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Labor Law

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the rule against perpetuities was apparently instituted because of a misunderstanding as to this rule. Testatrix by will created a trust with power in the trustee to divide principal and interest among five named persons, including three named grandsons, until one of the named grandsons attained the age of thirty years, or would have attained that age "if he lived so long." If at the end of this period any principal remained it was to be divided among any of the three named grandsons who survived to this date. The will also provided that the three named grandsons should take the entire estate absolutely and in fee simple if the trust failed for any reason. Obviously the measuring lives are the five named persons and all interests would either vest or not vest within the period of their lives. As the court said, "The only possible ultimate beneficiaries of this trust were living at its creation."²⁶

ROBERT N. COOK

INSURANCE

Because of the lack of significant opinions rendered on Insurance during the period covered by this survey, Mr. Justin Smith has not submitted an article this year.

THE EDITORS

LABOR LAW

The decisions of the Ohio courts in this field, as reported last year, were sparse in contrast with the large number reported during 1959.

The exhaustion of administrative remedies became the controlling issue in *Ladd v. New York Central Railroad*.¹ A former employee brought an action against the railroad for an alleged breach of his contract of employment as a result of the employee's disqualification for further service on the basis of his alleged physical disability. In the petition it was claimed that the defendant had wrongfully and fraudulently violated the provisions of certain rules governing the defendant and its employees, which rules made up the collective bargaining agreement between them. Suit was brought by the plaintiff as a third party beneficiary. Upon submission of the issues to the jury, a lump sum verdict was returned

26. *Id.* at 829.

in the amount of \$50,000, for which judgment was rendered; this judgment was affirmed by the court of appeals.

The Ohio Supreme Court, in a unanimous opinion, held that the Federal Railway Labor Act, by its terms, formed an integral part of any brotherhood agreement with a railroad. This act, it was pointed out, established a National Railway Adjustment Board to hear and determine disputes arising between an employee and a railroad. It would be difficult to conceive, the court said, of a more complete administrative procedure for the settlement of all grievances and disputes between the railroads and their employees. The procedural steps provided under the rules making up the private agreement had been followed all the way to the chief operating officer of the railroad. However, no further appeal was taken, and the dispute was not submitted to the National Board. This amounted to a failure to exhaust the administrative remedies available to the plaintiff, according to the supreme court. Therefore, it was held that the action in the lower court had been prematurely brought and that the petition should have been dismissed. The judgment of the court of appeals was reversed, and final judgment was rendered for the defendant.

McAllister Dairy Farms, Incorporated v. Amalgamated Meat Cutters, Local 200,² involved a contempt proceeding against two individuals and two labor unions. One of the defendants, while on the union's picket line, had committed an act of violence by stabbing another employee with a can opener, in violation of a court order permitting peaceful picketing. The common pleas court not only found the picket guilty, but also found the two unions guilty and imposed a fine of \$500. Upon examination of the record, the court of appeals failed to find any evidence that either union had conspired with the picket or had aided or abetted any act in violation of the court's order. Instead, it was found that the record contained evidence that the unions had admonished their members, especially those on the picket line, to obey the court's order. The judgment against the unions was reversed.

An earlier decision of the court of appeals in *Faxon Hills Construction Company v. United Brotherhood of Carpenters and Joiners of America*³ has just been reported. The court held that where the employer, in an action in the state court, introduced into evidence a charge filed with the National Labor Relations Board alleging that certain union activities amounted to an unfair labor practice affecting interstate commerce, such record established, for jurisdictional purposes, that the activities of the union did in fact affect interstate commerce and therefore, came within the scope of the federal act, so as to deprive the state court

1. 170 Ohio St. 491, 166 N.E.2d 231 (1960).

2. 162 N.E.2d 881 (Ohio Ct. App. 1958).

3. 109 Ohio App. 21, 163 N.E.2d 393 (1957).