

THIS EXAMINATION CONSISTS OF 6 PAGES. PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER.

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2022

LAW 416.001
Labour Law

Professor: Colin Gusikoski

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:
1. This is an open book examination.
 2. There are **four** PARTS to the examination.
 3. PARTS I and II are fact scenario questions with one question in Part I, and three questions in Part II.
 4. PART III consists of one long answer question.
 5. PART IV consists of two long answer questions. Only answer one of the two questions.
 6. The value of each question out of 100 is indicated. Also, provided is an estimated time, calculated on the basis of the value of the question as a percentage of 180 minutes, with additional time allocated to questions that require more reflection.
 7. You may assume any additional facts that you think are necessary to answer a question, but you should state clearly any assumptions you have made. Do not make assumptions that have the effect of avoiding relevant legal issues. Unless otherwise stated, assume that the jurisdiction is British Columbia.

PART I Fact Scenario (25 marks – 50 minutes)

The Steelworkers Union, Local 100 (“Local 100”) commences an organizing drive for employees at Mugs-R-U’s (“MRU”), a facility in the lower mainland that manufactures coffee mugs and other porcelain products. At the beginning of the campaign, the Union organizer held a meeting at the Smile Café around the corner from the facility.

The union organizer attended the meeting a couple of minutes late and when she arrived one of the employees, who had no relationship with the union, had already started speaking to the group. The employee was stating that MRU was an unsafe place to work and that he personally witnessed workers dealing with toxic ceramic material without masks, that such conduct was illegal, and with one phone call the union could shut the company down. The Local 100 representatives interrupted this individual and began the meeting. The Union representative simply spoke about the normal pay and benefits within the industry and described the process of organizing and negotiating a collective agreement with MRU. They noted that the wage rates were 15% below the nearest unionized competitor and suggested that the same could be achieved at MRU. At the end of the meeting the union organizer stayed behind and had people sign cards who wished to sign them.

The next day management at MRU circulated a letter which stated, among other things, the following:

We want to start by acknowledging that you have the right to choose whether or not to unionize. However, as your employer, we want to make sure you are aware of our view.

We believe that there are disadvantages to unionization.

If you become represented by a trade union, you will lose your ability to directly negotiate with the Employer about the terms and conditions of your employment, whether or not you voted for the union. You will be bound by decisions taken by the unionized group, such as decisions to agree to certain terms and conditions of employment, or to strike - whether or not you personally agreed.

If a trade union becomes certified, unionized employees may end up in a union-mandated strike, or subject to lockout, if bargaining breaks down, and lose pay for weeks or months, whether or not you personally agree with the union’s position.

You will likely have to pay union dues. Ask the trade union how much you will have to pay in dues and consider that cost.

Once a trade union is certified to the Employer, it is not easy to have the trade union decertified.

Unionization does not guarantee job security, increased wages, or improved benefits. We are a family corporation that has been dealing with challenging economic conditions but

striving at all times to do right by our customers, suppliers and employees. Additional administrative costs of dealing with a union could upset our financial position.

We believe that the best way to ensure job security is to provide superior service to our customers.

Union Statements

It has come to our attention that the union is spreading inaccurate union propaganda to our employees and we would like to exercise our right to respond to these statements.

As we understand it, Local 100 convened a meeting at the local diner yesterday and at that meeting Local 100 representatives advised the employees in attendance that Local 100 could shut down the operations with one phone call. We understand that these statements were made in relation to a strong push for attendees to sign union cards. In our view this is inaccurate propaganda.

Furthermore, our understanding is that people acting on behalf of Local 100 have made statements to employees about Local 100's ability to get significantly higher wage rates from MRU should they unionize.

Please understand that MRU strives to provide competitive wage rates. Failure to do so would adversely impact our ability to recruit and retain workers. However, MRU's ability to pay wage rates is constrained by many factors, including the nature of our business, the global economy etc. Over the last few months our business has been subjected to challenges due to Covid-19, supply chain issues, extreme weather events and, most recently, the concerning events unfolding in the Ukraine. These are serious challenges the Company is facing regardless of how things turn out in the near future.

Conclusion

If you have any questions, comments or concerns for MRU, please feel free to email the undersigned at humanresources@mru.com. Your communications will be maintained in confidence, and we will try to answer it the best we can, within the limits prescribed by law.

Our preference is to continue to work directly with you without the involvement of a third-party union. We believe that by working constructively together, without the involvement of a third-party union, is the best way to improve our business, and, in the process, provide secure and satisfying employment to you, our employees.

We respectfully ask that you say NO to trade union membership/representation. Please give us a chance to work directly with you.

Question #1 (25 marks – 50 minutes)

You are a lawyer hired by Local 100. Advise Local 100 on the statements which may offend the *Labour Relations Code*, which sections might be breached, and why.

PART II Fact Scenario (45 marks – 70 minutes)

The organizing drive at MRU was initially successful but eventually stalled out after the letter that MRU sent to its employees. The Union was initially attempting to organize an all employee unit, but is just shy of threshold and may have to scale back or abandon its certification drive.

The union provides you with the following information on its organizing efforts. There are three buildings that employees work in: the office, the production facility and the warehouse.

Office

The office employees include: 1 receptionist, one salesperson, 2 human resource (“HR”) personnel and one accountant. The receptionist answers phones and, on occasion takes orders. The salesperson solely takes orders and makes cold calls. The accountant is in charge of all the company’s books and finances and compiles detailed financial spreadsheets on the company’s performance for head office. The head of HR is the *de facto* “boss” on site and does all the hiring of full-time staff, while the Junior HR completes payroll and maintains all personnel files, including disciplinary records and managerial assessments of employee performance for the annual reviews.

Production

The production facility only runs during office hours and has one supervisor who reports directly to the head of HR. That supervisor regularly intervenes in workplace production issues and directs employees in ways that is intended to make the production process more efficient. On one occasion an employee came to work with alcohol on his breath. The supervisor phoned the head of HR and asked what should be done. The head of HR asked the supervisor for her opinion, and the supervisor said, “I can’t have anyone intoxicated at work.” The head of HR then said: “well send them home for one day without pay then,” On another occasion, an employee refused a direct order of the supervisor. The supervisor sent that employee to the head of HR. The supervisor then phoned HR and said, “you better fire that guy or I’m quitting.” HR subsequently fired the individual for insubordination. These are the only two individuals who have been disciplined in recent memory.

The rest of the production work is separated into two groups: casting and painting. There are 20 production employees including the supervisor. In addition to the 20 employees, the supervisor has discretion to hire part time staff to assist with backlogs. Normally, the supervisor gets his 14-year-old son, Ned, to assist on Thursdays when his son does not have any high school classes. His son also brought a friend, Ted, on two occasions when it was particularly busy, but Ted found the work boring and has only been back on one occasion since, because he needed money for a PlayStation 5.

Warehouse

The warehouse is in a self-contained building and also runs during office hours. The warehouse consists of 1 supervisor, 3 forklift drivers, 3 shipper/receivers and 5 delivery drivers. The supervisor, like the supervisor for the production facility has the authority to hire temporary staff. He has only hired his brother-in-law when they are behind on orders. This is normally about 3 days a month. Employees in the warehouse do not generally interact with the production

employees with the exception of the forklift drivers who have to pick up pallets of finished product every morning from the production facility. The shipper/receivers are on the computers for most of the day but also check inventory on a daily basis. The forklift drivers drive forklift all day, and there are 5 forklifts to choose from which are varying degrees of size. The truckers hold a specialized class 5 license and, when they are driving truck, they spend all day in their vehicles, including their breaks. Truckers regularly communicate with the shipper/receivers and are supplied with a tablet containing the same program used by the shippers/receivers. The truckers will perform the same functions as shippers/receivers on this tablet which relate to their orders and inventory. The only thing the truckers cannot do on the program, is place orders themselves. Placing orders is solely reserved for shippers/receivers. Normally, the trucks back up to the warehouse and a forklift driver will load or unload the trucks, but when it is especially busy the truck drivers will operate a forklift and load or unload their own trucks. Furthermore, as the forklift work is the bottleneck of the delivery process, if a forklift driver is on holiday or sick, a trucker will fill in for that operator. Also, when the forklift demands are excessive, a trucker will volunteer to drive a forklift for a day to reduce the backlog. This happens approximately once a week.

Question #2 (20 marks – 35 minutes)

You are a lawyer for MRU and it has approached you for advice on who could be ineligible to vote. Provide your opinion on all the employees who would or could be ineligible to vote and your basis for that conclusion.

Question #3 (20 marks – 30 minutes)

You are again the lawyer for Local 100. Local 100 discloses that the truckers are a weird group and they have no interest in representing the truckers nor do the truckers have any interest in signing a union card. They would like to know whether they could exclude the truckers from a certification application. Provide your opinion on the likelihood that the Board would issue an application for certification for an all employee unit but excluding the truck drivers.

Question #4 (5 marks – 5 minutes)

Provide two other possible bargaining unit descriptions that, in your view, would likely be appropriate for collective bargaining.

PART III Essay Question (15 marks – 30 minutes)

Question #5 (15 marks – 30 minutes)

Provide your opinion on a much-needed addition, change or deletion to the present *Labour Code*. Explain the reason for your view, provide a solution that you view as appropriate and explain how your alteration aligns with or might affect the Board's general policy approach.

PART IV Essay Questions (15 marks – 30 minutes)

Answer only **one** of the following questions (for 15 marks – 30 minutes):

Question #6a

Justify the restrictive approach to picketing in the BC *Labour Code* against the general common law approach to picketing. In doing so, you will explain the current state of the law, how it differs from the common law and explain why the difference makes sense in light of the general framework of the *Labour Code*.

OR

Question #6b

Describe different pairs of provisions in the BC *Labour Code* that are in tension with each other. Your answer should include the actual provisions, the Board's law and policy with respect to those provisions and the inherent tension between the two provisions.

END OF EXAMINATION