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Labor Law

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Insurable Interest — Ownership Not A Necessity

As part of a divorce proceeding the husband was ordered to pay a specified sum of alimony and support of the children, subject to "the further order of the court"; and to pay certain other expenses. Title to the household goods was given to the wife. The husband carried a policy of fire insurance which covered loss of such household goods and the clothing of the children. Loss by fire occurred and the husband sued to recover. Against the argument of the company, the court held that the husband had an insurable interest in these items. Ownership is not necessary for existence of an insurable interest. A change of circumstances affecting adversely the economics status of his children and his former wife, would, in all probability, result in a modification of the court's order of support because the father is charged with reasonable support. Consequently, the loss of the goods through fire damage would, potentially, put upon the father an additional burden. This is sufficient to give him an insurable interest in the goods.[14]

EDGAR I. KING

LABOR LAW

The most interesting decision during the past year was rendered by the Supreme Court in the case of *Perko v. Local No. 207, International Ass'n of Bridge, Structural & Ornamental Iron Workers.*[1]

This was an action by a foreman to recover damages for an alleged wrongful interference with the plaintiff's right to work.[2] Plaintiff's petition alleged that the union and certain of its officials had conspired against him to deprive him of his right to continue working as foreman for his most recent employer or any other company in the geographic area served by the Local, by suspending his foreman's rights and demanding his discharge. A strike was instituted, it was said, to enforce the demand, and plaintiff was discharged. The common pleas court dismissed the action on defendant's motion, for lack of jurisdiction over the subject matter. This judgment was sustained by the court of appeals.

In a per curiam opinion, the Supreme Court held that plaintiff was entitled to maintain the action and overruled the lower courts. Since this was an action for damages for a common law tort, the court reasoned that its maintenance was not precluded by the fact that the union had also committed an unfair labor practice within the terms of the Labor

14. Stauder v. Associated General Fire Co., 105 Ohio App. 105, 151 N.E.2d 583 (1957).

Management Relations Act, relying upon the recent decisions of the United States Supreme Court in the *Russell* and *Gonzales* cases.[3] Neither was the action precluded by plaintiff's failure to first exhaust the remedies allegedly provided by the union constitution and bylaws. The court pointed out that the plaintiff was not asking for reinstatement or other equitable relief, that it was not established that internal remedies had been provided for the consideration of damage claims, and that such a course would be vain and futile under the circumstances of this case in any event.[4]

This decision falls within one of the biggest chinks in the federal pre-emption doctrine, and is clearly supported by the two cases cited. The utilization of the state forum for damage actions in cases of this kind appears to be developing into a popular trend. The availability of this means of protecting the rights of the individual, be he member or nonmember, may well become one of the most significant modern developments in the law of labor relations. For one thing, it may help to demonstrate that legislative action to outlaw the union shop and other forms of union security provisions, are unnecessary. Damage awards could be a powerful force in discouraging improper union action. At the same time, the ultimate value of this device may depend in large measure upon its judicious application, for, as has been recently pointed out, substantial harm to the union movement could result.[5] It remains to be seen how far this trend will carry.

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1. 168 Ohio St. 161, 151 N.E.2d 742 (1958). See discussion in ADMINSTRATIVE LAW section, *supra* and TORTS section, *infra.*

2. It seems clear enough from the allegations of the petition that there had been an interference with plaintiff's contract of employment, but whether such interference gives rise to an actionable wrong beyond this (with respect to other employers in the area) is another matter. For a discussion of the so-called "right to work," see, Teple, *A Closer Look at "Right to Work" Legislation,* 9 WEST. RES. L. REV. 5 (1957).

3. U.A.W. v. Russell, 356 U.S. 634 (1958) in which it was said that the availability of partial relief under the federal act does not deprive a person of his common law right of action in tort for all damages suffered. IAM v. Gonzales, 356 U.S. 617 (1958), in which it was held that nothing in the federal Labor Management Relations Act deprives the state of power to award damages for loss of wages to a union member expelled in violation of his rights under the union constitution (mandatory reinstatement was also recognized as a remedy available under California law).

4. Futility is one of the recognized exceptions to the rule that courts normally will not entertain actions based upon alleged wrongful expulsion until the internal remedies have first been exhausted. The exception is applied, for instance, when the same individuals who file the charges will sit in judgment when the matter comes up for hearing under the procedure provided within the union structure. See, MATHEWS, LABOR RELATIONS AND THE LAW 915-16 (1953); Crossen v. Duffy, 90 Ohio App. 252, 103 N.E.2d 769 (1951).

5. Smoot, *Staggering Punitive Damages Against Labor Unions,* 7 CLEV. MAR. L.

The remaining cases reported in 1958 involved injunctions against picketing. This remains the most prolific source of litigation in this field of law, and the most recent decisions serve to further define the Ohio rule regarding the right to picket.

In *P. & S. Operating Co. v. Brotherhood of Painters and Paper Hangers of America, Dist. Council No.* 12,[6] recognition picketing by strangers was again held to be unlawful by the Ohio Supreme Court. A motion picture theater operator had brought action for damages and for an injunction to restrain the picketing. Defendant's demurrer was sustained in common pleas and the court of appeals affirmed, but the Supreme Court reversed and remanded, one judge dissenting.[7] The public policy of the State of Ohio, it was said, precluded picketing by persons never employed by the employer, the sole purpose of which was to bring pressure upon the employer to compel his employees to join the union.[8] There was no dispute between the employer and his employees, and the union did not represent anyone ever employed there.

In *Brown v. Amalgamated Meat Cutters,*[9] on the other hand, employees of the store definitely were involved and yet the same result was reached. The injunction sought by the employer against the picketing union was granted.[10]

Twelve grocery clerks had signed union membership application cards, and when the employer still refused to recognize the union these employees, along with some others, walked out. All but two subsequently returned, however, and renounced the union in petitions presented to the employer on two different occasions. The applications for membership had never been accepted by the union, but the fact remained that

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REV. 524 (1958). This writer stresses the importance of the punitive damages which the state court judgments included in both the *Russell* and *Gonzales* cases.

6. 168 Ohio St. 73, 151 N.E.2d 364 (1958).

7. Judge Zimmerman, without opinion, declined to adopt the majority view. In his dissenting opinion in the earlier case of Chucales v. Royalty, 164 Ohio St. 214, 129 N.E.2d 823 (1955), discussed in the 1955 Survey, 7 WEST. RES. L. REV. 295 (1956), he had already expressed himself rather well.

8. The majority specifically approved and followed the earlier decisions in Crosby v. Rath, 136 Ohio St. 352, 25 N.E.2d 934 (1940) and Chucales v. Royalty, *supra.*, note 7. It is clear by this time that the court has deliberately chosen to ignore the distinction between *Crosby* and the later decisions, the picketing having been accompanied by violence in the former but not in the latter. The court also reiterated its view that the policy of a state may be established as well by judicial pronouncements of the common law as by legislative enactment. The former, of course, has the advantage of considerably greater flexibility.

9. 148 N.E.2d 357 (Ohio C.P. 1956).

10. This decision was affirmed in 148 N.E.2d 360 (1957), *appeal dismissed,* 167 Ohio St. 28, 145 N.E.2d 536 (1957).

two of the employees continued to take part in the picketing. The court in this case reasoned that there was no dispute at the time of the action, between the employer and 85% of his employees, and that the only grievance of the two who remained on strike was the employer's refusal to negotiate and sign an agreement with the union. This was construed, therefore, to be an attempt to require the employer to recognize the union against the wishes of most of the employees, which was held to be unlawful as against the public policy of the state.

Like the decision in *Anderson v. Local* 698,[11] reported and discussed in the 1957 Survey,[12] this is clearly an extension of the rule established by the Supreme Court. The question is whether the Supreme Court will allow this trend to continue, and if so, how far. If these two decisions are correct, as a practical matter, any picketing by less than a majority of the employees of the establishment is just as unlawful as stranger picketing.

In *Faxon Hills Construction Co. v. United Brotherhood of Carpenters & Joiners of America,*[13] defendant union conducted a campaign for support among the employees and then called a strike when the employer refused to negotiate. The employer first filed an unfair practice charge, stating that commerce was affected within the meaning of the federal act, but the N.L.R.B. refused to take jurisdiction. Suit was then instituted in the common pleas court to enjoin the picketing which attended the strike. The injunction was granted, but the court of appeals dismissed the petition and dissolved the injunction on the ground that the lower court lacked jurisdiction over the subject matter. The Supreme Court held that an allegation in an unfair practice charge filed with the N.L.R.B. that interstate commerce was affected, is only a legal conclusion and not conclusive as to the actual existence of such an effect so as to preclude an Ohio court from having jurisdiction, particularly where the federal agency refuses to assert jurisdiction and no other evidence appears as to the effect on commerce.[14] The decision of the court of appeals was reversed.

EDWIN R. TEPLE

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11. 101 Ohio App. 542, 140 N.E.2d 432 (1956), *appeal dismissed,* 165 Ohio St. 512, 137 N.E.2d 752 (1956).

12. 9 WEST. RES. L. REV. 338, 340 (1958).

13. 168 Ohio St. 8, 151 N.E.2d 12 (1958).

14. The court explained that a statement of fact in a pleading, which is material and competent, constitutes a judicial admission, but it must be one of fact and not merely a legal conclusion. The allegation of a conclusion, it was pointed out, binds neither the pleader nor the court.