Case Western Reserve Law Review

Volume 8 | Issue 3

1957

Labor Law

Edwin R. Teple

a life insurance policy on the life of a parent which are paid to a child are free from the claims of creditors. In *Mathews v. Bertsch*[9] a plaintiff sought to escape this result by attempting to have a trust impressed on the funds under the following circumstances: plaintiff had provided advances and expenses for decedent and to provide payment decedent had named plaintiff beneficiary under the policy but had reserved the right to change the beneficiary. Later, decedent made his daughter beneficiary. The court held that plaintiff was a "creditor" within the meaning of the statute and not the beneficiary of a constructive trust.

EDGAR I. KING

LABOR LAW

The Ohio courts seem to have been busier with this subject during the past year than any of the other states included in the Northeastern Reporter.

The most popular question again this year concerned the limitations on peaceful picketing.

In reliance upon the decision of the Ohio Supreme Court in *Chucales v. Royalty*,[1] reported in last year's Survey,[2] the Common Pleas Court of Hamilton County held in *Faust v Truck Drivers, Local 100*[3] that where the owner of a small sandwich shop decided to remove the cigarette machine belonging to a wholesale dealer and serviced by such dealer's union employees, and then obtained his own machine and purchased the cigarettes from local dealers who used non-union delivery men, picketing of the sandwich shop by the union to which the wholesaler's employees belonged to coerce the owner to resume his original arrangement, was unlawful because it constituted either an attempt to exercise indirect pressure on local concerns and, therefore, amounted to a secondary boycott, or was an unlawful interference with the constitutional right of the shop owner to buy merchandise where he chose.

In *Cavett v. District Lodge 34, International Ass'n of Machinists*,[4] the Hamilton County Court of Appeals permanently enjoined picketing by a union which had sought by this means to force recognition by the employer even after the National Labor Relations Board had determined that the union had no authority to act as the bargaining agent of the employees. The court held that no actual labor dispute existed and that picketing under such circumstances was an invasion of the right of the individual employees not to participate in union activity, and of the em-

[9] 58 Ohio Op. 281, 132 N.E.2d 770 (Ct. App. 1955)

ployer's right to operate his business without wrongful interference, all of which was in violation of the public policy of the State of Ohio. Until Congress has completely ousted the state courts from jurisdiction in matters of this nature, the court said, they continue to have the power to protect the employer from irreparable loss for which no other remedy at law exists, particularly after submission of the parties to the National Labor Relations Board.

The question of the state's jurisdiction and the extent to which the decision in *Crosby v. Rath*[5] may be applied, may soon be settled by the United States Supreme Court as a result of the decision in *Fairlawn Meats, Inc., v. Amalgamated Meat Cutters.*[6] In that case, the union had 18 members out of a total of 50 employees and sought recognition by the employer as bargaining agent. The court of appeals held that where the picketing of the business establishment was conducted by a minority of the employees thereof for organization purposes only, and not to secure a settlement of grievances among the employees, and where such picketing, although peaceful, is done in part at least upon land owned or leased by the employer, and the union, by threats and coercion, institutes a secondary boycott against the employer, such picketing is contrary to law and may be enjoined. In the course of its opinion, the court also determined that the business of the employer was purely local in character, the "jurisdictional yardstick" of the National Labor Relations Board to the contrary notwithstanding.[7] As a basis for its ruling, the court of appeals cited *Crosby v. Rath*[8] and *W E. Anderson Sons Co. v. Local* 311[9] despite the fact that the picketing was not entirely peaceful in those two cases. The appeal to the Supreme Court of Ohio was dismissed and certiorari has been granted by the United States Supreme Court.[10]

In *International Ass'n of Machinists v. General Electric,*[11] the union brought an action against the employer to enjoin the discharge of certain employees on the ground that the action which the employer sought to

---

[1] 164 Ohio St. 214, 129 N.E.2d 823 (1955).

[2] 1955 Survey, 7 WEST. RES. L. REV. 295 (1956).

[3] 136 N.E.2d 169 (Ohio C.P. 1956).

[4] 136 N.E.2d 276 (Ohio App. 1956).

[5] 136 Ohio St. 352, 25 N.E.2d 934 (1940).

[6] 99 Ohio App. 517, 135 N.E.2d 689 (1955).

[7] The employer in this instance operated a wholesale and retail meat business with three stores in the city of Akron.

[8] Crosby v. Rath, 136 Ohio St. 352, 25 N.E.2d 934 (1940).

[9] 156 Ohio St. 541, 104 N. E.2d 22 (1952).

[10] 351 U.S. 922 (1956).

[11] 136 N.E.2d 167 (Ohio C.P. 1949).

take violated the collective bargaining agreement between the union and employer. The Cuyahoga County Common Pleas Court held that where the collective bargaining agreement provided that the continuous service of any employee should be terminated by the employer only in the event that such employee left voluntarily or was discharged, the doctrine of *expressio unius est exclusio alterius* applied and termination by the employer except as specified therein was prohibited. The employer, therefore, could not unilaterally terminate the employment of male employees upon reaching age 65, or female employees at age 60, without any showing of good cause therefor. The reference to a discharge pre-supposed good cause, the court said, and "retirement" is a voluntary rather than an involuntary act. This decision should be of considerable interest to those concerned with retirement plans and the drafting of the separation provisions of collective bargaining agreements.

A so-called class action in the Cleveland Municipal Court was properly dismissed, according to the Ohio Supreme Court, where the one who initiated the action to recover damages for himself and others similarly situated as a result of the employer's failure to pay a 10% retroactive wage increase, had neither the capacity nor the right to maintain the action.[12]

In *Moore v. District 50, United Mine Workers*,[13] the action was against a labor union and certain of its members for alleged conspiracy. The Common Pleas Court of Franklin County held that since the gist of the action was assault and battery, the allegations as to conspiracy being merely matters of inducement, the statute of limitation as to the assault and battery would govern and the action was barred after one year.[14]

In *Stevison v. Cummins*,[15] the action was by a former employee for an award of severance pay allegedly due under a collective barganing

---

[12] Young v. Klausner Cooperage Co., 164 Ohio St. 489, 132 N.E.2d 206 (1956) The plaintiff had walked out on strike in violation of a "no strike" clause in the union contract, and had failed to return, and this action, the court held, operated as a forfeiture of his right to any additional pay to which he might otherwise have been entitled. In addition to holding that where the action fails as to the one initiating the same, it fails as to all, the court also pointed out that no two defendants were entitled to identical amounts as retroactive pay and could not be joined for this reason.

[13] 131 N.E.2d 462 (Ohio C.P 1954)

[14] The court also held that the members of the union were not subject to either civil or criminal liability for the acts of the union or its officers unless such members authorized or participated in the particular acts complained of; and that where the action is dismissed against all of the individual members made parties defendant, such action could not be maintained against the union itself under the statute authorizing class action, such statute having no application.

[15] 131 N.E.2d 863 (Ohio App. 1956).