

George Mason University Law School
LABOR LAW, 256-001
SPRING 2022

Monday 6:05 pm – 8:05 pm

Instructor – Miriam Szapiro

mszapiro@gmail.com

she/her

Office Hours: My office hours are **Mondays**, between **5:00 and 6:00 pm**. Please email me if you plan to stop by so we can confirm the time. I am happy to meet with students and hope you will take the opportunity to do so if you have any questions or concerns.

Description: Labor law is the law regulating workers' right to a voice at the workplace through collective action. Unlike most subjects, labor law rights are essentially *collective* rather than *individual* rights. Labor law overlaps with numerous other areas of doctrine, including First Amendment freedoms of speech and association; protections against workplace discrimination; immigration law; and the common law of contracts, torts, and property. Labor law also presents challenging questions regarding the relationship between law, social action, economics, and politics.

Instruction will be through lectures, discussion, and an occasional expert speaker. Students may email me by Sunday evening before class to express an interest in focusing on a particular assigned topic to be covered at the next class.

Text and Materials:

Required:

Labor Law in the Contemporary Workplace, 3rd Edition, Kenneth G. Dau-Schmidt et al.

The 2021 *Update Memo* to the 3rd Edition:

https://3668083.app.netsuite.com/core/media/media.nl?id=5221175&c=3668083&h=sAcaDBDgN1zZ6cSOAurMxyuWxkkjmnqVCCAp-fJ33nCJ0I50&_xt=.pdf.

Additional assigned cases and NLRB materials can be found at www.nlrb.gov (under Cases & Decisions, Board Decisions, at: <https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act>) or other parts of the website.

Various supplemental readings focusing on current real-world situations involving labor law (TBD).

NOTE: check the Update (when assigned, below) before reading the Casebook to make sure the Casebook pages have not been replaced by the Update pages.

Recommended:

- *Values and Assumptions in American Labor Law* (1983), James Atleson
- You may purchase the statutory supplement or otherwise access the statutes covered.

Grading: Students are expected to come to class having done the assigned reading and to be prepared to discuss it. Grades for the course will be based primarily on student performance on a final exam. Class participation will be considered as per the law school's academic regulations (which allow using class participation to increase or reduce a final course grade to the next higher or lower course grade) and evaluated based on quality of participation. Class discussions are an essential component of the class, and thus they require coming to class prepared, ready to listen, and ready to join in the discussions.

Cell phones and other communication devices are not to be used during class. Please keep them stowed away and out of sight. Laptops or tablets may be permitted for the purpose of taking notes only.

Attendance: I will take attendance at the beginning of each class. Consult www.law.gmu.edu/academics/regulations for the Law School's rules on attendance.

Learning Outcomes: Students who complete this course will have:

- knowledge and a basic understanding of the National Labor Relations Act, its origins and its principles;
- an understanding of both representation cases and unfair labor practice cases and the way the National Labor Relations Board and courts decide such issues;
- The ability to analyze NLRB decisions and the different legal and policy rationales underlying conflicting decisions;
- The ability to apply the legal analysis enunciated in those decisions to different real-world situations.

Reading assignments: Expected reading assignments for each class are provided below but are subject to revision as the semester proceeds. Efforts will be made to remain consistent with this expected schedule but will be adapted based upon, e.g., the needs of the class or significant updates in the current state of labor law. Reading assignments for each subsequent class will be announced at the conclusion of each class, but please feel free to reach out at any time to clarify the assignments.

Topic and Reading Schedule

Class 1 – January 24 - *Introduction to American Labor Law: a nutshell history leading up to enactment of the statute and its amendments, and an overview of key features of the statute*

- Casebook Chapter 1, "The Evolution of the Contemporary Workplace," pp. 31-36, 40-90.
- Scan NLRA with particular attention to Section 1, "Findings and Policies."

- Skan NLRB website and links, providing snapshot of key aspects of the law, at: <https://www.nlr.gov/about-nlr/rights-we-protect/whats-law>

Class 2 – January 31 - *Who is an Employee? Protected and Unprotected Workers*

- NLRA, Section 2(2)(definition of “employer”), 2(3)(definition of “employee”), and 2(11)(definition of “supervisor”);
- Casebook Chapter 1, “The Evolution of the Contemporary Workplace,” pp. 90-97, 102 note 5, and Update Memo (“Update”);
- Casebook Chapter 3, “Boundaries of Collective Representation,” pp. 222-240; Update pp. 232 to 237 note 1; pp. 269-280; pp. 285-291; pp. 296-298;
- <https://www.nlr.gov/guidance/memos-research/general-counsel-memos>, GC 21-08, Statutory Rights of Players at Academic Institutions (Student-Athletes) Under the National Labor Relations Act, at: <https://apps.nlr.gov/link/document.aspx/09031d458356ec26>;
- <https://www.nlr.gov/guidance/memos-research/general-counsel-memos>, GC 22-01, Ensuring Rights and Remedies for Immigrant Workers Under the NLRA, at: [Ensuring Rights and Remedies for Immigrant Workers Under the NLRA](#).

Class 3 – February 7- *Who is an Employer?*

- Casebook, Chapter 2, “Concerted Activity for Mutual Aid and Protection,” pp. 246-247 (up to *Miller and Anderson*);
- Casebook, Chapter 3, “Boundaries of Collective Representation,” pp. 258-260 (up to notes).[*subcontractors*]; pp. 358-372 up to note 2 and Update; pp.303-328;
- Supplemental readings (franchises, etc): TBD.

Recommended article: David Weil, *How to Make Employment Fair in an Age of Contracting and Temp Work*, HARVARD BUSINESS REVIEW (March, 2017), at: [How to Make Employment Fair in an Age of Contracting and Temp Work](#).

Class 4 – February 14 - *The Basic Employee Rights Covered by the Act: Self-Organization and Protected Concerted Activity, part 1*

- Casebook, Ch. 2, “Collective Action in the Workplace,” pp. 114, after *** - 116; 117-122 (no notes);124-130 (not dissent); 132-134, notes 1-4 and 6, and Update to p. 134: (Update p.6, first par.); pp. 135-142; 143 starting with *Eastex*-146 and notes 1-3 pp. 146-148; pp. 149-157, no notes;158-170 (up to C).

Class 5 - February 21 - *The Basic Employee Rights Covered by the Act: Self-Organization and Protected Concerted Activity, part 2*

- Casebook Ch.2, “Collective Action in the Workplace,”pp.196-199, not notes; 200-208; 216-217 n.1; Update to pp. 196-217;
- Casebook, Ch.3 “Establishing Collective Representation,” Sec.C.”Regulation of Access,” pp.430-432 through first full par.; Update notes replace 432-449 to n.5;
- *Jefferson Standard Broadcasting Co.*, 94 NLRB 1507 (1951);

- GC Memo, March 31, 2021, "Effectuation of the National Labor Relations Act Through Vigorous Enforcement of the Mutual Aid or Protection and Inherently Concerted Doctrines," at:
<https://apps.nlr.gov/link/document.aspx/09031d45833ea1f3>.

Class 6 – February 28 - Activity that is Unprotected or Loses Protection

- Casebook, Chapter 2, "Collective Action in the Workplace," pp. 158-170;
- Supplemental readings: TBD.

Class 7 - March 7 - Employer Rules and Restrictions on Protected Concerted Activity

- *Republic Aviation*, 324 U.S. 793 (1945);
- *DirecTV*, 359 NLRB 545 (2013);
- Casebook Ch.2, "Collective Action in the Workplace," pp. 170-184, and Update Note to p. 184; pp.185-196, including note. 2 p. 195;
- Casebook Ch.4, "Establishing Collective Bargaining Representation," Update Notes replacing pp. 448-458, beginning with second Update par. after direction "On page 4, strike all text..." and only until *Caesar's Entertainment*, Casebook pp. 449-458; related Update to pp. 458-460, notes 1-3; Casebook pp. 461-466 up to n.3; Update Memo to pp. 466: replace Casebook with Update notes 3, 4, and 7; Update to p. 467, par. after ***.

Class 8 - March 21: Unfair Labor Practices: Section 8(a)(1) and (3); Remedies

- Reread Sections 8(a)(1) and (3) and 10(j);
- Casebook, Ch.4, "Establishing Collective Representation, pp. 476--492;
- General Counsel Jennifer Abruzzo Memo on Seeking all Available Remedies, at: [Seeking Full Remedies](#);
- Casebook, Ch.4, pp.493-514 (1st par.);
- General Counsel Jennifer Abruzzo Memo on 10(j) Injunctions, at: [Utilization of Section 10\(j\) Proceedings](#);
- Supplemental readings: TBD.

Class 9 – March 28: Paths to Representation; Exclusive Representation

- Reread Sections 8(a)(2), 8(c), and 9(a);
- Casebook Ch. 4, "Establishing Collective Representation," pp. 385 (after the 3 stars) - 398; pp. 407-428 (before notes); pp. 514-524, no notes except Update note to p. 537; pp. 538 (at 2. Representation Elections) - 543, second full par.; pp. 546-563; 566-584; 590-621;

- Regional Director's Decision and Direction of Election in *Amazon*: [10-RC-269250](#), 11/29/2021;
- Supplemental readings: TBD.

Class 10 - April 4 - The Bargaining Process

- Casebook, Chapter 5, "Collective Bargaining," pp. 628-635, no notes; pp. 653-664; pp. 666-674, no notes; pp. 676-679; pp. 680 (starting at 3) - 685, note 6; pp. 685-692; Update to p. 693, notes 6-7; pp. 694-713; pp. 718-722 note 4.

Class 11 - April 11 - Economic Weapons

- Casebook, Ch.6, "Economic Weapons," pp. 729-735; pp. 737-745; p. 747, only Update replacing note 3, and p. 748-749, notes 5 and 6 and Update to p. 749 subsection c; pp. 755-758, notes 2 and 4; pp. 755-757, up to notes; pp. 759-764 up to *Electronic Data Systems*; pp. 773, starting at 2. "Legal Regulation..." - 779 up to notes; pp. 780-782 up to notes; pp. 789 b. - 790, first full par.; pp. 793 D. - 797 and Update to p. 797; p. 798 up to *Midwest Generation*; pp. 801-805 up to *International Paper Co. v. NLRB*; pp. 813-820; pp. 853, starting with notes - 859 up to notes and Update to par. below the note;
- Chapter 7, "Life under the Collective Bargaining Agreement," p. 873 A -877 up to *United Steelworkers of America*;
- [Board Issues Decision on Inflatables and Bannerling](#) (and link to Decision);
- NLRB website re: the right (or not) to strike, at <https://www.nlr.gov/strikes>.

Recommended article re: lockouts:

http://www.americanbar.org/content/dam/aba/publishing/aba_journal_labor_employment_law/v31n2/abajlel31-2_05ray.authcheckdam.pdf.

Class 12 – April 18 - Union's Duty of Fair Representation, Employees' Right to Refrain from Membership; Ending the Bargaining Relationship

- Casebook, Chapter 7, "Life under the Collective Bargaining Agreement," pp. 874B- -877; p. 938a; pp.941-944;
- Casebook, Chapter 8, "Collective Activism: The Expanding Boundaries of the Modern Labor Law Practice," pp. 1056-1063; 1078-1084, end of first par.; pp. 1078 Section 4-1085, top of page;
- Casebook, Chapter 9, "Ending the Collective Bargaining Relationship," pp. 1117, following *** - 118; 1122 up to *Allentown Mack*; pp. 1132-1140, no notes; pp. 1142-1146 up to dissent; pp. 1151D-1158; 1159 following *** - 1169 up to E., Update 1167.

Class 13 - April 25 - New Labor Organizations and New Forms of Worker Activism; Review

- Casebook, Chapter 8 - "Collective Activism: The Expanding Boundaries of the Modern Labor Law Practice," pp. 1010 - 1029 through note 1; 1037c-1038;
- Supplemental readings: TBD.

Suggested Feature Films/Documentaries (in no particular order):

Harlan County, USA, 1977

Norma Rae, starring Sally Field, Directed by Martin Ritt, 1979

The Killing Floor, Bill Duke, 1984

Matewan, Directed by John Sayles, 1987

American Dream, Directed by Barbara Kopple, 1990

Bread & Roses, starring Adrien Brody. Directed by Ken Loach, 2000

Where Do You Stand? Stories from an American Mill, 2004

Updated 1/3/22