

GEORGE MASON UNIVERSITY LAW SCHOOL

**Labor Law, 256-001**

Spring 2023

Wednesdays, 6:05 p.m. – 8:05 p.m. (2 credits)

Professor Amy L. Cocuzza<sup>1</sup> (she/her)

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**Syllabus**

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. 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. In addition, labor law presents challenging questions regarding the relationship between law, social action, economics, and politics.

Labor law is also extraordinarily dynamic, which means that it's a near-certainty that something on this syllabus will be obsolete by the time you graduate (if not by the end of the semester). The objective is for you to understand the fundamentals; think about the "whys" of U.S. labor policy; and know how to find up-to-date answers.

**Learning Outcomes**

Students who complete this course will have:

- Knowledge and a basic understanding of the National Labor Relations Act, its origins, principles, and scope;
- 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.

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<sup>1</sup> Amy L. Cocuzza is currently the Deputy Solicitor of the National Labor Relations Board. Previously, she worked as a National Negotiator for the National Treasury Employees Union and held supervisory and non-supervisory roles in the NLRB's Division of Advice. Prior to attending law school, she worked as a union organizer for 1199 SEIU, United Healthcare Workers East and Local 802, American Federation of Musicians. Ms. Cocuzza holds a B.S. in Human Biology from SUNY Albany, a Master of Industrial and Labor Relations from Cornell University, and a J.D. from the University of Michigan Law School.

(Biographical information hidden in a footnote in a tiny font to comply with government ethics regulations. See 5 C.F.R. § 2635.807(b).)

## Course Materials

### Required:

1. Secunda, Lofaso, Slater, & Hirsch, MASTERING LABOR LAW. (“MLL”)
2. National Labor Relations Act, 29 U.S.C. § 151–169 (“NLRA”).
3. Various articles, cases, or other materials, which I will distribute via the course TWEN site: <https://lawschool.westlaw.com/manage/HomePage.aspx?courseID=310924>.

### Recommended Resources:

1. John E. Higgins, DEVELOPING LABOR LAW: THE BOARD, THE COURTS, AND THE NATIONAL LABOR RELATIONS BOARD (8th ed. 2022), available at <https://www.bloomberglaw.com/product/blaw/browser/105.468608>. This is the classic treatise upon which most practitioners rely. Available with your Bloomberg Law login.
2. Brent Garren, HOW TO TAKE A CASE BEFORE THE NLRB (10th ed. 2021 –date), available at [https://www.bloomberglaw.com/legal\\_search/browser/105.468612](https://www.bloomberglaw.com/legal_search/browser/105.468612). Available with your Bloomberg Law login.
3. Daily Labor Report. This Bloomberg Law newsletter provides “coverage of key labor legislation, court decisions, regulatory actions, administrative rulings, and collective bargaining news.” It is an essential resource for both veteran and aspiring labor and employment lawyers. You can sign up for daily delivery via email. Available with your Bloomberg Law login. <https://www.bloomberglaw.com/product/labor/bloomberglawnews/daily-labor-report>

Please note: these resources are recommended because they offer additional context and insight. **They are not required.** Students will not be held accountable for material that is not discussed in class or covered in the required reading.

## Course Policies

### Contact Information and Office Hours

I am delighted to meet in person or over Zoom to discuss labor law, answer administrative questions, or address other class-related issues. Office hours are by appointment (please e-mail [laborlawprof@gmail.com](mailto:laborlawprof@gmail.com)).

I will communicate with you via the course TWEN page, so please ensure you are registered.

## Classroom Norms

I am committed to developing a learning community that is inclusive and respectful, and ask you to commit to that same goal. Labor law engenders strong opinions on the roles of labor and management in our society. Please be mindful that all of us come to this class with different lived experiences and perspectives. There is sometimes a variance between law “on the books” and law in real life, and between what is legal and what you consider just. A dedication to inclusiveness requires respecting what others say, their right to say it, and the thoughtful consideration of others’ communication. Respecting each other’s individual differences is critical in transforming a collection of diverse individuals into an inclusive, collaborative, and excellent learning community.

Students should come to class prepared, having read and thought about the assigned material, and be ready to participate in a meaningful way. Both speaking up and actively listening are valuable tools for furthering thoughtful, enlightening dialogue.

In order to facilitate a rich classroom environment and minimize distractions, laptops, tablets, and mobile phones may not be used for messaging, social media, or web-browsing during class.

## Attendance

Regular attendance is required for credit in this course, as set for in the Academic Regulations 4-1, available at <https://www.law.gmu.edu/academics/regulations>. Students may miss a maximum of 3 class sessions and remain in compliance with the attendance policy. (AR 4-1.1.) You must be present for at least 90 minutes (75%) of a 2-hour class to be considered in attendance. (AR 4-1.1.)

## Method of Evaluation

Your final grade will be based on a self-scheduled 24-hour take-home exam, which you may complete anywhere the Scalia Law Honor Code permits. It will be open book; students are strictly prohibited, however, from receiving any outside assistance or discussing the exam with anyone else until after the exam period is over. I reserve the right to adjust your grade up or down by one step based on the quality of your participation over the course of the semester (i.e. B to B+, A to A-, etc.).

This course follows the grading policies outlined in the Academic Regulations 4-5.7, which may be found at <https://www.law.gmu.edu/academics/regulations/>.

## Disability Support

Any student who may need an accommodation based on the potential impact of a disability should contact the Records Office, 703-993-8015, or Associate Dean Nields,

703-993-8174. Additional information on accommodations is available through the University's Office of Disability Services.

### **Topic and Reading Schedule**

The following assignments may be revised or supplemented as the semester proceeds, and I will inform you of any changes by email and/or via the TWEN page. We may also have guest speakers during the semester, and will adjust the readings accordingly.

#### **January 18 Introduction to U.S. [Private-Sector] Labor Law and NLRB Practice and Procedure**

- NLRA Sections 1 and 7
- MLL, pp. 3–16; 23–29
- Additional information re. *NLRB v. Noel Canning* and President Obama's recess appointments to the Board:
  - <https://www.scotusblog.com/2014/06/court-strikes-down-recess-appointments-in-plain-english/>
  - [https://en.wikipedia.org/wiki/NLRB\\_v.\\_Noel\\_Canning](https://en.wikipedia.org/wiki/NLRB_v._Noel_Canning)

#### **January 25 Employees Under the NLRA (part I)**

- NLRA Section 2(3) (definition of “employee”) and 2(11) (definition of “supervisor”)
- MLL, pp. 37; 41–53
- GC Memo 17-01 “Report on the Statutory Rights of University Faculty and Students in the Unfair Labor Practice Context.” **Read pp. 1–2; 10–23.**
- Skim GC Memo 22-01, “Ensuring Rights and Remedies for Immigrant Workers Under the NLRA.”

#### **February 1 Employees Under the NLRA (part II); Who Is An Employer Under the NLRA?**

- *SuperShuttle*, 367 NLRB No. 75 (2019) (majority and dissent)
- NLRA Section 2(2) (definition of “employer”)
- MLL, pp. 38–41
- “The Democratic Party,” Advice Memorandum dated Aug. 19, 2021. **Read pp. 1–10**
- Skim the NLRB’s Notice of Proposed Rulemaking regarding the Standard for Determining Joint Employer Status

February 8 **The Basic Employee Rights Covered Under the Act:  
Self-Organization and Protected Concerted Activity**

- Reread NLRA Section 7
- MLL pp. 57–72
- *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962)
- *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978)
- *Sabo Inc. d/b/a Hoodview Vending Co.*, 359 NLRB 355 (2012)
- Skim *Alstate Maintenance, LLC*, 367 NLRB No. 68 (2019)

February 15 **Employer Coercion, Domination, and Discrimination**

- NLRA Section 8(a)(1), (2), and (3)
- MLL pp. 77–84; 89–118
- *Plaza Auto Center*, 360 NLRB 972 (2014)
- *Pier Sixty, LLC*, 362 NLRB 505 (2015)
- Skim *General Motors LLC*, 369 NLRB No. 127 (2020)
- GC Memo 21-06, “Seeking Full Remedies”

February 22 **Organizing a Union**

- *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945)
- *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992)
- Skim *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (2019)
- Additional readings TBD

March 1 **Employer Speech in Union Representation Campaigns**

- NLRA Section 8(c)
- MLL pp. 84–88
- GC Memo 22-04, “The Right to Refrain from Captive Audience and Other Mandatory Meetings”
- Additional readings TBD

March 8 **Selecting a Bargaining Representative; The Duty of Fair Representation  
(Exclusive Representation is Weird)**

- NLRA Section 9
- MLL pp. 311-333
- Additional readings TBD

March 15 Spring Break: No class

March 22 **The Duty to Bargain (part I)**

- NLRA Section 8(a)(5); 8(d); 8(f)
- MLL pp. 141–155
- Additional readings TBD

March 29     **The Duty to Bargain (part II): Subjects of Bargaining**

- MLL pp. 165–181
- Additional readings TBD

April 5       **Strikes, Lockouts, and Economic Warfare**

- NLRA Section 8(g); Section 13
- MLL pp. 199–214
- Additional readings TBD

April 12     Happy Constitutionality Day! **Picketing, Boycotts, and Secondary Activity**

- NLRA Section 8(b)(4) and (7)
- MLL pp. 243–271
- Additional readings TBD

April 19     **Federal Preemption of State and Local Labor Laws**

- MLL pp. 297–310
- Super-timely bonus: will the Supreme Court rewrite labor law preemption doctrine?
  - <https://www.scotusblog.com/case-files/cases/glacier-northwest-inc-v-international-brotherhood-of-teamsters/>
  - *Why Going on Strike Could Get Much Harder for American Workers*, CBS News (October 13, 2022) (available at <https://www.cbsnews.com/news/striking-supreme-court-glacier-northwest-teamsters/>)
- Additional readings TBD