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THE APPLICATION OF THE ANTI-TRUST LAWS OF TEXAS TO LABOR UNIONS

“Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, . . .”¹

THIS declaration appeared in the first organic law of Texas and remains in force to the present day, indicating a basic public policy of the State to forbid any combination or act tending to restrain the free course of trade and commerce. Supplementary to the Constitution and in much greater detail, legislation has been enacted at various times for the purpose of achieving and maintaining freedom of trade and commerce.² The statutes

¹ TEX. CONST. ART. I, § 26.

² TEX. REV. CIV. STAT. (Vernon, 1925) Arts. 7426-7447.

Art. 742 defines a trust as a “combination of . . . acts by two or more persons, . . . or associations of persons . . . for either or all of the following purposes: 1. To create, or which may tend to create, or carry out restrictions in trade or commerce . . . or carry out restrictions in the free pursuit of any business authorized or permitted by laws of this state. 2. To fix, maintain, increase, or reduce the price of merchandise. 3. To prevent or lessen competition. 4. To fix or maintain any standard or figure whereby the price of any article . . . shall be in any manner affected, controlled, or established. 5. To make, enter into, maintain, execute, or carry out any contract . . . not to sell . . . any article or commodity . . . or by which they shall in any manner affect or maintain the price of any commodity or article . . . to preclude a free and unrestricted competition . . . or by which they shall agree to pool, combine or unite any interest they may have in . . . any article or commodity . . . whereby its price . . . might in any manner be affected. 6. To regulate, fix, or limit the output of any article or commodity . . . or the amount of work that may be done. . . . 7. To abstain from engaging in or continuing in business . . . partially or entirely within the State of Texas . . .”

Art. 7428 enacts: “Either or any of the following acts shall constitute a conspiracy in restraint of trade: 1. Where any two or more persons . . . engaged in buying or selling any article of merchandise . . . enter into an agreement . . . to refuse to buy from or sell to any person . . . any article of merchandise . . . 2. Where two or more persons . . . shall agree to boycott or threaten to refuse to buy from or sell to any person . . . for buying from or selling to any other person. 3. Where any two or more persons, . . . or associations of persons shall agree to boycott, or enter into any agreement or understanding to refuse to transport, deliver, receive, accept, erect, assemble, operate, use, or work with any goods, wares, merchandise, articles or products of any other person, firm, corporation or association of persons; provided, however, that this subdivision of this article shall not be construed to apply to an agreement between employees to terminate their employment, or to refuse to transport, deliver, receive, erect, assemble, operate, use or work with the goods, wares, merchandise, articles or products of their immediate employer unless such refusal is intended or calculated to induce, or shall have the effect of induc-

define trusts, monopolies, and conspiracies in restraint of trade, and provide that "Any and all trusts . . . and conspiracies in restraint of trade . . . are prohibited and declared to be illegal."³

These legislative declarations are no more than a codification of our inheritance from the common law of England. An apt illustration of the attitude of the common law toward monopolies is to be found in the well-known *Case of Monopolies*.⁴ This decision reveals the basic social objection to monopoly and espouses the philosophy of freedom of commercial intercourse. The holding of the case was that a certain exclusive manufacturing fran-

ing, such employer from purchasing or from otherwise acquiring goods, wares, merchandise, articles or products from any person, firm, corporation, or association of persons." (Sec. 3 was added by amendment on May 30, 1947, to be effective 90 days after June 6, 1947).

Article 7429 enacts that "any and all trusts . . . and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal."

Tex. Pen. Code (Vernon, 1925) Arts. 1632-1634 are also applicable. Art. 1632 is exactly the same as TEX. REV. CIV. STAT. (Vernon, 1925) Art. 7426, and Art. 1633 is exactly the same as TEX. REV. CIV. STAT. (Vernon, 1925) Art. 7428, including the latest amendment.

Art. 1637 enacts that if any person shall form or agree to form a trust or conspiracy in restraint of trade, or be a party thereto, or act in furtherance thereof, he shall be confined in the penitentiary not less than two nor more than ten years.

Art. 1643 provides: "It shall be lawful for any members of such trades unions or other organization or association, or any other person, to induce or attempt to induce, by peaceable and lawful means, any person to accept any particular employment, or quit any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quite any pursuit, in which such person shall then be engaged. No such member shall have the right to trespass upon the premises of another without the consent of the owner thereof."

Art. 1644, as amended on May 30, 1947, provides: "The foregoing article (1643) shall not be held to apply to any combination or combinations, or to any act by any member of such trades union or other organization or association, or any other person, or to an agreement between two or more persons, formed or taken for the purpose of limiting the production, transportation, use or consumption of labors' products, or which creates a 'Trust' or 'Conspiracy in Restraint of Trade' as in this chapter defined. Nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to time of service, or other stipulation, between employers and employees. Nothing herein contained shall be construed to repeal, affect, or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools, or monopolies."

TEX. REV. CIV. STAT. (Vernon, 1925) Arts. 5152-5154 are also applicable. Art. 5152 provides that it shall be lawful for workers to organize into unions to protect their interests.

Art. 5153 is substantially the same as TEX. PEN. CODE (Vernon, 1925) Art. 1643.

Art. 5154 is substantially the same as TEX. PEN. CODE (Vernon, 1925) Art. 1644.

³ TEX. REV. CIV. STAT. (Vernon, 1925) Art. 7429.

⁴ *Darcy v. Allein*, 11 Co. Rep. 84 (1602).

chise was a monopoly, illegal, and void under the common law. This early case declared:

"All . . . trades, as well mechanical as otherwise, which prevent idleness (the bane of the commonwealth) and exercise men and youth in labour, . . . are profitable to the commonwealth, and therefore the grant to the plaintiff to have the sole making of them is against the common law, and the benefit and liberty of the subject . . . there are three inseparable incidents to every monopoly. . . . That . . . the price of the same commodity will be raised . . . that after the monopoly granted, the commodity is not so good and merchantable as it was before. . . . It tends to the impoverishment of divers artificers and others, who before, by the labour of their hands in their art or trade, had maintained themselves and their families, who now will of necessity be constrained to live in idleness and beggary; . . . and the common law, in this point, agrees with the equity of the law of God, . . . and it agrees also with the civil laws; . . ."⁵

On the basis of the foregoing statement one might think that any type of monopoly or restraint of trade is prohibited by law. But this is not so. The question then arises, what restraints are permissible? Or, to narrow the question for purposes of this study, to what extent are labor union activities subject to the anti-trust laws of Texas? Conflicting constructions of the Texas statutes have caused uncertainty with respect to this issue. It is thought desirable to examine the cases to determine whether or not a definite answer can be given as to the application of the anti-trust laws to unions.

On March 30, 1889, the Texas Legislature passed "an act to define trusts, and to provide for penalties . . . and to promote free competition in the State of Texas."⁶ This act defined a trust in substantially the same manner as does the present statute and declared that a violation of any of the provisions of the act was a restraint of trade. The first case arising under this statute, *Queen Insurance Co. v. State*,⁷ was a suit brought by the state to restrain a combination of fire insurance companies from fixing

⁵ *Id.* at 86.

⁶ *Tex. Laws 1889, c. 117, p. 141.*

⁷ 86 *Tex. 250, 24 S. W. 397 (1893).*

rates and agents' commissions. The Supreme Court of Texas held the act to be constitutional, but not applicable to the insurance business. The word "trade" was not to be construed as including every type of contract, and the insurance business was not within scope of the act. In *Anheuser-Busch Brewing Association v. Houck*⁸ the court again held the act constitutional; it intimated that if a contract were found to be in restraint of trade under the statute, no distinction would be made as to whether the restraint were reasonable or unreasonable.

In 1895 the act was amended in order that it should not be construed to prevent laborers from organizing for the purpose of maintaining standards of wages. In *Texas Brewing Co. v. Anderson*⁹ and in *Waters-Pierce Oil Co. v. State*¹⁰ the amended act was held a constitutional exercise of the State's police power and not violative of the Federal Constitution.

The Anti-Trust Act was again amended in 1899.¹¹ Shortly thereafter, the Legislature enacted what has since become Arts. 1642-1644 of the Penal Code,¹² which declared it lawful for labor to organize and for union members to induce, by peaceful means, others to stop or start any particular work. A provision was also inserted that these sections should not be held to apply to any combination the purpose of which was to limit the production or consumption of labor's products and that nothing therein should be construed to repeal, affect, or diminish the anti-trust statutes.¹³

⁸ 88 Tex. 184, 30 S. W. 869 (1895).

⁹ 40 S. W. 737 (Tex. Civ. App. 1897).

¹⁰ 19 Tex. Civ. App. 1, 44 S. W. 936 (1898).

¹¹ Tex. Laws 1899, c. 146, p. 246.

¹² Tex. Laws 1899, c. 153, p. 162.

¹³ In 1903 the Legislature enacted a new anti-trust act (Tex. Laws 1903, c. 94, p. 119) expressly repealing all former enactments on the subject, and in 1911 the statutes of the state were codified for the first time. By 1923 the Legislature amended the 1903 act (Tex. Laws 1923, c. 5, p. 12), and in 1925 the statutes were revised again, taking their present numbers. For various cases construing the constitutionality and applicability of the anti-trust statutes through these modifications, see the following: *Queen Insurance Co. v. State*, 86 Tex. 250, 24 S. W. 397 (1893); *Anheuser-Busch Brewing Co. v. Hauck*, 88 Tex. 184, 30 S. W. 869 (1895); *Texas Brewing Co. v. Anderson*, 40 S. W. 737 (Tex. Civ. App. 1897); *Waters-Pierce Oil Co. v. State*, 19 Tex. Civ. App. 1, 44 S. W. 936 (1898), 177

Although the anti-trust statutes have been in effect in this state since 1889, the first case in which they were applied to labor union activity did not arise until 1918. In *Webb v. Cooks', Waiters' and Waitresses' Union, No. 748*,¹⁴ the plaintiff cafe owner sued to restrain the defendant union from picketing his place of business because of his refusal to sign a closed shop contract. No strike was involved, as the plaintiff did not employ union labor. The court held that the defendant's activities were not only provocative of violence and bloodshed, but also amounted to intimidation and coercion. In answer to the defendant's contentions that an association or combination of persons had the constitutional right to speak or write free from injunctive restraint and that the picketing constituted an exercise of such right, the court quoted at length and with approval the views expressed in *American Federation of Labor v. Buck's Stove and Range Co.*¹⁵ In that case the picketing activities of a labor union had been condemned as an unlawful boycott. The court there stated:

"... a powerful combination to boycott immediately deflects the natural course of trade."

It was further said:

"... at common law every person has individually, and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction."

To meet the defendant's argument that its purpose was not to injure the plaintiff but to promote better conditions, the Texas court replied that this legitimate purpose became immaterial in

U. S. 28 (1900); *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540 (1902); *State v. Waters-Pierce Oil Co.*, 67 S. W. 1057 (Tex. Civ. App. 1902); *State ex rel. Attorney-General v. Shippers Compress and Warehouse Co.*, 95 Tex. 603, 69 S. W. 58 (1902); *Waters-Pierce Oil Co. v. Texas*, 177 S. W. 615 (Tex. Civ. App. 1903); *aff'd* 197 U. S. 115 (1905); *State v. Laredo Ice Co.*, 96 Tex. 461, 73 S. W. 951 (1903); *Water-Pierce Oil Co. v. State*, 48 Tex. Civ. App. 162, 106 S. W. 918 (1907); *State v. Humble Oil and Refining Co.*, 263 S. W. 319 (Tex. Civ. App. 1924); *State v. Standard Oil Co.*, 130 Tex. 313, 107 S. W. (2d) 550 (1924); and *Ex Parte Tigner*, 132 S. W. (2d) 885 (1939), *aff'd* 310 U. S. 141 (1940).

¹⁴ 205 S. W. 465 (Tex. Civ. App. 1918).

¹⁵ 33 App. D. C. 83 (1918).

the light of proof that the immediate object was to intimidate and coerce the plaintiff to sign a contract which he was neither willing nor obligated to sign. The court rested its decision in part upon the prohibition of the Texas anti-trust statutes. It was concluded that the defendant's acts plainly came within the meaning of a trust, that is, a combination entered into to create and carry out restrictions in the free pursuit of the plaintiff's lawful business. Upon the defendant's assertion that Art. 5245,¹⁶ declaring the lawfulness of labor organizations and the use of peaceful means to induce others to stop or start work, conferred upon it authority for its actions in relation to the plaintiff's business, the court pointed out that Art. 5246¹⁷ provided:

"... nothing herein contained shall be construed to repeal, affect, or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies."

The court also said that in enacting Art. 5245 the Legislature did not intend to authorize acts of coercion and intimidation such as had been engaged in here.

While a reading of the case makes it apparent that the decision was not rested entirely upon the anti-trust statutes, it is quite clear that emphasis was placed upon these enactments. Thus, for the first time in Texas, a labor organization was held subject to the anti-trust laws because its actions were an unjustified restriction upon the free pursuit of a lawful business and fell within one of the definitions of a "trust." Subsequent decisions have been consistent in asserting the application of the anti-trust laws to labor activities.¹⁸

The Supreme Court of the United States has recently spoken

¹⁶ Arts. 5245 and 5246 were changed in numbers in the 1925 revision, and are now 5152 and 5154, respectively.

¹⁷ In the 1925 revision Art. 5246 became Art. 5154.

¹⁸ For cases following the Webb case in applying the anti-trust law to similar fact situations, see *Cooks', Waiters' and Waitresses' Local Union v. Papa George*, 230 S. W. 1086 (Tex. Civ. App. 1921); and *Culinary Workers' Union No. 331 v. Fuller*, 103 S. W. (2d) 295 (Tex. Civ. App. 1937). See also *International Assn. of Machinists Union, Local No. 1488 v. Federated Assn. of Accessory Workers*, 109 S. W. (2d) 303 (Tex. Civ. App. 1937).

with respect to the application of the Texas anti-trust laws to labor unions and has indicated some constitutional limitations. The widely publicized case of *Carpenters and Joiners Union of America, Local No. 213 v. Ritter's Cafe*¹⁹ was concerned with this point. Plaintiff's cafe was picketed because he refused to require a contractor, who was building an entirely separate structure for him at a distance of a mile and a half from the cafe, to employ only union labor. The Texas court construed Arts. 5152 and 5153 in such a manner as to authorize labor to organize and to picket so long as the picketing was carried on by striking employees having a bona-fide labor dispute with their employer. But the plaintiff had no such dispute with his employees, and in these circumstances the court stated:

"No right of free speech . . . is transcended by an injunction restraining the picketing of a place of business by persons (whether members of a labor organization or union, or not) who seeks either to prevent the public from trading with the picketed place, or to compel its owner to break a contract he has with some disassociated third person."²⁰

The court called the defendant's attention to the fact that the state anti-trust laws were in full force and effect, and said that the Eleventh Amendment to the Federal Constitution did not make invalid the use of an injunction to prevent violation of these laws.²¹

Application for a writ of error was denied by the Texas Supreme Court, and the United States Supreme Court granted a writ of certiorari.²² The latter Court affirmed the judgment below on the ground that a violation of the anti-trust laws could be found and injunction issued where no "industrial connection"

¹⁹ 149 S. W. (2d) 694 (Tex. Civ. App. 1941).

²⁰ *Id.* at 697.

²¹ Mr. Justice Cody concurred in the refusal of a motion for rehearing, but on the ground that the right of free speech could not be used to implement a boycott, which he felt the facts here disclosed. See also *Ex Parte Tigner*, 139 Tex. Cr. R. 452, 132 S. W. (2d) 885 (1939), *aff'd* 310 U. S. 141 (1940).

²² 315 U. S. 722 (1942).

existed between the defendant union and the building contractor. The Court declared:

"While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies to promote the health, safety, morals, and general welfare of its people. . . . The Constitution does not forbid Texas to draw the line which has been drawn here."²³

The *Ritter* case was the last of a series of cases delimiting the constitutional right of free speech as exercised in peaceful picketing.²⁴ In view of these cases the Texas decisions prior to 1940 are of doubtful authority if cited for the broad proposition that an injunction may issue in any picketing case where a violation of the anti-trust laws is found. But the *Ritter* case certainly indicates that violation of anti-trust statutes may be enjoined if the violation consists in picketing a business or person who has no industrial connection with the original labor dispute. Such picketing may be described as an instance of "secondary picketing" which is not constitutionally protected from injunction. It is to be borne in mind that, under recent Supreme Court doctrine, secondary picketing is practiced as an exercise of free speech where it is directed against a person or business closely related and industrially connected with the original dispute.

*Borden Co. v. Local No. 133 of International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America*²⁵ was decided while the *Ritter* case was in process of appeal to the U. S. Supreme Court. The decision presents an interesting problem as

²³ *Id.* at 726.

²⁴ Where a state wishes to impose a restraint of freedom of expression taking the form of peaceful picketing, the grounds for the restraint should be relatively specific, rather than broad and general in character, in order to survive the constitutional objection. *Thornhill v. Alabama*, 310 U. S. 1088 (1940). The right to picket peacefully is not limited to the case of an immediate or direct dispute between an employer and his employees. *American Federation of Labor v. Swing*, 312 U. S. 321 (1941). The non-existence of a "labor dispute" as defined by a state statute is not determinative of the right to picket where the constitutional guaranty of free speech is asserted. *Bakery and Pastry Drivers and Helpers Local No. 802 of the International Brotherhood of Teamsters v. Wohl*, 315 U. S. 769 (1942).

²⁵ 152 S. W. (2d) 828 (Tex. Civ. App. 1941).

to whether the constitutional guaranty of free speech was given effect. A labor dispute existed between the Borden Company and its employees. Defendant union picketed retail stores selling Borden's products, including the retail establishment of one Sam Person. Both the Borden Co. and Person sought injunctions. The trial court granted Person's application but denied that of the Borden Co. because of a lack of definiteness in the application, and the judgment was affirmed on appeal.

Person contended that the defendant union had no real dispute with him, that its acts were intended to coerce him into discontinuing the sale of a product for which there was a consumer demand and that inducement of the public to refrain from purchasing such product amounted to an illegal trust and conspiracy in restraint of trade and an unlawful secondary boycott. The court sustained these contentions, citing the anti-trust statutes, and construing Arts. 5152-5154 as legalizing picketing only by striking employees who seek to persuade other employees to quit or dissuade third persons from accepting employment. The court held that although defendant's picketing involved no violence, the purpose was to force the plaintiff "to discontinue the sale of milk processed by the Borden Company, an act in direct violation of the anti-trust laws of the state." The court further said:

"The courts of this state are vested with the authority, in protecting the rights of citizens, to enjoin picketing by a labor organization where no labor dispute does or can exist between the labor organization and the person whose place of business is picketed, and where such picketing involves such illegal conduct on the part of the defendant union as the state is authorized to and has declared unlawful, or where such picketing involves the violation of a law the constitutionality of which has been sustained by the Supreme Court of the United States."²⁶

One may argue that in the Borden case there was no substantial "industrial connection" between Person's general retail establishment and the dispute between the defendant union and the Borden Company. If the argument is accepted, the case is consistent with

²⁶ *Id.* at 834.

the *Ritter* decision. But one may wonder if the connection was not a good deal closer than that which appeared in the *Ritter* case.

It is difficult to evaluate *Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America v. Longley*²⁷ because the fact situation is not fully reported. Apparently, however, the situation involved a strike and picketing by the plaintiff's employees in order to carry out the intention of some unnamed third party to coerce the plaintiff into signing a contract. The court, for procedural reasons, considered all disputed fact questions involved in favor of the plaintiff and assumed that there was no bona fide labor dispute between the plaintiff and his employees. Hence, the picketing was not done under any right granted by Art. 5153, but was an unlawful boycott to coerce the signing of a contract. The court said:

"There is, in our opinion, no lawful power, legislative, executive, or judicial, in this state or in this nation, to authorize picketing of a man's place of business as a part of the means of effecting a boycott designed to coerce the owner into signing a contract he otherwise would not sign."²⁸

The case does not refer directly to the state anti-trust laws, but the court's designation of the defendant's acts as amounting to a boycott seems to imply that those laws were violated, because boycotts and other impediments to the natural course of trade are among the primary evils proscribed by the anti-trust laws. It is difficult to construct a case in which, despite the existence of a strike and picketing by employees, no bona fide labor dispute existed. If the non-existence of a bona fide labor dispute is accepted, however, the case possibly may be supportable under recent Supreme Court doctrine if there was no industrial connection between the original dispute and the later occurring strike and picketing.

A very recent application of the anti-trust laws to labor activities occurred in *Turner v. Zanes*.²⁹ Plaintiff freight agency refused

²⁷ 160 S. W. (2d) 124 (Tex. Civ. App. 1942).

²⁸ *Id.* at 127.

²⁹ 206 S. W. (2d) 144 (Tex. Civ. App. 1948).

to enter into a closed shop contract, and defendant union took steps to enforce a secondary boycott. The plaintiff's customers were advised that their employees would strike and that picketing would follow if they continued to do business with the plaintiff. The court permitted a picket line to remain at the plaintiff's place of business, but injunction was granted against the boycott and picketing of customers with whom the plaintiff had contracts or did business. The court stated:

"The foregoing facts conclusively establish a conspiracy in restraint of trade or secondary boycott; such activities on the part of a labor organization being violative of Texas statutes defining trusts, conspiracies against trade, pools and monopolies, as our courts have consistently held from an early date."³⁰

It was pointed out that "peaceful picketing" for a proper labor objective implies the absence of acts unlawful under statute as well as of violence and trespass and that the constitutional guaranty of free speech does not preclude reasonable regulation.

The foregoing cases clearly demonstrate that the anti-trust statutes of Texas are applicable to labor unions, and there is little basis for the thought, which has had some currency, that labor unions are exempt from the operation of these laws.³¹ In the past year the Texas Legislature has enacted amendments to the anti-trust laws which put beyond question their application to labor unions.³²

There remains the difficult problem of determining when a labor union goes beyond the rights and privileges afforded it under state laws and under the Federal Constitution. Peaceful

³⁰ *Id.* at 149.

³¹ It is interesting to note that Texas is regarded as being the most vigorous of all the states in the enforcement of its anti-trust laws. 1 *MARKETING LAWS SURVEY*, 56 (1940).

³² *Tex. Laws 1947, c. 309.* "The fact that trade unions, labor unions, and other organizations, persons, and associations of persons have formed 'Trusts' and 'Conspiracies in Restraint of Trade' and have used economic power to restrain free trade and commerce, contrary to the intent and purposes of the anti-trust laws of the State of Texas, while claiming exemption from such laws, making it necessary that such statutes be amended so as to clearly prohibit all trusts and conspiracies in restraint of trade, creates an emergency . . ." etc.

exercise of a union's most basic rights, striking and picketing, causes some restraint of trade and commerce and results in pecuniary loss. Nevertheless, exercise of these rights is not invariably a violation of the anti-trust laws, nor could it be so held, if the constitutional guaranty of free speech is to be given effect. Perhaps the cases mean that when a union has a dispute with its employer and uses the traditional means of economic pressure, striking and primary picketing, no violation of the anti-trust laws is involved.³⁵ But secondary boycotts and interference with third parties who deal with the original employer disputant seem to be violations of the statutes, particularly if the third parties have no industrial connection with the dispute. Perhaps, too, the picketing without strike situation, involving an outside union, is regarded as an unreasonable restraint of trade and commerce and within the ban of anti-trust legislation.

It has been said that anti-trust legislation has been applied to labor activity in Texas more stringently than elsewhere. The statutes are broad in language and the exceptions cautious, and no person or group should be able to claim itself above laws of a general application. It is to be emphasized, however, that the possibility exists that relief from literal application of the anti-trust statutes may be obtained by assertion of the constitutional right of free speech.

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³⁵ For cases wherein the picketing was held proper and not violative of the anti-trust laws, see *San Angelo v. Amalgamated Meat Cutters and Butchers Workmen of North America, Local 103*, 139 S. W. (2d) 843 (Tex. Civ. App. 1940); *Tipton v. Hotel and Restaurant Employees International Alliance, Local No. 808*, 149 S. W. (2d) 1028 (Tex. Civ. App. 1941); and *The Fair, Inc. v. Retail Clerks International Protective Assn., Local No. 131*, 157 S. W. (2d) 176 (Tex. Civ. App. 1941).