## LABOR LAW EXAM 2003 SCORE SHEET

## Question 1 - Part 1 - 20 pts.

Issues: Bulletin board

Security/surveillance

Employee reporting back to supervisor

## 8(a)(1) – Bulletin board

- -- must permit organizing activity under Republic Aviation
- -- er has not effectively limited use of bulletin board (disputed)
- -- compare union notices w/other postings. U most analogous to political organization. No such postings, but no evidence of removal, either.
  - -- removing notice is most likely a ULP

## 8(a)(1) – surveillance

- -- camera probably OK there for rational, lawful purpose, ees aware of it.
- -- problem if camera is misused. Here, misuse in terms of seeking to identify prounion ee, but no action taken against her.
  - -- a close call, but probably OK
- 8(a)(1) ee volunteers to share info w/er; er should decline.
  - -- potential for unlawful use of info, i.e., terminating ees who attended meeting.

### Part 2 – **10 pts**

Issues: ULP v. laboratory conditions

Employer's communications: §8c False/misleading statements

Threat/promise v. opinion/prediction

Union's communications:

False/misleading statement

Promise

### Er Speech

\$8(c) – er speech is not a ULP if it contains "no threat of reprisal or force or promise of benefit."

Speech that is not a ULP may violate laboratory conditions test

1. Union president indicted:

--no threat/promise – not a ULP. Use lab conditions test.

--speech potentially misleading. OK – let ees decide for themselves. No forgery or alteration of Board documents involved.

2. Handbill linking wages/prices/loss of customers.

--potential ULP ("I don't think so!" could imply threat – consider surrounding circs, ees' perception)

--could be reasonable prediction – "demonstrably probable consequence beyond er's control"

## **U** Speech

8b1 is narrower in scope than 8a1 - 8b1A limited to tactics involving violence, intimidation, threats/reprisals. Apply laboratory conditions in this case.

Both examples are lawful. Misleading statement re: benefits is OK – let ees think for themselves. No forgery or deception re: source of documents. Union can make promises, e.g., higher wages, because it cannot guarantee delivery. Lacks er's level of control.

### Part 3 – **20 pts**

Issues: non-ee organizers excluded from property

Off-duty ees excluded from property

Handbill – disloyalty

Sections 8(a)(1) & (3)

Non-ee organizers can be excluded under Lechmere. Clearly this is not a remote access situation.

Off-duty ees cannot be excluded – they have a right to be on premises. They cannot be disciplined for insubordination – they disobeyed an order to disperse, not a work-related order. Can limit their numbers so as not to disrupt/threaten the public. No evidence of that conduct here. Off-duty ees can be outside store and in the lounge.

Handbill is potentially disloyal – attacks quality of goods.

#### Question 2 - 20 pts

8(a)(5)

Duty to disclose applies in grievance context

- -- broad, discovery-type standard
- -- U must request info in good faith at least 1 justifiable reason
- --Info sought must be "relevant" & "reasonably necessary" to U's function

Not unlimited – <u>Detroit Edison</u>. Consider privacy concerns. Apply balancing test. U request is reasonable, but balance against privacy interests. Reasonable to require ee consent. Possibly limit to relevant documents in file, not entire file.

# Question 3 - 30 pts

Issues: <u>Electromation</u> / § 8(a)(2) employee committee Concerted activity

- 1. Test for labor org under §2(5).
  - -- ee participation
  - -- purpose of "dealing w/er"
  - -- Dealings concern conditions of work or other statutory subjects.
    - --bilateral mechanism of proposals and consideration.
    - --pattern or practice
    - -- mgmt on committee can vote (majority) or facilitate
- 2. Indicia of "domination"
  - --created by mgmt
  - --structure/function determined by mgmt
  - --existence depends on mgmt.

No requirement of antiunion animus or specific motive to interfere w/ Sec. 7 No requirement re: ees' subjective belief

In this case, we have ee participation, but probably not "dealing with." Clear evidence of "domination."