

Fall 1999 Labor Law Final

Essay Question I.

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Stuff is Us

Stuff is Us (SIU) is a privately owned, major Internet retailer, which recently celebrated its third anniversary. The on-line company sells books, toys, cds, pharmaceuticals and groceries. SIU has seven warehouses located across the United States from which it ships orders. The company's annual sales exceeded \$55 million in 1998.

9 months ago, SIU, which prides itself on being a worker friendly, progressive firm, recognized the Retail Clerks International Union (RCIU) at its warehouse in Tacoma, Washington. The company and the RCU began bargaining immediately after SIU recognized the union. The company and the union agreed to meet in the warehouse conference room, from 3:00 p.m. until 10:00 p.m. two nights a week until the contract was hammered out. SIU paid the members of the bargaining committee double time for the hours spent bargaining, and provided meals for all the sessions. Occasionally, during breaks in the bargaining sessions, the bargaining committee members were allowed to browse through the books in the warehouse and select books for their families. SIU did this to partially compensate for the fact that bargaining prevented committee members from being home with their families in the evening.

Nevertheless, things have not gone smoothly. The union requested information on the number of repetitive motion and back strain injuries in the warehouse, employee test scores and SIU's scoring procedures for the exam used to promote order pullers to supervisors. The company refused to give the RCU the information it requested, stating that the information was proprietary, and had to be protected due to the privacy of employees.

SIU asked the union to accept contract language stating that the union RCU would not discipline union members who crossed the picket line. The company also requested, and stridently held out for contract language stating, "SIU employees will only purchase their prescriptions, books and toys from SIU." In addition, SIU refused to accept contract language concerning a grievance procedure and just cause discipline. The company instead countered with the following managements rights clause language, "Management shall have the sole and exclusive right to determine matters affecting hiring, firing, discipline and promotion as well as benefits and wages. Management's policy will be to always treat workers fairly." SIU was firm concerning this language.

During the time RCU and SIU were bargaining, SIU noticed that the union seemed to be falling apart. SIU managers heard rumors that employees were unhappy with the union, and did not support it. In addition, a group of employees calling itself the "Rainbow Coalition" spoke with managers about the issues concerning them, that they felt the union had not addressed. The Coalition was comprised of people of color, gays and lesbians and disaffected parents-who felt the union did not care about daycare issues. As SIU was concerned with the happiness of it's employees, it withdrew recognition from the union. When the union filed ?8(a)(5) and ?8(a)(1) charges, SIU argued that the union did not represent a majority of the employees.

The union then began to picket the warehouse with signs stating, "Stuff is Us Progressive-ly Bad to Workers," "We Thought SIU Cared-We Were Wrong," "Stuff-It" and "We Get No Share of the Overpriced Stuff." The company sought to enjoin the picketing stating that such activity was antithetical to the free market, and that the workers were forming an illegal conspiracy. It also fired all workers carrying the "Overpriced Stuff"and "Stuff It" picket signs. At that point the union filed ?8(a)(1) and ?8(a)(3) charges, called a strike, and began carrying signs that said, "Stuff is Us Unfair to Workers," "Stuff is Us --Violates Labor Laws-Unfair." SIU began recruiting permanent replacements for the warehouse jobs, and some isolated incidents of violence occurred on the picket lines between replacement workers and strikers. SIU fired all strikers involved in violence. SIU also filed ?8(b)(1) and ?8(b)(2) charges. The union filed a representation petition.

You are the National Labor Relation Board Administrative Law Judge who is responsible for resolving these issues. Write your opinion. Be sure to cite all applicable case law, and to discuss all possible violations as well as the appropriate remedies.

Essay Question II.

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Freight Lines Trucking

The Teamsters Union began organizing Freight Lines Trucking (FLT), a major regional carrier, in September of this year. The organizing drive has been a turbulent one. Freight Lines immediately hired "Workplace Associates (WA)," a management consulting firm specializing in keeping companies union free. Soon after the arrival of WA, FLT instituted Worker-Management Resolution Committees. Managers in each department selected employees to serve on the committees from a list of volunteers. The committees were comprised of 4 employees, a supervisor or manager and a human resources specialist. The committees' role was to resolve issues in the workplace that made workers unhappy. However, the workers on the committees were specifically told that there would be no "horse trading." Employees were to bring their own or fellow employees' suggestions to the meetings, but management reserved the right to decide the proper disposition of the suggestions.

In the meantime, the Truckers for Democracy (TD) also began organizing the FLT workers, on the platform that the Teamsters were corrupt and that TD would better serve workers' interests. Soon many of the drivers began to wear, "TD-A True Union," buttons, which FLT on WA's advice asked employees to remove or face discipline. TD supporters began sitting next to the entrance to FLT with signs reading, "FLT Unorganized-Does NOT Recognize TD," "FLT NOT a Unionized Company." TD supporters also passed out leaflets to passers by which stated, "This is information for the purpose of truthfully advising the public that the employer does not employ members of the TD union." Suppliers from unionized firms did not enter.

TD filed an election petition, and the Teamsters sought to intervene. TD maintained the picket line and also sent union employees to obtain jobs at FLT so that they could help with the organizing once they began working there. As soon as WA learned the identity of the TD employees, it advised the employer to terminate them for moonlighting. The Teamsters in the meantime began standing on the sidewalk and talking with anyone who would listen about the value of the Teamsters Union and the fact that TD was a sham. Several employees alleged that the Teamsters let them know that they were strongly encouraged to vote Teamster.

WA also advised FLT to begin keeping an eye out for troublemakers. Off duty security personnel began watching the union headquarters of both the Teamsters and the TD to see which employees entered. FLT let employees know they had been observed entering the union hall. FLT also gave employees notice of its new "no solicitation" policy. "Employees are not permitted to solicit on company premises during work. No employee shall distribute literature on company property." The company explained that the rules were necessary for two reasons: 1) productivity-the different factions of union supporters were engaging in minor skirmishes which disrupted productivity and efficiency; 2) safety-papers flying around the trucking terminal might land on the windshield of truck causing safety problems. TD staffers were kicked off FLT premises when they tried to leaflet the cars in the parking lot.

While the election was pending Trent Nott, a driver who was not known to be supporter of either union, refused to drive a truck with faulty brakes. He wrote a letter to the company saying, "Me and the other drivers deserve better than to have to risk our lives for a buck." He was fired.

As the election neared, WA produced a pamphlet for FLT entitled, "The Truth About Unions." Variations of this document were placed in each employee's check envelope for the six weeks preceding the election. The pamphlet contained many factual inaccuracies and distortions. The company also called several mandatory meetings to discuss its position on unions, such as how unions hurt companies and their workers. Selected individual employees were treated by their supervisors to lunch at the local diner and asked their position on the union. They were admonished not to support the union.

On the day of the election, the Teamsters set up a sound truck across the street from the polling place and broadcast union songs, Teamster speeches and other propaganda. The TD won the election, and the company announced that it was relocating due to the anticipated increase in labor costs.

Discuss all the issues in raised by this fact pattern. Did WA provide sound advice to FLT? What violations of labor law are present? What likely outcome? Include cases in your discussion where relevant.

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II. This is the essay portion of the exam. Suggested time: 1 hour and 30 minutes. Please write in the blue books, using ink, skipping every other line, and leaving the back of the page blank.

Helms' Fix N Paint Shop

Helms' Fix N Paint Shop (Fix N Paint) is a large auto body repair and custom auto painting business. There are several locations throughout the Southwest. Because of the specialized nature of custom paint jobs, particularly those done on classic vehicles, Fix N Paint is always looking for experienced employees. Two members of the Restore and Repair Workers of America (RRWA) applied for jobs at the Tulsa Fix N Paint office. One of them, Smitty, known to be an ardent union organizer, was turned away at the door. He was told that he wasn't being hired because the work in his portfolio did not rise to the level of expertise typical of Fix N Paint workers. Jackson, the Tulsa Manager told an employee, "We don't need his type around here stirring up trouble." However, Davis, the second RRWA organizer, who was unknown to the management of Fix N Paint and whose portfolio was admittedly impressive was hired immediately.

Davis, immediately began organizing as soon as she was hired. She told the employees of the advantages of being unionized, and promised them that were they to sign up now, they would experience a substantial savings in their union dues. Davis passed out and collected signatures on representation cards, which read, "I request an election to determine the proper bargaining representative for Fix N Paint." Later that day, after checking with the national union, she informed the employees that the "savings-on-dues" offer would be extended beyond the election date, but employees signing up now would receive a \$50 gift certificate for a local (unionized) grocer, just in time for holiday shopping.

Davis asked Fix N Paint for voluntary recognition and suggested to Helms that she, "file for an election, if you don't believe that a majority of the employees support the union." Helms refused to file for an election, but decided that to keep the peace, she would sit down and talk with the union. She valued her good relationship with employees and decided to honor their decision to unionize. The first bargaining session took place the local pool hall at 10:00 p.m. as requested by the union. The RRWA bargaining team explained that one of its non negotiable terms was that every car repaired by the shop display a "proudly repaired by union workers," sticker. The explanation was that this would let the public know that the best body workers were union workers.

In the meantime, the RRWA filed an election petition with the Board. The next day, the union called Helms and demanded the names, addresses, phone numbers and e-mail addresses of all the Fix N Paint employees. In the meantime, as a matter of curiosity, Fix N Paint decided to test the employees' support for the union. Ms. Helms threw a company picnic at the local amusement park complete with "ride free" tickets for the employees' children. During the course of the picnic, Helms gave a speech asking for cooperation between labor and management, and stated that great benefits could be derived through such cooperation. Jackson passed out and collected ballots asking each employee their position on the union.

The RRWA had determined that its position concerning the proper bargaining unit was that the bargaining unit should include all primers, dent and fender workers, frame workers, painters and finishers. Finishers were those who like Davis performed the highly skilled specialty work. The union also wanted to include the few members of the clerical staff along with the two estimators. Each location also had one evening security guard who was to be included in the unit as well. The Tulsa Fix N Paint was to be an individual bargaining unit. Fix N Paint argued for statewide units since, "each shop was so small in the grand scheme of things and it would be a pain to have to bargain with several unions." The Board approved the bargaining unit over Fix N Paint's objections.

Discuss all possible violations of labor law in the scenario set out above. Be sure to identify the source of the rule you are citing. Don't forget to discuss the possible remedies for each violation, and the likely outcome of any adjudication of the issues.

III. Policy Question: Suggested time 20 minutes.

What was the Board's Midwest Piping doctrine? Why did the Board come to reject the Midwest Piping doctrine? What policy interests was the Board attempting to balance as it struggled to come up with a suitable rule? What is the current rule? Do you agree with the present rule? Why or why not? If not, what rule would you suggest?

IV. Bonus question--3 points : What is the Hobbs Act? Why has it been the subject of discussion recently?