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Labor Law - Objects of Union Action - Organization of Managers of Retail Chain Stores as Proper Object

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LABOR LAW—OBJECTS OF UNION ACTION—ORGANIZATION OF MANAGERS OF RETAIL CHAIN STORES AS PROPER OBJECT—The owner and operator of retail food stores located throughout the nation brought action to enjoin strike activities by the defendant union, which sought recognition as bargaining agent for managers and clerks in the local stores. Both clerks and store managers had been members of the defendant local unions since 1937, and the latter, acting under certification as bargaining representative for both groups of employees under the National Labor Relations Act, had negotiated contracts with the plaintiff covering managers and clerks continuously since that time. Upon the refusal of the plaintiff to include the store managers in the contract, or to recognize the clerks' unions as the representatives of the store managers, the union struck and the present action was commenced. *Held,* with a dissenting opinion, that the union activities in seeking recognition as bargaining agent for local retail store managers, who were supervisory employees, were not

reasonably related to any legitimate interest of organized labor, were not in furtherance of any proper labor objective, and, as a matter of sound public policy, were enjoinable within equity jurisdiction of the court. *Safeway Stores, Inc. v. Retail Clerks International Assn.*, 41 Cal. (2d) 567, 261 P. (2d) 721 (1953)

It is well settled that the objects of peaceful concerted activity by unions must be proper[1] and that the propriety of those objectives may be determined by the state as a matter of public policy so long as the decision is not arbitrary, discriminatory, or in conflict with an applicable federal statute.[2] Since supervisors have been excluded from the benefits of the National Labor Relations Act,[3] the representation by a single union of both managers and the employees they supervise would seem to be a proper question of public policy for the state. In the principal case, however, the conflict within the court was caused by the majority's apparent disregard of a state statute which, according to the dissenting opinion, declared the policy of the state in providing that all employees have the right to self-organization in unions of their own choosing, to negotiate the terms and conditions of their employment, and to engage in concerted activities for their mutual benefit and protection.[4] The question of whether a supervisor is an employee under such a statute, and the determination of an appropriate bargaining unit for him, have posed problems of increasing complexity for labor boards, both federal and state. The NLRB, after some hesitancy in policy, held that supervisors were employees under the original federal act.[5] But except in particular industries where joint collective bargaining by supervisors and workers was traditional,[6] or in instances where a supervisor was one in name only,[7] the NLRB was reluctant to declare appropriate a bargaining unit composed of both supervisors and the men they supervise.[8] A similar result is found in states having comprehensive labor legislation, none of the boards denying that a supervisor is an employee under the acts[9] unless specifically

[1] Hotel and Restaurant Employees International Alliance and Bartenders International League of America v. Greenwood, 249 Ala. 265, 30 S. (2d) 696 (1947). 4 TORTS RESTATEMENT §§783, 784 (1939).

[2] International Brotherhood of Teamsters v. Hanke, 339 U.S. 470, 70 S.Ct. 773 (1950); Building Service Union v. Gazzam, 339 U.S. 532, 70 S.Ct. 784 (1950).

[3] 61 Stat. L. 138, 151 (1947), 2 U.S.C. (1952) §§142, 164.

[4] 1 Cal. Labor Code (Deering, 1953) §923.

[5] Hearst Publications, Inc., 25 N.L.R.B. 621 (1940); Boeing Airplane Co., 46 N.L.R.B. 267 (1942). SMITH, LABOR LAW, 2d ed., pp. 66-68 (1953). But see also Great Atlantic and Pacific Tea Co., 69 N.L.R.B. 463 (1946).

[6] The printing trades: Chicago Rotoprint Co., 45 N.L.R.B. 1263 (1942); the maritime industry: Lykes Bros. Steamship Co., 2 N.L.R.B. 102 (1936). For other trades and industries in which joint collective bargaining by supervisors and workers has been recognized by the NLRB, see "Union Membership and Collective Bargaining by Foremen," U.S. Dept. of Labor, Bureau of Labor Statistics, Bul. 745 (1943).

[7] Shell Petroleum Corp., 9 N.L.R.B. 831 (1938).

[8] Numerous cases illustrating this policy may be found in NLRB THIRD ANNUAL REPORT 180 (1938); NLRB FIFTH ANNUAL REPORT 70 (1940).

[9] Third Avenue Transit Corp., 16 Lab. Rel. Rep. 694 (1945); Sears, Roebuck and Co., 8 L.R.R.M. 393 (1941). See also New York State Labor Relations Board v. Metropolitan Life Ins. Co., 52 N.Y.S. (2d) 590 (1944).

excluded by them,[10] and all of the boards agreeing that supervisors and their employees as a matter of policy should not generally be placed in the same bargaining unit.[11] Thus the majority in the principal case comes to a conclusion not unlike the decisions of labor boards in other jurisdictions. But while in other states authority is vested in a proper agency to determine the appropriate bargaining unit, no such authority is specifically granted to the courts of California. Consequently the question may involve the propriety of a state court's disregard for the unqualified assertion of the legislature that employees may freely choose their own bargaining representative.[12] In the final analysis the basic policy decision should take into account two factors: the history of collective bargaining in the particular unit,[13] and the degree of proximity of the functions of the supervisors in question to those of either real policy-making management or to the rank and file employee.[14] In most situations, the grouping of supervisors with the workers they supervise will add immeasurably to an already complicated labor relations picture, and thus on purely pragmatic grounds[15] should be discouraged wherever found in its initial stages.[16] But such a policy must be administered with discretion, for, as in the principal case, it is difficult to believe that social benefit will be derived from the destruction of a bargaining relationship with a twelve year history of presumably successful negotiations and contracts.[17]

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[10] In Wisconsin, Minnesota, and Colorado, supervisors are specifically excluded from the coverage of the labor relations acts.

[11] Bee Line, Inc., 6 N.Y.S.L.R.B. 686 (1943); Loew's Boston Theatres Co., 2 L.R.R.M. 557 (1938). See also PENNSYLVANIA LABOR RELATIONS BOARD, FIFTH ANNUAL REPORT 50 (1941); NEW YORK STATE LABOR RELATIONS BOARD, SIXTH ANNUAL REPORT 53 (1942).

[12] As the dissenting opinion points out, the right to choose the bargaining representative is unqualifiedly reserved to the workers by the California statute, note 4 supra. And there is no mention in the statute of the appropriate bargaining unit, or who is to make the decision concerning it. Since the problem of the appropriate unit has been judicially relevant only since the passage of the NLRA and the subsequent Little Wagner Acts, and has been limited to questions of certification under those acts, its judicial use in the context of the principal case may be questioned.

[13] See note 6 supra.

[14] Another factor of minor importance is the feasibility of finding some unit which is appropriate, when a proposed unit is denied to supervisors desiring to unionize. For without a doubt foremen have a right to join a union of some type. Packard Motor Co. v. NLRB, 330 U.S. 485, 67 S.Ct. 789 (1947), and 61 Stat. L. 151 (1947), 2 U.S.C. (1952) §164.

[15] Unfortunately many of the arguments posed on both sides of the question have been purely ideological, thus furnishing little practical aid in solving an important problem of industrial relations.

[16] See an excellent discussion of the whole subject in LEITER, THE FOREMAN IN INDUSTRIAL RELATIONS 126-165 (1948). Also KILLINGSWORTH, STATE LABOR RELATIONS ACTS 198-203 (1948).

[17] By merely enjoining the picketing by the defendant union on the ground that there had been violence, many of the problems of the principal case could have been avoided. In addition, an argument on the conflicting policy toward supervisors represented on the one hand by the Taft-Hartley Act and on the other by the California statute could have proved interesting. But such an argument was absent in the principal case and is largely outside of the scope of this note.