

GEORGE MASON UNIVERSITY LAW SCHOOL

Labor Law, 256-001 (2 credits)

Spring 2024

Mondays, 8:10 p.m. – 10:10 p.m.

Professor Amy L. Cocuzza¹ (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 objectives are 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 unfair labor practice cases and representation 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.

¹ In her day job, Professor Cocuzza is 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

I am not requiring students to purchase a traditional casebook. Each week, I will assign readings from a variety of sources, including the National Labor Relations Act, 29 U.S.C. § 151–169 (“NLRA”), caselaw, treatises, and articles. Cases will be edited to highlight the material I want you to focus on, although you of course always have the option of reading the case unedited. I will endeavor to provide at least a week’s notice of assigned reading.

The following treatises, available online, will contain some of your required readings. Students are encouraged to explore these resources beyond the assignments:

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>.
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.

Course Policies

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’ communications. 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 my experience, our lessons are more fruitful when we have an active/engaged dialogue. Each week, a minimum of two students will be designated as discussion leaders; they are expected to come to class prepared to discuss the week’s cases in greater depth and ask and/or answer questions about the readings.

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.

Contact Information and Office Hours

Although I will not hold scheduled office hours, I am delighted to meet in person, by phone, or over Zoom to discuss labor law, answer administrative questions, or address other class-related issues. Please e-mail laborlawprof@gmail.com to arrange.

Attendance

Regular attendance is required for credit in this course, as set forth 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.)

If you know that you will be absent on a day that you are scheduled to lead discussion, please let me know as far in advance as possible so that we can make alternate arrangements. Even if you are not on tap to lead discussion, I always appreciate advance notice when you will miss class.

Religious Accommodation

Religious observances may occasionally conflict with scheduled class meetings. Absences due to religious observances will always be deemed excused; they must, however, still count as absences under the Academic Regulations.

Disability Support

Any student who may need an accommodation based on the potential impact of a disability should contact the [University's Office of Disability Services](#).

Method of Evaluation

Your final grade will be based on a **48-hour open-book, open-note take-home exam**, which you may complete at any time during the finals period and anywhere the Scalia Law [Honor Code](#) permits. 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 4-6, which may be found at <https://www.law.gmu.edu/academics/regulations/>.

Topic Schedule

The following schedule may [will likely] be adjusted or adapted as the semester progresses. I hope to have one or more guest speakers, which could require further adjustment.

January 22 Class 1: **Introduction to Labor Law (the class) and labor law (the field)**

Discussion leader: Professor Cocuzza

Assigned Reading:

- NLRA Sections 1 and 7 (29 U.S.C. § 151; 29 U.S.C. § 157)
- DEVELOPING LABOR LAW: THE BOARD, THE COURTS, AND THE NATIONAL LABOR RELATIONS BOARD — Chapter 2.
- David Leonhardt and Noam Scheiber, *Labor's Very Good Year: Why 2023 Was Such An Important Year For Unions*, N.Y. TIMES, Dec. 6, 2023, available [here](#).
- Lauren Kaori Gurley, *Blue-Collar Workers Won Big in 2023, Defying Bleak Predictions*, The Washington Post, Dec. 30, 2023, available [here](#).

January 29 Class 2: **Self-Organization and Protected Concerted Activity**

Discussion leaders: TBA

Assigned Reading:

- Re-read NLRA Sections 1 and 7
- Read NLRA Section 8(a)(1)
- DEVELOPING LABOR LAW: THE BOARD, THE COURTS, AND THE NATIONAL LABOR RELATIONS BOARD — Chapter 6.I.A - 6.I.B.3
- *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962)
- *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978)

February 5 Class 3: **Jurisdiction and Cast of Characters under the NLRA (Part I)**

What is the NLRB and what do they do? Who's an employee under the Act?

Discussion leaders: TBA

Assigned Reading: TBA

February 12 Class 4: **Jurisdiction and Cast of Characters under the NLRA (Part II);
Employer Domination under Section 8(a)(2)**

Discussion leaders: TBA

Assigned Reading: TBA

February 19 Class 5: **Organizing a Union**

Discussion leaders: TBA

Assigned Reading: TBA

February 26 Class 6: **Unlawful Discrimination/Discharge under Section 8(a)(3)**

Discussion leaders: TBA

Assigned Reading: TBA

March 4 Spring Break: No class

March 11 Class 7: **Employer Speech in Union Representation Campaigns**

Discussion leaders: TBA

Assigned Reading: TBA

March 18 Class 8: **Selecting a Bargaining Representative**

Discussion leaders: TBA

Assigned Reading: TBA

March 25 Class 9: **The Duty to Bargain**
Sections 8(a)(5); 8(b)(3); 8(d)

Discussion leaders: TBA

Assigned Reading: TBA

April 1 Class 10: **Subjects of Bargaining**

Discussion leaders: TBA

Assigned Reading: TBA

April 8

Class 11: Strikes, Lockouts, and Economic Warfare

Discussion leaders: TBA

Assigned Reading: TBA

April 15

Class 12: Picketing, Boycotts, and Secondary Activity

Discussion leaders: TBA

Assigned Reading: TBA

April 22

Class 13: The Duty to Bargain; Federal Preemption of State and Local Labor Laws

Discussion leaders: TBA

Assigned Reading: TBA