LABOR LAW

Definition of Labor Dispute

The plaintiff, Paul Senn, was a tile contractor operating in Milwaukee, Wisconsin. He employed several tile layers and helpers who were non-union employees and who had no desire to join the union and he worked along side his men at the trade. The defendant Tile Layers' Union desired that Senn become a union contractor. Senn was willing to unionize his business but he would not comply with the union's demand that he refrain from working with his men as a laborer. Accordingly the union placed four pickets bearing "unfair" signs in front of the building which served as plaintiff's home and office. The picketing was without violence and was unaccompanied by any unlawful act. The plaintiff asked that the picketing be enjoined contending that no trade dispute existed. Both the trial court and the Wisconsin Supreme Court held the picketing to be legal under the Wisconsin anti-injunction statute which permitted peaceful picketing (Wisc. Stat. 103.51-103.63). *Senn* v. *Tile Layers' Protective Union, Local No. 5*, 222 Wis. 383, 268 N.W. 270, re-hearing denied 222 Wis. 383, 268 N.W. 872 (1931). The United States Supreme Court affirmed the holding of the state courts, 57 Sup. Ct. 857, 81 L. Ed. 854 (1937).

In those states that consider peaceful picketing to be lawful (See Oakes, *Organized Labor and Industrial Conflicts* (1927) p. 456), it is generally assumed that an actual trade dispute must exist before labor can utilize this weapon.

An early interpretation of the term "trade dispute" arose under section 20 of the Clayton Act [38 Stat. 730, 738 (1914) 29 U. S. C.A., sec. 52 (1927)] which provided:

> 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 between an employer and employees, or between persons employed and persons seeking employment, involving or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law. . . .

In *Duplex Printing Co.* v. *Deering*, 254 U.S. 443, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196 (1921), it was held that the terms "employer and employees" as used in the act prevented persons other than laborers actually employed by plaintiff from availing themselves of the restrictions against injunction—that members of the union to which the employees belonged could not boycott the employer. This construc-

tion was accepted in later decisions: *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U.S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, 27 A.L.R. 360 (1921); *Waitresses' Union* v. *Benish Restaurant Co.*, (1925, C.C.A. 8th) 6 Fed. (2d) 568); *International Organization, U. M. W.* v. *Red Jacket Consol. Coal & Coke Co.*, (1927, C.C.A. 4th) 18 Fed. (2d) 839 certiorari denied 275 U.S. 536, 72 L. Ed. 413, 48 Sup. Ct. 31 (1927); *Armstrong* v. *United States* (1927, C.C.A. 7th) 18 Fed. (2d) 371 certiorari denied 275 U.S. 534, 72 L. Ed. 412, 48 Sup. Ct. 30 (1927).

The Norris-LaGuardia Act (47 Stat. 70 (1932), 29 U.S.C.A. 100-115) and its counterparts now in effect in 14 states represent another attempt by legislatures to limit the use of the injunction in labor controversies. Sec. 113 defines a labor dispute as:

> Any controversy concerning terms or conditions of employment, or concerning the association, or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment *regardless of whether the disputants stand in the proximate relation of employer and employee* (italics author's).

Despite the emphatic wording of this statute some courts have stated that a labor dispute can exist only between an employer and his immediate employees. *United Electric Coal Co.* v. *Rice*, 80 Fed. (2d) 1 (1935, C.C.A. 7th), certiorari denied 297 U.S. 714 (1936); *Lauf* v. *E. G. Shimmer & Co.*, 82 Fed (2d) 68 (1936, C.C.A. 7th); *Scavenger Service Corp.* v. *Courtney*, 85 Fed. (2d) 825 (1936, C.C.A. 7th); *Safeway Stores, Inc.* v. *Retail Clerks' Union*, 51 Pac. (2d) 372 (Wash., 1935), 84 U. of Pa. L. Rev. 771 and 1027 (1936).

It is fair to conclude that until recently the prevalent judicial attitude toward labor disputes has been to confine the concept to the small, relatively unimportant conflicts that occur between the individual employer and his immediate employees even in the face of express legislative mandate to the contrary.

Prior to many of the cases set forth above, however, a trend toward a more liberal construction of the term "labor dispute" was discernible. In *Exchange Baking Co.* v. *Rifkin*, 245 N.Y. 260, 157 N.E. 130 (1927), it was stated (p. 263):

> All engaged in a trade are affected by the prevailing rate of wages. All, by the principle of collective bargaining. Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained only if union conditions prevail not in some single factory but generally. That they may prevail it may call a strike and picket the premises of an employer with the intent of inducing him to employ only union labor and it may adopt either method separately.

Following substantially the same theory a like result has been reached in other cases. *Goldfinger* v. *Feintach*, 159 Misc. 806, 288 N.Y.S. 855 (1936); *Nann* v. *Raimist*, 255 N.Y. 307, 174 N.E. 690, 73 A.L.R. 669 (1931); *Stillwell Theaters* v. *Kaplan*, 259 N.Y. 405, 182 N.E. 63, 84 A.L.R. 6 (1932).

A more liberal treatment is also apparent in some cases arising under the state and federal anti-injunction statutes, the courts holding that a trade dispute exists when there is a conflict between an employer and any body of men in the same class of employment as are his employees. *Cinderella Theater Co.* v. *Sign Writers' Local Union*, 6 F (Supp.) 209 (1934, D.C. N.J.); *Fenski Bros.* v. *Upholsterers' International Union*, 358 Ill. 239, 193 N.E. 112, 97 A.L.R. 1318 (1934); *Dehan* v. *Hotel & Restaurant Employees, etc., Local Union*, 159 So. 637 (La. App., 1935); *Geo. B. Wallace Co., et al.* v. *International Ass'n of Mechanics, etc.*, 155 Or., 63 Pac. (2d) 1090 (1936). *American Furniture Co.* v. *I. B. of T. C. & H. of A.*, 222 Wis. 338, 268 N.W. 250 (1936).

The case law of Ohio on the subject is not crystallized to such an extent that a valid generalization can be drawn therefrom. There is no statute defining the term "trade dispute" and the majority of the lower courts that have discussed the problem seem to adhere to the older view that the concept is exclusive of any conflict except one that is between an employer and his immediate employees, 24 O. Jur. 694, 2 O.S.L.J. 301 and cases cited (1936). Two cases, however, have sanctioned picketing when there was no dispute between the employer and his own employees, but only between him and the union. *The S. A. Clark Co.* v. *The Cleveland Waiters & Dispensers Local No. 106, et al.*, 22 Ohio App. 265, 154 N.E. 362 (1936); *McCormick & Fisher* v. *Local Union No. 216, Hotel & Restaurant Employees*, 13 Ohio C.C. (N.S.) 545, 32 C.D. 165 (1911).

The decision in the *Senn* case places the United States Supreme Court in line with the more modern definition of a trade dispute in that the court permitted picketing to force unionization and compliance with union rules. In view of the rapid development of large scale unionism and the resulting interdependence of interest between laboring men, whether they be fellow employees or not, the decision is salutary and shows a commendable willingness on the part of the Supreme Court to take a realistic view of labor controversies.

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