

# Labor Law

Elon Law School  
Spring 2016  
Monday & Wednesday, 3:45-5:15 pm  
Room 105

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## 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.

After taking this course, students should be able to

- Explain the system of labor-management relations under the National Labor Relations Act, including the procedures for establishing union representation, the collective bargaining process & arbitration of contractual disputes, the limits on employer and union conduct, and the procedures for adjudicating unfair labor practices.
- Explain the legal regulation of internal union affairs under the Labor-Management Reporting & Disclosure Act, including the conduct of union elections, the reporting of union finances, and the rights of union members.
- Research the law, analyze issues, and advise clients on matters involving the rights and duties of employers, employees, and labor unions under the NLRA and LMRDA.

## Material

Paul Secunda, Jeffrey Hirsch, & Michael Duff, *Labor Law: A Problem-Based Approach* (2d ed.) (Carolina Academic Press 2017) (“Casebook”)

Other assigned readings are available online via links on the course website [emfink.net/LaborLaw](https://emfink.net/LaborLaw).

## 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 contributions to class discussions and simulation exercises (25%). There will be no final exam for this course.

### *Class Attendance and Preparation*

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.

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.

### *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**

Casebook, Chapter 1

Rex v. Journeymen-Tailors 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)

Vegelahn v. Guntner, 167 Mass. 92 (1896)

In re Debs, 158 U.S. 564 (1895)

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)

### **2 Coverage of the NLRA**

Casebook, Chapter 2

George Gonos, The Contest Over "Employer" Status in the Postwar United States: The Case of Temporary Help Firms, 31 Law & Society Review 81 (1997)

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 Protections**

#### **3.1 Protected Concerted Activity**

Casebook, Chapter 3

#### **3.2 Employer Domination & Discrimination**

Casebook, Chapter 4

Kate Bronfenbrenner, *Hard Bargaining*, 52 *Labour/Le Travail* 361 (2003)

### **4 Union Organizing**

#### **4.1 Communicating with Employees**

Casebook: Chapter 5

Andrew W. Martin, *Resources for Success: Social Movement, Strategic Resource Allocation, and Union Organizing Outcomes*, 55 *Social Problems* 501 (2008)

#### **4.2 Establishing & Ending Union Representation**

Casebook, Chapter 6

### **5 Collective Bargaining**

#### **5.1 Exclusive Representation & The Duty to Bargain**

Casebook, Chapter 7

#### **5.2 Subjects of Collective Bargaining**

Casebook, Chapter 8

#### **5.3 Enforcement of Collective Bargaining Agreements**

Casebook, Chapter 13

### **6 Labor Disputes**

#### **6.1 Strikes & Lockouts**

Casebook, Chapter 9

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, Chapter 10

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 Unions Duties to Members & Non-Members

Casebook, Chapter 12

Marc Dixon, *Union Threat, Countermovement Organization, and Labor Policy in the States, 1944–1960*, 57 *Social Problems* 157 (2010)

### 7.2 Union Democracy & Corruption

Labor-Management Reporting & Disclosure Act

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)

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 Outside the NLRA

### 8.1 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*

Atkins 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 Labor Law: A Search for Common Elements*, 27 *ABA Journal of Labor & Employment Law* 149 (2012)

### 8.2 Labor in the Shadow of the Law

Daniel Gross & Staughton Lynd, *Solidarity Unionism at Starbucks* (PM Press Pamphlet Series No. 9, 2011)

Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 *Law & Contemporary Problems* 141 (2019)

David Bacon, *A Union for Tobacco Workers*, 15 *Working USA* 417 (2012)

## 9 Not Just the “White (Male) Working Class”: Race, Gender, Immigration & the Labor Movement

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)

## **10 Future Directions in Labor Law**

Kate Andrias, *The New Labor Law*, 126 *Yale Law Journal* 2 (2016)

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)

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)