

Labor Law

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Elon Law School
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Monday & Wednesday, 3:45-5:15 pm
Room 105

Description

This course examines labor-management relations in socio-legal perspective, drawing on both traditional legal materials (i.e. statutes, regulations, judicial opinions) and social research (i.e. theoretical perspectives & empirical studies from the social sciences). The aim of the course is to provide students with an overview of significant issues and doctrines in labor law, introduce students to theory and research on labor unions and labor-management relations, and encourage students to consider how insights from social theory and research can inform legal practice.

Material

Paul M. Secunda & Jeffrey M. Hirsch, *Labor Law: A Problem Based Approach* (2012) (Required)

Douglas E. Ray, et al, *Understanding Labor Law* (4th Ed.) (Lexis Nexis 2014) (Suggested)

The course website, emfink.net/LaborLaw, has links to statutes and regulations, supplemental readings, and other resources.

Policies

Grading

Your final grade for the course will be based on take-home research and writing problems assigned during the term (75% total) and your in-class performance (25%). There will be no final exam for this course.

The in-class performance component depends on your preparation before class, regular and prompt class attendance, and constructive engagement during class. Elon Law School's standards and ABA guidance for awarding course credit assume at least two hours of out-of-class student work for each hour of classroom instruction.

Attendance

Elon Law School has adopted the following attendance policy for all courses:

The Law School administers a policy that a student maintain regular and punctual class attendance in all courses in which the student is registered, including externships, clinical courses, or simulation courses. Faculty members will give students written notice of their attendance policies before or during the first week of class. These policies may include, but are not limited to: treating late arrivals, early departures, and/or lack of preparation as absences; imposing grade or point reductions for absences, including assigning a failing grade or involuntarily withdrawing a student from the class; and any other policies that a professor deems appropriate to create a rigorous and professional classroom environment.

In case of illness or emergency, students may contact the Office of Student and Professional Life, which will then notify the student's instructors. A student may notify the faculty member directly of a planned absence and should refer to individual faculty members regarding any policy that may apply. In the case of prolonged illness or incapacity, the student should contact the Office of Student and Professional Life.

Excessive absences (more than 2 classes) may result in a reduction of your grade.

Disability Accommodations

For disability accommodation requests, contact the Elon Law [Registrar's Office](#).

Honor Code

The Law School [honor code](#) applies to all activities related to your law school study, including conduct during class and examinations.

Outline & Assignments

1 Origins of the Modern U.S. Labor Law Regime

1.1 Unions in the Pre-Wagner Era

- [Rex v. Journeymen-Taylors of Cambridge](#), 88 Eng.Rep. 9 (1721)
- [Commonwealth v. Pullis](#) (1806), reprinted in Commons, et al, 3 A Documentary History of American Industrial Society 59 (2d ed. 1910)
- [Commonwealth v. Hunt](#), 45 Mass. 111 (1842)
- [Vegeahn v. Guntner](#), 167 Mass. 92 (1896)
- [In re Debs](#), 158 U.S. 564 (1895)

1.2 Ushering in the Wagner Era

- Casebook: 1-34
- Clayton Antitrust Act, § 6 (15 U.S.C. § 17) (1914)
- [State v. Beal], 199 NC 278 (1930)
- The Gastonia Strikers Case, 44 Harvard Law Review 1118 (1931)
- Theodore Draper, Gastonia Revisited, 38 Social Research 3 (1971)
- Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 (1932)
- National Labor Relations Act, 29 U.S.C. §§ 151-169 (1935)

- [Wagner Act Summary Chart](#)

2 Coverage of the NLRA

2.1 Employers under the NLRA

- Casebook: 34-37
- George Gonos, [The Contest Over “Employer” Status in the Postwar United States: The Case of Temporary Help Firms](#), 31 *Law & Society Review* 81 (1997)

2.2 Employees under the NLRA

- Casebook: 37-97
- Julia Tomassetti, [Who Is a Worker? Partisanship, the National Labor Relations Board, and the Social Content of Employment](#), 37 *Law & Social Inquiry* 815 (2012)
- Katherine V.W. Stone, [Legal Protections for Atypical Employees: Employment Law for Workers without Workplaces and Employees without Employers](#), 27 *Berkeley Journal of Employment & Labor Law* 251 (2006)

3 Employee Rights Under the NLRA

3.1 Employer Interference

- Casebook: 99-157

3.2 Protected Concerted Activity

- Casebook: 159-203

4 Union Organizing

4.1 Union Communication with Employees

- Casebook: 205-48
- Andrew W. Martin, [Resources for Success: Social Movement, Strategic Resource Allocation, and Union Organizing Outcomes](#), 55 *Social Problems* 501 (2008)

4.2 Employer Communication with Employees

- Casebook: 248-88
- Kate Bronfenbrenner, [No Holds Barred: The Intensification of Employer Opposition to Organizing](#) (EPI Briefing Paper No. 235, 2009)

4.3 Establishing Representation

- Casebook: 289-318

4.4 Withdrawal of Recognition

- Casebook: 318-33

5 Collective Bargaining

5.1 Duty to Bargain

- Casebook: 335-86

5.2 Subjects of Bargaining

- Casebook: 387-435
- Judith Stepan-Norris & Maurice Zeitlin, "Red" Unions and "Bourgeois" Contracts?, 96 *American Journal of Sociology* 1151 (1991)

6 Labor Disputes

6.1 Strikes & Lockouts

- Casebook: 437-75
- Jim Pope, Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations, 24 *Law and History Review* 45 (2006)
- Marc Dixon & Andrew W. Martin, We Can't Win This On Our Own: Unions, Firms, and Mobilization of External Allies in Labor Disputes, 77 *American Sociological Review* 946 (2012)
- Ahmed A. White, The Crime of Staging an Effective Strike and the Enduring Role of Criminal Law in Modern Labor Relations, 11 *Working USA* 23 (2008)

6.2 Picketing, Boycotts, & Corporate Campaigns

- Casebook: 477-527
- Timothy J. Minchin, "Don't Sleep With Stevens!": The J.P. Stevens Boycott and Social Activism in the 1970s, 39 *Journal of American Studies* 511 (2005)

7 Internal Union Affairs

7.1 Duty of Fair Representation

- Casebook: 557-72

7.2 Union Membership

- Casebook: 573-625
- Marc Dixon, Union Threat, Countermovement Organization, and Labor Policy in the States, 1944-1960, 57 *Social Problems* 157 (2010)

7.3 Union Democracy

- Labor-Management Reporting & Disclosure Act (“Landrum-Griffin Act”), 29 U.S.C. §§ 401-402, 411-415, 481-483
- [Sickman v. Communications Workers of America Local 13000](#), 1999 WL 1045145 (E.D. Pa. 1999)
- Herman Benson, Landrum-Griffin Act at 50: Has it Been Good or Bad for Unions?, 13(2) New Politics (2011)

7.4 Union Corruption

- Labor-Management Reporting & Disclosure Act (“Landrum-Griffin Act”), 29 U.S.C. §§ 431-441, 461-466, 501-504
- U.S. v. Local 560 International Brotherhood of Teamsters, 581 F. Supp. 279 (D.N.J. 1984)
- David Witwer, [The Racketeer Menace & Antiunionism in the Mid-Twentieth Century U.S.](#), 74 International Labor & Working Class History 124 (2008)
- James B. Jacobs & Ellen Peters, Labor Racketeering: The Mafia and the Unions, 30 Crime & Justice 229 (2003)

8 Labor Unions in the Public Sector

- [King v. Priest](#), 206 S.W.2d 547 (Mo. 1947)
- Joseph E. Slater, The Court Does Not Know “What a Labor Union Is”: How State Structures and Judicial (Mis)constructions Deformed Public Sector Labor Law, 79 Oregon Law Review 981 (2000)
- North Carolina General Statutes, Chap. 95, Art. 12: Collective Bargaining & Strikes by Public Employees
- [Arkins v. City of Charlotte](#), 296 F. Supp. 1068 (W.D.N.C. 1968)
- [Winston-Salem/Forsythe County Unit of the North Carolina Ass’n of Educators v. Phillips](#), 381 F. Supp. 644 (M.D.N.C. 1974)
- Ann C. Hodges & William Warwick, [The Sheathed Sword: Public-Sector Union Efficacy in Non-Bargaining States](#), 27 ABA Journal of Labor & Employment Law 275 (2012)
- Martin H. Malin, [The Legislative Upheaval in Public-Sector Law: A Search for Common Elements](#), 27 ABA Journal of Labor & Employment Law 149 (2012)

9 Labor, Race, Gender, & Immigration

- Larry J. Griffin & Robert R. Korstad, Class as Race & Gender; Making & Breaking a Labor Union in the Jim Crow South, 19 Social Science History 425(1995)
- Martha R. Mahoney, [What’s Left of Solidarity? Reflections on Law, Race, and Labor History](#), 57 Buffalo Law Review 1515 (2009)
- Kate Bronfenbrenner, Organizing Women: The Nature and Process of Union-Organizing Efforts Among U.S. Women Workers Since the mid-1990s, 32 Work & Occupations 441 (2005)

- Jillian Crocker and Dan Clawson, [Buying Time: Gendered Patterns in Union Contracts](#), 59 *Social Problems* 459 (2012)
- Brian Burgoon, et al, [Immigration and the Transformation of American Unionism](#), 44 *International Migration Review* 933 (2010)
- David Bacon, [A Union for Tobacco Workers](#), 15 *Working USA* 417 (2012)

10 The Demise of the Wagner Model and the Future of Unions

- Bill Fletcher Jr., Kate Bronfenbrenner, & Donna Dewitt, [The Future of Organized Labor in the U.S.: Reinventing Trade Unionism for the 21st Century](#), *Monthly Review* (Feb. 21, 2005)
- Stanley Aronowitz, [Reversing the Labor Movement's Freefall](#), 12(2) *Logos* (Winter 2013)
- Moshe Marvit & Leigh Ann Schriever, [With Traditional Unions on the Decline, Can Members-Only Unions Breathe Life Back Into Labor?](#), In *These Times*, (Oct. 21, 2015)
- Paul Secunda, [The Wagner Model of Labour Law is Dead, Long Live Labour Law!](#), 38 *Queen's Law Journal* 545 (2013)
- Daniel Gross & Staughton Lynd, [Solidarity Unionism at Starbucks](#) (PM Press Pamphlet Series No. 9, 2011)
- Janice Fine, [Worker Centers](#), 14 *Race, Poverty & Environment* 54 (2007)