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We will supplement in class discussions electronically. I encourage you to e-mail me questions and comments about the material we discuss in class. Unless you specify that you want your e-mail to remain confidential, if I believe the question or comment could be of general interest to the class, I will forward it together with my response to the entire class. I encourage all students in the class to respond and continue the discussion.

Office Hours: No appointment is necessary. Simply come by anytime. I am usually there.

Texts: We will not be using a published casebook this semester. Instead we will be using the draft of a casebook on which I am co-author. Dau-Schmidt, Malin, Corrada, Cameron & Fisk, Labor Law for the Contemporary Workplace. The draft is posted on the class website. I will provide you with a username and password to access the draft. You are prohibited from giving out this information. Disseminating the username and password to anyone not enrolled in the class will be treated as a violation of the Code of Conduct. We welcome your comments on the draft as the semester progresses. Your comments will assist us in improving the final version before it is sent to the publisher, Thomson/West.

Grades: Final exam grade which may be raised or lowered based on class participation.

You are expected to attend class and to be prepared regularly. I usually do not take attendance (except in my seminar) but because the class is so small, you do a major disservice to your classmates by being absent unnecessarily. Therefore, an attendance sheet will be circulated at each class. It is your responsibility to make sure you sign it. We will use a no fault attendance system. Anyone absent more than six times (slightly more than 20% of the classes) will lose one grade increment (e.g., from an A to an A-, from an A- to a B+, etc.) for each additional absence.
Relief from this rule will be available only if every absence is due to exceptional circumstances. If, however, you blow off five classes and then miss two classes because of serious illness, relief will not be available.

Final exam is open book and open note to the following extent: You may bring and use the casebook, any handouts distributed in class or via the class website, printouts of any NLRB decisions assigned during the semester, and any notes personally prepared by you or prepared jointly with other members of the class.

**Computer Tutorial:** I have developed a computer exercise designed to teach NLRB procedure. Every student is required to do this exercise on or before September 17, 2007. The tutorial is available on the class website. The site is protected by a username and password which you will receive in class. You are prohibited from giving out this information. Disseminating the username and password to anyone not enrolled in the class will be treated as a violation of the Code of Conduct.

To use this tutorial, download a copy of Neuron 7.2, available at: [ftp://ftp.sumtotalsystems.com/pub/tb2/neuron/72/neuron.exe](ftp://ftp.sumtotalsystems.com/pub/tb2/neuron/72/neuron.exe). If you already have a newer copy of Neuron on your computer, be aware that the tutorial will not work as well and you may experience errors. If you experience errors, please refer to the instructions available on the website.

**Upcoming Conferences:** Students are encouraged to attend our upcoming conferences on Federal Sector Labor Law on September 2, and on Illinois Public Sector Labor Law on October 19. You may attend at no charge, but must register in advance, by e-mailing clestaff@kentlaw.edu or calling 312-906-5090. If you wish to receive a set of course materials and receive meals, you must volunteer to help work the registration table. You may volunteer when you register.

**Upcoming Distinguished Labor Leader Lecture:** On October 30, 2007, UFCW International President Joseph Hansen will deliver the 8th annual Distinguished Labor Leader Lecture. There will be a pre-lecture reception at 12 noon with the lecture to follow at 1:00 p.m.

**NLRB Website:** [www.nlrb.gov](http://www.nlrb.gov). This is a very useful website and you should visit it. It contains full text of NLRB decisions and of NLRB General Counsel Advice Memoranda, among other things.
Initial Assignment Schedule

August 27:  **Introduction**

Read Chapter 1, The Evolution of the Contemporary Workplace, pp. 1-57. (Please note that these are manuscript pages which are shorter than published casebook pages.) Also consider the following problem (you will want to consult the Norris-LaGuradia Act, 29 U.S.C. §§ 101 - 115):

Your client is a trucking company which transports new cars from factories in and around Detroit, Michigan to new car dealers across the country. Your client has been party to a contract with other new car transport companies and the International Brotherhood of Teamsters, Local 299. The contract has a provision prohibiting strikes during its term.

The contract was about to expire. Negotiations were progressing but a new agreement had not been reached. Your client and the other trucking companies agreed with the union to extend the old contract, including its no strike clause, and to make any increases in wages and benefits that might ultimately be agreed to in a new contract retroactive to the date the old contract that was scheduled to expire. Eventually, the parties agreed on a new contract. However, the Local 299 membership rejected it in a ratification vote.

Your client and the union leadership returned to the bargaining table. They again agreed to extend the old contract and to make increases in wages and benefits that might ultimately be agreed to in a new contract retroactive. When this agreement was announced, the members of Local 299, against the directives of the local's leadership, struck your client and the other trucking companies. Their picket signs complain of sweetheart deals between the Local’s officials and the employers, corrupt Local officials, failure to prosecute grievances vigorously, and a general lack of leadership. Your client’s entire operation has been shut down, as have the operations of the other new car transport companies. The auto manufacturers' inventory is piling up and they have threatened to move as much of the work as possible to the railroads. What advice can you give your client regarding its legal options?

August 29:  **The NLRA: Overview and Coverage**

Read Chapter 1, pp. 57-88; Chapter 2, pp. 27-45

When you think of an independent contractor, what type of individual comes to mind. It is probably not a taxi driver. When you think of which workers have a greater need for collective bargaining, do you think of Carlos Zambrano or the
taxi driver who drives him to Wrigley Field? Yet, Zambrano is an employee covered by the NLRA and is represented by a union, the Major League Baseball Players’ Association - AFL-CIO and is covered by a collective bargaining agreement, whereas, as you learned from the Seafarers case, the taxi driver has no NLRA rights. Does this make sense? Can there be any method to this madness? Consider the approach in Canada as exemplified by the Saskatchewan statute quoted in Note 2 on page 27. How does the approach to defining “employee” in Canada differ from the approach in the U.S.? Does your answer to that question help you in your search for a method in the madness of granting collective bargaining rights to professional athletes but not to taxi drivers?

The issue in Oakwood Care Center arises in a different manner but is in many ways similar to the issue in Seafarers. There is no question that leased employees are employees under the NLRA. At issue in Oakwood Care and in Sturgis, the decision it overruled, is whether to combine those employees with the workers employed directly by the lessor for purposes of collective bargaining. What are the practical effects of combining them or making them organize separately? Why do you think employers choose to lease employees from other companies when those employees work side-by-side with the employer’s regular workers, performing identical tasks under the same supervisors? Does your analysis of the “method to the madness” of giving professional athletes collective bargaining rights while denying them to taxi drivers help you decide whether Oakwood or Sturgis is the better approach? The practice of leasing employees was unknown in 1935 when the NLRA was enacted or in 1947 and 1959 when it was last amended in any major way. Is this relevant to resolving the question?

September 3: Happy Labor Day!

September 5: NLRA Coverage Continued

Read Ch. 2, pp. 2-21, 52-83

The RLA, 45 U.S.C. § 151 Fifth, defines employee as, “every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of this service) who performs any work defined as that of an employee or subordinate official . . .” 45 U.S.C. § 181 refers to employees of air carriers as “any pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.” How does this compare to the NLRA definition?
September 10: **Section 7 - the Heart of the NLRA**

Read Chapter 3, pp.1-33, and New York City Transit Authority v. PERB (posted on class website).

Compare the language of Section 7 of the NLRA to the Railway Labor Act, 45 U.S.C. § 152 Fourth, which declares simply, “Employees shall have the right to organize and bargain collectively through representatives of their own choosing.” Why might the NLRA protect “other concerted activity for mutual aid and protection” while the RLA lacks such language. Consider the significance of the distinction. Note that in the public sector, most states have adopted section 7 but some have not included the “other concerted activity” language, most notably California, New York and Oregon. Why might a state exclude such language from its definition of protected activity?

September 12: Rosh Hashana - no class

September 17: **The Essence of Collective Representation**

Read Ch. 3, pp. 33-66.

September 19: **Union Access to Employees**

Read Ch. 4, pp. 1-27, 33-34 (top).

September 24: **Regulating the content of speech**

Read Ch. 4, pp.27-33. We will watch employer and union campaign propaganda films.

September 26 **Other Forms of Employer Interference and Employer Discrimination**

Read Ch. 4, pp. 34-46.

October 1: **The Representation Election as the Route to Recognition**

Read Ch. 4, pp. 91-100. (You may also want to read pp. 79-82, which cover material covered in the tutorial). Consider the following problem:

At Hi-Tec Services, Inc., the IBEW has filed a representation petition seeking an election in a bargaining unit consisting of all CSRs who are located in the State of Illinois. CSRs are supervised, electronically, by Customer Service Managers (CSMs). Each CSM has a territory. There
are two CSMs covering Illinois. One CSM is responsible for the State of Illinois north of Interstate 80. The other CSM is responsible for the State of Illinois south of Interstate 80. The CSMs occasionally assign work, although most often work is assigned from Hi-Tec's dispatchers who are located in three regional offices (East, Central and West). Illinois falls in the Central Region. CSMs are available for electronic consultation by the CSRs in their territories when the CSRs are having problems that require advice or assistance. CSMs also are the first line of contact by a customer with a complaint of concern. The dispatchers sometimes consult the CSMs prior to assigning a particular job. CSMs are furnished copies of all comments submitted by a customer concerning CSRs in their territories. CSMs are expected to monitor these comments and, if a pattern of negative comments develops, a CSM is expected to contact the CSR and offer assistance. CSM's do not complete performance appraisals of the CSRs and have no authority to discipline them. CSMs have, on a very few occasions, recommended discipline. The recommendation goes to the regional office, where the regional vice president has authority to administer discipline up to a 30 day suspension. Discharges must be approved by the Vice President of Operations, who is based in the West regional office in Seattle. CSMs spend 85 percent of their time working by themselves servicing customers. The dispatchers generally assign the most difficult or complex assignments to the CSMs.

CSRs in Illinois work almost exclusively in Illinois, except for a few times where one has been sent to assist with a customer in a neighboring state. There also have been a few occasions where CSRs from the St. Louis area have been dispatched to service customers in southern Illinois because Hi-Tec has few customers in southern Illinois and the St. Louis CSRs were geographically closer to those customers than the nearest Illinois CSR.

As counsel for Hi-Tec, how should you respond to the representation petition?

October 3:  
**By-passing the Election: Pressuring the Employer for Voluntary Recognition**

Read Ch. 4, pp. 66-79.

October 8:  
**By-passing the Election: Voluntary Recognition**

Read Ch.4, pp. 49-65; Dana Corp. Nos. JD-24-05 (NLRB ALJ April 11, 2005), Shaw’s Supermarkets, 343 NLRB 963 (2004), and Dana Corp., 341
NLRB 1283 (2004), all available on the NLRB’s website.

October 10: **By-Passing the Election: Forcing Recognition**

Read Ch. 4, pp. 87-90, 82-85

As you read *Gissel*, consider the possible rationales for the bargaining order. Is it issued as a remedy for the employer's unfair labor practices (e.g. 8(a)(1), 8(a)(2), and 8(a)(3) violations? If so, what is the rationale? Is it based on the employer's duties under §§ 8(a)(5) and 8(d)? If so, what is the rationale? Does the Court tell us in *Linden Lumber*? What difference does it make which basis for *Gissel* we adopt? Consider the situation where the employer has committed outrageous unfair labor practices but the union never got a majority of the employees signed on authorization cards. Consider the situation where the employer commits no unfair labor practices but takes a *Struckness* poll and learns that 52 percent of the employees desire union representation.