SMU DEDMAN SCHOOL OF LAW

SMU Law Review

Volume 6
Issue 3 *Survey of Southwestern Law for 1951*

Article 7

1952

Labor Law

Richard B. Perrenot

Follow this and additional works at: https://scholar.smu.edu/smulr

Recommended Citation
Richard B. Perrenot, *Labor Law*, 6 Sw L.J. 337 (1952)
https://scholar.smu.edu/smulr/vol6/iss3/7

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.

the common usage of the word "theft" prevails in an insurance case.[21]

There is a conflict among the cases as to whether a "theft" provision covers the case where the insured is induced to part with possession of his automobile by fraud,[22] but recovery is usually allowed where the theft statutes include taking by fraud. It does seem desirable to have a uniformity with criminal court decisions defining the crime on which the insurance claim is based.

Melvin R. Stidham.

LABOR LAW

PEACEFUL PICKETING — INCIDENTAL HARM TO STRANGER

Arkansas. Missouri Pacific Ry v. United Brick and Clay Workers Union, Local No. 602,[1] involved the right of a stranger to a labor dispute to enjoin picketing. Striking employees of the Acme Brick Company had established picket lines at the highway leading to the Company's plant and at a point where the railway's spur track leading to the brick plant crossed the highway. The pickets at this latter point were intended to convey notice of the strike to the railway's train crews on their way to the Acme plant. The regular train crews refused to cross this picket line, and the railway had to stop its trains at that point and put on special crews to take its trains in and out of the plant. It was to enjoin the maintenance of this picket line that the Missouri Pacific brought suit.

The railway conceded the Union's right of peaceful picketing but contended that the picketing in question was for an illegal purpose and should be enjoined under the doctrine of the *Giboney* case.[2] First, it was said that the picketing prevented the railway

---

[21] Van Vechten v. American Eagle Fire Ins. Co., 239 N. Y. 303, 146 N. E. 432 (1925).

[22] VANCE, INSURANCE (3d ed. 1951) § 199.

[1] ....Ark........, 238 S. W. 2d 945 (1951).

[2] Giboney v. Empire Storage & Ice Co., 336 U. S. 490 (1949).

from complying with its statutory duty to provide equal service to all shippers.[3] The court answered by saying that this was not the purpose of the picketing but was merely an incidental result thereof. Second, the railway relied on a statute making it a misdemeanor to do a willful act which stops or obstructs a railway engine.[4] The court pointed out that this statute was enacted in 1868, was aimed at physical obstructions or conduct endangering lives and property, and was not applicable to a picket line. Third, the railway said that since it alone was hampered by the picket line, the conduct amounted to an unlawful secondary boycott. The court held that even if a secondary boycott were unlawful in Arkansas, this picketing was primary, and the fact that the railroad was the only one affected by it was immaterial since the strike was not directed against it.

The dissenting opinion relied on the penal statute mentioned and interpreted it not as a safety measure but as a guaranty of free and uninterrupted flow of commerce. The *Giboney* case was thought to be authority that an injunction could issue against picketing which caused a violation of state law.

A recent Texas case presented a similar fact situation.[5] There a striking union maintained a picket line at the railroad's spur track leading into the picketed plant. A temporory injunction issued against picketing within one hundred feet of the tracks on the ground that such acts caused a secondary boycott in violation of Texas statutes.[6] The Texas Supreme Court held that the picketing was not unlawful because it had the effect of persuading the railroad employees not to serve the business of the employer who was being picketed. Further, the court held the injunction void as an abridgement of the right of free speech.

The issue of free speech was not raised in the *Missouri Pacific* case, but both cases would appear to be correctly decided on the

[3] ARK. CONST. Art. 17, §§ 3, 6.

[4] ARK. STAT. 1947 ANN. § 73-1105.

[5] *Ex parte* Henry, 147 Tex. 315, 215 S. W. 2d 588 (1948).

[6] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5154f.

ground that peaceful picketing for a lawful purpose should not be enjoined because of harm to a third party which is a normal incident of the picketing. A contrary holding would operate in many instances to deny a striking union the right of appealing to the public and, in particular, to other unions. It is, of course, possible that in a particular case the "incidental" harm resulting from the picketing might justify a different result, but in the present case it is submitted that the refusal to enjoin picketing because of incidental harm to a stranger was a proper and just decision.

PEACEFUL PICKETING TO FURTHER AN UNLAWFUL CONSPIRACY

Texas. In *Best Motor Lines* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 745,*[7] Best sought to enjoin picketing of its terminal by the Union. Best and defendant truck lines each had a labor contract with the Union, which contracts provided, among other things, that the employer would not require his employees to go through the picket line of a striking union. Best and the other truck lines had made, and were carrying out, contracts as to exchanging and interlining of freight. The Union's representative presented Best's general manager with a labor contract covering Best's clerical workers and demanded that he sign it. Best had never had a labor contract covering clerical workers with this or any other union. The general manager refused to sign the contract until the Union furnished proof that it had been certified as the bargaining agent for the clerks or that a majority of them had selected the Local to act for it. Thereupon the Union called a strike, and Best's drivers and dockmen quit working and went on the picket line.

Best claimed that defendant truck lines, because of the Union's threats, refused to carry out their exchange and interline con-

[7] ....Tex........., 237 S. W. 2d 589 (1951), *rev'g* 229 S. W. 2d 912 (Tex. Civ. App. 1950).

tracts, and Best further said that the Union's acts were done in furtherance of an unlawful conspiracy. The Union answered that there was a labor dispute and peaceful picketing for a lawful purpose and that an injunction would abridge its right of free speech. A temporary injunction was granted but was dissolved by the court of civil appeals on the ground that no unlawful purpose on the part of the Union had been made out.

The petition for writ of error presented two points: first, the Union's picket line was part of a combination in violation of the Texas anti-trust laws, and, second, the picketing was for an unlawful purpose because it was an attempt to force Best to bargain with the Union when it apparently represented only a minority of the clerks. The Texas Supreme Court, in upholding the injunction, held that labor unions were expressly made subject to the anti-trust laws.[8] Further, it was held that the Union had entered into an unlawful conspiracy in violation of the antitrade restraint laws[9] and could not use a peaceful picket line in connection with such an unlawful course of conduct. The court distinguished Ex parte *Henry*,[10] relied on by the court of civil appeals in dissolving the injunction, in that there was no evidence in the *Henry* case of a conspiracy in restraint of trade or proof of intent of the union to cause third parties to cease doing business with the picketed employer, whereas the evidence in the *Best* case clearly showed this. The court said that while the right of free speech protected picketing, the element of economic coercion in picketing made it subject to certain limitations not ordinarily imposed on free speech.

Justice Garwood dissented on the ground that while the injunction was properly granted, modification should be made so as to enjoin picketing only when it was accompanied by unlawful conduct.

The violations of the anti-trust laws in this case had two aspects: first, the agreements between the Union and defendant truck lines

[8] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5154.

[9] TEX. REV. CIV. STAT. (Vernon, 1948) arts. 7426, 7428.

[10] 147 Tex. 315, 215 S. W. 2d 588 (1948).

not to handle Best's freight, and, second, the agreement among members of the Union to force Best either to sign the contract or to quit operating. All of these agreements would seem to fall under Section 1 of Article 7426 as combinations to create restrictions in trade or commerce; and under Section 3 of the same article as combinations to prevent or lessen competition in transportation of commodities. These agreements would also be violative of Section 3 of Article 7428 as conspiracies against trade, *viz.*, where two or more persons agree to refuse to transport, deliver, or receive goods of any other person. The fact that defendant carriers were coerced into such agreement by the Union's threats to call strikes did not detract from the illegality of the agreements, although this might lay the Union open to another criminal charge.

The trial court found as a conclusion of law that the Union's acts and conduct constituted and had the effect of putting into actual existence and continuation a secondary boycott and a secondary picket line against Best, although neither the civil appeals court nor the supreme court discussed this point. Courts frequently refer to secondary picketing and secondary boycotting as though they were necessarily inseparable, but the Texas statutes define each.[11] Secondary picketing is defined as "establishing a picket or pickets at or near the premises of an employer where no labor dispute . . . exists between such employer and employees." The only picket line in this case was the line around Best's terminal, and it does not appear that any persons except Best's employees were in it. It is submitted that had the supreme court given this question attention, it would not have held that there was secondary picketing. A secondary boycott is defined as including "any combination , plan, agreement or compact entered into, or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by . . . refusing to handle . . . use or work on equipment

[11] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5154f, § 2 (d), (e).

or supplies of such person, firm or corporation, or interfering with, or attempting to prevent the free flow of commerce." This definition clearly covers the agreements of the Union with the truck lines and with its own members.

Any picketing, of course, is likely to have an adverse effect on the business or trade of the employer being picketed and thus to a greater or less degree to affect competition. Such a powerful economic weapon must necessarily be limited in its use, and the Texas statutes which give to labor unions the right to organize[12] and to picket[13] are followed immediately by a statute providing that nothing in these statutes shall diminish the force of enactments against trusts and conspiracies in restraint of trade.[14] The Union contended that conduct which amounted to no more than peaceful picketing could in no sense be regarded as violating the anti-trust laws. But to adopt this contention would be to render the last cited article of no effect, as long as the Union's unlawful plans were carried out by means of peaceful picketing. The evidence clearly established the unlawful course of conduct pursued by the Union, and it is submitted that the court properly limited the right of picketing by forbidding its use as an instrument in carrying out a violation of the law.

The dissenting opinion is very probably correct in asserting that the picketing itself is not unlawful and that the injunction should be modified to forbid it only when accompanied by unlawful conduct. However, as Justice Garwood admitted, the decision is susceptible of being given this interpretation, which is what the majority of the court probably intended.

---

[12] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5152.

[13] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5153.

[14] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5154.

CLOSED SHOP AGREEMENT DECLARED A CONSPIRACY IN RESTRAINT OF TRADE

Texas. In 1951 the Texas Legislature enacted a statute[15] providing that it should constitute a conspiracy in restraint of trade for an employer and a union to enter into an agreement whereby an employee's right to work depends on his membership or non-membership in the union. A 1947 statute[16] had previously declared void and against public policy any contract requiring of an employee or applicant for employment that he belong or not belong to a union. The significance of the new statute is that in declaring a closed shop agreement to be a conspiracy in restraint of trade, it subjects violators of the statute to fine and imprisonment, whereas the old statute provided for no penalties. Conspiracies in restraint of trade are prohibited and declared to be illegal and unenforceable by statute,[17] and the fine recoverable by the State is $50 to $1500 for each day of violation.[18] The Texas Penal Code defines a conspiracy in restraint of trade in the same words as does the civil statute,[19] and prescribes a prison sentence of 2 to 10 years for violation.[20]

The old statute gave the employer a defense to an action for breach of a union or closed shop contract as well as a forceful argument against it in collective bargaining negotiations. But it did not operate as a deterrent to the making of such agreements, which, to a large extent, were carried out. It is felt that the new statute, by subjecting both contracting parties to punishment, will have a powerful effect in preventing union and closed shop agreements from coming into existence.

Richard B. Perrenot.

---

[15] TEX. REV. CIV. STAT. (Vernon, 1952 Supp.) art. 7428-1.
[16] TEX. REV. CIV. STAT. (Vernon, 1948) art. 5207a.
[17] TEX. REV. CIV. STAT. (Vernon, 1948) art. 7429.
[18] TEX. REV. CIV. STAT. (Vernon, 1948) art. 7436.
[19] TEX. PEN. CODE (Vernon, 1948) art. 1634.
[20] TEX. PEN. CODE (Vernon, 1948) art. 1635.