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Labor Relations - Labor Relations Acts - Public Employment - Right of Police Officers to Unionize

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of constitutional provisions which differ from those of the United States Constitution.[13]

The North Dakota Constitution[14] provides that private property shall not be "taken or damaged" for public use without just compensation, and this has been held to be broader than the guarantee of the fifth amendment to the United States Constitution.[15] Just compensation should then include not only the value of the property condemned but also consequential losses attributable thereto so that the owner would be put in as good a position pecuniarily as he would have been had the property not been taken.[16]

In the dissenting opinion of the instant case, moving costs are considered consequential damages.[17] A North Dakota statute[18] has been interpreted to provide for consequential losses arising from injuries to other property in condemnation proceedings.[19] Also, under the North Dakota constitutional provision which requires payment of compensation when property is damaged, consequential losses may be recovered.[20]

Therefore, it would appear that with the authority from the interpretation of the constitution and statutes by the North Dakota courts, there should be no difficulty in disregarding the much criticized general rule and allowing moving costs as an element of fair market value. This would follow the spirit of the constitutional requirements for the payment of "just compensation."

G. EUGENE ISAAK.

LABOR RELATIONS — LABOR RELATION ACTS — PUBLIC EMPLOYMENT — RIGHT OF POLICE OFFICERS TO UNIONIZE. — Officers of the Little Rock Policemen's Union brought suit to enjoin the city officials from enforcing an act requiring that persons be denied employment because of membership in a labor union,[1] contending the act was unconstitutional due to Ark. Const.

Avenue, 294 Mich. 569, 293 N.W. 755 (1940); General Ice Cream Co. v. State, 99 N.Y.S.2d 312 (Ct.Cl. 1950).

13. Ill. Const. art. II, § 13, and Ill. Ann. Stat. c. 47, § 1 (Smith-Hurd 1950) provide that "private property shall not be taken or damaged for public use without just compensation . . . ." See Chicago v. Taylor, 125 U.S. 161 (1888).

14. N. D. Const. art. I, § 14; see also, N. D. Rev. Code § 32-1501 (1943). In cases where state constitutions provide that compensation must be paid for property "taken or damaged," consequential damages may be recovered, 2 Nichols, *Eminent Domain* § 6.4432 (2) (1950).

15. Donaldson v. Bismarck, 71 N.D. 592, 3 N.W.2d 808 (1942).

16. See Walker v. United States, 64 F. Supp. 135 (Ct.Cl. 1946); Martin v. Tyler, 4 N.D. 278, 60 N.W. 392 (1894); Donaldson v. Bismarck, 71 N.D. 592, 3 N.W.2d 808 (1942). N.D. Rev. Code § 32-1532 (Supp. 1957) allows, at the discretion of the court, attorney's fees to the defendant condemnee, the general rule being that attorney's fees are not allowed under condemnation statutes unless specifically provided for.

17. See United States v. Petty Motor Co., 327 U.S. 372 (1946).

18. See N.D. Rev. Code § 32-1522 (3) (1943).

19. See Little v. Burleigh County, 82 N.W.2d 603 (N.D. 1957).

20. See Otter Tail Power Co. v. Von Bank, 72 N.D. 497, 8 N.W.2d 599 (1943); Hamilton v. Bismarck, 71 N.D. 321, 300 N.W. 631 (1941); King v. Stark County, 67 N.D. 260, 271 N.W. 771 (1937) (North Dakota allows recovery when a person has sustained direct, physical damages to his property in excess of that sustained by the public generally).

1. Ark. Stat. Ann. (1947), Act 30 (1957) § 19-1715. Union membership by police officers is inconsistent with the discipline which their employment requires and § 19-1716 of the same act provides that no person who is a member of a policemen's union shall be eligible to serve on any municipal police force and that the union members currently serving shall be dismissed unless they sever their relationship with the union within thirty days.

amend. 34, Section 1.[2] Appellants contended that an implied exception excluding public officials from the meaning of the amendment should be read into the amendment. The Arkansas Supreme Court *held,* that public employment was within the purview of the amendment, therefore the conflict between the act and the amendment was irreconcilable, consequently the act must fall.[3] *Potts v. Hay,* 318 S.W.2d 826 (Ark. 1958).

The right of public employees in general to organize labor unions is becoming increasingly recognized provided they do so with limited powers.[4] Municipal unionization appears generally to be limited to membership in a union which bars strikes and does not seek to bargain collectively for public employees, but merely tries to represent its members in the presentation of grievances connected with their employment.[5] In situations similar to the instant case, however, it has been held that an ordinance prohibiting city employees from joining a labor union is not unconstitutional and void as depriving city employees of the freedoms, rights and privileges granted by state constitutions.[6] In another case involving an ordinance which conflicted with a constitutional amendment making it lawful for all employees to organize and become members of a labor union the court said that the statute had no application to public employees.[7]

The right of union affiliation by municipal employees seems to be in a state of development and has given rise to many conflicting opinions.[8] Up to the present time, however, with the exception of the instant case, there has been great reluctance by the courts in allowing policemen and firemen to unionize. The reason for this is that police and fire departments are usually considered in a class apart from other public employees and to be associated wtih an organization which in any way attempts to control their relations with the municipality, has been held to be inconsistent with the discipline required of them.[9] While the obligation of the members of the police force would be superior to that of the union obligation, "so long as human nature is what it is, a man cannot serve two masters."[10]

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2. Ark. Const. amend. 34, § 1, Rights of labor. "No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union, or those who refuse to join a labor union . . . ."

3. Justice Smith in the instant case said, "We are not convinced that the bare fact of union membership on the part of police officers presents such a threat to the public welfare that an implied exception must be written into the unqualified language of the constitution."

4. See, *e. g.*, Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947) (The court said that public employees had no right to collective bargaining, but recognized their right to join a union.); Broadwater v. Otto, 370 Pa. 611, 88 A.2d 878 (1952).

5. See Beverly v. Dallas, 292 S.W.2d 172 (Tex. Civ. App. 1956).

6. See Perez v. Board of Police Comm'rs. of Los Angeles, 78 Cal.App.2d 638, 178 P.2d 537 (1947) (Court upheld an order of the board forbidding police officers to become or to continue as members of any labor union.); CIO v. Dallas, 198 S.W.2d 143 (Tex. Civ. App. 1946) ("While city employees have a right to constitutional privileges of freedoms, they have no constitutional right to remain in the services of the city in violation of an ordinance prohibiting city employees from joining labor unions.").

7. McNatt v. Lawther, 223 S.W. 503 (Tex. Civ. App. 1920) (A labor union was organized in the fire department of Dallas. Governing authorities directed the firemen to disband the union or suffer dismissal—firemen refused and were dismissed, the court upheld the dismissal.).

8. 25 Tenn. L. Rev. 511, 515 (1958).

9. See Carter v. Thompson, 164 Va. 312, 180 S.E. 410 (1935); Hutchinson v. Magee, 278 Pa. 119, 122 Atl. 234 (1923).

10. King v. Priest, 357 Mo. 68, 206 S.W.2d 547 (1947).

No cases directly involving a right-to-work law such as the one in the instant case could be found, consequently it can only be left to conjecture as to what the decision would be in North Dakota which also has a right-to-work law similar to that of Arkansas.[11]

From the standpoint of public policy it seems that unionization of police officers would not be in the best interests of the community. Since public employees if they do unionize, do not have the privilege to strike, bargain collectively, picket or have a closed shop,[12] it would appear to be of slight advantage to be a member of a union. The possibility exists that the employees would be better served by having a local committee, elected from their membership to discuss local wages, hours, working conditions, and in this way present their problems to the proper public officials.

RICHARD J. RAMAGE.

MINES AND MINERALS — LEASES, LICENSES, AND CONTRACTS — OIL AND GAS LEASE TERMINATES UPON UNREASONABLE CESSATION OF PRODUCTION. — Plaintiff purchased a leasehold estate existing under an oil and gas lease covering property where there was one small producing well, and the terms of the lease were for one year and as long thereafter as oil and gas were produced. The primary term of the lease had expired, when the lessees ceased production five or six months prior to the purchase due to a dispute between themselves. The lessors contended that, with the voluntary cessation of production the lease terminated. The Supreme Court of Oklahoma, three justices dissenting, *held* that the well had not been shut down for an unreasonable length of time by the five or six month period, hence the lease had not expired. *Cotner v. Warren*, 330 P.2d 217 (Okla. 1958).

In determining whether an oil or gas lease has been forfeited for breach of covenant to market production, equity imposes a rigid standard of good faith on the part of lessee, measured not only by lapse of time,[1] but by diligence of the lessee.[2]

The court in the principal case, followed the Kentucky rule that the only fair and just rule is "a lease continues in force unless the cessation period viewed in light of all the circumstances is for an unreasonable time."[3] In-

11. N. D. Rev. Code § 34-0114 (Supp. 1957) "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization, and all contracts in negation or abrogation of such right are hereby declared to be invalid, void and unenforceable."

12. See Beverly v. Dallas, 292 S.W.2d 172 (Tex. Civ. App. 1956).

1. Bell v. Kilburn, 192 Ky. 809, 234 S.W. 730 (1921) (While courts usually disfavor forfeitures, gas and oil leases present a recognized exception to this rule, based on the view that because of their elusive and transitory character, time must be regarded as the essence of the contract).

2. Bristol v. Colo. Oil and Gas Corp., 225 F.2d 894 (10th Cir. 1955). (Under Oklahoma law, actual production within definite term of an oil and gas lease which is to extend as long as oil or gas is produced is not a condition precedent to extension of lease beyond definite term, and lessee has a reasonable time to market after discovery and expiration of definite term. But the lessee as condition precedent to extension impliedly covenants to operate the validated lease in a prudent manner and with reasonable diligence becaause the covenant necessarily embraces a duty to market production to mutual advantage of lessor and lessee). *Accord*, Christianson v. Champlin Refining Co., 169 F.2d 207 (10th Cir. 1948).

3. Lamb v. Vansyckle, 205 Ky. 597, 266 S.W. 253 (1924). *Compare with* Louisiana rule where, "in order to cancel the lease, there must be some evidence that the wells thereon are no longer capable of producing oil or gas in paying quantities; or that