

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!

MASSACHUSETTS SCHOOL OF LAW

LABOR LAW - PRIVATE SECTOR
FINAL EXAM
DECEMBER 6, 2001
PROFESSOR FREDERICK T. GOLDER
(781) 592-4000 x 305

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 an 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.

MASSACHUSETTS SCHOOL OF LAW

LABOR LAW - PRIVATE SECTOR
FINAL EXAM, DECEMBER 18, 1998
PROFESSOR FREDERICK T. GOLDR
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HYPOTHETICAL CASE 1

The Flush Company designed, made and installed toilets in office buildings. Its employees were represented by eight local plumbers' unions. The Flush Company had collective bargaining agreements with those eight local unions through a multi-employer association. Seven of the collective bargaining agreements permitted subcontracting to companies that had agreements with the unions. One of the agreements did not permit subcontracting.

The Flush Company began experiencing financial problems, and it looked like things were going down the drain. In November, 1993, the Flush Company adopted a "neutral plan" under which it would become a general contractor and subcontract out all of its plumbing.

In February, 1994, the Flush Company withdrew its membership in the multi-employer association and notified all of the unions. By January, 1995, the Flush Company had notified all the unions that it would not be renewing their collective bargaining agreements and that as a general contractor it would not be employing union employees to work on toilets in office buildings.

Between August, 1994, and May, 1995, the Flush Company met with most of the unions to discuss its decision to subcontract. By April 1, 1995, the Flush Company had laid off all of its employees who installed toilets in office buildings. By June 30, 1995, the Flush Company had liquidated substantially all the vehicles, tools and equipment used in installing toilets in office buildings. Since then, almost all of the work had been subcontracted to firms having collective bargaining agreements with the unions.

The Flush Company refused to bargain with the eight unions over the subcontracting and over successor collective bargaining agreements and laid off the union employees who had performed the work that was now subcontracted out.

You have been retained to represent the eight unions. What remedies are available? What course of action would you recommend to the unions? Please explain as part of your answer why you have recommended a particular course of action.

HYPOTHETICAL CASE 2

The Hotel Employees And Technicians Union were seeking to organize the Notel Motel. Three days before election the manager of the Notel Motel began distributing coffee mugs that bore the slogan "Vote No" and "Just Vote No." The Manager approached each of the employees individually, shook their hand, asked them for a "No Vote" and handed them one of the coffee mugs. Each coffee mug had the name of the employee on it.

The Notel Motel won the election and the HEAT Union is now seeking to set aside the election as an unfair labor practice and is seeking to ask the NLRB for a bargaining order with the Notel Motel.

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

HYPOTHETICAL CASE 3

The Hospital Employees and Licensed Practitioners Union has had a collective bargaining relationship with the Sun Hospital for more than 20 years.

The Sun Hospital has used surveillance cameras in their hospital since 1981. Some were in plain view and the employees knew about them. According to the Sun Hospital, the HELP Union never sought to bargain over the installation of these cameras, the monitoring of them, or any aspect of their use. Since 1990, eleven hidden cameras have been installed because of extensive theft of drugs that occurred. The Sun Hospital also suspected other misconduct. In July, 1994, a union employee discovered a camera hidden in an air vent in the women's rest room. When this was brought to the attention of the Sun Hospital, the camera was removed.

On August 1, 1994, the HELP Union, sent the Sun Hospital a letter complaining about the rest room camera and cameras found in the recreation area.

On August 4, 1994, the Sun Hospital advised the union that while some cameras are in plain view, others are from time to time "strategically placed in other areas in response to reasonably suspected misconduct." On August 16, 1994, the Union demanded bargaining on the subject of cameras within the hospital. The Sun Hospital failed to make any reply.

After waiting for more than six months, the HELP Union filed a grievance on February 12, 1995.

When the collective bargaining agreement expired on May 18, 1998, the HELP Union sought to bargain about the cameras. The Sun Hospital refused to bargain about the cameras stating that the use of cameras were within the scope of managerial decisions lying at the core of entrepreneurial controls and that this was a matter solely within the discretion of management.

The HELP Union filed an unfair labor practice charge on December 3, 1998, claiming that the Sun Hospital violated Section 8 (a) (1) and (5) by refusing to bargain in good faith about the cameras.

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.

MASSACHUSETTS SCHOOL OF LAW

LABOR LAW - PRIVATE SECTOR FINAL EXAM, DECEMBER 22, 1999
PROFESSOR FREDERICK T. GOLDER; (781) 592-4000

HYPOTHETICAL CASE 1

The Sunshine Electronic Company ("SEC") manufactures circuit boards for computers. In 1990 SEC created an Employee Committee consisting of twenty (20) employees selected by SEC from a hundred (100) applicants. The Employee Committee met regularly and addressed four main issues:

1. the type of medical insurance benefits available to employees;
2. the disposition of funds from the Employee's Stock Ownership Plan;
3. employment policies regarding termination; and
4. time off for family and medical leave reasons.

The Employee Committee process would generally have members "throw out" ideas relating to whatever topic was under discussion. The ideas would then be discussed by the members and someone from management who was present at the meeting. A poll would be taken by a management representative "to see how many people agreed with a particular opinion and to determine the majority view." SEC's representative would then return to the Employee Committee to announce the decision made by SEC with respect to the issue under consideration.

An unfair labor practice has been filed, and you have been assigned to hear the case as an administrative law judge. Write a decision stating whether or not an unfair labor practice has been committed as charged and set forth the basis and reasons for your decision.

HYPOTHETICAL CASE 2

The Flash Company is a manufacturer of light bulbs. The Electric Union Workers ("EUW") sought to organize the plant. The Company created a "wall of shame" on which shut-down plants were depicted. The Company also mailed employees factually accurate letters referring to plant closings and job loss of other plants, EWU sought to organize.

EWU represented plants that had closed, were represented on the "wall" in the form of 4 foot by 6 foot paper tombstones. The Company added a tombstone every day or two, including, the day before the election, a tombstone that bore the name of its own plant and had a question mark in the middle.

EWU has lost the election and has come to you for advice. What steps would you recommend taking on behalf of EWU setting forth your reasons? What arguments do you anticipate the Company will make?

HYPOTHETICAL CASE 3

The Acme Building Company was awarded a contract to modernize a large apartment unit. The Company formed a joint venture with another Construction Company to perform the contract. Various construction unions began a campaign to force the owner of the facility to stop doing business with the Acme Company and to eliminate all non-union employers from the construction site. The Acme Company and the owner of the building filed suit to enjoin the unions from interfering with the business relationship and also sought money damages against the unions.

The Acme Company has retained you. What actions would you take and why, setting forth your rationale. What defenses do you anticipate will be made by the unions?

HYPOTHETICAL CASE 4

The Flap Company is a manufacturer of paper napkins. The Paper Makers Union ("Union") has represented the employees since the early 1960's. The bargaining unit consists of approximately 164 employees. There were many collective bargaining agreements between the parties.

On May 18, 1999, management informed the union that it wished to alter the vacation scheduling policy. Following some discussion, but without the union's agreement, the company implemented a new policy in which vacation requested more than three weeks in advance would be scheduled according to "first come, first served," rather than according to seniority.

When the current collective bargaining agreement ("CBA") expired on July 16, 1999, the parties met sixteen times to negotiate a new CBA. The parties were far apart on a number of issues, including the scope of the management rights clause, changes in vacation policy, use of temporary workers, and wage and benefit concessions.

The union rejected the final offer and went out on strike on September 29, 1999. The president of the Flat Company sent each of the striking employees a letter urging them not to strike, and advising them that if they did strike they were subject to permanent replacement with only a preference for future hiring.

John Doe, a union member, returned to work while the strike continued. The strike ended on October 8, 1999, and all but thirty workers were recalled.

John Doe was fined and expelled by the union for crossing the picket line. The Flat Company then discharged John Doe for failing to meet production standards.

John Doe has come to you for advice. What steps would you take on his behalf? Please state your reasons for the recommended action. What defenses do you expect the company to raise? What defenses do you expect the union to raise?

MASSACHUSETTS SCHOOL OF LAW

LABOR LAW - PRIVATE SECTOR
FINAL EXAM, DECEMBER 1, 1995
PROFESSOR FREDERICK T. GOLDR
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Hypothetical Case 1

The Eatright Supermarket owns two stores, one in a shopping plaza in Lowell where the employer leases space, and one in Andover, Massachusetts, on property owned by the employer. On September 7, 1994, the EAP Union began informational picketing and handbilling outside the customer entrances of both stores. The signs and handbills stated that the employer neither employed union members nor had a union contract, and asked the customers not to patronize the employer. When the people carrying the picket signs and passing out the handbills refused to leave, the employer obtained a state court injunction which ordered the union's activity on public property to be away from the stores.

The employer acted on the basis of their written policy on solicitation of customers. The policy stated that as a general rule, "Any solicitation or distribution of materials to" customers by "outside groups or individuals" on company premises is prohibited, that the employer "will allow no solicitation or distribution activity on their premises that holds any significant potential of harming" the employer's business, and that no solicitation involving a do-not-patronize issue, a political campaign, or any controversial issue is allowed.

The policy also states that because limited access to customers by "charitable organizations under control conditions" enhances the employer's "business goodwill in the communities it serves," solicitation and distribution by organizations "charitable in nature" may be permitted. The policy also states that the employer "retains discretion to deny access to their premises to any individual or group whose activities does not, in their judgment, promote the employer's business."

You have been retained by the union to represent them. What remedies are available to the union? What remedies would you recommend to the union? Please set forth the basis for your recommendations to your client.

Hypothetical Case 2

A third year employee of a chemical company was repacking some hydrochloric acid into a drum when he was observed holding a lit cigarette. Smoking in the presence of hazardous materials was prohibited under the company's rules of conduct, which stated that a violation of this rule may result in immediate discharge. Upon being caught

with the lit cigarette, the employee was immediately relieved of duty and discharged. The employee filed a grievance.

The employee admitted that he was holding a lit cigarette. He also admitted that he had signed off on receiving the rules of conduct, and that no-smoking signs were posted in the building. However, the Material Safety Data Sheet for hydrochloric acid indicated that it was non-flammable. Furthermore, the heating system at the plant contained two overhead heaters that were ignited by gas with a pilot light within each unit, resulting in exposed flames in the facility at all times. The employee's disciplinary record revealed no serious infractions. Violation of the no-smoking rule was the sole basis for his discharge. The employer has refused the union's request to arbitrate the dispute.

You have been retained by the union to represent the employee. What action would you take on behalf of the employee and why? What remedies are available to the employee? What arguments would you make to the arbitrator at the arbitration proceeding?

Hypothetical Case 3

A collective bargaining agreement between the employer and union provided that the employer would pay one hundred percent of the health benefits of the employees. The collective bargaining agreement ended on November 30, 1994. The parties met nine times prior to the expiration of the collective bargaining agreement to negotiate a new agreement. After the collective bargaining agreement ended, four more bargaining sessions were held, the last one on April 1, 1995. At that meeting, the employer declared an impasse and implemented the terms of their final offer.

At the beginning of negotiations, the employer told the union that health benefits were being increased on December 1, 1994. During the November 28th meeting, the union rejected the employer's package of proposals, and announced that after the collective bargaining expired, the employer's premium payments for health benefits would be limited to the dollar amount it had been paying. On November 30, 1994, the employer gave the employees a memo notifying them that the insurance premiums for health benefits were being increased and that the increased cost would be covered through deductions from their paychecks.

On December 2, 1994, the union filed an unfair labor practice charge protesting the employer's unilateral action.

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