Hypothetical case 1

The Koff Company promulgated a no-smoking policy. The Union, the Greater Association of Security Personnel, filed a grievance asserting that smoking had been allowed in approximately 50% of the plant areas and that 32% of the employees smoked. The Union asserted that the new rule was a unilateral change in working conditions and would adversely affect many employees, and therefore must be negotiated.

The company took the position that elimination of smoking would benefit both the company and the employees. The employer further asserted that employees worked in close proximity to each other and that non-smokers are directly affected by smoking. The employer also asserted that a ban on smoking would reduce health insurance costs. The employer produced records to show that group health insurance costs had tripled in the past ten years, even though the average size of the work force had decreased.

The parties have not been able to resolve their differences, and the case is now scheduled for arbitration. The Union has asked you to represent them at the arbitration proceeding.

What issues would you present to the arbitrator? What arguments would you present to the arbitrator? Do you see any ethical problems? If yes, how would you resolve them?

Hypothetical case 2

"Al Stresor is an employee of the Koff Company. He learned that a Christmas Party was to be given for employees of one of the plants, and he attempted to learn who was in charge of the party so that he could offer to play the piano or organ there. The people he approached were not responsive, and he left the work area without incident."
According to the employer, it received a call from the supervisor of the plant who said that the employee's contacts with the workers at the plant were a "nuisance." The employer investigated, and allegedly learned that the employee had been loitering about the plant administrative offices, copying the names and telephone numbers of female employees. The employee also allegedly asked the workers at the plant "personal questions" concerning the Christmas party and their phone numbers.

The employer gave the employee a disciplinary notice suspending him for five days because of "poor work performance, creating a nuisance for employees, and sexual harassment and/or unwanted contact of employees."

The employee filed a grievance under the collective bargaining agreement, and as a result the Union negotiated a reduction of the five-day suspension to a two-day suspension, and had the notice revised to refer to "harassment" rather than to "sexual harassment." Following that incident the employer sent a disciplinary notice to the employee accusing the employee of "falsification" of a time card. The employee had entered a day of sick leave on his card, although he had not provided a doctor's excuse for his absence. Because the doctor's excuse requirement had been made known to the employee, his supervisor regarded the time card entry as a falsification. The Union was able to negotiate a change of disciplinary notice by deleting the reference to "falsification" and instead the disciplinary notice was changed to state "malingering" and ignoring "required policy/procedures."

Al is not satisfied with the steps taken by his Union, and he seeks legal advice from you.

What course of action would you recommend and why? What defenses would you expect the employer to raise and why?

Hypothetical Case 3

Since 1968, the Management-Rights Clause of the Koff Company's collective bargaining agreement has included the right "to subcontract" and subcontracting is also exempt from the arbitration provision.

During negotiations that preceded prior collective bargaining agreements the Union unsuccessfully sought to restrict or eliminate the right to subcontract maintenance work. The Union filed a number of subcontracting grievances between 1981 and 1988, and there were five strikes in support of those
grievances.

In January 1990, the Union filed a grievance protesting the subcontracting that occurred during the latest peak. The Union demanded a list of the subcontractors used, the jobs they performed, the cost of individual jobs, and the identities of the bidders on these jobs. The employer provided some of the information, but refused to supply the cost information. The Union asserted that it needed the cost information to process its grievance and also to prepare for negotiations of a new collective bargaining agreement to replace the one that was scheduled to expire in May 1990.

The Union also went on strike. The Company offered two years of extra seniority for the striking employees if they would return to work and hired some new permanent replacements. When the strike ended, three of the striking employees were replaced by employees who had less seniority, but who had returned during the strike and gained the extra two years of seniority.

The Union filed unfair labor practice charges against the Employer asserting that the employer was not bargaining in good faith and had discriminated against the striking employees by offering two years of seniority to get the strikers to return to work.

You are the NLRB. Please provide your rulings and rationale for your rulings.

ALL ANSWERS MUST BE IN YOUR EXAM BOOKLETS!