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LABOR LAW: A PROBLEM BASED APPROACH

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MATTHEW  BENDER

DEDICATION

PMS: To my grandfather, Joseph B. Godick, for instilling in me a life-long desire to fight the good fight for workers' rights, and with love to Mindy, Jake, and Izzy

JMH: With love to Lynn, Noah, and Naomi

PREFACE

Labor law is facing challenging times in the first part of the 21st Century. This is especially true in the American private sector, which largely comes under the federal, Wagner-model based, National Labor Relations Act (NLRA). Just over 75 years after its enactment, both employers and unions are seriously questioning the continuing viability of the Wagner model.

Regardless of which side they take in labor law debates, it is important for students to have a model of learning that mirrors the type of problems that newly-minted labor attorneys will face in practice. The problem-based approach we take in this book derives from prescient statements made by Professor Pavel Wonsowicz of the UCLA Law School. In discussing why moving beyond lectures and the Socratic method would be a pedagogical improvement over the way law students have traditionally been taught, Professor Wonsowicz commented: “I tell my students at the outset of a course that there’s an unfairness going on in the way classes have been traditionally handled. It’s this: We teach you on the case method and test on the problem method.” We also believe strongly that the problem-based pedagogical method will directly help students in their eventual practice of labor law by synchronizing the way labor law is taught with the way it is tested in the law school environment.

A typical chapter in this book commences with a clear synopsis of the materials to be covered in the chapter. Second, introductory materials relate the basic thrust of the materials about to be covered. Third, in most sections, a problem is presented based on scholarly articles in the area, recent case law, and current events. Fourth, students are given problem materials to work through to solve the hypothetical presented; these materials include case excerpts, public documents, and law review articles and other secondary materials. Fifth, and finally, the students are presented with a section entitled, “Post Problem Discussion.” Similar in structure to the Notes section of more traditional casebooks, this section seeks to highlight important areas in the primary and secondary materials, while providing additional materials for consideration of the problem. We hope that professors will engage in classroom teaching based on the problem(s) assigned for class. Indeed, this material lends itself well to classroom role-playing exercises and other experiential learning techniques.

To be clear, *Labor Law: A Problem Based Approach*, still features the most important cases, documents, and articles for students to study in order to become proficient in the practice of American private-sector labor law. But rather than attempting to have students glean the important facets of the law solely through the traditional case method, this book’s problem-based approach requires students to act like attorneys. In short, this book provides a pedagogical alternative that we believe many professors and students will embrace as more compatible with the challenges that labor law practitioners will face in the coming decades. In our view, engagement with both the theoretical foundations and practical implications of labor law is essential for any labor law student who wishes to think critically about these issues and become a more effective advocate for their clients.

Throughout this book, we also hope to bring to bear our familiarity with the Internet, blogs, and social media to make our book one of the most interactive for students yet. In this vein, students will find relevant links to government websites, links to the Workplace

PREFACE

Prof Blog (which we co-edit along with three other law professors), and links to other relevant information on the web.

We offer thanks to all who helped us with this project, especially to the law professors who gave us permission to reproduce their works and to our families for putting up with our long hours in bringing this book to publication. A special thanks goes to Alana Leffler, Marquette University Law School Class of 2013, and Casey Turner, University of North Carolina School of Law Class of 2013, for their exceptional and tireless editorial assistance on this Casebook. It would not have been possible to complete this book without them. Also, thanks to Leslie Levin who was our initial contact with the publisher and to Pali Parekh who was our principal editor for this edition.

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Milwaukee, Wisconsin

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May 2012

TABLE OF CONTENTS

Chapter 1	THE STRUGGLE FOR CONTROL OVER THE EMPLOYMENT RELATIONSHIP	1
Section 1	WHAT IS LABOR LAW AND IS IT STILL RELEVANT?	1
	Problem #1: Is Labor Law Still Relevant?	2
	Wilma Liebman, <i>Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Board</i>	3
	<i>The Dunlop Commission on the Future of Worker-Management Relations — Final Report</i>	6
	Post Problem Discussion	8
Section 2	A BRIEF OVERVIEW OF THE AMERICAN LABOR MOVEMENT	10
A.	The Roots of American Labor Law	11
B.	Events Leading up to the Enactment of Modern Labor Laws	12
C.	The First Attempts at Federal Labor Legislation	14
D.	Modern Day Labor Legislation	16
E.	The Global Workplace, Intra-Union Disputes, and Present Day Attacks of Unions	19
Section 3	UNIONIZATION AND COLLECTIVE BARGAINING: JUSTIFICATION AND CRITIQUE	21
	Problem #2: Should I Seek Unionization?	22
	Post Problem Discussion	22
Chapter 2	THE ORGANIZATION, PROCEDURES, AND JURISDICTION OF THE NLRB	25
Section 1	THE NLRB'S ORGANIZATIONAL STRUCTURE	25
A.	Office of General Counsel	26
B.	Division of Judges	27
C.	NLRB Members	27
Section 2	NLRB PROCEDURES	29
A.	Representation Questions	29
B.	Unfair Labor Practices	32
Section 3	JURISDICTIONAL LIMITS OF THE NLRB	34
A.	Who is an "Employer" Under the NLRA?	35
1.	Private-Sector Employers	35
2.	Railway and Airline Exclusion	35
3.	Monetary Threshold	36
4.	Religion Exception	36
B.	Who is an "Employee" Under the NLRA?	37
1.	Employee or Independent Contractor?	38

TABLE OF CONTENTS

	Problem #1: “Freelance” Software Engineers	38
	<i>Roadway Package System, Inc.</i>	39
	Post Problem Discussion	45
2.	Employee or Student?	47
	Problem #2: Law Students Unite!	48
	<i>Boston Medical Center Corp.</i>	48
	<i>Brown University</i>	53
	Post Problem Discussion	59
3.	Unions Salts	60
	<i>NLRB v. Town & Country Electric, Inc.</i>	61
	Post Problem Discussion	65
C.	Excluded Employees	66
1.	Managers	66
	Problem #3: Compuware’s Purchasing Controller	66
	<i>NLRB v. Yeshiva University</i>	66
	Post Problem Discussion	73
2.	Supervisors	74
	Problem #4: Restaurant Captains	74
	Section 2(11) of the NLRA	75
	Brief of the NLRB General Counsel, in <i>Oakwood Healthcare,</i> <i>Inc.</i>	76
	<i>Oakwood Health Care, Inc.</i>	77
	Post Problem Discussion	87
3.	Confidential Employees	88
4.	Foreign Jurisdictions and Extraterritoriality	89
	Problem #5: A Bad Business Trip	89
	<i>Asplundh Tree Expert Co. v. NLRB</i>	90
	Post Problem Discussion	96
Chapter 3	DOMINATION AND DISCRIMINATION	99
Section 1	EMPLOYER DOMINATION OF A LABOR ORGANIZATION	99
	Problem #1: There’s No Such Thing as a Free Lunch	100
	<i>Electromation, Inc.</i>	101
	Michael H. LeRoy, <i>Employee Participation in the New Millennium:</i> <i>Redefining a Labor Organization Under Section 8(a)(2) of the NLRA</i>	111
	Post Problem Discussion	116
Section 2	ANTI-UNION DISCRIMINATION	120
A.	What Section 8(a)(3) is not: A Very Brief Introduction to Section 8(a)(1)’s Prohibition Against Interference with Employees’ Labor Rights	120
B.	What Section 8(a)(3) is: Prohibition Against Union-Based Discrimination	122

TABLE OF CONTENTS

1.	The <i>Wright Line</i> Test	122
	Problem #2: Boing Trampolines and Pogo Sticks	122
	<i>NLRB v. Transportation Management Corp.</i>	123
	<i>Textile Workers Union of America v. Darlington Manufacturing Co.</i>	127
	Post Problem Discussion	132
C.	Refusal-to-Hire Cases	135
	Problem #2: The Electric Company	135
	NLRB, Office of the General Counsel Guideline Memorandum Concerning Toering Electric Company	136
	Michael C. Duff, <i>Union Salts as Administrative Private Attorneys General</i>	139
	Post Problem Discussion	143
D.	Remedies for Section 8(a)(3) Violations (and Section 8(a)(1) Too) . . .	144
	Problem #3: Career Opportunities	146
	Jeffrey M. Hirsch, <i>NLRB Reverses Backpay Burden</i>	147
	<i>Hoffman Plastic Compounds, Inc. v. NLRB</i>	149
	Post Problem Discussion	155
Chapter 4	PROTECTED CONCERTED ACTIVITIES UNDER SECTION 7	159
Section 1	CONCERTEDNESS OF THE EMPLOYEE CONDUCT	159
	Problem #1: Facing the Music, With a Buddy	160
	<i>NLRB v. City Disposal Systems, Inc.</i>	160
	<i>NLRB v. J. Weingarten, Inc.</i>	166
	<i>IBM Corp.</i>	171
	Post Problem Discussion	182
Section 2	LEGITIMATE PURPOSE FOR CONCERTED ACTIVITY	184
	Problem #2: Politics as Usual?	184
	<i>Eastex, Inc. v. NLRB</i>	186
	Post Problem Discussion	189
Section 3	LEGITIMATE MEANS FOR CONCERTED ACTIVITY	190
	Problem #3: The Six-Foot Inflatable Rat	190
	<i>NLRB v. Local 1229, IBEW (Jefferson Standard Broadcasting Co.)</i> . .	191
	Matthew W. Finkin, <i>Disloyalty! Does Jefferson Standard Stalk Still?</i> .	196
	Post Problem Discussion	201
Chapter 5	ORGANIZING A UNION	205
Section 1	THE RIGHT TO COMMUNICATE v. EMPLOYERS' PROPERTY RIGHTS	207
	Problem #1: Food Court Meeting	207

TABLE OF CONTENTS

A.	Employee Communications at the Workplace	208
	<i>Republic Aviation Corp. v. NLRB</i>	208
	Post Problem Discussion	213
B.	Non-Employee Access to the Workplace	214
	<i>Lechmere, Inc. v. NLRB</i>	214
	Post Problem Discussion	221
C.	Electronic Communications	225
	Problem #2: Union E-Mails	225
	Jeffrey M. Hirsch, <i>Communication Breakdown: Reviving the Role of</i> <i>Discourse in the Regulation of Employee Collective Action</i>	226
	<i>Guard Publishing Co. (Register-Guard)</i>	230
	Post Problem Discussion	246
Section 2	EMPLOYER SPEECH	248
	Problem #3: The Election Campaign: The Mall's Captive Audience Meetings	248
A.	Captive Audience Meetings	249
	<i>Livingston Shirt Co.</i>	249
	<i>NLRB v. United Steelworkers of America (Nutone Inc. & Avondale</i> <i>Mills)</i>	252
	Post Problem Discussion	256
B.	Threats or Predictions?	257
	<i>NLRB v. Gissel Packing Co.</i>	257
	Post Problem Discussion	260
Section 3	FACTUAL MISREPRESENTATION	261
	Problem #4: The Election Campaign: Altered Sample Ballots	261
	<i>Midland National Life Insurance Co.</i>	262
	Post Problem Discussion	267
Section 4	PROVIDING OR PROMISING BENEFITS	268
	Problem #5: The Election Campaign: A Visit from the Corporate President and a Union Raffle	268
	<i>NLRB v. Exchange Parts Co.</i>	268
	<i>NLRB v. Savair Manufacturing Co.</i>	271
	Post Problem Discussion	275
Section 5	SURVEILLANCE	278
	Problem #6: I Always Feel Like Somebody's Watching Me	278
	<i>F.W. Woolworth Co.</i>	279
	Post Problem Discussion	280
Section 6	INTERROGATION AND POLLING	281
	Problem #7: The Election Campaign: Questions from a Supervisor . . .	281
	<i>Struknes Construction Co.</i>	282
	<i>Sunnyvale Medical Clinic</i>	284

TABLE OF CONTENTS

Post Problem Discussion	287
Chapter 6	
SELECTING AND DESELECTING THE BARGAINING REPRESENTATIVE	289
Section 1 GROUNDS FOR NOT HOLDING AN ELECTION	289
1. Lack of support from employees for union	290
2. The commission of an unremedied ULP: the blocking charge policy	290
3. The election bars: certification bar, voluntary recognition bar, and contract bar	290
a. Certification Bar	291
b. Election Bar	291
c. Contract Bar and Its Exceptions	291
d. Voluntary Recognition Bar	292
Problem #1: The New NLRB Elections Rules	293
Post Problem Discussion	295
Section 2 THE MEANING OF “APPROPRIATE BARGAINING UNIT”	296
Problem #2: Holy Appropriate Bargaining Unit, Batman!	299
<i>NLRB v. Chicago Health & Tennis Clubs, Inc.</i>	299
Post Problem Discussion	305
Section 3 REPRESENTATION PROCEEDING REVIEW	306
Section 4 GISSEL BARGAINING ORDERS	307
Problem #3: Non-Majority Bargaining Orders	307
<i>NLRB v. Gissel Packing Co.</i>	308
<i>Linden Lumber Division, Summer & Co. v. NLRB</i>	312
<i>Gourmet Foods, Inc. v. Warehouse Employees of St. Paul</i>	313
Post Problem Discussion	316
Section 5 WITHDRAWAL OF UNION RECOGNITION	318
Problem #4: Boxing Out the Union	319
Douglas E. Ray, <i>Withdrawal of Recognition After Curtin-Matheson: A House Built on Sand</i>	319
<i>Allentown Mack Sales and Services, Inc. v. NLRB</i>	324
<i>Levitz Furniture Co.</i>	328
Post Problem Discussion	329
Chapter 7	
EXCLUSIVITY AND THE DUTY TO BARGAIN IN GOOD FAITH	335
Section 1 DIRECT DEALING	335
Problem #1: Are You Ready for Some Kickball?	336
Section 9(A) of the NLRA	337
James J. Brudney, <i>A Famous Victory: Collective Bargaining Protections and the Statutory Aging Process</i>	337

TABLE OF CONTENTS

	<i>Emporium Capwell Co. v. Western Addition Community</i>	
	Organization	340
	Post Problem Discussion	345
Section 2	BARGAINING TACTICS	347
A.	Economic Pressure	347
	Problem #2: By-The-Book	348
	<i>NLRB v. Insurance Agents' Union</i>	348
	Post Problem Discussion	354
B.	Surface Bargaining	354
	Problem #3: Do You Want Ketchup with That?	354
	<i>NLRB v. American National Insurance Co.</i>	355
	<i>Garden Ridge Management, Inc.</i>	360
	Post Problem Discussion	366
Section 3	DUTY TO PROVIDE INFORMATION	368
	Problem #4: A Note from Your Doctor	369
	<i>NLRB v. Truitt Manufacturing Co.</i>	370
	<i>Detroit Edison Co. v. NLRB</i>	373
	Post Problem Discussion	378
Section 4	IMPASSE	379
	Problem #5: I'm Going to Take My Ball and Go Home!	380
	<i>NLRB v. Katz</i>	381
	Post Problem Discussion	384
Chapter 8	SUBJECTS OF COLLECTIVE BARGAINING	387
Section 1	MANDATORY v. PERMISSIVE SUBJECTS OF BARGAINING	387
	Problem #1: Testing the Mandatory-Permissive Distinction	389
	<i>NLRB v. Wooster Division of Borg-Warner Corp.</i>	389
	<i>Johnson-Bateman Co. v. International Association of Machinists</i>	394
	Post Problem Discussion	397
Section 2	DUTY TO BARGAIN OVER SUBCONTRACTING AND PARTIAL CLOSINGS	399
	Problem #2: When the Lights Go Out in Milwaukee	400
	<i>Fibreboard Paper Products Co. v. NLRB</i>	400
	<i>First National Maintenance Corp. v. NLRB</i>	406
	Theodore J. St. Antoine, <i>Legal Barriers to Worker Participation in Management Decision Making</i>	412
	Post Problem Discussion	419
Section 3	RUNAWAY SHOPS	421
	Problem #3: Sweet Home Missalabama, Where the Skies are so Blue	421
	<i>United Food & Commercial Workers, Local 150-A v. NLRB (Dubuque Packing Co.)</i>	422

TABLE OF CONTENTS

	<i>Dorsey Trailers, Inc. v. NLRB</i>	428
	Post Problem Discussion	433
Chapter 9	STRIKES, LOCKOUTS, AND EMPLOYER RESPONSES TO UNION CONCERTED ACTIVITY	437
Section 1	STRIKES AND PERMANENT REPLACEMENTS	437
	Problem 1: Is the Right to Strike in the U.S. Illusory?	438
	<i>NLRB v. Mackay Radio & Telegraph Co.</i>	439
	<i>Laidlaw Corp.</i>	442
	Paul M. Secunda, <i>Politics Not As Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board</i> . . .	446
	Post Problem Discussion	447
Section 2	SUPER-SENIORITY AND LOCKOUTS	449
	Problem 2: Keep on Knockin', But You Can't Come in	449
	<i>NLRB v. Erie Resistor Corp.</i>	450
	<i>American Ship Building Co. v. NLRB</i>	455
	Paul M. Secunda, <i>Politics Not As Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board</i> . . .	461
	Post Problem Discussion	463
Section 3	THE GREAT DANE FRAMEWORK AND INHERENTLY DESTRUCTIVE CONDUCT UNDER SECTION 8(a)(3)	464
	Problem 3: The 30% Rule	464
	Paul M. Secunda, <i>Politics Not As Usual: Inherently Destructive Conduct, Institutional Collegiality, and the National Labor Relations Board</i> . . .	465
	<i>Local 15 IBEW v. NLRB</i>	469
	Post Problem Discussion	474
Chapter 10	PICKETING, BOYCOTTS, AND UNION SECONDARY ACTIVITY	477
Section 1	CONSTITUTIONAL LIMITATIONS ON THE RIGHT TO STRIKE AND PICKET	477
Section 2	RECOGNITIONAL PICKETING UNDER SECTION 8(b)(7)	479
	Problem #1: Can I Get Some Recognition Here?	480
	Lee Modjeska, <i>Recognition Picketing Under the NLRA</i>	480
	Hod Carriers Local 840 (Blinne Construction Co.)	487
	Post Problem Discussion	494
Section 3	SECONDARY BOYCOTTS UNDER SECTION 8(b)(4)	496
	Problem #2: Secondary Boycotting Bradgelina	497
	<i>NLRB v. Denver Building & Construction Trades Council</i>	498
	<i>Sailors Union of the Pacific (Moore Dry Dock Co.)</i>	501
	<i>Douds v. Metropolitan Federation of Architects</i>	503

TABLE OF CONTENTS

	<i>Local 761, International Union of Electrical, Radio and Machine Workers v. NLRB</i>	506
	Post Problem Discussion	510
Section 4	CONSUMER APPEALS AND CORPORATE CAMPAIGNS	512
	Problem #3: “Ocean Gasoline Made by Scabs”	513
	<i>NLRB v. Fruit & Vegetable Packers & Warehouseman, Local 760 (Tree Fruits)</i>	514
	<i>NLRB v. Retail Store Employees Union Local No. 1001 (Safeco Title Insurance Co.)</i>	517
	<i>Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council</i>	522
	Post Problem Discussion	525
Chapter 11	LABOR LAW PREEMPTION DOCTRINES	529
Section 1	MANDATORY PREEMPTION: <i>GARMON</i> PREEMPTION	531
	Problem #1: Worker Freedom Laws and Captive Audience Meetings, Take 1	531
	<i>San Diego Building Trades Council v. Garmon</i>	532
	Paul M. Secunda, <i>Toward the Viability of State-Based Legislation to Address Workplace Captive Audience Meetings in the United States</i> . .	536
	Post Problem Discussion	536
Section 2	PERMISSIVE PREEMPTION: <i>MACHINISTS</i> PREEMPTION	538
	Problem #2: Worker Freedom Laws and Captive Audience Meetings, Take 2	538
	<i>Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission</i>	539
	<i>Chamber of Commerce of the United States v. Brown</i>	543
	Brief of Law Professors as Amicus Curiae in Support of Defendants’ Opposition to Motion For Summary Judgment, <i>Associated Oregon Industries v. Avakian</i>	548
	Post Problem Discussion	554
Section 3	SECTION 301 PREEMPTION	555
Chapter 12	WORKER RIGHTS IN A UNION	557
Section 1	THE DUTY OF FAIR REPRESENTATION	557
	Problem #1: The Tale of the Deceitful Motel Clerk	559
	<i>Vaca v. Sipes</i>	560
	<i>Air Line Pilots Association International v. O’Neill</i>	565
	Post Problem Discussion	571
Section 2	UNION SECURITY CLAUSES AND STATE RIGHT-TO-WORK LAWS	573

TABLE OF CONTENTS

	Problem #2: Safeguarding the Rights of a Dissenting Actress	574
	<i>NLRB v. General Motors Corp.</i>	575
	<i>Communication Workers v. Beck</i>	579
	Harry G. Hutchison, <i>Compulsory Unionism as a Fraternal Conceit? Free</i> <i>Choice for Workers: A History of the Right to Work Movement</i>	589
	Post Problem Discussion	598
Section 3	THE UNION’S RIGHT TO DISCIPLINE ITS MEMBERS	601
	Problem #3: I Don’t Walk the Line	601
	<i>NLRB v. Allis-Chalmers Manufacturing Co.</i>	602
	<i>Scofield v. NLRB</i>	609
	Roger Hartley, <i>National Labor Relations Board Control of Union</i> <i>Discipline and the Myth of Nonintervention</i>	613
	Post Problem Discussion	623
Chapter 13	ADVANCED ISSUES IN LABOR LAW	627
Section 1	THE GRIEVANCE AND ARBITRATION PROCESS	627
	Problem #1: Layoffs, Up on the Roof	628
A.	Why Have a Grievance and Arbitration Process?	629
	Martin H. Malin, <i>The Evolving Schizophrenic Nature of Labor</i> <i>Arbitration</i>	629
	Post Problem Discussion	633
B.	The Arbitration-Court Relationship	634
	Section 301, Labor Management Relations Act, <i>Suits By and Against</i> <i>Labor Organizations</i>	634
	<i>United Steelworkers of America v. Warrior & Gulf Navigation Co.</i>	634
	Post Problem Discussion	637
C.	The Arbitration-NLRB Relationship	639
	Harry T. Edwards, <i>Deferral to Arbitration and Waiver of the</i> <i>Duty to Bargain: A Possible Way Out of Everlasting Confusion</i> <i>at the NLRB</i>	639
	NLRB, Office of the General Counsel Division of Operations- Management Casehandling Regarding Application of <i>Spielberg/Olin</i> Standards Memorandum OM 10-13(CH)	643
	Post Problem Discussion	644
Section 2	SUCCESSORSHIP	645
	Problem #2: Apples and Oranges	645
	Keith N. Hylton & Maria O’Brien Hylton, <i>Rent Appropriation and the</i> <i>Labor Law Doctrine of Successorship</i>	646
	Post Problem Discussion	651
Section 3	MID-TERM BARGAINING AND CONTRACT EXPIRATION	652
	Problem #3: Fighting Against Extra Pay	652

TABLE OF CONTENTS

<i>Milwaukee Spring Division (Milwaukee Spring II)</i>	653
Post Problem Discussion	656
Section 4 ANTITRUST	658
Problem #4: Kickball Lockout	658
<i>Brown v. Pro Football, Inc.</i>	659
Post Problem Discussion	666
 Appendix	 669
 Table of Cases	 TC-1
 Index	 I-1
