

## READ CAREFULLY

### LABOR LAW

#### Final Examination

Professor Baldwin

December 10, 2004

9:00 A.M. - Noon

#### Instructions

This is a three (3) hour "open book" examination. For the exam, "open book" means that you may bring your casebook, your statutory supplement, your class notes, any other notes that you prepared for the course or the exam, any other notes for the course or exam that you co-authored, and any Labor Law class handouts that you received from me this semester.

The examination totals 1000 possible points and it is divided into two parts.

Part I contains twelve (12) multiple choice and yes/no questions. **Please place each choice in the blank space provided next to the number for the question.** Then write your rationale for your choice in the space provided. If your answer exceeds the space allotted, please continue your answer on the back of that page. If you are continuing an answer, please indicate that to me at the point where you are going to the next page. **A complete answer for each question in Part I will include your choice next to the number and the rationale for your choice in the space provided.** The value for each question in Part I is 50 points.

There are essay questions in Part II. **Please answer Part II questions in your blue books.**

Question	Total Points	
I	100	(A=50, B=50)
II	200	(A=50, B=50, C=50, D=50)
III	100	

#### PLEASE NOTE:

1. There is one fact pattern carrying through Part I-Questions 3-10 and Part II-Question I. There is a second fact pattern for Part II-Question II A B C & D, and a separate fact pattern for Part II-Question III.
2. Budget time wisely
3. I thoroughly enjoyed our class. Please have a safe, healthy, relaxing, rewarding, holiday and vacation.

## PART I

1. \_\_\_\_\_ Mercy Hospital (Mercy) is a private full service hospital in Columbus, Georgia, and The Nurse's Association of Georgia (the Association) is the certified collective bargaining representative for the Registered Nurse title at Mercy. Mercy and the Association have an existing collective bargaining agreement covering the Mercy Registered Nurses.

On March 1, 2004, Mercy nearly lost the life of one of its patients. After the near fatality, the Mercy Human Resources Director (the Director) conducted an investigation. When it was complete, she concluded that Registered Nurse Charles Barton (Barton) gave the patient a wrong medication. He failed to submit a Mercy Incident Report about the error as well. The Director terminated Barton's employment with Mercy effective March 15, 2004.

On March 17, 2004, the Association filed a grievance on behalf of Barton with the Director in accord with the collective bargaining agreement grievance procedure. The Union appealed Barton's termination. It sought reinstatement and back pay for him. When the Director denied the grievance on March 25, the Association appealed the Hospital's denial to arbitration on the same day.

On March 25, 2004 the Association requested Hospital Incident Reports about other Registered Nurse medication errors resulting in discipline. It informed the Director that it needed the Reports to see if the Hospital had terminated any other Registered Nurse similarly situated. The Director, citing patients' and employees' confidentiality concerns, flatly refused the request. The Hospital will:

- A. Violate 8(a)(1) and 8(a)(5) if it refuses to give the requested Incident Reports to the Association.
- B. Not violate 8(a)(1) and 8(a)(5) if it refused to give the requested Incident Reports to the Association.
- C. Violate 8(a)(1) and 8(a)(5) if it fails to offer some accommodations in lieu of the relevant Incident Reports.
- D. A and B
- E. B and C
- F. None of the above





### FOR QUESTIONS 3 - 10 AND PART II, QUESTION I

Buzz It Inc. is a non-union electrical contractor located in Savannah, Georgia, and Buzz It did what it could to stay that way. As a consequence of overzealous efforts to preserve its union-free workplace, the National Labor Relations Board sustained five of ten 8(a)(1) Unfair Labor Practice Charges filed against the Company by the International Brotherhood of Electrical Workers (IBEW) between January 1, 1996 and December 31, 2003. Buzz It settled three of the other charges with the IBEW. The Company convinced the NLRB Atlanta Regional Director to dismiss the remaining two charges.

In January, 2003 Buzz It successfully bid on a two year construction project in Savannah, Georgia. By the terms of the project contract, Buzz It agreed to begin work on March 1, 2003 and finish by March 1, 2005. It was immediately apparent that the project required more licensed electricians than the six that the Company originally budgeted. For that reason Buzz It added four very qualified electricians on February 14, 2003. The four were so qualified that Buzz It knew they would "hit the ground running" when the project started on March 1, 2003. The Company did not know that Sid Bream (Bream), one of the new hires, already was an IBEW member when it hired him. The other three licensed electricians were not union members. Buzz It hired no other licensed electricians between February 14, 2003 and December 10, 2004.

One month after Buzz It hired the four electricians, the Company General Manager (the Manager) discovered that Bream was a card carrying IBEW member. The Manager reported his discovery to the Chief Operating Officer (The COO). The COO was upset and immediately met with the Manager and the Chief Financial Officer (CFO). The three agreed to do all they could to keep Buzz It "the preferred way". They also agreed that "the preferred way" required getting rid of Bream.

The ten electricians have received their paychecks in envelopes marked "Big Project" since the project began on March 1, 2003. For the 2003 and 2004 Memorial Day, Independence Day, and Thanksgiving holidays, Buzz It placed an extra \$500.00 in those envelopes. The face of each of the envelopes read, "Holiday Help". Buzz It labeled their 2003 Christmas pay envelopes "Santa's Help" and included a check for \$1000.00 as well. The "Holiday Help" and "Santa's Help" envelopes also contained copies of the same letter. The letter said, "Enjoy your pay over the holiday. You deserve it. Please remember that we would rather close than go Union. We have been, and will remain non-Union. If you think otherwise, then you should work for another company. We have endured Unfair Labor Practice Charges before."





















## PART II

- I. You are an attorney at the NLRB Atlanta Regional Office. Late yesterday your boss, the NLRB Atlanta Regional Director, informed you that the NLRB Atlanta Regional Office Investigator reconsidered IBEW'S Unfair Labor Practices Charges on behalf of Bream. After her thorough review, she reversed her decision.

The case file for IBEW and Buzz It is on your desk today. The file contains all the facts in Part I page 4 to page 12.

- A. You are assigned to determine whether the Investigator's new conclusion should be affirmed or reversed. You must explain the bases for your opinion.
- B. The Regional Director wants you to address the question of appropriate remedy (remedies) if you conclude that the Regional Director should affirm the Investigator's new conclusion.

- II. Hallie's Towing Equipment Company (Hallie's) was a manufacturer of vehicle towing equipment. By January, 2004 the company had two large facilities on a 10 acre tract known as "Hallie's Acres" twenty miles southwest of Macon, Georgia. The Company manufactured auto-towing equipment in the North Building and tractor-trailer truck towing equipment in the South Building. The Company was non-union, but word "on the acres" was that the United Auto Workers (UAW) organizers were beginning to talk to employees in both plants. I. M. Stearn, Manager overseeing both facilities, decided to act quickly. On April 1, 2004, he sent the following directive to all auto-towing equipment assembly line employees and all truck-towing employees in both buildings:

1. Any off duty employee seen commingling with known employees of the United Auto Workers will be disciplined. We must preserve the safety and sanctity of Hallie's and Hallie's Acres anywhere and everywhere. Hallie's people are known for certain things in this community and we all must keep it that way.
2. Effective April 15, 2004 there will be a Continuous Improvement Committee composed of twelve employees from the North Building and twelve employees from the South Building. Your input has helped this Company be a leader in plant safety, in plant employee health and in assembly line improvements. It's time we formalized what has been an informal successful process. Select your twelve building representatives to meet with me on April 30.

Our first order of business for your selected representative will be a poll to learn your preference. We might consider recognition of Local 501 if you tell us that's what you want.

- A. Hallie's has no past history of Unfair Labor Practice Charges. Describe any unfair labor practice(s) that the directive contains in any event.
- B. On May 1, 2004, the UAW presented Human Relations Vice President Hal E. Kalon (Kalon) with authorization cards from 25% of the auto towing equipment employees and 15% of the truck towing equipment employees. When the Union requested recognition to represent all of Hallie's towing equipment employees in the same collective bargaining unit, Kalon refused.

On May 7, UAW filed a petition for election with the NLRB Atlanta Regional Office. It sought to represent the towing equipment employees from the North and South Buildings. Could the UAW represent employees from both buildings? How and when can Hallie's challenge the Union's petition to represent employees in both buildings?

- C. There are rumblings that Hallie's will close its North Building if the Union becomes certified. Will closing the North Building give rise to any Section 8 violation(s)?
- D. Assume that the NLRB certified an appropriate unit of Hallie's towing equipment employees, and that there was a representation election for the unit on June 1, 2004. The NLRB determined that the UAW got 49.5% of the vote, and Hallie's got 50.5%. Could the Union seek to set aside the election? How? Why or Why not?

- III. Mt. Pisgah is a small liberal arts college with one graduate school, located in North Smyrna, Georgia. There are 2800 undergraduates, and there are 280 graduate students in the two year Mt. Pisgah Masters of Education program. The College and the Masters Program are fully accredited.

Making the Masters Program (M.A.) outstanding is the "Teach Mt. Pisgah" service/in training component. In the first year of "Teach Mt. Pisgah", an M.A. candidate must serve as an academic mentor to ten Mt. Pisgah freshmen. There are no credits for the program, but each graduate student earns \$12.00 for each hour of mentoring.

In the second year, Mt. Pisgah requires an M.A. candidate to serve as a Teaching Assistant to a Mt. Pisgah undergraduate faculty member in one of the undergraduate departments. As a Teaching Assistant, the second year graduate student must maintain office hours one day a week, teach a small section of a basic undergraduate course, or co-teach an upper level undergraduate course with a Mt. Pisgah faculty member. Mt. Pisgah faculty members may request up to three Teaching Assistants if a class exceeds 30. That aspect of the second year program enables an M.A. to earn one third of his or her second year credit hours. Mt. Pisgah M.A. students must take both years of "Teach Mt. Pisgah"

All graduate students are covered by the Mt. Pisgah Faculty Health Insurance Program for both years of study. Withholding taxes and social security taxes are deducted by Mt. Pisgah College from pay for mentoring. Could the Mt. Pisgah M.A. candidates become a bargaining unit certified for representation by the American Federation of Graduate Students?

END OF EXAM