

UNIVERSITY OF MISSISSIPPI  
SCHOOL OF LAW

LABOR LAW  
Professor Secunda

FINAL EXAM

Date: December 12, 2002

Time Allowed: 3 Hours, 30 minutes

Instructions

1. You are allowed to refer to the statutes in your statutory supplement, but no other materials may be consulted during this examination.
2. Please "sign" the following pledge by writing your examination number on the line after the pledge. DO NOT write your name on this examination or on any bluebook.

By the act of submitting my examination, I do pledge, on my honor, that I have neither given nor received any improper assistance and that I will report any improper assistance given or received by others of which I am aware.

Exam No. \_\_\_\_\_

3. No examinations may leave the examination room. Return your examination with your bluebooks.
4. The first thirty (30) minutes of the examination is recommended for the purpose of reading over the examination and organizing your thoughts.

GOOD LUCK AND HAVE A GREAT WINTER HOLIDAY!

**DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED**

## **THREE QUESTIONS**

### **QUESTION ONE** (One Hour; worth 1/3 of points)

Weasel Medical Supplies ("WMS"), an American medical supplies company that is a wholly-owned subsidiary of Rodents British Medical Supplies, has offices throughout the United States and maintains a significant presence in Mississippi. The corporate headquarters for WMS are located in Jackson, and the company maintains branch offices in six major Mississippi cities. Both the corporate headquarters and the branch offices employ clerical employees and medical sales personnel (who travel to businesses and residences to sell WMS medical supplies). The average branch office employees 4 sales personnel and 3 clerical employees, while corporate headquarters employs 20 sales personnel and 24 clerical employees.

The clerical employees are represented by SEIU Local 007, which was certified following an election 11 months ago. The union thus far has been unsuccessful in negotiating a contract on behalf of the clerical employees it represents. The sales personnel are not organized. WMS medical supplies are sold through medical supply distributors located throughout the state that operate independently of WMS, but whose product line is composed primarily (65%) of WMS products.

Six months ago, WMS became aware of declining morale among the sales personnel in the branch offices. The sales personnel were disturbed by recent and dramatic increase in the number of customers they were required to sell to in order to meet their monthly sales quota. They were also concerned about a recently instituted requirement of having to punch a time clock at the start and end of every work day. Although this rule applied to all employees, the sales personnel thought its application to them particularly unfair in light of the fact that the majority of their work is done in the field so that it is not necessary for them to report to the office before beginning work.

Dewey Cheatam, the vice president in charge of human resources for WMS, became particularly concerned about the sales personnel unrest when he heard from branch managers that the sales personnel frequently complained to one another and to the clerical workers about their working conditions during the morning coffee breaks. When Cheatam observed a sales employee, Norma Ray, talking with a union organizer, Reuven Yankee, from the SEIU at a nearby coffee shop while breakfasting on his way to work one morning, he decided it was time to act.

Cheatam undertook five steps to discourage unionization of WMS sale employees by the SEIU. First, he promulgated a uniform no-solicitation rule. Second, he equipped the sales personnel with home computers connected to the mainframe and instructed them to do their own clerical work. Third, Cheatam restructured the sales personnel's jobs so that they could work out of their homes rather than out of the office, effectively eliminating any contact between them and clerical staff other than necessary contact with

payroll and benefits department. Fourth, he closed the branch offices, terminating all branch office clerical workers. He also terminated all clerical workers at the corporate headquarters in Jackson except the few necessary to perform the administrative tasks necessary for the operation of the business. Fifth, and finally, he set up a Suggestions Committee to be made up of both representatives from management and the sales personnel. Although management is not obligated to adopt any proposals accepted by the Suggestion Committee, management promises to give all employee proposals due consideration.

The next week, organizers from the SEIU begin picketing, alternating between the public sidewalks outside WMS Headquarters in Jackson and the public sidewalks adjacent to the independent medical supply companies near Jackson that sell WMS products. The picket signs displayed at corporate headquarters and at the medical supply companies read: "UNFAIR - WEASEL MEDICAL SUPPLIES, A FOREIGN EMPLOYER WITH THE PRIVILEGE OF OPERATING ON AMERICAN SOIL, IS TAKING ADVANTAGE OF AMERICAN WORKERS. BUY AMERICAN -- DON'T BUY WEASEL." Since the nature of the business carried on at corporate headquarters is such that there is virtually no in-person contact with the public (the vast majority of the contacts take place over the telephone or through the mails), no fall-off in business resulted. Productivity declined, however, as 10 of the Jackson sales personnel joined the picket line and refused to come to work. WMS immediately fired those 10 striking sales personnel for insubordination. The independent medical supply companies experienced a significant drop-off in sales of medical supplies because half of their business is conducted in person on a walk-in basis; however, none of their employees ceased working.

Finally, five additional SEIU organizers stood on public sidewalks outside the Big Bank with which WMS does business, wearing "Buy American" T-shirts and passing out leaflets describing the behavior of WMS toward its employees. The leaflets also detailed the amount of business that WMS does with this bank, and emphasized that the bank's support has been a critical element in supporting WMS's business model because the bank financed the purchase of the computer and modern equipment necessary for WMS's current restructuring. The leaflets closed by urging customers to withdraw its business from Big Bank because the bank is using their money to facilitate the exploitation of American workers by foreign interests.

By the end of the week, SEIU has obtained the requisite number of signed authorization cards from Weasel Insurance adjustors and filed an election petition with the NLRB.

Weasel Medical Supplies has retained you as its counsel. Advise WMS what its rights are in this situation. Be sure to specify the statutory grounds for any legal claim, the likelihood of success under current law, and the remedies available, and any counter-charges that you anticipate from the SEIU.

**QUESTION TWO** (One Hour; worth 1/3 of points)

For the past 30 years, a multi-employer Association consisting of 5 companies has negotiated collective bargaining agreements on a group basis with the Union which represents the employees of all five employers. The existing multi-employer contract is due to expire on July 1, 1996. On March 1, 1996, the Union notifies the association and the Federal Mediation and Conciliation Service that it desires to negotiate a new group agreement. From March 1 to July 1, the Union and the Association meet and confer without being able to agree upon a new contract. During this period, the union has its members engage in work slow downs in order to put pressure on the Association to agree to its proposals.

During this same negotiation period, and without negotiating with the Union, the Association unilaterally adopts a no-fault attendance policy which applies immediately to all of its employer member employees. It also unilaterally decides to contract out work previously preformed by the Union employees to subcontractors because of new technologies being utilized for the first time in its production processes.

The impasse between the parties is based on the following circumstances. On the one side, the Union insists that the Association agrees to terminate any employee who does not join the Union within 30 days of employment, to consult it before it makes any major capital investments to improve its facilities, and to pay a higher percentage of health care benefits for current retired employees. The Association refuses to accede to any of these proposals.

On the other side, the Association wants the Union to agree to a standard wage rate for all employees it represents to help the Association more effectively compete with its competitors and to give the Association unilateral authority to set hours and work policies under a broad management rights clause. The Union refuses to accede to these proposals.

On July 1, believing that further negotiations with the Union are futile, the Association unilaterally implements its proposals. On July 2, the Union decides to strike one of the 5 Association members, the Conformist Company, in an effort to obtain a favorable contract with it, which it can thereafter seek from the other four employers. As soon as the strike begins, Conformist hires temporary replacements for the striking workers, and is thus able to remain in operation. To guarantee the continued service of such replacements during the entire labor dispute, Conformist promises to give a \$1000 bonus to each temporary replacement who works throughout the total strike period. At the same time, the other 4 Association members lock out their workers, with three of the four simultaneously hiring temporary replacements for the locked out workers so that they similarly can continue to operate. The fourth employer, Independent Company, hires permanent replacements for its locked out workers.

On November 1, three Conformist Company strikers cross the picket line and return to work. Shortly before crossing the picket line, the three Conformist strike breakers resigned their full membership in the Union. The Union has a rule that employees may not resign from the Union during a strike, considers these employees still members, and fines them for crossing the picket line. The three strike-breakers refuse to pay the union fine.

By December 1, the strike has ended and the workers agree to accept the Association demands and drop their own as long as they are unconditionally returned to their previous jobs. The Association members agree to terminate their temporary and permanent replacements (although Conformist follows through with its bonus promise), and return the strikers to their positions.

A year later, December 1, 1997, the assets of the Conformist Company are bought by Next Corporation. Next Corporation initially hires 40% of Conformist's employees. Six months later, May 1, 1998, when business begins to boom, Next Corporation hires another 20% of former Conformist employees. The Union sought to apply the terms of the contract it had with Conformist Corporation against Next Corporation the day after it had bought Conformist Corporation's assets. Next Corporation refused to recognize the Union or its contract with Conformist Corporation.

- a. Discuss all possible unfair labor practices which may have been committed by any party and any other causes of action which any party may have against any other party. You should also discuss appropriate remedies.
- b. If a smaller company not represented by the Association is forced to submit to the standard wage rate negotiated between the Association and the Union, can the smaller company make out an antitrust claim against the Union and the Company? Under federal law? Under a state antitrust statute?

**Question Three** (One hour; worth 1/3 of points)

Comment critically on the following statement. Advocate a position with respect to the statement. Integrate cases, statutes, and arguments discussed in class to support your view.

"The more demanding standards adopted by the National Labor Relations Board in Levitz Furniture for employer withdrawal of recognition from an incumbent union are not only inconsistent with the United States Supreme Court's decision in Allentown Mack Sales, but are inconsistent with the purposes underlying the National Labor Relations Act and, thus, are due no deference by reviewing courts."