Case Western Reserve Law Review

Volume 9 | Issue 3

1958

Labor Law

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Two very important, and perhaps far reaching, decisions were handed down in Cuyahoga County during the past year with reference to the application of an injunction by a state court to what might be described as semi-peaceful picketing.

In *Richman Bros. Co. v. Amalgamated Clothing Workers,*[1] an injunction against the picketing of the plaintiff's stores by the defendant was upheld. The appellate court ruled that where the union engaged in stranger picketing for the purpose of coercing the employer to enter into a contract for the use of the union label, the lower court had jurisdiction to enjoin mass picketing or picketing which interfered with the means of ingress and egress to and from the employer's stores, or which interfered with pedestrians or vehicular traffic in or about said stores. There was also an indication in Judge Kovachy's opinion that the picketing in this case was considered contrary to law and order and the peace and dignity of the state.

According to the evidence, it appears that the union normally used one or two pickets at each store. However, in 20 instances during a two-year period, special sporadic demonstrations took place which involved from 15 to 20 pickets in each instance. The court felt that this was sufficient evidence of mass picketing within the meaning of the *Garner* case[2] and particularly under the language of the United States Supreme Court in *United Automobile Workers v. Wisconsin Employment Relations Bd.*[3]

In the case of *Standard Oil Co. v. Oil Workers International Union,*[4] the employer sought to enjoin the union from picketing its distribution centers which were manned by members of a different union. The employer sought the injunction, despite the existence of a labor dispute, on the ground that this picketing would induce a breach of the "no work stoppage" clause of the contract which the employer had with the other union. Judge William K. Thomas, speaking for the court, held that such picketing could in fact be enjoined. The evidence in the case revealed that from 4 to 20 pickets were normally used at the distribution centers, and once as many as 50 to 75 pickets were used. Trucks were prevented from entering the premises by the taunts of the pickets or by strikers actually walking in front of the trucks and then approaching the drivers to discourage entry. Judge Thomas pointed out that there is nothing in the

[1] 144 N.E. 2d 573 (Ohio Ct. App. 1957).

[2] Garner v. Teamsters Union, 346 U.S. 485 (1953).

[3] 351 U.S. 266, 274 (1956).

[4] 144 N.E.2d 517 (Ohio C.P. 1957).

Labor Management Relations Act to protect against concerted activities having as their purpose possible and probable inducement of a breach of contract. The court reasoned that where no such remedy existed in the federal enactment, the state retains its historic right to uphold and enforce valid contracts. There was no doubt in the court's mind that it is the public policy of the state of Ohio to uphold and enforce valid contracts, and where a suit for damages does not afford an adequate remedy, equity protection will be made available.

The difficult question of conflicting Federal-State jurisdiction in the field of labor-management relations was reviewed at some length in the opinion. Particular note was made of the recent decision of the United States Supreme Court in *International Union v. Wisconsin Employment Relations Bd.*[5] in which the federal court upheld a state board order against the instigation of intermittent and unannounced work stoppages saying there is ". . . no basis for denying to Wisconsin the power, in governing her internal affairs, to regulate a course of conduct neither made a right under federal law nor a violation of it and which has the coercive effect obvious in this device."[6]

Judge Thomas also pointed out that there was no intent on the part of the picketing union to displace the other union as a bargaining agent, so that there was no question of an unfair labor practice. This, counsel for the defendant apparently readily admitted. Judge Thomas also distinguished the ruling of the Pennsylvania Supreme Court in *American Brake Shoe Co. v. District Lodge 9*,[7] on the basis that Pennsylvania has a specific anti-injunction act, of which there is no counterpart in Ohio.

It is interesting to note that the court chose to place its decision upon this broad basis rather than relying upon evidence which might have been construed as mass picketing within the specific exception mentioned by the U. S. Supreme Court in the *Garner* case.[8] At least by the standard used by the court in the *Richman Bros.* case, referred to above, this would have been a sufficient basis for the ruling. The decision appears to establish a new area of exception to the rule in the *Garner* case.

In another picketing case, the Common Pleas Court of Muskingum County held that where an assembly of workers around the employer's premises constituted mass picketing, a temporary injunction would be granted limiting the union to two pickets in front of the employer's plant. Picketing, it was held, must be limited to peaceful persuasion, which, ac-

[5] 336 U.S. 245 (1949).
[6] *Id.* at 265.
[7] 373 Pa. 164, 94 A.2d 884 (1953).
[8] See note 2 *supra.*

cording to the court, could not be accomplished with more than two pickets.[9]

In *Bonfield v. Bartenders' Union, Local 68*,[10] the employer sought a temporary injunction against the union picketing, and the union cross-petitioned for an order directing the employer to enter into a collective bargaining agreement. The parties had been engaged in bargaining and the plaintiff had recognized the union at one point but subsequently had promoted the resignation of its employees therefrom. The court held that a valid labor dispute existed which justified the picketing, but refused to order the plaintiff to enter into a contract as demanded by the defendant.

Anderson v. Local 698, Retail Clerks Union,[11] involved an interesting situation of picketing against a small store. This particular store was a local, independent grocery employing nine clerks and three butchers. The butchers were not involved at all, but the nine clerks had been members of the union, which had entered into a collective bargaining agreement with the owner. Prior to the expiration of the contract, however, the owner apparently decided he did not wish to have anything further to do with the union and so advised his employees. In individual interviews he asked each clerk to withdraw from the union and six of the nine complied with his request. Thereafter, the negotiations for a new contract broke down (not too surprisingly), and a picket line was established by the union. There is no indication that the picketing was anything other than peaceful, and the three clerks who declined to withdraw from the union refused to cross. Nevertheless, in clear contrast with the *Bonfield* decision, it was held that the attempt to force the employer to negotiate was unlawful and was properly enjoined.

This is hardly a case of stranger picketing. Yet the court spoke almost as though the union and the employer had never met. By this decision, the court certainly is carrying the Ohio view on organizational picketing one important step further. To justify the application of the rule to the circumstances of this case, the court found that the store became a nonunion establishment by the statement of the employer, and

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[9] Zanesville Publishing Co. v. International Typographical Union, Local 199, 143 N.E.2d 185 (Ohio C.P. 1956). The court ruled that under the facts of this case, the ingredients were present which probably would result in consequences occasioning injury, and that the anticipated consequences need not first occur to justify issuance of an injunction. No details concerning the number of pickets or their conduct are given in the opinion, but the court stated that the picketing could not be permitted to obstruct public alleys or sidewalks.

[10] 144 N.E.2d 143 (Ohio C.P. 1956).

[11] 101 Ohio App. 542, 142 N.E.2d 432 (1956); appeal dismissed, 165 Ohio St. 512, 137 N.E.2d 752 (1956).