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Public Sector Employment: Cases and Materials

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PREFACE

Since 1971, when the Labor Law Group first published a casebook on public sector labor law under the authorship of Donald Wollett and Don Sears, the field has changed dramatically. The skepticism which characterized early legislative and judicial attitudes toward collective bargaining in the public sector has been replaced by general acceptance. Union organization in the public sector, in contrast to the private sector, has continued to grow. In 2009, for the first time in history, a majority of union members in the United States were employed by a unit of government. Debates over whether the public sector is different from the private sector have become more nuanced, focusing on the inevitably political context of public sector bargaining and its implications for the structure and processes of bargaining and dispute resolution. And while private sector labor law continues to provide a model for the public sector, there has been a good deal of experimentation, at both federal and state levels, with different ways of structuring the bargaining relationship. Perhaps the most notable experimentation since publication of the prior edition of this book has been the requirement in several states that employers recognize exclusive bargaining representatives on the basis of authorization cards signed by a majority of the members of the bargaining unit, without the need for a representation election.

Succeeding editions of the original casebook, Collective Bargaining in Public Employment, with continued authorship by Donald Wollett along with Joseph Grodin, Reginald Alleyne and, later, June Weisberger, sought to bring developments up to date through modifications within the same basic format. Ten years after the last edition of that book, it became apparent that a brand new volume was required. This new book, Public Sector Employment, first published in 2004, authored by Joseph Grodin, June Weisberger and Martin Malin as a successor to Collective Bargaining in Public Employment, extended coverage to include the individual employee-employer relationship in the public sector, including constitutional rights of public employees and civil service and tenure systems. This edition continues the evolution of the book with expanded coverage of constitutional rights of public employees and civil service and tenure systems. The new edition further develops legislation governing the public sector workplace, including special Fair Labor Standards Act rules and whistleblower protection. It also covers Tenth and Eleventh Amendment limitations on federal regulation of state and local government employment relationships. Accordingly, the book should be useful for courses on public sector employment even in the minority of jurisdictions that have no public employee bargaining statutes.

The new edition updates the material from the first edition. Developments since the first edition have included the debate over the compatibility of collective bargaining for public employees with national security, including
the litigation over regulations issued by the Departments of Defense and Homeland Security that greatly restricted the scope of bargaining; the move by a number of states to requiring card check recognition; and significant constitutional decisions such as *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006) and *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591, 128 S.Ct. 2146, 170 L.Ed.2d 975 (2008). References to statutes and regulations are current as of at least July 2010. We have retained the emphasis upon state law but, we have included substantial references to developments regarding federal employee labor relations. We continue to contrast public sector employment with the private sector, and to raise questions concerning the degree to which the private sector model should apply when government is the employer.

It remains the case that there is no one body of public sector labor law. Indeed, one of the attractions of courses on public sector employment is that the different jurisdictions truly serve as laboratories for different approaches to the issues and allow for comparisons across jurisdictions. We have included material from a wide array of states, but we assume that professors and students will want to supplement the materials in this casebook with materials from their own jurisdictions. A convenient source of information about the law in different jurisdictions is the Association of Labor Relations Agencies (ALRA). ALRA’s membership consists of the national, state, provincial and local labor relations agencies in the United States and Canada. Its website, www.alra.org, contains links to the websites of its member agencies which, in turn, contain links to statutes, regulations and decisions of their jurisdictions.

A few notes about the editing of cases and readings. We have edited out most footnotes, but retained those we believe to be particularly significant or pedagogically useful. In those cases, we retained the original footnote numbers. We have used asterisks instead of ellipses to indicate where we have deleted material in the editing process but also edited out lengthy string citations and pinpoint citations without indicating this with asterisks. Where cases quoted material and used ellipses, we replaced the ellipses with asterisks. We have added parallel citations and otherwise standardized type face and citation style.

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