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SMU Law Review

Volume 5
Issue 3 *Survey of Southwestern Law for 1950*

Article 8

January 1951

Labor Law

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LABOR LAW

PEACEFUL PICKETING BY STRANGERS

Arkansas. In *Local No. 802 v. Asimos*[1] the Arkansas Supreme Court discussed the right of a union to picket in the absence of a labor dispute. A suit was brought to enjoin picketing petitioners' restaurant. Petitioners had refused to sign a contract with defendant union as bargaining agent for the employees. No outstanding contract had been in effect; only one employee was a union member in good standing, and few of the other 23 employees had any desire to make the union their bargaining agent. The union had voted a strike and had established a picket line in order to enforce collective bargaining.

Picketing was peaceful and orderly, with the exception of one questionable incident. Two pickets, each carrying a placard reading "Jefferson Coffee Shop Refuses to Bargain with Employees' Local 802," slowly walked in front of the doors of the coffee shop. As a result, the volume of business materially decreased, the proprietors suffered financial loss, and three or four employees left work, either because frightened by assembled crowds or because they had relatives in the union and were reluctant to cross the picket line.

The trial court granted a permanent injunction against all picketing. Upon appeal, however, the Arkansas Supreme Court reversed and dissolved for the most part the injunction granted. The court reasoned that peaceful picketing accompanied by a lawful purpose, even in the absence of a labor dispute, involved freedom of speech as guaranteed by the Fourteenth Amendment. The premises for the court's conclusion were as follows:

1. An isolated act of violence not connected with picketing was not sufficient to justify a permanent injunction.[2]

2. There had been no showing that the union had as its ob-

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[1] .....Ark....., 227 S. W. 2d 154 (1950).

[2] Local Union 858 v. Jiannas, 211 Ark. 352, 200 S. W. 2d 763 (1947); Riggs v. Tucker Duck and Rubber Co., 196 Ark. 571, 119 S. W. 2d 507 (1938); Local Union No. 313 v. Stathakis, 135 Ark. 86, 205 S. W. 450 (1918). The court also cited Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 (1941).

jective the execution of a closed shop contract prohibited by statute.

3. The Arkansas court felt bound to abide by two United States Supreme Court decisions in which no "labor dispute" had been involved: the "Bakery Case"[3], where a union picketed a bakery to compel bakery peddlers to comply with union terms, even though none of the peddlers were union members; and the "Cafeteria Case"[4] where, in order to organize workers, a union picketed a cafeteria run entirely by proprietors without any hired help. Picketing in these two cases was held to be no great evil, and so the Arkansas court reasoned that there was no fact present in the *Asimos* case to permit a different result.

4. The United States Supreme Court was the final arbiter as to the scope of the constitutional guaranty of free speech attached to peaceful picketing.

The *Asimos* case indicates that the Arkansas court believes it is compelled to dissolve an injunction in a picketing without strike case in almost any kind of labor controversy, and this seems to be the meaning of the *Swing* decision.[5] One may question whether this is a desirable state of affairs. How can one reconcile the absolute right peacefully to picket where an innocent proprietor is subjected to financial loss and impairment of his good will because he refuses to contract with a union which does not represent his employees, and where employees, in order to keep out of trouble, sustain a loss of pay? Why should picketing be allowed by a strange entity which has as its purpose the organization of employees, and for which organization the employees have no desire? Such picketing becomes a weapon of oppression. One may wonder whether the United States Supreme Court will reconsider and permit a state to decide that the interests of the community require that "stranger" picketing be prohibited.

There was a question of misrepresentation in the *Asimos* case. The picketers were carrying a placard worded "Jefferson Coffee

[3] Bakery and Pastry Drivers and Helpers, Local 802 v. Wohl, 315 U. S. 769 (1942).
[4] Cafeteria Employees' Union, Local 302 v. Angelos, 320 U. S. 293 (1943).
[5] American Federation of Labor v. Swing, 312 U. S. 321 (1941).

Shop Refuses to Bargain with Employees' Local 802". A reasonable implication was that the owners refused to bargain with the chosen representative of the majority, if not all, of the employees working in the coffee shop. Yet the Arkansas court merely stated that the signs carried by the pickets were not libelous or false. The fact was that one employee out of 24 was a union member. Granting that the peaceful picketing could not be enjoined, it is suggested that a requirement of a fuller and more accurate placard would have been fair. Thus, the placard might have been made to read:

> One employee belongs to our union. Jefferson Coffee Shop refuses to bargain with Local 802."

By this method, freedom of speech is still permitted, but the harm done to innocent proprietors and idle employees is greatly decreased, and the public is correctly informed.

Peaceful Picketing for an Illegal Purpose

Arkansas. Self v. Taylor[6] involved a suit by an employer to enjoin the representative of the International Brotherhood of Electrical Workers (I.B.E.W.), Local No. 700, and others from picketing his business. Over a course of nine years, the union had been the bargaining representative for the employees. A one-year closed shop agreement with an automatic renewal clause had been in effect since 1946 but was terminated by the union in 1949. In 1947 the State of Arkansas had passed a law which prohibited closed shop contracts, and it applied to all collective contracts executed subsequent to the passage of the Act.[7]

After termination of the contract, all employees quit work. For several months negotiations were in progress between the employer and the union representative, and unsuccessful attempts were made by the union to impose another closed shop contract. Finally, the union offered a contract with no mention of closed shop, union shop, or union hiring hall, but included therein was a provision for cancellation at any time by either party upon 60 days' notice.

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[6] .....Ark....., 235 S. W. 2d 45 (1950).

[7] Ark. Const. Amend. No. 34 (1945); Ark. Stat. 1947 Ann. §§ 81-202, 81-203.

The employer agreed to accept all terms of the contract if it were on a year's basis, but declined to sign it in its presented state because he had been told by union officials that he would have to discharge non-union employees or the union would exercise its right to cancel. After continued insistence on the clause by the union, the employer broke off negotiations.

Soon after, two union members began peacefully picketing the place of business. They carried a placard with the words, "This Place is Unfair to Electrical Workers Local A.F.L. 700." To restrain such picketing, the employer filed a petition for relief, and the trial court granted a permanent injunction on the ground that the union was picketing to obtain a closed shop. Upon appeal, the Arkansas Supreme Court held that the evidence sustained the finding of the chancellor and affirmed the injunction.

In arriving at its decision, the court noted the constitution of the International Union prohibited members from working with non-union employees, that union officials had testified that it was the policy of the I.B.E.W. to work only with union people of their own craft, and that if the employer continued to have non-union employees, that union officials had testified that it union would have to give 60 days' notice. The court stated that although the contract sought was legal on its face, the contract by itself would not determine the objective of the picketing. Other facts to be considered were (1) the circumstances of its proposal, (2) the constitution of the International Union, and (3) the testimony of union representatives concerning the follow-through of I.B.E.W. policy. These over-all considerations made it apparent that a closed shop was the union's objective in picketing.

The court reasoned that if the employer did not discharge non-union employees, the union could always give 60 days' notice, terminate the contract, and begin picketing under the pretext of some claimed legitimate grievance; but basically the real purpose would be to force a closed shop. Therefore, if an injunction were not granted, the employer would be subjected to endless

picketing, which could only be terminated by a closed shop in practice if not by contract. The court reiterated the principle that peaceful picketing for a lawful purpose is protected by the Federal Constitution and Arkansas law, but that peaceful picketing for an unlawful objective is not protected as an exercise of the right of free speech.

One judge dissented, saying that the evidence had shown that the defendants would not promise to work more than 60 days, which was their privilege, as there is no law requiring a promise to work for a longer period. The judge apparently thought that peaceful picketing should not be enjoined. However, he asserted that if notice of cancellation were given, picketing could thereafter be enjoined if it had as an objective a closed shop agreement.

The critical question in this case was what the employees and the union would do during the 60 days following a notice of cancellation. The dissenting judge seemed to assume that the workers would stay at their jobs for at least 60 days; whereas the majority of the court apparently inferred that the contract would not last even 60 days, with performance terminating soon after notice of cancellation.

This decision is consistent with a recent United States Supreme Court decision holding that picketing for a closed shop can be enjoined by a state.[8] A similar holding was made in a 1951 case arising in Texas.[9]

If the 60-day contract had been entered into, one may wonder if the union would have cancelled the contract and called a strike with the secret purpose of securing a closed shop. It would seem that any court would have seen through such conduct. Furthermore, if the union really had such a plan of conduct, a one-year contract could have served its purpose equally as well.

It is suggested that the plan behind the offered contract was along the following lines. The union was in a strong, entrenched

[8] Building Service Employees International Union, Local 262 v. Gazzam, 339 U. S. 532 (1950).

[9] Sheet Metal Workers Local No. 175 v. Walker, 236 S. W. 2d 683 (Tex. Civ. App. 1951) *er. ref.*

position. Every employee was a union member. Under the 1947 act, however, the employer was able to hire non-union workers. If he did so, he was aware that it would displease the union employees and that 60 days hence his contract might be terminated and production halted. But if he hired only union members, he could count on continuous production for an indefinite period. Actually, if the employer asserted his freedom and hired non-union workers, the union would be legally helpless, as he would be complying with law. Any attempt by the union thereafter to force the employer to discharge the non-union employees would be illegal and subject to legal action. It would, therefore, seem that the psychological coercion and possibility of restricting the contract to 60 days was the only threat present.

On close analysis, a basic reason for the decision would seem to be a desire by the Arkansas Supreme Court to do its part in achieving uniformity and stability in labor law and labor relations. A means to this end is the continued promotion of bargaining agreements for periods of at least one year. In support of this thought, it need only be mentioned that the court was influenced by an analogous situation in a case before the National Labor Relations Board.[10] There the federal board held that union insistence on a 60-day cancellation clause amounted to bad faith bargaining and was an unfair labor practice. The court went on to state that the primary objective of collective bargaining is to stabilize labor relations for reasonable periods of time and that the union had been unwilling to bind itself for more than 60 days, in the face of traditionally bargained-for contracts of one-year duration. Viewing the current trend of emphasis on stability and the securing of contracts of reasonable and definite periods of time, the Arkansas Supreme Court probably thought that a 60-day contract was odd and the labor relations thereunder not sufficiently predictable. If the union's motives are properly subordinated to the law, it can achieve satisfaction for its legitimate claims, arising during conventional one-year periods.

[10] Matter of Chicago Typographical Union No. 16, 86 N.L.R.B. 1041 (1949).

UNEMPLOYMENT COMPENSATION—EMPLOYEE PARTICIPATING IN LABOR DISPUTE

Arkansas. Reddick v. Scott[11] involved a proceeding for unemployment benefits by 12 employees. The situation originated when, upon signs of union activity, the employer informed his employees that if they wanted to organize a labor union, they would have to seek employment elsewhere. This amounted to a lockout, and a number of employees remained away from their jobs. The employer then sent a letter to each of the absent employees and assured them that their employee relationship had not been terminated and that they could return to work. The employees replied by letter requesting assurance that upon their return there would be no discrimination on the basis of union activity. The employer answered by mail, stating that there would be no such discrimination, and the absent employees returned to their jobs.

A week later six or seven men were asked to work a Saturday afternoon, but none of the employees showed up. As a result, five of these employees were discharged. Incensed at the action, a majority of the other employees called a strike and establishd a picket line, taking the position that they would not return to work unless the five were reinstated or unless all the others who failed to work that afternoon were also discharged.

Twelve of the striking employees sought unemployment benefits for the period commencing with the date of the strike. The Arkansas Appeals Tribunal denied their claim on the ground that unemployment was due to a labor dispute, but it overlooked a provision of the Arkansas Employment Security Act authorizing payment of benefits if the labor dispute was caused by a failure or refusal of any employer to conform to terms of any agreement or contract between employer and employee, or of any law of Arkansas or of the United States pertaining to collective bargaining.[12] The Board of Review, after noting the provision mentioned, affirmed the lower tribunal's decision on the ground that there had been no agreement between the employer and the employees.

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[11] .....Ark....., 228 S. W. 2d 1008 (1950).

[12] ARK. STAT. 1947 ANN. § 81-1106(d).

Upon appeal, the Arkansas Supreme Court held that the conclusions of the Appeals Tribunal and the Board of Review were erroneous. The court said that the mere existence of a labor dispute does not preclude the allowance of unemployment benefits and that the exchange of letters constituted an agreement that there would be no discrimination on account of union activity. However, there had been no finding of fact by the administrative tribunals as to (1) whether the labor dispute had been caused by the employer's failure to conform to his agreement or to law, (2) whether or not the discharged employees owed their original idleness to a labor dispute, and (3) whether such idle employees were available for work. The court, therefore, reversed the administrative decision and remanded for proceedings in accordance with its opinion.

The Arkansas statute seems express and clear. However, it might be questioned as to whether the facts warranted application of the statutory provision. It should be noted that only a part of the employees remained away because of the lockout and that the employer's letter assuring that there would be no discrimination was submitted only to the absent employees. The facts of the case were not complete, and it might well be that the great majority of the employees were working during the lockout and did not participate in the correspondence. There was no indication that the correspondence was participated in by some exclusive bargaining agent for the employees. Furthermore, it was not clear whether the five discharged men and the twelve seeking benefits were also included in the number locked out. Although it is possible that an agreement was made between the originally locked-out employees and the employer, would such an agreement be impressed on the other employees? It is true that an employer is not prohibited from making separate and individual contracts with groups of his employees, but the tendency today is to question agreements other than a single exclusive contract between the representative of the bargaining unit and the employer. Perhaps the union or a majority of the employees ratified the agreement in the principal case and thus made it binding as to all the employees. But the

only evidence denoting ratification was the calling of a strike by a majority of employees. Is this sufficient ratification?

From the standpoint of good labor relations the requirement that an employer abide by his promise to his employees is sound. The employer's assurances, although addressed to absent employees, probably became common knowledge among all employees in a matter of a few hours, and the workers would readily interpret the assurances as applicable to all, just as any fair-minded employer would intend. Apparently, the employees were only commencing to organize and thus had no spokesman to represent them all. In view of the circumstances, there would seem to be an agreement and thus the technical aspect of statutory application could be satisfied. It is to be noted that the National Labor Relations Board held that the five men had not been discriminated against because of union activity and that no violation of the Taft-Hartley Act had occurred.[13]

Texas has a statute pertaining to unemployment compensation which disqualifies an employee from benefits if his stoppage of work is due to a labor dispute at the place of last employment and he has participated or is directly interested in the labor dispute.[14] The wording is almost identical with that of the Arkansas statute. However, the proviso allowing the employee participating in the labor dispute to receive benefits where the dispute was caused by the employer's failure to conform to his labor agreement, is not included in the Texas statute. Inasmuch as the Texas statute is clear and unambiguous and in view of the fact that there are no reported cases interpreting the statute, it would seem that a different holding would be made by a Texas court on the facts made out in the principal case. Moreover, it would appear that regardless of the cause of the labor dispute, the participating or interested employee would be precluded from receiving unemployment compensation.

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[13] L. W. Scott, d.b.a. Scott Paper Box Co., 81 N.L.R.B. 535 (1949).

[14] TEX. REV. CIV. STAT. (Vernon 1948), art. 5221b-3(d).