



Exam Number \_\_\_\_\_

FINAL EXAMINATION

in

LABOR LAW

May 8, 1985

Mr. Shanor

Instructions

This two and one-half hour exam contains four parts. Part I contains six short answer questions; Parts II, III and IV each consist of a 30-minute 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 or 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!

Labor Law Final Examination  
Mr. Shanor  
May 8, 1985

Exam Number \_\_\_\_\_

Page Two

I.  
(One Hour)

Discuss concisely what violations, if any, of federal labor laws exist under the following circumstances, referring to statutes, case law, and policy factors.

(1) The employer which decides to eliminate an entire product line because "labor costs have become excessive" refuses to discuss its decision or the consequences of the decision on employees with the union.

---

---

---

---

---

---

---

(2) Several employees, despite a broad "no strike" clause in a collective bargaining agreement applicable to them, engaged in a "sympathy strike" in support of another union's strike against the employer. The employer disciplined them for this activity. The arbitration clause could not have been used by the employees under these circumstances.

---

---

---

---

---

---

---

Labor Law Final Examination  
Mr. Shanor  
May 8, 1985

Exam Number \_\_\_\_\_

Page Three

(3) The employer disciplined striking union officials who struck in violation of a no-strike clause more severely than it disciplined other employees. The collective bargaining agreement required the union to disavow unlawful strikes, exert efforts to end unlawful strikes and insist that employees end the strike.

---

---

---

---

---

---

---

(4) The union failed to timely notify an employee of its decision not to process her request to file a grievance about her allegedly forced resignation. The union considered her request, determined she wouldn't prevail, but negligently failed to notify her timely of its decision.

---

---

---

---

---

---

---

(5) After an employee was identified as being a union organizer, the owner of the company asked the employee, "Why are you trying to get a union in here?" When the employee responded, "Low pay, no benefits and lack of job security," the owner then asked whether the union charged a fee to join. When the employee said yes, the owner ended the discussion by saying he would "talk to your supervisor about it."

---

---

---

---

---

---

---

---

(6) Kenneth Prill, one of several tractor-trailer vehicle drivers for a nonunionized employer, was discharged for repeatedly complaining about and ultimately refusing to drive an unsafe vehicle after filing a safety complaint with the Public Safety Commission.

---

---

---

---

---

---

---

---

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?

---

---

---

---

---

---

---

---



Labor Law Final Examination  
Mr. Shanor  
May 8, 1985

Exam Number \_\_\_\_\_

Page Seven

III.  
(30 Minutes)

The Michigan Strikebreakers Act reads as follows:

"Sec. 1. No person, partnership, firm or corporation, or officer or agent thereof, involved in a strike or lockout shall knowingly employ in place of an employee involved in the strike or lockout any person who customarily and repeatedly offers himself for employment in the place of employees involved in a strike or lockout.

"Sec. 2. No person, partnership, firm or corporation, or officer or agent thereof, involved in a lawful strike or lockout shall hire and import or contract or arrange with any other person, partnership, agency, firm or corporation to hire and import from another state or country, for the purpose of strikebreaking, persons for employment in place of employees involved in the strike or lockout.

"Sec. 3. Any person, partnership, agency, firm or corporation violating any provision of this act is guilty of a misdemeanor."

The Michigan Chamber of Commerce brings a declaratory judgment action against the State of Michigan (such an action is permitted under state law) seeking to have this statute declared facially invalid. Write a brief memo assessing the legality under federal labor law of this state statute.

---

---

---

---

---

---

---

---

---

---

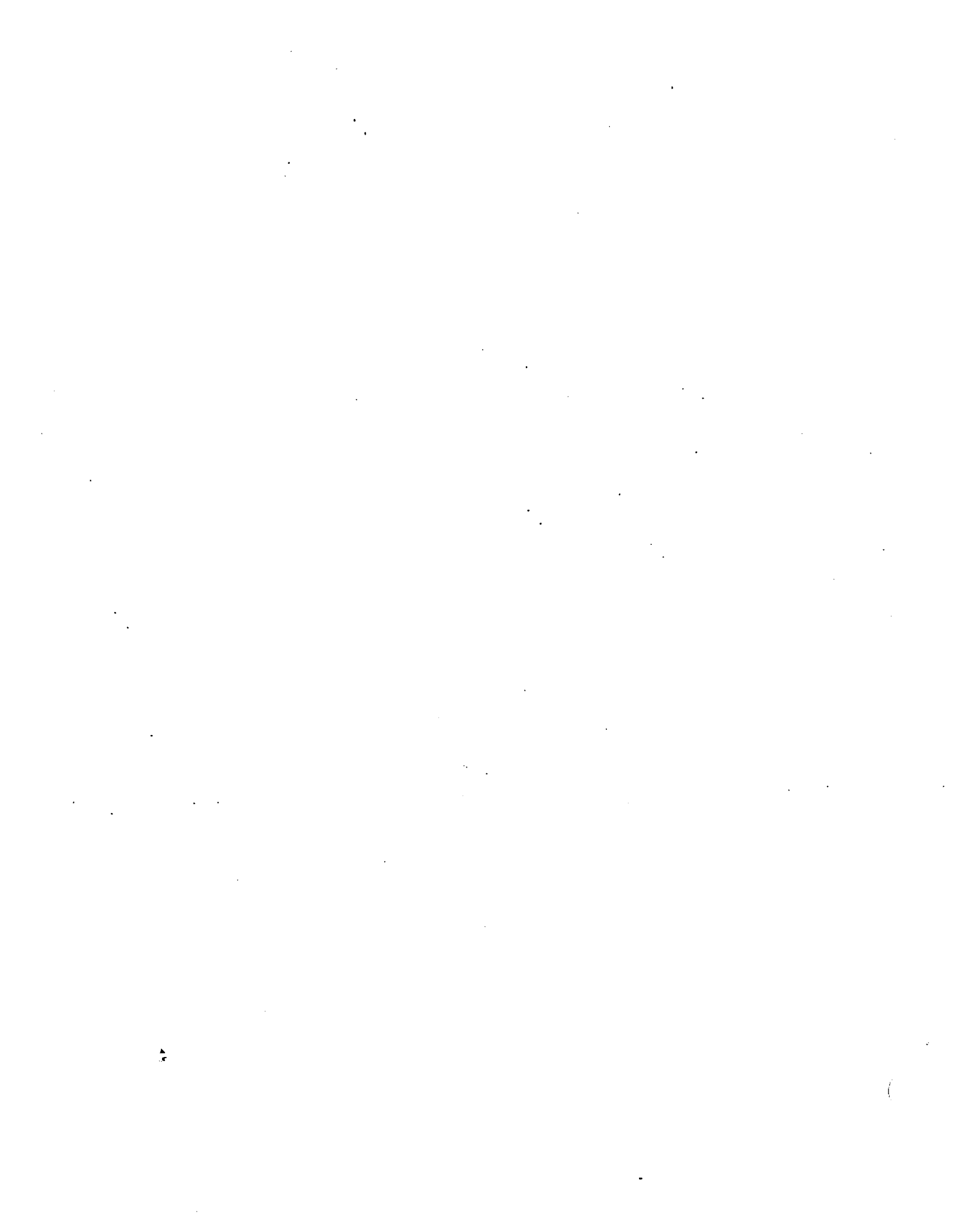
---

---









Answer Sheet for 5/8/85 Exam

I. (1) FNM & Otis Elevator (8(a)(5) Refusal to Bargain)

- (a) decision bargaining a "fundamental bus. decision"
  - bargainable (decision turns on costs)
  - balancing (speed, secrecy, etc. vs. EE interests)
- (b) effects bargaining
  - required (wages, hrs, work cond. under 8(d))
  - but generally ineffective (no leverage)

Also Darlington 8(a)(3) possibility?

(2) 8(b)(1) or §301 violations? 8(b)(4)?

(a) Was strike w/in "no strike" clause?

- broad construction generally but see Buffalo Forge
- remedy affected by arbitrability (Boys Market)

(b) Was strike a 2° Boycott?

- no: vs. own (1° ER)
- yes: if other U. is engaged in 2° boycott, wouldn't support thereof also be 2°?

(3) 8(a)(1) or 8(a)(3)? Union 301?

(a) Discrimination not permitted absent agreement.

- S.Ct. in Metro Edison case

(b) Was there sufficient agreement?

- no: no explicitly greater officer duties
  - yes: imply them from fact that U can only operate thru agents
- [balance ⇒ no because remedies exist vs. union, even if sometimes ineffective; see cases on \$ from fees for breach of No Strike clauses]

(c) Union breach CBA: no pers. liab; inj., dam. vs. U

(4) DFR breach

- Vaca v. Sipes - "arbitrary, discriminatory" std.
- Is "simple negligence" arbitrary? Coe Rubber
- Policy: can you discourage negligence?
  - systems approach ⇒ yes
  - indiv. case approach ⇒ no

- (5) 8(a)(1) and (3)?
- Struckness balancing test? Rossmore House => ↓
  - Ambiguity of final ER start
  - Chilling effect on ee vs. ER free speech  
(discipline of ee as point of WLRB involve.)
- (6) §7?
- "concerted" activity?
    - Interboro & S.Ct. approval in Trans. Mgmt
      - "pursuant to enforce of CBA"
      - NLRB discretionary interp.
    - Alleluia Cushion vs. Meyers Indus.
      - "capable of affecting others"
      - vs.
      - individual action only
    - "At Will" or exception?

II. See 4/30/84 Answer Sheet

III. Preemption

A. Framework

1. Argu-Prohib/Protected Garmen
2. Unregulated/Econ. Forces Wisc. Comm.

B. Argu-Prohib/Protected

1. ER may hire temp. or perm. replace. Mackay Radio  
•• not prohibited
2. Rt. to strike protected, but no mention of protection of ER rt. to hire (fits w/in mgmt. discretion or residual)

C. Unregulated

1. Strong area of concern; classic econ. forces  
See N.Y. Telephone
2. Countervailing state interests?
  - violence prevention?
  - overly broad b/c can solve that w/crim. penalties (assault etc.) and tort law (assault etc.)
3. No legis. history to support state intrusion (contrast N.Y. Tel.)
4. Belknap relevance?

IV. 1. "Struck work" fine

- (a) 8(b)(1)(A) restraint on ability to abstain from collective activity?
    - compare pending S.Ct. case re barring resignation
    - impact on labor-mgmt relations
    - "internal rules"? Allis-Chalmers
      - reasonableness Q no longer applicable
    - Granite State
  - (b) §10(a)(1) Landrum Griffin?
    - free speech?
    - no - caveat to §101(a)(1) plus picketing speech issue?
2. Barring "leadership" for 5 yrs.
- (a) Due Process under 101(a)(5)?
    - arbitrariness
    - size penalty
  - (b) Discrimination