

**2008 BAR EXAMINATIONS
LABOR LAW**

7 September 2008

2 P.M. – 5 P.M.

INSTRUCTIONS

This questionnaire consists of fourteen (14) numbers contained in eight (8) pages. Read each question very carefully. Answer legibly, clearly and concisely. Start each number on a separate page; an answer to a subquestion under the same number may be written continuously on the same page and on the immediately succeeding pages until completed. Do not repeat the question.

You will be given credit for your knowledge of legal doctrine and for the quality of your legal reasoning. A mere “Yes” or “No” answer without any corresponding discussion will not be given any credit.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE.

GOOD LUCK!



**DANTE O. TINGA
CHAIRPERSON
2008 BAR EXAMINATIONS COMMITTEE**

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

I

a) Explain the automatic renewal clause of collective bargaining agreements. **(3%)**

b) Explain the extent of the workers' right to participate in policy and decision-making process as provided under Article XIII, Section 3 of the Philippine Constitution. Does it include membership in the Board of Directors of a corporation? **(3%)**

II

a) What issues or disputes may be the subject of voluntary arbitration under the Labor Code? **(4%)**

b) Can a dispute falling within the exclusive jurisdiction of the Labor Arbiter be submitted to voluntary arbitration? Why or why not? **(3%)**

c) Can a dispute falling within the jurisdiction of a voluntary arbitrator be submitted to compulsory arbitration? Why or why not? **(3%)**

III

Savoy Department Store (SDS) adopted a policy of hiring salesladies on five-month cycles. At the end of a saleslady's five-month term, another person is hired as replacement. Salesladies attend to store customers, wear SDS uniforms, report at specified hours, and are subject to SDS workplace rules and regulations. Those who refuse the 5-month employment contract are not hired.

The day after the expiration of her 5-month engagement, Lina wore her SDS white and blue uniform and reported for work but was denied entry into the store premises. Agitated, she went on a hunger strike and stationed herself in front of one of the gates of SDS. Soon thereafter, other employees whose 5-month term had also elapsed, joined Lina's hunger strike.

a) Lina and 20 other saleladies filed a complaint for illegal dismissal, contending that they are SDS' regular employees as they performed activities usually necessary or desirable in the usual business or trade of SDS and thus, their constitutional right to security of tenure was violated when they were dismissed without valid, just or authorized cause. SDS, in defense, argued that Lina, et al. agreed — prior to engagement — to a fixed period employment and thus waived their right to a full-term tenure. Decide the dispute. **(4%)**

b) The owner of SDS considered the hunger strike staged by Lina, et al., an eyesore and disruptive of SDS' business. He wrote the Secretary of Labor a letter asking him to assume jurisdiction over the dispute and enjoin the hunger "strike". What answer will you give if you were the Secretary of Labor? **(3%)**

c) Assume that no fixed-term worker complained, yet in a routine inspection a labor inspector of the Regional Office of the DOLE found the 5-month term policy of SDS violative of the Labor Code's security of tenure provisions and recommended to the Regional Director the issuance of a compliance order. The Regional Director adopted the recommendation and issued a compliance order. Is the compliance order valid? Explain your answer. **(3%)**

IV

Super Comfort Hotel employed a regular pool of "extra waiters" who are called or asked to report for duty when the Hotel's volume of business is beyond the capacity of the regularly employed waiters to undertake. Pedro has been an "extra waiter" for more than 10 years. He is also called upon to work on weekends, on holidays and when there are big affairs at the hotel.

What is Pedro's status as an employee under the Labor Code? Why? Explain your answer fully. **(6%)**

V

The Pizza Corporation (PizCorp) and Ready Supply Cooperative (RSC) entered into a "service agreement" where RSC, in consideration of service fees to be paid by PizCorp, will exclusively supply PizCorp with a group of RSC motorcycle-owning cooperative members who will henceforth perform PizCorp's pizza delivery service. RSC assumes -- under the agreement --- full obligation for the payment of the salaries and other statutory monetary benefits of its members deployed to PizCorp. The parties also stipulated that there shall be no employer-employee relationship between PizCorp and the RSC members. However, if PizCorp is materially prejudiced by any act of the delivery crew that violates PizCorp's directives and orders, PizCorp can directly impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s.

- a) Is the contractual stipulation that there is no employer-employee relationship binding on labor officials? Why? Explain fully. **(3%)**
- b) Based on the test/s for employer-employee relationship, determine the issue of who is the employer of the RSC members. **(4%)**
- c) Assume that RSC has a paid-up capitalization of ₱1,000,000.00. Is RSC engaged in "labor only" contracting, permissible job contracting or simply, recruitment? **(3%)**

VI

On the day that the Union could validly declare a strike, the Secretary of Labor issued an order assuming jurisdiction over the dispute and enjoining the strike, or if one has commenced, ordering the striking workers to immediately return to work. The return-to-work order required the employees to return to work within twenty-four hours and was served at 8 a.m. of the day the strike was to start. The order at the same time directed the Company to accept all employees under the same terms and conditions of employment prior to the work stoppage. The Union members did not return to work on the day the Secretary's assumption order was served, nor on the next day; instead, they held a continuing protest rally against the company's alleged unfair labor practices. Because of the accompanying picket, some of the employees

who wanted to return to work failed to do so. On the 3rd day, the workers reported for work, claiming that they do so in compliance with the Secretary's return-to-work order that binds them as well as the Company. The Company, however, refused to admit them back since they had violated the Secretary's return-to-work order and are now considered to have lost their employment status.

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers' constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment.

You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues:

- a) Was there a strike? **(4%)**
- b) Were the employees simply exercising their constitutional right to petition for redress of their grievances? **(3%)**
- c) What are the consequences, if any, of the acts of the employees? **(3%)**

VII

Tito Pacencioso is an employee of a foundry shop in Malabon, Metro Manila. He is barely able to make ends meet with his salary of ₱4,000.00 a month. One day, he asked his employer to stop deducting from his salary his SSS monthly contribution, reasoning out that he is waiving his social security coverage.

If you were Tito's employer, would you grant his request? Why?
(6%)

VIII

Carol de la Cruz is the secretary of the proprietor of an auto dealership in Quezon City. She resides in Caloocan City. Her office

hours start at 8 a.m. and end at 5 p.m. On July 30, 2008, at 7 a.m. while waiting for public transport at Rizal Avenue Extension as has been her routine, she was sideswiped by a speeding taxicab resulting in her death. The father of Carol filed a claim for employee's compensation with the Social Security System. Will the claim prosper? Why? (6%)

IX

Assume that in Problem 5, Mario, an RSC member disgusted with the non-payment of his night shift differential and overtime pay, filed a complaint with the DOLE Regional Office against RSC and PizCorp. After inspection, it was found that indeed Mario was not getting his correct differential and overtime pay and that he was not declared an SSS member (so that no premiums for SSS membership were ever remitted). On this basis, the Regional Director issued a compliance order holding PizCorp and RSC solidarily liable for the payment of the correct differential and overtime pay and ordering PizCorp to report Mario for membership with SSS and remit the overdue SSS premiums.

Who has the obligation to report the RSC members for membership with the SSS, with the concomitant obligation to remit SSS premiums? Why? (6%)

X

Pepe Santos was an international flight steward of FlySafe Airlines. Under FSA's Cabin Crew Administration Manual, Santos must maintain, given his height and body frame, a weight of 150 to 170 pounds.

After 5 years as a flight steward, Santos began struggling with his weight; he weighed 200 lbs., 30 pounds over the prescribed maximum weight. The Airline gave him a one-year period to attain the prescribed weight, and enrolled him in several weight reduction programs. He consistently failed to meet his target. He was given a 6-month grace period, after which he still failed to meet the weight limit. FSC thus sent him a Notice of Administrative Charge for violation of company standards on weight requirements. He stated in his answer that, for medical reasons, he cannot have a rapid weight loss. A clarificatory hearing was held where Santos fully explained his predicament. The explanation did

not satisfy FSA and so it decided to terminate Santos's service for violation of company standards.

Santos filed a complaint for illegal dismissal, arguing that the company's weight requirement policy is unreasonable and that his case is not a disciplinary but a medical issue (as one gets older, the natural tendency is to grow heavier). FSA defended its policy as a valid exercise of management prerogative and from the point of view of passenger safety and extraordinary diligence required by law of common carriers; it also posited that Santos' failure to achieve his ideal weight constituted gross and habitual neglect of duty, as well as willful disobedience to lawful employer orders. The Labor Arbiter found the dismissal illegal for there was neither gross and habitual neglect of duty nor willful disobedience.

Is the Labor Arbiter correct? Why or why not? Explain fully. **(6%)**

XI

Complainants had worked five (5) years as waitresses in a cocktail lounge owned by the respondent. They did not receive any salary directly from the respondent but shared in all service charges collected for food and drinks to the extent of 75%. With respondent's prior permission, they could sit with and entertain guests inside the establishment and appropriate for themselves the tips given by guests. After five (5) years, the complainants' individual shares in the collected service charges dipped to below minimum wage level as a consequence of the lounge's marked business decline. Thereupon, complainants asked respondent to increase their share in the collected service charges to 85%, or the minimum wage level, whichever is higher.

Respondent terminated the services of the complainants who countered by filing a consolidated complaint for unlawful dismissal, with prayer for 85% of the collected services or the minimum wage for the appropriate periods, whichever is higher. Decide. **(6%)**

XII

Arnaldo, President of "Bisig" Union in Femwear Company, readied himself to leave exactly at 5:00 p.m. which was the end of his normal shift to be able to send off his wife who was scheduled to leave for overseas. However, the General Manager required him to render overtime work to meet the company's export quota. Arnaldo begged off, explaining to the General Manager that he had to see off his wife who was leaving to work abroad. The company dismissed Arnaldo for insubordination. He filed a case for illegal dismissal. Decide. (6%)

XIII

The rank-and-file union staged a strike in the company premises which caused the disruption of business operations. The supervisors' union of the same company filed a money claim for unpaid salaries for the duration of the strike, arguing that the supervisors' failure to report for work was not attributable to them. The company contended that it was equally faultless, for the strike was not the direct consequence of any lockout or unfair labor practice. May the company be held liable for the salaries of the supervisors? Decide. (6%)

XIV

"Powersa", a labor federation, after having won in a certification election held in the company premises, sent a letter to respondent company reminding it of its obligation to recognize the local union the federation represents and to enter into a CBA with the local union. Respondent company replied that though it is willing, the rank-and-file employees had already lost interest in joining the local union as they had dissolved it. "Powersa" argued that since it won in a certification election, it can validly perform its function as a bargaining agent and represent the rank-and-file employees despite the union's dissolution.

Is the argument of "Powersa" tenable? Decide with reasons. (6%)

NOTHING FOLLOWS.