



EVEN THE FEDERAL GOVERNMENT CAN'T BEAT *THE BLUEBOOK*

Fred B. Jacob

BLUEBOOK RULE 6.1(b), “Periods,” provides that “every abbreviation should be followed by a period.” In classic lawyering form, however, *The Bluebook* then offers an exception to the rule, and then an exception to the exception:

Some entities with widely recognized initials, e.g., AARP, CBS, CIA, EPA, FCC, FDA, FEC, NAACP, and NLRB, are commonly referred to in spoken language by their initials rather than by their full names; such abbreviations may be used without periods in text, in case names, and as institutional authors. Do not, however, omit the periods when the abbreviations are used as reporter names, in names of codes, or as names of courts of decision. Thus:

NLRB v. Baptist Hosp., Inc., 442 U.S. 773 (1979).

But: E. Belden Corp., 239 N.L.R.B. 776 (1978).¹

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¹ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 89 (21st ed. 2020).

The Bluebook's official title, of course, is *A Uniform System of Citation*, and the use of “uniform” – dating back to 1926 – is no accident.² Uniformity is *The Bluebook's* chief virtue, providing a common grammar for the legal community. From my first day of law school, I had been trained to worship it like a sacred text.

In 1997, I joined the NLRB's Appellate Court Branch as a junior attorney. But as my first brief³ hit the supervisory editing process, my dream job turned into a young lawyer's nightmare: The NLRB did not follow *The Bluebook*. Instead, it adhered to the *NLRB Style Manual*,⁴ an odd collection of rules that in no way resembled standard *Bluebook* citation format.⁵ The former law clerks in my cohort of newly hired junior attorneys were mortified, fearing that the judges and law clerks who'd be reading our briefs would find our work less credible as a result of the seeming citation errors throughout.

With the backing of our union, the National Labor Relations Board Professional Association, we rebels drafted a proposal asking branch management to adopt *The Bluebook*. To our surprise, management agreed – but not without asking one important question: Would we have to cite volumes of the Board's reported decisions as “N.L.R.B.” instead of “NLRB”? Since 1949, the National Labor Relations Board has cited its own volumes *without* periods, *e.g.*, 239 NLRB 776 (1978). While management could wrap their heads around the idea of underlining signals and spelling out “affirmed,” the prospect of abandoning the Board's preferred self-citation was a bridge too far.

In the 1990s, the NLRB was not alone in having its official reporters officiously “periodized” by *The Bluebook* in the name of uniformity. Table T.1 of *The Bluebook's* 1991 Fifteenth Edition covered “United States Juris-

² See generally Fred R. Shapiro & Julie Graves Krishnaswami, *The Secret History of the Bluebook*, 100 MINN. L. REV. 1563 (2016).

³ NLRB v. Birnie Bus Serv., Inc., 116 F.3d 1472, 1997 WL 346105 (2d Cir. 1997) (table).

⁴ NLRB STYLE MANUAL: A GUIDE FOR LEGAL WRITING IN PLAIN ENGLISH (1983 ed.), babel.hathitrust.org/cgi/pt?id=uiug.30112106853788.

⁵ *The Style Manual* did not underline or italicize signals like “see” and “cf.” *Id.* at 6. It jettisoned *The Bluebook's* list of preferred explanatory phrases like *affirmed* and *enforced* in favor of the truncated and roman style “affd.” and “enfd.” *Id.* at 2. And, rather than cite case names by, well, *their names*, it instead substituted an arcane list of popular union names for the union names reported in the *Federal Reporter*. *Id.* at 7.

dictions,” and offered a list of “United States official administrative publications.”⁶ Table T.1 cited the official reporter of the Federal Labor Relations Authority as “F.L.R.A.,”⁷ but, like the NLRB, the FLRA cited its own volumes *without* periods. Indeed, the first page of its official reporter explicitly directed readers to cite decisions as “1 FLRA ____.”⁸ Same with the Federal Energy Regulatory Commission, whose reporters instructed practitioners to use “FERC” in citations, but *The Bluebook* required “F.E.R.C.”⁹ The Federal Mine Safety and Health Review Commission, too, faced the same punctuation preemption.¹⁰ And so on.¹¹

Despite this consistent line of pro-period authority, NLRB management thought they might have a shot at convincing the *Bluebook* editors to adopt NLRB style, rather than the other way around. After all, the NLRB has the power to shape workplace policies for almost all private-sector employers in the United States and broad authority running “the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause.”¹² If the agency could bend corporate America and powerful labor unions to its will, how hard could it be to convince a bunch of 2Ls and 3Ls running the Harvard, Yale, Columbia, and Penn law reviews to follow the NLRB’s self-citation preference?

⁶ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 168-69 (15th ed. 1991). This author has had the benefit of reviewing the Eleventh (1971), Thirteenth (1981), Fifteenth (1991), Nineteenth (2010), and Twentieth (2015) editions of *The Bluebook*. Unfortunately, the Sixteenth Edition, which was the operative version in 1997, is lost to the hinterlands of used booksellers like Amazon and eBay.

⁷ Bluebook (15th ed.), *supra* n.6, at 168.

⁸ 52 DECISIONS OF THE FEDERAL LABOR RELATIONS AUTHORITY at i (June 1, 1997-Mar. 31, 1998), heinonline.org/HOL/P?h=hein.usfed/dflr0053&i=1.

⁹ Compare Bluebook (15th ed.), *supra* n.6, at 168, with FEDERAL ENERGY GUIDELINES, FERC REPORTS at i (Jan.-Mar. 1997) (directing readers to cite the volume as “78 FERC ¶”), heinonline.org/HOL/P?h=hein.usfed/federgy0016&i=1.

¹⁰ Compare Bluebook (15th ed.), *supra* n.6, at 168 (citing Federal Mine Safety and Health Review Commission Decisions as “F.M.S.H.R.C.”), with *Asarco, Inc.*, 19 FMSHRC 1, 2 (1997) (citing other FMSHRC cases as “Pontiki Coal Corp., 8 FMSHRC 668, 674-75 (May 1986)” and “Reid v. Kiah Creek Mining Co., 15 FMSHRC 390 (March 1993)”).

¹¹ Bluebook (15th ed.), *supra* n.6, at 168-69.

¹² *NLRB v. Reliance Fuel Oil Corp.*, 371 U.S. 224, 226 (1963) (emphasis omitted).

On April 24, 1997, Assistant General Counsel John Burgoyne sent the Harvard Law Review Association his pitch. After setting forth Rule 6.1(b), AGC Burgoyne pointed out that “this . . . rubric is contrary to the NLRB’s own long-standing practice.” He continued:

The Bluebook does not give reasons for its citation choices. I assume that it recommends the use of periods for NLRB Decisions because it uniformly recommends the use of periods for all United States official administrative publications. See Table T-1, pp. 168-170. It seems to me, however, that the publisher of a volume has or ought to have the prerogative to set the ground rules about how its volume is to be cited. If this is so, then I think that The Bluebook should defer to the NLRB’s decision, even at the expense of losing uniformity. Accordingly, I suggest that in future editions *The Bluebook* permit the deletion of periods from the citations to NLRB Decisions, FLRA Decisions, and any other Agency which does not use them in its official reports.¹³

The NLRB is still waiting for *The Bluebook*’s response.¹⁴ Despite the silence, the Board’s Appellate Court Branch resolutely held onto “NLRB,” even as it adopted the rest of *The Bluebook*.¹⁵ To this day, the Branch has continued to cite Board reporters in briefs to the courts of appeals as 314 NLRB 1234, not 314 N.L.R.B. 1234. And, at least some courts seem to have blessed the practice.¹⁶

¹³ Letter from John D. Burgoyne, Assistant General Counsel, National Labor Relations Board, to the Harvard Law Review Association (Apr. 24, 1997) (on file with author). Judge Posner agreed, for what it’s worth. See Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850, 852 (2011) (“There are esoteric sources, such as administrative decisions and regulations, but the agencies caption their various promulgations in a way that makes it obvious how to cite them analogously to judicial decisions and to statutes.”).

¹⁴ I must concede that I cannot *prove* that *The Bluebook* never responded; I was a junior attorney at the time, and perhaps a negative reply wasn’t deemed important enough to share. As subsequent editions of *The Bluebook* show, though, the Board’s suggestion was not adopted.

¹⁵ Memorandum to Appellate Court Branch Attorneys, at 5 (May 27, 1997) (on file with author). Perhaps the NLRB should have just taken one author’s suggestion and used the parenthetical “(the Bluebook made me do it)” after each “N.L.R.B.” cite? See Michael S. Kwun, *The New Parentheticals*, 22 GREEN BAG 2D 13, 14 (2018) (“The Bluebook has some inane rules.”).

¹⁶ See, e.g., *Kava Holdings, LLC v. NLRB*, 85 F.4th 479, 483–84 (9th Cir. 2023) (citing

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As those of us who worked for him know, AGC Burgoyne was a great lawyer. But his letter to the *Harvard Law Review* was a bit *ipse dixit*, asking for citational *Chevron* deference without offering reasoned decision-making for the change. And there *are* good arguments why “no periods” in NLRB is better than the “four periods” in N.L.R.B. Rule 6.1(b) might have been a relic left over from the pre-1949 N.L.R.B. self-citation form. Using “NLRB” instead of “N.L.R.B.” might save overworked law review staffers time micro-managing punctuation and avoid unnecessary proofreading errors. Eliminating extra periods could save millions of dollars in ink costs for law reviews over the long term.¹⁷

Thankfully, the period of period hegemony has come to an end. In 2010, the Nineteenth Edition of *The Bluebook* announced “a significant expansion in the coverage of administrative agency materials,” due to the “vital assistance” of “[m]any federal agencies and the Board and Staff of the *Administrative Law Review*.”¹⁸ It introduced a new Table 1.2, entitled “Federal Administrative and Executive Materials.”¹⁹ In a break from the uniform practice demanded in earlier editions, *The Bluebook* now directs us to cite the official reporters of the Federal Energy Regulatory Commission and the Federal Mine Safety and Health Review Commission *without periods* as “FERC” and “FMSHRC”²⁰ – consistent with how the agencies cite

“Hotel Bel-Air, 358 NLRB 1527 (2012), *adopted by* 361 NLRB 898 (2014), *enforced*, 637 F. App’x 4 (D.C. Cir. 2016)” and “Hotel Bel-Air, 370 NLRB No. 73 (2021)”; PG Publ’g Co. v. NLRB, 83 F.4th 200, 205, 207 (3d Cir. 2023) (citing “Bottom Line Enters., 302 NLRB 373, 374 (1991)” and “Finley Hosp., 362 NLRB 915 (2015)”; Atl. Grp., Inc. v. NLRB, No. 22-60442, 2023 WL 5584119, at *3 (5th Cir. Aug. 29, 2023) (citing “Cascades Containerboard Packaging, 370 NLRB No. 76, slip op. at 1 (2021)” and “Bemis Co., 370 NLRB No. 7, slip op. at 1 fn. 3 (2020)”). *But see* Longmont United Hosp. v. NLRB, 70 F.4th 573, 579 (D.C. Cir. 2023) (using “N.L.R.B.” to cite Board volumes); Int’l Bhd. of Teamsters Loc. 947 v. NLRB, 66 F.4th 1294, 1313 (11th Cir. 2023) (same).

¹⁷ Cf. Madeleine Stix, *Teen to government: Change your typeface, save millions*, CNN.COM (Mar. 29, 2014) (reporting a high-schooler’s study that concluded that using a font with thinner lines could save the U.S. government \$136 million annually in ink costs), www.cnn.com/2014/03/27/living/student-money-saving-typeface-garamond-schools/index.html.

¹⁸ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION viii (19th ed. 2010).

¹⁹ *Id.* at 218-28.

²⁰ *Id.* at 225.

themselves.²¹ With these changes – perhaps suggesting that AGC Burgoyne was correct that “the publisher of a volume has or ought to have the prerogative to set the ground rules about how its volume is to be cited” – the rules regarding periods in citing federal agency bound volumes have fractured. As in society, where we now understand that it’s important to call people what they want to be called, *Bluebook* uniformity has given way to individuality. Uniformity no longer means that every agency is treated alike, but that every agency is treated *as it would like*, uniformly.

But Table 1.2 still “N.L.R.B.’s” the NLRB’s reporters.²² So, maybe it’s worth another run for the Board. How the Harvard-Yale-Columbia-Penn posse determines what goes into *The Bluebook* is a bit of a mystery, and if the posse is listening now, I hope it’ll take these arguments under advisement for the next edition. But one thing seems clear: Uniform citation is not a democracy. For those of us who have spent our careers at the NLRB fighting for workplace democracy – and perseverating over proper citation style – that can be bit of a hard pill to swallow.²³



²¹ See, e.g., NorthWestern Corp., citing itself as “186 FERC ¶ 61,027” (Jan. 11, 2024) (and citing other FERC cases as “Citizens Sunrise Transmission LLC, 171 FERC ¶ 61,106, at P 10 (2020)” (at 3), “N. Baja Pipeline, LLC, 128 FERC ¶ 61,082, at P 14 (2009)” (at 4)); Secretary of Labor, Mine Safety and Health Administration v. Carmeuse Lime and Stone, Inc., citing itself in page runner as “45 FMSHRC page 179” (Apr. 12, 2023) (and citing other FMSHRC cases as “Jim Walter Res., Inc., 15 FMSHRC 782, 786-89 (May 1993)” (at 179), “Asarco LLC, 42 FMSHRC 308, 310 (Apr. 2020)” (at 180)).

²² Bluebook (21st ed.), *supra* n.1, at 240; THE BLUEBOOK ONLINE, Table T1.2 (“Cite decisions and orders to the Decisions and Orders of the National Labor Relations Board (N.L.R.B.)”), www.legalbluebook.com/bluebook/v21/tables/t1-united-states-jurisdictions/t1-2-federal-administrative-and-executive-materials/national-labor-relations-board-nlrp (last visited Jan. 25, 2024).

²³ Of course, the Board would still have the perennial “NRLB” problem. Sigh. See Westlaw searches showing that, between 1942 and 2021, 93 different courts of appeals opinions misspelled “NLRB” as “NRLB,” www.westlaw.com/SharedLink/293346c2bdeb4eb68f9e1239bd105c7a?VR=3.0&RS=cblt1.0, as did 291 law reviews during an even shorter period of time, tinyurl.com/5xf2v7xn.