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Labor Law: Final Examination (May 1960)

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Instructions: In the following questions, C means company or employer, E means employee, and U means union. Discuss fully all issues raised by each question whether or not essential to the answer of the specific question asked.

I.

C, a railroad, was organized nearly one hundred years ago, and operates through several states as an integral part of the national railway system important to the transportation of freight and passengers in interstate commerce. When first in business, frequent stops were planned about seven to ten miles apart on the road, but now airlines, pipelines and trucking have reduced drastically the amount of C's business. Thus many Es of C do as little as one hour of work per day, though they are paid for a full day. C has requested Public Utility Commission in four of the states in which it operates for permission to initiate a Central Agency Plan which would result in abolishing many of the stops which it now makes. This plan includes eliminating many jobs held by Es who belong to U, with which C has a collective agreement. After C made its request to the Public Utility Commissions, U gave notice to C that it wanted to negotiate to amend the collective agreement by adding, "No position in existence on (a date prior to the going into effect of the Central Agency Plan) will be abolished or discontinued except by agreement between C and U." C refused to discuss the proposal with U and advised U that it should seek relief with the various Public Utility Commissions. This U refused to do and threatened C with a strike if C continued its refusal to discuss the matter. C files an action in the federal district court for injunctive relief.

- (A) Will C succeed?
- (B) What remedies, if any, are open to U?

II.

Es have been employed by C for years as truckers. They have been permitted to purchase their own equipment, drive and maintain it, being known as owner-operators, C hiring them as drivers and renting their equipment. U has represented many other employees of C for a long time, and in order to force C to cease using owner-operators, forced upon C a collective agreement making it economically impossible for C to continue his relationship with the owner-operators, and reducing Es to mere drivers. The agreement gave Es seniority as drivers from Sept. 1, 1959, the effective date of the contract, but did not give them seniority for all the years prior to 1959 they had worked for C. The result was to place Es on the bottom of the seniority list, making them susceptible to early lay-offs. Alleging irreparable injury, Es ask injunctive relief in the Circuit Court of the state in which C has its main office, specifically requesting U be forced to revise its seniority lists and give Es their true seniority, and prohibiting the enforcement of the 1959 collective agreement so long as their low seniority continues. U moved to dismiss the action on the grounds that the Circuit Court is without jurisdiction, and that the action does not state a cause of action.

How should the court rule on the motion? Why?

III

After a brief strike, Es of C, a textile plant, returned to work. Four days later U called the president of C on the phone, and requested that U be recognized as the bargaining agent of C's Es. At this time 38 of 52 Es had signed union cards. Six days later U repeated the demand. U offered to let C check the union membership cards, but C declined, and a consent election was agreed upon. C advised supervisory Es that they should not interfere with U activities and posted a notice advising all Es of their right to vote freely in the coming election. However, some supervisory Es did engage in conduct the N. L. R. B. found to be in violation of N. L. R. A. § 8(a)(1). U lost the election and immediately filed a protest against the conduct of the election. The N. L. R. B. regional director set aside the election and directed that another be held. U then withdrew its representation petition and filed charges of unfair labor practices, specifically of violating N. L. R. A. § 8(a)(5). Subsequently, N. L. R. B. ordered C to cease and desist from refusing to bargain with U and upon request to "bargain collectively with U."

(1) Assuming you are attorney for C, and want to set aside the Board's order, how do you proceed?

(2) Ought you be successful in setting aside the Board's order?

IV

E had worked for C for 10 years, though not on a job represented by the U which was bargaining agent for other employees of C. E was then promoted to a job which was under U coverage. Still later E was promoted to an even higher job, still under U coverage, on the basis of her more than ten years seniority with C. U was not asked for approval of this second promotion, and filed a grievance alleging violation of a part of the collective agreement which provided that C should notify U when new employees were to be hired and that C would accept applicants furnished by U unless C found such applicants to be incompetent to perform the duties required of the job. U also alleged violation of the seniority provisions of the collective agreement. The arbitration clause in the agreement provided that the Arbitrator should have the power to interpret and apply the provisions of the agreement, but that he should not have the power to amend or modify any of its provisions, nor have the power to affect a change in any of its provisions.

You are the arbitrator. How will you decide the grievance? Why?

V

C1 is a corporation which furnishes engineering services such as designing installations for public utilities, and has a collective agreement with U which represents its workers. The agreement expired and negotiations failed in executing a new agreement. Five days later U struck C1. C2 is the same kind of corporation as C1, but is organized quite independently. A year previous to the strike, C1 began subcontracting some of its work to C2 on a cost plus basis. At the time of the strike, an appreciable portion of C1's work was thus being done by C2. Following the strike, the subcontracting of the work increased until C2 was doing about 75% of C1's work. It was the practice for C1 supervisors to go to C2's plant to oversee the work, and after the strike such visits became much more frequent. U asked C2 to stop taking the work, and when C2 refused, U started to picket C2's plant.

(1) As attorney for C2, what steps, and on what basis, will you take in an attempt to end the picketing?

(2) Assuming you have taken the correct steps, should the picketing be stopped?