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Labor Law—Retail Store Owner May Deny Union Opportunity to Reply to Pre-Election Speech

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amusement tax on its football games and held the case to be within the letter of the act. *Allen v. Regents of the University of Georgia*, 304 U. S. 439 (1938).

Rule 41 (e) of the Federal Rules of Criminal Procedure has been interpreted to the effect that an aggrieved party can suppress illegally seized evidence not only in advance of trial but also in advance of indictment. This liberal construction is rationalized by recognizing the harm wrought by a wrongful indictment, even if it does not result in a conviction. In Re *Fried*, 161 F. 2d 453 (2d Cir. 1947). Another theory allows suppression in advance of indictment because the court may reach forward to control the presentation of evidence that may come before it. *Foley v. United States*, 64 F. 2d 1 (5th Cir. 1933).

Although Rule 41 (e) would seem to be the best method available, this rule does not purport or otherwise appear to be an exclusive remedy; for the doctrine rests on and is inseparably tied up with the property right of the person from whom the article is taken. *Foley v. United States, supra.*

It would seem to follow that the present case "falls within the letter and spirit of Rule 25 (d)", and substitution should be allowed as a matter of course. The attitude of the court seems to evince a tacit desire to delimit and narrowly confine the suppression and return of illegally seized property to the exact remedy afforded by Rule 41 (e) of The Federal Rules of Criminal Procedure. If this be the unarticulated ground for the court's dismissal, it is deplorable that a defendant should be deprived of his substantive rights by a mis-application of procedure.

Howard L. Meyer, II

LABOR LAW — RETAIL STORE OWNER MAY DENY UNION OPPORTUNITY TO REPLY TO PRE-ELECTION SPEECH

Employer, variety store, addressed its employees on company time and on company property, exhorting them to vote against the union in the coming election. Requests by the union for an opportunity to address the employees under similar circumstances were refused. The N. L. R. B. found that the employer's refusal constituted discriminatory application of its no-solicitation rule. In a proceeding on petition for enforcement of a cease and desist order, *Held* (2-1): Employer is not required to provide equal opportunity to union representatives to speak to employees on the premises and during working hours. *N. L. R. B. v. F. W. Woolworth Co.*, 214 F. 2d 78 (6th Cir. 1954).

The courts have held that the N. L. R. B. can require an employer to allow union solicitation on working premises during non-working hours even where there is no showing that solicitation elsewhere would be ineffective. *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793 (1945). An exception has been made to this general rule in allowing retail department stores the privilege of prohibiting all solicitation within the selling areas of the store during working and non-working hours, *N. L. R. B. v. May Dept. Stores Co.*, 154 F. 2d 533 (8th Cir. 1946).

Before 1947, the N. L. R. B. and the courts were reluctant to allow the employer any opportunity to make anti-union speeches to his employees on the ground that any employer opinion unfavorable to unionization was coercive because of the employers' control over employees. *N. L. R. B. v. Federbush Co., Inc.*, 121 F. 2d 954 (2d Cir. 1941). It was later recognized in a dictum that an employer might have the right to make such speeches on company time and property if similar opportunity were given to the union. *N. L. R. B. v. Clark Bros. Co., Inc.*, 163 F. 2d 373, 376 (2d Cir. 1947). Because the actual holding of the *Clark Bros.* case, that an employer's anti-union speech to his employees during working hours and on company time was an unfair labor practice, was deemed too restrictive of employer free speech, the "employer free speech amendment" was included in the Taft-Hartley Act, 61 STAT. 142 (1947), 29 U. S. C. § 158 (c) (Supp. 1952). This amendment provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof . . . shall not constitute . . . an unfair labor practice under any provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

The employer free speech amendment was qualified by a decision that if an employer retail department store chose to close its selling areas to union solicitation, then it must abstain from campaigning against the union on the same premises to which the union was denied access. *Bonwit Teller, Inc. v. N. L. R. B.*, 197 F. 2d 640 (2d Cir. 1952). The decision in *Bonwit Teller* was modified by an N. L. R. B. declaration that in the absence of a broad no-solicitation rule (i. e., one which prohibits union solicitation during non-working as well as working hours), an employer does not commit an unfair labor practice if he makes a pre-election speech to his employees on company time and premises and denies the union's request for an opportunity to reply. *See Livingston Shirt Corp.*, 107 N. L. R. B. 109 (1953). According to this dictum, the broad no-solicitation rule in the instant case would preclude the employer from making any anti-union speeches on company time and property because this would be a discrimina-

tory application of the no-solicitation rule. The majority in the present case applies the *holding* of the *Livingston Shirt* case (that a no-solicitation rule applying only to working hours leaves the employer's right to speak unqualified), inasmuch as the union organizer asked only for an opportunity to speak on *working* time, and did not ask for an opportunity to speak on non-working time.

The dissenting opinion, in accord with the decision of the Board, declared that there was no issue of employer free speech involved. It maintained, rather, that section 8(a)(1), forbidding as unfair labor practices employer interference with employees' exercise of their rights to self-organization, was involved.

By expanding the *holding* of the *Livingston Shirt Corp.* case and failing to follow the dictum of that case the court has given the employer great leeway under section 8(c). But the court has at most overruled previous restrictive interpretations of the employer free speech amendment. This would seem to carry out the intention of the legislature in passing the amendment.

Dawn Girard

PERSONAL PROPERTY — JOINT TENANCY IN SAFE DEPOSIT BOX

Decedent and his niece executed an agreement making the niece joint owner of the contents of a safe deposit box with right of access to it. Both acknowledged receipt of keys from the bank, but decedent retained possession of both. *Held* (4-3): No valid inter vivos gift of the contents was made since decedent did not sufficiently divest himself of dominion over the property. *Chadrow v. Kellman*, ___ Pa. ___, 106 A. 2d 594 (1954).

The mere deposit of an article in a jointly leased or used safe-deposit box of itself results in no change of title. *Bauernschmidt v. Bauernschmidt*, 97 Md. 35, 54 A. 637 (1903); *Mercantile Safe Deposit Co. v. Huntington*, 89 Hun 465, 35 N. Y. Supp. 390 (Sup. Ct. 1895); In re *Brown*, 86 Misc. 187, 149 N. Y. Supp. 138 (Surr. Ct. 1914), *aff'd* 167 App. Div. 912, 151 N. Y. Supp. 1106 (1915), 217 N. Y. 621, 111 N. E. 1085 (1916). Even when the language of the lease is in terms of joint tenancy with right of survivorship, unless the lease clearly refers to the contents, it is generally construed as giving no further right than the use of the box. *Wohleber's Estate*, 320 Pa. 83, 181 A. 479 (1935); *Richards v. Richards*, 141 N. J. Eq. 579, 58 A. 2d 544 (1948); In re *Dean's Estate*, 68 Cal. 2d 86, 155 P. 2d 901 (1945). Thus, a contract with a bank signed by a husband and his wife stating that they were joint