

COLLECTIVE BARGAINING - FALL 2013

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Reading Resources:

A major focus of this class is to present practical exercises to prepare you to become an associate in a law firm that handles collective bargaining and labor/management matters, perhaps as part of a general practice. Having taken a prior labor law class is not necessary, nor is it a prerequisite. I may from time-to-time generate class materials that will be made available in advance of any class. We will also have guest speakers. Finally, you will be given practice exercises that will provide you with feedback during the progress of the class.

COURSE OUTLINE

BACKGROUND

Class One - August 22, 2013

Evolution of Contemporary Workplace

- Overview of American Labor History of Collective Bargaining
- Present State of Collective Bargaining in the 21st Century
- Understanding Collective Bargaining - Union and Non-Union Setting and How It Impacts on Becoming a Labor Lawyer
- Social Media and Recent Workplace Developments

The Professor will review with the class some practice exercise problems that demonstrate the interaction of Labor Law, Employment Law and Social Media and other workplace issues. They are intended to be reflective of elements of the Course content during the semester.

Class Two - August 29, 2013

Understanding the National Labor Relations Board

- National Labor Act Processes - NLRB
- Is There a Problem With the National Labor Relations Board - Recent Initiatives by the NLRB and are they enough to protect workers?
- Legislative action involving the NLRB and Collective Bargaining
- The Boeing Experience

- Noel Canning, Div. of Noel, Carp v. NLRB 705 F.3d 490, 194 LRRM 3089 (D.C. Cir. 2013) – What is the impact of this decision?
- NLRB Cases on Facebook Firings and Social Media Policies

Class Materials: Please read the National Labor Relations Act (NLRA). You may also wish to read “The Basic Guide to the National Labor Act;” it is on the NLRB website or I can provide copies. Finally, I will provide a handout on understanding the NLRA.

Class Three – September 12, 2013

Boundaries of Collective Bargaining

- Impact of Unregulated Economy/Misclassification of Workers
- Who is an Employer?
 - o Federal/State Initiatives to Enforce Employer Status
- Interaction of Union and Social Activist Groups in Protecting Worker Rights in the Modern Workplace
- Role of Worker Centers

Read: The Cost of Worker Misclassification in New York, Linda H. Donahue, et al. (professor will provide at first class) – Also available at <http://digitalcommons.ilr.cornell.edu/reports/9/>

There will be a guest speaker who formerly worked as an Assistant Attorney General in the Labor Bureau of the New York State Attorney General’s Office.

Class Four – September 19, 2013

Establishment of Collective Representation

- Routes to Union Recognition
- Neutrality Agreements/Recognition Agreement
- The Significance of the Register Guard case – 357 NLRB No. 27 (2011), supplementing 351 NLRB 1110 and the role of Social Media in Union organizing
- Future of Worker Representation

Cases to read:

- Lamons Gasket Company, 357 NLRB No. 72 (2011)
- Brooks v. NLRB, 348 U.S. 96 (1954)
- NLRB v. Gissel Parking Co., 395 U.S. 575 (1969)
- Linden Lumber v. NLRB, 419 U.S. 301 (1974)
- International Hod Carriers, Local 840 (Bline Construction), 135 NLRB 1153 (1962)
- New Otani Hotel & Garden, 331 NLRB 1078 (2001)

Students will be assigned a specific case and will be expected to provide their analysis of that case to the class.

Class Five - September 26, 2013

Preparing for Collective Bargaining Negotiations

- Elements of a Collective Bargaining Agreement (sample CBA to be provided and reviewed by Professor)
- Fundamentals of Collective Bargaining Law
- Preliminary Procedures To Prepare For Bargaining
- Subjects of Collective Bargaining Law
- Use Of Information Requests As A Bargaining Tactic

Case Assignments:

- NLRB v. Insurance Agents Union, 361 U.S. 477 (1960)
- NLRB v. Katz, 369 U.S. 736 (1962)
- Detroit Edison v. NLRB 440 U.S. 301 (1979)
- Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964)
- Dubuque Packing Co., 303 NLRB 386 (1991), enf'd., I.F.3d 24 (D.C. Cir. 1993)
- Laborers Health and Welfare Trust v. Advanced Lightweight Concrete Co., Inc., 484 U.S. 539
- Neilson Lithographing Co., 305 NLRB 697 (1998) - petition for review denied subnom Graphic Communications Union Local 508 v. NLRB 977, Fd.2 1168 (7th Cir. 1992)
- Stella D'oro Biscuit Inc., 355 NLRB No. 158 (2010), enf. denied, ___ F3d. ___, (2d Cir. 2013)

Students will be assigned a specific case and will be expected to provide their analysis of that case to the class. I will also distribute a guide on collective bargaining basics.

MECHANICS OF COLLECTIVE BARGAINING

Class Six - October 3, 2013

Administration of the Collective Bargaining Agreement

- Duty To Bargain During Contract Term
- Reconciling Contractual v. Statutory Discrimination Claims (14 Penn Plaza LLC v. Pyett, 129 S. Ct. 1456 (2009))
- Union's Duty of Fair Representation
- Preparing A Case For Arbitration
- Tips for Preparing Witnesses for Judicial and/or Arbitration Proceedings

Cases to read:

- 14 Penn Plaza LLC v. Pyett, 129 S. Ct. 1456 (2009)
- Steelworkers v. American Manufacturing, 363 U.S. 564 (1960)
- Steelworkers v. Warrior & Gulf Navigation, 363 U.S. 574 (1960)
- Boys Market v. Retail Clerks, 398 U.S. 235 (1970)
- Buffalo Forge v. Steelworkers, 428 U.S. 397 (1976)
- Vaca v. Sipes, 386 U.S. 171 (1967)

I will explain and review a sample grievance procedure explaining how work disputes are addressed under a collective bargaining agreement.

Class Seven -October 10, 2013

Negotiation Tactics and Interplay with Applicable Law

- Principles of Collective Bargaining
- Non-Traditional Concepts of Collective Bargaining

Case Assignments:

- Embarq Corporation, 356 NLRB No. 125 (2011)

A guest speaker will be invited to discuss his/her collective bargaining experiences. An informational guide will also be provided to supplement the presentation.

ADMINISTRATION OF THE COLLECTIVE BARGAINING AGREEMENT

Class Eight - October 17, 2013

Mock Arbitration - We will have a mock arbitration proceeding where class members will assume various roles in arbitration. One of my colleagues will be present to serve as a mentor.

Class Nine - October 24, 2013

We will be joined by an Attorney from the National Labor Relations Board and Hofstra Law graduate who will address recent developments at the NLRB and service as a Government Attorney.

UNION WEAPONS FOR COLLECTIVE BARGAINING SUCCESS

Class Ten - October 31, 2013

Union Strategy to Achieve Collective Bargaining Recognition/Objectives

- Traditional Picketing Activity
- Use Of The "Rat" And Banners

- Use of a Project Labor Agreement and Similar Labor-Oriented Vehicles to Retain or Obtain Union Representation
- Do Free Speech Principles Applied to Labor Disputes

Cases/Documents to read:

- NLRB v. Denver Building & Construction Trades Council, 341 U.S. 675 (1961)
- Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 485 U.S. 568 (1988)
- Sailors Union of the Pacific & Moore Dry Dock Co., 92 NLRB 547 (1960)
- Project Labor Agreements in New York State; In the Public Interest (Professor will provide copies)
- New Jersey v. DeAngelo, 185 LRRM, 3057 (N.J. 2009)
- Sheet Metal Workers Local 15, AFL-CIO, 356 NLRB No. 162
- United Brotherhood of Carpenters and Joiners of America, Local Union No. 1506 (Eliason & Knuth of Arizona), 355 NLRB No. 159 (2011)
- Building & Construction Trades Council, et al. v. Associated Builders, et al., 507 U.S. 218, 142 LRRM 2649 (1993) – the “Boston Harbor” case
- New York State Chapter, Associated General Contractors v. New York Thruway Authority, 88 N.Y.2d 56, 666 N.E. 185, 643 N.Y.S. 480, 151 LRRM 2891 – The “Tappen Zee” or “Thruway Authority” case
- Building Industry Electrical Contractors Association, et al. v. The City of New York, et. al, 2012 U.S. App. Lexis 9160 (2012)

Class Eleven – November 7, 2013

We will be joined by Adjunct Professor and Assistant District Attorney Chris Nicolino from Suffolk County who will discuss his office’s initiatives in enforcing NYS Labor Laws, Sections 220 and 222, as well as applying criminal law to the work place. There will be a powerpoint presentation.

EMPLOYMENT RELATIONSHIPS

Class Twelve – November 14, 2013

Role of Employee Benefits in Collective Bargaining Process

- How The Pension Protection Act and the Patient Protection and Affordable Care Act have Changed Collective Bargaining Rules

There will be a guest speaker who formerly worked with the U.S. Department of Labor who will discuss the Pension Protection Act and the Patient Protection and Affordable Care Act.

Class materials will be distributed.

NEGOTIATIONS

Class Thirteen - November 21, 2013

Contemporary Workplace Bargaining Issues

- Employment Handbooks - In A Union And Non-Union Setting
- Privacy At The Worksite - Employee v. Employer Rights, Social Networking, etc.

Cases to read:

DirectTV v. DirectTV Holdings, 359 NLRB No. 54
Karl Kranz Motors Inc. d/b/a Kranz BMW, 358 NLRB No. 164
Hyundai Amer. Shipping Agency Inc., 357 NLRB No. 80
Costco Wholesale Corp., 357 NLRB No. 106
Hispanics United of Buffalo, Inc., 359 NLRB No. 37
Banner Health Systems d/b/a Banner Estrella Medical Center, 358 NLRB No. 93
Supply Technologies LLC, 359 NLRB No. 38
Target Corporation, 359 NLRB No. 103

We will discuss the preparation of an employment handbook and related social media issues.

Class Fourteen - December 2, 2013

The Class As Negotiators - Materials will be distributed for a "mock" negotiation process. We will have a Union and Management attorney present to assist in this process.

SOME COMMENTS

Seventy percent (70%) of your grade will be determined by a five to six question take-home examination; the questions will emphasize practical and legal responses to various collective bargaining and contractual issues. Thirty-percent (30%) of your grade will be determined by a combination of classroom participation, performance during in-class exercises, and written practical matter exercise questions.

I will have some colleagues address the group on collective bargaining issues in their areas of specialty, such as how to organize, negotiate; and other issues that impact on collective bargaining. In this labor climate, collective bargaining extends beyond the traditional labor-

management arena, such as in employment and employee benefits law and social media - we will consider those areas.

Hofstra Law School Notice:

The rules require law students to be in good and regular attendance in the courses for which they are registered. Sign-in sheets for each regularly-scheduled class will be provided, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in and attending class.