

COLLECTIVE BARGAINING COURSE (UPPER DIVISION)
SAMPLE EXERCISE #1

The County of Kauai enacted an Ordinance to address traffic and pedestrian safety. The Ordinance prohibits standing on the public sidewalk to solicit employment and bars motorists from stopping to solicit employment or hire workers. The Ordinance also relates to such other activity as student soliciting cars for high school car wash fundraisers.

It is the position of the local law makers and police officials that current road safety laws – such as the State’s Vehicle and Traffic Laws – are inadequate to protect motorists or pedestrians in these circumstances. An organization of day laborers challenges the Ordinance because it believes that a group of predominantly Latino day laborers who make a living soliciting work will be unable to obtain temporary jobs. It is their further position that the Ordinance violates a wide variety of constitutionally protected speech laws. On the other hand, the County who promulgated the Ordinance believe that it had the power to enact the Ordinance based on public safety and police power rights.

Consider whether the Ordinance is a legitimate governmental exercise, or alternatively, it violates constitutional and public policy.

Central to any consideration should be what facts must be developed to support either position.

COLLECTIVE BARGAINING COURSE (UPPER DIVISION)
THE INTERACTION OF LABOR LAW AND SOCIAL NETWORKING

SAMPLE EXERCISE #2

The following fact situation involves a worker who was fired for posting criticism of his supervisor on Facebook.

Employee A was not a quiet person. He often criticized management at the construction site who employed him regarding various work-related issues. In this instance, on his Facebook page, the employee disparaged the level of job safety, and particularly his supervisor, who was tasked with the responsibility of assigning work to employees. His Facebook postings included words to the effect that “this bastard couldn’t get himself lost in a one-car funeral, he has no experience in work assignments, and management knows that he is incompetent.”

The employee’s postings were somehow reported to management at the company and he was asked to attend a meeting with his immediate supervisor, about whom the comment was made. Fearing that he would be disciplined as a result of his comments and, as was his right under the Collective Bargaining Agreement that covered his employment as a Union member, he requested Union representation for the interview. That request was denied and consequently, he refused to attend the interview. Employee

A was subsequently terminated allegedly in violation of the employer's Social Media Policy.

Neither the employee's immediate supervisor nor any other management representative at the company had access to his Facebook page. However, some employees who had access to his Facebook page did offer comments to his postings. Finally, there was no evidence that Employee A restated his Facebook postings to anyone during working hours at the job site.

The employer's Social Media Policy stated as follows:

In order to ensure that the company and its employees adhere to their ethical and legal obligations, employees are required to comply with the company's social media policy. The intent of this policy is not to restrict the law of useful and appropriate information, but to minimize the risks to the company and its employees.

Prohibited Subjects

In order to maintain the Company's reputation and legal standing, the following subjects may not be discussed by employees in any form of social media:

- Confidential or proprietary information about employees.
- Disparagement of the company's services, executive leadership, management, employees, strategy, and construction business practices [Emphasis added].
- Explicit sexual references.

- Reference to illegal drugs.
- Obscenity or profanity.
- Disparagement of any race, religion, gender, sexual orientation, disability or national origin.

So the questions are as follows.

Do you believe that the company's Social Media Policy was used to improperly terminate Employee A's employment because he allegedly made disparaging and defamatory comments when discussing the company and his superior?

Alternatively, do you believe that the company's Social Media Policy was a legitimate exercise of management rights, because of the disparaging and defamatory nature of the employee's comments?

Do you believe that it is relevant that Employee A's comments were limited to expression on his Facebook page?

COLLECTIVE BARGAINING COURSE (UPPER DIVISION)
LIFE UNDER THE COLLECTIVE BARGAINING AGREEMENT

SAMPLE EXERCISE #3

Smith, a maintenance employee of Enderby Industries, Inc., and a member of a bargaining unit represented by the Steelworkers, bid on and was awarded a position as drill operator trainee. During his period as a trainee, Smith's supervisor counseled him on several occasions that he was producing too many defective parts. After giving Smith a final warning that his performance had to improve or he would be discharged, the company fired Smith when his performance failed to improve. Smith, who is African-American and was a union steward, disputes the company's claim that he produced excessive defective parts. He claims that his supervisor, who is white, was biased against him because of his race and because he vigorously pursued grievances as a union steward. The union also claims that in the past the company has allowed five drill operator trainees, four of whom were white and none of whom were active union officers, whose performances were substandard to return to their prior positions rather than fire them. The company disputes the claims of discrimination and maintains that Smith's deficiencies were far more egregious and numerous than any other trainee and that unlike the

situation with the other five trainees, there was no opening in Smith's former job.

COLLECTIVE BARGAINING COURSE (UPPER DIVISION)

SAMPLE EXERCISE #4

The Employer owns and operates a manufacturing facility. The employees have been represented by the Union since 1996. The most recent Collective Bargaining Agreement (CBA) expired on December 31, 2006. At the December 21, 2006 negotiating session, the parties reached a tentative agreement. The employees ratified the agreement on December 29. When the CBA was presented to the Employer's administrator, he told the Union that he had to take the CBA to the Employer's President for approval. As she was out of the country, he left a copy of the CBA at the President's office and provided a copy - marked as "tentative" - to the Employer's payroll officer. The President never approved the CBA. Nevertheless, on January 1, 2007, the payroll office implemented the wage agreement, as set forth in the CBA.

When the President returned, she told her administrator that she had not approved the wage increases and wanted them rescinded. She met with the employees and told them that the wage increases were not part of the tentative CBA. Indeed, she had not delegated authority to anyone to sign the CBA in her absence and, as the wage increases were too costly, she was rescinding them effective July 1, 2007. The President did not notify the

Union of this action. The Union's position was that the "tentative" CBA was a binding one and that the Employer was bound by it to reinstate the pay increases.

The Union has filed charges with the National Labor Relations Board stating the Employer engaged in unfair labor practices for failing to agree to the tentative CBA and for rescinding the wage increases without negotiating the issue with the Union, allegedly in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act.

Specifically, the Employer has asked you, as its counsel, to provide a memorandum that sets forth whether the Employer's position is defensible. Therefore, consider your memorandum the response to this question.