

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 January 1989, Union X and Company A executed a formal written "collective Bargaining Agreement", which provides in pertinent part:

"The normal work week shall be forty (40) hours per week, eight hours per day, five days per week, Monday through Friday, inclusive."

"The following shall be deemed holidays: New years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. All work performed on any of the above holidays shall be paid for at double the regular rate of pay. In the event that no work is performed on those days, all employees shall receive eight hours pay at regular straight time rates."

On July 3, 1990, about 20 minutes before quitting time, the employer notified 16 employees that they were being laid off because of lack of work. The entire plant was shut down the following day and all but the 16 laid off employees received holiday pay. The 16 employees filed a grievance which is now before you as arbitrator.

At the arbitration hearing, the employer contends that irrespective of the work week set forth in the contract, it has for a number of years, for bookkeeping reasons, operated on a different payroll week; that the new payroll week started with July 4; and that the employees are not entitled to holiday pay as they were laid off at the end of the day before Independence Day. Further, since 1982 company policy has been declared in notices posted prior to each holiday, that an employee must work the day before and the day after the holiday in order to be eligible for holiday pay.

As the arbitrator, write your award with a supporting opinion reflecting your reasons.

X, a female factory worker, was reprimanded and docked one hour of pay because she wore slacks described as bright red in color. The Employer's objection to these slacks is that the tendency of the bright color is to distract the attention of employees, particularly that of the male sex, and thus raise safety and production hazards.

Assume that you are acting as arbitrator of a grievance filed by X. The contract provides --

"If it is finally determined that the employee has been discharged or disciplined without good and just cause, such employee shall be restored to his former status at the time such action was taken against him, and shall be compensated for the wage loss, if any, which has been incurred."

The evidence also shows that the Employer requires female employees to wear slacks, but there is no published rule regarding the color thereof. The Employer claims that there is a general understanding that bright colors are "taboo".

Write your award in this matter with a supporting opinion reflecting your reasons.

C&M is engaged in the construction of a slurry impoundment dam at Powhatan No. 7 Mine. F was hired as a mobile equipment operator on May 30, 1983. In 1984, he successfully bid as fuel truck operator, which consisted of fueling all equipment, driving for repair parts, and working with mechanics after completion of fueling and errands.

Because of adverse weather, on January 3, 1991, several employees including F, were notified that they were to be laid off on Friday, January 4, by seniority within classification due to lack of work. On January 7, the foreman delivered a Standardized Layoff Form to each of the laid off employees.

On January 14, F, accompanied by H; a grievance committeeman prior to his layoff on January 4, spoke to the Project Superintendent. F said he was qualified to perform the mechanical work then being performed by S, who was hired as a mechanic on June 5, 1983.

The Superintendent asked if F had his own tools. F answered, "Yes." At that point, H took over the conversation and told F he didn't have to furnish tools. Finally, H said, "We might as well get out." H and F then left.

On January 17, F wrote a grievance claiming - "The Employer kept S with less seniority than I." F mailed the grievance to the Employer on January 23. It was received on January 26.

The Labor Contract provides:

"Disputes shall be resolved as follows:

"(1) The employee will make his complaint to his immediate foreman who shall notify the employee of his decision within 24 hours.

"(2) If no agreement is reached between the employee and his foreman, then within five work days of the foreman's decision, the grievance shall be presented to the Employer in writing on the standard grievance form and shall be taken up by the grievance committee and a representative of management..

When the work force is reduced at a construction site, employees at that project site with the greatest seniority shall be retained, provided they can perform the work which remains to be

done at the project site. The Employer shall furnish a copy of the Standardized Layoff Form to each employee at the time he is laid off."

Assume the parties, being unable to settle the grievance, select you as arbitrator. Write your award with a supporting opinion reflecting your reasons.

IV.

X, the President of ECC, a proprietary nursing home, consults you with respect to the home's pay practices. The home is unorganized. You learn --

1.that registered nurses, who are paid \$11 per hour, and housekeepers, who are paid \$4.90 per hour, receive the same rate, even though they in some weeks work as much as 60 hours.

2.that the Director of Nursing, a registered nurse, who consistently works more than 40 hours per week, is paid at \$12 per hour.

3.that two male nurses aides are paid 500 per hour more than female nurses aides.

4.that all employees are required to use a time clock and although instructed not to ring in more than ten minutes before the start of their shift at 7:00 A.M., 3:00 P.M., and 11:00 P.M., some employees customarily come to work early and frequently start work one-half hour early.

5.that ECC requires nurses and nurses aides to wear white uniforms at their own expense. However, ECC launders the uniforms for them.

What advice would you give X? Explain fully.

V.

X has been employed for ten years at the soda and lunch counter of the Y store. The labor agreement between the store and the Hotel and Restaurant Employees Union provided that no employee was to be discharged except for just cause. In early 1991, the store management noted cash shortages at the lunch counter.

Y store suggested to the Union that the entire counter crew (eight employees) should be terminated. The Union examined Y's books and agreed to a proposal that four of the employees be temporarily laid off and that they be temporarily replaced to see if the cash picture would improve. X was laid off in March, 1991. When the cash picture improved in March and April, the Union agreed that the experiment had proved Y's point and that the four employees could be permanently replaced. X was permanently replaced.

X met with the Union grievance committee and the Executive Board in an effort to convince

them that her discharge was unjust. The Union chose not to process her grievance.

Assume that X consults you for advice respecting her rights. What would you advise her? Explain fully.