

LABOR AND EMPLOYMENT ARBITRATION [LAW 227.1]
UNIVERSITY OF CALIFORNIA, BERKELEY LAW SCHOOL
FALL 2013
BARRY WINOGRAD, LECTURER
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COURSE SYLLABUS AND READINGS

Materials for this course are available in four parts. First, students will use a specially prepared *Arbitration Practice Guide* (APG) that contains subject area outlines and practice exercises that will be reviewed for class sessions and also used as a resource outside of class. Second, students will be assigned relevant cases by using citations that are available online. A list of online readings accompanies the class schedule below. Pertinent statutes and arbitration rules also are identified for online reference. Third, students can review several arbitration and practice articles that are compiled in a set of *Extra Handouts* to be provided online to students. The articles are offered as recommended reading and references for various topics during the semester. Last, materials to be used in a mock arbitration will be distributed in the final weeks of the class to the teams presenting the arbitration.

Online case assignments are largely in the first third of the course. Portions of the *Arbitration Practice Guide* will be assigned, for the most part, in the balance of the course. Articles that are recommended for extra reading and reference will be designated throughout the semester. The instructors will be available for consultation by appointment or by phone. Barry Winograd can be reached by phone at (510)273-8755, and by email at winmedarb@aol.com. Margaret Brogan can be reached by phone at (610) 668-4121, and by email at margaret.brogan@verizon.net.

There is no final examination for the course. Instead, grades will be based on a series of written assignments during the course of the semester, and on the mock arbitration team-exercise near the end of the course.

As a result of holidays falling on Monday, September 2 and Monday, November 11, one or two make-up classes will be scheduled during the semester, or the length of one or two classes will be increased. Final make-up scheduling will follow consultation with students in the course. Tentatively, a make-up session will take place on Friday, September 20 or Saturday, September 21.

<u>Date</u>	<u>Subject/Reading</u>
August 26	Introduction to Labor and Employment Arbitration APG 1, 23
September 2	No Class (Labor Day)
September 9	Judicial Enforcement and Review of the Labor Arbitration Agreement: Lincoln Mills American Manufacturing Warrior & Gulf Enterprise Wheel Garvey Eastern Associated Coal Murphy: Feller Interview, 1994 Feller Article, 1976
September 16	Employment Arbitration Gilmer Armendariz Circuit City v. Adams Waffle House Rent-A-Center Grodin Article, 2001
September 20 or 21 (Make-Up Class)	Labor Law and Employment Arbitration Gardner-Denver Northwest Airlines Pyett DR Horton Duty of Fair Representation Vaca Deferral to Arbitration Olin

September 23	Labor Arbitration - Discipline Cases APG 2-3 Dunsford Article, 1989
September 30	Labor Arbitration - Contract Cases APG 4-5 Mittenthal Article, 1961 St. Antoine Article, 2000
October 7_	Labor Arbitration - Procedural Issues APG 6-9 AAA Labor Arbitration Rules Code of Professional Responsibility For Arbitrators for Labor-Management
October 14	Labor Arbitration - Evidence and Witness Issues APG 10-14 Evidence Debate Article, 1998
October 21	Visiting Advocates
October 28	Employment Arbitration Case Management APG 21-22 AAA Employment Arbitration Rules JAMS Employment Arbitration Rules
November 4	Case Preparation and Presentation APG 15-20
November 11	No Class (Veterans Day)
November 18	Mock Labor Arbitration

COURSE READINGS

In addition to outlines and exercises in the *Arbitration Practice Guide* noted on the syllabus, readings from the following list will be assigned and recommended. All of these materials can be found online. Other material will be distributed at class sessions.

1. CASES

A. Supreme Court Decisions

1. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) (dissent to p. 469)
2. *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960)
3. *Steelworkers v. Warrior & Gulf Navigation*, 363 U.S. 574 (1960)
4. *Steelworkers v. Enterprise Wheel*, 363 U.S. 593 (1960)
5. *Vaca v. Sipes*, 386 U.S. 171 (1967)
6. *Alexander v. Gardner-Denver*, 415 U.S. 36 (1974)
7. *Gilmer v. Interstate/Johnson Lane*, 500 U.S. 20 (1991)
8. *14 Penn Plaza v. Pyett*, 556 U.S. 247, 129 S.Ct. 1456 (2009)
9. *Rent-A-Center v. Jackson*, 561 U.S. ___, 130 S.Ct. 2772 (2009)
10. *Eastern Associated Coal v. Mine Workers*, 531 U.S. 57 (2000)
11. *Circuit City Stores v. Adams*, 532 U.S. 105 (2001)

12. *Major League Baseball Players v. Garvey*, 532 U.S. 504 (2001)

13. *EEOC v. Waffle House*, 534 U.S. 279 (2002)

B. Other Court and Agency Decisions

1. *Airline Pilots Assn. v. Northwest Airlines*, 199 F.3d 477 (D.C. Cir. 1999)

2. *Armendariz v. Foundation Psychcare*, 24 Cal.4th 83 (2000)

3. *D.R. Horton*, 357 NLRB No. 184 (2012)

3. *Olin Corp.*, 268 NLRB 573 (1984)

2. **STATUTES AND RULES**

A. Federal Arbitration Act, 9 USC Section 1 et. seq.

B. California Arbitration Act, Code of Civil Procedure Section 1280, et seq.

C. AAA Labor Arbitration Rules (www.adr.org)

D. AAA Employment Arbitration Rules (www.adr.org)

E. JAMS Employment Arbitration Rules (www.jamsadr.com)

F. Code of Professional Responsibility for Arbitrators of Labor-Management Disputes (www.naarb.org)

3. **ARTICLES AND COMMENTS (RECOMMENDED)**

These articles can be found at www.naarb.org, by clicking the tab for "Dispute Resolution in the Workplace," and then searching for the designated reading.

A. Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, in 14th NAA Proceedings, 1961, p. 30 (BNA)

B. Feller, *The Coming End of Arbitration's Golden Age*, in 29th NAA Proceedings, 1976, p. 97 (BNA)

- C. Dunsford, *Arbitral Discretion: The Tests of Just Cause*, 42nd NAA Proceedings, 1989, p. 23
- D. Feller, *Fireside Chat: How the Trilogy Was Made*, in 47th NAA Proceedings, 1994, p. 327 (BNA) (Interview by Murphy)
- E. *A Debate: Should Labor Arbitrators Receive Evidence for "What It's Worth?"*, in 51st NAA Proceedings, 1998, p. 89 (BNA)
- F. St. Antoine, *Contract Reading Revisited*, in 53rd NAA Proceedings, 2000, p. 1 (BNA)
- G. Grodin, *Arbitration Decisions of the U.S. Supreme Court*, in 54th NAA Proceedings, 2001, p. 13 (BNA)