COURSE OUTLINE
Fall SEMESTER 2017
HOFSTRA LAW SCHOOL

COURSE: LABOR LAW I

PROFESSOR: KAREN P. FERNBACH, Esq.
E-mail: kpfernbach@gmail.com; or Karen.P.Fernbach@hofstra.edu

Cell 516-578-7386

MATERIALS: Text- Labor Law Cases and Materials, Cox, Bok, Gorman and Finkin, 16th ed, University Casebook, Foundation Press. 2015 or 2016 Statutory Appendix and Case Supplement

Class Meets: Mondays and Wednesdays from 10:10-11:30 in Room 2-38. Use of laptop will be permitted provided that it is used for note taking.

Course goal: The course will look at the most significant sections of the National Labor Relations Act. It is designed to give you an understanding of how and why the Act was drafted and the role of the National Labor Relations Board and its impact on current labor-management issues both in the union and non-union setting.

Grade will be based on final exam but classroom participation will help to bring your grade up. You can bring your text book, appendix, and class notes to exam. Cases will be assigned to students for each class to present but all students must keep up with the readings and be prepared to be called upon during discussions.

Session 1 (Monday, August 21) – Overview of Course Objectives
The historical development of the regulation of the Labor-Management relationship in the United States.

During this session we will cover the following cases:

Vegelahn v. Guntner, Cox, p. 5-13

Cox, p. 13-21

Loewe v. Lawlor, Cox, p. 20-23

Cox p. 25-36
Wagner Act  (NLRA– Creation of the NLRB and its Structure and Procedure)

Cox-p. 41-56

Jurisdiction under the NLRA –Cox p. 56-59
History of jurisdictional standards
Board Authority to cede jurisdiction

Catholic Bishop, 440 US 490 (1979); Pacific Lutheran, 361 NLRB No. 157 (2014)
Jurisdiction over religious affiliated organizations

Chicago Mathematics & Science Charter School, 359 NLRB No. 41 (2012)
Jurisdiction over entities established or controlled by a political subdivision

**Session 2 (Wednesday, August 23)**  Viewing of documentary film:”The Hands that Feeds”

Review of the NLRA Statute (Bring Appendix to class)

**Sessions 3 (Monday, August 28)** – Union organization: The establishment of the bargaining relationship

**Property rights vs. right to organize**
Cox p. 89-140

*Republic Aviation Corp. v. NLRB,*  p. 90-96

*Beth Israel Hosp. v. NLRB*  Notes p. 95-96

*Cintas Corp. v. NLRB,*  p. 99-104

*Lechmere, Inc. v. NLRB,* Cox, p. 106-116

Tri-County Medical Center, 222 NLRB 1089 (1976)

*Hillhaven Highland House,* 336 NLRB No. 62 (September 2001)

New York, New York, 356 NLRB No. 119 (March 25, 2011)
Session 4 (August 30) – In this class we will examine the Board procedures under Section 9 of the Act.

Section 9(a)

Representation case issues

Procedure: Types of petitions

Showing of interest

Representation procedures, hearings & elections

Revised Representation Rules effective April 14, 2014
Cox p. 81-87

Excelsior Underwear, p. 140

NLRB v. Wyman Gordon p. 144

Enforcement of Representation cases

Leedom v. Kyne, p. 309-313

Selection of Bargaining Representative
Cox p. 253-260

Session 5 (Wed, September 6)- Unit issues

Employee status (Section 2(3) of the NLRA)
Cox, p. 58-73

We will discuss the following cases;

*Boston Medical*, 330 NLRB No. 30 (1999) (interns, residents)

New York University, 332 NLRB No. 111 (2000) (grad assistants)
Brown University, 342 NLRB 483 (grad assistants)
Columbia University, 364 NLRB # 90 (August, 2016)

Northwestern Univ.362 NLRB No. 167 (2015) (student athletes)
Fed Ex Home Delivery, 361 NLRB No. 55 (2014) (indep. contractor)

Mezonos Bakery, 357 NLRB No. 47 (2011) on remand 362 NLRB
No. 41 (2015) (undocumented)

Kentucky River Community Care, 532 U.S. 706 (2011) (supervisor)

Yeshiva University, 444 U.S. 672 (1980) (managerial)

**Session 6 (Mon. September 11) - Appropriate Unit**

Cox, p. 260-278

*Blue Man Vegas v. NLRB*, p.263-272

*American Hospital Assn v. NLRB*, p. 274-276

Specialty Health Care, 357 NLRB No. 83 (2011)

*The Neiman Marcus Group, Inc. d/b/a Bergdorf Goodman*, 361
NLRB No. 11 (July 28, 2014)

Macy’s, Inc., 361 NLRB No. 4 (2014)

But See, Constellation Brands v. NLRB, No. 15-2442, 2016 U.S.
App. LEXIS 20768 (2d Cir. Nov. 21, 2016)

*SingleLocation vs. Multi-location units*

Cox, p. 278-308

*Multi-Employer/Coordinated Bargaining*
Session 7 (Wed. September 13)

**Post Election Procedures-Election Propaganda**

Cox, p. 146-171

Gissell, p.151-154

*Midland Life Insurance*, p. 158-168

Sewell Mfg., note p.169-170

**Interference with Section 7 Rights**

*Cox* p. 171-186

*NLRB v. Lorben*, p. 171-175

*Operating Engineers (Struksnes)*, p. 175-178

*Exchange Parts*, p. 179-181

*NLRB v. Starbucks*, 679 F3d 70 (2d Cir 2012)

Union misconduct, p. 182-186

Review of violations under Sections 8(a)1), 8(b)(1)(A) that interfere with Section 7 rights of employees

Session 8 (Mon. September 18)
Section 8(a)(2) vs. Lawful Voluntary Recognition

Employer Domination/ Assistance

Cox, p. 187-209
Electromation, p. 191-198
ILGWU v. NLRB (Bernhard Altmann), p. 199-202
Bruckner Nursing Home, 262 NLRB 955 (1982) P 202-204

Majestic Weaving, p. 205 point 2; 147 NLRB 859 (1964), enf. den. 355 F.2d 854(2d Cir. 1966)
Dana Corp, p. 182-184, enf. Montague v. NLRB, 698 F.3d 307 (6th Cir. 2012)
Lamons Gasket Company 357 NLRB No. 72 (2011)
Loomis Armored U.S. Inc. 364 NLRB No. 23 (June 9, 2016)
Neutralilty Agreements P.204-209

Session 9 (Monday, September 25)

Sections 8(a)(1)(3) and (4)
Section 8(b)(2)-p.209-242

Discrimination

Budd Mfg, p. 209-211
Nichols Aluminum p.216-227

Adkins Transfer, p. 228-234
Session 10 (Wednesday September 27)

Protected activity

Notes, p. 512-

*NLRB v. City Disposal*, p. 514-524

Notes, p. 472-474
Weingarten, 420 U.S. 251 (1975)

*IBM*, p. 528-535

*Eastex*, p. 536-540

Use of Social Media to engage in Section 7 Activity
Pier Sixty, 362 NLRB No. 59 (March 31, 2015)
Affd. 855 F.3d 155 (2nd Cir. April 21, 2017)

Waiver of group arbitration and adjudication
D.R. Horton, 357 NLRB No. 184 (2012), enf. den 737 F.3d 344 (5th Cir, 2013)

Murphy Oil, 361 NLRB No. 72 (2014)
- 544-560, affd. 808 F.3d 1013 (Fifth Circuit, Oct. 26, 2015)
pending cert in U.S. Supreme Court

Session 11 (Monday, October 2)

Unprotected / Protected Concerted activity
562-579

_Jefferson Standard_, p. 566-574

Notes, p. 498-499

Atlantic Steel, 245 NLRB 814 (1979)

Jimmy Johns, 361 NLRB No. 27 (2014), reversed by en banc decision, July 3, 2017

Employer Work Rules –Lawful or Not?
Lutheran Heritage, 343 NLRB 646 (2004)
Whole Foods Market, 363 NLRB No. 87 (Dec. 2015), affd Second Circuit, June 1, 2017

Valley Health System, 363 NLRB No. 178 (May, 2016)-

T-Mobile USA, Inc.v. NLRB, Case No. 16-60284 (Fifth Circuit), July 25, 2017

Wal-Mart Stores, 364 NLRB No. 118(2016)

Session 12 (Wednesday, October 4)

Employer Responses to Concerted Activities

_Mackay Radio_, p. 580-582

_NLRB v. Erie Resister_, p. 583-587

_American Shipbuilding_, p. 589-597

_Great Dane_, p. 597-602

_Local 15 IBEW_, p. 602-608

_Laidlaw_, p. 609-613

_Metropolitan Edison v. NLRB_, p. 618-624

Unfair labor practice strikers
Session 13 (Monday, October 9)

Remedies for unfair labor practices
Cox – p. 242-253

Phelps Dodge v. NLRB, p. 242-245

Mezonos Maven Bakery, 357 NLRB No. 47 (2011)

GC Memo. 15-03 on Immigration
OM Memo-16-24 on Consequential Damages

King Scoopers, 364 NLRB No. 93 (Aug. 2016)

Injunctive Relief under Section 10(j) and other Special Remedies

Standard for 10 (j)
Fernbach v. Sprain Brook Nursing Home;
91 F. Supp. 3d 531 (S.D.N.Y. March 9, 2015 (Judge Sullivan)

Administration of the Collective Bargaining agreement

Notes, p. 763-780
Lincoln Mills, p.775-779

Steelworkers v. American Mfg., p.781-783

Steelworkers v. Warrior & Gulf, p.784-791

Steelworkers v. Enterprise Wheel, p.804-807

Session 14 (Wednesday, October 11)

Deferral to Arbitration Decision by NLRB

Cox 837-844
Spielberg 112 NLRB 1090 (1955)

United Technologies, p. 866-874

Babcock & Wilcox Construction, 361 NLRB No. 132 (2014)
844-857

Collective Bargaining Section 8(a)(5) and 8(b)(3)

Bargaining Order Based on Employer Unfair Labor Practices

Gissell, p. 315-328

Notes, p. 328-333

Sessions 15 and 16 (Monday, October 16, Wednesday, October 18)

Continuing Bargaining Obligation
Negotiation of the CBA- Exclusive Representation and Majority Rule

*Jl Case*, p. 359-362

*Emporium Capwell*, p. 364-372

**Session 17, Monday, October 23** – Cox 382-385

Duty to bargain in Good Faith-P. 382-385

*A--1 -King Size Sandwiches*, p. 385-392

Duty to provide Information

395 - Truit Mfg. Co

Stella Doro, (SDBC Holdings, Inc. v. NLRB, 711 F.3d 281 (2nd Cir. 2013) p. 398

KLB Industries, Inc. v. NLRB, 700 F.3d 551 (D.C. Cir. 2012) p. 397

*Detroit Edison*, p. 399-405
Disneyland Park, 350 NLRB 1256 (2007)

**Session 18 (Wednesday, October 25)**

Bargaining tactics

*NLRB v. Insurance Agents*, p.407-414

*NLRB v. Katz*, p. 414-418 (Unilateral Changes)


Subjects of bargaining –Mandatory vs. Permissive
P. 438-442

**Session 19  (Monday, October 30)**

*Lawful Impasse Rules and Exceptions*
*Taft Broadcasting Co.* 274 NLRB 260 (1985)
*Bottom Line Enterprises*, 302 NLRB 373 (1991)
*RBE 320 NLRB 80* (1995)

*NLRB v. American National Insurance*, p. 426-431

*NLRB v. Borg Warner*, p. 432-437

**Session 20 (Wednesday, November 1)** –

Decisional and/or Effects Bargaining

*Fibreboard v. NLRB*, p. 443-450

*First National Maintenance*, p.465-467
UFCW v. NLRB (Dubuque Packing), p. 468-477

Chemical Workers v. Pittsburgh Plate Glass, p. 480-485

Transmarine Remedy – Transmarine Navigation 170 NLRB 389 (1968)

Total Management Security Illinois, 364 NLRB No. 106 (2016)

Waiver by Contract or Past Practice/Zipper Clause P. 451-45, 389 (Zipper Clause)

Session 21 (Monday, November 6)

Successorship

P. 909-925 (Burns, Successor, 404 U.S. 272 (1972)

Fall River Dyeing, p.912-925

P. 925-928
Planned Building Services, 347 NLRB 670 (2006)
Pressroom Cleaners, 361 NLRB. No. 57 (2014)


Howard Johnson, p. 928-934

Nexco Solutions, 364 NLRB No. 44 (July 18, 2016)

Session 22 (Wednesday, November 8)

Bargaining remedies

HK Porter, p. 497-499

Excello Corp., p. 501-509
‘Bargaining Obligations

*Joint Employer*

Browning Ferris Industries 362 NLRB No.186 (Aug. 27, 2015), pending in Court of Appeals, D.C. Circuit

Miller & Anderson, 364 NLRB No. 39 (July 11, 2016))

*Single Employer/Alter Ego*

NYP Acquisition Corp, 332 NLRB 1041 (2000)

Crawford Door Sales Co., 226 NLRB 1144 (1976)

**Sessions 23 and 24 (Mon. November 13 & Wed. November 15)**

Cox 1063-1071

*Duty of Fair Representation- Section 8(b)(1)(A)*

*Steele v. Louisville RR* p. 376-380

Notes, p. 380-382

*ALPA v. O'Neill* p. 1073-1079

*Vaca v. Sipes* p. 1083-1099

*Bowen v. USPS* p. 1105-1113

Mandatory Unionization – Cox 1113-1118

*CWA. v. Beck* 1128-1132

*Marquez v. Screen Actors* p. 1132-1137

*Ellis* p. 1138-1141

*California Saw & Knife* p. 1143-1148
Session 25 (November, 20)

Violations under Section 8(b)(2)

Use of Exclusive Hiring Hall vs. Non-Exclusive Hiring Hall
Cox – pages 1154-1162

Discharge for failing to pay union dues vs. State right to Work Laws
Proviso to Section 8a3

Discussion on Impact of Trump Board vs. Obama Board

Session 26 – Wednesday, November 22

Wrap Up and Begin Review

Session 27 – Monday, November, 27

Continue Review – Come prepared with questions

Session 28 (Wednesday, November 29)

Go over prior exam questions