Chapter 1 OVERVIEW; EARLY DOCTRINES; CURRENT APPLICATIONS

Case Questions

1.1, Commonwealth v. Pullis, p. 08

1. (Q.) How did the court view the combination of workers with respect to their intent?

(A.) The court states that the combination of workers can be viewed in two ways. The first is that they want to benefit themselves; the second is that they want to injure those who do not join in their combination. The court stated that the law condemns both.

2. (Q.) Did the court find the continuance of the withholding of labor attributable to a combination?

(A.) Yes. The court stated that the continuance of the withholding of labor was attributable to a combination and the mutual agreement of all of the indicated journeymen to persist in not working for less than a certain fixed rate.

1.2, Commonwealth v. Hunt, p. 09

1. (Q.) What was the "manifest intent" of the labor organization in the case?

(A.) The manifest intent was to induce all those engaged in the same occupation to become members of the labor union.

2. (Q.) How does the court define a criminal conspiracy?

(A.) A criminal conspiracy is "a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means."

3. (Q.) State the rule of law developed by the court.

(A.) (a) A labor union is not a criminal conspiracy if it is formed for lawful purposes and if it employs permissible means to achieve its purposes.
(b) It is not unlawful for a labor organization to seek to achieve security by inducing all in the same occupation to be members and by refusing to work for a person who employs nonmembers.

1.3, Vegelahn v. Guntner, p. 11

1. (Q.) Was the picketing peaceful or tainted with violence?

(A.) It was essentially peaceful.

2. (Q.) What was the scope of the court's injunction?

(A.) The injunction prohibited interference by the union not only with contractual relations but also with employees not contractually bound as well as prospective employees. The injunction was extremely broad in scope.

3. (Q.) In his classic dissent, how does Justice Holmes justify the infliction of injury by a labor organization?

(A.) He contends that the infliction of injury is justified both by an analogy to competing business firms that destroy each other as well as by a need to restore bargaining power to workers.

1.4, Hitchman Coal & Coke Co. v. Mitchell, p. 12

1. (Q.) What agreement did the Hitchman Company ask its employees to abide by?

(A.) Any employees who wanted to join a union could do so provided they quit their employment with the company.

2. (Q.) At the time of this case, what states were mining coal on a closed-shop basis?

(A.) Ohio, Indiana, and Illinois had closed-shop mines.

3. (Q.) What is a closed shop?

(A.) A closed shop is a form of union security under which the employer may employ only union members who were in the union prior to hire.

4. (Q.) Were the organizing efforts of the UMWA peaceful? Was this a good defense?

(A.) Yes. The defense was not good inasmuch as the Court held that the end sought caused illegal breach of contract.

5. (Q.) Did the Court concede that workers had the right to form and join labor organizations?

(A.) Yes, but this right was subject to employer acquiescence.

6. (Q.) Did the Court uphold the yellow-dog contract?

(A.) Yes, as "constitutional rights of personal liberty and private property."

1.5, Lawlor v. Loewe, p. 15

1. (Q.) What purpose was pursued by the United Hatters?

(A.) The purpose of the United Hatters was to compel unionization of the plaintiff's manufacturing operations.

2. (Q.) What pressure methods did the American Federation of Labor and the United Hatters exert?

(A.) The United Hatters, in conjunction with the AFL of which it was an affiliate, engaged in a primary and secondary boycott extending to dealers who sold plaintiff's hats. An unfair list was circularized among the AFL constituents, and it appreciably reduced the plaintiff's sales. In addition, the union label and strike action were employed.

3. (Q.) State the rule of the case.

(A.) Secondary boycott interference with interstate commerce is a method within the ban of the Sherman Act.

1.6, Brady v. National Football League, p. 19

1. (Q.)Must there be a duly certified union in order to have a "labor dispute" under the Norris-LaGuardia Act?
(A.) The text of the Norris-LaGuardia Act and the cases interpreting the term "labor dispute"do not require the present existence of a union to establish a labor dispute.

2. (Q.) Did the "labor dispute" between the Players and the League disappear when the players decertified as a union and elected to pursue the dispute through antitrust litigation rather than collective bargaining?
(A.) Whatever the effect of the union's decertification may have on the League's immunity from antitrust liability, the "labor dispute" did not suddenly disappear just because the Players elected to pursue the dispute through antitrust litigation rather than collective bargaining.

3. (Q.) Did the Court decide that the League's nonstatutory labor exemption from the antitrust laws continues even though the players decertified as a union?
(A.) No. The court carefully expressed no opinion on the question of whether the League's nonstatutory labor exemption from the antitrust laws continued or terminated once the Players decertified their union.

1.7, Brown v. Pro Football Inc., p. 22

1. (Q.) Identify the "non-statutory labor exemption," and explain its significance.

(A.) The non-statutory labor exemption was created by the Supreme Court to avoid the application of federal antitrust laws to multiemployer collective bargaining activities with union, dealing with wages, hours, and working conditions.

Without this exemption, antitrust laws might apply to certain multiemployer bargaining agreements even though federal labor policy favors such bargaining.

2. (Q.) Did the non-statutory labor exemption from the antitrust laws expire upon the parties reaching bargaining impasse?

(A.) Under labor law's impasse doctrine, most provisions incorporated in a collective agreement are held not to expire with the agreement, but rather "survive" until the parties reach a good-faith deadlock in negotiations toward a new agreement. Only after reaching such an impasse may employers legally make unilateral changes in mandatory subjects or take other action such as to lock out employees until a new agreement is reached, or to negotiate separate interim agreements on an individual employer basis. If antitrust laws are applied when an impasse is reached, instability and uncertainty would be introduced into the collective bargaining process. The Supreme Court did not agree that the exemption expired upon impasse of the parties.

3. (Q.) If the NFL Players Association decertifies, may NFL players bring suit against NFL owners for anti-trust violations for the league's salary cap and employer-imposed uniform salary rates for develop-mental squad players?

(A.) Yes. The exemption applies to employers and employees and their representatives bargaining to make the collective bargaining process work. The employers agreed among themselves to set and apply the $1,000 a week wage for the developmental squad players. Without the nonstatutory exemption, which would not apply if there was no union context in which the employers and union sought to bargain over wages, hours, and working conditions, the employers would be subject to the antitrust laws for wage fixing.

Chapter Questions and Problems, p. 23

1. (Q.) What three early common law doctrines were applied to labor organizations?

(A.) Criminal conspiracy, civil conspiracy, and contractual interference doctrines were applied to labor organizations.

2. (Q.) What is the present status of the so-called yellow-dog contract?

(A.) The yellow-dog contract is outlawed legislatively by the Railway Labor Act, the Labor Management Relations Act, and the Norris-LaGuardia Act (Federal Anti-Injunction Act).

3. (Q.) May the National Labor Relations Board obtain injunctive relief against unions in light of the Federal Anti-Injunction Act?

(A.) Section 10(1) of the NLRA allows the NLRB to seek appropriate relief against unions in certain matters such as secondary boycotts and jurisdictional disputes. This section of the NLRA thus narrowed the application of the Federal Anti-Injunction Act. In Chapter 7 *Boys Market* injunctions will be discussed, where, under limited circumstances, a court may enjoin a strike in violation of a contractual no-strike clause.

4. *[Union antitrust violations, Section 1.6.]* An injunction may be issued in this case. Although unions are ordinarily exempt from antitrust liability and an accompanying injunction under the nonstatutory exemption to Antitrust law, an injunction may be issued in some cases. Under *Pennington*, unions that join in concerted action with an employer group to force other employers from the industry or to impose a fixed wage scale on other employers are subject to the antitrust laws and the injunctive powers of those laws.

   The injunction was issued in this case. The court held that the NECA-IBEW agreement amounted to a business group combining with labor to fix prices and divide up markets. This joint violation of the Sherman Act warranted an injunction from the court.

5. *[Contempt powers to enforce labor injunctions, Section 1. 5.]* The U.S. Supreme Court determined that $52,000,000 in fines assessed against the United Mine Workers by a Virginia trial court for contempt of court for widespread, on-going, out-of-court violations of a complex injunction were criminal and could not be imposed absent a criminal trial.

6. *[Importance and Complexity of labor laws, Section 1.1.]* As will be fully developed in Chapter 4, an employer cannot walk away from its relationship with a union, like an individual and employer can terminate their employment relationship at the end of the duration set forth in an employment contract or, if no durations is in effect between the individual and the employer then the relationship is "at will" and generally can be terminated for any reason or no reason. However, the employer cannot unilaterally refuse to bargain with a union with majority support of its employees under our labor laws even at the expiration of the contract period. An exception exists, when the employer can actually prove that the union has lost majority support of the employees. The Shreveport Theatre was unaware of its obligations under the National Labor Relations Act and got caught up in years of expensive litigation.

7. *[Application of discrimination law and other labor and employment laws, Section 1.3.]* In the case of the owner of Louis of Boston or the manager of the Shreveport Theatre it is quite possible to not have known the complexities of the National Labor Relations Act that an employer's bargaining obligation continues after the expiration of the collective bargaining contract. Reading what Ms. Browne Sanders had to endure at work one comes quickly to the conclusion that "this is not right"; and for the CEO of the team to retaliate rather than correct the situation is untenable. Moreover, it was very, very expensive to the enterprise. Hopefully, the notoriety of the case will have a teaching effect on other firms to continuously supervise and train executives at all levels and all employees on sexual harassment policy and the consequences of misconduct.

   News reports indicated that $4 million of the $11.5 million settlement was paid in legal fees. Students may be asked about their impressions about such a sizeable fee.