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## Labor Law: Final Examination

William & Mary Law School

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**DIRECTIONS.** This examination consists of two parts. The first is composed of multi-issue questions. All issues raised by the facts, whether or not dispositive of the question as a whole, should be fully discussed. The second portion is composed of questions which may or may not contain more than one issue. Your job here is to identify and discuss only the controlling issue. In each Part the following abbreviations have been used: C means Company or Employer, U means union or collective bargaining agent, E means employee or union member, and B means National Relations Board. These abbreviations should be used in your answers to the questions.

## PART I

A. C and U have a collective bargaining agreement which terminates at the end of February, 1972. This agreement contains a clause providing that U will not strike for any reason during the life of the agreement as well as grievance procedures terminating in arbitration. Commencing in November, 1971, C and U commenced negotiations on a new agreement, but became bogged down over the question of wages. In December, 1971, C fired E, who happened to be president of U, for rather aggressively questioning C's ability to pay the wages desired by U, alleging that such was disloyalty. E filed a grievance which was processed to arbitration with the result that the discharge was sustained. U then, in January, 1971, gave C notice of intent to terminate the agreement and simultaneously commenced a strike, giving ambiguous reasons for its actions. In order to keep production going C hired replacements for Es on strike and granted the replacements superseniority. After only two days of striking C capitulated on the wage demand, U called off the strike and demanded that C reinstate all strikers and discharge all replacements. Must C do so? Why?

B. C manufactures synthetic fibers which are easily contaminated by any foreign substance. In order to keep its plant as clean as possible, C, believing that shreds of waste paper contributed to product contamination and general uncleanness, promulgated a no-solicitation rule which barred at all times, among other things, the distribution of any paper materials on C's property. U, interested in becoming collective bargaining representative for C's Es, has had its own agents as well as some of C's Es distribute pamphlets throughout C's plant, including the cafeteria, both during lunch hours and regular work hours. Learning of U's activity C took effective steps to stop distribution of the pamphlets and, at the same time, distributed literature tending to show that Es would be better off without U. U complained to B that C's actions violated 8 (a) (1) and B, considering only the foregoing facts, issued an order preventing C from enforcing its no-solicitation rule against U. C refused to comply and B now seeks to have its order enforced in the proper Court of Appeals. Should the Court enforce B's order? Why?

C. C is a trucking firm doing business wholly in State X. U represents a group of C's Es known as maintenance engineers who are charged with the responsibility of maintaining all C's equipment. Es, in turn, direct janitors, mechanics and grease monkeys and have responsibility to hire, transfer and discharge them. C does an annual gross volume of business of \$70,000. Exactly half of this business originates in X, is shipped to C-1 who then ships it out of state. The other half comes to C from C-1 who receives it from out of state, C then distributing it in-state. U has demanded that C bargain with it on a contract. C has refused. Should U be able to enforce its demand before B? Why?

D. U represents C's Es. While nothing in the C-U collective bargaining agreement limits any employee with requisite seniority from bidding for certain apprenticeships, C has consistently for a period of 20 years refused to allow Black employees to bid for apprenticeships in those aspects of the business classified as electronic. E, a Black, possesses of requisite seniority and believing himself qualified so far as skill is concerned, one day noted



announcement of an opening in C's electronic department, and bid the job. C flatly refused to consider his bid, and when E complained to U, U flatly declined to file a grievance on E's behalf? What remedies, aside from those existing under any state or federal civil rights legislation, if any, are available to E? Why?

E. C and U, which represents C's Es, have been bargaining on a collective bargaining agreement for months. If agreement is reached, it will be the parties' sixth each of two-years duration. The principle point of difference preventing agreement concerns wages. U has made 20 demands and C has made 20 counter-offers, but still no agreement has materialized. Finally C announced it could think of nothing else to offer, broke off negotiations and shut down the plant. In past years U had, on occasion, forced C to accede to its wage demands by short strikes, but U nonetheless filed charges before B claiming C to be in violation of 8 (a) (1) (3) and (5). B ordered C to open its plant, put all Es back to work and continue negotiating. A portion of B's holding was based on the premise that it had power to infer from the facts that C's actions were based on anti-union animus. C refused to comply and B now seeks to have its order enforced in the appropriate Court of Appeals. What holding? Why?

## PART II

1. C is a nation-wide tax consulting firm having offices in various areas of many states. U believing it has a majority of Es at C's office in City Y, State X, demands that C bargain. C has refused, maintaining that U's representation, if any, should be on a nation-wide, or at least a state-wide, basis. In similar cases B has certified other unions on both local and state-wide levels. When U complained that C's refusal to bargain constituted a violation of 8 (a) (5), B ordered C to bargain with U on U's requested single unit basis. B, however, did not state reasons for its order and C refused to comply. B now seeks to have its order enforced before the appropriate court of appeals. What holding? Why?

2. Although U presented C with valid evidence that a majority of C's Es wished U to represent them for purposes of collective bargaining, C refused to bargain with U. U then petitioned B for certification, but later withdrew its petition in favor of filing an 8 (a) (5) complaint against C. Some months later B found that C had violated 8 (a) (5) but by this time U clearly had lost its majority and C refused to follow B's order to bargain. Should B's order now be enforced in a Court of Appeals? Why?

3. When U struck C over the matter of C's threat to move south to avoid high costs incurred by unionism, not all Es participated. Those not participating attempted to continue work but were prevented from doing so by beatings and threats received from those Es who took part in the strike. These beatings and threats were not ordered by U and U took no action although it knew of the occurrences. What recourse, if any, do the non-striking Es have under the National Labor Relations Act? On what legal theory?

4. Although U is certified by B as the representative of C's Es, C has refused to bargain with U. U thereupon commenced a picket of C's premises with signs stating, "C is unfair -- refuses to bargain with U." Other signs stated, truthfully, "C is unfair -- will not pay union scale." This picketing caused all deliveries coming into C's plant to stop. C complained to B and B sought an injunction against the picketing in an appropriate United States District Court. Should the injunction issue? Why?

5. U is involved in a labor dispute with C, manufacturer of paints. In support of its dispute U has placed pickets in front of several hardware stores carrying C's products. These pickets carry signs which encourage the public not to buy C's paints because C will not agree to several of U's demands. C seeks through B to enjoin the picketing. Should C succeed? Why?

6. C is a large concern employing many classifications of Es, different classifications being represented by different Us. One U, to which E did not belong, went on strike, but E's U wished to have its members continue work. C, however, would not permit any member of E's U to work, although Es who did not belong to any U were permitted to work. E thereupon filed a suit for damages against C in U.S. District Court. The suit was based on a clause in the collective bargaining agreement covering E which prevented discrimination against E because of membership in a U. C moved to dismiss. What result? Why?