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Constitutional Law : Due Process: Labor Disputes Under Wisconsin Labor Code

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NOTE

CONSTITUTIONAL LAW—DUE PROCESS—LABOR DISPUTES UNDER WISCONSIN LABOR CODE.—Organized labor, for years, has contested the use of the injunction in labor disputes, and has long been active in legislative circles to secure statutory relief from the use by the courts of this powerful weapon.¹ In 1887 such injunctions were practically unknown. Unlawful activities by labor in connection with industrial disputes were dealt with in the criminal courts or by self-help on the part of employers. It was not until the great railway strike of 1894 directed against the Pullman Company that the full possibilities of the injunction in the field of labor disputes were generally realized.² When the Supreme Court upheld the injunction, a precedent was created which had great influence in the state courts, and the budding tendency of those courts to grant injunctive relief in labor cases was confirmed.³ The period from 1895 to the beginning of the present decade saw a progressive increase in the number of labor injunctions granted by the state courts.

All these developments met with uncompromising hostility on the part of organized labor which sought relief through legislation. The Clayton Act, enacted in 1914, was supposed to be a step in the right direction.⁴ Indeed Samuel Gompers informed the trade union movement that the words, "the labor of a human being is not a commodity or article of commerce" as contained in Section Four of the Act were sledge hammer blows to the wrongs and injustices so often inflicted upon the workers.⁵ But labor was doomed to disappointment. The Supreme Court in *Duplex Printing Press Co. v. Deering*⁶ held that the term "labor dispute" as used in Section 20 of the act must be confined to one between an employer and his employees. This decision prevented the Clayton Act from giving effective support to labor in its endeavor to strengthen its bargaining position; for the strength of that position depends upon broad unionization, which can only be secured by allowing the unions to use their available weapons against recalcitrant employers even though there be no present dispute as to wages or condition of employment between a particular employer and his employees. After the Clayton Act was passed numerous states enacted anti-injunction legislation substantially following the federal act. The state courts, including that of Wisconsin, followed the construction of the Supreme Court in holding that a labor dispute could exist only where there existed the relationship of employer and employee.⁷

¹ FRANKFURTER & GREEN, *THE LABOR INJUNCTION* (1930).

² *United States v. Debs*, 158 U.S. 564, 15 Sup. Ct. 900, 39 L.ed. 1092 (1895).

³ *Sherry v. Perkins*, 147 Mass. 212, 17 N.E. 307 (1888); *Murdock, Kerr & Co. v. Walker*, 152 Pa. 595, 25 Atl. 492 (1893).

⁴ 38 STAT. 738 (1914), 29 U.S.C.A. § 52 (1926). Section 20 provided in part: "No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case involving or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury . . ."

⁵ Frankfurter & Greene, *Legislation Affecting Labor Injunctions* (1929) 38 YALE L. J. 879. The identical phrase appears in the Wisconsin Statutes of 1927 in Section 133.05.

⁶ 254 U. S. 443, 41 Sup. Ct. 172, 65 L.ed. 344 (1921).

⁷ *Monday Co. v. Auto. etc. Workers*, 171 Wis. 532, 177 N.W. 867 (1920); *Gévas v. Green etc. Club*, 99 N.J. Eq. 770, 134 Atl. 309 (1926); *Harvey v. Chapman*, 226 Mass. 191, 115 N.E. 304 (1917).

After the decision in the *Duplex* case, injunctions in labor controversies seemed to be the order of the day.⁸ Many disinterested persons became highly critical of the courts because of such intervention. Congress was besieged with various bills seeking to restrict the power of courts to issue injunctions in cases involving dynamic social and economic problems. In the great economic struggle between capital and labor, the decided trend of public opinion seemed to be toward the conviction that labor is entitled, through the medium of collective bargaining, to a greater recognition of its rights and that legislation should be enacted further to foster the welfare and interests of the wage-earner. This crystallization of public opinion culminated in the passage by Congress in 1932 of the Norris-LaGuardia Act. Several states have enacted laws identical in nature.⁹

The Norris Act, and the state statutes which have adopted its terms, sought to circumvent the decision of the *Duplex* case by including in the definition of "labor dispute" the clause "regardless of whether or not the disputants stand in the proximate relation of employer and employee." This enactment marks the dawn of a new era in the domain of labor injunctions. The various state courts whose legislatures have added the clause to the bill, are giving full scope to the definition which the legislatures intended it should have.¹⁰ The Wisconsin court in two recent cases has upheld the right of others than the immediate disputants to take part in labor disputes.¹¹ In the first of these, the *American Furniture Co. v. Chauffeurs, Teamsters, and Helpers Union*,¹² there was no dispute between the employer and the employees. The defendant union picketed the store to compel the company by economic pressure to execute certain contracts with them. The plaintiff's employees were opposed to signing these contracts. The court in a four to three decision upheld the right of the union to picket the store. In the second case which was decided at the same term of court,¹³ a labor dispute was found to exist when there was a controversy between a union and a contractor whom the union sought to compel to obey union rules under which the contractor would be unable to work himself though there was no dispute between the contractor and his employees and he was willing to adopt all other union terms. Although the two subjects involved in these decisions lend themselves to individual and personal views they were not decided on that basis. They are the result of a solemn effort to give full and true effect to the legislative mandate.

⁸ *Truax v. Corrigan*, 257 U.S. 312, 42 Sup. Ct. 124, 66 L.ed. 254 (1921); WITTE, *THE GOVERNMENT IN LABOR DISPUTES*, pp. 272-273 (1932); Note (1935) 33 MICH. L. REV. 777.

⁹ 47 STAT. 70 (1932), 29 U.S.C.A. §§ 101-115 (1932); Wis. Stat. (1937) § 103.51 *et seq.*; Riddlesbarger, *State Anti-Injunction Legislation* (1935) 14 ORE. L. REV. 501.

¹⁰ *Wallace Co. v. International Assc. of Mechanics*, 155 Or. 652, 63 P. (2d) 1090 (1936); *Starr v. Laundry and Dry Cleaning Workers' Union*, 155 Or. 634, 63 P. (2d) 1104 (1936); *American Furniture Co. v. Chauffeurs, Teamsters, and Helpers Union*, 222 Wis. 338, 268 N.W. 250 (1936); *Senn v. Tile Layers Protective Union*, 222 Wis. 383, 168 N.W. 270 (1936). See also *Schuster v. International Ass'n. of Machinists*, (Ill. App. 1937) 12 N.E. (2d) 50.

¹¹ 222 Wis. 338, 268 N.W. 250 (1936); 222 Wis. 383, 268 N.W. 270 (1936).

¹² 222 Wis. 338, 268 N.W. 250 (1936).

¹³ 222 Wis. 383, 268 N.W. 270 (1936).

In *Wallace Co. v. International Association of Mechanics*,¹⁴ the Oregon Supreme Court held the statute applicable to an employer's suit to enjoin picketing by a labor union though none of the employees were members of the union and no dispute existed between the employer and the employees.

The federal courts which have passed upon the question have not been in complete accord. The District Court for the Eastern District of Michigan held a labor dispute to exist where the union had requested the plaintiff moving picture theater to discharge from its employ a sign writer who was not a member of any union when the theater refused.¹⁵ The Circuit Court of Appeals for the Seventh Circuit has taken the opposite viewpoint. In *United Electric Coal Companies v. Rice*¹⁶ the plaintiff had a contract with the United Mine Workers of America, and this contract called for the employment of members of this union. Many of the employees joined a new union, and it demanded that the employer break his contract with the old union; there was no dispute as to wages and other conditions of employment. The court in affirming the decree enjoining defendants reached the conclusion that a liberal interpretation of the labor dispute provision of the Norris-LaGuardia Act required the existence of a dispute between the employer and the employee growing directly out of their relationship.

In *Lauf v. E. G. Shinner & Co.*,¹⁷ the Circuit Court of Appeals for the Seventh Circuit adhered to the construction which they had given in the *Rice* case. The question involved the right of a union to picket the plaintiff's market in Milwaukee. In that case there was no dispute between the employer and employees, and the labor union did not represent any of the employees of the plaintiff. It was held that no labor dispute existed within the meaning of the Wisconsin or Norris-LaGuardia Acts, and that on the authority of the *Rice* case there must be a labor dispute between the employer and his employees before outsiders might participate. The *Lauf* case has recently been considered by the Supreme Court of the United States.¹⁸ The judgment of the circuit court of appeals was reversed and the case was remanded to the district court. The Supreme Court held that the district court was bound by the construction given to the state act by the state supreme court, that the state court had decided that a dispute like this was a labor dispute, and that the district court had not in any event made sufficient findings of fact with respect to irreparable injuries and lack of police protection as is required under the Norris-LaGuardia Act to support any injunction which the court may otherwise issue. Whether the particular acts of picketing and publicizing could be permitted, assuming that the dispute was a labor dispute within the meaning of the Wisconsin Labor Code, the Court said, must await determination after further inquiry before the district court.

The Wisconsin Supreme Court in the *American Furniture Company* case had before it these two cases from the Circuit Court of Appeals of the Seventh Circuit. Despite the decision in

¹⁴ 155 Or. 652, 63 P. (2d) 1104 (1936).

¹⁵ *Cinderella Theatre Co. v. Sign Writers' Local Union*, (D. C. Mich. 1934) 6 F. Supp. 164.

¹⁶ (C.C.A. 7th, 1935) 80 F. (2d) 1.

¹⁷ (C.C.A. 7th, 1936) 82 F. (2d) 68.

¹⁸ *Lauf v. E. G. Shinner & Company*, U.S.L. Week, March 1, 1938, at 735.

the *Lauf* case which specifically interpreted the Wisconsin Labor Code, the court, with Mr. Justice Wickhem writing the decision, held that the language of the act was plain and unambiguous, and did not exact as a prerequisite to a labor dispute that there be a controversy between an employer and his employees. He specifically held that the statute makes the scope of a controversy broad enough to include questions relating to association or representation of persons relative to conditions of employment or industrial relations, and this regardless of whether or not the disputants stand in the proximate relation of employer and employee. In *Senn v. Tile Layers Protective Union*,^{18a} which was affirmed on appeal to the United States Supreme Court,¹⁹ the court was faced with the contention that the right to work in a business with his own hands is a right guaranteed to a man by the Fourteenth Amendment, and that the state may not authorize unions to employ publicity and picketing to induce him to refrain from exercising it in the absence of any dispute between him and his men. The Wisconsin court in refusing the injunction held that what the union was doing was asserting their rights under the acts of the legislature for the purpose of enhancing work for themselves, and those whom they represented, and since their act of peaceful picketing was a lawful form of appeal to the public to turn its patronage from the plaintiff to the concerns in which the welfare of the members of the union was bound up, such action was justifiable. Mr. Justice Brandeis, speaking for the Supreme Court in upholding the decision reached by the Wisconsin court, held that the Wisconsin labor law was a matter wholly for the public policy of the state and as such was not the concern of the federal courts. It is interesting to note that the same principles which motivated his dissenting opinion in the *Duplex* case rendered seventeen years ago are found in his opinion in the *Senn* case.²⁰

The Wisconsin legislature and supreme court have put a strong weapon in the hands of the labor unions. There is no doubt but that the Wisconsin law was drawn to promote unionism, just as the same idea was written into our "little Wagner law" in the "all-union agreement clause" by which an employer and a labor organizer can bargain to affect the rights of the workers through a closed shop agreement.²¹ Whether the unions will be able to handle the problem intelligently, is one that will become more apparent in the future.

RICHARD M. RICE.

^{18a} 222 Wis. 383, 268 N.W. 270 (1936).

¹⁹ 301 U.S. 468, 57 Sup. Ct. 857, 81 L.ed. 1229 (1937).

²⁰ *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 41 Sup. Ct. 172, 65 L.ed. 349 (1921).

²¹ WIS. STAT. (1937) § 111.07.