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Labor Law: Final Examination (May 28, 1962)

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Directions: Discuss fully all issues raised by the following questions whether or not any one issue would be decisive of the question. In the questions U stands for union, C for company or employer, E for employee, and B for the National Labor Relations Board.

I.

U is engaged in an attempt to organize the Es of C. This has caused friction and excessive talking in C's plant, resulting in a reprimand to one of the foremen. As the campaign progressed tension and bickering increased, and all Es were cautioned to stop quarreling and get to work. But E1 and E2 persisted in constant "campaigning" for U, causing other Es to complain to C. E3 was warned that he'd be discharged if he continued to solicit for U during working hours (as he had been doing), but E3 proceeded to tell other Es of a U meeting, asked them if they'd signed an anti-U petition and referred to the "high" pay of one E who was talking against U. At this point C laid off E1 and E2 for three days and discharged E3.

Then, fearing U was making headway, C proceeded to hold some 33 meetings of groups of from 35-90 Es at each of which C said, in effect, that it was the sole source of supply for some of its customers; that, if unionized, it could not so remain because of the threat of work stoppage from strikes and walkouts; and, as a matter of fact, one of C's customers had started looking for another source of supply. In the election held soon afterward, U lost. Discuss the rights of the parties involved.

II.

C operates in a four-story building with production facilities on the top two floors, packing on the second, and shipping on the first. The whole operation is supervised by a vice-president, with a clerk overseeing the shipping operation. In the shipping department were two truck drivers, a receiving clerk, three wrappers and a stockhandler. C also employed truck drivers who drove intra and interstate about half the time, otherwise helping with packing and wrapping. Within C's operations there was a frequent interchange of functions; seniority was plant-wide; all Es were paid an hourly wage and the same benefits.

U1 is the collective bargaining agent for all C's Es by virtue of B certification. U2, by petition, seeks to represent C's truck drivers, or, alternatively, a combined unit of drivers and shipping department personnel. U1 has not traditionally represented truck drivers. What factors should B consider in ruling on U2's petition? What result?

III.

Initially C, a manufacturer, used an independent contractor to make deliveries to customers. Then C commenced doing its own delivering, purchasing trucks and hiring drivers for this purpose. Immediately C commenced having trouble complying with Interstate Commerce Commission Regulations. Prior to the ICC trouble, U commenced approaching C's Es (truckers) for membership, and when C learned of this it let it be known that it was definitely anti-U. C threatened Es with discontinuance of operations and discharge, promised them special benefits if they'd vote against U, interrogated them concerning identity of U supporters, and requested they sign individual work agreements. Nonetheless, U won a subsequent election and was certified. C's conduct, however, persisted throughout the contract negotiations which followed. During the negotiations, C informed U it was considering of again sub-contracting the hauling of its goods, that negotiations would have to be suspended because of an audit and an ICC investigation. Still negotiations were kept open. Then, a few days later C, without notice to U, sub-contracted its hauling operations and discharged Es. U has complained of all C's conduct to B. You are B. What orders will you issue, if any? Why?

IV.

U1 (local) had a collective agreement with C, but because of internal troubles its parent was suspended from its International. C's Es became dissatisfied and voted to join U2. This was done by resolution transferring all property to U2 and agreeing to continue as before except that U2 would be substituted for U1. C sought B determination of which U it should recognize, the U1 contract not having expired. B ordered an election which resulted in favor of U2. C and U2 then operated under the contract originally negotiated by U1. Five Es, however, refused to pay dues to U2 and U2 asked C, in accordance with the contract's union security clause, to discharge the five Es. C refused and the matter went to arbitration.

The arbitrator held that U1 existed only in name and held for U2. The five Es concerned then paid their dues, but complained to B that the forcing of dues payment was an unfair labor practice. B held for the five Es. C and U2 refused to comply and B seeks an order in the appropriate Court of Appeals enforcing its order.

- (a) Should the election have been held in the first place?
- (b) Should the Court of Appeals enforce the B's order? Why?

V.

U is the certified collective bargaining representative for Es of C, an armored car service agency. But contract negotiations have broken down because C would not permit U to use its trucks for time studies over C's routes. U made the request following C's denial of such information in discussions of overtime pay provisos to go in the contract. U went on strike, setting up a picket at C's main office, and having pickets follow C's trucks to various stores served by C. While at such stores, the pickets passed out leaflets to passersby among whom were the store's employees. U, further picketed the stores with signs which identified C as the party to the dispute. The pickets made oral requests not to patronize the stores served by C. Both C and U allege unfair labor practices. What result? Why?

VI.

During an election campaign, subsequently won by U, U sent a letter to C's Es showing the wages earned by various Es and stating it would be unlawful for C to withdraw previously granted (unilateral) pensions for discriminatory purposes. C countered the letter by telegram, pointing out many errors. In fact the letter was misleading, inaccurate, speculative and contained half-truths and misrepresentations. After the election C refused to bargain. U filed charges of failing to bargain in good faith and C filed charges to invalidate the election. B held the letter might be characterized as above stated, but not of such character to set aside the election, and held for U and against C. C refused to comply and B seeks enforcement of its order in the appropriate Court of Appeals. What result? Why?

VII.

C is exclusive distributor of X paint in area Y. Cl is a general contractor who, at all times material, is building an office building and has a master labor agreement with U which, among other things, states that Cl's Es shall not be required to handle non-union materials. One day U's agent appeared at the building and stated he was not sure C's paint was manufactured by a company that employed union men, that most likely it was "non-union" paint. Thereupon Cl's employees quit work. Cl was informed that no painting could be done until it was determined whether or not the paint was "union made." What charge, if any, lies against U? What defenses, if any, does U have?

VIII.

C and U are parties to a collective agreement containing a "no strike" clause. The agreement also has compulsory arbitration provisos which apply, however, only to seniority and wage (overtime, etc.) matters. Further, there are provisos allowing the contract, or any part thereof, to be renegotiated upon 60 days notice by either party even though the term of the agreement has not expired. Upon giving proper notice, U wanted to negotiate a union shop clause. (The State has no right-to-work-law). Contemporaneously, C laid off, permanently, three employees because of lack of work, but, in so doing, retained some men senior to those laid off. U requested arbitration on the layoff, but C refused. C also refused to discuss the union shop matter. U commenced a peaceful picket. C hires you to exercise all possible remedies and exert all possible rights. Assuming the basic causes of action to be several, what type or types of suits or actions will you file or process? Where?