

Public Sector Employment Seminar
Fall 2009
Professor Malin

SYLLABUS

Office: Room 843

Telephone: 906-5056

E-mail: mmalin@kentlaw.edu

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

Texts: *Public Sector Employment: Cases and Materials*, by Joseph Grodin, June Weisberger and Martin Malin (West 2004) and supplemental materials available on the class website.

Grades: Research Paper - 60 percent

Your paper must be on a topic approved by me dealing with the law governing the public sector workplace. A list of suggested topics is attached. These are only suggestions and I encourage you to come up with your own topic, regardless of whether it looks anything like the suggestions. Your topic must receive my approval. In addition, each student is required to meet with me at least once prior to the due date for first drafts to discuss your approach to the paper. Additional meetings are encouraged.

The paper must be at least 25 pages long, double-spaced, one-inch margins, 12 point times new Roman font, exclusive of footnotes. It must be typed or word processed. You will be required to produce a first draft and a final draft. **Your first draft is not a rough draft. It is expected to be a polished paper -- your best effort.** I will read it, comment extensively on it and meet individually with you to suggest ways to improve it. The individual meeting is required. After the meeting you will prepare a final draft. Your grade will reflect your effort on the first draft, your improvement in light of the comments that I make, and the overall quality of the final product.

Please note - writing a research paper is not like writing a brief or a memo. For many of you, this will be your first exposure to this type of legal writing. "Writing a Student Article" by Eugene Volokh is a useful introduction to the subject. I also recommend *Scholarly Writing for Law*

Students by Fajans and Falk (West 1995) as a useful supplemental guide. Of course, if you have questions about the scholarly research and writing process, you should contact me.

Also please note that a first draft and a final draft are the required minimum. I am willing to work individually with you on interim drafts to help you improve the final product. If your first draft is greatly deficient, I may require an interim draft. I encourage you to strive to make your paper publishable and then submit it to appropriate journals for possible publication and/or to writing competitions.

In Class Presentation - 20 percent

A key characteristic of a seminar is that the students truly learn from each other. To this end, you are required to make an approximately 30 minute in-class presentation concerning the topic on which you are writing. In advance of the presentation, you are to develop a reading assignment for the class. You are to then lead a class discussion on the topic in light of the reading assignment. The expectation is that your classmates will learn from you concerning your topic and you will learn from their discussion of your topic and the reading you assigned them.

You must meet with me to discuss your presentation and to obtain my approval of the reading assignment. I will have it photocopied and distributed to the class. Therefore, you must submit your proposed reading assignment to me sufficiently in advance of the class before the class in which you present so that I can approve it and discuss any modifications which may be necessary.

Class Participation - 20 percent

Class participation is defined broadly. It includes your participation in discussion of the material that I assign. It also includes participation in the discussion led by your classmates when they give their presentations. Furthermore, we will have an E-mail mailing list for all students in the class. Because we meet only once each week, we will use E-mail to continue our discussions of the material from the previous class and of the material for the class coming up. Class participation includes participation in the e-mail discussions.

Finally, class participation includes attendance. Your attendance is crucial to the success of the class. Your classmates cannot learn from you or you from them if you are absent. You are expected to attend every class. We will use a no fault attendance system. I will take attendance each class. Anyone absent more than three times 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 two classes and then miss two classes because of serious illness, relief will not be available.

Schedule and Deadlines: Topics must be approved by 4:00 p.m. Monday, September 14, 2009. You should have submitted to me a written topic proposal.

First drafts are due by 4:00 p.m. Monday, November 2, 2009.

A schedule for Presentations and a sign-up sheet will be posted in the near future. Sign-up for presentation slots will be on a first come, first served basis.

Final Papers are due by 4 p.m. Monday, December 21, 2009. You may turn your paper in to me or to my assistant, Sharon Wyatt-Jordan. If you submit your paper to Ms. Wyatt-Jordan, be sure to obtain a receipt documenting the date and time you submitted it.

Late Paper Penalty: A penalty of one grade increment (e.g., from an A to an A-, from an A- to a B+, etc.) will be assessed for every eight hours or fraction thereof that a first draft or final paper is late. The penalty will apply to the grade for the paper. Papers are not considered turned in until they actually are received by my assistant or me. For example, placing the paper in my mailbox at 10 p.m. does not stop the penalty clock until I actually receive your paper (presumably the following morning).

Upcoming Conferences: Students are encouraged to attend our upcoming conferences on Federal Sector Labor Law on September 17, and on Illinois Public Sector Labor Law on November 13. 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.

Initial Assignment Schedule

August 24 **Introduction**
Read Chapter 1; text pp. 1 - 22 and NTEU v. Chertoff (posted on class website)

- August 31 **Constitutional and Civil Service Rights of Public Employees**
Read text pp. 23 - 68, 70-78, 82-88, Garcetti v. Ceballos (posted on class website)
- September 7: **Happy Labor Day!**
- September 14 **Statutory Protection of Union Activity**
Read text pp 92-93, 97-120; read NYC Transit Authority v. PERB, posted on class website;
- September 21 **Routes to Recognition**
Read Chapter 5; read “Card Check Recognition in the Public Sector,” and County of DuPage v. ILRB (Illinois Card Check Case) posted on class website.
- September 28 **No Class - Yom Kippur**
- October 5: **The Duty to Bargain in the Public Sector**
Read Chapter 6
- October 12 **Subjects of Bargaining**
Read text pp 213 - 276
- October 19 **Strikes**
Read Chapter 8
- October 26 **Alternative Impasse Procedures**
Read text pp 326 - 346; 360 - 370; Illinois FOP Labor Council and Village of Fox Lake (posted on class web site)
- November 2: **Enforcing Collective Bargaining Agreements**
Read Chapter 10; text pp 371 - 410

**PUBLIC EMPLOYMENT SEMINAR
POSSIBLE PAPER TOPICS**

This is a list, in no particular order, of possible topics for seminar papers. It is far from exhaustive and is not intended to restrict your selection of a topic. If you have particular ideas you would like to explore, please contact me and we will work them into a topic that is appropriate and manageable. If you choose a topic dealing with traditional union-management law in the public sector, a useful web site is www.alra.org. This is the web site of the Association of Labor Relations Agencies, an organization of all labor relations boards in the United States and Canada. It has links to the web sites of its member agencies which can provide valuable information on statutes, regulations and recent decisions.

Collective bargaining rights of attorneys and/or judicial personnel

Scope of bargaining in the public sector

Scope of bargaining in the federal sector

Constitutional due process rights of public employees in disciplinary matters

Drug testing in the public sector: labor law and/or constitutional law concerns

Union Security Fees: What may a union charge an objecting fee payer?

Union Security Fees: Constitutionally required due process procedures

Enforcement of collective bargaining agreements in the public sector

Public sector strike prohibitions

Interest arbitration in the public sector

First Amendment rights of public employees

"Bargaining in the Sunshine"

Supervisors and managers - a comparison of different approaches in the public sector

Off-duty conduct as a basis for discipline of public employees

Relationship between collective bargaining and civil service and tenure systems

Public sector strike injunctions

Privacy rights of public employees

Restrictions on public employee political activities

The duty to disclose information in the public sector

The duty of fair representation in the public sector

Bargaining unit determinations in the public sector

Privatization

Charter schools and collective bargaining

Fair Labor Standards Act issues in the public sector

Deferral to arbitration by public sector labor boards

The scope of Eleventh Amendment sovereign immunity

Civil Service Systems - procedures and/or substantive standards

Teacher tenure systems - procedures and/or substantive standards

Public Sector Collective Bargaining in the Absence of a Statute

Federal Sector Labor Law and National Security

Retiree benefits in the public sector

Collective Bargaining for Non-standard Employment Relationships, such as Home Health Care Workers and Day Care Providers

Topics related to specific types of public employees: e.g. teachers, police, firefighters, etc.