HYPOTHETICAL PROBLEMS

 These problems involve the further saga of the relations between the Professional Sports Agency (PSA) and the Professional Sports Union (PSU). You will remember that in December we looked at the bargaining for a first contract between PSA and PSU. Relations were quite rocky then but as the weeks went by, they got better.

 Today we are going to analyze three incidents that have taken place since you looked at the bargaining in December.

 INCIDENT ONE

(1) During negotiations for a first contract, the union continually raised the issue of the discharge of the union supporter during the campaign. Students will remember that PSA was quite hostile to the PSU during the pre-election campaign. They threatened discharge and indeed discharged a “very vocal union supporter” shortly before the election.

(2) PSU has not forgotten this supporter and is constantly raised his reinstatement during bargaining. PSU has also filed an unfair labor practice complaint with PERB alleging an unlawful discharge. PSA has been silent about the matter since the day the unfair labor practice complaint was filed saying only that they would answer any questions PERB has and if necessary defend themselves against the complaint should a hearing be rescheduled.

(3) Finally, at the July 15 bargaining session the union raised the discharge again and Mr. Smith from PSA said in desperation “I’m sick of not being able to tell why we did what we did so here it is. That employee was a bum. He was always late and he never got his work done on time.”

(4) This was all news to the PSU and after thinking about it, they decided that if what the PSA said was true, they would drop the matter. So, in order to investigate this, they asked PSA for tardiness records for the employee and for all other employees for the six months before the discharge. And, as to the bad poor work assertion by PSA, the union asked for the evaluations of the work of all PSA employees for the past six months.

(5) Smith was bargaining on the day the PSU made the request. He asked the union why they wanted this information. “After all,” he said, “you know me and you have my word that this is why we fired the employee and furthermore, you don’t need this information because you don’t have a grievance arbitration agreement yet.” The PSU representative said we want it in order to make our case at PERB, to bargain with you about hiring this employee back and to have a provision that deals with discipline in any contract we get. Smith said he will put the information together and get it to the union. The union has continued to ask at every bargaining session and Smith says he is working on it and getting the evaluations together takes time. In fact he said this most recently at the November 30 bargaining session.

(6) You are handling labor relations for PSA and John Smith asks you for advice. He is now having second thoughts about his promise. Does he have to give this information? If he does, does he have to give it all? And finally, he says he is concerned about the privacy of the union employees and he now wants to refuse to give any information because of privacy.

(7) What would you tell him?

 INCIDENT TWO

(1) The PSA want the very best people to supervise and manage the Agency and have decided that it will have a promotion test whenever there is a vacancy. Under their plan, the PSA will announce the vacancy and the date of the test.

(2) Applicants will be scored on employee performance (50%) and on the scores the employees get on the test (50%).

(3) Smith announced this at a bargaining session and then told the PSU that the first vacancy announcement would be posted the next day. The examination will be four weeks later.

(4) The PSU said they had no real objection to this plan but that they want to be sure that the test is job related. So they asked if they could participate in developing the questions. Smith said that would delay the process and destroy the confidentiality of the test questions so he wouldn’t agree. So the PSU offered an alternative. “Let us see the questions at the same time you give the test. That way,” they said, “no one could fear that we will give out the questions to those taking the exam. Smith said no to this because he said he wants to use the test again and if the union has the questions and answers; it might give them out to future examinees.

(5) The PSU would not be put off. It has filed a written request for the exam questions. It however gives PSA the choice, let us be part of the committee preparing this exam or give us the questions at the time you give the exam.

(6) Again Smith comes to you for advice. What would you tell him?

 INCIDENT THREE

(1) At the next bargaining session after Incident Two, the PSU again raises the discharge of the employee telling Smith that they intend to pursue this matter as long as it takes to get the employee reinstated. Smith laughs and says you will lose no matter what you try because I have evidence right here that will blow you out of the water. He then holds up an envelope and says “it’s all right in here.” The union asks what it is and Smith says “you’ll find out if you go after me about this.” The union asks for the envelope and Smith says “absolutely no. You are going to die when you see it and you will be very embarrassed that you pushed this the way you have.” The union asked again for the envelope and Smith smiled and put it in his pocket and walked out.

(2) The union now asks you if they can get the envelope. What do you tell them?

Suggested Reading:

* NLRB v. Acme Industrial - 87 S. Ct. 565
* AFSCME v. DCPS Opinion No. 339
* West Penn Power - 339 NLRB 585-592
* AFGE v. DC Office of Labor Relations et al - Opinion No. 1528