1971

Labor Law: Final Examination (January 8, 1971)

William & Mary Law School

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DIRECTIONS: Discuss fully each issue raised in the following questions whether or not any one issue is deemed dispositive of the question as a whole. If factual statements are incomplete or the questions otherwise vague, state applicable assumptions and answer the questions on the basis of the facts given and the assumptions made. The following abbreviations are used throughout the questions and should be used in your answers: B means National Labor Relations Board. C means Company or employer. U means union or collective bargaining representative. E means employee or union member.

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I. C and U are parties to a collective agreement having the usual provisions including a section providing that C shall not discharge any E except for just cause and a grievance procedure which terminates with final and binding arbitration. This agreement does not, however, contain a no-strike clause. During the term of the agreement, C fired one E allegedly for refusing to follow a work order given by his foreman. U immediately protested the firing and called a strike which caused all production to stop. C demanded U call off the strike, offered to arbitrate and, when U refused, filed a suit in state court asking that the strike be enjoined, that damages be awarded for the actual loss of production during the strike and that exemplary damages also be awarded. U then petitioned the local Federal District Court to accept the case on removal. C resisted U's petition for removal. Discuss the merits of C's suit and of U's petition for removal.

II. U-1, local of International U, is located in W, State of X. U-2, another local of International U, is located in Y, State of X. X has no right-to-work law. E has filed a two-count action in state court against U-1. The first count, praying for damages and restoration to membership, alleged that E had been a member of U-1, but that U-1 wrongfully breached its agreement of membership by expelling E for criticizing the president of U-1. The second count, praying for damages, alleged that U-1 had wrongfully refused to give E a referral to U-2 and that as a result of such refusal E could not obtain employment in Y since U-2 there had a union shop agreement with its C. U-1 has moved to dismiss the suit. Criticize, either favorably or unfavorably, E's lawyer for his choice of forum.
III. For many years C, whose employees are paid on an incentive basis, has been promising a bonus when, in C's judgment, it was financially able to pay it. About 35% of C's Es have belonged to U, although U has postponed attempting to secure recognition or bargaining until it could convince more Es to join. Finally the day came when U thought it might win 55% of the employee vote in an employee representation election and so commenced laying groundwork for an election or a demand for bargaining according to which ultimately appeared most feasible. C, hearing of this, took a look at its financial position and found that it was, as a matter of fact, possible to pay most Es the long-promised bonus. C talked the matter over with U and with U's knowledge paid bonuses to those employees with the best production records who, coincidentally, were members of U. E-1 saw the bonus payments as a violation of § (a) (1) and filed an unfair labor practice charge. At hearing C produced uncontradicted evidence showing that the payments were strictly on the basis of merit and denied any anti-union motivation. C also maintained that the charge should not be heard unless U were joined on an § (b) (2) charge. B found that C had violated § (a) (1), and that it was not necessary to join U. C refused to follow B's compliance order and B now seeks to have its order enforced by a Circuit Court of Appeals. How should the Court of Appeals hold? Why?

IV. C's Es are currently represented by U-1 which is signatory to a collective bargaining agreement with C. U-1 has, however, become inactive, has not elected officers, has not processed employee grievances and has not held membership meetings. Now U-2, during the term of the C-U-1 contract, seeks recognition and bargaining from C on the basis of signed authorization cards from a majority of Es which state, "I hereby authorize U-2 to represent me for all collective bargaining purposes conducted with C". C took no action to verify the cards nor was there any evidence of irregularity in U-2's obtaining them, but still refused to recognize or bargain with U-2. U-2 then commenced picketing C with signs which truthfully stated, "C employs many who are non-union and C does not have a contract with U-2". After the picketing continued for 20 days, C's suppliers refused to make deliveries. C thereupon filed charges with B claiming U-2 was in violation of § (b) (1) (A) and § (b) (7). U-2 counter-charged that C was in violation of § (a) (1) and § (a) (5) and requested an order that C bargain. Which party, if either, and to what extent, should prevail before B? Why?

V. U represents the employees of C. B is a member of U, but is personally opposed to striking. When C announced that financial considerations prohibited it from giving its usual Christmas bonus, many employees walked out. U knew of this but said nothing and did nothing. Later these employees commenced picketing C's premises with signs stating that C was parsimonious and opposed to its employees having a merry Christmas. Upon occasion a brick was thrown through C's plant window and the language on the picket line now and then became profane and obscene. A few threats were heard made that if C didn't loosen up, some heads would be bashed in. Still U continued its silence. For several days E went to work as he always had. But one day when he tried to enter C's premises to go to work, he was struck on the head by a brick thrown by one of the pickets and badly injured. Discuss what remedies, if any, aside from a §301 damage suit are available to C and E in state court.