1972

# Employee Relations: Final Examination (1972)

William & Mary Law School

FINAL EXAMINATION
Employee Relations

Marshall-Wythe School of Law, 1972

Professor R. Brown

General Directions: Answer questions as fully as requested. The value of each question is roughly equivalent to the time allotted for each.

I. (25 minutes)

John Q. Retailer operated a small grocery store business with gross sales of $198,000 yearly and he employed, on the average, 74 employees 37 of whom were union members covered by a master contract which covered 500 employees throughout the city.

On May 12, 1972 Retailer, in order to be in line with local competition, wanted to raise prices to absorb increased costs due to his newly-implemented wage scale. He wishes to raise his prices on several items including duck soup which he hopes will in part offset his employees' newly negotiated wage increases of an average of 7% for all employees in the appropriate unit.

On the basis of the above facts, advise Retailer on the following issues:

(a) Is Retailer covered by the Economic Stabilization Act? If so why, if not why not?

(b) Assuming coverage by the Act, may Retailer raise his prices for the reasons he advances? If so why, if not why not?

(c) If Retailer's wage increase were challenged, list how he might try to justify it.

(d) Is Retailer a Category I, II, or III employer and why? Explain briefly how his "risk factor" differs from other categories.

(e) If Retailer wishes to minimize this "risk factor" and/or to seek an exemption or exception to a price increase, briefly list the appeal process he may pursue.

II. (25 minutes)

In May, 1972, City National Bank and Trust Co. (Bank) owns a complex of three interconnected buildings in Detroit, Michigan and occupies 23 percent of the gross usable space. The remainder is rented to a variety of tenants, some of whom are engaged in interstate commerce. The entire complex is operated as a unit by City National Building Manpower Inc. (Manpower) which is staffed in part by Bank personnel, and which uses Bank equipment for bookkeeping and accounting purposes. Manpower accounts to the Bank for the net rental income which amounts to over $3,500,000 annually. The Bank pays Manpower $5,000 monthly as a management fee for its services.

Bank has an average of 660 employees all of whom are admittedly subject to the Fair Labor Standards Act. Manpower employs an additional 325 employees including maintenance and operation employees of every kind who work throughout the three buildings including those portions occupied by the Bank. Manpower and Bank consult you as to the following matters.

(a) Are Manpower's operating and maintenance employees within the coverage of the Fair Labor Standards Act? If so, why; if not, why not? Discuss briefly but fully.

(b) Assuming arguendo that the employees are covered, Manpower wants to know whether the compensable time of certain employees begins when they actually begin to work or when they report for work. The problem concerns several operating engineers who spend about 13 minutes at the beginning of each shift preparing the machinery for operation and then prior

to the end of the shift, spending another 7 minutes distributing tools to the proper work benches and chests. Discuss fully but briefly and advise Manpower whether the above employees' time is compensable time within the meaning of the FLSA.

(c) Manpower also consults you as to whether the FLSA requires overtime payment for employees' work on the Fourth of July National Holiday. If so, why; if not why not?

III. (35 minutes)

Miller was an employee for Amsterdam Mill Company (AMC). His usual work was loading lumber onto trucks at the sawmill. The mill employed a full time truck driver and one of the proprietors also drove on a regular basis. However, Miller was occasionally asked to drive, and on the morning of April 3, 1972 he had driven one load to a nearby town at the request of the proprietor. The regular driver was home sick that day. Later that same day another truck was loaded and ready to go but neither of the proprietors was at the mill. The employee, Miller, decided to deliver the wood himself. On his return trip he drove off the edge of the road into a lake and was dead when he was pulled out a short time later. The medical cause of death was not established.

AMC seeks your advice on the following (a) May Miller's widow recover under the State's Workmen's Compensation Act? If so why; if not why not: State definite conclusions. (b) What added considerations would be involved, if any, had Miller died as a result of (1) Being forced off the road by an oncoming car playing "chicken" with Miller; (2) a heart attack.

IV. (35 minutes)

Two of your clients have filed for unemployment compensation and they now seek your counsel as to whether they will be successful on their claims. The State Statute reads that no compensation will be paid to those who "voluntarily quit without good cause". It also contains the other usual provisions.

On April 25, 1972 Alice Longskirt terminated her employment as an executive secretary after two years of service, allegedly for the reason it was necessary to follow her husband to his new job to which he had just been transferred. She had searched in the new area for several weeks for a new position but generally had been unsuccessful except for one position at Exploiters Inc. where secretaries were presently on strike. She had, however, received favorable responses to her job inquiry for a position as a bookkeeper which paid much less compensation.

Harry Longchoreman presented a somewhat different problem. He had been an employee for Empire Corp. for 25 years and was eligible for retirement in 9 months. However he heard from reliable sources that a strike was to occur within 3 months. Not wanting any part of the strike, Harry contemplated retiring early at reduced benefits pursuant to a collective bargaining agreement his union had with Empire Corporation. His decision was finalized the next day when he broke his leg golfing. He retired early and remained in traction for the next 12 months. Three months after Harry retired, the rumored strike developed and lasted beyond Harry's former time for retirement at full benefits.

Advise Alice and Harry on the following questions reaching definite conclusions.

(a) Advise Alice as to what she should do and whether she may collect unemployment benefits? If so why, if not why not?

(b) Did Harry fare better vis-a-vis unemployment compensation as a result of his early retirement? Explain fully but briefly and conclude whether Harry may collect.

V. (60 minutes)

Plaintiff, a Negro named Abbot, was originally employed by the Company at its Petroleum Equipment Division in Longview, Texas, in 1961. The Company is engaged in the manufacture and marketing of metal products used in oil field production pumps. Abbot was initially employed in the Foundry Casting Department as a Casting Machine Operator. At least until this lawsuit was filed, he was classified as a Metal Pourer in the Department and was paid $2.79 per hour. Employees classified as "leadmen" in the Department retain and accumulate seniority in their basic job classifications, but receive a rate of pay that is $0.20 above the hourly rate of the highest classification led. It is the job of the leadman at $2.99 per hour for which Abbot twice applied and the denial of which he alleges was twice based upon racial grounds.

Employees at the Company's Longview Plant are unionized. In 1964 the Company signed a collective bargaining agreement with two local lodges of the International Association of Machinists, AFL-CIO. This agreement covered all production and maintenance hourly rated employees at the Longview Plant, with exceptions not relevant here. The agreement gives each employee company seniority and classification seniority. With respect to promotions, the agreement provides that seniority, skill, and ability in the next lower-rated job classification or classifications in the same seniority group will be given preference before new employees are hired. If skill and ability are relatively equal, seniority will prevail. Disputes involving promotions are subject to resolution under the grievance-arbitration machinery at the Longview Plant. Article IV of the agreement establishes a three-step grievance procedure for the settlement of employees' grievances. If agreement is reached at any of three steps, the matter is ended there. Article V of the agreement states that grievances will be considered settled by means of the procedures established in article IV unless they are submitted to arbitration within ten days after completion of the "third step" in the article IV procedure. After arbitration, the arbitrator's decision is to be "final and binding on both parties, the Company and the Union," and this decision is to be based solely upon the terms and conditions of the agreement and the evidence presented to the arbitrator. Together, articles IV and V are to "constitute the sole and exclusive method of determination, decision, adjustment or settlement between the parties of any and all grievances and * * * will constitute the sole and exclusive remedy to be utilized by either party for any and all grievances."

In early 1966, the position of leadman on the night shift was temporarily opened. Abbot applied for this position. The position was thereafter signed to a white man having less experience and seniority than Abbot. Abbot then made a grievance complaining of the awarding of the job to the less senior employee. This grievance was prosecuted through the "third step" of the grievance procedure, at which step the grievance was decided against Abbot. The matter was not then submitted to arbitration. Instead, on March 1, 1966, Abbot filed a formal charge of discrimination with the Equal Employment Opportunity Commission (EEOC). This charge was based upon the Company's denial of the promotion to him and was filed within ninety days after the allegedly discriminatory acts occurred.

In September, 1966, the leadman on the day shift resigned, and Abbot applied for his position. The Company did not question Abbot's ability to perform as a leadman. It did, however, abolish the position. On the ground that the position Abbot sought no longer existed, his application for promotion was denied. Abbot again made a grievance. This time, the grievance was prosecuted through all three steps in the grievance procedure and was then submitted to arbitration. On February 18, 1967, the arbitrator determined that the Company did not, under then existing operating conditions at the Longview Plant, violate the collective bargaining agreement in not replacing the services of the resigned leadman with those of Abbot in the leadman classification. On March 6, 1967, Abbot filed a second charge with the EEOC. The charge was based upon the Company's discontinuation of the leadman classification after Abbot had applied for the vacant position. It was filed some

154 days after the allegedly discriminatory acts occurred.

(a) Due to a backlog of cases, the EEOC has not yet reached a decision on whether there is reasonable cause to believe a violation of Title VII exists. Advise Abbot on whether he may at this time successfully sue in federal court under §1981 of the 1866 Civil Rights Act and under Title VII of the 1964 Civil Rights Act, discussing the legal obstacles to such a suit. Reach a definite conclusion giving supporting reasons.

(b) While in your office plaintiff tells you about his wife, Wilma, who also has allegedly been discriminated against by her employer, Tower Telephone Co. (TTC), allegedly because she is a negro. He related this story as follows: In response to a newspaper advertisement advertising for men for a "lineman's" job, she took a chance and answered it. TTC's initial reaction was bewilderment but they did let her fill out the application and take the tests which among other things tested her writing ability and mathmatical skills. One week later she was told that she would not be hired because (1) she failed the tests; (2) her application revealed she had been arrested for prostitution 11 times over the past five years which would violate a company policy of not hiring those persons with "numerous arrests"; and (3) a state law prohibited employers from employing women for jobs where they would be continually required to climb to heights greater than 20 feet. As a lineman, she would have to climb to heights of forty feet every day. Assuming Wilma gets into federal district court, briefly sketch the probable legal disposition of the employer's reasons for not hiring Wilma, giving supporting reasons and rendering to Wilma an opinion on her likelihood of success in a suit under Title VII of the Civil Rights Act against TTC.