Labor Law II Outline

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Enforcement of Collective Bargaining Contracts

Source of Law

Lincoln Mills (cb1-9)

- **Held**: §301 grants federal jurisdiction **and** creates a body of federal common law of the collective bargaining agreement.
- Federal question jurisdiction extends to applying federal substantive law, but §301 establishes no substantive rules, thus can only be constitutional by implication that Congress "delegated" legislative authority to Federal Courts to make up substantive law.
- Injunctions to arbitrate under a collective bargaining agreement can be granted in labor disputes, despite Norris-LaGuardia prohibition (implied exception).

Grievance/Arbitration Enforcement

Steelworkers Trilogy

American Manufacturing Co. (cb2-1)

- **Held**: if a claim is made which is covered by the collective bargaining agreement, employer must go to arbitration, even if it is patently frivolous.
- Court should not apply "ordinary contract law," instead it is "confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. ... The courts, therefore, have no business weighing the merits of the grievance..."
- No exception to "no strike" clause, thus no exception to grievance clause; this is a *quid pro quo*.

Warrior & Gulf Navigation Co. (cb2-4)

- **Held**: strong presumption in favor of arbitrability; party must present forceful evidence that matter was excluded for arbitration not to apply.
- Just because a grievance is arbitrable doesn't mean party gets anything, however. If contract gives broad management rights clause, arbitrator will rule that union cannot challenge contracting out decision3

Enterprise Wheel & Car Corp. (cb2-11)

- **Held**: courts should not review merits of arbitration decision; a mere ambiguity is not sufficient to vacate an award, if decision "draws it essence" from the contract then it should be enforced.

Public Policy Exception

Misco (cb3-7)

- **Held**: a court can vacate an arbitration award when **the award itself** violates an explicit, well-defined, and dominant public policy.
- Policy of "not operating dangerous machinery while smoking marijuana" isn't the kind of well-defined/explicit policy; must be more like going against Civil Rights Act, etc..

See also *Eastern Associated Coal* (similar holding with respect to marijuana use by truck driver) and *Black v. Cutter Laboratories* (pre-*Lincoln Mills* case upholding California's vacating arbitral award where employee was supposedly fired for communist party membership on "independent state grounds" doctrine).

No-Strike Clause

Sands Manufacturing Co. (cb4-4)

- **Held**: §7 does not protect a strike in breach of no-strike clause; generally, any strike in breach of a collective bargaining agreement is unprotected.

Mastro Plastics (cb4-5)

- **Held**: ULP strike is exception to *Sands Manufacturing*/§8(d) rule; ULP strikes are protected.
- Unclear whether union can waive right to ULP strike; D.C. Circuit has held it can.

Charles Dowd Box Co. v. Courtney (cb4-6)

- **Held**: §301 does not oust state courts of suits involving CBAs.

Lucas Flour Co. (cb4-7)

- **Held**: state courts must apply **Federal Law** to breach of CBA suits.
- **Held**: where contract is silent, no-strike clause will be presumed as part of grievance/arbitration.

Sinclair Refining (cb4-14)

- **Held**: Norris-LaGuardia prohibition on anti-strike injunctions is not modified by §301.
- Some states still permitted anti-strike injunctions for grievance strikes, however. (overruled in *Boys Markets*, below).

Avco Corp. (cb4-15)

- **Held**: action to enjoin grievance strike may be removed to federal court, thus state law permitting anti-strike injunctions is effectively nullified. (but *see Boys Markets*, below).

Boys Markets Injunctions

Boys Markets (cb5-1)

- **Held**: Notwithstanding Norris-LaGuardia, a strike in breach of a no-strike clause over an arbitrable grievance may be injoined if equity favors an injunction, overruling *Sinclair Refining*.
- Kingpin of federal labor policy is no-strike promise *quid pro quo* for grievance/arbitration machinery.

Gateway Coal (cb6-1)

- **Held**: Presumption that agreement to arbitrate and no-strike duty are coterminous, even for safety strike, thus *Boys Markets* injunction could be granted against workers striking to protest retention of foreman responsible for mine safety error.
- Work stoppage under §502 cannot be enjoined, but here there was not ascertainable, objective evidence of imminent and abnormal danger.

Duty of Fair Representation

History

Steele v. Louisville & Nashville R.R. (1944) (cb7-1)

- **Held**: union cannot discriminate based on invidious categories, but where union makes distinction within the bounds of relevance, widen latitude will be granted.
- "We think Railway Labor Act imposes upon rep at least as exacting a duty to protect equally the interests of the members ... as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates."
- Duty of fair representation does not require union to desegregate.

James v. Marinship Corp. (1944) (cb7-9)

- **Held**: closed shop cannot discriminate on the basis of race—codified in §8(a)(3).

Conley v. Gibson (1957) (cb7-13)

- **Held**: duty of fair representation extends to administration of contract as well as negotiation.

Ford Motor Co. v. Huffman (1953) (cb7-16)

- **Held**: union did not breach its DFR when it renegotiated contract to favor employees who had done military service but hadn't worked at Ford previously.
- "The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed ... subject to good faith and honesty of

purpose."

- CBA does not vest employees with individual rights and entitlements that they may sue to protect.

Individual Rights under a Collective Bargaining Agreement

Smith v. Evening News Association (1962) (cb8-6)

- **Held**: even though a breach of contract might also be a ULP, claim can still be brought in court under §301; individual employees can bring claims under §301.
- In this case, there was no exclusive grievance/arbitration provision, however.

Humphrey v. Moore (1964) (cb8-9)

- **Held**: individual employees can sue for breach of contract even against union's interpretation, although in this case union's interpretation was reasonable and thus not overturned (this aspect probably overruled in *Vaca v. Sipes*).
- **Held**: no breach of DFR where no evidence of deceit, fraud, bad faith, or arbitrary discrimination even if union represents employees with antagonistic interests.

Republic Steel Corp. v. Maddox (1965) (cb8-16)

- **Held**: employee must exhaust exclusive grievance procedure before attempting to bring claim under §301.
- Distinguishes *Smith v. Evening News* because there was no exclusive grievance procedure there.

Vaca v. Sipes (1967) (cb9-1)

- **Held**: Employee can sue employer under CBA only if union's failure to proceed with grievance is a breach of duty of fair representation.
- **Held**: Duty of fair representation is breached only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.
- **Held**: *Garmon* preemption does not apply to suits for breach of DFR.
- **Held**: A union does not breach its DFR merely by settling or dropping a meritorious grievance short of arbitration.
- "Duty of fair representation has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law."

Hines v. Anchor Motor Freight, Inc. (1976) (cb9-25)

- **Held**: if union breached DFR, CBA finality clause is negated, reexposing employer to a §301 breach of contract suit by employee.

Bowen v. United States Postal Service (1983) (cb9-34)

- **Held**: union must pay backpay to employee when breach of DFR and breach of contract are proved (i.e., successful claim under *Vaca*). Apportionment of damages.

301-DFR Litigation

Statutory and Constitutional Rights in Collective Bargaining

Local 13, Int'l Longeshoremen's & Warehousemen's Union (1971) (cb10-3)

- **Held**: bad faith "grievance swapping" can be breach of DFR; unclear whether grievance trading alone is breach of DFR.
- Circuit court opinion.

Smith v. Hussmann Refrigerator Co. (1980) (cb10-9)

- **Held**: pursuing one set of grievances (seniority) and ignoring another (merit) was breach of DFR.
- Follows the Summers position that individuals have rights under CBA: "The collective agreement creates rights in the individual employee which are enforceable under section 301." Circuit court opinion.

Retana v. Local 14 (1972) (cb10-24)

- **Held**: union breaches DFR when it fails to explain contract to non-English speaking employee.

Waiver

Alexander v. Gardner-Denver Co. (1974) (cb11-4)

- **Held**: employee rights under Title VII are not subject to prospective waiver through collective bargaining. Arbitration is "inadequate forum" for these rights.

McDonald v. City of West Branch (1984) (cb11-11)

- **Held**: 1983 civil rights claims are not waived by failure to appeal grievance arbitration decision.

Cary v. Adams-Arapahoe School District (1979) (cb11-16)

- **Held**: teachers did not waive their First Amendment rights with CBA but school board was entitled to prevail on First Amendment merits.

W.R. Grace v. Local 759 (1983) (cb11-20)

- **Held**: employer may not breach CBA on the ground that the breach was required by Title VII conciliation agreement; employer must bear the cost unless seniority system

was negotiated and maintained with discriminatory intent. "Enterprise liability" theory of social justice.

Gilmer v. Interstate/Johnson Lane Corp. (1991) (cb11-24)

- **Held**: individual employee can waive statutory rights in arbitration agreement; distinguishes *Gardner-Denver* because it involved *union*'s promise to arbitrate *contractual* claims, but some courts infer that *Gilmer* overruled *Gardner-Denver* (e.g., *Austin v. Owens-Brockway Glass Container*, 1996 78 F.3d 875).

Wright v. Universal Maritime Service Corp. (1998) (cb11-31)

- **Held**: if collective bargaining agreement waives statutory rights, it must do so unequivocally.
- Does not decide whether CBA can waive civil rights claims, however.

Safrit v. Cone Mills Corp (2001) (cb11-37)

- **Held**: there is unmistakable waiver of statutory rights, claim is subject to arbitration.
- Supreme Court denied *cert*.

Constitutional Rights of Public Employees

Rights vs. Privileges

McAuliffe v. City of New Bedford (1892) (cb18-7)

- **Held**: when state acts as employer, it is not subject to First Amendment; state employee may have a right to free speech, but does not have a right to job.
- Relies on a "rights/privileges" distinction that it is rejected in later cases.

Scopes v. State (1927) (cb18-8)

- **Held**: state employer is governed by master-servant law, thus no constitutional right to challenge criminal ban on teaching evolution.

Procedural Due Process (Property)

Board of Regents v. Roth (1972) (cb19-6)

- **Held**: to have a property interest in a benefit, a person must have more than an abstract need or desire for it; more than a unilateral expectation of it; must, instead, have a **legitimate claim of entitlement to it**. Property interests are not created by constitution but from an independent source of law.
- Court has rejected the wooden distinction between "rights" and "privileges."

Perry v. Sindermann (1972) (cb19-12)

- **Held**: property interest can be established by a state-fostered understanding of continued employment absent just cause.

Arnett v. Kennedy (1974) (cb19-17)

- **Held**: statute which creates property interest cannot also define the procedure due.
- **Held**: pre-deprivation full-blown trial-like process is not required to meet procedural due process for job termination.
- Rehnquist, Berger, Stewart: where the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, a litigant in the position of appellee must take the **bitter with the sweet**.

Bishop v. Wood (1976) (cb19-34)

- **Held**: "at will" state employee has no property interest in job; state actor must have done something to tell people they can rely on past practice before legitimate expectation is created (even though officer was classified as "permanent employee").
- **Held**: false stigma alone is not enough to constitute a protectable liberty interest.
- "The federal court is not the appropriate forum in which to review the multitude of personnel decisions which are made daily by public agencies."
- Potential adopts "bitter with the sweet" approach of *Arnett*, although it claims not to, and possibly resurrects the "rights/privileges" distinction.

Cleveland Board of Education vs. Loudermill (1985) (cb19-43)

- **Held**: rejects "bitter with the sweet" approach, but simple pre-termination hearing is sufficient to satisfy procedural due process under *Mathews* balancing test.
- Not covered in course.

Procedural Due Process (Liberty)

Paul v. Davis (1976) (cb20-1)

- **Held**: to assert protectable liberty interest, plaintiff must demonstrate **stigma**, **falsity**, and **change in legal status**; stigma must be "**published**" in some way.

First Amendment

Free Speech Rights of Public Employees

Pickering v. Board of Education (1968) (cb22-2)

- **Held:** employees in public sector have First Amendment protection against

termination; apply multi-factor balancing test to weigh states' interest with individual's interest.

- Repudiates the "rights/privileges" dichotomy and McAuliffe v. City of New Bedford.

Branti v. Finkel (1980) (cb22-7)

- **Held:** employment can only be conditioned on party membership when "the hiring party can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved" (rather than *Elrod* which focused on "policymaking" or "confidential" employees).
- *Elrod v. Burns* involved a Sheriff, *Branti* involves public defenders.

James v. Board of Education (1972) (cb22-16)

- **Held:** dismissal on basis of speech must be based on reasonable inferences flowing from concrete facts and not abstractions; the court should not accept the employers' judgment on the disruption that will result from speech.
- 2nd Circuit Case—fact specific application of *Pickering* – says that off duty and on duty expression distinction is not critical.

Phillips v. Adult Probation Dep't (1974) (cb22-21)

- **Held:** supervisor could reasonably conclude that H. Rap Brown poster in probation officers' office sufficiently interfered with duties to justify discipline not violating First Amendment.
- 9th Circuit Case—fact specific application of *Pickering* – says that off duty and on duty expression distinction is critical.

Connick v. Myers (1983) (cb22-24)

- **Held:** when employee speaks not as citizen on matter of public concern but as employee then federal court is not appropriate forum to review employer's decision to terminate.
- **Held:** to determine if matter is "public concern" look at **content**, **form**, and **context**.

Gaj v. U.S. Postal Service (1986) (cb22-36)

- **Held:** complaint about personal safety was mere employee dissatisfaction and thus did not rise to level of "public concern," thus no First Amendment protection.

Callaway v. Hafeman (1987) (cb22-38)

* **Held:**when employee didn't communicate sexual harassment concern to the public but only confidentially, speech was not "of public concern," thus no First Amendment protection.

Waters v. Churchill (1994) (cb22-41)

- **Held:** if employer could constitutionally dismiss employee for what he reasonably believed employee said, mistake of what is actually said does not violate constitution.

Rust v. Sullivan (1991) (cb22-52)

- **Held:** government can choose to fund expressive activities that it chooses and not others; possible return of "unconstitutional conditions" in abortion context.

Lyng v. International Union, UAW (1988) (cb22-58)

- **Held:** government can "merely decline to extend food stamp assistance to striking workers" without violating First Amendment right of association.

Legal Services Corp. v. Velazquez (2001) (cb22-60)

- **Held:** rule barring legal services from trying to challenge laws violates First Amendment; distinguishable from *Rust* because this is not "government as speaker."

Access Issues

Commonwealth v. Davis (1897) (cb30-1d)

- **Held:** when state acts as property owner it is not limited by First Amednment; analogous to the "rights/privileges" cases and *McAuliffe v. New Bedford.*

Police Dep't, City of Chicago v. Mosley (1972) (cb30-2)

- **Held:**ordinance which allowed labor picketing but not other picketing is unconstitutional content-based discrimination, subject to intermediate scrutiny: "whether there is an appropriate governmental interest suitably furthered by the differential treatment." ... must be "narrowly tailored to legitimate objectives."

Exclusive Representation and Governmental Decision-Making

City of Madison, Sch. Dt. v. Wisc. Employ. Rel. Comm'n (1976) (cb30-6)

- **Held**: state labor board violated First Amendment when it held that it was an unfair labor practice for a school board to permit dissident employees to speak at public meeting.
- *Cf. Emporium Capwell* where employees lost all Section 7 rights when they protested employer racial discrimination without going through union.

Smith v. Arkansas State Highway Employees (1979) (cb30-11)

- **Held**: the state is not required by the First Amendment to accept grievances from a union, even when it does accept grievances from individual workers; no right to chose your representative in petitioning the government.

Perry Education Assn. v. Perry Local Educators' Assn. (1983) (cb30-13)

- **Held**: union exclusive mailbox access policy is constitutional; no viewpoint discrimination because mailbox access is given "neutrally" to whoever is bargaining representative; no public forum because state only opened mailbox to limited audience.

Minnesota State Board for Community Colleges v. Knight (1984) (cb30-23)

- **Held**: state does not violate First Amendment when it excludes non-union bargaining unit members from session discussing nonmandatory subjects because the "meet and confer" session is not a public forum; state can choose whom it wants to listen to in limited access forum.
- Challenged statute in limited access context need only "rationally further a legitimate state purpose."

Union Security

Statutory Rules

NLRB v. General Motors Corp. (1963) (cb31-6)

- **Held**: for purposes of union security under the NLRA, "membership" simply means paying the agency fee.

Railway Employees' Department v. Hanson (1956) (cb32-1)

- **Held**: provision of RLA which preempts state "right-to-work" laws does not violate First Amendment and is appropriate legislative measure to insure industrial peace.
- Case agrees that preemption is "state action," even though statute only *enables* private parties to make union security agreement. (Cf. corporate enabling statutes; no state action from corporate action).

Int'l. Ass'n. of Machinists v. Street (1961) (cb32-6)

- **Held**: RLA union security provision was intended to prevent "free-riders" but does not permit unions to force employees, over their objection, to support political causes which they oppose.
- **Held**: employee must make dissent affirmatively known and is then entitled to refund of funds.

Communications Workers of America v. Beck (1988) (cb32-35)

- **Held**: NLRA should be interpreted as RLA was in *Street*, to permit compulsory agency fees but not dues to support ideological activities.
- Avoided constitutional questions entirely; no "preemption state action" as there was in *Street*.

Constitutional Analysis

Abood v. Detroit Board of Education (1977) (cb32-19)

- **Held**: differences between public- and private-sector employment do not translate into different First Amendment rights, so compulsory dues for collective bargaining does not violate constitution, but member cannot be compelled, consistent with First Amendment, to fund union ideological activities.

Expenditure Types

Ellis v. Brotherhood of Railway, Airline & Steamship Clerks (1984) (cb33-1)

- **Held**: RLA only permits compulsory dues if challenged expenditure is necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.
- Court permits dues for conventions, social activities (that are open to non-members), publications (but only nonpolitical fraction of publications), litigation incident to negotiating and administering contract; but rejects organizing and general litigation expenses.

UFCW Local 1036 v. NLRB (2002) (cb33-11)

- **Held**: NLRA permits compulsory dues for organizing, unlike RLA.
- Ninth Circuit Opinion—not followed in other circuits.