Co., 106 Super. Ct. 259, 161 Atl. 434 (1932). The presumption so provided for is not rebuttable by proof of later recovery. *Heralds of Liberty* v. *Jones*, 142 Miss. 735, 107 So. 519 (1926); *Dietlin* v. *Mo. State Life Ins. Co.*, 126 Cal. App. 15, 14 Pac. (2d) 331 (1932). *Contra: Mitchell* v. *Equitable Life Assur. Soc.*, 205 N.C. 721, 172 S.E. 497 (1934); *Graham* v. *Equitable Life Assur. Soc.*, 221 Iowa 748, 266 N.W. 820 (1936). The usual requirement that total disability must exist for sixty days prior to submission of proof of a total and permanent disability does not raise a presumption of permanence on the expiration of that period. *Paul* v. *Mo. State Life Ins. Co.*, *supra*. Such a clause is generally construed to provide "days of grace" to allow investigation by the insurer. *Lewis* v. *Metropolitan Life Ins. Co.*, *supra*; *Ginell* v. *Prudential Ins. Co.*, *supra*; *Job* v. *Equitable Life Ins. Co.*, 133 Cal. App., Supp. 791, 22 P (2d) 607 (1933). But *cf. Laupheimer* v. *Mass. Mutual Life Ins. Co.*, 224 Mo. App. 1018, 24 S.W. (2d) 1058 (1930).

PAUL W. BROWN

LABOR LAW

EMPLOYER ASSOCIATIONS AND TRADE DISPUTES

Plaintiff corporation was engaged in the business of selling and repairing automobiles. At one time it had a contract with the defendant union, but the contract had not been renewed and had terminated more than two years before the present dispute. None of plaintiff's employees belonged to any union and in fact all had voted not to join the defendant union, stating that they had no differences with the plaintiff. Just before the vote was taken, defendant had begun picketing plaintiff under a plan to picket successively one of thirty such auto dealers each year. The facts stated by the court do not clearly show the exact purpose of the picketing, but the opinion indicates that the court felt the object was a closed shop. The Common Pleas Court of Montgomery County held there was no labor dispute, and therefore issued a temporary injunction restraining defendant union from all picketing, and from passing out copies of a paper containing statements tending to create the false impression that trouble existed between plaintiff and his employees. *White-Allen Chevrolet, Inc.* v. *Auto Mechanics Local Union No. 314 et al.*, 27 Ohio Abs. 273, 12 Ohio Op. 288, 3 L.R.R. 205 (Nov. 19, 1938).

In another recent decision, plaintiff corporation, a dealer in new and used cars, was a member of an association originally composed of one

hundred and nine auto dealers known as the Cleveland Automotive Trade Association, a corporation. Plaintiff, along with the other members had delegated to this corporation full authority to bargain for them with labor unions. The association acting through its Labor Advisory Committee made an agreement for one year with the defendant union covering minimum rates of pay, and terms and conditions of employment. While the agreement was in force, plaintiff had abided by it in dealing with its employees, even though they were not members of defendant union. At the expiration of the contract, the association, then consisting of eighty-two members, and the defendant union began negotiations for a new agreement. Failing to come to terms, the defendant union then called a strike against all members of the association, and began picketing the plaintiff, advertising to the public that a trade dispute existed between the union and the plaintiff. At this time no difference of opinion existing between plaintiff and its own employees. The Common Pleas Court of Cuyahoga County held that a valid labor dispute existed, and refused to enjoin picketing so far as it was peaceful. *Frankel Chevrolet Co., et al.* v. *Meerchaum, et al.*, 27 Ohio Abs. 425, 12 Ohio Op. 387, 3 L.R.R. 347 (Oct. 5, 1938).

The *White-Allen* case, *supra*, is in line with the majority of Ohio cases in defining the words "labor dispute," as meaning a dispute between an employer and his own employees, and relating to wages, hours or working conditions. *Park* v. *Hotel, et al. Employees*, 22 O.N.P. (N.S.) 257, 30 Ohio Dec. 64 (1919); *Brown & Son* v. *United Mine Workers*, 25 O.N.P. (N.S.) 485 (1925); *United Tailors Co.* v. *Joint Board of Amalgamated Workers of America, et al.*, 26 O.N.P. (N.S.) 439 (1926); *Saltzman* v. *Employees Local*, 25 Ohio Abs. 354, 10 Ohio Op. 6 (1937); Labor Law—Definition of Labor Disputes by W. K. Stanley, 10 Ohio Bar 703 (Mar. 21, 1938). The court distinguished *Clark Lunch Co.* v. *The Cleveland Waiters Local No. 106*, 22 O.A. 265, 4 Ohio Abs. 669 (1926); on two grounds, pointing out in the first place that in that case the union men handed out cards to patrons and others during the luncheon and dinner hours. These cards asked the public not to patronize the Clark Co. stating truthfully that it did not employ union labor. The court compared these cards with the copies of the newspapers known as the "Labor Union," which was likewise handed out by the picketers in the *White-Allen* case. The court felt that the papers contained statements tending to create a false impression of trouble between the plaintiff and his employees. The second basis for distinction was that in the *Clark* case, *supra*, the union had organized other restaurants which paid higher wages, and required shorter hours

of labor. The court in that case felt the union was justified in influencing its members and friends in order to protect itself and the competitors who employed union labor. But in the *White-Allen* case, none of the other dealers was organized, and the plaintiff was the only dealer being picketed. The court therefore felt that to permit the picketing to continue would result in the destruction of the one company's business, and its diversion to the twenty-nine others similarly situated, without the union's object being attained. The court held further that despite the rule of the *Clark* case, the rule is firmly established in Ohio that picketing is not proper in those cases in which there is no trade dispute between the employer and his employees.

It is interesting to note that the court in the other principal case, the *Frankel* case, *supra*, was the same as decided the *Saltzman* case, *supra*, where the strict definition of a labor dispute was followed, a case cited by the court in the *White-Allen* case. Thus in the two principal cases, the courts accept the definition of a labor dispute as stated in the *Park* case, *supra*. However the *Frankel* case on its facts is the first of its kind in Ohio in that the employers had there acted in concert with other employers, and operating through a joint association had contracted in reference to hours, wages, and terms and conditions of employment affecting employees of all members of the contracting group. In the light of these circumstances the court held the accepted definition inapplicable.

In reaching its conclusion the court in the *Frankel* case stresses two factors. The first is the delegation to a trade association of the right to bargain with labor unions on plaintiff's account. In the area of administrative labor law, the National Labor Relations Board has given similar treatment to analogous fact situations. It has held that an association of employers is to be treated as a single employer within the National Labor Relations Act where the association has engaged in collective bargaining for all its individual employer members. The theory is that the Act includes "any person acting in the interest of an employer, directly or indirectly" within the term "employer." "Person" is defined as "one or more . . . associations . . ." *In Re Mobile Steamship Ass'n., et al.*, 3 L.R.R. 166 (Sept. 29, 1938); *In Re Admiar Rubber Co.*, 3 L.R.R. 262 (Oct. 19, 1938); *In Re Shipowner's Ass'n of the Pacific Coast, et al.*, 2 L.R.R. 547 (June 21, 1938). The second factor is that the employer had acted in concert with others in setting up an *economic unit* to establish wages, hours, *etc.*, which would affect and be applicable to all employees of the industry, including members of the local unions. On the termination of the contract, the parties bargained for two and one-

half months but failed to reach a new agreement. The court then felt that the entire course of conduct, the prior dealings between the parties resulting in the establishment of *jural* and legal relationships, plus the renewed bargaining and failure to agree, gave rise to a labor dispute, and therefore the defendant union had a right to picket peacefully for the purpose of truthfully advertising their dispute to the public. For the purpose of determining the bargaining unit under section 9 of the N.L. R.A. (29 U.S.C.), the Board has held that employers who have delegated to an association the right to bargain for them, have set it up as their *economic unit* dealing with labor by and through the association and being bound by the contracts it made; *In Re Mobile Steamship Ass'n., et al., supra; In Re Admiar Rubber Co., supra; In Re Shipowner's Ass'n. of the Pacific Coast, et al., supra;* and that the employees of such employers could also be treated as a single bargaining unit, on the theory that such a unit would be most appropriate, due to: first, uniformity of working conditions; second, treatment by the employees themselves in that manner; and third, parallel development by the employers. *In Re Shipowner's Ass'n of the Pacific Coast, et al., supra.*

Applying the rationale of the *Frankel* case to the *White-Allen* case it is possible to suggest two plausible arguments for refusing an injunction in that case. There was no agency in the *White-Allen* case, therefore there is no analogy on that point. However it would seem immaterial whether the employer acted through an agent or in person in dealing with the union and accepting the contract previously made. As to the secon dargument, the facts are different but the theory of the *Frankel* case and the N.L.R.B. cases cited, may be said to be applicable. It might be suggested in the *White-Allen* case that an economic unit was set up for bargaining, which was recognized and accepted by all the parties involved. Plaintiff had previously dealt with the union representing the craft as an appropriate bargaining unit, and once having accepted them he cannot later disclaim them. Moreover can it be denied that there was a labor dispute between plaintiff and defendant in the *White-Allen* case? Did not the parties previously bargain and enter into a legal and *jural* relationship? When the first contract was terminated they bargained again, but terms weren't acceptable, and therefore no agreement resulted. Their differences, however, might be brought within the reasoning of the *Frankel* case which states, " . . . One may not freely join in such a course of conduct resulting in contractual relations and accept all the benefits without being willing to sustain some of the natural burdens logically resulting from such a relationship."

These contentions rest, however, on the assumption of a persistency

of an earlier relation. In the *Frankel* case this was an established fact, but in the *White-Allen* case the lapse of over two years would seem to interrupt this former relation so seriously as to preclude the application of the arguments of the *Frankel* case. The *White-Allen* case merely reaffirms the general definition of a trade dispute in Ohio, while the *Frankel* case has extended that definition to include disputes with non-employees where there has been an immediately prior course of dealing sufficient to imply an acceptance by the employer of this group as a bargaining unit.

LEON N. STONE

NEGOTIABLE INSTRUMENTS

CHATTEL LOAN ACT — HOLDER IN DUE COURSE

A provision in General Code section 6346-5a, known as The Chattel Loans Act, reads: "If interest, consideration, or charges in excess of those permitted by this act shall be charged, contracted for, or received, the contract and all papers in connection therewith shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever." The case of *Capitol Loan and Savings Co.* v. *Biery, et al*, 134 Ohio St. 333, 16 N.E. (2d) 450, (1938), held absolutely void a note and mortgage given by a borrower to a company licensed under this Act. The loan was for less than $300.00 where the chattel mortgage was on household goods, and, in addition to the provisions for foreclosure proceedings authorized under the Act, the mortgage contained a provision concerning default, and in that event, provided for entry by the mortgagee " . . . into any building or upon any premises where said property, or any part thereof, may be situated, and take the same into its possession without process of law and dispose of the same at any time thereafter, at public or private sale, and out of the proceeds of said sale to pay first, the reasonable cost and expense of taking, keeping, and selling the same and all court costs . . ." The grounds relied upon by the court were that the note and mortgage were to be considered as a part of the same transaction; *McClelland* v. *Sorter*, 39 Ohio St. 12 (1883), that the excessive charges as defined by General Code section 6346-5, were "contracted for"; the statute providing "*the contract and all other papers* in connection therewith shall be void and the *licensee* (italics supplied) shall have no right to collect . . ." The case was not affected by the fact that General Code section 8566, provides only for an actual foreclosure proceeding in the case of a chattel