

It would seem that there are public policy arguments which should privilege such reports from inspection and production. It is not so easy to accomplish this purpose in the face of Ohio G. C. Sec. 11552. It might be done by limiting the effect of that section. Thus in the *Ex parte Schoepf* case (supra) the court said, "The efforts of the plaintiff appear to us to be directed toward a 'fishing' for the nature of the defense and persons by whom it is to be established, rather than to obtain competent and necessary evidence to sustain the plaintiff's petition." In the principal case the court reaches the same result by an extension of the lawyer-client privilege. If this view is to be followed, it would seem that the report should be privileged while it is in the hands of the insurance company as well as in the hands of the attorney. While this may seem to enlarge the privilege of lawyer and client, it seems less objectionable than a doctrine that a document which could be subpoenaed while in the hands of a client may find sanctuary in the hands of an attorney.

PHILIP J. WOLF

LABOR LAW

LEGAL ASPECTS OF THE SIT-DOWN STRIKE.

The latest weapon in the ceaseless conflict between capital and labor is the sit-down strike. It is a swift moving effective technique that has served labor well in recent months. The success of the General Motor's strike is an indication that it will be utilized more and more by organized labor.

It is recognized by this writer that the legal aspect of the sit-down strike situation is a comparatively unimportant portion of the whole problem. The economic and social ramifications of such a class struggle are interwoven into the controversy to such a degree that accepted legal theory has been relegated to a position of secondary importance. Granting that this be true, the legal questions involved are still of sufficient significance to warrant a synopsis of the subject. In view of the recent development of this technique there is little case law to guide the courts. Thus a review of the general law relative to strikes is necessary.

In Ohio the right to strike has been upheld in numerous decisions: *Parker v. Bricklayers' Union*, 10 Ohio Dec. Rep. 458, 21 Wkly. L. Bull. 223 (1889); *Brown Mfg. Co. v. Union*, 12 Ohio Dec. (N.P.) 753 (1902); *The La France Electrical Construction and Supply Co. v. International Brotherhood of Electrical Workers, Local 8, et al.*, 108 Ohio St. 61, 140 N.E. 897 (1923).

This right, however, cannot be exercised indiscriminately. To be recognized as legal the strike must be the consequence of a legitimate trade dispute. *La France Co. v. International Brotherhood supra*; *The Driggs Dairy Farms, Inc. v. Milk Drivers and Dairy Employees, Local Union No. 361 et al.*, 3 Ohio Op. 212, 49 Ohio App. 303 (1935); and note in 2 Ohio St. L.J. 301 (1936).

Not only must the ends for which the strike has been called be legal, but the means used by the striking employees to attain their objectives must conform to certain legislative and judicial standards of legality. Thus picketing, if conducted in a peaceful manner, is recognized as a legal weapon in this state. *La France Co. v. International Brotherhood, supra*; *Louis Park et al. v. Locals 108, and 167 of the Hotel and Restaurant Employees International et al.*, 22 Ohio N.P. (N.S.) 257, (1920); *Bellview Brewing Co. v. International Union of the United Brewery Workers of America et al.*, 12 Ohio N.P. (N.S.) 257, 24 Ohio Dec. 102 (1911).

Any form of picketing which amounts to violence, force, intimidation, or coercion of other employees is illegal. See *La France v. International Brotherhood, supra*. In the *La France* case it was said that "anything which tends to substitute the will of the strikers for the will of those whom they approach" is coercion. Thus picketing in such numbers as to constitute a threat of physical force or to prevent free access to the plant was declared to be illegal. (For a full discussion of the lawfulness of various forms of picketing, see *The Legal Status of the Strike, Boycott, and Picketing in Ohio*), thesis by Bruce Robert Morris, pages 41 et seq. (1932).

While several early cases in Ohio declared the primary boycott to be illegal, *Dayton Mfg. Co. v. Metal Polishers, Buffers, Platers & B. W. Union*, 8 Ohio N.P. 574, 11 Ohio Dec. (N.P.) 643 (1901); *Mulholland v. United Trades*, 13 Ohio Dec. (N.P.) 342 (1902), the later decisions declare this weapon to be legal in the presence of a legitimate trade dispute. *McCormick v. Local Union*, 22 Ohio C.D. 165 (1911); *S. A. Clark Co. v. The Cleveland Waiters' and Dispensers' Local No. 106 et al.*, 22 Ohio App. 265, 154 N.E. 362 (1926). A secondary boycott, however, is generally held to be illegal. *Moore v. Bricklayers' Union*, 23 Wkly. L. Bull 48 (1889); *Savoy Realty Co. v. McGee*, 4 Ohio Op. 88 (1935).

It is generally assumed that certain fundamental rights or privileges are secured to each party in a labor dispute. The employer has the right to conduct his business as he sees fit, to secure a supply of labor, and to acquire and protect property. These rights, however, are limited by

rights in the employee group to organize and strike, to picket peacefully, and to make use of the primary boycott. The non-striking laborers have the right to pursue their desired occupation, to labor where they please, and to make decisions uncoerced by the will of a superior force.

A study of these "rights" makes it obvious that legal support for the position of labor in the sit-down strike situation is difficult to find. The right of the employer to conduct his business as he sees fit is further abridged in that he cannot operate his plant despite the possible existence of an ample supply of labor. His property rights, as represented by the earning capacity of his plant, are seriously restricted. From the standpoint of prospective employees, the situation is little better. While a sit-down strike is in progress, a laborer desirous of securing employment in the plant embroiled in the strike is deterred by the massed force of the former employees of the company. There is a definite impairment of his freedom to labor where he pleases, to pursue his desired occupation, or to make free decisions.

Where do the rights of organized labor fit into the picture? The right to organize cannot furnish the required justification for the sit-down strike for the acts of organization must precede, at least to some extent, the actual strike and this type of strike is not a necessary step in organization. Neither can the right to strike furnish the required justification. A strike has been defined as "a stoppage or cessation of work by common agreement on the part of any number of workingmen employed by a common employer, for the purposes of obtaining or resisting a change in the conditions of employment." *Park v. Locals, supra*. If we consider this "stoppage or cessation of work" to be an absolute termination of the employer-employee relationship an employee would seem to be under a duty to leave the employers' premises within a reasonable time. Where there is a failure to do this the conclusion seems inescapable that the sit-down striker is a mere trespasser. The "right to strike" does not carry along with it the right to trespass. While it seems likely that the courts will follow the above reasoning it is submitted that the logical point of departure for a justification of the sit-down strike may be found in the proposition that the stoppage of work does not necessarily operate as a termination of the employer-employee relationship. It is not improbable, in view of present liberal trends, that the law might consider the employees' interest in their relationship to be of such moment as to warrant the conclusion that the employer-employee relationship remains intact as long as the laborer remains upon the premises of the employer despite the cessation of work. From this it would follow that the sit-down striker would not be a trespasser.

Will the right to picket justify an unsanctioned occupation of a plant by striking workers? A number of Ohio cases have laid down the proposition that mass picketing constitutes intimidation and is illegal. *La France v. Electrical Workers, supra*; *Eureka Foundry Co. v. Leher, 13 Ohio Dec. (N.P.) 398 (1902)*; *Brown Mfg. Co. v. Union, supra*. The sit-down strike bears some analogy to a mass picketing of the plant. This, coupled with the fact that the courts have refused to allow a picket to trespass, *New York, etc. R. R. v. Wenger, 17 Wkly. L. Bull. 306, 9 Ohio Dec. Rep. 815 (1887)*, seems to dispel any possibility that the sit-down strike might be declared legal because of its resemblance to picketing.

Assuming that the sit-down strike is illegal, what means may the employer utilize to combat it? It is settled law that the owner of property is entitled to use a reasonable amount of self help to eject a trespasser. *Laymon v. State, 12 Okla. Cr. 337, 156 Pac. 907 (1916)*; *Stacey v. Commonwealth, 189 Ky. 402, 225 S.W. 37 (1920)*. Thus it would seem to be within the legal rights of the employer to cut off heat, water or light from his plants to drive out the strikers as was done in the recent Fansteel Corporation strike at Waukegan, Illinois. Beside this he may use a reasonable amount of actual physical force without fear of legal consequences. Moreover, the employer would be privileged to call in the assistance of the law enforcement agents in the furtherance of an ejection action or under the statute making trespass a criminal act. (Ohio G.C. 12,522). The practicable disadvantages of these remedies are patent. The use of force is almost certain to be met by force with the resulting destruction of person and property. The machines would be smashed, general chaos would result and, what probably is foremost in the mind of the large manufacturer, the market for the sale of the company's product would be considerably shrunken since it seems that the public looks with disfavor upon the product of a manufacturer who has declared open warfare on organized labor.

Recent events have shown that the courts are not reluctant in issuing a mandatory injunction against a group of sit-down strikers and there is some precedent to support their action. Many of our leading cases in the law of strikes have enjoined a trespass by former employees upon the property of the employer. *Hitchman Coal Co. v. Mitchell 245 U.S. 229, 62 L. Ed. 260, 38 Sup. Ct. 65, (1917)*. *International Organization, U. M. W. A. v. Red Jacket Consolidated Coal and Coke Co., 18 Fed. (2nd) 839, certiori denied 275 U.S. 536, 72 L. Ed. 413, 48 Sup. Ct. 31*. In an Ohio case (*New York etc. R. R. Co. v. Wenger, supra*) the point was discussed and a mandatory injunction

was issued to restrain the striking employees from trespassing upon the property of the employer despite the fact that the purpose of the trespass was merely to persuade other employees to join the strike.

Even though the employer may procure a mandatory injunction with little difficulty many objections may be advanced against its utilization. In the smaller strikes its efficacy is considerable since it is usually obeyed without resort to enforcement measures. In a strike in which great numbers of employees are involved, however, the possibilities of voluntary compliance with the order are inconsiderable. In such a situation enforcement measures would be productive of as much damage to property as if the employer had used self-help. The buying public, however, does not feel the same resentment toward the use of force when that use is in conjunction with proper legal proceedings. Whereas in the self-help situation only the rights of the employer furnish the justification for physical conflict, once the injunction has been issued another justification arises, i. e., the maintenance of the position and dignity of the judicial system. The mandatory injunction, then, seems to be the most suitable weapon for the employer to combat the sit-down strike situation.

It is within the bounds of possibility that the employer might bring a civil action against the individual strikers or the union that fomented the dispute. While there is no doubt that the individual employee may be held liable for damages incident to an illegal strike, *Moore v. Bricklayers' Union*, *supra*; *Parker v. Bricklayers' Union*, *supra*, the question of reaching the funds of an unincorporated union is worthy of some discussion. The problem was settled in the federal courts by the case of *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 66 L. Ed. 975, 27 A.L.R. 762, 42 Sup. Ct. 570, 148 Ohio C.C.A. 495 (1922), where it was held that such a voluntary association could be classed as a legal entity for the purposes of suit and that the funds of such a body might be reached by attachment. In several states, notably California, Connecticut, Montana, New Jersey, Texas and Vermont, specified statutes have been enacted providing that unincorporated associations are subject to suit. Oakes, *Organized Labor and Industrial Conflicts*, p. 116 (1927). The weight of authority in those states in which there is no relevant statute seems to consider a labor union to be a proper subject of suit. *Michaels v. Hillman*, 183 N.Y.S. 195, 112 Misc. 395; *Clarkson v. Laiblan*, 216 S.W. 1029, 202 Mo. App. 682. The case law on the subject in Ohio is peculiarly meager. In *Parker v. Bricklayers' Union*, 10 Ohio Doc. Rep. 458, 21 Wkly. L. Bull. 223 (1889), both the trade union and the members who actually participated in the strike were held liable for damages resulting from an illegal boycott.

Furthermore the union was held to be a proper subject of suit for another purpose in *Kisler v. Motion Picture Operators' Union*, 24 Ohio L. Rep 144, 3 Ohio L. Abs. 594, on second hearing, 4 Ohio L. Abs. 55 (1925). Thus it would appear that in this state the employer could maintain an action for damages against the labor union instigating a sit-down strike.

Under the present status of labor law in Ohio and other jurisdictions, the sit-down strike is thus an illegal weapon, but the present legal remedies are ill-suited to meet it. Labor law, however, is constantly being modified by social forces. It seems possible that public opinion might, in time, influence the courts and legislatures to such a degree that they will sanction the use of this new weapon. Whether or not this occurs it seems probable that the sit-down strike is destined to be a major weapon in the conflict between labor and industry.

GEORGE BAILEY

LEASES

LEASES — DEFECTIVELY EXECUTED LEASES — EFFECT IN EQUITY

In 1932, the plaintiff theatre corporation agreed to lease a part of the defendant's building for a period of about eight years at an annual rent. A lease was drawn up by the plaintiff in accordance with the understanding and forwarded to the lessor who failed to have it witnessed. The lessee went into possession and in 1935 surrendered possession at the end of the yearly rental period and brought this action in which it asked for a declaration that the instrument created only a tenancy from year to year. The defendant answered and requested specific performance of the original contract. Held, that such defectively executed lease may be evidence of a contract to make a lease which created in favor of the lessor the right of specific performance. *R. K. O. Distributing Corp. v. Film Center Realty Co.*, 53 Ohio App. 438, 5 N.E. (2d) 927, 6 Ohio Op. 512, 22 Ohio L. Abs. 402 (1936).

Ohio General Code, Section 8510, provides that a "lease must be signed by the lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing must also be acknowledged by the, lessor" before one of certain named officers "who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto." Section 8517 provides that "nothing in this