LABOR LAW (LAW 731.512)

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Syllabus and Reading Assignments


Other Sources of Reading Assignments: Some other assigned cases and documents will be available on the TWEN website for the course. Below, those assignments will refer to the course website [abbreviated as W]

Sections of National Labor Relations Act [NLRA]: All assigned section of the NLRA can be found in the “Text of the NLRA” document on the TWEN website.

Bases for Grade: 70% Final Examination, 15% [Multi-state Performance Test Bar question-like written answer), 15% Class Participation (quality not quantity)

Course Outline and Assigned Readings: All page numbers refer to the Text unless otherwise stated

I. (The Shrinking?) Labor Law Rights of (Nearly All) Non-Government Employees

A. The National Labor Relations Act (NLRA) and the National Labor Relations Board (NLRB).

Read: T, pp. 5-8, up to Part III; Overview of NLRB Organization and Procedure, on W; NLRB General Counsel Robb Memo to [Managers] (December 1, 2017), on W.

B. The Rights to Complain & Suggest (Solicitation & Distribution)

Read: Sections 7 and 8(a)(1) of the NLRA, on W; T, pp. 86-89 (Subchapter B, up to Section 4); The Boeing Company, on W; UPMC Presbyterian Shadyside Hospital (8/6/2018); Purple Communications II (2017), on W.

C. The Right to Protest (Concerted Activity)

(1) Protected Concerted Activity. Read: Section 7 of the NLRA, on W; T, pp. 124-31, up to Section 8; Washington Aluminum and Mike Yurosek decisions on W.

(2) Unprotected Concerted Activity. Read: T, pp. 131-32; Media General Operations (4th Cir. 2009), on W; Endicott Interconnect, on W.
Employer Responses to Concerted Activity

a. Treatment of Strikers.
   \textbf{Read:} T, pp. 230-37, up to subchapter C.

b. Rights of Replaced Strikers.
   \textbf{Read:} Laidlaw decision on W; T, pp. 237-47, up to subchapter I.

c. Status of Replacements of Strikers.

II. Labor Law and Unions

A. The Unionized Workplace.
   \textbf{Read:} T, p. 142, starting at subchapter D - p. 147, up to Section 6; \textit{J.I. Case,} on W; \textit{Katz,} on W; 2017 S. 155 (the proposed RAISE Act); \textit{Certified Grocers,} on W; \textit{Tschiggfrie Properties, Ltd.}, on W.

B. Negotiation of the Collective Bargaining Agreement.

   (1) Section 8(a)(5): The Employer’s Duty to Bargain in Good Faith
   \textbf{Read:} Section 8(a)(5) of the NLRA, on W; T, p. 168, starting at Subchapter B -174, up to subsection g; \textit{Atlanta Hilton} on W.

   (2) Section 8(b)(3): The Union’s Obligation to Bargain in Good Faith.
   \textbf{Read:} Section 8(b)(3) of the NLRA, on W; T, pp. 174-75, up to Subchapter D; \textit{Insurance Agents Union,} on W.

   (3) Per Se Breaches of Good Faith.
   \textbf{Read:} T, p. 189, starting at subchapter F - p. 194 up to Subchapter G; \textit{Naperville Ready Mix}, on W (7th Cir. 2001).

   (4) Subjects of Bargaining: the Mandatory/Permissive Distinction.
   \textbf{Read:} T, p. 175, starting at subchapter D - p. 185, up to Section 5.

   (5) Bargaining over “Outsourcing” and Transfer of Work.
   \textbf{Read:} T, pp. 185-189, up to subchapter F.

C. Strikes and Lockouts in the Unionized Workplace.

   (1) Employer Responses to Concerted Activities.

   a. Effect of a Strike upon the Duty to Bargain.
   \textbf{Read:} \textit{Finch, Pruyn & Co., Inc.}, 349 NLRB 270 (2007), on W.
b. Permanent Subcontracting. **Read:** *Land Air Delivery*, on W.

(2) Lockouts. **Read:** T, pp. 247-249, up to subchapter J; *Local 15 IBEW*, on W.

D. Picketing

(1) Picketing and Freedom of Communication. **Read:** T, pp. 261-66, up to subchapter B and then T, pp. 278-283 (subchapter H); *Tree Fruits*, on W; *Safeco*, on W; *DeBartolo*, on W.

(2) Organizational and Recognition Picketing. **Read:** Sections 8(b)(4) and 8(b)(7) of the NLRA, on W; T, pp. 285-289 (subchapter K).

(3) Secondary Pressure.

a. Definition of “Secondary” **Read:** Section 8(b)(4) of the NLRA, on W. T, pp. 266-70, up to subchapter E and T, pp. 283-85, up to subchapter I (the Ally Doctrine); *Service Employees Local 525*, on W.

b. Situs of Picketing **Read:** T, pp. 270-78.

E. Administration of the Collective Bargaining Agreement.

F. Lawful and Unlawful “Employee Involvement”: Section 8(a)(2) of the Act

(1) Employer Domination.

a. Introduction. **Read:** Sections 8(a)(2) and 2(5) of the NLRA, on W; T, pp. 481-85.

b. The Current Debate over Section 8(a)(2). **Read:** *Electromation* decision on W; 1996 S. 295 (the TEAM bill) and President Clinton 1996 Veto Message, on W.

(2) Unlawful Employer Assistance to a Union. **Read:** T, pp. 486-93; Section 8(f) of the NLRA, on W.

IV. Labor Law and Organizing/Selecting a Union as Representative

A. the Issue of Access to Employer Property: **Read:** T, p. 89, starting at Section 4, - p. 93, up to subchapter C; *Lechmere*, on W; 2017 H.R. 744 (proposed Truth in Employment Act), on W.

B. Threats Against Employees. **Read:** Sections 8(a)(1) and 8(c) of the NLRA, on
W; T, pp. 93-96, up to Section 3; Student Transportation, on W.

C. Other Types of Speech.  **Read:** T, pp. 96-97, up to subchapter D.

D. Additional Forms of Employer Interference.  **Read:** T, pp. 97-103, up to subchapter H.

E. Misconduct by Unions, Employees and Outside Parties 

**Read:** Section 8(b)(1) of NLRA, on W; T, pp. 103-04, up to subchapter J.

G. Protection Against Discrimination: Section 8(a)(3) of the Act.

(1) The *Wright Line* Standard.  **Read:** Section 8(a)(3) of the NLRA, on W; T, p. 132, starting at subchapter B-p. 137, up to Section 6; and Transportation Management, Best Plumbing and Springfield Day Nursery decisions, all on W.

(2) Discrimination and Management Decisions - Transfer of Work, Plant Closings. 

**Read:** Int’l Ladies Garment Workers, on W; T, pp. 137-39.

(3) Discrimination Against Supervisors.  **Read:** T, pp. 139-40.

(4) Remedies for Unfair Labor Practices.  **Read:** Section 10(c) of the NLRA, on W; T, pp. 140-42, up to subchapter D and T, p. 106, starting at subchapter L-p. 110, up to subchapter M; “Is Your Company Ready to Post?,” on W.

H. Selection of the Employee Representative:

(1) Representation Election Procedures.  **Read:** Section 9 of the NLRA, on W; T, p. 60, starting at Section 3 – p. 69, up to subchapter E and T, p. 104, starting at subchapter J – p. 106, up to subchapter L.

(2) Determining Appropriate Bargaining Units.  **Read:** T, pp. 38-60, up to subchapter 2; *PCC Structural* *s, Inc.*

(3) Means Other Than Elections for Unions to Gain or Lose Representative Status

**Read:** T, pp. 164-168, up to subchapter B and T, p. 194, starting at subchapter G – p. 197, up to subchapter H; *SFO Good-Nite Inn* on W.

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**Information and Rules for the Course**
A. Information:

1) My office number is Room 1113 on the 11th floor of the law school, and my office telephone number is 837-4604. My assistant is Gloria Joy, who is in Room 518 of the law school, whose number is 837-4631, and whose e-mail address is gpjoy@ubalt.edu. My e-mail address is mjhayes@ubalt.edu

2) The only required material for this course is the Text, which is identified at the beginning of the syllabus.

B. Rules for the Course:

1) Grades:

   a. Final exam (70% of each student’s grade): The final examination this semester will be similar in format to past exams. Copies of my two most recent Labor Law exams can be accessed in the Course Materials section of the TWEN website for the course. Like those exams, the Spring 2018 Labor Law final exam will be open book and open notes. I will provide you with additional information on the format and content of the final examination later on in the course.

   b. Multistate Performance Test Bar question-like written assignment (15% of each student’s grade): By the end of January, the instructor will share with you a Labor Law question based on a past Multistate Performance Test Bar exam question (which, for the record, was a Contracts question, not a Labor Law question, so don’t bother searching for it online). Your assignment will be to write a brief “closed memo” (for which no legal research will be required), of no more than 5 double-spaced pages, to answer the question. The deadline for e-mailing your answer to the instructor will be 5 p.m. on March 31.

   c. Other class participation (15% of each student’s grade): Every student’s performance in class participation other than the student’s in-class presentation and facilitating discussion resulting from that presentation will comprise 15% of that student’s grade. As explained more fully below, in the section on the method of calling on students, every student will be called on by name, most likely twice or more, to answer questions about a particular case (or portion of a case) or other reading assignment. With regard to the class participation grade, the instructor will give particular weight to the student’s performance when called on by name and not as a volunteer. However, the instructor will keep track at every class session of the contributions made to class discussion by volunteers.

   Also, to provide another opportunity for students who don’t like to volunteer during class sessions (and for all other students as well) also counting toward the class participation grade will be student contributions to the Forum section of the TWEN site. Frequently I will post in the Forums section questions that I’d like students to think about in preparation for the next class session. And students can respond to those questions.
between class sessions by posting answers and comments to my questions. Students are also welcome to initiate their own posts on the Forums section, which could be their own questions or inviting discussion on some idea or item relating to Torts. All student contributions in the TWEN Forums will be considered in determining the class participation grade. Through contributions to the TWEN Forums section, and when called on by name as discussed in the 1st paragraph of this subsection, students who are relatively “quiet” can receive the same top grades for class participation as students who volunteer more frequently.

2) Assignments: I will tell you in class the assignments that you will be responsible for in the next few classes. We will proceed in the order on the syllabus, if you want to read ahead.

3) Calling on students, and student responsibility for assigned material:

a. Initially, and I hope throughout the semester, I will call on students in the following way:

1. For most class sessions I will designate 1-2 students, in alphabetical order, whom I will call on. I will try to give these students a few days advance notice of when they will be called on, so that they can read the assigned material with particular care and also give it careful thought. I will call on these designated students to answer questions about the facts, reasoning and conclusions of the assigned cases, or about other specific issues from the assigned reading.

2. All other students will be expected to have read the material assigned for each class. And I will rely on the rest of the class, through volunteers, to answer questions about basic principles in the material, to make arguments for positions, and so on. If I do not get volunteers, I reserve the right to call on non-designated students, at random, by name.

3. If I call on a student, either designated or at random, who is unprepared to discuss the assignment, I will call on that student at the next class. If the student is unprepared at that class, I will count that as one absence against the student, and also call on that student at the next class.

b. The above-described approach to calling on students has been mostly successful in the past, but in some classes it has nearly reduced the amount of class participation by non-designated students to a lower level than I believe appropriate. Consequently, if the level of class participation becomes too low, I reserve the right to switch to the following method: announcing in advance several students (e.g. an entire row) who will be responsible for answering questions about material at a future class session, and then calling on those students by name (not as volunteers) at that class session.

4) Attendance policy:
a. Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to receipt of a grade for the course is conditioned upon a record of attendance satisfactory to the professor. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with UB law school policy and also the American Bar Association Standards for Law Schools.

b. For this course, students are permitted a maximum of five absences. My general approach is that I don’t differentiate between excused or unexcused absences. If a student reaches five absences (other than for religious holidays, discussed below) I will contact that student to discuss how many absences that student will be permitted for the remainder of the semester.

c. Religious holidays are handled somewhat differently. If a student exceeds the five allowed absences because of absences due to religious holiday(s), I won’t impose the penalties described below, but instead the student will be required to do some kind “makeup work” to compensate for exceeding the allowed number of absences.

d. If a student exceeds the number of absences that, based on the discussion between professor and student have been established, there will be a grade sanction for exceeding that limit. The grade sanction means a deduction of a step in a grade, such as a deduction from a B+ to a B.

e. If after imposition of such a grade sanction, the student has an additional absence, I reserve the right to withdraw the student from the course, which would result in a course grade of “FA” referenced above.

f. I understand that there can be special circumstances, like serious health problems or family issues, which cause frequent absences. That is why I have arranged my attendance policy so that the sanctions are not automatic, but are worked out with the student. But I would emphasize that, whenever possible, this be worked out in advance. I will be more understanding with students who do that than students who bring excuses to me at the end of the semester, or after I have notified them that I intend to impose a grade sanction on them.

I strongly recommend that you attend as many class sessions as you can. In this course, considerable material will be covered only in the lectures and not in the assigned readings. It is likely that much of the material covered exclusively in lecture will be tested on the final examination.

5) Lateness: Over the years, I have sometimes received complaints from students that classmates who come to class five or more minutes late are extremely disruptive. I think these complaints are legitimate, and therefore urge all students to come to class on time. If disruption by late-arriving students becomes a problem, I reserve the right to establish a policy barring students from attending class sessions to which they arrive late by 10 minutes or more.
C. Disability Policy

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or kschulz@ubalt.edu.

D. Academic Integrity

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

E. Title IX Sexual Misconduct and Nondiscrimination Policy

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

F. Computers: Students may use laptop computers for class related purposes only.

G. Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.