

## QUESTION

Pat Sims is a production and maintenance worker employed by Company, Inc. (“Company”), a parts manufacturer, at Company’s Houston, Texas facility. In November 2019 Sims contacted Brian Fair, the chief union organizer employed by Union Local 1 (“Union”), at Union’s Houston office. Sims informed Fair that a number of Company employees were interested in learning about the benefits of unionization and collective bargaining. Fair later met with Sims at Union’s office; after that meeting, Fair told Sims that he would initiate an organizing campaign at Company’s facility.

A few weeks later, Fair appeared at Company’s offices and applied for a job as a production and maintenance worker. After filling out an application he was interviewed by Madison Adams, Company’s director of personnel. During that interview Adams inquired about Fair’s employment history and learned, among other things, that Fair had previously worked for another parts company in the Houston area. Adams asked Fair if he was currently employed. “No,” Fair responded, “I’m unemployed and really need this job.” Adams: “Have you ever been a member of a union?” Fair: “Nope.” Fair was hired and began working for Company the next day. Working from 8:30 a.m. to 5:00 p.m. Monday through Friday, Fair approached a number of employees during his and their breaks and lunchtime, discussed with them his view of the benefits of unionization and collective bargaining, and obtained signed union authorization/election cards from approximately sixty workers.

In early January 2020 Fair called Sims on her cell phone and informed her that a number of employees had expressed interest in learning more about the union. “Let’s try to schedule a meeting at Union’s office Saturday at noon,” Fair told Sims. “Are you at work? I’m going to email you a list of persons I’ve talked to. Could you let them know about the meeting?” “Of course,” Sims responded. Fair sent the list to Sims’ Company email address from his Union Local 1 email account. On her next break Sims sent emails to fifty-one employees at their Company email addresses inviting them to the Saturday meeting.

One of the employees who received the email invitation, Derrick Kennedy (who hates unions) took a copy of Sims’ email to personnel director Adams. Adams read the email and said to Kennedy, “Tell me everything you know about this.” Kennedy told Adams that employees who received the email were pushing for a union and named six employees, including Sims, that he characterized as the “ringleaders.” Adams immediately approached Sims at her workstation. “Why would you send this on our system, Sims? You know that our policy clearly states that the email system and equipment are owned by the Company and are not to be used for this crap. Your employment is terminated immediately.” Adams then located Fair in Company’s break room and asked about the email he sent to Sims. “I sent the email, I work for Union Local 1 and I’m trying to organize your workers, that’s what I do,” Fair responded. “You didn’t tell me that when I interviewed you, I wouldn’t have hired you,” Adams said, and she fired Fair on the spot.

Two days later Sims, angered that she had been fired, posted the following message on her Twitter and Facebook pages: “Friends: Company fired me because I had the nerve to talk to a union about representing me and my coworkers. Boycott Company!! And don’t purchase their crappy and second-rate products!!!”

**QUESTION: Has Company committed any unfair labor practices? Discuss potential remedies for any unfair labor practices you identify.**

### **QUESTION**

[The same facts in the preceding Question apply to this question.]

Union filed a petition with the National Labor Relations Board seeking an NLRB-conducted representation election in the following proposed bargaining unit: “All full-time and regular part-time production and maintenance employees and guards employed by Company, Inc. at its facility located in Houston, Texas.” Company president Bob Moorland received a mailed copy of the petition a few days later. Angered by the petition, Moorland posted the following on Twitter: “Some of my employees apparently want a union. I’m tempted to fire them all on the spot.” (Union organizer Fair saw and retweeted the tweet and posted it on Union’s Facebook page with this message: “This is why you need union representation!”)

The next day Moorland summoned all production and maintenance employees to a meeting in Company’s cafeteria. At that meeting he stated:

“Thanks for coming. I’ll be brief. I received a letter today from the National Labor Relations Board about an election petition. I feel betrayed. I thought that we had a great relationship but . . . Let me be as clear as I can be so that there is no confusion. We . . . you . . . don’t need a union, but you need a job. I pay you a more than fair wage and I will never pay you more just because some union tells me that I have to. If this is all about money just let me know, I’ll give you a pay raise next month. And we don’t need an election, let’s just vote now. If you want a union raise your hand! [No employee raised their hand.] OK, whatever. Get back to work.”

Company and Union stipulated to an election in the one hundred and fifty employee production and maintenance unit to be held on February 4, 2020, with the polls open from 1:00 p.m. to 5:00 p.m. On the morning of the election Company supervisors distributed “Vote No” buttons to production and maintenance employees. When one employee refused to take the button, his supervisor said “I’ll remember you.”

The election was held as scheduled. Fifty “yes” votes were cast for, and fifty “no” votes were cast against, Union Local 1.

**QUESTION: Did the Company engage in any post-petition unfair labor practices or objectionable conduct affecting the election results? Note areas for further factual or legal exploration and inquiry, if any.**