Labor Law
Professor Fisk
Fall 2007
Page 1

Syllabus

Professor Catherine Fisk
Office:
Phone:
Email:

Assignments and all handouts will be posted on Blackboard.

OFFICE HOURS:

Tuesdays & Thursdays 3:00- 4:00 p.m. Wednesdays, 10:00 to noon.
Or by appointment. Or drop in. I am usually around most of every weekday. Also, I am happy to answer questions via telephone or email.

Course Description

This course will focus on the law governing relations between employers and workers acting collectively through unions. Unlike most courses in law school, we focus on collective, rather than individual rights. We study the law regulating the collective rights of employees from the lowest end of the wage scale (janitors, grocery clerks, and nursing home aides) to the highest end (screen actors and athletes). We study the processes of negotiation and dispute resolution that they and firms use to establish wages and working conditions. We study employee and employer rights of freedom of speech and association in connection with union organizing, the use of strikes and lockouts to resolve negotiating disputes, and the various forms of litigation, lobbying, and alternative dispute resolution, including arbitration, that are used to enforce collective bargaining agreements and other statutory labor rights.

In the process of studying the development of the doctrine in this area, we will consider the larger question of the role of collective action by workers and management in the regulation of working conditions. In particular, we will consider whether the collective model is preferable to the model of statutory protection of individual workers that has increasingly come to replace unions as the principal source of regulation of working conditions.

This course has a practical as well as a policy orientation. To develop the skills you may need as lawyers, we will discuss problems that might arise in practice. I will assign problems in advance, and will expect you to come to class prepared to argue on behalf of various parties to the dispute.
Requirements

Reasonably regular class attendance and participation are required. The substance of class discussion will be considered part of the course subject matter and, therefore, fair game for the final examination.

There will be an 8-hour take-home final examination that you can do any day during the exam period. Unless you do the optional essay (described below) your grade will be based largely on the final exam, although I may add points to your final grade to acknowledge outstanding class participation. Exams from years past are at the end of the photocopied materials.

Optional Essay: Labor law’s reliance on unions and collective bargaining is a regulatory scheme unlike any other. To fully understand it, you should see how it operates in the workplace. To enrich your understanding, therefore, I encourage you to do the following extra credit essay. If you do the essay and your essay grade is better than your final exam grade, the essay grade will comprise 15 percent of your final course grade. If you do not do the essay, or if your essay grade is lower than your exam grade, your final grade will be based on the exam and class participation alone.

The essay should be fun and not especially onerous to do. The research will consist of reading one or more book(s) and/or articles on how an organizing campaign, strike, union-busting effort, or other important labor law event affect a particular firm or industry. You could also watch one or more of the many, wonderful documentary films about labor unions. You then need to write an essay about how the structure of labor law influenced the events. If you prefer a current topic, you could write about any of the recent or ongoing labor disputes (e.g., the ongoing effort of the SEIU to organize janitorial workers and security guards in commercial office buildings, labor disputes in Hollywood or professional sports, the effort to form a union at the huge Smithfield pork processing plant in Tarheel, North Carolina, or any other labor-management issue that interests you). I will provide a list of books that you may choose from for your essay, or you can choose any other book (subject to my approval). You can do on-line research, or research in print or broadcast journalism. I’ll even loan you books if you can’t find them in the library.

The essay must be a minimum of 8 typed, double-spaced pages. It is due no later than the last day of classes.

Course Materials

The required text is in manuscript; it is Cameron, Corrada, Dau-Schmidt, Fisk & Malin, Labor Law in the Contemporary Workplace (“LLCW”). It will be published by West in 2008. For your convenience, the statutory supplement to the text is included in the photocopied materials.

There are other materials you may wish to consult for clarification or background reading. They are not required; all are on reserve in the Library. Labor lawyers rely on Hardin, The Developing Labor Law, a two-volume treatise published by BNA, for up-to-date and detailed treatment of various subjects. Shorter explanations of doctrine are found in Getman, Pogrebin & Gregory, Labor Management Relations and the Law (2d ed., Foundation 1999), Ray, Sharpe & Strassfeld, Understanding Labor Law (Matthew Bender, 1999), and Douglas Leslie, Labor Law in a Nutshell (4th ed., West 2000). An exceedingly insightful explanation of why the law is the way it is James B. Atleson, Values and Assumptions in American Labor Law (University of Massachusetts Press, 1983). (“Atleson”)

**Assignments**

The assignments for the course are listed below, in the order in which we will cover them. I will keep you posted as we proceed about how far ahead you need to read. The page numbers are, unless otherwise noted, to LLCW. There are more assignments listed than we are likely to cover. I will delete some assignments from the syllabus as we go along to reflect student interest and recent developments in the law.

I have also noted which sections of the various statutes that you should read. This course involves a significant component of statutory interpretation, so it is **essential to read the statute**. In addition, I encourage you to read the notes following the cases. Unlike notes in many casebooks, these are helpful in that they allow you to apply the principles articulated in the main cases to novel fact patterns. I also use some of them in class discussion, as indicated on the syllabus. I have suggested optional readings for those with an abundance of time and interest in the material.

**I. LABOR AND THE CONTEMPORARY WORKPLACE**

1. Introduction to Collective Labor Action in the American Context
   
   LLCW 1-57
   
   *Vegelehan v. Gunther*
   
   *NLRB v. Jones & Laughlin Steel*

2. The History and Content of Modern Labor Legislation
   
   LLCW 58-85
   
   **Statutes:** As you read about the statutes in the casebook, you might want to skim the statutes themselves, all of which are in the back of the materials:
   
   -- Sherman Act and the Clayton Act (1890, 1912)
   -- Norris-La Guardia Act (1932)
   -- Railway Labor Act (1926)
   -- Wagner Act, known as National Labor Relations Act (NLRA) (1935)
   -- Taft-Hartley Act, known as Labor Management Relations Act (LMRA) (1947)
   -- Landrum-Griffin Act, known as Labor Management Reporting and Disclosure Act (LMRDA) (1959)

**II. COLLECTIVE ACTION AND REPRESENTATION**

3. Collective Action
LLCW 87-115

Statute: NLRA §§ 7, 8(a)

4. Independent Unions

LLCW 115-128

Statute: NLRA § 8(a)(2)

5. Majority Rule, Exclusivity and Employer Domination, Assistance, and Interference

LLCW 128-145

III. BOUNDARIES OF COLLECTIVE REPRESENTATION

6. Who is an Employee? (And Why Does It Matter?)

LLCW 147-192

Statute: NLRA §§ 2(3), 2(12), 8(a)(1)

7. Who (or What) is the Employer? (And Why Does It Matter?)

LLCW 193-216

Statute: NLRA §§ 2(2), 2(11)

IV. ESTABLISHING COLLECTIVE REPRESENTATION

8. Access to Employees and to the Workplace

LLCW 223-249

Statute: NLRA § 8(a)(1), 8(a)(3)

9. Employer Interference, Restraint or Coercion

LLCW 249-260

NLRB v. Washington Aluminum
Eastex v. NLRB
Timekeeping Systems
IBM Corp.

Electromation
Crown Cork & Seal

Emporium Capwell
Electromation (again)

Town & Country Electric
Lechmere v. NLRB
Hoffman Plastic v. NLRB
Seafarers/Yellow Cab
Oakwood Care Center
Brown University

Oakwood Healthcare
NLRB v. Yeshiva Univ.

Technology Service Solutions I & II
New York, New York
Farm Fresh

Exchange Parts
Allegheny Ludlum
Statute: NLRA § 8(c)

10. Discrimination

LLCW 260-268

Statutes: NLRA § 8(a)(3)

11. Routes to Union Recognition

LLCW 268-313

Statute: NLRA §§ 8(b)(7), 9, 10

V. COLLECTIVE BARGAINING

12. Models of the Nature of Bargaining

LLCW 323-338; 341-345

Statute: NLRA §§ 8(a)(5), 8(b)(3), 8(d)

13. Duty to Bargain in Good Faith

LLCW 345-363


14. Subjects of Bargaining

LLCW 380-398

Hardesty Co.

LLCW 405-406

Detroit Edison

Statute: Fibreboard Paper

15. Remedies for Failures of the Bargaining Process

406-413

Statute: First National Maintenance

Statute: Dubuque Packing Co.

Statute: H.K. Porter

Statute: Seattle v. PERC
VI. ECONOMIC WEAPONS

16. Labor Protest and the Constitution

LLCW 415-436

Thornhill v. Alabama
Police Dept. v. Mosley
Teamsters v. Vogt
NAACP v. Claiborne Hardware
ILA v. Allied International

17. Statutory Protections for Employee Protest

LLCW 436-468

Elk Lumber
International Protective Servs.
Jefferson Standard Broadcasting
Electronic Data Systems
U.S. v. Pacific Maritime Assn

Statute: NLRA §§ 8(d), 8(g) 10(c)
LMRA §§ 201, 203, 204, 206-210

18. The Battle for Solidarity: Management Tactics

LLCW 468-480

Mackay Radio
TWA v. IFFA

19. The Battle for Solidarity: Union Tactics – Relations with Members

LLCW 480-487

Pattern Makers v. NLRB

Statute: NLRA § 8(b)(1), 8(b)(2)

20. The Battle for Solidarity: Union Tactics – Corporate Campaigns

LLCW 487-499

Caterpillar

21. Employer Weapons

LLCW 499-513

Midwest Generation
Local 15, IBEW v. NLRB
International Paper v. NLRB

22. Statutory Protections for Employers: Secondary Activity

LLCW 513-551

Denver Bldg.
Moore Dry Dock
Local 761 (General Electric)
Markwell & Hartz
Fruit Packers (Tree Fruits)
DeBartolo
Statute: NLRA §§ 8(b)(4), 10(j)  
LMRA § 303

23. Statutory Protections for Employers: Hot Cargo Agreements

LLCW 551-560

Statute: NLRA § 8(e)

To Be Continued . . .