HYPOTHETICAL CASE 1

The Daily Chronicle is family-owned corporation that publishes, circulates, and distributes the Daily Chronicle newspaper. Frank Bright was the sole, full-time photographer for over thirty-five years. By 1995, photography work had declined to the point that a full-time photographer position was no longer necessary. As a result, the Daily Chronicle added night/week-end work to Frank as part of his regular duties. From 1995 to 1998, Frank was responsible for the majority of the newspaper’s night/week-end work. Frank received no additional compensation for this work. During the same time period, the full-time sports editor, Sam Berg, also expressed and interest in earning extra money. The Daily Chronicle assigned night/week-end work, paying him an hourly rate.

The Daily Chronicle also hired independent contractors who would contribute stories and/or would take photographs for the newspaper on an ad hoc basis.

On January 4, 1996, Teamsters Local was certified as the exclusive collective bargaining representative for certain employees of the newspaper. This certified bargaining unit did not include the independent contractors. During 1996, the union and the newspaper began negotiating for an initial collective bargaining agreement. During the negotiations, the parties discussed the newspaper’s use of independent contractors, but never resolved the matter.

On May 16, 1996, the parties agreed that, while negotiations progressed, the newspaper would continue its past practice. The next day, the union requested the newspaper hire an independent contractor to do night/week-end work in order to enable Frank to spend more time with his ailing wife. The newspaper refused, insisting that it was not going to give Frank full-time pay to work part-time.

When Frank retired in January 1998, the newspaper employed Sam as temporary/full-time photographer. In addition to his new photography duties, Sam also alternated as a weekend sports editor, writing sports stories and assisting with the layout of the sports section.

In March 1998, Sam informed the newspaper that he was having difficulty completing the night/week-end work that Frank had previously performed. The newspaper hired several independent contractors to cover the night/week-end work. The newspaper informed Sam that the independent contractors would perform most of the
photography work, but that Sam would continue to take sports photographs on nights and weekends.

The newspaper neither notified the union of its decision to sub-contract the night/week-end photography work previously assigned to Frank nor gave the union the opportunity to bargain over this decision.

At the parties next negotiating session, on July 18, 1998, the union asserted that the newspaper had unilaterally removed photography work from the bargaining unit by subcontracting the night/week-end work. The union asked the newspaper to rescind its action, but the newspaper refused.

On August 1, 1998, the union filed an unfair labor practice charge with the National Labor Relations Board (NLRB), alleging that the newspaper, in subcontracting night/week-end work, had unilaterally changed the terms and conditions of employment without bargaining, as required under Federal Labor Law.

On August 15, 1998, the union learned that the NLRB intended to issue a complaint based upon the union’s unfair labor practice charge. Two days later the union met with the employees and informed them of the newspaper’s unilateral change and its refusal to rescind its action, as well as the impending NLRB complaint. After learning of the newspaper’s unfair labor practice, numerous employees indicated the desire to go on strike, and the membership held a strike vote. The union membership voted to strike and left work the next day, August 24, 1998.

After the bargaining unit employees went on strike, the newspaper continued to publish its newspaper, relying on the assistance of family members, supervisory employees, and a few non-striking bargaining unit employees. Eventually, the newspaper hired temporary replacement workers.

On January 4, 1999, the union contacted the newspaper seeking to resume bargaining and requesting information concerning the replacements. By letter dated March 5, 1999, the newspaper stated that none of the temporary replacements are considered to be permanent replacements.

The parties then scheduled the bargaining session for March 14, 1999. At this meeting, the newspaper said that they were happy with the replacement employees, and that if they could not reach an agreement with the union soon, they would favor the permanent replacements of the strikers.

The next day, on March 16, the newspaper stated that it believed the strike was an economic strike, and that the company considered the temporary replacements "to be regular, permanent replacement employees," namely, that the strikers were being permanently replaced.
Although the union requested additional bargaining dates, the newspaper did not meet with the union again until May 16, 1999. On May 20, the union’s president sent the newspaper a letter stating that he wished to “reconfirm” that “each of the employees represented by the teamsters local is making an unconditional offer to return to work, at all times since March 15, 1999.” The newspaper never allowed the striking employees to return to their jobs, and the parties could not reach a collective bargaining agreement.

The Daily Chronicle has retained you to represent them before the NLRB. What defenses and arguments would you raise on behalf of the Daily Chronicle? What course of action would you recommend to the Daily Chronicle and why?

**HYPOTHETICAL CASE 2**

Same facts as in Hypothetical Case 1.

The union has retained you to represent them before the NLRB. What arguments would you raise on behalf of the union? What course of action would you recommend to the union and why?

**HYPOTHETICAL CASE 3**

Same facts as in Hypothetical Case 1.

You have been assigned to hear this case as the Administrative Law Judge for the NLRB. Please write a decision setting forth the basis and rationale for your decision.

**HYPOTHETICAL CASE 4**

A maintenance worker at a Charleston manufacturing plant grieved that he was unfairly discharged for sleeping on the job, even though other employees who have been caught sleeping at the same facility received much lighter penalties. A supervisor testified at the hearing that in the early morning of January 4, he heard a gasoline pump “running very loud,” indicating that it might overheat and explode. The supervisor went to the control station to look for the pump and found the grievant sound asleep while sitting up in his chair. Had an action occurred during this period, the supervisor stated, the risk of injury to workers and the damage to the plant could have been devastating. The grievant was discharged a few weeks later.

You have been selected as the arbitrator in this case. Please write an arbitration decision setting forth the basis and rationale for your decision.