* in court.

- A charge must be filed with EEOC within *180 days* from the date of the alleged violation.
- This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law. For ADEA charges, only state laws extend the filing limit to 300 days.
- These time limits do not apply to claims under the EPA, because that Act does not require persons to file a charge first with EEOC in order to have the right to go to court. However, since many EPA claims also raise Title VII sex discrimination issues, it may be advisable to file charges under both laws within Title VII's time limits.

4. *EEOC Procedures for Processing Charges of Discrimination*

- After the charge is filed, the EEOC will generally conduct an in-depth interview with the charging party. If that interview does not produce sufficient evidence to support the claim and the agency does not believe that further investigation will establish a violation of the law, it will dismiss the charge at that time. When the agency dismisses a charge, it issues a “right to sue” notice, which gives the charging party 90 days to file a lawsuit on his or her own behalf.
- If the agency does not dismiss the charge at the outset, it will conduct an investigation, during which it may make written requests for information, interview people, review documents, and perhaps visit the workplace where the alleged discrimination occurred.
- During the investigation, the EEOC may offer the parties the opportunity to mediate the dispute, in an attempt to resolve it quickly without a lengthy investigation. Mediation is voluntary and confidential, and requires the consent of both parties. If the mediation is unsuccessful, the investigation will continue.
- When the investigation is complete:
 - If the EEOC determines there is insufficient evidence to support the charge, it will dismiss it and issue a right to sue letter;
 - If the evidence establishes that discrimination has occurred, the EEOC will inform the employer and the charging party of its findings in a letter

of determination, and will attempt conciliation with the employer to develop a remedy for the discrimination.

- If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored.
- If EEOC is unsuccessful in conciliating the case, it will decide whether to bring suit in federal court. If EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf. In Title VII and ADA cases against state or local governments, the Department of Justice takes these actions.

5. *Filing a Discrimination Lawsuit in Federal Court*

- As a general matter, a charging party may file a lawsuit within 90 days after receiving a "right to sue" notice from EEOC.
- Under Title VII, the ADA and GINA, a charging party may also request a notice of "right to sue" from EEOC 180 days after he or she files the charge with the EEOC and may sue within 90 days after receiving this notice.
- Under the ADEA, the charging party may file suit at any time 60 days after filing a charge with EEOC, but not later than 90 days after EEOC gives notice that it has completed action on the charge.
- Under the EPA, a lawsuit must be filed within two years (three years for willful violations) of the discriminatory act, which in most cases is payment of a discriminatory lower wage.

6. *Special Rules for Federal Employees*

There are separate procedures for federal employees seeking to enforce the anti-discrimination statutes. Federal employees should check "Federal Sector Complaint Processing Procedures" on the EEOC's website (www.eeoc.gov).

II. OTHER LAWS AFFORDING WORKPLACE PROTECTIONS

A. The National Labor Relations Act

The **National Labor Relations Act** (NLRA), as amended, is the primary federal law regulating private sector labor-management relations. It is important for all trade unionists to remember that the NLRA begins, in Section 1, with the declaration that it is

*the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by **encouraging the practice and procedure of collective bargaining** and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (Emphasis added.)*

Section 7 of the NLRA contains the Act's basic promise, guaranteeing employees the rights:

- to organize;
- to form, join or assist labor organizations;
- to bargain collectively through representatives of their own choosing;
- to engage in strikes, picketing, and other concerted activities, for their mutual aid and protection; and
- to refrain from those activities, except to the extent that such a right may be affected by an agreement between an employer and a union representing a majority of the workforce, requiring membership in a labor organization as a condition of employment.

Section 8 of the NLRA describes conduct by employers and unions that is unlawful under the Act – “unfair labor practices.” Among other things, Section 8 declares that it is an unfair labor practice for an *employer* to:

- interfere with employees in the exercise of their Section 7 rights;
- discriminate against an employee because the employee supported a union or otherwise engaged in any of the activities protected by the NLRA;
- refuse to bargain with a union chosen by a majority of the employees to be their exclusive bargaining representative.

Although the NLRA does not expressly prohibit race or sex discrimination, the Act does obligate unions, as the employee's exclusive bargaining representative, to represent *all* members of the bargaining unit fairly. This obligation is known as “the duty of fair representation.” It is a violation of the duty of fair representation for a union, in

carrying out its obligations as the bargaining representative, to discriminate on the basis of race, color, religion, sex, national origin, disability or age.

The labor movement believes that the promises of the NLRA have been substantially eroded in recent years by a highly politicized National Labor Relations Board (NLRB) and increasingly hostile employers. To meet the challenge this presents to the ability to organize and effectively represent working people, unions have made passage of new legislation, the Employee Free Choice Act (EFCA), a priority in coming years. EFCA would require employers to recognize unions as the exclusive bargaining representative of units of employees based on a showing of majority support through card checks, rather than requiring an NLRB-supervised election. It would also institute arbitration to resolve conflicts over negotiations for first contracts, rather than permitting employers to drag out negotiations and thereby weaken union support.

The NLRA is enforced by the NLRB. Individuals aggrieved by unfair labor practices may file charges with the nearest regional office of the NLRB. For further information about the rights guaranteed under the NLRA and the process for filing charges, see the Board's website at <http://www.nlr.gov>.

B. The Family and Medical Leave Act

The **Family and Medical Leave Act of 1993** (FMLA) is intended to assist workers in balancing the demands of work and family. It applies to employers with 50 or more employees.

The FMLA entitles "eligible" employees to take up to 12 work weeks of leave during any 12-month period for one or more of the following reasons:

- the birth of a child and to care for the newborn child;
- the placement of a child with the employee through adoption or foster care, and to care for the child;
- to care for the employee's spouse, son, daughter or parent with a "serious health condition"; and
- because a "serious health condition" makes the employee unable to perform one or more of the essential functions of his or her job.

Employees are "eligible" for FMLA leave if they:

- have been employed by a covered employer for at least 12 months, which need not be consecutive;
- had at least 1,250 hours of service during the 12-month period immediately before the leave started; and
- are employed at a work site within 75 miles of which the employer employs 50 or more employees.

For purposes of the FMLA, a “serious health condition” is “an illness, injury, impairment, or physical or mental condition that involves ... [i]npatient care ... or [c]ontinuing treatment by a health care provider.” An otherwise eligible employee seeking FMLA leave for his or her own “serious health condition” must obtain a certification from a health care provider that, due to that condition, the employee is unable to work at all or to perform one or more of the essential functions of the job.

Employees taking FMLA leave have certain important rights. At the end of FMLA leave, the employer must return the employee to the same job or to a job with equivalent pay, benefits, and other terms and conditions. The employee may not lose any rights or benefits accrued prior to the leave. While on leave, the employer must continue the employee’s existing level of health benefit coverage.

The FMLA, however, has a serious limitation that interferes with the ability of many employees to take advantage of their rights: the Act does not require employers to pay employees for their FMLA leave. If an employer otherwise grants employees paid sick leave, it may require employees to use some or all of that leave (with pay) as part of the 12-week FMLA leave.

Many states have their own statutes providing family leave. The statutes may apply to employers with fewer employees than those covered by the FMLA, and may provide more leave. When both the FMLA and a state law apply, the employee is entitled to whichever provides the more generous benefits.

In 2008, Congress amended the FMLA to extend its benefits to the families of military personnel. The amendments permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."

The FMLA is enforced by the Wage and Hour Division of the U. S. Department of Labor (DOL) and through private lawsuits. Employees denied FMLA leave or reinstatement may file a complaint with DOL, which will investigate and attempt to resolve the dispute and which has authority to file suit in the U.S. district courts. The employee may also choose to go directly to court, without pursuing administrative remedies. For more information about enforcing rights under the FMLA, check the DOL’s website at <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>.

C. Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 (Title IX) prohibits sex discrimination against students and employees by education programs and activities that receive federal financial assistance. The overall goal of Title IX was to bring gender equality in all aspects of higher education—academic programs, athletic programs, and any other program. If only one program at a particular institution receives federal

funding, the entire institution must comply with the provisions of Title IX. Violations of Title IX can result in the loss of federal funding.

Title XI protects all full and part-time employees of covered institutions against sex-based discrimination in employment, recruitment and hiring under any education program or activity which receives or benefits from federal financial aid. Like Title VII, Title IX forbids sexual harassment and discrimination on the basis of pregnancy.

With the enactment of Title IX, most federally supported single-sex higher education institutions were no longer permitted. Women won access to many publicly funded educational institutions from which they had previously been excluded, and have gained access to a full range of athletic programs.

D. The Immigration Reform and Control Act

The **Immigration Reform and Control Act of 1986** (IRCA) requires employers to verify that their employees are authorized to work in the United States, by checking certain forms of identification. IRCA also prohibits discrimination based on national origin or citizenship.

An employer that only requires individuals of a particular national origin or individuals who appear to be foreign to provide employment verification may violate *both IRCA and Title VII*. Employers who impose citizenship requirements or give preference to U.S. citizens in hiring or employment opportunities may also violate IRCA, unless these are valid legal or contractual requirements for particular jobs. Employers may also violate Title VII if a requirement or preference has the purpose or effect of discriminating against individuals of a particular national origin.

IRCA was intended to curb illegal immigration by prohibiting employers from hiring individuals who are not authorized to work in the U.S. In policy statements issued in 2000, 2001 and 2006, the AFL-CIO Executive Council has decried the Act, various guestworker programs and court decisions limiting the recourse of immigrants against whom employers have discriminated as not only as completely failing to stem the flow of undocumented workers, but as giving employers tools for victimizing immigrant workers and degrading the working conditions of all employees. “[F]irmly and squarely set[ting] out [its] view that immigrants have played and continue to play an extremely important role in the workplace and society; and that they are entitled to full and fair workplace protection,” the Executive Council called on Congress to “replace [IRCA] with an alternative policy to reduce undocumented immigration and prevent employer abuse.” The Executive Council has also stated that any new immigration policy must seek to prevent employer discrimination against people who look or sound foreign; allow workers to pursue legal remedies, including supporting a union and obtaining backpay, regardless of immigration status; and ensure that employers comply with applicable labor standards regardless of the immigrant status of their employees.

The AFL-CIO Executive Council's 2000, 2001 and 2006 policy statements on immigration are available on the AFL-CIO's website: <http://www.aflcio.org>.

E. The Occupational Safety and Health Act

The Occupational Safety and Health Act ("OSH Act") created the Occupational Safety and Health Administration ("OSHA") within the U.S. Department of Labor. It also created two other federal agencies: the National Institute of Occupational Safety and Health ("NIOSH"), a research agency within the Department of Health and Human Services, and the Occupational Safety and Health Review Commission ("OSHRC"), an independent agency that decides challenges to OSHA enforcement actions.

The OSH Act gave OSHA the responsibility for promulgating standards that address safety and health hazards in the workplace, and for enforcing those standards.

The statute requires employers to comply with OSHA standards and generally to provide their employees with workplaces that are free from serious, recognized hazards. It also requires employees to comply with OSHA standards, although it does not give the agency the authority to cite employees for failing to fulfill those obligations.

Employee rights under the statute are explained in greater detail in Chapter 6 of this manual, and on OSHA's website, <http://www.osha.gov/as/opa/worker/rights.html>.

F. Executive Order 11246

Executive Order 11246 is a presidential order that applies to federal contractors or subcontractors that perform work on federal contracts valued over a certain dollar amount. The Executive Order prohibits contractors from discriminating on the basis of race, sex, religion, color or national origin, and requires affirmative action for women and minorities. The Executive Order has had a significant impact on fighting discrimination, particularly in the construction industry.

All of a contractor or subcontractor's facilities are covered by the Order, regardless whether it uses a particular facility in completing the federal contract. The Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor is responsible for enforcing the Order. The sanctions for violating E.O. 11246 include cancellation, termination or suspension of the contract, or debarment -- *i.e.*, disqualification from entering into additional government contracts -- for a period of time.

For more information, see

http://www.dol.gov/esa/regs/compliance/ofccp/ca_11246.htm.

As noted, Executive Order 11246 requires federal contractors not only to refrain from discrimination, but also to implement affirmative action programs -- programs that

are the subject of much controversy and misinformation. The following information is intended to clear up some of the myths and to provide a context for understanding affirmative action requirements.

1. What Is Affirmative Action?

Affirmative action programs are intended to ensure that eligible workers from all segments of society have equal opportunities to compete and succeed in the workplace. “Affirmative action” refers to a wide variety of tools intended to expand job and educational opportunities for members of groups that have been subject to systematic discrimination. Its goal is to end discrimination through rules, programs or other endeavors that ensure equal access and equal opportunities. Although affirmative action has been used effectively in education and training, its principal focus has been in employment.

Some examples of affirmative action programs are special recruitment efforts, outreach targeted towards minorities or women, training and promotional opportunities and holding employers and educational institutions accountable for employing or admitting minorities and women.

2. History of Affirmative Action

President John Kennedy first used the term “affirmative action” in 1961 when he signed Executive Order 10925, requiring federal contractors to ensure that applicants are employed, and that employees are treated, without regard to their race, creed, color or national origin. President Johnson signed Executive Order 11246 in 1965, establishing affirmative action obligations for federal contractors. Executive Order 11246 was signed after extensive studies demonstrated that employment discrimination often resulted from the failure of employers to establish positive nondiscrimination policies. Gender was added to the Executive Order as a protected category in 1968. The Nixon administration introduced the concept of “goals and timetables” on the advice of prominent corporations and business leaders who recognized that a diverse work force freed of job discrimination was good for business.

3. Importance of Affirmative Action

Women and minorities have made progress in the workplace as a result of affirmative action programs—experiencing new job and promotion opportunities and increases in wages. Affirmative action programs have also benefited all Americans, by helping to create a more competitive, competent, productive and diverse workforce by expanding the talent pool that reflects the markets most companies strive to serve.

Discrimination nonetheless remains a workplace problem for women and minorities. Far too often, women and members of minority groups face few advancement opportunities and unequal wages regardless of their skills, education, experience and

tenure. Affirmative action programs are therefore still needed to combat wide-spread discrimination.

4. *Myths About Affirmative Action*

- ***Myth #1: Affirmation action uses quotas.***
 - ***Facts:*** Affirmative action does not allow for using quotas. The use of quotas has been illegal since the U.S. Supreme Court's 1978 decision in *The Regents of the University of California v. Allen Bakke*. Lawful affirmative action programs cannot be used to remove someone from a position he or she holds or to take away vested benefits. Legal action can be taken against employers who erroneously use quotas instead of formulating a lawful, purposeful action plan.
- ***Myth #2: "Goals and timetables" mean the same as quotas.***
 - ***Facts:*** Quotas are not the same as "goals and timetables." Goals and timetables, authorized by Executive Order 11246, are benchmarks by which to measure progress toward eliminating the severe under-representation of qualified women and minorities in specific job categories. It is one of the most commonly used affirmative action tools for improving integration. The courts also realize that goals and timetables must be flexible and take into consideration such factors as the availability of qualified candidates.
- ***Myth #3: Affirmative action allows for unqualified workers to be hired.***
 - ***Facts:*** The purpose of affirmative action is not to promote unqualified workers. The courts have stressed that affirmative action is intended to "create an environment where merit can prevail." Hiring and promotional decisions are to be based on qualifications. Once hired, individuals must demonstrate their capabilities like everyone else.
- ***Myth #4: Affirmative action allows for the use of "preferences."***
 - ***Fact:*** Affirmative action is not about using preferences. It permits employers to include race, gender and ethnic background among the factors to consider in the hiring, selection and employment process. Affirmative action increases the possibility that all members in our diverse society will receive equal treatment for opportunities in education, training and jobs.

- ***Myth #5: Seniority systems are affected by affirmative action programs.***

- ***Facts:*** Lawful affirmative action programs do not add seniority credits to some employees or take credits away from others.

5. State Anti-Affirmative Action Initiatives

In recent years, affirmative action programs have been confronted with an intense increase of assaults. Those opposed to equal opportunity are attempting to undo 50 years of moderate progress towards equality. At state and federal levels, affirmative action opponents have initiated new campaigns in the legislatures and courts.

a. California's Proposition 209

California became the first state in the nation to ban affirmative action programs for women and minorities. In the 1996 election, California's voters approved Proposition 209, the so-called "California Civil Rights Initiative." Proposition 209 bars state and local governments from using gender- or race-based employment preferences. This initiative repealed most of California's affirmative action programs. It did not affect affirmative action programs run by the federal government and private businesses and colleges.

Proposition 209 is an assault on equal opportunity and inclusion. The measure eliminated affirmative action programs that helped women and minorities achieve equality in public employment, education and contracting, including:

- tutoring and mentoring for minority and women students;
- affirmative action programs that encourage the hiring and promoting of qualified women and minorities;
- outreach and recruitment programs that encourage applicants for governmental and contract jobs; and
- programs that give preference to women-owned or minority-owned companies on public contracts.

A coalition of civil rights groups fought the initiative in various federal courts, arguing that it abolished only programs that benefited women and minorities and kept in place programs that offered preferences for people on other grounds, such as veteran's status, age or disability. The courts, however, denied the challenge, and Proposition 209 was implemented.

b. Fallout from Proposition 209 in Other States

Policies and formal initiatives similar to California's Proposition 209 have appeared in several other states, meeting with various degrees of success. A few recent examples:

- **OKLAHOMA**

Affirmative action opponents tried to get a measure on the fall 2008 election ballot that would ban the use of racial, ethnic and gender preferences by public colleges and other state and local agencies. The initiative's sponsors withdrew the petition, however, when the secretary of state's office found that, due to large number of duplicates in the signatures collected, they had failed to collect the 138,970 valid signatures needed to get the initiative on the ballot.

- **MISSOURI**

In Missouri, Working to Empower Community Action Now (WeCAN), a coalition of community, faith, labor, business and education leaders worked to oppose an initiative that opponents of affirmative action programs were trying to get on the Missouri election ballot. WeCAN volunteers educated voters on the negative social and economic effect the initiative would have on the state. As a result, the organizations proposing to ban affirmative action in Missouri were unable to secure enough signatures.

- **COLORADO**

Colorado Unity, a non-partisan coalition of community, civil rights, business, labor and faith organizations and individuals committed to preserving and promoting effective affirmative action policies, was unsuccessful in keeping the Colorado Civil Rights Initiative off the November 2008 ballot. If passed, the initiative will prohibit discrimination or preferential treatment by the State of Colorado in public employment, public education, and public contracting.

6. *Support for Affirmative Action Remains Crucial*

a. *Affirmative Action Facts*

Women and minorities still suffer from wide-spread discrimination even with the major gains made through affirmative action programs. The battle ahead becomes especially apparent from the disturbing statistics below.

- An earnings gap between women and men persists across a wide spectrum of occupations. In 2007, women earned, on average, only 80 cents for every dollar earned by men.
- The EEOC received about 82,750 total charges of employment discrimination in FY2007.
- In the first quarter of 2008, the median weekly earnings by race, for all U.S. full-time wage and salary workers, were as follows:

Race or ethnicity	Women	Men
White	\$652	\$822
Black or African American	\$556	\$604
Asian	\$754	\$939
Hispanic or Latino	\$501	\$538

Source: BLS, *News* (USDL 08-0507, April 17,2008), Table 1.

b. Is Affirmative Action Still Necessary?

Finding common ground as we move toward the 21st century depends fundamentally on our shared commitment to equal opportunity for all Americans.

— President Bill Clinton

Discrimination against women and minorities has blighted American history. Women and minorities could not exercise the most basic right of citizenship: the right to vote. They were barred from certain occupations. Colleges and universities were closed to them. “Want ads” maintained separate listings for men and women and told some groups they “need not apply.” Some employers told women (but not men) with young children not to bother to apply. Federal law has only prohibited sex discrimination in employment since 1964, and in education, only since 1972.

Affirmative action programs have provided women and minorities with opportunities to assume their rightful place in society. Recruitment, outreach, training and other affirmative action programs have opened doors for women and minorities in the workplace, in educational institutions, and in other areas of society. These programs are as urgently needed today as they ever were. Eliminating or curtailing affirmative action would halt the progress women and minorities have been able to achieve. Indeed, we would take a giant leap backward in our journey toward equal opportunity for all, because discrimination is still widespread. It persists in housing, education, employment opportunities, wage disparities between women and men, and in banking and borrowing.

c. Affirmative Action Reflects Unionism’s Ideal of Justice

Affirmative action is an important issue for union members, because as trade unionists, we advocate fair treatment and equality for all workers. People who attack affirmative action might also eliminate safety and health laws, job security, union rights, overtime and other protections for which workers and their unions have fought.

d. Would the “Merit System” Be Better?

Opponents of affirmative action argue that people should be hired and promoted based on merit. Although valid in principle, in workplaces where there is no union, this

system would give the boss all the power to determine the standards of “merit” and which employees meet the standards. How fair are bosses when they hold all the cards? That’s why unions organize in the first place—to establish clear, fair procedures in the workplace, like promotion lists and seniority. If merit systems replace affirmative action programs, what other procedures will be determined on merit? Seniority? Job security? Pay increases? What standards will companies follow when judging merit? Will they make up, and remake, the rules as they go along to suit their moods or ideology?

e. Should Only the Needy Receive Assistance?

Some affirmative action foes feel that economic class should be the basis for programs to help people succeed. Giving special aid to low-income people to help them succeed is a good idea. Also better daycare, healthcare, a higher minimum wage, and grants for college or training. But poor people are not the only people affected by race and sex discrimination.

- People of color, no matter what their economic status, would still be the subject of discrimination.
- Middle-class women and people of color often are not promoted to better jobs.
- Few women and people of color are in positions of power.
- Women and people of color who own businesses have more difficulty borrowing money than white men do.

In fact, many of the people who object most to affirmative action are the same people who have cut back on programs, such as childcare, school lunches and educational grants, which are designed to help lower-income people improve their lives. So, do these people really want to help lower-income people, particularly by abolishing affirmative action?

The work force comprises men and women from all races and ethnic backgrounds. For years, and even now, some of us have been treated better at the expense of others. If we expect to build real unity and find common ground, none of us should benefit at the expense of the others. That isn’t fair; but without affirmative action, that’s what happens. Millions of workers have benefited from affirmative action. **Affirmative action is an effective tool to make our society fair for everyone.**

III. OTHER PENDING CIVIL RIGHTS INITIATIVES

A. Prevention of Hate Crimes

Hate crimes can be broadly defined as violent acts against another person, motivated by hatred for the actual or perceived race, color, religion, national origin, sexual orientation, gender, or disability of the victim. Violence based on the victim's membership in a minority group is a matter of great national and community concern.

Since 1969, federal law has permitted federal prosecution of hate crimes committed on the basis of a person's race, color, religion, or nation origin, when the victim was engaged in federally-protected activity. Every Congress since 1999 has considered versions of the Local Law Enforcement Enhancement Act (LLEEA) – also known as the Matthew Shepard Act – which would expand existing federal hate crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability, and drop the requirement that the victim be engaging in a federally-protected activity. In 2007, both the House and the Senate passed versions of the LLEEA, but the bill stalled when President Bush threatened a veto.

B. Employment Non-Discrimination Act (ENDA)

The Employment Non-Discrimination Act is intended to make clear that Title VII's protections extend to discrimination on the basis of sexual orientation. The most recent version of the bill, H.R. 3685, was passed by the House of Representatives by a vote of 235 to 184 on November 7, 2007.

Part B: Your Rights as an IBEW Member

1. What Are Your Rights Under the IBEW Constitution?

The Constitution of the IBEW establishes the rights and obligations of the members and provides a means for members to achieve common goals and to establish workable policies. The IBEW Constitution also provides a method for amending its laws and outlines an appeals procedure for members who may be accused of breaking those laws.

The IBEW Constitution is the supreme law of our international union. It describes the purpose for which our union was founded, our philosophy and the union's structure. As the basic law of the Brotherhood, it establishes the rights, privileges, duties and obligations of the members, the local unions and the International.

The members of an organization must be able to modify the organization to meet their needs as society changes. The IBEW Constitution provides methods to amend the International Constitution.

Union Administration

To provide more efficient and fair administration, large organizations generally apportion various responsibilities for administering policies and enforcing laws to smaller subdivisions. The IBEW Constitution establishes the subdivisions of the union. The International has many local unions and system councils, each having its own bylaws. In addition, local unions frequently establish internal units in order to meet the more-specialized needs of their members. However, the laws of local unions and their units cannot conflict with the IBEW Constitution.

While the Constitution is the supreme law of the Brotherhood, the implementation and application of the Constitution is further addressed in the *IBEW Basic Laws and Policies*. In addition, local unions may develop policies of their own as long as those policies do not conflict with the IBEW Constitution, the *IBEW Basic Laws and Policies* or federal, state, or provincial law.

System for Appeals

An element essential to the governance of a free, democratic and voluntary organization is an appeals procedure. Even though a member agrees to abide by the rules of an organization, an individual could interpret the rules differently. The Constitution provides for a trial at which fellow members hear the charges against an individual accused of violating the union's rules and the facts of the case. They render a decision. If

the member is dissatisfied with the decision, the member may appeal to the International Vice President in charge of the district. If the International Vice President does not reverse the decision, and the member still feels an injustice has been done, the member may appeal the case to the International President, the International Executive Council and the International Convention, in that order. The decision of the International Convention, like that of the Supreme Court of the United States and the Supreme Court of Canada, is final and binding.

2. What Are Your Rights Under Local Union Bylaws?

Local unions and their members understand their problems better than anyone else and are better able to care for their needs. The locals develop bylaws to handle their responsibilities and take care of business as effectively and efficiently as possible.

According to the IBEW Constitution, “Local unions are empowered to make their own bylaws and rules, but these shall in no way conflict with this Constitution. Where any doubt appears, this Constitution shall be supreme.”

Local Union Autonomy

Local unions are chartered by the International Secretary-Treasurer, when authorized by the International President, and operate in prescribed territorial and trade jurisdictions. They enjoy wide autonomy. They elect their own officers and make their own bylaws and rules, which must be approved by the International President and cannot conflict with the IBEW Constitution. They determine their own local union dues. Per capita payments to the International Office are set by the members, through their delegates to the International Convention, or by referendum.

Member Participation

Our organization is structured so that every member has a voice in its operation. As a member of your local union, you may be appointed as a shop steward; business representative; delegate to various labor councils with which your local union is affiliated; member of a negotiating committee, safety committee, social committee or other local union committee; press secretary; registrar; instructor for a training program; etc.

If you are eligible under terms of the IBEW Constitution and local union bylaws, you have the right to be a candidate for a local union or international union office or a delegate to the IBEW International Convention.

Operations and Finances

Collective bargaining goals are set at the local union level. Each local union determines the improvements that are required to serve its particular needs best. Once

your local union has established its bargaining goals, your international union will provide assistance.

Local union bylaws, along with the IBEW Constitution, are the blueprint for the successful operation of your local union. Bylaws provide the means by which local union members elect their officers and set their term of office, duties, salaries and expenses.

Bylaws provide for the amount of local union dues each member is required to pay to support the cost of servicing the local union. Bylaws also specify the method for establishing the amount of local union dues. Only local union members, by secret-ballot vote, can change the amount of those dues. The local union is required to notify all members by mail of any upcoming vote that changes the amount of dues that they pay.

3. What Does a Collective Bargaining Agreement Do for You?

“Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. ...” (National Labor Relations Act, Section 7)

“... To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to ... confer in good faith with respect to wages, hours, and other terms and conditions of employment. ...” (National Labor Relations Act, Section 8(d))

Negotiating a collective bargaining agreement with your employer is one of the most important services provided by your local union. No longer must you face management alone and unaided when seeking improved wages, working hours, fringe benefits and other working conditions. The local union’s negotiating committee works on behalf of the members as a unit. Local union officers and representatives are skilled negotiators who make every attempt possible in negotiations to improve the standard of living for all employees in the bargaining unit. All members of the bargaining unit are entitled to the benefits specified in the agreement.

Legal Obligation

Your employer is obligated by law to bargain with your union on such items as wages, working hours, overtime, vacation, holidays, sick leave, compassionate leave, safety, seniority, pension, health and welfare, life insurance, grievance and arbitration procedures, job security—to mention a few of the numerous items considered as “terms and conditions of employment.”

After an agreement is negotiated, the negotiating committee discusses with the members the provisions and their effects on the membership. The committee may then recommend that the members approve the agreement or do not approve. The latter action

would send the committee back to management to further negotiate any provisions the members did not approve. Once the agreement has been approved by the members and signed by both parties, your employer cannot unilaterally change any provision in the agreement during its agreed-upon term. Collective bargaining agreements are legally enforceable through regulations and procedures established under the authority of the National Labor Relations Act and its successors, the Taft-Hartley Act and the Landrum-Griffin Act. Such procedures may include suit in federal court.