

Bar Examination Questionnaire for Labor Law
Set A

1. The union's by-laws provided for burial assistance to the family of a member who dies. When Carlos, a member, died, the union denied his wife's claim for burial assistance, compelling her to hire a lawyer to pursue the claim. Assuming the wife wins the case, may she also claim attorney's fees?

- A. No, since the legal services rendered has no connection to CBA negotiation.
- B. Yes, since the union should have provided her the assistance of a lawyer.
- C. No, since burial assistance is not the equivalent of wages.
- D. Yes, since award of attorney's fee is not limited to cases of withholding of wages.

2. Pol requested Obet, a union officer and concurrently chairman of the company's Labor-Management Council, to appeal to the company for a recomputation of Pol's overtime pay. After 5 p.m., his usual knock-off time, Obet spent two hours at the Personnel Office, reconciling the differing computations of Pol's overtime. Are those two hours compensable?

- A. Yes, because Obet performed work within the company premises.
- B. No, since Obet's action has nothing to do with his regular work assignment.
- C. No, because the matter could have been resolved in the labor-management council of which he is the chairman.
- D. Yes, because the time he spent on grievance meetings is considered hours worked.

3. The Labor Code on retirement pay expands the term "one-half ($\frac{1}{2}$) month salary" because it means

- A. 15 days' pay plus 1/12th of the 13th month pay and 1/12th of the cash value of service incentive leave.
- B. 15 days' pay plus 1/12th of the 13th month pay and the cash equivalent of five days service incentive leave.
- C. 15 days pay plus a full 13th month pay.
- D. 15 calendar days' pay per year of service plus allowances received during the retirement year.

4. A foreign guest in a luxury hotel complained that he lost certain valuable items in his hotel room. An investigation by the hotel pointed to two roomboys as the most probable thieves. May the management invoke "loss of confidence" as a just cause for dismissing the roomboys?

- A. No, "loss of confidence" as reason for dismissal does not apply to rank and file employees.
- B. No, "loss of confidence" applies only to confidential positions.
- C. Yes, "loss of confidence" is broad enough to cover all dishonest acts of employee.
- D. RIGHT ANSWER Yes, "loss of confidence" applies to employees who are charged with the care and custody of the employer's property.

5. Tower Placement Agency supplies manpower to Lucas Candy Factory to do work usually necessary for work done at its factory. After working there for more than two years under the factory manager's supervision, the workers demanded that Lucas extend to them the same employment benefits that their directly hired workers enjoyed. Is their demand valid?

Bar Examination Questionnaire for Labor Law
Set A

A. Yes, since it was Lucas that actually hired and supervised them to work at its factory.

B. No, since the agency workers are not employees of the client factory.

C. Yes, since they have been working at the factory in excess of two years.

D. No, since it was the placement agency that got them their jobs.

6. Both apprenticeship and learnership are government programs to provide practical on-the-job training to new workers. How do they differ with respect to period of training?.

A. In highly technical industries, apprenticeship can exceed 6 months; learnership can exceed one year.

B. Apprenticeship cannot exceed 6 months; learnership can.

C. Apprenticeship shall not exceed six months; while learnership shall not exceed three months.

D. The law lets the employer and the apprentice agree on the apprenticeship period; but the law fixes learnership period at six months in non-technical industries.

7. Venus Department Store decided to contract out the security services that its 10 direct-hired full-time security guards provided. The company paid the men separation pay. With this move, the Store was able to cut costs and secure efficient outside professional security services. But the terminated security guards complained of illegal dismissal, claiming that regular jobs such as theirs could not be contracted out. Will their complaint prosper?

A. No. the management has the right to contract out jobs to secure efficient and economical operations.

B. Yes. They should be reinstated or absorbed by the security agency as its employees.

C. No. They are estopped from demanding reinstatement after receiving their separation pay.

D. Yes. The company cannot contract out regular jobs such as they had.

8. Although both are training programs, apprenticeship is different from learnership in that

A. a learner may be paid 25% less than the legal minimum wage while an apprentice is entitled to the minimum wage.

B. apprenticeship has to be covered by a written agreement; no such formality is needed in learnership.

C. in learnership, the employer undertakes to make the learner a regular employee; in apprenticeship, no such undertaking.

D. a learner is deemed a regular employee if terminated without his fault within one month of training; an apprentice attains employment status after six months of apprenticeship.

9. A golf and country club outsourced the jobs in its food and beverage department and offered the affected employees an early retirement package of 1 ½ month's pay for each year of service. The employees who accepted the package executed quitclaims. Thereafter, employees of a service contractor

Bar Examination Questionnaire for Labor Law
Set A

performed their jobs. Subsequently, the management contracted with other job contractors to provide other services like the maintenance of physical facilities, golf operations, and administrative and support services. Some of the separated employees who signed quitclaims later filed complaints for illegal dismissal. Were they validly dismissed?

A. Yes. The jobs were given to job contractors, not to labor-only contractors, and the dismissed employees received higher separation pay than the law required.

B. No. The outsourcing and the employment termination were invalid since the management failed to show that it suffered severe financial losses.

C. No. Since the outsourcing of jobs in several departments entailed the separation of many employees, the club needed the Secretary of Labor's approval of its actions.

D. No. Since the outsourced jobs were held by old-time regular employees, it was illegal for the club to terminate them and give the jobs to others.

10. Sampaguita Company wants to embark on a retrenchment program in view of declining sales. It identified five employees that it needed to separate. The human resource manager seems to recall that she has to give the five employees and the DOLE a 30-day notice but she feels that she can give a shorter notice. What will you advise her?

A. Instead of giving a 30-day notice, she can just give a 30-day advanced salary and make the separation effective immediately.

B. So long as she gave DOLE a 30-day prior notice, she can give the employees a shorter notice.

C. The 30-day advance notice to the employee and the DOLE cannot be shortened even with a 30-day advance salary.

D. She can give a shorter notice if the retrenchment is due to severe and substantial losses.

11. Under the Labor Code, its provisions on working conditions, including the eight-hour work day rule, do not apply to domestic helpers. Does it follow from this that a domestic helper's workday is not limited by law?

A. No, since a domestic helper cannot be required to work more than ten hours a day.

B. Yes, since a domestic helper's hours of work depend on the need of the household he or she works for.

C. No, because a domestic helper is legally entitled to overtime pay after ten hours of work.

D. Yes, a domestic helper may be required to work twelve hours a day or beyond.

12. Under the Labor Code on Working Conditions and Rest Periods, a person hired by a high company official but paid for by the company to clean and maintain his staff house is regarded as

A. a person rendering personal service to another.

B. a regular company employee.

C. a family member.

D. domestic helper.

Bar Examination Questionnaire for Labor Law
Set A

13. The union filed a notice of strike due to a bargaining deadlock. But, because the Secretary of Labor assumed jurisdiction over the dispute, the strike was averted. Meanwhile, the employer observed that the union engaged in a work slowdown. Contending that the slowdown was in fact an illegal strike, the employer dismissed all the union officers. The union president complained of illegal dismissal because the employer should first prove his part in the slowdown. Is the union president correct?

A. Yes, since the employer gave him no notice of its finding that there was a slowdown.

B. Yes. The employer must prove the union president's part in slowdown.

C. No. When a strike is illegal, the management has the right to dismiss the union president.

D. No. As the union president, it may be assumed that he led the slowdown.

14. The existing collective bargaining unit in Company X includes some fifty "secretaries" and "clerks" who routinely record and monitor reports required by their department heads. Believing that these secretaries and clerks should not be union members because of the confidential nature of their work, the management discontinued deducting union dues from their salaries. Is the management's action legal?

A. No, only managers are prohibited from joining unions; the law does not bar "confidential employees" from joining unions.

B. No, "confidential employees" are those who assist persons who formulate, determine, or enforce management policies in the field of labor relations.

C. Yes, secretaries and clerks of company executives are extensions of the management and, therefore, should not join the union.

D. No, "confidential" employees are those who handle executive records and payroll or serve as executive secretaries of top-level managers.

15. Jose Lovina had been member of the board of directors and Executive Vice President of San Jose Corporation for 12 years. In 2008, the San Jose stockholders did not elect him to the board of directors nor did the board reappoint him as Executive Vice President. He filed an illegal dismissal complaint with a Labor Arbiter. Contending that the Labor Arbiter had no jurisdiction over the case since Lovina was not an employee, the company filed a motion to dismiss. Should the motion be granted?

A. No, the Labor Arbiter has jurisdiction over all termination disputes.

B. Yes, it is the NLRC that has jurisdiction over disputes involving corporate officers.

C. No, a motion to dismiss is a prohibited pleading under the NLRC Rules of Procedure.

D. Yes, jurisdiction lies with the regular courts since the complainant was a corporate officer.

16. An employee proved to have been illegally dismissed is entitled to reinstatement and full backwages computed on the basis of his

A. basic salary plus the regular allowances and the thirteenth month pay.

B. basic salary plus the salary CBA increases during the pendency of his case.

Bar Examination Questionnaire for Labor Law
Set A

- C. basic salary plus the increases mandated by wage orders issued during the pendency of his case.
- D. basic salary at the time of dismissal.

17. The meal time (lunch break) for the dining crew in Glorious Restaurant is either from 10 a.m. to 11 a.m. or from 1:30 p.m. to 2:30 p.m., with pay. But the management wants to change the mealtime to 11: a.m. to 12 noon or 12:30 p.m. to 1:30 p.m., without pay. Will the change be legal?

- A. Yes, absent an agreement to the contrary, the management determines work hours and, by law, meal break is without pay.
- B. No, because lunchbreak regardless of time should be with pay.
- C. Yes, the management has control of its operations.
- D. No, because existing practice cannot be discontinued unilaterally.

18. The employees' union in San Joaquin Enterprise continued their strike despite a return to work order from the Secretary of Labor. Because of this defiance, the employer dismissed the strikers. But the Labor Arbiter declared as illegal the dismissal of those whose commission of unlawful acts had not been proved. They were ordered immediately reinstated. The employer refused, however, to reinstate them on the ground that the rule on immediate reinstatement applies only to terminations due to just or authorized causes. Is the employer's refusal justified?

- A. No, every employee found to have been illegally dismissed is entitled to immediate reinstatement even pending appeal.
- B. Yes. The employer's refusal is legal and justified as a penalty for defying the secretary's lawful order.
- C. Yes, the rule on immediate reinstatement does not apply to employees who have defied a return-to-work order.
- D. No. The dismissal of the employees was valid; reinstatement is unwarranted.

19. Llanas Corporation and Union X, the certified bargaining agent of its employees, concluded a CBA for the period January 1, 2000 to December 31, 2004. But, long before the CBA expired, members of Union Y, the minority union, showed dissatisfaction with the CBA under the belief that Union X was a company union. Agitated by its members, Union Y filed a petition for a Certification Election on December 1, 2002. Will the petition prosper?

- A. No, such a petition can only be filed within the freedom period of the CBA.
- B. No, since a petition for certification can be filed only upon the expiration of the CBA.
- C. Yes, a certification is the right remedy for ousting a company union.
- D. Yes, employees should be allowed to cancel at the earliest opportunity a CBA that they believed was obtained by a company union.

20. Is it correct to say that under Philippine law a househelper has no right to security of tenure?

- A. No, since a househelper can be dismissed only for just cause or when his agreed period of employment ends.
- B. Yes, since it is the employer who determines the period of his service.

Bar Examination Questionnaire for Labor Law
Set A

- C. Yes, since a househelper can be dismissed with or without just cause.
- D. No, since a househelper can be dismissed only for just cause, except when he has been employed for a definite period not exceeding one year.

21. Reach-All, a marketing firm with operating capital of P100,000, supplied sales persons to pharmaceutical companies to promote their products in hospitals and doctors' offices. Reach-All trained these sales persons in the art of selling but it is the client companies that taught them the pharmacological qualities of their products. Reach-All's roving supervisors monitored, assessed, and supervised their work performance. Reach-All directly paid their salaries out of contractor's fees it received. Under the circumstances, can the sales persons demand that they be absorbed as employees of the pharmaceutical firms?

- A. No, they are Reach-All's employees since it has control over their work performance.
- B. Yes, since they receive training from the pharmaceutical companies regarding the products they will promote.
- C. No, since they are bound by the agency agreement between Reach-All and the pharmaceutical companies.
- D. Yes, since Reach-All does not qualify as independent contractor-employer, its clients being the source of the employees' salaries.

22. Executive Order No. 180, which protects government employees, does NOT apply to "high-level employees," namely,

- A. presidential appointees.
- B. those performing policy-determining functions, excluding confidential employees and supervisors.
- C. confidential employees and those performing policy-determining functions.
- D. elective officials.

23. In the case of a househelper, reinstatement is not a statutory relief for unjust dismissal because of the confidentiality of his or her job. Instead, the househelper shall be paid

- A. an indemnity equivalent to 15 days' pay plus compensation already earned.
- B. a separation pay equivalent to one month's pay per year of service.
- C. a separation pay equivalent to one-half month's pay per year of service.
- D. 15 days' pay as indemnity plus wages lost from dismissal to finality of decision.

24. The CBA for the period January 2007 to December 2009 granted the employees a P40 per day increase with the understanding that it is creditable as compliance to any future wage order. Subsequently, the regional wage board increased by P20 the minimum wage in the employer's area beginning January 2008. The management claims that the CBA increase may be considered compliance even if the Wage Order itself said that "CBA increase is not creditable as compliance to the Wage Order." Is the management's claim valid?

- A. Yes, since creditability of the CBA increase is the free and deliberate agreement and intention of the parties.
- B. Yes, since the Wage Order cannot prejudice the management's vested interest

Bar Examination Questionnaire for Labor Law
Set A

in the provisions of the CBA.

C. No, disallowing creditability of CBA pay increase is within the wage board's authority.

D. No, the CBA increase and the Wage Order are essentially different and are to be complied with separately.

25. When an employee works from 8 a.m. to 5 p.m. on a legal holiday falling on his rest day, which of the following formulas do you use to compute for his day's wage on that day?

A. His regular daily wage multiplied by 200% plus 30% of the 200%

B. His regular daily wage multiplied by 200%

C. His regular daily wage plus 200%

D. His daily regular wage

26. The employees' rights to organize and to bargain collectively are means of exercising the broader right to participate in policy or decision-making processes. The employees' right to participate in policy and decision making processes is available

A. if a labor-management council exists.

B. if a labor-management council does not exist.

C. if a union exists and it agrees to the creation of a labor-management council.

D. whether or not a labor-management council exists.

27. If not used by the end of the year, the service incentive leave shall be

A. carried over to the next year.

B. converted to its money equivalent.

C. forfeited.

D. converted to cash and paid when the employee resigns or retires.

28. An employee is NOT entitled to "financial assistance" in cases of legal dismissal when the dismissal

A. is based on an offense reflecting the depraved character of the employee.

B. is based on serious misconduct or breach of the employer's trust.

C. is grounded on any of the just causes provided by the Labor Code.

D. when the employee has less than 10 years of service.

29. In a work-related environment, sexual harassment is committed when

A. the offender has authority, influence, or moral ascendancy over his subordinate victim.

B. the victim's continued employment is conditioned on sexual favor from her.

C. the female victim grants the demand for sexual favor against her will.

D. the victim is not hired because she turned down the demand for sexual favor.

30. Government employees may elect a union as their exclusive representative but this right is not available to

A. regular employees in government instrumentalities and agencies.

Bar Examination Questionnaire for Labor Law
Set A

B. employees of government-owned and -controlled corporations without original charters.

C. employees of government-owned-or-controlled corporations with original charters.

D. employees of provincial and local government units.

31. Celia, an OFW that Moonshine Agency recruited and deployed, died in Syria, her place of work. Her death was not work-related, it appearing that she had been murdered. Insisting that she committed suicide, the employer and the agency took no action to ascertain the cause of death and treated the matter as a "closed case." The worker's family sued both the employer and the agency for moral and exemplary damages. May such damages be awarded?

A. Yes, the agency and the employer's uncaring attitude makes them liable for such damages.

B. Yes, but only the principal is liable for such damages since the agency had nothing to do with Celia's death.

C. No, since her death is not at all work-related.

D. No, since her death is not attributable to any act of the agency or the employer.

32. When the employer or his representative hurls serious insult on the honor or person of the employee, the law says that the employee

A. may leave work after at least a five-day notice to the employer.

B. may leave work at any time and file for constructive dismissal.

C. may leave work without giving a 30-day notice to the employer.

D. may abandon his job at once.

33. A sugar mill in Laguna, capitalized at P300 million, suffered a P10,000.00 loss last year. This year it dismissed three young female employees who gave birth in the last three years. In its termination report to DOLE, the sugar mill gave as reason for the dismissal "retrenchment because of losses." Did it violate any law?

A. Yes, the law on retrenchment, the sugar mill's losses not being substantial.

B. Yes, the law against violence committed on women and children.

C. No, except the natural law that calls for the protection and support of women.

D. No, but the management action confirms suspicion that some companies avoid hiring women because of higher costs.

34. "Piece rate employees" are those who are paid by results or other non-time basis. As such they are NOT entitled to overtime pay for work done beyond eight hours if

A. their workplace is away from the company's principal place of work.

B. they fail to fill up time sheets.

C. the product pieces they do are not countable.

D. the piece rate formula accords with the labor department's approved rates.

35. An employer may require an employee to work on the employee's rest day

Bar Examination Questionnaire for Labor Law
Set A

- A. to avoid irreparable loss to the employer.
- B. only when there is a state of calamity.
- C. provided he is paid an extra of at least 50% of his regular rate.
- D. subject to 24-hour advance notice to the employee.

36. The State has a policy of promoting collective bargaining and voluntary arbitration as modes of settling labor disputes. To this end, the voluntary arbitrator's jurisdiction has not been limited to interpretation and implementation of collective bargaining agreements and company personnel policies. It may extend to "all other labor disputes," provided

- A. the extension does not cover cases of union busting.
- B. the parties agreed to such extended jurisdiction.
- C. the parties are allowed to appeal the voluntary arbitrator's decision.
- D. the parties agreed in their CBA to broaden his jurisdiction.

37. Philworld, a POEA-licensed agency, recruited and deployed Mike with its principal, Delta Construction Company in Dubai for a 2-year project job. After he had worked for a year, Delta and Philworld terminated for unknown reason their agency agreement. Delta stopped paying Mike's salary. When Mike returned to the Philippines, he sued both Philworld and Delta for unpaid salary and damages. May Philworld, the agency, be held liable?

- A. No, since Philworld, the recruitment agency, is not the employer liable for unpaid wages.
- B. Yes, since the agency is equally liable with the foreign principal despite the termination of their contract between them.
- C. Yes, since the law makes the agency liable for the principal's malicious refusal to pay Mike's salary.
- D. No, since Mike did not get paid only after Delta and Philworld terminated their contract.

38. Melissa, a coffee shop worker of 5 months, requested her employer for 5 days' leave with pay to attend to the case that she filed against her husband for physical assault two weeks earlier. May the employer deny her request for leave with pay?

- A. Yes, the reason being purely personal, approval depends on the employer's discretion and is without pay.
- B. No, as victim of physical violence of her husband, she is entitled to five days paid leave to attend to her action against him.
- C. No, the employer must grant the request but the leave will be without pay.
- D. Yes, since she is not yet a permanent employee.

39. Quiel, a househelper in the Wilson household since 2006, resigned from his job for several reasons. One reason was the daily 12-hour workday without any rest day. When he left his job he had unpaid wages totaling P13,500.00 which his employer refused to pay. He wants to claim this amount though he is not interested in getting back his job. Where should he file his claim?

- A. He should file his claim with the DSWD, which will eventually endorse it to the right agency.

Bar Examination Questionnaire for Labor Law
Set A

B. Since he has no interest in reinstatement, he can file his claim with the office of the regional director of the Department of Labor.

C. He should file his claim exceeding P5,000.00 with the office of the labor arbiters, the regional arbitrators representing the NLRC.

D. He should go to the Employee's Compensation Commission.

40. For labor, the Constitutionally adopted policy of promoting social justice in all phases of national development means

A. the nationalization of the tools of production.

B. the periodic examination of laws for the common good.

C. the humanization of laws and equalization of economic forces.

D. the revision of laws to generate greater employment.

41. To avail himself of paternity leave with pay, when must the male employee file his application for leave?

A. Within one week from the expected date of delivery by the wife.

B. Not later than one week after his wife's delivery or miscarriage

C. Within a reasonable time from the expected deliver date of his wife.

D. When a physician has already ascertained the date the wife will give birth.

42. The constitution promotes the principle of shared responsibility between workers and employers, preferring the settlement of disputes through

A. compulsory arbitration.

B. collective bargaining.

C. voluntary modes, such as conciliation and mediation.

D. labor-management councils.

43. Which of the following is NOT a requisite for entitlement to paternity leave?

A. The employee is cohabiting with his wife when she gave birth or had a miscarriage.

B. The employee is a regular or permanent employee.

C. The wife has given birth or suffered a miscarriage.

D. The employee is lawfully married to his wife.

44. Of the four grounds mentioned below, which one has been judicially affirmed as justification for an employee's refusal to follow an employer's transfer order?

A. A transfer to another location is not in the employee's appointment paper.

B. The transfer deters the employee from exercising his right to self-organization.

C. The transfer will greatly inconvenience the employee and his family.

D. The transfer will result in additional housing and travel expenses for the employee.

45. Of the four definitions below, which one does NOT fit the definition of "solo parent" under the Solo Parents Welfare Act?

A. Solo parenthood while the other parent serves sentence for at least one year.

B. A woman who gives birth as a result of rape.

Bar Examination Questionnaire for Labor Law
Set A

C. Solo parenthood due to death of spouse.

D. Solo parenthood where the spouse left for abroad and fails to give support for more than a year.

46. Albert and four others signed employment contracts with Reign Publishers from January 1 to March 31, 2011 to help clear up encoding backlogs. By first week of April 2011, however, they remained at work. On June 30 Reign's manager notified them that their work would end that day. Do they have valid reason to complain?

A. No, since fixed term employment, to which they agreed, is allowed.

B. Yes, their job was necessary and desirable to the employer's business and, therefore, they are regular employees.

C. Yes, when they worked beyond March without an extended fixed term employment contract, they became regular employees.

D. No, since the 3-month extension is allowed in such employment.

47. A handicapped worker may be hired as apprentice or learner, provided

A. he waives any claim to legal minimum wage.

B. his work is limited to apprenticeable job suitable to a handicapped worker.

C. he does not impede job performance in the operation for which he is hired.

D. he does not demand regular status as an employee.

48. The Secretary of Labor and Employment or his duly authorized representative, including labor regulations officers, shall have access to employer's records and premises during work hours. Why is this statement an inaccurate statement of the law?

A. Because the power to inspect applies only to employer records, not to the premises.

B. Because only the Secretary of Labor and Employment has the power to inspect, and such power cannot be delegated.

C. Because the law allows inspection anytime of the day or night, not only during work hours.

D. Because the power to inspect is already delegated to the DOLE regional directors, not to labor regulations officers.

49. In industrial homework, the homeworker does at his home the work that his employer requires of him, using employer-supplied materials. It differs from regular factory work in the sense that

A. the workers are not allowed to form labor organizations.

B. the workers' pay is fixed by informal agreement between the workers and their employer.

C. the workers are under very little supervision in the performance or method of work.

D. the workers are simply called "homeworkers," not "employees," hence not covered by the social security law.

50. Which of the following grounds exempts an enterprise from the service incentive leave law?

Bar Examination Questionnaire for Labor Law
Set A

- A. The employees already enjoy 15 days vacation leave with pay.
- B. The employer's business has been suffering losses in the past three years.
- C. The employer regularly employs seven employees or less.
- D. The company is located in a special economic zone.

51. Which of the following acts is NOT considered unfair labor practice (ULP)?

- A. Restraining employees in the exercise of the right to self-organization.
- B. Union's interference with the employee's right to self-organization.
- C. Refusal to bargain collectively with the employer.
- D. Gross violation of the collective bargaining agreement by the union.

52. In computing for 13th month pay, Balagtas Company used as basis both the employee's regular base pay and the cash value of his unused vacation and sick leaves. After two and a half years, it announced that it had made a mistake and was discontinuing such practice. Is the management action legally justified?

- A. Yes, since 13th month pay should only be one-twelfth of the regular pay.
- B. No, since the erroneous computation has ripened into an established, non-withdrawable practice.
- C. Yes, an error is not a deliberate decision, hence may be rectified.
- D. No, employment benefits can be withdrawn only through a CBA negotiation.

53. Where the petition for a certification election in an unorganized establishment is filed by a federation, it shall NOT be required to disclose the

- A. names of the local chapter's officers and members.
- B. names and addresses of the federation officers.
- C. names and number of employees that initiated the union formation in the enterprise.
- D. names of the employees that sought assistance from the federation in creating the chapter.

54. Under the Limited Portability law, funds from the GSIS and the SSS may be transferred for the benefit of a worker who transfers from one system to the other. For this purpose, overlapping periods of membership shall be

- A. credited only once.
- B. credited in full.
- C. proportionately reduced.
- D. equally divided for the purpose of totalization.

55. Of the four tests below, which is the most determinative of the status of a legitimate contractor-employer?

- A. The contractor performs activities not directly related to the principal's main business.
- B. The contractor has substantial investments in tools, equipment, and other devices.
- C. The contractor does not merely recruit, supply, or place workers.
- D. The contractor has direct control over the employees' manner and method of

Bar Examination Questionnaire for Labor Law
Set A

work performance.

56. X Company's CBA grants each employee a 14th month year-end bonus. Because the company is in financial difficulty, its head wants to negotiate the discontinuance of such bonus. Would such proposal violate the "nondiminution rule" in the Labor Code?

- A. No, but it will certainly amount to negotiating in bad faith.
- B. Yes since the rule is that benefits already granted in a CBA cannot be withdrawn or reduced.
- C. No, since the law does not prohibit a negotiated discontinuance of a CBA benefit.
- D. Yes, since such discontinuance will cancel the enjoyment of existing benefits.

57. Night differential is differentiated from overtime pay in that

- A. while overtime pay is given for overtime work done during day or night, night differential is given only for work done between 10:00 p.m. and 6:00 a.m.
- B. while overtime pay is paid to an employee whether on day shift or night shift, night shift differential is only for employees regularly assigned to night work.
- C. while overtime pay is for work done beyond eight hours, night differential is added to the overtime pay if the overtime work is done between 6:00 p.m. and 12 midnight.
- D. while overtime pay is 25% additional to the employee's hourly regular wage, night differential is 10% of such hourly wage without overtime pay.

58. Differentiate a "labor organization" from a "legitimate labor organization."

- A. While the employees themselves form a "labor organization," a "legitimate labor organization" is formed at the initiative of a national union or federation.
- B. While the members of a "labor organization" consists only of rank and file employees, a "legitimate labor organization" consists of both supervisory and rank and file employees.
- C. While a "labor organization" exists for a lawful purpose, a "legitimate labor organization" must, in addition, be registered with the labor department.
- D. While the officers in a "labor organization" are elected in an informal way, the officers in "legitimate labor organization" are formally elected according to the union's constitution and by-laws.

59. The negotiating panels for the CBA of X Company established a rule that only employees of the company will seat in each panel. In the next session, the management panel objected to the presence of the union counsel. Still the negotiation proceeded. At the next session, the management panel again objected to the presence of the union counsel as a non-observance of the "no outsider" rule. The negotiation nonetheless proceeded. Does the management panel's objection to the presence of the union counsel constitute unfair labor practice through bad-faith bargaining?

- A. Yes, the management is harping on a non-mandatory matter instead of proceeding with the mandatory subjects of bargaining.
- B. No, there is no bargaining in bad faith since the bargaining proceeded anyway.
- C. Yes, the management panel has no legal basis for limiting the composition of

Bar Examination Questionnaire for Labor Law
Set A

the union negotiating panel.

D. No, since it is the union that violates the ground rules fashioned by the parties, it is the one negotiating in bad faith.

60. Which of the following acts is NOT part of the regulatory and visitorial power of the Secretary of Labor and Employment over recruitment and placement agencies? The power to

- A. order arrest of an illegal recruiter
- B. inspect premises, books and records
- C. cancel license or authority to recruit
- D. garnish recruiter's bond

61. Where there is a bargaining deadlock, who may file a notice of strike?

- A. The majority members of the bargaining unit.
- B. The recognized bargaining agent.
- C. Any legitimate labor organization in the employer's business.
- D. The majority members of the bargaining union.

62. When a recruitment agency fails to deploy a recruit without valid reason and without the recruit's fault, the agency is obligated to

- A. reimburse the recruit's documentary and processing expenses.
- B. reimburse the recruit's expenses with 6% interest.
- C. pay the recruit damages equivalent to one year's salary.
- D. find another employer and deploy the recruit within 12 months.

63. Which of the following is an essential element of illegal recruitment?

- A. The recruiter demands and gets money from the recruit but issues no receipt.
- B. The recruiter gives the impression that he is able to send the recruit abroad.
- C. The recruiter has insufficient capital and has no fixed address.
- D. The recruiter has no authority to recruit.

64. A group of 15 regular rank-and-file employees of Bay Resort formed and registered an independent union. On hearing of this, the management called the officers to check who the union members were. It turned out that the members included the probationary staff, casuals, and the employees of the landscape contractor. The management contends that inclusion of non-regulars and employees of a contractor makes the union's composition inappropriate and its registration invalid. Is this correct?

- A. Yes, union membership should be confined to direct-hired employees of the company.
- B. Yes, the "community of interest" criterion should be observed not only in the composition of a bargaining unit but also in the membership of a union.
- C. Yes, a union must have community of interest; the non-regulars do not have such interest.
- D. No, union membership may include non-regulars since it differs from membership in a bargaining unit.

Bar Examination Questionnaire for Labor Law
Set A

65. Which is NOT a guideline for the dismissal of an employee on the ground of “loss of confidence”?

- A. Loss of confidence may not be arbitrarily invoked in the face of overwhelming evidence to the contrary.
- B. Loss of confidence as cause of dismissal should be expressly embodied in written company rules.
- C. The employee holds a position of trust and confidence.
- D. Loss of confidence should not be simulated nor a mere afterthought to justify earlier action taken in bad faith.

66. Pedring, Daniel, and Paul were employees of Delibakery who resigned from their jobs but wanted to file money claims for unpaid wages and 13th month pay. Pedring’s claim totals P20,000.00, Daniel’s P3,000.00, and Paul’s P22,000.00. Daniel changed his mind and now also wants reinstatement because he resigned only upon the instigation of Pedring and Paul. Where should they file their claims?

- A. With the DOLE regional director for Pedring and Paul’s claims with no reinstatement; with the labor arbiter for Daniel’s claim with reinstatement.
- B. With the Office of the Regional Director of the Department of Labor for all claims to avoid multiplicity of suits.
- C. With a labor arbiter for all three complainants.
- D. With the DOLE Regional Director provided they are consolidated for expediency.

67. In a scenario like typhoon Ondoy, who may be required by the employer to work overtime when necessary to prevent loss of life or property?

- A. Health personnel
- B. Employees with first aid training
- C. Security and safety personnel
- D. Any employee

68. The management and Union X in Atisan Mining entered into a CBA for 1997 to 2001. After 6 months, a majority of the members of Union X formed Union Y and sought management recognition. The latter responded by not dealing with either union. But, when the CBA’s economic provisions had to be renegotiated towards the end of the term of the CBA, the management chose to negotiate with Union Y, the newer union. Thus, Union X which negotiated the existing CBA charged the company with unfair labor practice (ULP). The company argued that it committed no unfair labor practice since the supposed violation had nothing to do with economic provisions of the CBA. Is the management right?

- A. No. Refusal to comply with the CBA’s economic provisions is not the only ground for ULP; a disregard of the entire CBA by refusing to renegotiate with the incumbent bargaining agent is also ULP,
- B. Yes. No unfair labor practice was committed because the supposed violation has nothing to do with economic provisions of the CBA.
- C. Yes. The management commits no ULP when it decided to renegotiate with the numerically majority union.
- D. Yes. A CBA violation amounts to ULP only if the violation is “gross,” meaning

Bar Examination Questionnaire for Labor Law
Set A

flagrant or malicious refusal to comply with the CBA's economic provisions which is not the case here.

69. The apprenticeship program should be supplemented by theoretical instruction to be given by

- A. the apprentice's school only where the apprentice is formally enrolled as a student.
- B. the employer if the apprenticeship is done in the plant.
- C. the civic organizations that sponsor the program.
- D. the Department of Labor and Employment.

70. The Securities and Exchange Commission approved a merger that allowed Broad Bank to absorb the assets and liabilities of EBank. Broad Bank also absorbed EBank's rank-and-file employees without change in tenure, salary, and benefits. Broad Bank was unionized but EBank was not. The Broad Bank bargaining union requested the management to implement the union security clause in their CBA by requiring the ex-EBank employees to join the union. Does the union security clause in the Broad Bank CBA bind the ex-EBank employees?

- A. No, since the ex-EBank employees were not yet Broad Bank employees when that CBA was entered into.
- B. No, Broad Bank's absorption of ex-EBank employees was not a requirement of law or contract; hence, the CBA does not apply.
- C. Yes, Broad Bank's absorption of ex-EBank employees automatically makes the latter union members of Broad Bank's bargaining union.
- D. Yes, since the right not to join a labor union is subordinate to the policy of unionism that encourages collective representation and bargaining.

71. The employer must observe both substantive and procedural due process when dismissing an employee. If procedural due process is not observed, the dismissal will be regarded as

- A. defective; the dismissal process has to be repeated.
- B. an abuse of employer's discretion, rendering the dismissal void.
- C. ineffectual; the dismissal will be held in abeyance.
- D. legal and valid but the employer will be liable for indemnity.

72. Mario, an expert aircon technician, owns and manages a small aircon repair shop with little capital. He employs one full-time and two part-time technicians. When they do repair work in homes or offices, their clients do not tell them how to do their jobs since they are experts in what they do. The shop is shabby, merely rented, and lies in a small side street. Mario and the other technicians regard themselves as informal partners. They receive no regular salary and only earn commissions from service fees that clients pay. To what categories of workers do they fall?

- A. Labor-only contractors
- B. Job contractors
- C. Pakyaw workers
- D. Manpower agency contractors

Bar Examination Questionnaire for Labor Law
Set A

73. How often should the collected service charges be distributed to employees in hotels and restaurants?

- A. Every end of the month
- B. Every two weeks
- C. Every week
- D. At the end of each work day

74. Which of the following conditions justifies a licensed employment agency to charge and collect fees for employment assistance?

- A. The recruit has submitted his credentials to the employment agency.
- B. The POEA has approved the agency's charges and fees.
- C. The agency's principal has interviewed the applicant for the job.
- D. The worker has obtained employment through the agency's efforts.

75. During the CBA negotiation the management panel proposed a redefinition of the "rank-and-file" bargaining unit to exclude "HR Specialist" in the human resource department and "Analyst" in the research and development department. The union panel objected since those affected have already been included in the bargaining unit covered by the existing CBA and so could no longer be excluded. Is the union correct in insisting that their exclusion would amount to bad faith on the part of the management panel?

- A. No, efforts to modify an existing CBA do not constitute bad faith if such modification does not diminish employment benefits.
- B. Yes, the proposed exclusion amounts to management's violation of its duty to bargain because it disregards the bargaining history between the parties.
- C. Yes, once the coverage of the bargaining unit has been contractually defined, it can no longer be redefined.
- D. No, bargaining history is not the only factor that determines the coverage of the bargaining unit; seeking its redefinition is not negotiating in bad faith.