



FINAL EXAMINATION

in

LABOR LAW

April 30, 1984

Mr. Shanor

Instructions

This three-hour exam contains four parts. Part I contains six short answer questions; Parts II and III each consists of a 30-minute essay; Part IV is a one-hour essay.

This exam is open book. You may use your casebook, statutory and photocopied supplements, class notes, hornbook or nutshell; the library, other persons, and computer facilities are off limits. This exam may be taken in this room, the smoking room, and the typing room.

Read, think, and organize before you write.

All answers should be written or typed in the spaces provided.

Write your exam number on each page of the exam in the space provided and return your entire exam at the end of three hours.

GOOD LUCK!

I.
(One Hour)

Discuss concisely what violations of federal labor laws, if any, exist under the following circumstances, making reference to statutory sections, case law, and labor law policy factors.

1. A union constitutional provision provides that "No resignation or withdrawal from the Union shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent."

2. An employer questions a supervisor concerning the union sympathies of various line employees during an election campaign; when answers are refused, the employer demotes the supervisor.

3. An employer discharges union officer for failing to prevent a wildcat strike when the no-strike clause in the bargaining agreement requires union officials to take "all possible efforts to prevent all strikes."

4. A collective bargaining agreement provides that all union officers will be the last to be fired in the event of lay-offs (regardless of their seniority) and shall have priority bidding rights for new job openings.

5. A union, pursuant to a "no ratting" clause in its constitution, fines a member who reports to the employer that another employee breached a company work rule.

6. A union insists during bargaining that it will make no wage concessions unless the salary of the Company President is reduced by 50% (to \$500,000 per year) and also insists that the company dismiss a firm of "hardline" labor relations consultants who have advised the employer to commit unfair labor practices when benefits of violation appeared to outweigh sanctions imposed for violation.

II.
(30 Minutes)

Shortly after the beginning of an organizational campaign, the Plant Manager posted the following notice on the bulletin board:

Attention All Employees!

There will be no solicitation of any kind on plant premises by any employee during working hours.

There will be no distribution of any literature, notices, cards, or papers of any kind in and about the work areas of any employee at any time. Non-employees shall not come upon or be upon the plant premises for the purpose of soliciting or distributing literature, notices, cards, or paper of any kind.

Exceptions to these rules may be made only upon prior submission in writing of the request to the Plant Manager.

After the Union lost the election, it filed unfair labor practice charges and petitioned to have the results set aside. During these proceedings, the Plant Manager testified that he was aware when he posted the notice that union activity was in progress. He also testified that he had been concerned with the declining quantity and quality of work and the excessive amount of trash at the plant during the organizational campaign.

How should the NLRB rule on the Union's charges and petition? Why?

III.
(30 Minutes)

Ghoul, Inc., a Delaware Corporation, has been debarred from selling its products to the State of Wisconsin for the next three years under the following statute:

§ 101(a) The Department of Industry, Labor and Human Relations shall maintain a list of persons or firms that have been found by the National Labor Relations Board, and by three different final decisions of a Federal court of appeals within a 5-year period (if the three final decisions involved a cumulative finding of at least three separate violations) to have violated the National Labor Relations Act.

(b) A name shall remain on the list for three years.

(c) The State of Wisconsin shall not purchase any product known to be manufactured or sold by any person or firm included on the list of Labor Law violators compiled under § 101(a).

By letter, Ghoul was recently notified of its inclusion on the Labor Law violators list and its debarment until March 1, 1987. As of the date of the letter, Ghoul had outstanding bids to the State of Wisconsin in excess of \$100,000. On that same date, the state notified all current state vendors that they could not sell products to the State of Wisconsin containing Ghoul-produced components and notified all state purchasing agents of Ghoul's debarment.

Ghoul has come to you, a prominent management labor lawyer, for help in overturning this debarment. A careful check confirms your fears that the State of Wisconsin has its facts right about Ghoul's "aggressive" anti-union activities and that there are no procedural defects in the State's use of the debarment process. What and where do you argue on Ghoul's behalf and what are your chances of success?

IV.
(One Hour)

Long John Silver's, Inc. (Silver), a national chain of fast-food seafood restaurants, entered the western Pennsylvania market in 1973. Its first restaurant, in the Pittsburgh suburb of Monroeville, was built by Muko, Inc. (Muko), a nonunion general contractor which was the low bidder. During construction, the site was picketed by the Trades Council of Pittsburgh (the Council) one of several trades councils in southwestern Pennsylvania. After the restaurant opened, the Council continued to leaflet patrons, asking them not to patronize Silver because it had used contractors paying less than the established prevailing construction wages in the area. At no time was Muko picketed or handbilled at its offices or at any other jobsite.

Meanwhile, Muko was awarded a contract to build another Silver's restaurant nearby. Construction began about the time the Monroeville restaurant opened.

Fearful of the effect of handbilling at both locations, Silver approached the Council to request that the handbilling be terminated promptly. The Council indicated that was possible if union labor was used in building all future restaurants. The Council supplied Silver a form contract used between local unions and union contractors and a list of contractors with whom the locals had collective bargaining agreements.

Shortly thereafter, Silver sent a letter to the Council indicating a desire "to establish good working relations with Pittsburgh unions," that "[w]e plan to use only union contractors certified by [the Council]" and that "[w]e will request that all the investors developing for us use union contractors." Silver indicated that it was very important "that we not be subjected to any kind of information picketing." The Council promptly discontinued its campaign against Silver.

Silver then told Muko it could build all its restaurants in the area if it continued to offer high-quality work at competitive prices as a union contractor. Muko refused either to become a union contractor hiring only unionized subcontractors or to establish a "double-breasted" operation which would sign union contracts. Muko was, therefore, not asked to bid any of twelve further jobs for Silver. It subsequently sued Silver and the Council under the antitrust laws.

Write a brief opinion disposing of the Council's motion to dismiss it as a party defendant to the suit.

Answer Sheet for 4/30/84 Exam

I. 1. Open issue from Allis Chalmers, Scofield, et al. under 8(6)(1)(A). Pits need for discipline in most critical context against coercion of individual where (presumably) dues will continue to be paid. Moreover, resignation may be "free speech" under LMRDA § 101(a)(2) and even, given Abood, a "free association" constitutional right. Nevertheless, an "end run" of union discipline and solidarity concerns. See Pattern Makers handout (S.Ct. decision).

2. This appears broadly "coercive" under § 8(a)(1), at least if employees find out, since they will assume sanctions or reprisals might be forthcoming. But supervisor himself (unless a "dual status" employee) has no § 7 rights to assert because (1) he is not an employee and (2) his noncooperation, if not rooted in the CBA, is not "concerted." Perhaps the "concerted activity" is that of the employees, and the supervisor is merely the conduit.

4. It is a violation of § 8(a)(2) for the employer to "assist" a labor organization. Nevertheless, layoff protection may be justifiable in order to insulate those responsible for bargaining for the union from being ineffective; the priority bidding rights seem to have no similar justification and indeed tend to separate officer and member interests.

5. Assuming that "due process" is observed, no problem under § 105 LMRDA or § 609. Interboro/Meyers interface The 8(b)(1)(A) concerns of Scofield may, however, cause some problems. (1) Is there a "legitimate union concern" to this clause? Jefferson Standard, § 10(c) for cause disciplining, and the like are pro-efficacy and loyalty, while this rule appears to run counter. On the other hand, perhaps this strengthens the unions adversary role. (2) The rule may run counter to labor policy for the above reasons.

6. There is an 8(b)(3) refusal to bargain where a union insists upon a non mandatory or permissive subject outside its "turf." The President's salary is such; moreover, a broad reading of § 8(b)(1)(B) might construe this as coercing the ER concerning selection of CBA reps. Likewise, hiring consultants is an ER turf; however, such reps probably aren't "CBA reps" under § 8(b)(1)(B) and the advised ULPS clearly affect the employees' "working conditions." Liability for the consultants in addition to ER for ULPS?

II. Employees -- § 8(a)(1)

No solicitation during working hours

- ER efficiency vs. message alternatives under § 7 heavily weighted in ER favor

No Distribution of Literature in work areas

Republic Aviation = rule bad, motive irrel.

Nutone & Avondale = balancing as above

with asserted interest (trash) looked at closely

Note openness of process during lunch, after work, etc.

Non-Employees -- § 8(a)(1)

No solicitation or distribution

- ER Prop. rts. vs. alternative means of access
- Rts involved under § 7 are those of ees
- First Amendment washout (unless "co. town")
- How carefully to look at alternatives?
- How "heavy" is "no-trash" rule
- overturning elections vs. "mere" ULP?

Both -- § 8(a)(3)

turns on discrimination

issue is discrim. intent or discrim. in practice

timing leaves ER in bad posture

III. See Wisc. Dept. of Industry et al. v. Gould, Inc.,
750 F.2d 608 (7th Cir. 1984), affirmed 54
USLW 4228 (Sup.Ct. Feb. 26, 1986).

IV. See Muko, Inc. v. S.W. Pennsylvania, 609 F.2d 1368
(3d Cir. 1979).