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SMU Law Review

Volume 4
Issue 3 *Survey of Southwestern Law for 1949*

Article 10

January 1950

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Recommended Citation
Dale Williams, *Labor Law*, 4 Sw L.J. 311 (1950)
https://scholar.smu.edu/smulr/vol4/iss3/10

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LABOR LAW

PICKETING AND FREE SPEECH

Texas. In *International Union of Operating Engineers, Local No. 564 v. Cox*[1] the Texas Supreme Court reviewed the constitutionality of state legislation concerning picketing. Cox, the owner of a laundry, sought injunction and damages against several discharged employees who were picketing his plant. Some of his employees had previously asked a local union to help them improve their working conditions. As a result of the union's talks with Cox, he agreed to an election to determine if the employees wanted union representation. The election resulted in a tie vote. Two days before the election Cox had reduced the wages of two women actively engaged in unionization, and immediately after the election had fired another who voted for the union. At this, six employees walked out, and Cox told them that they were automatically fired. Picketing consisted of carrying signs and was at all times peaceful. The union distributed circulars, which were defamatory and untrue, but Cox asked no relief on this account. The court of civil appeals granted an injunction, based in part on the untrue circulars and in part because no "labor dispute" existed under the Texas statutes.[2] The statutory definition was as follows:

> "The term 'labor dispute' is limited to and means any controversy between an employer and a *majority* of his employees concerning wages, hours, or conditions of employment; provided that if any of the employees are members of a labor union, a controversy between such employer and a majority of the employees belonging to the such union, concerning wages, hours, or conditions of employment shall be deemed, as to the employee members of such union, a labor dispute within the meaning of this act." (Italics added.)

The supreme court acknowledged that under the statute there was no labor dispute because there was not a majority of the employees or a majority of the union members involved in a contro-

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[1] ——Tex——, 219 S. W. 2d. 787 (1949).

[2] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5154f, sec. 2(h).

versy with their employer, since none of the employees were members of the union and less than a majority were involved in the controversy. However, the supreme court did not agree with the court below in saying that they (the persons on strike) were not employees. The court thought that they were still employees who had only temporarily ceased their labors. The court declared the narrow definition of a "labor dispute" unconstitutional since the Fourteenth Amendment of the United States Constitution guarantees the right of peaceful picketing and publishing the facts of a dispute by circulars and banners. A state may validly impose reasonable regulations, but regulations must not deprive one of fundamental rights, which may be claimed by minority as well as majority groups. On rehearing the court emphasized that Article 5154f was held invalid only insofar as it operated to deprive the petitioners of the right of free speech, as defined by the decisions of the Supreme Court of the United States.

In another case decided by the Texas Supreme Court, *North East Texas Motor Lines, Inc., v. Dickson*,[3] it was decided that an employer must be afforded an opportunity to negotiate with a union before peaceful picketing can take place. The petitioner was a motor freight company, employing about 150 persons, and eleven of these asked the union to act as their bargaining agent. Thereafter, a union official called an official of the motor lines to make an appointment to talk about a contract; but after making the appointment, the union official failed to make an appearance or to send a copy of the contract to the motor company. Soon after, the eleven employees walked out and established a picket line never having made a demand to the employer directly. Other motor freight lines refused to cross the picket lines, and plaintiff's motor freight company suffered considerable losses. The trial court granted an injunction against the picketing and decided that there was no labor dispute. The court of civil appeals reversed the trial court, but the supreme court reinstated the verdict of the trial

[3] ——Tex.——, 219 S. W. 2d. 795 (1949).

court, saying that while the right to picket peacefully was not doubted, the right could be qualified and limited if the employer was not informed of the union's object and not given an opportunity to negotiate.

As in the previous case, the court pointed out the connection between free speech and peaceful picketing; but the court insisted that where an employer has no knowledge of any demands by his employees and has had no opportunity to negotiate, there could not possibly be a labor dispute. It was recognized that the National Labor Relations Act[4] makes it an unfair practice for an employer to refuse to bargain with his employees, but an employer cannot be guilty of wrong where he has no knowledge of any demand that he could bargain about. Thus it appears that a necessary element for a labor dispute to exist is that the employer be given a chance to negotiate.

Enactment in 1949 Affecting Labor

New Mexico. The Nineteenth Legislature of New Mexico passed a law[5] designed to eliminate discrimination in employment because of race, creed, color or national origin. The preamble of the act states that legislation is necessary in order that all individuals may maintain a decent standard of living and in order that the highest development of capacities may be attained. The act covers not only regular employers but labor organizations, the State, and other organized groups. Domestic servants and children employed by parents are exempted from the operation of the act.

The statute sets up a state commission, called the State Fair Employment Practice Commission,[6] to handle all grievances, with power to subpoena any necessary parties and to pass on unlawful employment practices. In general, unlawful employment practices include refusing to hire a person because of race, color, creed, or national origin; discharging him for such reason; refusing to

[4] 49 Stat. 452 (1935); 29 U.S.C.A. § 158 (a) (5).
[5] New Mexico Laws 1949, c. 161.
[6] § 6.

employ for such reason by tacit agreement among members of organizations; making inquiries or records in connection with employment which may be the basis of discrimination because of race, color, creed, or national origin; discharging or expelling a person because he makes a complaint under the law; or inciting or abetting anyone, employer or employee, to violate any section of the act.[7] In addition, the State Fair Employment Practice Commission is given power to formulate an educational program in public schools, with a view to eliminate prejudice.[8]

The State Fair Employment Practice Commission has the usual powers of an administrative agency entrusted with judicial functions. Testimony is taken under oath at the commission's hearing, and if a respondent is found to have engaged in an unlawful employment practice, an order is served requiring him to cease and desist from engaging in such unlawful practice, and to take affirmative action including (but not limited to) hiring, reinstatement, upgrading of employees, with or without back pay, or restoration of membership in any respondent labor organization, or such acts as will, in the judgment of the commission, effectuate the purpose of the act.[9] If the commission is satisfied that there is no basis for a complaint, it may issue an order of dismissal. Appeal may be taken from the commission's ruling to the district court. A trial de novo is provided for; thus, a person aggrieved by the commission's action has the right to an independent judicial trial on the merits.[10] The district court probably has power to enforce its judgment by contempt process resulting in fine or imprisonment.

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[7] § 4.
[8] § 9.
[9] § 10.
[10] § 11.