

LABOR RELATIONS LAW

Rankin M. Gibson

December 10, 1990

This is an "open book" examination, it must be completed in three hours.

If you find it necessary to assume the existence of any facts not stated in the problem, be sure to indicate in your discussion such facts as you have assumed.

I.

The statutes of State W direct the Department of Industrial Relations to maintain a list of every person or firm found by judicially enforced order of the National Labor Relations Board to have violated the N.L.R.A. in 3 separate cases within a 5 year period. A name remains on the list of violators for 3 years. State procurement agents are forbidden by State W statute from purchasing "any product known to be manufactured or sold by any person or firm included in the list of violators".

In October 1990 W placed the name of G, a Delaware Corporation, on the list, of violators following the judicial enforcement of 4 violations of the N.L.R.A. The Department of Industrial Relations informed G that State W would enter into no new contract with G until 1995 and would continue current contracts with G only as long as necessary to avoid contractual penalties, and further, as long as G was on the list, State W would purchase no products containing components produced by G. At the time of the notice G held state contracts worth over \$10,000 and had submitted bids for additional contracts with State W for \$75,000.

The President of G consults you for advice as to what judicial relief, if any, from the action taken by State W can be obtained. What would you advise G? Explain fully.

On December 1, Union X wrote to the Mayor of Swanton, Ohio (pop. 3424), stating that (1) it represented a majority of the street department employees of the Village, (2) requesting that it be recognized as the sole and exclusive bargaining representative of such employees, and (3) requesting a meeting with the Mayor for the purpose of negotiating an agreement governing wages, hours, and working conditions for such employees. Upon receipt of the letter, the Mayor discharged Mr. Smith, a street department worker, and the leader of the unionization movement.

Upon receiving no reply from the Mayor and in protest over the discharge of Smith, on December 3, a majority of the street department workers called in "sick". On the morning of the 3rd, a group of three or four "sick" employees and their sympathizers walked in a circle on the public sidewalk in front of the Village Hall. Some of the walkers carried placards reading as follows:

"Swanton Unfair. Village officials refuse to meet and bargain with their employees. We protest the discharge of John Smith. Union X."

Some village workers refused to enter the Village Hall. Some church groups in Swanton urged the Mayor to recognize Union X and to reinstate John Smith. Other civic groups urged the Mayor to fire the workers who refuse to come to work and the street department workers who report "sick".

(A) Assume that the Mayor consults you, as Village Solicitor, respecting the legal rights and remedies of the Village. What would you advise? Explain fully.

(B) Assume that Union X consults you regarding its legal rights and remedies. What would you advise? Explain fully.

Union X represents some, but not a majority of the production and maintenance employees of Company A. On November 1st, without prior notice, Union X called a strike and established a picket line, never more than two pickets at one time, before the two plant gates. The pickets carried placards reading:

"Company A does not have a contract with Union X."

On and after November 1st, the following events occurred.

(1) Employees of a sheet metal contractor doing repair work in the plant for Company A refused to cross the picket line. The contractor's employees are members of Union Y.

(2) Pickets of Union X followed Company A's trucks which were moving goods from the plant to determine who were consignees. In two instances, the retail stores which received the goods were picketed.

(3) A picket for Union X called upon a foreman of the Shipping Department of Company C, which supplied corrugated containers to Company A, and requested him not to handle any containers consigned to Company A. The foreman complied with the request.

Assuming that the NLRB has jurisdiction and that Company A filed unfair labor practice charges against both Union X and Union Y -

(A) What unfair labor practices, if any, do you believe the Board probably will find against Union X? Explain fully.

(B) What unfair labor practices, if any, do you believe the Board probably will find against Union Y? Explain fully.

(C) What relief, if any, can Company A secure from the NLRB or from the Court? Explain fully.

Company A has had a collective bargaining agreement with Union X for the last three years. In October, 1990, Union X gave proper notice of its intention to negotiate a new contract. During October and November, the Union and the Company met several times in an effort to reach a new agreement. On November 25, 1990, Company A told the Union that if no agreement was reached by November 30, it would discontinue (1) the grievance and arbitration procedures, (2) preferential seniority for union stewards, (3) the union shop provision, and (4) the check-off provision. The existing contract expired on November 30, 1990.

The parties were unable to agree upon the terms for a new agreement. On December 1, 1990, Union X called the employees out on strike.

(1) Assuming that the NLRB has jurisdiction and Company A consults you, what problems, if any, do you foresee if the Company goes forward with its proposals to discontinue the above described benefits and practices? Explain fully.

(2) What relief, if any, in your opinion, is available to the Company in these circumstances?

V.

On December 1, the Ohio Nurses Association wrote to the Superintendent of the Franklin County (Ohio) Hospital (1) stating that it represented a majority of the nursing personnel in the Hospital, (2) requesting that it be recognized as the exclusive representative of all nursing personnel, and (3) requesting a meeting for the purpose of negotiating an agreement governing wages, hours, and working conditions for such employees.

Following receipt of the letter, the Superintendent, on December 4, discharged Mrs. J, the head nurse on the 2nd shift and the leader of the unionization movement.

Having received no reply from the Superintendent, on December 8, a majority of the nurses, in protest over the discharge of Mrs. J, called in "sick". On the same morning, groups of 8 or 10 "sick" nurses and their sympathizers, walked in a circle on the public sidewalk in front of each entrance to the Hospital. Some of the walkers carried placards reading as follows:

"Franklin County Hospital Unfair. Hospital refuses to meet and bargain with its employees. We protest the discharge of Mrs. J. Ohio Nurses Association"

Some laboratory technicians and dietary personnel refused to cross the picket line and enter the Hospital. Some physicians and some civic leaders urged the Superintendent and the Board of County Commissioners to recognize the Ohio Nurses Association and to reinstate Mrs. J. Other physicians and other civic leaders urged that personnel who fail to report for work or report "sick" be discharged.

(A) If the Superintendent consults you respecting the legal rights and remedies of the Hospital, what would you advise? Explain fully.

(B) Would your advice be any different if Ohio had a little Norris-La Guardia Act? Explain fully.