

# Labor Law

Prof. Bagchi, Spring 2026

This course will introduce the fundamentals of labor law in the United States, comparing the American approach with those of other advanced industrialized democracies. We will study the federal law governing employee collective action, including the law governing organizing, bargaining (including tools of economic pressure), preemption of state law and arbitration. We will then assess the political and economic role of organized labor; consider historical and institutional explanations for American 'exceptionalism', and; explore the advantages and disadvantages of American labor law as compared to its alternatives. Throughout the course, students will conduct a series of simulation exercises in order to experience the strategies and dilemmas of organizing, collective bargaining and labor policy design.

## Course Objectives:

Students should (1) understand the basic rules governing collective bargaining in the private sector in United States, (2) understand the historical origins of our labor law regime (3) understand the basic contours of contemporary policy debates around labor law and (4) understand the strategic choices facing unions and employers under our labor regime.

## Course Requirements:

The majority of readings below are in the casebook ("CB"): Cox, Bok & Gorman's LABOR LAW: CASES AND MATERIALS (18th Edition). Readings outside the casebook will be available on Blackboard.

*All students must take the exam and your course grade will be based on your exam, with potential adjustments for class participation.* You may also choose to fulfill your writing requirement by also registering for a 2-credit independent study. In that case, you will need to write a 25-page paper on some topic related to employment or labor law. Paper topics must be approved by January 30; an outline is due February 27; and a draft is due April 3. Papers will be evaluated for credit/no credit; no letter grade will be awarded. There is no paper requirement for the course if you are not using it to satisfy your writing requirement.

## Syllabus

### I. Introduction to Course

(Jan 14) Different Approaches to Labor Law [No reading]

(Jan 21) Labor as a Social Phenomenon

Elizabeth Anderson, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT) 37-71 (2017)

### II. Origins and Structure of the National Labor Relations Act

- (Jan 26) Early period: CB 5-15  
 William Forbath, *Courts, Constitutions, and Labor Politics in England and America: A Study of the Constitutive Power of Law*, 16 LAW & SOC. INQUIRY 1-21 (1991).
- (Jan 28) Antitrust Exception?: CB 15-36
- (Feb 2) Modern Era: Wagner Act and major amendments: CB 40-54
- (Feb 4) Jurisdiction and Scope of the NLRB regime: CB 54-74
- (Feb 9) Adversarialism  
 Company Domination: CB 205-16  
 Robert Kagan, ADVERSARIAL LEGALISM 51-54
- (Feb 11) Organization and Procedure under the NLRB: CB 74-93

### **III. The Right to Organize**

- (Feb 18) Neutrality Agreements: CB 217-27  
 Workplace Policies: CB 96-100, 106-21
- (Feb 23) Property access CB 124-34, 145-56  
 Polling CB 189-96
- (Feb 25) Communications during Union Elections: CB 169-73, 176-85  
 Conferring Deterrent Benefits: CB 198-99
- (Mar 2) Union Misconduct: 200-04  
 Discrimination against Pro-Union Employees: CB 228-29, 230-34, 237-40,  
 CB 242-47
- (Mar 4) Remedies: CB 250-56, 257-58, 259-61  
 Securing or Losing Recognition without an Election: CB 307-15, 325-33

### **IV. Bargaining**

- (Mar 16) Bargaining Unit: CB 272-75, 284-90, 299-302  
 Exclusive representation: CB 337-40, 341-50  
 Duty of Fair Representation: CB: 353-59

- (Mar 18) Duty to Bargain in Good Faith: CB 363-70 [until Problems], CB 372-76, 377-83  
 Union pressure during bargaining: CB 385-92  
 Unilateral changes by employer: CB 293-96
- (Mar 23) Subjects of Bargaining: CB 406-418, 418-22, 423-29, 432-43, 444-45
- (Mar 25) Remedies for Bargaining Violations: CB 464-67, 468-77

#### **V. Economic Pressure**

- (Mar 30) Concerted Activity: CB 481-91, 494-97
- (Apr 1) Strike Replacement: CB 547-49, 550-54  
 Lockouts: CB 556-64, 569-75, 576-79
- (Apr 6) Discrimination against strikers: CB 564-67  
 Unfair labor practice strikes: CB 591-95  
 Unprotected union activity: CB 524-30, 534-40
- (Apr 8) Constitutional Framework around Picketing: CB 36-40, 599-603, 622-29  
 Consumer Appeals: CB 605-620
- (Apr 13) Secondary Pressure: CB 655-58, 660-62, 667-70, 675-83, 684-87

#### **VI. Preemption of State Labor Law**

- (Apr 15) CB 938-42, 958-64, 965-977

#### **VII. Arbitration**

- (Apr 20) CB 735-45, 758-61, 765-71, 777-88

#### **VIII. Situating the United States among Rich Industrialized Democracies**

- (Apr 22) Labor, Politics and Society. CHOOSE ONE AMONG THE FOLLOWING:

Robin Archer, *Why Is There No Labor Party? Class and Race in the United States and Australia*, in eds. Halpen & Morris, *AMERICAN EXCEPTIONALISM?: US WORKING-CLASS FORMATION IN AN INTERNATIONAL CONTEXT* 56-75 (1997).

Levitsky & Mainwaring, *Organized Labor and Democracy in Latin America*, 39 *COMP. POL.* 21 (2006)

Martin O'Neill and Stuart White, *Trade Unions and Political Equality*, in eds. Collins et al., *PHILOSOPHICAL FOUNDATIONS OF LABOUR LAW* 252-68 (2018). (Apr 27)

(Apr 25) Industrial Structure. CHOOSE ONE AMONG THE FOLLOWING:

Kathleen Thelen, *Varieties of Labor Politics in Developed Democracies* in VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE 71-85, 91-94, 98-103 (eds. Hall & Soskice 2001).

Lars Calmfors & John Driffill, *Bargaining Structure, Corporatism, and Macroeconomic Performance*, 3 ECON. POL. 14, 15-21 (1988).

Mark Anner, *The Industrial Determinants of Transnational Solidarity: Global Interunion Politics in Three Sectors*, 12 EUR. J. OF INDUS. RELATIONS 7-24 (2006).

(Apr 27) Review