

CHICAGO-KENT COLLEGE OF LAW  
ILLINOIS INSTITUTE OF TECHNOLOGY

Professor Martin H. Malin  
Friday, May 19, 2006

Labor Law  
6 p.m.

FINAL EXAMINATION  
(3 Hours)

Directions

This examination is open book. You may use any or all of the following: Cox, Bok, Gorman & Finkin casebook, Supplements, handouts, and any materials personally prepared by you or prepared jointly with other students in the class, as long as they are handwritten or typed on regular paper. You may not have any other materials at your desk during the exam. If you have brought any other materials into the room, you must place them at the front of the room. You may not share materials during the exam. You may not tear pages out of your bluebooks. You are not to identify yourself in any manner, other than exam number, on your blue books, question sheets or anything else turned in that will be submitted to the professor. Any violation of these rules will be treated as a violation of the Code of Conduct. Questions are weighted as follows:

1. 30 points
2. 50 points
3. 20 points

Good Luck!

Have a great holiday!

**1. 30 points**

You represent the United Food and Commercial Workers (UFCW). Huge Retail Supermarkets (Huge) operates retail grocery stores throughout the Chicago area and the midwest. Huge has a collective bargaining agreement with the UFCW covering all of its stores in Cook, DuPage, Lake, Kane, Will and McHenry Counties. Article 1(A)(1) of the collective bargaining agreement (CBA) provides that Huge must recognize the union as the exclusive bargaining representative of “all employees who perform work within food markets presently operated and hereinafter established, owned or operated by Huge” in the listed counties.

Last year, Huge acquired a majority of the stock of First Class Groceries (First Class), a small chain in Cook, Lake and Dupage Counties that sells high-end groceries and emphasizes fresh organic produce and free range chicken. None of First Class’ stores are unionized. After the acquisition, Huge reorganized First Class’ management structure. A Huge manager of labor relations became First Class’ vice president for human resources and she reported to Huge’s senior vice president for human resources. First class retained its separate employment standards which included a lower wage scale than Huge paid the UFCW-represented employees and which did not provide employees with any paid time off and only provided employees with a high deductible health insurance plan coupled with a medical savings account in contrast to Huge employees who received paid sick, holiday and vacation days in accordance with the CBA and a traditional PPO health insurance plan. First Class also retained its employee handbook, hiring practices and brand identity.

Three months ago, Huge notified UFCW that it had sold one of its Wilmette stores and that it would be closing the store as a result of the sale. If offered to meet with UFCW to bargain over the effects of the store closure. When the parties met, the union asked who had purchased the store and Huge replied that it had sold the store to First Class which intended to remodel it and reopen as a First Class store. The union then demanded that it be recognized as the representative of the employees at the First Class store in accordance with Article 1(A)(1). Huge replied that such questions were up to First Class. The union responded, “You are First Class. You own First Class. You run First Class. You are required to recognize us.” Huge replied that First Class was a separate corporation with its own labor relations policies.

First Class distributed flyers to all residences in Wilmette announcing its acquisition of the store and that it looked forward to serving the Wilmette community soon. Meanwhile, the union picketed the store with signs saying, “Shame on Huge, Union Yes – First Class No,” and “Support Your UFCW Workers.” The union also distributed flyers to all residences in Wilmette headlined, “Huge Thinks You’re Stupid.” The text of the flyers attacked the substitution of First Class for Huge at the store as “replacing the workers who have served the community for so many years with low wage workers getting no benefits.” The union also filed a grievance alleging that Huge violated section 1(A)(1) of the contract and demanding recognition when First Class takes over the store.

Huge filed 8(b)(4)(B) and 8(e) charges against the union and has asked the regional director of the NLRB to seek a 10(l) injunction against the grievance proceeding, against the picketing and against further distribution of the flyers. As counsel for UFCW, how will you defend. Evaluate Huge’s theories and your likelihood of success.

**2. 50 points**

You are counsel to Davenport Dairies, Inc. (DDI), a processor of dairy products, including milk, yogurt, cheese and ice cream. For thirty years, DDI's production and maintenance employees have been represented by the Teamsters. In March 2006, the company employed 50 production workers and 30 maintenance employees. The parties began negotiating for a successor contract to their existing collective bargaining (CBA) agreement which was scheduled to expire on June 30, 2006. Among other provisions, the expiring CBA provided for an entry level wage scale for production workers of \$10.00 per hour with a progression to a top wage rate of \$13.00 per hour in eighteen months. The wage rate for beginning skilled maintenance employees was \$17.50 per hour with progression to \$20.00 per hour over eighteen months. Employees who worked the third shift (11:00 p.m. - 7:30 a.m.) received a shift differential of \$1.00 per hour. Employees who worked Saturdays received time and one half and employees who worked Sundays or holidays received double time. The CBA provided for 8 paid holidays, 7 paid sick days and 2 paid personal days per year. Employees earned 1 week of paid vacation after 1 year of service. Employees earned 2 weeks of vacation after 3 years of service; 3 weeks after 6 years of service; 4 weeks after 10 years of service and 5 weeks after 15 years of service. Employees paid \$10 per month for single health insurance coverage and \$40 per month for family coverage.

At the opening bargaining session, the union demanded an 8% across the board pay increase in each year of a new 3-year contract, an additional paid holiday, 3 extra paid sick days per year and a guarantee that no employee would be laid off during the term of the contract. Darlene Davenport, DDI's chief spokesperson responded that its labor costs far exceeded those of its competitors. She continued, "With our current labor agreement, we simply cannot compete. The dairy products market gets more and more competitive every day, with retailers demanding that we lower our prices. None of our competitors have labor costs as high as ours and we just have to bring our labor costs down if we want to retain our customers and stay in business." The Union chief negotiator asked if the company was losing money. Darlene replied, "I'm not saying we're losing money right now but if we don't reduce our labor costs so that we can retain our customers, that could change very quickly." DDI then proposed a three year contract with the entry level production employee earning \$7.00 per hour and progressing to a top rate of \$12.00 per hour after 5 years; entry level skilled maintenance employees earning \$12.50 per hour and progressing to \$16.00 per hour after 5 years; eliminating 1 paid personal day, 1 paid holiday and 2 paid sick days per year; capping vacation accruals at 3 weeks per year; eliminating the third shift differential, changing Sunday and holiday pay to time and one half, and increasing health insurance premium contributions to \$100 per month for single coverage and \$200 per month for family coverage.

The union requested DDI provide it with its certified financial statements for the past 5 years, a list of all of its competitors, the company's analysis of the labor costs of each competitor and the basis for that analysis, and a list of all company customers and all customers who have left the company for a competitor in the past 5 years. DDI produced an analysis of competitors' wage and fringe benefit costs but declined to produce anything else labeling the other information as irrelevant and privileged.

The parties met 14 times. By July 1, they had reached agreement on all noneconomic terms of a new contract. The union had reduced its wage demands to 3% raises in each year of the new contract. The union had also dropped its demand for extra paid sick days and an extra paid holiday. It continued to demand that employee contributions to health insurance remain as under the expired contract and continued its demand for a guarantee against layoffs. DDI had dropped its demand to increase the time for progression to top pay to 5 years and proposed instead to increase the period from 18 months to 2 years, had changed its position on health insurance to a demand that employees pay \$75 per month toward single coverage and \$150 toward family coverage, increased its proposed entry level wage scale for production workers to \$9.00 per hour, and maintained the rest of its wage proposals, proposed that the shift differential be \$.50 per hour and maintained its proposals eliminating one holiday and one personal day and two sick days, but dropped its proposal to cap vacation accrual at 3 weeks.

The union's chief negotiator stated at the next bargaining session, "We appreciate that both parties have made some movement but we remain fundamentally apart. The union wants to simply keep up with inflation while the company wants to push us into poverty. If the company continues to insist on cutting our wages and benefits, we will be forced to strike."

Darlene replied, "Go ahead and strike. Make my day. We are ready for you. We will replace everyone of you. If the union strikes, it will bust itself. We will be rid of you once and for all and we will hire all the people we need at \$7.00 per hour."

At the time he was preparing DDI's initial contract proposals, DDI's Vice President for Labor Relations prepared a memo to Darlene Davenport which stated that any concessionary contract would be an almost impossible sell to the union and would likely result in a strike. The memo analyzed the labor market, concluded that replacement employees were plentiful and detailed a plan for inducing incumbent employees to cross the picket lines during a strike, recruiting and training permanent replacements for employees who stayed out on strike and providing security for both groups. It concluded, "We will put tremendous pressure on the union. The union leadership will realize its folly and accept our proposals or the union will go down and we will be able to operate union-free."

On July 8, the union struck. The company shut down its production operations but continued to fill customer orders from goods it had stockpiled prior to the strike. On July 9, the parties met again. The union had no new proposals but advised the company that it had more moves to make if the company was willing to include a guarantee against layoffs and if the company would "get real with respect to health insurance." Darlene said, "Let us mull this over. Let's get back together tomorrow morning." The union agreed.

Meanwhile, the company shifted the positioning of its security cameras. Three cameras that were pointed at the parking lot in the front of the company's property were shifted so that they now recorded the picketing going on on the sidewalk in front of the premises.

On July 10, the company proposed again eliminating the shift differential entirely, again lengthening the period from entry level to top pay to 5 years, went back to its prior position that entry level production workers should receive \$7.00 per hour, again proposed capping vacation accrual at 3 weeks per year but exempting from the cap all employees currently receiving more than 3 weeks, but also proposed that employee health insurance premiums be \$50 per month for single coverage and \$100 per month for family coverage. For the first time, the company

proposed raises in the second and third years of the contract of 3% each year. The company's position on sick days, personal days and holidays was unchanged but the company did propose a guarantee that there would be no layoffs as long as the company's sales were at least at the same level each quarter as they were for the third quarter of 2005. The third quarter was usually DDI's best quarter because of increased ice cream sales in the summer.

The union's chief negotiator responded, "You call this getting real! This is crazy! Maybe we need to wait until your stockpiles dwindle. We figure you can last a week on your stockpiles. We'll talk to you again next week unless you have a more realistic proposal between now and then." Darlene replied, "We're not going to negotiate against ourselves. We'll see you next week. If you have a proposal before then, you know how to reach me."

On July 15, Darlene sent a letter to every employee. The letter told employees that the company had been trying to get the union to understand its need to be competitive. It cited the wages and benefits its competitors paid, information that it had previously give to the union, and stated that the strike was only hurting the company's competitiveness even more. The letter urged employees to return to work and stated that they could do so under the wages and benefits of the expired contract "for the time being." It stated, however, that beginning July 22, the company would start hiring permanent replacements.

Over the course of the next week, 10 production workers and 5 maintenance workers crossed the picket line and returned to work. On July 25, the company hired 25 replacement production workers and 10 replacement maintenance workers. With these 30 production workers, 15 maintenance workers and supervisors, the company resumed production and had little difficulty meeting demand for its product. On August 1, the union offered to accept the company's proposals on sick days, personal days and holidays, the company's proposal of no layoffs as long as sales for each quarter equaled or exceeded sales for the third quarter of 2005, and proposed the 18 month pay progression, a one year wage freeze and raises of 3% in the second and third years of the contract. Darlene responded, "Your strike is irrelevant. We are operating just fine without you and you know that. You were too blind to see what a good deal I offered you a month ago. Well, back then I viewed your strike as a bit of a risk so I was willing to be generous to avoid it. Now, I know that your strike poses no risk at all." She then counteroffered the company's original proposal from the first bargaining session.

On August 2, the union made an unconditional offer to return to work. DDI promptly reinstated that 20 most senior production workers and 15 most senior maintenance workers. It told the others that there were no openings for them and that they would be recalled in order of seniority as positions became available. The next day, the union filed 8(a)(1) and (5) charges against DDI. As counsel for DDI, discuss every theory of violation that the union may reasonably assert, your defenses and your likelihood of success.

### **Question 3 20 points**

You are the Regional Director of the NLRB. SEIU filed a petition to represent the employees of Local Maintenance Company (Local). The parties consented to an election which is scheduled to be held in three weeks.

Local is a wholly-owned subsidiary of Mega Maintenance Company (Mega), which has subsidiaries operating throughout the country. For the past year, Mega has been considering changes to its health insurance plan. In response to recommendaitons from managers in Akron,

Ohio; New York City; Tuscon, Arizona and Youngstown, Ohio; Mega has explored the possibility of adding dental coverage. It was concerned about the cost, but two months ago, it received a very good bid from No Name Insurance Company. Mega spent the past month checking on No Name's reputation and concluded that No Name was reputable. It accepted No Name's bid and announced to all of its employees at all of its subsidiaries throughout the country, including Local Maintenance here in Chicago, that effective January 2, 2007, employees would be covered by dental insurance provided through No Name at no additional cost to the employee for single coverage and at a cost of \$25 per month for family coverage. Coverage will include 100% of reasonable and customary charges for semi-annual checkups and hygiene and between 50% and 85% of reasonable and customary charges for other dental procedures, depending on the procedure. As soon as the announcement was received by the Local Maintenance employees, SEIU filed an 8(a)(1) charge. Will you issue a complaint? Explain,.