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Labor Law: Final Examination (January 4, 1973)

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DIRECTIONS: The following abbreviations have been used: C means company or employer; E means employee or union member; and U means union. Please use these abbreviations in your answers.

Discuss fully all issues raised by each question whether or not you believe any one issue may be dispositive of the question as a whole. At the same time make your discussion of the issues as succinct as possible. Do not restate the facts presented in the questions. If you believe the factual statement in any question to be incomplete, ambiguous or vague, you may state a factual assumption (so long as it does not change the actual facts presented in the question) and answer on the basis of such assumption. This is a closed book, closed note-book, closed statute examination. No questions will be answered during the course of the examination.

I. C-1, whose 20 employees belong to U-1 had a collective agreement with U-1 containing, among other provisions, grievance and arbitration clauses, severance clauses, wage rates and job descriptions. C-1 is in the business of installing, servicing and maintaining refrigeration and air conditioning equipment and for years has performed maintenance service for Frozen Foods, Inc. (FF), a processor and distributor of frozen meats, vegetables and fruits. Upon the expiration of the C-1/FF maintenance contract, however, C-2, engaged in the same business as C-1, successfully bid for FF’s maintenance work. C-2 immediately hired 15 of the Es who had been working for C-1 and five new men, but at the same time made it known that it was doubtful cordial relations could be maintained with U-1, and proceeded to pass out authorization cards on behalf of U-2 even though the U-1/C-1 agreement was at mid-term. U-1 countered by demanding that C-2 acknowledge the validity of the severance, wage and job description clauses in the C-1/U-1 agreement, demanded that C-2 meet to discuss these and other conditions of employment and sought arbitration, after its grievances over C-2’s refusal to do so, went unheeded. C-2 refused to talk about the C-1/U-1 agreement, refused to discuss anything with U-1 and refused to arbitrate, claiming that labor agreements are not binding on non-consenting successors. What remedies, if any, does U-1 have against C-2?

II. U, racially integrated, represents Es employed by C and has executed a collective agreement containing grievance and arbitration clauses on behalf of such Es. C is a large department store with branches in several states, but has never permitted a Negro to hold the job of floorwalker, a position admittedly covered by the collective agreement. Learning that a position of floorwalker was open in the store where he worked, E, a Negro having the requisite seniority and qualifications, bid for the job. When his bid was summarily rejected, E filed a grievance alleging breach of the collective agreement which stated that job openings should be awarded to the senior employee bidding who held seniority and was qualified for the job. U, however, flatly refused to process E’s grievance to arbitration. What remedies may E pursue against C and U?

III. C and U have negotiated a collective agreement containing a no-strike clause, binding grievance/arbitration clauses (from which wage rates are excepted), seniority clauses, and a listing of job classifications with corresponding wage levels. Some Es classified as carpenters were assigned work involving
installation of electrical circuits. Noting that electricians were paid $3.30 per hour, while carpenters received only $3.10 per hour, these Es grieved claiming their pay should be increased $.20 per hour for the time they performed the work in question. Simultaneously, U, by virtue of an applicable wage-reopener clause in the contract, sought to renegotiate all wage rates and job classifications, hoping to establish detailed job descriptions so that it would not be plagued with handling grievances such as Es have filed. Company declined to consider the matter claiming that Union wanted to discuss more than merely wages and also declined to arbitrate claiming that the arbitration sought to establish wage rates which were excluded as an arbitrable subject. Upon C's refusal to negotiate and to arbitrate, U called a general strike. C immediately filed an action in the proper court seeking to enjoin the strike. U counterclaimed with a demand that C be ordered to arbitrate. The court summarily denied U's counterclaim and held, further, that the Norris-LaGuardia Act prevented the issuance of an injunction in a labor dispute. Both C and U appeal. Should the Court of Appeals order an injunction? If so, to what extent and under what conditions?

IV. C, a non-U employer, operates an electronic assembly plant. This business has a large parking lot for its employees, subject to a no-solicitation rule, which is located immediately adjacent to, and not separated from, a parking lot owned by a shopping center. The shopping center is privately owned but is easily accessible from public roads. No effort has been made by the shopping center to restrict parking in its lot to its customers and as, C knows, many of shopping center's customers park on a portion of C's parking lot. U is interested in organizing C's Es but is uncertain as to the likelihood of success and as to the timing of its organizational efforts because to date U has been successful in obtaining authorization cards from only 10% of C's Es. U therefore commenced picketing and passing out pamphlets in C's parking lot protesting C's low wages although making it clear there was no intent to induce the employee of any employer to strike or refuse to work. Although the picketing continued peacefully for more than 30 days with no other action taken by U, and although all of C's Es who had signed authorization cards joined the picket during their off hours, there was no stoppage of work in C's plant nor interference with deliveries or services. C nonetheless sought to enjoin the picketing in state court on the grounds it constituted a trespass and also charged U with an unfair labor practice under Sec. 8(b) (7), NLRA, as amended. Assuming no problem in C's seeking both remedies, should he be successful? Why?

V. Sec. 8(d), NLRA, as amended, provides in pertinent part that the duty to bargain collectively means that no party to a collective bargaining agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice on the other party to the agreement of the proposed termination or modification sixty days prior to the expiration date of the agreement and that any employee who engages in a strike within this 60-day period shall lose his status as an employee for the purposes of Secs. 8, 9 and 10 of the Act, as amended.
C and U are signatories to a collective bargaining agreement containing both no-strike and grievance/arbitration clauses. Sixty days before the agreement was to expire, U gave C written notice of its intent to seek a better wage rate for several job classifications. Thirty days later, when C took a hard line in preliminary negotiations, U called a general strike. C then informed E-1, a striker that his services would no longer be needed inasmuch as his job had been taken by another employee. In fact, however, E-1's job was only temporarily filled by a supervisor. Upon learning of this fact, U announced its purpose in striking was only to protest the discharge of E-1. Thereafter, and before the expiration of the agreement, C discharged E-2 for refusing to work when E-2 refused to cross the picket line established by U and actually filled his job. Upon termination of the strike both E-1 and E-2 request reinstatement to their jobs. Is C obligated to rehire them?