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The Work of the Louisiana Supreme Court for the 1953-1954 Term
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LABOR LAW

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Two of the cases decided by the court during the past term made important additions to the jurisprudence of labor relations.

The case of greater significance was *Douglas Public Service Corp. v. Gaspard*[1] which decided issues of federalism in the regulation of collective bargaining practices, and the constitutionality of Louisiana's "Little Norris-LaGuardia Act."[2] This case arose out of a strike which apparently resulted when the employer and the union representing his employees were unable to agree on the terms of a new contract. The plaintiff-employer sought an injunction restraining alleged acts of trespass upon its property as well as violence, actual and threatened, upon certain of its officers and employees. The district court dismissed the case on motions of the individual defendants (members of the union) and the Supreme Court granted appropriate writs to review that action. The defendants relied principally upon two points to sustain the trial court's dismissal: (1) that their conduct, as alleged in the plaintiff's petition, constituted an unfair labor practice within the meaning of the National Labor Relations Act, as amended, and since the dispute admittedly affected interstate commerce, the National Labor Relations Board was the exclusive forum for its redress, and (2) that the state's "Little Norris-LaGuardia Act" forbids the granting of injunctive relief in cases arising out of labor disputes.

The first of these contentions called for an application of the principles set forth in the celebrated *Garner* case[3] decided by the United States Supreme Court at its 1953 term. It was there held that a state court was without jurisdiction to enjoin picketing which (though peaceful) comprised an unfair labor practice under the federal act because the jurisdiction of the National Labor Relations Board was regarded, in the circumstances, as being exclusive. It was specifically emphasized that the Court was not confronted with "a case of mass picketing, threatening of employees, obstructing the streets and highways,

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1. 74 So.2d 182 (La. 1954).

2. LA. R.S. 23:821-849 (1950).

3. Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (A.F.L.), 346 U.S. 485 (1953).

or picketing homes." And the Court added, "We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' "[4]

The Louisiana Supreme Court, clearly aware of the federal issue involved, nevertheless held that the lower court erred in denying the injunction on this ground since the allegations of the petition (accepted as true for the purpose of passing upon the exceptions) had made out a case for state intervention to protect the type of interest regarded as excepted in the *Garner* case. The opinion of Chief Justice Fournet on this point reflects a clear appreciation of the problem, treats it in a clear and lucid fashion, and, it is submitted, reaches the only acceptable conclusion.

On the second issue of the case, however, there is basis for real difference of opinion. Louisiana's "Little Norris-La-Guardia Act," like its federal prototype, forbids the courts to exercise their jurisdiction to issue injunctions in cases arising out of labor disputes unless, after hearing held pursuant to personal notice, the court finds (1) that unlawful acts have been threatened or committed, (2) that substantial and irreparable injury to property will ensue unless enjoined, (3) that the balance of the equities favors the plaintiff, (4) that action protected by the statute is not sought to be enjoined, (5) that there is no adequate remedy at law and (6) that the police have failed or are unable to protect plaintiff's property. An exception is made to permit the issuance of a temporary restraining order on at least forty-eight hours' notice in cases where it is alleged that the holding of such a hearing will render substantial and irreparable injury to the plaintiff's property unavoidable.[5]

A temporary restraining order had been issued in this case, but was thereafter dissolved by the trial court and plaintiff's petition was dismissed because it was regarded as "insufficient to constitute an allegation of violence and/or threats so excessive as to render resort to the courts necessary for the preservation of peace and order."[6]

It is not entirely clear that the trial court rested its decision on the anti-injunction statute, and under the circumstances, as

4. *Id.* at 488.
5. LA. R.S. 23:844 (1950).
6. 74 So.2d 182, 186 (La. 1954).

noted by Justice Hamiter in his concurring opinion, it was seemingly unnecessary to pass upon the issue of the constitutionality of the legislation at all. It would have sufficed to send the case back with directions to the district court to hold the hearing required by the act. However, the defendants contended that the act was a bar to injunctive relief and the court reached and decided that issue, holding that the legislation conflicted with the provisions of Section 6 of Article I of the State Constitution declaring that "All courts shall be open and every person for injury done him in his rights, lands, goods, person or reputation shall have adequate remedy by due process of law and justice administered without denial, partiality or unreasonable delay." In stating its conclusion the majority opinion says, "It follows that the provisions of the so-called anti-injunction act that seek to limit the jurisdiction of the district courts of this state in the granting of immediate relief, if that is necessary for the protection of rights and property, are illegal and ineffective."[7] There is no further or more detailed expression of opinion concerning which of the express findings required by the statute "unreasonably delays" the administration of justice.

It must be conceded that the time required for holding a hearing to determine the facts prescribed by the anti-injunction act will result in *some* delay—a delay that was never encountered during the heyday of the *ex parte* labor injunction. But the legislature, in enacting the statute, had concluded that justice under such circumstances was too swift to be altogether sure. It had declared as the policy of the state that "Legal procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party . . . is peculiarly subject to abuse in labor litigation [for enumerated reasons],"[8] and expressly conditioned the granting of injunctive relief upon a series of findings made at a hearing. Thus, in the balancing of interests of employers and their property on the one hand, and employees and their right to engage in concerted activity on the other, the legislature prescribed a policy of minimal delay of forty-eight hours. Indeed, in a sense, the legislature was heeding rather than ignoring the constitutional exhortation of due process by providing reasonable notice and opportunity to be heard to workers prior to enjoining them in the exercise

7. *Id.* at 187.
8. LA. R.S. 23:843 (1950).

of their right to engage in concerted activity. No reasonable person wishes to see the owners of property denied their right to have legal protection of their interests. At the same time, however, equally reasonably minded persons, familiar with the dark history of labor injunctions, do not wish to see a return to the practices of those days. The statute in question represents the legislative judgment of a fair compromise between the competing interests in this area.

Justice Hawthorne, in a strong dissent, emphasized the fact (undisputed by the majority) that the legislature had not prohibited the courts from issuing injunctive relief and persuasively argued that the forty-eight hour notice and hearing requirement was but another instance in which the legislature has traditionally regulated the issuance of a variety of judicial writs. He cited a formidable list of statutory restrictions upon the use of injunctions many of which have been expressly sustained against attack and all of which are accepted without serious question as to their validity. And certainly the existence of these restrictions in other fields is relevant. If "due process of law" is to be equated with "traditional notions of fair play and substantial justice"[9] or "legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights,"[10] it is difficult to explain how the court can conclude that the forty-eight hour notice and hearing provision is invalid in a labor injunction setting, but similar restrictions (or outright prohibition of the remedy) are sustained in others.

The other labor case decided at the past term, *Robichaux v. Texas & N.O.R.R.*,[11] illustrates one of less frequently mooted, but nevertheless natural and logical implications of the concept of collective bargaining—the determination of individual employee's rights through action taken by the union representing him in the bargaining process. The plaintiff-engineer, employed by the defendant railroad, had been discharged for alleged violations of company rules. The question whether the plaintiff's discharge was for "just and sufficient cause" within the meaning of the collective bargaining agreement between the

9. Mr. Justice Stone in International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), quoting from Milliken v. Meyer, 311 U.S. 457, 463 (1940).
10. Mr. Justice Fields in Pennoyer v. Neff, 95 U.S. 714, 733 (1878).
11. 72 So.2d 305 (La. 1954).

railroad and the union (of which the plaintiff was a member) was thereafter submitted to arbitration at the union's insistence in response to the plaintiff's written request to the union to do so. The arbitration proceeding resulted in an order of reinstatement of the plaintiff to his former job, but provided that under the circumstances there should be no provision for back pay lost during the term of his unemployment.

After accepting re-employment and in disregard of the compensation proviso of the award, the plaintiff instituted suit for back pay for the period of his unemployment, contending that the union was without authority to compromise his case. In rejecting his claim and dismissing his case the court said, "Even if the union was without authority as contended by appellant, though we do not concede this, appellant accepted the settlement and is bound by it."[12] On the facts of the case the decision seems entirely correct and any other result would have been open to serious question.

The more difficult aspect of this type of case is presented where the individual has not accepted the settlement, or engaged in any activity which may be construed as acceptance. The courts in such cases are squarely confronted with the issue which the court here left open—whether a clear agency has been established on the part of the union to make the settlement in question, and if not, whether such an agency is necessary in order to give binding validity to the agreement that has been effected. A natural reluctance to permit the rights of individuals to be conclusively disposed of by third parties points in the direction of requiring a specific agency to be spelled out. On the other hand, however, respect for the integrity of the collective bargaining process demands that finality and authority be accorded the agreement that has been made between the representatives of the parties. This consideration is given added emphasis by the terms of the National Labor Relations Act and the Railway Labor Act, which put the employer under a statutory duty to bargain with the union as the representative of his employees—and should therefore be entitled to expect that the bargains he makes will be respected and enduring. The United States Supreme Court, when confronted with this issue in 1945,[13] decided by a five-four vote that "For an award to affect the employee's rights, therefore, more must be shown

12. *Id.* at 306.
13. Elgin, Joliet & Eastern R.R. v. Burley, 325 U.S. 711 (1945).

than that the collective agent appeared and purported to act for him. It must appear that in some legally sufficient way he authorized it to act in his behalf."[14] The decision met with a storm of protest from employers and unions alike, as well as from the governmental agency charged with the administration of federal legislation, and upon rehearing the decision was affirmed, but in a modified form which recognized that "custom and usage may be as adequate a basis of authority as a more formal authorization for the union, which receives a grievance from an employee for handling, to represent him in settling it. . . ."[15] Applying the test as thus formulated to the instant case, the written request from the plaintiff to the union would seem to supply the authorization required.

LOCAL GOVERNMENT

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PUBLIC CONTRACTS

In *Board of Levee Commissioners v. Lacassin*[1] a motion had been made to authorize the chief engineer of the Board of Levee Commissioners to advertise for bids for a lease on certain property owned by the board "for a period not to exceed one year." A detailed lease proposal and a form of the proposed lease were prepared containing an option to renew for two years.

The Supreme Court held that since the form of the lease had been prepared by the board's employees, "any one who was led to bid in accordance with all the terms contained in the form of lease, had the right to expect that the Board would abide with all of its provisions after acceptance of his bid."[2] In addition the court stressed that, subsequent to the receiving of bids, the board authorized its president to enter into a contract of lease with the successful (and only) bidder " 'in accordance with the General and Special Specifications . . . all in accordance with his bid . . . which is hereby accepted. . . .' "[3] The court did not

14. *Id.* at 738.
15. Elgin, Joliet & Eastern R.R. v. Burley, 327 U.S. 661, 663 (1946).

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1. 74 So.2d 52 (La. 1954).
2. *Id.* at 55.
3. *Ibid.*