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Labor Law - Judicial Interpretation of Wisconsin Employment Peace Act

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LABOR LAW — JUDICIAL INTERPRETATION OF WISCONSIN EMPLOYMENT PEACE ACT.

The Wisconsin Employment Peace Act[1] becomes applicable in a labor controversy in Wisconsin and remains so until such time as action is taken by the National Government under the National Labor Relations Act.[2] The Act includes many provisions which are very similar to corresponding provisions of the National Labor Relations Act and contains a number of important innovations not to be found in the Federal Act.[3]

This note will be confined to a discussion of cases interpreting the two principal innovations of the Wisconsin Act. These are: (1) addition to the protected right of labor to organize and bargain collectively of the right to refrain from any or all such protected labor activity, and (2) addition of a list of unfair labor practices prohibited employes which parallels the list of unfair labor practices prohibited employers; the latter list being the same under both the Wisconsin and National Acts.[4]

Interpretation of the statute has centered pricipally around these two innovations. Those challenging these provisions have advanced two main arguments. These arguments are: (1) the attempted regulation of picketing (through the unfair labor practices sections) violates the guarantee of free speech in the Federal Constitution, and (2) the statute conflicts with, and deprives persons of, rights protected by the National Labor Relations Act.[5]

With reference to the right to refrain from protected labor activity, the second argument was advanced in *Christoffel v. Wisconsin Employment Relations Board.*[6]

In this case two employes made a complaint to the board charging Christoffel and Local 248 of the UAW-CIO with unfair labor practices. The charged unfair labor practices included (1) coercion and intimidation of the company to discharge complainants, and (2) intimidation of complainants by threatening bodily harm and other injuries because of their continued refusal to join the union. These charges were based on section 111.04 of the Wisconsin Statutes.[7]

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[1] Chapter III, Wis. Stat., as amended by Chapter 465, Laws of Wisconsin (1943).
[2] Wisconsin Labor Relations Board v. Fred Reupping Leather Company, 228 Wis. 473, 279 N. W. 673 (1938), and cases following.
[3] 29 U. S. C. A. 157 (1938).
[4] Section 8, National Labor Relations Act, and Sec. 111.06 (1), Wis. Stats.
[5] Section 7, National Labor Relations Act, 29 U S. C. A. 157.
[6] 243 Wis. 332, 10 N. W. 2d 197 (1943).
[7] Section 111.04 provides: "Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

The plaintiffs challenged the act on the ground that section 111.04 dilutes and impairs rights protected by section 7 of the National Act.

The court, speaking through Mr. Justice Fowler, dismissed the plaintiffs' contention as follows:[8]

> "Plaintiffs' counsel contend that section 111.04, Stats., of the state act on which the instant proceeding is based is invalid because in conflict with section 7 of the national act, 29 USCA, Sec. 157. The wording of the two sections is identical except in two particulars: (a) The state act declares the right of employes to engage in 'lawful concerted activities' referred to, while the National Act does not contain the word "lawful". It certainly cannot be implied that under the National Act any activities but lawful ones may be engaged in. Thus the insertion of 'lawful' in the state act raises no conflict. (b) The state act adds to the national act the following "and such employes shall also have the right to refrain from any or all such activities."
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> "As the National Act says nothing at all respecting the right of employes to refrain from joining a labor organization or assisting in its activities, we see no conflict between the two acts."

The employe unfair labor practice section of the statute[9] was first interpreted by the Wisconsin Court in *Hotel and Restaurant Employes International Alliance, Local No. 122, A. F. of L. v. Wisconsin Employment Relations Board,*[10] in which case the Union placed stress upon the applicability of the Federal guaranty of free speech.

In this case the Wisconsin Board found that the Union had committed unfair labor practices consisting of picketing and carrying on the concomitants of a strike without obtaining approval of the majority of the workers concerned through a secret ballot as required by the act.[11] The board ordered the union to cease and desist from (1) picketing, and (2) attempting to hinder or prevent, through threats and intimidation, coercion, or force of any kind, the pursuit of lawful work by employes of the hotel.

The Wisconsin Supreme Court upheld the board's order stating:[12]

> "As we understand and construe the statute the right of free speech is not interfered with. The conduct complained of in this case and described as "picketing", was not the sort of conduct

[8] Supra, footnote 6, at page 342.

[9] Wis. Stat., Sec. 111.06 (2) provides: "It shall be an unfair labor practice for an employe individually or in concert with others: . . . (e) To cooperate in engaging in, promoting or inducing picketing, (. . .), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike."

[10] 236 Wis. 329, 294 N. W. 632, 295 N. W. 634 (1941).

[11] Wis. Stat., Sec. 111.06 (2) (e).

[12] Supra, footnote 10; at p. 343.

that was indulged in by the defendant in the *Thornhill* case, supra . . . It was mass picketing, organized and carried on by the Unions supplemented by boycott and violence, and was clearly within the exception stated in the *Thornhill* case warranting state action."

The Union appealed to the Supreme Court of the United States. In a decision affirming the Order, Justice Frankfurter said:[13]

"Whether Wisconsin has denied the petitioners any rights under the Federal Constitution is our ultimate responsibility. But precisely what restraints Wisconsin has imposed upon the petitioners is for the Wisconsin Supreme Court to determine. — That Court has of course the final say concerning the meaning of a Wisconsin law and the scope of administrative orders made under it. — What is before us, therefore, is not the order as an isolated, self-contained writing but the order with the gloss of the Supreme Court of Wisconsin upon it."

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"That the order forbids only violence, and that it permits peaceful picketing by these petitioners, is made abundantly clear by the expressions of the court."

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"As the order and the appropriate provisions of the statute upon which it is based leave the petitioner's freedom of speech unimpaired, the judgment below must be affirmed."

Another case in which stress was placed on the Federal guarantee of free speech was that of *Wisconsin Employment Relations Board v. Milk and Ice Cream Drivers and Dairy Employees Union, Local No. 225, A. F. of L.*[14] This case presented the question whether peaceful picketing can be prohibited under the act where its purpose is to coerce the employer into granting a labor demand which he is forbidden to grant under the act.

Specifically the board made a finding of fact that the union was attempting to coerce the Company to grant an "all-union" provision where such a provision had been rendered unlawful by an employe referendum conducted in accordance with the terms of the act.[15] The Union was ordered to cease and desist. In the Supreme Court of Wisconsin it was held that picketing, even though peaceful, may be prohibited where no unfair labor practice has been committed by the

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[13] 315 U. S. 437 at pp. 440-442, 62 S. Ct. 706 (1942).

[14] 238 Wis. 379, 299 N. W. 31, 316 U. S. 668, 86 L. ed. 1744, 62 S. Ct. 1035 (1941).

[15] Wis. Stat., Sec. 111.06 (1) (c) provides in part: "An employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where at least three-quarters of such employes voting (provided such three-quarters of the employes also constitute at least a majority of the employes in such collective bargaining unit) shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board."

employer, and where its purpose is to coerce the employer to accede to an unlawful demand. Prohibition of such picketing was held not to be a violation of the right of free speech guaranteed by the Federal Constitution. In this decision Justice Fowler stated:[16]

> "It is said in American Furn. Co. v. I. B. of T. C. & H. of Amer., 222 Wis. 338, 367, 268 N.W. 250, that the terms of a statute 'cannot be stretched to permit a Union to enforce by picketing demands which the employer may not lawfully accede to.' Picketing that so aims is unlawful, though it is free from violence."
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> "To assert that one is unfair to organized labor may properly be adjudged to be an unfair labor practice where, as here, the evidence shows that the assertion is false."

In *Retail Clerks Union, Local No. 1403, A. F. of L. et. al., v. Wisconsin Employment Relations Board,*[17] the question of whether "stranger picketing" may be prohibited without violating the guaranty of free speech was presented. The board made a finding of fact that the Union was picketing the Racine store of the Sears Roebuck Company for the purpose of compelling the employes of that store to join the Union, and declared this to be an unfair labor practice.[18] The board ordered the Union to cease and desist. The Supreme Court of Wisconsin upheld the order, and in the opinion Justice Martin stated:[19]

> "Peaceful picketing is now recognized as an exercise of the right of free speech and therefore lawful . . . However, it cannot be made the cover for concerted action against an employer in order to achieve an unlawful or prohibited object, such as to compel an employer to coerce his employes to join a union."
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> "While workers may engage in concerted action against persons with whom they have a labor dispute, if they combine a lawful and proper object with other obj,ects which are unlawful and improper, their action is not for a proper object so long as they insist upon improper objects."

In *Allen Bradley, Local No. 1111 UERMW of A (CIO) v. Wisconsin Employment Relations Board and Allen Bradley Company*[20]

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[16] Supra, footnote 14, pp. 395, 396, 398.
[17] 242 Wis. 21, 6 N. W. 2d. 698 (1942).
[18] Wis. Stat., Sec. 111.06 (2) (b) says in part: "It shall be an unfair labor practice for an employe individually or in concert with others: (b) To coerce. intimidate or induce any employer to interfere with any of his employes in the enjoyment of their legal rights, including those guaranteed in section 111.04.—"
[19] Supra, footnote 17, at pages 37, 38.
[20] 237 Wis. 164, 295 N. W. 791 (1941).

the whole employe unfair practice section[21] was challenged on the ground that it impaired rights guaranteed by the National Act.

In this case the board found the Union, though engaged in a lawful strike, guilty of unfair labor practices and ordered it to cease and desist from (1) mass picketing, (2) threatening employes with physical injury or property damage, (3) obstructing and interfering with the free use of the streets, (4) obstructing and interfering with entrance to and egress from the plant, and (5) picketing the residences of employes. The order permitted the use of fifteen pickets at any one time during the day. On appeal to the Supreme Court of Wisconsin[22] the only question raised was constitutionality of the act, the contention being that it diluted, impaired and defeated federally protected rights. The court affirmed the order and stated:[23]

> ". . . There can be no conflict between the acts until they are applied to the same labor dispute. They are upon two different planes. The National Labor Relations Act deals with labor relations only as a means of protecting inter-state commerce. The Wisconsin Employment Peace Act deals with labor relations in the exercise of the police power of the state."
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> "The appellants, while asserting that they do not do so, in fact argue this case as if the failure of Congress to define unfair labor practices of employes operates as a license to employes in the enforcement of their demands to do any or all of the things declared by the Wisconsin Employment Peace Act to be unfair labor practices. This argument stems from the idea that Congress is regulating labor relations instead of inter-state commerce."

On appeal to the Supreme Court of the United States,[24] the order was affirmed and, in the opinion of the court Mr. Justice Douglas stated:[25]

> "Since Wisconsin has applied to appellants only parts of the State Act, the conflict with the policy or mandate of the Federal Act, must be found in those parts. But, as we have said, the Federal Act does not govern employee or Union activity of the type here enjoined. And we fail to see how the inability to utilize mass picketing, threats, violence, and other devices which were here employed impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed or protected by the Federal Act."

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[21] Wis. Stat., Section 111.06 (2).
[22] 237 Wis. 164, 295 N. W. 791 (1941).
[23] Supra, footnote 22. at pp. 179, 180.
[24] 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154 (1942).
[25] Supra, footnote 24, at p. 750.

Upon the basis of the above cases it may be said that the courts have upheld those provisions of the Employment Peace Act of Wisconsin which (1) prohibit coercive measures on the part of labor organizations unless the majority of the employes of an employer have voted for a strike, (2) prohibit coercive measures to compel an employer to engage in or permit action prohibited by law, such as entering into an all-union agreement which has been rendered illegal by an employe referendum, or coercing his employes to join a Union in violation of their statutory right to refrain from such activity, (3) prohibit all picketing where the charges of unfair labor practice made by the Union against the employer are found by sufficient evidence to be false, and (4) prohibit the use of mass picketing, threats, and violence in the conduct of a labor dispute.

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