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Labor Law - Right to Work Act - Restraint of Peaceful Picketing

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Much of the confusion in the present law relating to prescription of criminal prosecutions results from the cumbersome structure of these two articles. Article 8 contains provisions relating to three different prescriptive periods,[15] and article 9 either supplements article 8 or adds a fourth prescriptive period. Although the decision in the subject case was an attempt to bring order to this confusion, it does not appear to have improved upon the original situation. It is submitted that the most logical remedy to the situation is corrective legislation. In order to avoid the present confusion in structure and language, the prescriptive period for charging the crime and the period for bringing the defendant to trial after the charge is filed should be stated in separate articles, each including its own provisions as to interruption and suspension. The provision for the three-year period should include the following:

(1) The period should begin to run from the date of the charge.

(2) After the lapse of three years, an accused should have an absolute right to a nolle prosequi if he can show that nothing has occurred that would cause the period to be interrupted or suspended.

(3) Interruption of the period should be limited to acts of the accused as now provided in articles 8 and 9.

(4) A provision for suspension of the period by occurrences not within the control of the state or the accused should also be included in order to codify the rules developed by the courts on the subject.[16]

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LABOR LAW — RIGHT TO WORK ACT — RESTRAINT OF PEACEFUL PICKETING

Plaintiff was engaged in the business of operating a supermarket. Two of its employees, both of whom were meatcutters

15. Article 8 provides for a one-year prescription upon the filing of the indictment running from the time the offense has been made known to the authorities. It also provides for a prescription of six months from the date of the offense on prosecutions for any fine or forfeiture.

16. *E.g.*, concerning the insanity of the accused, see State v. Theard, 212 La. 1022, 34 So.2d 248 (1948). For a general discussion see Annot., 30 A.L.R.2d 462 (1953).

and members of defendant labor union, presented to plaintiff a proposed labor contract, one provision of which stated:

> "The employer [plaintiff] shall recognize the union [defendant] as the sole bargaining agent for all the employer's employees in the meat department, poultry and fish which have to do with wages, hours of labor, and working conditions, excluding all supervisors as defined in the Labor Management Relations Act of 1947, as amended."

Upon plaintiff's refusal to bargain with defendant, the two meatcutters went on strike and engaged in peaceful picketing of plaintiff's place of business. Plaintiff thereafter employed a non-union meatcutter and sought an injunction against the picketing, alleging a violation of the Louisiana Right to Work Act. The district court denied the injunction. On appeal to the Louisiana Supreme Court, *held,* reversed. The purpose of the picketing was to compel plaintiff to enter into a contract which would have the effect of *abridging* the rights of the non-union meatcutter because of membership in a labor organization. The non-union employee's rights would be "diminished, reduced, curtailed, or shortened" by having a union act as his agent. *Piegts v. Amalgamated Meat Cutters, Local No. 437, AFL,* 228 La. 131, 81 So.2d 835 (1955).[1]

Section 14(b) of the Labor Management Relations Act of 1947[2] provides, in effect, that nothing in the act is to be construed as authorizing any union shop, maintenance of membership, or other form of compulsory unionism agreement[3] in any state where such agreement is forbidden by state statute. This federal sanction has encouraged the passage of the so-called "Right to Work Acts" in a number of states.[4] The purpose of

1. Rehearing not considered.
2. 49 STAT. 449, 29 U.S.C. § 164(b) (1947).
3. The closed shop, union shop, and maintenance of membership agreements are categorized as "union security" devices, that is, these agreements fix the position of the union in the plant and its relation to the workers in their jobs. A closed shop agreement obligates the employer to hire only union members. Union shop agreements require membership in a union as a condition of *continued* employment, usually requiring the employee to become a union member within 30 days after initial employment. A maintenance of membership clause means that all employees who are union members at a specified time after execution of the contract or later join the union must remain members for the duration of the contract as a condition of employment.
4. Ala. Acts 1953, No. 430, p. 535; ARIZ. CONST. art II, § 35; ARK. STATS. §§ 81—201-205 (1947); FLA. CONST. *(Declaration of Rights)* § 12; Ga. Acts 1947, No. 140, p. 616; IOWA CODE § 736A.2 (1946); Miss Acts 1954, No. 1394, p. 273; NEB. CONST. art. XV, §§ 13, 14, 15; NEB. REV. STAT. § 48-217 (1943);

such statutes is to insure that employment will not be denied because of membership or non-membership in a labor organization. Thus, the Louisiana Right to Work Act, Act 252 of 1954,[5] provides in section 1:[6]

> "It is hereby declared to be the public policy of Louisiana that the right of a person or persons to work shall not be denied or abridged on account of *membership or non-membership in any labor union or labor organization.*" (Emphasis added.)

Another statement of policy is found in the savings clause of the act, section 10,[7] which reads:

> "Nothing in this Act shall be construed to deny or abridge the right of employees by and through a labor organization or labor union to *bargain collectively* with their employer." (Emphasis added.)

The term "bargain collectively" in section 10 indicates the permissible sphere of union activity under the act. The term is not defined in the act, nor has any Louisiana court provided a definition. However, since it is used in the same context in the federal statutes,[8] it can be argued that resort should be made to previous judicial interpretations of "collective bargaining." In *NLRB v. J. I. Case Co.*, the United States Supreme Court stated:

> "The very purpose of providing by statute for collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the representative unit whatever the type or terms of his pre-existing contract of employment."[9]

Under such an agreement *individual* representation and bargain-

N.C. GEN. STAT. §§ 95:78-84 (1950); N.D. REV. CODE § 34-0114 (Supp. 1949); S.C. Acts 1954, No. 652, p. 1692; S.D. CONST. art. VI, § 2 *as amended*; TENN. CODE § 11412.8 (1934); TEX. REV. CIV. STAT. art. 5207a (Vernon 1925); Utah Laws 1955, c. 54, p. 80; VA. CODE §§ 40:68-74.5 (1950).

5. LA. R.S. 23:881-888 (1950).

6. *Id.* 23:881.

7. *Id.* 23:887.

8. Section 7 of the LMRA provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to *bargain collectively* through representatives of their own choosing . . . ." (Emphasis added.) 61 STAT. 140, 29 U.S.C. § 157 (1947). This language was unchanged from the earlier National Labor Relations Acts.

9. 321 U.S. 332, 338 (1944).

ing are precluded. Insofar as representation and recognition are concerned, the will of the majority of the employees in a unit is controlling. Although this understanding of the nature of the collective bargaining agreement precludes individual bargaining, it should be noticed that it does not require an individual to belong to a labor organization. The individual is compelled only to accept the will of the majority in having the union *represent* the employees in that unit. An examination of section 1 of the Louisiana act reveals that one of the purposes of that legislation is to insure that employees will not be compelled to become members of a labor organization. The language of section 1 of the act does not restrict a union in its *representation* of all the employees, but only forbids union *membership as a condition of employment.* Therefore, when section 10 speaks of "bargaining collectively," it must refer to the general understanding of that term since the *Case* decision, that is, the recognized union represents *all* employees in the unit. Furthermore, section 10 appears to be repetitious of the policy expressed in an earlier Louisiana statute, the "Little Norris-LaGuardia Act."[10] This latter legislation recognized that "it is necessary that the individual workman have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint of coercion of employers of labor."[11] Also, the Louisiana Mediation and Arbitration Statute[12] speaks of "collective bargaining between employers and the representatives of their employees."[13] The language of these two statutes appears to substantiate the view that section 10 of the Right to Work Act preserves to labor organizations the fundamental feature of collective bargaining, that of *representing* all the employees in a unit.

From this analysis of section 10, what the legislature intended in section 1 can be easily ascertained. That section concerns the question of "union security," that is, it amounts to a prohibition against a denial of employment because of union

10. LA. R.S. 23:822-848 (1950). It should be noted that the provisions of this act referring to the use of the injunction have been declared unconstitutional. Douglas Public Service Corp. v. Gaspard, 225 La. 972, 74 So.2d 182 (1954), 15 LOUISIANA LAW REVIEW 476 (1955). However, the policy statements in the act do not appear to have been affected by the decision.

11. LA. R.S. 23:822 (1950).

12. *Id.* 23:861-876.

13. *Id.* 23:861(2).

membership or non-membership. Nowhere in this section or those that follow (with the exception of section 10) does the act refer to recognition. It should also be noted that section 2[14] prohibits the acquisition of an "employment monopoly in any enterprise." Again, this is not a prohibition against collective bargaining or the right to enter into a sole collective bargaining agreement, but is a clear prohibition against labor union control of employment by dictating who may work and who may not work. From this analysis it is apparent that the legislature intended to prevent agreements whereby *membership* in a union is a condition of employment, and not to prohibit collective bargaining as such. Section 14(b) of the Labor Management Relations Act seems to support this conclusion. That section authorizes state prohibitions of union security agreements in interstate commerce, but does not authorize a prohibition of collective bargaining in this area of commerce.[15]

In the instant case the court relied exclusively upon section 1 of the Right to Work Act, and decided that if plaintiff signed an agreement recognizing the union as the sole collective bargaining agent of all the employees, a *non-union* employee's rights would be abridged. The term abridged, as used in section 1, was construed to mean "diminished, reduced, curtailed, or shortened." The court further stated that "liberty of contract is the non-union man's prerogative." If this decision may be used as a guide to future interpretation of the act, it is clear that the court will allow union organization, but such unions will be permitted to represent only those employees that are union members. It is doubtful whether the advocates of the controversial legislation contemplated that the act would have such a drastic effect upon collective bargaining.[16] The court obviously confused

14. *Id.* 23:882.

15. Section 14(b) authorizes state regulation of *agreements* which require membership as a condition of employment. Section 4 of the Right to Work Act, LA. R.S. 23:883(B) (1950), also regulates *conduct* which induces a violation of the act. Therefore, in a situation involving interstate commerce, where the Labor Management Relations Act of 1947 is applicable, it is questionable whether this provision of the Louisiana act is valid, as it appears to be in conflict with the federal act.

16. Borron, *The Case for the Right to Work Act*, 15 LOUISIANA LAW REVIEW 66, 71 (1954), wherein the author remarks: "The act does not affect the right of employees to join a union or retain their union membership . . . . [I]t expressly provides to the contrary. The act does not interfere with the right of employees to bargain collectively through representatives of their own choosing. Section 10 of the Act expressly guarantees this right."

Another writer, discussing the scope and effect of the act, commented: "The act does not infringe upon the right of an employee to join a union, nor upon the right of the union of his choice to bargain collectively for him and the other em-

"union security" and "recognition." By denying defendant union the privilege of peaceful picketing for the latter right, the court did not follow the command of the legislature expressed in section 10, that is, the right to bargain collectively shall not be abridged. If the proposed contract submitted to plaintiff had requested that membership in the defendant union be made a condition of employment, it is obvious that under section 1 it would have been unlawful for plaintiff to sign the contract. Defendant did not ask for such an agreement, but only to be *recognized* as the bargaining agent of the employees. Furthermore, the construction given section 1 by the court renders that section irreconcilable with the prohibition in section 10 against abridgement of the right to organize. By applying the court's definition of the term "abridged" to the situation of the union meatcutters in the instant decision, the inevitable conclusion is that their rights, too, have been "diminished, reduced, curtailed, or shortened." They were prohibited from doing what section 10 had reserved to them. Finally, the court's argument that the non-union employee's rights under section 1 would have been infringed had plaintiff signed the agreement seems hardly plausible as there were no non-union employees in plaintiff's employ at the time the agreement was presented to plaintiff for his acceptance. Only after the strike by the two meatcutters was there a non-union employee.

In his dissenting opinion Justice Hawthorne concluded that "in effect, what the majority opinion holds in the instant case is that collective bargaining through a representative chosen by the majority of the employees, to represent all the employees, union or non-union, is illegal and in violation of the Right to Work law, and that peaceful picketing for recognition of such right may be restrained or enjoined." The writer suggests that the court erred in its construction of section 1 of the act by confusing two fundamental terms in labor management relations, that is, "union security" and "recognition."

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ployees whom it represents. The public policy of Louisiana, elsewhere expressed in its laws, favoring collective bargaining as a means of achieving stable labor relations, is not abridged. Labor agreements setting forth the wages, hours, vacations, pensions and other conditions of employment, and providing procedures for the settlement of disputes and grievances may still be entered into between employers and unions." Kennan & Lang, *The Louisiana Right to Work Law — Some Comments as to its Scope and Effect*, 2 LA. B.J. 3, 6 (1954); see Dodd, *The Case Against the So-Called Rights to Work Act*, 15 LOUISIANA LAW REVIEW 74 (1954).