

LABOR LAW II (BARTLETT)

Spring 82

I

C. 3

Samco Corporation had a valid collective agreement with a local union of the Beamsters containing a broad arbitration clause relating to "wages, hours, and other terms and conditions of employment." Jim Smith, a union member of long standing, failed to get a promotion that he thought he was entitled to and the union asked the company to arbitrate the matter. The company refused, claiming that the clause covered the workforce, not supervisors, and that if Jim had been promoted he would now be a supervisor. The company agreed, however, to refer the arbitrability question to the arbitrator in order to see if it needed to reword the arbitration clause. In order to pressure the union, the company meanwhile dismissed Jim, an active shop steward. Noting that the contract contained no restrictions on strikes, the union applied counter-pressure by calling a strike. The company said that it would apply for an injunction against the strike until the matter had been decided by the arbitrator. The strike was barely a few hours old when Bert Langley, a union member, crossed the picket line. The Beamsters fined him \$1,000. Bert threatened to go to the N.L.R.B. to have the fine revoked, as he earned only \$200.00 per week. Bert Langley had other problems with the union. Three months ago, Bert had publicly attributed the expensive house, clothes and car of the Local's president to the fact that the president, in Bert's opinion, was a "liar, cheat and embezzler." Because of these allegations, a stationery company terminated its contract with the Local's business office to supply office stationery and supplies. The union had then used its internal disciplinary machinery against Bert, denying him the right to run for union office for the next ten years. Bert had exhausted two stages of the three-stage internal appeals procedure. The final stage was an appeal to the Annual Convention of the Beamsters, which was over ten months away. Bert realized with horror that the local president whose reputation he had attacked would be one of the fifty delegates at the Convention. Bert was now threatening to go to court rather than wait for the Convention. In addition, Bert was threatening to go to the Secretary of Labor to get publicity for his case.

The International President of the Beamsters' Union is seeking your help. Advise him of the issues involved.

II

Rimco, Inc. had a valid collective bargaining agreement with the Beamsters which contained a clause referring to arbitration all "unresolved differences." Six of the 100-strong workforce had been discharged for continuous lateness. The aggrieved workers claimed they were not late for work at any time. They alleged that the machine on which they punched their time-cards was incorrect. The union took their claim to arbitration, but laughingly refused to investigate the machine's inaccuracy, pointing out that the rest of the workforce were not late, and they all used the same machine. The arbitrator denied the grievance of the six workers. It later transpired that the clerk who adjusted the machine on their shift had been negligent in setting the clock. The six claimed they were entitled to another arbitration hearing to determine the relevance of the clerk's admitted negligence to their problem. The company and the union refused. At this point Rimco was taken over by Carnivore, Inc. which had a 57-strong workforce. Carnivore hired 54 of the Rimco employees. It was able to start operations, after considerable modification of plant and machinery, at Rimco's location. Rimco had manufactured spare parts for foreign cars; Carnivore made spare parts for American cars. Carnivore refused to recognize the Beamsters as bargaining agent for its new combined workforce, even though the Beamsters had been certified in a valid N.L.R.B. election only six months ago. Carnivore also refused to adopt the terms of the collective agreement between the Beamsters and Rimco. In order to get the aggrieved six off its back, the Beamsters requested Carnivore to re-open the arbitration about their lateness. Carnivore refused to do so. The Beamsters had yet another problem; the 46 employees of Rimco who were not offered employment at Carnivore were terribly upset and threatening legal action. They claimed that the union had unfairly represented them. They said that when the union heard of the impending takeover, it took no steps to prevent it, instead settling for job continuation for the 54 whom Carnivore hired. The aggrieved 46 included the six who had the lateness problem. The 46 employees also wanted to present their case to Beamster headquarters; but headquarters claimed that as the 46 were now unemployed they could no longer be union members. The 46 claimed they stood ready and willing to pay their union contributions.

Advise Carnivore, the Beamsters, and the 46 of the likely outcome(s) in this matter and the options, if any, open to them.

31. Page Limitation - 4 sides only

C.3

Sam Look, who is black, was accused by a supervisor of constantly submitting work of inferior quality and was suspended on January 31st, 1979. The applicable collective agreement contained a grievance and arbitration procedure and Sam decided to use it. Before his case reached arbitration Sam realized, in horror, that Joe Wimp, a recently elected local union official, was going to represent him in arbitration. Wimp was highly motivated and well-intentioned but he was a novice in arbitration and Sam also distrusted his ability to argue the case properly. Sam told Wimp that the supervisor was a member of the Ku Klux Klan and that this swayed the supervisor's attitude towards the quality of the work that Sam produced. Wimp scoffed at this, reminding Sam that other minority people worked under the supervisor and they had no complaints. Sam then asked the president of the local, Tony Cortez, an able and experienced contract negotiator, if he would argue Sam's case. Cortez declined, saying that Wimp had to start somewhere. Wimp did not look into the supervisor's background, but instead he worked diligently night and day to prepare Sam's case for arbitration. Professor Bumble, who taught industrial relations at an Ivy-league university, was the arbitrator. He said that the parties could have a written transcript of the proceedings if they wished, but forgot to tell the court reporter to start; when pointed out to him, he told the reporter to start, although the parties had already completed their opening statements. Wimp called the supervisor for testimony and questioned him thoroughly concerning the workplace and the standards expected by the Company of its employees. The hearing took place on April 30th, 1979. The arbitrator asked Sam if he felt that he had been given a full and fair hearing. Sam said yes, but he still felt that the Company was against him because he was black - an assertion that had been denied by the supervisor. The arbitrator found for the Company. Enraged, Sam filed an employment discrimination claim with the E.E.O.C. He also stated at the next meeting of the local that Cortez lived too lavishly on his union salary, and implied that Cortez was manipulating his union expense allowance. The Union summoned Sam to headquarters where he appeared before a tribunal, of which Cortez was a member. The tribunal expelled him from membership; Sam thus lost his job because there was a union shop agreement in force at his place of work. Sam's friend, Al, advised him to appeal his expulsion through the union machinery; which culminated in a final appeal to the Annual Convention of the union in December, 1979. Sam pointed out that "Cortez and that idiot Joe Wimp are among the five hundred delegates, and anyway I have a wife and four children to support in the meantime." Joe decided to take an action in court. Still hurt by the turn of events, he also notified the Secretary of Labor that the union reimbursed union officers accused of crimes for their legal costs. The union contended that such expenditures

were authorized by a majority of the membership in a referendum on the question.

Sam comes to you for help. Advise him of the most likely outcome(s) in this matter and the options open to him.

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I

C.2

A union local's president, Tom Jones, comes to you for legal advice on a number of puzzling problems arising from the following facts. The collective agreement between his union and the employer, Pinkirtone, contained a broad arbitration clause requiring the submission of "all disputes over the interpretation and application of this agreement" to arbitration. Another clause of the agreement linked wage levels to the cost of living index issued by the Bureau of Labor Statistics. This clause permitted the parties to re-open negotiations when the index passed certain points, with a view to settling at what point wage increases should be pegged. The union decided that it would be better if wage increases were linked instead to the price of the product. Pinkirtone refused to even meet with the union over this, claiming that such an arrangement would be illegal. Pinkirtone requested arbitration but steadfastly refused to meet with the union representatives. The union struck. Pinkirtone claimed that the strike was prohibited under the contract and it was seeking an injunction and damages. Some workers crossed picket lines while the strike was in progress. They were fined \$1,000 by the union although they earned only \$250 per week. The aggrieved members then started an action in civil court to recover the amount of the fines. Other dissidents in the ranks were threatening to go to the Secretary of Labor to have him investigate the manner in which Tom was disbursing strike pay. Tom considered that he had enough headaches as it was without letting untrained laymen look at union strike accounts. One worker wanted to take Pinkirtone to court on his own behalf; Tom told the worker that this was a stupid thing to attempt as only the union could take such an action. Another troublemaker pointed out that if the employer had agreed to the union proposal to link wages to the price of the product, then a fall in price would have meant a wage-cut. The fact that the union had not thought of this, said the worker (a Mr. Bol Shevik), showed "negligent representation" on the part of the union representatives. Tom told Bol Shevik that he was nuts because there was no such action available but the redoubtable Mr. Shevik was still threatening action.

Advise Tom Jones of the issues involved.

II

Flibinite had a collective agreement with union X which contained a broad arbitration clause requiring the submission of "all differences under this agreement" to final and binding arbitration. Flibinite made plastic cups and plates. Being a progressive company Flibinite had a "non-discrimination" clause in the agreement together with an "affirmative action" goal of ensuring the promotion of sufficient minority workers to the ranks of supervisors to reflect the percentage of minorities in its workforce, viz. 30%. It had trouble achieving this goal and minority workers initiated a grievance. Before the matter came to arbitration Flibinite was taken over by Plastitoys. The new company made plastic toys and were able to adapt Flibinite's machinery, after considerable modification, to making their product. Plastitoys had a workforce of 54 and they agreed to hire 57 of the 150 workers of the former Flibinite. They refused, however, to recognize union X (which had won a valid N.L.R.B. election only three months before the merger). They refused also to adopt the terms of the old agreement between Flibinite and union X. Because they did not adopt the "old" terms they also refused a request by minority workers to process their "old" grievance to arbitration. Union X claimed that Plastitoys had to recognize them, adapt the terms of the former agreement with Flibinite, and process the grievance of the minority workers to arbitration.

Advise Plastitoys, union X, and the minority workers of the likely outcome(s) in this matter and the options open to them.