

TABLE OF CONTENTS

PREFACE TO SEVENTH EDITION	V
PREFACE TO FIRST EDITION	VII
ACKNOWLEDGMENTS AND PERMISSIONS	XI
FOREWORD.....	XIII
THE LABOR LAW GROUP.....	XVII
TABLE OF CASES.....	XXXVII

PART I. A SHORT HISTORY OF COLLECTIVE BARGAINING AND THE LAW IN THE UNITED STATES: THE SEARCH FOR BALANCE

Chapter 1. Labor as a Commodity: The Rise and Decline of the Double Standard	3
A. The Common Law	3
The Philadelphia Cordwainers' Case (Commonwealth v. Pullis).....	3
Walter Nelles, The First American Labor Case	4
Notes	14
Commonwealth v. Hunt.....	15
Notes	20
Walker v. Cronin	21
Notes	23
Secor v. Toledo, P. & W. Ry.	24
Notes	27
Walter Nelles, A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction.....	27
Notes	35
Vegelahn v. Guntner	36
Notes	43
Plant v. Woods	44
Notes	50
Coppage v. Kansas	52
Notes	58
B. Early Statutes: Anti-Trust and Anti-Anti-Trust (Sherman Act of 1890, Clayton Act of 1914, Norris-Laguardia Act of 1932).....	59
Loewe v. Lawlor.....	59
Notes	65
Duplex Printing Press Co. v. Deering	67
Notes	74
Coronado Coal Co. v. United Mine Workers.....	76

Notes	81
Great Northern Ry. v. Brosseau	82
Note	88
Felix Frankfurter and Nathan Greene, <i>The Labor Injunction</i>	89
Notes	93
The Norris-Laguardia Act of 1932	95
United States v. Hutcheson	97
Notes	103
Chapter 2. Paternal Protection.....	105
Introductory Note	105
A. The Railway Labor Act of 1926	106
Structure of the Railway Labor Act	108
Texas & New Orleans R.R. Co. v. Brotherhood of Railway and Steamship Clerks	109
Notes	114
Virginian Ry. v. System Federation No. 40	115
Note	118
B. The Wagner Act of 1935.....	119
NLRB v. Jones & Laughlin Steel Corp.	121
Notes	127
Warren Madden, <i>Origin and Early Years of The National Labor Relations Act</i>	128
Notes	135
Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board	137
Notes	140
American Federation of Labor v. NLRB	142
Notes	147
NLRB v. Fansteel Metallurgical Corp.	152
Notes	160
Hunt v. Crumboch	163
Notes	167
The Wagner Act: The End of the First Era	169
Chapter 3. The Need for Balance: Government as Umpire	171
Introductory Note	171
A. The Taft-Hartley Act of 1947.....	172
1. Background	172
Foster R. Dulles, <i>Labor in America</i>	172
Note	175
2. A Brief Introduction to the LMRA.....	175
3. Immediate Impact of the NLRA	177
Universal Camera Corp. v. NLRB	177
Notes.....	183
Local 357, International Brotherhood of Teamsters v. NLRB	184
Notes.....	192

Clyde W. Summers, A Summary Evaluation of the Taft-Hartley Act.....	193
Notes.....	194
B. The Landrum-Griffin Act of 1959.....	196
C. Racial and Related Employment Discrimination.....	199
<i>Steele v. Louisville & Nashville R.R.</i>	199
Notes	205
D. (Relatively) Recent Developments	207
1. Government as Employer: The Umpire Unionized	207
Laborers Local 236, AFL-CIO, AFSCME Local 60, AFL-CIO v. Walker	209
Notes.....	212
2. Wrongful Termination: Erosion of the Employment-At-Will Doctrine.....	212
Notes.....	215
3. The Ever-Changing Labor Environment	215
Structural Changes to the U.S. Economy	216
Disappearance of Strikes as an Economic Weapon.....	218
Labor's Diminishing Political Power and the Public Ambivalence Towards Union Power	218

**PART II. A LONG ANALYSIS OF PROBLEMS
GLOSSED OVER IN THE SHORT HISTORY**

Chapter 4. Federal Supremacy, Exclusivity, Bargaining Units, and Coverage	223
A. Federal Supremacy	224
1. <i>Garmon</i> Preemption	225
<i>San Diego Building Trades Council v. Garmon</i>	225
Notes.....	233
Exceptions to <i>Garmon</i> Preemption	234
2. <i>Machinists</i> Preemption	238
<i>Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Commission</i>	238
Notes.....	242
3. Section 301 Preemption	243
<i>Lingle v. Norge Division of Magic Chef, Inc.</i>	244
Notes.....	250
B. The Principle of Exclusivity.....	252
<i>J.I. Case Co. v. NLRB</i>	252
Notes	256
<i>Emporium Capwell Co. v. Western Addition Community Organization</i>	259
Notes	265
C. Case Procedure, Decertification, and Bar Rules	266
1. NLRB Organization.....	266
2. NLRB Procedure in "R" and "C" Cases	267

(a) "R" Case Procedure	268
(b) "C" Case Procedure	272
3. Adjudication and Rulemaking	276
NLRB v. Wyman-Gordon Co.	276
Notes.....	283
4. Decertification and Withdrawal of Recognition	286
Notes.....	290
5. Bar Rules.....	291
(a) The Statutory Election Bar	292
(b) The Certification Bar.....	292
Brooks v. NLRB	292
Notes.....	296
(c) The Recognition Bar	296
(d) The Contract Bar	297
American Seating Co.	297
Notes.....	301
D. Inclusion and Exclusion from Coverage Under the NLRA	303
1. Who Is an Employee?	303
NLRB v. Town & Country Electric, Inc.	303
Notes.....	310
Student Workers.....	312
2. Supervisors	313
Oakwood Healthcare, Inc.	315
Notes.....	320
3. Independent Contractors	322
4. Confidential and Managerial Employees.....	324
5. Exclusions Based on the Board's Discretionary Jurisdiction	327
Note	329
E. The Bargaining Unit	329
1. The "Community of Interest" Standard	329
Macy's Inc. v. NLRB	332
Notes.....	338
2. Multi-Employer Bargaining Units	340
NLRB v. Truck Drivers Local 449 ("Buffalo Linen")	340
Notes.....	343
3. Pushing the Boundaries of the Appropriate Bargaining Unit: The Case of "Contingent" and "Alternative Employment Arrangements"	344
Concluding Comment: The Politicization of the NLRB	349
Chapter 5. Organizing: Conduct and Remedies.....	351
A. Employer and Union Conduct Impairing the Right to Organize	351
1. Discharge and Discipline: Interaction of Sections 8(a)(1) and (3).....	351
Edward G. Budd Mfg. Co. v. NLRB.....	351
Notes.....	353
NLRB v. Transportation Management Corp.	353

Notes.....	358
NLRB v. Burnup and Sims, Inc.....	359
Note	361
Note on the “Overlap Problem”: Sections 8(a)(1) and 8(a)(3)	362
2. Solicitation and Access.....	366
Republic Aviation Corp. v. NLRB.....	366
Notes.....	371
Lechmere, Inc. v. NLRB.....	376
Notes.....	385
Purple Communications, Inc.	392
Notes.....	405
3. Polling, Interrogation, and Surveillance.....	406
4. Threats	408
Zeiglers Refuse Collectors, Inc. v. NLRB	408
Notes.....	413
5. “Promises of Benefit”	415
NLRB v. Exchange Parts Co.....	415
Notes.....	418
6. The Fall (and Rise?) of Company Unions.....	420
(a) Early Board Enforcement of the Ban on Company Unions ...	420
(b) Taft-Hartley Changes.....	422
(c) Employee Participation Programs: The Company Union Resurrected?.....	422
E.I. du Pont de Nemours & Company	423
Notes.....	429
7. Closings: Total, Partial, and Threats	431
Textile Workers Union v. Darlington Manufacturing Co.	431
Notes.....	437
B. Speech Issues.....	438
1. The Totality Test, Section 8(c), and the First Amendment	438
NLRB v. Virginia Electric & Power Co.	438
Notes.....	443
2. Misrepresentations.....	444
Notes.....	446
3. Appeals to Racial Prejudice	448
Sewell Manufacturing Co.....	448
Notes.....	451
4. Captive Audience Speeches and Equal Time Rules	452
Notes.....	455
5. The First Amendment	457
NLRB v. Gissel Packing Co.	457
Notes.....	461
C. Representation Without Elections: Neutrality Agreements, Card Checks, and Corporate Campaigns	464
1. Background	464
2. Legal Issues	467
Lamons Gasket Co.....	470

Notes.....	473
D. Remedies.....	474
1. Remedies for Individual Employees.....	474
Notes.....	476
<i>Phelps Dodge Corp. v. NLRB</i>	476
Notes.....	479
<i>Hoffman Plastic Compounds, Inc. v. NLRB</i>	480
Notes.....	485
<i>NLRB v. St. George Warehouse & Merchandise Drivers Local No. 641</i>	488
Notes.....	492
2. Bargaining Orders.....	493
<i>NLRB v. Gissel Packing Co.</i>	493
Notes.....	499
3. Remedies for Union Misconduct.....	503
 Chapter 6. Union Weapons: Strikes, Picketing, and Boycotts	505
A. Due Process and Freedom of Speech.....	505
<i>Thornhill v. Alabama</i>	506
Notes	511
B. Secondary Boycotts and “Hot Cargo”	513
1. The [Struck Work] Ally Doctrine.....	516
<i>NLRB v. Business Machine and Office Appliance Mechanics Conference Board, Local 459, IUE (“Royal Typewriter”)</i>	517
Notes.....	523
2. Common Situs Picketing	525
<i>NLRB v. Denver Bldg. & Const. Trades Council</i>	526
Notes.....	531
<i>Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO v. NLRB (“General Electric”)</i>	533
Notes.....	539
3. Consumer Picketing and Handbilling	543
<i>NLRB v. Fruit and Vegetable Packers, Local 760 (“Tree Fruits”)</i>	543
Notes.....	554
<i>Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council</i>	558
Notes.....	564
4. The Primary-Secondary Distinction Carried to Distraction: The Interaction of Sections 8(b)(4), 8(e), and 10(l)	567
<i>National Woodwork Manufacturers Association v. NLRB</i>	569
Notes.....	577
<i>NLRB v. Enterprise Association of Steam and General Pipefitters of New York (“Austin”)</i>	580
Notes.....	590
<i>Connell Constr. Co. v. Plumbers Local 100</i>	592
Notes.....	596

C.	Organizational and Recognitional Picketing	602
	International Hod Carriers Building and Common Laborers Union, Local 840, AFL-CIO (“Blinne Construction”).....	606
	Notes	611
	Local Joint Executive Board of Hotel and Restaurant Employees (“Crown Cafeteria”) Supplemental Decision and Order	614
	Notes	616
	Houston Building and Construction Trades Council (“Claude Everett Construction”)	619
	Notes	622
D.	Jurisdictional Disputes: Sections 8(b)(4)(D) and 10(k)	625
	NLRB v. Radio and Television Broadcast Engineers Union Local 1212 (“CBS”)	626
	Notes	630
	Note on Preliminary Injunctive Relief Under the NLRA	632
	Note on Featherbedding	633

Chapter 7. The Negotiation Process: Legal Framework and Bargaining Strategies.....637

	Introductory Note	637
A.	Economic Weapons	638
	1. Employee Weapons.....	638
	(a) Protesting	638
	NLRB v. Washington Aluminum Co.	638
	Notes	642
	(b) Requesting Representation or Assistance.....	647
	NLRB v. J. Weingarten, Inc.	647
	Notes	652
	Fresh & Easy Neighborhood Market, Inc.	654
	Notes	660
	(c) Disparaging the Employer’s Product and Other “Disloyal” Activity	660
	NLRB v. Local 1229, IBEW (“Jefferson Standard”)	660
	Notes	666
	(d) Section 7 Activity and Social Media	670
	(e) Strikes and Slowdowns	672
	NLRB v. Insurance Agents’ International Union.....	672
	Notes	681
	2. Employer Weapons	683
	NLRB v. Mackay Radio & Telegraph Co.	683
	Notes	685
	NLRB v. Erie Resistor Corp.....	693
	Notes	700
	American Ship Building Co. v. NLRB	701
	Notes	710
	NLRB v. Great Dane Trailers, Inc.	714
	Notes	720

NLRB v. Katz.....	722
Notes.....	727
A Note on State Government Interference in Collective Bargaining.....	730
B. The Duty to Bargain in Good Faith	733
1. Bargaining Subjects	734
NLRB v. American National Insurance Co.	734
Notes.....	740
NLRB v. Wooster Division of Borg-Warner Corp.....	741
Notes.....	746
2. Unilateral Changes	748
Fibreboard Paper Products Corp. v. NLRB	749
Notes.....	756
3. Using <i>Fibreboard</i>	758
(a) Partial Closings	759
(b) Relocations	763
(c) Impact of Later Cases on Subcontracting Decisions	765
4. Facilitating Bargaining: The Duty to Provide Information	767
NLRB v. Truitt Manufacturing Co.....	767
Notes.....	771
5. Hard Bargaining Versus Surface Bargaining	772
White v. NLRB.....	773
Notes.....	780
NLRB v. General Electric Co.....	781
Notes.....	790
C. Remedies for Bargaining Violations	794
H.K. Porter Co. v. NLRB.....	794
Notes.....	799
Ex-Cell-O Corp.....	801
Notes.....	809
NLRB v. Food Store Employees Union, Local 347 ["Heck's"]	811
Notes.....	815
Concluding Note on the Nonremedial Remedy and Its Alternatives.....	818
Chapter 8. Enforcing the Collective Agreement.....	823
A. Introduction	823
B. Judicial Review of Arbitration Agreements and Awards: The Scriptural Foundations	824
Textile Workers Union v. Lincoln Mills.....	825
Notes	832
A Brief Introduction to Labor Arbitration and the Steelworkers Trilogy	835
United Steelworkers v. American Manufacturing Co.....	838
Note	840
United Steelworkers v. Warrior and Gulf Navigation Co.	841
Notes	848

United Steelworkers v. Enterprise Wheel and Car Corp.	850
Notes	854
C. Judicial Review of Arbitration Agreements and Awards: Interpreting and Implementing the Scriptures	856
1. Judicial Review on the Basis of the Trilogy Exceptions: The “Own Brand of Justice” and “Essence” Tests.....	856
Major League Baseball Players Association v. Garvey.....	859
Notes.....	864
2. Judicial Review on the Ground That the Award Violates Public Policy	866
Eastern Associated Coal Corp. v. United Mine Workers	867
Notes.....	874
A Note on Criticism of the Trilogy Framework	876
D. Arbitration Agreements and Statutory Claims.....	878
Alexander v. Gardner-Denver Co.....	878
Notes	888
From Labor to Employment Arbitration	889
E. Enforcement of No-Strike Clauses	891
Local 174, Teamsters v. Lucas Flour Co.....	891
Notes	897
Boys Markets, Inc. v. Retail Clerks Union	899
Notes	909
Mastro Plastics Corp. v. NLRB	913
Notes	919
F. Successorship.....	919
John Wiley & Sons, Inc. v. Livingston	920
Notes	928
NLRB v. Burns International Security Services	928
Notes	937
Howard Johnson Co. v. Detroit Local Joint Executive Board, Hotel Employees International Union	940
Notes	949
G. Section 301 and the NLRB	952
NLRB v. C & C Plywood Corp.....	952
Notes	957
H. The Duty to Bargain During the Life of the Agreement.....	959
Collyer Insulated Wire	962
Notes	970
I. The Impact of Bankruptcy on the Duty to Bargain During the Life of the Collective Agreement.....	973
Northwest Airlines Corp. v. Association of Flight Attendants— CWA	974
Notes	985

Chapter 9. Individual Rights	989
A. Introduction	989
1. Individual Rights Versus Collective Action	989
2. Addressing the Tension.....	990
B. Individual Rights and the Duty of Fair Representation: Congruence and Conflict.....	994
1. The Duty of Fair Representation in Contract Negotiation	994
Air Line Pilots Association, International v. O'Neill	995
Notes.....	1000
Note on the Disenfranchisement of Nonmembers.....	1002
2. The Duty of Fair Representation in Contract Administration....	1004
Vaca v. Sipes	1004
Notes.....	1014
Hines v. Anchor Motor Freight, Inc.	1018
Notes.....	1027
Note on “Perfunctory” Processing of Grievances.....	1029
3. Enforcing the Duty of Fair Representation	1031
Bowen v. United States Postal Service	1032
Notes.....	1038
C. Union Security.....	1038
1. Introduction	1038
2. The Law of Compulsory Membership	1041
NLRB v. General Motors Corp.	1041
Notes.....	1046
Marquez v. Screen Actors Guild, Inc.....	1050
Notes.....	1057
Note on Jurisdiction in Union Security Cases.....	1060
3. “Free Riding,” “Forced Riding,” and the Principle of “Germaneness”: Unions’ Use of Compulsory Payments	1061
Abood v. Detroit Board of Education.....	1062
Notes.....	1072
Communications Workers of America v. Beck	1074
Notes.....	1077
Note on Chargeable and Non-Chargeable Expenses.....	1078
A Note on Notification Responsibilities	1081
International Association of Machinists & Aerospace Workers v. NLRB (“California Saw”).....	1083
Notes.....	1085
A Note on Procedures for Dealing with Objectors’ Complaints...	1086
Chicago Teachers Union, Local No. 1 v. Hudson.....	1087
Notes.....	1090
International Association of Machinists & Aerospace Workers v. NLRB (“California Saw”).....	1091
Notes.....	1094
D. The Union’s Power to Compel Concerted Activities.....	1097
NLRB v. Allis-Chalmers Mfg. Co.	1098
Notes	1106

TABLE OF CONTENTS**xxxv**

NLRB v. Boeing Co.....	1107
Notes	1115
Note on Resignations	1117
INDEX.....	1121