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Unemployment Compensation - Labor Dispute Disqualification - Interpretation of the Establishment Clause

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ed, as in this case, by the court declaring that the real duty is to secure for the *cestui que trust* the benefits intended by the settlor and to accomplish this purpose deviation may be necessary.[9]

The principle is well settled that courts will allow deviation when the provisions of the trust involve illegality,[10] impossibility[11] or where the purpose of the trust has been achieved.[12]

In the instant case the Court allowed the trustee to invest in corporate stocks, not on the basis of advantage to the beneficiary, but because of changed economic conditions. If deviation were not permitted, accomplishment of the purposes of the trusts would be substantially impaired. This holding seems to be justified on the basis of the necessity involved and it should have no adverse effect on future litigation since each case must be decided on its own merits.

Admittedly then the expressed intention of the settlor is not immutably controlling as is commonly asserted. Examination reveals that the court of equity possesses appreciable discretion in passing on the intangibles of necessity and so-called dominant intention. Further, court authorized modification creates an inconsequential effect on future litigation for each case must be decided on its own merits with the measure of the court varying as did the traditional "foot of the chancellor".

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UNEMPLOYMENT COMPENSATION — LABOR DISPUTE DISQUALIFICATION — INTERPRETATION OF THE "ESTABLISHMENT" CLAUSE. During the course of collective bargaining negotiations, the employees of two stores of a nine store food market chain voted to strike. The employees of all nine stores were represented by the same local union. The stores were all branch stores and situated within the metropolitan area, the general office and all managerial depart-

9. Hoffman v. First Bond and Mortgage Co., 116 Conn. 320, 164 A. 656 (1933); Mass v. Reed, 184 Ill. 263, 56 N.E. 306 (1900); Trust Co. of New Jersey v. Glunz, 119 N.J. Eq. 73, 181 A. 27 (1935); *In re* Pulitzer's Estate, 139 Misc. Rep. 575, 249 N.Y.S. 87 (1931); Ruggles v. Tyson, 104 Wis. 500, 79 N.W. 766, 768 (1899) (The Court provided a good statement of the general rule: "Rather than that the scheme of the creator of such estate shall entirely fail by reason of some circumstance not forseen by him and provided for, the court may intervene, but only for the purpose of, and so far as necessary, to preserve the property.").

10. See Stout v. Stout, 192 Ky. 504, 233 S.W. 1057 (1921) (after prohibition, cooperage was infeasible, held deviation allowed); *cf.* Gouy Shong v. Chew Shee, 254 Mass. 484, 150 N.E. 225 (1926); RESTATEMENT (Second), TRUSTS § 166 (1959).

11. *In re* Young's Will, 178 Misc. 378, 34 N.Y.S.2d 468 (1942); see Sturgeon v. Stevens, 186 Pa. 350, 40 A. 488 (1898); RESTATEMENT (Second), TRUSTS § 165 (1959).

12. Simmons v. Northwestern Trust Co., 136 Minn. 357, 162 N.W. 450 (1917).

ments being located in a nearby city. Subsequent to the walkout at the two stores, the employer locked up the seven remaining stores. The claimants, employees in this latter group of stores, applied for Unemployment Compensation benefits, maintaining that the branch stores were in fact separate "establishments" under the Minnesota Employment Security Act,[1] which disqualifies individuals who lose employment because of a labor dispute. The claimants were granted benefits. Upon appeal by the employer, the Minnesota Supreme Court *held,* two justices dissenting, the decision reversed. The court concluded that the nine stores were in fact integral parts of the same unit of employments, therefore constituted a single "establishment" under the statute. *Weiss v. Klein Super Markets, Inc.,* 108 N.W.2d 4 (Minn. 1961).

All state and federal unemployment compensation statutes contain provisions which disqualify individuals unemployed as a result of labor disputes.[2] Some statutes use the term "establishment,"[3] and others use the terms "factory, establishment or other premises".[4] However, courts usually hold that either phrase in no way changes the applicability of the statute.[5]

Several tests have been applied by the courts in interpreting the meaning of the phrase. In the more recent decisions, the courts have construed the issue of separate establishments on the relative interdependence of the components from the point of view of organizational unity,[6] giving consideration to functional integrality,[7] geographical location (or physical proximity),[8] or weighing both tests equally in the light of the facts presented.[9]

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1. Minn. Stat. Ann. § 268.09 (1) (1945) disqualifies individuals for benefits, "(6) If such individual has left or partially or totally lost his employment with an employer because of a strike or other labor dispute. Such disqualification shall prevail for each week during which such strike or other labor dispute is in progress *at the establishment in which he is or was employed. . . .*"

2. U. S. Bureou of Employment Security, Dep't. of Labor, *Comparison of State Unemployment Insurance Laws* as of January 1, 1960, p. 102.

3. *E.g.,* Minn. Stat. Ann. *supra* note 1.

4. *E.g.,* N.D. Cent. Code § 52-06-02 (4) (1961).

5. Ford Motor Co. v. Div. of Employment Security, 326 Mass. 757, 96 N.E.2d 859 (1951); Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576 (1950); Ford Motor Co. v. Unemployment Compensation Comm'n., 191 Va. 812, 62 S.E.2d 28 (1951).

6. General Motors Corp. v. Mulquin, 134 Conn. 118, 55 A.2d 732 (1947); Spielmann v. Industrial Comm'n, 236 Wisc. 240, 295 N.W. 1 (1940); see Tucker v. American Smelting and Refining Co., 189 Md. 250, 55 A.2d 692 (1947).

7. Mountain States Tel. and Tel. Co. v. Sakrison, 71 Ariz. 219, 225 P.2d 707 (1950); Ford Motor Co. v. Abercrombie, 207 Ga. 464, 62 S.E.2d 209 (1950); Spielman v. Industrial Comm'n, *supra* note 7. *Contra,* Park v. Appeal Board of Michigan Employment Security Comm'n, 355 Mich. 103, 94 N.W.2d 407 (1959).

8. Walgreen Co. v. Murphy, 386 Ill. 32, 53 N.E.2d 390 (1944); Ford Motor Co. v. Div. of Employment Security, 326 Mass. 757, 96 N.E.2d 859 (1951); Ford Motor Co. v. Unemployment Compensation Board of Review, 168 Pa. Super. 446, 79 A.2d 121 (1951).

9. See Snook v. International Harvester Co., 276 S.W.2d 658 (Ky. 1955); Adamski v. State, 108 Ohio App. 198, 161 N.E.2d 907 (1959); Neidlinger v. Unemployment Compensation Board of Review, 170 Pa. Super. 166, 84 A.2d 363 (1951).

A scruitiny of the cases reveals a tendency in recent years for courts to apply a more strict interpretation to the "establishment" clauses. These authorities hold that the unity which must be present be a unity of employment rather than a unity of purpose.[10] In the instant case, the court upheld the unity of employment doctrine which it first set forth in the landmark case *Nordling v. Ford Motor Co.*

In the absence of any North Dakota decisions in point, and of any expression of legislative intent, it is submitted that the courts of this state should construe our "establishment" clause from the more modern point of view of unity of employment.

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10. Ford Motor Co. v. Kentucky Unemployment Compensation Comm'n, 243 S.W.2d 657 (Ky. 1951); Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576 (1950); Kroger Co. v. Industrial Comm'n of Missouri, 314 S.W.2d 250 (Mo. 1958); Machcinski v. Ford Motor Co., 277 App. Div. 634, 102 N.Y.S.2d 208 (1951).