

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

LABOR LAW
Professor Secunda

FINAL EXAM

Date: December 5, 2006

Time Allowed: 3 Hours

Instructions

1. This is an open book examination. You may refer to any materials.
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 to the front of the room at the end of the examination.
4. There are **THREE PARTS** to the exam, allotted equal time. Please be sure to do all parts of the exam, spending sufficient time on each.

GOOD LUCK AND HAVE A GREAT WINTER HOLIDAY!

DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED

THREE PARTS (100 Points Total)

PART ONE (One Hour; 35 points)

QUESTION ONE (7 points)

Britney Lohan is the president of a clothing manufacturing plant. In order to provide a pleasant work environment for all and to maintain order, she enacts policies prohibiting the use of abusive language, harassment, and verbal and mental abuse in the workplace. The Cheesy Clothing Union (CCU) is in the process of organizing employees at the plant and objects that these policies interfere with employees' rights under the applicable labor law. Will an unfair labor practice claim to challenge these workplace policies be successful?

Would the outcome be the same if the company sought to prohibit workers from soliciting for union membership in non-work areas during non-work time? If not, why the different result?

QUESTION TWO (7 points)

Ashton Federline is looking at disciplinary action against him again for failing to follow company work rules, and this time he fears it could mean his job. Although Ashton works in a non-union workplace, he wants to have his friend, Kid Anderson, attend his disciplinary investigatory interview with his boss. Does Ashton have the right to have Kid there under the NLRA? Does your answer change if Ashton worked in a unionized workplace in which Kid was a union officer? If so, why the different result?

QUESTION THREE (7 points)

Paris Ritchie Hotels (PRH) has always had a volatile relationship with its unionized hotel employees. After the last contract negotiations broke down, the workers went out on strike to demand their bargaining proposals be implemented. PRH first continues operations with supervisory personnel and some temporary replacement workers. As the strike lingers on, a number of previous striking employees cross the picket line and are permitted to return to work. Although eventually the rest of the striking workers make an unconditional offer to return to work (and vacancies exist for them to return), PRH institutes a partial lockout and refuses to let these workers return to work. The union files an unfair labor practice charge. What result?

QUESTION FOUR (7 points)

New York passes a law that completely prohibits all so-called blackmail picketing by unions. Such picketing occurs when a non-majority union pickets an employer for recognition. Shortly thereafter, the Affiliated Brotherhood of Carpenters (ABC) union, a non-majority union, pickets the Katie Cruise Carpentry Factory (KCCF) in New York both to be recognized as the union for the company's employees and to demand that the

company raise its wages to a level consistent with other carpentry companies in the area. The company seeks an injunction and damages in state court against the picketing based on the New York state law. What result?

Could KCCF voluntarily recognize the ABC union consistent with federal labor law?

QUESTION FIVE (7 points)

Brad Jolie Safari Supplies (BJSS) is in the business of outfitting adventurers around the world with clothes and other necessary provisions. When its production workers go out on strike, BJSS contracts with Angelina Pitt Safari Goods (APSG) to make for BJSS at its own factory the goods that BJSS can no longer make itself. The striking workers picket at both BJSS and APSG. APSG files unfair labor practice charges against the union. What result?

Does your answer change if APSG independently ends up obtaining most of BJSS' business as a result of the strike at BJSS?

Assuming again that BJSS sends its struck work to APSG, does BJSS have to bargain with the union over the decision to contract out the work to APSG?

PART TWO (One Hour; 35 points)

Jessica Lachey Enterprises (JLE) is the largest producer of lighting and stage equipment in the country. It has five non-unionized locations, including one in Jackson, Mississippi. The United Light and Stage Workers (ULSW) wish to organize the production workers at the Jackson location. ULSW obtains authorization cards from a majority of workers in the unit it seeks to present and asks that the company voluntarily recognize it as the representative of the production workers. The company refuses and the union files a representation petition with the NLRB for an election. The union wins the election and is certified as the bargaining representative of the production workers at JLE.

The company and the union then attempt to bargain a first contract. Although the parties are able to come to agreement rather quickly on many issues, the outstanding issues include the installation of a café in the plant, the replacement of a unit of workers with labor-saving machinery, and requiring the union to put any workplace dispute to a vote by its membership before it decides to go out on strike. After bargaining for a number of months, holding at least ten bargaining sessions, and insisting on its position on each of these three controversial issues, the company declares an impasse and implements its last best offer on each of these proposals.

The workers respond by going out on strike and setting up picket lines outside the plant. The company, wishing to secure the service of replacement workers and to induce striking employees to come back to work, offer replacement and cross-over employees additional vacation benefits beyond what workers who remain on strike can expect to receive.

The union then escalates the situation by refusing to allow trucks from other companies from delivering their goods to JLE and, in fact, three employees threaten to slash the tires of the third-party truck drivers if they seek to cross the picket line. The company immediately terminates the employment of these three employees. The union also goes to stores that sell light and stage equipment manufactured by JLE and picket with signs that tell consumers that they have a labor dispute with JLE and to please not to buy JLE products.

Although the strike eventually settles, and a first contract is entered into, the union's actions exact a heavy economic toll on JLE and it decides a few months later to close its Jackson location. Although JLE does not say this to the union, it hopes employees at its other non-unionized plants will see what happened to its Jackson location and not try to unionize in the future. JLE does not discuss the closing of the facility with the union at all and workers show up to work one day finding the plant boarded up.

- A. Please discuss all of the labor law claims that the company and the union may have against one another. Please remember to discuss possible remedies where appropriate.
- B. If JLE decides to relocate its business from Mississippi to New Mexico rather than shutting it down, does its bargaining obligations with regard to the union change? What additional information might you need to know?
- C. After being closed for six months, a group of former JLE managers buys the property and the company and they essentially open the same business under a new name, Bonaducci Big Lights (BBL). Does BBL still have to recognize the union and abide by the terms of the old contract with JLE if initially 60% of its workers are JLE workers, but three months later only 40% of its workers are from JLE?
- D. Before the Jackson location shuts down, the union and the company get into a dispute under the new contract concerning a provision about job assignments. The union files a breach of contract claim in state court. How should the company respond?

PART THREE (One Hour; 30 points)

Comment critically on the following statement:

"Congress should pass the Employee Free Choice Act (EFCA), which would (1) require employers to bargain with a union on the basis of card check recognition; (2) provide for mediation and arbitration for a first contract; and (3) increase penalties for employer violations of the NLRA."

In your answer, you should discuss the following: What is the current state of labor law doctrine in these areas? 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 in opposition? Integrate cases and policy arguments in supporting your answer.