LABOR LAW FINAL EXAM

May 4, 2003 1:00 p.m. – 3:00 p.m. Room 123

Please read and follow these instructions carefully.

- 1. This exam consists of **THREE** (3) questions. Question 1 has **THREE** (3) parts.
- 2. This exam has **SEVEN** (7) **pages**. Check that your copy has all of the pages in the proper order.
- 3. Be sure that you have received a copy of the NLRA. You may refer to this copy of the NLRA **ONLY. NO OTHER MATERIALS may be used during the exam.**
- 4. Skim over the entire exam before you begin. Note that each question is worth a specified percentage of the total exam. Use these percentages to help you budget your time during the exam.
- 5. Note also that each question (each part of Question 1) has specific instructions at the end of its hypothetical. Read and follow these instructions carefully.
- 6. You do not have to answer the questions in order, but PLEASE CLEARLY INDICATE which question you are answering.
- 7. Outline and plan your answers on scrap paper before writing in your exam book. Expect to spend $\frac{1}{4}$ -1/2 of your time for each question reading, thinking, and outlining your response.
- 8. When writing in the exam book, please **SKIP LINES**. You may write on both sides of the page, and you may place more than one answer in an exam book.
- 9. If you use more than one exam book, be sure to place your anonymous number on each book and label the books "1 of 2," "2 of 2," etc.

GOOD LUCK!

LABOR LAW EXAM – SPRING 2003

Question 1 – CheapMart Discount Stores (50% of total exam score)

Background

CheapMart (or the "Company") is a national chain of discount retail stores known for its low prices and large selection. It has also developed a reputation for driving smaller retail establishments out of business, and for taking a firm anti-union stance. Despite repeated attempts at union organization at dozens of the Company's 500 stores in the United States, not one store has been unionized. The International Retail Associates Trade Establishment ("IRATE" or the "Union") is trying again. The following events occurred at the Company's newest store (the "Store") located in Lower Wage Township, Pennsylvania.

The Company opened the Store – its 501st – in November 2001. The Store employs 100 employees and 15 departmental managers, who report to the store manager. In addition to retail sales space open to the public, the Store has a receiving dock adjacent to a stockroom, and an employee lounge area, including lockers, restrooms, and seating for meals and breaks. Employees park in a designated area of the parking lot and enter the employee lounge area directly through a set of doors marked "EMPLOYEES ONLY." Here they punch the timeclock, don their CheapMart smocks, and proceed to the sales floor. At all times from the opening of the Store through the present there has been a sign posted at all public entrances saying, "Solicitation and Distribution by Non-Employees is Strictly Prohibited on these Premises."

Part 1 (20% of total exam score)

In January 2002 Ellen Employee ("EE") asked the store manager ("SM") if the employees could have a bulletin board placed in the employee lounge. "What for?" SM asked suspiciously. "To exchange information," EE replied with a smile. SM referred this request to his superior, District Manager ("DM"), who replied, "A bulletin board's OK, but be sure to post a notice that says its use is limited to personal employee information. We have to be careful they don't start posting union notices. Keep an eye on it – if there are any union postings, tear them down." SM hung a bulletin board in the lounge but did not post a notice limiting its use. He claims that he told EE its use was to be limited as directed by DM, but EE disputes this. From January until June 2002 the postings on the bulletin board included only the following: notices of cars for sale, available tickets to sporting events, fundraising for several medical causes, Alcoholics Anonymous meetings at a local church, and an offer by an employee's teenaged daughter to babysit.

Then, on July 1, SM saw the following notice posted in the board:

CheapMart Employees, Unite! Are you tired of earning the minimum wage? Let's make this the first CheapMart Store to Go Union! Join us at the IRATE Union Hall on July 16 at 7:00 p.m.

SM removed the notice. It kept reappearing. Every morning SM checked the board and removed the notice. Every afternoon it was back. SM discussed this with the Store's security director, "SD." SD pointed out that one of the Store's surveillance cameras records activity in the lounge. This camera, which is plainly visible in the lounge, has been there since the Store opened. Its purpose, according to management, is to deter employee shoplifting and alcohol/drug use. All employees were made aware of the camera during their orientation training. SD and SM viewed the videotapes made during the first two weeks of July and determined that EE was posting the notice.

On the morning of July 16, another employee, Brown Noser ("BN"), approached SM and said, "I guess you know there's a Union meeting tonight. I'm against the Union. I was thinking – what if I go to the meeting and tell you what happened?" SM replied, "Hey, thanks! That would really help the Company. I'd like to know who's there and what's discussed at the meeting. Let me know tomorrow!" BN attended the meeting and reported back to SM, providing a list of employees and the unsurprising insight that the employees are disgruntled with their wages and benefits.

QUESTION: Based on the above facts, identify each unfair labor practice ("ULP") charge that may be brought **AGAINST THE COMPANY.** For each ULP, identify (1) the applicable section of the NLRA, (2) the applicable legal rule, (3) the facts and arguments favoring the Union AND the Company (*i.e.*, arguments and counterarguments), and (4) the likely outcome of the ULP charge if it were to reach an administrative law judge ("ALJ").

Part 2 (10% of total exam score)

An organizing campaign ensued. During the course of the campaign, the Company distributed the following information to the employees:

- 1. Newspaper articles about the indictment of the Union local's president on racketeering charges in 1999. The president was subsequently acquitted, but the Company did not distribute information to this effect.
- 2. A handout signed by SM stating, "We can only stay in business by keeping our customers satisfied. If wages go up and prices go up, our customers may shop elsewhere, putting your job in jeopardy. Do you really need a union? I don't think so!"

The Union distributed the following:

- 1. Aggregate statistics showing that unionized retail employees at major chain stores have superior insurance benefits compared with those at nonunionized stores. In fact, the insurance benefits provided by CheapMart are superior to the average benefits of unionized retail chain store employees.
- 2. A handout stating, "If you had a Union, you'd be making more money. Your wages will go up if you vote Union!"

QUESTION: Assess the lawfulness of these communications by the Company **AND** the Union.

Part 3 (20% of total exam score)

One day during the campaign, approximately 30 off-duty employees and three non-employee Union organizers gathered at the public entrances to the Store. At the same time, ten off-duty employees and one organizer stood outside the employees' entrance; at times, they entered the employee lounge area. All of the off-duty employees and the organizers distributed this handbill to customers entering and leaving and to employees entering the store and gathered in the lounge:

CheapMart is UnAmerican!
Did you know that only 5% of the products sold in this store are made in the USA?
CheapMart cares more about profits than about saving American jobs.
American-made goods are higher quality goods made by higher quality workers.
What if our retail jobs could be moved overseas?
CheapMart would do that if they could.
Cheap foreign labor puts the "Cheap" in CheapMart!
Be a patriot: don't patronize CheapMart until they raise wages and stock American-made goods!

SM ordered the non-employee organizers to leave the premises and told the offduty employees to disperse, saying that only two of them could be stationed at each door. The organizers and employees refused to leave. After an hourlong standoff, SM called the police. When the police arrived, the organizers and employees left the premises. The next day, SM fired the employees involved in this incident for insubordination.

QUESTION: The Union filed ULP charges on behalf of the terminated employees and the organizers. Identify (1) the applicable section(s) of the NLRA, (2) the applicable legal rule(s), (3) the facts and arguments favoring the Union AND the Company (*i.e.*, arguments and counterarguments), and (4) the likely outcome of each ULP charge if it were to reach an ALJ.

Question 2—Spacely Sprockets (20% of total exam score)

Spacely Sprockets (the "Company") produces sprockets at its facility in Astro, Delaware. Since 1989 the manufacturing employees have been represented by the Sprocket International Manufacturers' Union ("SIM" or the "Union").

George Jetson and his co-worker, Rudy Rocket, were employed as assembly line inspectors and represented by the Union. One day the pair were on duty when the sprocket assembly line malfunctioned. Red lights flashed and sirens wailed as the line shut down. The ruckus woke up Jetson and Rocket, who had dozed off after lunch while they should have been monitoring the line. The loss of production time, the damage to sprockets-in-process, and repair expenses cost the Company \$ 76,521.19. Mr. Spacely gave Rocket a three-day suspension without pay, but shouted, "Jetson! You're fired!"

Jetson grieved his termination with the Union. The Union decided to pursue this grievance on the ground that Jetson and Rocket were subjected to different punishment for the same offense. The Company countered that its differential treatment of the employees was justified based on their past performance and disciplinary records. The Union requested Rocket's personnel file and the personnel files of any other employees who had been sanctioned for sleeping on the job. The Company replied that these files contained confidential and sensitive material, and refused to provide the files without the consent of Rocket and the other affected employees, all of whom withheld consent. The Company provided the Union with a copy of its "Employee Records Privacy Policy," which states,

Spacely Sprockets values and respects employee privacy. Access to personnel records shall be as follows:

Employees: All employees have the right to review and correct their personnel records.

Management: Management has the right to review employee personnel files for jobrelated reasons.

Access by other individuals/entities: Unless compelled by law, the Company will not release employee personnel records to ANYONE without employee consent.

QUESTION: Must the Company unconditionally disclose the requested files to the Union? Why or why not? Be sure to consider arguments and counterarguments for both the Company and the Union. Can you suggest a resolution to this issue that would be consistent with the NLRA?

Question 3--Slate Quarry & Gravel Co. (30% of total exam score)

Slate Quarry & Gravel Co. (the "Company") is a non-union company in Bedrock, New Jersey. The Company took the following steps in an attempt to improve safety, productivity and morale.

On February 1, 2003, the Company announced the formation of an "Employee Suggestion Screening Committee" by distributing the following memorandum to all employees:

Make Slate a better place to work! Do you have helpful suggestions that might improve our safety record? Stimulate productivity? Improve management-employee relations? Have you noticed the new suggestion box next to the timeclock? You can help in two ways. First, make a suggestion! Just drop a note in the box. Second, volunteer for the Employee Suggestion Screening Committee. The Committee will review the submitted suggestions once a month and will select suggestions to forward to management for consideration. Every month the best suggestion, as determined by management, will be implemented (if feasible) and the employee who suggested it will win a valuable prize! Sign up for the Committee on the Human Resources Bulletin Board.

Seven employees signed up for the Committee. The Human Resources Manager, Cora Quartz, convened the first meeting, which Mr. Slate, the Company president, also attended. The meeting was held in a Company conference room on Company time. Quartz set the agenda, which included establishing Committee membership, procedures, and a schedule of meetings. Quartz announced that the Committee would be comprised of the seven employees and Quartz. Quartz and the employees discussed procedures and agreed that each month the Committee would review all of the submitted suggestions, select the three best ones, and submit them to management. The employees on the Committee would select the three best suggestions without any input from Quartz; Quartz would then discuss the three recommended suggestions with Mr. Slate, who would have final approval of the winning suggestion. The Committee also discussed appropriate prizes, such as "preferred parking" for a month, gift certificates to local businesses, and small cash prizes. Quartz stated that the Company would fund a monthly prize at a value of up to \$ 50.00. The Committee elected Barney Rubble, a popular employee, as chair.

On February 10, 2003, Mr. Slate, announced that all employees would have to arrive at work at 8:30 a.m. on each of four consecutive Mondays to attend a mandatory series of safety programs. "We've had too many on-the-job accidents," Slate said. Because the employees' earnings were determined by their productivity, they would in effect not be paid for attending these safety meetings.

Fred Flintstone has worked for the Company as a "quarry operator" since 1990 without incident. Fred and the other quarry employees work from 9:00 a.m. until 5:00

p.m., Monday through Friday. Fred was angry about the new policy. "This isn't fair," he said to his co-worker, Barney Rubble, as they ate lunch. "These meetings are going to be a waste of time, and we're not getting paid for them."

"I don't know, Fred. They might be useful," Barney said. "You've got to admit, there have been a lot of accidents lately. I hate the idea of getting here early on Monday mornings, though, and we really ought to be paid for our time."

"Well, I'm going to do something about it," Fred replied.

The whistle blew and Fred and Barney went back to work.

The next day Fred spoke with Mr. Slate. He complained about the new policy. "Everybody's really upset about this, Mr. Slate. We think it's not fair. In fact, it's illegal. We're entitled to overtime under the Fair Labor Standards Act." (For purposes of this problem, presume that Fred's FLSA assertion is true.)

"You're the only one complaining, Flintstone. There's nothing I can do about it. Now get back to work!"

On the day of the first scheduled meeting, all of the employees except for Barney and Fred arrived early and attended the meeting, most of them grumbling and looking sleepy. Barney called in sick and did not report for work that day. Fred did not attend the meeting. When he arrived at work at 8:57 a.m., Mr. Slate was waiting for him at the timeclock.

"Don't bother to punch in, Flintstone," he said. "You're fired!"

The Union of Stone Age Workers ("USAW" or the "Union") was interested in organizing the Company's employees but had not yet begun an organizing campaign. The Union filed ULP charges against the Company based on the conduct described above.

QUESTION: Based on the above facts, identify each unfair labor practice ("ULP") charge that the Union may plausibly bring **AGAINST THE COMPANY.** For each ULP, identify (1) the applicable section of the NLRA, (2) the applicable legal rule, (3) the facts and arguments favoring the Union AND the Company (*i.e.*, arguments and counterarguments), and (4) the likely outcome of the ULP charge if it were to reach an ALJ.

THE END