1965

Labor Law: Final Examination (January 1965)

William & Mary Law School

FINAL EXAMINATION LABOR LAW JANUARY, 1965

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DIRECTIONS: Discuss fully each issue raised by the following questions whether or not any one issue is conclusive of the question. In these questions C means company or employer, U means union, B means the National Labor Relations Board, and E means employee. These abbreviations may be used in your answers. Otherwise do not abbreviate.

I. E is a member of U and employed by C. U represents the Es of C for purposes of collective bargaining. U is duly authorized by its by-laws to make assessments from time to time for U purposes and its constitution provides that one of the purposes of U is to promote or oppose legislation in which U may be directly or indirectly interested. The by-laws also provide procedures for the expulsion of members, when for just cause such is necessary, and prescribes that such may be done by a committee specially constituted upon notice and hearing to the member concerned. It is then stated that review of the committee's action is vested in the international U of which U is an affiliate. By majority vote U has decided to employ a lobbyist to assist in the current drive to obtain repeal of Sec. 14(b) of Taft-Hartley, and has assessed each member $5.00 for this purpose. E, however, believes 14(b) is good law and refuses to pay the assessment. Thereupon after notice and hearing he is suspended from U for two months and is prohibited from running for U office for six months. E's lawyer then filed in Federal court an action under Sec. 101, Landrum-Griffin, alleging E had been wrongfully suspended from U and wrongfully prevented from running for office, that E had exhausted all his remedies within the U and that further resort thereto would be futile. Should E be successful in his suit? Why?

II. A majority of C's Es have joined U, but C has steadfastly refused to recognize U as the representative of its Es. Thereupon U commenced picketing C's premises with signs some of which said, "C not Organized--Does not Pay Union Wages--Does not have Union Working Conditions." Other signs were the same except for the "C not Organized" portion. The picketing has been in effect for 15 days with neither C nor U having taken any other action whatsoever. During this time C's business has been normal except for the fact that two members of another U who were truck drivers refused, on two separate occasions, to cross the picket line. C has not recognized any other U nor has there ever been an election at C's plant. Now C charges U with unfair labor practices before B. Will C be successful? Why?

III. C (railway) has for some time been considering eliminating some of its warehouses which would throw nearly 100 Es (members of the U representing C's Es) out of work, and for as long has refused to discuss the matter with U. Simultaneously, C has let accumulate 50 grievances which allege that each E concerned is entitled to "call-out" pay for being on certain occasions called at home to come to work at times other than their regular shifts. When strike rumblings were heard, however, C sent both matters to the Railway Adjustment Board. Notwithstanding U struck. C's lawyers then obtained an injunction against the strike in Federal District Court. U appeals. What result? Why?

IV. C is a non-retail business. Its entire operation consists of wholesaling $25,000 worth of goods directly from its plant to others in another state, while obtaining $25,000 worth of goods for its processes from C1 (in C's state) who, in turn received those goods from a concern in another state. U, representative of C's Es, has a contract with C which contains a no-strike clause and grievance procedures which culminate in arbitration. The law of C's state provides that it shall be unlawful for any type of secondary pressure to be brought by a U against any C. During the life of the C-U contract U struck C when C fired an employee for singing the union anthem while at work. During the strike U asked other Cs who did business with C not to patronize C while the strike was in progress, but nothing more. C simultaneously filed unfair labor practice charges with B on U's strike activity and a damage suit under Sec. 301-303, Taft-Hartley in State Court. B declined to take jurisdiction and the State Court awarded C damages under state law. U now moves for a stay of execution, pending appeal from B's declining jurisdiction, maintaining B had exclusive jurisdiction and also seeks reversal of the State Court's decision. What result? Why?

V. U and C are parties to a collective bargaining agreement which is about to expire so are negotiating a new one. U wants a clause providing that if C requests any E to handle any goods made in any shop not under contract with U's international, U can reopen the contract and terminate it in case of failure to agree. When C will not agree to this clause U commenced a picket of C's premises with signs reading, "Help us keep our jobs" and "Buy locally made goods." (C had been buying out-of-town, non-union goods). What is the quickest remedy available to C and upon what grounds?

VI. C and U have a contract containing a no-strike clause, grievance and arbitration clauses applicable to any dispute arising from the terms of the contract and, among others, seniority, recognition and wage clauses. Nothing is said however about sub-contracting. After a long study based solely on economic considerations, C concluded that it would be better to sub-contract the manufacture of certain machine tools it had been making itself and which were necessary to its processes. So, without notice to U, C signed a contract with C1 whereby C1, as an independent contractor, would, for a fixed price, come onto C's premises and take over the manufacture of the tools, using C's machinery, but with C1 supplying its own labor force. Certain of C's Es were then told they'd be laid off. U simultaneously filed a grievance and charges with B, and when C refused to entertain the grievances U struck. C then, in Federal District Court, sued U under Sec. 301 of Taft-Hartley. U moved to dismiss the 301 suit because the matter was before B, and also sought a decree of specific performance of the grievance procedure. The District Court ordered arbitration of the grievances and proceeded with the 301 suit. Ultimately B ordered C to reinstitute its machine tool process and to reinstate with back pay those Es who'd been laid off. Assume a consolidated appeal from the District Court's order to proceed with the 301 suit and of the order to arbitrate along with B's decision to the proper Court of Appeals. What should be the result in the Court of Appeals? Why?