

**LAW529: Employment and Labour Law**  
**Take-Home Exam**  
**Dr. Clara Chapdelaine-Feliciati**

**Date:** Monday, November 7, 2016.

**Submissions Due:**

- Monday, November 21, 2016 by **6:00 pm**.
- Students must submit assignments on time.
- **Failure to do so results in a grade of zero.**

**Material Covered:**

- Labour Law (weeks 8-11): Chapters 2-5 (Olivo's textbook), including lectures, discussions, cases, and PowerPoint slides.

**Submission Requirements:**

- Students must submit their assignments to **Turnitin.com** through the course D2L site.
- Students must **also deposit a hard copy** of their assignment in the instructor's **mailbox on the 7th floor of TRSM building (mailbox room)**.
- Please DO NOT submit your assignment via email.
- Please DO NOT submit your assignment in class or in the instructor's office.
- Please DO NOT submit your assignments in folders, binders or plastic covers.

**Length:**

- Papers should not be longer than 4 pages (**double spaced**) excluding a cover page.
- Format: 8.5" x 11" paper, Times New Roman 12 point font, within minimum 1" margins.
- Any pages beyond 4 pages will not be read nor considered in marking the assignment.

**Term Value of this assignment:** 30%

**Assignment Requirements:**

1. Please answer the questions in an organized and coherent way.
2. Please use headings and if appropriate, use sub-headings.
3. Please do not include an introduction and conclusion.
4. You are not required to use external sources.
5. Please note that collaboration or group work is forbidden.
6. You are required to refer to relevant legal tests, cases and legislation to support your arguments.
7. Acknowledgement of sources:
  - Be sure that you accurately cite and quote all sources used to avoid academic misconduct.
  - It is not sufficient to simply list the sources at the end of your paper.
  - Whenever you cite or quote, please indicate the source at the end of your sentence in brackets or in a footnote.
  - A bibliography list is not required.

## **Facts**

Power-Mart Inc. (the “Company”) is a corporation with hypermarkets that sell clothes and beauty products across Canada. Its head office is located in Toronto, Ontario.

Meghan and Shahrukh are two cashiers who work at a Power-Mart hypermarket located on Bay Street in Toronto. They would like to improve their working conditions since they are presently solely covered by the Employment Standards Act. More specifically, they would like to have benefits, paid statutory leave, job security and better wages. Meghan has been working for Power-Mart for over 6 years and Shahrukh for over 10 years - yet neither has job security. The hypermarket on Bay Street has 160 full-time workers, 10 supervisors (who supervise and discipline workers), five IT (computer) workers and 5 security guards. That is, the hypermarket has a total of 180 workers.

Meghan and Shahrukh discussed the possibility of forming a union with other workers in Power-Mart. One of these workers, Sally, who gets along very well with one of the supervisors, Steve, told him about these discussions. The following week, Steve promoted 30 workers to the newly created position of ‘managers’. When Meghan spoke with these workers, she found out that they received a minimal salary increase and that their new tasks consisted in merely directing the work of other employees – they were not involved in hiring and disciplining other workers.

Meghan and Shahrukh turned to Unifor (the “Union”) in an attempt to organize their workplace. On September 5, 2016, Unifor Local 529B filed an application for certification as the exclusive bargaining agent of “all employees of Power-Mart, save and except supervisors, in the hypermarket on Bay Street, Toronto”. The Union estimated that there were 170 workers in the bargaining unit and provided the Ontario Labour Relations Board (the “Board”) with signed membership cards on behalf of 85 workers in its proposed bargaining unit.

On September 7, 2016 the Company filed its response. It contended that the correct bargaining unit description is actually “all employees at the Power-Mart Bay street branch, save and except supervisors, managers, IT personnel and security guards”. The Company explained that: (1) managers (including the 30 newly promoted ones) should be excluded as they are not employees for the purpose of the OLRA; (2) IT personnel should be excluded since they have access to confidential computer data of the hypermarket; and (3) security guards should be excluded as they could use their position to create animosity in the workplace. As a result, according to the company’s calculations, 40 of the 85 signed cards belong to workers who are not employees under the OLRA. **The Board now has to determine which proposed description (the Union’s or the Company’s) is the appropriate bargaining unit.**

On September 9, Enrique, another worker at Power-Wart, told Meghan that Steve promised him a promotion if he refused to sign a Union membership card. The same week, Power-Mart also organized a meeting with workers during which Steve explained that the Company would have to terminate many employees if a union was formed.

During this period, Shahrukh started receiving anonymous phone-calls in the middle of the night, and the person on the phone told him that ‘If I were you, I would worry about my pregnant wife and my teenage daughter’. Shahrukh is particularly concerned because his wife is indeed pregnant and his daughter Suhana is a teenager. He recently upgraded his home security system.

On September 15, Sally spoke with other workers and told them that the Union would cause them to lose their jobs. Shahrukh overheard her and told her that she was a traitor and that if she did not join the Union, he and Meghan would make her regret it.

On October 8, the Board ordered that a certification vote be held on October 11, 2016. A hearing was scheduled for October 22, 2016 to determine the appropriate bargaining unit.

On October 9, the CEO of Power-Mart was interviewed by CBC news and declared that unions were created for “lazy and opportunistic” workers and that such institutions threatened the market economy. The same day, Steve changed Shahrukh’s schedule to evening hours, whereas he previously used to work solely during the day to spend time with his wife and daughter in the evenings.

On October 10, Power-Mart informed its workers that it would have to close the Bay Street hypermarket in 10 months due to financial constraints. On October 11 the vote was held. The votes were not count until the hearing on October 22.

**But the workers would like to file an unfair labour practice complaint against the employer with the Ontario Labour Relations Board and to also claim a breach of the statutory freeze. As well, Power-Mart would like to file an unfair labour practice complaint against the Union.**

The workers set up a meeting with the Company on October 12 to discuss this matter, but the management team did not show up. Three days later, Shahrukh and Meghan organized a strike at the Bay street hypermarket with another 60 workers who had signed the Union membership cards, including the security guards, to prevent Power-Mart from closing the hypermarket. Twenty other workers of the Bay Street Power-Mart hypermarket started picketing outside of the ‘Shoppers Mart Inc’, an important supplier of Power-Mart, with signs stating ‘Boycott Power-Mart! We just want to keep our jobs and to create a Union!’. Power-Mart decided to dismiss these employees, effective immediately, as a form of discipline.

**Power-Mart would like to stop this strike. The workers argue on the other hand that dismissal is in violation of the OLRA.**

**For each of these three matters (1. Appropriate bargaining unit; 2. Unfair labour practice and statutory freeze; 3. Strike and dismissal), please:**

1. Discuss the legal arguments of BOTH parties;
2. Assess the legal merits of their arguments (i.e. How strong are the arguments? Who would win the case?); and
3. Determine the potential remedies.