

LABOR LAW (LAW 227)

UNIVERSITY OF CALIFORNIA SCHOOL OF LAW

SPRING 2014 - ANDREW KAHN, LECTURER

COURSE SYLLABUS AND READINGS

Reading assignments with page designations are contained in the textbook Dau-Schmidt et al, *Labor Law in the Contemporary Workplace* (West Academic Publishing 2009)(shown below as “Text”). Additional reading is contained in West’s accompanying Statutory Supplement (“Statutes”), in the Textbook’s 2012 Supplement posted on-line at Westacademic.com (“Supp”), and on the course website (“Website”).

To minimize the amount of required reading, the instructor during class will summarize a number of the cases in the Textbook rather than requiring students read them. They are listed below as “Also to be discussed”. The summary of them presented in class will be part of what students will be expected to know on the final exam in addition to required readings. If one attends class and takes good notes, there is no reason to read these cases.

There will be one exam, an open-book¹ half-day take-home final , which will account for 80% of the student’s grade. The rest of the grade will be based upon class attendance and participation. To hopefully prevent the need for any “cold-calling” on students, the instructor will ask 2-4 students at the end of each class to be prepared at next class to discuss the upcoming readings. (In the tradition of collectively-run workplaces, the students selected can split the work in half between themselves, and any student selected this way but unable to attend the next class prepared can arrange with another student to substitute in who has not been selected before).

The instructor realizes there are legitimate reasons for missing class: students who need to miss class should e-mail the instructor a brief explanation in advance absent some emergency. The instructor will be available for consultation by appointment (preferably just before or after class or evenings) and can be reached by phone at (415) 547-7247. Email should be sent to “ajk@dcbsf.com.”

Because the instructor intends to be very frank with students about judges, unions, employers, lawyers and government officials (and wants students to do the same), the instructor asks that you obtain his approval before tape-recording any class.

1. Week of January 6:

Introduction to Labor Relations Laws and the NLRB

Why most labor lawyers are now also constitutional lawyers

Text: pp. 35-38, 44-47, 54-57, 68-71, 82-85

Statutes: Norris-LaGuardia Act; NLRA secs. 1 – 3, 7, 10.

Website: NLRB form “The NLRB and You”

Supp. pp. 1-3.

¹ Meaning the student can use the assigned readings and their class notes, but not the internet.

2. Week of January 13

Who is a covered “employee” and not excluded as “supervisor”, student, manager, etc?

What is the status of undocumented workers under the Act?

Text: pp. 108-12, 115-17, 152-60, 167-82

Statutes: re-read NLRA sections 2(2), 2(3), 2(11).

Website: Tips on NLRB practice re undocumented workers

Supp: 8-9 (only *Sandoval*)

Also to be discussed: *Roadway* and notes (Text 117-26); *Town & Country* and *Brown Univ.* (Text 142-52 and Supp 6); *Yeshiva* (Text 184-91).

3. Week of January 20:

Rights of Self-Organization (What Are Protected Concerted Activities?)

Employer Domination and Assistance of Labor Organizations

Text: 226-29, 236-38, 246-51, 275-81, 594-97, 824-34

Statutes: NLRA Sections 7, 8(a)(1)-(3), 8(f); re-read Section 2(5) and 2(9).

Supp: 8-12, 15 (just addition to n3 on p.250)

Website: Class Actions as Protected Concerted Activities & Class Action Waivers in Employee Arbitration Agreements

Also to be discussed: *Washington Aluminum & City Disposal* (Text 215-26), *IBM* (229-35), *Electromation* (253-63); *Emporium Capwell* (281-90).

4. Week of January 27:

Union Access

Employer Speech, Coercion & Discrimination

Text: 294-299, 316-22, 331-32, 336-346, 351-55

Statutes: NLRA Secs. 7, 8(a)(1)-(3), 8(b)(1)-(3), 8(c)

Supp. 20-29, 30-37, 39-40

Website: *Ralphs Grocery v. UFCW* (2012) 55 Cal.4th 1083

Also to be discussed: *Technology Service Solutions* (Text 322-28), *Allegheny Ludlum* (347-50), *Darlington Mfg* (364-70).

5. Week of Feb. 3:

Routes to Union Recognition: appropriate units; elections; bargaining orders; voluntary recognition outside NLRB procedures

Text: 370-74, 382-90; 400-14; 421-33, 446-47

Statutes: NLRA Sections 8(a)(5) and 9; 8(b)(7); LMRA Section 302

Supp: 40-44

Website: *Mulhall v. UNITE HERE* (pending before U.S. Supreme Court)

Also to be discussed: *Friendly Ice Cream* (Text 375-82), *Gissel Packing* (390-399), *Blinne Constr.* (414-421), *Dana Corp.* (434-45); *Lamons Gasket* (Supp 45-56).

6. Week of Feb. 10:

Collective Bargaining: Defining Good Faith Bargaining; The Problem of Surface Bargaining; Unilateral Changes; The Parties' Right to Information; Effect of a Strike on the Duty to Bargain; The Duty to Bargain During the Term of a Contract; Mandatory and Optional Subjects of Bargaining; Bargaining Remedies

Text: 453-66; 475; 487, 495, 506-26, 541-44

Statutes: re-read NLRA Section 8(a)(5)

Supp: 58

Also to be discussed: *American Nat'l Ins.*(Text 475-79), *Detroit Edison* (487-94); *Allied Chemical* (533-38).

7. Week of Feb. 17:

Employees' Economic Weapons: Constitutional Protections for Strikes and Protests; Statutory Protections for Strikes and Other Protests

Text: 550-76, 583-604; 611-19, 626-30

Statutes: Re-read NLRA Sections 8(a)(1),(3), 8(d), 8(g), 8, 13.

Supp: 62

8. Week of Feb. 24:

Employer Economic Weapons and Statutory Protections for Employers

Secondary Activities by Unions & the First Amendment

Text: 630-33; 639-704 (focus on 682-94)

Statutes: NLRA Sections 8(b)(4); 8(e)-(f); LMRA section 303.

9. Weeks of March 3 & March 10:

Daily Life Under Collective Bargaining Agreements: Workplace Self-Governance Under the Collective Bargaining Agreement; The Collective Bargaining Agreement and Injunctions

Text: 705-58

Statutes: LMRA Section 301; Norris-LaGuardia Act; LMRA sections 175a and 302

Website: Sample Collective Bargaining Agreement & Questions about it

10. Week of March 17:

The Individual and the Collective Process: the Duty of Fair Representation

The Interplay Between Contractual Grievance Procedures and “External” Public Law (NLRA, Title VII, FLSA, ADA, ADEA)

LMRA Section 301 Preemption of State Laws for Unionized Workers

Text: 758-70;783-86, 800-804; 1001-3; 1030-36

Statutes: LMRA Section 301; NLRA Sections 8, 8(b)(1)-(2); 14(b).

Also to be discussed: *Pyett* (Supp. 68-76)

11. Week of March 31:

Ending the Collective Bargaining Relationship: Withdrawal of Recognition; Decertification; Successorship; Double-Breasting

Text: 916-17, 926-35; 949-56, 967-80

Website: *Cal. Grocers Assn v. City of L.A.* (2011) 52 Cal. 4th 177

Also to be discussed: *Allentown Mack* (917-24); *Fall River Dyeing* and related cases (956-67)

12. Week of April 7:

Preemption of State and Local Laws: Garmon Preemption; Machinists Preemption

Worker Activism: Labor Organizations and Community and Political Action

Employer Lawsuits

Text: 1004-30; 815-23; 835-40

Supp: 80 (att’n to n.2 re: Text p 838)

Website: *Sutter Health v UNITE HERE* (2010) 186 Cal. App.4th 1193

13. Week of April 14:

Regulation of Union Dues, Union Security and Union Political Activity in Campaign Finance Laws, NLRA, Right-to-Work Laws and First Amendment caselaw

Text: 850-53, 866-902

Statutes: NLRA sections 8(a)(3), 8(b)(2), 8(f), 14(b); LMRA section 304

Supp: pp. 81 (start para. 5) – 86 (end at IV)

14. Week of April 21:

Review Sessions