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MUNICIPAL CORPORATIONS-COLLECTIVE BARGAINING CONTRACTS-IMPLIED POWER TO BARGAIN WITH A LABOR UNION

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MUNICIPAL CORPORATIONS—COLLECTIVE BARGAINING CONTRACTS—IMPLIED POWER TO BARGAIN WITH A LABOR UNION—Under the Ohio Constitution the City of Cleveland had the power to own and operate a street railway system. The city charter authorized the Transit Board to supervise, manage and control the transit system. The authorization included the power to establish wages and working conditions in accordance with the provisions of the charter. An action for a declaratory judgment was brought in order to determine whether the board had the power to contract with a union as the exclusive bargaining agent of the transit system employees, or the power to contract with a union for arbitration of disputes, and finally, whether the board had the power to enter into a collective bargaining agreement with a union. *Held*, the Transit Board had no express power, nor could one be implied, to contract with any union. *City of Cleveland v. Division 268 Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 30 Ohio Op. 395 (1945).

The court in the principal case follows well established principles of municipal law in dealing with a problem which arises from any attempt to apply equally well established principles of labor law to government employees. The first two issues certified to the court may be easily disposed of by an examination of the powers of municipal authorities. Although the defendant union relied upon the distinction between proprietary and governmental functions, the court discards the distinction because the question is not one of liability upon an effective contract, but rather is an issue as to the existence of a power to contract.[1] Whatever the effect of the distinction as to other phases of law, it has none on the extent of a municipality's power to contract.[2] Moreover, an employee of a municipally owned utility is not any less a government employee merely because his labor is used in a proprietary function of the city. The court finds no implied power in the board to designate a union as the sole bargaining agent of the transit employees because it would result in discrimination against employees not represented by a union.[3] The attempt to establish a board

[1] Principal case at 405. In Nutter v. City of Santa Monica, (Cal. Super. Ct. 1944) 13 LW 2124, the court relied upon the proprietary-governmental distinction in upholding a collective bargaining agreement between the city and a labor union. The court also applied the California Labor Code to municipal employees. For a criticism of the decision see MUNICIPALITIES AND THE LAW IN ACTION, National Institute of Municipal Law Officers, 374 (1945).

[2] 6 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., § 2652 (1937). See also, POWER OF MUNICIPALITIES TO ENTER INTO LABOR UNION CONTRACTS, Report No. 76, National Institute of Municipal Law Officers, 21 (1941).

[3] Principal case at 407. The court adopts the reasoning expressed in Drake Bakeries Inc. v. Bowles, 31 O.N.P. (N.S.) 425 (1934). The court in the principal

of arbitration is obviously in conflict with the fundamental principle that delegations of legislative power are invalid.[4] The Transit Board is a public body, subject to regulation in the public interest; any contract to make the determination of an arbitration binding upon the board is invalid as a surrender of power to a body without official sanction.[5] In view of the strict limitations upon implied powers, it would appear that without reference to the obstacle of delegation of legislative power, the contract establishing a board of arbitration would be invalid.[6] It is difficult to find a power to so contract as an incident of the express authority of the board, or as indispensable to the purposes of the municipality. The third issue certified to the court, that is, the power to enter into a collective bargaining agreement, causes more difficulty. It is possible to imagine a situation where such an agreement would not operate as a restraint upon the board's exercise of discretion, nor as a delegation of power, nor as discrimination against other city employees. But, "collective bargaining connotes more than the mere holding of conferences." [7] The very purpose of such bargaining is to reach an agreement acceptable to both parties; such an objective necessarily results in some delegation of authority to the union, or in some influence upon the board's exercise of its authority. The obstacle to this attempt to contract becomes insurmountable when the board is confronted with the fact that here again it is relying upon an implied power.[8] The board's control of the transit system is exercised by resolution, not by contract with a labor union.[9] The question as to the validity of an express power to enter into a collective bargaining agreement with a union remains unanswered, but not uncontroverted.[10]

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case interprets the Ohio law as giving no right to establish an exclusive bargaining agent without the consent of all employees to be represented; this is in view of the fact that Ohio has no labor relations act, and the federal statutes do not cover municipal employees.

[4] 1 McQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., §§ 393, 394, and 395 (1940).

[5] 8 OHIO JUR. § 218 (1930).

[6] In Local Union No. 26 v. Kokomo, 211 Ind. 72 at 79, 5 N.E. (2d) 624 (1937), it is pointed out that implied powers are found only where they make express powers effective or enforceable, or where they are indispensable to the objects or purposes of the municipality.

[7] POWER OF MUNICIPALITIES TO ENTER INTO LABOR UNION CONTRACTS, Report No. 76, National Institute of Municipal Law Officers, at 15.

[8] See note 6, supra.

[9] Principal case at 411.

[10] Although no court of last resort has as yet passed on the question of a municipality's power to enter into a collective bargaining agreement, it is doubtful that this situation will long last. To the writer's knowledge there have been four decisions rendered by lower courts covering the problem: the principal case; Nutter v. City of Santa Monica, (Cal. Super. Ct. 1944) 13 LW 2124; Mugford v. Mayor and City Council of Baltimore, (Baltimore City Circuit Ct. 1944), 13 LW 2245, in which the court recognized a power in the municipality to bargain with a union, but held that there was no power to give the union preference over others; and Chapin v. Board of Education of Peoria, 5 MUNI. L. J. 24 (1939), which held that the Board of Education did not have the power to enter into a collective bargaining agreement with the union where it was attempted to establish a closed shop.