

LABOR RELATIONS LAW

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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.

In September 1988, ABS was discharged for insubordination. She timely filed a grievance which was taken to arbitration. Arbitrator C found that ABS was insubordinate in a confrontation with X, a leadman, but he commuted the discharge to a one week suspension without pay because (1) she was not informed by the leadman that her job would be in jeopardy if she did not comply with his directions and (2) the discharge was contrary to the Employer's past practice of giving a one week suspension for the first offense of insubordination.

On May 19, 1989, after receiving Arbitrator C's Opinion and Award, the Employer, after a brief consultation with the Union committee, posted a memorandum on the subject:

"Insubordination". The memorandum explained that the Employer wanted to clarify its position based upon "the binding arbitration that we recently received." The memorandum distinguished between gross insubordination and insubordination and established a procedural sequence for the imposition of discipline in cases of insubordination.

The Union on May 23, 1989 filed a grievance protesting the notice posted on May 19th saying "we want the past practice procedure followed as well as the contract language."

The contract provides "all duties, functions and responsibilities incident to the operation of the business are vested in the company. The exercise of such authority shall not conflict with this agreement." The contract also provides that an Employee may lose his seniority in the event of "discharge for just cause." The contract recognizes discipline in two categories: minor violations and major violations of plant rules including "gross insubordination."

Assume that the Union's grievance of May 23, 1989 is presented to you as the arbitrator for decision. Write your Opinion and Award.

II

DS was hired as a security guard on February 22, 1989. She became a dues paying member of the Independent Plant Guard Union on March 22, 1989. On July 14, 1989 she was terminated for the stated reason that she was in her 6 month probationary period and did not qualify as a security guard.

The Union timely filed a grievance on behalf of DS alleging (1) discharge without proper cause, (2) discharge because of Union membership, (3) discharge in conflict with the equal opportunity article.

The Security Department tells you, as corporate counsel, that (1) it has a responsibility to remove probationary employees who fail to measure up to Security Department standards during the probationary period, (2) DS a probationary guard was never refused Union representation, (3) there is no evidence to substantiate a violation of the equal opportunity article, and (4) although DS may grieve, as a probationary employee, she has no right to arbitrate.

In your study of the collective bargaining agreement you find that Section 7.01 provides "A new Guard shall be considered as probationary for the first 6 months of his/her employment."

Section 7.02 provides "After a Guard has finished his/her probationary period, his/her name shall be entered on the seniority list as of the date 6 months prior to the date he/she completes his/her probationary period." Section 7.03 provides "There shall be no seniority among probationary Guards; and there shall be no responsibility for there employment of probationary Guards if they are laid-off or discharged during the probationary period." Section 7.04 provides "When a Guard acquires seniority, his/her name shall be placed on the seniority list in seniority order." Section 7.05 provides: "A Guard shall lose his/her seniority when (b) He/she is discharged for proper cause and the discharge is not reversed through the grievance procedure." Section 7.06 provides:

"Where there is a reduction-in-force (layoff) of Guards, the following shall apply: (a) All probationary Guards will be laid off first Section 7.07 provides: "As openings occur, laid off Guards will be recalled in the order of their seniority, before any new Guards are hired, provided they are capable of performing the available work."

By Section 1.01 the Employer recognizes the Union as the sole and exclusive collective bargaining agent "on behalf of all Guards employed in the Employer's Security Department." In 4.04 the grievance procedure provides in part "(a) Any Guard who has been disciplined by a suspension or discharge will be furnished a copy of the discipline report which shall set forth the reason for such suspension or discharge as well as the extent of discipline. (b) Any Guard who is removed from his/her work and is taken to an office for the purpose of being disciplined, may if he/she so desires, request the presence of the Union Steward. (c) Should a Guard believe he/she has been suspended or discharged without proper cause, he/she may file a written, signed grievance as Step Two of the grievance procedure

What would you, as corporate counsel, advise the Employer to do? State your reasons.

III.

For 21 years J. B., a union member, has been a bus driver for the I. C. School District. On October 10, 1989, he transported the high school football team to the high school in S. School District for a game. The game was hotly contested. At the conclusion of the game the Athletic Directors of both schools recommended that the I. C. players board the bus immediately for return to the home school without changing their muddy uniforms to clean "sweats".

Because of a standing order by the Transportation Director, J. B. refused to let the players on his bus which was clean. The I. C. High School Principal approached and told J. B. to let the players board. He refused. Until the Athletic Director asked him to let the players board, J. B. continued to refuse to let the players board.

Ten days later J. B. was given a 30 day disciplinary suspension for insubordination. His grievance was taken to arbitration. Article V of the collective bargaining contract prohibits an arbitrator from adding to or modifying the terms of the contract in any manner whatsoever. Based on J. B.'s long period of service and a job description which requires a driver to keep his bus clean and provides that a driver is under the Supervision of the Director of Transportation, the arbitrator allowed the grievance, but reduced the suspension to 3 days.

(A) Assume the Board of Education consults you to ascertain whether it can vacate the award, what would you recommend and what procedures would you follow? Explain fully.

(B) Assume the Union asks you for assistance in securing compliance with the arbitrator's award, what problem do you foresee and how would you proceed? Explain fully.

IV.

X, the President of ABC Corporation, which is engaged in the design, assembly, sale and servicing of automatic finishing and buffing equipment, consults you with respect to the propriety of the corporation's pay practices. The plant is "open shop." In your investigation you learn

(1) That most employees are compensated on the basis of a weekly salary, which remains constant regardless of the number of hours worked in any week;

(2) That employees at times worked both more than and less than their scheduled 44 hour weeks, depending upon the orders in process, but were paid the same weekly salary;

(3) That most of the male employees are paid \$140 per week; three of the older employees are paid \$176 per week; and three female employees are paid \$130 per week;

(4) That all employees are required to use a time clock and although instructed not to ring in more than ten minutes before 7:00 A.M., some employees come to work early each morning and frequently start work by 6:30 A.M.;

(5) That the corporation contributes \$4.40 each week to a trustee health and welfare program for each employee.

What problems do you believe the corporation is facing with respect to its pay practices? What advice would you give X? Explain fully.

V.

On October 17, 1989, D, a production clean up worker, was laid off. D had greater plant seniority than S, who was retained as Assistant Flexo Press Operator.

The labor contract provides that "In the event of a reduction in force, plant seniority shall prevail where the senior employee is capable of performing the existing job."

The evidence showed that D had, in fact, worked for five weeks in the Fall of 1989 on the Flexo Press; part of the time he worked as a Flexo Press Feeder, and part of the time as Assistant Flexo Press Operator.

The primary duties of the Assistant Flexo Press Operator are to assist and relieve the Flexo Press Operator. The duties also include lubrication, adjustment of the Flexo Press and threading a strip of aluminum into the press.

The Employer offered evidence to show that S had worked three months on the Flexo Press ..and on October 17, 1989, completed her training as an Assistant Flexo Press Operator. The Employer further offered testimony that D had not threaded the Flexo Press. D did not deny this testimony but said he had helped thread the Flexo Press several times.