

LABOR LAW I
May 14, 1990
9:00 A.M. - 12:00 Noon
Professor Baldwin

INSTRUCTIONS

I. This is a 3 hour open book examination. You may use your casebook, your Statutory Supplement, your notebook, and any notes that you have prepared.

II. There are two parts to the examination. In Part I, there are 6 multiple choice and yes-no questions. Next to the beginning of each question there is a blank. Please place the letter that you select on the blank line.

After each multiple choice question, there are lines. Please write an explanation for your choice on the lines and the back of the page if you wish. A complete answer will have a letter choice on the blank space and an explanation. Since your choices and explanations to Part I will be written on the examination, please be certain to return it with your blue book(s).

In Part II there are 2 essay questions. Please use the blue books to answer the essay questions, and please use every other line of the book as you write your answer. Remember to use your exam number on your exam booklet and each blue book.

III. The examination point score totals 1000. Each of the 6 short answer questions in Part I is worth 90 points.

Essays 1 and 2 in Part II are each worth 230 points.

IV. Please budget your time wisely. Remember that it is more important to write precisely and succinctly than it is to write vaguely and expansively.

V. I will be available to answer questions at times during the exam.

I enjoyed the semester. Have a safe and productive summer at bar exam preparation, your employment, or at play!

Jamie Bloodlette was suspended from his position as an A & P Supermarket food checker without pay after the Employer's supervisors observed him behaving erratically at his work station for three months. Further investigation revealed that he had falsified store documents and that \$1400 in missing food over three years was directly attributable to him. The Service Employees International Union is certified to represent all A & P food checkers. The collective bargaining agreement between the Employer and the Union is the same as the agreement in your Supplement in all respects.

After suspension but before discharge, Bloodlette entered a state hospital suffering from mental illness. The medical staff concluded that he had suffered from voices telling him to steal for at least four years. They further concluded that he will behave normally with medication. The report is accurate and the diagnosis is correct. The Employer discharged Bloodlette before it had knowledge of the medical staff report.

The Union, on behalf of Bloodlette, duly appealed the discharge and presented the Employer with the medical staff report. The Employer denied the grievance, and the matter is appealed to arbitration. By the time the arbitration hearing was scheduled, Bloodlette had behaved normally with medication for three months.

At the arbitration, the Union submitted the medical staff report, and Bloodlette testified lucidly about his misconduct and his mental illness. Arbitrator Ferren Square found just cause for discharge, but ordered that the Employer reinstate Bloodlette without back pay to a lower paying, closely supervised price stamper position.

4. _____ (Yes or No) If A & P moves to vacate the award in federal district court, should the motion be granted?

ESSAY 1

I.M. Wright is a 25 year employee of Kaolin, Inc. and a 25 year member of the Independent Workers of North America, the certified collective bargaining representative. Five years ago he became disenchanted with the Union and last year he did something about it.

On April 1, 1989, Wright filed a decertification petition with the NLRB Regional Director in Atlanta. The petition met all NLRB standards for decertification petitions.

On April 3, four union member co-workers jointly filed charges with the Union alleging that Wright's action violated Union Constitution VIII by, "advocating or attempting to bring about the withdrawal of the Union." The aforementioned is part of Article VIII of the Union Constitution.

Article X states that one who violates the Union Constitution is entitled to be heard before a Hearing Committee, and appeal to the Union's Executive Board, a the Union membership, and to the International Union Appeals Board. Article XI states, "Any member convicted of any one or more of the offenses set forth in Article VII, VIII, or IX may be fined, suspended or expelled from the Union."

Wright had a hearing before the Union Trial Committee at which he had full and fair opportunity to present his defense to the charges. The Trial Committee determined that he was guilty and:

1. suspended him from Union membership for five years
2. precluded him from attending Union meetings for five years
3. billed him for the hearing costs, and
4. ordered him to write an apology to the Union members

Wright appealed to the Union Executive Board. The Board affirmed the finding of guilt, reversed the Committee on hearing costs, and affirmed the other penalties. The Union membership affirmed the Executive Board. On appeal to the International's Appeals Board, the Board affirmed the vote of the Union membership and the Union Executive Board.

Wright's attorney duly filed a charge with the National Labor Relations Board alleging a violation of Section 8(b)(1)(A).

Assume the Regional Director issues an 8(b)(1)(a) charge. Can Wright prevail before an Administrative Law Judge?

ESSAY 2

John Henry was a steel sheet factory worker for the Shelton Steel Sheet Company at its Lock Haven, Pennsylvania, plant from January

1, 1959 until his death at work on February 14, 1990. He perished in a sweeping plant fire that caused thirteen deaths.

At the time of his death, Henry was a member of United Steelworkers Local 33. Local 33 has been the certified collective bargaining representative for the 250 steel sheet factory workers at the plant since 1949, and had a 1987-1990 collective bargaining agreement precisely like the one in your Supplement.

The parties added Article XIV as a result of negotiations for the 1987-90 agreement. Prior to and during negotiations, Union members including John Henry agitated for some concession from Shelton Steel on plant safety.

Safety concerns were justified. In 1984, 1985, and 1986, the Occupational Health and Safety Administration inspected the plant and found unacceptable levels of toxic fumes. In 1987, OSHA fined Shelton Steel \$300,000.00 because the unacceptable fume level continued. In 1988 and 1989, the Company barely managed to meet acceptable levels according to OSHA standards. In addition, the Company let rubbish accumulate in some corners of the plant. The combination of the rubbish, fumes and a discarded match caused the fatal fire.

When the parties reached their 1987-90 agreement, the Union held a meeting at which I.M.M, Union President, extolled the virtues of the Safety Committee. He promised that it would make the plant safe again, and that the Union would do all that it could to achieve safety.

On December 1, 1987, the Union announced that its Safety Committee members would appoint fire marshalls annually, and the Union would undertake their training. Fire marshalls were appointed on 1/6/88 and 1/3/89, and the Union spent \$1500 in each year for their training. By February 14, 1990, however, Union Safety Committee members had not appointed fire marshalls for 1990. And on February 14, 1990, Union members of the Committee were six months late on their Committee assignment to propose a plant-wide rubbish disposal plan.

On May 11, the Lock Haven Fire Inspector reported that the body positions and remains of six dead employees including Henry suggested that they probably died because of their proximity to a rubbish pile, and because they walked away from the fire exit in the flames and smoke in their confusion.

Henry's widow consults you, and she tells you that she wants the Union to pay. Advise her about the potential claims that may be available and any pitfalls that may await if you pursue the pockets of the Union.