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## A Research Guide to the Law of Private Sector Labor- Management Relations

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# A Research Guide to the Law of Private Sector Labor-Management Relations\*

Laura J. Cooper\*\*

*The law of private sector labor management relations involves a technical subject matter and is further complicated by sometimes obscure jurisdictional standards. Researching the area is done most effectively using commercially published looseleaf services. Professor Cooper's guide explores the differences between the two major services, discusses other primary and secondary sources for labor law research and offers a research strategy for labor issues.*

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### I. Introduction

This is a guide to researching the law governing private sector labor-management relations, including employee organizational rights, unfair labor practices, representation elections, and collective bargaining. The guide is designed for someone with general legal research skills who wants to learn about labor law research. It assumes a basic knowledge of statutory and case law research.

I recommend that this guide be read in its entirety initially. Material in one section is often relevant for other sections. Some redundancy is inevitable because of the sometimes circular nature of legal research. Later sections refer to earlier ones without verbatim repetition, and logical abbreviations are used after a source or service name has been spelled out once.

Labor-management relations law is based on federal and state statutes. The major division is between laws governing the private sector and those governing the public sector. The private sector includes employees and employers in privately owned, for-profit or not-for-profit businesses. Public sector law governs the relationship between government employees and the unit of government that employs them, whether at the local, state, or federal level. This article covers only private sector law.

The most comprehensive and well-developed body of labor law stems from the National Labor Relations Act of 1935 (NLRA),<sup>1</sup> as administered by the National Labor Relations Board (NLRB). It governs the relationship between most employers and employees in the private sector. Both state private sector labor law and state and federal public sector labor law depend on the law developed under the NLRA as a guide. For research in these other areas, especially on uncertain or undeveloped issues, research in NLRA law is helpful to assist with analysis and for purposes of analogy.

One body of labor-management relations law that stands alone stems from the Railway Labor Act of 1926 (RLA).<sup>2</sup> This is the oldest body of labor law, and it governs relations within the railroad and airline industries. While many of the basic policies are similar to those of the NLRA, its internal mechanisms and procedures differ significantly. It forms a separate and distinct system that is less open to analogy than is NLRA law.

Once the researcher has decided whether the issue needing research involves the public or private sector, the next question is which body of law within that sector governs the employer and employees involved. Because the statutes do not define jurisdiction except in broad terms, it is necessary to research the issue of jurisdiction carefully through agency and court decisions. What follows is only a general guide.

## II. Jurisdiction

Within the private sector there are three sources of labor relations law: the National Labor Relations Act, the Railway Labor Act, and state labor relations statutes. The first two are federal statutes; to the extent that federal statutes assert jurisdiction over disputes, states are precluded from asserting jurisdiction over the same issues.

### A. *National Labor Relations Act of 1935*

The NLRA created the National Labor Relations Board to conduct representation elections and remedy unfair labor practices. The Act asserts jurisdiction over labor disputes arising between employers and employees in businesses affecting commerce. The terms "employers," "employees," and "affecting commerce" are defined generally in section 2 of the NLRA. More specific standards are found in regulations and decided cases. In one of the rare uses of its rule-making authority, the NLRB promulgated rules defining jurisdiction over colleges and universities,<sup>3</sup> symphony orchestras,<sup>4</sup> and the horse racing and dog racing industries.<sup>5</sup>

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1. 29 U.S.C. § 151-87 (1982).

2. 45 U.S.C. § 151-88 (1982).

3. 29 C.F.R. § 103.1 (1986).

4. *Id.* § 103.2.

5. *Id.* § 103.3.

Most of the Board's standards for asserting jurisdiction are found in adjudicatory decisions of the Board. These decisions are cited in the annotations to section 152 in the *United States Code Service (U.S.C.S.)*.<sup>6</sup> The *Labor Relations Expediter (LRX)* binder of the Bureau of National Affairs' (BNA) *Labor Relations Reporter (LRR)* service,<sup>7</sup> also provides an overview of jurisdiction of the Board starting at *LRX* 373.

While the Act's jurisdictional scope extends to all businesses "affect[ing] the flow of commerce,"<sup>8</sup> the Board has chosen to limit its exercise of authority to employers who have a significant impact upon commerce. These jurisdictional standards generally rest on the dollar amount of business done by the employer, determined by gross annual volume of business or interstate inflow or outflow of goods and services to or from the employer or a combination of the factors.<sup>9</sup> Broadly, the standards are \$50,000 annually for nonretail (wholesale or manufacturing) operations and \$500,000 annually for retail operations.<sup>10</sup> The major exclusions from jurisdiction of the NLRA are airlines, railroads, agricultural workers, and government employees. Check the specific standards in each case where jurisdiction of the NLRA is in question.

### B. *Railway Labor Act of 1926*

The jurisdictional scope of the Railway Labor Act is determined by the statutory terms "carrier," "employee" and "commerce" defined in the Act.<sup>11</sup> Because part of the definition of "carrier" includes all companies subject to the Interstate Commerce Act,<sup>12</sup> the jurisdictional section for that Act<sup>13</sup> is also important. Thus, although it does not directly administer the RLA, the Interstate Commerce Commission does determine some jurisdictional issues under the Interstate Commerce Act. Air carriers were expressly included in the jurisdiction of the RLA in 1936.<sup>14</sup> The *U.S. Code Service* cites many court decisions on jurisdiction.<sup>15</sup> The RLA covers more supervisory employees than the NLRA does. The RLA also covers employees of state-owned carriers (government employees).

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6. *U.S.C.S.* is a better resource than the *United States Code Annotated (U.S.C.A.)* for labor law because *U.S.C.S.* includes citations to both court and NLRB decisions, while *U.S.C.A.* only includes annotations to court decisions.

7. See *infra* § V.A.

8. 29 U.S.C. § 151.

9. [LRX] Lab. Rel. Rep. (BNA) 375-76 (July 7, 1986).

10. *Id.* at 376.

11. 45 U.S.C. § 151.

12. 49 U.S.C. §§ 10,101-11,901 (1982).

13. *Id.* § 10,501.

14. 45 U.S.C. § 181.

15. 45 U.S.C.S. §§ 151, 181 notes.

The RLA is administered by two agencies. The first, the National Mediation Board (NMB), holds representation elections, determines appropriate bargaining units, mediates collective bargaining disputes, induces parties to arbitrate and, when necessary, requests the President to appoint emergency boards to decide disputes.<sup>16</sup> The second agency, the National Railway Adjustment Board (NRAB), functions essentially as a final arbitration panel to decide disputes over grievances arising out of the interpretation or application of existing contracts.<sup>17</sup> While the NMB is empowered to establish an NRAB-like board for airlines, called the National Air Transport Adjustment Board,<sup>18</sup> it has not done so. The airline industry continues to use nongovernmental panels for arbitration.

### C. State Statutes

States are permitted to regulate labor-management issues not controlled by federal law where state regulation would not interfere with federal labor policy. State statutes may be located through traditional legal research skills or through use of the specialized labor law looseleaf services described in this research guide. For more information on state labor law, see section VIII of this guide.

## III. Structure and Functions of the NLRB

To do research using materials produced by the National Labor Relations Board, it is necessary to understand the structure of the agency and the types of information published by the various institutions and individuals within the agency. The NLRB is charged by Congress in the National Labor Relations Act with two functions: to remedy unfair labor practices and to resolve questions of representation—that is, whether a group of employees wish to be represented by a particular union or by no union.

In the performance of these two functions, the NLRB uses four main parts of the agency.

1. *Regional directors.* The directors of the NLRB's regional offices make the initial decisions in representation cases and determine whether to issue complaints in unfair labor practice cases.

2. *Administrative Law Judges.* These judges hear trials in unfair labor practice cases and issue recommended decisions for review by the five-member board.

3. *The General Counsel of the National Labor Relations Board.* The General Counsel supervises the regional offices and has ultimate responsibility

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16. 45 U.S.C. §§ 154-55.

17. *Id.* § 153.

18. *Id.* § 185.

for whether complaints should be issued in unfair labor practice cases. The General Counsel also issues advice memoranda, which either generally or specifically advise the regional directors of the sorts of cases in which unfair labor practice complaints should be issued.

4. *The Board.* The five-member Board, located in Washington, D.C., makes final agency decisions in all unfair labor practice cases and some representation cases.

Here is a brief description of the procedural steps in each of the two kinds of cases handled by the NLRB. An *unfair labor practice case* is commenced by the filing of a charge, by any person, with the appropriate regional office of the NLRB.<sup>19</sup> For example, an unfair labor practice charge might claim that an employer had discharged an employee in retaliation for union activity, or that a union had engaged in a secondary boycott, or that either a union or an employer had refused to engage in good faith collective bargaining. The charge is investigated by regional office personnel. If, in the opinion of the regional director, the charge is meritorious and a settlement is not forthcoming, the regional director issues a complaint against the employer or union. If a regional director determines that no complaint will be issued, that decision is subject to review by the General Counsel. If the General Counsel concurs that no complaint should be issued, that decision is not subject to judicial review.

In those cases where a complaint has been issued, the case then goes to trial before an Administrative Law Judge. At the trial, the party who bears the burden of proof is the General Counsel, who, in practice, is represented by an attorney from the regional office. The party who filed the charge also can participate in the proceedings as the charging party. The party against whom the charge was filed is the respondent. Following the conclusion of the trial, the Administrative Law Judge files a recommended decision, setting out the facts and analysis in considerable detail. Any party who disagrees with the findings of the Administrative Law Judge may file exceptions with the five-member NLRB in Washington. The NLRB reviews the decisions of the Administrative Law Judges, usually in panels of three. Often the Administrative Law Judges' decisions are adopted with only a brief opinion by the NLRB. Sometimes more extensive opinions, which include concurrences and dissents, are written. It is usually necessary to read the recommended decision of the Administrative Law Judge to understand fully the brief decision of the NLRB. Decisions of the NLRB are not legally binding unless they are enforced by one of the federal courts of appeals. The NLRB may seek judicial enforcement of its own orders, or any party aggrieved by

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19. The appropriate regional office can be located in the directories contained in the BNA and CCH services. See *infra* § V.

a decision of the NLRB may seek to have it set aside or modified in a federal court of appeals. Decisions of the circuit courts in NLRB cases are subject to Supreme Court review in the same manner as other circuit court decisions.

A *representation case* is commenced by the filing of a petition in the regional office. This might be a petition by a union seeking to gain representative status, an employer seeking to determine if its employees wish to be represented by a union, or a group of employees seeking to reject a union as their representative. The regional office also considers, less frequently, petitions seeking to amend or clarify a certification of representation, or to determine whether a union can continue to require employees to pay dues to their union representative (a deauthorization election). Any issues raised by the representation case are initially determined by the regional director. These issues might include such matters as whether the case comes within the jurisdiction of the NLRB, how the appropriate bargaining unit should be defined, and whether the employer or union, during the course of a union representation campaign, acted in a way that warrants invalidating the election results. Some of these cases are decided by the regional director on the basis of a field investigation by a staff member from the regional office. Other cases are decided by the regional director after an investigatory hearing conducted by a hearing officer (not an Administrative Law Judge) who is a field examiner or attorney on the staff of the regional office. A party aggrieved by a decision of a regional director in a representation case may seek review by the five-member Board by filing an exception, but this review is discretionary. If the case is selected for consideration by the NLRB, an opinion of the NLRB will be published. Neither the Board's decision in representation cases nor its decision not to consider a representation case are subject to direct judicial review, although sometimes these issues are reviewed by the courts of appeals engaged in review of a related unfair labor practice case.

This research guide provides assistance in locating the materials produced by each of the four entities encompassed within the NLRB: decisions by the five-member Board in representation cases and unfair labor practice cases; advice memoranda of the General Counsel regarding the issuance of complaints in unfair labor practice cases; recommended decisions of Administrative Law Judges in unfair labor practice cases; and decisions of the regional directors in representation cases.

#### **IV. Research Strategy**

Research in labor relations law is quite different from usual case or statutory research. While all labor relations law is based on statutes, the statutes themselves tend to be general and often rather vague. The majority of the law comes from agency, court, and arbitrators' decisions. Agency and ar-



bitrators' decisions are not readily accessible through traditional statutory or case law research tools. The complexity and rapid development of the law renders statutory annotations inadequate for finding necessary case law.

The best place to begin is with one of the looseleaf services that specializes in labor relations law. Commerce Clearing House (CCH) and the Bureau of National Affairs (BNA) both publish looseleaf labor law services. The services each provide a central research tool that allows access to other parts of the service and to primary sources outside the service. They also provide a good overview of the law by subject area and lead to a better-informed and thus easier approach to using more traditional research skills. An additional advantage of the services is that their looseleaf format permits revision and addition of new materials to continually update this area of constantly developing law.

Despite their initial helpfulness, the services do have limitations. Like any other publisher's case digest or analysis, they carry no weight of authority. They should be cited (1) as a parallel citation to an official reporter or (2) alone when they report a case not yet reported in an official reporter or if an official reporter is unavailable. (For example, many libraries do not receive the advance sheets for the *Decisions and Orders of the National Labor Relations Board*.) Editorial discretion also causes the services to be incomplete sources of authority. Not all cases are reported in either the BNA or the CCH service, and agency decisions are usually not reported in full text. In addition to substantially editing agency decisions, the looseleaf services omit the decisions of Administrative Law Judges, which frequently are necessary to understand fully an NLRB decision.

The services provide citations to other reporters so that research can be continued along more traditional lines. Statutes, case law, computers, treatises and periodicals all are more easily used in research after a general overview of the subject or issue has been gained through a looseleaf service.

## V. Services for Federal Labor Law

### A. BNA Labor Relations Reporter

The Bureau of National Affairs publishes a large amount of labor law materials in its *Labor Relations Reporter*. There is a guide to its use at the front of the *Master Index* volume. The BNA service is much more commonly used in practice and much more frequently used for case citations than the CCH *Labor Law Reporter*.<sup>20</sup> New materials are added to the BNA *Reporter's* looseleaf binders weekly so that it is substantially more current than primary sources. Cases and most other materials published initially in looseleaf form

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20. See *infra* § V.B.

later appear in bound volumes. A separate BNA service, *Collective Bargaining Negotiations and Contracts*, is discussed in section IX of this guide.

The *Labor Relations Reporter* contains texts of federal and state laws for both private and public sectors, agency and court decisions, digests and cross-reference materials, brief encyclopedia-type summaries on various topics in labor law, current information on developments and trends, and labor market statistical information.

The *Reporter* is composed of several binders. Those discussed in this article are the *Master Index*, *Labor Relations Expediter* or *LRX* (two volumes), *Analysis/News and Background Information*, *Labor Management Relations: Decisions of Boards and Courts*, *Labor Arbitration and Dispute Settlements*, and *State Laws*.

Binders relating to other aspects of employment law, such as wage and hours laws, fair employment practice laws, and individual employment rights, are not discussed in this guide. Of considerable current interest, however, are volumes 9 and 9A, *Individual Employment Rights*. One volume contains cases; the other is a manual, organized by state name and by topic, describing the law governing employees in the absence of, or despite the existence of, a collective bargaining relationship.

*Labor Relations Reporter* uses a classification number system based on a topical index similar to West's key number system. A good place to begin is with the *LRX* binders, which contain, in part, short, encyclopedia-like summaries of various topics. The first of the two *LRX* binders (the one with a single star on the binding) contains an index section arranged by topic and by important case names. *LRX* has a master index and usually one or more supplemental indexes, so be sure to check each. *LRX* is also indexed in the longer general index (often also with supplemental indexes) in the *Master Index* binder. The *Master Index* refers to other parts of the *Labor Relations Reporter* as well as to *LRX*. All these indexes include, along with traditional topical subject headings, the names of landmark Supreme Court and NLRB cases. This makes it easier to locate the appropriate entries if the researcher has a basic familiarity with labor law. Of the two indexes, the *LRX* index is shorter and, therefore, finding topics is quicker.

References in the *LRR* to the *Expediter* are always prefaced by "LRX," and the numbers refer to the page numbers in the first *LRX* binder. The page contains a discussion of the topic in summary form. The appropriate classification number for that topic, which appears just after the heading of the summary, is important for further research. Where appropriate, the summary also cites major cases relating to the topic. Once the summary has been read, the researcher has acquired a general overview of the subject, including other topics or subtopics to explore; classification number(s) for further research; and cites to a few important cases, agency decisions, arbitration awards, statutes, or rules, which may be used for further research in

*LRR* or elsewhere. If the general index of the *Master Index* binder is used, the researcher also may find an additional or duplicate classification number and a reference to texts of federal or state statutes.

To use the classification number, one turns to the *Master Index* binder which contains five separate "Cumulative Digest and Index" sections, one each for: Labor Management Relations (LR), Fair Employment Practices (FEP), Labor Arbitration and Dispute Settlements (LA), Wages and Hours (WH) and Individual Employment Rights (IER). The classification number begins with letters (LR, FEP, LA, WH, or IER), followed by a ► and the number (such as LR ► 52.27). The letters designate which cumulative digest to consult. At the front of each cumulative digest section there is a classification outline listed by number. This is a good place to find other numbers for closely related topics or to check to make sure that the classification numbers obtained accurately reflect the research objective.

The cumulative digests are similar to other case digests except that most of the references are to *LRR* materials. In recent volumes, however, cites to the official *Decisions and Orders of the National Labor Relations Board* appear next to internal citations. The digests provide references to court and agency decisions and arbitrators' awards. In the "LR" digest, for example, references are to the *Labor Relations Reference Manual (LRRM)*; recent decisions are in the *Labor Management Relations* binder, older ones in bound *LRRM* volumes. In the "LA" digest, references are to the *Labor Arbitration and Dispute Settlements* binder or to the bound *Labor Arbitration Reports*. The most current volume probably will have several separate, non-cumulative digests. It is necessary to check each section of the current digest. Once a volume of decisions is completed, a final cumulative digest for that volume appears in the looseleaf master index.

Once the appropriate digest entries are read, the researcher has the original classification number(s); cites to cases, decisions, awards, or statutes obtained from *LRR*; and cites to materials found in the looseleaf cumulative digests. There are some alternative research strategies at this point. The researcher may start reading cases or may continue research into less current materials (materials from more than about one year ago). If a longer list of sources is desired before reading opinions, the classification number is used to go to the paperback and then hardbound volumes of the appropriate cumulative digests. Each digest covers several volumes of *Labor Relations Reference Manual* or *Labor Arbitration Reports*, so more ground may be covered more quickly. For any classification number, the full range of digested materials can be obtained only by consulting three digest sources: the looseleaf binders for the most current digests; the paperback digests, each of which includes a cumulative digest for three volumes of decisions of less current material; and hardbound volumes, each covering several *Labor Relations Reporter* volumes of older material.

Once the source list is long enough, the researcher can go to the appropriate *LRRM* or *LA* volume to find the case, decision, or award. Any cites to volume numbers higher than those in the paperback or hardbound volumes are found in the *Decisions* looseleaf binder (for "LRRM") or the *Labor Arbitration and Dispute Settlements* binder (for "LA").

*LRRM* prints full texts of selected court decisions and summaries of all reported NLRB decisions. It does not print National Mediation Board determinations or National Railroad Adjustment Board decisions under the Railway Labor Act, but does print related court decisions. *LRRM* also publishes public sector labor relations cases but not agency decisions.

After the *Labor Relations Reporter* has been exhausted for cases, statutes, and other materials, it is important to continue research outside it. Because *LRR* prints only selected court decisions, the researcher will need to look elsewhere to determine which other cases may be of value. *LRR* also prints only summaries of NLRB decisions. A researcher will need to read the original text, which also contains the Administrative Law Judge's decision. Shepardizing is important to find modifications, reversals, and related citations. And, finally, *LRR* is not an authoritative source for citation purposes.

One way to get from *Labor Relations Reporter* to primary sources is to use the parallel citation tables located in the table of cases for each section in the *Master Index* binder. These are labeled "Case Tables," and they follow each "Cumulative Digest" section and are separated into LR, FEP, LA, WH, and IER. The parallel cites list *U.S. Reports*, *Federal Reporter*, *Federal Supplement*, and *Decisions and Orders of the National Labor Relations Board* next to *LRRM* cites. The bound volumes also have parallel cites listed at the front of each. The most recent tables are likely to be looseleaf and paperback. The tables also contain case tables arranged alphabetically by case name.

Only digests and excerpts of NLRB decisions are available in the *LRRM*. These should be read if the researcher desires an abbreviated version of the case to determine its relevance before reading the whole thing, or if a set of the official *Decisions and Orders of the National Labor Relations Board* is not available. Parallel cites to *Decisions and Orders of the National Labor Relations Board* are listed at the beginning of the decision summary in *LRRM*. Looking up the summary is often the fastest way to find a cite to the actual decision. Note that these cites are to the volume number and decision number that appear on the mimeographed copies of the decisions. When the decisions are bound, they are given page numbers to replace the decision number. Each bound volume of the *Decisions and Orders* has a chart near the front that converts the decision numbers to page numbers in the bound volume. NLRB decisions should be cited by volume and decision number only until they are bound. After binding they are to be cited by volume and page number.

After the researcher has located and read relevant case law, *Shepard's*

*Federal Labor Law Citations* or LEXIS should be used to locate subsequent case history and other relevant cases.

A large amount of additional useful information is contained in the *Labor Relations Reporter*.

While using the *Master Index* or reading *LRX* summaries, the researcher probably has found references to statutes or regulations. Complete texts of federal statutes and regulations are in the second binder of *LRX* (the one with two stars on the binding). State statutes are in the *State Laws* binder, where statutes are printed in full by state in alphabetical order. Both sections print full texts of arguably every statute relating to employment law (including public sector labor relations statutes). They contain some legislative history, note major amendments, and contain some editor's notes citing to significant case developments.

*Labor Relations Reporter* also has two good finding lists to help discover which section of which statute is applicable to the issue being researched. The first, for federal statutes, is located at the front of the "Text of Laws and Regulations" section in the second binder of *LRX* and is arranged by topic. For state laws, there is a finding list at the front of the *State Laws* binder.

The appropriate classification numbers for specific sections of statutes are found in the last section of the *Master Index* binder: "Statute Coordination Lists." For labor relations, the section coordinates federal statutes with classification numbers.

Other volumes of the *Labor Relations Reporter* contain useful information for research in private sector labor relations. Volume 1 of *LRX* contains the "Supreme Court Labor Docket," which is an overview of cases before the Supreme Court. This section is divided into two parts, a table of cases and a summary of rulings being challenged before the Court and of questions presented for review. The table of cases has three headings—"Decisions," "Review Granted," and "Other Action." Cases are listed under five subclassifications, according to the statutes to which they relate (e.g., Taft-Hartley Act, Civil Rights Act).

Volume 2 of *LRX* contains "Directories of National, Regional Offices of Federal Labor Agencies, Committees, Panels." This section lists names of directors, addresses, and phone numbers of various agencies, as well as which states and counties are included in each NLRB region. This information is necessary to determine in which regional office to file a representation petition or unfair labor practice charge.

In the front of the *State Laws* binder, there is a general discussion of the "Role of the States in Labor Relations."<sup>21</sup>

Volume 1 of *LRR: Analysis/News and Background Information (A/N&B)*

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21. [4 State Laws] Lab. Rel. Rep. (BNA) 1:1-1:9 (June 10, 1974).

has weekly information supplements that provide in-depth analysis and background on developments in labor relations and labor law. In the "Analysis" section, the editors summarize recent cases, previous law in the area, and the significance of the particular decision. A researcher who identifies a landmark NLRB or Supreme Court decision should check the current indexes of the *Master Index* to determine if an "Analysis" of the case has been published, which could serve as a shortcut to further research. The "News and Background Information" section contains information on significant developments affecting labor relations, with background information on economic and legal aspects. This section acts as a newsletter reporting on conferences, speeches, books, governmental reports, personnel changes, and the like. It also includes a national listing of upcoming conferences of interest to labor and employment professionals.

*A/N&B* is indexed by topic, case name, or state in the "Current Index for News and Analysis" section (tab M) of the *Master Index* binder. The index is cumulative only for each volume of *LRR* so you will need to check a separate index for each volume.

*Labor Relations Yearbook* is BNA's bound edition of *A/N&B*. This incomplete selection of information from the looseleaf *A/N&B* was published annually until 1984. While the BNA filing instructions advise subscribers to discard the previous year's *A/N&B*, some libraries, on their own, bind the complete text of the previous year's *A/N&B*.

### B. CCH Labor Law Reporter

Commerce Clearing House, Inc. publishes the *Labor Law Reporter (LLR)*, which provides information similar to that furnished by BNA's *Labor Relations Reporter*.

The *Labor Law Reporter* is composed of a set of looseleaf binders containing an outline of the basic law, indexes and new matters, and a set of bound volumes. The principal subjects addressed in the looseleaf volumes are labor relations, wages and hours, state laws, and employment practices. There are six volumes of *Labor Relations*, including an index and case table volume covering federal labor relations law. *Wages-Hours* comprises two volumes covering federal regulation of wages and hours and special rules affecting government contractors. The three volumes of *State Laws* cover state regulation of labor relations, public employee bargaining, and related state statutes. *Employment Practices* comprises four volumes covering employment discrimination based on race, color, religion, sex, national origin, and age, as well as enforcement of equal pay statutes.<sup>22</sup>

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22. A separate CCH one-volume binder entitled *Labor Arbitration Awards* (which is not part of *LLR*) contains indexes of awards, current awards, and biographies of arbitrators.

The *LLR* volume entitled *Topical Index—Finding Lists—Case Tables* contains, behind the tab “How to Use This Reporter,” an outline of the contents of the reporter and an explanation of alternative research strategies. It also provides a working example for research in labor relations, including photographic reproductions of pages in the *LLR*.

There is no precise parallel in *LLR* to the *Labor Relations Expediter* in the *BNA Labor Relations Reporter*. In 1987, CCH added the *Quick Finder* volume, which provides a general description of substantive law behind tabs for “Labor Relations,” “Wages-Hours,” and “Fair Employment Practices.” The *Quick Finder*, however, is not nearly so useful as the *BNA Labor Relations Expediter*. Textual material in the *Quick Finder* includes fewer case names and citations; the references for further research are provided in footnotes, and thus are harder to use than those of *LRX*; and the index, located at the end of the textual material, is much less detailed than that of *LRX* and does not include case names. The *Quick Finder*, however, would be one place to commence research in the *Labor Law Reporter*.

An alternative, and perhaps more fruitful, place to begin would be the “Topical Index” in the unnumbered volume *Topical Index—Finding Lists—Case Tables*. Behind the tab “Topical Index—Labor Relations” is a short “Rapid Finder Index,” that covers only principal topic headings; behind this is the more extensive “Topical Index.” Both indexes direct the researcher to paragraph numbers in the numbered volumes of *LLR* where two things are found: a compilation, which is an editorial explanation and overview of a topic, and annotations that offer brief statements of case holdings followed by citations. The citations in the indexes to whole numbers are to compilation paragraphs; the citations that include decimals are to annotation paragraphs. Between the compilation and the annotations for each topic is a topical list of annotations with annotation paragraph numbers, which provides a quick overview. Compilations also include a box directing you to the CCH citations for federal rules and regulations relating to the subject of the compilation paragraph. Statutes and regulations are contained in volume 1 of *LLR*. The annotations that follow the compilation paragraph are current only to the latest editorial revision of the compilation paragraph, which is indicated by the copyright date at the bottom of each even-numbered page. As in all legal research, initial research must be made current. In *LLR*, this is done by reference to the “Topical Index to New Developments” and the “Cumulative Index to New Developments,” both contained behind appropriately marked tabs in volume 4 of the *LLR*. Behind each of these tabs are several separate indexes covering different time periods, indicated by the table of contents for each index. To do a complete search, it is vital to separate the various indexes by hand or bookmark and to check each index. The topical index goes from words to paragraph numbers for cases. The cumulative in-

dex goes from compilation paragraph numbers (including annotation paragraph numbers) to "New Developments" paragraph numbers.

The cases for which paragraph citations have been obtained can be read in looseleaf volumes 4 and 5 for recent cases and in the hardbound volumes for earlier cases. There are separate sets of bound volumes for court cases (*CCH Labor Cases*) and for Board cases (*CCH NLRB Decisions*). Like BNA, CCH publishes full texts of court decisions, but only digests and excerpts of NLRB decisions. For the full text of Board decisions, including the appended Administrative Law Judge decisions, it is necessary to consult the official NLRB reporter and its mimeographed supplements or a computer service (LEXIS or WESTLAW). The official NLRB citation for a case can be found by consulting the top of the case excerpt in the CCH looseleaf or bound volume or by checking the finding lists at the beginning of the bound volumes of NLRB decisions or behind the tab "NLRB Decisions" in volume 5 of *LLR* for recent decisions.

After reading relevant case law located through CCH, the researcher should use *Shepard's Federal Labor Law Citations* or a computer service to find subsequent case history and other relevant cases.

In addition to the cases and compilations, the *Labor Law Reporter* includes a Supreme Court Docket (in the "Case Table" section of the *Topical Index* volume) and, in volume 1, a list of personnel and addresses for labor relations agencies (including county lists for NLRB regions), and texts of statutes and regulations.

Overall, the *BNA Labor Relations Reporter* is easier to use than the *CCH Labor Law Reporter*. Research is more easily commenced in the *BNA LRX* than in the *CCH* indexes and compilations or *Quick Finder*; *BNA* bound volumes include both court and board cases in the same volumes; and *BNA* digests contain more information about the case than do the *CCH* annotations, allowing the researcher more easily to identify cases to read.

For research in NLRB and court decisions, the *Labor Law Reporter* is best used when the *Labor Relations Reporter* is unavailable or as a backup after a search in the *BNA* service has been made. For research in arbitration, however, it is important to use both services because each has an independent system for selecting arbitration awards to publish.

### C. Shepard's Federal Labor Law Citations

A comprehensive tool for further research, official cites, or updating is *Shepard's Federal Labor Law Citations* (one set of volumes for statutes and another for cases). It works exactly like other volumes of *Shepard's*. It cites from sections of statutes; *CCH*, *BNA*, and Prentice-Hall (PH) reporters; and *Decisions and Orders of the National Labor Relations Board* to reporters;



CCH, BNA, and PH services; NLRB *Decisions*; articles, and other sources. It also includes tables of cross-references from BNA looseleaf services to reporters. To find a parallel looseleaf citation for a *Federal Reporter* case, use the *Federal Reporter* listings in *Shepard's Federal Labor Law Citations* (not the listings in the regular *Shepard's Federal Citations*). The parallel citation to the looseleaf service generally appears only in the first issue in which that case appears in *Shepard's*. Another way of locating a looseleaf cite for a *Federal Reporter* case is to use the case tables in the *Labor Relations Reporter* or the *Labor Law Reporter*, or LEXIS. *Shepard's* is an invaluable tool for research in labor law because its coverage is so broad. It is vital to shepardize all citations in labor law because it is common for agency decisions to be judicially reviewed. In order to ascertain subsequent enforcement or case history, it is necessary to use an NLRB or *Federal Reporter* citation. If you have only a looseleaf-citation, you can use *Shepard's* tables of cross-references to find the parallel citation. *Shepard's Federal Labor Law Citations* is also available on LEXIS, which has the capacity for expeditious cite-checking, including prior and subsequent case history, through its Auto-Cite feature.

## VI. Secondary Sources for Federal Labor Law

### A. Treatises

*NLRB Representation Elections: Law, Practice and Procedure*<sup>23</sup> is a looseleaf text that concentrates on the law and procedure of representation elections. It is arranged by topics, including: background (historical information); recognition, picketing, and filing a petition; NLRB procedures; and campaign conduct. There are several appendices, with the following titles: "Jurisdictional Yardsticks," "Community of Interests Checklist," "Tests of Employee Status," "Campaign Conduct," "Gissel Bargaining Orders," "NLRB Forms," and "Regional Offices of the NLRB." Appendices include examples of campaign materials with citations to determinations of their legality. The text of the National Labor Relations Act is included in this treatise, which also contains a table of cases and an index by topic. The information is presented in encyclopedia-like form but includes substantial detail and citation to authority.

Theodore Kheel's *Labor Law*<sup>24</sup> is an eleven-volume work which comprises volume 18 of the larger set, *Business Organizations*. It is in looseleaf form and is updated annually. At the beginning of the first volume are issues of the companion monthly newsletter *Labor Law Report*, which contain analysis and background of leading court and NLRB cases. A general table of con-

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23. J. FEERICK, H. BAER & J. ARFA, *NLRB REPRESENTATION ELECTIONS: LAW, PRACTICE AND PROCEDURE* (2d ed. 1985).

24. T. KHEEL, *LABOR LAW* (1972- ).

tents for all the volumes is located in the first volume. Eight volumes contain materials concerning private labor law; two contain materials concerning public labor law; the final volume is the table of cases and topical index, each of which is updated by the use of supplements. The information is rather detailed and exhaustively footnoted with cites to and summaries of cases and statutes.

Four volumes of the *Employment Coordinator*, a looseleaf service published by the Research Institute of America, Inc., are devoted to labor-management relations. The *Employment Coordinator* also covers such subjects as employee compensation and benefits, employment practices, and workplace safety. The *Coordinator* provides encyclopedic coverage of employment law issues, with footnotes to case authorities. In the back of each volume, behind the tab "Current Matter," are additional references, updated monthly, to new cases and their holdings, related by paragraph numbers to the main body of the text. The *Employment Coordinator* lacks the comprehensiveness of the *BNA Labor Relations Reporter*, but it is a good first reference for someone seeking to gain basic familiarity with a topic. The *Employment Coordinator* is probably the best first reference for nonlawyers or lawyers unfamiliar with labor law.

*The Developing Labor Law*<sup>25</sup> is a two-volume work published by BNA with a cumulative annual supplement. Included in this treatise are the history of the National Labor Relations Act, protected employee activity, the representation process, arbitration and the Act, economic action, administration of the Act, and relations between employee and union. There is also a table of cases and a topical index. This book represents the work of more than three hundred attorneys working within the Section of Labor and Employment Law of the American Bar Association. It is an effort to provide a restatement of the law under the National Labor Relations Act. It is accessible, comprehensive, and well documented. The primary drawback is that its supplements are not issued frequently enough to keep pace with changes in the law.

*Basic Text on Labor Law: Unionization and Collective Bargaining*<sup>26</sup> is a comprehensive treatise that thoroughly discusses and analyzes a variety of topics in labor law and policy. It provides an excellent synthesis of the law, but it has become outdated in some areas. In the back of the book are listed, for each chapter, citations to significant law review articles and books on the topic.

*Cases and Materials on Labor Law*<sup>27</sup> is a law school textbook now in its tenth edition. It contains edited versions of the key court and agency decisions as well as short textual essays on some topics. A short bibliography

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25. THE DEVELOPING LABOR LAW (C. Morris 2d ed. 1983).

26. R. GORMAN, BASIC TEXT ON LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING (1976).

27. A. COX, D. BOK & R. GORMAN, CASES AND MATERIALS ON LABOR LAW (10th ed. 1986).

on labor law, labor history, and arbitration is included at the beginning of the book. On the first page of each section of the text, the authors provide a brief list of the best law review articles and books which discuss that topic.

*NLRB Practice*,<sup>28</sup> despite its title, does not cover practice before the NLRB; instead, it provides a basic guide to substantive law under the National Labor Relations Act. The text provides extensive footnotes to case authority from the courts and the NLRB. The appendix includes the text of the National Labor Relations Act, pertinent regulations, and a few additional agency documents. *NLRB Practice* is updated by an annual pocket part.

*How to Take a Case Before the NLRB*<sup>29</sup> focuses upon the details of Board procedure in representation and unfair labor practice cases, with footnotes to important NLRB and court cases. This book offers more than 100 examples of NLRB forms and notices, plus over 150 pages of appendices, including regulations and other governmental documents describing Board procedures.

*Labor Relations Law in the Private Sector*,<sup>30</sup> a publication of the American Law Institute-American Bar Association Committee on Continuing Professional Education, is designed primarily for general practitioners and law students, but is also a possible initial reference for labor specialists. The book presents an overview of the law and procedure of the National Labor Relations Board, as well as chapters on federal preemption, antitrust law in the labor setting, and the duty of fair representation. The text includes citations to important Board and court decisions and an appendix containing the NLRA. ALI-ABA also publishes a companion volume, *Practice and Procedure Before the National Labor Relations Board*.<sup>31</sup> The last edition is somewhat outdated, but a new edition is expected. *Practice and Procedure* offers explanations of Board regulations and other procedural details. The material is presented in an easily accessible format and is well-indexed. Its appendices include a directory of NLRB regional offices and their counties of coverage, a useful practical chart of where and when various documents are to be filed, and samples of basic NLRB forms.

### B. Periodicals

A large number of legal and nonlegal periodicals focus on labor relations, and all of the general law reviews publish articles concerning labor relations law.

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28. L. MODJESKA, *NLRB PRACTICE* (1983).

29. K. MCGUINNESS & J. NORRIS, *HOW TO TAKE A CASE BEFORE THE NLRB* (5th ed. 1986).

30. F. BARTOSIC & R. HARTLEY, *LABOR RELATIONS LAW IN THE PRIVATE SECTOR* (2d ed. 1986).

31. T. KAMMOLZ & S. STRAUSS, *PRACTICE AND PROCEDURE BEFORE THE NATIONAL LABOR RELATIONS BOARD* (1980).

A number of law reviews specialize in labor law. The *Labor Law Journal* publishes short pieces on current developments. The *Industrial Relations Law Journal* publishes longer scholarly articles on industrial relations. An extremely helpful section in the back of each issue provides single paragraph abstracts of recent articles from other journals, organized under five main headings, and citations to case notes on significant recent cases.

Periodical articles can be found in either the *Index to Legal Periodicals (ILP)* or *Legal Resource Index (LRI)*. Both list specific case names and cite to articles commenting on those cases. *LRI* indexes more sources than *ILP* and includes articles with legal aspects from nonlegal periodicals. The listings begin with 1980. *LRI* is available in several formats. Its paper version, *Current Law Index*, indexes the same legal periodicals but not all the other nonlegal periodicals.

### C. General Legal Research Sources

Legal encyclopedias like *American Jurisprudence* and *Corpus Juris Secundum*, and the *American Law Reports (ALR)* also discuss labor relations topics and can be helpful in research. They are not as comprehensive, current, or detailed as the services and treatises. They may be helpful, however, in gaining a general overview of subjects and in defining general issues.

### D. Labor Law Bibliographies

Bibliographies of labor law can be helpful to a researcher. Two worth mentioning here are Jeanne M. Jagelski's *Doing Research in Federal Labor Law*<sup>32</sup> and Scott B. Pagel's "Federal Labor Law and Its Sources."<sup>33</sup> Jagelski's work, a short pamphlet prepared by the Library of Congress, describes primary research sources in labor law and includes a bibliography.

Pagel's article is an excellent exhaustive bibliography of research sources for federal labor law. This work addresses not only labor management relations, but also such topics as the civil service, the Fair Labor Standards Act, equal employment opportunity, and workplace safety.

## VII. Primary Sources for Federal Labor Law

### A. Statutes and Legislative History

Because most labor relations law is based on statutes, a close look at statutory language is important in labor law research. The following is a list of relevant federal statutes.

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32. J. JAGELSKI, *DOING RESEARCH IN FEDERAL LABOR LAW* (1978).

33. Pagel, *Federal Labor Law and Its Sources*, *LEGAL REFERENCE SERVICES Q.*, Summer/Fall 1985, at 5.

1. The National Labor Relations Act of 1935 (Wagner Act), as amended by the Labor-Management Relations Act of 1947 (Taft-Hartley Act) and the Landrum-Griffin Act of 1959, 29 U.S.C. §§ 151-87 (1982).
2. The Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act), 29 U.S.C. §§ 401-531 (1982).
3. The Railway Labor Act of 1926, 45 U.S.C. §§ 151-88 (1982).
4. The Anti-Injunction Statute, Section 20 of the Clayton Act of 1914, 29 U.S.C. §§ 51-53 (1982).
5. The Norris-LaGuardia Act of 1932, 29 U.S.C. §§ 101-15 (1982).
6. The Administrative Procedure Act, 5 U.S.C. §§ 551-921 (1982).

When citing the National Labor Relations Act, it is necessary to cite both to the section of the Act and to the section as codified in the *United States Code* (e.g., National Labor Relations Act § 9(c)(1), 29 U.S.C. § 159(c)(1) (1982)). Labor agency officials and experienced practitioners refer to the NLRA by section numbers of the Act rather than corresponding section numbers of the *Code*. Published versions of the Act, using Act rather than *Code* section numbers, can be found in the *Labor Relations Reporter* at LRX 3751 and in the *Labor Law Reporter* at volume 1, paragraph 601.

These statutes have not been amended often, but it is necessary to use the most current version and to make sure that any cases used to interpret statutory language interpret the most current language. *United States Code Annotated (U.S.C.A.)* and *United States Code Service (U.S.C.S.)* keep the text up-to-date and annotate the statutes. Unlike *U.S.C.A.*, *U.S.C.S.* cites to NLRB decisions as well as to court cases. Most of the services and many treatises also print the full texts of the statutes; some contain annotations or editor's notes as well.

There are numerous sources for legislative history of labor relations statutes. The following were compiled by the Department of Labor or the National Labor Relations Board.

1. *Legislative History of the National Labor Relations Act of 1935*, SuDoc # LR 1.5:L 11/6 (two volumes).
2. *Legislative History of the Labor-Management Relations Act of 1947*, SuDoc # LR 1.5:L 11/3 (two volumes).
3. *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, SuDoc # LR 1.5:L 11/7 (two volumes).
4. *Legislative History of the Railway Labor Act, as amended, 1926-1966*, SuDoc # Y 4.L 11/2:R 13/18/926-66 (one volume).

These volumes contain drafts of statutory language, committee reports, and floor debates. Anyone who has struggled with legislative history research in other areas will find these a real treasure. They are exhaustively indexed by subject and statutory section.

Other sources of legislative history information and documents include *United States Code Congressional and Administrative News (U.S.C.C.A.N.)*

(beginning in 1941), the *Congressional Record*, *Congressional Information Service (C.I.S.)* (beginning in 1970), and CCH's *Congressional Index*.

*U.S.C.C.A.N.* prints copies of enacted laws and selected committee reports. It is published annually with monthly supplements. A shortcut to finding committee reports and legislative debate is to look up the text of the statute in *U.S.C.A.* In the annotation immediately following the text of the statute is a citation to the committee reports in *U.S.C.C.A.N.* The first page of the committee report in *U.S.C.C.A.N.* indicates on which dates the legislation was debated in the House and Senate. The *Congressional Record* for those dates contains a record of debates and proposed amendments. Another source for floor debates is the annual *Congressional Record* index volume. The section entitled "History of Bills and Resolutions" lists bill numbers with page numbers in the *Congressional Record* for any recorded action on the bill.

The *Congressional Information Service* is an index to the congressional publications issued since 1970, excluding the *Congressional Record*, but including hearings and committee reports. *C.I.S.* is issued monthly, with cumulative quarterly indexes, and annual cumulations of the *Abstracts*, and the *Index*. The *Index* is arranged by subjects, names of witnesses, names of committees, and other references. Each item has a classification number by which may be found a summary of its contents in the *Abstract*. Full text is on microfiche, arranged by year, using the same classification number. At the end of the *Index* are tables of bills and reports, which supply classification numbers. At the end of each bound volume of the *Abstract* for years up to 1983 is an especially useful list, by public law number, of the publications containing a law's legislative history. Since 1984, this information is in a separate volume entitled *Legislative Histories*.

Material prior to 1970, as well as more recent material, is indexed in the less useful *Monthly Catalog of United States Government Publications*.

The two-volume looseleaf CCH *Congressional Index* indexes proposed and enacted legislation for each Congress. Each bill is indexed and summarized. A status table, which is updated weekly, traces the progress of each bill through the legislative process. Information similar to that contained in *Congressional Index* is also available and more easily accessible from the computer service, Legi-Slate.

Legislative history information also is included after the text of statutes in the *United States Statutes at Large*.

### B. Administrative Law and Information

This is an especially important area of labor relations law because the agencies that implement both the National Labor Relations Act and the Railway Labor Act are given broad discretion in the interpretation and application of statutes regarding administrative law.

The extent of judicial review of agency action is an important issue in labor law. It is important to check the appropriate sections of labor statutes as well as the Administrative Procedure Act. For example, findings of fact by agencies are subject to less scrutiny than findings of law. Some agency actions, such as the National Mediation Board's determination of appropriate class or craft under the RLA, are not subject to judicial review.

### 1. National Labor Relations Board

The National Labor Relations Board, which administers the NLRA, has both rule-making and adjudicatory powers but rarely uses its rule-making authority.

Rules promulgated by the NLRB are found in the *Code of Federal Regulations* at 29 C.F.R. §§ 100-199. The majority of the rules concern the procedures of the Board. Any rules issued after the most recent *C.F.R.* volume can be found in the *Federal Register*.

The NLRB has several functions and divisions and publishes a large amount of materials, including decisions, selected dispositions, practice and procedure guides, and reports.

Decisions are officially published in *Decisions and Orders of the National Labor Relations Board*. Current decisions appear first in mimeographed form; they are cited by volume and Decision number. Once bound,<sup>34</sup> decisions are cited by volume and page number. A chart in the front of each volume converts the decision number to the page number. Board decisions are the principal source of federal private sector labor law. The decisions are digested and indexed by the *Digest and Index of Decisions of the NLRB*, SuDoc # LR 1.82, for the years 1935-1970. Since 1970, the decisions have been indexed by the *Classified Index of N.L.R.B. and Related Court Decisions*, SuDoc # LR 1.8/6:9 (year). The *Classified Index* contains short summaries of the decisions that are indexed using the *Classification Outline*<sup>35</sup> discussed below. It also cites related court decisions, Administrative Law Judge decisions, and NLRB "Stipulation Decisions."

The NLRB publishes much other material, including dispositions of representation cases on the regional level and dispositions of unfair labor practice charges by the General Counsel, the prosecutor under the NLRA. All of this material is published using a rather complicated classification number system which is explained and listed in the *Classification Outline*.<sup>36</sup>

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34. The Board is running about a year behind in getting the mimeographed decisions into a bound form.

35. CLASSIFICATION OUTLINE WITH TOPICAL INDEX FOR DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD AND RELATED COURT DECISIONS (1982).

36. There is a shortened guide to the outline in the front of the *Current Reports* volume of the *National Labor Relations Board Advice Memorandum Reporter*.

The system is used throughout published NLRB materials. The classification system is substantially more cumbersome to use than the classification systems of the BNA and CCH looseleaf services.

The *National Labor Relations Board Advice Memorandum Reporter*, published by Labor Relations Press, contains opinions of the NLRB General Counsel, including decisions on whether to issue complaints in individual cases as well as directives to the regional offices on how to handle specific categories of cases. This reporter is the best source of information on the position of the General Counsel regarding the most current and uncertain areas of the law. Readers, however, should be cautioned that the General Counsel's view of the law in a developing area may well differ from the position that the NLRB ultimately takes on the issue. The *Current Reports* volume contains a shortened classification index guide; cumulative index listed by classification number; table of cases arranged by company or union name (listing case number, date, relevant classification numbers, and location in the *Reporter*); "Highlights" (summaries of the memoranda); and full texts of current advice memoranda. The *Reporter* has been bound annually since 1978. Each bound volume contains a cumulative index, a table of cases, and the memoranda. A few of the most important advice memoranda are also published in BNA's *Labor Relations Reporter*.

The *Classified Index of Decisions of the Regional Directors of the National Labor Relations Board in Representation Hearings*, SuDoc # LR 1.8/6-2, uses the NLRB classification system, listing information under the subject heading and number by company name within each region. The regional decision on each case and further disposition, if any, is given. The decisions themselves are available from the issuing regional office or from the NLRB office in Washington, D.C. Addresses are listed at the front of the *Index*. There is more than a year's delay from the issuance of a decision to its appearance in the *Classified Index of Decisions*.

The *Classified Index of Dispositions of Unfair Labor Practices by the General Counsel of the NLRB*, SuDoc # LR 1.8/8, indexes regional director dismissal letters, advice memoranda, appeals memoranda and dispositions.<sup>37</sup> Its format is the same as that of the *Classified Index of Decisions of the Regional Directors* described above.

The Office of the General Counsel of the NLRB publishes several practice and procedure guides. These extremely detailed official guides to NLRB procedures are designed for the use of NLRB personnel, but may be of use to others interested in the specific details of how cases are handled by the agency. It is important to make sure that procedural rules have not changed since their publication in these guides.

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37. The documents indexed are available, for a fee, from the Freedom of Information Officer, National Labor Relations Board, Washington, D.C. 20570.



*NLRB Pleadings Manual and Complaint Forms*, SuDoc # LR 1.6/2:P 71, is a collection of forms for use by attorneys in the NLRB regional offices. It is in the form of a looseleaf notebook and is indexed at the front.

*Guide for Hearings Officers in NLRB Representation Hearings*, SuDoc # LR 1.6/2:H 35.

*Guide to Basic Law and Procedures Under the National Labor Relations Act*, SuDoc # LR 1.6/2:L 41/2/978.

*An Outline of Law and Procedure in Representation Cases*, SuDoc # LR 1.6/2:L 41 (1974-) (updated).

*Casehandling Manual*, SuDoc # LR 1.6/2:C 26, is in three binders. Part 1 is *Unfair Labor Practice Proceedings* (1983); part 2 is *Representation Proceedings* (1975); part 3 is *Compliance Proceedings* (1977).

The *Annual Report of the NLRB*, SuDoc # LR 1.1: (year), contains important summary information on Board operations as well as Board and judicial decisions. It also includes a large number of useful charts and graphs describing NLRB operations. The *Annual Report* is the source of such information as the rate of union success in elections, the percentage of unfair labor practice charges found meritorious, and the percentage of Board cases affirmed in each of the federal courts of appeals.

The *NLRB Election Report*, SuDoc # LR 1.16: (Report #), is published regularly and gives statistics on representation elections. The *NLRB Election Report Glossary*, SuDoc # LR 1.16:Glossary, is the key to reading the codes in the *Election Reports*.

## 2. National Railway Adjustment Board and National Mediation Board

These agencies administer the Railway Labor Act. The National Railway Adjustment Board (NRAB) serves as a master arbitration panel to resolve contract disputes. Its decisions are published in *National Railway Adjustment Board Awards*, SuDoc # RA 1. Individual awards can be ordered from the Board. The awards are bound according to the four separate divisions (regions); only the fourth division has an index. Old decisions from the 1920s are contained in *Railway Labor Board Decisions*, SuDoc # RL-1.6/2:6. Rules for the NRAB are codified at 29 CFR § 301.

The National Mediation Board (NMB) functions somewhat similarly to the NLRB in determining appropriate bargaining units and holding elections. It also hears appeals from NRAB decisions, mediates disputes, and may request the President to appoint an Emergency Board to decide an unresolved dispute. *Determinations of the National Mediation Board* contains the determinations of the Board concerning appropriate bargaining units. Indexes are listed by carrier, by craft or class, and by subject matter. A job title index indexes cases that decided craft or class representation for each job title. No judicial review is available for these determinations. The *Annual Report of*

the NMB, SuDoc # NMB 1.1:(year), contains the year's highlights, summaries of representation cases decided, litigation activities, negotiations, interpretations of agreements and arbitrations, and the annual report of the NRAB. A series of pamphlets, *Administration of the Railway Labor Act by the National Mediation Board*, 1934-1970, SuDoc # NMB 1.2:R 13/4/934-70, gives some historical and policy insights into the NMB. Reports to the President of U.S. Emergency Boards to the President are generally at SuDoc # NMB 1.7: (Report Number). *Railway Labor Act at Fifty: Collective Bargaining in the Railroad and Airline Industries*, SuDoc # NMB 1.2R 13/5 (1976), is a pamphlet that describes the history of the RLA. Rules for the NMB begin at 29 CFR § 1200.

### 3. Federal Mediation and Conciliation Service

The Federal Mediation and Conciliation Service (FMCS) provides mediators to facilitate agreements in collective bargaining disputes in both the public and private sectors. The FMCS also provides labor and management with names of neutral arbitrators who may be used in grievance arbitration. Its statutory authority comes from 29 U.S.C. §§ 172-74 (part of the NLRA). The rules for the FMCS begin at 29 CFR § 1400.

#### C. Case Law

Through a looseleaf service, *Shepard's*, an encyclopedia, a treatise, *U.S.C.A.*, or *U.S.C.S.*, the researcher has found cites to cases. There are several sources for the full texts of court opinions.

Three reporters are specifically for labor cases. *Court Decisions Relating to the NLRA*, published by the NLRB, is indexed by case name. It prints cases from all levels of federal courts. Cases appear in publication here as much as five years after the date on which the decision was rendered. *CCH Labor Cases*, a selective reporter of federal and state cases in labor law, uses headnotes and captions. The table of cases lists by both plaintiff and defendant name and cites to other reporters. The topical index indicates in which jurisdiction the case was heard. All references to *CCH Labor Cases* are to paragraph numbers rather than page numbers. *Shepard's*, LEXIS and WESTLAW also cite to *CCH Labor Cases*. *BNA's Labor Relations Reference Manual*, discussed at length in section V.A. of this guide, also prints full texts of selected court decisions. Both *Shepard's* and LEXIS cite to *LRRM*.

General reporters also are sources for the full text of labor cases. For the United States Supreme Court, check the official *United States Reports*, West's *Supreme Court Reporter*, *U.S. Supreme Court Reports-Lawyer's Edition*, *U.S. Law Week* (BNA), and *U.S. Supreme Court Bulletin* (CCH); for the United States Courts of Appeals, check West's *Federal Reporter* and

*Federal Reporter 2d*; for the United States District Courts, check West's *Federal Supplement*.

## VIII. State Law Research

### A. Matters Governed by State Law

The supremacy clause of the federal Constitution means that federal law generally preempts or precludes state regulation of the same matter. The law of labor preemption is unsettled and sometimes unpredictable. In general, state law is residual and the states are permitted to regulate conduct not regulated by federal law, but this is not uniformly true. This uncertainty makes it necessary to research issues of preemption at the outset to make sure that state law research is appropriate.

State law provides the rule of decision for an issue if either (1) the employer's basic relations with its employees are not governed by either the National Labor Relations Act or the Railway Labor Act; or (2) an employer's labor relations generally are regulated by federal law, but the issue raised is considered to be one important to the state and of only peripheral concern to the federal regulators.

In the first category, states may regulate labor-management activities that are not controlled by the federal labor statutes, the National Labor Relations Act, and the Railway Labor Act.<sup>38</sup> In brief, the NLRB is authorized by statutes to regulate all businesses in interstate commerce, but restricts its coverage to those businesses having a significant impact upon interstate commerce, as defined by the Board's own jurisdictional standards. Private businesses not in interstate commerce or whose activities in interstate commerce are below the Board's jurisdictional standards may be regulated by state law. (States also may regulate the labor relations of state and local governments, but that law is beyond the scope of this research guide.)

In the second category, state law might be used, for example, to enjoin violent or mass picketing at the place of business of an employer governed by the NLRA, even though state law could not govern the collective bargaining practices of that employer.

More detailed materials on federal preemption of state labor law can be found in *U.S. Code Service* annotations<sup>39</sup> and in the state law materials in the BNA and CCH looseleaf services, discussed immediately below.

Once it is determined that an issue is not within the jurisdiction of the federal labor laws, it is appropriate to research the content of the state law

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38. The jurisdictional scope of these Acts is described in section II.

39. 29 U.S.C.S. § 141 nn.16-58.

for the state in which the problem arises. Federal law is much more developed and more comprehensively reported than state private sector labor law, so there may be little law from the state in which the problem arises. In such cases, it is appropriate to argue by analogy; therefore, one should research legal materials from other states or from federal sources interpreting identical or similar statutory language.

### *B. Research Strategy*

Once the researcher has reached a preliminary conclusion that an issue is governed by state law, the next step is to research the specific labor law of the appropriate state. State labor law research may be initiated in one of two ways. One can either begin with primary state law materials (statutes, regulations, decisions of courts and administrative agencies) or secondary sources such as looseleaf services. If one chooses to begin with primary state law materials, research methods are traditional ones. One might start with annotated state statutes or a state encyclopedia or digest. In the alternative, one might begin state labor law research by using the separate state law sections of the CCH and BNA looseleaf services. The following section describes the use of the looseleaf services in state law research. Since BNA and CCH publish somewhat different state materials, the researcher should check both services if available. Regardless of whether the researcher begins with primary or secondary sources, the other group of sources should be used to supplement the initial research to assure accuracy and completeness.

### *C. Using Looseleaf Services to Research State Law*

#### *1. Labor Law Reporter*

The *Labor Law Reporter* published by Commerce Clearing House covers state as well as federal labor law. The general outline of the *LLR* and a suggested research strategy for its use are contained in Section V.B. above. The state labor law materials in *LLR* are contained in the three volumes labeled *State Laws*. The state law information is arranged somewhat differently than the rest of the *Reporter*. Because of this different arrangement, one should commence state law research in *LLR* by reading the helpful material beginning at paragraph 40,250 behind the tab "Explanatory Guide" in volume 1 of *State Laws*. This section includes an overview of the sorts of issues governed by state labor law, the relationship of state labor law to federal regulation, and a general description of the sources of legal authority within a state which might regulate the activities of labor and management. It is important to make sure that the matter purportedly regulated by state law is not in fact preempted by federal law. The "Explanatory Guide" offers an overview of federal preemption, including a partial list of basic rules of federal preemp-

tion at paragraph 40,254. The "Explanatory Guide" also outlines, beginning at paragraph 40,300, a strategy for doing state labor law research in CCH.

Behind the "All-State Charts" tab, volume 1 of *State Laws*, indicates with a simple "Yes" or "No" whether each state regulates various aspects of labor and management activity by statutory or constitutional provisions. These charts should not be relied upon, however, because they do not include citations to relevant provisions and do not cover state regulation of an activity resulting from other legal sources, such as court or agency decisions, agency rules, or attorney general opinions.

Volume 1 of *State Laws* also contains, behind the tab "Topical Index—State Laws," a uniform numbering system for topics so that the same compilation paragraph number is used for each state.<sup>40</sup> Immediately following, also behind the "Topical Index—State Laws" tab, at page 50,151, is a "Main Topical Index." The topic paragraph numbers listed apply to all states that regulate the subject. Topics are indexed under the name of the state only when the subject matter is peculiar to that state. Next included in volume 1 are "Current Case Tables—State Laws" and "Case Tables—State Laws," which list alphabetically by case name, court and agency decisions on state law. Volume 1 also includes a directory of names and addresses of the personnel of state labor agencies.

The remainder of volume 1 and all of volume 2 contain, behind a tab for each state, a compilation of that state's law, organized according to the uniform topic numbers. These materials include digests of cases and statutes, as well as, in some instances, the full text of statutes and regulations. To find how a topic is treated in the laws of a particular state, one would identify the uniform topic number from the Topical Index in volume 1, then look for that topic number in the compilation for that state, behind a tab with the state's name in volume 1 or 2. Volume 3, which updates the state compilations in volumes 1 and 2, includes topical and cumulative indexes to new developments in state laws, an editorial section labeled "Current Comment & CCH Analysis," digests of state agency decisions and texts of state court decisions.

## 2. *Labor Relations Reporter*

The BNA *Labor Relations Reporter* covers state labor laws in Volumes 4 and 4A. Volume 4 contains a brief guide for using the state law binders.

The state law materials are arranged for each state under a uniform system of classification numbers that are different from the classification numbers

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40. The uniform numbering system is outlined beginning at page 50,075.

used in the rest of the BNA *Labor Relations Reporter*. Most of the material in volumes 4 and 4A is state statutes and regulations, with occasional editor's notes describing and providing citations to decisions and attorney general opinions interpreting the statute or regulation. The states are arranged in alphabetical order behind orange tabs listing several states for which the law is reported following the tab.

Volume 4 also contains, behind the blue tab "Finding Lists, Tables of Laws, Guide to Laws," an overview of the law of federal preemption, charts of state holidays and minimum wage rates, an index of topics covered in the state laws section, and a directory of state labor agencies which, unlike the comparable list in *Labor Law Reporter*, does not include names of agency executive personnel.

### IX. Collective Bargaining

BNA publishes another looseleaf service in two binders, called *Collective Bargaining Negotiations and Contracts (CBNC)*. Binder 1 contains the following topics.

A. "Background for Bargaining" includes economic data (such as the *Consumer Price Index*), government economic policy statements, and reports on bargaining from various government agencies.

B. "Demands and Counterproposals" covers demands and bargaining programs of unions and management from major industries.

C. "Strategies and Techniques" covers strategies and guides for employers and unions in bargaining preparation, negotiations, preparation for and behavior during a strike, administration of the contract, and other related topics.

D. "Current Bargaining Issues."

E. "Administering the Contract."

F. "Industry Wage Patterns and Wage Data."

G. "Current Contract Settlements" has biweekly tables with a large amount of information.

H. "Selected Contracts in Text."

All of the sections have tables of contents. Binder 2 covers basic patterns in negotiating union contracts and includes texts of contract clauses. Each section covers a major bargaining issue (e.g., grievances, holidays, overtime) and explains the trend in negotiation of that issue.

BNA also publishes a series of pamphlets entitled *Collective Bargaining Special Reports*. These pamphlets contain a calendar of negotiations that lists contract expirations by industry. BNA also publishes biweekly the *Collective Bargaining, Negotiations and Contracts Newsletter*, which contains general news, agency statistics, and editorials.

### X. *Computer-Assisted Research*

Computer-assisted research is useful either when speed is necessary or when conventional sources are inadequate or unavailable. In a library that does not receive the mimeographed decisions of the NLRB, WESTLAW or LEXIS can be used to obtain the full text of the NLRB decision and the Administrative Law Judge's decision for cases not yet published in the official *Decisions and Orders of the National Labor Relations Board*. Computers sometimes are the only source for extremely recent decisions. Computers also permit unusual search requests, such as a search for all the decisions of a specified federal judge or Administrative Law Judge. LEXIS provides the most efficient means of obtaining subsequent history of Board and court decisions.

#### A. *DIALOG*

File 244 of DIALOG contains labor law. It provides summaries of decisions and references to texts of decisions on labor relations, arbitration, and other areas of employment law. It has abstracts of state and federal court decisions as well as NLRB rulings. It corresponds, in part, to BNA's *Labor Relations Reporter* (1966 to present), and can replace use of *LRR* where *LRR* in hard copy is unavailable.

#### B. *LEXIS*

The Labor Library of LEXIS contains court cases, NLRB decisions (full texts including Administrative Law Judge decisions), and titles 20 and 29 of *C.F.R.* Court cases and NLRB decisions may be searched separately or together. The LEXIS Labor Library also includes federal employee labor relations and occupational health and safety materials beyond the scope of this guide. The LEXIS Labor Library contains several BNA publications, including the *Daily Labor Report*, a useful, detailed newsletter of current developments in labor relations. LEXIS includes *Shepard's Federal Labor Law Citations*<sup>41</sup> and allows using an NLRB or *Labor Relations Reference Manual* citation when using Auto-Cite—LEXIS's expedited method for finding case history.

The Labor Library on LEXIS does not include state labor materials or federal statutes, but these can be searched in other LEXIS libraries.

#### C. *WESTLAW*

WESTLAW's Federal Labor Databases file includes several separate files

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41. WESTLAW does not have *Shepard's Federal Labor Law Citations*.

prefaced by the letters "flb"; these include such materials as the *United States Code*, federal court cases, the *Code of Federal Regulations*, and selected secondary sources. Unlike LEXIS, WESTLAW does not permit a simultaneous search of court and agency material. State cases and public sector cases can be searched in other data bases. WESTLAW includes full texts of cases, including Administrative Law Judge decisions for NLRB cases. WESTLAW also permits searches using the West key number system.

### XI. A Note on Authority and Citation Form

The sorts of authority and citation form used in a brief to a decision-maker in a labor relations case should vary depending on the nature of the decision-maker. For example, because entities within the National Labor Relations Board seek to have a uniform law applied nationally by the NLRB, agency officials give little or no weight to decisions of federal courts of appeals, even from the same circuit in which the NLRB case arose, if the judicial authority is inconsistent with decisions of the five-member NLRB. Therefore, in briefs to a regional director, Administrative Law Judge, or the NLRB, an attorney should rely principally on NLRB decisions. Regional directors and Administrative Law Judges have no power to change NLRB policy. The NLRB, which does have such power, is usually more likely to change its policy by persuasive analysis rather than by an argument that its policy is inconsistent with decisions of the courts of appeals.

In briefs to a federal circuit court, however, decisions of courts of appeals, particularly the court of appeals in which the case is pending, should be relied upon. Obviously, decisions of the United States Supreme Court will be of paramount authority in both agency and court of appeals proceedings.

In deciding what citation form to use in a brief, an attorney should be guided more by the practicalities of the situation than by any formal citation guide. There is no point in using a citation to a set of books not available to the decision-maker. For example, the library of a regional director is likely to contain the official NLRB decisions and a set of the *BNA Labor Relations Reporter*, and perhaps the *CCH Labor Law Reporter*. If one were seeking to cite a court of appeals case, perhaps one enforcing an NLRB decision, one would want to cite to the *BNA Labor Relations Reference Manual* rather than to the *Federal Reporter* series. Similarly, briefs to Administrative Law Judges and to the NLRB itself probably should include citations to official NLRB decisions and the *L.R.R.M.* rather than to the *Federal Reporter* system. If *Federal Reporter* citations are used in agency proceedings, parallel citations to the *L.R.R.M.* also should be included. In the federal courts, on the other hand, the *Federal Reporter* system surely is available, but the looseleaf labor services may not be.



Whenever an NLRB case is cited, the attorney must make sure that the subsequent history of the case is explored through *Shepard's* or LEXIS and that any subsequent history, such as judicial enforcement or nonenforcement, is included in any citation to that NLRB case.