

Understanding

LABOR LAW

THIRD EDITION



Douglas E. Ray
Calvin William Sharpe
Robert N. Strassfeld

UNDERSTANDING LABOR LAW

THIRD EDITION

Douglas E. Ray

Dean and Professor of Law

St. Thomas University School of Law

Calvin William Sharpe

Galen J. Roush Professor of Business Law and Regulation and

Founding Director, CISCOR (Center for the Interdisciplinary Study of
Conflict & Dispute Resolution)

Case Western Reserve University Law School

Robert N. Strassfeld

Professor of Law

Case Western Reserve University Law School

常州大学图书馆
藏书章



LexisNexis®

ISBN: 978-1-4224-7026-8

Library of Congress Cataloging-in-Publication Data

Ray, Douglas E., 1947-
Understanding labor law / Douglas E. Ray, Calvin William Sharpe, Robert N. Strassfeld. -- 3rd ed.
p. cm.
Includes index.
ISBN 978-1-4224-7026-8 (soft cover)
1. Labor laws and legislation--United States. I. Sharpe, Calvin William, 1945- II. Strassfeld, Robert N. III. Title.
KF3369.R388 2011
344.7301--dc22
2011013561

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2011 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexus.com/lawschool.

Editorial Offices

121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexus.com

UNDERSTANDING LABOR LAW Third Edition

LexisNexis Law School Publishing Advisory Board

William Araiza

Professor of Law

Brooklyn Law School

Lenni B. Benson

Professor of Law & Associate Dean for Professional Development

New York Law School

Raj Bhala

Rice Distinguished Professor

University of Kansas, School of Law

Ruth Colker

Distinguished University Professor & Heck-Faust Memorial Chair in Constitutional Law

Ohio State University, Moritz College of Law

David Gamage

Assistant Professor of Law

UC Berkeley School of Law

Joan Heminway

College of Law Distinguished Professor of Law

University of Tennessee College of Law

Edward Imwinkelried

Edward L. Barrett, Jr. Professor of Law

UC Davis School of Law

David I. C. Thomson

LP Professor & Director, Lawyering Process Program

University of Denver, Sturm College of Law

Melissa Weresh

Director of Legal Writing and Professor of Law

Drake University Law School

PREFACE

This book examines the multifaceted and complex law of private-sector labor law. It is a broad and interesting field. Labor legislation has shaped our country's labor relations system and labor law remains an important and evolving part of national policy and the framework of rights that defines our society. We think you will enjoy and benefit from its study.

Because the book focuses on relations between management and labor in the private sector, it deals primarily with the National Labor Relations Act, as amended, and its interpretation and application by the federal courts and the National Labor Relations Board. We have sought to include discussion of major cases found in standard casebooks on the subject and, where appropriate, bring in additional cases and other sources to help the reader reach a fuller understanding. We have especially sought to discuss the practical implications of doctrines as well as the interrelationships between them.

The treatise is organized in a format that is consistent with the organization of most Labor Law courses. At the end of each chapter is a section titled "Chapter Highlights." This section is intended to summarize some of the major doctrines discussed in the chapter and should be helpful for review and clarification purposes. Topics chosen for this treatment include matters which our combined teaching experience tells us are frequently misunderstood.

We wish to thank a number of people for the help they provided on this book.

Douglas E. Ray thanks many. This book would not exist without the legal intelligence, sterling assistance, and dedication of several. Their inspiration made this book possible. For the third edition, I thank Shirley Baker of the University of Toledo College of Law for her expert editing and production assistance and Tom Crishon and Colleen Neary for the research assistance they provided while Toledo Law students. For help with the second edition, I thank Paula Garrison, Constance Sweeney and Linda Triolo of the Widener University School of Law Dean's Office for their production assistance and Widener law graduates Emily Abbott Vanderweide, Daniel Brown, Melissa Donimirski and Alicia Kratzer for the research assistance they provided. For assistance on the first edition, I am grateful to Lin Whalen, formerly of the University of Toledo College of Law, for her help and to University of Toledo law graduates Debra Baker, Josh Bills, and Judy Fornalik Phillips for their research efforts. Finally, I express my thanks to my co-authors for their friendship and all I have learned from them and to my former labor law students whose interest and questions have expanded my understanding.

Professor Sharpe is grateful for the dedicated clerical assistance of Rebecca Wright, who coordinated the development of his chapters and consolidated the entire project. Dawn Richards provided valuable clerical assistance on the second edition and Jennifer Hines on the third edition. Professor Sharpe also benefitted from the excellent research assistance of Geoffrey Ashley and Phil Strzalka. Kevin Shebesta continued this quality of research assistance on the second edition, and Matt Kissling on the third edition. Professor Sharpe received generous financial support while he worked on this project. Case Western Reserve University Law School provided a grant for the completion of this project and the Chicago-Kent College of Law provided facilities and a stimulating intellectual environment during Professor Sharpe's sabbatical, when he commenced

PREFACE

writing the first edition. Grants from Case enabled completion of the second and third editions. For Professor Sharpe, any clarity in the presentation of this material reflects an ongoing effort to meet the intellectual demands of enthusiastic students during his years of teaching the subject at Case Western Reserve, the University of Virginia, Wake Forest, George Washington, Arizona State, DePaul, the University of Minnesota, and Seton Hall law schools.

Professor Strassfeld wishes to thank Alice Hunt for her usual exceptional secretarial support and Carrie Nixon and Brian Wassom for their able research assistance for the first edition. For her excellent research assistance for the second edition, he thanks Catherine Beck. Christopher Diehl provided similarly superb and thorough research for the third edition, for which I offer my thanks. He also thanks Professor Douglas Leslie for nurturing his interest in labor law while in law school and after; Professor Calvin Sharpe, for his support and collegiality over the past nearly two decades; and Dean Douglas E. Ray for his friendship, equanimity, and wisdom. Professor Strassfeld is grateful, as well, to his past and current labor law students who have made labor law a gratifying subject to teach and who have in countless ways added to and influenced the story he has to tell. He thanks Case Western Reserve University School of Law, which has, in addition to providing an opportunity to teach labor law and advanced labor law, also provided summer research support for this project. Finally, at the risk of sounding trite, he thanks his wife Anne Strassfeld, and sons Jonathan and Daniel for their support and forbearance in the face of shirked household jobs and unplayed games of running bases.

We all wish to thank the members of the editorial staff at LexisNexis for their efforts in the production of this book. Special thanks are due Cristina Gegenschatz (Practice Area Editor) for her help in making the second edition a reality, to Christopher Van Cleve (Editor) and all others at LexisNexis whose efforts contributed to the publication of this book.

We would appreciate your suggestions and reactions. Chapters 6, 8, 9, 10, 11 and 12 were the primary responsibility of Douglas Ray; Chapters 2, 3, 5, 7, 13, 16 and 18 were the primary responsibility of Calvin Sharpe; and Robert Strassfeld was primarily responsible for Chapters 1, 4, 14, 15 and 17.

Douglas E. Ray

Calvin William Sharpe

Robert N. Strassfeld

Dedication

DER: To my family and to the memory of my mother, Hazel Ray.

CWS: To my wife, Jan, my son, Kabral, my daughters, Melanie and Stevie, daughter-in-law Nikki, and grandson Isaiah with love.

RNS: To the memory of my mother, Ruth Strassfeld, and to my father, Meyer Strassfeld, who with their words and deeds taught me the importance of social justice; and in memory of my granduncle Tony, who, because he believed in One Big Union, would have greeted this project with kindhearted skepticism.

TABLE OF CONTENTS

Chapter 1	INTRODUCTION	1
§ 1.01	INTRODUCTION: THE ROOTS OF AMERICAN LABOR LAW	1
§ 1.02	REGULATION OF MASTER-SERVANT RELATIONS IN ANTEBELLUM AMERICA	2
[A]	Beginnings of an American Labor Movement	2
[B]	Criminal Conspiracy	3
§ 1.03	EMERGENCE OF A NATIONAL LABOR MOVEMENT AND THE EXPANSION OF JUDICIAL INTERVENTION	4
[A]	Rise of the Labor Movement	4
[B]	The Labor Injunction	5
[C]	Labor and the Sherman Act	7
[D]	Labor's Response to Judicial Intervention: The Triumph of Bread and Butter Unionism	7
§ 1.04	EARLY LABOR LEGISLATION	8
[A]	Railway Labor Act	8
[B]	Norris-LaGuardia Act	8
§ 1.05	THE NATIONAL LABOR RELATIONS ACT	9
[A]	Wagner Act	9
[1]	The New Deal and the NLRA	9
[2]	The Purposes of the Act	9
[3]	Principle Features	10
[B]	Labor Management Relations Act (Taft-Hartley)	11
[C]	Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin)	11
Chapter 2	THE NATIONAL LABOR RELATIONS BOARD	13
§ 2.01	NLRB JURISDICTION	13
§ 2.02	NLRB ORGANIZATION	21
§ 2.03	PROCEDURE IN UNFAIR LABOR PRACTICE CASES	23
§ 2.04	CHAPTER HIGHLIGHTS	31
Chapter 3	THE AT-WILL DOCTRINE, EXCEPTIONS AND THEIR LIMITS	33
§ 3.01	INTRODUCTION	33
§ 3.02	DEFINITION AND HISTORY OF THE AT-WILL DOCTRINE	33
§ 3.03	COMMON LAW EROSIONS OF THE AT-WILL DOCTRINE	35
[A]	Contract Erosions	35
[1]	Express Contracts	35

TABLE OF CONTENTS

[2]	Reliance and Implied-In-Fact Contracts	37
[3]	Employment Manuals	40
[4]	Disclaimers	42
[B]	Tort Erosions	43
[1]	Public Policy Violations	44
[a]	Refusal to Commit Unlawful Acts	44
[b]	Fulfilling a Public Obligation	45
[c]	Exercising a Statutory Right	46
[d]	Whistleblowing	46
[2]	Intentional Infliction of Emotional Distress	48
[C]	Good Faith Limitations	49
[D]	Other Issues Affecting Employer Sovereignty	51
§ 3.04	LEGISLATIVE EROSIONS AND THE PROPOSED RESTATEMENT	54
[A]	Legislative Erosions	54
[B]	The Proposed Restatement of Employment Law	55
§ 3.05	CHAPTER HIGHLIGHTS	56
§ 3.06	CHART	56

Chapter 4 SELECTING A BARGAINING REPRESENTATIVE: THE RIGHT TO ORGANIZE AND THE REPRESENTATION ELECTION 59

§ 4.01	INTRODUCTION	59
§ 4.02	ELECTION PROCEDURE	60
[A]	Initiation of the Process	60
[B]	Grounds for Dismissing the Election Petition	61
[C]	Bargaining Unit Determination	65
[D]	Conduct of Elections	67
[E]	Judicial Review of Representation Elections	68
[F]	Construction Industry Prehire Agreements	69
§ 4.03	SAFEGUARDING THE RIGHT OF SELF-ORGANIZATION	69
[A]	Introduction	69
[B]	Access to the Employer's Property for Campaign Purposes	69
[1]	Employer Restrictions on Access by Nonemployee Union Organizers	70
[2]	The Shopping Center Cases	73
[3]	<i>Babcock & Wilcox</i> Revisited: <i>Lechmere Inc. v. NLRB</i>	76
[C]	Employer Restrictions on Organizational Activity on Its Property	78
[1]	Restrictions on Solicitation by Employees: <i>Republic Aviation</i>	78
[2]	The Content of Union Literature and the Protection of Section 8(a)(1)	82
[3]	Captive Audience Speeches and the Right of Equal Access	83

TABLE OF CONTENTS

[D]	Alternative Means to Reach Employees with the Union's Message: Email and Salts, Two more Closing Doors?	85
[E]	Wrap up on Access and Solicitation	89
[F]	Election Propaganda: Employer and Union Speech	89
[1]	Predictions and Threats of Reprisal	90
[2]	False Statements and Forgeries	93
[3]	Appeals to Racist Sentiments and Bigotry	96
[G]	Other Interference With the Right to Self-Organization	96
[1]	Polling, Interrogation, and Surveillance	96
[2]	Promises and Inducements	98
§ 4.04	RETALIATION IN RESPONSE TO ORGANIZATION AND THE EXERCISE OF SECTION 7 RIGHTS	103
[A]	Protection Under Section 8(a)(3) Against Discrimination	103
[B]	Going Out of Business, Partial Shutdowns, and Runaway Shops	104
[C]	A Brief Note on Intent	107
§ 4.05	AVOIDING OR ALTERING THE NLRB ELECTION PROCESS BY AGREEMENT	108
§ 4.06	REMEDIES FOR INTERFERENCE WITH ORGANIZATIONAL AND OTHER SECTION 7 RIGHTS	111
[A]	Remedies for Sections 8(a)(1) and 8(a)(3) Violations	111
[B]	Bargaining Orders as a Remedy for Employer Misconduct	112
§ 4.07	CHAPTER HIGHLIGHTS	115

Chapter 5 EMPLOYER DOMINATION AND ASSISTANCE 117

§ 5.01	INTRODUCTION	117
§ 5.02	LABOR ORGANIZATION	117
§ 5.03	DOMINATION	121
§ 5.04	INTERFERENCE	122
§ 5.05	THE <i>MIDWEST PIPING</i> DOCTRINE	125
§ 5.06	LABOR-MANAGEMENT COOPERATION POLICY	129
§ 5.07	CHAPTER HIGHLIGHTS	133

Chapter 6 PICKETING AND STRIKING FOR RECOGNITION ... 135

§ 6.01	INTRODUCTION	135
§ 6.02	SECTION 8(b)(7) AND ITS ORIGINS	136
§ 6.03	WHAT IS PICKETING?	139
§ 6.04	WHAT CONSTITUTES AN OBJECT OF RECOGNITION OR ORGANIZATION?	139
[A]	Generally	139
[B]	Area Standards Picketing	141
[C]	Picketing to Protest Unfair Labor Practices	142

TABLE OF CONTENTS

§ 6.05	APPLYING SECTION 8(b)(7)(A)	144
§ 6.06	APPLYING SECTION 8(b)(7)(B)	145
§ 6.07	APPLYING SECTION 8(b)(7)(C)	146
[A]	Generally	146
[B]	What is a “Reasonable Period”?	148
[C]	The Expedited Election Proviso	148
[D]	The Publicity Proviso	149
§ 6.08	EMPLOYEE RIGHTS AND THE PROTECTED STATUS OF ORGANIZATIONAL PICKETING AND STRIKES	151
[A]	Generally	151
[B]	Rights of Organizational Strikers	151
[C]	Access to Property Issues	152
§ 6.09	CHAPTER HIGHLIGHTS	153

Chapter 7 COLLECTIVE BARGAINING AND THE EXCLUSIVE REPRESENTATIVE 155

§ 7.01	INTRODUCTION	155
§ 7.02	DESIGNATED OR SELECTED	155
§ 7.03	EXCLUSIVITY	157
§ 7.04	BARGAINING BEFORE THE EXECUTION OF THE AGREEMENT	163
[A]	The Duty to Bargain in Good Faith	163
[1]	Good Faith Violations	165
[2]	<i>Per Se</i> Violations	167
[B]	Subjects of Collective Bargaining	173
[C]	Multiemployer and Multiunion Bargaining	179
§ 7.05	EXECUTION OF THE AGREEMENT	182
§ 7.06	BARGAINING DURING THE TERM OF THE AGREEMENT	183
[A]	Surviving Duties	183
[B]	Enforcement Jurisdiction	186
[C]	Mid-Term Modifications	186
[D]	The Bankruptcy Laws	191
§ 7.07	REMEDIES FOR VIOLATIONS OF THE DUTY TO BARGAIN	192
§ 7.08	CHAPTER HIGHLIGHTS	194

Chapter 8 DURATION OF UNION’S STATUS AS BARGAINING REPRESENTATIVE 197

§ 8.01	INTRODUCTION	197
§ 8.02	THE PRESUMPTION OF CONTINUED MAJORITY STATUS	197
[A]	Irrebuttable Presumptions	197
[1]	Certification Year	198
[2]	Voluntarily Recognized Unions	198

TABLE OF CONTENTS

[3]	Contract Bar	200
[B]	Rebuttable Presumptions	200
§ 8.03	SUCCESSORSHIP	201
[A]	Generally	201
[B]	The <i>Burns</i> Decision	201
[C]	The <i>Fall River</i> Decision	203
[D]	Presumption of Continued Majority Status in a Successor Situation ...	205
§ 8.04	LOSS OF REPRESENTATIVE STATUS	205
[A]	Generally	205
[B]	Withdrawal of Recognition	206
[1]	The Test	206
[2]	<i>Allentown Mack</i>	207
[3]	<i>Levitz Furniture</i>	208
[4]	Polling	208
[5]	Consequences of an Unlawful Withdrawal of Recognition	209
[C]	Employer Petition for Election	210
[D]	Decertification Elections	211
§ 8.05	CHAPTER HIGHLIGHTS	212
Chapter 9	STRIKES	215
§ 9.01	INTRODUCTION	215
§ 9.02	STATUTORY NOTICE REQUIREMENTS	215
[A]	Generally	215
[B]	Health Care Industry Notice Requirements	217
§ 9.03	NO-STRIKE CLAUSES AS A LIMIT ON THE RIGHT TO STRIKE ..	219
§ 9.04	EMPLOYER INTERFERENCE WITH THE RIGHT TO STRIKE	221
[A]	Generally	221
[B]	Threats to Discharge or Replace Strikers	221
[C]	Discharge of Strikers	222
[D]	<i>Erie Resistor</i> and Inducements to Return to Work	223
[E]	Payment or Withholding of Benefits During a Strike	223
[F]	Treatment of Former Strikers	225
§ 9.05	EMPLOYER COUNTERMEASURES AND REPLACEMENT ISSUES	226
[A]	Generally	226
[B]	Temporary Replacements	226
[C]	Permanent Replacements	227
[D]	Status of Replacements as Permanent or Temporary	230
[E]	Status of Permanently Replaced Economic Strikers	231
[F]	Reinstatement Rights of Permanently Replaced Strikers	232
[G]	Reinstatement Rights of Unfair Labor Practice Strikers	234

TABLE OF CONTENTS

[H]	Suits by Displaced Replacements	235
§ 9.06	UNPROTECTED ACTIVITY AND THE STRIKE	235
[A]	Discharge of Strikers for Misconduct	235
[B]	State Court Injunctions	238
[C]	Civil Actions	239
[D]	Unfair Labor Practice Charges Against the Union	240
§ 9.07	UNEMPLOYMENT COMPENSATION AND STRIKES	241
§ 9.08	CHAPTER HIGHLIGHTS	241

Chapter 10 LOCKOUTS 243

§ 10.01	INTRODUCTION	243
§ 10.02	STATUTORY NOTICE PREREQUISITES AND CONTRACTUAL LIMITS	243
[A]	Section 8(d) Notice	243
[B]	Contract Limitations	244
§ 10.03	DEFENSIVE AND OFFENSIVE LOCKOUTS	244
[A]	Defensive Lockouts	245
[B]	Offensive Lockouts	246
[C]	Partial lockouts	247
§ 10.04	GOOD FAITH BARGAINING	247
§ 10.05	REPLACEMENT ISSUES	249
[A]	Generally	249
[B]	Temporary Replacements	249
[1]	Defensive Lockouts	249
[2]	Offensive Lockouts	249
[3]	Limits on Use of Replacements	250
[C]	Permanent Replacements	251
§ 10.06	LOCKOUTS AND UNION MAJORITY STATUS	251
§ 10.07	UNEMPLOYMENT INSURANCE ISSUES	251
§ 10.08	CHAPTER HIGHLIGHTS	252

Chapter 11 SECONDARY BOYCOTTS 253

§ 11.01	INTRODUCTION	253
§ 11.02	PRIMARY EMPLOYER STATUS	255
[A]	Single Employers and Alter Egos	255
[B]	Ally Status and Struck Work	256
§ 11.03	<i>DENVER BUILDING TRADES</i>	257
§ 11.04	THE PRIMARY EMPLOYER ON THE PREMISES OF A NEUTRAL .	257
[A]	Ambulatory Situs	257
[B]	Common Situs	259
[1]	Generally	259

TABLE OF CONTENTS

[2]	Reserved Gates	259
§ 11.05	A NEUTRAL EMPLOYER ON THE PRIMARY'S PROPERTY	261
§ 11.06	HOT CARGO CLAUSES	262
[A]	Work Preservation Issues	263
[B]	Right to Control Issues	265
[C]	Subcontracting Clauses and Union Standards Clauses	266
[D]	Special Rules and Exemptions	266
§ 11.07	JURISDICTIONAL DISPUTES	267
§ 11.08	REMEDIES	267
§ 11.09	CHAPTER HIGHLIGHTS	268
Chapter 12	CONSUMER PICKETING AND HANDBILLING	271
§ 12.01	INTRODUCTION	271
§ 12.02	PRODUCT PICKETING AND <i>TREE FRUITS</i>	271
§ 12.03	<i>SAFECO</i> AND LIMITS ON PRODUCT PICKETING	272
§ 12.04	HANDBILLING	273
[A]	The Publicity Proviso	274
[B]	<i>DeBartolo II</i>	275
[C]	Threats to Handbill	276
§ 12.05	ACCESS TO PRIVATE PROPERTY FOR CONSUMER PICKETING OR HANDBILLING	276
§ 12.06	CHAPTER HIGHLIGHTS	278
Chapter 13	ENFORCEMENT OF THE COLLECTIVE BARGAINING AGREEMENT	279
§ 13.01	INTRODUCTION	279
[A]	History of Arbitration Clauses	279
[B]	The Role of the Courts	280
[1]	<i>Textile Workers v. Lincoln Mills of Alabama</i> and the Developing Common Law	281
[2]	Other Cases	282
§ 13.02	THE <i>STEELWORKERS TRILOGY</i>	283
[A]	<i>United Steelworkers of America v. American Manufacturing Co.</i>	283
[B]	<i>United Steelworkers of America v. Warrior Gulf Navigation Co.</i>	284
[C]	<i>United Steelworkers of America v. Enterprise Wheel & Car Corp.</i>	286
§ 13.03	PUBLIC POLICY CASES	287
[A]	<i>United Paperworkers International Union v. Misco</i>	287
[B]	The Progeny of <i>Misco</i> and <i>W.R. Grace</i>	288
§ 13.04	ENFORCING THE NO-STRIKE CLAUSE	292
[A]	The Norris-LaGuardia Obstacle	292
[B]	<i>Boys Markets, Inc. v. Retail Clerks Union, Local 770</i>	293

TABLE OF CONTENTS

[C]	<i>Buffalo Forge Co. v. United Steelworkers of America</i>	294
[D]	Union and Member Liability Under No-Strike Clauses	294
§ 13.05	THE ARBITRATOR AND THE NLRB DURING THE TERM OF THE AGREEMENT	295
§ 13.06	CHAPTER HIGHLIGHTS	298
Chapter 14	FEDERAL PREEMPTION OF STATE REGULATION .	299
§ 14.01	INTRODUCTION	299
[A]	The Nature of the Problem	299
[B]	Preemption Themes	300
[C]	The Basic Preemption Rules	301
§ 14.02	THE <i>GARMON</i> RULE	302
[A]	Arguably Protected or Arguably Prohibited Conduct	302
[B]	Exceptions to the <i>Garmon</i> Rule	303
[C]	Elaboration and Evolution of the <i>Garmon</i> Rule and its Exceptions	305
§ 14.03	REGULATION OF CONDUCT THAT IS NEITHER PROTECTED NOR PROHIBITED: THE <i>MACHINISTS</i> RULE	310
[A]	Permitted Conduct	310
[B]	Rejection of the <i>Briggs-Stratton</i> Rule	311
[C]	Application of the <i>Machinists</i> Rule	314
§ 14.04	THE GOVERNMENT ACTING IN A PROPRIETARY ROLE	316
§ 14.05	SECTION 301 PREEMPTION	318
§ 14.06	CHAPTER HIGHLIGHTS	321
Chapter 15	RECONCILING LABOR LAW AND THE ANTITRUST LAWS	323
§ 15.01	INTRODUCTION	323
§ 15.02	LABOR ANTITRUST JURISPRUDENCE BEFORE THE NORRIS-LAGUARDIA AND WAGNER ACTS	323
§ 15.03	<i>UNITED STATES v. HUTCHESON</i> AND THE STATUTORY EXEMPTION	325
§ 15.04	<i>ALLEN BRADLEY</i> : UNION-EMPLOYER COLLUSION	327
§ 15.05	<i>PENNINGTON, JEWEL TEA</i> AND THE NONSTATUTORY EXEMPTION	329
§ 15.06	<i>CONNELL CONSTRUCTION COMPANY</i> : FURTHER LIGHT ON THE NONSTATUTORY EXEMPTION?	333
§ 15.07	THE PROFESSIONAL SPORTS CASES	336
§ 15.08	CHAPTER HIGHLIGHTS	338

TABLE OF CONTENTS

Chapter 16 PROTECTING THE INDIVIDUAL IN A UNION AND NON- UNION ENVIRONMENT 339

§ 16.01	THE INDIVIDUAL IN EMPLOYMENT GENERALLY	339
§ 16.02	THE INDIVIDUAL IN THE COLLECTIVE SETTING	340
§ 16.03	THE DUTY OF FAIR REPRESENTATION	340
§ 16.04	SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT	344
[A]	“Concerted” Activity	344
[B]	Ends	346
[C]	Means	347
§ 16.05	CHAPTER HIGHLIGHTS	348

Chapter 17 NLRA REGULATION OF THE RELATIONSHIP BETWEEN THE INDIVIDUAL WORKER AND THE UNION 349

§ 17.01	INTRODUCTION	349
§ 17.02	MEMBERSHIP AND UNION SECURITY AGREEMENTS	349
[A]	Legal and Illegal Union Security Agreements	349
[B]	State Right-to-Work Laws	352
[C]	Dissenter’s Rights: The <i>Beck</i> Decision	353
[D]	Union Hiring Halls	355
[E]	Bargaining Agreement Terms That Favor Union Officers	356
§ 17.03	NLRA REGULATION OF UNION DISCIPLINE	357
§ 17.04	CHAPTER HIGHLIGHTS	361

Chapter 18 LABOR LAW ISSUES IN THE GLOBAL ECONOMY .. 363

§ 18.01	INTRODUCTION	363
§ 18.02	LITIGATION	364
[A]	Extraterritorial Application of Domestic Law	364
[B]	International Standards Litigation in Domestic Courts	365
[1]	<i>Sosa v. Alvarez-Machain</i>	370
[2]	Forum Non Conveniens	373
[3]	Comity	374
[4]	Act of State Doctrine	375
[5]	Foreign Sovereign Immunities Act	375
§ 18.03	ECONOMIC PRESSURE	375
[A]	Labor Standards and Trade	376
[1]	Aggressive Unilateralism	376
[2]	Regional Agreements	379
§ 18.04	MORAL SUASION	382
[A]	The ILO	383
[B]	Specific Groups	385