

UNIVERSITY OF MISSISSIPPI  
SCHOOL OF LAW

LABOR LAW  
Professor Secunda

FINAL EXAM

Date: December 11, 2003

Time Allowed: 3 Hours, 30 minutes

Instructions

1. You are allowed to refer to the labor statutes, but no other materials may be consulted during this examination. Your statutes may not be cross-referenced or annotated prior to the examination, but highlighting, underlining, and tabbing are permitted.
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 40 points)

Paul Pugilist is famous in the glass industry as one of the most belligerent, and effective, union presidents. He is disliked by his employer, Glacier Glass, one of the foremost makers of light bulbs and lava lamps, but is generally admired by most of his fellow employees. Glass workers at Glacier Glass are represented by the Regular Employees' Federation of Light Engineers and Chalice Tradesmen ("REFLECT").

Pugilist is particularly fierce when it comes to bargaining new contracts with Glacier Glass. Fifty days before the expiration of the current collective bargaining agreement, Pugilist serves a written notice on Glacier that REFLECT wishes to modify the current collective bargaining agreement. Pugilist advances three primary proposals on behalf of REFLECT: (1) union control over the selection of food choices at the company cafeteria; (2) a requirement that all employees join REFLECT within 30 days of becoming an employee of Glacier Glass; and (3) health insurance with lower deductibles and co-payments, with the concession that the union will agree to mental health coverage being eliminated. Initially, Glacier Glass refuses to bargain with REFLECT, maintaining that it will not commence bargaining over a new contract until the current one expires.

While the current contract is still in force, and eager to rid itself of a union troublemaker, Glacier terminates Pugilist's employment when he insists that some of the glass equipment in the plant is unsafe to operate and refuses repeatedly to operate the machinery in question. Pugilist had pointed out to his supervisor that there is a clause in the current collective bargaining agreement which states that employees will not suffer adverse employment actions for refusing to operate unsafe equipment. As Pugilist leaves the building after his termination, an upper management official is overheard saying, "That should teach the union a lesson!"

Once the collective bargaining agreement expires, Glacier starts to bargain with REFLECT and agrees with the union's third proposal concerning health care, but maintains that it will not engage in bargaining with REFLECT over its first two proposals. Glacier also insists that REFLECT cede to it complete discretion over how merit pay is determined for employees and tells the union, without bargaining over the issue, that it is relocating the light bulb part of its business to another state because of the rising costs of doing business in its current location. This relocation will cause approximately 20% of REFLECT employees to lose their jobs.

For the next three months, the parties attempt to resolve their disputes across the bargaining table. REFLECT insists on bargaining with Glacier over its first two proposals without success and Glacier is similarly unable to convince the union about its merit pay proposals. Additionally, Glacier refuses to bargain with the union over any aspect of the relocation decision. At this point, Glacier unilaterally implements its last best offers to REFLECT.

Incensed, REFLECT is able to persuade 80% of Glacier's glass workers to go out on strike. Immediately, Glacier permanently replaces most of these striking employees. It also pays accrued vacation benefits to its non-striking employees, but not to striking employees. Additionally, Glacier subcontracts out the remaining work previously performed by the strikers to Barry's Bulbs.

In order to increase the pressure on Glacier, REFLECT threatens Barry's Bulbs with picketing at their premises if they do not stop doing the Glacier subcontract. Additionally, during contract negotiations with a lamp retailer which purchases products from Glacier, Larry's Lamps, REFLECT insists that Larry's agree to contract language prohibiting it from carrying products manufactured by Glacier. Afraid that their businesses will suffer irreparable harm if they do not agree with the union, Barry's cancels its subcontract arrangement with Glacier and Larry's agrees to enter into the contract provision prohibiting it from doing business with Glacier.

While this strike and picketing activity is occurring, a group of union members concerned about their mental health benefits being eliminated approach REFLECT and demand that it withdraws its health insurance proposal which would eradicate mental health coverage for employees. REFLECT refuses.

After many more months of bickering, Glacier and REFLECT are finally able to negotiate a strike settlement agreement under which all permanently replaced employees get their jobs back and all the replacement workers are fired.

Please discuss all potential claims and remedies that different parties may have against one another. Does your analysis change if the state in which Glacier Glass is located has a law which permits union shop clauses?

**QUESTION TWO** (One Hour; worth 30 points)

Gotham City has become a bit of a drag. Having captured all the villains and having tired of being caped crusaders, Batman and Robin have decided to open up their own automobile factory to mass produce their ever popular Batmobile.

Rather than start from scratch, Batman and Robin decide to purchase Catwoman's automobile factory, which was closed three months ago. Batman and Robin decide to use the same equipment and assembly process that Catwoman used while she was in business.

Catwoman's auto workers are represented by the Metal Employees of the World (MEOW). Initially, Batman and Robin hire 100 auto workers for their factory, 60 of whom are MEOW-represented employees who used to work for Catwoman's former company. After this initial round of hiring, MEOW demands that it be recognized as the bargaining representative for all auto workers at the Batmobile plant, but Batman and Robin refuse to recognize MEOW.

Three months later, with business booming, Batman and Robin hire an additional 30 auto workers, none of whom are from Catwoman's former company. This development is hardly surprising as Batman and Robin had always planned to hire a second shift of workers, as they believed Batmobile sales would take off with rocket propelled speed.

A week later, MEOU presents to Batman and Robin authorization cards from 60% of all the employees in the proposed bargaining unit and again demands recognition. A number of these authorization cards were acquired by MEOU by promising auto workers to waive certain union initiation fees once the union was recognized. Batman and Robin again refuse to recognize MEOU. Infuriated, MEOU insists that Batman and Robin file an election petition with the NLRB if they are unwilling to accept the union's showing of majority status. Batman and Robin again refuse.

Because Batman and Robin continue to refuse to recognize MEOU as the bargaining representative of its employees, MEOU employees establish pickets around Batman and Robin's auto factory. The picket signs read, "POW! BAM! OUCH! - Batman and Robin Unfair to Workers," "Batman and Robin should Recognize MEOU - we treat our workers purr-fectly," and "Batman and Robin do not pay area standard wages." This picketing continues non-stop for 6 weeks and then MEOU files an election petition with the NLRB. After filing the petition, MEOU continues its picketing around the factory. using the same signs.

In support of its organizational campaign, MEOU also pickets using the same signs at the entrances to car dealerships which sell the Batmobile urging consumers not to buy Batmobiles. These dealerships, which also sell four other types of cars, lose 25% of their business as a result of these pickets and put pressure on Batman and Robin to recognize MEOU.

Having had quite enough, Batman and Robin seek to rid themselves of MEOU's organizational campaign. First, they attempt to obtain an injunction in federal court seeking to terminate the picketing as an illegal conspiracy by the union. Furthermore, Batman and Robin tell its employees that MEOU has ruined other companies it has attempted to organize (even though there is no truth to this allegation), and that if they continue to support the union, the increased salary and benefit demands may force the Batmobile factory to be closed and they would lose their jobs as a result.

MEOU has now filed a number of claims against Batman and Robin. You are labor counsel for Batman and Robin. You should not only advise them on whether they have violated the law, but also the potential remedies that the Union may have against them. Also consider whether Batman and Robin can file any claims against MEOU for its conduct and the potential remedies that may be available to them.

**QUESTION THREE** (One hour; worth 30 points)

Comment critically on the following statement:

"The current adversarial model of labor relations no longer makes sense in modern American society. In the absence of a union, employers willing to give their employees a voice in the workplace should be able to do so without fear of running afoul of the National Labor Relations Act. And even when a workplace is unionized, employers should be able to directly deal with individual employees or groups of employees without union interference and without being penalized under the Act. In short, more honey and less vinegar in labor relations will better foster industrial peace."

In your answer, you should discuss the following: What is the current state of labor law doctrine in this area? Do you favor changing or retaining the present legal rules? What arguments support your position, and what is your response to the best argument that could be made against that position? Integrate cases, statutes, and policy arguments in supporting your answer.