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Labor Law: Constitutionality of Anti-Closed Shop Amendment

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LABOR LAW: CONSTITUTIONALITY OF ANTI-CLOSED SHOP AMENDMENT

Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 69 Sup. Ct. 251 (1949)

Plaintiff labor union brought suit for a declaratory judgment testing the constitutionality of a Nebraska constitutional amendment prohibiting the closed shop.[1] The plaintiff contended that this law violated the due process clause of the Fourteenth Amendment of the United States Constitution in that it was designed to deprive all persons of "liberty" (1) to refuse to hire or retain any person in employment because he was or was not a union member, and (2) to make a contract or agreement to engage in such discrimination against union or non-union workers. The Supreme Court of Nebraska upheld the constitutionality of the amendment, and the plaintiff appealed. HELD, the due process clause of the Federal Constitution[2] does not forbid a state to pass laws clearly designed to safeguard the opportunities of all persons, union and non-union, in obtaining employment free from discrimination because they are union or non-union workers. Judgment affirmed.

From early times a shop closed to workers who refused to join the union has been one of the first objectives of organized labor;[3] yet its achievement has been slow and tortuous in an industrial society, as has been that of all rights of labor unions. Even when the rights of labor began to gain recognition, the dominant forces of a laissez-faire economy and the prevailing attitude of individualism resulted in a largely unrestricted right of formulating contracts as between employer and employee; this was considered a matter of individual liberty and property preserved inviolate by the Federal Constitution.[4]

In 1907 the United States Supreme Court held unconstitutional Con-

[1] NEB. CONST. Art XV, §13:

"No person shall be denied employment because of membership in or affiliation with or resignation or explusion from a labor organization or because of refusal to join or affiliate with a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership in or nonmembership in a labor organization."

[2] U. S. CONST. AMEND. XIV, §1.

[3] TONER, THE CLOSED SHOP 22 (1942).

[4] DAUGHERTY, LABOR PROBLEMS IN AMERICAN INDUSTRY 429 (3d. ed. 1936); Abelow, *The Closed Shop in New York*, 7 BROOKLYN L. REV. 464 (1938).

gressional legislation making it a criminal offense to discharge an employee because of his membership in a labor organization.[5] This, in effect, legitimatized one of the employer's most vicious weapons — the "yellow dog" contract. A few years later the Court, following its earlier mandate, invalidated a Kansas statute outlawing the "yellow dog" contract as a denial of the liberty of the parties, guaranteed by the due process clause, to fix their own terms of employment.[6]

During the next few years labor received some encouragement from decisions upholding state regulation of working hours as a reasonable exercise of the police power for the health of its citizens,[7] but this trend was temporarily checked by the *Adkins* decision[8] in 1923 that state legislation providing for minimum wages for women and children was invalid, even though the cases were argued on the same basis.

The decision that manifested the change in the viewpoint did not involve a labor issue. The United States Supreme Court held in 1933 that a state could by appropriate measures set a minimum price in businesses affected with a public interest even though not utilities, and that it might adopt any economic policy reasonably deemed to promote the public welfare and might enforce it by legislation adapted to the purpose selected without violating the due process clause of the Fourteenth Amendment.[9] Decisions following soon afterward conclusively established this liberal due process theory,[10] adding the obvious factor that the various legislatures must have the power to make use of this "trial and error" method of social reform without the former amount of judicial interference.[11] This is typified by the 1935 decision in *West Coast Hotel Co. v. Parrish*,[12] which specifically overruled the *Adkins* case and held that a minimum-wage law for women was valid. Speaking broadly, it rested on the power to restrict freedom of contract between employers and employees in the public interest. All contracts, therefore, are subject to the paramount authority of the state by means of its police power to safeguard not only the health, morals and safety of its citizens but likewise their economic needs, provided the economic scope of the business involved is quantitatively broad enough to be capable of disturbing the

[5]Adair v. United States, 208 U. S. 161 (1908).
[6]Coppage v. Kansas, 236 U. S. 1 (1915).
[7]Bunting v. Oregon, 243 U. S. 426 (1917); Muller v. Oregon, 208 U. S. 412 (1908).
[8]Adkins v. Children's Hospital, 261 U. S. 525 (1923).
[9]Nebbia v. New York, 291 U. S. 502 (1934).
[10]See note 7 *supra*.
[11]See note 8 *supra*.
[12]300 U. S. 379 (1937).