The Catholic Lawyer

The Code of Canon Law Provisions on Labor Relations

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The new Code of Canon Law\(^1\) codifies the modern teaching of the Roman Catholic Church on labor relations which was first addressed by Pope Leo XIII in 1891 in the encyclical letter *Rerum Novarum*,\(^2\) and reiterated by every successor pope,\(^3\) and most recently extended by Pope John Paul II in his encyclical letter *Laborem Exercens* (On Human Work)\(^4\) in 1981. This teaching has also been reflected in the work of the Second Vatican Council, in particular in *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World),\(^5\) and in Synodal documents such as "Justice in the World."

In this Article, the tradition of Church teaching on labor relations will be examined in order to provide a context for consideration of the various provisions of the Code of Canon Law which deal with labor rela-

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\(^1\) References to the Code of Canon Law are made to the Latin-English edition prepared under the auspices of the Canon Law Society of America. See *CODE OF CANON LAW* (Transl. Canon Law Society of America) (1983).


\(^3\) The Pope Paul VI, on the Coming Eightieth (Octogesima Adveniens) (St. Paul Editions) (1971) [hereinafter cited as *The Coming Eightieth*].

\(^4\) The Pope Paul VI, on the Coming Eightieth (Octogesima Adveniens) (St. Paul Editions) (1971) [hereinafter cited as *The Coming Eightieth*].

\(^5\) The Pope Paul VI, on the Coming Eightieth (Octogesima Adveniens) (St. Paul Editions) (1971) [hereinafter cited as *The Coming Eightieth*].


\(^7\) *Pastoral Constitution on the Church in the Modern World* (Gaudium Et Spes), promulgated by His Holiness Pope Paul VI on December 7, 1965 (St. Paul ed.) (n.d.).

Two lines of development in the Code will be underscored. The first provides recognition of the rights of workers to associate for the purpose of obtaining recognition and protection of employment rights; the second provides authority for religious to assert claims to rights for compensation and general working conditions. Attention will then be directed to developments in labor law in the United States which have increasingly addressed efforts of workers in church-related institutions to unionize and efforts of religious to inclusion in unions of their co-workers.

I. CHURCH TEACHING ON LABOR RELATIONS

A. Rerum Novarum

Pope Leo XIII issued the encyclical On the Condition of Workers on May 15, 1891. The Pope confronted a spectrum of vast social injustice resulting from the excesses of industrial development with its increased concentration of wealth and a resultant deprivation of the working classes. At the same time, the Pope expressed concern for the developing social movements that seemingly aimed at exacerbating class conflict and that placed excessive emphasis on materialism. Three principles provided the basis for the Pope's teaching: personal liberty, the right to property, and the demand for social justice. The subject of labor relations was viewed as involving a set of rights and duties on the part of the workers and employers.

The Pope identified a set of duties for workers and employers in

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7 See infra notes 112-42 and accompanying text.
8 See infra notes 112-29 and accompanying text.
9 See infra notes 130-42 and accompanying text.
10 See infra notes 143-231 and accompanying text.
11 See infra notes 232-49 and accompanying text.
12 Conditions of the Working Classes, supra note 2, at 208.
13 Id. at 208-10.
14 Id.
15 The Pope identified that workers are obliged:
   To perform entirely and conscientiously whatever work has been voluntarily and equitably agreed upon; not in any way to injure the property or to harm the person of employers; in protecting their own interests, to refrain from violence and never to engage in rioting; not to associate with vicious men who craftily hold out exaggerated hopes and make huge promises, a course usually ending in vain regrets and in the destruction of wealth.
   Id. at 219.
16 Under Pope Leo's edict employers should realize that
   [w]orkers are not to be treated as slaves; justice demands that the dignity of human personality be respected in them, enabled as it has been through what we call the
his encyclical. One prevalent contemporary view that the Pope considered was the position that the wages and conditions of labor were the product of market forces and that the freedom of contract between employer and employee fixed a just wage. Pope Leo formulated this position which has, in recent times, received a new respectability in contemporary commentary:

We are told that free consent fixes the amount of a wage; and therefore the employer, after paying the wage agreed to would seem to have discharged his obligation and not to owe anything more; that only then would injustice be done if either the employer should refuse to pay the whole amount of the wage, or the worker should refuse to perform all the work to which he had committed himself; and that in these cases, but in no others, is it proper for the public authority to intervene to safeguard the rights of each party.  

The Pope, however, identified in this position a failure to account for a standard of fairness and justice. There is, of course, readily apparent in this position, a failure to consider the imbalance in bargaining power between worker and employer. This involves a failure to observe the social necessity of employment and of a wage for the worker, and that the employer is able to take advantage of the fact of the oversupply of available workers and the limited alternatives in employment available to workers in order to set an excessively low wage in relation to the productive contribution of the worker in light of the worker's economic needs. The Pope also addressed the failure of a free market theory of labor to take into account the demands of social justice.  

Christian character . . . . [1]t is the duty of the employers to see that the worker is free for adequate periods to attend to his religious obligations; not to expose anyone to corrupting influences or the enticements of sin, and in no way to alienate him from care for his family and the practice of thrift. Likewise, more work is not to be imposed than strength can endure, nor the kind of work which is unsuited to a worker's age or sex.  

Among the most important duties of employees . . . . is to give every worker what is justly due him. Assuredly, to establish a rule of pay in accord with justice many factors must be taken into account.  

Id. at 219-220.  
17 Id. at 235.  
18 An impartial judge would not assent readily or without reservation to this reasoning, because it is not complete in all respects; one factor to be considered, and one of the greatest importance, is missing. To work is to expend one's energy for the purpose of securing the things necessary for the various needs of life and especially for its preservation . . . . If labor should be considered only under the aspect that it is personal, there is no doubt that it would be entirely in the worker's power to set the amount of the agreed wage at too low a figure . . . . But this matter must be judged far differently, if with the fact or of personality we combine the factor of necessity . . . . To preserve one's life is a duty common to all individuals, and to neglect this duty is a crime. Hence arises necessarily the right of securing things to sustain life, and only a
Pope Leo identified two means to ensure the provision of a just wage and decent working conditions: state intervention and free association of workers. The Pope first laid down a duty and right on the part of the State to develop laws and institutions that would guarantee the well-being of workers. While the Pope viewed the State as providing a framework for providing desirable conditions for employer-employee relations, direct pervasive intervention of the State was viewed as less desirable than the development of free associations that could bargain for terms of employment suited to the particular conditions of the enterprise and the felt needs of workers.

Two forms of association were identified as potentially providing the framework for meeting the workers' needs: first, organizational settings in which employer and employee could provide the means for meeting the employment, personal, and social needs of the parties; and, second, allowing associations of workers to join together to ensure that their needs

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wage earned by his labor gives a man the means to acquire these things.

Let it be granted then that worker and employer may enter freely into agreements and, in particular, concerning the amount of the wage; yet there is always underlying such agreements an element of natural justice, and one greater and more ancient than the free consent of contracting parties, namely, that the wage shall not be less than enough to support a worker who is thrifty and upright.

*Id.* at 234-35.

19 [T]hose governing the State ought primarily to devote themselves to the service of individual groups and of the whole commonwealth, and through the entire scheme of laws and institutions to cause both public and individual well-being to develop spontaneously out of the very structure and administration of the State . . . . *Id.* it is within the competence of the rulers of the State that, as they benefit other groups, they also improve in particular the conditions of the workers. Furthermore, they do this with full right and without laying themselves open to any charge of unwarranted interference. For the State is bound by the very law of its office to serve a common interest.

*Id.* at 227-31.

20 In these and similar questions, such as the number of hours of work in each occupation and the health safeguards to be provided, particularly in factories, it will be better, in order to avoid unwarranted governmental intervention, especially since circumstances of business, season, and place are so varied, that decision be reserved to the organizations of which we are about to speak below, or else to pursue another course whereby the interests of the workers may be adequately safeguarded—the State, if the occasion demands, to furnish help and protection.

*Id.* at 236-37.

21 E]mployers and workers themselves can accomplish much in this matter, manifestly through those institutions by the help of which the poor are opportunely assisted and the two classes are brought closer to each other. Under this category come associations for giving mutual aid; various agencies established by the foresight of private persons to care for the worker and likewise for his dependent wife and children in the event that an accident, sickness, or death befalls him; and foundations to care for boys and girls, for adolescents, and for the aged.

*Id.* at 238.
Pope Leo concluded his encyclical with a clarion call for reform and action aimed at providing just labor relations. He urged that employers be mindful of the duties owed to their employees and that employees continue to press their claim for representation. Further, he stressed that immediate action be taken to prevent the current social evil, worker exploitation, from becoming incurable.

B. Quadragesimo Anno

Pope Pius XI issued his encyclical Restructuring the Social Order on May 15, 1931, on the fortieth anniversary of *Rerum Novarum*. Pope Pius reaffirmed the principles laid down in *Rerum Novarum* and sought to clarify and extend the Church's teaching on labor relations. The Pope acknowledged the need for continuing social reform while confirming the natural law character of property. Affirming the need for individual freedom and free association, the Pope placed emphasis on the need to secure the common good and justice. Explicit recognition was given to "a new branch of jurisprudence unknown to earlier times, whose aim is the energetic defense of those sacred rights of the workingman that proceed from his dignity as a man and as a Christian." These laws concern "the soul, the health, the strength, the housing, workshops, wages, dangerous employments, in a word, all that concerns the wage-earners, with particular regard to women and children." The Pontiff stressed the importance of societies of workingmen in pursuing the ends of just labor relations, "of encouraging Christian workingmen to form unions according to their several trades." Praise was directed to those who facilitated the growth of the trade union movement—to "the clergy and many of the laity [who] devoted themselves everywhere with admirable zeal to the creation of such unions, which in turn became instrumental in building up a body of..."
truly Christian workingmen. These happily combined the successful plying of their trade with deep religious convictions; they learned to defend their temporal rights and interests energetically and efficiently, retaining at the same time a due respect for justice and a sincere desire to collaborate with other classes.”

Pope Pius maintained that the doctrine of an “innate right of forming unions” declared in *Rerum Novarum* was properly extended to other areas of activity, “to find ready application to corporations other than those of workingmen.” In particular, the Pope noted approvingly the “spread of associations amongst farmers and others of the humbler classes.”

The Pope urged recognition of the need for just distribution of wealth; both the unjust claims of capital and labor were to be rejected. Capital’s unjust claim, according to the Pope, was to all of “the products and profits, which left the laborer the barest minimum necessary to repair his strength and to ensure the continuation of his class.” On the other hand, the Pope noted that there was “set up in opposition to this fictitious law another equally false moral principle: that all products and profits, excepting those required to repair and replace invested capital, belong by every right to the workingman.” In opposition to these polar errors, the Pope set out what he viewed to be the true proposition that should govern distribution: “Each class, then, must receive its due share, and the distribution of created goods must be brought into conformity with the demands of the common good and social justice, for every sincere observer is conscious that the vast differences between the few who hold excessive wealth and the many who live in destitution constitute a grave evil in modern society.”

This principle was developed by the Pope in a theory of the just wage. As a general matter the objective of a just wage is to create a situation in which “the propertyless wage earner be placed in such circumstances that by skill and thrift he can acquire a certain moderate ownership.” Echoing the words of Pope Leo, it was observed that “[i]n estimating a just wage, not one consideration but many must be taken into account.” This is because “in labor, especially hired labor, as in ownership, there is a social as well as a personal or individual aspect to be

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28 Id.
29 Id. at 15-16.
30 Id.
31 Id. at 22.
32 Id. at 22-23.
33 Id. at 24.
34 Id. at 25-26.
considered.” Pope Pius identified three factors to be taken into account in determining the just wage: the personnel, the state of business, and the common good. The Pope set out that: “In the first place, the wage paid to the workingman must be sufficient for the support of himself and his family. . . . Every effort must therefore be made that fathers of families receive a wage sufficient to meet adequately ordinary domestic needs.”

Second, the economic status of the enterprise placed parameters on the proper wage: “The condition of any particular business and of its owner must also come into question in settling the scale of wages, for it is unjust to demand wages so high that an employer cannot pay them without ruin, and without consequent distress amongst the working people themselves.” Finally, the exigencies of the common good must be considered in determining the just wage: “[T]he wage-scale must be regulated with a view to the economic welfare of the whole people. . . . [O]pportunities for work [should] be provided for those who are willing and able to work. This depends in large measure upon the scale of wages, which multiplies opportunities for work as long as it remains within proper limits, and reduces them if allowed to pass these limits.”

Beyond the payment of a just wage, Pope Pius urged the development of means of participation of workers in the employing enterprise; the Pope proclaimed: “We deem it advisable that the wage-contract should, when possible, be modified somewhat by a contract of partnership, as is already being tried in various ways to the no small gain both of the wage-earners and of the employers. In this way wage-earners are made sharers in some sort in the ownership, or the management, or the profits.” The objective of the development of such participation is the very reconstruction of the social order which is the driving theme of Pope Pius’ encyclical, “to abolish conflict between classes with divergent interests, and thus foster and promote harmony between the various ranks of

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34 Id. at 26-27.
35 Id. at 27.
36 Id. at 28.
37 Id. at 28-29.
38 Id. at 26. The Pope observed:

Justice is to be observed not merely in the distribution of wealth, but also in regard to the conditions under which men engage in productive activity. There is, in fact, an innate need of human nature requiring that men engaged in productive activity have an opportunity to assume responsibility and to perfect themselves by their efforts.

Consequently, if the organization and structure of economic life be such that the human dignity of workers is compromised, or their sense of responsibility is weakened, or their freedom of action is removed, then we judge such an economic order to be unjust, even though it produces a vast amount of goods, whose distribution conforms to the norms of justice and equity.

Id. at 25.
C. Mater et Magistra

On May 15, 1961, on the seventieth anniversary of the issuance of Rerum Novarum, Pope John XXIII issued his encyclical letter On Recent Developments in the Social Question Considered in the Light of Christian Teaching. Pope John carefully reviewed the teachings of his predecessors on the matter of labor relations. While affirming the basic tenets of the earlier papal pronouncements, Pope John stressed the changed historical and social circumstances which he viewed as having profound significance for just labor relations. Among the significant developments in science, technology, and economics, the Pope identified developments in social welfare including social insurance, educational improvements, increased social mobility, and a reduction of class differences, and the greater participation of the individual in public affairs.

Pope John stressed the need to give equal weight to private, individual and joint initiatives in pursuit of common interests and to the necessity of public intervention in stimulating, regulating, supplementing, and complementing these efforts to achieve social justice. The very complexity of modern social relationships was seen as creating a need for both individual and public efforts.

Pope John emphasized the social implication of wage policies that necessitate consideration of the complex factor his predecessor identified as central to the determination of a just wage. Additionally, he stressed the desirability of greater worker participation in the enterprises with which they are associated.

Pope John went on to urge two lines of development in labor relations: a broadening of the groups properly regarded as entitled to organize for the purposes of achieving greater protection and participation in their productive activities; and increased activity on the part of governmental bodies to secure worker protection. As to expanding the bodies of persons who are properly recognized as having a right to organize for their common good, Pope John approvingly quoted the remarks of his predecessor, Pope Pius XII, who stated in a September 1, 1944, radio broadcast: “Small and medium-sized holdings in agriculture, in the arts and crafts, in commerce and industry, should be safeguarded and fostered. Such enterprises should join together in mutual aid societies in or-

\[40\] Id. at 31.
\[41\] See Mater et. Magistra, supra note 3, at 3.
\[42\] Id. at 14.
\[43\] Id. at 14-15.
\[44\] Id. at 16-17.
\[45\] Id. at 25.
der that the services and benefits of large scale enterprises will be available to them. So far as these larger enterprises are concerned, work agreements should in some way be modified by partnership arrangements. Pope John went on to urge the formation of professional associations for craftsmen and artisans and for the support of these groups by the State: "[I]t is most fitting not only that both these groups be suitably formed in technical and in spiritual and intellectual matters, but also that they be joined together professionally. Nor is it less fitting that the State make special provisions for them in regard to instruction, taxes, credit facilities, social security and insurance."  

Pope John gave particular emphasis to the need to develop means for worker participation in the enterprises with which they are associated. The Pope stressed: "[W]e regard as justifiable the desire of employees to be partners in enterprises with which they are associated and wherein they work . . . . we do not doubt that employees should have an active part in the affairs of the enterprise wherein they work, whether these be private or public." While acknowledging "the necessary and efficient unity of administration," the Pontiff maintained, "it by no means follows that those who work daily in such an enterprise are to be considered as servants, whose sole function is to execute orders silently, and who are not allowed to interject their desires and interests, but must conduct themselves as idle standbys when it comes to assignment and direction of their tasks."  

Two beneficial results were seen as flowing from worker participation in the enterprise: first, mutual respect and stability; and, second, positive contributions to the efficient operation of the enterprise. The Pope reasoned: "This requires that mutual relations between employers and directors on the one hand and the employees of the enterprise on the other, be marked by mutual respect, esteem, and good will. It also demands that all collaborate sincerely and harmoniously in their joint undertaking, and that they perform their work not merely with the objective of deriving an income, but also of carrying out the role assigned them and of performing a service that results in benefit to others. This means that the workers may have a say in, and may make a contribution toward, the efficient running and development of the enterprise."  

One of the consequences of the social, scientific, and economic changes that the Pope identified at the beginning of his encyclical was the

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46 Id. (quoting Pope Pius XII, Radio Broadcast, September 1, 1944, reprinted in Acta Apostolical Sedis XXXVI (1944)).
48 Id. at 26-27.
49 Id. at 27.
50 Id. at 27.
displacement of workers caused by technological advances. Observing this fact, the Pontiff urged the development of programs and policies directed at ameliorating this situation. As a general matter, the Pope observed that: "[I]t is an undeniable fact that the more recent productive systems, thanks to the impulse deriving from advances in technology and science, are becoming more modern and efficient, and are expanding at a faster rate than in the past. This demands of workers greater abilities and professional qualifications. Accordingly, workers should be provided with additional aids and time to achieve a suitable and more rounded formation."  

The Pope proceeded to confirm the Church's continuing support of unions and collective bargaining, emphasizing their contribution to the reduction of social strife and to the development of productive enterprise. Further, the Pope underscored the need for public authorities to attend to the proper functioning of the economy, and the related need to provide for representation by management and workers before the public authorities. Special recognition was given to the contributions already made by the various professional groups and associations of workers within various nations as well as by the International Labor Organization which was said to have assisted in the obtaining of recognition of legitimate rights of workers.

D. Octogesima Adveniens and Populorum Progressio

On May 17, 1971, in his Apostolic Letter to His Eminence, Maurice Cardinal Roy, Pope Paul VI celebrated the eightieth anniversary of the publication of Rerum Novarum. This letter focused on the subject of labor relations supplementing Pope Paul's encyclical letter, On the Development of Peoples, issued on March 26, 1971. In his encyclical, Pope Paul identified the nature of human aspirations:

Freedom from misery, the greater assurance of finding subsistence, health and fixed employment; an increased share of responsibility without oppres-

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51 Id. at 28.
52 The Pope stated:
Now, as is evident to all, in our day associations of workers have become widespread, and for most part have been given legal status within individual countries and across national boundaries. These bodies no longer recruit workers for purposes of strife, but rather for pursuing a common aim. And this is achieved especially by collective bargaining between associations of workers and those of management. But it should be emphasized how necessary, or at least very appropriate, it is to give workers an opportunity to exert influence outside the limits of the individual productive unit, and indeed within all ranks of the commonwealth.

Id.
53 The Coming Eightieth, supra note 3, at 5 and 42.
54 See Development of Peoples, supra note 3, at 531.
sion of any kind and in security from situations that do violence to their
dignity as men; better education—in brief, to seek to do more, know more
and have more in order to be more: that is what men aspire to now when a
greater number of them are condemned to live in conditions that make this
lawful desire illusory. 56

The Pope went on to consider the subject of work in relationship to this
formulation of the character of human hope. He first identified the posi-
tive contribution that work can make to human development:

[Work] is for all something willed and blessed by God. Man created to His
image “must cooperate with his Creator in the perfecting of creation and
communicate to the earth the spiritual imprint he himself has received.”
God Who has endowed man with intelligence, imagination and sensitivity,
has also given him the means of completing His work in a certain way:
whether he be artist or craftsman, engaged in management, industry or agri-
culture, everyone who works is a creator . . . . Further, when work is done
in common, when hope, hardship, ambition and joy are shared, it brings
together and firmly unites the wills, minds and hearts of men: in its accom-
plishment, men find themselves to be brothers. 56

However, while underscoring the benefits of work, the Pope was not un-
mindful of the adverse effects work activity can have through the effects
of materialism and dehumanization. He warned:

Work of course can have contrary effects, for it promises money, pleasure
and power, invites some to selfishness, others to revolt; it also develops pro-
fessional awareness, sense of duty and charity to one’s neighbor. When it is
more scientific and better organized, there is a risk of its dehumanizing
those who perform it, by making them its servants, for work is human only
if it remains intelligent and free. 57

In his Apostolic Letter, on the occasion of the eightieth anniversary
of Rerum Novarum, Pope Paul turned his attention to the conditions
that permit work to contribute to human development rather than stifle it. 58
The Pope conceded that the vast differences between the social and
economic conditions in various countries prevent a simple and uniform
approach to labor relations. 59 Still, he maintained that there are a num-
ber of widely experienced problems that need to be addressed. 60 Three
interests of workers are identified as requiring vindication: a right to
work, a right to a just wage, and a right to social assistance. According to
Pope Paul: “Every man has the right to work, to a chance to develop his


56 Id. at 9.
57 Id. at 21.
58 Id. at 21.
59 The Coming Eightieth, supra note 3, at 14.
60 Id. at 6-7.
61 Id. at 7.
qualities and his personality in the exercise of his profession, to equitable remuneration which will enable him and his family 'to lead a worthy life on the material, social, cultural and spiritual level,' and to assistance in case of need arising from sickness or age."\(^{61}\)

Pope Paul confirmed the Church's social teaching that unions are instrumental to the realization of these interests.\(^{62}\) Nevertheless, the Pope warned of possible abuses: "Here and there the temptation can arise of profiting from a position of force to impose, particularly by strikes—the right to which as a final means of defense remains certainly recognized—conditions which are too burdensome for the overall economy and for the social body, or to desire to obtain in this way demands of a directly political nature."\(^{63}\) To prevent such abuse, the Pope suggested that public authorities may properly intervene for the good of the general society.\(^{64}\)

An area of concern which was underscored by the Pope involved the victims of change and the "new poor." The Pope observed: "In industrial change, which demands speedy and constant adaptation, those who will find themselves injured will be more numerous and at a greater disadvantage from the point of making their voices heard."\(^{65}\) Similarly, it was said: "The Church directs her attention to those new 'poor'—the handicapped and the maladjusted, the old, different groups of those on the fringe of society, and so on—in order to recognize them, help them, defend their place and dignity in a society hardened by competition and the attraction of success."\(^{66}\) Finally the Pope deplored discrimination on account of race, origin, color, culture, sex, or religion, and urged that "all should be equal before the law, find equal admittance to economic, cultural, civic and social life and benefit from a fair sharing of the nation's riches."\(^{67}\)

Pope Paul VI amplified the position of his predecessors who maintained that the person has a right to work in order to develop his human potential. Pope Paul urged the international community to devote increased attention to the development of work opportunities. The Pope warned: "With demographic growth, which is particularly pronounced in the young nations, the number of those failing to find work and driven to misery or parasitism will grow in the coming years unless the conscience of man rouses itself and gives rise to a general movement of solidarity through an effective policy of investment and of organization of produc-

\(^{61}\) Id. at 14.
\(^{62}\) Id. at 14-15.
\(^{63}\) Id. at 15.
\(^{64}\) Id.
\(^{65}\) Id.
\(^{66}\) Id. at 15-16.
\(^{67}\) Id. at 16.
tion and trade, as well as of education."

E. Laborem Exercens

Pope John Paul II issued his encyclical On Human Work on September 14, 1981. It was intended that the encyclical be issued on May 15, 1981, on the ninetieth anniversary of Rerum Novarum; however, the attempted assassination of John Paul II prevented the completion of the letter until later in the year. Pope John Paul began his encyclical by affirming the dignity of work and its contribution to social, cultural, and moral development. The Pope acknowledged both the significance of work as well as the burdens it can produce: "(M)an’s life is built up every day from work, from work it derives its specific dignity, but at the same time work contains the increasing measure of human toil and suffering, and also of the harm and injustice which penetrate deeply into social life within individual nations and on the international level."

To avoid the injustices of work, the Pope acknowledged the contributions of worker solidarity and worker participation: "(W)orker solidarity, together with a clearer and more committed realization by others of workers’ rights, has in many cases brought about profound changes. Workers can often share in running businesses and in controlling their productivity, and in fact do so. Through appropriate associations they exercise influence over conditions of work and pay, and also over social legislation."

Nevertheless, the Pope warned that progress in local areas of labor relations should not blind one to the unfulfilled demands of justice for workers in various countries in various areas of economic activity. The Pope observed: "(V)arious ideological or power systems, and new relationships which have arisen at various levels of society, have allowed flagrant injustices to persist or have created new ones." The demand for "study of the subject of work and of the subjects’ living conditions" stems not only from increased identification of areas of social imbalance, but also from the fact that new areas of imbalance arise from technological displacement and from lack of coordination of educational activity and development of demand for services; this latter concern led the Pope to observe that:

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64 Id. at 17.
66 Id. at 2.
67 Id. at 12.
68 Id.
Social groups that were not previously included in such movements but which, in changing social systems and conditions of living, are undergoing what is in effect “proletarianization” or which, even if not yet given that name, in fact deserves it. This can be true of certain categories of groups of the working “intelligentsia,” especially when ever wider access to education and an ever increasing number of people with degrees or diplomas in the fields of their cultural preparation are accompanied by a drop in demand for their labor. This unemployment of intellectuals occurs or increases when the education available is not oriented towards the types of employment or service required by the true needs of society, or when there is less demand for work which requires education, or when it is less well paid.73

The response to these newly discovered areas of deprived workers led the Pope to call “for ever new movements of solidarity of the workers and with the workers” in face of “the ‘poor’ [which] appear under various places and at various times; in many cases they appear as a result of the violation of the dignity of human work: either because the opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family.”74

Pope John Paul formulated the issues of labor relations as a matter of “‘human rights.’” Similarly, the Pope maintained that it was a principle of Church teaching that “labor has a priority over capital, and that labor is always a primary efficient cause,”75 and, finally, the right of property which is founded on work must be understood according to the principle that “the right to private property is subordinated to the right to common use, to the fact that goods are meant for everyone.”76

The understanding of the rights of workers is broader than simply obtaining a just wage, according to Pope John Paul; rather: “(T)he person who works desires not only due remuneration for his work; he also wishes that, within the production process, provision be made for him to be able to know that in his work, even in something that is owned in common, he is working ‘for himself.’”77

Pope John Paul placed new emphasis on State labor policy, stating that “it is the State that must conduct a just labor policy.”78 This emphasis flows from a clearer understanding of the mutual interdependence of economic activity, and the need to develop coordination of this activity. In addition, there is the requirement of justice that there be “suitable

73 Id.
74 Id. at 14.
75 Id. at 19.
76 Id. at 23.
77 Id. at 26.
78 Id. at 28.
employment for all who are capable of it.”

Finally, there is a need for the State to meet: “The obligation to provide unemployment benefits, that is to say, the duty to make suitable grants indispensable for the subsistence of unemployed workers and their families.”

According to the Pope, all this requires of the State is that it provide “a just and rational coordination within the framework of which the initiative of individuals, free groups and local work centers and complexes must be safeguarded.”

Three issues are identified by the Pope as providing the primary claims of the worker in relationship to his direct employer: just remuneration, elimination of discrimination, and provision of needed social benefits. The Pontiff identified the central issue to be that of a just wage; he wrote: “The key problem of social ethics in this case is that of just remuneration for work done.”

This requires a consideration of the economic needs of the family and a social evaluation of the worker’s role. A second requirement is that economic activity be conducted without discrimination of any kind.

Third, the Pope observed: “Besides wages, various social benefits intended to ensure the life and health of workers and their families should be provided; these benefits include health care, accident expenses, medical assistance, as well as rest from work including vacation, pension and old age insurance.”

To secure these rights, Pope John Paul assigned a primary role to unions. According to the Pope: “All these rights, together with the need for the workers themselves to secure them, give rise to yet another right: the right of association, that is to form associations for the purpose of defending the vital interests of those employed in various professions. These associations are called labor or trade unions. The vital interests of the workers are, to a certain extent, common for all of them; at the same time, however, each type of work, each profession, has its own specific character which should find a particular reflection in these organizations.”

The Pope traced the origin of unions to medieval guilds and to the industrial struggle of the modern period when workers strove to “protect their just rights vis-a-vis the entrepreneurs and the owners of the means of production.”

The Pope stated that today unions are not only “an indispensable element of social life,” but ought to be extended to all areas of economic activity since: “[r]epresentatives of every profession

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79 Id. at 29.
80 Id. at 29-30.
81 Id. at 30.
82 Id. at 31.
83 Id. at 31-32.
84 Id. at 33.
85 Id.
86 Id.
87 Id. at 34.
can use them to ensure their own rights."88 Thus, the Pope noted: "[T]here are unions of agricultural workers and of white-collar workers; there are also employers' associations."89 According to the Pope, Catholic social teaching does not view unions merely as instruments of "class" struggle, but as "a mouthpiece for the struggle for social justice," so that a "union remains a constructive factor of social order and solidarity."90

The Pontiff identified a series of special roles for unions. First, he suggested that unions directly engage in efforts to instruct and educate workers and foster workers' self education.91 Second, the Pope acknowledged that the strike or work stoppage was a valuable method used by unions in pursuing workers' just rights.92 Third, it was suggested that the benefits of worker organizations be extended to agricultural workers who not only face exhausting physical demands but who often lack adequate professional training and proper equipment.93 Fourth, the Pope urged that: "The various bodies involved in the world of labor . . . should by means of effective and appropriate measures foster the right of disabled people to professional training and work, so that they can be given productive activity suited to them."94 Finally, the Pope maintained that the burdens on "emigration in search of work" should be reduced; the Pope urged: "The most important thing is that the person working away from his native land, whether as a permanent emigrant or as a seasonal worker, should not be placed at a disadvantage in comparison with the other workers in that society in the matter of working rights."95

F. Gaudium Et Spes

The Pastoral Constitution on the Church in the Modern World96 produced under the auspices of Vatican Council II and promulgated by Pope Paul VI on December 7, 1965, declared certain principles governing socio-economic life as a whole and devoted particular attention to the nature of work and the proper mode of labor relations.

In Section 67 of the Pastoral Constitution, specific recognition is given to human labor as the primary element of economic life since it "comes immediately from the person, who as it were stamps the things of

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88 Id.
89 Id.
90 Id.
91 Id. at 35.
92 Id.
93 Id. at 36.
94 Id. at 53.
95 Id. at 54.
96 Pastoral Constitution on the Church in the Modern World, supra note 5, at 1.
nature with his seal and subdues them to his will.’ Among the functions of labor are the obtaining of the means of material support, providing the means for good work, and facilitating creative activity. On this basis the Pastoral Constitution declares:

From this there follows for every man the duty of working faithfully and also the right to work. It is the duty of society, moreover, according to the circumstances prevailing in it, and in keeping with its role, to help the citizens to find sufficient employment. Finally, remuneration for labor is to be such that man may be furnished the means to cultivate worthily his own material, social, cultural and spiritual life and that of his dependents, in view of the function and productiveness of each one, the conditions of the factory or workshop, and the common good.

Further, it emphasized that the process of productive work should be adapted to the needs of the person so that it is fulfilling rather than oppressive. Thus, it is stated: “The opportunity should be granted to workers to unfold their own abilities and personality through the performance of their work,” and, further, workers “should also enjoy sufficient rest and leisure to cultivate their familial, cultural, social and religious life.”

Section 68 of the Pastoral Constitution gives explicit recognition to principles of worker participation, association for common objectives, and action to achieve just claims. First, the principle of participation is stressed: “[W]ith attention to the functions of each—owners or employers, management or labor—and without doing harm to the necessary unity of management, the active sharing of all in the administration and profits of these enterprises in ways to be properly determined is to be promoted.”

Second, the right of association is recognized: “Among the basic rights of the human person is to be numbered the right of freely founding unions for working people. These should be able to truly represent them and to contribute to the organizing of economic life in the right way. Included is the right of freely taking part in the activity of these unions without risk of reprisal.” Finally, the devices of collective bargaining and the strike are viewed as rightly and necessarily available to workers in pursuit of their just claims; the Pastoral Constitution declares: “When, however, socio-economic disputes arise, efforts must be made to come to a peaceful settlement . . . a strike, nevertheless can remain even in present-day circumstances a necessary, though ultimate, aid for the defense of the worker’s own rights and the fulfillment of their just

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97 Id. at 71.
98 Id. at 71-72.
99 Id. at 71.
100 Id.
101 Id. at 74.
102 Id.
desires. As soon as possible, however, ways should be sought to resume negotiations and the discussion of reconciliation."\textsuperscript{103}

G. Synodal Document On The Justice in the World

The Synodal Document on the Justice in the World\textsuperscript{104} issued in November, 1971, reaffirmed the teachings on labor relations and made an important and explicit expansion of the coverage of the teachings of the Church to priests, religious, and lay persons who serve as employees of Church enterprises. The new Code of Canon Law gives direct and concrete recognition of the rights of Church workers to a just wage and social security.\textsuperscript{105}

The Synodal Document expresses concern that contemporary social and economic developments threaten worker welfare and social justice:

[N]ew divisions are being born to separate man from his neighbor. Unless combatted and overcome by social and political action, the influence of the new industrial and technological order favors the concentration of wealth, power and decision-making in the hands of a small public of private controlling group. Economic injustice and lack of social participation keep a man from attaining his basic human and civil rights.\textsuperscript{106}

Several sources of the problems of economic instability are identified: rapid growth of the labor force, rural stagnation and displacement, migration to urban areas which lack sufficient job opportunities.\textsuperscript{107} According to the Synodal Document, "[t]hese stifling oppressions constantly give rise to great numbers of 'marginal' persons, ill-fed, inhumanely housed, illiterate and deprived of political power as well as of the suitable means of acquiring responsibility and moral dignity."\textsuperscript{108}

Two directions of social reform are identified as necessary to avoid the threat of social injustice: economic growth and worker participation. The Synodal Document declares:

It is impossible to conceive true progress without recognizing the necessity—within the political system chosen—of a development composed both of economic growth and participation; and the necessity too of an increase in wealth implying as well social progress by the entire community as it overcomes regional imbalance and islands of prosperity. Participation constitutes a right which is to be applied both in the economic and in the social and political field.\textsuperscript{109}

\begin{footnotes}
\footnote{103} Id.
\footnote{104} Justice in the World, supra note 6, at 33-52.
\footnote{105} See infra notes 139-41 and accompanying text.
\footnote{106} See Justice in the World, supra note 6, at 35-36.
\footnote{107} Id. at 36.
\footnote{108} Id.
\footnote{109} Id. at 38.
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The Synodal Document, while acknowledging that the Church alone cannot solve the problems of social injustice, nevertheless finds that the Church has a special role in this quest: "[S]he has a proper and specific responsibility which is identified with her mission of giving witness before the world of the need for love and justice contained in the gospel message, a witness to be carried out in Church institutions and in the lives of Christians." The first way that this role is realized is in the continuing witness of the Church to the rights of workers to associate, to a just wage, to participation, to social welfare, and to proper working conditions. The second is in the relation of the Church to those who labor within Church institutions. This latter responsibility is given explicit recognition in the Synodal Document which declares:

Within the Church, rights must be preserved. No one should be deprived of his ordinary rights because he is associated with the Church in one way or another. Those who serve the Church by their labor, including priests and religious, should receive a sufficient livelihood and enjoy that social security which is customary in their region. Lay people should be given fair wages and a system for promotion. We reiterate the recommendations that lay people should exercise more important functions with regard to Church property and should share in its administration.

The Code of Canon Law specifically incorporates provisions which provide for both the recognition of workers' right of association and the provision of just remuneration and social security, as well as explicitly providing for just compensation to religious employees and lay employees of church institutions.

II. CANON LAW PROVISIONS ON LABOR RELATIONS

A. Provisions on Workers' Right of Association

The Code of Canon Law provides recognition for a general right of association which provides a basis for concerted action for common goals. It is through the exercise of this right of association in the formation of a union or workers' organizations and in the development of associations of workers and employers/managers that the goals of social justice and the realization of workers' rights can be achieved. Indeed, Canon 215 provides:

The Christian Faithful are at liberty to found and to govern associations for charitable and religious purposes or for the promotion of the Christian vocation in the world; they are free to hold meetings to pursue these purposes in

110 Id. at 42.
111 Id. at 44.
Beyond recognition of this general right of association, the Code provides for the development of associations within the Church separate from the consecrated life which may involve clerics and laity in common activity in pursuit of social justice and in the realization of the Christian spirit in the temporal order. The Code further mandates that the faithful join those associations where membership is encouraged by ecclesiastical authority. This provision provides firm authority for Church established associations which will seek justice in the economic sphere and will carry out the Church's teachings in the field of labor relations.

Associations formed within the Church to pursue these aims of social justice in the temporal order can be established by private agreement after review by a competent authority (Canon 299) or by ecclesiastical authority alone (Canon 301). The Code provides for a form of incorporation of these associations within the Church. The provision suggests that the form of associations should meet the needs of a particular profession or trade rather than mandating a uniform organizational structure or a specified form of activity.

The Code provides authority for associations to adopt the equivalent of by-laws which can establish criteria for membership, rules for meetings, and provision for officers. Canon 309 provides:

Legitimately constituted associations have the right, in accord with the law and the statutes, to issue particular norms respecting the association itself

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112 CODE OF CANON LAW, Canon 215, supra note 1.
113 Canon 298 provides:
§ 1. In the Church there are associations distinct from institutions of consecrated life and societies of apostolic life, in which the Christian faithful, either clergy or laity, or clergy and laity together, strive by common effort to promote a more perfect life... or to exercise other apostolic works, namely to engage in efforts of evangelization, to exercise works of piety or charity and to animate the temporal order with the Christian spirit.
§ 2. The Christian faithful should enroll especially in associations which are erected or praised or recommended by competent ecclesiastical authority.

Id. at Canon 218.
114 Id. at Canon 299.
115 Id. at Canon 301.
116 Canon 304 provides:
§ 1. All associations of the Christian faithful, whether public or private, by whatever title or name they are called, are to have their own statutes which define the end of the association, or its social objective, its headquarters, its government, the conditions of membership and by whom it's policies are to be determined, according to the need of or utility of time and place.
§ 2. They are to choose a title or name for themselves which is adapted to the usage of time and place, selects especially in view of their intended purpose.

Id. at Canon 299.
to hold meetings, to designate moderators, officials, other officers and administrators of goods.\textsuperscript{117}

In \textit{Canon 310} the Code enumerates authority for members of associations which are not constituted as juridical persons to jointly contract obligations, as in the form of partnership, and to acquire property.\textsuperscript{118} In addition, members are given the opportunity to exercise these rights directly or by proxy.\textsuperscript{119}

The Code provides that public associations established by ecclesiastical authority have the status of juridical persons.\textsuperscript{120} The Code establishes independent authority in public associations to undertake activities appropriate to their chartered purpose; \textit{Canon 315} provides:

Public associations . . . can begin undertakings in keeping with their character projects which are appropriate to their character, and they can direct them in accordance with their statutes, but under the further direction of the ecclesiastical authority . . . .\textsuperscript{121}

The Code provides that private associations can acquire juridical personality by a formal decree of the competent ecclesiastical authority.\textsuperscript{122} The Code recognizes authority in the membership of a private association to designate its officers in accordance with the statutes of the association.\textsuperscript{123} A private association is free to administer its property in accordance with its statutes.\textsuperscript{124} Finally, the Code provides for the dissolution of associations in accordance with the rules of the association or by competent authority where there is serious abuse.\textsuperscript{125}

This general framework for public and private associations and for secular and Church-related associations is complemented by a series of provisions which direct that the members of these associations work for the promotion of social justice and for the common good rather than for mere private or group advancement. The mandate to pursue social justice is laid down in \textit{Canon 222(2)}, which provides: “They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources.”\textsuperscript{126} In pursuing the ends of social justice, the Code specifies that appropriate attention be given to the common good and concerns of others; \textit{Canon 223(1)} provides that: “In exer-

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id. at Canon 309.}
\item \textit{Id. at Canon 310.}
\item \textit{Id.}
\item \textit{Id. at Canon 313.}
\item \textit{Id. at Canon 315.}
\item \textit{Id. at Canon 322.}
\item \textit{Id. at Canon 324.}
\item \textit{Id. at Canon 325.}
\item \textit{Id. at Canon 326.}
\item \textit{Id. at Canon 222(2).}
\end{enumerate}
\end{footnotesize}
cising their rights, the Christian faithful, both as individuals and when gathered in associations, must take account of the common good of the Church, and of the rights of others as well as their own duties to others."

The goals of social justice and the common good are to be pursued within a context of perfecting the temporal order. Finally, the Code makes clear that the quest for economic and social justice pursued by individual and collective activity is to occur without discrimination on the basis of sex, race, religion, or nationality.

By these various provisions the Code of Canon Law provides a structural framework which can permit the realization of the Church's teaching on labor relations. Through both secular and Church affiliated organizations, workers may collectively assert their rights to just compensation, social protection, and participation while attending to the general demands of social justice and the requirements of the common good.

B. Provisions on Clerics' Work Rights

The new Code of Canon Law directs special attention to the rights and obligations of clerics in the context of their work activity. The Code, in a sense, provides a model formulation for proper labor relations as developed in the Church's teachings and decrees since the promulgation of Rerum Novarum. The Code recognizes the clerics' right of association, to just compensation, and to social services. Nevertheless, certain limitations are placed on clerics' assumption of leadership roles in unions which parallel the limitation on clerical political activity.

A recognition of the right of the secular clergy to freely associate thereby supporting a right to an appropriate form for unionization is provided in Canon 278(1): "Secular clerics have the right to associate with others for the purpose of pursuing ends which benefit the clerical state." The Code recognizes specific claims to compensation and welfare reflecting the traditional teaching of Church on the just claims of labor. A right to just compensation is established by Canon 281(1). Further, the Code recognizes a claim to the provision of adequate social

\[127 \text{Id. at Canon 223(1).} \]
\[128 \text{Id. at Canon 225(2).} \]
\[129 \text{Id. at Canon 208.} \]
\[130 \text{Id. at Canon 278(1).} \]
\[131 \text{See id. at Canon 281(1). The Canon provides:} \]

When clerics dedicate themselves to the ecclesiastical ministry they deserve a remuneration which is consistent with their condition in accord with the nature of their responsibilities and with the conditions of time and place; this remuneration should enable them to provide for the needs of their own life and for the equitable payment of those services they need.

\[132 \text{Id.} \]
welfare to meet the needs of clerics. The Canon mandates that the clerics should be provided with sufficient social assistance so that they are “suitably provided for if they suffer from illness, incapacity or old age.” In the development of the Church's teaching on just labor relations, increasing recognition has been given to the need for regular periods of rest for workers and for vacations. In accordance with this teaching, provisions for rest periods and vacations are made in the new Code; Canon 283(2) recognizes that: “Clerics are entitled to a due and sufficient period of vacation each year to be determined by universal or by particular law.”

Special provision is made for specific vacation periods for parish priests in Canon 533(2), which states: “Unless there is a serious reason to the contrary, the pastor may be absent each year from the parish on vacation for a period at most one continuous or uninterrupted month; times days or weeks that the pastor spends once a year in spiritual retreat which are not counted in his vacation days . . . .”

In order to meet the financial requirements established by the above provisions on just wage and social welfare, the Code provides for the establishment of a special fund. Canon 1274(5) further provides that: “If it is possible, these institutes are to be established that they are also recognized as effective under the civil law.”

Among the general provisions of the Code is one which prescribes the holding of public office by clerics; specifically Canon 285(3) states: “Clerics are forbidden to assume public offices which entail a participation in the exercise of civil power.” This general provision is extended to union organizations in a Code provision which places limits on the ability of clerics to assume leadership roles in unions although it in no way limits the ability of clerics to be members or to participate in union activity.

The Code of Canon Law provides authority for claims to a just wage and to social welfare by lay people who are employed in Church enterprises in accordance with the Church's teaching on labor relations most clearly stated in the Synodal Document on Justice in the World. Canon 231(2) provides that lay workers: “have a right to a decent remuneration suited to their condition, by such remuneration they should be able to provide decently for their own needs and the needs and for those of their family with due regard for the prescription of civil law, they likewise have

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132 See id. at Canon 281(2).
133 Id. at Canon 283(2).
134 Id. at Canon 533(2).
135 See id. at Canon 1274(1).
136 Id. at Canon 1274(5).
137 Id. at Canon 285(3).
138 See id. at Canon 287(2).
139 See supra notes 110-11 and accompanying text.
a right that their pension, social security and health benefits be safeguarded.”140 In order to ensure the fulfillment of the right of lay employees to claims to compensation and welfare, the Code places an obligation on the administrators of temporal goods of the Church to contractually provide for payment of such claims and to pay employees according to their just wage.141

In addition to applying the principles of labor relations developed in the Church’s teaching, the Code lays down principles for clerics’ dealings with property and the obligation placed on them to engage in charitable works. Canon 282(1) mandates that:

After they [clerics] have provided for their own decent support and for the fulfillment of all the duties of their state of life from the foods which they receive on the occasion of exercising on ecclesiastical office, clerics should want to use any superfluous goods for the good of the church and for works of charity.142

It is evident how various provisions of the Code of Canon Law closely conform to the traditional teaching of the Church on the conditions of just labor relations. The recognition of a right of association is central to the vindication of the primary claims to just compensation, participation, and social welfare provision. An important feature of the Code is the model it provides for just labor relations in its special provision for compensation and provision of welfare for clerics and lay employees of Church enterprises.

The remainder of this Article will consider two areas of legal development in the United States which address the issues of inclusion of religious in bargaining units and the effort to apply national labor law requirements to labor organizations formed by workers in Church enterprises. Finally, an effort will be made to determine whether the practice in the United States conforms to the standards and spirit of just labor relations as set out in the Code of Canon Law.

140 CODE OF CANON LAW, Canon 231(2), supra note 1.

141 Canon 1286 mandates:

Administrators of temporal goods:

1. are to observe meticulously the civil laws pertaining to labor and social policy according to church principles in the employment of workers;

2. are to pay employees a just and decent wage so that they may provide appropriately for their needs and those of their family.

Id. at Canon 1286.

142 Id. at Canon 282(1).
III. LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING: CLERICAL EMPLOYEES AND RELIGIOUS ENTERPRISES

A. Clerical Employees and Appropriate Bargaining Units

A series of cases has arisen before the National Labor Relations Board and the federal courts involving clerical and religious employees of enterprises owned, controlled, or sponsored by religious communities. A central issue in these cases has been whether the vows of poverty and obedience should result in the exclusion of the clerical and religious employees from a bargaining unit established by representation elections. These cases have involved Church affiliated colleges, hospitals, and nursing homes.

In 1971, the NLRB decided *Fordham University*, which considered a number of issues regarding appropriate bargaining units. One issue presented was the appropriateness of the inclusion of a number of clerics in the bargaining unit. Approximately seventy of the full-time university faculty members were members of the Society of Jesus. The union

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143 See infra notes 144-248 and accompanying text.

144 The National Labor Relations Board is vested with the responsibility for determining the appropriate unit for purposes of collective bargaining. See 29 U.S.C. § 159(b) (1982). Section 159(b) provides that: "The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this [Act], the unit appropriate for the purposes of collective bargaining shall be the employee unit, craft unit, plant unit, or subdivision thereof ...." The Board has broad discretion in determining the appropriate unit and the extent of membership in the unit. See Packard Motor Car Co. v. NLRB, 330 U.S. 485, 491 (1947), where the Supreme Court stated that the determination of an appropriate unit "involves of necessity a large measure of informed discretion and the decision of the Board, if not final, is rarely to be disturbed." *Id.* The union must be shown to involve a community of interest in order to be recognized as the appropriate bargaining unit. See R. GORMAN, LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING 67 (1976). According to Gorman, the following criteria are used to determine whether a community of interest has been established:

1. similarity in the scale and manner of determining earnings;
2. similarity in employment benefits, hours of work and other terms and conditions of employment;
3. similarity in kind of work performed;
4. similarity in the qualification, skills and training of the employees;
5. geographic proximity;
6. continuity or integration of production processes;
7. common supervision and determination of labor-relations policy;
8. relationship to the administrative organization of the employer;
9. history of collective bargaining;
10. desires of the affected employee;
11. extent of union organization.

*Id.* at 69. The vow of poverty has been considered by the NLRB with reference to criteria (1) and (2) and the vow of obedience has been viewed as raising issues relevant to criteria (8) and (9). See *id.*

145 Fordham University and American Association of University Professors, Fordham University Chapter; Fordham University and Law School Bargaining Committee, 193 N.L.R.B. 134 (1971).

146 *Id.* at 139.
moved to exclude the clerics from the bargaining unit while the university took no position on the question. The findings of fact included that:

Most Jesuits live in a separate building, and their salaries are paid to the Jesuit community, an incorporated body, which houses and feeds them. The Jesuits may, with the permission of their religious superior, live away from this building and receive their own salaries; such permission has never been refused, but only 2 of the 70 Jesuits on the full-time faculty presently live away from the community. The Jesuits are hired in the same manner as other faculty members, and their salaries and other terms and conditions of employment are determined in the same manner. A Jesuit who leaves the Order may remain a faculty member and receive the same salary formerly paid to the community on his behalf. He may remain at Fordham and accept tenure despite the objection of the Order.

The Board concluded: "There is no evidence that membership in the Order is in any way inconsistent with collective bargaining with respect to a Jesuit's salary or other terms and conditions of employment. Accordingly, we shall include the Jesuits in the unit."

A contrary result was reached by the NLRB in Seton Hill College. In Seton Hill, the union moved to exclude from the bargaining unit those faculty who were members of the religious community which operated the college because they lacked a community of interest with the lay faculty. Among the bases for the asserted lack of a community interest, the union argued that the sisters were not interested in wages since they took a vow of poverty, returned part of their wages to the college under a contractual agreement, would not strike the college, and managed the college. The employer argued that the vow of poverty did not preclude an interest of religious employees in their wage, that the religious employees receive the same monetary wage as lay faculty, that these employees are hired on the same basis as lay faculty, that they work the same hours and perform similar assignments in all departments, that religious employees sign employment contracts identical to those signed by lay faculty, and that they have the same supervision and enjoy the same conditions of employment as other workers.

The Board concluded that the religious order held title to the buildings and grounds of the college and that governmental power over the college was vested in a board of which fifty percent of the membership were required to be members of the Order. The Board further stressed

147 Id.
148 Id.
150 Id. at 1027.
151 Id.
that the Superior of the Order referred nuns to the president of the college for assignment to the college faculty, and that the college had a uniform salary scale, used a standard form employment contract, and provided similar teaching assignments to all faculty.\footnote{Id. at 1026.} A crucial finding in the Board’s decision was the fact that the religious members took vows of poverty and obedience which required the nuns to relinquish a right to ownership of temporal goods and to submit to the Order’s Superior in the case of assignment.\footnote{Id. at 1027.} Further, the Board found that the religious faculty did not receive remuneration directly from the college but instead the nun’s wages were paid directly to the Order which returned the balance of salaries to the college in the form of an annual gift after deducting a living allowance.\footnote{Id. at 1026-27.}

The Board ruled that the members of the Order should not be included in the same bargaining unit as the lay faculty.\footnote{Id. at 1027.} Reasoning that, although the work and working conditions of the two groups were identical, their interests were divergent; the lay faculty members worked in an employer-employee relationship while the religious employees were viewed as quasi-employers who were subject to a vow of obedience to their Superior who served on the Board of Trustees.\footnote{Id. at 1027.} Moreover, the Board determined that the economic interests of the religious and lay employees did not coincide because the lay employees had a particular interest in their wage while the religious employees were obligated by their vow of poverty and a contractual duty to return a substantial portion of their wages to the college. Recognizing that the college paid into the pension and insurance programs for lay faculty while the Order made separate payments for its religious members, the Board observed: “The fact that the college has unilaterally established separate programs of fringe benefits for lay faculty and sisters indicates recognition on its part that the two groups have different interests.”\footnote{Id.} The Board observed in a footnote to its opinion: “To the extent that [the opinion in] \textit{Fordham University} may be deemed inconsistent with this Decision, it is hereby overruled.”\footnote{Id.}

The \textit{Seton Hill} decision was quickly followed by another 1973 decision in \textit{Carroll Manor Nursing Home}\footnote{Carroll Manor Nursing Home and Service Employees International Union, Local 82 AFL-CIO, 202 N.L.R.B. 67 (1973).} which reached a similar result. The employing nursing home was maintained and operated by the Car-
The Board found the home to be “religiously associated” rather than a religious operation. The employer contended that non-administrative employees who were members of the Order should be included in the bargaining unit. The Board found that, although all employees worked the same hours and shifts, the nuns were on a separate monthly rather than biweekly or hourly basis. Further, the Board determined that the nuns’ salaries were bookkeeping entries with a deduction and payment made to cover incidental expenses with the remainder transferred to the Order’s Mother house. The Board also noted that the nuns were subject to vows of poverty and obedience. The NLRB held that the religious employees had particular interests resulting in an employment relationship different from other employees and were properly excluded from the bargaining unit.

In 1975, in Saint Anthony Center, the Board followed the general principles set out in Seton Hill and Carroll Manor Nursing Home but specifically distinguished employees who were members of the religious order that operated the employing nursing home from employees who were members of religious orders unrelated to the home. As to the employees who were affiliated with the Order operating the home, the Board found that their terms and conditions of employment differed substantially from those of their lay counterparts. It noted that the members of the Order took vows of poverty, chastity, and obedience to God and the superior of the Order, that the members of the Order did not receive direct remuneration from the employer, that they lived within the facility, and that they were subject to different disciplinary procedures. The Board held that members of the Order were properly excluded from the bargaining unit on the ground that their economic interests do not coincide with those of the lay employees because they were subject to different terms and conditions of employment, and because there were possible conflicts of loyalty resulting from their membership in the Order which controlled the home.

The Board distinguished other religious employees who were mem-

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160 Id. at 67.
161 Id.
162 Id.
163 Id.
164 Id.
165 Id.
166 Id.
168 Id. at 1011-12.
169 Id. at 1011.
170 Id.
171 Id. at 1011-12.
members of orders other than that which operated the home. It found that these religious employees were treated just like any other member of the lay staff. Such employees received direct remuneration from the employer, received the same amount of compensation as other employees, and were on the same payroll. The Board also noted that these employees were not bound by a vow of obedience to anyone operating the home. Thus, the Board found that despite membership in a religious order, these non-affiliated employees shared a community of interest and working conditions and were properly included in the bargaining unit.

In St. Rose de Lima Hospital, Inc., the Board decided to exclude from a bargaining unit members of a religious order which owned and operated an employing facility. The Board, without analysis, decided the case on the authority of Saint Anthony Center and Seton Hill. However, in D'Youville College, decided the same year as St. Rose, the Board explicitly distinguished Seton Hill College. First, the order which was associated with D'Youville College and which the religious employees were members of did not own or control the College. Instead an independent board of trustees had control over the property and policy of the College. No more than one third of the trustees were members of the Order. The Board concluded that there was no basis for holding that the religious employees were anything other than regular employees.

Second, the Board noted that in Seton Hill, the union objected to the inclusion of the religious employees, but no similar objection was voiced here. Thus, although the religious employees had taken vows of poverty and only retained from their salaries amounts sufficient to cover their living expenses, there was a sufficient community of interest to permit their inclusion in the bargaining unit.

In 1977, three cases were decided by United States Courts of Appeals, two by the Second Circuit and one by the Third Circuit, which considered the propriety of the Board's determination to exclude employees who were members of religious orders from bargaining units. In

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172 Id. at 1012.
173 Id.
174 Id.
175 St. Rose de Lima Hospital, Inc., 223 N.L.R.B. 1511 (1976).
176 Id. at 1513.
177 D'Youville College, 225 N.L.R.B. 792 (1976).
178 Id.
179 Id.
180 Id.
181 Id.
182 Niagara University v. NLRB, 558 F.2d 1116 (2d Cir. 1977); Nazareth Regional High School v. NLRB, 549 F.2d 873 (2d Cir. 1977).
183 NLRB v. Saint Francis College, 562 F.2d 246 (3d Cir. 1977).
In *Niagara University v. NLRB*,¹⁸⁷ the Court of Appeals reached a significantly different result. The opinion devoted extensive consideration to the propriety of excluding religious employees from a bargaining unit. Niagara University appealed an NLRB establishment of a bargaining unit excluding seventeen Eastern Province Vincentians who were members of the Order that founded and that was associated with the university.¹⁸⁸ Niagara contended that the appropriate unit included all full-time faculty. The court conceded that the determination of the appropriate bargaining unit involved the informed discretion of the Board. Nevertheless, it found the exclusion of religious employees to be arbitrary and inconsistent with prior decisions.¹⁸⁹

The Board had found that the Eastern Province Vincentians did not share a community of interest with lay employees.¹⁹⁰ This determination rested on the finding that the priests were subject to a vow of poverty, lived communally, did not have written contracts, were not eligible for tenure, and were subject to reassignment.¹⁹¹

The court first determined that the Board had mistakenly relied on *Seton Hill*,¹⁹² which was distinguishable on the grounds that the university rather than the particular Order held title to university property, and that no more than one-third of the Board could be Vincentians.¹⁹³ The

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¹⁸⁴ 549 F.2d 873 (2d Cir. 1977).
¹⁸⁵ Id. at 879.
¹⁸⁶ Id. at n.3 (citations omitted).
¹⁸⁷ 558 F.2d 1116 (2d Cir. 1977).
¹⁸⁸ Id. at 1117.
¹⁸⁹ Id. at 1121.
¹⁹⁰ Id. at 1118.
¹⁹¹ Id.
¹⁹² Id. at 1119.
¹⁹³ Id.
court recognized *D'Youville College*\(^{184}\) as proper authority with respect to the ownership and constitution of the Board.\(^{185}\) The court stressed the fact that the Board controlled the university, thus the identification of the religious faculty with the employer found in *Seton Hill* and related cases was absent.\(^{186}\) Second, the court found that the Board erroneously found a lack of community interest on the basis that the religious faculty was subject to a vow of poverty.\(^{187}\) The court noted the Board's inconsistency in the determination to include non-Vincentian religious employees who were subject to a vow of poverty and excluding the Vincentians on the basis of their vow of poverty.\(^{188}\) It cited the Board's analysis of the vow of poverty and the unproven assumption that a desire for income is somehow related to the particular way in which money is spent.\(^{189}\) That the Order made a gift of funds to the university was irrelevant; the court distinguished *Seton Hill* on the basis that the Order in that case was contractually bound to return wage funds to the college,\(^{200}\) and the court cited approvingly *D'Youville College* where the nuns made a gift to the college without any effect on the employment status of the nuns.\(^{201}\) Both religious and lay faculty in the instant case had the same wage scale, same working conditions, same personnel policies, and were eligible for the same insurance and retirement plan. The court observed that: "The differences that do exist such as the religious faculty not being tenured and not actually participating in the employer's retirement plan, were found by the Board in the unit clarification proceeding to be 'hardly the whole or even an overwhelmingly large part of the employment situation,' and they indicate little more than a diversity of immediate interests that would be found in any unit, such as one combining young and old employees."\(^{202}\) The court concluded that there was a sufficient community of interest between lay and religious faculty so that exclusion of the Vincentians was arbitrary.\(^{203}\)

In *NLRB v. Saint Francis College*,\(^{204}\) the Third Circuit followed the decision in *Niagara University* and distinguished *Nazareth Regional*...
High School. The only issue before the court was the appropriateness of the Board's determination of the faculty bargaining unit and the exclusion of the Franciscan faculty whose order was associated with the college.208

The court's findings of fact included that: lay members were elected to the board of trustees, the order had released the college from its debts in exchange for a tract of land, and the Franciscans were under contractual agreements largely identical to the lay faculty.206 The court noted two special features of the Franciscans' activity: they donated approximately 50% of their salary to the college as an unrestricted gift, and their checks were sent directly to their monastery although they had a right to receive them directly.207 The Franciscans participated in the short-run disability plan, but not the pension or insurance program.208

The court distinguished Seton Hill on several grounds. There was no evidence that the Franciscan Order controlled the college. Rather the college was owned and administered by a board of trustees which included lay members; the Franciscans applied independently for teaching positions; and gifts to the college by the Order was voluntary and not contractually required.209 Moreover, the court observed that D'Youville and Niagara had seriously eroded Seton Hill.210 D'Youville stressed that the corporate ownership of an enterprise governed by an independent board eliminated any basis for holding religious employees to be identified with the employer.211 Further, the court interpreted Niagara as stressing that vows of obedience were too indirect a link to establish an identity of interest between employee and employer and that the vow of poverty did not eliminate an interest in salary since the recipients had an interest in sums being available to support the Order and to support charitable work.212 Nazareth Regional High School was distinguished by the court on the ground that the fact that the Franciscans chose to donate 50% of their salary to the college could not be held equivalent to a situation where religious faculty were paid substantially less than lay faculty.213

The court found that the vow of obedience referred to religious matters and not to the employee-employer relationship.214 As a result the court ruled: "[T]here is nothing in the record to support a finding that

206 562 F.2d 246 (3d Cir. 1977).
207 Id. at 249.
208 Id.
209 Id. at 250, 253.
210 Id. at 250-51.
211 Id. at 251.
212 Id. at 251-52.
213 Id. at 252.
214 Id. at 253.
the Franciscan faculty, through vows of obedience or shared commitment, differ from lay faculty in terms of their employment relationship. 215 As to compensation, the court found no difference in salaries. 216 The differences in fringe benefits were minimal and not sufficient to differentiate the Franciscans from other employees. 217 The court held that the exclusion of the Franciscan faculty was unreasonable and arbitrary, and constituted an abuse of discretion by the Board. 218

The concurring opinion in Saint Francis identified two reasons why the exclusion of the religious faculty was improper. 219 With respect to salary and fringe benefits, the concurrence maintained that it was unreasonable to assume that religious persons who spend less money on themselves are therefore less interested in their incomes. 220 Second, nothing in the record supported the inference that a shared religious identity between religious faculty members and individuals in college administration would result in a consolidation of views that would compromise the employer-employee relationship. 221

The National Labor Relations Board has continued to give close scrutiny to situations involving religious employees of church-affiliated enterprises. In Mercy Hospital of Buffalo, 222 the Board excluded a religious employee from the bargaining unit on the ground that the employer's by-laws required more than one-half of the members of the board of trustees to be members of the religious order with which the employee was affiliated. It concluded that the religious employees were related to the employer. 223 The NLRB distinguished Niagara on the ground that there the Order did not have legal title to university property, and no more than one-third of the trustees could be members of the Order. 224 Saint Francis was distinguished on the ground that the decision turned on the inadequacy of the vows of obedience and poverty to establish a lack of community interest. 225 In Mercy Hospital the control of the board of trustees by the Order of which the religious faculty was a member created sufficient identity between the employer and employee, that the religious employee was properly excluded from the bargaining unit. 226

115 Id.
116 Id. at 253-55.
117 Id. at 253.
118 Id. at 255.
119 Id. at 255-57.
120 Id. at 256-57.
121 Id. at 257.
122 Mercy Hospital of Buffalo, 250 N.L.R.B. 949 (1980).
123 Id. at 949-50.
124 Id. at 949.
125 Id.
126 Id. at 949-50.
In Catholic Community Services,\(^2\)\(^2\)\(^7\) the Board held that employees of religious orders shared a sufficient community of interest with other employees that they should be included in the bargaining unit.\(^2\)\(^2\)\(^8\) It found that the employees who were members of the religious orders were subject to the same terms and conditions of employment as lay employees receiving the same rates of pay, performing the same job functions, and subject to the same personnel policies.\(^2\)\(^2\)\(^9\) The fact that some religious employees lived in facilities owned by the employer and the fact that there were different tax withholding rules for members of religious orders were deemed irrelevant.\(^2\)\(^2\)\(^0\) The Board concluded: "There is no special relationship between the employer and the orders to which certain employees belong, although at least one of the orders involved voluntarily makes charitable contributions to Catholic Community Services." It therefore determined that all employees shared a community of interest and were to be included in the bargaining unit.\(^2\)\(^2\)\(^1\)

The development of case law which views religious employees as sharing a community of interest with other employees so that they should be included in collective bargaining units is consistent with the provisions of the Canon Law and church policy. The consistency of a religious vocation and union membership is reflected in a recent statement of the Sacred Congregation for Religious and Secular Institutes entitled _Religious Life and Human Promotion_\(^2\)\(^2\)\(^2\) which states:

> In principle there does not seem to be any intrinsic incompatibility between religious life and social involvement even at the trade-union level. At times, according to different laws, involvement in trade union activity might be a necessary part of participation in the world of labor; on the other hand, such involvement might be prompted by solidarity in the legitimate defense of human rights.\(^2\)\(^3\)\(^3\)

This principle is codified in the new Code of Canon Law which recognizes the religious employee's rights of association and rights to just compensation, participation, and social welfare.\(^2\)\(^3\)\(^4\)

\(^2\)\(^7\) Catholic Community Services, 254 N.L.R.B. 763 (1981).

\(^2\)\(^8\) Id. at 765.

\(^2\)\(^9\) Id.

\(^2\)\(^1\) Id.

\(^2\)\(^2\) Id.

\(^2\)\(^3\)\(^3\) "Religious Life and Human Promotion" in Sacred Congregation for Religious and the Secular Institutes, _Religious and Human Promotion (April 25-28, 1978) and the Contemplative Dimension of Religious Life (March 1980)_ (St. Paul ed.) (n.a.).

\(^2\)\(^3\)\(^4\) Id. at 15.

\(^2\)\(^3\) See supra notes 112-142 and accompanying text.
B. Church—Affiliated Institutions and National Labor Relations Board Jurisdiction

In 1970, the NLRB began to assert jurisdiction over labor disputes in nonprofit colleges and universities. The Board extended its jurisdiction in 1971 to include private, nonprofit, secondary, and elementary schools, and subsequently sought to assume jurisdiction over all private "religiously associated" elementary and secondary schools that were not "completely religious."

In 1976, the National Labor Relations Board ordered two groups of Catholic high schools, that had allegedly violated provisions of the National Labor Relations Act, to negotiate with NLRB certified unions wishing to represent the lay members of their facilities. The church-affiliated schools maintained that the Board lacked jurisdiction over them, in that they did not fall within the jurisdictional authority granted to the Board, and that the exercise of such jurisdiction would violate the first amendment.

The Seventh Circuit Court of Appeals declined to enforce the NLRB order. The court ruled that the assertion of jurisdiction over all non-sectarian organizations, except those which were "completely religious" was improper since the distinction between "completely religious" and "religiously associated" did not entail sufficient limits for exercise of Board discretion. The court further concluded that subjecting church-affiliated schools to Board authority would violate the first amendment through interference with the school's right to manage its own affairs in accordance with religious tenets.

In NLRB v. Catholic Bishop of Chicago, the Supreme Court held that the NLRB had no jurisdiction over a union of lay teachers in "church-operated" secondary schools. The holding was based on a narrow construction of the National Labor Relations Act because of the "dif-
difficult and sensitive constitutional questions which the Court felt it would otherwise have had to face. The Court applied the rule of statutory construction that no act of Congress should be construed as violating the Constitution if a constitutional construction is possible. The Court suggested that a reading of the Act as authorizing the Board to exercise jurisdiction over religious schools would involve a violation of the free exercise clause of the Constitution.

The Court failed to find any clear congressional intent that the Act encompass church-operated schools. The Court noted that there was "no clear expression of an affirmative intention by Congress that teachers in church-operated schools should be covered by the Act" since Congress never considered religious schools in relation to the Act. Moreover, the Court concluded after examining the church-teacher relationship in a church-operated school, that the exercise of Board jurisdiction would present a "significant risk" that the first amendment would be infringed.

In a dissenting opinion, Justice Brennan argued that the majority incorrectly read the language and history of the Act and was not consistent with the Court's own precedents. The dissent maintained that the Act on its face covered all employers with sufficient impact on interstate commerce, except for those falling within the Act's eight express exceptions. Justice Brennan contended that none of the express exceptions pertained to schools and that there was no showing of congressional intent to exclude church-operated schools from Board jurisdiction. Moreover, the Court's own precedents were said to apply the Act to all em-

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248 Id. at 507.
249 Id. at 500. The Court observed: "In a number of cases the Court has heeded the essence of Mr. Chief Justice Marshall's admonition in Murray v. The Charming Betsy, 2 Cranch 64, 118 (1804) by holding that an Act of Congress ought not be construed to violate the constitution if any other possible construction remains available. Moreover, the Court has followed this policy in the interpretation of the Act now before us and related statutes." 440 U.S. at 500.
250 Id. at 508, 516-17.
251 Id. at 511. An employer subject to the Act is defined as:

[A]ny person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision there of, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

ployers who met the interstate commerce requirements.\textsuperscript{252}

The decision in Catholic Bishop of Chicago has been the subject of much commentary and criticism.\textsuperscript{253} While much of this analysis must remain beyond the scope of this Article, the question does arise whether this decision and the initial action of Church authorities in resisting certification can be reconciled with the Church's teaching on labor relations and its support of unionization. This case can be reconciled with the Code of Canon Law and the Church's traditional teaching on labor relations. It does not deny the right of school employees or lay employees to unionize or form associations for collective action. It merely establishes that the form, structure, and rules governing collective bargaining and employer-employee relations established by the National Labor Relations Act are not binding on church-operated enterprises. Forms of worker association other than those based on the industrial model are thus made available to church-operated institutions.

The Church's teaching as reflected in papal encyclicals, conciliar and synodal documents as well as the provisions of the Code of Canon Law make it clear that there is not one unique form of association appropriate to achieve employee rights and social justice.\textsuperscript{254} As the Church's teaching on labor relations has broadened beyond industrial workers to include agricultural workers, craftsmen, and professionals, it increasingly has been stressed that organizational arrangements should be developed that would be appropriate to this form of activity and the needs of the workers.\textsuperscript{255} Whether or not a church affiliated enterprise submits to the jurisdiction of the National Labor Relations Board, the new Code of Canon Law, and the tradition of the Church on the matter of labor relations makes it clear that lay people working in Church enterprises have a right to freely associate to vindicate their rights and that they "have a right to a decent remuneration suited their condition; by such remuneration they

\textsuperscript{252} Id. at 516-17.


\textsuperscript{254} See supra notes 20-22, 37-38, 86-89, 115-116 and accompanying text.

\textsuperscript{255} See supra notes 29-30, 46-47, 88-89 and accompanying text.
should be able to provide decently for their own needs and for those of their family with due regard for the prescriptions of civil law, they likewise, have the right that their pension, social security and health benefits be provided."\(^{256}\)

\(^{256}\) **Code of Canon Law, supra** note 1, at Canon 231(2).