

LABOR LAW FINAL EXAM

**May 13, 2002
9:00 a.m. – 12:00 p.m.
Room 237**

Please read and follow these instructions carefully.

1. This exam consists of **FOUR (4)** questions.
2. This exam has **NINE (9)** 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 handout **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 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 $\frac{1}{4}$ - $\frac{1}{2}$ 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

QUESTION 1– On Time Delivery Co. (30% of exam score)

On Time Delivery Co. (“OTD” or the “Company”) is a regional trucking company that serves the Northeastern United States. OTD operates six (6) trucking terminals, located in Elizabeth, NJ; Baltimore, MD; Cleveland, OH; Buffalo, NY; Providence, RI; and Philadelphia. Each of these terminals employs truck drivers, shipping and handling personnel, clerical and office staff, and management. OTD’s corporate headquarters are located at the Elizabeth terminal. Until early 2002, OTD was a non-union company – a rarity in the trucking industry. In January 2002, the Teamsters began an organizational campaign at all six of the Company’s terminals. The Teamsters sought to represent the drivers at each of these locations. Each location would constitute a separate bargaining unit of drivers.

At 8:00 a.m. on January 12, 2002, when terminal manager Barb Smith arrived at the Philadelphia terminal, she noticed that each of the fifty-five (55) OTD trucks in the parking lot had a piece of paper tucked under its windshield wipers. Smith removed a paper from a truck and read the following:

**OTD DRIVERS, THE TIME HAS COME TO HEED THE
CALL! UNITE AND JOIN THE TEAMSTERS!**

**LOCAL 1717 CAN HELP YOU GAIN THE PROTECTION OF
THE TEAMSTERS’ NATIONAL MASTER FREIGHT
AGREEMENT!**

**VOTE TEAMSTERS FOR HIGHER WAGES, BETTER
BENEFITS, AND FAVORABLE WORK RULES.**

**STOP BEING THE LOWEST PAID DRIVERS IN THE
INDUSTRY!**

**MEETING ON JAN. 14 AT 7:00 P.M., TEAMSTERS UNION
HALL, 2300 NORTH DELAWARE AVENUE.**

BE THERE!

The day shift drivers, who work from 8:00 a.m. – 4:00 p.m., were just starting to arrive. Their procedure is to enter the terminal, log in by swiping their ID cards in a scanner, and then proceed to their assigned truck in the parking lot. At the end of their shift they return the truck to the lot and sign out, exiting through the terminal. The truck parking lot, adjacent to the terminal, is surrounded by a wire mesh fence topped with

barbed wire. There are two gates in the fence, clearly marked for the trucks to enter and exit. To enter, the driver must swipe a computerized access card over a scanner; the gate then swings open to permit entry. The exit gate operates by optical scanner; whenever a vehicle passes within a certain distance of the gate, it opens automatically.

Smith observed numerous drivers approaching their trucks and removing and reading the union notices. Some of them folded up the notices and put them in their pockets or inside their trucks; others threw them in trashcans. She frantically began to pull notices off as many trucks as she could. As she was doing so, Carl Weiss, a driver, approached her and said, "Don't take those, Barb! Leave them for the drivers! You can't interfere with our rights!" Weiss was carrying a handful of the notices. Smith replied, "You have no right to put these fliers on the trucks! I'm taking them down!" Weiss said, "The Teamsters won't let you get away with this!" With that he got into his truck and drove toward the parking lot exit. As he drove, he handed fliers to drivers who were walking across the lot to their trucks. Back in the terminal, Barb checked the computerized employee log-in system and found that Weiss had checked in to the terminal at 7:00 a.m., although he (like the other drivers) was scheduled to begin work at 8:00. At 7:00 a.m. there are no regularly scheduled drivers at the terminal. The only employees typically on site at that time are the shipping and handling workers who sort packages, assign routes, and load the trucks. When Weiss returned from his route, Smith fired him. She told him that his conduct in the morning constituted "insubordination." At the desk in the terminal where the drivers log in and out, Smith posted a sign that said, "**PLACING OF ANY NOTICES ON OTD TRUCKS IS STRICTLY PROHIBITED!**"

The Teamsters had found some support among the drivers at OTD at least in part because of the drivers' dissatisfaction with their wages. The Company had granted annual pay raises to its drivers since 1985. Some of these raises were in the form of a straight hourly increase, while others were increases in the base mileage rate (i.e., the amount paid per mile driven). The amount and character of the raises varied, depending upon the Company's profitability. Until 1999, these raises were granted every October. In October 1999, however, the Company decided to defer the raise until January 2000 due to year-end financial weakness. Similarly, the 2000 raise was announced in October 2000 but deferred until Jan. 2001. No raise was announced or implemented in October 2001 or January 2002. On February 12, 2002, the Teamsters won elections at the Company's Baltimore and Elizabeth terminals. (Elections at the other sites were scheduled for March.) On February 15, the Company published the following announcement in its monthly employee newsletter:

PAY RAISE IN MARCH 2002

Things are looking up! Thanks to your hard work, OTD has exceeded profit predictions for the last quarter of 2001. As you know, we've weathered some tough times over the last few years, but profits are turning around and we want to share them with you, our loyal employees. Everyone can look forward to a larger paycheck starting in March, with the increase retroactive to January. (We regret that we are unable to offer this raise to drivers at the Baltimore and Elizabeth terminals; federal labor laws prohibit us from unilaterally raising wages of union-represented employees.)

On March 20, the Teamsters won elections at the Cleveland and Buffalo terminals. On March 28, the Teamsters lost elections at the Providence and Philadelphia sites.

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 ALJ.

QUESTION 2 – Salinger Corp. (20% of exam score)

Salinger Corp. ("Salinger" or the "Company") manufactures construction equipment, such as cranes, excavators, and bulldozers, at its single facility in Caulfield, Pennsylvania. The production employees have been unionized by the United Auto Workers ("UAW" or the "Union") since 1969. In the most recent collective bargaining agreement ("CBA"), which ran from March 1, 1998-April 30, 2001, the Union made significant concessions in wages and benefits in order to cut costs in the face of a loss of profitability. Beginning on April 15, 2001, the parties began negotiating a new CBA.

At the first bargaining session, on April 15, the Company demanded the right to subcontract work and to impose mandatory overtime. The Union opposed these demands and sought a 10% wage increase to compensate for the givebacks in the previous CBA. The Company stated that the subcontracting and overtime were necessary because it had received a large order (the "Order") and feared that without these provisions it could not fill the Order. The Union requested details of the Order, including the name of the customer, the number and types of equipment ordered, the delivery dates, and the total charge; the Company refused to provide this information, stating that it was confidential. The Union proposed that the parties meet on April 18. The Company's chief negotiator said that he would not be available on that date and suggested that they reconvene on April 20. The Union agreed.

At the April 20 session, the Company offered a 2% wage increase, but continued to insist upon the right to subcontract and to assign mandatory overtime. In fact, the Company's chief negotiator told the Union that the Company was prepared to endure a

strike if the Union did not agree to these clauses. “We will insist to impasse on subcontracting and overtime. Take it or leave it,” he said.

The Union requested a bargaining session on April 22. The Company replied that this would be “a waste of time unless you are ready to accept subcontracting and mandatory overtime.” Consequently, no further bargaining sessions were scheduled.

When the CBA expired on April 30, the Union went on strike. The Company continued to operate by using management employees, by subcontracting certain work, and by hiring replacement workers.

On August 10, 2001, as the strike continued, executives of the Company learned of a manufacturing facility that was for sale in Carlton, Georgia. They visited the Georgia property on August 15 and found the facility to be superior to their Pennsylvania plant in many ways. The building was newer and larger, with more efficient ventilation and electrical systems. The corporate office space was modern and well appointed. The parking lot was larger and in better repair. The assembly line layout was larger and more efficiently organized, which the Company estimated could potentially double productivity. In addition, due to increased production space, the Company might be able to expand its business into making components to be sold to other construction equipment manufacturers. The location in Georgia would reduce shipping and freight costs, because most of the Company’s customer base was located in the South and Southwest. Utility costs and taxes were substantially lower than in Pennsylvania, presenting additional cost savings. The Company also projected that labor costs would be reduced.

On August 20, the Company decided to buy the Georgia plant. They announced this decision to the Union on August 25, and stated that the Pennsylvania plant would be shut down on December 31, 2001 unless the Union agreed to a CBA incorporating a 20% wage reduction and a wage freeze for the life of the contract. All the work previously performed at the Pennsylvania plant would be transferred to Georgia, including the work being done to fill the Order. The Union refused to accept the proposed wage terms. The Company agreed to negotiate with the Union regarding the effects of the shutdown, such as severance pay and medical benefits for terminated employees.

On September 1 the Union made an unconditional offer to return to work. On September 15, after repeated requests by the Union, the Company recalled workers—but only to fill the positions that had been performed by management. The Company did not displace any of the replacements and did not discontinue subcontracting.

The Union filed ULP charges against the Company based on the actions noted below. For each, identify the applicable section of the NLRA, discuss in detail the legal rules and relevant facts for each charge, and predict its outcome. Be sure to consider arguments and counterarguments.

- (1) Refusal to disclose information regarding the Order.
- (2) Refusal to bargain regarding the decision to shut down the Pennsylvania plant.
- (3) Offering of a 20% wage reduction and a wage freeze.
- (4) Failure to reinstate strikers promptly and to “bump” replacements to make positions available for returning strikers.

Question 3 – Big Urban University (20% of exam score)

Maria Landon is a campus police officer at Big Urban University (the “University”), a private school located in Major City. Maria has worked for the University for two years. She was hired as a replacement worker when the campus security force, which is represented by the Private Security Officers’ League (“PSOL” or the “Union”), went on strike in September 1999. She was recently assigned to work with Officer Mike Harper as his partner. This assignment would require Maria and Mike to spend a four-hour shift from midnight until 4:00 a.m. patrolling the campus in a marked campus police cruiser. They would spend the remainder of their 8-hour shift in the office, doing administrative tasks and/or responding to police calls as needed.

Mike Harper has worked for the University for 17 years. He was instrumental in the Union’s successful campaign to organize the campus police in 1988. He has served as a Union steward and he was a picket captain during the 1999 strike, which lasted for 2 months. In addition, he has served on the PSOL’s bargaining committee, which was credited with bringing the 1999 strike to a favorable conclusion for the Union.

Maria told her supervisor, Linda Law, that she refused to work so closely with Mike because, in her words, “he’s a known sexual harasser.” When Linda asked Maria to explain, Maria said, “Everyone knows that other women have complained about him. You know that’s why he keeps getting assigned a new partner – because nobody wants to work with him.” Linda acknowledged that there had been complaints about Mike’s conduct. In fact, two other female officers had alleged that Mike had harassed them. One quit her job with the campus police without pursuing formal action. The other officer requested a transfer, which was denied. She then filed a grievance against the University for failing to address her claim of sexual harassment by granting her transfer request and sanctioning Officer Harper. The Union and the University settled the grievance confidentially, and the grievant was assigned another partner. Linda informed

Maria that if she did not accept this assignment, she would be fired. Maria said, “I told you, I refuse to work with Mike. I have a right to be protected from sexual harassment – it’s right in the collective bargaining agreement. You can’t subject me to this.” Linda replied, “If that’s how you feel about it, you’re fired.”

The next day Maria contacted the Union and filed a grievance, alleging that she was discharged without cause in violation of the CBA. The Union promptly settled the grievance with the University: Maria was to receive one month’s pay and have her employment record indicate that she quit voluntarily; furthermore, she was to sign a release agreeing not to sue the University or the Union under any cause of action arising from her termination. Maria refused to sign the release. Rather, she is seeking YOUR ADVICE regarding other possible remedies.

The applicable CBA contains the following relevant clauses:

Discrimination. The University and the Union agree not to discriminate on the basis of race, color, creed, national origin, sex, sexual orientation, or marital status. Sexual harassment is a form of sex discrimination and is strictly prohibited.

* * *

Discharge for just cause. An employee may be discharged only for just cause. “Just cause” includes but is not limited to insubordination, refusal to fulfill job duties, incompetence, being under the influence of alcohol or narcotics on the job, and violation of the absenteeism policy. No employee shall be terminated for filing a grievance under the terms of this Agreement.

What options are available to Maria? Be sure to address the following issues in your response and to discuss each fully, considering the arguments on each side:

- (1) Did Maria’s termination violate §§ 8(a)(1) and/or 8(a)(3)? Why or why not?
- (2) Can Maria bring a successful DFR claim against the Union?
- (3) Can she sue the University under § 301?

QUESTION 4 -- Belladonna Fashions (30% of exam score)

Belladonna Fashions, Inc., (“Belladonna” or the “Company”) is a manufacturer of women’s clothing located in Brooklyn. The production employees, who work as fabric cutters and sewing machine operators, are represented by the International Ladies’ Garment Workers Union (“ILGWU” or the “Union”). The parties’ current CBA will expire on May 15, 2002; the parties began negotiating for a new agreement on May 1. Although it has not been specified in the current or past CBAs, it has been the Company’s longstanding practice to grant employees the opportunity to buy a limited

amount of clothing from the Company at wholesale prices. Given that the retail markup is double the wholesale price, this constitutes a significant employee discount. This benefit was very popular among the employees, who routinely took advantage of it. Recently, however, the Company has decided to discontinue this practice because it has had trouble meeting increased demand from retailers and cannot afford to “give away” items that could help fill orders. At a bargaining session on May 1, the Union demanded that the employee discount be maintained and for the first time be included in the CBA. The Company refused and explained its position. The Union insisted on its position and threatened to strike in support of its demand. A Company representative said, “I don’t believe you’ll strike over this. And we still have two weeks under the old CBA with its no-strike clause. I think we can work this out.” The Union negotiator replied, “If we reach an impasse on the employee discount, you’ll really have trouble meeting demand because we’ll be out on strike!”

The next bargaining session was scheduled for May 9. On May 7, however, 20% of the employees called in sick. While none of them had exhausted their available sick days under the CBA, the Company suspected (correctly) that this was an organized Union “sick out.” This conduct was repeated on May 8 and 9 and was orchestrated in such a way that none of the employees involved exceeded their allotted number of sick days. Productivity was down significantly on May 7, 8, and 9.

At the session on May 9, the Union continued to insist on the employee discount. The Company rejected this demand and threatened to file ULP charges against the Union for its “sick out.”

On May 11 and 12, while the Company was closed for the weekend, some of the employees distributed handbills in front of a department store that carries Belladonna products. The workers stood on a public sidewalk and passed out notices that said:

**BELLADONNA—
WHERE GREED AND STINGINESS ARE
ALWAYS IN FASHION!

WE SEW THE CLOTHES
BUT WE CAN’T AFFORD TO BUY THEM!

YOU SHOULDN’T BUY THEM EITHER!

DON’T SUPPORT BELLADONNA FASHIONS
THEY ARE UNFAIR TO WORKERS!**

Today the Company has sought your advice. Please advise the Company regarding (1) any ULP charges that may be brought **AGAINST THE UNION**, and (2) whether the Company may, without running afoul of the NLRA, discipline the employees who engaged in handbilling outside the department store. Consider the strengths and weaknesses of any potential claim or action under consideration.