

MASSACHUSETTS SCHOOL OF LAW**FINAL EXAM – Private Sector Labor Law**

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Hypothetical Case 1

Holesome is a commercial bakery, selling bread and other products to retailers in Boston. Smith and Jones were salesmen for Holesome. Their duties included driving company trucks and delivering baked goods to clients. In the summer of 2005, Smith, Jones, and some other Holesome salespeople began to talk about forming a union. From the beginning, Smith took the lead in scheduling meetings, and Jones led the drive to recruit other salespeople to join the union. Initially, Jones recruited other employees informally. By the fall of 2005, however, Jones had begun handing out union authorization cards and telling his coworkers that “the union could better represent their interests.”

Holesome had a “union avoidance policy,” and its management quickly began observing and discouraging the salespeople’s unionization campaign. Private investigators working for the company observed one of the early organizational meetings. Then, in September 2005, Holesome’s president, Don Killum, sent a letter to his employees stating that a group of dissatisfied employees had “attacked” the company, creating “a serious threat to your job, your future and the future of your family.” The letter showed the company’s feelings about the unionization effort and concluded by instructing employees to read and abide by the company’s “union avoidance policy,” and to say “‘NO’ to the union agitators.”

Shortly after this letter was sent, Holesome supervisors confronted Smith, Jones, and several other employees to ask them what they thought about the letter. When Smith was interrogated about the letter, the conversation quickly became antagonistic. Smith refused to tell his supervisor what he thought of the letter, the supervisor persisted in his questioning, and ultimately Smith told the supervisor that he could not answer without “compromising himself.” The acrimonious interrogation did not stop Smith’s efforts on behalf of the union. Until his discharge in the spring of 2006, Smith spent “almost every afternoon” in the company parking lot, soliciting his fellow employees to sign union authorization cards.

In April 2006, Smith was fired. Holesome maintains that it terminated Smith because he violated the company’s rule against letting non-employees ride in company trucks. One day in late April a man jumped into Smith’s truck while Smith was waiting for a traffic light to change. Smith told the stranger to get out of the truck. The passenger refused to leave and demanded a ride to the next traffic light (in the direction Smith was traveling). Smith insisted that the person leave the truck and told him that he was prohibited by company policy from transporting passengers. Still, the passenger would not get out, and Smith would not have been able to remove him without resorting to physical force. The light changed, and cars behind the truck started honking. Smith decided that it would be better to transport his unwanted passenger a short distance than to have a physical fight with him in the middle of an intersection. The passenger jumped out of the truck when he reached his intended destination, and Smith continued on his route.

A Holesome supervisor observed the unwanted passenger's brief ride on Smith's truck. When Smith returned to Holesome's warehouse, another supervisor told him that he had been seen with an unauthorized passenger. The supervisor asked Smith to fill out a written report describing the incident. Smith did as he was asked. When Smith arrived at work the next day, two supervisors confronted him and told him that he was suspended without wages or health benefits. The supervisors also instructed Smith to return to the plant the following week for a hearing.

The next week, Smith arrived at the plant at the time he had been told to come, bringing with him a man whom he introduced as his union representative. While Smith had been scheduled to meet with Holesome's Human Resources Director, he was told upon arriving with his union representative that the director was unavailable and that he would have to meet with a junior supervisor. He also was told that he would not be allowed to bring the union representative with him. The meeting was short. The supervisor simply told Smith that he had been fired, and then said, "Well, that's all." While Smith asked for a letter explaining the reasons for his discharge, Holesome personnel neither furnished such a letter nor explained to Smith why he had been fired.

A few days after Smith was fired, a Holesome supervisor confronted Jones as he was loading his truck. The supervisor asked Jones if he knew that Smith had been fired. When Jones nodded, the supervisor said that Jones should "be careful" and "take care of his job" because "he was going to be next." A few days after this conversation, Killum sent another anti-union letter to Holesome's employees. This letter stated that the company had learned "in the past several days" that "a union continued to threaten the future and security of the Holesome families." Again, the company interrogated its employees about their reactions to the letter.

Later that month, Holesome fired Jones for his unauthorized distribution of six cups of hot coffee to a group of non-employees, including Smith, who were soliciting for the union outside the plant.

Smith and Jones have come to you for advice. What claims do they have? What courses of action can they take? What courses of action would you recommend on their behalf and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in hypothetical case 1. Assume that Smith and Jones filed unfair labor practice charges against Holesome. Holesome has come to you to defend the charges. What defenses would you raise on Holesome's behalf and why? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

Hypothetical Case 3

The Ice Transportation Service (ITS) operates a container terminal at the port of Boston through which it imports and exports pass continuously. During past bargaining with ITS on behalf of the office clerical bargaining unit, the Union attempted to negotiate on behalf of the Payroll and Billing Representative. Each time, however, the Union ultimately agreed to leave the position out of the unit. Accordingly, when ITS hired Diana Tardy in June 2005 as the Payroll and Billing Representative, the Union was not authorized to bargain on her behalf. Not dissuaded by prior failures, the Union asserted itself once more: On February 4, 2006, it presented ITS with a letter demanding recognition as the bargaining representative of a single-employee unit consisting of Tardy. The letter imposed a one-hour deadline, which the Union extended until the next morning. On February 5, ITS rejected the demand and refused to recognize the Union as Tardy's bargaining representative.

Two Union representatives and Tardy immediately responded by picketing. No other ITS employees joined the picket line, but many ILWU-affiliated employees ceased working. The work stoppage, having brought the terminal to a halt, prompted ITS to request expedited arbitration. Within a few hours, the arbitrator concluded that the picket line was not bona fide and ruled in the company's favor, allowing ITS to refuse to pay employees who honored the picket line. Although not subject to the arbitration, the Union and Tardy ended the picket line following the ruling.

The short work stoppage cost ITS a significant amount of money and goodwill with its customers. It caused a mile-long truck backup, delayed several shipments, and cost upwards of \$150,000. In addition, despite the arbitrator's award, many workers who honored the picket line did not return until the next day. Because her actions triggered the events, ITS fired Tardy on February 8.

The union and Ms. Tardy have retained you to represent them. What remedies are available to them? What course of action would you recommend and why? Is there a conflict of interest in representing both the union and Ms. Tardy? If so, explain the conflict. If not, explain why.

LIMIT: Three (3) blue book pages

Hypothetical Case 4

Same facts as in hypothetical case 3.

You have been assigned to hear this case as the administrative law judge for the NLRB. Please write a decision based upon the facts given and provide the rationale for your decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!