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Labor Law: Representation Petition Barred Only Until Expiration of Bargaining Agreement

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> "It is difficult to discover any cogent defensive arguments against placing all probate jurisdiction, including determination of the homestead character of both realty and personalty, in the county judge's court . . . . [because] . . . Obviously the probate court is the tribunal best suited to perform this function in the first instance."

This article points out the rights of appeal to the circuit court and to the Florida Supreme Court and argues that, if hundreds of thousands of dollars worth of property can be entrusted to a county judge, surely the first thousand in personalty and the homestead status of realty can likewise be entrusted to him.[12]

In the future the Florida Supreme Court undoubtedly will favor determination by a county judge of realty's homestead status, at least regarding inclusion in, or exclusion from, an estate in the process of administration. A decision otherwise will, as in previous cases, result in suspension of probate proceedings in the county judge's court while judge and administrator await the decision of the circuit court on the status question. The rule announced in the instant case benefits both the litigants and the courts in eliminating transfer of the status question to the circuit courts, in reducing court costs to litigants, and in expediting probate proceedings. A litigant's right of appeal to the circuit court, moreover, remains unimpaired.

M. R. ADKINS

LABOR LAW: REPRESENTATION PETITION BARRED ONLY UNTIL EXPIRATION OF BARGAINING AGREEMENT

Ludlow Typograph Company, 108 N.L.R.B. No. 209 (June 25, 1954)

In October 1952, following a representation election by company employees, the National Labor Relations Board certified the International Association of Machinists as a bargaining representative. In December 1952 the employer and the IAM entered into a collective bargaining agreement effective from November 1, 1952, to November 1, 1953. A rival union, the International Union of Engravers, informed

[12] *Ibid.*

the employer on August 10, 1953, that it represented the employees and on August 11 filed a representation petition. On August 26 a third union requested representation and filed a petition on August 27. On September 16, 1953, the employer and the incumbent IAM terminated their prior contract by signing a new bargaining contract effective retroactively from August 17, 1953, to August 17, 1955. The IUE and the third union's requests for recognition and bargaining were made, and their petitions filed, before the IAM and the employer signed the new contract. HELD, the September 1953 collective bargaining agreement between certified union and employer did not bar the earlier petitions of other unions for representation.

The NLRB has held that certification barred consideration of rival representation petitions for one year from the date of certification and created a duty in the employer to bargain in good faith with the certified union exclusively during the one-year period.[1] Prior to the instant case, the Board followed the holding of *The Quaker Maid Co.*[2] that the signing of a renewal contract between the incumbent union and the employer within one year after certification barred a rival union's petition for the period of the contract. This was true even if it was executed with notice of a timely representation claim by a rival union.[3] An agreement for the extension of an expiring contract until a new contract was consummated, however, did not bar a representation petition; such an agreement was regarded as an extension for an indefinite period.[4] Had the NLRB applied the *Quaker Maid* rule in the instant case, the September 1953 contract between the IAM and the employer, which was signed within the certification year, would have barred consideration of the petitions of the IUE and the third union. The Board, however, expressly refused to apply the rule.

The majority opinion, overruling the *Quaker Maid* rationale, emphasizes the employees' right of freedom of choice in selecting a representative. The instant case holds that when an employer and a certified union enter into a collective bargaining agreement the time period of that contract, rather than the one-year period from the date

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[1]Centr-O-Cast & Engineering Co., 100 N.L.R.B. 1507 (1952); De Vry Corp., 73 N.L.R.B. 1145 (1947).

[2]71 N.L.R.B. 915 (1946).

[3]Texas Paper Box Mfg. Co., 75 N.L.R.B. 799 (1948); De Vry Corp., 73 N.L.R.B. 1145 (1947).

[4]Hytron Radio & Electronics Corp., 66 N.L.R.B. 267 (1946); Allis-Chalmers Mfg. Co., 64 N.L.R.B. 750 (1945).

of certification, determines whether a rival union's petition filed within one year of the date of certification is barred. Clearly, the contract period may either lessen or extend the prior one-year period. The majority position is that the *Quaker Maid* rule unduly prolongs the protection afforded an employer and the incumbent union. This view necessarily modifies the rule dismissing representation petitions filed during the certification year that was applied by the NLRB prior to this case.[5] Two subsequent Board decisions[6] follow this majority doctrine. In one, the *Ludlow* policy operated retroactively to reinstate a petition that had been voluntarily withdrawn by the union.[7]

The minority opinion attacks the allowance of a challenge of a certified union's majority status upon expiration of the term of its initial contract. The dissenters point to *Centr-O-Cast & Engineering Co.*,[8] in which the Board stated that the *Quaker Maid* rule accomplished the dual purpose of encouraging the execution of a collective bargaining contract and enhancing the stability of union relations. They further contend that a newly certified union will hesitate to agree to a short term contract, since it might thus lose its right of representation within the year following certification. By the same token, an employer might strive for a short term contract in order to expeditiously eliminate his absolute duty to bargain with the newly certified union. The dissenting opinion indicates that these conflicting aims might promote industrial strife.

The avowed policy of the Taft-Hartley Act[9] is to promote stability in employer-employee relationships. The instant case fails to promote the policy that a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period to insure a fair chance of success.[10]

GEORGE VEGA, JR.

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[5]See Centr-O-Cast & Engineering Co., 100 N.L.R.B. 1507 (1952).

[6]Flintkote Co., 109 N.L.R.B. No. 183 (Sept. 10, 1954); Natvar Corp., 109 N.L.R.B. No. 186 (Sept. 10, 1954).

[7]Natvar Corp., 109 N.L.R.B. No. 186 (Sept. 10, 1954).

[8]100 N.L.R.B. 1507, 1508 (1952) (dictum).

[9]61 STAT. 136 (1947), as amended, 29 U.S.C. §141 (1952).

[10]See Franks Brothers Co. v. NLRB, 321 U.S. 702 (1944); Centr-O-Cast & Engineering Co., 100 N.L.R.B. 1507 (1952).